



## East African Journal of Environment and Natural Resources

[eajenr.eanso.org](http://eajenr.eanso.org)

Volume 6, Issue 1, 2023

Print ISSN: 2707-4234 | Online ISSN: 2707-4242

Title DOI: <https://doi.org/10.37284/2707-4242>

EANSO

EAST AFRICAN  
NATURE &  
SCIENCE  
ORGANIZATION

Original Article

### Customary Rights and the New Conservation Paradigm in the Context of the Conflict in Kahuzi Biega National Park in Eastern Democratic Republic of Congo

Pacifique Mukumba Isumbisho<sup>1</sup>, Jean De Dieu Mangambu Mokoso<sup>2\*</sup>, Roger Katusi Lomalisa<sup>3</sup> & René Manirakiza<sup>1</sup>

<sup>1</sup> University of Burundi P. O. Box 2700. Bujumbura Burundi.

<sup>2</sup> Université Officielle de Bukavu, P.O. Box 570, DRC

<sup>3</sup> Université de Kisangani, P. O. Box 2012, Kisangani, DRC

\* Correspondence email: [mangambujd@gmail.com](mailto:mangambujd@gmail.com)

Article DOI: <https://doi.org/10.37284/eajenr.6.1.1428>

Date Published: **ABSTRACT**

14 September 2023

**Keywords:**

Conservation Paradigm,  
Indigenous Batwa,  
Customary Spaces,  
Conflict,  
Park

This paper examines the Kahuzi Biega National Park (PNKB) Development and Management Plan 2009-2018, the revised version of 2013, in accordance with the international principles of the new conservation paradigm. Three-dimensional modelling as a tool for knowledge transmission and socio-ecological education to indigenous youth was carried out to illuminate the impact on the life of the Batwa indigenous people on their ancestral land. Sixteen former camps within the PNKB were identified, including other cultural spaces such as places of refuge, hunting, exchange, and commercial barter occupied by indigenous Batwa within the PNKB, conferring on them customary rights to the park. The return of the Batwa indigenous people to the park in 2018, believing that the authorities had not kept their promises, followed by 54.5% of the traces of occupation of their former customary spaces. A related cultural, environmental, and educational development plan is essential to conciliate the interests of conservation in this conflict context among the indigenous residents.

#### APA CITATION

Isumbisho, P. M, Mokoso, J. D. D. M, Lomalisa, R. K. & Manirakiza, R. (2023). Customary Rights and the New Conservation Paradigm in the Context of the Conflict in Kahuzi Biega National Park in Eastern Democratic Republic of Congo. *East African Journal of Environment and Natural Resources*, 6(1), 325-339. <https://doi.org/10.37284/eajenr.6.1.1428>.

#### CHICAGO CITATION

Isumbisho, Pacifique Mukumba, Jean De Dieu Mangambu Mokoso, Roger Katusi Lomalisa and René Manirakiza. 2023. "Customary Rights and the New Conservation Paradigm in the Context of the Conflict in Kahuzi Biega National Park in Eastern Democratic Republic of Congo". *East African Journal of Environment and Natural Resources* 6 (1), 325-339. <https://doi.org/10.37284/eajenr.6.1.1428>.

#### HARVARD CITATION

Isumbisho, P. M, Mokoso, J. D. D. M, Lomalisa, R. K. & Manirakiza, R. (2023) "Customary Rights and the New Conservation Paradigm in the Context of the Conflict in Kahuzi Biega National Park in Eastern Democratic Republic of Congo", *East African Journal of Environment and Natural Resources*, 6 (1), pp. 325-339. doi: 10.37284/eajenr.6.1.1428.

#### IEEE CITATION

P. M., Isumbisho, J. D. D. M., Mokoso, R. K., Lomalisa & R., Manirakiza. "Customary Rights and the New Conservation Paradigm in the Context of the Conflict in Kahuzi Biega National Park in Eastern Democratic Republic of Congo", *EAJENR*, vol. 6, no. 1, pp. 325-339, Sep. 2023.

#### MLA CITATION

Isumbisho, Pacifique Mukumba, Jean De Dieu Mangambu Mokoso, Roger Katusi Lomalisa & René Manirakiza. "Customary Rights and the New Conservation Paradigm in the Context of the Conflict in Kahuzi Biega National Park in Eastern Democratic Republic of Congo". *East African Journal of Environment and Natural Resources*, Vol. 6, no. 1, Sep 2023, pp. 325-339, doi:10.37284/eajenr.6.1.1428.

## INTRODUCTION

Understanding the scale, location, and nature conservation values of the lands over which indigenous peoples exercise their traditional rights is key to the implementation of several global conservation agreements (Garnett et al., 2018). The new conservation approach to protected areas (PAs) is about protecting or restoring people's sustainable relationships with their environment. This means that PAs should be established after full consultation and managed with the participation of local communities and indigenous peoples (Phillips, 2013). Effective protection of the human rights of indigenous peoples and local communities has been shown to improve the protection of ecosystems and biodiversity (Dawson, 2021; Stevens, 2013). Attempting to conserve biodiversity by excluding local communities from a protected area is generally doomed to fail (Stevens, 2013).

This study examines the spaces formerly occupied by the Batwa people, indigenous residents within the Kahuzi Biega National Park (PNKB) who have customary rights over the park. The study analyses the PNKB Development and Management Plan 2009-2018, the revised version of 2013 in accordance with the international principles of the "new conservation paradigm". The nature conservation paradigm began under the protectionist approach that excluded communities from participating in conservation activities and prevented people from using protected natural resources for their basic needs (Adams & Infield, 2003).

In 2011, the World Conservation Union (IUCN) agreed to review the implementation of the resolutions on indigenous peoples made at the 4th World Conservation Congress (WCC4) in

Barcelona, Spain in 2008 and to advance their implementation. IUCN resolutions 4.048 (on follow-up to the Durban Accord and Action Plan) and 4.052 (which aims to develop a "mechanism to address and remedy the effects of historical and current injustices suffered by indigenous peoples in the name of nature and natural resource conservation"), as part of the implementation of the UN declaration on the rights of indigenous peoples (UNDRIP) within IUCN associated with the programme of work on protected areas of the UN Convention on Biological Diversity (CBD), are adopted and made (IUCN & Forest Peoples Programme, 2011). These resolutions are referred to as the "new conservation paradigm" (Domínguez & Luoma, 2020). Thus, several conservation actors have adopted policies committing to respect the rights of indigenous peoples, including their right to free, prior, and informed consent (Colchester, 2004; Dowie, 2011; Domínguez & Luoma, 2020; Freudentha et al., 2012).

One initiative that has emerged under the new conservation paradigm is the Whakatane mechanism. It was developed in 2011 by IUCN to address historical institutional injustices against indigenous communities in the name of conserving natural resources on traditional lands (ERND, 2015; ECOSOC, 2018; Freudentha et al., 2012). The first two pilot Whakatane assessments were conducted in 2011 and 2012 in Ob Luang National Park in Thailand and Mount Elgon in Kenya, respectively (Dawson et al., 2021). For equity reasons, protected areas are subject to governance and other assessments, including the Whakatane mechanism, according to Franks and Schreckenberg (2016).

The third pilot Whakatane assessment was conducted in Kahuzi Biega National Park in 2014.

The forced evictions of Batwa residents from their ancestral lands to make way for the creation of Kahuzi Biega National Park (PNKB) took place over two decades, in the 1960s and 1970s (ERND, 2015; Barume, 2003; Couillard et al., 2009). Between 1970 and 1985 (ERND 2015), approximately 6,000 Batwa indigenous people were forcibly evicted from their ancestral lands within the park (Barume, 2003). This eviction left thousands of pygmies (Batwa indigenous people) in a very precarious situation. The Batwa have been destroyed culturally through the loss of their forests, their right of access to natural resources including the right to land, and other accompanying measures that should have been put in place were not and made them vulnerable.

This has led to an increase in disputes between the PNKB and indigenous Batwa (pygmy) and over-access to the park's natural resources. Incidents of access to the park have been recorded, and Congolese law prohibits indigenous Batwa from entering the park to collect natural resources. These incidents include the death of a young indigenous Twa and his father, who was shot inside the park. These two Batwa were looking for medicinal plants in the park in 2017. Conflicts over access to the resources of PNKB are initiated by local residents, including the Batwa (Brown & Kasisi, 2009; PNKB/ICCN, 2013). This has led to "slow" violence, which occurred gradually and out of sight of park managers at first, and then to open resistance under the sudden violence, culminating in invasions of the highland part of the park in 2018 by indigenous Batwa residents (Simpson, 2021). This was despite numerous dialogue meetings between PNKB/ICCN managers, the Congolese government and Batwa residents. This invasion has led to poaching, deforestation, etc. (Simpson, 2021; Consortium UCB-UEA, 2021). Since January 2020, hundreds of hectares of forest have been cleared for charcoal production (Simpson, 2021).

Furthermore, the conflict management and resolution tools put in place by park managers, with the support of other local and international actors, do not specifically address the issue of lack

of space on customary land and access to natural resources by indigenous Batwa residents in the context of conflict. This is in line with the international conservation mechanisms to which the PNKB/ICCN has been committed for over 30 years.

This study rests on two assumptions:

- The existence of former areas of indigenous Batwa occupation within the PNKB gives them customary rights to the PNKB.
- The voluntary return of indigenous Batwa residents 2018 to the park follows the pattern of reoccupation of former areas of ancestral land.

These two hypotheses further raise a question about the courses of action of the actors involved: is the management tool, the revised version in 2013 of the PNKB management plan (PAG) 2009-2018, in line with the international principles of the 'new conservation paradigm'?

## MATERIALS AND METHODS

Kahuzi-Biega National Park covers an area of about 6000 km<sup>2</sup>. It is located in eastern DR. Congo in the southern part of the Kivu-Ruwenzori chain in the Albertine Rift region and lies between the two centres of Guineo-Congolese and Afromontane endemism. It takes its name from two mountains (Kahuzi: 3326 m and Biega: 2790 m) that dominate its high-altitude part (Mangambu, 2016). This park (Figure 1) has a remarkable presence of Grauer's gorillas (*Gorilla beringei graueri*) (Safari et al., 2015). The present study was carried out in the hinterland of the high-altitude part of the PNKB.

The data collection was preceded by a desk study. This was carried out with the aim of listing the management tools of the PNKB for use in analysing the key elements of the new paradigm in the protected area (Koné & Pacifique, 2018). The three-dimensional model (MP3D) was used as a dialogue and negotiation tool for the focus groups (Rambaldi, 2010; Ravera, 2011).



It provides a collaborative framework that can ensure the full and effective involvement of indigenous peoples (IPs) in conservation while respecting their rights and institutions (Garnett et al., 2018). The information added to the model by Batwa communities and PNKB delegates was used, among other things, as evidence of the customary space rights of local Batwa people during the Whakatane assessment exchanges in the highland part of PNKB.

La carte illustre la région de la Bahr el Jebel (BESAB) et de la Bahr el Jebel (BESAB) en République centrafricaine. Les zones BESAB sont indiquées par des hachures vertes et rouges. Les limites territoriales sont tracées en noir. Les rivières sont représentées en bleu, les lacs en bleu clair, et les routes en orange. Les localités sont marquées par des points noirs. Une légende en bas à gauche explique les symboles utilisés. Des échelles en kilomètres (0, 1, 2 km) sont fournies en bas à droite. Des coordonnées géographiques sont indiquées sur les bords de la carte.

Discussions were held with communities and managers to obtain free and informed consent (FPIC) on the importance and reasons for the MP3D and the step-by-step process. Four Whakatane assessments were conducted (UICN & Forest People Programme, 2011) in Kabare, where the number of delegates (N=79), Kalehe (N=67), Bunyakiri (N=44) and Bukavu (N=139). The model covered an area of 27 km x 24 km on the ground (648 km<sup>2</sup>) of the high-altitude part PNKB. The lowest contour is 1200 m, and the highest is 3300 m altitude.

Model enrichment was carried out over six days successively by leaders of Batwa residents (women and men) aged 60 and over, together with young people (for educational purposes) from Kabare (N= 20), Kalehe littoral (N= 20) and Bunyakiri (N= 20), and PNKB delegates living with Batwa residents (N= 3). Thedigitisation of

the information provided, once the model was completed by the delegates of the Batwa indigenous residents, was processed in Arc GIS 9.3 software. To date, the MP3D processes have been successfully used to prepare, among others, management plans on land use, protected areas, and ancestral domains (Pedrick, 2016). The technical and geographical coordinates that facilitated the GIS integration of the model were provided by the PNKB/ICCN (2014).

## RESULTS

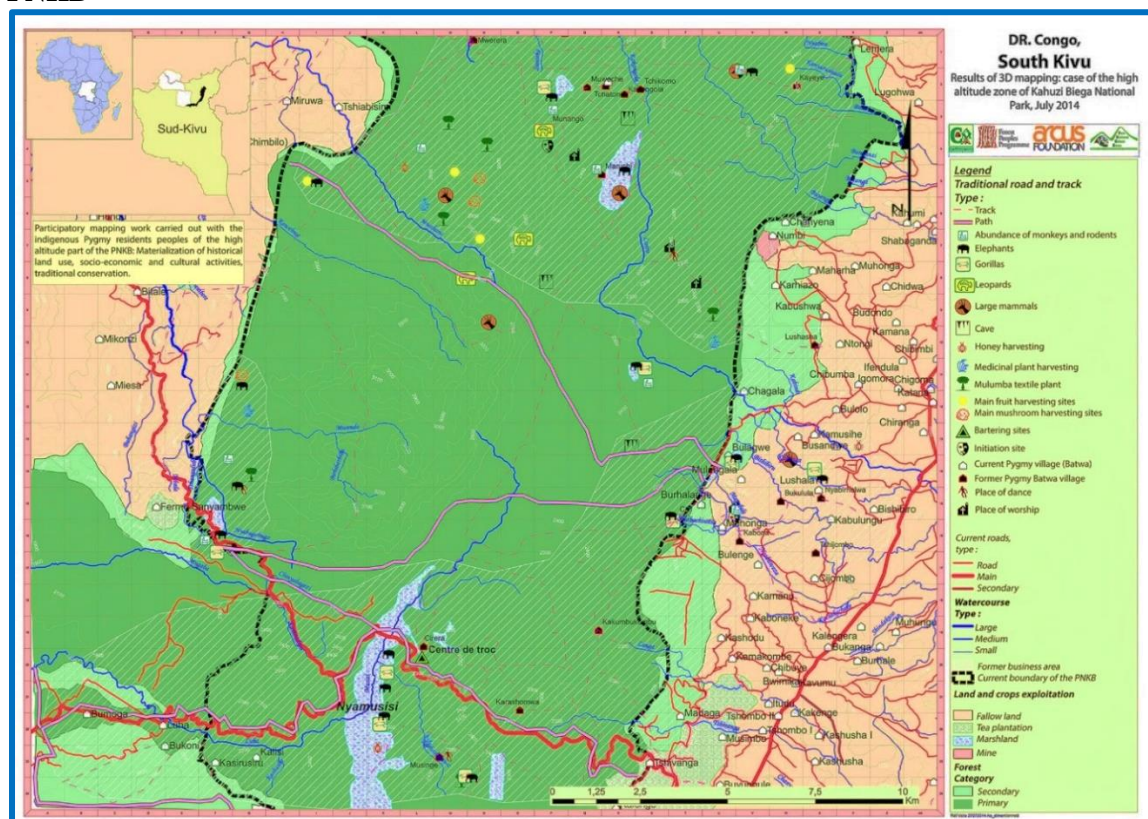
### Indigenous Batwa Traditional Knowledge and Nature Conservation

According to Batwa residents, before they were evicted from their ancestral lands, Batwa indigenous people lived in harmony with nature. They did not cut wood. Instead, they collected dead wood for domestic use. Bushfires were strictly forbidden for the pain of social exclusion. It was also forbidden to kill large animals and especially pregnant females. The exploitation of mineral resources was not important despite the

knowledge of their existence. The hunting season was very well regulated, and hunting was only done with nets woven from forest ropes (from lianas). It was also forbidden to kill totem animals for medicinal purposes. The Batwa did not cut down trees to harvest honey and other fruits but climbed them.

In the PNKB highlands landscape, *Figure 2* below, based on MP3D by Batwa and PNKB delegates, shows some former life of the Batwa indigenous community in the old villages and areas they consider to be their customary lands, which they occupied for many years before the creation of the park. Senior Batwa leaders educate, sensitise and transfer knowledge to young Batwa indigenous people who are engaged in the MP3D map-making exercise. They are in direct dialogue with the KPNB delegates on issues of customary land space that have opposed them for more than 52 years. Some former settlements and customary rights of Batwa residents are in *Figure 2*.

**Figure 2: Digitised map of the Batwa enriched model to show former customary areas in the PNKB**



Sources: CAMV/Forest Peoples Programme 2014 map supplemented with our data.



The work of enriching the model converted into the digitised map above reveals the following aspects included in this *Table 1*.

**Table 1: Some former villages of the indigenous Batwa people in the high-altitude part of the PNKB in the Kabare, Kalehe littoral and Bunyakiri area.**

Fv. Kabare	Nv. Kabare	Fv. Kalehe Littoral	Nv. Kalehe littoral	Fv. Bunyakiri	Nv. Bunyakiri
Kabona	Chombo	Kayeye	Lemera	Bihene	Bitale
Cizi	Buyungule	Lukunda	Numbi	Bwangisi	Hungu
Karhashomwa	Kavumu	Ngandjo	Buhobera	Mwendo	Luchuwa
Kakumbukumbu	Kakenge	Chikomo	Lukungula	Mwerera	Lukumba
Kalisi	Bwimika	Kakongola	Buziralo	Mubugu	Mulonge

*Légende : Fv= Former villages, Nv= New villages*

In Kabare, the village of Birhondo Bibirhi, meaning two hills, was crossed by the Busasa road and the Bugulumiza Mountain was located there. The fauna was the ruminants *Bovidae* including antelopes (*Tragelaphus*) and wild pigs (*Suidae*).

The indigenous pygmies hunted the Kenzi (*Thryonomys swinderianus*) and the Aulacodes (*Thryonomys gregorianus*), the Nandji (*Cricetomys emini*), the Gambian rat (*Cricetomys gambianus*), the Nkwale (*Pternistis afer*), the Chishegeshe (*Atherurus africanus*), the civet or “mugaka” (*Civettictis civetta*), animals with magnificent skins that were worn by the great chiefs, bushpigs (*Potamochoerus larvatus*), monkeys (*Colobus* sp), pigeons or “Nchima” (*Columba*), antelopes (*Tragelaphus* spp), hylochoeres or “Nshenge” (*Hylochoerus meinertzhageni*). Other former customary areas used by the Batwa of Kabare in PNKB were the hills of Chankere, Kabwe, Kantontobwa, Shashale, Birembo, Kambugu1, Ngolo, Kasihe, Saparo, Kadegedege and Nyamubwa. The village of Muyange was located near two wetlands: Karhimbiri and Musisi. In the latter wetland, there were elephants (*Loxodonta africana cyclos*), gorillas (*Gorilla beringe graweri*), in particular the gorilla nicknamed “Casimir Mubalabala”, and leopards (*Panthera pardus*). The most used medicinal plants in these ancient villages are, among others “Kifubula” (*Crassocephalum bumbense*), “Bungwerhe” (*Carapa grandiflora*), “Muyimbu” (*Bridelia bridelifolia*).

The former village Cirera was located near the Musisi swamp. In this village, people used to exchange products by barter (trade). In the former village Kakumbukumbu there was a water source and the rivers “Kakumbukumbu”, “Chishaka”, and “Shantinga”. A hunting trail ran through the village.

Customary rights of indigenous Batwa and the PNKB: the return of indigenous Batwa to their ancestral land in the park

Against all odds, in October 2018, about 40 indigenous Batwa households from the village of Buhobera, in Kalehe territory, decided to return to the PNKB. They said they were tired of the promises made and speeches broken by the Congolese government on land issues. Actors working on behalf of indigenous peoples on the periphery of the PNKB are less concerned about the issue of access to natural resources (forests, land, etc.). This may be because these are not indigenous; they do not know the pain of separation from their land, the loss of rights, and the absence of freedom.

Thus, in their movement to (re)appropriate their ancestral land, the Batwa of Buhobera were gradually joined by several other Batwa from Kabare and Bunyakiri. The Batwa will open up the forest and use the Bantu, who are non-indigenous residents, as labour for charcoal-making and sawing boards. Some will engage in subsistence farming in small areas. Others will use

non-indigenous people for artisanal gold panning, according to the PNKB authorities.

In its current state, and given the extreme poverty of the Batwa and their constant quest for survival, it is hardly surprising to see such abuses.

“Returning to the park may have seemed like a momentary opportunity to them”, said an indigenous Batwa leader from Kabare. They occupy 22 sites, some of them listed in *Tables 2 and 3*.

**Table 2: Some occupied Kabare spaces/sites in the park during reoccupation in 2018**

Administrative territory	Sites/ spaces reoccupied	Site Manager/ reoccupation	□ Yes, customary spaces	Peripheral villages of Batwa origin
Kabare	Nyamwambanza	Ntav.	□	Buyungule
	Buku	Mir. & Mar.	□	Kamakombe
	Chanderama	Cib.	□	Chibuga
	Karhimbire	Kas.	□	Muyange
	Ngolo	Mag.	□	Makondo et Kalonge
	Mugezi	Mag.	□	Makondo, Buyungule
	Bisihe	Chib.	□	Muyange et Ngolo

**Table 3: Some occupied Kalehe spaces/sites in the park during reoccupation in 2018**

Administrative territory	Sites/ spaces reoccupied	Site Manager /reoccupation	x Non, customary spaces	Peripheral villages of Batwa origin
Kalehe	Lwamisakure	Kaf.	X	Buziralo, Minova, Bishulishuli
	Kamanda	Buw, kaf, Sin, Bur.	X	Kamishasha, Solifem
	Kayeye	Kash. Mut.	X	Mirezo, Ramba, Buziralo, Lufamando
	Lumba	Mut.	X	Ramba, Ziralo

According to an indigenous Twa from Kabare, their settlement sites (12 out of 22 sites or 54.5%) are part of the ancestral spaces formerly occupied by their parents when they were in the park. These occupation sites were within a few hundred metres of the boundary of the PNKB, say the Batwa, as shown in *Figure 3* of this map below, which illustrates the various occupation sites not authorised by PNKB managers in 2018 in accordance with Law No. 14/003 of 11 February 2014 on nature conservation in the Democratic Republic of Congo. Since the Batwa incursion into Kahuzi Biega National Park, violent and sometimes deadly altercations between Batwa and eco guards have increased.

PNKB Development and Management Plan (PAG) 2009-2018, revised version 2013 and the “new conservation paradigm”.

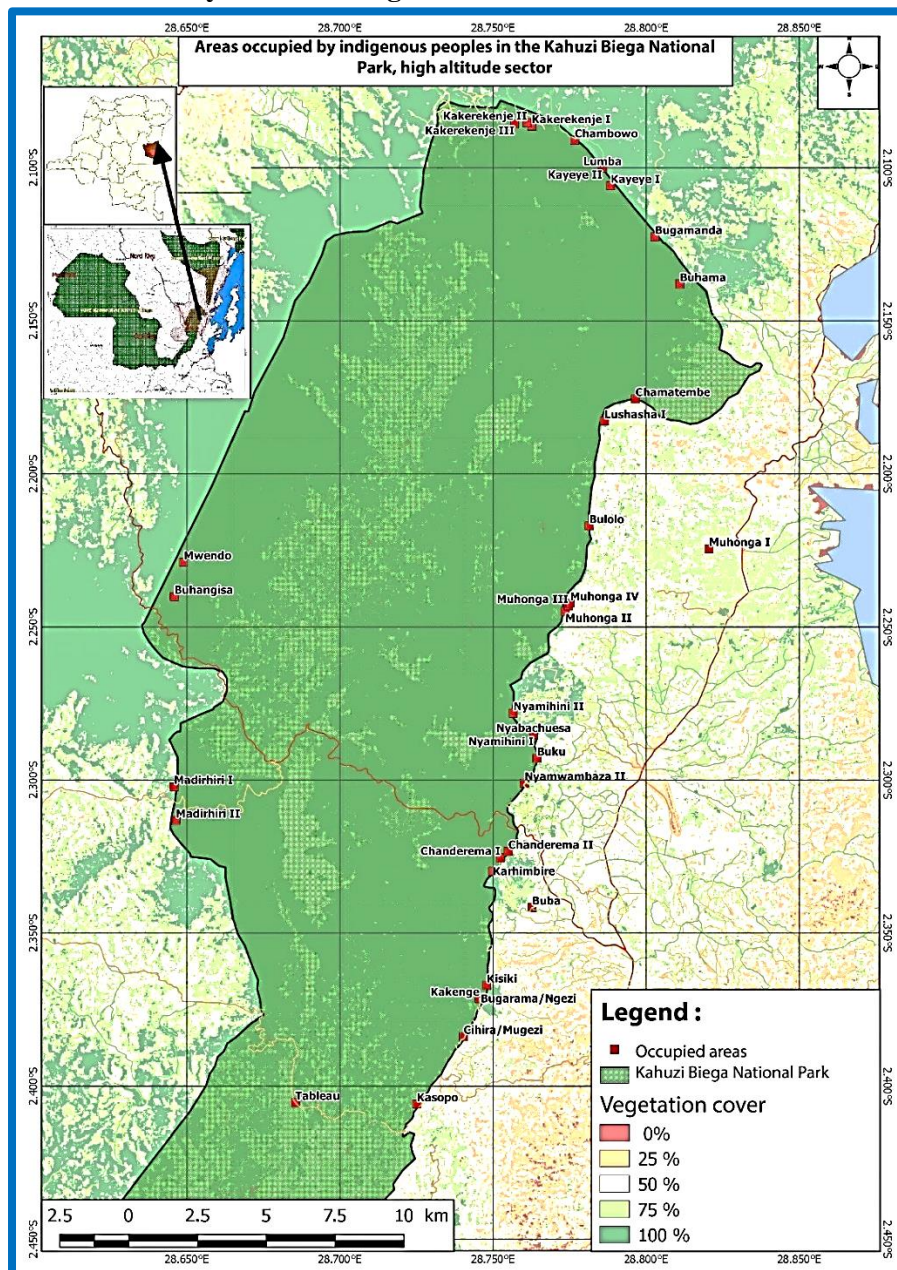
In order to protect and sustainably manage the biodiversity of PNKB, the park put in place a 2009-2019 Management Plan (PAG) (the revised

plan). Do the various programmes in the PAG meet the requirements of the new protected area conservation paradigm?

The revised plan outlines some challenges to the achievement of the sustainable management objectives of the PNKB, including conflicts between the population, the park and other entities because of the interests and survival issues of each stakeholder around the PNKB. The PNKB’s community conservation programme aims to strengthen the participation of the surrounding population in natural resource conservation and integrated development. The programme is based on nine principles, namely: community participation, implementation of sustainable development projects in the park’s surroundings, equitable sharing of revenues generated by the PNKB, transformation of conflicts related to the park’s existence, public-private partnership, integration of the population in the park’s management, promotion of social capital, involvement of stakeholders in decision-making

and sharing of responsibilities for the sustainable management of the park, and promotion of gender equality in the management of the park.

**Figure 3: Map showing the different sites of occupation by indigenous Batwa residents notauthorised by PNKB managers in 2018.**



The revised plan shows that some of the principles appear to meet the requirements of the new conservation paradigm. These include community participation, revenue sharing from park conservation, gender promotion and conflict resolution. Other aspects of the new conservation paradigm are not addressed by the revised plan, including the promotion of the rights of the Batwa, the valorisation of their cultures and traditions, the

equitable and fair sharing of benefits from tourism, and the issue of access to and use of customary land.

## DISCUSSION

### Indigenous Culture and Nature Conservation

The indigenous Batwa identify with this statement by an old Massai:



*“We protect nature because we depend on it for our living. Those who do conservation do it because it gives them work and because they get money from white men (tourists). If the white men don’t give them any more money, that’s the end. For us, even if the white man doesn’t give money anymore, we will continue to protect our environment. We did it before the white man came. We do it because our lives depend on it, because the lives of our ancestors depended on it, and so will future generations”* (Nelson & Hossack, 2003).

Indeed, around the world, several parks have been established in the former villages and areas of indigenous peoples. These parks include the Langtang and Sagarmatha Mountain Parks in Nepal in the mid-1970s (Jefferies, 1982; Mishra, 1982); Yosemite Park in the Sierra Nevada in California, where the Miwok were driven out in 1890, 1906, 1929, and 1969; Madura Oya National Park in Sri Lanka which the Vedda were forced to leave in 1970. The Bushmen San were excluded in 1997 and 2002 from the Kalahari Game Reserve in Botswana, and the Khomani San from the Kgalagadi/Rajasthan Transboundary Park in South Africa (Colchester, 2003). Other African exclusions are of the Ogiek of the Mau Forest in 1856, 1911, 1914, 1918, 1926, 1927, and 1977; the Batwa of Nyungwe Volcanoes Park and Nature Reserve in Rwanda in 1925, 1933; the Batwa of Bwindi and Mgahinga National Parks in Uganda in 1990; the Masai of Ngorongoro conservation area in Tanzania and the Baka of Dja Wildlife Reserve in the mid-20th century (Nelson & Hossack, 2003).

### **The Former Occupation Zones and the Customary Rights of Indigenous People**

In Central Africa, the foundations of the customary land tenure system are of the same order (Grenand & Joaris, 2000). It is an imprescriptible right of use, inalienable collective property and boundaries defined by natural landmarks, but the historical and spatial issues are different. Indeed, while the courts largely admit customary rights for the settlement of land disputes at the local level, legislation rejects the

vague category of “use rights”, a residual category of property rights ship of the civil code, local rights, rules and practices regarding appropriation, access, inheritance and transmission of land and natural resources (Grenand & Joaris, 2000).

ERND (2015) show that Batwa lived in the PNKB on the hills of Chatondo, Katasomwa, Munango, Kabona, Kakumbukumbu and Bukulula, respectively, areas now established as the Kahuzi-Biega National Park, straddling the territories of Kabare, Kalehe and Shabunda in South Kivu province. This corresponds with the data offered by the current paper concerning the former occupation zones of indigenous residents in the highland part of the PNKB and their customary rights. In September 2020, at a workshop to review the results of the study on the identification and location of the three types of Batwa land in and around the high-altitude part of the PNKB in the territories of Kabare and Kalehe in South Kivu and Walikale in North Kivu, there were 23 conflicting spaces lands in the Kabare part of the PNKB, 26 in the Kalehe part, and seven in the low altitude part of Walikale. However, the study does not mention the type and nature of the lands identified, whether they are hills, plains, forests, or former villages.

Delegates from the consultation framework, of which PNKB is a member, meeting in February 2021, agreed to make a plea to the Congolese government on the issue of compensation for Batwa residents who lost their customary land in the 1970s without consultation, consent, and accompaniment to the host land for conservation reasons. Was this a tacit recognition of customary land rights on land taken from Batwa residents by the Congolese government and managed by the PNKB/ICCN to this day? Certainly, in DR. Congo, according to article 53 of the Land Law No. 073-021 of 20 July 1973 on the general regime of property, land and buildings, and the regime of securities, as amended and completed by Law No. 80-008 of 18 July 1980, the land is the exclusive, inalienable, and imprescriptible property of the state. With this provision, the

statenationalised 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 (Utshudi, 2008).

On the other hand, the decree of 11 April 1949 on the forest estate in its articles 8-10 in section 1 - Customary uses and commercial exploitation, on the forest regime of the colonial era, rather recognises certain customary rights and uses of indigenous people on indigenous lands, where customary uses were allowed (Codes, 1959). The 1949 law did not promote traditional African beliefs, practices, and knowledge. It was more logical for the post-colonial governments of DR. Congo to work towards the valorisation of the traditional knowledge of their people. But they all failed in their responsibility.

This 1949 code recognised communities' property rights based on customary land use and occupation. Indigenous forests were one of the three types of forests. There were indigenous people subject to taxation and those exempted from taxation, such as the Batwa, who enjoyed more extensive forest rights. The land law of 20 July 1973 abrogated everything, and the new forestry code did not restore these rights. The Land Law of 20<sup>th</sup> July 1973 provides that the soil and subsoil belong to the state, instead recognises communities as having a simple right of enjoyment, and admits that some land in rural communities continues to be governed by customary laws.

The current Forestry Code seems to be inspired by this law. Indeed, Article 7, paragraph 1, states: "Forests are the property of the State". By not guaranteeing customary rights over forests, these two laws do not preserve or enhance the traditional knowledge, innovations, and practices in the field of forests, of which these communities are the custodians. As much as these laws do not specifically refer to indigenous peoples, they ignore their cultural and spiritual values, their right to control their traditional knowledge, their intellectual property rights, their land rights, their 'sacred areas', etc. (Sinafasi & Mukumba, 2005).

However, Simpson (2021: 23) shows that the Batwa of Kahuzi-Biega returned to the forests (park) not just to regain control over what they saw as rightfully theirs but also to accumulate economic wealth through the extraction of resources, which led to widespread environmental destruction in the park's highland sector. The Batwa see their access to the Park's natural resources as one of the alternative means of substance available to them, which had eluded them for many years.

### **Indigenous People Cultural Life Outside of Ancestral Land in the Conservation Context**

Batwa residents feel that they have been further marginalised in the host villages for several decades after their expulsion into the park. Indeed, social contracts for conservation can have unintended consequences when they are not respected or broken (Simpson & Pellegrini, 2022), and conservation actors perceived to be breaking the terms of (implicit) social contracts may inadvertently encourage local communities to adopt alternative contracts with other actors. Furthermore, conservation-induced immobilisation affects the movement of indigenous people's knowledge and practices (Awuh, 2016).

Moreover, territorialisation for conservation, nor the slow violence that it can give rise to, has gone unopposed. There are countless examples where communities affected by protected areas have engaged in forms of resistance and counter-territorial struggles (Simpson, 2021). For example, in Indonesia, a community has (re)appropriated its ancestral lands in Lore Lindu National Park (Simpson, 2021).

There is also a lack of clear intervention strategies for acquisition, understanding and harmonisation with beneficiaries on the concept of land with non-governmental and governmental actors on the issue of land for Batwa residents. "We have become landless displaced people in our country, yet in front of us was our customary land which is full of everything we need to survive", said an indigenous Batwa man from Buhobera when

interviewed after entering the PNKB. Indeed, the Batwa still consider the forest their home (Sinafasi & Mukumba, 2005). The forest of PNKB is their Eden (Simpson, 2021).

Indeed, as Dominguez and Luoma (2020:2) point out, the livelihoods of indigenous peoples, custodians of the world's forests since time immemorial, were eroded when colonial powers claimed control over their ancestral lands. Too often, as Colchester notes (Colchester, 2003), the environment suffers from forced settlements in new territories. Traditional balances between people and their environment are destroyed. People are confined to small, unsuitable areas. The end result is the destabilisation and increasing degradation of the environment (Colchester, 2003; Awuh, 2016). For category V protected areas (national parks) established by the World Conservation Union (IUCN), the ecosystem and the cultural values of communities must be protected (Dudley & Stolton, 1999; Day et al., 2012; Triplet et al., 2020)

According to Simpson (2021: 20), the Batwa who live along the border of the PNKB claim that the areas that now constitute the park today were never land space for PNKB; it is the ancestors' Batwa field which is consistent with Holmes' (2007), observation that the pursuit of prohibited practices is itself a political statement, as it contains, alongside other motivations, an implicit statement that these practices should be allowed. Practices such as unauthorised access by Batwa residents to the park's natural resources are seen as one of the sources of conflict between the Batwa and PNKB (Brown, & Kasisi, 2009; Consortium UCB-UEA, 2021).

### **Compliance of Management Tools with International Principles of the “New Conservation Paradigm”**

The revised plan is based on the National Community Conservation Strategies 2007-2011 and 2015-2020 (strategies 1 and 2).

Strategy 1 (full version, July 2008) gives a new impetus to the conservation paradigm shift discourse. One of the components of the strategy

was to promote the involvement of local communities and indigenous peoples in the establishment, creation, and management of new protected areas by: “Carrying out prior participatory studies/surveys to find out the different reasons for the creation of the protected area, encouraging communities to set up self-managed protected areas based on existing examples”.

Strategy 2 refers to the Whakatane mechanism in its chapter dealing with the state of community conservation in protected areas on the legal and institutional level at international and regional level. It stresses the importance of taking into account the rights of indigenous communities (living in and outside protected areas) which strengthen the participatory management of protected areas with local populations. In practice, protected areas in DR. Congo and PNKB are slow to comply with these texts.

Mubalama et al. (2018) demonstrate the importance of traditional knowledge combined with scientific knowledge as a new paradigm for the conservation of protected areas: the case of the “Malambo” (spaces used as maternity wards for animals) in the Itombwe Nature Reserve in Democratic Republic of Congo. The case of the “Malambo” (areas used as maternity wards for animals) in the Itombwe Nature Reserve in Democratic Republic of Congo, which is rich in biological biodiversity and has been managed for thousands of years by indigenous communities under the protection of the Itombwe Nature Reserve, which is adjacent to the PNKB. The management of these areas contributes enormously to the conservation of biodiversity in protected areas. These areas are the maternity for wild animals.

The report and addendum of the Panorama Hotel convention in South Kivu province, Eastern of Democratic Republic of Congo in 2019 also refers to the Whakatane process carried out in the PNKB.

In this document, the Whakatane process is considered to be the best way out of the recurrent



conflicts between the PNKB and the Batwa indigenous residents, by enhancing their traditional and cultural capacities in the conservation service, in agreement with the PNKB, in the implementation of the cultural rites (ICCN/PNKB, 2019). The participation of local Batwa people in the management and conservation of PNKB is marked by two traditional ceremonies. The first, called the “sheep rite”, to habituate the gorillas to human presence, takes place once a year: it aims to save the gorillas from natural disasters and external attacks. The second is the enthronement of the park chief to protect the forest and its resources, including the gorillas (Shalukoma, 2007). Unfortunately, these rituals have been interrupted for a long period since 1990. Nevertheless, the Bukavu Declaration as part of the February 2021 consultation adopted cultural promotion as a means to address conflict in the PNKB, including access by the Batwa to medicinal plants, identification and mapping of traditional ritual sites, and the resumption of traditional rituals in the park.

The PNKB remains concerned that once the Batwa are allowed to hold their traditional rites in the Park, some of them will engage in practices that are contrary to conservation. The management system appears to be worried that they may not be able to regulate the Batwa’s intrusions if they are looking for dead wood, non-timber forest products, medicines, etc.

The PNKB managers recalled that he had, on one or two occasions in 2021, allowed some indigenous Batwa women, with the accompaniment of ecoguards, to collect dead wood in the park, and once for the sheep rite in 2021, to show his willingness to re-establish peace with the Batwa residents. If the Batwa should be allowed into the park to harvest natural resources (what natural resources?), under what conditions? How should they be supervised, if necessary, and for how long?

## CONCLUSION

The new way of conserving protected areas by incorporating the rights of indigenous residents is

the focus of this study, which highlights the ancient spaces that the Batwa indigenous people occupied within Kahuzi Biega National Park (PNKB) and which gave them customary rights to the park. The study then analyses the PNKB management plan (PAG 2009-2018, revised version 2013) in the light of the international principles of the ‘new conservation paradigm’. Finally, it analyses the various dialogues between Batwa indigenous residents and PNKB managers in the context of international mechanisms, including Whakatane.

A literature review of the management tools of the PNKB was conducted for comparative analysis with the key elements of the new paradigm. A three-dimensional model (P3DM) was produced on the basis of which the lives of indigenous Batwa were made concrete. The P3DM was used as a tool for dialogue, negotiation, and advocacy in focus groups between local Batwa people and the authorities, including the managers of the PNKB. Sixteen former settlements on the Kabare side, 12 on the Kalehe coastline side and 6 on the Bunyakiri side within PNKB were mapped, including other cultural spaces such as refuge areas, hunting areas, barter areas, etc.

The content of some of the principles of the PAG 2009-2018 management tool, the 2013 revised version of the PNKB, theoretically meet the requirements of the new conservation paradigm. These include community participation, revenue sharing from park conservation, gender promotion and conflict resolution. But, other features of the new conservation paradigm are being ignored by the PNKB, including the promotion of the rights of indigenous Batwa, the valorisation of their culture and traditions, the equitable and fair sharing of benefits from tourism, and the issue of access to and use of customary land.

The return of the Batwa to the park in 2018, believing that the authorities had not honoured their commitments to provide them with new land and alternative livelihoods as stipulated in the various agreements, followed 54.5% of the tracks occupying their former customary areas in the park; although this was achieved by opening up

the forests for exploitation. A cultural and environmental management plan is essential to reconcile the interests of conservation with those of the indigenous Batwa residing in the PNKB.

## ACKNOWLEDGEMENTS

The authors would like to thank the Batwa indigenous people living in the vicinity of the PNKB and the organisation “Centre d’Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables” for their support and advice in the field.

## REFERENCES

- Adams, W. M., & Infield, M. (2003). Who is on the gorilla’s payroll? Claims on tourist revenue from a Ugandan National Park. *World development*, 31(1), 177-190.
- Awuh, H. E. (2016b). Conservation-induced resettlement: The case of the Baka of southeast Cameroon—a variation on the habitual mobility–immobility nexus. *Transfers*, 6(2), 54-73. <https://doi.org/10.3167/TRANS.2016.060205>
- Barume, A. K. (2003). En voie de disparition ? Les droits des autochtones en Afrique : Le cas des Twa du Parc national de Kahuzi-Biega, en République démocratique du Congo. Forest Peoples Programme.
- Brown, O., & Kasisi, R. B. (2009). Renforcement de la capacité de l’ICCN à la gestion et la résolution des conflits liés aux ressources naturelles dans le Parc National de Kahuzi-Biega, République Démocratique du Congo. Institut international du développement (IISD), 23.
- Codes (1959). Les codes et Lois du Congo Belge, —Tome III, 8e édition des Codes Louwers – Strouvens, 1959. Structure et liste des dispositions du décret du 11 Avril 1949 sur le régime forestier, 311-312.
- Colchester, M. (2004). Conservation policy and indigenous peoples. *Environmental Science & Policy*, 7(3), 145-153.
- Colchester, M. (2003). Nature sauvage, nature sauvée. Peuples autochtones, aires protégées et conservation de la biodiversité. Mouvement mondial pour les forêts tropicales, (WRM) et Fonds mondial pour la nature (WWF), 154 p.
- CONSORTIUM UCB-UEA (2021). Analyse des dynamiques des conflits autour du parc national de Kahuzi-Biega (PNKB), rapport produit par Université Catholique de Bukavu, Université Évangélique en Afrique pour le Management Systems International (MSI), A Tetra Tech Company, Sous contrat de AID-OAA-I-13-00042/Task Order Numéro AID-660-TO-16-00004 USAID’s Solutions for Peace and Recovery, 76p. [https://pdf.usaid.gov/pdf\\_docs/PA00XK66.pdf](https://pdf.usaid.gov/pdf_docs/PA00XK66.pdf)
- Couillard, V., Gilbert, J., Kenrick, J., Kidds, C. (2009). Les droits fonciers et les peuples des forêts d’Afrique-Première partie : Perspectives historiques, juridiques et anthropologiques. Forest Peoples Programme, Moreton-in-Marsh, Royaume-Uni, 54.
- Dawson, N., Coolsaet, B., Sterling, E., Loveridge, R., Nicole, D., Wongbusarakum, S., & Rosado-May, F. (2021). The role of Indigenous peoples and local communities in effective and equitable conservation. *Ecology and Society*, 26 (3) :19-31. <https://doi.org/10.5751/ES-12625-260319>
- Day, J., Dudley, N., Hockings, M., Holmes, G., Laffoley, D., Stolton, S., & Wells, S. (2012). Application des catégories de gestion aux aires protégées : Lignes directrices pour les aires marines. Gland, Suisse : UICN. 36 pp (<https://portals.iucn.org/library/sites/library/files/documents/PAG-019-Fr.pdf>)
- Domínguez, L., & Luoma, C. (2020). Decolonising conservation policy: how colonial land and conservation ideologies persist and perpetuate indigenous injustices at the expense of the environment. *Land*, 9(3), 65. <https://doi.org/10.3390/land9030065>

- Dowie, M. (2011). Conservation refugees: the hundred-year conflict between global conservation and native peoples. MIT press, 376.
- Dudley, N., & Stolton, S. (1999). Threats to forest protected areas: A survey of 10 countries. A research report from IUCN for the World Bank Alliance for Forest.
- ERND. (2015). L'expulsion des populations pygmées du Parc national de Kahuzi-Biega : Faits, Conséquences et perspectives. Rapport d'étude. Rainforest Foundation Norway, Eds.; Rainforest Foundation Norway: Oslo, Norway.
- Franks, P., & SchreckenberG, K. (2016). Advancing equity in protected area conservation. IIED Briefing Paper- International Institute for Environment and Development, 17344.
- Freudenthal, E., Ferrari, M. F., Kenrick, J., & Mylne, A. (2012). The Whakatane mechanism: Promoting justice in protected areas. *Nomadic Peoples*, 16(2), 84-94.
- Garnett, S.T., Burgess, N.D., FA, J.E., Fernández-Llamazares, Á., Molnár, Z., Robinson, C.J., Watson, J.E., Zander, K.K., Austin, B., Brondizio, E.S. & Collier, N.F. (2018). A spatial overview of the global importance of Indigenous lands for conservation. *Nature Sustainability*, 1(7), 369-374.
- Grenand, P., & Joiris, D. V. (2000). Usages de l'espace et enjeux territoriaux en forêt tropicale. In : Bahuchet S. (ed.). Les peuples des forêts tropicales aujourd'hui : 2. Une approche thématique. Bruxelles (BEL) ; Bruxelles : APFT ; ULB, p.107-134
- Holmes, George (2007). "Protection, Politics and Protest: Understanding Resistance to Conservation". *Conservation and Society*, 5(2) :184– 201.
- ICCN/PNKB (2018). Dialogue de haut niveau sur le processus de la protection durable du PNKB et la cohabitation pacifique entre le parc, les peuples autochtones Batwa/Bambuti et les communautés riveraines du 19 au 20 septembre 2019. Rapport
- Jefferies, B. E. (1982). Sagarmatha National Park: The impact of tourism in the Himalayas. *Ambio* 11, 274-81.
- Kone, L., & Pacifique, M. (2018). La Conservation et les droits des communautés locales et des peuples autochtones en République Démocratique du Congo : Note de Plaidoyer. Forest People Programme.
- 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. Editions universitaires européennes, 354 p. ISBN: 978-3-639-50712-6.
- MISHRA, H. R. (1982). Balancing human needs and conservation in Nepal's Royal Chitwan Park. *Ambio* 11, 246-251.
- Mubalama Kakira, Banswe Tshibangu, Alesa Lusambya, & Kavusa Kambale (2018). Savoirs traditionnels concilies aux connaissances scientifiques comme nouveau paradigme de la conservation des Aires Protégées cas de Malambo Réserve Naturelle d'Itombwe RD.Congo.in *Annales des Sciences et des Sciences Appliquées*, 4(3/4), 129-167
- ECOSOC (2018). Etude sur la protection de l'environnement et les droits de l'homme des peuples autochtones\*\* Note du Secrétariat, E/2017/43, par.106. <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/01/N1806554.pdf>
- Nelson, J., & Hossack, L. (2003). Les peuples autochtones et les aires protégées en Afrique : Du principe à la pratique. FPP, Moreton-in-Marsh
- Pedrick, C. (2016). Le pouvoir des cartes : Quand la 3D s'invite à la table des négociations. Wagenigen. CTA Publishing.



- [http://www.iapad.org/wp-content/uploads/2016/11/1944\\_PDF.pdf](http://www.iapad.org/wp-content/uploads/2016/11/1944_PDF.pdf)
- Phillips, A. (2003). Turning ideas on their head: the new paradigm for protected areas. *In the George Wright Forum (Vol. 20, No. 2, pp. 8-32)*. George Wright Society.
- PNKB/CCN (2013). Plan d'Aménagement et de Gestion du PNKB 2009-2018 (version Révisée 2013).
- Rambaldi, G. (2010). Modélisation participative en 3D – Principes directeurs et applications, édition 2010.CTA, Wageningen, Pays-Bas.
- Ravera, F., Hubacek, K., Reed, M., & Tarrasón, D. (2011). Learning from experiences in adaptive action research: A critical comparison of two case studies applying participatory scenario development and modelling approaches. *Environmental Policy and Governance*, 21(6), 433-453.
- Safari, A. C., Birhashirwa, R. N., Fatuma, F. K., & Mokoso, E. J. D. D. M. (2015). Exploitation de bambous (*Sinarundinaria alpina* (K. Schum.) CS Chao & 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*, 72(2), 265-287. <https://doi.org/10.1080/00207233.2014.961270>
- Shalukoma, C. (2007). La participation des populations pygmées à la conservation dans le parc national de Kahuzi-Biega (république démocratique du Congo). In *Quelles aires protégées pour l'Afrique de l'Ouest ? Conservation de la biodiversité et développement* : Paris : IRD, 2007, Pp.436-443 (Colloques et Séminaires).
- Simpson, F. O. L., & Pellegrini, L. (2022). Conservation, extraction and social contracts at a violent frontier: Evidence from eastern DRC's Itombwe Nature Reserve. *Political Geography* 92, 102519.
- Simpson, F. O. L. (2021). When the hidden transcript stroms centre stage: From slow to sudden violence in eastern DR. Congo's Kahuzi-Biega National Park (No. 2021.03). Universiteit Antwerpen, Institute of Development Policy (IOB). <https://medialibrary.uantwerpen.be/files/8518/abc059ff-f0a3-491b-bd57-a4e171e895d9.pdf>
- Sinafasi, M. & Mukumba, I. (2005). An Assessment of the Implementation of International Commitments on Traditional Forest-Related Knowledge in the Democratic Republic of Congo. In *Our Knowledge for Our Survival Volume One: Regional Case Studies on Traditional Forest Related Knowledge and the implementation of related International Commitments*. IAITPT, CIFOR, Chiang Mai, Thailand, II, 109-144.
- Stevens, S. (2014). Advancing the new paradigm. Indigenous peoples, national parks, and protected areas: a new paradigm linking conservation, culture, and rights, 283.
- Triplet P., Kpidida B. K et Houenhouna D. H. M. (2020). Créer, gérer et évaluer une aire protégée, DAGAN Éditions & Éditions EPA.
- UICN & Forest Peoples Programme (2011). Plan directeur pour les évaluations Whakatane.
- Utshudi Ona, I. (2008). La gestion domaniale des terres rurales et des aires protégées au Sud Kivu : Aspects juridiques et pratiques d'acteurs. *L'Afrique des Grands Lacs. Annuaire 2007-2008*, 415-442.