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Detainees Freed in Landmark Case on Conservation and Indigenous Land Rights in Democratic Republic of the Congo

In a landmark case that pitted a Western-funded nature reserve against the rights of the indigenous people who were expelled to make way for the park, a military garrison court in Bukavu, DRC, on Friday 30 July ruled in favor of the eight indigenous Batwa people, overturning their lengthy sentences and sizeable fines.

According to the defendants' attorney, Adele Bisharhwa, the defendants are all members of the indigenous Batwa community who had been evicted from their lands in 1975 when the boundaries of Kahuzi Biega National Park were extended. "Since then, these indigenous peoples have been going through a situation of unspeakable and indescribable misery due to having been extracted from their natural environment, and have never been able to adapt to life outside the Park. They are completely destitute, without means of production and have no land they can cultivate for their survival. Their return to the Park in 2018 was justified by a quest for subsistence. Their efforts were not intended to undermine the security of property and people or to exploit the Park, but rather to find solutions for their survival," concluded Bisharhwa.

The indigenous Batwa were expelled in 1975 when Kahuzi-Biega National Park in the eastern Democratic Republic of the Congo was expanded to protect lowland gorillas, elephants and other tropical forest species. Formerly hunter-gatherers known as Pygmies, and the earliest known human inhabitants of the region, the Batwa people had protected these wildlife and habitats for millennia. But no environmental or social impact studies were done prior to creating the new "protected area", nor was there any consultation with local communities in the process.ⁱ Since 1975, the lands have experienced multiple armed conflicts, and have been

designated as a UNESCO World Heritage Site.ⁱⁱ The Batwa have lived in abject poverty for the past 45 years, without access to any replacement lands or economic compensation.

“My father told me about all the camps they lived in before they were expelled from the park,” says Julien Basimika Enamiruwa, a Batwa man who now works to promote the rights and development of the Batwa people. “He often regretted not being able to go into the hills that belonged to them but are now in the Kahuzi-Biega National Park. These were the sacred sites of the Bakanga clan, where my father, his father, grandfather and great-grandfather worshiped.” Basimika was 10 years old at the time of the expulsion.

After a multi-year negotiation process between the Batwa and the *Congolese Institute for the Conservation of Nature* (ICCN) failed to result in any beneficial outcomes, in 2018 some of the Batwa families decided to move back onto their former lands, now inside the park boundary. In late January 2020, eight members of Chief Jean-Marie Kasula’s extended family were arrested and later charged with criminal association, possession of a weapon of war, and malicious destruction of nature. After a one-day show trial before a military garrison court, with no ability to put up a defense, all eight were convicted.^{iii,iv} Six men were sentenced to 15 years each, and two women to one year each, along with a penalty of \$5000 for each of the eight.

The convictions were immediately appealed by attorneys for the *Network of Congolese Foresters* (RCF-RDC), which has a long history of defending indigenous rights and promoting indigenous community forestry. The lawsuit garnered national and international support, with over 100 organizations across DRC and around the world helping to promote and fund the effort.^v The appeal was originally scheduled to be heard in May of 2020, but repeated delays on the part of the Court and the Prosecutors postponed the hearings until April of 2021. Meanwhile, overcrowding, unsanitary conditions and lack of food in the prison led several of the convicted men to become seriously ill. Four were released pending the appeal (two women and two men, including Chief Kasula himself), but Kasula was re-arrested after going back into the Park. Chekanabo Kayeye, the other man who was released, died in late April of illness he contracted while in the prison.

In an unpublished interview conducted in December 2020, Chief Kasula explained why he returned to the Park lands: “I am thinking of my community; I also long for the Kahuzi-Biega National Park – I cry for the lands. The government must agree to review the boundaries, and let the indigenous people live, too.”

The legal appeal was based on the following grounds:

- that the defendants were not a “criminal association” formed to loot the national park, but were rather a family returning to their traditional lands
- that the “weapon of war” (an AK47 of the type used by the ecoguards and the army) had been found on the ground by Kasula’s family, who did not know how to use it and who were planning a trip to turn it over to the authorities the next day
- that the defendants were not engaging in malicious destruction of nature, but had returned to the park to engage in subsistence practices as a last resort to stay alive, in the absence of any other options; the park being considered their “nourishing mother”
- that the process of the original hearing and convictions violated most procedural rules designed to ensure fair and impartial trials

Friday’s decision by the military garrison court in Bukavu tossed out the “criminal association” charge, reduced the sentences from 15 years to 15 months (already served), and reduced the fines from \$5000 to \$500. The prisoners are to be freed on Monday.

This case is significant in the context of a growing global movement to end the so-called “coercive conservation” based on the expulsion of indigenous peoples and local communities.^{vi} Recent studies have shown that upholding the right of indigenous peoples to remain on their biodiverse lands not only protects human rights, but is also more effective at preventing poaching and deforestation.^{vii}

Conservation funded by Western donors brings in tourism and uses armed patrols to intercept poachers and other illegal resource extraction.^{viii} However, it is not cost-effective, and can lead to illegal deforestation and other corrupt practices where resource-rich lands have been cleared of their original communities. In fact, parts of Kahuzi Biega National Park itself have been

plagued by unregulated mining development by other encroaching communities, despite the fact that park managers viciously expel, imprison or even kill the Indigenous Batwa people who attempt to return home.^{ix}

According to Dr. Deborah Rogers, ecologist and President of *Initiative for Equality*, one of the international organizations supporting the appeal, “The reason these lands were considered so valuable in terms of tropical forest and biodiversity was because the indigenous people who lived there for thousands of years had ensured their protection.”

“Brutally expelling this community, while providing no compensation or alternative means of subsistence, is not only an egregious violation of their human rights. It’s also a significant step in the wrong direction for conservation, eliminating the protection that the Indigenous Peoples provided for the rare flora and fauna valued by the visitors, scientists, donors and UNESCO,” Rogers continued.

In an interview following the announcement of the court’s decision, Elikia Amani, Director of Réseau Congolais des Forestiers, the Bukavu-based organization that filed the legal appeal, stated that although the detainees are being released, “the struggle still continues; we will accompany them to achieve the recovery of part or all of their ancestral lands.”^x

ⁱ Barume, Albert Kwokwo. 2003. En Voie de Disparition ? Les droits des autochtones en Afrique : le cas des Twa du Parc national de Kahuzi-Biega, en République Démocratique du Congo. Forest Peoples Programme, UK. 140 pp.

ⁱⁱ <https://whc.unesco.org/en/list/137/>

ⁱⁱⁱ <https://taz.de/Naturschutz-contre-Menschenrechte/!5666561/>

^{iv} <https://www.initiativeforequality.org/indigenous-batwa-sentenced-prison-reoccupying-traditional-lands/>

^v <https://www.initiativeforequality.org/declaration-solidarity-indigenous-batwa-defendants/>

^{vi} <https://www.mdpi.com/2073-445X/9/3/65>

^{vii} <https://initiativeforequality.org/wp-content/uploads/Evidence-on-Indigenous-Protection-of-Lands-Jan-2021.pdf>

^{viii} <https://www.initiativeforequality.org/protected-areas-drc-broken-system-les-aires-protegees-en-rdc-un-systeme-casse/>

^{ix} <https://initiativeforequality.org/wp-content/uploads/Conflit-entre-Tembo-et-Hutu-dans-le-territoire-de-Kalehe-avril-2021-FR.pdf>, p 6-7

^x <https://www.youtube.com/watch?v=g4VAZSRxo9M>