

# Land and communities: Kahuzi-Biega National Park

A review of the availability of land, forests and other natural resources in the hinterland of the high altitude part of the Kahuzi Biega National Park, eastern Democratic Republic of Congo

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Pacifique Mukumba Isumbisho with Franklin Bombwe, John Shukuru Bahati, Sylvain Kulimushi Matabaro, Gentil Iragi Kulimushi, Prince Mulungula Kyabu

## Key points:

*Kahuzi-Biega National Park is recognised as being the customary land of the Batwa, from which they were expelled when the Park was created*

There is universal acknowledgement of this fact, but there has never been formal acknowledgement of the injustice of their forced expulsion, nor compensation nor reparations made for that injustice. They continue to live landless, in poverty and are frequently criminalised.

*The understanding of “land” is profoundly different between the Batwa and conservation authorities.*

When the Batwa talk about land, they are talking about their ancestral territories, including forests, wildlife, landscape and their centrality in Batwa culture and society. A patch of land for cultivating crops is not and cannot be equivalent.

*Land tenure as recognised by the state or by customary authorities is inaccessible to Batwa people*

Both formal and customary systems are prohibitively expensive and do not take Batwa customary tenure into account.

*There is no suitable land that is freely available to Batwa communities within a 10km zone around PNKB*

All land outside the Park is owned by private owners and no landowner has been identified who was prepared to offer land to communities free of charge or at an affordable cost.

*Until a solution is found that takes into account Batwa understandings of land and forest and redresses the injustices they face, conflict and mistrust will persist.*



Batwa communities around Kahuzi-Biega National Park were displaced in the 1970s by the creation of the Park and have lived in a situation of landlessness and precarity ever since. For Batwa people, their ancestral lands are essential for their physical and cultural survival – they depend on natural forest resources to live and their connections with the land and forest are a central part of their cultural and spiritual lives.

For many years, the Batwa have demanded that their landlessness and marginalisation be recognised as being a consequence of their expulsion, and that this injustice be tackled so that they can live with dignity. A solution that is frequently proposed by other actors is that of providing alternative land outside of PNKB for the Batwa communities. Although this solution was first proposed in 2014, nothing has since changed. No Batwa community has yet obtained secure title to any land outside the Park and people continue to live in precarity, criminalised for trying to find the means to survive. Some communities, in despair at a solution ever being offered by the authorities, have returned to their ancestral lands inside the park.

This study examines the current situation of land ownership and access to resources for Batwa communities living around the high altitude part of PNKB, with a view to understanding whether the proposed solution of offering alternative land to communities is a viable one.

In the first place, it is clear that the Batwa understanding of “land” is not simply that of a patch of soil to cultivate. For the Batwa, ‘land’ incorporates the forest and wildlife living there as well as the strong social and cultural ties they have to their ancestral lands. This means that one area of land is no substitute for another.

This poses a challenge to the idea of compensating for land lost with another piece of land. It is also clear that all communities around PNKB know that the formal law exists, but in practice, customary law prevails. In this way, the Batwa know that their land, inside PNKB, is still theirs, and they do not recognise the legitimacy of other authorities stopping their access to their lands.

When it comes to formal land title, and routes through which Batwa people could access that, there are almost no options. In this study, all land that was appropriate for Batwa use was identified as being owned by other people and there were no examples of a title holder being willing to hand land to the Batwa, who are unable to buy it because of their precarious situation.

Bearing these factors in mind, the conclusion reached is that finding land outside the Park is neither a practical nor a long term solution to the fundamental problem of conflict between Batwa communities and the conservation authorities resulting from the expulsion and exclusion of the Batwa. There is little or no land available and even if there were, the fact that it would not be an acceptable substitute for Batwa ancestral lands means that some form of access to the Park would have to be negotiated also.



## I. Introduction

Since the 1970s, Indigenous Pygmy Peoples have faced the injustice of having been brutally evicted from their ancestral lands, which deprived them, without compensation, of their traditional means of subsistence. Nearly five decades after this eviction, the Batwa are still claiming their ancestral lands. In 2014, following the Whakatane dialogue between Kahuzi Biega National Park (PNKB) and local communities and Indigenous Peoples<sup>1</sup>, the Congolese government made a firm commitment to address the Batwa claims, including making land available. Unfortunately, since then, neither the Congolese state nor non-government actors have yet identified exactly where the land to be granted to the Batwa might be located and to whom it belongs.

This study aims to respond to the information gap on the problem of the availability of land, forests and other natural resources in the hinterland of the high-altitude part of PNKB. The study was preceded by a literature review which included an inventory of national legal texts and international instruments that guarantee indigenous peoples' rights to land and natural resources. A survey was carried out in the territories of Kabare and Kalehe, particularly in the Miti-Katana, Kalehe-Ihusi, and Kalonge-Bitale axes. For two months, from June 2020 to August 2020, a team of four investigators including a lawyer, a sociologist, a botanist and a cartographer was deployed on the ground to collect data on the availability of land, forests and other natural resources in the peripheries of the high altitude part of the PNKB, in the East of the Democratic Republic of Congo (DRC).

## II. Context

The DRC is a multi-ethnic country with some 250 ethnic groups, including several indigenous peoples<sup>2</sup>, who are estimated to number around 700,000 (1% of the total DRC population). These peoples are known in the anthropological literature as Sua, Mbuti, Bambuti, Batwa, Twa. Indigenous peoples are often equated with local communities and are sometimes considered vulnerable groups given that the concept of "indigenous peoples" remains a controversial notion in Africa in general and in DRC in particular. They are marginalised in the implementation of national policies and continue to be discriminated against in host communities. They are sometimes victims of human rights violations and live in food insecurity. Statutory laws and local customs imposed by the Bantu, the neighbouring dominant communities, do not recognise their right to own or occupy their land. However, an organic law on indigenous peoples is currently pending adoption at the level of the National Assembly, which may represent a glimmer of hope in the quest to improve the living conditions of indigenous communities in DRC.

In the eastern part of DRC, evictions of indigenous peoples from their ancestral lands in order to create national parks began during the colonial period. In 1925, a royal decree created the Virunga National Park in North Kivu. This practice continued after the country's independence, following the then government's desire to develop a tourism industry. PNKB was established between 1970 and 1975.

The creation of PNKB left thousands of indigenous Batwa in a very precarious situation. They were culturally impoverished by the loss of their forests<sup>3</sup>. Their right of access to natural resources, their right to land and compensatory measures to support the expelled Batwa communities should have been recognised and guaranteed, but this was not the case.

Their ancestral ties to the forest and extreme poverty sometimes lead the Batwa to enter the park<sup>4</sup>, despite the legal restrictions in force, so that they can harvest natural resources that are essential for their subsistence, such as honey or medicinal plants.

Several dialogues and attempts to resolve the conflict between the PNKB administration and the indigenous Batwa residents took place between 2014 and 2019. In 2014 (the Whakatane Dialogue) and in 2018 (the Miti-Centre Dialogue) and in September 2019 (the Panorama Dialogue) were held to try to resolve the conflict and find a solution to the problem of landlessness<sup>5</sup>. Unfortunately, all these initiatives have not seen serious follow-up on the commitments made.

A few weeks after the 2019 High Level Dialogue, the Chief of the Kabare chiefdom decided to grant about ten hectares to the Batwa in Kabare territory. This decision was very quickly challenged by officials of the Institut National d'Etude et de Recherche Agronomiques (INERA) on the grounds that the concession granted to the Batwa fell within the domain of this public institution<sup>6</sup>.

The resolutions adopted from each of these dialogues include a commitment to identify and make land available to the Batwa communities bordering PNKB and to facilitate the administrative procedures relating to land acquisition for them<sup>7</sup>.

It is within this framework that this study was conducted. It aims to present an inventory of the availability of land, forests and other natural resources in the hinterland of the high-altitude part of PNKB.

Specifically, this study aims to :

- Locate and identify the available land around PNKB.
- Determine the legal status of the available land and forests around PNKB;
- Identify the value of these lands and forests in terms of biodiversity;
- Determine the Batwas' connection to these lands and the Batwas' attachment to the forest within the Park;
- To know the extent of the power of the customary authorities in the allocation and management of land in South Kivu;
- Survey the willingness of private actors or customary authorities to make land available for the benefit of Batwa communities.



### iii. Difficulties

- Some sites were inaccessible by road. Surveyors and their guides had to walk to reach them.
- Unable to make direct contact with the owners of the identified land or forests. Investigators had to use the information provided by the Batwa and local customary authorities.
- Unavailability of certain resource persons (chiefly local administrative authorities). This situation led the investigators to talk to the deputies when the incumbent was unavailable.

## IV. Results

### i. Legal basis of Batwa rights to land and natural resources

In DRC, Article 53 of the Land Law states that 'land is the exclusive, inalienable and imprescriptible property of the state'<sup>11</sup>. With this provision, made in 1973, the state nationalised the land, thus abolishing not only private land ownership, but also the colonial distinction between state land governed by written law and indigenous land subject to customary rules and practices. From then on, all land became state land. However, it is administratively differentiated into urban and rural lands and legally into private and public domain lands<sup>12</sup>. The private domain, divided into urban and rural land, is subject to legislation that organises private land use by granting concessions to individuals and securing it through registration certificates<sup>13</sup>.

However, while this legislation covers all urban and rural land managed through the concession system, the same does not apply to rural land occupied by rural populations<sup>14</sup>. Article 389 of the same law made the regulation of user rights acquired on such land subject to a presidential order that is still pending. This gap has left the conditions of control and use of land occupied by rural populations in a situation of 'legal no man's land' in relation to formal law<sup>15</sup>.

It should also be noted that when Article 387 of the Land Law states that 'land occupied by local communities becomes state land from the entry into force of this law', this in no way means that these communities no longer have tenure rights over the land to which they have traditionally occupied. Above all, it should be noted that the Congolese constitution of 18 February 2006 guarantees the right to property (or property rights in the broad sense) acquired in accordance with custom in the following terms: 'the State guarantees the right to individual or collective property acquired in accordance with the law or custom'. Furthermore, it should be noted that the constitution Article 153, paragraph 3, makes custom one of the sources of law in the sense that it can be applied by the courts and tribunals as long as it is not contrary to public order and morality.

Moreover, sectoral legislation developed in recent years, such as that on community forestry, also provides an opportunity to secure customary land tenure through local community forest concessions (CFCLs)<sup>16</sup>. In addition, contrary to the old

legislation<sup>17</sup>, the Nature Conservation Act of 2014 shows a positive shift in the discourse towards recognising customary land rights and the positive role that local communities can play in conservation<sup>18</sup>.

Indeed, contrary to previous legislation on nature conservation, which established restrictive state management that excluded local communities, the 2014 law on nature conservation makes the consultation of neighbouring populations a prerequisite before the creation of any protected area. It also defines the conditions of access to biological and genetic resources, the valorisation of traditional knowledge associated with these resources, and defines fair and equitable sharing of the benefits arising from exploitation of these resources.

Other interesting legislative and policy initiatives include a land reform process and a proposed law on indigenous peoples' rights that is currently before Parliament. It should also be noted that the DRC has an obligation to implement the various conventions to which it has acceded. We have identified a series of international and regional legal instruments that guarantee the right of indigenous peoples to land and natural resources. However, the list we have been able to draw up is far from exhaustive (see Appendix I).

### ii. The concept of land in the context of PNKB

Indigenous peoples have a deep and intimate relationship with the land on which they live and its resources<sup>19</sup>. Since their expulsion from PNKB, the Batwa have repeatedly asked the Congolese Government to give them land. However, for the Batwa the concept of 'land' is seen in a much broader sense. Sometimes they use the word 'forest' to indicate 'land'. For the Batwa, the concept of land is inseparable from the forest and must be distinguished from the concept of land simply as any patch of earth, as it is currently implied in the recommendations of the various dialogues and attempts at peaceful resolution of the Batwa-PNKB conflict.

The Batwa commonly refer to the land and the forest itself as central to them in terms of conservation, use and livelihoods<sup>20</sup>. Ancestral forest lands play a central role in the lives of these indigenous peoples, as the source of their livelihoods and the inspiration for their spiritual and cultural practices. Forests enable fishing, gathering and hunting; they provide materials for shelter, tools, handicrafts, ceremonial objects and traditional medicines; they also serve as a source of artistic and spiritual inspiration, and of cultural and social connection, including through ritual. In return, indigenous beliefs and practices contribute to the preservation of forests, their biodiversity and the ecosystem services they provide<sup>21</sup>.

The dispossession of the Batwa from their ancestral lands during the creation of PNKB has profoundly changed their way of life. Thousands are living in a very precarious situation. However, because of the traditional historical and cultural links with the forest within the Park boundaries that remains to this day, and because of their extreme poverty, the Batwa sometimes enter the Park despite the legal restrictions in place. Indigenous Batwa people feel that they need access to the Park's forest resources as much as they need access to land. In their view, land alone cannot meet all their needs. Because of their attachment to their forest lands, they will always need to be able to visit it for cultural, social and spiritual reasons as well as to obtain key natural resources found in the Park such as non-timber forest products (NTFPs), meat, honey,

medicinal plants, etc.

*'There are resources that we cannot find anywhere else but in the park. This is particularly the case for Maziba. We can only find this water in the park. For us Batwa, Maziba is holy water. We use it to chase away evil spirits,'* says Ms Kajuru M'shengere<sup>22</sup>.

So for the Batwa, even if tomorrow the government were to give them land outside the park, they would also have to be granted the right to enter the Park to practice subsistence hunting or to collect medicinal plants and other NTFPs.

It should also be noted that in 2018, during the voluntary return of the Batwa to Kahuzi Biega National Park, some of them abandoned the portions of land they had acquired from traditional chiefs or benefactors (NGOs, churches, etc.) to settle in the Park. According to the Administrative Secretary of the Buhavu chiefdom, other individuals, before moving to the Park, may even have sold their land outright at a low price.

From the above, it is clear that even if the Government were to make new land available to the Batwa (outside PNKB), they will still see the need to have access to their forest lands for cultural and social reasons as well as to seek vital resources in the Park that they cannot access outside.

### iii. Land, forests and natural resources in the hinterland of the high altitude part of PNKB

#### a) Land ownership

According to the testimonies collected, most of the available land around PNKB in its high altitude part is owned by private concessionaires. Indeed, on the land identified as being currently uncultivated and potentially suitable for use by the Batwa, no fewer than 110 private concessions have been counted in the territories of Kabare and Kalehe, covering an area of approximately 8000 ha. The largest landowners are the state, such as the two concessions belonging to the Institut National d'Etude et de Recherche Agronomiques (INERA), or the concession belonging

to the Centre de Recherche en Sciences Naturelles (CRSN) Lwiro, three private owners, who each hold more than 400 ha and the Catholic church, which has 600 ha.

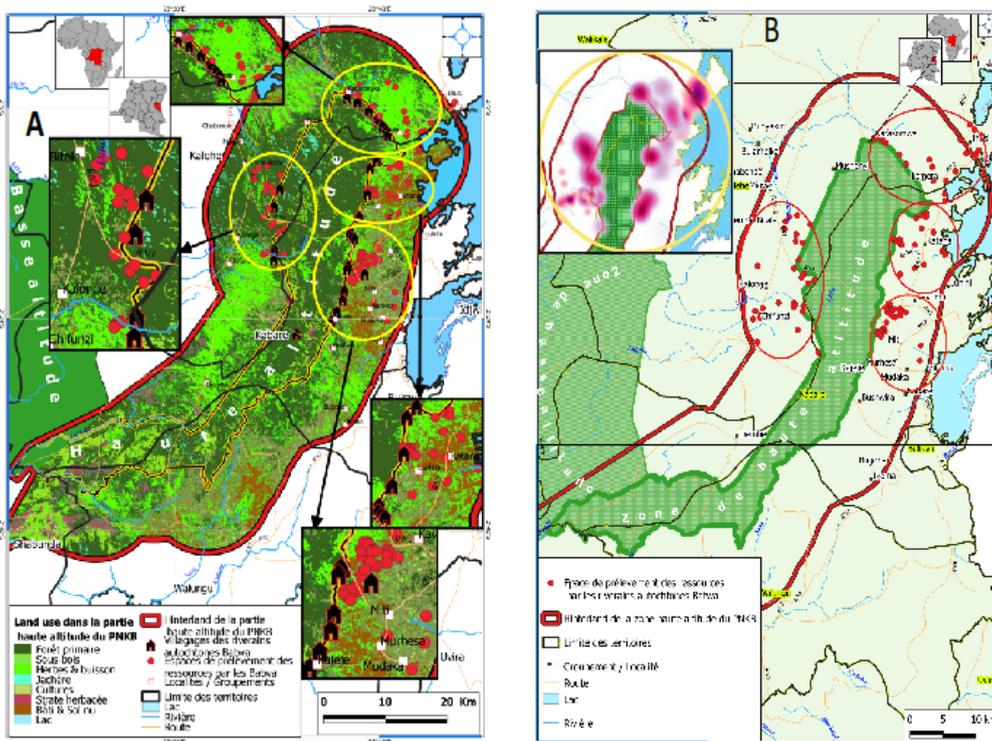
In Kabare territory, for example, the Batwa do not have their own land. To get a piece of land, they have to negotiate with private concessionaires because the state itself has none or very little. The head of the Bugorhe groupement in Kabare territory suggested that private concessionaires should be approached to negotiate portions of land that could be allocated to the Batwa. *'The state can expropriate these concessionaires and allocate land to the Batwa. Or it can disallocate part of its own concessions to the Batwa'*, he added<sup>23</sup>.

According to the Secretary of the Miti groupement chief, neither the Kabare chiefdom nor the Miti groupement has any land. For his part, the Secretary recalled that PNKB had promised to buy land for the Batwa, but had not kept its promise. According to him, the Batwa have returned to the park because their demands have not been met<sup>24</sup>.

In the Ndando groupement, in Kalehe territory, a private concessionaire owns nearly three quarters of the available land. The same observation was made in other parts of Kalehe territory. Here too, most of the land and forests belong to private concessionaires. The customary authorities are obliged to buy land from individuals<sup>25</sup>.

Some group leaders hold concessions on a personal basis. This is the case of Joseph Nakalonge of Kalonge, who says he owns land but is not prepared to give it to the Batwa for free. On the other hand, he says he is prepared to sell it to them. The latter recalls that in 2019, General Mundos<sup>26</sup> came to him to negotiate a concession for the Batwa. *'I went to show my field of about ten hectares to the commander of the 33rd military region. After negotiations, and in the presence of the Batwa who were very happy that day, General Mundos promised to come back another time with the donors to buy this concession for the Batwa. Since then, nothing'*, he laments.

#### b) Distribution of natural resources



**Figure 2: A,B**  
Classification of land use patterns. A. Batwa occupation and use of land. B. Location of resource extraction areas by indigenous Batwa residents in the high altitude part of PNKB  
Source: CAMVIFPP data

Figure 2 shows land use in the periphery of the high altitude part of PNKB.

In Figure 2, it can be noted that the areas where indigenous Batwa residents harvest resources include grassland, scrub and woodland. The north-western and northern parts of the hinterland also contain some primary forest (see Figure A) and constitute a continuous extension of the vegetation type of PNKB. Other seasonal harvesting areas are cropland and fallow land where Batwa community members collect resources.

The scrub is actually the burnt areas or areas affected by bushfire at the time of this study. However, since they are always in preparation for new vegetation regeneration, the areas of scrub are not permanent. The period during which the observations and field visits were carried out (August) corresponds exactly to the end of the dry season in this area. This is the time when herders burn the dry grass to allow for a good flush of grass in September, thus preparing green pasture for their herds. Indigenous Batwa people are bound to their ancestral lands in every way (material, cultural and spiritual). They cannot be permanently separated from it unless they find an identical area offering them the same alternatives as their ancestral lands. Some of the peripheral areas of the park offer them these resource harvesting possibilities, as shown in Figure B.

The resources harvested in the riparian areas of the park extend into the park, where they would be more abundant than outside. The Batwa take resources from within the park close to their areas of occupation in the periphery. This is the basis for conflict between eco-guards and indigenous peoples. The small 'pink cloudy spot' map in Figure B illustrates this. It is a visual expression of the location data of indigenous peoples' resource extraction areas.

#### c) Natural resource use in law

With a paramilitary management regime in place in protected areas, which are home to resources that are needed or desired by neighbouring populations, "illegal" practices are commonplace. Among the protected areas of South Kivu, PNKB is under particular pressure, given its size and resources<sup>27</sup>, but also its current situation as a refuge for armed groups.

PNKB has been identified under the law as being in need of "integral protection", which implies the prohibition of access to and removal of resources. This gives rise to a negative feeling of frustration and insecurity and exacerbates hostility among local populations, given its protection status and the resulting sanctions and harassment of communities<sup>28</sup>. The state management regime is thus perceived by these populations as an imposition and incompatible with the need for access to nature to meet their needs. Several sociological studies on the relationship between humans and nature have highlighted this<sup>29</sup>.

On the subject of access to natural resources, Article 39 of the Forestry Code limits use rights in classified forests, (including National Parks), to the collection of dead wood and straw; the gathering of fruit, food or medicinal plants; the harvesting of gums, resins or honey; the collection of caterpillars, snails or frogs; and the removal of wood for building houses and for handicraft use<sup>30</sup>. In addition, the management plan for each classified forest must determine the rights of use authorised for the forest concerned. Only local populations have the prerogative to exercise use rights in protected areas<sup>31</sup>.

In addition, the Nature Conservation Act of 2014 identifies that exemptions to conservation measures can be granted to neighbouring populations in the interest of their food security<sup>32</sup>. Indeed, this law fills a gap in Congolese nature conservation legislation, which had not been taking into account the new challenges imposed by sustainable development and the fight against poverty for local populations who might not be in a position to actively participate in the management of protected areas in order to derive legitimate advantages and benefits. It should also be noted that the stated vision of the new management of protected areas in the DRC is to ensure the conservation and effective and sustainable management of biodiversity throughout the national network of protected areas in the DRC, in cooperation with local communities and other partners for the well-being of the Congolese people and all humanity<sup>33</sup>. In its General Management Plan (2009-2019), PNKB had set itself the objective of strengthening the involvement of the surrounding population in conservation and integrated development.

However, it is also important to note that to date, the rights of use of the local population in the Kahuzi Biega National Park have not been implemented. Access to the Park's natural resources is prohibited in practice. The Batwa are the first victims of this situation, given the precariousness of their lives.

#### d) Natural resources inside PNKB boundaries

Access to the natural resources of PNKB is one of the Batwa's main demands. Their survival depends on it. However, their brutal expulsion, without warning or free, prior and informed consent, has created a great imbalance in their way of life. Left without other means of support, the Batwa have no alternative but to look for food in the park. Moreover, they still recognise themselves as the owners of this forest and land. The Batwa claim that they are not affected by the restrictions imposed by the law. "Access to the Park is forbidden to other communities, but not to the Batwa", they say. The Batwa assert that they cannot starve to death when the Park is next to them and there are all the resources there that they need for their subsistence. We have noted above that there are many natural resources that the Batwa can only find inside the Park, or that there is a much greater abundance of these resources in the Park than in the land and forests identified around PNKB.

Examples of natural resources that the Batwa usually look for in the park include: vines (locally called Nshuli, Nkenge, Lubugu, etc.) which are used to make baskets and pots; medicinal plants, honey, meat, etc. The Batwa know by heart the different places in the Park where they regularly go to collect the natural resources they need. Figure 3 shows the resources collected from the identified land/forests in the hinterland of the high altitude part of the KBNP and within the Park.

#### e) Batwa livelihoods and human rights abuses

As mentioned above, the Batwa are at great risk when they enter PNKB or a private concession to collect any of the resources they need for their survival. Some concessionaires (mostly private) make access to their land/forests conditional on the payment of a fee in order to carry out subsistence farming. Given their precariousness, the Batwa are unable to pay this fee. So they do not hesitate to access these concessions despite the restrictions imposed. The need to obtain natural resources vital to their survival, such as non-timber forest products (NTFPs), game, honey and medicinal plants, is stronger than the desire to comply with arbitrary fees



## f) Role of customary authorities in the allocation and management of rural land

It is important to note first of all that according to the Land Law, it is the Ministry of Land that implements the state's policy on land allocation and distribution. Land is managed by public administrations, either by public bodies created for this purpose or by joint ventures for real estate development<sup>36</sup>.

Therefore, under formal law, customary authorities apparently have no role to play in the allocation, distribution and management of land. In determining competences in land matters, the law expressly excludes customary authorities from decision making on land tenure by reserving land management to public administrations. However, in land transactions, it is clear that farmers resort to customary practices, even though custom is no longer the formal source of land rights since the unification of the land tenure system. Moreover, although they were deprived of their land tenure power by the law of 20 July 1973, customary authorities continue in practice to play a decisive role in the allocation of land. This situation is a source of confusion of rights and land tenure insecurity<sup>37</sup>.

*“We collaborate with the land registry services,”* says Mr Lushombo Kamirogosa, head of the Mbinga Sud grouping. According to him, the groupement issues the authorisation named an Act of Occupation and Exploitation of Customary Land (see photo in annex IV).

For the chief of the Mbinga Sud grouping, this authorisation recognises the right to use rural land. It is issued by the chief of the groupement with validation by the chief of the chiefdom, in return for payment of 25 US dollars. He adds that the Land Registry and Titles Department cannot issue the registration certificate unless it is certain that the owner is in possession of the deed of occupation and exploitation of customary land.

On the other hand, the head of the Bitale group deplors the fact that most of the private concessionaires who now occupy the majority of the land in his area come with documents (property titles) already signed by the cadastral and real estate services and sometimes even by the provincial Governor. However, he points out that it was only recently and thanks to the support of a non-governmental organisation that the Buhavu chiefdom was able to draw up a document (Act of Occupation and Exploitation of Customary Land) to certify the occupation of rural land by an individual.

For his part, the chief of the Kalonge grouping, Mr Joseph Nakalonge, said that most of the land now belongs to private concessionaires, who are therefore free to sell their land to whomever they wish, even without going through the customary authorities.

The Kabare chiefdom issues certificates of occupation for customary land through the customary land service. According to the Secretary of the Chief of the Miti group, this certificate is issued after a field survey to certify that the concession requested is not in conflict. He added that at a workshop that brought together all the chiefs of the Kabare territory, they were told that the land registry service and real estate titles do not have the right to interfere in the land issues of the chiefdom.

The Chief of the Bugorhe group reassures that there is no overlap between the customary land service and the land registry and titles services. According to Mr. Guylain Kalibanya, the customary land

service has been able to resolve the many land conflicts. For him, the customary land certificate is more reassuring for the citizens than the other property titles delivered by the land registry service because this certificate is ‘perpetual’.

Whatever the nature of the title deed (registration certificate or customary land certificate or even the deed of occupation and exploitation of customary land), the Batwa who have small portions of land do not have the possibility of accessing it due to lack of means (these titles are not issued free of charge). In addition, Batwa chiefs do not have precedence in the local administration.

## g) Cultural values

Since their expulsion from the Kahuzi Biega National Park, most Batwa state that they no longer carry out their traditional rites in the park because they are forbidden to enter it. For the Batwa, traditional rituals must be held in a remote area of the forest. In the Buhavu chiefdom, however, the Batwa organise their traditional rites in Mirenzo village, which is located on the edge of PNKB in the Mubugu groupement, in Kalehe territory.

It should be noted that in 2018, when a group of Batwa decided to return voluntarily to the Park, some of them started once again to organise their traditional rites in the Park. Those who are still in the Park continue to organise their traditional rites in the sites they occupy within the Park. This is the case for the Batwa of Bugamanda, Buhoyi, Kayeye and Katasomwa in Kalehe territory.

In the Kalonge grouping, the Batwa say that they usually identify appropriate places to hold their traditional rites. But they have to ask permission from the owners beforehand. Other Batwa, on the other hand, claim to have adopted the Bantu way of life since their expulsion from the PNKB. Still others cite the fact that they have converted to Christianity. All this, they say, means that they no longer practise their traditional rites. However, the loss of certain cultural values as a result of the expulsion from PNKB has not completely broken the deep link that the Batwa have with their ancestral lands.

## V. Conclusion

This study aims to shed light on the availability of land and forests and other natural resources in the hinterland of the high altitude part of Kahuzi Biega National Park. It analysed the Batwa's perception of the concept of land. Several major findings emerged from this study:

The perception of the notion of ‘land’ for Batwa communities is different from that of other stakeholders. The Batwa perceive the concept of ‘land’ in a much broader sense. Sometimes they use the word ‘forest’ to indicate ‘land’. For them, land is inseparable from the forest. They see the forest as a means of securing their livelihoods and fundamental to their spiritual and cultural practices.

The research results show that there is ‘available’ land around some of the high altitude part of the KBNP - that is, there are concessions that are not currently cultivated or occupied. However, these are reportedly owned by private concessionaires, who are not prepared to hand them over to the Batwa. Only a few lands are owned by some public establishments, which use them for their own purposes. In the territories of Kabare and Kalehe, the customary authorities have indicated that they no longer have

any land. All the land now belongs to private concessionaires. It is from the latter that even some customary authorities have to negotiate and/or buy land. Whatever the status of the authority (customary or administrative authority) that manages the land or issues the title deeds, in practice this has no impact on the Batwa because they have almost no land outside PNKB. Even those who have small portions of land do not have the means to access these titles.

Some of the identified land and forests are rich in natural resources that the Batwa harvest for their livelihoods. However, there are resources that the Batwa can only find within the Park or that are in abundance there. This situation leads the Batwa to enter the Park to obtain resources essential to their survival, despite the legal restrictions in place. Often communities pay a high price for entering the Park. There have been several reported incidents of Batwa being killed by ecoguards<sup>38</sup>.

Batwa access to natural resources in the Park or in land and forests belonging to private concessionaires is strictly prohibited. With regard to access to the Park, it should be noted that the Batwa are not permitted to enter the Park to harvest natural resources, despite the fact that their user rights are supposed to be guaranteed by law. Several clashes, sometimes deadly, between the Batwa and eco-guards have been recorded over the past three years in PNKB.

The same applies to land and forests belonging to private concessionaires. Conflicts between Batwa and landowners are widespread. The Batwa are accused on a daily basis of stealing from the fields or plantations of individuals.

The Batwa have a prior claim to land in PNKB. Notwithstanding the granting of land to the Batwa, they demand that their user rights in PNKB be guaranteed. In other words, in addition to land, the Batwa are demanding that they be allowed to enter the

Park to harvest the natural resources they need for their survival.

With regard to the organisation of traditional rituals, the Batwa identify that they are forbidden to practice traditional rituals in the Park. Park officials do not allow them to enter the Park.

## VI. Recommendations

The above evidence shows that the problems of the Batwa are far from being resolved. Access to land, access to natural resources, access to health care, employment and education are the main demands of the Batwa. They continue to demand that their rights be restored. The Batwa do not exclude the possibility of returning to the Park once again if their demands are not taken into account. Those who have been in the park since October 2018 are making their exit conditional on the granting of new land, failing which they plan to remain in the park permanently.

In view of the above, we suggest the following:

- That the Congolese government recognise and redress the historical injustice that the Batwa have suffered as a result of their removal from PNKB;
- That if the Government succeeds in obtaining and granting the Batwa land outside PNKB, they should be guaranteed access to natural resources in the Park;
- That the managers of the PNKB/ICCN explore legal opportunities to facilitate the return of communities to certain areas of the Park to obtain the resources necessary for their survival;
- That the law on indigenous peoples be adopted and applied to further protect their rights;
- Revise the status of customary chiefs to reduce discrimination against Batwa community leaders in rural land management.



## Notes

- 1 Evaluations Pilotes Whakatane auprès des Autochtones Pygmées et des Communautés Locales Riveraines du Parc National de Kahuzi Biega en Province du Sud-Kivu/RD Congo, tenues à Bukavu en Octobre 2014.
- 2 Indigenous peoples are often referred to generically as 'pygmies' in the DRC. However, the African Commission on Human and Peoples' Rights and many indigenous representatives themselves consider the term to be pejorative. We will use the term 'indigenous people' in this study.
- 3 Pacifique Mukumba 2020, « Les riverains autochtones Batwa et le retour sur leurs terres ancestrales dans le Parc National de Kahuzi Biega, Est de la RD Congo », in Bulletin du WRM available at: <https://wrm.org.uy/fr/les-articles-du-bulletin-wrm/section1/les-riverains-autochtones-batwa-et-le-retour-sur-leurs-terres-ancestrales-dans-le-parc-national-de-kahuzi-biega-est-de-la-rd-congo/>
- 4 On 6 October 2018, about 40 households from Buhobera village in Kalehe territory returned to PNKB. They were joined by several other Batwa groups from Kabare and Bunyakiri. The PNKB authorities tried several times to use force to persuade the Batwa to return to their villages, but without success. Instead, this has led to often deadly clashes between Batwa and eco-guards. See CAMV, Report, 2018.
- 5 See : -Recommandations du dialogue tenu au Sud-Kivu entre les Pygmées riverains du PNKB et le Parc National de Kahuzi Biega du 25 septembre au 4 octobre 2014 ; -2018 : Conclusions issue de la rencontre d'échange tenue à Miti-centre, le 02 Février 2018 sur la problématique relative aux tensions intercommunautaires opposant les communautés Shi et Twa (Pygmées) ainsi que l'administration du Parc National de Kahuzi-Biega dans l'axe Miti-Katana en territoire de Kabare en province de Sud-Kivu ; -2019 : Déclaration de Bukavu sur le dialogue de haut niveau sur le processus de la protection durable du Parc National de Kahuzi-Biega et la cohabitation pacifique entre le Parc, les peuples autochtones et les autres communautés riveraines.
- 6 Sud-Kivu: la chefferie de Kabare et l'INERA/Mulungu divisés sur une étendue de terre de 16ha : <https://www.radiomaendeleo.info/2019/11/12/societe/sud-kivu-la-chefferie-de-kabare-et-linera-mulungu-divises-sur-une-etendue-de-terre-de-16ha/>
- 7 See points: I1, I2, IV1, in the Déclaration de Bukavu sur le dialogue de haut niveau sur le processus de la protection durable du PNKB et la cohabitation pacifique entre le Parc, les Peuples autochtones et les autres communautés riveraines. See also points 1 and 2 of the roadmap of the Déclaration above, and point A1 of the addendum.
- 8 Mangambu M. 2013. Taxonomie, biogéographie et écologie des Ptéridophytes de l'écosystème forestier des montagnes du Parc National de Kahuzi-Biega à l'Est de la R.D. Congo. PhD thesis, Université d'Anvers, Belgium.
- 9 Mangambu M. 2016. Diversité, Biogéographie et Ecologie des Ptéridophytes : Cas de massif montagneux du Parc National de Kahuzi-Biega à l'Est de la RD. Congo. Edition universitaires européennes, 346 p ISBN:06-04-2016
- 10 Chibembe A.S., Birhashirwa N R.; Kamwanga F.F. and Mangmabu M. 2015. Exploitation de Bambous(*Sinarundinaria alpina* (K. Schum.) C.S. Chao et Renvoize), cause des conflits entre le Parc National de Kahuzi-Biega et la population environnante: stratégie de conservation et de résolution de Conflit. International Journal of Environmental Studies. 2015. 72(2): 265-284.
- 11 <http://dx.doi.org/10.1080/00207233.2014.961270>  
La loi n° 073-021 du 20 juillet 1973 portant régime général des biens, régime foncier et immobilier et régime des sûretés, telle que modifiée et complétée par la loi n° 80-008 du 18 juillet 1980.
- 12 Article 55 of the Land Code of 1973
- 13 Article 61 of the Land Code of 1973
- 14 Article 388 of the Land Code of 1973 states "*Land occupied by local communities is land that is inhabited, cultivated or used in some way by these communities individually or collectively in accordance with local customs and practices.*"
- 15 Mathieu, P., Tshamala Kazadi. 1990. "Quelques aspects des législations et pratiques foncières actuelles au Zaïre Ambiguïtés et enjeux pour les politiques agricoles", Monde en développement, 69, Vol 18, 1990, p. 56.
- 16 Lassana Kone & Pacifique Mukumba. 2018. La Conservation et les droits des communautés locales et des peuples autochtones en République Démocratique du Congo : Note de Plaidoyer, FPP, CAMV, Août 2018.
- 17 L'ordonnance-loi n° 69-041 du 22 août 1969 sur la conservation de la nature.
- 18 See the preamble to loi n° 14/003 du 11 février 2014 relative à la conservation de la nature, see also articles 19 -21 of the same law (Dérogations aux mesures de conservation).
- 19 Salmon, E. 2000. Kincentric Ecology: Indigenous perceptions of the human-nature relationship. Ecol. Appl. 10, 1327–1332.
- 20 Stevens, C., Winterbottom, R., Reytar, K., Springer, J. 2014. Securing Rights, Combating Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change. Washington, DC: World Resources Institute, Rights and Resources Initiative. <https://www.wri.org/publication/securing-rights-combating-climate-change>
- 21 D. L. Dufour. 1990, Use of Tropical Rainforests by Native Amazonians. Bioscience 40, 652.
- 22 Sheil, D., M. Boissière, and G. Beaudoin. 2015. Unseen sentinels: local monitoring and control in conservation's blind spots. Ecology and Society 20(2): 39.
- 23 "Maziba" is water from geothermal springs only to be found inside PNKB
- 24 Interview carried out on 25/8/20 with Guylain Kalibanya, Chef de groupement Bugore, Kabare territory
- 25 Interview carried out on 25/8/20 with Charles Lushombo, Chef de groupement Miti, Kabare territory
- 26 Interview carried out on 16/8/20 with Zagabe Bitale, Chef de groupement Bitale, Kalehe territory
- 27 General Muhindo Akili Charles, alias Mundos, was Commander of the 33ème Région militaire for nearly 2 years. He worked with PNKB to try and eradicate armed groups from the Park. In 2018, when the Batwa chose to return to the Park, the PNKB Chef du Site turned to General Mundos to dissuade the Batwa from remaining there. On 12th February, 2019, the Director of ICCN and the Chef du Site of PNKB presented him with a "médaille de mérite écologique". See also :<http://www.kahuzibiega.org/2019/02/14/le-commandant-de-la-33eme-region-militaire-du-sud-kivu-promet-son-soutien-au-parc-national-de-kahuzi-biega/>
- 28 PNKB is an UNESCO World Heritage Site because of its ecological significance.
- 29 Mugangu Matabaro. 2001. Conservation et utilisation durable de la diversité biologique en temps de troubles armés. Cas du Parc national des Virunga, Rapport de recherche, UICN,

Programme Afrique Centrale, janvier 2001, p. 70.

29 W., Busane Ruhana Mirindi. 2006. La gestion participative des aires protégées au Sud-Kivu Perspectives pour une gestion décentralisée du domaine public de l'État, Discussion paper, Projet Dynamique des filières productives et développement rural intégré, Laboratoire d'économie appliquée au développement (LEAD), juin 2006, p. 21.

30 Article 21, loi n° 14/003 du 11 février 2014 relative à la conservation de la nature

31 Article 38, loi n°11/2002 du 29 août 2002 portant Code forestier en République Démocratique du Congo

32 Articles 19 and 20, Nature Conservation Code of 2014

33 Stratégie nationale de conservation de la biodiversité dans les aires protégées de la République Démocratique du Congo, September 2012

34 See: CAMV, Cohabitation tumultueuse entre le PNKB et les autochtones pygmées riverains : Rétrospective de quelques faits et incidents enregistrés entre 2014-2020, December 2020.

35 Judgement handed down by the Bukavu Military Garrison Court under RP No 1630/20 in the case of the Public Prosecutor's Office and the civil parties (PNKB) against Kasula Jean-Marie et al.

36 See articles 181 et 182 of loi n° 73-021 du 20 juillet 1973 portant régime général des biens, régime foncier et immobilier et régime des suretés as revised in loi n° 80-008 du 18 juillet 1980

- See also articles 183 onwards in loi n° 73-021 du 20 juillet 1973

37 See Rouland N. 1988. Anthropologie juridique, Paris, PUF, 1988, pp. 74-121 et 183-207, and Girous, M.-H. 2000. La protection des minorités en droit international. Hongrie et Roumanie, une étude de cas, Montréal, Éditions Thémis, 2000, pp. 7- 14.

38 See CAMV. 2020. Cohabitation tumultueuse entre le PNKB et les autochtones pygmées riverains : Rétrospective de quelques faits et incidents enregistrés entre 2014-2020, Rapport décembre 2020.

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## Disclaimer

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## Forest Peoples Programme

1c Fosseyway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK

Tel: +44 (0)1608 652893 | info@forestpeoples.org | www.forestpeoples.org

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