

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

RESEARCH AND INFORMATION VISIT TO THE REPUBLIC OF CONGO

5 – 19 September 2005

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INTERNATIONAL
WORK GROUP FOR
INDIGENOUS AFFAIRS

REPORT OF THE AFRICAN COMMISSION'S WORKING GROUP
ON INDIGENOUS POPULATIONS/COMMUNITIES:
RESEARCH AND INFORMATION VISIT TO THE
REPUBLIC OF CONGO, SEPTEMBER 2005

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LIST OF ABBREVIATIONS

ACHPR/African Commission – African Commission on Human and Peoples’ Rights

ADHUC – Association for Human Rights and the Prison System / Association des droits de l’homme et l’univers carcéral

AFLEG – Africa Forest Law Enforcement and Governance / Processus d’application des législations et de gouvernance dans le domaine forestier en Afrique

CDHD – Centre for Human Rights and Development / Centre des droits de l’homme et de développement

COMIFAC – Forestry Commission in Central Africa / Commission des forêts en Afrique centrale

EU – European Union

FGEGT – Forest Law Enforcement, Governance and Trade / Application des réglementations forestières, gouvernance et commerce

IPHD – International Partnership for Human Development

NCO – Non-commissioned officer

NGO – Non-governmental organisation

OCDH – Congolese Human Rights Watchdog / Observatoire congolais des droits de l’homme

PRAEBASE – Project of Support to Basic Education; Ministry of Primary, Secondary and Professional Education / Projet d’appui à l’éducation de base ; Ministère de l’enseignement primaire, secondaire et professionnel

UNDP – United Nations Development Programme

UNESCO – United Nations Economic, Scientific and Cultural Organization

UNFPA – United Nations Population Fund

UNICEF – United Nations Children’s Fund

Working Group – African Commission’s Working Group on Indigenous Populations/Communities

PREFACE

The African Commission on Human and Peoples' Rights (ACHPR or African Commission), which is a body of the African Union, has been debating the human rights situation of indigenous peoples since 1999, as these are some of the most vulnerable groups on the African continent. Since the 29th Ordinary Session of the African Commission, held in Libya in 2001, representatives of African indigenous communities have regularly attended the ACHPR's sessions and have given strong testimonies about 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 peoples, moreover, wish to exercise these rights within the institutional framework of the nation-state they belong to. 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 then comprised three ACHPR Commissioners, three experts from indigenous communities in Africa and one international expert on indigenous issues. 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 peoples and communities in Africa (the full report can be downloaded

from <http://www.iwgia.org.sw163.asp>). 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, and framework for, the issue of indigenous peoples' 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.

This report is part of a series of country-specific reports produced by the Working Group, and endorsed by the African Commission on Human and Peoples' Rights. These country-specific reports emanate from 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 peoples' human rights, and to inform about 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, as well as other interested parties. This dialogue should be undertaken in accordance with the provisions of the African Charter on Human and Peoples' Rights.

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

Kamel Rezag Bara

Commissioner

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

EXECUTIVE SUMMARY

The African Commission's Working Group on Indigenous Populations/Communities conducted a research and information visit to the Republic of Congo from 5 to 19 September 2005. The visit's mission team comprised Mr. Zephyrin Kalimba, a member of the Working Group and Dr. Albert K. Barume, a member of the Working Group's advisory network of experts.



The Mission met with representatives from various State and inter-State institutions and non-governmental organisations, including particularly the Presidential Office, Parliament, various ministries, the World Bank, the European Union, the UNDP, UNICEF, the NGO Association des Droits de l'Homme et l'Univers Carcéral, (Association for Human Rights and the Prison

System - AHUC) and the Observatoire Congolais des Droits de l'Homme (Congolese Human Rights Watchdog - OCDH).

The aim of the visit was to

- Inform the Congolese government, regional and local authorities, national human rights organisations, media, civil society organisations and associations, development agencies and other interested players about the report and the efforts of the African Commission on Human and Peoples' Rights with regard to indigenous peoples;

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- Collect all information relating to the human rights situation of indigenous peoples in the Republic of Congo 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 peoples to targeted individuals and institutions.

The Republic of Congo covers an area of 342,000 km², and is inhabited by around 3 million people, including indigenous 'Pygmies' known by various names ('Babenga', 'Babongo', 'Bambendzele', 'Baka', 'Baluma' and 'Bangombe') depending on the region of the country. These communities make up the indigenous 'Pygmy' people, who are recognised as being the oldest inhabitants of all Africa's tropical forests.

Since gaining independence from France in 1960, the Republic of Congo has experienced a number of periods of political unrest. The last was in 1997 with the arrival to power of the country's current President. In economic terms, the country relies essentially on its natural resources: oil, followed – increasingly – by logging operations.

The Republic of Congo is a state Party to various international conventions and treaties affecting indigenous peoples. These are, primarily, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention on Biological Diversity and the African Charter on Human and Peoples' Rights. All these international human rights instruments guarantee special protection measures for indigenous peoples.

Throughout history, even during colonial times, the 'Pygmies' of the Republic of Congo have been marked by negative stereotypes, going as far as to consider them sub-human. The Mission was able to observe the level of exclusion and marginalisation the indigenous 'Pygmies' suffer in the Republic of Congo. A high level of illiteracy, despite efforts historically made in this area by the Republic of Congo, a lack of legal protection of their ancestral lands, the impact of logging, the practice of servitude or

« Pygmies' masters » that many still endure, the violence and sexual abuse suffered by female Pygmies - without the slightest concern from the public authorities -, a lack of access to basic primary health care and a lack of enjoyment of citizenship rights on a par with the rest of the population. These are the dominant and striking features of the state of human rights that the Mission noted within the 'Pygmy' communities of the Republic of Congo.

In terms of the problems faced by 'Pygmies' in the Republic of Congo, some of the people the Mission talked to felt that this indigenous population excludes itself from modern life and resists all trends and efforts to be drawn into the dominant way of life. The Mission took this opportunity to explain that one could not accuse Africa under the colonial yoke of excluding itself from the settlers' way of life and so the same argument must apply to the indigenous 'Pygmies', whose marginalisation is certainly not due to their behaviour or attitude. One opinion put forward largely by development agencies and civil society suggested that a policy of positive discrimination should be implemented in this regard.

Although the Constitution and existing laws of the Republic of Congo are not in line with the country's international commitments, in terms particularly of the indigenous peoples, it is important to note that the indigenous cause is now showing positive and completely unexpected signs and possibilities in this country. In fact, a draft bill on the indigenous 'Pygmy' people is currently under discussion within the Ministry of Justice, some logging companies are in the process of implementing exclusively indigenous programmes and the land issue creates less problems in this country because of the very low population density of around 11 inhabitants per square kilometre.

Whilst aware of the pejorative and negative connotation attached to the term 'Pygmy', this report nonetheless uses it for lack of anything better. The report comprises four sections, preceded by an executive summary and followed by a conclusion and recommendations. These sections are: socio-political context, existing legal framework, important thematic issues and a summary of the different meetings.

The African Commission's Working Group on Indigenous Populations/ Communities makes the following recommendations:

A. To the Government of the Republic of Congo

1. Urgently bring the draft bill on 'Pygmies' to a successful conclusion, bearing in mind the deep concerns of the communities in question;
2. Put national sectoral policies in place that will enable the 'Pygmies' to enjoy all rights and fundamental freedoms on a par with other Congolese citizens;
3. Take urgent measures to put an end to the practice of "Pygmies' masters" and punish all those who take part in it.

B. To the African Commission on Human and Peoples' Rights

1. Conduct country by country monitoring of the commitments and/or indigenous policies adopted by development agencies, bilateral and multilateral partners;
2. Organise a regional conference on experiences of educating 'Pygmy' children in Central Africa, with a view to exchanging experiences, gaining inspiration and, for some, refocusing strategies;
3. Support the creation of an indigenous civil society in this country with a view to establishing capable and legitimate spokespersons with whom the government can dialogue;
4. Visit the Republic of Congo with a view to supporting the draft bill that is underway and raising the awareness of the government with regard to the different aspects of indigenous law that this bill should incorporate;
5. Write to the European Union, the World Bank, the different bilateral partners and COMIFAC (Forestry Commission in Central Africa) with a view to including the issue of indigenous peoples in the different processes related to forestry management in the Congo basin, such as AFLEG (Africa Forest Law Enforcement and Governance), the Convergence Plan, etc.;

6. Commence intersessional meetings involving the development agencies and players working on behalf of indigenous peoples in Africa;
7. Put in place a mechanism for monitoring the recommendations of the Working Group's reports through different players, both state and non-state.

C. *To the Congolese civil society*

1. Strengthen the existing indigenous associations.

D. *To the international community*

1. Design and implement projects specifically focussing on the needs of the Pygmy population, including such issues as land, education, health, forced labour, bondage and sexual violence;
2. Support an in-depth study of the situation of indigenous Pygmy peoples in the Republic of Congo, possibly including a census;
3. Assist in disseminating the African Commission's report on the rights of indigenous communities.

I. SOCIO-POLITICAL CONTEXT IN THE REPUBLIC OF CONGO

The Republic of Congo gained its independence in 1960. It covers an area of 342,000 km² divided administratively into 9 regions, namely, Cuvette, Cuvette Ouest, Kouilou, Lekoumou, Likouala, Niari, Plateaux, Pool and Sangha, plus the town of Brazzaville. With a population of approximately 3 million, half of whom live in the capital, Brazzaville and the town of Pointe Noire, this country has one of the lowest population densities in Africa, with an average of around 11 inhabitants per km². It is bordered by Angola, Cameroon, the Central African Republic, the Democratic Republic of Congo and Gabon.

In political terms, the Republic of Congo is in the process of emerging from a political crisis that took place in 1997, at the end of which the current president took power. Presidential elections took place in March 2002, followed by legislative elections in July of the same year. Some regions of the country are not yet entirely peaceful and the political climate is not completely free of tensions.

On a sociological level, the Republic of Congo is a multiethnic country, with four main ethnic groups (Kongo, Sangha, M'Bochi and Teke) sharing French as their official language and Lingala and Kikongo as their national languages. The 'Pygmies' form one of the other components of the country's population, most of them living in the provinces of Sangha, Likouala, Cuvette, Lékoumou and Niari. Their number is more or less unknown but they are certainly in the majority in some parts of the country. One female member of Parliament is recognised as having an essentially Pygmy electorate.

II. EXISTING LEGAL FRAMEWORK AND INTERNATIONAL COMMITMENTS OF THE REPUBLIC OF CONGO

The Constitution of the Republic of Congo contains no provisions offering any protection to indigenous peoples. Nonetheless, the supreme law of the country provides against all forms of discrimination, including that

based on race or ethnic group. The Minister of Justice has just instigated a draft bill of law on the 'Pygmies', to be submitted to Parliament for adoption. This draft text is currently in the hands of civil society for comments and consultation with the indigenous communities in question. The British NGO, the Rainforest Foundation, is financially supporting this consultation process, which is being conducted by local NGOs, including indigenous 'Pygmy' groups and associations.

The Republic of Congo is party to a number of international conventions and treaties protecting different aspects of indigenous rights. These are, primarily, the International Covenant on Civil and Political Rights (ratified by the Congo on 05/10/83), the International Covenant on Economic, Social and Cultural Rights (ratified by the Congo on 05/01/84), the Convention on the Elimination of all Forms of Racial Discrimination (ratified by the Congo on 10/08/88), the Convention on the Elimination of all Forms of Discrimination against Women (ratified by the Congo on 25/08/82), the Convention on the Rights of the Child (ratified by the Congo on 13/11/93), the Convention on Biological Diversity (ratified by the Congo on 01/08/1996) and the African Charter on Human and Peoples' Rights (ratified by the Congo on 09/12/82).

The transposal of these international instruments into the Republic of Congo's internal law following their ratification is recognised by the 2002 Constitution, article 184 of which states that, "Treaties and Agreements, duly ratified or approved, have – from the moment of their publication – higher authority than that of the law, subject - for each agreement or treaty - to their application by the other party."

III. DIFFERENT MEETINGS HELD

3.1 *Meeting with the Association for Human Rights and the Prison System*

The Association for Human Rights and the Prison System / Association des Droits de l'Homme et l'Univers Carcéral (ADHUC) is a non-governmental human rights organisation based in Brazzaville. It is ac-

tive throughout virtually the whole country. Among other activities, ADHUC works with indigenous 'Pygmy' peoples through a programme previously financed by the US Embassy in Brazzaville. Its work relates to finding out about the general living conditions of indigenous 'Pygmies' and helping some of them to become involved in advocacy work around their cause. This NGO intends to commence work on identifying and pinpointing the geographical location of the different indigenous 'Pygmy' communities in the Republic of Congo.

Copies of the Report of the African Commission's Working Group of Experts on indigenous populations/communities were presented to ADHUC. This NGO, already active within the African Commission for Human and Peoples' Rights, received the report very positively. In their opinion it comes at a crucial time, given the efforts underway in the country on the issue of the indigenous 'Pygmy' people.

Not only did ADHUC make its Secretariat available to the Mission but it also facilitated, and accompanied the Mission to, several meetings and activities.

3.2 Participation in a national workshop involving representatives of all indigenous 'Pygmy' communities in the Congo

The Mission took part in a national workshop involving representatives of all indigenous 'Pygmy' communities in the Republic of Congo. This was a meeting to discuss the Congolese government's draft bill on indigenous 'Pygmies'.

Organised by the Congolese Human Rights Watchdog / Observatoire Congolais des Droits de l'Homme (OCDH), this workshop also involved a number of non-indigenous human rights NGOs, particularly the Association of Women Jurists of the Republic of Congo and ADHUC, and representatives from the Ministry of Justice and other State departments involved in social issues.

The Mission had the opportunity to present the efforts the African Commission on Human and Peoples' Rights has been making in relation to in-

indigenous peoples to the participants, particularly the report of the Working Group of Experts and other actions undertaken by the Commission. Copies of the report were handed out to participants, who were of the opinion that the report and the African Commission's efforts were highly unexpected and came at an historic time for indigenous 'Pygmy' rights in the Republic of Congo.

3.3 Meeting with the Congolese Human Rights Watchdog

The Congolese Human Rights Watchdog/Observatoire Congolais des Droits de l'Homme (OCDH) is an NGO active in the area of forest peoples' rights. Since 2004, it has been implementing a specific programme for indigenous ('Pygmy') peoples. This organisation produced a report on the human rights situation of the indigenous 'Pygmy' peoples in 1996 but it is its recent 2004 publication on the 'Pygmies' that seems to have had greater impact and encouraged the Ministry of Justice to commence discussions on the need for a legal text providing protection for the indigenous 'Pygmy' communities.

The Mission met with the Programme Officer and President of the organisation. Given its observer status with the African Commission on Human and Peoples' Rights, and the fact that it participates fairly regularly in this body's sessions, the OCDH was already aware of the Report of the Working Group of Experts. After long discussions on the living conditions of the 'Pygmies', the OCDH representatives stated a wish to see the Working Group of the African Commission on Human and Peoples' Rights support the process of formulating a law on indigenous 'Pygmies' in the Republic of Congo.

3.4 Meeting with the United Nations Population Fund

The Mission met with representatives from the United Nations Population Fund (UNFPA). Its Brazzaville office also covers Gabon. The UNFPA's Resident Representative and assistant took part in the meeting. After presenting the aim of its visit and explaining the efforts of the African Commission on Human and Peoples' Rights in relation to indigenous rights, the Mission handed over a copy of the Report, which was accepted

enthusiastically. The Resident Representative emphasised that this African Commission report would enrich the discussions underway between the UNFPA and the Ministry for Social Affairs around the possibility of an in-depth study into the situation of indigenous 'Pygmy' peoples in the Republic of Congo.

The United Nations Population Fund seems to be aware of the particularly difficult living conditions of the indigenous 'Pygmy' communities in the Republic of Congo. Reference was made, for example, to certain illnesses that particularly affect this people, such as Pion. The UNFPA is also concerned that the exact demography of the indigenous population is not known. The only estimates available date from 1984, which put the number of indigenous 'Pygmies' at around 20,000. This figure, estimates the UNFPA, is far from the reality, hence the need for a census.

The Mission asked the UNFPA to help disseminate the African Commission's report and to use it to put in place a policy or programme aimed at responding to the concerns of the indigenous 'Pygmy' peoples of the Republic of Congo. The UNFPA, in turn, stated its wish to see the African Commission, through the Working Group of Experts, establish a mechanism for monitoring application of the Report's recommendations.

3.5 Meeting with the Human Rights Department / Ministry of Justice

The Mission held a meeting that lasted more than one hour with the Human Rights Department of the Ministry of Justice, hereinafter called 'the Department'. The Director General attended, assisted by three of his staff, including the head of the sub-department for minorities. The Human Rights Department is a recent creation of the Ministry of Justice. It acts as specialist body and technical advisor to the Ministry on human rights issues.

Its representatives received the Report of the African Commission's Working Group on indigenous populations/communities very favourably. They felt that it was in tune with the efforts of their government, particularly the creation of the sub-department for minorities and the draft bill on protecting 'Pygmy' rights, the first version of which had been

submitted to civil society and the relevant communities for comments and additions. This text is aimed at ensuring equal rights for 'Pygmies', on a par with the rest of the Congolese population.

The Department highlighted, moreover, its policy of special attention for vulnerable communities. It is in this perspective that it intended to celebrate the International Day of the World's Indigenous Peoples. It is also planning to organise information days and sessions around texts on the rights of indigenous peoples, minorities and vulnerable communities. According to the Director General, a meeting on human rights in the Great Lakes Region held recently in Nairobi discussed the issue of indigenous peoples and the need to consider the issue of indigenous rights at regional level.

The 'Pygmies' lack of access to civil documents (identity cards, birth certificates, etc.), to land, education, health care and employment were other problems that were all noted during the meeting. The Mission stated its wish to see all these issues effectively addressed in the draft bill. To this end, the Mission took the opportunity to explain the broad outlines of indigenous peoples' land rights, the unfounded nature of the theory of the 'Pygmies' self-exclusion, which seems widespread in the Republic of Congo, the need for an education system that takes the cultural specifics of 'Pygmies' into account without isolating them further, and the measures that needed to be taken to combat the demeaning practices akin to slavery that some 'Pygmies' continue to endure.

3.6 Meeting with the Ministry of Primary, Secondary and Professional Education / Project of Support to Basic Education

The Mission met the people in charge of the Project of Support to Basic Education (PRAEBASE) of the Ministry of Primary, Secondary and Professional Education. Funded by the World Bank, this programme has four components, namely, capacity building, infrastructure rehabilitation, improving the quality of teaching and educating vulnerable groups, such as young people not in school and 'Pygmies'.

The number of 'Pygmy' children attending school is well below the national average. This is the justification for the particular focus placed on them. In Lékoumou department, for example, out of a total of 18,243 'Pygmy' children, only 472, or 2.9%, of 'Pygmy' children are attending school¹. In other words, the different national education programmes do not seem to have taken the specific problems confronting 'Pygmy' children into account.

The 'Pygmy' component of the PRAEBASE project is being implemented in association with organisations experienced in this area, in particular the International Partnership for Human Development (IPHD) and UNESCO, and will consist of covering the costs of the children's different needs with a view to keeping them in school. This project also has a consultative body made up of various interested parties, including civil society, with a mandate to regularly review the project's impact. This body was launched on 9 August 2004, International Day of the World's Indigenous Peoples, symbolically chosen because of the project's particular focus on indigenous 'Pygmy' peoples. The project could commence activities over a large area of the country.

During the interview, the Mission also highlighted the problem of educating 'Pygmy' and non-Pygmy children alongside each other. The Project, on instructions from the Ministry, intends to conduct an in-depth study with a view to establishing programmes that not only provide an emancipating education to 'Pygmy' children but that are also culturally appropriate. Among other factors that may be considered by the study is the language of instruction, appropriateness of the school timetable and parents' training.

3.7 Meeting with the Delegation of the European Commission

The European Union is one of the region's major players in terms of human rights and the environment. It was in this dual role that the Mission met with a representative from the Delegation of the European Commission in Brazzaville to present him with a copy of the African Commission's report on indigenous populations/communities.

1) Source: International Partnership for Human Development (IPHD)

The representative we met welcomed the initiative of the African Commission on Human and Peoples' Rights with regard to indigenous peoples' problems in regard to which, he said, "Everyone is aware of but no-one has dared tackle for so long". The discriminatory practices suffered by the 'Pygmies' of Central Africa in general are undoubted. He was moreover delighted that the initiative had come from Africa itself rather than from elsewhere.

The EU representative emphasised the existence of a budget line for indigenous peoples within the European Union. At the level of the Brazzaville Delegation, he mentioned the programme of support for the rule of law, which could serve as an entry point for projects from indigenous or non-indigenous associations working in this area.

In relation to the issue of sustainable forest management in Central Africa, which the European Union is supporting, the representative highlighted the European Union's support of the AFLEG (Africa Forest Law Enforcement and Governance) and FGEGT (Forest Law Enforcement, Governance and Trade) processes. All these processes, he emphasised, could be opportunities for greater advocacy around the rights of the indigenous 'Pygmy' peoples who inhabit these African tropical rainforests.

3.8 Meeting with UNICEF/ Republic of Congo

The Mission held an almost two-hour long meeting with the Resident Representative of UNICEF in Brazzaville, assisted by his protection coordinator. After briefly presenting the aim of the visit, the Mission presented the two representatives with copies of the Report of the African Commission's Working Group on indigenous populations/communities.

The Resident Representative told us that UNICEF did not need to be converted to the cause of the indigenous 'Pygmy' populations of the Republic of Congo as it was already well aware of it. He also favourably received the report. "Caring for the vulnerable is part of our mandate..... with the government's assistance we have produced a documentary film on the country's 'Pygmies'," he said. He continued with a list of the different activities undertaken by his organisation on behalf of the 'Pyg-

mies', particularly an anti-Pion programme, as this particularly affects the 'Pygmy' community in the northern part of the country. "Through all these initiatives," emphasised UNICEF's representative, "we are a critical government partner to whom, in addition to comments and suggestions, we also offer our support."

The Mission particularly emphasised application of the Convention on the Rights of the Child, the legal basis for positive discrimination measures in favour of the 'Pygmies', as well as UNICEF's role in ensuring application of the said Convention, and particularly article 30 on indigenous children. The representative promised to help disseminate the Report and to use it with a view to improving UNICEF's programmes for indigenous 'Pygmy' peoples.

The Mission also highlighted and shared the experience of UNICEF/Latin America, which has a regional advisor on indigenous peoples. Among other things, this person is responsible for ensuring that UNICEF's activities are in line with the international obligation to pay particular attention to indigenous children, as provided for in the Convention on the Rights of the Child.

3.9 Meeting with International Partnership for Human Development

International Partnership for Human Development (IPHD) is a US NGO that has been working in the education sector in the Republic of Congo since 2000. It is known for its work on school canteens, otherwise known as 'food for education', which consists of providing food to school pupils in an effort to get them to stay at school for as long as possible. Operational in a number of the country's departments or provinces, IPHD is also active in combating malaria in the school environment.

In relation to 'Pygmy' children's education, IPHD's motivation comes from observing their low level of school attendance in relation to a national average of more than 70%. Its programme has the aim of getting 2,500 'Pygmy' children in Lékoumou department into school over a three-year period. To do this, the NGO has established school canteens in schools where there are a high number of 'Pygmy' children. Although all the chil-

dren are fed, only the 'Pygmy' children benefit from school stationery, clothes and primary health care and hygiene. Each school involved has a Parents' Committee on which 'Pygmy' parents sit. The teams of cooks also include 'Pygmies'.

Despite resistance to the programme from non-Pygmy communities, to date 1,297 'Pygmy' children have already been enrolled in school, including 589 girls. In some places, the 'Pygmy' children now look cleaner, to the point of forming the object of jealousy and complaints from the other children. The PRAEBASE project of the Ministry for Primary, Secondary and Professional Education intends to sub-contract some of its activities to IPHD, which is also facing a funding problem.

The following joint concerns were highlighted during the meeting between the Mission and IPHD:

- Project sustainability: during its second year, the project experienced problems with supplies, which led to some of the 'Pygmy' children dropping out;
- Financial constraints prevent this programme from being extended to other provinces or departments of the country;
- The 'Master/Servant' relationship between some 'Pygmies' and Bantus has a negative impact on the programme. For example, although present on school management committees, 'Pygmy' parents rarely express their opinions;
- Improvements in the living conditions of 'Pygmy' parents would seem to be essential if they are to be able to take future responsibility for their children. With the support of the US government, IPHD intends to commence a programme of communal plots in this regard;
- Particular attention should also be paid to the post-primary school period;
- There is a need for in-depth studies in order to be able to take 'Pygmy' culture into consideration in the education system made available to them.

3.10 Meeting with the Presidential Office

At the Presidential Office, the Mission was received by the Legal Advisor to the President of the Republic, hereinafter called 'the Advisor'. After giving him some copies of the Report of the African Commission's Working Group on indigenous populations/communities, the meeting spent more than an hour considering different aspects of indigenous 'Pygmy' problems in the Republic of Congo.

In fact, the Advisor received the Report with satisfaction and welcomed the African Commission's efforts. According to the Advisor, the indigenous 'Pygmy' people have remained clearly marginalised or, better said, have marginalised themselves due to their own behaviour with regard to modernity. It is thus essential that these people become aware of their backwardness and do something about it, said the Advisor, for the rest of us also went through the same process with the arrival of colonialism and modernity.

Apart from this theory of self-exclusion, the Advisor highlighted his country's efforts in this regard, particularly the existence of a sub-department for minorities and vulnerable people within the Human Rights Department of the Ministry of Justice and the creation of a National Human Rights Commission. In addition, he emphasised the existence of several 'Pygmy' individuals who are fully integrated into national life, to the point that their 'Pygmy' roots are no longer noticeable. Also, the Advisor continued, relations between Bantu and 'Pygmy' villages are normal and not as conflictual as is often stated.

In reaction to the Advisor's comments, the Mission explained that the indigenous 'Pygmies' of the African tropical rainforests do not exclude themselves. On the contrary, they are the victims of a failure to recognise their way of life, namely, hunting and gathering, as worthy of legal protection, a contributing factor in development and a central focus of their culture. Comparable treatment has not been given to farmers who, with the advent of the modern African state saw their use and occupation of the land promoted, supported and even financed. This greatly increased

the economic power and consequently the habitat of farmers, and facilitated their access to education, to health care and to what is known as modernity. The Mission continued by emphasising that, later, as the need for conservation arose, the 'Pygmy' way of life - focused on hunting and gathering - was criminalized in some countries.

In addition, the Mission noted the practice of "Pygmies' Masters", which is rampant in several of the country's departments. This is despite international conventions and national laws prohibiting this kind of practice and guaranteeing special protection for indigenous peoples. The land issue was also raised, along with the 'Pygmies' lack of access to health care.

The Mission was, however, in agreement with the Advisor on the weakness of indigenous civil society in the Republic of Congo, in comparison with other Central African countries. In fact, there are scarcely any indigenous peoples' associations in this country.

3.11 Meeting with the United Nations Development Programme

The Mission also met with the United Nations Development Programme (UNDP), more precisely this UN agency's Governance Programme in the Republic of Congo. As elsewhere, the Mission presented a copy of the Report of the African Commission's Working Group on indigenous populations/communities, explained the African Commission's efforts in this regard and invited the UNDP to make use of and disseminate the report.

It emerged from this meeting that, apart from some sporadic actions undertaken to the benefit of 'Pygmy' communities, the UNDP/Republic of Congo has no specific programme for indigenous people. However, the UNDP is involved in the PRAEBASE project of the Ministry of Primary, Secondary and Professional Education.

The Mission highlighted the following at the meeting:

- UNDP policy on indigenous peoples,
- The UNDP's commitments and declarations at the last session of the Permanent Forum on Indigenous Issues held in New York in May 2005, in terms of the Millennium Development Goals and, particularly, poverty reduction and universal education for all.

3.12 Meeting with the Resident Representative of the World Bank

The Resident Representative of the World Bank in the Republic of Congo also granted the Mission an audience and this latter, in addition to presenting him with a copy of the Report, highlighted the African Commission's efforts in this regard.

The representative welcomed the Report favourably, describing it as an essential tool with which to advance indigenous rights in Africa. He emphasised the fact that his institution was a stakeholder in international indigenous rights protection, referring to the financial institution's internal policy on this issue.

By way of illustration, the representative mentioned his institution's financing of the PRAEBASE project which, he insisted, has an indigenous 'Pygmy' component. In addition, the Mission highlighted the Republic of Congo's access to the Heavily Indebted Poor Countries (HIPC) programme, the current drafting of the national poverty reduction programme and a number of other projects with an impact on 'Pygmies' as paths of entry by which the situation of this people could be taken into account and improved.

The World Bank representative was in full agreement with the Mission and recommended mechanisms to the African Commission's Working Group on Indigenous Populations/Communities for the implementation of its report.

3.13 Meeting with the Centre for Human Rights and Development

The Centre for Human Rights and Development/Centre des Droits de l'Homme et de Développement (CDHD) is an NGO based in Brazzaville and run by human rights lecturers from university institutions with experience in other Central African countries, particularly Cameroon. Founded in 2003, the CDHD specialises in promoting human rights through research, publication and the popularisation of human rights. It works in partnership with other human rights NGOs involved in protection (defence), teaching institutes, government bodies and other civil society players. It responds to training, information, advice, research and publication needs in the human rights area.

With regard to the issue of indigenous peoples, the Centre highlighted its wish to embark upon a series of studies. Referring to the initiative of the former President of the Republic of Congo, Mr. Marien Ngouabi, on behalf of the 'Pygmies', the CDHD highlighted the lack of consultation of those involved as the main reason for the failure of this initiative. The CDHD emphasised, moreover, the essential nature of consultation in the choice and implementation of projects in indigenous areas.

Finally, the Centre was delighted with the report of the Working Group on indigenous populations/communities along with the African Commission's efforts in this area, which it considered a tool it could use in its future studies on indigenous peoples.

3.14 Meeting with the Presidency of Parliament

The Mission also met staff members from the office of the President of Parliament, namely the office director and diplomatic advisor. Their interest in the Working Group's report was clearly apparent. They also congratulated the African Commission on its efforts in the area of indigenous rights, as well as the Working Group's interest in the Republic of Congo.

In response to the argument of self-exclusion given by these representatives, the Mission took the opportunity to highlight the historic injustices to which the indigenous 'Pygmy' people have been subjected in different

countries, including the Republic of Congo. It is essentially a question of a lack of recognition and protection of this people's way of life revolving around hunting and gathering, and already considered a criminal act in some countries.

Amongst other things, the representatives wanted to know if positive discrimination measures would be in violation of the constitutional rule of non-discrimination or, better said, equal rights. The Mission responded by noting the provisions of the Convention against all Forms of Racial Discrimination, which specify that taking measures of positive discrimination in favour of marginalised groups does not constitute a violation of the principle of equal rights. Examples of other countries that have moved in this direction were also given. The issue of the 'Pygmies' lack of access to identity cards, along with other problems, was also considered during the meeting.

The members of the office of the President of Parliament claimed to have been greatly enlightened by their conversation with the Mission. They asked the Mission to send them copies of legal texts or acts passed in other African countries on behalf of indigenous peoples. They finally promised to report back faithfully to the President and to provide him with copies of the Report with very clear recommendations.



Photo: Albert K. Barume (2005)

3.15 Visit to an indigenous 'Pygmy' community

Despite the time constraints, the Mission visited an indigenous 'Pygmy' community, accompanied by officials from the NGO ADHUC. The village visited was Bene, situated around 300 kms from Brazzaville. This village, entirely 'Pygmy', illustrates the gulf that exists between the 'Pygmy' and other communities. The Mission met with village members, who talked of the separate lives they lead, the legal insecurity of their lands and the other abuses they are subjected to.

3.16 Meeting with the national press: press conference

At the end of the visit, the Mission organised a press conference for the local and national press. Held in a meeting room at the NGO ADHUC, around ten or so newspaper publishers attended the conference. The main points highlighted to journalists by the Mission focused around a brief presentation of the content of the Working Group's report, an overview of the efforts of the African Commission on Human and Peoples' Rights with regard to indigenous peoples and a summary of the different meetings held in Brazzaville.

A series of questions were raised by the journalists, indicating their interest in the issue. Do the Pygmies not exclude themselves from national life? What was the reaction of the different authorities to your visit? Why has Africa waited so long to address the issue of indigenous peoples? What support could the Working Group provide for 'Pygmies' in the Republic of Congo? How many Pygmies are there in Central Africa? These were just some of the questions raised by the journalists. The following day, several local newspapers published articles on this press conference.

3.17 Depositing of copies of the Report with the library of Marien Ngouabi University

The Mission left several copies of the Report of the African Commission's Working Group on indigenous populations/communities with the central library of the Marien Ngouabi University, the largest in the country.

IV. OVERVIEW OF THE SITUATION OF THE RIGHTS OF INDIGENOUS 'PYGMY' PEOPLES IN THE REPUBLIC OF CONGO

4.1 *The practice of "Pygmies' masters", a practice tantamount to slavery*

In some regions of the Republic of Congo, the practice of holding one or more 'Pygmies' in servitude persists. The beneficiaries of this practice speak in terms of "my Pygmies". A father may bequeath lands to his children, including the 'Pygmies' living on them.

This may relate to whole 'Pygmy' families or to individuals in the service of an individual or family. The "masters" claim to act as guarantor in relation to any problems their 'Pygmies' may possibly encounter and, in return, they have the right to complete devotion and to demand unpaid labour in the fields; in fact, they have a virtual right of life or death over their subjects, as a local human rights NGO worker explained to the Mission. The indigenous 'Pygmies' in such a situation are supposed to carry out all kinds of work, at any time and under any conditions. They are very often subjected to corporal punishment, and are even deprived of food for simply refusing or being unable to carry out a particular task.

In some cases, the "Master" is also the owner of the fruits of labour that "his Pygmies" have carried out against payment from a third party. In other words, some "masters" even demand the salaries of their 'Pygmies'. The "Masters" commit various other abuses, including sexual violence against the wife or daughters of "his Pygmies" without these latter being able to say a thing.

"The Master cannot touch or eat what our women have prepared. But he sometimes sleeps with our wives and daughters. When they fall pregnant they come back to us because the Master would not want it to be known that he had had a child with a Pygmy woman", a 'Pygmy' revealed to the Mission.

"I had a chance to go to school but to do so I needed the authorisation of my Master and he said he didn't have the money to send me," another 'Pygmy' confided to the Mission.

"Non-Pygmies often spit and turn away if a Pygmy goes by, as if we were not human beings like them".

"Working for no money or receiving a few litres of traditional wine in payment is another degrading practice that we Pygmies continue to be subjected to in the Republic of Congo," a 'Pygmy' also confided to the Mission.

4.2 *Right to citizenship, to equal enjoyment of rights and to participate in the running of the country*

The Constitution of the Republic of Congo states that all citizens are equal before the law:

"All citizens are equal before the law. All discrimination based on origin, social or material position, racial, ethnic or departmental affiliation, sex, education, religion, philosophy or place of residence is forbidden, subject to the provisions of articles 58 and 96². "

Law No.073/84 of 17 October 1984 on the Family Code states that everybody's status must be established by means of a certificate issued through the civil registry. This relates particularly to birth, marriage and death certificates. With regard to birth certificates, the law indicates that all children must be registered at birth, failure to do so leading to the risk of a fine being imposed on the parent or guardian. The birth certificate is an essential document with which to obtain other documents and services, particularly identity cards, voting cards, school registration, travel documents (passports) and even access to employment.

Despite the fact that birth certificates are free, many 'Pygmy' children are not registered. This is for a variety of reasons, including the parents' lack of access to a registry office and the inappropriateness of the established

2) Article 8 of the Constitution of the Republic of Congo

procedures in terms of the way of life and remoteness of 'Pygmy' communities. In addition, some registry office officials demand money from 'Pygmies' who wish to obtain any civil documents.

However, many indigenous 'Pygmies' in the Republic of Congo do have voting cards, which they use as identity documents. This is the result of the fact that 'Pygmy' votes are of great importance, particularly in some districts where they are considered to be in the majority. It is believed that a number of electoral candidates have taken measures to ensure the mass enrolment of 'Pygmies', even if these latter have no identity documents.

"They come seeking our votes during the elections and for this they issue us with voting cards, without any identity document. I can't read well but I don't think it is normal to issue someone with a voting card when they don't have an identity card. This shows us that the Bantu are only here in search of our votes." (comments of an indigenous 'Pygmy' from Kuilou)

The 'Pygmies' say they have had few problems integrating into the national army however. The Mission met indigenous 'Pygmy' NCOs who stated that, unlike in other sectors of national life, here they suffer less prejudice, scorn and negative stereotyping. A certain belief in the mystical ability of 'Pygmies' to offer protection from bullets is probably at the root of this openness towards them in the army.

4.3 *Sexual violence against indigenous women*³

Various corroborating accounts received by the Mission demonstrate that indigenous 'Pygmy' women in the Republic of Congo suffer several types and forms of sexual violence, firstly as women and secondly as indigenous 'Pygmies'. In addition to often being forced into sexual relations with the "Masters" of their husbands or fathers, 'Pygmy' women are also the object of a practice known as "renting".

3) A report jointly produced by the Rainforest Foundation and OCDH - the Congolese Human Rights Watchdog on the situation of 'Pygmies' in the Republic of Congo is more explicit on the subject of the sexual violence suffered by 'Pygmy' women in this country: <http://www.rainforestfoundationuk.org/s-Republic%20of%20Congo>

“A Bantu may come and take a Pygmy girl, take her home, make babies with her and then reject her with no consequences. It is a sort of sexual slavery that the Bantu call ‘renting’. These men who abuse our wives and daughters say they have rented them and yet they give nothing in return. And we Pygmy men, we have nowhere we can go to complain about this practice.” (comments of a ‘Pygmy’ man interviewed by the Mission)

4.4 *Right to education*

The Republic of Congo was, at one time, well-known for having achieved an almost 100% literacy level, one of the highest on the continent. But these statistics did not include indigenous ‘Pygmy’ communities. In spite of these efforts, a high level of illiteracy can be perceived among a majority of the country’s indigenous ‘Pygmies’. A report by International Partnership for Human Development (IPHD), a US NGO active in the area of ‘Pygmy’ children’s education, highlights for example the fact that, in Lékoumou region, Pygmy children represent no more than 2.9 per cent of the children in school.

The prejudices, ridicule and scorn to which ‘Pygmy’ children who dare go to school are often subjected, the decades-long absence of a targeted national policy, along with the parents’ poverty seem to be the main causes of the high rates of illiteracy amongst ‘Pygmy’ communities. Various national and international players active in this sector, particularly IPHD and the PRAEBASE project of the Ministry for Primary, Secondary and Professional Education, agree.

“A large number of ‘Pygmy’ children drop out of school because of the scorn and discrimination they are subjected to from their fellow pupils, even teachers.”

“We heard of one teacher who listed the Pygmy children on a loose sheet of paper and the rest of the class, that is the non-Pygmies, in the formal class register. The teacher justi-

fied this by saying that, sooner or later, the Pygmy children would drop out of school to follow their parents into the bush and so it wasn't worth listing them in the normal class register"

"It is not just any teacher that will accept Pygmy children in his class"

"Very few non-Pygmy children would agree to share a reading or maths book with a Pygmy pupil"

"Many Pygmy children drop out of school because they have nothing to eat"

All these comments and observations come from educationalists running different projects and programmes aimed at tackling the problem of getting 'Pygmy' children into school in the Republic of Congo. The Ministry for Primary, Secondary and Professional Education has just adopted a National Education Plan for all with a chapter on education for children from disadvantaged social sectors.

4.5 Forced labour and discrimination in the employment world

The few 'Pygmies' who have access to employment also suffer various forms of discrimination, particularly that of being paid without a pay slip or paid less than their non-Pygmy colleagues doing the same work. Unwarranted deductions on the part of some paying agents, taking advantage of the 'Pygmies' illiteracy, and the payment of part of their salary to their "masters" are both further factors that seriously affect the net earnings taken home by some salaried 'Pygmies'.

Some accounts received highlight, for example, the fact that an indigenous 'Pygmy' whose net salary should be 30,000 FCFA (around 55 US dollars) may take home only 5,000 FCFA (around 9 US dollars) after all the unwarranted deductions that have been taken from his pay.

“I was employed by a foreign company on a salary of 40,000 FCFA. But before each payment, the Bantu paying agent deducted 20,000 FCFA from my salary for no reason. There was no-one I could complain to.” (Comment of an indigenous ‘Pygmy’)

“I was employed by a logging company with non-Pygmy colleagues, who all received a salary on the basis of a payslip. I was never paid in this way. I do not know if the amount the paying agent gave me was right or not.” (Comment of an indigenous ‘Pygmy’)

4.6 *Land problems facing indigenous peoples*

The indigenous ‘Pygmies’ of the Republic of Congo are also facing a growing land problem due largely to a failure to recognise their way of life (hunting and gathering, along with their nomadic lifestyle) and consequently the absence of any legal protection of their ancestral lands.

Congolese land law denotes the State as the sole and only owner of the soil and sub-soil. In addition, like many land laws in Central Africa, it recognises only visible occupation and use of the land. In other words, lands that are not visibly occupied and used are considered vacant and automatically return to the State, which can then allocate them to different uses, particularly conservation and logging, following a vacant land survey.

Although it confers no right of ownership, customary law is recognised as a source of usage and occupation rules for some land in rural areas. But, once again, customary ‘Pygmy’ land management rules do not enjoy the same status.

Apart from the fact that the law does not protect ‘Pygmies’ land rights, non-Pygmy communities also refuse to accept that a ‘Pygmy’ can own land. Land occupied or used by a ‘Pygmy’ is, in some areas, considered to belong to no-one. It is also intolerable to them that a ‘Pygmy’ should

occupy a plot in the middle of a Bantu village. In such a situation, the 'Pygmy' is forced to move to the edge of the village.

"We have been in this village for many years. We live alone here and everyone recognises that this village belongs to us. A lack of resources prevents us from obtaining the legal documents stating our ownership of these lands, which have for some time been coveted by people from outside the community. Not long ago, an army officer came and set up home on a section of our lands with the consent of the local authority. It is time the State guaranteed our rights to our ancestral lands." (Comments of an indigenous 'Pygmy' met by the Mission)

In November 2000, the Republic of Congo adopted a new Forestry Code although this, too, failed to reinstate the 'Pygmies' customary land rights. This text distinguishes between State forest and private forest, without making any reference to forest lands that local communities could claim on the basis of their customary rights. Moreover, in addition to prohibiting all human activity in highly diverse forests, which are generally the areas where the 'Pygmies' live, this code provides for rights of use over a very limited number of forest products, none of which can be marketed⁴.

V. CONCLUSIONS AND RECOMMENDATIONS

This research and information visit to the Republic of Congo was successfully conducted and enabled an understanding to be gained of the broad human rights issues affecting the indigenous 'Pygmy' population. In addition to international commitments taken on the issue, a law giving this community special protection is currently under discussion within the country.

4) Law No. 16-2000 of 20 November 2000 on the Forestry Code

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

- A. *To the Government of the Republic of Congo*
1. Bring the draft bill on 'Pygmies' to a successful conclusion, bearing in mind the deep concerns of the communities in question;
 2. Put national sectoral policies in place that will enable the 'Pygmies' to enjoy all rights and fundamental freedoms on a par with other Congolese citizens;
 3. Take measures to put an end to the practice of "Pygmies' masters" and punish all those who take part in it.
- B. *To the African Commission for Human and Peoples' Rights*
1. Conduct country by country monitoring of the commitments and /or indigenous policies adopted by development agencies, bilateral and multilateral partners;
 2. Organise a regional conference on experiences of educating 'Pygmy' children in Central Africa with a view to exchanging experiences, gaining inspiration and, for some, refocusing strategies;
 3. Support the creation of an indigenous civil society in this country with a view to establishing capable and legitimate spokespersons with whom the government can dialogue;
 4. Visit the Republic of Congo with a view to supporting the draft bill that is underway and raising the awareness of the government with regard to the different aspects of indigenous law that this bill should incorporate;
 5. Write to the European Union, the World Bank, the different bilateral partners and COMIFAC (Forestry Commission in Central Africa) with a view to including the issue of indigenous peoples in the different processes related to forestry management in the Congo basin, such as AFLEG (Africa Forest Law Enforcement and Governance), the Convergence Plan, etc.;

6. Commence intersessional meetings involving the development agencies and players working on behalf of indigenous peoples in Africa;
7. Put in place a mechanism for monitoring the recommendations of the Working Group's Reports through different players, both State and non-State.

C. *To the Congolese civil society*

1. Strengthen the existing indigenous associations.

D. *To the international community*

1. Design and implement projects specifically focussing on the needs of the Pygmy population, including such issues as land, education, health, forced labour, bondage and sexual violence;
2. Support an in-depth study of the situation of indigenous Pygmy peoples in the Republic of Congo, possibly including a census;
3. Assist in disseminating the African Commission's report on the rights of indigenous communities.