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Editorial

Prof. NZABANDORA N. Mubanzi Joseph, the Dean of the Faculty of Social Sciences in ULK/Gisenyi campus presented the results on the research on the conflict rising from the interests of local community and the conservation of the Albert National Park. A conservation policy compromising the rights, interests and vital needs of local communities is the worst of the strategies of national parks protection. The experience of the Albert National Park is a percussive illustration during the period between 1925 and 1947. Actions aiming at conciliating both the conservation objectives and vital interests of local communities were put into effect between 1947 and 1960. During this period, the Albert National Park became one of the best national parks worldwide. These two strongly contrasted periods of the Albert National Park constitute an eloquent call and defense for a conservation policy which meets the rights and vital needs of local populations, thus contributing to their socio-economic development.

Dr. KAAYA Siraje, a senior lecturer and Vice Rector in Charge of Academic Affairs, ULK, Kigali Campus and Dr. MUSIIME Andrew, a senior lecturer ULK, researched on; " enhancing students performance through involvement and engagement; reflections on the case method of teaching at Makerere university business school." The major purpose was to examine the relationship between the case method of teaching and student performance in a university setting, and to establish the relationship between case method of teaching and engagement, involvement, of student as regards their performance in today's Business Schools. Universities should establish clear policies and train their staff in the case method of teaching to help gain the necessary pedagogical skills needed, to increase the case "reception" levels among the academic staff.

The Universities should facilitate case-focused research both among the staff and students in order to gain new insights and also undertake benchmarking study visits to Universities that are known to use the case method of teaching perfectly.

One of the principle challenges in economic integration is how to make community laws legally binding and enforceable within national legal systems. Within this joint research entitled "the process of domestication of African economic agreements", Mr. Titien Habumugisha, the Dean of the Faculty of Law and Jean de Dieu Zikamabahari, a lecturer in Law department, analyze issues hampering the domestication of African economic agreements. They also focus on its importance and the place of African economic treaties at the national level through domestication process.

The study conducted by Timothy Njoroge and Kimuli Ronald, both Lecturers at ULK/Gisenyi Campus, shades light on two key factors that have remained obscure in the History of Rwanda. These factors are: the country's and its surroundings' physical features as well as John Hanning Speke's book called ***"The Journal of the Discovery of the Source of River Nile (1886)."***

The regional prohibitive geographical features cannot, in any way, support the fact that the East African Bantu population crossed Lake Tanganyika, Rusizi Valley or Lake Kivu from the former Zaire because of poor technology that existed at that time.

Rwandan historians dwelt on a word of mouth from very few Europeans who had read John Hanning Speke's book but who had kept it secret for over a century, until Google scanned it recently for public consumption. It is this book that brought the Hamitic Myth and the confusion of the term Bantu as an ethnic group in Rwanda, contrary to its linguistic meaning elsewhere in East Africa.

We discovered, after all, that there is no specific ethnic tribe called Bantu. Instead, even the so called Hamites or Nilotes whom the book claims to have come from Ethiopia, were actually pastoralist Bantu speakers who roamed the interlacustrine from as early as the 5th century BC.
Read on!

Dr SEKIBIBI Ezéchiel
The Rector

LES LEÇONS DES CONFLITS ENTRE COMMUNAUTES LOCALES, ADMINISTRATION COLONIALE ET CONSERVATEURS AU SUJET DU PARC NATIONAL ALBERT, ACTUEL PARC DES VOLCANS VIRUNGA (1925-1947)

Prof. Dr NZABANDORA N.M. Joseph

SUMMARY

This work is mainly based on intensive use of local archives (those of the African Directorate of the former Institute of National Parks of Belgian Congo at Rumangabo, North Kivu) and the African hives of the Ministry of Foreign Affairs of the Kingdom of Belgium in Brussels pertaining to the relations between the Albert National Park and surrounding populations between 1925 and 1947.

It aims to rescue from oblivion the practical issues and lessons learned from the implementation of integrated conservation in an environment with multiple and diverse micro-tangs of the soil , densely populated and totally exploited by very diverse socio-economic groups (specialized livestock breeders, farmers, fishermen, hunters and gatherers, artisans and traders of mineral salt and hoes).

The experience of this first national park in Africa shows that a wilderness created and managed at the expense of vital needs and interests of neighboring populations is a pure utopia. It gives scientific backing to the policy which involves the sharing of tourism revenues between National Parks local people for their socio-economic Development.

RESUME

Ce travail est essentiellement basé sur l'exploitation intensive des archives locales (celles de la Direction africaine de l'ex-Institut des Parcs Nationaux du Congo Belge à Rumangabo, Nord-Kivu) et des Archives Africaines du Ministère des Affaires Etrangères du Royaume de Belgique à Bruxelles portant sur les relations entre le Parc National Albert et les populations environnantes entre 1925 et 1947. Il vise à sauver de l'oubli les problèmes et leçons pratiques à tirer de la mise en œuvre de la conservation intégrale dans un milieu aux micro-terroirs multiples et variés, densément peuplé et exploité au maximum par des formations socio-économiques très diversifiées (éleveurs spécialisés du gros bétail, agriculteurs, pêcheurs, chasseurs-cueilleurs, artisans et trafiquants du sel minéral et des houes).

L'expérience de ce premier parc national du continent africain montre qu'une réserve intégrale créée et gérée aux dépens des intérêts et besoins vitaux des populations avoisinantes est une pure utopie. Elle donne une caution scientifique à la politique consistant à partager les revenus touristiques entre les Parcs Nationaux et les populations locales pour leur développement socio-économique.

INTRODUCTION

Une politique de conservation néfaste aux droits, intérêts et besoins vitaux des communautés locales est la pire des stratégies de protection de la nature. C'est tout simplement la pire des utopies. L'expérience du Parc National Albert entre 1925 et 1947 en est une illustration percutante. En effet, pendant cette période le Parc National Albert, le tout premier parc du continent africain, n'existait que de nom suite aux assauts multiples et variés des communautés locales dont il était l'objet. La prise en considération des intérêts vitaux des communautés locales a débuté en 1948. Entre 1948 et 1960, le même parc était présenté comme l'un des meilleurs parcs nationaux du monde. Ces deux périodes vigoureusement contrastées du Parc National Albert constituent un brillant plaidoyer pour une politique de conservation respectueuse des droits et besoins vitaux des populations locales et contribuant en plus au développement socioéconomique de celles-ci. Les faits historiques soigneusement consignés dans les archives coloniales parlent d'eux-mêmes de façon éloquente.

Cette modeste contribution est de nature à attirer l'attention des conservationnistes africains sur l'impérieux intérêt de tenir compte des droits, intérêts et besoins vitaux des populations riveraines des aires protégées dans leurs stratégies de conservation de la nature. Elle exploite l'une des formes d'expérimentations en sciences sociales dénommée expérimentation *ex post facto*. Celle-ci étudie les conséquences d'une variable qui n'a pas été introduite par le chercheur en exploitant une situation offerte par l'histoire ou la nature (DEPELTEAU, F., 2007 : 266). Nous comparons en effet le comportement des populations avant et après la mise en œuvre des politiques de conservation de la nature tenant compte des besoins et intérêts vitaux des communautés locales,

en exploitant des archives héritées de la colonisation. La variable a été introduite par les colonisateurs qui ont en plus consigné par écrit au quotidien et conservé les faits y relatifs.

Ce travail est donc essentiellement basé sur l'exploitation intensive des archives locales (celles de la Direction africaine de l'ex-Institut des Parcs Nationaux du Congo Belge à Rumangabo, Nord-Kivu) et des Archives Africaines du Ministère des Affaires Etrangères du Royaume de Belgique à Bruxelles portant sur les relations entre le Parc National Albert et les populations environnantes. Les archives de l'Institut Congolais pour la Conservation de la Nature à la station de Rumangabo, ancien siège de la direction africaine de l'Institut des Parcs Nationaux du Congo Belge en même temps, ont été exploitées en 1995 et 1996, juste avant leur disparition complète suite à leur saccage et mise à feu lors des conflits armés dont le Nord Kivu est le théâtre depuis le début desannées 1990. Les Archives Africaines de Bruxelles relatives aux relations entre les parcs nationaux de l'ex-Congo Belge et les populations avoisinantes ont été ouvertes pour la toute première fois au public scientifique en 1998.

La consultation de toutes ces archives a été réalisée grâce aux consultances pour les projets de conservation de l'Union Européenne au Nord-Kivu et à l'occasion de nos études et recherches doctorales financées par le Programme APFT (Avenir des Peuples des Forêts Tropicales) de l'Union Européenne et le Royaume de Belgique entre 1995 et 2003. Nous les avons encore revisitées en 2006 lors de notre dernier séjour en Europe pour complément d'information. Nous avons aussi effectué une enquête auprès des 161 familles chassées du Parc entre 1929 et 1935. Nous présentons d'abord l'intérêt de l'article.

Nous décrivons ensuite l'ampleur des expropriations foncières, leurs coûts sociaux ainsi que et les réactions des communautés locales ayant eu pour conséquence la disparition de fait de la réserve naturelle intégrale.

INTERETS MAJEURS DE L'ARTICLE

Cet article présente tout au moins trois intérêts majeurs. Premièrement il sauve de l'oubli les problèmes et leçons aussi bien pratiques qu'utiles de la mise en œuvre de la conservation intégrale dans un milieu aux micro-terroirs multiples et variés, densément peuplé et exploité au maximum par des catégories sociales très diversifiées. En effet, la zone d'étude présente une très grande diversité des milieux écologiques et morpho climatiques. C'est la raison pour laquelle elle était intensément peuplée et exploitée par des catégories sociales fort variées. Il s'agit par exemple des chasseurs-cueilleurs pygmées, des éleveurs spécialisés de gros batail, des corporations des commerçants exploitant des zones d'activités tertiaires dominantes dans les grandes zones d'échanges économiques, des agriculteurs, des communautés de pêcheurs, des exploitants des salines des volcans Virunga et du Nord-est du lac Edouard aux pieds du Ruwenzori, etc.

Cette zone d'étude réunit en un territoire très réduit presque toutes les catégories sociales auxquelles les parcs nationaux font face dans le monde. Très rares sont les zones d'étude qui présentent un tel avantage.

Ce qui en fait un terrain de recherche vraiment privilégié à tous points de vue. Le deuxième intérêt est le pragmatisme belge en matière de conservation intégrale. Les responsables de l'Institut des Parcs Nationaux du Congo Belge se sont rendus compte au cours des années 1920, 1930 et 1940 qu'une réserve intégrale créée et gérée aux dépens des intérêts et besoins vitaux des populations avoisinantes est une pure utopie. C'est d'ailleurs l'hypothèse majeure que nous soutenons et entendons vérifier.

Les responsables de l'Institut des Parcs Nationaux du Congo Belge ont procédé aux expropriations sommaires de très grande ampleur en foulant aux pieds les textes légaux qui protégeaient les droits indigènes. Ces expropriations foncières ont pour conséquences

immédiates suivantes : incorporation dans la réserve intégrale des domaines de chasse des Pygmées, des zones spécialisées d'élevage bovin, des champs de cultures, des gisements de fer, des régions métallurgiques et d'exploitation des salines, des zones d'échanges interrégionaux, des pêcheries communautaires, des villages, des lieux sacrés et des ficus ancestraux servant de lieux de culte, etc.

Les réactions des catégories sociales ainsi lésées dans leurs intérêts vitaux furent à la mesure de l'ampleur des expropriations. Les responsables de l'Institut des Parcs Nationaux du Congo Belge furent vite complètement dépassés par les assauts multiples et variés des populations locales contre le Parc National Albert. Comme si cela ne suffisait pas et contrairement à ce qu'on serait porté à penser, ils subissaient la pression agissante de l'administration coloniale et des services judiciaires de la colonie tenant au respect des droits indigènes reconnus par les arrêtés et décrets royaux antérieurs.

Les dictionnaires Le Petit Larousse illustré en couleur (2001) et Nouveau Petit Le Robert (1996) définissent l'expropriation comme étant l'action de déposséder quelqu'un de sa propriété ou de ses biens immeubles (sol, maisons) dans un but d'utilité publique moyennant indemnité. Pour la période étudiée il n'y a pas eu d'indemnité. Il convient donc de parler plutôt d'expropriation sommaire, c'est-à-dire une expropriation effectuée sans autre forme de procès. Ce sens rejoint d'ailleurs l'une de trois définitions que Gérard CORNU (2005 : 386) donne au concept d'expropriation : L'expropriation est « *en un sens générique, toute opération tendant à priver contre son gré un propriétaire foncier de sa propriété, plus généralement à dépouiller le titulaire d'un droit réel immobilier de son droit* ».

Pour tenter de sortir de l'impasse totale, ils se sont alors mis à remuer ciel et terre, en mettant en pratique tout ce qui leur venait à l'esprit et procédant par essais et erreurs. Chemin faisant ils débouchèrent finalement, à la fin des années 1940, sur des stratégies originales conciliant efficacement les objectifs de conservation intégrale avec les impératifs démographiques, économiques, sociaux et culturels des populations locales. Le troisième intérêt de ce travail est qu'il montre concrètement les coûts sociaux, économiques et socioculturels de la conservation de la nature pour les populations locales.

Enfin cette expérience a particulièrement retenu notre attention à cause de l'intérêt sans cesse croissant porté sur les dimensions socio-économiques et culturelles des politiques de conservation depuis les années 1980 par l'Union mondiale pour la conservation de la Nature, la Banque mondiale et les organisations non gouvernementales internationales de conservation de la nature. Les conservateurs de la Région des Grands Lacs devraient tirer des leçons de l'expérience du Parc national Albert qui est non seulement la plus longue du contient africain en matière de conservation de la nature, mais aussi et surtout dont les parcs nationaux du Rwanda et de la République Démocratique du Congo constituent le prolongement. Bonnes ou mauvaises, elles nous semblent particulièrement utiles pour ces deux pays. Cette expérience constitue par exemple un témoignage percutant de la pertinence de la politique de partage des revenus touristiques entre l'Office Rwandais du Tourisme et des Parcs Nationaux (ORTPN) et les populations avoisinantes pour leur développement socio-économique. Cette politique est rigoureusement appliquée depuis 2005 dans le Parc National des Volcans qui a succédé au Parc National Albert en 1960.

Rappelons que lors de l'accession du Congo belge à l'indépendance en 1960, le Parc National Albert a été scindé en deux : une partie pour le Congo sous le nom du Parc National des Virunga et une autre pour le Rwanda sous l'appellation du Parc National des Volcans.

Le Parc National Albert a été créé dans la région des volcans Virunga en avril 1925 par le Roi des Belges Albert 1er. A la suppression des zones socio-économiques traditionnelles (3) pour constituer une réserve naturelle intégrale du Parc National Albert, au grand mépris des intérêts vitaux des populations locales, a succédé une prise d'assaut de cette réserve par ces dernières : guerres meurtrières contre les gardes et les conservateurs menées surtout par les Pygmées et les éleveurs, incendies phénoménales et incessantes de grandes étendues du parc, empoisonnement des animaux du parc, violations anarchiques et occupations forcées de la réserve intégrale par les agriculteurs, les éleveurs, les chasseurs-cueilleurs, les pêcheurs et les trafiquants. En 1947, soit 22 ans après sa constitution au prix des expropriations foncières inconséquentes et migrations forcées, la réserve intégrale n'existait que sur papier. Tirant les leçons qui s'imposaient de cette malheureuse expérience, des projets de conservation et de développement intégrés furent entrepris à partir de 1948 et durant les années 1950 la réserve intégrale n'a plus connu les assauts des populations environnants.

Il avait fallu des actions palpables en faveur des populations avoisinant le parc (NZABANDORA N.M, 2003 : 202-266). C'est ainsi que la promotion des plantations de bambous chez les paysans, la délimitation et l'exploitation règlementée des forêts communautaires grignotées sur la réserve intégrale, le peuplement de poissons des lacs et des étangs situés en dehors de la réserve dont les lacs Burera et Ruhondo au Rwanda ainsi que le Lac Kivu,

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[3] Il s'agit notamment des zones exclusives d'élevage permanent et de transhumance dans les contreforts des volcans Virunga (éteints et actifs), des zones à très forte dominance agricole, des pêcheries communautaires de la Rutshuru, de la Semliki et du Lac Edouard, des domaines de chasse et voies de passages contrôlés par les Pygmées, voies et enfin des zones commerciales dans les régions des volcans et du lac Edouard.

les pêcheries industrielles créées à l'intérieur de la réserve et gérées au mieux des intérêts de la population, la réalisation des adductions d'eau, etc. se sont substituées aux ressources vitales des communautés locales incorporées dans le parcs. Bien plus, des dispensaires, des écoles, des bourses d'études, des paysannats d'expérimentation et d'adaptation des plantes, des mesures de lutte antiérosives, des stratégies efficaces de protection des populations locales et de leurs biens (champs de culture et bétail) contre les animaux du parc ont davantage redoré le blason du Parc National Albert.

En outre les communautés locales étaient associées à la conception et à la mise en application de la politique des migrations indigènes pour dégorger les régions riveraines de la réserve intégrale. Les modalités d'émigration (détermination des quotas par colline et par clan ou lignage, les mesures incitatives comme le transport, l'obtention et la mise en valeur préalable des champs dans la zone d'immigration, l'exonération des impôts) étaient déterminées de commun accord avec les représentants coutumiers des collines, des lignages et des clans.

Enfin des voies de circulation furent ouvertes et règlementées dans la réserve intégrale. Même les couloirs de circulation du gros bétail avec les zones à pâturer dans la réserve lors de la traversée du parc furent cadastrés. Enfin les responsables de l'Institut des parcs Nationaux du Congo Belge ont procédé à partir de 1948 à rachat, à la rétrocession ou l'échange des collines incorporées dans la réserve intégrale. Toutes ces actions concrètes ont abouti à la liquidation des litiges entre le Parc National Albert et les communautés avoisinantes.

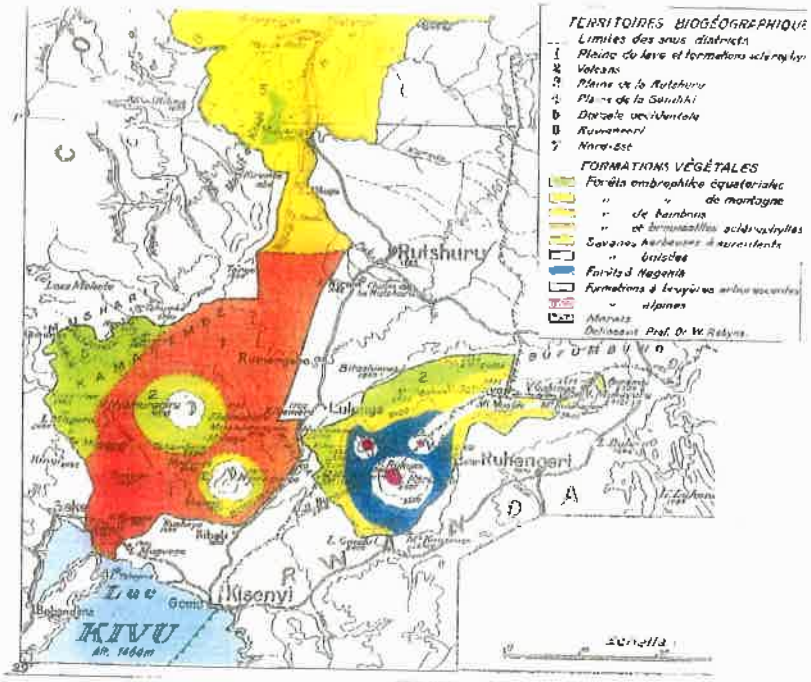
2. LES EXPROPRIATIONS FONCIERES POUR CONSTITUER LA RESERVE INTEGRALE ET LEURS COUTS ECONOMIQUES, SOCIAUX, SOCIO - POLITIQUES ET CULTURELS POUR LES COMMUNAUTES LOCALES

La création et les quatre extensions successives de la réserve naturelle intégrale au Nord-Kivu et au Nord-ouest du Rwanda entre 1925 et 1935 n'ont pas tenu compte des droits multiples et variés que les communautés locales y exerçaient depuis siècles. Les villages ont été déplacés et rejetés en dehors des limites de la réserve naturelle intégrale. Les zones traditionnelles de chasse et de cueillette, d'élevage bovin, de cultures vivrières, de pêche et de commerce ont aussi été supprimées par la même occasion. En conséquence, les populations locales furent contraintes soit de s'exiler en Ouganda voisin, soit de s'installer sur des terres des communautés voisines épargnées par des expropriations moyennant paiement de lourds tributs fonciers.

Les réactions des communautés locales ont été à la mesure de l'ampleur des expropriations foncières et des migrations forcées qui en ont découlé. Elles se sont traduites entre 1935 et 1947 par l'échec cinglant de la mise en œuvre des mesures de conservation, plongeant ainsi les responsables du Parc National Albert dans l'impasse totale.

Devant l'impossibilité d'appliquer les textes législatifs et réglementaires pour préserver la réserve naturelle intégrale, l'Institut des Parcs Nationaux du Congo Belge a dû recourir à des expédients. Mais ces derniers ont créé plus de problèmes qu'ils n'en ont résolus. Les impasses auxquelles ils ont permis cependant de baliser des voies prometteuses pour l'avenir.

CARTE N° 1 : LES SECTEURS SUD DU PARC NATIONAL ALBERT DANS LA REGION DES VOLCANS VIRUNGA AU KIVU ET NORD-OUEST DU RAWANDA



Le noyau initial du Parc National Albert fut créé en 1925 dans la région des volcans Virunga situés de part et d'autre de la frontière du Rwanda avec la République Démocratique du Congo comme on le voit sur la carte n° 1 ci-dessus. Les extensions successives vers le Nord ont été réalisées entre 1929 et 1950 aux dépens des intérêts vitaux des populations locales. Les expropriations de grande envergure ont été réalisées en deux grandes étapes à l'occasion des extensions du Parc National Albert.

Ce fut d'abord la suppression de fait entre 1929 et 1932 des « territoires-annexes » () de la réserve naturelle intégrale sur lequel les communautés locales continuaient d'exercer leurs droits en attendant la négociation de leur rachat et de leur compensation par d'autres terres conformément au décret royal du 9 juillet 1929. Alors que ce dernier avait fait passer la superficie de la réserve naturelle intégrale de 24.000 hectares à 200.000 hectares, le colonel honoraire Henri HACKARS, Commissaire de 1ère classe du District de Kibali Ituri, et le colonel R. HOIER, Conservateur du Parc National Albert, procédèrent à la délimitation et à l'abornement des 350.000 hectares, incluant ainsi dans le parc 150.000 hectares constituant les « territoires-annexes » créés par le décret du 9 juillet 1929 dans les chefferies du Bukumu et du Bwisha, au Sud-Est du Territoire de Rutshuru. Les villages, les champs de cultures, les pâturages d'élevage bovin, les domaines de chasse, de cueillette, de coupe de bois et de bambous ainsi qu'une partie des concessions de la paroisse de Rugari (alors Mission Rulenga) se retrouvèrent ainsi à l'intérieur des limites de la réserve naturelle intégrale. Ils furent par conséquent évacués de force entre 1933 et 1934.

La deuxième vague d'expropriations foncières sommaires a résulté de l'incorporation dans la réserve naturelle intégrale de vastes régions évacuées de force à la suite de l'épidémie de la maladie du sommeil. Comme nous le verrons plus loin, la lutte contre la maladie du sommeil n'était qu'un prétexte pour évacuer de force les communautés locales de leurs terres et pêcheries traditionnelles au profit du parc. Mais cette épidémie bel et bien eu lieu. Elle a éclaté en 1927 sur les rives du lac Edouard et dans la plaine de Semliki située au nord de ce dernier.

« Dans les territoires-annexes, l'interdiction de chasser, pêcher ou de procéder à des coupes de bois n'existe que sous réserve des droits acquis par des tiers ou des besoins normaux et coutumiers des indigènes établis dans la région ou d'une autorisation spéciale délivrée par l'Institut » (Institut des Parcs Nationaux du Congo Belge, **Premier Rapport quinquennal 1935-1939**, p. 39).

La partie de la vallée de la Semliki frappée par cette épidémie était délimitée au Nord par les rivières Kenya sur la rive gauche de la Semliki et Lume sur la rive droite, au Sud par la côte septentrionale du lac Edouard comprise entre les embouchures des rivières Tambwe et Lubiriha, à l'Ouest par la chaîne des monts Mitumba et, enfin, à l'Est par la rivière Lubiriha, à une distance de 5 km à l'est de la route Beni-Kasindi (BAITSURA MUSOWA W.W. L., 1982 ; PALUKU TSONGO, 1982 ; NZABANDORA N.M., 1984).

Les recensements médicaux effectués par la Mission de la Maladie du Sommeil de la Semliki et du Lac Edouard entre 1928 et 1930 témoignent de l'ampleur et de la gravité de cette épidémie : 5130 personnes infectées sur la côte Ouest du lac Edouard et 1725 autres dans la plaine de la Semliki (NZABANDORA N. M., 1984 : 50-53). En 1929 les autorités médicales du District du Nord-Kivu ont réparti les habitants de la côte Ouest du lac Edouard en deux groupes : d'un côté ceux qui étaient atteints de trypanosomiase et de l'autre ceux qui ne l'étaient pas encore. Les premiers furent regroupés dans quelques pêcheries traditionnelles, telles que Hangi, Sikumoya, Kamande, Lunyasenge, Kisaka, etc., où ils devaient recevoir des soins médicaux. Les voies d'accès à ces pêcheries étaient rigoureusement réglementées pour éviter la propagation de l'épidémie.

Quant aux personnes saines, elles furent évacuées contre leur gré et contraintes de s'installer ailleurs (NZABANDORA N. M., 1984 : 51-53). Le lieutenant colonel honoraire Henri HACKARS, alors Commissaire de District de l'Ituri, a réalisé cette évacuation avec beaucoup de zèle et de fermeté qui lui valurent par la suite l'engagement par l'Institut des Parcs Nationaux du Congo Belge en qualité de conservateur adjoint.

En application de la décision n° 11/1932 des autorités médicales du District du Nord-Kivu du 8 juin 1932, 290.765 hectares furent évacués par les agriculteurs et pêcheurs nande ainsi que par les éleveurs hema dans la plaine de la Semliki. En 1933, les familles qui avaient été regroupées dans les villages des pêcheurs sur la côte Ouest du lac Edouard en 1929 furent, elles aussi, chassées et obligées d'aller s'installer ailleurs (NZABANDORA N. M., 1984 : 53). L'ordonnance n° 25/AGRI du 18 février 1934 du Gouverneur Général du Congo Belge interdit ensuite la pêche dans la région du lac Edouard. De février à juin 1934 l'administrateur du Territoire de Lubero, Henri BRACARD, et le lieutenant colonel honoraire Henri HACKARS procédèrent à la délimitation d'environ 50.000 hectares sur la côte Ouest du lac Edouard en vue de l'extension du Parc National Albert.

L'extension de la réserve naturelle intégrale était présentée comme une très grande contribution à la lutte contre l'épidémie de la maladie du sommeil. Pourtant les enquêtes effectuées au cours de la même année par les médecins provinciaux, notamment le Dr MATHIEU et le Dr HOEBEKE, concluaient au retour des populations déplacées à leurs anciens villages et pêcheries, quitte à être soumises à des examens médicaux périodiques parce que cette épidémie avait pratiquement été endiguée.

Les habitants de la côte Ouest du lac Edouard et de la plaine de la Semliki s'étaient d'ailleurs toujours bien accommodés des épidémies de la maladie du sommeil depuis des temps immémoriaux. Celle du début des années 1890, par exemple, n'avait pas empêché de fortes densités de population et la prospérité économique de ces régions que nous y avons notées au début du XX ème siècle. L'administrateur du Territoire de Rutshuru, A. WILLEMART, n'avait pas tort lorsqu'il affirmait en 1938 que « la maladie du sommeil n'était qu'un alibi pour déposséder les autochtones

de leurs terres au profit du Parc National Albert »(5). Le même alibi fut d'ailleurs utilisé entre 1933 et 1934 par la Commission de la Protection de Faune et de la Flore du Katanga, au Sud-Est de la République Démocratique du Congo, lors de la création de la réserve intégrale zoologique de l'Upemba. Celle-ci fut par la suite érigée en parc national de même nom le 10 mai 1939 par un décret royal (MAKABUZA, 1973 : 28). La maladie du sommeil fut par ailleurs l'un des arguments avancés en 1936 par le Gouverneur du Kivu et le Gouverneur Général du Congo Belge pour demander au gouvernement britannique de prolonger la réserve naturelle intégrale du Parc National Albert en Ouganda et, par conséquent, d'interdire des pêcheries sur les rives et les eaux ougandaises du lac Edouard (6).

D'après les enquêtes effectuées en 1939 par VAN DEN DRIES, alors administrateur du Territoire de Lubero, 8.843 personnes formant 1.900 familles d'agriculteurs et 365 familles de pêcheurs furent chassées de la côte Ouest du lac Edouard. Aucune mesure d'accompagnement de ces déplacements massifs forcés ne fut arrêtée. Abandonnés à leur triste sort, les habitants chassés de leurs terres n'avaient devant eux que trois possibilités :

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[5] Lettre du 18 mai 1938 de l'administrateur du Territoire de Rutshuru, A. WILLEMART, adressée au Conservateur en Chef du Parc National Albert à Rumangabo. Archives de la station administrative et technique des Secteurs Sud du Parc National des Virunga à Rumangabo.

Lettre n° 845/736/Agri/Pêche du Commissaire Provincial et Chef de la Province de Costermansville, J. NOIROT, adressée au Gouverneur Général du Congo Belge à Léopoldville le 6 août 1936. Dossier F.5. 02 /PNA, Archives de la station administrative et technique des secteurs Sud du Parc National des Virunga à Rumangabo.

[6]Lettre n° 845/736/Agri/Pêche du Commissaire Provincial et Chef de la Province de Costermansville, J. NOIROT, adressée au Gouverneur Général du Congo Belge à Léopoldville le 6 août 1936. Dossier F.5. 02 /PNA, Archives de la station administrative et technique des secteurs Sud du Parc National des Virunga à Rumangabo.

soit négocier leur installation sur des terres des unités sociales traditionnelles (clans et lignages) épargnées par l'extension du parc moyennant des tributs fonciers, soit se faire engager comme travailleurs dans les plantations agricoles et les sociétés minières, soit enfin franchir la frontière et s'exiler en Ouganda. Le rapport du même administrateur territorial rédigé en 1935 mentionne 2000 familles qui ont quitté la côte Ouest du lac Edouard pour s'établir en Ouganda à la suite de l'extension du Parc National Albert entre 1929 et 1934 (7). Les familles expulsées de leurs terres ancestrales ou ayant perdu leur gagne-pain, à la suite de la suppression des zones socio-économiques et des voies commerciales qui les animaient, préféraient émigrer vers l'Ouganda où elles pouvaient continuer à vaquer à leurs activités traditionnelles comme la pêche, le commerce, la forge et même la chasse. Celles qui s'amassaient aux limites du parc étaient fauchées par la faim, la misère et les maladies de carence nutritionnelle très sévère comme nous le verrons plus loin.

Les enquêtes effectuées sur le terrain auprès des 161 familles déplacées des autres secteurs de la réserve naturelle intégrale entre 1929 et 1935. Elles sont réparties comme suit : 34 pour les secteurs Sud (volcans Mikeno, Karisimbi, Nyamuragira) au Sud-Est du Territoire de Rutshuru, 42 pour les secteurs Centre, plus précisément sur la côte Est du lac Edouard au Nord-Est du même territoire, 36 pour le Ruwenzori et, enfin, 49 pour la haute et la moyenne Semliki dans les secteurs Nord situés dans le Territoire de Beni. Les résultats auxquels nous sommes arrivé témoignent, encore une fois de plus, de l'ampleur des expropriations foncières et des migrations massives forcées de grandes familles : 256 familles dont 103 de grands éleveurs tutsi parties du Sud-Est du Territoire de Rutshuru pour les régions de Mushari-Bwito et de Masisi.

'Dossier n° 49.02/PNA « Droits indigènes dans le Parc National Albert », Archives du Territoire de Lubero, à Lubero et de la station administrative et technique des Secteurs Sud du Parc National des Virunga à Rumangabo.

457 familles de pêcheurs et commerçants déplacées de la côte Est du lac Edouard dont 316 se sont établies à la frontière de la République Démocratique avec l'Ouganda, 325 familles expulsées de la moyenne Semliki dont 108 se sont exilées en Ouganda,457 familles de pêcheurs et commerçants déplacées de la côte Est du lac Edouard dont 316 se sont établies à la frontière de la République Démocratique avec l'Ouganda, 325 familles expulsées de la moyenne Semliki dont 108 se sont exilées en Ouganda, enfin 689 familles chassées du secteurs du Ruwenzori et de la haute Semliki dont 271 partirent pour l'Ouganda.

Bien que déjà alarmants, ces chiffres ne traduisent pas toute la réalité. Ils ne donnent qu'un ordre de grandeur. Ces enquêtes ont en outre révélé que 72 % de la réserve naturelle intégrale du Parc National des Virunga, et non 50 % avancés par J. VERSCHUREN (1993 : 94), étaient occupées et exploitées par les communautés locales.
Les familles déplacées étaient corvéables et taillables à merci par les unités sociales traditionnelles qui les accueillaient sur leurs terres. L. CAPRASSE, Commissaire du District du Nord-Kivu en donne un exemple parmi tant d'autres :

« Dans le cadre de la lutte contre la maladie du sommeil, écrivait-il en 1959, *un clan des Baswaga a dû quitter ses terres coutumières pour s'installer sur des terres appartenant aux Batangi. Lors de l'extension du Parc National Albert, ces Baswaga n'ont reçu aucune indemnité pour la domanialisation de leurs terres qu'ils n'occupaient pas. 7.800 ha de terres Batangi sont occupées par environs 8.000 Baswaga (...) qui payent le tribut foncier aux Batangi » (8).*

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[8] CAPRASSE, L., Procès-verbal de la réunion tenue au District du Nord-Kivu le 27 octobre 1959, p. 4. Dossier F.5.08/PNA. Archives de la station administrative et technique des secteurs Sud du Parc National des Virunga à Rumangabo.

Les expropriations sommaires au profit du Parc National Albert ont donc provoqué des conflits intercommunautaires. Dans la chefferie du Bwisha (Territoire de Rutshuru), les responsables du parc ont opposé les agriculteurs Hutu aux éleveurs Tutsi. Recourant aux fameuses théories échafaudées au Rwanda, sans preuves historiques, ils affirmaient que les droits fonciers des éleveurs Tutsi étaient précaires et qu'ils devaient être déplacés sans problèmes pour dégorger les régions riveraines de la réserve intégrale. Ces théories ont été démenties par le Congrès mondial des Anthropologues tenu à Nairobi en 1948. Mais l'administration coloniale et les responsables de l'Institut des Parcs Nationaux du Congo ont continué à utiliser ces théories pour exproprier les éleveurs. Pour s'accaparer des terres des communautés locales, les responsables du Parc National Albert faisaient du feu de tout bois.

Certains magistrats corrompus, ou tout simplement juges et parties, ont invoqué la suppression des zones socioéconomiques et les mouvements migratoires forcés découlant des extensions du Parc National des Virunga pour justifier de nouvelles expropriations foncières au profit de celui-ci. Cet argument fut par exemple soutenu par le Substitut du Procureur Général, Léon DEWAERSEGGER, dont la mission était pourtant de défendre les intérêts vitaux des populations riveraines du parc lors des enquêtes de vacance et de cession des droits indigènes entre 1947 et 1948. Il écrit notamment ce qui suit au sujet de la cession des terres indigènes dans la région des volcans Virunga :*« ...il est mis à la disposition des indigènes des régions voisines des terres cédées, des terres fertiles des altitudes égales et d'une valeur équivalente à celles qu'ils occupent dans la région de Bwito et de Mushari, régions faisant partie de la circonscription du Bwisha où se trouve le bloc VII. Et déjà à présent, on constate une émigration des indigènes des régions avoisinant les terres du bloc VII vers d'autres régions du Territoire de Rutshuru ou du Territoire voisin de Masisi.*

Cette migration (...) prouve que si la population des régions visées ci-dessus devait s'accroître dans des proportions telles que le manque de terres se fasse sentir, les indigènes peuvent disposer des terres équivalentes en quantité et en qualité suffisantes et situées dans la même circonscription ou dans le territoire voisin » ([9]).

Cet argument a été puisé dans les dispositions stipulées à l'article 4 du décret royal du 26 novembre 1934 créant l'Institut des Parcs Nationaux du Congo Belge. Il constitue une preuve percutant de l'ignorance de l'organisation socio-foncière des communautés claniques du Nord-Kivu. Les familles et les unités sociales traditionnelles déplacées de force de leurs terres ancestrales tombaient inexorablement de leur piédestal. Elles perdaient automatiquement, outre leur indépendance économique, socio-foncière notamment, leurs rôles et statuts aussi bien politiques, sociaux que religieux et rituels dans le concert des autres unités sociales traditionnelles.

Bien plus des familles entières, des unités sociales traditionnelles, des formations socioéconomiques et des entités politiques furent complètement désintégrées. C'est notamment le cas du groupe socioéconomique des Bakingwe [10],

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[9] Rapport synthétique de la Commission d'enquête de 1947 sur les droits indigènes dans le Parc National Albert, Rutshuru, le 3 avril 1948. Dossier annexe à la lettre du 5 septembre 1958 de M. V. VAN STRAELEN, Président du Comité de l'Institut des Parcs Nationaux du Congo Belge, au Conservateur en Chef M. MICHA du Parc National Albert à Rumangabo. Dossier n° 127 / Lim/PNA. « Litiges relatifs aux limites du Parc National Albert ». Archives de la station administrative et technique des secteurs Sud du Parc National des Virunga à Rumangabo.

[10] Les Bakingwe formaient une corporation des commerçants et exploitants des salines. Ils contrôlaient presque toutes les activités économiques de la région du lac Edouard qui constituait au XIXème siècle une zone à activités tertiaires dominantes d'après les récits des explorateurs tels que Emin Pacha et Henry Morton Stanley qui ont séjourné sur les côtes de ce lac dans les 1880 et 1890. La corporation des Bakingwe était multiethnique avait la prépondérance des Nande et Banyarwanda qui en assuraient la direction. On y trouvait aussi des Hunde et des Banyankore.

sur lequel tenait la prospérité économique de la région du lac Edouard et du Sud-Ouest de l'Ouganda, qui a disparu depuis lors et pour toujours. **C'est aussi la situation des** éleveurs hema de la plaine de la Semliki et des éleveurs tutsi dits Abagogwe dont les pâturages occupaient des niches écologiques sur les hauts versants des volcans Virunga, jusqu'à l'altitude de 3.700 m d'après les renseignements fournis par J-M. DERSCHEID en 1928, de part et d'autre de la frontière de la République Démocratique du Congo avec le Rwanda et l'Ouganda. Le Parc National a en outre sonné le glas des Pygmées mbuti du Territoire de Beni et des Pygmées Bayanda (Twa) de la région des volcans Virunga du Congo-Kinshasa, de l'Ouganda et du Rwanda, alors que l'un des objectifs de la création de ce parc était de les préserver de l'extinction ! Les chefs coutumiers des chefferies amputées ou supprimées furent rabattus au rang des demandeurs de terres et d'asile méprisés de tous. Le chef KATANA de l'ancienne chefferie de Bwito Nord sur la côte méridionale du lac Edouard et le chef BASANA de la chefferie de Bukumu sur les rives septentrionales du lac Kivu en sont des exemples.

La création et l'extension du Parc National des Virunga ont par ailleurs profondément compromis la vie religieuse et spirituelle. Les communautés claniques furent déplacées et les tombes de leurs ancêtres-fondateurs occupées par le parc et, donc, interdites à tout accès. Elles furent ainsi coupées de leurs socles identitaires et sécuritaires, de ce qu'elles appellent leur « cordon ombilical, source de vie et d'espoir » (Résultats de nos enquêtes effectuées sur le terrain).

Il en a découlé une profonde désorientation morale, religieuse et spirituelle. Tous les maux et problèmes graves liés à la vie d'errance, de pauvreté, de famine, de maladie, à la désadaptation due aux nouvelles conditions de vie et aux échecs de tentatives de conversion aux nouvelles activités économiques, les épidémies, les épizooties (peste) et l'invasion des criquets pèlerins des années 1930,

étaient attribués au fait d'être coupé des ancêtres-fondateurs d'unités sociales traditionnelles. Ainsi 38 tombes d'ancêtres - fondateurs des lignages et segments de lignage sont revendiquées dans les secteurs Sud (volcans Virunga), 27 sur la côte Ouest du lac Edouard et 43 dans les secteurs Nord. Les communautés locales déplacées croient profondément que la guerre d'usure contre le parc pour délivrer ces tombes, contribue, faute de mieux, à les rétablir dans les bonnes grâces des ancêtres. C'est donc un devoir sacré. Les revendications des communautés locales portaient aussi sur les gisements de minerai de fer et des salines incorporés dans la réserve intégrale[11]. Les problèmes évoqués ci-dessus expliquent les reflux des familles déplacées qui viennent, de façon intempestive, revendiquer violemment leurs droits et, au besoin, saboter la réserve naturelle intégrale considérée comme la source de toutes leurs misères.

L'OPPOSITION D'UNE FIN DE NON RECEVOIR AUX REVENDICATIONS DES COMMUNAUTES AVOISINANT LA RESERVE NATURELLE INTEGRALE

L'intransigeance des responsables du Parc National Albert face aux revendications des droits indigènes a été l'occasion de la prise d'assaut de la réserve naturelle intégrale par les populations locales. Celles-ci n'ont systématiquement envahi, occupé, exploité et saboté de diverses manières la réserve naturelle intégrale qu'après l'échec de leurs revendications pacifiques. Pourtant celles-ci étaient canalisées et appuyées par tous les échelons de l'administration locale et régulièrement transmises au Ministre des colonies. L'extrait ci-dessous de la lettre du Gouverneur Général du Congo Belge adressée au Ministre des Colonies le 7 décembre 1936 l'exprime à l'envi :

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[11] Lettre n° 35.138 Rum. Pol. Ind ; du 26 juin 1945 du Président du Comité de l'Institut des Parcs Nationaux du Congo Belge. Fonds AGRI (39). Archives Africaines du Ministère des Affaires Etrangères du Royaume de Belgique à Bruxelles.

« ... Je tiens toutefois à vous signaler la situation malheureuse des indigènes du lac Edouard, situation dont m'a entretenu, lors de mon passage, le Chef Ndeze. Les indigènes de Vitshumbi se sont vus interdire le droit de pêche qu'ils exerçaient depuis toujours. Les uns se sont résignés et souffrent de ne plus avoir leur alimentation coutumière. « Leurs corps », me disait le Chef Ndeze en me demandant miséricorde, « se sont déjà modifiés ». Les autres sont tout simplement passés de l'autre côté de la frontière et pêchent en territoire de l'Uganda, où les autorités, loin de les décourager, les attirent. Le poisson nous est revendu comme une importation étrangère ».

Le Gouverneur Général P. RYCKMANS conclut sa lettre en insistant sur la nécessité absolue de la réouverture de la pêche indigène sur le lac Edouard. Auparavant, dans une autre lettre adressée au Ministre des Colonies le 28 mai 1935, il avait plaidé pour la rétrocession d'environs 200.000 hectares des secteurs Nord du Parc National Albert dans le Territoire de Beni en faveur des communautés claniques nande et mbuba confrontées déjà au cruel problème de manque de terres et pour permettre aux Hema qui avaient trouvé refuge en Ouganda de récupérer leurs pâturages dans la plaine de la Semliki.

Les responsables de l'Institut des Parcs Nationaux du Congo Belge invoquaient invariablement les rapports du Dr A. RODHAIN, Directeur de l'Institut de Médecine Tropicale Prince Léopold, et les décisions des autorités médicales du District du Nord-Kivu ainsi que les décrets et arrêtés royaux pour opposer une fin de non recevoir aux revendications des communautés avoisinant la réserve naturelle intégrale. Ils firent donc de l'épidémie de la maladie du sommeil leur cheval de bataille. La multiplication et la radicalisation des revendications indigènes eurent par conséquent pour effet la multiplication et le renforcement des mesures déclarant infectées de maladie du sommeil les régions litigieuses.

Un témoignage nous est fourni par le rapport annuel de l'Institut des Parcs Nationaux du Congo Belge de 1935 :
« *Le Comité se basant en cela sur l'avis autorisé de Monsieur le Docteur RODHAIN et des médecins ayant dirigé les Missions de la Maladie du Sommeil à la Semliki et au lac Edouard, a estimé qu'une année d'évacuation ne suffisait pas pour éteindre les foyers de Trypanosomiase qui avaient à peu près anéanti les populations de la région* » (12).

Le Dr A. RODHAIN était juge et partie car il était membre de la Commission administrative de l'Institut des Parcs Nationaux du Congo Belge. Alors que les régions du lac Edouard et de la plaine avaient été évacuées en 1934, le Ministre des Colonies décide en date du 9 juillet 1937 que « *conformément aux conclusions du service médical, tous les droits de pêche seront retirés aux populations qui seront refoulées dans les contreforts surplombant le lac Edouard, au-delà de 1500m d'altitude* ».

Le mois suivant la décision n° 13/Hyg. du 22 janvier 1937 du Commissaire du District du Nord-Kivu, F. ABSIL, déclare infectées de maladie du sommeil les régions du lac Edouard et de la Semliki et ordonne leur évacuation complète. L'objectif de ces mesures était de décourager les revendications des communautés locales ainsi que les tentatives de réoccupation de la réserve naturelle intégrale. Avant cette date, les responsables de l'Institut des Parcs Nationaux du Congo Belge refusaient de racheter les droits indigènes sous prétexte que la réserve naturelle intégrale occupait des régions que l'épidémie de la maladie du sommeil avait vidé de sa population.

Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice de 1935, p. 19, Dossier 13, Portefeuille AGP(30), Archives Africaines du Ministère des Affaires Etrangères du Royaume de Belgique à Bruxelles.

Cet argument est repris dans presque toutes les publications consacrées au Parc National des Virunga. Nous voyons là le refus de ne pas reconnaître les coûts sociaux et le poids écrasant des mesures de conservation sur les communautés claniques du Nord-Kivu. Mais celles-ci n'ont pas croisé les bras face à cette intransigeance des responsables du parc.

4. LES ASSAUTS DES COMMUNAUTES LOCALES CONTRE LA RESERVE INTEGRALE

Le refus des responsables du Parc National Albert a finalement eu un effet boomerang qui les a plongés dans une impasse totale et gravement compromis la réserve naturelle intégrale pendant plus de dix ans. A partir de 1935 les assauts des communautés locales contre la réserve naturelle intégrale furent multiples et variés. Ils allaient du braconnage de subsistance au rétablissement des villages, des pêcheries, des champs et des pâturages dans la réserve naturelle intégrale, en passant par le refus de fournir des ouvriers, la mise à tabac des gardes, les révoltes sanglantes et les incendies volontaires phénoménaux ravageant irrémédiablement la réserve intégrale.

4.1 LE SABOTAGE DE LA RESERVE INTEGRALE

Selon les rapports annuels de la station de Rumangabo déjà cités, 94 indigènes et un Européen riverains des secteurs Sud du Parc National Albert furent condamnés en 1938 pour contravention au règlement de l'Institut des Parcs Nationaux du Congo Belge. En 1939 la police du parc réprimait encore 82 infractions, dont 31 faits de pêche, 5 faits de chasse et 46 délits de circulation des vaches et des personnes. Les infractions les plus courantes dans les secteurs Sud du Parc National des Virunga étaient la circulation illicite, le braconnage de subsistance, la coupe de bois et de bambous et surtout la dévastation de la réserve intégrale par le gros bétail.

La recrudescence du braconnage caractéristique des secteurs Sud depuis 1935 a gagné les secteurs Nord à partir de 1937 et s'y est accentuée pendant les années 1940.

Le braconnage et la circulation illicite n'étaient pas seulement le fait des populations habitant à l'intérieur ou à la lisière du parc. Ces infractions étaient surtout commises à partir de l'Ouganda par les familles déplacées de force lors des extensions successives de ce dernier. Les témoignages recueillis dans les rapports annuels de l'Institut des Parcs Nationaux du Congo Belge et couvrant la période allant de 1945 à 1954 montrent que c'est cette catégorie de personnes qui fut le véritable casse-tête pour les responsables locaux du Parc National Albert. Les vagues des braconniers qui déferlaient sur la réserve naturelle intégrale à partir de l'Ouganda furent souvent des prétextes pour opérer de nouveaux expropriations et déplacements des villages des communautés frontalières.

C'est fut, par exemple, le cas en 1951 des villages qui étaient situés à l'embouchure de la rivière d'Ishasha, sur la côte Est du lac Edouard faisant partie des secteurs Centre. En dépit de cette mesure, « la zone de la rivière d'Ishasha et la région voisine de Nyamite » sont demeurées « deux centres névralgiques » des secteurs Centre (13). Les braconniers opérant à partir de l'Ouganda se permettaient de traverser les eaux du lac Edouard occupées par le parc d'Est en Ouest pour exercer leurs activités dans leurs anciennes pêcheries localisées sur la côte Ouest, toujours dans les secteurs Centre.

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[13] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1954, p. 24.

A l'instar des secteurs Sud et Centre, les secteurs Nord ont payé un très lourd tribut aux incursions, à partir de l'Ouganda, des familles déplacées antérieurement. Nous avons retenu trois extraits des rapports annuels de l'Institut des Parcs Nationaux du Congo Belge pour illustrer ce phénomène :

« De nombreuses infractions, dont les auteurs sont fréquemment des braconniers ugandais, sont toujours constatées dans les secteurs dépendant de la station de Mutsora », lit-on dans le rapport de 1947([14]).
« De nombreuses infractions en matière de chasse, de pêche et de coupe de végétaux caractérisent toujours les secteurs septentrionaux du Parc National Albert et notamment dans le secteur de Kasindi. Les délinquants sont en majeure partie des braconniers ugandais », précise-t-on dans le rapport de l'année suivante ([15]).

Au cours des travaux de matérialisation de la frontière du Congo Belge effectués en 1950, il a par ailleurs été constaté que les populations ougandaises débordaient en territoire congolais pour se livrer à des cultures dans les secteurs Nord du Parc National Albert ([16]).

Le braconnage n'était pas seulement le fait des populations autochtones. Le rapport annuel de l'Institut des Parcs Nationaux du Congo Belge a relevé en 1946

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[14] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1947, p. 16.
[15] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1948, p. 17.
[16] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1950, p. 15.

« *plusieurs infractions en matière de chasse et de circulation à charge des Européens résidant dans le voisinage des secteurs Sud du Parc National Albert* (la région des volcans)» ([17]). Celui de 1953 est plus explicite encore quant aux ravages perpétrés dans les secteurs Nord par les colons européens :

« *On ne peut cependant négliger la présence des colons dans la région de Hululu. Il y a lieu d'appréhender que, sous prétexte de protection des plantations, des éléphants n'y soient abattus. Les éléphants et les buffles, qui étaient jadis toujours nombreux aux abords de la route allant vers Kasindi, sont de plus en plus rarement aperçus* » ([18]).

Les gardes du Parc National Albert étaient impuissants non seulement devant les braconniers européens mais aussi face aux populations locales. Par peur des représailles de celles-ci, mais aussi par solidarité avec les membres de leurs unités sociales traditionnelles (clans, lignages, familles étendues), ils se rendaient fréquemment coupables de complicité avec les braconniers. Des opérations de patrouilles effectuées en 1952 par le Conservateur adjoint des Secteurs Centre avaient abouti à l'arrestation d'une grande bande de braconniers qui se livraient à la pêche illicite sur la côte Ouest du lac Edouard avec la complicité des gardes ([19]). Les concussions entre les gardes et les braconniers étaient aussi fréquemment déplorées dans la région des volcans (secteurs Sud du Parc National Albert). C'est la raison pour laquelle un grand nombre de gardes de ces secteurs furent licenciés en 1935 et remplacés par des gardes auxiliaires pygmées aussi bien au Rwanda qu'au Congo ([20]).

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[17] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1946, p. 17.
[18] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1953, p. 23.
[19] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1952, p. 16.
[20] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1935, p. 21.

Les chefs locaux opposaient des entraves multiples et variées au recrutement des gardes et des travailleurs par les responsables du Parc National Albert. Les travailleurs permanents posaient, de leur côté, des exigences continuelles au point de vue salaire sans toutefois admettre un contrôle sur leur rendement ([21]). Quant aux gardes consciencieux, ils étaient régulièrement menacés et même agressés par les communautés avoisinant ou violant la réserve naturelle intégrale. Il n'était pas facile de recruter parmi les communautés de pêcheurs, d'agriculteurs et d'éleveurs. Il faillait donc recourir aux Pygmées Bayanda mais sans succès comme nous allons le voir ci-dessous.

AGRESSION DES GARDES, REVOLTES SANGLANTES ET INCENDIES SPECTACULAIRES DANS LE PARC

Les groupes sociaux qui agressaient le plus les gardes durant la période allant de 1938 à 1954 sont les Pygmées Bayanda et les Tutsi riverains de la région des volcans (des secteurs Sud du Parc National Albert) aussi bien du côté congolais que du côté rwandais et ougandais, les pêcheurs nande ainsi que les commerçants Bakingwe chassés des secteurs Centre et Nord. Quant aux éleveurs hema qui avaient été évacués de la plaine de la Semliki en 1932, ils se sont surtout singulièrement distingués par des incendies phénoménaux qu'ils allumaient dans la réserve naturelle intégrale en guise de protestation.

Les rébellions des Pygmées yanda contre le Parc National Albert peuvent surprendre à première vue du fait que l'un des objectifs initiaux de celui-ci était de les préserver de l'extinction. En effet, ils étaient considérés comme faisant partie intégrante des ressources naturelles du parc) et on recourait fréquemment à eux pour remplacer les gardes Hutu et Tutsi défaillants ou manifestement mal intentionnés.

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[21] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1951, p. 16.

Le commerce des peaux de damans procurait d'énormes revenus aux Pygmées yanda et aux autres communautés riveraines de la région des volcans (secteurs Sud du Parc National Albert). Les Pygmées yanda troquaient ces peaux aux agriculteurs hunde et hutu qui, à leur tour, les vendaient aux Européens. Les prix très alléchants offerts par ces derniers incitaient irrésistiblement à la violation de la réserve naturelle intégrale ([23]). D'après des témoignages indépendants et concordants récoltés sur le terrain, les habitations des colons agricoles du Sud-Est du Territoire de Rutshuru avaient été littéralement transformées en véritables ateliers d'assemblage des peaux des damans sous forme de manteaux, de couvertures et de couvre-lits. C'est sous cette forme qu'elles étaient exportées pour échapper à la vigilance des responsables du Parc National Albert et de l'administration coloniale (Communication verbale des anciens domestiques des colons européens interrogés à Goma, Munigi et Bukavu en septembre 1996).

La limitation des activités et du mouvement des Pygmées yanda a provoqué deux grandes révoltes dans les secteurs Sud (chaîne des volcans Virunga). Celle de 1940 est rapportée comme suit :

« *Un cas de chasse abusive exercée par les indigènes de Kameronze a donné naissance à une rébellion d'un clan des Batwa, rébellion qui ne put être réprimée que grâce à l'intervention personnelle de l'administrateur du Territoire de Masisi* » ([24]).Cette révolte est restée gravée dans la mémoire des populations locales. Celles-ci la comparent aux guerres atroces que les Pygmées yanda de la région des volcans Virunga leur ont livrées à la fin du XIX ème siècle et au début du XX ème siècle. Pendant plusieurs mois les gardes ne pouvaient pas effectuer des patrouilles dans l'un des secteurs Sud dénommé Nyamulagira.

[23] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1945, p. 23.
[24] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1940, p. 25.

Une autre révolte de grande ampleur des Pygmées yanda a éclaté en 1951 dans le secteur Mikeno situé à l'Est du secteur Nyamulagira. Le rapport de l'Institut des Parcs Nationaux du Congo Belge lui a consacré le commentaire suivant :

« Dans la zone de Jomba les Pygmées s'introduisent fréquemment dans le Parc pour y couper du bois de chauffe. Jusqu'à présent les gardes n'ont pu réprimer ces infractions pour le bon motif que les Pygmées n'hésitent pas à les attaquer au moyen de leurs lances » ([25]).

Les autres agresseurs des gardes de la réserve naturelle intégrale aussi redoutés que les Pygmées yanda étaient les éleveurs Tutsi avoisinant la région des volcans (secteurs Sud). Ils s'insurgeaient contre les gardes en patrouilles et blessaient mortellement quelques uns parmi eux, comme ce fut, par exemple, le cas en 1954 ([26]).

La situation des gardes des secteurs Nord du Parc National Albert n'était guère meilleure que celle de ceux des secteurs Sud. Les agressions dont ils étaient victimes furent mainte fois décrites dans les rapports annuels de l'Institut des Parcs Nationaux du Congo Belge. Pour aller vite nous nous limitons à deux cas. Le premier est décrit dans le rapport de l'année 1945 comme suit :

« Quelques incursions des braconniers venant de l'Uganda ont été constatées. A deux reprises ces délinquants, qui s'introduisent en bandes dans la réserve, se sont livrés à des voies de fait sur les gardes. Le Conservateur est intervenu auprès du District Commissioner ugandais qui a pris des mesures de répression nécessaires » ([27]).

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[25] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1951, p. 15.
[26] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1954, p. 24.
[27] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1945, pp. 25-26.

Ces mesures ne semblent pas avoir produit les effets escomptés. C'est du moins l'impression que donne la situation qui a continué à caractériser les secteurs Nord et qui ressort du rapport annuel de 1946. L'extrait ci-dessous en témoigne :

« La surveillance s'avère toujours difficile dans les secteurs septentrionaux du Parc National Albert. Des incidents fréquents surgissent entre les gardes et les maraudeurs armés. La fraude de l'or vers l'Uganda semble active dans ces régions. Les menaces constantes dont les gardes sont l'objet de la part des groupes des fraudeurs soulignent la nécessité de doter nos représentants d'un armement adéquat. Des dispositions sont prises en accord avec le Gouvernement Général en vue cette protection » ([28]).

Les gardes les plus attaqués par les communautés locales étaient surtout ceux qui surveillaient les secteurs les plus méridionaux (région des volcans Virunga) et les plus septentrionaux du Parc National Albert protégeant la forêt équatoriale de haute altitude et de très basse altitude (le cas de la moyenne et de la basse Semliki). Ici comme ailleurs, la forêt a gardé la représentation que les communautés locales développent à son égard : à la fois refuge des fuyards, repaire des rebelles et garde à manger (source de nourriture). Quant aux gardes chargés de la surveillance des zones steppiques et de savane boisée, ils devaient faire face à des incendies criminels qui ravageaient la réserve naturelle intégrale par des centaines voire des milliers d'hectares chaque année pendant la saison sèche.
En 1939 quatre grands incendies ont dévasté la réserve naturelle intégrale de savane et de steppe comprise entre le lac Edouard et la parallèle de Mutsora, près de la station administrative et technique des secteurs Nord.

Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1946, p. 16.

D'autres feux allumés toujours par les populations locales au cours de la même année ont ravagé des centaines d'hectares de brousse dans la plaine de la Rutshuru-Rwindi située au sud du lac Edouard et faisant partie des secteurs Centre du Parc National Albert ([29]). De « nombreux incendies » sont de nouveaux signalés dans la plaine de la haute Semliki en 1940. A partir de cette date ils deviennent spectaculaires. Les rapports annuels de l'Institut des Parcs Nationaux du Congo Belge pendant les exercices 1950 et 1951 indiquent que les auteurs de ces incendies sont les éleveurs Hema ([30]) qui, comme nous l'avons vu, avaient été chassés en 1932 de leurs pâturages situés dans la plaine de la Semliki.

Les zones de forêt dense équatoriale de montagne et de basse altitude étaient donc investies en permanence par des assaillants composés de chasseurs Pygmées yanda, d'éleveurs tutsi et de trafiquants Bakingwe particulièrement redoutés. En même temps les régions de steppe et de savane étaient ravagées par des incendies épouvantables allumés par les éleveurs Hema et les trafiquants. Pendant ce temps les côtes du lac Edouard et les rives de la Semliki étaient aussi envahies massivement par des pêcheurs. Comme si cela ne suffisait pas, une grande partie de la réserve naturelle intégrale fut occupée et exploitée de force par des agriculteurs.

4.3. OCCUPATION FORCEE ET EXPLOITATION ANARCHIQUE DE LA RESERVE NATURELLE INTEGRALE PAR LES COMMUNAUTES LOCALES

Le mouvement d'occupation forcée et d'exploitation anarchique de la réserve naturelle intégrale par les agriculteurs et les éleveurs est parti encore une fois de plus des secteurs Sud (région des volcans) en 1935.

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[29] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1939, pp. 19 et 25.

[30] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1950, p. 17. Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1951, p. 16.

Cette réaction des agriculteurs Hutu et des éleveurs Tutsi de la région des volcans Virunga s'explique par deux raisons bien fondées: l'incorporation dans la réserve naturelle intégrale du « territoire annexe » créé par le décret royal de 1929 et le refus des responsables du Parc National Albert d'accorder aux familles chassées de leurs terres ancestrales, pour des raisons de conservation, l'autorisation de traverser cette réserve pour émigrer vers les régions de Bwito-Mushari et de Masisi.

Le décret du 9 juillet 1929 stipulait que les communautés locales conservaient leurs droits coutumiers sur le « territoire annexe » jusqu'au jour où elles seraient indemnisées. Contre toute attente, le « territoire annexe » fut incorporé dans le parc sans aucune forme de procès lors des délimitations de la réserve naturelle intégrale de 1929-1933. Dès 1935 les agriculteurs riverains du secteur de Nyamulagira envahirent la réserve et rétablirent des villages aux environs de Mushobele ([31]). Le secteur de Mikeno fut également occupé par les agriculteurs la même année. Les revendications des communautés riveraines de ces deux secteurs méridionaux sont reprises dans l'extrait ci-dessous du rapport de l'Institut des Parcs Nationaux du Congo Belge de 1936 :

« Il convient de signaler que certains constats d'infractions ont donné lieu à des problèmes juridiques, les indigènes surpris en flagrant délit de braconnage ayant, à juste titre, allégué qu'ils avaient abandonné leurs droits de chasse moyennant paiement d'une indemnité, mais que celle-ci ne leur avait pas encore été versée » ([32]).

Dans sa lettre n° 152/699/Agri/50/J.3 adressée au Ministre des Colonies le 28 mai 1935, le Gouverneur Général du Congo Belge, P. RYCKMANS,

[31] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1935, p. 22.
[32] Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1936, p. 20.

soutient ouvertement la cause des communautés locales parce que « *de telles formalités n'ont pas été remplies jusque là, non seulement pour les secteurs Sud (région des volcans), mais aussi pour une bonne partie de l'étendue du Parc National Albert* ». Ce problème juridique a pris une tournure très inquiétante en 1937, date à laquelle le Parquet de Costermansville s'avisa que le décret royal du 9 juillet 1929 n'était pas applicable au Parc National Albert. Les services judiciaires considéraient désormais comme terres indigènes la totalité de la réserve naturelle intégrale acquise en 1929.

En conséquence de nombreux jugements condamnant les indigènes surpris dans le parc furent révisés. A plusieurs reprises, des indigènes punis en vertu de la législation et de la réglementation relatives au Parc National Albert étaient remis en liberté et leurs amendes restituées. Les procès verbaux dressés par les responsables de l'Institut des Parcs Nationaux du Congo Belge à charge des contrevenants étaient systématiquement classés sans suite par les services judiciaires ([33]). Fortes du soutien de l'administration coloniale et du Parquet de Costermansville, les communautés locales durcissaient leurs positions face aux responsables de l'Institut des Parcs Nationaux du Congo Belge. Elles ne voulaient plus entendre parler du rachat de leurs droits coutumiers. Elles sont même revenues sur les droits cédés antérieurement sur certains blocs de la réserve naturelle intégrale. Le mouvement a gagné les secteurs Nord en 1945. L'extrait ci-dessous montre que les responsables du parc étaient plongés dans une impasse :

« *Des difficultés du même ordre que celles relevées à propos des secteurs Sud du Parc National Albert (région des volcans) ont été éprouvées par le Conservateur de Mutsora. Des revendications furent formulées par les indigènes,*

[33] Voir les rapports annuels de l'Institut des Parcs Nationaux du Congo Belge pour les exercices 1938 [pp.18-19], 1940 [pp. 23-24] et 1946 (p. 23).

notamment dans l'extrême Nord en Territoire d'Irumu, dans la partie où une rectification des limites avait déjà été consentie par l'arrêté du 17 mai 1939. De même, en Territoire de Beni, en terres du notable BAUMBILIA, celles du village Kinawa (région des Watalinga), le mont Birimu (chefferie Bashu) et le mont Libina (Tshiaberimu) ont fait l'objet des contestations plus ou moins justifiées de la part des indigènes, désireux d'étendre leurs terres d'occupation au détriment du Parc National Albert (...). En chefferie Baniari, les indigènes ont opposé un refus obstiné à toute demande de céder les droits qu'ils conservent ou prétendent conserver sur les terres ayant fait en 1938 l'objet d'une enquête de vacance. Ces indigènes, loin de quitter les terres en litige, ont établi en 1945 de nouveaux villages à quelque deux cents mètres à l'intérieur de nouvelles limites abornées par le Conservateur.

Les nouvelles limites proposées maintenant par les indigènes, non seulement réduisent l'extension primitivement demandée à un tiers environ, mais rendent par surcroît illusoire toute efficacité de protection de la réserve par suite de sa profondeur et du libre exercice du droit de pêche dans la Semliki que les Baniari entendent conserver » ([34]).

Les régions litigieuses n'ont fait que s'étendre dans la réserve naturelle intégrale par la suite. En 1946, par exemple, ce fut le tour des régions suivantes d'être revendiquées dans les secteurs Nord par les communautés locales : le massif du Tshiaberimu, une zone située entre les rivières Semliki et Djuma en chefferie Bashu, la région de Dingima en chefferie Watalinga sur la rive droite de la Semliki et enfin celle comprise entre les rivières Semliki et Batunga en chefferie Baniari, dans l'extrême Nord du Parc National Albert.

Rapport annuel de l'Institut des Parcs Nationaux du Congo Belge pour l'exercice 1945, pp. 17 et 26.

Les faits que nous venons de décrire témoignent de façon suffisamment éloquente que la réserve naturelle intégrale a pratiquement cessé d'exister sur le terrain entre 1935 et 1947. Les responsables de l'Institut des Parcs Nationaux qui lui vouaient un culte sacro-saint ne savaient plus sur quel pied danser, ni à quel saint se vouer. A la constitution de la réserve naturelle intégrale au mépris des intérêts vitaux des communautés locales avait immédiatement succédé une période d'échec cinglant de la mise en œuvre des mesures de conservation intégrale. Cette situation dramatique, découlant de la non prise en compte des besoins des communautés locales lors de la création et de l'extension des réserves naturelles intégrales, a été également vécue ailleurs au Congo belge et dans d'autres pays africains.

La région située entre l'Est de la Lualaba, nom que porte le Fleuve Congo au Katanga, et comprise entre le lac Kabwe, la rivière Lwingila et la Rufira fut successivement érigée en réserve intégrale zoologique, puis en réserve intégrale de chasse entre 1933 et 1934 avant d'être transformée en parc dénommé Parc National de l'Upemba le 10 mai 1939 par un décret royal. Ici encore, comme au Nord-Kivu et au Nord-Ouest du Rwanda, les populations locales furent déplacées sous prétexte de lutter contre les mouches tsé-tsé vecteurs de la maladie du sommeil.

En 1940, elles ont revendiqué violemment, mais sans succès, leurs droits d'occupation, de cultures, de chasse et surtout de pêche. En 1953-1954 le Parc National de l'Upemba fut envahi par des irréguliers venus de tous les côtés. Les parties septentrionales et occidentales de ce parc furent complètement réoccupées. Les villages abandonnés depuis 1937 sur les rives du Lualaba, du lac Kabwe et du lac Upemba à l'intérieur de la réserve naturelle intégrale, furent reconstruits. La superficie du Parc National de l'Upemba qui était de 1.700.000 hectares à sa création fut réduite à 300.000 hectares seulement (MAKABUZA, 1973 : 28-31).

Depuis 1991 les responsables du Parc National de Kahuzi-Biega situé au Sud-Kivu, dans l'Est de la République Démocratique du Congo, font face une hostilité farouche des communautés locales qui a fini par paralyser complètement toutes leurs activités.

Le Parc National de Mgahinga Gorille constitue un autre exemple. Il fut créé dans le région des volcans Virunga en Ouganda en1991 en expulsant les populations locales. Il a par conséquent connu le même sort que le Parc National Albert au Nord-Ouest du Rwanda et au Nord-Kivu ainsi que celui de l'Upemba que nous venons de présenter. L'hostilité des communautés locales à l'égard de ce parc était si forte à un moment donné que le Projet de Développement par la Conservation jugea impossible d'y poursuivre ses enquêtes socioéconomiques avant que les esprits ne soient calmés et apaisés (R.G. WILDet J. MUTEBI, 1996 : 10).
Un autre exemple nous est donné en 1990 par les gestionnaires des aires protégées africaines, pour la plupart, membres de la Commission des Parcs Nationaux et des Aires Protégées de l'Union mondiale pour la nature :

« *...les aires protégées de la zone sahélienne ont souvent été agrandies au détriment de quelques villages à leur périphérie qui ont été déplacés et rejetés en bordure de nouvelles limites, créant ainsi des problèmes compromettant quant à l'avenir de certains parcs et réserves. L'exemple typique de ce point de vue est constitué par le Parc National de Niokolo Koba au Sénégal, qui a connu sept extensions successives et où les communautés villageoises déplacées pratiquent un braconnage intense et dramatique dans cette région* » (MANKOTO, 1990 : 6).

Le dernier exemple est celui de l'Inde où les populations locales ont été systématiquement expropriées sans aucune mesure de compensation et massivement déplacées au profit des parcs nationaux.

KEY WORDS

Student, Involvement, Engagement

BACKGROUND

Makerere university business school is the leading institution in Uganda in business training for both undergraduate and post graduate courses, and indeed through innovative approaches the school is engaging the private sector through entrepreneurship programmes as well as the international student community through "hybrid" collaborations with universities in the United States. Though MUBS became a constituent school of Makerere university in 1998, it has since grown into fully independent institution with a student population of up to ten thousand. It offers a range of undergraduate and postgraduate courses fully accredited by the Uganda National Council for Higher education.

The pedagogical approaches used in MUBS have remained traditional, majorly the lecturer-led ones that are based on straight lectures. Though the school has tried to be innovative by training some staff in case study methods, these few staff have not disseminated the knowledge to others. Despite the undisputed importance and need of case method of teaching and the school's effort to support it, there has not been any school-wide policy in this regard. Apart from two courses; strategic management and marketing case study, there has not been effort by the departments in general and lecturers in particular to integrate the use of cases in other courses, though there exists administrative will and encouragement for the use of cases in the university. Indeed various departmental meetings have noted a general discomfort of many staff in the use of cases. Some lecturers at one point in time abandoned teaching strategic management because the team leader insisted on the use of cases for this course (Business Administration departmental meeting, April 2008).

CONCLUSION

Les exemples évoqués ci-dessus s'ajoutent à l'inventaire des échecs cinglants de mise en œuvre des mesures de conservation à travers de nombreux pays tropicaux dressé par M. COLCHESTER (1994) pour démontrer qu'une réserve naturelle intégrale, créée et gérée aux dépens des communautés avoisinantes, est une utopie. Comme nous venons de le voir les responsables de l'Institut des Parcs Nationaux du Congo Belge en ont fait une triste expérience entre 1935 et 1947. Mais ils ne se sont pas pour autant découragés. Ils ont remué ciel et terre pour tenter de sortir de l'impasse, en mettant en pratique désespérément tout ce qui leur venait à l'esprit, jusqu'au jour où ils sont tombés, chemin faisant et par essais et erreurs, sur des stratégies concrètes tendant à concilier vraiment les objectifs de conservation avec les impératifs sociaux, démographiques et économiques des communautés locales, comme le Rwanda le fait depuis 2005.

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ENHANCING STUDENT PEFORMANCE THROUGH INVOLVEMENT AND ENGAGEMENT; REFLECTIONS ON THE CASE METHOD OF TEACHING AT MAKERERE UNIVERSITY BUSINESS SCHOOL.

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Abstract

The major purpose of the study was to examine the relationship between the case method of teaching and student performance in a university setting. Objectively, the study was to establish the relationship between case method of teaching and student engagement, relationship between case method of teaching and student involvement and relationship between case method of teaching and student performance as influenced by the engagement and involvement of students. This paper describes the nature of student involvement and engagement in the process of study especially as stimulated by the use of the case method of teaching. There are significant differences between the traditional and case based delivery methods and these shape student performance and ultimately affect their competitiveness, thus creating difficult point of departures and differences in today's Business Schools.

The study used a correlation design based on Bachelor of Leisure and Hospitality Management students offering strategic management semester two of 2007/2008 academic year at Makerere university business school who were 111 in number, and from whom a sample size of 80 was obtained according to Morgan and Krejcie (1970) guidelines on how to choose a sample as cited by Sekaran (2004, p.294). The questionnaire was pre-tested on 10 respondents, an equivalent of 10% of the sample size (Saunders et al, 2003).

Findings indicate a positive relation between the case method of teaching and student engagement ($r=.514^{**}$, $p<.01$), Case Method of Teaching was the most powerful at explaining the Student Performance (Beta = .499, sig. = .000), the Case method of teaching and student performance are significantly and positively related ($r=.749^{**}$, $p<.01$),

the implications of the study are that Universities should establish clear policies that emphasize the use of case method of teaching in their pedagogical approaches, should facilitate case-focused research both among the staff and students, and efforts in future research may be put on broadening the population to include all courses that use the case method. And what emerges is a challenge of the commonly held belief that students' involvement and engagement should be teacher or rule guided, and provides guidelines for the classroom use of the case method; that are necessary to achieving an enduring and positive impact on student engagement.

The paper emphasizes that case method of teaching promotes understanding that is far much more than recalling because students are exposed to a "wrapped around" and complete idea- and this enables students to compare and contrast concepts, relate these concepts to other subjects and experiences, generate questions and hypotheses that lead to new knowledge and further inquiries.

The paper concludes that case method of teaching is modern and appropriate to foster student involvement and engagement in the teaching and learning process, encourages quick assessment of student learning by the lecturers, motivates students and must be on top of the pedagogical issues and delivery methods especially those of business schools, and would enable universities to produce graduates that will enable firms trade out of poverty in the current global economic crisis.

The analysis of student performance especially on the two courses that have integrated case method of teaching shows significant improvements since the introduction of cases (MUBS Course Files 2007, 2008), though this is measured on the basis of end of semester results, there seems to be underlying linkages with the students engagement and involvement in the course of study. Little is known or evidenced in the school's efforts to track student performance apart from the summaries made on the results sheet (Course files 2007, 2008), and indeed no apparent analysis of any kind has been done in respect to students' interaction in and with the process of study and how this would affect their performance.

Problem statement

Despite the importance of cases and case method of teaching in enhancing student performance, there has been a lukewarm reception among many university lecturers and students in the few universities in the developing world that have embraced this method (Chapman, 2003), indeed Makerere University business school is no exception to this. There has been widespread misconception and ill feeling about the case method of teaching (MUBS Course files 2006, 2007, 2008), and this is exemplified by the failure to adopt the case method to deliver other courses except strategic management and marketing, despite the school wide encouragement. An analysis of all academic based policies indicate no known effort prior to this study, specifically at MUBS that have a focal attention on student engagement and involvement and their influence on student performance.

Objectives of the study

The major purpose of the study was to examine the relationship between the case method of teaching and student performance in a university setting.

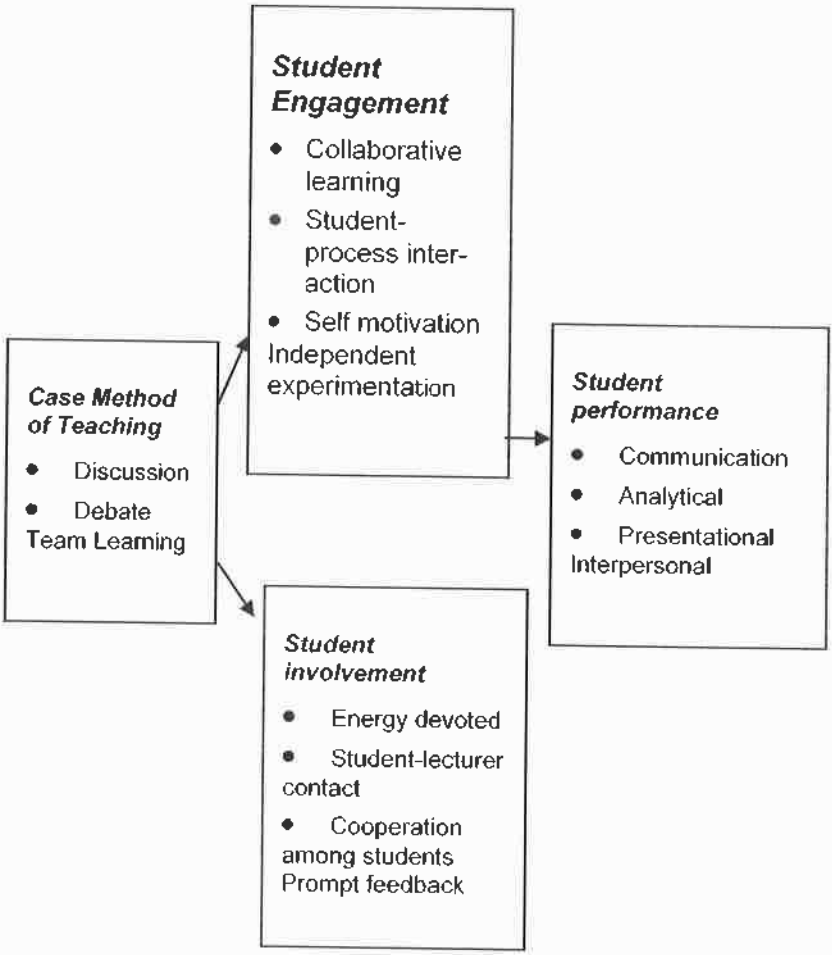
This was due to the fact that although the case method of teaching has been in existence for over 50 years and widely used in the developed world like at Harvard Business School, many universities in the developing world have not embraced it. The few that have innovatively used it, it is still in infancy or has failed to mature due to some circumstances. If arguments are expressed on the relationship if any between the case method of teaching and student performance, then outright strides will be undertaken by universities to embrace it in their pedagogy. Specifically the study sets out to achieve the following objectives;

i. To evaluate the relationship between case method of teaching and student engagement

ii. To assess the relationship between case method of teaching and student involvement

iii. To establish relationship between case method of teaching and student performance as influenced by the engagement and involvement of students.

Conceptual Framework



Adopted from; Case method of teaching (Erskine et al., 1981), Student Engagement (Newmann, 1986), Student Involvement (Astin, 1984), and Student Performance (Researcher Modifications based on various literature)

LITERATURE REVIEW

Case method teaching

The case method is a form of learning where the students read a description of a (real) case or a problem taken from an existing area. The lecturer elaborates on what to do in this case by providing a range of guidelines, and then the students undertake a case analysis that enables them to make justifiable decisions to solve the problem. The case method emphasizes undertaking the analysis in groups. Indeed extant literature indicates no guide on group structure, dynamics or size, but the lecturer can innovatively form the groups depending on the total number of the students in the class. After that they meet with the class to present and discuss the case with one another and with the lecturers' facilitation.

The case method has been used at Harvard University and many other universities for more than 50 years, mostly within business and law studies. Business and law schools have had a long tradition of using real or simulated stories known as cases to teach students about their field (Christensen 1986), and valuable case books in the field have been written about the pedagogy (J. Erskine et al. 1981) indeed Robert Merry (1954) indicated that cases should improve students' learning through their joint, cooperative effort, rather than on the teacher conveying his/her views. Cases can be administered to students either in a discussion format, debate format, public hearing format, trial format; problem based learning format, and team learning format. Each of these formats has its own challenges and can be administered in combination depending on the situation. For discussion, debate and team learning as these form the "hybrid" method used at MUBS, as these promote active learning (Myers & Jones, 1993; Johnson, Johnson & Smith, 1991), cooperative learning (Cooper 1991), and critical thinking (Paul, 1992).

Student Engagement

Existing literature shows that student engagement is increasingly seen as an indicator of successful classroom instruction, and as a valued outcome of school reform (Kenny et al 1995), and Schlecty (1994) contends that the phrase has been identified with, and widely used in education circles. Students are engaged when they are attracted to their work, persist despite challenges and obstacles, and take visible delight in accomplishing their work. Bomia, et al (1997), and this also focuses on student's willingness, need, desire and compulsion to participate in, and be successful in, the learning process, a view held by Chapman, E. (2003) as depicting students' willingness to participate in routine school activities, such as attending class, submitting required work, and following teachers' directions in class. On the other hand, Fletcher (2005) indicates that the term is also increasingly used to describe meaningful student involvement throughout the learning environment, including students participating curriculum design, classroom management and school building climate.

Though many studies have focused on student engagement and have earmarked it a desirable trait in schools (Schlecty, 1994, Kenny etal 1995), there is little consensus among students and educators as to how to define it (Sharan et al, 1999). Though some studies link student engagement to student motivation, Williams (2003) has looked at student engagement in terms of both psychological and behavioral components, and that it focuses students' attitudes towards school, as opposed to student disengagement identifies withdrawing from school in any significant way.Psychological engagement happens when a lesson captures students' imaginations, and attracts their meandering attention. Indeed Strong et.al., (1995) indicates that this will lead to students give clear, immediate, and constructive feedback.

Behavioral engagement reflects the student's actions within and outside the classroom environment, both as an individual or as a group (McCombs & Pope, 1994; Fletcher, A. 2005). Chapman, E. (2003) contends that the term student engagement has been used to mean students' willingness to participate in routine school activities, such as attending classes, submitting required work, and following teachers' directions in class. Skinner, E.A., & Belmont, M.J. (1993) indicates that students who are engaged show sustained behavioral involvement in learning activities accompanied by a positive emotional tone. Whether psychological or behavioral, student engagement is indicated by; the level of academic challenge, collaborative learning, student-process interaction, enriching education experiences, initiative, self-motivation, independent experimentation, and peer coaching, and enthusiasm, indeed all the above will make students devote *substantial time and effort to a task* (Newmann, 1986)

Despite being difficult to conceptualize, student engagement is recognized by teachers and researchers as an important link to student achievement and other learning outcomes (McGarity & Butts, 1984; Capie & Tobin, 1981).

Student Involvement

Extant literature indicates that student involvement is hinged on pedagogical practices and as a process its based on multiple relationships and activities that enforce learning (Kember & Gow, 1994; Astin, 1984) Astin's (1984). Theory of involvement posits that students learn more the more they are involved in the academic aspects of the class experience. Students who are involved devote significant energy to academics, spend time discuss class/ course works and interact often with one another.

Importantly, the most persuasive types of involvement are academic involvement, that encourages class-peer interaction and is a lynch pin of student-centered teaching. According to Astin (1984), the quality and quantity of the student's involvement influences several educational outcomes including cognitive learning and academic performance, and for a student to be involved in the learning process, she or he must invest energy in academic relationships and activities. With student involvement there should be; student-lecturer contact, cooperation among students, active learning, prompt feedback, time on task, and expression of diverse talents.

Literature provides an interesting array of outcomes and supporting benchmarks for student involvement; Class-wide approaches - student-specific roles in building leadership, and; intentional programs designed to increase student efficacy as partners and equal players in classrooms (Fullan, 2000), Sustainable classroom structures of support - Policies and procedures are created and amended to promote meaningful student involvement within the classroom. Sustainability within a class cannot be seen solely through a structural lens; instead, it must happen within a clear set of procedures (White & Crump, 1993), Personal commitment – Students' dedication, relationships, and classroom culture builds a long term connection among students, Strong learning connections - Classroom learning and student involvement are connected by classroom credit, ensuring relevancy for educators and significance to students. Meaningful student involvement should not be an "add-on" strategy for lecturers but it should be integrated throughout their teaching activities (Cipolle, 2004)

Student Performance

Student performance can either be classroom based or assessment based. Though assessment-based student performance is undertaken through course work and examinations sat at the end of each course of study.

This has slightly been studied even though not in relation to case method of teaching, on the other hand, classroom-based student performance refers to the level of skill a student exhibits during and in a process of study in a classroom. Though assessment-based student performance can be measured directly using scores/ results of course works or examinations that can be computed in percentages, classroom-based student performance can be measured on the basis of skill development in terms of communicational, presentational, analytical and interpersonal abilities amassed by an individual student as a result of interaction with a particular process in classroom or largely in a learning process. This study will focus on classroom-based student performance since the case method of teaching is more of a process interaction between students and lecturers than assessment-based student performance which is only based on the lecturers assessment of students work.

METHODOLOGY

The methodology used in this study was designed to examine the relationship between the case method of teaching and student performance. The study used a correlation design based on Bachelor of Leisure and Hospitality Management students offering strategic management semester two of 2007/2008 academic year at Makerere university business school. The study population consisted of 111 students. The class list provided by the faculty was used as a complete sampling frame from which the respondents were selected using simple random sampling. A sample size of 80 was obtained according to Morgan and Krejcie (1970) guidelines on how to choose a sample as cited by Sekaran (2004, p.294). Primary data was collected through the use of self-administered questionnaires, distributed and eventually collected from the students, of the 80 questionnaires sent out, the researcher managed collect back 51 questionnaires amounting to 63.75% response rate.

To establish reliability and validity, the questionnaire was pre-tested on 10 respondents, an equivalent o 10% of the sample size (Saunders et al, 2003)

RESULTS AND DISCUSSION

Age Group by Gender Distribution of the respondents

The female students dominated the sample (54.9%) while their male

			Gender		Total
			Male	Females	
Age Group	Below 30 yrs	Count	17	20	37
		Row %	45.9%	54.1%	100.0%
		Column %	73.9%	71.4%	72.5%
	31-40 yrs	Count	6	6	12
		Row %	50.0%	50.0%	100.0%
		Column %	26.1%	21.4%	23.5%
	41-50 yrs	Count		2	2
		Row %		100.0%	100.0%
		Column %		7.1%	3.9%
Total		Count	23	28	51
		Row %	45.1%	54.9%	100.0%
		Column %	100.0%	100.0%	100.0%

counterparts comprised only 45.1% of the sample.

Among the Females, the majority were below 30 years (71.4%), 21.4% of them were in the 31-40 year age group and the other 7.1% were in the 41.50 year age group. On the other hand, the males were dominantly of the "Below 30 year age group" (73.9 %.) It was observed that there were no male students in the 41-50 year age group but all respondents in this age group were female.

The results were also presented using the figure below.

Funding and Method preferred most

Source of funding by Most preferred method of teaching Distribution

The results show the distribution of the Source of funding by most preferred method of teaching Distribution among the university students.

			Most preferred method of teaching			Total
			Case study	Straight Lectures	Others	
Source of funding	Self	Count	11	9		20
		Row %	55.0%	45.0%		100.0%
		Column %	47.8%	34.6%		39.2%
	Em-ployer	Count	1	1	1	3
		Row %	33.3%	33.3%	33.3%	100.0%
		Column %	4.3%	3.8%	50.0%	5.9%
	Parents	Count	10	14	1	25
		Row %	40.0%	56.0%	4.0%	100.0%
		Column %	43.5%	53.8%	50.0%	49.0%
	Others	Count	1	2		3
		Row %	33.3%	66.7%		100.0%
		Column %	4.3%	7.7%		5.9%

Total	Count	23	26	2	51
	Row %	45.1%	51.0%	3.9%	100.0%
	Column %	100.0%	100.0%	100.0%	100.0%

The greater proportion of the students were observed to prefer Straight Lectures (51.0 %,) while those who preferred Case Study comprised 45.1% of the sample and those who prefer other methods were in the minority (3.9%). Overall, the majority of the students are sponsored by parents (49.0%) and those who are self sponsored comprised (39.2%). The smaller proportions were sponsored by 5.9% other parties and Employers. The majority of those sponsored by Parents were observed to prefer the use of straight lectures (56.0%) while the majority of those who are self sponsored (55.0%) prefer the use of case studies.

The Relationships between the variables

The zero order correlations were employed to explore the relationships between the variables i.e. Student Engagement, Student Involvement and Student Performance.

Relationships between the variables

	1	2	3	4
Student Engagement-1	1.000			
Student Involvement-2	.688**	1.000		
Case Method of Teaching-3	.514**	.531**	1.000	
Student Performance-4	.736**	.604**	.749**	1.000
** Correlation is significant at the 0.01 level (2-tailed).				

The relationship between the case method of teaching and student performance

The results in the table above showed that the Case method of teaching and student performance are significantly and positively related (r =.749**, p<.01). In addition, student Engagement (r =.736**, p<.01), Student Involvement(r =.604**, p<.01) were also positively related to Student performance. The results imply that the better the management of administering course content using the Case method of teaching, the better the levels of student performance that will be observed. The findings indicate a positive relationship, and indeed as contended by Erskine et al. (1981) cases do improve student learning through flexible pedagogical approaches that are involving and problem-solving based. All the dynamics students go through to prepare, discuss, debate and present case findings or solutions are significant activities that have not only psychological and behavioral impact, but also both short-term and long-term capability development among the students, and these will in-turn improve student performance.

The relationship between the Case Method of Teaching and Student Involvement

The results also showed that the Case method of teaching and Student Involvement were positively related (r =.531**, p<.01). These results show that the Case Method of Teaching enhances the level of Student Involvement. The Student Involvement was also observed to have a positive relationship with Student Performance (r = .604**, p<.01). Case Method of teaching therefore enhances the level of student Involvement which in turn also leads to improved levels of student performance. The findings above indicate a rather positive relationship between the case method of teaching and student involvement, this establishment is an outcome of good classroom culture, student commitment, and strong student-learning based relationships especially as advanced by (Kember & Gow, 1994)

The relationship between the Case Method of Teaching and Student Engagement

The Case Method of Teaching and Student Engagement were also observed to be significantly and positively related (r=.514**, p<.01). Furthermore, the level of Student Engagement was observed to be related to the level of Student Engagement (r=.736, p<.01). The results also highlight the potential of the Case Method of teaching to enhance the level of student engagement which in turn results into improved Student Performance.

Whereas Strong et.al, (1995) emphasizes that capturing student's imagination increases Psychological engagement, and McCombs & Pope (1994) contends that student's actions within classrooms reflect behavioral engagement, these are paramount indications towards student performance. Indeed the findings have revealed that there was such a positive relation between the case method of teaching and student engagement (r=.514**, p<.01). This indicates a big potential of the Case Method of teaching towards enhancing student engagement and performance (r=.736, p<.01). These findings supplement further the arguments that student engagement is based on a successful classroom instruction (Kenny etal 1995).

Prediction Model

These results highlight the extent to which the predictors ie Student Engagement, Case Method of Teaching and Student Involvement can explain the level of Student Performance.

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.	Dependent Variable: Student Performance	
		B	Std. Error	Beta				
	(Constant)	.549	.340		1.613	.114	R Square	.729
	Student Engagement	.486	.113	.468	4.290	.000	Adjusted R Square	.711
	Case Method of Teaching	.369	.069	.499	5.340	.000	F Change	41.183
	Student Involvement	.018	.108	.018	.164	.871	Sig. F Change	.000

These results highlight that the predictors can explain up to 71.1% of the variance in the Student Performance (Adjusted R Square = .711). These results further reveal that the Case Method of Teaching was the most relevant at explaining the Student Performance (Beta = .499, sig. = .000) and this was closely followed by the Student Engagement (Beta = .468, Sig.= .468, Sig. = .000). Overall, the regression model was significant (sig. F Change = .000). Indeed the ability of the case method of teaching to predict up 71.1% of student performance indicates the student's ability to communicate, analyze, and meaningfully present ideas, as well improved interpersonal-relationships are key components, and all these skills developed for a student will improve the level of performance.

Conclusion and Implications

From the above discussions its clear that though the case method of teaching is not the most preferred (45.1 %), and as indicated earlier in the background that in the universities that are innovatively implementing it, there is a lukewarm reception, there are significant indications that it is the most effective method in enhancing student performance especially with the prediction potential of 71.1 %. This is further supported by the fact that the relationship between the case method of teaching and student engagement and involvement are significant, and they also influence student performance.

It therefore implies that Universities should establish clear policies that emphasize the use of case method of teaching in their pedagogical approaches as these will enhance student performance. Also Universities should train their staff in the case method of teaching to help them gain the necessary pedagogical skills needed, perhaps this would increase the case "reception" levels among the academic staff.

The other implication is that Universities should facilitate case-focused research both among the staff and students in order to gain new insights and also undertake benchmarking study visits to Universities that are known to use the case method of teaching perfectly. Though this study was based on the a single course and this would have been methodologically limiting, efforts in future research may be put on broadening the population to include all courses that use the case method, study the relationships between the case method of teaching and exam performance and grades, and longitudinal research may suffice here and also include the academic staff, these and other research efforts may be undertaken to further strengthen the call.

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White, C. and Crump, S. (1993) "Education and the three 'P's: Policy, politics and practice: A review of the work of S. J. Ball," *British Journal of Sociology of Education, 14*(4) pp. 415-429 useful for understanding the role of policy in creating sustainable conditions in schools.

THE PROCESS OF DOMESTICATION OF AFRICAN ECONOMIC AGREEMENTS

This article is jointly published
by **Titien Habumugisha, (LL.M)**, the Dean of the
Faculty of Law at Kigali Independent University

and

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Kigali Independent University.

Abstract

Regional economic integration has played a central role in the development of African Countries since the era of independence reflected in the slogans of different leaders, which called for the liberation and unification of the continent. Although it was the driving force of the first Panafricanists, it could not be fully realised due to different challenges such as war, conflicts, unqualified personnel and financial problems. It is in this regard that the Organisation of African Unity in partnership with the United Nations Economic Commission for Africa ***(ECA)*** *developed a promising framework which could bring together all African Countries and move them closer to an African Economic Community by the year 2000 through the Lagos Plan of Action and the Final Act of Lagos.*

The law has an important role to play in any kind of economic integration all over the world. The experience of the European Union can help us to see the way forward for the African Economic Community. This article focuses on the role of African economic agreements, and its place at national level through domestication process.

Introduction

Economic integration has been defined as "the elimination of economic frontiers between two or more economies", and it involves the removal of obstacles to trans-boundary economic relationships in fields such as trade, the movement of labour services, and the flow of capital[35]. The cooperation framework geared up by the Lagos Plan of Action was clearly defined by the Organisation of African Unity Heads of States and Governments when they reaffirmed their "Commitment to establish by the year 2000, [...] on the basis of a treaty to be concluded, an African Economic Community in order to ensure the economic, cultural and social integration of Africa"[36]. Preceding the African Union there was, therefore, an effort at economic integration in the form of the African Economic Community (AEC), whose treaty has been incorporated into the African Union's constitutional structure[37].

In this paper, which focuses on the harmonisation of African laws and the domestication of african economic treaties, the examination will be determined by the different challenges that the continent is facing in economic integration through the AEC, and the way forward. Even though the treaty establishing the Community allows its members to enjoy and observe the legal system of the Community, it does not determine or settle the incorporation of its measures into national laws.

Our analysis will focus on the importance of the role of law in economic integration through different treaties and protocols. In the first part of this article,

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[35] See F. Richard, "Observing the Legal System of the Community: The Relationship between Community and National Legal Systems under the African Economic Community Treaty", 15 *Tulane Journal of International & Comparative Law*, 42 (2006-2007).

[36] Lagos Plan of Action, 1980-2000,available at: http://www.uneca.org/itca/ariportal/docs/lagos_plan.pdf, accessed on 20 May 2011.

[37] Article 33(2) if the Constitutive Act of the African Union, July 11, 2000, available at: http://www.au2002.gov.za/docs/key_oau/au_act.htm, visited on 20 May 2011.

after looking at the definition and the authority of a treaty, we will analyse the monism-dualism theories and see the direct applicability and effect of Community law within COMESA, EAC and ECOWAS member states, where one of the principal challenges in regional integration is how to make community laws legally binding and enforceable within national legal systems[38]. Drawing on the experience of the European Union, this article will then demonstrate how the AEC law could be successful through the doctrine of supremacy of community law. Before concluding the paper we will address the role played by the national courts and the Court of Justice in giving Community law the force of law in national legal systems.

I. Authority of a Treaty

I.1. Definition

Article 2 of the Vienna Convention on the Law of Treaties of 1969 states that a "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation[39].

I.2. Enforcement of a Treaty

Article 1 of the Vienna Convention also states the different steps to be fulfilled in order to allow a treaty to enter into force as follows:
(a) ratification, acceptance, approval and accession means in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

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[38] B. Anton, *et al.*, *Monitoring Regional Integration in Southern Africa Yearbook*, Vol. 8, South Africa, Tralac, 2008, p. 149.
[39] Article 2 (a) of the Vienna Convention on the Law of Treaties 1969: United Nations, *Treaty Series*, vol. 1155.

(b) full powers means a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;

(c) Reservation means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State[40].

Article 11 provides that "the consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed."[41] As stated in Article 24(1) of the previous convention, a treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree[42].

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[40]Article 2 (c) of the Vienna Convention (supra note 5).
[41]Article 11 of Vienna Convention (supra note 5).
[42]A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.

2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.
3. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides.
4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text. See the article 24 (1) of Vienna Convention (supra note 5).

II. Domestic application of treaties

II.1 Theories of Monism and Dualism

The accession of States to the incorporation of multilateral or bilateral treaties into their domestic laws means that the rights and duties contained in such treaties may become applicable and enforceable domestically in those member States.[43]
How, then, can community laws take on the form of treaties, protocols, regulations, decisions, principles, objectives and general undertakings?

Given that different countries have agreed on a sort of treaty, there are different means of expressing their consent to be bound by that treaty, as stipulated in article 11 of the Vienna Convention, which provides that "the consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed."[44]

However, the Convention does not stipulate how States may propose the domestic implementation of treaties which they have signed at the international level. The Convention rightly leaves this question to be resolved by each State, of course in accordance with its national legal system. Hence, the "domestication" of treaties is a matter of national law and is not governed by international law. [45]
Two most important approaches, and some variations of them, may be identified with respect to the question of the status of treaties in domestic legal systems. It should be noted that the relation between national and international law is discussed from the monist-dualist perspective. The two theories will be discussed in the next section.

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[43] See A.O. Adede, *A Foundation for Law and Policy for Contemporary Problems*, (2001).
[44] Article 11 of the Vienna Convention (supra note 5).
[45] The Vienna Convention (supra note 10).

II.2 The Monist Approach

Monism has its roots in natural law theories which perceive all law to be the result of reason. It envisions international law as automatically part of national legal systems and suggests that no divergence can arise between international and national law because they originate from the same source.[46]

In the monist approach, the legal system of a State is usually considered to include treaties to which the State has given its consent. As a result, certain treaties may become directly applicable in that State at the domestic level (self-executing) and do not rely on subsequent national legislation to give them the force of law once they have been ratified by the State. "Where a treaty is thus considered to be "directly applicable", under this approach, it means that the domestic courts as well as other governmental bodies are obliged to apply rules of international law directly without the need for any act of adoption by the courts or transformation".[47]

II.3 The Dualist Approach

Under the dualist approach, treaties are not part of the national legal system of a country. They are fundamentally separate from domestic law. Hence, under this approach, a treaty to which a State has agreed does not become automatically valid within that State until appropriate national legislation has been enacted to give the treaty the force of domestic law. This is the so-called "act of transformation", which has various different methods of adoption.[48]

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[46] J. Dugard, *International law a South African perspective*, 3 ed., Cape Town, Juta, 2008, p. 47.

[47] *Ibid.*
[48] *Ibid.*

One of them is the direct incorporation of the treaty rules during a drafting procedure which gives the force of law to specified provisions of the treaty, or indeed the whole treaty, generally planned to accompany the transforming act itself. The prime example of this approach is Kenya and other Commonwealth countries, which inherited it from the British practice.[49]

Dualism reflects an attitude of legal positivism. It postulates that national and international laws operate on different legal planes: international law governs relations between states and national law governs relations between individuals and the state.[50] Under dualism, international law has no role to play in the national legal systems of any country unless it has been adopted or incorporated by that country. It is in this context that these theories are still useful for the better understanding of how national legal systems are related to, and move towards, international law, especially treaties.[51] Both approaches have been analysed in the context of former British and French African colonies.

II.4 The former British Colonies

In this regard our analysis will be focusing on how African constitutions draw near international law en route for national law. The former British colonies adhere to the principle of dualism, where international law does not become part of, or have the force of, law in national legal systems unless it has been expressly given that force by a national measure, usually an act of parliament. [52]

They make a clear distinction between national and international law and show various ways in which national law can adopt and integrate international law.

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[49] *Ibid.*
[50] *Ibid.*
[51] *Ibid.*
[52] *Ibid.*

II.5 The former French Colonies

The African former French colonies adhere to the principle of monism. Their provisions are modelled on article 55 of the French Constitution of 1958. In general, they provide that treaties or agreements duly ratified or approved shall, upon their publication, have an authority superior to that of domestic legislation, subject, for each agreement or treaty, to application by the other party. [53]

This provision gives the force of law to international law and determines its status within the national hierarchy of laws. Under this provision, as soon as an international treaty or agreement is ratified or approved it has precedence over national laws, subject to implementation by the other parties to the treaty or agreement. The international treaty becomes applicable as law in the national legal system and can be invoked directly in national courts. [54] The question arises, as to how this comes about. How, or on what basis, can an international treaty become applicable and effective in national law?

III. The place of economic agreements in Rwandan municipal law

Rwanda experienced a tragic genocide in 1994, and continues to suffer from its social and economic consequences. Nevertheless, priority has been given to rebuilding and restructuring the economy. Rwanda's trade policy is aimed mainly at contributing to its social and economic developments. Since 1994, Rwanda has initiated a broad economic reform agenda, establishing the rule of law, providing macroeconomic stability, establishing new economic and financial institutions, privatising state enterprises, developing human resource capacity and repairing infrastructure.

[53] *Ibid.*

[54] See for example the article 132 of the Constitution of the People's Democratic Republic of Algeria;
Treaties ratified by the President of the Republic in accordance with the conditions provided for by the Constitution are superior to domestic law. Available at: http://confinder.richmond.edu/admin/docs/local_algeria.pdf, accessed on 20 May 2011.

[55] *Ibid.*

On the implementation side, in Rwanda[59] the power to inter into treaties is entrusted to the executive.[60] However, peace treaties and treaties or agreements relating to commerce and international organizations and those which commit state finances, modify provisions of laws already adopted by Parliament or relate to the status of persons, can only be ratified after authorisation by Parliament. It is submitted that the legislature played part in the treaty-making process when a treaty deals with international economic relations and international organisations.

As shown above, numerous treaties were transformed into Rwandan law by legislative means. From a practical standpoint there is a question of place international treaties under Rwandan law. As has been shown[61], the position under the 2003 Constitution is that a treaty becomes law in Rwanda only after it has been incorporated into municipal law by some act of legislative. It is provided that "upon their publication in the official gazette, international treaties and agreements which have been conclusively adopted in accordance with the provisions of law shall be more binding than organic laws and ordinary laws except in the case of non compliance by one of parties."[62]

In practice, however, the matter may no be so clear cut. The article 192 provides that "where an international treaty contains provisions which are inconsistent with the Constitution, the authorisation to ratify the treaty or agreement cannot be granted until the Constitution is amended".

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[59] See the article 189 (1) of the Constitution of the Republic of Rwanda of 2003 as amended up today. *OG* of 4 June2003

[60] "The President of the Republic negotiates international treaties and agreements and ratifies them. The Parliament is notified of such treaties and agreements following their conclusion.

[61] Article 181(1) (supra note 21).

[62] Article 190 of the Constitution of the Republic of Rwanda of 2003.

From this perspective one can argues that the Constitution must be viewed and interpreted in accordance with international law, which is accepted in all civilised countries. In this circumstance it is possible to affirm that under Rwandan law international law is not part of international law but also it is superior to the Constitution of Rwanda in some cases.[63]

According to the above view, is it good argument in some cases to say that international treaties signed and ratified by Government of Rwanda are hierarchically superior to the Constitution? Could it do this under the 2003 Constitution? What would a court do if a treaty contains provisions which are inconsistent with the Constitution? As there is no clear case about the hierarchy of international law, in the context of article 190, international treaties and agreements which have been conclusively adopted in accordance with the provisions of law shall be more binding than organic laws and ordinary laws.

IV. Community treaties and law translation

IV.1 Direct applicability of community law

In most regional economic treaties there are some provisions that determine the relations between national law and that of the community. If the community treaty is silent on that issue, it will be necessary to see what the constitutions and jurisprudence of the individual countries concerned have provided for.

"This is emphasised by article 192 of 2003 Constitution, which provides that where an international treaty contains provisions which are inconsistent with the Constitution, the authorisation to ratify the treaty or agreement cannot be granted until the Constitution is amended."

At the same time we must look at the effectiveness of what community treaties have provided compared to what has already been established in different constitutions of the community. This kind of approach will help us to establish the extent to which community treaties and national law stand in conflict, and how to overcome such conflicts when they occur.

The principle of direct applicability of community law allows the latter to be incorporated into the national legal system and become part of it without the need for intervening national measures. [64]

The European Court of Justice defines the principle of direct applicability of community law to mean that the enforcement of community law in national law is an act independent of any measure for its reception, be this resolution or act of parliament or executive act such as cabinet approval.[65]

The Constitution of the Republic of South Africa states in article 231(3) that "any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament". [66]

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[64] Eaton, *et al.*, (supra note 4) p.151.

[65] *Ibid.*

[66] The Constitution of the Republic of South Africa, article 231 available at: http://www.gov.za/documents/constitution/1996/96cons14.htm#231, see e. g. Constitution of the Republic of Ghana, Article 75 which provides that '(1) The President may execute or cause to be executed treaties, agreements or conventions in the name of Ghana. (2) A treaty agreement or convention executed by or under the authority of the President shall be subject to ratification by - (a) Act of Parliament; or (b) a resolution of Parliament supported by the votes of more than one-half of all the members of Parliament.'

In general and especially in common law countries, an act of parliament is required before international law becomes part of national law, and the mere approval by the legislative body will not suffice.[67] Yet the Constitution of the Republic of Malawi in Article 211(3) provides that customary international law, unless inconsistent with this Constitution or an Act of Parliament, shall have continued application. [68] That means, as long as it is not contrary to national law it has unremitting power within it.

In the context of our analysis, none of the regional economic communities provides for the direct applicability of the community treaty unless an advisory opinion has been given. When the East African Community treaty was elaborated, Mvungi advocated the insertion of a provision to make for the direct application of the community law and decisions in the domestics jurisdiction of the Partner States, but unfortunately this call was not heeded by the drafters of the EAC Treaty.[69] Hence the EAC Treaty, in article 8(2), provides that

"Each Partner State shall, within twelve months from the date of signing this Treaty, secure the enactment and the effective implementation of such legislation as is necessary to give effect to this Treaty, and in particular - (a) to confer upon the Community the legal capacity and personality required for the performance of its functions; and

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[67] B. Anton, *et al* (supra note 4) p. 151.

[68] Constitution of the Republic of Malawi, Article 211(3) available at: http://www.parliament.go.th/parcy/sapa_db/cons_doc/constitutions/data/Malawi/Malawi.pdf, accessed on 15 May 2011.

[69] See Mvungi, S. E. A. The draft Treaty of the Establishment of the East African Community: A Critical Review, 2002 in Monitoring Regional Integration in Southern Africa, Yearbook Vol. 8 (2008), p.152.

(b) to confer upon the legislation, regulations and directives of the Community and its institutions as provided for in this Treaty, the force of law within its territory". [70]

Thus, the EAC Treaty provides for the principle of supremacy of the laws of the community[71] as stated in Article 8(4): "Community organs, institutions and laws shall take precedence over similar national ones on matters pertaining to the implementation of this Treaty. The principle may be useful to priorities an incorporated customs law which conflicts with a national law. Community law, being distinct from national law, is also independent from it.[72] However, given the direct applicability of community law, the further question of its effectiveness in national legal systems now calls for consideration.

IV. 2 Direct Effect of Community Law

The direct effect of community law enables individuals to invoke community law before national courts and allows national courts to use community law as an independent, direct and autonomous basis for decisions.[73]

Direct effect should be distinguished from direct applicability, inasmuch as direct applicability deals with the processes or means by which community law becomes part of national legal systems, whereas direct effect determines whether community law creates enforceable rights within national legal systems.[74]

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[70] East African Community Treaty, Article 8 (2); COMESA Treaty, article 5(2); ECOWAS Treaty, article 5(2) which provides that: 'Each Member State shall, in accordance with its constitutional procedures, take all necessary measures to ensure the enactment and dissemination of such legislative and statutory texts as may be necessary for the implementation of the provisions of this Treaty'. Available at: http://www.afrimap.org/english/images/treaty/ECOWAS%20Treaty.pdf, accessed on 18 May 2011.

[71] B. Anton, *et al.* (supra note 4) p.155.

[72] P.S.R.F. Mathijsen, *A Guide to European Union Law*, 8th ed. Sweet & Maxwell, 37. (2004).

[73] B. Anton, *et al.* (Supra note 4), p.155.

[74] *Ibid.*

Thus, although all directly effective laws can be considered part of national legal systems, not all directly applicable laws are directly effective. This does not mean that such a law is useless in national legal systems; it may, for example, inform a court's interpretation of another national law.[75]

The COMESA, EAC and ECOWAS treaties are silent on the issue of whether they (or laws generated under them) are directly effective. An example of this is their provision for a preliminary reference procedure which allows national courts to refer questions of community law to community courts for answers.[76] The COMESA Treaty in Article 30 provides:

Where a question is raised before any court or tribunal of a Member State concerning the application or interpretation of this Treaty or the validity of the regulations, directives and decisions of the Common Market, such court or tribunal shall, if it considers that a ruling on the question is necessary to enable it to give judgment, request the Court to give a preliminary ruling thereon. Where any question as that referred to in paragraph 1 of this Article is raised in a case pending before a court or tribunal of a Member State against whose judgment there is no judicial remedy under the national law of that Member State, that court or tribunal shall refer the matter to the Court.[77]

By referring those questions to the court, they accepted that community law binds within its territory of their jurisdiction and may confer rights which they must uphold.

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[75] *Ibid.*

[76] *Ibid.*

[77] Article 30 COMESA Treaty, available at: http://about.comesa.int/attachments/comesa_treaty_en.pdf, accessed on 20 May 2011; see also article 34 of the Protocol of ECOWAS Community Court of Justice (as amended).

Regional economic communities have an interest in ensuring and facilitating law translation by enacting principles aimed at protecting the translation of such laws from inimical treatment of a sort which may render them ineffective within national legal systems.[78]

As noted above, the ECOWAS, COMESA and EAC Treaties have adopted a less effective means of translating community laws into national legal systems, that is, the reliance on national constitutional procedures instead of the principle of direct applicability. They are also silent on the issue of the direct effect of community law, and, accordingly, have rendered uncertain the issue of whether individuals can invoke community law before national courts.[79]

The principle of supremacy of community law assumes that conflicts may arise between national law and community law before national courts. The preliminary reference procedure ensures that questions of community law arising within national legal systems are ultimately and automatically decided at the community level.[80] The place of community law in national legal systems is greatly influenced by national constitutions and judicial philosophy with regard to the relation between international law and national law.[81] Because states are sovereign, giving effect to or enforcing a law emanating from another legal system should as a rule have the express or tacit approval of the State. Where courts enforce or use foreign laws without this approval, they will often be accused of inappropriate judicial activism and blurring the lines between executive, judicial and legislative functions. [82]

B. Anton, *et al.* (Supra note 4) p.156.

Ibid.
Id. p.157.

Ibid.

Ibid.

An examination of how African constitutions are engineered to receive community laws should begin with the extent to which they acknowledge the existence of the community. In some constitutions, there are passing references to the community's existence (here one should include the organisation of the OAU, now the AU) and a constitutional commitment to abide by their principles or work towards achieving their goals.[83] For example, Article 40(d) of the Constitution of Ghana provides that:

"*In its dealings with other nations, the Government shall adhere to the principles enshrined in or as the case may be, the aims and ideals of (ii) the Charter of the Organisation of African Unity; ...(iv) the Treaty of the Economic Community of West African States; and (v) any other international organisation of which Ghana is a member.*[84]

Other constitutions make reference to international or foreign policy objectives such as "promoting sub-regional, regional and inter-African cooperation and unity" as stated in Article 19(b) of the Constitution of Nigeria which at the same time provides for the "promotion of African integration and support for African unity".[85]

Even if these provisions are superficial, they are at least useful. They demonstrate sensitivity to the existence and ideals of the African economic integration process. However, as channels for integrating community law into national legal systems they are of limited use. They mainly relate to the conduct of inter-state relations. This is reflected in the fact that they are often part of the 'foreign policy' provisions of the constitution.[86] They do not purport to make community law part of national law and it will take a great deal of difficult legal argument and judicial imagination for effect to be given to community law on their basis. However, courts can have regard to them in the interpretation and enforcement of national law vis-à-vis community law.[87]

[82] *Ibid.*
[83] Constitution of the Republic of Ghana, Article 40(d)(ii)(iv); available at: http://www.google.co.uk/search?hl=en&q=Ghana+Constitution&btnG=Search&meta, accessed on 20 May 2011.
[84] Constitution of the Federal Republic of Nigeria, available at: http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm, accessed on 20May 2011.
[85] B. Anton, *et al.* (supra note 4) p.158
[86] *Ibid.*

Despite the fact that in common law systems the enforcement of community law does not automatically define its place in national law, article 151 of the Constitution of Burkina Faso, provides that: "Treaties or agreements regularly ratified or approved have, from their publication, higher authority than laws, provided that, in respect of each agreement or treaty, the other party applies that treaty or agreement."[88]

IV.3 The Doctrine of the Supremacy of Community Law

The integration of different economies creates both vertical and horizontal relationships. Whereas the former exist between a community's legal system and those of its individual member states, the latter (horizontal) refer to the relationships among the individual member states themselves. Establishing and defining this latter set of relationships, and examining some legal aspects from the perspective of the AEC, is important for the success of any economic integration initiative.

IV.3.1. Supremacy of Community Law

The AEC Treaty does not clearly stipulate that Community law has power over national law. Nonetheless, some writers have tried to surmise a relationship of supremacy, using the text, structures, and objectives of the AEC Treaty.[89] Conflict between national and community law can happen in any economic integration community or process at any time when law on both sides is silent to its possibility. Such conflict can be considered part of the broader problem of the relationship between national legal systems and community law. Different solutions to this problem can be found in Africa.[90]

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[88] Constitution of the Republic of Burkina Faso; available at: http://www.google.co.uk/search?hl=en&q=Burkina+Faso+constitution&btnG=Search&meta, accessed on 20 May 2011.

[89] See Gino J. Naldi & Konstantinos D. Magliveras, The African Economic Community: Emancipation for African States or Yet Another Glorious Failure? 24 N.C. J. INT'L L.& COM. REG.601, 620-21 (1999).

[90] See generally Richard F. Oppong, Re-Imagining International Law: An Examination of Recent Trends in the Reception of International Law into National Legal Systems in Africa, 30 FORDHAM INT'L L. J. (forthcoming 2006).

While some countries adhere to monism, others are dualist. Whatever the way forward at the national level, the pursuit of economic integration in Africa demands a rethinking of the existing national constitutional arrangements,[91] in which the reception of International law and its relationship with national law must be examined.

The doctrines of sovereignty and of the supremacy of national constitutions and national law may need re-examination.[92] Advocates of the supremacy of the Community law also point to decisions and rules of the community that are automatically enforceable in member states, as well as the community's division of competence between itself and its member states. Whilst such a deduction is simply made, it will take an activist court to give power or emphasis to this supremacy, and it will require sturdy political and judicial will on the part of domestic national courts to sustain it.

The experience of the European Community is worth examining. The Treaty of Rome, like the AEC Treaty, was not explicit on whether community law enjoys supremacy over member states. Nonetheless, the European Court of Justice (ECJ) has been able to constitutionalise the Treaty of Rome and put it above national law: in *Van Gend en Loos v Nederlandse Tariefcommissie*,[93] the ECJ moved closer to the idea of supremacy by holding that the European Community constituted a new legal system which was distinct from that of its members.

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[91] See generally Tiyanjana Maluwa, The Incorporation of International Law and Its Interpretational Role in Municipal Legal Systems in Africa: An Explanatory Survey, 23 *S. AFR. Y.B. INT'L L.*45 (1998).

[92] See Richard F. Oppong, Observing the Legal System of the Community: The Relationship Between Community and National Legal Systems Under the African Economic Community Treaty, 15 Tul. J. Int'l & Comp. L.63 (2006-2007).

[93] S.Wolf , "European Community Law", in *Monitoring Regional Integration in Southern Africa*. Yearbook Vol. 8 2008, p.64; see also Treaty establishing the European Economic Community, signed on 25 March 1957.

Finally, the ECJ elevated European Community law above national law in *Flamino costa v E.N.E.L*, where it held that by contrast with an ordinary international treaty, the European Economic Community (EEC) Treaty had created its own legal system which, on entering into force, became an integral part of the legal systems of its members and therefore bonding on their courts.[94]

The precedence of community law is confirmed by Article 249 of the EEC Treaty, whereby a regulation "shall be binding" and "directly applicable in all member states."[95] It remains to be seen whether the AU Court of Justice will use the similar context in order to urge the primacy of AEC law over national law; nor will it be easy to assess how domestic African courts will react to any statement of the primacy of community law over national law by the AU Court of Justice.

To avoid any future conflict resulting from the failure of the AEC Treaty to clearly determine the issue of the supremacy of Community law, Article 8(4) of this Treaty provides that "Community organs, institutions and laws shall take precedence over similar national ones on matters pertaining to the implementation of this Treaty."[96] The stipulation itself represents great progress in economic integration efforts on the continent and will challenge each and every member state of the AEC that is still burdened with traditional concepts of sovereignty.[97] A judicial statement by the AU Court of Justice stipulating that AEC law takes primacy over contrary national legislation will establish consistency in the application of community law and ensure that its concepts have the same implication autonomously of the jurisdiction.[98]

[94] *Ibid.*
[95] *Ibid.*
[96] EEC Treaty (supra note 59)
[97] S.Wolf (supra note) 59,p.67.
[98] *Ibid.*

IV.3.2 Enforcement of Community Law

For a number of legal theorists, enforcement of sanctions is the very real meaning of law.[99] The coordination and enforcement of community law is supposed to be at both the national and the community level if it is to be successful at both levels.[100] Article 8(1) of the AEC Treaty states that: "the Assembly shall be the supreme organ of the Community"[101] and is the higher institution responsible for implementing different objectives mentioned in the Treaty. Within the European Union, the European Commission has been described as Europe's "single most important political force for integration, ever seeking to press forward to attain the community's objectives",[102] and it is able to do this not only because it is comprised of technocrats, but also because members are required to be persons whose "independence is beyond doubt," and who do not "seek nor take instructions from any government or from any other body." The effective combination of independent technocrats and politicians may partly account for the success of the European Union.[103]

In this way, the lack of stronger and autonomous institutions to offset the reluctance of politicians from putting community law into practice is one of the foremost reasons behind the slow speed of economic integration in Africa.[104] The AU Court of Justice is one of the important organs for the enforcement of AEC law and it is independent of all the other community institutions and "shall ensure the adherence to law in the interpretation and application of this Treaty and shall decide on disputes submitted thereto pursuant to thisTreaty."[105]

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[99] B. Anton, *et al.* (Supra note 4) p.72.
[100] *Ibid.*
[101] See African Economic Community Treaty, available at: http://www.africanreview.org/docs/civsoc/aectreaty.pdf , visited on 20 May 201.
[102] B. Anton, *et al.* (Supra note 4) p.73.
[103] *Ibid.*
[104] B. Anton, *et al.* (Supra note 4), p.74.
[105] Article 18(2) of the African Economic Community, 1991.

As mentioned above, the European Court of Justice has used a parallel stipulation to enlarge the extent of its judicial appraisal to matters not clearly specified in the European Community Treaty. It remains to be seen how the AU Court of Justice will proceed to get this kind of power.

It is hard to conceive of a stable community when the regulations are not equally relevant within member states. Undeniably, the very essence of integration will not be achieved since "uniformity in the meaning of law is part of the constitutional glue that holds the Community jointly." Article 19 of the AEC Treaty provides that: "the Decisions of the Court of Justice shall be binding on Member States and organs of the Community with respect to that particular case."[106] States for their part "guarantee" execution of judgements, and non-compliance may be referred to the Assembly, which may inflict sanctions.

Nevertheless, various reasons can be given for such non-compliance with international judgements, including arguments about national sovereignty, the absence of strong economic interdependence among the countries on the continent, a preference for negotiation instead of adjudication, and the absence of a private right of action before international tribunals in Africa. In this regard the precedential value of judgements is limited, as they are only binding on a specific case. Therefore, the fundamental role of precedents in the enforcement and development of law may well be lost.

The absence of a private right of action represents a grave limitation on the jurisdiction of the AU Court of Justice: potentially its role in the integration process and the choice for third parties to allege before the AU Court of Justice is left open. The need for the consent of the state party may render the right deceptive.

Article 19 of AEC Treaty.

It is difficult to conceive of any reason for this limitation other than the desire of member states to control the AU Court of Justice, even if only indirectly. Arguably, the 'exhaustion of local remedies' formula was not used because the drafters envisaged that there would be no local remedies for the breach of Community law at the national level, and hence, no possibility of ever exhausting it. If the requirement of consent remains, then the formidable barrier to the effectiveness of AEC Law is assured and it will make the integration initiative merely cosmetic. This unduly restrictive rule on private rights of action also runs counter to developments in other regional economic treaties,[107] as well as the recommendations of African legal scholars. Subsequently revisions of the AEC Treaty will hopefully create a provision for private rights of action either directly or by reference from national courts.

IV.3.3 Legal Techniques for the Enforcement of Community Law

Apart from the institutional dimensions of the enforcement of Community law, it is also necessary to assess the legal methods proposed by the AEC Treaty for the enforcement of the decisions of the Assembly. Article 10 of the AEC treaty states that decisions of the Assembly are "automatically enforceable" thirty days after being signed by the chairman of the Assembly. As stipulated in article 13, regulations of the Council[108] must be approved by the Assembly and are also "automatically enforceable thirty days after signature by the chairman of the Council."[109] This means that Community decisions and regulations will not be subject to any further national implementation measure before they can become effective within the national legal system.

[107] Article 26 establishing COMESA; article 15(2) of the Protocol on Tribunal SADC. Both articles provide for private right of action after the exhaustion of local remedies.

[108] Nsongurua J. Udombana, An African Human rights Court and an African Union Court: A Needful Dualism or a Needless Duplication? 28 Brook. J. INT'L L.881, 852-55 (2002-2003).

[109] Articles 10-13 of the Treaty establishing COMESA, signed on 5th November 1993.

In seeking to integrate AEC law into the national legal systems of its member states, the national courts may learn comparative lessons from the willingness of other national courts in Africa to rely on international human rights conventions, even in instances where, although ratified, they have not been incorporated into national legislation.[110]

In cases where Community issues are concerned, national courts may interpret statutes in light of Community law and this may entail interpreting domestic law to promote rather than undermine Community law. Arguably, the national courts, as organs of their respective states, are enjoined to observe "the legal system of the Community" and must also refrain from actions that may hinder the objectives of the Community. [111]

The ECJ holds that national courts are also responsible for the fulfilment of the obligation imposed on member states by article 10 of the European Community Treaty to take measures necessary to attain the objectives of the European Community.[112] It is significant that article 10 of the European Community Treaty is both in language and substance identical to article 5 of the African Economic Community Treaty. They provide that:

Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardize the attainment of the objectives of this Treaty. [113]

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[110] B. Anton, *et al.* (Supra note 4), pp. 77-78.
[111] Articles 3(e) and 5(1) of the COMESA Treaty.
[112] Article 10 of the COMESA Treaty.
[113] Article 10 of the European Community, available at: http://www.ena.lu/, accessed on 5/2/2011.

Article 5 (1) of the AEC Treaty states that: "Member States undertake to create favourable conditions for the development of the Community and the attainment of its objectives, particularly by harmonising their strategies and policies. They shall refrain from any unilateral action that may hinder the attainment of the said objectives."[114] Confidently, we hope that National courts will extend this adjudicatory approach to decisions made by the AU Court of Justice.

The technique of automatic enforceability is one of the myriad techniques available for the enforcement of AEC law.[115] There is a need for greater coordination both among national implementation agencies as well as between the AEC and national agencies. The AEC must build a strong relationship with these agencies by ensuring a mutual flow of information between them and the presence of community consciousness. An awareness of Community law on the part of these agencies can further the implementation of Community law.[116] The implementation of Community law will also improve when Community law is comprehensible, clear and coherent, which may result in non-compliance or the varied application of Community law.[117]

IV.3.4 Relationship between National Courts and the Court of Justice

The absence of an express provision for the relationship between national courts and the AU Court of Justice can hamper the effectiveness of the Court in the enforcement of AEC law.

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[114] Supra note 65, article 5(1).
[115] B. Anton, *et al.* [supra note 4], p. 79.
[116] *Ibid.*
[117] *Ibid.*

The effective implementation of community law in Europe is enhanced by references to the ECJ for preliminary rulings by national courts, the use of ECJ case law by national courts as precedents, the use of the enforcement processes of national courts to put into effect ECJ judgments, and regular interaction between the ECJ and national courts. [118]
Through active support and use by national courts, European Community law has become less an international law but rather resembles a federal legal system that governs the European Union. [119] It is recommended that a system of reference for preliminary rulings by national courts, similar to article 234 of the European Community Treaty be introduced into the AEC legal system.

This provision states that [t]he Court of Justice shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of this treaty, (b) the validity and interpretation of acts of institutions of the community and of the ECB; (c) the interpretation of the statutes of bodies established by an act of the council, where those statutes so provide. Where such a question is raised before any court or tribunal of member state, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon. Where any such question is raised in a case pending before a court or tribunal of a member state against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.[120]
Similarly, some regional economic treaties in Africa allow national courts to seek preliminary rulings from their respective community courts as stipulated in article 34 of the COMESA Treaty, detailing that the interpretation or application of the provision or the validity of the regulations, directives,

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[118] B. Anton, *et al.* (supra note 4), p. 80.
[119] Stephen Wetherill, *Law and Integration in the European Union* 1995, p.106.
[120] Supra note 80.

decisions or actions of the community court can be requested by the national court if necessary. [121]

According to article 35 of the AEC Treaty, the judgment is "final, binding and conclusive" as well as subject to the possibility of review[122] and article 33 emphasises that the judgment has "precedence over decisions of national courts." For this purpose, it is significant that the protocol of the Court of Justice of the AU lists general principles of law as one of the sources of law the court can refer to when deciding cases, so it will be universally recognized [124]. In reality, in the absence of any express relationship created by the AEC Treaty between national courts and the AU Court of Justice, a cautious reliance by the court on general principles of law may encourage national courts to borrow from the jurisprudence of the AU Court of Justice and this will provide an indirect means of enforcing Community law at the national level

Although, national courts often rely on jurisprudence from other domestic courts, it is debatable whether they can, or will, equally rely on the judgments of the AU Court of Justice. The adjudicatory approach of relying on decisions of foreign courts as persuasive authority, especially prevalent in common law countries is not ordinarily extended to international tribunals.[125]

However, it is increasingly advocated that there must be interaction, dialogue, or transjudicial communication between national courts and international tribunals.[126] Arguably, the fact that a judgment of the AU Court of Justice is binding on member states could be interpreted to imply that it binds the national courts of the member states as well.

[121] Article 34 of the COMESA Treaty

[122] Article 35 of the COMESA Treaty.

[123] Article 33 of the COMESA Treaty.

[124] Article 20 of the Protocol on the Statute of the African Court of Justice and Human Rights. July 01, 2008. Available at: http://www.africaunion.org/root/AU/Documents/Treaties/Text/Protocol%20to%20the%20African%20Court%20of%20Justice%20-%20Maputo.pdf, visited on 5/2/2011

[125] B. Anton, *et al.* (Supra note 4), p. 82.

[126] *Ibid.*

Arguably, the fact that a judgment of the AU Court of Justice is binding on member states[127] could be interpreted to imply that it binds the national courts of the member states as well. [128]

The protocol on the relationship between the African Economic Community and the Regional Economic Communities[129] provides the institutional framework for coordinating and harmonizing the relationship between them.

While the protocol is replete with emphasis on the need to coordinate and harmonise activities at both levels, there is no defective provision on the superiority of AEC law over that of the regional communities, except where it allows the Assembly or Council to give directives to the communities and explicitly states that their decisions may include sanctions.[130] Indeed, communities constitute the foundation of the AEC and the lack of a precise provision on their relationship with the AEC is one of the most important challenges. It remains to be seen how possible disagreement will be solved.

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[127] *Ibid.*
[128] *Ibid.*
[129] Article 7(3) (b) of the Protocol on the relationship between the African Economic Community and the Regional Economic Communities.
[130] Article 21 of AEC Treaty.

Conclusion

There is a need for engagement between Community law, national courts, and individuals if integration efforts in Africa are to succeed. The AEC is still in its formative stages, which suggests that national courts should adopt a teleological approach in cases where individuals seek the benefits of Community law and policy.

In this situation, national courts should refer to and make use of Community goals. As for Oppong, [131] "to my knowledge, it is only within the East African Community that all the founding member states have enacted legislation giving 'the force of law' to 'the p &dd—rovision of any Act of the Community from the date of the publication of the Act in the Gazette". [132]

It appears that other regional economic community member states have been remarkably coy about giving the force of law to community laws in their national legal systems. Bethlehem,[133] for example states that "in most instances, the trade, financial and economic agreements of which South Africa is a party have not been enacted into municipal law."[134] To sum up, it appears that African governments have not appreciated the fact that economic integration makes constitutional demands and, on some issues, require the rethinking or modification of constitutional or legislative provisions to accommodate community law and the community itself. For a true

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[131] Oppong, R. F., "Making Regional Economic Community Law Enforceable in National Legal Systems: Constitutional and Judicial Challenges", in Bösl, A. (et al.). *Monitoring Regional Integration in Southern Africa*, Yearbook, STellenbosch, Tralac, 2008, p. 153.

[132] Supra note 4, p. 153.

[133] Bethlehem, D. 2005, 'International Economic Relations', in Dugard, J., *International Law: A South African Perspective*, Landsdowne, South Africa, Juta & Co, 2005, p. 434.

[134] *Ibid.*

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HISTORY OF RWANDA: FILLING IN MAJOR GAPS

By Timothy Njoroge

And

Ronald Kimuli

1. GENERAL INTRODUCTION

Man's quest for discovering his environment has no boundaries. Stemming from his basic needs, namely shelter and clothing, the early man discovered edible herbs from poisonous ones, made tools from stones and sheltered himself in caves before learning how to construct a decent home.

As time went by, the invincible man gradually improved his discoveries into such great economies and high technology that we are currently enjoying. Along this advancement, however, grew some vices such as materialism, greed, fear and uncertainty that caused the same man to distrust his neighbor, causing him to move from place to place in order to satisfy his insatiable needs.

Although there have been remarkable advancements in sectors such as education, manufacturing, agriculture and livestock as well as communication which have been distributed worldwide, depending on the beneficiaries' ability to acquire them, information sharing suffered an equally major impediment until the computer era.

It is this setback, coupled with the ever increasing needs for mankind that have caused wars and misunderstandings not only among communities, but also among nations. A good example is the misuse and distortion of the word ***"Bantu"*** in Rwanda and elsewhere within the African continent by historians.

Whereas ***"Bantu"*** is simply a collective linguistic terminology referring to various languages spoken by most inhabitants of East Africa because of their common similarity ***'ntu'***, Rwandan colonizers chose to distort its significance to mean a particular ethnic group of the Rwandan community and went ahead to say that this group was different from the rest of the community. The rest of the population was called either Nilotes or Hamites and Pigmoid, all according to their appearance.

It is commonly believed that the early Bantu speaking community came from the present day Cameroon and around other regions within the Central Africa towards the East through the present day Democratic Republic of Congo.

The reasons for their migration are believed by historians as natural calamities such as volcanic eruptions, gas overturn, floods or diseases. Their migrations were sporadic, in small or big numbers depending on factors that forced them to leave their early settlement.

The migration of the Bantu speaking community is well documented elsewhere apart from Rwanda and Burundi where the term ***"Bantu"*** is understood to mean a particular ethnic group. This research will therefore seek to clarify the linguistic meaning of the term ***"Bantu"*** and highlight both the entry and exit points, that is, in and out of the present day Rwanda.

This will call for extensive exploration and fact collection missions within the Eastern Africa region including the Eastern Democratic Republic of Congo (DRC.) It will also disapprove the Hamitic myth and instead, will prove that the so-called Hamites, Nilotes or Gallas have actually been Bantu speaking pastoralists who have been roaming the Great Lakes region including Rwanda, Burundi for many centuries BC.

2. PROBLEM STATEMENT

Although all African countries suffered due to colonization, Rwanda's situation went out of proportion, culminating into the 1994 genocide. While the wounds are healing at a remarkable pace, the scars will bear witness at how expensive ignorance and information manipulation can be. The main problems included the introduction of the Hamitic theory and ignoring the country's geography.

First of all, few people ventured in and outside the country before and during colonial rule due to various reasons such as:

a. Prohibitive physical boundaries such as lakes, swamps rivers and volcanoes;

b. Indigenous strong armies that could not allow in any group of people wishing to venture into the Rwandan territory;

C. Trade across the borders was also limited due to language barriers;

Secondly, these disadvantages enabled the colonialists to easily adopt other vices in their attempt to divide and rule, the most remarkable

ones being the following, among others:

A. Distortion of the Rwandan history during the colonial rule;

B. Introduction of the Hamitic theory;

C. Devaluation of the Rwandan culture which had ensured unity and prosperity in the country ever since the nation was established.

3. SIGNIFICANCE OF THE STUDY AND OBJECTIVES

This study aims at clarifying the meaning of the term 'Bantu' for the Rwandan scholars and harmonizes its implication according to how it is understood elsewhere within the continent. It will help in filling major gaps that have been removed from the Rwandan history or deliberately distorted by colonialists to suit their needs.

The study will point out the most probable entry and exit points into and out of the present day Rwanda for various Bantu speaking communities before spreading into the rest of East Africa. At the same time, the study will take into account the region's physical features and the little technology that existed at that time, which should have been considered by historians while writing the Rwandan history.

The findings will point out that the people referred to as "nilotes"or "hamites" by most Rwandan historians were actually various pastoralists Bantu speaking communities even long before they entered from the eastern part of the present day Rwanda.

It is this erroneous reference, coupled with deculturalisation that greatly contributed to the 1994 genocide in Rwanda and many massacres in Burundi.

The findings further nullify the erroneous hypothesis from historians which suggests that there was a migration of Bantu speakers towards East Africa that crossed Lake Tanganyika towards Tanzania or Rusizi River to Burundi from Congo. On the other hand, due to prohibitive geographical features of the areas mentioned, the research proves that they actually entered through former Gisenyi and Ruhengeri Provinces which are currently known as Rubavu and Musanze Districts respectively in Rwanda.

The findings further disapprove the hypothesis that the Bantu speaking communities exited Rwanda through Rusumo area between the current Rwanda and Tanzania border where it was and still is practically impossible to cross due to the huge Akagera and Ruvubu Rivers and the vast swamps as well as numerous lakes along the Akagera River until the establishment of Karagwe Kingdom. The only passable exit point could have been across Muvumba River, which was also the entry point for the Bantu speaking pastoralists.

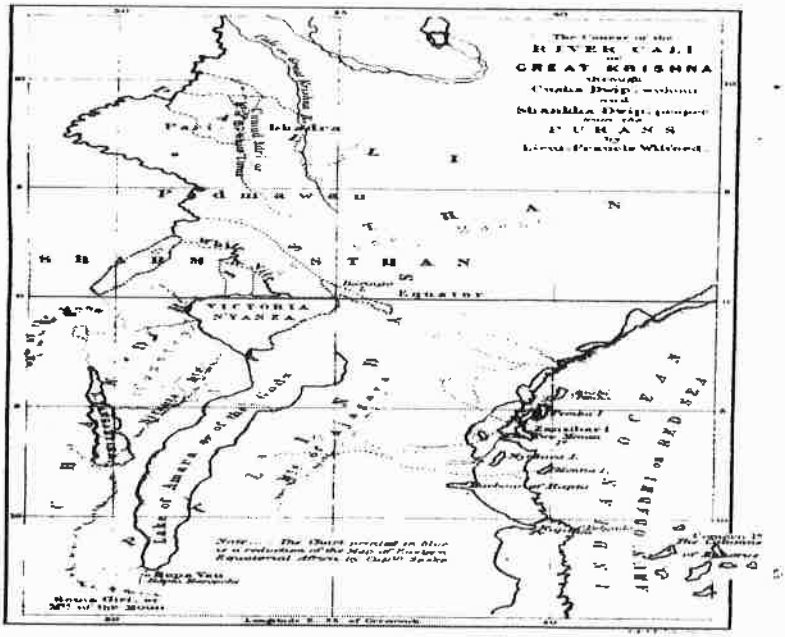
The real root cause surrounding the Hamitic myth is John Hanning Speke's Journal of the Source of River Nile (1868) which was not published until recently when Google scanned it and put it online for public interest. Whereas the rest of East Africa was occupied by various ethnic groups whose languages differed in many aspects, Rwanda and Burundi shared one language and had the same ethnic background and therefore became the most vulnerable communities who later emerged as the most victims of invented history.

It is not possible to coherently argue on the Hamitic myth without first reading Speke's journal and observing his arguments and abstract description of the people's physical appearance on which he based those arguments.

It is not possible to coherently argue on the Hamitic myth without first reading Speke's journal and observing his arguments and abstract description of the people's physical appearance on which he based those arguments. This unfortunate situation, coupled with the fact that unfounded history of Rwanda has now existed for over a century, calls for more extensive research which should aim at putting the Rwandan history in its right perspective.

A glance at a map on page XXX in the same journal reveals a triangular Lake Victoria and another huge one south of here called Amara that has never existed on the African Continent.

Speke' map of East Africa showing the course of the River Nile.



The degree of error in Speke's findings and judgments are evenly reflected in the current history of Rwanda because the same findings were considered by colonizers as the primary source of written information about the people of East Africa including Rwanda where Speke never set foot.

A modern map of East Africa. SOURCE: *McMillan Map of East Africa*

However, we are very grateful for the existing written history because it provided many valuable hints without which this research would have been exceedingly exhausting.

4. HISTORICAL BACKGROUND OF THE STUDY

From the onset of colonization, Rwanda and Burundi were labeled as countries which were inhabited by three ethnic groups, namely Hutu, Tutsi and Twa, all sharing one language and culture but having distinct ethnic backgrounds. Based on their heights and classes in the society, the colonialists went ahead and classified the citizens as Tutsi, Hutu and Twa respectively and even went to the extent of calling one of the newly created ethnic group, the Tutsi, as foreigners who abandoned their own homeland in either Egypt or Ethiopia to settle in Rwanda and Burundi some centuries ago.

Except in Rwanda and Burundi where the colonialists took advantage of people's physical features to divide them into different ethnic groups, elsewhere in Africa, especially East Africa, each ethnic group consists of either short or tall people, all distinguished by their culture and dialects. The ones whose dialects have the common similarity ***"ntu"*** are collectively called ***"bantu"*** while the issue of their physical characteristics or ethnic backgrounds is irrelevant as there is no particular tribe or ethnic group called ***"Bantu"***.

The fact that Rwanda and Burundi's colonialists dwelt too much on their subjects' physical appearance and accordingly divided them into ethnic groups is absolutely questionable and has gone on unnoticed for so long.

There are many good reasons as to why every country should have its own true history and Rwanda should not be denied this right. Keeping in mind that the task of gathering the necessary information to fill in the major gaps in the current Rwandan history is extremely a hard one, we nonetheless committed ourselves to carry out this exploratory research as our contribution to the Rwandan community in particular and the world in general.

The team which was comprised of Timothy Njoroge and Ronald Kimuli, both of ULK Gisenyi Campus started by exploring both scarpments of the western Rift Valley from the southern tip of Lake Tanganyika, all the way to Lake Albert. Two exploratory journeys started at Gisenyi whereby Timothy Njoroge followed the southern route towards Karongi and Cyangugu along the eastern shores of Lake Kivu. He then followed Rusizi River through Bugarama and on to Bujumbura, on the northern tip of Lake Tanganyika. The eastern and western shores of the lake had been explored before in a separate 6 months expedition which took place in 1986.

Ronald Kimuli trailed the northern route towards Lake Albert. Save for another stretch on the eastern flank of Muhabura volcano, around Bunagana, Kisoro and Cyanika which also leads into Rwanda, there is no other safe passage up to River Semliki further north.

We then went round the country in order to establish the possible exit points. We discovered that the present day Rwanda is almost an island that trapped the new comers for a very long time before discovering their way out, across Umuvumba River in the Eastern part of the present day Rwanda. In the process, we also discovered that this very exit point was also the entry point for another Bantu speaking community who were mainly pastoralists.

5. RESEARCH METHODOLOGY

The research was exploratory and focused on the region's physical features, marriage and burial ceremonies as well as child naming. Oral literature and numbering also featured prominently and in fact, revealed many common beliefs including taboos and the deity. Moreover, our personal experiences while living with various communities in the region coupled with extensive travelling in the areas mentioned, helped us in accomplishing this work.

Exploratory research is a type of research conducted for a problem that has not been clearly defined. Exploratory research helps determine the best research design, data collection method and selection of subjects. It should draw definitive conclusions only with extreme caution. Given its fundamental nature, exploratory research often concludes that a perceived problem does not actually exist, hence our firm belief that there is no particular ethnic group called Bantu. It is simply a collective linguistic terminology referring to various languages spoken by most inhabitants of East Africa because of their common similarity '**ntu.**'

6.THE FINDINGS

Although it is probable that the Bantu speaking community came from the Central Africa, their point of entry as claimed by existing history is highly doubtable due to prohibitive physical boundaries that exclusively separate East Africa from the rest of the continent. It is apparent that historians greatly overlooked the fact that the 800 Km long Lake Tanganyika is not only too large to be crossed by a dug-out canoe but also a very turbulent one. Even at points where the lake is narrow and allowed navigation, dug-out canoes cannot be credited for a population of one hundred million people of the Bantu speaking community within only three hundred years given that, like any other place on this earth, East Africa too had its own demographic restrictions.

Besides, dug-out canoes must have been the scarcest items as were the tools to be used for making them, since communities were always on the run due to lack of organized leadership and sporadic invasions from other wanderers. The making of one dug-out canoe required an organized team of not less than ten men or more to fell a huge tree and a considerable time to make a vessel out of it. Such an activity could only be carried out by a settled community with a stable leadership. It is important to note that communication between Rwanda and Ijwi Island in Lake Kivu became possible during RUGANZU II NDOLI in the 16th century.

Rusizi River which feeds Lake Tanganyika from the north enters the lake between Bujumbura and the town of Uvira in DR Congo. The same river is too large and occupies a large swamp of up to 50 Km at some points while maintaining the same volume of water right from Lake Kivu, some 90 Km upstream from where it takes its source.

Then comes the deep and equally perilous and shore-less Lake Kivu that occupies the area between Cyangugu and Sake near the volcanoes. Only 15 Km to the North of Sake and Goma towns of Eastern DR Congo lie two very active volcanoes known as Nyiragongo and Nyamulagira which are part of the Virunga volcanic chain.

The volcanic chain is responsible for the inaccessible Rutchuru River (of Eastern D R Congo) which flows through an impenetrable tropical forest all the way to Lake Edward and later flows out of here as River Semliki to form Lake Albert further north.

It is this water drainage from the Virunga volcanic chain that is referred to as the Albertine Nile. Except a small 15 Km wide stretch of land in the northern Rwanda between the volcanoes and Lake Kivu, and another equally small passage on the eastern flank of Muhabura, volcano, around Bunagana, Kisoro and Cyanika which also leads into Rwanda, there is no other safe passage up to River Semliki further north.[IV]

These two stretches are most probable entry points for the farming Bantu speaking groups into East Africa but not before staying in the present day eastern and southern Rwanda longer than they did elsewhere before abandoning it due to drought. Here too, it is important to note that cattle can survive a two consecutive year drought while no subsistence farming is possible during that same period. This aspect gave an edge to a pastoralist over a subsistence farmer who either had to move on in search of another favorable farming area or seek refuge to the Bantu speaking pastoralist whose cattle could survive the drought. It further explains why the pastoralist Bantu remained lords over the farming Bantu regardless of one's ethnic background.

Although it is difficult to establish when both groups occupied the present day Rwanda, it is easy to note that the country's maze-like features including its physical boundaries that make it a sort of island, must have trapped the communities and kept them roaming its hills and plains, probably for several centuries, before discovering the only passable exit point across Muvumba River. However, we can reservedly assume that the pastoralist had a clear edge on the territory's permanency over the farmer because the cattle could survive the drought longer than subsistence crops.

6.1 ENTERING RWANDA

Many African migrations were caused by a number of factors such as famine, diseases and other natural calamities. Even in the wake of new technology, these disasters are still devastating the continent. It is not surprising to hear that hunger, disease or a volcanic eruption has caused death to a considerable number of people and leave other prolonged effects on the remaining population. Methane gas overturn in Lake Nyos (Cameroon, 1986) Ebola, (DRC 1976 and 1989) the frequent eruption of Mt Nyiragongo, DRC, (the most current one having taken place in 2001) famine due to prolonged drought in North Eastern Kenya, are some of numerous examples that have attracted international attention in recent years.

Although no account of such calamities were recorded 300 years ago and before, it is wrong to assume that they never took place. In fact, we can assumedly say that the situation was even worse especially when there was no means of communication, neither a hospital nor a police station in addition to lack of any type of administrative structure or even a metrological department.Once at a place called Sake on the northern shore of Lake Kivu, the Bantu found themselves trapped between the lake and Mount Nyiragongo only about 15 Km to the north.

Here, there were only two alternatives: Passing between Nyiragongo and Karisimbi volcanoes up to Muhabura and then into Rwanda via Kisoro and Cyanika. The second alternative is moving towards Goma, passing through the eastern flank of Rubavu hill and continues through Busasamana. From this point the Bantu moved straight ahead and continued between Gishwati and Karisimbi or followed the eastern side of Lake Kivu.

This is the group that roamed the Rwandan central plateau and travelled further south to Burundi and the present day Tanzania along Lake Tangayika. This is proved by the fact that only one culture and language, variably called Kinyarwanda in Rwanda, Kirundi in Burundi and Baha in Tanzania are shared all along the eastern escarpment of the Western Rift Valley, from the northern shore of Lake Kivu to the southern end of Lake Tanganyika.

It is also interesting to note that nothing is shared between two cities that live directly opposite each other, on the same lake, such as Kigoma (Tanzania) – Kalemie (DRC), Bujumbura (Burundi) – Uvira (DRC), Cyangugu (Rwanda) – Bukavu (DRC).

It is from this entry point that the farming Bantu speaking community therefore entered Rwanda in small groups, probably composed of close family members because of suspicion due to insecurity, except during volcanic eruptions and or gas overturn that drove a large number of people. Even then, people would remain suspicious of one another until an opportune time availed itself when each family followed its own way.

Once a family chose its territory, it tried as much as possible to establish its own defense mechanism which would not take long before a new comer or a more powerful group or family entered the same territory and drove the former family away. This is how life for the Bantu speaking farmer was until they made contacts with Bantu speaking pastoralists who already occupied the Rwanda central plateau up to the western shores of Lake Victoria. Under such circumstances, it was not possible for different families to harmoniously live together like in our modern societies.

This left all the families or individuals to fend for themselves and always remained on the look-out for any newcomer who was never welcome for security reasons.
It is important to note that any territorial occupation was never negotiated and that weaker families were forcefully driven out by stronger ones. Life must have remained like that until the farming Bantu had an encounter with pastoralists who, as we have gathered, had a well administrative structure. This must have been either in the current central plateau or in low altitude areas in the present Eastern Province of Rwanda.

This is very easy to understand because nopastoralist would lead his cattle up a steep hill where there is no water. In addition to this, such low altitude areas attracted little or no rainfall which caused long droughts that could not sustain crops and therefore kept the Bantu speaking farmers roaming the hills in search of land that was suitable for subsistence farming.

6.2 THE ROLE OF RWANDA'S PHYSICAL FEATURES IN EARLY MIGRATIONS

Although early historical findings have helped in finding out about Rwanda's past, it is only geography that can reveal the mystery of people's migration into the country and their eventual settlement. First of all, the country's history talks of only the royal lineage and their conquests on other kingdoms with no reference to any natural calamity that might have taken place and how it affected the ordinary citizen. Secondly, the colonial and pro-colonial administration concentrated on a divide and rule policy and therefore did very little to put the country on the African map in its true perspective.

Steep hills were simply referred to as "gentle hills" while great rivers that are responsible for huge lakes such as Victoria and Tanganyika were merely called "streams".

Of course, this did not attract any researcher's attention or curiosity. This was further worsened by the fact that the road network in the country, during the colonial era up to now avoided completely the view of rivers such as Mukungwa, Akanyaru, Nyabarongo and Akagera except at crossing points. Yet, it is only these maze-like features, in addition to numerous lakes, rivers, vast swamps and oral tradition that can reveal how the Bantu speaking people, regardless of their ethnic backgrounds, lived in Rwanda before migrating to other parts of East Africa.[VI] This also explains why the country is still the most densely populated in Africa while the living conditions in Rwanda are more difficult, compared to other countries in the region.[VII]

While one group of Bantu speaking people followed the eastern flank of Lake Kivu, the one that pursued the route between Gishwati and Karisimbi must have passed north of Lake Bulera or through Ntaruka, near the Ruhengeri because it must have been very difficult to cross Mukungwa river further downstream. This is the group that proceeded to Byumba and areas around Lake Muhazi.[VIII]

6.3. JOHN HANNING SPEKE' S JOURNAL

Having extensively explored the Great Lakes region in order to ascertain its physical features and access their navigability while keeping in mind the technical know-how which existed before kingdoms were established, we sought the earliest written materials about the region and found Speke's Journal of the discovery of River Nile.

In his French and British sponsored exploration, we can only say that Speke's achievements were limited to confirming to the Geographical Society that Lake Victoria was the source of River Nile while the rest of Speke's findings were given undue credit.His 590 page book is, as our study found out, the main source of confusion surrounding the Hamitic and Nilotic myths because it is indeed the very first written information about the African interior that included all the kingdoms in the Great Lakes region, their strengths and weaknesses, their lifestyle as well as a very detailed description of the region's soil and vegetation, including edible and medicinal herbs. In their scramble for the African Continent, the colonizers had to rely on Speke's inexplicit information, in addition to Vasco da Gama's and other early explorers'.

Unfortunately, some of Speke's assertions in the journal which instantly became the colonizers' Bible had nothing to do with any scientific discovery. Most of them were just Speke's own imagination. On his arrival to the interior of Tanzania, Speke was surprised to find organized kingdoms in Usui, Usagara and Unyamwezi as well as Karagwe. Further north, in Uganda, he was even struck by a very advanced administrative structure at Kabaka Mutesa's palace where Speke had to wait for three weeks before seeing the Kabaka who was very much aware of Speke's presence, but could not see him because he was too busy settling more important kingdom issues.

The Kabaka's administrative structure which included two prime ministers and their deputies as well as other ministries, are some of the things that surprised Speke who could not attribute such skills to an Africa.

It is worth noting the difficulties that Speke went through before reaching King Rumanyika's palace in Karagwe and their discussions. Having been pillaged each time he entered a new kingdom, save for Karagwe and Buganda, Mr Speke devised a new approach in order to appease his patrons. Basing his argument on their physical features, he invented the story of a superior tribe called Hamites which traces its ancestry to King Solomon whose hair was as straight as his as he says it in "The Journal of the Discovery of River Nile, 1868", page 236.[IX]

At last, Speke had found the trick that served him as a master key which opened any door to every kingdom he wished to enter, for, Rumanyika alone played the most important role to introduce him to the Kabaka of Buganda and later on to the king of Bunyoro, a task which would have otherwise been impossible to achieve.

From here onwards, the seed of confusion which later caused many divisions, massacres and genocide in Rwanda had resolutely been sown, for, the story of Wahuma or Wahima and Batutsi was so amplified to the extent that he sought his superiors to believe him because he thought that it would be difficult for them to do so by using common sense. Thus, he went ahead to form his own theory about the Abyssinians having invaded the Negroes' land.[X] Please note that this page is marked by hand, to mean either suspicion or something of a certain interest because Speke's report about Africa's interior was the only source of written information in the nineteenth century.

Speke ignored what King Rumanyika of Karagwe had told him earlier on that the Great Lakes Region had been just one big kingdom that included Rwanda, Burundi, Buganda, Toro and Karagwe which had been dismembered before King Ruhinda of Karagwe who was King Rumanyika's 11th ancestor,[XI] a fact that was greatly ignored

because it contradicted Speke's assertion that Huma, Hima or Tutsi were foreigners from Abyssinia.The genealogy of Ruhinda Empire or the Karagwe Kingdom, from the earliest known to the reign of king Rumanyika and after the break-up of the Great Kingdom of Meru is as follows: Ruhinda, Ntare, Ruhinda II, Ntare II; There were five other kings before Rusatira whose names are not known because Rusatira is known to have been the 11th king of Karagwe. [XII]
After Rusatira, the following kings are known to have reigned in Karagwe respectively: Muhinga, Karemera, Ntare VII, Ruhinda VI, Dagara, who begot Rumanyika. Mr Speke went on to contradict himself on page 241 of the same journal, calling Rumanyika and his eleven generations before him, including the dismembered kingdom of Meru as "foreigners" [XIII]

Whenever Mr Speke subconsciously reckoned that Wahuma, Wahima or Watutsi were legitimate inhabitants of areas they occupied because he could not establish when the so called "foreigners" first occupied the Great Lakes region, he chose to say that they were Ethiopians who changed their names from Gallas, to either Wahuma, Wahima or Watutsi while admitting at the same time that no one could explain this. [XIV]

However, according to scientific research, the truth is that various ethnic groups, including those ones that Speke chose to call "foreigners" and whose dialects were and remain Bantu in linguistic terms, roamed the Great Lakes region several centuries BC. There is no scientific proof that pins Ethiopia to the origin of Tutsi. [XV] For reasons explained in the previous chapter, all the kings in the Great Lakes region were mainly pastoralists and this activity supported life more than tilling the land in drought seasons.

This aspect naturally favored the pastoralist to assume the lordship over their fellow farmers who, under normal circumstances, sought the pastoralist's protection. Perhaps, since Mr Speke observed that pastoralists were fewer than farmers and that he was only interested in that majority's land, he chose to use the word "foreigner" instead of "minority" because the later would have given them legitimacy over their respective countries.

It is also important to note that shortly after Speke's journal reached the Geographical Society's hands, the colonizers preferred to negotiate protectorate treaties in countries which had organized leadership such as Rwanda and Uganda while Kenya and Tanzania became colonies respectively. However, the issue of "foreigner" could not work in Uganda because there were many ethnic groups that could not be easily divided along ethnic lines. Nevertheless, in Rwanda, the issue became a powerful weapon for the colonialists because of demographic reasons: pastoralist Bantu were fewer than the farming Bantu.

After applying Speke's prescription on the Rwandans, the trick worked even better for the colonialists because each "newly created ethnic group" tried to justify its superiority or oppression respectively. It is also worth noting that within only twenty years after Speke's visit to East Africa, the whole region had already been effectively colonized whereby Rwanda, Burundi and Tanzania were allocated to Germany while Uganda and Kenya became protectorate and colony respectively to the British Empire.

6.4 PASTORAL BANTU SPEAKING GROUPS

Excavation work shows that there existed a Bantu pastoralist community in western Uganda called Bachwezi. Archaeology sites at Bigo bya Mugenyi, Mubende, Kibengo and Ntusi confirm that this community had a ditched enclosure called ***orurembo*** which is similar to ***irembo*** in Kinyarwanda. Their youth were initiated into adulthood in a ceremony known as "***kubandwa***" (initiation into adulthood) hence the names such **"Emanzi"** (the initiated) or "***Akamanzi*** "(the little initiated one) and they called a brown cow ***"ente y'ebihogo***" while a cattle keeper was known as "***omuriisa w'ente***"

These words are still used today in Runyoro, Rutoro, Runyakore and Rukiga languages which are purely Bantu. Other names of places such as **Murambi, Nyamiyaga** and **Masaka** as well as **Isaka**, and **Rusatira**, to mention just a few, exist throughout the interlacustrine region, including the present day Rwanda where the pastoral Bantu roamed in search of greener pastures.

The ceremony ***"kubandwa"*** which existed throughout Rwanda and died away on the introduction of Christianity, ensured that a person had ceased to be a child. Before the ceremony took place, many rigorous exercises including all the necessary codes of ethics had to be indoctrinated to the would-be initiated youth before the actual initiation, which can be likened to today's baptism. It is important to note that this practice still exists among the Kikuyu, Embu, Luhyia and Masai in Kenya and Tanzania as well as the Bagisu of Uganda.

Though these rituals which point out certain practices or behaviours as taboos take various forms depending on the community performing it, we can say, to a certain extent, that peace and stability which has been observed in these communities can be credited to the teachings obtained from their respective initiation ceremonies.

Unfortunately for Rwanda, such rituals were the first casualties of colonization such that the ordinary citizens just survived on any leadership that was imposed on them, without any ethics or any code of conduct to refer to. During the same period, the issue of ethnicity was deliberately amplified such that by 1994, everything had been lost to the extent that a mother mercilessly hacked her own offspring to death. It is therefore unjustified to refer to the Batutsi as Hamites, Galla or Cushites just as we cannot refer to the Bantu speaking community in East Africa such as Lundu-mbo, Basaa, Bafia or Kafa which are the main Bantu groups in Cameroon.

7. CONLUSION AND SUGGESTIONS

The existing Rwandan history is only concerned with royal linage, their conquests as well as classifying Rwandans as Hutu, Tutsi and Twa, depending on their physical appearance, in complete oblivion of the actual meaning of the term "Bantu." It erroneously refers to the Tutsi as a non Bantu and foreigners whereas they were actually Bantu speakers who had been living within the great lakes region as confirmed by G.S. Were and D.A Wilson in " *Africa though a thousand years."* They were simple Bantu speaking pastoralists who entered the country from the east.

By the time the first colonialist came to Rwanda, details of the royal lineage were already available, having passed from generation to generation through oral literature and poetry. These poets could accurately recount all the kings' events from the year 1089 AD up to 1972 when Alexis Kagame was writing a book titled ***"Un abrégé éthno-histoire du Rwanda."***

He went on to say that he personally verified the facts from all the four corners of the country and found that they were the same. Surprisingly, Alexis Kagame too referred to pastoralist Bantu as "***Hamites***" Was this due to ignorance or influence by the colonialist? Having nothing to write about, the colonialist embarked on describing and classifying the people he saw depending on their appearances and thus, caused enough turmoil in both Rwanda and Burundi, the last one being the 1994 genocide in Rwanda.

Apart from Rwanda and Burundi, the pastoral Bantu speaking communities have lived peacefully in their respective countries namely Uganda, Kenya and Tanzania.

Because the term "Bantu" was clearly understood in the above mentioned countries, none of their respective administrations has ever segregated them from the rest of the population and consequently, the same pastoralist Bantu speaking communities have never felt different from the rest of the population in their respective countries.

It is therefore recommended that historians as well as history teachers in Rwanda quickly adopt this connotation and that these findings should always serve as a major reference for any historian who may wish to write anything about Rwanda.

Africans should write their own history based on scientific research as well as existing oral tradition, geography, languages, culture and consider all the uniting factors which existed before colonialism. Nobody has the right to distort our concrete well being which existed for many centuries. In this regard, we request Rwandan historians to critically consider the above mentioned facts, especially the geography of our region and these new findings in order to confidently rebuild our own history, as no foreigner will ever do it for us.

Furthermore, the Government of Rwanda should form a team of experts to gather the lost Rwandan culture with the aim of restoring some of it in schools, depending on how relevant it is to the current society. This practice has been termed as the real development engine in India, China and Japan.

The current History of Rwandan, including the findings of our research is just a tip of the iceberg. We surely need to dig deeper and discover more about that great kingdom of Meru of which Rwanda was part, as mentioned in Speke's journal.

Above all, we sincerely believe that this issue is indeed very urgent because every country needs to have its own true history as a major catalyst for a long term development.

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Foot notes

[I] *G S Were and D A Wilson: East Africa through a thousand years: 1968 and 1972, page 7. "Their origins are largely un-known, but they probably came from a fairly restricted area of central or western Africa since their languages have many basic similarities. These languages are collectively called by specialists as "Bantu" and people who speak them have been given the same name."*

[II] *Jean Paul Harroy: Rwanda, de la Féodalité a la Démocratie, p 24, 25 and 26. The same Bantu speaking community has been classified into three groups namely, "Pigmoids", "Bantu" and "Batutsi". In his book, J P Harroy took great pain in differentiating these "groups", going by their physical appearance.*

[III] *G S Were and D A Wilson: East Africa through a thousand years, page 4: 'Until recent years, East Africa was a difficult area to cross. There were areas dominated by tsetse fly and the malaria carrying –mosquito. There were the forested mountains and highland regions. There were the steep escarpments of the eastern and the western rift valleys.*

These barriers largely explain why it was until the end of the eighteenth century that the people from the far interior began to reach he coast and why none of the coastal peoples had penetrated inland at an earlier date.'

[IV] *In order to understand how the areas mentioned greatly impeded the early Bantu migration, one needs to physically explore them.*

[V] *McMillan: Atlas de Géographie: deuxième édition: page 12*

[VI] *Jean Paul Harroy: Rwanda, de la Féodalité a la Démocratie: 'With rare exceptions, the soils of Rwanda are neither very fertile nor very poor but the thousand hills' physical features naturally demarcated the country into 15 territories which are surprisingly so distinctive from each other that even the least observing eye can clearly notice.*

[VII] *Macmillan Atlas de Géographie page 42. Google Earth: Rwanda*

Please, note that while many names such as Mukungwa, Jali, Shyorongi, Muhazi and Nyabarongo whose meanings are unknown in Kinyarwanda dialect, some of them have significant meanings and are used elsewhere in East Africa. Besides, the Kikuyu community in Kenya counts from 1 to infinity in Kinyarwanda.

[VIII] The Journal of the Discovery of River Nile, page 236:*"Ever proud of his history since I traced his descent from Abyssinia and King Solomon whose hair was as straight as my own, Mr Rumanyika dwelt on my theological disclosure with the greatest delight and wished to know what differences existed between the Arabs and ourselves."*

[X] The Journal of the Discovery of River Nile" page 241 which says in part: "*The reader has now my experience of several of minor states, and has presently to be introduced to Uganda, the most powerful in the now divided ancient great kingdom of Kitara.....It appears impossible to believe, judging from the physical appearance of the Wahuma, that they can be of any other race other than the semi Shem-Hamitic of Ethiopia*".

[X] The Journal of the Discovery of River Nile; page 223: *"Rumanika asked how I could account for the decline of countries instancing the dismemberment of the Wahuma and remarked that formerly, Karagwe included Burundi, Rwanda and Gisaka which collectively were known as the Kindom of Meru, governed by one man.*

[XI] The Journal of the Discovery of River Nile; page 244: "which order only changed with the eleventh reign when Rusatira ascended to the throne."

[XII] The Journal of the Discovery of River Nile; page 241 *"In these countries, the government is in the hands of foreigners who had invaded and taken possession of them, leaving the agricultural aborigines to till the ground while the junior members of usurping clans herded cattle, just as in Abyssinia or wherever Abyssinians or Gallas have shown themselves."*

[XIII] The Journal of the Discovery of River Nile; page 244 "How or when their name became changed from Wahuma to Watutsi, no one is able to explain"

[XIV] KI-ZEBRO and SHERPAZ in their "Histoire de l'Afrique Noire d'hier a demain" 1972, page 60: ***"Anyway, nothing compels to have a priori thought that Batutsi came from Ethiopia."***

[XV] *G S Were and D A Wilson: East Africa through a thousand years: 1968 and 1972 page46. "The most that can be said, however, is that there was an immigration of a pastoral people into the area north and west of Lake Victoria. Their descendants are still found in Bunyoro, Ankole, Toro, Rwanda, Burundi, Wanga and the Bukoba District of the mainland Tanzania, particularly Karagwe."*

[XVI] *Alexis Kagame: Un abrégé d'éthno-histoire du Rwanda: 1972 page 15: 'We have already explained how the kings' poets helped in transiting this oral form of literature. According to them (poets) Gihanga is the founder of Abanyiginya dynasty."*

[XVII] Alexis Kagame: Un abrégé d'éthno-histoire du Rwanda: page 35: "After the Abanyiginya dynasty took control of Rwanda, more Hamites continued coming into the country where they perfectly integrated themselves in an already structured society"