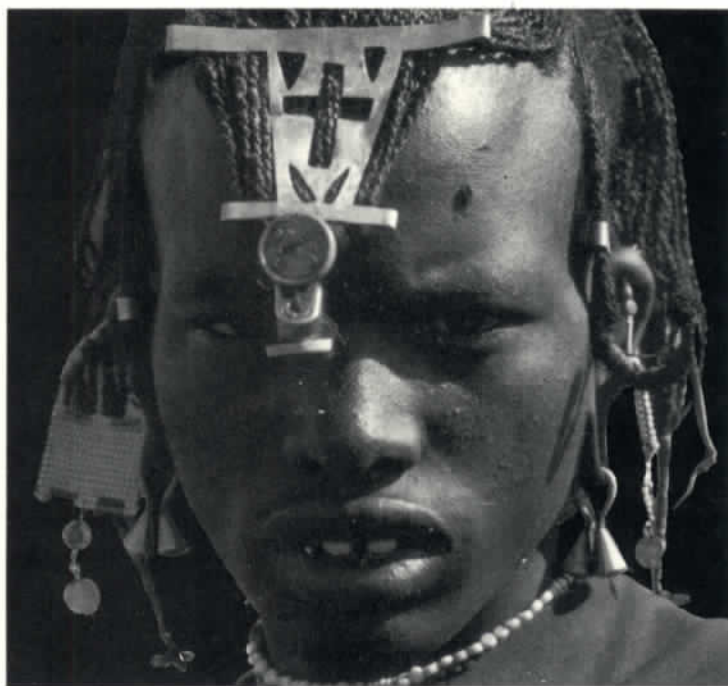


# "...NEVER DRINK FROM THE SAME CUP"

Proceedings of the conference  
on Indigenous Peoples in Africa  
Tune, Denmark 1993



CDR / IWGIA DOCUMENT 74

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Peoples in Africa. Tune, Denmark, 1993

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IWGIA Document no. 74

Published by IWGIA and the Centre for Development Research,  
Copenhagen 1993

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## Editor's Preface

The present volume contains the papers that came out of a conference on „The Question of Indigenous Peoples in Africa“ jointly organised by The International Work Group for Indigenous Affairs (IWGIA) and the Centre for Development Research (CDR) in Copenhagen. The conference was sponsored by the Development Agency (DANIDA) of the Danish Foreign Ministry and was held June 1-3, 1993, at Tune Landboskole in Greve outside of Copenhagen.

The idea of organizing the conference had been conceived by IWGIA, who wished to explore the status and meaning in applying the concept of „indigenous peoples“ in African contexts and the extent to which this might contribute to a productive identification of the nature of the problems and predicaments as perceived by particular African minority populations themselves.

Invitations to participate in the conference were circulated to a broad range of organisations and associations representing African peoples, who had either defined themselves as indigenous peoples or were likely to be defined by others as such. There was no intention on the part of the organizers to enrol every African population, who might possibly be conceived of as „indigenous“. Thus representation at the conference basically included groups, that had already created organizations of their own or were in the process of doing so in order to protect their own interests and create a platform for dialogue with the governments of the states within whose boundaries the group existed.

The conference moreover included researchers and experts (mainly lawyers, anthropologists and development advisers) whose specialised knowledge covered a range of issues pertaining to the question. Representatives of the governments of Botswana and Namibia and of the Norwegian and Danish development agencies of the respective Foreign Ministries (NORAD and DANIDA) were included amongst the invited participants. Their presence facilitated the pursuit of a dialogue between the indigenous groups and the respective governments.

Prior to the event, the conference themes „Indigenous People and Human Rights“, „Indigenous Peoples and the State“, „Indigenous Organizations: Aims and Possibilities“ had been tentatively decided upon by the organizers with little knowledge of what actually would be presented at the conference. Participants had been encouraged to

relate their presentations to the conference themes, but it had simultaneously been made clear, that they were free to address whichever aspects of the themes that might be of interest to them. Thus the papers given reflect as much the choices and preferences of their authors as they reflect an effort on the part of the conference organizers to direct the debate in certain directions. Very few of the papers in fact addressed any one of the conference themes only. Instead most presentations given by indigenous participants reflected the broad range of problems identified by themselves as important, whereas the papers presented by researchers and experts obviously reflected their particular field of professional expertise. This obviously produced considerable heterogeneity in choices of focus and manners of addressing and identifying the pertinent issues.

For purposes of publication the editors decided to organize the papers and presentations according to region rather than issue.

As many of the presentations were given by individuals whose mother tongue is not English, the editors have subjected all papers to a mild process of language polishing prior to publication. Two papers were given by individuals whose native language is American. In these cases the editors have respected American orthography. In all others English.

It is not the intention that the papers contained in this volume provide an exhaustive tour of indigenous groups of people in Africa or of all problems encountered by them. The papers represent a first attempt to mark out a path along which to tread when seeking to come to grips with the situation of African minority populations that perceive of themselves as indigenous. Others may wish to follow in these footsteps. Some will go on to redefine issues, seek alternative directions, and probably come up with quite different ideas and ways of grasping the problems.

The aim of the conference was to open up to debate of the question of whether we are justified in applying the concept of „indigenous peoples“ in Africa. Some indigenous representatives had no problem with being thus labeled, whereas others felt that the concept did not pertain to them at all. Still others sought to redefine it in such a way as to make better sense if and when applied.

The use of the concept „indigenous peoples“ in categorizing populations is not a simple question of typology. It has political implications and overtones on many levels and therefore its use should be debated in a forum including the peoples who might benefit from it as well as risk being victimized by it. The joint

IWGIA-CDR conference on the „Question of Indigenous Peoples in Africa“ provided such a forum. However, it was only a beginning. Those who are keen to listen to the voices of indigenous peoples themselves may learn from it. Researchers and experts sat down for three days and listened, learnt and talked. Indigenous people listened to each other and to the researchers. Everybody were a little wiser afterwards. The book contains some of the things that were said.



## “...NEVER DRINK FROM THE SAME CUP.”

### An Introduction

In Rwanda the Batwa cannot share a drinking tube with people from other ethnic groups and a drinking glass used by them has to be broken after being used (cf. Sebalinda's paper in this volume). Daily practices such as these form part of a whole system of routines that ensure a continuing discrimination of groups of peoples in africa that have come to perceive themselves as indigenous peoples.

Many indigenous peoples of Africa today are facing acute threats to their very survival. For some of them it has become increasingly difficult to secure enough food to eat and an adequate place to live; to avoid the risks of being killed, enslaved or otherwise abused and mistreated by others; and to hold on to resources, hopes and skills through which they can reproduce themselves as individuals and communities.

For some time, their situation has been of acute concern to activists, researchers and others. Their analyses tend to see their problems as a result of “modern development”, the lack or inadequate implementation of human rights legislation, and the apparent diminution of cultural diversity among the world's peoples as a corollary of the spreading mass-culture of consumerism.

Yet who count as “indigenous peoples”? Is this just another word for the most marginalized amongst the Third World's rural poor? Or are they the descendants of peoples who were first-comers to particular tracts of land? Are they peoples who for one reason or another have managed to hang on to ways of thinking and living that appear traditional? Are they our prophets since they have maintained ecologically sound systems of production and sustainable resource management in harmony with the natural environment?

Is the term *indigenous peoples* an objective, neutral term or is it vested with so much ideological baggage that we must disregard its content and look merely at the forms, i.e. the structures within which “indigenous” peoples are positioned? It may not be possible to derive an exclusive definition that allows easy identification or reduces complicated political and social issues to a single label. Perhaps the concept of *indigenous peoples* - developed out of centuries of colonization in the Western Hemisphere - cannot be applied to African contexts at all.

These were some of the debates taken up by the IWGIA-CDR conference on the Question of Indigenous Peoples in Africa. Many points of view were presented and many doubts were raised as to the wisdom of identifying specific African populations as indigenous peoples. The consensus that developed at the conference was that the concept “... implies peoples with strong ties to their lands, who have been in their region since before colonisation, were now dominated by other peoples from whom their cultures were markedly different and who identify themselves as ‘indigenous’.” (cf. Colchester 1993: 38).

The concept of indigenous people, as applied to the African setting, is a complicated and much debated one. But this is mostly so from the perspective of decision-makers and those dealing with international human rights issues, and less so when seen by those who themselves claim to be indigenous.

When Europeans conquered Africa a large number of self-governing peoples, as well as other groups already subject to forms of African domination or slavery, were turned into dependent tribes or ethnic groups. When Europeans were forced to relinquish political control, the artificial colonial boundaries became the borders of post-colonial states. Changing the meaning of these political entities also changed the roles and positions that peoples within these entities had vis-à-vis each other. Indigenous communities now became politically subordinate to an African political elite drawn from the more powerful communities within state boundaries.

The indigenous ‘movement’ in Africa has grown as a response to the policies adopted by independent post-colonial African states. The favouring of settled agriculture over hunting, gathering and nomadic cattle-herding has been instrumental in both marginalizing and stigmatizing some peoples and inspiring them to identify themselves as indigenous groups. So too has the establishment of national parks and other projects that led to forced relocation of the inhabitants. The cultural domination of the new states by certain

groups served to marginalize others. The overall result was that some peoples became "leftovers". They did not enjoy the advantages which resulted from independence, nor did they benefit from development aid, which has been flowing into Africa since the 1960s.

It may be argued that all African peoples are indeed indigenous in the sense that they are populations whose ancestors have inhabited the continent since time immemorial - and that it makes little sense to distinguish some groups as "more indigenous" than others. However, the conflicts and the problems characteristic of indigenous people are real and conspicuous in Africa today - no matter how the populations define themselves or are defined by others. In order to find viable solutions to conflicts and problems in which differences of culture and ethnicity are involved, adequate analysis and identification of the issues is called for. This implies not only recognition of cultural differences between the peoples involved, but also investigation of the political and structural contexts of those differences. The search for conceptual tools is a necessary step in this process.

Summarizing the various approaches to the definition of indigenous peoples, three tendencies may be distinguished: A) the *structuralist approach*, by which indigenous peoples are defined according to their position within the overall social and economic structure of the country in which they live. At first sight, the indigenous peoples of Africa appear to be populations who deliberately escaped from, or were left out of all forms of participation in modern development. They are often groups who were systematically marginalized during the colonial period and later ignored by the post-colonial nation states within whose borders they reside. Some researchers taking a more radical stance within this type of approach argue that marginalization is *the* defining characteristic of indigenous peoples. This of course leaves unanswered the question of why some other groups of people who are equally marginalized are not to be considered indigenous. It is also quite unclear whether the peoples in question will cease to be indigenous should they succeed in liberating themselves from their marginalized condition. Obviously, marginalization as such is not a satisfactory description or explanation; and in particular marginalization cannot be conceived of as *the* important defining characteristic of indigeness. This is not to deny the fact that a large number, or maybe the majority, of indigenous peoples *are* marginalized, but to point out the necessity of taking other aspects than structural position into account.



The structural approach contrasts with what has been perceived as B) the *substantial definition* which defines indigenusness in terms of the content of particular cultures which distinguishes them from other, non-indigenous groups. Thus, particular ways of life and the degree to which traditional cultural values and forms have been retained may be perceived as defining characteristics. According to this latter view, indigenous peoples are at heart hunters and gatherers, nomadic or transhumant livestockherders. A major weakness of this approach is a tendency to consider culture in rather static terms or merely allowing for very slow and gradual change rather than radical and dynamic transformations. Carrying the culturalist point of view to its logical conclusion means that indigenous peoples cease to be indigenous the moment their cultural institutions have been dismantled and they stop speaking their own language; when they put away their traditional dress, and substitute modern technology for traditional tools and weapons.

Finally C) the *historical approach* stresses that indigenous peoples are the descendants of certain peoples who occupied discrete territories at particular points of time in the past. Obviously the approach is predicated upon the specific time and event selected as the parameter by which indigenusness is defined. Unfortunately historical knowledge may be fragmentary and incomplete, and not well substantiated by written records, oral history, archaeology, highly disputed lexical statistics (glottochronology), or other types of evidence. Thus the historical approach is often forced by its own limitations to disqualify certain groups from claiming status as indigenous even though the same groups would be defined as such by other types of criteria.

It is worth recalling the definitions of indigenous peoples contained in ILO-Convention 169 adopted in 1989 as they combine historical and cultural criteria: "Peoples ... are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions"...

As first-comers, i.e. (descendants of) the peoples who were there before somebody else, indigenous peoples invariably possess or claim rights to a particular territory from which they make (or used to make) their living and where they consider themselves to belong. Ethnic groups who are not "indigenous" in this sense cannot

claim rights to territory as aboriginal inhabitants. However, especially in Africa people have moved around throughout history for many reasons, both voluntary and enforced. Thus we find that this most commonly used defining characteristic of the concept of indigeneness is in practice highly ambiguous.

Many groups whose status as indigenous peoples have not been questioned in fact claim aboriginal rights to lands and territories quite different from those where their ancestors lived at the time of “discovery” or colonization. In Africa, though some groups such as the Pygmies<sup>1</sup> of Central Africa and Bushmen of the Kalahari may perhaps be considered as the true first-comers to the lands where they presently live, other groups who see themselves as indigenous people cannot claim to be first-comers. Their awkward position reflects the real-life situation of the majority of people who were pushed around, thrown off their land and marginalized in pre-colonial, colonial and post-colonial Africa.

Some scholars have stressed self-identification as one very important aspect of ethnic identity (cf. Barth 1970:10; Ardener 1989: 111; Chapman 1993:34,38ff.), and the same argument would seem to hold for indigenous identity. If you believe you are an indigenous person then this is *the* most important defining principle. This is also reflected in the words of the ILO Convention 169: “Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for defining the groups to which this convention applies.” Granted that there is nothing essentialist about having or upholding a particular identity - “it [ethnicity] is not a thing but a process” (Sollors 1989:xv) - few would disagree that indigenous peoples must be seen as self-defining entities.

However, the need for auto-identification rather than ascription by others, is sometimes put forward to imply that ethnic or indigenous identity is virtually a matter of choice. Sometimes ethnic auto-identification has even been regarded as an opportunistic manipulation with unsubstantiated legitimacy. Certain scholars within ethnicity studies have described ethnic identities in language that suggests that these identities are basically invented for instrumental purposes so as to better compete with others over scarce resources (Despres 1975, Cohen 1974, Glazer & Moynihan, eds. 1975). Conceptualizing ethnic processes in terms of group competition over scarce resources neglects important insights formulated by Fredrik Barth way back during the pioneering phase of modern ethnicity studies in the introduction to his edited volume *Ethnic Groups and Boundaries* (© 1969). Barth argued that, “...the persistence of ethnic

groups in contact implies not only criteria and signals for identification, but also a structuring of interaction which allows the persistence of cultural differences" (Barth 1970:16). Thus ethnic processes involve much more than resource competition. They require a social system that allows a systematized communication of cultural differences in order to reproduce itself. Communication of differences may obviously be considered an aspect of interaction, but to the extent that this communication of differences becomes a precondition for the maintenance of an entire social system, it becomes a property of that particular social system (cf. Eriksen 1991).

When ethnic processes are reduced to questions of rational choice or interaction between individuals, the complexities of collective identity formation are overlooked, and this reduction not only prevents a thorough understanding of the discriminatory nature of the social system in its totality; it has also, unfortunately, been employed to question the legitimacy and authenticity of indigenous people's claims. Some parties to conflicts involving indigenous peoples may have vested interests in denigrating their opponents by raising doubts about the authenticity of indigenous claims. Indigenous peoples are particularly vulnerable to this strategy when they have already endured prolonged stigmatization on the grounds of their ethnic identity. They may have concealed that identity in order to protect themselves or adapt to the standards and values of the majority society (cf. Eidheim 1970). But even then, consciousness of an ethnic or indigenous identity is often maintained and allows the identity to be openly exhibited when contexts change in its favour. This is quite different from opportunistically *changing* identity as the wind blows. Rather it is a question of choosing to conceal or reveal a particular identity depending on the historical context.

From the testimonies presented at the IWGIA-CDR conference it was clear that the particular identities of these indigenous peoples were never simply matters of choice. Particular ethnic labels and identities had invariably been ascribed to indigenous peoples by others who wanted to discriminate against them on the grounds of real or assumed ethnic characteristics. In some cases indigenous people were not allowed to fetch water from the same well or drink from the same glass as the majority population; they might have to sneak around in the darkness of night in order to ensure their supply of drinking water. Every one of the presentations made to the conference testified to the discriminatory treatment accorded indigenous people by the dominating populations in their countries, not as a result of attempts to set themselves apart socially or politically

- but because indigenous peoples *looked* different, dressed differently, behaved differently or otherwise were perceived to *be* different from the rest. Indigenous identity was an experienced social reality, whether consciously acknowledged and made part of public and political discourse or not. Yet it is not any a priori cultural *difference* that makes indigenous identity so pertinent, but rather the specificity of the power relations at a given historical moment and in a particular place (cf. Sollors 1989). In sum, indigenous identity is highly contextual and constitutes a social fact which may or may not become a platform for social and political activity, or from which to make demands for legislative measures from governments or administrative agencies.

Indigenous peoples are not usually involved in conflicts over the control of state-power or state institutions. They seldom aspire to independent statehood, but claim rights to territory and to self-determination in order to secure their own existence. It is important to remember that indigenous peoples do not always demand equal rights or equal opportunities - but rather some sort of special status. This is mostly so where participation in the institutions of the dominant society, such as the school system, the capitalist economy, etc., present serious conflicts with central features of the indigenous way of life. Indigenous peoples may perceive themselves as inherently different from the majority population with whom they must co-exist. If so, they demand to be respected and allowed to remain who they are. When granted special rights, however, indigenous peoples may still be victims of systematic discrimination. Thus - if granted equal rights or special rights - it may seem that indigenous peoples are bound to lose either way. This dilemma has so far been difficult to solve. Indigenous peoples in most cases must adapt to some extent to the requirements of citizenship within a modern state. To accomplish the goals of articulating their interests, they depend on cooperation with the state and other national or even supra-national agents vested with executive and decision-making power. Some states are not willing or ready to accept a role as partners in the dialogue with indigenous peoples. However, the assertion of indigenous people's rights provides an alternative to ethnic strife and opens up ways of resolving conflicts through negotiated agreements between states and peoples. The aim should be to allow indigenous peoples to safeguard their future without resort to violence. For this reason, work has been going on for more than a decade within the framework of the United Nations to develop a universally accepted bill of rights for indigenous peoples.

Some African countries have challenged the universality of the concept of human rights, claiming that Western countries force their own ethnocentric cultural notions upon the rest of the world. A counter position to this alleged human rights imperialism is to start with cultural diversity and accept that even "universal" human rights have their cultural origins. This, however, does not excuse the way in which authoritarian regimes and ruling elites have used the argument about the integrity of the state to subjugate the collective rights of indigenous people.

In recent years we have seen how donor countries have used a new argument to link aid to the observance of human rights. But until now, this has been confined to the observance of individual human rights; the collective rights, including the collective rights of indigenous peoples, have not played any major role in this discussion. Experience from Africa points to the necessity of expanding our horizons to look at questions relating to peoples' control over their own societies, land, culture, development - in short - their self-determination. Self-determination is a need and a right both for individuals and peoples so they can maintain continuity in cultural traditions, social order, and build their future on their own standards and values. As such, self-determination may be seen as a prerequisite of peaceful development and stability.

Looking at current issues in Africa related to the question of collective rights, the prominent role of indigenous peoples' rights to territory and land is obvious (cf. IWGIA Yearbook 1989, 1990, 1991, 1992; or Swift 1982). No other question appears more important to indigenous peoples in Africa than this. The drastic reduction in the land availability is causing hardship in many regions. Furthermore, violations of the most fundamental rights are a growing problem; in this part of the world cases of the brutal genocide of specific groups are documented. Even in democratic states, indigenous peoples face discrimination simply on account of ethnic affiliation, use of a native language or customary religion.

To restore a balance, the indigenous peoples of Africa need to organize. Usually we find indigenous organizations using non-violent, non-secessionist strategies to challenge the nature of state-structures which have left them marginalized. Experience has shown the value of African institutions and African NGOs (indigenous organizations, human rights organisations, grassroots organisations and others) in contributing to the furthering of sustainable development and promotion of human rights through dialogue with governments.

Over the last few years interesting developments relating to

human rights have emerged at the national and pan-African level, yet indigenous issues continue to suffer from lack of attention. The possibility exists that African countries may make major achievements through dialogue and cooperation with indigenous groups over rights to land, culture and self-determination. This way African states could gain international credit by being in the forefront in this field of human rights. Some states have already taken steps in this direction. Donor agencies could be encouraged to give priority to those countries taking the lead in complying with the rights of indigenous peoples to self-determination and accepting the indigenous peoples' right to development.

However, until states realize that all peoples have the right to self-determination, indigenous peoples have no other option than to continue to appeal to the international community, the media, the United Nations and donor countries for support. Some already have considerable experience in doing so, while others have barely started. Maybe one of the main lessons to be learnt from the situation of Africa's indigenous peoples is that the colonial legacy is one of completely distorted cultures and social relations. Despite decades of decolonization, that legacy is still with us. Maybe the time has come to listen to what indigenous peoples have to say and take seriously their proposals for both the diagnosis of the malady and its alleviation.

## Notes

1. It is now debated whether hunter-gatherers like the Pygmies have ever lived in the tropical rainforest independently of agriculture - and one of the possible questions following from this is whether other groups of cultivators in Central Africa also may be regarded as true first-comers - in the sense that Pygmies may share their first-comer status with other forest-dwelling groups (see Bahuchet, McKey & de Garine 1991; Headland & Bailey 1991).

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# CHAPTER 1

## PASTORALISTS OF EASTERN AFRICA



J.T. MWAIKUSA

## COMMUNITY RIGHTS AND STATE CONTROL IN TANZANIA

In 1984 the Constitution of the United Republic of Tanzania underwent a very significant amendment. For the first time in the country's history, the universally known basic rights and freedoms found a place in the Constitution; the Bill of Rights was enacted into the Constitution through that amendment.

With the Bill of Rights the scope of the rights and freedoms of the subject was widened significantly. The use of some laws which were known to be notorious for their restriction of freedom has since been restricted. And already some statutory provisions have been invalidated by the High Court for infringing basic rights or freedoms as now contained in the constitution. Now guaranteed under the Constitution are the right to freedom, dignity and equality before the law; the right to life, personal liberty and privacy; freedom of movement, expression, religious belief and association; and of course the right to property.

As it happens, the right to property is very well protected, which goes well with the current privatisation policy. Private investment has been strongly encouraged in recent years and at present there is an extensive Privatisation Program under which many state-owned companies are to be sold to private business. The program would be threatened if the prospective buyers were not assured of their continued property right in what they are being invited to buy.

Property rights are guaranteed in the strongest terms under article 24 of the Constitution, which also says that „a person shall not be arbitrarily deprived of his property“ save with „the authority of law which shall set out conditions for fair and adequate compensation.“ That guarantee has been reiterated in official statements; the President, for example, is known to have publicly expressed regret that

the word „nationalisation“ was still in the dictionaries<sup>1</sup>. Undoubtedly, the right to property is the securely protected right.

By contrast, there is no guarantee, in fact no protection at all, for community rights. This position is capable of adversely affecting many people. Those most likely to be worst affected are some of the indigenous communities.

## Community Rights

The omission of protection for community rights is a bit disturbing because the *Ujamaa* ideology, under whose shadows the Bill of Rights was enacted, claims to aim at exalting the African traditional values of communal life, especially for the rural peasantry who constitute more than 80 % of the population. But it would seem that in putting that ideology into practical translation some basic tenets of those traditional values have been totally disregarded. Thus the rights of a community, such as the right to water sources, or to hold land by and for the community, are non-existent under the law as it now stands.

When one considers pastoral communities in Tanzania, the importance of the community as an institution is immediately clear. Life among pastoral societies is heavily dependent upon the availability and proper management of grazing land. Traditionally, this land is communal in all pastoral communities. An individual gets the right to use it by virtue of membership in the community holding the communal land or having control over it. That community usually has its own institutions exercising authority over the land and its use. The land does not belong to any individual member or members of the community. It belongs, so to speak, to the entire community.<sup>2</sup>

But the „community“, according to the laws of the state, has no identity or existence. Therefore it cannot hold or own property in any way. Therefore, according to the law, that land belongs to nobody; it is unowned. This is the unfortunate legal position which has led to the plight and misery of the Barabaig pastoralists of Hanang District.

The Barabaig are pastoralists, now resident in Hanang District where they have been living for more than 150 years (Lane 1991:23; Fosbrooke 1972:31-32; Klima 1970). As a pastoral community they have all the time had a communal system of land tenure which has obvious advantages for pastoral communities; it makes possible the

maximisation of the feeding capacity of the entire land, with all its variations, for the benefit of all members (James & Fimbo 1973:94). With their various institutions the Barabaig were for generations able to make good and proper use of their common land, observing all the „Do's“ and „Don't's“ of land use as developed by the community itself: rules like the preservation of sacred trees, or trees of some significance or use to the community, and so on (Lane 1991).

Customary rules have also been used to ensure a proper observation of the transhumant system of using land for pasture. Thus, for example, a strict customary law rule, later made a by-law of the Native Authority under the Indirect Rule system of colonial administration, prohibited the use of the *darorajand* plain for grazing or habitation during the rainy season simply because that was the time when the pasture regenerated in order to continue supporting the Barabaig during the dry season. With such elaborate rules, the Barabaig were able to manage their communal grazing resources and maintain them reasonably well.

But apparently the Government does not know that system of holding grazing land. To the Government, „communal“ or „common“ land can only mean land which is not owned by anybody since, to the Government and its laws, a community cannot own land. So, seeing the Barabaig communal grazing land as nobody's, the Government went ahead and alienated the land in favour of its own corporation, NAFCO, in order to carry out large-scale wheat farming, with financial assistance from Canada. This step left the Barabaig without grazing land. The Government presumed that the land was wholly unowned. The Government is keen to make that presumption irrefutable to date. That is why even though there are Barabaigs prosecuting two representative suits<sup>3</sup>, trying to claim the land back to their community, the Government would rather sell the said land to some private buyer in a World Bank backed Privatisation Program<sup>4</sup> than let it fall back to the Barabaigs.

## Indigenous Communities and the Corporate Status

From the above it would seem that the state in Tanzania would like to promote private or individual interests at the expense of those which are communal; that is why the right to private property is so strongly safeguarded.

That may well be true; but for purposes of accommodating

interests which are or may be common to a group, the state seeks to promote the „corporate body“ which in law is accorded the status of a person, thus earning the name „legal person“ or, better still, „artificial person“. The corporate body is intended by the state to supersede the „community“ as the representative and custodian of common interests and rights.

In the rural areas, particularly after the Villagisation Program of 1973-76, the most important corporate body could well be the village council, which comes into legal existence by operation of law and the magical signature and seal of a Government official called the Registrar of Villages<sup>5</sup>. Thus the legal position is that either this corporate body or a natural individual can own land; but the community as such is an entity unknown to law and therefore cannot.

But to expect the village council to indeed replace the traditional community and protect and serve the common or communal interests with the required efficiency is, perhaps, to expect too much. Again, the Barabaig experience illustrates the problem.

As part of the Villagisation Program, pastoral communities were also organised, sometimes forcefully, into pastoral villages. This move in itself shows that the Government presumed that pastoral communities had no organisations already; alternatively, that the state wanted the existing indigenous organisations disbanded. After setting up the villages, the villagers were then encouraged to form, by way of elections supervised by the Party, village councils which then went through the process of registration and incorporation. Thus the village council acquired corporate status and, according to the law,<sup>6</sup> was vested with some administrative authority over the village, including powers for the control of land and its use.

But, in the case of Hanang District, when the state moved into the land and displaced the Barabaig by alienating it in favour of NAF-CO, the village council, with its powers of control over village lands, proved its worthlessness to the Barabaigs. They went to court to contest the alienation of their land. Conveniently, they filed their case in the name of the Village Council as the first plaintiff, while the names of more than sixty individuals also appeared as co-plaintiffs. Ultimately, they lost the case<sup>7</sup>, and the land, because, among other things, they could not prove that they were natives holding land according to native law and custom under the *Land Ordinance 1923* (Cap. 113), which was the basis of their claim.

Perhaps that verdict should not be particularly surprising be-

cause by any law or standard, the definition of a „native“ would not include a corporate body, which is what a village council inherently is. But we think that there was plenty of logic for the Barabaigs to claim their common grazing lands in the name of their village council. They had been made to believe that through the village council they were setting up their own institution to serve them and their interests. It was practical logic to treat the village council as the „owner“ of those lands which the Barabaig land tenure system had always regarded as „common“ or „communal“ land, and into which NAFCO had now moved and started wheat farming. It was this type of land, totalling 6295 acres, which the village council was claiming for and on behalf of the pastoral villagers, who did not even physically go to court, believing, rightly, that the village council was there to effectively represent their interests. The other co-plaintiffs were also essentially claiming their respective individual land holdings which totalled 1830 acres, consisting mainly of homesteads and farming plots.

But the village council, not being a native, could not own land under customary law. By entrusting to the village council their communally held grazing lands, which are traditionally owned by the community, the Barabaigs were in effect unwittingly reinforcing the state presumption that those lands are unowned; this is because according to state law, the indigenous community has no identity or existence. A village council has, but has no competence to hold land under customary law.

If the indigenous traditional community needs replacing, then the village council is probably not the best institution to replace it with, at least not now. The village council is not an institution of the people, but an institution to facilitate state control of the rural population (Århem 1985:22-26). The village council, along with the program which brought it, Villagisation, has been nothing but an imposition upon the people, bringing in a completely new order regarding the structure of authority and a land use pattern not readily reconcilable with the traditional community, whose values and institutions had evolved out of the community itself. It has been said that:

„The new hierarchy of political offices - the village chairman, secretary and manager- weakened the traditional leadership, and placed the centre of authority outside the local community.“ (Århem 1985:25)



Thus what the Barabaigs tried to do was to use an alien institution to assert their indigenous rights. This could not be; the village council was never conceived and designed as an institution to serve the interests of the rural peasants or pastoralists. Rather it was conceived and set up as an instrument to facilitate effective control of the people by the state.

## State Control of Civil Society

Control of civil society has been the pre-eminent concern of the state as manifested through Government policies and practices all the time. Much has been said about the suppression of political rights by the one-party state system, in force in the country until June 1992. But that tells only half the story; the state in Tanzania has all the time been seeking to control every aspect of civil life and activity. The one-party state arrangement only made control easy by providing the necessary structure and framework suitable for such control.

By way of illustration, we point out here, very briefly, how the state in Tanzania has been controlling civil society through effective control of all civil institutions such as religious organisations, professional bodies and other non-governmental organisations.

All christian denominations are conveniently grouped into two main bodies: the Christian Council of Tanzania (CCT) for all protestant denominations and the Tanzania Episcopal Conference (TEC) for catholics. Any religious congregation claiming to be Christian must affiliate with one or the other of those two bodies if it wants both influence and peace with the Government. For Muslims there is the Supreme Muslim Council of Tanzania (BAKWATA). What comes out of the Council is regarded by the government as „ex-cathedral“ for all Muslims.

It is public knowledge that the regime has always maintained very cordial relations with those three bodies, effectively using them to contain all religious groupings and to bring them to use their pulpits to mobilize support for Government policies. Under the one-party state system with its concept of Party Supremacy<sup>8</sup>, whenever the National Executive Committee (NEC) of the Party (which has been the supreme policy making organ) met to deliberate on important or sensitive matters, leaders of those three bodies have always been invited as „observers“; the NEC meetings are always held in camera. Effectively, a version of the one-party state has been established for religious organisation and administration.

BAKWATA is perhaps illustrative of that; it was formed in 1968, with active Government encouragement, with the objective of establishing a „one-party“ Muslim following. Its administrative set-up and organisation is remarkably similar to that of the ruling party, especially as it was then. At BAKWATA's inaugural conference at Iringa, one resolution was that all Muslims were to dissolve their then existing congregations and constitute themselves into regional or district organs of BAKWATA. The state has assisted in carrying out that resolution. Some such congregations which could not dissolve themselves were declared unlawful societies under the *Societies Ordinance 1954*, and their assets vested in BAKWATA by Government orders.<sup>9</sup> At least one such congregation which resisted self-dissolution for almost too long was recently declared by both the High Court at Arusha and the Court of Appeal to be an unlawful society and therefore not even competent to own a mosque.<sup>10</sup>

Recently, some Muslim groups have tried to organise themselves independent of BAKWATA. Most of them have failed to secure registration without which, according to the Arusha case referred to above, meaningful activity is severely curtailed. But there is one which managed to gain prominence recently: the *Baraza la Uendelezaji Kuran Tanzania* (BALUKTA). Possibly it secured registration on account of the apparent thrust of its name (and probably its constitution too) towards mere promotion and development of Quranic teaching. Its prominence shot up almost overnight from 1991, after BALUKTA publicly took position in defense of the one-party state by condemning those Muslims who sought to engage in politics in opposition to the ruling (and by then, only) political party. BALUKTA therefore bought its prominence by seeking and apparently getting alliance with the state party. The alliance has failed to persevere, though, and recently BALUKTA has been banned and its leader and some members arrested on allegations of criminal conduct ranging from unruly chaotic behaviour, destruction of property and planning to effect government changes through unconstitutional means.<sup>11</sup>

Professional bodies in Tanzania have generally sought to organise themselves nationally, thus reducing the chances of having a multiplicity of organisations concerned with the same or similar things. The general belief is that this tendency has been voluntary. However, a few exceptions could be noted regarding that belief.

During 1989/90 some medical practitioners, mainly based at the Muhimbili Hospital, decided to form an organisation of their own. They had at least one thing in common: none of them was in the high

ranks of specialists. So they called their organisation the Tanzania Junior Doctors Association. Registration of their association was delayed for a very long time, meeting with stiff resistance simply because, as they were told, there was already registered long ago a Tanzania Medical Association embracing all medical practitioners, which the junior doctors were reminded that they were free to join at any time instead of setting up another organisation.

It is as if a „one-party“ syndrome has infected every civil and professional organisation. Rather surprisingly, not even lawyers have been spared the infection. In 1990 at a General Meeting of the Tanganyika Law Society there came up for discussion the issue of registration of two lawyers' groups: the Kilimanjaro Lawyers Association (sought by lawyers based in and around Kilimanjaro Region) and the Tanzania Women Lawyers Association (sought by women lawyers generally but mainly Dar es Salaam based). There was surprisingly strong resistance from some of the members of the Law Society who advanced strong learned arguments which were remarkably similar to those of the single political party in defense of its monopoly position.

That this came up for discussion at the Law Society General Meeting could be telling. Registration of an association or a society is sought by application to the Registrar of Societies. Now in the case of the two lawyers' groups, after receiving the applications for registration the Registrar thought it wise to seek and get the opinion of the Law Society first before deciding on the applications. This seems to be one of the strategies of the state in exercising control over civil organisations: using existing organisations or their leaders, by patronising them or offering them favours, and then using them to exert control or exercise influence over the possible extents of potential civil activism. Sometimes, when favours and co-optation of the leadership into Government ranks fail, suffocation or subtle coercion of the organisations may sufficiently serve the purpose. Either way, it is always better and more efficient for the Government to exercise its control through a single organisation, thus the deliberate Government preference for „umbrella“ organisations.

In recent years there has been a proliferation of civil associations commonly referred to as Non-Governmental Organisations. The Government in Tanzania promptly reacted to this new development by initiating and organising the formation of an umbrella organisation called „Tanzania Association of Non-Governmental Organisa-

tions (TANGO). All associations considering themselves to be non-governmental organisations are strongly encouraged to affiliate with TANGO when seeking registration. And, true to his fashion, the Registrar of Societies often seeks TANGO's opinion before registering a new organisation, and TANGO's opinion is highly regarded. In due course TANGO's status could be nearing that of BAKWATA or the Christian Council of Tanzania or the Tanzania Episcopal Conference. TANGO actually feels that it has a legitimate authority to advise any person or body wishing to have dealings with any non-governmental organisation in Tanzania and even the Government regularly consults it for that purpose almost as a general rule of practice<sup>12</sup>.

The urge for control has been shown to be extending far and wide, even to cover those civil groups and activities which are actually in line with or in support of the official policies and ideological inclinations of the regime. Therefore support for the Government has not been enough; rather the Government has also sought the right, so to speak, of controlling and directing that support as well. Any effort or tendency by any group to enhance its independence and autonomy and resist or avoid such control has usually led to some very strong action being taken by the state.

Nothing typifies this more than the rise and fall of the Ruvuma Development Association. This was an association of villages founded in 1963 and organised entirely by its own members. It is said to have been extremely successful in its democratic organisation, communal production, self-reliance and the provision of social services to its members (Toroka 1968:2, Lewin 1969). These are in fact the same virtues which were adopted as part of the official state policies in 1967 and Nyerere devoted much of his time propounding them with so much vigour and intensity in his *Ujamaa* ideology. In fact it is said that even Nyerere's 1967 and 1968 papers on socialism and its application to rural Tanzania followed closely the experience of the Ruvuma Development Association (Coulson 1982:319).

But the association's virtues were the one big problem which led to its sudden demise. It was too independent in its organisation and free from state control and patronage. The state in Tanzania has always felt threatened by independent civil organisations like the Ruvuma Development Association. That is why the President invoked his powers under the *Societies Ordinance 1954*, declaring the association an unlawful society and ordering it to be wound up.<sup>13</sup>

After the Ruvuma Development Association was crushed, state

executives at regional and district levels adopted a strategy to make sure that no similar organisation was to be started in any village or villages. And as part of the strategy, when the Villagisation Program came, it was planned in the regional and district offices of the Government, and then implemented by militia backed Government officials with such vigour that no doubt was left that the whole exercise was a Government scheme for its own purposes (cf. Coulson 1982).

## The Challenge Ahead

It is tempting to think that the coming of „political liberalisation“ as marked by the *Eighth Constitutional Amendment Act 1992* (No.4 of 1992), which re-introduced multi-party politics, has the effect of making the regime less inclined to control civil society than has been the case. So far there has been no such indication. While declaring its readiness to contend with political organisations in opposition to it, the regime remains very wary of independent organisations which can have influence upon the people, but are not political parties. The structures designed for the exercise of state control remain intact, except that now the powers of control will be able to change hands from one party to another. It should be noted that the list of repressive laws recommended for repeal or amendment by the Nyalali Commission, the presidential commission whose central recommendation brought multi-party politics in 1992, remains in the statute books; they include the *Societies Ordinance* under whose provisions the Ruvuma Development Association and many other groups have been liquidated.

In any case, it cannot be expected that the Government will change automatically in its attitudes and practices merely because there is now a multi-party constitution in force. Much as the multi-party constitution did not just come in without popular pressure, unwarranted state control of civil association will only recede as a result of similar pressure.

Otherwise the Ruvuma Development Association experience reflects what is still the Government's long standing inclination to control and patronise everything and everybody. Whenever any organised group or association tends to be difficult to control, irrespective of its objectives and activities, the Government will harrass it in various ways, including proscription, until the group goes out of existence, or succumbs to state patronage. The treatment of

pastoral communities will not in any way be different. With the growing consciousness bred of continued marginalisation by state policies, pastoralists are learning, it appears, that state patronage does not help their cause; their own independent and self-reliant organisations may serve them better. It can only be hoped that accounts of the experiences of such organisations as the Junior Doctors Association and the Ruvuma Development Association will serve well as warning examples, not to scare the pastoralists but to make them know what to expect and brace themselves to survive it.

Recent events have shown that Government officials are extremely uneasy about KIPOC, the independent organisation of pastoral communities in Arusha Region. The organisation seems to be making effective progress with some development projects. They are expanding secondary school education in their area and, which is quite significant, they have managed to acquire title deeds for the pastoral lands of seven villages. What disturbs the Government officials most is the fact that KIPOC is managing to do all this without at all involving the district or regional „leadership of the Government and the Party“. This is what made the activities of KIPOC suspect. The organisation was proscribed in Hanang District because it was said to be going out of its way and trying to bring development to the people, which is supposed to be the exclusive function of the Party and the Government.<sup>14</sup>

We should point out here that the acquiring of title deeds for pastoral lands is a very significant development. It ensures that the rights of the pastoral communities to their grazing lands, which are usually communal, are secure. It is a step which adds to the autonomy of the communities in whose names or interests the title deeds have been issued by reducing their dependency upon the state.

Dependency is what made even the villages established under the Villagisation Program lose all their initiative potential and fall under the control and direction of the state in every detail. And that too was part of a deliberate strategy of the state: it promised extensive social services, far beyond any imaginable capacity of the villages, and thus made them entirely dependent upon the state and forced to submit themselves to its full control.

In this connection, we should mention the *Regulation of Land Tenure (Established Villages) Act 1992* (No. 22 of 1992). This law was rushed through Parliament in order to save the state from an embarrassing chaos which was likely to occur as a result of the messy implementation of the Villagisation Program in Mbulu District. In large areas of the district several individual farmers were

thrown out of their farms in order to provide land for the villages which were then established.

But after evicting the farmers, no steps were taken to lawfully acquire those lands and vest them in the new villages or villagers. Now, several years later, the former owners, who were until their eviction holders of the lands under customary law, came up and instituted court cases claiming back their lands. Their success in court, which in many cases was very imminent, would lead to an immediate displacement of many villagers, in their hundreds, by just a few individuals. Apart from the injustice to the hundreds of villagers who were to be displaced (and thousands of their dependants), this would be very embarrassing to the Government which brought them there in the first place. So the Government brought about the enactment of this law to save itself from its own mess.

The law extinguishes all customary land rights in respect of village lands, which are lands within the jurisdictional areas of villages established under the Villagisation Program, whether those villages are registered or not. The law also takes away the right to compensation for the loss of land resulting from the application of this law, and precludes the institution of any civil suit to claim or assert any such right. At the time of enacting the law there were many such cases pending in court; the law terminates any such pending cases, and prohibits the execution of any judgment, decree or other order that may have been made by any court in respect of the same.

It is extremely doubtful whether that law would pass the test of constitutionality. But so far that question has not found occasion to be raised.

On the face of it, that law may look like it is seeking to protect communities, the communities in the villages where some individuals, perhaps greedy individuals, would displace them. Indeed, that is the impression which the Government has been trying to make all along, and it may well be the case for those villages in which the Government indeed sought to prevent mass displacements of villagers. But the purported protection can only have a very short life and it certainly does not exist at all for pastoral communities with regard to grazing lands which are held and used communally. The law extinguishes whatever customary rights there may be in those lands. Thus those who had been enjoying the use of those lands as theirs no longer have that right.

To make it worse the law only *extinguishes* customary land rights but *does not vest* the rights in those lands in the village council or

other common institution of the villagers. The effect therefore is to statutorily render lands in the villages unowned or nobody's lands; they are now lands which are there for the taking, with even greater ease than was the case when alienating land for NAFCO. And we say that the purported protection of villagers under this law is illusory, because the rights which have been extinguished are not only those of the former owners who were evicted but even of those now in occupation. It means that all those peasant villagers now holding or using land in established villages can no longer claim to be occupiers of land holding customary rights of occupancy under the *Land Ordinance*. Rather, they are more like licensees, persons using land merely at the pleasure of the Government. Thus they are wholly dependent upon the Government, an arrangement which very well suits the purposes of state control of civil society.

That is why the securing of title deeds for pastoral lands as done for the seven villages in Ngorongoro District is a very significant step which is highly commendable.

## Notes

1. cf. Daily News, Dar es Salaam, 10 December 1990; Business Times, Dar es Salaam, 8 February, 1991. 2. This is said to have been the traditional principle of land „ownership“ in all African societies before disruption by European influences. cf. Nyerere, J.K., 1966 3. Yoke Gwaku and Others v. National Agricultural and Food Corporation (NAFCO) and Another, High Court of Tanzania, Arusha Registry, Civil Case no. 52 of 1988, and Ako Gembul and Others v. National Agricultural and Food Corporation (NAFCO) and Two Others, High Court of Tanzania, Arusha Registry, Civil Case no. 12 of 1989.
4. Business Times, Dar es Salaam, 1 December, 1992
5. Sections 22-26 of the Local Government (District Authorities) Act, 1982, (Act. no. 7 of 1982).
6. Initially, the law applicable was the Villages and Ujamaa Villages (Registration, Designation and Administration) Act, 1975, which was repealed by the 1982 law cited in note 5 above which all the same re-enacted the provisions relating to the registration and incorporation of villages.
7. National Agricultural and Food Corporation v. Mulbadaw Village Council and Others, Tanzania Court of Appeal, Civil Appeal No. 3 of 1985 (unreported).
8. On the rise of the concept of „Party Supremacy“ see Mseka 1977
9. Government Notices, No. 434 and 435 of 1968, and Government Notice , No. 169 of 1969.
10. Arusha Muslim Union v. BAKWATA, Tanzania Court of Appeal, Civil Appeal No. 33 of 1990 (unreported).



11. As reported prominently in the local press, all Dar es Salaam based: the dailies , Uhuru and Daily News, reports for the whole week from 10th to 17th April, 1993; also in the bi-weekly Mfanyakazi of 14th and 17th April, the weekly Business Times of 16th April, and the fortnightly Family Mirror no. 100 (2nd Issue) April, 1993.
12. This was disclosed, perhaps unintentionally, at a conference on Empowering People: Civil Associations and the Role of NGOs, organised by the Institute of Development Studies, University of Dar es Salaam, and held at Arusha, Tanzania, in August 1991.
13. Government Notice No. 254 of 1969
14. The Express, Dar es Salaam, November 18-25, 1992

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## THE BARABAIG LAND CASE

### Mechanics of state-organised land-grabbing in Tanzania

Land grabbing organised by the state for its own gain is by no means uncommon in the history of Tanzania. According to A. B. Lyall, the British colonialists were the architects of the present day land tenure system in Tanzania. The structures of land tenure were built around concepts which allowed the state to take over land from whomsoever under a variety of inbuilt legal pretexts including: failure to develop land; eminent domain; trusteeship of the state over all land referred to as „Public Land“, partly through the notion that African natives never owned land „in re“ (i.e. in itself) but only had use and occupational rights; etc. (Lyall 1973).

#### The Historical/Social Paradigm

A classic example of land grabbing against a native community was executed by the British themselves just after World War II in the famous Meru Land case (cf. Japhet & Seaton 1967). The Wameru, just like the Barabaig, are a tribe in the Northern Tanzania Arusha Region. Unlike the Barabaig they are agriculturalists. The British, in a post-war strategy of rewarding soldiers by giving them prime land in the colonies, found the Meru plains to be suitable for White settlement and sought to settle White settlers in the area. They organised a scheme whereby more than 300 families of Wameru living in prime land would be re-settled in dry areas and their land given to the soldiers. The Wameru led by Kirilo Japhet resisted the move and took their case to the United Nations. Tanzania, then Tanganyika, was a Trust Territory of the United Nations (the British being Trust Territory Administrators on behalf of the U.N.); the Trusteeship Council was the right forum for the grievances of the

Wameru. Their struggle led to the amendment of the *Land Ordinance, Cap. 113*, to the effect that no land under the jurisdiction of a Native Authority could be alienated without consulting the said Native Authority.<sup>1</sup> Typically, the British Government resisted the move and re-interpreted the law to mean that consultation did not imply obtaining the consent of the Native Authority.<sup>2</sup> The *Land Ordinance* clearly failed to provide protective mechanisms for the native title to land. And the state's hegemonic position and self-interest did not in any way help matters in this dictatorial set-up.

The independence government has also been guilty of insensitivity to inherent land rights of native communities in a variety of ways. Examples abound in the manner through which village settlements were to be created,<sup>3</sup> rangeland schemes established,<sup>4</sup> and the whole exercise of Ujamaa Villages was carried out in total disregard to the traditional land rights of the natives.<sup>5</sup> Statutes which followed the exercise from 1975 failed completely to provide for a land tenure structure. This vacuum has recently been filled in a clumsy post-haste fashion with a concept to be known as a „Village Title“ in the place of a Native Title to land<sup>6</sup>. A host of problems have been generated in this experimentation but the essential point here is that the characteristic insensitivity to native land proprietorship by Government has been common throughout Tanzania's history. The Barabaig case is a clear indictment of the post-independence state.

The social history of the Barabaig has now been reviewed adequately. Thanks to the initial sociological work of Wilson and now of Charles Lane and others, a fair understanding of their social structure is in place and their legal norms and practices have also received scholarly attention (Wilson 1952/53; Lane 1991; Tenga 1992).

Briefly, as already stated, the Barabaig are a pastoral ethnic group living in the Northern part of Tanzania, East Africa, in an area known as the Hanang Plains along the famous great Rift Valley. They have been the victims of „development“ in the sense that the Hanang Plains attracted Canadian Technical Assistance (through CIDA) for opening mega-wheat farms complexes covering more than 100,000 acres of land. Seven farms named Basotu, Setchet, Murjanda, Mulbadaw, Gawal, Waret and Gidagamowd are today operational under the ownership of a parastatal concerned with food production. This is the now infamous National Food and Agricultural Corporation (in short NAFCO) which has subsidiary companies in each of the mega-farms. NAFCO is the historical descendant of the British post-war parastatal which was created for the same

purpose and disastrously failed in Southern Tanganyika to develop a groundnut scheme. This was the Overseas Food Corporation (OFC), which having failed to develop mega-groundnut farms in 1954 was transformed into Tanganyika Food Corporation (TFC) and worked in Village settlement schemes, Kongwa Ranch Scheme in Central Tanganyika and in tobacco farming schemes in Western Tanganyika. At independence it came under the National Development Corporation (NDC) and later became an independent parastatal known as NAFCO.

When funding for wheat farming was obtained from Canada in the early 70's NAFCO was already overseeing a model wheat farm in Hanang by the name of Basotu. The acquisition of this 10,000 acre farm had already caused clashes with the native community, but NAFCO, flush from new and promising funding, between 1974 - 1984 went on acquiring 100,000 acres more to put in place a huge project. The Barabaig pastoralists living in the area, their traditional village authorities, etc., were completely ignored in the exercise and where consulted it was for rubberstamping purposes only. The Barabaig like the Meru in the 1950s, have struggled against this act of land-grabbing by the state. They have done so in a variety of ways. One of the ways has been through the courts of law.

The purpose of this paper is to provide a legal analysis of the variety of legal scenarios that have been generated in Barabaig's decade-long struggle in the Courts. The paper will make only a passing reference to those cases presently in court. Professional ethics for the Bar in Tanzania oblige practising advocates not to discuss *sub judice* cases in public. Hence the authors being practising advocates (and one of them directly concerned in the cases which are *sub judice*) are therefore unable to comment on proceedings in these cases. But we discuss issues and select references from other relevant cases.

## The Legal Paradigm

Ownership of land in Tanzania is today regulated under the *Land Ordinance, Cap.113* of the Laws. All land is *Public Land* under the trusteeship of the President. Grants of land can be made, for not more than 99 years in a system of land tenure known as the Right of Occupancy. Land so granted is issued under a Certificate of Title. The Land Ordinance recognises customary tenure as Rights of Occupancy. Hence for a majority of native Africans the land tenure

practised by them is known as the Deemed Right of Occupancy. Proof of ownership is through use and occupation and hence rights derived from this tenure are known as usufructuary rights. Most of the traditional land is held under this system of ownership. An analysis of this kind of land tenure and its precariousness has been done elsewhere and need not delay us (cf. Tenga 1992; James & Fimbo 1973).

It is worth noting however that as of December, 1992 (see Charles Lane's paper) the definition of the right of occupancy has been expanded to include what are termed „Village Titles“. The significance of this change will be discussed later in this paper.

Landholding rules or the systems of land-use under traditional law are specific to the tribe or ethnic group within which that land is owned. This has been the position of the law in Tanzania since the British Colonial period (See: *Mtoro bin Mwamba v. Attorney-General* (1953) 2 TLR 377 [CA] (James & Fimbo 1973:fn.12)). For pastoralist communities one of the essential elements of ownership is common property. Pasture and grazing land is normally held in common. Hence the reference for ownership will be the community at large and not the individual.

According to the law the land holding rights of the community cannot be extinguished unless certain steps are taken under the land acquisition statutes. There is the *Land Acquisition Act, 1967*, which allows the President to acquire land compulsorily. Under the *Town and Country Planning Ordinance, Cap. 378*, planning authorities may also compulsorily acquire land for planning purposes. Elaborate procedures in relation to consultation, compensation, grievance structures, etc. are provided to ensure a fair settlement upon acquisition. This is essential since the *Constitution of the United Republic of Tanzania* provides: under Art. 24.

"24 - (1) subject to the relevant laws of the land, every person has the right to own or hold any property lawfully acquired.

"24 - (2) subject to the provisions of sub-section (1), a person shall not be arbitrarily deprived of his property for the purpose of acquisition or any other purpose without the authority of law which shall set out conditions for fair and adequate compensation."

The case of the Barabaig is a sad example of how the legal mandates have been overlooked or simply ignored. It is proposed here to review the Mulbadaw Case, Government response to acquisitions through legislations measures, grants of titles and appointment commissions.

## Mulbadaw Village Council and 67 Others versus NAFCO<sup>7</sup>

In March, 1979 NAFCO, an agricultural parastatal, occupied 3,000 acres of land in an area belonging to the Mulbadaw Village. This land was opened for wheat farming. Again in March, 1980 NAFCO expanded acreage to 6,000 acres, thus adding 3,000 acres more. The Village Council, which is the lawful authority in the area, was not consulted nor were the individuals who were evicted and whose houses were razed in the process. The Village Council and about 67 villagers brought a case against NAFCO challenging NAFCO's acquisition of the land. NAFCO did not deny the acquisition of the land but argued that it was carrying out a lawful Tanzanian national project, the Mulbadaw wheat project. This project covers 10,000 acres being part of the Hanang Wheat Complex (HWC), in all some 70,000 acres under the Canada-Tanzania Wheat Program; the area having been identified by the government for that purpose. Thus NAFCO's occupancy, it was argued, was made valid through governmental directives.

NAFCO was given a Letter of Offer for the area on 29th of July, 1981, for 99 years; backdated to begin from 1 st of July, 1979. Presumably to cover the time when NAFCO started to wrongfully occupy Barabaig land.

In court the Judge requested the parties to address the issue concerning the application of the *Land Acquisition Act, 1967*. Both legal counsels, Mr. Musei and Mr. Jundu, did so. It was clear that under section 3 of the Act the President is authorised to acquire land where such land is required for any public purpose. Under Section 4 (2) it is provided:

„Where the President is satisfied that a Corporation requires any land for the purposes of construction of any work which in his opinion would be of public utility or in the public interest or in the interest of the national economy, he may, with the approval, to be signified by resolution, of the National Assembly and by Order published in the Gazette, declare the purpose for which such land is required to be a public purpose and upon such order being made such purpose shall be deemed to be a public purpose for the purposes of this Act.“

Section 6 of the Act also provides that if the President resolves that any land is required for a public purpose, the Minister for Lands shall give notice of such intention to the persons interested or claiming to be interested in such land. The Minister is further authorised to issue a subsequent notice directing the person con-



cerned to give up possession within a specified period of not less than six weeks from the date of publication of such notice in the *Government Gazette*.

The Counsel for NAFCO objected in court that the *Land Acquisition Act, 1967* and its procedure does not apply to land held by peasants under customary land tenure and only applies to Granted Rights of Occupancy. The Court disagreed and held that under the *Land Ordinance Cap.113*, the definition of a Right of Occupancy includes land held under customary tenure. The Court further observed that, according to Section 17 of the *Land Acquisition Act*, where any question arose respecting title to any land the party in possession is deemed to be lawfully entitled to such lands unless the contrary is shown to the satisfaction of the court. Hence in the case of the Barabaig claimants it was legitimate to assume that, if they were in possession of the disputed land before NAFCO came to the scene, they were to be deemed the lawful occupiers. Judge D'Souza of the High Court held that the legal procedures were not followed. The Offers of Rights of Occupancy were therefore illegal and so was NAFCO's Occupancy.

NAFCO was dissatisfied with the High Court's decision and appealed to the Tanzania Court of Appeal. Three Justices of Appeal heard it i.e. Justice Nyalali, Justices of Appeal Mustafa and Makame. The decision was written by Justice Mustata (see *Civil Appeal No. 3 of 1986 NAFCO vs. Mulbadaw Village Council and Ors*). Justice Mustafa decided to firstly see whether the issue of lawful occupation had been clearly resolved in the lower court since, he argued, „the evidence adduced was somewhat confused and vague“.

The evidence had established clearly that the village council had been registered under the *Villages and Ujamaa Villages (Registration, Designation and Administration) Act, 1975* on 24th of March, 1977 and incorporated on 30th December, 1977. There was no evidence on record that the village land had been vested in the village council. The Court of Appeal noted that for the High Court Judge to assume that mere registration vested land in the village council was a „quantum leap“ on the part of the Judge, and reasoned:

„The previous village as a community might or might not have had ownership or possession of the land within its administrative unit. The land in the village might have belonged individually to the villagers living in the village or the village might have had some land in its own capacity as a community. We have no evidence. But an administrative unit does not necessarily imply that the land within its administrative jurisdiction is land belonging to it. At

least no such evidence had been adduced, nor indeed was such a claim made. The fact that the Village Council succeeded the previous unincorporated village in its administrative function over a specified area confers no title of any type over such land on the Village Council.“

Hence the Court decided that the Council was not in any lawful occupation over the land within its jurisdiction and hence could not sue *qua* owner.

As for the remaining 66 Villagers who were parties in the Case the Court of Appeal argued that each of these had to prove his or her own customary title. Only 5 of them testified in Court and they did not in any manner establish their customary titles nor that of their co-plaintiffs. Justice Mustafa stated:

„The Judge had obviously held that all the 66 Villagers held customary tenancies over their plots. We fail to see how the contents of Ex.P.6 (which incidentally listed only 64 names) could be evidence of the respective rights of those who had not testified. There is no evidence as to when each villager had occupied or was in possession of the land, and this list was compiled in the absence of NAFCO. In any event each villager had to prove his own case... Here each villager had a separate and distinct claim, though the claims were based on similar acts of trespass. This is not one of those representative suits by or for a club, where different conditions apply.“

Thus the 61 applicants were struck out for not having testified in a case which was admittedly based on „similar acts of trespass“. And for those who testified (i.e. 4) the judge argued that they had to prove that they were *natives* in order to hold customary titles:

„It is for a Plaintiff to establish that he was a native before a Court can hold that he was holding land on a Customary Tenancy. These 4 villagers had not established that they were in occupation on the basis of customary tenancies.“

For the last person who testified and admitted that he was a Somali the Court took a colonial definition of a „native“ which defined a Somali as not a native. In actual case the definition as it stands today describe a native as a citizen of Tanzania „*who is not of European or Asiatic origin or descent*“. Nevertheless the Court was emphatic that he „*could not hold a customary tenancy*“. Hence NAFCO was left with no challenger and the decision of the highest court of the land was against the Barabaig.

In using technicalities to dismiss the Barabaig claim several questions remained unanswered.

First who comprises the „native community“ which may hold a land right under the Land Ordinance? In pre-colonial days the kinship structures and tribal levels would define a community. In some cases the ‘parish’ as a territorial, and not a consanguinity unit, would be defined by traditional practices. But the British introduced the *Native Authorities Ordinance of 1926*, where traditional communities found legal recognition. This was carried over in the *Local Government Ordinance, Cap. 333*; and later through the *Decentralisation of Government Administration (Interim Provisions) Act, 1972* and also the *Villages and Ujamaa Villages Act, 1975* which created village councils. Once again the village councils have been made part of the local government structures through the *Local Government (District Authorities) Act, 1982*. Hence one may confidently say at the community level the successor of the „native community“ as envisaged in the *Land Ordinance 1923*, bogus as it is, is the Village Council. How then did Justice Mustafa ignore this fact and simply declare that the Village Council has no interest at all in land? How can grazing land, which is common property in pastoral communities, be owned if not through a public authority such as a village council? The good judge just skirted around the issues.

Second, the most alarming conclusion was the court’s misdirection on the issue of native rights. In the lower court it was held, and we think correctly, that the fact of possession of itself was adequate enough to prevent a trespasser from asserting an interest in the land. It was not contested that the villagers were in occupation when NAFCO came in. But the Court treated this fact as one in need of proof when even NAFCO could not contest it, as it was too obvious. And for this very reason it did not appear as necessary both to the lower court, to the lawyers of both sides, and to the parties, that evidence must be led to prove whether these African natives before the court and villagers in Mulbadaw Village were actually natives. But the Court of Appeal thought this was necessary. Under the Rules the Court of Appeal is empowered to call for additional evidence<sup>8</sup>. This was not done. But if it were done the results would have been rather obvious, viz, the 67 Applicants were citizens of Tanzania and were not of Asiatic or European descent. The Court would have had no alternative but to declare NAFCO a trespasser.

Obviously the Barabaig were dissatisfied by the decision. They had reached the highest court in the land and had lost. The only alternative was to pursue a legal remedy once again in other farms and follow the procedure as articulated in the Court of Appeal’s decision. They approached the Legal Aid Committee of the Uni-

versity of Dar es Salaam which agreed to represent them in cases concerning three farms in the complex: Gawal, Waret and Gida-gamowd. This was done and two cases opened in the High Court, Arusha<sup>9</sup>. Proceedings are still pending but other matters of alarming proportions began to develop around the cases. These concern legislative machinations.

## Legislative Attempts to Extinguish Customary Land Rights

Such measures have been taken by the Tanzanian Government through various techniques including the issuance of Certificates of Title notwithstanding the fact that trespass had already taken place, issuance of Government Notices to extinguish Barabaig land rights retrospectively, and also using the National Assembly to pass a law extinguishing customary titles generally. We shall briefly review these attempts.

### Issuance of Title Deeds ex post facto

The Case of Mulbadaw Village Council vs. NAFCO is a classic example of the use of this technique. Through administrative practice any applicant for land is issued with a Letter of Offer for a right of occupancy. Once this Offer is accepted by paying the necessary fees then the Commissioner for Lands issues a Certificate of Title which is the formal legal title deed<sup>10</sup>.

Once the Certificate of Title is issued, ownership of land is confirmed, and, generally, the Certificate cannot be questioned. According to Section 33 of the *Land Registration Ordinance Cap. 334*, the Certificate of Title is an absolute proof of ownership and, barring fraud, it cannot be impeached in a court of law. What government and NAFCO were actually doing was to allow NAFCO to take over Barabaig land on the basis of administrative directives. And then much later, after evictions and cultivation have already been carried out, issue Letters of Offer and the Certificates of Title as if the later documents would sanction any illegalities carried out previously. The High Court judge in the Mulbadaw Case had noted:

„...Where someone is in lawful occupation of land no valid right of occupancy can be offered to anyone else over the same land unless the provisions of the *Land Acquisition Act 47/67* have been complied with. To hold otherwise would mean the Commissioner for

Lands, by simple device of making Offers of Rights of Occupancy could by-pass the provisions of the law. In view of this I hold that the Right of Occupancy offered to NAFCO in respect of Mulbadaw Wheat Project was not valid ... The Offer for Mulbadaw Wheat Project (Ex-D.16) was accepted in July, 1981 and the requisite fees paid in August 1981. This was well after NAFCO had evicted the Plaintiffs from the Land. In other words when NAFCO set out to expand into Mulbadaw they did not even have a Right of Occupancy over the area."

The legal documents for ownership have time and again been produced *post-haste* by NAFCO and Government to justify the trespass as legal. Yet judicial opinion on this kind of legislative doctoring has been negative. Even in cases of double-allocation of land where authorities have resorted to purported lawful revocation of titles to justify re-allocation to someone else, the courts have struck out such manoeuvring (see: Case of *Patman Garments vs. Tanzania Manufacturers*, [1981] Tanzania Law Reports 303). It has become rather obvious that this procedural doctoring cannot pass through the courts. After the Mulbadaw Case, the government sought to use legislation to extinguish Barabaig Customary Titles, or any other native titles, where its interests conflicted with those of the local communities. Two cases are classic.

### Extinction of Customary Titles by Operation of Law

Two methods have been used by the Government. First through the operation of the *Rural Lands (Planning and Utilisation) Act, 1973 No.14 of 1973*. And second, by special legislation entitled *Regulation of Land Tenure (Established Villages) Act, 1992 No. 22 of 1992*.

#### A. Extinction of Land Rights by Regulations and Orders Under Act. No. 14 of 1973

Due to the need to regulate the villagisation exercise under the socialist policies of Ujamaa, the government introduced a statute to regulate the exercise in 1973. The major purpose of the Act was to monitor and control development of land within certain specified areas. This law was then not widely used. But under its provisions it was possible to issue regulations under which rights to land could be extinguished. In 1986 when the Ujamaa exercise had already been

overtaken by other events and statutes, the Government rediscovered the 1973 Act and enacted regulations titled the *Land Development (Specified Areas) Regulations of 1986* (Government Notice (GN) No. 659 of 1986).

Under Regulation 4 the Prime Minister was empowered to enact rules for extinction of land rights. This was done by the enactment of the notorious *Extinction of Customary Land Rights Order of 1987* (GN. No.88 of 1987). It extinguished customary land titles in certain areas in Northern Tanzania. Then followed GN. 338 of 1988 titled *Specified Areas (Extinction of Customary Land Rights (Ukerewe, Masasi Notice, 1988* and finally GN. 260 of 1989 titled the *Customary Land Rights (Amendment) Order, 1989*.

In the last order customary land rights existing at Gawal, Waret, Gidagamowd, Murjanda, Basotu and Setchet (i.e. over the farms taken over by NAFCO) were extinguished. The Order was signed by the then Prime Minister Joseph S. Warioba, on 10th of July, 1989. The Order was to operate retrospectively as if issued in 1987 under G.N. 88 of 1987.

These Orders have been challenged in various cases: in the Case of *Tito Saturo & 7 Others vs. Matiya Seneya & Others. (Civil Case No. 27 of 1985 - Arusha High Court)*. In the ruling by Judge Chua of the High Court the following was stated:

„...the most important question in this ruling is whether the *Land Development (Specified Areas) Regulation 1986* (GN 659/86) and the Order made thereunder (GN 88/87) are ultra vires the Constitution of the United Republic of Tanzania. This important point was not raised at the trial, for reasons which have not been explained here or in the Court of Appeal. One can only speculate what may have inhibited Counsel for the Plaintiffs from doing what was expected of him at the trial. The Court of Appeal in its wisdom has ordered that the point be taken up. Counsel for the Plaintiffs has accordingly made a detailed and well researched submission in which he challenges the validity not only of the subsidiary legislation but also of the principal Act i.e *The Rural Lands (Planning and Utilisation) Act 1973*. I propose to deal with the submissions for and against the validity of the Act. But obviously it will be necessary first to refer to the provisions that are relevant to this case.

Section 4 of the Act provides:

„Where the President is of the opinion it is of public interest to regulate land development in any area of Tanganyika, he may by order in the Gazette, declare such area to be specified area for the purpose of this Act“.

Pursuant to the power conferred on the President by the above section an order was made in Government Notice No. 102 published on the 25.10.85 as follows:-

*„Whereas the President is empowered by Order in the Gazette to declare any area of Tanganyika a specified area for the purposes of the Rural Lands (Planning and Utilization) Act 1973:*

*And whereas the President is of the opinion that it is in the public interest to regulate land development in the whole of the Mbulu, Babati, Hanang and Arumeru District:*

*Now therefore the President hereby declares the whole areas of MBULU, HANANG, BABATI and ARUMERU DISTRICTS specified areas for the purposes of the above Act“.*

Section 5 (1) (g) and (h) of the Act provides: -

*„5 - (1 ) Where any areas has, by an order made under section 4 been declared to be a specified area the Minister may, after consultation with the Minister for the time being responsible for lands, make regulations -*

*( g) providing for the revocation of or the amendment of the terms of, any right of occupancy granted in respect of any land the whole or any part of which falls within the specified area*

*(h) providing for the extinction, cancellation or modification of the rights, titles and interests in or over the parcels of land falling wholly or partly within the specified area, or in or over any bulding within the specified area“.*

The expression Minister, is defined under s.2 to mean the Minister for the time being responsible regional administration.

It was submitted that the Statute is ultra vires the Constitution of the United Republic for the following reasons: The first objection to the Act is that it contravenes the right to be heard which is a cardinal principle of the natural justice enshrined in our Constitution in Article 13 (6) (a). Nowhere in the Act is it stated that before the rights of people in the specified areas are affected they will be given an opportunity to be heard. Since the Act, as will be seen later in this ruling, has very drastic effects on the rights of people to own land the omission to provide for a right to be heard is indeed a serious one.

For the sake of clarity Article 13 (6) (a) of the Constitution of the United Republic is reproduced below.

*„13 (6) For the purposes of ensuring equality before the law, the state shall make provisions: -*

*(a) That every person shall, when his rights and obligations are*

*being determined, be entitled to a fair hearing by the Court of law or other body concerned and be guaranteed the right of appeal or to another legal remedy against the decisions of courts of law and other bodies which decided on his rights or interests founded or statutory provisions.“*

Reference was made to the *Land Acquisition Act* which in Section 6 provides: -

*„6 If the President resolves that any land is required for a public purpose, the Minister shall give notice of intention to acquire the land to the persons interested or claiming to be interested in such land or to the persons entitled to sell or convey the same, or to such of them as shall, after reasonable inquiry be known to him.“*

Such provision, it was submitted, would have satisfied the conditionality of the right to be heard. I subscribe to that view without any reservations.

The second objection taken against the statute is that it fails to provide for fair and adequate compensation. The requirement of compensation as stated before is a constitutional right enshrined in Articles 24 (2) of the Constitution as already cited hereinabove. The only provision in the Act which has some semblance of compensation is 5 (1) (i) which empowers the Constitutional requirement of fair and adequate compensation.

The third objection against the statute is that it is said to be discriminatory in that it is made to apply to certain areas. If it is found to be discriminatory that would be contrary to Article 13 (2) of the Constitution of the United Republic which provides:

*„13 (2) Subject to this Constitution, no legislative authority in the United Republic shall make any provision in any law that is discriminatory either of itself or in its effects.“*

The question is whether the Act can be said to be discriminatory within the meaning of that term in the Constitution. The term discriminatory is defined in Article 13 (5) of the Constitution to mean:

*„affording different treatment to different persons attributable only mainly to their respective descriptions by race, place of origin, political opinions, colour, occupation or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.“*

Taking into account the actual effect of the statute as will be seen later in this ruling, I am unable to resist the inference that the statute discriminates on the basis of origin of persons in those areas



mentioned in the government notice Nos. 402/85 and 88/87 for only specific villages in specific divisions are affected. So even if it were argued that the Act is not on the face of it discriminatory in its effect it is difficult to resist the inference that it does discriminate. That means that the Article 13 (2) of the Constitution has been infringed.

It is now time to look at the subsidiary legislation contained in Govt. Notices Nos. 88/87 and 659/86. Under G.N. 659/86 regulation 4 (1) it is provided that:

*„Where in relation to any part within a specified area it is in the public interest that any right over land held under customary law should be extinguished, cancelled or modified, the Minister shall extinguish, cancel or modify that right.“*

Acting under the powers conferred by the above regulation the Minister issued an Order in G.N. 88/87 couched in the following terms:

- 1. This Order may be cited as the Extinction of Customary Land Rights Order 1987 .*
- 2. All customary land rights within the areas specified in the Schedule to this Order which areas are in Arusha Region, are hereby extinguished.*
- 3. Where any customary land right is extinguished in accordance with paragraph 2, the land shall rest in the District Council which has jurisdiction over the area where the land is situated and that District Council may distribute that land in the way it deems fit.“*

It was contended by Council for the Plaintiffs that the *Land Development (Specified Areas) Regulations 1986* (G.N.659/86) is ultra vires the principle Act. It was argued that whereas under Section 5 of the *Rural Lands (Planning and Utilization) Act 1973* the Minister for the time being responsible for regional administration is empowered to make regulations after consultation with the Minister for the time being responsible for lands, the regulations made under G.N. 659/86 do not in any way indicate that such a consultation was carried out. Learned Counsel for the Defendants countered this argument by stating that there was no legal requirement for the consultation and that in any event the consultation may have been carried out but mention of it was omitted in the Government Notice.

I am not at all satisfied with the argument advanced by learned Counsel for the Defendants for the law has prescribed that the exercise of the power under section 5 of the Act can be carried out after consultation with the Minister for Lands and there is no way the general public can know that the law has been complied with if it is not so indicated in the Government Notice.

It is I think clear that if the Minister exercised the power alone he would be arrogating to himself powers in excess of what the statute granted him and to that extent his acts would be ultra vires.

It was further contended that the regulations were repugnant to the general principles of law in so far as they do not give any opportunity to those people who would be affected an opportunity to be heard. The omission of the right to be heard as stated before in this ruling is a contravention of a cardinal rule of natural justice - namely *audi alteram partem* - which is enshrined in Article 136 (a) of the Constitution of the United Republic.

As a general proposition a subsidiary legislation which purports to override general principles of law will be declared null and void. Even before this country became independent and had no constitution subsidiary legislation that contravened general principles were declared null and void. The case of *Manal Damor Kanji vs. Tanga Township Authority TLR. Vol. 239* which was cited by Counsel for plaintiffs, illustrates the point. In that case the power conferred on the Governor by S.3. of the *Township Ordinance* - Cap 29 to make rules „for the health, order and good government of townships“ did not justify the provision contained in rule 25 which purported to displace the legal presumption of innocence and that portion of the rule was declared null and void.

A similar decision was reached in the English case of *Powel v May 1946 K. 330* in which a by-law was declared ultra vires and local council on the ground that it was repugnant to the general law of the land as contained in the *Street Betting Act 1906* and the *Betting and Lotteries Act 1934*. (U.K.)

In the result the following provisions are declared null and void for contravening the Constitution of the United Republic of Tanzania Section 5 (1) (g) and (h) of the *Rural Lands (Planning and Utilization) Act, 1973*, Section 3 and 4 (1) of the *Land Development (Specified Areas) Regulations 1986* and the whole order made in Government Notice No. 88/87.

Sgd. L. J. Chua  
Judge

With obvious failure to meet constitutional criteria in the regulation, orders and notices to extinguish titles the Government was left with little choice but to use directly the Parliament in extinction of titles.<sup>11</sup>

## B. Extinction of Land Rights by The Regulation of Land Tenure Act, 1992.

The objects and reasons for this Act are briefly stated in the Bill as follows:

This Bill is designed to resolve conflicting interests existing in land occupied by Villages which were established pursuant to the government Policy on villagization.

Clauses 1 and 2 deal with preliminary matters including definitions.

In Clause 3 it is proposed to extinguish all rights based on customary law in all lands within village boundaries.

In Clause 4 it is proposed that no compensation shall be paid only on account that a right under Customary Law has been extinguished.

In Clause 5 it is proposed that any proceedings relating to any dispute over village land which is pending before any court to be terminated and any judgement, order or decree relating to such disputes should not be given effect.

Clause 6 proposes to vest exclusive jurisdiction over disputes involving villages land in the Customary Land Tribunal and only disputes not involving claim of the extinguished rights may be instituted.

Clauses 7 sets out the functions of the Tribunal and in Clause 8 it is proposed to confer upon the Tribunal the same powers and protection as are conferred upon the Tribunal under the *Customary Leaseholds (Enfranchisement) Act, 1968*.

Clause 10 provides for regulations to be made by the Minister responsible for lands prescribing the manner of making appeals.

In the last Clause 11 it is proposed to revoke the *Extinction of Customary Land Rights Order, 1987*.

By a stroke of the pen, Parliament sought to extinguish customary rights all over Tanzania. The Bill did not in any way propose an alternative system of land tenure for the 80% of Tanzanians living in villages. Their access to Courts was to be closed and even where they held decrees from Courts those Orders could not be enforced. The Act had retroactive effect. No Compensation was provided for.

In many aspects this bill was in breach of constitutional protections. Due to wide-ranging protest it was hastily amended so that the final Act referred only to villages affected by the Villagisation

Programme from 1970 - 1978 and that those who held hitherto customary titles were presumed to have *Village Titles*. In actual legal sence the Act is still a nullity. Suffice it to say that a panicky Government has reached the limit in seeking ways to extinguish native titles.

## Other Developments

NAFCO has used two classic methods of harassment against the Barabaig. First, is the use of Criminal law of trespass and second, through sheer human rights abuses.

### A. Criminal Trespass Cases

A leading Human Rights activist, a Barabaig, Mr. Duncan Geta-kanod reports as follows:

„There were many criminal trespass cases which differ in their categories and in number as compared to the number of years. These cases are of human rights violations and are mostly ignored or inadequately investigated and the perpetrators are not brought to justice.

Our people are accused and harrassed for lack of water, and grazing for cattle in NAFCO areas and on many occasions houses are burnt with property inside them. These are usually done purposely due to our peoples ignorance, lack of education, lack of awareness, no knowledge of our civil right and no one is ever known to defend and educate us. We need Advocates' help to know our rights of existence.

The following analysis of the Criminal Trespass Cases for last five years will enable some one to see how serious to us these cases are in NAFCO areas.

Thus:

(i) 1987: 10 cases were recorded by us, although more than 30 cases were sent to Court. In these 10 cases, 17 accused were fined Shs. 27,000/= each. Others had a fine between Shs. 5,000/= and 17,000/=. A number were imprisoned too.

(ii) 1988: There were 102 accused and 77 were fined. 25 were imprisoned amongst the 102 accused.

(iii) 1989: There were 142 accused. All were found guilty of the offence. 129 were fined and 13 were imprisoned.

(iv) 1990: There were 230 accused. All fined heavily and a number imprisoned.

(v) 1991: There were 204 accused. Three were acquitted at Primary Court. 14 cases were appealed against the sentence and conviction. On appeal we got acquittal on three appeals. The rest are still pending in Court. They are to be heard later in May this year.

(vi) 1992: There are 32 Accused in nine cases to date. A number are in Primary Court and another is in preliminary stage in two Police Stations.

NB. All accused who are sentenced to imprisonment are sent to jail for lack of money to pay fines. Some are women and a number are children who received strokes on their buttocks in jails.

Under Section 299 of the *Tanzania Penal Code*, Cap. 16 the offence is defined as follows:

„ Any person who-

- (a) Unlawfully enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property; or
- (b) having lawfully entered into or upon such property unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit any offence, is guilty of the misdemeanour termed „Criminal Trespass“ and is liable to imprisonment for three months: if the property upon which the offence is committed is any building, tent or vessel used as a human dwelling or any building used as a place of worship or as a place for the custody of property the offender is liable to imprisonment for a year.

The basic ingredient of the offence is entry aimed at committing an offence within the property. The Barabaig often cross the farms in search of water for livestock. At times women and children follow the harvesting machines to collect fallen grain. In all these instances no intention to commit a crime is there. Nevertheless at the irrational decision of NAFCO workers they are arrested and charged for criminal trespass. Moreover it has been held by courts of law that whenever there is a *bona fide* claim of right by the alleged trespasser this nullifies criminal intention. And also where there is a dispute of ownership of land this issue ought to be settled first in a Civil Court before a criminal action can proceed (See: the *Case of Said Juma vs. Republic* (1968) High Court Digest, P.158 per Saidi, J.). The many cases on criminal Trespass which Duncan sites are based on a *bona fide* claim of right and/or entry which has no criminal intent whatsoever. But due to ignorance, lack of legal assistance, etc., many Barabaig are languishing in jail due to this form of legal harrassment.

## B. Human Rights Abuses

Various reports are now out which confirm the existence of serious human rights abuses within the Hanang Wheat Complex. Efforts to bury these under an official wall of silence have failed and a Government Commission was appointed led by Justice Kiranga of the Court of Appeal and reported in March, 1993. The report is not public as yet but some newspapers (Business Times) have leaked certain aspects of it in the press.

## Conclusion

It is clear that the struggle for the land rights of the Barabaig is very crucial. Not only for the Barabaig, a national minority, but for Tanzanians at large. The old adage that a threat to justice anywhere is a threat to justice everywhere holds true in this case. Governmental use of formal machinery and the law to deny the Barabaig their inalienable rights amounts to abuse of power. The same machinations can easily be used against others. The role of lawyers and other officials is to see that the legal system is one of fairness and one which respects basic human rights. The effort of lawyers in assisting the legal battle for the Barabaig centres around Constitutional provisions which are clear. Whether this legal hope can be translated into a social and political reality depends on the combined efforts of NGO's, human rights activists, sympathetic professionals and institutions, and the commitment of the Barabaig themselves. We think there is good reason to be hopeful.

## Notes

1. The Land Ordinance was amended by Ord. No. 5 of 1950 to provide that native authority must be consulted before rights of occupancy are granted.
2. cf. Government Circular on „Land Utilization and the Allocation of Individual Rights over Land“ GC No. 4 of 1953.
3. Village Settlements Commission Act, 1963.
4. Range Land Management Act 1964.
5. Villages and Ujamaa Villages Act, 1975. Also see generally Andrew Coulson, Tanzania: A Political Economy. OvP:1983. Concerning the traditional land rights of the natives a thorough analysis is yet to be performed and may require extensive work. But a preliminary survey has been carried out: see R.W. Tenga, „Land Law and the Peasantry in Tanzania: A Review of the Post-Arusha Period 1967-1986“, E.A. Social Sciences Review.

6. Regulation of Land Tenure (Established Villages) Act, 1992, No. 22 of 1992, Section 12.
7. See Mulbadaw Village Council and 67 Others vs. NAFCO, Civil Case No. 10 of 1981 (High Court, Arusha) per Ag. J. D'Souza.
8. Rule 34 of Tanzania Court of Appeal Rules, 1979, GN. 102 of 1979, made under s.11 of the Appellate Jurisdiction Act, 1979, no. 15. of 1979.
9. For Gawal Farm: Yoke Gwaku and 5 Ors vs. NAFCO & Gawal Farm and Civil Case no. 52 of 1988. For Waret and Gidagamowd. Ako Gambul & 10 Others vs. NAFCO & Waret Wheat Farm LTD. & Gidagamowd Wheat Farm Ltd. Civil Case No. 12 of 1989 Arusha High Court.
10. Section 9 of the Land Ordinance Cap. 113.
11. The Court of Appeal did not have an opportunity to make a final Ruling on Judge Chua's Ruling. The proceedings were struck out for other reasons. Yet the signs were clear that the Orders and Regulations would not pass judicial scrutiny if fairly assessed. Cf: Yoke Gwaku & Others vs. NAFCO and Anor. Civil Case No. 52 of 1988 (c/f Misc. Civil Application No. 148/88 H/c) per E.N. Munuo J. - recognising the subsidiary legislation as valid: dated 15th August, 1990.

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CHARLES LANE

## THE STATE STRIKES BACK

### Extinguishing customary rights to land in Tanzania

*The purpose of this paper is to provide a brief historical account of land law and administration in Tanzania as it particularly affects customary land tenure. Through this I hope to show that, consistent with imperial objectives, the independent government has treated indigenous rights to land as inferior to those of the state despite legislative provision that theoretically protects them. Through a series of policy directives the government has brought about land reform without a proper legal basis. In the ensuing chaos outside interests have exploited this opportunity for their own ends to the detriment of customary land holders. In an attempt to bring order the government has confused its responsibility to govern with that of imposing control over its citizenry, and has itself appropriated land as well as opened the way for individuals to acquire customary lands for commercial purposes. Resistance to this is manifest in increasing litigation being brought by the dispossessed attempting to assert their customary rights. Initial success in the courts has been dealt with by the issuing of the executive authority of Government Notices extinguishing customary rights to land in those areas where litigation is pending. However, the scale of the challenge to the state is such that the government has sought protection first with the use of executive authority and finally through legislation that extinguishes customary rights to land throughout the country.*

*The paper will draw attention to the implications this has for customary land rights holders and assess the prospects for cultural minorities, particularly common property resource users like pastoralists. At the same time I will take the opportunity of bringing attention, for perhaps the first time outside, to some of the findings of The Presidential Commission of Enquiry into Land Matters or Shivji Commission.*



## Customary rights theoretically assured

Customary land rights to land in Tanzania are enshrined in the preamble of the 1923 Land Ordinance;

“WHEREAS it is *expedient* that the existing customary rights of the natives of the Tanganyika Territory to use and enjoy the land of the territory and the nature; fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves their families and their posterity should be assured protected and preserve,

“AND WHEREAS it is *expedient* that the existing native customs with regard to the use and occupation of land should *as far as possible* be preserved [emphasis added];”

The Ordinance also declared all land to be “public land” (Section 3), and conferred power over its disposition to the Governor, now President; “for the use and common benefit, direct or *indirect*, of the natives..” (Section 4).

A subsequent Amendment in 1928 gave customary rights statutory recognition as a Deemed Right of Occupancy which is defined as;

“the title of a native or a native community lawfully using or occupying land in accordance with native law and custom.”

This Ordinance and its Amendment remain law to this day. However, the use of such words as “expedient”, “as far as is possible”, and “indirect” common benefit gave notice of government’s intention to apply the law to serve its political ends, even, as we shall see, if this goes against the interests of indigenous peoples (natives).

## Land tenure insecurity

The administration and management of land in the hands of first colonial and then independent governments confirms the inferior status of indigenous lands compared to that of crown title and Granted Rights of Occupancy, i.e. leasehold title (Tenga 1992). Expediency was first applied in favour of settlers who acquired title against the interests of local land holders as was seen in the Meru land case in the 1950s when force was used to evict Meru peasants from the tribal lands they had occupied “since time immemorial” (Japhet & Seaton 1967:11).

## Barabaig case

More recently, a parallel is found in the Barabaig land cases where the government through its agent, National Agriculture and Food Corporation (NAFCO), has alienated Barabaig customary lands for the Tanzania Canada Wheat Scheme (TCWP), a Canadian aid (CI-DA) funded large scale highly mechanised wheat production complex. Like the Meru, the Barabaig were forcibly evicted from their homes and subjected to violations of their human rights (see Lane 1993).

A total of more than 100,000 acres of pasture land has been withdrawn from pastoral production for the scheme. This amounts to 12% of the land area of Hanang district which roughly conforms to the traditional Barabaig territory (Lane & Pretty 1989). However, the loss to the Barabaig is greater than the acreage involved. Taken together with the area covered by two large salt pans, a forest reserve, land lost to encroaching farmers, and the limited access to about a third of the district covered by tsetse infected bushland, the combined area unavailable to grazing might amount to as much as 50% of the district (Lane 1991a). More importantly, however, is the type of land taken for the TCWP farms. The land taken for wheat production represents the largest area of prime grazing land the Barabaig call *muhajega*, the most productive element in the Barabaig grazing rotation. By denying access to this vital resource the whole grazing system is disrupted, which has had an adverse impact on the local ecology with dire consequences for the Barabaig (Lane & Scoones 1993).

This land is not only important for its productive capacity, but also valued for its cultural and spiritual significance. A matter of real concern for the Barabaig is the destruction of their ancestors' graves or *bung'eding* (Lane 1991a). Indications are that this has also had a deleterious effect on Barabaig social welfare as measured by levels of infant mortality (Blystad 1992, Borgerhoff Mulder 1990).

It is clear from a succession of reports and protests from the Barabaig that the land was acquired with little attention being given to Barabaig customary rights of occupancy (see for example Africa Watch 1990, Survival International 1990). Sometimes, the first the Barabaig knew about the loss of their land was the sound of tractors ploughing around their homesteads. Although some Barabaig were given some compensation, too little was given to too few, too late to be of use (Lane 1991b). No assistance was given to help relocate

them elsewhere. Considered legal opinion suggests that due process of law was not followed, or at worst corrupted by NAFCO to acquire the land (Lane 1993).

Problems for the Barabaig are shared by other indigenous groups in Tanzania, particularly those groups like pastoralists and hunters and gatherers, who retain strong cultural identity and who rely on communal access to resources for their livelihoods. These groups have been most affected by national programmes that attempt to transform Tanzanian society into settled village communities with economies based on crop production.

## Villagisation

According to Shivji, Chairman of The Presidential Commission of Inquiry into Land matters, the post-independent government had “no express land tenure policy as such, and much less, a clear position on customary tenure” (URT 1992:20). However, since independence there have been a series of major policy related initiatives that have profoundly affected the status of customary land tenure. Perhaps the most significant of these is the policy for “villagisation” in which coercion was used to force all Tanzanians to live in settled communities (Hyden 1980).

The settlement of rural peasants in villages became the cornerstone of socialist policy in which “ujamaa villages” would become “islands of socialism in a hostile capitalist sea” (Coulson 1979:3). Millions of rural peasants were moved into concentrated settlements with scant regard to existing customary land use patterns causing utter confusion about the legal status of customary rights in relation to the rights of new occupiers of village land (URT 1992). Yet, ironically it is ‘villagisation’ that posed the first great threat to customary land tenure and the future of indigenous cultures.

The legislative instruments that facilitated ‘villagisation’ (Rural Lands Planning & Utilization Act 1973 and the 1975 Villages & Ujamaa Villages Registration, Designation & Administration Act) maintained centralised authority yet gave directions for the appointment of new local village authorities to administer land;

“...so vague and their implications for land interests (ownership) are so far-reaching that, even without a bill of rights entrenching the right to private property and principle of natural justice, they could have been declared *ultra vires* by the courts on several grounds, including on the grounds of unreasonableness” (URT 1992:47).

Shivji believes this was tantamount to land redistribution without legal authority, and “fraught with malpractice, including taking away land to wreak revenge or allocate it to families of leaders” (URT 1992:54).

The movement of people into villages was achieved with “little regard to existing land tenure systems and the culture and custom in which they are rooted” (URT 1992:61). A ‘top down’ approach was applied to land tenure reform and land administration to unify the diversity of customary land tenure arrangements into more centralised statutory tenure. Contrary to intention the lack of clarity in law of the new tenure arrangements operated to facilitate “arbitrary encroachment, invasion and alienation in favour of outside individuals and institutions (including government) against the interests and wishes of villages” (URT 1992:61).

This is particularly prevalent in rangeland areas where there is thought to be a surfeit of fertile land. In the process perhaps over a quarter of a million pastoralists (mainly Maa & Tatoga speakers like the Barabaig)<sup>1</sup> who rely on communal lands for livestock production now find the best of their lands taken and their movements restricted as exemplified by the Barabaig case.

Many customary land tenure systems like that operated by the Barabaig and Maasai include elements of communal access to resources. Pastoral communities have developed highly complex common property regimes to facilitate mobile resource utilisation in ‘non-equilibrium’ environments (Behnke & Scoones 1991). The demarcation of communal rangelands into villages has the potential for total disruption of customary pastoral land use patterns. Village boundaries not only divide communal rangeland areas into discrete administrative units, they also provide the potential for exclusion from access to resources. As village land areas are unlikely to cover the area that makes up an ecological land use unit, particularly in those times when migration is extended to include distant forage and water resources, in times of drought, the potential for restricted access or exclusion is likely to pose problems for herders and cause ecological stress.

A study by Kjaerby of villages in Hanang district shows that those Barabaig who settled in villages on the semi-arid Hanang plains were forced to compromise their herding strategy by limiting the extent of their migration to the distance their herds could travel to and from the homestead in one day. The concentration of animals within the village has had an adverse ecological impact and encour-

aged a trend towards agro-pastoralism and has resulted in a decline in levels of production (1979).

Whilst the nation's settlement has largely been achieved it has had less effect on pastoral land use than might have been expected. This is due less to the few concessions made to pastoral communities - like 'Operation Imparnati' in which some Maasai communities were allowed to orient to a central location rather than build their homes in a village centre (Ndagala 1982) - and owes more to the fact that many villages have yet to be officially demarcated, and *ad hoc* mobile pastoral land use patterns persist.

The 'villagisation' programme was not specifically designed to settle pastoralists, nor has it wholly achieved this, but it has presented particular problems for them in addition to those experienced by more sedentary agricultural populations. How long can *de facto* communal tenure arrangements be maintained within a village structure? How can livestock belonging to one village share resources with another when the land use authority has passed from traditional institutions to new village administrative units? How can migration beyond village boundaries and the utilisation of resources that are ostensibly the property of villages other than their own be facilitated? These will become crucial questions when villagers start to accept the paramountcy of village titles in contradiction with customary land tenure arrangements.

## Village titling and land use planning

Tanzania, like most other countries in Africa, is pursuing privatisation of land in all but name. The government is investing in a land titling programme in the belief that only through registered titles can rural land users be encouraged to increase production by making greater investments, protect natural resources from destruction, and induce lenders to extend credit on the basis of land as collateral.

The genesis for village titling is found in the National Agricultural Policy document, which recommended that villages be given title deeds and individual villagers sub-titles to land (URT 1983). A party (CCM) directive issued in 1987 declared that village demarcation and titling was to be achieved by 1992 (URT 1992). The purpose of this was to provide greater security of tenure to villagers through control of encroachment. However, as will be shown, it has singularly failed to protect village lands from alienation by outsiders, and

created problems of its own. Titling presents a double edged sword to pastoralists. There are obvious advantages from having registered title to land as protection from land grabbing. Recently in Naberera village of Kiteto district alone “40,000 acres of land had been dished out to village leaders, local top civil servants and their relatives” through a bogus process involving village meetings that did not take place (Kaiza 1993).

Under the new administrative structure each village is granted statutory title to land. This has resulted in the *double allocation* of rights where registered titles are superimposed on existing customary titles, as the law still theoretically recognises customary rights to land by way of the 1923 Land Ordinance. This raises a fundamental legal question: which title to land will prevail?

Village land use planning has also been proposed as an adjunct to the titling programme. The logic of it is that only with individual title will land users be encouraged to invest in land and become eligible for credit. This strategy is being pursued by government and donor alike despite the fact that this logic is challenged by empirical research (Place and Hazell 1993), and described as a “fallacy” by such eminent scientists as Bromley and Cernea (1989). It is also being implemented by procedures developed for urban planning that are inappropriate for the diverse tenure systems found in rural environments. Maps of the ‘planning areas’ designate fixed ‘land use zones’ and fail to take account of the complexities and flexibility inherent in the customary land tenure arrangements.

The shortcomings of land use planning for cattle herders using extensive land use systems based on communal tenure arrangements is well illustrated by the plan for Dirma village. Traditionally, Barabaig herders migrate out of the village in the dry season to gain access to permanent water to the east on the shores of lake Balangda Lelu in return for letting herders from other areas come in to the village in the wet season to make use of the rich pasture resources found there.

A rapid rural appraisal conducted by the World Bank to study the impacts of the land demarcation and land use planning process revealed that in Dirma the process failed to account for the diversity of natural resources within the village boundary, and provide for the complexity of the traditional land use pattern, or accommodate the interrelationship between resources in and beyond the village boundary. It erroneously treated all villagers as an homogenous group and

gave no recognition to the different interests groups found within the village. Some villagers and some of their leadership saw the plan as a means to protect land from encroachment. Others wanted to be able to take up the more fertile land for themselves by acquiring individual title for themselves or sub-lease it to commercial farmers. What few of them realised was that this same process could also restrict the traditional migratory pattern and ultimately deny them access to water in the dry season in a neighbouring village (Johansson 1991).

The bias of planners to perceive all that they find as primitive and unsuitable and in need of reform is well exposed by the language used in the planning process. The basic assumption on which the plan was based regarded the traditional grazing pattern as haphazard (“*kiholela*”) and inconsistent with development objectives.

“[The] planners have arbitrarily assumed that current land use is inadequate and destructive to the environment and the plan prescribes replacement of existing agricultural and pastoral practices with ‘modern’ and ‘scientific’ methods (*ya kisasa* and *ya kitaalamu*), without elaborating on what these concepts mean.” (1991:1).

According to Johansson (1991) the planning process was not “transparent and intelligible” to the villagers, and so little account was taken of their perspectives or detailed environmental knowledge attained beforehand that the plan was likely to damage the local pastoral economy, degrade the environment and prompt migration of pastoralists from the area.

From this it is clear that at the local level there are serious consequences for minority cultures and indigenous land use systems. Village titling was designed to provide greater security of tenure. That it has manifestly failed to do so is shown by what some commenters have called the “scramble for Maasailand”.

As very few village land use plans have yet to be drawn up, let alone implemented, local people are not as yet very much affected by what is being planned for them, and have little knowledge of the potential adverse impacts such imperfect planning can have on the local ecology. But it is becoming clear that planning ends up becoming the means by which local people can be deprived of their land. Those who have the means to exploit the process for themselves can benefit disproportionately, or be party to deals whereby outsiders gain title to village land. A few mainly wealthy and powerful individuals can win to the detriment of many losers. Issues of equity and justice are subsumed in the rush to take advantage of what is on offer.

Vulnerable groups, like cultural minorities or groups within society, such as women, find that their position can become downgraded as they bear the brunt of adverse changes (Jowker & Horowitz 1991, Joekes & Pointing 1990, Talle 1988). Society becomes polarised with a growing proportion of poor people having to depend on others and become “ecological refugees” (Hjort & Salih 1989), abandoning their homes and way of life to migrate to peri-urban slums to eke out an unsatisfactory living in the informal sector of the economy.

In the end everyone loses. In pastoral areas, for example, where lands are alienated and customary controls on land use are undermined to the point where free for all access ends up destroying resources beyond recovery, production declines to the detriment of local people’s welfare and reduces their contribution to the national economy. The people displaced in this process can also become a burden on the state as there is insufficient industrial or commercial sector capacity to pick them up.

## The state strikes back

With greater political liberalisation in the 1980s, it is not surprising that local land holders, whose customary rights were infringed in the process of villagisation, the granting of village titles and the re-allocation of land through land use planning, have begun to challenge the government in the courts. Early cases indicate that the courts will rule in favour of original customary title holders (URT 1992). The state has responded to this prospect with some extraordinary measures that strike back at the attempt to assert customary rights.

## Using executive authority

Rather than face the prospect of losing cases to customary land holders and having to return ‘village lands’ to original occupants, the government has chosen to deal with the matter by exercising its executive authority. At first the Prime Minister issued Government Notice (GN) 659 (Extinction of Customary Land Rights Order) in 1987, extinguishing customary rights to land in 105 villages of Arusha region where litigation was pending. However, this did not include those villages involved in the Barabaig land cases against



NAFCO. In 1989 the GN was extended by the Extinction of Customary Land Rights (Amendment) Order to include those villages whose residents were contesting NAFCO for illegal alienation of land for the TCWP wheat scheme, and made it retrospective to the date of the original GN (1987). That predates the Barabaig plaint so as to deny them legal remedy to their land claim in court.

The GNs were issued under the Rural Lands (Planning & Utilisation) Act 1973, which empowers the President to declare a 'specified area' that may be subject to the extinction, cancellation or modification of 'deemed rights of occupancy' (customary title) by the Minister of Lands. However, as there is no evidence that the areas concerned were ever 'specified', and as there is doubt whether the Prime Minister can be deemed to be the Minister responsible for lands within the meaning of the Act, it is again unlikely to be upheld in the courts. The Act itself could be challenged on grounds of being in breach of the Bill of Rights which is now an integral part of the constitution. Professor Shivji has opined that the GNs are contrary to both the provisions of the 1973 Act and to the 1923 Land Ordinance that recognises customary land rights (URT 1992).

## Using legislation

The prospect of the courts ruling against the validity of the GNs and forcing the undoing of the fabric of the villagisation and titling programmes has prompted the government to take an even more radical step. So as to ensure victory in the courts, a quite extraordinary legislative instrument has been devised, designed to extinguish all customary rights to land within the boundaries of all villages in the country incorporated between 1970 and 1977.

This legislation is so blatantly courageous in the furtherance of the state's interests against its citizenry, and may go down in the annals of Africa's legal history as one of the most remarkable pieces of legislation yet devised, that I will quote parts of it *verbatim* for the record. The Regulation of Land Tenure (Established Villages) Act 22 of 1992 revokes and replaces the GNs by proposing that;

Section 3 "...all rights to use or occupy land in accordance with any custom or rule of customary law in any village land or vacated settlement held or claimed to be held by any person prior to this Act is hereby extinguished."

Section 51.(a) “no compensation will be payable only on account of the or remitted to any court...in relation to the extinction of any right..

(b) “any suit or other proceeding..which shall have been instituted..shall forthwith be terminated.

(c) “no judgement, order or decree passed, made or given either before or after the commencement of the Act..shall be executed.”

2. “No order as to costs shall be made in relation to a suit or other proceeding which is terminated in accordance with this section.”

The timing of the Act in relation to the submission of the Report of The Presidential Commission of Inquiry into Land Matters also raises questions of propriety. It was tabled in Parliament only days before Professor Shivji submitted his report to the President.

How is it that legislation was introduced in advance of the publication of the findings of the presidential commission? Surely, logic suggests that the findings of the Commission should provide the basis for any new legislation. The answer to this question lies in the disparity of view expressed in the two documents. It could be, for example, that it was thought necessary in some quarters that the Commission’s recommendations for the recognition of customary rights to land, the involvement of local elders in the registration of titles, and the abolition of existing legal and administrative provisions which treat customary rights as inferior were unacceptable to those who wish to continue capitalising on the chaos already created.

Only time will tell whose interests will prevail, the state’s or customary land holders’, and whether this legislation will persist. It is, however, expected that it will be challenged in the courts as inconsistent with provisions of the constitution (Lane 1993). Here attention will be given to reconciling the legislation with Section 24 of the 1977 Constitution;

(1) “Subject to the relevant laws of the land, every person has the rights to own or hold any property lawfully acquired.”

Whereas the law might have been changed in this case, the courts will be asked to decide whether this is consistent with the entrenched right of people to own land and not be arbitrarily dispossessed.

In the case of failure of customary rights to prevail under this

Section, a second provision of the constitution may provide remedy for customary rights holders;

(2) “Subject to the provisions of sub-section (1), a person shall not be arbitrarily deprived of his property for the purpose of acquisition or any other purpose without the authority of law which shall set out conditions for fair and adequate compensation.”

It remains to be seen how the legislation with express denial of compensation or the right to recourse to the courts can be read against this provision. If the legislation is allowed to stand, the implications for millions of hitherto customary land rights holders are most grave.

### Major implications for customary rights holders

1. If Act 22 is to prevail and recognition of customary rights to land is denied, the current chaos and potential for land grabbing will persist to the ultimate dispossession of indigenous peoples of their lands.
2. Act 22 cements the ascendancy of state over local interests, and contradicts new thinking on sustainable land use in which authority over land is vested in locally based institutions that accommodate the myriad complexity of customary land tenure arrangements and provide effective control over use and disposition of lands, especially in areas where common property resource management systems predominate (see Lane & Moorehead 1993).
3. The opportunity for resolving conflicts over customary lands and the design of new land policies based on respect for the customary rights to land of indigenous peoples will be lost if the Barabaig case is scuppered by the defence pleading ‘no case to answer’ on the basis of Act 22. This outcome will deny customary rights holders the legal precedent on which to seek remedy for unlawful alienation. It will leave them at the mercy of an administration that has to date failed to serve their interests or provide the basis for order and efficient land use.

### Note

1. Estimates only as ethnic origin has not been included in Tanzanian census data since 1967.

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M.K. van KLINKEN

## MAASAI PASTORALISTS IN KAJIADO (KENYA)

### Taking the future in their own hands

*Pastoralists are in dire straits. After having been ignored by the early colonial Government in Africa, they are now faced with the twin contradictory forces of change and exploitation. The pressures of change, brought about by education and integration into the national economy, have polarized the pastoral communities, improving the lot of some and leaving many bewildered behind in islands of dust and pauperization. The forces of exploitation originate from both within and without, as national and internal elites benefit from the situation of the pastoralists unable to deal and interact with the complex realities brought about by modern life.*

*This process of marginalisation is evident in the position of the Maasai pastoralists. The pastoralists number about 300,000 and occupy some 100,000 km<sup>2</sup> on both sides of the Kenyan and Tanzanian borders (Bonfiglioli 1992:143). This paper focuses on the Maasai pastoralists of Kajiado District, one of the two districts in Kenya inhabited by the Maasai, the other being the neighbouring Narok District. Kajiado Maasai have been mere spectators to developments and changes affecting their future. To manage the inevitable changes, the Kajiado Maasai have to take charge of their own destiny (Polong 1992:17). The various external and internal threats are analysed in this paper, and the options through which the Kajiado Maasai pastoralists can take the future in their own hands are considered.*

### Spectators

One of the most important factors affecting the viability of the pastoral system is the availability of land. Over the years, this



fundamental resource base has been constantly eroded. During this century alone, the Kenya Maasai territory has been reduced to almost half its former size (Rutten 1992:8). This process began at the beginning of the century, when the colonial Government expropriated large tracts of land to allocate to White settlers, confining the Maasai pastoralists to Maasai reserves through 'treaties' in 1904 and 1911. These reserve were further reduced through the creation of Game Reserves and Parks, carving out areas for the exclusive use of wildlife and excluding pastoralists. After Independence, the concept of modern land tenure was introduced into the District, fundamentally altering the premises on which pastoralism is based.

In the late 1960s and early 1970s, land adjudication was introduced into the District, creating some 51 Group Ranches. All the households residing in a given area became members of the Group Ranch. The land was held in common ownership, but livestock remained individual property. In addition, 378 individual ranches were created for those who did not want to be members of a Group Ranch. These individual ranches were almost invariably located in the high potential and better watered areas of the District. Their owners were mostly educated and elite Maasai (Kajiado District Atlas 1990:56).

This tenure arrangement initiated a slow, steady and irreversible trend of further land alienation, which still continues today. It began in the high potential areas of Ngong and Loitokitok, where individual ranchers sold their land to immigrants, who settled and took up agriculture. The process of land alienation accelerated when the Group Ranches bordering the high potential areas subdivided into individual parcels. From a study of five recently subdivided Group Ranches, it was found that eight per cent of the total area has been bought up. To indicate the trend, in the first Group Ranch to complete the subdivision exercise, one third (34%) of the area was sold in the 8 years since individual title deeds were issued (Munei 1991:37). In another study of two other subdivided Group Ranches, it was found that 20 per cent of one Group Ranch and 28 per cent of the other had been sold in an almost similar period (Galaty 1992:31). All of the buyers are non-Maasai, and certainly the process was initially fuelled by overpopulation in the neighbouring agricultural areas, causing „migration in search of farmland down the ecological gradient“ (Bernard 1985:60). Lately, however, the process has become diffuse, and is more linked to the political economy of the country.

As a result of the process of land alienation, the Maasai pasto-

realists have come under severe pressure. The fall-back areas, preserved for grazing in extremely dry years, were the first victim. Subsequently, the dry season grazing areas were taken out of the pastoral production system. Now, the normal range areas are also under threat and are slowly being encroached upon. The resultant reduction in land, coupled with an increasing population, exerts extreme pressure on the fragile resource base.

As shown above, the single most important factor facilitating land alienation has been the introduction of modern land tenure, which ignores any traditional customary practices and rights. As Dr. Kituyi remarked in a conference of Kajiado leaders (Kituyi 1992a:29):

„I think the most important thing about a title deed is that it is authority to sell. A title deed is an instrument of alienation, not control.... Title deeds give you the unilateral independence to dispose of land and hence the freedom to become poor. They are a licence to destroy the future of your children.“

Two sets of actors can be distinguished in the above described process. The *spectators*, who were not given the chance to participate in the decision regarding land tenure, and who voluntarily but unwittingly sell their wealth to buy poverty (Rutten 1992:9). Because the modern concept of land is alien to their cultural framework, they take decisions the consequences of which they neither can foresee, nor are they informed about. “The Maasai found it difficult to believe that land, which belonged to God, could be sold as a commodity. Vulnerable and unaware of their rights, they were taken advantage of by the buyers“ (Nasieku 1993:4). It is the second set of actors, the *collaborators*, who have created this situation, and are either unaffected by it or reap its profits.

## Collaborators

Traditional Maasai society, although non-stratified, cannot be considered egalitarian (Kituyi 1985:18). Traditionally, there have always been elites who manifested their power in non-material values such as generosity and prestige. With the penetration of the colonial and modern system, different categories of elites emerged, often competing with the traditional elites. Whereas the category of the traditional elites was built on the foundation of perishable surplus, the modern elites are linked to the state system, and derive their position from education and politics. Coupled with the commo-

ditization of land and the commercialisation of livestock, this has caused significant stratification in Maasai pastoral society.

Therefore, the concept of *the* Maasai pastoral people can be used only with caution. As a people they may face marginalisation, but this process may have different effects on the various strata within Maasai society. A careful analysis of the role of the different actors, particularly the elites, is therefore required.

With the gaining of Independence (in 1964), two categories of elites, incorporated in the State system, emerged in Maasai society. The first category was the one of the colonial chiefs and other functionaries, who were usually recruited from the traditional elites (Kituyi 1985:20), and by a combination of the two roles were able to consolidate and transcend their position. The second category was the emerging class of young, educated Maasai, who aspired to escape from the confines of traditional society.

The role of education in Maasai society has often been misunderstood. As in most pastoral societies, educational participation has been extremely low. This is mainly due to cultural attitudes, and as these change, school enrollment in the District is increasing, although still well below the national average. Nevertheless, education has also often been viewed with respect. This contradiction manifested itself early in the colonial period. The Kaputiei were offered some of the first educational openings of any tribe in the Kenyan interior when, in 1894 twenty-two children began to attend school in Kibwezi. „There they were instructed in industrial work and Swahili, with some cricket in their spare time; this remarkable diet was insufficiently attractive to hold them, and by 1898 all who had not fled had voted with their feet against education“ (King 1971:118). On the other hand, the first Kenyan to study abroad in America was a Maasai from Narok in 1909, Mr. Molonket ole Sempele (King 1971:125).

This contradiction of *neglect* and *respect* for education continues to characterize Maasai society. Whereas the lack of interest can be explained by the irrelevance of modern education to pastoral societies, the explanation for the respect for the educated among the Maasai is more complex. A contributing factor could be the opportunistic character of Maasai culture, whereby the educated are seen as a bridge between the traditional and modern realm. Some more temporal factors could also have contributed. Due to the lack of interest of the missionaries operating in the Maasai area to establish educational facilities, most of the responsibility for providing education fell to the colonial Government. Therefore, the link

between Christianity and education was less close than in other pastoral areas in Kenya, which lessened the alienation of the educated from the traditional society (Schneider 1959:160). Similarly, employment opportunities for the educated were mostly to be found in towns. But due to the proximity of Nairobi to the District, most educated Maasai were able to participate in the formal sector, while retaining close links at home. The dominant practice of the educated, which is to invest surplus savings from their formal employment into the livestock economy, only heightened their prestige.

The educated have often not used their responsibility as providers of bridges to the advantage of the pastoral community. An example is the Ngong land case of the 1960s, where the land consolidation in Kajiado started. The Ngong area, bordering Nairobi and the heavily populated agricultural community of the Kikuyu, was at that time under pressure. This forested and high potential area was encroached by Kikuyu squatters and, to stem this tide, the young, educated Maasai convinced the Government and the elders that the land should be adjudicated into individual parcels. The title deeds were subsequently issued, mainly to the two categories of elites able to benefit from this opportunity, i.e. the Maasai colonial functionaries and the educated Maasai. By the mid-seventies, half of the land thus consolidated had already been sold to the Kikuyu (Muranja 1973:-57). Twenty years on, the Maasai still living and owning land in the Ngong area are few and far between, forming an indistinguishable minority on what once was their own land.

A not dissimilar sequence of events occurred in the high potential areas of Loitokitok, which have also been alienated from the pastoral system. The majority of the original individual ranches in the high potential areas of the District have become settlement areas for small-scale farmers from agricultural tribes. With the change from customary land rights to land titling or registration, the educated in particular were provided with the opportunity to exploit their knowledge of the modern political economy to their own advantage, and at the expense of the future of their own people. These opportunities still exist with the subdivision of the Group Ranches. The resultant land transfers are instigated and facilitated by the educated elite, who introduce the land buyers from outside the District to those of their fellow Maasai who might be persuaded to sell their land. After independence, the political realm provided the educated Maasai and other elites with new possibilities for exploitation.

## Perpetrators

The Kajiado Maasai have for a long time played an important role in national politics. Both Stanley Oloitipiti and John Keen were given prominent positions in the Kenyatta administration, while Prof. George Saitoti has held various important positions since 1983 in the Moi administration, even climbing to the post of Vice President in 1989. This high level of political representation has had various consequences relating to the nature of the political economy in Kenya.

Kenyan politics is dominated by two linkage patterns: affinity and patronage. During the one-party era, political patronage became centralised in the Presidency, while other political forces were ignored. This pattern is based on structural inequality, with the patron at the centre and his clients at the periphery (Oyugi 1985: 161). Kajiado Maasai politics has followed this pattern closely, with the status of the patron being derived from his (perceived) closeness to the Presidency. The ability of the political clients at the periphery to become local patrons depends on their links to the patron at the centre. Therefore, the criterion for political leadership is not the ability to represent the interests of local communities, but one's effectiveness as an 'official socializer', i.e. „socializing the population into accepting the official ideology“ (Rakodi 1988:38).

Due to the politicisation of almost all sectors, the results of these developments can be felt in all aspects of Maasai society. The locational Chiefs are political appointees. The local Councillors can be elected only if they have the political backing of a patron, or alternatively if they can utilise the affinity factor, by exploiting the differences in Maasai society between clans, age groups, sections and sexes. Even so, they can gain influence and power only by offering their services to the dominant political patron. The election of Group Ranch officials follows much the same pattern. This has created a class of leaders in the District who do not feel accountable to society. This class of petty leaders has little in common with the traditional leadership and elites, but bases its position on favours from the political patron.

The educated have had few aspirations to vie for positions in the petty political leadership class. As their ambitions were usually aimed higher, they tried to carve out their own patron positions in society. Again, any chance of success depended on the attitude of the political patron. This left the positions in the petty politicians class free to be filled by the uneducated, non-traditional, mediocre elites,

exacerbating the dependence on the centre. For example, the effects of the powerful position held by Stanley Oloitipitip can still be felt today. He was able to mobilise considerable resources for development and other activities, but with the effect of stifling local initiatives. At one time he was approached by a local community which wanted to raise funds to construct its own health facility. Instead of encouraging the community in this endeavour, he diverted Government funds to the construction of the facility without requesting any community contribution. A similar situation pertains to boreholes, a major source of water for livestock in the District, where surface water is scarce. Out of the 372 boreholes found in the District in 1988, 117 (or 32%) were drilled in the 1960s and 1970s, when Oloitipitip was at the height of his power. The majority of these were owned by the Government, County Council and Group Ranches (MOWD 1988:8), all institutions which were heavily influenced and manipulated by him. In 1983, when Oloitipitip fell from power, communities had come to regard boreholes as important and reliable water sources for livestock production, almost synonymous with development itself. However, with no immediate alternative centre of power available, they were left with little knowledge on borehole operation and maintenance, and no skills to drill additional ones. The 1980s found most of these boreholes inoperational or working below capacity, with the communities reverting to their traditional water sources, the shallow wells, which harvest sub-surface water in the perennial rivers.

Communities were slow to recognise the pitfalls of dependence. It took a long time for communities to realise that they do indeed have the capacity and ability to manage and operate their own boreholes. The lessons were learnt faster by the educated elite, who were able to fall back on their affinity network in the modern sector. They managed to use their network relations to extract favours and resources. There was an upsurge in borehole drilling in the District in the 1980s, during which 45% of the boreholes existing in 1988 were drilled. However, almost all of these were drilled by individuals, some of them recent settlers, others the educated Maasai (MOWD 1988:8). Another manifestation of the dominance of the centre over the periphery can be found in the current land sales. The initial buyers of land were mostly Kikuyu, pushed out of the neighbouring overpopulated farm areas. They acquired the land for small scale mixed farming. This trend has recently changed, however. It is now the present powerful national elite who are buying fairly large tracts of land for residential and speculative purposes. Unlike the

earlier immigrants, who used the educated and petty leadership elites to gain access to the District, the national elite is now using the District patronage structure to acquire the land. This has only strengthened the centralisation of political patronage in Maasai society, and illustrates that dependence has not disappeared with Oloitipitip, but has only been replaced.

## The accomplices

It is in this context that development projects and donor funded activities operate. Criticism of development projects and policies for pastoralists has been frequent and varied. Development interventions have been based on the wrong premises, using imported western ranch models transplanted into local conditions without the required adjustments. They have failed to acknowledge the existing traditional structures and leadership (Fumagalli 1978:61,62). Anthropologists in particular have criticized early pastoral interventions as having been planned by range ecologists who ignored the view of the anthropologists. The Kenya Livestock Development Project, funded by the World Bank in the 1960s and 1970s and which led to the creation of Group Ranches in Kajiado, was planned by a grassland botanist. The anthropologist who criticized him for wrongly interpreting local concepts was later chided for getting it wrong again (Rutten 1992:271). To make matters worse, development interventions have been implemented by staff and administrators who come from non-pastoral backgrounds and thus have only a dim view of pastoralism and pastoralists. They usually see postings to pastoral areas as a form of punishment and consider the pastoralists with suspicion, resulting in a frequent lack of understanding and communication between administrators and herders (Halderman 1985:203).

Recognising these criticisms, the catchword for development interventions has become '*community participation*'. Pastoralist communities must be incorporated into decision-making processes influencing their future. This concept has been applied so often and so vaguely, that it has become „a little like eating spinach: no one is against it in principle because it is good for you“ (Arnstein 1969: 216). However, the concept is seldom further defined. Is this participation just an empty ritual, or does it give the real power needed to affect the outcome of the process? And to whom does the 'community' refer? In the pastoral setting, it is usually assumed that the

traditional leadership can effectively represent the interests of the pastoralists. But as demonstrated in the case of the Kajiado Maasai, because the leaders are so tied up with the modern State sector, this premise becomes increasingly questionable.

As traditional leadership has been dismantled and made irrelevant, and with the subordination of the new emerging elites to the political patronage structure, a vacuum has been created. Two recent examples from Kajiado illustrate how State and donor agencies can manipulate this vacuum to plan and execute development interventions. The first case is the Noolturesh Water Project, funded by the Italian Government. This project conveys water over a distance of 220 km from the foot of Mt. Kilimanjaro to the settled areas of the neighbouring Machakos and the Kajiado District headquarters. This left the pastoralists in the Loitokitok area without water. The river, which provided water for their livestock in the Kuku plains, dried up because of the water abstraction for Noolturesh. No provision was made for watering points along the Noolturesh pipe-line passing through the plains. The pastoralists in the Loitokitok area were not consulted in the planning of this project. No independent environmental assessment was made for the giant project, into which the Italian Government sank some one billion K.Shs (160 million US\$). Initial murmurs of dissent from the pastoralists were effectively quietened. Who could give voice to their grievances? The traditional leadership was at a loss. The voice of the petty political and educated elites, who realised the implications of the project, was partly neutralised when the patronage structure was mobilised to protect the considerable State interests in this project. Whatever voice remained was too insignificant to be listened to.

The second case is the planning of three hydro-power dams in the Ewaso Ngiro River. This development is still at the planning and design stage, however the treatment of the issues so far gives little hope that the people most affected will be given any serious consideration. The most significant effect of the proposed developments will be on the downstream floodplain, the Shompole swamp, and Lake Natron, into which the river drains. The Shompole swamp is the dry season grazing area for Shompole Group Ranch and part of Olkiramatian Group Ranch. The design report, while acknowledging this fact, dryly notes: „There would appear to be no practicable mitigating measures other than compensating for land affected in the flood plain“ (Kenya Power Company 1993:1-35). The suggested ‘compensation’ consists in simply buying up the dry season grazing area at current market rates! The 1,000 pastoral households, de-



pending on the area in question for their *livelihood*, can be bought off with a mere 17.5 million K.Shs. (US\$ 0.5 million)! It is interesting to contrast this treatment of pastoral livelihoods with the attention accorded to flamingoes and fish, dependent on Lake Na-tron. Both are subjects of elaborate reports studying the possible effects of the proposed developments on their habitat and habits, while the pastoralists are written off with a stroke of the pen. The environmental assessment reports carried out so far have been commissioned by the same consultants undertaking the design of the project, which puts the independence of the reports seriously in doubt. Considering the magnitude of the project, involving an estimated 3 billion K.Shs., the State interest in the project is great. Who in this situation, can voice the concerns of the pastoralists? The project has caused anxiety in the area, but the end result may not be significantly different from the case of Noolturesh, although with far greater consequences. No donor has been identified for the project yet, but if past experiences are anything to go by, it should not be difficult for the Government to find an accomplice for this intervention.

## Empowerment

The Kajiado Maasai pastoralists face a difficult future. They are under external threats. They cannot rely on concerned researchers, be they range ecologists or anthropologists, to express their interests. Neither is the benevolence of administrators or donor agencies sufficient. The Kajiado Maasai pastoralists require „both articulate pressure groups which can consistently and effectively highlight the problems bedevilling the range lands population and a resource base for generating a viable view of alternative development“ (Kituyi 1992b:45). But who can form these groups? The pastoralists are internally divided. The present leadership structure is not effective, and is serving other interests. The chances of the formation of groups independent of the present political structure are not very great.

A possible strategy for empowerment is to broaden and diversify the leadership and power base. This has been happening to some extent in Kajiado. The first step in this strategy is to break the dependence syndrome. The attitude that development endeavours need political backing and can only be delivered through political patronage is strongly entrenched in the District. However, the reali-

sation that communities on their own can initiate and carry out development activities is slowly gaining ground. Over the past few years, the District has seen the proliferation of small, local, self-help groups, which number some 2,000 at present. Although the function and composition of these groups may differ, they are usually formed for a specific purpose. At first the groups were mostly initiated by outside agencies to carry out specific tasks, and were meant to 'placate' communities, rather than to involve them (Arnstein 1969: 220). Examples of these are local school committees, which manage local primary schools. Their powers are limited, as they have to operate within the national educational framework. Others are committees established to provide a forum through which outside agencies can discuss planned interventions with the local community. The role of these committees is limited, as the actual intervention is usually decided by the agency before the committees are consulted. The committee would only be left with the decision, for example, on the exact location of the watering trough in the case of water projects. These types of committees do not really differ from the Group Ranch committees earlier described, and are usually dominated by the petty political elites, although in some cases there is an influence from the traditional leadership.

However, more recently a new type of functional group has been emerging. These are formed by pastoralists tired of being manipulated and who want to take development in their own hands, although their groups are still very limited in scope. Some of these are youth groups; their members are tired of listening to politicians praising the virtues of education while they are themselves denied an education, on the grounds that they might become a threat to the elites. These groups are now pressing for their own educational opportunities. Others are groups of women who have heard enough about the benefits of development, but in which they cannot participate. These groups are now tackling their situation on their own. Yet others are small groups formed by like-minded people who want to solve specific problems. They have realised that large community efforts are slow to materialise. The larger the community, the more easily it is divided, manipulated and incorporated. These small, functional groups are therefore coming together to solve their own problems in their own way, relying on their own strength and potential, and are actually getting things done.

It is interesting to note that the leadership of these emerging groups is drawn from outside the described category of elites. In general, these leaders have had some education, but they are inde-

pendent and do not belong to the petty political class which is part of the patronage structure. It is these leaders who can play an important part in the empowerment strategy. However, at present these groups are still too isolated, fragmented and vulnerable. They require further strengthening, experience, confidence and institution building. Even so, it is doubtful whether they can stand on their own when faced with external threats and pressure. This was demonstrated recently in the case of the Olkiramatian and Shombole Community Development Project (OSCDP). Within this project, local communities are carrying out their own tsetse control, using a trap that is simple to construct, easy to maintain and cost-effective (Dransfield *et al* 1991:289). However, the International Centre for Insect Physiology and Ecology (ICIPE), under whose umbrella the trap was initially developed, saw the successful application of the traps outside ICIPE control as a potential threat to their further research efforts. The structure of OSCDP was still weak, as it was based on the committees of the two Group Ranches in the area, whose leadership positions were dominated by the petty political class. This weakness was exploited by ICIPE, which manipulated and divided the Group Ranch committees to bring the project under its control.

Therefore, the emerging independent leadership cannot stand on its own, but needs to seek alliances and coalitions with other groups in Maasai society. Whereas this paper has demonstrated the hitherto exploitative role of the educated Maasai, based on their effective incorporation into the political patronage structure, there is however a new group emerging amongst them who could be described as *professionals*. What differentiates the educated from the professional is that the latter (in addition to his training) adheres to professional norms, and that he sustains these in the face of strong contrary pressure. As a series of three District Conferences (1989, 1991 and 1992) has demonstrated, the group of Maasai professionals, usually working outside the District, but interested in developmental issues and concerned about the position of the pastoral people, is slowly growing (Klinken 1992). Whereas it was the educated who sold the land in the past (as in the Ngong case), they are now not as likely to sell land as the uneducated and unemployed (Galaty 1992:34).

It is with this group of Maasai professionals that the small, independent groups can seek alliances to take the empowerment strategy further. These professionals can address the administration and politicians on issues affecting the Maasai pastoralists, and can also understand and withstand external forces. They cannot do this

as individuals, however, but require the support from their peers. „The group of peers provides the social structure that permits the professional to resist the otherwise powerful pressures to fall short of professional norms.“ (Leonard 1993:77). The District Conferences mentioned above served as an early catalyst for bringing peers together, but there are recent signs among the Maasai professionals in the District of the formation of a more permanent group.

## Conclusion

The Kajiado Maasai have been the subject of varied experimentation with alternative development approaches. However, State and donor interventions have usually been based on negative stereotypes and benevolent generalisations (Bonfiglioli 1992:26), despite the fact that probably no other pastoral group has seen so many (international) researchers come and go and publish their findings in learned articles. Pastoral people should be given the opportunity to take part in their own development. To enable them to do this, an empowerment strategy has to be formulated, to protect them against exploitation by their own elites.

Essential components in the empowerment strategy are *land* and *education*. However, what is probably more important is a critical analysis of the economic-political situation, and a broadening of the empowerment base. It has been suggested that two categories of Kajiado Maasai elites could form the basis to further the empowerment strategy: the emerging functional group leadership and the Maasai professionals. The Maasai professionals should therefore be encouraged and assisted to work in their own District for their own people.

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SARUNI OITESOI ole-NGULAY

## INYUAT e-MAA/MAA PASTORALISTS DEVELOPMENT ORGANISATION

### Aims and possibilities

„The first duty of Society is the preservation of Society“.  
(*Water Bagehot on Literary Studies.*)

„The first duty of Society is to give each of its members the possibility of fulfilling his destiny. When it becomes incapable of performing this duty it must be transformed“.  
(*Alexis Carrel on Reflections on Life.*)

Tanzania has a population with ethnic heterogeneity; the majority, the Bantu, constitutes over 90% of the country's population. Then we have lesser groups - the Cushitic and Nilo-Hamites. The Maa peoples belong to the latter group and make up about 2% of the population. The increasingly marginalised Hazadpi belong to the Bushmen and are believed to be remnants of the Bushmen of Southern Africa. This group is regarded as the original inhabitants of northern Tanzania. We also have new immigrants - the Arabs, Asians and Whites.

The Maa peoples of Tanzania include: *Il-Maasai*, who are the stronghold of the group; and the lesser clusters - the *Il-Parakuyo* and the *Il-Larusa*. The latter cluster, however, is of Bantu origin; but was assimilated into the community (Moffett, J.P. 1938).

Our Prophets, *Iloibonok*; have significantly contributed to what we are today, particularly in terms of our socio-political organisation. They have divided us into different entities or territories under their spheres of influence. The *Il-Parakuyo*, for instance, are not only a cluster of the tribe or community, but also a different entity. This is because they have a prophet of their own. The *Il-Maasai*, on the other hand, are one cluster of the tribe, but have the three different entities of *Greater Kisongo*, *Greater Purko* and *Greater*



*Loita*. Each of these entities are under the sphere of a prophet. The *Il-Larusa* are a cluster, but not an entity. Their origin classifies them as a group within the community. They, however, lack unity because when they came (invited) to Maasailand they had no prophets of their own. They are therefore under the entity of *Greater Kisongo*.

The *Il-Maasai* and the *Il-Parakuyo* share the same ancestry, of *Maasinda*, the human founder of the tribe. They all acknowledge the first Prophet, *Kidong'oe*; who because he is unrecorded by history, to the present generations appears to be a myth and a legend.

Why then can't these peoples with the same ancestry and the same beliefs be of one cluster? In the early civil wars of the seventeenth century, amongst our people in the East African region, the *Il-Parakuyo* were fought and defeated by the *Il-Maasai*. The *Il-Parakuyo* were not merely alienated from the rest of the community, but were totally excommunicated. Persistently, the *Il-Maasai* kept on driving them to the south, thereby subjecting them to resource scarcity, displacement and marginalization. This historical phenomenon of wars and counter-wars between the two groups went on for a number of centuries. This decreased and minimized religious and cultural cooperation amongst the two groups, particularly in the male age-groups system or formation, when the two started to have different names for their age-groups and generations.

And why then are the *Il-Maasai* one cluster with different entities, why not three clusters, three entities?

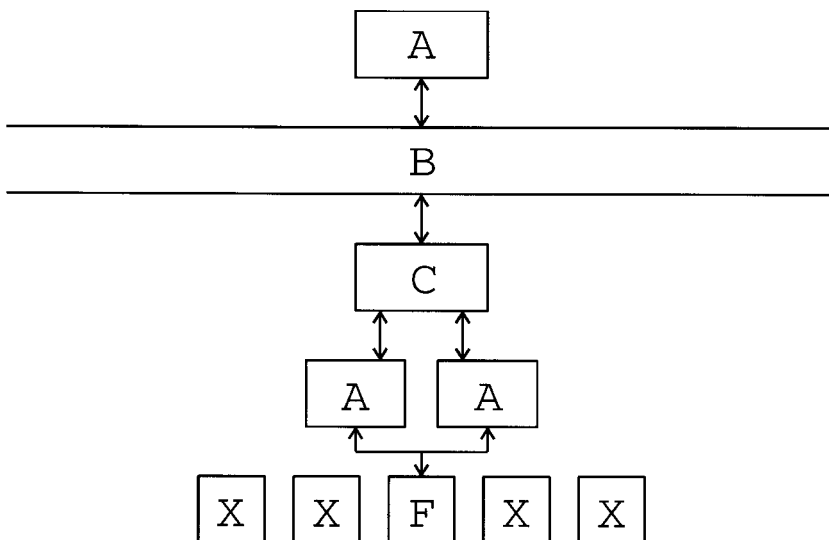
The *Il-Maasai*, with the exception of the *Il-Laikipia*, whom they made victims of genocide in the early nineteenth century, remained not only one cluster against the *Il-Parakuyo*, but also one entity; as it is remembered, first under Prophet *Suheet*, and later on, under his son, successor to the throne, Prophet *M'mbatiany*. This was until around the year 1890, when *M'mbatiany* died or was unable to perform his official duties. His two sons, Prophet *Olanana* and Prophet *Senteu*, fought for the throne, thereby leading the community into a civil war of succession. None of them precisely won this war, and instead each took the territory that fought on his side as his territory or his sphere of influence. *Olanana* took *Kisongo-Purko*, and *Senteu* took over *Greater Loita*. It was not until about 1911 that *Olanana* divided his sphere of influence between his sons, Prophets *Parrit* and *Kimoruai*, by giving *Greater Kisongo* and *Greater Purko* to them respectively. This partition of territory into the prophets' spheres of influence is recent, and to date its impact has not been greatly felt by the community. Indeed, there is still

religious and cultural cooperation of a kind amongst the three entities, especially in the age-group formations. It is also important to note that this development took place during the advent of colonialism, which brought peace and order amongst tribes, enough to prevent any civil war that could have developed amongst the *Il-Maasai* because of this partition. If it were not for this, I am afraid the *Il-Maasai* would not have been the same today. It is sad and disheartening that the *Maa* history is full of civil wars.

The *Oloiboni* is not the political but the ceremonial and symbolic head of a section or entity. He has a patriotic and religious duty to the community in his section. He is the unity of the people, deriving his divinity from the will of the people. Under the banner of the *Oloiboni*, members of a section exhibit a sort of assemblage and joint possession against those of another section.

The Maa peoples in general have never had political leaders like other tribes of East Africa. The right to govern among the Maa peoples has always been vested in a large group of elders, the numbers of which varied from several hundred to several thousand, depending on the size of the existing generations. The idea of one man alone governing never existed. This broad government of elders, guided by tribal ethics and norms, has always been incorruptible and strong, and as a result unchallengeable. „The slave trade kept the African interior in a state of chronic inter-tribal wars. Chiefs fought chiefs to get captives to sell for arms and spirits“. (Harlow, V., Chilver, E.M., and Low, D.A.). In contrast, there was never easy penetration through the Maa land by outsiders and hardly any member of the community was taken to slavery.

A section under the *Oloiboni* is sub-divided into small administrative localities, also under ceremonial and symbolic leadership; in this case the leadership is of the Youth, the warriors; known as the *Olaigwanani*. This Youth's Leader is regarded as a mobilizing force of the young people - the energetic and useful human resource of the community. To oversee the work of this Youth Leader are, first, the „Fire-stick fathers“, who are a particular council of elders, decoupled from the rest of elders in order to sponsor the formation of a particular age-group. Second is the entire elderhood, who are the „power base“ of the community. The essential social function of these venerable elders is to discern the right order of things, and guide the society along the path of right order and truth, „to seek the right order“, *aingoru enkitoo*. This is done by looking back at how things were, in relation to how things are now, and how they should



- A: Represents the institution of the Oloiboni at Section Level.
- B: Sectional gatherings during Eunoto and Olng'eherr Rituals; or in time of war, during old days. It stands to be a 'Supreme Organ' or 'policy maker' in a section. It comprises all Il Laigwanaak, their assistants, Ingopir, and representatives of 'fire stick fathers' from all the localities in the Section.
- C: The Institution of the Olaigwanani, his assistants Ingopir and/or the entire groups of elders (not necessarily Firestick fathers) from all sub-localities, Ingutot. Unlike the Sectional gathering, this organ meets frequently, collectively as a locality or non collectively at sub-locality. As a supreme organ of a locality it carries all management, Erramatare: Issues of a locality.
- D: A body of elders decoupled from the entire elderhood for being guardians or sponsors of an age-group. They are commonly known as 'Fire-Stick Fathers', "Iipayani Lo' Olpirron".
- E: Represents the Institution of warriorhood, custodian and defender of the community.
- F: Represent many of the numerous localities in a Section; whereas "F" stands as a model of how on single locality functions or is represented to the rest of the community in a Section.

be. This is not done by an individual in isolation; it is a collective exercise involving much discussion while striving for consensus (Hillman, E. 1991).

Localities, members of a Section are, independent and autonomous of each other, and would only come and meet together during a group's rites of passage every 10 -15 years. This is the case with *Greater Kisongo*, that appears to have more community cohesion than the rest. Localities within *Greater Purko* and *Greater Loita* are far more and increasingly independent and autonomous of each other, and do not have this forum of all localities. Instead, they have the forum at locality level.

Maasai socio-political organisation underlines two things. First is the pervasive quality of leadership. The „Fire-Stick Fathers“, the *Olaigwanani* and the *Oloiboni* comprise a core of leadership which is very inspirational to the warriors whom they lead through different rites of passage. Secondly, it underlines specific doctrines and practices that are unifying concepts in the people's belief. The age-grade system, for example, is a fulfillment of 'humanism' and 'wholeness'. Through alternating age-grade system, „Fire-Stick Fathers“ give vitality and continuity to the incoming young generations. There is a lot of celebration at 'X' and 'B' (see figure 1), of what is held and possessed or experienced to confirm and contribute 'wholeness'.

In conclusion, I would like to say that there is great diversity of Maa Peoples and Culture. As a *People* they do not have unifying leadership, and as a *Section*, the leadership takes a considerable period of time before it meets, thereby creating a leadership vacuum. Apart from the locality, Maa Peoples do not have a coherent and effective leadership nor visions of freedom from ignorance and deprivation. The society therefore needs to be transformed, in order to meet our contemporary challenges.

## The Maa Peoples, the State and the Development Community

The Maa speaking peoples of Tanzania and Kenya are today in a great cultural dilemma. Torn between the worlds of modernity and tradition, they have long clung to tradition, fostering cultural pride at the sacrifice of development.

The Maasai are stubbornly conservative in their customs and appearance, and totally against joining the 20th century (Fr.Mol, F.) Their adherence to tribal rituals, traditional institutions such as circumcision (for both genders), warriorhood, the age - grade system, the Prophet, the *Oloiboni*; etc and the resistance they have shown to accepting modernity - have been a powerful force in the minds of government officials, church leaders and development workers; and the policy suggestion of abolishing rather than moulding these rituals and traditional institutions has been widely unwelcome to the Maasai. As a result, in many parts of Maasailand, there is a conflict of interests between government, church leaders and development workers on the one hand, and the community on the other, the former advocating a change already prescribed and decided by them for the community to follow, and the latter wishing they were able to bring about change of their own choosing.

Recent field studies cast doubt on the nature of pastoral development, and in particular on whether it brings sustainable development. People have tended to ask - what and for whom is development? In the minds of those in government, the church hierarchy and the development community at large, development equates modernity with progress, with little consideration of the speed of change, instability and the human isolation associated with such development. Such „prescribed development“ imposed on people, has in most cases failed to accommodate tribal rituals (customs, traditions and beliefs) as well as people's traditional institutions: which to the Maasai community are seen as an integral part of their life and the only guarantors of their future. One school of thought believes that if individual ethnic groups can negotiate with the government institutions to be allowed to choose, plan and carry out their own development, efficient use of human and natural resources is likely to emerge. Such a sense of awareness has long been enjoyed by ethnic minorities in Europe, where each of these communities has their own cultural and religious identities that underline their development needs.

In the late 1960's the Government of the United Republic of Tanzania (URT) took steps to abolish the traditional dress of the Maasai community. This decision did not involve members of the community, or consider the reasons for the Maasai dressing pattern. To the government leadership, traditional dress was seen as being shameful to the nation and an offence to modernity. Members of the community who did not comply were refused access to public services. The

same issue resurfaced in Kenya in the 1970's. The man who started the row then was Mr. John Keen, now Secretary General of the Democratic Party, (DP). He is reported to have delivered an ultimatum at a fund-raising function in his constituency of Kajiado North, by telling his „barebottomed“ voters: „Cover up your buttocks within six months or I resign“. His fellow Member of Parliament, the controversial late Oloitiptip, said: „The Maasai people are quite civilized and reserve their rights to wear trousers or just to remain in cultural *shukas*. Nobody is going to force us to wear trousers just because Europeans do so!“

Advocating the same policy of banning Maasai traditional dress, the District Commissioner (DC) for Kajiado District, in Kenya, said in 1986 that he would not receive in his office any Maasai elder dressed traditionally. He said that: „The Maasai elders who supported cultural practices contrary to government aspirations had remained a stumbling block to development“.

One may wonder if banning traditional dress is a national priority. „Yes,“ as noted one Kenyan Maasai, „the Maasai ought to change in certain ways but whoever said the most pressing change required was dress?“ Despite this campaign to have the Maasai abandon their traditional ways, they continue to wear their traditional dress.

Changing dressing patterns is not the only pressure the Maasai have felt from their government; their adherence to tribal rituals and traditional institutions has also been threatened. Whereas the Government of URT has given to the community leasehold title to land for use in the *Olng'eherr Ritual*<sup>1</sup>, the Kenya Government, on the other hand, has persistently stood to ban these cultural expressions. From the mid 1970's to date, the Kenyan Government launched campaign after campaign to try to abolish the institution of moranhood (warrior). Also from time to time the Kenyan media has issued statements such as: „This is the last Eunoto Ritual“, „the End of the Road for Morans“, „the last of the Morans“, „Kenya launches campaign to end Maasai Morans“, etc.

The most noticeable incident is the Government campaign to bring a rapid end to moranhood in Kenya, which took place in the *Oloitokitok* area in 1987. This campaign was quite unpopular among the majority of Tanzanian Maasai who are also *Ilkisongo*, like those in the *Oloitokitok* area. They saw the campaign as the Kenyan Government's attempt to break the ancient links with their clansmen across the border. Armed policemen were ordered to forcefully

shave off the plaited hairstyles of the warriors rounded up by the security forces. The authorities also tried to dismantle one of the *Manyattas*, a remote compound where 50 - 100 morans live in seclusion to learn the songs, dances and customs of their forefathers. Included in the campaign was an idea of the DC to have two different groups of warriors undergo a forceful mass graduation ritual together, in defiance of community custom.

The government argues that moranism disrupts education, obstructs national development and encourages cattle rustling and poaching from game reserves. „It is inconsistent with the government policies... the morans engage in activities which do not allow them to engage in development. They are wasted at that time of life“.

But many Maasai said that the local leaders has been insensitive and narrow-minded in their approach to the problem ...“ We feel morans should be educated; but we oppose the way it is being handled. The government methods have been heavy-handed“. The elders did not openly express their views out of fear of government reprisal. The Maasai elders, unlike the „Chiefs“ appointed by the government, had doubts about the legitimacy of the mass graduation ritual<sup>2</sup> the DC was proposing.

There are other direct external pressure on the Maasai that come from land alienation and the encroachment of Christianity. Many pastoralists, especially poorer and less powerful ones, have been denied access to their traditional rangeland, and made more vulnerable to drought and famine. Central government legislation has removed the legitimacy from traditional land rules, and land has been taken away from traditional pastoral management without effective modern legislation replacing it! As a result, a situation of ruleless chaos has been created by government action (Lane, C and Swift Jan. 1989).

The Tanzania Act 22 of 1992 on land tenure extinguished customary land tenure while giving no compensation or legal redress. It is argued that the extinction of customary rights is to affect pastoralists most, and is likely to have serious political and social repercussions (Kamal, M. 1993).

The future of the Maasai and other pastoralists, is therefore at stake, depending on whether they lose or retain their lands.

The Church has become more development and progress oriented, but for the greater part has not accommodated traditional Maasai institutions. It is instead trying to convert them to what it would like them to be. A Catholic missionary who worked amongst the Maasai

once noted that: „Evangelization is a process of bringing the gospel to people where they are, not where you would like them to be“. But what do we see done by the Christian Churches to our community? It is total chaos and confusion, bringing despair. There are conflicts of interest on matters of marriage, tribal rituals (customs and traditions), traditional institutions - the *Oloiboni*, in particular; which the church would like to have abandoned as well as more trivial matters such as adorning oneself.

During the last *Olng'eherr* Ritual, the Lutheran Church in Arusha discouraged its Maasai followers from taking part<sup>3</sup>. Maasai Catholics on the other hand participated fully in all the rituals. If the Lutheran's refusal to participate in the ritual is because they see the ritual as an extension of Maasai belief in opposition to Christian belief, then perhaps, their refusal is valid, as it is questionable as to whether one may practice two opposing beliefs at the same time. They could, however, still have allowed it to be supported materially. If they refused to support the ritual simply because they saw it as being primitive or superstitious, then perhaps their views were far too narrow. The Catholics, on the other hand, understood the ritual as a cultural extension void of belief. This is also naive.

Christianity is against plural marriages, widely practiced by the Maasai.<sup>4</sup> Some more evangelical churches, the Pentecostal for instance, break up families by converting people with polygamous marriages.

State and development community intervention on our community has brought about cultural disintegration in a process characterized by:

- Alienation of grazing land
- Decreased number of cattle per household/person,
- break down of solidarity, e.g. the gap between rich and poor,
- Increased workload for women due to adoption of agriculture,
- Traditional culture under pressure and internal conflicts over the future.

Commenting on this cultural displacement and submission of the Maa peoples, a Maasai scholar recently (1987) had this to say:

„I can't look at them romantically. For years, they have decorated the plains for others. Now the painful reality is that they must change ...I don't fit (in the community)“; he said. „Sometimes I wish I had been born 50 years earlier or 50 years hence...”



Contributing to the same Maa predicament, another scholar (Western) said:

„In some aspects, their future appears to be something like it was for the American Indians in the middle of the last century. It looks as though they will end up either in isolated tribal groups on reserved land that can barely support them, or individually taking their chances in the cash-competitive, non tribal society outside the reserve.“

A few years ago, a Kenyan administrator asked: „The Maasai have had 20 years to change. Do they need more?“

Somebody else would also say that since the coming of colonialism the Maasai have had a hundred years to change. Do they need more?

Both colonial and independent governments have tried many ways to bring change about. Legislation, however, has proved ineffective, and now important lessons are emerging.

First people should not be administered like objects in matters that affect their lives, without involving them in the decision making process. This has been the policy followed in error by both colonial and independent governments in dealing with the Maasai. Secondly, a people's culture is the carrier of their values in the course of their economic and political life; it needs to be respected in order to bring about more effective change. It is necessary to know of their conceptions of what is right and wrong, what is good and bad and what is ugly and beautiful for them. Third, it is also necessary for even church development workers to respect the Maa religion. Development has to be by and for the people. The unity, strength and bonds of the Maa peoples is stored in their tribal rituals and traditional institutions: they have to be maintained and safeguarded in order to reap cultural sustainability and the benefits of sustainable development. Fourth, the Maa peoples lack educational knowledge and technical know-how. By this I mean the necessary means with which to change and mould their tribal rituals and traditional institutions to fit into a contemporary context. The community should be asking itself: Could different rituals be changed - not dropped - while retaining the same symbolism? Could the time taken up for rituals be reduced while retaining all the important elements? Could certain institutions, e.g. the „*Olpirron*“, that has immortalized our culture over the years, be changed and moulded in a way to inspire development? Could the institution of „*Olchokut*“ that involves children in herding be shifted to the elders so that our children could go to school?

Such a debate does not require the government or the church to initiate it. It is the work of the community, and educated members of the community in particular. They can liberate the community from ignorance. But they worry that the kind of education they have had has alienated them from the community, creating the two extremes of, on the one hand, an illiterate community, and on the other, educated individuals looking and working for their own advancement.

## NGOs and Maa Development

Much more than their Tanzanian counterparts, the Kenya Maasai have witnessed a major intervention by NGOs since independence in 1963. A majority of NGOs are either church-related groups originally focused on evangelisation and famine relief, and some are affiliates or extensions of international NGOs. Few are independent, and even fewer are viable local initiatives. A majority of NGOs are recent arrivals in the area, particularly since the early eighties. This is associated with the increased interest in the challenges of development for more peripheral areas that characterized this period, and an apparent fad to do something among the Maasai (Dr. Kituyi, M.1992).

In contrast, a majority tendency of the early NGOs in the Maasai area is that they came in to offer famine relief after extended drought. Hence their programme was originally of a relief nature. This had a major impact on the scope and type of transformation they have undergone. Whereas NGOs in general have had a substantial role to play in welfare and development activities in the Kenyan Maasai region, they have shown a number of weaknesses related to the way they have operated. One obvious problem is the large number of NGOs doing basically similar things; There is a multiplicity of religious NGOs which focus first on an evangelizing mission, and then secondly on developmental or welfare related work. It is common in parts of the Maasai land to witness various Christian evangelizing teams competing to win souls with a mixture of messages that would be most confusing even for a more literate and worldly audience than the one found in the Maasai market place (Dr. Kituyi, M. 1992).

Until very recently, there have been no NGOs in Tanzania Maasailand. The government has been the main development partner, while Christian aid was channelled directly by the Churches.

In 1970, the US AID-funded Maasai Livestock and Range Management Project was initiated. The project covered all four Maasai districts of Northern Tanzania. The project was the most costly development initiative in the Maasai region. It aimed at establishing ranching associations and an efficient marketing system with a view to increasing livestock sales for ecological and economic reasons. The approach was to invest in infrastructure by developing water, marketing venues, disease control, cattle improvement and the creation of ranching associations for managing the infrastructure.

The programme was long on promise and short on delivery. Most ranch associations remained in the process of formation up to the end of the project in 1980. Few services were actually delivered. Fewer were delivered in line with identified local needs. There was never any significant dialogue with the beneficiaries, and no local involvement in any of the phases of the project. When the donor left in 1979, the massive project quickly ground to a halt (Dr. Kituyi, M. 1992).

In the early 1980s, the Catholics formed an NGO, Arusha Diocesan Development Office (ADDO); and the Lutherans started the Maasai Health Services Project. The Pentecostals have an afforestation programme managed and supervised directly by the church. In the *Oloibor Soit* village, of Simarijiso District, they have a community development programme supported by affiliated NGOs in Sweden.

International NGOs are very limited; these are OXFAM-UK/Ireland and the African Development Foundation (ADF), of the USA. From the experience gathered, the two NGOs acted more as funding agencies than as actors in the field. OXFAM mostly supported the human rights of pastoralists, particularly amongst the Barabaigs; while ADF first supported a water project at *Olbalbal* village in Ngorongoro District, and is now supporting some small small programmes of the NGO - *Ilaramatak Lorkonerei*.

For a brief spell, MS, through the Danish Volunteer Service (DVS), and the Netherlands Development Organisation (SNV) have had a community development programme in the Ngorongoro division of Ngorongoro District.<sup>5</sup> DVS continues to operate in the Arumeru District, on women and youth development programmes and is showing interest in working with *Ilaramatak Lorkonerei* on a community Resource Management Programme.

In the late 1980s, local initiatives came on the scene, with the registration of the Korongoro Integrated Peoples Oriented to Conservation (KIPOC), *Inyuat e-Moipo* and the *Ilaramatak Lorkonerei*.

KIPOC has concentrated its main activities in Ngorongoro District, but has embarked on an ambitious programme of establishing representative offices in other pastoral districts of the region (Arusha). KIPOC officials see these as autonomous entities but this is subject to debate (Dr. Kituyi, M. 1992). The organisation's original goals are land rights, education and community empowerment.

While seeking to deal with all identified problems, the Ilaramatak Lorkonerei has identified three broad areas where it seeks to focus its attention. These are land security, women and child survival problems, and an educational and leadership training programme (Dr. Kituyi, M. 1992). This NGO, however, has focused its activities in the newly created district of Simanjiro.

Suffice it to say that in the last 10 years there have been a rapidly increasing number of NGOs involved in the Maa development in Tanzania. However, as we have seen above, all have not started the same way.

ADDO, for instance, is the brain child of an American Missionary, Edward Hearn. Combining his personal outside influence and that of the church, the NGO from early years received and continues to receive massive fundings; that has enabled it to be what it is and where it is - but where it is going - sustainability - is subject to debate. ADDO is a church NGO with policies formulated by the church; it is doubtful whether the Maasai, the majority of whom are not Christians, would contribute to its sustainability in the future. Other NGOs that have come upon the scene through local initiatives are on the other hand facing a multiplicity of problems which the former has never experienced. They are still struggling to establish bases from which to coordinate their activities while they are without the minimum requirement of let alone sufficient manpower.

Unless there is a flow of capital from the north to enable these NGOs to establish their institutional framework, as is the case with ADDO, I am afraid they will never achieve their development agenda. The other weakness of the NGOs in Maasailand is that they work more on material (water, education, income generating etc.) possessions, without any consideration of the moral and spiritual possessions of this people. The two - material and spiritual possessions - should go hand in hand. If Christians, the Lutherans for instance, are against the tribal rituals of the Maasai, I am sure they would not support any initiative aimed at transforming these rituals. They would not support the development of Maasai cultural and religious sites like *En'donyo o Ilmorwaak* or *Oyarata le- Mukulat*.

Apart from doing what other NGOs are doing in the area, *Inyuat e- Maa* will work to enhance the social values and cultural traditions of our people. We believe that our people need not only material but also spiritual possessions as given by their cultural world.

## Maa Peoples in Search of Identity

One example of the emerging attempt by the pastoralists to take stock and charge of their development in economic and cultural terms was the first Maa Conference on Culture and Development held in Arusha in December 1991. After discussion on the state of relations with other peoples, forms of change, perceived cultural submissiveness, growing poverty, land loss, and attitudes towards the Maasai, the participants sought to identify a way forward ... Apart from any institutional and developmental consequences from the conference, the fact of pastoral peoples identifying and sharing dialogue on their rightful contribution to their own development is of major significance. It marks the important transition from the era of being objects of development aid, to actors in problem identification and solution. The spirit of the conference has a bearing to other grassroots initiatives that are emerging as vehicles for pastoral transformation (Dr. Kituyi, M. 1992).

The conference expected to draw delegates from members of the community in both countries, Tanzania and Kenya<sup>6</sup>. The conference aimed at looking into the Maa people's cultural dilemma brought about by forces of modernity versus tradition and provide pertinent guidance for the future. It wanted to look at our yesterdays, which have important lessons on how we look at today, and how we see the possibilities for our tomorrows.

The aims and objectives of the conference, therefore were:

- (a) to stimulate, educate and enlighten the community, to understand their present predicament through exchange of views, ideas and experiences.
- (b) to pin-point, examine and critically analyse factors or forces contributing to this predicament, and suggest corrective measures.
- (c) to put Maa traditional institutions on the agenda of government and development agencies for the sake of grassroots institutional development.

Efforts and plans to have the conference were frustrated twice by the authorities. The democratisation process was in the making, and therefore part of the process, but not yet understood, and even when understood it was not accepted by many in authority in our government. Conference organisers were seen as agitators, trouble-makers and forces of tribalism. We were interrogated and threatened that legal action would be taken against anyone who worked for the conference. However, we were not cowed by such threats and intimidation; we fought it all, and at last the Tanzanian Government permitted a „cut-down“ conference that excluded the community in Kenya. The Tanzania Government, as we learnt later, is not to blame for the exclusion of Kenyans. Instead, the Kenyan Government is to blame for this, and I would like to ask this international gathering that addresses itself to the „Question of Indigenous Peoples of Africa“ to take note of this. The conference was never political in intention, but aimed at the peaceful development and progress of our community in both countries. But by forbidding its citizens to attend the conference, the Kenya Government interfered with the democratic rights of this people.<sup>7</sup>

A number of resolutions were arrived at. While not radical in many ways, they reflected the blend of participants and the growing diversity of Maasai opinion. On education, they resolved to contribute to greater access by Maasai children to quality education. On religion, the existing pluralism was endorsed - „every man must go to heaven in his own way“.

On culture, there was clear attempt to combine retention of tradition while sacrificing elements that have held back the development of modern education, such as the extended transition from boyhood into adulthood (moranhoo), and practices that demean women, such as female circumcision and some marriage arrangements. The participants called for the respect and protection of cultural institutions and sites. A body was established named Inyuat e - Maa (Maa Pastoralists Development Organisation). This was to be registered as a Nongovernmental Organisation (NGO) charged with identifying development priorities and charting a course of action. The new body was seen as a vehicle for increased popular participation in development (Dr. Kituyi, M. 1993).

The major lesson of the conference was significantly a realisation that our survival as a people, society and culture, lies squarely on us.

We colonized Africans have been thinking of ourselves as „objects“ for so long that we sometimes forget that we are also „subjects“. We have been acted upon so often in recent times that we

often forget our potential as actors. We need not always be pawns in other people's games. We can become players in our own right (Prof. Mazrui, A. 1988).

The Maa community of Tanzania wants to reclaim its position in history; to re-write it as makers of history and not as objects to be acted upon; to take things in our own hands.

## The Organisation

„Instead of lamenting, as a threat, the disintegration of many traditional values and the lack of clear definition with which our historical period presents us, we may attempt to understand and to use the very conflicts and ambiguities of the time to open the way for realization of new possibilities“.

(Hellen Merrell Lynd, on *Shame and the Search for Identity*.)

*Inyuat e Maa* is a community organisation for the Maa-speaking peoples of Tanzania. It was formed by the community after the First Pan Maa Conference on Culture and Development of 1991. The conference drew representation from all the localities of the three Sections of *Greater-Kisongo*, *Greater-Purko*, *Greater-Loita* and the *Il-Parakuyo*. They included traditional leaders, the *Il-Laigwanaak*, who were cultural resource people and the educated members of the community, dialogue participants. The conference was therefore widely represented and broad-based, to make the resolutions reached at of community consensus. For this reason, the organisation covers all the areas of the Maa Pastoralists.

The Maa word, „*Inyuat*“, means, effort/endeavour/undertaking/action/participation, in one's struggle for survival. We have simply called the organisation „Maa Pastoralist Development Organisation“ in English, not only as a matter of convenience, but also to mention and underline the main source of livelihood of the majority of the Maa peoples.

The organisation has been registered only recently. It is only 5 months old, and therefore apart from the conference, and too young to claim any achievements. I am the only employee of the organisation at the moment; for lack of funds, we have been unable to engage the manpower required.

But as the Maa saying goes: „We have killed the lion, let us dance in celebration“. Having their organisation registered, the Maa Community of Tanzania, despite the tribulations it has suffered, has

„killed the lion“; and is now dancing in celebration and joy. We have put our cultural and economic survival in trust to this organisation.

## Aims and Objectives

The Maa community of Tanzania, with the exception of their kinsmen, the *Il-Larusa*, are today the single largest marginalised group in the country. Over the years, they have nurtured a direction of „self-imposed isolation“ apart from the demand of national socio-economic development by maintaining a tribal life void of cultural diffusion. Their reluctance to acquiesce to formal education, their abhorrence of city life and persistent pastoralism at the expense of agriculture, the immortality-mystique and the celebrity they give to their tribal rituals, have indeed kept this „isolation“ and „protectionism“ alive. Their many traditional institutions have contributed to the satisfaction, confidence and therefore preservation of this culture. The environment in which they live has not only dictated their occupation, but also their costume, which today gives them a unique and spectacular cultural identity. The resistance they have shown to accepting modernity has been a powerful force in the minds of government officials, church leaders and development workers; and the policy suggested of abolishing rather than moulding these rituals and traditional institutions has not been widely welcomed by the community. Writing about us in 1938, H.A. Fosbrooke said: „Ever since their original contact with Europeans, more than half a century ago, they have as people most courteously defined their attitude more by deeds than words, that they are satisfied with their mode of life and intend to adhere to it. Certain adaptations and concessions they have made but only after critical examination and slow absorption, not by unreasonable aping“.

In order for our community to become a meaningful community, the aims and objectives of our organisation have to consider and take note of the above development contradiction. The aims and objectives have to focus on our *basic personality* - of mind, body and spirit. They have to give the community the *Satisfaction* and *Confidence* it needs in order to survive as a people and as a culture.

In one of the clauses in the Constitution of Inyuat e-Maa, we make it clear that we shall encourage and promote cultural and religious tolerance amongst all peoples and communities, not only in Tanzania, but the world over, for the peaceful co-existence of

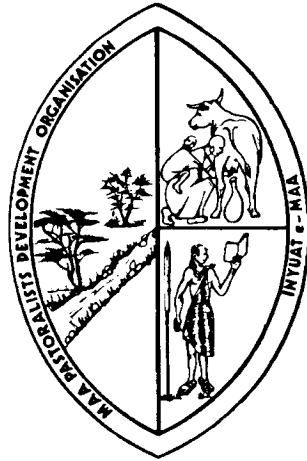


mankind. We do this in the hope that others would reciprocate in a way that would enable us to achieve our cherished and desired goals.

The emblem of our organisation clearly spells out what we cherish and desire, and therefore what we stand for.

a) The shield- symbolises defence, nervousness and self-protection, in the safeguard and preservation of our culture and other possessions.

b) The „|-“ mark- that crosses the shield from North to South and from the East, is the emblem of Maa belief and religious observance, Kha-pikhop. We believe we came from the North, far beyond the East African region, and have headed South. The East where the sun and moon rise, symbolises the „source“ of life; as opposed to the West where the two set. The West is a sign of bad omen.



c) The cow- being milked by a mother carrying a child on her back has two values: The cow itself stands for our persistent pastoralism, while the mother and child stands for the „family“ and the great care we give to it.

d) The warrior reading a book- is an emblem of the importance of formal education, which we dearly need in our pursuit of freedom from ignorance and also in order to know how to deal with the outside world. The traditional attire of the warrior stands for preservation, to assert that it is possible to obtain formal education while maintaining one's basic personality.

e) The left half of the shield - shows trees and a stream, to symbolize our concern with environmental and conservation issues. The water stream speaks of our determination to provide water for both humans and livestock, which to our community is of prime importance.

So, whereas Christian NGOs focus first on the mission of evangelization, and secondly on development or welfare related work, Inyuat e-Maa will first focus on Maaism<sup>8</sup> and secondly on development and welfare related work.

In order of priority the following are the organisation's aims:

#### Vision and strategy

In section one, we saw that the community is made up of a number of entities, each of which is autonomous. The leadership of any of these entities (sections) is itself loose, not effective. At community level or national level, there is no leadership. The strong leadership at locality level is being shaken, by government legislation, land transactions, etc.

In former days, the community managed to live by this arrangement, perhaps because there were less encroaching and destructive external forces. But today the world has changed dramatically, with increasing outside contact. Our traditional culture is coming under pressure and the role of the elders (the power base) is being eroded while there is increasing resource scarcity, displacement and marginalisation of the community.

The organisation aims at organising the community by giving it vision and leadership in pursuit of freedom from ignorance and deprivation. Through mobilisation, we hope to bring community unity and cohesion in order:

- a. To choose, plan, implement and evaluate projects affecting their living conditions and future.
- b. To cultivate awareness of the rights of our people through information and education.

Our approach to this process is via an understanding of the peoples' cultural world - indeed their socio-organisation. Inyuat e-Maa would not like to see the centralisation of the community come about, because it is contrary to our socio-political organisation. It could also cause many bottle-necks in the development process.

Instead, the organisation would like to see each of its sections forming their own development NGOs at section level. The locality could form a local grassroots NGO to liaison with the broad section NGO.

The traditional leadership, the *Oloiboni* at section level, the *Olaigwanani* at locality level, and the *Engopiro* at sub-locality level, needs to be transformed. These grassroots institutions demand literacy and formal offices in order to have the vision to manage the development process of our present demands.

Inyuat e-Maa, then remains not precisely an NGO but a „Community“; like the „Christian community“, the „Moslem Community“; etc. It could be a forum for all other Maa NGOs, a custodian of

Maa Culture and the community national spokesman. The community in Kenya could also organise itself along these lines. At the end of the road the community could get a territorial body to work for the advancement of the Maa culture and peoples.

Suffice it to say that at the moment Inyuat e-Maa does not see other Maa local NGOs as competitors - overall it is the only NGO entrusted with the cultural affairs of the community. However, the organisation suggests that viable and sustainable Maa NGOs should be based on the socio-political organisation of the community. They would then be better understood by its members, who could increasingly contribute to their sustainability.

### Cultural Survival

Cultural disintegration is the evil sweeping across Africa. It is one of the great evils Africa has suffered, unmatched by any other continent. Africa has tended to copy rather than borrow from the outside world what is good for it to follow or nourish and to give a leg up to its own common heritage, i.e. its culture. Africa has equated development with modernity, with little consideration of the speed of change, the instability it can cause, and the human isolation associated with it: African native customs, rituals, beliefs and institutions have been neglected and regarded as less civilised. This dangerous and deplorable misconception has been held by both outsiders and our fellow African elites. So in Africa today there is not cultural sustainability. The African must change, but the changes should relate to his own self and also to the Gods.

Inyuat e-Maa recognises that Maa traditional society has started to crumble. We are seeing it disintegrating. Our major aim therefore is to save the society from total disintegration. We will put emphasis on institutional building by moulding the traditional institutions that we need for community grassroots development to fit into the contemporary context. The tribal rituals that relate us to our God also need to be strengthened. At the moment, we are trying to sell an idea to the Netherlands Humanistic Institute for Co-operation with Developing Countries, HIVOS, to help us to develop the *En'donyo O'Ilmorwaak*, „The Shrine Hill of Elders“. This is a sacred place in our culture. For almost 200 years, over 12 generations of Maa elders have been inaugurated at this place. This happens when our young people, the warriors or Iimorraan, cross the age of youth and are ordained to be elders, or priests of the community.

Inyuat e-Maa knows that if we are to allow this sacred place and some others with values and symbolism in our culture to disappear,

our culture will never be the same again. The younger generations that have been given the custody and trust of our culture by older generations, will, if this happens, be condemned by history.

### Economic Survival

Cultural survival goes hand in hand with economic survival. What we see today is that the majority of those joining the church are poor members of the community; while the majority of the rich or well-to-do are reluctant to do so. Pride, dignity and honour are essential to us. Without economic power, however, there will be no pride, dignity and honour; and therefore there will be no culture.

Our economy is based on subsistence pastoralism which today because of people's increasing demands and wants cannot be relied on. The land left to us, however, after the best areas have been appropriated by others, is arid or semi-arid, quite ill-suited for agriculture. Emphasis will still be on pastoralism in order to avoid environmental degradation of these fragile regions of the world. It has to be improved, through animal health care, attention to natural resources (water, pasture, etc.) and the creation of better conditions for the marketing of livestock and animal products. Inyuat e- Maa will also work towards empowering the community in the control and management of all their activities.

However, since the conditions of pastoral life are declining, through loss of animals, insecure land tenure, growing poverty, the effects of drought, etc, other economic activities are also important. We shall try to diversify our economy by protecting the abundant wildlife within our range lands in order to reap the benefits of it. We could create multiple land use units (livestock, wildlife, tourism, etc), in such areas; and claim hunting and camping fees from tourism coming into the area. Women will be encouraged to engage in handicrafts such as beadwork, in which they excel.

Much of all this, however, depends on whether we retain our land or not. We have suffered greatly because of the land deprivation resulting from the creation of protected areas, National Parks, large and small scale agriculture, forest reserves as well as mining and hunting concessions. Today, in most of our lands this nightmare of development is persistent; the whole situation is chaotic and without rules. In one locality of Naberera in the Simanjiro District, for instance, last year, more than 35000 acres of land were appropriated to 17 individuals in one single day.

The Maasai traditional land tenure arrangements that helped sustain the environment of these fragile regions of the world has

been destroyed by government legislation, while nothing is done to replace it.

The Mkomazi Game Reserve (MGR) case is one of the latest of these moves that are subjecting our community to resource scarcity, displacement and marginalisation. Members of the community who lived in the area together with wildlife for many years, were forcibly evicted from this area in 1988, making the area exclusively wildlife domain.

„Whereas modern conservation strategy emphasises the importance of direct benefits to local inhabitants in terms of long term sustainability, and this strategy is currently being followed in Ngorongoro Conservation Area (NCA) and the Serengeti National Park, in Mkomazi Game Reserve (MGR) the strategy being followed is premised on creating active hostility towards local inhabitants. The pastoralists, who have resided in the area for more than a hundred years, have been deprived of their ancestral rights, evicted without preparation for their reception elsewhere and have suffered social disruption and economic disaster as a result“ (Fosbrooke,H.).

With the support from the International Institute for Environment and Development(IIED), London, Inyuat e-Maa and other interested parties are challenging this move by the pro-wildlife lobby.

Inyuat e-Maa would like to have this Mkomazi area returned to its former status of human/wildlife relationship. If the Government of The United Republic of Tanzania agrees to this, the IIED agrees to fund a feasibility study aimed at making the area a multiple land use unit, like the Ngorongoro Area.

Inyuat e-Maa sees LAND as an issue if we are at all to survive; we hope to work hand in hand with other local NGOs in the area to have the land left to us registered. At the moment, this is the most immediate solution to the problem. There are, however, fundamental problems as to the criteria to be followed in this land registration: There are those advocating a government village demarcation procedure, on one hand, and on the other, those favouring a traditional land tenure arrangement seen to be more viable in a pastoral setting.

## Possibilities

On the question of possibilities, I have addressed myself as to the question of what opportunities and chance we have; what is our potential and capacity; our prospects and expectations for our sustainability?

## Government of The United Republic of Tanzania

We as a Non-Government Organisation (NGO), or as a Community, in the midst of the larger community of Tanzania, take note of the fact that the United Republic of Tanzania, is the main policy formulator and chief development partner of any other development entity, whether international, government or local community NGO. In order for our organisation to have good prospects, we must recognise and live with this reality. We are not competitors, but rather working partners for the development of the community and the whole country at large.

## Donor Agencies

Donor agencies of the North have long been actors in the development of the South. Even as we stand here now, we owe our existence to donor agencies, such as SIDA, DANIDA, FINNIDA, NORAD, HIVOS and the International Institute for Environment and Development (IIED), London. However, with the end of the Cold War, some predict the phasing out of such donor agencies in the near future. We do not expect to survive solely on donors' support. But, since we are still young we would need co-operation of a kind with them; this co-operation would give us the mileage to build our working arrangements and capacity.

## The Community

Given the lifetime, I believe *Inyuat e-Maa* has the potential for self-sustainability. Of all development processes and theories brought to our people, none has ever seriously considered our cultural aspirations and needs. This is one of the major reasons why our community has been sceptical about accepting the current development process. Having recognized this we hope, through mobilisation, to get greater community participation and support.

The Constitution of the Organisation stipulates the organs needed for community mobilisation: -*The Oloiboni* - For the Section level. His ceremonial-cum-religious leadership is expected to help the organisation identify the real local leaders of the people. These local leaders, *Il-Laigwanaak*, pay him official visits from time to time, not only to acknowledge his role as a leader of the community, but also on matters regarding the wellbeing of the community in a particular locality.

However, for the most part, the *Oloiboni* may be seen as a positive institution serving real human needs (Hillman, E. 1991).

-The *Olaigwanani* (pl.*Il-Laigwanaak*) - the mobilisation base is the locality where efficient community leadership is based. The *Olaigwanani* is the grassroots organ the organisation would contact for any mobilisation process. He would liaison with his assistants, the *Ingopir* (S. *Engopiro*) to mobilise the people in the locality. To the community, this leader is more effective and inspirational than government grassroots officials.

-*The Olamal lo Ilmoran* - Youth's mobilisation force at the locality level. Normally, it mobilises resources to meet the costs of the group rites of passage.

-*The Olamal lo Ingoroyok* - Women's mobilizing force. The *Olamal*, for most of the time, is religiously or morally oriented. It also, as Hillman puts it, „serves real human needs“, when it serves to mobilise a particular social group to meet their development needs. Like the *Olamal lo Ilmorran*, this women's mobilizing force operates at the locality or sublocality level.

People's income and living standard, however, have to be improved to contribute increasingly to their development. We look forward to working hand in hand with other local NGOs in the area, KIPOC, Inyuat e-Moipo, Ilaramatak Lorkonerei, ADDO and others to come to achieve this objective.

The Organisation Inyuat e-Maa is structured in the following way:

- Socio-economic development department - to deal with the socio-economic development of the community in order to join the main stream of national development.
- Cultural and religious affairs - to deal with all cultural issues for the sake of cultural survival.
- Research and economic diversification - to deal with all the research work needed by the three departments of the organisation and also to advice on the means of diversifying the previously monocultural economy of the community.

In future, we hope the three departments will split into autonomous but complementary entities. The socio-economic development department becomes the main NGO taking over the rights and financial obligations of *Inyuat e-Maa*. Research and economic diversification become a self-supporting economic wing to generate surplus for the community. Maa religion would cease to be informal and

become formal when the cultural and religious affairs department of the NGO becomes an autonomous Cultural and Religious Institute of the Community. The Cultural and Religious Institute will be the supreme body to mould and project the development of the former two entities.

If we happen to succeed along these lines we will have borrowed and not copied from others. One of the most successful, progressive, entrepreneurial, religious and cohesive community in the world today, I would say, is the Ismailia Community, led by His Highness, H.H. The Aga Khan. It is actually structured along the above lines which we would like to devise.

## Conclusion

Shakespeare in „Hamlet - Prince of Denmark“ once said:

„But, orderly to end where I begun,  
Our will and fate do so contrary run  
That our devices still are over-thrown  
Our thoughts are ours,  
their ends none of our own“.

In conclusion, I would like to say that the aforesaid are our devices, and we have the will to accomplish them. As Shakespeare says, however, we must keep in mind the fact that people's devices, thoughts and will, due to encroaching, competing and perilous forces or other shortcomings, may never be accomplished.

A learned Maasai (ole-Saibull) advises that, „There must be a marriage between the old and the new, the traditional and the modern; otherwise to divorce tradition from education, from religion and from progress is to destroy the Maasai from two fronts, the educated Maasai will have no roots and the traditional Maasai will have no shoots. There is a need for both groups to come together and appraise their differences with an eye to reviewing them in order to secure their own survival as a competent community within the larger society of which the Maasai are an integral part... The answer must be a matter of choice between resistance, yielding or adaptation“.

I believe there is a divinity that will shape our end.



## Notes

1. Now (since 1988), the Maasai community in both countries (Kenya and Tanzania) holds leasehold title to about 600 hectares at En'donyo o Ilmorwaak (the Shrine Hill of Elders). The area is between Mountains Kilimanjaro and Meru, in the Hai District of Tanzania.
2. The ritual concern is the olng'eherr, that took place 1987/90 involving the Ilkishumu age-group - now after the ritual renamed Ilkitoip. The Kenya Government wanted the younger age-group of Ilkimunyak, which had not even undergone the preceeding ritual of Eunoto to undergo the ritual with Ilkishumu. Customarily, this was enough to break the links between the Ilkisongo of Kenya and Tanzania.
3. Sources are Samwel Ole Makara, a Lutheran at Sekel, Arusha, and Lazarus Ole-Nairowa, a Lutheran at Monduli, who was questioned by his Pastor as to why he went to the First Part of the Ritual at En'donyo o Ilmorwaak. (Personal conversation with the two 1989).
4. „Plural marriage or polygamy, is found throughout the world in a variety of forms that are culturally determined ... amongst Western peoples in consecutive polygamy“. Hillman, E.; In Polygamy Reconsider: Christian Churches and African Plural Marriages.
5. None of the two Organisations is in the area at the moment. M.S. has had operational complicity that culminated with the suspension of the programme. Anna Petit was the SNV technical assistance in the area; with the end of her tenure there has been no replacement. HIVOS/SNV, however, are supporting KIPOC, the NGO in the area.
6. The population of the Community in both countries is more or less the same.
7. Due to this reason, the Community in Kenya could not take part and is not therefore a member of the Organisation.
8. Institutional building: see the institutions on figure one. - Search for Maa identity. - Olkereti le Maa—Maa culture and religion.

## CHAPTER 2

### BUSHMEN OF SOUTHERN AFRICA



ROBERT K. HITCHCOCK

## INDIGENOUS PEOPLES, THE STATE, AND RESOURCE RIGHTS IN SOUTHERN AFRICA

*The governments of Namibia, Botswana, Zimbabwe, and Zambia are pursuing policies which theoretically devolve control over natural resources to local communities. A goal of these policies is to encourage conservation through allowing local people to benefit from resource utilization. This paper assesses the impacts of changing resource management rules of southern African states. Drawing on data from Bushmen (San), Himba, Kalanga, and Ndebele populations, it demonstrates that the degree to which local people have control over resources varies greatly. States in southern Africa have tended to grant only limited rights to resources to indigenous peoples, and many of the socioeconomic benefits from those resources fail to reach local communities. Clearly, greater efforts are needed on the part of states, NGOs, international donors, and local people themselves to promote land and resource rights of African indigenous populations.*

Over the past several years a dramatic upsurge has taken place in the efforts of governments, international donor agencies, and various non-governmental organizations to promote community-based natural resource management programs in southern Africa. These activities were initiated in part because of the failure of previous conservation policies, which took away the control of natural resources from local people and placed it in the hands of the state or private companies (Anderson and Grove 1987; Adams and McShane 1992; Bonner 1993).

The governments of Namibia, Botswana, and Zimbabwe currently are pursuing policies which theoretically devolve control over natural resources to local communities. The main assumption underlying these policies is that local people will be more willing to conserve resources if they are able to gain direct economic benefits from them.

Some of the people involved in the decentralized natural resource management programs are indigenous groups who depend to a certain extent on wild plants and animals for their subsistence and income. Often described as vulnerable populations because of their poverty and their low socioeconomic and political status, the indigenous peoples of southern Africa have begun to organize themselves into grassroots action committees and associations in an attempt to enhance their rights. The question is to what degree these efforts will be successful given current government policies.

This paper assesses the impacts of changing resource management rules of these southern African states (Figure 1). The governments of these three countries have tended to grant only limited rights to resources to indigenous peoples, and many of the socioeconomic benefits from those resources fail to reach local communities. Drawing on specific case material, it examines the degree to which indigenous peoples have benefitted from natural resource management policies.

## The Ju/'hoansi of Namibia

Perhaps the best-known of the community-based people's organizations involved in natural resource management activities is the Nyae Nyae Farmers Cooperative (NNFC), an association of Ju/'hoansi Bushmen involved in a multi-faceted development effort in north-eastern Namibia. Formed in 1986, this organization has undertaken a variety of projects, including the establishment of over 30 decentralized communities, each with its own water source, gardens, and small herds of livestock. Foraging makes up part of the subsistence of these Ju/'hoansi communities, while some income is derived from rural industries such as the manufacture of handicrafts.

The Ju/'hoansi have made efforts to gain greater control over their land and resources through petitions to the government of Namibia and by playing an active role in a national-level conference on land reform held in the country's capital in 1991 (Republic of Namibia 1991). The Namibian government gave tacit recognition to their land rights when they stated that they would accept the traditional Ju/'hoansi land management system as the basis for land allocations. Subsequently, the Ju/'hoansi were able to convince some pastoralists who had moved into their areas with their cattle herds to leave peacefully, thus demonstrating their willingness and ability to maintain control over their resources (Bieseke 1992; Hitchcock 1992).

One problem is that the Ju/'hoansi do not have definite legal control over the resources in their area. They are not allowed to protect their herds and water points from problem animals such as lions and elephants, nor can they exploit and sell local timber.

Efforts are now being made to establish a natural resource management program in Bushmanland. Some members of the Nyae Nyae Farmers Cooperative are concerned about the implications of new kinds of land management categories which could usurp the authority of the Ju/'hoansi. They are also concerned that most of the economic benefits will continue to flow to government or to a private safari company, Anvo Hunting Safaris, which has been operating in the area since 1988. Their efforts to convince the government to permit local people to make decisions about the use of natural resources have so far been unsuccessful. Progress is being made at the regional level, however, with the setting up of an Environmental Planning Committee (EPC) in early 1992. The government of Namibia is listening to the concerns of Ju/'hoansi, and efforts are being made to institutionalize resource access rights. Pressures continue to mount as pastoralists and tourism companies scout Eastern Bushmanland and request permission from local communities and the central government to move into the area.

## The Himba of Northwestern Namibia

The Himba are semi-nomadic pastoralists who utilize widely dispersed water points and grazing in the rugged mountains and sandy plains of northwestern Namibia and southwestern Angola. Numbering 9,000, the Himba have had to cope with drought, war, and changing economic circumstances over the past two decades (Jacobsohn, Pickford, and Pickford 1990). Once some of the wealthiest pastoralists in Africa, the Himba lost many of their animals in a major drought in 1979-1982. Many of them became more dependent upon the state for food, moving into towns. Others became wage laborers, while still others turned to foraging or irrigated gardening for a living.

In the 1980s, the Himba were affected by the war between the South African Defense Force and the South West Africa Peoples Organization (SWAPO). As a result of the spread of weapons in the region, poaching increased substantially. Administrative changes occurred in Kaokoland, with a centralization of control by the government. Strict anti-poaching regulations were on the books in

Namibia, but the enforcement of these regulations was complicated in a region as remote as Kaokoland.

As an attempt to respond to problems facing Himba and others in northwestern Namibia, two programs were developed through the combined efforts of the communities affected and a non-government organization known as Integrated Rural Development and Nature Conservation (IRDNC). One program involved the setting up of a community game guard system in which local Himba were appointed to monitor areas where they reside. The guards are responsible for tracking wildlife and looking for poachers; all enforcement is handled by government officials. The game guards are serviced by the field staff of the Ministry of Wildlife, Conservation, and Tourism. In exchange for their services, the guards are given a small salary and a food and commodities allotment. In the area where the game guards exist, poaching has declined considerably and wildlife numbers have increased in the past several years.

The community game guard system has been successful for two important reasons. Firstly, the system was planned and implemented by the communities involved, and capitalized on the people's inherent value of wildlife as a resource by allowing them the authority and responsibility to manage it. Secondly, the system brought together the expertise and support of several actors - the community, the IRDNC, and the government - who play complementary roles in the program.

The second program was a pilot tourism one in which tourists coming in to the area paid a levy of R25 (about US \$10) per head per night. The funds from the levy were distributed among the communities with traditional rights in the area. People were also able to benefit from tourism through the sale of crafts to visitors. Tour operators were encouraged to have tourists stop and greet and talk to the residents of the area and to be more conscious of the environmental impacts of tourism, including depletion of firewood and the leaving of refuse.

The Himba tourism project is one example of what is being tried to allow communities to tap into a share of local resource potential. The project is working well in that the relationship between tourists and communities is now more positive, and the communities are enjoying an economic gain. The arrangement, however, is an ad hoc one. Tour operators could decide not to cooperate with the communities, and there are no legal restrictions requiring them to do so. To assure that the project continues to work smoothly, the communities' right to manage the wildlife and tourism must be protected legally.

## Remote Area Dwellers in Botswana

A different situation exists in the remote areas of the Republic of Botswana. The Botswana government has yet to pass specific legislation which will allow local people control over resources in tribal land areas (71% of the country). Under the Botswana government's Tribal Grazing Land Policy (1975) and Wildlife Conservation Policy (1986), there are stipulations that local communities will be encouraged to utilize wildlife and other natural resources, but as yet there are few communities which have been able to obtain a portion of the benefits from the sale of hunting licenses or the granting of safari company concessions.

There is a stipulation under the Fauna Conservation (Unified Hunting) Regulations of 1979 that „special licenses“ can be granted to subsistence hunters. Remote Area Dwellers (RADs) who depend to a significant extent on wildlife can use these licenses to hunt specified types of animals. In practice, people have been arrested for illegal hunting even if they had these licenses. The degree to which rural people actually have access rights to wildlife resources is thus open to question.

Efforts have been made by the Botswana government, local communities, and non-government organizations to set up community projects involving wildlife. These projects have not been very successful in part because of organizational problems and because the benefits of the projects have been low. The distribution of the benefits has not always been very wide in the communities where the projects have been implemented (e.g. in Kedia and Mabutshane) (Cumming and Taylor et al. 1989; Hitchcock 1991).

In the case of the Nata Conservation Trust, which ostensibly is a community-based resource management program in northeastern Botswana, benefits have yet to reach the residents of the region. In the establishment of the program there was fairly limited consultation with local people. Some individuals, including Tyua Bushmen, were excluded from the area set aside for conservation and eco-tourism purposes. In addition, the region which the trust controls contains an important salt source which was a major item used by Tyua for income generation and exchange. The project has thus led to lowered access to important resources and a reduction in the incomes of local people.

Several of the remote area communities in Botswana are trying to set up their own resource utilization programmes. The people of Manxotae on the Nata River in northeastern Botswana, for example,



are working on small-scale rural industry projects. In the western part of the Okavango Delta region, women's groups are starting to practise conservation of the palms used for the manufacture of baskets. Groups in Ghanzi District have begun horticulture and agroforestry projects. Kuru Development Trust in northern Ghanzi District has initiated an array of development projects which have resource management implications (Kann, Hitchcock, and Mbere 1990).

The complexity of the insecure land and resource tenure situation can be seen in the case of the Central Kalahari Game Reserve. There the approximately 1.000 Bushmen and Bakgalagadi have been told that they have to move out of many of the areas where they have lived for generations and move in to a relatively small (900 square kilometer) area around the community of !Xade. Not only will high population densities quickly outstrip local resources, but there will be land use conflicts between resident groups and those who are resettled there. There are no formal mechanisms in place for people in !Xade to benefit from tourism in the Central Kalahari. There have been incidents in the Kalahari in which local people have been beaten and tortured by police and Department of Wildlife and National Parks officials (Mogwe 1992).

Unless efforts are made to ensure that local people in Botswana are able to retain the rights over land and resources, these projects could be threatened by outside interests. Indeed, this has already occurred in several parts of Botswana where non- local people have brought in their cattle to use the grazing and water. The livestock have had negative effects on the gardens and other resource-related projects of local residents. Requests have been made by local communities that the Botswana government grant them security of tenure over their resources, but as yet there has been no formal response to these requests.

## Natural Resource Management and CAMPFIRE in Zimbabwe

In the case of Zimbabwe, whose Communal Areas Management Program for Indigenous Resources (CAMPFIRE) is held up as the best example of community-based resource management and development in Africa, rural Zimbabweans have begun to gain a certain amount of access to economic benefits from wildlife resources (Adams and McShane 1992; Bonner 1993). In the past, many of the

people in rural Zimbabwe saw wildlife more as a problem than a potential source of income, subsistence, and employment. Elephants, buffalo, and other animals destroyed their fields and sometimes killed people, and predators such as lions and leopards reduced their livestock numbers. The safari industry catered to non-local hunters and tourists, and people in the communal areas saw few, if any, benefits from the presence of safari companies. Personnel of the Department of National Parks and Wildlife Management were viewed as enforcers of laws which sometimes meant that local people were jailed for illegal hunting or obtaining resources inside the Parks and Wildlife Estate.

Realizing some of the problems in ways wildlife and other resources have been managed, the Zimbabwe Government passed the *Parks and Wildlife Act* which enables districts and local communities to gain access to benefits from wildlife resources. The devolution of authority over wildlife was done through the granting of what is known as Appropriate Authority status to districts. As of early 1993, 20 districts were recognized as having the right to benefits from their wildlife resources.

The basic principle behind CAMPFIRE is the re-empowerment of local communities through providing them with access to, control over, and responsibility for natural resources. A second principle is that local communities should have the right to make decisions regarding those natural resources and any activities that affect them. A third principle is that communities should receive the benefits from the exploitation of natural resources (Department of National Parks and Wildlife Management 1992; Environmental Consultants 1990, 1992). As Martin (1986:iv, 17) has noted, the ways to achieve the objectives of the CAMPFIRE program were (1) to obtain the voluntary participation of the communities in a flexible program that incorporates long-term solutions to resource problems and (2) to provide the appropriate institutions under which resources can be legitimately managed and exploited by the communities for their own direct benefit.

CAMPFIRE seeks to ensure that wildlife revenues are provided to producer communities. Under current legislation, it is the districts that have the right to make decisions about benefit distributions. Suggestions have been made by organizations involved in the implementation of CAMPFIRE activities that legislation should be changed to allow lower-level institutions (e.g. ward development committees, WAD-COS, and village development committees, VIDCOS) to have the authority to make resource management and distribution decisions.

Given the socioeconomic and ecological diversity in Zimbabwe, no one model of community empowerment is appropriate to all situations. Whereas Nyaminyami District Council has its own wildlife trust, other districts have chosen to have only wildlife steering committees. Some of Zimbabwe's districts have provided benefits to households whereas others have maintained the revenues at council level and have used those revenues to underwrite development projects in the various wards in their areas.

Interest in CAMPFIRE programs was generated in Beitbridge District in the late 1980s with visits by the Department of National Parks and Wildlife Management (DNPWM) and, later, meetings of the CAMPFIRE Association and regional CAMPFIRE awareness workshops of Zimbabwe Trust. This interest was enhanced by contacts with a local safari operator and commercial farmers. Subsequently, a district wildlife committee was formed. This committee recommended to the council that 90% of the revenues be returned to the local community. It also suggested that revenues be given to the wards and villages which produced those revenues. An additional recommendation was that the village which received the largest proportion of the revenues, Chikwarakwara, should have the right to decide the amount of money that should be allocated to community projects and to household benefits (Child and Peterson 1991). The District Council accepted these recommendations and provided benefits to the villages and households. The Beitbridge experience indicates that communities can gain access to wildlife revenues under CAMPFIRE and that the linkage between conservation and development can be recognized.

Another of the districts where CAMPFIRE is being implemented is Tsholotsho, south of Hwange National Park in the Matabeleland North Province in western Zimbabwe. The Tsholotsho area was once occupied solely by Bushmen peoples known as Tyua (Chwa) who were mobile foragers. Today, the district is also occupied by Kalanga agropastoralists and Ndebele pastoralists. Most of the people in the district now obtain their incomes and subsistence from crop production, livestock-raising, small-scale rural industries, and wage labor.

In the 1930s hundreds of Tyua were removed from their traditional territories when Wankie Game Reserve (now Hwange National Park) was established. The process of dispossession was nearly completed in the late 1940s and early 1950s with the appropriation of grazing land in both Zimbabwe and Botswana for a Colonial Development Corporation (CDC) ranching and agricul-

tural scheme. Settlement in the modern period expanded in the 1950s, many of whom had been evicted from then overcrowded districts of Matabeleland South. The movements into remote western sandveld areas were instigated by colonial administrators to resettle people and make way for commercial white farming.

Tyua and other rural Tsholotsho residents are not allowed to hunt or to shoot animals that raid their fields. They must depend instead on Department of National Parks and Wildlife Management (DNP-WLM) game scouts to deal with problem animals. With the granting of Appropriate Authority status to Tsholotsho in 1991, residents were theoretically given the authority to manage the wildlife in their areas and benefit from revenues that are produced through wildlife-related activities such as hunting and tourism. In practice, however, benefits have gone to the District Council and have not been distributed at the local level except in the form of projects decided upon by the council (e.g. roads, schools). As several people noted in interviews in 1992, the people in the rural parts of the district are not receiving full benefits from the wildlife in their areas.

In Bulalima Mangwe District, the District Council invested substantial resources from a USAID-funded Natural Resource Management Project in refurbishing a dam which is being used for livestock watering purposes. The increased numbers of cattle have had impacts on grasses in the region, particularly those grasses which Tyua women use for thatching houses and for sale to other people. Tyua women have argued forcefully that the natural resource management projects are having negative effects on their standards of living.

CAMPFIRE in Zimbabwe is being implemented in areas where common property management regimes exist. Local communities do not own land; rather, they hold land under traditional tenure systems. At the same time, communities in communal lands in Zimbabwe do not have legally defined rights to natural resources besides wildlife; instead, they have customary rights to exploit resources such as grazing, timber, and thatching grass. What this means, in essence, is that local communities have little, if any, recourse if district councils or individual entrepreneurs enter their areas and exploit their non-wildlife resources.

One of the problems with CAMPFIRE and other rural development programs in southern Africa is that many of the decisions about resource management come from outside the producer community. This can be seen, for example, in those cases where the district councils make suggestions to lower-level institutions as to

how they should spend the money obtained from wildlife revenues. It should be stressed, however, that some of the people at the ward and village level have begun to lobby hard for greater decision-making power, something that district councils have begun to take greater notice of. Even if the situation in Zimbabwe cannot at present be described as one in which communities have been empowered, it is not unlikely that the trend is toward increased participation in decision-making at the local level.

## Conclusions

These cases indicate that there is significant variation in the degree to which local people actually benefit from natural resource management policies and programs in southern Africa. In some cases, these projects have done more harm than good. In other cases, they have had slightly beneficial effects, but it is unclear whether they will continue to be positive over the long term.

The problem with most natural resource management projects and government policies in southern Africa is that they fail to give local people secure legal control over natural resources and the power to make decisions about their use. Until this is done, the laudable goals of conservation, social justice, and economic development will remain impossible to achieve. Clearly, greater efforts are needed on the part of states, non-government organizations, international donors, and local people themselves to promote land and resource rights of African indigenous populations.

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Table 1. Projects in Community-Based Natural Resource Management and Development in Southern Africa.

Project	Country	General Comments
D'Kar	Botswana	development trust known as Kuru comprised of 5 communities involved in a wide range of activities
Kedia	Botswana	wildlife utilization project in a remote community of 700 in the western Central District
Lorolwane	Botswana	communal grazing area with an estimated 200 households involved in a livestock management scheme
Mabutsane	Botswana	several rural communities involved in wildlife utilization, tourism, and a handicrafts project
Nata Sanctuary	Botswana	conservation trust involved in a sanctuary and tourism program
Bokong Reserve	Lesotho	local communities involved in a multi-purpose reserve area that includes grazing, a vultury, and tourism
Sehlabathebe	Lesotho	grazing association consisting of livestock owners who manage an area of range land on a communal basis

Bazaruto	Mozambique	fishermen in Bazaruto archipelago involved in a game guard system overseeing turtle nests and tourism
Caprivi	Namibia	two groups in Mafue involved in a community game guard system
Purros	Namibia	Himba and Herero communities involved in tourism, handicrafts, and a community game guard system
Zeederburg	South Africa	a small group of Bushmen on a farm in the northern Cape involved in tourism
Richtersveld National Park	South Africa	Nama groups allowed access to a park for grazing and tourism
Kosi Bay Nature Reserve	South Africa	a chiefly game reserve with Tonga and Zulu involved in tourism
Piggs Peak	Swaziland	number of <i>zenzele</i> associations (women's self-help groups) engaged in income generating activities, horticulture, and fish production
Lupande (ADMADE)	Zambia	wildlife utilization program with environmental education and training as well as village scouts
CAMPFIRE	Zimbabwe	wildlife utilization, tourism, and income generating projects in a dozen of Zimbabwe's 55 districts



## Map of Namibia, Botswana and Adjacent Nations



MRS ULITALA HIVELUAH

## STATEMENT BY THE PERMANENT SECRETARY, MINISTRY OF LANDS, RESETTLEMENT AND REHABILITA- TION (MLRR), NAMIBIA

Ladies and Gentlemen,

1. Ever since I received the invitation to this Conference I have been trying very much to identify the Indigenous Peoples in Africa and relate them to the state, because after the independence of Namibia from South Africa in 21 March 1990, the indigenous peoples of Namibia formed part of the state.
2. When I look at the international scene the issue is self-explanatory: the Indians and Eskimos are indigenous to North America, the Aborigines to Australia.
3. The Namibian scene is different. Here we see a heterogeneous population, divided into ethnic groupings that were treated differently and discriminated against by the colonial systems which had oppressed them for more than a century.
4. Our young republic is therefore faced with the great challenge of building one nation out of a highly divided people.
5. To tackle this task, the Namibian Government started out with a constitution that guarantees and proclaims the rights and freedoms of all its citizens, irrespective of race, color, creed, ethnic origin or social standing. Furthermore, it has embarked upon a policy of National Reconciliation, whereby old wounds are not to be opened.

Mr Chairman

6. Having said that, we do, however, recognise that there is a peculiar problem confronting some groups of our society, which

we see as the most disadvantaged and deserving of special attention. The Bushmen are one of these groups.

7. Their traditional nomadic way of life has been disrupted by the private ownership of land which was promoted by the apartheid system and by the demarcation of national game parks for the protection and conservation of our game and vegetation. This prevents them from hunting game for survival as they used to do.
8. In the same light, the introduction of the money economy has also meant that like other Namibian citizens the Bushmen people can no longer live a subsistence life alone. They need cash incomes with which to satisfy their needs. This need for money was exploited by the colonial army during the National Liberation Struggle, which employed some of the Bushmen as trackers to detect the movement of the soldiers of the People's Liberation Army of Namibia (Plan).

The withdrawal of the army of occupation and loss of subsequent sources of wages left the Bushmen destitute, unemployed and marginalized.

Mr Chairman

9. When we search into our past to gauge where we are at present, we are often accused of blaming everything on colonialism. However, in the case of the Bushmen people it is fair to say that this disadvantaged group in Namibia was deprived of its former hunting fields by the latter wave of communities and settlers who entered our country. At the same time, their traditional way of life was destroyed by their introduction to the modern economy which made them more vulnerable.
10. However, the Namibian Government is well aware of the plight of the Bushmen community and has made their development and social advancement a priority within its budgetary limitations.
11. In this connection, the resolution No.14 of the National Conference on Land Reform of June 1991 recommended that Bushmen as well as disabled people be given special protection of their land rights.

The Government of Namibia believes that the disadvantaged communities of our society must be given the right to talk and they must be listened to. To this effect, my Ministry organized and hosted a Regional Conference on Development Programs for

African Bushmen in June last year. The Bushmen communities all over Namibia were represented and were free to voice their concerns to the Government on topics like: Land Reform and land rights; education; health; sanitation; to mention but a few.

12. Nevertheless, we are faced with the challenge of how to fully integrate the Bushmen in our fast and ever changing society without the loss of their cultural values. Most of us who have undergone cultural transformation know it is almost impossible; but wish it was possible to have a culture that can grow with you. Or is it not possible to pick certain aspects of your culture that you cherish and actually grow with them, whilst taking care not to get locked in a culture that prohibits development.

Mr Chairman

13. We realized that these are issues that deal with social acceptance. We would not like to have a situation where one part of our population is developed only so that it can serve another. Neither do we want to give nourishment to the myth that Bushmen should cling to their old way of hunting and fruit gathering. Or to the suggestion of separate development independent of the larger society in which they are to function as individuals.
14. On the other hand we put emphasis on the issue of individual rights and equal opportunities, with the basic understanding that all Namibians are equal under our constitution. We also strongly believe that the only way that people can exercise their rights fully is by having access to education, because education does facilitate the ability to state one's case, not only in your community but in an international forum like this, and be heard in your own voice and not through a medium that may choose to misrepresent you.

Mr Chairman

15. It is true that the Bushmen have a culture of their own which has sustained them over centuries; but we realize that culture is not something that exists in isolation of the environment. The reality may also be that nomadic life is no longer possible. We are experiencing series of droughts, the population increases and pressure on the land builds up.
16. To this effect, the Government of Namibia had embarked on resettlement schemes for disadvantaged groups namely:

- (a) former exiles
- (b) disabled
- (c) displaced
- (d) Bushmen

So far the Bushmen as a group form the largest part of the Resettlement Schemes.

Mr Chairman

17. The major aim of resettlement is to create homes for landless Namibians, by allocating arable land to them to settle on, use and develop in order to make a living as individuals, families or a group.

However, Resettlement Schemes are not only providing homes for the most disadvantaged but also making them self-sufficient in food production, and helping them attain a certain socio-economic level when they can feel fully integrated into the society.

Similarly, most of the Resettlement Centres have primary schools, clinics and in a few cases where the resettlement is near a hospital, a mobile clinic visits the centre twice a week.

Concerning food production, the Government provided agricultural tools, ploughing services, fertilizers and seeds for a start. Gardening had been introduced in all the schemes to improve the settlers' diet. And the results are that people are producing surplus for cash income. One Bushmen Resettlement Scheme in the east of our country now supplies a local school with fresh vegetables on a weekly basis.

Mr Chairman

I have to personally admit that as a Government we may be preoccupied with the social and economic welfare of our disadvantaged groups but lack the anthropological knowledge of why the Bushmen of our society live a nomadic life.

Do they live a nomadic life in search of food, or do Bushmen just enjoy moving around? Those are the things we need to understand before we confine anyone to a fixed home whose value they may not enjoy.

Before we do this we must be convinced as a Government that the nomadic life is one that any person could possibly choose.

We in Namibia are however convinced that the solution has to

come from the disadvantaged people themselves. And the consultative meetings held with Namibian Bushmen confirm our conviction that the Bushmen are in fact ready to settle down and be integrated into the Namibian society.

Mr Chairman

Allow me to conclude that the time has come in our Namibian society when the Bushmen are not to be regarded as mere objects of aesthetic appreciation and admiration for socio-anthropological research, but as part and parcel of our new and vibrant society, proud and ready to take their place among all rightful people of Namibia, our country, our continent, our humanity. The Namibian Bushmen are ready to work together with all other citizens to shape our country's destiny.

I thank you, Ladies and Gentlemen.



## STATEMENT BY THE MINISTRY OF LOCAL GOVERNMENT, LANDS & HOUSING, BOTSWANA

The Basarwa, commonly known as „Bushmen“, are believed to be the earliest inhabitants of the present day Botswana.

Much of their early history and culture are recorded in rock paintings and folk tales, as well as in a number of anthropological studies which have been conducted from time to time.

The Basarwa in Botswana are estimated at around 50,000. They are mostly in the Kgalagadi, Ghanzi, North West and Central Districts.

Traditionally, the Basarwa lived in groups which consisted of a number of related families. They lived entirely by hunting wildlife and gathering veld products.

They had no established homes. They moved frequently and settled for short periods in areas where melons, nuts, wildfruits and other veld products were abundant.

Because of intermarriage and social integration with the rest of the population the Basarwa's traditional life style has undergone tremendous change.

There are probably less than 3,000 Basarwa who still depend entirely on hunting and gathering for their survival.

Starting from 1974, the Government instituted a special programme called the Remote Area Development programme, whose main objective was to facilitate the social integration of the marginalised sections of the population into the mainstream of the society.

Large-scale rehabilitation projects have to date been undertaken under this programme, with the aim of developing and integrating Basarwa and other Remote Area Dwellers into the mainstream of modern Botswana society.

Most of the settlements inhabited by Basarwa have access to basic social facilities such as a school, clinic and potable water. In



addition, many Basarwa children go to school while their parents seek employment in the public and private sectors.

From the consultations which have been carried out with the District Local Authorities, including the Basarwa themselves, it has become apparent that there are inherent weaknesses in the current policy on the Remote Area Development programme. This policy is consequently being reviewed in order to address these weaknesses.

Some of the key areas which will receive attention as part of the review process are as follows

- (a) The need to initiate educational programmes aimed at improving the accessibility of land to the Basarwa.
- (b) The need to ensure an increased access of the Basarwa to education and training so as to improve their access to employment opportunities.
- (c) The need to involve Basarwa in the decision-making process on matters relating to their Communities. It has been realized that most of the development activities which have been carried out in the remote settlements to date have largely been prescribed by government, without direct input from the beneficiaries.
- (d) The need to ensure social acceptance of Basarwa by the general populace and to promote the Basarwa's assertiveness.
- (e) The need to promote production-oriented, income and employment generating activities in the remote settlements.
- (f) The need to recognise and preserve the unique culture and traditions of the Basarwa.

The finalization of the policy on the Remote Area Development programme and the convening of a Regional Conference on the San People later this year in Botswana will constitute the highlights of the International Year of Indigenous Peoples.

It is hoped that all these developments will result in tremendous changes and improvements in the living conditions of the Basarwa in the next decade.

JOHN KATÉ HARDBATTLE

## STATEMENT ON BEHALF OF THE FIRST PEOPLE OF THE KALAHARI

*THE FIRST PEOPLE OF THE KALAHARI, KGEIKANI KWENI came into being after the Botswana Society workshop on sustainable rural development and before the subsequent meeting with the MLGL&H, its members being drawn from the Nharo, the T/aokwe, the G//anakwe, the G//wikwe and the #Au//ae.*

*The aims of the first people are:*

*The recognition of the N/oakwe as one people.*

*The creation of a National Council for the N/oakwe through duly elected representatives, to work for the recognition of land rights for our different peoples.*

*The invigoration of the culture as well as the individual identification with the culture of the N/oakwe in order to strengthen the multiple forms of expressions which are significant of our culture.*

*The establishing of an office to print and distribute information world-wide as well as amongst ourselves, to contact and strengthen links with other first peoples, to create an archive and film, video and tape library, to map the territorial distribution of tsgôre (sip well i.e. territory) as they are the centres of our ancient lands. An office that would be a meeting place for the N/oakwe to come together, with their problems, to find funding for scholarships, get legal aid, to facilitate development initiatives by the people etc.*

*The first stumbling block which is still in our path has been our failure to get funding from local donor agencies.*

*To move freely amongst the N/oakwe scattered all over Gomghae, the Sand Face, which is our known world, is essential. To monitor, report and keep up to date with the situation, a massive subsidy on fuel and 4 x 4 vehicles are needed for this is the only form of communication available to link the various peoples together.*

*We want to break through the apathy imposed on us through the loss of our ancestral lands, our rights to water, the gathering of peoples in settlements, the dependency of living off the drought relief. Through this National council we can also benefit the country as a people capable of creating our own development plans in co-operation with the government.*

N/oakwe of Botswana are today a people who have found a voice. A voice which was raised for the first time at the Botswana Society Workshop for sustainable rural development in Gaborone April 1992. There issues were raised like

- 1) forced resettlement of the people from the Central Kalahari Game Reserve (CKGR),
- 2) an appropriate name for the N/oakwe instead of derogatory names like *Tengyanateng*<sup>1</sup>, *Basarwa*<sup>2</sup>, *Batshobanaga*.
- 3) Burning issues like early school dropouts because of physical punishment, unwanted teenage pregnancies at secondary schools<sup>3</sup>,
- 4) unknown diseases,
- 5) alienation from land and natural resources.

The Botswana government was not amused. A meeting was called to „discuss“ these issues between a N/oakwe delegation and the minister of local government, lands and housing (MLGL&H). This was to be a meeting between the minister (Mr. Chapman Butale) and a representative N/oakwe delegation, chaired by the then permanent secretary, (Mrs Pelonomi Venson).

The meeting did not go as expected. Instead of meeting with the minister and the P.S. as agreed, what confronted the delegation was a line-up of two Assistant Ministers, the Ghanzi D.C., GD CS, three Councillors from the District, the MP for Ghanzi and others.

We soon found out that the intention was not to discuss any of the issues raised by the N/oakwe at the workshop. I want to describe this meeting in some detail since it was the first official meeting between a Botswana Ministry and a representative delegation of N/oakwe. It all went sadly wrong:

Although I was invited by the MLGL&H to bring the N/oakwe delegation to Gaborone, I could not fully participate in the meeting, since I am unable to speak Setswana. And it was insisted that the meeting should be conducted in Setswana, contrary to the laws of Botswana, and despite the fact that none of the members of the delegation are literate or fluent in Setswana. I made an appeal that the meeting should be held in English, which is a national language, making it possible for me to translate for the N/oakwe. This appeal was rejected.

Since it was now clear to us that we had not been invited to discuss issues we had raised before, but to an interrogation, we

called for a recess so we could evaluate our position. We then agreed to hand over the statement we had previously written in anticipation of possible problems. When we presented the statement to the P.S. it was rejected with the words: „ We don't accept it since we do not know who wrote it.”

It seemed that all they wanted was to find out which foreign agencies had put these wild ideas into the heads of the N/oakwe.

A remark made at the meeting by one of the Ass. Ministers will show the tone: „You think that these outsiders will always help you (meaning the donor agencies), well, one of these days they will be gone and there will only be us, and we own you and we will own you till the end of time and you will not achieve what you want“.

The chair then wanted to hear from each member of the delegation whatever he had to say even if it was in poor Setswana. The meeting carried on with the delegation under great duress and stress, with questions fired at them from the up to ten powerful figures opposite. The meeting closed in deadlock after four hours. None of the delegation present at the meeting was included in the „San“ Conference which took place the following month in Windhoek, Namibia.<sup>4</sup>

Some of the problems facing the N/oakwe today are the huge distances between the settlements causing the lack of communication between the different peoples. Up to 100% illiteracy amongst the middle-aged and old people, landlessness, lack of water and the forced deprivation of the traditional subsistence base, which has caused great poverty and hunger and the subsequent diseases.<sup>5</sup>

The lack of an economic base in the settlements hinders the movement of the people and prevents them from coming together for discussions about their problems amongst themselves.

An important aspect and role of the local NGOs would be to fill the communication gap by providing the necessary logistics.

4 x 4 vehicles are the most important tool to physically go to distant areas for face to face meetings amongst the N/oakwe. E.g. it took ten days to get the seven delegates to the meeting in Gaborone. Accurate reporting to the people on the current situation country-wide would only be possible if perhaps up to 3/4 of Botswana were travelled by 4 x 4 vehicles as the only means of communication.

## The urgent need to monitor and report the on-going situation in the CKGR

Since the beginnings of the 80s a very subtle but effective programme of intimidation was started to force the inhabitants out of the GKGR, the majority of the people being G/wikwe and G//anakwe. The threats to the residents were to cut off all services including water, clinics, transport and threats of physical violence to force the residents to move to Xade which then was to be degazetted from the Game Reserve. It must be obvious to anybody how the people living in Molapo, Metsiamanong, Gope feel being threatened to make them leave their ancient lands as well as the severe stress it will add to the people already living in Xade. Notwithstanding that these people never were consulted or promised any compensation.

In all fairness there seems to be no official discrimination, however there are some worrying statements made by the government.

1. When asked by the land development committee 1978 what the rights of Basarwa occupants of tribal land were the attorney general's chambers litigation consultant replied „that the Basarwas has no right except those of hunting“. (Opinion in re: common law leases of tribal lands, January 23, 1978, ML GL & H file 2/1/1) This opinion has never been revoked.

2. When the opposition party raised the question in parliament of what plans the government had for 1993, the year of indigenous peoples, the Minister of MLGL&H answered: „none, this is because, as far as we are concerned, all Batswana are indigenous to Botswana, except those who may have required citizenship by registration. In addition, the government development program's assistance schemes do not draw any distinction among the country's citizens" (Daily News, March 5, 1993 BOPA).

The N/oakwe then are not officially recognized as an indigenous people. This may be the reason why the RAD programme is failing as the N/oakwe are the major target group in this programme.

A poor Batswana needs only sufficient money to be on a par with other Batswana with all that means of equal land rights etc. A poor N/oakwe does not only need clever development plans on which he has never been consulted. He is expected to forget and to discard one of the oldest and gentlest cultures on earth. He is expected to overcome the destruction of his own culture and in less than two decades to integrate into a society which has always discriminated

against him. Many among the elite today still consider them no more than serfs since they „inherited“ them from their forebears. The Setswana word for serf is used even today, being *malata*.

He is expected to be equal in stature and opportunity to all other Batswana without the benefit of respect for his culture, language, land rights, social standing, education, economic base and political power. But he is expected to compete as an equal in a marketplace in which he has not the first inkling of the rules of the games.

The image that emerges of the present day N/oakwe then is of a shadow people who raise their hands at election time to vote for a councillor and for a member of parliament. Quite often the same councillor who should then represent them and their interests turns and ruthlessly exploits them in the name of business.

In this way he becomes rich and powerful in the settlement and dominates

the will of the people. For instance, a Batswana is brought to the settlement by a political party, where the people are told to vote for this man: „Here is your party representative, if you don't like him, you don't have to vote for him the next time (in four years time)“. He is elected. The first thing he does is to get a hawker's license (to help his constituents) and he physically moves to the settlement.

Instead of selling his goods at reasonable prices, his prices are quite often the double of shops in the nearest town. He also sells alcohol, which is illegal. However the profits are bigger, he gives credits easily, but is ruthless in collecting debts. Very quickly he is a livestock owner in the settlement. All the cash from drought relief programmes( fencing, labour intensive roads etc.) goes directly to him on pay-days. He owns 4 x 4 vehicle so he may exploit the people more by collecting firewood, veldfoods, thatching grass for houses, and offering lifts into town for exorbitant fees (Morama episode). These same exploited people are then called apathetic, lazy, useless drunks, when the development programme fails, by those who exploit them.

## Notes

1. The meaning of *tengyanateng* is „those who are deep within deep“
2. The pronunciation of *Basarwa* should in fact be 'ba-sa-rua', meaning „those who do not own“.

3. Pupils describe the primary school years as „the crying years“ because of their fear, shame and homesickness. They are beaten, terrorised and abused in the hostels by anybody, being unable to defend or protect themselves.
4. When the question arose of who would be allowed to go the San conference in Windhoek, Namibia, again it was stated „That we the government will pick the delegation, we will use our vehicles to get them, and we will give them food and we will brief them to praise Botswana, because Botswana is better than other countries.“
5. The growth rate factor of tuberculosis among our people is the highest in Africa. The diarrhoea among children is one of the main contributing factors to child mortality.

*The First People  
of The Kalahari  
May 17, 1992*

*The Honourable Minister  
Ministry of Local Government,  
Lands & Housing  
Mr. C. Butale*

*26 years of independence have brought Botswana forwards and us, the first people of the Kalahari, backwards.*

*The problem is that the Government has not been able to identify representatives with whom they can work in order to adapt the development programmes of the Botswana Government to meet the special needs of the N/oaakwe (the Ju/twasi), who have been consistently marginalized.*

*We now feel the need for the Government to acknowledge us as One People, recognizing the diversity in terms of language and territorial ownership.*

*When we had control of our territories there was a network, a constant interaction and contact amongst us. Territorial rights were recognized, whilst sharing resources with neighbouring groups.*

*In order to meet the development objectives of the Botswana Government we propose that new ways are tried out to create representative structures.*

*To meet these objectives we therefore propose to set up a national council and ask the Government to recognize this council as a legitimate negotiating partner.*

*We suggest a vote be set aside to cover consultations amongst us in order to establish this council.*

*We also strongly ask that on-going or further alienation of land be halted, either through resettlement or fencing, until the council has been established.*

*We therefore ask you to bring our words to the Government so that these words can be considered. And we would like a meeting so that we can negotiate and settle this before we attend the conference in Namibia on June 16-18, 1992.*

*Komtsa Komtsa  
of the Nharo*

*Roy Sesan  
of the G/annakwe*

*Saikuta  
of the G/wihve*

*Tsao  
of the Ju/twasi*

*Gomme Kgao  
of the Ju/twasi*

*Aaron Johannis  
of the Nharo*

*(translated by John Hardbattle)*

*contact address: First People of the Kalahari, P.O.Box 173,  
Ghanzi*





# AARON IARITWA JOHANNIS & KOMTSA KOMTSA\*

## STATEMENT BY REPRESENTATIVES OF THE FIRST PEOPLE OF THE KALAHARI

*Aaron /Ar/twa Johannis:* We have no land which is called after us. We seem to be an appendix of other peoples. We feel discriminated. Everything will be lost.

*Komtsa Komtsa:* We are with many peoples, like there are many Tswana groups. We are the original inhabitants of Ghanzi Ridge. The black and white people came later.

In the Botswana Constitution the Bushmen are not mentioned. In each district there are now settlements of Bushmen.

*Aaron /Ar/twa Johannis:* The people here speak of „nomadism“. Why have they never asked us why we are going round. We are no nomads. There have always been territorial grounds that were respected by all. There is therefore no justification to say that we have no right on land.

Since we have no land rights it seems that we are not intelligent people. Because of our culture we have always survived, so we are intelligent.

If Government wants to assist us it should provide us with enough land instead of hand-outs.

The Government speaks of consultation. But where we live there is no consultation. Botswana Church Council helps us on transport. Komtsa and myself, we have seen that everywhere it is the same in Botswana. It seems strange that the Government of Namibia does consult the people. It seems as if the Government of Botswana wishes to fight us because we want our rights.

In Parliament the question was posed if Bushmen and Botswana Church Council are the same. Botswana Church Council is called the church of the devil..

What hurts is that the „red people“ are disappearing. That is why we want our rights, our land, our culture.

The District Commissioner came to D'Kar and we presented this issue. He stated that we should marry black people so that our children will be Batswana... We have seen on our trip that black men do not take Bushmen women. And I will never ask a black woman, that means death, that is no use...

We know customary law in Botswana. If we marry a black woman we pay in cattle. But if black men marry Bushmen women there is no compensation.

The law does not work for us. It is only today that I heard about the proposal for the review of the Remote Area Development Programme.

We hear the word „development“ for such a long time, the word is there, but our land and culture are disappearing. Words are easily spoken but there is no implementation.

Especially in times of elections there are many words, but after the elections we are again „remote area dwellers“.

*Komtsa Komtsa:* Thank God that I am here. I will not say much, Aaron has said everything and it is the truth.

The Government leaves us. We are discriminated even by our Government and that does hurt.

Councillors and Members of Parliament should represent us.

Going to the police is useless. Seven or eight years cattle was stolen from me. The police officer wrote it on a matchbox and there was no follow-up. Also the Labour Department is discriminating me.

There was therefore every reason to go to Botswana Church Council. It seems that Botswana Church Council is helping us. As a result now Botswana Church Council is being discriminated.

Botswana got independence in 1966. The Government said, „We are all Batswana“. You should not use your own name but be called „Motswana“. Why then am I called in a different way? I want to be recognized as a citizen, do consult me, instead of giving orders to move. We are no nomads, we had territories. Our people in Ghanzi did not even know Maun because they stayed within their territories.

When wildlife is no longer there, how can Government say that we did it. What would Government say if you compare the amount of wildlife at independence and now? Then there was so much wildlife. What then has happened with it from 1966 onwards?

The word RAD means „I am deep, deep in the ground“, therefore I do not hear anything. We want to know how we are called.

We are called „burners of the veld“. Why then does God, who burns the veld by lightning, not have problems?

A lion that eats an eland does not go to prison. But I, when I eat an eland I do go to prison.

At the workshop of the Botswana Society none answered that question about the burning of the veld.

Who washes the name „RAD“ from my back? It has to get off...

We are called „Basarwa“ and we call the black people „Khebbe“.

We have a lot of pain and when I go on, this will continue till tomorrow.

When the Boers came to Ghanzi they found me at the waterside, now they have the land.

The Government has followed their trace.

When Queen Elizabeth ruled we had „house-tax“. We asked her where the money went to. She said it is used to develop the country. But now the money is gone and the land is gone. And I have seen people who take away our children.

- \* The statements by Aaron /Ar/twa Johannis and Komtsa Komtsa to the Tune Landboskole Conference were given in their own native language and translated simultaneously by John Hardbattle. Rob v.d. Boom of the *Kalahari Support Group* in Amsterdam took notes of the statements as they were translated into English. The statements presented here are in the words taken down by Rob v.d. Boom.

The editors are thankful to Rob v.d. Boom for letting us use his notes for the publication.



#OMA GIAQ'O

## EXPERIENCES OF A STUDENT TEACHER

My name is #Oma G/aqó. I am 22 years old and married to Sebe. She is 18. I have one child, #Oma. He is one year and nine months old. My wife will have another child soon. We live in N!aici, a village with 23 people. Of these 23 people, twelve are children. N!aici is quite small. A big village has about sixty people. //Auru is such a big village. There we are building a school.

In N!aici, where I live, we have a garden. The people of the village work in the garden. Others collect firewood. We also have five cattle. My grandfather still hunts. The young people in N!aici do not hunt any more.

In Eastern Bushmanland, there are 32 villages. We call them *n!oresi*. Many villages have small gardens and cattle.

The Namibian government helped us with food. We did not have much food because of the drought.

I am a student teacher. I want to teach the children of Bushmanland. I myself went to school for nine years from 1980 to 1989. The school was in Tjum!kui, the centre of Eastern Bushmanland. In the beginning it was o.k., but there were not many Ju/'hoan people. The Damaras and Hereros made life difficult for us. Many of us left school after only a short time. They got no education.

In our training, there are ten students. We learn how to read and write English and Ju/'hoan. We will teach the children in Ju/'hoan. Up to now, there have not been any schools in Namibia that teach in Ju/'hoan. We Ju/'hoan people had always to learn in a foreign language, mainly Afrikaans. This will all be over when we teach as teachers in our village schools. Then all our children will be able to learn in our own language.

At the moment, we do practical teaching in our villages. This is our first experience with teaching. We teach the children how to write their names. We read Ju/'hoan stories to them. We play with

them, and they draw pictures. We want the children to have fun in school. They must not be afraid of school. They are all very keen to learn. They like to play and to have fun.

The adult people in the village like it too. They helped to build the school building with us. Next year in January we will start our class 1 in //Auru and in four other villages.

I think it is important to learn from an early age. We must be able to do things on our own. We must be able to understand what we are doing. Only then we can be independent of other people.

For me it is a very exciting experience to be here in Copenhagen. It is good that I can talk to you people far away from Bushmanland. We must talk to understand each other. I will tell my people what we discussed here. It is so important that we communicate. It is so good that we are being heard. I am looking forward to hearing about your experiences. I would like to thank you all for the invitation to this conference.

Thank you very much.

*(Mr. #Oma G/aqó represented the Nyae Nyae Development Foundation of Namibia, Baraka Training Centre, Eastern Bushmanland, at the conference)*

## CO-OP MANAGEMENT AND LAND RIGHTS

### Work Experiences within the context of the Question of Human Rights

I would like to thank you for the invitation to speak at this important conference today. You have given me the opportunity, apparently a human right, to speak on behalf of my Ju/'hoan colleagues.

I would like to point out that we, the Ju/'hoansi, did not have this right to spell out our concern before independence. I am not used to addressing such an international forum, but I will try my best and I am sure I will learn more from this experience.

I would like to speak on behalf of my brothers and sisters in Bushmanland, about Land Rights and our traditional *N! ore* system. I myself work as the manager of the *Nyae Nyae Farmers' Co-operative*, where I consider myself to be the „trouble-shooter“ for whatever problems may occur. It is a very demanding position, and due to the vast area of Bushmanland it is not always easy to communicate efficiently with all our 32 *n!oresi* (villages).

I consider it very difficult to live in Bushmanland. Since the South African army attracted a considerable number of Damaras to work for them, these people have made life difficult for us. The high salaries paid by the South African army introduced money into a moneyless society, which led to problems like alcohol abuse and the exploitation of the Ju/'hoansi by other peoples who were more used to a money-orientated economy.

I would like to point out, however, that despite all the problems I am not at all interested in leaving Bushmanland: I was born here, and I am prepared to do my share to make things work again.

Within the Co-op, we work together to enhance the quality of life for all the Ju/'hoansi. We want to be independent and to produce agricultural products on our own, including cattle farming and the maintenance of technical equipment. The structure of the Co-op is democratic, with every *n!ore* electing two representatives who then



elect the Co-op leadership, consisting of the President, the Chairperson, the Manager and the Assistant Manager.

Setting up a co-operative is a difficult process, but it is slowly working out. The cattle situation in the *n!oresi* is good, and every *n!ore* has good, clean water. The problem is, that sometimes people want too much too fast. We always and consistently address this problem in our meetings with the villagers. It is a matter that requires a great deal of time and dedication.

Daily life in Bushmanland revolves around *n!oresi*. Bushmanland or the Nyae Nyae area is our large *n!ore*. It is like a territory for all our families. The large *n!ore* consists of our small *n!oresi*, which are the territories of an extended family. *N!ore* means basically the place where you were born and where your parents and your grandparents were born. In Eastern Bushmanland we have 200 of such „family *n!oresi*“.

The *n!ore* is not just a piece of land. It is a piece of nature. It is our natural resource. We find our entire livelihood in such a *n!ore*, the vegetables, the wild food plants, the water, the game and material for our houses, tools, and so on. Each *n!ore* does not provide the same natural resources, therefore the Ju/'hoan families have learnt to share them. We have learnt to help each other in order to survive in such a harsh environment. In short, the *n!ore* is our backbone for survival, and therefore the foundation of our culture.

We wish to maintain and manage our *n!oresi* for our children and grandchildren, so that we have something valuable to offer them for their future. If you just look across the border fence to Botswana where our brothers and sisters have lost their *n!ore* rights, you might recognize that there the Ju/'hoansi are living in poverty and without any rights, oppressed by others who have taken over the Ju/hoansi land.

We, the Ju/'hoansi, consider the right to our *n!oresi*, the right to use and manage the natural resources, to be essential for our lives.

I brought this to your attention to inform you how we are depending on our *n!oresi*, and how our culture and well-being are linked to this land system. We Ju/'hoansi were born here, we grew up here, we married here. Still, Bushmanland belongs to the government - why don't we have the right to the land? We know the animals, we know the bush food, we were taught how to use these valuable natural resources for the best benefit of all our people. We are afraid of others moving in, and again taking away everything from us. For us, land rights are a human right. A human right the Farmer's Co-operative and all the Ju/'hoan people are committed to.

The independent government of Namibia has given us numerous opportunities to speak about our problems, concerns and future plans. We spoke at the National Land Conference in 1991, at the regional San conference in 1992, and recently at the UNIC/UNAM/ UNESCO Workshop on Education, Training and Information on Human Rights. We participate regularly in the Environmental Planning Committee of Bushmanland, and we are now taking part in this important conference in the year for Indigenous People.

Together with my brothers and sisters back home in Bushmanland, I consider this event a learning experience and a wonderful opportunity to meet other indigenous groups.

I believe it will be interesting to exchange our views, and to get new input from everybody participating here. We want to know if there is any other place with the same or similar problems, we want to find out if there has been any indigenous group that successfully secured their land rights and how it was achieved.

I must admit that sometimes I almost lose hope for our cause. Maybe we can get new and fresh encouragement from the people here? Maybe we can realize that we are not alone with our difficulties, and maybe we will find new strength in our struggle for our rights of which we have been deprived for so long? And, maybe even we, the Ju/'hoan people, can offer ideas to our friends in other countries.

I am looking forward to a dialogue and process of mutual encouragement. Encouragement is a powerful tool for everybody involved in our striving for justice and empowerment. If we are able to create this spirit of encouragement, the conference could be a starting-point for a better and more secure future for all indigenous peoples in the world.

Thank you for inviting us to be part of this re-construction of our reality.

Thank you very much

*(Mr. Kxao Moses #Oma represented the Nyae Nyae Farmers' Co-operation, Baraka, Eastern Bushmanland, Namibia, at the conference)*



KIPI GEORGE

## STATEMENT ON BEHALF OF THE BARAKWENA IN NAMIBIA

Distinguished Guests Brothers and Sisters.

On behalf of the Barakwenas, The Evangelical Lutheran Church in Namibia (ELCIN) headed by Bishop Kleopas Dumeni and the Government of the Republic of Namibia under the leadership of his excellency, Dr. Shafiishuna Sam Nujoma, may I thank you for inviting me to participate in this important conference for the Indigenous People which takes place in Copenhagen, Denmark.

I also feel honored to say a word in the conference. The colonial government in our country divided us in our homelands, but immediately after independence our government of the Republic of Namibia revoked this. During the Land Conference in June 1992 as well as it is in the Constitution of our country now, the right to occupy the land was emphasised. The Barakwena community feel this is a very important step, because without land you are not able to develop yourself.

Many years ago, many communities in Namibia had the land where they lived, but the San community were moving from one place to another, because they did not have the land where they settled, but today the Government of the Republic of Namibia after 3 years of independence and the Evangelical Lutheran Church in Namibia have settled more than 6000 San people in Namibia including the Barakwena San community of West-Capri in Namibia.

For many years the colonial government declared our land in West Capri to be a nature conservation area where the people were not considered, but only animals and trees, however our government today gave land to the San community to cultivate and for grazing. The Evangelical Lutheran Church in Namibia is now helping the San people to develop this land, and we are thankful.

One of the serious problems among the Barakwenas of Namibia is work, as you may know many of the men have been working in the former South African Defence Force, and after Resolution 435, they

were left without work. The Evangelical Lutheran Church in Namibia has so far employed some members. However there is still a need for employment to improve the living standard.

The Evangelical Lutheran Church in Namibia has so far built three primary schools and three clinics, which the Barakwenas feel very happy about. The schools and clinics mentioned above will enable us to be self dependent and develop our community. May I appeal to the international community in this conference to support us for further development in our community. At the same time the schools I mentioned built by the Evangelical Lutheran Church in Namibia are contributing to the education of our people, however, there are still not enough classrooms, and we are asking the international community to support us with materials and funds.

The government and ELCIN have drilled boreholes in our area, but because of the growing population, these boreholes are not enough to provide potable water for the people. Again assistance is needed in this field.

At the end may I mention the area of consideration:

1. The Land
2. Education
3. Housing
4. Health
5. Income Earning Projects and
6. Water

Brothers and Sisters I thank you all.

## CHAPTER 3

# PYGMIES OF CENTRAL AFRICA



GASPARD SEBALINDA

## THE RELATIONSHIP BETWEEN THE BATWA AND THE STATE OF RWANDA

Rwanda is a small country located in central Africa and landlocked by the following neighbours: Burundi, Zaire, Uganda and Tanzania. It comprises about 8 million, its population density is over 280 per Km<sup>2</sup>. Rwanda has been independent since 1st July 1962. Its people are divided into three ethnic groups: the majority Bahutu (86%) the (Nilotic) Batutsi (13%) and the tiny minority Batwa (0,4%). Historians relate, though without going into detail, that the Batwa were the first to arrive in the country. The Bahutu arrived secondly, coming from the Tchad region around the 10th century of our era. The Batutsi arrived last. They came from Ethiopia around the 15th century. There are many religious affiliations in Rwanda of which the main ones are the Roman Catholics, the Protestants, the Seventh Day Adventists and the Muslims. Among the Batwa, 44.63% are Catholics, 14.88% are Protestants, 8.68% are Muslims and 31.81% belong to other religions.

### The Situation of the Target Group

Since the arrival of the Batutsi and the Bahutu, the Batwa suffered various forms of inhumane treatment inflicted by their new compatriots. They were marginalised and discriminated against. They did not share drinks with people from other ethnic groups. From the outset, they were chased away from the forest which were like their nourishing mother. Consequently, they could no longer practise their professional activities of hunting and plucking forest fruits. Henceforth, some penetrated deeper into the forests but the rest remained with the agricultural Bahutu and with the cattle-rearing Batutsi. A small minority of Batwa still live in the forest; they are the pygmies, who still practise hunting and forest-fruit plucking.



Those who remained with the Bahutu and the Batutsi are called potters because they abandoned hunting. They adopted cultivating and livestock-rearing though without land or animals. Thus two subdivisions of the Batwa exist: forest Batwa living in the forest and potter Batwa who have settled down and practise traditional pottery. A small minority of the Batwa who had remained in the Gishwati forest (in the north of the country) are now living in the periphery of the same forest. They have been forbidden to hunt and they are no longer able to get food. They are no longer at ease; they have no houses. Indeed, they are miserable.

From time immemorial, the Batwa were considered by their neighbours as mentally backward, as buffoons, as executioners, as imbeciles, as villains, as deprived of intelligence, indeed as next to wild beasts and fit to be marginalised. They were discriminated against and marginalised. That is the reason why since early days no Mutwa acceded to primary or secondary education. This was due to the treatment of the Bahutu and the Batutsi. They were clearly their masters during the monarchico-colonial period as well as after independence.

During the First Republic regime which lasted twelve years, nothing was done for the welfare of the Batwa. They were always kept away from the country's wealth. Even though a bit was done to improve their situation during the Second Republic era, such as allowing access to secondary education and even to University to a small number of Batwa, it was too little to be significant. Thus no Mutwa is to be found among ministers, director-generals, prefects (province governors), Bourgmestres (district chiefs), local councillors, heads of parastatal bodies or private enterprises. Time has come therefore to fight to safeguard Batwa rights and interests. We must fight for our social, economic, political and socio-cultural integration as well as for our development.

## The Socio-Cultural Field

The Batwa continually have to endure hardships related to social integration. They engage in next to no commercial exchanges with the other ethnic groups. They do not use the same drinking tube; save for rare exceptions, a drinking glass used by them has to be broken after being used. A Mutwa cannot take in marriage a girl from other ethnic groups, and vice versa.

At school, Batwa children are confronted with the same problem

of integration. They are haunted by an inferiority and minority complex and teachers do not bother to take strong measures towards their social integration. This results in the Batwa abandoning school altogether. Likewise, the Batwa may not fetch water from the same well as the other groups but have a well of their own. Otherwise, they have to wait for nightfall to be sure that everybody else has gone home in order to get water.

The exclusion of Batwa people also embraces the aspects of nutrition, greetings and marriage. Racism is so entrenched in the collective subconscious that it is even circulated through proverbs such as: „a he-goat can't mount a sheep“.

It is true that things were not perfect between the Bahutu and the Batutsi. The former had some privileges over the latter but differences never went as far as to erect segregationist barriers as with the Batwa. It is clear that some Batwa acquiesced to such a situation and remained on the hills, subject to every kind of racist manoeuvring: those are the potter Batwa. Some Batwa perhaps more conscious of the situation, preferred to live on little rather than lose their liberty: they are the foresters. They fled from the powerful racists and isolated themselves deep in the forest, that is, the forest that was still available. It is quite clear therefore that this segregation against the Batwa in general and against forester Batwa in particular is not very different from other forms of social injustice that history has known in time and space, namely slavery and apartheid.

## The Economic Field

The Batwa are worse off than the other ethnics group due to their lack of land, which is the basis of all economic development. The forest, which for the Batwa constituted the patrimony and their source of subsistence, ensuring their traditional survival (hunting and fruit gathering), is fast being destroyed, and has been since 1960, without anybody thinking of providing an alternative for the Batwa. Most of them were chased away from the peripheric areas of the old forest without being resettled anywhere else.

Furthermore, there has not been any policy of providing the Batwa with alternative activities capable of generating money. They have no wage-earning jobs. They are extremely poor. Without economic power, they cannot satisfy the needs which require money-spending. This explains their backwardness and abject poverty. They survive thanks to begging and through sorrowful misery.

## The Political Field

Not a single Mutwa is to be found among the higher echelons of the Public Service: ministers, governors, mayors, etc. The Batwa are entirely the forgotten ones. They have no representative in the Public Administration, and things get worse on the political level. Some local authorities have not even bothered to undertake a census of the Batwa among the population of their respective areas.

## The Main Problems Encountered

### *a) Poverty*

The Batwa lack everything. They lack clothing: they are always in rags. Their potter's trade does not earn them much, if anything, because of competition with modern plastic and metal articles (e.g. pans, basins, etc.). Cooking pots and containers made by the Batwa can no longer be sold on the market and when they are, they are worth about a mere twenty francs, which is equivalent to US\$ 0.138.

Imagine what kind of life that is for a human being! They have nothing to eat and when they find something it is only for one meal a day, an insufficient one at that. Children and mothers are the most vulnerable.

### *b) Health*

Because of poverty, the Batwa do not get basic health care at health centres. They have no money to pay for medical services at hospitals or other medical establishments. That is the reason why there is a high infant mortality among the Batwa. Pregnant women are afraid of attending pre-natal and even natal consultations so as not to be laughed at because they are poorly dressed. Hygiene is lacking everywhere (e.g. latrines, drinking water, washing water, etc.).

### *c) Education*

This domain is the most deplorable of all. In fact, the access to secondary education is almost impossible. This is due to the distrust by the Bahutu and the Batutsi who assert with pride and confidence that it is a matter of intellectual incapacity and weakness on the part of young Batwa. This pretext is always advanced to explain the few cases of strong-willed Batwa children who manage to reach school and be successful. The real causes are

poverty, lack of financial means, their inferiority complex, their non-integration among schoolmates, the aloofness with which the teacher treats a Mutwa child resulting in subjective treatment during exams, humiliation of the Mutwa and the superiority complex of his school or classmates. All these facts contribute towards impeding the education of the Batwa.

The projected doubling of the number of Batwa in the secondary schools has not only fallen dead but also rather turned into a remorseless massive dismissal. This has further discouraged other Batwa children and parents who, despairingly, tend to believe that progress is impossible.

d) *Habitat*

The majority of Batwa families dwell in grasshuts. They lack sufficient arable land and have no means to build themselves durable and convenient houses.

e) *Malnutrition?*

This is a very sad problem. The Batwa do not get food to eat, and those who do find some have only enough for one inadequate meal a day.

f) *Public and Private Infrastructure*

There exist health services, establishments of education from primary to university level, subdistrict, (commune) and provincial (prefecture) centres for development and permanent training. Unfortunately, access of the Batwa to any of these establishments is not at all easy. The Batwa are indeed a forgotten people as regards administrative and political fields.

## Non-Governmental Organisations established in Rwanda

There exist in Rwanda four NGOs dealing with the integration, promotion and development of the Batwa.

1. A.P.S.D. = Association for the Social Promotion of the Deprived, formerly called Association for the Social Promotion of the Batwa, founded by a nun twelve years ago. It is situated in the Butare prefecture, and is especially active in the Nyabisindu Sud-region (the southern part of the country).
2. ADIGMAR = Association for the Global Development of Marginalised Groups of Rwanda, operating among the Pygmies in

the Ruhengeri-Gisenyi Regions (in the north and north-west of the country).

3. A.P.B. = Association for the Promotion of the Batwa, which is a newly created association nearly two years old. It was the Reverend Brother Gratian of the Brothers of Charity Congregation of Butare who managed to pull some Batwa families out of the slums in that prefecture.

I cannot deny that a number of achievements have been made by these associations but, to tell the truth, it was too little to make any significant improvement in the Batwa's lot. The Batwa's situation remains critical in spite of subsidies received from the State and aids received from international organizations and benefactors over the last twelve years.

4. A.D.B.R. = Association for Global Development of the Batwa of Rwanda.

Realising that this minority Batwa ethnic group is fast disappearing (from 1% to 0.4 % of the total population) due to extreme poverty, malnutrition, lack of integration, mistrust, lack of education, lack of sanitary services and other handicaps to their survival, a group of intellectual Batwa working in Kigali (the capital city of Rwanda) and from elsewhere in the country gathered to discuss solutions to the problems facing the Batwa as a result of marginalisation by the rest of Rwandese Society. They then decided to found an association with the objective of finding solutions to problems regarding the promotion, integration, liberation, evaluation and emancipation of indigenous peoples.

This association was set up on the 31st January 1993. It is still a de facto organisation with no official registration because the post of the Minister of Justice has since then been vacant. We hope the matter will be settled very soon.

## The Main Objectives of the A.D.B.R.

The main objectives of the A.D.B.R. are:

- To aim for the development of all Batwa, both potters and foresters
- To seek their total integration (both economic and socio-cultural)

- To encourage school attendance by children and literacy among adults
- To work closely with the relevant authorities and non-governmental organisations for the promotion of the Batwa
- To maintain and safeguard the interests of that ethnic group
- To arouse a spirit of cooperation and promote the development of the Mutwa woman
- The improvement of the conditions of life of the group
- The creation of jobs and the modernisation of the potter's craft
- To encourage forest Batwa to work towards the protection of their environment.

## The Relationship between the A.D.B.R. and the Government of Rwanda

As I have already said, the A.D.B.R. has come at the right moment because of the need to tackle the problems of indigenous peoples, the Batwa have lived with for years and years. Unfortunately, there are many handicaps to be reckoned with. Being still young, the A.D.B.R. lacks necessary basic tools: it lacks office equipment, means of transport, telecommunications, etc. The Government of Rwanda does not want to provide us with the means which would enable us to function as an effective and useful organisation, though it helps other non-governmental organisations represented by members of other ethnic groups. We should be receiving subsidies just as those given to other associations like ADIGMAR and APSD. In fact, we are the most concerned and we must be the foremost in solving our own problems. We have written many letters to local authorities explaining our problems and proposing remedies. We also managed to obtain a one hour broadcast on Radio Rwanda which allows us to convey the situation to the authorities and to the people concerned. Grosso modo, the A.D.B.R. is ready to collaborate seriously with the government and with other non-governmental organisations honestly fighting for the rights and interests of indigenous peoples.

The government is unwilling to grant subsidies to the A.D.B.R. because most of the highly placed persons responsible for the granting of subsidies have all sorts of relationships with the leaders of the other non-governmental organisations also competing for funds.

The former do not want to lose the profits they receive from those indigenous peoples on the grounds that it is thanks to them that aid is provided to the latter.

It is quite understandable therefore that those authorities could not encourage the existence of a rival association founded and managed by people concerned with and conscious of their own preoccupations.

The Association for Global Development of the Batwa of Rwanda (ADBR) has been hampered by the oppression exercised for centuries on that ethnic group from which we rightfully come. That oppression has perennially been characterised by the alienation and stifling of our citizens' rights to the detriment of their inalienability, indefeasibility and universality. In the light of this we have delivered a memorandum to the Rwandese authorities containing the following desiderata:

- Whereas the history of Rwanda recognizes the Batwa to be the first occupants of the country on the one hand;
- Whereas Rwanda is inhabited by three ethnic groups (the Bahutu, the Batutsi and the Batwa) on the other hand;
- Recalling the fact that Rwanda has been under feudo-monarchical domination for more than four centuries;
- Taking into account the fact that for so many years the ethnic Batwa was marginalised in Rwandese society;
- Regretting that the trusteeship authority (Belgium), in spite of its intelligentsia, failed in the fulfilment of its mandate of seeking the progress of the entire people in that it had to eradicate any element noxious to the development of all the components of the whole population;
- Realising, as a crowning misfortune, that the subsequent Republican regimes favoured oligarchy, nepotism, regionalism and tribalism, which constitute a break with democracy and an obstacle to national development, to say the least; hence the paralysis in the highest quarters;
- Taken into account the existence of human and civil rights voted and recognized by the constituent Assembly of the United Nations and ratified by its member countries.
- Taking advantage of the proclamation by the United Nations of 1993 as the International Year for the World's Indigenous People in independent countries and the wish that it ends successfully in their favour;
- Considering the fact that Rwanda is at present at a decisive phase of its history whereby it needs a renewal of hearts guided by a

sense of brotherhood, of tolerance, of reciprocal frankness, of national concord and of transparency in the management of the national wealth;

- Noting that the on-going Arusha negotiations constitute an opportunity for the survival of the country but that unfortunately the absence of a Batwa representative among the negotiators is ill felt within the Batwa of Rwanda;
- Whereas the Batwa ought to have a say on the future of their country but the negotiations tend to envisage a new country implicitly ignoring the Batwa since the other ethnic groups alone steer the conduct of the destiny of the Nation at the exclusion of the Batwa.
- Being indignant at realizing that neither the Rwanda Government, nor the mediating country, nor the political parties participating in the transition Government, nor the international organizations (observers) present at the negotiations, none of all these uttered a word concerning the right devolved to the Batwa to participate in the forthcoming transition Government and in the Transition National Assembly;
- Noting that the Batwa lag very far behind in their political, social, economic, cultural and artistic development, which backwardness is imputed to the successive governments including the Belgian.
- Requesting the application of human rights, civil rights and the rights of minorities;

#### WE DEMAND THE FOLLOWING:

1. That the State proceeds to equitable allocation of land in favour of the Batwa who do not have any so far (i.e. potter and forest Batwa).
2. That, with immediate effect, the state indemnifies the forest Batwa in compensation for their property abusively and arbitrarily seized by the G.B.K. Project, The ORTPN Tourism Board, the military Domain and the individual bosses.
3. That the State facilitates competent Batwa participation in the management of state affairs by allowing access to public posts: for instance, at the conclusion of the current negotiations the Batwa ought to be allotted one ministerial portfolio and one seat in the legislative Assembly; whereas in the administration, at least two posts of sub-prefects (provincial deputy-governors) should be provided.



4. That the State facilitates access to loans for Batwa civil servants, according to their capability, for the construction of their homes.
5. That the State exempts Batwa children attending primary and secondary school from paying school fees.
6. That the State provides scholarships to Batwa students for the pursuit of higher (i.e. university, etc.) education.
7. That the State undertakes as soon as possible the construction of a ceramics school for the modernisation of pottery which is the craft the Batwa naturally excel in.
8. That the State, assisted by Belgium (in compensation for its failures during the colonial era), supports the A.D.B.R. (Association for the Global Development of the Batwa) in its initial stages for the pursuit of the patriotic goals it has set itself.

The support should consist in, among other things, the grant of a plot for the building of a head office, and financial assistance for the construction of offices and for the acquisition of equipment, of a commercial vehicle for miscellaneous transport and of a car for the use of the Legal Representative of the Association.

*Gaspard Sebalinda is Deputy Legal Representative of the Association for the Global Development of the Batwa of Rwanda (A.D.B.R).*

CHARLES UWIRAGIYE

## THE ETHNIC BATWA AND THEIR PHYSICAL SITUATION IN RWANDA

Colleagues, Ladies and Gentlemen

On behalf of the Association for the Promotion of Batwa, I am extremely happy and honoured to stand here and present the Ethnic Batwa and their physical situation in Rwanda.

Maybe some of you know the geographical position of Rwanda and others not. Briefly, Rwanda is a small country, landlocked and about 26,338 km<sup>2</sup> and traced very searchingly in the heart of Africa on the map. There are the republics of Uganda in the north, Burundi in the south, Tanzania in the west and vast Zaïre in the west. Batwa, Bahutu and Batutsi dwell in the country, and the population is about eight million. Like other indigenous peoples of Tropical Africa, the Batwa have been marginalised, poor, downtrodden, deprived of their land and property, despised et cetera. Through the invasion of the major society of the two tribes, the Batwa are caught in that sea of miseries and recurring situations.

Our ancestors were the first to occupy this territory, which was all forest. Their dependence was on hunting and tuber collecting. Their happiness and amusement in their eco-systems plus the sufficiency of resources from the ecological surroundings, were disrupted by the land-tillers (Bahutu) who came second, brutally destroying the natural greenery in greed for crop planting. They overran the forest and our ancestors were forced to shift from time to time further away from the machete and hoe. By the time the Hermites (Batutsi) arrived along with their herds of cattle, the forest was on the point of vanishing and the country was becoming semi-arid. Grazing and other man-made activities have made our territory nearly a desert in some regions.

In the resurgence of democracy especially in the Third World and the Eastern Bloc countries after the Cold War, few Batwa (10) were not convinced that they should form a political party. We cannot

compete in politics for winning elections. Instead we formed an association to survey and seek the solutions of the problems ethnic Batwa encounter in the country. We have a saying in my language (Kinyarwanda) that one tree does not make a forest. The Association for the Promotion of Batwa cannot reach its objectives alone, and that is why the doors are open and arms extended beckoning others to join us and knocking on your doors in search of your cooperation and support. The objectives of the association are:

- to present and defend the interests and rights of Batwa
- to act as an intermediary for the Batwa in matters concerning them with the authorities and other well-wishers
- to assist the Batwa to improve their primary health care, education, socio-economics and culture.

It was officially legalised by the Ministry of Justice on 8 November 1991 (M.A. 371/05 of 8/11/1991). It was published in the Government Gazette no. 15 of 1/8/1992. Normally, it is illegal and totally forbidden for any association to start operating before it is legalised. To mention but a few, its achievements are:

- two months after its official recognition, APB together with other indigenous associations from the Tropical belt of the world formed the International Alliance of the Indigenous-Tribal Peoples of the Tropical Forests, February 15, 1992 in Penang, Malaysia
- APB has been admitted into the Unrepresented Nations and Peoples Organisation (UNPO) January 15, 1993.
- in the Central African Republic at M'Baiki in a meeting of the Pygmies Inter-Group, APB was elected International Coordinator together with John Peter Godding
- there is also an affiliation of two Integrated Groups namely: Integrated Women's Group and Integrated Youth Group
- through the recognition of the Ministry of Justice, the Ministry of Public Works has allocated us a plot of about three and a half hectares to establish and concentrate APB's services and activities.

The many other achievements also including the Training Centre School in Carpentry and Tailoring for the Batwa Youth and so on.

## The situation

Like many other Pygmoid races in Tropical Africa, the ethnic Batwa are facing many tangible and intangible threats in Rwanda. Too much planning for the development policies of our country has been underway, and we are not recognized for our share and participation in food production. There is no mention of the Batwa even in planning for the future of this country. At the moment there are negotiations in progress between the Rwandan Government and the Rwanda Patriotic Front, where we are not represented even though we are definitely victims of the current conflict: as the saying goes, when two elephants fight, the grass suffers. Many forms of multi-party democratic parties have registered, but unfortunately none by Batwa and for Batwa. You may judge the reasons why we did not start direct political action.

Ruling, leading and governing have been the possession of Bahutu and Batutsi since the organisation of government, or rather their invasion in Rwanda. We are denied a part in the decision-making team in affairs and problems overrunning our country. There is no trace of the Batwa in any sort of administration or leadership.

There is also much exploitation in the field of education, where you find that a much smaller percentage are educated than in other major societies. You very well know that education is the backbone of all phases of development. And this is their excuses for depriving us of participation and involvement in the atmosphere of intellectuality. But that is not true because even those who have gone to school are not recognised as educated in terms of employment, leadership and other social integration. We are always denied to freely mix with them. We are still investigating if this was planned so that they may keep us under their feet. The Rwandan Constitution and international covenants, especially Universal Human Rights, state that all peoples are equal. Why then is this not the case for the ethnic Batwa in Rwanda and other Pygmoid human beings in Tropical Africa? Animals are better off than us and the authorities make no effort to improve the situation. Education is very expensive, and the ethnic Batwa cannot afford it, if the other tribes get assistance from Caritas, BørneFonden et cetera, why may not Batwa youth benefit from the same source?

There is constant suffering and dying among the ethnic Batwa and the Pygmoid race in Tropical Africa. They lack preventive medicine and they are attacked by malaria, worms, et cetera. The authorities are not taking heed at all and soon we shall disappear from the face of the earth.

Like other human beings, we demonstrate and illustrate our culture in dances and songs. This is already encroached upon and the National Dancing Troupe, *Urukerereza*, plays and stages it. About three quarters of this is composed of Batwa and that is not revealed to the international community. We are vanishing in all kinds of social existence if nothing is done. Our resource is clay as a primary material for producing pots, which is another way of displaying the culture through the tribal products. This clay is also grabbed by the major society for making bricks, or the area where it is found, for agricultural cooperatives and grazing.

Since we have been thrown out of the forest, we have been given no compensation, as others have, for new land, or even material compensation. We are not at all considered for this, while the major society is given something to compensate for their property. This causes great havoc, because the Batwa possess no land until today. Land is for the farmers in the major society and those Batwa who can afford to acquire a strip through a long period of struggle, either get too small a plot to satisfy family needs, or semi-arid physical features. The vast and fertile land is being grabbed by the wealthy major society for pastures and cultivation while ethnic Batwa are being forced to landlessness. The major society makes laws and we are oppressed by them while they are defended by those laws.

## The economic and political exploitation impact

Another major threat is the concept of development in the Rwanda state, which is imposing on the marginalised Batwa and their way of life. The international institutions which fund many development projects in Rwanda are neglecting our presence and overlook our involvement. The state and major society grab the chances, and the Pygmoid people in Tropical Africa are increasingly downtrodden and deprived of their rights and property.

Well, in order to develop, the western forms of economic organisation must replace and destroy our ways of life which are considered primitive. This is a very provocative technological concept of development which plays a great role in oppressing my tribal society. It has disturbed our resources and political autonomy, not to mention the ecological balance. An example at hand is the World Bank financed project in the Gishwati National Reserve, which has left my brothers and sisters displaced and forcibly chased away from their eco-systems to pave way for a modernised agro-sylvo-pastoral

development project. They have not been compensated for that and they are now roaming the country begging for food et cetera. If the major society is to decide which project is to be initiated in a location through having more voices and more decision-making power, then the few Batwa who reside in the location are deprived of their right to self-determination. And if almost all international funding organisations base their development concept on that democratic system which, in fact, we are not against, we are now appealing to you and need your support to convince them that they should also benefit the Pygmoid peoples in Tropical Africa.

In the Chairman's report on the Ngo's Consultation on Global Environmental Facility (GEF) operations in Africa May 5-7, 1992 Paris, he states that in order to influence and contribute to the GEF as well as other conservation activities, NGOs must make an effort to contact the government. "On the other hand," he continues, "the government should also take the initiative to involve people and draw upon their local knowledge, together they can better identify potential environment activities for GEF." Unfortunately, the Batwa in Rwanda are pushed away from such GEF projects.

The concept of the nation state is largely a myth. To regard the nation state as the only acceptable political unit has led to the continuing marginalisation and denial of the political rights of tribal and indigenous peoples and other minorities like Batwa in Rwanda.

The Universal Declaration of Human Rights proclaimed by the United Nations General Assembly, itself rooted in the Western individualistic milieu, made no provision for the protection of the ethnic groups and communities living in the modern state system. Article 17 states that everyone has the right to own property and no one shall be arbitrarily deprived of his property. Absurdly, the Pygmied peoples in Tropical Africa have not been recognised for the privilege. The ceramic factories like Gatagara and Muyunzwe which are to benefit Batwa by modernising their craftsmanship, are not run by and of benefit to Batwa major tribal individuals. Ruliba Brick Making Factory at the bank of River Nyabarongo near Kigali, which is being financed by D.D.A. organisation, is a full possession of the major tribal society and no Batwa are considered for involvement and participation in its inputs and outputs. Remember clay is our traditional inheritance and no deep intellectuality is involved in mixing it ready for production.

The Association for the promotion of Batwa held a seminar in Kigali from 23 through 25 March this year and its theme was "The

Integration of the Ethnic Batwa in Democracy". It was attended by many Government Officials, and international and religious representatives. Thanks a lot to the Konrad-Adenauer (a Germany based organisation in Rwanda) whose financial assistance helped the seminar reach its objectives. Briefly, the participants concluded that the Ethnic Batwa's miseries, backwardness et cetera are the results of the neglect of the respective governments of Rwanda.

### Proposals

In skills and development, the Ethnic Batwa and the other Pygmoid races would like to ask for your full support in primary, secondary and beyond, and other training. Please help us achieve our goals of raising the Batwa from the bondage of oppression and slavery.

Lastly, we would like to thank the organisations which support the cause of the Indigenous Peoples of the world. Much appreciation too is for the International Work Group for Indigenous Affairs, Centre for Development Research, DANIDA, and all of you who took part in organising this conference. May God bless you.

Thank you very much for your attention.

MARCUS COLCHESTER

## SLAVE AND ENCLAVE

### Towards a Political Ecology of Equatorial Africa

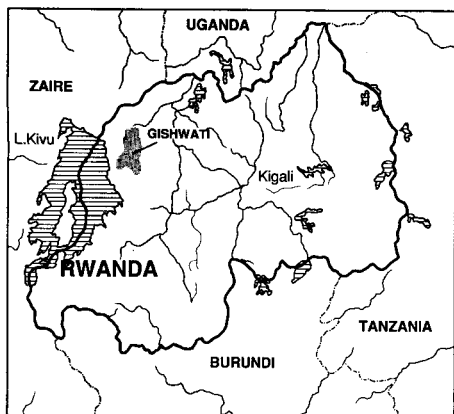
The three countries of „Equatorial Africa“ that this study addresses – Gabon, the Congo and the Central African Republic – are at a turning point in their history. After three decades of „independence“, dominated by single party politics, they are all three now uneasily engaged in political liberalisation. Political parties have sprung up in great profusion, non-governmental organisations are proliferating and critical social and economic questions that have been unasked and even unaskable for decades are once again the subject of intense and earnest debate.

The forests and the peoples who still rely on them for their daily needs are, however, not prominent among the new issues being discussed. Despite the fact that these countries' economies are heavily dependent on the exploitation of natural resources – renewable and non-renewable – the countries' massive foreign debts, worsening balance of payments and chaotic internal financial affairs are all the focus of attention; a fact made even less surprising considering that these countries are among the most urbanised in Africa.

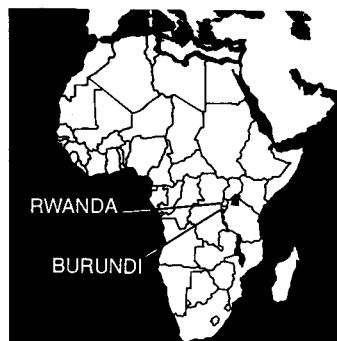
This study<sup>1</sup> looks in particular at the situation of the rural communities of these countries and the tropical forests that provide the basis for their livelihoods. It shows how the traditional social and political institutions of the forest dwelling peoples – Bantu and „pygmy“ alike – were markedly transformed by the slave trade, the colonial era and by the subsequent interventions of commercial interests and the new African states.

Historically weakened by outside interventions and still marginal to government priorities and policy making, rural communities are today on the point of collapse. Yet, on the other hand, the states





Distribution of African pygmy populations  
Source: Dyson 1992



AFRICA

which have taken over control of their lands and forests are hopelessly ineffective and corrupt, being little more than patronage networks for the enrichment of the indigenous elite and outside commercial interests.

The result is that the forests of Equatorial Africa are virtually defenceless, having been denuded of any effective institutional security, either local or governmental. If these countries are not suffering the startling rates of deforestation that have all but destroyed the forests of West Africa it is only because they have not yet experienced the same pressure from migrants. However, as logging intensifies - and with it the road networks - and as the rural poor spill over the frontiers from neighbouring countries, as they surely will due to the collapse of rural economies and population increase, these flows of impoverished rural migrants will be all but impossible to restrain. If the West African experience is not to be repeated, urgent measures are needed now to reassert effective controls over the forests and over forest-based enterprises. This implies a revalidation and reassertion of community control of forests at the same time as the withdrawal of political protection from unscrupulous dealers in bushmeat and timber. Achieving this will require a radical transformation of the political economies of these countries.

## Equatorial Africa

The „Equatorial Africa“ of this study, comprised of Gabon, the Congo and the Central African Republic, retains some 47 million hectares of closed tropical forests, which combined with those of Angola, Cameroon, Zaire and Equatorial Guinea make up the second largest area of closed tropical forests in the world after Amazonia - see table 1 (Sayer et al 1992).

The Congo Basin is home to several hundred related peoples, numbering some 12 million (Vansina 1990), most of them linguistically closely related and referred to in the anthropological literature as the „Western Bantu“, as well as some 300,000 so-called „pygmies“ and similar groups (Beauclerk 1993). Today, in „Equatorial Africa“, the people inhabiting the forest areas, mainly reliant on self-provisioning economies based on shifting cultivation, treecropping, hunting and fishing, number less than 2 million, owing to the very high proportion of the population in these three countries living in cities.

(See map)

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Table 1:

Estimated areas of closed tropical forests in Central Africa

*Equatorial Africa* (millions of hectares)

Gabon	20.5
Congo	21.3
Central Africa Republic	5.2
<i>Sub total</i>	47.0
Cameroon	15.5
Equatorial Guinea	1.7
Zaire	119.0
Angola	2.9
Total	186.1

Source: Sayer et al. 1992

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Equatorial Africa is presently suffering a very low rate of deforestation ranging between some 0.3% - 0.5% per annum which corresponds to the area's very low population density. Despite these low rates of forest loss, there is massive and widespread degradation of forests due to overhunting for the trade in bushmeat and other animal products and due to poorly controlled and wasteful logging. Mining and a general neglect of rural economies compound these problems.

## The forests

Some 18,000 years ago during the last major dry spell in Africa's prehistory, contemporaneous with the Wurm II glaciation of northern Europe, the forests of Equatorial Africa were probably reduced to one or two isolated forest „refuges“ covering a very small proportion of the region, the rest being covered by extensive savannahs (Vansina 1990; Sayer et al 1992:20). The forests then spread once more until some 5000 years ago the tropical belt was at its wettest and forest cover was even greater than today. Since then, there appears to have been a progressive and very gradual drying of the region placing the forests under stress. Most of the dry ground forests of Equatorial Africa today „occur under rainfall regimes which are marginal for this type of vegetation and as a consequence they are more vulnerable to disturbance and small changes in climate than those of other regions“ (Holdgate 1992:vi). As a result, the forests are gradually retreating (Carroll 1992:12).

Floristically these forests are some of the most diverse in Africa and they still contain an abundance of wildlife making them a prime focus for the concerns of conservationists, with their notable fauna including forest elephants, lowland gorillas, various kinds of chimpanzees, forest antelopes, a very diverse avifauna etc (McShane-Caluzi et al 1992; Carroll 1992; Wilks 1990).

## The peoples

Archaeological investigations in Equatorial Africa are in their infancy. They show human occupation of the area by hunters and gatherers using simple stone tool kits from at least 70,000 BP (Oslisly and Peyrot 1987) but it remains an open question whether these peoples are in any way related to the so-called „pygmy“ peoples who are

considered to be the descendants of the earliest surviving inhabitants of the region.

Jan Vansina's careful reconstructions of „Western Bantu“ migrations from their origin near the present Nigerian-Cameroonian border suggest that they began their penetration of the region, based on a well-developed agricultural economy of yams and oil palms, some 5,000 years ago. According to his reconstructions, the first wave of Bantu settlers had reached as far south and east as the Congo River by 3,000 BP and had spread across to Africa's great Central Lakes by 2,000 BP.

The later introduction of iron working (from around 2,500 BP) (Oslisly and Peyrot 1987) and bananas and other elements of the Malayo-Polynesian root crop complex (from around 1,000 BP) led to a much more intensive use of the land and forests, with fishing, hunting and gathering declining in importance relative to farming and, later, trade (Vansina 1990: Murdock 1959).

Vansina has emphasised the traditions of equality in Bantu society of these early times. The social organisation, he argues, reflected a decentralised settlement pattern in which certain households, and within them individuals, led as much due to personal esteem as the assertion of any real authority or power. Settlements were fluid and mobile and local leaders were accountable to the rest of the village, or at least to other males or elders.

In a similar vein, Robert Harms's detailed studies of the middle Congo villages of the mid-19th century emphasize the deep rooted unease within Western Bantu cosmology towards the accretion of power. He has characterised Western Bantu cosmology as being a „zero sum game“ in which an increase in spiritual power or social esteem or material wealth implied a proportional decrease in the other two and in which one individual's gain was seen as always bringing a corresponding loss to the wider social group (Harms 1981). Such beliefs were expressed, on the one hand, in strong pressures to share and redistribute wealth and other resources and, on the other, through „witchcraft“ accusations which were the main expression of unresolved tensions and jealousies. According to such analyses fear of „witchcraft“ was a great equaliser: a sanction against personal greed and aggrandizement. As Vansina puts it „witchcraft was an ideology of equality and cooperation“ (Vansina 1990).

The new technology of iron and bananas, coupled with natural increase, inevitably resulted in population growth such that by the end of the first millenium, according to Vansina, the population

stood at some 4 people per square kilometre (Vansina 1990). The result was the emergence of new traditions of hierarchy which overlay uncomfortably, and exist today in dynamic tension with, earlier egalitarian traditions. According to Vansina's interpretation, warfare and competition for land and later slaves led to the emergence of much larger and more centralized villages, stockaded settlements, elaborate weaponry etc.

These new forms of political hierarchy were expressed through new forms of symbolism involving solitary predators. Leopards, fish eagles and pythons represented the authority of leaders, and, according to new customs, the „spoils of the leopard“ - a kind of symbolic tribute whereby the remains of killed leopards were entrusted to one's superiors - were now sent up the hierarchy not just to village chiefs as in the past but to regional warleaders and later even „kings“.

It is possible to see this same tension, between the ideals of egalitarian respect and subordination, in the ambiguous notions held by the Bantu of so-called 'pygmies', on the one hand revered in myth as the source of much knowledge and wisdom about forest dwelling and on the other despised as primitive and inferior beings.

These new traditional hierarchies in Equatorial Africa were to be exaggerated by future trade patterns and by colonial interventions to the point where the submergence of the egalitarian traditions can be seen as one of the main problems in the Western Bantu area today. Almost all outside pressures since contact have exaggerated the tendency to hierarchy and reduced the accountability of leaders to their fellow citizens.

## The slave trade

The most tragic and obvious example of how contact with the „west“ brought out the hierarchical and arbitrary aspects of leadership in Bantu societies was the slave trade, which cost the lives of several millions of Africans and led to the transport overseas of millions more.

The trade in slaves on the coasts of Equatorial Africa commenced with the Portuguese in about 1580 but only became vigorous after about 1640. The peak of the slave trade was the mid-18th century and was already in decline by the time the British decided to end the trade by force (Harms 1981).

From the point of the trade's impact on the future political economy of the region, the key feature to appreciate is that the

European slavers themselves never went far inland from their trading factories and were almost never actually engaged in the business of raiding for slaves. On the contrary, slaving was carried out by Africans and implied the transformation of old types of bondage and servile working conditions into pure slavery as well as the massive intensification of raiding and war.

Slaving always implied a two-way transaction, albeit on very unequal terms, whereby Africans were exchanged for western goods: industrial cloth, metal goods, beads, and - essential for the perpetuation of the trade - guns, shot and gunpowder.

Slaves were traded throughout the Congo basin resulting in the distribution of western trade goods right across the continent, reaching at least 1,700 kilometres upstream from the mouth of the Congo, north and south into the savannahs of the CAR and Angola and east into the East African slave trading network dominated by the Arabs (Pakenham 1991; Bierman 1990; Harms 1981; Manning 1957).

Slaving had a profound impact not just on the groups which lost members to slavery but also on those engaged in the trade. Robert Harms' (1981) studies have shown how, in order to gain control of the trading network, dispersed and differentiated social groups merged their numbers and identities to increase their force. Internally the groups were dominated by „trading firms“ often made up of a chief and his sons. The increasing importance of heritable wealth, capital accumulation and the corresponding need to resist redistributive customs led many traditionally matrilineal societies of the middle Congo to become increasingly patrilineal. Trading firms avoided the redistributive demands of traditional society and swelled their numerical force by recruiting numbers as slaves, both as labour, as wives (without matrilineal rights of inheritance) and to produce pliable heirs.

Ivory from elephants gradually emerged side by side with slaves as a trade good of importance and by the mid-19th century had mostly replaced slaves as the main export from the Congo basin. Yet this only perpetuated the domination of the political economy in the forests by the trading chiefs.

As Robert Harms (1981) has noted:

„The ivory trade like the slave trade was essentially an extractive type of enterprise: it neither stimulated the growth of subsidiary industries nor encouraged greater productivity on the part of the common people. Certain classes of Africans gained short-term benefits from the sale of tusks, but because elephants could be killed at a much faster rate than tusks could be grown, it was only

a matter of time before this resource became scarce. It did not provide a foundation for long-term prosperity or a basis for self-sustaining economic growth."

## The colonial era

The end of the 19th century witnessed an unseemly scramble by the European powers for control of the African continent, in which competition for control of trade in the Congo basin played a determining part (Pakenham 1991). As the rise of European industrial powers on the continent began to threaten British supremacy in international trade, efforts to protect sources of cheap raw materials and captive markets increasingly challenged the free market ideology that had prevailed in the early 19th century, and it was thrown over in favour of an imperial strategy (Martin 1983).

The protectionist intent of the colonials was no secret. As one delegate noted to the French Association of Industry and Agriculture in March 1899, the colonials' aim must be:

„to discourage in advance any signs of industrial development in our colonies, to oblige our overseas possessions to look exclusively to the mother country for manufactured products and to fulfil, by force if necessary, their natural function, that of a market reserved by right to the mother country's industry“ (in Dumont 1962:51).

Equatorial Africa, later to be called French Equatorial Africa (AEF), fell under the control of the French. Portuguese, Dutch and, especially, British factories active along Gabon's rivers (Kingsley 1897) were compensated (some quite handsomely) and asked to leave. However, unable and unwilling to directly administer the vast area, the French government allocated most of the region to some 40 companies, who without any kind of consultation with the local people thereby gained control over 80% of the entire territory of 700,000 square kilometres (Austen and Headrick 1983:46). Some concessions were huge, the area controlled by the *Compagnie Française du Haut Congo* encompassing 3.6 million hectares, for example (Hecketsweiler et al 1991:73).

Within these vast concessions the companies had almost sovereign control of their huge tracts of forest, including the right to their own police force and to develop their own laws. The express aim of the concessionaires was to extract the wealth of the areas' natural resources - chiefly wild rubber, ivory, and later coffee, cocoa & palm

oil - as cheaply and as fast as possible. Other motives there were also: as Austen and Headrick (1983:47) note „the basic motive for taking up concessions was often stock-market speculation in Europe rather than entrepreneurship in Africa.“

Locally too the process was open to considerable abuse as the concessionaires were subject to very little scrutiny - slavery, violence, killing and inhuman punishment were widely documented and later caused a public scandal (Pakenham 1991). Yet even after the worst abuses were checked, the benefits to the local economy were minimal.

As Charles Nouffard, then Secretary General for the Colonies wrote in 1907:

„Given the way commerce is presently carried out in Gabon, one cannot say that it contributes to the wealth of the colony. This type of trade, based on the collection of forest produce is more similar to a mining venture which uncovers the natural riches and then drags them off“ (Pourtier 1989:127).

Although the concessions were initially granted for a 30 year term, many of the companies that gained the concessions in the 1880s are still active today or they have directly passed on their rights to other foreign enterprises - a remarkable continuity of interest, reflecting also the political continuity between the colonial and post-colonial eras (Pourtier 1989:141).

## Administrative yoke

The story of the concession system is relatively well known and therefore not expanded on here. Less well appreciated is the extent to which the French colonial authorities intervened by force in the daily lives of the local peoples to facilitate their exploitation. For it soon became apparent to the French colonial State that a permanent French government presence was necessary to ensure effective management of the new territories. It is clear too from the colonial sources that the local communities bitterly resented the takeover of their lands and lives.

That the local people resented taxation was half of its purpose, its symbolic value of yoking the African to the colonial state being at least as important as the revenue gained. As one colonial report noted in 1911:



„The payment of the head tax is to the indigenous mind testimony of submission; this general perception thus gives it considerable political importance; it should be the logical outcome of methodical occupation“ (cited in Pourtier 1989:80).

Resistance was widespread. In fact the whole of the interior of the AEF had to be brought under French control by a process of conquest, as the villages flared up in reaction to the demands on them to yield labour and forest products to the concessionaires and then taxation to the French administrators. The result was a protracted, 50 year long, piecemeal war.

As Roland Pourtier notes:

„Paying tax signified the end of freedom for people who had never rendered tribute of any kind. The brutality with which it was exacted, added to all the excesses committed by the concessionaires, was fire to the powder“ (Pourtier 1989:91).

The African uprisings were brutally put down, but it was a lengthy process. As one administrator noted „all the interior had to be conquered, valley by valley, village by village“, while they encountered „stubborn and unexpected resistance“ (Austen and Headrick 1983:40). Bit by bit the French had to increase their military presence. Militias were established in 1887 which carried out limited but violent police actions to extract tax. These being inadequate for the task, they were reinforced by Senegalese „*tirailleurs*“ in 1902 whose practice was to torch villages and force the destitute villagers to relocate near to tracks and roads. In 1906 a territorial army was established and by 1909 a Programme of Occupation was decided on. By the 1930s, when the last areas of resistance were being brought under control in what is now the west of the Central African Republic, the French were using planes to spot villages hiding out in the forests before sending in the army to bring them in (Pourtier 1989; Austen and Headrick 1983:38).

Since the main problem for colonials at this time was not so much gaining control of land as the shortage of labour, the aim of the fiscal and military interventions was to enforce the *corvée*, and, through various levies and taxes in both produce and money, to oblige the African to involve themselves in the cash economy, which meant, essentially, work for the concessionaires.

The destruction of the traditional self-provisioning economy fitted well with this logic and for this reason, as was the case with one order given to troops in 1914, the soldiers were commanded to „destroy pitilessly all the plantations and buildings possible“. The taking of hostages including women and children, pillage, arbitrary

imprisonment, executions and massacres, the torching of settlements and the sacking of whole communities down to the last item, were commonplace practices - with one patrol returning to base to report taking „44 machetes, 15 combs, 15 cauldrons and cooking pots, 7 baskets of rubber and one dog“ (Pourtier 1989:98).

It is important to understand that these were not arbitrary excesses committed by over-zealous soldiers. „Man hunts“, to extract corvée labour for concessions, plantations, road-building, portage and later the Congo-Ocean railroad, were fundamental to the colonial economy (Austen and Headrick 1983:32). The railroad itself, built to compete with the Belgian railway on the other side of the River Congo, employed over 80,000 people under terrible conditions. In all it is estimated that some 20,000 Africans died in its construction (Guichaoua 1989:17), with a 45% mortality in the labour force being recorded in the worst year (Austen and Headrick 1983:71).

Campaigns to reduce resistant populations were expressly carried out in support of the concessionaires who were having trouble with indigenous participation. Thus from 1917 the colonial army undertook a brutal campaign in the upper Congo to ensure that the local people worked for the *Compagnie Française du Haut Congo*. A detailed study in the area carried out for the World Conservation Union concluded that:

„The result was catastrophic and the psychological effect on the population was profoundly negative and still persists to this day. Villages emptied, the villagers fled to the hunting and fishing camps out of reach of the „works“ and military recruitment. This massive exodus into the bush on the present Gabon-Congo border, between 1917-1920 is called by tradition the „rubber war““ (Hecketsweiler et al 1991:70).

Similar atrocities occurred in the rubber regions of Ubangi (present CAR) a little further north, where in the years before 1914, villagers unable to flee were tied together, and brought naked to the forests to tap the rubber vines. They lived in the open and ate what they could find. A French missionary who witnessed the scene wrote: „The population was reduced to the darkest misery ... never had they lived through such times, not even in the worst days of the Arab [slaving] invasions.“ (Austen and Headrick 1983:35).

## „Regroupement des villages“

„The nomadic condition which is the antithesis of civilization occurs all along the rivers, whereas we must apply all our efforts to force the indigenous people to settle down in a permanent manner around the commercial centres“ (Commandant Gabon Masson, 1883, in Pourtier 1989:104)

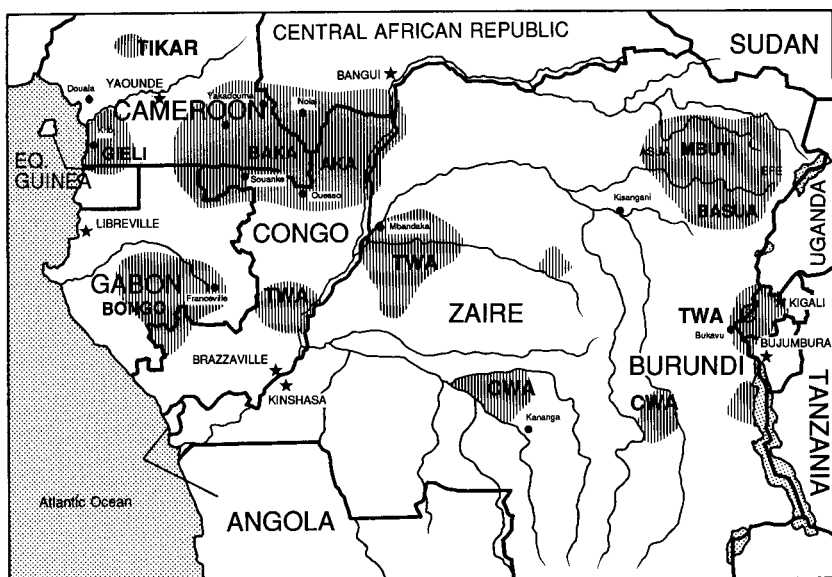
A central plank in the French administrative policy was the resettlement of the dispersed and mobile African communities in larger, permanent villages on roads and portage trails. As one colonial official put it:

„No serious programme can be effectively carried out in this country without first getting the local people to concentrate in large villages“ (Pourtier 1989:102)

Thus, one of the main purposes of conquest was to effect this villagisation by force and to bring the local people under the control of the administration so that they could be obliged to render up their tax and labour and also to ensure they were under surveillance to prevent further rebellions. All this, it was claimed, was to benefit the local people making it easier for the administration to provide health care, education and other services. These benefits were long in coming but the onerous exactions of the colonial state were imposed immediately.

The policy of „regroupement“ was applied throughout the AEF and took place over many decades, though often subject to policy shifts and reversals due to spontaneous migrations by the reluctant Africans back to their ancestral territories. The policy continued right up to independence and in Gabon and in the Congo was pursued into the 1970s, with just the same rationale.

The „regroupement“ policy had devastating effects on the local peoples. In the early days, resettlement was carried out without the minimum of consideration being given to customary land rights, resulting in conflicts over land between different groups (Pourtier 1989: 106). Besides upsetting local systems of land ownership and control and overturning traditional institutions, the concentration of population also led to declining standards of nutrition and exposed the road-side groups to epidemics of diseases (Hecketsweiler et al. 1991:88; Guichaoua 1989:18). Most devastating in this regard was a serious increase in sleeping sickness which swept right through the region in the first half of the 20th century causing a massive population decline (Austen and Headrick 1983).



The consequences of these kinds of interventions were devastating for the local people, as one missionary reported to Andre Gide:

„For the past year, the situation has been getting more and more difficult. The Mangas are worn out, and have no longer the ability or the will to do anything. They prefer anything, even death, to portage... Dispersion of the tribes has been going on for more than a year. Villages are breaking up, families are scattering, everyone abandons his tribes, village, family and plot to live in the bush like wild animals to escape being recruited. No more cultivation, no more food... Famine occurs and these last few months the Mangas have been dying by the hundreds of hunger and misery“ (cited in Dumont 1962:38)

Reviewing the colonial experience in the Upper Congo, the World Conservation Union team concluded:

„The process of colonisation consisted of nothing more... than the systematic sacking of the region with complete scorn for the inhabitants and their socio-cultural identity“ (Hecketsweiler et al 1991:72).

A terrible but important irony is that the administration's scorn for traditional ways of life has endured well into the era of independence. As a regional „*préfet*“ noted in independent Gabon in 1963:

„We have had enough of these isolated hamlets, which, being so numerous and of eccentric location, lost in the vastness of the

Gabonese forest, have never allowed the Gabonese government to have control of their populations or permanent contact with them and have thereby prevented an improvement of their standard of living“ (cited in Pourtier 1989:110).

Convinced that „no family head can cut himself off from the duty to modernise“, the post-colonial government continued to force villages to resettle, as in the past tearing them away from their crops and plantations without any compensation, overturning residence patterns that reflected local social and political realities and throwing, at least temporarily, into disarray the traditional systems for allocating rights to land. Indeed in some respects the „*regroupement*“ programmes under the independent administration were more onerous than in the past. Houses in the new settlements had to be laid out in regular rows with defined sizes of houseplots and pathways (Pourtier 1989:110). The programme continued into the 1970s and police force was used when the locals resisted. Consequently between 1955 and 1975 the actual number of villages in Gabon halved.

The disruption of people's residence patterns, leadership systems and ties with the land was to have serious long-term consequences. As the oil economies boomed on the coast in the 1960s and 1970s, the rural exodus turned to a flood. For people who had already been deracinated, the move to the city was only one more of many relocations.

## The indigenous elite

The reason for the striking continuity between the colonial and independence policies lay in the acculturation of the African elite, who by the time of independence had absorbed French culture, French values, French education and French tastes to the point where indigenous traditions were treated by them with scorn (Davidson 1992).

The process began before the colonies were formally annexed. Already by the mid-19th century the coastal peoples were enmeshed in European trading relationships according to European values.

As James Barnes noted:

„status was increasingly measured in European terms, that is, in money or in commodities used in commercial transactions. The traditional practice of bartering gave way to a cash nexus that

altered, perhaps irreversibly, traditional methods of assessing and determining value“ (Barnes 1992:19).

Once the territory was annexed the process of assimilation became a more conscious policy (Barnes 1992:26), as crucial a part of the colonial strategy for gaining control of the local populations as the crushing of indigenous resistance by force of arms, the obligatory „*regroupement des villages*“ and the extraction of indigenous surplus in the form of forced labour, *corvée*, taxation and levies.

From the early 20th century the French authorities discriminated between the local Africans and their colonial masters. While the latter were ruled by French law, the former were subject to the „*indigénat*“. This legally constituted process of discrimination assigned an inferior legal status to the local people and allowed the French administrators considerable latitude to administer justice as severely as they saw fit. As Barnes (1992:26) notes „persons under the ‘*indigénat*’ were subject to penalties and taxation without the legal protection afforded citizens“.

However, notably exempt from this discrimination was the small frenchified indigenous elite whose members were considered to be „*évolués*“ and, thus, accorded the status of citizens. In Gabon as elsewhere, this created a local „elite attuned to the French presence and subservient to its interests“ (Barnes 1992:27).

The process of cooptation of the indigenous leadership extended right down to the community level, as the civilian administration imposed a hierarchy of „*chefs du canton*“ and „*chefs du village*“ chosen to act as intermediaries between the villagers and the administration. Dependent on the colonial authorities for their positions and often resented and even, behind their backs, ridiculed by the villagers themselves, these leaders often became ready tools in the colonials' hands and assisted with the unjust exploitation in the concessions (Hecketsweiler et al 1991:70).

Moreover, owing to the success of the colonial French „*mission civilatrice*“, which placed much more emphasis on the education of its subjects as part of a conscious policy of assimilation, there was little conflict between the educated „*évolués*“ and traditional chiefs. As Austen and Headrick (1983:79) note:

„Chiefs and their families were often in the forefront of those acquiring Western education, thus reinforcing their position. The French even encouraged chiefs to send their children to school and occasionally built special institutions for them.“

Advancement in the colonial area was thus measured in terms of the degree to which individuals or groups had acquired a western outlook and French culture. Favoured ethnic groups emerged, considered to be more „evolved“ and less „backward“, and groups which had been middle-men in the pre-colonial trade now became an important base of support for the administration.

It is a structure and a practice which persists to this day. Leaders and chiefs, and favoured ethnic groups, continue to feel that they owe their primary allegiance to the urban elites and to the administration and not the villagers or the remoter, more traditional rural communities.

At the local level, as among the urban elite, these interventions were socially and culturally destructive. As the World Conservation Union team concluded from their study in the Upper Congo:

„The colonial system of exploitation, pushed by powerful political and economic imperatives, developed in complete contradiction to the local social, economic and cultural context - the traditional patterns of social life were replaced, without any kind of compensation, by a western-type hierarchical system not adapted to the local mentality and therefore inefficient, socio-economically speaking because of complete mutual incomprehension“ (Hecketsweiler et al. 1991:72).

### Logging concessions: „Devourers of men“

The trade in non-timber forest products, which had replaced the slave trade and on which the expectations of the concessionaires for ready profits had been based, dwindled during the early 20th century. In the interior, the trade was gradually supplemented with plantation and cash crops - cotton and peanuts in the drier zones; cocoa, coffee and oil palms in the wetter, forested areas. Concessionary companies operating in the hinterland received considerable French development assistance funds in the post-war era, through the FIDES programme, aimed at boosting agricultural production by modern methods (Barnes 1992; Pourtier 1989; Dumont 1962). Even into the 1960s, after independence, plantations established in the concessions, such as that of the *Compagnie Française du Haut Congo*, received substantial grants from the European Development Fund (Hecketsweiler et al 1991; Young 1983)

On the coast however, the trade in non-timber forest products was more rapidly replaced by a trade in timber itself. As in Brazil in the

early 17th century (Hemming 1978), the initial interest in timber was to extract red dyes for use in Europe. Later a small but important trade began in ebony (Wilks 1990:21).

The famous „*okoume*“ (*Acoumea klaineana*) started being used for cigar boxes in 1882, but it was its excellent qualities in plywood that led to it becoming a market leader (Wilks 1990:21). Restricted to the western forests of Gabon and the Congo, it formed and still forms the basis for a logging bonanza and became the foundation for the political economy of the AEF – until the 1960s, the one species represented 95% of Gabon’s timber trade (Pourtier 1989:145). Trade in „*okoume*“ created fortunes for the wealthy foreign loggers and the tree was incorporated into the national coat of arms in Gabon at independence. Champagne became known on these coasts as „*jus de okoume*“ and Gabon still boasts one of the highest rates of champagne consumption in the world (Barnes 1992; Wilks 1990; Pourtier 1989:279).

In the early years, the extraction of the timber had to be done by axe and handsaw, the great logs being then manhandled to the rivers and creeks and so floated out to the waiting trading ships. The process was very labour intensive and it fell to the local people to provide this labour force. Accounts of the conditions in the logging camps make grim reading. Recruited from the interior and sent down to the coastal logging camps, the men had to work on poor diets, lodge in primitive shelters and all for pitiful wages, for months at a time. Alcoholism was a serious problem in the camps and malnutrition, due to a reliance on a diet of milled rice, was manifest in rampant beriberi. Diseases – such as „flu“, yellow fever and trypanosomiasis flourished and venereal infections became rife, and were brought back to the interior when the labourers returned to their families. The population dwindled due to the high mortalities (Pourtier 1989:177-178).

Labour shortage remained the main constraint of these enclave economies. For example „in 1926 the timber companies requested authorisation to recruit 19,000 labourers, the government allowed 9,000 and, in the end, only 4,800 men could be found“ (Austen and Headrick 1983:36). By the 1930s, it was estimated that between one third and one half of males from interior villages of Gabon were brought down to the logging camps and logging continued to employ a quarter of the country’s entire male workforce until the 1950s, when mechanisation made the labour force largely redundant (Pourtier 1989: 175-177).



It is important to realise what this process implied. As Leroy Vail has noted of a similar process in East-Central Africa during the same period:

„The migrant was paid enough for his survival and for taxes, while the migrant's wife and family were expected to sustain themselves by marginal agriculture, maintaining a home to which the migrant returned regularly to beget children and ultimately to retire. The cost of reproducing the labouring population was thereby transferred from the capitalist sector to the village. This effectively meant that villages were subsidising the establishment of capitalist enterprises throughout the region. Employers had the use of the workers at the height of their physical well-being, but escaped the costs of health services and retirement benefits which would have become their responsibility had labour been fully proletarianised“ (Vail 1983:210).

The conscience of the colonial authorities was obviously pricked by this all too evident degradation and exploitation of the local people. As Governor General Rosta noted in 1937:

„Slowly but continuously the main part of the population is making its way across the forests down to the coasts. The logging camps are great devourers of men... Everything has been subordinated to the exploitation of the forest. The forests have sterilised Gabon, smacking down the men and taking off the women. This is the image of Gabon: a land without roads, without social programmes, without economic organisation, the exploitation of forests having sapped all the living force from the country... Between 1927 and 1938 nearly 2 billion francs were generated. What of this money remains in the country? Nothing!.. There is not a single indigenous teacher, doctor or vet, agricultural officer or public works agent“ (Pourtier 1989:146, 173, 181).

The logging, initially carried out without much order along the banks of the lower rivers, moved inland once the most easily accessible trees had been felled and was soon subject to regulations. In 1899, the State asserted rights to all „*terre vacante et sans maître*“ and began handing out logging concessions mainly to safeguard the companies' investments in railway tracks, mini locomotives and machinery. By 1914 the process for handing out logging concessions was legalised and by the 1920s logging got underway in earnest and the area of operations extended down into the coastal forests of what is now the Congo (Pourtier 1989:153).

The large logging concessions were concentrated in the hands of a few French companies. Attempts to provide local leaders with permits to log small areas failed to break the oligopoly. Either the

locals were persuaded to „sub-contract“ to the foreign companies or the permits were taken out in the locals' names only and effective control was immediately passed to their foreign patrons. A common practice was for the French loggers to take African women into concubinage and take out permits in their names or those of their parents (Barnes 1992:19; Pourtier 1989:155). By 1939, of the 1 million hectares of Gabon under concessions, 66% was controlled by just seven companies with some 83 other permit holders having the remaining 34% (Pourtier 1989:159).

Mechanisation, with chainsaws and powerful tractors which were introduced around 1950, led to a rapid expansion of the industry. By 1960 logging concessions covered some 3 million hectares in Gabon and provided some 80% of the country's revenue. The small handful of loggers were thus the real force in the country's political economy as independence approached.

### Independence: *plus ça change...*

Pressure for independence was not marked in the AEF, being much more vociferously demanded by the West African francophone states (Barnes 1992; Davidson 1992; Young 1983). Yet once the process for granting independence to the African colonies commenced, the logic for transferring power to the emerging African elite grew irresistible. Demands for independence based on the right to self-determination were only a small part of this logic - indeed in Gabon the most prominent local politicians' demand was for full integration with France as was assured Guadeloupe and Martinique (Barnes 1992: 34). Much more persuasive were the economic arguments. Once it was realised that the potential costs of maintaining a colonial presence outweighed the benefits, now that continued economic dependence was assured, self-interest prevailed (Martin 1983:25). The AEF, divided into the three countries of Gabon, the Congo and the Central African Republic, was granted independence in 1960.

For the departing colonial power, the crucial concern was to ensure that the „independent“ governments supported French interests. In both Gabon and the Congo, the principal aim was to guarantee that French logging companies were assured of continued access to the forests, but in Gabon, in particular, the French were also concerned to maintain access to strategic minerals - notably manganese and uranium - the latter being of critical importance to the development of France's nuclear programme and its independent

„*force de frappe*“. In the Central African Republic - as the Ubangi-Shari region of the AEF chose to be named - the main concerns that the French wanted to protect were in cotton, coffee and diamonds.

In Gabon, French interests played a determining role in selecting the future leadership. The long-standing alliance between the Mpongwe coastal elite headed by the indigenous businessman Paul Gondjout, the coastal Fang '*évolué*' led by future Prime Minister Leon Mba and French loggers formed the nexus of power. The loggers poured money into Mba's election funds for the Territorial Assembly in 1957 in order to head off the leadership bid by the vigorous Fang agriculturalists of the interior Woleu Ntem region, headed by the more democratically inclined Jean-Hilaire Aubame (Barnes 1992:33). A key figure from the French side was logger Roland Bru who threw his support behind Mba and became a prominent adviser to Mba after independence and even secured an official post in the government (Barnes 1992:39; Pean 1983).

After Mba's accession to power, democratic traditions were quickly overturned. The press was suppressed, political demonstrations banned, freedom of expression curtailed, the other parties gradually cut out of power and the constitution changed along Gaullist lines to vest power in the Presidency, a post that Mba assumed himself. However, when Mba dissolved the National Assembly in January 1964 in order to institute one-party rule, the result was an army coup, which sought to oust him from power and restore parliamentary democracy (Barnes 1992:42).

A year earlier de Gaulle had warned African states that „France would intervene if it considered its interests in jeopardy“ (Barnes 1992:43). The extent to which Mba's dictatorial regime was synonymous with „French interests“ soon became blatantly apparent. Within twenty-four hours of the coup to overthrow Mba, French paratroops flew in to restore Mba to power. After a few days of fighting, the coup was over and the opposition was imprisoned despite widespread protests and riots. Even the US Ambassador was moved to denounce the intervention as „an outright betrayal of Gabonese independence... a unilateral action on the part of a government in Paris exclusively concerned with its strategic interests“ (Barnes 1992:43). The French were unperturbed and, indeed, the paratroops remain in the Camp de Gaulle on the outskirts of Libreville to this day, where they share a hill-top with the fabulous palace of Mba's successor President Haji Omar Bongo - an unforgettable symbol of the coincidence of interests between the French and the ruling indigenous elite.

With the establishment of a one-party state, abuse of power and office became the norm. Wealth was concentrated in the hands of the ruling elite and the network of patronage became further and further removed from the day to day concerns of ordinary citizens. The Presidency passed smoothly from Mba to Omar Bongo, who, according to French author Pierre Pean, was „the choice of a powerful group of Frenchmen whose influence in Gabon continued after independence“ (Barnes 1992:47).

The flourishing enclave economy based on uranium, manganese, timber and oil swamped dissent against the excesses and repression of Bongo's government. As James Barnes has noted:

„participation and cooperation were rewarded handsomely, and the President was particularly generous to those who expressed their personal and political allegiance to his regime... Bongo created a monopoly over the decision-making process...[and evolved] a system of patronage controlled by [him] that rewarded the faithful with attractive sinecures in the civil and military bureaucracies“ (Barnes 1992:50).

Key posts in his administration were held by 125 Frenchmen. The paratroops were maintained in the Camp de Gaulle and they, along with a 1,500 strong presidential guard commanded by French and Moroccan mercenaries, provided security. Bongo has also sought spiritual protection against his enemies. He converted to Islam to ward him from sorcery attacks and has been initiated into a secret society that supposedly protects him from witchcraft. Those who persist in their opposition to his rule have been the victims of human rights violations, including arbitrary imprisonment and torture, according to Amnesty International and the US State Department (Barnes 1992).

Bongo and his cronies have amassed substantial fortunes having, in the words of Assam Assele, „transformed Gabon into their private preserve, handsomely enriching themselves in the process“ (Barnes 1992:60). Professor Barnes claims that *billions* of French francs have been transferred *annually* to Swiss and French banks.

The story in the Central African Republic is not dissimilar. After an aeroplane accident ended the life of the independent minded first President, Barthélemy Boganda, his successor, David Dacko received strong French support. But his repressive policies and his lack of effective economic reforms made him locally unpopular, and he was widely perceived as a „French puppet caring only about cultivating French interests“ (Newton 1989:107).

When Jean-Bedel Bokassa replaced Dacko on New Year's Day 1966, some hoped that the country, which had been virtually bankrupted by Dacko's mismanagement, might be given a chance to recover. However, Bokassa's capricious and violent rule was to become synonymous with the worst excesses of African dictatorship - "the systematic perversion of the state into a predatory instrument of its ruler" (Young 1983:292). Massive corruption was the norm and Bokassa himself appeared to make no distinction between the revenues to the State treasury and his personal income. Bokassa is famous for his alliance with French President Giscard D'Estaing, who was an enthusiastic big game hunter in the Central African Republic's eastern savannahs. Bokassa rewarded his friendship with handsome gifts of diamonds - causing a scandal in France when this was exposed in *Paris Match*. In return, D'Estaing supported Bokassa's megalomaniac coronation as Emperor of the 'Central African Empire' in 1977 and the avenue which leads to the Imperial Palace, built for the coronation, is still named after him. The French taxpayer picked up the US\$20 million tab for this farce.

The gross wastage of state revenues and the institutionalised graft and venality undermined the export sector. Coffee production declined, cotton production fell five-fold and diamond revenues were siphoned off into private bank accounts. Only in 1979, when it came to light that Bokassa visited prisons to personally torture and kill prisoners who had stood up to his whims, was French government support finally withdrawn. The paratroops were sent in once more and Dacko restored to power, to be replaced by army strongman General Andre Kolingba, the present President, in 1981 (Lamb 1990; Newton 1989; Young 1983).

Independence in the Congo pursued a somewhat different course. Initially, the post-independence regime was very much in the neo-colonial mould - servile to French political and economic interests. However, as Crawford Young (1983:310) noted, „it was swiftly corroded by venality and became an embarrassment not only to its internal supporters but also to its French sponsors“. After an uprising in the streets, the regime was overthrown in 1963 and a hardline Marxist-Leninist government assumed power. The French chose not to intervene.

Perhaps surprisingly, French influence and the role of foreign capital in the Congo was not so much rejected as the rhetoric would suggest. The state did create marketing monopolies for agriculture and forestry and other sectors were nationalised including the petroleum distribution network. But the timber concessions, some of the

oil palm plantations and many other import-export concerns remained in foreign hands. Foreign oil companies, too, were assured a satisfactory cut. „Even after a decade of official Marxism-Leninism in Congo, the primacy of the French business community was immediately apparent to the most casual visitor to Brazzaville“ (Young 1983:312).

All three countries remained tied to the French economy through their belonging to the French franc zone, which while it help stabilise the economies and stave off inflation also resulted in a steady overvaluation of the currency (*The Economist* 8 May 1993). French administrative practices also prevailed, perpetuating a top-down style of government which denied local people an effective voice (Young 1983: 294). Indeed the number of expatriates running the economy and administration actually increased in the post-independence era. In the Congo, during the 1960s, there were 11,000 expatriates - „who consumed 40% of merchandise and commercialised services, made all of the country's private savings, all of which they exported by value“ (Guichaoua 1989:26). Their numbers nearly held steady for some years and increased again with the oil boom of the 1970s. In Gabon the number of expatriates increased from some 4,300 at independence to some 30,000 by the 1980s, drawn in mainly to service the oil industry. The figure is down to some 13,000 today - due to the country's balance of payments crisis (Barnes 1992:55).

Although the African business sector also increased in the post-independence era, particularly in Gabon where an indigenous entrepreneurial elite had established itself during the slave trade, commerce has to a large extent remained in the hands of foreign companies (Barnes 1992:74). In the Congo and the CAR many of the European trading houses were the lineal descendants of the notorious concessionary companies of the early colonial era (Young 1983:301). The „*évolué*“ elite shared in the profits, either by working for the foreign companies, or by swelling the ranks of the bureaucracy. In the Congo, where the latter tendency was most strongly marked, the salariat mushroomed from 3,000 in 1960 to 73,000 by the end of the 1980s. A 2,500% increase in 25 years! (Guichaoua 1989; cf Young 1983:303). As Young has noted, this created a „state bourgeoisie which quickly took its place alongside the previously dominant foreign estate“ (Young 1983:302).

## Pacts with the Devil: enclave economies

The close convergence of interests between the post-independence bureaucracies, the ruling indigenous elites and foreign capital opened a deepening gulf between the rulers and the ruled. The result was that though „development“ was certainly promoted in all three countries, it was of a kind that bypassed the rural poor. Prestige projects in construction, mining, railways, oil, forestry and agribusiness served the interests of the urban elite and foreign companies, perpetuating the enclave economics of the colonial era.

The most famous of these projects, and one with major implications for the future of Gabon's forests was the „*Transgabonais*“, a massively expensive railway linking Libreville with Franceville, which even the World Bank declined to fund on the grounds that it was uneconomic and that Gabon would be better served by a road network (Pourtier 1989:231).

President Bongo was not to be dissuaded. In a now famous speech he stated:

„I swear in front of you, with or without the World Bank, the *Transgabonais* will be built. It will be built one way or the other, with someone or another. If it means making a pact with the devil, we will make a pact with the devil“ (Haji Omar Bongo, President of Gabon, February 1973 in Pourtier 1989:229)

The world is full of devils. Though lacking the World Bank's sanction, other banks and enterprises were keen to do business. The *Transgabonais* project was supported by, among others, the African Development Bank, certain Arab states, Canada, USA, Italy, West Germany, the European Community, Japan, France and the UK, which supplied US\$45 million of tied aid for building contractors Taylor Woodrow and Wimpey (Barnes 1992). The US\$ 5 billion boondoggle guaranteed lucrative contracts for a whole range of foreign construction and consultancy companies.

Yet this is a crazy scheme. Apart from the towns of Franceville and Libreville at either end of the railroute the track serves only some 150,000 people within 100 kilometres either side of the railroad. Even the manganese which the railroad could haul to Libreville for export is committed by treaty to be exported via a vastly expensive cable and train transportation system through Pointe Noire in the Congo. With the US Steel's iron ore prospect at Belinga now on hold, the railway's only hope of revenue is timber (Barnes 1992; Pourtier 1989). To the thousands of hectares of forest cleared to lay the railway must now be added the logging of millions more just to keep it running.

In the name of diversifying the economy the project has in fact created greater dependence on foreign enterprise and encumbered the country with a substantial foreign debt.

But the main foreign investments in Gabon and the Congo in the post-independence era - above all French but also significantly Japanese, from the USA and from other European countries - have been in mining and oil. Potash, uranium, manganese, oil and gas reserves have been lucratively developed, providing generous profits for foreign businesses (Barnes 1992: Guichaoua 1989).

Yet, the profits from these enclave enterprises have been largely repatriated by the mining companies while the state's revenues have been syphoned off by the countries' elites and used to pay the bloated bureaucracies. Little has been invested in sustainable enterprises or services relevant to the lives of the poor who make up the bulk of the population. The money has not provided the basis for real economic growth (Martin 1983:83).

## Logging

The politics of Equatorial Africa in the post-independence era, sketched in above, ensured that logging remained an enclave for foreign companies who enjoyed the patronage of the governing elites. In all three countries logging intensified and, even after the oil boom in Gabon and Congo, the substantial fortunes to be made from the industry ensured that the sector remained vigorous.

Mechanised logging, which began to develop in the 1950s, massively extended the area of extraction during the 1970s and 1980s. Whereas some 50 cubic metres of timber were being extracted per man day in 1950, over 300 cubic metres per man day were being extracted in 1970. By this time even the remote forests of the northern Congo and the south of CAR were under exploitation (Carroll 1992). This kind of logging required high overheads and substantial investment making logging even more the preserve of foreign capital (Pourtier 1989:166).

In Gabon, logging areas were zoned in 1961. The already heavily logged but more readily accessible coastal forests in „Zone 1“ were reserved for nationals - though often they sub-contracted to foreigners as in the colonial era, while the hitherto largely untouched „Zone 2“ further inland was opened to foreign companies. From 3 million hectares under concession in 1960, the area increased to 5,766,000 by 1976. Twelve companies between them dominated the trade.



Unsurprisingly, the one to reap some of the greatest gains was the *Nouvelle Société du Gabon* run by Mba's adviser and Bongo's protégé, Roland Bru (Pourtier 1989). Today the company is one of three illegally logging the La Lope Faunal Reserve, the centre-piece of the Government's conservation programme and site of a European Community funded eco-tourism project.

Roland Pourtier (1989:170) has this impression of the foreign timber tycoons:

„Most of the loggers are European businessmen, many old colonials of an adventurous bent, with big stomachs and an even greater appetite for francs, viscerally attached to their bush life, afloat with good fortune and knowing all too well how to make a killing.“

Logging is now spreading into a new „Zone 3“ on both sides of the Transgabonais railroad - also referred to as the „*Zone de Attraction du Chemin de Fer*“ - where another 3 million hectares are to be made available in 37 lots on condition that the logs are transported on the train. The industry has been reluctant to accept this deal. The railway parastatal - OCTRA - charges high tariffs and many loggers prefer to sneak their logs out along the atrocious roads rather than pay. By 1992, some 8.6 million hectares of Gabon's forests were under concession although only some 4 million hectares were currently being logged (World Bank 1992a:12).

Little is known of the direct impact of this logging on wildlife (McShane-Caluzi et al 1992:51). Logging opens up forests to settlement and small-scale shifting cultivation, but this is usually a temporary phenomenon - labourers relocating with their families to be near their place of work. More damagingly, it also opens otherwise inaccessible areas to hunting for the flourishing bushmeat trade (see below). The long term impact on the flora is also poorly understood: but what is clear is that the present rate of cut is unsustainable and valuable timber resources are being liquidated faster than they can regenerate.

Gabon has a large number of laws and regulations meant to control logging and ensure sustained yield production (Wilks 1990). However, they are little heeded or applied (McShane-Caluzi et al 1992:21; Wilks 1990:76). And since the government forestry service is funded from the central budget rather than through stumpage fees and other tariffs on the logging itself, there are few incentives for foresters to impose the regulations (Reitbergen 1990). On the other hand, the loggers themselves make sure the foresters are provided

suitable incentives not to apply them. As a result, almost all the forestry regulations are not applied, monitored or observed. The Forest Department does not make inventories. Management plans for exploitation are rarely required. Inspections are rare and statistics are not checked. Regulations of the cutting cycle are mostly ignored as are the, anyway inadequate, regulations on cutting size (McShane-Caluzi et al 1992:21).

The lack of control of logging has seriously damaged the forests. Careless extraction of choice timbers coupled with repeated re-entry has meant excessive damage to the residual stands - leading to their complete destruction as commercial forests (Rice and Counsell 1993).

In the Congo, the story is much the same. By 1988 some 7.7 million hectares out of a total 13 million hectares of exploitable forest were under concession (Hecketsweiler 1990:15). Foreign companies, or joint operations dominated by foreign capital, produce the vast bulk of the timber - near 80% of the sawlogs, 90% of the sawnwood and 92% of the plywood (Hecketsweiler 1990:32). As in Gabon, the government „largely lacks adequate technical and economic competence to control and rationally manage its forests“ (Ibid:39).

During the 1970s logging in the Congo was widely used as a fraudulent mechanism for capital flight, through false declarations of the quantity and type of timber being exported and through transfer pricing. But the government's attempts to curb these crimes through the creation of State monopoly for marketing timber was ineffective. The State agency ran at a loss due to inefficiency and corrupt collusion between loggers and officials (Djombo 1992).

A recently leaked report, prepared for the World Bank, reveals that in fact the logging industry in the Congo is swindling the government of millions of dollars. Unpaid taxes, stamp duty, stumpage and transport fees are estimated to exceed US \$12 million on declared production alone, but huge quantities of timber are slipping across the border illegally into neighbouring Cameroon and Central African Republic.

According to the report „almost all the companies in the forestry sector are „outside the law““. Despite good legislation, and contracts which supposedly ensure careful forest management, there is no effective oversight of actual operations. The report concludes that „forestry administration is non-existent“ and as a result „the forest is left to the mercy of the loggers who do what they like without being accountable to anyone“.

Companies are taking maximum advantage of this lack of proper supervision. For example, the French company *Forestiere Nord Congo* (FNC) has exclusive rights over ten years to log out some 187,000 hectares of forests in the north. The contract obliged the company to process 60% of the logs on site and to establish a major sawmill and woodprocessing works of entirely new, imported materials. In exchange, the government gave the company some generous benefits - massively reduced import duties and a five year tax holiday on wood production, including company taxes, property tax and stumpage fees. Yet, in complete violation of these terms, the company bought a dud second-hand mill in the Congo which has never functioned, has processed no timber whatsoever and has exported sawlogs for six years through the tax loophole it secured for itself. Even the tax it should have rendered has not been paid up. All in all, the company has cost the Congo some US \$2.9 million in lost revenue.

Just north of FNC, another isolated concession is being worked by the *Société Forestiere de Missa* (SFM) which turns out to be a front for the company SCAD which is logging and operating a saw mill just inside the border in the Central African Republic. Having exhausted its forest concession in the CAR, SCAD is now using its quarter million hectare concession in the Congo to keep its sawmill supplied. Thus, although the contract establishing SFM commits the company to extract its timber by road southward (thereby developing the infrastructure of northern Congo), in fact all the timber is disappearing into the CAR, to the extent that the local administration has no record whatsoever of the company's trade. Nor has the Congolese government attempted to set up customs or forestry posts to monitor the company's activities. „In effect“, the report notes, „Congo has generously handed the company a chunk of its territory without getting any benefit whatsoever“. Indeed, since the employees are all foreigners, even the salaries are being expatriated.

Just south of this mayhem, by the river Oubangui, the French-Congolese joint operation, SOFORIB, has developed an even better scam. Like the others, it has dodged its obligation to process 33% of the timber extracted, sending only sawlogs down the river to Brazzaville for export. But SOFORIB, being 49% owned by the Congolese government, has also managed to incur an enormous debt of around US \$ 10 million. No surprise that after these windfalls, all the expatriates running the operation have left the country.

Things are not much better on the half million hectare concession being logged by the *Société Congolese Arabe-Libyen* - a joint

venture of the Congolese government (51%) and *Jamahiriya Arabe-Libyenne* (49%). It too has failed to comply with the requirement to process timber locally but enjoys its 7 year tax break nonetheless. It too is not paying its bills and has managed to run up a healthy US \$ 7.8 million debt. The situation, the report concludes, is „catastrophic“.

The *Société Nord Bois de Sangha* (SNBS - 53% *Boissangha* (French), 5% *Labame* (French) and 32% Congolese) has US \$ 290,000 of unpaid tax while „most of the undertakings made by the company have not been met“. Next door the 480,000 hectare concession being logged by CIB, a holding of the German company *Hinrich Feldmeyer*, has run up US \$ 1 million in debts and is „not respecting the management plan“.

Perhaps most distressing of all, however, is the vast logging and processing complex that has developed around the northern capital Ouesso. Here the SCBO (*Société Congolais Bois de Ouesso*) with 1.13 million hectares has benefited from massive foreign „aid“ to install a highly sophisticated sawmill and veneer producing works - technology the report criticises as a result of „*folies de grandeur*“. With technical advice from the Finnish company *Jaako Poyry Oy* and some US \$12 million from the World Bank, the SCBO incorporated as 51% Congolese government, 45% *Société Agro-Finance* from Luxembourg and 4% *Silos de Sud-Ouest*. Its board included the Congolese President himself, an ex-minister and a French management consultant. Before long costs skyrocketed from an estimated US \$ 39 million to US \$63 million. Further loans were incurred from a variety of African banks but the mill was never completed and now remains mothballed with only a small sawmill carrying out some elementary cuts. The report ends by noting: „the situation is catastrophic and no further activity within the present arrangement is possible“. The company's failure is „due quite simply to the overvaluation of the project which has allowed some vultures to enrich themselves immeasurably at the Congo's expense“ (Commett 1992).

Meanwhile in the south of the country the situation is in some ways worse. Although supervision is slightly more rigorous, and processing more developed, the quality of forest management is very poor. Nearly all enterprises in the region are outside the law and unpaid taxes on declared production total well over US\$ 1 million (Commett 1992). Typically, companies practise very selective high-grading followed by repeated re-entry. So, instead of making a single intensive cut and then waiting 35 years or more before allowing machinery back into the forests, as regulations require,

loggers are returning every few years to cut more trees as market opportunities for other timbers develop or preferred species are exhausted. The result is serious forest degradation, to the point where forest regeneration is in real jeopardy. Scrappy regrowth dominated by shady broad leaved understorey species, like Marantaceae, mean that timber-rich forests may take centuries to re-establish themselves. The logging is also disgracefully wasteful with up to 50% of timber being dumped in the forest for lack of processing capacity (Doumenge 1992).

In the Central African Republic, where 48% of the exploitable forests are under concession (Carroll 1992), the accountability of the logging industry is even worse. Illegal cross border logging into the forests of north Congo was observed by FAO technicians in the mid-1970s and smuggling of timber down the Oubangi and Congo rivers to Brazzaville was almost normal behaviour. Today it is common knowledge in Bangui that nearly all the concessions are being illegally logged, with all the regulations flouted and much of the timber clandestinely leaving the country via the new road connections with the Cameroons. President Kolingba himself is alleged to be closely linked to businessman M. Kamash who owns the company SCAD which processes timbers illegally slipped across the border from north Congo. In common with all the concessionaires in the CAR, „SCAD carries out no management and employs no foresters - they are just timber merchants who mine the forests“, comments a local aid agency official. Staff in the forestry department privately acknowledge that it is not considered profitable to log sustainably in the CAR and, anyway, that there is nothing to enforce it.

The social impact of logging on local people has been disgracefully little studied in Africa. If anything, more is known about the impact of logging on gorillas and elephants than its effect on people. This intellectual vacuum has allowed a mythology to develop, according to which, in contrast to Amazonia and Southeast Asia, local people far from objecting to logging, actually welcome it for the roads, schools and clinics and jobs that it brings.

It might be fairer to say, however, that local people, denied for over a century a say in how their forests should be „developed“, have learned to make the most of logging. A deep seated resentment of logging as an intrusion of their land rights is widely noted (e.g. Witte 1993; Doumenge 1992:102). Typically, logging is a boom and bust phenomenon, bringing rapid social change, jobs and cash, and then moving on. Schools, clinics and roads - if they were ever

provided - are not maintained and soon fall into disrepair. New expectations and new needs created by the ephemeral cash incomes in the logging camps cannot be satisfied on a sustainable basis once the logging ends. This contributes to the instability of the population, as particularly the younger elements leave for the towns or other enclaves.

Although conditions in the logging camps have improved since the colonial era, they are far from salubrious. Particularly among „pygmies“, who make up between 30 and 47% of the workforce in the logging camps on the Congo-CAR border, diseases such as malaria, yaws, ulcers, tuberculosis and jiggers are rife (Oubangui nd) and companies discriminate against „pygmies“ by not providing them the same amenities as Bantu people. „Pygmies“ in the new settlements that have sprung up in response to the logging and wage labouring have suffered a breakdown of their traditional social structures and a loss of forest dwelling skills (Sarno 1993; Wilkie and Sidle 1990).

One study of the impact of logging concluded:

„Health and education facilities generally do not keep pace with the new population influx and the indigenous people are the last to be given or take advantage of these services. Ultimately, they are displaced and end up impoverished citizens, marginalised to the less desirable land and poorly integrated into the national society“ (Bailey et al 1990 cited in Carroll 1992:28).

In sum, foreign companies, national politicians and government officials are engaged in what amounts to massive fraud, whereby the countries' forest heritage is being exploited for their personal gain at the expense of the local people and their chance of sustainable development.

## Rural Stagnation

For the rural communities, the long history of exploitative, extractive and enclavistic development has meant marginalisation and poverty. Despite the statistically high per capita incomes of Gabon and the Congo relative to other sub-Saharan countries, the rural people are poor and getting poorer. Indeed it is probable that in terms of diet, morbidity and longevity, rural people in Equatorial Africa are worse off today than five centuries ago.

Colonial and post-colonial agricultural policy-makers alike have

had little patience for indigenous systems of agriculture. The Gabonese government's attitude is encapsulated in this statement:

„Agricultural development is not possible without a complete transformation of traditional modes of production... The need is to find new forms of production to promote an efficient type of modern agriculture charged with a real enterprising spirit“ (Government of Gabon, Vth National Plan cited in Pourtier 1989:283).

Thus, while most investment has been directed into the extractive industries, what little was put into agriculture was to promote cash cropping and exports. Following the pattern in the Belgian Congo (Harms 1974), the colonial authorities did experiment with regimented smallholder agriculture during the era of the „*regroupement des villages*“ (Pourtier 1989: 109) in an attempt to increase productivity and oblige the marketing of cash crops. However, only in the drier areas of the CAR did experiments with cotton production yield good results - from the colonials' point of view - and in other areas the „*paysannat*“ experiments were soon abandoned (Young 1983).

Most government efforts to develop agriculture have been invested in agribusinesses. Funds provided by the French through the post-war FIDES schemes and more recent state investments have promoted large-scale farming - cattle ranches, sugar plantations, battery poultry farms, rice schemes, rubber and oil palm estates and even banana plantations (Barnes 1992; Guichaoua 1987; Pourtier 1989). The explicit aim, notes Pourtier, has been to replace traditional, itinerant, family-based and labour intensive smallholder agriculture with fixed, intensive, mechanised agriculture serviced by wage labour. These heavily subsidised schemes have undercut small farmers, destroying the last elements of cohesion of rural society (Pourtier 1989:283).

The only notable exceptions have been African Development Bank funds provided to stimulate smallholder cocoa and coffee production among the Fang of the Woleu-Ntem region of north Gabon, which have been reasonably successful (Barnes 1992).

A century of neglect of smallholder agriculture has had inevitable consequences. In the CAR, despite the colonial focus on dryland farming of cotton and coffee cultivation in the wet zone, only 1% of the country is under agriculture (Carroll 1992:9). In Gabon, agriculture accounts for only 8% of the GDP, occupies only 0.5% of the surface of the country and supplies only 10-15% of the country's food needs. The other 85% of food needs are supplied through imports. The country's 70,000 smallholder households, who make up half the sparse popula-

tion, cultivate only 60,000 hectares (World Bank 1992a), down from over 106,000 hectares in 1960 (Barnes 1992:87). Even traditional peasant crops like taro, yams, manioc, mangos, avocados and vegetables are imported from neighbouring African states, notably Cameroon (Pourtier 1989:278). Until recently the rural population was actually declining due to the rapid rate of migration to the cities. Even now some 1.8% of the rural population migrate to the cities every year and it is mostly the young who leave. The mean age of village household heads has increased from 45 years in 1960 to 52 years by 1984 (McShane-Caluzi et al 1992).

In the Congo the situation is even more bizarre. Agriculture yields only 5.9% of GDP and the rural people are now in a minority. Since independence there has been a massive migration towards the cities. By 1972, 42% of the population was concentrated in urban centres over 25,000 (Young 1983:300). By 1990, a staggering 52% of the population, and 85% of men between 25 and 29, were in two cities alone. Fully 70% of the population is urban, despite the fact that the country has almost no industrial base (Guichaoua 1989). The lack of young males in the countryside places a heavy burden on women, children and the old. Fully 70% of Congolese farms are managed by women (Cleaver 1992:69). Education, preferentially given to young males, exacerbates this trend. The result is that towns are considered the domain of men and the countryside that of women (Guichaoua 1989:32).

The governments provide almost no services to the rural sector. Schools and clinics are absent or inadequately resourced. Credit and marketing schemes are lacking and roads are in chronic disrepair. These problems coupled with the over-valuation of the currency make it unlikely that smallholder agriculture can be revitalised without radical policy changes. In the Congo, the prospects seem so bleak that the World Conservation Union has concluded that „the Congolese rural way of life is gradually and inexorably dying“ (Hecketsweiler et al 1991:40).

The exceptional decline of rural life in the Congo is somewhat surprising considering that the country made greater progress than Gabon towards developing a dynamic and independent rural sector in the post-war years. Andre Guichaoua, in his dismal account of Congolese agriculture subtitled „*la liquidation du 'monde paysan' congolais*“, explains how these gains were squandered after independence, first due to the deepening control by foreign companies of mining, petroleum and export-import businesses and, secondly, due to the state's attempts to direct the agricultural sector itself. Excessive and ineffective state



interventions blocked rural progress and blunted rural producers' initiative (Guichaoua 1989). Programmes by the ILO and UNDP to develop a more dynamic agriculture based on rural cooperatives foundered on a lack of understanding of the customary rules regarding inheritance, land rights and residence (Desjeux 1987). These factors, coupled with the crazy increase in the salaried bureaucracy, which drew many people into the urban service sector, ensured that rural people's concerns received the lowest priority.

The marginalisation of smallholder agriculture has also weakened and transformed local level political institutions. Increasing mobility has weakened community ties and diminished customs favouring the redistribution of wealth and land. Echoing the political shifts seen in the era of the slave trade (Harms 1981 discussed above), traditionally matrilineal groups have become more patrilineal and marriages with women classified as „slaves“ (i.e. without lineage and therefore without kin to make demands on agnatic inheritance) have been favoured. These internal trends have been reinforced by imposed national laws which favour cognatic succession. These tendencies have further weakened the status and security of women (Desjeux 1987).

The domination of the political economy by the urban salariat has encouraged richer villagers to invest their slender cash resources not in developing village economies but rather in sending their children to schools and cities to get jobs in the bureaucracy. Once they have obtained jobs in the administration „their role is to redistribute what they can back to their villages of origin“ (Desjeux 1987:69). Dominique Desjeux explains:

„Just as the administration, in a general sense, seeks to use the chieftaincies as a relay with the peasant, so the chieftaincies seek to invest their nephews, children and 'country' in the administration, with the aim of benefiting by return from any chances of redistribution“ (Desjeux 1987:69).

The drift to the cities and the investment of rural communities in links with the urban populations results in rural communities being meshed through a complex web of kinship and customary ties with their relatives in the cities. Desjeux (1987:72) estimates that two-thirds of clans in the Congo are now in the cities.

The rural exodus and the decline of agriculture have, paradoxically, had severe environmental consequences. First, the loss of man-power in the rural communities has led to wasteful land use and resource management, probably the main cause of excessive cutting

of gallery forests in the Plateaux and Pool regions of Congo. Deforestation around town centres has also increased noticeably. Around Libreville and Pointe Noire, for example, squatter settlements have spilled into the local forests to eke out an existence through subsistence agriculture, a trend that has intensified markedly in recent years with the balance of payments crises in Gabon and the Congo. Around the capital of the CAR, Bangui, where the bankrupt government has not been able to pay government servants for the last six months, the demand of the city's half a million people for some 253,000 tonnes of fuelwood per year is causing the forest to retreat to the south and west at the rate of 0.5 to 1 kilometre per year (PARNR 1992). The salariat can no longer afford paraffin to cook.

Perhaps the most damaging consequence has been the „development“ of the trade in bushmeat - which threatens the extinction of many large and medium sized mammal and bird species, long before their habitats are destroyed. This is worrying not only from a „conservationist“ point of view but also because rural nutrition is suffering from declining meat consumption. The long term implications for the forests' biological diversity is unknown. Many plant species, including some commercial timber species, rely on mammals and birds to distribute pollen and seeds. Without these vectors, plant species diversity may decline.

The logic of the bushmeat trade is inexorable. Poor transport and marketing facilities and the difficulties rural producers have competing with cheaper imported foodstuffs, mean that only culturally valued, light and easily transportable commodities have a chance of competing in urban markets. Bushmeat fills these criteria perfectly. Whether smoked or fresh, bushmeat is considered a local delicacy and has a fetish value as a „noble“ food that conveys spiritual powers. A preferred food for celebrations and social events, bushmeat is bought, by the salariat in particular, for its prestige value and often „sells for more in the market than beef, poultry or other domestic meats“ (McShane-Caluzi et al 1992:51). Echoing the traditional duties of the hunter, bushmeat is still preferred as a gift to in-laws as a sign of respect (Doungoube pers. comm. 20 November 1992).

This demand has made bushmeat the main source of income for rural communities, particularly those in forest areas (Doumenge 1992; McShane-Caluzi et al 1992; Wilson and Wilson 1991). For a rural visitor to the urban centres, a stash of bushmeat in a basket is the equivalent of a credit card (Hecketsweiler et al 1991).

Because of the illegal nature of the trade in bushmeat, the volu-

mes of the trade have proved hard to gauge. The World Wildlife Fund team in Gabon estimate, conservatively, that four tons of meat enters Libreville every month (McShane-Caluzi et al 1992:51). A study of the markets in Pointe Noire in the Congo suggests that some 260,000 animals are sold there every year. This implies that in the „catchment“ for Pointe Noire local hunters are killing over half a million animals per year, as field studies show that for every animal traded to the city another is consumed or traded locally (Wilson and Wilson 1991). Similar studies in Bangui reveal that bushmeat is traded from up to 350 kilometres away. The nearer to the capital city, the higher the market price bushmeat commands (Doungoube 1991).

Gustave Doungoube's studies in the CAR reveal that a crucial factor promoting the development of the bushmeat trade is transport: the better the roads, the greater the trade - so long as the fauna is not extinguished (Doungoube 1991). The timber industry which relies on the creation of an extensive network of roads for the extraction of logs thus plays a major role in the expansion of the bushmeat trade.

As the World Wildlife Fund found:

„Logging and hunting are closely related in Gabon... [due to its] opening new areas for hunting and settlement... [W]orkers at forestry camps hunt with guns and snares, and hunting usually continues long after the logging is completed, since the new roads permit entry into previously inaccessible areas“ (McShane-Caluzi et al 1992:28).

Where logging is intensive a complex grid of feeder roads is established that provides easier access for hunters and makes control of poaching very difficult (Carroll 1992:27).

Main roads to service the logging industry have also been built with international assistance. French development funds and African Development Bank money, for example, have been spent on the so-called „4th parallel“ road which cuts through the forests of southern CAR. Ostensibly provided to assist with the marketing of coffee, it is common knowledge in Bangui that this road has really been put in to facilitate log extraction. The World Wildlife Fund fears that the road „could be a disaster for the forest, its wildlife and people“ due to uncontrolled logging and poaching for the bushmeat and international wildlife trade (Carroll 1992:26). Indeed, even the coffee marketing body ADECAF is worried that forest loss due to the road may provoke a regional drying and a decline in coffee production.

Animals are not only hunted for their meat. The traditional marketing of exotic animal parts for their fetish value - like gorilla's hands for providing manual strength - has been augmented by the

international trade in wildlife products - live animals for zoos, ivory and skins as trophies etc. Poaching of forest elephants has become a critical problem in northern Congo and southern CAR. The World Wildlife Fund predicts that elephant populations in the Dzangha-Sangha area, the remotest corner of the country, will be extinct within five years if the trade is not controlled (Carroll 1992:69).

Vivian and Barry Wilson conclude from their studies in the Congo that if something is not done to restrict the bushmeat trade „the country will find itself with a critical lack of game and the peasantry will soon be without resources“ (Wilson and Wilson 1991).

It is important to note, however, that it is the *trade* in wildlife products - bushmeat and other items - not the self-provisioning activities of local communities that are the main cause of faunal decline. The World Wildlife Fund's conclusions after several years in Gabon were that:

„subsistence hunting by small rural communities has a limited impact, [while] professional hunters who provide meat for larger towns can decimate the fauna of a particular area in a short time“ (McShane-Caluzi et al 1992:28).

Yet it is also important to note that in many areas the very same individuals act both as „professional hunters“ and subsistence hunters. The only difference is that the „professional hunter“ is hunting for the market and may use guns loaned by local chiefs and administrators, who also finance the transport of wildlife products to distant urban centres (and make a 40% profit thereby). In the CAR the great majority of bushmeat merchants in the capital, Bangui, are women, some of them wives of officials. They provide guns to experienced local hunters, with whom they have informal contracts to ensure that they get the game so killed (Doungoube 1991). The pattern is common throughout the region. The bushmeat trade is mediated through clientelistic networks - the web of kinship connections, traditional leadership patterns and administrative hierarchy - that link rural communities with the urban centres. The intimate involvement of influential officials in the trade is one of the factors that makes its control so intractable.

In the south-west CAR, for example, where the government with international assistance has been establishing wildlife sanctuaries, local officials, including those involved in Parks management, lend their guns to „pygmy“ hunters who shoot game for small payments. While the bushmeat is then sold in the local markets, valuable skins and ivory are traded more widely for considerable gain (Sarno 1993; Carroll 1992).

„Professional hunters“ are by no means only villagers. Leaving aside trophy hunters - mainly foreigners who get permits to hunt prestige game - urban teams, that use trucks to enter forests considered „open access“ areas, are also major players. The Forestry and the Hunting and Wildlife Departments are heavily implicated in the trade in wildlife products. The World Conservation Union estimates that, in the north Congo, „out of ten poachers, six are agents of ‘*Eaux et Forêts*’“ (Hecketsweiler et al 1991:190).

The World Wildlife Fund team in Gabon has concluded that the denial of local peoples' rights to land and control of natural resources is part of the problem.

„Gabon remains a classic example of a centralized bureaucracy in terms of control over natural resources. As a result decisions are taken with little or no input from those rural communities most affected by interactions with wildlife. These communities derive little or no benefit from the resources, and hence have little interest in their conservation“ (McShane-Caluzi et al 1992:39).

## Land Rights

Considering the tragic history of social disruption, exploitation and political marginalisation suffered by the indigenous peoples of Equatorial Africa, the endurance of their customary systems of land tenure are testimony of their fundamental importance to these societies. Studies throughout the region agree that the local peoples have clear concepts of land ownership and control (eg Hecketsweiler et al 1991:329). Yet these customary rights were largely ignored by colonial authorities, are not secured through national laws, are increasingly threatened by top-down development and conservation projects and are being side-stepped by an emerging indigenous elite seeking individual title to extensive areas of land for speculation, agricultural estates and personal gain.

In a study of the land tenure systems of four Bantu groups in Zaire, Robert Harms concluded that land is traditionally held by small groups which are constantly dividing, merging and shifting; and the person responsible for land is relatively low in the political hierarchy. This is because of the prevalence of shifting agriculture, which means plots are cultivated only temporarily, and of the low population density, which means new plots are easily found and there is consequently little interest in maintaining permanent *individual* rights to land (Witte 1993).

„Almost everywhere in Zaire large tracts of land are held by corporate groups. Individual parcels for cultivation within a tract are redistributed to the members of the group according to local laws each time the soil becomes exhausted in one place and it becomes necessary to set up new fields. Sometimes individuals move their fields, while at other times the whole village moves, causing a complete redistribution of the land. In the majority of cases the corporate group that holds the land is the lineage, though sometimes it is a political chiefdom. The land held by the group has fixed boundaries, either clearly defined geographical features or imaginary lines. Within the tract of the corporate group there are several kinds of rights in land, such as hunting rights, gathering rights, and cultivation rights. The individual cultivator, who gains rights to a plot of land by putting it under cultivation, maintains his rights until he abandons the field for another. In land held by lineages, strangers can gain rights in land. The key test is residence [and] most systems draw a careful distinction between inherited rights, which have come down from the ancestors who first settled the land, and strangers' rights, which cannot be passed on“ (Harms 1974:2)

Studies also agree that „pygmy“ groups do not assert exclusive rights to land separate from their Bantu patrons. Summarising the available knowledge, Robert Bailey, Serge Bahuchet and Barry Hewlett (1992:205) note:

„Close relations between pygmies and farmers extend to their perceptions of their rights to land. Each farmer clan has rights recognised by all neighbouring farmer clans to a specific area of forest, which they may clear for crop cultivation or where they may hunt, fish, gather and extract required raw materials. The clan of pygmies traditionally associated with that same farmer clan also has recognised rights to exploit the same area of forest. The farmers assist their pygmy partners in maintaining exclusive rights to this area, and violations by either pygmies or other farmers are contested through negotiation, or sometimes violence. In this way, most, if not all, areas of forest in Central Africa are claimed by indigenous people, and elaborate informal indigenous mechanisms exist to guarantee specific land rights.“

There is some evidence that these customary land rights systems helped to even out human pressure on the environment and promote sustainable land use. According to Raponda-Waller and Sillans, among the coastal groups in Gabon abuse of the environment was punishable by sanctions of the „*mwiri*“ secret society, which set up a „kind of nature reserve“ in overexploited areas to restrict further degradation (cited in Wilks 1990: 32).

Careful field studies by World Bank staff of customary tenure in sub-Saharan Africa have revealed that these systems are dynamic and flexible, astutely balancing demands for increases in productivity with long term concerns and the welfare of less well-off members of the community, thus effectively cushioning farmers against poverty (Migot-Adholla et al 1991; Blarel et al 1992; Place and Hazell 1992).

Summarising these studies in its 1992 „World Development Report“ the Bank noted:

„Landownership in Sub-Saharan Africa traditionally resides with the community, but farmers are assigned rights to use specific parcels. These rights give sufficient security for growing crops and, where bequeathed to children, foster a long-term interest in land management. Farmers may have limited rights to transfer land they use to others without permission from family or village elders, and other people may have supplementary use rights over the same land - to graze the land during the dry season or to collect fruit or wood. Such restrictions, however, do not appear as yet to have had a significant effect on investments in land improvements or on land productivity. Moreover, as population growth and commercialization make land scarce and increasingly valuable, land is increasingly privatized. The indigenous systems of communal tenure appear flexible enough to evolve with the increasing scarcity of land and the commensurate need for greater security of land rights. At the same time, the retention of some community control over landownership helps to prevent the emergence of landlessness“ (World Bank 1992b:144).

The implications of all this are clear:

„Few if any unoccupied lands exist in Central Africa. For the purposes of planning the development or protection of any area of land, it should be assumed a priori that any forest is occupied by some person, or some clan, lineage or group“ (Bailey et al. 1992: 207).

This is not a recommendation that has been heeded historically. The initial concessionary system of the colonial era almost totally ignored the existence of traditional land rights and the policy of „*regroupement des villages*“ led to land conflicts and a disruption of traditional farming systems (Guichaoua 1989:21). For some peoples, relocation meant destitution due to the total loss of land as they were resettled onto the customary areas of other dominant groups (Hecketsweiler et al 1991:89).

There exists no thorough study of French land laws in the AEF. A very hurried and partial examination of the available records (kindly assisted by Patrice Christy in Libreville) suggests that although the

colonial legislation secured the state's land ownership and a regime for the recognition of individual property rights from 1899, attempts to codify and protect customary rights were only first made in 1938. The overall tendency of the land tenure legislation was to encourage the registration of individual title to land that had been brought into production or use („*mise en valeur*“), with the aim of promoting economic progress. However, after 1938, the colonial state also guaranteed „solemn confirmation of customary land rights which may be freely exercised, within the limits set out by the law and duly declared regulations and public utility.“

The emerging laws stipulated that concessions could not be granted without customary rights first being voluntarily renounced. Customary rights could not be extinguished „except for the public good and after just compensation“. Efforts were also made to limit chiefs from allocating communal lands to outsiders for their personal profit and restrictions were imposed to curb the registration of individual titles on customary lands. Reading the laws one has the impression that they gradually evolved to deal with concrete problems encountered by administrators. It is not clear to what extent any of these laws were applied or upheld (Decree 28 March 1899; Arrêté 10 February 1938; Arrêté 968 20 March 1938; Arrêté 29 September 1950; Decree 55-580 20 March 1955; Arrêté 1896/DPLC 8 June 1955).

The legal situation after independence is even more confusing. Theoretically, in Gabon and the CAR, some of the colonial laws and regulations remain valid, but the few land and forestry laws passed since 1960 make no reference to them. In the Congo the situation changed with the 1970 Land Code which proclaimed all land to be the „property of the people represented by the State“ and abolished all titles and customary rights of land ownership, leaving only an ill-defined „right to enjoy the use of the soil“.

In any case the issue is largely academic. As Hecksweiler (1990:50) notes, „the land tenure law appears to have no noticeable effect on the actual situation in the countryside“. In all three countries practically all land, outside urban centres, is considered to be owned by the state; customary law, though it continues to be recognised variously, only secures rights of use, rights which are readily extinguished in the „public interest“.

Forest lands are subject to more restrictive legislation. The forestry laws, at least on paper, also recognize customary rights and provide legal protections against the awarding of concessions on indigenous customary rights areas, while giving priority to local



needs. However, these laws are not applied and, in effect, logging concessions are granted without reference to local populations (Hecketsweiler 1990; Wilks 1990).

As Kevin Cleaver (1992:70) of the World Bank notes, the effects of nationalising land have not been salutary:

„The response by many... governments has been to nationalize ownership of the land, with governments owning all land. Governments then allow de facto customary law to guide the use of some land while arbitrarily allocating other land to private investors, the political elite, and public projects. This has further reduced land tenure security rather than increased it.“

There is no doubt that local communities do feel threatened by the lack of land security and they themselves note that this has allowed their land to be exploited by outsiders as well as making them less concerned about prudent resource management. As one community in south CAR has noted:

„In the past the acquisition of lands was handled by the village clans. We had a rational way of using forest lands; the gardens were small and trees were cut down only for cultivation and survival needs. Now lands are taken over anarchically, because they have become State forests. We use chainsaws and we no longer control bush fires, we destroy sacred forests. The logging by Lorimbois also disturbed the environment. We have less game and the streams are drying up“ (PARNR 1992:14).

Local people want secure rights to their land. A World Bank forest management project in the CAR, which has run into local resentment of yet further government intervention in their lives, found that local communities „want the government to give them back the power to manage the forest as in traditional times, which would allow them to securely protect the forest“ (PARNR 1992:13). Most observers agree that to stabilize rural livelihoods, encourage investments in land and promote sustainable forest use, customary rights to land must be secured.

However, experience from other areas of Africa reveals that the registration of titles can deny the flexibility of traditional systems and opens the process of land allocation to abuses of power, leading to land concentration (Colchester and Lohmann 1993; Witte 1993). Warning against a tendency to introduce western systems of land ownership registration, Kevin Cleaver of the World Bank notes that:

„Land titling has permitted the political and economical elite, who maintain control of the title distribution mechanism, to grab the

land from traditional owners. Land distribution becomes more skewed as a result." (Cleaver 1992:71).

The dilemma for African governments is to find a way of legally securing communal tenure in a form acceptable to local communities without favouring the interests of indigenous elites and outsiders whose power and privilege give them unequal access to the administration.

## Future Options

In this study I have referred equally to Bantu and „pygmy“ peoples as „indigenous“. The term in its most literal sense only implies long term residence in a given area. In international law, people described as „indigenous“ are accorded preferential rights to land and protected against discrimination and integration (ILO 1989).

Increasingly, as the issue of indigenous rights has gained international currency, other „tribal“ or marginal ethnic groups have begun to describe themselves as „indigenous“ as a way of identifying their struggles with those of other „indigenous“ peoples with whom they feel a common cause and as a way of asserting their own claims to these same rights - to communal ownership of their traditional territories, to self-determination, to respect for their customary laws and to the legal recognition of their representative institutions.

So far as I am aware, none of the peoples in the forests of Equatorial Africa identify themselves as „indigenous“ in this sense, yet as we have seen many are making similar claims to control their customary lands as other „indigenous“ peoples.

International institutions have had a rather different approach in defining which peoples are „indigenous“ - preferring to use the term not so much for peoples with a claim to an area based on prior occupation, as in terms of their political vulnerability and marginal status (ICHI 1987; Burger 1987). The World Bank, for example, defines indigenous peoples as „social groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged by the development process“ (World Bank 1992c).

As this study should by now have made clear, the Bantu and „pygmy“ peoples inhabiting the forests of Equatorial Africa are obviously „indigenous“ in both the sense of long term occupancy of a given area and their being „disadvantaged by the development process.“ Certainly the „pygmy“ groups in the area are doubly

discriminated against and require urgently a recognition of their rights, but it does not follow that this is best achieved by singling them out for exclusive attention (Beauclerk 1993).

The point is contentious. Bailey, Bahuchet and Hewlett have gone so far as to argue that:

„Central African farmers and pygmies exist together, are interdependent, and should be considered as an integrated economic and social system“ (Bailey et al 1992:205).

But conversely it remains true that the once more „symbiotic“ relations between Bantu and „pygmies“ have grown increasingly hierarchical and exploitative, as Bantu and „pygmy“ economies have become more closely linked to the market and subject to external authoritarian traditions. It is hard to see how the resulting immiseration of „pygmy“ groups can be alleviated without to some extent breaking their growing dependency on their exploitative patron-client relations with farming groups (Sarno 1993).

My own view is that direct intervention in „pygmy“-Bantu relations by outsiders is likely to do more harm than good. Only when and if independent „pygmy“ organisations emerge to make their own demands will outside support be well-directed. If mistakes are then made, at least they will be mistakes made by the peoples themselves who can so learn from them. The real question then, one which bedevils all those engaged in supporting indigenous peoples, is how to help promote that self-determination without directing or influencing its evolution. The only answer, unsatisfactory though it is, is that great sensitivity must be used.

\* \* \* \*

The aim of this study has been to place the present situation of the peoples and rainforests of Equatorial Africa in their political and economic context. If past efforts by environmental organisations, conservationists and development agencies to „save the rainforests“ have failed, it is above all because they have not appreciated the political nature of the problem of rainforest loss (Colchester and Lohmann 1993). Technical fixes have thus been attempted which do nothing to resolve the underlying problems. Bandages are used when surgery is needed.

Forest loss is not presently a major problem in Equatorial Africa. Wildlife destruction from overhunting and forest degradation from overlogging are, however, seriously undermining local people's welfare

and contributing to a malaise in the political economy. Although the massive rates of forest clearance experienced in West Africa have not yet been observed, some of the conditions for such a situation are there. The forests are undefended. Those with authority over the forests have proved that they have no capacity to manage them. Those with an interest in their long term management have no power.

Already pressure from the landless, resulting from rising populations and rural stagnation outside the region, is being exerted on the forests. Peasants from the dryland regions of the CAR are moving south seeking lands on the forest frontiers being opened up by the loggers. As in West Africa, international boundaries are irrelevant to such forces. Already, Fulani from the Sahel can be found living in the gutters and begging on the streets of Brazzaville. Impoverished Zairian migrants, made destitute by Mobutu's profligacy, already make up about half those cutting firewood in the forests south of Bangui.

New forest policies which reassert the rights of local communities to their customary lands are needed *now* if secure systems of forest management are to be restored. As the resident World Wildlife Fund staff in Gabon noted in an internal memo of a proposed World Bank project:

„The most critical issue towards conservation management is decentralization and empowering local communities to manage natural resources... The problem is that there is no framework which allows those people most dependent on the forest to participate in the policy-making and planning process: it is imposed from above... Inevitably this means that the interaction between resource users and resource managers will be antagonistic... If the project by relying on essentially law enforcement activities to control resource use, alienates the rural communities who depend on the natural resources for their livelihood, then the project could result in very negative environmental impact.“

Given this insight it is disappointing to find that the main conservation initiatives being attempted in Equatorial Africa are dodging such fundamental questions. Forestry projects funded by the EC, FAO and the World Bank are investing in largely irrelevant forest inventories that take no account of the fact that the problems of unsound management are not technical but political. In these circumstances, inventories are only subsidies to timber miners, helping them to identify the most lucrative pieces of forest to pillage.

Protected area projects run by the World Wildlife Fund, Wildlife Conservation International and the European Community, while

often admirable in themselves, are also not predicated on simultaneous policy or institutional change. Instead they are choosing to isolate themselves from the political process and rely on the existing institutions. Many are located in remote and relatively unthreatened areas. Though often run by ex-patriates the projects nevertheless have a profound effect on national policy-making and personnel deployment. Given that environmental issues are anyway low on the national agendas, it is doubly worrying that these projects absorb much of the energy of government departments concerned with the environment, draw off the most environmentally motivated personnel and soak up the lion's share of international assistance targeted for the „environment“. The result is to distort the evolution of national environment policy.

Exactly because these projects attempt to dodge the awkward political questions, they then have to learn again from bitter experience that these are indeed the main issues that they have to confront. As one frustrated ex-patriate conservationist reported last year to his base office:

„The National Director assigned to the project... has proven himself dishonest, incompetent and totally self-serving. Others under his 'direction' naturally followed suit. The Mayor, Police, Commissioner and Gendarmerie Chief see their personal interests in profitable poaching hampered by the project. As one official is caught, fined and reassigned (rarely, as they are usually well protected) another usually worse is put in his place. It is this attitude that will eventually frustrate project personnel, expatriate and national, and lead to the failure of conservation in Central Africa.“

The forests of the region will remain vulnerable until the political economy allows the emergence of newly accountable processes of governance. Efforts by donors to impose such good governance from above are proving half-hearted (*The Economist* 22 February 1992), but fortunately the forces pressing for greater democracy in Africa do not depend on external assistance - though it may help - but on their own courage and coordination. Only with such democracy can these countries overcome what Chinua Achebe identifies as the main crisis of the African state: „the failure of our rulers to re-establish vital inner links with the poor and dispossessed“ (cited in Davidson 1992:261).

If Africa, states are to function in the long term interests of their citizens, they will require more committed and impartial state institutions. The paradox may be that decentralisation - allowing local

people more say and control over resources - could be the best force to counter the clientelism and factionalism of African politics.

For it is not yet clear that the encouraging trend towards political liberalisation and multi-party elections will achieve such an end by itself. After such a long history of political centralism and top-down administration, the political parties that have sprung into being in Equatorial Africa are to a large extent dominated by urban and elite groups. My impression, based on conversations with the urban and rural poor, is that few of them feel that their interests are well represented by any of the political parties, but rather that multi-party democracy has turned into a conflict between different elite ethnic factions to carve up the cake differently among themselves.

Political liberalisation has also spawned a large number of non-governmental organisations (NGOs), notably in the Congo where there are now literally hundreds of legally incorporated citizens' groups. Many of these groups are urban and run by members or ex-members of the salariat. Many are also essentially political factions, which have not yet found a convenient niche in the party-political process. A few are well-informed, closely linked to their constituencies and are developing practical ideas for assisting these communities. It may be some time, however, before these NGOs themselves develop effective means of being accountable to those in whose name they work. What many of them also lack is experience, funding and political space. The local administration remains deeply sceptical of these private initiatives and I was told, in the CAR, that NGOs still require Presidential approval before undertaking any new programmes.

My own hunch, after a very short visit, is that ecological balance will not be restored in Equatorial Africa without the resurgence of long submerged traditions of equality and accountability. This will require a long and slow process of rebuilding community institutions and controls. That process can benefit from the right legislative environment. It could also be helped by the emerging local non-governmental organisations, if they have the respect and patience to take their lead from the communities themselves. But it is in the emergence of new community associations, spontaneous women's marketing cooperatives and even youth groups such as the „amis de la nature“, that the best hope lies.

„Forests are gold. They are our riches to be cared for for our children.“

*(George Abiagna, Chairman, Botambi Solidarity Association, pers. comm. 18 November 1992)*

## Notes

1. This paper results from a short visit I made to Gabon, the Congo and the Central African Republic between October and December 1992, though the majority of the information and all statistics are derived from the literature cited. I would like to express my gratitude to the numerous government and aid agency officials, NGO personnel and community members who assisted me. The paper is a shortened version of a forthcoming booklet with the same title to be published by the World Rainforest Movement.

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## CHAPTER 4

### THE TUAREG PASTORALISTS OF NORTHWESTERN AFRICA



GUNNVOR BERGE

## REFLECTIONS ON THE CONCEPT OF INDIGENOUS PEOPLES IN AFRICA

### The case of the Tuareg

This paper addresses two questions of relevance to the discussion on the use of the concept of *indigenous peoples* in Africa. First, is there anything to be gained by including African minorities in the definition of *indigenous peoples*? More precisely, is there a point for certain ethnic groups fighting for self-governance in Africa to refer to themselves as *indigenous*? This theme, the main subject of this paper, is related to the fact that indigenous peoples, as they have been defined, are mainly to be found in certain areas of the world: America, Australia, and to some extent Asia. African or European minorities do not usually come to mind when the word *indigenous* is used. A definition that ties the concept of *indigeness* to aboriginality to the exclusion of peoples that cannot substantiate such a claim, may be referred to as a substantial definition. I argue that instead of defining *indigenous peoples* with a substantial definition, a structural definition can be introduced. Such a definition, focusing on an ethnic group's structurally difficult position vis-à-vis those in power, could bring about new insights and new consequences.

Definitions are, in many cases, more important to social scientists than to those they define. In this case, I argue, the discussion on the concept of *indigenous* diverges from other discussions of mostly academic relevance, such as discussions on the concept of class or caste. It is debatable whether the academic discussion on how to *define* caste has had an influence on the daily lives of people living in caste-systems. Being *defined* as indigenous, on the other hand, has had concrete implications for several peoples. I mentioned that being defined as indigenous could imply resentment or lack of respect. It could also have positive consequences. In 1989 the ILO



(The International Labor Organization) adopted the Indigenous and Tribal Peoples convention No. 169 concerning the rights of indigenous and tribal peoples. The United Nations is in the process of drafting a Declaration on the Rights of Indigenous Peoples. Several governments are showing a willingness to support indigenous peoples in their struggle for their rights. Whereas a definition of *indigenous* tied to aboriginality might lead the discussion astray when it comes to Africa, a structural definition would include several minorities. A structural definition of indigenous peoples creates an awareness of similarities even where major differences may exist. Such an awareness facilitates indigenous peoples' exchanges of strategies and solutions to their similar problems. Thus, the application of a structural definition of indigenous could create cross-continental ties as well as initiate international economic and political support.

In order to demonstrate the similarity between the problems faced by indigenous peoples in general and an African minority, I compare the UN draft for a „Universal Declaration on the Rights of Indigenous Peoples“ with the recently signed peace treaty between Tuareg rebels and the Malian government.<sup>1</sup> The comparison shows that many of the problems experienced by Tuaregs as a people strongly parallel those experienced by indigenous peoples in other parts of the world.

The discussion on the concept of indigenous peoples raises another theme which is only hinted at in this presentation. It deserves, however, to be taken seriously if solutions to the problems of oppressed peoples are to be sustainable over time. If there were no conflicts over resources - material or cultural - between indigenous peoples and others, indigenous peoples would have no problems. Should particular people, defined as indigenous, have stronger claims to self-governance than people living interspersed with them or next to them? To what extent should democratic measures be set aside in order to assure the rights of indigenous peoples, while denying these rights away to others? In Africa, where many different ethnic groups have lived side by side for centuries, it is neither feasible nor altogether obvious that those who happened to arrive prior to others (if such may be proved) for that reason alone ought to have particular rights to these territories today. The treaty between the Tuareg rebels and the Malian government offers one of many possible solutions to these questions: a combination of regional self-governance and internal democracy.

## What is to be understood by *indigenous*?

The use of the concept of caste has led to a lively debate among social anthropologists, a debate from which I think that we can learn something. Two divergent positions emerged in this debate (see Leach 1960:1, Berreman 1968:333). One was that caste should be defined in relation to the caste system in India, in terms of Hindu religion and related attributes such as purity. Such a definition may be called *substantial*, in that it fills a concept with an exclusive content. The consequence of such a definition is that the words caste and caste system should only be used when talking about India or Hindus. The second position was that caste and caste system should be defined in terms of structural features such as an unusually rigid social stratification, where membership of each division in the hierarchy is birth-ascribed, and where no individual mobility is permitted. The consequence of such a *structural* definition is that the concept becomes more cross-culturally applicable (Berreman 1968:333), and makes certain generalizations possible. But at the same time it loses some of the stringency obtained when narrowing the concept to Hindu castes. Thus, whether one chooses to define a concept in a substantial or a structural way is a question of what is most suitable to one's purpose, rather than a question of what is right or wrong.

What can we learn from this discussion? First, let us look at the definition of *indigenous* as it is rendered in a couple of dictionaries. In the *New Collins Concise English Dictionary* (Collins 1982:571) *indigenous* is explained as „originating in a country, native“. In a French dictionary, *indigenous* (autochtone) is explained as „a person from a place where s/he lives and where his/her ancestors have always lived (syn. aborigène)“. *Autochtone* comes from *khthôn* which means „land“ in Greek (Petit Larousse illustré 1986:79). In both cases, *indigenous* is defined in a substantial way as a people whose ancestors lived in the particular territory in which their descendants still live.

Implicit in such a definition is another aspect of the word *indigenous*. One does not usually talk about the descendants of the original owners of the land if nobody came after them. When the United Nations drafts a convention on the rights of indigenous peoples or when the ILO adopts a convention concerning indigenous peoples, these conventions do not concern Norwegians or Danes, even though both people, at least in part of our territories, are descendants of the first ones to arrive. People are only referred to as

*indigenous* if they, as a group, are subject to some form of colonization by a people arriving later. Moreover, people are called *indigenous* only if the relationship between the colonizers and the colonized is unfavourable to the people colonized. *Indigenous peoples* connotes a group of people deprived of rights, of „their“ territory and of self-determination. Here another connotation of the notion of *indigenous* (and in particular *indigène* in French) emerges. An indigenous person is someone left behind in the development of the modern world. At a meeting concerning the International Year of Indigenous Peoples held in Norway this spring (1993), the President of the Saami Parliament expressed that he often met resentment and lack of respect when presenting himself as an indigenous person. He thought he had noticed a certain positive change in the attitude towards indigenous peoples over the last years. Still, many of the connotations to the word *indigenous* are derogatory and negatively influenced the way in which people behaved towards him.

From the above discussion it becomes quite clear that the term *indigenous* is used with greatest adequacy in specific parts of the world. It „fits“ mostly those peoples who inhabited an area at the time when another people from another continent arrived and took possession of their land. This is so in the case of the Amerindians and of the Australian aboriginals. Such a definition of *indigenous* shows parallels with the definition tying *caste* to its Hindu context, imbuing the concept with some substantial content.

In Africa it is not always clear who the original inhabitants of the land were, as might be the case in America. One of the things that characterizes Africa is the great mobility of its populations over time. This is reflected for instance in the spotty maps of linguistic groups on the African continent. Murdock's map of tribes in Africa, though criticized and disputed for various reasons, underlines the great complexity involved in assigning a particular area to a particular people (Murdock 1959). Moreover, African state leaders are Africans belonging to local ethnic groups, not foreign colonizers. The distinction between indigenous peoples - in the sense of a people with an ancient tie to the land - and rulers, is not always easily drawn.

Take a look at the world map and the map of indigenous peoples in Africa presented in IWGIA Yearbook 1991 (pages 4 and 132). Those African peoples who have been allocated a place on the maps are - *without exception* - hunters/gatherers or pastoral nomads. These peoples have certain things in common; they tend to harvest what nature produces rather than manipulate nature to increase

production, which can then be harvested at a later date. In anthropological theory, the terms „immediate return system“ and „delayed return system“ (Woodburn 1982) have been created to point to this central difference between nomads and agriculturalists in relating to resources. To this distinction Woodburn attributes central structural differences between two main types of societies, differences like family life, women's role in society, housing, social organization, ownership and inheritance. Cultural history shows that for the greatest part of our history, humans have lived by hunting and gathering. Moreover, it appears to be demonstrated that with few exceptions, state formations grew out of agriculture, particularly irrigation agriculture, and not nomadism. For such reasons, we are guilty of being in error when we tend to consider *present* hunters/gatherers and pastoralists as somehow more original or pristine than other inhabitants, living next to them. Tuaregs are a people who have mainly lived as pastoral nomads in the regions bordering the Sahara desert, numbering between 1.5 and 3 million. They are included as indigenous peoples on the maps mentioned. Nearby sedentary agriculturalists such as the Songhoy or the Dogon, are not. These agriculturalists may have lived in the area as long as the Tuaregs have. Surprisingly enough groups such as the agriculturalist Zulus in South Africa are excluded from the maps. This people has experienced oppression from ethnically different (white) colonizers, thereby sharing the traits underlined in both the substantial and the structural definitions of *indigenous*. Thus, African indigenous peoples seem to be those who lead a certain way of life - a backward or outdated way of life. The irony is that evolutionary ideas, which involve an evaluation of other forms of social organization and which consequently many today tend to avoid, are being reintroduced or kept alive by those of us wishing to support indigenous peoples.

A preliminary conclusion on my part is that African minorities in many cases do not share the traits included in a substantial definition of *indigenous peoples*: being the first inhabitants of the land, having lived there since time immemorial but lately in a subordinate and deprived condition. Moreover, many of the connotations of the word indigenous are somehow derogatory, and one may ask oneself what there is to gain by subsuming a minority with already quite enough problems under a category replete with negative connotations.

The main reason put forward for a structural definition of caste was that it allows for cross-cultural comparison and hence generalization. The same argument can be put forward for a redefinition of the concept of *indigenous* in a more structural vein. A definition

of *indigenous peoples* as a minority, tribe or ethnic group which finds itself in a dominated and subordinate position vis-à-vis those in power, so that its members are not able to take or implement decisions concerning themselves, and who are experiencing many if not all of the problems addressed in the UN declaration, would, sad to say, include several African peoples. In order to argue for the relevance of a structural definition of the concept of indigenous peoples in Africa, I am going to compare paragraphs in the proposed UN Declaration on the Rights of Indigenous Peoples and a peace treaty, called „le Pacte National“, signed on April 11th 1992 by Tuareg and Moor rebels<sup>2</sup> on the one side and the Malian government on the other.

### Comparing the UN Declaration on Indigenous Peoples' Rights and the Malian/Tuareg Peace Treaty

The Tuareg rebellion is one of the less known of the recent violent conflicts on the African continent. The recent rebellion started in Niger in May 1990 and soon spread to Mali (see IWGIA Newsletter 62, Dec. 1990 for a description of the background of the conflict). The rebels were well trained and fought for a common purpose: influence over central decisions concerning themselves. The Malian dictator at the time did not only face the rebellion in the North, but a strong movement towards democracy was also gaining force in the South. Whereas rebels attacked administrative and military depots, the Malian army retaliated with extrajudicial executions, massacres and arrests of civilian Tuaregs. Thus, both parties had an interest in negotiating. The first peace treaty was agreed upon by the parties involved in January 1991, shortly before the Malian president, General Moussa Traoré, was ousted on March 26th 1991. Although this peace treaty was soon broken by both parties, it laid the foundation for the peace treaty of April 11th 1992. The aim of this peace treaty was to create peace in Mali's three Northern regions, the chief areas (in Mali) where the Tuareg population lives, and at the same time save Mali as a state. This was accomplished through the Malian government granting a particular status to these regions. Although both sides have broken the peace treaty since, Mali's first democratically elected president since independence, Alpha Oumar Konaré, has deemed the reinstallation of peace in the North the most important pressing issue to be handled by his government. All major rebel

movements have similarly pledged adherence to the treaty, the last one as recent as May 1993.

The peace treaty, a twenty-six page document divided into seven parts, states in general terms the final results of the peace process. A demilitarized democratic semi-sovereign Northern Mali where democratically elected northerners are in power, receiving health care and education on the same level as the rest of Mali is one example. The peace treaty also describes ways in which to reach these goals, including a (gradual) withdrawal of Malian troops from the North, democratic elections, and increased development efforts in the region both through the participation of foreign donors and NGOs and by increasing the percentage of Mali's GNP invested in the area. Joint committees of rebels, Malian officials and mediators are to organize and control the application of the treaty.

Parts of the peace treaty have relevance only to the solution of the conflict in Mali. Other parts, however, easily lend themselves to comparison with the presently discussed draft for a United Nation's „Universal Declaration on the Rights of Indigenous Peoples“. The draft is divided in seven parts, each divided into paragraphs. The draft is presently being discussed at different levels at the UN, before being sent to governments. At present, some nineteen paragraphs have reached the status of „operative paragraphs“ (Parts I-III in the draft). Others, which have not yet arrived at that stage of agreement are referred to as „draft operative paragraphs“ (Parts IV-VII, thirteen paragraphs in all).

Operative paragraph 1 in the Draft Universal Declaration states that indigenous peoples have a right to self-determination.

„By virtue of this, they freely determine their relationship with the States in which they live, in a spirit of coexistence with other citizens, and freely pursue their economic, social, cultural and spiritual development in conditions of freedom and dignity.“

Draft operative paragraphs 18, 20, 23 and 24 expand upon what is to be understood by self-determination: the right to maintain and develop traditional economic structures, institutions and way of life, the right to plan and implement health, housing and other social programs, the right to take decisions in matters dealing with education, information, culture, religion ... as well as control over the administration. Finally, operative paragraph 15 states indigenous peoples' individual and collective rights to own, control and use territories that they have traditionally exploited.

As mentioned, the peace treaty grants the three Northern regions

a particular status within the frame of the Malian nation-state. This is substantiated in Part III of the treaty. There are to be democratic elections at the different administrative levels. These democratically elected bodies are responsible for issues related to agriculture, herding, water, ecology and natural resources, industry, transport, education, communication, health, culture, tourism, research, art and handicraft, to mention important domains corresponding to the proposed UN Declaration. There are only three areas of real importance to locals over which the Malian state remains in control: the whole nation will have a common currency, the same law system, and a common defence.

Of other central concern to Tuaregs is the right to live in peace, regardless of ethnic origin. In operative paragraph 4 of the Universal Declaration it is stated that indigenous peoples have the collective right to exist in peace and security and to be protected against genocide. This point is addressed in the treaty through the proposed creation of brigades and military units composed of equal numbers of rebels and military personnel. Such joint units are hoped to inhibit violence from each party in the conflict.

Operative paragraph 13 in the Universal Declaration states that:

„indigenous peoples have the right to adequate financial and technical assistance, from States and through international cooperation, to pursue freely their own economic, social and cultural development...”

Equally relevant here is draft operative paragraph 19: „The right to special State measures for ... improving their (indigenous peoples') social and economic conditions“. In Part IV of the treaty an often voiced Tuareg complaint against the Malian government is officially accepted and an amendment suggested. The complaint is that the North has been prejudiced against in the development efforts of the country. Thus, a particular development program with the explicit aim to level out differences between the North and the rest of the country within ten years is to be formulated and implemented.

The right to be governed by one's own people is touched upon in several of the paragraphs of the Universal Declaration (such as draft operative paragraphs 20 and 23), as it is seen as one of the measures by which indigenous peoples are to achieve real influence over their lives. This is similarly an important issue in the peace treaty (Part IV). The government is to make an effort to hire administrators from the North. Until now, the populations of the North have to a great extent been administered by people from the South, who have little knowledge of local customs, traditions or language. At present the

Malian government is trying to recruit 300 local administrators to fulfil this part of the treaty.

I argued that nomadism as a lifestyle seems to be a central factor in the Western conceptualization of an African people as indigenous. In spite of this, one of the most common problems experienced by nomads is not addressed in the Universal Declaration. The migration cycles of nomads often cross state boundaries, as nomads often depend on resources that are scattered over large areas. Draft operative paragraph 26 states that cultural and social exchanges and trade across state boundaries should be facilitated. But it does not address an important point: that the resources on which a particular people depend now belong to different states<sup>3</sup>. Both the right to cross boundaries between states so as to maintain traditional trade and social exchanges (draft operative paragraph 26), as well as the right to continue a traditional way of life (draft operative paragraph 18) - which in the Tuareg case implies crossing state boundaries - are highly disputed issues in Mali today. The Malian government has been leading a vigorous settlement policy directed towards the nomads ever since independence, as the French did before them. The crossing of borders by nomads in what was once their home territory is a very sensitive question in West Africa, creating problems between neighbouring states, as expressed in this citation by the Algerian Prime Minister: „We must end this problem of foreigners who come from neighbouring countries“ (Reuter's Information Services, Inc. 14th March 1993). As a consequence of the colonization the Tuareg home territory is today divided between 5 different African nation-states: Mali, Niger, Algeria, Burkina Faso and Libya. In the eyes of Tuaregs artificial borders crisscross *their* territory. In the eyes of the states, Tuaregs become problematic *foreigners* when crossing these borders.

Another very complex matter is hardly touched upon neither in the Draft Declaration nor in the peace treaty. African ethnic groups are rarely the sole inhabitants of the areas where they live. It is not evident that the ethnic group which populated a particular area at a certain time in history - say at the time from which the first written sources of the area are preserved - for that reason alone should have a particularly strong claim to the territory today (confer the Israeli-Palestinian dilemma). Operative paragraph 9 in the Universal declaration states that indigenous peoples have the right to designate and maintain the original names of communities. In Mali, the fact that several minorities inhabit and have named the same areas renders the application of this seemingly non-controversial paragraph difficult.



Tuareg rebels generally refer to the area covered by the treaty as Azawad. In the treaty the name Azawad is discussed. The Malian government is willing to accept such a designation of the country's three northern regions, but only after a referendum on the issue. Azawad is populated not only by Tuareg and Moor nomads, but by Songhoy agriculturalists, Bozo fishers and Ifoulanen and Fulani agriculturalists/nomads, to mention but some of the groups present. No group has a clear numerical majority, and the outcome of any democratic procedure is uncertain. Any concession granted to one group to the detriment of others - these rights being legitimized by the notion of *indigenous* or otherwise - is bound to do injustice to someone.

## Conclusion

I opened this presentation by asking what it is that certain African minorities stand to gain by calling themselves or being defined by others as *indigenous peoples*. I argued that a substantial definition of the term *indigenous* - tying the concept to aboriginality and a long time span of uninterrupted inhabitance - would for several reasons, lead the discussion along infertile paths. African peoples have a migratory past, and it is not always easy to establish who came „first“. Neither, from my point of view, is it evident that such a claim, if verified, should grant these peoples particular rights to resources centuries later, to the detriment of other inhabitants. Moreover, the concept of *indigenous* has several negative connotations, which nobody would like to attach to themselves.

However, the treaty signed between Tuareg rebels and the Malian state demonstrates that African minorities experience problems which are structurally similar to those of indigenous peoples in other parts of the world. A structural definition of indigenous peoples, while implying some loss of stringency, allows us to see principal structural similarities between the situations in which certain ethnic groups and minorities world-wide find themselves. The awareness of such similarities might create bonds between peoples where none previously existed. Recently formed ties between Scandinavian Saamis and N/oaKwe (bushmen) of Namibia and Botswana illustrate this. Such an awareness might be the first step towards an organized exchange of ideas, information and strategies between minorities and others supporting them. Such an awareness might lead to desired changes in the conditions of indigenous peoples in the world.

## Notes

1. Different versions of the UN draft are circulating. In this paper, all references to particular paragraphs in the Declaration refer to the version presented in IWGIA Yearbook 1991:149-156 - a draft submitted by the members of the working group at first reading.
2. The rebellion is usually referred to as „the Tuareg rebellion“, and I will use that term. Some Moor nomads also live in Northern Mali and have experienced many of the same problems as the Tuaregs; though fewer in numbers, they also took part in the rebellion.
3. I suppose that this demonstrates the limits within which the United Nations, being a congregation of states, operates.

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## THE PROCESS OF A PEACE AGREEMENT

### Between the Movements and the United Fronts of the Azawad and the Government of Mali

*This account concerns the Tuareg peoples of Northern Mali. They have been estimated as comprising 500,000 people (out of a total population of over 8 million) and occupy a territory of over 800,000 square kilometres. The decolonization of the territory inhabited by the Tuareg - just as its partition between different states - occurred without consultation with the people involved. This is why we now find ourselves in the Republic of Mali.*

*The marginalization of our peoples has led them to revolt twice since independence. Whereas a political solution to the first revolt was hidden from view, the second led to a political peace agreement after a long process. This agreement, known as the national agreement (Pacte National), establishes a special status (Statut Particulier) for the Northern regions.*

#### The rebellion of 1963

Since the departure of the French colonial power, the Malian administration which succeeded it behaved in a manner even more hostile to the people: confiscations, violence, suspension of civil rights, taxes and a variety of humiliations. This situation precipitated a rising which broke out in 1963 in the L'Adrar des Iforas.

The rebellion of 1963 was a real disaster for the Tuareg. The troops of the Malian army, encouraged by the pact between Modibo Keita (Mali's president) and Ben Bella (the president of Algeria) indulged in summary - and public - executions, petrol burning of their camps: in a word, the extermination of the people and their cattle. They rarely searched out the rebel armies and all rebels they encountered south of a line running from Tessalit to Kidal were systematically killed.

The armistice that occurred in 1964 did not resolve the essential problems. Due to the mediation of the clan chief of the region (Intalla Ag Attaher) the rebels surrendered their weapons on condition that there would be no reprisals. But even this condition was not respected and summary executions continued long after the armistice. There began an exodus of the population to Algeria and to Libya. The regime of Modibo Keita was brought down by the army in 1968 but the conditions of the Tuareg did not improve.

## Conditions between 1968 and 1990

The regime of the Second Republic is characterized by a centralization of political and administrative power. The administration is out of touch with the people and, as concerns the understanding of development problems, there is a gap between the people and the administrative authorities. The administration is regarded by the people as a system of coercion and repression: in most districts the administrators are drawn from the armed forces and/or in reserved occupations. They have no coherent programme and no motivation to involve the people. That which matters most to them is the collection of taxes. There is a mutual mistrust between the administration and the people.

Characteristic of the three Northern regions is that nomadism is the principal way of life of the people; especially in the Kidal region. The military junta in power has exploited the droughts of 1973 and 1984 and has used international aid as a political weapon against the Tuareg. The droughts have disrupted society, especially the nomads. Droughts have broken up families and provoked an exodus to neighbouring countries. A transfer of wealth has occurred: the „nobility“, those who owned large numbers of cattle before the drought, have been impoverished and among the other social strata, the industrious have rapidly recovered their wealth by hard work. The Tuareg have been displaced from the centres of decision-making and authority. They are considered second class citizens.

## The revolt of 1990

The difficult situation in which the Tuareg live in the interior of their country has made them understand the need for organization. For this reason, the Congress that took place in 1980 served as a

framework for planning and reflection about the future. A campaign of public awareness, through the distribution of cassettes of chants and music, has started. Occasional attacks have taken place in Niger and Mali but they did not achieve much. It was the events of 1990 - with the return of refugees from Algeria and the massive arrest of young Tuareg in Northern Mali - which provoked the second revolt on June 28, 1990, at Menaka.

The reaction of the Malian army, which counterattacked the civilian population, had the reverse effect of what was intended. For, where the young men had been intimidated in order to get them to denounce the insurgents, they had taken to the bush to reinforce the ranks of the movement. Attacks have been carried out on the symbols of the state at Tadermine, Tarkint, Abeybara, Bouressa and other administrative posts in the North. Unlike the revolt of 1963, that of 1990 involved all the Tuareg.

For the Malian authorities of the time, the military solution was given priority. Hence camps were burned, men herded into ditches and shot. Exasperated by an elusive enemy, the army turned on the civilian population. Thus it was only after the skirmish at Toksimene in September 1990 in the course of which the army lost over 200 men, that a process of negotiation was considered. The international press has played a major role in creating public awareness and accelerating the search for a solution. The meeting that was held on the 9th September 1990 at Djanet in Algeria was proposed by Presidents Moussa Traore of Mali and Ali Cheibou of Niger to promote a dialogue and to seek a solution within a regional framework.

## The Tamarasset Agreement

On his return from Djanet, the President of Mali held consultations with traditional chiefs and with certain Tuareg officials in Bamako. It was decided to establish two commissions: one to explore the issues and the other, at Tamarasset, to gather information on the grievances of the insurgents.

At this point in time, the Popular Movement of the Azawad (MPA) was not prepared to negotiate and for this reason a team had been given the task of resuming negotiations later.

On the 5th of January, 1991, political and military representatives of MPA were in Tamarasset for the negotiations. A commission had been given the task of drawing up a list of simple demands. The

strategy was to demand independence or a federation and, as a minimal demand, special status (Statut Particulier) and demilitarization. Four representatives of the MPA and of the Islamic Arab Front of the Azawad (FIAA) met a Malian delegation of the same size. The Algerian mediators faced enormous difficulties in mediating viewpoints. It was necessary to reduce the number of mediation groups and the Algerians had to shuttle between the two in order to finalize the Tamarasset agreement on January 6th, 1991. The agreement accorded to the regions of Northern Mali the status particulier, demilitarization and considerable development assistance (47.3% of the capital budget).

Several days after the signing of the Tamarasset agreement, a delegation of the movements, lead by the Secretary General Iyad Ag Aghali, met in Bamako. This meeting had been convened by the Moussa Traore regime, which then had its back to the wall, in order to reassure domestic opinion about the peace in the North of the country. Ordinary members of the organisations were not well informed as to the contents of the agreement and this contributed to dissent, organised at the heart of the Liberation Front of the L'Aza-wad (FPLA).

On March 4th, a delegation of MPA and FIAA met at Gao with the task of assessing the Tamarasset agreement: but, to its surprise discovered that conflicts existed as to the interpretation of the agreements. The problem of the Tamarasset agreement is that it is not spelled out; in particular, the content of the statut particulier is not explicit. The fact that the agreement had been signed by an officer of the armed forces meant that many people felt that it had no legal validity. The failure split the MPA a second time and led to the creation of the Revolutionary Army for the Liberation of the Azawad (ARLA). The pressure of the rebellion in the North, together with that of the democratic movements in the South led, on 26th of March, 1991, to the overthrow of the regime of Moussa Traore.

## The Transition

Afterwards, the Committee of National Recovery which came to power was in favour of accepting the Tamarasset agreement. This alacrity proved to be in part an attempt to reassure international opinion and in part to create discord within the rebellion. In order to understand more precisely their interpretation of the Statut Particulier, a group of representatives of the Northern regions (Tuareg,

Arab and Songhoy) spelled out in a document in April, 1991, a detailed account of the Tamarasset Agreement.

The major objective of the transitional government was to make a success of the national conference, in the course of which the „problem of the North“ was to be dealt with. At the insistence of the MPA, who insisted on keeping a record of the meeting, it was decided to prepare the conference of Timbuctoo, which would serve as a forum in the course of which, the peoples of the North would support the agreement. For a campaign hostile to the agreement was in the process of developing among the settled agricultural communities.

The Mali military chiefs have conducted a real massacre in the North, of the Tuareg, at Goundam, Léré, Timbuctoo etc. These events helped radicalize yet again the views of certain movements. It is in this context that a meeting was held at Elgoléa (Algeria) between all the movements and fronts of the Azawad. The purpose was to define a simple list of common demands and to establish a negotiating group. A team met at Mpoti to assist the conference due to be held in Timbuctoo. An initial exchange of documents between the movements and the government has taken place. On their return to Tamarasset, the movements appointed a commission which was to return to Algiers to undertake a thorough study of the simple list of collective demands.

## The Negotiations

The same strategy has been used since the Tamarasset Agreement. The first meeting in Algiers served as a preliminary conference. The federal system has been placed on the agenda before the second meeting in Algiers. The Malian authorities have rejected this and the movements have also rejected the decentralisation proposed by the government. Slowly and painfully, a compromise has been found around a national agreement before the third meeting in Algiers.

## The National Agreement

The national agreement between the movements and the united fronts of the Azawad and the government of Mali was signed on 11th April, 1992 in Bamako.

It contains three provisions:-



## 1. Security Provisions

- The creation of a ceasefire commission.
- The integration of the insurgents and the creation of special units.
- The institutionalization of an interior security corps, the special forces (gendarmerie), the police, the tribal police (garde-goum).  
comprising all local armed units and under the control of the elected district commissioners (Gouverneurs).
- The reduction of military forces.
- The repatriation and resettlement of displaced peoples.

## 2. Political and Institutional Provisions

The agreement establishes a special status (Statut Particulier) for Northern Mali. The statute lays down the competence of elected bodies and regional executives in accordance with a democratic administration. Local, regional and interregional elected bodies are empowered to:

- plan their urban and rural communities,
- define and promote the programmes of economic, social and cultural development that they wish. Such programmes, both generally and specifically, cover the sectors and activities of health, education, agriculture, animal husbandry, irrigation, urbanization, housing, the preservation of the environment, industry, transport, communication, culture, tourism, the study and promotion of local languages, handicrafts, the management and protection of historical monuments, inheritance taxes and the initiation, and exploration of natural resources,
- solicit assistance from development NGOs,
- represent the central government at the regional level,

## 3. Economic Provisions

- The creation of a development fund and the re-establishment of a fund for the assistance and compensation of the victims of all the consequences of the conflict.

- A special ten-year development programme for Northern Mali.
- The establishment of special tax concessions during this ten-year period.

## The Problems

The national agreement celebrated its first anniversary on April 11th this year. The application of the agreement requires the recognition of many kinds of problems:-

- The attacks of the „bandits“ before the signature of the national agreement and the disproportionate reprisals taken by the army. The latter have brought about an exacerbation of certain tendencies in the movements and, even more crucially, an exodus of the nomadic population.
- The opposition of part of public opinion among the settled agricultural communities to the implementation of the agreement.
- The proliferation of splits within the movements and united fronts of the Azawad.
- The lack of a solution to the Tuareg problem of Nigeria which has caused disturbances in Northern Mali.
- On the ground, there are at present two sets of authorities: those of the movements and united fronts of the Azawad and those of the Malian government. The power of traditional authorities has declined. The presence of the power of the movements has permitted an equilibrium and relative peace in the Kidal region. In the other regions, the heterogeneity of the population (nomads and settled farmers) has made it difficult to bring about such an equilibrium and peace due to conflicts over access to the river Niger and over land.

The partial suspension of economic activity and the deterioration of the economic infrastructure have lead to a very serious impoverishment of the population of the North.

## Implementation

### 1. What has been achieved:

- The institutional framework determined by the national agreement is in place. This involves the Commission for Follow-up of the National Agreement, the Ceasefire Commission and the Commissariat of the North.
- At the security level, the integrated brigades are operational and the 600 insurgents are already integrated into the special units. Conflicts have been few and decreasing.
- At the societal level, the consensus achieved among the different political parties concerning the question of the North has served to decrease social tensions between the agricultural communities and the nomads. The people are resuming their normal activities.
- At the level of the economy, the holding of public hearings on development in the regions of Timbuctoo, Gao and Kidal has permitted donors to announce their intention of funding emergency programmes evaluated by an inter-agency mission of the United Nations (December 1992). The Mission also noted the growing resumption of the activities of NGOs and the growth of certain projects such as the Programme of Food Security and Income (PSARK) in the Kidal region.
- A joint commission of government and donors is now in place to coordinate the financing of emergency development activities in the North and is also charged with preparation of the ten year development plan for the Northern regions.

### 2. What remains to be achieved

- The integration and resettlement of the remaining combattants (about 90%).
- The relaxation of military measures.
- The repatriation and resettlement of the refugees.
- The integration of the officials of the movements in the central administration of the state.
- The economic provisions (see section VII-3 above).
- The political and institutional provisions (see section VIII-2 above).

The Commission for the follow-up on the national agreement has stated that only about 3% of the provisions of the agreement have been implemented.

## Transitional Measures

Following the implementation of the national agreement, and in accordance with the recommendations of a joint mission of France and the Commissariat of the North with the task of making proposals for the rehabilitation of public administration and restoring public confidence, this will be implemented at the district level with the establishment of Transitional District Colleges (CTA). Its members must be representatives of different geographical zones and the different social groups in the district. No group of any kind can be excluded. The district chief presides over the Transitional District College in which are to be implemented the structures of a democratic administration.

At the level of each regional chief, a mobile team will be created charged with assisting the Governor in reinstalling state structures at district and sub-district level. These three individuals will be allocated as follows:-

- One responsible for security provisions
- One responsible for institutional provisions
- One responsible for developmental measures

These levels have been decided by the Minister of the Interior in a circular dated March, 1993.

## Democracy

The insufficient mediation coverage poses the problem of the access of the political parties to these regions. Information passes through different shades of opinion which distort it. Decisions are not made as a result of the programme but by individuals. There is a problem of cooperation between the political parties, especially those which carry certain stereotypes: this party of the „nobles“, that party of the „vassals“. This begs the question of multipartism in a traditionally extremely hierarchical society. The emergence of different centres of decisionmaking require that the holders of traditional authority

take a back seat. In addition, there remains the problem of the future place of the movements and fronts of Azawad in the context of multipartism and democracy; especially the framework for the people of the three regions of the North.

The challenge facing the actual policy of the government is the development of the Northern regions, to resolve the disequilibrium between the North and the South of the country and to remove the feeling of part of the people of marginalisation.

## Conclusion

The process of the peace agreement in Mali is unique in Africa. It is one of those rare cases where a conflict between a minority and the central state has ended in an agreement. There are several factors which have brought this about: the military victory of the Northern combattants on the ground and the pressure exerted by the democratic movement in the South; international support (the media, Amnesty, IWGIA and other organisations) plus the fact that the combattants, unlike the army, did not attack the civil population; the cohesion of the movements and the fronts during the negotiations.

The national agreement accords specific rights to the people of the North. They will have to decide freely, to defend and promote their culture and civilization; measures crucial for minorities all over the world.

This peace agreement is a challenge for the Malian government. There are two scenarios: either the agreement will be enacted or hostile forces will proliferate and the obstacles will multiply. If the first scenario prevails, this will serve as an example for all the minorities in the region. If the second scenario prevails, the impasse and the explosion which we will have brought about is virtually inconceivable.

Finally, whatever the case, we dare to hope that despite the opposition of certain groups, that those in power in Mali will have to think hard about the endless conflicts of Africa (Liberia, Somalia, the Sudan...) since, having a solution within their reach, the chance must be seized.

IBRAHIM AG LITNY

## THE TUAREG AND THE SCHOOL

Although the institution of school was introduced in Africa in the early years of colonization, it took some time before it reached the Tuareg country. There had been some question of opening schools for the nomads as soon as their territory had been occupied, in the beginning of the century, but this initiative did not materialize until the eve of African independence. Why was there such a delay? The Tuareg lived in arid areas, which were hard to get to, and of minor economic interest to the colonizer. Despite the Great Peace that had been signed with the Tuareg after years of incursion, some troubles remained. Some opponents did not give up (Fihroun in Ataram, Kawsen in Aïr, etc.). In view of the immensity of their country and with their way of life, it was certainly more complex to govern the nomads than the sedentary people. Every form of discontent that could have led to disorder had to be avoided. Muslim propaganda had some influence on the population: it depicted the French as infidels, capable of transmitting their impiety to those who approached them. For the Tuareg, a child attending the school of the *Ikoufar* (infidels) would become sacrilegious and therefore definitively lost to his family. The Tuareg also saw the schooling of their children as a disguised form of a tribute they were forced to pay to the French. Besides, there was a lack of funds for the schools in the colonies until the end of World War Two. Only in 1946, when the "Union Française" was created, was the idea of schooling the nomads' children revived, this time with much determination.

### Nomadic schools in French Sudan

The nomads were citizens, in the same way as the sedentary people: thus the colonial administration could simply not leave them isolated. In order to control them, the authority had to move closer to them. The best way to reach this goal was certainly to create schools, which had already proved efficient elsewhere. The colonizer found this institution an efficient instrument of submission. G.

Hardy confirms it: "To transform the primitive people of our colonies, to make them as faithful to our causes and as useful to our enterprises as possible, we dispose of only a few means, and the most reliable of them is to take the native during his childhood, to make him see us assiduously, submitting him to our intellectual and moral habits during a few years in a row; in a word, this means opening schools for him where his mind will be shaped in accordance with our intentions" (1917:VIII). In the case of the Tuareg, school would also have to adapt to their nomadic way of life. The nomadic schools were born from this double necessity of bringing a foreign knowledge and adapting it to the social milieu.

One year after the decree establishing citizenship in A.O.F. (Afrique Occidentale Française/French Western Africa), the opening of schools for the sons and nephews of the Tuareg chiefs and notables was decided by the highest authorities. Important funds were released, allowing the creation of special schools intended to follow the camps on their trips. Assurances were also given to parents who aposed questions about school: What is it for? Is it acceptable to a Muslim? What is taught? Will it not turn children away from tradition? The administration had to answer all these queries to calm the parents' fears and finally succeed in its goals. The school had to provide food, housing and even clothing to children who had often been recruited very far from it. It was certainly with all this provisioning in mind that the Tuareg used to say to the administration employee or the teacher: "We confide our child to you".

In French Sudan (now Mali), the nomadic school first appeared in the Goundam subdivision. It was opened in 1917 for two tribes : the *Kel Intsar* (maraboutic tribe) and the *Tinguer Edjef* (warrior tribe). After six years, these two schools were closed because of the insufficient number of pupils, and their pupils were sent to the sedentary school in Goundam. In 1936, the school for the confederation of the western *Kel Intsar* was reopened at the insistent request of the *Amenokal* Mohamed Ali Ag Attaher. The school of the *Tinguer Edjef* was reopened only in 1941, and the same year three more schools were created: one for the Tuareg tribe of the *Kel Haoussa*<sup>1</sup>, and the two others for the Moorish tribes of the *Tormoz* and the *Ideylouba*.

The rapid development of schools among nomads in the Goundam subdivision is linked to the person of Mohamed Ali, who campaigned strongly in their favour<sup>2</sup>. To convince the people in his confederation, he started by recruiting his own children and nephews, as well as the children of his close relatives. In 1942, a second

school was opened for his tribe, which highlights the success of his recruitment campaign. From then on, the number of classes continued to rise in the subdivision, from first-year classes to primary classes, to finally lead to the establishment of a regional school for nomads with primary and intermediate classes in Bankoni (Lake Horo). The success was such that a school for nomad girls<sup>3</sup> and a secondary school were opened in Goundam.

In September 1947, Mr. Louveau, the Governor of French Sudan, who strongly supported schooling in his colony, sent a mission to Gao and Menaka, consisting of the inspector for administrative affairs in North Sudan, the head of the Muslim affairs office, and the head of the education office. The objective of the mission was to bring Tuareg notables to admit the necessity of school for their children. This time, the efforts proved successful: the *tiwsaten* of central Gao, Bourem, Ansongo and Kidal subdivisions put up little resistance. Only the *Amenokal* Tiljad, from Menaka subdivision, confirmed his previous opposition. What can possibly have changed the Tuaregs' position on the question of school? The defeats of the great antagonists were attributed to fate or to God's will. The establishment of school, a logical consequence of the French domination, was considered another manifestation of it. By 1947, the French school had already produced some state employees among the Tuareg - and not necessarily among the least religious of them - such as the *Kel Intsar* of Goundam subdivision. With time, the Tuareg had come to know the French better and forget some of their prejudices towards them. Another element was the dissatisfaction with being commanded by people from the South, whose superiority was justified only by the knowledge they had acquired from the French school.

Two nomadic schools had actually been created in 1946 in the Gao area: the school of the *Kel Essouk* in Arisongo subdivision (100 km from Gao) was soon closed, for lack of pupils; the school of the *Kounta* Moors of Bourem subdivision, originally opened in Agamhor (160 km from Gao) for only two years, remained open even after this period. Why were these two tribes special? The *Kel Essouk*, as well as the *Kounta*, were maraboutic groups. The Koranic school must have made them used to the idea of school. Maybe they also wanted to acquire and master a new kind of knowledge through school. Moreover, these tribes have a less nomadic way of life than the others, and the fact they were close to Gao, the centre of authority for the subdivision, put them more in contact with the administration.



Much care was given to the material organisation of schools by subdivision commanders, who were responsible for the funds provided. After the mission, sent by the chief commissioner of the Republic in A.O.F., to persuade the chiefs of Tuareg *tiwsaten* (tribes) to accept the opening of schools for their children, the chiefs had to agree on their location. It was decided to place each school near the camp of the tribe's *Amenokal* (chief), not only for the school to receive his special care, but also to make it better accepted by the people. Once agreement on the principle was reached, the administration would send two teachers, one for French and the other for Arabic. The latter would teach the children a little of the Koran, in order to reassure any parents who suspected the French school of corrupting their children. Originally, the nomad school was to be housed under a tent. Tents soon proved small and inadequate and were replaced by straw or banco huts. The administration appointed a monitor to look after the school, its well and its pasture. It provided the children with rice, millet and salt as food, and gave them clothes and blankets. The animals, which provided the canteen with meat, milk and butter, were delivered by the *tiwsaten*, as were

Subdivision	Tribes	Total number of pupils	Chiefs' Children
Bourem	Maures-Kounta	41	10
Kidal	Ifoghas	32	20
Ménaka	Iwellemmeden	47	6
Gao-Haoussa	Acheriffen	40	1
Gao-Gourma	Kel Agheris	32	4
Ansongo-Haoussa	Daoussahak	40	5
Ansongo-Gourma	Kel Essouk	40	2
Total		272	48

*Table 1 : Distribution of the tribes in the 1948 recruitment in the Gao area*

the shepherds and the kitchen-maids. A community clinic was annexed to each school, and was visited at least once a year by the head-doctor of the subdivision.

Many Tuareg chiefs, at least at the beginning, did not send their own children to the French schools, but only children of poorer families: tributary people's children, natural children, mulattos, prisoners' children. Thus, in the Gao area, among 272 pupils recruited between January and May 1948, 48 were sons or nephews of chiefs or notables, this is to say less than one in five (see Table 1).

In this table, we observe that the Kidal school had the highest proportion of so-called "noble" children (20 out of 32). This can be explained by the socio-political characteristics of the *Kel Adagh*, but also by the perspicacity of the administrator at this time, M. Clauzel, who gave special care to the good functioning of the school in his subdivision.

At the beginning, parents used to threaten they would rather kill their children than send them to the French school, and also kill the monitors who dared come and ask for them. The women were the most hostile towards the recruitment of children, and this made things even more difficult. All kinds of tricks were used to hide the children. During the recruitment period, parents avoided leaving the children alone with the cattle as they usually did. Everything was used as a hiding-place: mountains, wells, trees, tent corners... How many parents, knowing that the school was not yet interested in girls, actually declared all their children as female? How many went as far as to declare their child dead? How many went to see a marabout, paying with a few head of their cattle so that the school would not ask for their child?

These schools were mostly schools for nomads, because they actually moved very seldom. For example, from January to June 1948, of the seven schools of the Gao area - the most concerned with nomadic schools - only three moved more than a one day's camel ride away, this is to say 45 to 50 km: the schools of the *Kel Adagh* in Kidal, the *Kounta* in Bourem, and the *Dahoussak* in Ansongo-Haoussa.

## Post-colonial School in Mali

After the departure of the French in 1959-1960, nomadic schools became definitively sedentary. Although it maintained French as the teaching language, the Malian school broke with the system inher-

ited from the former home country. During the period of the marxist experience (1960-1968), it moved seriously away from its mission of teaching universal knowledge. It was used as a pretext to channel and recruit the Tuareg youth (especially in the Adagh area) into various political activities: scout movements, folk troops, sport competitions, daily parades, meetings used for political ideology lessons. Public holidays were cancelled for pupils, as well as winter and spring holidays. School time was shared between class lessons and "Cultural Revolution" activities. During the summer holidays, pupils left their villages and had "Revolution" activities in the country. As a consequence, they saw their parents very seldom. Apart from the few hours of lessons in French, they had to speak Bambara, a language of the South that had been declared the national language. To speak one's own language, *Tamachaq*, was considered an insult to the Revolution. To please this Revolution, one had to repudiate one's origins, in the most visible way.

The 1963 armed uprising and the requirements of the "Cultural Revolution" forced nomads to move closer to villages. Populations settled close to urban centres were easier to recruit. A great number of children were mobilized, and thus schools had to be created: one school was opened in every district. The recruitment became strict, and was set to 45 pupils for each first year. In order to reach this objective, a strong pressure was put on parents and chiefs of tribes<sup>4</sup>.

In August 1968, the marxist regime of Modibo Keita was overthrown by a military coup. The new government abolished the political activities that mobilized the youth, thus freeing pupils and allowing school to play its educative role again. Yet, in the field of education, the reforms made did not take in account nomad specificities. The change of government in 1968 in Mali took place during a drought that was to culminate in 1973. The effects of this drought on the nomad populations were similar to those of the 1963-1964 uprising: people moved closer to urban centres, a large fraction of the population died (nearly 25%), especially young children; cattle herds were devastated (almost 80%), and a great number of families were forced to go into exile. Even if some nomads stayed, scanning the sky and waiting for the rain, the majority of them left in 1972 for other areas of the country (Kidal, Menaka, Gao, Timbuctoo) or abroad (Algeria, Libya, Niger, Nigeria). The exodus, the high mortality of children of school age, as well as the bad functioning of school canteens, considerably reduced the average yearly recruitment rate of nomad children (see Table 2).

	Number of children recruited	Yearly objective	Covering rate
1966-1967	250	270	93
1967-1968	284	270	105
1971-1972	65	270	24
1972-1973	44	270	16
1976-1977	40	270	15
1977-1978	60	270	22

*Table 2 : Change in the covering rate of school recruitment in relation with the yearly objectives set by the administration in the Kidal area.*

If we consider the change in the school recruitment rate in the Kidal area, we notice a clear falling trend in the covering rate relative to the yearly objective set by the administration (Table 2). This trend becomes very clear from 1971 onwards, and leads to an 86% decrease in recruitment. If such a trend continued after 1978, a complete stop in recruitment could have been expected for the 1988 period. And this is exactly what happened: from 1977 on, recruitment of nomad children continued to decrease considerably, down to a low 5% for the whole area in 1989, and to only 2% for Kidalville school. As for the loss observed during the school cycle itself, it can be explained by several factors, either linked to the school system or the environment. This large number of school failures can be a consequence of the inadequacy of curricula devised for sedentary populations and which did not take regional nomad specificities into account, despite several reforms to the educational system. As for the teachers, they prove insufficiently motivated with regard to the level required in this profession, many of them considering their time in the Tuareg country as a kind of punishment. The bad living conditions at school give rise to many escapes by children. The administration prefers to act by constraining parents, rather than by truly trying to make them sensitive to the issue of school.

## Schooling the Tuareg: an assessment

After forty years, it appears possible to make an assessment of the effects of school on the Tuareg. We can say that colonial school certainly did not achieve all its ambitions. Facing both hostility from the social environment and insufficiency of funds, it took a long time for schools to open in nomad areas. Until 1948, the Tuareg were very reluctant to accept the introduction of schools, because they symbolized French domination, and they saw it as a kind of masked tribute they had to pay. They also considered a child allowed to attend school as definitively lost to tradition. Colonial school was established, unable to follow the rhythm of nomadic life. It wanted to be a nomadic school, but remained a school for nomads. It opened too late to be able to form an elite among the Tuareg. In defence of the colonial school, it must be recognized that it truly tried to adapt to the environment, coming closer to the nomads. Although the knowledge it transmitted to children was not that of their ancestors', it is to its credit that it tried to keep these children in their affective, cultural and social environment. It also succeeded in interesting the nomads in taking charge of the feeding of their children, through the gift of animals to school canteens.

As for school in Mali, it deserves credit for making the educational system more democratic, first by increasing the number of schools at the town and village levels, secondly by abolishing elitism and establishing equal opportunity. It managed to recruit a large number of children, even though many of them, including girls, did not carry their studies very far. However, school in Mali can be criticized for serving as an instrument of political recruitment during its first phase (1962-1968). Moreover, it deliberately sacrificed a part of the population, the cattle breeders, for so-called national ambitions. Willing to decolonize and standardize, it abolished school manuals that had been especially devised for nomad children by the French. In the manual used in Mali at present, Tuareg children are told about "huts" for houses, "loincloth" or "chéchia" for clothes, "farming" for work, instead of being told about things of their own environment: tents, veils, or breeding, for instance. In its second phase, when it progressively gave up the canteen system, school made children live in difficult conditions, and brought them to dislike school.

Modern school, whether colonial or post-colonial, has not yet succeeded in fulfilling the needs of nomad populations in relation to their way of life. Keeping children far from their social and cultural

environment is not harmless: it causes affective damage, thus altering their psychological balance. Lengthy separation also deprives families of the share of the work children traditionally take on. Discontinuity in the knowledge transmission system accelerates their loss of identity. Among the greatest weaknesses of the modern school among nomads is its inability to form young people who can regenerate their way of life. Recruited children are deprived of their ancestral knowledge, and are considered degenerate by their parents. This was especially the case for the first recruits of the colonial period: they were mocked by their nomad companions, because of their softness and clumsiness. This lack of consideration progressively vanished when a large number of schools were created, when recruitment became systematic, and when dependence upon sedentary people increased through employment and insertion into administrative and political structures. Even if parents still think that school keeps their children too long, they do not question its importance any more: "those who attend school in the cities learn the secret of the world". Empirical knowledge is considered increasingly archaic by nomads, who believe it is not sufficient to bring them out of their isolation. They link their current problems (impoverishment, the forced settling process, their loss of identity) with their weakness in modern knowledge. But many of those who attended modern school (the so-called "*Kel lecol*", those from school) did not get very far in their studies, and thus find themselves torn between rational and traditional cultures. They did not succeed in becoming a link between the administration and their original environment. Does this mean that modern school is incompatible with the Tuareg way of life, or is it only the present conception of school that proves inadequate? In colonial times, school had made important efforts to adapt to the nomad environment which, however, remained hostile to it. Today, the Tuareg clearly understand its importance, but school has failed. In Mali as well as in other countries, the failure of the educational system can be attributed to wrong structural management of development; but in the case of the Tuareg, the fact that specificities of their way of life have not been sufficiently taken into account seems to be an additional element.

## Prospects and Aspirations

The Tuareg cannot be considered today a totally nomadic population: an estimate of those who have remained nomadic would not lie

above 60%, while the remainder live as a sedentary diaspora in Mali, Niger, Algeria, Libya, Mauritania, Saudi Arabia or Ivory Coast. Also, the population is not as homogeneous as it is often presented: what is true in northern areas, where extensive nomadism is practised, is not necessarily true in the Sahel area, where less extensive breeding is practised, often in combination with agriculture along the river.

The adaptation to the realities of today seems to be accompanied by a strong will for identity affirmation. The transition phase currently in progress should not be interpreted as a mere reconversion of the nomadic/sedentary, breeders/farmers, Ancients/Moderns type... Cattle are not the only economic base any more, not even a prestige possession. Paid work has increasingly become a complementary source of income and, in some cases, the main source. To replace traditional strategies or adapt them, a more precise knowledge of the needs is required. Drought is a cyclic reality of the climate in the Sahel area, where vegetation and water are the determining factors. To help the people in this environment means, first of all, to prevent or at least to limit the deterioration of the ecosystem. Another way of helping is to try to understand and support the newly initiated transition. This transition must take place by a process of choice and of balance between economics and politics, between the universal and the sacred. The Tuareg wish to change their image of predatory nomads or, a more sordid view, of drought victims into the image of ordinary people fighting to preserve their identity. In this respect, only a better consideration of regional particularisms will bring more autonomy to nomad populations and allow an adaptation of administrative structures. The Tuareg, whether from Saharan areas or the Niger area, nomad or sedentary, have three main concerns: to have better control over their destinies, to open their production system to technical advances, and above all to have some rights over the education of their children.

Society is under transformation and, more than ever, it needs to master its educational system. Because school remains, in societies with an oral tradition, a violation of the collective memory, the present challenge for school authorities is to offer the nomads an adequate educational system, which includes schools that will allow Tuareg children to have access to modern knowledge while preserving their values. In this respect, one should not forget the urgent need to regenerate their way of life through adequate education, directed towards the fulfilment of real needs. Everyone has a right to the access of knowledge: is it not the duty of school authorities to

consider a project of integrated schools for nomads? What about reconsidering the system of schools stationed on dry season wells where the largest number of tribes gather? There are many advantages to this system: children will gain access to universal knowledge without breaking with their social and cultural environment; they will be able to keep up their part of the work, for example bringing the cattle to the well in the morning, bringing them back to the camp in the evening, helping at the watering place, filling the goatskins. They would only be day-boarders, thus reducing the school fees. During the first six years, they would learn to read and write, while they evolve in their environment. After primary school, would it not be more judicious to let parents decide what direction their children should take? Should not the training of teachers promote people from the same environment, integrated with the camps, in the same way as the marabouts traditionally taught the children the rudiments of the Koran?

## Notes

1. The Niger river divides Gourma in two regions: Haoussa (known as Awza by the Tuareg) which is the left bank, and the Hari-Banda (known as Arabanda by the Tuareg) which is the right bank.
2. For information about this subject read the article by Hawad and Hélène Claudot-Hawad (1990:92-97).
3. When he came to Goundam in 1947, Mr. Combelles, the first headmaster of nomadic schools in the Gao area, was surprised to find there a school for girls, functioning well.
4. In this respect, one may mention the execution in Kidal in 1967 of the tribal chiefs Bessada Ag Ghissa of the Kel Taghlit, Ebagg Ag Elmouaq of the Taghat Mellet, and Hamzata Ag Alqacem of the Kel Telabit, found guilty of not sending their own children to school in time.

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## CHAPTER 5

# INDIGENOUS PEOPLES AND THE COLONIAL STATE



M. A. MOHAMED SALIH

## INDIGENOUS PEOPLES AND THE STATE

### An unaccomplished colonial legacy and the dilemma of internal colonialism in Africa

African indigenous peoples could probably not have found themselves victims of the present era of genocide and repression without the colonial legacy which presumed a linkage between the advance of „civilization“ and the „end of history“ for those whom it made prey to that undertaking. However, the colonialists were able to encapsulate large sectors of indigenous peoples and subsume them under the „modernization“ programme. Societies which inhabited remote regions with no direct economic potential or territories with severe natural constraints were left alone as long as they did not pose a source of political instability or became a threat to colonial rule. Some indigenous peoples were certainly left alone, not because of the colonialists' care and respect for their cultural values or human rights, but because they were not potentially beneficial to the religious, political or economic cause which the colonialists set out to accomplish.

Most post-independent African states were no less cruel towards their indigenous populations than the colonialists. The new incumbents of the political offices left by the colonialists shared with their departing masters two things: 1) a desperate attempt to incorporate indigenous peoples into the realm of an erroneously perceived „nation-state“ and 2) to become self-appointed guardians of the inherited colonial boundaries, regardless of their implications for national or regional security. A cynic may propose that the neo-colonialists (during the Cold War and probably still today) divided themselves between aiding the advancing internal colonialists or the indigenous movements in order to discredit their opponents (West or East) rather than to serve them well.

The dilemma of internal colonialism, on the other hand, has emanated from many calculated or miscalculated presumptions: 1) While the neo-colonialists have shunned their past and championed causes pertaining to the respect of peoples' right to self-determination, the internal colonialists began to lose ground as the legitimacy of the post-colonial state was increasingly challenged. 2) The internal colonialists have in many ways failed to maintain peoples' standards of living at the levels inherited from the colonialists, let alone meet the accelerating aspirations for development. A situation was created whereby the state became a meeting point of competing political interests seeking survival by appropriating power and using coercion to improve their capacity to misappropriate resources. This has heralded the triple failures of the African state: a) as an engine of development, b) as an arbiter of diverse ethnic claims, and c) as a sole possessor of the use of power and coercion to safeguard the public good, maintain peace and order and secure national sovereignty. It is under pretext claims such as these that the indigenous peoples became the object of the coercive apparatus of the African state - the police, the army and at times militias and paratroopers. The predicament of the indigenous peoples then is that they have been used as a scapegoat to cement a bankrupt and disintegrating political society looking for far-fetched legitimacy by creating an enemy image looming from the periphery and striving to hijack political power from the centre. The state's suppression of the indigenous peoples' aspirations cannot be seen in any way other than a callous act of genocide by a new breed of internal colonialists.

The paper attempts to: a) elucidate whether it is possible for neo-colonialists (both external and internal) to co-operate in protecting indigenous peoples' rights and b) ask the question whether the indigenous peoples have the potential to create viable states.

## Indigenous peoples and the colonial state

The subject of colonial atrocities and treacheries against African indigenous peoples is well known and it will serve little good to narrate it here (Annex 1). It is now evident that the colonial policies which were based on „protection and civilization“, (Merivale, 1988: 97), are responsible for most of the miseries which beset the indigenous peoples today. However, a passing yet important point to make is that Europeans should not attempt to present themselves as morally superior over their ex-subjects simply because, as Diamond

(1974:2) reminds us, the worst crimes of civilization were committed against people who did not know how to read or write. Let us not forget that Europe committed many of these crimes and one would therefore contend that it has a moral duty to set right some of its past injustices. For that reason alone, the present genocide and ethnocide committed against indigenous peoples can also be viewed as a continuation of the colonial policies by the neo-colonialists who set out to complete the unaccomplished colonial legacy basing their actions, yet again, on „protection and development“.

It is also premature to describe the colonial experience as an economic project devoid of interest in the cultures of the colonized. In this sense, the colonial history of Africa can be viewed as a process aimed at incorporating indigenous peoples and resources into the European realm in order to facilitate their exploitation. Well aware of the real and symbolic power of cultural values, traditional political structures and institutions, the colonial state embarked on integrating some sectors of the populations into its administrative structures and used them not only in military expeditions to subdue rebellion or appropriate productive land and mineral resources, but also to facilitate their cultural penetration. In discussing the relationship between cultural dependence and economic dependence between Europe and Africa, Mazrui (1990:6) argues that, „while economic dependency has always included some leverage on the part of the ‘colony’ upon the metropole (since the centre needs the periphery economically), cultural dependency has been much more of a one-way traffic at the organized level. The imperial power was prepared to dump its cultural goods on the African market, but it was not interested in purposefully importing African culture back into Europe. Whatever African culture has penetrated Europe has been due far less to organized European policies than to the activities of individual scholars, artists and antiquarians, and to the cultural impact of African slaves imported into the Western world“.

Europe as a whole was prepared to offer its religion, languages and culture to Africans - but only in exchange for land, mines, labour, energy and other economic riches of Africa. Jomo Kenyatta in the old colonial Kenya was more profound than even he may have realized when he observed,

„when the white man came to Africa he had the Bible and we had the land. And now? We have the Bible and he has the land.“

Land is also the target of the post-colonial state. It is now common knowledge in Africa that the state has long granted itself, under the

„project tenure“ legislations, the right to evict the traditional producers from any land it so chooses „to develop“ into mines, plantations, housing estates or any other „development“ activity. The African state could and can do so without notification, compensation or respect for usury, ancestral or any other customary rights. Such cases of state appropriation of land from subsistence cultivators and pastoralists are reported in Tanzania, Mauritania, Sudan, Ethiopia, Nigeria, Kenya and others. The neo-colonial mentality of the African neo-colonial elite is hardly distinguishable from their colonial predecessors.

Cultural colonization has taken several paths with the European value systems intimidating the indigenous African cultures, encapsulating and distorting them, a process known in the literature as Europeanization, Westernization or modernization. In their contacts with indigenous peoples, European colonialists imposed their languages, education systems, religions, judicial system, dress, lifestyle etc. Such socio-cultural transformations (or distortions) were seen by the colonialists as necessary for the commercialization of agriculture, mining activities, the introduction of European currencies, increased export of cash crops and import of manufactured goods, the growth of semi-European towns as administrative centres, urbanization etc. These interventions and others were labelled by the colonialists as „development“, „modernization“ or „civilization“.

Although colonialism was able to set the Westernization processes in motion, I by no means suggest that this occurred without resistance. As a matter of fact thousands of indigenous peoples died either in combat or as a result of these policies. Nor am I suggesting that there were no civilizations and no urbanization processes taking place, or proposing that there was no trade or no vibrant commercial sector in Africa before the advent of colonialism. I am arguing that the colonial powers were able to orientate and transform African society, economy and policy to serve the colonial objectives rather than the objectives, interests and aspirations of the indigenous peoples.

If culture is the whole complex which embraces the totality of ways, means, values and modes of living created by a group of human beings, then it is obvious that the colonial experience has transformed many of these ways and modes of African living. However, not all African societies have been equally affected by colonial activities. These policies applied a selective approach and reached more into some sectors of African society which were

perceived as more useful to the colonial project than others. The colonial state, and its institutions, applied the „divide and rule“ policies in many ways to strengthen its control over its subjects. Some societies were rewarded with administrative offices and educational opportunities, while others were left out. Those which were left out mostly represent Africa's indigenous peoples of today (Annex 2).

In addition to the misery inflicted on African societies by post-colonial ethnic wars, the colonial „divide and rule“ policies resulted in the creation of two sets of African cultures: large societies whose cultures and traditions have been encapsulated into the colonialists' traditions with patches of a commercial African culture sold to the tourists and other markets and industries, and small pockets of „preserved“ or „indigenous cultures“, often inhabiting the spatial and political periphery of the state. These societies thus remained to a large extent „indigenous“, while those which served the ex-colonial powers have been „modernized“. In post-colonial Africa, the „modernized“ or „Westernized“ Africans took over the political role of the colonialists. Hence, the transformation (or distortion) process which I have attempted to elucidate cannot be divorced from the formation of the post-colonial state, its goals and pursuits and its perception of its subjects, particularly its indigenous peoples. In this perspective, African post-colonial states have much in common with the states of the „New World“ as far as their treatment of their indigenous peoples is concerned (Annex 3).

In the theory of transition from colonial to post-colonial states, Alavi (1974) argues that, „the role of the colonial state was to create a state apparatus through which it could exercise dominance over the people of the colonies. The colonial state was therefore equipped with a powerful bureaucratic-military apparatus and mechanisms of government which enabled it through routine operations to subordinate African societies. The post-colonial state (Saul 1983) has inherited an overdeveloped apparatus and has used it to institutionalize practices through which the role of government is regulated“. It is, however, important to emphasize that the relationship between the colonial state and indigenous peoples was no less confrontational than that with the national state. Resistance to the advent of colonialism and state intervention was fierce among pastoralists and several historical studies have already documented such incidents (e.g. Mohamed Salih 1990b).

The emerging post-colonial African states have unwittingly reinforced the political values which they inherited from the colonial



state apparatus and all that went with it: European languages (English, French and Portuguese), military and administrative structures, political institutions and religious affiliations (Catholic or Protestant). These highly charged cultural manifestations have encompassed expressions of a political culture alien to African indigenous peoples who continued their resistance to external domination whether national or foreign. In a nutshell the post-colonial state has kept alive its ideological as well as political linkages and interests with the ex-colonial powers.

The cultural lag between the new political elite and the indigenous peoples was ushered by power structures devoid of legitimacy or popular engagement. Economically, promises of development have become a nightmare with increasing poverty, famine and starvation almost everywhere in this beleaguered continent of ours. Politically, the African post-colonial state had assumed the role of accomplishing the colonial crusade and incorporating what the colonialists had failed to incorporate into the realm of the post-colonial state. Political coercion, repression and denial of basic human rights were all used to complete such a project.

## Indigenous peoples and the post-colonial state in Africa

Now that the colonialists have left, the small educated and political elite among the indigenous peoples has opted for incorporation into the post-colonial state. However, the new incumbents of the ex-colonial offices resorted to the consolidation of their own power positions with complete disregard for their legitimate demands. The end result of the colonial experience is the creation of a divided African society: on the one hand, a largely urban or urban-like sector and a rural economy which are incorporated into and became susceptible to changes in the market economy on which they are increasingly dependent; on the other hand, a minority which remains „indigenous“ with limited if any dependence on the market economy. One section of African society has access to the factors of development (or underdevelopment) and the other still lives on nature and depends on subsistence crop and pastoral or agro-pastoral production.

Furthermore, indigenous peoples who were not fully subsumed under the colonial regime and its socioeconomic rewards (or punishment) ended up in a weaker bargaining position after the departure of the colonialists who protected them from competing ethnic

claims. The point here is that the colonialists did not empower the indigenous peoples or support them to gain access to the colonial state in a manner that would protect their rights to all that matters to them: lands, natural resources, property rights, cultural autonomy or institutions for self-government. However, this is not to deny that some limited educational opportunities were made available for the members of the chief families who spearheaded the administrative incorporation through local administration or the native administration system. The colonial legacy which successfully incorporated urban dwellers, educated and political elites into the Western „ways“ was not able to accomplish such a policy amongst remote „indigenous peoples“ some of whom are still aloof from and suspicious of state policies and intentions. Nietschmann (1988:271-2) has correctly argued that „states seek to exert centralized control over claimed national territory and inhabitants through intrusive legal, economic and bureaucratic means, backed by the threat or use of military force under the mantle of manifest destiny, national consolidation, resource procurement, development and military security, states have subjugated or threatened indigenous nations with imposed external Government policies, ranging from extermination to integration“. In the absence of a social contract that defines the limits of state intervention in people's lives, the question then is one of legitimacy and how the African state perceives its indigenous peoples and *vice versa*.

## The African state and the question of legitimacy

The independent African states were able to create the Organization of African Unity (OAU) and entrusted it with a supra-national role to safeguard the colonial boundaries which they inherited from the colonialists. The OAU Charter, Article III, No. 3, states, „respect to the sovereignty and territorial integrity of each state and for its inalienable right of independent existence“, but nowhere in the article of the African Charter on Human and Peoples' Rights from 1981 (cf. Hamalengwa et al, eds.1988) has anything about minority rights been mentioned. It seems that the African state is persistent in its negligence of the human rights of its minority groups and indigenous peoples.

Therefore, African post-colonial leadership has committed itself to the respect of the inherited colonial boundaries no matter how just or unjust they were, an undertaking which has delayed the solution

of many conflicts. Claims between states and indigenous populations, particularly pastoralists, over „who governs“ and hence who controls, have contributed to the proliferation of internal liberation wars. Claims and counter claims have resulted in the contradictions and conflicts which characterize the state-indigenous peoples' relationship. I argue elsewhere (Mohamed Salih 1990 b:10) and with particular reference to pastoralists that contradictions between state, society and nation emerged as the state began to intervene in every aspect of social and political life. The process of political modernization, the creation of parties, trade unions and co-operatives has hardly transcended the values inherent in local politics. In some cases it produced a blend of modern and traditional political values existing side by side. Hence, a serious confrontation is created between the values inherent in the state structure and the values of political expression available to society. The state's role as an ultimate arbiter of political and social institutions is at times challenged for at least two reasons: first, the state is perceived by society as a provider of social services and goods which, in reality it cannot satisfy for reasons emanating from underdevelopment, and second, a contradiction between nation and state has developed since the present national boundaries of most African states were artificial creations of colonialism. The fact that all wars in the African arid lands involve pastoralists (Dinka, Shilluk, Nuer, Tuareg, Baggara, Somali, Afar, Berber) highlights the calamity of the situation and the intensity of the contradiction between the values of statehood and those of nationhood. This always creates a crisis of identity especially in cases where pastoralists oscillate between adherence to local politics mediated by ethnicist ideology on the one hand, and national politics of a narrowly perceived notion of a nation-state on the other.

These wars can also be seen as a genuine struggle by indigenous peoples to free themselves from the stronghold of internal colonialism, a term generally used to denote a periphery-centre relationship, whereby resources are siphoned from remote underdeveloped to relatively developed regions within the country. It refers to a process according to which the state uses oppression and coercion similar to or even worse than the practices used by the European colonialists to control and suppress the human rights of its „indigenous peoples“. Within this frame of reference, the concept of internal colonialism implies contradictions between the state's objectives and those of „indigenous peoples“. Pirouet (1977:198-9) observes that, „in each case, resistance arose among people living at

the near to subsistence level. In each the resisters used the tactics of guerrilla warfare. In each case the regime was able to recruit into its counter-insurgency forces, large numbers of people from the same population group among which resistance arose, and it made constant use of this in its propaganda. In all these cases the resisters had difficulty in nationalizing resistance“. The processes of differentiation which have been taking place during recent centuries (Oy-bola: 1976; and Verhelst: 1990) have also reinforced patterns of political alliances detrimental to the indigenous people. The precarious balance between the African state and its minority groups does nothing but reinforce the neo-colonial thesis which I have already put forward (Annex 4).

For the indigenous peoples, disengagement from state operations is less harmful than the strain of the obscure and unjust state/citizen relationship in which the state has often exceeded its jurisdiction powers and abused the „fictitious“ one-sided social contract. It is not possible to present in detail all the areas of state abuse of the rights of indigenous peoples. Nor is it possible to map in detail how the state has failed every aspect of its duty as a protector of what Hobbs (quoted in Held 1983) calls „all that is dearest to man: his life, his limbs, his property etc“. In the following section an attempt is made to offer a synoptic view of themes dealing with the African state acts of genocide and ethnocide, abuse of human rights and appropriation of land.

## 1 - Genocide and ethnocide

Genocide has become a ghastly feature of modern wars in Africa and elsewhere (Rutherford 1973; Harff 1984; Horowitz 1976; Kuper 1981). Most of the violence taking place in Africa today has some sort of ethnic nature. In these wars, the elimination of the enemy and its cultural, religious and social values represents a blatant act of ethnocide. For instance, the wars in Southern Sudan, Liberia, Somalia, the hidden wars in South Africa, Mali, Mauritania and Niger, and even seemingly ideologically motivated wars such as the cases of Mozambique and Angola, do have an ethnic nature and rally the support of one ethnic group against the other. The African state is not only an accomplice to these wars, it is in many ways an initiator and perpetrator of genocide against its own people, siding with its supporters and at times aiding them annihilate opponents to the state.

Acts of ethnocide or cultural genocide have also been committed in the struggle between Arabized and indigenous African societies as is the case in the Sudan, Morocco and Mauritania. In some cases acts of genocide and ethnocide seem to go hand in hand, although genocide may take place for political reasons among similar cultural groups as in the cases of Burundi and Rwanda.

## 2 - Abuse of human rights

The subject of human rights in Africa has dominated the political agenda of many publications (USC:1974, 1979; Cone and Harris 1983; Eze 1984; Peter 1990; An-Na'im and Deng 1990; An-Naim 1992). However, I would argue that most of the discussion about human rights in Africa has been urban-based. There is much concern with political modernization with little emphasis on economic and social rights. The difficulty with this approach is that it tends to pay lip service to some of the human rights abuses which take place in the rural areas or which involve people who might not be easily reached by the media. Indigenous peoples suffer both from the consequences of repressive government actions and from forms of human rights abuses particular to their situation such as cultural genocide which in most cases remains unknown to the outside world. Abuse of human rights of indigenous peoples is commonplace and all the cases of genocide or ethnocide which have been reported by human rights and other organizations in recent years point to the fact that these are state or state-sponsored acts.

## 3 - Appropriation of property rights

The history of „settler colonialism“ and the recent history of landed property in post-colonial Africa is well known. The post-colonial or the neo-colonial African state has again become a self-appointed crusader endeavouring to incorporate into its economic and political domain peoples and lands which were not incorporated by the colonialists. There is the common tendency that the African state assumes the right of evicting small producers from their farms, pasture land, watering points and other landed resources. Cases of peasants and pastoralists being dispossessed by their states are common, and it is needless to repeat these arguments. However, state appropriation of land has contributed to „land hunger“, impoverishment and subsequently malnutrition. Most of the approp-

riated lands have high economic potential, but were not developed by the colonialists. Lands appropriated from indigenous peoples were mostly allocated to the powerful and wealthy strata of the population.

There are several other areas of concern related to the strained relationship between the African state and its indigenous peoples. What I have presented here is a gross generalization of a more detailed picture of state brutality against the indigenous peoples. To my mind, the present quest for the reconsideration of the relationship between state and civil society in Africa is much more a result of the coercion which the African state exerted upon civil society, than its failure to become an engine of economic development or the guardian of public interest. The issue of state legitimacy became important because most post-independent African states have depended on superpower rivalry during the Cold War for external legitimacy. Actions by states with the most absurd record of human rights were not questioned by either of the superpowers because they were perceived by their external supporters as a strategic ally whose loss might endanger their national security. External legitimacy cannot substitute internal processes of consciousness-raising, nor can it produce a sustainable system of accountability against human right abuses. This is not, however, to suggest that external pressure is not important in bringing about some quick changes in the state's attitude towards human rights issues.

### Integration, autonomy or preservation

Any discussion about indigenous peoples poses a dilemma of whether those concerned with their plight are in a position to influence their destiny and help them pursue the kind of life they would have wanted to pursue. The question is whether it is possible to reconstruct the material, social and political conditions under which they survived before the advance of foreign and national intruders; colonialists and neo-colonialists. Even more difficult is to identify them with what their true or potential redeemers perceive as integration, autonomy or preservation.

An important point to make in this connection is that indigenous peoples are highly differentiated and they are most likely to subscribe to more than one opinion and perception of what is considered as „good life“. In this regard, Bodley (1988) presents us with a very perplexing and challenging proposition which has serious impli-

cations concerning the future of indigenous peoples. According to Bodley (ibid.) the developmentalists or the advocates of integration, base their assumption on the following premises: 1) the way of life of indigenous peoples is materially inadequate; 2) integration will improve their quality of life; 3) interest in new technology on the part of indigenous peoples reflects a desire for integration, and 4) progress is inevitable. The counter argument to this viewpoint is that integration means the loss of a way of life which the indigenous peoples have experience of and have known for centuries; and as such it might contribute to cultural genocide.

The autonomy argument differs from integration and preservation in that the latter represent extreme poles implying two opposing objectives. The neo-liberal attitude encompassed in the autonomy argument can be viewed by the integrationists perspective as suicidal. It urges indigenous peoples to maintain autonomy in a highly interdependent world in which those who possess modern technology also possess unprecedented political power which can easily be transformed into means of economic exploitation and cultural domination.

The quest for autonomy is closely linked to the issue of self-determination and the creation of states (independent, federal or confederate) so that the indigenous people can gain control over their economic, social, political resources and cultural heritage. The difficulty here is not with the autonomy question *per se*, but with its political as well as economic implications. Politically, the theory of the state (any form of state) presupposes among other things the ordering of society within a given structure of power. As entities, states interact with other states and „poor states“ tend to receive *dictat* from „rich states“.

Today's indigenous societies are highly differentiated and as the colonial experience has shown, societies which were incorporated into the centres of power were able to join the colonialists in mistreating the societies which confined themselves to autonomy by choice or coercion. In retrospect this implies that the autonomy argument is self defeating in the long run, since any indigenous peoples state is by definition a „poor state“ and a „modernizing state“.

The problem with neo-colonialism is that it cannot just go away. It has the capacity to resurrect in dubious forms that are at times confused with „true liberation“. Economically, indigenous communities have weak bargaining power and since, at least, their political and educated elite have culturally more in common with their

present oppressor, economic links would likewise lead to „modernization“, inevitably ending their isolation.

In an illuminating statement on the Sami of Scandinavia Svensson (1992:363) poses the question, „How then can a particular culture survive?“ Svensson rightly answers by stating that „it (*culture*) can be sustained only by the common action of many people whose main concern is to maintain and develop their basic and culturally defined characteristics. These people share fundamental interests and values, as well as a distinct identity, which make them readily recognized and different vis-à-vis the outside world. Cultural survival, therefore, is primarily a collective objective and should be viewed in contrast to physical survival“. Any open-minded understanding of this statement would surely suggest that 1) cultural survival is possible only if the members of a given group possess the collective objective to make their culture survive and 2) that there is a danger of producing opposite results if the groups act individually (liberal individualism) with each individual attempting to grasp the opportunities which the structure of „modernization“ may open up. In the latter case the individual must have the right of choice to opt out vis-à-vis collective actions by the group. How to treat the question of minority opinions within minority groups, such as indigenous peoples, should be a cause for concern by human rights activists and voluntary groups lobbying for indigenous peoples.

In common with other indigenous peoples in Africa and other parts of the world the future of African indigenous peoples lies with the global structure of interests which determines issues of vital importance to their survival. The recognition that there is a question of indigenous peoples should not stop at scratching at the surface of the difficulties which beset them, but proceed to provide a programme for action: 1) to safeguard their peaceful existence without intimidation by the state or those who championed their cause without due consideration to how they themselves perceive their problems and their respective solutions, and 2) to protect their human as well as minority rights so that they may freely choose their future destiny, whether in integration, autonomy or preservation of their cultural heritage in the manner they choose. Those who care about indigenous peoples may succeed in their endeavour if they recognize their role as facilitators, not as champions of „moral superiority“.



## Annexes

1.

I argue elsewhere (Mohamed Salih 1990a :113-4) that „the colonial powers disguised their economic and political interests in Africa under the pretext of bringing civilization to its „primitive“ peoples and culture. The „savage“ or „primitive“ is often described by some colonial anthropologists, among other racist European writers, as non-literate, non-domesticated, wild, uncultivated, naked and ferocious in temper. It was under these negative attributes that European colonialism assumed that one of its prime objectives was to bring civilization to such savage societies“. As an illustration of such claims, I quote Howe's (1968:585), famous statement that, „It (Africa) possessed no maps. With eighteen thousand miles of coast, it produced no oceangoing ships, no navies or navigators. It sent no trade missions or emissaries around the world, of which it knew and contrived to know nearly nothing; each tribe was ignorant of almost all African lands, except its own, and those of its neighbours and present and past enemies. A female continent, Black Africa, was to be discovered, penetrated and dominated by others. There were few exceptions to this image of passivity“.

In a recent remark, Adu Boahen (1987:19) argues that „two extremely important social changes, both of them the direct consequences of the emergence of the educated elite, were the development of African religious nationalism, or „Ethiopianism“, and a veritable intellectual revolution, especially in South and West Africa... Both these unique developments of the latter half of the nineteenth century were the reactions of the African elite to the pseudo-scientific racist theories of the day in Europe and America, which declared the black man to be an inferior being because of his colour. These false racist ideas were given wide publicity as a result of the writings of people like Gobineau, Burton, and Windwood Reade. Most of the European missionaries and administrators were impregnated with these ideas prior to their arrival in Africa. Their consequent discrimination against educated Africans both in church and state infuriated many Africans. Some of the educated Africans also grew increasingly resentful of the condemnation of everything African by the missionaries“.

The unfortunate thing in post-colonial Africa is that some of the same educated African elite have become the neo-colonialists vis-à-vis the sections of their peoples whom the colonialists „forgot“ to incorporate into the realm of brutality and suppression of the colonial state.

2.

With an area comprising over one third of the total 2.5 million square kilometres of the Sudan, Southern Sudan had few contacts with the outside World until the 18th and 19th century slavery raids which were committed by European and Northern Sudanese (Muslim Arabic-speakers claiming Arab descent). During the Turco-Egyptian rule (1821-1885) and the Mahdiya national rule (1881-1898), the South remained the main slave-raiding ground. The Anglo-Egyptian condominium rule (1898-1956) prohibited the slave trade but introduced the Close Districts Act (1937) and devised a special Southern Sudan Policy which kept the South and the North apart.

The war in Southern Sudan began in 1955 and continued until 1972 with the signing of the Addis Ababa Agreement which granted the South an autonomous regional government. The war erupted again in 1983 with the introduction of the Islamic *sharia* laws, disagreement on the distribution of the expected revenues from the oil discovery in Southern Sudan and general resentment about the re-division of the South which undermined its bargaining power against the North.

UN estimates put the figure of the death toll during the first war at 1,000,000 and the present war at 500,000 lives. The present war has produced animosity amongst Southern Sudanese and aggravated the sentiments between Southern and Northern Sudanese. There are now at least three major southern military groupings in Southern Sudan, largely divided according to ethnic lines (Dinka, Nuer, Shilluk, Equatorians and some six other government-sponsored Southern Sudanese tribal militias. All the leaders of these movements have brutally abused their peoples quest for self-determination in their personal greed for power.

The population of Southern Sudan remained „indigenous“ with little or no major economic development efforts and with almost all its infrastructure destroyed during the present war (95 percent of schools, 90 percent of health facilities, roads, bridges, administrative centres, etc.

3.

Indigenous peoples are highly differentiated, and the relativity of the concept allows us to observe in the African context that some people are more indigenous than others. But ironically, the immigrant populations (who may be considered indigenous in the eyes of the outside world) do play the role of the colonialists and thus

undermine the basic human rights of those whose lands they occupied. A glaring example of this is the Tutsi Hutu case in Burundi.

Reyntjens (1993:195-6) reports that, „the total population of Burundi is 5,458,000 in 1987...85 percent are Hutu, 14 percent are Tutsi (later arrivals in the country and until recently the unchallenged masters) and 1 percent Twa, pygmoid hunters. The minority and late arrival Tutsi control the Government, the army and almost all important positions. There has been a bloody history of confrontation between the two and whenever the Hutu rose against Tutsi domination they were massacred in thousands. The latest incidents took place in August 1988 when tension erupted in the North of the country when following Tutsi provocation Hutu killed hundreds of Tutsi. The Tutsi-dominated army was immediately dispatched to restore order, but massacres similar to those of 1972 occurred. More than 60,000 refugees, mainly Hutu fled the country to Rwanda as the death toll rose to an estimated 20,000. In the aftermath of the killings, a group of Hutu intellectuals were arrested for protesting against the army actions and for demanding the establishment of an independent commission of inquiry into the massacres“.

President Buyoya, himself a Tutsi, began in 1989 the restructuring of the Burundi state apparatus, leading to democratization and multi-party elections in June, 1993. President Buyoya lost the elections and conceded defeat to a Hutu president.

4.

The Afar inhabit the North-Eastern fringes of the Horn of Africa. The Afar are shared by the states of Ethiopia, Eritrea and Djibouti. However, the Afar have always resisted domination by the modern state apparatus and although they have strong sultanates resembling the feudal kingdoms, they remain nomadic with strong decentralized authority. Their clan system is segmentary descending from clan families to clans and lineages.

The Afar migratory patterns are constantly disturbed by the expansion of peasant farmers, irrigated schemes and state farms. Since they depend on the Awash River for the dry season, the expansion of irrigated agriculture and the Ethiopian state appropriation of a vast area for the production of cash crops such as cotton has undermined their survival which is linked to the survival of their animals. The contradictions between the state agricultural policies and Afar survival strategies have contributed to political instability and insurgency in Afarland. The hostility between the Ethiopian Government during the Mengistu regime and the Afar culminated in

a serious conflict between the Sultan of the Afar and the Ethiopian Government. As a result, the Sultan of the Afar fled to Djibouti from where he waged a war against the Ethiopian regime. The conflict with the Government came about because Afar tradition holds that the Sultan owns the people and the land, a principle in conflict with the Ethiopian Government's socialist policies. The Afar Liberation Front is now a member of the Ethiopian Peoples Revolutionary Democratic Front which forms the Transitional Government of Ethiopia following the collapse of the Mengistu regime.

However, some Afar have again opted for self-determination from Eritrea, either to join the Ethiopian federal system or to become independent. The Afar issue will remain one of the problems nagging the newly-born Eritrean state. The Afar are also not on good terms with the Somali-dominated Djibouti Government. Although the negotiations between the Afar representatives and the Djibouti Government have led to a gradual return of the Afar to national politics after they had militarily controlled most of the Northern parts of Djibouti, they boycotted the elections of 8 - 9 May, 1993, in protest for unfair and non-democratic practices by the ethnic Somali during the build-up to the elections.

The Afar case demonstrates that the redrawing of some of the African borders (Ravenhill:1988) can be a painful, but necessary episode towards an ever-lasting solution to transboundary conflicts. It also illustrates that the African states, as guardians of the colonial boundaries, can commit atrocities against people whose cause they may know deep in their hearts to be a just one.

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SHARIF HARIR

## RACISM IN ISLAMIC DISGUISE?

### Retreating nationalism and upsurging ethnicity in Dar Fur, Sudan

Suffering from a widely recognized African, probably third world, syndrome, the Sudan has existed, albeit precariously, as a juridical expression of international law since 1st January 1956. Had international law condoned the creation of new states by the use of force, the present Sudan could have been divided into two distinct states, anywhere between 1955 when the Southern troops mutinied in Torit and 1963 when the Southern movement against the Centre was consolidated and the Anyanya and the Southern Sudan Liberation Movement (SSLM) were created. That possibility kept recurring, not so much due to the presence of forces fighting the Centre through the means of arms, but because of basic political issues which were addressed neither during the 1972 Addis Ababa Agreement nor afterwards. As Francis Deng observed on an occasion<sup>1</sup> in 1989, „what divides us is largely what is not said. We the Sudanese have a well-earned reputation for politeness and perhaps a less-known tendency toward optimism as a way of easing problems of life that confront us. But this may also lead to complacency and lack of realism which may in turn stifle creativity in the search for alternative solutions“. (Deng, 1989:10). But even if the unwillingness of the newly independent „formal Africa“ to allow the Sudan to be divided (reinforced by international law which sanctified the borders inherited from colonialism) thwarted the SSLM project of secession in the sixties, it is doubtful today whether the Sudan still covers the one million square miles it inherited from the British. This is so especially in the light of the Kenyan push on the Ilemi triangle in the South in 1991, the Egyptian *de facto* annexation



of the Halaib triangle in the North, and the many temporary annexations of portions of the Western Borders by Habre's Chad until December 1990 which have resulted in a potentially explosive border problem.

The outbreak of the present civil war in 1983 and the tone it took in 1991 after the split in the leadership of the Sudan People Liberation Army (SPLA) threatens to put secession firmly on the agenda again even if the two factions, i.e. SPLA-Nasir and SPLA-Torit, did not „word“ this exactly in the same manner. Furthermore, the international modalities that prevailed after the collapse of the Eastern Bloc, the aftermath of the Eritrian referendum and the US/UN intervention in both Somalia and Northern and Southern Iraq might not be altogether unfavourable for an eventual secession, especially as the issue at stake is tied closely to brutal and proven violations of human rights by the Sudanese regime in the Centre. Colonial borders are no longer as sacrosanct as they used to be during the cold war.

However, and more importantly, the Sudanese problem is one of internal weaknesses in the moulding of national loyalties. Crudely put, as a subject of national loyalty, the Sudan does not seem to have survived the euphoria of independence for long. For even if Khalil sang Aza<sup>2</sup> and the elite that led the Independence Movement assumed there was a Sudanese national identity, their very narrow-mindedness, myopia and „tribalism“ (albeit a degree refined compared to these tribal notions held by the mass of tribesmen since the elites' „tribalism“ was carefully cast in Islam and Arabism) and, above all, their very denial of worth to other cultural groups, led to a considerable waning of the generally held loyalties to the Sudan. Even Aza, who symbolized the Sudan and its yearning for independence, was a partial representation and a metaphor for central riverain cultural identity that was subsequently imbued with Islamic sacrality and mystery, but distinctly represented an arrogant version of Arabism not in terms of culture, but in racial terms. Aza as a symbol was never race-free or religion-neutral, i.e. it portrayed cultural images drawn from the politically dominant riverain groups.

The fact of the matter is that the whole of this development ensured a dominant position for the riverain based groups in the Sudanese decision making and political process. This, in turn, is reflected in the unequal development and the preferential placing of government allocations in the central riverain Sudan or „the developed triangle“ of Khartoum/Kosti/Sinnar, with an also discernible

urban bias even within this triangle. Although it was the British colonial administration which was supposed to be blamed for initially setting in motion these tendencies towards regional inequalities in development, it was the insistence of the Sudanese elites, in this centre, on pursuing the same colonial policy that entrenched the initial steps into a seemingly irreversible trend. Strangely, even ironically, it seems that the British interests in growing cotton in the Gezira to feed the Lancashire textile industry coincided with the riverain elite's interest in maintaining the *status quo* to its own advantage, which cynically resulted in the quasi-colonial situation of internal domination or internal colonization.

This situation and its entrenchment led to the massive labour migration on a West/East axis - from the rest of the Sudan to this triangle and its satellites in the rainfed mechanized agricultural belt and the industrial areas of its urban centres. While the centripetal forces in this situation, e.g. relative development, employment opportunities and concentration of modern life amenities (including the bright-light pull), enticed the rest of the country to move towards it and become a source of cheap labour, the culturally discriminative centrifugal tendencies (which though fully operational were never addressed politically) such as the cleavages between *awlad al balad* vs *gharaba* (worthy sons of the land versus Westerners), and *awlad arab* vs *Nuba or Jangei* (worthy sons of Arabs vs. Nuba and Southerners) never allowed integration of these elements into an equally worthy status of equal citizenship. The insurmountable cleavage between Arabs and non-Arabs remained the stumbling block for such an integration.

In this brief and rather skeletal paper, I shall deal with the above issues from a Dar Furi perspective. Methodologically, I shall follow the development of the socio-political career of one individual from Dar Fur: Dauod Bolad. Bolad, a Dar Furi of a Fur tribal origin, born in 1952, at the height of the anti-colonial nationalist drive, and learning his first lessons of nationalism under conditions of independence, represented probably a whole generation of educated Sudanese from the peripheries who struggled to survive the adverse political and economic conditions with their national feelings intact. However, in the end they have to give up and revert to a non-nationalist ethnic stance, under duress.

Until he fell captive into the hands of his former party colleagues, i.e. the National Islamic Front, in 1991, and his subsequent torture to death a week or so later, Bolad was not only an ordinary member of the so-called Islamic Movement, he was one of its leaders who

contributed to the consolidation of the movement. I shall come back to that later but for the moment I shall look into the real, but unsaid, cultural cleavages in Sudanese society that threaten to rip apart Sudanese polity. Bolad is again an archetype of both types of cleavages.

## What is not said which divides

Looking at Sudanese politics after independence one cannot help but observe the emergence of two parallel positions which are advocated by two distinct elites. The one position is that advocated by the central riverain elite of the „developed triangle“: that the identity of Sudan is undisputably Muslim and Arabic since Muslims constitute the majority of its population<sup>3</sup>. Hence the unity of the Nile Valley, meaning unity with Egypt, and the Arabic *Umma* (Arabic) or nation is a fundamentally desirable goal. Implicit in this view is an assumed superiority of Arabism over Africanism and a perceptible but cunningly cynical relegation of Africanism to a mere geographical status. The second position is taken by the missionary educated, typically Christianized and partly Europeanized Southern elites: both Arabic language and Islamization are to be resisted as vehicles of an oppressive overlord and Africanisation is to be pursued since only 39%<sup>4</sup> of its population claim to be Arab by race. In between these two poles arise a number of positions of compromise. However, as the civil war in the South and its transformation into a wider war is fuelled first and foremost by these two uncompromising elitist perceptions, I shall focus on them, attempting in the process to transcend them, since they constitute only the manifest causes, and to reach the latent ones that lie behind them.

To start with, the Sudan has two majorities: an African and a Muslim majority. The fact is that the polarization between Arabs and Africans does not represent the realities on the ground. The Sudan is constituted of anywhere between 570 and 595 tribal groups.<sup>5</sup> Aggregated into ethnic categories, we end up by having 56 related ethnic categories. Drawing a clear line between Africans and Arabs in the Sudan is not a simple matter and does not easily yield to statistical rendering. Most of the Sudanese fall into the category of Arabized Africans rather than the opposite, and Arabism in the Sudan is a cultural attribute rather than one of a race.<sup>6</sup> Even Arabic language, which is supposed to be the unmistakable signifier of Arabic belonging, while dominant as a *Lingua Franca*, constitutes only one of 100

languages.<sup>7</sup> It is also marked by a multitude of dialects, to the extent that not all the dialects are mutually intelligible to all the Arabic constituency where for example Dar Fur Arabic and the special Juba Arabic are hardly understood by riverain Sudanese Arabs. Moreover, the various Arab groups are socially hierarchized in terms of relative status; the riverain Arabs come out on top, since they define this hierarchy, and the rest come after them. This is an important point since most of what is Sudanese, for instance music, prototypes, food, costume, etc., is defined from the riverain perspective, which again holds political power. In fact historical parallels of such social ranking and placing could be brought from the conflict over the succession to the Mahdi in 1885 when his closest, i.e. Khalifa Sharif, or the Ashraf of the riverain Sudan, did not accept the authority of Khalifa Abdullahi, the appointed successor to the Mahdi, even though Khalifa Abdullahi was an Arab himself. His undoing, as far as the riverain Ashraf were concerned, was that he was a Baggara Arab of the Taaisha tribe of Western Sudan, i.e. Dar Fur. He was an Arab alright; but an inferior Arab! What was and is at stake is the definition of relative social worth as is acceptable to the riverain and not Arabism as a culture *per se*.

Islam is brought into this picture to reinforce Arabism as a „national identity“, i.e. a racial identity for some groups in this diverse and plural social and cultural landscape. But the dilemma of the dominant group that defines the relative worth of the others is that the Islamic constituency, in general terms, would include more than self-ascribed Arabs. It will encompass, in addition to those self-ascribed Arabs, Westerner *Gharaba* (Arabic) of Dar Fur, the Nubians of Northern Sudan, some Nuba of Central Sudan, some Ingesana and a sizeable group of Southern Sudanese. To surmount this dilemma which lumps together groups which conceive themselves as superior to others and groups defined as inferior by those who consider themselves superior, Islam is redefined to conform to a particular brand that is equivalent to the urban-based, riverain-practised one. Thus even on the criterion of Islam a considerable group of Muslims is excluded from that constituency in today's Sudan.

What is not said about the Sudanese problem which polarizes the Sudanese society is the fact that worth is denied to non-riverain Sudanese of non-Arab origin. This denial is perpetuated by popular as well as elite cultures, and encompasses Sudanese of non-Arab origin even if they occupy high constitutional or political office. Khalid, a member of the dominant riverain elite reports this situa-

tion as follows: „In the closed circles of Northern Sudan there is a series of unprintable slurs for Sudanese of non-Arab stock, all reflective of semi-concealed prejudice“ (Mansur Khalid 1990:135).

These „unprintable slurs“ are based on deeply entrenched racial attitudes harboured by people claiming Arab descent against non-Arabs who are generally considered „enslavable“ even if that no longer is possible on strict grounds of legality. Socially and culturally the „attitude“ remains intact. While slavery has long been abolished, the slave culture still exists in the minds of the people and specially in the minds of the descendants of the practitioners of yesteryear. The literal denial of worth which slavery imparts to its victims is attitudinally extended to include free men in today's Sudan. The term Abd (Arabic) slave is very much in current use both in the popular mind and in the closed elite circles that Khalid referred to. However, popular culture is one thing, but the prevalence of this attitude, even if not verbally expressed, among the power elite threatens the essence of the state as an arbiter of public good. Khalid further elaborates his point about this as follows: „Our intention here is not to open old wounds or provide an alibi for the colonialists, only to underline how the vestiges of the slave culture are still reflected in the prejudices that persist in modern Sudan with serious political and economic repercussions. What is abhorrent about slavery is, however, not the loss of liberty, loathsome as that may be, but the denial of worth. And as long as differentiations based on physical and cultural distinctions exist in the minds of people, *particularly of those who assume a role of national leadership*, the potential for antagonism will always be there. Those distinctions often translate themselves in social, economic and political stratifications, as well as assignment of roles within society - for example, the type of job one is good for or *that which is good for one*“ (Mansur Khalid 1990:14) (My emphasis, S.H.).

The manifest causes seen above, within the context of the Sudanese problematic, have more basic underlying latent cultural imperatives: the issue of relative worth against a background of cultural domination and dispossession. In a manner of speaking, the „denial of worth“ constitutes the core of the problem. Thus while the „developed triangle“ of the riverain central Sudan has attracted migrants like an economic magnet, it denied socio-cultural integration in interactive terms characterized by an equality of cultures. The riverain culture always assumed superiority. At this juncture we turn to Bolad and the view from Dar Fur.

## Bolad and the view from Dar Fur

*Who was Bolad? A brief biography<sup>8</sup> and a sketch of a context.*

Bolad was born to a *Quran*-bearing, Fur family in Southern Dar Fur near the town of Nyala somewhere between autumn 1951 and spring 1952. Like most other Sudanese of his time his birth certificate carries the date 01.01.52, estimated later by a doctor many years after the real event, when he began his school days in 1959. Politically, like most of the Dar Fur people of this period during the years of promise and the strong nationalist loyalties leading to independence on 1st January 1956, Bolad was also born into a politico-religious sect: the Mahdist *Ansar* sect of which the *Umma* party was the political expression. In fact, as Warburg recently observed (Warburg, 1992), „in the reality of the Sudan, one was born into a sect just as one was born into a family or a tribe, and one's own political convictions, though important in themselves, were of little significance when it came to *realpolitik*.. With a Muslim leadership convinced of its Islamic civilizing mission, it is not surprising that the Sudan has failed to produce a formula defining its own identity that satisfies all its ethnic, religious and cultural components“ (Warburg, G. 1992:188).

Thus Bolad's identity was shaped during the formative years of his life by his belonging to a Fur family, with a Fur language, and by his being born (by the very virtue of that family belonging) into a politico-religious sect of a defined character. He acquired Arabic as his second language by learning the *quran* by rote as well as through the national educational system.

After the first four years of primary school education and simultaneously learning and memorizing a sizable portion of the Holy book, i.e. the *Mus-Haf*, Bolad like other children of his time competed for entry into the intermediate school in 1963. While the curriculum of the primary school instilled literacy in Arabic, Islamic Religion, numeracy in arithmetic and the modern history of the Sudan, it also taught some European history and biological sciences. The unavoidable conflict between the local world view expressed in tribal custom, tradition and culture and the widened horizons imparted by the knowledge gained through the school and the relatively high explanatory values of the „new“ knowledge was already experienced at the primary school level. This was because the national educational system was not based on the local system. In the few cases that it reflected local Sudanese life, it was a local life beyond

the bounds of the Fur or Dar Fur local reality, i.e. riverain culture and practice was portrayed as a higher level of culture and the local customs were portrayed as embarrassingly primitive and outdated.

This tendency was progressively reinforced as one went from one rung on the educational ladder to the next. The twelve years of general education, i.e. four years for each rung on the educational ladder, ended up with a near-total alienation of the children from their local cultures and tended to push them towards standard Sudanization which is synonymous with the values of the urban riverain cultures of Northern Sudan.

During university education, which comes at the end of the twelve or so years of general education, a few of those formally educated people of regional and peripheral Sudanese background find their way back to their original cultures but the majority continues the pursuit of the standard „Sudanization“ project. Thus peripheral Sudanese, through the national educational system and at the cost of being uprooted from their societies, seek integration into the dominant riverain culture. Whether they continue seeking the realization of this project in later life is subject, of course, to the marginal returns of peripheral integration. But as I alluded to above, the systemic context of the riverain culture or its equivalent, „Sudanization“, is also strongly discriminatory as it persists in maintaining the distinctions between *Awlad al Balad* (and *Awlad Arab*) and *Gharaba* (Westeners), *janubi* (Southerners) and *Arabi Sakit* (Arabs of the countryside). In this cultural context one might understand better the rise of such regionally-based national political groupings as the Beja congress (1958), the Dar Fur development front (1964), the Nuba Mountains General Union (1964) and a host of regional parties in the South.

The systemic context in which Bolad operated - until his capture by his former party colleague Al Tayeb *Sikha* (the iron bar) the ruler of Dar Fur in late 1991 after the Khor *Gimbi* battle in Southern Dar Fur during which Bolad was commanding an SPLA force and *Sikha* was commanding forces belonging to the NIF, *alias* Government, including Arab *Fursan* (cavalry) - was a very complex one indeed. I would characterize his systemic context as composed of the following identity circles: his first principal identity (Fur tribe), the national educational system as a catalyst to his national identity, his regional Dar Furi identity, and the national Sudanese political context including its strong sectarian tendencies and the upsurge of the political Islamicist tendencies which prevail in the Sudan today.

Bolad, like most of the schooled Dar Furians of his generation,

disappointed with the sect into which he was born, i.e. the *Ansar* and Umma party of Mahdist orientation, due to its gross exploitation of trusting and „believing“ non-literate Dar Furians and its manipulation of the few schooled Dar Furians of the former generation, was looking for an alternative political platform which satisfied his (and the general) religious background. The atmosphere for the emergence of such a religious alternative was favourable especially after the October 1964 revolution that brought down the first military regime of general Abboud (1958-1964). Secular alternatives such as the Sudanese Communist Party (SCP), the Arab Baathist Party (ABP) or regional movements such as Dar Fur Development Front (DDF) were unsuitable for Bolad. His religious background as well as its urban-based nature ruled out the SCP. His Fur, non-Arab background ruled out the ABP; while the Dar Fur Development Front was not a party and its limited regional nature reduced its appeal.

The logical and practical alternative available was the Muslim Brotherhood which, after October 1964, was instituted as a political party bearing the name of the Islamic Charter Front, and led by the young lawyer and former dean of law in Khartoum University, Dr. Hassan Abdalla Al Turabi. This party appealed to the rebellious but religious and educated young men of Bolad's generation, chiefly because of its modern, albeit fundamentalist character when compared to the primitively exploitative and outdated Ansar and Khatmiyya sects which were the dominant political forces in the Sudan. But as the loyalties of the Dar Furians towards the Mahdi family and his descendants were and are as strong as to defy rational explanation, one might wonder if Dr. Turabi's marriage to the daughter of Sayyid Siddig Al Mahdi (the sister of Saddig Al-Mahdi, the leader of the Ansar and chairman of Umma party) did not, in mysterious ways, facilitate the acceptance by the children of Ansar such as Bolad of their conversion to the Muslim Brotherhood and its political organ the Islamic Charter Front.

Be that as it may, Bolad and many of his generation were recruited into the Muslim Brotherhood by their teachers as early as during their intermediate education (1963-1967) when they were in the 11-15 age group. The aftermath of the October 1964 revolution was a specially important period of recruitment of the Muslim Brotherhood in the schools, not only because this was a time when liberal democracy prevailed (1964-1969), but also because of the role played by their members in the University of Khartoum in realizing the October revolution and the appeal of the „hero“ aura to



school children. However, the Muslim Brotherhood did not succeed with the man in the street. The schools and the University of Khartoum were the breeding ground for the young zealots who used the opportunities provided by the democratic era, i.e. freedom of association, speech and congregation, for recruitment, though without having any illusions about the possibility of realizing their project democratically in the face of the hostility from the man in the street. In the schools and the university, Bolad, like most of his ideological compatriots, used such undemocratic means as beatings and intimidation to level with other political groups, especially those of the secular orientation.

However, it was during the years of Nimeiri's military dictatorship (1969-1985) that the big organizational boom occurred within the Muslim Brotherhood Movement. Likewise, it was during the years of studying engineering at the University of Khartoum (1971-1978) that Bolad became a prominent leader in the political Islamicist movement and made his marginal contribution as the chairman of the Khartoum University Students Union (KUSU). Due to the recurrent internment of the leadership of the Islamic movement during Nimeiri's early years, both political and opposition work fell on the shoulders of its student members who operated by controlling various student unions. The most prominent union that was entrusted with the leadership of the political Islamic work was the Khartoum University Students Union. Here, Bolad climbed to the top, according to whatever standards of merit were used in the internal organization of the Islamic Movement, and became its chairman. The chairman of Khartoum University Students Union during this decade (1971-1980) was more than a simple chairperson of an „innocent“ interest organization for students. KUSU, *de facto*, was the executive body of the Islamic movement above the ground. On a more general level, it coordinated, activated and led the widely spread national opposition against Nimeiri's regime. Hence, the chairman of Khartoum University Students Union mediated between the interned leadership of the Islamic movement and the Brotherhood on the one hand and the leadership of the national opposition abroad and its cells on the other - but more importantly carried out street actions such as rioting, demonstrations and general protest activities between 1971 and 1978 when the national reconciliation between Nimeiri and the Sudanese National opposition was effected. On another level, the chairman of KUSU worked closely with Turabi, Ali Osman Taha and the presently prominent leaders of the Khartoum regime. Besides ideological affinities,

which are basic, the chairman also developed personal and friendly relations with prominent personalities in the Islamic movement in a manner befitting a top leader. Weren't they brothers after all, and equal?

This was the job which was entrusted to Bolad, the Fur tribesman and engineering student, who was still above all a highly skilled and endowed Muslim brother, during the difficult period of 1975/1976. Of his prominent footsoldiers and ideological zealots who beat fellow students into conformity was the now colonel and ruler of Dar Fur al Tayeb Ibrahim Mohamed Kheir or *Sikha*, at whose hands Bolad was to perish under torture after the Khor Gimbil battle between the SPLA and the NIF forces in late 1991. However, importantly Bolad openly carried out his duties as the chairman of KUSU and as a prominent Muslim Brother and a first class destabilizer of Nimeiri's regime, to unprecedented heights of excellence. He mesmerized his audiences, both students and others alike, with a political rhetoric that left no doubt about his exceptional abilities in mastering his acquired language, Arabic. His knowledge of the Quran and Islamic jurisprudence was unsurpassed. But above all, through his leadership of student protest and destabilization activities and his leadership and articulation of general opposition against Nimeiri's regime, Bolad raised himself to the place of the opposite number to Nimeiri. In a manner of speaking, the chairman of KUSU in those years was the *de facto* opposite number to the incumbent president of the republic. Bolad was interned many times during those years but his ability to disappear from security custody earned him legendary status. No doubt, this reflected as much the proliferation of the Muslim Brotherhood in the state organs under Nimeiri as it reflected Bolad's exceptional abilities.

Graduating from the university in 1978, two years behind schedule due to his involvement in and devotion to the Brotherhood, Bolad did not choose to take the government employment to which he was entitled by virtue of his B.Sc. degree in engineering and the needs of the labour market. He chose, instead, to retire to his home town Nyala in Southern Dar Fur and started a carpentry workshop which was established through Islamic Banking Finance. He quietly retreated from the limelight but remained organizationally active building the National Islamic Front, a name which the political Islamic movement assumed after the overthrow of Nimeiri by a popular uprising in 1985. But during 1987/1989 Bolad was to come out from this „splendid isolation“, not so much to further the cause of political Islam as to fight a war of survival for his tribe, the Fur,

who were then under the threat of annihilation by an alliance of 27 Arab tribes with the tacit complicity of the central government of which his party, i.e. the National Islamic Front (NIF), was a coalition partner. In late 1989, after his colleagues in the Islamic movement effected a military coup which secured them exclusive monopoly of political power in the Sudan (a cause for joy and jubilation for Bolad under other circumstances), Bolad left the country to resurface in Khor Gimbil as late as 1991 as a commander of an SPLA force facing Al Tayeb (his former footsoldier and now army colonel and ruler of Dar Fur). Even in this situation where his former NIF comrade mobilized both the army and the local enemies of the Fur, i.e. the Arab *Fursan*, Bolad was nearly triumphant. However, he was only „nearly triumphant“ as the second round of the battle ended in the defeat of his forces. He fell captive into the hands of his former footsoldier.

A video recording of him, in which he appeared battered and exhausted but composed, was shown on Sudan's television, which promised a trial for his „treasonable act“. My sources indicate that his former ideological comrades and party members might have decided to „lose“ him under debriefing. He was too embarrassing a phenomenon to live to defend himself in a court of law - even if the court was one of the characteristic „Kangaroo-courts“<sup>9</sup> of the political Islamists in today's Khartoum.

### An attempt at interpretation: The view from Dar Fur

Dar Fur experienced centralized political authority long before the modern Republic of the Sudan of which it became formally a part on the 1st January 1917.<sup>10</sup> This experience came through the establishment of the Fur sultanate around 1650<sup>11</sup> and its transformative effects on state power and society through over two centuries of minimally interrupted traditions of state-building. This fact is important both for understanding the regional identity which the Dar Fur people tend to present (across the Arab/non-Arab divide) and for understanding the social organization among the Fur - the latter being a confederation of loosely-related patrilineal descent<sup>12</sup> groups speaking the same language; though, in fact, ambilineal. Being the subjects of a centralized state for such a long span of time during which the state assumed the monopoly of coercive power, the Fur all but lacked the corporate character of patrilineal groups, especially

when mobilizing themselves for self-defence; in contrast, among their nomadic neighbouring tribes, the defence function of kinship groups is still quite strong. For the Fur, this function has been assumed by the state for nearly three centuries. Hence during the difficult years of 1987 through to 1989, it had to take the organizational abilities of a person like Bolad even to partially mobilize them against the Arab conglomerate of 27 tribes that was intent on the destruction of Fur society.

To leap-frog historical detail, after being incorporated into the colonial Sudan, Dar Fur played an important, probably decisive, role in the nationalist movement leading to independence in 1956. This happened through various means, prominent among which was the strong support which Sayyid Abdel Rahman al Mahdi enjoyed among the various communities and tribes of Dar Fur after the resurrection of the Mahdist Ansar by the British as part of a policy to maintain equilibrium in the country. The strong revival of the Mahdist movement, the *Ansariyya*, in Dar Fur led to the creation of strong loyalties, specifically towards the Mahdi family and via them towards whatever concerns the members of that family advocated. This loyalty was first and foremost toward the family and only by osmosis toward the Sudan, so to speak. The importance of this support for Sayyid Abdel Rahman, as a leading proponent of Sudan's independence, as distinct from the Khatmiyya's support for the unity of the Nile valley, i.e. for unity with Egypt, was translated through parliamentary politics into a comfortable party political dominance which led to the declaration of independence from within the parliament in 1955. In more direct ways, the Dar Fur contribution to the process that led to independence was significant and decisive, though this was neither glorified nor seemed to be appreciated by the riverain power élite. It was a prominent Dar Fur tribesman<sup>13</sup> who proposed the motion for independence in the parliament. When it comes to the bond between Sayyid Abdel Rahman and the Fur, a special cause for strengthening the bond, apart from the religious motivation of reverence to the Mahdi and his doctrine, could perhaps be found in the kinship relations between the Fur sultans and the Sayyid: the mother of Sayyid Abdel Rahman was the sister of Fur sultan Ibrahim Quarad, the Fur princess Maqbula who was given in marriage to the Mahdi.

Apart from such „primordial“ support, there were other things happening in Dar Fur as far as Bolad's generation was concerned. Though a late-comer to the Sudan, the region of Dar Fur was quite vital to the country in at least one way, i.e. as a source of cheap

labour, whether seasonally moving along the West/East axis to pick the Sudan's major earner of convertible currency, cotton, or as a source of fighting men to be recruited as Sudanese cannon fodder for fighting the war in the South. Ironically, in their servitude, the Dar Fur people were the solid pillars and mainstays of Sudan in the areas of both economy and „national“ security. However, education was also slowly picking up as Bolad's generation came to see more schools being opened<sup>14</sup>. For the sectarian political parties (centrally-led but supported by the peripheries) Dar Fur provided the vote collecting ground for some and an extreme nuisance for others. For the *Umma* party and the *Ansar* Dar Fur was a ghetto which was fleetingly visited on ceremonial occasions of vote collection; it never failed to deliver a solid block of support for them. For the Nationalist Unionist Party (NUP), its successor the Democratic Unionist Party (DUP) and the Khatmiyya, Dar Fur was the spoiler since it supported their arch-enemy, the Ansar.

At home, by a combination of accidents of history and administrative design, the Dar Fur people felt excluded from areas of modern administration, structures of access to the state and structures of political access generally. More negatively, they felt dominated by the riverain Sudanese through the *Jallaba* control of trade and the riverain elements' exclusive monopoly of decision-making structures. As some sage might have put it, „they were our rulers, judges, police, tax collectors and even our jailers“. With migration and education, a small segment of Dar Fur people started developing a new consciousness as a result of comparing the parts of the Sudan they saw with their own political and living situation. The first reactions to this state of quasi-internal colonization came from educated people seeking sublimation and enfranchisement by joining the Islamic movement and consequently, inadvertently, adopting the „riverain cultural project“ of integration. Bolad's generation was such a one; but the systemic biases built into the riverain scheme defeated many - Bolad being one. However, the most grassroots oriented and less refined reactions came from the migrants and army survivors. It took various forms of clandestinity, sometimes appearing in the form of leaflets carrying inflammatory anti-*jallaba* rhetoric and movements threatening violence against *Jallaba* traders and administrators alike by replicating the Southern situation. The first such movement was typified by a group named the Red Flame (*Al Lahib Al-ahmer*) in the fifties, and the second was typified by a movement named *Soony* in the sixties. Soony was as symbolic evocation of the „good old days“ of Dar Furi independence, i.e. pre-1917.

Not looking beyond the manifest to the latent, the riverain elite, comfortable in their monopoly of political power, dismissed all these signs as racism, pure and simple. Ibrahim puts it this way: „While the Western regions of Dar Fur and Kordofan compare similarly to the South in terms of unequal access to education and other social services, this fact has over the years been covered under the blanket of common Muslim religion and Arabic culture. When signs of unrest and political protest were expressed during the mid 1970's in demand mainly for more equality, this agitation was suppressed as being mainly racist“ (Ibrahim, A.A. 1989:40). The racism displayed by the dominant, i.e. the riverain, elite was downplayed by the attribution of racist motives to the dominated - a ploy which is used to stifle any protest against inequality and injustice.

After the 1964 October revolution, the first generation of educated Dar Furians, disillusioned with the riverain project, started the Dar Fur Development Front, which succeeded in making the *Umma* party<sup>15</sup> see the point, if only momentarily. But the DDF was also defeated by a strange coincidence of vested interests from both riverain political leaders and educated Dar Furians who sought salvation through the Islamic movement. This last category included people like the minister of economic planning and investment in the current NIF Government, Dr. Ali el Haj,<sup>16</sup> and the generation of Bolad in the Islamic movement.

The dissatisfaction of the people of Dar Fur with all the regimes in the Centre, whether military or civilian since they all came from the riverain elite of the „Developed Triangle“, exploded in a massive upheaval in 1981. As a result of this the first person of Dar Fur origin to rule Dar Fur since the last sultan of Dar Fur, Ali Dinar who was killed on the 6th November 1916, was appointed. Ahmed Ibrahim Draige of the Fur and the leader of the parliamentary opposition until the 24th May 1969 assumed the rulership of Dar Fur at Nimeiri's request and was later legitimated by elections in 1982, but had to leave in 1983 because of differences with the president about the famine which was then at a very advanced stage in Dar Fur. In the period between Draige's abdicating office and the 30th June 1989 *coup d'état* by the NIF, a number of persons belonging to the Fur ethnic group held the office of ruler of Dar Fur<sup>17</sup>. This was, ironically, very unfortunate for the Fur tribesmen in general. Hit by the severe Sahelian drought and famines, with massive displacement of population from Northern parts of Dar Fur towards the Fur areas and with break-neck ethnic competition for the resources of this limited area, Dar Fur needed, at the time, a strong government to be

able to deal with the massive problems both materially and politically. This was, in fact, asking for the impossible, not only in terms of Dar Fur but also in terms of the Sudan. The whole of the state was adrift with its engines broken down. Nevertheless, ordinary Fur tribesmen were held responsible by other competing tribesmen and massive acts of violence were directed against them especially by the Arabs. The central government failed the Dar Fur regional government, as it did elsewhere, by not making funds and resources available to it.

Around the same time the Libyan/Chadian wars and the internal Chadian/Chadian wars spilled over into Dar Fur, creating a very precarious situation. Retreating Chadian Arab groups came with their arms into the Fur area, the only hospitable area in the prevailing drought, and their Libyan backers shipped massive supplies of arms and recruited allies among the ranks of the Dar Furian Arab groups. With the extreme conditions of the state at this particular time and the availability of a free or nearly free supply of arms, government administered security broke down; and tribal conflicts were, as a rule, settled through the strength of fire power rather than the tradition of reconciliation by negotiation. It was in this atmosphere that the Fur/Arab war broke out in 1987/88. It was during this time that Bolad and many other non-Arab Dar Furians who were members of the National Islamic Front (NIF), started reconsidering their loyalties.

For Bolad's generation the pursuit of the riverain project of integration through a militant, even if manifestly intellectualized, version of Islam was put to a severe test.<sup>18</sup> They waited for the government to do something such as, at least, stopping the Libyan arms supplies and dealing with the Chadian opposition groups and their local Nomadic Arab allies. The democratic government led by Saddig al Mahdi of the Umma party in coalition with the NUP and NIF could do neither. Libya was calling in debts incurred by all the three parties, now in government, during the years of opposition to Nimeiri (1970/77) (as the national opposition) when they received both refuge, training and arms supplies. In passing, the Libyan debt was more than what met the eye! Rather than dealing with Chadian Arabs and their local Dar Fur Arab allies, the central government set in motion a process of creating tribal militias based on Nomadic Arab groups. It supplied them with arms, ostensibly to fight SPLA incursions in the overlap areas between the North and the South. These arms were used against the Sudanese Fur, peaceful as they were. The Arab mounted raiders, called locally *Janawid* (hordes),

later elevated to the status of popular defence forces and given the name of *Fursan* (mounted knights), called occupied Fur villages „liberated areas“.

This looked like a gigantic conspiracy by the Arabs against the indigenous non-Arab people of Dar Fur from across two international borders and supported by supplies of superior arms, munitions and money from a regional power of considerable economic strength with a declared aggressive profile in the cause of Arab nationalism. The complacency of the Sudan government, controlled by the riverain elite, did not help in dispelling the conspiracy theory. However, Bolad and his generation of educated Dar Furian Islamicists were not yet convinced, even if a lingering doubt remained, visiting them now and then like a bad conscience. But the Arabs of Dar Fur clinched the matter when they formed an organization including 27 Arab tribes and called it the Arab congregation. Its declared aim was to fight non-Arab blacks (*zurga*) so as to preserve Arab interests, a policy which would eventually extend the Arabic cultural belt. They sent a delegation to Khartoum where it made representations to the incumbent prime minister, Sadig al Mahdi, who listened to their claims without reacting to their „racist“ ideology. This was taken by Bolad and his generation as a clear endorsement from the highest elected political office in the country. It brought out clearly and to the fore the Awlad Balad /Awlad Arab versus Nuba/ Gharaba/Southerner/Beja/ etc. dichotomy, but more pointedly, and in the rather simpler but clearly racist terms, the underlying cultural dichotomy between Arabs and Zurga (Black).

In this very specific political climate in Sudan, Bolad and his generation discovered that various forms of political Islam were being manipulated to galvanize Northern, alias riverain Central, Sudanese nationalism.<sup>19</sup>

The first indicator that some soul-searching was taking place in Bolad's generation occurred in 1988 when two NIF parliamentary members from Dar Fur crossed the floor to join the Democratic Unionist Party (DUP).<sup>20</sup> Bolad was quiet. Three or four months later the NIF effected a military coup on the 30th June 1989. Bolad was not jubilant; he exited the Sudan from Khartoum Airport to resurface a year or so later (1991) in the foothills of Jebel Marra, the heart of Fur territory, as an SPLA commander. On the rock of „arrogant racialism“ thinly disguised as Islamicist politics Bolad's wider and more encompassing nationalism died. In its place, a more basic national loyalty to his principal identity, the Fur, was revived. It is my submission that although Bolad clearly abandoned the elusive



riverain project when he chose to confront his former footsoldier, *Sikha*, in *Khor Gimbil*, had he survived the brutality of his captors, he would never have shed his basic social self: a Sudanese Muslim from the Fur of Dar Fur. This is the view from Dar Fur in as few words as possible.

## Notes

1. Quoted from Ahmed, A.M. & Sørbo, G.M. (eds.), 1989, *Management of the Crisis in the Sudan*. Proceedings of the Bergen Forum, 23.-24. February 1989.
2. Khalil Farah was a famous riverain Sudanese singer who composed this song in 1929/30 putting forward the image of a chaste riverain Sudanese virgin as a metaphor for the Sudan. Sudanese music also became synonymous with riverain music.
3. The Sudan Charter: National unity and diversity, by National Islamic Front. January 1987, in Ahmed, A.M. & Sørbo, G.M. (eds.) 1989:133-144.
4. The 1955/56 census in the Sudan.
5. Gore, W. (1989) quotes 570 tribes while Abdin, A. 1967 quotes 595 tribes. Both concur on 56 related ethnic groups.
6. See, for example, Abdel al-Rahim, M. „Arabism, Africanism and Self Identification in the Sudan. In Hassan, Y.F. (ed.), 1971:228-39.
7. Bell, H. 1989, quotes the 100 languages in the Sudan, while Beshir, M.O. 1989, quotes 250 languages beside Arabic.
8. The author knew Dauod Yahiya Bolad as a close friend from July 1967 when they met as co-students in El Fasher secondary school (Dar Fur). They were class mates for three years and members of the Muslim Brotherhood group in the school. They were also co-members of the executive committee of the union of the school's students, winning their seats on the platform of the Muslim Brotherhood. Although the author and Bolad parted ideological ways in 1971 at the University of Khartoum, when the author left the Brotherhood while Bolad continued in it and became one of its prominent leaders, their close friendship continued, sometimes cemented by cooperation on issues that concerned Dar Fur across the ideological divide. The last time the author met Bolad was in 1989 when his Egypt Air Flight was prevented from taking off from Khartoum by sandstorms and he and his co-passengers were lodged in the Friendship Palace Hotel, Khartoum North.
9. These are special military tribunals where the normal procedures followed in ordinary courts are telescoped. Leap-frogging established procedure, the court operations consist of levying accusation and meting out summary sentences without allowing for legal defence or observing established judicial procedures.
10. After Ali Dinar, the last sultan of Dar Fur, was killed by the British troops of the Anglo-Egyptian Sudan on 6. November 1916, Dar was formally annexed as an integral part of the colony in January 1st 1917. Prior to that it had been part of the Turco-Egyptian Sudan from 1874 and then of the Mahdist state (1885-1898). See Theobald 1956 and O'Fahey 1969 and 1980.
11. See O'Fahey, R.S. 1980:16.

12. See Barth, F. 1988, Human resources: Social and cultural features of Jebel Marra area project. Occasional paper No. 42:6.
13. It was Abdel Rahman Dabaka, the uncle of the incumbent Nazir (paramount chief) of the Beni Helba Baggara Arabs, who tabled the motion, from the parliamentary platform of the Umma party. As far back as 1952, the British flag was burned in Al Fashir, the capital of Dar Fur. Ironically it was the Nazir of the Beni Helba Arabs who led the delegation of the Arab congregation during the reconciliation conference between the Fur and the Arabs in 1989. The irony lies in the fact that while the uncle had tabled the motion of national independence in 1955, the brother's son was leading an ethnic delegation characterized by racist undertones.
14. From just one student in Gordon college between 1934 and 1944 (see M.O. Beshir 1989:184 (in Arabic)), a handful graduated from Khartoum university during the 1950s. In 1973, the union of Dar Fur students in universities and higher institutes (UDSUH) of which the author was a member showed a little over 200 members.
15. In fact the chairman of Dar Fur Development Front became the leader of the parliamentary opposition from the platform of the Umma party until the May 25th *coup d'état* occurred in 1969. Just to give an example of the attitude of mistrust held by the riverain establishment against educated Dar Furians, a vice-chancellor of a Sudanese university once snapped at the chairman of DDF, „we love simple Dar Furians but we hate the educated ones“. (Personal communication with Draige.)
16. Dr. Ali el Haj, the current „negotiator-general“ of the NIF Government was also one of the founding members of the DDF in 1965. It is interesting to mention the fact that while Draige, the chairman of the DDF, was able to enter parliament twice as a candidate of the DDF, Dr. Ali el Haj never managed to raise popular support from the platform of the Islamicist movement in Dar Fur. Only after the coup of 30th June 1989, was he appointed in his present role. Cynically, even this role has racist undertones where a black Dar Furian is negotiating with black non-Arab rebels.
17. These were colonel Arbab (1983-85), Yousif Bakheit (1985/86), and Tigani Sese (1988-89).
18. During this war 2500 Fur individuals lost their lives and a couple of thousand were disabled. The Fur lost 40,000 head of livestock, and 400 Fur villages including 10,000 houses were burned out of existence. Tens of thousands were displaced, and millions of pounds worth of investment in agricultural machinery was destroyed. See Sharif Harir 1992:1-2 and the proceedings from the reconciliation conference held at Al Fasher in 1989.
19. This aspect is, coincidentally, admitted to be the case even by some prominent apologists of the current NIF regime. See El-Affendi, A. 1992 discovering South-ern Sudan: Sudanese dilemmas for Islam in Africa, in the African Post Newsletter, vol.1, No.4, 1992:9-10.
20. They were Dr. Faroug Ahmed Adam, a long standing NIF member, who rose to prominence during the students' resistance to Nimeiri's regime in the seventies serving as secretary for foreign relations under the NIF-dominated KUSU and later, in 1982, parliamentary whip in the Dar Fur regional assembly, and Abdel Jabar Adam Abdel Karim, a prominent Fur who joined NIF in the eighties. Dr. Faroug's resignation from NIF brought the wrath of NIF upon him after the 1989 coup. He has been more or less in political detention during the past four years.

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## THE DEVELOPMENT OF INTERNATIONAL RECOGNITION OF THE RIGHTS OF INDIGENOUS PEOPLES

During the past decade, the rights of indigenous peoples have emerged as an important dimension in international human rights law. The United Nations and International Labor Organization have recently undertaken standard-setting activities for the development of new international instruments and the UN General Assembly declared 1993 as the „International Year for the World's Indigenous Peoples.“ These initiatives represent a recognition by the international community that indigenous peoples face a continuing crisis of survival as distinct societies.

The situation of indigenous peoples cannot be completely grasped apart from the history of colonialism. As we pass from the Columbus quinqucentenary to the International Year, we should be mindful of the profound link between 1492 and 1993. In the Western Hemisphere indigenous peoples were the first, and remain the most persistent victims of colonialism. During the intervening five centuries in that region, uncounted peoples ceased to exist directly as a result of the colonial process—others continue to suffer from its legacy.

Settler societies were established in indigenous ancestral territories, many of which became successor states. In a number of those countries, legal doctrines developed in the colonial era to legitimize European domination such as „discovery rights,“ *terra nullius*, and the „standard of civilization,“ continue to form the conceptual basis for the relationship between the state and indigenous peoples in municipal law. These doctrines function to rationalize the fact of incorporation of indigenous peoples into the state and their subjection to legislative authority. In other regions, the establishment of international frontiers according to existing colonial boundaries (*uti possidetis*) enclosed indigenous peoples within states without any

opportunity for genuine consent. However incorporated, indigenous peoples have found themselves vulnerable to exploitation by elements of the dominant society and by government policies structurally indistinguishable from classic colonialism. Indeed, a number of commentators have characterized the relationship as „internal colonialism,“ in which indigenous peoples are subjected to administrative control, dispossession of lands and resources, and forced or induced assimilation.

Despite this history, or perhaps because of it, recognition that surviving indigenous societies in existing states have rights *as peoples* developed slowly within the international human rights system. The earliest international approach to the situation in independent countries, formulated by the International Labor Organization (ILO) in connection with regional meetings of the American states members of the Organization in 1939 and 1949, emphasized assimilation rather than cultural integrity. Consistent with its specialized mandate in the field of labor relations, and as a result of experiences with rural development activities in the Andean mountains of South America, the ILO initially viewed indigenous peoples in the aggregate as a population of oppressed workers requiring national and international action to elevate living and working conditions, and as a potential source of labor mobilization for national economic development in several states. Cultural issues were set aside in favor of a class analysis emphasizing the economic marginalization of indigenous communities and individuals. Member states were encouraged to prevent discriminatory practices and to actively promote the integration of indigenous workers into national economies.<sup>1</sup>

As the ILO began to delve more deeply into the question, and expand its inquiry to include other regions, however, indigenous traditional cultures, institutions, and ways of life emerged as issues of unavoidable importance. In the first instance, ILO specialists perceived that the indigenous cultural context was an impediment to integration. Indigenous societies were a world apart from the social and economic life of the state, and their members were, for the most part, deeply committed to their communal bonds and patterns of existence. Consequently, in this view, traditional cultures and ways of life had to be transformed if integration and development goals were to be achieved. On the other hand, the ILO realized that rapid change that resulted in the disintegration of traditional structures of social support would be highly destructive, rendering individuals vulnerable to marginalization and exploitation.

To resolve the apparent dilemma, an expert body empaneled to advise the Labor Office in the early 1950's recommended a transitional regime in which indigenous institutions and ways of life would be protected by the state while the community was gradually guided through a process of directed change toward integration. Elements of protection would be incrementally removed as integration proceeded. The advisory body emphasized the importance of the relationship of indigenous peoples to their traditional lands in this process. Ensuring the land-base served multiple purposes in the ILO – analysis supporting the social cohesion of indigenous communities, providing the material basis for subsistence economies during the transitional period, and offering the potential for economic development through the eventual introduction of market-oriented agricultural production. The panel recommended that the land be secured through legal recognition of an indigenous „priority right“ based on traditional occupation.<sup>2</sup>

At no point in this period did the ILO consider indigenous rights to preserve the integrity of their cultures and social orders. Operating from an ethnocentric premise of social evolution and concerned with the process of rural development, the ILO emphasized induced and directed integration into the national society as the centerpiece of its program.

All of these issues shaped the development of Convention No. 107, the *Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries*, adopted by the International Labor Conference in 1957 and eventually ratified by twenty-seven states.<sup>3</sup> Because of the integrationist orientation of the instrument, many of the standards that resulted from this exercise have proven destructive to indigenous peoples.

It is important to note two normative developments, however. First, Article 9 of the Convention provides for the complete and immediate prohibition of forced labor affecting indigenous persons including serfdom and debt peonage. The ILO has interpreted the provision to allow minor communal services required of indigenous persons for mutual benefit by the indigenous community itself and to permit military conscription by the state.

The second, relating to land rights, is particularly important, but in practice less than categorical:



Article 11 - The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized.

The phrasing of the article is significant in that indigenous ownership is recognized on the basis of pre-existing right rather than a grant from the state. However, land rights are seriously qualified by other provisions in the Convention. For example, Article 12 is an open-ended derogation clause that permits the unconsented removal of indigenous peoples from their traditional territories „for reasons relating to national security or in the interest of national economic development.“ Additionally, the Convention provides no protection from alienation of lands through sale, mortgage, or lease outside the indigenous community.

In other respects, the Convention places all aspects of indigenous life under the administrative authority of the state, either for purposes of transitional protection or to facilitate integration. As a result, Convention No. 107 has been heavily criticized for legitimizing state practices that have led to the extinction of indigenous societies. It has had no apparent influence on the subsequent development of international standards, except perhaps as a negative model.

The United Nations began an examination into the circumstances of indigenous peoples in the early 1970's as a component of a broad study on racism and racial discrimination.<sup>4</sup> Because of the particular and complex nature of the problem, in 1971 the Sub-commission on Prevention of Discrimination and Protection of Minorities appointed José Martínez Cobo as a Special Rapporteur to study „The Problem of Discrimination Against Indigenous Populations.“<sup>5</sup> As the title indicates, the study began with an assessment of indigenous rights under then existing human rights norms, but it soon became apparent that the central issues affecting indigenous survival could neither be confined nor adequately addressed within the framework of the International Bill of Rights.<sup>6</sup>

Conducted over a period of twelve years by Augusto Willemsen Díaz of the UN Centre for Human Rights, the study increasingly focused on the indigenous group as a distinct society in terms of land rights, social relations, traditional ways of life, spiritual freedom, and broad issues of cultural integrity. Rejecting the ILO approach as ethnocentric, the UN study developed the premise that indigenous peoples had an inherent right to exist within their ancestral territories according to their own definitions and ways of being, and to transmit that territorial and cultural heritage to future

generations. In 1983, the Special Rapporteur submitted detailed conclusions, proposals, and recommendations on a broad array of issues including land and resources, cultural, social, and legal institutions, religious rights and practices, language, political rights, health, education, etc. The rights associated with these issues were presented as pre-existing rights rooted in the historical existence of indigenous peoples as distinct societies.<sup>7</sup> The 1983 final document provided an important conceptual foundation for later standard-setting efforts at the international level.

The greatest influence on the development of international standards, however, has come from indigenous peoples themselves. In 1975, indigenous representatives from Argentina, Australia, Bolivia, Canada, Colombia, Ecuador, Finland, Greenland, Guatemala, Mexico, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Sweden, the United States and Venezuela met in Port Alberni, Canada to begin an international movement for indigenous rights.

Two years later, in 1977, an International NGO Conference on Discrimination Against Indigenous Populations in the Americas was held at the Palais des Nations in Geneva. The Conference was attended by representatives of over sixty indigenous peoples, fifty international NGO's, the UN, ILO, and UNESCO, and observers from twenty seven governments. Indigenous participants made presentations concerning the authenticity of their histories as distinct peoples and linked those histories to three thematic areas for the definition of their rights: land, self-determination, and cultural integrity. At the close of the meeting, by a process of consensus, indigenous representatives developed a „Declaration of Principles for the Defense of the Indian Nations and Peoples of the Western Hemisphere.“<sup>8</sup> The document was the first serious attempt to formulate in legal terms a comprehensive set of norms on indigenous rights. A subsequent NGO conference in 1981 on „Indigenous Peoples and the Land“ issued a detailed analysis of the interplay between land rights and self-determination and called for the opening of international fora to indigenous participation.<sup>9</sup>

The 1977 and 1981 Conferences were educational and political watershed events. From that time forward, international organizations have perceived the need to involve indigenous peoples directly in activities concerned with their rights. Indigenous definitions of substantive rights have also significantly affected conceptual developments at the international level. For example, the final document of the UN study analyzed and endorsed the relevance of various forms of self-determination for indigenous survival.<sup>10</sup> Similarly, in

1981, a UNESCO international Conference on Ethnocide and Ethno-development in Latin America, with indigenous participants, issued the San Jose Declaration condemning cultural genocide, the intentional destruction of a distinct people through the suppression of cultural identity, as „an extreme form of massive human rights violation.“ The Conference also recognized land rights and autonomy as fundamental.<sup>11</sup>

By far the most significant development in this period, however, was the establishment in 1981 of the Working Group on Indigenous Populations within the U.N. Subcommission on Prevention of Discrimination and Protection of Minorities. The mandate of the Working Group is two-fold: to annually review developments concerning indigenous peoples and to draft new standards for the recognition of indigenous rights. The second part of the mandate represents formal recognition by the U.N. human rights system that the existing code of individual rights is insufficient in light of indigenous realities. It also clearly distinguishes indigenous rights issues from a parallel standard-setting exercise on the rights of minorities.

Since 1988, the Working Group, with both indigenous and government participation, has been elaborating a U.N. Declaration on the Rights of Indigenous Peoples.<sup>12</sup> The instrument is presently in the form of a consensus draft text that will be formally adopted by the Working Group at its 1994 session and submitted to the Sub-Commission in 1994 and the Human Rights Commission in 1995 for further action. The draft Declaration is far-reaching, recognizing rights along the full spectrum of indigenous relations with the state.

The ILO has also recently developed a new instrument. In 1989, the International Labor Conference adopted Convention No. 169 (*Convention Concerning Indigenous and Tribal Peoples in Independent Countries*) to revise and eventually replace Convention No. 107.<sup>13</sup> Directed integration has been eliminated as the organizing principle in favor of a participatory model derived from contemporary ILO rural development policies. In contrast with Convention No. 107, Convention No. 169 by its terms foresees the continuation of distinct indigenous societies and encourages governments to respect indigenous cultural integrity. Unlike the U.N. draft Declaration, however, it is not specifically a rights instrument setting forth a code of fundamental rights that the state may not violate. Rather, in the ILO mode, it seeks to regulate government policies through a set of procedural requirements placed on state parties, in which states otherwise retain legislative and administrative authority over indigenous affairs.

Both U.N. and ILO texts are innovative in that they focus on the indigenous group as the rights-holding entity. The instruments overlap in a number of thematic areas as well, but frequently take a strikingly different approach toward vital substantive rights.

## Lands and Resources

Each instrument recognizes the centrality of the profound and complex relationship that indigenous peoples have to the land and the natural world — and presents that relationship in the form of rights. The most extensive formulation appears in the U.N. draft Declaration:

Indigenous peoples have the right to own, develop, control, and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora, and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.<sup>14</sup>

Both instruments set forth rights of ownership and possession based on traditional occupation; that is to say, they are pre-existing or inherent rights to land established by indigenous histories, cultures and traditions that must be recognized by the state as a distinct legal regime. The language expresses a patrimonial concept of ownership in which indigenous societies have independent authority to determine tenures and usage patterns among their members.

Both texts also provide for environmental protection of the land-base, but here the language differs, reflecting structural differences in the approaches taken by the U.N. and ILO. The U.N. draft speaks of the *right* to the protection, conservation, and where necessary, the restoration of the total environment and productive capacity of lands and territories. It is also quite specific in prohibiting military activities without indigenous consent and the storage or disposal of hazardous wastes.<sup>15</sup> ILO Convention No. 169, by comparison, places a general *obligation* on state parties „in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.“<sup>16</sup> No rights are expressly designated.

One of the greatest differences in the instruments is in their stance toward the vital issues of expropriation of land and exploi-

tation of natural resources. ILO Convention No. 169 continues to permit the unconsented removal of indigenous peoples from their lands, albeit with a set of procedural requirements that must precede the action.<sup>17</sup> The U.N. draft strongly prohibits removals without free consent<sup>18</sup> and lists dispossession of lands, territories, and resources and population transfers as examples of cultural genocide.<sup>19</sup>

The draft Declaration includes the ownership and control of natural resources within the broad concept of land rights,<sup>20</sup> and clearly requires indigenous consent as a condition for commencement of natural resource extraction projects.<sup>21</sup> Convention No. 169 leaves the question of natural resources to national law, rendering indigenous peoples vulnerable to state action. Where national law recognizes indigenous resource rights, the Convention requires that these rights be „specially safeguarded.“ However, in countries where by law the state is designated as the owner of sub-soil or other resources, the instrument places no restrictions on resource extraction other than requiring a consultation process<sup>22</sup> and general obligations of environmental protection.<sup>23</sup>

The ILO provisions on removal and resource exploitation have been strongly criticized as potentially negating much of the protective value of the Convention. In most regions, resource extraction continues to be the most destructive phenomenon facing indigenous peoples.

## Self-Determination

In the words of the U.N. Special Rapporteur, „Self-determination, in its many forms, is ... a basic precondition if indigenous peoples are to be able to enjoy their fundamental rights and determine their future, while at the same time preserving, developing, and passing on their specific ethnic identity to future generations.“<sup>24</sup>

Inevitably, this issue has generated considerable controversy. For some governments attending U.N. Working Group meetings, discussion of self-determination begins and ends with the threat of secession and the dismemberment of the state. Although some indigenous peoples define their right to self-determination in terms of political independence, most indigenous representatives have taken a functional approach, without proposing a particular formula for the ultimate implementation of the right. They have posed self-determination as the right to control their institutions, territories, resources, social orders, and cultures without external domination or interfer-

ence *and* the right to establish their relationships with the dominant society and the state on the basis of consent.

The U.N. draft Declaration recognizes the right of indigenous peoples to self-determination in the same terms as the right is articulated in the international human rights Covenants:

Indigenous peoples have the right of self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.<sup>25</sup>

Aspects of these issues are dealt with functionally in Parts V and VII of the draft text. Articles 19 and 20 relate to the right to political participation in the institutions of the state, „if they so choose“, and are phrased in terms of participation by the peoples as such. Article 20 further requires states to obtain the „free and informed consent“ of indigenous peoples before implementing measures that affect them.

Article 31 deals directly with what is termed a „right to autonomy in matters relating to their own internal and local affairs“ - a specification of the *minimum* content of self-determination expressed generally in Paragraph 3. Included in the list that follows are culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, administration of lands and resources, environment, taxation, and entry by non-members. Gudmundur Alfredsson of the U.N. Centre for Human Rights, who participated in the original drafting of this clause, has said that it was based on the Greenland Home Rule arrangement. Other provisions in the text recognize the right to determine land tenures,<sup>26</sup> the structure, procedures, and membership of indigenous institutions,<sup>27</sup> membership in indigenous societies as a whole,<sup>28</sup> the responsibilities of individuals to the indigenous community,<sup>29</sup> and, when not incompatible with international human rights standards, to maintain their juridical practices and procedures.<sup>30</sup>

Convention No. 169 in contrast only deals with indigenous governance obliquely. References to self-generated indigenous institutions appear throughout the Convention, but no general right of self-government is acknowledged. For the most part, the scope and function of these institutions and the degree of self-control accorded indigenous peoples are left to the determination of the state. Moreover, states retain authority to intervene extensively in the internal affairs of indigenous societies without any requirement of consent. In place of consent, the state is obligated to engage in a consultative process with representative indigenous institutions when measures

that may directly affect them are under consideration. Article 6(2) sets a high threshold for consultations, charging governments with good faith efforts to achieve „agreement or consent“ to proposed measures, but the ultimate power of decision resides with the state. The absence of indigenous control is particularly evident in matters relating to natural resources.

The Convention provides for the possibility of indigenous administration and control in the areas of vocational training,<sup>31</sup> health services,<sup>32</sup> and education<sup>33</sup> under some circumstances.

## Cultural Integrity

The UN draft Declaration and ILO Convention No. 169 both reflect an awareness that culture is a comprehensive concept that involves communal identity, spiritual tradition, language, social institutions, customary law, and the totality of the indigenous relationship with the natural world. The draft Declaration expressly states the right to be free from cultural genocide, including within that concept any form of assimilation, integration, or ways of life „imposed on them by legislative, administrative or other measures,“ and the dispossession of territories and resources.<sup>34</sup> The rights to maintain language, spiritual traditions, traditional economies, and healing practices are specifically recognized,<sup>35</sup> along with the right to control the education of children.<sup>36</sup>

Convention No. 169 generally requires that the „social, cultural, religious and spiritual values and practices“ of indigenous peoples be recognized and protected and calls for respect for the „integrity of the values, practices and institutions of these peoples ...“<sup>37</sup>

In conclusion, although few would now deny the historical justice of the movement for indigenous rights, the political environment for the realization of those rights remains difficult. At the national level, where effective implementation must take place, governments are reluctant to concede authority over indigenous communities and territories or over the disposition of indigenous resources. Many factors impede change: the political culture of the state apparatus, residual racist attitudes that deny the inherent validity of indigenous cultures, ideologies that disregard the communal character of indigenous societies, development models oriented toward social and economic integration, and most powerfully, transnational and national economic interests that covet natural resources pertaining to

indigenous lands. Economic pressures are particularly intense in countries heavily burdened by international debt and affected by IMF structural adjustment regimes.

Nevertheless, change is occurring. Aside from standard-setting activities, the Working Group process itself has had a noticeable impact on the situation of indigenous peoples in some countries. As a forum, it has served to raise the visibility of indigenous issues for governments and has at times provided an opportunity for opening a dialogue that has continued in national capitals. It now remains to be seen whether the international community will take the next necessary step and memorialize a comprehensive and meaningful recognition of indigenous rights. The survival of peoples is in the balance.

*Portions of this paper were presented at a panel on „Indigenous Peoples and the Right to Self-Determination“ at the 1993 Annual Meeting of the American Society of International Law in Washington, D.C., April 2, 1993.*

## Notes

1. International Labour Organisation, *Indigenous Peoples: Living and Working Conditions of Aboriginal Populations in Independent Countries*, Studies and Reports, New Series, No. 35 (1953).
2. Second Session of the I.L.O. Committee of Experts on Indigenous Labour, 70 *International Labour Rev.* (1954).
3. International Labour Organisation, *International Labour Conventions and Recommendations, 1919-1981*, at 858 (1982). At the present time, 23 states remain parties to Convention 107: Belgium (1958), Cuba (1958), Dominican Rep. (1958), El Salvador (1958), Ghana (1958), Haiti (1958), India (1958), Egypt (1959), Syria (1959), Argentina (1960), Pakistan (1960), Peru (1960), Portugal (1960), Tunisia (1962), Brazil (1965), Malawi (1965), Ecuador (1969), Paraguay (1969), Panama (1971), Bangladesh (1972), Angola (1976), Guinea Bissau (1977), Iraq (1986). Ratifications are now closed.
4. United Nations, *Special Study on Racial Discrimination in the Political, Social and Cultural Spheres* (Hernan Santa Cruz, Special Rapporteur), UN Sales No. E.71. XIV.2 (1971), Chap. IX.
5. The final report was published as United Nations, *Study of the Problem of Discrimination Against Indigenous Populations* (José R. Martínez Cobo, Special Rapporteur) UN Doc. E/CN.4/Sub.2/1986/7 & Adds. 1-4 (1986).
6. The „International Bill of Rights“ is generally considered to include the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), and the International Covenant on Civil and Political Rights (1966).
7. Conclusions, Proposals, and Recommendations, E/CN.4/Sub.2/1986/7/Add.4.
8. International NGO Conference on Discrimination Against Indigenous Populations In the Americas: Statements and Final Documents (1977).



9. Report of the International NGO Conference on Indigenous Peoples and the Land (1981).
10. Supra note 7 at 20.
11. Quoted in supra, note 5, Vol. I, p. 123-25.
12. Report of the Working Group on Indigenous Populations On Its Eleventh Session, UN Doc. E/CN.4/Sub.2/1993/29, Annex I, p. 50- 60.
13. As of August 1993, five states have ratified Convention 169: Norway, Mexico, Bolivia, Columbia, and Costa Rica.
14. Draft Article 26.
15. Draft Article 28.
16. Article 7(4).
17. Article 16.
18. Draft Article 10 („Indigenous peoples shall not be forcibly removed from their lands and territories. No relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.“)
19. Draft Article 7(b), (c).
20. Draft Article 26.
21. Draft Article 30.
22. Article 15(2).
23. Article 7(4).
24. Supra note 7, at 20.
25. Draft Article 3.
26. Draft Article 26.
27. Draft Article 32.
28. Id.
29. Draft Article 34.
30. Draft Article 33.
31. Article 22.
32. Article 25.
33. Article 27.34.Draft Article 7(b), (d).
35. Draft Articles 9, 12-14, 21, 24.
36. Draft Article 15.
37. Article 5(a) (b).

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