

Human Rights Denied

Forced Evictions and Housing Injustice in the Democratic Republic of Congo

Francesco Seatzu*

Abstract

The Democratic Republic of Congo (DRC) grapples with a pervasive and alarming phenomenon of forced evictions orchestrated by multinational corporations operating within its cobalt and copper mining sites. The investigative report by Amnesty International and the DRC-based Initiative for Good Governance and Human Rights documents a troubling pattern of systematic disregard for the fundamental rights and dignity of affected populations, compounded by a stark failure on the part of mining operators to adhere to extant national legislation designed to mitigate the deleterious impacts of forced evictions attendant to mining pursuits. This article endeavors to contribute to the ongoing discourse surrounding human rights violations within the DRC by analyzing the complex international legal doctrines implicated by the egregious human rights violations arising from the implementation of mass forced eviction in the Kolwezi region of the DRC. Of particular concern is the infringement upon the human right to adequate alternative housing, a fundamental tenet enshrined within international human rights framework. In light of the humanitarian crisis precipitated by the forced evictions realized in the region of Kolwezi, it is evident that direct and concerted international intervention is indispensable to uphold the rule of law, safeguard human rights, and facilitate the sustainable recovery and rehabilitation of affected communities within the DRC. This article thus concludes by proffering pragmatic recommendations for the implementation of sustainable recovery programs and the establishment of judicial mechanisms to afford redress for the grievous human rights abuses perpetrated against vulnerable populations within the DRC's mining regions.

Keywords: forced evictions, adequate housing, Democratic Republic of Congo, mining, health

1. Introduction	284
2. The Contextual Backdrop of the Mass Forced Evictions in the Kolwezi Mining Region	286
2.1. Human Rights Violations and Abuses in the Kolwezi Mining Region	287
2.2. The International Response	289
2.3. The International Community's Justification for the Forced Mass Evictions in the Democratic Republic of Congo	290
3. Treaty-Based Safeguards for Property Rights, Housing, and Prevention of Forced Evictions	291
3.1. The Universal Declaration of Human Rights (UDHR)	293
3.2. The International Covenant on Economic, Social and Cultural Rights (ICESCR)	295
3.3. The International Covenant on Civil and Political Rights (ICCPR)	296
3.4. The African Charter on Human and Peoples' Rights	298
4. Domestic Enforceability of International Treaty Duties and Obligations	299
5. Rationale Behind International Intervention	301
6. Concluding Remarks and Practical Recommendations	303

* Francesco Seatzu: professor of law, University of Cagliari, fseatzu@unica.it.

1. Introduction

The practice of forced evictions, coupled with threats, intimidation, and deceptive tactics, has emerged as a recurring concern attributable to multinational corporations operating within cobalt and copper mining sites in the Democratic Republic of Congo (DRC),¹ as delineated in a recent inquiry conducted by Amnesty International. Entitled ‘Fuelling Change or the Status Quo?’, this report, jointly authored with the DRC-based Initiative for Good Governance and Human Rights, scrutinizes the human rights ramifications of four prominent development projects situated in the Kolwezi mining region in the southeastern precincts of the nation: namely, Kolwezi Copper and Cobalt Mine, Mutoshi Mine, Metalkol RTR, and Kamoa-Kakula Mine.²

Secretary General Agnès Callamard of Amnesty International underscores the imperative cessation of these evictions, frequently orchestrated to facilitate the expansion of industrial mining endeavors, due to their catastrophic implications for affected populations.³ Instead of benefiting from the developmental dividends of the burgeoning mining sector, communities domiciled within the Kolwezi vicinity are forcibly displaced from their residential abodes and agricultural land holdings to accommodate the exigencies of largescale mining undertakings.⁴ The report documents a discernible pattern of disregard evinced by mining operators toward the rights of affected populations, evincing scant regard for extant national legislation designed to mitigate forced evictions attendant to mining pursuits. Entire settlements, such as Mukumbi, have been razed to the ground, thereby precipitating a state of despondency and uncertainty amongst inhabitants like Kanini Maska and Papy Mpanga, who have shared their poignant narratives with Amnesty International.⁵

1 For more information, see at www.africanews.com/2023/09/12/cobalt-copper-mining-leading-to-forced-evictions-in-dr-congo-amnesty-international/.

2 References to the report can be found at <https://maniamedia.co.ug/2023/09/13/cobalt-copper-mining-leading-to-forced-evictions-in-dr-congo-amnesty-international/>.

3 For further references, see at www.amnesty.ie/congo-cobalt-copper/.

4 *Id.*

5 See also Amnesty International, *Democratic Republic of the Congo: Industrial Mining of Cobalt and Copper for Rechargeable Batteries Is Leading to Grievous Human Rights Abuses*, at www.amnesty.ie/congo-cobalt-copper/. (Amnesty International Report No1).

Given the DRC's preeminence as the principal supplier of cobalt, an elemental constituent in rechargeable batteries pivotal to the electronics and electric vehicle industries, its role in the global energy transition cannot be overstated.⁶ While Amnesty International acknowledges the imperative of decarbonizing the economy, it cautions against perpetuating human rights violations in the process.⁷

The quest for expansion by mining entities, particularly in Kolwezi, has precipitated the involuntary displacement of thousands of individuals, thereby imperiling their entitlements to shelter, education, healthcare, and communal coexistence.⁸ Against the backdrop of global endeavors aimed at curbing carbon emissions and embracing renewable energy sources, it is imperative to ensure that this transition is executed consonant with human rights principles and affords protection to vulnerable communities.⁹

The historical specter of colonial exploitation and the contemporary predilection for profit maximization underscore the urgency of adopting a human rights-based approach to the energy transition in the DRC.¹⁰ President Tshisekedi's vision of positioning the country as a 'climate solution country' presents a unique opportunity to champion climate justice and underscore the intrinsic linkage between human rights and a fair and sustainable energy transition.¹¹

This article contributes further to the discourse on human rights violations within the Democratic Republic of Congo by analyzing the international and domestic legal doctrines implicated in the human rights violations arising from mass evictions in Kolwezi, particularly focusing on the right to adequate alternative housing. It argues that international intervention is imperative to uphold the rule of law and assist the DRC in its recovery. The subsequent sections outline the rationale behind the mass evictions in

6 See Georgina Higgs, *DRC: The Endurance of Child Labour in Artisanal Cobalt Mining*, at <https://csapiemonte.it/sites/default/files/The%20Endurance%20of%20Child%20Labour%20in%20Artisanal%20Cobalt%20Mining.pdf>.

7 See at www.africanews.com/2023/09/12/cobalt-copper-mining-leading-to-forced-evictions-in-dr-congo-amnesty-international/.

8 See Amnesty International, "This Is What We Die For." *Human Rights Abuses in the Democratic Republic of the Congo Power the Global Trade in Cobalt*, www.amnesty.org/en/wp-content/uploads/2021/05/AFR6231832016ENGLISH.pdf. (Amnesty International Report No2).

9 Id.

10 For further references to this issue, see at <https://drcprecop27.medd.gouv.cd/en/yangambi.php>.

11 Id.

Kolwezi, the humanitarian consequences of the demolitions, and explore legal frameworks at both international and domestic levels. Finally, the article assesses whether the human rights abuses resulting from the mass evictions in Kolwezi warrant direct international intervention, concluding with recommendations for sustainable recovery programs and judicial recourse for affected individuals and communities.

2. The Contextual Backdrop of the Mass Forced Evictions in the Kolwezi Mining Region

The contextual backdrop of the mass forced evictions in Kolwezi sets the stage for understanding the gravity and implications of these actions. In the southeastern reaches of the DRC, the Kolwezi mining region has emerged as a locus of contention consequent to the resurgence of extensive copper and cobalt extraction activities since 2015.¹² Spearheaded by Compagnie Minière de Musonoie Global SAS (COMMUS), a collaborative venture between China's Zijin Mining Group Ltd and the DRC's state mining enterprise, Générale des Carrières et des Mines SA (Gécamines), this enterprise has precipitated profound sociopolitical and humanitarian ramifications within the environs of Cité Gécamines.¹³ This residential enclave, home to an estimated 39,000 inhabitants, has long been characterized by multi-room dwellings equipped with essential utilities, alongside educational and medical infrastructures.¹⁴

However, the resumption of mining operations has engendered a wave of involuntary displacements, with residents caught unawares until the conspicuous placement of red crosses on their abodes signified impending demolitions.¹⁵ Inadequate compensation packages proffered by COMMUS have forced residents into substandard living conditions, bereft of funda-

12 See Amnesty International, *DRC: Powering Change or Business as Usual?*, at www.amnesty.org/en/latest/news/2023/09/drc-cobalt-and-copper-mining-for-business-leading-to-human-rights-abuses/. (Amnesty International Report No3).

13 Congo communities forcibly uprooted to make way for mines critical to EV's, Amnesty report says, at <https://energy.economictimes.indiatimes.com/news/power/congo-communities-forcibly-uprooted-to-make-way-for-mines-critical-to-evs-a-mnesty-report-says/103626131> (Energyworld.com).

14 See e.g. Amnesty International Report No2.

15 Id.

mental amenities¹⁶ Meanwhile, proximate to the Mutoshi project overseen by Chemicals of Africa SA (Chemaf), the conflagration of Mukumbi settlement by military personnel has underscored the stark realities of dispossession and marginalization faced by local communities.¹⁷

Accounts of Kanini Maska and others depict the devastation wrought upon their homes and livelihoods, epitomizing the egregious human rights violations inherent in the pursuit of economic expansion.¹⁸ Similarly, the Metalkol Roan Tailings Reclamation (RTR) project, managed by a subsidiary of Eurasian Resources Group (ERG), has become ensnared in controversy following the coerced displacement of agrarian populations from their ancestral lands.¹⁹

Despite persistent protests and advocacy endeavors, redress remains elusive, with corporate entities absolving themselves of culpability for the plight endured by affected communities.²⁰ Thus, the Kolwezi mining region stands as a microcosm of the deleterious nexus between industrialization and human suffering, underscoring the imperative for prompt international intervention to redress the systemic human rights transgressions that pervade this domain.²¹

2.1. Human Rights Violations and Abuses in the Kolwezi Mining Region

The expansion of mining activities in the Kolwezi region has precipitated a myriad of human rights abuses, profoundly affecting the socio-economic fabric and well-being of local communities.²² Vulnerable populations, alrea-

16 See Amnesy International Report No3.

17 Id.

18 Id.

19 For futher informations on this project, see at [https://miningdataonline.com/project/587/Metalkol-Roan-Tailings-Reclamation-\(RTR\)-Mine.aspx](https://miningdataonline.com/project/587/Metalkol-Roan-Tailings-Reclamation-(RTR)-Mine.aspx).

20 Al Jazeera, *Mining of cobalt, copper in DRC leading to human rights abuses: Report*, at www.aljazeera.com/news/2023/9/12/mining-of-cobalt-copper-in-drc-leading-to-human-rights-abuses-report.

21 See Timothy Mwangeka Makori, *Artisanal Mines, Governance and Historical Generations in the Congo Copperbelt*, Ph.D. thesis, University of Toronto, 2019, at https://tspace.library.utoronto.ca/bitstream/1807/95913/3/Makori_Timothy_M_201906_PhD_thesis.pdf.

22 See Allie Constantine & Ismail Wolff, *The Dark Side of Technology: Coltan Mining in the DRC and its Human Rights and Environmental Impacts*, at <https://globalforestcoalition.org/the-dark-side-of-technology-coltan-mining-in-the-drc-and-its-human-rights-and-environmental-impacts/>.

dy grappling with poverty, have borne the brunt of these abuses, exacerbating their precarious circumstances. Displaced from their homes and ancestral lands without adequate compensation or alternative accommodations, residents have been thrust into destitution and homelessness.²³ Moreover, the disruption of livelihoods has perpetuated cycles of poverty, leaving families without means of sustenance or access to essential services.

The forced displacement has also disrupted access to education for school-aged children, further entrenching intergenerational cycles of deprivation. Families uprooted from their communities face significant barriers to accessing education, as children are forced to abandon their schools and communities, disrupting their academic progress and future prospects.²⁴ The loss of stable housing and social support networks further compounds the challenges faced by displaced families, exacerbating their vulnerability and marginalization.

Additionally, the elderly, stripped of their homes and support networks, have been left vulnerable and marginalized, compounding the humanitarian crisis unfolding in the region. For many elderly individuals, displacement has resulted in social isolation and diminished access to essential services, exacerbating existing health concerns and diminishing their quality of life.²⁵ Without adequate support or resources, elderly residents are left to navigate the challenges of displacement alone, further exacerbating their vulnerability and marginalization.

The systemic nature of these human rights abuses underscores the urgent need for intervention to address the root causes of displacement and ensure the protection of affected communities. Governments, mining companies, and international stakeholders must prioritize the rights and well-being of displaced populations, ensuring access to adequate housing, education, and social support services.²⁶ Additionally, robust mechanisms for accountability and redress must be established to hold perpetrators of human rights abuses accountable and provide justice for affected communities. Only through concerted action and collaboration can the human rights and dignity of displaced populations in the Kolwezi mining region be safeguarded and upheld.

23 See also Paul D. Ocheje, 'In the Public Interest: Forced Evictions, Land Rights and Human Development in Africa', *Journal of African Law*, Vol. 51, Issue 2, 2007, pp. 173–214.

24 See Energyworld.com.

25 See Amnesty International Report No2.

26 Id.

2.2. The International Response

Despite the egregious human rights violations and mass forced evictions perpetrated by multinational mining corporations operating in the DRC, the response from international actors and accountability mechanisms has been limited. The only exception to this was the action brought in April 2012 by a consortium of human rights organizations, including *Action contre l'impunité pour les droits humains* (ACIDH) and *La Fédération internationale des ligues des droits de l'homme* (FIDH), that filed a formal complaint with the Belgian National Contact Point (NCP) against the Forrest Group, a conglomerate engaged in mining activities within the DRC.²⁷ This complaint alleged multiple breaches of the OECD Guidelines on the Production of Forest Reproductive Materials²⁸ by the Forrest Group and its subsidiaries, specifically concerning their complicity in forced evictions and their failure to prevent demolitions in the Kolwezi mining region.²⁹

Despite the initiation of mediation procedures by the Belgian NCP, a conclusive determination regarding corporate responsibility was impeded by a paucity of verifiable evidence, ultimately resulting in the divestiture of the Forrest Group's interests in the affected mining ventures. Following the impasse, the NCP suggested that the Forrest Group engage in philanthropic initiatives as a means of restitution, but this proposal faced significant opposition from the victims, who deemed such measures insufficient to redress the profound socio-economic and humanitarian consequences of the forced evictions.

Additionally, diplomatic inquiries conducted by the Belgian Consul-General in 2012, aimed at elucidating the circumstances surrounding the evictions, yielded inconclusive findings, underscoring the formidable challenges inherent in ensuring accountability and regulatory oversight over corporate conduct in transnational operations. Despite these efforts, the complexity of corporate structures and the lack of cooperation from the implicated companies hindered the ability to fully uncover the extent of their involvement in the human rights abuses.

²⁷ *II.II.II et al. vs. George Forrest International SA*, 24 November 2004, at www.oecdwatch.org/complaint/II-II-II-et-al-vs-george-forrest-international-sa/.

²⁸ The guidelines are available at www.oecd.org/agriculture/forest/documents/oecd-guidelines-on-the-production-of-forest-reproductive-materials.pdf.

²⁹ *Id.*

2.3. The International Community's Justification for the Forced Mass Evictions in the Democratic Republic of Congo

The global community is increasingly cognizant of the prevalent issue of modern slavery within the DRC. Multinational corporations such as Apple, BMW, Google, Samsung, Volkswagen, and Tesla, which heavily rely on cobalt for their production processes, have purportedly initiated various initiatives to ameliorate the conditions within cobalt mining operations.³⁰ Despite their claims, these initiatives have come under scrutiny for their inadequacy in addressing the systemic issues underlying the exploitation and human rights violations within the cobalt mining industry.

One of the prominent initiatives purportedly aimed at improving conditions is the Cobalt for Development program.³¹ This initiative ostensibly seeks to enhance safety standards by providing training to mine operators and workers.³² However, the effectiveness of such programs remains questionable, particularly in the context of artisanal cobalt production, which predominantly involves small-scale miners operating under precarious conditions.³³ Similarly, the Fair Cobalt Alliance has been established with the purported goal of promoting fair labor practices and improving working conditions in cobalt mines.³⁴ Despite these efforts, the reality on the ground paints a starkly different picture, with reports indicating little to no improvement in the lives of those engaged in cobalt mining activities.³⁵

Critics argue that these initiatives serve more as a facade to appease public scrutiny rather than effecting substantial change.³⁶ Much like the government's justifications for forced evictions in Congo, these initiatives are viewed as mere token gestures aimed at deflecting attention from the

30 Victoria Audu, 'The Back End of Genocide: How the Rush for Congo's Cobalt is Killing Thousands', *The Republic*, 23 November 2023.

31 Further informations on this issue is available at <https://cobalt4development.com/>.

32 Id.

33 See e.g. Daniel Krummel & Patrick Siegfried, 'The Dark Side of Samsung's Value Chain: The Human Costs of Cobalt Mining "BLOOD, SWEAT AND COBALT"', *Journal of Geoscience and Environment Protection*, Vol. 9, Issue 2, 2021, pp. 182–203.

34 Informations on the programme is available at www.faircobaltalliance.org/.

35 See Hadassah Arian, *The Contradictions of a Clean Cobalt Commitment: An assemblage analysis of how the label of responsible cobalt sourcing enables actors to govern the local realities of the artisanal cobalt miners in the Democratic Republic of Congo*, at: <https://studenttheses.uu.nl/bitstream/handle/20.500.12932/71/Hadassah%20Arian%20Thesis%20Contradictions%20of%20a%20Clean%20Cobalt%20Commitment%20July%202021.pdf?sequence=1&isAllowed=y>.

36 Id.

pervasive human rights abuses and exploitation prevalent in the cobalt mining industry.

Furthermore, the persistent prioritization of profit over the well-being of workers and local communities by these corporations has drawn condemnation from the international community, humanitarian organizations, and human rights advocates.³⁷ Despite mounting pressure, tangible improvements in working conditions have been minimal, reinforcing the perception that these initiatives are primarily aimed at placating shareholders and maintaining the *status quo*.

3. Treaty-Based Safeguards for Property Rights, Housing, and Prevention of Forced Evictions

The delineation and safeguarding of the right to private property, housing, and the proscription of forced evictions have long been focal points within the realm of human rights jurisprudence.³⁸ Traditionally, property rights have been perceived as serving the interests of privileged segments of society.³⁹ However, the recognition of the human right to adequate housing and the prevention of involuntary displacements have gained near-universal acceptance as essential for the protection of vulnerable populations.⁴⁰

Far from being surprising, this is the case, given that the realization of the human right to housing is of utmost relevance for the enjoyment of all fundamental rights, including socio-economic rights.⁴¹ Moreover,

37 *Id.*

38 See e.g. Sarah Fick & Michel Vols, 'Best Protection Against Eviction? A Comparative Analysis of Protection Against Evictions in the European Convention on Human Rights and the South African Constitution', *European Journal of Comparative Law and Governance*, Vol. 3, Issue 1, 2016, pp. 40–69; Malcolm Langford, 'A Sort of Homecoming: The Right to Housing' in Mark Gibney & Sigrun Skogly (eds.), *Universal Human Rights and Extraterritorial Obligations*, University of Pennsylvania Press, Philadelphia, 2010, pp. 166–193.

39 See recently Erik Olin Wright, 'The Class Analysis of Poverty', *International Journal of Health Services*, Vol. 25, Issue 1, 1995, pp. 85–100; see also Seth W. Norton, 'Poverty, Property Rights, and Human Well-Being: A Cross-National Study', *Cato Journal*, Vol. 18, Issue 2, 1998, p. 233.

40 See e.g. Miloon Kothari *et al.*, *The Human Right to Adequate Housing and Land*, National Human Rights Commission, New Delhi, 2006, at https://hlnr.org.in/documents/the_human_right_to_adequate_housing_and_land.pdf.

41 See Christophe Golay, *The Right to Housing*, Human Rights Programme of the Euro-Third World Centre (CETIM), 2007, pp. 2–60.

housing remains one of the most essential human needs, yet millions of disadvantaged people around the world do not possess adequate housing.⁴² However, achieving a universally accepted interpretation of this right has proven challenging, especially given the need to reconcile property rights with the progressive mandates outlined in UN human rights treaties.⁴³ Consequently, the precise duties and obligations incumbent upon states in this context have often remained nebulous.⁴⁴

To address this uncertainty, oversight committees governing prominent UN conventions have endeavored to provide elucidation by promulgating specific interpretations, guidelines, and procedural safeguards.⁴⁵ These resolutions delineate the procedural prerequisites that state parties must adhere to before undertaking coercive evictions. Furthermore, both domestic and international case-law play pivotal roles in clarifying the guarantees enshrined in the right to adequate housing and protection against forced evictions, as delineated in major UN and regional African human rights instruments.⁴⁶

Notably, the Democratic Republic of Congo, as a signatory to pertinent international conventions, is bound by treaty obligations that recognize the right to adequate housing and safeguard against forced evictions.⁴⁷ These

42 See e.g. Miloon Kothari, 'Priority Issues and Impediments to Realizing the Right to Adequate Housing' in Berma Goldewijk et al. (eds.), *Dignity and Human Rights: The Implementation of Economic, Social, and Cultural Rights*, Brill, Leiden, 2002, p. 63.

43 See also Idowu Ajibade & Damilola S. Olawuyi, 'Climate change impacts on housing and property rights in Nigeria and Panama. Toward a rights-based approach to adaptation and mitigation', in Dominic Stcker & Elena Lopez-Gunn (eds.), *Adaptation to Climate Change through Water Resources Management Capacity, Equity and Sustainability*, Routledge, London, 2014.

44 See Kaara Martinez, 'In The Face of Financialization: Cities and the Human Right to Adequate Housing', *The Italian Yearbook of International Law*, Vol. 30, Issue 1, 2021, pp. 107–130.

45 For further references on this issue, see Bret Thiele, 'The Human Right to Adequate Housing: A Tool for Promoting and Protecting Individual and Community Health', *American Journal of Public Health*, Vol. 92, Issue 5, 2002, pp. 712–715; United Nations Centre for Human Rights, *Human right to adequate housing*, Geneva – New York, 1993.

46 See Scott Leckie, *From housing needs to housing rights: an analysis of the right to adequate housing under international human rights law*, The International Institute for Environment and Development, London, 1992.

47 Democratic Republic of the Congo has ratified the following UN human rights treaties: ICCPR, ICESCR, CAT, CEDAW, CRC, CERD, CRPD.

conventions encompass the UDHR,⁴⁸ the ICESCR,⁴⁹ the African Charter on Human and Peoples' Rights,⁵⁰ and the ICCPR,⁵¹ which mandate the prevention of arbitrary interference with individuals' homes and ensure the preservation of freedom of movement.

3.1. The Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights (UDHR), a landmark document adopted by the UN General Assembly in 1948, stands as a cornerstone in the evolution of human rights law globally.⁵² Its significance lies not only in its symbolic value but also in its profound impact on shaping the framework of international human rights norms.⁵³ While the Declaration itself does not possess legally binding force, its principles and standards have gained widespread acceptance and recognition as customary international law, serving as a guiding beacon for nations worldwide.⁵⁴

Central to the Declaration is Article 17, which articulates the fundamental right to property. This provision asserts that every individual, regardless of nationality, ethnicity, or social status, holds the inherent right to own property.⁵⁵ Whether held individually or collectively with others, this right is deemed inviolable and sacrosanct. Importantly, Article 17 explicitly pro-

48 UNDH, adopted and proclaimed by the United Nations General Assembly by resolution 217A (III) on 10 December 1948.

49 ICESCR, GA Res 2200A (XXI), 21 UNTS 3, entered into force January 3, 1976.

50 Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ('Banjul Charter'), CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), 27 June 1981. The Democratic Republic of Congo signed the African Charter on Human and Peoples' Rights (African Charter) on 28 December 1988.

51 ICCPR, GA Res 2200A (XXI), 21 UNTS 171, entered into force March 23, 1976.

52 See e.g. P.R. Gandhi, 'The Universal Declaration of Human Rights at Fifty Years: Its Origins, Significance and Impact', *German Yearbook of International Law*, Vol. 41, 1998, pp. 206–251.

53 See Mashood Baderin & Manisuli Ssenyonjo, 'Development of International Human Rights Law before and after the UDHR' in Manisuli Ssenyonjo (ed.), *International Human Rights Law: Six Decades after the UDHR and Beyond*, Routledge, London 2010, pp. 1–26.

54 See Hurst Hunnum, 'The Status of the Universal Declaration of Human Rights in National and International Law', *Georgia Journal of International and Comparative Law*, Vol. 25, Issue 1, 1996, pp. 287–397.

55 See Carolina Olarte-Bácares, 'Article 17 – The Right to Property' in Humberto Cantu Rivera (ed.), *The Universal Declaration of Human Rights – A Commentary*, Brill, Leiden, 2023, pp. 395–422.

hibits any arbitrary deprivation of property, affirming the principle that property rights are integral to human dignity and autonomy. By enshrining the right to property, the UDHR affirms the foundational role of property ownership in fostering economic security, individual autonomy, and social stability. Moreover, it underscores the responsibility of states to enact laws and policies that safeguard property rights and prevent unjust confiscation or expropriation. In essence, Article 17 serves as a bulwark against arbitrary state action and reinforces the principle of the rule of law in protecting the fundamental rights and freedoms of all individuals.⁵⁶

However, the practical application of Article 17 in the context of the DRC presents intricate challenges. Following the nation's independence, there has been a notable erosion of adherence to national laws, resulting in the emergence of informal settlements and ambiguous property rights regimes.⁵⁷ Consequently, there exists uncertainty regarding the extent to which individuals residing in these informal settlements are afforded protection under the right to property. Furthermore, the notion of 'arbitrary deprivation' of property, as elucidated in Article 17, is characterized by a lack of precise definition within the realm of international law.⁵⁸ Nonetheless, it is construed to encompass situations where individuals are divested of their property without adherence to due process, including adequate notification and the opportunity for meaningful participation.

In the context of the DRC, forced evictions frequently transpire devoid of proper notification or substantive consultation with affected communities.⁵⁹ For instance, eviction notices are often issued retrospectively, post-commencement of demolitions, thus depriving individuals of the chance to challenge the eviction or explore alternative arrangements.⁶⁰ Furthermore, consultations conducted by authorities tend to be cursory, lacking meaningful engagement with affected communities, thereby exacerbating

56 See Elisabeth Wickeri & Anil Kalhan, *Land Rights Issues in International Human Rights Law*, at www.ihrb.org/pdf/Land_Rights_Issues_in_International_HRL.pdf.

57 See Lassana Koné *et al.*, *Land reform and protection of communities' rights*, at www.forestpeoples.org/sites/fpp/files/publication/2017/05/drc-legality-seminar-english-web_0.pdf; see also Valérie Rosoux, 'The Two Faces of Belgium in the Congo', *European Review of International Studies*, Vol. 1, Issue 3, 2014, pp. 16–38.

58 See Theo R. G. van Banning, *The Human Right to Property*, Intersentia, Antwerp, 2022, p. 25.

59 See Carolien Jacobs & Antea Paviotti, *The right to decent housing in a context of urban displacement and fragility*, Leiden University, 2017, at <https://scholarlypublications.universiteitleiden.nl/handle/1887/58552>.

60 *Id.*

the infringement upon property rights.⁶¹ Consequently, these actions unequivocally constitute instances of arbitrary deprivation of property rights, contravening the safeguards enshrined in Article 17 of the UDHR. Hence, there arises an urgent imperative for the implementation of robust legal frameworks and procedural safeguards aimed at ensuring the efficacious protection of property rights in the DRC. Such measures are indispensable for upholding the principles of justice and equity, thereby safeguarding the rights and dignity of all individuals.

3.2. The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The obligation to uphold and safeguard the right to housing is enshrined within the framework of the ICESCR,⁶² to which the DRC is a signatory,⁶³ thereby establishing binding obligations. The right to housing is explicitly articulated in Article 11(1), which states: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food clothing and housing [...].” The supervisory committee, namely the ESCR Committee, in its General Comments Nos. 3⁶⁴ and 9 expound upon the obligations incumbent upon states under the CESCR, mandating each party to utilize: “all means at its disposal to give effect to the rights recognized in the Covenant [...] [including its] legal and administrative systems.”⁶⁵ For instance, a state party failing to provide essential foodstuffs, primary health care, basic shelter, or housing to a significant number of individuals is, *prima facie*, failing to discharge its obligations under the ICESCR.⁶⁶

In the context of the DRC, where state agents are responsible for infringing upon the rights of its citizens, the right to an adequate standard of housing can be construed as a negative duty on the government to ‘respect’ or “abstain from doing anything that violates the integrity of the individual

61 Id.

62 ICESCR, Article 11(1).

63 Listed above, footnote no. 47.

64 UN Economic and Social Council, General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant), E/1991/23, 14 December 1990.

65 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 9: The domestic application of the Covenant, E/C.12/1998/24, 3 December 1998.

66 General Comment No. 3, para. 10.

or infringes on his/her recognized human rights,” or in simpler terms, ‘duties to avoid depriving’.

Article 11(1) has been comprehensively construed and interpreted by the ESCR Committee in its General Comment No. 4.⁶⁷ This Comment outlines the obligations of states to prevent forced evictions, which include ensuring security of tenure, identifying individuals vulnerable to forced evictions, providing domestic legal remedies, and asserting that forced evictions are inconsistent with the Covenant, except in exceptional circumstances.⁶⁸ These exceptional circumstances encompass persistent behavior threatening public health or constituting criminal activity. The government of the DRC often justifies forced evictions under these exceptions.⁶⁹

General Comment No. 7 further delineates the procedures required by a state before carrying out compulsory evictions, including genuine consultation with affected individuals, adequate notice, provision of information on proposed evictions, and the avoidance of rendering individuals homeless or vulnerable to other human rights violations.⁷⁰

However, the evictions in the DRC have not adhered to these procedural requirements. There were no genuine consultations or fair notice provided to evictees, and the evictions took place in adverse weather conditions without alternative accommodations.⁷¹ The government of the DRC disregarded the procedural requirements specified in the General Comments interpreting Article 11(1) and failed to adhere to its ‘duties to avoid depriving’.

3.3. The International Covenant on Civil and Political Rights (ICCPR)

The International Covenants on Human Rights, namely the ICCPR and ICESCR, establish a clear distinction between civil and political rights,

⁶⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), E/1992/23, 13 December 1991.

⁶⁸ *Id.* para. 8(a).

⁶⁹ See e.g. Ana Camacho, *Ending Foreign Exploitation of Mineral Resources in the Democratic Republic of Congo*, 2023.

⁷⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, E/1998/22, 20 May 1997, para. 13.

⁷¹ See Patrick Ilunga, *Forced evictions from DR Congo mineral-rich villages blights outlook*, at www.theeastfrican.co.ke/tea/science-health/forced-evictions-from-dr-congo-mineral-rich-villages-blights-outlook-4377410.

such as the ownership of property, and social, economic, and cultural rights, which encompass broader entitlements like access to land, opportunities for development, and the ability to exercise self-determination over natural resources. However, these rights are strictly interrelated, requiring states to acknowledge individuals' inherent entitlement to a secure living environment free from unlawful or arbitrary eviction from their residences, lands, or communities.

In the DRC, the ICCPR holds significance as it explicitly provides for the right to a remedy within the state's domestic legal framework in Article 2(3). This provision empowers individuals to lodge complaints against the state with the UN Human Rights Committee if the state has accepted the committee's jurisdiction by ratifying the Optional Protocol specified in Article 41.⁷² Given the DRC's ratification of the ICCPR and its Optional Protocol, it acknowledges the competency of the Human Rights Committee to address individual grievances.⁷³

Article 17 of the ICCPR safeguards individuals' rights against arbitrary intrusions into their privacy, familial relationships, domicile, or correspondence. It serves as a cornerstone in protecting personal autonomy and integrity, ensuring that individuals can lead their lives free from unwarranted interference.⁷⁴

Furthermore, Article 12 of the ICCPR extends the guarantee of freedom of movement and the right to choose one's place of residence, subject to certain limitations. These limitations, delineated within the framework of the ICCPR, are intended to balance individual liberties with broader societal interests such as national security, public order, and public health.⁷⁵

However, it is crucial to interpret these exceptions narrowly to prevent abuse and ensure that the rights enshrined in the Covenant are upheld consistently and fairly. The Human Rights Committee's General Comment

⁷² UN General Assembly, Optional Protocol to the ICCPR, UNTS, vol. 999, p. 171, 19 December 1966.

⁷³ The Democratic Republic of Congo ratified the Optional Protocol to the ICCPR on 1 November 1976.

⁷⁴ For a commentary, see Paul M. Taylor, 'Article 17: Privacy, Home, Correspondence; Honour and Reputation', in Paul M. Taylor (ed.), *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights*, Cambridge University Press, Cambridge, 2020, pp. 458–498.

⁷⁵ Paul M. Taylor, Article 12: Freedom of Movement of the Person', in *Id.* pp. 325–353.

No. 27⁷⁶ provides invaluable guidance on this matter, emphasizing the importance of constraining the discretion of authorities tasked with implementing restrictions to safeguard individual freedoms effectively.

In response to forced evictions, the Human Rights Committee issued a resolution in 2004, urging governments to provide immediate restitution, compensation, or alternative accommodation to affected individuals or communities.⁷⁷ The resolution underscores states parties' obligation under the ICCPR to ensure due process, remedies, and prevention of further human rights violations in cases of lawful evictions.

During forced evictions in the DRC, the government failed to fulfill its duties and obligations under the ICCPR. The forced demolition of homes without offering restitution, compensation, or alternative housing constitutes arbitrary or unlawful interference with residents' rights to privacy, family, and home. Moreover, compelling individuals to relocate to rural areas against their will violates their right to freedom of movement and choice of residence. Article 2(3) mandates that victims receive an effective remedy from competent judicial, administrative, or legislative authorities.⁷⁸

As stipulated in Article 215 of the Constitution of the DRC, which grants superior authority to treaties and international agreements over national laws, the ICCPR is a self-executing treaty that necessitates a competent tribunal to address the government's human rights violations resulting from mass forced evictions, thereby entitling victims to an effective remedy.⁷⁹

3.4. The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights serves as a pivotal regional instrument in safeguarding human rights across Africa, mirroring the foundational principles outlined in universal human rights documents such as the UDHR, the ICESCR, and the ICCPR. Adopted by the Orga-

⁷⁶ UN Human Rights Committee (HRC), CCPR General Comment No. 27: Article 12 (Freedom of Movement), CCPR/C/21/Rev.1/Add.9, 2 November 1999.

⁷⁷ UN Commission on Human Rights, Forced evictions. E/CN.4/RES/1993/77, UN Commission on Human Rights, 10 March 1993.

⁷⁸ Article 2(3) guarantees the right of persons to effective remedies, when the rights or freedoms recognised in the ICCPR are violated.

⁷⁹ Article 215 reads as follows: "Lawfully concluded treaties and agreements, when published, have authority superior to that of the law. However, each treaty and agreement is subject to application by the other party."

nization of African Unity (OAU) in 1986 and ratified by the Democratic Republic of Congo, it established the African Commission on Human and Peoples' Rights (African Commission) with the mandate to address individual and state complaints related to human rights violations.⁸⁰ In contrast to the CESCR, the African Commission operates as a quasi-judicial body, aiming to foster amicable resolutions to disputes.⁸¹

However, the adoption of a Protocol to the African Charter in 1998⁸² paved the way for the establishment of the African Court on Human and Peoples' Rights (African Court), envisioned to provide a more formal adjudicatory platform for human rights issues.

Article 14 of the African Charter touches upon the right to property, yet it defers significant authority to national laws, granting states considerable latitude in regulating property rights.⁸³

4. Domestic Enforceability of International Treaty Duties and Obligations

In general international law, it is widely acknowledged that when a state becomes a party to a binding multilateral treaty, it undertakes a responsibility to enact domestic measures necessary to fulfill its international commitments, including their integration into domestic law.⁸⁴ This principle, embedded in various national constitutions, underscores the importance of treaty obligations in shaping domestic legal frameworks.⁸⁵ Additionally, there is a growing contention that the rights articulated in documents like the UDHR, particularly Article 17(2)'s prohibition of arbitrary property

⁸⁰ Further information on the tasks and activities of the African Commission is available at <https://achpr.au.int/>.

⁸¹ *Id.*

⁸² Organization of African Unity (OAU), Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and Peoples' Rights, 10 June 1998.

⁸³ See Manisuli Ssenyonjo, 'Economic, Social and Cultural Rights in The African Charter', in *The African Regional Human Rights System – 30 Years after the African Charter on Human and Peoples' Rights*, Martinus Nijhoff, Leiden, 2011, pp. 55–100.

⁸⁴ For references on this duty, see e.g. John H. Jackson, 'Status of Treaties in Domestic Legal Systems: A Policy Analysis', *American Journal of International Law*, Vol. 86, Issue 2, 1992, pp. 310–340.

⁸⁵ See Alejandro Chehtman, 'Constitutions and International Law' in Conrado Hübner Mendes et al. (eds.), *The Oxford Handbook of Constitutional Law in Latin America*, online edition, Oxford Academic, 13 January 2022.

deprivation, carry the weight of *jus cogens*.⁸⁶ While this claim may be considered ambitious, the practical application of such rights in national jurisprudence, often invoked in cases of human rights violations, reflects a broad consensus and adherence to these international agreements. Consequently, the UDHR, along with treaties like the ICESCR and the ICCPR, serve as authoritative references for national tribunals when confronting oppressive or discriminatory legislation and actions by state authorities.

As legally binding instruments of international law, these treaties not only impose obligations on member states but also guide the interpretation and implementation of domestic law within the jurisdiction.⁸⁷ However, for this infusion of international human rights law into domestic legal systems to be effective, it is imperative to have an independent judiciary free from executive coercion, capable of supplementing domestic law with international human rights norms.⁸⁸

Regrettably, the erosion of judicial independence in the DRC, marked by the removal and persecution of judges exhibiting autonomy from government influence, poses a significant impediment to the effective incorporation of international human rights standards into domestic legal frameworks.

Given these circumstances, not only are those affected by forced evictions in the DRC hindered from pursuing legal action against culpable officials under constitutional guarantees subject to judicial review, but any potential for Congolese courts to apply international human rights norms to ensure alignment between domestic legislation and Congo's international legal commitments is also obstructed.

This dual impediment underscores the urgent need for robust legal mechanisms to protect the rights of vulnerable populations and uphold the DRC's obligations under international law. It underscores the importance of an independent judiciary capable of interpreting domestic laws in accordance with international human rights standards, thereby providing avenues for justice and redress for those subjected to human rights violations. Furthermore, it emphasizes the necessity for legal reforms aimed at bolstering the rule of law and ensuring the effective implementation of

⁸⁶ See Andrea Bianchi, 'Human Rights and the Magic of Jus Cogens', *EJIL*, Vol. 19, Issue 3, 2008, pp. 491–508.

⁸⁷ See e.g. Alan Brudner, 'The Domestic Enforcement of International Covenants on Human Rights: A Theoretical Framework', *The University of Toronto Law Journal*, Vol. 35, Issue 3, 1985, pp. 219–254.

⁸⁸ See the Bangalore Principles of Judicial Conduct (E/CN.4/2003/65, annex).

international human rights instruments within the Congolese legal framework.

5. Rationale Behind International Intervention

While some international legal scholars argue that efforts to promote the ‘rule of law’ by the human rights movement have been unsuccessful, as demonstrated by interventions in Sierra Leone, Iraq, and Afghanistan,⁸⁹ it remains imperative for universally recognized human rights to be judicially enforceable rather than mere aspirations.

International response becomes necessary when a state consistently demonstrates its unwillingness or inability to comply with its international duties and obligations. In the case of the DRC, such intervention is crucial given its persistent violations of international human rights norms, which raise concerns within the international community.

The report jointly authored by Amnesty International and the DRC-based organization *Initiative pour la Bonne Gouvernance et les Droits Humains* (IBGDH), titled ‘Powering Change or Business as Usual?’ puts forth various intervention modalities in response to the ineffectiveness of intergovernmental enforcement mechanisms in addressing human rights violations.⁹⁰ These modalities encompass humanitarian aid, monitoring missions, diplomatic pressure, and, as a last resort, military force in cases where a state’s authorities fail to safeguard its civilians.⁹¹ At the core of this proposition lies the principle that all signatories of the UN Charter bear the responsibility to protect not only their own citizens but also those of other nations, extending to intervening in situations of mass atrocities, such as mass murder, rape, ethnic cleansing, and deliberate starvation, irrespective of member states’ inclinations toward non-intervention.⁹²

Justification for international response relies not only on evidence of threats to international peace and security but also on serious breaches of

⁸⁹ See e.g. Jane Stromseth et al., *Can Might Make Rights?: Building the Rule of Law after Military Interventions*, Cambridge: University Press, Cambridge, 2006.

⁹⁰ See Amnesty International Report No3.

⁹¹ Id.

⁹² See United Nations Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All-Report of the Secretary-General*, UN GAOR, 59th Sess., UN Doc. A/59/2005. (In Larger Freedom), stressing that the protection of human rights is important for fulfilling the objectives of development and security.

international law, as indirectly confirmed by the recent engagement of the UN Security Council in global public health matters.⁹³ Addressing violations of international law concerning public health, which have resulted in serious consequences such as starvation, disease outbreaks, and reported fatalities from forced evictions, calls for an international response under the auspices of the UN Security Council. This is especially pertinent for adherents of the doctrine of international responsibility to uphold public health.⁹⁴

The analysis indicates that the government of the DRC has violated the human right to adequate housing and the prohibition of forced evictions without due process, as outlined in several international human rights treaties. The ineffectiveness of human rights commissions in enforcing these treaty obligations highlights the need for decisive action by the UN to compel the DRC to adhere to its commitments. Moreover, with hundreds of thousands rendered homeless without access to basic necessities owing to their government's actions, the 'responsibility to practice public health' is unequivocally invoked.⁹⁵

Despite efforts by certain international NGOs to address the humanitarian crisis, the magnitude of the problem surpasses their capacity. Hence, the UN must prioritize human security over state security and urge member states to intervene in the DRC to safeguard the victims of the aforementioned forced evictions and hold the government accountable for its indifference to their suffering.

Expanding further, the proposed intervention strategies must be carefully coordinated and implemented in a manner that respects the sovereignty of the DRC while also ensuring the protection of human rights and the dignity of its citizens. This could involve establishing a framework for international cooperation and assistance to address the immediate humanitarian needs of those affected by forced evictions, including providing shelter, food, clean water, and healthcare services.

93 See e.g. Oliver Johnson *et al.*, 'The role of the UN Security Council in health emergencies: lessons from the Ebola response in Sierra Leone', *Australian Journal of International Affairs*, Vol. 76, Issue 1, 2022, pp. 11–16.

94 See David P. Fidler, 'The UN and the Responsibility to Practice Public Health', *Journal of International Law and International Relations*, Vol. 2, Issue 1, 2005, pp. 41–62; see also International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, International Development Research Centre, Ottawa, 2001; In Larger Freedom, para. 135.

95 Johnson *et al.* 2022.

Additionally, efforts should be made to strengthen the capacity of local institutions and civil society organizations to promote human rights, ensure accountability, and advocate for the rights of vulnerable populations. Furthermore, diplomatic pressure should be exerted on the Congolese government to adhere to its international obligations and respect the human rights of its citizens, including the human right to adequate housing and protection from forced evictions. Ultimately, the goal of international intervention should be to support the DRC in building a more just and equitable society where the human rights and dignity of all individuals are respected and protected.

6. Concluding Remarks and Practical Recommendations

The execution of evictions in Kolwezi, characterized by its lack of planning and organization, has resulted in significant and unnecessary human suffering affecting over half a million of the DRC's most vulnerable citizens. In such a crisis, identifying effective means of reconciliation poses a considerable challenge.

While international human rights law acknowledges individuals' entitlement to protection from arbitrary property deprivation by their government, the enforcement mechanisms prove ineffective when a state refuses to comply with its international duties and obligations. Moreover, the judiciary's inability to apply the law independently, often succumbing to intimidation by parties involved in forced evictions, further complicates the situation, leaving limited alternatives beyond substantial international intervention.

There exist sustainable and coherent strategies, with support from the international community, to promptly address the housing crisis. These strategies encompass various measures, including revising building codes and zoning regulations to accommodate the needs of low-income groups, providing affordable building materials and essential amenities as part of the mass evictions in Kolwezi, urban planning initiatives to utilize underdeveloped land for legal housing alternatives, and adjusting financial systems to offer accessible loans without unrealistic collateral demands for low-income and community groups. Additionally, the establishment of a truth and reconciliation commission could address the systematic abuses inflicted on the citizens of the DRC by their government.

Addressing the repercussions of the forced evictions in the Kolwezi region through international intervention, by implementing such strategies, represents an initial step in preventing future human rights violations perpetrated by multinational corporations engaged in forced evacuations and resettlements within Congolese territory.

Congolese policymakers have demonstrated irresponsibility in steering the country towards sustainable fiscal practices and have displayed a lack of concern for citizens' well-being during the implementation of state-sponsored policies since the nation's independence.⁹⁶ The forced evictions in Kolwezi and the subsequent lack of action by the government must mark a turning point, urging the international community to no longer remain passive while the DRC government imposes widespread suffering on its people.

⁹⁶ See Zoe Marriage, 'Divisive 'Commonality': state and insecurity in the Democratic Republic of Congo', *Third World Quarterly*, Vol. 32, Issue 10, 2011, pp. 1892–1910.