

Observations on the State of Indigenous Human Rights in Gabon

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Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous peoples' rights in countries throughout the world and publishes its findings in its magazine, the Cultural Survival Quarterly; and on its website: www.cs.org

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I. Executive Issue Summary

In the nation of Gabon, efforts to promote environmental conservation, including rainforests and the biodiversity they contain, have led to conflict between the rights of Indigenous Peoples within the nation and conservation regimes. The rights of Indigenous Peoples established under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) have been disregarded, and the livelihoods of Indigenous communities have been damaged by conservation efforts.¹ Both conservation and the rights of Indigenous Peoples are important goals worth pursuing, but a new strategy which integrates Indigenous Peoples into the conservation process, through consultation and the exercise of Free, Prior and Informed Consent, could produce better outcomes for both conservation efforts and the Indigenous communities of Gabon.

II. Background

Part of the Congo Basin, the biodiverse nation of Gabon is home to a number of self-identifying Indigenous Peoples² which include the Baka, the Akowa, the Bekui, the Bebinga, the Bambongo, and the Baringa.³ A joint report from the international non-governmental organization (NGO) Mighty and Gabon-based NGO Brainforest states that Gabon is home to a significant forest-dependent Indigenous population, including up to 30,000 Baka and Babongo people.⁴ Collectively these groups are often referred to as the “Pygmies of Gabon,” though it should be noted that the term “Pygmy” carries derogatory and offensive connotations.⁵ Nevertheless, the term continues to see widespread use.⁶ Widespread foreign investment has made Gabon one of the most prosperous West African nations, with a relatively high Gross National Product. However, the nation also has levels of poverty comparable to low-income countries.⁷ Gabon is also involved with international conservation frameworks.⁸

Gabon is involved with international legal frameworks in areas of both Indigenous human

¹ The United Nations Declaration on the Rights of Indigenous Peoples. Available at: http://www.un.org/esa/socdev/unpfii/documents/DRIndigenousPeoples_en.pdf

² “Report of the African Commission’s Working Group On Indigenous People/Communities.” The African Commission on Human and People’s Rights. 2007. Available at http://www.achpr.org/files/sessions/45th/mission-reports/gabon/misrep_specmec_indig_gabon_2007_eng.pdf

³ *Id.*

⁴ *Palm Oil’s Black Box*. Mighty. Bellantino, Higonnet, Hurowitz, Lapidus. 2016. Available at <http://www.mightyearth.org/wp-content/uploads/2016/12/Palm-Oil-Black-Box-PrintApproval4.pdf>

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Protected Areas in the Congo Basin: Failing Both People and Biodiversity?* Rainforest Foundation UK. Counsell, Orozco, Pyhala. Available at <http://www.rainforestfoundationuk.org/media.ashx/38342-rainforest-foundation-conservation-study-web-ready.pdf>

rights and in the conservation of biodiversity. The nation voted for the adoption of the UNDRIP in September of 2007, and ratified the ICCPR in 1983.⁹ Conservation efforts in Gabon have been driven through the creation of Protected Areas (PAs). In a report to the United Nations General Assembly, Special Rapporteur on the rights of Indigenous Peoples Victoria Tauli-Corpuz wrote:

“A protected area is a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives.¹⁰ Protected areas consist of many different conservation modalities, among them national parks and forests, wildlife refuges, marine areas, private and non-governmental organization (NGO)-governed preserves, Indigenous peoples’ protected areas, community lands and other areas where the protection of nature and the practice of sustainable livelihoods foster ecosystem integrity.”¹¹

Since the turn of the century, Gabon has undertaken a program of conservation intended to preserve rainforest and biodiversity within the nation, through the creation of PAs.¹² In 2002 President of Gabon El Hadj Omar Bong signed a decree which created thirteen national parks, including Ivindo National Park, which will be discussed in detail in the following section.¹³ These conservation efforts have had negative consequences for local communities and Indigenous People living near the national parks, including depriving them of access to resources associated with traditional patterns of livelihood and access to natural resources.¹⁴

The forest-dependent nature of many among the nation’s Indigenous population means that there is an intersection between conservation efforts and Indigenous Peoples. While policies are ostensibly driven by international policy designed to protect biodiversity and protect the rights of Indigenous Peoples, the two frameworks do not always align. Protected areas have the potential of safeguarding biodiversity for the benefit of all humanity; however, these have also been associated with human rights violations against Indigenous Peoples in many parts of the

⁹ “Report of the African Commission’s Working Group on Indigenous People/Communities.” The African Commission on Human and People’s Rights. 2007.

¹⁰ See Convention on Biological Diversity, art. 2

¹¹ “Report of the Special Rapporteur of the Human Rights Council on the rights of Indigenous peoples, Victoria Tauli-Corpuz. Available at <http://unsr.vtaulicorpuz.org/site/images/docs/annual/2016-annual-ga-a-71-229-en.pdf>

¹² *Protected Areas in the Congo Basin: Failing Both People and Biodiversity?* Rainforest Foundation UK. Counsell, Orozco, Pyhala

¹³ “Human Rights Abuses and Livelihood Impacts at the Ivindo National Park in Gabon.” Lang, 2016. Available at <http://www.conservation-watch.org/2016/11/16/human-rights-abuses-and-livelihood-impacts-at-the-ivindo-national-park-in-gabon/>

¹⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

world.¹⁵ The violations to the rights of Indigenous Peoples in the wake of expanding PAs have been raised by respective special rapporteurs during numerous country visits and communications to governments.¹⁶

III. Recommendations from Previous UPR Cycles

Gabon was previously reviewed during the 2012 Universal Periodic Review cycle. During that cycle, the National Report submitted by the government of Gabon indicated that it was taking steps to address recommendations made on the rights of minority and Indigenous groups.¹⁷ The recommendations on the rights of Indigenous People were as follows:

Strengthen its policies designed to better integrate the Pygmies in the society. Angola.¹⁸

Ensure full and equal access to public health services for Pygmy peoples in all areas of the country in particular by increasing the number of health care facilities and ensure proper registration of children at birth. Hungary.¹⁹

Encourage the participation of minorities, such as the Pygmies, in the political, economic and social life of the country. Costa Rica.²⁰

Protect the rights of Pygmy minority and elevate their health conditions and make all health services accessible to them, while facilitate their attainment of different health services in an easy way. Iraq.²¹

Adopt a specific plan to protect the rights of Indigenous peoples and a strategy to make basic services more accessible to the Pygmy minority. Slovenia.²²

Take additional measures to ensure the integration of Indigenous peoples in public institutions. Burundi.²³

¹⁵ *Protected Areas in the Congo Basin: Failing Both People and Biodiversity?* Rainforest Foundation UK. Counsell, Orozco, Pyhala

¹⁶ Report of the Special Rapporteur of the Human Rights Council on the rights of Indigenous peoples, Victoria Tauli-Corpuz.

¹⁷ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/157/09/PDF/G1215709.pdf?OpenElement>

¹⁸ Source of position: A/HRC/22/5 - Para. 101

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

In the wake of these recommendations, the government of Gabon adopted recommendations which committed to work to further integrate the Pygmy population into society at large, and to work to end discrimination against the Pygmy population.²⁴ The government also reaffirmed its commitment to the principles of the UNDRIP, stating that, “[d]rawing on the United Nations Declaration on the Rights of Indigenous Peoples, Gabon, together with civil society and a number of development partners, is taking steps to protect the rights of Indigenous peoples through public debates and the provision of medical, educational and economic assistance.”²⁵ The National Report also reaffirmed a commitment to a public policy that would “take account” of the Pygmies at an institutional level.²⁶

IV. Continuing Rights Violations

A. Protected Areas and Indigenous Peoples: Rights in Competition (Violation of UNDRIP Articles 5, 26)

While various local communities have experienced negative impacts because of the creation of protected areas in Gabon, Indigenous Peoples appear to have suffered the most. This is related to the discrimination they suffer in general, but also to the fact that the traditional territories of Indigenous Peoples largely coincide with areas targeted for conservation. The nomadic or semi-nomadic lifestyles of Indigenous Peoples depend on the non-intensive use of extensive areas of forest, while simultaneously stewarding the biodiversity of the environment. It is no coincidence that the areas inhabited by Indigenous Peoples overlap with protected areas. Already limited consultation and participation mechanisms are particularly ill suited to Indigenous socio-cultural realities; their unparalleled hunting skills combined with an increasingly difficult livelihood situation has made them particular targets for both poaching and anti-poaching interests.²⁷

In 2016, the Rainforest Foundation, with the aid of local partners including Gabon-based NGO Brainforest, published a case study on Ivindo National Park.²⁸ This study sought to understand the impact that the park, a PA, and other conservation efforts in Gabon had on Indigenous communities. Areas around Ivindo National Park are home to Baka People. Ivindo National Park is also the site of Kongou Falls, which has important cultural significance to Indigenous and local communities in Gabon.²⁹ Some members of local and Indigenous communities in the area still identify themselves as the traditional inhabitants of the Kongou

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Protected Areas in the Congo Basin: Failing Both People and Biodiversity?* Rainforest Foundation UK. Counsell, Orozco, Pyhala.

²⁸ *Id.*

²⁹ “Human Rights Abuses and Livelihood Impacts at the Ivindo National Park in Gabon.” Lang, 2016.

falls.³⁰

The results of the study demonstrate that in Gabon the rights of local communities and Indigenous peoples continue to be largely ignored or outright violated by conservation actors.³¹ The establishment of the Ivindo National Park imposed a number of restrictions on local communities regarding hunting, fishing, and gathering, which has led to local communities having not only less to eat, but also less surplus (particularly fish) to sell, meaning they have fewer resources to pay for necessities including their children's education or medicines.³² This stands in direct contravention to the International Covenant on Civil and Political Rights (ICCPR), which holds that all Peoples have the right of self-determination, including the free pursuit of economic development.³³

B. Free, Prior and Informed Consent (Violation of UNDRIP Article 10, 18, 19)

International conservation policy, as expressed through the instruments of the United Nations, calls for participation of local communities in conservation efforts. This includes adequate consultation and the exercise of Free, Prior and Informed Consent (FPIC) by Indigenous Peoples when conservation efforts would impact them.³⁴ These principles are enshrined in several international legal instruments, but their implementation in Gabon falls short.³⁵ In Gabon, local and Indigenous communities were not consulted before the creation of the Park, in violation of Free, Prior and Informed Consent standards outlined by the UNDRIP.³⁶ In field research conducted by the Rainforest Foundation UK and Brainforest, villagers (later triangulated and verified with other informants) attest that there was no consultation prior to the establishment of the National Park, and there is a unanimous agreement that the decision about the park was imposed on them. Interviewees felt that they are not listened to by the authorities, and feel disrespected.³⁷

This is part of a pattern of marginalization arising from systemic inability of Indigenous Peoples to engage in decision-making processes with the government.³⁸ In identifying regional trends for Indigenous Peoples in the Congo Basin, including those within Gabon, the Rainforest

³⁰ *Protected Areas in the Congo Basin: Failing Both People and Biodiversity?* Rainforest Foundation UK. Counsell, Orozco, Pyhala.

³¹ *Id.*

³² *Id.*

³³ United Nations International Covenant on Civil and Political Rights. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

³⁴ United Nations Declaration on the Rights of Indigenous Peoples Article 19.

³⁵ *Id.*

³⁶ "Human Rights Abuses and Livelihood Impacts at the Ivindo National Park in Gabon." Lang, 2016.

³⁷ *Protected Areas in the Congo Basin: Failing Both People and Biodiversity?* Rainforest Foundation UK. Counsell, Orozco, Pyhala.

³⁸ In contravention of UNDRIP Article 18.

Foundation concluded that “with very low income, Indigenous forest peoples have very little, if any, economic power to counteract any legal sanctions or challenge what in many cases appear to amount to arbitrary and extra-judicial punishments.”³⁹ Moreover, as marginalized groups in society, they remain disempowered to voice their rights, they continue to have unequal negotiating power, and are subsequently easy targets for outsiders to “use” and abuse, whether physically (in labor or violations) or intellectually (in negotiating trade or rights).⁴⁰ Furthermore, “involvement is often reduced to public information campaigns rather than significant FPIC and consultation.”⁴¹

C. Land Use Rights (Violation of UNDRIP Article 25, 26, 27)

In part, conflict between conservation efforts and Indigenous populations also stem from systemic issues within the legal framework present in the country. On the topic, a scholarly analysis of land use framework found that “in general, Gabon may have the legal framework in the [Congo Basin] region that most strongly limits community rights. While other countries vaguely recognize customary land rights, Gabonese law is specific in recognizing only usage rights, and the country doesn’t have specific legislation on Indigenous Peoples either.”^{42,43} This legal framework is similarly at odds with the UNDRIP, which consolidates the rights of Indigenous peoples already recognized in other human rights instruments and through the jurisprudence of the international human rights treaty bodies, affirms the right of Indigenous Peoples to own and control their lands.⁴⁴ As a result, the legal framework of land rights within Gabon stands in contravention of UNDRIP article 26.⁴⁵

Furthermore, local and Indigenous communities have virtually no tenure security over their traditional lands in any of the five Congo Basin countries, including Gabon.⁴⁶ Allocations for other uses, notably logging, mining and oil concessions, agro-industrial plantations and also protected areas, are effectively pushing local and Indigenous communities to ever smaller areas of land where they toil to meet their subsistence needs.⁴⁷ Designation of protected areas in the region follows the same pattern of exclusion, and in some cases even worsens it.⁴⁸

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ “Land Rights in Gabon: Facing Up to the Past and the Present.” Wily. Available at: http://www.fern.org/sites/fern.org/files/fern_gabon_LR_EN.pdf

⁴⁴ Report of the Special Rapporteur of the Human Rights Council on the rights of Indigenous peoples, Victoria Tauli-Corpuz.

⁴⁵ UNDRIP Article 26.

⁴⁶ In contravention of UNDRIP Article 26.

⁴⁷ *Protected Areas in the Congo Basin: Failing Both People and Biodiversity?* Rainforest Foundation UK. Counsell, Orozco, Pyhala.

⁴⁸ *Id.*

V. Questions

1. What actions does the government of Gabon have planned to reconcile the difficulties between conservation efforts and the rights of Indigenous Peoples?
2. How does the government of Gabon plan to incorporate the perspectives of Indigenous Peoples into conservation efforts in the future?
3. What is the government of Gabon doing to regulate conservation regimes and institutions with respect to Indigenous Peoples' rights?

VI. Recommendations

Cultural Survival urges the government of Gabon to:

1. Work to engage local Indigenous Peoples in conservation efforts. If engaged, Indigenous communities could be a significant asset in serving environmental goals while simultaneously ensuring that the rights of Indigenous Peoples could also be protected. Local and Indigenous communities have detailed ecological knowledge and traditional conservation practices, as well as a strong spiritual and physical link to the rainforest. This link creates sophisticated ideas of what sustainable use of these territories means for them and for future generations. The imposed conservation model that has dispossessed them as described above is in conflict with their understanding of land use and conservation. Hence, huge potential for collaboration and mutual benefit is being wasted.⁴⁹
2. Work to integrate community rights to lands, livelihoods, participation and FPIC in all aspects of conservation planning and management, including by formally committing not to support the creation of new PAs without the FPIC of local people. More broadly, ensure that all future land use planning and zoning involves the consultation and FPIC of local and Indigenous communities.⁵⁰
3. Consider changes to land use regimes which support traditional land use patterns which are harmonious with the land use needs of Indigenous Peoples.
4. Obtain the Free, Prior and Informed Consent of Indigenous communities in all projects affecting them.
5. Ensure Indigenous participation in decision-making at all levels in all matters affecting them.
6. Invite the UN Special Rapporteur on the Rights of Indigenous Peoples to visit Gabon.
7. Create a National Action plan on implementing the rights of Indigenous Peoples based on the World Conference on Indigenous Peoples' Outcome Document.
 8. Implement UN Special Rapporteur on the Rights of Indigenous Peoples recommendations from *Conservation and indigenous peoples' rights. Report to the General Assembly, 2016*

⁴⁹ *Id.*

⁵⁰ *Id.*