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briefing

Minority Rights Group

Justice served: The Batwa of Kahuzi-Biega and the failure of fortress conservation

Samuel Ade Ndasi and Stefania Carrer

A man from the Batwa community walks on felled trees in deforested land on the edge of Kahuzi-Biega National Park. January 2022. *Ed Ram.*

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About the authors

Samuel Ade Ndasi is MRG's African Union Advocacy and Litigation Officer. Samuel is a Senior Legal Practitioner and a human rights expert and has been a lecturer of International Human Rights Law at the University of The Gambia. Samuel has also worked as a legal officer at the African Commission and the African Court on Human and Peoples' Rights. He holds a Master's in Laws, Human Rights and Democratisation in Africa from the Centre for Human Rights at the University of Pretoria, and a Barrister-at-Law Certificate from The Gambia Law School.

Stefania Carrer is MRG's Litigation and Advocacy Officer. Before joining MRG, Stefania worked as a qualified lawyer in Italy. She specializes in the field of civil responsibility and international human rights protection. Her previous work experience includes the European Commission, the Hague Institute for Global Justice and the International Criminal Court. She holds a Master's degree in European and Transnational Law and a First Level Master's degree in Environmental Law.

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Introduction

In 2024, the African Commission on Human and Peoples' Rights (African Commission) ruled that the government of the Democratic Republic of Congo (DRC) violated the rights of the indigenous Batwa of the Kahuzi-Biega forest by evicting them from their ancestral lands to expand one of the country's biggest national parks. For the first time, the African Commission expressly recognized the crucial role that indigenous peoples play in protecting biodiversity, while condemning the model of environmental protection known as 'fortress conservation', which is based on the forceful exclusion of all human presence from ecosystems, including that of indigenous peoples from their ancestral lands without their consent. This briefing provides a summary of the decision, along with a description of the background to the case.

Historical background

Batwa people are among the forest-dwelling hunter-gatherer indigenous communities in the DRC. The Batwa of Kahuzi-Biega – one of many Batwa communities throughout Central Africa – have lived in the forests of the Kahuzi and Biega mountains since time immemorial. They are considered the most ancient population of the Congo River Basin, dating back to at least 3000 BCE and are among the most marginalized populations in the DRC. Their livelihoods, homes, traditions and culture reflect the symbiotic relationship they have with the forests and the lands they have traditionally inhabited.

The woes of the Batwa of Kahuzi-Biega started in July 1937, when the Belgian colonial administration created the Mount Kahuzi Zoological and Forestry Reserve. Batwa, however, remained. They continued to occupy their lands and practise their traditional lifestyle. By 1951, the reserve was expanded to include the Biega forest, now covering a total of 60,000 hectares. In 1970, the government enacted a law creating the National Park of Kahuzi-Biega (abbreviated 'PNKB,' for the French *'Parc National de Kahuzi-Biega'*), a protected area that has received funding and material support from the German and US governments, among other international supporters, and is managed by the Congolese Institute for the Conservation of Nature (ICCN). The PNKB was inscribed on UNESCO's World Heritage List in 1980.

The creation of the national park led to the relocation of some Batwa families from within the park to its borders. In 1975, the government expanded the PNKB area from 60,000 to 600,000 hectares. Batwa communities living on their lands were arbitrarily and forcibly expelled from the designated area without first being consulted or adequately compensated or resettled. Since then, the Batwa of Kahuzi-Biega have faced several forceful and brutal evictions, as detailed in reports published by Minority Rights Group (MRG).[1]

After an unsuccessful court action in 2008, in 2010, Batwa, supported by the Congolese NGO Environnement Ressources Naturelles et Développement (ERND Institute), initiated a domestic class action lawsuit against the Congolese government and ICCN, stating that as a result of two ordinances[2] creating and extending the PNKB from 60,000 to 600,000 hectares, they were arbitrarily evicted from their land without any compensation or consultation. They argued that the government had violated their property rights under domestic, regional and international law, as well as its commitment to ensure that all people (including indigenous peoples) are respected and treated equally without discrimination. Consequently, they requested that the judge grant them access to their ancestral lands, as well as ensure that they be provided with health and educational services and compensated for the harm they had endured. The domestic tribunal ruled on 28 February 2011, dismissing the community's claims. It held that, as the case concerned the constitutionality of the government's actions, it was outside the court's jurisdiction. On 11 December 2012, the Court of Appeal upheld the tribunal's judgment. The Batwa plaintiffs appealed to the Supreme Court in Kinshasa on 20 December 2013, but the appeal stalled without any prospects of progress.

Given the lack of justice at the domestic level, the Batwa of Kahuzi-Biega, with the support of MRG and the ERND Institute, filed a communication before the African Commission on 7 November 2015, seeking redress for rights violations suffered by them as a result of the systematic and illegal expropriation of and eviction from their ancestral lands.

At its 71st ordinary session (held on 21 April – 13 May 2022), the African Commission rendered its decision on the merits and found that the government of the DRC violated the rights of the Batwa people in terms of Articles 1, 2, 4, 8, 14, 16, 17, 21(1 and 2), 22, and 24 of the African Charter on Human and Peoples' Rights (African Charter).[3] The African Commission's decision was adopted by the Executive Council of the African Union at its 42nd ordinary session in February 2023. At its 79th ordinary session (14 May – 3rd June 2024), the African Commission adopted a Corrigendum to the merits decision.[4] The Corrigendum was requested by MRG to clarify and strengthen the language of the decision.

The Batwa's main arguments and the African Commission's analysis

The Batwa complainants claimed that the DRC government was violating their rights to life, non-discrimination, property, religion, health, education, natural resources, development, religion and culture – all rights protected under the African Charter. They argued that the government breached its own domestic legislation on property rights and the provisions of relevant international human rights instruments. It is worth noting that the DRC government did not submit its observations or counterarguments at any stage of the proceedings, despite the African Commission's repeated communications to it.

Recognition of Batwa as an indigenous people

To benefit from the provisions of the African Charter that protect collective rights as well as from the substantial body of international human rights law recognizing indigenous peoples' rights, the Batwa of Kahuzi-Biega argued first that they are an indigenous people. They stated that their community self-identifies as Batwa, a distinct socio-cultural entity, sharing a unique common history, ethnicity, culture and religion as a forest-dwelling people. Moreover, they affirmed that their way of life and survival is inextricably linked to the Kahuzi-Biega forests as their ancestral land, and that they are recognized as some of the first inhabitants of the forests of the Great Lakes region by other ethnic communities in the area.

The African Commission analysed the relevant regional and international standards and case law, and drew on the work of its Working Group on Indigenous Populations/Communities, as well as that of the UN Working Group on Indigenous Populations, finding that all definitions of 'indigenous people' recognize the inextricable links between indigenous peoples, their lands, religions, lifestyles and cultures. The African Commission also found that self-identification as a people with such shared characteristics is another determining factor. Applying these criteria to the present case, the African Commission recognized that the Batwa of Kahuzi-Biega are an indigenous people and that, as such, their existence is firmly linked to their ancestral lands and the resources thereof.

Violations of the African Charter

The Batwa stated that the DRC government, when it forcibly evicted them from their ancestral lands without any compensation, while allowing non-Batwa communities to remain in the PNKB, violated their right to non-discrimination (Article 2 of the African Charter). According to the complainants, Batwa are discriminated against based on their ethnic origin, and, consequently, have no access to their lands or basic social services such as health, education and infrastructure, and are excluded from political representation and participation. Based on the criteria developed in its own jurisprudence, the African Commission found that Batwa have been treated differently from others without valid justification. It recognized that non-Batwa people have had access to the Kahuzi-Biega forests despite general legislation banning human activities within the forests. Therefore, it found that the DRC violated the right to non-discrimination under Article 2.

Due to their forced eviction and lack of measures ensuring access to social services, the Batwa claimed that their right to life (Article 4) had been interfered with. This claim is grounded in the fact that Batwa have been arbitrarily deprived of the necessary conditions for a life in dignity, and that the conditions of extreme poverty in which they have been living have caused numerous deaths and threatened their very survival as a people. Furthermore, they claimed that cases of violence, including the ongoing arbitrary killings of members of their community, have not been investigated or remedied by the authorities. The African Commission considered the claims raised by the Batwa under Article 4, noting that the right to life is central to all other rights, and, as it pertains to indigenous peoples, is deeply intertwined with their living environment. The African Commission found that the lives of indigenous peoples can be threatened if, as happened to the Batwa, they are displaced without proper resettlement that enables them to live as they had before. As a result, it found that the DRC has negatively affected the capacity of the Batwa community to live with dignity and had thereby violated Article 4.

The Batwa argued that the Kahuzi-Biega forest is uniquely integral to their religious beliefs and practices, as this is where their spiritual sites are located. They require access to the forest to conduct and maintain their religious practices. Therefore, by evicting them and denying them access to the forest and their lands, the DRC government has violated their right to freedom of religion under Article 8 of the African Charter. In response, the Commission pointed to the *African Commission on Human and Peoples' Rights v. Republic of Kenya* (the Ogiek case), wherein the African Court remarked that for indigenous societies, freedom of religion is dependent on access to land. It noted that the Batwa are banned from entering the forest by the local authorities under the pretext that their presence threatens the ecosystem, although they have never hunted gorillas nor cut down trees in the forest, as stated by a report from the Working Group on Indigenous Populations/Communities. It found that the DRC violated Article 8, recognizing that Batwa are connected to the forest and rely on it for their religious beliefs and practices, and that their eviction and the continued denial of their access to the forest prevents them from enjoying their freedom of religion.

The Batwa further claimed that the Kahuzi-Biega forest is their ancestral home which they have inhabited since time immemorial. As such, their eviction from their lands and their continued exclusion from the forest is a denial of their property rights as an indigenous people in violation of Article 14 of the African Charter. The African Commission reiterated that the right to property is not limited to the right to access land but also encompasses the right to ownership, use and control over land and its resources. It stressed that under international law, indigenous peoples have customary property rights over their ancestral lands even in the absence of a title deed. Moreover, the African Commission noted that its Working Group on Indigenous Populations/Communities recognizes that there is a need to ensure the protection of the traditions and customs of African indigenous communities whose land tenure rights are threatened. The African Commission therefore found that Batwa were dispossessed of their land in the absence of the conditions prescribed by law to justify its expropriation, such as public utility, as there was no evidence that Batwa threatened the forest's environment.

Another claimed violation concerns the inability the community to access their supply of food and medicinal plants located in the Kahuzi-Biega forest. According to the complainants, the failure of the DRC government to ensure that Batwa have non-discriminatory access to healthcare, public health information, food, clean water, sanitation and adequate shelter resulted in severe health consequences for community members, thereby constituting a violation of their right to health under Article 16. The African Commission upheld these arguments based on the evidence provided, recognizing that Batwa were evicted from the Kahuzi-Biega forest, the only source of the traditional medicinal plants used in their health practices. The fact that the authorities forced them to live without access to any health facility amounts to a violation of Article 16.

The Batwa also argued that their forceful eviction denied them access to general and traditional education, in violation of Article 17(1). The denial of access to the Kahuzi-Biega forest, central to their culture as a hunter-gatherer community, deprives them from exercising their cultural practices and rights, in violation of Articles 17(2) and (3). The African Commission recognized that education is a primary way for economically and socially marginalized people to lift themselves out of poverty and is also a way for them to know and claim their rights. It stated that for indigenous peoples this right also extends to the right to practise and pass on their traditional and ancestral knowledge. Relying on the testimonies offered in the present case, the African Commission concluded that the Batwa's eviction inhibited them from passing down their traditional knowledge, as it is inextricably linked with their life in the forest. The DRC therefore infringed their right to education under Article 17(1).

In relation to the allegations under Articles 17(2) and 17(3), the African Commission stressed that the concept of culture must be understood within the context of indigenous communities. Highlighting the definitions of culture adopted by different international and regional bodies and confirmed by the African Court in the Ogiek case, the African Commission stated that culture should be understood in its widest sense, encompassing the total way of life of a particular group. The African Commission noted that for indigenous peoples who are often persecuted, discriminated against and forcibly assimilated into other ethnic groups, the preservation of their culture is of vital importance. By evicting the Batwa, the government failed to protect their traditional values, as the performance of their rituals and their ability to teach younger generations about their culture hinge on their access to the forest. The Commission therefore found that the DRC violated Article 17(2) and Article 17(3).

With their exclusion from the forest, the Batwa maintained that they were denied access to their natural resources on their traditional lands. They claimed that as an indigenous people they have the right to free enjoyment of those resources; instead, the government gave access to private actors to appropriate those resources without consultation with the community, in violation of Article 21(2). The African Commission concurred with the Batwa's arguments and recalled the African Court's and its own jurisprudence on the interpretation of Article 21, noting that although this provision originated from the need to address the colonial legacy of the continent and to protect African peoples from the exploitation of natural resources by a colonizer, it should now, in the postcolonial context, apply to the exploitation of natural resources rightfully belonging to one ethnic community, by another ethnic community, or by the state itself. The positive obligation of states to protect these communities' rights is particularly relevant when the establishment of natural parks negatively affects the population living on that land. In these cases, the state should prove that the affected population threatens the protection of the natural environment. In this case, the African Commission found that the DRC had failed to prove that the establishment of the PNKB was not detrimental to Batwa who, as a result, were denied access to their ancestral lands and resources. Furthermore, the Commission noted that the DRC has exploited or allowed other parties to exploit those resources without compensating or consulting the Batwa community, and has failed to protect the natural environment within the PNKB. Consequently, the Commission found that the DRC has violated Articles 21(1) and 21(2) of the African Charter.

The Batwa claimed that the DRC failed to consult with them about their social, cultural and economic life within the forest or about the conservation of their ancestral lands. Moreover, they argued that the DRC has also failed to ensure that Batwa have access to settlements that are

beneficial to their development and has not compensated them following their eviction. Based on international legal standards, the African Commission concurred with the Batwa's arguments and found that the DRC has violated their right to economic, social and cultural development under Article 22.

Lastly, the Batwa argued that the DRC's conduct in removing them from the Kahuzi-Biega forest violated their right to a general satisfactory environment favorable to their development as enshrined under Article 24 of the African Charter. Moreover, according to the complainants, the DRC failed to prevent the ecological degradation of the forest, further violating Article 24. The African Commission found that the DRC, in the implementation of its activities, failed to consider the specific circumstances of the indigenous Batwa, contributing as a result to the creation of an unfavorable environment for their fulfilment as human beings.

The African Commission also reiterated that a violation of any provision of the African Charter constitutes a violation of Article 1. Because the African Commission found that Articles 2, 4, 8, 14, 16, 17, 21(1 and 2), 22, and 24 have been violated, the DRC has, therefore, also violated Article 1.

The African Commission's Decision

Having ruled on the violations of the African Charter perpetrated by the DRC against the indigenous Batwa people as described above, the Commission proceeded to analyse the claims for remedies for the breaches it had found. It noted that although the African Charter does not enshrine a specific provision on reparations, its jurisprudence has established that violations of rights protected by the Charter give rise to a right to receive reparations. Reparations can be granted in various forms, depending on the rights violated, and can include administrative, legislative and judicial action, as well as monetary compensation.

Restitution of Batwa ancestral lands

The Batwa requested the restitution of their ancestral lands through different measures, in accordance with Article 21(2) of the African Charter, recognizing that dispossessed people have a legal right to the recovery of their property and adequate compensation. Having found the DRC responsible for the violations of Article 21, as illustrated above, the African Commission found the request to be justified. It urged the DRC, in consultation with the Batwa community, to:

- enact domestic legislation and any other measures necessary to delimit, demarcate and title Batwa ancestral lands, while refraining from taking any action that could be detrimental to said lands, or to the land they currently occupy;
- consider the ratification of the International Labour Organization's Convention on Indigenous and Tribal Peoples, No. 169;
- annul all laws prohibiting Batwa from access to their lands; and
- withdraw non-Batwa people from Batwa ancestral lands.

Compensation for harm done to Batwa

The African Commission held that the Batwa's claims for compensation were justified and appropriate. More specifically, the African Commission highlighted the difficulties involved in calculating compensation for the losses suffered by Batwa, and, therefore, requested:

- the creation of an independent panel of experts, to be appointed by the DRC National Human Rights Commission, to determine the appropriate amount of compensation to be awarded to the Batwa of Kahuzi-Biega;
- the filing of a domestic case concerning the assessment of damages reflecting the loss of life, property, hindrance to development and destruction of natural resources suffered by the Batwa of Kahuzi-Biega;
- the DRC to create a community development fund to develop projects to address the needs of Batwa related to health, education, housing, water, sanitation and other services, and to ensure regular dialogue with the community on the provision thereof;
- the DRC to pay the royalties deriving from the economic activities in the PNKB to the Batwa community;
- that Batwa are provided with employment opportunities within the park; and
- that the DRC actively protects and promotes Batwa traditional values as part of Congolese culture.

Other remedies granted

The African Commission also called for:

- the issuance of a full public apology by the DRC, acknowledging its responsibility for the human rights violations inflicted to the Batwa of Kahuzi-Biega, as a guarantee of non-repetition;
- the recognition of Batwa as full citizens of the DRC, and of their social, cultural and other contribution to the heritage of humanity;
- the provision of training in human rights and indigenous peoples' rights to ICCN administrators and PNKB rangers, with the involvement of the Batwa community; and
- the publication of a summary of its decision in an official journal and a newspaper of national coverage, as

well as the full decision on an official website for a period of one year, within six months of the decision being communicated to the government of the DRC.

The failure of fortress conservation in the PNKB

The African Commission's clear stance against 'fortress conservation models based on the forceful exclusion of indigenous peoples from their ancestral lands without their free and prior consent', and its declaration of such models to be 'ineffective', are the first of their kind in regional and international case law.[5] More specifically, the African Commission stated that 'the conservation model used in the Kahuzi-Biega National Park has failed, by excluding the Batwa as custodians of the forest.'[6] It also declared that the impact of conservation on indigenous peoples 'must be carefully analyzed and remedied'[7] and, in a ruling unprecedented on the African continent, found violations of the rights to health, education and environment in relation to conservation practices.

Fortress conservation is the dominant model of nature conservation worldwide, dating back to the colonial era. It assumes that in order to preserve ecosystems, their original human inhabitants must be removed, hence the creation of protected areas such as national parks, game reserves and other wildlife sanctuaries, where nature is conceived of as pristine and where human presence and activity are forbidden or strongly limited. The fortress conservation model is characterized by four key assumptions: (1) protected areas should be created and governed by states; (2) the goal of protected areas should be strict nature preservation; (3) effective protected area management requires them to be void of human habitation and use, particularly of indigenous peoples and local communities, who are seen as environmental threats; and (4) force (including lethal force) is justified to exclude these threats and protect biodiversity.[8]

As a consequence, indigenous peoples, like the Batwa of Kahuzi-Biega, and other marginalized communities who have lived in these territories since time immemorial, have been perceived as obstacles to achieving biodiversity conservation goals and have therefore been removed from their ancestral lands by national governments under pressure from international conservation organizations. In other words, those recognized as the best guardians of the natural world[9] have been removed from the lands they have considered sacred and preserved since time immemorial. This practice has resulted in violent conflict and grievous violations of human rights, as recognized by the African Commission in this decision, and in many other cases in Africa[10] and beyond.[11]

Over decades, indigenous activists, human rights practitioners and other experts have demonstrated that fortress conservation projects are detrimental not only to human rights, but also to the very land and biodiversity they purport to protect.[12] Scientific evidence suggests that biodiversity trends continue to deteriorate despite the expansion of protected areas worldwide.[13] These conclusions have been crystalized in the findings of the African Commission, setting a precedent for the development of human and indigenous peoples' rights standards in Africa and across our planet.

Notes

1 See Robert Flummerfelt, *To Purge the Forest by Force,* (https://minorityrights.org/resources/to-purge-the-forest-by-force-organized-violence-against-batwa-in-kahuzi-biega-national-park/)MRG, London, 2022, an investigation into human rights violations against Batwa in DRC's Kahuzi-Biega National Park; and, Colin Luoma *Fortress Conservation and International Accountability for Human Rights Violations against Batwa in Kahuzi-Biega National Park,* (https://minorityrights.org/resources/fortress-conservation-and-international-accountability-for-human-rights-violations-against-batwa-in-kahuzi-biega-national-park/) MRG, London, 2022, an analysis of the respective roles and accountability of the PNKB's core international partners.

2 Ordinance-Laws of the DRC (No. 70-316 of 30 November 1970 and No. 75-238 of 22 July 1975.

3 For the Decision, see the African Commission on Human and Peoples' Rights, 'Communication 588/15 Minority Rights Group International and Environnement Ressources Naturelles et Developpement (on behalf of the Batwa of Kahuzi-Biega Nationa Park, DRC) v. Democratic Republic of Congo (DRC)'.

4 For the Corrigendum, see the African Commission, 'Communication 588/15 CORRIGENDUM'.

5 See para. 230 of the decision read in conjunction with the corrigendum.

6 Ibid.

7 Ibid.

8 Luoma, p. 15.

9 See e.g., Claudia Sobrevila, 'The role of indigenous peoples in biodiversity conservation : the natural but often forgotten partners', World Bank Group, 2008.

10 See, the African Commission, 'Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 276/2003' (Endorois case), and 'African Commission on Human and Peoples' Rights v. Republic of Kenya, Judgment, Application No. 006/212' (Ogiek case).

11 See, e.g. Inter-American Court of Human Rights, 'Case of The Kaliña And Lokono Peoples v. Suriname', Judgment of November 25, 2015.

12 See, e.g. UN Special Rapporteur on Human Rights and the Environment, David R. Boyd and Stephanie Keene, 'Policy Brief No. 1 Human rights-based approaches to conserving biodiversity: equitable, effective and imperative', August 2021.

13 See, e.g. Jonas Hein, Marcelo Inacio Da Cunha and Jean Carlo Rodriguez de Francisco, 'Why protected areas alone are not enough to prevent the loss of biodiversity', German Institute of Development and Sustainability (IDOS), 2024.

working to secure the rights of minorities and indigenous peoples

Minority Rights Group

Justice served: The Batwa of Kahuzi-Biega and the failure of fortress conservation

The indigenous Batwa of Kahuzi-Biega are widely recognized as some of the original inhabitants of the Democratic Republic of Congo (DRC). For millennia, they lived in harmony with the biodiversity-rich forest surrounding Mounts Kahuzi and Biega. The forest provided everything they needed, and they considered themselves integral to it.

In the 1970s, everything changed when the DRC government created a national park, the *Parc National de Kahuzi-Biega* (PNKB), on Batwa lands. Violently expelled from their ancestral home, the Batwa were forced into decades of grinding impoverishment, severe discrimination, landlessness and skyrocketing mortality in informal settlements on the outskirts of the park. Those who attempted to return in 2018 were met with a three-year campaign of organized violence resulting in death, rape and forced displacement.

The story of the Batwa of Kahuzi-Biega is an archetypical example of the 'fortress conservation' model – nature conservation premised on the false assumption that effective conservation necessitates land rendered devoid (by force if necessary) of human habitation and use. The evidence that protected areas or national parks are an effective method of biodiversity conservation is weak, whereas the fact that they have led to the displacement of millions, widespread dispossession, evictions, hunger, ill health and human rights violations, including killings, rapes and torture across Africa and Asia is well documented.

Governments, development agencies and international conservation organizations are fortress conservation's major drivers. Instead of recognizing the vital role of indigenous knowledge and practices in sustainable land stewardship, they uphold a violent, anti-indigenous and neocolonial status quo. In a landmark 2024 ruling, the African Commission on Human and Peoples' Rights held that the DRC government had violated the Batwa's land and other rights in creating the PNKB, that the fortress conservation model is ineffective for conserving biodiversity and that indigenous peoples are the best guardians of nature.

The Commission's decision is therefore certainly historic for the Batwa of Kahuzi-Biega, who had for years awaited justice and reparations for the crimes perpetrated against them, but it is also a milestone for indigenous peoples' rights across Africa and beyond. It sets historic and vital legal precedents that will help indigenous peoples seeking redress for the harms of fortress conservation and sends an essential message that indigenous knowledge and practices are key in fighting the climate crisis. *Justice served: The Batwa of Kahuzi-Biega and the failure of fortress conservation* provides a useful summary of the Commission's decision and describes the background to the legal case.

Minority Rights Group International 54 Commercial Street, London E1 6LT, United Kingdom
Tel +44 (0)20 7422 4200 **Fax** +44 (0)20 7422 4201 **Email** minority.rights@mrgmail.org
Website www.minorityrights.org

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