

23 March 2022

To: UN Special Rapporteur

From: Michael Painter  
Senior Technical Advisor, Rights and Communities  
on behalf of the Wildlife Conservation Society (WCS)

Cc: Sushil Raj, Executive Director, Rights and Communities, WCS

Subject: **Submission for the 77<sup>th</sup> General Assembly Report**

Thank you for the opportunity to provide inputs for the 77<sup>th</sup> General Assembly Report. We apologize that we missed the 22 March deadline. We hope our comments will be helpful, despite our tardiness.

In your questionnaire, you ask for information about protected areas that have been created on Indigenous Peoples' lands and recent examples of where Indigenous People are participating in the management of those areas. WCS is entering into a new management agreement under a Public Private Partnership, with the National Protected Area Agency (ICCN), in the Democratic Republic of Congo, to conserve the Kahuzi-Biega National Park (KBNP) and bring it up to international human rights and protected area management standards.

KBNP was created as a Zoological and Forest Reserve, in 1937, and, in 1970, it was gazetted as a national park of the recently independent Republic of Congo, which was renamed Zaire soon after. Designation as a national park meant that human habitation was prohibited and the resident Batwa lost access rights to their forests. Since then, the Batwa have suffered repeated taking of their rights and territories.

WCS intends that the new management arrangement will create conditions that allow for the accomplishment of two crucial objectives. First, it will establish a publicly transparent and accountable model for nature conservation which ensures the rights of Indigenous Peoples and local communities are respected and protected. Second, it will demonstrate that this human rights-based approach is the best pathway to secure the survival of the unique and endangered flora and fauna of the KBNP over the long-term.

We understand that this is no small undertaking. Achieving these objectives will not happen overnight given past injustices, ongoing racism, and the purposeful marginalization of Indigenous Peoples in the region. To be successful, we must take concrete and meaningful action together with Indigenous Peoples and local communities, in partnership with the Government of DR Congo and civil society, which will lead to a new inclusive and equitable vision of conservation, which is founded on respecting and protecting the rights of those subject to past and continuing injustices, centering them in platforms of discussion and decision making, with an emphasis on their own institutions.

We think our efforts are more likely to be successful in facilitating the development of a new conservation vision if we engage with the international rights community generally and OHCHR. We also feel that this experience will offer important lessons for addressing injustices that have arisen in association with protected areas created without recognizing the rights of the Indigenous Peoples and local communities living in and around them. To this end, we want to share information about this experience with OHCHR, in the hope that you will find it useful to follow our efforts.

### **Kahuzi-Biega National Park and its tarnished history**

On the 27th of July in 1937 the Belgian colonial administration created the Zoological and Forest Reserve of Kahuzi-Biega. At that time all forests within the Belgian Congo “belonged” to the state, but according to a Royal Decree of January 1908 the reserve had to be managed “*sous reserve de droits indigenes*”, and thus could not evict people inhabiting such lands. However, this only referred to lands that were considered occupied (i.e. cultivated). Lands of nomadic people like the Batwa were considered vacant and thus open to appropriation and displacement under the colonial extractive economy model.

In November 1970, the Belgian photographer and conservationist Adrien Deschryver lobbied the recently independent Republic of the Congo (soon to be renamed Zaire), for the Kahuzi-Biega Natural Reserve to be gazetted as a National Park (Ordonnance-loi no. 70/316) and for him to be appointed its first chief warden. The change in designation meant that human habitation was prohibited and the resident Batwa lost access rights to their forests. Since then, the Batwa have suffered repeated taking of their rights and territories. Some 15,000ha of forest were returned to the Batwa and Local Communities, but the Batwa were soon displaced again, by certain powerful actors and institutions who claimed and then sold the land. In 1975, the government increased the size of the park (from 600 to 6,000km<sup>2</sup>) by adding in huge areas of the lowlands.

### **Kahuzi-Biega National Park: the current situation**

Over the last 50 years, the Batwa population has grown as modern medicine thankfully reduced appallingly high child mortality. But over the same period their forest was shrinking as others appropriated it for their farms. Today, there are nearly 6,000 Batwa living around the Park, more than before the park was created, and many of whom are landless. All that remains of their forest in this area is a small and highly fragile ecosystem. Though the Park is woefully inadequate to meet the needs of the Batwa today, it can and must do its part.

By 2019, a number of processes aimed at resolving this conflict had faltered, and not just those within the Park. Promises to the Batwa have been repeatedly broken, resulting in increasingly violent clashes and in third-party allegations of a targeted, violent and abusive campaign by government authorities to evict returning Batwa from the Park.

This comes against the broader socio-political backdrop of an insecure border region, some of the highest human population densities in rural Africa and the proliferation of multiple armed militias vying for access to globally valuable natural resources and minerals. The legitimate claims of the Batwa to their remaining ancestral lands inside the Park have been frequently co-opted by many local actors looking to exploit the natural resources within the Park or to subvert funding directed at resolving the conflict.

### **The need for a new paradigm**

Fifty years ago, when the KBNP was created, the human rights of the Batwa were abrogated. Today, we have a chance to not only recognize this injustice but start taking action to redress it in practice.

Through a rights-based conservation approach with the Batwa, combined with protection against outside actors attempting to log, mine, and appropriate land for agriculture, we now have the chance to develop a model that promotes the rights and livelihoods of the Batwa and local communities, thus protecting the services that the forests provide. Evidence from across Eastern DRC was telling us that securing lasting benefits for legitimate rights-holding forest peoples from forests that are heavily sought after by criminal and corrupt forces requires dedicated protection capacity. In time, as general governance improves, that presence of that capacity should decline as communities become more secure. However, it is dangerous and naïve to expect that there are simple or short-term solutions focused on the Park in isolation of the broader ethnic, political socio-economic and governance contexts.

WCS's own role has changed and must continue to do so. In 1959, Dr. George Schaller with support from WCS began pioneering research on eastern lowland Gorillas (*Grauer's Gorilla - Gorilla beringei graueri*), the largest of the Gorilla taxa. Additional research was undertaken in 1981 and 1994, leading to the first full census by WCS of Grauer's Gorilla and eastern Chimpanzee (*Pan troglodytes schweinfurthii*) in KBNP. In 2002, WCS began to develop a broader program of protected area management support to the Park. This included non-lethal operational support, human rights and de-escalation training to rangers, development of tourism infrastructure, investments in local livelihood projects, building civil society capacity around the KBNP, and supporting local community land tenure and governance programs in the Park buffer zone.

In 2019, and in response to the escalating violence in KBNP, WCS re-evaluated its role in supporting park management. It was clear that a vision for KBNP as a model for effective rights-based conservation was untenable under the current management structure for the Park, that our support could no longer continue in its current form, and that fundamental change was needed to immediately break the current gridlock and set it on a new path.

This led us to start working with ICCN in 2020 to develop a new governance structure for KBNP to establish a new paradigm. This structure will delegate responsibility to WCS, and, by engaging respectfully with the Batwa and in partnership with ICCN, enable us, together, to

implement a human rights-based approach to management of the Park that halts further degradation and destruction of the forest by loggers, miners, and land-grabbers who have no legal or customary rights. In doing so, we will work closely with different Batwa groups to support their cultural practices, promote their customary institutions, and open doors for not only participation but co-management and decision making.

### **KBNP: what does a PPP mean in practice?**

WCS has agreed to enter into a partnership agreement for the management and funding of the KBNP under a Public Private Partnership (PPP) that will delegate management authority to WCS who will be held accountable by a Board, whose members are selected from WCS, ICCN, independent experts, local community stakeholders, and observers.

The new management agreement will immediately enable WCS to take meaningful steps and concrete actions to ensure that the rights of the Batwa are respected and protected. It will enable us to mobilize the necessary resources and expertise not just in the management of the Park but in direct investments in land tenure, education, health and economic development for the local communities that seek to address long-standing structural inequalities. Through active and respectful engagement of Batwa and other communities in the management of the Park, WCS endeavors to develop a new framework for the Park and to re-establish dialogue mechanisms that have previously faltered. Together with the Batwa, government, and other actors we can also halt further forest degradation and loss of biodiversity in their traditional lands at the hands of abusers, traffickers, and illicit groups. Through collective responsibility we seek to make Kahuzi-Biega environs a safer place for communities around the Park who have faced abuse from various groups.

We recognise that there are important and complex debates and questions around claims, access, land tenure, compensation, and redress mechanisms. WCS will set up transparent processes, including the development of a grievance redress mechanism with independent oversight, which is intended to deepen the dialogue, and invite new parties to mediate conflicts and tensions. We aim to improve the economy through sustainable tourism development and private sector partnerships. Through our human rights-based approach and deeper dialogue with the Batwa communities, we will co-design with rights holders from Indigenous and Local Communities an access and benefit sharing scheme that supports different stakeholders. Finally, WCS will provide oversight to ensure that the highest human rights standards, environmental, and social safeguards are adhered to. Additionally, we seek to address the historical dispossession of land and the exclusion of Batwa communities. This will take time and will not be an easy journey in a region plagued by a history of violence, corruption, armed conflict, and competing interests in natural resources. These are difficult but necessary steps in addressing the existential threats faced by both the Batwa and the Park.

Towards this end, WCS is actively developing a social safeguarding strategy in the Central African region, building on our global institutional safeguarding procedures and policies, and learning from our own evaluations and reflections on the region over recent years. We have

been forging new partnerships with non-traditional conservation partners and experts in conflict resolution, peace-building, human rights, community governance and prevention of gender-based violence (GBV) within eastern DRC. We have greatly benefited from incorporating these multidimensional strategies in our approach. They have been applied already in supporting various tenure opportunities for communities located west of KBNP.

WCS also supports the management of two other protected areas in DRC in addition to KBNP: the Okapi Wildlife Reserve and the Kabobo Wildlife Reserve (KWR). Most recently, WCS finalized a free, prior, informed consent (FPIC) process in KWR. There, WCS is helping support the development of a new formal governance mechanism with local community structures integrated into protected area decision making. In the Okapi Wildlife Reserve, WCS supported the creation of 27 hunting zones and even more agricultural zones to support local management, as the Reserve recognizes and supports resource access and use by local communities and the Indigenous Mbuti and Efe as legitimate custodians of those forests.

### **Our commitment to the KBNP alone will not be enough to redress deeper social injustices**

The joint efforts of ICCN and WCS to implement the PPP vision within KBNP will only go so far. To truly redress past abuses and reverse continuing marginalization, others must do more than advocate for change. They must take a leadership role in launching meaningful actions on the ground to support the Government of DR Congo to effectively implement the pending new Law for the Protection and Promotion of Indigenous Peoples Rights and recognition of Indigenous customary land rights. Human-rights and Development NGOs, by securing funding and working on the ground with Batwa, local communities and local authorities, can help to substantially improve Batwa food sovereignty and income security. They can improve access to social services, resilience to climate, health and economic shocks, and, most importantly, the Batwa's right to self-determination through their own customs and institutions. Only then will the Batwa be able to attain their vision for current and future generations.

WCS is committed to conserving nature in the KBNP and respecting and protecting the rights of Batwa Indigenous Peoples. We challenge others to join us to redress past and ongoing abuses of Batwa rights. The time is over for advocacy alone; what we need are creative solutions and action.

Thank you for your attention.