

Executive Summary

1. Minority Rights Group (MRG) and Environnement Ressources Naturelles et Développement (ERND Institute) have commenced litigation before the African Commission of Human and Peoples' Rights (ACHPR) on behalf of the Batwa people of the Kahuzi Biega National Park (PNKB), an indigenous ethnic group, against the Democratic Republic of Congo (DRC) alleging various breaches of the Batwa people's fundamental human rights. These include, but are not limited to, the right to life, the right to property, the right to freely practice their religion, the right to health, the right to education, the right to freely dispose of their natural resources, the right to economic, social and cultural development, and the right to a satisfactory environment favourable to their development. These violations stem from the DRC's underlying failure to respect the traditional land rights of the Batwa people. In the 1970s, the DRC expelled the Batwa from their ancestral lands in the PKNB without their consent or prior consultation. Deprived of their land, effectively prevented from practising their traditional livelihoods (including their religious and cultural practices), and denied access to the most basic of social services, they suffer a high rate of malnutrition, disease, and mortality. Forced to live as squatters amongst other majority communities, they suffer deep-rooted discrimination. The Batwa people have not been compensated for the loss of their lands, and they have no effective remedy or avenues to challenge their dispossession as their right to ownership of their ancestral lands is not recognised by DRC law. Domestic litigation on behalf of the Batwa people has been ineffective; despite domestic litigation being initiated ten years ago, the Batwa have yet to obtain any remedy. Although the ACHPR seized itself of the Batwa's communication in February 2016, the DRC has not engaged in the process, which reflects the DRC's continued failure to address these serious violations of the Batwa people's fundamental human rights.
2. The DRC's breaches involve, but are not limited to, obligations enshrined in the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). As a State-party to those human rights instruments, the DRC is bound to uphold the rights of the Batwa protected in those treaties.

Background

3. The Batwa community is an indigenous ethnic group¹ and one of the most marginalised of all minorities in the DRC.² Traditionally a hunter-gatherer society, the Batwa's rich culture and ancient traditions are inextricably linked to their ancestral lands in the forests of the Great Lakes region. Land grabbing has jeopardized the community's livelihood and survival. As they are evicted from their ancestral lands, the Batwa are forced to relinquish their traditional economy and way of life and are relegated to live

in extreme poverty at the margins of society. Unless their rights, as guaranteed under international standards, are duly protected, the Batwa's living space will shrink further still, depriving them of the resources on which they depend for their survival and resulting in the disappearance of their culture and traditional knowledge.

4. In the South Kivu region of the DRC, the Batwa have lived in the area now called PNKB since time immemorial. In 1970, the government enacted a law creating the PNKB at the urging of the Congolese Institute for the Conservation of Nature (ICCN), which led to the eviction of some Batwa. In 1975, the government expanded the PNKB area from 60,000 to 600,000 hectares, which led to further evictions and restricted the Batwa's access to their ancestral lands, without compensation. During these evictions, the Batwa were violently driven out without warning and forced to find shelter among non-Batwa village communities with which they were not familiar. No relocation arrangements were made to assist the Batwa. They have been living in extreme poverty as squatters in various rural areas surrounding the PNKB ever since. Non-Batwa have been allowed to remain in the park, or received compensation.³
5. The DRC has seized the Batwa's ancestral land without their consent or prior consultation. The forest from which they are now excluded provided them with security and sustenance because it was a source of food, medicine, and fuel. In addition to securing subsistence and livelihood, the Batwa's ancestral land is seen as sacred, being inextricably linked to the cultural integrity of the community and its traditional way of life.⁴ As such, the dispossession of the Batwa's lands involves the violation of a series of inter-related rights that have ongoing consequences for the Batwa community, threatening their survival. To date, the DRC has failed to provide adequate redress.

Alleged Breaches

6. As a direct effect of the dispossession of their land and their continued inability to access the land following their eviction, the Batwa are presently denied meaningful access to, use of, and participation in decisions concerning their ancestral land, preventing them from pursuing their traditional way of life, cultural and religious practices, and livelihood. The Batwa have been displaced, forced to resettle among non-Batwa communities that routinely discriminate against them due to their ethnicity, and denied access to the natural resources located on their ancestral lands without consultation or compensation.⁵ They have also been denied access to the most basic of social services, including education and healthcare. The Batwa suffer a high rate of malnutrition, disease, and mortality as a result. The Batwa continue to be excluded from local political councils and decision-making processes due to the deep-rooted ethnic discrimination they experience, further marginalising the community and rendering it politically vulnerable.
7. The Batwa community has also suffered violations of their right to property and the right to freely dispose of wealth and natural resources. These violations remain continuing, as benefits of the property interest of the Batwa community over the land

continue to be denied and rendered worthless.⁶ The Batwa peoples' ongoing exclusion from their ancestral land, their inability to access a satisfactory environment favourable to their development by making use of the indigenous forest for food, cultural and religious ceremonies, and traditional medicines, their inability to access basic communal health care, and indeed, their inability to challenge their eviction, continues to threaten their very existence as an indigenous people.

8. The Batwa's attempts to seek redress in local courts have been to no avail as the rights of the Batwa to ownership of their land, and thus compensation for its expropriation, have never been (and are still not) recognised by DRC law. Accordingly, in November 2015, MRG and ERND Institute launched a case on behalf of the Batwa before the ACHPR. The decision on admissibility is currently pending before the Commission.

Recent Events

9. The situation on the ground continues to deteriorate for the Batwa of the Kahuzi-Biega Forest as the DRC has failed to adequately protect their rights. The DRC has not taken any meaningful steps to protect the Batwa's ancestral lands from commercial poaching, illegal mining, and timber extraction, even though in 1981, UNESCO declared the Kahuzi-Biega Forest a World Heritage Site. Moreover, the Batwa do not benefit in any way from the exploitation or revenue garnered from logging projects, mineral extraction, or conservation and tourism royalties on their ancestral land. Whereas, the Batwa's traditional knowledge allowed them to protect the forest and safeguard the territories and animals, now, some Batwa risk heavy fines, imprisonment, and even death by returning to the forest to collect herbs and wood, and to hunt.
10. On 26 August 2017, two Batwa community members from the village of Buyungule were shot by park guards in PNKB. Mobutu Nakulire Munganga,⁷ and his 17-year-old son Mbone Nakulire, had entered the PNKB to forage for honey and medicinal plants to treat diarrhoea and cholera. At around 8:30am they were both shot by four park guards on patrol, who reportedly considered them to be poachers; the child died on the spot whilst his father received bullet wounds in his right arm and shoulder blade.
11. Mr. Munganga's attempts to reach settlement terms with the park warden, including facilitating the arrest and prosecution of the perpetrators, have been unavailing. Although the public prosecutor initiated a proceeding against the park guards alleged to have carried out the shootings, the hearing, scheduled to take place on 3 January 2018, was postponed. No further information on the status of the case has been received to date.
12. In an unrelated incident on 28 August 2017, Biye Kirazi, a Batwa man from Nyakalengwa village, was beaten and killed by a group of local villagers with machetes, for allegedly raiding their fields. The same group responsible for the killing of Biye Kirazi then set fire to the Batwa village of Karama. The houses and goods of approximately 50 Batwa families were destroyed, forcing them to relocate to Kisiza village. The families remain displaced in Kisiza where they lack sufficient food and

adequate accommodation, a situation that is reportedly not being addressed by the local administrative and customary authorities.

Conclusion

13. The DRC government is failing to honour its human rights obligations under, among others, the ICCPR, the ICESCR, and the African Charter on Human and Peoples' Rights. It has consistently failed to safeguard and ensure respect for the cultural heritage of the Batwa people and to protect them from violations arising from the dispossession of their ancestral lands, including, but not limited to: the right to property, the right to life, the right to freely dispose of their natural wealth and resources, the right to freely practice their religion, the right to take part in their traditional culture, the right to health, the right to food, the right to housing, and the right to education. The DRC has also violated its general obligations to respect and ensure those rights vis-à-vis the Batwa of the Kahuzi-Biega Forest and has failed to adopt legislation to give those rights domestic legal effect. These violations and omissions are ongoing and must be redressed.

¹ The total population of indigenous Batwa peoples in the DRC was estimated at 600,000 in September 2008, comprising 1% of the country's total population. Foyer de Développement pour l'Autopromotion des Pygmées et Indigènes Défavorisés (FDAPYD – Hope Indigenous peoples) et. al., *NGO report on indigenous Pygmy peoples, Universal Periodic Review of the Democratic Republic of Congo - Indigenous peoples in the DRC: The injustice of multiple forms of discrimination*, 5, (2013) (citing World Bank, *Strategic Framework for the Preparation of a Pygmy Development Program–Democratic Republic of Congo*, Report No. 51108-ZR, 7, (2009)).

² The indigenous Batwa communities, possessing a distinct identity from the rest of the population, suffer from extreme economic, political, and socio-cultural marginalisation while still retaining particular attachment to the forest territories they traditionally occupied.

³ The Batwa have been chased out of the PNKB by the ICCN and PNKB regulators in spite of their knowledge of the wildlife and largely due to discriminatory policies, but non-Batwa communities have remained within the park undisturbed.

⁴ See Erica-Irene A. Daes, *Indigenous Peoples and their relationship to Land: Final working paper prepared by the Special Rapporteur*, UN Doc. E/CN.4/SUB.2/2001/21, (The importance of the relationship of traditional communities to their land, territories and resources has been recognised and explored by the United Nations Sub-Commission on the Promotion and Protection of Human Rights).

⁵ They are internally displaced persons suffering from deprivation of basic needs and are forced to move subject to the needs and desires of other communities who marginalise them. The Batwa travel between villages and cannot resettle in one location due to discrimination by the local communities.

⁶ Since their eviction, some of the land has been deforested and natural resources have been exploited to support mining and logging projects for economic gain. John Nelson et. al, *Background Paper: The Forest Dialogue Field Dialogue on Free, Prior and Informed Consent 21-25 May 2012 Bas Congo and Kinshasa, the Democratic Republic of Congo*, THE FOREST DIALOGUE, 2 (2012) at 2.

⁷ Mobutu Nakulire Munganga is named as one of the 66 plaintiffs who commenced an action against the DRC and the ICCN before the Tribunal de Grande Instance of Uvira, seeking redress for the seizure of the Batwa's ancestral lands. The court dismissed the case; the plaintiffs have appealed the decision to no avail. The appeal has been pending before the Supreme Court since December 2013.