

Observations on the State of Indigenous Human Rights in the Democratic Republic of Congo

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Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC since 2005. 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. Cultural Survival also produces and distributes quality radio programs that strengthen and sustain Indigenous languages, cultures, and civil participation.

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I. Background Information

Democratic Republic of the Congo (DRC) has experienced instability and conflict throughout much of its independence since 1960. There has been a resurgence of violence particularly in the east of the country, despite a peace agreement signed with the National Congress for the Defense of the People (CNDP), a primarily Tutsi rebel group. An attempt to integrate CNDP members into the Congolese military failed, prompting their defection in 2012 and the formation of the M23 armed group, and led to continuous conflict causing the displacement of large populations and human rights abuses before the M23 was pushed out of DRC to Uganda and Rwanda in late 2013 by a joint DRC and UN offensive. The DRC continues to experience violence committed by other armed groups including the Democratic Forces for the Liberation of Rwanda, the Allied Democratic Forces, and assorted Mai Mai militias.

The DRC is rich in natural resources including coltan, copper, niobium, petroleum, diamonds, gold, silver, zinc, manganese, tin, uranium, coal, hydropower, and timber. The rate of export of these resources has increased in recent years as there is relative stability in the nation. The total population of the country is 84.7 million with approximately 63.64% of the country being below the age of 25. The literacy rate is 63.8%, with 78.1% for men and 50% for women, with discrepancies between urban and rural literacy rates.

About 1 to 3% of the population of the DRC self-identifies as Indigenous, but Indigeneity in the DRC is complex. The 600,000 to 2,000,000 Indigenous Peoples predominantly identify as Baka, Mbuti, and Batwa (collectively also known by a derogatory term 'Pygmy') and live in eleven of the twelve Congolese provinces.

The concept of "Indigenous Peoples" is generally accepted by the government and civil society but the constitution and laws do not explicitly mention Indigenous Peoples. Although, the DRC voted for the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007, the DRC does not officially recognize Indigenous Peoples, and does not make a distinction between different lifeways (hunter-gatherers and farmers). In Africa the term "Indigenous" can be problematic and Indigeneity becomes a term for marginalized, displaced, and culturally threatened hunter-gatherer and nomadic peoples. There is also a high rate of intermarriage, particularly between Indigenous women and Bantu men, which make the distinctions even more complex. Although there are many remote Indigenous communities, there are also significant numbers who have moved to urban areas to avoid conflict. The paternalistic attitude the government holds towards Indigenous Peoples creates an identity that equates them more to children, complicating the different paths towards full achievement of human rights.

The Baka, Mbuti, and Batwa lifeways are closely linked to the forests in which they live. These forests provide cultural and spiritual spaces as well as economic viability through hunting, gathering, and fishing, and medical resources, through location specific pharmacopeia and medicinal plants. 65% of the DRC is covered in rain forests, many Indigenous Peoples have faced displacement for prolonged periods of time, mostly because of conflict, large scale infrastructure, conservation efforts, logging, and mining. Belgian colonial infrastructure projects such as road building were accompanied with the resettlement of many communities closer to the new roads, in order to easily tax and enslave them. The influx of refugees and a quickly growing population have also contributed to the displacement of Indigenous communities. Their removal from ancestral land is paired with systemic racial discrimination, which ultimately places Indigenous Peoples on the fringes of society.¹ This multi-layered historical displacement has severed many ties Indigenous Peoples had with ancestral lands and their communities, requiring innovative responses to land rights and a framework to acknowledge the experiences of Indigenous Peoples who have moved to urban areas.

II. Ongoing Rights Violations

A. Recognition

The constitution of the DRC recognizes and assures citizenship for all born on its territory, as well as to the ethnic groups whose members and territories form the DRC. The constitution prohibits discrimination on the basis of membership of a certain race, ethnicity, tribe, cultural or linguistic minority, but fails to specifically prohibit discrimination against Indigenous Peoples.

The lack of official recognition impacts the recording of Indigenous experiences in the DRC, a type of invisibility worsened by the fact that only 31% of births nationally are recorded.² It creates a troubling lack of data on Indigenous Peoples. Indigenous Peoples in the DRC have faced increased displacement due to rising conflict, armed rebel groups, extractive industries, and conservation efforts that resulted in the destruction of their societal fabric. Too often Indigenous Peoples are left out of the political processes and the decisions affecting them.

The DRC voted in favor of the 2007 UN Declaration on the Rights of Indigenous Peoples but has failed to ratify the predating Indigenous and Tribal Peoples Convention enshrined in ILO Convention 169. Moreover, all progress towards domestic legislation that would reflect the principles has been stalled within the Congolese Parliament.³

Despite the efforts of the Congolese government to address the lack of recognition of Indigenous Peoples in the Congo through the submission of legislation that specifically protects Indigenous people, its delay through the parliament leaves the status of Indigenous Peoples no better than if the legislation had not been submitted at all.

The Congolese government accepted recommendations submitted by its fellow Member States in the second cycle of the Universal Periodic Review in 2014 including the recommendations made Guatemala, Benin, the Central African Republic, and Mexico. Guatemala emphasized the importance for the Congolese government to work towards the recognition of Indigenous Peoples at the national level⁴. Benin recommended that the State pay particular attention to Indigenous Pygmy peoples, in order to guarantee their access to land and natural resources. The Central African Republic encouraged the Government to enact a law to promote and protect the rights of Indigenous Peoples based on the United Nations Declaration on the Rights of Indigenous Peoples. Mexico recommended that the State Party ensure land rights of Indigenous communities within protected natural parks, in particular Pygmies. They also recommended that the State harmonize projects of greenhouse gas reduction, deforestation reduction and forest degradation in line with the UN Declaration on the Rights of Indigenous Peoples. The Human Rights Committee iterated similar concern during the review of the DRC in 2017, expressing its concern over the rights of Pygmy communities and the delay of the Indigenous specific legislation through the Congolese parliament.⁵ This concern is shared by the outcome of a study produced by NODRI (les Nouvelles Dynamiques pour le Développement Rural Intégral) that confirmed that Free, Prior and Informed Consent of Indigenous Peoples is continually violated through the exploitation of their forests. Beyond the recognition of Indigenous Peoples in the Congo through the passing of the legislation before Parliament, there are concerns that Indigenous Peoples are not at all represented in the government. A report by the Global Forest Coalition asserts that political representation of Indigenous Peoples is “almost non-existent” including not a single representative in the Congolese Senate or National Assembly.⁶

B. Land Rights, National Parks and Conservation Efforts

The creation of the Kahuzi-Biega National Park in 1970 was followed by the expulsion of many Batwa communities from their ancestral land, and has served as an example⁷ of the presumed dichotomy between Indigenous rights and successful environmental protection. This dichotomy, which has often infringed upon the basic rights of Indigenous Peoples particularly in regards to land rights, is shifting but its consequences remain starkly visible. Reparations for communities like the ones expelled from Kahuzi-Biega National Park are not likely, especially as these Batwa communities have faced unfavorable court rulings and are awaiting trial at the supreme court.⁸ Recent developments are posing new threats disproportionately to Indigenous Peoples. Rainforest Foundation Norway is anticipating that the Congolese government will lift a moratorium on industrial logging it has had since 2002 in order to boost the country’s economy. Irène Wabiwa Betoko of Greenpeace Africa outlines that this would wreak environmental havoc, threaten the fragile biodiversity present, and threaten the people that depend on these forests, while the economic promises are likely to fall through.⁹ Indigenous Peoples rely on these

forests, and increased logging or exclusive rash conservation policies would disproportionately affect these communities.

Recent work from the local NGO Program for the Integration and Development of the Pygmy People (PDIP) is showing that contemporary conservation policies are still harming Indigenous Peoples. In Virunga National Park, created by the Belgians in 1925, Bambuti communities were expelled from their ancestral lands. They now live largely in Mudja, about 20 miles north of Goma. Imani Kabasele, head of the PDIP, said¹⁰ that two years ago a Mbuti man from the neighboring village of Biganiro went to the park to look for honey, a traditional economic activity for Bambuti. He disappeared for three days, and his body was discovered later with the markings of machetes. It is unclear if this act was committed by the highly militarized park rangers or the armed group Democratic Forces for the Liberation of Rwanda (FDLR). The violence adds a layer to the displacement of Indigenous Peoples and affects children as it causes trauma, broken families, and death. As Indigenous land rights are not explicitly protected by Congolese law, Indigenous Peoples often have nowhere to turn to. The displacement of Indigenous Peoples from their ancestral lands also contributes to high rates of malnutrition and infant mortality. For example, under-five mortality rates for the Mbendjele peoples in northern Congo are reported to be 1.5-2.4 times higher than nearby non-Indigenous populations.¹¹ The lack of culturally appropriate health care institutions only worsens the situation, as traditional knowledge and pharmacopoeia are lost. Indigenous Peoples are experiencing new diseases such as HIV/AIDS, yaws, and respiratory illnesses, which are foreign to their cultural vocabulary and culturally insensitive clinics limit the effectiveness of treatment and understanding of these ailments for Indigenous Peoples.

C. Extractive Industries and Modern Slavery

There is a wide variety of environmental issues that contribute to difficulties faced by Indigenous Peoples, such as poaching, unstable wildlife populations, and an influx of refugees who often do not receive government assistance and exhaust natural resources. The displacement of Indigenous communities and many of the hardships are related to the extractive industries in the DRC, many are illicit and run by rebel groups. The majority of these industries are mining and logging, and cause significant deforestation, water pollution, and soil erosion. The destruction of the ecosystems creates food insecurity, poverty, and displaced communities and interrupts cultural and linguistic traditions, posing threat to Indigenous cultures.

The wealth generated from extractive industries is not equally distributed and Indigenous Peoples pay the price through the destruction of their lands, barely receiving benefits. Dieudonné Akilimali, representative of Batwa de la République Démocratique du Congo (BRDC), mentioned how extractive industries were intended to improve the livelihood of all, for example through providing elementary education. Akilimali points out that this has not happened and Indigenous Peoples lack access to elementary education.¹² The unequal distribution of wealth in the DRC

keeps Indigenous children from enjoying the same rights as non-Indigenous children, while also having to live in environments rife with pollution and displacement.

These extractive industries employ many children, many of whom are Indigenous. Particularly in the mineral-rich provinces of North Kivu and former Katanga a significant amount of children work in terrible conditions in mines. Humanium reported that in Katanga and Copperbelt approximately 40% of the laborers in these mines are under the age of 18. In extreme heat, clouds of dust and mercury, narrow tunnels, and limited light these children work at depths of 200 to 300 meters exposed to risks of asphyxiation, rockslides, and other accidental deaths. Wages are about one to two US dollars a day. Numerous cobalt mines in the DRC have employed and employ children as young as seven.¹³ “I would spend 24 hours down in the tunnels,” Paul, a 14-year-old orphan and cobalt miner shares. “I arrived in the morning and would leave the following morning.”¹⁴ This grueling and illegal work barely sustains impoverished Indigenous communities, deprives a child of the right of education, and impacts the child’s physical and mental health. Bertin Masansa Ma-Nkemba, executive director of ForS-Pax Network, shared the example of the mines in the former province of Western Kasai. There is a high prevalence of sexual violence at these mines, which has largely affected women and girls and has increased HIV/AIDS rates. Drug addictions and higher crime rates are also increasingly common. Child labor disrupts healthy families and creates a vicious cycle through which Indigenous Peoples disproportionately become trapped in poverty.

The exploitation of labor takes form in a variety of ways in the DRC. In 2008 over a hundred Indigenous individuals escaped slavery,¹⁵ indicating how the mistreatment of Indigenous Peoples leads to inhumane and exploitative situations. Since then, the commitment to and evidence of change have remained remarkably absent, leading to a coalition of 15 different Indigenous rights organizations to explicitly demand the implementation of “measures [which] must put an end to forms of contemporary slavery manifested in the patronage of certain other ethnic groups to the detriment of Indigenous Pygmy minorities.”¹⁶ This document alludes to the particular experience of Indigenous Peoples in in the DRC, where other larger ethnic populations engage in traditionally sanctioned slavery. Although the constitution of the DRC prohibits any type of slavery, it is still a living practice affecting Indigenous Peoples. The enslavement of minors, sexual exploitation particularly of girls, displaced families, and a lack of access to health care and education is rampant. Slavery ruptures the fabric of Indigenous culture and perpetuates notions of Batwa and other Indigenous Peoples as being subhuman.

The status of land rights for Indigenous communities in the DRC is intrinsically linked with the status of their recognition. Since there has been no progress to adopt domestic legislation that recognizes the rights of Indigenous Peoples, their rights to traditionally inhabited or currently occupied lands are undetermined. The State has again accepted the recommendations from its fellow Member States during its

second review by the UPR as well as recommendations from the Human Rights Committee and Committee on the Rights of the Child to ensure that the land rights of Indigenous Peoples are respected.

A large area of concern that the government has the ability to act regardless of the legislation before Parliament is how they award contracts and ensure that the extractive businesses that are awarded these contracts have the free, prior and informed consent of the Indigenous Peoples who inhabit the territories where the extractive businesses are active or to ensure that these businesses provided fair compensation and/or are provided adequate relocation by the State.

The State seems to award these contracts without care for their effect on the territories that are inhabited by Indigenous communities and allow them to be solely responsible for interacting with Indigenous communities to receive consent or provide compensation. This has led to numerous reports that companies are either not asking for consent¹⁷, not providing adequate compensation if any¹⁸, and to not held accountable for consequences of their building projects or extraction.¹⁹

VIII. Questions

1. What steps is the DRC going to take to ensure the basic human rights of Indigenous Peoples?
2. How will the DRC incorporate Indigenous Peoples' rights in large scale national projects and conservation efforts?

IX. Recommendations

Cultural Survival urges the government of the Democratic Republic of Congo:

1. *To enact legislation and initiate national programs that specifically recognize, address and include the rights of Indigenous Peoples.*
2. *To ensure the freedom of expression and the right of assembly of Indigenous Peoples*
3. *To provide and disaggregate data and statistics on Indigenous Peoples and ensure that all children are registered at birth.*
4. *To ensure justice and resources in conflict areas increase in frequency to protect Indigenous Peoples.*
5. *To ensure the right to free, prior, and informed consent in all matters of extractive industries and conservation efforts taking place on Indigenous lands.*
6. *To evaluate its conservation policies to ensure respect of Indigenous rights, and to provide reparations to Indigenous Peoples who have experienced human rights violations.*
7. *To investigate and hold fair trials when Indigenous communities are attacked by armed groups.*
8. *To ensure culturally and linguistically appropriate resources are available for children exiting exploitative labor.*
9. *To enforce the commitment the DRC made to end child labor.*
10. *To ratify and implement ILO Convention 169.*
11. *To invite the UN Special Rapporteur on the Rights of Indigenous Peoples to visit the DRC.*

¹ <http://www.iwgia.org/regions/africa/democratic-republic-of-congo> accessed on 11/28/2016

² <http://www.humanium.org/en/africa/democratic-republic-congo/> accessed on 12/1/2016

³ <https://www.iwgia.org/en/democratic-republic-of-congo>

⁴ HRC/27/5

⁵ <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsvdnCkCHIZNza%2fmH1Yi6215z7g1JO29Ep%2fEIfCpt%2fefk1jvSw4WKPIwJn%2bl4amXjTq86suelkIIHWtMhfofDiDWkDobuOfTvU7PBREq8w%2fxO>

⁶ https://globalforestcoalition.org/wp-content/uploads/2014/04/RAPPORT-ALTERNATIF-UPR-ONG-PEUPLES-AUTOCHTONES-RDC-_ANGLAIS.pdf

⁷ http://www.iwgia.org/publications/search-pubs?publication_id=125 accessed on 11/28/2016

⁸ http://www.iwgia.org/images/stories/sections/regions/africa/documents/IW2016/Democratic_Republic_of_Congo_IW2016_web_redu.pdf accessed on 11/29/2016

⁹ <http://www.regnskog.no/en/news/congo-threatens-to-open-worlds-second-largest-rainforest-to-new-industrial-loggers> accessed on 11/28/2016

¹⁰ <http://www.ipsnews.net/2016/09/militarised-conservation-threatens-drcs-Indigenous-people-part-1/> accessed on 11/28/2016

¹¹ <http://www.forestpeoples.org/region/africa/publication/2010/health-situation-women-and-children-central-african-pygmy-peoples> accessed on 11/30/2016

¹² [http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH9874/0f515236.dir/EM16Akilimali084.pdf#search="Dieudonne AKILIMALI"](http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH9874/0f515236.dir/EM16Akilimali084.pdf#search=) accessed on 12/1/2016

¹³ <http://www.humanium.org/en/child-labor-in-the-mines-of-the-democratic-republic-of-congo/> accessed on 12/1/2016

¹⁴ <https://www.amnesty.org/en/latest/news/2016/01/Child-labour-behind-smart-phone-and-electric-car-batteries/> accessed on 12/1/2016

¹⁵ <http://www.survivalinternational.org/tribes/pygmies> accessed on 12/12/2016

¹⁶ http://globalforestcoalition.org/wp-content/uploads/2014/04/RAPPORT-ALTERNATIF-UPR-ONG-PEUPLES-AUTOCHTONES-RDC-_ANGLAIS.pdf accessed on 12/12/2016

¹⁷ https://globalforestcoalition.org/wp-content/uploads/2014/04/RAPPORT-ALTERNATIF-UPR-ONG-PEUPLES-AUTOCHTONES-RDC-_ANGLAIS.pdf

¹⁸ <https://www.survivalinternational.org/tribes/pygmies/racism>

¹⁹ <http://www.latempete.info/rdc-plaidoyer-pour-une-prise-en-compte-de-droits-des-peuples-autochtones/>