

## **Indigenous Peoples Rights in DRC seen from the UN**

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## I. UN Charter-based mechanisms

### A. The Universal periodic review

#### *1. Overview*

The Universal Periodic Review (UPR) is a review of the human rights records of all UN member States. The originality of the UPR is that this review is led by the member States (under the supervision of the Human Rights Council). This way, States can decide to address specific issues and ask the State under review to justify and explain the situation in its own territory. States can also make some recommendations after sharing their concerns. The State under review can underline some achievements it did between two cycles of review.

DRC has been a member of the UN Human Rights Council since January 2018. As of today, the Democratic Republic of the Congo has been reviewed three times in 2009, 2014 and in 2019.

The UPR does not reveal much information concerning the situation of the Pygmy populations in DRC, and almost nothing related to the national park of Kahuzi-Biega, except an allusion to it in a report submitted by Minority Rights Group International in the course of the third review cycle.

That being said, it is interesting to stress that the DRC did not even mention indigenous pygmy peoples in its reports for the First (2009) and second (2014) cycles, as if the situation of indigenous peoples was not an issue in the country.

But the information stemming from the UN-bodies and the submissions of the stakeholders, and especially of NGOs, have revealed that it is actually a highly sensitive issue.

These concerns expressed by UN-treaty bodies and NGOs have in turn led various countries to urge DRC to further protect the rights of indigenous communities, and especially the Pygmies. The major themes that seem to be of concern for UN member States and UN-committees are: the right to free, prior and informed consent (land issues) ; the discriminations against Pygmy communities ; the protection of their rights at the domestic level (through legislative measures). This, in turn, has forced DRC to explain in its third report how it took into account the recommendations issued in relation with indigenous people.

Nevertheless, the recommendations issued at the end of the third cycle still regret that the adoption of the bill on the protection and promotion of the rights of indigenous peoples has been delayed.

#### *2. Analytical guide*

*Legal sources and reports.* This report is based on documents issued in the course of the three different cycles of the UPR (2009, 2014 and 2019), which include national reports / compilation

of UN information / summary of stakeholders' information / questions submitted in advance by UN member states / outcomes of the reviews (report of the working group, decision of the outcome). As for the Third Cycle of the UPR only, other documents were issued: a letter by the High Commissioner to the Foreign Minister, a matrix of recommendations and an infographic. All these documents are available at : <https://www.ohchr.org/EN/HRBodies/UPR/Pages/CDIndex.aspx>

## 1. First cycle of the UPR – 2009

During the first cycle of the UPR (2009), the national report of the DRC did not mention indigenous issues at all. This appears to be in line with the information from the UN, since the CERD had regretted the reluctance of DRC to recognize indigenous communities. Indeed, in its DRC-country report issued in 2007, the Committee for the Elimination of Racial Discrimination expressed its concerns towards the situation of Pygmies communities in DRC, especially concerning their right to own, exploit, control and use their lands and resources. CERD was also concerned about the absence of free, prior and informed consent before granting concessions to companies<sup>1</sup>. One of the submissions made by stakeholders in the course of this first cycle also stressed the difficulties that Pygmy communities had to face due in particular to abusive forestry and to their social marginalization when they try to settle<sup>2</sup>.

In the outcome of the review of the First Cycle of the UPR, the UN Working Group observed that the DRC had made efforts to regulate the rational management of natural resources by adopting a policy of transparency and by renegotiating mining contracts. It further noted at that time that "a similar process was underway with the conversion of titles to forest land in consultation with the indigenous and local communities"<sup>3</sup>. The Working group remained silent on other issues related to indigenous communities.

## 2. Second cycle of the UPR - 2014

During the Second Cycle of the UPR, DRC still did not engage into indigenous issues in its national report.

But, since the First Periodic Review of DRC, the concerns expressed by the CERD had been further substantiated by other UN treaty-bodies.

Indeed, the Committee on Economic, Social and Cultural Rights had expressed its deep concerns regarding the subjection of members of the Pygmy community to mass rapes, extermination and persecution in war zones. Thus, it had urged DRC to ensure that racial

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<sup>1</sup> DRC First Periodic Review, Compilation of UN Information, A/HRC/WG.6/6/COD/2, 18 September 2009, at. 50-51.

<sup>2</sup> DRC First Periodic Review, Summary of Stakeholders Information, A/HRC/WG.6/6/COD/3, 9 September 2009, at. 58.

<sup>3</sup> DRC First Periodic Review, Report of the Working Group, A/HRC/13/8, 4 January 2010, at. 28.

discrimination is criminalized as a specific offence. Furthermore, the Committee also called for the adoption of a legislation and measures to recognize the status of Pygmies and other indigenous peoples, in order to protect their ancestral lands as well as their own cultural identity<sup>4</sup>.

These critics had also been followed by remarks by the CEDAW:

"Deeply concerned at the negative effect of the systematic and abusive exploitation of forest resources on the way of life of numerous indigenous peoples, CESCR recommended that the Government adopt legislation and measures to recognize the status of Pygmies and other indigenous peoples, in order to protect their ancestral lands as well as their own cultural identity. Expressing deep concern that, in war zones, Pygmies were subjected to mass rapes, extermination and persecution, CESCR urged the Government to ensure that racial discrimination is criminalized as a specific offence. CEDAW recommended that the Government ensure that Pygmy women had access, without discrimination, to basic services and to land"<sup>5</sup>.

During the period under review, the ILO Committee of Experts had also urged the Government to ensure an equality of treatment of Bambuti, Batwa and Bacwa in employment and the enjoyment of their rights to engage in their traditional occupations and livelihoods without discrimination<sup>6</sup>.

Furthermore, two submissions were made by various NGOs in defense of the rights of indigenous peoples in DRC. They observed that indigenous forest peoples' rights were still breached and that many Pygmy peoples had been forced out of the forests to settle in internally displaced people camp (they then experienced discrimination and denial of basic services) ; some indigenous peoples had been forced to leave their traditionally owned forests (because of logging companies), this resulted in the loss of their traditional way of life. For all these reasons, NGOs recommended that land and forest reforms and international initiatives to which the government had committed itself should devote particular attention to indigenous pygmy peoples and ensure their right to land and natural resources (access and control)<sup>7</sup>.

This could allegedly have contributed to raise the awareness of the other States on these issues. Indeed, some member States of the Human Rights Council insisted on the indigenous issues in their remarks to the DRC:

- the Central African Republic asked the DRC to implement a law that would protect and promote indigenous peoples' rights and based on the UNDRIP of 2007;
- Benin, Guatemala and Mexico asked the DRC to "pay particular attention to indigenous Pygmy peoples, in order to guarantee their access to land and natural resources", to

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<sup>4</sup> DRC Second Periodic Report, Compilation of UN information, A/HRC/WG.6/19/COD/2, 14 February 2014, at. 92-93.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, at. 72.

<sup>7</sup> DRC Second Periodic Review, Summary of Stakeholders Information, A/HRC/WG.6/19/COD/3, 6 February 2014.

recognize them at a national level and to "ensure land rights of indigenous communities within protected natural parks".

Those different recommendations were supported by the DRC that, during the Second Cycle of the UPR, considered that they were either implemented or in the process of implementation<sup>8</sup>.

### 3. Third cycle of the UPR - 2019

The issuance of specific recommendations regarding indigenous peoples during the second cycle of the UPR led DRC to tackle this issue in its third cycle national report. It mentioned that some legislative measures for the promotion and protection of human rights were under discussion before the Parliament, among which measures for the protection of the rights of indigenous peoples. In this document, the DRC recalled that, after taking part in the second cycle of the UPR (2014), it had accepted some of the recommendations made by the other UN members and had implemented some measures in order to fulfil the different expectations of the UN:

- DRC explained that a bill for the protection and promotion of the rights of indigenous Pygmy peoples had been before the National Assembly since 2015. This bill was an initiative of the group of national deputies and senators, with support from the Indigenous Peoples' Groups Force.
- It stressed that on the 9<sup>th</sup> of February 2016 an order had been adopted in order to enable communities to have usage rights of their forests in perpetuity and to set out their means of forest management (the order contained specific provisions on management and operation of local community forests). According to the DRC, this order enabled delineation of forest concessions approved by the local and provincial forestry administrations, mapping of concessions, forest inventories of the tracts in question, zoning and identification of the characteristic species of each forestry concession.
- since 2015, the Government has launched a community forestry procedure to protect the forests of indigenous peoples (decree No. 13/016 of 31 May 2013 on the establishment, organization and functioning of the National Commission on Land Reform).
- indigenous and local communities are consulted either through the establishment of platforms for dialogue between indigenous groups, the Government and international NGOs working to defend the rights of indigenous peoples or through the appointment of indigenous Pygmies in the working groups and inter-ministerial commissions dealing with forest reform<sup>9</sup>.

Despite these developments, various UN-treaty bodies had urged DRC to respect indigenous rights:

- the Committee on the Rights of the Child was "concerned that extractive industries continued to cause the destruction of lands, ecosystems and the livelihoods of families,

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<sup>8</sup> DRC Second Periodic Review, Report of the Working Group, A/HRC/27/5, 7 July 2014, at. 134.

<sup>9</sup> DRC Third Periodic Review, DRC country report, A/HRC/WG.6/33/COD/1, 27 February 2019, at. 111-116.

in particular indigenous families with children, forcing them into situations of internal displacement. It recommended that the State establish a clear regulatory framework for the extractive industries to ensure that they complied with international and national human rights, labour, environment and other standards, particularly with regard to children's rights."

- the Human Rights Committee made several recommendations among which : that DRC change its position regarding the status of indigenous peoples in the State and adopt legislation to protect their rights ; set up prior consultations with pygmy communities in order to obtain their free, prior and informed consent before the adoption or implementation of any measure that might have a substantial impact on their way of life, access to their traditional lands or their culture ; take legislative and practical measures to combat discrimination against pygmy communities<sup>10</sup>.

In the summary of the stakeholders' submissions, the office of the Human Rights Commissioner, stated that:

- the National Human Rights Commission observed that, despite some measures had been implemented, there had still been no significant improvement in the situation of indigenous Pygmy peoples in terms of legal recognition, or of effective participation in the conduct of public affairs, access to justice at the local level, or access to land and land reform, and the administration of natural resources or in terms of children's very low rates of access to education, health and information<sup>11</sup>.
- "Minority Rights Group International (MRG) noted that, as a direct effect of the expropriation of their land and their continued inability to access the land following their eviction, the Batwa are presently denied meaningful access to, use of, and participation in decisions concerning their ancestral land, preventing them from pursuing their traditional way of life, cultural and religious practices, and livelihood. The organization stated that the Batwa have been displaced and forced to resettle among non-Batwa communities that routinely discriminate against them due to their ethnicity, and have been denied access to the natural resources located on their ancestral lands without consultation or compensation. They have also been denied access to the most basic of social services, including education and healthcare, suffering a high rate of malnutrition, disease, and mortality as a result."<sup>12</sup>
- Cultural Survival recommended that the government ratify and implement the ILO Convention 169 and invite the UN Special Rapporteur on the Rights of Indigenous Peoples to visit the DRC. Also recommended that the Government evaluate its conservation policies to ensure respect of indigenous rights, to provide reparations to indigenous peoples who have experienced human rights violations, and to investigate and hold fair trials when indigenous communities are attacked by armed groups<sup>13</sup>.

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<sup>10</sup> DRC Third Periodic Review, Compilation of UN information, A/HRC/WG.6/33/COD/2, 4 March 2019, at. 13, 53.

<sup>11</sup> DRC Third Periodic Review, Summary of Stakeholders Information, A/HRC/WG.6/33/COD/3, 19 February 2019, at. 6.

<sup>12</sup> *Id.*, at. 59.

<sup>13</sup> *Id.*, at. 10.

As a result, several member States (Mexico, Bolivia, Madagascar, Norway and Sierra Leone) asked DRC to enact the bill for the protection of the rights of indigenous peoples in order to combat discrimination against the Pygmy populations and respect their consent before taking measures that may have consequences on their way of life<sup>14</sup>.

## B. The Special procedures

The Human Rights Council regularly set up Special Procedures in order to deal with specific issues. These procedures can either be country-specific or issue-specific. Mandate holders are special rapporteurs, independent experts or working groups appointed by the Council to serve on their individual capacity.

Due to the overall situation of human rights in DRC, the Commission and the Council have regularly appointed special rapporteurs on the situation of human rights in the country. But their reports have essentially focused on the breaches of human rights due to the various conflicts that divided DRC through the years. They have paid little attention to the situation of indigenous peoples.

The Commission and the Council have also created special procedures dedicated to indigenous peoples. First, a special rapporteur on the rights of indigenous peoples have been appointed. Although he has never visited DRC, some of his country-specific reports (such as the one dedicated to the Republic of Congo) and one of his thematic-reports shed light on the sensitive issue of the articulation of indigenous rights with conservation projects. Second, the Expert mechanism on the rights of indigenous peoples regretted in 2020 in a study study on Indigenous peoples' rights in the context of borders, migration and displacement that brutally evicted indigenous peoples are yet to receive justice, quoting especially the KBNP situation.

### *1. Special procedures related to DRC*

The Commission on human rights and the Council of Human rights set up special procedures on the situation of human rights in the Democratic Republic of Congo. The special rapporteurs focused on the many breaches of human rights related to the violent conflicts in DRC. It appears that none of them tackled directly the situation of the indigenous communities<sup>15</sup>.

For instance, the report prepared in 2007 by Titinga Frédéric Pacéré is essentially dedicated to the human rights situation in the Eastern part of the country and Northern Katanga. None of its observations or recommendations deal directly with the KBNP or the situation of Indigenous People (or more particularly the Batwa Population). The report is mainly dedicated to the

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<sup>14</sup> DRC Second Periodic Review, Report of the Working Group, A/HRC/42/5, 5 July 2019.

<sup>15</sup> See Special Rapporteur on the situation of human rights, report on the Democratic Republic of the Congo, Roberto Garreton, E/CN.4/2001/40, 1 February 2001; Special Rapporteur on the situation of human rights, report on the Democratic Republic of the Congo, Iulia Motoc, A/57/437, 26 september 2002;

political situation of the DRC, insisting for instance on extrajudicial executions, enforced disappearances, torture, arbitrary arrests, sexual violence and the situation of children. One of its recommendations could potentially be applied to the situation of indigenous population, although such link is not directly made by the Expert: This recommendation is to combat the trafficking and illegal exploitation of natural resources<sup>16</sup>.

## *2. Special procedure on the rights of indigenous people*

In the course of his mandate, the special rapporteur on the rights of indigenous people issues various reports, including annual reports on his action towards the promotion of IP rights, thematic reports on specific issues (such as climate change or access to justice) or country-reports based on country-visits.

Although he went to the Republic of Congo twice (in 2010 and 2019), the special rapporteur never visited the Democratic Republic of Congo for now. Thus, there exists no country-report on the situation of IP rights in DRC. Other country reports may shed light on the situation under review. For instance, the recent report on the situation in the Republic of Congo regretted that “Indigenous peoples’ traditional lands are used for hunting, gathering or religious practices and may be wrongly perceived by non-indigenous populations as being “unoccupied” and consequently subject to designation as forest reserves, national parks or conservation areas or for commercial exploitation”<sup>17</sup>. Furthermore, the same report highlighted the breaches of IP rights related to conservation project, in the form of alleged acts of violence by eco-guards or of the broader pressure that conservation initiative put on indigenous communities:

“97. Conservation initiatives put a disproportionate burden on indigenous peoples. A wider range of issues should be addressed to prevent the rapidly declining numbers of wildlife species, including the fragmentation of natural areas caused by the carving out of logging routes in the forest and the corruption and poor governance that enables criminal poaching activities. Furthermore, seeking to modify indigenous peoples’ traditional way of life, without due regard for their views, fails to recognize that indigenous peoples have a deep understanding of wildlife behavioural patterns and life cycles that enables them not only to hunt in a sustainable manner but also to support the thriving of wild animals and other biological and vegetal diversity.

98. Any measures for the conservation of wildlife and the natural environment must, like any economic or development project, be developed and implemented in consultation with the indigenous peoples affected. They must be designed so as not to deprive indigenous peoples of their means of subsistence within the forest and not to interfere with the free exercise of their traditional cultural and spiritual practices”<sup>18</sup>.

Eventually, the special rapporteur recommended that

“Conservationists and international donors concerned with the environment and the preservation of biodiversity should promote and fund indigenous-led conservation initiatives while focusing

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<sup>16</sup> Report of the Independent Expert in charge of examining the situation of human rights in the DRC, Titinga Frédéric Pacéré, A/HRC/4/7, 21 February 2007.

<sup>17</sup> Report of the special rapporteur on the rights of indigenous peoples, visit to Congo, A/HRC/45/34/Add.1, 10 July 2020, at 77.

<sup>18</sup> *Id.*, at. 97-98.



restrictive measures on threats to ecosystems coming from non-indigenous sources, including criminal poaching networks, corruption and unsustainable forest exploitation”<sup>19</sup>;

Although they deal with the situation in the Republic of Congo, these statements are also of interest for the DRC since they reveal the position of the special rapporteur regarding conservation projects.

The special rapporteur also expressed its concerns regarding conservation or environmental projects in thematic reports. This was especially the case in a 2016 report on conservation measures and their impact on IP rights. Quoting a study by the Rainforest Foundation, the special rapporteur regretted that

“indigenous communities have virtually no tenure security over their traditional lands in any of the five countries [of the Congo basin, including DRC]. The creation of at least 26 of the protected areas resulted in partial or complete relocation or displacement of local indigenous and farming communities present in the area prior to park establishment. In no case was any reparation for the displacements reported. Furthermore, of the 34 protected areas studied, 25 bordered with logging concessions, 19 overlapped with mining concessions and 9 overlapped with oil concessions”<sup>20</sup>.

This report ended up recommending States, among various recommendations, to

“76. Establish accountability and reparation mechanisms for infringements on indigenous rights in the context of conservation and provide redress for historical and contemporary wrongs”<sup>21</sup>.

### *3. Expert mechanism on the rights of indigenous people*

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) is composed of seven experts. It was established by the Human Rights Council, the UN’s main human rights body, in 2007 under resolution 6/36 as a subsidiary body of the Council. It provides the Human Rights Council with expertise and advice on the rights of indigenous peoples and assists Member States in achieving the goals of the United Nations Declaration on the Rights of Indigenous Peoples. In this context, it issues various reports on thematic issues.

In 2020 the expert mechanism issued a study on Indigenous peoples’ rights in the context of borders, migration and displacement. This study recalled that Indigenous peoples, including those with legally registered traditional lands, are often displaced because of policies designed to promote conservation and the creation of national parks, taking as an illustration the “Batwa of Kahuzi-Biega in South Kivu [that] were brutally evicted without compensation in the 1970s, after which it became a United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Site”.

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<sup>19</sup> *Id.*, at. 107.

<sup>20</sup> Report of the special rapporteur of the human rights council on the rights of indigenous peoples, A/71/229, 29 July 2016, at. 54.

<sup>21</sup> *Id.*

The study regretted that “they have yet to receive justice”<sup>22</sup>. The study also stressed that in some instances, forcefully evicted indigenous communities had the possibility to claim for their rights (in Botswana in 2006) and that, in other cases, the World Bank withdrew its funding due to the breach of IP rights.

It ended up with a list of advices addressed to the States, including that

“8. States should ensure that the rights of indigenous peoples are respected when carrying out commercial, development, climate change mitigation and conservation projects, including their right to consultation and free, prior and informed consent, and should adopt the recommendations as advised in the study on that theme (A/HRC/39/62), and the provision of restitution and compensation as contained in the Declaration. They should involve indigenous peoples in their strategies on climate change in order to take advantage of their traditional knowledge, valuable for ecosystem conservation”<sup>23</sup>.

## II. UN Treaty mechanisms

### A. Overview

The UN Human Rights-Treaty Bodies have regularly pointed out breaches of indigenous peoples rights in DRC, and especially of the Pygmies (Bambuti, Batwa, Bacwa). The first concluding observations issued by the HRC and the CESCR only mentioned the issue, since DRC reports were almost silent on it, considering that “there were no problems in Zaïre relating to religious, linguistic or ethnic minorities”.

From 2007, the issue has appeared as such in the concluding observations, that have stressed:

1. the breaches of the rights of the Pygmies to their land, due either to forestry or to extractive industries.
2. a broad context of discrimination regarding especially access to education, health or labour conditions, but also the impunity of those who persecute Pygmies.
3. The absence of an adequate legal framework, and especially the delay in enacting a bill that would offer a status to indigenous communities in DRC and the loopholes of the forestry code, that subsumes the Pygmies under the general heading of “local communities”.
4. Forced displacement of population.

That being said, it seems that no Human Rights-Treaty Body has ever pointed out the specific issue of the rights of the indigenous people in relation with the Kahuzi-Biega Park or more broadly with the setting up of conservation areas.

### B. Analytical Guide

#### *1. The Committee on the Elimination of racial discrimination (CERD)*

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<sup>22</sup> Study of the Expert Mechanism on the Rights of Indigenous Peoples, *Indigenous peoples' rights in the context of borders, migration and displacement*, A/HRC/EMRIP/2019/2/Rev.1, 18 September 2019, at. 30.

<sup>23</sup> *Ibid.*, annex.

It seems that the Committee on the Elimination of racial discrimination has been the first to deal directly with the situation of indigenous peoples, and especially of the Pygmy community in DRC, in its 2007 periodic report, although it did not address their displacement in relation with conservation projects as such.

Besides regretting the overall marginalization of the Pygmies (at. 333) and the persistent tensions between ethnic communities that characterized DRC (at. 336), the Committee noted with concern that the rights of Pygmies towards their lands were not guaranteed.

“332. The Committee notes with concern that the rights of the Pygmies (Bambuti, Batwa and Bacwa) to own, exploit, control and use their lands, their resources and their communal territories are not guaranteed and that concessions are granted on the lands and territories of indigenous peoples without prior consultation.

The Committee recommends that the State party take urgent and adequate measures to protect the rights of the Pygmies to land and: (a) make provision for the forest rights of indigenous peoples in domestic legislation; (b) register the ancestral lands of the Pygmies in the land registry; (c) proclaim a new moratorium on forest lands; (d) take the interests of the Pygmies and environmental conservation needs into account in matters of land use; (e) provide domestic remedies in the event that the rights of indigenous peoples are violated; and (f) ensure that article 4 of Ordinance-law No. 66-342 of 7 June 1966, on the prohibition of racism and tribalism, is not used to ban associations engaged in defending the rights of indigenous peoples. In addition, the Committee invites the State party to take account of its general recommendation No. 23 on indigenous peoples (art. 5)”<sup>24</sup>.

## *2. The Committee on Economic, social and cultural rights (CESCR)*

The Committee on Economic, social and cultural rights has only been able to review the situation in DRC twice.

Its first concluding observations, issued in 1988 while DRC was still named Zaïre, the committee only mentioned the issue of minorities, some of its members asking questions about the cultural position of ethnic groups existing in Zaïre. The government’s representative only answered that in his country,

“where many languages and dialects were spoken, the decision to opt for four official languages had been taken by consensus and had not been an attempt to give the other languages in the country minority status”<sup>25</sup>.

It was not until 2009 that the Committee issued its second report on the situation in DRC. Indeed, due to the situation then prevailing in DRC, the State failed to submit its periodic reports to the committee in 1992, 1997 and 2002.

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<sup>24</sup> [CERD, Concluding Observations, Democratic Republic of Congo, CERD/C/COD/CO/15, 17 August 2007, at. 315-342.](#)

<sup>25</sup> CESCR, [Concluding observations on the initial report submitted by Zaïre, E/C.12/1988/4, 1988, at. 270-330.](#)

In its 2009 report<sup>26</sup>, the CESCR regretted broad land-related disputes (paragraph 15) and, more specifically, reiterated the statement initially made by the Committee on the Elimination of racial discrimination related to the impact of forestry on the indigenous communities, especially the Pygmies (paragraph 14). It added two observations. The first one was about the societal marginalization of the Pygmies in particular with regard to their access to identity documents, education, health and employment and the treatment they are submitted to in war zones (mass rapes, extermination, persecution) in total impunity (paragraph 17). The second one further specified the way in which the breach of their land rights, especially due to forestry, eventually affect their own cultural identity (paragraph 36).

“14. The Committee is concerned that despite the adoption of the Forestry Code and a moratorium on concessions, illicit trade of wood and abusive exploitation of the country’s forests continue to adversely affect the ecology and biodiversity and undermine the rights of indigenous populations, especially pygmies, to live in their ancestral lands and manage their forests according to their traditional practices. The Committee also expresses concern that representatives of indigenous communities were not invited to take part in the second session of the inter-ministerial commission in charge of reviewing illicit logging contracts, although the session was devoted to the signature of contracts between local authorities and logging companies. (article 1.2)

The Committee urges the State party to enforce the moratorium on concessions until the mapping and zoning exercise is completed and to ensure that future forest concessions do not deprive the indigenous peoples of the full enjoyment of their rights to their ancestral lands and natural resources, and that the benefits thereof contribute to their poverty alleviation. The State party should ensure that forestry projects are centred on advancing the rights of forest-dependent peoples and conducted only after comprehensive studies are carried out, with the participation of the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned activities. The Committee encourages the State party to consider ratifying ILO Convention No. 169 (1989) on Indigenous and Tribal Peoples in Independent Countries”. (...)

“36. The Committee is deeply concerned that the systematic and abusive exploitation of forest resources in the State party has negatively affected the lands and the way of life of numerous indigenous peoples, especially the pygmies living in the Province of Equateur, impeding the enjoyment of their rights as well as their material and spiritual relationship with nature and, ultimately, their own cultural identity.

The Committee recommends that the State party adopt legislation and measures to recognize the status of pygmies and other indigenous peoples living in the State party, in order to protect their ancestral lands as well as their own cultural identity”.

DRC only submitted its sixth periodic report in 2019, although it was due in 2013. It tried to address some of the concerns raised by the CESCR in 2009. DRC stressed that indigenous peoples have benefitted from a support from both members of parliament and NGOs, that are authorized to work in DRC in order to raise the awareness of IPs on their rights; it emphasized that the forestry procedure had been improved in order to limit its impact on IPs’ land and to

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<sup>26</sup> [CESCR, Concluding observations on the second to fourth reports submitted by the Democratic Republic of Congo, E/C.12/COD/CO/4, 16 December 2009.](#)

permit them to claim for their rights; that a bill has been before the National assembly for some years; that discussions were ongoing regarding the ratification of the 169 ILO convention<sup>27</sup>.

### *3. The Human right committee (HRC)*

The Human Rights Committee has followed the same path as its Economic, Social and Cultural Rights counterpart. Its attention seems to have focused on other issues at first. But, in the course of the 2000s', it insisted on the situation of the Pygmy community, although tackling it only in broad terms.

In its first concluding observations on what was then called Zaïre, issued in 1987, the HRC only mentioned ethnic group and minorities, asking for further information on this issue in relation with article 27 of the Covenant, "even if (...) there were no problems in Zaïre relating to religious, linguistic or ethnic minorities". The State's representative replied quickly that

"there was no question of the Government of Zaïre interfering in the normal way of life of those tribes or imposing any particular language on them. They were free to use their own dialects except that only four local languages and French were used in the schools. Entry into the public service based entirely upon educational and professional qualifications. It was therefore difficult to speak of the existence of ethnic minorities in Zaïre and those who did so were often acting for political reasons"<sup>28</sup>.

In its second concluding observations, the Committee started expressing its concerns in relation with "the marginalization, discrimination and at times persecution of some of the country's minorities, including pygmies"<sup>29</sup> and urged DRC to provide information on measures taken to promote the integration of these minorities.

Eventually, in its third concluding observations on DRC report, issued in 2017, the committee further detailed its concerns, stressing the overall situation of insecurity and vulnerability of Pygmy communities, the discrimination Pigmies were reported to suffer, and their lack of protection. More specifically, it regretted:

"the State party's position that indigenous peoples are subsumed under the category of "local communities" in legislation, particularly in the Forestry Code. It is also concerned at the delay in adopting the law on the rights of indigenous peoples. The Committee deplores the serious human rights violations and forced displacement suffered by Pygmy communities in the Province of Tanganyika and the absence of decisive action to restore peace and ensure that the perpetrators of abuses are duly punished (arts. 2, 6, 7, 12, 26 and 27)"<sup>30</sup>.

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<sup>27</sup> Sixth periodic report submitted by the Democratic Republic of the Congo under articles 16 and 17 of the Covenant, due in 2013, submitted the 13th August 2019, E/C.12/COD/6.

<sup>28</sup> HRC, Concluding observations on the initial report of the Republic of Zaïre, A/42/40, 1987, par. 256-293, par. 289.

<sup>29</sup> HRC, Concluding observations on the third periodic report of the Democratic Republic of the Congo, CCPR/C/COD/CO/3, 26 April 2006, par. 26.

<sup>30</sup> HRC, Concluding observations on the fourth periodic report of the Democratic Republic of the Congo, CCPR/C/COD/CO/4, 30 November 2017, par. 49.

It thus called upon DRC to “change its position regarding the status of indigenous peoples in the State party and adopt legislation to protect their rights, in accordance with article 27 of the Covenant”; to make sure “that prior consultations are held with Pygmy communities in order to obtain their free and informed consent prior to the adoption or implementation of any measure that might have a substantial impact on their way of life, access to their traditional lands or their culture; and to “take legislative and practical measures to combat discrimination against Pygmy communities”<sup>31</sup>.

#### *4. The Committee on the Elimination of Discriminations against Women (CEDAW)*

The committee on the Elimination of Discriminations against Women also tackled the issue of the treatment of the Pygmy communities in DRC.

In its 2013 concluding observations on the DRC, the CEDAW alluded to the situation of the displaced Pygmy women. Interestingly, although it did not specify the cause of their displacement, it recommended to provide them with compensation:

“The committee recommends that the State party a) Ensure that Pygmy women have access, without discrimination, to basic services, including health care and education, and to land, ensure that they have access to self-sufficient livelihoods in the forest and provide compensation when they have been displaced from the forest”<sup>32</sup>

In its following concluding observations, the Committee further denounced the multiple forms of discrimination suffered by Pygmy women, regarding especially access to education, maternal and prenatal health services. It also regretted that the draft law for the protection of IP had been pending before parliament for five years and urged DRC to adopt it. From a more specific standpoint, it expressed its concerns towards the “forced evictions [of Pygmy women] from their ancestral lands, including by armed groups and militias in conflict areas, affect their culture and traditional ways of living” and therefore recommended DRC to .

“Protect the right of Pygmy women to their ancestral lands and cultural identity and ensure their participation in the ongoing forestry and land reform processes”<sup>33</sup>.

#### *5. The committee on the rights of the child (CRC)*

Although the committee on the rights of the child have not insisted on the situation suffered by the Pygmy community, it has expressed its concerns towards the impact of the extractive industry sector on children’s rights, insisting on

“the destruction of lands, ecosystems and the livelihoods of families, in particular indigenous families with children, and forcing them into situations of internal displacement”<sup>34</sup>.

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<sup>31</sup> *Id.*, par. 50.

<sup>32</sup> CEDAW, Concluding observations on the combined sixth and seventh periodic reports of the Democratic Republic of the Congo, CEDAW/C/COD/CO/6-7, 30 July 2013, par. 36.

<sup>33</sup> CEDAW, Concluding observations on the eighth periodic report of the Democratic Republic of the Congo, CEDAW/C/COD/CO/8, 6 August 2019, par. 45.

<sup>34</sup> CRC, Concluding observations on the combined third to fifth periodic reports of the Democratic Republic of the Congo, CRC/C/COD/CO/3-5, 28 February 2017

It thus recommended DRC to strengthen the regulatory framework applicable to these industries, so that “to ensure that their activities do not negatively affect human rights or endanger the enforcement of environmental and other standards, especially those relating to children’s rights”