

## HEADING TOWARDS EXTINCTION?

INDIGENOUS RIGHTS IN AFRICA: THE CASE OF  
THE TWA OF THE KAHUZI-BIEGA NATIONAL PARK,  
DEMOCRATIC REPUBLIC OF CONGO

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The book documents and discusses the case of the Twa, so-called 'pygmy' people, of the Kahuzi-Biega forests, South Kivu province in Eastern Congo.

The particular case of the Twa of Kahuzi-Biega is presented in the African context as well as in the context of emerging and established international norms and principles of indigenous peoples' rights.

'Heading towards distinction?' is a plea for recognition of the legal rights that the Twa are entitled to as an indigenous people. The book calls for the reform of the assimilationist approach taken by the Congolese government as well as the agencies involved in managing the Kahuzi-Biega National Park.



THE FOREST  
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*Dedicated to M'Zirhahinga, my mother,  
and all those members of rural communities  
who cannot afford legal fees for a better  
protection and defence of their rights*

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## LIST OF ACRONYMS

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APOSKI	Association des Politologues de Sud-Kivu
ADFL	Alliance of Democratic Forces for the Liberation of Congo
BMZ	German Federal Ministry for Economic Cooperation and Development
CAURWA	Communauté des Autochtones Rwandais
CBD	Convention on Biological Diversity
CERD	Convention on Elimination of all forms of Racial Discrimination
CNK	Comité National du Kivu
CODEBABIK	Comité de développement des Bakola/Bagyeli des arrondissements de Bipindi et Kribi
CRSN	Centre de Recherche en Sciences Naturelles
CSK	Comité Spécial du Katanga
EIA	Environmental Impact Assessment
EU	European Union
FPP	Forest Peoples Programme
FRELIMO	Front for the Liberation of Mozambique
GEF	Global Environment Facility
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit GmbH
ICCN	Institut Congolais pour la Conservation de la Nature
ICCPR	International Covenant on Civil and Political Rights
IZCN	Institut Zaïrois pour la Conservation de la Nature
ILO	International Labour Organisation
IPACC	Indigenous Peoples of Africa Coordinating Committee
IUCN	International Union for the Conservation of Nature/World Conservation Union
IWGIA	International Work Group for Indigenous Affairs

MP	Member of Parliament
MPR	Mouvement Populaire de la Révolution
OAS	Organisation of American States
OAU	Organisation of African Unity
NGO	Non-governmental Organisation
PIDP-Kivu	Programme d'Intégration et de Développement du Peuple Pygmée au Kivu
PINGOS	Pastoralist Indigenous NGO's Forum
RCD	Rassemblement Congolais pour la Démocratie
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
WIMSA	Working Group on Indigenous Minorities of Southern Africa
WRI	World Resources Institute
WWF	World Wildlife Fund

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## PREFACE

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This report tells the story of the Twa people of the Kahuzi-Biega National Park, in eastern Congo<sup>1</sup>, who were expelled from their forests in the name of nature conservation. The Twa, a hunting and gathering people of the tropical forests, face a dismal future. Denied access to the lands that they have depended on for millennia, they now live in miserable squatter camps on the margins of other villages in the area surrounding the Park. Deprived of rights, compensation or justice, the Twa are also suffering an alarming rise in malnutrition and disease, devastatingly expressed in escalating mortalities. 'Death is following us,' as one of the Twa told the author, who acted as a lawyer in their defence.

The decision by the Congolese authorities to expel the Twa from the Park, while tolerating the continued occupation of the same area by other ethnic groups engaged in agriculture, reveals deep-seated prejudices against these forest dwellers. The Twa feel that they are being 'treated like animals' (see quote on page 93). However, compared to the Twa, the animals of the Kahuzi-Biega National Park are being accorded privileged treatment.

Prejudice against the Twa is found not just in the way local farming peoples deny them land rights or respect, but in the way national laws discriminate against the Twa because they provide no scope for securing the rights of hunters and gatherers to their lands and livelihoods. The Twa are thus forced to live on the margins of Congolese society, outside the law and deprived of the services enjoyed by other Congolese citizens. Their situation was made much worse when their traditional territory was expropriated and made into a protected area.

The report places these events within the context of African policies regarding ethnic identity and the rights of peoples and explores the relevance of the international concept of 'indigenous peoples' in Africa. It shows how African states, while ostensibly freed from colonialism in the 1960s, have inherited and, indeed, entrenched the frontiers, laws and prejudices of their erstwhile colonial rulers, creating serious problems for the continent's marginalised groups. The report situates the Twa within the growing movement of self-identified 'indigenous peoples' in Africa, who question this heritage and are invoking emerging concepts of international law to renegotiate their relationship with the states that encompass them. They are, in effect, calling on Africa to reinvent itself based on a simultaneous respect for African traditions and identities and international human rights principles.

That such a re-negotiation is necessary hardly needs emphasising in a region that is being torn apart by ethnic strife: clear evidence that the predominant model of nation-building in Africa, based on imposed institutions and the denial of ethnic identity, has led to frustration and violence.

Eastern Congo has been embroiled in armed conflict since October 1996 when Laurent Kabila and his Alliance of Democratic Forces for the Liberation of Congo (ADFL), supported by ethnic 'Banyamulenge' Tutsis and Rwandese troops, launched their campaign to oust President Mobute Sese Seko. Kabila assumed power on May 12th 1997, but in August 1998 conflicts began again in Kivu with the rebellion of the Rassemblement Congolais pour la Démocratie (RCD) against the Kabila regime. In early 1999 there were eight armies and at least 12 other armed groups active in Congo, mostly in the eastern part, including the Mai-Mai who oppose the presence of Tutsi troops in eastern Congo, more than 10,000 Interahamwe (the militia that spearheaded the 1994 genocide in Rwanda), armed forces from Rwanda and Uganda backing the rebels and Zimbabwean troops fighting on the side of Kabila. The cease fire agreement signed in August 1999 between all the states and rebel groups involved in the war has been repeatedly violated, calling into question the commitment of the parties to negotiate a political settlement. It remains to be seen whether the agreed deployment of UN military observers and peacekeeping troops will be effective.

At the same time that both Africans and the international community are rethinking the role of traditional institutions and identity in projects of nation building, the global conservation movement has also begun to question its own approach to the establishment of protected areas. A discriminatory model of conservation, which expels resident peoples from protected areas, has begun to give way to a new model which recognises the rights of indigenous peoples, values their knowledge and seeks to give them a central role in the management of conservation zones.

The Twa of Kahuzi-Biega have yet to benefit from either of these changes in thinking and this report, thus, makes concrete recommendations for reforms in the way the Congolese authorities, conservationists, and the aid agencies supporting them, are dealing with the Twa.

The report draws on the records and data collected during the author's many years of experience as a lawyer acting for some of the most vulnerable social groups living in eastern Congo. Working as a member of the Kivu-based NGO Héritiers de la Justice, and as legal officer in charge of its '*Avocat des brousses*' (bush lawyer) programme, Kwokwo Barume has spent most of his professional life meeting, training and strengthening grassroots community groups. With his



focus on the most disadvantaged groups such as minorities, refugees, the internally displaced, victims of arbitrary arrests, children and those economically unable to pay lawyers, he came across the case of the Twa expelled from the Kahuzi-Biega National Park which led to a long period of observation and intense work with the Twa. He acted as defence lawyer for four Twa accused of killing the famous gorilla Maheshe. Together with the independent Twa NGO Programme d'Intégration et de Développement du Peuple Pygmée au Kivu (PIDP-Kivu), Kwowko Barume has maintained contacts, visits, assistance and permanent dialogue with the affected Twa communities, through all of which he has become deeply aware of their hardships and their social status as a 'forgotten people'.

In calling for a restitution of the Twa's rights, this report does not seek to undermine the dedicated work of Congolese and expatriate conservationists who have struggled to protect the country's wildlife. Indeed, in recent years the staff of the Kahuzi-Biega National Park have worked valiantly under extraordinarily difficult circumstances – and for long periods without pay – to prevent the killing of the lowland gorillas within the Park, while wars, rebellions and floods of refugees have spilled around them. We believe, however, that the need to respect the rights of peoples who have been treated as less than animals, is self-evident and that conservation will be strengthened not weakened when local communities experience it as a positive project for their own benefit.

Finally, on behalf of the Forest Peoples Programme, I would like to thank the Swedish Society for Nature Conservation and the International Work Group for Indigenous Affairs for their support in researching, writing and publishing this report.

*Marcus Colchester*  
*Forest Peoples Programme*

#### **Note**

- <sup>1</sup> The country has undergone several name changes. It was established by King Leopold of Belgium as the Congo Free State in 1885. Following its take-over by the Belgian government in 1908 it was known as Belgian Congo during the colonial period which ended in 1960. In 1971, President Mobute Sese Seko renamed the country Zaïre, and following his overthrow in May 1997 by the Alliance of Democratic Forces for the Liberation of Congo (ADFL) led by Laurent Kabila, the country was renamed Democratic Republic of Congo. For simplicity, this document uses the term 'Congo' except where distinction between the different political regimes is important. The term Congo-Brazzaville refers to the neighbouring Republic of Congo on the west side of the Congo River.

## **INTRODUCTION**



## INTRODUCTION

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This report documents and discusses the case of the Twa, so-called 'Pygmy' people, of the Kahuzi-Biega forests, South Kivu Province, eastern Congo. Starting in the late 1960s up to 6,000 Twa (580 families) were forcibly removed from their lands in the Kahuzi-Biega National Park. These Twa communities, originally hunter-gatherers and widely recognised as the descendants of the first inhabitants of the forests of eastern Congo, were driven off their lands, thus undermining their livelihoods and endangering their existence as a group. Even if alleviating measures or compensation had been provided, these would not have compensated the Twa for the loss of their lands with which they identify strongly. Nowadays the Twa live under the severest conditions characterised by a high infant mortality, malnutrition and alcoholism. They lack access to income generating activities so that in a context where medical care, education and housing are not provided by the government, they are unable to cover their basic needs.

Congo contains half of Africa's remaining dense moist forest and one eighth of all tropical moist forest on earth - only Brazil and Indonesia have larger areas of rainforest. The country has an extremely high diversity of plants and animals. The country contains nine national parks, four of which are designated UNESCO World Heritage Sites. Two of these World Heritage Sites, the Kahuzi-Biega and Virunga National Parks, lie in the eastern forests which are rich in endemic species. Wildlife tourism has been an important source of income since the 1970s, with the result that conservation policies have been prioritised over the rights of the Twa Pygmy peoples and farming communities inhabiting the forests.

This report combines historical, anthropological and sociological data with a contextualising discussion and account of the traditional, national, and international legal rights of indigenous people. This report is an advocacy document pleading for the recognition and restitution of the legal rights of the Twa of the Kahuzi-Biega National Park as an indigenous people. It calls for the reform of the assimilationist approach taken by the Congolese government as well as the agencies involved in managing the Kahuzi-Biega National Park. The Twa deserve, and are entitled to, more than just a range of integrative measures. They should be given an opportunity to deal directly with the Congolese government and conservation

bodies so that they can exercise their right to self-determination and to decide their own future and the way in which they would like to live. The assertion of indigenous rights provides an alternative to ethnic strife and opens up ways of resolving conflicts through negotiated constructive agreements between states and peoples. In putting forward the case for recognition of the Twa's rights, this report does not seek to deny other forest peoples rights which they may wish to claim.

This report discusses the situation of the Twa of Kahuzi-Biega within the African context. In spite of the reference to 'peoples' in the African Charter on Human and Peoples' Rights, groups' rights to identity seems to mean very little, if anything, in Africa. The majority of African countries has never adopted any policies promoting cultural identities, even after independence. It is not surprising that indigenous peoples are particularly vulnerable in such a political context.

In addition to the hostile political environment, African indigenous peoples seem to be marginalised in the international debate on indigenous rights. The definitions proposed for 'indigenous peoples' based on prior occupancy of areas which were subsequently taken over by European colonists do not take into account the history of African populations, which were subjected to migrations and influxes of fellow African peoples prior to the rule of the since-departed European colonists and still suffer internal colonisation. As a result, many authors conclude that while indigenous peoples can be clearly identified in the Americas and other regions of the world, in Africa it is difficult to determine which groups should be considered as indigenous.

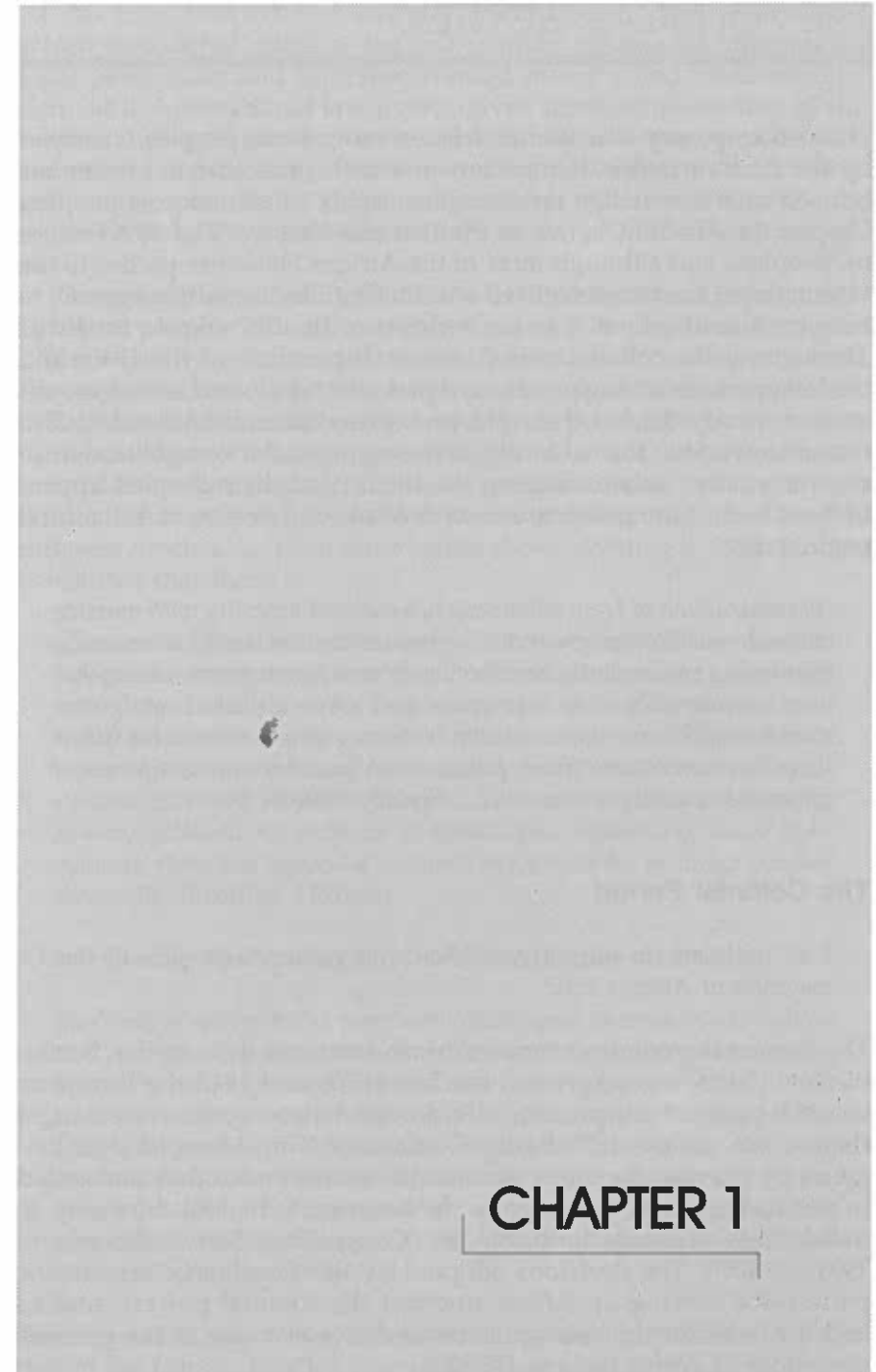
The combination of these two factors, one endogenous and the other exogenous, has led to many abuses and violations of many African indigenous and similar groups' rights, such as the expulsion of the Twa families of the Kahuzi-Biega forests documented in this report. In contrast to their indigenous brothers and sisters in the Americas, Australia and Asia, cases of African indigenous peoples are rarely heard or strongly advocated at a high level by national and international bodies.

This report aims to present the particular case of the Twa of Kahuzi-Biega in the context of emerging and established international norms and principles of indigenous peoples' rights. It is hoped that the discussion will be helpful to the authorities in Congo, conservation bodies and the international community in working towards more just and sustainable policies which address the threat of cultural annihilation of the Twa people and reconcile human rights with conservation objectives.

This report is divided into six sections. The first presents the historical political context which has shaped the current situation of African indigenous peoples. The second looks at the concept of indigenous peoples in Africa. The third section describes the biological and human environment of the Kahuzi-Biega National Park, and the conservation framework of Congo. The fourth section documents the expulsion of the Twa from the Park and their present situation. The fifth section discusses land rights and possible options for the Twa to challenge their expulsion from the Kahuzi-Biega National Park and negotiate new arrangements based on the recognition of their rights. Finally the report sets out recommendations for actions to be taken.

#### Note

- <sup>1</sup> 'Pygmy', a term derived from ancient Egyptian folklore, is considered derogatory by many, but some of the people use it themselves. It is used in this text as a generic term for the hunter-gatherer and former hunter-gatherers of the Central African forests, and where specific group names are not appropriate.



## THE POLITICAL CONTEXT

The contemporary situation of African indigenous peoples is shaped by the African political environment which since colonial times has refused to acknowledge communities' rights to existence as peoples. Despite the African Charter on Human and Peoples' Rights' reference to 'peoples', and although most of the African States are parties to the International Covenant on Civil and Political Rights, Africa appears to be a continent where a group's right to identity counts for little. Throughout the colonial period, the multipartyism of the 1960s and the long periods of single party systems which followed, social groups were not only denied the right to express their identities but also forced to abandon them. During all these phases, African political leaders, rather than acknowledging the identity of their peoples, appear to have been more preoccupied with what John Bodley calls 'cultural engineering':

*[the destruction of] any tribal society's cultural diversity with massive cultural modification programs... Any native custom that seemed... threatening was instantly abolished by decree whereas other customs that were considered barriers to progress were either abolished outright or steps were taken to suppress them. Natives... who continued the 'then-illegal' customs were fined, jailed, or subjected to various forms of corporal or capital punishment... (Bodley 1990:94-5)*

### The Colonial Period

*I do not want to miss a good chance of getting us a slice of this magnificent African cake<sup>1</sup>.*

The current boundaries of most African states result from the 'Scramble for Africa' when between the late 1870s and 1912 the European colonial powers competed to divide the African continent amongst themselves. At the 1895 Berlin Conference King Leopold II of Belgium, by playing the other powers off against each other, succeeded in persuading them to recognise the boundaries he had drawn up to delimit his personal fiefdom, the 'Congo Free State' (Pakenham 1991:239-255). The decisions adopted by the Conference set out the pattern for carving up Africa amongst the colonial powers, and so laid the basis for the subsequent boundaries of many of the present-day states of Africa (Anaya 1996:22).

At this time, international law was dominated by positivist theories, which considered states as the only entities possessing international legal personality and therefore entitled to enjoy and exercise rights defined in international law over a given territory. According to this understanding, lands that were occupied by non-state entities were sometimes considered to be *terra nullius*, i.e. 'no-man's land' or legally unoccupied lands. This concept of *terra nullius* was later rejected in the 1970s by the International Court of Justice in the *Western Sahara case*<sup>2</sup>.

On these grounds and because it was inhabited throughout mostly by tribal peoples, the African continent and its constituent peoples did not qualify as subjects of international law. According to Anaya, the 'fiction of discovery' was employed to uphold colonial claims to indigenous lands and to bypass any claim to possession by the natives in the discovered lands (Anaya 1996:22). However, other commentators, M.F. Lindley in particular, have examined state practice in relation to the legal process of colonisation in Africa and have reached different conclusions from those stated above<sup>3</sup>. Writing in 1926, Lindley concluded that there is

*abundant evidence to show that advanced [European] Governments do recognise sovereign rights in less advanced peoples with whom they come into contact, and do, in general, deal with such peoples on a treaty basis when acquiring their territory. In the face of that evidence ...any rule of international law which regarded the territory of independent backward peoples as being under no sovereignty and belonging to nobody would not only not be based upon 'evidence of usage to be obtained from the action of nations' but would be in direct conflict therewith. (Lindley 1926:46).*

Also, referring to the situation in Africa, Lindley stated that

*the lands of native tribes were not looked upon as territorium nullius also emerges very clearly when we consider the actual procedure by which the various powers extended their sovereignty over Africa. From such an investigation it appears that the territorial rights of the European powers in Africa were in general those which they had obtained by Cession from the native chiefs. In fact, the way in which a Power set about the appropriation of a tract of the country was generally by making treaties with the chiefs of all native tribes included within it. (Lindley 1926:34).*

Turning specifically to the establishment of the International Association in the Congo, Lindley notes that Stanley made hundreds of trea-

ties with indigenous rulers on behalf of the Association. In its dealings with the Belgian government, the Association declared that it had acquired territory and sovereignty thereover 'by Treaties concluded with the *legitimate sovereigns* in the basin of the Congo and its tributaries . . . ' (Lindley 1926:39, emphasis added). This raises a number of interesting questions concerning the legal status and rights of the Twa, who did not enter into treaty relations with colonial powers and therefore did not cede their territorial rights nor sovereignty thereby. As such, the state will have to prove that it obtained rights to Twa territory by some other means. If it cannot, a presumption exists that some measure of those rights still exists and must be respected. The preceding and other issues raised above require further research before any concrete conclusions can be made. While research on the manner by which territorial rights may or may not have been acquired over Twa territory is beyond the scope of the work at hand, the conclusions set out herein must be read without prejudice to any residual rights that the Twa may have in connection with larger issues of international law and the legal process by which the present state of Congo came into being. It is hoped that these issues can be dealt with in greater detail in a subsequent publication.

The colonial powers paid scant regard to sociological issues in their partitioning of the continent. Far from safeguarding pre-existing cultural identities, the Berlin Conference's resolutions were in complete disregard of ethnic boundaries (McCorquodale 1994:880). The Conference's purposes were largely economic. Colonial powers urgently wanted natural resources such as rubber, ivory, coffee and palm oil (Colchester 1995a:11), no matter what the costs to African cultures and livelihoods, thus exposing the incompatibility between the economic system of resource extraction and the social system of tribal and individual culture. It was clear that tribal cultures would have to give way and be transformed so that the resources of their territories could be efficiently exploited for the benefit of the world market economy. The colonial authorities were well aware of the risk that their exploitative policy could result in awakening the consciousness of local Africans: unrest and uprising could quickly sweep away the economic gains (Bodley 1990:58). In fact it would be difficult to continue with colonial economic activities if tribal peoples remained autonomous, sovereign societies that were both politically and economically self-sufficient (Bodley 1990:24). In order to prevent such disturbances the French and Belgian colonial powers adopted two main strategies in Central Africa.

First, all pre-existing social, political or other forms of organisations were to be broken up in order to separate individuals from their social and cultural roots. This was in fact one of the conse-

quences of the Berlin Conference. In Central Africa, for instance, the population of the Kongo Kingdom became divided among the Congo Free State, French Congo and Angola. On the grounds that 'the maintenance of the territorial status quo in Africa [should] be seen as the wisest course to...avoid a disruption' (McCorquodale 1994:880) many pre-existing, large, culturally homogenous entities remained divided by colonial boundaries.

Even traditional powers were affected. Under the French and Belgian colonial approach of direct rule, the traditional chiefs, who were regarded as symbols of their cultural identity by each group became tools in the colonial authorities' hands (Colchester 1995a:20). They were no longer allowed to assume their traditional roles of settling disputes, leading spiritual ceremonies, maintaining internal order and assuming political decision-making. Instead they were given new governmental tasks, such as recruiting forced labour, collecting taxes and maintaining the police force (Bodley 1990:70).

The second strategy for achieving maximum and easy access to resources required the use of force to crush any attempt at resistance. People were forced to leave their villages to be integrated into more heterogeneous groups, located alongside the routes of exploitation such as railways, roads and rivers (Colchester 1995a:16). In the Congo Free State, owned by King Leopold II of Belgium, villages were burned, looted and destroyed in order to force the population to leave their homes and to collect rubber. In his book *Red Rubber: The Story of the Rubber Slave Trade Flourishing in the Congo in the Year of Grace 1906*, Edmund Morel, a British shipping agent turned crusader against Leopold II's genocidal plundering of the Congo, estimated that up to 8 million people perished in the enforced collection of wild rubber (quoted in Bodley 1990:58). In French Equatorial Africa, French colonial militias set fire to the houses and belongings of anyone who resisted attempts to force them to leave their lands (Colchester 1995a:14). These acts of violence not only caused enormous suffering to African populations, but also helped to destroy their sense of cultural identity<sup>4</sup>.

In fact, as Berghe says, the 'colonial regime... was absolutely opposed to any process of nation-building' which identified ethnic groups. The concepts 'ethnic' and 'tribe' were 'vandalised', and regarded as retrograde. 'Primitivism [was] attached to the meaning of ethnicity. Thus the Zulu or Yoruba will be referred to as 'tribes' but not the Danes or the Turks.' Astonishingly, that which '... in Europe, Asia or Latin America has been called 'nationalism' i.e. a political movement for unification, autonomy or independence based on common ethnicity, becomes 'tribalism' in Africa.' (Berghe 1975:14-15).

## The First Decade of Independence

With the 1960s came the move towards independence. In almost all African countries the colonial rulers handed over political powers to Africans. But in contrast to the expectations of the newly independent populaces, the new African political leaders failed to restore to their peoples the right to 'determine their political status and freely pursue their economic, social and cultural development' as affirmed in Article 1 of the Covenant on Civil and Political Rights.

The new leaders did not recognise how damaging the division of Africa into 'modern states' was to the identity of many peoples. Taking their lead from the nationalism that was apparently successful in Europe at that time, the new political élite opted to transform their new states into 'nations' (Bodley 1990:59). Unfortunately, they failed to understand that nationalism as developed in Europe during the nineteenth century came out of already constituted nations (ethnic groups) demanding to be recognised as such (Berghe 1975:15). Under the illusion of being in the business of nation building, the new African leaders, meeting at the First Conference of Independent African States held in Accra, April 1958, reaffirmed the immutability of their borders, which ironically had been established by the colonial powers as the basis of their policy of 'cultural engineering'.

*We, the African States assembled here in Accra, in this our first Conference, conscious of our responsibilities to humanity and especially to the peoples of Africa, and desiring to assert our African personality on the side of peace...affirm the following fundamental principles... Respect for the sovereignty and territorial integrity of all nations...*

Two years later, on December 14<sup>th</sup> 1960, the United Nations General Assembly adopted a *Declaration granting Independence to Colonial Countries and Peoples*, reaffirming the same principle of immutable borders as defined at the Accra meeting.

*Resolution 1514(XV): The General Assembly...Convinced that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory... Declares that... All peoples have the right to self-determination, by virtue of that right they freely determine their political status and freely pursue their economic social and cultural development...All states shall observe faithfully and strictly the provisions of the Charter of the United Nations... on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity...*

In fact, the United Nations General Assembly could not be expected to go beyond the apparent demands of the new African leaders.

On this basis, the new African governments regarded the existence of autonomous tribal populations within the boundaries of the state as a challenge to their authority and a possible invitation to aggression by foreign powers (Bodley 1990:58). Trapped in the 'close convergence of interests between the post-independence bureaucracies, the ruling indigenous elites and foreign capital' (Colchester 1995a:33) they regarded tribal peoples as an obstacle to national unity and sources of instability.

However, in spite of the determination of political leaders to suppress ethnic groups' aspirations, the populations were far from losing their feelings of cultural identity. The populations' willingness to take any opportunity to restore their original homogenous groups was very obvious. The first opportunity arose when political parties were established. During the sixties, almost all African governments adopted multipartyism as a political ideology (Huybrecht et al. 1981:111). It is striking that most of these parties were composed of people from the same cultural background. In Kenya, for example, the KANU (Kenyan African National Unity) and the KADU (Kenyan African Democratic Union) parties were multi-ethnic but they were supported predominantly by Kikuyu and Maasai people respectively (Levin 1993: 129). In post-colonial Congo this was particularly evident. Most of the 20 or more political parties appear to have been frameworks for reconstructing ethnic groups, for example:

- RECO: Union des Ressortissants du Congo (Association of the Shi ethnic group)
- CONAKAT: Confédération Nationale des Baluba du Katanga (Confederation of Katangese peoples)
- ABAKO: Alliance des Bakongo. (Union of Kongo peoples)
- BALUBAKAT: Association des Baluba du Katanga. (Association of ethnic Luba living in Katanga province)
- UNIMO: Union des Mongo (Equateur). (Union of the Mongo ethnic group)
- FEDEKA: Fédération Kassaienne. (Federation of peoples from the Kasai region)
- ABAZI: Alliance de Bayanzi. (Union of the Yansi ethnic group)
- UNERGA: Union de Barega. (Union of the Rega ethnic group)
- ASSOREKA: Association des Ressortissants du Kongo. (Association of peoples from Kongo).
- UNEBAFI: Union Economique des Babembe de Fizi. (Economic Union of the Bembe of Fizi)

ATCAR: Association des Tshokwe du Congo, Angola et Rhodesie. (Association of the Tshokwe of Congo, Angola and Rhodesia)

This situation continued until African political leaders, attempting to redress the situation, started cracking down on political parties on the grounds that they had become instruments of division.

Populations then moved on from the formation of political parties to rebellions, which they saw as the new way to claim their identities. In Congo more than six rebellions erupted during the 1960s, all of them ethnically motivated (Verhaegen 1969:422-89). The first rebellion was the 'Mulelliste' led by Pierre Mulele of the Kongo peoples from Kwango and Kwilu, who were attempting to restore the Kongo Kingdom. The Uvira-Fizi rebellion in 1964 was inspired by the return from exile of King Simba who had been forced to give up his traditional powers by new political leaders in 1961. The rebellion of North Katanga was based on the demands of the Katanga people for the total independence of their region.

African political leaders still did not learn the lessons of the 1960s and the uncontested failure of multipartyism. Instead, they pointed the finger at 'tribalism' and 'ethnic groups' as the cause of rebellions, wars, and 'Balkanisation', which had caused hundreds of thousands of casualties (Remillieux 1989:84) For them it was time to move on to the single party system.

### The Single Party System

The single party political system was introduced in Africa in the 1970s on the grounds that the atrocities and the political instability faced by the continent during the 1960s were due to the multiparty system. Moreover, single parties were thought to be necessary to mobilise populations towards global development, as in China. Thus, as Levin shows, '... it became a further strategy of the new government to subsume the national self-determination rights of its ethnic groups into the rhetoric for the betterment of all'; for the new leaders '... independence [demanded] cementing in solidarity... for the emergence and survival of a notion of national unity...' (Levin 1993:128-130). Multipartyism was presented as alien to African traditional values, which were portrayed as based on one chief leading each village (Remillieux 1989:860).

Thus, almost all single parties purported to represent everyone's aspirations and their ideologies praised unity and the fight against ethnicity. For example, the guiding principles of the Kenyan Afri-

can National Union (KANU) were 'Love, Unity and Peace'. Its leaders insisted on the '... need for an active supra-tribal system for the promotion of nation-building and constructive nationalism', and that '... there still survived the negative tendencies of tribalism which were preventing the consolidation of nation-building, when it was realised how far tribally based socio-economic organisations were distracting attention from the national cause...' (Levin 1993:143). Attempts such as those of the Somalis to secede from Kenya were severely crushed (Musgrave 1997:214-15). In Zaïre, as the country was called at that time, the party's ideology even adopted the name of its leader. 'Mobutism' was defined as the whole of the thoughts and ambitions of Mr Mobutu Sese Seko and was described as 'a party above tribes, above clans, [...] a crucible of nationalism, an instrument of national integration' (Baleme 1997:69). The mainstream of ideas in this ideology were (in Lingala) *tata moko, ekolo moko, mokonzi moko, olinga loinga te ozali na kati ya MPR: one country, one leader, one authority, willing or unwilling everybody is a member of the MPR (Mouvement Populaire de la Révolution – the sole party)* (Remillieux 1989:85).

Three policies were at the forefront of Mobutu's 'nation-building' programme and had severe impacts on the cultural identities of the peoples of Zaïre.

First, all mother tongues were banned from the education system. Children in primary and secondary schools were severely punished when caught speaking in their vernacular languages, even outside classrooms. Foreign languages were thus imposed as an instrument for acquiring a national identity (Remillieux 1989:113-15).

The second policy consisted of moving civil servants around so that local populations were administered by people from different cultural backgrounds. It was intended that this would make everybody feel that they did not belong to a particular ethnic group or tribe but to a 'nation'.

*For the new regime... it was necessary, and indeed urgent, to achieve a mingling of populations by means of inter-provincial transfers. The Congolese had to become acquainted with the realities of other ethnic groups from other regions of the country. They had to be able to work in any province, feel at home there and supervise other Congolese belonging to cultures and traditions different from their own... Only this heterogeneous mix of peoples could engender in each and every one the feeling of not only belonging to the same State but also, and especially, to the same nation. The different ethnic groups had to stop wrongly adorning themselves with the attributes of peoples. (Baleme 1997:65-66).*

As well as ordinary civil servants, the political office of the MPR even translocated traditional chiefs away from their constituencies to new ones (Baleme 1997:69). In this respect the single party system adopted the same policies as the Belgian colonial power. All traditional chiefs ceased to represent their peoples and became the party's civil servants. Even their traditional titles (*mwami, nkumu, nzinga*) were removed and replaced by *président sectionnaire du MPR* (local president of the party).

Third, in many cases freedom of belief, religion and the right to practise a given religion were violated. Priests and other religious office holders were compelled at times to abandon practices considered incompatible with the party's ideology. From 1974 for example, all Christians were forced to stop using their religious names (Baleme 1997:69). Some religions, such as the Jehovah's Witnesses, were even forbidden – a case that reached the African Commission of Human and Peoples' Rights in 1991, which concluded:

*Article 8 of the African Charter protects freedom of conscience. The harassment of the Jehovah's Witnesses, as described in Communication 56/91, constitutes a violation of this Article, since the Government has presented no evidence that the practice of their religion in any way threatens law and order. (African Commission of Human and Peoples' Rights 1997:93)*

Similarly, in the Central Africa Republic Bokassa, who seized power in 1966, violently crushed any attempts to resist his programme of so-called national unity (Colchester 1995a:30). The Nigerian government reacted in the same way when Biafra declared independence on 27 May 1967 (Musgrave 1997:195-7).

Expropriation of lands was one of the techniques used in these actions seeking to deny communities their identities. Based on a socialist approach and guided by the Ujamaa ideology, the Tanzanian government took large areas of lands away from some tribal communities, such as the Barabaig, and created national farms administered by the Food Corporation (NAFCO). The Tanzanian state had the sole right to distribute land for cultivation and housing through allotment. About five million Tanzanians were resettled into so-called 'socialist villages' (Kerner 1988:169). In Mozambique, the Front for the Liberation of Mozambique implemented the same policy of transforming communities' lands into national farms. These measures were followed by the legislation of 1976, which took away from communities lands deemed to be uncultivated by their occupants (Kennet 1988:48). These measures were unpopular as the following statement by an elder of a local community shows:

*Let me tell you an anecdote. A bird was kept captive in a bird-cage. Along came FRELIMO and freed the bird; but they tied a rope to the bird's leg. Now I ask of you: has the bird been liberated or not? (Kennet 1988:49)*

In Cameroon the 1974 Cameroonian Land Tenure and State Lands ordinances came with the abolition of communities' land rights on what it called 'land free of any effective occupation' (Goheen 1988:299). Even in Rwanda, in 1976, a policy of relocating communities took place on the grounds that it would 'relieve population pressure in the more densely populated areas of the country...' (Reintsma 1988:44). In Kenya, a land registration policy forced the Maasai and other communities to abandon their traditional collective land tenure and an important part of their lands was transformed into national parks, reputed to be Kenya's largest earner of foreign exchange – an average of \$ 450 million per year since the 1990s (Cheeseman 1998:6-7).

The late 1960s and early 1970s were thus the time when political leaders throughout the whole of Africa, far from promoting groups' rights as part of the 'modern state', began to adopt more repressive policies towards the cultural identities of the peoples living within their countries' borders. These policies continued through the 1970s and 1980s and into the 1990s. In the name of so-called 'national interest' and conservation the Congolese government could thus decide to expel the Twa of the Kahuzi and Biega forests from their lands. The impacts of this expulsion on the Twa is described in detail in Chapter 5.

In opposition to this trend, since the 1970s there has been an increasingly vocal and effective movement of indigenous peoples from all over the world, who have been dispossessed of their resources and denied recognition of their identity by the states in which they live, and who are now seeking to renegotiate their relations with these states. In the next chapter we explore the concept of indigenous peoples as developed within international human rights fora. We describe how this concept has been resisted by African States, but is being taken up by African peoples, and illustrate how it applies to the Twa.

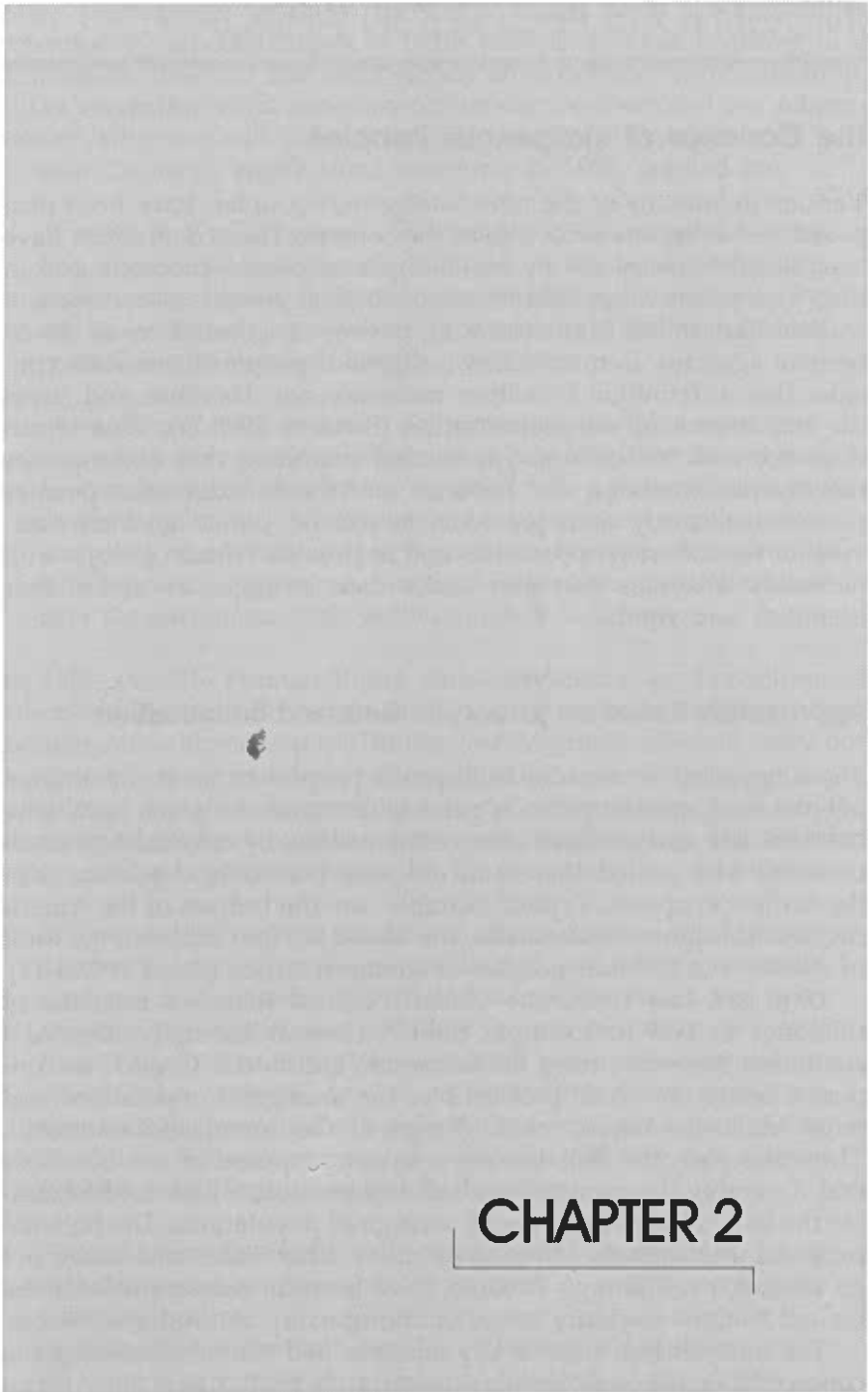
## Notes

- <sup>1</sup> King Leopold II of Belgium, quoted in Pakenham 1991:22
- <sup>2</sup> International Court of Justice Reports 1975:16. The Western Sahara had been a Spanish colony since 1884. In 1966 Spain was about to hold a referendum in Western Sahara on the issue of self-determination, when Morocco and Mauritania opposed the project, both claiming historical title to Western Sahara. This led the General Assembly of the United Nations to request an Advisory Opinion from the International Court of Justice as to whether Western Sahara



was *terra nullius* prior to Spanish colonisation. The Court advised that it was not, ruling that the territory had been inhabited by indigenous nomadic tribes.

- <sup>3</sup> Lindley's treatise is one of the first works to systematically assess the legal rights and situation of indigenous and tribal peoples in the context of European colonial expansion and international law and is widely cited as authoritative on the subject.
- <sup>4</sup> Colonial policy in relation to pre-existing social and political organisation varied across Africa. A number of British colonial territories applied a policy of indirect rule through pre-existing local authorities and forced resettlement along routes was not a general characteristic of British colonial policy.



## CHAPTER 2

## INDIGENOUS PEOPLES IN AFRICA

### The Concept of Indigenous Peoples

Various definitions of the term 'indigenous peoples' have been proposed, reflecting the evolution of the concept. These definitions have been largely constructed by non-indigenous people, proceeding from their viewpoints as representatives of colonial powers, as members of societies descended from colonising powers or as members of development agencies. In many cases indigenous peoples themselves consider that a definition is neither necessary nor desirable, and stress the importance of self-identification (Sanders 1993:75). This report does not seek to arrive at yet another definition that encompasses the diverse situations and histories of Africa's indigenous peoples more satisfactorily than previous definitions, but to give an overview of the different approaches and to provide African groups with necessary materials that may assist their struggles to assert their identities and rights.

### Approaches based on priority in time and colonisation

These approaches consider indigenous peoples to be the aboriginal peoples, original occupants or prior inhabitants of a given land, who have become marginalised after being invaded by colonial powers or invaders who settled there and are now politically dominant over the earlier occupants. Typical examples are the Indians of the Americas, the Aborigines of Australia, the Maori of New Zealand, the Inuit of Alaska, the Khoisan peoples of southern Africa (Kemf 1993:3-11).

Until the late 1980s, the United Nations followed this line of thinking. In 1949 for example, the UN General Assembly adopted a resolution recommending the Economic and Social Council to conduct a study on 'social problems of the aboriginal populations and other under-developed social groups of the American Continent'<sup>1</sup>. The same year, the Bolivian government proposed to the UN General Assembly the creation of a sub-commission, which could examine the issue of land recovery by aboriginal populations. The Bolivian proposal was strongly opposed by many other States and so did not go further, even though it could have been an opportunity for the United Nations to clarify issues of aboriginality and indigenesness.

The International Labour Organisation had started discussing the concept of indigenous peoples as early as 1921. Again no African

State participated in those meetings, which were predominantly attended by representatives of Latin American States resulting in a text which reflected the Latin American experience of colonisation. ILO Convention 107 *Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries*, which came into force in 1957, applied to:

*a) members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;*

*b) members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong.*

In 1971, the UN Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities appointed a Special Rapporteur on indigenous populations, José Martínez Cobo, to carry out a study on the problems of discrimination against indigenous populations<sup>2</sup>. In 1986 he produced a definition dating back to the thinking of fifty years earlier and clearly emphasising the criterion of original occupancy compared with recent settlers, as follows:

*Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or part of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.*

*This historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors:*

- a) occupation of ancestral lands, or at least of part of them;*
- b) common ancestry with the original occupants of these lands;*

- c) *culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle etc);*
- d) *language (whether used as the only language, as mother tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);*
- e) *residence in certain parts of the country or in certain regions in the world; (United Nations 1986).*

Martinez Cobo's definition has been criticised on the grounds that antecedence is not the only determining factor, and that he has not placed enough importance on self-identification and on contemporary situations. Brownlie considers the factor of vulnerability to be as significant as antecedence (Brownlie 1992:60). In the same vein, Gray asserts that all aboriginals are indigenous and not vice-versa (Gray 1995:38). Anaya distinguishes two kinds of indigenous peoples: those who 'found themselves engulfed by settler societies born of the forces of empire and conquest', such as the Inuit and Aleut of the Arctic, the Aborigines of Australia, the Maori of New Zealand, and the tribal peoples of Asia, and on the other hand '... groups which were not severally affected, if at all, by colonisation or its legacies... Isolated tribal peoples...lived mostly unaffected by outside forces until quite recently.' (Anaya 1996:4).

Africa was colonised, and as shown previously, the political and economic aims of the colonising powers resulted in their domination of African peoples. However, the colonial authorities departed following the sudden handing over of political powers to local Africans as a result of independence movements. There are no African states today in which the former colonial authorities are still in political control – the last remaining example was South Africa. This contrasts with the situation in Australia, Canada, Latin America and some parts of Asia where colonial settlers did not leave even at independence, and then not only claimed a new identity as nationals of these territories, but also continued to assert political power over the local populations.

Defining indigenous peoples as those local peoples still subject to the political domination by the descendants of colonial settlers as in the Americas and Australia has led some to assert that, unless all African populations are accepted as indigenous, '... in Africa it seems difficult to determine which population or group should be considered indigenous...' (Lerner 1991:100). By this reasoning, Africa would be the only continent in which all are indigenous (apart from small minorities of European or Asian descent) or none are indigenous, because none are still politically subject to the descendants of colonial settlers.

However, this argument ignores the 'internal colonisation' that has taken place by African peoples over each other for centuries. Throughout Africa's history, its peoples have engaged in numerous migrations motivated by drought, hunger and the desire to replenish decimated herds (Webster 1979:5-11) as well as for political and economic reasons and to establish control over resources, including long-distance trade in ivory and gold. Many oral histories from groups in the region emphasise notions of conquest (Lewis 2000:7, 47-49). These intense peoples' movements, which still occur in Africa, resulted in many cases in colonisation, displacement or domination of the pre-existing inhabitants, forcing them into a marginalised situation. Different forms of internal colonialism continue to be a central problem affecting indigenous peoples' lives (Gray 1995:50).

#### Approaches based on guiding principles

This approach, expounded by Erica-Irene Daes, the Chairperson of the UN Working Group on Indigenous Populations (established by the UN Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1982), takes a broader, practical view, arguing that although there is no need for a formal definition of the concept 'indigenous', it is important to recognise a number of factors that are relevant for developing an understanding of this concept. This 'polythetic' approach refers to a form of classification in which multiple criteria may be used but not all factors need to be present at the same time in a given situation. The aim is to 'provide some general guidance to reasonable decision-making in practice' (Daes 1996: 22). Based on a review of the evolution of the concept of indigenous from the late 19<sup>th</sup> century, previous definitions and international instruments, Daes identifies four elements which help us to understand the concept of 'indigenous':

- a) *Priority in time, with respect to the occupation and use of a specific territory;*
- b) *The voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organisation, religion and spiritual values, modes of production, laws and institutions;*
- c) *Self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and*
- d) *An experience of subjugation, marginalisation, dispossession, exclusion or discrimination, whether or not these conditions persist. (Daes 1996:22)*

Daes identifies attachment to territory and a priority in time as features which distinguish indigenous peoples from minorities and mentions the inherent danger of a requirement for historical continuity, as many indigenous peoples have been forcibly removed from their lands and now live in urban or other areas, but maintain their indigenous identity. Furthermore, Daes recognises the unease of many African and Asian Governments concerning the identification of indigenous peoples:

*Plainly, most of the persons who have control of the contemporary State are not less native to the soil of the country as a whole than groups that are identified as "indigenous" or "tribal". It should be pointed out, however, that this conceptual difficulty disappears if we think of "indigenous" peoples as groups which are native to their own specific ancestral territories within the borders of the existing State, rather than persons that are native generally to the region in which the State is located. (Daes 1996:20).*

The approach based on guiding principles was in fact also adopted by the 1989 ILO Convention 169 *Convention Concerning Indigenous and Tribal Peoples in Independent Countries*, which in contrast to ILO Convention 107 emphasises the principle of self-identification, stating in Article 1(2) 'Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this concept of this Convention apply.' The Convention applies to:

- a) *tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;*
- b) *peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.*

The World Bank has adopted an inclusive approach, stating in its Indigenous Peoples Operational Directive No. 4.20 (September 1991) 'The terms 'indigenous peoples', 'indigenous ethnic minorities', 'tribal groups', and 'scheduled tribes' describe social groups with a

social and cultural identity from a dominant society that makes them vulnerable to being disadvantaged in the development process' (World Bank 1992). The World Bank refers to all the above groups as 'indigenous peoples' for the purposes of the directive. It also notes that there are varying national legal contexts and socio-cultural criteria for identifying indigenous peoples and that 'no single definition can capture their identity'. However, the World Bank does list characteristics which may identify indigenous peoples in particular geographical areas such as:

- a) *close attachment to ancestral territories and to the natural resources in those areas;*
- b) *self-identification and identification by others as members of distinct cultural groups;*
- c) *an indigenous language, often different from the national language;*
- d) *presence of customary social and political institutions; and*
- e) *primarily subsistence-orientated production.*

Many indigenous groups agree that the concept 'indigenous' should be understood in a more comprehensive sense, but argue that this does not mean that it is applicable to any group. In asserting their right to a particular status, indigenous peoples do not however seek to deny the claim of other groups with a different status and different rights. For example, indigenous peoples assert collective rights i.e. rights of the group as a whole, to land, traditional knowledge, maintenance of culture and so on. In contrast, minorities have rights as individuals belonging to a particular group to practise religion, speak their language, obtain land; they are fundamentally connected to the state as individual citizens.

The International Alliance of Indigenous-Tribal Peoples of the Tropical Forest argues that indigenous peoples living in forest should be distinguished from spontaneous settlers or forest-dependent people, forced to migrate into forests because of social injustice but who lack practices and customs establishing a harmonious relationship with the environment in which they live and who do not have a culture of sustainable use of the forest (International Alliance of Indigenous-Tribal Peoples of the Tropical Forests 1997:63).

Conflicts between groups claiming different rights, especially over land, are common in Africa, but rather than addressing the different issues and claims

*...when the question of indigenous peoples is raised in international fora, officials of African states are always quick to state that "in Africa*





Photographs by  
Chris Allan (View of Kahuzi-Biega forest)  
and *Héritiers de la Justice*

*we are all indigenous." In stating so they are deliberately using the more literal connotation of "indigenous" in order to gloss over inequities that their governments have perpetuated in their respective countries and which have continued to marginalize and oppress certain categories of people in these regions. (Kipuri 1998).*

The Indigenous Peoples Of Africa Coordinating Committee (IPACC) describes the following characteristics that set indigenous Africans apart from other people in their countries:

- *a claim to specific ancestral territory linked to their cultural identity and economic survival*
- *a distinct and identifiable genealogical blood line, sometimes accompanied by distinct physical characteristics which draw attention*
- *modes of production such as hunting-gathering-foraging and pastoralism (using sheep, camels or cattle)*
- *a reliance on natural resources*
- *a long history of sustainable management and use of natural resources*
- *a close link between the natural world (wildlife, wild plants, distinctive climates) and their cultures, intellectual resources and identities*
- *an absence of concepts of individual land title*
- *a situation of non-dominance in their national economies and political systems. (IPACC n.d.)*

Indigenous groups assert their special relationship to specific lands and territories. There are several other groups whose claims of access to land have become genuinely founded in current international law. But, contrary to other groups, indigenous peoples do not just claim accession to land, but rather claim entitlement to a particular land area (Brownlie 1988:4). A special relationship with the land is a fundamental aspect of the identity of people who consider themselves indigenous (Gray 1995:6).

#### **Approaches based on the contemporary situation and self-identification**

It could be argued that even the broad guiding principles outlined above, by setting out the 'characteristics' of indigenous peoples, infringe the key principle of self-identification, and perpetuate a static definition of categories rather than a dynamic approach which examines rights within the context of power relations between different groups.

In Asia the pragmatic definition of the term indigenous could be applied to peoples otherwise described as 'tribal', 'minority', or 'aboriginal' peoples who share a common identity in having lived in an area prior to conquest or colonisation (including by other Asian peoples) and who are not empowered to live according to their socio-cultural, economic and political life-styles. As pointed out by Gray

*Indigenesness is not a thing or a person, but an attribute of both personal and collective identity... [it is] something which people identify in themselves. ... Indigenesness is something that is experienced. It is actually a self-reflective notion, which means that people have looked at themselves from the outside, identified the problems that face them, and understand why an assertion of their identity is a prerequisite for their survival. Indigenesness is an assertion by people directed against the power of outsiders. (Gray 1995:40).*

A look at the contemporary situation in Asia reveals a wide range of attitudes by different peoples concerning their self-identification as indigenous and the extent to which they wish to use the indigenous movement to further their own struggles. These include

- a) *the Tibetans who deliberately do not consider themselves to be indigenous,*
- b) *the East Timorese who recognise the indigenous aspect of their struggle, but have chosen to use the UN Decolonisation Committee and the UN Human Rights Commission as the fora to address their problems,*
- c) *tribal or native peoples who see that the demands of the indigenous movement apply to them and seek an autonomy that falls short of independence (the majority of the peoples of Asia)*
- d) *people who are unaware of the indigenous movement, but live in circumstances for which the term is appropriate. (Gray 1995:54)*

In Africa, where the indigenous movement has only recently started, there are several approaches to the concept of indigenous peoples. Some peoples, such as the hunter-gatherer Pygmies and 'Bushmen' are regarded as indigenous because they were distinct prior to European colonisation because of physical, historical and cultural characteristics. In addition these peoples' identity is strongly linked to their territories.

Since the mid 1980s land conflicts with conservationists and international companies have led the pastoralist peoples of East Africa to insist on the importance of the term indigenous for them. Although



originally used as term of mockery against them by dominant groups, pastoralists identify with other indigenous groups on the grounds that they are people with strong ties to their land, who have been in their region since before colonisation and are now dominated by other peoples whose cultures are markedly different. East African pastoralists see their indigenosity in terms of their special attachment to their lands, on which they depend for survival of their herds, their sense of shared ancestry, the existence of their own languages, cultures, spirituality, knowledge, political, social and cultural institutions and their oppression by other groups which have alienated their lands for non-pastoral uses and violate their social structures and practices (Kipuri 1998).

The term indigenous is also applied to, and adopted by, peoples who are settled but subordinated as peoples to the state, such as the Ogoni of Nigeria.

Each of these approaches is more inclusive and flexible, based on the contemporary situation of indigenous peoples' relations with the state and dominant groups and threats to their lifestyles and territories.<sup>3</sup>

The recognition that strict definitions will not be flexible enough to match the realities of a rapidly changing world, and will only retard developments (Thornberry n.d.) underlies an alternative approach to the meaning of indigenous. Rather than accepting the need for any kind of definition, however broad it may be, the identification of indigenous peoples emerges from the way in which indigenous rights set out by international instruments are developed by states, international organisations and the indigenous movement. This is the approach of the UN Working Group on Indigenous Populations which has resisted including any definition or guiding principles in its Draft Declaration on Indigenous Peoples (United Nations 1995).

*It is now a well-established fact that the concept of indigenous is in the international political and human rights terminology a political, strategic concept that relates to the need to establish human and cultural rights, to the decolonisation process, and to setting right generations of violations of basic individual and collective rights. Who is indigenous and who is not, is not rooted in either genes nor blood nor relationship to land as such. In the analytical conception of indigenosity, the relationship to the nation-state in its present role, to colonial and post-colonial processes, and to the dominant population and non-indigenous groups, are the most important to consider.*

*...The conception of indigenous as describing a certain type of marginalisation is always kept in mind, and also a constant preoccupation*

*that the work for the indigenous cause does not end up supporting ethnic chauvinism... In the political perspective... indigenous is a term that implies the legitimate struggle for certain rights. (Sjørsvlev 1996:3)*

### **International Instruments and Indigenous Rights: African Involvement**

Between 1921 and 1953, the International Labour Organisation (ILO) organised several discussion meetings of experts concerning the protection of indigenous workers culminating in a report 'Living and working conditions of indigenous populations in independent countries.' This report was published in 1953 (Hannum, quoted in Anaya 1996:61) and served as background for the ILO *Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, 1957 (No. 107)* – the first main international instrument on indigenous peoples' rights adopted by the international community.

Only six African delegations<sup>4</sup>, mostly from arabic-speaking nations, participated in the ILO preparatory sessions which started in 1956 because, up to that time, most of the African states remained subject to colonial authorities and therefore without treaty-making powers ((International Labour Conference 1956:537-538). Instead, representatives of Latin American and European States dominated these meetings. Indigenous groups also did not participate because the ILO involves governments, employers' organisations and employee organisations (trades unions) but not, of course, indigenous groups.

Thus, it is not surprising that ILO Convention 107 promoted an essentially assimilationist regime. States were responsible for defining and shaping the well being of indigenous groups, regardless of the wishes of the peoples themselves. Article 2 states: 'Government shall have the primary responsibility for developing co-ordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries.'

Ghana was the first African country to ratify ILO 107 Convention in 1958. Then followed Egypt (1959), Tunisia (1962), Malawi (1965), Angola (1976) and Guinea Bissau (1977).

Influenced by the meetings of the UN Working Group on Indigenous Population, in 1987 the ILO convened a group of experts to suggest revisions to the ILO Convention 107 with the aim of 'removing the assimilationist orientation of the earlier standards and recognising the aspirations of these peoples [indigenous and tribal] to



exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities...<sup>5</sup>

*ILO Convention on Indigenous and Tribal Peoples in Independent Countries, 1989 (No.169)* was adopted in 1989, and showed a new understanding and a core of more effective prerogatives for indigenous peoples (see page 45). Articles 7 and 14, for example, recognise the rights of indigenous peoples to decide their own priorities for development, and the rights of ownership and possession over the lands which they traditionally occupy. Articles 5 and 13 recognise collective rights and Article 16 deals with forced relocation, affirming that indigenous peoples should not be removed from their lands but if this is unavoidable, relocations should take place with free and informed consent and with proper compensation.

ILO Convention 169 came into force in 1991, following the ratifications of Norway and Mexico, in addition to Bolivia, Colombia, Costa Rica, Denmark, Ecuador, Fiji, Guatemala, Honduras, Netherlands, Paraguay and Peru. To date, not a single African State has ratified the Convention.

Nevertheless, since the mid-1980s, there is some indication of a greater awareness of the rights of indigenous peoples among African states. This may be attributed to their increasing involvement in the sessions of the UN Working Group on Indigenous Populations and the production of the Draft Declaration on the Rights of Indigenous Peoples. The first African attendance was in 1987 by a Tanzanian delegation including a Maasai member of parliament, who considered the event to be historical. 'I have learnt that this is the first time that representatives of any community in Africa have been able to attend this very important forum. This is an historical moment for us...' (Center for World Indigenous Studies 1999). At the 6<sup>th</sup> session of the UN Working Group on Indigenous Populations in May 1988 a representative of Congo/Brazzaville, reflecting the new understanding of indigenous rights emerging during the drafting of ILO Convention 169, stated: The '... standards relative to indigenous populations should, however, incorporate more practical and effective provisions which would emphasise ethno-development and self-determination rather than integration' (United Nations 1988). In the 1989 session Tanzania was again the only participating African state, and since 1993 the UN Working Group sessions have been attended by Ethiopia, Niger and Zambia.

Although it remains a non-binding instrument until adopted by the United Nations General Assembly and then ratified by the required number of States, the UN Draft Declaration on Indigenous Peoples constitutes a landmark and 'a beacon of hope for the justice indigenous people seek, as they shed the fears, humiliation, and

## ILO Convention 169

### Article 5

In applying the provisions of this Convention:

- a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;
- b) the integrity of the values, practices and institutions of these peoples shall be respected;
- c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

### Article 7

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.
2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.
3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.
4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

### Article 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.
2. The use of the term *lands* in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

### Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition,

measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned

#### Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.
2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

#### Article 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.
2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.
3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.
4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.
5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

despair of centuries of oppression'<sup>6</sup>. In its preamble, the Draft Declaration expresses the concern that

*indigenous peoples have been deprived of their human rights and fundamental freedoms, resulting, inter alia, in their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.*

The Draft Declaration sets out indigenous peoples' rights to self-determination, to maintain and develop their cultures, traditions, decision-making institutions and political, economic and social systems, to determine their own priorities for development and to ownership and control of their lands. Article 26 states:

*Indigenous peoples have the right to own, develop, control and use the lands and territories... and ... resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of the laws, traditions and customs, land tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation or encroachment on these rights.*

Article 10 states:

*No relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation, and where possible, with the option of return.*

Article 27 states:

*Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size, and legal status.*

If African governments are unwilling to recognise indigenous rights within the UN's human rights framework, the conditions attached to loans by financial institutions may prove a greater incentive. Since the late 1980s the World Bank has developed new directives promot-

ing sustainable development, taking account of local populations' needs. The Bank's Operational Directive 4.20 on Indigenous Peoples issued in 1991 emphasises the need to ensure that indigenous people are not adversely affected by Bank projects and that they receive culturally compatible social and economic benefits. The Bank's policy is to ensure 'the "informed participation" of indigenous people in the preparation of development plans and in the design and implementation of projects'. For investment projects affecting indigenous peoples, the borrowing government is required to prepare an indigenous peoples development plan consistent with the Bank's policy. On land tenure issues Operational Directive 4.20 states:

*... the borrower [should establish] legal recognition of the customary or traditional land tenure systems of indigenous peoples. Where the traditional lands of indigenous peoples have been brought by law into the domain of the state and where it is appropriate to convert traditional rights into those of legal ownership, alternative arrangement should be implemented to grant long-term, renewable rights of custodianship and use to indigenous peoples...*

In 1998 the Council of Ministers of the European Union agreed a resolution to improve the impact of development programmes and activities of the EU and its member states on indigenous peoples. The policy recognises that indigenous peoples have the right to choose their own development paths, which includes the right to object to projects, in particular in their traditional areas. The resolution states:

*The Council acknowledges the importance that indigenous peoples attach to the affirmation of their "self-development", that is to say, the shaping of their own social, economic and cultural development and their own cultural identities. This approach also recognises their own diverse concepts of development, and asserts that they should participate fully and freely in the development process. (European Union 1998).*

Member states are expected to develop practical procedures to ensure that the principles of the EU resolution are implemented in their own development programmes overseas.

The Convention on Biological Diversity (CBD) also provides a means of encouraging African countries to deal with the issues and concerns of indigenous and tribal communities. The CBD was opened for signature at the 1992 Rio Summit on the global environment and entered into force on December 29 1993. One hundred and seventy

five states are parties to this international instrument, including more than 45 African states. Congo (then Zaïre) signed the Convention on December 3 1994.

The Convention regulates access to genetic resources and provides for countries to set up their own 'sui generis' intellectual property rights systems to protect their genetic resources and local knowledge against unfair exploitation by outside interests and to develop these resources for the benefit of their own populations. Although the Convention was drafted without the participation of indigenous groups, and has been regarded by some as increasing the power of states to control indigenous lands, the Convention does have important elements protecting certain indigenous rights.

The preamble recognises:

*the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components.*

Article 8 of the Convention goes further. Paragraph (d) recognises the need for the protection of '... ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings' and paragraph (j) requires every party to the Convention 'as far as possible and as appropriate' and 'subject to its national legislation' to:

*... respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.*

Article 10 (c) obliges States 'as far as possible and as appropriate' to: protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

The African Charter of Human and Peoples' Rights, adopted in 1981 by the OAU (Organisation of African Unity) Assembly, is distinctive in that it recognises the rights of peoples, such as the right of all peoples to self-determination. It does not however make any

statements expressly dealing with the rights of indigenous peoples. The OAU has never shown any interest in drawing up a declaration or convention on this issue, as for example, the Organisation of American States has done. However, the African Commission of Human and Peoples' Rights' *General guidelines regarding the form and contents of reports to be submitted by State members regarding the meaning, scope and weight of the 'rights of peoples' recognised by Articles 17(2), 19 to 20 of the Charter* state that States shall take 'specific measures aimed at the promotion of cultural identity. States shall also take measures and programmes aimed at promoting awareness and enjoyment of the cultural heritage of national ethnic groups and minorities and of indigenous sectors of the populations' (African Commission of Human and Peoples' Rights 1990:417-8).

Even though the majority of African countries are still reluctant to accept internationally recognised indigenous rights, a number of countries are starting to introduce legislation designed to protect indigenous groups into their domestic legal framework. In 1995, Uganda amended its Constitution with new provisions, such as those of Article 32 (1), setting out 'affirmative action in favour of marginalised groups.' Other attempts, such as the Tanzanian National Land Commission of 1995 have rather failed to bring real change for indigenous peoples (Tenga 1998:1-18).

### The African Indigenous Movement

*As more African organisations and groups apply the term indigenous to themselves, they address an unfinished de-colonisation process which solved the problems of some groups at the expense of others<sup>7</sup>.*

While African states are slow to acknowledge internationally recognised rights of indigenous peoples, the peoples themselves are becoming increasingly vocal and active.

In the early 1990s African indigenous groups began to attend the sessions of the UN Working Group on Indigenous Populations. Dr. Deng Dongrin Akuany was one of the first, speaking on behalf of the people of Southern Sudan at the 11<sup>th</sup> session of July 1993, and reporting systematic depopulation, widespread killing, ethnic cleansing and terrorism. Twa representatives from Rwanda attended the Working Group for the first time in July 1994, in the aftermath of the Rwandese genocide, and since then have been regular participants. At the July 1998 session they were joined by a Twa representative from Congo. In 1997 African participants at the Working Group established the

caucus to facilitate, coordinate and represent the rights of the indigenous peoples of Africa. IPACC includes representatives of 'Bushmen', Maasai, Berbers, and Twa and Bagyeli Pygmies.

Nevertheless, African indigenous peoples are still under-represented at UN fora. One of the main reasons is the lack of funds to bring African representatives to the annual meetings in Geneva, and recognising this, the United Nations Voluntary Fund for Indigenous Populations and other support agencies have made special efforts in recent years to promote African participation.

Regional and national African indigenous networks have been established, such as the Working Group of Indigenous Minorities, (WIMSA) operating in southern Africa, and the Pastoralist Indigenous NGOs Forum (PINGOS Forum) of Tanzania, which includes several pastoralist groups and a Hadzabe community. The African Indigenous Women's Organisation was created in 1998 at the first African Indigenous Women's Conference in Morocco. A network of central African Pygmy peoples is emerging, which includes CAURWA (Communauté des Autochtones Rwandais), representing the Twa people in Rwanda, PIDP-Kivu (Programme d'Intégration et de Développement du Peuple Pygmée au Kivu) representing the Twa people in eastern Congo, and CODEBABIK (Comité de développement des Bakola/Bagyeli des arrondissements de Bipindi et Kribi), representing the Bagyeli people of Cameroon.

As well as carrying out advocacy at the international level, African indigenous groups are increasingly challenging state practices at the national level. In 1996, the Ogiek, a hunter-gatherer group living in the Tinet forest of the Mau escarpment in western Kenya, addressed a memorandum to the Kenyan Parliament claiming the right 'to live on their ancestral land and retain both human and cultural identities as Kenyans of Ogiek origins'<sup>8</sup>. Since then they have mounted a vigorous campaign in the courts to defend themselves against expropriation of their lands. The Barabaig of Tanzania have also been assisted to file a number of law suits for the recovery of their ancestral lands (Plant 1991: 33)

International NGOs such as Survival International, the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests, the International Work Group for Indigenous Affairs (IWGIA) and the Forest Peoples Programme have also helped to support the African indigenous movement by strengthening the emerging local indigenous organisations, facilitating meetings for exchange of information and development of common positions and carrying out advocacy on their behalf. A conference organised in 1999 by PINGOS and IWGIA in Arusha, Tanzania, brought together 50 participants from more than 30 indigenous organisations and communities in

east/central and southern Africa. The Arusha Conference stressed that

*the problem of ownership of land and all its resources – animals, water, trees, other vegetation etc. – is acute for all indigenous communities, and that many communities have lost all of their land and others are in grave danger of losing their land;*

and noted that '...this land alienation is due to the lack of recognition by governments of customary occupancy and modes of production and to the lack of adequate land tenure and land ordinance systems.' The Conference resolved that:

*The indigenous peoples have the same right as other African communities to live according to their cultures and freely determine their future and development just as other African communities do;*

*Indigenous peoples' distinctive rights to land, to environment and natural resources, as well as their human and cultural rights should be respected;*

*Compensation and reclamation of already lost land should be given to aggrieved indigenous communities;*

*The distinctive rights of hunter-gatherers must be enshrined in the constitutions and legislation, present and future, of all African countries. (IWGIA 1999:50-55).*

Many national and local organisations also work with, and sometimes act on behalf of, indigenous peoples in Africa. However, the ways of working, the methods, policies and conceptions of many of these remain essentially assimilationist, seeking to integrate indigenous peoples into the 'mainstream' without regard for their way of life. In Uganda for example, evangelical Dioceses have set up programmes aiming to integrate the Twa into existing educational systems, without taking into account the importance of seasonal events in their lives, such as the honey season that any Twa child is unlikely to miss (Bahuchet 1991:13). In Congo some preachers show little respect for Twa beliefs and practice, which are judged to be in conflict with the Christian faith.

In the past, some African indigenous groups believed that communities forced away from their lands and resources had no other option but to become fully integrated into the dominant society to avoid becoming miserable, impoverished outcasts eking a living on

the margins of society. However, there is a growing recognition that the rights to land, resources and self-determination, to protection of indigenous culture and knowledge, which are set out in the international instruments outlined above, provide the political apertures to press for an alternative model of development for African indigenous peoples, a model which enables them to maintain their identity and exert more influence over their futures.

### **The Twa as an Indigenous People**

*[In the survival of the culture of 'Pygmy' people we see] a strong culture despite its apparent fragility. One can only admire the persistence of these people in maintaining their mode of life down the centuries, despite the influence of history.<sup>9</sup>*

The 'Pygmy' peoples are estimated to number between 250,000 and 350,000 people (Luling and Kenrick 1998:1) (approximately equal to the number of Australian Aborigines). They occur mainly in the forest region of Central Africa, ranging from Cameroon, through parts of the Central African Republic, Equatorial Guinea, Congo-Brazzaville, Gabon, Rwanda, Burundi, Uganda, Congo and Angola (Vinding and Waehle 1996: 13). The different 'Pygmy' groups include the Baka and Bagyeli of southern Cameroon, the Ba-aka of the Central African Republic and northern Congo-Brazzaville, the Mbuti of the Ituri forest, north-east Congo, and the Twa of eastern Congo, southern Uganda, Rwanda and Burundi (Luling & Kenrick 1998: I-II). The term 'Mbuti' is sometimes used by local people as a general term for the Pygmies of eastern and northeast Congo<sup>10</sup> (See map page 55).

### **Priority In time**

Throughout the region, Pygmies are acknowledged by other groups to be the descendants of the earliest surviving inhabitants of the land, a belief which is indigenous and not derived from European thinking or research (Woodburn 1997:353). As such Pygmies are accorded significant status in the rituals of their Bantu neighbours, 'licensing' these later arrivals to use the land (Lewis and Knight 1995; Woodburn 1997:354). As assessed by Woodburn:

*To be a first inhabitant matters. It is not, however, recognized as providing a special claim to land rights because hunter-gatherer usage*

has not normally been recognised by African farmers as a form of property right – though, of course, it has the potential to be used politically as a form of property right and certainly should be and will be. What it is recognized as providing is a specially intimate tie with the land and its well-being and the well-being of those who live on it.

Woodburn goes on to express the irony of hunter-gatherers being expected to legitimise the authority of those who oppress them by having to bestow the land on them:

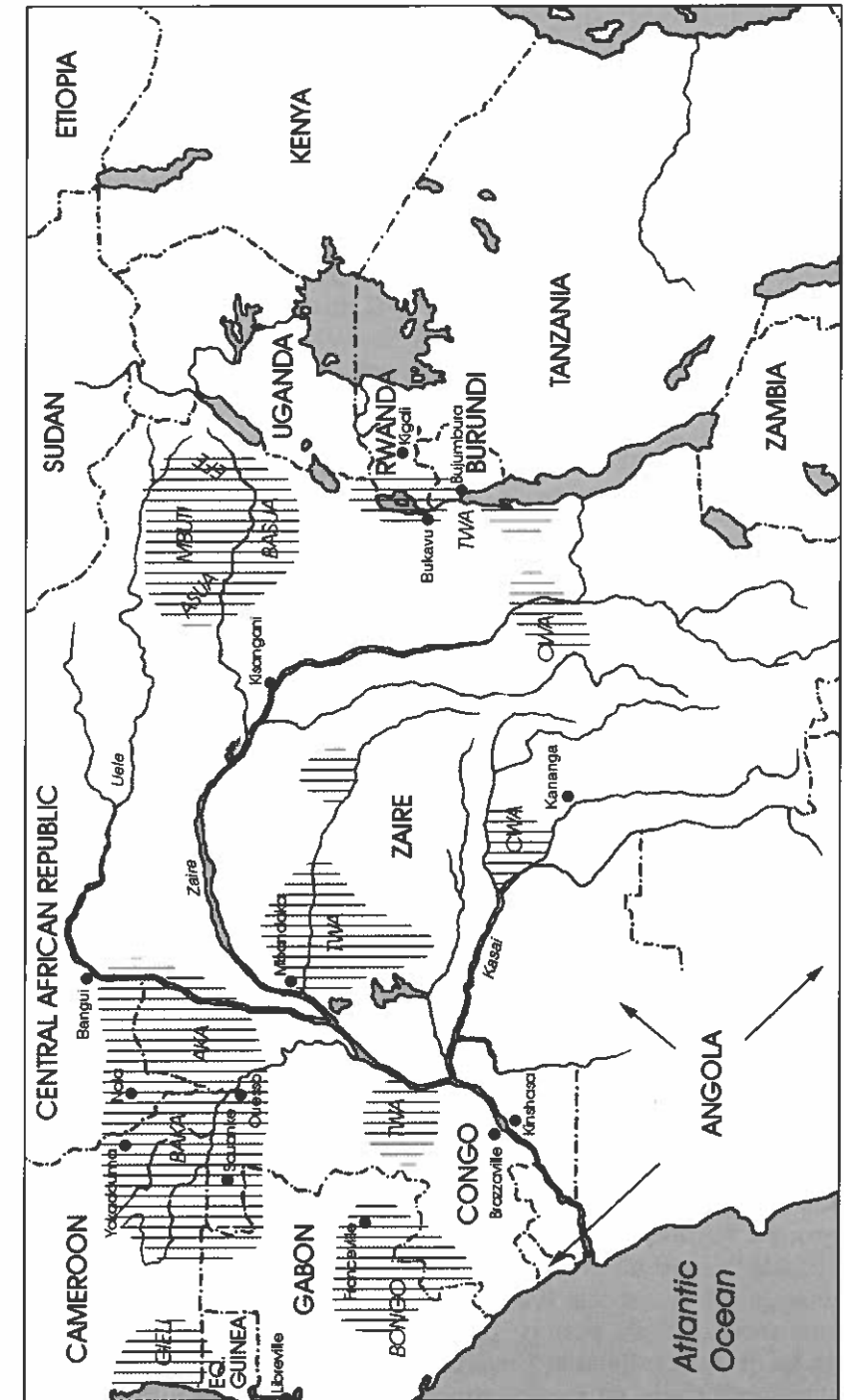
*...Their rights as first occupants are being recognized in these rituals but only if, in effect, they acknowledge they are not using the land in the best way and are handing it over to those who will. It could be argued that such participation is a form of ritual dispossession.*

In eastern Congo the Kahuzi and Biega forests have been inhabited for centuries by Twa people, practising a subsistence hunting and gathering life style. As elsewhere in Africa, the Twa are recognised as the first inhabitants of the forests by the other ethnic groups in the area. They were traditionally given the role of 'enthroning' the local chiefs or Mwamis and until recently Twa were always present at the Mwami courts (Kapupu 1996:18).

Historical analyses also indicate that Pygmies were present in the Congo basin before the arrival of other groups:

*... the Bantu were able to move quickly through the rain forest via the Congo drainage system until they emerged at the southern fringe of the forest in what is today the Luba country of the northern Katanga ... the Bantu apparently developed rapidly in numbers and expanded in all directions - moving southward across the Zambezi to form the civilisation which produced Zimbabwe, pushing eastward into the high plains where they fanned out in a complex movement which enveloped the plateau and the coast of East Africa, and doubling back through the forest to absorb the pygmy people of the Congo...they were in a position both to attract and to assimilate other people, imposing upon them their language until the population of Africa south of the equator had been converted substantially into iron-age speakers of Bantu...to the east in the Great Lakes there is also evidence of Bantu migrations, spreading north from a nucleus in the Zambezi valley and establishing the iron age in Rwanda, Uganda, and Western Kenya ... [This Bantu migration was] ... complicated however by countermigrations southward by Nilotic peoples. In western Uganda and Rwanda, pastoral groups known as Hima and Tutsi had established themselves over the Bantu farmers by the end of the fifteenth century, but at this point the*

Distribution of African Pygmy Populations





*Hima kingdom was invaded by the Nilotic Luo who poured into Uganda and western Kenya establishing a series of states north west of Lake Victoria. (July 1970 :133-135).*

Twa people were living in the forests of southern Uganda when the Bufumbira and Bakiga tribes moved in from Rwanda one or two centuries ago (Wily and Kabanankye 1996:27). The total present-day population of Twa comprises about 70-86,000 people, dispersed over an area of about 100,000 sq. km (Lewis 2000:2) straddling the state boundaries of eastern Congo, Burundi, Rwanda and southern Uganda (Kapupu and Kalimba 1998). The original territory of the Twa appears to have extended throughout the high mountain ranges bordering the Great Lakes.

### **Cultural distinctiveness**

To varying degrees 'Pygmy' groups in the densely forested areas continue their traditional lifestyle as semi-nomadic hunters and gatherers. Despite being separated by distance and language, they show great similarities in their social organisation and cultural traits, including their intimate knowledge of the forest and their unusual polyphonic song rituals which are used to maintain harmonious relationships with the forest (Luling and Kenrick 1998:IX). These groups share a cultural identity based on a minimum period spent hunting and gathering, identification with and preference for forest life, complex relationships with forest farmers and elephant hunting rituals (Hewlett 1996:215). Their languages are generally derived from those of neighbouring Bantu and other farming peoples, but the existence of a shared core of words, especially plant names, which are not borrowed from neighbours is taken by some researchers to indicate that Pygmies once had a common language (Luling and Kenrick 1998:VIII).

Despite the appeal of the 'noble savage' image to Western imaginations, it is important not to romanticise Pygmies as exotic beings whose way of life has remained fossilised in time. They live in dynamic societies which can, and do, adapt to changing circumstances providing they have the necessary resources to do so. Some groups, such as some of the Twa of Rwanda and Burundi have, for at least the last century, evolved another way of life as potters living outside the forest. Until the relatively recent advent of cheap plastic and metal goods, pottery provided a reasonable lifestyle for many Twa. In Burundi, some Twa became blacksmiths (J. Lewis, personal communication) a livelihood which has since died out. In more

recent times, the Mbendjelle living in the forests of the northern part of the Republic of Congo have been able to take advantage of new opportunities offered by the modern world, and some have become river traders, gardeners, guides and forest inspectors, without losing their identity as Pygmies (Lewis 1999:19). In eastern Congo there are still Twa living a traditional lifestyle in non-conservation forest areas, such as some remote parts of Kalehe District and Walikale. But they are increasingly under pressure from non-Twa hunters (APOSKI 1993:36). The Twa expelled from the Kahuzi-Biega Park have attempted to find alternative means of subsistence through agriculture and animal husbandry, but as they have no secure rights to land their existence is very precarious. Some sing and dance for money; others do farming and menial work for their neighbours, as they have no farmland of their own. Some Twa work for the Kahuzi-Biega Park administration as trackers, and although they are forbidden to hunt there, some still do so clandestinely.

Socio-economic relationships between Pygmies and other ethnic groups occur throughout Central Africa, based on exchange of forest products and labour for the agricultural products and artefacts of farmers. In some parts of Central Africa, these relationships may have existed for 2000 and possibly even 4000 years (Ehret and Posnansky (eds) 1982, quoted in Sayer et al. 1992:43). The nature of these relationships varies. The Mbendjelle, for example, choose to associate with Bantu and Oubangian-speaking farmers in order to obtain the products they want and see themselves as controlling the exchanges (Lewis 1999:3). However, for other groups such as the Baka of southeast Cameroon, who have been alienated from their forest domain through deforestation and sedentarisation, and are forced to live on the fringes of the money economy, their relative lack of choices makes them more vulnerable to exploitation by Bantu farmers (Abega 1998). This is also the case for the Twa now living on the fringes of the Kahuzi-Biega Park, Kivu, eastern Congo, who are in a very unequal position in their dealings with their farming neighbours.

Some officials argue that in entering the modern world, Pygmies have lost their identity and have become completely acculturated to the Bantu way of life implying that they have somehow lost their 'indigenesness'. This was claimed to be the case for the Twa of Kivu, by a representative of the Congolese Institute for Nature Conservation at a workshop in Bukavu organised by Héritiers de la Justice in celebration of the 1995 International Day of Indigenous Peoples<sup>11</sup>.

However, Turnbull found that the Mbuti of north-eastern Congo, only appear to be acculturated when interacting with the Bantu



'... because in this foreign world their own code of behaviour does not apply' and it does not hurt them 'to foster the villagers' illusion of domination; it even helps to promote favourable economic relations'. He concluded that '...after centuries of contacts with the more advanced cultures of the villages and in spite of all appearances, their acculturation to any other mode of life remains almost nil...' (Turnbull 1997:219-22).

Over the past thirty years, Twa communities in Uganda, Rwanda, Burundi and Congo have been expelled from their forest lands, to make way for conservation and agricultural projects. Together the Twa now constitute a significant concentration of former forest-dwelling hunter-gatherers, many continuing to live near the margins of their forests, but now obliged to live with very few resources in close contact with their Bantu neighbours. Many Twa customs have had to be abandoned due to the changes to their environment. For example, the Twa of eastern Congo have had to relinquish the traditional practice of moving camp after a band member has died and been left in their hut, as they can no longer roam freely through large areas of forest (Kapupu 1996:17).

Twa representatives from Rwanda and Kivu have themselves stated:

*In view of the fact that we are forgotten and marginalised despite [being] the great trustees and protectors of the equatorial forests of Africa, we ask you to...*

*Not take premature decisions about the forests without consulting with us and without guaranteeing our right to live there as protectors of the forests, which are for us a paradise...*

*That the Governments recognise the rights of indigenous peoples in ... legislation concerning the inhabitants living in the depths of the forest, without pressurising them or expelling them from their ancestral domain which they consider their paradise...<sup>12</sup>*

Twa representatives insist that respecting and supporting the traditional cultural identity of the Twa should not deny them access to services available to other members of society, such as schooling and health facilities. Twa people should also have a range of livelihood choices based on opportunities offered by the modern world, but which should also include the option to maintain or regain their forest-based existence.

### Experience of marginalisation

Throughout Africa, hunter-gatherers and former hunter-gatherers share the experience of marginalisation, stigmatisation and discrimination. Rigid barriers are drawn up against them, even though they pose no political threat as a numerically small minority; they are excluded or exclude themselves from normal dealings with other people. While hunter-gatherer relations with their farming neighbours can vary from virtual serfdom to freely entered-into exchange relations, in the wider national context hunter-gatherers are publicly and explicitly stereotyped as stupid, disgusting, greedy, primitive, lacking proper culture and even as not fully human. They are denied rights over lands, their own labour and their own practices, for example, the widespread notion among neighbours of Pygmy groups that they are entitled to control the labour and marriages of the Pygmy families they are associated with (Woodburn 1997:348-350). Former hunter-gatherers, including the Twa, suffer particularly severe discrimination when they have lost almost all possibility of living by hunting and gathering and have had to adopt service roles in relation to the dominant ethnic groups (Lewis and Knight 1995:9; Woodburn 1997:351). The relentless segregation and stigmatisation imposed on the Twa is reported in detail in the Rwandese context by Lewis and Knight and regarded as extreme by Woodburn in his analysis of the reasons for the widespread and deep-rooted discrimination against hunter-gatherers (Woodburn 1997:351).

Hunter-gatherers are not easily able to organise their own defence against discrimination. This is due largely to their political vulnerability and the traditional 'immediate-return', egalitarian social organisation, in which members of the group are not bindingly committed to each other and in which sharing and minimising of social differentiation is emphasised rather than authority and institutionalised 'leadership' (Woodburn 1997:352). It is thus remarkable that despite their marginalisation by the authorities and by society, Twa in Congo and Rwanda have succeeded in setting up their own organisations to press for their rights and help their people improve their living conditions. These organisations have recently begun to forge links with Twa communities in Uganda and Burundi.

The Twa of Congo have never played a part in national affairs, even though in 1970 President Mobutu of Zaïre, as the country was then known, declared that the Twa were the first inhabitants of the country (Kapupu 1996:17-18) and that all Twa had to be given equal treatment and equal opportunities in all aspects of public life compared with other citizens. It was announced that Pygmies were recognised as nationals and would be recruited into the army as well

as into the civil service. Following these declarations, some Twa were for the first time given identity cards and about 50 of them were then enrolled in the army. However, unlike their fellow soldiers, they were not given an opportunity to use modern weaponry but were told to continue using their traditional bows and arrows. This put them into a very vulnerable position and they were decimated during the secession movements in the 1970s. Subsequently no further steps were taken to involve Twa in national matters and they became once more a submerged and forgotten population.

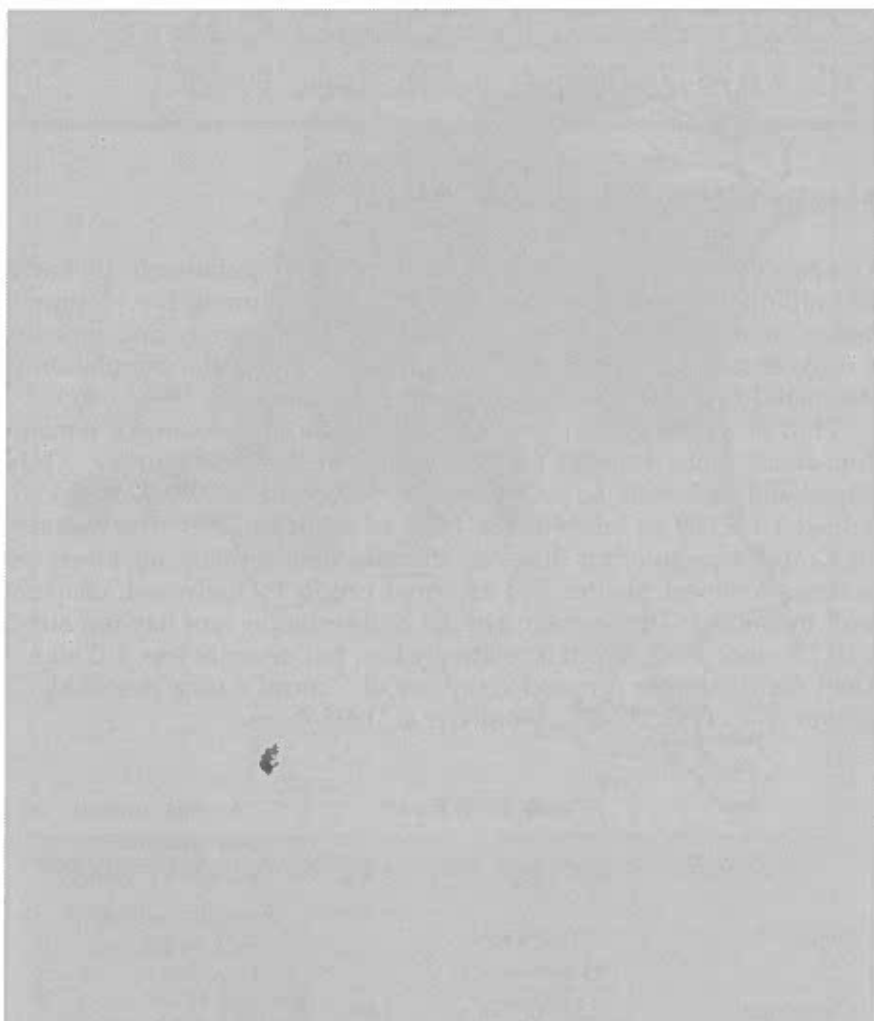
As well as the Twa, nine other ethnic groups inhabit South Kivu: the Shi, Fulero, Bembe, Rega, Tembo, Vira, Nyanga, Havu and Kusu. In contrast to the other ethnic groups, the Twa of South Kivu have never had any political representation even though they number up to 16,000 (APOSKI 1993:38) and in Congo elections have always followed ethnic lines.

According to the electoral system, each administrative area of about 25,000 people is entitled to one Member of Parliament. The Shi have had at least eight MPs since the late 1970s, the Bembe and the Fulero have each had two MPs. No Twa has ever been appointed as a civil servant or minister. Twa local chiefs are not even recognised by the local authorities, even where there are high concentrations of Twa such as in Tshibati (Kapupu 1996:7). This contrasts with the situation of the Tembo, and the Nyanga, both of whom comprise less than 15,000 people, but who have had their own MPs and representatives at high levels within the civil service. For example the head of the University of Kisangani (1982-1986) was Bamwisho Mihia, from the Nyanga ethnic group. Ngashi Bikulo, from the Tembo ethnic group was Director of the Bwindi Institute, and an MP. The last prime minister from South-Kivu was Birindwa ci Birhashwira, from the Shi group; the Head of Parliament in the 1990s was Anzuluni Bembe, from the Bembe. Kititwa Tumansi Bengantundu former head of the *Comité Central* (the main organ of Mobutu's single party regime) was from the Rega.

As well as their political and institutional marginalisation, the Twa lack access to health and education facilities. Up to 1991, no more than two Twa had entered into secondary education<sup>13</sup> and to date (1999) there are no recent reports of Twa in the army. These figures are unlikely to have improved due to the continuing collapse of the Congolese economy, exacerbated by the influx of refugees during 1994 and the armed conflict since 1996. The marginalisation and intolerable living conditions faced by the Twa now living around the Kahuzi-Biega Park are described in detail in Chapter 4.

## Notes

- <sup>1</sup> General Assembly Res. 275(III) (1949)
- <sup>2</sup> United Nations Economic and Social Council Resolution 1589(L), May 21 1971
- <sup>3</sup> A more detailed treatment of the range of approaches is given in International Alliance of Indigenous and Tribal Peoples of the Tropical Forests 1999:20-27.
- <sup>4</sup> These delegations were from Egypt, Liberia, Libya, Morocco, Tunisia and the Union of South Africa. However most of them did not contribute significantly. The Liberian delegation, for example, voted against the convention.
- <sup>5</sup> Preamble of the Convention adopted during the 76<sup>th</sup> session of the ILO
- <sup>6</sup> Statement made by Irene Daes to the Sub-Commission on Prevention of Discrimination and Protection of Minorities in August 1995
- <sup>7</sup> Vinding and Waehle 1996:14
- <sup>8</sup> Ogiek Welfare Council, July 1996, Nairobi/Kenya
- <sup>9</sup> Bahuchet 1991:12
- <sup>10</sup> The 'Ba' prefix indicates the plural, 'Mu' the singular; the terms Batwa and Twa may be used interchangeably.
- <sup>11</sup> Héritiers de la Justice 1995 Report.
- <sup>12</sup> *Declaration by the Indigenous Peoples of Central Africa*, 2nd Conference on Central African Moist Forest Ecosystems (CEFDHAC, or the 'Brazzaville Process?'), Bata, Equatorial Guinea, June 1998. <http://www.heritiers.org>
- <sup>13</sup> Héritiers de la Justice Workshop on the International Day of Indigenous Peoples 1995: presentation by Kapupu Diwa Mutimanwa, PIDP



# CONSERVATION IN CONGO AND THE KAHUZI-BIEGA NATIONAL PARK

## Forests and Biodiversity In Congo

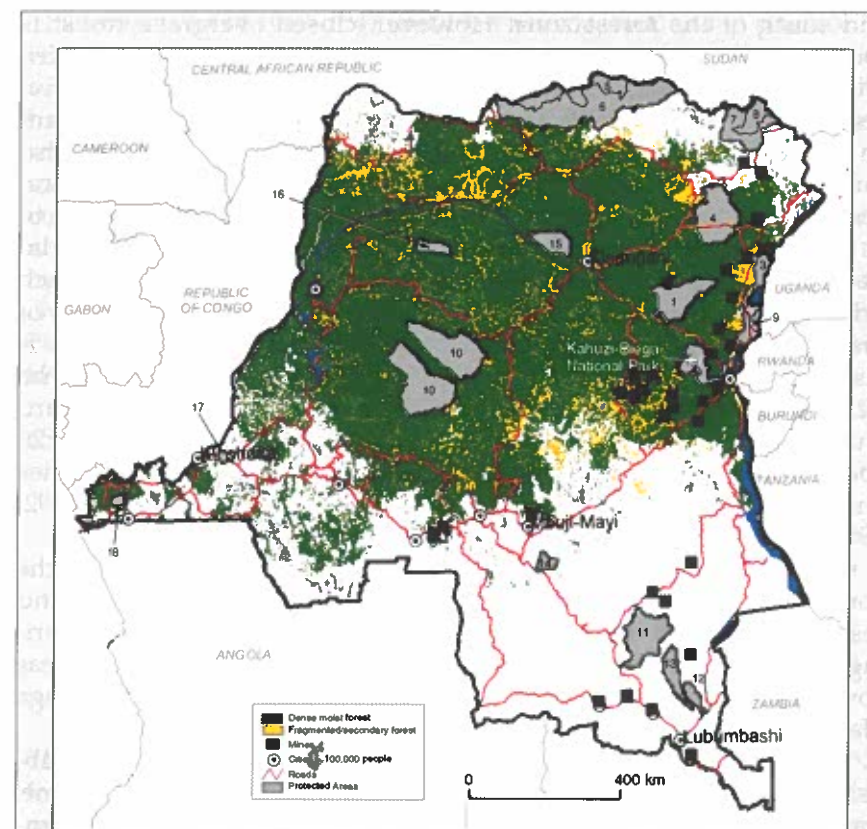
Congo's land area is 2.3 million sq. km. and its population in 1998 was 49 million. According to the United Nations Human Development Index, which combines life expectancy, adult literacy and income, Congo is ranked 141 out of 174 countries. 70% of the population is estimated to live outside urban centres (Wolfire *et al.* 1998: 7-8).

Half of Africa's forest area and one eighth of the world's remaining dense moist tropical forest is found in this one country. Only Brazil and Indonesia have larger areas of forest. In 1993, Congo contained 1,108,000 sq km of forest (47% of the land area). The majority of Congo's population depends directly or indirectly on forest resources for food, shelter and artisanal products, fuelwood, charcoal and bushmeat. The average annual deforestation rate has remained at 0.7% since 1980, which is relatively low, but nevertheless still higher than the five other forested countries of Central Africa (see Table 1) (Sayer *et al.* 1992:272-282; Wolfire *et al.* 1998:7)

Region	Dense Moist Forest		Average Annual Deforestation Rate	
	1993 1000 km <sup>2</sup> (% forest cover)	1993 ha/capita	1980-90 (% of total)	1990-95 (% of total)
Cameroon	180 (39%)	1.44	0.6	0.6
Republic of Congo	237 (69%)	9.88	0.2	0.2
Democratic Republic of Congo	1,108 (47%)	2.69	0.7	0.7
Equatorial Guinea	100 (60%)	5.54	0.4	0.5
Gabon	214 (81%)	17.83	0.6	0.5

Table 1: Comparison of forest cover and deforestation in Central African countries. From Wolfire *et al.* 1998

Congo's forests are mostly semi-evergreen, dominated by Caesalpiniaceae species, becoming more deciduous towards the north



### Protected areas in the Democratic Republic of Congo

1. Mako National Park
2. Kahuzi-Biega National Park
3. Virunga National Park
4. Okapi Wildlife Reserve
5. Bomu Nature Reserve
6. Billi-Uere Hunting Reserve
7. Galanga-na Bodio Hunting Reserve
8. Garamba National Park
9. Rutshuru Hunting Reserve
10. Salonga National Park
11. Upemba National Park
12. Kundelungu National Park
13. Kundelungu Ouest National Park
14. Shaba Game Reserve
15. Yangambi Floral Reserve
16. Lomako-Yekora Game Reserve
17. Bombo-Lumene National Park
18. Luki Forest Reserve

Source: Wolfire *et al.* 1998

and south of the forest zone. However, closed evergreen forest is found on the mountains in the 'Albertine Rift' area of the eastern borders, which form the watershed between the Nile and Zaïre rivers (Sayer *et al.* 1992: 273). Congo has a very high diversity of plant and animal species, due partly to the huge size of the country and also to the range of climates, topography and geology. There are several core areas of particularly high biodiversity and endemism, thought to correspond to sites of forest refugia at the time of the last world glacial maximum around 18,000 BP, when the climate in Africa was much drier than at present. The largest of these core areas lies in the east of the country, in the Albertine Rift area where the Kahuzi-Biega Park is also situated (Sayer *et al.* 1992: 22). The Albertine Rift area has the richest montane forest flora in Africa. The area around Lakes Edward and Kivu in Congo has at least 62 endemic plants, and a further 26 species are endemic to Rwanda and Burundi. Some 36 bird species and some 34 amphibians are confined to the region (Sayer *et al.* 1992: 29).

Congo's protected areas now cover 180,000 sq. km or 7.7 % of the country - higher than most other countries- and its 18 parks and reserves include nine national parks of which four are World Heritage Sites. In the eastern forests there are four major protected areas covering 38,300 sq. km in total: - the Kahuzi-Biega, Maiko and Virunga National Parks, and the Okapi Wildlife Reserve. See map page 65.

Congo's system of national parks and reserves began to be established in 1925 by the Belgian colonial government. At the present time, the protection of flora and fauna is addressed by three legal instruments, which deal with national parks (1969), 'protected areas' (1975) and hunting (1982). By law, though not necessarily in practice, no human inhabitants or hunting are permitted in national parks, however, they are open to the public. Habitation and any other human activity are also forbidden in game reserves, but people may live in hunting reserves. The *Ordonnance-loi* of 1969 forbids acts in national parks which could damage components of the ecosystem, but permits 'tourism or activities indispensable for the economic development of populations'. Park authorities are empowered to deal with infractions of the law up to 50 km from the border of the park (Doumenge 1990:84-85).

The law on hunting provides for 'rural hunting permits' which permit the owner to hunt with non-automatic fire arms and 'joint hunting permits' which permit community members to hunt as a group under the responsibility of the local headman within the borders of their lands and according to their nutritional needs. However, the joint hunting permit does not assure exclusive hunting rights for village communities, as there is no law preventing other types of permit holders to hunt on the same community lands (Doumenge 1990: 79-82).

The forest laws of 1949, 1947 and 1955 have lapsed, and in practice the 'Guide to Forestry Operations' (last edition 1986) is used. A new Forest Code was in preparation in 1990. Private rights to land, whether based on written title or custom, were abolished in 1973, and were transferred to the state. Land allocated by the state must be 'mise en valeur' i.e. exploited; otherwise it reverts to the state. In practice, customary law continues to regulate forestlands; for example, before a logging company in possession of a concession from the state can open up logging roads, it must obtain the agreement of the customary chief to whom the company also gives 'taxes' (Doumenge 1990:71-75). Further details of Congolese legal and customary land rights are given in Chapter 5.

The IUCN Tropical Forestry Programme in its 1991 survey of the conservation of ecosystems in Congo noted:

*There are frequent problems caused by land claims and customary rights of populations displaced by the creation of protected areas. These cannot be resolved without substantial economic compensation in cash or by promoting development activities and local participation in the economic activities generated by the protected area, so that the [displaced] populations do not feel themselves too injured and no longer continue to perceive the State as a repressive structure. (Doumenge 1990: 91).*

The Institut Congolais pour la Conservation de la Nature (ICCN - formerly IZCN<sup>1</sup>, is responsible for managing national parks, game reserves and hunting reserves. It was established in 1978 (Doumenge 1990: 71) replacing the Institut National pour la Conservation de la Nature (INCN) which was created on August 22, 1969 by *Ordonnance-loi* 69/041. The statutes of the Institute were later amended by *Ordonnance-loi* 72/012 of 1972. According to Article 15 of this *Ordonnance-loi*, the mandate of the Institute is to 'ensure, in natural reserves... the protection of nature, the promotion of scientific research and in so far as compatible with nature conservation, the promotion of tourism.' No mention is made concerning the rights of human communities living inside these protected areas, except Article 16 which states ambiguously that:

*The INCN is charged with the problems of the human environment, such as deforestation, pollution of water and air, degradation of sites, erosion. It provides detailed evaluations of all projects concerning industrialisation or management likely to improve, or have an impact on, the human environment, [providing] the project is submitted at least six months before its commencement.*



According to Article 27b of the *Ordonnance-loi* of 1972, managers of protected areas can act as *officiers de police judiciaire*, consequently they can arrest and detain anyone accused of breaching conservation laws.

The ICCN falls under the remit of the Ministry of Land, Environment and Conservation of Nature but is said to have a degree of autonomy that is unusual for African conservation organisations. It is regarded by conservation organisations as having a distinguished record, having survived periods of civil disturbance and lack of resources. It has been financed by the World Bank, European Union, German bilateral aid (German Society for Technical Cooperation, GTZ) and the World Wide Fund for Nature (WWF) (Sayer *et al.* 1992: 280).

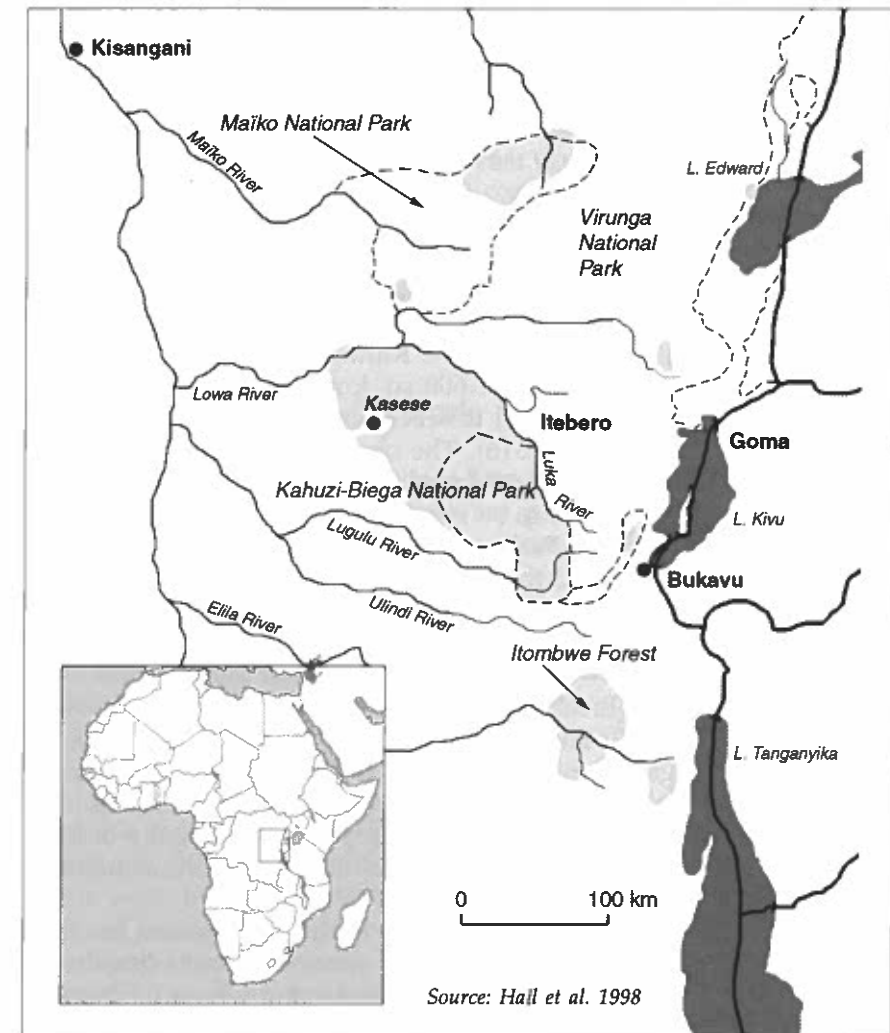
### The Kahuzi-Biega National Park

The Kahuzi-Biega National Park lies 20 km west of Bukavu in the province of South Kivu ( $1^{\circ}36' - 2^{\circ}37'S$ ,  $27^{\circ}33' - 28^{\circ}46'E$ ), taking its name from two extinct volcanoes, the Kahuzi (3,308 m) and the Biega (2,790 m). The average maximum temperature is  $18^{\circ}C$  and the minimum is  $10.4^{\circ}C$ , with about 1,800mm annual rainfall. The Park covers 6,000 sq km and is composed of two parts joined by a 7.5 km wide corridor. The smaller eastern part (600 sq. km) is mountainous while the larger, western part, lying to the south of the road from Bukavu to Kisangani covers about 5,400 sq. km of lowlands including parts of the rivers Lowa and Lugulu (Doumenge 1990: 132). The vegetation ranges from wet lowland rain forest (Guineo-Congolian) through transitional rainforest to Afromontane vegetation dominated by tree heathers (Sayer *et al.* 1992: 13).

The 'Zoological and Forest Reserve of Mount Kahuzi' was created by decree No. 81/AGRI of the Belgian colonial administrator (Governor General) on 27 July 1937. At that time, forests were regulated by Article 15 of the *Charte Coloniale* in general and in particular by the laws of 1947 and 1949. The Mount Kahuzi reserve was part of the *domaine privé de l'Etat*; it belonged to the Congolese State but could be conceded to an individual for private use. It was managed by the Comité National du Kivu. According to the Decree of February 1952, the contract of concession must state how the lands in question were to be used. Any changes to the stated use had to be authorised by the Governor of the Province.

The State also could terminate such concessions at any time, if the land was needed for public interest purposes. Furthermore, according to the *Arrêté Royal* of October 1, 1951, on the activities of the Comité National du Kivu for concessions of lands over 500 hectares, the benefi-

Distribution of Grauer's gorilla showing the major concentration around the Kahuzi-Biega National Park



ciary had to use the land *sous réserve de droits indigènes* i.e. the concessionaire could not evict people inhabiting such lands.

During the colonial period, it appears that park authorities were empowered to waive certain restrictions in favour of Pygmies. For example, Pierre Schumacher, concerned about the impact on the Twa of the stringent legislation governing the Albert National Park<sup>2</sup> obtained the following assurance from Mr. Van Straelen, the President of the Management Committee for National Parks in Belgian Congo:

Concerning the conditions in which the Pygmies live, the principle has always been accepted that the 'National Park' regime will ensure the integrity of the rights exercised by these nomadic small people (*né-grilles*) in the areas placed under our administration. Article 18 of the Internal Regulation provides that the Management Committee may lift prohibitions laid down in articles 7,8 and 9 of the Constitutional Decree, to maintain the conditions of existence of the nomadic Pygmies occupying the forests of the National Parks. (Schumacher 1940: 170).

The Park lay at the junction of four traditional autonomous areas or *Collectivités-chefferies*: Kalonge, Ngweshe, Nindja and Kabare. In 1951 the Mwamis (chiefs) of these areas were consulted by the colonial authorities, which then extended the Kahuzi reserve to include the Biega forest, covering an area of 600 sq. km in total. In November 1970, the Kahuzi-Biega Natural Reserve was gazetted as a National Park (*Ordonnance-loi* no. 70/316). The change in designation meant that human habitation was prohibited. The Park was now regarded as a public service that was to be run for the public interest only.

In 1975, the area of the Park was further increased by *Ordonnance-loi* 75/238, which extended the Park into the lowlands to encompass the present total of about 6,000 sq. km including almost all of the *Collectivité-chefferie* of Nindja, a significant part of Bunyakiri and some parts of Walikale.

In 1981 the Kahuzi-Biega National Park was declared a World Heritage Site by UNESCO. There are now four such sites in Congo, including the Virunga, Salonga and Garamba National Parks. Under the terms of the World Heritage Convention (1972) such sites are of 'outstanding universal value' and contracting parties are legally obliged to do their utmost to protect the sites' natural and cultural heritage (Sayer *et al* 1992: 73).

The main conservation interest of the Park is the eastern lowland gorilla, or Grauer's gorilla, *Gorilla gorilla graueri*, an endangered subspecies which is found only in eastern Congo, and whose total population size in 1990-91 was estimated at about 16,900 individuals (Hall *et al.* 1998: 122-130). See map page 69.

In 1979, the mountain sector of Kahuzi-Biega National Park contained up to 223 gorillas, comprising 14 families and 5 solitary males. By 1990, the number had increased up to 284: 25 families and 9 solitary males. A 1996 survey found similar numbers. There have been reports, however, that since these surveys many of these gorillas have been killed during the recent conflicts in the area (Yamigwa *et al.* 1996:62-78; Hall *et al.* 1998:124-125). The gorilla population in the lowland sector of the Park plus the forest area of Kasese outside the Park

is estimated at 14,659 (range 7410-22203). The gorillas found in this lowland area represent 86 percent of the subspecies' total population (Hall *et al.* 1998:122, 124).

The Park also contains forest elephant, buffalo, bongo antelopes and chimpanzees (Doumenge 1990:132). Until the escalation of civil conflicts in the region in 1996, the Park was a useful source of income for the Congolese central government, with foreign tourists paying about \$120 per visit in entry fees alone. In 1986, 2479 tourists visited Kahuzi-Biega (Doumenge 1990:62) compared with a total of 35,000 tourists per year in the whole of the country, worth US\$ 25 million in foreign exchange (Doumenge 1990:43). By 1994, the number of visitors to the Park had dropped to 644, of which 488 were Congolese (Anon 1995).

### Human Pressures on the Park

The area around Bukavu has been largely deforested, so that the upland forests in the east of the Park are particularly important for soil protection and as water catchments areas. South Kivu is one of the most densely populated provinces of Congo, with more than 6 million inhabitants, due to the fertile volcanic soils. In addition in recent years the region has also accommodated up to one million refugees from Burundi and Rwanda. The population density is highest around the eastern side of the Park (300 inhabitants/sq km in 1995) decreasing towards the west, although remaining significant around the Bitale-Itebero road (Bukavu-Kisangani). In the lowland areas the population density is around 10 people/sq km (Mbake 1995a). Economic activities in the area include subsistence agriculture (cash cropping - tea, coffee and chinchona plantations in the east), timber extraction and, in the west, hunting, cassiterite and gold mining, which are also carried out inside the Park boundaries. The urban centres of Bukavu, Goma and even Kisangani, 500 km to the northwest, stimulate commercial hunting for bush meat (Doumenge 1990:135) and elephant poaching is common in the Park (Wolfire *et al.* 1998:12). Nevertheless, densities of large mammals are higher in the protected areas of the eastern part of the country than outside them, indicating that the legal status of the protected areas has some influence (Hall *et al.* 1998:127).

Pressure on the Park has intensified over the last 10 years due to the hunger for fertile lands and gold panning opportunities which have drawn people into the forests. In addition, Laurent Kabila's 1996-7 military offensive, which ousted former President Mobutu Sese Seko broke up Rwandese refugee camps, driving hundreds of thousands



of refugees into the forest (Wolfire *et al.* 1998:10). Since then the Park has become a hideout for some of the many armed factions involved in the brutal ongoing civil conflict that is creating turmoil and insecurity in Kivu.

### Park Management and Local People

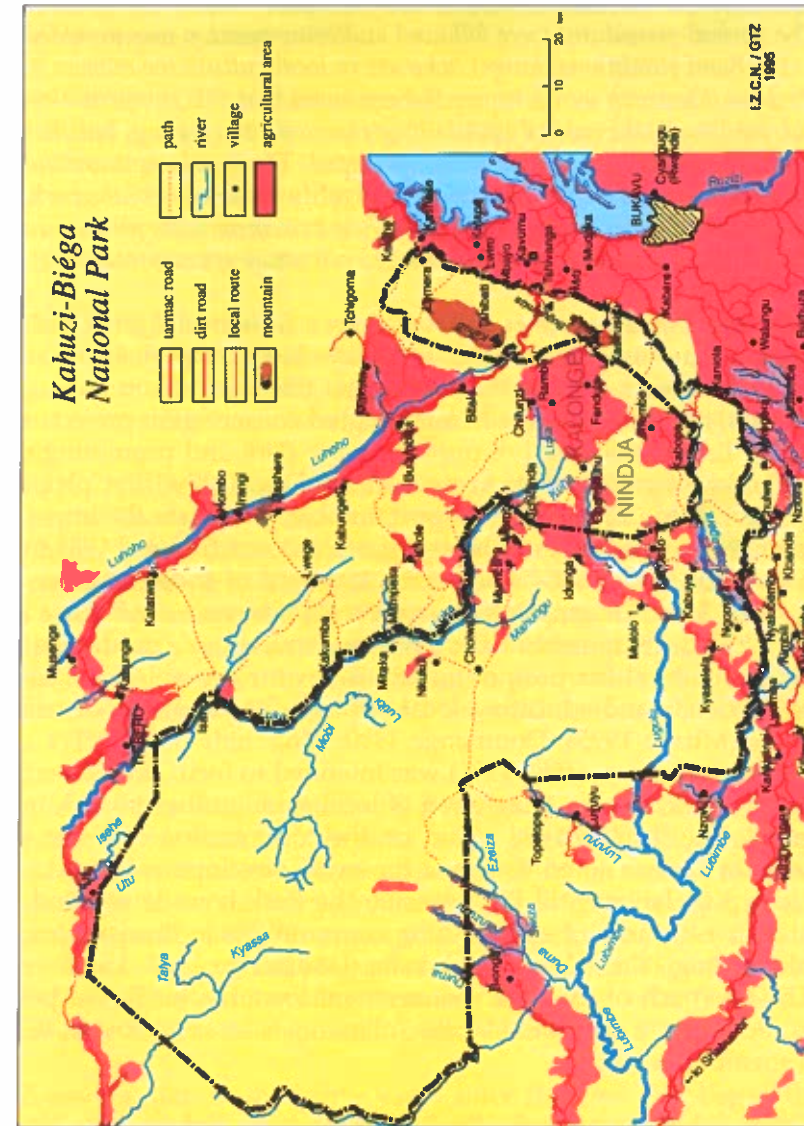
The extension of the Park into the lowlands in 1975 affected more than 13,000 settled people (mostly Shi, Tembo and Rega) who were using the forest lands for agriculture, cattle grazing, mining activities and limited hunting and fishing (APOSKI 1993:33). Local people were not consulted about their customary rights before the 1975 extension, 'the normal expropriation procedure as provided by the law was not followed and no compensation whatsoever was provided' (G. Debonnet, personal communication<sup>3</sup>). Many of the people living in the area enclosed by the extension refused to leave the Park and remained living there (see map page 73).

The Park authorities have attempted to force compliance with the Park regulations using measures which have included destruction of farms and seizure of cattle. In response, the communities in Nindja set fire to hundreds of hectares inside the Park. This led to a number of arrests and prosecutions. The traditional chief Mwami Nanindja held several discussions with the Park management on the issue of compensation. On July 8 1987 representatives of the local populations of Kabare and Nindja reached agreement with Park representatives on compensation arrangements in return for sustainable exploitation but, unfortunately, these agreements were not upheld, because the compensation was not forthcoming. The park authorities assert that they 'operate in the framework of the law' and that they 'cannot be made responsible for certain eviction decisions by the state and [have] no mandate to provide compensation...' which is 'clearly the responsibility of the government' (G. Debonnet, personal communication).

The thousands of Shi, Rega and Tembo who remained living in the Park converted parts of it for agriculture (Steinhauer-Burkart *et al.* 1995:45) and also continued raising animals, hunting and mining (Mbake 1995a). In 1995 15,000 people were still living in the Park, mainly in the lowland region (Mbake 1995a) and GTZ/ICCN reported that 'A great threat to the corridor that connects the mountain forest to the lowland forest, is illegal settlement by large farmers... large mammals no longer move between the two parts of the Park (Mbake 1995b).

The Kahuzi-Biega National Park, showing agricultural areas

Source: Steinhauer-Burkhardt *et al.* 1995



In contrast to their unsuccessful dealings with the non-Twa ethnic groups and their influential Mwami leaders, the Park authorities were highly effective in removing the politically vulnerable Twa, who hunted and gathered in the forest but did not destroy it for agriculture. Starting in 1967, Twa living in the Kahuzi-Biega Natural Reserve, as it was then known, were evicted (along with some Shi and Rwandese Tutsi refugees) on the orders of the provincial authorities. According to GTZ:

*The normal procedures were followed and compensation was provided to the Bami (traditional kings), who are in local culture the owners of the land. One may well advance the argument that this compensation did not benefit the evicted populations especially the pygmy, but that does not change the fact that it was provided. The populations around the highland sector do not question the legality of this part of the park. The problem for the pygmies lies with their extremely weak position in the traditional society. (G. Debonnet, personal communication).*

At this time, the reserve was still *sous réserve de droits indigènes* and the expulsion was therefore illegal under the law. Chapter 4 describes how the Twa were evicted and the impact this has had on them.

In 1985, the ICCN initiated an integrated conservation project with the GTZ. Its aim consisted of protecting the Park and promoting sustainable development of its surroundings. During the first phase of the project (1985-88), the most important objectives were the improvement of Park protection and the expansion of tourism. Until 1985 more than 85 % of ICCN/GTZ's activities consisted of increasing the patrols in the Park, creating 'small projects that increase confidence and support the development of the Park's surroundings', producing advertising material for promoting tourism, training of local staff for more efficiency and educating local populations about the benefit of the Park (Mbaka 1995a; Doumenge 1990: 136).

The second phase (1988-1991) was intended to focus on the periphery of the Park and the integration of local communities in Park management. The IUCN's 1990 report on the conservation of forest ecosystems in Congo noted the need for small development projects to lure out populations still living inside the Park boundaries, and the greater involvement of surrounding communities in tourism, for example, through the sale of handicrafts (Doumenge 1990: 136).

The approach of the Park management towards the Twa expelled from the forest is illustrated by the following assessment by an ICCN staff member in 1995:

*Sensitising the pygmies for the importance of the Kahuzi-Biega National Park has proven to be a difficult and tedious endeavour. We are*

*therefore still in the experimental phase of the project, continuously increasing our knowledge. Our efforts to alleviate the hardships of the pygmies are primarily focused on two aspects: opportunities for earning money (maintenance of the roads and other projects in the park) and support in agriculture. For road maintenance, a total of 62 pygmies were employed in 1994 for more or less extended periods of time. The seeds for agriculture (beans, corn and potatoes) were provided by the project. However, due to various reasons, the yield was fairly meagre. (Anon 1995).*

In 1996 ICCN/GTZ commissioned Kapupu Diwa Mutimanwa, a local Twa leader and coordinator of the Twa NGO Programme d'Intégration et de Développement du Peuple Pygmée au Kivu (PIDP-Kivu), to conduct a socio-economic study of Pygmies in 14 villages most directly influenced by the Park. In his report, Kapupu noted that despite their eviction from the Park, the Twa retain a strong connection to the forest.

*The [Twa] today see their situation as something that happened very recently and their homesickness for their old domain remains alive, even more so because they have great difficulty in gaining access to, and integrating into, a new life outside the forest. (Kapupu 1996 :1).*

GTZ/ICCN's Draft Management Plan for Kahuzi-Biega also acknowledges the Twa's continued connection with the forest: 'Even today one hears ...them lament having lost their vital domain where they lived from hunting and gathering.' GTZ personnel also recognise that as a result of their forced removal from the Park, the Twa, having 'no traditional land rights in the Bantu areas...became virtually landless. [Until today] many of them are living in pretty miserable conditions around the park...' (G. Debonnet, personal communication). However, GTZ insists that

*Allowing [the Twa] to live in the forest again was never an option: most have lost touch with the forest hunter gatherer life, although they did not adapt to sedentary agriculture. The highland sector of the park would also be too small to guarantee them a base of living and it would be incompatible with the conservation objectives. The project tried to conduct an agricultural programme with them, [teaching] them several techniques and providing them with some basic tools. This was a complete failure. (G. Debonnet, personal communication).*

GTZ asserts that, in the thirty years since the Twa first began to be evicted, the majority of them have lost their forest knowledge. However, in the same period the Twa have manifestly not been able to

adapt to an agricultural life-style. The Park management's insistence that Twa cannot be allowed to return to the forest of the highland part of the Park is based on its small area, its ecological fragility and proximity to areas of dense population, and the problems of controlling commercial poaching which is said to be connected to subsistence hunting. Commercial poaching has escalated in recent years due to increased demand for bush meat and the breakdown of the state, and most recently, due to the war situation. GTZ believes that the Twa's 'traditional systems for regulating... hunting had broken down long before the park came into existence' but concedes that '... [the possibility of] "controlled" hunting [will be discussed] in view of a possible zonation ... [but] can only be envisaged in certain parts of the lowland forest' (G. Debonnet, personal communication).

The Park management is unwilling to contemplate the return of the Twa to the Park because they are seen as a threat to wildlife. The greater threat comes from non-Twa peoples, who are the driving force behind commercial poaching and ivory and trophy smuggling. Indeed, trophy hunting may be encouraged by the publicity given by conservation projects to individual animals, such as the case (reported in the next chapter) of the famous gorilla Maheshe, whose image even appeared on the 5000 Zaire banknote. Gorillas would not still exist in the Kahuzi-Biega National Park if the Twa were their principal predators, as they have been living together for hundreds of years.

One might also question whether the expulsion of the Twa has removed a level of protection for the forest and opened it up to greater exploitation from outsiders. A Tembo man interviewed in March 1995 revealed that it is considered very dangerous to hunt in areas occupied by Twa because of their deadly hunting techniques, such as the use of poisoned arrows and very dangerous traditional traps. The expelled Twa are unlikely to have retained much enthusiasm for the conservation of forest resources, to the extent that Twa from the villages around the Park are reportedly being used as trackers by armed elephant poachers (Debonnet 1999).

However, the possibilities for fully engaging the Twa in the protection of the Park against outside exploitative interests in return for an agreed level of usage of the park's products seems never to have been explored. Instead GTZ/ICCN has sought to 'divert their interests from the park's resources' (Steinhauer-Burkart et al. 1995:47).

GTZ considers that 'mandating [indigenous peoples] in the management of protected areas... is a very important strategy [in the preservation of] many of the forests of the Congo basin'. However, GTZ does not believe ' [this] is a workable strategy for the Twa around the Kahuzi-Biega National park, since they have abandoned this way of life over 30

years ago... It is not feasible ecologically...[and]...it is not possible from their point of view either' (G. Debonnet, personal communication).

The Park authorities 'endorse a policy of collaborating with the population living around the Park [to arrive] at a sustainable management of the natural resources **around the park** and thus at a better protection of the park's resources' (emphasis added) and agree that 'the populations of Twa living around the highland sector deserve special attention in these programs considering their particular situation' (G. Debonnet, *idem*). The Park continues to employ Twa as permanent Park staff and as temporary workers, and according to GTZ, 'it is important that the Twa receive the necessary support to acquire a just position in the Bashi community. Though this cannot be the responsibility of the park authorities alone, they certainly have an important role to play' (G. Debonnet, *idem*).

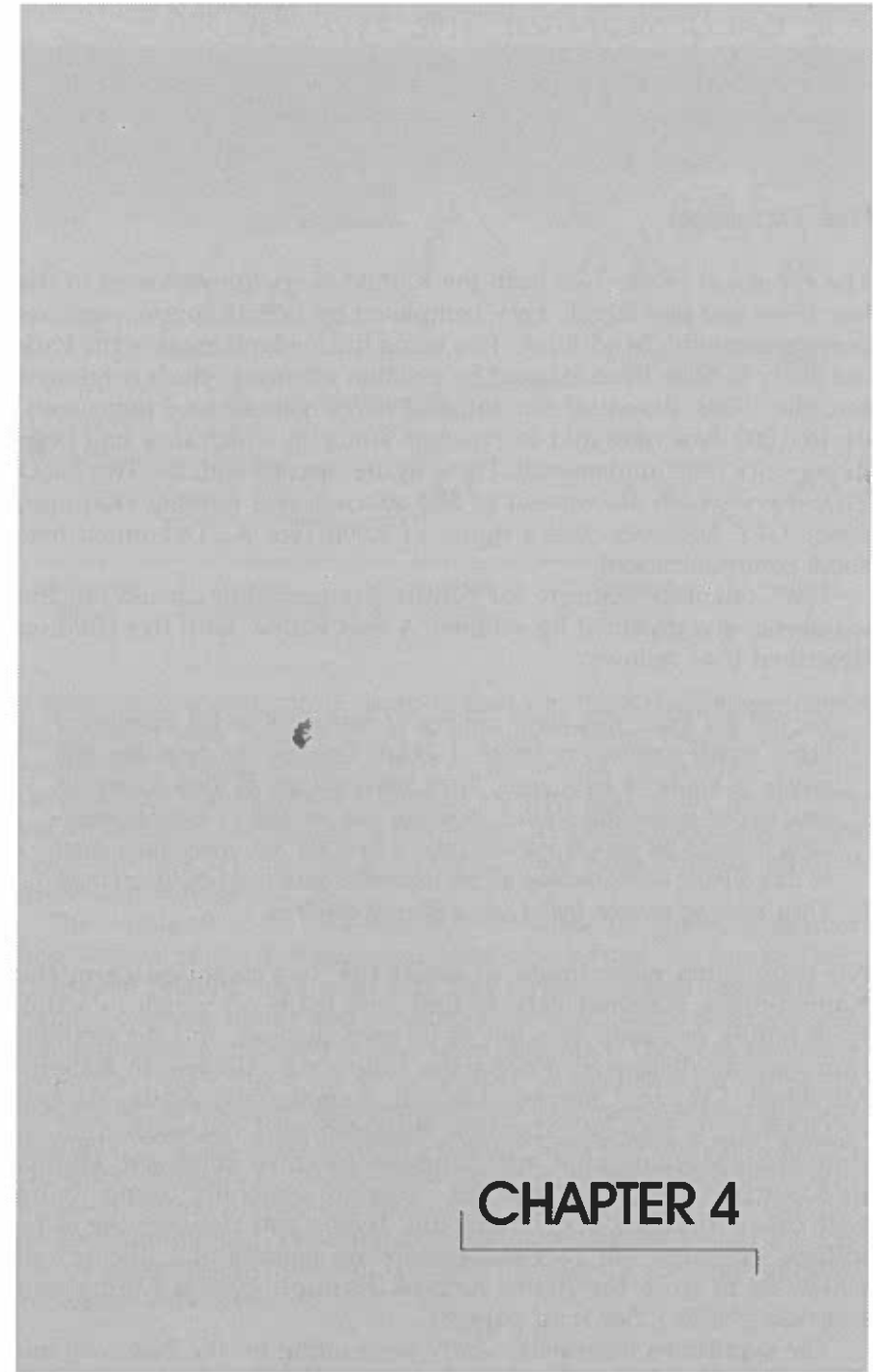
GTZ thus acknowledges that the situation of the Twa is of major concern, but seems never to have undertaken a detailed consultation with the Twa to solicit their opinions, determine their wishes and involve them in decision-making about their forests. The aim of the study commissioned by GTZ from Kapupu (page 75) was to identify ways in which the Park management could improve its projects with the Twa surrounding the Park<sup>4</sup>; it was not a participative consultation to determine the Twa's vision for their future.

In 1999 GTZ/ICCN reported that a new study would be carried out to reduce the human pressure on the Park's resources, which will document the animal and plant species used by the human population and their occurrence in areas outside the Park, and 'arrive at a strategy for the protection and sustainable use of resources in order to make them available to the population living close to the park. It is especially planned to use the knowledge of indigenous peoples such as the Twa.' (Anon 1999).

Although still far from a truly participative approach, these recent statements are welcome indications of a more positive recognition of the Twa's role by the Park management.

## Notes

- <sup>1</sup> For simplicity, the current name of the organisation is used throughout this publication
- <sup>2</sup> Encompassing the present-day Virunga National Park (Congo) and Parc des Volcans (Rwanda)
- <sup>3</sup> The GTZ representative responsible for Kivu projects. The personal communications are contained in letters to FPP dated 5 May 1999 and 8 November 1999.
- <sup>4</sup> The recommendations could not be implemented due to the outbreak of war in 1996.



**CHAPTER 4**

## THE EXPULSION OF THE TWA FROM THE KAHUZI-BIEGA NATIONAL PARK

### The Expulsion

The expulsion of the Twa from the Kahuzi-Biega forest started in the late 1960s and had largely been completed by 1975 (Kapupu, personal communication)<sup>1</sup>. In addition, Twa using the lowland areas of the Park are likely to have been affected by eviction attempts which continued into the 1980s. Based on the author's investigations and interviews, up to 6,000 Twa were told to evacuate lands on which they had been living since time immemorial. These figures accord with the Twa NGO PIDP-Kivu's own assessment of 580 affected Twa families (Kapupu, *idem*). GTZ however cites a figure of 1,000 Twa (G. Debonnet, personal communication).

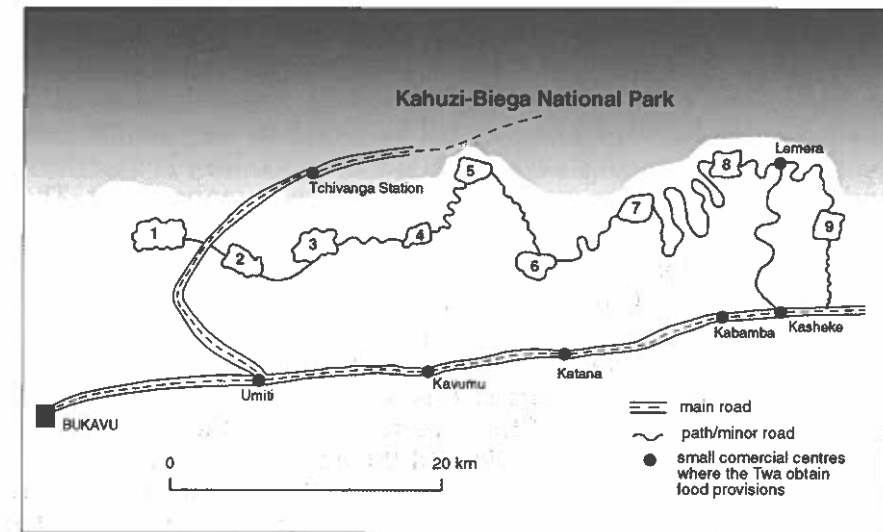
The Congolese Institute for Nature Conservation carried out the expulsion, accompanied by soldiers. A Twa widow with five children described it as follows:

*We did not know they were coming. It was early in the morning. I heard people around my house. I looked through the door and saw people in uniforms with guns. Then suddenly one of them forced the door of our house and started shouting that we had to leave immediately because the park is not our land. I first did not understand what he was talking about because all my ancestors have lived on these lands. They were so violent that I left with my children.*

No provisions were made to assist the Twa expelled from the Kahuzi-Biega National Park to find new lands on which to settle. Each family or group was left to its own devices, and the population became dispersed among the following villages: in Kabare: Muyange, Cibuga, Chombo, Tshibati, Kamakombe, Mulagala and Lushasha; in Kalehe: Muziku, Buhama and Nyawaronga; in Bunyakiri: Mushanguti, Canji, Cihonoa, Mivuwa, Bitali and Hungi; in Kalonge: Cifunzi and Rambo. Twa are generally found living with other ethnic groups, mainly Shi, Tembo and Havu, in the same village, although the Twa settlements are usually at a distance of 500-1,000 m from the Bantu houses (Kapupu 1996:5; Luling and Kenrick 1998:26). See map page 81.

The expulsions were particularly devastating for the Twa who until then had led a traditional hunter-gatherer existence, consisting of

Sketch map of Twa communities expelled from the Kahuzi - Biega Park



- |            |              |             |             |           |
|------------|--------------|-------------|-------------|-----------|
| 1. Muyange | 3. Chombo    | 5. Mulagala | 7. Lushasha | 9. Muziku |
| 2. Cibuga  | 4. Kamakombe | 6. Tshibati | 8. Buhama   |           |

periods spent moving from camp to camp in the Kahuzi-Biega forest interspersed with periods spent living near Bantu villages. The Twa considered themselves to be part of the forest, perceiving it to be plentiful and benevolent, a source of security and of life itself. They had an intimate knowledge of the forest, its plants and animals. For them the forest represented everything: their lives, culture, spiritual beliefs and way of life.

The expulsion of the Twa from Kahuzi-Biega has deprived them of their sources of meat, honey and wild tubers from the forest. Their traditional relationships with non-Twa farmers, which involved exchanges of meat, honey and medicines for agricultural produce, salt, iron implements and other goods, were disrupted. They can no longer obtain the plants that used to serve them as medicine for curing illnesses such as haemorrhage, epilepsy and pregnancy-related diseases (Kapupu 1996: 10). Most of their religious activities and rites, for example the initiation of males which can only be performed in the forest, have become impossible because of their new environment. For the Twa nothing can substitute or compensate for the loss of the forests, as no other environment can provide them with same spiritual and material benefits.



## Denial of Justice

The Congolese Institute for Nature Conservation (ICCN) and many representatives of other agencies involved in conservation within or around Kahuzi-Biega consider the Twa to be a potential threat to the animals of the Kahuzi-Biega National Park because they are the only people with a thorough knowledge of these forests. They know where and when each species can be found and how to approach it. The ICCN staff believes that the Twa must be prevented from continuing to hunt in the Park, and presume they are guilty when animals are killed in the Park. Consequently, Twa allegedly caught breaching the Park's regulations are frequently subjected to brutal and inhuman treatment in order to deter them from entering the Park. This is what happened to four unfortunate Twa, accused of having killed Maheshe, the most popular gorilla of the Kahuzi-Biega National Park. During the trial, an agent of the ICCN told the author, who was acting as defence lawyer for the four accused, that they should be severely punished so that other Twa would not attempt to go hunting in the Park.

Maheshe went missing in November 1993. Two years later, in August 1995, his body was found with its hands and head removed (Meder 1995). A criminal inquiry was then launched at the office of the Public Prosecutor of Kavumu. Acting on rumours, a few days later the Public Prosecutor, accompanied by members of the police force, raided the Twa villages of Cibuga, Chombo, Kamakombe, Muziku and Buhama. Several Twa men were arrested and taken to Kahuzi-Biega National Park's cell at Tshivanga, as well as many children and women who were arrested because their husbands could not be found. The authorities retained Soda Nyamushi, Kulimushi Chifulura and Mataboro Kabeba in custody. They were joined a few days later by Lukera Marhegane who surrendered after the others were arrested in order to get his family released. All four proclaimed they were innocent.

These four Twa spent eleven months in jail before they came to trial: two months at Tshivanga and Kavumu cells, three months in Katana prison, four months in the Central Prison of Bukavu, then they were transferred back to Katana in April 1996 where they were detained until their trial began in June 1996. The case was eventually dismissed due to lack of evidence against the accused Twa. A local businessman, Mr Tumbo, who is widely held to have commissioned the killing of Maheshe, was never questioned about his alleged involvement.

During their detention, the four accused Twa were subjected to inhuman and degrading conditions, which amounted to torture. At Tshivanga, each man was subjected to corporal punishment consisting

of daily beatings in order to make them confess. (These confessions were retracted by the Twa as soon as they got to court). After many attempts, the author obtained authorisation to visit them in Katana prison, nine months after they were first arrested. The prison was built of brick with a dirt floor. The roof leaked and due to the very wet climate, the rooms were extremely damp. The accommodation consisted of two rooms, each about two metres by three metres. There was no separating door between the two rooms, which contained about forty people – men, women (including some pregnant women) and children. The sight was horrific, resembling a concentration camp. All the inmates looked unhealthy and hungry. The author took his four Twa clients outside but they appeared to have lost their power of speech. A green substance was growing on their skin. Kabeba was suffering from a seriously infected wound, allegedly caused by the ill-treatment he was subjected to in the prison<sup>2</sup>. A few days later when the author returned, Marhegane had recovered his speech while the others were still very weak. Marhegane recounted that they had been severely tortured to make them confess, and that they were unable to get food because many prisoners did not want to share food with them on the grounds that they were dirty and uncivilised Pygmies. In addition even their families were denied visits.

The trial of these four Twa was characterised by obvious injustice, breaching Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) which states: 'Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law'. If the prosecutor cannot prove the defendant's guilt the accused must be given the benefit of the doubt as proscribed by the principle *in dubio pro reo*' (Nowak 1993:253). The defendant must also be provided with adequate time and facilities to prepare his or her defence (Raoul Wallenberg Institute 1997:32). The Human Rights Committee considers that both *de jure* or *de facto* limitations should be taken into account, encompassing any limitation which restricts defendants' ability to challenge the accusation (MacGoldrick 1991:427). Notwithstanding the fact that the prosecutor was unable to prove their culpability, the four Twa on trial were not given full opportunity to challenge the accusations against them, as the long period without access to a lawyer and their mental and physical deterioration due to the harsh conditions under which they were held effectively impaired their ability to organise their defence. Such circumstances amount to a violation of the right to the presumption of innocence<sup>3</sup>.

The right to legal assistance is recognised in Article 14(3)d of the ICCPR and in Article 7(1) of the African Charter on Human and Peoples' Rights. Congo is party to both of these instruments and has introduced this principle into its constitution. The right to legal assistance



includes the right to receive free legal assistance (Nowak 1993:257) providing the defendant can prove financial incapacity to pay legal fees and that free counsel is in 'the interests of justice'. Under Congolese domestic law, proof of financial incapacity is obtained through a certificate of indigence given by the local authority. In the case of the four Twa who, due to their incarceration, were unable to obtain such a certificate, the judge should have requested free legal assistance on their behalf at the time of the first hearing. This was not done.

The European Court of Human Rights' interpretation of the concept 'interest of justice'<sup>4</sup> requires consideration of the '... [a]pplicant's personal inaptitude to assume his or her own defence' and the '... [c]hances of the applicant's success', for example, through illiteracy or being unused to judicial proceedings.

Thus the Twa defendants' inability to obtain a certificate of indigence and their remote chance of success due to their unfamiliarity with judicial proceedings, and even their loss of speech, should have led the Congolese authorities to organise free legal assistance for the Twa. Instead, they were left to languish in prison until they were contacted by the author.

### **The Living Conditions of the Expelled Twa**

In all the villages to which they moved after being expelled from the Kahuzi-Biega Park, the Twa suffer from obvious nutritional deficiencies, poor hygiene, lack of medical care, inadequate housing, a high mortality rate and the impact of the armed conflict in the area.

#### **Nutrition and hygiene**

Now that they are no longer allowed to hunt in the forest, the Twa are deprived of their traditional diet of meat eaten with yams and other tubers. Malnutrition is obvious in all the villages, particularly among the children. Cases of kwashiorkor occur in almost every family. Women are also at risk of nutritional deficiency due to their inadequate diet coupled with almost continuous pregnancies. For example, in 1995 at Bitale/Bunyakiri, a pregnant woman confirmed that she had not eaten meat, fish or milk for the last seven months of her pregnancy, posing risks to her own health and that of her unborn child. Adult males appear to be less exposed to malnutrition because they are more mobile. They are able to survive by stealing food and also by clandestine hunting and foraging within the Park.

The nutritional status of vulnerable women and children is further

compromised by the breakdown of the traditional Twa food sharing systems.

Hygiene is extremely poor in all the villages. When the Twa moved from camp to camp in the large space of the forest, sanitary facilities were not necessary. Now, confined to village plots, sanitation is a serious problem. In part the lack of toilets is due to the Twa belief that digging holes brings bad luck, even death, to the community. The lack of drinking water is also a serious problem. None of the Twa villages has a pump. They obtain water from small streams near their villages, which are polluted by human waste, contributing to the incidence of diarrhoea, parasite infections and other water-borne diseases. The poor general level of health is evident in any Twa village visited.

#### **Medical care**

The region as a whole is served by a number of referral hospitals each linked to several small health centres. Referral hospitals are located at Katana (health centres in Kavumu and Bunyakiri), Kabare-Mukongola (health centre in Kasha, Kalonge-Centre), in Nyangezi, Walungu, Uvira, Lemera, Kaziba and Fizi/Nundu, also with associated health centres. While these provide health facilities for the general population, none of the health centres are in or even near Twa villages. In comparison with the other ethnic groups therefore, the Twa are at a severe disadvantage. Local authorities have made little effort to directly address the poor health conditions of the Twa. Only in 1996 was one Twa village, Muyange in the district of Kabare, provided with its own health centre. The centre was in fact set up by the Twa NGO PIDP-Kivu in collaboration with the Catholic Church. Unfortunately this project was halted by the political disturbances which erupted in October 1996.

The long distances between Twa villages and medical centres, the reluctance of Twa to endure humiliation by the medical centre personnel and the inability of Twa to pay for treatment have been the cause of many avoidable deaths of sick people and pregnant women. Having been deprived of their traditional, self-provisioning way of life, the Twa are now being forced to adapt to a market economy and find ways of earning money with which to obtain the goods and services they need. A few Twa have taken up charcoal making as a means of survival (Kapupu 1996:22) - an activity they have learned from the Bantu. Investigations by the Kivu NGO Héritiers de la Justice revealed that charcoal making is the most profitable economic activity a Twa can undertake, yet it takes at least two weeks of hard work to produce 30 kg of charcoal, which sells for a maximum of 10 US dol-

lars. This does not even cover a doctor's consultation, which costs about 15 US dollars. Similarly, a single dose of anti-malarial medication costs about 3 US dollars, making it impossible for Twa families to protect themselves from this dangerous disease that is very prevalent in the area.

The expulsion of the Twa from the forest has exposed them to new needs. For example, in February 1996, Park guards arrested the wife and daughter of a Twa from the village of Kambegeti/ Bunyakiri for selling meat, which allegedly was from the National Park. The Twa man in question confided to the principal author, his lawyer, that he had in fact been hunting in the Park because some of his children were sick and about to die and he did not have any money at all to take them to hospital. The author has encountered many such examples. The Twa blame their recently increased dependence on money to obtain all their needs on their expulsion from the forest.

The most frequently and urgently voiced anxieties of the Twa concern the lack of medical care. During the celebrations of the Third International Day of Indigenous Peoples organised by Héritiers de la Justice in 1995, a Twa man from Muziku (Kalehe district) stated:

*We are completely neglected and forgotten. Even our wives do not have access to midwives. They are permanently exposed to death because of lack of care during their pregnancy and deliveries. This came with the so-called modern life into which we were dragged. It did not exist when we were living in our natural environment. We had so many plants for such problems...*

Many Twa concur that their health conditions were better when they were living in the forests, as expressed by an old Twa man interviewed at Cifunzi/ Kalonge:

*When the Twa man looked after his health by using his traditional knowledge and his familiarity with the plants, his health was much better. He used to live longer. The Twa knew how to protect his wife and children from many diseases.*

## Housing

The traditional Twa leaf houses, so well adapted to their semi-nomadic forest life style, do not seem to be transferable to the newly enforced sedentary existence outside the forest. The Twa's poverty and lack of land prevent them from fully adopting the 'Bantu' type of housing which the majority of the population inhabit. The houses they have built with

mud bricks appear dilapidated and provide inadequate protection from the ten months of rain each year. A 35-year old Twa man from Tchibati pointed out there was no point in putting effort into building a more substantial house on land that he might be forced to vacate at any time. The extreme land insecurity of the Twa is discussed in Chapter 5.

In their traditional leaf houses, as long as the fire and bed are not exposed to drips of water, the Twa are content. However, when non-Twa visitors mock their leaky houses, the Twa are ashamed (Kapupu 1996: 6). Their malnutrition and poor general health makes them more vulnerable to cold and damp in the new-style houses. In all the Twa villages, only one family (at Muyange/Kabare) has been able to afford to buy corrugated iron roofing sheets, the preferred roofing material in the area.

## Mortality rate

The combination of physical stresses reported above result in a high mortality rate. According to a survey carried out by PIDP-Kivu in 1995, supported by observations by Héritiers de la Justice, the numbers of those Twa who were expelled from the forest declined from a maximum of 6,000 in the early 1980s to the current level of about 3,000. If this decline continues, the population will be extinct in a very few years<sup>5</sup>.

Infant mortality among the Twa is higher than in other groups. It is difficult to get accurate figures, but a by no means atypical example is given by a woman, aged about 40 in the village of Muyange/Kabare who was pregnant with her thirteenth baby. Only two of her previous twelve children were alive. She was hoping that the last one would survive, so she would have three children. But her extremely malnourished state did not bode well for her own survival, let alone that of her expected baby. The Twa say that a high pregnancy rate is the only way to maximise the chance of having at least two surviving children. The average under 5-year mortality rate per thousand live births in Congo is 185 (1995 data, WRI *et al.* 1998: 258). The average Congolese mother with 12 children might therefore expect to lose two or three children, but not 10.

The Twa are very conscious that their communities have been devastated following their expulsion from the Park. A Twa man from Bishuleshule/Kalehe, described their experience:

*...since we were expelled from our lands, death is following us. We bury people nearly every day. The village is becoming empty. We are*

*heading towards extinction. Now all the old people have died. Our culture is dying too...*

### Education

The Twa are particularly disadvantaged in gaining access to education. In 1996 for example, only 3 out of 193 (1.6%) school-aged Twa children in Bunyakiri *collectivité* attended school (Kapupu 1996: 12). The overall rate of school attendance among the Twa is estimated to be 11% (Kapupu 1995:41) yet in the country as a whole, 54 % of school-aged children were enrolled in 1993 (Microsoft 1998). The overall literacy rate in Congo is 77% whilst among Twa in Bunyakiri it is 6%. The main reason for the very low school attendance rates is not only lack of proximity to schools, as might have been the case when they were living in the forest, but poverty. A Twa living in Tchibati stated:

*We lack knowledge because of the lack of money. Each time we try to send our children to school, they are sent back to us because we cannot afford to pay for them. We do not have land for farming as everyone does here; even getting a job is difficult because some of our neighbours say we are not civilised and so are reluctant to let us work for them. Where else do you think we can get money to pay for school?*

Another Twa, from Bishuleshule/Kalehe, stated that he had attended school for about four weeks, but was forced to abandon it because of the fees.

Since the late 1980s, the Congolese government no longer provides free schooling. Parents now have to pay their children's tuition fees and also have to contribute to teachers' wages. Each school fixes its own rate, the lowest being the equivalent of five US dollars a month towards teachers' wages and about 15 dollars a year in tuition fees. This affects all families, but the Twa particularly severely. Their only significant source of cash income is charcoal making and a well-off Twa earns no more than 15 dollars per month, which is inadequate to cover a family's medical care, education, food, clothing and other needs.

The Twa are very aware of the injustice and discrimination to which they are subjected, and do not know how to deal with it. Their sense of hopelessness and deprivation is a contributing factor to their high level of alcoholism, which further exacerbates their spiral of decline.

### Armed conflict

The war in eastern Congo is a continuation of the long-standing political conflicts between the Hutu and Tutsi ethnic groups in Rwanda and Burundi, conflicts in which the Twa have been unwilling victims (Lewis and Knight 1995:55-68; Lewis 2000:60-73). Following the assassination of Rwandese President Juvenal Habyarimana on April 6<sup>th</sup> 1994, extremist Hutus embarked on a meticulously planned mass killing of Tutsis and moderate Hutus, led by the MRND<sup>5</sup> militia known as the Interahamwe. Within three months over 800,000 (mostly Tutsi) people had been massacred or maimed. While the international community prevaricated and wrung its hands, the genocide was eventually brought to a halt by the military advance of the Rwandese Patriotic Front (RPF), led by Tutsis in exile.

The RPF gained control of Rwanda in July 1994, but in so doing precipitated a mass exodus of more than a million Hutus, including many Interahamwe and members of the former Rwandese Armed Forces (ex-FAR) who settled in refugee camps across the Rwandese borders in Congo and Tanzania. Between 8,000 and 10,000 Rwandese Twa are estimated to have joined the flow of refugees (UNPO 1995:28). Within the refugee camps, Hutu supremacists continued political activism and military training, and were implicated in regular armed insurgency attacks across the Rwandese border. Their presence was regarded by the Rwandese government as a serious threat not only to the survivors of the genocide but also to the stability of the post-genocide national administration.

In contrast to Rwanda, the political scene in Burundi has been monopolised by Tutsis in recent years. Since 1962, following assassinations of Hutu elected political leaders by extremist Tutsis and a failed Hutu-led military coup, hundreds of thousands of Hutus have been massacred and similar numbers have fled to neighbouring countries (Reyntjens 1995:7, 15). More than 100,000 Burundian Hutus settled in refugee camps along the Burundi-Congo border.

Thus, by 1995 the Kivu region of Congo hosted a large number of Hutu refugees from both Rwanda and Burundi who considered themselves victims of political exclusion by the Tutsi-led governments in both countries. Militant Hutu leaders were able to exploit these sentiments and the local prejudice against the Banyamulenge, ethnic Tutsis who have lived in eastern Congo for several generations. Since the 1980s the government of Mobutu Sese Seko had disputed the nationality of the Banyamulenge, on the grounds that they were of Rwandese origin and therefore 'foreigners'. The Banyamulenge were targeted by security forces and suffered numerous human rights violations including arbitrary arrests and killings.

These factors combined to generate the October 1996 rebel movement, fronted by the Alliance of Democratic Forces for the Liberation of Congo (ADFL), led by Laurent Kabila. Various interest groups joined with the ADFL including the Banyamulenge community seeking to protect their Congolese nationality, and a handful of veteran Congolese opponents to the Mobutu regime. The rebellion was backed by thousands of soldiers and resources from the Rwandese government, whose aim was to dismantle the Hutu military machine operating from inside the Kivu refugee camps. The Ugandan government also supported the rebellion in order to eradicate attacks on Ugandan territory from rebels of the Allied Democratic Forces (ADF) operating out of Congo.

In late 1996 the Rwandese forces and ADFL attacked and dismantled the refugee camps in North Kivu. Hundreds of thousands of refugees returned to Rwanda, but many Interahamwe and ex-FAR remained in Congo and continued to strengthen their activities.

The combined forces of the rebellion fighting against the Interahamwe, ex-FAR and Mobutu's army brought the ADFL to power in May 1997. Once installed in Kinshasa, Kabila tried to free himself of the Rwandese and Ugandan influence that had brought him success. The alliance with Kabila had not given Rwanda and Uganda their anticipated result – the eradication of insurgents operating out of Congo – and when, in August 1998, Kabila ordered Rwandese soldiers serving with the Congolese army to return home the alliance between the ADFL, Banyamulenge and Rwandese forces broke up.

The players regrouped to launch a new anti-Kabila rebellion in north and south Kivu in August 1998, centred around break-away troops from the DRC forces, again backed by Rwanda and Uganda, who effectively established themselves as occupying forces, much to the resentment of the local Kivu population. Kabila in turn extended contacts to groups opposed to Rwanda and Uganda such as the ex-FAR and ADF, and to the Mai-Mai, 'traditional warriors' from several ethnic groups in Kivu, who represent themselves as opponents of the occupation by foreign (i.e. Rwandese and Ugandan) armies. Kabila also sought to gain popular support by stoking ethnic prejudice and resentment against the Tutsi. Internationally, the Kinshasa regime has military support from Zimbabwe, and Angola and Namibia are also involved in the conflict.

Between July 10 and August 31 1999 all the states involved in the conflict (Congo, Namibia, Uganda, Rwanda, Zimbabwe, and Angola) and the main rebel movements signed a cease-fire agreement in Lusaka, providing for an immediate cessation of hostilities and laying out the timetable for the withdrawal of foreign forces, the disarmament of militia groups, the deployment of a UN peace-keeping force and the organisation of inter-Congolese negotiations on a new political ac-

cord for Congo. The warring parties established a Joint Military Commission to oversee the implementation of the cease-fire until the deployment the peacekeeping force.

Following this internal effort, the United Nations began deployment of 90 military liaison officers in Congo and regional capitals as part of the new UN Observer Mission in the DRC (MONUC). However, repeated cease-fire violations called in question the commitment of the parties to the agreement. Sir Ketumile Masire, former president of Botswana, was nominated by the OAU as the facilitator of the inter-Congolese negotiations. In February 2000, the UN Security Council approved the deployment of 500 military observers supported by 5,000 UN troops, with the possibility of a full peacekeeping force if the cease-fire was respected<sup>8</sup>.

The current conflict in eastern Congo in general, and in the Kivu area in particular, results from the struggle of various ethnic groups and communities to be recognised as distinct entities. Rather than acknowledging the issue of ethnic diversity, the states involved rely on the nostrum of non-discrimination. The Congolese Constitution states

*In the Democratic Republic of Congo, no Congolese may be the subject of discriminatory measures in the field of education, access to public office or any other field, whether [the measures] result from laws or the implementation of executive powers, or are due to [the individual's] religion, tribal or ethnic affiliation, gender, ancestry, place of birth, place of residence or opinions...*

Similar provisions are made in the Constitutions of Rwanda and Burundi.

However, these proclamations ignore the fact that groups which, due to their social or cultural origins, cannot not enjoy the fundamental rights and freedoms on the same footing as others require specific protective measures. Until the states of the Great Lakes region of Africa address issues of ethnic diversity and design adequate mechanisms to protect the rights of both the majority and the minorities, a long-lasting peace is unlikely and the weakest social groups such as the Batwa will continue to suffer unacceptable discrimination.

The social turmoil caused by the war in Kivu has affected everyone, including the Twa. In October-November 1997, Twa of Tshibati, Mulagala, Muziku, Buhama and Lushasa villages on the outskirts of the Kahuzi-Biega Park, were attacked by Interahamwe and Mai-Mai who were based inside the Park. Over 525 Twa had to flee their villages (PIDP-Kivu 1998). A tour of Twa villages around the Park carried out by PIDP-Kivu in November 1998 to distribute seed and hoes revealed that live-

stock had been pillaged by marauding armed factions and fields close to the forest abandoned due to insecurity. PIDP noted:

*In August [1998], the population of Lushasha dispersed into the neighbouring village, some have returned and the others are still with the neighbouring non-Pygmy population living a very miserable life compared to previous times. This population has not received any humanitarian aid during this period because there is no agency working in rural areas.<sup>9</sup>*

Recent information indicates that almost all the Twa living in Kalonge, Kabare, Walungu and a part of Kalehe have been forced to leave their homes, because their areas are being used as training camps by different warring factions. In other cases Twa have even been accused of taking sides and therefore targeted directly. For example, 65 Twa living at Rambo/Kalonge had their village burned down because they were accused of being Mai-Mai.

As internally displaced persons fleeing the conflict, the majority of the Twa expelled from the Kahuzi-Biega Park move away in two directions. In 1999 most of those in the areas of Kabare and Walungu appeared to be heading southwards. Many had already reached Kakisingi, a village 70 km from Kabare. A few even reached Shabunda, which is about 165 km away from Kabare. Those living in the areas of Bunyakiri, Kalonge and Kalehe headed towards the north-west. Most of them reached Walikale, 100 km from Bunyakiri, where they met with another small Twa community.

These internally displaced Twa continue to face the same kinds of basic needs deprivations described above but receive almost no humanitarian aid, as the few agencies active in the field in eastern Congo are afraid to operate in very remote areas particularly in forests, where most of the battles are taking place. As a result emergency aid is available only close to urban centres.

As was noted in Rwanda during the genocide, when armed conflict breaks out in the Great Lakes region the Twa are particularly vulnerable; they are attacked and exploited by all the factions and receive little assistance from other social groups who look down on them as uncivilised and not deserving of attention (Lewis and Knight 1995:64, 93). Following a visit to Burundi in early 1998, PIDP-Kivu reported that in the displaced persons camps Twa were even forced by the Hutu and Tutsi to set up their shelters on the outermost edges of the camp to form a 'security belt' protecting the other camp inhabitants from attack<sup>10</sup>.

## Ethnic prejudice and discrimination

The severe problems that the Twa have experienced since their expulsion from the Kahuzi-Biega forest are compounded by the prejudice with which they are regarded by other ethnic groups due to their identity as Pygmies.

There are many examples illustrating this sad reality, such as the occasion of a football match between the Kivu NGO Héritiers de la Justice's staff and a Twa team organised for the celebrations of the Third International Day of Indigenous Peoples in November 1995. The football kits were hired from a local team, and paid for in advance. The day before the match, the owner of the sports equipment heard on the radio that the kits were for the Twa, and pulled out of the agreement on the grounds that other clients were threatening to withdraw their custom as they refused to use equipment which had been worn or used by Twa. In the end, the Twa *vs.* Héritiers de la Justice match had to be played without football kits.

As noted on page 59, severe and dehumanising discrimination is an everyday occurrence in the lives of Twa throughout the Great Lakes region. Everywhere Twa are considered by other ethnic groups to be dirty, primitive, untrustworthy and not part of society. There is almost no intermarriage between Twa and other ethnic groups (Lewis and Knight 1995; Woodburn 1997:345). With such marked inequalities, it is clear that the Twa do not enjoy fundamental rights and freedoms on the same footing as the other ethnic groups in eastern Congo. The utter marginalisation of the Twa was poignantly expressed by a Twa man in Kalonge in 1995:

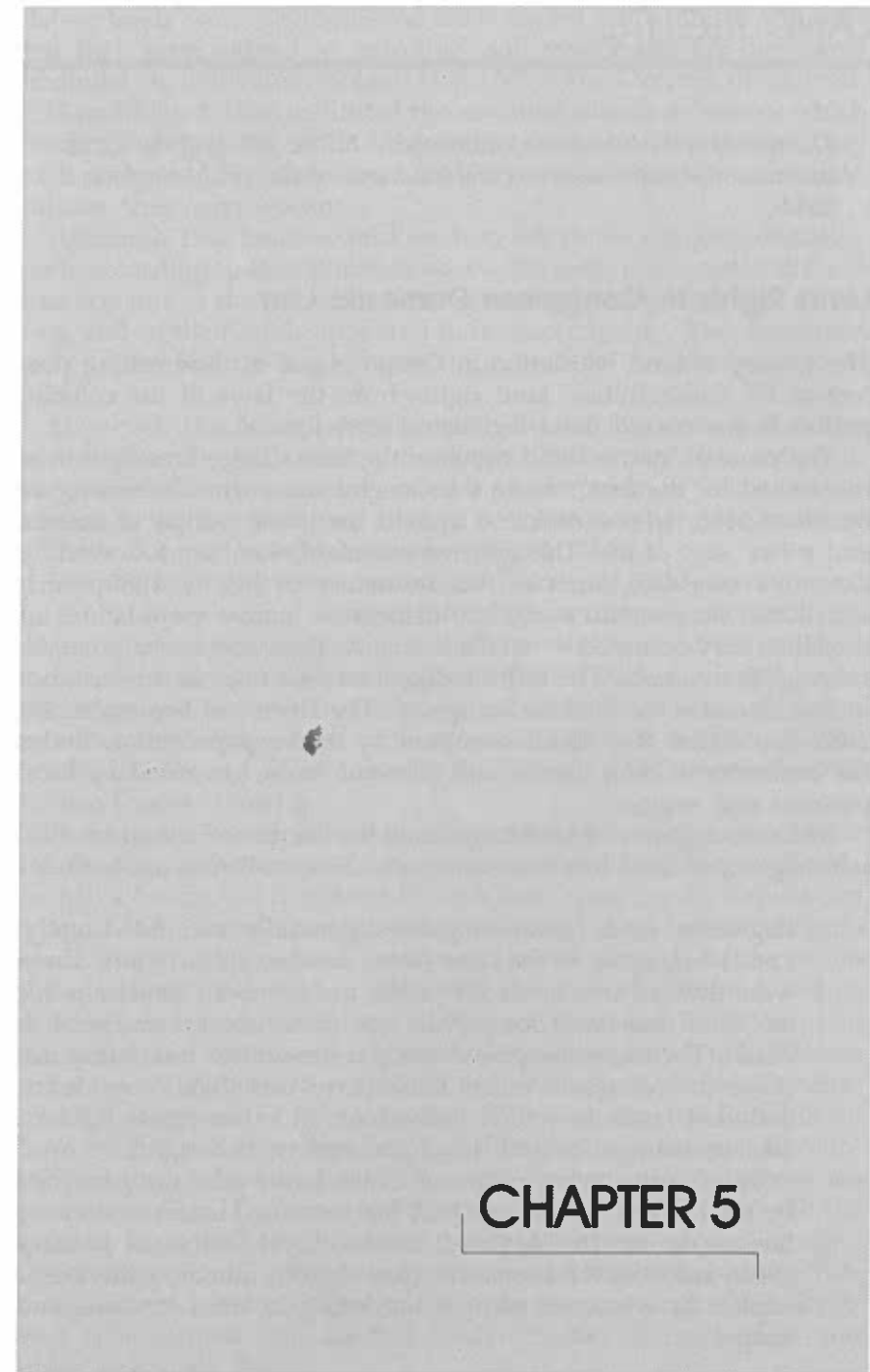
*We are treated like animals. Our whole life has been distorted. We cannot even claim our rights before courts and tribunals. We cannot hunt or fish any more. Our children cannot gain access to schools. Our wives do not benefit from any health care service. We even do not have access to land. Every time we attempt to get land as others do, we are told that we cannot because we are Mbuti.<sup>11</sup>*

## Notes

- <sup>1</sup> Kapupu Diwa Mutimanwa, Coordinator of PIDP-Kivu. The personal communications are contained in an email to FPP dated 8 December 1999.
- <sup>2</sup> By September 1996, Kabeba had died as a result of his wound.
- <sup>3</sup> *Carballal v Uruguay. Reports of the Human Rights Committee Doc. A/36/40: 125.* See also McGoldrick 1991: 427). The Human Rights Committee considered incommunicado detentions as amounting to a breach of presumption of

innocence, because of their negative impact on a defendant's capacity to organise his or her defence.

- <sup>4</sup> European Court of Human Rights 1993 *Hoang v France A / 243*, vol.16.
- <sup>5</sup> *Héritiers de la Justice Report 1995*: 14. See also Kapupu 1996:11
- <sup>6</sup> National Republican Movement for Democracy and Development
- <sup>7</sup> *Héritiers de la Justice 1996 Annual Report*.
- <sup>8</sup> For further information on the conflicts in Rwanda and Kivu see Destexhe (chk sp) 1995, Prunier 1995, Human Rights Watch 1999, International Crisis Group 1999 and bulletins of the UN Office for the Coordination of Humanitarian Affairs, Integrated Regional Information Network for Central and Eastern Africa [irin@ocha.unon.org](mailto:irin@ocha.unon.org)
- <sup>9</sup> PIDP-Kivu Internal activity report, November-December 1998
- <sup>10</sup> Kapupu M. Report of a Mission to Burundi and Rwanda, 22-28 March 1998. PIDP-Kivu Internal Report.
- <sup>11</sup> Workshop organised by *Héritiers de la Justice* on the 3rd World Day of Indigenous Peoples



## CHAPTER 5



## LAND RIGHTS

*The root of evil [will remain] untouched...till the native of the Congo becomes once more owner of his land and of the produce which it yields.<sup>1</sup>*

### Land Rights In Congolese Domestic Law

The history of land legislation in Congo is one of diminishing protection for communities' land rights from the laws of the colonial period to the current land legislation (*code foncier*).

The issue of 'native' land rights in the then Congo Free State was mentioned for the first time in the General Act of the Conference of Berlin of 1885, whose Article 6 upheld the 'preservation of natives and tribes' way of life. This general statement was then followed by executive measures, such as the Ordinance of July 1, 1885 which stated that no one had a right to dispossess 'native' populations of the lands they occupied – '*nul n'a le droit de déposséder les indigènes des terres qu'ils occupent.*' The term 'indigenous' was used in this instance in its colonial sense of 'non-European'. The Decree of September 14, 1886 also stated that 'lands occupied by native populations, under the authority of their chiefs, will continue to be governed by local customs and usages.'

These laws governed land issues until the Decree of February 6, 1920 which grouped land into three categories (Franco-Daune 1964: 13):

- Registered lands (*terres enregistrées*) generally held individually.
- Lands belonging to the state (*terres du domaine de l'Etat*). These were divided into lands for public use (*terres du domaine public de l'Etat*) and lands for private use (*terres du domaine privé de l'Etat*). The latter comprised lands conceded for temporary use (*terres concédées*) and vacant lands (*terres vacantes*). Vacant lands included lands to which individuals or other rights holders, such as companies with legal personality, had rights.
- 'Native' lands (*terres indigènes*). These lands were not governed by the Decree of February 1920 but remained under customary law as defined by Article 2 of the Royal Decree of January 1906: 'lands which the native [population] inhabit, cultivate or exploit in whatever manner according to local customs and usage.'

Native lands were distinguished from vacant lands on the grounds that they were subject to 'effective' and visible use i.e. they were inhabited or cultivated (Sohier 1954: 143). The Decrees of May 31, 1934 and May 8, 1936 instituted the so-called *enquête de vacance* which involved visiting the lands in question to determine whether they were occupied. The absence of anybody on such lands was taken to indicate they were vacant.

Although Twa lands would seem to fall in the category of native lands according to the definition above, the *enquête de vacance* did not take account of the nomadic hunting and gathering activities of the Twa, and so their lands appeared to be unoccupied. Twa territories such as the Kahuzi-Biega forests thus became classified as vacant lands.

However, this interpretation was contested by some authorities on the grounds that under pre-colonial land tenure, the notion of 'occupation' did not necessarily mean a visible presence: '... the land ... belongs to the first occupant ... and occupation is not necessarily an effective occupation.' (Malengreau 1947:69, 78-9).

Despite such objections, under the Decree of 1920, therefore, all the lands that were not divided into plots for allocation to individuals (*terres loties*) or found in the immediate vicinity of African villages and gardens (*terres indigènes*) (Bodley 1990: 86) such as mining lands, forests and waters, were regarded as vacant land and were managed by either the Colony itself or the Comité National du Kivu (CNK) created in 1928 and Comité Spécial du Katanga (CSK) created in 1900 (Franco-Daune 1964:14).

Land tenure remained governed by colonial law until the historic Bakajika Law, (*Ordonnance-loi* no. 66-343 of June 7, 1966) named after the MP who drafted it and entitled the law 'ensuring the Republic of Congo's full ownership rights over its domain and full sovereignty in conceding rights to land, forests and mines throughout the extent of its territory'. Adopted in 1967, this law declared all land and its resources to be owned by the State and abolished the concept of individual and community ownership recognised under the Decree of February 1920. Further reforms followed, such as the Constitutional Amendment of 31 December 1971 'assuring the Republic of Zaïre the full and free disposal of all its rights over the soil, the sub-soil and undeveloped natural resources' and the *Régime général des Biens Immobiliers, Fonciers et des Sûretés*<sup>2</sup> of 20 July 1973. As with the Bakajika Law, the 1973 legislation extinguished the colonial recognition of native lands; villages and communities lost ownership of their lands and were only entitled to the right of enjoyment. These lands were then termed 'non-allotted lands situated in rural areas and under customary law.'

Under the 1973 land legislation, which still applies today, state lands comprise public land (*terres du domaine public de l'Etat*) such as airports, roads, markets, public buildings, and private lands (*terres du domaine privé de l'Etat*) which includes both urban and rural lands that the State may concede for private use. Although the term 'vacant lands' was deleted in the new legislation, its working principles and social consequences are perpetuated through the mechanism of '*enquête de vacance*' which continues to be used for determining rural lands that are not used by communities and therefore can be alienated or allocated to other individuals.

### Customary Law

The 1973 statute states that lands not yet divided into individual plots by the land registration service and those found within non-urban centres are regulated by customary law.

#### Bantu customary law in South Kivu

In the South Kivu region of Congo there are two main systems of customary land law practised by the non-Twa ethnic groups. The first system occurs where local (non-Twa) chiefs (Mwamis) have traditional political prerogatives, including the right to distribute land to different groups, generally families, clans or large social groups. These acquire rights to the land by paying a gift of valuable goods, such as cattle, to the chief. This practice is prevalent in areas where land is a rare and valuable commodity, as in some parts of Kivu, a region that has been described as '... an exception with a unique and more highly centralised land distribution mechanism' (Shapiro and Tollens 1992: 20). Interestingly, lands under this system are not part of either the state public or private lands (*terres domaniales*) because they are individually held by a clan, family or community whose effective occupation or exploitation is visible. In other words, these lands are not considered as vacant, and the state has no right to them. Rights over these lands are enforceable before tribunals and courts and can also be proved by different means, including testimony.

In the Kahuzi-Biega area, the customary rights to lands distributed by the Mwamis of Kabare, Kalonge, Walungu and some parts of Kalehe, are either *kalinzi* – unlimited and perpetual use rights, or *bwassa* – temporary use rights.

*Kalinzi* requires payment of cattle, a sum of money, or other valuable items such as parrots or leopard skins, to the Mwami. The price depends on the area of land, its fertility and the social status of the applicant. The Mwami is sovereign in deciding to whom to give or refuse land. He may also defraud an applicant by refusing to give land, after having accepted their *kalinzi* payment.

*Bwassa*, which may be paid or not depending on the relation between the landlord and the applicant, may be terminated at any time by the landlord (generally a *kalinzi* holder) who may even order the occupant to leave before the harvest. It is the preferred type of land right allocated to outsiders, and is used to prevent them from integrating into their host communities. Most of the Twa now living in Kabare, Walungu, Nindja and Kalehe have been granted *bwassa* use rights.

The alternative type of customary land tenure permits any family or individual to use any unoccupied land. When a given piece of land ceases to be used any rights to it are relinquished. This system is generally found where there is no great competition for land, such as in the lowland forested areas which are partially occupied by the Rega. The Twa expelled from Kahuzi-Biega and now living in Bunyakiri, Walikale and some parts of Kalehe have this type of land tenure, giving them access of larger areas of land than communities settled in areas governed by the Mwamis. These areas are forested but with much less hunting and gathering potential than the Twa's original lands. These lands are however classed as vacant and therefore considered by the Congolese government as part of its private lands which the State is entitled to use, or to allocate to someone else.

#### Twa customary land tenure

The Twa who are the subject of this report consider the Kahuzi-Biega National Park to be their territory since time immemorial. Under the Twa's customary land tenure, their land is a well-defined area encompassing places where hunting, gathering, rituals and other cultural activities are carried out (Bahuchet 1991: 2). Generally such areas extend up to areas exploited or inhabited by non-Twa groups, particularly the Shi, Tembo and Havu who were mostly affected by the 1975 extension of the Park. Unlike these other ethnic groups, who even under customary land tenure divide community lands into individual plots, and in common with other 'Pygmy' peoples, the Twa do not have any notion of individual ownership over land and each clan has its own traditional area.

The forest is interchangeably used by different bands moving around, and the author did not hear of any inter-band hostilities concerning land. Indeed, the Twa appear to assume a collective responsibility to protect their land from incursion by foreigners. Non-Twa hunters are generally not welcome on Twa lands. All the exchanges with farmers are done at the extremities of the Twa territories. To keep out invaders, traps are often laid around the edges of Twa lands. These are greatly feared by the non-Twa.

### Twa Land Insecurity

The Twa have no effective rights under the Congolese land code. The existing Congolese land legislation discriminates against the Twa in four main ways:

- The *enquête de vacance* continues to be applied as during colonial times, and does not take account of the Twa nomadic way of life which means that the majority of their territory at any given time appears to be unoccupied;
- Twa lands which have been alienated as National Parks, have become part of state public lands, which cannot be allocated for private use;
- The law does not recognise the notion of collective rights to land – only individuals are entitled to apply for titles by addressing written demands to the land distribution service;
- Finally, the entire procedure of requesting individual title takes at least ten months and costs roughly the equivalent of US \$ 400. For the Twa and other 'Pygmy' groups, legal land title is effectively inaccessible due to their remoteness from the urban centres administering land distribution, their illiteracy and the high cost of administrative fees.

Twa rights under customary land laws are also very limited. The Twa expelled from the Kahuzi-Biega Park now living in Kabare, Walungu, Kalonge, Nindja, and some parts of Kalehe are under the system of customary land rights managed by the Mwami. In the majority of cases, they have not been accorded *kalinzi* or permanent tenure, because of their inability to come up with the required payment or because they have been deliberately cheated of their payment, as described by a Twa man from Idjwi:

*I was told to pay six parrots as kalinzi. I spent months looking for them. When I got them and gave them to the Mwami, he did not give*

*me any land in exchange. His advisors told me Twa cannot access the system of kalinzi.*

The majority of Twa living in the above areas have been allocated *bwassa* (temporary) tenure rights by the Mwami. In many cases these rights are on the least fertile lands, and in any case the plots held by the Twa families are extremely small. As they may be ordered to leave at any time, the Twa say there is little point in improving the land, building solid houses or making any other social or economic investment. In 1998 PIDP-Kivu's field worker reported on the serious land problems facing the Twa at Tchibati:

*The field around which this population lived was not their own, but a bwassa field which CRSN [at] Lwiro gave them. But now, CRSN... has already withdrawn its field... During the discussions I raised the problem of agriculture. The population asked me 'how are we going to farm now we no longer have a field? When we have a field again we will start farming, which is a means of living.'<sup>3</sup>*

The Twa now living in the forested areas of Bunyakiri, Walikale and some parts of Kalehe exercise customary use rights only as long as they occupy the land. Although they are not under the domination of the Mwami as in the other areas, this customary system offers no protection to the Twa against expropriation by the state (as when the Kahuzi-Biega National Park was created) or displacement and eviction by other groups in search of more fertile land.

A Twa from Bishulehule/Kalehe testified in 1995 at the celebrations of the Third International Day of Indigenous Peoples:

*One morning a group of many Bahavu broke into our village and started setting fire to our houses. Our wives and children were severely beaten, our belongings burned. One of us, Mr. Masumbuko Kavura Degard, even died of injuries. Many others were injured. They said that they did not want us to stay there...*

In conclusion, the principles regulating lands under both the written law and the customary law discriminate against the hunter-gatherer way of life. This together with *de facto* discriminations makes it impossible for Twa to secure legal title or customary rights on the same basis as other social groups. This effectively leaves them without any legal protection.

## Land Rights and Self-determination

*[Land is] the raison d'être of indigenous peoples' culture.*<sup>4</sup>

*[There is an] urgent need for understanding by non-indigenous societies of the spiritual, social, cultural, economic and political significance to indigenous societies of their lands, territories and resources for their continued survival and vitality. ... [B]ecause of the profound relationship that indigenous peoples have to their lands, territories and resources, there is a need for a different conceptual framework to understand this relationship and a need for recognition of the cultural differences that exist. Indigenous peoples have urged the world community to attach positive value to this distinct relationship. (Daes 1999: 6).*

Indigenous land rights are intimately linked with the rights of indigenous peoples to self-determination. Self-determination claims advanced by a group representing part of a state's population are frequently contested by the State, nervous of entering into discussions touching on self-rule or even secession (Quane 1998:564-68).

However, as pointed out by Umozurike '...self-determination need not irresistibly lead to independence or secession, inasmuch as it can also be satisfied through unitarism, multipartism, confederation, federalism or other relations that conform with the wishes of the peoples...' (Umozurike 1997: 53). Rather than trying to trade land rights against the fundamental right of indigenous peoples to self-determination, states should recognise that it is *not* the case that all indigenous peoples, or even the majority - and certainly not the Twa - wish to secede from the State and establish their own self-governing nations. Gudmundur Alfredsson, (former secretary of the UN Working Group on Indigenous Peoples) argues that in modern international law the concept of self-determination has essentially two meanings: external self-determination or statehood, and internal self-determination where 'effective participation in the life of the State...requires some decentralisation, autonomy or self-governance' (Gudmundur 1993: 45-51; Sanders 1993:79).

The main objective of the majority of indigenous peoples, including the Twa, is to renegotiate their relations with the state to give more control over their territories and their future. The assertion of indigenous rights provides an alternative to ethnic strife and opens up ways of resolving conflicts through negotiated constructive agreements between states and peoples.

Congolese law offers little redress for the Twa forcibly removed from their lands without any kind of compensation. In the following

section we explore possible mechanisms to resolve the issue of Twa land rights under international norms and agreements.

## Protection and Enforcement of Twa Land Rights: Existing Instruments and Potential Mechanisms

### International Instruments concerned specifically with Indigenous peoples

The rights to ownership and control of lands are central to all international legal frameworks shaped on behalf of indigenous peoples (see Chapter 2). The United Nations Draft Declaration on Indigenous Populations affirms indigenous peoples' right to own, develop, control and use the lands and territories that they have traditionally owned or otherwise occupied or used. It prohibits forced removal of indigenous peoples from their lands or territories, but where this has taken place sets out their right to the restitution of lands, or if this is not possible, to just and fair compensation.

ILO Convention 169 established the principle that 'aboriginal title' derives from immemorial possession and does not depend on any act of the state. Crucially for indigenous peoples, the Convention recognises the right of an indigenous group to collectively own land and resources. The Convention recognises indigenous and tribal peoples' rights of ownership and control over the lands which they traditionally occupy, and those lands to which they have traditionally had access for their subsistence and traditional activities - a particularly important requirement for nomadic peoples. Indigenous and tribal peoples' rights to the use, management and conservation of resources on their lands are recognised. The Convention also affirms that indigenous peoples should not be removed from their lands, but where this is necessary for exceptional reasons it should be carried out with their free and informed consent and with adequate compensatory measures (see page 45 for details).

ILO Conventions 107 and 169 do not set out any specific mechanisms for enforcing the indigenous rights they proclaim. However, indigenous claims to land may be brought under Articles 24 and 26 of the ILO Constitution. Complaints under Article 24 can be activated by an association of workers or employers against a given country for not complying with any ILO convention to which it is party. Complaints under Article 26 can be filed by a state, which has ratified the same convention of which it is accusing another of non-compliance, or by a delegation (workers, employers or government) to the Annual Labour Conference. The ILO Governing Body can also

hear procedures under Article 26 independently. Generally, a Commission of Inquiry is appointed, hearings are held and recommendations made by the Commission. If the accused state does not comply with the recommendations, conclusions are published. The Commission's decisions can be appealed against before the International Court of Justice. Violations of indigenous and tribal rights in Bangladesh, Brazil and India have been referred to the ILO, and in the case of Brazil and Bangladesh, elicited governmental responses and some changes. Observations by the ILO contributed to the initiation of the peace process between the Bangladeshi government and the Jumma peoples of the Chittagong Hills Tract, Bangladesh, and the halting of the settlement programme on Jumma lands (International Labour Conference 1999: 438-439; 1997: 306-308; 1998: 313-315).

Unfortunately for the Twa, Congo is not a party to ILO Convention 169 or 107. Even if they had been ratified, the strict government control of trade unions during the single party state means that the possibility of an association of Congolese workers challenging the government on anything is unthinkable at the present time. However, a complaint could be brought by international trade unions. Congolese civil society and indigenous communities should now press for the ratification of these conventions by Congo. As only a handful of African countries have ratified Convention 107 (see page 43) and none has ratified Convention 169, this imperative applies to the civil and indigenous movements throughout Africa.

### International Covenant on Civil and Political Rights

Article 27 of the United Nations' International Covenant on Civil and Political Rights (ICCPR) states:

*In those States in which ethnic, religious or linguistic minorities exist persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.*

The current development of international law shows that although Article 27 was primarily adopted on behalf of minority groups, it extends its protection to indigenous peoples, especially in a context where they are not recognised as such, as shown by the decisions of the Human Rights Committee in the Lubicon Lake Band case brought by Canadian Indians.<sup>5</sup> In this case, Mr. Bernard Ominayak, the chief of the Lubicon Lake Band complained, under Article 5 of the Optional

Protocol of the ICCPR (which is activated only for an alleged violation of an individual right and not for collective rights), that the Canadian government had violated Article 1 of the Covenant (the right of all peoples to self-determination) by authorising an oil company to exploit their land, which would destroy their natural resources, force them to leave their land and would therefore disturb their way of life.

Deciding that complaints cannot be made concerning alleged violations of Article 1 under the Optional Protocol, which only deals with individual rights not the collective right to self-determination, the Committee treated the complaint as one made by a group of similarly situated individuals under Article 27 holding that

*...Although initially couched in terms of alleged breaches of the provisions of article 1 of the Covenant, there is no doubt that many of the claims presented raise issues under Article 27. The committee recognises that the rights protected by Article 27, include the right of persons, in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong.*

Hence, it ruled that the activities of the industrial company would be a threat '... to the way of life and culture of the ... Band' and would therefore breach Article 27 of the Covenant on Civil and Political Rights.

In so doing, the Committee brought under the protective regime of Article 27 populations native to a given area, which have shown their intention of maintaining their traditions and whose way of life is deeply linked with the land they live on such that any measure aiming to take them away from their land would amount to a serious threat to such a group's culture and way of life.

In applying Article 27, the Committee has developed a test that in effect amounts to a balancing test whereby the nature of the interference with cultural rights is evaluated. In essence, this amounts to a threshold test by which the Committee seeks to ascertain if the petitioners right to culture has been denied or merely interfered with. First set out in *Lovelace v. Canada*,<sup>6</sup> this test was restated in *Kitok v. Sweden* as follows: 'a restriction upon the right of an individual member of a minority must be shown to have a reasonable and objective justification and be necessary for the continued viability and welfare of the minority as a whole.'<sup>7</sup> Also pursuant to *Lovelace*, the Committee held that 'not every interference [with the right to enjoy culture] can be regarded as a denial of the rights within the meaning of article 27 ...'<sup>8</sup>



Photographs by  
Chris Allan (View of Kahuzi-Biega forest), the author (top photo) and  
Herbiers de la Justice.





The Committee further elaborated on the test in the *Lansman v. Finland* cases, in which it stated that activities that deny the right of minorities to enjoy their culture are prohibited, but activities that only have a certain limited impact are not necessarily contrary to Article 27.<sup>9</sup> Consequently, the Committee defined the relevant issue in both *Lansman* cases as 'whether the impact of the [activity/interference] is so substantial that it does effectively deny to the authors the right to enjoy their cultural rights in that region.'<sup>10</sup> In *Lansman v. Finland*, the Committee added an important new element to the test when it recalled

*the terms of paragraph 7 of its General Comment on article 27, according to which minorities or indigenous groups have a right to the protection of traditional activities such as hunting, fishing or reindeer husbandry, and that measures must be taken to 'ensure the effective participation of members of minority communities in decisions which may affect them.'*<sup>11</sup>

The General Comment referred to above is worth quoting at some length given its relevance to determining state obligations under Article 27. It reads in pertinent part as follows:

*one or other aspects of the rights of individuals protected [under Art. 27] - for example to enjoy a particular culture - may consist in a way of life which is closely associated with a territory and its use of resources. This may particularly be true of members of indigenous communities constituting a minority ... With regard to the exercise of the cultural rights protected under Article 27, the committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, specifically in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them ... The Committee concludes that article 27 relates to rights whose protection imposes specific obligations on States parties. The protection of these rights is directed to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole ...*<sup>12</sup>

The community of Awas Tingni has filed a similar petition with the Inter-American Commission on Human Rights against the Government of Nicaragua. The community of Awas Tingni argues that

traditional indigenous land tenure systems and patterns of land use are an aspect of culture that is protected by Article 27 of the Covenant (Daes 1999:17).

Article 27 of the Covenant constitutes a binding international obligation for the Congo. The Twa have the possibility of acting under Article 5 of the Optional Protocol as a group of individuals collectively affected by an act which constitutes an alleged violation of Article 27 of the ICCPR. In order to establish that a violation has occurred they would have to demonstrate that their removal from their natural lands amounts to a denial of their right to enjoy their culture. Given the substantial nature of the interference with their cultural rights, in all its various aspects, caused by their removal, it should not be difficult to establish that a violation has occurred and that the state is obligated to provide adequate and effective remedial measures.

The procedures involved are as follows: if the communication to the Human Rights Committee passes the admissibility stage, then accusations are transmitted to the state in question, before a hearing takes place. In its role of a quasi-judicial body, the Human Rights Committee's mission is to verify whether allegations made against a given state are true. If so, it declares the state in question of having breached international law and makes a number of recommendations, which are later published in its annual report to the General Assembly.<sup>13</sup> This type of action is useful to indigenous groups in that decisions reached by the Human Rights Committee generate wide publicity and attention, and cause embarrassment to the concerned states, thus providing leverage for enactment of reforms.

### The norm of non-discrimination

Article 26 of the Covenant on Civil and Political Rights dealing with non-discrimination also offers some protection to the Twa. It states: '...the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, ...'

Although the Covenant does not define the term 'discrimination' the Convention on the Elimination of All Forms of Racial Discrimination (CERD) to which Congo is party, states in Article 1:

*...The term discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing of human*

*rights and fundamental freedoms in the political, economic, social, cultural or any field or public life.*

The words 'any distinction' refer to both *de jure* and *de facto* discriminations. The former consist of discriminatory laws whereas the latter consist of any situation that prevents someone from enjoying human rights and freedoms on the same footing as others. A neutral norm applied to parties in unequal conditions can have an unequal effect, as illustrated by Anatole France's ironic statement: '...the law's majestic equality, ...forbids the rich as well as the poor to sleep under bridges, to beg in the streets and to steal bread' (Rodley 1995:50).

The Human Rights Committee provides some guiding principles on *de facto* discriminations. It says that, in order to remedy unequal conditions amongst their populations, States should take

*... affirmative action in order to diminish or eliminate conditions that cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the state should take specific action to correct those conditions. Such action may involve granting for a time to part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant. (Rodley 1995:50)*

A State failing to provide such special treatment would be breaching its international obligations under Article 1 of the Convention on the Elimination of All Forms of Racial Discrimination.

The Congolese land code (*code foncier*) does not explicitly exclude Twa from access to land, although it denies secure legal land rights to customary owners. However, by denying recognition of land use types such as hunting and gathering and only making land titling mechanisms available to those with fixed villages or agricultural plots, the law does effectively discriminate against the Twa. In addition, *de facto* discriminations preventing the Twa's equal access to land compared with other ethnic groups include their illiteracy, residence in remote rural areas and lack of financial means which restrict their access to legal land titles and their nomadic way of life. These permit the state to declare their lands vacant. The discrimination and prejudice Twa suffer from other ethnic groups, who consider the Twa retrograde, second class humans not deserving of attention, privileges or rights to land, and

the Mwamis' discrimination against Twa seeking to pay for permanent customary land rights, are the main barriers to obtaining customary tenure.

According to the principles set out by the Human Rights Committee, the Congolese Government should carry out affirmative actions to eliminate these discriminations faced by the Twa.

Further support for corrective action is given by the Committee on the Elimination of Racial Discrimination's confirmation that '...discrimination against indigenous peoples falls under the scope of the Convention and that all appropriate means must be taken to combat and eliminate such discrimination'. The Committee went on to state:

*The Committee especially calls upon States parties to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.<sup>14</sup>*

The language of the General Recommendation quoted above is an elaboration of state obligations under Article 5(d)(v) of the Convention which prohibits discrimination relating to the right 'to own property alone as well as in association with others.' Read together, Articles 1 and 5(d)(v) provide for the recognition and respect of indigenous land and resource rights, cultural integrity and participation rights within the context of 'affirmative action' programmes specially designed to advance and protect the economic, social and cultural status and well-being of indigenous peoples.

According to Article 14 of CERD, the Twa could bring a complaint against Congo for violating Article 1 of the Convention. The complaint would be brought before the Committee on the Elimination of Racial Discrimination, which operates in the same way as the Human Rights Committee. This procedure, unlike the procedure of the Optional Protocol to the Covenant, can be activated by groups: Article 14 asserts the '...competence of the Committee to receive and consider communications from individuals or group victims of...' racial discrimination.<sup>15</sup>

## Norms of customary international law

ILO Convention 169 is important not only as an international instrument setting out rights of indigenous and tribal peoples but also as part of 'a larger body of development that can be understood as giving rise to new customary international law with the same normative thrust' (Anaya 1996:49-50; Colchester 1995b:7). There is now general recognition in international law that the aboriginal inhabitants of a region possess rights to their lands that cannot be ignored.

The International Court of Justice, in the *Asylum Case*,<sup>16</sup> defined a custom as a 'constant and uniform usage, accepted as law.' As Harris has pointed out, such usage involves both an objective element and a subjective one. The objective component of customary international law consists of a material act such as treaties, decisions of international and national courts, national legislation, diplomatic correspondence, opinions of national legal advisers and the practices of international organisations (Harris 1998:2). Brownlie has further commented that a state's practice may even be revealed through policy statements, press releases and comments on drafts produced by international bodies (Brownlie 1990:5). The objective component of an international custom must be accompanied by the subjective element known as *opinio juris* which distinguishes a norm of customary law from a mere usage. *Opinio juris* is a common belief that a given custom has become as binding as a legal obligation, and is closely linked with ideas of 'humanity', fairness and justice. State practice builds customary law where it is a response to an idea of humanity and States comply with a practice because they believe they are acting on behalf of compelling principles of humanity (Anaya 1996:56).

There are many examples demonstrating states' practice of recognising indigenous peoples' rights to the lands on which they live, such as allowing local populations to live within the boundaries of national parks. Examples include the Imraguen people in the Banc d'Arguin National Park, Mauretania, the 3,000 Sherpas still living in the Sagarmatha (Mount Everest) National Park, Nepal; native populations living in the Con Dao National Park, Vietnam, and local populations permitted to hunt and forage within the Wasur National Park, Indonesia (Kemf 1993: 7-8).

Brazil is reported to be taking more positive steps to recognise Yanomami Indians' land rights since the Inter-American Commission of Human Rights found in 1985 that the Brazilian Government was infringing its international obligations of to take 'timely and effective measures on behalf of the Yanomami Indians...'<sup>17</sup> Articles 53 to 63 and 87 of the Canadian Indian Act of 1985 protect the property of

Indians on reserves and prevent the property from being eroded. The 1993 Nunavut Agreement (creating a new indigenous territory in northern Canada) and the Nisga'a treaty currently being negotiated (to recognise Nisga'a rights to self-government in 2,000 sq km of their territory) are important measures upholding indigenous peoples' rights to land and autonomy.

In Australia, the Native Title Act of 1993 determines native titles over particular areas or lands and waters. The Australian High Court contributed to the recognition of indigenous land rights in the Torres Strait Islanders case in which for the first time, the Court struck down the doctrine of *terra nullius* ruling

*that the common law of Australia rejects the proposition that, when the Crown acquired sovereignty over territory which is now part of Australia, it thereby acquired the universal and absolute beneficial ownership of all the land therein...The common law accepts that the antecedent rights and interests in land possessed by the indigenous inhabitants of the territory survived the change in sovereignty; and those antecedent rights and interests thus constitute a burden on the radical title of the Crown.*<sup>18</sup>

The Waitangi Tribunal in 1976 in New Zealand (named after the treaty signed between traditional chiefs of New Zealand and the representative of the British crown in 1840) ruled that the Crown had the responsibility to protect Maori lands and resources and recommended the return of lands in certain cases, or the guarantee of compensation if that was not possible (Aylwin Oyazún 1996:15).

In the drafting sessions of the UN Draft Declaration on the Rights of Indigenous Populations and debates at the UN Working Group on Indigenous Populations, states have never objected to the idea of recognising the land rights of indigenous groups, even though they continue to discuss their scope, for example, whether rights should apply only to lands and resources still in present-day use, or also to lands which were traditionally owned or used (Article 26 of the Draft Declaration) (Barsh 1996:801).

Regional international fora also uphold the principle of recognising indigenous peoples' land rights. In February 1994, the European Parliament called upon its Member States to provide effective protection for indigenous peoples by incorporating the ILO Conventions 107 and 169 on indigenous peoples into their domestic laws.<sup>19</sup> In 1997 it adopted the Resolution 9(d) B4-0962 and 0989/97 on the situation in Chittagong Hill Tracts, calling on the Bangladesh government to 'recognise the crucial demands for the traditional lands rights ...of the Jumma people.' The Organisation of American States has pro-

posed a draft declaration on the rights of indigenous peoples' land rights, whose Article XVIII (2) states: '... Indigenous peoples have the right to the recognition of their property and ownership rights with respect to lands, territories and resources they have historically occupied... 0146 (OAS 1995).<sup>20</sup>

In fact, the practice of recognising indigenous land rights is much older than all these new developments. In 1537, Pope Paul III introduced a bill stating that '... Indians and all other peoples who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they be outside the faith...' Identical principles of use and occupation as the sole source of indigenous land rights were introduced into Spanish domestic law around 1594 (Bennett 1978:29). These principles were not just theoretical but used as background in some judicial decisions. For example, Chief Justice Marshall, in deciding the Johnson v McIntosh and Worcester v Georgia cases<sup>21</sup>, held that aboriginals were '...to be the rightful occupants of the soil, with a legal as well as a just claim to retain possession of it, and to use it according to their own discretion...' <sup>22</sup> The recognition of Indian land rights was positive, however Marshall's construction of these rights was within the framework of the doctrine of discovery (Daes 1999:26).

Thus in terms of Harris's and Brownlie's concept of international custom (page 112) stemming from decisions of international and national courts, national legislation, practices of international organisations and comments on drafts produced by international bodies, the principle of the rights of indigenous peoples to live on their ancestral lands has become generally accepted, and can no longer be reasonably ignored.

The *opinio juris* test is also upheld, as states do not recognise indigenous groups' rights to land because they are forced to but as a way of expressing their compassion and humanity and to redress the injustice and discrimination faced by such populations. As Anaya has said:

*...the demands of indigenous peoples have been addressed continuously in one way or another within the United Nations and other international venues of authoritative normative discourse. The extended multilateral discussion promoted through the international system has involved states, non-governmental organisations, independent experts, and indigenous peoples themselves. It is now evident that States and other relevant actors have reached a certain new common ground about minimum standards that should govern behaviour towards indigenous peoples, and it is also evident that the standards are already in fact guiding behaviour. Under modern theory, such a controlling consen-*

*...the claim here is not that each of the authoritative documents referred to can be taken in its entirety as articulating customary law, but that the documents represent some precepts that are widely accepted as ...customary law. (Anaya 1996:50, 56).*

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On this basis, by expelling the Twa from their lands in the Kahuzi-Biega forest without their free and informed consent and without fair compensation, Congo can be held to be in breach of norms of customary international law which recognise indigenous peoples' rights to ownership and control of their lands.

### African Charter mechanisms

The African Charter on Human and Peoples' Rights does not contain any particular mechanism that protects indigenous or community land rights. It is distinctive in that it recognises rights of peoples, but the exact definition of 'peoples' is left un-addressed. The African Commission on Human and Peoples' Rights, based in Banjul, Gambia, is the treaty body for monitoring the implementation of the African Charter. Under Article 62, states are required to submit reports every two years on measures they have taken to implement the Charter. Many governments however, including Congo, have not complied with these reporting requirements. The reports which have been submitted, which generally take the form of an open debate between states' representatives and Commissioners, have been dominated by issues such as pre-trial detention, freedom of association, disappearances, torture, independence of judiciary and refugee protection. The Commission has never raised indigenous peoples' issues. Even when the Commission was debating the Nigerian report in 1993, at the time when the campaign for Ogoni lands was being brutally suppressed by the Nigerian government, not a single Commissioner raised questions about Ogoni rights (Danish Human Rights Centre 1995:21-56).

In 1992, the presenter of the Senegalese report mentioned the problem of mismanaging indigenous land rights as one of the main causes of the Casamance conflict faced by his government.

*...concerning the problem of the Casamance [people seeking self-determination], if we go back into the history of these events, in 1964 Senegal enacted a law on the national domain which took away the*

*management of lands from the population into order to give them to the State. The law was applied in a brutal manner all over the country, as is customary when laws are applied, and this caused a certain bitterness on the part of the populations of the South and this may perhaps also explain this problem. (Danish Human Rights Centre 1992:68).*

Again, the Senegalese representative's statement was not followed up by any Commissioner. During the same reporting session, long hours were spent on the Tanzanian report without mentioning the problem of landlessness faced by the Maasai, the Hadza, the Barabaig, and other similar communities, whose lands were being taken away (Plant 1991:33).

This lack of interest in community land rights continues to characterise the African system of human rights, despite the Commission's guidelines in the interpretation of Article 17.2 of the Charter, dealing with communities' cultural identities. According to the guidelines, states shall take '... overall policy and specific measures aimed at the promotion of cultural identity as a factor of mutual appreciation amongst ... groups, communities, ...' (African Commission of Human and Peoples' Rights 1990:417).

Article 60 of the Charter gives Commissioners the freedom to question states on:

*... 'provisions of various African instruments on human and peoples' rights, ... and other instruments adopted by... African countries in the field of human rights as well as from provisions of various instruments adopted within the Specialized Agencies of the United Nations.*

In other words, at least states such as Angola, Egypt, Ghana, Guinea Bissau, Malawi and Tunisia, which have ratified the 107 ILO Convention of 1957, should be reporting, and being questioned, on its implementation. In relation to the Twa, the African Commission could increase pressure on Congo to comply with other international instruments that deal with indigenous issues, such as the dispositions of Article 27 of the ICCPR, which we have shown to be an important element in countering attempts to evict indigenous peoples from their lands.

As well as reviewing periodic states' reports, the African Commission may review communications (complaints) by any state alleging violation of the Charter by another state, and from individuals and non-governmental organisations (Articles 47-59 of the Charter).

The Twa could submit a communication using the mechanisms recognised by Article 55 that states:

*Before each session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications shall be considered by the Commission.*

Article 58(3) can also be used in situations that 'pose risk of further human rights situations so that a deterioration of the situation should be prevented' (Ankumah 1996: 40). According to Article 58(2), in the case of this latter procedure, a fact-finding inquiry mission may be set up and preventive measures may be taken, depending on the nature of the situation. Third parties (NGOs and similar bodies) may activate these procedures on behalf of the victims (Article 45) and have done so. For example International Pen filed a communication against the Ivory Coast in 1994 on behalf of victims of violation of the right to freedom of self-expression.<sup>23</sup> Amnesty International did the same against Sudan in 1990<sup>24</sup>.

NGOs with observer status in the African Commission can seize the Commission with communications and contribute to the Commission's sessions. Yet to date it appears that African indigenous groups have never participated at the Commission's sessions or applied for consultative status. Although most of the Commission's procedures are time-consuming, the mechanisms outlined above could be more widely used by African indigenous groups and NGOs to engage the African Commission on indigenous issues. As Evelyn Ankumah puts it, 'more remains to be done by NGOs towards the development of a human rights jurisprudence...' (Ankumah 1996:47).

### **New conservation policy**

As early as 1975, IUCN passed a resolution at its Twelfth General Assembly in Kinshasa, Congo, recognising the 'value and importance of traditional ways of life and the skills of the people which enable them to live in harmony with their environment.' The resolution recommended that governments 'maintain and encourage traditional methods of living' and 'devise means by which indigenous people may bring their lands into conservation areas without relinquishing their ownership, use or tenure rights.' In 1982 the World National Parks Congress in Bali, Indonesia asserted the same principle (International Alliance of Indigenous and Tribal Peoples of the Tropical Forest 1997:141-142). Despite these statements, the conservation model which seeks to establish protected areas by clearing them of resident human populations has continued to be widely applied, and

little progress has been made in implementing the new principles due to conflicts of interest between conservation organisations and indigenous peoples over the recognition of their land rights (Colchester and Gray 1998:10-17).

However, in recent years a dialogue has opened between conservation organisations and indigenous peoples. It is no accident that indigenous peoples are the main inhabitants of many of the last remaining bio-diverse and well-conserved ecosystems on the planet. Age-old prejudices about the backwardness of indigenous peoples have given way to growing respect as studies reveal the extraordinary sophistication of indigenous knowledge and customary management regimes and as changed policies that transfer control of resource to communities have been shown to be effective. Pressures are mounting on natural resources surrounding protected areas, local peoples are increasingly able to assert their rights to own and control their traditional lands and resources and government bureaucracies, which used to be able to defend protected areas from other outside interests, succumb to political manipulation and predatory private companies. Under these changing circumstances new alliances with local peoples who also resist these outside pressures offer new opportunities for local people and conservation.

In May 1996 the World Wide Fund for Nature (WWF International) adopted 'Principles for partnership between WWF and indigenous peoples' organizations in conserving biodiversity within indigenous peoples' lands and territories, and in promoting sustainable use of natural resources.' In these principles WWF fully endorses the provisions about indigenous peoples contained in Agenda 21, the Convention on Biological Diversity, ILO Convention 169 and the UN Draft Declaration on the Rights of Indigenous Peoples. The new policy explicitly recognises the rights of indigenous peoples to the use, ownership and control of their traditional territories and emphasises the principle of free and informed consent in interactions with indigenous peoples.

*Principle 8. WWF recognizes that indigenous peoples have the rights to the lands, territories, and resources that they have traditionally owned or otherwise occupied or used, and that those rights must be recognized and effectively protected, as laid out in the ILO Convention 169.*

*Principle 12. WWF recognizes that indigenous peoples have the right to determine priorities and strategies for the development or use of their lands, territories, and other resources, including the right to require that States obtain their free and informed consent prior to the approval of any project affecting those lands, territories, and resources.*

*Principle 14. In instances where multiple local groups claim rights to resources in indigenous territories, WWF recognizes the primary rights of indigenous peoples based on historical claims and long-term presence, with due regard for the rights and welfare of other legitimate stakeholders.*

*Principle 16. In conformity with the provisions of the ILO Convention 169, WWF recognizes the right of indigenous peoples not to be removed from the territories they occupy. Where their relocation is considered necessary as an exceptional measure, it shall take place only with their free, prior informed consent.*

*Principle 21. Whenever it promotes conservation objectives, and in the context of its involvement in conservation activities affecting indigenous peoples' lands and territories, WWF will encourage governments to "take steps as necessary ... to guarantee effective protection of [indigenous peoples'] rights of ownership and possession" of those lands and territories, as determined by the ILO Convention 169 (Art. 14).*

*Principle 27. WWF will not promote or support, and may actively oppose, interventions which have not received the prior, free and informed consent of affected indigenous communities, and/or would adversely impact - directly or indirectly - on the environment of indigenous peoples' territories, and/or would affect their rights. This includes activities such as:*

- economic or other development activities;
- natural resources exploitation;
- commercially oriented or academic research;
- resettlement of indigenous communities;
- creation of protected areas or imposition of restrictions on subsistence resource use;
- colonization within indigenous territories.

The World Conservation Union (IUCN) General Assembly in Montreal followed suit in October 1996. Resolution 1.53 called for a clear policy on protected areas established on indigenous lands based on:

- a) recognition of the rights of indigenous peoples with regard to their lands or territories and resources that fall within protected areas;
- b) recognition of the necessity of reaching agreements with indigenous peoples prior to the establishment of protected areas in their lands or territories;



- c) *recognition of the rights of the indigenous peoples concerned to participate effectively in the management of the protected areas established on their lands or territories, and to be consulted on the adoption of any decision that affects their rights and interests over those lands or territories.*

The resolution also urged all IUCN members (which include Congo) 'to establish appropriate mechanisms at the national level, for the development and implementation of policies on protected areas and indigenous peoples that are consistent with these principles.'

In 1999, IUCN, WWF and the World Commission on Protected Areas issued a joint statement of Principles and Guidelines on Indigenous and Traditional Peoples and Protected Areas which recognised that:

- *protected areas will survive only if they are seen to be of value, in the widest sense, to the nation as a whole and to local people in particular;*
- *the territorial and resource rights of indigenous and other traditional peoples inhabiting protected areas must be respected by promoting and allowing full participation in co-management of resources, and in a way that would not affect or undermine the objectives for the protected area as set out in its management plan;*
- *knowledge, innovations and practices of indigenous and other traditional peoples have much to contribute to the management of protected areas;*
- *governments and protected area managers should incorporate customary and indigenous tenure and resource use, and control systems, as a means of enhancing biodiversity conservation.*

As a step towards the promotion of these new models of conservation, the IUCN has likewise revised its set of definitions of types of conservation areas, recognising that protected areas do not have to be solely managed and controlled by state agencies but should include other types owned and managed by nongovernmental agencies, private companies, individuals, local communities and indigenous peoples. To accommodate the economic activities of resident peoples, the WWF and IUCN now give particular emphasis to the need to increase the number of protected areas in the IUCN's Categories V and VI, 'Protected Landscapes/Seascapes' and 'Managed Resource Protected Areas.'

These welcome changes in the policies of the conservation bodies are the first steps towards achieving sustainable relations between indigenous peoples and their natural environments, relations which

have been distorted by the impositions of national governments and the pressures of the market. The recognition of indigenous peoples' rights to own and manage their ancestral lands is an essential, but not necessarily sufficient, condition for sustainable land use. Indigenous peoples are aware that the integrity of their territories is now at risk not just because of external pressures to exploit their areas, which they seek to resist, but also because their own economies are undergoing change. They seek help from conservationists to address these problems, as partners in promoting change rather than as controllers of their lives.

As the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests noted in its 1995 Guiding Principles for Conservation in Indigenous and Tribal Territories:

*Indigenous peoples recognise that it is in their long-term interest to use their resources sustainably and respect the need for environmental conservation. Indigenous peoples recognise that the expertise of conservation organizations can be of use to their self-development and seek a mutually beneficial relationship based on trust, transparency and accountability. (International Alliance of Indigenous and Tribal Peoples of the Tropical Forests 1997:144).*

It will be difficult for reputable agencies involved in conservation projects either as funders or practitioners, such as the ICCN and GTZ in Kahuzi-Biega, to ignore the modern conservation principles and guidelines recognised by international conservation bodies and now accepted as norms for protected areas on indigenous territories.

Furthermore, GTZ's park management activities do not comply with the German Government's policy for the promotion of indigenous forest-dwelling peoples which states:

*All German development-cooperation activities that directly or indirectly affect forest-dwelling peoples must comply with the following guidelines:*

- *The human communities affected by projects must be identified, also analyzing the impact of projects on their current living and economic conditions. This can be done as part of environmental impact assessment (EIA).*
- *Traditional land and/or utilization rights must be surveyed and, to the greatest possible extent, respected (also as part of EIA).*
- *Traditional, self-determined ways of life and forms of economic activity must be respected to the extent wished by those affected.*

- *All affected individuals must be comprehensively informed and consulted at an early stage and in a form they can understand, as soon as action is taken on relevant project applications*
- *The affected people must be bindingly incorporated into the decision-making process within the scope of German Participation in project implementation.*
- *Particularly great importance must be attached to protecting the traditional ways of life of the indigenous forest-dwelling peoples.*
- *At the same time, however, it is essential to avoid automatically giving preference to the interests and demands articulated by forest-dwelling peoples. Whenever these wish or advocate initiatives that run contrary to the aims of sustainable management of natural resources, they should be excluded from promotion in accordance with the general principles of the Tropical Forest Sector Concept.*
- *Just as important as promoting forest-dwelling peoples is reviewing and, if necessary, modifying or even preventing proposed projects if they threaten to violate elementary interests of forest-dwelling peoples. (BMZ 1997: 14).*

The new conservation norms and the development policies of the German government provide an opening for the Twa to start a dialogue with ICCN and GTZ to stimulate revision of their policies in the Kahuzi-Biega National Park, starting with the recognition of Twa land rights. This process will require facilitation to enable the Twa communities to represent and articulate their concerns and to support a truly participative consultation. The negotiation should be based on fully informed consent to the terms and process of the negotiation, without political or financial pressure on the Twa and with both parties treated as equals in all aspects of the process. The aim of the negotiation is to develop an alternative practice of conservation in the Kahuzi-Biega National Park: reconciling conservation objectives in Kahuzi-Biega with the priorities and concerns of the Twa with a view to forging an alliance between the park authorities and the Twa communities to defend the Park against external destructive forces.

The Convention on Biological Diversity (CBD), to which Congo is a party, offers further possibilities for the Twa. It calls on parties to the Convention to maintain the traditional knowledge of indigenous and local communities and protect and encourage customary use of biological resources (Articles 8(j) and 10(c), see page 49). Indigenous peoples argue that in order to do this, their cultural heritage must be effectively protected and their rights to their territories and to control what happens on them must be respected during the establishment and management of protected areas.

The CBD Secretariat's analysis of the language of article 10(c) - 'protect and encourage customary use of biological resources' - supports the indigenous arguments. In its background paper on 'Traditional Knowledge and Biodiversity', the Secretariat stated:

*In order to protect and encourage, the necessary conditions may be in place, namely, security of tenure over traditional terrestrial and marine estates; control over and use of traditional natural resources; and respect for the heritage, languages and cultures of indigenous and local communities, best evidenced by appropriate legislative protection (which includes protection of intellectual property, sacred places, and so on). Discussions on these issues in other United Nations forums have also dealt with the issue of respect for the right to self-determination, which is often interpreted to mean the exercise of self-government. These conditions may also be considered in the context of incentive measures.*

Concerning the phrase 'Customary use of biological resources' the Secretariat stated:

*Customary use of biological resources must take into account the spiritual and ceremonial dimensions of such use in addition to the more strictly economic and subsistence functions. Such use may also entail restrictions in accordance with customary laws: such restrictions must be respected as a necessary function of cultural survival. Also, the methods of taking various species have frequently changed as a result of the introduction of new technologies, however, it is the traditional purposes for such taking which should remain paramount in considering customary uses of biological resources and traditional cultural practices.*

*In terms of implementation of article 10(c), in consideration of the terms "as far as possible and as appropriate" it would seem appropriate to provide for customary use of biological resources in accordance with traditional cultural practices within national laws. (UNEP/CBD 1997:23).*

These issues will be explored in 2000 by indigenous peoples, technical experts and government representatives in a specially established 'inter-sessional working group' of the CBD. A good faith interpretation of the obligations agreed to in Articles 8(j) and 10(c) coupled with the commitments of states under Agenda 21 of the UN Commission on Sustainable Development to work in partnership with indigenous communities in managing resources and achieving sustainable development, may offer some scope for the Twa to regain control of their territory and resources.

## Financial Institutions

Congo's natural resources include huge deposits of cobalt, copper, gold, and diamonds; a vast hydropower potential and substantial forest resources. Under the kleptocratic misrule of President Mobutu Sese Seko, the revenues from these resources largely disappeared into private bank accounts, and the country suffered from chronic poverty, inadequate services and lack of infrastructure. In readiness for the demise of Mobutu, foreign companies and strategists positioned themselves for the expected new opportunities for investment. Following the overthrow of Mobutu in May 1997, the new regime announced plans to rebuild the country's destroyed transport system and social services, and closed deals with several foreign countries to redevelop the lucrative mining sector (Wolfire *et al.* 1998:7). The anticipated reconstruction of Congo was, however, halted by the civil war which broke out in the east of the country in August 1998. It is fervently hoped that the ceasefire agreement signed in August 1999, supported by the recently initiated UN peace process, will bring lasting stability to the region.

With the establishment of peace, foreign investors will relaunch their activities in Congo. Road and dam building, railway reconstruction, mining activities, commercial logging and other enterprises will commence, which may impact on the Twa communities in Kivu. For example, in July 1997 the new government announced plans to rebuild the 500 km Goma-Kisangani route, as part of a \$2.5 billion, 28,000 km roads programme. The Goma-Kisangani segment runs close to the Kahuzi-Biega Park and to lowland forests around Kasese which are still relatively undisturbed, and in fact home to the greatest concentration of lowland gorillas (page 70). Improved road access may be welcomed by local communities for bringing new access to markets and facilities, but has considerable negative costs in stimulating greater inroads by loggers, farmers and commercial hunters, all of which are likely to have negative impacts on the Twa in terms of cultural erosion, health impacts and loss of livelihoods.

Where such future projects are financed or underwritten by multilateral financial institutions or donors whose policies set out provisions to prevent negative impacts on indigenous peoples, the Twa can insist on the correct application of those policies. For example, any activity funded or underwritten by the World Bank impacting on forests and indigenous peoples must adhere to its Forest Policy and Operational Directive 4.20 on Indigenous Peoples (Colchester 1999). Structural Adjustment Programmes and Country Assistance Plans for Congo should also be reviewed to ensure that impacts on indigenous peoples, including the Twa, are assessed and appropriate measures taken.

Non-compliance with Operational Directive 4.20 should be initially taken up with Bank staff. The Bank states that it is open to inputs from stakeholders in that it is '... informing and engaging all stakeholders (government agencies, local communities, scientific institutions, NGOs, private sector) at all stages of the project cycle' (World Bank 1998:12). Its Environment Department has produced a *World Bank Participation Sourcebook and Social Assessment Guidelines* for this purpose and an annual report *Monitoring Environmental Progress*. The Bank's stated aim is to implement 'a long term program that will depend on concerted and cooperative efforts by local communities, governments, NGOs, and other relevant stakeholders...' (World Bank 1998: 39). However, if direct dialogue with the Bank and other remedies have been exhausted, complaints can be brought before an Inspection Panel composed of prominent development specialists. The Panel can address issues of Bank non-compliance but not non-compliance by the borrower government. To date, the Panel has investigated some dozen cases.

## Notes

- <sup>1</sup> Edmund Morel, turn-of-the-century campaigner against Leopold II's excesses in the Congo Free State, quoted in Hochschild 1998: 272
- <sup>2</sup> General regime for real estate, land and guarantees
- <sup>3</sup> PIDP-Kivu Internal activity report, November-December 1998
- <sup>4</sup> Barsh 1996:801
- <sup>5</sup> Ominayak, Chief of the Lubicon Lake Band v Canada *Report of the Human Rights Committee. (Communication No. 267/1984) UN GOAR, 45<sup>th</sup> Sess.: 27*
- <sup>6</sup> Lovelace vs. Canada (No. 24/1977). *Report of the Human Rights Committee. 36 UN GAOR Supp. (No. 40) UN Doc. A/36/40 (1981): 166*
- <sup>7</sup> Kitok vs. Sweden, *Report of the Human Rights Committee, 43 UN GAOR Supp. (No.40) 221: 230, UN Doc. A/43/40 (1988).*
- <sup>8</sup> Cited in: *I. Lansman et al. vs. Finland (Communication No. 511/1992), CCPR/C/52/D/511/1992: 7*
- <sup>9</sup> *I. Lansman et al. vs. Finland (Communication No. 511/1992), CCPR/C/52/D/511/1992: 10; Jouni Lansman et al. vs. Finland (Communication No. 671/1995), CCPR/C/58/D/671/1995*
- <sup>10</sup> *I. Lansman et al. vs. Finland (Communication No. 511/1992), CCPR/C/52/D/511/1992: 10*
- <sup>11</sup> *I. Lansman et al. vs. Finland (Communication No. 511/1992), CCPR/C/52/D/511/1992: 10*
- <sup>12</sup> *General Comment No. 23 (50) (art. 27)*, adopted by the Human Rights Committee at its 1314th meeting (fiftieth session), 6 April 1994. UN Doc. CCPR/C/21/Rev.1/Add.5 (1994).
- <sup>13</sup> Article 45 of the International Covenant on Civil and Political Rights
- <sup>14</sup> Committee on the Elimination of Racial Discrimination. General Recommendation XXIII (51) on the rights of indigenous peoples, adopted at the Committee's 1235<sup>th</sup> meeting, on 18 August 1997.

- <sup>15</sup> Congo has not filed a declaration under Article 14. The countries which have done so are Algeria, Costa Rica, Denmark, Ecuador, France, Hungary, Iceland, Italy, Netherlands, Norway, Peru, Senegal, Sweden and Uruguay.
- <sup>16</sup> International Court of Justice Report 1950: 266. In this case Colombia provided Haya de la Torre, a former rebellion leader in Peru, with refugee status and assisted him to get out of Peru. Peru accused Colombia of constituting a safe heaven for criminals, however Colombia invoked a general international norm that asylum seekers should be assisted.
- <sup>17</sup> OEA/Ser.L/V/II.66, Oct, 1985
- <sup>18</sup> *Mabo v Queensland*, Australian Law Report 107 (1992).
- <sup>19</sup> *Resolution on Action Required Internationally Providing Effective Protection for Indigenous Peoples*. Parl.Doc. PV 58(II) (1994). Adopted by the European Parliament February 9, 1994.
- <sup>20</sup> Adopted on September 18, 1995.
- <sup>21</sup> Johnson, 21 U.S.: 590; Worcester, 31 U.S.:555-56
- <sup>22</sup> U.S. Supreme Court decisions.
- <sup>23</sup> African Commission, 1994, communication 138/94
- <sup>24</sup> African Commission, 1990, communication 48/90

## CHAPTER 6

## RECOMMENDATIONS

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Kahuzi-Biega National Park is a World Heritage Site. Under the terms of the World Heritage Convention, the Congolese authorities are obliged to do their utmost to protect the site's natural and cultural heritage. The Twa represent the cultural heritage of the Park, yet have suffered immeasurably as a result of the expropriation of their lands. They have been forcibly removed from the forest so vital for their culture, identity and self-respect. Having no lands outside the forest, they lack the security of a permanent resource base from which to maintain their traditional culture and economy or to develop alternative livelihoods. They are extremely poor and suffer from inadequate housing, health care, nutrition and education, and due to their indigenous identity are despised and marginalised by the rest of society. The forced relocation of the Twa away from their traditional lands violates recognised international standards on indigenous peoples' rights and is contrary to modern principles of conservation.

The Twa's expulsion from the Park, while other resident communities were allowed to stay, also constitutes a clear case of discrimination contrary to both international and Congolese law. In view of the Twa's dire social and economic situation, urgent measures are called for to rectify these injustices and restitute the Twa's full rights as an indigenous people with legitimate long-term interests in the sustainable use of resources in their traditional forests.

### Rights to Traditional Lands

A process of dialogue should be initiated with the Congolese Institute for the Conservation of Nature (ICCN) and the German development agency GTZ with the aim of exploring options for the implementation of the modern conservation principles outlined in Chapter 5 based on recognition of the rights of indigenous peoples to live on their ancestral lands – a principle which has become generally accepted, has been implemented in many protected areas (see page 112) and can no longer be reasonably ignored. The long-term aim is, through recognising the Twa's rights to occupy their traditional lands and control the use of their resources, to engage them as partners in the protection of their resources from outside destructive forces. This process needs to

be carefully prepared and should be regarded as a long-term endeavour requiring committed involvement by conservationists, NGOs and local government, as well as adequate levels of investment.

Initially, a participatory networking and dialogue process should be carried out with Twa communities, to

- help the Twa identify the current obstacles that deny them sustainable livelihoods;
- support a process of establishing consensus towards a common goal within Twa communities, using conflict resolution mechanisms which draw on their own cultural resources;
- support a process of networking between Twa communities, to strengthen local peoples' representation and increase their ability to have effective dialogue with ICCN/GTZ.

This process should be carried out by a facilitator experienced in community participation/representation and conflict resolution, assisted by local agencies including the Twa NGO PIDP-Kivu and the legal support organisation Héritiers de la Justice.

Complementing this process, detailed studies should be carried out of the resource requirements of the Twa, including the participatory mapping of the Twa's traditional land use in the forests now enclosed by the Park boundaries; the production capacity and carrying capacity of the Park; and resource exploitation by non-Twa, in order to determine the basis for sustainable utilisation and management of the Park's resources.

Conservation practitioners should work creatively with the Twa to find appropriate modernisations of their traditional skills and knowledge which would actively contribute to the conservation of their forests while also securing their livelihoods. For example adaptation of rope traps to ward off illegal hunters; tracking, observing and collecting data on particular species. Guardianship and research, supported by technical training, literacy projects, affirmative hiring programmes and employment targets for Twa within Park management, provide enormous scope for the modernisation of the Twa's traditional economy.

The ICCN's reputation as a distinguished conservation body, which has overcome numerous difficulties, would be enhanced internationally if it agreed to institute measures that ensured the survival of the Twa and the long-term sustainability of the Park.

## Access to Land Outside the Park

The Congolese authorities working in consultation with the Twa and NGOs should develop a special *régime foncier* or land code for the Twa, to enable Twa who wish to obtain land outside the Park to do so on an equal footing with other members of society.

This code could include:

- the designation of a special officer in charge of Twa land claims;
- provision for collective land titles;
- exemption of the Twa from administrative fees related to land;
- regulating the *kalinzi* system so that the scale of payments is in line with the Twa's financial capacities; and
- delimitation of Twa forest lands within the constituencies of Walikale, Bunyakiri and Kalehe.

## Complaint Mechanisms

If the Park management and Congolese authorities refuse to engage in constructive discussions towards securing land rights for the Twa, the mechanisms outlined in Chapter 5 should be initiated. These include:

- bringing a petition before the Human Rights Committee that Congo has violated Article 27 of the International Covenant on Civil and Political Rights;
- bringing a complaint before the Committee on the Elimination of Racial Discrimination that Congo has violated Article 1 of the Convention on the Elimination of All Forms of Racial Discrimination;
- informing the African Commissioner for Congo of the grave situation of the Twa, and bringing a complaint against Congo before the African Commission on Human and Peoples' Rights;
- bringing a complaint before the German Ministry for Economic Cooperation and Development (BMZ) that GTZ has violated the German government's policy for the promotion of indigenous forest-dwelling peoples.

In addition, African indigenous peoples organisations, NGOs, lawyers and members of civil society should press their governments to ratify ILO Conventions 107 and 169. The African Charter of Human and Peoples' Rights sets out to combine the specific needs and values of African cultures with standards that have been recognised as

universally valid. As such, African indigenous and non-governmental organisations, human rights organisations and civil society should press for the African Commission on Human and Peoples Rights to address internationally recognised indigenous issues within the African context and should engage more effectively with the Commission. Congolese organisations and agencies should press their government to submit the required two-yearly reports to the African Commission.

## Access to Essential Services

Whether living a semi-nomadic or settled life, Twa have the right to the same services as other members of society. In order to discuss and negotiate improvements in the conditions of life for the Twa a detailed brief (*Cahier des Charges*) is needed. This would set out provisions concerning land, education, nationality, civil service, health care, entitlement to free legal assistance and other affirmative actions, for example development of a school curriculum and timetable adapted to the Twa's needs.

This document would not be a Twa charter or declaration of their rights but set out the Twa's detailed requirements which they bring for negotiations with the state. The discussion of this document should be carried out jointly with the Twa people, the Congolese administrative and political authorities, NGOs and conservation agencies.

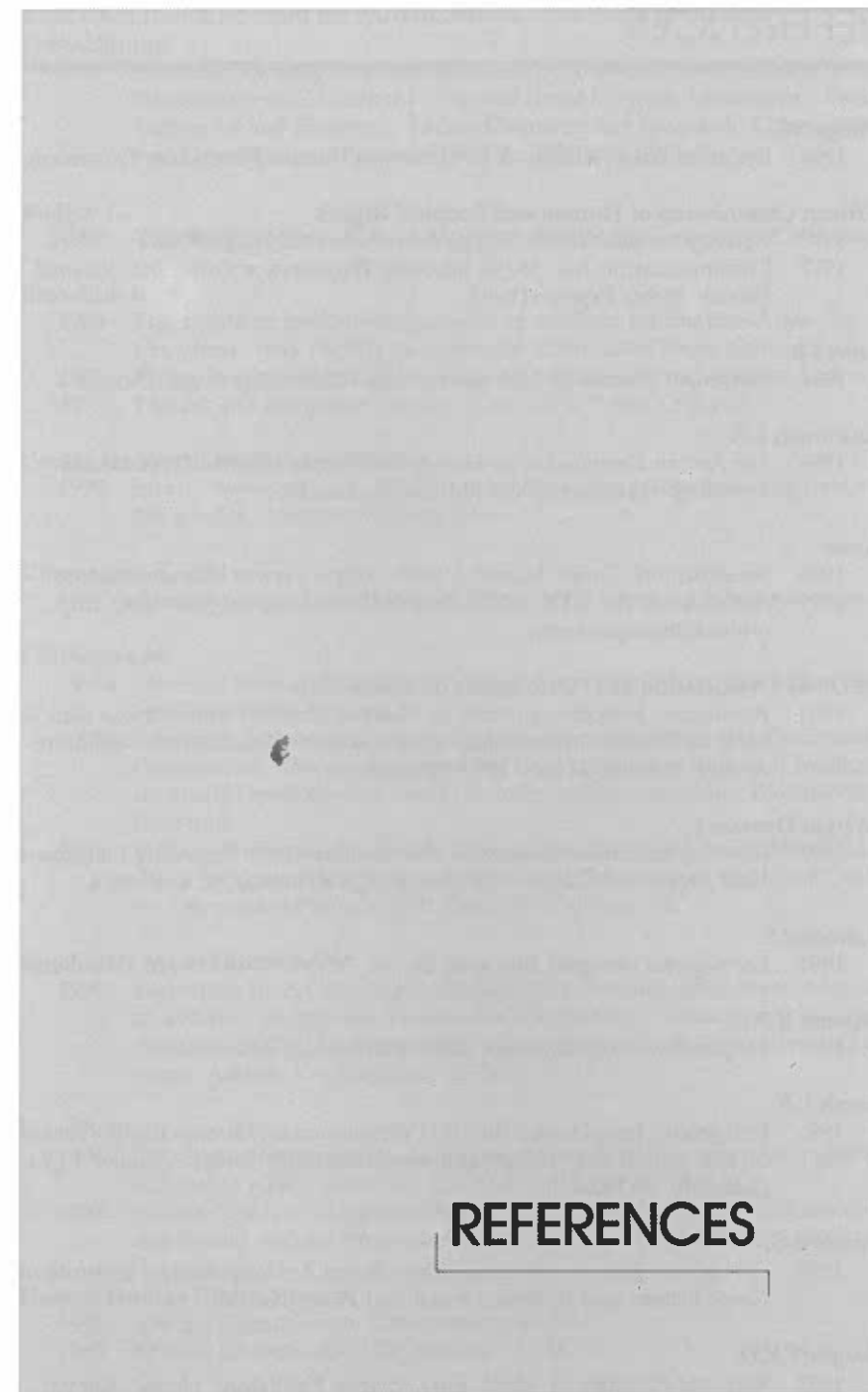
## Legal Working Group for the Twa

Prejudice and discrimination, coupled with the weak economic power and illiteracy of the Twa are the main obstacles to their access to justice. The establishment of a legal working group comprising a network of African lawyers with a good knowledge of indigenous rights could assist the Twa in Congo, Rwanda, Uganda and Burundi by:

- documenting cases of discrimination against Twa and assisting victims to bring their cases to court;
- accompanying Twa in their negotiations on issues such as land, taxes and employment policies with the political authorities of each State;
- providing legal expertise to NGOs and agencies working with the Twa;



- helping to elaborate briefs for the Twa;
- pressing for the elaboration of an African Convention on Indigenous and Tribal Peoples;
- publishing and commenting on conditions and treatment of indigenous and tribal peoples throughout Africa.



## REFERENCES

## REFERENCES

### Abega SC.

- 1998 Pygmées Baka: le droit à la différence. Inades-Formation Cameroun.

### African Commission of Human and Peoples' Rights

- 1990 Activity report. *Human Rights Law Journal* 11 (3-4):390-429  
1997 Communication No. 56/91 Jehovah Witnesses v Zaïre, *International Human Rights Report* 4(1):93.

### Anaya J.

- 1996 *Indigenous Peoples in International Law*. Clarendon Press, Oxford.

### Ankumah E.A.

- 1996 *The African Commission on Human and Peoples' Rights: Practice and Procedure*. Martin Nijhoff Publishers, London.

### Anon

- 1995 Sensitisation. *Gorilla Journal* 1/1995 <http://www.kilimanjaro.com>  
1999 Activities of the GTZ/ICCN Project. *Gorilla Journal* June 1999. <http://www.kilimanjaro.com>

### APOSKI (Association des Politologues de Sud-Kivu)

- 1993 *Populations autochtones, droits de l'homme et société démocratique dans le cadre de l'Année Internationale des Populations Autochtones*. Séminaire-Atelier, Bukavu 23 July 1993 (Mimeo).

### Aylwin Oyazún J.

- 1996 *Report of the Expert Seminar on Practical Experience Regarding Indigenous Land Rights and Claims*. UN Doc. E/CN.4/Sub.2/AC.4/1996/6.

### Bahuchet S.

- 1991 *Les pygmées changent leur mode de vie*. Vivant Univers No. 396, Paris.

### Baleme K.N.

- 1997 *Les pouvoirs et idéologies au Zaïre*. Harmattan, Bruxelles.

### Barsh L.R.

- 1996 Indigenous peoples and the UN Commission on Human Rights: A case of the immovable object and the irresistible force. *Human Rights Quarterly*, 18:782-813.

### Bennett G.

- 1978 *Aboriginal rights in international law*, Royal Anthropological Institute of Great Britain and Ireland. Occasional Paper No. 37.

### Berghe P.V.D.

- 1975 *Race and Ethnicity in Africa*. East African Publishing House, Kenya.

### BMZ (Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung)

- 1997 *Promotion of Indigenous Forest-Dwelling Peoples Within the Scope of the German Federal Government's Tropical Forest Program. Development-Policy Evaluation and Prospects*. Federal Ministry for Economic Cooperation and Development, Press and Public Relations Unit, Bonn.

### Bodley J.

- 1990 *Victims of progress*, 3rd Ed., Mayfield Publishing Company, California.

### Brownlie I.

- 1988 The rights of indigenous peoples in modern international law. In: J Crawford (ed) *The Rights of Peoples*. Clarendon Press, Oxford:1-16.  
1990 *Principles of public international law*. 4th edition. Clarendon Press, Oxford.  
1992 *Treaties and indigenous peoples*. Clarendon Press, Oxford.

### Center for World Indigenous Studies

- 1999 <http://www.cwis.org>. UN Working Group on Indigenous Populations 5th session (1987): PARKIPNY.txt.

### Cheeseman T.

- 1998 *Conservation and the Maasai in Kenya*. <http://www.Cheesemans.com>.

### Colchester M.

- 1995a *Slave and Enclave: The Political Ecology of Equatorial Africa*. World Rainforest Movement, Penang.  
1995b *Salvaging Nature: Indigenous Peoples, Protected Areas and Biodiversity Conservation*. Discussion paper 55. United Nations Research Institute for Social Development, World Rainforest Movement and World Wildlife Fund.  
1999 *Indigenous Peoples and Forests: Main Issues. The World Bank Group Forest Policy Implementation Review and Strategy Development: Analytical Studies*. Discussion Note, World Bank, Washington DC.

### Colchester M. and Gray A.

- 1998 Foreword. In: A Gray, A Parellada and H. Newing (eds). *From Principle to Practice: Indigenous Peoples and Biodiversity Conservation in Latin America*. IWGIA Document 87, International Work Group for Indigenous Affairs, Copenhagen: 10-17.

### Daes E-I.

- 1996 *Standard-setting activities: Evolution of standards concerning the rights of indigenous people*. UN Doc. E/CN.4/Sub.2/AC.4/1996/2.  
1999 *Human Rights of Indigenous Peoples: Indigenous People and their relationship to land*. Second progress report. UN Doc. E/CN.4/Sub.2/1999/18.

### Danish Human Rights Centre

- 1992 African Commission, 12th session: 45-80  
1995 African Commission, 13th session: 21-56

**Debonnet G.**

- 1999 Poaching in the Highland Sector of the Kahuzi-Biega National Park, Congo. *Gorilla Journal*. <http://www.kilimanjaro.com>.

**Destexhe A.**

- 1995 *Rwanda and genocide in the twentieth century*. Pluto Press, London.

**Doumenge C.**

- 1990 *La Conservation des Ecosystèmes forestiers du Zaïre*. IUCN, Gland, Switzerland.

**Dyson M.**

- 1992 Concern for Africa's forest peoples: a touchstone of a sustainable development policy. In: K Cleaver, M Munasinghe, M Dyson, N Egli, A Peuker and F Wencelius (eds) *Conservation of West and Central African Rainforests*. World Bank, Washington DC:212-221.

**European Union**

- 1998 *Resolution of the Council of Ministers: Indigenous peoples within the framework of the development cooperation of the Community and the Member States*. 2141th Council Meeting – Development. Brussels, 30 November 1998.

**Franco-Daune S.**

- 1964 *Le régime foncier au Congo-Belge*. B.C.C.I. (Belge-Congo et Commerce International) 1958, fasc. IX, Bruxelles (supplément).

**Gray A.**

- 1995 The indigenous movement in Asia. In: RH Barnes, A Fray and B Kinsbury (eds) *Indigenous peoples of Asia*. Ann Arbor, Association for Asian Studies Inc.:35-58.

**Goheen M.**

- 1988 Lands, symbols and power in Cameroon. In: RE Downs and SP Reyna (eds) *Land and society in contemporary Africa*. University Press of New England, Hanover:280-308.

**Gudmundur A.**

- 1993 The right of self-determination and indigenous peoples. In: C Tomuschat (ed) *Modern law of self-determination*. Martinus Nijhoff Publishers, London:41-54.

**Hall J.S., Saltonstall K., Inogwabini B.I. and Omari I.**

- 1998 *Distribution, abundance and conservation status of Grauer's gorilla*. *Oryx* 32:122-130.

**Harris D.J.**

- 1998 *Cases and materials on public international law*. 4<sup>th</sup> edition. Sweet and Maxwell, London.

**Hewlett B.**

- 1996 Cultural Diversity among African Pygmies. In: S Kent (ed) *Cultural Diversity among 20<sup>th</sup> Century foragers: An African Perspective*. Cambridge University Press: 215-244.

**Hochschild A.**

- 1998 *King Leopold's Ghost*. Houghton Mifflin Company, Boston, New York.

**Human Rights Watch and Federation International des Droits de l'Homme**

- 1999 *Leave none to tell the story: Genocide in Rwanda*. Human Rights Watch, New York.

**Huybrecht A., Mudimbe Y.V., Peeters L., Vanderlinden J., Van Der Steen and Verhaegen B.**

- 1981 *Du Congo au Zaïre*. CRISP (Centre de Recherche et d'Information socio-politique) Bruxelles.

**International Alliance of Indigenous-Tribal Peoples of the Tropical Forests**

- 1997 *Indigenous peoples, forests and biodiversity*. IWGIA Document 82. International Alliance of Indigenous-Tribal Peoples of the Tropical Forests and IWGIA, Copenhagen.

- 1999 Notes on the Study on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Populations. *Voices of the Rainforest* 1 (Special Issue 3).

**International Crisis Group**

- 1998 *North Kivu: Into the Quagmire? An overview of the current crisis in North Kivu*. [www.reliefweb.int](http://www.reliefweb.int)

**International Labour Conference**

- 1956 *Records of proceedings, 40th session*. International Labour Organisation, Geneva

- 1997 *Report of the Committee of Experts of the Application of Conventions and Recommendations*. ILO, Geneva.

- 1998 *Report of the Committee of Experts of the Application of Conventions and Recommendations*. ILO, Geneva.

- 1999 *Report of the Committee of Experts of the Application of Conventions and Recommendations*. ILO, Geneva.

**IPACC (Indigenous Peoples of Africa Coordinating Committee)**

- n.d. *Who are indigenous Africans?* Pamphlet. IPACC/PO Box 12995, Cape Town, South Africa.

**IWGIA (International Workgroup for Indigenous Affairs)**

- 1999 Arusha Resolutions. *Indigenous Affairs* 2/99: 50-55.

**July R.W.**

- 1970 *A History of the African Peoples*. Faber and Faber, London.

**Kapupu M.**

- 1995 *Le PIDP-Kivu: Acteur du développement ou du sous-développement du peuple pygmées?* Travail de fin de cycle, ISECOF-Bukavu. (Mimeo).  
1996 *Etude du Milieu des Pygmées Voisins du Parc National de Kahuzi-Biega Zones Rurales de Kabare et Kalehe. Mandat du Projet IZCN-GTZ.* (Mimeo).

**Kapupu M. and Kalimba Z.**

- 1998 *Les pygmées Batwa des pays des Grands Lacs menacés d'extinction.* Paper presented at the 1998 UN Working Group on Indigenous Populations, Geneva. (Mimeo).

**Kemf E.**

- 1993 *Indigenous peoples and protected areas.* Earthscan Publications Ltd, London.

**Kennet H.**

- 1988 *Land struggle and social differentiation in Southern Mozambique.* Scandinavian Institute of African Studies, Uppsala.

**Kerner O.D.**

- 1988 Land scarcity and rights of control in the development of commercial farming in north-eastern Tanzania. In: R.E. Downs and S.P. Reyna (eds) *Land and society in contemporary Africa.* University Press of New England, Hanover:159-191.

**Kipuri N.**

- 1998 *Indigenous peoples in Kenya – An overview.* Paper prepared for MS, the Danish Volunteer Organisation ([www.whoseland.com/paper6.html](http://www.whoseland.com/paper6.html))

**Lerner N.**

- 1991 *Group Rights and Discrimination in International Law.* Martinus Nijhoff Publisher, London.

**Levin M.**

- 1993 *Ethnicity and aboriginality: case studies in ethnocentrism.* University of Toronto Press, Toronto.

**Lewis J.**

- 1999 *Gorillas, pigs and people.* Paper presented at a Seminar on Anthropological Theory, London School of Economics. (Mimeo).  
2000 *The Batwa Pygmies of the Great Lakes Region: The Problem of Discrimination* A Report for Minority Rights Group. Final Draft 17.1.2000 (Mimeo).

**Lewis J. and Knight J.**

- 1995 *The Twa of Rwanda. Assessment of the Situation of the Twa and promotion of Twa Rights in Post-war Rwanda.* World Rainforest Movement and IWGIA.

**Lindley M.F.**

- 1926 *The Acquisition and Government of Backward Territory in International Law. Being a Treatise on the Law and Practice Relating to Colonial Expansion.* Longmans, Green and Co. Ltd, London.

**Luling V. and Kenrick J.**

- 1998 *Forest Foragers of Tropical Africa. A Dossier on the Present Condition of the 'Pygmy' peoples.* Survival International, London.

**MacGoldrick D.**

- 1991 *The Human Rights Committee.* Clarendon Press, Oxford.

**Malengreau G.**

- 1947 *Les droits fonciers coutumiers.* Mémoires de l'Institut Royal Colonial Belge, Bruxelles.

**Mbake S.**

- 1995a The Kahuzi-Biega National Park and the IZCN/GTZ Project. *Gorilla Journal* 1/1995 <http://www.kilimanjaro.com>  
1995b News from the Kahuzi-Biega National Park. *Gorilla Journal* December 95 <http://www.kilimanjaro.com> .

**McCorquodale R.**

- 1994 Self-determination: A Human Rights Approach. *International and Comparative Law Quarterly* 43 (4):857-886.

**Meder A.**

- 1995 Maheshe's tragic end, *Gorilla Journal* 1/1995. <http://www.kilimanjaro.com>

**Microsoft**

- 1998 *Encarta World Atlas and Statistics.*

**Musgrave T.**

- 1997 *Self-determination and national minorities.* Clarendon Press, Oxford.

**Nowak M.**

- 1993 *UN Covenant on Civil and Political Rights: Commentary.* N.P. Engel Publishers, USA.

**OAS (Organisation of American States)**

- 1995 *The Draft Declaration on the Rights of Indigenous Peoples.* O.A.S. Doc. OEA/Ser/L/V/II.90, Doc. 9 rev. 1.

**Pakenham T.**

- 1991 *The Scramble for Africa.* Weidenfeld & Nicolson, London.

**Plant R.**

- 1991 *Land rights for indigenous and tribal people in developing countries: A survey of law and policies.* International Labour Organisation, Geneva.

**PIDP-Kivu**

- 1998 *Les Pygmées Voisins du Parc National de Kahuzi-Biega en Peril.* Information bulletin issued by PIDP-Kivu, March 1998. <http://www.heritiers.org>

- Prunier G.**  
1995 *The Rwanda Crisis: History of the Genocide*. Columbia University Press, New York.
- Quane H.**  
1998 The United Nations and the evolving right to self-determination. *International and Comparative Law Quarterly*, Vol. 47(3):537-572.
- Raoul Wallenberg Institute**  
1997 *General comments and recommendations of the Human Rights Committee*. Lund, Sweden.
- Reintsma M.**  
1988 Land scarcity, distribution and use in Rwanda. Unpublished Master's Thesis. Essex University.
- Remillieux J.L.**  
1989 *Mobutu, dignité pour l'Afrique*. Michel Albin, Paris.
- Reyntjens F.**  
1995 Burundi: breaking the cycle of violence. Minority Rights Group, London.
- Rodley N.**  
1995 Conceptual problems in the protection of minorities: international legal development. *Human Rights Quarterly* 17:48-71.
- Sanders D.**  
1993 Self-determination and indigenous peoples. In: C Tomuschat (ed) *Modern law of self-determination*. Martinus Nijhoff Publishers, London: 55-82.
- Sayer J.A., Harcourt C.S. and Collins N.M.**  
1992 *The Conservation Atlas of Tropical Forests: Africa*. Macmillan Publishers Ltd.
- Schumacher P.**  
1940 Les Pygmées du Kivu. *Africa: Journal of the International Institute of African Languages and Cultures* 13:165-170.
- Shapiro D. and Tollens E.**  
1992 *The agricultural development of Zaïre*. Ashgate Publishing Company, Brussels.
- Sjørsløv I.**  
1996 Editorial. *Indigenous Affairs* 96/4:2-3.
- Sohier A.**  
1954 *Traité élémentaire de droit coutumier du Congo-Belge*. Maison F. Larcier, Bruxelles.

- Steinhauer-Burkart B., Mühlenberg M. and Slowik J.**  
1995 *Kahuzi-Biega National Park*. IZCN/GTZ-Project "Integrated Nature Conservation in East-Zaire". Park Brochure.
- Tenga R.**  
1998 *Legislating for pastoral land tenure in Tanzania: The draft land bill*. <http://www.whoselands.com>, paper 8:1-18.
- Thornberry P.**  
n.d. *Indigenous Peoples: a short note on concept and definition*. (Mimeo).
- Turnbull C.M.**  
1996 The lessons of the pygmies. In: RR Grinker and CB Steiner (eds). *Perspectives on Africa*. Blackwell Publishers, Cambridge, Mass.:218-227.
- Umozurike U.O.**  
1997 *The African Charter on Human and Peoples' Rights*. Martinus Nijhoff Publishers, London.
- UNEP/CBD (United Nations Environment Programme/Convention on Biological Diversity)**  
1997 Traditional Knowledge And Biological Diversity. Background paper prepared for Workshop On Traditional Knowledge and Biological Diversity, Madrid, Spain, 24 - 28 November 1997. UNEP/CBD/TKBD/1/2, 18 October 1997.
- United Nations**  
1986 Study of the Problem of Discrimination Against Indigenous Populations (E/CN.4/Sub.2/1986/7, Add. 1-4), available as UN Sales publication E.86.XIV.3  
1988 E/CN.4/Sub.2/AC.A/1988/Add.1.UNWGIP  
1995 *Declaration on the Rights of Indigenous Peoples*. UN Doc. E/CN.4/1995/2
- UNPO**  
1995 Batwa. Final Report (draft). A report of the UNPO Mission with APB, investigating the situation of the Batwa people of Rwanda, September 28-December 15 1994. UNPO, The Hague.
- Verhaegen B.**  
1969 *Rebellions au Congo*. CRISP (Centre de Recherche et d'Information Socio-Politiques) Bruxelles.
- Vinding D. and Waehle E.**  
1996 Focus on Hunter-Gatherers of Equatorial Africa. Human Rights and Development Challenges. *Indigenous Affairs* 4/96:13-15.
- Webster J.B.**  
1979 *Chronology, migration and drought in interlacustrine Africa*. Longmans, London.

**Wily L. and Kabanankye K.**

- 1996 Pygmies: Abayanda of South Western Uganda: Reaching the end of the road – and the beginning. *Indigenous Affairs* 4/96: 26-34.

**Wolfire D.M., Brunner J. and Sizer N.**

- 1998 *Forests and the Democratic Republic of Congo: Opportunity in a time of crisis*. World Resources Institute, Washington.

**Woodburn J.**

- 1997 Indigenous discrimination: the ideological basis for local discrimination against hunter-gatherer minorities in sub-Saharan Africa. *Ethnic and Racial Studies* 20 (2): 345-361.

**World Bank**

- 1992 *Indigenous Peoples*. Operational Directive 4.20. Washington DC.  
1998 *The convention on biological diversity and the evolving role of the World Bank*. Environment Department, World Bank, Washington, DC.

**WRI, UNEP, UNDP, World Bank**

- 1998 *World Resources 1998-99. A Guide to the Global Environment: Environmental Change and Human Health*. Oxford University Press.

**Yamigwa J., Kaleme K., Mwanga M., and Basabose K.**

- 1997 Food density and ranging patterns of gorillas in the Kahuzi-Biega National Park, Zaire. *Tropics* 6:62-78.