

□ COERCIVE CONSERVATION PRACTICES IN SUB-SAHARAN AFRICA

By Laura Hebert and Sharon Healey

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I. INTRODUCTION

In June of 1998, the chair of the American Anthropological Association (AAA) Committee for Human Rights, Dr. Tom Greaves, brought to the attention of the Institute of International Human Rights documented incidents of “coercive conservation” in Zambia. Coercive conservation involves the use of violence or force to promote conservation, including the extra-judicial killing or torture of individuals allegedly engaged in illegal hunting; the forced displacement of indigenous groups from their ancestral lands due to the encroachment of game park borders; and the denial of indigenous cultural, social, and economic rights for the purposes of protecting flora and fauna.

Significant debate has ensued in the human rights arena regarding the definition of the terms “indigenous” and “tribal.”¹ Given our primary concern for the cultural, social, and economic rights of indigenous peoples, clarifying our interpretation of the term is critical. Utilizing the criterion outlined by the International Labor Organization (ILO) in its Convention on Indigenous and Tribal Peoples in Independent States, for the purposes of the report we recognize the following as indigenous or tribal peoples: (1) peoples whose social, cultural, and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions by special laws or regulations; (2) peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural, and political institutions; and (3) peoples who identify themselves as indigenous or tribal.¹

In undertaking the case of coercive conservation in conjunction with the Institute of International Human Rights, the objective of our project is to prepare a plan of action for addressing the problem, with the expectation that the case will eventually be taken up by a local lawyer in Zambia. Given this goal, the project includes an analysis of both domestic and international legal options, as well as past and current advocacy efforts related to coercive conservation at the local, regional, and national levels.

In order to gain direct and current information on the situation of coercive conservation in Zambia and other sub-Saharan countries, we have established contact with numerous indigenous rights and human rights organizations in the U.S., the U.K., and Africa. To date, however, we have had only limited success in gaining new information regarding the current situation in sub-Saharan Africa. This is particularly true with respect to Zambia. Due to the assistance of several important contacts, notably Stuart Marks of Safari Club International, Dr. Chanda of the University of Zambia Law School, Phil ya Nangoloh of the Namibian Society for Human Rights (NSHR), and Norton Tennille of the Southern Africa Environment Project (SAEP), it is anticipated that

the dearth of substantive information will soon be remedied. The success of this

¹ ILO Convention 169 adopted on 7 June 1989 and entered into force on 5 September 1991

project is contingent on extensive research into national and international human rights mechanisms; on-going correspondence with individuals and organizations that have experience with this issue; the establishment of direct contact with affected persons and/or groups; and the designation of an individual in Zambia (or other sub-Saharan countries) willing to accept responsibility for pursuing the case locally. It is therefore important to keep in mind the ongoing nature of the project, with this interim report representing only an initial investigation of coercive conservation in sub-Saharan Africa. ILO Convention 169, adopted on 27 June 1989 and entered into force on 5 September 1991.

Two major concerns have led us to expand our research to include allegations of coercive conservation in other countries in sub-Saharan Africa. First, Zambia-specific information is seriously lacking due to the scarcity of individuals and organizations with experience on this issue. In contrast to Zambia, numerous indigenous rights and human rights organizations are examining issues of coercive conservation in countries such as Botswana, Zimbabwe, South Africa, Kenya, and Tanzania. Second, coercive conservation-related human rights violations frequently overlap national boundaries, due to the movement of poachers and native hunters across state borders in search of game. The report therefore identifies vulnerable communities throughout sub-Saharan Africa. The intention of expanding the research is to assess the pervasiveness of coercive conservation in Africa, while additionally researching successful strategies that may be applied to the Zambian context.

On account of the present lack of direct information, the bulk of this report reflects information gained through indirect sources, including media accounts, journal articles, and books pertaining to environmental conservation, social change, and the state of indigenous peoples in sub-Saharan Africa. In addition, we received research assistance from law students at the University of Zambia school of Law under the supervision of Dr. Alfred Chanda. The report is concerned with two main issues: (1) the extra-judicial killing of poachers, regardless of whether they are indigenous or commercial hunters; and (2) violations of indigenous cultural, social, and economic rights committed in the course of wildlife conservation, including the forced removal or resettlement of indigenous groups. We begin with a brief and general background of coercive conservation in sub-Saharan Africa.

II. OVERVIEW OF COERCIVE CONSERVATION

During the 1970s and 1980s, conservation efforts aimed at saving the rapidly disappearing wildlife of sub-Saharan Africa gained momentum. Since the initiation of these efforts, blame for the pervasive environmental degradation and depletion of wildlife has largely been placed on villagers, as a consequence of their commercial and/or subsistence activities. According to Fratkin and Wu, many wildlife organizations - primarily from Europe and the U.S. encouraged (and continue to encourage) African governments to evict or restrict human occupation within park boundaries, on the premise that the presence of villagers within game parks is incompatible with preservation of wildlife (1997: 58). In a background sheet titled "Parks and People," Survival

International reports that

[f]or many tribal peoples, conservation imposed from outside has meant eviction from their ancestral lands. Many conservationists still believe that to protect nature one must create wilderness areas that are devoid of human habitation. Yet almost all of the areas they designate as 'wilderness' have been inhabited by human beings for thousands of years. This idea of nature as wilderness provides a convenient cover for government programmes of forced assimilation."

In alluding to government programs of forced assimilation, Survival International is referring to a global trend in which indigenous peoples who serve as "guardians of the land" are being evicted from ancestral areas for the purposes of development (in its multiple forms).

Reinforced by international support for conservation efforts, governments are able to designate wilderness areas that result in the displacement of indigenous peoples without incurring much criticism from the international community. In the process, the designation of land as a wilderness area serves two main purposes for the government: (1) natural resources are protected (if you accept the position that the presence of indigenous peoples on game reserve land is incompatible with conservation), which directly benefits the generation of tourist revenues; and (2) indigenous groups that are displaced from their lands are generally forced to assimilate into "mainstream society" or are compelled to engage in new forms of subsistence activities. Having separate groups demanding separate rights is not in the interest of governments. Breaking down the cultural integrity and cohesion of these groups is therefore generally advantageous for governments. The forced resettlement of indigenous peoples, however, has had major human rights implications, particularly in terms of the deterioration in standards of living (most notably health and nutrition standards), a lack of access to the land, and a disintegration of cultural integrity.

In attributing responsibility for the depletion of lands, forests, and wildlife to indigenous groups and poor rural farmers, the conservation movement has neglected to appreciate the historical context of environmental degradation in sub-Saharan Africa. In a *Cultural Survival Quarterly* article titled "When Parks Encroach Upon People," David Hughes asks why indigenous peoples, if they are to blame for environmental degradation, so often live close to or within areas rich in biodiversity - in contrast to rural elites who often inhabit depleted lands. According to Hughes, responsibility for the degradation of the environment lies with colonial settlers, who dispossessed indigenous peoples and small-hold farmers of their ancestral land. The seized land was converted by settlers into industrial forests and agricultural plantations, thereby decreasing the availability of rich, fertile land (Hughes, 1996: 36-37). Following the end of colonial rule and the transfer of power to national and local elites, indigenous groups and poor communal farmers continued to be vulnerable to confiscation of their land due to the lack of government recognition accorded to customary property rights. As the impetus of wildlife conservation grew in sub-Saharan Africa, dispossessed groups again found themselves forced off the land they inhabited by the encroaching borders of game parks.

Hughes compares the conflict between conservation and human use of the land in terms of a stakeholder analysis. Stakeholders in conservation efforts include communal farmers, small to large landowners, conservation groups, the tourist industry, timber

firms, consumers of timber, and tourists. Despite the survival-dependent stakes of communal or rural residents (i.e., basic subsistence and adequate nutrition) as compared to tourist firms (increasing profits), in practice, communal and poor rural farmers most often find themselves in an inferior and unprotected position (Hughes: 36). In some countries in sub-Saharan Africa, such as Kenya and Tanzania, tourism has become the leading source of foreign revenue, contributing to further expansion of game reserves and conservation efforts. Because the lure of wildlife safaris brings in huge profits for the governments, the tourist industry and conservation organizations are given significant leeway to ensure the preservation of African flora and fauna. However, as the “tourist boom gathers momentum, over-development risks causing as much damage in the bush as the continuing illegal poaching of wild animals. But for the countries of southern Africa, enjoying peace for the first time in 30 years, tourism is seen as the business of the future” (Betts, 30 December 1995: 1).

In other cases, such as with the Maasai in Kenya, the San Bushmen in South Africa, and the Ju/wasi in Namibia, the government has endorsed the commodification of indigenous groups in order to attract tourists. In exchange for access to land, these groups are to symbolize the “primitive” and “traditional” for the benefit of tourists. For indigenous peoples such as the Ju/wasi and the “Kagga Kamma” Bushmen, the choice is between consenting to their own commodification or being relegated to harsh and infertile land where the survival of their peoples would be placed at risk. Such government-led efforts ignore the fact that indigenous ways of living have already been irrevocably altered by colonialism, dispossession of ancestral lands, and the introduction of a cash economy.

Numerous research studies have concluded that indigenous groups are not the source of environmental degradation in sub-Saharan Africa. Rather, indigenous foragers and pastoralists are generally understood by anthropologists as living symbiotically with the land and wildlife. Furthermore, “[i]t should be noted that there are suspicions that some of the poaching going on in southern Africa was or is the work of military, police, or wildlife conservation agencies and not the work of local people” (Hitchcock, 1998: 1). Due to government denial of their customary land rights, indigenous peoples and poor rural farmers are easy targets of government scapegoating. Environmental organizations are increasingly recognizing that the success of conservation efforts is dependent on harnessing the support, knowledge, and participation of indigenous groups. As the following sections of this report demonstrate, the majority of governments in sub-Saharan Africa nevertheless continue to implement wildlife preservation strategies which place the very survival and well-being of their human citizens in jeopardy.

III. EXTRA-JUDICIAL KILLING AND TORTURE OF “POACHERS”

Zambia:

The 1996 ABC *Turning Point* documentary “The Deadly Game” is largely responsible for having brought to global attention the apparent killing of poachers and unarmed villagers in Luangwa Valley, Zambia. The video relates the story of two American wildlife biologists who arrived in Zambia in 1986 to study African lions. In the process of their research in Zambia, they became directly involved in

anti-poaching activities, including providing ranger scouts with uniforms and weapons, training scouts how to fire their guns, and participating in airborne anti-poaching operations by transporting the scouts to various locations in the North Luangwa National Parks, and conducting anti-poaching flights at night to frighten poachers away from their camps and into the hands of the game guards. An unsigned letter sent to a professional hunter with a concession near the park, states: “Two poachers have been killed and one wounded that I know of thus far, and we are just getting warmed up” (25 March 1994)¹ In the *Turning Point* video, the researcher is heard instructing the rangers of the unofficial shoot-to-kill policy of the Zambian government. (Zambian officials deny there is any such policy). He is captured on film telling the rangers: “You shoot at them first. That means that when you see the whites of his eyes, and if he has a firearm, you kill him before he kills you.” The film later shows an unarmed man (it is not known whether he is a poacher or a villager) being repeatedly shot by a scout until he is dead, with his body then being left in the game park. A letter from an ABC broadcast producer states that neither of the researchers or any member of their staff were present at the time of the shooting and have never been charged with a crime.

Under Zambian law, individuals who are convicted of poaching are most often given a small fine and rarely serve jail time. In contrast, scouts who kill poachers and report these deaths to the police may be tried for manslaughter. For instance, an interview conducted by Stuart Marks of Safari International on 31 July 1997 notes that a former game scout, Patrick Mwale, was awaiting trial for the murder of two alleged poachers. Consequently, the light sentencing of poachers and the severe treatment of scouts who murder poachers may inadvertently (or intentionally, depending on how the situation is interpreted) encourage scouts to kill alleged poachers and leave their bodies in the game reserves without reporting the deaths to the authorities. In September of 1996, following the airing of the *Turning Point* documentary, the researchers left Zambia for the United States for what they claim was their annual lecture and undraising trip, but they never returned to Zambia. Their projects were eventually headed up by former employees.

In response to the *Turning Point* documentary, Jane Hill, President of the AAA, sent a letter to Zambian President Frederick Chiluba in June of 1998, expressing the AAA’s concern over the incident. The letter encouraged the undertaking of an inquiry into the killing, as well as a more general investigation of coercive conservation in Zambia. The AAA additionally suggested that wildlife conservation and wildlife management be reformed where they appear to encourage human rights violations. The Permanent Secretary of the Zambian Ministry of Tourism responded to the letter in October 1998. According to the Secretary’s letter, the Zambian police carried out an investigation immediately following their receipt of the *Turning Point* video. The conclusions of the investigation were that Zambia has never had a policy of shoot to kill, but other

¹ The researcher contend that the letter was dictated by a British employee who sent the letter under his name because it would “add greater weight,” although they concede that the employee has absolutely no recollection of the letter. They further contend that after demanding that requesting help in protecting his camp, the hunter turned on them by sharing the letter with others in an effort to harm them whom he believed were attempting to sabotage a funding request he’d made to the Fish U.S. Fish and Wildlife Service.

conclusions raise questions as to the extent to which any investigation was conducted. ABC producer states that the researchers and their staff were not in the area when the man was killed.

The most recent letter to the Institute from Dr. Tom Greaves of AAA states that he believes the Zambian government did indeed take the filmed killing of the alleged poacher seriously. According to Dr. Greaves, however, the Zambian government is “silent on coercive conservation as a policy and to me it appears that one cannot infer from the letter whether or not they would approve of indigenous repression and constraint short of killings” (November 1998).

A general consensus among our contacts is that the incidence of arbitrary killings of poachers and villagers in Zambia by wildlife scouts has declined. According to Robert Hitchcock, the arbitrary killing of alleged poachers and dislocation of indigenous peoples from their ancestral lands is relatively “historical” compared to countries such as Botswana, Zimbabwe, Namibia, Angola, Kenya, and a host of others.² Stewart Marks, he contends that despite the lack of public knowledge of coercive conservation in the country, conservation-related human rights violations persist in Zambia.³

According to research undertaken by the law students at the Zambia School of Law, The shooting of poachers or indigenous hunters is still an ongoing problem in Zambia. For example, on January 7, 1999, wildlife officers in Mulobezi allegedly executed six villagers suspected of poaching. Area Councilor Beatrice Monde said two of the victims after killing an animal had gone back to the village to mobilize other villagers to help them skin and carry the animal when the group was ambushed by the scouts on their way back and were killed execution style.⁴ The bodies of the victims have not been found, prompting villagers to accuse wildlife officers of covering up the incident.

The officers allegedly reported the shooting to Livingstone Police about 162Km from where the incident is said to have taken place, rather than the Mulobezi Police, who were stationed only six kilometers away. Police sources in Mulobezi said, although the shooting took place in an area falling under the Southern division the wildlife officers were supposed to have reported the matter to them because of proximity. They dispute a claim by the wildlife officers that the men were shot after a heavy exchange of fire because the villagers only had a licensed shotgun, which has since been recovered. The villagers claim the alleged poachers should have been apprehended, rather than shot, as they were not heavily armed, and that the animals had been damaging the villagers’ crops. The government does not have a policy to compensate the people whose fields have been destroyed, yet the hunting of those animals by tribes-people is often considered illegal poaching.

² As noted in an e-mail from Robert Hitchcock to Laura Hebert on 8 October 1998

³ Telephone conversation between Marks and Hebert on October 30th 1998

⁴ *Cold Blooded Killings Rile Villagers*, Times of Zambia, on January 7, 1999

Another incident occurred in South Luangwa in July/August 1997. This information was given by Mr. Banda, of the National Parks and Wildlife Service’ Prosecutions Department. Two poachers were shot dead by game scouts i the Luangwa Park in July or August of 1997. Mr. Msimuko, the public relations officer of the Zambia Wildlife Authority, (ZAWA) stated that the killing of poachers or indigenous hunters

remained an ongoing problem in Zambia. However he noted that suspected poachers also shoot wildlife scouts. 27 wild life scouts were killed by poachers between 1996 and 1999. "There is total war in the field and it would not be justified to hold that poachers are shot by wildlife scouts only without advertising the problem of exchange of fire between the poachers and the wildlife scouts".

Mr. Msimuko noted that historically, it was easy for the scouts to apprehend poachers because they would typically not be armed, but that the poachers have commercialized the killing of the animals and have obtained sophisticated weapons such as AK47 rifles, which were more advanced than those weapons possessed by the game scouts. Between 1987 and 1991 the government supplied the scouts with Ak47s to use defensively. Mr. Msimuko, P.R.O. ZAWA, Chilanga, stated that There have not been any meaningful steps taken to address the problem of extra judicial killing of poachers specifically. The only steps so far taken are conservation and educational programmes." ⁵

Botswana:

In a report on coercive conservation in southern Africa, Hitchcock described the high rate of arrest of alleged poachers in Botswana and claims of torture, inhumane treatment, and extra-judicial killings of suspected poachers at the hands of game scouts and other officials. Relying on information gathered by Alice Mogwe (which we have been unable to directly access to date), Hitchcock writes that

[a]ccording to one report, the most common form of torture included the use of a 'rubber ring' placed tightly around the testicles and a plastic bag placed over the face of a person. There were cases where people died of injuries inflicted upon them by Department of Wildlife and National Parks officials. Such an incident allegedly occurred at Xade in August, 1993, when a 40-year-old man died after being detained and questioned at length by game scouts. Community leaders in the central Kalahari have argued that authorities have stepped over the line from anti-poaching to persecution (1998: 7).

In an article written for *Human Ecology*, Hitchcock reports that some Botswanan officials have suggested off the record that there may have been as many as 96 people shot in 1992 alone . . . [i]nterviews of local people in villages along the Zimbabwe-Botswana border indicate that a fairly sizable number of people have been stopped and questioned, some have been beaten, and at least a dozen people have been killed in the past 2 years, most of them women and children. (1995: 191-192).

Hitchcock notes that field data suggests that at least some of those shot "were simply gathering wild plants, obtaining water, or visiting friends" (1995: 191). The events described by Hitchcock occurred more than five years ago. Recent killings by the Botswana Defense Force (BDF), however, reinforce claims that the extra-judicial killing of alleged poachers continues in Botswana. On 20 July 1998, two suspected poachers were killed by the BDF's anti-poaching unit in Botswana's Kwando area. The Botswana government came under intense pressure for the killings as the two suspected poachers were Namibian citizens.

⁵ Interview with Mr. Msimuko, P.R.O. ZAWA, Chilanga, conducted by law students of Zambia Law University on March 28th 2000.

Namibian Vice President Kaura “claimed that the BDF was using Namibians for ‘target practice,’” and “accused [Botswanan President] Nujoma of being lukewarm in airing his concern and in urging Botswana to stop the shooting” (Maletsky, 30 July 1998: 1). Further research into allegations of extra-judicial killings of poachers in Botswana is required, including statistical information regarding the numbers of suspected poachers killed within the past two years, a determination of Botswana’s policy toward poachers (e.g., do they have an explicit shoot-to-kill policy), and an assessment of advocacy efforts around the issue.

Zimbabwe:

In 1984, the Zimbabwean government initiated a “save the rhino” anti-poaching campaign. In the first two years of the campaign, anti-poaching patrols killed 18 poachers along the country’s northern border with Zambia (Deutsche Press-Agentur, 19 November 1986). This figure does not include killings that occurred in other areas of Zimbabwe. According to official figures, in the period between July 1984 and September 1991, wildlife patrols killed 145 suspected poachers. In response to senior park officials being faced with criminal charges for killing alleged poachers, the Zimbabwe government introduced The Protection of Wildlife (Indemnity) Act in May 1989. The Indemnity Act “shields national park game wardens and security force personnel from criminal prosecutions for acts carried out in good faith in the course of anti-poaching activities. This indemnity does not apply to civil proceedings for compensation” (Carver, 1995). According to Carver, the implementation of the Indemnity Act has apparently “encouraged the use of lethal force against poachers, including the possible use of extra-judicial executions. It is alleged that in some quarters the security forces follow a ‘shoot-to-kill’ policy”.

As noted earlier, poachers and native hunters often cross state boundaries in the pursuit of game. This is particularly true in the case of Zambian poachers crossing into Zimbabwe. In 1992, Zimbabwean wildlife authorities “issued a desperate appeal for the right to pursue fleeing rhino poachers across the Zambezi into Zambia, instead of being forced to stop at the border formed by the river” (The Gazette, 27 May 1992). The same report described the killing of five poachers, the wounding of two, and the capture of one “in an unusually successful operation” (1).

Information related to extra-judicial killings of alleged poachers in Zimbabwe is out-of date. We have not been able to determine whether Zimbabwe continues to support the shoot-to-kill policy. As in the case of Botswana, further research is required.

South Africa:

In December 1997, four poachers in two separate incidents were killed by game rangers in South Africa. One poacher was shot in Kwazulu-Natal’s Umfolozi game reserve for killing four white rhino for commercial purposes. In the same week, “three poachers who apparently killed giraffe and buffalo for their meat were shot dead in South Africa’s Kruger National Park in a gun battle with a game ranger” (AmNet News Service, 27 December 1997: 1). The article notes that meat poaching in Kruger Park has been on the rise due to the arrival of poachers from Mozambique.

Given the progressive nature of the new South African Constitution, which includes extensive provisions related to due process, it is improbable that the South African government explicitly supports the extra-judicial killing of alleged poachers. However, further clarification of the position of the South African government and

research into the treatment of alleged poachers by wildlife authorities are required.

Kenya:

Information related to the extra-judicial killing of poachers in Kenya is limited. However, a 1993 Chicago Tribune article pertaining to the Owens' research in Zambia refers to the shoot-to-kill policy of the Kenyan government: "Poachers are now shot on sight in Kenya, which lost 70 percent of its elephants . . . Thirty poachers have died so far" (Gorner, 21 January 1993: 2).

Summary

Although information related to the extra-judicial killing of poachers in each of these countries is inadequate, existing information demonstrates the prevalence of conservation-related actions that result in the death or torture of suspected poachers. In pursuing claims of the killings or torture of alleged poachers as human rights violations under international mechanisms, two questions are central: (1) Does the government explicitly support shoot-to-kill policies, thereby violating established rights of due process? and (2) If the government does not explicitly support extra-judicial killings, has it taken adequate action to protect individuals from such violations (i.e., by prosecuting those responsible for the extra-judicial killings under the criminal law, or implementing programs training rangers in resolving conflicts peaceably)? At the present time, these questions remain unanswered due to a lack of access to national legislation.

Clearly, the killing of suspected poachers in violation of their right to due process is a critical concern. A far more pervasive and large-scale problem affecting communities throughout sub-Saharan Africa, however, is the forced displacement of indigenous peoples and poor rural farmers for the purposes of wildlife and natural resource conservation. The following section examines the nature of the problem and its consequences for the survival and well-being of indigenous groups in sub-Saharan Africa.

IV. VIOLATIONS OF CULTURAL, SOCIAL, AND ECONOMIC RIGHTS

This section examines the influence of coercive conservation policies on violations of the cultural, social, and economic rights of indigenous peoples in sub-Saharan Africa, including the forced removal or resettlement of peoples from their ancestral lands, the denial of access of indigenous peoples to wild natural resources, and the consequential decline in the health and living standards of these populations. Given the widespread impact of coercive conservation policies, a complete delineation of vulnerable groups in sub-Saharan Africa is impracticable. We have therefore identified one or two affected groups within each of the countries, in order to demonstrate commonalties in experiences of indigenous groups across the region. As in the case of the extra-judicial killings of alleged poachers, this section will be augmented by new and direct information received from organizations working on indigenous rights and human rights issues in Africa.

Zambia:

Stuart Marks, an anthropologist who has spent his life working on issues of culture and ecology in Zambia, made a statement before the AAA in November of 1997 in order to express his concern over the increasing threat to indigenous peoples in Zambia posed by wildlife preservationists. Marks describes the conservationists as "indifferent to the human costs of their actions." As a consequence of the "attack by outsiders," the "survival of human values, perceptions, and activities which created and sustained the

environmental landscapes well before these preservationists appeared to champion these scenes” is endangered (Marks, 1997: 1). The Bisa, a shifting agriculturalist and hunting society that inhabits the Luangwa Valley, is identified by Marks as a particularly vulnerable indigenous group imperiled by wildlife conservation policies. Specific information pertaining to the present situation of the Bisa is lacking. Marks has agreed, however, to share his Bisa contact information with the Institute, thereby enabling us to make (future) direct contact with affected indigenous peoples.

In addition to the Bisa, another group that is vulnerable to the encroachment of game park boundaries are settlers that inhabit the Tuta bridge area, which lies within the Kalasa Mukoso game management area. An article in the *Times of Zambia* in October 1997 reports that the government is attempting to evict the settlers for illegally residing in a game reserve area. The settlers have lived in the region for more than sixty years, prior to the establishment of the game reserve. The 10,000 settlers have refused to move and maintain that they are ready to sacrifice their lives, as an eviction poses a “threat to their life.” Representatives of the group have accused the Zambian government of “doing nothing regarding security personnel and Government officials in the province who continued poaching the animals in the area unhindered” (*Times of Zambia*, 10 October 1997, 1). New developments in the situation of the Tuta bridge settlers must be examined, in order to determine what strategies were undertaken by representatives of the settlers to respond to the threat of eviction and whether the government’s threat was carried out.

Section 54 of the National Parks and Wildlife Act provides that the President has power to declare any land a Game Management Area or extend already existing ones, however, section 12 of the Lands Acquisition Act (Cap 189), requires compensation to be paid for the land in an amount equal to what would be received if the land were sold on the open market. In reality, indigenous groups are sometimes forced to relocate without compensation for their land. For example, the Zambian law students reported one instance where a tribe was forced to move to the other side of the Luangwa river without compensation when the area that they were inhabiting became part of the Mfuwe Game Park.

Botswana:

Of all the African countries studied in this project, Botswana has perhaps the greatest problem with both extra-judicial killings of alleged poachers and violations of economic, social, and cultural rights in the name of wildlife conservation. Efforts to protect the wildlife and wilderness areas of Botswana have been expanded by the government in an attempt to reduce the country’s reliance on diamond mining as a source of foreign exchange. As in numerous other countries of sub-Saharan Africa, human habitation in game reserves is viewed by the Botswanan government as incompatible with conservation of wildlife and natural resources. As a consequence, a number of indigenous peoples have been evicted from game reserve land or are currently vulnerable to the effects of coercive conservation, including the Basarawa, the Kgeikani Kweni, and the Bakgalagadi of the central Kalahari; Subiya villagers in Chobe National Park; and the Tyua and Kalanga in Nata Sanctuary. This section examines the plight of the San Bushmen of the Central Kalahari and the Tyua of the Nata region.

The Central Kalahari Game Reserve (CKGR) was established by the British rulers of Botswana in 1961 in order to protect Bushmen land, resources, and nomadic way of

life. According to an October 1998 Survival International press release, however, the Botswanan government has been trying to force the Bushmen from the CKGR since 1986⁶ in order to make way for wildlife and tourism ventures. The press release describes the most recent attempt of the Botswanan government to force the remaining Bushmen of the CKGR from their land by threatening to cut off access to essential water supplies. The press release reports the decision of the Minister for Local Government, Mr. D.K. Kwelagobe, to cease Bushmen access to vital water and food, irrespective of the earlier government promise to continue the supplies and regardless of the dependence of the Bushmen on these supplies to see them through the dry season.

According to the Botswanan government, Bushmen are leaving the CKGR voluntarily. An April 1998 article in *The Star* contends, however, that reports of government intimidation of Bushmen has led to charges of forced removal.⁷ As articulated in the article, the government “request” for the removal of Bushmen from the CKGR “comes after a century of discrimination and marginalisation of San by whites and blacks. San frequently retell stories of discrimination, general hostility as well as beatings, torture and castrations by wildlife rangers and soldiers, who accuse San of poaching.”⁸ Although such accusations against the government have surfaced, a formal investigation of the allegations has not yet been initiated.

The hunting and gathering of the San is perceived by the government as a threat to efforts to expand tourism and game populations. The wildlife of the Kalahari is reported as five to ten percent of their level in the 1970s. *The Star* article notes, however, that “the problem is that the game were wiped out not by the San, but by government-installed fences designed to keep disease-bearing game away from cattle designed for export. The fences follow the arbitrary park boundary, drawn by the British, which prevented game from migrating to natural water sources just outside the park.”⁹

Such a mis-perception of the source of wildlife depletion in Botswana has significantly contributed to violations of the human rights of the San. It is important to note that the dispossession of Bushmen land is not only a consequence of conservation efforts. Ostensibly under the guise of conservation, the forced removals of Bushmen populations from game reserve areas is additionally benefitting state and transnational efforts to expand mining in the region. By removing Bushmen from reserves, whether voluntarily or forcibly, the rights claims of Bushmen to minerals that may be discovered on the land (notably diamonds and oil) will be diminished. De Beers and Anglo American are the two main transnational corporations engaging in mining operations in the region. In an August 1997 article for *The Sunday Independent*, a spokesperson for Anglo American acknowledges that the company is engaged in mining activity in areas¹⁰ where removals of Bushmen have occurred. In the same article, the author quotes a lawyer’s assessment of the removal of the remaining Bushmen from the CKGR:

⁶ The Survival International press release, and subsequent information related to the situation of the Bushment of the CKGR, may be found on the Southern Africa Environment Project (SAEP) web site at

<http://www.oneworld.org/saep/sadc/country/botswana/botswana.html>.

⁷ The *Star* article may be found on the SAEP web site (see footnote 3). The author of the

article is not given.

⁸

Ibid.

⁹

Ibid.

“The manner in which De Beers and Anglo American are operating suggests that they are colluding with the government to get rid of the people.”¹¹ The position of the Bushmen of the CKGR illustrates the manner in which governments may manipulate international support for nature conservation in order to expand unrelated development efforts. In the case of diamond and oil mining, these efforts are likely to cause far greater damage to the environment and wildlife than would the continued inhabitancy of Bushmen within the game reserve.

The situation of the Bushmen of the CKGR is perhaps the most cited and documented example of coercive conservation in Botswana. Numerous indigenous peoples in Botswana, however, are threatened by government plans to expand the tourist industry, including the Tyua. Prior to the creation of game reserves in Botswana, the Tyua were foragers and pastoralists who engaged in hunting, gathering, and fishing for subsistence purposes. As a consequence of the establishment of several game reserves and national parks along the Botswana-Zimbabwe border, “local people were required to cease their subsistence and commercial hunting activities” (Hitchcock, 1995: 179). Some of the Tyua left the reserve land and “shifted into a more mixed economic system” (180). For those that remained, a series of forced resettlements occurred, including their forced migration (at gun point) to the Nata River area in the late 1940s (181). Game scout camps were established in the Nata River area in order to curb local hunting (184). Although the hunting activities of the Tyua were forcibly curtailed, provisions were established for local people to apply for Special Game Licenses in order to hunt wild animals for subsistence purposes.

In the 1980s, tourism in the Nata area increased substantially. Hitchcock reports that the tourists “are establishing camping places, utilizing scarce firewood, leaving trash, and taking photographs of local people without permission. They also chase animals in their vehicles, which makes the animals less easy to hunt” (191). As a result of expanded tourism in the region, the Central District Council placed added restrictions on access to Special Game Licenses, preventing many Tyua from engaging in subsistence activities (191). These same groups have been subjected to on-going search and seizure operations, arrest, torture, and extra-judicial killings in an attempt to intimidate them into discontinuing subsistence hunting and vacating reserve areas.

A great deal of activity has focused on coercive conservation in Botswana, including grassroots activism (Ditshwanelo - the Botswana Centre for Human Rights), academic research, and the organization of international meetings (including the participation of the Working Group on Indigenous Peoples (WGIP), Amnesty International, Survival International, etc.). Given the apparent pervasiveness of the problem in Botswana, our project should consider the possibility of shifting the focus of our work from Zambia to Botswana (at least in the short-term, until we can

¹⁰

Oliver, Guy. “De Beers and Anglo Linked to the Forced Removal of the Last Kalahari Bushmen.” *The Sunday Independent* (31 August 1997). Available on the SAEP web site (see footnote 3).

¹¹

Ibid.

gain sufficient information to proceed), or assigning other students to follow through on the situation in Botswana. We have already established contact with several NGOs in the country, including Ditshwanelo.

South Africa:

The Bushmen are among the most “heavily studied peoples in the history of science” (Survival International, “Hunters Facing Change”). They are believed to have inhabited the area for as long as 23,000 years. The exploitation and displacement of the Bushmen peoples has occurred in nearly every country in southern Africa. The arrival of colonial settlers in the area now known as South Africa disrupted traditional ways of life for indigenous groups, displaced them from the most fertile of lands, denied access to natural resources required for survival (such as water), and placed the very survival of these peoples at risk. By the 1970s, residence and hunting rights for Bushmen inhabiting the Kalahari Gemsbok Park were entirely suspended.

The plight of the Bushmen of the Kalahari in South Africa vividly represents the commodification of indigenous groups that is occurring in order to lure tourists to southern Africa. ¹² In the early 1990s, three white landowners developed a tourist resort in the Cedarberg Mountains called the Kagga Kamma Nature Reserve. In order to attract tourists to their game reserve, the landowners “invited” Bushmen to inhabit the area, promising access to land and natural resources. According to the landowners, the project has been developed as a “dual strategy for the survival of these people and their heritage” (White: 61). The Bushmen are able to “live according to their traditions and exploit the natural environment for their subsistence,” yet “they and their customs are exhibited to tourists in what are marketed as unique cultural and educational encounters” (White: 61). The project ignores the fact that the “traditional” way of life of the Bushmen no longer exists. White explains that when the tourists “retire to their ‘luxury Bushman hut’ chalets, the Bushmen themselves exchange their loincloths for Western rags and go home to a shanty settlement that is hidden from the public gaze” (61). Moreover, the promises made to the Bushmen, including adequate housing, schooling, legal protection, and wages, have failed to materialize. Although some Bushmen are returning to the Kalahari because of these conditions, the lack of access to natural resources and hunting rights in the Kalahari forces many to stay at Kagga Kamma.

Bushman populations in South Africa, Botswana, and Namibia are facing the possibility of extinction. Not only are Bushmen languages, cultures, and knowledge threatened, but the very survival of these groups is at stake. Numerous organizations in Southern Africa work to promote land rights for Bushmen groups, including the Working Group for Indigenous Minorities of Southern Africa (WIMSA), the South African San Institute (SASI), and Ditshwanelo. Given the urgency of the Bushmen situation, further research is required in order to ascertain local progress in achieving land rights for Bushmen peoples.

¹² The Kalahari extends into Namibia, Botswana, and South Africa. There are small (and rapidly declining) Bushmen populations in each of the countries.

Zimbabwe:

Given the Zimbabwean government’s apparent support for shoot-to-kill policies, and the increasing importance of tourism to the Zimbabwean economy, we are likely to find numerous infringements of indigenous cultural, social, and economic rights. Our

attempt to confirm such cases is limited to date. One case we have encountered involves the displacement of tribal peoples from protected land for the purposes of expanding the Chimanimani National Park. In the early 1900s, a group of Shona-speaking people under Chief Ngorima were displaced from their land by European settlers and forced to move to an area in the Rusitu Valley. The District Commissioner set aside roughly 12,500 hectares in the Rusitu and Haroni watersheds as Ngorima Tribal Trust Land. In the 1960s, expansion of the boundaries of the Chimanimani National Park in eastern Zimbabwe encroached on land belonging to the Ngorima Tribal Trust Land. Although the intention of the original trust was to prevent alienation of the tribal land and resources, the Parks Board did not recognize the trust and treated the communal land as fungible. In the process, the fields and homesteads of people were “suddenly inside the National Parks’ estate . . . through the parks’ encroachment, these residents became *de jure* squatters on park land” (Hughes: 38). The Department of National Parks and Wildlife Management maintains that forests within the park “are under severe threat from human activities.” As a consequence, “scouts have used intimidation and even violence to discourage hunting, collecting and farming in these areas” (Hughes: 38).

Kenya & Tanzania:

The Maasai, a pastoral group that inhabits the savannas of southern Kenya and northern Tanzania, have been subjected both to the effects of colonialism and to the consequences of tourism. By the early 1900s, “the British in Kenya evicted Maasai from their lands north of Nairobi to make room for European settlers. Confined to 35,000 km² in Kenya . . . and 60,000 km² in Tanzania, the Maasai were further restricted by the creation of wildlife parks and reserves in the 1940s and 1950s” (Fratkin and Wu: 55).

The Ngorongoro Conservation Area and the Mkomazi Game Reserve are among the game parks being cleared of people purportedly to protect wildlife. The decision to clear indigenous groups such as the Maasai from game parks is largely influenced by the encouragement of wildlife conservation organizations from Europe and the United States (Fratkin and Wu: 58).

The confiscation of Maasai lands “is in violation of communal property rights of the pastoralists, rights which are legally protected in Tanzania and are given some protection in Kenya” (Fratkin and Wu: 56). The governments of Kenya and Tanzania have largely overlooked these communal property rights. Indigenous groups have, however, effectively protested the violations of their rights, including one case in which Maasai and Parakuyo pastoralists (with the assistance of the International Institute for the Environment and Development and the Legal Aid Committee of Dar es Salaam University) took the Tanzanian government to court for failure to recognize their customary land rights (Fratkin and Wu: 59). Further research is necessary to determine the outcome of this and other cases in Kenya and Tanzania, in order to ascertain possible strategies for approaching the dispossession of communal land holdings in other contexts.

V. CONCLUSION OF BACKGROUND INFORMATION

Coercive conservation policies, when implemented with disregard for the impact on human populations in Africa, directly contribute to the displacement of peoples from their ancestral lands, the erosion of cultural integrity, and a decline in the health and living standards of affected peoples. In March 1996, indigenous rights activists argued before the Human Rights Commission of the United Nations that “the actions of

government conservation agencies and some environmental non-government organizations are in violation of international human rights law” (Mogwe 1992, as cited in Hitchcock, 1998: 2). Violations of indigenous and minority peoples’ human rights stemming from coercive conservation are directly tied to the dispossession or lack of access of these peoples to the land to which they are socially, economically, and culturally connected. As articulated by Stephen Corry, Director General of Survival International, the key to redressing these violations is resolving conflicts over land rights. Virtually all violations of indigenous and minority rights “stem from the theft of their land and resources which are supposedly protected by law. Attempts to defend the human rights of tribal people, without addressing the fundamental question of their land rights, will ultimately fail.”¹³ We concur with the assessment of Survival International and, as a consequence, our delineation of a plan of action for approaching coercive conservation in sub-Saharan Africa primarily centers activism and legal mechanisms connected to indigenous land rights. Given our concerns over the arbitrary killing and torture of alleged poachers, we additionally explore violations of due process and the rights of individuals to freedom from torture and cruel, inhuman, or degrading treatment.

VI. PLAN OF ACTION

In the course of compiling background information on coercive conservation in Africa we have encountered considerable interest and support for our project from activists, academicians, and international organizations. Although numerous organizations in Africa have experience in political and/or legal advocacy around indigenous rights issues, coercive conservation is a relatively novel concept, as is its association with international human rights norms. The interest that has been generated by the issue of coercive conservation leads us to conclude that this project presents an meaningful and feasible opportunity for the Institute, in collaboration with international organizations and affected communities, to participate in achieving expanded protection of the human rights of indigenous and minority peoples.

The following “Plan of Action” outlines proposed avenues for addressing conservation related human rights violations in sub-Saharan Africa. Our Plan of Action encompasses three main and interrelated objectives: (1) an analysis of the relevant domestic and international legal mechanisms that may be adopted in each project country to redress violations; the compiling of a litigation memorandum for each context; and the designation of an in-country lawyer willing to pursue the case; (2) the linking of the Institute of International Human Rights with international and in-country individuals and organizations engaged in research and/or advocacy for indigenous rights; and (3) the establishment of a task force under the directive of the Institute in order to permit the realization of the above objectives. Each of these objectives will be discussed at greater length, beginning with an analysis of domestic and international legal mechanisms.

A. Domestic Law & International Human Rights Mechanisms

This section reflects on the possible mechanisms for approaching (1) the arbitrary killing of alleged poachers and (2) violations of indigenous and tribal peoples’ cultural, social, and economic rights, and delineates specific articles that are relevant. Given the project’s initial concentration on Zambia, we have not analyzed the domestic laws of other countries of sub-Saharan Africa, nor have we closely examined the applicability of international human rights mechanisms to other contexts. In this initial report, it is not our

intention to present an exhaustive set of mechanisms with which to approach the problem. Rather, we introduce a general assessment of potential mechanisms, with a focus on international human rights law.

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See the Survival International web site at www.survival.org.uk/.

The formation of a task force will be critical to identifying mechanisms that are feasible and applicable to each country. Identification of domestic mechanisms is particularly critical, given that under all of the international instruments victims must first exhaust domestic remedies or show that the exhaustion of these remedies would be unduly time consuming or futile.

Shoot-to-Kill Policies

Shoot-to-kill policies constitute a deprivation of due process and would thus be prohibited by a number of international treaties, including the African Charter on Human and Peoples Rights, the Covenant on Civil and Political Rights, and the Convention Against Torture. In addition, shoot to kill policies clearly violate the Prevention and Investigation of Extra-legal Arbitrary and Summary Executions.¹⁴ In resolution 1989/65, paragraph 1, the Economic and Social Council recommended that the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions should be taken into account and respected by Governments within the framework of their national legislation and practices.

The primary difficulty in utilizing both domestic and international mechanisms to remedy the arbitrary killing or torture of alleged poachers is the need to prove that states support explicit shoot-to-kill policies. For example, the official position of the Zambian government is that it does not support a shoot-to-kill policy for poachers. Furthermore, Zambia appears on at least two occasions to have prosecuted wildlife scouts for the murder of poachers. Despite the official position of the government, however, cases of alleged poachers being killed or tortured by Zambian wildlife scouts (i.e., agents of the state) have been documented. Moreover, as evidenced by the Turning Point video, an informal shoot-to-kill policy appears to have been supported by the Zambian government at one time. In order to pursue domestic and international legal mechanisms, documentation of the (official or unofficial) complicity of project country governments in the killing or torture of alleged poachers is critical. Extra-judicial execution violates a number of regional and international human rights instruments.

1. The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights was adopted on 27 June 1981 by the Assembly of Heads of State and Government of the Organization of African Unity (OAU) and came into force on 21 October 1986. The OAU is situated in Banjul, Gambia, and the African Charter is sometimes referred to as the Banjul Charter. 41 members of the OAU have ratified the Charter. All of the countries included in this project are members of the Organization of African Unity. Of these countries, only Kenya and Namibia have not ratified the African Charter.¹⁵

¹⁴ Economic and Social Council res. 1989/65, annex, 1989 UN ESCOR Supp. (No. 1) at 52, UN Doc. E/1989/89 (1989).

Remedies under the Charter

¹⁵ "Shoot to kill" policies violate articles 6 and 7 of the Charter, which pertain to the right of individuals to due process. Under the Charter, it is feasible that a "communication" pertaining to shoot-to-kill policies may be brought against any of the OAU member states, with the requirement that local remedies must first be exhausted. In order to submit a communication for the arbitrary killing of alleged poachers, it will be necessary to establish government support for the killing. As mentioned previously, there may be difficulty in showing that Zambia is violating the convention since it has some sort of record of prosecuting persons who implement shoot to kill policies. Under the Charter, however, Zambia could bring a complaint against Zimbabwe as news reports indicate that Zambian poachers are being shot in Zimbabwe, which apparently does have an express shoot to kill policy. Although the complaint procedures of the Charter

specifically permit one state to file a complaint against another, this has never been done before in the Charter's history. Zambia could also bring a complaint directly against Zimbabwe as there are no residential jurisdictional requirements under the Charter. Additionally, it is possible that the express nature of Zimbabwe's shoot to kill policy may avoid the requirement that remedies be exhausted. A further description of the relevant provisions of the Charter and an explanation as to how it works is attached as **Appendix A.**

The Commission

The Charter established the African Commission on Human and Peoples' Rights on 29 July 1987. The Commission is made up of eleven members elected by secret ballot by the Assembly of Heads of State and Government (AHSO). There may not be more than one member from each state on the Commission. The members are elected for six-year terms and can seek reelection. To date most of the Commission members have been government officials. The Commission has additionally granted observer status to over 30 NGOs and has created the privately run African Center for Democracy and Human Rights which has as its goal the dissemination of information about human rights procedures, research documentation, training, and education. The observer NGOs may propose items to be included in the Commission's agenda. The Commission reports annually on its activities to the AHSO. The decisions of the Commission may be published only upon the agreement of the AHSO. All Assembly resolutions must be passed by a two-thirds majority. Unlike the European and Inter-American Systems, the African system does not have a court to which decisions can be appealed.

The Commission's tasks can be lumped into two broad categories: promotion and protection. With regard to its promotional activities, the Commission has established a documentation center and put on a number of seminar and training courses. With regard to its protection activities, the Commission may receive communications from State Parties to the Charter, and from individuals and NGOs with respect to violations of the Charter. Although a number of individuals and organizations have lodged complaints

against State Parties, as of its eleventh session in 1992, it had not resolved any of the complaints. ¹⁶ A more detailed description of the complaint procedures available is attached in Appendix A.

¹⁵

As of December 31, 1990

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Of the 29 complaints lodged against State Parties, some were withdrawn as the situation that gave rise to the complaint had been independently resolved. In other cases, the Commission was still seeking information regarding admissibility. Two cases were referred to the Chairman of the OAU pursuant to Article 56(3).

2. Covenant on Civil and Political Rights

Shoot-to-kill policies violate articles 6 and 9 of the Covenant on Civil and Political Rights. Article 6(1) states that "every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Article 9(1) states that "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." All the project countries have ratified the Covenant on Civil and Political Rights except for Botswana. Only Zambia, however, has ratified the First Optional Protocol, which permits individuals to bring complaints to the Human Rights Committee.

3. Convention Against Torture

Shoot-to-kill policies explicitly violate the Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention defines "torture" as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, **punishing him for an act he or a third person has committed or is suspected of having committed**, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions (Art. 1). Project countries that are party to the Convention on Torture include Kenya, Namibia, South Africa, and Zambia. Zambia just became a party to this Convention, by way of accession, on 7 October 1998. Under the Convention, individual complaints against a country are permissible only if the State Party has specifically agreed to permit them, pursuant to article 22. We have not yet been able to determine whether the project countries that are party to the Convention permit individual complaints.

Forced Displacement

ILO Convention 169 offers the best mechanism for complaints relating to the forced displacement of indigenous groups as it specifically addresses this issue. Unfortunately, no African state has ratified this Convention. Although not stated

explicitly, forced displacement is arguably prohibited by Article 11 of the Covenant on Economic, Social, and Cultural Rights, which guarantees the right to an adequate standard of living. Under the Covenant, individual complaints can be brought against states that have signed the Optional Protocol. Of the project countries, all are party to the Convention on Economic, Social, and Cultural Rights, except for Botswana.

Forced displacement may also violate article 2(1) of the Covenant on Civil and Political Rights, which states: “All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.” Additionally, forced displacement may violate the Convention on Permanent Sovereignty

¹⁸ over Natural Resources. Under this Convention the right to natural resources are guaranteed to peoples and nations.

¹⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.

Domestic Legal Remedies

In addition to international mechanisms, legal remedies for each country are available at the domestic level. However, various domestic statutes may thwart the successful prosecution of wildlife scouts who employ “shoot to kill” policies against suspected poachers. For example, while section 12 of Zambia’s National Parks and Wildlife Act provides that: “A Wildlife Police Officer below the rank of Wildlife Police Warden and equivalent commits an offence against discipline if he uses any unnecessary violence on any person suspected of having committed a crime or other person with whom he may be brought into contact within the execution of his duty”,¹⁹ and further states that “the use of firearms shall be as far as possible to disarm and not to kill”,²⁰ the Policy for National Parks and Wildlife in Zambia grants immunity to game scouts who 30th April, 1998 policy for National Parks and Wildlife in Zambia, stating “ Wildlife Scouts shall not be subject to any actions, liability, claim, or demand who were acting in *bona fide* exercise of powers conferred by the Zambia Wildlife Act for the purpose of carrying out their duties according to the provisions of the Act.”²¹

Although it is not possible to present a comprehensive delineation of available remedies for the project countries, we provide the example of Zambia’s Land Act, 1995, Administration of Land Act, to illustrate possible means of accessing domestic law to rectify violations of indigenous or tribal cultural, social, and economic rights.

Under Zambia’s Land Act, all land in Zambia is vested in the President for the behalf of the people of Zambia. The following provisions of the Land Act are directly relevant to our project:

Section 3(4): Notwithstanding subsection (3), the President shall not alienate any land situated in a district or an area where land is held under customary tenure--

(a) without taking into consideration the local customary law on land tenure which is not in conflict with this Act;

(b) without consulting the Chief and the local authority in the area in which the land to be

alienated is situated, and in the case of a game management area, and the Director of National Parks and Wildlife Service, who shall identify the piece of land to be alienated;

(c) without consulting any other person or body whose interest might be affected by the¹⁸
G.A. res. 1803 (XVII), 17 U.N. GAOR Supp. (No.17) at 15, U.N. Doc. A/5217 (1962).

¹⁹ Section 12(1)(c) of Zambia's National Parks and Wildlife Act

²⁰ Section 163(2) of Zambia's National Parks and Wildlife Act

²¹ Policy for National Parks and Wildlife in Zambia, April 30th, 1988

grant; and

(d) if an appellant for a leasehold title has not obtained the prior approval of the chief and the local authority within whose area the land is situated.

Section 3(7): In alienating land the President shall take such measures as shall be necessary to--

(a) control settlements, methods of cultivation and utilization of land as may be necessary

²²Policy for National Parks and Wildlife in Zambia, April 30, 1998

for the preservation of the natural resources on that land; and

(b) set aside land for forest reserves and game management areas and national parks and for the development and control of such reserves, game management areas and national parks.

Section 7: Customary holding to be recognized and to continue--

Notwithstanding subsection (2) of section thirty-two but subject to section nine, every piece of land in a customary area which immediately before the commencement of this Act was vested in or held by any person under customary tenure shall continue to be so held and recognized and any provision of this Act or any other law shall not be so construed as to infringe any customary right enjoyed by that person before the commencement of this Act. (2) Notwithstanding section thirty-two, the rights and privileges of any person to hold land under customary tenure shall be recognized and such holding under the customary law applicable to the area in which a person has settled or intends to settle shall not be construed as an infringement of any provision of this Act or any other law except for a right or obligation which may arise under any other law.

Section 8: Conversion of customary tenure into leasehold tenure--

(1) Notwithstanding section seven, after the commencement of this Act, any person who holds land under customary tenure may convert it into a leasehold tenure not exceeding ninety-nine years on application, in the manner prescribed, by way of--

(a) a grant of leasehold by the President;

(b) any other title that the President may grant;

(c) any other law.

(2) The conversion of rights from a customary tenure to a leasehold tenure shall have effect only after the approval of the chief and the local authorities in whose area the land to be converted is situated, and in the case of a game management area, and the Director of National Parks and Wildlife Services, the land to be converted shall have been

identified by a plan showing the exact extent of the land to be converted.

Except for a right which may arise under any other law in Zambia, no title, other than the right to the use and occupation of any land under customary tenure claimed by a person, shall be valid unless it has been confirmed by the chief, and a lease granted by, the President.

Conclusion of Legal Mechanisms

Different international human rights mechanisms are applicable depending on the nature of the human rights violation. For both contraventions of due process and violations of indigenous cultural, social, and economic rights, the African Charter is the only mechanism that applies to each of the project countries. The Charter is, however, unclear about the ability of the Commission to adjudicate individual complaints that do not represent mass violations. Furthermore, the Commission is plagued by financial difficulties and has been concentrating more on its mandate to promote, rather than protect, human rights. Therefore its usefulness as an avenue for redress may be limited. For the arbitrary killing or torture of alleged poachers, remedies are available under the Convention on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Under the Convention on Civil and Political Rights, however, the option to submit individual complaints to the Human Rights Committee is available only against Zambia.

Given the difficulty of substantiating violations of indigenous cultural, social, and economic rights - and the conflicts of interest such an effort is certain to produce - redressing these violations is far more complex. As we established in our background report, however, such violations directly stem from the dispossession or lack of access of indigenous or tribal peoples to the land to which they are socially, economically, and culturally connected. The power of international human rights law is not necessarily in its ability to directly compel states to protect or refrain from violating the human rights of its citizens. Rather, its power is in setting the standards for state behavior - most efficiently and effectively accomplished through the implementation of domestic legislation. As such, although invoking international human rights law may “shame” states into correcting abusive behavior, it is not necessarily the most appropriate or accessible mechanism with which to achieve expanded land rights of indigenous or tribal peoples. This is particularly true given the requirement for each of the Conventions that domestic remedies first be exhausted prior to pursuing international mechanisms. As in the case of Zambia, domestic legal options are likely in existence in each of the project countries, thereby presenting the most feasible means of advocating for the land rights of indigenous peoples.

Therefore, substantial research is required (ideally by the task force members) in order to access and review domestic laws, procedures, and precedence. Further recommendations for work to be done by the task force include:

1. Obtaining copies of the African Commission’s yearly reports so we can determine whether it has begun to resolve complaints by individuals and other organizations. These yearly reports are on file with the U.N.
2. In the event that there are published decisions regarding individual complaints, we need to find out where these are codified and see if we can obtain copies.
3. We need to obtain the relevant codes of civil procedure for the countries in question so we can determine the mechanisms for bringing a domestic complaint. We also need to get

relevant criminal and civil statutes. Although these can be obtained by some of the universities that maintain African law libraries, we need to know the specific code section in order to have it copied and sent to us. Perhaps Dr. Chanda's research student can provide this information.

B. International Collaboration

Linking the Institute of International Human Rights with international and in-country individuals and organizations is crucial for expanding our understanding of the current situation in each context, accessing domestic legal information, and designating responsibility for pursuing advocacy and legal remedies at the local level. We have already made significant progress in contacting international organizations, generating²² interest among these groups, and initiating a mutual exchange of information. Of the contacts that have been established to date, four are worth mentioning in detail.

²²

For a partial list of established contacts, please see **Appendix B**.

Dr. A. Chanda, a professor of law at the University of Zambia, has agreed to arrange for a student to research our numerous questions regarding the Zambian legal system. Dr. Stuart Marks of Safari Club International has agreed to provide the \$300 necessary to fund the student. The connection with Dr. Chanda is particularly important, given our struggles over the past few months to obtain up to date information on the situation in Zambia.

Phil ya Nangoloh of the Namibian Society for Human Rights (NSHR) has also agreed to work with the Institute on researching the issue of coercive conservation in Namibia and Zambia. The concept of coercive conservation is new to NSHR, although the organization has worked on issues of indigenous land rights in the past. NSHR is currently compiling information for the Institute regarding Bisa tribes in Luangwa Valley, Zambia.

The Institute has formed a solid contact with Virginia Luling of Survival International, a UK-based NGO that works globally on indigenous cultural survival issues. Survival International is also working on a general report pertaining to 'parks and people.' The work of Survival International in sub-Saharan Africa focuses on Tanzania, Kenya, and Botswana. Survival International has already supplied the Institute with a list of relevant contact individuals in the field and a packet of background information. We are currently awaiting the arrival of legal documents and reports. Ms. Luling is traveling to Kenya and Tanzania in January and February and will provide the Institute with updated information on her return.

Finally, we have initiated a working relationship with Norton Tennille of the Southern Africa Environment Project (SAEP). SAEP is based in Cape Town, South Africa, and is involved in issues of environmental justice. Although SAEP does not have prior experience with coercive conservation projects, Mr. Tennille has expressed significant interest in involving his interns in our project, particularly in the form of activism and research. SAEP has also developed an extensive web site, and Mr. Tennille has offered to give as much publicity as he can to our project.

Generating and maintaining communication with individuals and international organizations requires much more time and effort than has been possible with a two-member team. The formation of a task force, enabling students to concentrate on a specific country, will permit a much more sustained exchange of information.

C. Establishing a Task Force

Establishing a task force of graduate and law students to build upon our foundational work is the key to transforming this project from an academic exercise into a collaborative effort capable of achieving expanded human rights protection for indigenous peoples in Africa. As evidenced by our background report, coercive conservation is pervasive and has pernicious consequences for the health and living standards of indigenous and tribal peoples. Attempting to address the issue of coercive conservation in Africa as a whole has proven to be daunting and of minimal value in itself. Through the distribution of tasks among teams of students, our objective to pursue political and legal advocacy in each project country will be greatly facilitated.

Our vision of a task force includes the formation of seven teams of students, either working alone or in pairs, that will focus on the issue of coercive conservation-related human rights violations in each project country. The work of the teams will be coordinated by Hebert and Healey, who will meet with the teams on a bi-weekly basis. Each team will be given all available background information pertaining to the situation in their country and a list of contact individuals/organizations. Teams will be responsible for specific tasks, including: (1) networking with relevant organizations and contact individuals in affected communities in order to ascertain the current situation; (2) establishing the formal and informal position of the government regarding the extra-judicial killing of alleged poachers; (3) documenting specific cases of coercive conservation-related human rights; (4) tracking down all applicable domestic

laws, statutes, and decisions; (5) identifying applicable regional and international human rights mechanisms; (6) designating on-the-ground individuals willing to accept responsibility for pursuing cases locally; and (7) preparing a team report in the form of a litigation memorandum. Each team will be responsible for maintaining a file on their country, which will be turned in to the Institute upon completion of their work. In our capacity as leaders of the task force, we will coordinate the activities of the team and continue to establish contacts with relevant individuals and organizations. Once the teams have completed reports on their country, the team leaders will be responsible for compiling a comprehensive report, with the aim of publication.

VII. CONCLUSION

In order for the Institute of International Human Rights to distinguish itself as a relevant and vital presence in the DU and Denver community (and beyond), it is imperative that the Institute establishes a solid record of experience in research and legal advocacy. Such a record will not only enhance student interest in Institute projects, but will also assist in the necessary task of generating financial support for its work. Given the significant interest this project has already attracted, it has the potential to establish recognition for the Institute both locally and internationally. More importantly, however, it has the potential to redress violations of the human rights of African peoples. This report represents only the beginning of what we hope will prove to be groundbreaking and meaningful work.

Appendix A: Relevant Articles of The African Charter on Human and Peoples Rights

A. Relevant Articles

Due Process

Article 6: Every individual shall have the right to liberty and to the security of her

person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 7:

1. Every individual shall have the right to have his cause heard. This comprises:
 - (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions laws, regulations and customs in force;
 - (b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
 - (c) the right to defense, including the right to be defended by counsel of his choice;
 - (d) the right to be tried within a reasonable time by an impartial court or tribunal.
2. No one by be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed . . .

Property Rights/Displacement

Article 14: The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with public laws.

Article 21: (1) All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. (2) In case of spoliation the dispossessed people shall have the right to lawful recovery of its property as well as to an adequate compensation (note the use of the word “its” as opposed to “his” or “her,” the term “people” in the charter has been interpreted as referring to group rights as opposed to individual rights.

B. Complaint Procedure Under the Tribunal

There are two complaint mechanisms under the Charter, one for States, and one for Individuals

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(1) Complaint Procedure for States 24

If a State Party to the Charter believes another State Party to the Charter has violated it, it may make a complaint (communication) to the offending state with and the Secretary General of the OAU, or refer the matter directly to the Commission. If, within three months, the issue is not

satisfactorily settled by bilateral negotiation or other procedure, the complaining State can

submit the matter to the Commission. (Art. 47, 48, 49). All local remedies (if they exist) must be

exhausted before the Commission can take jurisdiction of the issue (Art. 50). After obtaining all

information from the States concerned and other sources, and after trying all means to reach an amicable solution, the Commission shall prepare a report with its facts and findings and recommendations that shall be sent to the States concerned and the AHSB (Art. 52, 53)

(2) Complaint Procedure for Others

Communications can also be received from others if: the authors are identified; their knowledge of the alleged violation is not obtained exclusively through the media; local remedies have been exhausted and the complaint is reasonably timely. The person or group complaining of mass violations need not be directly affected and need not even reside in the country against which the complaint is made (Art. 56). Complaints must be

brought to the attention of the State concerned, prior to consideration by the Commission (Art. 57). The African Charter is vague as to what the Commission may do when an individual alleges that there has been a violation of a guarantee under the charter that is not a “mass violation” under article 42. There have been contradictory interpretations of the Commission’s role in this circumstance.

Resolution of Complaints

If the Commission finds that there are a series of massive violations, it draws the matter to the attention of the OAU which can request an in depth study.(Art. 58). The Charter does not specify the action that the Commission may take if it finds that an individual or single violation has occurred as opposed to a “series of mass violations.” All findings of the Commission are to remain confidential until the AHSG decides otherwise.

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Although we are concerned with individual complaints, both mechanisms are included so that we have a more complete understanding of the OAU system.

C. Critique of the OAU

The OAU has some drawback for use as a vehicle to process our complaints. First, while the extra-judicial killing of poachers certainly would violate the due process provisions, the forced relocation is not so clear cut. We would first have to prove that indigenous group had some tangible property right under the convention. It is unclear as to whether the Commission can any action on complaints of an individual nature as

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opposed to complaints of mass violations. The system has no court so there is no way to appeal a final decision of the Commission. The decisions of the commission are only published upon the agreement of the AHSG. Thus adverse publicity can not be used as a coercive tool as it is under the Inter- American System.

²⁵

Appendix B: International Contact List

Afronet (Inter African Network for Human Rights & Development)

Contact person: Ms. Muleya Mwananyanda, Information Officer
e-mail: afronet@zamnet.zm

Amnesty International

UK e-mail: info@amnesty.org.uk
Southern Africa e-mail: info@amnesty.org.za

Amnesty International USA, Southern Africa Coordination Group

Contact person: Christian Williams
e-mail: cwilliams@wtgi.com

Cultural Survival

Contact person: Nicole Thornton, Education Coordinator
e-mail: csinc@cs.org

Ditshwanelo - Botswana Center for Human Rights

e-mail: ditshwanelo@info.bw

First Nations Institute

Contact person: Kristyna Bishop, lawyer
kbishop@firstnations.org

Human Rights Watch

USA e-mail: hrwdc@hrw.org
UK e-mail: hrwatchuk@gn.apc.org

Indigenous Peoples of Africa Coordinating Committee (IPACC)

Contact person: Sheila Dutton, Coordinator

Postal address: (same address as SASI)

e-mail: ipacc@iafrica.com

Namibian Society for Human Rights

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In *Guide to International Human Rights Practice*, Hannum states that “If a communication relates solely to individual violations of human rights, the Commission appears to have no power to take any action or even to make recommendations to the state concerned.”

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The bibliography includes only those sources used to compile the background report.

Contact person: Phil Ya Nangoloh

e-mail: nshr@iafrica.com.na

OXFAM

Contact person: Timothy

e-mail: oxfam@zamnet.zm

PINGOS Forum (Pastoral Umbrella Organization)

Contact person: Martin ole Saning’o, Coordinator

Postal address: PO Box 12785, Arusha Tanzania

Tel: 00255 57 7012

Fax: 00255 57 8593

Southern Africa Environment Project (SAEP)

Contact person: Norton Tennille

e-mail: saepusa@aol.com or saepnft@iafrica.com

South African San Institute (SASI)

Contact person: Geoff Perrott

Postal address: PO Box 12995, 3 Princess Rd., Mowbray 7705, Cape Town, South Africa

e-mail: sasi@iafrica.com

Survival International

Contact person: Virginia Luling, Africa Campaigns

e-mail: survival@gn.apc.org

WIMSA: Working Group for Indigenous Minorities of Southern Africa

Contact person: Axel Thoma

Postal address: PO Box 11778, 8 Bach St., Windhoek, Namibia

e-mail: wimsareg@iafrica.com.na

The World Conservation Union (IUCN Zambia)

Contact person: Maswabi M. Maimbolwa, Director

e-mail: iucn@zamnet.zm

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