



## **AFRICAN PROTECTED AREAS BETWEEN BIODIVERSITY LOSS AND MILITARIZATION**

### **The conservation and rights of the indigenous Batwa of Kahuzi Biega National Park (PNKB), Eastern DR. Congo**

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#### **Introduction**

The forced eviction of the Batwa from their ancestral lands to make way for the creation of the Kahuzi Biega National Park (PNKB) in 1971 left thousands of Pygmies in a very precarious situation. The Batwa indigenous people have been culturally destroyed by the loss of their forests. The right of access to natural resources, the right to land and other accompanying measures for the expelled Batwa communities should have been put in place, but this did not happen. This was observed in August 2007, during the ICCN capacity building workshop on the management and resolution of conflicts linked to natural resources in the PNKB, supported by the International Institute for Sustainable Development (IISD), the participants have identified and categorized the different conflicts that the PNKB is facing. This includes among others: the conflict related to access to the natural resources of the KBNP by local residents. (Brown & Kasisi, 2009; ICCN/PNKB. General Management Plan, 2009).

An invasion of the high altitude part of the park by the Batwa indigenous peoples living along the park has been observed since October 2018, despite the law prohibiting it. The risk of an integrated socio-ecological system threatened with extinction in the landscape of PNKB in eastern DR. Congo is observed.

This situation raises some questions that we will try to answer.

What are the challenges the Batwa have faced since their expulsion from PNKB? How can the conservation interests (of the PNKB) be reconciled with the rights of the indigenous Pygmy communities living along the rights of the PNKB.

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This document seeks to touch on the salient points of the outline of the reconciliation of conservation interests and the rights of the Batwa indigenous people living along the PNKB.

To do this, three data sources were used, including the literature review, semi-structured interviews of key stakeholders and a series of focus groups of Batwa leaders to understand the lives of indigenous people before and after their eviction on the one hand; and the roles they played in conserving biodiversity in the PNKB before their eviction on the other.

### **Brief history of the conflict between indigenous Batwa and PNKB**

In the eastern part of the DR.Congo, the relocation of indigenous peoples from their ancestral lands to create national parks began during the colonial period.

In 1925, a royal decree of the same year created Virunga National Park in North Kivu. After the country's independence, between 1970 and 1975, the PNKB was created in South Kivu province. It extends from the Congo River basin near Itebero-Utu to its western border northwest of Bukavu. Its geographical coordinates are to the west at the Ezeza River (21°33'E), to the east at Lemera (28°46'E), to the south at Lubimbe (2°37'S) and to the north at Mount Matebo or Mount Kamengele (1°36'S). Its altitude varies between 600 meters and 3308 meters. It is between 1°36' - 2°37' South latitude and 27°33' - 28°46' East longitude. The government of the time in Zaire had nominated PNKB for inscription on the World Heritage List in 1979 and the UNESCO World Heritage Committee inscribed it as a natural World Heritage Site in 1980. The PNKB was included in 1996 on the list of heritage in danger following strong human pressure on natural resources. With the wars, more than 90% of its surface area escaped the control of the Congolese Institute for Nature Conservation (ICCN). (Shalukoma. 2007).



Figure 1. Location of the high altitude part of the PNKB

### ***The lives of the Batwa indigenous people before their expulsion from PNKB***

Before the expulsion from their ancestral lands, the Batwa lived in harmony with nature. The Batwa did not cut the woods. Instead, they collected dead wood for domestic use. Bushfire was formally prohibited under penalty of social exclusion. It

was also prohibited to kill large animals and especially pregnant females. The exploitation of mineral resources was not important despite knowledge of their existence. The hunting season was very well regulated and hunting was done only by nets woven by forest ropes (vines,...). It was also prohibited to slaughter totem animals for medical purposes but also pregnant females. Only leaves, bark, root pieces were used... The Batwa did not cut down trees to collect honey and pick fruit, but they climbed.

Evictions in PNKB occurred over two decades, the 1960s and 1970s (Nelson, J. and Hossak, 2003; Barume, 2003; Couillard et al., 2009). About 6,000 Twa have been forcibly evicted from their ancestral lands in this Park (Barume, 2003). Between 1970 and 1985 (ERND, 2017), the Batwa were expelled from the hills of *Chatondo*, *Katasomwa*, *Munango*, *Kabona*, *Kakumbukumbu* and *Bukulula* respectively..... areas that have been erected at high altitude in the PNKB to date. These hills are located between the territories of Kabare, Kalehe and Shabunda in South Kivu Province.

*The lives of the Batwa indigenous people after their expulsion and the challenges faced by the Batwa indigenous*

According to the 2017 census conducted by the National Institute of Statistics (INS) and the Centre d'accompagnement des Autochtones pygmées et minoritaires Vulnérables (CAMV) in South Kivu, there are approximately 9608 indigenous Batwa living in 101 villages bordering the high altitude area of the PNKB in Kabare and Kalehe territories, in South Kivu province in DR. Congo.

According to the results of this census, 97% of Batwa children are not registered in the civil registry, 77% of Batwa have a low level of education. 70% of the villages counted are far from basic social services. For those who have access to it, their costs unfortunately remain high.

The Batwa are currently leading a life of wandering, begging, devoid of human dignity. Reduced to the situation of "landless peasants", they are homeless and live at the mercy of the host populations who use them in a form of servitude.

Famine, undernourishment and malnutrition, illiteracy, lack of decent housing, difficult access to health care and education, marginalization and even professional discrimination are their daily lot.

## Challenges

- ✓ Since their expulsion from the PNKB, participatory management and benefit-sharing mechanisms for the exploitation of the stolen lands have not been put in place.
- ✓ No accompanying measures have been put in place, such as the granting of land to expelled communities and access to natural resources in the KBNP.
- ✓ The leaderships of the Batwa indigenous communities expelled, diminished in their influence and legitimacy in relation to the communities they represent.
- ✓ Despite the various interventions of State and development actors on the ground, there are no assessment indicators that take into account international principles of conservation over time that show the socio-economic change of the expellees.

### **How to reconcile conservation interests with the rights of the Batwa ethnic communities?**

The process of reconciling conservation interests and the rights of Batwa indigenous communities in the high altitude area of the PNKB did not start today. We will first invoke this alert, launched in 1975 by the World Conservation Union (IUCN), on the impact of the displacement of populations from their lands following the creation of protected areas. Then, we will take stock of the case of a group of Batwa living near the PNKB who, in the face of the Congolese government's indifference to their demands, decided to bring the matter before the courts. Others, on the other hand, have chosen the path of direct dialogue with the PNKB to find lasting solutions to their problems.

*The call on governments of IUCN member countries to respect the rights of indigenous peoples when establishing protected areas.*

In 1975, when the Congolese government expelled the indigenous Batwa from the PNKB, the 12th IUCN General Assembly was held in Kinshasa at the same time. At the end of this general meeting, the following recommendations were made, among others:

- ✓ That the governments of countries where isolated indigenous cultures are still present recognize the right of these peoples to live on the lands they traditionally occupy and take measures to enable these peoples to maintain their way of life, taking into account their opinion;
- ✓ That in the establishment of national parks or reserves, indigenous peoples not be displaced from their traditional lands without their consent and without prior consultation.

### *The United Nations Declaration on the Rights of Indigenous Peoples<sup>2</sup>*

To this end, the United Nations Declaration on the Rights of Indigenous Peoples (adopted by the DR. Congo in 2007) imposes an obligation on States to effectively address the dispossession of indigenous peoples' lands, territories or resources. In the same vein, the Declaration affirms the right of indigenous peoples to a remedy when their lands, territories and resources have been confiscated, occupied, occupied or used without their free, prior and informed consent.

### *The Batwa use the courts to assert their rights*

In 2008, tired of waiting for government promises, the Batwa, supported by Minority Rights Group International (MRG) and Environment, Natural Resources and Development (ERND), will decide to take their case to the national courts to obtain compensation for the damage they suffered following the expulsion from their ancestral lands in the PNKB. The Batwa were dismissed at the first and appeal levels before appealing to the Supreme Court in 2013. The Batwa have been waiting for the hearings to begin since that day. In the face of inaction by the national courts, the Batwa, represented by MRG and ERND, brought the matter before the African Commission on Human and Peoples' Rights on 7 November 2015. The African Commission on Human and Peoples' Rights declared this complaint admissible in June 2019. It considered that domestic remedies were neither sufficiently available nor effective to ensure adequate compensation for the violations suffered by the complainants.

### *The dialogue between Batwa and PNKB under the Whakatane<sup>3</sup> mechanisms in 2014: What about the commitments made by stakeholders?*

The Whakatan mechanism as a tool for dialogue stands on particularly relevant policies in order to define and negotiate the rights of sharing resources in different conservation contexts. (Garnett et al. 2018). The whakatane mechanism was adopted

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<sup>2</sup> UN Declaration on the Rights of Indigenous Peoples, Arts.8, 10.

[https://www.un.org/development/desa/indigenouspeoples/wpcontent/uploads/sites/19/2018/11/UNDRIPE\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wpcontent/uploads/sites/19/2018/11/UNDRIPE_web.pdf)

<sup>2</sup>*ibid.*, Art. 28.

<sup>3</sup> The Whakatane Mechanism is an IUCN One Programme initiative that supports the implementation of “the new paradigm” of conservation, focusing on situations where indigenous peoples and/or local communities are directly associated with protected areas as a result of their land and resource rights, including tenure, access and use. The mechanism promotes and supports the respect for the rights of indigenous peoples and local communities and their free prior and informed consent in protected areas policy and practice, as required by IUCN resolutions, the Convention on Biological Diversity (CBD), and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

<http://www.forestpeoples.org/sites/fpp/files/news/2016/08/What%20is%20the%20Whakatane%20Mechanism.pdf>

in application of to IUCN Resolutions 4.048 and 4.052 in 2011. At the end of 2014, at the request of some indigenous Pygmy leaders bordering the PNKB whose forebears had been expelled from the park, a direct dialogue between the two parties will be initiated through CAMV with the support of the Forest Peoples Programme UK.

This dialogue was preceded by consultations within Batwa villages bordering the PNKB to seek their free, prior and informed consent (FPIC). Then, actual "Whakatane" assessments were organized around the three-dimensional mapping that materialized the lives of Batwa indigenous people in the park. These assessments were carried out respectively at the Kavumu/Kabare, Ihusi/Kalehe and Bitale/Bunyakiri sites in South Kivu province, eastern DR. Congo.

Then, the Ogiek of Kenya, who experienced an almost similar situation and tested the Whakatane mechanism at Mount Elgon in Kenya, came to share their experience with the Batwa living along the banks of the PNKB. And finally, in Bukavu, there will be a direct dialogue between the Pygmies, provincial government delegates, deputies, ICCN and PNKB in Bukavu. At the end of this dialogue, a roadmap was adopted by all stakeholders.

Three years after the adoption of this document, a meeting to assess the implementation of the commitments contained in the 2014 roadmap was held in Bukavu. It will be noted that almost all the commitments contained in the said roadmap have not been respected. The document of statutes of the organization of the expelled Batwa indigenous Batwa for the sustainable management of resources as well as the report of the census of the indigenous Batwa living along the upper part of the PNKB were given during the meeting.

Nevertheless, the participants in this meeting will decide to set up a commission to monitor the implementation of the 2014 roadmap. This commission is composed of representatives of the Batwa, PNKB, Civil Society, Provincial Assembly and Provincial Government. Participants also reaffirmed their willingness to follow the dialogue for the sustainable conservation of the PNKB and the promotion of Batwa rights.

Unfortunately, an incident will occur (in August 2017) in the Park, a few months after the holding of this meeting in Bukavu to evaluate the implementation of the 2014 roadmap. During this incident, a young Twa boy will die and his father will be seriously injured by bullets as they collect medical plants in the PNKB.

On August 25, 2018, after several months of negotiations under the facilitation of CAMV, the PNKB and the victims' families will reach an agreement. The two parties will agree to sign a memorandum of understanding to end their dispute. In addition, they agreed to establish a framework for dialogue to build on previous positive actions and propose lasting solutions to the conflicts between the Batwa and PNKB.

While everyone was waiting for this framework for dialogue to be put in place, on 6 October 2018, about 40 households in *Buhobera* village in Kalehe territory will decide to return to PNKB. They will be gradually joined by several other groups from Kabare and Bunyakiri. They occupy 21 sites within the PNKB.

Since the Batwa's incursion into the PNKB, several actions have been taken to defuse the crisis and dissuade the Batwa from returning to their villages, but without success. The PNKB has repeatedly tried to use force (by burning the Batwa huts) to dissuade the Batwa from returning to their villages, but in vain. On the contrary, the actions of the PNKB led most of the time to clashes that were often fatal.

Thus, apart from the murder of the young twa by the PNKB eco-guards mentioned above, there have been 5 deaths to date, including 3 on the side of the Batwa indigenous residents and 2 on the side of the eco-guards. About 20 Batwa leaders are in prison and others are wanted by the security services. Also in relation to this case, two local indigenous peoples' rights organizations, CAMV and ERND (Environment, Natural Resources and Development), have already been convened by the intelligence service on the grounds that these organizations are instrumentalizing the Batwa to remain in the PNKB.

*Major innovations of DR. Congo law No. 14/003 of 11 February 2014 on nature conservation and the new conservation paradigm<sup>4</sup>*

DR. Congo law No. 14/003 of 11 February 2014 on nature conservation<sup>5</sup> in its articles 19, 20, 51, 51, 52 has introduced innovations compared to the 1969 Ordinance-Law on Nature Conservation, among others on the definition of conditions of access to biological and genetic resources, the enhancement of traditional knowledge associated with these resources, and the fair and equitable sharing of the benefits arising from their exploitation. (Lassana and Mukumba, 2018). This is supported by the principles of the new conservation paradigm, which solidifies the relationship between the conservation of biodiversity and the well-being of society in a sustainable way. (Gauthier-Clerc, 2014), recognizes the key roles that indigenous peoples and local communities must play in conserving the earth's biodiversity and the need to integrate their rights and interests into the sustainable management of protected areas. (Peter Bille Larsen, 2006; Rights and Resources Initiative, 2014). Some key terms of the new paradigm state that "respecting, encouraging and integrating traditional knowledge and customary law, as well as practices of resource management; but also recognizing and guaranteeing indigenous peoples' rights to their lands contributes to

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<sup>4</sup> The "new paradigm" has emerged sixteen years ago at the World Parks Congress in Durban in 2003. It foresees measures to assess the implementation of resolutions relating to indigenous peoples adopted at the 4th World Conservation Congress (WCC4) in 2008 in Barcelona, Spain, and in order to make a progress in their implementation in case of gaps. Just as the Durban Action Plan and the Programme of Work on Protected Areas (POWPA) of the United Nations Convention on Biological Diversity (CBD) are often considered as the "new conservation paradigm". They are essential to ensure that conservation practices respect the rights of indigenous peoples, namely those specified in the United Nations Declaration on the Rights of Indigenous Peoples, and to ensure the full and effective participation of indigenous peoples in policies and practices.

<https://www.forestpeoples.org/sites/default/files/publication/2011/07/fpp-iucn-fr-plan-directeur-preliminaire-pour-les-evaluations-whakatane-pilotes-v5fr.pdf>

<sup>5</sup> <http://cd.chm-cbd.net/implementation/fol320521/loi-relative-la-conservation-de-la-nature>

the more effective conservation of a protected area. (FPP-IUCN. 2011). Moreover, some scientists and managers of the Itombwe Natural Reserve (RNI) in the province of South Kivu in Eastern DR. Congo, have just demonstrated the role played by the cultural space "*Malambo*" rich in biological biodiversity and managed during the millennia by indigenous communities in protecting the RNI, neighbour of PNKB. (Mubalama-Kakira et al. 2018).

And Crawhall (2018) notes that when inequalities or refusals related to resources use are high, it is likely that values are also to be refused as well, and this disrupts social consensus on what these values are, including what needs to be preserved and protected. Recognition of indigenous peoples' rights to land, benefit-sharing and institutions is essential in order to achieve local and global conservation objectives. (Garnett et al. 2018).

*Batwa indigenous people living along of the PNKB have a natural resource management tool*

In 2017, the indigenous Batwa drew up their Bylaws which has been serving them for the good governance of their community and for the sustainable management of natural resources both within the park (pilot access areas) and outside of it or in another area that would be granted to them by the government.

In these Bylaws, the indigenous Batwa have established ancestral rules and practices related to environmental conservation and protection. It is also foreseen in the same Bylaws that the offender to one or another article will be liable to sanctions corresponding to his fault.

*The Institut Congolais pour la Conservation de la Nature (ICCN) is convening a high-level provincial dialogue in Bukavu in September 2019 to try to defuse the crisis*

Despite the many initiatives to put both parties on the same table and the many commitments made by stakeholders, nothing has changed on the ground, on the contrary, the situation of the Pygmies continues to deteriorate further and the PNKB remains the target of poachers, foresters, miners etc.

In response to this situation, which has become almost chaotic, in September 2019, ICCN will organize a dialogue in the city of Bukavu, in eastern DR. Congo. This dialogue was organized jointly with a network of Indigenous Peoples and Local Communities for Forest Ecosystems (REPALEF), under the moderation of the DR. Congo ambassador to UNESCO, Mr Samy Mankoto. This dialogue was an opportunity to put an end to this conflict, which was getting worse and worse. Unfortunately, there was less convergence of views:

- ✓ Representatives of the Batwa community initially refused to sign the declaration adopted at the end of this dialogue when the government and non-Batwa organizations/leaders had already done so. It is only after the dialogue (several days) that the representatives of the Batwa community will finally agree to sign the declaration and the roadmap.



- ✓ Then, the day after the dialogue, an addendum to the roadmap was prepared and signed by Batwa representatives alone. The signing of the addendum by ICCN officials took place only after informal discussions held after the dialogue. The addendum in question refers to the 2014 Whakatane Roadmap. Although in this document, access to the park's natural resources is unfortunately reduced to a matter of access to forests for ritual purposes.

It is clear that the various resolutions adopted during this dialogue were not unanimously agreed by all participants.

#### *Challenges related to the dialogue process*

- ✓ It should therefore be noted that the failure to respect the commitments made by the various stakeholders constitutes an obstacle to the development of this dialogue process.
- ✓ The numerous altercations between eco-guards and Batwa and the threats made against the Batwa leaders worsened this situation, which was already on the verge of implosion.
- ✓ As a result, there has been a loss of trust between the parties to the conflict, which has not allowed this dialogue process to continue.

#### **Conclusion and recommendations**

The regular clashes between eco-guards and Batwa, which have become more pronounced since the return of the indigenous Batwa to the PNKB, must involve all parties involved in this conflict, both nationally and internationally. Urgent measures

must be taken to discourage those who destroy this world heritage, which is the KBNP, and above all to ensure that the scenes of violence we have witnessed do not recur. Sustainable accompanying measures and commitments must be taken to protect and promote the rights of Batwa residents and to protect the biodiversity of the KBNP. Only the process of dialogue can lead us to find sustainable solutions for reconciling the conservation interests of the KBNP and promoting the rights of the Batwa communities bordering the park.

#### *Recommendations for action*

a. That dialogue can only resume if certain prerequisites are met. Among others, the release of arrested pygmies, the cessation of prosecutions against certain pygmies leaders, the cessation of hostilities (between eco-guards and Batwa residents) on the ground, the reintegration of Batwa; PNKB agents who have been suspended or who do not work for fear of reprisals.

b. That a mediator or facilitator accepted by all parties to the conflict be appointed to restore trust between the above-mentioned parties so that each can fulfil its commitments and facilitate the harmonization and implementation of the various agreements. This mediator or facilitator should work in conjunction with the framework for consultation and dialogue that will be put in place

c. That an independent investigation be set up to establish the responsibilities of each other following the various incidents that led to the loss of human lives.

d. That mechanisms for access by Batwa indigenous communities to the natural resources of the PNKB be put in place. For example: delimit pilot areas within the PNKB to which the Batwa could have access.

It is true that access to land is one of the Batwa's major claims, but beyond that, it is important to involve the Batwa in the management of the PNKB to obtain legitimate benefits and advantages. At the same time, they must be guaranteed access to the natural resources of this Park. Without this, the Batwa will always be tempted to enter the Park despite legal prohibitions to obtain the resources they need.

e. That a Socio-Ecological Resilience Plan be designed and implemented to ensure the livelihoods of the indigenous Batwa and the biological diversity of the PNKB

f. That a complaint and information management mechanism at the local level be adopted by stakeholders to anticipate conflicts.

g. That a specific law be passed in parliament to redress the historical injustices suffered by the Batwa indigenous people following their expulsion from the PNKB.

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