

REPORT OF THE AFRICAN COMMISSION'S WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES

RESEARCH AND INFORMATION VISIT TO THE DEMOCRATIC REPUBLIC OF CONGO

9-25 August 2009



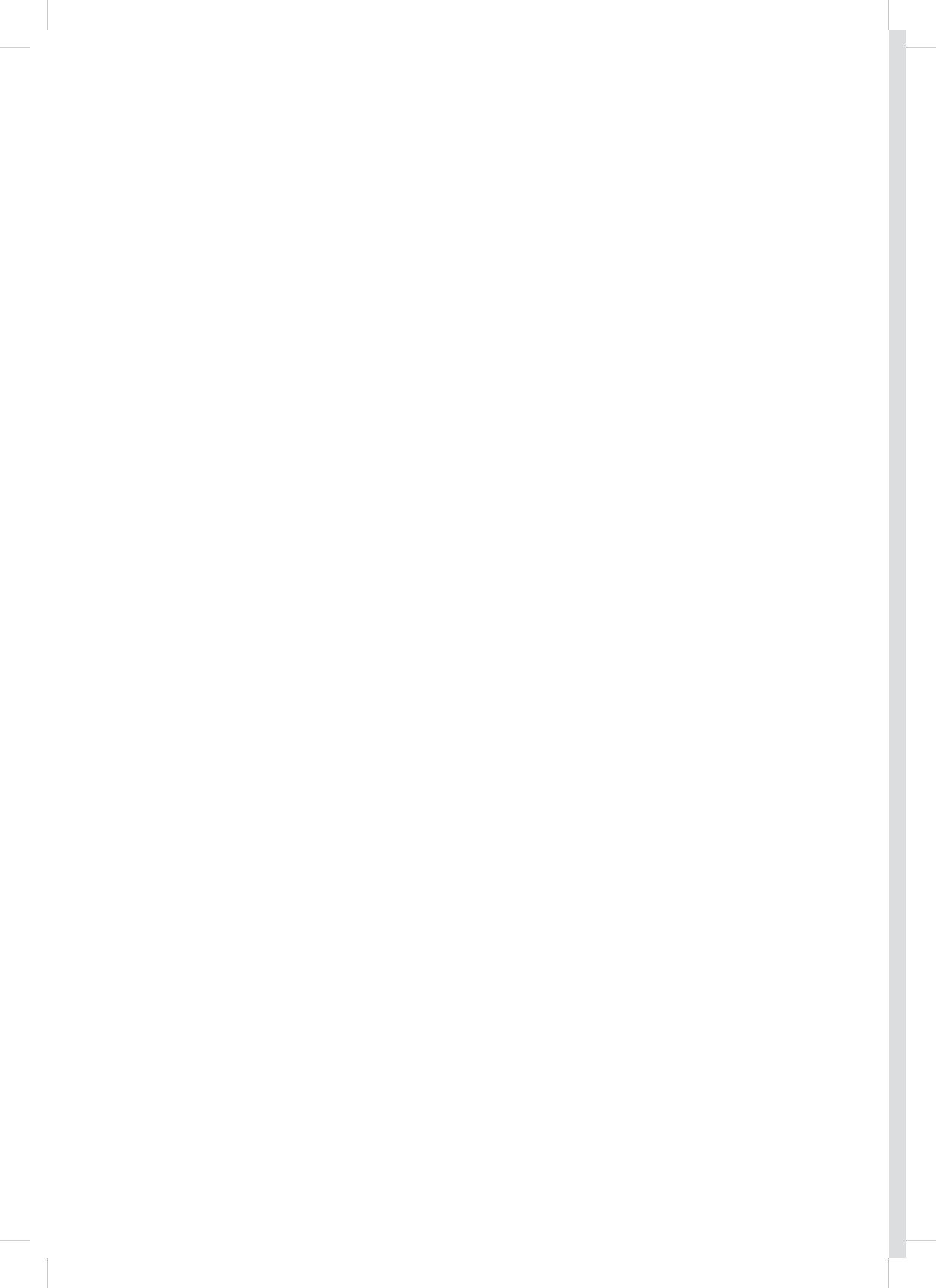
African Commission on
Human and Peoples' Rights



IWGIA

International Work Group
for Indigenous Affairs





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The African Commission on Human and Peoples' Rights
adopted this report at its 49th ordinary session, 28 April-12 May 2011



African Commission on
Human and Peoples' Rights
(ACHPR)



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Typesetting and Layout: Jorge Monrás

Prepress and Print: Eks-Skolens Trykkeri, Copenhagen,
Denmark

ISBN: 978-87-92786-07-4



Distribution in North America:
Transaction Publishers
390 Campus Drive / Somerset, New Jersey 08873
www.transactionpub.com



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AND PEOPLES' RIGHTS (ACHPR)**

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*This report has been produced with financial support from
the Danish Ministry of Foreign Affairs*

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ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
APRODEPED	Action pour la Promotion et la Défense des Droits des Personnes Défavorisées / Action for the Promotion and Defence of the Rights of Marginalised People
APDMAC	Action d'Appui pour la Protection des Droits de Minorités en Afrique Centrale / Support for the Protection of Minority Rights in Central Africa
CAMV	Centre d'Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables / Support Centre for Pygmies and Vulnerable Minorities
CELPA	8 ^e Communauté des Eglises de Pentecôte en Afrique Centrale / 8th Community of Pentecostal Churches in Central Africa
CNDP	Conseil National pour la Défense des Peuples/National Council for the Defence of Peoples
COCREFOBA	Conservation Communautaire pour la Réserve Forestière des Bakano / Community Conservation for the Bakano Forestry Reserve
CODELT	Conseil pour la Défense Environnementale par la Légalité et la Traçabilité / Council for Environmental Defence through Legality and Traceability
COMIFAC	Commission des Forêts en Afrique Centrale / Central African Forestry Commission
CREF	Réseau pour la Conservation et la Réhabilitation des Ecosystèmes Forestiers / Network for the Conservation and Rehabilitation of Forest Ecosystems
DRC	Democratic Republic of Congo
ERND INSTITUTE	Environment, Natural Resources and Development Institute

FARDC	Forces Armées de la République Démocratique du Congo / Armed Forces of the Democratic Republic of Congo
FDAPID	Foyer de Développement pour l'Auto Promotion des Pygmées et Indigènes Défavorisés / Development Centre for the Self-Promotion of Disadvantaged Pygmies and Indigenous Populations
FDLR	Forces Démocratiques de Libération du Rwanda / Democratic Forces for the Liberation of Rwanda
ICCN	Institut Congolais pour la Conservation de la Nature / Congolese Institute for Nature Conservation
IP	Indigenous Populations
LINAPYCO	Ligue Nationale des Associations Autochtones de la République Démocratique du Congo / National League of Indigenous Associations of the Democratic Republic of Congo
MONUC	United Nations Mission in the DRC
NGO	Non-governmental Organisation
PARECO	Patriotes Résistants Congolais/ Congolese Resisting Patriots
PIDEP	Programme d'Intégration et de Développement du Peuple Pygmée au Kivu / Programme for the Integration and Development of the Pygmy People of Kivu
PNKB	Kahuzi-Biega National Park
REDD	Reducing Emissions from Deforestation and Forest Degradation in Developing Countries
UEFA	Union pour l'Emancipation de la Femme Autochtone / Union for the Emancipation of Indigenous Women
UGADEC	Union des Associations de Conservation des Gorilles pour le Développement Communautaire à l'Est de la RDC / Union of Gorilla Conservation Associations for the Community Development of Eastern DRC
UNICEF	United Nations Children's Fund
WGIP	Working Group on Indigenous Populations Communities (African Commission)

PREFACE

The African Commission on Human and Peoples' Rights (ACHPR or African Commission), which is the human rights body of the African Union, has been debating the human rights situation of indigenous populations since 1999. Indigenous populations are some of the most vulnerable and marginalized groups on the African continent and their representatives have, since the 29th Ordinary Session of the African Commission in 2001, participated in the ACHPR's sessions. The indigenous representatives have borne strong testimony to their situation and the human rights violations they suffer from. Their message is a strong request for recognition and respect, as well as a call for improved protection of their civil, political, economic, social and cultural rights. It is also a request for the right to live as peoples and to have a say in their own future, based on their own culture, identity, hopes and visions. Indigenous populations, moreover, wish to exercise these rights within the institutional framework of the nation state to which they belong. The African Commission has responded to this call. The African Commission recognizes that the protection and promotion of the human rights of the most disadvantaged, marginalized and excluded groups on the continent is a major concern, and that the African Charter on Human and Peoples' Rights must form the framework for this.

In order to achieve a better basis on which to advance discussions and formulate recommendations, the African Commission set up a Working Group on Indigenous Populations/Communities (Working Group) in 2001. The Working Group implemented its initial mandate by producing the comprehensive document "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities" on the human rights situation of indigenous populations and communities in Africa (the full report can be downloaded from <http://www.achpr.org>). The report was adopted by the African Commission in November 2003, and published in a book format in 2005. The report is the African

Commission's official conceptualisation of indigenous populations' human rights in Africa.

In 2003, the Working Group was given the mandate to:

- Raise funds for the Working Group's activities, with the support and cooperation of interested donors, institutions and NGOs;
- Gather information from all relevant sources (including governments, civil society and indigenous communities) on violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Undertake country visits to study the human rights situation of indigenous populations/communities;
- Formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Submit an activity report at every ordinary session of the African Commission;
- Co-operate when relevant and feasible with other international and regional human rights mechanisms, institutions and organisations.

On the basis of this mandate, the Working Group has developed a comprehensive activity programme. This programme includes undertaking country visits, organising sensitisation seminars, cooperating with relevant stakeholders and publishing reports, all with a view to protecting and promoting indigenous populations' rights in Africa.

This report is part of a series of country-specific reports produced by the Working Group, and adopted by the African Commission on Human and Peoples' Rights. These country-specific reports are the result of the various country visits undertaken by the Working Group, all of which have sought to engage with important stakeholders such as governments, national human rights institutions, NGOs, intergovernmental agencies and representatives from indigenous communities. The visits have sought to involve all relevant actors in dialogue on indigenous populations' human rights, and to inform them of the African Commission's position. The reports not only document the Working Group's visits but

are also intended to facilitate constructive dialogue between the African Commission, the various African Union member states, and other interested parties.

To date, the Working Group has undertaken visits to Botswana, Burkina Faso, Burundi, Central African Republic, Democratic Republic of Congo, Gabon, Kenya, Namibia, Niger, Libya, Republic of Congo, Rwanda and Uganda. These country visits have been undertaken over the 2005-2011 period, and the reports are published once adopted by the African Commission. Hopefully, the reports will contribute to raising awareness of indigenous populations' situation in Africa, and prove useful for establishing dialogue and identifying appropriate ways forward for improving indigenous populations' situation in Africa.

It is hoped that, via our common efforts, the critical human rights situation of indigenous populations will become widely recognized, and that all stakeholders will work to promote and protect indigenous populations' human rights in their respective areas.

Musa Ngary Bitaye

Commissioner

Chairperson of the African Commission's Working
Group on Indigenous Populations/Communities

ACKNOWLEDGEMENTS

The African Commission on Human and Peoples' Rights would like to express its appreciation to the government of the Democratic Republic of Congo for its hospitality and availability during the visit. The African Commission is also grateful to all the persons met during the visit, without whom it would have been impossible to gather all the information found in this report. The persons met were authorities and governmental institutions, international organisations, donors, civil society organisations, universities, media and different indigenous communities in North and South Kivu.



MAP OF DEMOCRATIC REPUBLIC OF CONGO

EXECUTIVE SUMMARY

This research and information visit to the Democratic Republic of Congo was conducted from 9 to 25 August 2009 by Mr Zéphyrin Kalimba, member of the Working Group on Indigenous Populations/Communities, accompanied by the sociologist, Mr Loamba Moke, President of the *Association pour les Droits de l'Homme et l'Univers Carcéral* (ADHUC). The mission was assisted in North and South Kivu provinces by Maître Paulin Polepole, a member of *Environnement, Ressources Naturelles et Développement* (ERND INSTITUTE).

The objectives of the visit were:

- To inform the Congolese government, regional and local authorities, national human rights institutions, the media, civil society organisations and associations, development agencies and other players involved in protecting and promoting indigenous populations in Africa about the report and the efforts of the African Commission on Human and Peoples' Rights (ACHPR) with regard to indigenous populations;
- To collect all information relating to the human rights situation of indigenous populations in the DRC with a view to providing an in-depth report to the African Commission on Human and Peoples' Rights;
- To distribute the African Commission's report on indigenous peoples to key individuals and institutions;
- To distribute the UN Declaration on the Rights of Indigenous Peoples, adopted on 13 September 2007, to the different actors met and to discuss its implementation.

Socio-political background

Demographic and economic data¹

The Democratic Republic of Congo (DRC) is a vast country covering 23,449,000 km², situated in the centre of Africa. It shares borders with nine countries: Angola, Burundi, Republic of Congo, Central African Republic, Uganda, Rwanda, Tanzania, Sudan and Zambia. It has an estimated population of more than 60 million, comprising more than 200 ethnic groups, including the indigenous populations. The country is currently sub-divided into 11 provinces, including the capital, Kinshasa, which has the status of "city – province". In line with the Constitution of 18 February 2006, it is anticipated that these 11 provinces will increase to 26.

The Congolese population is very young, 48% being under the age of 14. Average life expectancy is 52.6 years for women and 50.1 for men. Households comprise, on average, six (6) people. The active population, between 15 and 64 years of age, is estimated at 57%. In 1990, 68% were working in the agricultural sector, 13% in industry and 19% in the tertiary sector. One child in four (between 5 and 14 years) works more than four hours a day, either performing domestic or other (farming or business) tasks for someone else or for their family.

In addition, the country is home to a substantial wealth of mineral resources (gold, diamonds, coltan, copper, cobalt, oil, niobium, timber, coffee etc.) and a remarkable diversity of flora and fauna. Crossed by the Congo River, the DRC has an estimated hydroelectric power potential of 100,000 megawatts (Mw), or 13% of world potential, but only currently has a total installed power of 2,516 Mw, or 2.5% of estimated potential. Household access to electricity is 1% in rural areas; 30% in towns. Moreover, despite its wealth of hydrographic potential, the population has little access to drinking water; only 27.2% of households have such access. The agricultural, forestry and fishing industries are also very little exploited. Neither the population in general nor the indigenous population in particular receive any benefit from the country's significant exploitation of

¹ This information is taken primarily from the report of the *Bureau d'Etudes de Recherches et de Consulting International* (BERCI) and from Transparency International: "Système national d'intégrité" DRC country study 2007. Some information dates from several years back but is the only data available.

its natural resources and subsoil. Less than 2% of the roads are generally surfaced.

The population of the DRC is considered one of the poorest in the world. Per capita Gross Domestic Product (GDP) fell from US\$380 in 1960 to US\$224 in 1990, finally dropping to US\$120 in 2005. Scarred by 40 years of bad governance, looting of the national economy and the forced privatisation of the public sector, the country is now ranked 167th out of 177 countries in the Human Development Report.

Virtually all organised companies in the DRC, including the central and commercial banks, operate largely outside of the formal sector. There is widespread corruption and this significantly affects the capacity of the public authorities to provide essential services. In 2007, Transparency International listed the DRC 168th out of 180 countries.

The country is one of 40 benefiting from the World Bank's "heavily indebted poor countries" (HIPC) initiative within the context of its debt reduction programme. This initiative has meant creditors undertaking to cancel 6.3 billion dollars of debt when the DRC reaches the end of the initiative.

Historical and political overview

A former Belgian colony, the DRC gained its independence on 30 June 1960. The assassination of the first elected Prime Minister, Patrice Lumumba, and the taking of power by General Mobutu on 24 November 1965 influenced what happened in the country in the following decades. General Mobutu ushered in a centralised system with a strong concentration of power in which he, the President of the Republic, was the only legitimate authority. General Mobutu held office until 1997 and this period was marked by many serious human rights violations.

A strategic Western ally in the face of the Soviet bloc, the DRC began to lose geostrategic importance for the West following the fall of the Berlin Wall. Mobutu announced the introduction of a multi-party system in 1990. This thawing of the country's political life led to the emergence of numerous new political parties and newspapers that were to become mouthpieces of the opposition.

In 1994 and 1995, the genocide in Rwanda led to a massive influx of refugees to the eastern parts of the DRC, destabilising the region and causing the “1996 war”. This war was to precipitate Mobutu’s departure and the taking over of power by Laurent-Désiré Kabila’s Alliance of Democratic Forces for the Liberation of Congo (AFDL) on 17 May 1997.

In 1998, the conflict between the DRC, Uganda and Rwanda led to a war that was to last until 2003, despite a ceasefire agreement signed in Lusaka in July 1999. This war was to involve numerous players, including the national armies of Rwanda, Burundi, Uganda, Angola, Namibia and Zimbabwe, and the country became divided into three zones of influence, governed by the different factions involved in the conflict. According to some estimates, this resulted in more than 3.8 million deaths.

In January 2001, Laurent-Désiré Kabila was assassinated and replaced by his son Joseph Kabila. A UN peacekeeping mission (MONUC), now comprising more than 17,000 men, was then sent to the country. Joseph Kabila’s arrival in power enabled the Lusaka ceasefire agreement to be implemented, setting in motion a peace accord leading to the withdrawal of Rwandan and Ugandan troops, along with a lifting of controls on political parties and the media.

Peace negotiations between the warring parties, the unarmed political opposition and civil society, known as the “Inter-Congolese Dialogue” (DIC) brought the armed conflict to an end with the signing of a “global and inclusive agreement on transition in the DRC” on 16 December 2002 in Pretoria. This agreement theoretically heralded an end to the war and a new political order in the country. The different factions involved in the war were included in power through a transitional government. This agreement brought in the famous “1+4” system, with a President of the Republic (President Joseph Kabila) and four Vice-Presidents, i.e. the heads of the main rebel movements (the *Mouvement de Libération du Congo* and *Rassemblement Congolais pour la Démocratie*), a representative of the previous government and a representative of the unarmed opposition.

During the transition period (2003-2006), the international community provided virtually 57% of the State budget and almost all of the financial and material resources for the election process, which cost nearly half a billion Euros. A lack of trust among the members of the transitional government, however, and the refusal of each party to lose the election and its “control” over the country’s institutions in Kinshasa, including manage-

ment of its financial and natural resources, formed a real threat to the consolidation of democracy both before, during and after the 2006 elections.

A constitutional referendum in December 2005 enabled a new Constitution to be enacted on 18 February 2006, and the effective commencement of an election process. The parliamentary and presidential elections of 2006 represented a return to constitutional legality for the Congolese population and international community that should enable the public authorities, regional administration and the country's development as a whole to be revitalised within a context of better governance. Despite the adoption of a bill of law on the "status of political opposition" by the National Assembly in the first half of 2007, however, some international and local political observers, along with members of the opposition parties, fear a drift towards dictatorship on the part of the current President, Joseph Kabila.

On taking oath in November 2006, President Joseph Kabila listed his five priority areas for government action:

- Infrastructure;
- Jobs;
- Food security through agricultural revival;
- Water and electricity;
- Access to basic social services (education, health and housing).

In February 2007, the Prime Minister and his government presented a programme to the newly-elected Parliament that included a good governance contract between the authorities and the Congolese population. The programme and contract are based on the Poverty Reduction and Growth Strategy Paper (PRGSP) and the five priority areas. Since then, apart from the launch of the Priority Action Programme (PAP) on 25 June 2007 - a kind of development policy for the period up to the next elections - little else has been done. The new government's extreme caution, almost using kid gloves to grope its way around the public administration, seems to have caused widespread disenchantment, particularly in the east of the country where many people voted for Kabila.

In practice, the situation remains critical for the vast majority of the population. A number of violent episodes took place in 2007, including: the bloody events in the Bas-Congo between the authorities and the politico-religious organisation "Bunda Dia Kongo" (BDK) in January/February.

ruary 2007, resulting in hundreds of deaths, including civilians; the bloody events of March 2007 in Kinshasa caused by clashes between armed bodyguards of the former MLC rebel chief, Vice-President and candidate in the second round of presidential elections, Jean-Pierre Bemba, and the regular armed forces; and the Kanyola massacres of 26 May 2007, in South Kivu, in which 18 civilians were killed by FDLR/Rasta militia while they were sleeping. Moreover, the persistent violence in the east of the country, with no reaction from the newly-elected authorities, proves that there are many challenges still remaining.

In 2009, three of the main challenges facing the new Congolese government were: pacification and national reconciliation, the establishment of a new army incorporating the different armed factions, and local elections. In fact, peace and security remain highly fragile in the post-electoral context. Pockets of insecurity in the two Kivus, Ituri and North Katanga continue to represent a threat to the DRC's stability.

However, the "Kimia II" operations to track down the Democratic Forces for the Liberation of Rwanda (FDLR), the Popular Front for Justice in the Congo (FPJC) and the Congolais Mai-Mai armed groups in South Kivu represent a high point, and this despite the FDLR's reprisals against the people in the east of the country. MONUC shares the humanitarian concerns in this regard, whilst encouraging the continuation of military operations to neutralise these rebel groups.

In May 2009, the FDLR burned down more than 700 houses in Busurungi (Walikale Territory in North Kivu), causing thousands of people to be displaced. At Dianga, around 50 kms from Mbandaka in Bolomba territory, Equateur Province, the indigenous people say they are subjected to arbitrary arrests and degrading treatment on the part of the Head of the Administrative Supervision Unit ("*Chef de poste d'encadrement administratif*"). Many of them have sought refuge in the forest, including at Makabya to the north of Nyabyondo and neighbouring villages: Bushani, Bukombo, Kaanya and Kalembera in Masisi.

Specific situation of the DRC's indigenous populations

There are many indigenous communities in the DRC. The following is a list of groups by region:

- Equateur: Batwa (Batswa), Batoa, Batwa, Balumbe, Bilangi, Bafoto, Samalia, Bone, Bayeki
- Bandundu: Batsa, Batwa, (Batswa), Bamone, Bakengele
- Orientale: Bambuti, Baka, Efe, Bambeleketi
- Katanga: Bashimbi (Bashimbe), Bamboté, Bakalanga
- Kasai-Oriental: Batwa (Batswa), Babindji²
- Kasai-Occidental: Batwa (Batswa)
- North Kivu: Batwa (Batswa), Bayanda, Babuluku, Banwa, Banbuti, Bambote.
- Maniema: Batwa (Batswa), Bambuti, Bambote
- South Kivu: Batwa (Batswa), Bayanda, Babuluku, Barhwa, Bambuti, Bambote, Bagezi (Bakeshi).

There has never been a census of these indigenous populations, hence their exact number in the DRC is unknown. The figures given are approximate and vary considerably, from between 250,000 and 600,000 people.³

The main problems facing indigenous communities in the DRC are the following:

- A lack of access and rights to land and forest in which they can practise their traditional activities;
- A lack of access to basic infrastructure (schools, healthcare, accommodation);
- Discrimination, marginalisation and poverty;
- A lack of representation within government and parliamentary structures;
- They are the victims of armed conflict, of many forms of violence such as slavery and rape, and their physical integrity is under threat;
- Their specific rights are not taken into account in the national laws.

2 According to some sources of information, the Babindji are not indigenous “Pygmies” but they are identified as indigenous nonetheless. See the report of the workshop organised by UNESCO on support policies and practices for indigenous Pygmies in the DRC, held on 18 and 19 December 2003, in Kinshasa.

3 See: www.camv-pygme.org/index.php?option=com_content&task=view&id=13&Itemid=28

Existing legal framework and international commitments

The Constitution of the DRC contains no provisions on the protection of indigenous populations. It does, however, prohibit all forms of discrimination, including on the basis of race or ethnic group. The DRC has ratified a number of agreements and treaties relevant to indigenous populations' rights. These relate particularly to:

- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights;
- The Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention on the Elimination of All Forms of Discrimination against Women;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Convention on the Rights of the Child;
- The Convention on Biological Diversity;
- The Convention on the Prevention and Punishment of the Crime of Genocide;
- The Convention relating to the Status of Refugees;
- The African Charter on Human and Peoples' Rights;
- The Rome Statute of the International Criminal Court (ratified 11 April 2002);
- The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

The relevance of these international instruments is that, according to the February 2006 Constitution, once ratified, they are automatically incorporated into domestic legislation. With regard to international treaties and agreements, Article 213 of the Constitution stipulates that: "The President of the Republic shall negotiate and ratify international treaties and agreements. The government shall sign international agreements that do not require ratification, following consideration by the Council of Ministers. It shall then inform the National Assembly and Senate."

The DRC has not yet ratified ILO Convention 169 on indigenous and tribal peoples, but it has voted in favour of the UN Declaration on the Rights of Indigenous Peoples. Moreover, the authorities met during this mission promised to initiate a law for the promotion and protection of the DRC's indigenous population, and to set in motion the process for ratifying ILO Convention 169.

The DRC has immense mineral and forest wealth and this is an asset for its socio-economic development, provided it is well managed. These sectors are now governed by a new law, Law No. 007/2002 of 11 July 2002 on the Mining Code, along with Presidential Decree No. 038 of 26 March 2003 on Mining Regulations, published on 15 July 2003, and Law No. 011/2002 on the Forest Code, governing forest ownership and use rights.

The Forest Code governs the ownership and use rights of forests and establishes the basic framework for the government's forest policy in the DRC. Article 7 of the Forest Code stipulates that: "The forests are owned by the State. Their exploitation and use by private or corporate bodies, of private or public law, is governed by the provisions of this law and its implementing regulations". Article 10 of the Forest Code defines certain broad categories of forest, such as "commercially exploitable", "community use" and "conservation". Moreover, Article 53 of the Land Law (Law No. 73-021 of 20 July 1973 on the general regime of goods, land and property regime and security regime, as amended and completed by Law No. 80-008 of 18 July 1980) stipulates that the soil is the exclusive, inalienable and imprescriptible property of the State, and Article 8 of the same code recognises the local people's right of ownership of natural or planted resources on the lands that are lawfully conceded to them by virtue of land legislation.

One of the innovations of the Forest Code is that it takes into account the customary use rights of local and indigenous communities, and establishes the concept of "local community forest". This concept is intended to demonstrate the desire of the Congolese legislators to encourage effective local and indigenous community participation in forest management. And yet despite the specific focus placed on local community forests, indigenous communities often report failures on the part of logging companies to respect standards for the management and use of forests. Situations such as these are at the root of conflicts between the communities and the logging companies.

The government also plans to validate a national strategy for the development of indigenous populations in the DRC at the level of the Ministry of Social Affairs, Humanitarian Action and National Solidarity. The strategy, which needs to be validated in consultation with the NGOs working with indigenous populations, was not public at the time of the visit.

Meetings held during the visit

In order to achieve its objectives, the mission met with many of the country's political and administrative representatives, university researchers, media, international, intergovernmental and non-governmental organisations and indigenous communities, in Kinshasa, North Kivu and South Kivu (Goma and Bukavu).

Observations from the delegation

Although the mission was able to observe the government's current efforts, on a national and provincial level, the human rights situation of indigenous populations in the DRC remains worrying. They are subjected to systematic discrimination caused by prejudice and stereotyping, and the warring factions have committed atrocities against them, particularly indigenous women and girls. They have been, and continue to be, subjected to multiple forms of discrimination and serious human rights violations. They are, for example, the target of sexual attacks simply because of their ethnic background, with such actions being justified by a belief that sexual relations with an indigenous woman is "good for a bad back".

Indigenous populations depend on their lands and resources for their well-being and for their cultural, economic, physical and spiritual integrity. And yet the DRC has neither defined nor demarcated the lands and territories of indigenous populations, and there is no mechanism in Congolese law by which to ensure their free, prior and informed consent to activities that affect them. Protected areas have been established on indigenous populations' lands without their consultation and with no com-

pensation. The continuing exclusion of indigenous populations from these areas has forced them to abandon their traditional way of life and culture and they are now living a highly vulnerable existence, in extreme poverty.

Forest concessions have also been established on indigenous populations' lands without their consent and without any compensation. The State has even recognised that they have continued to grant concessions on indigenous populations' lands, despite a moratorium instituted in 2002 and confirmed by a presidential decree in 2005 forbidding the granting of concessions in national park and protected areas. The lands and forests of the DRC are threatened by the continuing encroachment of the extractive industries. A programme of forestry reforms, including the 2002 Forest Code and a process of re-registering forest concession titles, has been implemented by the government, with World Bank assistance. And yet to date, neither of these two processes has in practice resulted in the recognition and the protection of indigenous populations' rights.

The mission also noted that indigenous populations are under the control of Bantu chieftaincies at the local level and have no land on which to build houses or grow crops. The lands they do occupy are owned by customary chiefs and they can be evicted at any time. Moreover, indigenous populations do not enjoy the same civic rights as other Congolese citizens.

Following discussions and talks with the different actors met, the mission noted the following:

- The Congolese government has not established any specific policy for the promotion and protection of indigenous populations' rights;
- Indigenous populations lack any representation in national, provincial and local institutions;
- Indigenous populations are marginalised by other peoples;
- Indigenous populations have been stripped of their lands by the State, customary chieftaincies and other populations;
- Local authorities and other populations have insufficient information about indigenous populations' rights.

The DRC's political and administrative authorities did, however, promise the mission that a national strategy for the development of indigenous

populations' rights would be validated and implemented in all spheres, along with the UN Declaration on Indigenous Peoples' Rights (UNDRIP), adopted on 13 September 2007.

Chapter 4, Article 66 of the DRC's Constitution (A citizen's duties), stipulates that: "All Congolese citizens have the duty to respect and treat their fellow citizens without discrimination and to maintain relations with them that enable national unity, mutual respect and tolerance to be safeguarded, promoted and strengthened. They also have a duty to preserve and strengthen national solidarity, particularly when this is under threat". While the Constitution prohibits all forms of discrimination and stipulates equality between communities, it does not, however, specifically recognise the rights of indigenous populations. And yet the situation of indigenous populations in the DRC has deteriorated to such an extent that their physical and cultural integrity, even their very survival as populations, is now under threat.

The DRC has joined the "Reducing Emissions from Deforestation and Forest Degradation in Developing Countries" (REDD) programme, a new mechanism for financing environmental projects aimed at mitigating climate change and conserving forests for sustainable development. The government has put in place a national REDD Committee and a National REDD Coordination to implement the programme, thus expressing the State's commitment to ensure its implementation in the country. This programme also reinforces the State's responsibility to consider and respect the rights of indigenous populations in the DRC.

Conclusion

The research and information visit to the DRC went smoothly and enabled the mission to obtain a broad overview of human rights problems in general, and indigenous rights problems in particular, in Kinshasa and in the east of the country, specifically North and South Kivu. The situation of indigenous populations is alarming in the DRC, in terms of access to land and forest, access to basic services and justice, participation in decision-making, consultation, insecurity and serious human rights violations.

The enactment of the Forest Code of 22 August 2002 is, however, one of the actions the Congolese government has taken to improve the situation in the forest sector. The Forest Code lays down a basis of modern forest management principles by stipulating that the forest must fulfil both environmental and social functions and contribute to national development. Moreover, it takes the importance of the local population's active participation in forest management into account. One of the innovations of the Forest Code has been to preserve the customary use rights of local and indigenous communities. Article 22 paragraph 1 stipulates that, "A local community may, on request, obtain by way of forest concession all or part of the protected forests included within the forests regularly possessed by virtue of custom". To obtain a concession, the local community has to make a request to the State, which owns the forests.

Other good initiatives from the government should also be mentioned, including the elaboration of a national strategy for the development of indigenous populations in the DRC which, however, still needs to be validated and disseminated. Moreover, some positive initiatives have been taken in North and South Kivu by the local government.

And yet the absence of a specific national law for indigenous populations and the lack of legal recognition show that indigenous issues are still not a priority for the Congolese State. Moreover, the numerous UN programmes underway in the DRC do not take account of the specific problems faced by indigenous populations, and they unfortunately have no specific policies in their regard.

Recommendations

Based on the findings of the visit, the African Commission's Working Group on Indigenous Populations/Communities makes the following recommendations:

A. To the Government of the Democratic Republic of Congo:

1. Put in place positive sectoral policies that will enable the indigenous populations to enjoy all basic rights (including to health and

- education) and fundamental freedoms on the same basis as the rest of the Congolese population;
2. Validate and make known the national strategy for the development of indigenous populations in the DRC;
 3. Develop a specific law on the promotion and protection of indigenous rights in the DRC;
 4. Expedite the court case between the indigenous populations living around the Kahuzi-Biega National Park in Kabare, South Kivu, the Congolese Institute for Nature Conservation and the Congolese State in a transparent and equitable way;
 5. Take specific measures to ensure that indigenous populations obtain access to justice through the strengthening of legal aid centres;
 6. Involve the indigenous organisations and communities in the decision-making, design, establishment and monitoring of development projects that affect their communities;
 7. Organise a specific census of indigenous populations;
 8. Take measures to ensure the systematic registration of births and the issuing of civil documentation to indigenous children and parents;
 9. Recognise the traditional way of life of indigenous populations and take measures to encourage their access to citizenship;
 10. Provide legal protection of indigenous peoples' rights to land, forests and natural resources;
 11. Take specific measures to ensure indigenous populations are not being dispossessed of their land and natural resources and to ensure that indigenous populations are involved in decision-making processes and management of their land and natural resources.
 12. Compensate the indigenous populations that have been expropriated from their lands for the public good adequately;
 13. Make known and disseminate the UN Declaration on the Rights of Indigenous Peoples in local languages;
 14. Take specific measures aimed at protecting the rights of indigenous women and girls, who are doubly vulnerable because they are both female and indigenous;
 15. Ensure indigenous women are protected from sexual violence or any other form of violence and put programmes in place to help the victims of violence;

16. Take measures to protect the rights of children abandoned as a result of rape;
17. Promote indigenous peoples' traditional culture through pharmacopeia and handicrafts;
18. Ensure that the perpetrators of acts of violence against indigenous populations, including those involved in practices of slavery or rape, are brought to justice;
19. Put programmes in place to encourage income-generating activities for indigenous peoples;
20. Help indigenous populations' organisations to access the DRC's Social Fund;
21. Take the necessary measures aimed at ratifying ILO Convention 169;
22. Establish a lasting peace in the DRC in general and in North and South Kivu provinces in particular, in order to enable the indigenous populations to return to their places of origin.

B. To Congolese civil society:

1. Undertake greater networking in order to better guide and organise activities of lobbying, advocacy, awareness raising, sustainable development, the fight against impunity, etc;
2. Take ownership of and raise awareness of the UN Declaration on the Rights of Indigenous Peoples;
3. Take ownership of and raise awareness of the Forest Code and the Mining Code;
4. Train indigenous populations in the use of participatory mapping when demarcating their lands;
5. Support the indigenous populations in legal and administrative areas;
6. Strengthen the legal aid centres already in place;
7. Initiate programmes of income-generating activities for indigenous populations;
8. Initiate programmes to ensure that children that are the result of rapes are protected;
9. Promote access to education on the part of indigenous children;

10. Promote access to basic services on the part of indigenous populations.

C. To the international community:

1. Support the sustainable development activities and programmes of indigenous populations in the DRC;
2. Support the Congolese government to implement its national plan for indigenous populations;
3. Anticipate including indigenous issues in the different processes relating to the forest management of the Congo basin, such as AF-LEG (Africa Forest Law Enforcement and Governance), the European Union convergence plan, the World Bank, the different bilateral partners and the Central African Forestry Commission (COMIFAC);
5. Organise inter-agency meetings aimed at raising awareness of indigenous issues and mobilising resources;
6. Support an in-depth study into the situation of indigenous populations in the DRC, including a specific census;
7. Support the dissemination of the African Commission's report on the rights of indigenous communities;
8. Support the education of indigenous children;
9. Support NGOs involved in protecting indigenous peoples' rights both financially and technically.

I. INTRODUCTION

The African Commission on Human and Peoples' Rights (ACHPR) was established under Article 30 of the Charter with the mandate of promoting and protecting human and peoples' rights in Africa.

In order to effectively carry out its mandate, the ACHPR decided to establish Special Mechanisms, including Special Rapporteurs and Working Groups on thematic human rights issues. These special mechanisms have the same kind of mandate as the ACHPR – that is to promote and protect human rights - in their respective areas of specialisation. One such special mechanism is the Working Group on Indigenous Populations/Communities (WGIP) established by the ACHPR at its 28th Ordinary Session held in Cotonou, Benin, in October 2000. The Working Group was initially mandated to:

- examine the concept of indigenous people or communities in Africa;
- study the implications of the African Charter on Human and Peoples' Rights and the well-being of indigenous communities, especially with regard to the right to equality (Arts. 2 and 3), the right to dignity (Art. 5), to protection against domination (Art. 19), to the promotion of cultural development and identity (Art. 22);
- consider appropriate recommendations for the monitoring and protection of the rights of indigenous communities; and
- submit a report to the African Commission.

In 2003, the WGIP presented a Report to the ACHPR in which it gave an overview of the situation of indigenous populations in Africa and conceptualised its approach to indigenous issues within the framework of the Charter. The Report was adopted by the ACHPR in 2003 and was published and widely disseminated. The Report is the official conceptualisation and framework within which the African Commission promotes and protects the rights of indigenous populations and communities on the continent.

Preparation of the mission

At its meeting prior to the 45th Ordinary Session of the ACHPR, in May 2009, the WGIP decided to conduct a research and information visit to the DRC. It is important to note that it is not necessary to send a *note verbale* to the government of the country in which a research and information visit is conducted. It was thus decided that the visit would be conducted, from 9-25 August 2009, by Mr Zéphyrin Kalimba, member of the Working Group on Indigenous Populations/Communities, accompanied by the sociologist, Mr Loamba Moke, President of the *Association pour les Droits de l'Homme et l'Univers Carcéral* (ADHUC). The mission was assisted in North and South Kivu provinces by Maître Paulin Polepole, a member of *Environnement, Ressources Naturelles et Développement* (ERND INSTITUTE).

Terms of reference of the mission

One of the tasks of the WGIP is to gather information on the situation of indigenous populations/communities in the respective African Union member states, and to examine the rights to equality, dignity, protection from discrimination, self-determination and promotion of cultural development and identity of indigenous populations.

The specific terms of reference of the mission were, *inter alia*, to:

- Inform the Congolese government, regional and local authorities, national human rights institutions, the media, civil society organisations and associations, development agencies and other players involved in protecting and promoting indigenous populations in Africa about the report and the efforts of the African Commission on Human and Peoples' Rights (ACHPR) with regard to indigenous populations;
- Collect all information relating to the human rights situation of indigenous populations in the DRC with a view to providing an in-depth report to the African Commission on Human and Peoples' Rights;

- Distribute the African Commission's report on indigenous populations to key individuals and institutions;
- Distribute the UN Declaration on the Rights of Indigenous Peoples, adopted on 13 September 2007, to the different actors met and to discuss its implementation.

In order to achieve these objectives, the mission met with many of the country's political and administrative representatives, university researchers, international, intergovernmental and non-governmental organisations and indigenous communities, in Kinshasa, North Kivu and South Kivu (Goma and Bukavu).

The different indigenous populations in the DRC comprise the Bambuti (Basua, Efe and Asua) who live in the east of the country, particularly Ituri, the Twa, who live along the border with Rwanda and in the Tumba Lake region in Equateur Province, and the Awa who live in the forests and bush around the Kasai lakes. Other groups are spread throughout the DRC's forested region, particularly the Aka people along the north-west border with the Republic of Congo. The total indigenous population in the DRC is unknown but estimates vary between 250,000 and 600,000 people.

II. SOCIO-POLITICAL BACKGROUND

1. Demographic and economic data⁴

The Democratic Republic of Congo (DRC) is a vast country covering 23,449,000 km², situated in the centre of Africa. It shares borders with nine countries: Angola, Burundi, Republic of Congo, Central African Republic, Uganda, Rwanda, Tanzania, Sudan and Zambia. It has an estimated population of more than 60 million, comprising more than 200 ethnic groups, including the indigenous populations. The country is currently sub-divided into 11 provinces, including the capital, Kinshasa, which has the status of “city – province”. In line with the Constitution of 18 February 2006, it is anticipated that these 11 provinces will increase to 26.

The Congolese population is very young, 48% being under the age of 14. Average life expectancy is 52.6 years for women and 50.1 for men. Households comprise, on average, six (6) people. The active population, between 15 and 64 years of age, is estimated at 57%. In 1990, 68% were working in the agricultural sector, 13% in industry and 19% in the tertiary sector. One child in four (between 5 and 14 years) works more than four hours a day, either performing domestic or other (farming or business) tasks for someone else or for their family.

In addition, the country is home to a substantial wealth of mineral resources (gold, diamonds, coltan, copper, cobalt, oil, niobium, timber, coffee etc.) and a remarkable diversity of flora and fauna. Crossed by the Congo River, the DRC has an estimated hydroelectric power potential of 100,000 megawatts (Mw), or 13% of world potential, but only currently has a total installed power of 2,516 Mw, or 2.5% of estimated potential. Household access to electricity is 1% in rural areas; 30% in towns. Moreover, despite its wealth of hydrographic potential, the population has little

⁴ This information is taken primarily from the report of the *Bureau d'Etudes de Recherches et de Consulting International* (BERCI) and from Transparency International: “*Système national d'intégrité*” DRC country study, 2007. Some information dates from several years back but is the only data available.

access to drinking water; only 27.2% of households have such access. The agricultural, forestry and fishing industries are also very little exploited. Neither the population in general nor the indigenous population in particular receive any benefit from the country's significant exploitation of its natural resources and subsoil. Less than 2% of the roads are generally surfaced.

The population of the DRC is considered one of the poorest in the world. Per capita Gross Domestic Product (GDP) fell from US\$380 in 1960 to US\$224 in 1990, finally dropping to US\$120 in 2005. Scarred by 40 years of bad governance, looting of the national economy and the forced privatisation of the public sector, the country is now ranked 167th out of 177 countries in the Human Development Report.

Virtually all organised companies in the DRC, including the central and commercial banks, operate largely outside of the formal sector. There is widespread corruption and this significantly affects the capacity of the public authorities to provide essential services. In 2007, Transparency International listed the DRC 168th out of 180 countries.

The country is one of 40 benefiting from the World Bank's "heavily indebted poor countries" (HIPC) initiative within the context of its debt reduction programme. This initiative has meant creditors undertaking to cancel 6.3 billion dollars of debt when the DRC reaches the end of the initiative.

2. Historical and political overview

A former Belgian colony, the DRC gained its independence on 30 June 1960. The assassination of the first elected Prime Minister, Patrice Lumumba, and the taking of power by General Mobutu on 24 November 1965 influenced what happened in the country in the following decades. General Mobutu ushered in a centralised system with a strong concentration of power in which he, the President of the Republic, was the only legitimate authority. General Mobutu held office until 1997 and this period was marked by many serious human rights violations.

A strategic Western ally in the face of the Soviet bloc, the DRC began to lose geostrategic importance for the West following the fall of the Berlin Wall. Mobutu announced the introduction of a multi-party system in

1990. This thawing of the country's political life led to the emergence of numerous new political parties and newspapers that were to become mouthpieces of the opposition.

In 1994 and 1995, the genocide in Rwanda led to a massive influx of refugees to the eastern parts of the DRC, destabilising the region and causing the "1996 war". This war was to precipitate Mobutu's departure and the taking over of power by Laurent-Désiré Kabila's Alliance of Democratic Forces for the Liberation of Congo (AFDL) on 17 May 1997.

In 1998, the conflict between the Presidents of the DRC, Uganda and Rwanda led to a war that was to last until 2003, despite a ceasefire agreement signed in Lusaka in July 1999. This war was to involve numerous players, including the national armies of Rwanda, Burundi, Uganda, Angola, Namibia and Zimbabwe, and the country became divided into three zones of influence, governed by the different factions involved in the conflict. According to some estimates, this resulted in more than 3.8 million deaths.

In January 2001, Laurent-Désiré Kabila was assassinated and replaced by his son Joseph Kabila. A UN peacekeeping mission (MONUC), now comprising more than 17,000 men, was then sent to the country. Joseph Kabila's arrival in power enabled the Lusaka ceasefire agreement to be implemented, setting in motion a peace accord leading to the withdrawal of Rwandan and Ugandan troops, along with a lifting of controls on political parties and the media.

Peace negotiations between the warring parties, the unarmed political opposition and civil society, known as the "Inter-Congolese Dialogue" (DIC) brought the armed conflict to an end with the signing of a "global and inclusive agreement on transition in the DRC" on 16 December 2002 in Pretoria. This agreement theoretically heralded an end to the war and a new political order in the country. The different factions involved in the war were included in power through a transitional government. This agreement brought in the famous "1+4" system, with a President of the Republic (President Joseph Kabila) and four Vice-Presidents, i.e. the heads of the main rebel movements (the MLC and RCD), a representative of the previous government and a representative of the unarmed opposition.

During the transition period (2003-2006), the international community provided virtually 57% of the State budget and almost all of the finan-

cial and material resources for the election process, which cost nearly half a billion Euros. A lack of trust among the members of the transitional government, however, and the refusal of each party to lose the election and its "control" over the country's institutions in Kinshasa, including management of its financial and natural resources, formed a real threat to the consolidation of democracy both before, during and after the 2006 elections.

A constitutional referendum in December 2005 enabled a new Constitution to be enacted on 18 February 2006, and the effective commencement of an election process. The parliamentary and presidential elections of 2006 represented a return to constitutional legality for the Congolese population and international community that should enable the public authorities, regional administration and the country's development as a whole to be revitalised within a context of better governance. Despite the adoption of a bill of law on the "status of political opposition" by the National Assembly in the first half of 2007, however, some international and local political observers, along with members of the opposition parties, fear a drift towards dictatorship on the part of the current President, Joseph Kabila.

On taking oath in November 2006, President Joseph Kabila listed his five priority areas for government action:

- Infrastructure;
- Jobs;
- Food security through agricultural revival;
- Water and electricity;
- Access to basic social services (education, health and housing).

In February 2007, the Prime Minister and his government presented a programme to the newly-elected Parliament that included a good governance contract between the authorities and the Congolese population. The programme and contract are based on the Poverty Reduction and Growth Strategy Paper (PRGSP) and the five priority areas. Since then, apart from the launch of the Priority Action Programme (PAP) on 25 June 2007 - a kind of development policy for the period up to the next elections - little else has been done. The new government's extreme caution, almost using kid gloves to grope its way around the public administration,

seems to have caused widespread disenchantment, particularly in the east of the country where many people voted for Kabila.

In practice, the situation remains critical for the vast majority of the population. A number of violent episodes took place in 2007, including: the bloody events in the Bas-Congo between the authorities and the politico-religious organisation "Bunda Dia Kongo" (BDK) in January/February 2007, resulting in hundreds of deaths, including civilians; the bloody events of March 2007 in Kinshasa caused by clashes between armed bodyguards of the former MLC rebel chief, Vice-President and candidate in the second round of presidential elections, Jean-Pierre Bemba, and the regular armed forces; and the Kanyola massacres of 26 May 2007, in South Kivu, in which 18 civilians were killed by FDLR/Rasta militia while they were sleeping. Moreover, the persistent violence in the east of the country, with no reaction from the newly-elected authorities, proves that there are many challenges still remaining.

In 2009, three of the main challenges facing the new Congolese government were: pacification and national reconciliation, the establishment of a new army incorporating the different armed factions, and local elections. In fact, peace and security remain highly fragile in the post-electoral context. Pockets of insecurity in the two Kivus, Ituri and North Katanga continue to represent a threat to the DRC's stability.

However, the "Kimia II" operations to track down the Democratic Forces for the Liberation of Rwanda (FDLR), the Popular Front for Justice in the Congo (FPJC) and the Congolais Mai-Mai armed groups in South Kivu represent a high point, and this despite the FDLR's reprisals against the people in the east of the country. MONUC shares the humanitarian concerns in this regard, whilst encouraging the continuation of military operations to neutralise these rebel groups.

In May 2009, the FDLR burned down more than 700 houses in Busurungi (Walikale Territory in North Kivu), causing thousands of people to be displaced. At Dianga, around 50 kms from Mbandaka in Bolomba territory, Equateur Province, the indigenous people say they are subjected to arbitrary arrests and degrading treatment on the part of the Head of the Administrative Supervision Unit ("*Chef de poste d'encadrement administratif*"). Many of them have sought refuge in the forest, including at Makabya to the north of Nyabyondo and neighbouring villages: Bushani, Bukombo, Kaanya and Kalembera in Masisi.

3. Specific situation of the DRC's indigenous populations

There are many indigenous communities in the DRC. The following is a list of groups by region:

- Equateur: Batwa (Batswa), Batoa, Batwa, Balumbe, Bilangi, Bafoto, Samalia, Bone, Bayeki
- Bandundu: Batsa, Batwa, (Batswa), Bamone, Bakengele
- Orientale: Bambuti, Baka, Efe, Bambeleketi
- Katanga: Bashimbi (Bashimbe), Bamboté, Bakalanga
- Kasai-Oriental: Batwa (Batswa), Babindji⁵
- Kasai-Occidental: Batwa (Batswa)
- North Kivu: Batwa (Batswa), Bayanda, Babuluku, Banwa, Banbuti, Bambote.
- Maniema: Batwa (Batswa), Bambuti, Bambote
- South Kivu: Batwa (Batswa), Bayanda, Babuluku, Barhwa, Bambuti, Bambote, Bagezi (Bakeshi).

There has never been a census of these indigenous populations, hence their exact number in the DRC is unknown. The figures given are approximate and vary considerably, from between 250,000 and 600,000 people.⁶

The main problems facing indigenous communities in the DRC are the following:

- A lack of access and rights to land and forest in which they can practise their traditional activities;
- A lack of access to basic infrastructure (schools, healthcare, accommodation);
- Discrimination, marginalisation and poverty;
- A lack of representation within government and parliamentary structures;

5 According to some sources of information, the Babindji are not indigenous "Pygmies" but they are identified as indigenous nonetheless. See the report of the workshop organised by UNESCO on support policies and practices for indigenous Pygmies in the DRC, held on 18 and 19 December 2003, in Kinshasa.

6 See: www.camv-pygmee.org/index.php?option=com_content&task=view&id=13&Itemid=28

- They are the victims of armed conflict, of many forms of violence such as slavery and rape, and their physical integrity is under threat;
- Their specific rights are not taken into account in the national laws.

III. EXISTING LEGAL FRAMEWORK AND INTERNATIONAL COMMITMENTS

The Constitution of the DRC contains no provisions on the protection of indigenous populations. It does, however, prohibit all forms of discrimination, including on the basis of race or ethnic group. The DRC has ratified a number of agreements and treaties relating to indigenous populations' rights. These relate particularly to:

- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights;
- The Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention on the Elimination of All Forms of Discrimination against Women;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Convention on the Rights of the Child;
- The Convention on Biological Diversity;
- The Convention on the Prevention and Punishment of the Crime of Genocide;
- The Convention relating to the Status of Refugees;
- The African Charter on Human and Peoples' Rights;
- The Rome Statute of the International Criminal Court (ratified 11 April 2002);
- The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

The relevance of these international instruments is that, according to the February 2006 Constitution, once ratified, they are automatically incorporated into domestic legislation. With regard to international treaties

and agreements, Article 213 of the Constitution stipulates that: "The President of the Republic shall negotiate and ratify international treaties and agreements. The government shall sign international agreements that do not require ratification, following consideration by the Council of Ministers. It shall then inform the National Assembly and Senate."

The DRC has not yet ratified ILO Convention 169 on indigenous and tribal peoples, but it has voted in favour of the UN Declaration on the Rights of Indigenous Peoples. Moreover, the authorities met during this mission promised to initiate a law for the promotion and protection of the DRC's indigenous population, and to set in motion the process for ratifying ILO Convention 169.

The DRC has immense mineral and forest wealth and this is an asset for its socio-economic development, provided it is well managed. These sectors are now governed by a new law, Law No. 007/2002 of 11 July 2002 on the Mining Code, along with Presidential Decree No. 038 of 26 March 2003 on Mining Regulations, published on 15 July 2003, and Law No. 011/2002 on the Forest Code, governing forest ownership and use rights.

The Forest Code governs the ownership and use rights of forests and establishes the basic framework for the government's forest policy in the DRC. Article 7 of the Forest Code stipulates that: "The forests are owned by the State. Their exploitation and use by private or corporate bodies, of private or public law, is governed by the provisions of this law and its implementing regulations". Article 10 of the Forest Code defines certain broad categories of forest, such as "commercially exploitable", "community use" and "conservation". Moreover, Article 53 of the Land Law (Law No. 73-021 of 20 July 1973 on the general regime of goods, land and property regime and security regime, as amended and completed by Law No. 80-008 of 18 July 1980) stipulates that the soil is the exclusive, inalienable and imprescriptible property of the State, and Article 8 of the same code recognises the local people's right of ownership of natural or planted resources on the lands that are lawfully conceded to them by virtue of land legislation.

One of the innovations of the Forest Code is that it takes into account the customary use rights of local and indigenous communities, and establishes the concept of "local community forest". This concept is intended to demonstrate the desire of the Congolese legislators to encourage effective local and indigenous community participation in forest man-

agement. And yet despite the specific focus placed on local community forests, indigenous communities often report failures on the part of logging companies to respect standards for the management and use of forests. Situations such as these are at the root of conflicts between the communities and the logging companies.

The government also plans to validate a national strategy on the development of indigenous populations in the DRC at the level of the Ministry of Social Affairs, Humanitarian Action and National Solidarity. The strategy, which needs to be validated in consultation with the NGOs working with indigenous populations, was not public at the time of the visit.

IV. DIFFERENT MEETINGS HELD

1. KINSHASA

The mission began its work in Kinshasa, the political capital of the DRC, on 10 August 2009. The meetings conducted in Kinshasa are described below.

a. Meetings with the government

MEETING WITH THE VICE MINISTER, MINISTRY OF JUSTICE

On 14 August, the mission was received by His Excellency the Vice Minister of Justice, Mr Jean Collins Musonda Kalusambo, assisted by his Advisor. The meeting was broadcast by Congolese National Radio and Television. After presenting the aim of its mission, the team provided His Excellency with two copies of the WGIP's report, two copies of the UN Declaration on the Rights of Indigenous Peoples, and one copy of the report of the regional sensitisation seminar in Central Africa. The Vice Minister is a defender of human rights and a member of the first General Assembly of the Economic, Social and Cultural Council of the African Union. He informed the mission that the Ministry of Justice's programme includes, in particular, the recruitment of more than 500 judges to facilitate access to justice in the communities. He said that the DRC is a post-conflict country and human rights violations are a constant feature, particularly in the east of the country, where the indigenous populations are suffering greatly. He also said that the Ministry of Justice intends to develop communications as a way of implementing the legal apparatus, which is the bedrock of development. The Vice Minister assured the mission of the Ministry's commitment to implementing the UN Declaration on the Rights of Indigenous Peoples and to disseminating the WGIP's report.

MEETING WITH THE MINISTRY FOR GENDER AND FAMILY

The mission met with the Assistant Director of the Minister's Cabinet on 13 August, at the Ministry for Gender and Family. After presenting the aim of its visit, the mission provided copies of the WGIP's report, the UN Declaration on the Rights of Indigenous Peoples, and the report on the regional sensitisation seminar in Central Africa.

The Assistant Director informed the Mission of the Ministry's concerns regarding rape and violence against women, and informed them of Law No. 09/001 of 10 January 2009 on child protection, along with Law No. 08/11 of 14 July 2008 on the rights of people living with HIV/AIDS. He also said that apart from these actions, the Ministry organises a large number of dissemination and awareness raising activities for women and children.

MEETING WITH THE MINISTRY OF SOCIAL AFFAIRS, HUMANITARIAN ACTION AND NATIONAL SOLIDARITY

On 14 August, the mission was received by the Director of the Minister's Cabinet, Mr J. P. Bokolo Ompoka. The delegation presented the aim of its visit and provided copies of the WGIP's report, the UN Declaration on the Rights of Indigenous Peoples and the reports of the regional sensitisation seminar in Central Africa.

The Director explained the work implemented by the department with regard to indigenous populations, and indicated that he had an Advisor working on this issue. Indigenous populations were, in his opinion, vulnerable groups requiring protection. He also noted that the religious institutions were showing responsibility by providing supervision and training for this category of the Congolese population. He indicated that the department helps national and international NGOs working to promote and protect indigenous populations to obtain formal recognition from the State. He is also exploring the possibility of implementing a programme of support to indigenous organisations.

The mission also had a meeting with Mr Kululumia Bipa, Advisor on socio-professional and economic reintegration within the Ministry, who in turn briefly presented the national strategy for indigenous populations in the DRC. He recognised that indigenous populations suffer discrimination at many levels. He said that the department, in cooperation with other departments in the Ministry, civil society actors and indigenous populations' organisations, had selected four priorities with regard to indigenous rights in the DRC, namely:

1. The validation of an overall national strategy which will form the national policy on indigenous populations;
2. To develop recommendations, legislative texts and general guidelines on indigenous rights;
3. The demarcation of indigenous lands and territories;
4. The preparation of a bill on the promotion and protection of indigenous populations' rights in the DRC.

MEETING AT THE MINISTRY OF HUMAN RIGHTS

On 14 August, the mission met with Mr Paul Lohalo Onyemba and Mr Fuelo Madiadi Lievin, both ministerial advisors within the Ministry of Human Rights. The advisors very favourably received the WGIP's report, the UN Declaration on the Rights of Indigenous Peoples and the report of the regional sensitisation seminar in Central Africa. They recognised that the process of integrating indigenous populations was not easy, stating that these people were resistant to change and inward-looking. They said that the Constitution of the DRC recognises all groups, including the "Pygmies". In their opinion, the "Pygmies" were accepted within the community and had access to schools. Notwithstanding this, they said that the Ministry was ready to cooperate with other ministries and civil society organisations working for the promotion and protection of indigenous populations' rights in order to facilitate the process of indigenous integration into society.

b. Meetings with international organisations

MEETING WITH THE DEPUTY DIRECTOR OF THE HUMAN RIGHTS OFFICE OF THE UNITED NATIONS MISSION IN CONGO (MONUC) IN KINSHASA

On 10 August, the mission met with the Deputy Director of the UN's Human Rights Office, Mr Louis-Marie Bonaka, at the MONUC office in Kinshasa. The mission gave him a copy of the report of the African Commission's WGIP, a copy of the UN Declaration on the Rights of Indigenous Peoples, and the report on the regional sensitisation seminar in Central Africa. It also presented the African Commission's work with regard to indigenous populations and urged the use and dissemination of the reports. During the meeting, the Deputy Director informed the mission that the MONUC office addresses human rights issues but that, unfortunately, indigenous rights were not yet being considered by the Office. Given the importance of the issue and the human rights violations being suffered by this group, the mission discussed with MONUC the possibility of designating a Focal Point to take responsibility for indigenous rights within MONUC and MONUC indicated that this would be possible.

c. Meetings with NGOs

MEETING WITH MEMBERS OF THE COUNCIL FOR ENVIRONMENTAL DEFENCE THROUGH LEGALITY AND TRACEABILITY (CODELT)

The mission met with the President of CODELT, Mr Augustin Mpoyi Mbunga, on 10 August. He explained CODELT's aims to the mission: "To promote the concepts of legality, traceability and involvement in the system of natural resource management and use, through activities aimed both at reflection and action". He also said that the organisation supports local communities and indigenous populations. The mission provided copies of the WGIP's report, the UN Declaration on the Rights of Indigenous Peoples and the report on the regional sensitisation seminar in Central Africa, and urged Mr Mpoyi Mbunga to make use of and disseminate the reports. The mission also encouraged CODELT to include awareness

raising on the UN Declaration on the Rights of Indigenous Peoples in its programme.

d. Meetings with the media

MEETING WITH THE EDITORIAL TEAM OF RADIO OKAPI

The mission met with the editorial team of Radio Okapi on 10 August, at the radio station's offices. In a radio broadcast, the mission had an opportunity to present the aim of its visit, the institutions it was planning to meet and to give a brief overview of the indigenous populations of North and South Kivu. It explained that a report would be produced and presented to the African Commission's Working Group on Indigenous Populations/Communities.

On 14 August, the mission was interviewed for a second time by the editorial team of Radio Okapi in order to provide more information on the fieldwork and to increase the mission's visibility in relation to the political and administrative authorities in Kinshasa. The mission thanked Radio Okapi most sincerely for contributing to the good progress of the mission and giving it the opportunity to meet with a good number of authorities in Kinshasa.

INTERVIEW GIVEN TO NATIONAL CONGOLESE RADIO/TELEVISION (RTNC)

On 14 August, the head of the mission, Mr Zéphyrin Kalimba, explained the aim of the mission's trip to the DRC and the work and mandate of the WGIP to *Radio Télévision Nationale Congolaise* (RTNC). He also shared the mission's programme and planned visits in, among other places, Kinshasa, Goma and Bukavu.

2. IN NORTH KIVU (GOMA)

a. Meetings with the government

MEETING WITH THE PROVINCIAL MINISTRY FOR THE ADMINISTRATION OF JUSTICE, HUMAN RIGHTS AND COMMUNITY RE-INTEGRATION

The mission met with the Director of the Minister's Cabinet, Mr Boniface Nduhirahe and Mr Kizito Niyitegeka and Mr Jules Simpeze, Human Rights Advisor to the Minister and Expert responsible for the Detention Centres Monitoring Committee respectively, on 18 August.

It emerged from these meetings that there is no specific Ministry programme focusing on indigenous populations. It is possible that these people are not expressing their demands sufficiently to be taken into consideration, stated the Cabinet Director. He did, however, feel that the issue could now possibly be considered in the context of the 2010 budget.

The delegation raised the issue of whether the Ministry was informed of the eviction of families from their homes in Famando and what measures were being advocated to reinstate their households' rights. The Ministry team stated that it had never been informed of a legal case on the evictions of the indigenous populations.

With regard to the problem of registering the births of indigenous children, the Ministry responded that it was a problem that not only affected indigenous populations. The Ministry team stated that the provincial government had made a commitment to establish a registry official in each area, with responsibility for issues relating to the civil registry at this level. They said this could enable all sectors of the population to gain access to basic State services, including the indigenous population.

The Ministry team informed us that the minister had sent letters to the head of the justice division asking for a list of all national and international organisations working on behalf of the indigenous populations with the aim of enabling him to monitor what was being done for them and assess NGO performance in this area. He said that sanctions could even be envisaged.

MEETING WITH THE DEPUTY GOVERNOR OF NORTH KIVU PROVINCE

As the Provincial Governor was on a mission to Kinshasa, the mission was received by the Deputy Governor on 18 August. After welcoming us,

he informed the mission that the Bayaka, the indigenous population of Kinshasa, were also an indigenous population of the Congo. The mission took note of this information and promised to look into the issue.

He stated that the world was now moving towards the abolition of discrimination. He said that, previously, peoples had been very inward-looking, considering each other as enemies. He indicated that this was no longer the case: all peoples now mixed and exchanged their experiences and knowledge. And to encourage this positive trend, he said that participatory mechanisms needed to be put in place at country and provincial level.

He felt that the root of the problem lay in access to land. In his opinion, the right to land had to be ensured, with space even being freed up in national parks. He also said that if this was impossible and there was no land available, indigenous populations should be compensated or areas should be freed up elsewhere for them.

He indicated that the province of North Kivu had put in place a policy to protect vulnerable social groups, including the indigenous populations. He also called on civil society to designate a focal point to act as a resource or contact person for indigenous issues.

He stated that the indigenous populations had a lot to teach other groups, but that this had unfortunately not been taken advantage of. He gave the example of the indigenous population of Walikale, which used to help people living with HIV/AIDS with leaves, and care for them, before the arrival of antiretrovirals.

He also called on associations working for indigenous rights to be more enterprising so that indigenous populations could become more independent; he said that there should be a jointly planned provincial programme for their development. To this end, he also proposed that NGOs should write to demand a provincial level Indigenous Populations' Plan.

MEETING WITH THE PROVINCIAL MINISTRY FOR THE ENVIRONMENT, TOURISM, CULTURE, ARTS, SPORT AND LEISURE

The mission was received on 19 August by:

- Mr Jean de Dieu Mwise Kabano, Director of the Ministerial Cabinet,
- Mr Covis Joseph Mbairwa, advisor,
- Mr Katsongo Gédéon, advisor on environment and tourism.

They informed the mission that the Ministry's policy is to move from the integral conservation of forests to integrated conservation, which includes involving local communities. They said that the Ministry now involved local and indigenous communities in decision-making on conservation.

The Ministry informed the mission that the provincial government had already proposed a bill on indigenous issues but that it has not yet been legislated by the National Assembly.

b. Meetings with international organisations

MEETING WITH UN HABITAT

UN Habitat is a United Nations agency working to improve the living environment. The mission was received by Mr Cristol, specialist in land issues, on 17 August. He informed the mission that the institution had only opened an office in the DRC in June 2009, at the recommendation of MONUC and UNHCR. He said that its aim in the DRC is to provide support to the stabilisation and peace promotion process.

He also said that UN Habitat has a land programme in the east of the DRC that comprises three components:

- land mediation;
- land administration support; and
- land reforms.

He indicated that the mediation component is aimed at preventing and resolving land conflicts. He said that it aims to find negotiated solutions to land conflicts between parties. He affirmed that there is no specific programme for consideration of indigenous populations, who come under the category of vulnerable groups. He mentioned that UN Habitat is

currently in the process of evaluating the situation on the ground and it is initially targeting three territories, namely: Rutsuru, Masisi and Lubero and Ituri district in the north. He said that the land mediation will be undertaken by land mediators chosen from within the communities and trained by UN Habitat and that their role will be to meet people in the field and help them to find solutions to the land conflicts. He said that the target beneficiaries of this component are returnees, displaced persons and refugees and that the intention is also to establish land mediation centres in each sector by 2010.

He said that the vision is that land security is not only a matter for the legal system but that customary aspects should also be taken into consideration. Given that customary aspects prevail within community practice, he indicated that the most appropriate mechanisms have to be sought.

He finally said that the two other components, namely support to land administration and land reforms, were not yet on the agenda at the time of the visit and will not be addressed until 2010.

MEETING WITH UNICEF

The mission was received by Mr Patience Muderwa, head of the eastern zone (South Kivu, North Kivu, Kisangani and Maniema), on 18 August.

Mr Muderwa informed the mission that UNICEF has a legal and social protection programme that takes all categories of children into consideration (street children, victims of HIV, other vulnerable groups and indigenous). He said that specific activities have been initiated with indigenous children in central Congo, particularly in Equateur Province, in Mbandaka. He indicated that activities include care for children living with HIV/AIDS, vaccination and schooling. He said that proposals have been made to extend this to the east of the country, namely South Kivu, North Kivu, to Kisangani and to Maniema.

With regard to the Mugunga camp (North Kivu), he mentioned that UNICEF targets all children without ethnic distinction. He informed the mission that the education team has commenced an emergency programme in partnership with the NGO "Alpha Ujuzi", which is implementing school projects among the displaced children in the camps. He

said that the school section is working with the EPSP (Primary, Secondary and Professional Education) Division.

He also maintained that UNICEF pays particular attention to child soldiers but, for indigenous children to also benefit from this assistance, they needed to be enrolled in schools targeted by UNICEF.

He finally said that the social protection division has given resources to the Division for Social Affairs, Women, Family and Children to facilitate the registration of the births of indigenous children.

Mr Mederwa stated that the question was now one of what would happen when the "Pygmies" go back to their villages of origin. He confirmed that UNICEF was already working on this and that programmes were currently being designed.

c. Meetings with donors

MEETING WITH GTZ (German cooperation)

The mission was received by Mr Camara, Head of Unit, on 19 August. The Head of Unit said that GTZ had just resumed its activities in the DRC after several years of absence. They were preparing for the return of displaced people from 7 internal displacement camps in the region to their villages. He said that the Shasha camp was largely indigenous. Although the indigenous population has specific needs that require a special programme, he said that GTZ prioritises equality of enjoyment and thus has no indigenous component in its projects. He indicated that the return of displaced populations to their villages of origin will enable them to be given better assistance and increase their independence and that preparation for the return of the displaced population begins with the identification of people and their return areas.

Mr Camara informed the mission that the provincial government was responsible for establishing the return areas for displaced people and that it had already indicated that the project's implementation areas would be Kichanga, Rutsuru and Masisi. He said that this gives the project more legitimacy and enables the provincial government to take ownership of the project whilst building its capacities.

Mr Camara also mentioned the possibility that some indigenous groups might not want to return to their village of origin because of numerous problems they may encounter there. In fact, he indicated that the indigenous communities were subjected to mass human rights violations during the armed conflicts and although the GTZ had organised their return, some indigenous families were refusing to go back through fear and lack of protection.

He also informed the mission that there is a “low cost housing programme”. He said that the aim of this programme is to improve housing at no cost to the beneficiaries and that it targets the most vulnerable groups in society, including the indigenous communities. He said it will also comprise training in building, carpentry, brickwork and other trades linked to house building. He finally said that the GTZ has also put in place training projects for young people with no work.

d. Meetings with NGOs

MEETING WITH THE UNION OF GORILLA CONSERVATION ASSOCIATIONS FOR THE COMMUNITY DEVELOPMENT (UGADEC) OF EASTERN DRC

The mission met with Mr Jean-Paul Shabantu, the focal point of UGADEC in Goma, on 17 August. Mr Shabantu informed the mission that UGADEC is a conservation NGO that is in the process of putting community reserves in place for the protection of the gorillas and their habitat in various parts of North Kivu.

He said that UGADEC prioritises a community approach to conservation. He said that community conservation consists of a legal mechanism by which a local community can itself decide to devote a part of its customary lands to creating a conservation zone, which it manages alone or with others with a view to drawing income from it, whilst ensuring the conservation of the diversity of its lands.

According to him, the advantage of this approach is that the community is involved in conservation and benefits from the results of this work. He indicated that this work is taking place in the area between the Kahuzi-Biega National Park and the Maïko National Park.

He mentioned that the process of creating community reserves is initiated through consultation with the local communities. In order to involve the community in the decision-making process, he said that UGA-DEC has agreed to include the customary chiefs of local communities in its statutory bodies, particularly the General Assembly and dialogue committee.

He indicated that the reserve is divided into different zones. He said some parts are devoted to integral conservation, others have restricted rights to resource use and others have no resource use restrictions at all.

He finally said that the organisation has also established a university with a biology and conservation department (the Tanya Centre for Biological Conservation). He indicated that an indigenous person has, moreover, obtained a diploma in conservation from this university.

MEETING WITH THE CREF NETWORK

The mission met with Mr Alphonse Muhindo, executive secretary of the organisation, on 18 August. He informed the mission that CREF is a network of NGOs for the conservation and rehabilitation of forest ecosystems and that its main aim is to re-establish the forest and to defend the rights of the local communities who depend on the forests of North Kivu.

Mr Muhindo stated that CREF's 2005-2013 activity plan comprised a component entitled "Pygmy dignity". He said that this component focuses on legal assistance to indigenous populations in order to remedy the numerous violations to which they are subjected.

He indicated that CREF implements concrete actions such as the training of para-lawyers. He said that given that the legal route is not always the best in terms of finding solutions to conflicts, CREF also facilitates mediation and consultation. He said it remains sensitive to the land issue but has not yet addressed this.

In relation to protecting the traditional knowledge of indigenous populations, Mr Muhindo said that, for the last four years, CREF had been working through a steering committee to verify that the implementing regulations for the Forest Code comply with community practices and traditions.

He informed the mission that CREF supports a number of other projects, including:

- Forestry and agroforestry;
- Training in fish farming;
- The planting of fields for beekeeping in Beni territory;
- The provision of sources of drinking water;
- The organisation of a workshop for the production of mobile improved stoves;
- The provision of materials such as, for example, a press to make biomass bricks.

The representative also mentioned that CREF was working for community forestry and working to make the existing international instruments known among a wider public. Moreover, he said that CREF advocates wide consultation with local populations in relation to the conservation actions underway.

The representative said that the African Commission could be useful to it in a number of ways, including:

- Exchanging information on current indigenous issues;
- Facilitating strong advocacy in favour of civil society in order to strengthen its financial and technical capacity for action;
- Helping civil society to become involved in decision-making bodies.

MEETING WITH PIDEP

The mission met Mr Joseph Itongwa, National Coordinator, on 19 August. He informed the mission that PIDEP was founded in 1991.

Mr Itongwa said that, from 1991-1998, activities focused on mobilisation and awareness raising of indigenous populations with regard to their rights and identity. He said that PIDEP has also worked with *Héritiers de la Justice*, a local NGO, to defend and provide legal support to indigenous populations in Bukavu. He indicated that this project has now

ended, however. He said that PIDEP currently lacks financial resources and is thus implementing few activities at the moment.

In terms of land security, He informed the mission that PIDEP limits itself to “customary security”. He said that “customary security” is currently PIDEP’s flagship project and that it consists of demanding recognition of indigenous culture, which is beginning to disappear, and this includes ensuring “customary security” (including language, way of life, natural environment, etc.). He said that PIDEP is, however, encountering difficulties in obtaining recognition of the collective rights of indigenous communities from the administrative and judicial authorities.

According to him, there is also a problem of accessing identity documents. To remedy this problem in indigenous areas, he said PIDEP is distributing PIDEP membership cards to the indigenous population, who can use them as identity documents.

e. Meetings with the indigenous communities of North Kivu

MEETING WITH INDIGENOUS DELEGATIONS IN GOMA

On 16 August, the mission met with indigenous delegates from North Kivu communities, primarily from Masisi, Ritshuru, Nyiragongo and Walikale, who were in Goma to attend a round table meeting organised by PIDEP. The round table participants also included members of parliament, ministers and civil society organisations. Mr Joseph Itongwa, PIDEP coordinator, presented the members of the mission to the indigenous delegations and explained the aim of their visit to the DRC. The mission had an opportunity to discuss the situation of indigenous populations in North Kivu, particularly with regard to land problems and violence against women.

Meeting with indigenous delegates from Masisi

Two indigenous delegates, Mr Kasalemba Balaire and Mr Ndachaya Bonane, stated that their greatest problem related to accessing land. They

said that their ancestral lands had been taken from them by the Batembo,⁷ lands that they had lived on since time immemorial. They informed the mission that, during fighting between the FARDC and the CNDP, they were forced to leave their lands at Famando. They then negotiated with a priest, "Don Bosco" for access to a space at Shasha, where they were able to live temporarily. When they returned to Famando, after the fighting, the Batembo had taken over their lands and refused to give them access. The provincial authorities were informed of this issue and, on 31 May 2007, they went to Famando with a provincial delegation to conduct investigations. The delegation identified 51 fields that had been taken from 51 indigenous families. Through claims, they have been able to recover 12 of those fields, including: Kakungwa in the area of Kishandja; Shongoro in Buhuli; Mwote in Kashukano; Birezi, Ruazi and Mushere in Kamwobe. They also informed the mission that, given the lack of security in this part of North Kivu, the other fields (39) are still occupied by the Batembo.

The second problem they raised was that of access to justice. They said that indigenous populations have no financial resources with which to access justice. Moreover, according to them, the justice system is highly corrupt. They said that a community member had been in prison for three years, with the complicity of the Batembo. He was probably being held in Goma central prison. He was likely to have been imprisoned because he was leading the demands for the return of their fields and he was accused of a breach of the peace.

They said that the justice system was not the same for the "Pygmies" as for other peoples. They said they had made several complaints to the judicial authorities but there had never been any follow-up. They gave two examples where complaints had been made to the Goma Prosecution Service but there was no response:

"A Pygmy was mortally wounded by a soldier; this latter was arrested and sentenced but then released and he fled to Burundi. We have now heard that he is living peacefully in Uvira."

"My wife was beaten up by a soldier when she was 9 months' pregnant. He was not arrested."

⁷ The Batembo are a Bantu people who live alongside the indigenous people.

They also stated that they had been the victims of various human rights violations. For example, they said that the remains of Bambuti (indigenous people) had been disinterred and taken to unknown places. They said that they are used for their magical powers and so were probably traded.

Moreover, various people stated that their children had never been registered with the civil registry. They said that they dared not go to register them because they knew that the officials would not allow them to do so. In fact, they said that in practice, they refuse to register a Pygmy child, on the pretext that it is a waste of time.

Meeting with indigenous delegates from Walikale

The mission had a meeting with the representative of the communities of Walikale Territory, Mr Mukumbwa Mayaliwa, an indigenous leader, who informed the mission that this territory comprised two sectors, namely: Bakano and Wanyanga.

Bakano

More than 75% of Bakano sector is covered by the Kahuzi-Biega National Park (PNKB). According to the representative, the National Park is the cause of the eviction of the forest communities to Itebero. Moreover, he said that the area of the Park had been decided without consulting the local people. 2,617 households, who were living inside the Park in Babuluko and Banasampanda, have been evicted. These households are now living on the edge of the park, without any access to it.

The representative also informed us of plans to create nature reserves on the part of associations such as COCREFOBA (*Conservation Communautaire pour la Réserve Forestière de Bakano*), an environmental organisation focused on protecting gorillas and their habitat. He said that these projects were being commenced in consultation with the local communities. He also stated that another problem was that the Walikale forests contained large mineral deposits. The exploitation of these minerals by private companies was also leading to a loss of indigenous populations' lands.

The representative gave various examples of human rights violations that had been committed by the FARDC or other armed groups in the sector:

“A pregnant woman and her two daughters were raped by soldiers of the *“brigade brassée”* (‘integrated brigade’) known as the *“brassards vertes”* (‘green armbands’), without any arrests being made.”

“During transfer of the 85th brigade, in Kissa village, Lt. Tukuni raped two of the wives of the chief and two of his daughters, whom he held for 5 days. He looted the whole village, taking everything he could find. He was sentenced to 35 years in prison, and he and his soldiers are now being held in Munzenze prison in Goma. In addition, he also has to pay, jointly with the State, for all the goods looted from the communities. So far, neither he nor the State has paid for the goods lost by the communities.”

“In January 2008, in the indigenous village of Kilali, Chief Samili was murdered by the Interahamwe. The community organised, caught the culprits and took them to Goma. The perpetrators had resources and contacts within the military, however, and were easily able to escape.”

The mission also noted that the sector’s health centre had no pharmaceutical products and that very few, if any, indigenous children were attending school for lack of money.

The mission noted that a large number of indigenous people in this sector are farmers but they have limited access to fields because of a lack of space. The mission was informed for example, that Mr Mukumbwa Mayaliwa had bought a field for 6 goats. He said the interim local chief refused to recognise him the right to this land, however, and threatened to evict him. A situation such as this does not encourage indigenous populations to obtain lands because other groups do not recognise their rights to access the land.

Wanyanga

According to the representative, this sector has been the theatre for clashes between the Nyanga and Hunde armed factions, and later between these two factions and the national army, since 1992.

He said that the sector has also been subjected to the creation of a number of reserves, namely the IREGUA and URGI reserves established by UGADEC (*Union des Associations de Conservation des Gorilles pour le Développement Communautaire à l'Est de la RDC*) without consulting the communities. According to the representative, these projects are supported by Parliamentary Members Chemusimiwa Bwira and Maitre Kalinda, but not by the local community.

VISIT TO THE INDIGENOUS POPULATIONS IN THE MUGUNGA CAMP FOR THE INTERNALLY DISPLACED

The Mugunga displacement camp contains displaced indigenous and other populations. The mission visited this camp, focusing particularly on the situation of the indigenous population. The delegation held meetings with indigenous men, women and youth to discuss the problems they have encountered during and before their displacement and throughout their day-to-day lives in the camp.

The indigenous population said they were happy to meet the mission and stated that no authorities had come to visit them or give them any moral support since their displacement. They stated their problems in the following terms:

- They are hungry;
- They have lost everything because of the war: homes, clothing, goods, livestock and crops, etc;
- They lack space and have no access to the land. They used to have ancestral lands but they said that the Bantu chiefs had taken these lands from them;

- They have become beggars and cannot provide for their needs. When they were living in the villages, they used to work for the Bantu, who paid them a little, but now they have no work;
- The children are not going to school for lack of money;
- They said that all aid provided to the displaced was taken by the camp President, Mr Mahoro. Moreover, the indigenous community was not represented in any significant manner on the aid distribution committee. Out of the 24 people on this committee, there was just one indigenous person, who was not listened to and had been unable to impose his opinion on the rest of the committee.
- They said that Bantu men who had children with indigenous girls were unwilling to recognise those children. Once the girl was pregnant, the man would leave her destitute and would not recognise the child, quite simply because it was born of an indigenous woman. It was the same for cases involving soldiers and armed groups. They would get indigenous girls pregnant but then provide no assistance to the mother. Indigenous girls in this situation said that their own fathers had to take responsibility for the children, bringing them up and accepting them as their own. They added that often these men would come to them to cleanse themselves of taboos, in the belief that sexual relations with an indigenous woman rids you of bad luck.

The mission noticed that many women were raped by different elements of the armed groups, including the national army. To begin with, the women were hesitant to admit that they had been raped but, as the mission left the camp, a number of them informed the mission that this was the case.

The mission was also informed that the armed groups had killed many people. Of the names given to the mission, the mission can mention the following as examples:

- Kabumba Albertine and his daughter Batasema Tulinabo,
- Sangiza Kirembe and Kimomole Makopo, Sake Territory,
- Bamboko, Masisi Territory, by the Interahamwe.

VISIT TO MUDJA INDIGENOUS VILLAGE

The village chief, Mr Muhima Sebazungu, met the mission on 16 August. This village of 30 houses, situated around 15 km to the north of Goma, was built by a local NGO called PIDEP-Kivu⁸ and is also participating in the activities of other NGOs, such as UEFA.⁹ The aim of the visit was to verify the situation of non-displaced indigenous populations who have benefited from various actions on the part of NGOs.

The mission noted that despite all the actions and interventions in this village, the community still has a number of problems. During meetings, the community stated its problems as follows:

- Lack of a school and the resources to send the children there;
- Insufficient living space: 30 households are occupying an area of 5 ha. Each of these families has a living space of 15m²; they told us that all the space around about used to belong to their indigenous ancestors but that the Bantu chiefs had taken the land and now the indigenous people were restricted to this small area;
- They lack agricultural inputs (fertilisers, seeds, etc.);
- Communities were evicted from the forests, which have been turned into national parks by the State. Now they no longer have access to the forest as they are forbidden from entering. This prevents access to, among other things, traditional medicines, non-timber forest products and other traditional products;
- The small area of land that the community occupies is not legally secure: it is not demarcated or registered, and there is no title. The mission was informed that, around 1992, a protestant pastor from the Mudja 8th CEPAC¹⁰ named Muhima Kana came here and began to convert the local population. The family head at the time gave him a place to build a small church. He gradually occupied the land, building a large church, and now he claims to be the owner of a large part of the land. He says that the small spot where the church is built belongs to the church but that he has bought the rest

8 Integration Programme for the Pygmy People of Kiv

9 Union for the Emancipation of Indigenous Women

10 CEPAC: 8th Community of Pentecostal Churches in Central Africa

from the local chiefs. People met by the mission stated that they had asked the pastor to show his documents to the sector chief but, at the time of the mission, he had still not done so. The indigenous people we spoke to were afraid that the pastor would fabricate false documents and obtain the support of the local chief, thus enabling him to actually obtain the land titles. The local communities do not have the means to initiate administrative proceedings to obtain the necessary titles;

- They are scorned and have even lost all self-respect. They have lost their traditions because they no longer have access to their lands;
- Their relations with the Bantu are characterised by abuses of power on the part of the Bantu and a lack of trust and openness;
- They are paid 500 FCFA for a day's labour. This is the equivalent of USD 0.70, well below the minimum wage stipulated by Congolese legislation.

3. IN SOUTH KIVU (BUKAVU)

a. Meetings with the government in Bukavu

MEETING WITH THE PROVINCIAL MINISTRY OF MINES, ENERGY AND HYDROCARBONS

The mission was received by the Minister for Mines, Hydrocarbons and Energy, Mrs Colette Mikila, assisted by her advisor, Mr Bisimwa, on 22 August.

Although there is no specific strategic plan for indigenous populations within the Ministry, the minister confirmed the importance of indigenous issues and her support for the development of the DRC's indigenous population. She expressed concern at the fact that mining operations could be found in the forests where indigenous populations live but that the indigenous populations were not running them or benefiting from them. She said she was responsible for raising the awareness of other ministers in this regard.

The minister stated that everyone was now aware of the Pygmies' land problems and that people were now increasingly understanding that the indigenous issue had to be considered specifically. She said that

the Minister of the Interior, who deals with the issue of the customary chiefs, had to give guidance in terms of addressing this issue.

For her, the last elections were the first historic opportunity for the indigenous population to vote but, unfortunately, no indigenous candidates were elected.

The delegation asked the minister what she thought of the fact that the Mining Code ensures the primacy of the mining sector over forest conservation, as well as the land and habitat rights of local populations. She said that, in fact, the rights of people living in the forests should not be sacrificed but that, unfortunately, the mining operators were not negotiating with the local populations. She gave the example of the Banro company, which had been forced to consult and negotiate with the local population at Mukungwe and at Luhwindja.

The delegation finally asked the minister how the Ministry negotiated with the local population to produce their terms and conditions. She stated that the different social sectors were consulted and their points of view collated. It was then possible for the minister to summarise them and reach a final solution.

b. Meetings with NGOs in Bukavu

MEETING WITH ERND INSTITUTE

The mission was received by Mrs Anny Mbombo, executive secretary of the organisation, on 21 August. She informed the mission that the NGO works, among other things, on projects related to natural resource and forest management, and focuses on awareness raising and legal and administrative support to indigenous populations.

Mrs Mbombo spoke about the issue of legal and administrative support to indigenous populations in terms of their struggle to access land and natural resources. She cited a number of cases in which the indigenous populations had been supported by ERND, particularly cases of the residents of the Kahuzi-Biega National Park, who brought a case against the Congolese Institute for Nature Conservation (ICCN) and the Congolese State, demanding compensation and their rehabilitation following their eviction from the park without any consultation. She said that

ERND had established itself as the civil party in the case and provided assistance to the indigenous community before the High Court.

She also mentioned ERND's involvement in discharging the debt of indigenous populations at Kamanyola. She said that discharge of the debt was made possible by recovering their fields and allocating land titles to the indigenous populations.

The delegation members visited a brick-making activity that uses organic waste (paper, dead leaves or wood shavings). The mission was informed that ERND also assists in the production of mobile improved stoves and writes and publishes the leaflet "Green Alert".

MEETING WITH UEFA

The mission met with Mrs Adolphine Muley, Coordinator of the Union of Indigenous Women (UEFA) on 21 August.

According to her, the problems facing indigenous women in the DRC are heavily influenced by the consequences of the war and the displacement of the population. She said that there are many cases of rape and sexual violence that are reported. She said that a few women receive some help but most are left without any support through lack of resources and hence a lack of access to basic services such as health centres. Moreover, she mentioned that access to education is difficult for displaced populations, who find themselves in places with no schools nearby. She said that UEFA has thus been involved in setting up primary schools in Tshombo (Kabare territory), at Buziralo and at Tshandje (Kalehe Territory) and also establishing a health centre at Mudja in North Kivu.

According to her, the problems of indigenous populations living around the edges of the Kahuzi-Biega National Park relate primarily to the ban on accessing resources. She said that they have in fact been evicted and can no longer enter the Park. Mrs Muley gave the example of Mr Marhegane, who was sent to prison for hunting a buffalo, which is a protected animal.

Mrs Muley informed the mission that, in the past, UEFA always used to refer legal cases to partner organisations that provided legal support within their programmes but that, for some time now, they had begun to

implement a legal component and had hired a lawyer to handle the different legal cases of indigenous women. She also said that one of the problems of legal cases was that people wanted to settle criminal issues amicably, which encourages impunity in the indigenous environment. Moreover, she said that intimidation on the part of soldiers or other Bantu can also influence people and force them to negotiate.

She informed the mission that UEFA also obtains funding for economic activities with indigenous people. For example, she said that the organisation implements artisanal activities involving non-timber forest products. It has also funded the purchase of a boat engine for indigenous fisherpeople.

Finally, she indicated that UEFA supports the transmission of radio broadcasts to raise awareness among indigenous communities and their neighbours.

MEETING WITH APRODEPED

The mission was received on 22 August by Prof. Moïse Chifende, APRODEPED's (*Action pour la Promotion et la Défense des Droits des Personnes Défavorisées*) Coordinator. The mission was informed that APRODEPED is an association of jurists working for the protection of disadvantaged persons.

Prof. Chifende also informed the mission that APRODEPED advocates involving the indigenous people themselves in the struggle for recognition and promotion of their rights. He said that the organisation also argues for positive discrimination in terms of granting scholarships to indigenous students who wish to continue on to higher education.

He also said that, since April 2003, this organisation has, with support from the European Commission, been implementing a project to raise awareness among those responsible for applying the laws on the rights of ethnic minorities, indigenous populations and people suffering from discrimination. He indicated that it provides legal assistance to minorities, indigenous populations and discriminated persons in court cases related to recognising, promoting and protecting their cultural and linguistic rights, and rights to land, nationality, etc. He said it thus encourages

greater access to the justice system and to the State's administrative departments, without discrimination.

Prof. Chifende said he already had some documents from the African Commission and the Working Group on Indigenous Populations/Communities, and that he had used the reports a great deal in his current work on indigenous populations.

MEETING WITH CAMV

The mission met a team from the *Centre d'Accompagnement des Autochtones Pygmées et Minorités Vulnérables* (CAMV), comprising Justin Bafunyembaka, Kisangani Mukinzi, Marie Bwami and Joseph Tambwe, on 22 August. The mission was informed that CAMV is an NGO working with indigenous populations in the east of the DRC. It was also informed that CAMV is divided into a number of link-support centres located more or less throughout the region in which the indigenous populations live. It is these link-support centres that implement the activities.

The representatives from CAMV indicated that the organisation's objectives are:

- Humanitarian assistance;
- Action for sustainable development;
- Defence and protection of indigenous rights;
- Lobbying and advocacy;
- Good governance.

They said that their activities involve the following areas:

- Adult literacy and education;
- Civic participation;
- Lobbying;
- Raising awareness of the new Forest Code;
- Participatory mapping;
- The production of an information and communication bulletin "*Echos de pygmées*".

MEETING WITH APDMAC

The mission met with *Action d'Appui pour la Protection des Droits des Minorités en Afrique Centrale* (APDMAC) on 23 August, represented by Mr Tuteene, Executive Secretary of the association. He told us that he himself was part-Pygmy (one parent was a Pygmy while the other was from another ethnic group) and so he had a particular interest in indigenous rights.

He informed the mission that APDMAC implements activities to promote and protect indigenous populations and fight discrimination and violence against them.

c. Meetings with universities

MEETING WITH THE CATHOLIC UNIVERSITY OF BUKAVU (UCB)

On 22 August, the mission continued its discussions with Prof. Moïse Chifende but this time in his capacity as Vice-Dean of the Faculty of Law. He was accompanied by President of the Bar, Thomas Lwango, head of courses at the UCB. The members of the mission were given a tour of the different university buildings, particularly the faculty of law. The mission also visited the university's central library and presented copies of the WGIP's report and the UN Declaration on the Rights of Indigenous Populations.

The mission wanted to know if there were students who had written dissertations on indigenous issues or on the African Commission on Human and Peoples' Rights. In response, the Vice-Dean said that there were dissertations focusing on indigenous populations and the African Commission. Unfortunately, the mission was unable to access these documents because the visit took place on a Saturday when most of the staff were not working.

d. Meetings with indigenous communities in South Kivu

VISIT TO THE INDIGENOUS VILLAGE OF KATANA

On 23 August, the mission visited the Katana indigenous encampment and was informed that the indigenous population living in this encampment were evicted from the Kahuzi-Biega National Park by the government. They then temporarily occupied land on the concession of the Lwiro Scientific Research Institute. The Natural Resources Network finally bought them a plot where they live today (Katana encampment).

The mission was also informed that the village chief, Mr Kaneto, was the victim of an attack by the FDLR and Interahamwe as they were being thrown out of Kashusha refugee camp in 1996. They gouged out his eyes and now he is blind.

After bringing together the village members, Mr Kaneto said that, before the park was extended, they used to live in the forests (now park). They had everything they needed to live there, enough space for their traditional activities such as initiation and ancestral invocation ceremonies, hunting, burial grounds, etc. He added that once the forest had become a park and they were evicted, the State had abandoned them to their fate, with no land or other support measures.

The delegation members held a meeting with village members to discuss their daily life and the problems they face. It transpired that their main problems now relate to land: they have nowhere to live, let alone grow food. They no longer have access to the forest's resources, which provided them with medicines, firewood and food. They no longer have anywhere to bury their dead. Whenever someone dies, they have to negotiate a piece of land from the Bantu on which to bury them, but they cannot later return to invoke that person or celebrate their memory because the landowner refuses them access for fear of being cursed.

The village chief also said that the Congolese Institute for Nature Conservation, which is responsible for managing the national parks, gives them just one day a week to collect firewood, which is not enough for their survival as they usually need to light a fire for at least 6 hours a day. Because of this ban, they have no access to wood with which to build houses. This is why they decided to bring a case against the State and the

Congolese Institute for Nature Conservation (ICCN). The chief said that the case would, they believed, decide their fate: if they were successful they hoped the State would reinstate their right to access the forest and the land. If they lose the case, however, he fears that the State will crush them yet more, and in his opinion this could lead to their total disappearance.

4. PRESS CONFERENCE

The mission held a press conference to inform the public of the results of the mission and to give a general overview of the human rights situation of the DRC's indigenous populations. Various people participated in this press conference (please refer to the participants' list in Annex 1): representatives from the media, universities, State institutions, including provincial representatives and parliamentary members, as well as civil society organisations.

Under the chairmanship of Maitre Paulin Polepole, member of *Environnement, Ressources Naturelles et Développement* (ERND INSTITUTE) and resource person during the visit to North and South Kivu, the press conference consisted of four speeches followed by questions, discussions and exchanges.

Mr Kalimba, head of the delegation, explained the objectives and terms of reference of the Working Group on Indigenous Populations/Communities. He then explained the content of the different Working Group reports, which he handed out to the participants.

He was followed by Mrs Anny Mbombo, executive secretary of the NGO Environment, Natural Resources and Development (ERND Institute), based in Bukavu. She focused on the situation of indigenous rights in North and South Kivu. She mapped out these populations in the two provinces and described the deplorable situation in which they now live. She said that the problems of indigenous populations in North and South Kivu could be summed up as a lack of land and living space, a lack of schooling, no access to health care or other vital resources, marginalisation, a lack of involvement in public affairs, etc. At the same time, she praised the efforts of those who had decided to take the Congolese State and the ICCN to court.

Mrs Espérance from the NGO Union for the Emancipation of Indigenous Women (UEFA) spoke on the specific problems of indigenous women in North and South Kivu. She said that, in addition to the problems suffered by women in North and South Kivu in general, namely rape, lack of schooling, no participation in public affairs... indigenous women suffer further, particularly in terms of the failure to consider or consult them during decision-making, their exposure to heavy work and their marginalisation.

Mr Loamba Moke finally concluded the speeches with a brief account of the mission's trip to the DRC. In his speech, he said that the mission to the DRC was an important one for the African Commission's Working Group on Indigenous Populations/Communities. In all, the delegation had held 35 meetings in the regions of Kinshasa, Bukavu and Goma, meeting with public officials including national and provincial ministers, governors, international agencies and organisations, civil society organisations and communities. He felt the mission had gone well and that important information had been obtained. He informed the participants that the delegation would draft a report to be submitted to the African Commission on Human and Peoples' Rights for adoption.

These speeches were followed by questions and discussion. The participants made various recommendations, which were all noted by the mission's members, who promised to bear them in mind in the conclusions of the mission's report.

V. OVERVIEW OF THE SITUATION OF INDIGENOUS POPULATIONS' RIGHTS

1. Right to access land and forest

Access to their traditional lands is essential to the survival of indigenous populations. They have close links with the forest and its resources, on which they depend for their well-being, identity and integrity. Now more than ever, the importance of land is being felt on the lives of indigenous populations and the dispossession of land and natural resources from which they suffer has significant consequences of an economic, legal and political nature. According to a report by APRODEPED, having been dispossessed of the lands they occupied for centuries, indigenous populations now live in a situation of economic, social and cultural deprivation.¹¹ The indigenous populations told the mission that, if they were still living in the forests, their lives would be better because they would be able to obtain medicinal plants and practise their customs. They maintain close psychological, spiritual and cultural links with the forest, and their identity and survival as distinct and indigenous populations depends on this.

The DRC has, however, neither defined nor demarcated the lands and territories of indigenous populations and there is no mechanism in Congolese law to ensure their free, prior and informed consent regarding decisions that affect them. Consequently, protected areas and logging and mining concessions have been established on their traditional lands without any consultation or consent, and without any compensation. This has been the case for thousands of indigenous populations, brutally evicted from forests during the creation of national parks or the expansion of their boundaries in South Kivu (Kahuzi-Biega National Park "PNKB")

¹¹ Action for the promotion and defence of disadvantaged people (APRODEPED): *"Droits des minorités ethniques, des peuples autochtones et des autres personnes victimes de discrimination (RDC)"*. October 2003.

and North Kivu (Virunga National Park). It is also the case of indigenous families dispossessed of their ancestral lands in Beni in North Kivu, and in Ituri in Orientale province, to make way for mining concessions.

The indigenous populations of the PNKB believe that this territory has belonged to them since time immemorial. And yet the Park authorities refuse them entry and there is no global plan with regard to these indigenous people's rights. Moreover, Congolese law stipulates that lands expropriated for the creation of national parks form part of the public State domain and cannot be allocated for private use, which includes the social and economic activities of the indigenous populations.

The indigenous populations of North and South Kivu are subject to numerous constraints on the lands in which they live. The mission was witness to various land conflicts in the region. For example, according to a report from PIDEF, in Monvu village, Idjwi territory, an indigenous family represented by Mr Kahimano Kirazi is in conflict with the head of Ntambuka chiefdom, who is also a provincial member of parliament, following their eviction to make way for a forest concession in Monvu village. The chief does not recognise the indigenous family's ownership right. He has apparently used his status as provincial Member of Parliament to delay consideration of the complaint lodged by PIDEF.

No measures were taken to help the indigenous people find alternative lands after their lands were handed over as forestry concessions. Consequently, the indigenous population is dispersed between neighbouring villages, with no means of subsistence.

Having involuntarily left the forest, the indigenous populations no longer have any possibility of meeting their families' subsistence needs. According to Mr Maito, a dignitary from the indigenous populations of Mukohwa, his community has little to eat. The only income they have comes from the women, who carry traders' bags from Masisi to Nyabyondo (a distance of around 24 kms) and also from work they do in their neighbours' fields, which pays them 500 FCFA (USD 0.7) a day.

Below is a summary table of the victims of the eviction from Monvu village:¹²

N°	Head of household	Composition of household				
		Men	Women	Boys	Girls	Total
1	Hahimono Kirazi	1	1	5	4	11
2	Namikazo Wivine	-	1	1	1	3
3	Ntawizera Kahimono	1	1	-	-	2
4	Benshi Kahimono	1	1	1	-	3
5	Bahati Chirazi	1	2	4	3	10
6	Gura Bahati	1	1	3	2	7
7	Bagenda Bahati	1	1	1	1	4
8	Musinji Sardini	1	1	2	1	5
9	Kabwana Chirazi	1	1	1	2	5
10	Kihaya Chirazi	1	-	-	-	1
11	Bede Chirazi	1	1	2	2	6
12	Bonheur Sardini	1	1	3	1	6
13	Méthode Sardini	1	1	2	1	5
14	Desiré Chabwenemwami	1	1	1	1	4
15	Rocheron Chirazi	1	-	2	1	5
16	Bindu Chirazi	-	1	1	2	4
17	Nabunani Chirazi	-	1	-	-	1
18	Narukiko Chirazi	1	1	3	2	6
19	Kavayaga Chirazi	1	1	-	-	2
20	Maombi Chirazi	1	1	-	2	4
	Total	17	19	32	26	94

12 PIDEP – Kivu: “Rapport de mission de document du litige portant sur l’expulsion des autochtones pygmées du village de Monvu à IDJWI Sud par le Mwami Ntambuka Mihigo II Roger”. 2009

2. Practices similar to slavery

The mission noticed that practices similar to slavery are clearly present in North and South Kivu where it is common to see indigenous communities exploited by their Bantu neighbours. In fact, some indigenous populations are still even today treated as slaves by some Bantu. These latter keep them in a state of virtual slavery that goes as far as requisitioning their services and/or their goods for free. And when they do get paid, they receive very little money or only clothing or food.

Although the political authorities that the mission met all recognised the difficult situation facing indigenous populations, particularly in terms of obtaining land, largely caused by the proliferation of parks and reserves, they denied the existence of any practices similar to slavery.

3. Right to security and freedom from sexual violence

Indigenous populations live in a constant state of insecurity. They receive threats from the FDLR accusing them of helping the coalition of the Rwandan APR and the DRC's armed forces to track Rwandan Hutu combatants, by indicating where the FDLR camps are. Although the indigenous populations have never taken any significant part in the armed conflicts in the east of the DRC, they have nevertheless been the target of attacks by armed groups.

Moreover, a number of accounts gathered by the mission show that indigenous women in the DRC are suffering from various kinds of sexual violence. Indigenous women are also, among other things, the victims of gang rapes. According to one statement, a group of nine Bambuti (indigenous) women were raped by around 20 soldiers from the Masisi region, North Kivu. These repeated rapes have serious psychological and physical consequences. The mission also met a number of women who were suffering psychological after-effects and who, for example, were having trouble feeding their children. Moreover, women often abandon the children they have as a result of rape.

Indigenous women experience multiple forms of discrimination, because of their poverty, because of their indigenous identity and because

of their gender, and they are consequently the victims of serious violations of their human rights. For example, in addition to being subjected to sexual violence on the same level as other Congolese women, indigenous women form the object of specific attacks because of their ethnic belonging. In fact, there is a belief that raping an indigenous woman will cure a number of ills (for example, a bad back). The victims are often afraid to make a public complaint as they may be considered defiled, which could lead to their rejection by their communities.

4. Right to education

In terms of access to education, indigenous children encounter numerous obstacles. Although as many indigenous girls attend primary school as boys, the number of girls in secondary school plummets because families prefer to invest in the education of their sons, believing that girls will marry and be taken care of by their husbands. The literacy rate among Twa women in the Great Lakes Region is thus generally lower than that of Twa men.

It should be noted that the second Millennium Development Goal - "Education for all by 2015" - is not being delivered among the indigenous communities of the DRC. The DRC's Poverty Reduction Strategy Paper (PRSP) reveals a deterioration in the State education sector in particular, due to the saturation of the schools, the disrepair of infrastructure, the lack of school materials, and the lack of motivation among teaching staff. Although Article 43 of the DRC's Constitution states that: "Primary schooling is compulsory and free in State institutions", this is not in fact the case because parents have to pay the teachers' allowances every month. Because the indigenous people have no resources, indigenous children are often unable to attend primary school. In addition, most indigenous villages have no State school infrastructure; the schools they do have have either been destroyed, are incomplete or are ill-equipped, and there is a need for NGOs to take immediate responsibility for them.

The mixed Katabira primary school at Byarenga, in the south-east of Walikale territory in Ihana district, is an example of a school set up by an NGO called "*Foyer de Développement pour l'Auto Promotion des Pygmées et Indigènes Défavorisés*" (FDAPID). The mission met the Secretary General

of this association, who explained the difficulties encountered by the school due to a lack of national and international grants. The local and indigenous communities are incapable of contributing to the running of the school, the entire responsibility for which thus falls to the association.

Some statistics indicate that only 18.7% of the indigenous population in the DRC is enrolled in primary school (6-11 years old) compared to a national rate of 56.1%, and that 30.5 % of the indigenous population (15 years old and over) is literate compared to 65% nationally.¹³ Despite the fact that the DRC has ratified the Convention on the Rights of the Child, education of indigenous children in the DRC at primary level is above all undertaken by non-governmental organisations.

5. Access to health care

The health situation of indigenous populations in the DRC is highly worrying. Given their vulnerable social condition, indigenous populations are heavily exposed to different tropical and endemic illnesses such as malaria, intestinal parasites, respiratory illnesses, skin diseases and HIV/AIDS. The infant mortality rate is very high and access to clean drinking water virtually non-existent.

Despite the presence of all these tropical diseases and HIV/AIDS, indigenous villages have few health centres and the local population thus has little access to modern primary health care. Moreover, when they do attend health centres, indigenous populations have insufficient resources to pay the medical and pharmaceutical costs. They are also finding it increasingly difficult to access their traditional medicine as they are no longer permitted to enter the forests, which are classified as either protected areas or forest concessions, to obtain medicinal plants.

6. Right to citizenship, to equal enjoyment of rights and to involvement in decision-making

Indigenous populations are often victims of discrimination, rejection and scorn on the part of other sectors of Congolese society. They are numeri-

¹³ http://siteresources.worldbank.org/EDUCATION/Resources/Session2_Wodon_Dec20.pdf

cally weak in relation to other communities in the DRC as a whole, and are not represented in the State institutions. Although international human rights instruments ratified by the DRC insist on the legal recognition of each individual, it has been reported that indigenous people do not generally enjoy legal recognition as individuals. Their language, their inferiority complex and the condescending attitude of some Bantu form handicaps to equal access to rights.

Indigenous populations are excluded from the decisions that concern them and are not consulted by government on issues that directly affect their way of life. For example, indigenous populations are not consulted in the process of converting forest titles. In fact, the titles that were existing as of the date of entry into force of the Forest Code have to be re-registered and form the object of new contracts before they can be considered legally valid. Although the conversion process is underway, the State has not yet organised widespread or in-depth consultations with the indigenous communities to ensure that their rights are guaranteed.

The DRC's indigenous populations are marginalised from involvement in public affairs. They are not involved, as a specific social group, in any of the country's political normalisation and reconstruction processes. This can be considered equivalent to a lack of enjoyment of their civic rights. In fact, most indigenous people have no registration documents (birth certificates, national identity cards, marriage certificates,...). This puts them in a difficult situation in relation to implementing certain civic rights, such as the right to vote and the right to stand as a candidate for election. They have no representation in most of the State bodies.

7. Access to justice

Article 12 of the Constitution of the DRC stipulates that: "All Congolese are equal before the law and have the right to equal protection from the law". Article 150 states that: "The judicial system is the guarantor of the individual freedoms and fundamental rights of citizens. In the exercise of their function, judges are subject only to the authority of the law..."

Indigenous populations' complaints are rarely followed up with a judicial investigation, however. Lack of financial resources, of knowledge of the justice system and of trust in the justice system prevent indigenous

populations from accessing this. Moreover, the system is heavily affected by corruption and sometimes negatively biased against indigenous populations.

There is currently a court case ongoing between the indigenous people living around the Kahuzi-Biega National Park in Kabare territory, South Kivu, the Congolese Institute for Nature Conservation (ICCN) and the Congolese State. These indigenous populations are being supported by ERND Institute through a legal and administrative support programme being funded by the Rainforest Foundation.

VI. CONCLUSION AND RECOMMENDATIONS

The research and information visit to the DRC went smoothly and enabled the mission to obtain a broad overview of human rights problems in general, and indigenous rights problems in particular, in Kinshasa and in the east of the country, specifically North and South Kivu. The situation of indigenous populations is alarming in the DRC, in terms of access to land and forest, access to basic services and justice, participation in decision making, consultation, insecurity and serious human rights violations.

The enactment of the Forest Code of 22 August 2002 is, however, one of the actions the Congolese government has undertaken to improve the situation in the forest sector. The Forest Code lays down a basis of modern forest management principles by stipulating that the forest must fulfil both environmental and social functions and contribute to national development. Moreover, it takes the importance of the local population's active participation in forest management into account. One of the innovations of the Forest Code has been to preserve the customary use rights of local and indigenous communities. Article 22 paragraph 1 stipulates that: "A local community may, on request, obtain by way of forest concession all or part of the protected forests included within the forests regularly possessed by virtue of custom." To obtain a concession, the local community has to make a request to the State, which owns the forests.

Other good initiatives from the government should also be mentioned, including the elaboration of a national strategy for the development of indigenous populations in the DRC which, however, still needs to be validated and disseminated. Moreover, some positive initiatives have been taken in North and South Kivu by the local government.

And yet the absence of a specific national law for indigenous populations and the lack of legal recognition show that indigenous issues are still not a priority for the Congolese State. Moreover, the numerous UN programmes underway in the DRC do not take account of the specific

problems faced by indigenous populations, and they unfortunately have no specific policies in their regard.

In view of the above, the African Commission's Working Group on Indigenous Populations/Communities makes the following recommendations:

a. To the Government of the Democratic Republic of Congo:

1. Put in place positive sectoral policies that will enable the indigenous populations to enjoy all basic rights (including to health and education) and fundamental freedoms on the same basis as the rest of the Congolese population;
2. Validate and make known the national strategy for the development of indigenous populations in the DRC;
3. Develop a specific law on the promotion and protection of indigenous rights in the DRC;
4. Expedite the court case between the indigenous populations living around the Kahuzi-Biega National Park in Kabare, South Kivu, the Congolese Institute for Nature Conservation and the Congolese State in a transparent and equitable way;
5. Take specific measures to ensure that indigenous populations obtain access to justice through the strengthening of legal aid centres;
6. Involve the indigenous organisations and communities in the decision-making, design, establishment and monitoring of development projects that affect their communities;
7. Organise a specific census of indigenous populations;
8. Take measures to ensure the systematic registration of births and the issuing of civil documentation to indigenous children and parents;
9. Recognise the traditional way of life of indigenous populations and take measures to encourage their access to citizenship;
10. Provide legal protection of indigenous peoples' rights to land, forests and natural resources;
11. Take specific measures to ensure indigenous populations are not being dispossessed of their land and natural resources and to en-

sure that indigenous populations are involved in decision making processes and management of their land and natural resources.

12. Compensate the indigenous populations that have been expropriated from their lands for the public good adequately;
13. Make known and disseminate the UN Declaration on the Rights of Indigenous Peoples in local languages;
14. Take specific measures aimed at protecting the rights of indigenous women and girls, who are doubly vulnerable because they are both female and indigenous;
15. Ensure indigenous women are protected from sexual violence or any other form of violence and put programmes in place to help the victims of violence ;
16. Take measures to protect the rights of children abandoned as a result of rape;
17. Promote indigenous peoples' traditional culture through pharmacopeia and handicrafts;
18. Ensure that the perpetrators of acts of violence against indigenous populations, including those involved in practices of slavery or rape, are brought to justice;
19. Put programmes in place to encourage income generating activities for indigenous peoples;
20. Help indigenous populations' organisations to access the DRC's Social Fund;
21. Take the necessary measures aimed at ratifying ILO Convention 169;
22. Establish a lasting peace in the DRC in general and in North and South Kivu provinces in particular, in order to enable the indigenous populations to return to their places of origin.

b. To Congolese civil society:

1. Undertake greater networking in order to better guide and organise activities of lobbying, advocacy, awareness raising, sustainable development, the fight against impunity, etc;
2. Take ownership of and raise awareness of the UN Declaration on the Rights of Indigenous Peoples;

3. Take ownership of and raise awareness of the Forest Code and the Mining Code;
4. Train indigenous populations in the use of participatory mapping when demarcating their lands;
5. Support the indigenous populations in legal and administrative areas;
6. Strengthen the legal aid centres already in place;
7. Initiate programmes of income-generating activities for indigenous populations;
8. Initiate programmes to ensure that children that are the result of rapes are protected;
9. Promote access to education on the part of indigenous children;
10. Promote access to basic services on the part of indigenous populations;

c. To the international community:

1. Support the sustainable development activities and programmes of indigenous populations in the DRC;
2. Support the Congolese government to implement its national plan for indigenous populations;
3. Anticipate including indigenous issues in the different processes relating to the forest management of the Congo basin, such as AFLEG (Africa Forest Law Enforcement and Governance), the European Union convergence plan, the World Bank, the different bilateral partners and the Central African Forestry Commission (COMIFAC);
4. Organise inter-agency meetings aimed at raising awareness of indigenous issues and mobilising resources;
5. Support an in-depth study into the situation of indigenous populations in the DRC, including a specific census;
6. Support the dissemination of the African Commission's report on the rights of indigenous communities;
7. Support the education of indigenous children.
8. Support NGOs involved in protecting indigenous peoples' rights both financially and technically.

ANNEX 1

LIST OF PARTICIPANTS AT THE PRESS CONFERENCE

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