

Observations on the State of Indigenous Human Rights in Congo

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Submission by:

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 Summary

This is Republic of the Congo's (the Congo) third Universal Periodic Review (UPR) cycle. In its second cycle, the Congo accepted 167 of 174 recommendations. Among the accepted recommendations, there are only three commitments to improve conditions for Indigenous communities. These include finalizing the procedure of accession to the Convention 169 concerning Indigenous and Tribal Peoples, pursuing the formulation and implementation of a new and more efficient multi-year plan for the rights and quality of life of Indigenous Peoples, and ensuring access to justice for Indigenous groups. The Congo voted in favor of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 and has ratified the ILO Convention No. 169.¹ Even with its expressed support for these instruments, the Congo continues to violate its principles, particularly seen in its initiation of and response to land rights violations, the absence of Free, Prior and Informed Consent, violence against Indigenous women, and in discrimination towards Indigenous Peoples.

II. Background Information

"Indigenous" is a controversial word in Africa, as it is argued that all Africans are Indigenous. Even so, on December 30, 2010, the Congo became the first country in Africa to pass legislation protecting Indigenous Peoples' rights.² The legislation's purpose is to address marginalization and exclusion of Indigenous Peoples from receiving education and access to health care services. The legislation vows to protect Indigenous Peoples equally as the Bantu, the Congo's predominant ethnic group that arrived in the region approximately 2,000 years ago.³ This legislation aims to protect the rights of Indigenous Congolese peoples, called Pygmies, who make up 10% of the Congolese population. The Baaka, Mbendjele, Mikaya, Luma, Gyeli, Twa, Mbuti, and Babongo peoples are collectively known as Pygmies. They predominantly live in northern Congolese forests. The umbrella term "Pygmy" has been used in a derogatory way but is still widely used to reference Indigenous forest peoples as a whole. It has recently been reclaimed by some groups seeking a revalorization of Indigenous identity and rights.⁴ The livelihoods of Pygmies largely depend on forests, which today are being degraded by illegal logging ventures by governments private companies.⁵

III. Ongoing Rights Violations

¹https://www.upr-info.org/sites/default/files/document/congo_republic_of/session_17_-_october_2013/a_hrc_wg.6_17_cog_1_congo_e.pdf

² <http://www.loc.gov/law/foreign-news/article/congo-new-law-on-rights-of-indigenous-peoples/>

³ <http://minorityrights.org/country/congo/>

⁴ <https://www.culturalsurvival.org/news/new-law-protect-indigenous-peoples-rights-congo>

⁵ <http://minorityrights.org/country/congo/>

A. Indigenous Peoples in Congolese Society

i. Identity

Most Pygmies have neither national identity cards nor birth registration, both of which the government is responsible for providing.⁶ This makes it easier for their citizenship to be questioned or presumed non-existent,⁷ in violation of UNDRIP articles 5 and 6. Lacking identity cards, and virtually being non-existent in official records complicates the ability of Pygmies to access services provided by the government, including formal education and literacy training, and complicates their opportunities for seeking formal employment. These factors make it difficult for Pygmies to gain economic stability and to expand opportunities for younger generations, which in turn makes it easier for them to be discriminated against and taken advantage of.⁸

ii. Poverty and Health Risks

70% of people in the Congo live in poverty.⁹ Such poverty is more prominent in rural areas, where Pygmies reside. Approximately 84% of the urban Congolese population have access to drinking water, compared to only 27% of the rural Congolese population.¹⁰

Poverty is one of many factors that contribute to poor access to health care for Pygmies. For example, 40% of Indigenous children are chronically malnourished.¹¹ Living deep in the forest, Pygmies' risks of poor health conditions is increased by limited access to culturally sensitive health services and education.¹² At the same time, degradation of forests and biodiversity is reducing communities' access to healthy food and plants traditionally used as medicine.

There are approximately 781 infant deaths per 100,000 live births across the Congo. Only 1 in 4 of pregnant Pygmy women give birth in health facilities and only 20% visit such facilities during their pregnancy, in general.¹³ In addition to poverty and location, another reason most Pygmy women do not give birth in health facilities is due to their fears about facing discrimination by hospital or clinic staff and due to a lack of culturally sensitive healthcare. They fear being treated like objects, lesser than non-Indigenous women, or being laughed at and left waiting, which

⁶ <http://gvnet.com/humantrafficking/Congo-ROC.htm>

⁷ <https://www.ipacc.org.za/en/where-we-work/congo-basin.html>

⁸ <https://www.ipacc.org.za/en/where-we-work/congo-basin.html>

⁹ <http://minorityrights.org/country/congo/>

¹⁰ <https://www.humanium.org/en/republic-of-congo/>

¹¹ <http://www.loc.gov/law/foreign-news/article/congo-new-law-on-rights-of-indigenous-peoples/>

¹² <https://www.unfpa.org/news/protecting-indigenous-forest-dwellers-republic-congo>

¹³ <https://www.unfpa.org/news/protecting-indigenous-forest-dwellers-republic-congo>

women have recalled enduring.¹⁴ For these reasons, many Pygmy women choose to give birth in their forest communities.¹⁵

In addition to the many health risks that come with giving birth absent medical professionals, Indigenous women cannot afford the cost of antenatal care, like check-ups for herself and for her baby and even clothing for her baby. The United Nations Population Fund (UNPA) initiated an effort to supply birthing kits to Indigenous women, containing clothing, medication, gloves, and syringes. While these resources are crucial, these women deserve more, and it is the government's job to provide them with support in the form of legal enforcement. For example, Article 22 of a national law adopted in February 2011 provides that Pygmies are to have access to health services without discrimination. This provision is not being adequately enforced, and its enforcement could have huge impacts on the health care of Pygmy women and children.¹⁶

iii. Education and Employment

While it is nationally mandatory for students to be in school between the ages of 6 and 16 and although the Congolese government has expressed its goal for 50% of Indigenous children to receive "high quality school education," approximately 65% of Indigenous children do not have any access to education.¹⁷ This is in comparison to the national rate of 39%. Most disparities are seen between urban and rural communities, with rural, Indigenous communities disadvantaged.

This disadvantage stems from education expenses. The law states that education is free until the age of 16, but this does not account for the costs of books, uniforms, other school fees, and the long commute distance. These are fees many Pygmy families cannot afford. For the Pygmy children who are able to attend school, there are still limitations on their education experience, as there are resource issues such as shortage of teachers, linguistic barriers, and discrimination, and lack of culturally relevant curricula.¹⁸

Poor education leads to fewer employment opportunities and a decreased capacity to speak up for equal rights and fair treatment in the workplace. The aforementioned December 2011 law has had minimal effect in improving the hiring of Pygmies.¹⁹ Due to poor access to education, many

¹⁴<http://makeeverywomancount.org/index.php/gender-issues/hiv-aids/1426-republic-of-the-congo-many-indigenous-women-still-give-birth-in-the-forest>

¹⁵<http://makeeverywomancount.org/index.php/gender-issues/hiv-aids/1426-republic-of-the-congo-many-indigenous-women-still-give-birth-in-the-forest>

¹⁶<http://makeeverywomancount.org/index.php/gender-issues/hiv-aids/1426-republic-of-the-congo-many-indigenous-women-still-give-birth-in-the-forest>

¹⁷ <https://www.humanium.org/en/republic-of-congo/>

¹⁸ http://www.ohchr.org/Documents/Issues/IPeoples/SR/A-HRC-18-35-Add5_en.pdf

¹⁹ <https://freedomhouse.org/report/freedom-world/2015/congo-republic-brazzaville>

Pygmies are illiterate, making them even less attractive to employers in addition to discrimination in the hiring process.²⁰

iv. Political Participation

Due to the low access to national identity cards and birth registration, most Pygmies are not registered to vote and therefore lack political representation. The low participation of Pygmies in the voting process not only keeps Pygmies from having their voices heard in politics, but also decreases the chances of Pygmies being elected in the political process.²¹ This exclusion from political participation further isolates Pygmies and frustrates the opportunity for change.

B. Violations of Free, Prior and Informed Consent (UNDRIP 8, 22, 24, & 29)

i. Land Rights Abuses and Evictions (UNDRIP Articles 18, 19, 26, 27, 28, 30, 32, 37, 38, & 46)

In 2012, the United Nations Consultation for Congolese Civil Society and Indigenous Peoples Programme (CACO-REDD) was created to promote Indigenous land rights and management and the assessment of different social risks. “REDD” stands for “reducing emissions from deforestation and forest degradation in developing countries,” which reflects CACO-REDD’s focus on ecosystem maintenance. It functions as a contact point for civil society organizations and Indigenous communities, particular to facilitate consultations to fulfill the right to Free, Prior and Informed Consent.²² A key function of CACO-REDD is its translations to facilitate consultations between Indigenous Peoples, who primarily speak their local, native languages, and private companies and governments, who primarily speak French and Bantu. These translations are necessary for adequate consultations, particularly over land rights disputes. However, private companies and the national and local governments often forgo consultations altogether.

Due to their dependency on the forest, Pygmies have developed highly sophisticated expertise on biodiversity and the components of their lands. Yet their knowledge is often taken advantage of. Their wealth of information has been claimed through literal torture and other means of persecution, including the burning of communities. Not only do these company and governmental acts deprive Pygmies of their customary, traditional land rights, but also of all their property that goes along with these lands, like traditional medicines only produced in the forest.²³

²⁰ <http://gvnet.com/humantrafficking/Congo-ROC.htm>

²¹ <https://freedomhouse.org/report/freedom-world/2015/congo-republic-brazzaville>

²² <https://theredddesk.org/countries/actors/consultation-framework-congolese-civil-society-and-indigenous-peoples>

²³ <https://www.survivalinternational.org/articles/3473-conservationistscongobasin>

These land grabbings are illegal in countless ways, including the eviction and displacement of Pygmies, the taking of their customary lands, the danger posed to forest lands that the “grabbers” have little knowledge of, and the violation of free, prior and informed consent, which the Congo expressly endorsed in the UNDRIP and in the ratification of ILO Convention No. 169. Above all, these land grabbings deprive Pygmies of their identity.²⁴

Not only do these land grabbings violate Pygmies’ human rights, but they deprive the nation as a whole of the benefits of Indigenous knowledge and conservation.²⁵

C. Indigenous Women and Children

i. Introduction

The Rainforest Foundation is an organization that promotes the "establishment of community rights over rainforest lands," particularly for Indigenous communities who cannot defend these rights alone. The Foundation reported on findings by the Congolese Observatory of Human Rights (OCDH). OCDH found that Pygmies are constant victims of beatings, collective rapes, slavery, and police brutality, among other atrocities.²⁶

ii. Violence

iii. Trafficking – Forced Labor, Sex Trafficking, and Modern-Day Slavery

The Congo is considered a “source country” for trafficking children, which means it is where traffickers find victims and also where children are trafficked to from bordering countries. Indigenous children are particularly vulnerable to trafficking in the form of forced labor and sexual exploitation. Child victims are mainly targeted in rural, Indigenous areas, since this demographic is often impoverished and families are deceived into having their children work to make money for the family. Both forced labor and sexual trafficking are often linked to crime networks.²⁷

Congolese law prohibits child labor, with a minimum working age requirement of 16 years old. However, the International Labor Organization surveyed that approximately 85% of children in rural, Indigenous regions work for very low wages.²⁸

²⁴ <https://www.survivalinternational.org/articles/3473-conservationistscongo-basin>

²⁵ <https://www.survivalinternational.org/articles/3473-conservationistscongo-basin>

²⁶ <http://gvnet.com/humantrafficking/Congo-ROC.htm>

²⁷ <http://gvnet.com/humantrafficking/Congo-ROC.htm>

²⁸ <https://www.humanium.org/en/republic-of-congo/>

Trafficking into forced labor is also considered modern-day slavery. A prevalent example is in Ngoua II, where Pygmies work on Bantu farms for what is equivalent to £1 per day. This type of slavery is considered “debt slavery” because Pygmies often enter a cycle of being indebted to the Bantu, borrowing money, finding themselves in debt, and returning to borrow more money. When it comes time to repay their debts, Pygmies, often illiterate, rely on their Bantu employers to calculate what they owe.²⁹

D. Criminalization of Pygmies

Pygmy populations face criminalization in the form of arbitrary arrests and physical abuse, particularly surrounding their conservation efforts. This abuse is often perpetrated by State-employed eco-guards, who are tasked with protecting vulnerable ecosystems. However, eco-guards in the Congo partner with the tourism industry, an industry that has often devastated tribal lands.³⁰

In 2017, Survival International reported that eco-guards forced Indigenous Baka men, women, and children to “strip to their waists, get to the ground and ‘crawl like snakes’ while the guards kicked and whipped them with their belts.”³¹

In March 2018, eco-guards accused two Baka women and two Baka men of elephant-hunting and proceeded to physically beat them. The eco-guards arrested the two men without any evidence of their alleged elephant-hunting. These arbitrary arrests are common occurrences.³²

Eco-guards have also stolen Baka food, set their homes on fire, damage their cooking instruments, and damaged their radios. This abuse and criminalization is their way of communicating a job well-done to the broader Congolese community.³³ However, all this criminalization accomplishes is the promotion of discrimination and pain of Indigenous communities, which further instills fear in Pygmies, and the distraction from legitimate instances of violations against vulnerable ecosystems.

IV. Questions

1. What steps is the Congo taking to respect, protect, and fulfill the rights of Indigenous Peoples in the country?
2. How is the Congo working towards improving Indigenous Peoples’ access to decision making and political participation?

²⁹ <http://gvnet.com/humantrafficking/Congo-ROC.htm>

³⁰ <https://www.survivalinternational.org/news/11935>

³¹ <https://www.survivalinternational.org/news/11935>

³² <https://www.survivalinternational.org/news/11935>

³³ <https://www.survivalinternational.org/news/11935>

3. What steps is the Congo taking in combating discrimination against Indigenous Peoples?

V. Recommendations

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

1. Take steps to establish culturally appropriate health services, especially for gynecological and obstetric care for Indigenous women.
2. Facilitate the acquisition of birth certificates and identity cards for forest-dwelling communities.
3. Ensure that the Free, Prior Informed Consent of Indigenous communities is obtained before any project that may affect them.
4. Disaggregate census data to monitor the conditions of Indigenous Peoples.
5. Implement Law No. 5-2011 on the Promotion and protection of the rights of indigenous peoples (“Indigenous Rights Law”)
6. Increase access to linguistically and culturally appropriate education for Indigenous communities.
7. Ensure the inclusion and participation of Indigenous Peoples regarding conservation efforts.
8. Invite the UN Special Rapporteur on the Rights of Indigenous Peoples to visit the country.
9. Create a National Action plan on implementing the rights of Indigenous Peoples based on the World Conference on Indigenous Peoples’ Outcome Document.
10. Implement the 2010 recommendations from UN Special Rapporteur on the Rights of Indigenous Peoples.
11. Conduct a comprehensive national campaign focused on educating both Indigenous Peoples and Bantus about their rights and obligations towards one another.
12. Include a widespread tolerance and anti-discrimination program into the national educational curriculum.