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Fortress Conservation and International Accountability for Human Rights Violations against Batwa in Kahuzi-Biega National Park

Colin Luoma





A traditional Batwa home in Kahuzi-Biega National Park in the Democratic Republic of Congo. *Credit: Robert Flummerfelt*

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Abbreviations

ACHPR	African Commission on Human and Peoples' Rights	ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ACtHPR	African Court on Human and Peoples' Rights	ICESCR	International Covenant on Economic, Social and Cultural Rights
BMZ	Bundesministerium für wirtschaftliche Zusammenarbeit	ILO	International Labour Organization
CAFEC	Central Africa Forest Ecosystems Conservation	IUCN	International Union for Conservation of Nature
CARPE	Central African Regional Programme for the Environment	KfW	Kreditanstalt für Wiederaufbau
CBD	Convention on Biological Diversity	MOU	memorandum of understanding
CCCs	community conservation committees	MRG	Minority Rights Group International
CERD	Committee on the Elimination of Racial Discrimination	NGO	non-governmental organization
CESCR	Committee on Economic, Social and Cultural Rights	PNKB	Parc National de Kahuzi-Biega
CIHR	Conservation Initiative on Human Rights	PPP	public-private partnership
COP	Conference of the Parties	OUV	Outstanding Universal Value
CSO	civil society organization	PTSD	post-traumatic stress syndrome
DRC	Democratic Republic of Congo	SMART	Spatial Monitoring and Reporting Tool
DOI	US Department of the Interior	SOC	State of Conservation
EU	European Union	UN	United Nations
FARDC	Forces armées de la république démocratique du Congo	UNDRIP	UN Declaration on the Rights of Indigenous Peoples
FPIC	free, prior and informed consent	UNESCO	UN Educational, Scientific and Cultural Organization
GFA	GFA Consulting Group	UNEP	UN Environment Programme
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit	UNGA	UN General Assembly
IACtHR	Inter-American Court of Human Rights	UNGPs	UN Guiding Principles on Business and Human Rights
ICCAs	indigenous peoples' and community conserved territories and areas	UNSC	UN Security Council
ICCN	Institut Congolais pour la Conservation de la Nature	USAID	US Agency for International Development
ICCPR	International Covenant on Civil and Political Rights	USFWS	US Fish and Wildlife Service
		WPC	World Parks Congress
		WCS	Wildlife Conservation Society
		WHC	World Heritage Committee
		WWF	World Wide Fund for Nature

Key findings

Key findings

- **In the Democratic Republic of the Congo (DRC) and across the world, ‘fortress conservation’ poses an existential threat to indigenous peoples and their ancestral territories:** The systemic and grievous human rights violations endured by the indigenous Batwa community in and around the Kahuzi-Biega National Park (Parc National de Kahuzi-Biega – PNKB) are emblematic of such a ‘fortress conservation’ approach to biodiversity protection that negatively impacts indigenous peoples globally. These abuses represent the natural consequences of first removing indigenous peoples from their lands, territories and resources in the name of conservation, and then failing to rectify their exclusion. While nearly all conservation actors rhetorically denounce this colonial approach, it remains a prevailing mode of protecting nature in the PNKB and across many other protected areas in the region, with devastating consequences for both indigenous peoples and the environment.
- **This model of conservation often relies on the widespread use of coercion and violence to protect the ‘fortress’, with indigenous and local communities bearing the brunt of this violence:** The PNKB relies on a heavily militarized form of conservation that contributes to human rights violations against Batwa. It is part of a broader global trend in conservation and represents an increasingly violent way to manage protected areas, particularly in Africa. In the PNKB, ecoguards are equipped with military-grade weapons, use sophisticated monitoring technologies, conduct joint patrols with the Congolese army (Forces armées de la république démocratique du Congo – FARDC) and receive paramilitary training from international partners. This militarization of conservation, including training in the use of mortars and other heavy weapons, is directly linked to the large-scale human rights abuses perpetrated against Batwa community members inside the PNKB.
- **Global conservation NGOs, having directly funded and supported the militarization (including combat and weapons training) of ecoguards are implicated and complicit in these human rights abuses:** International conservation NGOs, such as the Wildlife Conservation Society (WCS), wield significant power and influence over conservation policy in protected areas. To date, the WCS has not leveraged its power to meaningfully incorporate Batwa into the PNKB’s management or otherwise alleviate the deteriorating human rights situation. It had knowledge of unresolved allegations of human rights abuses against Batwa, including explicit warnings in May 2019 that PNKB ecoguards were shooting and threatening Batwa community members who refused to leave the park and intended to use ‘any means’ to remove them. Yet the WCS continued to provide material support to PNKB ecoguards, including through compensation, equipment and training in the lead-up to joint operations by ecoguards and soldiers against Batwa in 2019 and 2021. Such support was conducted in violation of the UN Security Council’s (UNSC) arms embargo in the DRC.
- **International donors, including governments in the global north, have continued to fund these activities despite widespread evidence of severe violence suffered by Batwa community members in the name of conservation:** German and US development agencies have funded the fortress and militarized conservation approaches employed in the PNKB. On paper, these donors commit to respecting the rights of indigenous peoples under established international standards and their internal policies, but they have failed to ensure that a rights-respecting approach to conservation becomes a reality in practice. Millions of dollars have been provided annually to the PNKB without adequate oversight or controls, including robust human rights monitoring. The mechanisms employed have been insufficient to apprise donors of the full scale of human rights abuses against Batwa. At the same time, these donors were aware of unresolved human rights grievances in the PNKB and the imminent threat of violence by park authorities against Batwa who refused to leave their ancestral lands. Notwithstanding, these donors continued to support the PNKB in advance of the joint operation in July-August 2019, rendering them complicit in these abuses.

Executive summary

The decades-long struggle of the Batwa of the Kahuzi-Biega forest is inextricably rooted in the dispossession of their ancestral lands and the theft of their resources in the name of nature conservation. Protected areas like the PNKB are supposedly part of the solution to the environmental crises facing our planet. For decades they have been touted as a cornerstone of biodiversity protection and a key climate change mitigator. Yet their problematic origins, doubtful environmental efficacy and incredible human costs bring these claims into serious question. In the PNKB, and in other state-managed protected areas established on indigenous territories, nature conservation is invariably a violent, colonial project that must be robustly challenged.

Part I of this report situates the grievous human rights abuses documented in *'To Purge the Forest by Force': Organized violence against Batwa in Kahuzi-Biega National Park ('To Purge the Forest by Force')*,¹ within the broader global phenomenon of 'fortress conservation', a prevailing mode of biodiversity protection that separates ecosystems from their original human inhabitants. Fortress conservation is rooted in racist and colonial ideologies premised on transforming the spaces indigenous peoples have always lived in, into an imaginary 'wilderness', devoid of any human activity. These areas are designated and cordoned off as national parks, game reserves and nature sanctuaries for the benefit of others (Western tourists, scientists and, in some cases, extractive industries), but not the indigenous peoples who have long lived in symbiosis with their natural environments, shaping and responsibly safeguarding them for future generations. Instead, these original guardians are abruptly transformed into poachers, criminals and trespassers on their own lands by laws that effectively criminalize their way of life and fail to recognize indigenous customary title.

The PNKB is an emblematic example of fortress conservation. Batwa were violently expelled when the park was created and their removal continues to serve as the impetus for their insecurity, socio-economic deprivation and ongoing exclusion from their ancestral lands. Without access to their territories, resources and sacred sites, Batwa are rendered deeply impoverished, landless, dependent and culturally disconnected. They are disproportionately

blamed for environmental degradation largely caused by others, and their traditional ecological knowledge, developed over millennia of living in harmony with the forest, is at best marginalized or tokenized, and at worst, disregarded entirely. Their exclusion has enabled international donors, NGOs and policy makers based in the global north to dictate conservation agendas in the PNKB, while Batwa's rights, worldviews and traditional knowledge are routinely distorted or silenced.

The so-called 'new paradigm' of rights-respecting conservation² has not been embraced in the PNKB or in many other protected areas and the call to adopt such approaches remain unrealized. The international conservation community has made a clear, rhetorical shift away from the wholesale exclusion of indigenous peoples. Yet, the fortress conservation model has been difficult to disrupt in practice. For Batwa and indigenous peoples across the world, state-managed protected areas continue to be a principal threat to their lives, lands and livelihoods, and, as a consequence, to the ancestral homelands they have effectively safeguarded. More than 50 years after their original eviction, Batwa have not been integrated into the management of the PNKB in any meaningful way. They suffer severe forms of discrimination and structural violence on the edges of the park, and as *'To Purge the Forest by Force'* documents, they continue to be met with extreme physical violence at the hands of a system that principally views them as an enemy to the PNKB's biodiversity. These abuses are the natural consequences of conservation policies that evict indigenous peoples from their lands, exclude them indefinitely and criminalize them when they seek to return home.

The militarization of protected area management in the PNKB has led to serious human rights abuses against Batwa. Existing protected areas are managed in a variety of ways that are, at their core, violently anti-indigenous. This includes increasingly militarized approaches, characterized by the use of military-grade weapons and surveillance technologies, paramilitary training by foreign contractors, and joint patrols with state armed forces. In the PNKB, this militarization has resulted in overly aggressive policing and military-style actions by ecoguards (often jointly with the FARDC) who disproportionately

target, criminalize and brutalize Batwa. Batwa are falsely labelled as rebels and consistently targeted as environmental threats, but authorities make little to no effort to understand or resolve their long-standing grievances or the socio-economic disparities that force them into life-or-death situations in and around their ancestral homeland. Militarized conservation in the PNKB reached a new crescendo between July 2019 and December 2021 when, armed with a full arsenal of heavy weapons (including mortars) and accompanied by the FARDC, PNKB ecoguards waged numerous, coordinated military assaults on Batwa civilians living inside the park. As detailed in *'To Purge the Forest by Force'*, this systemic violence resulted in a level of death and destruction against Batwa characteristic of full-scale attacks against civilians, with dozens of victims of direct violence and thousands more whose lives were, once again, upended in the name of conservation.

The PNKB must refrain from evicting Batwa from their lands inside the park without their free, prior and informed consent (FPIC). The return of Batwa communities to the PNKB in October 2018 transformed the dynamic between Batwa, PNKB administrators and the parks' international supporters. With Batwa once again living on their lands inside the forest, authorities cannot seek to relocate them under international law without seeking their FPIC. The PNKB's international partners must also respect the principle of FPIC and should withdraw support of any conservation project or measure impacting Batwa inside the PNKB absent their FPIC.

Fortress conservation in the PNKB is failing the environment. While the manner in which protected areas are created and managed often inflicts serious human rights abuses on indigenous peoples, in the PNKB, the fortress conservation model is also failing to achieve desired ecological outcomes. It is widely acknowledged that current measures are inadequate to stem the tide of rapid species loss. This is readily apparent in the PNKB, which has experienced dramatic reductions in flagship species over the park's lifespan. Rather than re-evaluating the fortress conservation model in light of such environmental shortcomings, conservation actors fundraise on the back of them, using species loss to justify ever more violent and extreme conservation policies. At the same time, Batwa have not been afforded any meaningful opportunity to participate in or benefit from the conservation of the PNKB, or otherwise prove themselves the best environmental custodians of their territories and resources, as they had done prior to their removal. This ignores Batwa's historical stewardship of the forest, international human rights law and the growing

body of evidence demonstrating that indigenous-owned, occupied and managed territories outperform state-managed protected areas in safeguarding the environment.

Part II of this report assesses the respective roles and accountability of the PNKB's core international partners and stakeholders in connection with conservation-related human rights abuses committed against Batwa. While the Congolese state bears primary responsibility for the recurring violence against Batwa, international actors within the global conservation establishment fund, support, facilitate and tacitly condone coercive forms of conservation in the PNKB which promote and enable such abuses to occur. These actors were aware of human rights abuses committed against Batwa, but failed to adopt or implement policies that adequately mitigate the risks, subjecting one of the world's most marginalized communities to an ongoing cycle of violence, poverty and abuse. This is a common dynamic in conservation projects in the Congo Basin and across developing nations more generally.

The WCS, the leading conservation NGO supporting the park, is the principal promoter and implementer of militarized conservation in the PNKB. For two decades, the WCS has supported the park without adequately seeking to mitigate the underlying human rights risks posed to Batwa. Instead, it has actively sponsored an aggressive, heavily militarized approach to conservation that empowers PNKB personnel to commit widespread human rights violations against them. The WCS disclaims responsibility for this violence on the basis that it has no management authority in the PNKB. Yet, with explicit knowledge of serious and unresolved human rights abuses, it still compensated ecoguards, furnished advanced surveillance equipment, provided and/or supported various forms of paramilitary training and failed to adequately investigate alleged abuses committed against Batwa community members. The paramilitary training was provided in violation of the UNSC's arms embargo.

The violent status quo in the PNKB is further entrenched by the park's two primary donors: the German and US federal governments. The WCS and other partners in the PNKB receive millions of US dollars in bilateral financing from development agencies in Germany and the US. These public donors claim to prioritize the participation and inclusion of indigenous peoples in their conservation projects, yet this has failed to materialize in the PNKB. Both have actively funded the militarized approach to park law enforcement embodied in the PNKB's fortress conservation model, without accounting for the social impacts of such support on the

Batwa community. Money flows into the park without sufficient controls or oversight over how it is used in remote areas of the Eastern DRC, far from Berlin or Washington. The donors do not proactively monitor human rights developments and existing mechanisms fail to fully apprise them of violations, often rendering them blind to the violent consequences of how conservation is being pursued in the PNKB. When made aware of such abuses, they have responded inadequately.

The WCS and the PNKB's donors continued to materially support the PNKB even after they were apprised of unresolved human rights grievances and warned of impending violence against the Batwa. In May 2019, the WCS and the PNKB's primary donors were informed by civil society that park ecoguards were threatening and shooting Batwa community members who had returned to their ancestral home in the PNKB. They were also explicitly warned that PNKB leadership had given the Batwa an ultimatum to leave the park, or else it intended to use 'any means' to remove them. Despite this knowledge, the WCS and the PNKB's donors continued to provide various forms of financial and technical support to PNKB ecoguards in the weeks and months leading up to the violent, joint operation in July-August 2019 that killed, maimed and displaced scores of Batwa civilians living inside the park.

Despite being made aware of repeated human rights violations between 2017 and 2021, a meaningful investigation in the PNKB was only contemplated in December 2021, and only after international supporters were made aware of Minority Rights Group International's (MRG) forthcoming *'To Purge the Forest by Force'* report. International supporters were apprised in writing of attacks and a risk of future imminent violence against Batwa

communities by ecoguards inside the PNKB in May 2019 and again in July 2021. None of the PNKB's international supporters publicly condemned the violence at these times, nor did they commission an independent investigation in response. Silence and inaction in the face of such reports demonstrates a lack of urgency and political will amongst the park's international supporters to robustly investigate such claims and discharge their due diligence obligations. A few months later, Batwa villages in PNKB were once again attacked by ecoguards and soldiers.

International support of the PNKB has consistently treated human rights violations against Batwa as collateral damage in the larger project of protecting biodiversity. The WCS, donors and international organizations, such as the UN Educational, Scientific and Cultural Organization (UNESCO) and the International Union for the Conservation of Nature (IUCN), have all contributed to the marginalization of Batwa in their support of the creation and/or management of the PNKB, but have failed to adequately address and remedy violations. At the heart of this problem is the insidious idea that nature conservation is something solely within the purview of others and that, if left to their own devices, indigenous peoples like Batwa will resort to environmentally destructive behaviour to the detriment of the planet. Despite the Batwa's historical record of sustainability, the urgency of protecting biodiversity and combating climate change is now weaponized against them, providing cover for state authorities to conduct large-scale human rights abuses, such as those committed inside the PNKB between 2019 and 2021. Fortress conservation is an inherently colonial, violent and ecologically flawed approach that must be upended and radically transformed for both people and our planet.

Methodology

This report analyses the human rights implications of conservation policy in the PNKB as it relates to the Batwa of the Kahuzi-Biega forest. It is the product of research carried out by the author, a lawyer and researcher at MRG and an independent research team commissioned by MRG. Extensive background research was initially performed to identify and examine the political, social and cultural contexts in which conservation-related human rights abuses have been committed against Batwa community members in and around the PNKB. This included a thorough review of documentary sources concerning Batwa, as well as consultations with local and international civil society organizations (CSOs).

This research situates the human rights abuses experienced by Batwa in the wider context of conservation policies which disproportionately harm indigenous peoples and other marginalized communities. Several consultations and interviews were conducted with conservation, human rights and indigenous rights experts regarding the modalities and impacts of fortress conservation in the PNKB and globally. An examination of the relevant discourse was carried out, including an analysis of academic literature, civil society reports, policy papers, environmental studies and media coverage. Where possible, specific attention was afforded to sources addressing protected area management and conservation initiatives impacting indigenous peoples and local communities in the Eastern DRC, and in the Congo Basin more broadly. This background research buttressed MRG's existing expertise, institutional knowledge and experience derived from legal and advocacy work with indigenous forest-dwelling communities, including Batwa of the Kahuzi-Biega forest.

Additional desk-based research was conducted to identify the different partners involved in the financing, support, operation and management of the PNKB. Grants, agreements, parliamentary records, reports, financial records and correspondence were reviewed to identify relevant actors, analyse their respective roles in the PNKB and assess their culpability for human rights abuses committed against Batwa. The challenges in obtaining complete and reliable information from these actors were apparent from the outset. Requests for information under applicable freedom of information legislation to federal agencies in the US and Germany

were largely denied or went unanswered. Conservation organizations objected to these requests, despite their support in the PNKB being publicly funded. This lack of transparency prevented a richer and more detailed understanding of how the PNKB is financed and managed to the detriment of the Batwa.

This report explicitly draws from research findings included in *'To Purge the Forest by Force'* and the underlying data collected during extensive field work in and around the PNKB between October 2020 and December 2021. The author collaborated closely with the research team to inform the field research and elicit information regarding the human rights abuses experienced by Batwa, as well as on issues concerning park management and international support of the PNKB. A full description of the methods employed in the field research is contained in *'To Purge the Forest by Force'*.

The author attempted to interview representatives of the principal international partners involved in supporting and funding the PNKB. These partners included the WCS, the US Fish and Wildlife Service (USFWS), the US Agency for International Development (USAID), the KfW Development Bank (Kreditanstalt für Wiederaufbau – KfW), the German Corporation for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit or GIZ), GFA Consulting Group (GFA) and Maisha Consulting Ltd (Maisha). Requests for interviews were granted in the case of the WCS and USAID, were declined in the case of the USFWS and GIZ and went unanswered in the case of Maisha. KfW and GFA agreed to respond to written questions in lieu of an oral interview. The author participated in subsequent video calls with KfW personnel on both 15 September 2021 and 8 October 2021 to discuss ongoing human rights violations in the park.

An advanced draft of this report was not circulated to the ICCN, PNKB or the park's international partners prior to the finalization of its text. This decision was grounded in and informed by credible security risks against Batwa community members and local human rights defenders that arose after an advanced, confidential draft of *'To Purge the Forest by Force'* was provided to the park's international partners and was subsequently leaked without permission from MRG. This decision was made in the spirit of taking every

reasonable precaution to ensure the safety of the Batwa community and the civil society actors that work to protect and advance their rights.

Unless otherwise indicated, all references to Batwa, Batwa of Kahuzi-Biega or Batwa of the Kahuzi-Biega forest are meant to describe the indigenous forest-dwelling

community whose ancestral lands are located in the forests surrounding Mount Kahuzi and Mount Biega in the Eastern DRC. Depending on the context, references to the PNKB either describe the physical protected area itself, or the personnel responsible for administering and managing the park.

Legal framework

This section briefly charts the international human rights standards most relevant to indigenous peoples and conservation, and the various obligations of NGOs, donors and international organizations in the context of their conservation work and support. It examines and summarizes these standards to delineate a legal framework that guides rights-respecting conservation policy, but also one which holds conservation actors accountable when contributing to human rights violations against indigenous peoples and other marginalized communities. Rather than an exhaustive account of all legal protections relevant to Batwa and other indigenous peoples vis-à-vis conservation,³ it seeks to outline the most pertinent international human rights obligations of different actors in the establishment, management and support of protected areas.

Human rights standards applicable to indigenous peoples and conservation

The establishment and maintenance of state-managed protected areas on traditional territories of indigenous peoples almost inevitably result in the infringement of an interrelated set of human rights. These rights are enshrined in a number of binding human rights treaties and soft law instruments which protect the civil, political, social, economic and cultural rights of indigenous peoples. In the first instance, these include several universal human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and at the regional level, the African Charter on Human and Peoples' Rights (African Charter). It has been repeatedly affirmed that indigenous peoples can utilize the protections contained in these universal instruments, and UN treaty monitoring bodies have consistently extended the rights to self-determination, land and culture to indigenous peoples, and have recently begun to invoke their right to FPIC.⁴

The DRC is a party to all these instruments, and pursuant to its 2006 Constitution, duly ratified international treaties take precedence over domestic laws.⁵

Numerous human rights protections in these instruments are commonly violated through coercive conservation policies, including, but not limited to: the right to life, right to liberty and security of person, right to self-determination, freedom of movement, the principle of non-discrimination, freedom of religion, right to property, right to health, right to culture, right to education, right to participate in the conduct of public affairs, right to an adequate standard of living, right to housing, right to development, right to natural resources and right to a healthy environment.

This body of international law imposes positive and negative obligations on the DRC to guarantee the human rights of Batwa. It has the duty not to infringe on human rights, to protect against human rights violations committed by non-state actors, as well as to ensure a victim's right to a remedy under international law for gross violations, including '[a]dequate, effective and prompt reparation for harm suffered' and access to justice and relevant information.⁶ These obligations can be violated by direct state action or omission, including through its institutions or agencies at the national and local levels.⁷ It follows that applicable ministries and agencies within the Congolese government, including the ICCN, are bound directly by these international human rights norms.

In addition to the human rights standards explicit in universal instruments, a growing body of international human rights law specifically protects the rights of indigenous peoples. The most important and comprehensive set of indigenous rights is contained in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), including several protections directly relevant to conservation. It expressly provides that 'indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources', and that 'States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.'⁸ Article 32 of the Declaration further states that:

- (1) *Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources and*
- (2) *States shall consult and cooperate in good faith with the indigenous peoples concerned through their*

*own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.*⁹

UNDRIP explicitly protects the collective rights of indigenous peoples to own, use, develop and control their traditional lands, territories and resources and calls on states to give legal recognition to them.¹⁰ This recognition of indigenous land rights is buttressed by other international standards and jurisprudence. Indigenous peoples' collective rights to own their traditionally occupied lands and to be consulted on legislative or administrative measures that may affect them is guaranteed in International Labour Organization (ILO) Convention No. 169.¹¹ Several universal human instruments, including the ICCPR, the ICESCR and ICERD, have also been interpreted as protecting the land rights of indigenous peoples and requiring states to seek their FPIC when activities taking place on their ancestral lands stand to impact their rights.¹² Numerous human rights bodies, including in the Inter-American and African human rights systems, have affirmed indigenous peoples' rights to self-determination, land and culture in the face of coercive conservation measures, holding that such measures could not justify depriving indigenous peoples of their lands, territories and resources.¹³ The Committee on the Elimination of Racial Discrimination (CERD) has further asserted that states must take steps to return lands and territories to those indigenous peoples who were dispossessed of them without their FPIC.¹⁴

Environmental standards applicable to indigenous peoples and conservation

A range of international environmental standards have been developed in the context of indigenous peoples and conservation. The most important of these have been promulgated within the Convention on Biological Diversity (CBD) and the IUCN. The CBD provides the overarching international, environmental framework for conservation. It contains minimal protections for indigenous peoples, including those aimed at safeguarding customary use of biological resources and preserving indigenous traditional knowledge relevant for conservation and sustainable use,¹⁵ but does not explicitly account for the human rights of indigenous peoples.¹⁶

Since 2004, many decisions and recommendations adopted by the Conference of the Parties (COP) to the

CBD have strengthened the rights of indigenous peoples in connection with the conservation of their lands, territories and resources.¹⁷ For instance, in adopting a Programme of Work on Protected Areas, the COP called on states to ensure that the 'establishment, management and monitoring of protected areas should take place with the full and effective participation of, and full respect for the rights of, indigenous and local communities consistent with national law and applicable international obligations'.¹⁸ In 2014, the COP further deemed that activities on the customary sustainable use of biological resources 'should be undertaken with the full and effective participation of indigenous and local communities, in particular, women and youth, taking into consideration the United Nations Declaration on the Rights of Indigenous Peoples'.¹⁹

Prior to 2003, the rights of indigenous peoples were not centred in the work of the IUCN, despite the significant impact protected areas had on their lands, territories and resources. Since then, the IUCN has adopted standards in line with the 'new paradigm' for protected areas (described in more detail below) that increasingly recognized indigenous rights. Principal among these is the World Parks Congress (WPC) Recommendation No. 24 (2003), which called for the end of involuntary evictions and resettlements and for the guarantee that protected areas be established only with the FPIC of indigenous peoples and with 'prior social, economic, cultural and environmental impact assessment, undertaken with the full participation of indigenous peoples'.²⁰ The Durban Accord and Durban Action Plan, outcome documents from the IUCN's 5th WPC, also make several commitments towards recognizing, respecting and protecting that human rights of indigenous peoples in the context of conservation.

Human rights standards applicable to conservation NGOs

While states are the primary duty bearers under international law, the Durban Action Plan and the UN Guiding Principles on Business and Human Rights (UNGPs) have increasingly been interpreted as assigning international conservation NGOs their own responsibility to respect human rights; this obligation has been reinforced by their internal human rights policies and social safeguards. The UNGPs are not legally binding but have emerged as a consensus set of best practices concerning corporate responsibility vis-à-vis human rights. They were developed in the context of corporate entities, but are equally applicable to conservation NGOs, as clarified by an independent panel of experts tasked with

investigating the Worldwide Fund for Nature (WWF)'s role in alleged human rights abuses:

*'The expectation of respect for human rights cannot be lower for multinational conservation organisations than it is for multinational business enterprises. Although non-profit organisations play significantly different societal roles than business enterprises in many respects, they often have similar structures that give rise to similar issues in implementing the responsibility to respect human rights. Most importantly, their institutional activities are capable of causing or contributing to adverse human rights impacts.'*²¹

Conservation NGOs, such as the WCS, have the threshold duty to 'avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved'.²² The UNGPs make clear that NGOs must respect the human rights of indigenous peoples in line with UN standards.²³ They further state that this responsibility 'exists independently of States' abilities and/or willingness to fulfil their own human rights obligations'.²⁴ More specifically, conservation organizations must (a) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and (b) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services, even if they have not contributed to those impacts.²⁵

In the Eastern DRC, where the rule of law is generally weak, conservation NGOs are at increased risk of being complicit in the commission of human rights violations. The concept of 'complicity' has been conceptualized as one of 'being implicated in a human rights abuse that another company, government, individual or other group is causing'.²⁶ According to the UNGPs, complicity arises when an organization 'contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties'.²⁷ In the scope of conservation work, complicity could arise in an NGO's provision of goods or services or when these entities are silent in the face of human rights abuses.²⁸

Meeting their responsibilities under international law requires conservation NGOs to, among other things, carry out adequate human rights due diligence, engage in meaningful consultation with potentially affected groups, and report to stakeholders regarding how to address existing human rights concerns.²⁹ To the extent that NGOs cause or contribute to adverse human rights impacts, they must provide for or cooperate in remediation and take appropriate steps to ensure that victims have access to an effective remedy.³⁰ The UNGPs also make clear that NGOs must respect the human rights of indigenous peoples in

line with UN standards,³¹ which include the fundamental protections contained in UNDRIP.

International human rights standards applicable to donors

The human rights obligations of states do not cease to exist outside of their borders. States engaged in bilateral biodiversity assistance must protect and respect the human rights of indigenous peoples in connection with the conservation activities they support, wherever they take place. Of particular importance to donors engaging in biodiversity development are indigenous peoples' rights to self-determination, including the right of FPIC, the right to lands and natural resources, and rights ensuring that basic human needs are met, including the right to food, education, health, housing and water.

Donor human rights obligations are multi-layered. First, they must ensure that their assistance does not infringe on the human rights of indigenous peoples. The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment has underscored this point and called on donor states to ensure that biodiversity-related projects do not violate human rights.³² Most international development agencies have now incorporated a human rights-based approach to their work, including the German and US agencies analysed in this study. These internal human rights commitments must be adhered to in connection with donor-funded conservation interventions.³³

Second, donors must take adequate steps to ensure that their partners respect their human rights obligations. The UNGPs provide that states have a heightened responsibility to ensure that business enterprises operating in conflict-affected areas are not involved in human rights abuses, including 'ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses'.³⁴ Donors must structure arrangements in such a way as to ensure that they have the opportunity to engage in human rights monitoring and can adequately respond to credible allegations of human rights violations.

Finally, donor states, when acting as members of international organizations, should encourage those institutions to promote respect for human rights and, when requested, assist other states to meet their duty to protect against human rights abuses.³⁵ This is particularly salient with respect to state membership in intergovernmental organizations such as the IUCN, the COP to the CBD and the World Bank, all of which have critical roles in global conservation policy.

International human rights standards applicable to international organizations

Numerous international organizations play direct and indirect roles in the PNKB's conservation initiatives. For instance, the IUCN was instrumental in the establishment of the PNKB and continues to assist the DRC in establishing and managing protected areas. UNESCO has designated the PNKB a natural World Heritage site and conducts ongoing monitoring in the park as part of this process. The work of the UN Environment Programme (UNEP), the COP to the CBD and the World Bank have all, either directly or indirectly, impacted the PNKB.

International organizations are subjects of international law, with their own rights and duties, distinct from those of their member states, and international organizations are not automatically bound by treaty obligations of their

members.³⁶ These organizations remain responsible for ensuring that their activities do not support conservation policies and activities that violate the human rights of indigenous peoples.³⁷ They are bound by customary international law, as well as their own human rights and social safeguarding policies.³⁸ UN agencies are further bound by the UN Charter, which provides for the promotion and respect of human rights.³⁹

Critically, international organizations must guard against contributing to human rights violations through their work or support. The International Law Commission's Draft Articles on the Responsibility of International Organizations prohibit international organizations from rendering aid or assistance in maintaining a situation where human rights are not being protected.⁴⁰ In the conservation context, this prohibits international organizations from supporting, financing or implementing conservation initiatives that infringe on human rights, and particularly the rights of indigenous peoples or local communities.

Part I. The PNKB: A paradigmatic case of fortress conservation

1. Batwa of the Kahuzi-Biega forest

Batwa of the Kahuzi-Biega forest belong to the forest-dwelling indigenous peoples of the DRC.⁴¹ These groups, including Batwa, are commonly referred to as Pygmies or *Peuples Autochtones Pygmées*, a term that is often used derisively by some groups, but one with which many Batwa self-identify.⁴² They are widely recognized as the original inhabitants of the DRC by both the Congolese government and other communities.⁴³ They possess a unique culture, formed through living in symbiosis with the biodiversity-rich forests of the Congo Basin, which distinguishes them from other ethnic groups.⁴⁴ As place-based peoples, Batwa identify as indigenous.

While most narrations begin with their forced removal from the lands upon which the PNKB created, the history of the Batwa community begins with their life in the forests surrounding Mount Kahuzi and Mount Biega, the two extinct volcanoes that dominate the landscape and from which the park derives its name. Like other indigenous communities across space and time, Batwa maintain a sacred connection with their ancestral territories. For them, the forest was provider of everything, and they considered themselves fully integrated within it.⁴⁵ For millennia, Batwa lived in harmony with the forest – their natural environment.⁴⁶ Forest life physically sustained them, supplying a variety of food, medicinal and fuel sources. It served as the centre of their intellectual, spiritual and cultural life, the place where they worshipped their ancestors, buried their dead and conducted their spiritual and cultural rites. As a result, Batwa of Kahuzi-Biega derive their distinct identities from their sacred relationship with the forest.

Through their proximity and reliance on forest resources, Batwa cultivated an intimate knowledge of the flora and fauna in the Kahuzi-Biega landscape. Their tracking skills and ability to navigate dense rainforest are unparalleled.⁴⁷ They are considered the region's best traditional healers and foremost experts on the use of medicinal plants in treating illnesses.⁴⁸ This traditional ecological knowledge, passed from generation to generation, allowed Batwa to survive in the forest for many years without significant reliance on outside communities. They knew how to preserve the forest for future generations, just as their ancestors had done before

them.⁴⁹ Thus, for Batwa, their lands, territories and resources are an indispensable element of both their physical and cultural survival.⁵⁰

As a traditional hunter-gatherer community with a cultural and spiritual connection to the forest, Batwa historically maintained an environmentally sustainable way of life. They used low-impact, traditional methods to hunt small animals and collect fruits, tubers, insects, plants and honey, which yielded a rich and sustainable diet. They principally hunted deer, porcupines, antelope and other small animals, but considered gorillas to be sacred and forbidden to hunt.⁵¹ Only certain community members were allowed to hunt with restrictions on the type and quantity of animals that could be harvested.⁵² They did not fell trees, but collected dead wood, and bushfires were socially prohibited and penalized by the community.⁵³ Cognizant of the need to not deplete resources in any given area, they would move periodically throughout the forest to allow flora and fauna to replenish naturally.⁵⁴ For Batwa, and other indigenous communities around the globe, their lands and resources were not viewed as marketable commodities, capable of being exploited for a profit; instead, they are an integral and inseparable part of their entire ethos, central to their distinct worldview and cosmologies.⁵⁵

Batwa's responsible stewardship of the Kahuzi-Biega forest helped foster an ecosystem that sustained hundreds of different plant, mammal and bird species, as well as Batwa themselves. This rich biodiversity, cultivated and safeguarded by Batwa, prompted the Belgian colonial government to preserve the landscape. In 1937 it created 'The Zoological and Forest Reserve of Mount Kahuzi', a small nature reserve that was expanded in 1951 to encompass 60,000 hectares of forest within Batwa ancestral territory.⁵⁶ At the time, the creation of the reserve did not seem to have had a meaningful impact on the Batwa, who were allowed to remain in the forest, with most having no awareness that their sacred lands had been designated as a reserve.⁵⁷ Yet, this act represented the first abrogation of Batwa land rights in furtherance of nature conservation, a path that ultimately led to their removal years later.

In the late 1960s, the postcolonial Congolese government began contemplating converting the nature reserve into a national park. This was principally the hobbyhorse of Adrien Deschryver, a Belgian photographer and son of the last Belgian Minister of the Colonies. Deschryver was enamoured with the beauty of the area, including the majestic eastern lowland gorillas (Grauer's gorillas) found in the forest.⁵⁸ The establishment of a national park was also robustly supported by the IUCN, the largest intergovernmental organization focused on nature conservation. At its 9th General Assembly held in Lucerne, Switzerland in 1966, the IUCN passed a resolution recommending the DRC government 'undertake without delay the establishment of a National Park in the Kahuzi-Biega region and the administrative measures necessary to ensure the immediate strengthening of protection of the slopes of the volcanic massif'.⁵⁹ The IUCN followed up in 1969 by stating it: 'strongly hopes that it will be possible to achieve the establishment' of Kahuzi-Biega National Park.⁶⁰ At no point did the IUCN address the potential human impacts of creating a national park on Batwa lands.

In 1970, the postcolonial government gazetted and expanded the area designated as a forest reserve into a national park, effectively creating the PNKB.⁶¹ What began as a 75,000 hectare protected area was later reduced to 60,000 after 15,000 of those hectares were allocated to wealthy, non-Batwa farmers.⁶² With the creation of the PNKB in 1970, Batwa families were displaced and relocated within park boundaries, but were allowed to continue living in the forest.⁶³ Then, in 1975, the PNKB was expanded to encompass the lowland sector in the

West, increasing tenfold from 60,000 hectares to 600,000 hectares of total area under protection.⁶⁴ In the 45 years since, the park boundaries have remained unchanged.⁶⁵

The PNKB's expansion was accompanied by state authorities forcibly and violently evicting all Batwa living in the forest. It is estimated that between 3,000 and 6,000 Batwa (580 families) were dispossessed of their ancestral lands to pave the way for the PNKB.⁶⁶ Carried out abruptly and at gunpoint, the evictions forced thousands of Batwa to flee without warning. Authorities looted Batwa property and destroyed their homes. Several Batwa community members died in the process; some were beaten; others fled and were never seen by their families again.⁶⁷

The creation of the PNKB did not treat all forest-dwellers equally. Non-indigenous, settler communities, including primarily Shi, Tembo and Rega, occupied lands in the forest prior to the creation of the park.⁶⁸ While Batwa were forcibly removed without consultation or compensation, the government acquiesced in the continued occupation of the park by these agriculturalist communities. These non-Batwa communities were allowed to remain in the park despite reports documenting the ecological threat posed by their agricultural and mining activities in the ecological corridor. Their occupation continued for decades, until 2019 when the ICCN removed communities in the ecological corridor and cancelled their land titles.⁶⁹ Among other things, this illustrates the discriminatory intent behind the creation and subsequent management of the PNKB. As Roger Muchuba Buhereko notes, '[i]t was only...those with no voice and no legal protection, namely the [Batwa], who were evicted without any form of legal process.'⁷⁰

2. Fortress conservation in the PNKB

The case of the Batwa of Kahuzi-Biega is emblematic of the environmental and human costs associated with the creation of strictly protected, state-managed protected areas on the ancestral lands of indigenous peoples. Regrettably, it is not an isolated example of anti-indigenous conservation policy. For nearly 150 years, indigenous peoples across the world have suffered under conservation regimes that disregard their customary land rights and their central role in protecting the Earth's ecosystems.⁷¹ The PNKB, perhaps as much as any protected area in the world, lays bare the stark realities of pursuing nature conservation divorced from the very people who have always safeguarded these spaces. It

illustrates the full scale and severity of the physical, structural and cultural violence sustained by indigenous peoples, communities who continue to bear the full brunt of coercive conservation measures. All the while, ecosystems remain in peril – evidence that state-managed protected areas, a hallmark of conventional, Western approaches to biodiversity protection – are failing to meet the collective environmental challenges of our time.

The following analysis situates the historical and recurring human rights violations sustained by the Batwa of Kahuzi-Biega within the broader concept of fortress conservation, a colonial mode of protecting nature that demands that indigenous peoples be separated from their

natural environments. It demonstrates how the conflict in the PNKB and the resulting human rights violations against the Batwa documented in *'To Purge the Forest by Force'* are the product of the dominant entities, systems and ideologies that influence conservation policies around the globe, to the severe detriment of indigenous peoples. As a case study, the PNKB reveals how fortress conservation continues to consistently harm both people and the environment.

Definitions and origins

The removal of Batwa from the Kahuzi-Biega forest to create a national park void of human presence is a classic case of what experts commonly refer to as 'fortress conservation'.⁷² Fortress conservation has emerged as the dominant way to discuss conservation approaches that displace indigenous peoples and/or local communities from their ancestral lands and territories to establish strictly protected, state-managed protected areas. While often ill-defined, fortress conservation is principally about creating protected areas through forced or coerced displacement of these groups, alongside the imposition of severe curtailments on their usage rights.⁷³

Also called 'colonial conservation', 'green colonialism' or 'coercive conservation', the fortress conservation model is characterized by four key assumptions: (1) protected areas should be created and governed by states; (2) the goal of protected areas should be strict nature preservation; (3) effective protected area management requires them to be void of human habitation and use, particularly of indigenous peoples and local communities, who are seen as environmental threats; and (4) force (including lethal force) is justified to exclude these threats and protect biodiversity.⁷⁴ To safeguard the fortress, conservation authorities treat indigenous peoples as criminals, poachers and squatters on lands they have occupied for centuries. This makes already marginalized communities like Batwa extremely vulnerable to violence, both from the state and at the hands of other groups.

The fortress conservation phenomenon has manifested itself differently in various geographical, social, cultural and political contexts. Currently, it is most closely associated with protected areas in Africa and Asia, though its genesis lies firmly rooted in the American experience. Westward expansion in the US brought white settlers into contact with some of the most pristine ecosystems on the planet, as well as their long-standing stewards – the various Native American peoples that occupied and shaped these territories for millennia. In the late nineteenth century, leading environmentalists began to prioritize the preservation, rather than development of these landscapes, ultimately leading to the establishment

of the world's first national parks: Yellowstone National Park in 1872 and Yosemite National Park in 1890.⁷⁵ Their creation was only made possible through the coerced and forced displacement and ongoing exclusion of indigenous peoples.⁷⁶ In discussing America's national parks, Ojibwe writer David Treuer remarks: 'all of them were founded on land that was once ours, and many were created only after we were removed, forcibly, sometimes by an invading army and other times following a treaty we'd signed under duress.'⁷⁷ Thus, from the outset, the concept of protected areas necessitated the removal of indigenous peoples from their traditional territories.

The philosophy of national parks is premised on a 'wilderness myth', treating lands occupied and used by indigenous peoples as uninhabited. This notion featured prominently in colonial encounters across the world, justifying dispossession of indigenous lands and resources for the benefit of colonial powers.⁷⁸ Yet, it is rarely acknowledged that the national parks system, and the environmental movement more generally, were born from the removal of indigenous peoples from their lands.⁷⁹ They were completely written out of the history of the places they had always been a part of.

Importing fortress conservation to the PNKB

The 'Yellowstone model' of protected areas, as it became known, took root and was quickly replicated in other parts of the world under the basic premise that nature can only flourish when sequestered from humans.⁸⁰ It was embraced first by other colonial powers, particularly in Europe. Cordoning off land for protected areas under state authority became a colonial tool to extend control over remote territories and reluctant populations.⁸¹ Later, it was adopted by successor postcolonial states which saw national parks as a key source of tourist revenue and international prestige.⁸²

In the DRC, the colonial links are explicit. After King Leopold plundered forest resources under the Congo Free State, King Albert I of Belgium pushed for the creation of Virunga National Park in 1925, the country's first national park. He did so after an inspirational trip to Yellowstone National Park in 1919.⁸³ In the PNKB, Deschryver, like so many colonial 'conservationists' before him, saw the immense value in keeping nature pristine, but not alongside the indigenous Batwa who had always inhabited the forest. Ironically, he famously relied on two Batwa trackers, Pili Pili Purusi and Mishebere Patrice, to make daily excursions into the forest in order to track and study the Grauer's gorillas.⁸⁴ He used Batwa people's intimate forest knowledge to gain access to and eventually habituate the gorillas, but later accompanied armed guards

who violently evicted the Batwa community from the forest.⁸⁵ Described as a ‘one-man force for law and order’ within the PNKB, Deschryver became the first warden of the park and the principal architect behind the policy of excluding Batwa from the forest for the stated purpose of saving the Grauer’s gorillas.⁸⁶

As with other fortress conservation projects, the expulsion of Batwa – ostensibly to protect nature – was built on a set of myths and false narratives. The colonial delusion that the forest was unoccupied, despite the obvious presence of Batwa over generations, justified stripping them of their customary land rights and paved the way for their displacement.⁸⁷ Their evictions and subsequent exclusion were further rationalized through the fiction that Batwa were a threat to biodiversity. Many non-Batwa agriculturalist communities that were allowed to remain in the forest and farm the land engaged in activities that were far more destructive to the forest than Batwa’s low-impact, traditional lifestyle could ever be. This underscores that the treatment of Batwa as a threat to biodiversity in the forest was not rooted in any scientific (Western or indigenous) basis, but was built entirely on a sense of European cultural and intellectual superiority, including regarding the types of land use worthy of protection.⁸⁸ Severe curtailments on access and resource use were imposed, based on negative stereotypes of Batwa as being criminals and poachers. These mischaracterizations were subsequently solidified through the campaigning of international conservation organizations, as well as in popular culture.

Indigenous displacement

Through most of the twentieth century, the creation of strictly protected, state-managed protected areas under the Yellowstone model dominated the international conservation landscape.⁸⁹ They have been seen as vitally important for protecting and fostering biodiversity, particularly under traditional, Western forms of conservation science and management.⁹⁰ This resulted in a rapid expansion of protected areas, the majority of which are located in developing countries.⁹¹

The scale of negative social impacts associated with fortress conservation is not fully known, but it is clear that these practices have had deleterious consequences on indigenous peoples and local communities.⁹² There is a lack of available data on the precise number of protected areas that have resulted in evictions, but the sheer number of people negatively impacted is immense.⁹³ One estimate suggests that between 8 and 136 million people have been displaced through the creation of protected areas covering only half of the terrestrial area formally protected today.⁹⁴ Research in the Congo Basin demonstrates that the vast

majority of protected areas established in the region involved the relocation or displacement of indigenous and local communities without any form of compensation.⁹⁵ Despite this, for many years, various actors in the international conservation community consistently downplayed or denied this reality.⁹⁶

For indigenous peoples, conservation-related evictions represent the latest in a long line of colonial practices that have resulted in the dispossession of their lands. This sentiment was expressed by indigenous delegates at the IUCN’s 5th WPC: ‘First we were dispossessed in the name of kings and emperors, later in the name of state development, and now in the name of conservation.’⁹⁷ Because conservation strategies focus on protecting ecological hot spots, they disproportionately impact indigenous territories. These groups own, occupy and regularly use some of the most biodiverse ecosystems on the planet.⁹⁸ As these are the territories that traditional conservationists are so keen to preserve, there is a significant amount of overlap between state-managed protected areas and indigenous territories.

- Indigenous peoples represent 5 per cent of the global population
- Indigenous lands occupy 22 per cent of the Earth’s land surface
- Indigenous lands contain 80 per cent of the world’s remaining biological diversity
- An estimated 50 per cent of existing protected areas have been established on lands occupied or regularly used by indigenous people.⁹⁹

Conservation-related evictions are enabled by states consistently failing to recognize and respect the customary land tenure of indigenous peoples. As described above, the rights of indigenous peoples to their customary territories and resources are widely recognized at the international level. Nevertheless, customary ownership and use rights are still commonly violated by states, including through the creation of protected areas on indigenous territories. This is a direct legacy of colonialism, whereby indigenous lands were first plundered and exploited to enrich the metropole or the settler state, and then later cordoned off for preservation, but all without the input or participation of indigenous peoples.¹⁰⁰

Likewise, the Batwa’s removal and continued exclusion from the PNKB is rooted in the failure to recognize their customary land rights in the forest. Prior to the colonial era, indigenous peoples in the DRC, such as Batwa, had rights over their collective territories and customary land systems. Starting with King Leopold’s Free State and

thereafter with Belgian colonial rule, these customary rights were disregarded and all indigenous-occupied lands were declared property of the state.¹⁰¹ After formal decolonization, the successor postcolonial state continued to suppress customary land tenure, again declaring all indigenous land to be state property, legally rendering the Batwa squatters in the same forests they customarily owned and occupied for millennia.¹⁰² This empowered state authorities to evict Batwa from their ancestral homes with complete legal impunity.

Discrimination and economic, social and cultural deprivation and disruption

The forced and coerced removal of indigenous peoples from their ancestral territories for the purposes of conservation has negative and often irrevocable impacts on the lives of indigenous peoples. They are not only displaced physically, but also economically and culturally. USAID's study into conflict dynamics in the PNKB describes the precariousness of the Batwa's circumstances post-eviction:

*Thus, they suffer from marginalization, the spiral of poverty, food insecurity, extrajudicial executions, the severing of their links with their spiritual sites, deprivation of access to justice and remedies; and almost absent education. Forced to settle down, they have become cheap labor for the host communities and engage in activities "unprofitable, precarious and low investment".*¹⁰³

Without the right to engage in subsistence activities, including hunting, gathering and cultivating in their traditional ways, indigenous peoples like the Batwa become deeply impoverished. That is why indigenous peoples and local communities displaced through conservation are some of the most destitute populations across Africa.¹⁰⁴

Conservation evictions commonly render indigenous peoples and local communities landless and dependent on either the state or surrounding communities for their very survival. After their expulsion from the PNKB, the Batwa did not receive any form of compensation or relocation assistance from the state.¹⁰⁵ Most were forced to find refuge on the edges of non-Batwa, host villages surrounding the highland sector of the park. Some were allocated small plots of land, but they were insufficient for the Batwa to meet their basic needs as a hunter-gatherer society. Even on these small plots, they are essentially treated as squatters, with no secure rights to the

underlying land and subject to further evictions at a moment's notice.¹⁰⁶ This is a common phenomenon with indigenous peoples evicted from forests across the Congo Basin.¹⁰⁷ It renders Batwa particularly vulnerable to discrimination and state violence. Their plight was summarized by the African Commission's Working Group on Indigenous Populations/Communities in 2003:

*'[t]he Batwa who were driven out of the Kabuzi-Biega forests are now extremely poor, even destitute. Most have no property, and it is very difficult for them to obtain their basic needs. To survive, some have learned from other non-Batwa how to make charcoal from wood to sell and this gives them around \$10 every fortnight. Others who have plots of land try to cultivate them as best they can with potato and vegetables but, given that they are not used to farming, and that the rains have been extremely irregular in recent times, their situation remains one of extreme poverty. The Batwa in the north of the Kabuzi-Biega Park have settled on plots of land but these lands, officially unoccupied, may be allocated to someone else by the local authorities. The Batwa have no legal protection once neighbours from other ethnic groups decide to take their land or drive them out of their villages.'*¹⁰⁸

Forced into a sedentarized life on the rims of the park, Batwa also suffer from extreme discrimination from other communities.¹⁰⁹ They are viewed and stigmatized by non-Batwa as 'backward, beggars and thieves, childish, dirty, ignorant, immoral and stupid'.¹¹⁰ This discrimination regularly results in their being denied access to basic social services, including health care, education and adequate housing.¹¹¹ Their exclusion from the forest, lack of access to basic social services and deplorable living conditions have led to high rates of malnutrition, disease and death.¹¹² It is estimated that by 1995, 20 years after their removal from the forest, up to 50 per cent of the Batwa community had perished.¹¹³

The extreme poverty experienced by Batwa outside of their ancestral lands is often cited as a reason why biodiversity is suffering in the PNKB. High levels of poverty in many communities around the highland sector place untenable demands on forest resources. Yet, the destitution of the Batwa is the direct result of fortress conservation itself. In that sense, it is a self-made threat to biodiversity, created alongside the PNKB when the Batwa were unlawfully and callously removed from their ancestral home without any type of compensation or viable alternative lands.

Fortress conservation also necessarily entails significant religious and cultural loss for indigenous peoples. That is because indigenous cultural and spiritual identities are

inextricably intertwined with their lands, territories and resources. Put differently, indigenous cultures are inseparable from the territories in which they are practiced.¹¹⁴ Their separation from their sacred lands, as well as their cultural practices, works to sever the cultural bonds that bind indigenous communities together. In turn, indigenous resistance to protected areas has been rooted in the desire to safeguard both their lands and their cultural integrity, two aspects essential to their survival as separate peoples.

Traditionally, the forest served as the cultural heartbeat of Batwa life. Barred from their ancestral lands, they are no longer able to access their sacred sites, conduct their cultural rites or preserve and transfer much of their traditional knowledge. Most religious customs and cultural practices have been lost or abandoned outside of the forest. Batwa cannot bury their dead in their sacred places or properly worship their ancestors.¹¹⁵ Despite these difficulties the Batwa have remained steadfast in maintaining distinct cultural identities, and many have held on to their knowledge, animist beliefs, rites and customs.

Role of NGOs and donors

National governments in developing, biodiversity-rich countries commonly rely on international donors and well-funded conservation NGOs for financial and technical assistance in operating protected areas. Hundreds of millions of dollars in international funds are expended on protected areas in Africa alone.¹¹⁶ As a consequence, these entities possess a tremendous amount of power and responsibility for how protected areas are managed and operationalized.

In the PNKB, conservation policy is set by the ICCN, but it is strongly dependent on and influenced by international conservation NGOs and donors. The DRC's national conservation strategy observes that the ICCN is 'extremely dependent' on external funding, and that available state resources are 'relatively marginal'.¹¹⁷ Beyond the marginal sums allocated by the DRC government, the ICCN receives millions of dollars in funding, as well as technical support from several international entities, including German and US development agencies and the WCS.¹¹⁸

Large conservation organizations, like the WCS, put immense pressure on states to place more and more land under protected area status.¹¹⁹ This is done not only as a supposed ecological imperative, but also because these NGOs' business models revolve around their role and supposed expertise in managing these areas. In many cases, conservation NGOs either directly manage or co-manage protected areas. This dependence on the establishment and

maintenance of protected areas is one of the underlying factors behind the push by global conservation NGOs for the adoption of a 30 per cent by 2030 target in the post-2020 Global Biodiversity Framework before the CBD, which seeks to nearly double the amount of area under protected status by 2030.¹²⁰

It perhaps also explains why international conservation organizations have tacitly endorsed the displacement of indigenous peoples to accommodate conservation projects.¹²¹ Mark Dowie describes common NGO attitudes that produce mistrust among indigenous communities:

*'These NGOs with their singular, science-based interest in creating vast protected areas, seem to have little interest in the land rights or respect for the traditional lifeways of peoples who have had been living in the areas for centuries, in some cases millennia.'*¹²²

Even though all major conservation organizations now disavow forced or coerced human displacement as necessary to protecting nature, to a large degree these organizations still determine how landscapes are used and who has access to them, often to the exclusion of indigenous peoples and local communities.¹²³ Moreover, conservation NGOs continue to not adequately consult with or respect the FPIC rights of indigenous peoples in connection with the creation of new protected areas.¹²⁴

A further central grievance among indigenous peoples concerns the cosy relationships that many large conservation NGOs have with corporations that continue to exploit and profit from indigenous territories and resources. These NGOs often enter into partnerships with or receive millions of dollars from corporations and industries that constitute some of the world's top polluters.¹²⁵ They routinely claim this is done to try to influence corporations to act responsibly towards nature, but associating with and supporting these corporations confers on them a certain level of undeserved environmental legitimacy, what many describe as 'greenwashing'.¹²⁶ This is an untenable position for most indigenous peoples and sows further animosity towards the rich, Western NGOs that seem to be in charge of governing their sacred places.

Global conservation NGOs enjoy the support of bilateral and multilateral donors who commit billions of dollars to biodiversity assistance annually. Donor money is used to fund various conservation initiatives, including the establishment and management of strictly protected areas, but very little, if any, is earmarked for social safeguards, such as ensuring that FPIC processes meet international standards. As discussed in Part II of this report, some donors lack effective monitoring mechanisms to ensure that human rights are respected in connection with this financing.

Alongside biodiversity assistance, donors also routinely finance socio-economic development projects in the proximity of protected areas; but these have not transformed impoverished and displaced indigenous communities into self-sustaining ones. While perhaps well intentioned, much of this programming is arguably a distraction from the more difficult task of meaningfully negotiating access to territories and resources, and integrating indigenous participation and traditional knowledge into conservation strategies and methodologies. This is observable in the PNKB, where donors have pursued a range of socio-economic initiatives, with very few success stories, while avoiding long-term solutions that are premised on the recognition and respect of Batwa's rights to self-determination and their ancestral territories.

Critically, despite the massive financial investment in global conservation, very little money actually makes its way to local communities or grassroots conservation efforts. Rainforest Foundation UK's study in the Congo Basin found that 'the fact that large conservation NGOs are absorbing and managing the bulk of the funds for conservation efforts has also meant that local civil society ends up receiving marginal portions of this money, if any at all'.¹²⁷ Tourism in national parks and other protected areas is held up as a key revenue source for developing states, but whatever benefit is realized, very little is received by indigenous peoples and local communities who were reliant on the land. This top-down approach to conservation funding works to marginalize the very people who have proven capable of protecting and fostering biodiversity.

False paradigm shift

Indigenous peoples have long challenged the negative impacts of protected areas on their lands and livelihoods. As the indigenous rights movement gathered steam in the 1960s and 1970s, activists began confronting the conservation establishment, demanding that actors respect and accommodate indigenous rights in the creation and management of protected areas.¹²⁸ Their resistance reached a climax at the IUCN's 5th WPC in 2003. Over 120 indigenous representatives provided a forceful rebuke of the prevailing fortress conservation model and the power brokers who were enabling and promoting it. During the 5th WPC, indigenous peoples were recognized by the IUCN as valuable and effective partners in conservation and various commitments were made to respect their rights to lands, territories and resources.

Stan Stevens describes the central tenets behind the 'new paradigm' of nature conservation reached during the fifth WPC as one that:

*'repudiates many long-standing assumptions, policies, and practices but also envisions very different ways of establishing, governing, and managing national parks and other protected areas. This paradigm calls for affirmation of Indigenous peoples' conservation achievements, rights-based conservation, establishment of new kinds of protected areas, and reform of existing protected areas that do not meet new international standards.'*¹²⁹

This new paradigm was subsequently memorialized in the Durban Accord and Action Plan, which set forth critical targets focused on indigenous peoples' role in conservation.

Durban Accord and Action Plan

Target 8: All existing and future protected areas are established and managed in full compliance with the rights of Indigenous Peoples, including mobile Indigenous Peoples, and local communities by the time of the next IUCN World Parks Congress.

Target 9: The management of all relevant protected areas involves representatives chosen by Indigenous Peoples, including mobile Indigenous Peoples, and local communities proportionate to their rights and interests.

Target 10: Participatory mechanisms for the restitution of Indigenous Peoples' traditional lands and territories that were incorporated in protected areas without their free and informed consent are established and implemented by the time of the next IUCN World Parks Congress.¹³⁰

Contemporaneously, the COP to the CBD called for an assessment of the 'economic and socio-cultural costs, benefits and impacts arising from the establishment and maintenance of protected areas, particularly for indigenous and local communities' and for adjustments to 'policies to avoid and mitigate negative impacts'.¹³¹ The Programme of Work on Protected Areas further required the effective participation of and full respect for the rights of indigenous peoples in establishing, managing and monitoring protected areas.¹³² Thus, by 2004, the IUCN and CBD, the two most important international conservation bodies in the world, had recognized indigenous peoples and rights-based approaches as essential to effective biodiversity protection.

Today, there is considerable momentum behind the idea that conservation agendas divorced from indigenous peoples are fundamentally unjust and environmentally

unsound policy.¹³³ In response to these developments, conservation NGOs, government donors and international organizations have all adopted policies undertaking to respect indigenous peoples' rights vis-à-vis their conservation initiatives. However, early on, indigenous rights advocates noticed a disconnect between the pro-indigenous rhetoric of conservation actors and the way in which protected areas were still being created and managed on the ground.¹³⁴ Newly established protected areas continued to displace indigenous peoples and local communities, restrict their resource access or otherwise violate their human rights. In most contexts, indigenous peoples were not integrated into protected area governance in the way envisioned in the Durban Action Plan and they benefited very little (if at all) from the lands they had safeguarded for generations.¹³⁵

Despite the rhetoric around conservation moving away from the colonial, fortress conservation approach, the shift has been largely semantic and strict protectionist approaches continue to be embraced in many parts of the world, including in the Congo Basin.¹³⁶ This was emphasized in the 2016 thematic report of the UN Special Rapporteur on the rights of indigenous peoples:

*'While the high rate of biodiversity in indigenous ancestral lands is well established, the contribution of indigenous peoples to conservation has yet to be fully acknowledged. Although a new rights-based paradigm to conservation has been advancing during the last decades, it remains in its initial stages of being applied. Rights-based conservation measures continue to be hampered by the legacy of past violations and by the lack of legal recognition by States of indigenous peoples' rights.'*¹³⁷

These claims are buttressed by research confirming that protected areas have continued to displace indigenous peoples and local communities well into the twenty-first century. For example, a recent study found that the number of protected areas in India alone had increased from 67 in 1988 to 870 in 2020, resulting in the displacement of 13,450 families over that same period of time.¹³⁸

The difficulty in realizing a new paradigm for conservation has been particularly acute with regard to an overriding reliance on state-managed protected areas. A shift towards community-based conservation was signalled in the wake of fifth WPC, including in the recognition of indigenous peoples' and community conserved territories and areas (ICCAs) as a protected area management category at both the IUCN and the CBD. More protected areas have been created as or converted into ICCAs in recent years, but the progress has been relatively slow.¹³⁹

Data from 2018 demonstrates that the number of recognized ICCAs (1,377) pales in comparison to the number of state-managed protected areas (194,836), with the latter constituting 82 per cent of all protected areas and the former only making up 0.6 per cent.¹⁴⁰ This lends credence to the claim that states and global conservation actors are only paying lip service to the ideals of community-based conservation.¹⁴¹

The proliferation of strictly protected areas also militates against an indigenous rights-respecting approach. Despite the way in which they originated and have been subsequently weaponized, protected areas are not inherently anti-indigenous. Even strictly protected areas can be rights-respecting if they are established and governed with the FPIC of indigenous peoples, respect their right to self-determination, meaningfully incorporate them in conservation decision-making and do not otherwise violate their human rights.¹⁴² Indigenous peoples have used such protected area designations to affirmatively safeguard their ancestral lands from development and extractive threats. However, this remains the exception, not the rule. State-managed, strictly protected areas ordinarily involve the removal of indigenous peoples and/or severe restrictions on their usage rights. Notably, while more progressive and inclusive approaches have gained some traction in the Americas, conservation practice in Africa and Asia is still largely conditioned on creating and maintaining state-managed, strictly protected areas.¹⁴³

In some ways, the PNKB represents a microcosm of global conservation's false paradigm shift. Until recently, it was taken for granted that the protection of biodiversity in the PNKB was the sole province of the ICCN and the foreign experts who had resolved to save the gorillas. The Batwa's expulsion was portrayed as a regrettable, but necessary act to protect the biodiversity of the forest and their return was seen as environmentally unfeasible.¹⁴⁴ Today, the historical plight and suffering of Batwa is increasingly acknowledged. They are recognized as the first peoples of the forest, and it is generally accepted that they have a historical claim to their ancestral lands, albeit not a legal entitlement. Nearly all of the PNKB's partners have publicly committed to rights-respecting and inclusive forms of conservation with some protections for indigenous peoples.

In 2014, the ICCN, Batwa representatives and various other stakeholders in the PNKB entered into a dialogue process through the auspices of the Whakatane Mechanism, a conflict resolution process developed at the IUCN.¹⁴⁵ This dialogue involved PNKB staff, representatives of Batwa and local communities around the park, provincial authorities, customary chiefs, ICCN representatives and civil society. Its aim was to bring the

relevant parties together to assess the situation in the PNKB, propose solutions to problems that had arisen and work to implement these solutions.¹⁴⁶ During a series of meetings and roundtables, a roadmap was developed to meet the immediate needs of the community, with a longer-term goal of facilitating greater community management and allowing collective land ownership.¹⁴⁷ Various commitments were made on all sides, but the ICCN and the government never implemented agreed-upon measures.¹⁴⁸ Further attempts at a dialogue between 2014 and 2018 faltered due in large part to the killing of 17-year-old Mutwa Christian Nakulire and the shooting of his father, Mobutu Nakulire Munganga, by PNKB ecoguards while the father and son were searching for medicinal plants in the PNKB.¹⁴⁹

The next significant dialogue was held at the Panorama Hotel in Bukavu in September 2019 in the first wave of the mass violence perpetrated against Batwa communities inside the park, as documented in *To Purge the Forest by Force*. During the meeting, Batwa representatives re-emphasized the need to return to the roadmap developed during the Whakatane process and, in particular, work towards co-management or participative management of the PNKB.¹⁵⁰ Further commitments were made at the conclusion of this high-level dialogue through the signing of the 'Bukavu Declaration', some of which weakened covenants already made by the PNKB during the 2014 Whakatane process. Unfortunately, the ICCN again has made no effort to follow through on their commitments, instead resorting to an aggressive, hostile and heavily militarized approach towards Batwa.¹⁵¹

Despite commitments from the ICCN, donors and other partners, conservation in the PNKB still employs the top-down approach characteristic of the fortress conservation model. The PNKB's promises to work with the Batwa to incorporate them into the management of the park have gone unfulfilled. Indeed, a signatory to the 2019 Bukavu Declaration stated: 'It is only the pygmies who have done their part.'¹⁵² Rather than engage in a constructive and genuine dialogue process, the PNKB has instead resorted to employing a 'divide and conquer' strategy with Batwa. This is characterized by park authorities providing segments of Batwa leadership and population with modest political and economic incentives to curry favour, including employment opportunities in the PNKB, while at the same time violently cracking down on the majority of Batwa leaders and community members who resist the park's coercive brand of conservation.¹⁵³ Thus, while the PNKB and its partners employ the rhetoric of consultation and participation with the Batwa, there has been very little movement towards anything resembling a rights-respecting approach.

The militarization of conservation

One of the ways in which fortress conservation has endured, and in some cases intensified, is through militarizing protected area law enforcement.¹⁵⁴ To enforce the 'fines and fences' approach inherent in the fortress conservation model, authorities are increasingly turning to aggressive and violent responses to supposed biodiversity threats. This is typically discussed under the banner of 'militarized conservation' or 'green militarization', defined by Elizabeth Lunstrum as 'the use of military and paramilitary (military-like) actors, techniques, technologies, and partnerships in the pursuit of conservation'.¹⁵⁵ It is characterized by ecoguards being equipped with military-grade weapons, furnished with advanced surveillance equipment and technologies and trained in weapons handling, military engagement and combat tactics, often through private, foreign military contractors. This is ostensibly done for the purposes of protecting nature and, in particular, combating poaching and the illegal wildlife trade more generally.

In protected areas such as the PNKB, militarized approaches have become a normalized and institutionalized response to biodiversity threats.¹⁵⁶ As detailed later in this report, conservation NGOs and donors actively fund and promote militarized forms of conservation in the PNKB and across the Congo Basin. This presents an immense challenge for human rights, particularly as ecoguards come into contact with indigenous peoples and local communities seeking to access their traditional territories to engage in subsistence hunting or other forms of sustainable resource usage.

The militarization of conservation in the PNKB is self-evident. Ecoguards wear fatigues, brandish military-grade weapons and carry multiple rounds of ammunition. Ecoguards in the Rapid Intervention Unit use AK-47 rifles, while some handle even more powerful weapons, including GP-25 grenade launchers and PKM machine guns. During the operations described in *To Purge the Forest by Force*, ecoguards deployed mortar fire and high-powered machine guns on Batwa villages.¹⁵⁷ The militarization of the PNKB's law enforcement is also evidenced by the park's use of advanced surveillance technologies, including the US-funded Spatial Monitoring and Reporting Tool (SMART), technology used to collect data and inform patrol strategies and improve effectiveness. Other forms of intelligence-gathering software and ground sensors are also leveraged as part of the park's anti-poaching strategies.¹⁵⁸

As discussed more fully in section II (3) of this report, PNKB ecoguards received paramilitary training from a variety of partners, including Maisha, GFA and the WCS,

under projects funded by the German and US governments. This is a common phenomenon across many protected areas in Central Africa impacted by violent conflict. In most cases, black African ecoguards receive paramilitary training from white, foreign trainers, lending further credence to arguments that conservation, at least as practiced in Africa, is heavily underscored by notions of white superiority.¹⁵⁹

Lastly, the PNKB has militarized its approach to biodiversity protection by coordinating closely with the FARDC, including conducting joint patrols both inside and on the rims of the park. These patrols are justified by the ICCN based on the presence of armed militias in the park. However, research has shown that joint ICCN/FARDC operations can fuel rather than mitigate armed mobilizations.¹⁶⁰ This was supported by a study in the PNKB, which found that FARDC involvement presents a risk to ecoguards, who become seen as aligned to the army and were targeted for retaliation by armed groups.¹⁶¹ FARDC interventions and the establishment of military positions within the park have hindered participatory conservation management and have generally increased insecurity for Batwa and other local communities.¹⁶²

All told, the PNKB ecoguards resemble a well-equipped and highly trained paramilitary unit prepared to engage with enemy combatants rather than a group of park rangers tasked with preserving plants and animals. The approach is not strictly protectionist, either. Numerous Batwa have been killed, beaten and arbitrarily detained outside the borders of the PNKB. Even non-Batwa community members reported that ecoguards burned their dwellings and looted their possessions outside of the park.¹⁶³ This violence is amplified by the overtly hostile rhetoric from PNKB leadership toward Batwa, including referring to them as terrorists.¹⁶⁴ In connection with the lead up to the joint operation in July-August 2019, ecoguard sources described receiving authorizations akin to ‘shoot to kill’ orders with respect to Batwa inside the park.¹⁶⁵ This aggressive positioning and pre-emptive enforcement are characteristic of what political ecologist Rosaleen Duffy calls ‘war by conservation’: the idea that ecoguards are taking more proactive, offensive actions, including intervening militarily inside and outside the borders of protected areas.¹⁶⁶

Despite criticism from human rights organizations and international media, militarized conservation still has staunch supporters.¹⁶⁷ While reluctant to label it militarized conservation, conservation NGOs robustly promote it in Central Africa, positing this as a war on poaching that justifies use of military tools, pitting ‘noble’ ecoguards fighting to save species from greedy criminal networks of poachers.¹⁶⁸ This messaging, used in their campaigning, emphasizes poaching threats to megafauna,

like the Grauer’s gorillas in the PNKB, to raise significant sums of money from statutory donors and the public at large.¹⁶⁹ The narratives regularly depict poachers as villains and lionize ecoguards as heroes.¹⁷⁰ This type of narrative galvanizes Western donors to increase funding to combat illegal poaching in Africa, without either assessing or understanding its attendant social impacts.

This simple ‘heroes versus poachers’ binary narrative is easily digestible and satisfies the general public’s desire to identify with a cause for good.¹⁷¹ This is observable in the context of forest-dwelling indigenous peoples in the Congo Basin, who were stereotyped as ruthless poachers in *Gorillas in the Mist*, the 1998 biopic about the primatologist Dian Fossey,¹⁷² instead of a community that hunted small animals for subsistence. This depiction ignored their role as forest custodians and the fact that they did not traditionally hunt (never mind poach) large mammals such as gorillas.¹⁷³ The ‘heroes versus poachers’ narrative has become entrenched in conservation messaging, with no comprehension of the human costs of confronting suspected poachers with a militarized response.

This is not to suggest that illegal wildlife trade is not a serious problem that negatively impacts indigenous peoples and local communities. Sophisticated criminal groups have poached megafauna in DRC’s national parks, causing severe species loss,¹⁷⁴ and this remains an environmental concern in the PNKB. In deciding to retain the PNKB on its list of World Heritage Site in Danger, UNESCO regularly cites the threat of illegal poaching and commercial hunting, including by armed groups operating within the park.¹⁷⁵

Yet evidence suggests that militarized conservation disproportionately targets indigenous peoples and local communities engaged in marginal, subsistence-level hunting and resource extraction in protected areas.¹⁷⁶ Unlike armed groups and politically powerful farmers causing massive destruction in the park, marginalized Batwa are an easy target for park law enforcement. Experts draw parallels between the failures of militarized conservation and the war on drugs where poor, local communities are instrumentalized to commit crimes, but do not materially benefit; militarized policing is met by even more militancy by traffickers; and harsh policing alienates desperate local communities who remain reliant on the illicit trade of these goods.¹⁷⁷ As discussed below, many of these dynamics are reflected in the PNKB, especially with respect to the Batwa’s role in the charcoal trade.

It is also important to acknowledge the difficult and often dangerous work undertaken by ecoguards. UNEP estimates that approximately 1,000 ecoguards were killed in the line of duty between 2004 and 2014.¹⁷⁸ In the Eastern DRC, dozens of ICCN ecoguards have been killed, including a number in the PNKB. In these conflict zones,

heavily militarized approaches to conservation are commonly justified by the presence and ongoing threats posed by armed groups. At various times since at least 1994, armed groups have operated in and/or maintained a presence inside the PNKB.¹⁷⁹ However, research suggests that militarized conservation does not necessarily make ecoguards or civilians safer against armed groups or other criminal elements. Instead, it can lead to an ‘arms race’, worsening relations between protected areas and surrounding communities.¹⁸⁰ Duffy et al. explain the flawed logic of relying on militarized conservation in conflict settings:

‘When conservationists operate in conflict zones, they often face intense pressures and can feel directly threatened by armed groups and by heavily armed poachers. When faced with such threats it can seem a “common sense” response for rangers to resort to the use of force to protect wildlife and themselves. However, when readily using force, it may occur that groups (including rangers), which are armed for conservation purposes, are simply regarded as another armed group engaged in a conflict. This can lead to an escalation in arms and in levels of violence, and once such a dynamic is generated it is difficult to de-escalate.’¹⁸¹

This explains why some Batwa, threatened by a conservation army equipped with military-grade weapons (such as the Rapid Intervention Unit in the PNKB) could be incentivized to align themselves with armed groups as a matter of self-protection. Historically, when aggressive and violent law enforcement tactics have been used against Batwa in violation of their human rights, ecoguards become vulnerable to acts of retribution, especially when avenues to justice are foreclosed.¹⁸²

The increased militarization of conservation also produces severe negative impacts on ecoguards. Research shows increasing rates of post-traumatic stress syndrome (PTSD) and stress-related conditions among ecoguards in some parks.¹⁸³ Ecoguard sources talked about difficulties in adjusting to a role where they were expected to engage in guerrilla warfare, as opposed to traditional tracking and monitoring duties. They also expressed a high level of discomfort in conducting joint operations against Batwa inside the PNKB in July-August 2019. This suggests some reticence among PNKB ecoguards to accept the militarized approach foisted upon them, but they remain powerless to disrupt internationally funded systems that exist in the park.

The environmental inefficacy of fortress conservation

Fortress conservation causes immense harm to indigenous peoples, but also consistently fails to meet

environmental expectations and objectives. State-managed protected areas are the cornerstone of global conservation efforts, including at the IUCN and the CBD, yet there is little evidence to suggest that prevailing approaches are meeting global conservation goals.¹⁸⁴ A 2019 report from the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services found that biodiversity loss was occurring at unprecedented rates, with over 1 million species at risk of extinction.¹⁸⁵ The same report concluded that biodiversity in the areas managed by indigenous peoples and local communities was declining less rapidly than in other regions.¹⁸⁶

This rapid species loss occurs alongside a significant expansion in the terrestrial and marine areas under protected status, driven by the CBD targets. After analysing data in 12,315 protected areas across 152 countries, a 2019 study concluded that, on average, human pressures on nature actually increased inside protected areas. In fact, the protected areas subject to the study performed similarly, and in the case of tropical regions, worse than non-protected areas. Among other potential causal factors, the study pointed to weakened land tenure rights of indigenous peoples and local communities.¹⁸⁷ Accordingly, the authors of the study concluded that increasing terrestrial coverage under the CBD’s previous targets led to the failure of many protected areas and further cautioned against the ‘rapid establishment of new [protected areas] without simultaneously addressing the conditions needed to enable their success.’¹⁸⁸

The failure of state-managed protected areas to realize positive biodiversity outcomes has also been specifically observed in the Congo Basin. Rainforest Foundation UK’s 2016 study into protected areas across the region, including the PNKB, determined that there is little empirical evidence to suggest that state-managed protected areas are achieving tangible conservation objectives. Instead, poaching remains prevalent and species, especially megafauna like elephants and gorillas, are rapidly declining, despite strict protections and well-financed law enforcement.¹⁸⁹ The increase in poaching in fortress conservation projects has been observed in other studies,¹⁹⁰ with many such protected areas suffering severe environmental deterioration.¹⁹¹ Despite this poor track record, the DRC’s Minister of the Environment and Sustainable Development recently pointed to the expansion of protected areas in the country as a justification to lift the long-standing logging moratorium in the DRC,¹⁹² a move criticized by civil society.¹⁹³

Fortress conservation is incompatible with positive environmental outcomes for three primary reasons. First, evicting indigenous peoples from their ancestral lands removes an essential part of that ecosystem. Indigenous peoples’ custodianship and traditional knowledge have

positively shaped landscapes for thousands of years, protecting and fostering biodiversity through traditional practices and sustainable livelihoods.¹⁹⁴ In the case of Batwa, they maintained a symbiotic relationship with the forest which was mutually beneficial to both nature and its human inhabitants.

Second, displacing indigenous peoples often removes a layer of protection that safeguards against external threats, including those posed by human settlement, extractive industries and development projects.¹⁹⁵ The establishment of protected areas on the territories of indigenous peoples erodes their authority to deter and prevent other communities and more destructive actors from accessing and degrading nature. As Geldmann et al. found: '[i]n this way [protected area] designation can spur encroachment rather than prevent it'.¹⁹⁶ Fortress conservation replaces indigenous peoples with states that often lack the capacity, resources, know-how and political will to adequately protect the environment.¹⁹⁷ In the PNKB, the expulsion of the Batwa removed an essential layer of protection that prevented intrusions by others,¹⁹⁸ and may have contributed to the subsequent occupation of the PNKB by armed actors who spread conflict to the region.¹⁹⁹

Lastly, exclusionary and violent nature preservation methods alienate indigenous peoples and local communities, making them less likely to support a state's conservation objectives. Indigenous peoples and local communities often possess sustainable resource management regimes and practices that are disrupted and replaced by state-managed protected areas. This, along with the deprivation of subsistence activities that depend on access to territories, can lead to over-exploitation and resource extraction by indigenous peoples and local communities.²⁰⁰ This dynamic exists in the PNKB and the Batwa's lack of interest in state conservation objectives is understandable considering their impoverishment, continued exclusion from their lands and resources, and the ongoing harassment and violence inflicted on them by park ecoguards.²⁰¹

Instead of accepting the shortcomings of the fortress conservation model, proponents consistently attribute environmental degradation to the actions of indigenous peoples and local communities on the basis of flimsy evidence.²⁰² These groups are disproportionately blamed for poaching, mining or deforestation, while extractive industries and more politically powerful actors benefit from resource-rich territories with relative impunity. In some landscapes, indigenous practices have even been banned as environmentally unfriendly, despite a historical track record of sustainability, with disastrous consequences for nature.²⁰³

As an especially biodiversity-rich area in the Congo Basin, the PNKB is a significant conservation priority for both the ICCN and the international conservation community. Most well known for being the last remaining

natural habitat for the critically endangered Grauer's gorilla population, the park contains a great diversity of other animal and plant life, itself evidence of the sustainable ways in which Batwa lived in the forest for millennia.²⁰⁴ Like other state-managed protected areas in the region, the PNKB has consistently underperformed, with the fortress conservation approach used by the ICCN and supported by international partners, unable to foster and protect the park's diverse flora and fauna.

The lack of comprehensive assessments regarding the effectiveness of conservation is a consistent problem with protected areas in the DRC, including in the PNKB.²⁰⁵ Notwithstanding, it is clear that under ICCN management, the PNKB has suffered ongoing environmental deterioration, as reflected in the UNESCO World Heritage Committee's (WHC) recurring decisions to keep the PNKB on its List of World Heritage Sites in Danger. The gorilla and elephant populations have declined drastically.²⁰⁶ The park's elephant population was completely decimated in the mid-1990s with the influx of thousands of refugees displaced from neighbouring Rwanda.²⁰⁷ Additionally, research in 2016 found that the Grauer's gorilla population in the PNKB had declined by as much as 87 per cent.²⁰⁸ While gorilla numbers seem to have rebounded slightly in the highland sector of the park in recent years,²⁰⁹ the PNKB is still routinely cited as an example of the type of rapid biodiversity loss that is imperilling the planet as a whole.²¹⁰

The reasons that conservation is failing in the PNKB are various and complex. The refugee influx from Rwanda in the mid-1990s also brought armed groups, who began exploiting the park's resources for subsistence or to finance their activities. This had a devastating impact on the park. Entrenched poverty in the villages around the PNKB has also historically placed increased demand on resources.²¹¹ These human pressures on the park are undeniable, especially in the highland sector which is one of the most densely populated areas in the Eastern DRC. Settlement by non-Batwa farmers in the ecological corridor between the highland and lowland sector has also been cited as a principal threat to the environmental integrity of the park.²¹²

Conservation actors repeatedly point to recurring periods of war, civil conflict and general instability in the Eastern DRC as reasons why biodiversity is failing in the PNKB.²¹³ While undoubtedly a significant factor in the park's environmental degradation, especially due to the occupation by armed groups and their unlawful resource extraction, the inability of the ICCN to manage and protect the park cannot be explained solely by pointing to civil conflict. It is a far more complex situation, rooted in the unlawful creation of the park in 1975, which created a series of conflicts and disputes over territories and resources, including between the Batwa and PNKB authorities.²¹⁴

In the PNKB, local populations, including Batwa, regularly enter the forest to access and extract natural resources. They hunt and trap small animals, collect firewood and gather medicinal plants. Some Batwa engage in more substantial activities, such as artisanal mining and charcoal production. None of this is unique to Batwa and, in fact, non-Batwa communities and armed groups engage in extractive practices on a much larger scale. The African Commission's Working Group on Indigenous Populations/Communities expounded this distinction, stating that Batwa traditionally 'never hunted gorillas, nor did they destroy the forest by cutting down trees', while farmers have 'caused great damage to the forest by destroying large sections in order to create agricultural plots and pasture'.²¹⁵ One could also fairly question whether the Batwa would be forced to engage in 'illegal' activity had they been able to remain in the forest undisturbed. Moreover, the ICCN has itself been accused of participating in the extraction of natural resources, to the detriment of the PNKB.²¹⁶ Yet it is Batwa who are consistently and disproportionately blamed for environmental destruction. As the most marginalized peoples in all of the DRC, they are easy targets who are routinely scapegoated for the park's failed conservation policies.

This was most recently illustrated in late 2018, when community members from several Batwa villages returned to live on their lands inside the PNKB.²¹⁷ Park authorities blamed Batwa for deforesting over 300 hectares of woodland inside the park, causing an outcry and condemnation amongst conservationists²¹⁸ and academics.²¹⁹ This proved to be a simplistic response, however, to a more complex dynamic around resource extraction that was occurring in the park: the return of Batwa presented an opportunity for other groups to exploit resources under cover of the Batwa's historical and legitimate claim to the forest. Numerous sources, including the PNKB, acknowledge that Batwa were instrumentalized by more powerful groups, who paid Batwa minuscule wages for the extremely dangerous work involved in producing charcoal.²²⁰ Minimal benefit actually flowed to Batwa communities, while non-Batwa suppliers and trading networks in Bukavu allegedly made large profits.²²¹ This is characteristic of the treatment of Batwa more generally, whom other communities often considered to be their serfs and property.²²² This has been observed by the African Commission's Working Group on Indigenous Populations/Communities:

'Practices similar to slavery are clearly present in North and South Kivu where it is common to see indigenous communities exploited by their Bantu neighbours. In fact, some indigenous populations are still even today treated as slaves by some Bantu. These

*latter keep them in a state of virtual slavery that goes as far as requisitioning their services and/or their goods for free. And when they do get paid, they receive very little money or only clothing or food.'*²²³

Scapegoating indigenous peoples, such as Batwa, as environmentally destructive belies a robust body of evidence demonstrating that indigenous-owned, occupied and managed territories are outperforming state-managed protected areas in achieving ecological outcomes. In a recent study on rights-based conservation, the NGO, Rights and Resources Initiative, found that:

*'The lands and forests managed and governed by [indigenous peoples], [local communities] and [Afro-descendants] are able to suppress fires and resist forest loss, and consequently experience lower rates of deforestation. Their lands have enhanced carbon storage capabilities, contain important populations of threatened terrestrial vertebrate species, and protect biodiversity in general.'*²²⁴

Dozens of studies across various geographical and cultural contexts have confirmed this.²²⁵ This has led to a growing recognition that indigenous peoples are the best custodians of their territories.²²⁶ As place-based peoples, they have an intimate and extensive understanding of their environment, honed through generations of living and being in these places, developing the traditional knowledge that guides and demands sustainable, environmental conduct.²²⁷ These communities understand their natural environment deeply, as confirmed by UNDRIP, which declares that 'respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment'.²²⁷

While indigenous peoples are not monolithic, and their environmental stewardship should not be romanticized, there is copious evidence across many different contexts that demonstrates the low-impact, sustainable lifestyles of indigenous peoples have overwhelmingly protected the ecological integrity of their territories.²²⁹ This is directly evidenced in the first instance by the immense overlap between global biodiversity hotspots and territories owned, managed and occupied by indigenous peoples.²³⁰ This is not a coincidence, nor the result of low population density, but reflects the positive contributions made by indigenous peoples in furtherance of the preservation of their environments.²³¹ Experts now accept that conservation without indigenous governance and participation is likely to fail.²³² Notwithstanding, fortress conservation ignores this growing body of evidence and marginalizes indigenous traditional

knowledge and ways of living with the natural world. Instead of being rewarded for responsible stewardship, fortress conservation displaces and then excludes indigenous peoples from their territories and resources.²³³

The PNKB's condemnation of Batwa as environmentally destructive is at odds with their long-standing, sustainable guardianship of the forest. Anthropologist Jerome Lewis remarks that: 'Batwa ... are entitled to respect for their singular significance in the history of the area as the original inhabitants, and as people who, unlike later comers, used the environment without destroying or seriously damaging it'.²³⁴ Barume observes that: 'Park authorities were highly effective in removing the politically vulnerable [Batwa], who hunted and gathered in the forest but did not destroy it for agriculture.'²³⁵ Indeed, it is only through the Batwa's long-term custodianship of the Kahuzi-Biega forest that conservationists had anything left to preserve when they

created the PNKB in the 1970s. Unfortunately, Batwa have not been given a meaningful opportunity to demonstrate this effective governance over the past 50 years as they have been excluded from any management or decision-making post-eviction, as well as from the lands and natural resources that provided the basis of the mutually reinforcing give-and-take that characterized Batwa's relationship with the Kahuzi-Biega forest.

Regardless of the reasons behind the ongoing environmental deterioration, the fact remains that the fortress conservation approach in the PNKB, supported by the park's international partners, is failing to protect the biodiversity of the forest. The creation of a strictly protected area, without meaningful participation of its owners and original stewards, has failed to meet modest conservation goals and has proven to be ecologically catastrophic. Thus, the PNKB represents a clear case of how fortress conservation fails both people and the environment.

Part II. International accountability for human rights violations in the PNKB

While the primary duty to respect Batwa human rights lies with the Congolese government, the PNKB's international partners have committed to respecting the rights of indigenous peoples in connection with their support of protected areas. They are responsible for ensuring that their activities do not result in or contribute to the commission of human rights abuses. Yet, the PNKB remains a violent project maintained through the support of several international actors who uphold the park's fortress conservation model and its increasingly militarized

approach to park law enforcement. Each of these conservation NGOs, donors, consulting companies and international organizations has a duty to not contribute to ongoing conservation-related human rights violations and to promote a more just, rights-respecting approach to biodiversity protection in the PNKB. The second part of this report addresses the roles and culpability of the primary international stakeholders supporting the PNKB: (1) the WCS, (2) the German federal government, (3) the US federal government and (4) UNESCO.

3. The Wildlife Conservation Society

While several conservation NGOs have been involved in the PNKB since its inception, the most active of these organizations is the WCS, a New York-based NGO with a long-standing and sizeable role in international conservation.²³⁶ The WCS has been a major force behind fortress conservation projects globally, but particularly in the Congo Basin.²³⁷ As one of the largest and most well-funded conservation organizations in the world, operating mostly in developing states, it has significant political and financial power in determining how protected areas are managed and how alleged human rights abuses are responded to. It also has a legal responsibility to respect human rights in the course of its conservation work.

In the PNKB, the WCS was aware of unresolved allegations of human rights abuses committed by ecoguards against members of the Batwa community prior to the violent, joint operation in July-August 2019 detailed in *'To Purge the Forest by Force'*. Months earlier, it was expressly informed that ecoguards were shooting and threatening Batwa community members inside the park and that the PNKB intended on removing them by 'any means' if they refused to leave voluntarily.²³⁸ The WCS nonetheless continued to provide various forms of technical and material support to the PNKB, including ongoing payments for ecoguard compensation, equipment, and law enforcement training. More broadly, it has actively funded and facilitated the increased militarization of conservation in the PNKB, including through on-site law enforcement training and by

subcontracting a private military contractor (Maisha) to provide paramilitary training to PNKB ecoguards. This training coincides with recurring violence perpetrated by PNKB ecoguards against Batwa and was undertaken in violation of the UNSC's arms embargo in the DRC. This represents a failure on the part of the WCS to uphold its human rights commitments in the context of its financial, material and technical support of conservation-related activities in the PNKB.

Colonial history and legacy

The WCS's troubled history with the forest-dwelling peoples of the DRC began with the kidnapping of Ota Benga, an indigenous man taken to the United States and eventually displayed alongside primates in a cage at the WCS-owned Bronx Zoo in 1906.²³⁹ WCS co-founders Madison Grant and Henry Fairfield Osborn, Sr helped arrange and lobbied for Benga to be brought to the Zoo and displayed in the 'monkey-house cage'.²⁴⁰ Benga was only released from captivity after outrage was expressed by local Black ministers in New York. Desperate, broken, and unable to return home, Benga committed suicide in 1916.²⁴¹ In subsequent years the WCS reportedly distorted the truth surrounding Benga, including by claiming at one point, that he was an employee of the Bronx Zoo.²⁴² It was not until 2020 that it finally publicly apologized for the racist and intolerable treatment of Benga, 114 years after he was forced into the monkey-house cage.²⁴³

Racist Roots

Even compared to other environmental organizations, the origins of the WCS are especially sordid.²⁴⁴ Its co-founder, Madison Grant, penned *The Passing of the Great Race: or The Racial Basis of European History* in 1916, which advanced a theory of white supremacy and eugenics that championed the superiority of the 'Nordic race'.²⁴⁵ Another co-founder, Henry Fairfield Osborn, Sr, helped get the book published and wrote a glowing endorsement of Grant's theory in the preface of the 1918 revised version.²⁴⁶ Years later, Adolph Hitler purportedly wrote to Grant calling *The Passing of the Great Race*, 'his bible'.²⁴⁷ A German translation of the text was eventually introduced as a defense exhibit during the Nuremberg trials by Dr Karl Brandt, an SS officer and Hitler's personal physician, who proffered Grant's theory as justification for the eugenics policies of the Third Reich. In the United States, Grant was influential in promoting legislation that restricted immigration based on race, as well as anti-miscegenation laws in the 1920s. He was also a leading figure in the eugenics movement globally, hosting the International Eugenics Congress in 1921.²⁴⁸

While the WCS has moved beyond the overt racism and intolerance that characterized its founding, its evolution into a major institutional actor in global conservation must be contextualized in this history since harmful ideologies informed its early conservation work. The WCS's support of protected areas began in 1946 with the creation of the Jackson Hole Wildlife Park, which eventually became part of Grand Teton National Park, located in the US.²⁴⁹ It helped establish the park with a view towards providing tourists with an opportunity to view majestic local wildlife, including large mammals such as elk and bison.²⁵⁰ However, at that time, and thereafter, no consideration was given to the indigenous peoples who had occupied these lands for thousands of years before white settlers had expanded west.²⁵¹

The Jackson Hole Wildlife Park was the WCS's first foray into fortress conservation, a modus operandi that continued for much of the twentieth century. In the late 1950s, the WCS expanded its conservation work to Central and East Africa, including the DRC.²⁵² In the subsequent 60 years, it has supported at least 245 protected areas globally in various capacities.²⁵³ It is particularly active in Africa, where it touts the 'largest and longest standing field conservation program' on the continent.²⁵⁴ Across Central Africa, alone, it supports the management of 18 different protected areas, including the PNKB.²⁵⁵

The WCS has been explicit about the type of conservation it intended to pursue in the Congo Basin.

Michael Fay,²⁵⁶ a senior conservationist with the WCS, testified before US Congress that '[m]y work in the Congo Basin has been basically to try to bring this U.S. model to Africa', an obvious nod to the fortress conservation approach that originated in Yellowstone and Yosemite National Parks.²⁵⁷ Later, when indigenous peoples and their advocates began demanding that their rights be respected in conservation projects, former WCS president Steven Sanderson reportedly claimed that the conservation agenda had been 'hijacked' at the expense of biodiversity and wildlife.²⁵⁸

WCS engagement with indigenous peoples

The WCS is one of the most powerful conservation NGOs in the world, partnering with some of the wealthiest bilateral donors and receiving millions of dollars in funding to implement various conservation initiatives. This financial leverage provides the WCS with a platform to promote western ideals of biodiversity conservation, while its political power is harnessed to impose its vision of how landscapes should be used in places like the Eastern DRC.²⁵⁹ With this power comes increased responsibility for ensuring that indigenous peoples do not suffer undue adverse consequences associated with efforts to protect nature.

The WCS is staffed with well-meaning, highly capable professionals who care deeply about saving wildlife and stemming biodiversity loss: in the PNKB it has proven its commitment in the face of challenging and dangerous work.²⁶⁰ Yet, as an organization, the WCS consistently falls short of recognizing and respecting the rights of indigenous peoples in the scope of its conservation work. This is a serious shortcoming for an organization which intentionally elects to work in 'areas inhabited by the rural poor, by marginalized and disenfranchised people, or by long-term traditional, indigenous inhabitants'.²⁶¹ Despite the significant overlap of its conservation activities on the territories of indigenous peoples, the WCS has been reluctant to adopt robust internal safeguards in line with international standards guaranteeing indigenous rights. Nor has it been able to ensure that its existing policies and safeguards are adequately operationalized on the ground in protected areas such as the PNKB.²⁶²

In the wake of UNDRIP's adoption in 2007, major conservation organizations, including the WCS, took steps to memorialize their commitments to respecting human rights. In 2009, these organizations formed the Conservation Initiative on Human Rights (CIHR), a consortium with the stated goal of promoting integration of human rights in conservation policy and practice.²⁶³ While the WCS is one of the original members, it refused

to sign the CIHR's Conservation and Human Rights Framework, opting instead to create its own,²⁶⁴ with one conspicuous difference between the two policies: the CIHR Framework includes a specific commitment to 'support the improvement of governance systems that can secure the rights of indigenous peoples and local communities',²⁶⁵ while the WCS's internal human rights framework only refers to local communities, omitting indigenous peoples from the entire document.²⁶⁶ This suggests, at a minimum, that the WCS is not comfortable recognizing the specific rights of indigenous peoples or in making direct commitments to them as part of its official human rights policy.²⁶⁷ This is also buttressed by the fact that the WCS does not maintain a stand-alone indigenous peoples policy, unlike other large conservation organizations.²⁶⁸ Indeed, while the WCS's existing policies apply to indigenous peoples, they offer no specifically tailored protections to these groups, despite their marginalized status in society and the disproportionate impact that protected areas have on them.²⁶⁹

Existing research shows that the WCS's internal safeguards have not been regularly implemented or adhered to, especially in protected areas across the Congo Basin.²⁷⁰ In the past 20 years, the WCS has facilitated the establishment of a number of protected areas on the territories of indigenous peoples and/or local communities, often claiming that these spaces are uninhabited or downplaying the number of local people impacted.²⁷¹ These claims have been challenged by independent research,²⁷² but the organization has been recalcitrant in its approach.²⁷³ Today, the WCS continues to support conservation initiatives which seek to relocate indigenous peoples, which, in at least one case, it touts as a 'win-win situation'.²⁷⁴ Civil society has questioned whether these programmes are truly voluntary or compliant with indigenous peoples' FPIC rights.²⁷⁵ There have also been reports of serious ecoguard abuses against indigenous peoples in protected areas that the WCS supports or manages in the Congo Basin.²⁷⁶ As a result, its work has come under increased scrutiny by indigenous groups, human rights NGOs, and governments alike.²⁷⁷

Recently, the WCS has taken more positive steps to recognize the central role that indigenous peoples should have in conserving the environment. For example, in response to the proposed Draft Post-2020 Global Biodiversity Framework in the CBD, the WCS has pushed for stronger language, calling not just for the full and effective participation of indigenous peoples but for indigenous-led conservation, which it acknowledges is effective.²⁷⁸ The challenge is for the WCS to ensure that this rhetoric translates into practice and that indigenous rights-respecting modes of conservation are realized, particularly in insecure and politically challenging

contexts, such as the PNKB. Yet, as discussed more fully in section II(3) of this report, the WCS seems unwilling to exert the same level of pressure and influence to ensure Batwa's adequate participation and governance in the PNKB, as it does in furtherance of securing its own management role in the park.

WCS support of the PNKB

The WCS has been involved in the PNKB for several decades, even before the area was gazetted as a national park. In 1959, it sponsored the renowned biologist Dr George Schaler to conduct research in the forests of the Eastern DRC in what is now Virunga National Park and the PNKB. It publicly claims that Dr Schaler's research constituted the *first* study of Mountain and Grauer's Gorillas in the region,²⁷⁹ ignoring the history of the many Batwa and other Congolese who lived with and studied these creatures long before Dr Schaler's visit to the Eastern DRC.

For the past 20 years, the WCS has funded and supported the management of the PNKB. Its support includes, but is not limited to, payment of ecoguard compensation, the provision of supplies, equipment and rations, various forms of species monitoring and data collection, capacity building, ecoguard training, conflict resolution and local community engagement. Unlike its role in other protected areas, the WCS does not currently (as of the date this report was finalized) have direct management or co-management responsibility in the park, and it is quick to point out that it does not have the authority to direct the PNKB ecoguards. Rather, with funding from international donors, it provides various levels of technical and material support in furtherance of the ICCN's management of the PNKB.

Between 2016 and 2020, the WCS spent more than US\$582 million through its global conservation programmes.²⁸⁰ It is unclear how much of this money is allocated to the PNKB, but it is possible that it exceeds the funding received from the DRC's central government, even though the ICCN is the entity charged with administering the park. For example, in 2012, the ICCN was allocated US\$1 million in the national budget, of which the PNKB received only US\$18,000.²⁸¹

A primary focus of the WCS's work in the PNKB has been on strengthening the law enforcement capacity of its ecoguards. It has supported ecoguards to establish regular patrolling systems, counter armed poaching, and implement intelligence, surveillance and monitoring software and systems aimed at improving law enforcement.²⁸² As an organization, it is regularly touted as having particular expertise in conservation law enforcement, including in grant applications to its donors.

This emphasis on law enforcement is borne out in the grants awarded to the WCS. For instance, of the total funding the WCS received from the USFWS via international conservation grants for work in the DRC between 2010 and 2018, approximately 84 per cent was earmarked, in whole or in part, for law enforcement-related activities. By contrast, a tiny percentage of USFWS grant money was allocated to community engagement or conflict resolution, despite the WCS's claim of using a 'conflict-sensitive conservation approach' in the PNKB.²⁸³

Militarized ecoguard training and support

In connection with its law enforcement support, the WCS actively promotes the militarization of the PNKB's ecoguards. The WCS does not call it militarization, opting to refer to its law enforcement training and support as contributing to the 'professionalization' of ecoguards, which it views as a critical need in the DRC.²⁸⁴ In the PNKB, it provides specific incentives, in the form of 'top-up' or 'prime' payments to the ecoguards in the Rapid Intervention Unit, the paramilitary unit responsible for the human rights abuses documented in *To Purge the Forest by Force*. These prime payments are determined based on a sliding scale that reflects rank and grade, but on average, they amount to US\$40 per month, regularly eclipsing the ecoguards' base salaries paid by the ICCN.²⁸⁵

The WCS has also arranged for and provided paramilitary training to the Rapid Intervention Unit. Between 2016 and 2017, with funds from the US government, the WCS engaged Maisha to provide paramilitary training and other security services to PNKB ecoguards.²⁸⁶ Maisha is a private military contractor that markets and sells security services to conservation departments and NGOs in Africa, particularly those that work in landscapes afflicted by armed conflict or where the rule of law is generally weak.²⁸⁷ The WCS has partnered with Maisha in numerous protected areas it supports, commending it for its work in 'professionalizing' ecoguard teams.²⁸⁸

Maisha is an ardent supporter of the militarization of conservation across Africa. Its CEO, Nir Kalron, is a former Israeli special forces operative who has strongly advocated for a radical form of 'neo-conservation' premised on a belief that defenders of wildlife are literally at war with poachers.²⁸⁹ He has also embraced the parallels between anti-poaching and the global war on drugs, reportedly stating that '[t]here won't be anything to conserve without harsh measures in security and enforcement against wildlife trafficking as there are in drug trafficking ...'²⁹⁰ For Kalron, this requires resources to be shifted away from scientific research and traditional ecological monitoring activities and towards aggressive and sophisticated operations.²⁹¹

With the support of private military contractors like Maisha, the WCS has funded and promoted militarized forms of conservation across numerous protected areas. Across Central Africa, Maisha has trained ecoguards in paramilitary tactics, including various forms of surveillance and monitoring, weapons handling and combat training. According to the WCS, it last partnered with Maisha in the PNKB in 2017,²⁹² but it is reported that Maisha continued to train PNKB ecoguards into at least 2020.²⁹³ While not naming Maisha, ecoguard sources confirmed that in the lead-up to the joint operation against the Batwa inside the PNKB in July-August 2019, 'white mercenaries' trained them in the use of heavy weapons, including the mortars deployed against Batwa inside the park.²⁹⁴

The WCS has assumed a more direct role in the paramilitary training of PNKB ecoguards since October 2019. Between October 2019 and June 2021 it employed an on-site law enforcement adviser in the PNKB, who provided continuous and ongoing training, mentoring and technical support to the Rapid Intervention Unit. This included instruction on weapons handling, patrol techniques, navigation technologies, radio communications, and rules regarding use of force and arrests.²⁹⁵ In connection with this training, the WCS provided equipment and supplies to the ecoguards: rations, GPS and satellite communication devices, solar power banks, uniforms, tents, camp beds, office equipment, solar panels and batteries, furniture and radios.²⁹⁶ The provision of this equipment and supplies began in July 2019, immediately preceding the first of three large-scale attacks by joint contingents of park guards and soldiers against Batwa villages inside the PNKB.

As detailed in *'To Purge the Forest by Force'*, this militarized training was provided in violation of the UNSC-imposed arms embargo in place in the Eastern DRC since 2003. The WCS failed to ensure that its training and/or support of training was accompanied by an advanced notice to the UNSC's Sanctions Committee, as required under successive UNSC resolutions.²⁹⁷

The WCS's knowledge of and responses to alleged human rights abuses against Batwa

Through its support of the PNKB, the WCS has been made aware of ongoing human rights violations committed by ecoguards against members of the Batwa community. It expressly acknowledges that '[c]onflicts between [ICCN] and the local communities in and around the park had become commonplace.'²⁹⁸ In 2017, the WCS was directly apprised of the killing of 17-year-old Mutwa Christian Nakulire and the shooting of his father, Mobutu Nakulire

Munganga, by ecoguards while the father and son were searching for medicinal plants in the PNKB.²⁹⁹ A US government investigation further confirmed that the WCS had been alerted to numerous instances of human rights abuses in the scope of its conservation work more generally, including ‘one in which a government park ranger killed an indigenous man in the DRC’.³⁰⁰

In May 2019, the WCS was explicitly informed by civil society that ecoguards were shooting and threatening Batwa community members who had returned to the PNKB.³⁰¹ The WCS was further put on notice that the PNKB had given the Batwa an ultimatum to leave their lands inside the park otherwise PNKB authorities would use any means, including force, to expel them.³⁰² And rather than publicly denounce such violations and withdraw support, WCS continued with their financial and technical assistance, including by providing training to the ecoguards in the Rapid Intervention Unit credibly accused of shooting and threatening Batwa.³⁰³ Shortly after receiving this communication, the WCS also began furnishing equipment to the Rapid Intervention Unit in July 2019, just weeks prior to the initial joint attacks targeting Batwa inside the park.³⁰⁴

In July 2021, the WCS was once again made aware of credible accounts of human rights violations in the park, including the killing of two Batwa men by a joint contingent of FARDC soldiers and PNKB ecoguards.³⁰⁵ Privately, WCS claims to have conducted internal inquiries which it maintains revealed conflicting accounts around the July 2021 attacks.³⁰⁶ It is not clear what specific steps WCS took to investigate these claims, assess the conflicting information or discharge its due diligence obligations. It did not inquire with MRG, the civil society organization that raised these allegations of human rights abuses with the ICCN, WCS and the park’s other international partners. Instead, a representative of WCS emailed PNKB Director De Dieu Bya’ombe wishing him ‘courage’ in the face of such allegations and attendant demands by civil society. The WCS was also apprised of further human rights violations in November 2021, including accounts that two Batwa children were burned alive in their homes by ecoguards and soldiers.³⁰⁷

Apart from actual knowledge, the WCS has constructive knowledge of human rights abuses committed by PNKB ecoguards. It maintained an on-site presence in the PNKB through its law enforcement adviser, who liaises directly with PNKB leadership. The organization has also been involved in the ongoing dialogue process between the Batwa community, the ICCN, the provincial government in South Kivu and other stakeholders. During these meetings, the grievances of the Batwa community vis-à-vis ecoguard abuses are routinely raised, including recurrent and unresolved human rights violations. Lastly, civil society has been

reporting on the deteriorating human rights situation in the PNKB for many years, with the WCS engaging with some of these CSOs. Yet, despite the ICCN’s poor human rights track record, the WCS has publicly commended the ICCN and endorsed its management of the PNKB.³⁰⁸

The WCS’s organizational ‘Global Grievance Redress Mechanism’ is supposedly maintained for the purpose of providing a mechanism for impacted parties to raise grievances regarding its projects and activities.³⁰⁹ WCS staff are encouraged to use locally appropriate methods to disseminate the policy to individuals and communities, but the vast majority of Batwa have no awareness of the WCS, much less come into contact with their staff members. No site-specific grievance mechanisms currently exist in the PNKB. WCS has recently publicly committed to setting up a grievance and redress mechanism in the park, but only after it was made aware that its support of the park and complicity in human rights abuses was to be scrutinized in *To Purge the Forest by Force*.³¹⁰ The lack of a local, effective and culturally appropriate grievance mechanism has hindered the WCS and the PNKB’s other partners from being adequately apprised of ongoing human rights violations against Batwa and from ensuring that the ICCN and/or local authorities are providing redress for these violations.

Despite knowledge of unresolved human rights abuses, it is not clear what remedial steps the WCS has taken in response. In the case of the killing of 17-year-old Christian Nakulire, the WCS’s response appears to be limited to a communication of concern to ICCN leadership in Kinshasa, asking them to conduct a ‘speedy and thorough investigation’.³¹¹ By requesting ICCN to investigate, the WCS is essentially asking the alleged perpetrator of serious human rights abuses to examine and adjudicate its own conduct. Perhaps unsurprisingly, a US government investigation found that for every identified allegation of human rights abuse in the scope of its conservation work, the WCS took the position that either the allegations were false or they had been adequately resolved by the appropriate authorities.³¹²

There is also evidence to suggest that the WCS failed to report human rights concerns in the PNKB to its donors. For instance, a US Department of Interior (DOI) investigation determined that grantees, such as the WCS, did not share internal investigations or make the USFWS aware of human rights allegations in protected areas the agency funds.³¹³ In the same year that Christian Nakulire was killed, the USFWS had awarded the WCS a grant to work with the ICCN to counter armed poaching and other security threats through the development of the Rapid Intervention Unit.³¹⁴ Failing to report such abuses through standard channels limits the ability of donors to adequately respond to violations and deprives them the

opportunity to assess WCS's own culpability in the commission of these wrongs.

In the same investigation, WCS refused to provide requested information to the DOI, stating that its 'request was overly burdensome and that they would only be able to produce a limited amount of information based on their internal document retention policy'.³¹⁵ The DOI memorandum further noted that:

*'despite several reports detailing extensive allegations of human rights abuses at the hands of eco-guards supported by the WCS, they indicated their record retention policies prevent the Department from assessing whether such incidences involving their organization occurred or how they were handled.'*³¹⁶

This lack of transparency and forthrightness in the face of egregious allegations of human rights abuses committed

in the context of its conservation work impedes oversight and demonstrates a serious lack of accountability.

The WCS remains an active and committed partner in the PNKB, as demonstrated by its 2020 statement to the WHC, maintaining that it 'redoubles its commitment to the [PNKB] and looks forward to strengthening its support to ICCN in addressing the current threats to the [PNKB]'.³¹⁷ As described in Section II(7) below, it is currently in the process of negotiating and entering into an arrangement with the ICCN to co-manage the PNKB and is participating in preliminary discussions with other stakeholders to support a human rights investigation in the park. It has also recently committed to a 'new paradigm' of conservation in the PNKB, which it claims will respect the rights of Batwa.³¹⁸ To date, however, it has failed to accept responsibility for its role in militarizing the Rapid Intervention Unit or publicly reconcile how its support of that unit has contributed to serious human rights abuses.

4. German development assistance and support

The German federal government is the primary financier of the PNKB and one of the largest funders of international conservation projects. It has assumed the responsibility to ensure that its biodiversity support does not contribute to human rights violations. Yet, the German government has been the target of credible accusations that it funds and supports ecoguards in the Congo Basin who have perpetrated serious human rights abuses against indigenous peoples, including against Batwa in the PNKB.³¹⁹ This prompted a flurry of parliamentary proceedings and internal investigations into the government's role in conservation-related human rights violations.³²⁰

The German government's long-standing partnership in the PNKB has made it aware of the ongoing exclusion of Batwa from conservation decision-making and the myriad human rights violations rooted in their original expulsion from their ancestral lands. It has the financial leverage to influence the ICCN and push conservation policy towards a more rights-respecting model, inclusive of Batwa. For nearly 40 years, however, the German government has tacitly supported the PNKB's coercive and violent approach, leading to serious and ongoing human rights violations against Batwa. Despite explicit knowledge of recurrent human rights abuses, it continued to materially support the park, including by providing

compensation and training to PNKB ecoguards. While modest steps have been recently taken to address some of its human rights shortcomings, German support of the PNKB is principally characterized by a reluctance to ensure a meaningful departure from the park's fortress conservation approach that was initially implemented and later entrenched through German assistance.

Overview of German biodiversity funding

German money for biodiversity assistance comes almost exclusively from the Federal Ministry for Economic Cooperation and Development (Bundesministerium für wirtschaftliche Zusammenarbeit – BMZ), and to a lesser extent, the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety (Bundesministerium für Umwelt, Naturschutz und nukleare Sicherheit – BMU).³²¹ The funds are primarily administered through two implementing organizations: KfW, for financial support, and GIZ, for technical assistance.³²² German cooperation is then either provided directly to country partners, such as the ICCN, or through international implementing partners, such as conservation NGOs like the WCS. In addition to bilateral funding, Germany also provides millions of dollars in

multilateral financing through mechanisms such as the Global Environment Facility and the World Bank's Forest Carbon Partnership Facility, as well as through its membership in the European Union (EU).³²³

Through the activities of KfW and GIZ, Germany has emerged as one of the largest biodiversity donors in the world. Over the past 20 years, the German federal government has continuously increased its financial contribution to international biodiversity initiatives, providing €500 million annually for the conservation of forests and other ecosystems since 2013.³²⁴ This amount was increased to €600 million in 2021, making Germany responsible for close to 10 per cent of all biodiversity funding from international development.³²⁵ KfW plays an outsized role in this assistance, supporting more than 740 protected areas across 60 countries.³²⁶ As of 2020, KfW had committed nearly €3 billion to biodiversity projects, with nearly 90 per cent of that funding going to projects in Latin America, Africa and Asia.³²⁷ A large percentage of this money flows to protected areas in the Congo Basin. As of 2019, the federal government had a total of €440 million committed to active biodiversity projects across 17 protected areas in the region.³²⁸ The scope of its involvement and the funding levels demonstrate that biodiversity conservation in the Congo Basin has emerged as a top priority for German development.

While Germany funds a range of biodiversity-related initiatives, investing in strategies to combat poaching and the illegal wildlife trade is a key focus area.³²⁹ Anti-poaching was included as part of Germany's 'Marshall Plan for Africa', alongside a call for the creation of more protected areas.³³⁰ As of January 2018, the German federal government has dedicated €191.7 million to 59 anti-poaching initiatives.³³¹ By October 2020, this amount had increased to €260 million.³³² A disproportionate amount of this funding, 74 per cent, is directed at projects in Africa.³³³ It is used for various forms of capacity building, surveillance equipment and software, and ecoguard training.³³⁴ These anti-poaching projects are ongoing across the continent and are often implemented by GIZ, with global conservation NGOs, such as the WCS and WWF, and private consulting companies, such as GFA, serving as important partners on the ground.³³⁵

Engagement with indigenous peoples

Beyond its obligations under international law, Germany's development activities must adhere to a number of internal policies and guidelines that safeguard the rights of indigenous peoples. BMZ's human rights guidelines, fully binding on KfW and GIZ, provide that the principle of FPIC must be respected in development

Colonial Legacies

Historically, Germany has a long-standing and sizeable footprint in fortress conservation projects on the African continent.³³⁶ Bernhard Grzimek, a German zoologist and christened 'father of African conservation', embraced the Yellowstone model and successfully campaigned for the establishment of national parks across East Africa in the mid-twentieth century.³³⁷ He famously remarked that '[a] National park must remain a primordial wilderness to be effective' and that 'No men, not even native ones, should live inside its borders.'³³⁸ He was convinced that Maasai and other pastoralist communities would inevitably destroy nature, remarking that 'you cannot keep men, even black and brown ones, from multiplying and cannot force them to remain "primitive"',³³⁹ and that it was the responsibility of 'we Europeans to teach our black brothers to value their own possessions.'³⁴⁰ Grzimek's vision was realized when thousands of Maasai were evicted to pave way for the Serengeti National Park, now a premier destination for western tourists. Grzimek's colonial and paternalistic approach to conservation was subsequently incorporated into numerous protected areas that he helped establish and manage, a legacy in East Africa that continues.³⁴¹ KfW even established a €50,000 'KfW-Bernhard-Grzimek-Prize' to honour people and organizations who apply their creativity, innovation or entrepreneurship to help raise social awareness of biodiversity.³⁴²

measures impacting indigenous peoples.³⁴³ KfW's *Sustainability Guideline* further stipulates that the World Bank's *Environmental and Social Standards* and the UN *Basic Principles and Guidelines on Development-based Evictions and Displacement* must be observed in financial cooperation projects.³⁴⁴ The *Sustainability Guideline* states that all activities, including biodiversity measures, must undertake environmental and social impact assessments to identify any negative effects or risks that a project may have for either the environment or human rights.³⁴⁵ GIZ also employs a 'Safeguards and gender management system' with the objective of complying with a 'do no harm' principle, which seeks to prevent projects from having unintended negative effects on people or the environment.³⁴⁶

The German federal government officially maintains that nature conservation and human rights, including the rights of indigenous peoples, are not mutually exclusive.³⁴⁷ KfW states that the aim of its funding 'is to encourage the involvement of local communities in nature conservation and protected area management'.³⁴⁸ The government claims to strive to incorporate safeguards for indigenous peoples into the agreements it enters into with partners, as well as in workshops and trainings.³⁴⁹ In practice, however,

German development assistance has fallen short of meeting its own commitments to protect the rights of indigenous peoples, especially in challenging contexts like the Eastern DRC.

For example, even though BMZ's human rights guidelines recognize indigenous peoples' FPIC rights, the German federal government actors seek to evade their commitments on account of the PNKB and other supported protected areas being created prior to their involvement.³⁵⁰ It is plain that one cannot travel back in time to obtain the Batwa's FPIC prior to their original expulsion in the 1970s. Yet, Batwa communities have physically occupied their lands inside the PNKB since their return in October 2018. Congolese law prohibits subsistence hunting and the construction of structures within strictly protected areas such as the PNKB, effectively criminalizing Batwa traditional livelihoods.³⁵¹ However, Batwa customary ownership rights were not extinguished with their original eviction. Under international law they maintain the right to use and enjoy their ancestral lands only subject to restrictions that are in the public interest and are necessary and proportional.³⁵² Germany must reconcile how its support of the PNKB contributed to the forced expulsion of Batwa from their lands inside the park in contravention of international standards, including ILO No. 169, of which Germany is a recent signatory.³⁵³

Germany's position further ignores the fact that Batwa have FPIC rights with respect to both the creation of the park *and* any other measure or project impacting them, which includes the continuing operation of the PNKB and the various conservation projects implemented on the territories of Batwa with German financial or technical assistance. To suggest that FPIC only applies when access and usage rights stand to be curtailed does not align with current international standards or BMZ's human rights guidelines. UNDRIP, which Germany and the DRC both voted to adopt in 2007, provides that indigenous peoples have the right to FPIC prior to the approval of any project affecting their lands, territories or resources.³⁵⁴ BMZ's human rights guidelines cite UNDRIP in maintaining that FPIC must be adhered to in any development measures impacting indigenous peoples.³⁵⁵ Likewise, the World Bank's *Environmental and Social Standards*, which KfW commits to observing, mandates that FPIC be obtained for any project with 'adverse impacts on land and natural resources subject to traditional ownership or under customary use or occupation' or one which has significant impacts on indigenous peoples' cultural heritage that is material to their identities.³⁵⁶

A study commissioned by KfW and GIZ into human rights and protected areas in the Congo Basin confirmed as much, stating that FPIC obligations can arise when activities impact traditional lands and resources.³⁵⁷ The

study further identified a lack of capacity among German development staff, remarking that: 'Interviews have shown that there is still some uncertainty in the projects regarding the concept and application of FPIC.' It recommended that KfW and GIZ 'develop practice-oriented assistance on FPIC in cooperation with indigenous peoples and local communities'.³⁵⁸ It is not clear whether this has occurred in the PNKB.

When asked about ensuring indigenous participation in protected areas, the German federal government points to the fact that indigenous peoples are being employed by parks and are involved in community conservation committees (CCCs) (discussed below).³⁵⁹ Some Batwa are employed by the PNKB, but they represent a tiny fraction of the total number of park staff. In 2018, it was reported that of the 365 people that worked in the PNKB, only 17 were Batwa.³⁶⁰ That is only 17 positions for thousands of Batwa community members living in and around the park. Moreover, Batwa employment in the PNKB has traditionally been confined to poorly paid guides and other menial positions, while administrative and other better-remunerated positions are given to non-Batwa.³⁶¹ These limited and sporadic employment opportunities do not begin to approach the types of compensation owed to Batwa as a result of their being deprived of their lands and livelihoods.

Nor does the employment of a handful of indigenous individuals in protected areas discharge state obligations to respect the collective rights that these communities possess with respect to their lands and natural resources. In comparison, UNDRIP provides that 'indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their land or territories and other resources'.³⁶² In the PNKB, the Batwa community has not been meaningfully integrated into governance or decision-making, depriving them of their right to develop and preserve their lands, territories and resources. The inference that can be drawn from the German government's posture is that conservation policy is something that should be handled by others, with possible benefits, such as employment opportunities or socio-economic development projects, possibly flowing to indigenous peoples and local communities. It espouses the importance of local participation in the biodiversity initiatives it supports, yet this has not been realized in the PNKB and other protected areas it supports.³⁶³

In the scope of its biodiversity development assistance in Africa, Germany further seeks to evade its human rights commitments by treating indigenous peoples in Africa differently from those in other parts of the world. It takes the position that because most African countries have not ratified ILO No. 169 and do not recognize indigenous peoples as collective rights holders, it should refrain from publicly insisting on the recognition and respect of

indigenous rights in the African context.³⁶⁴ It acknowledges that indigenous peoples are often massively discriminated against, but argues that demanding indigenous-specific rights could lead to or aggravate conflict between indigenous peoples and other ethnic groups or governments.³⁶⁵ This line of reasoning is disingenuous, not least since both Germany and the DRC – and indeed, every African country bar two – voted in favour of UNDRIP, which unequivocally provides for the collective rights of indigenous peoples, including in the connection with their lands, territories and resources. It also echoes some of the concerns voiced by African states ahead of the adoption of UNDRIP,³⁶⁶ which were put to bed by an Advisory Opinion by the African Commission on Human and Peoples' Rights (ACHPR), which found that UNDRIP was in keeping with the rights already enshrined in the African Charter.³⁶⁷

German support in the PNKB

The PNKB is a flagship protected area for the German government. It maintains a special relationship with and responsibility towards the park, having provided financial and technical support over years of civil war and instability. This continues despite Germany not having an official development relationship with the central DRC government since 2017.³⁶⁸ Germany sees its support of the PNKB as vital to species protection, positioning itself as an environmental saviour of sorts:

*'...[w]ithout the support of German development cooperation to protect the remaining rainforest and its biodiversity, the destruction of ecosystems would have progressed even further due to the particularly high pressure on natural resources in this region.'*³⁶⁹

PNKB administration also recognizes the central role that German development plays in the national park, purportedly stating that 'without Germany, the park would not exist'.³⁷⁰

Yet German support has come at the expense of Batwa, who have been treated as collateral damage to the broader goal of protecting nature. The millions of euros poured into the PNKB by Germany have not changed the fact that Batwa remain deeply impoverished and wholly deprived of their territories, resources, ancestors and traditional ways of life rooted in the forest. Instead, it has reinforced the fortress conservation model and militarized law enforcement in the park.

GIZ

GIZ has a long-standing investment in the park, having provided financial and technical support to the

PNKB since 1983.³⁷¹ Shortly after the park's creation, GIZ supported Congolese authorities in securing the PNKB's borders, including through increased patrols around the park.³⁷² While it recognized the dire situation Batwa were forced into after their removal from the forest, GIZ maintained that allowing them to return was incompatible with conservation objectives, stereotyping the community as environmentally destructive.³⁷³ While generally acknowledging the importance of incorporating indigenous peoples in conservation, GIZ did not extend this to the PNKB, falsely assuming that the Batwa had abandoned their traditional way of life.³⁷⁴

Rather than seek to incorporate them into the management of the park, GIZ set out to sedentarize Batwa, later admitting this was a complete failure.³⁷⁵ It consistently supported socio-economic development projects in villages surrounding the park, as well as sensitization missions to 'teach' Batwa the value of conserving the same ecosystems they had sustainably safeguarded for thousands of years prior to any German setting foot on Congolese soil.³⁷⁶ These projects did not reflect Batwa needs nor benefit them materially since GIZ failed to consult with the community in their design and implementation.³⁷⁷ This paternalistic approach also failed to meet international standards concerning Batwa's right to self-determination and exacerbated tensions and mistrust between Batwa and the PNKB.

German development actors continue to prioritize modest socio-economic development in villages surrounding protected areas over any meaningful consultation and participation of indigenous peoples in protected area management or benefit-sharing schemes. KfW states that a focal point of its biodiversity support is 'improving income and living conditions for the communities living adjacent to protected areas'.³⁷⁸ Poverty alleviation in local communities surrounding protected areas can be critical to combating environmental degradation, including extractive activities and the illegal wildlife trade. However, in the PNKB, German-sponsored development projects have not transformed the material circumstances of Batwa, which remain relatively unchanged since their removal from the forest.

Critically, these initiatives are not accompanied by comprehensive plans for how to ensure Batwa are able to access their lands and resources, a precondition for them to be a self-sustaining community.³⁷⁹ Outside the park, most Batwa are forced to live on plots of land they do not own, rendering them vulnerable to exploitation by other groups and making it impossible for them to otherwise benefit from these lands.³⁸⁰ Without meaningful access to and recognized ownership over their lands and resources in the forest, Batwa continue to suffer undue hardships. Furthermore, socio-economic development projects on the

outskirts of PNKB, even well-meaning and sustainable ones, lose legitimacy when accompanied by an overtly violent approach to protecting the park's boundaries.³⁸¹

The German government claims that its conservation approach in the PNKB is aimed, in part, at involving the local population in park management.³⁸² After the Batwa were originally forced out of the forest, GIZ never engaged in a detailed consultation process with the community to solicit their input on forest governance.³⁸³ In 2000, 25 years after the Batwa's original expulsion, the ICCN and GIZ initiated a project with the aim of working with communities to conserve the park's natural resources, leading to the formation of CCCs in certain villages surrounding the PNKB.³⁸⁴ These CCCs were advertised by the PNKB as bodies to bridge communication between the ICCN and local communities. However, the CCCs failed to improve Batwa participation or communication with the park authorities since they had no decision-making power. They also lacked independence from the ICCN and many Batwa viewed them as agents or spies of the PNKB; in fact, many Batwa believed that the CCCs were a formal arm of the PNKB.³⁸⁵ Mudinga et al. describe them as characterized by a 'sort of veiled paternalism and a clear desire to keep control of management issues by pushing local actors to follow a certain direction'.³⁸⁶ Thus, despite the German federal government citing the PNKB as a positive example of integrating indigenous peoples into conservation work, the reality is that Batwa are almost wholly excluded.³⁸⁷ Beyond a few symbolic gestures, there have been no concrete achievements in recognizing and promoting the Batwa's central role in preserving the biodiversity of the PNKB.

KfW

In addition to technical assistance offered by GIZ, Germany provides significant funding to the PNKB through KfW, which has co-financed the park since 2008.³⁸⁸ It is the PNKB's single largest donor in recent years, providing more than half of the park's total budget,³⁸⁹ with funds directed to the ICCN, the sole recipient of KfW's financing in the PNKB.³⁹⁰ While one of six protected areas KfW supports within Germany's biodiversity cooperation in the DRC (current total financial commitment of €66 million),³⁹¹ it remains unclear how much of that funding is directed to the PNKB. When asked to disclose details of how money is allocated for protected area financing, the German government stated that it is not possible.³⁹²

Requests to KfW and GIZ for this information pursuant to the German Freedom of Information Act (*Informationsfreiheitsgesetz*), including requests submitted

by the author, are routinely denied on the grounds that these entities operate under private law and cannot be considered a public authority subject to such requests.³⁹³ This position has been challenged by a case brought to the Frankfurt am Main Administrative Court, which ruled that KfW is a public authority and, therefore, cannot automatically deny Freedom of Information Act requests.³⁹⁴ While Germany claims that calls for greater transparency have been 'taken to heart', KfW and GIZ continue to withhold documentation on their publicly funded support of the PNKB.³⁹⁵ The lack of transparency concerning Germany's role in the PNKB obscures its activities, potentially circumventing international human rights law and its own internal human rights safeguards.³⁹⁶

While KfW refuses to disclose details of the financial assistance it provides to the PNKB, significant sums are clearly allocated towards paying compensation to ecoguards. Reports suggest that ecoguards received US\$80 per month in 'bonuses' from KfW, an amount that exceeds their salaries from the ICCN.³⁹⁷ Other funded activities include general management costs (electricity, fuel, etc.), bonuses and medical costs for ICCN staff, training, rations, equipment enhancements, park infrastructure, biomonitoring activities and consultancy services. Additional support is provided for community development activities surrounding the park, including infrastructure projects, payment of education fees and micro-credit schemes.³⁹⁸ KfW also funds conflict resolution processes in the PNKB. This type of support is similar across German-supported protected areas in the Congo Basin.³⁹⁹

KfW has recently represented that it secured 35 hectares of land for the Batwa community.⁴⁰⁰ It is not clear what KfW intends to do with this land, how it will transfer ownership to members of the Batwa community or whether KfW sought to obtain the FPIC of the Batwa prior to securing these alternative lands. The 35 hectares are located outside the PNKB, with KfW personnel emphasizing that the park is 'not for sale'.⁴⁰¹ Yet, even assuming that such alternative lands could be provided to Batwa in a meaningful way, this does not change the fact that the community continues to be excluded from their natural resources and sacred sites located on their ancestral homeland. Indeed, a March 2021 study into the availability of land for Batwa around the PNKB found that alternative lands 'would not be an acceptable substitute for Batwa ancestral lands' and 'that some form of access to the Park would have to be negotiated also'.⁴⁰²

GFA

GFA, a private German consulting firm specializing in protected area management and biodiversity conservation,

is one of the primary implementers of Germany's biodiversity development assistance.⁴⁰³ It has supported the PNKB since 2010 and its activities are financed through a project on biodiversity and forest management funded and implemented by KfW on behalf of the German federal government.⁴⁰⁴ Even though GFA's support is funded by the German government, KfW refuses to disclose whether it has a contractual relationship with the consulting company in the context of its conservation support in the PNKB. When asked whether KfW has a contractual arrangement with GFA or whether GFA is a third-party beneficiary under any contract between KfW and ICCN, the development bank refuses to confirm or deny any contractual relationship.⁴⁰⁵ KfW seems keen on distancing itself from GFA's activities, which include more direct interaction with both PNKB personnel and local and indigenous communities. On the ground, however, distinctions between KfW and GFA are sometimes blurred and not well understood.⁴⁰⁶

GFA partners directly with the ICCN as its implementation consultant in the PNKB.⁴⁰⁷ In this role, it assists the ICCN and its partners to manage various conservation projects, including the training of ecoguards. GFA constructed a ranger training camp in 2014, where 24 ecoguards were trained in anti-poaching combat. GFA describes this as including multiple rounds of ecoguard training sessions, particularly around matters of park security as well as the tracking and arresting of wildlife poachers.⁴⁰⁸ GFA also trained PNKB ecoguards in 2016, which included combat tactics, rules of engagement and the handling of weapons, military equipment and technologies.⁴⁰⁹ As part of their consultancy in the PNKB, it has also hired short-term law enforcement experts to provide specialist ecoguard training.⁴¹⁰ Similar to the WCS, GFA provided for, arranged for and/or supported this training without an advanced notification to the UNSC's Sanctions Committee in place, in violation of the arms embargo in the DRC.⁴¹¹ Thus, with funding from the German federal government, GFA has been actively conducting and facilitating the militarized training of PNKB ecoguards in violation of international law.

Knowledge of and response to alleged human rights abuses

Both KfW and GIZ remain far removed from what occurs in and around the PNKB. Neither agency has an office or permanent staff in Bukavu and staff visits to the park are infrequent.⁴¹² This perhaps explains why the German government often seems able to only provide superficial information about what is occurring in the park. For instance, personnel for KfW responsible for overseeing its biodiversity projects in the PNKB and

across Central Africa were unaware that hundreds of Batwa continue to live on their lands inside the park.⁴¹³

Thus, existing processes and protocols in the PNKB do not seem to fully apprise the German government of basic facts concerning the PNKB, much less human rights violations committed against Batwa. As described above, there is no effective grievance mechanism in the PNKB where Batwa community members could raise concerns to the park's management or its partners. KfW acknowledges this deficiency more generally, admitting that: 'The large number of incidents has shown that the mechanisms created in national park projects in the Congo Basin to prevent and deal with human rights violations are inadequate.'⁴¹⁴

Notwithstanding, on numerous occasions, the German federal government was apprised of human rights violations committed by ecoguards against members of the Batwa community in and around the PNKB.⁴¹⁵ In September 2017, Mobutu Nakulire Munganga submitted a formal complaint to KfW and GIZ (in addition to the WCS) explaining how his 17-year-old son, Christian Nakulire, was shot and killed in the PNKB. He asked, *inter alia*, why the German government continued to support the PNKB without obtaining the FPIC of the Batwa community.⁴¹⁶ Internal government communications further confirm that it received several complaints since 2017 regarding alleged human rights abuses in the PNKB.⁴¹⁷ In 2019, KfW was also directly apprised of the killing of a Mutwa man, Matabashi Teso, by PNKB ecoguards on 24 April 2019 via correspondence from a German MP.⁴¹⁸

Similar to the WCS, the German federal government was also warned by civil society of escalating threats and abuses against Batwa community members, particularly those who had returned to the forest in 2018. In May 2019, it was advised of reports that ecoguards were shooting and threatening Batwa inside the park and further warned of the very high likelihood that PNKB authorities were preparing to use all available means, including force, to imminently remove Batwa community members from the park.⁴¹⁹ However, it is not clear whether the German government took any preventative or remedial actions in response to these warnings, despite being the primary funder of the same ecoguards accused of such abuses. Two months later, the PNKB and the FARDC conducted the initial large-scale, joint operation against Batwa villages in the park.

The German government states that it responds to allegations of human rights violations by directly addressing human rights deficits with its local partners, such as ICCN.⁴²⁰ When allegations of serious abuses are raised, they urge the ICCN to fully clarify the underlying facts. If necessary, it will have its own staff assess the situation on the ground or commission external experts to

investigate. To the extent that human rights allegations are not satisfactorily resolved, German development actors can sanction partners under applicable contracts, including suspension of payments.⁴²¹

Yet when confronted with allegations of complicity in the commission of human rights abuses by ecoguards in the PNKB and the Congo Basin more generally, the German government resorts to perfunctory responses. Like other stakeholders in the PNKB, it sidesteps responsibility, shifting blame to the ICCN, over whom the government has no direct authority.⁴²² It also points to the unstable security situation in the Eastern DRC and the dire socio-economic conditions of communities, and treats human rights abuses in German-financed parks as purely individualized instances ('tragic isolated cases') rather than a systemic issue inherent in the dominant conservation policies that marginalize indigenous people and local communities.⁴²³ Its mere denial of the systemic nature of these violations gives it licence to avoid the responsibility of conducting a comprehensive review of the human rights implications of its biodiversity support in the region.

In response to reports from BuzzFeed News regarding ecoguard human rights abuses (the BuzzFeed reporting),⁴²⁴ as well as a separate investigation into human rights violations in Salonga National Park, another German-financed protected area in the DRC, BMZ temporarily suspended funding to the ICCN in January 2020 – eight months after it was told ecoguards were shooting Batwa in the park and violent evictions were imminent.⁴²⁵ It is not clear why remedial action was not taken earlier in the PNKB in light of the German government's explicit knowledge of multiple credible allegations of ecoguard abuses and the overtly hostile positioning of the PNKB towards Batwa inside the park immediately before the joint operation in July-August 2019. It claims a zero-

tolerance policy for human rights violations vis-à-vis its partners, but it financially supported the ICCN for years, despite the ongoing operation of the park without consultation with or FPIC of Batwa, as well as the existence of unresolved human rights grievances.

Germany has yet to resume its full financial support of the PNKB as of the date of this report. A memorandum of understanding (MOU) has been entered into by BMZ and ICCN regarding Germany's continued support to the PNKB in light of the ongoing human rights situation. While this MOU has not been publicly disclosed, KfW claims it contains measures to improve human rights and ensure they are embedded more strongly as a priority for ICCN.⁴²⁶ KfW further maintains that the ICCN has complied with certain conditions set forth in the MOU, triggering some 'transitional payments', but other monies continue to be withheld.⁴²⁷ However, it has not disclosed the nature of the transitional payments or whether it is directly funding ecoguard activities. Moreover, before entering this MOU, there is no indication that the German federal government conducted an extensive investigation of the human rights abuses alleged to have been committed in the PNKB or the other protected areas it finances in the DRC.

Prior to December 2021, German development actors had not sought to conduct a meaningful investigation into unresolved allegations of human rights abuses against Batwa by ecoguards. KfW only called for such an investigation in December 2021 after repeated efforts by MRG and other civil society actors to apprise KfW, GIZ and GFA of ecoguard violence (dating back to at least 2017) and only after becoming aware that they would be implicated in human rights abuses documented in *To Purge the Forest by Force*. As of the date this report went to press, this investigation is ongoing and unresolved.

5. US development assistance and support

The PNKB has also been funded by two US federal agencies, USAID and the USFWS. They have provided foreign development assistance to the PNKB through financial and technical support for various conservation activities, with a disproportionately high level of funding directed towards law enforcement. A review of publicly available records shows an upward trend in US development funds directed to anti-poaching and law enforcement activities, money that has been used in the

PNKB to militarize ecoguards who commit egregious human rights violations against the marginalized Batwa community.

Despite significant financial investments in the PNKB, both agencies failed to take adequate steps to ensure their support did not contribute to human rights violations in the park. Without a consistent presence near the PNKB, USAID and the USFWS rely on implementing partners, including the WCS, to both: (i)

adequately engage with indigenous peoples in accordance with international standards and (ii) apprise them of human rights violations committed in the context of their conservation support. In the PNKB, both agencies lacked sufficient oversight and controls to ensure that their funded projects did not contribute to a worsening human rights situation.

Overview of US biodiversity funding

USAID is a major funder of environmental conservation programmes worldwide, supporting activities in more than 50 countries.⁴²⁸ Between 2016 and 2020, over US\$2 billion was allocated by the US Congress to USAID for conservation programming.⁴²⁹ In the same time period, its biodiversity funding grew by nearly 20 percent.⁴³⁰ In 2019, alone, it financed international biodiversity programmes to the amount of US\$288.35 million across 56 countries.⁴³¹ In total, it provides approximately two-thirds of all US government funding for biodiversity assistance, making it one of the most significant conservation donors on the planet.⁴³² The majority of this money is directed to projects in 12 designated 'tier one' countries, which includes the DRC.⁴³³

A high percentage of these funds is directed to Central Africa through the Central Africa Regional Program for the Environment (CARPE), USAID's largest environmental program. CARPE is a long-term partnership between USAID and several conservation NGOs. Established in 1995 to promote forest management and biodiversity conservation in the Congo Basin,⁴³⁴ it currently supports biodiversity conservation in eight major landscapes, including in Maiko-Tayna-Kahuzi-Biega landscape, a 106,000 square km area, which contains the PNKB, two other national parks and numerous nature reserves. The WCS is USAID's lead implementing partner in the Maiko-Tayna-Kahuzi-Biega landscape.⁴³⁵

The USFWS is a federal agency within the DOI principally tasked with conserving and managing natural resources for the American public. Within the USFWS, the Division of International Conservation is focused on assisting countries to protect and conserve at-risk species. It provides various levels of technical and financial assistance to partner countries and NGOs to address habitat conservation, species conservation and wildlife trafficking.⁴³⁶ Between 1989 and 2018, it issued more than 4,200 international conservation grants worth a total of US\$322 million.⁴³⁷ Its international conservation programming in Africa is primarily funded from appropriations transferred from USAID through CARPE.⁴³⁸

US prioritization of anti-poaching and law enforcement initiatives

Conservation funding from the US has focused on combating poaching and the illegal wildlife trade more generally. This is largely in response to the US government embracing the idea that wildlife poaching is linked to international terrorism, and therefore involves issues of national security.⁴³⁹ In 2014, the US government established its National Strategy for Combating Wildlife Trafficking, which sets forth the country's principles and priorities for curbing the illegal wildlife trade.⁴⁴⁰ Then in 2016, US Congress passed the Global Anti-Poaching Act, which among other things, directed USAID to provide financial and technical support to improve wildlife law enforcement abroad, and particularly in Africa.⁴⁴¹ The legislation specifically urged the US to 'continue providing defense articles (not including significant military equipment), defense services, and related training to appropriate security forces of African countries for countering wildlife trafficking and poaching'.⁴⁴²

Between 2014 and 2020, the US government provided approximately US\$554 million in funds aimed specifically at combating the illegal wildlife trade.⁴⁴³ To illustrate the exponential growth, USAID's funding for illegal wildlife trade initiatives grew by more than fivefold between 2012 and 2015.⁴⁴⁴ A large percentage of these funds go directly to ecoguard-related activities.⁴⁴⁵ In step, USAID realigned CARPE to focus on combating wildlife trafficking with one its key priorities now being to improve the law enforcement capacity of ecoguards to conduct effective and efficient patrols.⁴⁴⁶

The USFWS also focuses on funding anti-poaching and illegal wildlife trade projects with foreign governments and partners.⁴⁴⁷ In 2016, the USFWS implemented a separate grant programme, entitled Combating Wildlife Trafficking, funding projects aimed at halting the illegal wildlife trade. As a partner in CARPE, it claims to leverage law enforcement expertise to strengthen its partners' ability to fight wildlife trafficking.⁴⁴⁸ Between 2013 and 2018, the USFWS provided US\$117 million to overseas projects with some component for ecoguard support.⁴⁴⁹ This money was used to source SMART software and ecoguard training, including training in military-style engagement and combat techniques.⁴⁵⁰

Both USAID and the USFWS tout the impact of their development assistance on reducing the illegal wildlife trade, but do not acknowledge the potential harm inflicted on indigenous peoples and local communities caught in aggressive anti-poaching operations. For example, in one of its 'success stories', USAID commended ICCN

ecoguards and the FARDC for conducting a joint, anti-poaching operation in Salonga National Park in 2011. The sweep, dubbed ‘Operation Bonobo’, was performed by over 300 military personnel and lauded by USAID for arresting 30 suspected poachers and confiscating more than 120 high-powered firearms.⁴⁵¹ At the same time, USAID does not publicly confront credible allegations that Operation Bonobo resulted in serious and widespread human rights abuses against local community members.⁴⁵²

Engagement with indigenous peoples

In March 2020, USAID adopted a *Policy on Promoting the Rights of Indigenous Peoples*. The policy contains important commitments, including respecting indigenous peoples’ FPIC rights in connection with USAID’s development activities.⁴⁵³ USAID’s *Biodiversity Policy* further recognizes indigenous peoples as a key constituency in conservation, with one of its guiding principles being to partner with local communities and indigenous peoples.⁴⁵⁴ In line with these policies, USAID contends that it consults with indigenous peoples in connection with its programme design and implementation.⁴⁵⁵

Notwithstanding these commitments, USAID’s conservation support has not adequately engaged with or integrated indigenous peoples into its programming, particularly in Central Africa. A 2017 CARPE midterm evaluation found that:

‘CARPE has been unable to effectively integrate indigenous people into its biodiversity conservation and climate change mitigation portfolios. CARPE needs clear strategies informed by social science and led by subject matter experts if it is to have any chance of having significant impact. A unified program spanning CARPE Landscapes with a dedicated staff trained and skilled to address the very delicate issues of relations with ethnic minorities (specifically “pygmies” – baMbuti, baTwa) could yield better results.’⁴⁵⁶

Partially in response to this evaluation, CARPE and USAID’s Democracy, Rights and Governance unit formed ‘CARPE IPE’, an initiative intended ‘to strengthen collaboration with and leadership of indigenous peoples within CARPE’s key strategic areas.’⁴⁵⁷

Likewise, a 2020 study commissioned by USAID into CARPE found ‘no substantial relationship between CARPE/USAID and [indigenous peoples] at the local level’.⁴⁵⁸ The indigenous peoples and local communities impacted by the USAID-funded protected areas subject to the study were generally not aware of USAID or CARPE.⁴⁵⁹

USAID takes the position that its partners (NGOs or national conservation agencies) are the entities that engage directly with indigenous peoples, not USAID, which lacks a physical presence near many of the protected areas it finances, including the PNKB. But the aforementioned study also determined that, in the DRC, ‘leaving this function to either the Implementing Partner or ICCN would be unlikely to lead to improvements in [indigenous peoples’] engagement, based on the results obtained in this area over the last few decades’.⁴⁶⁰

So while USAID’s *Policy on Promoting the Rights of Indigenous Peoples* incorporates critical rights articulated in UNDRIP and elsewhere, adequate safeguards have not been operationalized on the ground to benefit indigenous communities impacted by the protected areas USAID supports. Its internal study found that indigenous peoples and local communities impacted by CARPE-funded protected areas felt that conservation approaches did not respect their rights, but instead caused:

‘considerable harm to them, as manifested in compromised livelihoods, challenges to social and cultural reproduction resulting from loss of access to customary lands, excessive punishments for carrying out traditional activities, and other manifestations of what has been called the “fortress conservation” mentality.’⁴⁶¹

The USFWS maintains a *Native American Policy* that is applicable to resource management and conservation as it relates to indigenous communities in the US,⁴⁶² but it does not have corresponding indigenous peoples or human rights policies guiding its international conservation support. This is a significant omission considering an entire division of the USFWS is dedicated to international affairs, with millions of dollars of grant money allocated to conservation projects outside of the US.

US support in the PNKB

The DRC is a focus country for USAID and the Maiko-Tayna-Kahuzi-Biega landscape is one of the USAID-supported landscapes in CARPE. Through CARPE, USAID has been providing funding to protected areas in the Congo Basin since at least 2005. Similar to German support, specific details of USAID’s assistance are not publicly available; rather funding levels can only be ascertained at the landscape level. For instance, USAID committed US\$13.6 million through the project entitled ‘CARPE Phase III: “Central Africa Forest Ecosystems Conservation (CAFEC)”, Maiko-Tayna-Kahuzi-Biega landscape, 2013–2018’, to ‘maintain the ecological integrity of the humid forest ecosystems of the Congo Basin’.⁴⁶³ It is unclear how much of that money is dedicated to the PNKB.

With CARPE funds, USAID finances a range of activities in protected areas in Central Africa, including paying for park infrastructure and direct ecoguard support, such as the provision of GPS units, SMART technology, rations and law enforcement training.⁴⁶⁴ In the PNKB, USAID has directly funded ecoguard activities, including through infrastructure projects (such as the construction of ecoguard housing facilities, the provision of patrolling and data collection technologies and other measures to improve and enhance ecoguards' patrols).⁴⁶⁵ USAID has also funded the construction of tourist campsites in the PNKB.⁴⁶⁶ Additionally, much of the support provided by the WCS to the PNKB has been financed through grant money issued by USAID.⁴⁶⁷

Between 2011 and 2018, the USFWS committed over US\$842,000 to conservation measures in the PNKB through various grant programmes.⁴⁶⁸ Nearly two-thirds of this money is earmarked to support ecoguard activities related to law enforcement. This includes ecoguard capacity building, establishing patrolling systems, erecting ecoguards' posts, furnishing law enforcement monitoring software and technologies, and providing law enforcement training. Moreover, a 2015 grant from the USFWS specifically allocated funds for the WCS to engage Maisha to provide the paramilitary training described in section II(3) earlier.⁴⁶⁹

Knowledge of and responses to alleged ecoguard abuses

Like the WCS and the German federal government, USAID was apprised of threats made by the PNKB to forcibly evict Batwa from the forest, as well as incidents of Batwa being shot and threatened by PNKB ecoguards in May 2019.⁴⁷⁰ At the time of this notice, USAID was supporting an active project in the PNKB, but it does not appear to have taken any remedial action in response to these reports. Beyond this, it remains unclear to what extent USAID and the USFWS had knowledge of unresolved human rights abuses committed by PNKB ecoguards. When asked about the agency's knowledge of pre-existing human rights grievances in the PNKB, USAID representatives in the DRC acknowledged that allegations had been made.⁴⁷¹

In an investigation into how US agencies have addressed allegations of human rights abuses in connection with their conservation support in Central Africa, USAID representatives told investigators they were unaware of the breadth of the allegations contained in the BuzzFeed reporting.⁴⁷² They indicated they had heard about accusations related to another protected area in the DRC (Tumba Lediima Nature Reserve), but did not mention the PNKB.⁴⁷³ In the same US government investigation,

USFWS officials variously claimed that the agency was unaware of either all or some of the allegations contained in the BuzzFeed reporting.⁴⁷⁴ However, USAID does acknowledge the high levels of conflict and tension around the park, as evidenced by the fact that they have supported conflict resolution dialogues and recently commissioned a study into conflict dynamics in the PNKB.⁴⁷⁵

Neither USAID nor the USFWS has a consistent presence in South Kivu and their ability to access communities around the PNKB is severely limited. USAID must comply with US State Department security regulations in order to visit certain areas in the DRC and it is difficult for USAID representatives to obtain the necessary security clearance to visit villages on the rims of the PNKB, where most of the displaced Batwa population live.⁴⁷⁶ Thus, the agency's ability to get direct information about human rights grievances with any type of granularity is severely curtailed.

A seeming dearth of actual knowledge in these contexts illustrates a core deficiency in how international donors like USAID and the USFWS are funding conservation projects in protected areas such as the PNKB. The monitoring of conservation grants usually involves information funnelled through conservation NGOs and other in-country partners. USAID relies almost wholly on implementing partners such as the WCS to establish appropriate information channels and communicate concerns to the agency. However, in the PNKB, it admits that many of these channels could not be established on account of the WCS's lack of management authority in the park.⁴⁷⁷ It nonetheless continued to fund projects in the PNKB up to July 2019, aware of an imminent threat of violence towards Batwa, and knowing that there were severe limitations in receiving reliable information about what was occurring in the park.

This deference regarding human rights monitoring gives conservation NGOs a significant degree of discretion over what is included in information flows.⁴⁷⁸ Many of the more unsavoury details regarding how conservation impacts indigenous peoples and local communities tend to be omitted, and insufficient controls are embedded in underlying agreements and protocols to ensure that active human rights monitoring is guaranteed and complete and accurate information is communicated up the chain.⁴⁷⁹ This systemic problem was referred to by a former USAID consultant as a form of 'institutionalized cluelessness'.⁴⁸⁰ The ways development agencies structure their arrangements with partners mean that they are not directly apprised of human rights violations occurring in the protected areas they finance. In fact, USAID personnel acknowledged that the way it structured its projects in the PNKB did not provide sufficient protections for USAID, its partners or the communities living around the park.⁴⁸¹

This presents a serious shortcoming from a human rights monitoring and accountability standpoint.

USAID further admits that it has concerns over the ICCN's ability to perform responsibly in the PNKB and other protected areas in the DRC.⁴⁸² It is also aware of the human rights impacts associated with the ICCN's militarized approach to conservation in USAID-supported protected areas. The aforementioned 2017 CARPE midterm evaluation found that 'the ICCN approach to law enforcement, while professional and producing results with limited resources, is heavily militarized. While warranted in the circumstances, the paramilitary function of the ICCN has had negative implications for community relations in some locales.'⁴⁸³ It pointed to the Tayna Gorilla Reserve in the Maiko-Tayna-Kahuzi-Biéga landscape as 'instructive of the potential downsides of militarized conservation'.⁴⁸⁴ According to the evaluator, the militarized approach there created conflict between ICCN and local communities, making USAID engagement in the protected area 'problematic.'⁴⁸⁵

The USFWS also lacks adequate controls and oversight over its conservation assistance, as confirmed by the DOI's 2019 programmatic review of the agency's international conservation grant programme.⁴⁸⁶ Initiated in light of allegations that taxpayer funds were used to support human rights violations of indigenous peoples in Africa and Asia, the review identified several shortcomings regarding the USFWS's administration of its international conservation grant program.⁴⁸⁷ It confirmed that the agency did not possess adequate controls, processes and oversight to allow monitoring of and response to allegations of human rights abuses.⁴⁸⁸ As an example, the USFWS's *Assistance Award Guidelines* narrowly requires grant recipients to notify the agency of any conflicts of interest that arise during the life of the award, but does not task them with notifying the agency of human rights conflicts or investigations.⁴⁸⁹ The review further confirmed that the USFWS does not conduct proactive monitoring, only engaging in monitoring once allegations came to light. It also called into question the willingness or the ability of grant recipients, such as the WCS, to share relevant information and make the agency aware of allegations of wrongdoing.⁴⁹⁰

In the context of US government support for conservation initiatives, legal safeguards exist to ensure that US funds are not used by ecoguards to commit serious human rights violations. Pursuant to the US Leahy Laws, USAID is prohibited from using funds to assist foreign security forces or individuals where there is credible information that these forces have committed a gross violation of human rights.⁴⁹¹ USAID considers ecoguards to operate within units of foreign security forces, and are thus subject to a vetting process under the Leahy Laws.⁴⁹²

Funds appropriated to the USFWS under the US Foreign Assistance Act through interagency agreements with either the US State Department or USAID are also subject the Leahy Laws under certain circumstances.⁴⁹³ Grants from both USAID and the USFWS contemplate that funds will be used to assist the ICCN in the management of the PNKB. According to the Leahy Laws, the PNKB must undergo a vetting process through the US State Department to determine whether it is implicated in the commission of gross violations of human rights.⁴⁹⁴

PNKB ecoguards presumably underwent annual Leahy vetting as a prerequisite for USAID's financial support. This raises questions as to the robustness of the processes and protocols involve in the vetting considering the ICCN's troubling human rights record in the PNKB and across the DRC. Regardless, the vetting does not extend to other security forces that the ICCN works alongside, namely the FARDC. Thus, the joint patrols that conducted operations against Batwa in 2019 were not fully vetted, even though they were funded in part by the US government.

USAID and the USFWS have taken steps in response to general allegations of ecoguard human rights abuses in protected areas they support, though not specifically in relation to the PNKB. Following public outcry over the BuzzFeed reporting, USAID claims to have strengthened its approach to social safeguards, including 'ensuring the rights of indigenous and local communities and minimizing the risk of the abuse of power by rangers'.⁴⁹⁵ Much of this has centred around providing additional human rights training for ecoguards, as well as measures to improve engagement with indigenous peoples.⁴⁹⁶ As of June 2019, USAID has no active projects in the PNKB and currently does not provide any direct support to the park.⁴⁹⁷ As discussed in section II(7) of this report, its re-engagement in the PNKB and its renewal of funding is being made contingent on a change in management structure in the PNKB.

Additionally, as a result of the DOI's programmatic review, US\$12.3 million of USFWS-committed CARPE funds (including funds for the PNKB) have been suspended.⁴⁹⁸ As of 2021, all new funding from the USFWS was still on hold pending a full departmental review and the implementation of significant controls. The DOI also directed the USFWS to 'prioritize funding for research, training and development of best practices in international conservation efforts that draw on [USFWS] expertise but avoids all activities where the [USFWS] cannot ensure future human rights violations will not occur'.⁴⁹⁹ According to the DOI, these best practices include, *inter alia*, obtaining indigenous peoples' FPIC before a programme is established or expanded, avoiding providing funding for subgrantees, stopping grants for

high-risk activities (including ecoguard law enforcement), and requiring grantees to certify that activities will not violate US law and directing them to immediately report any internal investigations conducted on human rights abuses in which federal dollars may have been involved.⁵⁰⁰ Representatives of USFWS refused to be interviewed in connection with this report, and it is not clear which of these steps, if any, have been taken by the federal agency.

US Congress has also acted in response to investigations into links between donors and ecoguard abuses. Most significantly, the Committee on Appropriations has provided guidance to USAID and the DOI regarding future funding of national parks and protected areas under the 2020 Appropriations Bill. The committee's report states that funding should be conditioned on donors reaching agreements with implementing partners to ensure that:

- (1) information detailing the proposed project and potential impacts is shared with local communities and the free, prior, and informed consent of affected indigenous communities is obtained in accordance with international standards;

- (2) the potential impacts of the proposed project on existing land or resource claims by affected local communities or Indigenous Peoples are considered and addressed in any management plan;
- (3) any eco-guards, park rangers, and other law enforcement personnel authorized to protect biodiversity will be properly trained and monitored; and
- (4) effective grievance and redress mechanisms for victims of human rights violations and other misconduct exist.⁵⁰¹

In response, USAID has indicated it is taking steps to comply with this congressional directive, including by consulting with indigenous peoples, compiling best practices for training park rangers and examining approaches to grievance and redress mechanisms.⁵⁰² It is unclear whether permanent legislation will be enacted regarding additional controls over international conservation funding,⁵⁰³ or the exact measures USAID or USFWS is taking in the PNKB and elsewhere to ensure it is able to engage in proactive human rights monitoring and effectively respond to violations committed against indigenous peoples.

6. UNESCO

Indigenous peoples and World Heritage

Several state-managed protected areas receive an additional layer of international protection and funding by being designated as natural World Heritage sites by UNESCO.⁵⁰⁴ The basis for World Heritage designation is provided for in the Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention), adopted in 1972, which aims to identify and protect sites which possess 'Outstanding Universal Value' (OUV).⁵⁰⁵ The World Heritage Convention also established the World Heritage Committee (WHC) as the international body responsible for implementing the convention.⁵⁰⁶ OUV is defined by the WHC as 'cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity'.⁵⁰⁷

Natural World Heritage status is often conferred on the traditional territories of indigenous peoples without their consultation or consent.⁵⁰⁸ Likewise, steps taken by governments to set aside areas with World Heritage status have led to the forced removals of indigenous peoples and/or imposed significant restrictions on natural resource

access.⁵⁰⁹ In some protected areas, international recognition has served as the justification for the expulsion of these communities.⁵¹⁰ In turn, indigenous peoples impacted by protected areas have objected to their exclusion from World Heritage processes and raised concerns over the negative human rights impacts they commonly face when their territories are conferred natural World Heritage status.⁵¹¹

UN expert bodies have repeatedly called for reform in how the World Heritage Convention is applied to indigenous peoples and their territories.⁵¹² Prior to 2019, the WHC's *Operational Guidelines for Implementation of the World Heritage Convention* (Operational Guidelines) did not contain human rights safeguards or indigenous rights protections. Several important provisions for indigenous peoples were incorporated into the *Operational Guidelines* at the WHC's 43rd session, including requiring indigenous peoples' FPIC to be obtained in connection with the nomination process of World Heritage sites,⁵¹³ calling for states to adopt a human rights-based approach in the identification, nomination, management and protection processes of World Heritage sites,⁵¹⁴ and demanding that states closely collaborate with indigenous peoples in managing World Heritage sites by developing equitable governance arrangements, collaborative

management systems and redress mechanisms.⁵¹⁵ Despite these improvements, permissive language in the *Operational Guidelines* still falls short of fully aligning with existing international human rights standards, including the guarantees contained in UNDRIP.

The PNKB as a World Heritage site and non-engagement with Batwa

The PNKB was inscribed as a natural World Heritage site in 1980 despite the WHC's knowledge of the forced displacement of Batwa from the Kahuzi-Biega forest.⁵¹⁶ Its nomination emphasized the PNKB's 'great variety of grassland and forest habitats' and its status as 'the major sanctuary for the mountain gorilla'.⁵¹⁷ However, during the nomination and inscription process, no mention was made of Batwa, the original human inhabitants of the forest. The WHC also failed to consult with the evicted Batwa community, nor did it seek their consent to inscribe their ancestral lands as a natural World Heritage site.⁵¹⁸ Their wholesale exclusion from the process is symptomatic of the WHC's neglectful approach to indigenous peoples more generally.

As an advisory body to the WHC, the IUCN is responsible for evaluating properties nominated for inscription to the World Heritage List, and for engaging in consultations and dialogues with nominating state parties.⁵¹⁹ This envisages a year-long process, complete with desk reviews, expert consultations and field missions.⁵²⁰ Just as the IUCN played a key role in promoting the establishment of the PNKB, it also contributed to its designation as a natural World Heritage site. Yet, there is no evidence that the IUCN consulted with Batwa as part of their recommendation to the WHC.

The status of the PNKB as a natural World Heritage site is undoubtedly a source of great pride for the DRC.⁵²¹ The park's World Heritage status is aggressively marketed in nearly all of its promotional materials. The designation also allowed the WHC to begin allocating modest funds to the DRC to assist in conserving and monitoring the PNKB.⁵²² To date, it has provided thousands of US dollars to pay for equipment, vehicles, training and infrastructure, as well as emergency assistance.⁵²³ None of this money has gone directly to the displaced Batwa communities on whose lands the World Heritage designation is placed.

In 1997, the WHC placed the PNKB on its List of World Heritage in Danger.⁵²⁴ Under the World Heritage Convention, the WHC is called to 'establish, keep up to date and publish, whenever circumstances shall so require ... a list of the property appearing in the World Heritage List for the conservation of which major operations are

necessary and for which assistance has been requested under this Convention'.⁵²⁵ In placing the PNKB on the List of World Heritage in Danger, the WHC cited an influx of refugees and the presence of militia groups and illegal settlers, which had led to fires, increased poaching, and illegal removal and burning of timber.⁵²⁶ Thereafter, in consultation with the DRC, it established a committee to develop and adopt a 'desired state of conservation for the removal of the property from the List of World Heritage in Danger,' and a programme for corrective measures.⁵²⁷ Through this programme, the WHC obliged the Congolese government to use military force to safeguard the park's integrity and outstanding universal value,⁵²⁸ thus promoting and reinforcing the PNKB's militarized approach to conservation. None of this was done through consultation with or participation of the impacted Batwa community.

Failure to address the deteriorating human rights situation in the PNKB

After a site is placed on the List of World Heritage Sites in Danger, it undergoes a State of Conservation (SOC) process. The WHC annually reviews SOC reports from state parties regarding the sites included on the List of World Heritage Sites in Danger, including the PNKB. The IUCN plays a significant role in the SOC reporting process, submitting independent evaluation reports and recommendations to the WHC, on the basis of which the WHC decides whether additional measures are needed to conserve the property, whether to remove the property from the World Heritage Sites in Danger List or whether to remove the World Heritage designation altogether.⁵²⁹ Batwa, on the other hand, are wholly excluded from the SOC process. For instance, in a 2017 reactive monitoring mission in the PNKB, carried out jointly by the World Heritage Centre and the IUCN, Batwa community members were ostensibly not consulted in the assessment of the PNKB's SOC. In contrast, the joint mission elected to meet with representatives of many other entities involved with the PNKB, including the ICCN, the WCS, KfW, GIZ, GFA and the provincial government of South Kivu.⁵³⁰

The threat of losing World Heritage designation is taken seriously by the DRC, demonstrating the UNESCO's power to influence conservation policy at the domestic level.⁵³¹ In its various reports to the WHC, the DRC has sporadically raised issues concerning tensions between PNKB management and local communities, including Batwa. The corrective measures raised by the government principally involved socio-economic development and awareness raising among local

communities.⁵³²⁵ Recently, it blamed local civil society for the ‘instrumentalization’ of Batwa in connection with their activities in the PNKB.⁵³³ The WHC has also focused on the need for socio-economic development projects in surrounding villages. It recently commended the DRC for implementing community conservation projects that recognize the rights and traditional means of subsistence of Batwa, but it did so without addressing their ongoing exclusion from the park or acknowledging recurring violence committed against them by ecoguards.⁵³⁴

In February 2018, UNESCO addressed the DRC over tensions between the PNKB and local communities.⁵³⁵ In July 2021, it further noted ‘regrettable’ delays in implementation of the Bukavu Dialogue.⁵³⁶ Yet, the WHC has not directly and publicly acknowledged the dire human rights situation in the PNKB, nor has it referenced the ongoing human rights violations committed by PNKB ecoguards against Batwa.⁵³⁷ The WHC’s silence in relation to these abuses is not for lack of knowledge: civil society and Batwa representatives have brought both historical and ongoing human rights violations to the attention of the WHC. Among other things, they asked UNESCO and the IUCN to address the plight of Batwa evicted from the PNKB in the SOC process, including by calling on the DRC to ensure Batwa’s participation in the governance and management of the PNKB.⁵³⁸ Moreover, in May 2019, representatives from UNESCO and the IUCN received the same correspondence as the PNKB’s other international partners indicating that PNKB ecoguards were shooting Batwa in the park and were threatening imminent and violent evictions, if necessary.⁵³⁹ Less than two months later, the WHC’s 2019 SOC report concerning the PNKB made no mention of these human rights abuses or threats of violence against Batwa. UNESCO representatives were also apprised by MRG of reports of serious human rights violations committed by ecoguards against Batwa inside in PNKB in July 2021 and November 2021, to which no response was received.⁵⁴⁰ Thus, UNESCO has been wholly reluctant to adequately influence the DRC to provide an effective remedy or mechanism of redress for past human rights violations experienced by Batwa.

The WHC’s failure to address the human rights violations endured by Batwa at the hands of PNKB ecoguards, as well as the community’s continued exclusion from the park, does not align with its organizational commitments towards indigenous peoples. UNESCO’s *Policy on Engaging with Indigenous Peoples* promises implementation of UNDRIP across its programme areas.⁵⁴¹ This includes promoting ‘indigenous and local initiatives to develop equitable and inclusive governance arrangements, establishing collaborative management systems and, when appropriate, redress mechanisms’.⁵⁴² However, by failing to confront ongoing human rights violations against Batwa and failing to demand the right of Batwa to govern their ancestral territories, the WHC and the IUCN are tacitly reinforcing and legitimizing coercive conservation in the PNKB.

In many ways, the PNKB’s World Heritage status is being weaponized against Batwa. When community members are perceived as environmental threats, the park’s World Heritage designation is raised as an impetus for aggressive action against them.⁵⁴³ UNESCO and the IUCN have both promoted a strong law enforcement posture in the park, calling for strengthened anti-poaching efforts and continued joint ICCN/FARDC patrols.⁵⁴⁴ UNESCO is also planning to provide direct support for law enforcement in the PNKB. In May 2021, it announced a project with the ICCN, entitled ‘Securing Kahuzi-Biega National Park (DRC)’ which includes, among other things, ‘operational support to law enforcement patrols for 30 rangers in the lowland sectors’ and ‘support in the acquisition of specialised field equipment for a mobile rapid intervention unit.’ UNESCO subsequently clarified that the project is contingent on WCS formalizing a co-management agreement with the ICCN, as well as the results of a pending internal ICCN investigation into human rights abuses committed against Batwa inside the PNKB.⁵⁴⁵ Therefore, even with many of the PNKB’s primary donors and partners scaling back their support due to concerns with park management, UNESCO remains seemingly receptive to supporting the fortress conservation model in the park.

7. Public–private partnerships: A false, colonial solution?

International support from the PNKB’s primary partners has been significantly reduced pending a change in the park’s management structure. For the WCS and the German and US donors, the solution to the human and ecological challenges in the PNKB lies in establishing a public–private partnership (PPP) model to manage the park. In its 2020 *Impact Report*, the WCS makes its intentions clear in this regard:

*‘We are now taking lessons learned from Okapi Wildlife Reserve and other key African strongholds to seek a public–private partnership for WCS’s management of Kahuzi-Biega National Park, so that the gorilla populations can recover across the region.’*⁵⁴⁶

WCS recently confirmed that it is in the process of entering into a PPP arrangement with the ICCN.⁵⁴⁷

On the donor side, KfW publicly states that ‘future, co-management agreements between INGOs and ICCN would be required for standard [financial cooperation] financing of conservation areas as part of direct cooperation.’⁵⁴⁸ Likewise, USAID has adopted a blanket policy across all protected areas in the DRC (including the PNKB), conditioning any future projects or financial support on the establishment of a PPP model.⁵⁴⁹ Thus, there is significant pressure, both political and financial, placed on the DRC to commit to a PPP arrangement in the PNKB.

PPP models differ depending on the nature of the agreements between national authorities, conservation NGOs and other partners. They are premised on using donor funds to pay a private entity (usually an international conservation NGO) to assume co-management or management authority over a protected area where a state has been perceived to be unable or unwilling to effectively administer the protected area and safeguard nature.⁵⁵⁰ Some arrangements confer full management authority directly to an NGO, while others contemplate a co-management arrangement, whereby a state allocates specific responsibilities to an NGO, while retaining overall authority over park management. Still others strike a middle ground, where an independent, intermediate entity (generally with national status) is created to assume management authority over a protected area, which then subcontracts responsibilities to specific partners.⁵⁵¹

These arrangements have proliferated across Central Africa, with numerous states delegating conservation

responsibilities to foreign organizations.⁵⁵² With donors conditioning their funding on the implementation of PPP models, states in Africa have been incentivized to effectively relinquish control over vast amounts of territory – what many criticize as attacks on national sovereignty.⁵⁵³ The model is championed by conservation organizations as essential to the long-term management and sustainability of protected areas. For example, after entering into a PPP arrangement with the ICCN in the Okapi Wildlife Reserve, the WCS announced a ‘new hope for conservation in the protected area’.⁵⁵⁴ Despite this, the efficacy of these arrangements is under-studied and not well known.⁵⁵⁵

There is significant momentum behind adopting a PPP model in the PNKB due to the ICCN’s abysmal track record in respecting human rights and protecting the park’s biodiversity. At various times over the last 20 years, the ICCN has been unable to control significant portions of the PNKB, leaving it vulnerable to extractive activities of various actors and infiltration by armed groups.⁵⁵⁶ Nonetheless, from a human rights perspective, shifting management responsibility to an international conservation NGO, such as the WCS, does not necessarily mitigate human rights risks to Batwa.

First, as demonstrated in section II(3) of this report, the WCS has not proven itself capable and/or willing to respect the rights of indigenous peoples in the scope of its conservation work. This is principally evidenced by the WCS’s training, funding and support of PNKB ecoguards who have committed serious human rights abuses against Batwa community members, and the organization’s steadfast promotion of militarized conservation, a general lack of transparency around its conservation work, and a failure to directly and robustly investigate alleged human rights abuses brought to its attention. At a minimum, this calls into question the fitness of the WCS to manage the PNKB in a manner that respects and protects the human rights of Batwa.

PPP models in other protected areas in the DRC have not significantly reduced human rights concerns. Accounts of serious human rights violations committed by ecoguards against indigenous peoples and local communities have been documented in Virunga⁵⁵⁷ and Salonga⁵⁵⁸ national parks, both either managed or co-managed by international NGOs under PPP arrangements. In Virunga, for instance, research shows that its PPP arrangement has been unsuccessful in rooting

out corruption in park management and ineffective in preventing large-scale extractive activity or unsustainable resource use.⁵⁵⁹ Thus, for affected communities in the DRC, the violence and unsustainability of fortress conservation has not been necessarily mitigated by shifting management responsibilities to conservation NGOs.

Second, evidence suggests that PPP arrangements can entrench rather than reduce militarization of conservation. Research in Virunga National Park demonstrates that after a PPP was established between the ICCN and the African Foundation Fund (a British NGO, later Virunga Foundation), park interventions became increasingly militarized.⁵⁶⁰ The PPP enabled donor money from the European Commission to directly fund militarized conservation, including forms of military and paramilitary training.⁵⁶¹ In conflict-affected regions like the Eastern DRC, it is foreseeable that a PPP arrangement could transform the PNKB into a 'state within a state', with foreign NGOs and their partners effectively exercising control over the park.⁵⁶² Among other things, this encourages the increased use of private, foreign military contractors, like Maisha, which explicitly advocate for the creation of 'conservation protection enclaves' in these contexts – described as semi-autonomous regions staffed with security personnel and privatized by conservation NGOs.⁵⁶³

Third, a PPP arrangement with an international conservation NGO to manage the PNKB is unlikely to gain legitimacy among Batwa. It is quite telling that the park's international partners are willing to leverage their financial and political capital to shift management authority to a foreign conservation organization, while failing to demand that Batwa's customary land rights be recognized or enlist their expertise in effective governance

of the PNKB. Thus, PPP arrangements arguably embrace the same top-down methods inherent in the fortress conservation model. Without a community conservation approach that includes robust consultation and recognition of customary land and resource rights, Batwa, like other indigenous peoples, are unlikely to perceive foreign control of their lands as legitimate or support such conservation initiatives in the PNKB.

Fourth, in some PPP arrangements, conservation NGOs are given management authority, but state agencies retain control over ecoguards.⁵⁶⁴ Under these scenarios, conservation NGOs have been able to disclaim any responsibility for the human rights abuses committed by ecoguards of which they have no control, while also simultaneously taking credit for managing protected areas. This only serves to further blur responsibility for protecting human rights.

Finally, there is a risk that PPP arrangements will solidify, rather than dismantle colonial modes of protecting nature. Central Africa is arguably the only region in the world where private entities manage flagship protected areas.⁵⁶⁵ Placing an international conservation NGO, normally based in the global north, in charge of the Batwa's sacred lands reproduces the same brand of European colonialism that the community suffered under Belgian rule. More generally, the push for conservation NGOs to manage more and more parks in Africa under PPP arrangements resembles a twenty-first-century 'scramble for Africa', with organizations jockeying to maintain a footprint on the continent by managing vast territories and determining conservation policy.⁵⁶⁶ All the while, Batwa remain outside of their lands and at the mercy of their various colonizers.

Conclusion and recommendations

Ongoing violence against Batwa in the PNKB is a blunt reminder of the immense human costs associated with pursuing conservation strategies that prevent indigenous peoples from owning, governing, accessing and benefiting from their traditional territories and resources. For Batwa, their suffering is seemingly endless, with colonial harms unresolved and persisting, and new forms of violence constantly emerging. All of it, however, is firmly rooted in their removal from their ancestral lands in the name of conservation, a cataclysmic event that has caused intergenerational and irrevocable harm to the first peoples of the DRC.

In the more than 50 years since the PNKB was created, little progress has been made in alleviating this suffering. Instead, much of the original violence brought upon Batwa has been recreated through a series of broken promises by the PNKB and an increasingly aggressive and militarized approach to enforcing park boundaries. Batwa are disproportionately criminalized and cast as environmentally destructive, providing cover for the types of mass human rights violations perpetrated against them between 2019 and 2021. Despite progressive rhetoric from the park's international supporters, the so-called new paradigm of conservation has yet to find its way to the PNKB.

Regrettably, this is not an isolated example of flawed conservation policy. Rather, it is indicative of the institutional shortcomings and systemic failures inherent in the dominant ways in which conservation is pursued by states and promoted by international conservation actors. Donors, NGOs and intergovernmental organizations bolster a violent and anti-indigenous status quo in many protected areas, including in the PNKB. This is evident not in their statements before international bodies or in the pages of their official policies, but rather in the types of initiatives they fund, the activities they support, their ignorance of events on the ground and their lack of meaningful action in the face of egregious allegations of human rights violations.

Our collective solutions to biodiversity loss and climate change cannot come at the continued expense of indigenous peoples – the communities least responsible for these crises. In the realm of protecting nature, no one has contributed more and benefited less than these groups. Yet, with the parties to the CBD primed to adopt a target

to put 30 per cent of the planet under protected area status by 2030, and without adequate safeguards, indigenous peoples, like Batwa, are once again being forced to bear the burden of environmental mitigation through dispossession of ancestral territories and disruption of sustainable ways of life. At the same time, such an approach ignores the past 150 years of conservation-related dispossession and violence that underpins the climate and biodiversity crises.⁵⁶⁷

The recommendations proposed here are not intended simply to shift conservation in the PNKB and other protected areas towards a more just and rights-respecting approach. Such a shift does not decolonize the dominant modes of conservation that continue to inflict suffering and violence on Batwa and other indigenous peoples. Rather, these recommendations seek to chart a course of action for the DRC and its international partners to begin to radically up-end the colonial, fortress conservation model and the attendant violent and coercive practices that have become normalized in the PNKB and across many other protected areas in the DRC and elsewhere.

To the DRC government, including the ICCN:

With regard to indigenous peoples' rights:

- Uphold human rights commitments to recognize, respect and protect the rights of indigenous peoples, and ensure that international human rights standards, including those included in UNDRIP, are fully integrated into conservation policies and management plans in the PNKB and across all other protected areas in the DRC;
- Adopt all necessary policy, legal and administrative measures for the full recognition of the rights of indigenous peoples over their lands, territories and resources as enshrined in international human rights law, including taking all necessary actions to enact and implement the *Proposition de loi portant protection et promotion des droits des peuples autochtones pygmées*;
- Provide effective mechanisms of redress and adequate, effective and fair remedies in connection with all historical and contemporary injustices perpetrated against indigenous peoples in the DRC;

- Undertake all necessary measures to effectively implement UNDRIP, including by harmonizing existing national laws with UNDRIP's protections.

With regard to conservation policy in the PNKB:

- Refrain from removing Batwa living on their ancestral lands in the PNKB without their FPIC;
- Legally recognize, respect and protect Batwa's collective right to self-determination, FPIC rights and customary ownership of their ancestral lands, territories and resources contained within the PNKB, and prioritize Batwa ownership, management and participation as central to conservation policy in the PNKB;
- Support and facilitate Batwa's collective ownership and management of their ancestral lands through appropriate co-designed mechanisms;
- Protect and support Batwa's right to determine, develop and implement their own conservation initiatives in the PNKB, including through assistance programmes as contemplated in Article 29 of UNDRIP;
- Commission an independent study into the environmental effectiveness of the current policies and strategies employed in the PNKB, ensuring meaningful consultation and effective participation of a representative cross-section of the Batwa community, and documenting the extent of and responsibility for unsustainable, extractive activities inside the park;
- Consult with a representative cross-section of the Batwa community to arrive at innovative solutions to problems of unsustainable resource extraction in the PNKB and commit to address underlying drivers of biodiversity loss;
- Recognize, respect and protect Batwa's traditional forest knowledge, acknowledge their positive contributions to conservation, and promote them as the best custodians of their natural environments;
- As a member of international and intergovernmental organizations, promote indigenous rights-respecting conservation agendas, including demanding the inclusion of robust safeguards in the CBD's post-2020 Global Biodiversity Framework with respect to indigenous peoples' rights to their lands, territories and resources;
- Refrain from entering into any PPP arrangement that would confer management or co-management authority in the PNKB to any entity, foreign or domestic, including any international conservation NGO, who has not demonstrated a proven track record of respecting the rights of indigenous peoples in conservation, and instead, commit to support Batwa governance of the PNKB, including through financial and technical assistance, in consultation with a representative cross-section of the Batwa community.

With regard to human rights investigations and mechanisms of reparations and redress:

- In conjunction and consultation with a representative cross-section of the Batwa community, commission an independent, impartial, thorough and transparent investigation into the human rights abuses committed by PNKB ecoguards in and around the park, including, but not limited to those abuses documented in 'To Purge the Forest by Force';
- Publicly disclose and communicate (while ensuring the security of witnesses and victims) the results of all internal and external investigations of conservation-related human rights abuses in and around the PNKB to all relevant stakeholders, including the PNKB's partners, donors, local civil society, the South Kivu provincial government and the Batwa community;
- In conjunction and consultation with a representative cross-section of the Batwa community, take all necessary measures to provide an adequate, effective and fair remedy to affected Batwa for their displacement from the Kahuzi-Biega forest and the ongoing violations of their human rights, including:
 - Full restitution of their ancestral lands with co-designed mechanisms including financial resources made available to restore, rehabilitate and repair any environmental damage caused;
 - Elimination of all restrictions on Batwa's usage rights with respect to their territories and resources;
 - Financial compensation based on, but not limited to, lost opportunity costs, revenues derived from the PNKB since its creation, and any physical, mental, moral or material damages incurred by the community;
 - Medical, psychological and social care for victims;
 - A public apology, acknowledging responsibility for the unlawful evictions and ongoing human rights violations.
- Promote and facilitate increased access to justice for Batwa community members to seek remedies and redress for past or current human rights violations related to the PNKB, including through supporting and collaborating with local civil society;
- Establish and support an independent, on-site and culturally appropriate grievance mechanism in the PNKB to promote transparency and provide access to justice for affected members of the Batwa community and other marginalized, local communities;
- Take all necessary steps to facilitate the reporting of abuses by ecoguards, including through awareness raising, community outreach and collaborating closely and productively with local civil society.

With regard to the demilitarization of the PNKB:

- Commit to a process of demilitarization in the PNKB, including by:
 - Engaging in a gradual disarmament process in order to reduce and ultimately abolish the use of lethal weapons by PNKB ecoguards;
 - Issuing clear and consistent guidelines regarding protocols and conditionalities for FARDC interventions inside the PNKB, including joint patrols with ecoguards;
 - Providing indigenous-led human rights and sensitization training to all PNKB personnel, including ecoguards;
 - Engaging in a vetting process within the PNKB to determine the extent to which leadership and individual ecoguards should be removed from their positions based on their lack of compliance with human rights standards;
 - Initiating and supporting prosecutions against PNKB ecoguards, FARDC soldiers and all other persons credibly accused of directing or committing unlawful acts of violence against Batwa community members, including those documented in ‘To Purge the Forest by Force’.
- During the demilitarization process, commit to using unarmed PNKB personnel to conduct consultations and otherwise maintain community relations with Batwa;
- Cease making inflammatory statements that falsely accuse Batwa community members of being terrorists or members of armed groups as justifications for militarized interventions in the PNKB.

With regard to conflict resolution:

- Recommit to and abide by the various commitments made during prior conflict resolution dialogues between Batwa, the PNKB and other stakeholders, including the Whakatane dialogue;
- Commit to a new and genuine dialogue process with a representative cross-section of Batwa community members and staffed with independent mediators and mechanisms to ensure that agreements are respected and implemented;
- Cease making and promptly retract all inflammatory and unfounded accusations directed towards CSOs supporting the rights of Batwa, blaming them for instrumentalizing Batwa or otherwise furthering the conflict in the PNKB.

With regard to justice systems and prison conditions:

- Guarantee that Batwa detainees and prisoners are afforded legal aid, judicial due process and fair trials in connection with any arrests and/or detentions associated with their activities inside the PNKB;
- Ensure that Batwa detainees and prisoners are treated with respect and inherent dignity, free from torture or other cruel, inhuman or degrading treatment or punishment, and commit to ensuring that conditions of confinement meet international standards;
- Cease sending Batwa civilians directly to the military justice system.

To the WCS and other international conservation NGOs in the PNKB:

With regard to indigenous peoples and human rights in conservation:

- Respect and promote the rights of indigenous peoples as recognized under international human rights law and prioritize conservation initiatives and programming that advance the recognition and protection of indigenous peoples’ rights to self-determination, lands, territories and resources;
- Integrate all human rights commitments into a single policy document with strengthened internal safeguards in the context of protected areas and other conservation initiatives, including tailored protections for indigenous peoples in line with UNDRIP;
- Establish specific safeguards in the overall governance of international conservation NGOs, to ensure that human rights principles are mainstreamed within their vision, strategies, planning of activities, and oversight;
- Commit to not support any conservation initiative which entails the forced or coerced displacement of indigenous peoples, or any curtailments of their rights whatsoever, without obtaining their genuine FPIC;
- Withhold support for any conservation project that was initiated without the FPIC of indigenous peoples unless and until negatively impacted communities receive an adequate, effective and fair remedy;
- Advocate for stronger indigenous peoples’ protections and safeguards within conservation policy making fora, including within processes at the IUCN and CBD;
- Undertake a process of reflective learning of the extent to which such organizations are implicated in the construction and maintenance of structural racism and/or discrimination in the context of their conservation work.

With regard to human rights due diligence, monitoring and transparency:

- Commit to abiding by the Guiding Principles on Business and Human Rights;
- Comply with all applicable due diligence obligations, including proactive human rights monitoring and ensuring compliance with indigenous peoples' rights in connection with project assessments;
- Integrate indigenous peoples' rights into due diligence processes, including by:
 - conducting specific risk assessments with respect to indigenous communities after robust and meaningful consultations with a representative cross-section of indigenous peoples who may be affected;
 - ensuring effective participation of indigenous peoples in the conception, design, implementation and management of projects;
 - scrutinizing the extent to which FPIC has been obtained from affected indigenous peoples, and the adequacy of any consultation or processes employed.
- Ensure that indigenous rights and human rights commitments are incorporated into all agreements entered into with governments and other partners in connection with conservation work and ensure that all such agreements be made publicly available;
- Maintain a clear and consistent protocol for responding to allegations of ecoguard human rights abuses;
- Increase overall transparency around conservation work, including by continuously monitoring and reporting on the integration of human rights and publicly disclosing organizational challenges and levels of compliance with human rights obligations and commitments to indigenous peoples;
- Guarantee that effective and transparent mechanisms are in place to monitor ecoguard conduct and investigate allegations of wrongdoing;
- Maintain and operationalize certain protocols to ensure that allegations of ecoguard abuses are promptly reviewed and communicated to donors and other partners in a timely manner and through formal communication channels;
- Hire an expert(s) on indigenous rights at all levels of the organization, including in overseeing community consultations, FPIC and other direct engagement with indigenous peoples for each supported protected area;
- Build capacity amongst staff on human rights standards and best practices.

With respect to the support of the PNKB:

- Unequivocally support the recognition, respect and protection of Batwa's customary land rights in the PNKB;
- Commit to protecting the rights of Batwa to continue living on their ancestral lands inside the PNKB;
- Take all necessary measures to ensure that internal human rights commitments are implemented and operationalized in the PNKB;
- Build genuine partnerships with local human rights CSOs advocating on behalf of Batwa and support civil society initiatives aimed at strengthening Batwa's rights and governance over their lands, territories and resources;
- Acknowledge and promote the efficacy and utility of Batwa's conservation governance and traditional knowledge systems;
- Condition ongoing support of the PNKB on:
 - The completion of a thorough, independent and transparent investigation into the human rights abuses committed by PNKB ecoguards in and around the park, including, but not limited to those abuses documented in 'To Purge the Forest by Force';
 - The provision of an adequate, effective and fair remedy to affected Batwa for both historical and contemporary harms associated with the PNKB;
 - The implementation of adequate guarantees of non-repetition that safeguard against repeat violations;
 - The establishment of an on-site, independent and culturally appropriate grievance mechanism in the PNKB.
- Seek to develop bona fide and equal partnerships with the Batwa community to support their effective participation in and governance over conservation projects, including by exchanging conservation knowledge and providing financial and technical support when appropriate.

With regard to human rights investigations and mechanisms of reparations and redress:

- For the WCS: publicly acknowledge and apologize for its role in promoting and supporting fortress conservation projects which have impeded on the rights of indigenous peoples and other local communities;
- Support Batwa's claims for a remedy and reparations in connection with their expulsion from the Kahuzi-Biega forest and recurring human rights violations, including through financial compensation, elimination of usage restrictions and restitution of their ancestral lands.

With regard to the demilitarization of the PNKB:

- Cease all forms of militarized ecoguard training, including any support or instruction on weapons handling, combat tactics, advance surveillance technologies or patrol strategies;
- Refrain from contracting with private contractors to train PNKB ecoguards;
- Adopt and operationalize detailed human right commitments specifically tailored to any law enforcement and/or anti-poaching support in the PNKB;
- To the extent that the WCS or any other international conservation NGO continues to provide or support military or paramilitary training of PNKB ecoguards, promptly notify the UN Security Council Sanctions Committee regarding such activities;
- Reflect upon and publicly report on the extent to which advanced surveillance technologies present an increased human rights risk to indigenous peoples and local communities, particularly when such equipment is commandeered by elements of the FARDC;
- Commit to promoting more nuanced messaging around anti-poaching and the illegal wildlife trade in ways that reflect the lived experiences of indigenous and local communities and the challenging contexts in which they have been forced to live in as a direct consequence of fortress conservation.

To the PNKB's donors

With regard to indigenous peoples and human rights in conservation:

- Urge governments and partners to respect and protect the rights of indigenous peoples in connection with all donor-supported conservation initiatives;
- Incorporate human rights commitments into all agreements entered into with governments and partners in connection with conservation assistance and make such agreements publicly available;
- Actively seek to diversify biodiversity assistance, with an emphasis on reallocating funds to increasingly support indigenous peoples, including through direct funding for:
 - indigenous peoples' own conservation initiatives and local and grassroots projects;
 - projects that seek to secure indigenous land tenure rights;
 - human rights due diligence and social impact studies;
 - separate consultations with indigenous communities and robust FPIC processes;

- investigating and documenting cases of alleged human rights violations by ecoguards;
- redress mechanisms and the payment of compensation for human rights abuses committed by ecoguards whose activities were funded by a given donor.
- Suspend or withdraw funding for conservation projects with unresolved allegations of serious human rights violations, which funding should not be reinstated until such allegations have been independently investigated, necessary safeguards (supervised externally) have been fully operationalized, and adequate remedies provided to victim(s).

With regard to monitoring, controls, oversight and transparency:

- Implement adequate controls to ensure that donor support does not contribute to human rights violations against indigenous peoples;
- Proactively monitor compliance of funded conservation projects with relevant international human rights standards and domestic laws, including through extensive and ongoing consultations with civil society and indigenous communities throughout the life of conservation projects;
- Ensure that all funded projects contain an adequate budget for monitoring and responding to alleged human rights violations;
- Publicly disclose detailed information on how donor-supported protected areas are funded, including specific amounts for each protected area, who the money is directed to, how it is used and what conditions are placed on such funds;
- Automatically treat the funding of protected areas as a 'high-risk' activity and implement robust due diligence requirements before agreeing to provide assistance, including ensuring that the FPIC of affected indigenous communities is obtained prior to and during the entire lifespan of any project;
- For every funded protected area, ensure that an indigenous rights expert is engaged and placed in proximity to the protected area in order to oversee community consultations, FPIC processes and to engage with and address community grievances;
- Implement adequate controls to ensure that partners and subgrantees apprise donors of alleged human rights abuses committed in the context of their conservation support.

With regard to donor support of the PNKB

- Use contractual and financial leverage to urge the ICCN and partners to adequately address and remedy human rights violations committed against Batwa;
- Refrain from supporting any action or initiative which results in the forced or coerced removal of Batwa living on their ancestral lands inside the PNKB without obtaining their FPIC;
- Condition continued funding in the PNKB on the following:
 - the completion of a thorough and independent investigation into the human rights abuses committed by PNKB ecoguards in and around the park, including, but not limited to those abuses documented in ‘To Purge the Forest by Force’;
 - the provision of an adequate, effective and fair remedy to affected Batwa for historical and contemporary violations;
 - adequate guarantees of non-repetition that safeguard against repeat violations;
 - the establishment of an on-site and culturally appropriate grievance mechanism in the PNKB.
- Promote and fund local economic development projects that specifically target marginalized Batwa populations, and ensure that such projects are Batwa-led, sustainable and respect the cultures, traditional knowledge and customary land use of Batwa;
- Provide and encourage conservation funding and support to local CSOs working to ensure Batwa’s participation, management, governance and ownership of their ancestral lands in the PNKB.

To international organizations and intergovernmental bodies

With regard to the UN Security Council:

- Investigate the supply of arms or related materials or technical training and assistance to the PNKB without advance notice to the UN Sanctions Committee, and if appropriate, assess sanctions against any culpable parties.

With regard to UNESCO:

- Revise the Operational Guidelines to fully align with UNDRIP, including ensuring that the right to FPIC is complied with in any World Heritage nomination, management and policy measure affecting indigenous peoples’ territories, lands, resources and ways of life;
- Meaningfully account for the plight of Batwa, including addressing ongoing ecoguard abuses, in the

course of all World Heritage processes, assessments, investigations and decisions concerning the PNKB;

- Consult with a representative cross-section of the Batwa community and local CSOs before taking any decisions in the SOC process with respect to the PNKB;
- Publicly condemn human rights abuses perpetrated against Batwa by PNKB ecoguards;
- As part of the World Heritage SOC monitoring process, implement a new programme for corrective measures in the PNKB, urging the DRC government to respect Batwa’s customary land rights in the PNKB, provide redress and reparations for historical and contemporary violations, take steps to integrate Batwa into the governance and decision-making in the PNKB, and re-engage in a meaningful dialogue process;
- Refrain from providing direct law enforcement assistance to PNKB ecoguards, including through operational support or the provision of field equipment, in connection with any current and future projects.

With regard to the IUCN:

- Acknowledge and apologize for its role in the establishment of the PNKB without consulting with Batwa or accounting for the adverse impact of the PNKB on their lands, territories, resources and way of life;
- In consultation with indigenous peoples, fund and establish a truth and reconciliation process to document the history of fortress conservation and the associated harms on indigenous peoples and local communities, as well as provide a mechanism of redress for historical wrongs;
- Meaningfully address ongoing human rights violations sustained by Batwa as a result of the PNKB and push for recognition of their rights in connection with recommendations provided to the UNESCO WHC.

With regard to the Parties, Secretariat and Open-ended Working Group of the CBD:

- Promote the legal recognition and protection of indigenous peoples’ lands, territories and traditional knowledge systems in all CBD processes, programs and decisions;
- Condition any increase in targets for percentage of area under protected status in the post-2020 Global Biodiversity Framework on those areas being owned, governed and managed by indigenous peoples and/or local, land-dependent communities.

Notes

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- 10 *Ibid.*, Art. 26. In a 2007 Advisory Opinion, the African Commission on Human and Peoples' Rights (ACHPR) concluded that there was consistency between the protections articulated in UNDRIP and those enshrined in the African Charter. See ACHPR and International Work Group for Indigenous Affairs (IWGIA), United Nations Declaration on the Rights of Indigenous Peoples, Advisory opinion, May 2007, Accra, Ghana, 2010.
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- 12 UN CESCR, General Comment No. 21, Right of Everyone to Take Part in Cultural Life (Art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights), 21 December 2009, UN Doc. E/C.12/GC/21, para. 36; UN Committee on the Elimination of Racial Discrimination (CERD), General Recommendation No. 23 (Indigenous Peoples), 18 August 1997, para. 5.
- 13 See e.g. African Court on Human and Peoples' Rights (ACtHR), *African Commission on Human and Peoples' Rights v. Republic of Kenya*, Judgment of 26 May 2017, Application No. 006/2012; ACHPR Communication 276/2003, *Centre for Minority Rights Development v. Kenya*, November 2009; *Kaliña and Lokono Peoples v. Suriname*, Inter-American Court of Human Rights (IACtHR) Judgment of 25 November 2015; *Case of Xákmok Kásek Indigenous Community v. Paraguay*, IACtHR Judgment of 24 August 2010.
- 14 *Lars-Anders Ågren et al. v. Sweden*, Communication No. 54/2013, UN Doc. CERD/C/102/D/54/2013 (2020), para. 6.27.
- 15 CBD, Arts 8(j) and 10(c).
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- 23 *Ibid.*, Principle 12, Commentary.
- 24 *Ibid.*, Principle 11, Commentary.
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- 27 UNGPs, Principle 18, Commentary.
- 28 See UN Compact, Principle 2, *op. cit.*
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- 44 Coutillard, V. *et al.*, *Land Rights and the Forest Peoples of Africa: Historical, Legal and Anthropological Perspectives*, Overview: Analysis and Context, UK, Forest Peoples Programme (FPP), 2009, p. 5.
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- 51 Busane, W. *et al.*, *L'Expulsion des populations pygmées du Parc National de Kahuzi-Biega: faits, conséquences et perspectives*, Bukavu, June 2016.
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Fortress Conservation and International Accountability for Human Rights Violations against Batwa in Kahuzi-Biega National Park

The Kahuzi-Biega National Park ('PNKB') in the Democratic Republic of the Congo presents an existential threat to the indigenous Batwa people. For millennia, Batwa occupied the forests surrounding Mount Kahuzi and Mount Biega, utilizing traditional ecological knowledge and sustainable practices to foster one of the most biodiverse places on the planet. The creation of the PNKB in the 1970s forced Batwa from their ancestral lands, rendering them deeply impoverished, landless, dependent and culturally disconnected. When they seek to return home and access their lands and resources, they are subjected to extreme violence by park authorities who treat them as trespassers, poachers and enemies of conservation.

This report situates the serious human rights violations suffered by Batwa in the PNKB within the broader global phenomenon of 'fortress conservation' and analyses the respective roles and accountability of the park's core international partners. Ongoing violence against Batwa in the PNKB is a stark reminder of the immense human and environmental costs associated with pursuing conservation policies that prevent indigenous peoples from owning, governing, accessing and benefiting from their territories and resources. These policies are bolstered by donors, global NGOs and international organizations which enable and tacitly uphold a violent and anti-indigenous status quo in the PNKB and other protected areas.

Donors, conservation organizations and other international partners of the PNKB have failed to adequately ensure that their support did not contribute to human rights violations committed against Batwa. These international partners had explicit knowledge of unresolved human rights abuses committed by ecoguards, as well as threats of imminent violence against Batwa communities living inside the park. Yet, they continued to equip, fund and train ecoguards and actively promoted the increasing militarization of the PNKB. This militarization has resulted in overly aggressive policing and military-style actions by ecoguards (often jointly with the Congolese Army) who explicitly target, criminalize and brutalize Batwa. At the same time, the park consistently fails to meet environmental expectations and objectives.

Thus, the PNKB represents a clear case of how fortress conservation fails both people and the environment. Regrettably, it is not an isolated example of flawed conservation policy. Instead, it is indicative of the institutional shortcomings and systemic failures inherent in the dominant ways in which conservation is pursued by states and promoted by international conservation actors in the Congo Basin and in other parts of the world.



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