



## **SUMMARY REPORT**

# **THE RIGHTS OF INDIGENOUS PEOPLES IN THE REPUBLIC OF CONGO:**

**An analysis of the national context plus  
recommendations**

*Produced as part of civil society's contribution to the proposed "Law on the  
promotion and protection of Congo's Pygmies"*

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*With the support of*



This report presents an executive summary plus recommendations from civil society with regard to the "Law on the promotion and protection of Congo's Pygmies". For a more in-depth analysis, please see "*Les Droits des Peuples Autochtones en République du Congo: Analyse du contexte national et recommandations*"<sup>1</sup>.

This work has been coordinated by the Observatoire Congolais des Droits de l'Homme (OCDH), with the technical and financial support of the Rainforest Foundation UK.

The **Observatoire Congolais des Droits de l'Homme** (OCDH) has observer status with the African Commission on Human and Peoples' Rights (ACHPR). It is a member of the International Federation for Human Rights (FIDH), the World Organisation against Torture (OMCT) and the *Union Interafricaine des Droits de l'Homme* (UIDH).

The **Rainforest Foundation UK** aims to support indigenous people and traditional populations of the world's rainforests in their efforts to protect their environment and fulfill their rights. The Rainforest Foundation assists forest peoples in: securing and controlling the natural resources necessary for their long term well being and managing these resources in ways which do not harm their environment, violate their culture or compromise their future; and developing means to protect their individual and collective rights and to obtain, shape and control basic services from the state.

The Rainforest Foundation seeks to do this through practical projects in tropical rainforest areas, all of which work with local indigenous peoples or non-governmental organisations. We also run campaigns that seek to address the underlying causes of the destruction of tropical rainforests.

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<sup>1</sup> This report is a translation from French. For the definitive version please see 'Rapport Sommaire les Droits des Peuples Autochtones en République du Congo'.

## I. SUMMARY REPORT

This report, produced by the Observatoire Congolais des Droits de l'Homme (OCDH), in association with the Rainforest Foundation UK, has been prepared as part of civil society's contribution to the consultation process on the draft "*Law on the promotion and protection of Congo's Pygmies*".

It presents a summary analysis of the situation of indigenous peoples in the Congo, based on data from participatory field research and on a study of international standards relating to indigenous peoples. It also provides information on Congo's national legislative context. It then presents a series of recommendations regarding the content of this law.

This process, which took place over a one-year period, included an analysis of Congolese national legislation, (June 2005), an analysis of indigenous rights in the light of international standards, (May 2005), and discussions with indigenous communities in the field in six of the country's departments, (October 2005 – February 2006). The field data and national and international analyses were considered during the course of a civil society consultation meeting, (May 2006). This meeting also produced a series of recommendations with regard to the analysis of national context and the draft bill prepared by the government, (Ministry of Justice and Human Rights).

The indigenous peoples of the Congo, which include the *Batswa, Mbendjele, Baaka, Mikaya, Nguelé, Balouma, Bagyeli, Babi* and *Bangombe*, identify themselves as "*indigenous peoples*" and not as "*Pygmies*". It is therefore proposed that Congo's indigenous peoples should be defined as follows: "*Communities originating from territories which they occupy traditionally, who are distinguishable from other groups in the national population by their cultural identity and who are governed by their own customs and traditions.*"

Traditionally, indigenous peoples live in small egalitarian social groups; depending on hunting and gathering for their livelihoods. They are characterised by their mobility over a vast territory; moving, according to their needs, from one resource centre to another. Because of their mobility, they do not amass land or material assets. Their practices and complex cultural rituals are based on a respect for, and careful management of, the forest.

The national-level analysis of the situation of indigenous peoples' human rights is very worrying. The study teams on the ground observed communities living in precarious situations of extreme poverty and marginalisation, without secure access to the natural resources and lands on which they depend. They are subjected to victimisation and abuse by other communities, while the authorities look on with indifference. Their daily lot is the result of a lack of recognition of these peoples' values and knowledge, by a lack of access to social services adapted to their own culture and by low

pay, even conditions of slavery, in their working life. Testimonies gathered in the field are clear: the human rights of indigenous peoples are under real threat, hence the urgent need to develop mechanisms to redress this situation.

The Congolese government's initiative to adopt a law on indigenous peoples is a key element in responding to these challenges.

A concern for peoples or populations identified as indigenous has been present in international law for more than fifty years. The debate around indigenous rights has evolved from an integrationist approach towards indigenous populations in the 1950s and 1960s to the current approach that respects their cultural diversity and specific rights.

The instruments that best define the current international approach are *International Labor Organisation (ILO) Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989)* and the *United Nations Draft Declaration on the Rights of Indigenous Peoples (1994)*.

At an African level, the *African Charter on Human and Peoples' Rights* contains many provisions that are clearly applicable to the situation of Congo's indigenous peoples. The African Commission on Human and Peoples' Rights has now established a group of experts to consider indigenous peoples' issues.

Congolese legislation makes no reference to indigenous peoples. In theory, these peoples should be protected by the legal instruments that protect the human rights of all Congolese, such as the Constitution. This is not the case in practice where indigenous peoples suffer from extreme marginalisation and discrimination against them. There are elements of Congolese law which, by failing to take account of the specific characteristics of indigenous peoples, actually form an obstacle to the full exercise of their rights.

In this report, the major challenges facing indigenous peoples' rights are analysed according to the following issues: equality and non-discrimination; citizenship rights and access to justice; rights to self-governance and participation; rights to cultural identity; rights to land and natural resources; and economic and social rights.

Indigenous peoples are subject to incredible levels of discrimination. They are considered 'sub-human' and suffer discrimination in every area of their daily life. This discrimination has, for centuries, been justified by a complex web of concepts, stereotypes, myths and untruths about them.

Although indigenous peoples are also Congolese citizens, it is rare to find an indigenous person who carries identity documents. The obstacles to an indigenous person obtaining such documents include: a) a failure to adapt the state identification system to the indigenous environment; b) discrimination

within existing state registry offices, which discourages people from attending; c) an absence of information and awareness-raising around the importance of such documents within communities; and d) the costs associated with obtaining these documents. Yet without them, an individual is limited in the full exercise of his or her rights. Freedom of movement, access to schooling, the ability to vote, etc. become almost impossible.

In terms of access to justice and respect for the rights of individuals, indigenous people experience the same difficulties. Their traditional justice systems are not recognised and, if they turn to the modern justice system, they are often ignored or, worse still, subjected to discrimination, threats and violence. Indigenous women are often victims of sexual violence and manipulation, with no possibility of effective recourse.

There is virtually no situation in which an indigenous authority is officially recognised. Indigenous peoples are often obliged to accept the authority of other national communities, forced to accept a chief they have not chosen while their own organisational structure goes unrecognised. There are no indigenous peoples elected to public office at regional or national level, and very few state officials are indigenous. Such lack of representation or linkage between the different governance systems leads to even greater marginalisation of indigenous peoples.

In terms of cultural identity, indigenous peoples are facing extremely strong pressure to renounce their cultural characteristics and integrate. Their knowledge and practices are not valued and they are constantly being told that their culture is poorer and "*less developed*" than other national cultures.

Rights to land and natural resources were identified as the most important challenge facing the majority of indigenous people consulted during this process. In their culture, the forest belongs to them and they manage it sustainably. For these peoples, having access to the forest is essential both for their culture and for their survival. But national law limits their rights to use the forest, and does not recognise indigenous systems when guaranteeing customary land rights.

In practice, the situation is even worse: indigenous peoples are often threatened and ill-treated by state or conservation officials when attempting to exercise their hunter/gatherer traditions. They are frequently thrown off their lands and even ejected from their homes. The study found no examples of indigenous peoples being consulted with regard to an action that would affect them. They were generally not even informed at all.

In terms of economic and social rights, the Congolese system does not take into account the importance of 'way of life' when providing or disseminating public services. Indigenous communities' financial resources are limited and they are discriminated against in their access to services, particularly in the distance of services from indigenous areas of habitation. All this combines to

limit indigenous access to basic community services. In their working life, too, indigenous peoples are often ill-treated, paid less than other people for the same task or even forced to work for nothing or, at most, a few second-hand clothes. Their knowledge and experience are not valued as they should be.

On the basis of these field observations and an analysis of the national and international context, those involved in this research process have formulated a series of recommendations regarding the content of the new law. These recommendations reflect the reality of the Congolese situation, and take account of current international standards.

It is the authors' wish that this report should support the excellent initiative of producing a law on Congo's indigenous peoples. Such a law could turn the Republic of Congo into a model of good practice for indigenous rights in Africa. This would be a historic moment for these peoples.

## **II. RECOMMENDATIONS**

The following recommendations are made to the Government of the Republic of Congo:

### **A. RECOMMENDATIONS REGARDING INTERNATIONAL LAW**

1. The government should promote ratification of ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989).

### **B. RECOMMENDATIONS REGARDING THE NATIONAL LEGAL FRAMEWORK**

2. A law should be urgently adopted to take account of the marginalisation and discrimination that the indigenous peoples of the Congo have historically suffered, and which prevents them from enjoying the rights guaranteed by the Constitution and national legislation on an equal footing with the rest of the population.
3. The new law should be compatible with international and African developments in the protection of indigenous peoples, drawing on existing specific international legal instruments and precedents set by international human rights bodies.
4. The Congolese Government must be supported in all its efforts to promote the law on indigenous peoples, particularly by international human rights bodies and national and international civil society organisations.
5. It would be desirable to include a provision in the Congolese Constitution recognising the existence of indigenous peoples and guaranteeing their human rights without discrimination.

### **C. RECOMMENDATIONS REGARDING THE CONTENT OF THE FUTURE LAW**

The future law on the rights of indigenous peoples should include a definition of the peoples who are the focus of this law. With regard to this definition, *it would be desirable*:

6. to use the term indigenous instead of Pygmy in order to avoid any negative connotations and conform to international standards in this regard;
7. to avoid discriminatory elements in the body of the law on indigenous peoples that may run counter to the objectives of the law and could suggest that these peoples are inferior or under-developed.

8. to include elements found in international definitions of indigenous peoples, such as notions of cultural specificity; of original occupation of the land; of different traditions and customs.

## **EQUALITY AND NON-DISCRIMINATION**

*It would be advisable* for the future law to contain the following objectives:

9. Congolese law must ensure that indigenous peoples fully and effectively enjoy the rights that international and national law guarantee to the whole of the Congolese population.

10. In the absence of equality between the indigenous peoples and the rest of the Congolese population, it is essential to adopt special measures to protect the rights of these peoples, without this infringing on their status as citizens in any way.

11. The law must pay particular attention to ensuring that indigenous peoples are able to exercise their economic, social and cultural rights on an equal footing with the rest of the Congolese population.

12. The law must condemn all activities aimed at maintaining a category of the population in a position of either domination or inferiority, and provide criminal sanctions for all acts of discrimination against indigenous persons.

## **CITIZENSHIP RIGHTS AND ACCESS TO JUSTICE**

With regard to enjoyment of the general citizenship rights guaranteed to all Congolese citizens, the law *should*:

13. Promote free acquisition of identity documents by indigenous persons, including the establishment of mobile identification teams in this regard.

14. Guarantee equality of access to justice for indigenous peoples.

15. Guarantee respect for the human rights of indigenous peoples on an equal footing with the rest of the Congolese population.

16. Provide special protection for indigenous peoples against: acts of torture; inhuman and degrading treatment; infringements of the right to life and to physical integrity; infringements of freedom of movement; slavery and forced or unremunerated labour.

17. Guarantee, in particular, indigenous women's right to fully enjoy all human rights on an equal footing with the rest of the Congolese population, particularly the right to freedom from sexual violence or manipulation by virtue of their ethnic origin.

18. Establish special mechanisms to prevent violations of the human rights of indigenous peoples by virtue of their ethnic origin.

### **SELF-GOVERNANCE AND PARTICIPATION**

With regard to indigenous peoples' rights to self-governance and participation, the law *should*:

19. Recognise the right of indigenous peoples to administer their own internal and local affairs.

20. Recognise the traditional indigenous authorities that are specific to their cultures, including customary jurisdiction within the Congolese judicial system, respecting human rights standards.

21. Ensure consultation of indigenous peoples by means of appropriate procedures whenever legislative or administrative measures are envisaged that are likely to directly affect them. The consultations must be undertaken in good faith and in a manner appropriate to the circumstances, with a view to reaching an agreement or obtaining consent with regard to the measures envisaged.

22. Guarantee the representation of indigenous peoples in political institutions at local, regional and national level, establishing special mechanisms to enable their participation in these; for example, the adoption of a quota of indigenous representatives at each level.

23. Promote the electoral participation of indigenous peoples by establishing special mechanisms.

24. Take account of villages inhabited by indigenous communities during the process of village creation by prefects.

### **CULTURAL INTEGRITY**

With regard to protecting and recognising the identity and culture of indigenous peoples, the law *should*:

25. Recognise the importance of cultural diversity and the fact that indigenous cultures, namely the languages, history, way of life and customs, enrich the cultural identity of the Congolese State.

26. Ensure that full ownership of the cultural and intellectual assets of indigenous peoples is recognised and that the right to control and to protect these assets is provided to these peoples.

27. Develop and promote indigenous cultures:

- a. by establishing a national indigenous peoples' day, organised with the involvement of the indigenous peoples themselves.
- b. by encouraging collaboration between indigenous peoples and the state around the preservation of their sacred places and rites as places of cultural expression.
- c. by encouraging the right of indigenous peoples to revive, use and pass on to future generations their history, their languages, their knowledge of flora and fauna, their oral traditions and their philosophies.
- d. Prevent, punish and compensate for the consequences of assimilation or integration imposed by other cultures or ways of life, along with propaganda directed against indigenous peoples.
- e. Take measures, be they collective or individual, to prevent the disappearance of indigenous peoples' cultures.

## LAND AND NATURAL RESOURCES

*It would be desirable* for the law to contain a specific section on indigenous peoples' rights to land and natural resources.

### Land

In relation to the right to land, the law *should*:

- 28. Recognise the collective rights of indigenous peoples to ownership, possession or enjoyment of the lands they traditionally occupy or use in any other way.
- 29. Recognise the principle of territoriality, that is, the rights of ownership, possession or enjoyment of the whole of the environment or habitats that the indigenous peoples traditionally occupy or use in any other way.
- 30. Recognise the collective nature of the right of indigenous peoples to ownership, possession or use of their lands, according to their habits and customs.
- 31. Recognise the special importance of the culture and spiritual values of these peoples in their relationship with their traditional forests.
- 32. Recognise the customary law of indigenous peoples over the lands they traditionally occupy in a permanent or semi-permanent manner, by promoting development of their lands in line with their habits and customs.

33. Recognise, guarantee and protect the principles of inalienability, imprescriptibility and intangibility of the ownership of indigenous lands.
34. Recognise the user rights over lands that indigenous peoples traditionally use, even if they do not occupy or use them permanently, or if these lands are used jointly with other communities.
35. Protect the rights of ownership, possession and enjoyment of indigenous lands by implementing demarcation programmes and granting land titles, taking into account the customary law, values, habits and customs of these peoples.
36. Ensure that land titles for indigenous lands are granted free and exempt from charges.
37. Prohibit the forced displacement of indigenous peoples from their traditional lands except in exceptional circumstances, for reasons of national security or public health. When such a displacement is essential, the communities in question must have the right to return to their lands. When such a return is not possible, they must be relocated to similar lands and compensated for all loss or damage suffered by virtue of this.
38. Prevent the illegal occupation or expropriation of indigenous lands by individuals not belonging to these peoples; prevent such individuals from being able to cite the customs of these peoples or their ignorance of the law in order to obtain rights over these lands.
39. Recognise the methods of transmission or internal distribution of land rights between members of indigenous communities.

#### Natural resources

With regard to the rights of the peoples in question to access and use the natural resources on their lands, or with regard to any use of natural resources that is likely to directly affect their environment or habitat, the law *should*:

40. Recognise indigenous peoples' right to access and use the natural resources they traditionally use, primarily for their subsistence, including the waters, wildlife, vegetation and other forest resources. The *classified forest* and *hunting zone* mechanisms provided by national legislation could be used in this regard.
41. Recognise, in particular, indigenous peoples' right to hunt and use the forest resources for their own consumption, under the terms recognised by Congolese law. *It would be desirable* to recognise indigenous peoples' right to market non-timber forest products outside the system of special licences provided by the Forest Code.

42. Include mechanisms for consulting indigenous peoples whenever the exploration, exploitation or conservation of natural resources within their environment or habitat is envisaged.

43. Include the need to produce studies on the socio-economic and environmental impact of natural resource exploitation or conservation projects on indigenous communities.

44. Include the improvement of indigenous peoples' living conditions and their education, employment and health status as priority objectives in government specifications related to forestry or mining concessions.

45. Include the State's duty to consult indigenous peoples whenever the creation of protected areas likely to directly affect their capacity to use the natural resources is envisaged, and to involve them in the use, management and conservation of the resources within these areas.

46. Protect and promote indigenous peoples' knowledge, innovations and practices regarding biological diversity and ensure that the resulting benefits are fairly shared.

## **ECONOMIC AND SOCIAL RIGHTS**

In terms of guaranteeing economic and social rights within the law, *it would be advisable* to take into account the preservation of indigenous peoples' cultural identity, along with their participation and consultation, in recommendations related to education, health, employment and housing and to establish special mechanisms to prevent discrimination in these areas.

### Education

With regard to education, *it would be desirable to:*

47. Bear the following in mind when designing and implementing education services:
  - a. The specific nature of a semi-nomadic life, including the mobility of communities and a school timetable adapted to the practices of the peoples in question.
  - b. Exemption from the age criterion for the schooling of indigenous children.
  - c. Respect for Article 83 of the Congolese Constitution of 20 January 2002 regarding free schooling and the awarding of grants to indigenous children for secondary education onwards.

- d. The diversity of indigenous languages and their value.
  - e. The training of indigenous teachers.
48. Establish a literacy system adapted to indigenous cultures.

### Health

With regard to health, *it would be desirable to:*

- 49. Establish primary health care services that are integrated into the indigenous environment, bearing in mind the specific nature of a semi-nomadic life.
- 50. Put special mechanisms in place to promote indigenous peoples' traditional medicine, for example, traditional medicine centres.
- 51. Encourage lower cost access to medical care for indigenous peoples via public health structures and the medical centres of logging companies.
- 52. Prohibit the use of toxic products that endanger health or encourage pollution of the environment in which indigenous peoples live.
- 53. Train indigenous health agents in integrated primary health care.

### Working conditions

With regard to working conditions, *it would be desirable to:*

- 54. Remunerate the expertise of indigenous peoples justly and fairly, for example, their knowledge of the forest and its species.
- 55. Demand that indigenous peoples be recruited as a priority by logging, mining and other companies working in their areas.
- 56. Take special measures to guarantee access to professional training on the part of indigenous peoples.
- 57. Ensure that indigenous individuals employed in the private sector, public sector or civil society structures receive the same pay as other people doing the same work.
- 58. Grant indigenous workers equal opportunities in terms of social benefits, allowances and promotions.
- 59. Ensure respect for the provisions of articles 87 and 88 of the Employment Code.

## Environment

60. The law *should* recognise the right of indigenous peoples to a healthy and satisfactory environment on the lands where they live, along with the need to implement measures to protect and preserve that environment.

### **D. RECOMMENDATIONS REGARDING THE PROCESS OF DRAFTING THE LAW**

Concerning the process of drafting the law, *it would be advisable to:*

61. Ensure that indigenous peoples are consulted at all stages of formulation of the law. In this regard, the government could make consultation visits in the field to the indigenous communities to explain the principles set out in the new law to them, and with a view to obtaining their consent regarding the content of this law.

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