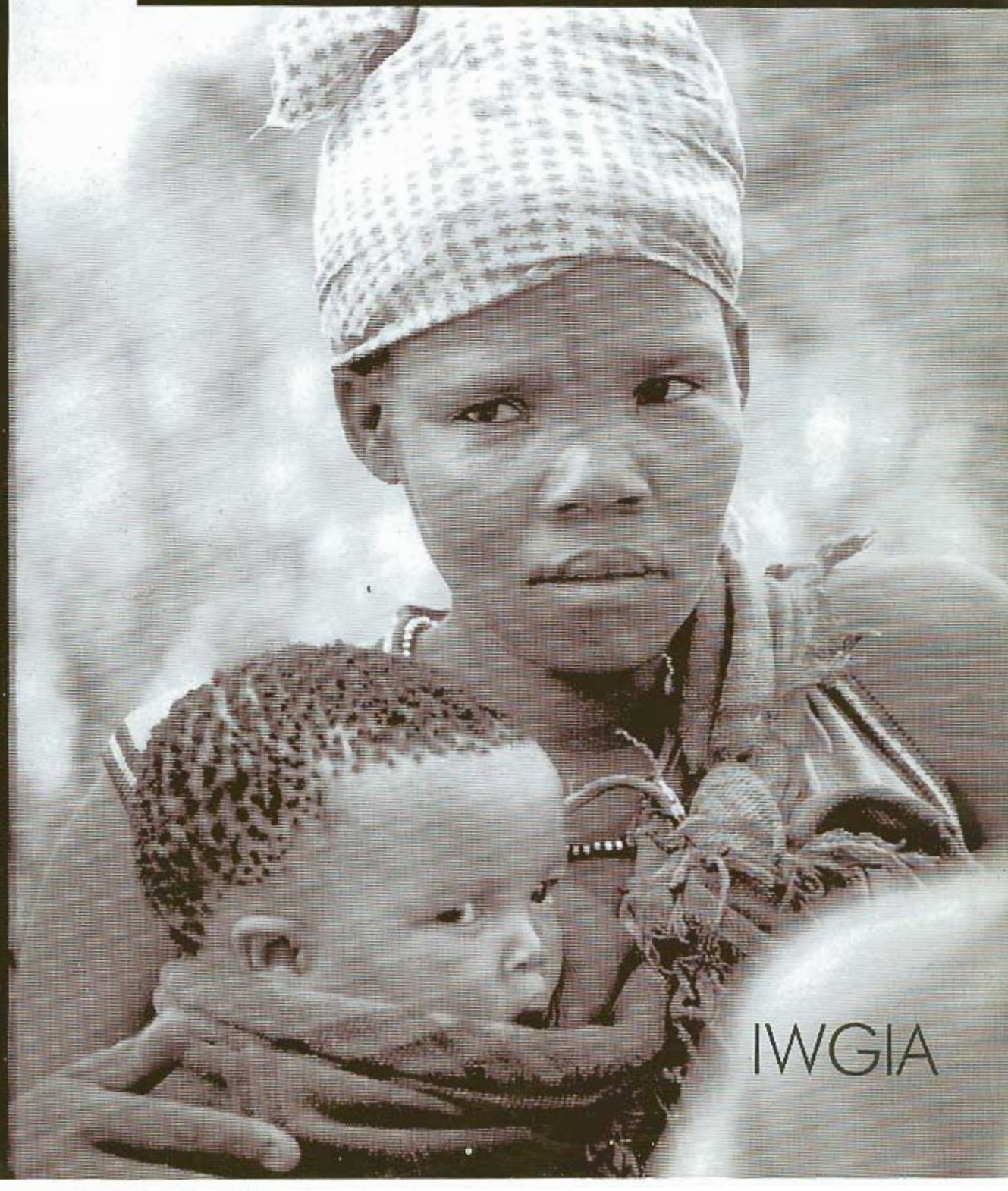
4/03

INDIGENOUS AFFAIRS

INDIGENOUS PEOPLES IN AFRICA



IWGIA

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IWGIA update

Various developments have recently taken place at international and inter-regional levels, and in which IWGIA has been involved:

At its last session in the Gambia in November 2003, the African Commission on Human and Peoples' Rights adopted the *"Report of the African Commission's Working Group on Indigenous Populations/ Communities"*. This is an important development for the promotion and protection of the rights of indigenous peoples in Africa, and the process is described in greater detail in this issue's editorial.

The Working Group on the Draft Declaration on the Rights of Indigenous Peoples held its ninth session in September 2003. The Working Group was established with a mandate to complete the adoption of a Draft Declaration on the Rights of Indigenous Peoples within the timeframe of the International Decade of the World's Indigenous Peoples. Unfortunately, all hopes of progress were frustrated as the ninth session of the Working Group was unable to provisionally adopt any of the articles discussed. The future of the Working Group - and of the Declaration - now largely depend on intergovernmental negotiations that will take place on this subject during the forthcoming sessions of the Commission on Human Rights.

Since the establishment of a Commission on Self-Government in Greenland, IWGIA has monitored its work, and took part in the final public meeting that was held in Nuuk in October 2003. The meeting revealed broad support for Greenland's increased self-governance and thus for establishing a new agreement with Denmark to replace the 25-year-old Home Rule arrangement.

Major parts of IWGIA's work are devoted to programme and project support at local and national level. As part of IWGIA's ongoing programme development initiative for Asia, two partner consultation workshops have been organized in the Philippines and in Thailand respectively. Thematic priorities and work strategies were discussed and one of the priority needs identified during the discussions was leadership training at different levels.

In relation to Latin America, the armed conflict in Colombia has virtually disappeared from the international media. And yet the violence in this country continues to cause forced displacements and death in rural areas, seriously affecting indigenous and Afro-Colombian communities. This is why issue number 4 2003 of IWGIA's Spanish version of "Indigenous Affairs" is devoted exclusively to Colombia.

The annual IWGIA Forum meeting for all members took place on 7 November 2003 in Copenhagen, the theme being indigenous video making and the role that IWGIA can play in this. In the annual elections for two of IWGIA's board members, Espen Wæhle, who is a curator at the National Museum in Copenhagen, was re-elected and Mark Nutall, Henry Marshall Tory Professor of Anthropology at the University of Alberta, Canada, was elected as a new member.

At the end of 2003, IWGIA entered into a new 4-year framework agreement with the Danish Ministry of Foreign Affairs and a new 1-year agreement with the Finnish Ministry of Foreign Affairs. This is in addition to a 3-year agreement entered into with Sweden in 2002, and a one-year agreement with the Swiss Ministry of Foreign Affairs. We expect to renew our agreement with the Norwegian Ministry of Foreign Affairs in early 2004. ❑

Cover: San woman and child from Botswana. Photo: Arthur Krasilnikoff

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EDITORIAL

EDITORIAL

Marianne Wiben Jensen

Most African states are host to a rich variety of peoples and cultures. Not only is this in itself fascinating and rich in terms of cultural diversity. It also has the potential to contribute fruitfully to the development of African states. However, this cultural diversity, which should be a unique asset, often becomes a source of conflict, domination and discrimination. It is a fact that certain peoples on the African continent today have become marginalized while others dominate development policies and processes. A similar trend can be observed right across Africa: settled agriculture and modern development schemes/enterprises are seen as the way to development and certain types of indigenous African systems, such as nomadic pastoralism and hunting/gathering, are looked upon negatively and their future survival and development is put in jeopardy. The sustainability and development potential of these cultural systems is ignored and they are perceived as being incompatible with modernization.

Many groups of primarily pastoralists and hunter/gatherers - many of whom identify themselves as indigenous peoples - are today finding it very hard to survive as peoples on their own terms and to establish a dialogue with states or dominant groups as to how their perspectives on development could be accommodated.

Obviously, no peoples or cultures are static. All cultures change with changing circumstances and indigenous peoples' cultures are no different. Indigenous peoples do not call for the right to remain unchanged, nor to be isolated from the rest of the world. They call for the right to be involved in determining their own development and future, according to their own perspectives and visions. They call for respect for basic human rights, including the right to existence and to the social, economic and cultural development of their own choice, in accordance with their own identity.

Major problems

As is the case for indigenous peoples the world over, one of the major threats to indigenous peoples in Africa is land dispossession. The expansion of areas for agricultural production, the establishment of natural parks and conservation areas, commercial game hunting, encroachment by mining, logging and oil drilling operations, large scale infrastructure projects such as the construction of dams, pipelines etc. are all pushing indigenous peoples ever more to the margins, leaving them without sufficient land to continue their modes of production and ways of life. Such deprivation of their livelihoods is a major problem for many indigenous groups, and the struggle to stop land alienation processes is at the heart of their demands.

Another major related problem for indigenous peoples is neglect and lack of attention on the part of national development policies. If they are reached at all by development initiatives, these are often biased and ill-conceived and do not build on local indigenous structures and traditions nor do they accommodate the needs and wishes of the groups concerned.

Many African indigenous groups face discrimination and negative stereotyping, depicting them as underdeveloped and uncivilized. The dominant development paradigms promoted by most African states, focusing on agricultural development and "modern" sectors, contribute to fostering such prejudice and lack of readiness to consider other forms of production and land use positively. Recent research has shown that the modes of production of pastoralists and hunter-gatherers and their unique adaptations to the natural surroundings offer sustainability and long-term success in desert, savannah, forest, wetland and mountainous areas. These peoples are often contributing substantially to the national economy as well. All this is often ignored or not even known or realized by the national authorities.

Breakthrough with the African Commission

In 1999, IWGIA published a thematic issue of *Indigenous Affairs* focusing on the situation of indigenous peoples in Africa. It took its point of departure in a conference held in Arusha, Tanzania at which Commissioner Barney Pityana from the African Commission on Human and Peoples' Rights also participated. The resolution from this conference recommended that the African Commission should begin to deal with the human rights of indigenous peoples. This had, in fact, been an aim since the 1993 conference on the issue of indigenous peoples in Africa, organized by IWGIA in Tune, Denmark.

The Arusha Conference was the beginning of a positive and constructive process that owes a lot to the commitment and persistent work of (now former) Commissioner Barney Pityana and a process in which IWGIA, along with many indigenous representatives and human rights activists from all over Africa, have been actively

involved. Now, four years later, a major breakthrough has been achieved.

In November 2003, the African Commission adopted the comprehensive *"Report of the African Commission's Working Group on Indigenous Populations/Communities"* and, through this, a major African human rights body has now recognized the existence of indigenous peoples in Africa and acknowledged that they suffer from a range of human rights violations that must be addressed. Mandated by the *"Resolution on the Rights of Indigenous Populations/Communities in Africa"* adopted in Benin in October 2000, the report:

- analyses the human rights situation of indigenous peoples and communities in Africa;
- analyses the African Charter on Human and Peoples' Rights and its jurisprudence on the concept of "peoples", and
- examines the concept of indigenous peoples and communities in Africa.

The report analyses violations of the human rights of indigenous peoples with regard to: violation of the right to land and productive resources; discrimination; violation of the right to justice; violation of cultural rights; denial of rights to constitutional and legislative recognition and protection and violation of rights to health and education.

It concludes that land dispossession is a major problem threatening the survival of indigenous peoples and turning them into the most destitute and poverty stricken. It furthermore concludes that indigenous peoples and communities are, to a large extent, discriminated against by mainstream populations; that their cultural rights are violated; that they are poorly represented in key national structures and poorly protected by national legislation and constitutions, and that most of the areas still occupied by indigenous peoples and communities are underdeveloped, with poor infrastructure. The report concludes that these conditions constitute violations of a number of different articles in the African Charter. It reads:

"Indigenous peoples and communities in Africa experience a range of human rights violations that ultimately boil down to a threat towards their right to existence and to the social, economic and cultural development of their own choice. Articles 20 and 22 of the African Charter on Human and Peoples' Rights emphasize that all peoples shall have the right to existence and to the social, economic and cultural development of their own choice and in conformity with their own identity. Such fundamental collective rights are to a large extent denied to indigenous peoples. Land dispossession of indigenous peoples, widespread discrimination, denial of cultural rights, exclusion from political representation, lack of constitutional and legal recognition and protection etc. clearly bears witness to this fact."

The report concludes that the human rights situation of indigenous peoples and communities in Africa is a serious cause for concern, and that effective protection and promotion of their human rights is urgently required.

The report analyses the African Charter on Human and Peoples' Rights and its jurisprudence relating to "peoples" and concludes that both the individual and collective rights provided for in the African Charter should be applicable to the promotion and protection of the human rights of indigenous peoples. The relevant articles include articles 2, 3, 5, 17, 19, 20, 21, 22 and 60.

The report takes the view that *"as the African Charter recognises collective rights, formulated as rights of 'peoples', these rights should be available to sections of populations within nations states, including indigenous people and communities"* and it points out that *"the Commission has indeed started to interpret the term 'peoples' in a manner that should allow indigenous people to also claim protection under Articles 19 – 24 of the African Charter."*

The overall conclusion is that indigenous peoples and communities in Africa suffer from a number of particular human rights violations that are often of a collective nature; that the African Charter is an important instrument for the promotion and protection of the rights of indigenous peoples and communities; and that the preceding jurisprudence of the African Commission opens a path for indigenous peoples and communities to seek protection of their human rights.

The report takes the view that, although contested, the term *indigenous peoples* is valuable in an African context as it offers the victims of particular human rights abuses an important way forward to improve their situation. The report recognizes the concerns over the use of the term *indigenous peoples* in the African context. However, it concludes that *"the overall present day international framework relating to indigenous peoples should be accepted as the point of departure. The principle of self-identification as expressed in the ILO Convention 169 and by the Working Group on Indigenous Populations is a key principle, which should also be guiding in the further deliberations of the African Commission."*

A window of opportunity

At its 34th Ordinary Session in the Gambia in November 2003, the African Commission adopted a resolution that provides for the adoption, publication and distribution of the report to all member states and for the establishment of a Working Group of Experts for an initial two-year term. The mandate of this Working Group is to gather information on violations of the human rights and fundamental freedoms of indigenous populations/communities in Africa, to undertake country visits, formulate recommendations on measures to remedy human rights violations and to submit an activity report at every ordinary session of the African Commission (every 6 months). While the establishment of the Working Group as a mechanism to promote and protect the rights of indigenous peoples is very commendable and unique in the context of the African Commission, a great deal of challenging and difficult work also lies ahead to secure the necessary resources and to effectively organize and carry out the mandate.

Hopefully, the Working Group and all the indigenous representatives and African human rights activists who are involved in this process will be able to put this window of opportunity to good use. With the adoption of the report and the resolution, indigenous peoples in Africa now have an important platform via which to shed light on the situation of indigenous peoples in Africa and to lobby African governments to recognize indigenous peoples, their human rights concerns and their particular needs.

African indigenous representatives have, over the past 3 years, participated actively in the sessions of the African Commission and the NGO Forum prior to the sessions. While the whole issue was initially received with scepticism and rejection by some members of the African Commission, the attitude is now both open and positive. The active participation of indigenous representatives and the contact and dialogue with commissioners, government and NGO representatives has been very important in creating interest and understanding. It is now up to all stakeholders to make sure that this promising process continues and that the momentum is used to improve the conditions, human rights and fundamental freedoms of the indigenous peoples of Africa.

This issue of *Indigenous Affairs* brings examples of the present situation of some indigenous peoples in Africa: the Twa and Pygmies in Central Africa, the San in Botswana and South Africa, pastoralists in Ethiopia and the Maasai in Tanzania. A recurrent theme in all articles is the fundamental importance of access and rights to land and natural resources. The articles document various forms of ongoing land dispossession and they describe the efforts to counter such processes and reach new constructive solutions. ❑

RESOLUTION ON THE ADOPTION OF THE:

Recalling the provisions of the African Charter on Human and Peoples' Rights which entrusts it with a treaty monitoring function and the mandate to promote human and peoples rights and ensure their protection in Africa;

Conscious of the situation of vulnerability in which indigenous populations/communities in Africa frequently find themselves and that in various situations they are unable to enjoy their inalienable human rights;

Recognising the standards in International law for the promotion and protection of the rights of minorities and indigenous peoples, including as articulated in the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the International Labour Convention 169 on Indigenous and Tribal Peoples in Independent Countries, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child;

Considering the emphasis given in International law to self identification as the primary criterion for the determination of who constitutes a minority or indigenous person; and the importance of effective and meaningful participation and of non discrimination, including with regard to the right to education;

Considering that the African Commission at its 28th Ordinary Session held in Cotonou, Benin in October 2000, adopted the *"Resolution on the Rights of Indigenous Populations/Communities"* which provided for the establishment of a Working Group of Experts on the Rights of Indigenous Populations/Communities in Africa with the mandate to:

- Examine the concept of indigenous populations/communities in Africa;
- Study the implications of the African Charter on Human and Peoples Rights on the well being of indigenous communities;
- Consider appropriate recommendations for the monitoring and protection of the rights of indigenous populations/communities.

"REPORT OF THE AFRICAN COMMISSION'S WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES"

THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, MEETING AT IT'S 34TH ORDINARY SESSION, IN BANJUL, THE GAMBIA FROM 6TH TO 20TH NOVEMBER 2003

Noting that a Working Group of Experts comprised of three Members of the African Commission, three Experts from indigenous communities in Africa and one Independent Expert was established by the African Commission at its 29th Ordinary Session held in Tripoli, Libya in May 2001 and consequently held its first meeting prior to the 30th Ordinary Session held in Banjul, the Gambia in October 2001 where it agreed on developing a *Conceptual Framework Paper* as a basis for the elaboration of a final report to the African Commission, and where it agreed on a work-plan;

Noting further that the Working Group of Experts convened a Roundtable Meeting prior to the 31st Ordinary Session of the African Commission in April 2002 in Pretoria, South Africa where it discussed the first draft of the *Conceptual Framework Paper* with African human rights experts whose contributions were taken into account in the elaboration of the second draft of the *Conceptual Framework Paper* which was further discussed at a Consultative Meeting held in January 2003, in Nairobi, Kenya;

Emphasising that the Final Report of the Working Group of Experts is the outcome of a thorough consultative process involving various stakeholders on matters relating to indigenous populations/communities in Africa;

Reaffirming the need to promote and protect more effectively the human rights of indigenous populations/communities in Africa;

Taking into account the absence of a mechanism within the African Commission with a specific mandate to monitor, protect and promote the respect and enjoyment of the human rights of indigenous populations/communities in Africa;

Decides to:

Adopt the *"Report of the African Commission's Working Group on Indigenous Populations/Communities"*, including its recommendations

Publish as soon as possible and in collaboration with International Working Group of Indigenous Affairs (IWGIA) the report of the Working Group of Experts and ensure its wide distribution to Member States and policy makers in the international development arena;

Maintain on the agenda of its ordinary sessions the item on the situation of indigenous populations/communities in Africa

Establish a Working Group of Experts for an initial term of 2 years comprising of -:

1. Commissioner Andrew Ranganayi Chigovera (Chair)
2. Commissioner Kamel Rezag Bara,
3. Marianne Jensen (Independent Expert)
4. Naomi Kipuri
5. Mohammed Khattali
6. Zephyrin Kalimba

for the promotion and protection of the rights of indigenous populations/communities in Africa and with the following Terms of Reference;

- With support and cooperation from interested Donors, Institutions and NGOs, raise funds for the Working Group's activities relating to the promotion and protection of the rights of indigenous populations/communities in Africa;
- Gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous populations and their communities and organisations, on violations of their human rights and fundamental freedoms;
- Undertake country visits to study the human rights situation of indigenous populations/communities;
- Formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Submit an activity report at every ordinary session of the African Commission;
- Co-operate when relevant and feasible with other international and regional human rights mechanisms, institutions and organisations.

Done in Banjul, 20th November 2003

INDIGENOUS ADVOCACY IN CENTRAL AFRICA

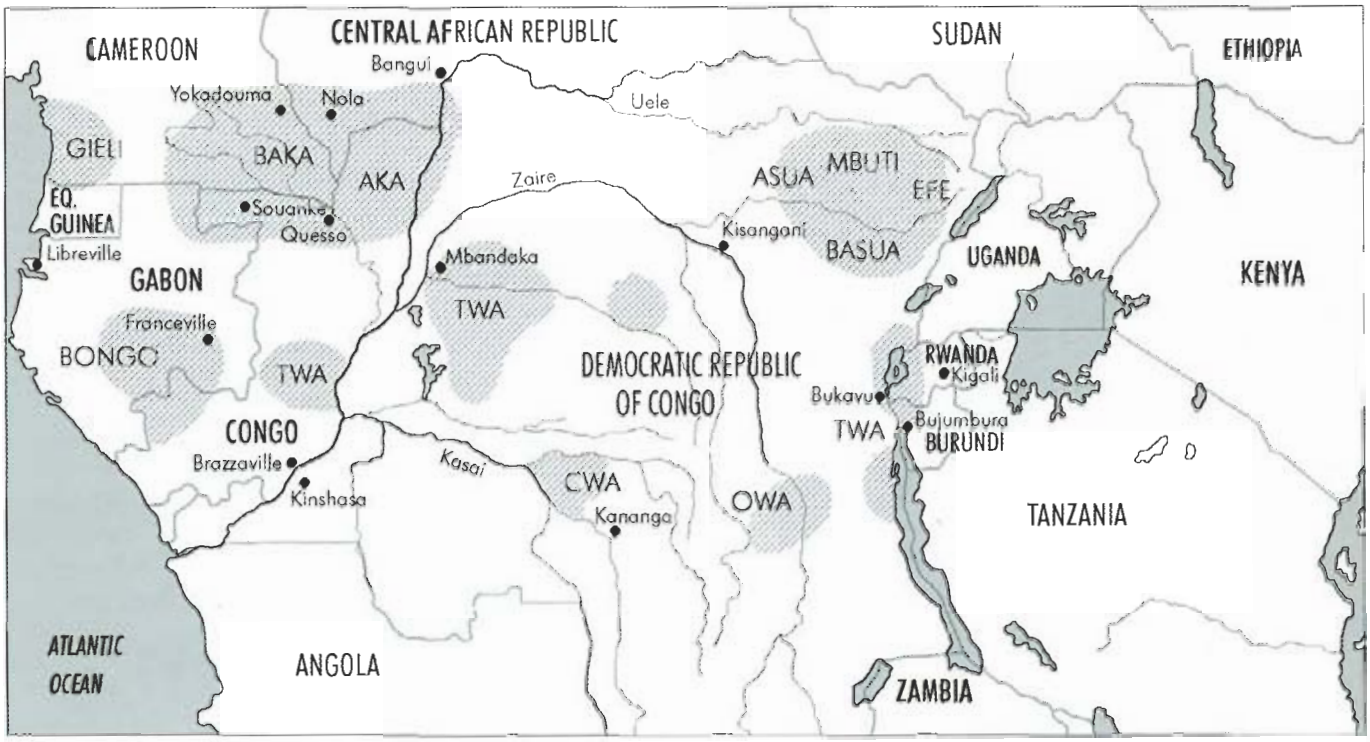
Dorothy Jackson

Indigenous forest peoples under threat

The hunter-gatherer peoples of the Central African forests (so-called 'Pygmy' peoples) see themselves, and are seen by their neighbours, as the *autochthons* or 'first people'[1]. Where forests have remained relatively intact, these peoples have been able to maintain their distinctive, egalitarian, inclusive and highly autonomous communities and their 'immediate-return' livelihood systems based on subsistence hunting and gathering, and on trading of forest products with neighbouring 'Bantu' peoples. In other parts of Central Africa, these indigenous communities have been forced to forsake their traditional culture and economy as their forest lands have been expropriated by logging, clearance for agriculture and pasture, 'development' and infrastructure projects, and the creation of wildlife conservation areas. Such processes are set to increase throughout the region, resulting in increased pressure on these communities and a progressive loss of autonomy and control over their lives.

Hunter-gatherer peoples' cultural survival is threatened by two major forms of discrimination – lack of recognition of their land rights, and ethnic discrimination.

Former Twa hunter demonstrating use of spear near the Echuya forest, Uganda. Photo: Dorothy Jackson



Under statutory law and Bantu customary law, huntering and gathering is not seen as conferring use and ownership rights in the same way as farming or herding, because it does not result in visible transformation of the environment (*'mise en valeur'*). Consequently hunter-gatherer land rights are not recognised in customary or statute law, and their communities are regarded as being under the jurisdiction of dominant groups claiming land rights over the same areas[2]. As hunter-gatherers' forest lands are expropriated, their land rights are effectively extinguished without compensation and their access to vital forest resources is curtailed or prohibited, resulting in severe impoverishment, nutritional deficiency, impaired health and cultural collapse.

Ethnic discrimination against hunter-gatherers by farming and herding peoples is widespread throughout Africa. Hunter-gatherers are stereotyped as physically and socially inferior, as unclean, untrustworthy, immoral, lazy and stupid, even as not fully human. They are exposed to high levels of violence, have very unequal access to justice, and have to endure racial prejudice in every aspect of their lives[3]. This discrimination becomes much more intense and damaging when hunter-gatherers have lost almost all possibility of living their traditional lifestyles, and have adopted a way of life similar to that of their neighbours[4].

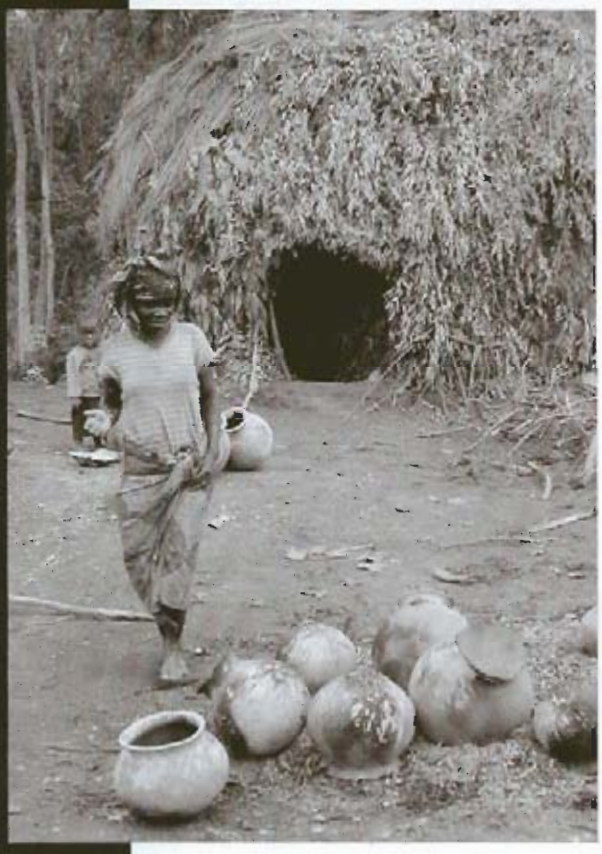
Faced with these threats to their physical and cultural survival, the hunter-gatherer peoples of Central Africa's forests are beginning to organise themselves. It is probably no coincidence that the Twa people of the Great Lakes region (currently estimated to number 70,000 - 87,000 in Burundi, eastern Democratic Republic of Congo (DRC), Rwanda and south-western Uganda), who have lost almost all their lands and are suffering severe deprivation, were the first to set up their own organisations to press for their rights to land, resources, justice and access to services and to counter the deeply-rooted prejudice and discrimination they face[5]. The mobilisation of the Twa acted as a catalyst for the indigenous movement in Central Africa, spreading awareness amongst similar groups and informing outside agencies of their rights and concerns. Linkages are now developing between indigenous organisations and hunter-gatherer groups across Central Africa, helping to strengthen their voice and find common ground.

Indigenous rights and the state

Most African states do not recognise the existence of indigenous peoples in their countries, arguing that, in relation to the occupation of the continent by colonial powers, all Africans are indigenous[6]. This argument glosses over the widespread recognition among settled farming peoples of the prior occupancy of their lands by hunter-gatherer peoples, the marginalisation of certain ethnic groups by dominant groups in post-independence African states, and the modern analysis of indigenousness based on attachment to a specific territory, cultural distinctiveness, self-identification and experience of subjugation[7]. The self-identification of certain peoples as indigenous draws attention to the fact that, in the process of 'nation building', African states have chosen to ignore,

Twa woman chopping wood, Bungere Gitega, Burundi. Photo: Dorothy Jackson

Twa potter and traditional hut near the Nyungwe forest, Rwanda. Photo: Dorothy Jackson



discourage or suppress recognition of ethnic differences and the collective rights of the different peoples within the state boundaries. This has contributed to a very fragile form of participation that is constantly under threat of an upsurge in ethnic strife.

Under the international human rights agreements ratified by most Central African states, such as the International Convention on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racism, and the African Charter on Human and Peoples Rights, indigenous peoples have the right to self-determination, enjoyment of their culture, protection of their lands and resources, protection from racial discrimination, equal access to services and participation in economic development[8]. Since 1992, Central African indigenous forest peoples' representatives have participated at meetings of international human rights bodies to increase international awareness of their situation and put pressure on states to uphold the human rights standards they have signed up to. So far, African states have generally failed to acknowledge their obligations to protect indigenous peoples' rights. For example, the Democratic Republic of Congo's (DRC) 2002 report to the African Commission on Human and Peoples Rights does not even mention 'Pygmy' peoples, despite the extreme human rights violations, including killings, rapes and cannibalism[9] that they are facing as a result of the armed conflicts in the east and north-east of the country.

The recognition by states of indigenous peoples and their internationally agreed rights would open up the debate on the relationship between states and the peoples who live there. Most states are not willing or ready to engage in this dialogue. However, most of the demands made by indigenous and tribal peoples for more control over their territories and their future are compatible with the requirements of a democratic state. Ultimately, negotiated constructive arrangements between the state and its constituent peoples are needed, to ensure that local community institutions can effectively secure their areas from outside pressure and peoples are able to safeguard their future without resort to violence[10].

Representation

Of all the marginalised forest peoples of Central Africa, only the hunter-gatherer 'Pygmy' peoples have so far identified themselves as indigenous, and are using the international indigenous movement to press for their rights as peoples. This is not without risk of countermeasures by state authorities. For example, in Rwanda, where all reference to ethnicity is suppressed on the grounds that it is 'divisionist', Twa organisations have been warned by the government that they risk being closed down as a result of their public calls for equal treatment for Twa people. The Twa say that their problems stem overwhelmingly from the fact that they are Twa, so the issue of ethnic

identity cannot be glossed over. In 2000, the Twa organisation CAURWA (*Communauté des Autochtones Rwandais*) wrote an open letter to the Rwandan President asking why there had been no improvement in the situation of the Twa since the post-genocide government came to power. In August 2003, CAURWA wrote an open letter (published in a national newspaper) to four presidential candidates requesting them to support measures to tackle Twa landlessness.

The Rwandan Twas' advocacy with national and local governments has resulted in some recognition at policy level that special measures are needed to address Twa needs – the Twa are now classed as a 'vulnerable' group, Rwanda's National Unity and Reconciliation Commission has a small budget line for support to Twa communities and the new Rwandan Constitution reserves eight places in the Senate for representatives of 'historically marginalised communities'. This would apply to the Twa, thus potentially giving them representation in the Rwandan legislature for the first time. However, of the four senators chosen so far by the President, none are Twa, raising concerns that, in the end, Twa will be denied this opportunity.

In Burundi, Twa have better representation at a high political level - three senate places are reserved for Twa (two are currently filled) and a Twa woman, Libérata Nicayenzi, represents a multi-ethnic constituency in the National Assembly. However, at policy level, recognition of Twa needs and implementation of measures to address them are even less developed than in Rwanda.

Representation of Twa in local government structures throughout the Great Lakes region is still very limited, and then only at the lowest administrative levels and in areas where the population is mainly Twa. In higher administrative positions Twa would represent mixed ethnic constituencies, which is generally unacceptable to other groups. Twa feel that they are rejected as leaders because of their ethnic origin, their illiteracy and poverty, and that their views are not listened to in public meetings; consequently Twa do not put themselves forward for election. The Twa are also widely regarded as too frank and unable to keep secrets, leading others to stereotype them as unsuitable representatives [11].

> *"Even if we have to elect our leaders, we deliberately vote for Barundi [non-Twa] because a Twa is not listened to and even if he calls a meeting they [non-Twa] don't come. You know, even the few Bashingantahe [traditional authority] who are designated to deal with Twa cases have to be Twa because they [non-Twa] say that we are thieves and wizards and that is why they nominate a Twa to manage other Twa".* (statement by Twa man, Muramvya, Burundi) [12]

Elsewhere in Central Africa, there is virtually no representation of indigenous forest peoples in local administrative or political structures.

Threats to land

Among Central African hunter-gatherer peoples, loss of land rights is particularly severe for the Twa people of the Great Lakes region, who originally subsisted by hunting and gathering in mountains of the Albertine Rift area of Central Africa until incoming farming and herding peoples began to clear the forests over 500 years ago. As they gradually lost their forest lands Twa people were forced to seek alternative livelihoods. Some Twa found roles as attendants, dancers, musicians and messengers at the courts of the former Tutsi kings, or *Mwamis*, and others became potters. During the last century, Twa lands were further encroached on by agri-development projects, logging, military zones and mining and, over the last 50 years, Twa communities have been forcibly expelled from forests designated for conservation including the Parc des Volcans and Nyungwe forests in Rwanda, the Mgahinga and Bwindi Impenetrable Forest mountain gorilla parks in south-western Uganda and the Kahuzi-Biega National Park and Virunga National Park in DRC[13].

Following the loss of their traditional forest lands, the Twa are now one of the most disadvantaged ethnic groups in the Great Lakes region in terms of land ownership, with landlessness up to four times greater than in the general population[14]. A few Twa communities have been able to obtain land, through gifts from the *Mwamis*, private purchase by NGOs and church groups, or government land distribution on a very limited scale. Because of their low social status, the Twa are highly vulnerable to losing what lands they do have by physical eviction, encroachment and intimidation by neighbours or by local authorities. In times of hunger they may also sell or rent their lands for a pittance. Lacking land, and with the collapse of local markets for pottery due to the introduction of metal and plastic goods, most Twa now eke a living from casual labour (usually paid less than workers of other ethnic groups) and begging. The Twa have fallen deeper and deeper into poverty, becoming social, economic and political outcasts.

Advocacy on land issues

In the Great Lakes region, Twa organisations are lobbying local and national authorities to make land available to the Twa. In Rwanda, some communities have obtained farming rights to state-owned marsh land by forming community associations registered with the local authorities. Twa organisations are participating in the 'LandNet' NGO coalition, lobbying for the needs of the poor and marginalised to be addressed by Rwanda's new land policy and law. In June 2003, the Twa NGO CAURWA sent a memorandum to national decision-makers on the Twas' acute land situation[15]. CAURWA has held several meetings with Rwandan authorities to discuss compen-

sation and assistance to Twa communities expropriated of their lands in national parks.

In Uganda, the community-based Twa organisation UOBDU (United Organisation for Batwa Development in Uganda) has held several meetings with the Mgahinga and Bwindi Impenetrable Forest Conservation Trust (MBIFCT) to lobby for the continuation of a land purchase scheme set up to compensate Twa following their exclusion from the Mgahinga and Bwindi national parks[16]. The MBIFCT scheme provided land for less than half of the 400 landless Twa households before running out of funds. UOBDU is also exploring possibilities of Twa acquiring land under Uganda's 1998 land act, which permits community associations to apply to obtain government land held in trust by the District Land Boards.

In Burundi and DRC, long-standing armed conflicts between rival political factions have displaced hundreds of thousands of people and disrupted normal land administration. Twa organisations have succeeded in purchasing land, or getting government to allocate land, for a handful of communities. The transitional Burundi constitution requires a review of land policy as part of the reconciliation process between Burundi's ethnic groups, and the new DRC constitution and forest laws make some provision for the protection of the interests and use rights of local populations[17]. However, the scope for Twa organisations to influence land policy in these countries is presently low.

The loss of lands and forest-based livelihoods forced on the Twa over many years is now being repeated to varying degrees among other hunter-gatherer communities, including the Mbuti of the Ituri region of DRC, the Bagyeli and Baka in Cameroon and Ba'Aka groups in Central African Republic (CAR) and Republic of Congo. A major cause is the expansion of conservation areas in forest areas, without regard to hunter-gatherer land rights and resource use (see John Nelson's article in this issue). As with the Twa, these other forest peoples are now mobilising to try to protect their lands and resources.

Bagyeli and Baka communities, with NGO support, have started mapping their traditional hunting and gathering areas to demonstrate how their access to essential resources is being denied by the imposition of protected areas on indigenous lands, and to lobby conservation agencies for changes in protected area management plans. Bagyeli communities are also mapping their lands crossed by the controversial Chad-Cameroon oil pipeline (the financing of which is underwritten by the World Bank)[18] in preparation for future negotiations with neighbouring communities, government agencies and pipeline authorities to secure formal recognition of Bagyeli land rights.

Bagyeli communities are organising themselves to dialogue with pipeline authorities to secure their fair share of compensation for damage caused by the pipeline – compensation which had initially been captured by neighbouring Bantu groups because the Bagyeli were not recognised as rights holders under local customary law[19]. According to World Bank loan conditions, an Indigenous Peoples Plan (IPP) must be developed conforming to the Bank's Operational Directive 4.20, addressing fundamental issues such as the legal recognition of indigenous rights including rights to land, Cameroonian government policy on indigenous peoples, and the promotion of indigenous participation in the full project cycle. So far, consultation with Bagyeli has been inadequate. Bagyeli are now pressing pipeline agencies to consult properly with them on the preparation of the IPP and on the planning and implementation of 'development' activities that were meant to mitigate the impact of the pipeline on Bagyeli communities.

Strategies

The aim of Central African indigenous forest peoples' organisations is to end prejudice and discrimination against their people, and to secure their free enjoyment of their rights as citizens of their country. The strategy adopted by all groups so far is the engagement of their communities with the national society in order that they may claim their rights and access services, but without losing their identity. This distinction between engagement on the one hand, and integration and assimilation – absorption into society and loss of identity – on the other, is of central concern.

One of the main challenges is to develop appropriate models of development through which hunter-gatherer communities can enjoy equal opportunities in health care, education, employment, land, and justice without loss of culture and identity. Unfortunately, the dominant models of development are essentially assimilationist, for example requiring mobile communities to sedentarise so that they can obtain identity cards, send their children to school, live in modern housing and so on. Forest peoples' organisations urgently need information about alternative development models, including for example, ambulant education using curricula which teach children about important aspects of their culture and livelihoods; modernisation of traditional skills such as hunting, gathering, use of herbal remedies; and appropriate land tenure systems combining land security with scope for practising traditional livelihoods.

Central African indigenous peoples organisations are also seeking to strengthen their voice at national and regional levels through networking and participation in indigenous caucuses. Several of their organisations are members of indigenous networks such as the Indigenous Peoples of Africa Coordinating Committee (IPACC), the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests and the African Indigenous Women's Network, and are involved in indigenous caucuses active on climate change, biodiversity, forests and sustainable development. The International Alliance of Indigenous and Tribal Peoples of the Tropical Forests re-

cently held a meeting in Kigali, Rwanda, of indigenous organisations from the Great Lakes Region and Cameroon, to discuss strategies for ensuring that donor agencies uphold their policies on indigenous peoples, to agree upon a common position on protected areas to present at the 4th World Parks Congress in Durban, South Africa in September 2003[20], and to review the structure of the International Alliance in Central Africa. Other national forest peoples' networks are being proposed, or established, such as the *Ligue Nationale Des Associations Autochtones Pygmées Du Congo* (LINAPYCO) and the *Réseau des Associations Autochtones Pygmées* (RAPY) based in Bukavu, DRC. The challenge for these networks is to develop decentralised mechanisms ensuring that the networks remain accountable to local indigenous communities and organisations, genuinely represent the diversity of interests from the 'traditional' forest-based hunter-gathering groups to the more acculturated, settled groups, and provide effective communication to and from the local communities and the national, regional and international levels. ❑

Notes

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6 Among African states, Ghana, Egypt, Tunisia, Malawi, Angola and Guinea Bissau have signed ILO Convention 107 – the first international treaty to deal specifically with indigenous and tribal peoples' rights. No African states have signed the more extensive ILO Convention 169. However indigenous peoples are recognised by the post-apartheid South African government and the Cameroon government (see Cameroon's 1997 report to the Committee for the Elimination of Racial Discrimination). The government of former Zaire (now Democratic Republic of Congo (DRC)) recognised 'Pygmies' as indigenous but this provision has not been retained in DRC's 2003 Constitution.

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8 Jackson 2003 op.cit 19-21.

9 Human Rights Watch, *Ituri: "Covered in blood". Ethnically Targetted Violence in North-eastern DR Congo,* 2003, vol. 15, no. 11 (A), http:hrw.org/reports/2003/ituri0703/DRC0703full.pdf; IRIN, 15 January 2003, 'DRC: MONUC confirms cannibalism in Mambasa, Mangina', http:www.irinnews.org/report.asp?ReportID=31724; IRIN, 28 January 2003, 'DRC: Pygmies demand a tribunal for crimes.http:www.irinnews.org/print.asp?ReportID=31962.

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11 Jackson 2003 op cit p 16; Nkurunziza, S., *Towards Social and Economic Inclusion of Minorities: A case of the Twa People in Burundi,* Unpublished MSc Thesis, University of Dublin, 2002 pp 84-96 and 113.

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19 Nelson J, J Kenrick and D Jackson. *Report on a Consultation with Bagyeli Pygmy communities impacted by the Chad-Cameroon oil-pipeline project.* Forest Peoples Programme, May 2001

20 See Nelson (this issue) for details of the successful incorporation of indigenous demands into the WPC's declarations and resolutions.

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AFTER THE WORLD PARKS CONGRESS: RIGHTS OF INDIGENOUS COMMUNITIES STILL AT STAKE IN CENTRAL AFRICA

John Nelson

Source: FPP "Indigenous Peoples and Protected Areas in Africa"

Indigenous forest communities under pressure

Indigenous Bagyeli communities throughout south-west Cameroon have always relied on hunting and gathering, and the livelihoods of many are still tied to the remaining forests that have not yet been taken over by farmers, or cut down by loggers. Their way of life is now coming under renewed threat from new rules about to be imposed on them by government authorities and NGOs now responsible for the newly re-energised Campo Ma'an National Park (PNCM) lying just east of Cameroon's Atlantic coastline. World Bank funding for the Chad-Cameroon pipeline via the International Finance Corporation and its environmental impacts obliged the Cameroon Oil Transportation Company (COTCO) to identify and then support compensatory environmental offset projects. New funding for the PNCM constitutes one of these, leading to the imposition of new prohibitive regulations that will further impede local communities' subsistence use of the region's remaining forests. This applies particularly to core protected areas of the PNCM, comprising over 250,000 hectares[1], but will also affect the adjoining "buffer" zones. Much of this land overlays Bagyeli traditional hunting and gathering grounds[2]. The increased enforcement that will inevitably be imposed by this offset project will further restrict the availability of food, building and craft materials, and traditional medicines, which lay at the foundation of the Bagyeli livelihood system.

The erosion of their rights, livelihoods and standard of living that this conservation project threatens is a problem shared by many other indigenous communities living in the forested regions of southern and eastern Cameroon, northern Gabon, south-west Central African Republic and the northern reaches of both the Congo Republic and the Democratic Republic of Congo, especially in the numerous, large and highly biodiverse forests being targeted by conservation organisations.

Many protected areas overlap onto local peoples' land needed for hunting, fishing and gathering. Photo: John Nelson

Over 2000 kilometres to the east, in south-west Uganda, indigenous Twa were finally evicted from Bwindi and Mgahinga National Parks in 1994, precipitated by funding provided by the World Bank GEF. Twa from this region have never been compensated for the loss of their forest rights, even though hunting and gathering in these forests lie at the root of their livelihoods and culture. Many Ugandan Twa are now landless, or living on the land of others, for whom they must work for very low wages or in-

Mother and child, Cameroon. Photo: John Nelson

kind payments. They face daily discrimination from government institutions and NGOs, are socially and politically marginalised, and are a severely disadvantaged group living at the edge of local society. Ugandan Twa have lost access to their spiritual sites and hunting camps located within these reserves that are inhabited by rare mountain gorillas, a significant source of economic benefit for the country through tourism, and along with these places their access to traditional medicines, food, and building materials. They are confronted by an uncertain future outside the forest.

In order to survive they are seeking to acquire new lands for their communities, and to develop alternative sources of revenue, thereby transforming their lifestyles, and culture. The dwindling forests of south-west Uganda, its high population density and the restrictions on local peoples' subsistence activities in forests are problems shared by many Twa living in Rwanda, Burundi and eastern DRC.

Conservation and human rights violations

Across Central Africa[3] over 450,000 square kilometres now fall under protected areas[4], comprising almost 11% of its land, an area the size of Sweden, or Cameroon. Almost half of these lands, or over 20 million hectares (the size of the UK) have now been designated as core protected zones where human activities are generally banned under the protection regimes currently in operation in Central Africa[5]. This area is poised to grow rapidly as ongoing processes to designate new areas are finalised[6], and other zones are put under protection through the vigorous efforts of conservation agencies operating across these countries, often through initiatives to establish transboundary protected areas[7], a current preoccupation of many of those working in the conservation scene across this continental belt. Other new initiatives imposing a "landscape approach"[8] may double the amount of Central African forests destined for protection.

Many of these protected areas overlap lands owned or claimed by local communities, including indigenous forest communities whose presence pre-dates others, including colonial and post-colonial governments[9]. The resulting impacts of conservation projects on these groups are often severe. For many forest-dependent communities, protected areas bring with them forced expulsion from their lands without compensation, the elimination of their rights over their traditional lands, the progressive destruction of their livelihoods, the loss of their identities and increasing socio-economic marginalisation.

> *"You speak to me of the parks, and all that I know is that the authorities and soldiers came from far away, in order to chase us away with guns and tell us never to return to the volcanoes, where we were forbidden to hunt, look for honey, water, and wood."* (Twa, Rwanda)

> *"...someone left the village to tell us in the bush that our village had been burned down by the hunting guards. We returned from the bush to find all the houses burned down. Clothes, identity cards, mattresses, everything. Clothing, everything. The cooking pots were broken. That was what it was like when I arrived."* (Bagyeli, south-west Cameroon).

European and North American donors and conservation agencies are directly implicated in many old, new and pending protected areas in Central Africa, so recent work[10] examined the degree to which they were applying key principles protecting communities' rights in protected areas. These principles were agreed upon at the 1992 World Conservation Congress and, over the last 10 years, guidelines have been drawn up with the support of the World Commission on Protected Areas (WCPA), the World Conservation Union (IUCN) and World Wildlife Fund International (WWF)[11]. These recognise the rights of indigenous peoples to use, own and control their traditional territories, and protect their traditional knowledge and skills. They also espouse the development of working partnerships with indigenous peoples based upon the principle of full and informed consent and that they gain equitable shares of conservation benefits. Many of these widely-agreed principles are also embedded in the internationally binding Convention on Biodiversity (CBD), now ratified by over 170 countries, including all those in Central Africa.

Work over the past few years shows how, in Africa, these widely agreed principles are not being applied properly by governments and conservation agencies.

There are a number of reasons for this, including:

- a lack of commitment by conservation agencies to engage with local people, rather than animals or plants;
- severe and growing logging pressure on Central African forests, which helps justify a "conservation at any cost" mentality amongst conservationists;
- a lack of awareness within protected area projects of international standards for working with indigenous communities, coupled with a tendency to treat all local communities as a single entity, rather than as distinct communities with different livelihood systems and cultural norms;
- a lack of funding to enable protected area staff to develop a better understanding of indigenous forest peoples' worldviews in order to enable their communities to participate meaningfully in the development of conservation plans;
- a lack of capacity within protected area management teams to enable participative processes to occur with communities, and a lack of capacity amongst indigenous communities to adequately express their concerns about how their rights may be violated by protected area plans;

- a lack of recognition and respect for the customary land and resource rights of indigenous hunting and gathering peoples by most Central African governments;
- periodic conflict and governmental instability often linked to competition over natural resources within and between some Central African countries[12].

"I had only one antelope - it was for my family. I had killed this antelope for food. I asked ECOFAC to leave me with my antelope, but they did not agree. And my wife had just given birth in the village! ..... They have the right to arrest people. But when they confiscate our only antelope, them, those bosses, what are they thinking? Do they think that they ought to take the antelope that I killed? The antelope that I must use to feed my family? They did not forbid us to eat meat!" (Baka, southern Cameroon).

The restrictions imposed by conservation agencies on indigenous / forest peoples' access to forest resources are continuing to destroy, progressively, indigenous forest peoples' livelihood systems. The expropriation of resources and rights that conservation often brings[13] reinforces the persistent and almost universal discrimination that has hindered indigenous hunter-gatherer communities for years, keeping them at the margins of society[14].

"I am speaking of all of the people in this village – we were born in the forest, we grew up in the forest, we do everything in the forest, gathering, hunting, fishing, everything. So, now, where do they want us to make our lives? How are we supposed to live? If we are to be prevented from using the forest, where are we supposed to make our lives?" (Baka , south-east Cameroon).

Now international conservation agencies are pushing for even greater control of communities' forest resources in Central Africa through substantial new funding for conservation being leveraged from international and bilateral donors, along with North American and European conservation agencies, via the Congo Basin Forest Partnership (CBFP). Lead country the United States has already committed $53 million to the CBFP over 5 years, with a further $37 million to be raised by partners[15]. This influx of money is in addition to the millions of dollars of international donations already being used to maintain many other existing conservation initiatives across the region. These conservation efforts gained a higher profile through publicity leading up to the World Parks Congress (WPC) in Durban in September 2003.

Moving forward, but towards an uncertain future

The threat to indigenous forest communities' rights in Central Africa is still growing. However, significant gains were made this year at the World Parks Congress favouring communities' rights. This Congress of 2500 conservation practitioners is held every 10 years and is highly influential in terms of conservation policy and practice. The theme of the 2003 Congress was "Benefits Beyond Boundaries", and the Accord and Recommendations that it agreed upon set important new standards for the rights of indigenous peoples living in and around protected areas. The Action Plan contains a full section entitled "The Rights of Indigenous Peoples, Mobile Peoples and Local Communities Recognised and Guaranteed in Relation to Natural Resources and Biodiversity Conservation", which recommends spe-

Twa woman evicted from the Kahuzi-Biega National Park, the DRC. Photo: Dorothy Jackson

Batwa outskirts of Volcano National Park, Rwanda. Photo: Kalimba Zephyrin

cific targets and actions for governments and protected areas[16].

The Durban Recommendations and Action Plan call on countries to undertake reviews of existing conservation laws and policies that impact on indigenous peoples, and to adopt laws and policies giving indigenous peoples and local communities control over their sacred places. In Central Africa, the conservation policy reviews that are advocated will necessarily lead to revision of old legislation that universally precludes subsistence activities within parks. Forest Peoples Programme analysis has shown that these laws are often incompatible with international norms of indigenous peoples' rights[17]. Progress is being made to address the application of law over these matters, with some African courts already upholding indigenous peoples' customary ownership even after other legal systems were subsequently imposed by the State[18]. The potential for protecting African communities' land and resource rights through legal revision is huge.

However in Central Africa, where francophone systems prevail, the situation is more complicated. Here, customary rights to land are generally asserted by communities through the *mise en valeur principle*[19], and guaranteed by the governments now claiming proprietorial control over all untitled lands. However, there are few mechanisms to guarantee these land rights for forest communities still relying on hunting and gathering over large areas of forest. A key underlying issue facing many communities living in the Central African forest zone, including both cultivators and indigenous hunting and gathering communities, is linked to the States' monopoly over the allocation of land and resource rights. Their ultimate control of these forest zones is now associated by many communities with land rights insecurity, exacerbated by the high value of the timber and mineral resources located in their forests.

The reality is that many resources that communities claim as their own are normally allocated to outside, private groups via ministerial grants of timber or mineral

concessions, without these communities' knowledge, participation or consent. This is also the reality of corporate conservation practice in many Central African locations. Many of those in North America and Europe who, with good intentions, fund conservation would be shocked to know that hundreds of thousands of people are now bearing the brunt of the costs of conservation projects that they support with their money. In many locations where conservation organisations are active forest communities' standards of living are falling, and along with them the communities' commitment to these projects over lands that they cherish, but over which they are being told they have no valid claim. This situation is unsustainable.

Ways forward

If conservation organisations with interests in Central Africa are to come in line with the widely agreed international standards, and in turn promote the long-term sustainability of their international programmes to protect biodiversity, they will need to change their practices. In particular, they must demonstrate to communities their commitment to these standards by acknowledging the rights of communities from their project areas to maintain their rights and livelihoods. They should provide funding to support proper and equitable engagement with indigenous communities on the communities' terms, and invest in training for their staff so that they have the skills they need to work in partnership with communities. If they do this, it will help unlock the potential that clearly exists for the development and implementation of new models of cooperation that are just, and which will promote greater long-term benefits for communities with conservation. ❑

Notes

1 United Nations List of Protected Areas 2003. IUCN/UNEP/WCMC/WCPA.

2 See CED (2003) Carte Communautaire d'Utilisation des Ressources Forestieres de PNCM-Nord. Yaounde: CED.

3 Cameroon, Gabon, Republic of Congo, Democratic Republic of Congo, Central African Republic, Uganda, Rwanda, Burundi.

4 According to IUCN classification categories I to VI.

5 Categories Ia (Strict Nature Reserve managed mainly for science), Ib (Wilderness Area managed mainly for wilderness protection) and II (National Park managed mainly for ecosystem protection and creation) cover the highest protection categories where exploitation of any kind, even for subsistence, is generally prohibited under existing national legislative norms. The real figure is likely to be higher because the UN list does not indicate those areas not directly complying with category criteria but where extractive use of core protected areas, even for subsistence, is now prohibited.

6 For example, in Gabon, where almost a million hectares have yet to be categorised under the IUCN system, even though strict protection measures prohibiting use by communities are already in place over many of them.

7 Including, for example, where the Dzanga-Ndoki Park CAR adjoins Lobéké in Cameroon, within the proposed Dja-Boumba Bek-Nki-Odzala-Minkébé transfrontier protected area between Gabon, Congo Republic and Cameroon, and proposed "Peace Parks" along the Albertine Rift area between Uganda, Rwanda and DRC.

8 As favoured by many of those promoting the Congo Basin Forest Partnership.

9 Especially so-called "Pygmy" communities or "first forest inhabitants" whose livelihoods and culture are inextricably tied to forests across the Central African belt.

10 Nelson, J and L Hossack (eds)(2003) *Indigenous Peoples and Protected Areas in Africa: from principles to practice.* Forest Peoples Programme: Moreton-in-Marsh. Available in English and French with accompanying video. Also see Barume, Albert Kwokwo (2000) *Heading Towards Extinction? Indigenous Rights in Africa: The Case of the Twa of the Kahuzi-Biega National Park, Democratic Republic of Congo.* IWGIA Document No. 101. Copenhagen: IWGIA. Also in French and English.

11 IUCN- World Conservation Union/WCPA – World Commission on Protected Areas/ WWF – Worldwide Fund for Nature (2000) Principles and guideline on protected areas and indigenous/traditional peoples.

12 For example, in north-eastern DRC where Kahuzi Biega National Park, the Ituri Forest Reserve and Virunga National Park are all impacted by conflict linked to the rich mineral and oil resources of the region.

13 See Cernea, Michael and Kai Schidt-Soltau (2003) *National Parks and Poverty Risks: Is Population Resettlement the Solution?* Paper presented to the World Parks Congress.

14 For more information, see www.forestpeoples.org.

15 Including governments involved, the International Tropical Timber Association, the World Bank, the World Conservation Union, the American Forest and Paper Association, Association Technique Internationale des Boix Tropicaux, the Centre for International Forestry Research, Conservation International, Forest Trends, Jane Goodall Institution, Smithsonian Institution, Society of American Foresters, Wildlife Conservation Society, World Resources Institute, and the World Wildlife Fund (see http://carpe.umd.edu)

16 For the full texts see: www.iucn.org/themes/wcpa/wpc2003.

17 MacKay, F (2002) *Addressing Past Wrongs. Indigenous Peoples and Protected Areas: the right to restitution of lands and resources.* Occasional Paper, Forest Peoples Programme, Moreton-in-Marsh.

18 South African Constitutional Court Ruling of 14 October 2003. See www.concourt.go.za, Case Id. 12632. This decision reaffirms UK Privy Council decisions affecting land laws in Commonwealth countries.

19 Literally, to "put into value", usually via construction or cultivation.

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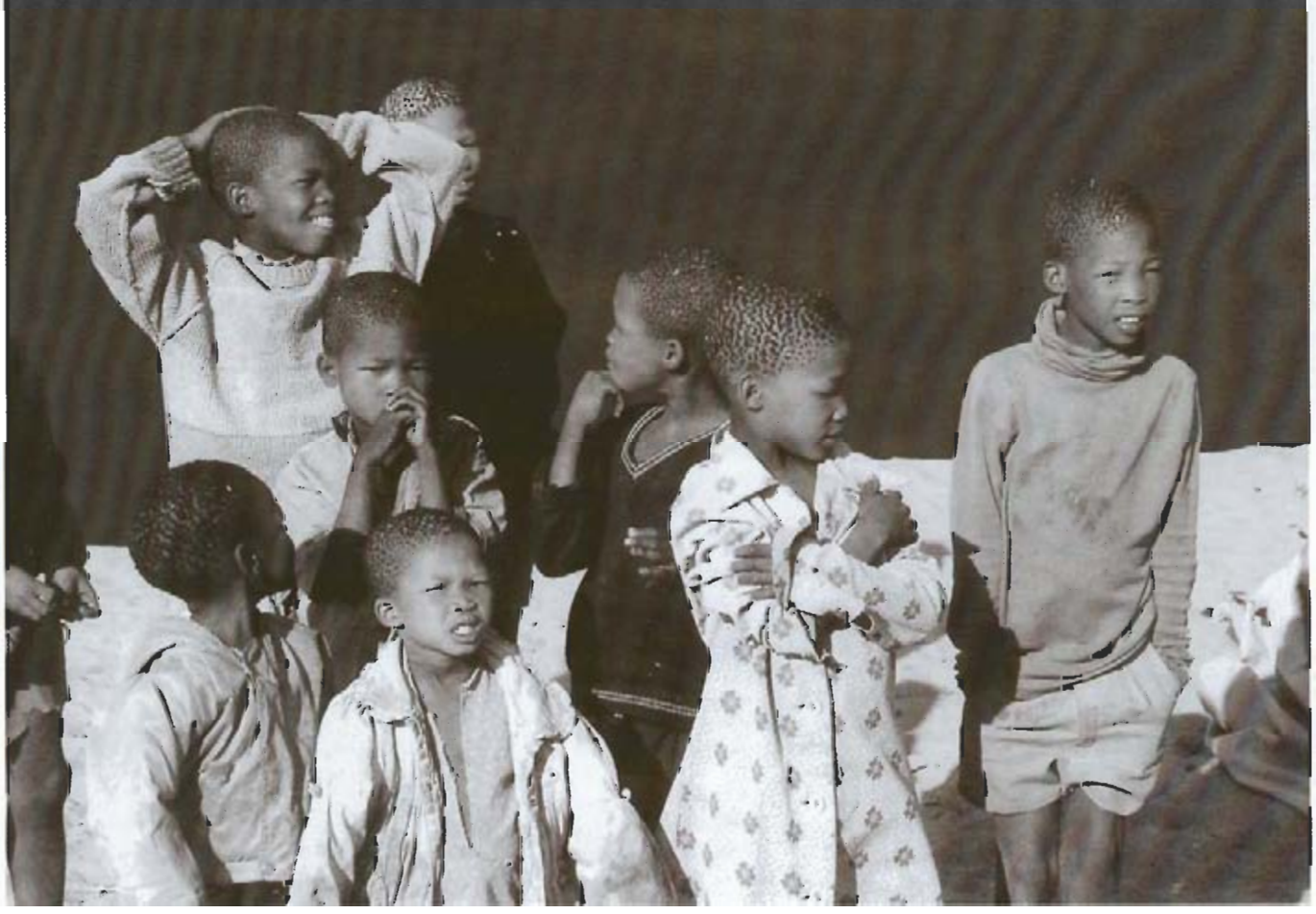
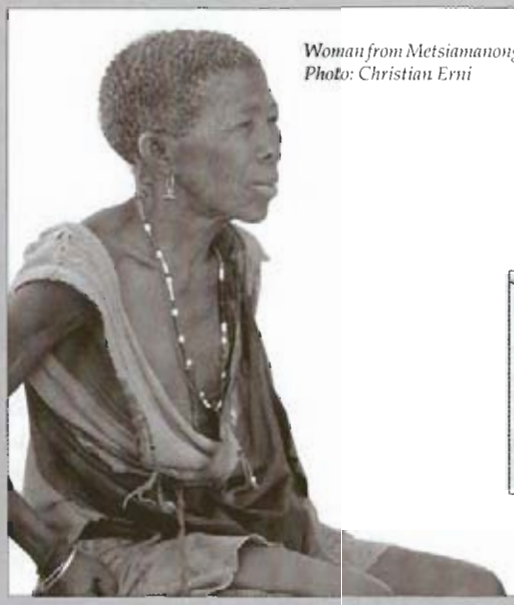
STRUGGLING FOR THE RIGHT TO RETURN

THE RESIDENTS OF THE CENTRAL KALAHARI GAME RESERVE *VS.* THE GOVERNMENT OF BOTSWANA

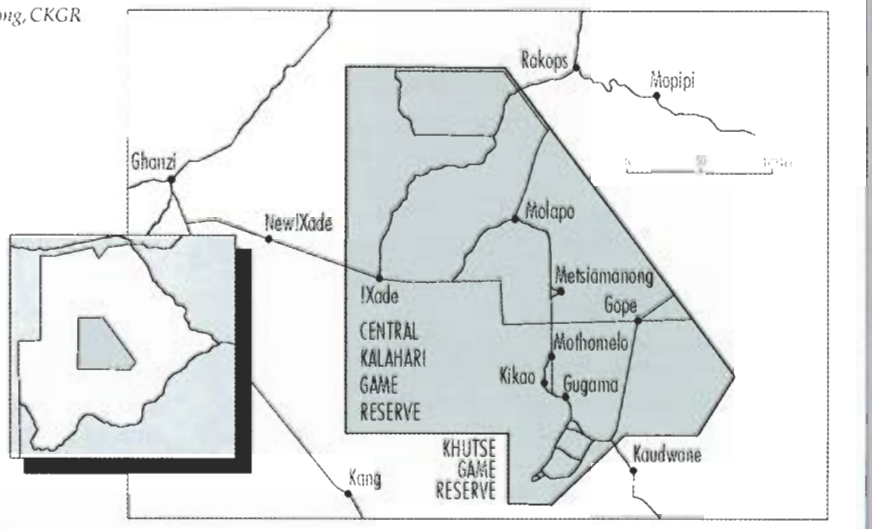
Diana Vinding



San children, Metsiamenong, CKGR 1996. Photo: Diana Vinding



Woman from Metsiamanong, CKGR
Photo: Christian Erni



Two years ago, on 29 October 2001, the President of Botswana, Mr. Festus Mogae, in his State of the Nation address, announced the Botswana Government's intention to terminate the delivery of essential services to the some 600 San and Bagkalagadi people residing in the Central Kalahari Game Reserve (CKGR) by 31 January 2002. These services included the provision of drinking water on a weekly basis to each settlement; the maintenance of the only functioning water borehole in the settlement of Mothomelo; the provision of food rations to those registered destitute and to registered orphans; the provision of transport for the residents' children to and from boarding school; and the provision of healthcare through a mobile clinic and ambulance service.

Over the following months, the CKGR residents and their representatives repeatedly and insistently called upon the government not to implement its decisions and instead agree to negotiations. Numerous meetings with government officials, however, were to no avail and, by mid-February, government trucks had moved the majority of families to settlements outside CKGR.

Only one way forward was left: to take the Government of Botswana to court on the charge that its decision to terminate basic and essential services was wrongful and unlawful. This happened in April 2002. Due to a number of circumstances, to which we shall return, the case is still on-going. However, it is expected that it will be heard by the High Court of Botswana in May/June 2004.

Background

The San people (Bushmen or Basarwa as they are called in Botswana) are believed to have lived in the region known today as the Central Kalahari Game Reserve (CKGR) since time immemorial, and one of the main purposes in establishing the Game Reserve in 1963, prior to independence, was to allow the San as well as the Bakgalagadi – a Bantu group with which they have cohabited for more than 400 years - to continue their traditional lifestyle if they so wished.

Only a few years after Independence, the Government of Botswana began talking about the need to resettle the CKGR residents – estimated at that time to number around 1,500 - 2,000 individuals. Over the course of the subsequent years, people grew more and more uncertain about their future. In 1996, the government officially announced that all the communities within the CKGR would have to relocate to places outside the reserve. The reason given, then and later, was that people should partake in the "development" of the country, and that this could only happen in "modern" settlements, where water, schools and other facilities could be provided.

For some time, international pressure seemed to deter the relocation plans and the government even confirmed to the ambassadors of various European countries and the US as well as to the European Union representative that the provision of basic and essential services "to people who wish to stay in the CKGR will not be discontinued". Nevertheless, an increasing number of cases of harassment and mistreatment by government officials were reported by local people and, in spring 1997, 1,100 people - representing a sizable proportion of the population of the CKGR - were moved out of the reserve to two new settlements - New !Xade and Kaudwane - where they faced hardships of all kinds since the facilities they had been promised had not been put in place. The result was that quite a few families decided to move back.

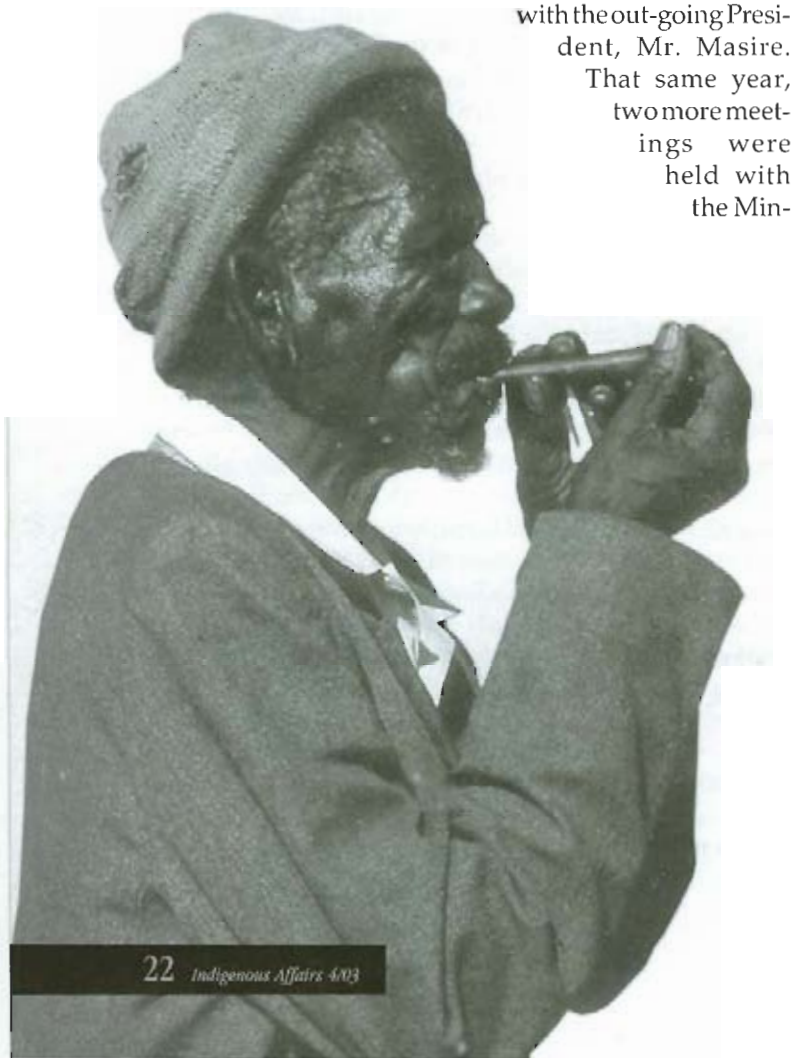
San mobilization

At that time, the people who had remained in the CKGR had already started mobilizing. With the support of the

San organisation, The First People of the Kalahari (FPK), a "CKGR committee" was constituted, with two democratically elected representatives from each of the seven CKGR communities. It was also decided to establish a body that could represent the CKGR residents' interests vis-à-vis the Botswana Government and, in 1997, the CKGR Negotiating Team (CNT) was formed. Besides the 14 CKGR members, it comprised one representative from each of the main San organisations (First People of the Kalahari, WIMSA Botswana[1] and Kuru Development Trust), one from each of the San support organisations (DITSHWANELO – the Centre for Human Rights in Botswana - and Botswana Christian Council, BCC) and a legal advisor from the South African firm of lawyers Chennells Albertyn, Glyn Williams. Only delegates representing the CKGR committee and the San organisations were entitled to vote as part of the decision-making process of the Negotiating Team.

The mandate of the CNT was to try to establish a dialogue with the government and negotiate a solution that would allow the residents to remain in the CKGR. If such a dialogue and negotiation could not be established, then the CNT would go to court and initiate a land claim case.

From 1997 to 2002, the CNT was engaged in a series of efforts to enter into dialogue with the government. The first letter was sent in July 1997, but it took almost a year for an answer to be received, leading to a meeting in March 1998 with the out-going President, Mr. Masire. That same year, two more meetings were held with the Ministry of Local Government, and these meetings were the first in a long series of subsequent meetings with high government officials under the new administration of President Festus Mogae and Vice President Ian Khama.



Man from Molapo, CKGR.
Photo: Diana Vinding

However, government officials made it clear that they did not consider the Negotiating Team to have a mandate to negotiate on behalf of the residents of the CKGR and that the government "would not recognize rights to land in a game reserve but would only grant ownership of land to Basarwa who moved out of the CKGR and into New !Xade and Kaudwane".

This prompted the Negotiating Team to engage in a multifaceted strategy to assist the people of the CKGR to assert their rights. This strategy included (1) the registration of all the people who claimed to have rights in the CKGR, (2) the mapping of the people's ancestral territories in the CKGR, and (3) the mounting of an information dissemination campaign to familiarize people in the CKGR and surrounding areas with the options they had available to them.

In the latter part of September 1998, the first steps to initiate the registration process in the Central Kalahari Game Reserve were taken but it was not until 1999 that the process gained momentum. The first mapping trip was made in June 1999. Most of the registration and mapping work in the Central Kalahari was done by two FPK mobilizers under the supervision of external consultants.

From 1999 to 2001, approximately 300 adults residing or formerly residing in the Central Kalahari were interviewed, registered and photographed. One of the outcomes of this process was that CKGR residents and people who had traditional rights in the reserve stated individually and collectively that the Negotiating Team and First People of the Kalahari had their support in attempting to assert their land and resource rights. Another was the elaboration of maps of ancestral territories and current communal use areas in the Central Kalahari Game Reserve. All this material was later compiled in a series of maps and reports, which were made available to the Department of Wildlife and National Parks (DWNP) for use in the revision of the CKGR and Khutse Game Reserve Management Plan – the Third Draft Management Plan.

A number of meetings were held in 2001 between the Negotiating Team and the DWNP concerning this management plan, and it was agreed in principle that the DWNP Management Plan for the CKGR would include the recognition of "communal use zones" for the communities remaining in the Central Kalahari Game Reserve. At a meeting in May, the DWNP presented the Third Draft and the boundaries of the communal use zones as well as the other provisions made regarding the rights of the residents were discussed. In general, the Negotiating Team was very satisfied with this meeting as most of its suggestions regarding the areas to be included in the communal use zones had been integrated into the Draft. This was the last meeting held and the Third Draft has

since then been substantially altered by the government: it no longer accepts any kind of residency within the CKGR and the idea of "communal use zones" has been dropped.

The eviction from CKGR

The first indications of a possible termination of the provision of basic and essential services to the residents of the CKGR came in August 2001 but were at first denied by the Minister of Local Government, Mrs. Margaret Nasha. However, she later said that providing services in the CKGR was "too expensive" because it was costing 55,000 Pula per month (or approximately 11,775 US$) for 589 people, - a figure that came out of the census conducted in August 2001 by the government. The cost per person per month therefore works out at 98.38 Pula (21 US$). The Government of Botswana allowance for the destitute under its Destitute Policy was at that time 117 Pula (25 US$) per person per month. This allowance is for a basket of goods that provides less than 1 700 calories per day – or less than the World Health Organization minimum to maintain health. What this meant, in effect, was that the Government of Botswana was not even meeting its own minimal standards in the way in which goods and services were being provided to the people of the CKGR, much less world standards. In October 2001, the Special Game Licenses[2] held by CKGR residents expired (they are valid for one year only) and were not renewed. By the end of that month, the President of Botswana, Mr. Festus Mogae, had delivered his State of the Nation address.

During November and part of December 2001, and in response to Mogae's threat to terminate all service deliveries, the Negotiating Team and/or its representatives had a number of meetings with Botswana Government personnel, including Vice President Ian Khama, but the government seemed adamant that it would go ahead with its scheme.

Over the course of the years, many explanations have been put forward to explain the government's insistence on relocating the residents of the CKGR. One is the existence of diamonds, notably in Gope, in the eastern part of the reserve, where De Beers holds a concession but has not, until now, found it economically worthwhile starting mining operations. Last year, another multinational consortium was granted mineral prospecting licenses over large parts of Botswana, including the CKGR, for prospecting diamond deposits, but whether this will result in new findings and eventually mining activities is still an open question. Another explanation is that the presence of residents is seen as a threat to wildlife and therefore jeopardizes the

Molapo, CKGR, 2000. Photos: Diana Vinding

government's efforts to develop the CKGR as a new tourist attraction. The government, however, has all along maintained that its motive was its wish to integrate the (supposedly backward) San into mainstream society.

The Court Case

On 31 January 2002, the Negotiating Team released a press statement in which it stated that it believed

> *"that the decision of the Government to terminate essential services to the game reserve is wrongful and unlawful. We believe that it is a deliberate attempt by the Government to force the residents out of the reserve.... The Negotiating Team has called upon the Government not to implement its decision. Instead it should allow the process of negotiations through DWNP to continue... The Negotiating Team urges the Government of Botswana to review its decision...."*

But, by mid-February, a sizable number of families had been moved by government trucks out to New! Xade and Kaudwane and, by the end of the month, fewer than 70 adults remained in the reserve, although experiencing difficulties in getting sufficient food and water to meet their needs. Attempts by FPK to organize water transport to some of the communities were stopped by the authorities.

It was on this basis that the lawyers for the CKGR Negotiating Team decided to go to court. In February 2002, a so-called "Founding Affidavit" was filed in the Botswana High Court by Roy Sesana and 241 other Residents *vs.* the Government of Botswana. Roy Sesana is a resident of CKGR and has for many years been one of the leaders of the First People of the Kalahari.

The government immediately responded by raising a number of technical points, stating that the Founding Affidavit sworn by Roy Sesana had not been properly sworn in accordance with the Rules of Court; that the matter was not urgent; that the Applicants had no claim; and that an illiterate person such as Roy Sesana could not swear a sophisticated Founding Affidavit.

During March and early April, supplementary affidavits were signed, duly sworn and filed and, on April 10, the Residents of the CKGR asked the High Court to declare the government's decision to terminate basic and essential services to them unlawful. The application also asked to have the court declare that those who had been effectively forced to move due to the termination of services should be returned to the CKGR. However, on Friday 19 April 2002, Judge Dibotelo of the High Court dismissed the case. The Judge

- Struck out the Founding Affidavit sworn by Roy Sesana because it had not originally been properly sworn in accordance with the Rules of Court;
- Ruled that the properly re-sworn Founding Affidavits, containing identical allegations and sworn to correct the defects in the original Founding Affidavit, could not be filed in accordance with the Rules of Court.

However, although he dismissed the Applicants' claim with costs, the Judge granted leave to the Applicants to institute fresh proceedings on papers prepared in compliance with the Rules of Court.

On the right of Roy Sesana to bring a case to Court in his own right and on behalf of "his community or tribe", the Judge made the following two somewhat contradictory rulings:

- Roy Sesana "has *locus standi* to institute these proceedings to vindicate his rights and those of his community, which he alleges are being violated by the Government"
- There is no authority for Roy Sesana to bring these proceedings on behalf of the other Applicants.

The Appeal Case

The Residents appealed against the ruling for three reasons:

- It was wrong in law, and they should have been given leave by the Court to present their claim on its merits;
- To prevent the Botswana Government from repeatedly taking technical points every time the residents re-launched proceedings in order to prevent them from commencing with their case on the merits;
- To freeze the costs order against Roy Sesana and the residents made by the High Court Judge when he dismissed their application.

The appeal was heard on 11 July 2002. The Court of Appeal Judges suggested to the two lawyers representing the Residents and the Government respectively that they consider agreeing to an order that the application of the Residents be urgently referred back to the High Court for witnesses to give verbal evidence on a date convenient to the parties; and that this verbal evidence should be heard in Ghanzi – which is more convenient for the witnesses than Lobatse, where the High Court usually sits. Both the Residents and the Attorney General agreed to this referral.

However, the Attorney General's Chamber later objected to a draft order drawn up by the representatives of the Residents, and no consensus could be reached by the two parties before the Attorney General's representative went on a sabbatical leave in early September. Therefore, the Residents had no alternative but to go back to the Court of Appeal in January 2003.

During the hearing in January, the Presiding Judge expressed his disappointment at the further delay in the case due to what he deemed to be additional technical objections by the Attorney General, and adjourned the hearing for two hours with a strong recommendation that the two sides reach an agreement. He urged the Attorney General to abandon the technical issues in the interest of the Residents who were being prejudiced by the undue delay in the hearing of their case. When the court resumed, the two parties had agreed on the following, amongst other issues:

- That the case would be referred to the High Court where verbal evidence would be given by witnesses both in Lobatse and Ghanzi
- That the High Court would make a decision on the following substantial issues:
  - Whether it was unlawful for the GOB to terminate basic and essential services to the Residents of the CKGR in January 2002
  - Whether the Government has an obligation to restore the services to the Residents
  - Whether the Residents were in possession of their land and were deprived of such possession forcibly, wrongly and without their consent
  - Whether the Government's refusal to issue Special Game licences to the Residents and to allow them to enter the CKGR is unlawful and unconstitutional

Furthermore, the Judge ordered that the government cover the costs of the Court of Appeal hearing due to the wasted time. The agreement was based on issues that the Residents' representatives had initially proposed in August 2002, with three minor changes. The Judge was therefore of the opinion that the agreement could have been reached without the necessity of re-appearing before the Court. It was also decided that the matter would be heard between May and July of 2003. However, due to delays in receiving the Attorney General's "admission of facts",[3] this did not happen and the case has not yet been heard.

The situation as of February 2004

While all this has been going on, a fair number of residents (70 – 100 according to reports) have returned to the CKGR, and many more have tried to but have been stopped by the authorities and forced to return to New !Xade or Kaudwane. This has happened despite the infrastructural facilities offered in the settlements (water supply, schools, health care, etc.) and the hardships the returnees face in the CKGR (lack of water, food, harassment by the authorities, etc.). Molapo - the community to which Roy Sesana belongs – is a case in point. The 30-40 people who have returned lack water and have to forage for food. On 16 June, 11 of them received a summons, "for entering into a game reserve without a valid permit".

But people simply do not thrive in the settlements. New !Xade has even been renamed the "seeker of graves" because not only are many goats dying through lack of proper grazing areas but people also claim that many of the resettled people have died. They blame this on the lack of traditional medicine, malnourishment (i.e. lack of traditional food such as wild berries, roots and meat from wild animals) and being grouped with many people in one area, which is something they are not used to.

At the time of writing, no definite date for the High Court hearings has yet been set, but a good guess is May 2004. Sadly enough, the court case has become even more relevant as time goes by. In the Western Sandveld, in Central District, several thousand San have been or expect to be evicted from the land on which they have lived and sustained themselves for generations, as a result of the privatisation and fencing of communal lands to the benefit of large cattle-owners.

This is why the CKGR court case, insofar as it will try to establish the rights of the CKGR residents to return to, reside and occupy their traditional areas, is so important since it could well represent a challenge with the capacity to alter the land rights of San generally. ❑

Notes

1 WIMSA Botswana is part of the southern African organisation, Working Group of Indigenous Minorities of Southern Africa.
2 The Special Game Licenses gave the residents the right to hunt and kill a certain quota of specified game per year.
3 Pursuant to the Rules of the High Court of Botswana, the Attorney General has to admit – or refuse – certain facts set out by the Applicants.

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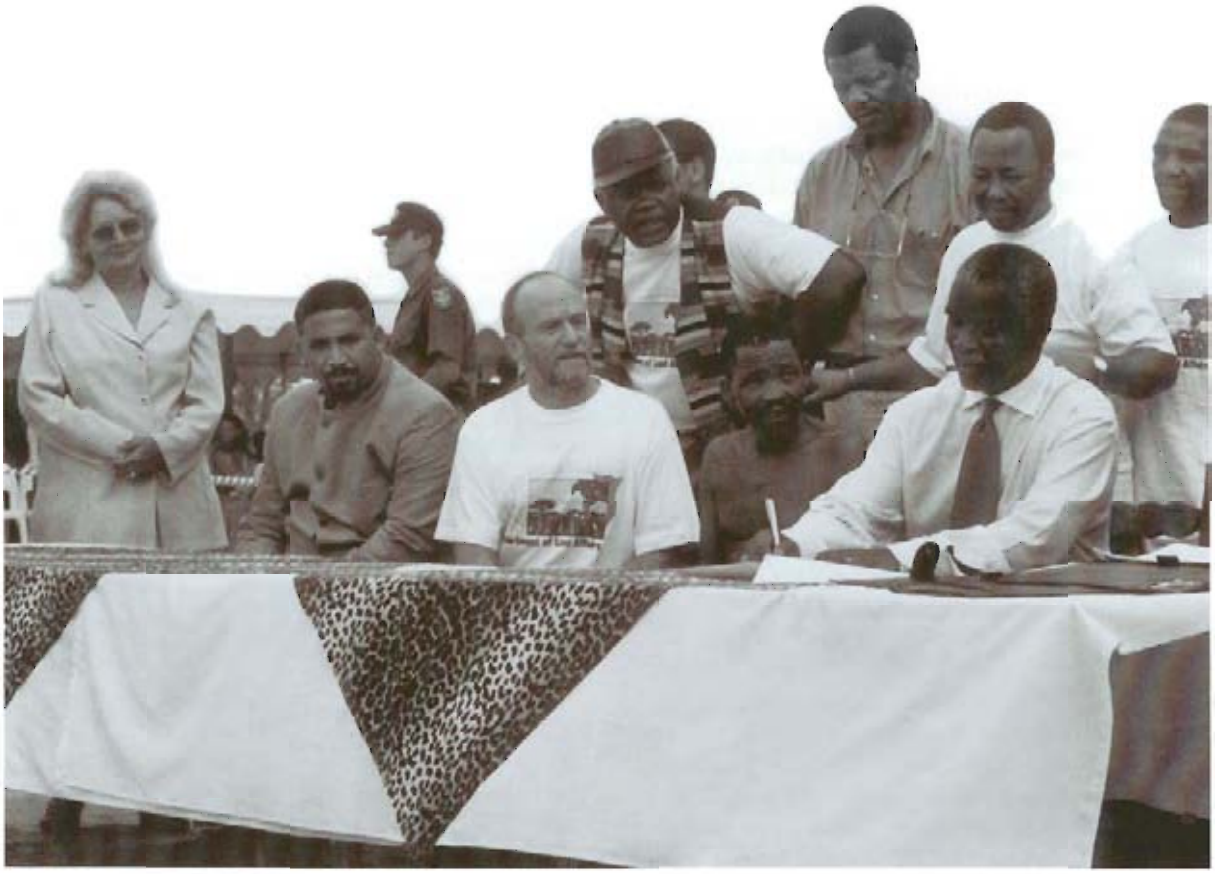
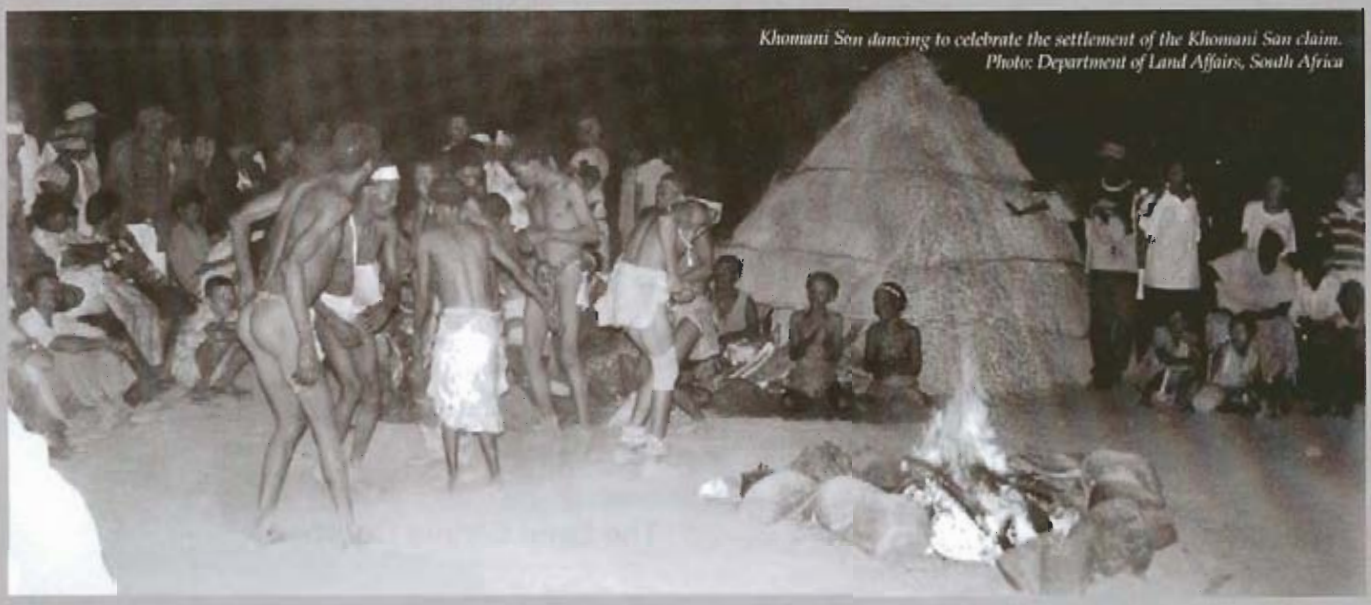
PROTECTING THE LAND RIGHTS OF INDIGENOUS PEOPLE: A SOUTH AFRICAN CASE STUDY

Maureen Tong



The celebration of the Khomani San claim. Sitting in front (in white t-shirt) former Minister of Land Affairs, Derek Hanekom, a member of the Khomani San Community and Deputy President at the time, Mr Thabo Mbeki. Standing behind (in colourful waist and cap) former Chief Land Claims Commissioner, Advocate Wallace Mgoqi, and next to him former Premier of the Northern Cape, Menne Dipico. Photo: Department of Land Affairs, South Africa



Khomani San dancing to celebrate the settlement of the Khomani San claim. Photo: Department of Land Affairs, South Africa

Historical perspective

The Khoekhoe and the San people are generally acknowledged as being the first people to occupy the southernmost part of Africa, since time immemorial.[1] They are found in five countries of southern Africa, namely, Angola, Botswana, Namibia, South Africa and Zimbabwe. Despite this general acknowledgement, [2] there is as yet no consensus on the meaning of 'indigenous people' in the African context, or on the issue of who qualifies for this status.[3]

The *apartheid* government of South Africa forcibly assimilated the Khoe and San people into the coloured community, or some into the majority Bantu-speaking people, notably the Batswana and the Xhosas. The Khoe-San 'revivalist movement' is working hard to recover the identity, culture and sense of pride of the Khoe and San people. The majority Bantu-speaking Africans views this development with some suspicion. This arises from the fact that the forced assimilation of the Khoe and San people into the coloured identity brought with it some benefits that were not available to other Africans during apartheid, which was a system based on denial of rights or granting of privileges based on racial classification. There is therefore a sense of discomfort as to what being recognised as 'indigenous' or 'first nations' would entail for the Khoe and San people, which would be different from the majority African population. There is little doubt however, that all South Africans, especially those of African descent, support the restoration of the dignity and identity of the Khoe and San people. This was illustrated by the general public support and sense of pride that was demonstrated when Sarah Baartman's remains were returned from Europe to South Africa in May 2002.

The Democratic Government of South Africa recognises the San as a 'community' deserving of protection both in terms of constitutional rights and government policy. A number of government departments have undertaken projects aimed at addressing the cultural revival of the Khoe and San people and the socio-economic conditions under which they live. For example, the Khoi-San Council is officially recognised by the Department of Provincial and Local Government. This Department is also implementing a project aimed at recognising the indigenous names of places, notably the Khoe and San names. The term 'indigenous' is used in section 6(5)[4] of the Constitution in reference to languages, the need to protect and promote indigenous languages, making specific mention of the Khoi, San and Nama languages.

In 2000, the national broadcasting company, the South African Broadcasting Corporation (SABC), granted a broadcasting licence to the X-KFM Radio station. The radio station broadcasts in the !Xun and Khwedam languages. The Pan South African Language Board (PanSALB) has developed the ǂKhomani language into written form and is in the process of finalising the compilation of a Nama/Afrikaans dictionary. [5] The South African National Coat of Arms depicts Khoe and San images and language.

A brief history of land dispossession in South Africa

Dispossession of land in South Africa began with the arrival of the Dutch East India Company to the Cape in 1652, under the leadership of Jan van Riebeeck, who encountered the Khoesan people living there.[6] This was the beginning of a process of land dispossession that was so extensive and so brutal that, by the early 1990s, it was said that the white population, which makes up less than 20% of the South African population, had control of and access to 87% of the land while the black majority had access to only 13%.[7] Being hunter-gatherers and pastoralists, the Khoe and San people also experienced

land dispossession on the part of the Bantu-speaking Africans, who practised agriculture.[8] Land was one of the most legislated issues during apartheid.

The land restitution process

Section 25(7) of the Constitution of the Republic of South Africa Act 108 of 1996 gives the right to restitution to individuals or communities dispossessed of rights in land as a result of past discriminatory purposes. It provides as follows:

> *"A person or community dispossessed of property after 19 June 1913, as a result of racially discriminatory laws or practices, is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress."*

The Restitution of Land Rights Act 22 of 1994 established the Commission on Restitution of Land Rights (Land Claims Commission), whose function is to investigate and settle land claims, which may include natural resources such as minerals, forests, etc.

The Land Claims Commission

The Land Claims Commission has returned land to the Khoe and San people, including the ǂKhomani San of the Southern Kalahari and the Klein Fonteintjie community who had been forcibly removed from its land together with the Batlhaping clan of the Batswana, a Bantu-speaking community from Schmidtsdrift. The Commission restored the land of the Batlhaping and the Klein Fonteintjie community in 1999 while awarding financial compensation to the Griqua of Griqualand West in the year 2000. The state offered alternative land to the San groups, the !Xu and the Khwe, when land they had been occupying was restored to the Klein Fonteintjie and Batlhaping communities of Schmidtsdrift.

Most notable of the Khoe-San claims settled by the Land Claims Commission is that of the ǂKhomani San of the Southern Kalahari. Despite the initial government policy to let them live in the Kalahari Gemsbok National Park undisturbed, the ǂKhomani San were systematically driven out of the Park from 1937 on.

In 1999, the Land Claims Commission restored land inside and outside the Kalahari Gemsbok National Park to the ǂKhomani San and Mier communities. The ǂKhomani San received nearly 40,000 hectares of private and state-owned lands south of the Park and approximately 25,000 hectares of land inside the National Park. The Park will continue to be managed as a conservation area. This will be achieved under a 'contract park' arrangement that will have commercial benefits for the community. While part of the land was restored in 1999, the ǂKhomani San community were given the title deed to the remaining land during the United Nations World Summit on Sustainable Development (WSSD) in Johannesburg, South Africa, in August/September 2002.

Mr Thabo Mbeki, who was the Deputy President of South Africa at the time, stated the following in his speech at the ceremony to symbolically hand over the successfully claimed land to the ǂKhomani San of the Southern Kalahari in 1999:

> *"What we are doing here ... is an example to many people around the world. We are fulfilling our pact with the United Nations during this Decade on Indigenous People."*[9]

The Land Claims Court

The Restitution Act also established a specialist court, the Land Claims Court, to adjudicate on land reform cases. Before the closing date for lodging claims, 31 December 1998, individuals or communities had a choice of bringing their claims either to the Land Claims Commission or to the Land Claims Court.

The Land Claims Court has had to decide whether the Khosis community, a Khoe-San community, could be given back its land, which now houses the Army Battle School of the South African National Defence Force (SANDF).[10] The Land Claims Court stated that, in deciding this question, the 'test' was whether a fair-minded and reasonable person would conclude that it was in the public interest that the land should or should not be restored to the community. The Court weighed up the national need for defence and an effective battlefield against the states' obligation to correct the legacy of apartheid on land dispossessions. It was decided that the land should not be restored due to the threat of loss of life, overhead missiles as well as military training in the vicinity of the land. The community was awarded 'equitable redress' in the form of alternative land.

Judge Bam AP differed with the majority of the judges at the Land Claims Court and stated that the socio-economic needs of the Khosis community had to be taken into account, bearing in mind that the community had co-existed with the Battle School since 1979. He also stated that the SANDF could acquire additional land adjacent to the Battle School. The judge also held that a human rights approach, as opposed to a robust approach, had to be adopted in such cases.

The settlement of the Richtersveld claim

On 14 October 2003, the Constitutional Court of South Africa decided to return land and mineral rights to the Nama people of the Richtersveld, a section of the Khoe-San people, whose dispossession began with the annexation of the land by the British Crown in 1847. This decision is

significant to the indigenous people of Africa, and, we hope, to those around the world as well. The claim went through the Land Claims Court, the Supreme Court of Appeals - which has the final say on issues that are not of a constitutional nature - and finally the Constitutional Court, being the highest court of the land on issues that have a bearing on constitutional rights. The right to claim restitution is protected in the terms of section 25(7) of the Constitution.

The Constitutional Court stated that the lack of recognition of the indigenous law of land rights of the Richtersveld people by the Cape Colony Government was racially discriminatory and resulted in their eventual forcible removal from the land and the loss of mineral rights, which were ultimately granted to Alexkor Ltd, a 100% state-owned company.

The Richtersveld people

The Court described the Richtersveld people as a distinct ethnic group, which is:

> *"[A] sub-group of the Nama people who in turn are generally considered by anthropologists to be a sub-group of the Khoi (also called Khoikhoi and, in former times, Hottentot) people. The Khoi are in turn seen as a sub-group within the larger category of Khoisan peoples, which include both Khoi and San* (Bushmen)."[11]

The Richtersveld people are said to have assimilated some San and some Baster people by the mid 19th century but the group as a whole is predominantly of Khoe-Nama descent. The Basters were people of mixed descent, mainly from European fathers and San or Khoekhoe mothers.[12]

The Richtersveld people occupied the whole of the Richtersveld, which was part of Little Namaqualand - as the area immediately south of the Gariep River in the northern part of the Cape Colony was called - at the time of annexation by the British Crown. They had lived there long before the Dutch arrived at the Cape in 1652 – they apparently practised pastoralism in the area as early as 700 AD.[13] The claim was, however, not for the whole of the Richtersveld but only for a narrow strip of land along the west coast from the Gariep (Orange) River in the north to just below Port Nolloth in the south.

The community considered the whole of the Richtersveld area to be their land, which they held collectively. They required outsiders to have the permission of the entire clan before being allowed to settle on the land. There is evidence that, as early as the 1800s, the community required outsiders to obtain permission before they could explore for minerals on the land[14].

The indigenous law of the Richtersveld people therefore regulated the entitlement of the entire community to the use and occupation of the land. The primary rule was that the land belonged to the community as a whole - all members were entitled to the reasonable occupation and use of all land and its resources held in common by them. These rights to use and occupation of land and natural resources were not available to outsiders, who had to obtain permission to use the land, often upon payment of a fee. The Court cited a number of examples to illustrate the fact that even the head of the clan – the *Kaptein* (Captain) - had to have the consent of the community *raad* (the tribal executive or council) before he could let the land to outsiders. Apart from regulating land issues, the Captain and his *raad* also mediated on internal disputes and acted as a court of law - adjudicating on criminal and civil matters. The *raad* also acted and spoke on behalf of the Richtersveld people in dealings with the colonial government and others.

The Richtersveld people were pastoralists with a semi-nomadic lifestyle. The Land Claims Court described this as follows:

> *"It is clear that there was a seasonal cycle in the movement patterns. In the dry, hot summers when livestock required water every day or two, the herders tended to graze their cattle where water was available along the banks of the Gariep River and at other secure water sources. In the winter, when the livestock were less water-dependent, the herders moved further afield to their winter pastures in the mountainous areas and in the sandveld so as to preserve the grazing close to their secure water sources for the summer."*[15]

There were, however, some San people in the Richtersveld in the late 18th century who practised hunting and gathering.[16] The *Trekboere*, descendants of European settlers, only started settling in the Richtersveld area during the second half of the 19th century. They did so, however, with the permission of the Richtersveld *raad* and subject to the payment of grazing fees. This was a practice consistently followed well into the 20th century. Apart from regulating grazing land, the Richtersveld people also regulated the exploration of minerals on the land, reserving the right to grant or refuse mining leases.

Indigenous law

The Constitutional Court decided that the nature and content of the rights of the Richtersveld community before annexation by the British Crown had to be determined in accordance with the indigenous law of the community at the time. In upholding their indigenous law of land rights, the Constitutional Court agreed with the Privy Council decision that:

> *"A dispute between indigenous people as to the right to occupy a piece of land has to be determined according to indigenous law "without importing English conceptions of property law."*[17]

While the British Crown had the power to extinguish the land rights of the Richtersveld community when it annexed their land in 1847, the Constitutional Court however found no evidence of such extinguishment. The Court decided therefore that the land and mineral rights of the community survived annexation.

Mineral rights

While the (British) Cape Colony government left the Richtersveld community to live on the land according to their indigenous law undisturbed for many years, the discovery of alluvial diamonds on their land led to a number of laws being passed to restrict their rights. The Union of South Africa was formed in 1910 as a British colony. It passed the Precious Stones Act of 1928, which did not recognise the rights of the Richtersveld community as the owners of land under indigenous law because their rights had not been registered in the deeds office. This law regarded all land that was not registered in the deeds registry to be unalienated Crown land.

The indigenous law of the Richtersveld Community did not recognise private ownership of land. The Precious Stones Act of 1928 made the continuous occupation and use of the land by the Richtersveld community illegal. The Union of South Africa Parliament passed a resolution on 1 June 1926 establishing the Richtersveld Reserve for use and occupation by the Richtersveld community. The Reserve was half the size of the land that the community had initially had access to and excluded the mineral-rich land, which was later transferred to Alexkor Ltd, a 100% state-owned company set up to exploit minerals on the land.

The Precious Stones Act of 1928, which was passed in 1927, was used by the state from 1928 onwards to force the Richtersveld community to leave the claimed land. The law restricted them to the Richtersveld Reserve. The state was able to do this since the community did not have title deeds to prove that they had owned the land from which they were being forcibly removed when being restricted to the Richtersveld Reserve.

When deciding on the claim by the Richtersveld community, the Constitutional Court held that the Precious Stones Act of 1928 was racially discriminatory because it failed to recognise the indigenous law of land ownership of the Richtersveld people in favour of private ownership of land, which was practised mainly by white people. This was especially in light of the fact that:

> *"Indigenous law ownership is the way in which black communities have held land in South Africa since time immemorial, the inevitable impact of the Precious Stones Act's failure to recognise indigenous law ownership was racially discriminatory against black people who were indigenous law owners. The laws and practices by which the Richtersveld Community was dispossessed of the subject land accordingly discriminated against the Community and its members on the ground of race."*[18]

The Constitutional Court, while substantially confirming the decision of the Supreme Court of Appeals (SCA), held that the Richtersveld people had the right of ownership of the land they were claiming under indigenous law, which included the rights to minerals and precious stones and not under the common law of ownership as decided by the SCA.

Conclusion

The Constitution of the democratic government in South Africa has developed a framework that makes it possible for all people, including the Khoe and San people, to claim restitution of their rights to lands - including natural resources - that were dispossessed as a result of racially discriminatory laws and practices. The Constitution also lays the foundation for institutional arrangements to give effect to the right to claim restitution – both the Land Claims Commission and the Land Claims Court owe their existence to section 25(7) of the Constitution.

The significance of the Richtersveld decision lies in its recognition of the land and mineral rights of indigenous people based on their indigenous law of land use and occupation. By recognising this indigenous law, the Court has dispensed with the inferior status with which such laws were usually viewed by colonial governments and, sometimes unwittingly, by post-colonial states. The Constitutional Court decided that indigenous law is now an integral part of South Africa law, subject to it being consistent with the Constitution and not the common law – which is often based on colonial values and systems.

While some in South Africa may not welcome the Richtersveld decision, especially in relation to mineral rights - due to the current state policy and draft law to vest all minerals in the state - the decision is good for constitutional democracy. Everyone, including the state, has to respect the decisions of the courts, especially when interpreting the highest law of the land – the Constitution of the Republic of South Africa Act 106 of 1998.

It is hoped that other governments in Africa, including those in the sub-region of the Southern African Development Community (SADC), such as Botswana, will follow the precedent set by South Africa and respect the land and mineral rights of the Khoe and San people – based on their indigenous law. The systematic removal of the San people from the Central Kalahari Game Reserve in Botswana flies in the face of good precedents set by the South African government. It has been proved, with the settlement of the ‡Khomani San of the Southern Kalahari, that the establishment of game reserves does not have to be at the expense of the indigenous people. The 'contract park' arrangement at the Kalahari Gemsbok National Park is a good example of conservation that is mutually beneficial to both state and indigenous people[19].

It is hoped the following words of President Thabo Mbeki at the opening of the South African Parliament on 25 June

1999 will set an example to the rest of Africa and other parts of the world:

"The promotion and protection of the cultural, linguistic and religious rights of all our people must occupy a central place in the work of the government. It should not happen that anyone of us should feel a sense of alienation. Whatever the sickness of our society, none should be driven to levels of despair which drive them to a peripheral existence at the fringes of the mainstream. Nor should we allow that those who were denied their identity, including the Khoi and the San, to continue to exist in the shadows, a passing historic relic and an object of an obscene tourist curiosity. We consider the work of restoring the pride and identity of all our people of vital importance to the task of advancing the human dignity of all our citizens and ensuring the success of our efforts towards national reconciliation and nation building."[20] ❑

Notes

1 James Suzman, *An Introduction to the Regional Assessment of the Status of the San in Southern Africa*, © 2001 LAC, Suzman *An Assessment of the Status of the San in Namibia*, © 2001 LAC, Crawhall, Nigel, *Written in the Sand* 2002; SASI and UNESCO, 6, Tong, Maureen *Lest We Forget: The Restitution Digest on Administrative Decisions* 2002 Commission on Restitution of Land Rights.

2 The President of Namibia, Mr Sam Nujoma, acknowledges the San as the 'original inhabitants' of Namibia. See Appendix A Speech by the Namibian President Sam Nujoma at the Regional Conference on Development Programmes for Africa's San/ Basarwa Populations, Windhoek 16-18 June 1992 as reprinted in Suzman *An Assessment of the Status of the San in Namibia*, © 2001 LAC, 155.

3 There have recently been very positive developments at the African Commission on Human and Peoples' Rights (ACHPR) in opening the debate on the issue of indigenous people in Africa. This began with the adoption by the ACHPR of the *Resolution on the Rights of Indigenous Populations/Communities*" at its 28th Ordinary Session held in Cotonou, Benin in October 2000. The said resolution established the Working Group of Experts on the Rights of Indigenous Populations/Communities in Africa with the mandate to:

- Examine the concept of indigenous populations/communities in Africa;
- Study the implications of the African Charter on Human and Peoples Rights on the well being of indigenous communities;
- Consider appropriate recommendations for the monitoring and protection of the rights of indigenous populations/communities.

The ACHPR adopted the Conceptual Framework Document drafted by the Working Group of Experts during the 34th Ordinary Session of the ACHPR held in Banjul, the Gambia, from 6-20 November 2003. The ACHPR also extended the mandate of the Working Group of Experts to include the promotion and protection of the rights of indigenous populations/communities in Africa. The new terms of reference for the Working Group are, with support and cooperation from interested Donors, Institutions and NGOs, raise funds for the Working Group's activities relating to the promotion and protection of the rights of indigenous populations/communities in Africa; and

- Gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous populations and their communities and organisations, on violations of their human rights and fundamental freedoms;
- Undertake country visits to study the human rights situation of indigenous populations/communities;
- Formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Submit an activity report at every ordinary session of the African Commission;
- Co-operate when relevant and feasible with other international and regional human rights mechanisms, institutions and organisations.

4 Constitution of the Republic of South Africa Act 108 f 1996.

5 South African San Institute (SASI), *Language Rights for Marginalised Constituencies in South Africa: A User's Handbook*, Results of a Language Rights Workshop, © SASI 2000, 27

6 Welsh, Frank, *A History of South Africa*, 2001 Harper Collins, 77.

7 Tong, Maureen, *Lest We Forget*, 4

8 Ibid, XIII.

9 Quoted in IWGIA, *Indigenous World 1999-2000*, 373 and IPACC, *Annual Review November 1998 – October 1999*, 2, and Tong, Maureen *Lest We Forget*, 3.

10 *Khosis Community (Lohatla) v Minister of Land Affairs.*

11 *Richtersveld Community and Others v Alexkor Ltd and Another* 2003 (6) BCLR 583 (SCA) at paragraph 16. The case was decided on 24 March 2003.

12 Ibid, paragraph 17.

13 Ibid.

14 *Alexkor Ltd and Another v Richtersveld Community* http://www.concourt.gov.za/files/alexkor/alexkor/pdf paragraph 61.

15 *Richtersveld Community and Others v Alexkor Ltd and Another* 2001 (3) SA 1293 (LCC) paragraph 58.

16 *Richtersveld Community and Others v Alexkor Ltd and Another* 2003 (6) BCLR 583 (SCA) paragraph 21.

17 Ibid at paragraph 50 referring to the case of *Oyekan and Others v Adele* [1957] 2 All ER 785 at 788G- H.

18 *Alexkor Ltd and Another v Richtersveld Community* http://www.concourt.gov.za/files/alexkor/alexkor/pdf paragraph 94.

19 Internationally, it is hoped that other governments, such as the British government, will follow the example of South Africa in its dealings with indigenous people within their territories. The outcome of the court case concerning the Ilois people of the Chagos Archipelago is unfortunate. The restitution process in South Africa guarantees the right to claim the return of the land (restoration) or equitable redress for those dispossessed of rights in land since 1913. The continued forced exile of the Chagossian people due to the US military base on their homeland violates the human rights of the Chagossian people. It is also not consistent with norms and standards developed in international law.

20 Quoted in Tong, *Lest We Forget*, 3.

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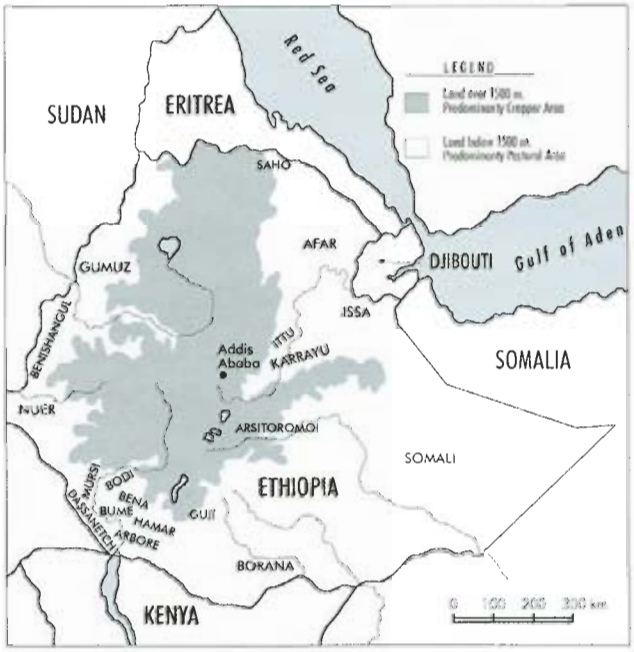
THE MARGINALIZATION OF PASTORAL COMMUNITIES IN ETHIOPIA

Melakou Tegegn



Livestock is the lifeline of pastoral communities and animals are well taken care of - pastoralists in the Somali region. Photo: Pastoralist Concern Association of Ethiopia (PCAE)

Borana women performing traditional female dance during the Pastoralist Day, 2004. Photo: Melakou Tegegn

A group of young people performing traditional male dance during the Pastoralist Day 2004. Photo: Melakou Tegegn

Like many countries in Sub-Sahara Africa, Ethiopia is multi-ethnic, multi-religious and, therefore, multi-cultural. The modalities of interaction and relationships between the various ethnic and cultural groups was for too long determined by Ethiopia's traditional polity and by the system of mal-governance that passes as the post-war 'modern state'. Both the dominant traditional polity, as well as the post-war governments, did not recognize the country as a unity in diversity. This led to dominance by one and/or two ethnic groups and the marginalization of the rest. A policy of national oppression, i.e. a systematic policy of segregation and subjugation on the basis of ethnicity, followed in the wake of such dominant/dominated relationships. This, in turn, caused several forms of ethnic conflict that wrecked the country for too long, accounting mainly for massive poverty and under-development nation-wide. This article intends to highlight the political marginalization of pastoral communities in Ethiopia against the background of ethnic and cultural heterogeneity.

Pastoralists in Ethiopia

Pastoral communities constitute roughly 10% of the Ethiopian population. Inhabiting mainly the peripheral areas of the country, Ethiopian pastoralist communities live in areas characterized by harsh environmental and climatic conditions. The main pastoral communities are the Somali, Afar and Borana living in the south-east, southern and north-eastern parts of Ethiopia. There are also smaller pastoral as well as agro-pastoral communities such as the Hamer, Arbore, Dassanech, other Omotic communities in the South, Kereyu in the east and Nuer in the west. In terms of area, these pastoral communities live on 61% of the country's landmass.

In terms of ownership of the country's livestock, the pastoral communities are believed to own the most. It is believed that the largest concentration of domestic herds in Africa is found in Ethiopia. Of the total number of livestock in Ethiopia, it is estimated that 40 per cent of the cattle, 75 per cent of the goats, 25 per cent of the sheep and 100 per cent of the camels are under pastoral communities. Some of the biggest rivers in the country such as the Genale, Wabe Shebelle, Omo, Baro Akobo, Abay, Tekeze and Awash run through areas inhabited by pastoral communities. Almost all the National Parks are situated in pastoral areas (Arsano, 2:2000). Despite such actual and potential economic resources, pastoral communities live in abject poverty, being exposed to periodic famines, and are marginalized politically and socially. Large tracts of pastoral grazing land was literally confiscated and made into large reserves for wildlife parks. In addition, more lands have been taken from pastoral communities through various machinations, for the sake of commercial cotton farms.

Political marginalization

As elsewhere when indigenous people are being marginalized, Ethiopian pastoralists are marginalized primarily due to the prevalent political structure which, in turn, is a reflection of the modalities of state-society relationships in Ethiopia. The historical roots of the state-society relationship continuum that prevailed in the regimes of the so-called "modern state" date back to the period of colonization and the scramble for Africa. That was when the Ethiopian state established its autocratic hegemony over the territories it acquired through negotiations and agreements with expanding colonial powers. This resulted in the hegemonic role of the dominant ethnic groups, the Amharas and Tigreans, and the subjugation of the rest.

Pastoralists inhabiting mainly the peripheries of Ethiopia are among those affected by the consequences of these arrangements. Most of the pastoral areas were divided by these artificial arrangements, from the Beni Amer of Sudan-Eritrea to the Nuer of Sudan-Ethiopia, from the Boranas of Ethiopia-Kenya to the Somalis of Kenya-Somalia-Ethiopia and the Afars of Ethiopia-Eritrea and Djibouti. Indeed these arrangements posed a unique problem to pastoralists who were divided by the artificial divisions. This also lent itself to a proliferation of conflicts in the Horn as a whole, as ethnic undercurrents surfaced in a number of these areas.

These arrangements have also caused additional problems to pastoralists. On top of the division of their communities, pastoral land was either taken away from them by the new "conquerors" or reserved for game parks by the state. This caused enormous problems to pastoralists as it exacerbated their economic marginalization. One of the factors that contributed to the various conflicts in pastoral areas is precisely this marginalization at the level of access to resources. In some agro-pastoral areas, communities have been transformed to landless labourers working for absentee landlords, as the communal pattern of land ownership by pastoralists was replaced by a new land tenure system that brought the feudal system of land ownership, tenure and production.

Economic marginalization gave way to cultural marginalization. As the ruling ideas at any given point in time are the ideas of the dominant groups, the dominant groups advanced constructions such as that which depicts the pastoral way of life as uncivilized and even barbaric. The construction of pastoralism as uncivilized passed from generation to generation only to become a stereotype. The Amharic word *zelan*, meaning nomad, is literally an insult to mean uncultured, mannerless and unruly according to these stereotypes. This construction in turn serves a purpose. The purpose is to rationalize the dominance of the landed gentry and its 'civilizing mission'. Because pastoralism is considered uncivilized and backward, it goes without saying that it needed to undergo changes, to be 'civilized'. This kind of mind-set has

caused incalculable harm as it has tried to deprive pastoralists of their cultural identity, their language and even their religion. Instead, the official language, Amharic, was imposed on them. Those who did not speak Amharic had no access to public education, jobs or even to legal defence in courts.

This situation prevailed in the country up until 1991 when the military regime was overthrown. The fact that this repressive situation lasted for so long also had its own drawbacks as pastoralists focused too much on external factors and less or almost not at all on internal dynamics. Democratic or progressive undercurrents did not penetrate pastoral communities to enable them to look inwardly as well. Consequently, the attitude towards gender relations and other traditional relationships has been kept intact, unchanged and uninfluenced. As such, the most brutal forms of violence against women that take place in the form of genital mutilation still occur in some pastoral communities such as the Afar and Somali. Pastoral communities are still not looking inwardly because their need to respond to external factors, directly or indirectly, overtly or covertly still preoccupies them.

Federalism exacerbates marginalization

Although the state system in Ethiopia has changed a great deal, the plight of pastoralists still prevails. The state system in Ethiopia now is that of a federation of ethnic-based regional governments. The federal arrangement gives exclusive powers to regional governments over matters of internal affairs, including development planning. However, this has exacerbated the political marginalization of pastoralists as the plight of pastoral communities is left entirely to "their" regional governments. The regionalization of the state system, i.e. the federal arrangement, was decided to the complete exclusion of wider civil society. Civil society had no role in electing its own leaders, as elections in Africa are normally foregone conclusions. Those who rule pastoral areas today are not elected in the proper sense of the term. The rulers are all those who are favoured by the ruling party.

There is no problem with a federal form of state whatsoever. The problem with the Ethiopian version is that it is replete with so many problems, first and foremost because it is projected from the perspective of an extreme form of ethnic politics, which puts ethnicity at the center of everything.

A major problem is the uneven distribution of skilled human resources. Traditionally, ethnic groups other than Amharas and Tigreans have been marginalized from modern education. Over past decades, pastoral areas have been completely marginalized in terms of access to public education. As the new federal arrangement is constructed, the ethnic regions should be governed by people of their own ethnic group, and this poses serious problems in terms of getting educated and qualified leaders in these regions. Furthermore, the official policy of the federal government is that political and administrative appointments are made on the basis of political loyalty and not on the basis of qualification. The combination of these two factors has made it very difficult for the marginalized regions to get educated and qualified administrators from their own ethnic groups. For instance, the current head of the Afar administrative region, by his own recent public admission, has not even completed grade five.

What counts in appointments is loyalty to the ruling party. A consequence of such a policy is the fact that corruption and embezzlement of public funds has become the norm in pastoral administrative regions. Administrative regions such as Somali, Afar, Gambela and Oromia are well known for corruption and outright embezzlement of public funds (see Reported Cases of Corruption, Panos: 1999). These state structures and state systems, and the ethnic as well as the loyalty-before-qualification rationale for appointment, have in effect aggravated the marginalization of pastoralists as they have now become prey to officials who rule them on their behalf.

In daily life, outright political repression is again the norm in pastoral administrative regions. In a country where the constitution grants full rights to political participation on the part of political parties as well as civic groups, the rulers in the various regions tolerate no political expression. That is why political expression in the pastoral regions takes the form of political or even armed violence. Regional rulers have become tyrants who tolerate no dissenting views let alone expressions of opposition. They rule without any accountability whatsoever; no state institutions oversee them, not even the federal government, which gave them enormous powers in the first place. Tyranny, corruption, embezzlement, violation of the rule of law, violence against civil society, destruction of the environment, and abduction of women are rampant and go unchecked. This is the gloomy picture of pastoralist administrative regions today.

Biased development policies

Central government does not have a policy of pastoral development at all. Instead, the government's perceptions of development in general, and its strategy for what it called "backward regions" as well as pastoral regions is to intensify agricultural development, with sedentarization as the thrust of its perception and strategy of development. The regional authorities are pursuing a similar policy, grossly undermining pastoralism as a way of life and discounting pastoral livestock production. As the prevailing policy of the state and regional authorities is alien if not hostile to pastoralists, the relationship between pastoral communities and regional authorities is not that of coop-

eration and understanding. The structure of authority in rural areas is minimal if not absent as it is the government's policy not to be involved in development work in pastoral areas unless the pastoralists are settled. Pastoralists have no mechanism for promoting their interests within the system nor is there any administrative structure set up for them by the authorities.

The dominant discourse and pastoralism

It is high time indeed to go beyond explaining pastoral marginalization as such and to cross the Rubicon in order to delve into the evolution and construction of the prevailing "world view", the "dominant discourse" on development of relevance to pastoralism. For the dominant discourse is an expression of the prevalence of market globalization.

The prevalence of market globalization in the contemporary world has a long and brutal history and evolution. The market system has systematically undermined and destroyed other knowledge systems in order to achieve its hegemony.

What is more tragic is that, with the process of decolonization, the 'nation-state' in the South, tied in so many ways to the colonial powers, which have now become neo-colonial powers ruling from behind, had unquestionably taken for granted the notion of development as defined by the dominant discourse. By surrendering to the dominant discourse, the South has accepted the Northern (Western) knowledge system as the knowledge system, its notion of development as the only definition of development, and that development is synonymous with modernization, with Westernization and 'marketization'. Other knowledge systems are considered backward, unscientific and subject to disappearance, to be replaced with the Western knowledge system and civilization.

It is this notion of civilization and development that informs the dominant discourse. How pastoralism is viewed within this discourse may not come as a surprise. The theory of the 'tragedy of the commons' is just one aspect of how pastoralism is viewed in the dominant discourse.

The dominant discourse, being a Western discourse, has nothing to say on pastoral development or accumulation based on pastoral livestock production. It is simply not in the 'holy books'. Not Adam Smith nor any classical economist, not even the champions of neo-liberal economics have ever written about it. The dominant discourse and the 'holy books' simply do not recognize it. On the contrary, pastoralism has been condemned to extinction. No wonder then that a production system condemned to extinction 'cannot become a basis for accumulation'. However, pastoral accumulation is not only a possibility but can even be more feasible and contribute more to the national economy than other traditional economies in the concrete situation of Ethiopia if equal attention is paid to its development and if it is accorded the necessary support it deserves, particularly at the macro level. A conducive policy environment, backed up by implementation of concrete government measures, is a crucial link to the process of pastoral accumulation. In other words, pastoral accumulation needs attention and support similar to that which the farming community is accorded.

The feasibility of pastoral accumulation can be ascertained by the potential of pastoral livestock production. In the first place, Ethiopia has the largest number of livestock in Africa. It is only common sense that policy makers should bank on what the country has in its own hands in order to develop the national economy. It is a paradox of immense proportions for Ethiopia's policy makers to devote efforts and resources to making crop cultivation agriculture the sole source of accumulation and of industrialization as a whole while completely neglecting the pastoral livestock production system, even in the face of the insistence of experts and development practitioners. What makes this paradox all the more incomprehensible is the fact that the crop cultivation sector has become extremely precarious as a result of persistent drought, land parcelization and environmental degradation. What would have made sense on the part of Ethiopia's policy makers would have been to bank on pastoral livestock production and design a strategy of growth. Herein lies the issue of pastoral accumulation, whose strategy should focus on livelihood diversification and putting a livestock marketing mechanism in place.

Double-edged marginalization

As in most cases, political marginalization on the part of pastoralist communities was preceded by forcible eviction from their land and/or restriction of their movements. In a multi-ethnic setting such as Ethiopia, where the domination of one or two ethnic groups prevailed within the traditional and modern polity, the political marginalization of pastoralists, who are of marginalized ethnic groups themselves, occurs as a result of pursuing a policy of ethnic domination or national oppression, if you will. In such cases, pastoralists are faced with a double-edged marginalization: firstly as one of the dominated ethnic groups and secondly as pastoralists.

The marginalization pastoralists face as pastoralists is much more severe than the national oppression that other dominated ethnic groups face. Other ethnic groups may suffer from being excluded from running their own affairs, unable to use their own language in schools and at work, compelled to adopt the languages of the dominant ethnic group/s, and suffering culturally. As sedentary and farming communities they were not required to change their mode of life, their production systems and way of life in general. However, when it comes to pastoralists, their very way of life is considered a problem because, in the eyes of the dominant forces, pastoralism constitutes a way of life unsuitable for modernization

As far as pastoralists' participation in decision-making processes goes, both at the macro and local level, the situation is more frustrating. The fundamental contradiction here is that the Northern (Western) notion of nation-state and the pastoralist traditional decision-making pattern seem to be incompatible. Incompatible because the 'nation-state' in Africa opted to impose the notion and practice of a modern state on pastoralist communities with no respect for traditional systems of governance and authority. On top of that, the function of the African state as coercive rather than persuasive, corrupt rather than transparent, tax collector and embezzler rather than developmental, repressive rather than democratic, all smacks of being alien to pastoralists. Hence, the pastoralists' perception of the state as alien and their reciprocal hostility towards it. As a result, whatever the state stands for is viewed by pastoralists with suspicion.

Good governance – the African way

It is indisputable that the record of the African state in development and governance is one of failure. A number of institutions, from local academics to the 'brains' of the World Bank/IMF, have been engaged in numerous projects to change this direction. Unfortunately, as the current reality of the continent reveals, poverty, famine, instability and conflict have become its hallmarks not to speak of *les damnés des la terre*, from the city of the dead in Cairo to the slums of Soweto and from stateless Somalia to staggering Sierra Leone and Liberia; those who perish like flies in Ethiopia by famine, the homeless who eke out a 'living' in the cities of the continent, those who die in their thousands from AIDS, malaria, and so on. The African state has not yet solved any of these fundamental problems. On the contrary, it seems that these problems have been aggravated as a result of perennial power struggles between politicians.

If this is the record of the African state after forty years in power it is indeed high time to question the very validity/relevance of the Western notion and experience of the modern state that was inherited from the colonial state. Can Africa not have its own form of state, governance, etc...? Be that as it may, one incontrovertible fact, however stands out starkly: the exclusion of African 'civil society'! African 'civil society' has, since independence, borne the brunt of all these crises and fundamental problems gripping the continent. The state has always been the sole actor since the dawn of independence (euphemistically referred to as 'political' independence) in decision-making and the development process. In view of the failure of the African state as stated above, it is indeed high time to question the *raison d'être* of the African state and highlight the necessary role of 'civil society'. It is in this vein that we raise the issue of good governance.

There is now a universal agreement that social development is impossible without the popular participation of civil society in the process. This is indeed a challenge to the African state, which has put obstacles in the political, economic, social and cultural paths of civic participation.

The Ethiopian federal system is an excellent prototype of what good governance is not. The Ethiopian constitution probably grants the most liberal rights, next to that of South Africa. However, the gulf between the constitution and practice is so wide that it has prevented civil society from independently participating. First, according to the government's ethnic policies, what is being encouraged is the building of regional/ethnic institutions whilst multi-national and countrywide institutions are being systematically discouraged. Federal state institutions that are crucial to the functioning of a federal government are not being put in place either. On top of this, even government institutions are bypassed by party structures and institutions. The result is an absence of state institutions that are supposed to be permanent, irrespective of which party/government is in power. The consequence of this state of affairs on pastoral regions is enormous, as the rule of law is non-existent and increasingly becoming irrelevant. Under the previous regime, pastoralists as well as peasants used to send elders to the capital seeking redress. It is pointless and irrelevant to do this under the federal arrangement now, as they have "their own governments".

Mutual recognition

If there is anything that passes as an important lesson to be drawn from the experience of the rule of the African state, it is that the need for mutual recognition between state and society in general has been completely neglected. The African state took upon itself the mantle of 'leadership' solely by itself, on behalf of society. The experience from the role of the African state clearly shows that this go-it-alone approach on the part of the state has resulted in ignominious disaster, both politically and economically. The African state has so far been 'imitating' the nation state in the West as a 'vehicle of development', with complete disregard for the role of civil society in the West, its relationships with the state, the social contract, and so on. Thus this imitation has focused on the forceful aspect of the state and not on the regulating one, which is the decisive element in the development and as well as the political process in the West.

Without further ado, we can say that the African state must recognize the crucial role of civil society in the development and political processes. In fact, it is also a rightful role, which civil societies across the continent are fighting for. Unless they achieve this right and recognition from the state, the chances of success for social development and political stability are indeed gloomy. On the other hand, civil society must also recognize the necessary role of the state. There can be no dispute over

this. Achieving this role depends on whether or not the state assumes a regulating role as opposed to a dictating one. In other words, the state needs to cultivate legitimacy through its regulating role and recognition of the rightful role of civil society.

In good governance, the relationship between state and society is not static but dynamic, involving good natured measures such as the state encouraging civil society to take part in the development process and civil society actively cooperating with state organs in various development undertakings.

An important component of the concept and practice of good governance is transparency and dialogue with civil society. Cooperation between state and society, particularly at the level of macro-economic policy formulation, is fundamental. In the African experience, the state formulates policies and society pays not only the cost of implementing them - ill-conceived as they are in most cases - but also bears the brunt of their negative consequences. This makes the need for the active participation of civil society in policy formulation all the more crucial.

Conclusion

What we have presented in this article is thought provoking. The many issues we raise require volumes of work to discuss them exhaustively. If the concept and practice of good governance has to conform with pastoralism in Africa, however, there are certain radical policy approaches that need to be considered by the powers that be. Firstly, in as much as modernity has not effectively replaced traditional livelihood systems and/or has not provided the solution for problems of development of traditional societies, traditional livelihood systems are still viable and should be recognized as such. The problem in Africa is that the African state only recognizes the crop-cultivating system as a viable way of life, not pastoralism. The first step forward in relating good governance to the African condition is to recognize pastoralism as a way of life and as viable as any traditional economic systems and to stop equating pastoralism with a mere traditional livestock production system.

Secondly, the Ethiopian government must recognize that, insofar as it considers the crop cultivating sector as part of the national economy and even calculates it in its GDP, the livestock wealth in the hands of pastoral communities must also be considered as part of the national economy. This recognition will lead to the support that pastoral livestock production systems needs from the government in order to be incorporated into the national economy. Ethiopia is said to have the largest number of cattle in Africa. And yet, is pastoral livestock production considered a part of the national economy? Does it get any support, as the farmers do, from the numerous extension packages?

Thirdly, good governance implies a democratic relationship between state and society and the establishment of a democratic political structure. In pastoral societies, this particular relationship suffers a great deal, as the local authorities are invariably authoritarian and the political structure is democratic only on paper.

In a nutshell, pastoralism and pastoral development require a fresh approach. After forty years of efforts to 'develop' pastoralists, mainly by converting them to a sedentary lifestyle, it is now essential to recognize the magnitude of the failure of this approach and to embark on a radical and revolutionary policy. The litmus test to this seriousness would be the establishment of a pastoral ministry or pastoral authority separate from the ministry of agriculture or any other. ❑

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Young Maasai men from Ngorongoro. Photo: Frans Welman

Maasai women repairing roof, Ledonido. Photo: Frans Welman

Maasai women milking cattle in the kraal, Ngorongoro. Photo: Frans Welman

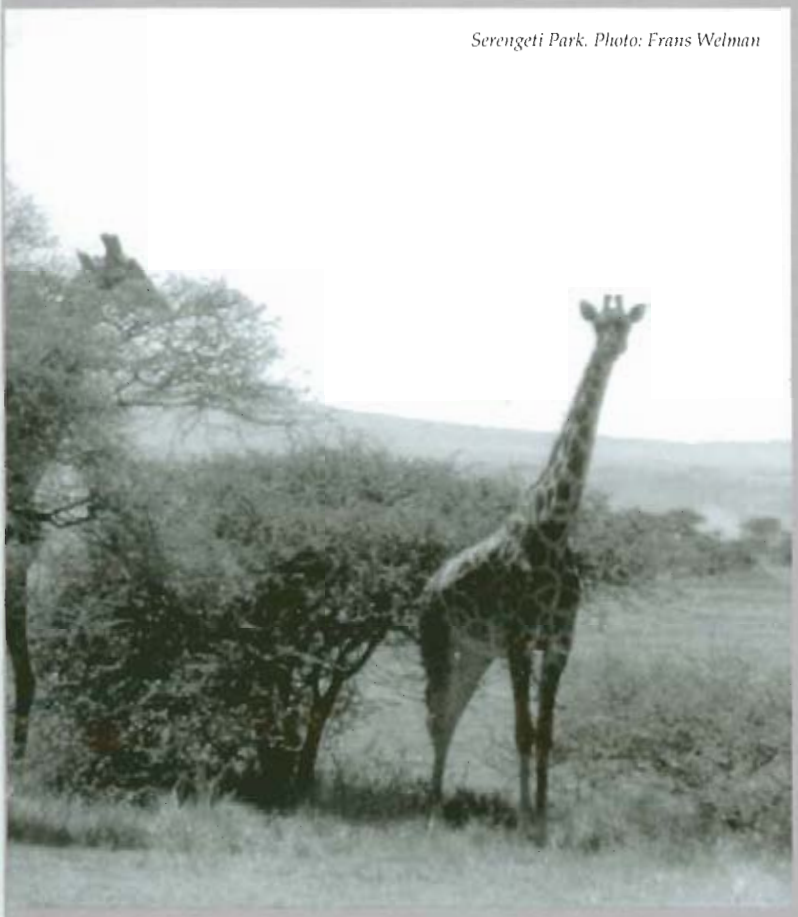
RIGHTS TO LAND: THE CASE OF THE MAASAI OF TANZANIA

Benedict Ole Nangoro

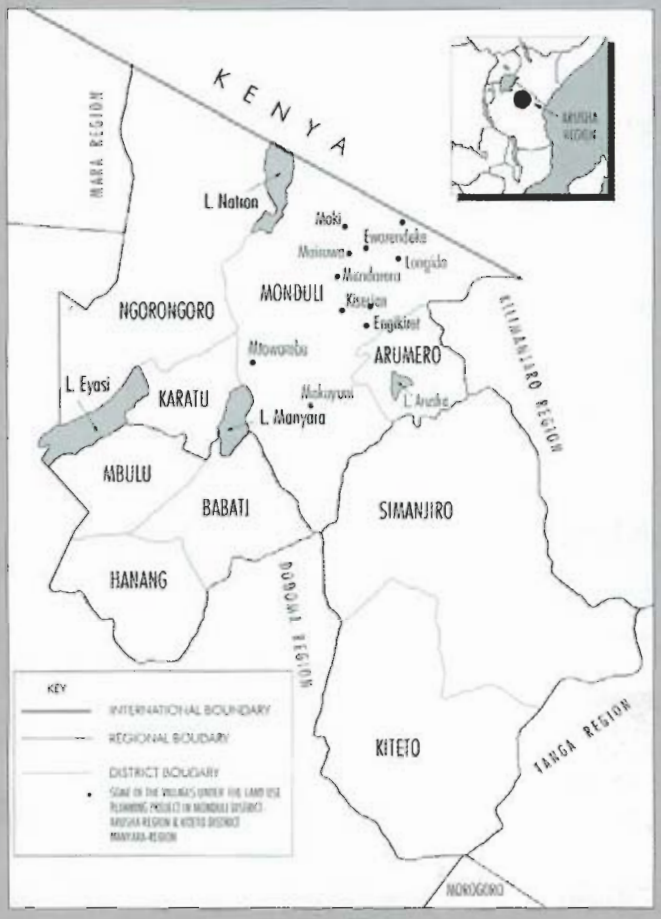
Prior to 1885, the indigenous land tenure system in Tanzania was organised around ethnic nations, with each ethnic community occupying a territory of its own. Various social indigenous institutions regulated access to, and use and management of specific lands and resources. After the Berlin Conference and the subsequent colonisation, sovereignty and property merged into one entity. On 26 November 1886, the German Administration issued a decree declaring all land in Tanzania to be Crown land (Herrenlos Kronland) and, in 1895, the Imperial Land Ordinance stipulated that a registry certificate was the only proof of title to land. This was the beginning of an imposition of Western models, patterns and values of land ownership in Tanzania.

When Germany was defeated after the First World War, Tanzania (then Tanganyika) became a British territory under the League of Nations and, in 1923, the British Administration introduced the Land Ordinance (1923) that governed and regulated access to land in Tanzania.

Although the Land Ordinance of 1923 was influenced by the land law of Northern Nigeria, the basic structure, concepts and legal definitions of tenure were all modelled on British property law. Under the British, the settlement of land-related conflicts took place in courts of law, placing conflict resolution on land mat-



Serengeti Park. Photo: Frans Welman



ters outside indigenous social structures and institutions. The law declared all land in Tanzania to be public, and vested in the Governor as the trustee of all the territory's subjects. In 1926, the British Administration introduced development conditions that were attached to land titling and, in 1928, rights to land were classified into two categories: granted and redeemed (customary) rights of occupancy.

At independence in 1961, Tanzania adopted the Land Ordinance of 1923 as the basis of land legislation and the word **governor** was replaced with the word '**president**'. The structure, spirit and administration of land laws remained basically the same until 1999, when the Land Act 1999 and the Village Land Act 1999 were enacted by Parliament.

Following increased land use conflicts, violence and threats to social stability in some parts of the country, a Presidential Commission of Inquiry into Land Matters was formed and chaired by Professor Issa Shivji. The commission started its work in 1991, finalising and presenting its report in January 1993. It held a total of two hundred seventy-seven (277) meetings involving more than eighty thousand (80,000) people. The commission's report was in two volumes and some of the key recommendations of the Shivji Commission included:

- Vesting root title for most of the lands in the respective village communities; and
- Removing land administration from the Executive and placing it in the hands of an autonomous Land Commission.

The commission was forceful in recommending that land administration should be de-linked from the Executive, and that rural communities should own, control and manage their own lands.

Current national land policy and legislation

In August 1995, Tanzania formulated a National Land Policy that paved the way for the Land Act 1999 and the Village Land Act 1999. According to the National Land Policy (NLP), *"All land in Tanzania is public and it is vested in the Presidency as a trustee on behalf of all citizens"*[1]. In principle, the legislation stipulates that all land other than village lands should be administered by the Commissioner of Lands on behalf of the President.

In brief, the National Land Policy (1995) established core principles around which subsequent land acts were built. These included: recognition that all land in Tanzania is public and vested in the President as the trustee on behalf of all citizens; recognition of the long-standing occupation or use of land by the majority of Tanzanians as customary title according to law; facilitation of equitable distribution of and access to land by all citizens;

setting of ceilings on the amount of land that any one person or corporate body may occupy or use; ensuring that land is used productively and that any such use complies with the principles of sustainable development; taking into account the fact that land interests have value and that value is taken into consideration in any transaction affecting land transfers, acquisitions or any other interests in land; and paying full, fair and prompt compensation to any person whose right of occupancy of land is revoked.

The policy and legislation sought to provide for an efficient, effective, economic and transparent system of land administration. According to the land policy and legislation, land in Tanzania is classified into:

- General Lands
- Village Lands
- Reserved Lands

Administration and management of land

Several authorities have been mandated to manage land matters at different levels. The distribution of powers and roles of the different institutions, according to the Land Act and Village Land Act 1999, is as follows:

Institution	Mandate/powers/roles
President Minister of Lands	• Trustee on behalf of citizens of all land in Tanzania • Can revoke rights of occupancy • Can acquire the land for public interests • Assists the President and oversees the Commissioner on Land Administration
Commissioner of Lands	• Principle administrative officer on land matters • Assists the president in implementing the land laws • Can delegate functions to persons or institutions • Plays a key role in decisions regarding land allocation
District Councils	• Assist in advising appropriate institutions on land and management decisions
Village Councils	• Manage Village lands on behalf of Village Assemblies • Receive and determine applications for land • Allocate village lands after approval from Village Assembly • Grant Certificates of Occupancy and derivative powers
Village Assemblies	• Oversee management of village lands by village councils • Approve outstanding village adjudication
Village Adjudication Committees	• Mark land boundaries • Determine interests of people on land • Settle disputes arising from adjudication process • Report to the village council
Village Land Councils	• Settle disputes over land matters on village lands

Source: Land Act No.4 and Village Land Act No. 5 (1999)

The model of land tenure in Tanzania is a lease form in which the state owns lands and citizens are tenants of the state.

Villagisation

One of the biggest government interventions in the pastoralist areas of northern Tanzania was the Ujamaa villagisation programme, in which more than thirteen (13) million Tanzanians were moved into Ujamaa villages.

In the pastoralist areas, this involved moving people into large but often loose village groupings and such groupings regulated access to, and control and management of natural resources. Neither the administrative structures nor the new forms of resource management patterns reflected indigenous patterns of resource ownership, use and management.

The Ujamaa Villages Act of 1975 created village councils as new corporate entities with legal identity and the power to regulate access to and control over land resources. Such powers of village governments did not bother to explain from where such village councils got the land.

Village structures and village leaders became very powerful, and abuse of office became a serious problem, with some village leaders colluding with corrupt district and regional officials to give substantial land resources to outsiders.

The villagisation programme marked an important phase in the Maasai social, economic and political transformation in Tanzania. It relocated the Maasai settlements into semi-permanent villages throughout Maasailand, except in the dry areas of Makami, Engaruka, Sale and Olokii.

Whereas some pastoralists saw the villagisation programme as giving them legal rights over their natural resources, others saw it as something that opened their lands to all Tanzanian nationals.

The Tanzanian administrative units of villages, areas, districts and regions were centralised, with appointed officials acting as executives at each level. Courts of law became more active in settling disputes, replacing councils of elders. Government-appointed administrators and politically-appointed leaders exercised more power, by-passing democratically-elected traditional leaders.

Ethnicity coloured the conflicts in villages where mixed communities were grouped together during the villagisation programme. This problem was perceived by pastoralists as most serious in the Kiteto district, where agriculturists and pastoralists were lumped together, yet the grazing rights of pastoralists were not catered for. Ethnically-based village communities found it difficult to agree on

protecting grazing blocks, preferring instead to cultivate everywhere. As villages became mixed ethnically, and the economy more diversified, there was now less homogeneity and collective action was harder to enforce than it was in the past. Villagisation therefore created uncertainty of tenure for pastoralists, forcing certain segments of the pastoral communities to diversify, with more pastoralists becoming engaged in other economic activities such as cultivation, small-scale business, wage labour and mining. Some of these modes of production were adopted because they were assumed to provide secure rights to resources and reduce vulnerability.

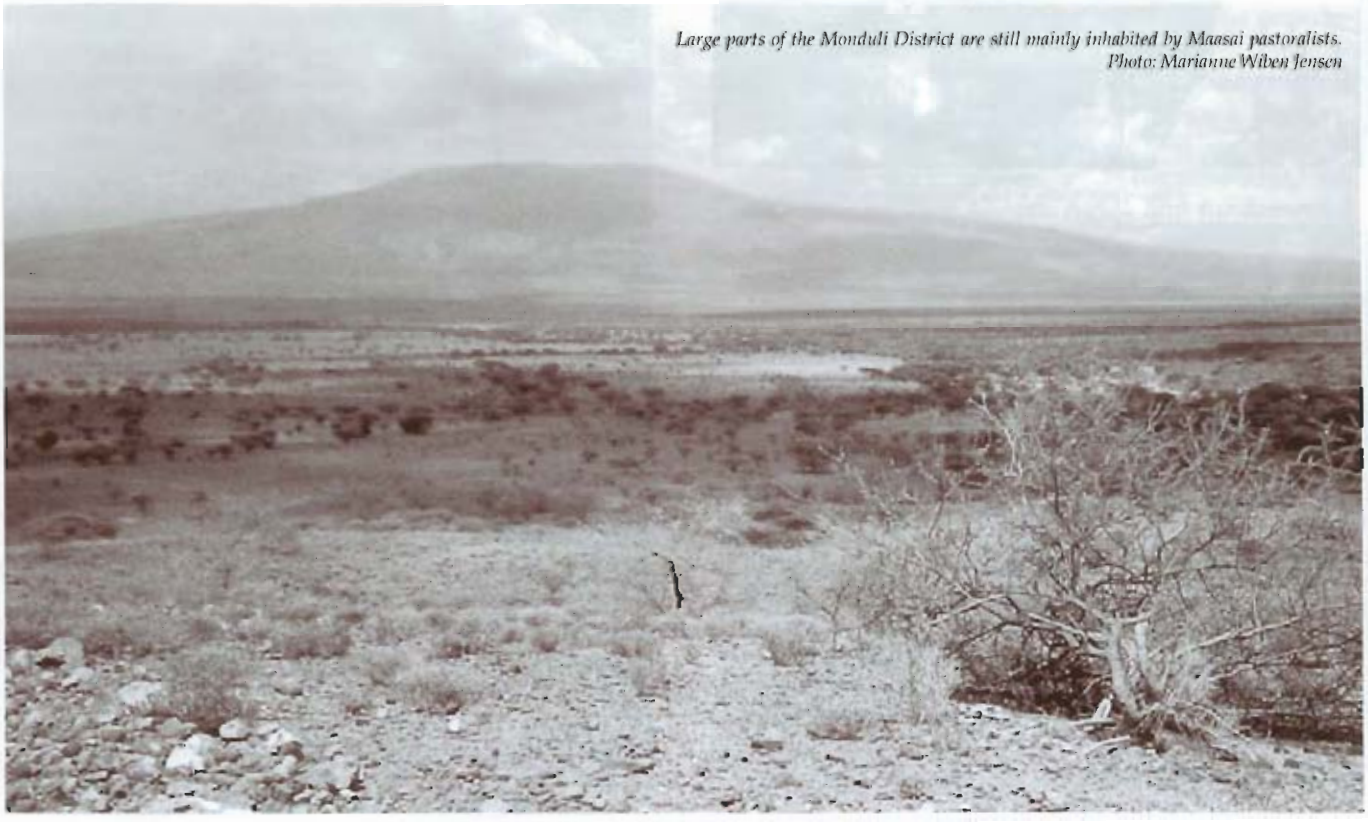
Land alienation

The alienation of indigenous pastoral land in Tanzania has taken place under consecutive administrations: German, British and post-independence. During the British Administration, lands were first alienated for wildlife, via the creation of wildlife sanctuaries for the exclusive use of wildlife in areas such as the Serengeti, Manyara, Tarangire and Engordoto National Parks[2] and, later, Ngorongoro Conservation Area (NCA), a total area of 25,670 sq. km (59% of Ngorongoro District). All these were indigenous peoples' prime lands, with the best water sources, and with wet and dry season pastures and plenty of grazing resources.

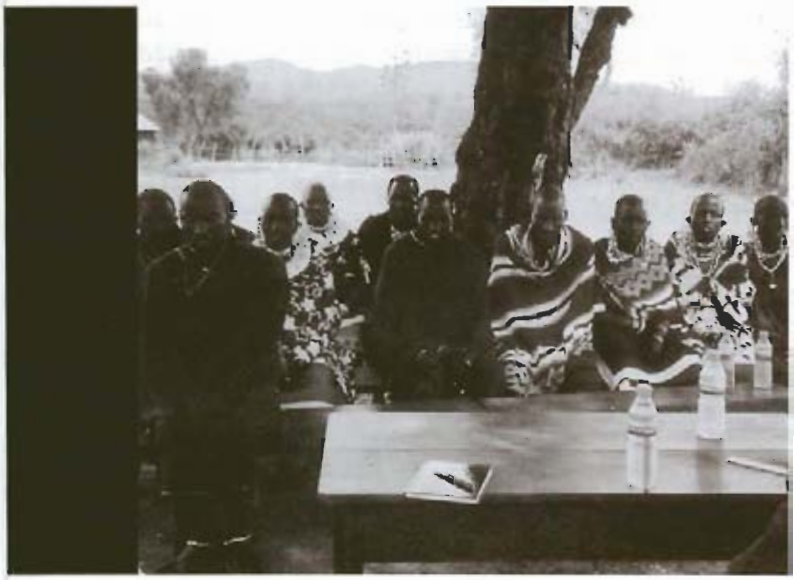
Although people still live and graze their animals in the NCA, their rights to land are subordinated to those of wildlife. In 1974, legislation was passed banning cultivation within the NCA and, shortly afterwards, the Maasai were evicted from the Ngorongoro crater where they had lived for generations[3]. The campaign to exclude pastoralists from Ngorongoro continues, particularly championed by the Frankfurt Zoological Society which has, since 1959, been a major player in Northern Tanzania. Land legislation such as the Conservation Act of 1959 was used to evict the Maasai from the Serengeti, and the exclusive rights to the Serengeti reserved for wildlife alone. Since wildlife parks are not fenced, the whole of Maasailand still acts as dispersal areas for wildlife, and the migratory and breeding herds have adverse effects on livestock disease control.

The second manifestation of land alienation took place when land was taken out of pastoralism and given to white settlers. The Kisongo plains of Makuyuni and Monduli Juu (Monduli) were alienated immediately after the World War I for European settlers and some non-Maasai farmers[4]. The area near Lake Manyara was given to white ranchers. This trend continued after independence, with the highlands of Monduli Juu and Loliondo being alienated to *Breweries* in the 1980s for the growing of barley. *Breweries* is a parastatal with a monopoly over brewing and distributing beer. Large tracts of land were also allocated to large-scale farmers in Lolkisalie and Naberera during the 1970s and 1980s.

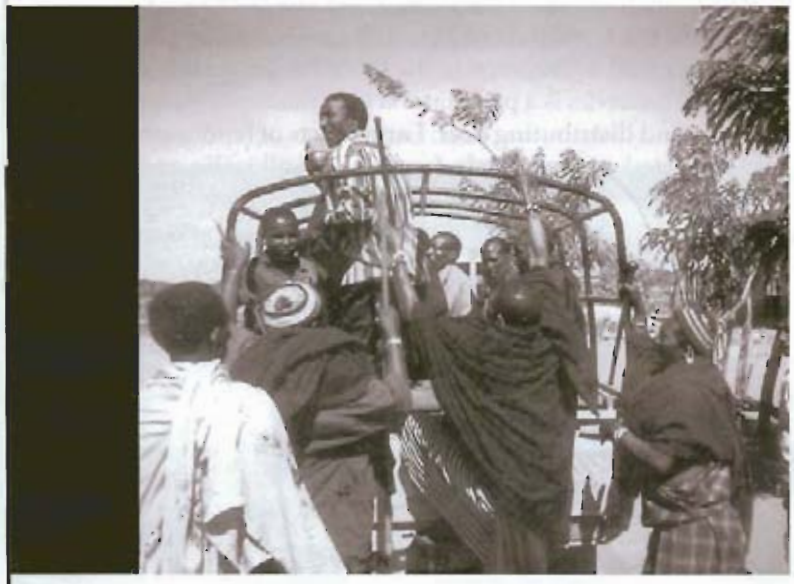
Different government resettlement schemes have also used Maasailand to resettle people from neighbouring ethnic groups, especially the Waarusha, Meru, Chagga and Pare. This forms a third category of pastoral land alienation. Under the British colonial administration, the



Large parts of the Monduli District are still mainly inhabited by Maasai pastoralists.
Photo: Marianne Wiben Jensen



Land committee members from the Mairowa and Orgira villages, Monduli District. Photo: Marianne Wiben Jensen



Villagers participating in land demarcation activities. Photos: CORDS

highlands of Mukulat and Oloitushula, lying between Monduli and Arusha, were handed over to the Waarusha in the late 1940s, following population pressure and Waarusha demands for more land. At about the same time, the area lying to the east of Mount Meru (i.e. Ngare- Nanyuki and Ngabobok) was given to the Meru as compensation for their land, which had previously been given to white settlers around King'ori. In the 1980s, many landless peasants from Arumeru were resettled in Kiteto and Monduli Districts.

The fourth feature of pastoral land alienation is one of infiltration and encroachment. Various administrative government officials posted to district headquarters such as Monduli, Loliondo, Kibaya as well as Mto wa Mbu *(Entasaeniki)* have used their position to acquire land from pastoralists for small-scale farming. Businessmen who migrated to semi-urban centres were also involved in land grabbing in Maasailand. The amount of lands taken by government officials and business people from elsewhere who settled in these places was cumulatively great.

The fifth form of land alienation has taken the shape of joint ventures between Maasai individuals or groups and outside investors.

The consequences of land alienation

The effects of land alienation on the pastoral economy are serious. The alienation of large blocks of high potential grazing land such as the Serengeti, Manyara and Tarangire national parks and others for large-scale farms in Lolkisalie, Simanjiro, Naberera and West Kilimanjaro has implied massive losses of dry season grazing and permanent water sources. People have been squeezed into smaller areas that now have to be used all year round. The restriction on movements of people and livestock has increased pressure on the resource base which, in turn, has increased competition and conflicts over land and related resources, making governance of pastoral resources more difficult and costly.

Conflicts over land in Maasailand have manifested themselves in various forms. There is competition and conflict between livestock and wildlife in areas adjacent to wildlife parks; conflict between livestock and crop farming in all the areas where agriculturalists have been settled and, since 1986, conflicts have been growing between pastoralists and miners in areas such as Naberera, Kaangala and Mererani. Central to the land conflicts in pastoral areas is the legality and legitimacy of the new class of land owners, who possess certificates of occupancy from the ministry without any consent of the customary land holders.

Some of the noticeable consequences of the depleted resource base are the following: it has rendered the usual daily and seasonal migrations more difficult, expensive, dangerous and often impossible, depending on the area.

The resource base has been reduced in quality and quantity and this has, in turn, reduced the number of livestock that can be kept per household, hence decreasing the viability of the pastoral economy. Since livestock are the productive assets of pastoralists, their decrease in numbers also implies increased poverty[5].

Environmental destruction has increased as livestock are forced to concentrate on small marginal areas that used to be utilised only seasonally. Some of the pastoralists are finding it difficult to re-constitute their herds. This is not made any easier when, following a drought, they are given seeds to plant cereals instead of restocking activities as a means of drought recovery. Because of this, some households are unable to return to the pastoral economy.

Due to the increased economic vulnerability and livelihood insecurity, coupled with factors relating to changes in the political economy, there has been a noticeable increase in rural-urban migrants seeking alternative means of survival.

As already mentioned, the problem of land alienation has intensified among the indigenous Maasai, and this trend increased sharply when the Tanzanian government and IMF signed an agreement on a Structural Adjustment Programme (SAP) in 1987. Economic liberalisation relaxed the former *Ujamaa* policies, and the country's yearning for economic recovery created a climate in which the government sought investment by any means. In Maasailand, this manifested itself in intensified government efforts to promote large-scale farming, mining of gem stones, wildlife conservation and tourism.

Village land demarcation, titling and registration

Indigenous Pastoral Maasai Communities (IPMC) have adopted different responses to land tenure insecurity. Some have adopted crop farming as a form of diversification at the household level. Other social groups have moved into other sectors of the economy, such as gem stone mining, petty trading and wage employment.

In one case, a foreign-owned company, Tanzania Cattle Products (TCP), applied in 1987 for a total of 250,000 hectares of land along the Ruvu river in Simanjiro district (then Kiteto), threatening to displace nearly 16 Maasai villages. The Ministry of Lands gave the TCP permission, and signposts were put up across Ruvu grazing lands by the TCP, forbidding the Maasai from grazing their animals, stating: *'private property and unauthorised people and livestock not allowed'*.

At about the same time, people in the villages of Emboreet, Narokouo and Loiborsirret, which bordered the Tarangire National Parks, were told of the Park's plans to create a ten kilometre-wide buffer zone to facilitate the free migration of wild animals. Similarly, the creation of a buffer zone along the eastern border of Serengeti posed threats to some villages in Loliondo. Different forms of wildlife conservancies and hunting blocks also threatened pastoral lands in Monduli, Simanjiro and Kiteto districts.

In attempting to counteract the TCP threats to their land, the pastoralists of the Ruvu villages convened a conference in 1987, which brought together villagers from all 16 affected villages and representatives from the Simanjiro villages. A few Maasai leaders working with the government and NGOs attended the meeting. The meeting took place at Kambi ya Chokaa, and one of its resolutions was to demarcate the villages. Similar moves were taken in other areas in an attempt to use the government policy and legislation to curb land alienation and enhance security of land tenure for pastoralist communities.

The process and conditions

After seeking information on the conditions and costs of land demarcation, certification and registration, the organization *Community Research and Development Services* (CORDS) started a village land demarcation programme in 1999. CORDS used the National Land Policy (1995) as well as legislation to draw up guidelines for village land demarcation. The guidelines, as provided by policy and legislation, set out the conditions that have to be met by each village before permission for demarcation, mapping, registration and certification can be granted.

Under the new land policy and legislation, a village must be registered, must agree on its borders with neighbouring villages and surveying must be done by government surveyors. When the exercise is finally completed and a certificate of occupancy is obtained marking specific village boundaries, specific conditions are attached to it (development conditions), which technically still give central government the possibility of transferring parts of village land from one category to another.

A certificate of occupancy is issued by central government, which is an authority external to the pastoral setting. Development conditions are attached to granted rights of occupancy. Such conditions appear to erode security of tenure, as the state can still use these conditions to transfer land from one category to another. The certificate states that the land is the property of the President, and it is only its development that belongs to the people. The villagers can only occupy land, and they are only given permission to occupy and use it for a defined period of time and for a defined purpose. The certificate also states that the President can change the agreement, if the occupiers fail to meet the conditions, or if the President needs such land for any other national use. The

certificate further states that the certificate of occupancy can be transferred to someone else.

Despite these conditions, titling was still seen by pastoralists and their organisations as an opportunity to formalise rights to land and secure pastoral land rights. Although the process was costly, the villagers were prepared to pay the costs related to transforming land ownership rules. The decision to demarcate land and obtain certification was reached because pastoralists realised that indigenous modes of tenure could no longer secure pastoral rights to land and safeguard the interests that pastoralists had in land from different forms of alienation.

Demarcation and conflict

The idea that land should be divided, branded and owned was not easily internalised by the indigenous pastoral Maasai, who knew their socio-ecological reality well. The pastoralists knew that the unreliability of rainfall could only be contained, and risk averted, if flexibility was not only maintained but also maximised so that people and livestock could follow water and forage as circumstances dictated.

The land demarcation process posed some difficulties to concerned villages. Village boundaries as set during the villagisation programme were questioned, with each village trying to increase its own land. In cases where a village would gain more by following pre-villagisation boundaries, it argued for the agreement to be based on former traditional territorial sections, and where the advantage lay in the villagisation boundaries, a village argued in favor of such boundaries. What appeared to be the determining factor was not so much whether boundaries were based on traditional or post - villagisation boundaries but which ones gave them more land and more critical resources. People tried to go for whichever option would give them most land, particularly strategic areas that contained the most permanent water points, salt licks, dry season grazing and settlement areas accessible from their semi-permanent settlements close to trade and service centers.

Although people in the villages had shared the same resources for many years, and many of them were related, dividing the land they had once shared created divisions that were as much social as they were economic. As long as ownership was part of the picture, user rights that people had held in the past and never questioned no longer appeared adequate or acceptable. Each group wanted ownership, not simply user rights.

Titling of land and tenure security

With support from CORDS and its funding partners, more than fifty pastoral village communities in Monduli District have been demarcated, mapped, registered and certified. The question is: Are indigenous Maasai pastoral land rights secured as a result of demarcation, mapping, registration and titling ('branding of the land')? This question needs to be answered in the light of what has happened in the villages whose lands were demarcated, mapped, registered and certified.

Many villages, under the co-ordination of CORDS, demarcated and surveyed their village lands, had village maps drawn up and secured certificates of occupancy for their village lands. In a number of cases, pastoral land rights have been secured, at least for the time being, as a result of this land demarcation and registration. Some villages have freed themselves from threats such as those posed by hunting blocks, investors and wildlife conservancies. Some villages have freed themselves from the land threats posed by the expansion of the National Park, by creating a 10 km buffer zone to allow free movements of wild animals. Other villages have averted threats from different land applicants who were promised farming land by the Ministry of Land and Human Settlement. There have also been achievements in some areas whereby villages have rejected attempts to resettle landless peasants from neighbouring districts on their lands.

However, cases still exist in which pastoral lands have been alienated even after the process of titling was completed. Such cases have taken various forms, involving local and central government officials at different levels, and such cases are common in areas where some corrupt village leaders have colluded with foreigners to mis-appropriate land from the villages.

Loss of water sources, or blocking of the pastoralists' routes to water points, represents another form of resource alienation, and pastoral property rights have occasionally been curtailed in this way. The titling and registration of land, as specified under the law, does not confer rights to water, minerals and other specified resources on the villagers, even when these are found within the village boundaries, or when the villagers have customary rights over them. The village certificates of occupancy do not confer rights to these other resources on the villagers and the villagers are therefore supposed to apply for water rights separately.

What is the possible explanation for continued tenure insecurity?

It is true that the Maasai see land as a big problem but perceptions of the land problem and proposed solutions differ, and such perceptions are now a matter of public debate and concern among the Maasai. The Maasai perceive the land problem to be essentially one of a conspiracy by outsiders to destroy indigenous Maasai society, and proposed solutions have equally placed great attention on the outside causes of land alienation. 'Brand-

CORDS staff and villagers at demarcation site in Mairowa, Monduli District. Photo: Marianne Wiben Jensen

ing the land' or land demarcation is seen by the Maasai and some development activists as a clear-cut solution to 'defining out' everyone else, i.e. non-Maasai, and keeping land exclusively for the 'pure pastoralists', the indigenous Maasai. Is this a realistic vision, in a country where land is 'public' i.e. the property of the nation, and its administration undertaken by government departments whose employees are mostly 'outsiders'? Would the non-Maasai, non-pastoral population, which increasingly constitutes the population of the villages that were once 'purely or predominantly' Maasai, form part of the land owning group whose brand the land carries?

While it is true that outside forces, e.g. land legislation and bad administration of land by the government departments, have contributed to the insecurity of tenure even after demarcation, there are other internal contributors to the problem.

First, when proper analysis is done of the underlying causes of tenure insecurity, it emerges that the causes of tenure insecurity are not exclusively external. The perception that land alienation is exclusively external has masked a deeper and more complex reality. There have, for instance, been several recent cases of members of the village communities misappropriating land and using it to enter joint ventures with investors for individual monetary gain. It has been easy to escape scrutiny using the label of ethnic identity. Even when detected, punishment is not easy as this process is considered legal in the eyes of the law (in court).

Second, the organising principle, i.e. the perception of the Maasai as an ethnically distinct, economically purely pastoral and culturally homogenous group, was probably misleading and short-sighted for a number of reasons. The ethnic, economic, cultural, legal, political and territorial boundaries have been shifting[6]. With the increased competition for land, different individuals can take Maasai names in order to obtain land. With people moving in and out of the pastoral sector, and the Maasai society going through social changes, new determinants of identity are emerging. Different Maasai have adopted different lifestyles. Some work in different professions and others work in the mining industry as well as other businesses. A few have gone into large-scale farming and tourism. All these different occupations are increasingly influencing production relations within the Maasai society. The interests of different Maasai economic groupings are increasingly diverse, and cohesion is weakened.

CORDS works closely with the target villagers to analyse the problem of land as well as interests in land in order to determine a more practical strategy for securing land tenure. A stakeholder analysis is often used to determine different forms of resource utilization and management. Land demarcation is followed by land zoning to determine specific uses per zone, and village by laws are formulated to protect pastoral land from other forms of land use. Non-Maasai and non-pastoralists are accommodated in the stage of land zoning to ensure that they have access to land, but farming land is planned in such a way that it does not displace pastoralism and does not fuel land use conflicts between different resource users.

Concluding remarks

Village land demarcation as a coping strategy to enhance security of tenure for the pastoral communities offers new opportunities to pastoral communities. It has raised the awareness of the community regarding the new challenges posed by the land policy and legislation in Tanzania. Communities have used the existing legal system to formalise their rights to land and have used demarcation, mapping, registration and certification as instruments to mark the boundaries of their village lands and formalise their land ownership.

With this increased awareness, the pastoralists have come to understand their rights to land and have organised themselves in order to address issues related to resource tenure insecurity, a process that is intrinsically linked to collective action.

Some of the observed limitations that have constrained the demarcation work in Maasailand include: a limited capacity on part of pastoralists and their organisations to analyse issues, high illiteracy levels, poor village leadership and a lack of harmony between various policies or pieces of legislation (Village Land Act and other acts such as the wildlife and mining acts).

Land is mentioned by most of the NGOs as a number one problem but the magnitude of the problem has not been matched with efforts to solve land problems. Collective titling of village land is undertaken only by CORDS and this important feature in establishing legal property rights is yet to be adopted by more NGOs and sustained by indigenous pastoral communities themselves. Demarcation, however, has created an opportunity to engage people fully, actively and consciously in asserting their rights to key resources. ❑

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Notes

1 This is contrary to recommendations of the Presidential Commission of Inquiry into land matters, which proposed that root title should be vested in respective village communities and control over tenure administration should be removed from the Executive and placed in the hands of an autonomous land commission

2 The national parks ordinance of 1954 and Ngorongoro Conservation Area authority, 1959

3 See Parkipuny (1991), Arhem (1985a) & Homewood & Rodger 1991 for a detailed analysis of NCA conflict with the Ngorongoro Maasai

4 See Arhem(1985a) for a detailed account of land alienated in the 1930s and 1950s, and Muir(1994) for land recently handed over to large-scale farming.

5 Arhem (1985a) and Potkanski (1994) have both noted that the livestock/human ratio has fallen from 10 to 3 livestock per capita in the last 30 years. In his sample, Potkanski (ibid) observed the social stratification, with a wealth ranking of 12% rich, 23% middling, 25% poor and 40% destitute. In a study undertaken on the Maasai of Simanjiro, Muir (1994:40) noted a similar pattern, with 14.0% wealthy, 41.5 % middling, 28.9% poor and 15.7% very poor.

6 See Spear & Waller (1993) on models of the Maasai regarding Maasai categories that are exclusive economically and inclusive culturally.

Benedict Ole Nangoro is a Maasai from Kiteto District in Tanzania and currently works with CORDS, a local NGO involved in land issues among the Indigenous Pastoral Maasai communities.

IWGIA - INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS

IWGIA's aims and activities

The International Work Group for Indigenous Affairs - IWGIA - is a non-profit, politically independent, international membership organization.

IWGIA co-operates with indigenous peoples all over the world and supports their struggle for human rights and self-determination, their right to control of land and resources, their cultural integrity, and their right to development. The aim of IWGIA is to defend and endorse the rights of indigenous peoples in concurrence with their own efforts and desires. An important goal is to give indigenous peoples the possibility of organising themselves and to open up channels for indigenous peoples' own organizations to claim their rights.

IWGIA works at local, regional and international levels to further the understanding and knowledge of, and the involvement in, the cause of indigenous peoples.

The activities of IWGIA include: publications, international human rights work, networking, conferences, campaigns and projects.

For more information about IWGIA's activities, please check our website at: www.iwgia.org

Publications

IWGIA publishes a yearbook, ***The Indigenous World/ El Mundo Indígena,*** and a quarterly journal ***Indigenous Affairs/Asuntos Indígenas.*** Furthermore, a number of books thematically focussing on indigenous issues are published each year.

Suggestions for and contributions to IWGIA's publications are welcome and should be submitted to the editors in charge.

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IWGIA and Forest Peoples Program (FPP), 2002
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