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## The Batwa and the Kahuzi-Biega National Park in the DRC: Will the new law on Indigenous Peoples help the Batwa recover their land?

The Batwa Indigenous People saw their ancestral lands expropriated from them following the creation of the Kahuzi-Biega National Park (PNKB, by its French acronym) in the Democratic Republic of Congo (DRC). In this process, the Batwa faced the worst atrocities and violations of their individual and collective rights. Their violent expulsion was supported by international donors (German and US funds, among others) and conservation NGOs (such as the Wildlife Conservation Society – WCS), which reinforced colonial and racist practices with respect to the Batwa.

In 2022, the government of the DRC passed a new law to protect the rights of Indigenous Peoples. Will this law help the Batwa in their fight to regain their lands?

### **Introduction**

The Democratic Republic of Congo (DRC) has the largest network of protected areas in the entire African continent. This network covers 11.7% of the national territory (1). Indigenous Peoples and their diverse forests have lived in interdependence for centuries. Yet, the situation of these peoples, and thus of their forests, has never been as precarious as it is today (2).

The DRC's Kahuzi-Biega National Park (PNKB) is located near the western shore of Lake Kivu and the border with Rwanda. It was created in 1970 by Belgian colonial authorities, and its designation as a national park consequently denied the Indigenous Batwa People access to their ancestral lands. Kahuzi-Biega is one of the largest national parks in the country.

As in other state-managed protected areas, nature conservation in the PNKB has been an unquestionably violent and colonial project, which must be vigorously challenged. For more than four decades, the Batwa have basically been fighting to recover their ancestral lands and their access to the forests and natural resources of the PNKB. Several organizations that support the remaining Batwa inside the PNKB have attempted to respond to this crisis, but this has proven futile. In 2006, the Center for the Accompaniment of Indigenous Pygmies and Vulnerable Minorities (CAMV, by its French acronym) launched a huge campaign to seek dialogue and reconciliation between the Batwa who were expelled from their ancestral lands, and Kahuzi-Biega National Park authorities. But this process, which culminated in the signing of a road map, was also unsuccessful. Meanwhile, the organization Environment, Natural Resources and Development (ERND, by its French acronym) took legal action on this matter against the Congolese State, in this case represented by the ICCN (Congolese National Agency for Protected Areas) and the PNKB. But this action was also unsuccessful.

Thus, angered by the cycles of unfulfilled promises by the Congolese government, and given their situation of extreme poverty, some Batwa decided to voluntarily return to their ancestral lands within the Kahuzi-Biega National Park in October 2018—despite the legal restrictions in force in the DRC. In 2019, another dialogue was convened in an unsuccessful attempt to convince the Batwa to leave the

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park.

Following the failure of these processes, the PNKB paramilitary structure, in coordination with the Congolese army, carried out large-scale organized violence against the Batwa Indigenous People living on their ancestral lands within the park. This organized violence began in 2019 and it continues to this day. The NGO Minority Rights Group was able to obtain evidence of systematic torture, killings—including of children—and gang rapes of at least 15 Batwa women by park rangers and soldiers during the operations in July and November-December 2021. The attacks documented by this NGO "constitute serious violations of international and national law and may constitute crimes against humanity. The attacks were well planned, targeted civilian populations, were geographically widespread and systematic, served a State policy, and involved crimes such as murder, rape and persecution" (3).

This systematic violence received crucial financial support from international partners, despite these partners having knowledge of the human rights violations committed by the park rangers they support. The PNKB's paramilitary unit has received substantial support from the governments of Germany and the United States, as well as from conservation NGOs such as the Wildlife Conservation Society (WCS); this evinces the inherently militarized approach to conservation that is being promoted. In 2022, WCS signed a public-private partnership to co-manage the PNKB with the DRC government's National Agency of Protected Areas (ICCN) (4). Meanwhile, the park is open to, and being exploited by, numerous safari tourism agencies, making it abundantly clear why there are interests in the park being "undisturbed."

When it passed the law on the protection and promotion of the rights of Indigenous Pygmy Peoples (PAP) in 2022, the Congolese government finally recognized their right to their land and the natural resources it contains. This article seeks to reflect on Indigenous People's rights to land and natural resources enshrined in Chapter 5 of the aforementioned law, in light of the PNKB case. The main question pertains to whether this law can help the Batwa recover the lands stolen from them by the PNKB.

In order to fully understand this issue, this article will focus on three key points. The first provides a brief overview of the historical and legal foundations of Indigenous Peoples' rights to land and natural resources in the DRC. The second presents a succinct analysis of the Batwa's right to land and natural resources in the context of the PNKB. And the third elaborates on the lessons that can be gleaned from analyzing this law.

## **A brief look at the historical and legal foundations of the Batwa's right to land and natural resources**

**Historical background.** The Batwa are widely recognized as Indigenous Peoples and are considered to be the first inhabitants of the DRC, both by the Congolese state and by other communities (5).

The Batwa People have their origins in the forests surrounding the Kahuzi and Biega mountains, two inactive volcanos from which the park derives its name. The Batwa maintain close ties to their ancestral territories. For millennia they lived in harmony with the forest—their natural environment—until 1937, when the colonial power created the "Zoological and Forest Reserve of Mount Kahuzi." This initially small nature reserve was expanded in 1951 to include 60,000 hectares of forest in the Batwa's ancestral territory. A few years after the DRC's independence, the government designated this area as a national park and expanded it, creating the Kahuzi-Biega

Following this designation, what had been a protected area of 60,000 hectares now became 600,000 hectares. This expansion of the PNKB involved acts of brutality and barbarity (eviction of homes, humiliation and whipping, confiscation or malicious destruction of household goods, etc.), without any prior consultation, free consent or compensation to the Batwa. This continues to be the cause of the imbalance in the Batwa's way of life. It is estimated that between 3,000 and 6,000 Batwa (580 families) have been dispossessed of their ancestral lands to make way for the PNKB (6).

**Legal background.** The nationalization of the land also greatly contributed to dispossessing the Batwa of all land ownership (7). The February 2006 Constitution of the DRC, as amended today, states in Article 9 that "the State exercises permanent sovereignty, in particular over land (...)," which is explicitly repeated in Article 53 of the Land Law.

However, it should be noted that where Article 387 of the Land Law establishes that "lands occupied by local communities become (...) state lands," this does not at all mean that these communities cease to have property rights to lands to which they have traditional ties. Above all, it should be noted that Article 34 of the Constitution of 2005 guarantees the right to property acquired by custom (or the right to ownership in a broad sense). Furthermore, Article 153 of said Constitution recognizes customs as a source of right, in the sense that it can be applied by courts and tribunals as long as it does not conflict with public order or good practices.

Furthermore, in addition to the 2022 Law on the protection and promotion of Indigenous Peoples' rights, other legislation that has been developed in recent years also guarantees the respect for local communities' rights with regard to lands and forests—including those of Indigenous Peoples. This includes, but is not limited to, the Forest Code of 2022. There is also Law No. 11/022 from 2011 on the fundamental principles of agriculture. It is also worth mentioning Law No. 14/003 from 2014 on the preservation of nature. Clearly, this law marks an evolution in favor of recognizing customary land rights, and the positive role that local communities can play in conservation. Pending the outcome of the current agrarian reform process, there are other interesting regulatory initiatives, particularly Decree No. 14/018 from 2014, which establishes the terms and conditions for the allocation of forest concessions to local communities. And in addition to its increasingly abundant domestic legislation, the DRC is also obligated to implement various specific international instruments related to promoting the rights of Indigenous Peoples—instruments to which it has freely subscribed.

## **Indigenous Peoples' right to ancestral territories in the context of the PNKB**

At first glance, an analysis of Article 42 of the 2022 Law on the Rights of Indigenous Peoples shows that the Congolese legislator has implicitly ignored the issue of the Batwa's rights to enjoyment (not to mention property rights) of their traditional lands/forests considered to be protected areas.

In fact, this provision expresses, rather, the Batwa's general right to lands and forests that they currently possess—not to the lands and forests that they occupied, used or possessed in the past, and which were classified as conservation areas or granted to private entities. The 2014 Law on Nature Conservation is the only legal instrument that defines measures for conservation and the use of natural resources in protected areas. And according to this law, the acquisition of any individual or collective property right in protected areas is prohibited. However, the 2014 law provides for some exceptions to conservation measures in regards to access to natural resources. Such exceptions are made in the interests of public health, safety, and food security for people living near protected areas.

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## **In light of the case of the Batwa of the PNKB, the analysis of the 2022 law on the protection and promotion of the rights of Indigenous Peoples shows that:**

1. The Batwa's right to land and natural resources enshrined in this law does not apply to traditional lands that have been granted to private parties and/or lands that have been designated as protected areas. In the case of the Batwa's ancestral lands designated as protected areas (e.g., the forests of the PNKB), the only way for the Batwa to recover their lands would be to dismantle all or part of the PNKB to allow them to occupy and fully use the forests it contains. Why dismantle? Because the PNKB has become a public good (protected area) that cannot be given away or sold.
2. The law makes no mention of reparations for the historic injustices to which Indigenous Peoples have been subjected following their expulsion from their ancestral lands. The legislator should have at least referenced this issue, on the basis of international customary law, which offers Indigenous Peoples the possibility to demand restitution of their lands and compensation for losses suffered (in accordance with the United Nations Declaration on the Rights of Indigenous Peoples).
3. Finally, this law does recognize, however, the important role that local communities and Indigenous Peoples must play in nature conservation.

## **Conclusion**

This analysis has shown without a doubt that the Batwa Peoples of the PNKB face the problem of not being able to access their lands and forests. Their expulsion from this protected area is the main reason for their diminishing rights to their traditional lands.

The rights to land and natural resources enshrined in Article 42 of the 2022 Law do not apply to conservation areas that are in the public or private domain. This law does not explicitly grant Indigenous Peoples any subsidiary rights to protected areas, beyond what is provided for in the law related to nature conservation. As a result, there are two fundamental problems: the Batwa's rights to their traditional lands that have been classified as conservation areas, and, by extension, reparations for the historic injustices to which they were subjected as a result of their eviction.

Nonetheless, this law could represent an important step in the legal recognition of Indigenous Peoples as owners and holders of rights assigned to forest areas. It is also a tool to enforce those rights. Going forward, implementation of this law will be key, and above all, adoption of its enforcement measures.

Likewise, the agrarian reform that is currently underway—which includes the interests of Indigenous Peoples as one of its objectives—should be completed. The 1973 Land Law left the matter of indigenous (traditional) communities' lands unresolved, which should be resolved through presidential decree. Hopefully this matter will finally be resolved to clarify the land ownership rights of indigenous communities in the DRC.

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- (7) UCB-UEA Consortium, 2021. Kahuzi Biega National Park (KBNP), Conflict Dynamics: Prospects for Peaceful Cohabitation between the KBNP and Indigenous Peoples/Pygmies and other riverside populations, United States Agency for International Development (USAID)