

The Researcher

Published by The Refugee Documentation Centre
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Welcome to the June 2010 issue of The Researcher

For this summer issue Caroline O'Connor, from her experiences with UNDP Somalia, gives an account of the Women's Lawyers Association in Somaliland. Pierrot Ngadi of the Congolese Anti-Poverty Network (CAPN) discusses the issue of Education in the Democratic Republic of Congo and Patrick Dowling of the Refugee Documentation Centre gives an insight into the current situation facing the Pygmies of the Republic of the Congo. A summary of the recent Dokie case is provided by Mary Fagan of the Refugee Documentation Centre and John Stanley, B.L. presents a digest of recent EU Immigration cases. The issue concludes with a selection of Refugee Documentation Centre query responses on Somalia and the Republic of the Congo.

Wishing all of our readers an enjoyable summer

Deirdre Houlihan, RDC



Disclaimer

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The Researcher is published three times a year by:

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The Researcher is available on the Legal Aid Board website www.legalaidboard.ie and also on the websites of the European Country of Origin Information Network, www.ecoi.net and UNHCR's Refworld, www.Refworld.org/

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Women's Lawyers Association in Somaliland



by Caroline O'Connor, UNDP Somalia.

Somalia has been in a state of war for over 20 years. In conflict and post-conflict countries such as Somalia where structures for the administration of justice have collapsed, the human rights of vulnerable groups such as women and children are even more subject to abuse. One of the major human rights violations perpetrated in Somalia is sexual violence against women. It is an endemic problem that must be tackled at a number of levels: legal, political and social. UNDP has supported the efforts in South Central Somalia and Somaliland of two women's bar associations that campaign to protect and promote the rights of women in war-affected areas—guaranteed by UN Security Council Resolution 1820—as well as provide technical support to female lawyers. I have spent the last six months working as Access to Justice (Judiciary) Specialist with UNDP Somalia on the Rule of law and security team (ROLA). As a former committee member of the Irish Women Lawyers Association, I was eager when the opportunity presented itself to work with Somaliland Women's Law Association (SWLA). SWLA is a non profit, non partisan NGO established in 2008. It is the first female lawyers' association not only in Somaliland, but in all of Somalia. Somaliland seceded from Somalia in 1991, and advocates independence for the north-western portion of the Somali Democratic Republic and remains unrecognised by any state or international organisation.

The establishment of SWLA is an extremely important step, both in terms of assisting female lawyers in their professional career and in providing appropriate and gender-sensitive legal advice to women in Somaliland. The sole practicing female lawyer in Somaliland until 2007 was Ifrah Aden Omar, who heads the SWLA. Ifrah is also the Director of the Women and Children's Unit at the Hargeisa legal aid clinic that was itself established with UNDP help in 2003. There are currently 17 female members of the SWLA with a further 24 women set to graduate from the University of Hargeisa's law faculty in September this year, bringing membership up to 41. UNDP has provided grants for females to attend Hargeisa law faculty since 2004. The SWLA is enhancing the skills of female lawyers in Somaliland through the creation of an internship program placing recent female graduates in law firms and government ministries. Currently, there are no prosecutors or judges in Somaliland. Ifrah is aware of the fact that it will take time for the male-dominated legal profession to understand and accept the importance of women lawyers in society but SWLA lawyers are the forefront of change in Somali society.

The SWLA legal team consists of a Chairperson, coordinator, 2 lawyers, 4 paralegals, secretary and an administrator. Paralegals conduct weekly and daily visits to police stations, monitoring visits to prisons and IDP camps in the Hargeisa region. Their team has represented female clients at all stages of legal proceedings and their paralegals engage in much mediation work. UNDP provide technical assistance to SWLA to create awareness and the means to run the association in terms of equipment, technical and financial support as well as legal training and establishing links with female lawyers outside Somaliland. The aims of the SWLA include: to provide free legal aid for women and children in Somaliland, to provide a professional and social network for women lawyers and to promote the wider participation of women in development of the law.

Since 2008, SWLA has undertaken a number of awareness raising activities, to publicize their activities and facilitate discussion on women's role in the law profession. This included radio messages, 2 newsletters which also discussed women's rights under Islam (2000 copies distributed) as well as information meetings with

elders and community leaders, Police and Justice Officials as well as members of the local and national authorities. This has led to a greater awareness of the SWLA amongst the population and a greater acceptance of their work. One tangible achievement was that from September 2009, the SWLA began providing legal aid and directly representing cases in the Courts, something which would have proved more difficult a year previously when there was still a lot of resistance to women appearing as defence Counsel. The awareness raising has also paid off, demonstrated by the immediate demand seen for legal services provided by women. SWLA conducted weekly monitoring visits to prisons, 8 police stations in the region and 5 IDP camps, to provide legal assistance and representation. SWLA also conducted a number of workshops which were well attended and improved public awareness on women's rights and established that female victims of crime are entitled to defend their rights through the justice system.

The existence of voluntary legal organisations such as SWLA is vital to many women in Somaliland, which lacks a free legal aid service and where the legal system has frequently failed to protect and uphold their human rights. Women and girls are most disadvantaged and vulnerable to the effects of poverty, poor education and violence of all types. The most common cases SWLA deals with are rape, domestic violence, divorce, child custody, child maintenance and inheritance. Since September 2009 to December 2009 the SWLA assisted in 91 cases in total, i.e. 58 family cases, 8 rape cases (art. 398 – Carnal Violence), 11 domestic violence cases, 3 detention of illegal weapon cases, 1 inheritance, 1 double marriage and 9 cases under art. 496 of the penal code (cheating) which led to the release of women prisoners from Gabilay Prison.

It was a fascinating and invaluable experience to work with such women in a young and vibrant organization. I worked on capacity building, advocacy and monitoring and evaluation aspects of SWLA. Of course, there are challenges facing SWLA but with the support of their partners and the Government, they can be overcome.

See further www.slwomenlawyers.net

'Someone told me it's all happening at the zoo'¹: The Pygmies in the Republic of the Congo²



By Patrick Dowling, RDC

Introduction: At the zoo

A group of Congolese musicians attending a festival were provided with accommodation in the local zoo. This was in order to maintain the link to the participants' home or natural habitat.³ The festival concerned is the Festival of Pan-African Music (Fespam) held in the capital of the Republic of the Congo, Brazzaville, is an annual event. In previous years, this particular troupe of musicians were treated the same as other players.⁴ "But this year the group of 20, including 10 women and a three-month-old baby, were given one tent to share in the city's zoo. A spokeswoman for [the] Fespam [event held in July 2007] said the decision was made in consultation with the Forestry Ministry, so that the [musicians]...would not be cut off from their "natural environment".⁵ The musicians in question were Pygmies⁶; specifically they were

¹ Title from lyrics of 'At the Zoo' by Simon and Garfunkel
http://www.lyricsfreak.com/s/simon+garfunkel/at+the+zoo_20331900.html

In all cases I have used capitalization for Pygmy/Pygmies irrespective of original source usage

² The Republic of the Congo is also called Congo Brazzaville and will be referred variously according to the sources dictates

³ BBC News (13 July 2007) *Pygmy artists housed in Congo zoo*
<http://news.bbc.co.uk/2/hi/6898241.stm>

⁴ *Ibid.*,

⁵ *Ibid.*,

⁶ Lewis notes that the name " 'Pygmy' is an academic term designating the small-stature hunter-gatherer and former hunter-gatherer peoples of the equatorial forests and adjoining areas across Central Africa. This term is widely used by non-Pygmy people, but only rarely by Pygmies themselves. Outsiders often use it in a derogatory way...Many Pygmy peoples prefer ethnic labels that correspond to specific areas of forest – Bambutu, the Ituri forest (Democratic Republic of Congo [DRC]), Baaka, the Lobaye forest (Central African Republic [CAR]), Bambendjelle, the Ndoki forest (Congo-Brazzaville and CAR)...".

Jerome Lewis (2000) *The Batwa Pygmies of the Great Lakes Region* Minority Rights Group International

[http://www.coporwa.org/documents/Lewis_\(2000\).pdf](http://www.coporwa.org/documents/Lewis_(2000).pdf)

Reuters notes that Pygmies is a name "...introduced by European explorers, refers to various ethnic groups of central Africa whose adults are shorter than 1.5 metres (five feet)".

Baka, who live primarily in the forested northern regions of the country.⁷ The Baka are among "...several groups of 'Pygmies'...who have often complained of being marginalised and shunned by other communities [in the Republic of the Congo].⁸ This treatment of Pygmies occurs in the form of "...discrimination, exploitation and disrespect".⁹ And while the Baka Pygmies musicians at Fespam were accommodated in the zoo other "...groups at the festival stayed in hotels".¹⁰ The group of Pygmy musicians in Brazzaville zoo became an attraction for visitors to the zoo. "But the group themselves are not happy. Activists say the Pygmies are being treated like zoo exhibits. 'It's not good for men, women and children to all be in this one tent. We need some space,'...[said one musician]...[The] Congolese Observatory of Human Rights said the Pygmies...[had] to collect firewood in the zoo to cook their food, and were being stared at and filmed by tourists and passers-by".¹¹ The misrepresentation and marginalisation of Pygmies "...[has] had devastating effects upon their populations. The popular perception of them as barbaric, savage, wild, uncivilized, ignorant,

Reuters (14 July 2007) *Congo moves pygmy musicians from zoo after outcry*

<http://www.reuters.com/article/idUSL14526356>

IRIN News describes usage of the term in Africa, that the term "...pygmy" is decried as derogatory in parts of the continent - mainly eastern Africa - due to the prejudices associated with the term over the centuries. However, it does not convey the same stigma in western Africa, where it is used as a generic name for several ethnic groups".

IRIN News (March 2006) *Minorities Under Siege, Pygmies today in Africa*

<http://www.irinnews.org/pdf/in-depth/Pygmies-today-in-Africa-IRIN-In-Depth.pdf>

Cavalli-Sforza adds that it "...is not clear how the name sound to Pygmies themselves, since they are usually given other names by their neighbors".

Luigi Luca Cavalli-Sforza 'introduction' in *African Pygmies* (1986) edited by Luigi Luca Cavalli-Sforza, Academic Press, Orlando, Florida, pp.19-20

Issues concerning the stature of pygmies are dealt with in: Andrea Bamberg Migliano, Lucio Vinicius, and Marta Mirazo´n Lahr 'Life history trade-offs explain the evolution of human pygmies' in *Proceedings of the National Academy of Sciences* (18 December 2007) edited by Kirsten Hawkes

<http://www.pnas.org/content/104/51/20216.full.pdf>;

Anjana Ahuja (21 January 2008) *Why do pygmies die so young* The Times

http://www.timesonline.co.uk/tol/comment/columnists/guest_contributors/article3221346.ece

⁷ *Ibid.*,

⁸ IRIN News (15 August 2007) *Congo: Indigenous people "exploited" in recent elections*

<http://www.irinnews.org/Report.aspx?ReportId=73742>

⁹ *Ibid.*,

¹⁰ *Ibid.*,

¹¹ BBC News, *op.cit.*,

unclean and...sub-human has seemingly legitimized their exclusion from mainstream society and left them with little support or outside resources in their current state of forced displacement".¹² The focus of this article is on issues regarding the treatment of Pygmies¹³ in the Republic of the Congo¹⁴ beginning with a brief historical overview.

History

Pygmies are "...considered to be the original inhabitants of the [African] continent".¹⁵ Research produced in 2009 into the origins of the Pygmies suggests they split off from nonpygmy peoples at some point between 50,000 and 90,000 years ago and remained a homogenous group, until 2800 years ago when farming Bantu tribes spread across central Africa splitting the forest dwelling Pygmies into isolated groups.¹⁶ "As a result, each group evolved separately. Even today, they seldom know of each other's existence..."¹⁷ Today the Pygmy

¹² Refugees International (12 Aug 2003) *Forgotten people: the Batwa 'Pygmy' of the Great Lakes region of Africa*
<http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/a84e5cbac3ac8c2885256d800079aaba>

See also this comment from an article in the Smithsonian "Time and again on this visit, I encountered tales of Bantu prejudice against Pygmies, even among the educated. On my first trip to Mossapola, I had asked Bienvenu if he'd marry a Pygmy woman. "Never," he growled. "I'm not so stupid. They are bambinga, not truly humans, they have no civilization." This belief that Pygmies are less than human is common across equatorial Africa."

Paul Raffaele (December 2008) *The pygmies plight* Smithsonian magazine

<http://www.smithsonianmag.com/people-places/The-Pygmies-Plight.html>

¹³ The term 'Pygmy' (and derivatives) will be used inter-changeably with descriptions such as 'forest dwellers', 'hunter-gatherers', 'indigenous peoples' et al according to usage by the sources

¹⁴ Though references will be made to neighbouring countries where pygmies dwell and to the Central African region overall

¹⁵ IRIN News (March 2006) *Minorities Under Siege, Pygmies today in Africa*

<http://www.irinnews.org/pdf/in-depth/Pygmies-today-in-Africa-IRIN-In-Depth.pdf>

¹⁶ Ann Gibbons (5 February 2009) *A Short History of African Pygmies*, Science Now

<http://news.sciencemag.org/sciencenow/2009/02/05-03.html?rss=1>

Olsen adds that "The Pygmies used to occupy a much larger territory, but they have retreated from that broad area over the last thousand years because of long-term climatic changes, which have caused the tropical forest to shrink, and the expansion of Bantu agricultural techniques, which has likewise converted large sections of the tropical forest to savanna. In recent years, more intensive forms of swidden agriculture, lumbering, and mining have also contributed to the steady elimination of tropical forest. In the process, the Pygmies have lost territory".

James Olsen (1996) *The Peoples of Africa* Greenwood Press, Connecticut, p.488

¹⁷ Ann Gibbons, *op.cit.*,

Middleton and Rassam add that "There is so much diversity among these groups that it is impossible to describe a "pygmy" culture.

populations are scattered across the equatorial rainforests of Central Africa¹⁸ with each group showing diversity in hunting, dwelling and language.¹⁹ “They inhabit a narrow band of tropical rain forest...stretching from Cameroon's Atlantic coast eastward to Lake Victoria in Uganda. With about 250,000 of them remaining, Pygmies are the largest group of hunter-gatherers left on earth”.²⁰ It is thought that the Pygmies “...were once more numerous and might have inhabited a larger part of Central Africa”.²¹ In recent “...decades, development activity and political instability have encroached on the living space of many Pygmy communities...of Central Africa. The increasing number of urban settlements, population growth, deforestation, armed conflict and ethnic discrimination have forced a large number of Pygmies to leave their ancestral lands. Displaced from the forests that provided them their livelihoods, Pygmies have

That there is no generic term other than the European word “pygmy” (derived from the Greek *pyme*, meaning a unit of measure equivalent to the distance from the elbow to a knuckle) bears testimony to the absence of any pan-“pygmy” awareness or culture. Forest foragers are in most areas unaware of the existence of “pygmies” in other regions, and there is currently no sense of solidarity among the different populations...Forest foragers are distributed discontinuously across nine different African countries (Rwanda, Burundi, Uganda, Zaire, the Central African Republic, Cameroon, Equatorial Guinea, Gabon and Congo). Most forest foragers live in the Congo basin...There is enormous diversity in the natural environments occupied by the forest foragers of the Congo basin—from upland dense tropical rain forest to lowland swamps to mixed savanna-forest environments. Ethnolinguistic diversity is also evident...The Aka, Asua, Baka, Efe, and Mbuti are relatively mobile; they live in temporary spherical huts. The Bongo, Kola, and Twa tend to be more sedentary; they build rectangular, mud-thatch village houses...”

John Middleton and Amal Rassam volume editors (1995) *Encyclopedia of World Cultures, Volume IX, Africa and the Middle East* G.K. Hall & Company, New York, p.356

¹⁸ IRIN News,*op.cit.*,

¹⁹ Ann Gibbons,*op.cit.*,

Olsen adds the following descriptions “There are four major subgroups of Pygmies. The Western cluster of Pygmies, who are sometimes known as the Binga (Babinga, Babenga, Bambenga), number approximately 35,000 and live in the northeastern reaches of Congo, southwestern Central African Republic, southern Cameroon, parts of Gabon, and across the Ubangi River in Zaire...The Central cluster of Pygmies consists of the Twa or Cwa people...The Twa live north of Lake Leopold in Zaire. The Eastern cluster of Pygmies are known as the Mbutis (Bambuti)...their homeland is the Ituri forest of northeastern Zaire...The Southeastern cluster...live in Rwanda and Burundi”

James Olsen,*op.cit.*,pp.488-489

Olsen commenting on language notes “Pygmies speak languages that they have borrowed from their neighbours”.

Ibid,p.488

²⁰ Paul Raffaele,*op.cit.*,

²¹ Luigi Luca Cavalli-Sforza ‘Demographic Data’ in *Africa Pygmies* (1986) edited by Luigi Luca Cavalli-Sforza, Academic Press, Orlando, Florida, p.23

struggled to find their place in the modern world. Today, most communities live in poverty as second-class citizens, with less access to healthcare, education, land and employment than the ethnic majority”.²²

Today

Presently in Central Africa the “...culture of impunity continues to exist in relation to different levels of discrimination facing...Pygmy populations [across the region]. [In]...Cameroon, Uganda, Burundi, Rwanda, the Central African Republic, Republic of Congo, DRC and Gabon [Pygmies]...experience discrimination to different degrees”.²³ Pygmies are “...subject to discrimination and marginalisation at local and national levels as a result of their ethnic identity as ‘Pygmies’ and their forestbased way of life. Discrimination typically consists of negative stereotyping (...labelled as stupid, dirty, dishonest, backward, subhuman etc...), segregation (they may not be allowed to eat or drink with, or sit next to, other people or use wells at the same time) and abuse of rights”.²⁴ In each country “...communities may experience levels of discrimination and abuse depending on their location and how effectively the law protects them”.²⁵ There are within these countries “...constitutional provisions against discrimination, including discrimination on ethnic grounds, and most have provisions for supporting minority and vulnerable groups...However, in practice, Pygmy people experience discrimination and marginalisation on a daily basis”.²⁶ In some countries Pygmies “...are not even officially recognised as citizens in the territories where they reside...Many states that officially recognise Pygmies’ rights systematically ignore them in practice”.²⁷

²² IRIN News,*op.cit.*,

²³ *Ibid*

²⁴ Dorothy Jackson (October 2004) *Implementation of international commitments on traditional forest-related knowledge: Indigenous Peoples’ experiences in Central Africa* Forest People’s Programme http://www.forestpeoples.org/documents/africa/tfrk_expert_mtg_oct_04_eng.pdf

²⁵ IRIN News,*op.cit.*,

²⁶ Refugees International,*op.cit.*,

²⁷ IRIN News,*op.cit.*,

The Republic of the Congo

The minority Pygmy population in the Republic of the Congo is estimated to number less than 100,000 and are "...ethnically unrelated to the Bantu majority".²⁸ The Pygmies are found throughout the whole country but principally reside "...in the departments of Niari, Lekoumou, Likouala, Plateaux and Sangha".²⁹ The Pygmies in Congo's rainforests are variously called "...Baka, Bakola, Aka, Babongo, Bambuti and Batwa. [They often complain]...of being marginalised and shunned by other communities".³⁰ They are "...often forced by the Bantu majority to live on the margins of society".³¹ In 2009 the UN Committee on the Elimination of Racial Discrimination noted "...the marginalization and discrimination to which the Pygmies are subjected in terms of access to justice and the enjoyment of their economic, social and cultural rights, in particular access to education, health and the labour market. The Committee is especially concerned by reports of domination, discrimination and exploitation to which the Pygmies are subjected, at times including modern forms of slavery".³² This can lead to a "...lifetime [of] servitude through customary ties to ethnic Bantu 'patrons' ".³³

²⁸ United States Department of State (19 April 2010) *Background Note: Republic of the Congo*

<http://www.state.gov/r/pa/ei/bgn/2825.htm>;

IRIN News offers an alternative population estimation of pygmies or "...indigenous people...to...number 300,000, or 10 percent of the country's population".

IRIN News (26 August 2008) *Congo: "We remain marginalised", indigenous people say*

<http://www.irinnews.org/Report.aspx?ReportId=79995>;

The CIA estimate the overall population at just over 4 million CIA (10 May 2010) *World Factbook, Congo, Republic of the* <https://www.cia.gov/library/publications/the-world-factbook/geos/cf.html>

²⁹ International Work Group for Indigenous Affairs (2009) *The Indigenous World 2009*

<http://www.iwgia.org/graphics/fotos/books/THE%20INDIGENOUS%20WORLD-2009.pdf>

³⁰ IRIN News (28 November 2007) *Congo: Human rights groups urge legal protection for indigenous communities*

<http://www.irinnews.org/Report.aspx?ReportId=75553>

³¹ IRIN News (3 April 2006) *Congo: Limited success in struggle for pygmy integration*

<http://www.irinnews.org/Report.aspx?ReportId=58637>

³² UN Committee on the Elimination of Racial Discrimination (23 March 2009) *Consideration of reports submitted by States parties under article 9 of the Convention : International Convention on the Elimination of All Forms of Racial Discrimination : Concluding observations of the Committee on the Elimination of Racial Discrimination, Congo*

<http://www.unhcr.org/refworld/pdfid/4a2d0f7e2.pdf>

³³ Freedom House (April 2010) *Freedom in the World - Congo, Republic of (Brazzaville) (2010)*

Treatment of the Pygmies in this manner derives from how they are perceived. "Often considered "inferior", "impure" or even "sub-human" by their Bantu neighbours, Pygmy groups are segregated and excluded from the sphere of public action and decision-making".³⁴ This is not a new phenomenon. "Throughout history, even during colonial times, the 'Pygmies' of the Republic of Congo have been marked by negative stereotypes, going as far as to consider them sub-human".³⁵ In Sangha department...Pygmies living in Pokola are...subjected to beatings and acts of intimidation and other ill treatment at the hands of police officers, who consider them to be sub-human... Faced with such contempt, the Pygmies prefer to keep a low profile and suffer at home rather than make a complaint to the police".³⁶ And although the constitution of the Republic of the Congo issued in 2002 "...declared all Congolese equal, it did not make any specific provisions to protect the Pygmy minority, leaving them no legal recourse when their rights are violated".³⁷ Research produced in 2009 by the International Work Group for Indigenous Affairs shows little change. "Despite various initiatives aimed at improving their access to civil and political, socio-economic and cultural rights, the indigenous groups still live in extreme poverty. They are the victims of marginalisation and discrimination of all kinds".³⁸

A UNICEF representative in 2009 "...raised[ed] the issue of treatment of indigenous people...especially children who are marginalized

<http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7953>

³⁴ IRIN News (March 2006) *Minorities Under Siege, Pygmies today in Africa*

<http://www.irinnews.org/pdf/in-depth/Pygmies-today-in-Africa-IRIN-In-Depth.pdf>

³⁵ International Work Group For Indigenous Affairs & African Commission On Human And Peoples' Rights (2007) *Report of the African Commission's Working Group on Indigenous Populations/Communities, Research and Information Visit to the Republic of Congo, 5-19 September 2005*

http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/Reports/CountryVisitCongoReportFINAL_%20ENG.pdf

³⁶ Observatoire Congolais des Droits de l'Homme/OCDH (July 2004) *The Situation Of The Pygmies In The Republic Of Congo* <http://www.rainforestfoundationuk.org/files/the%20situation%20of.pdf>

³⁷ IRIN News, *op.cit.*,

³⁸ International Work Group for Indigenous Affairs (2009) *The Indigenous World 2009*

<http://www.iwgia.org/graphics/fotos/books/THE%20INDIGENOUS%20WORLD-2009.pdf>

by society and often face discrimination".³⁹ Such discrimination can take the form of prejudices and derision against Pygmy children who attend school.⁴⁰ Minority Rights Group International in 2009 reports a local Pygmy leader from Ouessou in Sangha department saying "...that in school, 'indigenous children are often ridiculed by their peers' ".⁴¹ A Pygmy representative from Dzaka in the Sangha department reports that in "...schools, indigenous children are often ridiculed by their peers as being filthy and smelly...[and such children may]...leave school and move to the forest..."⁴²

A historical "...exclusion from formal education has had considerable impact on their economic situation. In the past, colonisers and missionaries...largely ignored Pygmy communities and refused to send them to school. This discrimination continued after independence, and today, the majority of Pygmies are illiterate, making it even more difficult for them to be involved in commerce and trade, let alone participate in government or study for any of the professions, such as... medicine".⁴³ A Pygmy

³⁹ United Nations International Children's Fund (24 January 2009) *UNICEF Executive Director announces \$500,000 for social protection programs in the Republic of the Congo (Brazzaville)* http://www.unicef.org/media/media_50948.html

⁴⁰ International Work Group For Indigenous Affairs & African Commission On Human And Peoples' Rights (2007) *Report of the African Commission's Working Group on Indigenous Populations/Communities, Research and Information Visit to the Republic of Congo 5-19 September 2005* http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/Reports/CountryVisitCongoReportFINAL_%20ENG.pdf

⁴¹ Minority Rights Group International (16 July 2009) *State of the World's Minorities and Indigenous Peoples 2009 - Republic of Congo* <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=printdoc&docid=4a66d9a841>

⁴² IRIN News (26 August 2008) *Congo: "We remain marginalised", indigenous people say* <http://www.irinnews.org/Report.aspx?ReportId=79995>

⁴³ IRIN News (March 2006) *Minorities Under Siege, Pygmies today in Africa* <http://www.irinnews.org/pdf/in-depth/Pygmies-today-in-Africa-IRIN-In-Depth.pdf>

A spokesperson for the Socio-Cultural Promotion of Congo Pygmies says in relation to education that "...Over 40 years have passed since the country's independence and unfortunately there are fewer than 10 Pygmy graduates and very few have completed secondary school".

Minority Rights Group International, *op.cit.*,

The IRIN News report above also notes how the pygmy form of governance compounds the situation "This neglect by governmental authorities is made worse by pygmy communities' inherent political weakness, which stems from their dispersion, imbalance of power and the discrimination they suffer from their co-nationals".

community representative from Dzaka in Sangha department says: ...'It is difficult; we don't have a health centre, no school, even though we are near the capital,' ...".⁴⁴

The discrimination against the Pygmies "...in educational and health opportunities...[can leave them susceptible to]...HIV/AIDS and other preventable infections, yet [they] receive limited help to combat these".⁴⁵

Politics

In the Republic of the Congo as throughout "...Central Africa, governments have denied Pygmies the right to organise and represent themselves, which has led to increasing cases of ethnic discrimination...The majority of Pygmy communities do not benefit from any form of political representation and also lack institutions able to directly defend their rights. Being geographically and politically dispersed and having little trans-national consciousness as an ethnic group, they remain politically weak. The traditional power structure of representative institutions is entirely foreign to Pygmy society, as hierarchy is not necessarily a dominant feature of Pygmy clans".⁴⁶ Pygmies therefore have had "...no opportunity of making their voices heard by the political leaders".⁴⁷ The Pygmies were "...largely exploited during recent elections because they did not understand the voting process".⁴⁸ This superstructural lacuna is furthermore apparent in how decisions are made regarding rights to forests.⁴⁹

IRIN News, *op.cit.*,

⁴⁴ IRIN News (26 August 2008) *Congo: "We remain marginalised", indigenous people say*

<http://www.plusnews.org/Report.aspx?ReportId=79995>

⁴⁵ IRIN News 14 August 2007 *Congo: New lobby group for indigenous people*

<http://www.irinnews.org/Report.aspx?ReportId=73720>

⁴⁶ IRIN News (March 2006) *Minorities Under Siege, Pygmies today in Africa*

<http://www.irinnews.org/pdf/in-depth/Pygmies-today-in-Africa-IRIN-In-Depth.pdf>

⁴⁷ Observatoire Congolais des Droits de l'Homme/OCDH, *op.cit.*,

⁴⁸ IRIN News (15 August 2007) *Congo: Indigenous people "exploited" in recent elections*

<http://www.irinnews.org/Report.aspx?ReportId=73742>

The United States Department of State adds that "Many Pygmies were not aware of the concept of voting and had minimal ability to influence government decisions affecting their interests...."

United States Department of State (11 March 2010) 2009 Human Rights Report: Republic of the Congo

<http://www.state.gov/g/drl/rls/hrrpt/2009/af/135948.htm>

49 Dorothy Jackson, *op.cit.*,

The “...negative stereotyping [and]...stigmatizing characterizations of hunter-gatherers as ignorant, stupid, primitive, lacking in proper culture and not fully human [means that]...any denial of hunter-gatherer rights by non hunter-gatherers is justified since they are not properly human nor living as people should. This denial of rights...often takes the form of claiming that Forest People should not have control over their own labour [or]...their lands...”⁵⁰ Some Pygmy communities are

“...deemed to ‘belong’ to the neighbouring Bantu villages, and so do not have independent representation in administrative and legal matters”.⁵¹ And in “...some regions of the Republic of Congo, the practice of holding one or more ‘Pygmies’ in servitude persists. The beneficiaries of this practice speak in terms of ‘my Pygmies’. A father may bequeath lands to his children, including the ‘Pygmies’ living on them”.⁵²

Autochthons of the forest

“...Forest people are seen as the first inhabitants of the Central African forests...[Their]...origin stories begin in the forest and remain there. They see themselves, and are seen by their neighbours, as the autochthons or ‘first People’ of the Central African Forests”.⁵³ Pygmies live in “...an intimate symbiosis with their environment ...traditionally ...[living] deep in the woods, often in remote camps located several days’ walk from any road or village. Their livelihood, medicinal practices and culture...depend entirely on the forest. The relationship is sustainable in that Pygmies do not deplete their natural resources, thus maintaining the delicate balance of the rainforest ecosystem. Beyond its role as purveyor of goods and resources, the forest is also a social, cultural and spiritual space that plays an essential role in Pygmy cultures and identities. The great spirit of the forest, called jengi by some communities, is central

to many initiation ceremonies and is one of the few common words shared by most Pygmy groups across the African continent”.⁵⁴ The Pygmies are however, “...engaged in a David and Goliath battle over plans to allow millions of hardwood trees to be felled, many to make garden furniture and flooring for European homes”.⁵⁵ Traditionally boundaries of the forest “...used by the clans and their forefathers [rely]...according to living

54 IRIN News (March 2006) Minorities Under Siege, Pygmies today in Africa

<http://www.irinnews.org/pdf/in-depth/Pygmies-today-in-Africa-IRIN-In-Depth.pdf>

Jackson adds that “Traditionally-living indigenous forest dwelling Pygmy peoples have extensive and detailed knowledge about forest ecology, wildlife, and plants including medicinal plants, forming part and parcel of their cosmology and their holistic view of the forest and themselves as intimately connected and indivisible. They do not strictly speaking conceive of ‘owning’ the forest, but as belonging to it and being its guardians. The whole forest is sacred; the spirits of the ancestors and the forest are one and the same being. ‘The spirits of the ancestors are in the forests. Spirit and forest are one, inseparable, one always.’ Traditionally-living Pygmy peoples typically use forests in a non-exclusive way for their hunting, gathering and small-scale agricultural...activities. They consider the forest to be a source of abundance providing for all their needs; the forest can be shared with everyone, including villagers, researchers, loggers and conservationists, providing that users respect the resources, and share the resources extracted according to appropriate codes of conduct. The abundance of the forest is maintained by proper sharing between people, and between people and spirits, and by singing and dancing rituals which ensure the support of spirits to help them satisfy all their needs. Economic inequalities within groups are levelled by ‘demand-sharing’: whoever has more of something than they need must share it with those that don’t. Hunter-gatherer societies still leading a traditional life are strongly orientated to meeting present needs, rather than investing labour for returns in the future. They value mobility and are non-hierarchical and egalitarian, having no overall leader. Individuals with recognised skills or experience may be designated positions of social responsibility in relevant situations, but these positions do not give the individual power and authority over others. Their influence is dependent only on their personal persuasiveness. Women have a prominent role in decision-making within the group. Decisions are taken collectively and everyone may voice their opinion, the society is inclusive. Disagreements and problems are often dealt with by avoidance and moving away from the source of difficulty”.

Dorothy Jackson,op.cit.,

Observatoire Congolais des Droits de l’Homme/OCDH says that “...Pygmies often do not believe it necessary to grow their own crops. Given their nomadic lifestyle, they are unwilling to grow crops that will take several months or even years to mature (such as coffee and cocoa). Such patience cannot be justified in their eyes. A hunting party more rapidly produces game ready to be eaten, sold or exchanged for the Bantus’ agricultural products. It is similarly this nomadic lifestyle that forms a barrier to the Pygmies’ chances of owning land for, although land rights reforms began last year, long-term possession is required before land can be purchased in the primary forests of the Congo”.

Observatoire Congolais des Droits de l’Homme/OCDH,op.cit.,

55 Jonathan Brown (15 October 2007) The independent Congo’s pygmies take on World Bank to save rainforest from loggers The Independent

<http://www.independent.co.uk/news/world/africa/congos-pygmies-take-on-world-bank-to-save-rainforest-from-loggers-396903.html>

50 Justin Kenrick and Jerome Lewis ‘Discrimination against the forest people (‘pygmies’) of Central Africa in Suhas Chaakma and Marianne Jensen editors (2001) Racism Against Indigenous Peoples The International Work Group for Indigenous Affairs, Copenhagen, p.316

51 Dorothy Jackson,op.cit.,

52 International Work Group For Indigenous Affairs & African Commission On Human And Peoples,op.cit.,

53 Justin Kenrick and Jerome Lewis,op.cit.,p.316

Middleton and Rassam note that pygmy origin “...stories often make reference to a god who created the world, the forest, and the first humans, after which she or he withdrew to the sky and paid no more attention to the affairs of the world”

John Middleton and Amal Rassam,op.cit.,p.357

memory. The sizes of the territories depend on the size of the group, and the range of habitats needed to ensure sustainable food provisioning...⁵⁶ Yet "...Pygmy peoples' territories are not recognised by statutory legal proceedings for the determination of occupancy, resulting in their customary lands being deemed vacant and 'terres sans maîtres' [lands without masters] and thereby available for appropriation for the state and transfer to other users, such as logging companies. Neither are their ancestral territories recognised under the customary laws of the surrounding farming communities for whom it is the action of transforming or 'developing' the land (mise en valeur [put to productive use]...that confers ownership and use rights".⁵⁷ This definition of land ownership is both historical and regional. "Throughout most of the Central African region, both under colonialism and since independence, traditional territories became State lands unless they had permanent buildings on them or were in active exploitation as farms. This definition of land ownership has remained in place today and effectively discriminates against Forest Peoples' and use and claims over land, since the majority of their lands will appear unoccupied at any given time".⁵⁸ The State can then appropriate such land and deem it serviceable.⁵⁹ This is devastating to the Pygmies of the Republic of the Congo whose "...culture, belief systems and livelihood depend on their symbiotic relationship with the Central African rainforest".⁶⁰ And systematically over decades, Pygmies have "...been driven away from their territory without compensation or any prospect of alternative livelihood. Without land or independent means of sustaining themselves, many Pygmies live in extreme poverty".⁶¹

Farming and logging

Most Pygmies etch a living off the land and do so in tandem with the Bantu farming communities "...migrating back and forth seasonally between

the [Bantu] farming villages...and a hunting-gathering lifestyle in the forest".⁶² And since "...almost all Pygmies still live in the forest, they come in contact with farmers only at the fringes of the forest, where farmers have opened clearings for cultivation. With the continuous recession of the forest, destroyed by African farmers as well as by lumberers, Pygmies either retreat farther into it or are absorbed into the farming cultures".⁶³ Such 'exchange relationships' have endured for centuries⁶⁴ yet at the same time for both Pygmy and Bantu they "...seem to perceive their [respective] ways of life as being irreconcilable, particularly given the contempt shown by the Bantu for the Pygmies. This has caused the Pygmies to choose to close in on themselves and to go back to their roots, so as not to lose their culture".⁶⁵ However while it may have been practical "...for Pygmies to live in isolation, it has become virtually impossible for them to participate in the economy of the modern world".⁶⁶ Therefore many Pygmies work "...as day labourers and servants on [Bantu] farms that do not belong to them...".⁶⁷ In the Republic of the Congo "...Pygmy workers are often discriminated against, receiving lower wages and few amenities than workers of other ethnic groups. Cash is now replacing barter and payment in kind in the traditional exchange relationships between Pygmy peoples and farming groups...and is increasingly needed to pay for education and health care, and to buy household goods...The increasing reliance of Pygmy people on cash and credit has increased the

62 James Olsen,op.cit.,p.488

63Luigi Luca Cavalli-Sforza 'introduction' in African Pygmies (1986) edited by Luigi Luca Cavalli-Sforza, Academic Press ,Orlando, Florida, p.18

64 Dorothy Jackson,op.cit.,

65 Observatoire Congolais des Droits de l'Homme/OCDH,op.cit.,

66 IRIN News,op.cit.,

67 Ibid.,

Jackson notes other employment opportunities "Professional hunters and poachers recruit Pygmy men as hunters and guides, and loggers employ them as tree spotters, thereby using indigenous knowledge to remove valuable products that are key resources for Pygmy communities. Despite their many years of knowledge and experience, Pygmy people are generally regarded as unskilled workers and are paid only a manual wage for their services. They frequently sell their forest products at below market prices. The factors driving Pygmy peoples into such disadvantageous relationships include poverty and the need for cash, the belief that the forest is there for all and can be shared, and their expectation of a fair portion of the returns. Some Pygmy representatives are now calling on forest authorities and conservation managers to exert more control over commercial poachers and make better use of Pygmy knowledge and skills to protect forest areas".

Dorothy Jackson,op.cit.,

56 Dorothy Jackson,op.cit.,

57 Ibid.,

Jackson also mentions that as "...a result of sedentarisation campaigns by colonial and post-independence regimes...[there has been a] drastic reduction of forest areas available to Pygmy communities through logging, farming, development and wildlife conservation projects...

Ibid.,

58 Justin Kenrick and Jerome Lewis,op.cit.,pp.316-317

59 International Work Group For Indigenous Affairs & African Commission On Human And Peoples,op.cit.,

60 IRIN News,op.cit.,

61 Ibid.,

control of employers and Bantu chiefs, as Pygmy workers become enmeshed in debts which they are never able to pay off or work off”.⁶⁸ The influence of international logging companies provides employment also but places “...Pygmies in a wrenching dilemma: tree by tree, the jobs it gives them are destroying the forest home where they have lived for millennia. ‘It’s out of a need to survive that I work with the timber companies,’ said [one]...Pygmy logger. ‘Our life is impossible outside the forests.’ ”.⁶⁹

Logging companies have their obligations and “...are supposed to provide social amenities such as schools, roads and health posts for the benefit of rural communities – but in practice they often fail to do so. Pygmy people may in any case not be able to benefit from these facilities due to poverty or discrimination. Local people are usually unaware of conditions in management agreements defining the obligations of logging companies towards local communities...or the penalties that should be imposed for infractions. They are thus not able to fulfil a potentially useful role of helping forest services hold loggers to account”.⁷⁰ And Pygmy groups who do organise and seek to “...gain more control over their lives by establishing themselves as autonomous entities dealing directly with external agencies, rather than through their Bantu ‘patrons’, are increasingly required to adopt hierarchical administrative structures providing representatives or ‘leaders’ with whom the agencies can interact, and that, in theory, provide a system for managing incoming money on behalf of the group. These new bureaucratic hierarchies are very different from the traditional egalitarian and fluid social institutions involved in consensual decision-making and the fair distribution of resources among Pygmy group members, and have contributed to erosion of social cohesion. The youth who are more literate, more fluent in official languages and better versed in the norms of dominant society, are propelled into positions of power, undermining the traditional role of elders”.⁷¹ There is a loss therefore not only of traditional Pygmy livelihoods “...[but also]

cultural practices...[alongside]...the loss of their customary forest lands and access to forest resources, coupled with increasing sedentarisation and reliance on farming to meet basic subsistence needs. The loss of forest skills and knowledge is seen first among the indigenous youth, who spend less time in the forest than their parents and more time in schools, conforming to dominant culture and exposed to education curricula that do not value forest knowledge”.⁷² The International Work Group for Indigenous Affairs puts it succinctly thus: that Pygmies “...are frequently not granted any rights or sustained support from governments, missionaries and development agencies, unless they are willing to give up their way of life, settle by the road, engage in agriculture and send their children to school”.⁷³

Conclusion

Throughout the Central African region “...governments have ignored politically weak hunter-gatherer groups because they do not make investments in land generally recognised by authorities, such as clearing, farming, or mining”.⁷⁴ In April 2010 the government of the Republic of the Congo was party to the cancellation of a “...conference aimed at protecting the rights of central Africa's Pygmies...because governments are too busy to discuss their fate...

The Republic of Congo was to host an international forum...including UN representatives, politicians and Pygmies”.⁷⁵ Anticipating this meeting, the Minister of Forest Economy “...said...that the aim of the meeting was ‘to elaborate and adopt a plan of action to protect the rights and emancipation of the indigenous people of Central Africa’...‘The indigenous peoples (Pygmies) are players who live with biodiversity and work to manage it in durable fashion. We have much to learn from them and should be humble to go to their school,’...”.⁷⁶ The Pygmies ‘school’ derives from the survival “...of the Pygmy way of life for 2000-2500 years...The survival of traditional values and customs in spite of a reasonably close contact with farmers must have been made possible by the existence of a

68 Ibid.,

69 New York Times (16 February 2003) Logging Jobs Benefit Pygmies, But Imperil Their Forest Home <http://www.nytimes.com/2003/02/16/world/logging-jobs-benefit-pygmies-but-imperil-their-forest-home.html>

70 Dorothy Jackson, op.cit.,

71 Ibid.,

72 Ibid.,

73 Justin Kenrick and Jerome Lewis, op.cit., p.315

74 IRIN News, op.cit.,

75 Agence France Presse (12 April 2010) Governments 'too busy' to discuss pygmy rights: Congo official http://www.terraviva.com/reports/Governments_too_busy_to_discuss_pygmy_rights_Congo_official_999.html

76 Ibid.,

refuge, the forest, and the attractiveness of the hunting and gathering seminomadic ways of life compared with the greater sedentarism of the early farmers. Less work and hunger, a challenging and entertaining activity like the hunt, a beautiful, protective environment like the tropical forest...and the considerable sense of freedom and flexibility offered by the lack of chiefs and by continuous movement...available to small, mobile, and easily fissionable groups, must all be considerable attractions".⁷⁷ Another attraction and a means of maintaining the bond with the forest is through global positioning systems (GPS) and in 2008 "...Pygmies are using modern technology to save sacred trees, thanks to...the World Bank's Development Marketplace...[which] funds social entrepreneurs to use the power of ideas to promote sustainable development. By using handheld...GPS...Pygmies in the Republic of Congo are guiding a logging company away from cutting trees that hold special value for forest communities, thereby reducing age-old tensions between forest-dependent people and the logging industry. 'Getting the Pygmies to do the mapping was fundamentally important to recognizing their rights over the forest,' said [the]...Tropical Forest Trust... 'If you're going to do sustainable forest management...you've got to give these people a voice in managing the forests.' ".⁷⁸ Utilising technology "...allows Pygmies to pinpoint sacred trees, ancestral hunting grounds, and plants which should not be touched during the season when they yield special fruits...Once the Pygmies identify a tree or area, it is marked by painting the tree trunks. Then, with the press of a button, precise location information is beamed to a satellite and onward to the logging company where it is converted into maps that guide bulldozers and chainsaws away from the selected trees and chosen areas. 'Pygmies possess intimate knowledge of the forest. The GPS devices allow them to not only communicate knowledge of the forest but also to assert their desire that parts of the forests remain untouched for them to use and manage according to tradition and willingness to share generously

77 Luigi Luca Cavalli-Sforza 'African Pygmies: An Evaluation of the State of Research' in African Pygmies (1986) edited by Luigi Luca Cavalli-Sforza, Academic Press, Orlando, Florida, p.425
78 World Bank (21 April 2008) Pygmies Use Satellite-Technology to Protect Congolese Forests
<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/CONGOEXTN/0,,contentMDK:21738497~menuPK:349232~pagePK:2865066~piPK:2865079~theSitePK:349199,00.html>

other products of the forest bounty,' said...a World Bank forestry expert... 'They want to respect the forests, and want that their culture, their memories, be respected.' "⁷⁹

Legislative developments and indigenous organisation from 2006 onwards in the Republic of the Congo have advanced the rights of Pygmies.⁸⁰ In 2009 "...the Council of Ministers of the Congolese government adopted the Law on promoting and protecting indigenous peoples in the Republic of Congo...It covers all the rights contained in the UN Declaration on the Rights of Indigenous Peoples, including civil, political, economic, social and cultural rights, along with the right to prior consultation. By adopting this law, the government of the Republic has demonstrated its commitment to ensuring respect for indigenous peoples' rights, in accordance with international human rights standards and international humanitarian law. It is now possible to talk of real hope for indigenous peoples, as their specific rights are recognised".⁸¹ Yet despite these "...positive developments in 2009, Congo's indigenous peoples are still living in a situation of extreme poverty and marginalization, in which they are facing insecurity, a lack of safe access to natural resources and a lack of rights to education, health or

79 Ibid.,

Researching earlier Turnbull and Jackson offer the alternatives: Turnbull "The present state of our knowledge about the anthropology of the Pygmy hunters of Africa is still remarkably and lamentably poor. It is all the more regrettable since conditions for research are becoming increasingly difficult, and also since the social and demographic picture is beginning to change at a greatly increased pace".

Colin M. Turnbull 'Survival Factors among Mbuti and Other Hunters of the Equatorial African Rain Forest' in African Pygmies (1986) edited by Luigi Luca Cavalli-Sforza, Academic Press, Orlando, Florida, p.103;

Jackson "Central African indigenous peoples have very little control over how their information is documented, stored or accessed by those who have collected it. They are generally not informed about research findings, or how their information is being used by others in management of forest resources. Indigenous organisations are largely unaware of new approaches and thinking in relation to protecting traditional knowledge, or the different options that have been used by indigenous peoples elsewhere".

Dorothy Jackson, op.cit.,

80 IRIN News (28 November 2007) Congo: Human rights groups urge legal protection for indigenous communities

<http://www.irinnews.org/Report.aspx?ReportId=75553>

See also: IRIN News (14 August 2007) Congo: New lobby group for indigenous people

<http://www.irinnews.org/Report.aspx?ReportId=73720>

81 International Work Group for Indigenous Affairs (April 2010) The Indigenous World 2010

http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/IndigenousWorld/IW_%202010_WEB.pdf

citizenship”.⁸² Moreover access “...to justice, to land, jobs and elections is also not fully guaranteed for indigenous peoples in Congo. Indigenous peoples’ representation is non-existent within democratically-elected institutions such as the National Assembly, the Senate, the National Human Rights Commission and the Economic and Social Council”.⁸³ The United Nations Committee on the Elimination of Racial Discrimination adds in 2009 that “...the rights of indigenous peoples, and of the Pygmies in particular, to own, develop, control and exploit their lands, their resources and their communal territories are not guaranteed and that concessions are granted in respect of indigenous peoples’ lands and territories without prior consultation”.⁸⁴ Writing over 100 years ago about the neighbouring Congo the New York Times states “We may be only moderately hopeful as to the future of the Congo state. Perhaps in a hundred years from now, when the rails are laid in that portion of the dark continent, there may be some glimmer of light”.⁸⁵ Writing over 100 years later the New York Times espouses the wishes of the Pygmies in the Republic of the Congo “They are human beings who have the right to live in their natural space.”⁸⁶ And while the Bantu see the “...Pygmies are on a par with animals [and have]...a...saying that goes, ‘When a Bantu kills a Pygmy, it is like a lion rinsing its mouth.’ ”,⁸⁷ Pygmies are finding their voice. A commentator in the New York Times notes “...‘The Pygmies have remarkable artistic talent...When they sing in the open air with their clear voices, you think that you are in front of the best cathedral chorus in Europe’...”.⁸⁸ The troupe of Pygmy musicians attending the Festival of Pan-African Music in July 2007, initially accommodated in the Brazzaville zoo, were moved to a local school.⁸⁹

⁸² Ibid.,

⁸³ Ibid.,

⁸⁴ UN Committee on the Elimination of Racial Discrimination, *op.cit.*,

⁸⁵ New York Times (11 February 1889) Pygmies in Africa http://query.nytimes.com/mem/archive-free/pdf?_r=1&res=9403E6DC1730E132A25752C1A9649C94689E D7CF

⁸⁶ New York Times (16 February 2003) Logging Jobs Benefit Pygmies, But Imperil Their Forest Home <http://www.nytimes.com/2003/02/16/world/logging-jobs-benefit-pygmy-but-imperil-their-forest-home.html>

⁸⁷ Observatoire Congolais des Droits de l’Homme/OCDH, *op.cit.*,

⁸⁸ New York Times, *op.cit.*,

⁸⁹ Reuters, *op.cit.*,

Recent Developments in Refugee and Immigration Law *By Mary Fagan, RDC*

Dokie (A Minor) & Ajibola v Refugee Applications Commissioner & Ors., Unreported, High Court, Cooke J., 19th of January 2010

LEAVE – JUDICIAL REVIEW – CERTIORARI – APPLICATION – COUNCIL DIRECTIVE 2005/85/EC – S.12(1) REFUGEE ACT 1996 – DIRECTION – LAWFULNESS – S.17(1) REFUGEE ACT 1996 – EFFECTIVE REMEDY AGAINST DETERMINATION OF AN ASYLUM APPLICATION AT FIRST INSTANCE – S.5 ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000 – SUBSTANTIAL GROUNDS – EXTENSION OF TIME – GOOD AND SUFFICIENT REASON – EXHAUSTION OF APPEAL PROCESS

Facts

Both applicants sought leave to apply *inter alia* for orders of certiorari quashing the S.13 report of the Refugee Applications Commissioner in circumstances where each had appealed to the RAT before the judicial review procedure was commenced. In the *Ajibola* case, the applicant also sought to quash the decision given by the RAT on the appeal. In *Dokie*, the appeal was postponed but still pending. The grounds for the applications raised two legal issues *viz.* (1) Whether the direction given by the Minister under S.12(1) of the Refugee Act 1996 to ORAC and the RAT requiring priority to be given to the examination and determination of asylum applications by reference to a single country of origin (Nigeria) was lawful having regard to the provisions of Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status and in particular Article 23 thereof which it was submitted contained an exhaustive list of the cases in which member states were permitted to prioritise/accelerate first instance examinations of applications and (2) Whether the “effective remedy before a court or tribunal” against the determination of an asylum application at first instance requirement in Article 39 of the Directive was met by the appeal from the S.13 report to the RAT pursuant to the Refugee Act 1996 or by the availability of judicial review. Both applications to quash the S.13 reports were made outside the statutory limitation period and required an extension of time of some four months in *Ajibola* and some nine weeks in *Dokie*.

Findings

Held by Cooke J. that each of the two legal issues raised met the “substantial ground” requirement in S.5 of the Illegal Immigrants (Trafficking) Act 2000 and accordingly the ordinary standard prescribed by Order 84 of the Rules of the Superior Courts.

In the *Ajibola* case, given that no intention was formed to seek judicial review within the statutory time limit or an acceptable period thereafter which was then prevented from being followed up by some excusable cause and the fact that the extension of time required to enable a challenge to be mounted to the S.13 report was considerable, there was no “good and sufficient reason” within the meaning of the Act of 2000 for extending the time. Furthermore it was unnecessary to grant the extension of time in relation to the S.13 report as the RAT decision itself could be challenged by reference to the two legal issues raised. The validity of the RAT’s decision was dependent on whether it was a step in the first instant determination of the asylum application by ministerial decision under S.17 of the Refugee Act 1996 or on whether it constituted an “effective remedy” for the purposes of Article 39 of the Directive. The legality of the S. 12 direction could also be tested by reference to the RAT’s decision given the respondent’s stance that the RAT’s decision forms part of the first instance determination. Accordingly, leave was refused to challenge the S.13 report but granted to challenge the RAT’s decision.

Even if the prioritisation direction by the Minister was found to be incompatible in principle with the requirements of the Directive, it would be open to the Court to refuse to quash the S.13 report in the absence of proof that the direction had actually impacted on the interview or report in the case.

In the *Dokie* case, notwithstanding the fact that it was clear that there had been an implied decision not to seek judicial review but to proceed by way of an appeal, the applicant was not in this instance obliged to exhaust the appeal remedy prior to seeking judicial review. The status of the appeal itself was one of the legal issues involved and the applicant ought not to be compelled to exhaust the right of appeal until this issue was resolved.

Given the Court’s approach in *Ajibola*, viz. that the legal issues raised could be tried after the conclusion of the appeal process, it could be argued that leave should be refused in respect of the “prioritisation” ground. However, as both cases were intended to be heard together as test cases and as both issues were to be decided by the Court, leave should be granted by reference to the prioritisation issue also. It would be unjust to require the applicant *Dokie* to proceed to an appeal when the judgment in *Ajibola* might ultimately hold that the prioritisation direction was unlawful.

The factors to be considered in granting an extension of time for “good and sufficient reason” were not confined to a consideration of whether the intention to seek judicial review was formed at the correct time and the reasons for the delay. There could be good and sufficient reason for an extension of time where the question to be decided was of sufficient general importance. In the *Dokie* case the importance of the two legal issues involved and the desirability that they be subject to definitive determination in the two cases constituted good and sufficient reason for extending the time and granting leave to judicially review the S.13 report by reference to the two legal issues.

Cases Cited

Adeyemo v MJELR & Anor 14th of January 2010, Case 23/84 Commission v Germany [1985] E.C.R.1661, C.C.D. *Teo v An Bord Pleanala & Others*, Unreported, Cooke J., 6th of February 2009, *G.K. v Minister for Justice* [2002] 1 I.L.R.M. 401

NOTE: A substantive hearing was held on this case in late April 2010 for which as yet, no judgment has been delivered.



EU Refugee & Immigration Law Digest June 2010. By John Stanley, BL

Case C-175/08 Abdulla v Bundesrepublik Deutschland, ECJ, Grand Chamber, 2 March 2010.

Article 11(1)(e) of Directive 2004/83/EC – Revocation of Refugee Status - Cessation of Refugee Status – Change of Circumstances

The German Bundesamt granted the five Iraqi appellants refugee status in 2001 and 2002. In 2006, the competent German higher administrative courts affirmed decisions of the Bundesamt revoking the appellants' refugee status as a result of changed circumstances in Iraq.

Article 11(1)(e) of Council Directive 2004/83/EC provides:

1. A third country national ... shall cease to be a refugee if he or she:

...

(e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality."

Article 11(2) of the Directive provides:

2. In considering [1(e)], Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well founded.

The appellants lodged appeals to the Federal Administrative Court. The referring Court took the view that there is a cessation of refugee status when (1) the situation in a refugee's country has changed in a significant and non-temporary manner and the circumstances justifying fear of persecution have ceased to exist, and (2) there is no other reason to fear being persecuted within the meaning of the Directive.

The referring Court asked the ECJ the following by way of a preliminary reference:

1. Is Article 11(1)(e) to be interpreted as meaning that refugee status ceases to exist if the refugee's well founded fear of persecution on the basis of which refugee status was granted,

no longer exists and he also has no other reason to fear persecution?

2. If question 1 is to be answered in the negative, does the cessation of refugee status under Article 11(1)(e) also require that, in the country of the refugee's nationality,
 - a. an actor of protection within the meaning of Article 7(1) be present, and is it sufficient in that regard if protection can be assured only with the help of multinational troops,
 - b. the refugee should not be threatened with serious harm, within the meaning of Article 15, which leads to the granting of subsidiary protection under Article 18, and/or
 - c. the security situation be stable and the general living conditions ensure a minimum standard of living
3. In a situation in which the previous circumstances, on the basis of which the person concerned was granted refugee status, have ceased to exist are new, different circumstances founding persecution be:
 - a. measured against the standard of probability applied for recognising refugee status, or is another standard to be applied, and/or
 - b. assessed having regard to the relaxation of the burden of proof under Article 4(4)?

The Grand Chamber ruled:

1. Article 11(1)(e) of Directive 2004/83/EC must be interpreted as meaning that:

— refugee status ceases to exist when, having regard to a change of circumstances of a significant and non-temporary nature in the third country concerned, the circumstances which justified the person's fear of persecution for one of the reasons referred to in Article 2(c) of the Directive, on the basis of which refugee status was granted, no longer exist and that person has no other reason to fear being 'persecuted' within the meaning of Article 2(c) of the Directive;

— for the purposes of assessing a change of circumstances, the competent authorities of the Member State must verify, having regard to the refugee's individual situation, that the actor or actors of protection referred to in Article 7(1) of the Directive have taken reasonable steps to prevent the persecution, that they therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national

concerned will have access to such protection if he ceases to have refugee status;

— the actors of protection referred to in Article 7(1)(b) of the Directive may comprise international organisations controlling the State or a substantial part of the territory of the State, including by means of the presence of a multinational force in that territory.

3. In so far as it provides indications as to the scope of the evidential value to be attached to previous acts or threats of persecution, Article 4(4) of the Directive may apply when the competent authorities plan to withdraw refugee status under Article 11(1)(e) of that directive and the person concerned, in order to demonstrate that there is still a well-founded fear of persecution, relies on circumstances other than those as a result of which he was recognised as being a refugee. However, that may normally be the case only when the reason for persecution is different from that accepted at the time when refugee status was granted and only when there are earlier acts or threats of persecution which are connected with the reason for persecution being examined at that stage.

2. When the circumstances which resulted in the granting of refugee status have ceased to exist and the competent authorities of the Member State verify that there are no other circumstances which could justify a fear of persecution on the part of the person concerned either for the same reason as that initially at issue or for one of the other reasons set out in Article 2(c) of the Directive, the standard of probability used to assess the risk stemming from those other circumstances is the same as that applied when refugee status was granted.

3. In so far as it provides indications as to the scope of the evidential value to be attached to previous acts or threats of persecution, Article 4(4) of the Directive may apply when the competent authorities plan to withdraw refugee status under Article 11(1)(e) of that directive and the person concerned, in order to demonstrate that there is still a well-founded fear of persecution, relies on circumstances other than those as a result of which he was recognised as being a refugee. However, that may normally be the case only when the reason for persecution is different from that accepted at the time when refugee status was granted and only when there are earlier acts or

threats of persecution which are connected with the reason for persecution being examined at that stage.

Case C-578/08 Chakroun v Minister van Buitenlandse Zaken, ECJ, Second Chamber, 4 March 2010

Directive 2003/86/EC – Family Reunification – Refusal - Recourse to Social Assistance

(Note: While Ireland has not opted into Directive 2003/86/EC, the case is noted here for its importance to EU family reunification law generally.)

Mrs Chakroun applied to the Netherlands Embassy in Morocco in 2006 for a provisional residence permit in order to live with her husband in the Netherlands. Mr Chakroun had lived in the Netherlands since 1970. The couple had been married since 1972. The Minister refused the application on the ground that Mr Chakroun has not in receipt of sufficient income. The applicant appealed the decision to relevant courts, and ultimately to the Raad van State, which asked the following question of the ECJ by way of a preliminary reference:

1. Should the phrase ‘recourse to the social assistance system’ in Article 7(1) of the Directive be interpreted as permitting a Member State to make an arrangement in respect of family reunification which results in family reunification not being granted to a sponsor who has provided evidence of having stable and regular resources to meet general subsistence costs, but who, given the level of such resources, will nevertheless be entitled to claim special assistance to meet exceptional, individually determined, essential living costs, income-related remission of charges by municipal authorities, or income-support measures in the context of municipal minimum income policies?
2. Should the Directive, in particular Article 2(d), be interpreted as precluding national legislation which, in applying the resource requirement pursuant to Article 7(1)(c), makes a distinction according to whether a family relationship arose before or after the entry of the resident into the Member State?

The Court ruled:

1. The phrase ‘recourse to the social assistance system’ in Article 7(1)(c) of Council Directive 2003/86/EC must be interpreted as precluding a Member State from adopting rules in respect of family reunification which result in such reunification being refused to a sponsor who has proved that he has stable and regular resources which are sufficient to maintain himself and the members of his family, but who, given the level of his resources, will nevertheless be entitled to claim special assistance in order to meet exceptional, individually determined, essential living costs, tax refunds granted by local authorities on the basis of his income, or income-support measures in the context of local-authority minimum-income policies.
2. Directive 2003/86, in particular Article 2(d) thereof, must be interpreted as precluding national legislation which, in applying the income requirement set out in Article 7(1)(c), draws a distinction according to whether the family relationship arose before or after the sponsor entered the territory of the host Member State.

Case C-31/09 Bolbol v Bevadorlasi es Allampolgarsagi Hivatal, Opinion of Advocate General Sharpston, 4 March 2010

Article 12(1)(a) Council Directive 2004/83/EC – Palestinian Refugees – Exclusion Clause

Ms Bolbol, a stateless Palestinian, arrived in Hungary on a visa from the Gaza Strip and applied to the Bevadorlasi es Allampolgarsagi Hivatal (BAH) for refugee status under Article 1D of the 1951 Refugee Convention on the basis that she was a Palestinian residing outside the UNWRA zone. Ms Bolbol did not avail of UNWRA’s protection or assistance whilst in the Gaza Strip. She presented in support of her claim an UNWRA registration card issued to the family of her father’s first cousin. The BAH disputed the existence of a family connection. UNWRA did not confirm whether she would be entitled to be registered.

Article 12(1)(a) of Directive 2004/83/EC states:

A third country national or a stateless person is excluded from being a refugee, if:

(a) he or she falls within the scope of Article 1D of the Geneva Convention, relating to the protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Directive

The BAH refused Ms Bolbol’s application. Ms Bolbol challenged the BAH’s decision rejecting her claim for refugee status before the Fovarosí Biroság, which asked the ECJ the following by way of a preliminary reference:

For the purposes of Article 12(1)(a) of Council Directive 2004/83/EC:

1. Must someone be regarded as a person receiving the protection and assistance of a UN agency merely by virtue of the fact that he is entitled to assistance or protection or is it also necessary for him actually to avail himself of that protection or assistance.
2. Does cessation of the agency's protection or assistance mean residence outside the agency's area of operations, cessation of the agency and cessation of the possibility of receiving the agency's protection or assistance or, possibly, an objective obstacle such that the person entitled thereto is unable to avail himself of that protection or assistance?
3. Do the benefits of this directive mean recognition as a refugee, or either of the two forms of protection covered by the directive according to the choice made by the Member State, or, possibly, neither automatically but merely inclusion in the scope of *ratione personae* of the directive?

Advocate General Sharpston suggested that the Court rule as follows:

1. A person comes within the scope of the first sentence of Article 12(1)(a) of Council Directive 2004/83/EC only if he has actually availed himself of the protection or assistance of a UN agency other than the UNHCR. Mere entitlement to such protection or assistance does not suffice to trigger that provision.
2. The words 'cessation of the agency's protection or assistance' means that the person concerned is no longer in the relevant geographical area and has ceased, otherwise than of his own volition, to benefit from the protection or assistance that he enjoyed immediately before leaving that geographical area.
3. The words 'the benefits of this directive' mean recognition as a refugee and the automatic grant of refugee status.

Case C-162/09 Secretary of State for Work and Pensions v Taous Lassal, Opinion of Advocate General Trstenjak, 11 May 2010

Article 16(1) of Directive 2004/38/EC – Right of Union citizens to reside in the territory of the Member States – Right of permanent residence – Residence for a continuous period of five years – Taking into account periods of time before expiry of the transposition period – Loss of the right of permanent residence – Absence of more than two years.

Ms Lassal, a French national, moved to the United Kingdom in 1999. Throughout the period from September 1999 until February 2005, she was a 'worker' within the meaning of EU law. She left the UK in 2005 for 10 months. After her return to the UK she was paid jobseeker's allowance. She then applied for income support on the basis that she was pregnant. That application was refused on the ground that she had no right to reside in the UK. Ms Lassal appealed against the refusal of income support and her appeal was allowed by an Appeal Tribunal. The Appeal Tribunal decided that Ms Lassal was entitled to income support because she had a permanent right to reside in the United Kingdom by virtue of regulation 15(1)(a) of the 2006 Regulations. The Secretary of State appealed against that decision to a Social Security Commissioner and against the Social Security Commissioner's rejection of his appeal. The referring court asked the ECJ the following by way of a preliminary reference:

In circumstances where (i) an EU citizen came to the United Kingdom in September 1999 as a worker and remained as a worker until February 2005; (ii) the EU citizen then left the United Kingdom and returned to the Member State of which she is a national for a period of ten months; and (iii) the EU citizen returned to the United Kingdom in December 2005 and resided there continuously until November 2006, when she made a claim for social security assistance:

Is Article 16(1) of Directive 2004/38 to be interpreted as entitling that EU citizen to a right of permanent residence by virtue of the fact that she had been legally resident, in accordance with earlier Community law instruments conferring rights of residence on workers, for a continuous period of five years which ended prior to 30

April 2006 (the date by which Member States had to transpose the Directive)?

Advocate General Trstenjak opined that irrespective of the meaning finally to be given to the second sentence of recital 17 in the preamble to the directive, it is clear at least that it does not justify the conclusion that only a period of residence completed in accordance with the national provisions enacted in order to transpose Directive 2004/38 and applicable from 30 April 2006 can qualify as a period of legal residence within the meaning of Article 16(1) of the directive. The Advocate General stated that, on the contrary, a period of residence completed in accordance with the predecessor provisions of Directive 2004/38 is also a period of legal residence under Article 16(1) of the directive.

The Advocate General suggested the Court answer the question as follows:

Article 16 of Directive 2004/38/EC is to be interpreted as meaning that a Union citizen who resided legally for a continuous period of five years in a host Member State, before expiry of the period for transposition of the directive on 30 April 2006, has a right of permanent residence, in so far as she was not absent from that Member State for a period exceeding two consecutive years.

Case C-357/09 Kadzoev v. Direktsia ‘Migratsia’ pri Ministerstvo na vatrešnite raboti, ECJ, Grand Chamber, 30 November 2009

Directive 2008/115/EC – Detention – Refugee Applicant

(Note: While Ireland has not opted into Directive 2008/115/EC, the case is noted here for its importance to EU refugee law generally.)

On 21 October 2006 a person was arrested by Bulgarian law enforcement officials near the frontier with Turkey. He had no identity documents. A deportation order was made against him, and he was placed in detention, to be detained until it was possible to execute the deportation decree. The Russian authorities claimed that the temporary identity card could not therefore be regarded as a document proving the person's Russian nationality.

On 31 May 2007, while he was detained, Mr Kadzoev applied for refugee status. The Administrativen sad Sofia-grad dismissed his

action and refused him asylum. No appeal lies against that decision. Following an administrative procedure the Supreme Administrative Court accepted that it was not possible to establish with certainty the identity and nationality of Mr Kadzoev, so that it considered him to be a stateless person.

The Administrativen sad Sofia-grad stated that Mr Kadzoev was still detained in the detention centre. The main proceedings were commenced by an administrative document filed by the director of the Directorate for Migration at the Ministry of the Interior, asking that court to rule pursuant to Article 46a(3) of the Law on foreign nationals, on the continued detention of Mr Kadzoev.

That referring court stated that, before the Law on foreign nationals in the Republic of Bulgaria was amended for the purpose of transposing Directive 2008/115, the duration of detention in the detention centre was not limited to any period. It pointed out that there were no transitional provisions. The applicability of the new rules deriving from the directive to periods and the grounds for extending them was therefore considered a matter on which ECJ interpretation should be sought, especially as, in the case at issue in the main proceedings, the maximum duration of detention laid down by the directive had already been exceeded before the directive was adopted. Also there was no express provision stating whether in a case such as the present one the periods referred to in Article 15(5) and (6) of Directive 2008/115 are to be understood as including the period during which the foreign national was detained when there was a legal prohibition on executing an administrative measure of 'deportation' on the ground that a procedure for recognition of humanitarian and refugee status had been initiated by Mr Kadzoev.

The referring court also indicated that, if there was no 'reasonable prospect of removal' within the meaning of Article 15(4) of Directive 2008/115, the question arises whether the immediate release of Mr Kadzoev should be ordered in accordance with that provision. The Bulgarian Administrativen sad Sofia-grad referred the following questions to the Court for a preliminary ruling:

1. Must Article 15(5) and (6) of Directive 2008/115 ... be interpreted as meaning that
 - (a) where the national law of the Member State did not provide for a maximum period of

detention or grounds for extending such detention before the transposition of the requirements of that directive and, on transposition of the directive, no provision was made for conferring retroactive effect on the new provisions, the requirements of the directive only apply and cause the period to start to run from their transposition into the national law of the Member State?

(b) within the periods laid down for detention in a specialised facility with a view to removal within the meaning of the directive, no account is to be taken of the period during which the execution of a decision of removal from the Member State under an express provision was suspended owing to a pending request for asylum by a third-country national, where during that procedure he continued to remain in that specialised detention facility, if the national law of the Member State so permits?

2. Must Article 15(5) and (6) of Directive 2008/115 ... be interpreted as meaning that within the periods laid down for detention in a specialised facility with a view to removal within the meaning of that directive no account is to be taken of the period during which execution of a decision of removal from the Member State was suspended under an express provision on the ground that an appeal against that decision is pending, even though during the period of that procedure the third-country national has continued to stay in that specialised detention facility, where he did not have valid identity documents and there is therefore some doubt as to his identity or where he does not have any means of supporting himself or where he has demonstrated aggressive conduct? □

3. Must Article 15(4) of Directive 2008/115 ... be interpreted as meaning that removal is not reasonably possible where:

(a) at the time when a judicial review of the detention is conducted, the State of which the person is a national has refused to issue him with a travel document for his return and until then there was no agreement with a third country in order to secure the person's entry there even though the administrative bodies of the Member State are continuing to make endeavours to that end?

(b) at the time when a judicial review of the detention is conducted there was an agreement

for readmission between the European Union and the State of which the person is a national, but, owing to the existence of new evidence, namely the person's birth certificate, the Member State did not refer to the provisions of that agreement, if the person concerned does not wish to return?

(c) the possibilities of extending the detention periods provided for in Article 15(6) of the directive have been exhausted in the situation where no agreement for readmission has been reached with the third country at the time when a judicial review of his detention is conducted, regard being had to Article 15(6)(b) of the directive?

4. Must Article 15(4) and (6) of Directive 2008/115 ... be interpreted as meaning that if at the time when the detention with a view to removal of the third-country national is reviewed there is found to be no reasonable ground for removing him and the grounds for extending his detention have been exhausted, in such a case:

(a) it is none the less not appropriate to order his immediate release if the following conditions are all met: the person concerned does not have valid identity documents, whatever the duration of their validity, with the result that there is a doubt as to his identity, he is aggressive in his conduct, he has no means of supporting himself and there is no third person who has undertaken to provide for his subsistence?

(b) with a view to the decision on release it must be assessed whether, under the provisions of the national law of the Member State, the third-country national has the resources necessary to stay in the Member State as well as an address at which he may reside?'

The Grand Chamber ruled:

1. Article 15(5) and (6) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as meaning that the maximum duration of detention laid down in those provisions must include a period of detention completed in connection with a removal procedure commenced

before the rules in that directive become applicable.

2. A period during which a person has been held in a detention centre on the basis of a decision taken pursuant to the provisions of national and Community law concerning asylum seekers may not be regarded as detention for the purpose of removal within the meaning of Article 15 of Decision 2008/115.

3. Article 15(5) and (6) of Directive 2008/115 must be interpreted as meaning that the period during which execution of the decree of deportation was suspended because of a judicial review procedure brought against that decree by the person concerned is to be taken into account in calculating the period of detention for the purpose of removal, where the person concerned continued to be held in a detention facility during that procedure.

4. Article 15(4) of Directive 2008/115 must be interpreted as not being applicable where the possibilities of extending the periods of detention provided for in Article 15(6) of Directive 2008/115 have been exhausted at the time when a judicial review of the detention of the person concerned is conducted.

5. Article 15(4) of Directive 2008/115 must be interpreted as meaning that only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods.

6. Article 15(4) and (6) of Directive 2008/115 must be interpreted as not allowing, where the maximum period of detention laid down by that directive has expired, the person concerned not to be released immediately on the grounds that he is not in possession of valid documents, his conduct is aggressive, and he has no means of supporting himself and no accommodation or means supplied by the Member State for that purpose.

CAPN have the pleasure in announcing
the Celebration of
50 years of Congolese Independence



**A Celebration of 50 years of
Congolese Independence
1960-2010**

DATE: Thursday 24th June 2010

TIME: 6.00pm- 9.30pm

Thomas's Prior, Bewleys Hotel, Dublin 4

By

Congolese Anti- Poverty Network (CAPN)

1. **Vincent Browne, Journalist & Broadcaster**
2. **Ludo De Witte, Researcher & Writer**
3. **Michael Butler, Irish United Nations Veteran Association (IUNVA)**
4. **Mary Sweeny, Trocaire**
5. **Julia Ngadi, Congolese Anti- Poverty Network- youth (CAPN)**
6. **Pierrot Ngadi, Chairperson of the CAPN**
7. **Cllr Emer Costello, Lord Mayor of Dublin City Council**
8. **CHAired BY Senator David Norris**

Followed by Congolese/ Irish Celtic Rhythm Music and Dance

Note that food will be provided during the celebration

Contact: Pierrot Ngadi

Add: 10 Cornmarket, D-8

Phone: 0879581726,

E-mail: pierrotcsginfo@ireland.com

**This event is supported by
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"Small acts can bring about big changes..."



Education in the Democratic Republic of Congo



By Pierrot Ngadi of the Congoese Anti-Poverty Network

Background of the Democratic Republic of Congo (DRC)

The Democratic Republic of Congo is the third largest country in Africa. It covers an area of 2345 410 km², and its population is estimated at around 62 million. Approximately 250 ethnic groups inhabit the DRC and most of them share many cultural traits. The DRC was formerly, in turn, the Congo Free State, Belgian Congo, Congo-Leopoldville, Congo-Kinshasa, and Zaire. Though it is located in the Central African UN sub region, the nation is economically and regionally affiliated with Southern Africa as a member of the Southern African Development Community (SADC).

The DRC borders the Central African Republic and Sudan on the North; Uganda, Rwanda, and Burundi on the East; Zambia and Angola on the South; the Republic of the Congo on the West; and is separated from Tanzania by Lake Tanganyika in the East. The Second Congo War, beginning in 1998, devastated the country greatly. It involved seven foreign armies and is sometimes referred to as the "African World War". Despite the signing of peace accords in 2003, fighting continues in the east of the country with an intensity of rape and other sexual violence described as the worst in the world. The war is the world's deadliest conflict since World War II, killing 6 million people.

French is the official language of the DRC whereas Lingala, Kikongo, Swahili and Tshiluba are the national languages.

The average life expectancy is 57 years and the country has a high prevalence of infectious diseases including HIV/AIDS, typhoid, malaria and hepatitis. Mineral resources include, Diamonds, Copper, Gold, Manganese, Coltan, Zinc, Tin, Iron Ore, Cadmium, Silver, Uranium, Niobium, Cobalt, Crude Oil and Cassiterite. Agriculture includes Coffee, Tea, Oranges, Hevea, Cotton, Palm Oil, Plantain, Cocoa, Timber, Pineapple, Rice etc... It is well known that the

Uranium in the first atomic bomb which the Americans dropped at Nagasaki and Hiroshima during the second World War came from the Shikolombwe mine of l'Union Miniere du Haut Katanga, in the DRC. Africa has 15% of the world's Niobium reserves and 80% of its Tantalum deposits. The DRC alone has 60% of Africa's Niobium and 80% of Africa's Tantalum. Half of the African rainforest is concentrated in the DRC

Despite the fact that the DRC is potentially rich in resources, its population lives in extreme poverty because of successive bad governments

Introduction

This report has been produced by Pierrot Ngadi, a Human Rights Activist and Chairperson of Congoese Anti-Poverty Network (CAPN). It is the outcome of the concern of CAPN over the current situation in the DRC and a meeting Pierrot had with senators such as Maria Corrigan and David Norris and students from UCD and Trinity College.

The summary of the report was also sent to Peter Power, TD – *Minister* of State for *Overseas* Development via senator Maria Corrigan, who we asked to make a follow up on our behalf. The report was intended to seek assistance from educational development programme of Ireland to enable the DRC to achieve one of the Millennium Development Goals (MDGs).

Why assistance from the Republic of Ireland was needed?

Ireland has a long tradition of solidarity with the DR Congo from Roger Casement, Conor Cruise O'Brien, Irish-UN peacekeeping, former Irish President and High Commissioner Mary Robinson up to the present. Because of Ireland's own experience of colonisation and reasons including, poverty, famine and mass emigration, Ireland has been actively helping developing countries to sustain their development. A very large number of Irish people have had an active involvement in development activities in poorer countries through missionary work and volunteering with international organisations. Also, no one can ignore the commitment and support of the Irish People and organisations within humanitarian crisis.

Ireland is one of the Organisation for Economic Co-Operation and Development (*OECD*) countries which are committed to supporting poorer countries such as DRC to reach their MDGs and also to reduce poverty. The Irish Government has made a commitment to reach the target of 0.7% of GDP. This commitment is reflected in substantial growth in annual allocations for ODA in the national budget. In 2000, Ireland was providing €254 million in ODA, which represented 0.3% of GNP. By 2004, Ireland's ODA amounted to €480 million, or 0.4% of GNP.

Ireland is ranked as the seventh most generous OECD donor, in terms of contributions per capita. In addition to this increase in ODA allocations, Ireland has called for other OECD donors to honour the commitments implicit in the Millennium Declaration, and increase levels of ODA. (Report of Ireland-MDG, 2000)

Ireland recognises the importance of supporting effective local, national, international and multilateral institutions that can contribute to global efforts to reach the MDG's.

If Ireland can provide educational and health assistance to DRC, it can directly strengthen its programmes which address priority problems such as gender inequality and with resources this will enable the Congolese people to access basic social services. Ireland has already designed and put in place assistance through its bilateral aid programme with countries such as Ethiopia, Mozambique, Tanzania, Uganda, Zambia and Lesotho to address the root causes of poverty, in supporting education, health, water and sanitation, and HIV/AIDS programme within these six countries.

Ireland has committed and prioritised most of its programme to Africa.

About the Millennium Development Goals

The MDGs are eight international development goals that the 192 United Nations member states and at least 23 international organisations have agreed to achieve by the year 2015. They include reducing extreme poverty, reducing child mortality rates, fighting disease epidemics such as AIDS, and developing a global partnership for development. It is the primary responsibility of poor countries to work towards achieving these Goals. They must do their part to ensure greater accountability to citizens and efficient use of

resources. But for poor countries to achieve the first goals, it is absolutely critical that they seek support and help in developing partnerships with rich countries. In the case of DRC, it would be advantageous to develop a partnership with Ireland and develop programmes towards achieving universal primary education. Ireland has already been working with six African countries. However, the DRC will not be seeking direct financial support but rather assistance with human resources. This means identifying volunteers including teachers, doctors, and students who can support education and health programmes in the DRC.

The importance of education

Referring to the MDGs, Secretary-General Ban Ki-Moon explained how education played an important role in our society today. He said "We have ample evidence that education improves individual incomes, economic growth, child and maternal health, resistance to disease and environmental practices," This is true because education plays a very important role in a person's life. It gives us power and strength. Education teaches us to write, read, think, listen, speak, discover, react and achieve in our life...If the system of education becomes accessible, adaptable, acceptable and available in the DRC, the Congolese people will contribute a lot to their country and be able to sustain themselves.

Life long learning and education is a driving force towards sustainable development; the best investment any country can make to its citizens is to educate them to improve their family's well being as this will result in the stability of both individuals and the country. The opposite is a whole generation of the country at risk. Therefore, environment, society and economics which I consider being pillars of sustainable development for any country will collapse.

Education in DRC

The education system in the DRC is governed by three government ministries: the Ministère de l'Enseignement Primaire, Secondaire et Professionnel (MEPSP), the Ministère de l'Enseignement Supérieur et Universitaire (MESU) and the Ministère des Affaires Sociales (MAS). In 2002, there were over 19,000 primary schools serving 160,000 students; and 8,000 secondary schools serving 110,000 students. Primary school education in the DRC is neither compulsory nor free unlike Uganda, Malawi, Tanzania, Kenya, and

Zambia which have been able to eliminate school fees providing the next generation with the knowledge to succeed in life. The money is there, but there's no way to get it – due to the high levels of corruption in DRC (it is ranked as 150th in the world). Though money is in the government, most of it fails to reach the schools. As expressed by Winifred Kiyabo “When I was nine my father died, that's when my problems started. My mother didn't have any money to pay for my school fees, and the teachers used to send me home from school. But now I'm happy... school fees have been abolished, and no one is stopping me coming to school.”

Many children in the DRC are not able to go to school because parents are unable to pay the enrolment fees. – Parents are customarily expected to pay teachers' salaries. In 1998, the most recent year for which data is available, the gross primary enrolment rate was 50 percent. Gross enrolments ratios are based on the number of students formally registered in primary school and therefore do not necessarily reflect actual school attendance. In 2000, 65 percent of children aged 10 to 14 years, were attending school. As a result of the 6-year civil war, over 5.2 million children in the country receive no education.

Education is a big challenge for the DRC?

According to the World Bank, the DRC was one of the top five countries in the world with the largest number of children out of school as of 2003. At that time, UNICEF estimated that approximately 50 percent of children of primary school age were completely outside the educational system. Churches and church networks all over DRC had established and run schools, but still, estimates of children who did not have access to education were as high as 70 percent in the East, according to the International Federation of the Red Cross. One percent of the national budget was allocated to education. Teachers were severely underpaid, and in North Kivu the last time teachers received their state salary of US\$5.82 per month was in 1995. The 15 percent gender gap in school enrolment was explained as a result of several barriers for girls to educational opportunities. For example, the opportunity cost of girls' education was extremely high, considering the prohibitively high fees for schooling and supplies, and girls' regular participation in household and farming duties.

The education system in the DRC is completely devastated. Many schools have been seriously

damaged, others have been pillaged and destroyed. This has led to more than 4.6 million children out of school, including 2.5 million girls out of a total estimated 14.3 million girls nationwide. An estimation of 40 percent of school-age children did not attend school at all, with girls constituting a majority of absentees.

The forced recruitment of boys at gunpoint, especially in the most conflict-affected eastern areas of DRC, which is another aspect to take into consideration, has reduced dramatically the number of children in school according to the *Small Arms Survey 2004*. In addition, the *Small Arms Survey 2004* recorded a survey conducted in Djugu suggesting that armed confrontations have resulted in the destruction of 211 out of a total of 228 schools since 1999, and that over 60 percent of students (39,600 down to 10,620) and teachers (1,771 down to 701) have left schools.

In mid-2003, the RCD and the Mai Mai in Kalonge, South Kivu, destroyed schools and pillaged school supplies. According to Project GRAM-Kivu, fighters burned the schoolbooks and other school supplies of the local children who were in the midst of preparing for the state exams at the close of the school year.

Attacks on schools and hospitals continued into 2005. Amnesty International reported that RCD-Goma troops systematically pillaged and looted schools, hospitals and other buildings in Nyabiondo area in January 2005, (Amnesty International: *DRC North-Kivu: Civilians Pay the Price for Political and Military Rivalry*, September 28, 2005.)

In July 2005, a child in eastern DRC reported to staff of World Vision that each Friday, rather than attending classes, he and his classmates were obliged to work in their teacher's fields.

Educational Costs

Several other factors account for low enrolment rates, high drop out rates and irregular attendance. For example, the high cost of primary education prevents many families from enrolling their children in school. According to the World Bank, the total annual cost for the education of one child in DRC is approximately US\$63. Local sources explain that this includes approximately US\$24 for school fees, US\$15 for school materials, US\$10 for school uniforms and US\$15 for shoes. The resulting perception among many children and

their families is that schooling is not as profitable as working on the family land. This is particularly true for parents who are themselves illiterate and do not see the reasons for their children to attend school. In some cases, parents choose to send their sons rather than daughters to school, due to their inability to afford schooling for all siblings, causing frustration among girls. Due to insecurity and various violent incidents on the roads to school, many parents keep their children at home rather than sending them to school. There are 14.51 million workers, most work in the agricultural sector. The wage tends to be US\$40 a month. The Congolese government established a minimum wage scale but the problem is that the wages have not kept up with inflation.

Teachers Salaries

Teachers have been extremely underpaid, receiving approximately US\$20 per month, plus an extra US\$10 in transport allowance. In September 2005, the teachers union demanded salaries in the range of US\$50 to US\$100 per month, although the minimum national salary should be US\$208 per month. The October agreement allowed for an increase in salaries by US\$45 per month for teachers in Kinshasa, US\$21 in Lubumbashi and US\$14 for teachers in other provinces.

Funding Data

Public Expenditure on Education as a % of Gross National Income (GNI)	4.6%
% Education budget allocated to higher education	No data
Loan/Grant scheme in place	No data

Testimony of Rebecca from Oxfam about schooling in the DRC

Oxfam press officer Rebecca Wynn said “The children I am meeting here in Kibati are at school, but they get no education”. The school is where they sleep. It’s their home. Ever since they fled from the violence in their villages, it’s where they have slept, with leaves as their mattresses and their bodies snuggled close.

A blackboard hangs on the wall, unused. On the left-hand side of it, scrawled in chalk, is a roll call from some weeks ago. On that day, 37 children attended school, seven were absent. Now every schoolchild is absent. The classrooms are homes

for Congo’s displaced, who have nowhere else to go. It’s a devastatingly sad scene.

People talk about Congo’s massive potential – its minerals, its rainforest, its fertile land. In this classroom, I feel like I’m confronted with the most important part of that potential – its people.

Wherever I’ve been in Congo in the last few weeks, I’ve been struck by the energy and sheer resilience of the people I’ve met. These people want to go places and improve their lot, but are continually being pushed backwards by Congo’s relentless violence.

In the classroom, I meet Hyirabazumgu. She is 45 and has seven children. The youngest is six and the oldest is 22. She is animated and her eyes spark as she tells me how she left her home.

“What can you do when death is at your door – you just have to run,” she says,” We could see and hear bullets and shelling coming from the volcano and the national park. We knew we had to get out of there. We grabbed children, and those who had time grabbed their possessions.” She is clearly concerned about her children’s future.

To sleep and live in a classroom is the saddest thing. Our children are here doing nothing.” She points to one girl walking with a young boy. The girl is clutching a plastic bag and her eyes scan the ground. “You see that girl over there – she was taking her national exams. She is 18 and clever. Now she is just idling here, with nothing to do.”

Achievement of Universal Primary Education in the DRC

As explained previously and following the above examples and testimony we can say the Congolese government must invest in education and must ensure that education is available, accessible, acceptable and adaptable as Katarina Tomasevski, the former UN Special Rapporteur on the Right to Education expressed.

The government must comply with compulsory – education requirements and must respect, protect and fulfil them as its first responsibility and duty toward its citizens. These requirements are: **adequate infrastructure and trained teachers to support education delivery, non discriminatory and accessible to all, appropriate and of quality. E.g. safe buildings, a school in a village, enough teachers, free textbooks and uniforms, sanitation facilities and appropriate transport.**

Unfortunately in the case of the DRC, there is simply violation of rights to education because the indicators show that primary education is not free and compulsory because of lack of infrastructures and supports, despite its constitution which was approved by Congolese voters in December 2005 guaranteeing free primary and secondary schooling for all children. There is a big budget, the money allocated for all children to receive primary education is insufficient, the quality is very poor, the state is not making concrete steps towards achieving free secondary and higher education, teachers are not well trained, and don't receive domestically competitive salaries and lack of appropriate working conditions and teaching materials. School buildings are not safe, sanitation facilities don't exist, and including safe drinking water, a library, ICT resources and teachers are unpaid etc...

The Creation of the Congolese Anti-Poverty Network (CAPN)

The Congolese Anti-Poverty Network grew out of a series of face to face and online meetings organised by Pierrot Ngadi and Lokola Mtwali with Congolese individuals and organisations in Dublin, Birmingham, Italy, and France and in the Democratic Republic of Congo. The outcomes of these meetings were that all participants agreed to establish the aims and objectives, membership criteria, memorandum and articles of association and the website of the network.

The CAPN work together with grass root organisations, statutory and non statutory bodies to eradicate poverty and provide a solid future for Congolese people. These aims and objectives can only be achieved by partnership working, encouraging exchange programmes, visits and volunteering, providing human rights education promoting and supporting formal and informal education, and empowering people in communities.

Conclusion

Education is a driving force towards sustainable development and a factor in reducing poverty and inequality and for laying the basis for sustained economic growth.

From its generosity towards the poor countries, Ireland can assist the DRC to build sustainable education systems appropriate both to the needs of the Congolese people and the country through a

bilateral project with the DRC. This will help the DRC to overcome those barriers within the Congolese education systems, reduce poverty and assist the country to achieve the MDG's objectives as Mozambique and Uganda who have benefited from bilateral assistance from Ireland. If Ireland can help and assist the DRC rebuild its education systems, it will enable all Congolese to have an opportunity to make a better life for themselves. Unfortunately, too many children in the DRC today grow up without this chance, because they have been denied their basic right to even attend primary school. Education lies at the heart of any economy – an educated workforce increases trade, employment and money for the government. Support the youth of the DRC to enable growth in the country.

Recommendations

- Building effective links between Ireland and DRC by facilitating the transfer and exchange of knowledge, skills and expertise to and from the Congo.
- Undertaking actions for mutual benefit.
- Ensuring that sustainable development is at the core of all work undertaken mainly with education.
- Supporting the Congolese Diaspora community in Ireland in their efforts to respond to the development in their home land.
- Promoting and encouraging international sustainable development volunteering to Irish public and private sector staff
- Working with partners to facilitate the work of the Congolese Diaspora community in Ireland in maximising their impact on MDG delivery in the Congo
- Encouraging public sector placements and twinning which contribute to MDG delivery.
- Sponsoring events organised by CAPN that will enable the Irish government and public, including NGOs working in the Congo, to understand better the education system within the Congo.



Refugee Documentation Centre Queries

Republic of the Congo - Information on the Rebel Ninja Movement led by Pastor Ntumi

A *Europa World Online* article on the recent history of the Republic of Congo, in a paragraph titled “Renewed Violence in the South” refers to the Ninja rebel militia group as follows:

“Meanwhile, in March 2002 renewed violence erupted in the Pool region, apparently instigated by members of a ‘Ninja’ militia group, led by Rev. Frédéric Bitsangou (also known as Ntumi). The conflict widened in early April, when two people were killed in an attack on a train on the Congo-Océan railway by members of the militia, although Ntumi denied his forces had initiated the attack. Following further insurgency in Mayama, some 80 km west of Brazzaville, government forces, reportedly assisted by Angolan troops, were dispatched to the region, and air attacks were launched against the rebels. By mid-April the unrest had spread to southern Brazzaville, and by late May some 50,000 people were reported to have been displaced. In late April government forces announced that they had regained control of the Congo-Océan railway, facilitating a normalization in the supply of fuel and food to the capital, although fighting continued in Pool. At the end of May government troops regained control of the rebel stronghold of Vindza.” (Europa World Online (undated) *Africa South of the Sahara – The Republic of the Congo: Recent History* Murison, Katharine)

In a paragraph titled “Peace Agreement Signed” this article continues:

“In mid-March 2003 the Government and Ntumi’s ‘Ninja’ militia group signed an agreement aimed at restoring peace to the Pool region. The rebels agreed to end hostilities and disarm, while the Government was to guarantee an amnesty for the rebels and integrate former combatants into the national armed forces. At the end of August the Assemblée nationale formally approved an amnesty for former ‘Ninja’ fighters, to cover the period from January 2000. By September 2003 the situation in Pool had stabilized sufficiently to allow an electoral commission to be formed in the region. None the less, in October renewed clashes between ‘Ninja’ fighters and government forces near Mindouli resulted in at least 13 deaths. In December,

following reports that Kolélas had unsuccessfully attempted to re-enter the Congo under an assumed identity from the DRC, clashes were reported in Brazzaville between ‘Ninja’ groupings allied to Ntumi and Kolélas, although peace was soon restored. In January 2004 Ntumi announced a series of conditions for his return to Brazzaville from his base in Loukouou, in the Pool region, including the installation of a government of national unity, the return of exiled former leaders, the definition of his status and an agreement on the number of his fighters to be integrated into the army, police and gendarmerie. The Government largely rejected Ntumi’s demands in March, insisting that the peace agreement signed one year earlier made no provision for the formation of a government of national unity or the return of exiles, and announced that working groups had recently been formed to monitor the demobilization, disarmament and reintegration of former rebels and to consider Ntumi’s status. At least seven militiamen and two members of the armed forces were killed in clashes near Kinkala later that month, according to the Government.” (ibid)

An article on the Ninjas published by *The Observer* notes:

“This is the Pool region of the Republic of Congo. Ninja country. A rebel movement has for years battled the government in a guerrilla war with atrocities committed on both sides. The Ninjas wear purple as a sign of suffering. Their hair is dreadlocked because of a Bible passage which says no razor should touch the head of the chosen ones. They say an apocalypse is coming and, after so much destruction, many suspect it has already started. Ten years of fighting have made Pool desolate. Thousands have fled their homes to hide in the forests, hungry, sick and frightened of the men with guns and blades. 'It is one of Africa's totally forgotten conflicts. Hardly reported yet it's a major humanitarian catastrophe. The society is just melting back into the bush,' said Paul Foreman, a head of mission for Médecins Sans Frontières (MSF) in the capital Brazzaville. The world hardly noticed, partly because the conflict was overshadowed by the mayhem in a bigger neighbour with a similar name, the Democratic Republic of Congo, and partly because no key Western interests were involved. Fighting between government and rebel

forces raged longest and fiercest in Pool, Brazzaville's rural hinterland, spilling into the city itself, levelling entire neighbourhoods and shattering the skyline." (The Observer (7 December 2003) *Apocalyptic rebel movement revisits Congo's heart of darkness* Carroll, Rory)

In 2003 *IRIN News* reported on an amnesty for Ninja militants, stating:

"The National Assembly of the Republic of Congo approved on Thursday a bill on amnesty for Ninja militants who fought government forces in the Department of Pool in the south of the country. In a communiqué, the government said the amnesty would cover the period from 15 January 2000 until the date the bill is ultimately signed into law by Congolese President Denis Sassou-Nguesso. Under the terms of the amnesty, the Ninja militants will not be prosecuted for their actions." (IRIN News (1 September 2003) *National Assembly approves bill on amnesty for Ninja militias*)

A 2007 *BBC News* article reports:

"Frederic Bitsangou, also known as Pastor Ntumi, agreed to disarm after being given a government post. The man who led a five-year insurgency in the south-eastern region until a deal in 2003 will have responsibility for peace and reconciliation efforts. His group now wants to transform into a political party. Under the deal, Pastor Ntumi will keep 60 bodyguards." (BBC News (6 June 2007) *Congo's 'Ninja' leader to disarm*)

See also a further *BBC News* report which states:

"The Ninjas remain as the last rebel group, an estimated 5,000 young men with guns and a charismatic leader hiding for more than a decade in the forested region to the west of the capital Brazzaville. A peace deal was signed four years ago, but such conflicts do not respect the rules of war and peace, civilians and combatants. The Ninjas kept their guns, and local people continued to be robbed and intimidated." (BBC News (28 June 2007) *Congo's 'Ninja' leader ready for peace* James, John)

In June 2008 *IRIN News* reported the disbandment of the Ninjas as follows:

"Ntumi used the occasion to announce the disbanding of the Ninjas, the armed wing of his political party, the Conseil national des

républicains. 'I don't want people to die in Pool because of Ntumi. Pool must be protected from danger. Today we declare the disbanding of our armed branch,' he said." (IRIN News (10 June 2008) *Congo: DDR gets under way for 30,000 ex-combatants*)

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Somalia - Information on the safety of returns to the Mogadishu area of Somalia, including any dangers on the route of return.

Eligibility guidelines recently published by the *UN High Commissioner for Refugees*, in a section titled “Eligibility for International Protection” (sub-section titled “General Approach”), state:

“Somalis from southern and central Somalia seeking asylum and protection due to the situation of generalized violence and armed conflict in their places of origin or habitual residence and whose claims are considered as not meeting the refugee criteria under Article 1A(2) of the 1951 Convention⁶⁶ or Article I(1) of the OAU Convention,⁶⁷ should be granted international protection under the extended refugee definition in Article I(2) of the OAU Convention. In States in which the OAU Convention does not apply, a complementary/subsidiary form of protection should be granted under relevant national and regional legal frameworks. The widespread disregard of their obligations under international humanitarian law by all parties to the conflict and the reported scale of human rights violations make it clear that any person returned to southern and central Somalia would, solely on account of his/her presence in southern and central Somalia, face a real risk of serious harm.” (UN High Commissioner for Refugees (5 May 2010) *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia*, p.10)

In a section titled “Internal Flight or Relocation Alternative (IFA/IRA) (sub-section titled

“Southern and Central Somalia”) these guidelines state:

“In light of the risks to safety and security, ongoing armed conflict and the shifting armed fronts and ongoing widespread human rights violations, it cannot be considered reasonable for any Somali, regardless of whether the individual originates from southern and central Somalia, Somaliland or Puntland, to relocate within or to southern and central Somalia. Access to land, water, services and security in southern and central Somalia is generally defined by clan membership. In such situations, it would not be reasonable to expect someone to take up residence in an area or community where persons with a different clan background are settled, or where they would otherwise be considered aliens. There is evidence from the IDP settlements in urban areas across Somalia, including Puntland and Somaliland, of daily abuse faced by members of clans which are not considered to ‘originate’ from the area in which they find themselves displaced. Furthermore, it would also not be reasonable for persons who have a well-founded fear of persecution to relocate within or to southern and central Somalia due to the massive displacement from Mogadishu, which has drained the absorption capacity of host communities in most areas of southern and central Somalia – even if the displaced persons are of the same clan as members of the host community. Economic collapse and massive displacement has saturated clan social and economic support in home clan areas. In Galgaduud, which has received one of the largest numbers of IDPs in 2007, it was one of the few regions which also witnessed returns to Mogadishu. Interviewees reported to UNHCR that they had reached a level of desperation so severe that they preferred the misery and insecurity in Mogadishu. Based on the above, UNHCR considers that there is no available internal flight or relocation alternative in any part of southern and central Somalia.” (ibid, p.34)

A *UNHCR News* report on the return of displaced persons to Mogadishu notes:

“Many IDPs are returning as complete families but others are heads of households who have left their relatives behind in settlements for the internally displaced while they check the conditions of their properties. They are returning

to Hodan, Wardhiigleey, Yaaqshiid and Heliwaa neighbourhoods in north Mogadishu that were devastated by two years of war and left virtually empty. "The displaced have lost everything and are returning to ruined homes and livelihoods," Spindler said. The latest returns are taking place at time when Mogadishu is experiencing some of the heaviest fighting in recent months, resulting in many civilian casualties and renewed displacement. 'We are in the process of assessing the scale and magnitude of the latest displacement,' Spindler said. 'UNHCR is not encouraging returns to Mogadishu at this juncture, as the security situation is volatile and the conditions are certainly not conducive,' he added." (UNHCR News (27 February 2009) More than 40,000 Somalis return to Mogadishu despite renewed fighting)

An *IRIN News* article reports:

"Although Halane's family and others have begun returning, many others remain in camps, said Ahmed Dini of Peaceline, a civil society group in Mogadishu. 'There are returns but I would describe it as a trickle, not a flood yet,' Dini said. He said most of the returnees were coming back to a risky situation, with little or no services. 'They have no health facilities or schools and on top of that there is no help to assist them restart their lives,' he said. 'Most homes are either partially or totally destroyed.' He added that many of the families could not afford to rebuild. 'We may have to set up [IDP] camps inside their compounds.'" (IRIN News (5 March 2009) Somalia: IDPs returning to "risky" Mogadishu)

In a section titled "Background" a *Human Rights Watch* report states:

"The new TFG president, Sheikh Sharif Ahmed, appeared committed to building greater legitimacy and a broader base of military support for his government. Sharif, the former head of the ICU, had spent two years in exile in Eritrea and Djibouti. He had a background that many hoped would enable him to draw elements of the formidable but diverse armed opposition to the TFG under his banner. This did not happen. During the tenuous calm that emerged in early 2009, thousands of families who had been displaced by war began returning home. But by late February Somalia's armed factions had reverted to open conflict—and the situation has

deteriorated ever since. The consequences have been dire. Fighting once again rages in the capital and civilians bear the brunt of indiscriminate attacks and other abuses." (Human Rights Watch (19 April 2010) *Harsh War, Harsh Peace: Abuses by al-Shabaab, the Transitional Federal Government, and AMISOM in Somalia*, pp.12-13)

In a section titled "Indiscriminate and Other Unlawful Attacks" this report continues:

"Mogadishu has been the primary theater of open warfare in Somalia, though fighting has also exacted a heavy toll on civilians in other conflict areas in south/central Somalia. In early 2009 tens of thousands of Somalis who had been displaced by fighting began returning to their homes in Mogadishu, hopeful of the possibility of peace. But after a brief lull, fighting began anew and has continued ever since. Violations of the laws of war, which apply to both national armed forces and non-state armed groups, have persisted in the Somali capital since 2007 and continue through the present." (ibid, p.36)

An *IRIN News* report on the situation in Mogadishu in March 2010 states:

"Clashes between government troops and Islamist insurgents have displaced more than 55,000 people from Mogadishu since the beginning of February, with many of them heading out of Somalia to neighbouring Kenya, according to the UN Refugee Agency. In the border town of Liboi, people told IRIN by phone that 300 to 400 Somali families were waiting there to be registered as refugees. In all, almost 570,000 Somalis are refugees and most of them live in camps in Kenya. 'Staying in Mogadishu now is like a death sentence: you are not safe; your neighbour is not safe,' Hawo Sheikh Ali, one of the refugees, told IRIN on 22 March. She left Mogadishu at the end of February after a mortar shell killed 15 people in her Wardhigley neighbourhood." (IRIN News (22 March 2010) Kenya-Somalia: Thousands flee Mogadishu "death trap")

An *Agence France Presse* report on current events in Mogadishu notes:

"The Western-backed Somali government and the Islamist rebels have waged near-daily battles for the control of the seaside city of Mogadishu since last May." (Agence France Presse (12 May

2010) Nine killed as Somali forces attack insurgents)

A report from the *Missionary International Service News Agency* states:

“Meanwhile, in Mogadishu, calm appears to have returned after, yesterday, it was subjected to some of the most intense fighting and violence in the past few months. At least 15 people were killed and 50 others wounded, including many civilians hit by mortars and grenades inside their own homes. The local radio 'Shabelle' reported that the fighting lasted several hours into the night in the quarters of Hodan, Daynile and Yakshid, engaging the 'Shabab' militias against the AMISOM peacekeeping contingent backed government troops.” (Missionary International Service News Agency (MISNA) (13 May 2010) Somalia: Tension in Mogadishu, Liberation of Afgoye Clinic Demanded)

A report from the Somali news agency *Garowe Online* states:

“At least 25 people have reportedly been killed and dozens others wounded in fresh violence that rocked Somalia’s capital in the last two days, Radio Garowe reports. Somali forces getting backings from African Union troops clashed with anti-government fighters in northern districts of Mogadishu. The people, mostly civilians were killed in mortar exchange at the Bakara Market, an insurgent stronghold in the capital in northern districts of Hodan, Wardhigley and Hawlwadag. Ali Muse, an ambulance service official, said on Thursday that they have assisted over 60 wounded, adding that he death toll could be much higher.” (Garowe Online (14 May 2010) Somalia: Clashes in Mogadishu kill dozens)

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