

Case Study One

**Indigenous Peoples' Rights in the Kenya
Lake System in the Great Rift Valley**

By DR. KANYINKE SENA¹

Indigenous Peoples' Rights in the Kenya Lake System in the Great Rift Valley



K. Sena: Endoroi in Lake Bogoria

The Kenya Lake System in the Great Rift Valley is a World Heritage site in Kenya which comprises three inter-linked, relatively shallow, alkaline lakes and their surrounding territories. The lakes system includes Lakes Elementeita, Nakuru and Bogoria in the Rift Valley. The lakes cover a total area of 32,034 and was inscribed as a world heritage site in 2011.² The inscription was based on the lakes system outstanding universal values and criterion (vii), (ix) and (x)³ as provided for, under paragraph 77 of the Operational Guidelines for the Implementation of the World Heritage Convention.⁴ Despite the indigenous communities living in and around the lakes, the nomination only focused on the natural properties of the lakes system, and did not feature any cultural values.



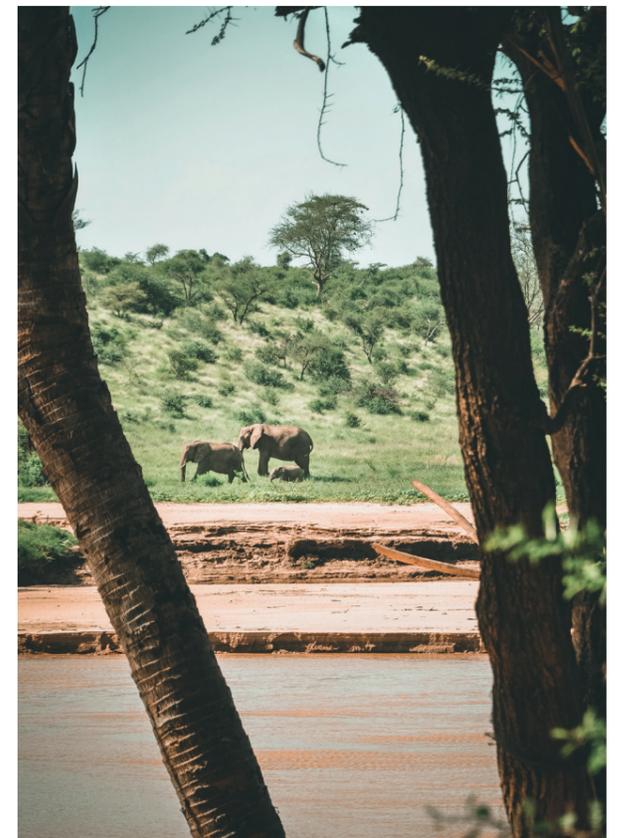
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For over a decade, indigenous communities have been engaging in the World Heritage Committee processes. At the 41st session of the World Heritage Committee held in Krakow, Poland in July 2017, indigenous peoples at the session decided to establish the International Indigenous Peoples' Forum on

World Heritage (IIPFWH), as a standing global body aimed at representing indigenous peoples voices in the World Heritage Committee processes.⁵ The Committee referred to the establishment of the IIPFWH, "As an important reflection platform on the involvement of Indigenous Peoples in the identification, conservation and management of World Heritage properties, with a particular focus on the nomination process."⁶

Pursuant to the mandate of the Forum, this report aims at analyzing Indigenous Peoples' involvement in the Kenya Lakes System in the Great Rift Valley World Heritage Site. The report is as result of extensive literature review and interviews with communities in and around the lakes that comprise the Kenya Lakes System.



Indigenous peoples in the Kenya lakes system



In order to maintain and enhance the Outstanding Universal Values of the lakes system, the World Heritage Committee, while inscribing the property, emphasized the need to sustain and enhance effective management, while addressing a range of long-term issues. This includes catchment level management of threats and developments with particular emphasis on management of groundwater, surface pollution, forest cover, as well as inter-sectoral and participatory management processes especially with respect to environmental impact assessments.⁷ In the spirit of this emphasis by the Committee, it is therefore critical to engage indigenous peoples on site and at the catchment level, in all activities aimed at sustaining and enhancing the management of the lakes system.

The indigenous communities that are on site or at the catchment level are the Endorois, Maasai and Ogiek communities. The Endorois are a community of approximately 60,000 people who have

lived in and around Lake Bogoria for centuries. In 1973, they were evicted from their ancestral land for the establishment of the Lake Hannington, now Lake Bogoria game reserve. The eviction was without consultation or adequate compensation. The eviction also interfered with their culture, livelihoods and religious practices. The Maasai, a pastoralist community, live adjacent to Lake Nakuru National Park, Lake Elementeita in Kenya and Lake Natron in Tanzania. Though Lake Natron is not part of the Kenya Lakes system, the World Heritage Committee specifically noted “the need for transboundary cooperation as the values of the Kenya Lakes system are partly dependent on the protection of other lake and wetland areas, specifically Lake Natron in Tanzania, as part of a future transnational serial World Heritage property.”⁸ The Ogiek are a recent hunter-gatherer community in the Mau forest complex which is home to the source of the rivers Njoro, Makalia and Nderit which feed into Lake Nakuru.⁹

Interactions between indigenous communities and the lakes system

Indigenous peoples interact with the Lakes system in a variety of ways. However, this report focuses only on consultation and benefit sharing.

a) Consultation and participation

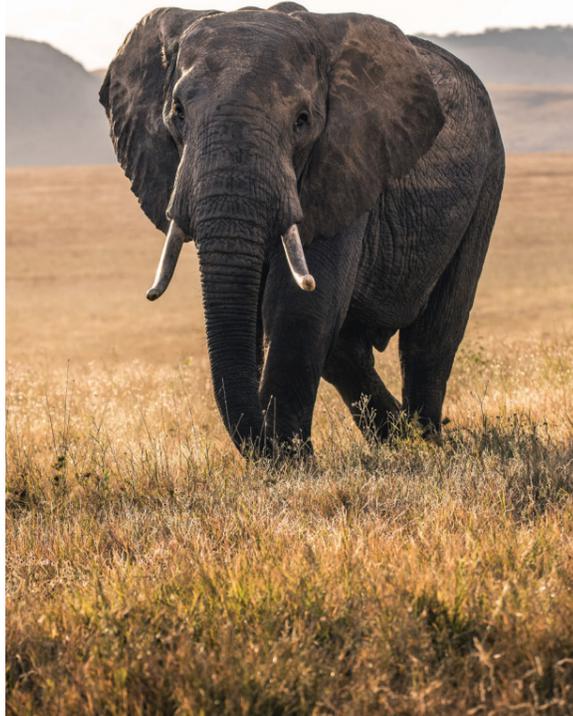
Indigenous communities are key in the conservation of their culturally significant sites. They are libraries of indigenous knowledge related to the sites, yet when such sites are inscribed as world heritage sites, they are often not involved in the attendant processes.¹⁰ Though consultation with indigenous communities in the nomination, inscription and management of Lakes Nakuru and Elementeita needs further research, consultations with upstream Ogiek community is non-existent.¹¹ The Endorois community has also raised issues regarding the consultation process that went into the nomination and inscription of Lake Bogoria as part of the Kenya Lakes System.¹² Consultation with Endorois was critical especially since the Africa Commission on Human and Peoples Rights had ruled that Lake Bogoria is the Endorois ancestral home.¹³ However, during consideration for inscription, government representatives insisted that there was full consultation with the Endorois and table lists of participants for several meetings it had organized.¹⁴ This raises questions on the mode of consultation and the representative indigenous peoples institutions, and how to ensure the full and effective consultations with indigenous communities in world heritage process.

In decision 38 COM 7B.91, the World Heritage Committee noted “The resolutions of the

African Commission on Human and Peoples’ Rights (ACHPR) with regard to the recognition of rights of the Endorois in relation to Lake Bogoria, urged Kenya to respond to ACHPR regarding its resolutions and to ensure full and effective participation of the Endorois in the management and decision-making of the property, and in particular the Lake Bogoria component, through their own representative institutions.”¹⁵ Subsequent interactions between Government and the Endorois through the Endorois Welfare Council led to a Kabarnet Declaration that recognized that Baringo County Government as holding Lake Bogoria in trust for the Endorois community, with the community having the rights to approve any plans regarding the management of the Lake. In Decision 39 COM 7B.5, the World Heritage Committee welcomed “the adoption of the Kabarnet Declaration, which formally recognizes the Endorois as a community and the Endorois Welfare Council as their representative organization in the management of Lake Bogoria.”¹⁶ In 41 COM 7B.21, the Committee further reiterated its request to Kenya for a progress report on the implementation of the African Commission on Human and Peoples’ Rights (ACHPR) Endorois ruling to ensure the full and effective participation of the Endorois in the management and decision-making of Lake Bogoria.¹⁷ However, a report submitted by Kenya to the World Heritage Centre in January 2019 does not indicate any significant progress in the implementation of the World Heritage Committee resolutions on the full and effective participation of the Endorois in the management and decision-making of the property.

a) Benefit sharing

Benefit sharing connotes the action of giving a portion of advantages/profits, both monetary and non-monetary, to others.¹⁸ It is a technical term used in the context of access to and use of natural resources. In the context of world heritage sites, it denotes sharing of monetary and non-monetary benefits arising from the commercial or non-commercial utilization of resources of resources found in a heritage site. The monetary benefits from the Kenya Lakes system include revenue from tourism activities and proceeds from the extraction of any minerals or genetic resources in the property. Non-monetary benefits can include grazing rights, cultural activities, in addition to the provision of water and aesthetic values among others. Benefits flow with responsibility for each beneficiary to contribute to the integrity of the property.



Indigenous communities, both in and around the property as well as in the upper catchment areas should benefit from the utilization of the property. While Lake Nakuru is under the Kenya Wildlife Service (KWS) which sends all collected revenue directly to the national treasury, Lake Bogoria is under the County Government of Baringo, which collects and distributes revenues from the Lake. There is therefore no clear indication on how indigenous communities in and around Lake Nakuru directly benefit from the revenues collected from the lake. However, the situation is different in the case of Lake Elementeita and Bogoria. Communities in and around Elementeita enjoy free, unlimited access to the lake. KWS has not implemented any formal revenue collection structures and the Lake Elementeita Ecotourism Association formed by the community around the lake, only charges for guided tours.

In the case of Lake Bogoria, the Endorois has for the last few years received 10% of the annual revenue collected from the lake.¹⁹ They further occupy 40 % of the jobs related to the park management.²⁰ In 2015, the Endorois community received royalties amounting US\$ Dollars 22,000 (2,000,000 Kenya Shillings) from the use of enzymes collected from the lake by Novozymes, a Bio-prospecting Company. Other benefits that the Endorois enjoy, include grazing rights managed by a grazing committee, unrestricted access to the lake and even some live inside the property. A cultural center that was established outside the gate to enhance the Endorois community benefits remains neglected for unclear reasons. Other indirect benefits include Endorois women running small businesses outside the game reserve's entrance. However, both the management of the lake and the Endorois community is enhancing income opportunities from the property to boost monetary benefits. This will also significantly decrease livelihoods pressures directly facing the property.

Addressing Indigenous Peoples' Rights in the Property



a) Recognition of Land Rights

Indigenous peoples land rights are crucial for conservation.²¹ The United Nations has noted that indigenous peoples' collective rights to lands, territories and resources not only contributes to their well-being but also to the greater good, by tackling problems such as climate change and the loss of biodiversity.²² The Food and Agriculture Organization also specifically notes that Indigenous Communities are key to sustainable forest management.²³

Unfortunately, indigenous communities in the Kenya Lakes system are still struggling for the recognition of their lands rights in and around lake Bogoria and in the Mau upper catchment areas.

Lake Bogoria, for example is the ancestral home of the Endorois community. They have lived there; their houses were there by the shores. The lake is of great significance to them. It is their cultural site. It is a prayer site, a site that brought together the community in whichever occasion. This is a site they have lived and performed rituals, where they buried their ancestors.²⁴ In 1974, they were evicted from the territory for the establishment of the Lake Bogoria Game reserve. Since the mid 1980's they have been pursuing their land rights through different processes including the African Commission on Human and Peoples Rights. In 2010, the Commission recommended that the government of Kenya recognize and restitute Endorois land rights to Lake Bogoria. But to date, the Commission's decision is yet to be fully implemented despite annual reminders by the World Heritage Committee since 2015. Similarly, the Ogiek, a recent hunter-gatherer

community found in the Mau forest complex, were flushed out of the forest in what the Kenyan government said was a move to pave way for conservation of the Key water tower. Following an eight-year legal battle, the African Court on Human and Peoples Rights, in May 26, 2017 asserted Ogiek claims over the Mau forest complex. The Ogiek are currently pushing for the recognition and restitution of their land rights.

The various government agencies involved in recognition of land rights should speedily therefore act to recognize the land rights of the Endorois and Ogiek for the benefit of the Lakes system.

b) Involvement in management

There is increasing recognition of the value that local, indigenous and mobile communities can bring to the process of conserving biodiversity.²⁵ Participatory conservation enables multiple approaches in mitigating impacts faced by World Heritage Sites. The Executive Director of Flaming Conservation Network insists that involvement of indigenous knowledge in conservation of the Kenya Lakes system is critical in dealing with challenges that have accumulated over years.²⁶ Communities in and around the Lake system are involved in the design of the respective management plans for Lakes Elementeita, Nakuru and Bogoria. In Lake Elementeita, members of the lake's ecotourism association are involved in the informal day to day activities of the lake. However, there still remains challenges, especially in relation to encroachment by the hotels around the lake. A boundary review of the lake's boundaries might address this encroachment challenge. With Lake Nakuru being a national park under the exclusive management of the Kenya Wildlife Service, it's not clear how the community around it is involved in the daily management of the lake. In Lake Bogoria, a grazing committee has been established to manage community grazing at the lake. Endorois tour guides are also part of

the Lake management and over 40% of the staff employed by the County government to manage the lake are from the Endorois community.

A formalized management of Lake Elementeita that will include the local Maasai population will be necessary. Similarly, KWS should clearly provide information on how the community around the park is involved in the daily management of the park. In Lake Bogoria, the formulation of the management plan is progress, but support is needed to fast track the process and its implementation.

c) Addressing threats to the outstanding universal values of the property

Reports to the World Heritage Committee tend to focus only on threats within the property. For example, the report submitted by to the 43 session of the Committee only lists governance, housing, major visitor accommodation and associated infrastructure, management systems/ management plan and renewable energy facilities, as factors identified in previous reports as threats to the property.²⁷ However, indigenous peoples in and around the property note the existence of additional challenges as highlighted below.



i. Geothermal activities in the rift valley

Though reports on the property have identified renewable energy activities as one of the threats to the outstanding universal values of the property, indigenous peoples note that the focus has been on the actual property but not on areas outside the property within the rift valley and in close proximity to the property. Indigenous communities have observed that for the last few years, "water levels have increased tremendously," in Lake Nakuru and Lake Bogoria, affecting the feeding patterns of the flamingoes in both lakes and geysers, which are key tourist attractions in Lake Bogoria. Unconfirmed reports link the rising water levels to geothermal extraction activities

in the Olkaria and Menengai geothermal area. Extraction of geothermal resources is also at advanced stages of development in Silali in Baringo County, approximately 20 km from Lake Bogoria.²⁸ Therefore while the report to the 43-session committee indicates the threats of renewable energy as resolved, indigenous peoples request an independent environmental impact assessment of the geothermal extraction activities in Olkaria, Menegai and Silali, on the property in accordance with Paragraph 172 of the Operational Guidelines.

ii. Climate change

Indigenous peoples in and around the three lakes that comprise the property



have noted prolonged droughts, irregular rainfall and increased desertification. This are attributed to climate change. Deforestation for agricultural purposes in the upper catchment areas is contributing to drying of rivers that feed the lakes and siltation during the dry season. Climate change is therefore a threat to the outstanding universal values of the property and requires urgent measures to address the issue. For example, several boreholes maybe needed around the three lakes to provide fresh water for wildlife and the indigenous communities during the dry seasons.²⁹

iii. Pollution

Despite government denials,³⁰ stakeholders have raised serious concerns regarding the heavy pollution affecting the Kenya Lakes System property.³¹ Lake Nakuru is reeling under pressure as a result of the rise of population in Nakuru town and its environs, resulting in increasing levels of pollution especially from untreated sewage, chemicals and industrial waste.³² Sewage from Nakuru town is not effectively recy-



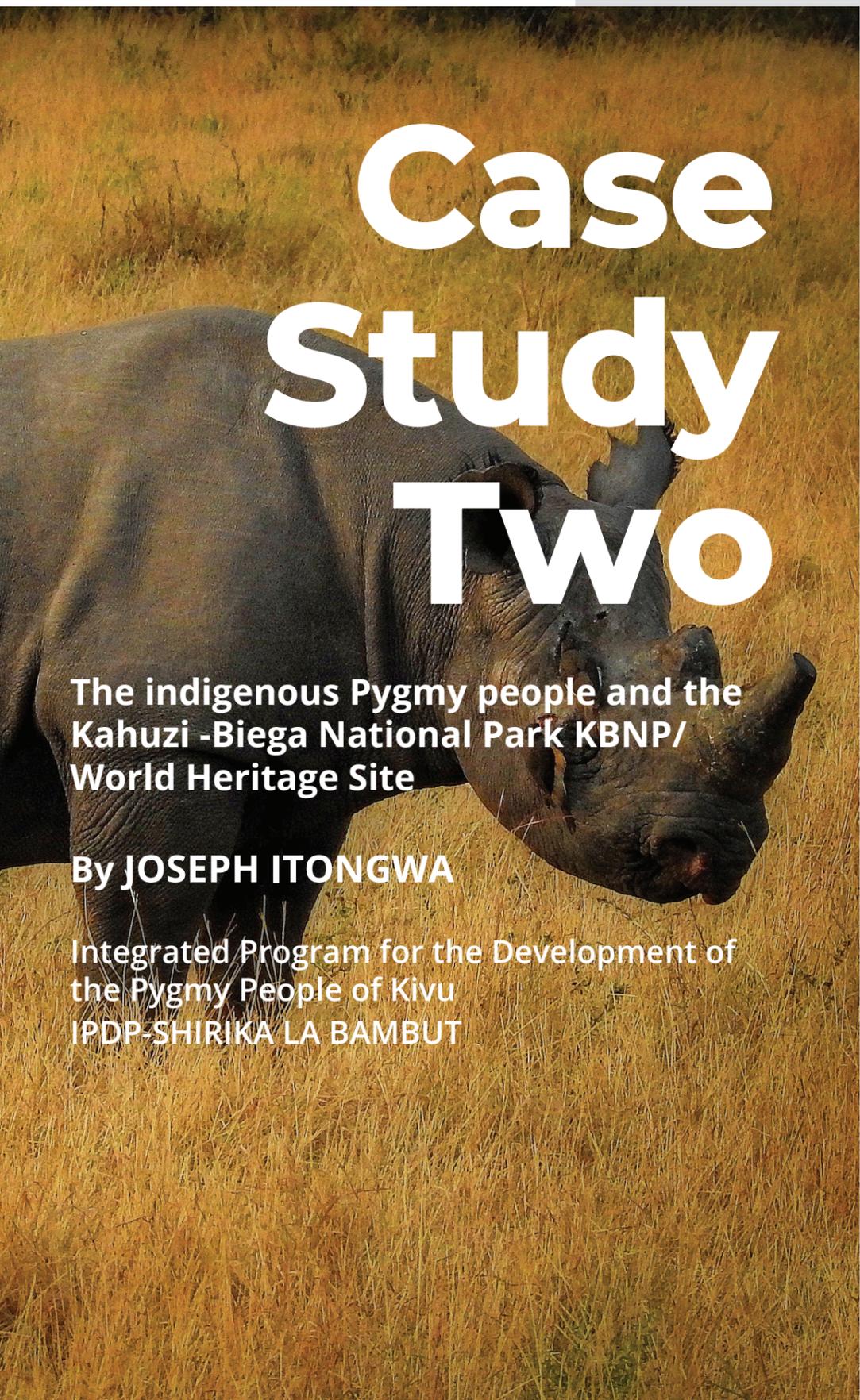
clad. During the rainy seasons, flooding drains large amounts of raw sewage and industrial waste into the lake. The number of flamingoes has been alarmingly reduced,³³ and experts have linked recent suspected outbreaks of anthrax at the Lake to the pollution.³⁴ The National Environment Complaints Committee (NECC), has also noted massive amounts of pollution as the main challenge facing the lake.³⁵ Similarly, numerous deaths of flamingoes in Lake Bogoria have been linked to industrial pollution from agricultural activities upstream, especially at the catchment areas of the lake's inflow.³⁶ For the outstanding universal values to continue, *it is important then that pollution should be addressed. Measures could include construction of a new sewage treatment site for Nakuru town and Egerton University's sewage, addressing encroachment and addressing industrial pollution in the upper catchment areas of both lakes. Reforestation of degraded upstream lands would be critical.*

d) Enhancing Benefits through Increased Revenue Streams

A sizable income from the lakes systems will act as an incentive for both indigenous peoples and concerned government agencies to sustain the Outstanding Universal Values of the property. The current low revenue streams from Lakes Elementeita and Bogoria discourage both from putting serious efforts in sustaining the universal values of the property. For example, a senior government official in Lake Bogoria asserts that they haven't really felt any serious benefits from inscription of the site as a World Heritage Site. For the Kenya lakes system, so far only three requests totaling USD \$45,000 have been approved for any support activities. The last funding was in 2006³⁷ and this was even before inscription in 2011. Since inscription, only USD \$17,283 has been granted by the UNESCO Regional Office for Eastern Africa (2015-2016).³⁸

Noting the report of the World Heritage Centre and advisory bodies on sustainable development on World Heritage Sites in Africa, indigenous peoples in and around the Kenya Lakes system would like serious efforts to enhance revenue streams from the property, to support indigenous people's sustainable development.





Case Study Two

The indigenous Pygmy people and the Kahuzi -Biega National Park KBNP/ World Heritage Site

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Introduction

To improve the collaboration and dialogue for the respect of the rights of indigenous people and to reinforce the endeavours for the protection of the World Heritage Site



The Kahuzi-Biega National Park (KBNP) is one of 5 national parks from the Democratic Republic of the Congo (DR Congo) that has inscribed as a UNESCO World Heritage Site. Since its inscription in 1980, it has been considered a treasure of mankind. But since 1997, the KBNP has been featured on the list of endangered sites as a result of the armed conflict that the DR Congo has experienced for more than 20 years.

The park is situated to the east of part of DR Congo, and it has an extensive surface area of 600 000ha and an altitude of 600m to 3308m. The park was named after the two mountain ranges dominating the park's highlands, Mount Kahuzi (3308m) and Mount Biega (2790m). The KBNP cov-

ers the administrative territories of Kabare, Klehe, Shabunda and Walunga in the South Kivu Province; Walikale in the North Kivu Province and Punia in the Maniema Province. The park is inhabited by abundant and varied wildlife including one of the last populations of the eastern lowland gorillas (*Gorilla beringei graueri*).

The protection of the *graueri* Gorilla species motivated the colonial authorities in 1937 to create the Zoological and Forestry Reserve of Kahuzi-Biega, which covers a surface area of 75 000ha in the region of the Mount Kahuzi and the Mount Biega. The Reserve was established as a park in 1970 and once established, the boundaries were re-



visited and reduced to a surface area of 60 000ha. The attempt to join the Gorilla populations of the highlands with those located in the forests of the lowlands, resulted in the KBNP's extension to 600 000ha, that would include 540 000ha of lowlands which were originally not originally part of the park.

From the beginning, the park has had strict protection measures, which led to the expulsion of the indigenous Pygmy people. Additionally, the expansion was made without any prior studies or consultations with the local and indigenous peoples whose survival depended on the natural resources of this area.

The KBNP has both a management plan and a strategy to engage community

members in conservation that would involve riverside communities. However, Communities have no say in the decision making structures relating to the management and governance of the park

Local participation structures referred to as CMCC³⁹ have also been created. In addition, the KBNP provides certain social support grants to the Pygmy families still living around the park and in the villages of the Kabare and the Kalehe in the KBNP highlands. These grants include social development and human rights initiatives, which are being supported by both local and international organisations. However, all these enterprises add little value to the indigenous peoples because they are deprived of the land and natural resources that are essential for their survival

The indigenous Batwa Bambuti-Babuluko people and the KBNP:



According to recent assessments by the CINC, the population of the indigenous Pygmy community of Batwa and Bambuti-Babuluko, (highlands and lowlands) is estimated at more or less 600.⁴⁰ The number of indigenous people surrounding the KBNP would be more than the current estimation, particularly because some indigenous villages remain inaccessible in the lowlands.

The indigenous Batwa Bambuti-Babuluko people have developed a strong bond with the land and the natural resources of the park which is a reason why they are important partners in the sustainable conservation of the ecosystems located in this heritage of mankind site.

In the lowlands, the indigenous people still maintain their traditional way of life and culture which goes hand in hand with nature conservation. This has resulted in a Decree from the Communal Forestry giving four Bambuti-Babuluko families of the Lufito, Kambushi, Kissa and Kilali villages, ownership over their ancestral land. In contrast, the indigenous communities living in the highlands have lost many of their cultural practices following the eviction from their ancestral territory. Lack of access to their traditional natural resources have had very negative impact on their culture, identity and livelihood. Traditional hunting, gathering and collection of medicinal plants are now considered illegal and many Batwa people have been severely punished by the law when caught.

Since August 2018, the land rights claims of the Batwa people, who inhabit the Kabare and Kalehe highland territories, has taken an unusual turn with more than 200 families occupying areas of the park without authorisation from the government or park. This unauthorised occupation has unfortunately given rise to non-indigenous communities members engaging in illegal activities such as hunting, wood cutting and charring.

In the lowlands, ten or more sacred sites and cultural spaces belonging to indigenous people are situated within the park. This has caused the indigenous communities to regularly query the definite periphery of the park.



To promote dialogue and use the traditional knowledge and expertise of the Batwa Bambuti regarding matters of conservation in the KBNP.

It is imperative to find a peaceful resolution to the conflict between the indigenous Batwa Bambuti people and the management team of the KBNP. A way that this can be encouraged is by using the Whakatane mechanism of the IUCN. This created a, "mechanism to address and redress the effects of historic and current injustices against indigenous peoples in the name of conservation of nature and natural resources."

In addition, indigenous Batwa Bambuti-Babuluko people should be active participants in the management of the sites in the KBNP. They should have unlimited access to natural resources and have their rights guaranteed, as set out by recommendation 133.162 of the Universal Periodic Review of the DRC, adopted by the Human Rights Council in April 2014.

Therefore, it is important to recognise that:

- Conservation areas which are situated on the land and territories of indigenous people are most effectively managed when it is done in partnership with them, with special

focus on their culture and their policy of sustainable management as opposed to a 'fortified conservation' system, which excludes them from their land, territories and ancestral resources;

- The indigenous Batwa Bambuti-Babuluko people must play a significant role in the establishment of the KBNP on their land and territories. They should also be involved as stakeholders during the whole process of inscription of the site as a World Heritage Site.
- Their prior, free and informed consent should be obtained before any activity can place take on the site;
- The indigenous Batwa Bambuti-Babuluko people must be actively engaged in the management and the decision-making process related to the KBNP. Their traditional knowledge as custodians of nature should be recognised and promoted. Their traditional knowledge, customary laws and indigenous sustainable practices regarding the management of ecosystems and resources must be respected, promoted and integrated;
- The financial benefits forthcoming from the KBNP should be equally distributed between the indigenous Batwa Bambuti-Babuluko communities;
- The historic injustices committed against the Batwa Bambuti-Babuluko people, by the establishment of the KBNP must be recognised and the appropriate measures must be put in place to ensure their sustainable livelihoods and to respect their human rights.

