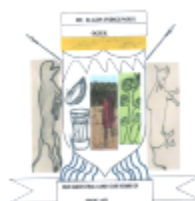


**INDIGENOUS PEOPLES IN UGANDA:
A REVIEW OF THE HUMAN RIGHTS SITUATION OF
THE BATWA PEOPLE, THE BENET PEOPLE AND PASTORALIST COMMUNITIES**

Alternative report to the
Initial report of the Republic of Uganda to be presented at the 55th
session of the United Nations Committee on Economic, Social and Cultural Rights
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The submitting organisations

The United Organisation for Batwa Development in Uganda (UOBDU) aims to support Batwa in Uganda to address their land issues and other socioeconomic problems and to help them develop sustainable livelihoods. UOBDU was established in 2000 by the Batwa themselves and registered in 2002, is a national NGO formed by Batwa. All Batwa are eligible to join and the organization's governing board is made up of Batwa who are elected at UOBDU's periodic General Assemblies. Email: uobdubatwa@gmail.com

The Mount Elgon Benet Indigenous Ogiek Group (MEBIO) is a community based organization, formed and registered in 2012 by concerned community members in the Benet resettlement area. The prime objective of the association is to champion the plight of its people who are facing not only marginalization, but also discrimination and human rights violations. Membership stands at 5000 men and women and has a management structure composed of indigenous Benet. Email: mungech@gmail.com

The Coalition of Pastoralist Civil Society Organisations (COPACSO) was formed in 2005 as a loose coalition of civil society organizations working for the advancement of pastoralists in Uganda. It provides a platform for member organizations to engage in policy formulation and advocacy for recognition of pastoralism and the right of pastoralists to benefit from national and local resources. The goal of the coalition is to achieve national policy and local practices that enhance capabilities and improve the welfare of pastoralists. Email: info@copacso.org

The Forest Peoples Programme (FPP) is an international human rights organisation founded in 1990 and based in the United Kingdom. FPP supports forest peoples in their struggle to control the use of their lands and resources, and works to put human rights issues at the heart of the debate about forests. FPP helps to create space for forest peoples to negotiate their demands through their own representative institutions and to determine their own futures. FPP supports forest peoples to develop sustainable activities that enhance their dignity and the protection of the environment. FPP has been working in Uganda with the Batwa since 2000 and the Benet since 2013. Email: info@forestpeoples.org

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1. Introduction and executive summary

This report presents information pertaining to the Batwa people, the Benet people and pastoralist communities in Uganda, who all presents the characteristics of indigenous people as per international law. They have a common experience of landlessness and historical injustices caused by the creation of conservation areas in Uganda. All three groups have been forced to leave their ancestral lands for many years and continue to experience various human rights violations, including marginalisation, discrimination, poverty, malnutrition and violence today.

This report outlines the multiple ways in which these groups have been denied the progressive realisation of their rights under the International Covenant on Economic, Social and Cultural Rights ('the Covenant'). Broadly speaking, this is manifested in the following impacts on these indigenous peoples: continued forced evictions and exclusions from ancestral lands without communities' consultation, consent, or adequate (or any) compensation; violence and destruction of homes and property including livestock; denial of the means of subsistence and cultural and religious life that their exclusion from ancestral lands and natural resources entails; and in consequence, continued impoverishment and social and political exploitation and marginalisation.

These impacts negate numerous key Covenant articles including:

- article 1 (denial of self-determination, including self-determined development predicated on secure means of subsistence from natural wealth and resources on ancestral lands)
- article 2 (discrimination on grounds of race, since rights violations have disproportionate impacts on indigenous peoples);
- articles 6, 7 and 9 (forced exclusion from livelihoods, exposure to exploitative labour and impoverishment without protection);
- article 10 and 11 (lack of adequate standard of living, including in respect of food and housing, particularly in the cases of forced eviction, compromising the integrity of both family and wider community, leaving children especially unprotected)
- article 12 and 13 (social and economic marginalisation and discrimination compromising access and attainment in health and education)
- article 15 (denial of strongly land-connected cultural life of indigenous peoples compromises the integrity of whole cultures, risking harm to, or even complete loss of, associated languages, religions, traditions, customs and social fabric)

The UN Committee on Economic, Social and Cultural Rights ('the Committee') has issued detailed and explicit guidance on the implementation of the Covenant in the context of indigenous peoples for some time, in numerous Concluding Observations and in its General Comments – *inter alia* General Comments 20 (non-discrimination) and 21 (cultural life). One key reason for this lack of implementation of the Covenant in respect of indigenous peoples in Uganda is the confusion around the definition of indigenous peoples in the Ugandan Constitution and international law, which leads to a lack of recognition of the very existence of indigenous peoples in Uganda.

This fact led to the Batwa filing a petition before the Constitutional Court of Uganda in order to get redress for the violation of their land rights. However, since the petition was filed, there has been additional violence and the human rights situation of the Batwa has not changed. Because of the case, UOBDU have also been excluded from a collaborative agreement with the Uganda Wildlife Authority ('UWA') intended to involve the Batwa in the management of a tourism project taking place on their ancestral lands.

The Benet are still trying to get implementation for a court case that led to a settlement, consolidated in a judge-approved 'Consent order and decree' dated 27 October 2005. The settlement stated:

That it is hereby declared that the Benet Community residing in Benet Sub-County including those residing in Yatui Parish and Kabsekek Village of Kween County and in Kwoti Parish of Tingey County are historical and indigenous inhabitants of the said areas which were declared a Wildlife Protected Area or National Park; That it is hereby declared that the said Community is entitled to stay in the said areas and carry out agricultural activities including the developing the same undisturbed; That the Respondents take all steps necessary to de-gazette the said area as a Wildlife Protected Area or National Park pursuant to this Consent Judgment, after a physical inspection of the boundary with the Benet Community.¹

There are numerous allegations of rape and violence against Benet women in particular that have been committed by authorities, and continue to be committed presently. There are also numerous allegations of violence – including fatal violence – towards the Benet in general which also continue to be committed presently. These incidents have been reported to relevant authorities, but to date, local police, local office of the Uganda Human Rights Commission (UHRC) and local government have all failed to act in response to community complaints, allowing the UWA to continue to act with impunity.

Regarding pastoralist groups in particular, this report also brings to the attention of the Committee that the new land policy of 2013 includes some good theoretical points for their rights, however, it is not clear how historical injustices will be corrected so that pastoral communities may regain control of the land they were dispossessed of. It is also still hard to see the policy implemented in the near future given the cost implications and the various interests at stake. Because of this, the pressure is on civil society organisations to keep communities aware of government commitments and demand, through the various levels of governance that the promises of the new Land Policy are fulfilled. The submitting organisations are, keen to know if Uganda is aware of the challenges associated with implementation and what it is doing to address them, but also if Uganda understands that the redress and full implementation of pastoralist rights will need to go beyond what is currently planned in the Land Policy.

¹ Consent Judgment and Decree, Uganda Land Alliance, Ltd. v. Uganda Wildlife Auth., Miscellaneous Cause No. 0001 of 2004 (High Court of Uganda at Mbale)

With a view to address the human rights violations experienced by indigenous peoples in Uganda, suggestions for recommendations by the Committee are made at the end of this report.

2. A glance at the human rights situation of the Batwa People, the Benet People and Pastoralist communities

2.1 The Batwa people of Uganda: status of a long fight for land rights recognition

The Indigenous Batwa people: past and present

Originally, the Batwa were forest-dwelling hunter-gatherers, living and practising their cultural and economic way of life in the high mountainous forest areas around Lake Kivu and Lake Edward in the Great Lakes region of Central Africa. The Batwa are widely accepted as the first inhabitants of the region, who were later joined by farmers and pastoralists. The Batwa are still to be found living in Rwanda, Burundi, Uganda and eastern Democratic Republic of Congo, with an estimated total population of 86,000 to 112,000. As their traditional forested territories were destroyed by agriculturalists and pastoralists or gazetted as nature conservation areas, the Batwa were forced to abandon their traditional lifestyle based on hunting and gathering. Some were able to develop new means of survival as potters, dancers and entertainers. Others became dependent on occasional work and begging. Virtually all were rendered poor and landless.

As their traditional forested lands and territories fell under the control of agro-industry and conservation agencies, the Batwa became squatters living on the edges of society. They encountered prejudice and discrimination from the dominant society, which referred to them as “pygmies”. This marginalized existence and discrimination continues largely unabated today. Their customary rights to land have not been recognized and they have received little or no compensation for their losses, resulting in a situation where the majority of Batwa remain landless and are living in extreme poverty.²

While accurate figures are difficult to determine and estimates from different sources vary, the 2002 population census showed that approximately 6,700 Batwa lived within the present State boundaries of Uganda, mainly in the south-west region. Data collected in 2007 by UOBDU provides information according to which 3,135 Batwa live in the districts of Kisoro, Kanungu, Kabale, Mbarara, Ntungamo and Lwengo (Katovu township).³ These Batwa are former inhabitants of the Bwindi, Mgahinga and Echuya forests, from which they have been evicted and excluded over time by State action. The English colonial administration established conservation zones on these traditional forested territories in the 1930s, and in 1991 the establishment of Bwindi and Mgahinga National Parks for gorillas enabled the authorities to evict the Batwa definitively from the forest.⁴

² Detailed information on the Batwa can be found in: Lewis, J, *The Batwa Pygmies of the Great Lakes Region*, MRG, London, 2000; Woodburn, J. *Indigenous discrimination: the ideological basis for local discrimination against hunter-gatherer minorities in sub-Saharan Africa*, in *Ethical and Racial Studies*, Vol. 20, No.2, 1997, pp. 345-361; Jackson, D., *Twa Women Twa Rights in the Great Lakes Region of Africa*, MRG, London, 2003; Nelson, J. and Hossack, L. (eds.), *From principles to practice: Indigenous peoples and protected areas in Africa*, FPP, Moreton-in-Marsh, 2003.

³ UOBDU, *Batwa Data of December 2007*, districts of Kisoro, Kabale, Kanungu, Mbarara, Lwengo, Ntungamo.

⁴ African Commission on Human and Peoples' Rights, *Report of the Working Group on Indigenous Populations/Communities* (2005) (hereafter 'WGIP 2005 report'), p.22

The World Bank's Global Environment Facility (GEF) provided funding to Uganda to support the management of these national parks, through a trust originally known as the Mgahinga and Bwindi Impenetrable Forest Conservation Trust Fund (MBIFCT). The overall objective of the MBIFCT (today renamed as the Bwindi Mgahinga Conservation Trust (BMCT)) is the protection of the forests; however it was also established to support research and small projects for local people. The BMCT is also responsible for a Batwa component which specifically seeks to address the needs of the Batwa who were recognized as having been particularly adversely affected by the creation of the National Parks. As stated in the GEF's 1995 Project Document for BMCT:

*"In the proposed project area there is a small group of Batwa (ca. 600-1000 people, less than one percent of the total target population), forest dwellers who once occupied what are now the [Bwindi Impenetrable National Park and Mgahinga Gorilla National Park]. When these areas became Forest and Game Reserves in the 1930's, with human occupation and hunting formally banned, these forest dwellers began to shift out of the shrinking forest area and began spending more time as share-croppers and laborers on their neighbors' farms. However, they still had access to many forest resources and the forests continued to be economically and culturally important to them. The gazettement of the areas as national parks has virtually eliminated access to these opportunities for all local people, but the impact has been particularly harsh on the Batwa because they are landless and economically and socially disadvantaged, and have few other resources or options."*⁵

At the time the BMCT was established, the World Bank required the Government of Uganda to provide an Indigenous Peoples Plan to ensure the participation and benefit of the Batwa.⁶ The World Bank approved this plan and provided funding four years later for the commission of an anthropological and socio-economic study of the local Batwa to assess the need for revising the Indigenous Peoples Plan.⁷ The resulting report recommended – recognizing Batwa use rights to certain resources in the parks – rites of passage to sacred sites, the attribution of forest and farmland to evicted communities, capacity building and educational, health and economic assistance. However, these recommendations were not fully implemented. Instead, compensation efforts focused on the creation of "multiple-

⁵ World Bank, *Uganda: Bwindi Impenetrable National Park and Mgahinga Gorilla National Park Conservation*, Global Environment Facility, Project Document 12430 – UG. Global Environment Coordination Division, World Bank, Washington DC, (January 1995), Annex 6. Further information on the devastatingly negative impact of these World Bank/GEF funded conservation areas on the Batwa of south west Uganda can be found at: Kenrick, J., and UOBDU, *The Batwa of South West Uganda: World Bank Policy on Indigenous Peoples and the Conservation of the Bwindi and Mgahinga National Parks*, Forest Peoples Programme, Moreton-in-Marsh, 2000; Jackson, D., *Implementation of international commitments on traditional forest-related knowledge: Indigenous peoples' experiences in Central Africa*, Forest Peoples Programme, Moreton-in-Marsh 2004; Kabanankye, K. and Wily, L, *Report on a Study of the Abayanda Pygmies of South Western Uganda*, Kabale, Mgahinga and Bwindi Impenetrable Forest Conservation Trust, 1996; Lewis (2000), above note 1; Nelson and Hossack (2003), above note 1.

⁶ World Bank Operational Directive 4.20

⁷ Kabanankye and Wily report, above note 4

use zones" within the parks and grants of small parcels of land to a small minority of Batwa. Due to flawed implementation and institutional discrimination, Batwa access to park resources through the multiple-use zones has not materialized on any meaningful basis.

The parks were created without consulting with or seeking the consent of the indigenous Batwa as required by international law. A statement by a representative of the BMCT at the 5th World Park Congress in 2003 confirms that "As National Parks, access to forest products was denied to the communities ... This government action without consultation with locals created a lot of local communities' hostility against the protected areas".⁸

It was not until this non-consensual park creation occurred that the violation of Batwa land rights became fully evident. As one researcher has noted, "despite the gazetting of their forests [in the 1930s], Batwa continued to consider Bwindi, Mgahinga and Echuya forests as their own during this period. With the establishment of Bwindi and Mgahinga as national parks under the administration of Uganda National Parks in 1991, the Batwa came to realize how thoroughly they had lost their lands and resources."⁹

The most acute impact of the Batwa's forced eviction and exclusion from their ancestral lands is severe landlessness. After the park creation in 1991, 82 percent of Batwa were entirely landless, living either as squatters on the land of others, on government land or on church land.¹⁰ In 2004, 44 % of Batwa were found to not even have land on which to build a hut.¹¹ Data collected in 2007 by UOBDU show that the landless in Kisoro represent 50.4%, Kabale 61.4%, Kanungu 20.9%, while Mbarara, Katovu and Ntungamo landless represent 100% of the total households.¹²

As a result of their exclusion from their ancestral forests and the loss of their traditional lifestyle, the majority of Ugandan Batwa also suffer severe poverty, discrimination and socio-political exclusion. The Batwa are seen by the dominant society as backward and childish, incapable of speaking for or representing themselves. They are presumed to be thieves and are considered dirty, ignorant and immoral. They are often not allowed to draw water from a well at the same time as others, and intermarriage with other ethnic groups is frowned upon.¹³

Such discrimination is still widespread in rural areas and impacts negatively on Batwa lives on a daily basis. Discrimination, poverty and exclusion directly affect the Batwa's ability to find work and positions of responsibility in Ugandan society. The majority of Batwa

⁸ Geo Z. Dutki, Mgahinga and Bwindi Impenetrable Forest Conservation Trust Fund, Vth World Parks Congress: Sustainable Finance Stream, September 2003, Durban, p.2

⁹ Lewis, above note 1 at p 20.

¹⁰ Kabanankye and Wily, above note 4 at p. 116.

¹¹ United Organisation of Batwa Development in Uganda (UOBDU), Report about Batwa data, August 2004, Uganda, p.3.

¹² UOBDU, Batwa Data of December 2007, districts of Kisoro, Kabale, Kanungu, Mbarara, Katovu, Ntungamo, p.6

¹³ Lewis, above note 1 at pp. 13-18.

communities remain isolated from the rest of Ugandan society due to their poverty and the mutual distrust that exists between the Batwa and Uganda's other ethnic groups, as well as their lack of access to information and low self-confidence in being able to take advantage of opportunities open to them. Although there are Batwa political representatives in Rwanda and Burundi, there are no known Batwa holding positions of political responsibility in Uganda today.

As summarized in a study contained in a Social Protection report prepared for Uganda's Ministry of Gender:

*"The entire community of Batwa are poor and depend on begging as a form of livelihood. Most are landless – out of about 2,000 Batwa pygmies in Western Uganda, only 74 have land – and are widely regarded as people "with no rights". Tax exemption for this group is taken as a sign that the government does not recognize them. Although other minorities are represented in parliament through NGOs and CBOs, the Batwa pygmies are not. Other ethnic groups despise them. They rarely eat on the same plate with neighbours. Although, they have been living in isolation, they have not escaped the HIV/AIDS epidemic. Their housing conditions are very poor and they lack access to social services such as running water and health facilities. This group can be seen as chronically poor. Their children experience high rates of malnutrition and there is societal discrimination against them. As a result of all these problems, they are demotivated as a group and seem to be resigned to their situation."*¹⁴

The Batwa case before the Constitutional Court

On 8th February 2013, the Batwa of Uganda submitted a petition to the Constitutional Court of Uganda seeking recognition of their status as indigenous peoples under international law and redress for the historic marginalisation and continuous human rights violations they have experienced as a result of being dispossessed of their ancestral forest lands by the government.

Before their eviction, the Batwa had lived in the forest since immemorial times. The measures taken to remove the Batwa, to create 'environmentally protected' areas, and to limit access and use of Bwindi Impenetrable National Park, Mgahinga Gorilla National Park and Echuya Central Forest Reserve, resulted in the violation of the Batwa's property rights over their ancestral lands. While colonial protection of the forest started in the 1930s, many Batwa continued to live in the forest and to use its resources until the 1990s; when they were evicted, without consultation, adequate compensation or offer of alternative land.

As a result the Batwa have seen the heart of their culture, traditions, beliefs and wealth swept away. They have become squatters on other peoples' land and now experience

¹⁴ Institute of Development Studies, Social Protection in Uganda: Study to inform the development of a framework for social protection in the context of the Poverty Eradication Action Plan: Phase 1 report: Vulnerability Assessment and Review of Initiatives, Chapter 3 "Analysis of Vulnerability in Uganda", p.44, Sussex, 2002, available at: <http://www.ids.ac.uk/ids/pvty/pdf-files/UgandaCh3.pdf>

severe poverty, malnutrition and health problems. They are subjected to high levels of discrimination in Ugandan society and are not treated or perceived as equal citizens. The list of human rights violations they face is long: forced labour, lack of political representation and participation, lack of access to education, housing, healthcare, social security and benefits, and more.

The central issue for the Batwa is their land. To date, the revenues and employment opportunities arising from governmental exploitation of protected areas have not benefited the Batwa. Revenues generated from activities now taking place on the Batwa's ancestral lands are considered in the public interest. However, these revenues have not been redistributed to address the negative impacts suffered by the Batwa following their eviction from their ancestral lands without their free prior and informed consent and without adequate compensation. Land restitution, resettlement, compensation, and positive measures to redress the violations of the Batwa's human rights should be a governmental priority, but these issues are simply not on the agenda.

The **United Organisation for Batwa Development in Uganda (UOBDU)** has been supporting the Batwa to unite and engage communities in informed advocacy for their human and land rights since its creation in 2000. Through years of consultations, the Batwa's voice has become stronger: communities pursued compensation from the government through numerous exchanges and discussions with local councils, various government departments as well as the Parliament of Uganda. They also sought support from international and regional human rights mechanisms, which led to the issuance of clear guidance on how Uganda should address the human rights situation of the Batwa. However, the hope of achieving remedies outside the courts faded as no concrete reparation measures were put in place by national authorities. The Batwa spoke to the government but have not been heard. They were instead offered empty promises that remain unfulfilled.

Consequently, Batwa representatives and **UOBDU** have petitioned the Constitutional Court of Uganda in a claim involving the Attorney General, the National Forest Authority and the Uganda Wildlife Authority (UWA). As of April 2015, the case has yet to be heard in court and the Batwa are closely monitoring the process so that their claim receives the attention it deserves. As well as reaching a decision on the issue of land restitution and compensation for human rights violations, the Constitutional Court is being requested to provide an interpretation of international law and the application of international and regional principles and standards pertaining to indigenous peoples' rights. Harmonisation of national and international law is required for full consideration of the Batwa's land rights claims.

Violence and regression while waiting for the case to be heard

Houses burnt in Ryabitukuru

While the Batwa are waiting for their case to be heard in the courts, communities continue to suffer violence and discrimination from neighbouring ethnic groups. On Saturday 7th June 2014, Batwa communities in Ryabitukuru, Kisoro District, were burned out of their homes in an example of the discrimination and worsening marginalisation that the Batwa face in Uganda. Out of the 14 households in the community, 13 were targeted, leaving many

families destitute and homeless. Despite the Batwa households being scattered over a large area of land, it only took the violent mob two hours moving from house to house ensuring that almost all properties were completely destroyed.

Fearing for their lives and having had their community destroyed, the Batwa fled to the Rubuguri police post for security. Because the post was small, the Batwa were shifted from there to a NGO building which is meant to benefit all the public. While there, well-wishers including NGOs like UOBDU, Red Cross and SUNBEAM provided them with food, water, utensils, blankets and any other amenities. Government officials mobilized and provided tents as shelter. .

Garama Cave: UOBDU excluded from agreement with UWA

In addition to this, the Uganda Wildlife Authority withdrew from a formal agreement (MOU) that it had entered with UOBDU regarding the employment and revenue sharing of the tourism project at Garama Cave. According to this agreement, Batwa were employed to guide tourists and UOBDU was tasked with overall management of the Batwa involvement. In this regard the Batwa trail has been represented as positive action put in place by the Ugandan Government for the Batwa.¹⁵ However, after the filing of the petition before the Constitutional court, UWA terminated the MOU thus disadvantaging the Batwa from fully benefit from the Batwa Trail project and up to now the termination persists.

2.2 The indigenous Benet people of Uganda

The Benet indigenous people (also referred to as Ndorobo, Musobishiek, or Ogiek) have lived in the Mt. Elgon forests from time immemorial, practicing a mixed livelihood system including pastoralism, hunting and gathering. The Benet describe their range-lands as stretching from Sironko river in the west eastwards across Suam river into Kenya, then again passed Lwakhakha river back into Uganda as far as Manafa river.

Mt. Elgon Crown Forest was created by the British in 1936, imposing a public protected area on the Benet's ancestral forest land, without the consultation or consent of the Benet. The Benet were not excluded from the forest by the creation of the Mt. Elgon Crown Forest, but were made subject to stricter rules without their consent or consultation, e.g. controls against cultivation, keeping goats etc. The keeping of cows and sheep, and hunting and gathering were allowed.

The protected area status of Mt. Elgon changed from Crown Forest to Forest Reserve status in 1951, which restricted hunting, as well as maintaining restrictions on cultivation and keeping goats. The squeeze on Benet livelihood options caused by these restrictions prompted the Benet to send letters to the Government requesting alternative land for

¹⁵ "Trail of hope for Uganda's lost Pygmy tribe", The Guardian, 17 July 2010, accessible at: <http://www.theguardian.com/travel/2010/jul/17/uganda-mgahinga-batwa-trail-pygmyies>; see also BATWA: THE MOST MARGINALISED PEOPLE IN UGANDA? 6 June 2014, by Ewelina Kawczynska, accessible at: <http://www.equaltimes.org/batwa-the-most-marginalised-people?lang=en#.VS56yc4irFI>

cultivation. The intention was not to give up their forest land and homes, but to obtain additional land that they could use to cultivate food.

In 1961, civil conflict between the Benet neighbours, the Sabiny and Bagisu, around the time Uganda was gaining independence from the British led to some displacement and separation of the Benet community, who were subsequently divided into three main groupings, known as: Kwoti Benet, Benet Benet, Yatui Benet (though all sections in fact maintained the same coherent Benet Ogiek identity). Independence took place in 1962, and the protected area status of Mt. Elgon changed from Forest Reserve to Central Forest Reserve in 1968. The Benet's formal requests for additional land were eventually responded to by the Government which indicated that it would allow Benet access to land for cultivation.

Finally in 1983, without prior information or consultation, the Benet were told to come and ask for land. The process was marked by a lack of information, the Benet not being aware of the land allocation criteria or how much land was due to them. Some had to pay bribes to be considered for land, and others never got any at all, including orphans and widows. The process also discriminated against the Benet as it was a requirement that applicants had three tax tickets, which Benet were far less likely to have than Sabiny by virtue of the Benet's forest-based way of life. Even after allocation, officials reclaimed some land as they felt too much had been allocated. In some cases, some land was retaken in full even after allocation.

The Yatui Benet were entirely unaffected by the 1983 resettlement and land allocation process, having not been included in that process, and so continued to live in the Crown Forest. As a result, between 1988-1990, a local government initiative was embarked on, recognising that some communities, including the Yatui Benet, had not moved to the resettlement area. The Yatui Benet living in the forest did not want to leave their forest lands and were therefore evicted by force, being given one day's notice to leave by the Forest Department. Violent evictions from the villages of Sabu and Arakut therefore took place in which houses were burned and cattle confiscated, on the basis of the community's refusal to join the rest of the Benet who had been moved to Kween District. Some of the Yatui Benet were resettled in the area of land above the area allocated in 1983 by the Kapchorwa District Council, despite the original area of resettlement land being limited to 6000 hectares. Many Yatui Benet refused to leave the forest even when their houses had been burned, choosing to remain in the forest living in caves or under trees, even though this meant being constantly searched for and chased by Forest Department guards, and many of their cows and sheep dying.

In 1992, Mount Elgon forest was elevated to Mount Elgon National Park. The Uganda Wildlife Authority (UWA) took over responsibility of Mt. Elgon National Park following its creation by the 1996 Wildlife Act. UWA's website currently states that Mt. Elgon covers 1,121km² (112,100ha) and is home to two 'tribes', the Bagisu and Sabiny, 'with the marginalized Ndorobos forced to dwell deep within the forest of Benet'. A 1993 survey demarcating the 6,000 hectare resettlement area found that the area occupied by the Yatui Benet in 1990 and part of the 1983 allocations were inside the protected area, and amounted in total to around 1,500 hectares more than the planned 6,000 hectares (the

total resettled area was therefore around 7,500 hectares). The 6,000 hectare resettlement area was finally degazetted from the National Park in 2002 by Parliamentary vote.

In 2002, the threat of eviction of all persons from outside the 6,000 hectare area who were inside the protected area led to a court case supported by Action Aid and brought by Uganda Land Alliance (ULA), against respondents UWA and the Attorney General. The court case led to a settlement, consolidated in a judge-approved 'Consent order and decree' dated 27 October 2005, that has subsequently been neither implemented nor enforced, stating:

*"That it is hereby declared that the Benet Community residing in Benet Sub-County including those residing in Yatui Parish and Kabsekek Village of Kween County and in Kwoti Parish of Tingey County are historical and indigenous inhabitants of the said areas which were declared a Wildlife Protected Area or National Park; That it is hereby declared that the said Community is entitled to stay in the said areas and carry out agricultural activities including developing the same undisturbed; That the Respondents take all steps necessary to de-gazette the said area as a Wildlife Protected Area or National Park pursuant to this Consent Judgment, after a physical inspection of the boundary with the Benet Community."*¹⁶

It appears that some areas of Benet ancestral lands and some Benet communities are not included in the scope of this consent order, which is understood to be mainly concerned with the Benet living in the approximately 1,500 ha resettlement area outside the planned 6,000 ha.

On the 16 February 2008 Yatui Benet in the former Benet resettlement area were violently evicted by the UWA. In the four month period following eviction, before the community were temporarily allocated land in Kisito, Kwosir Sub-County, in Kween District, the community had to take refuge with relatives, or find shelter in caves or under trees. The temporary land allocation process was also riddled with procedural unfairness and corruption, with some community members having to bribe officials to get the land they needed. This land allocation was only supposed to be for 6 months, but there has been no change since then. In ignoring the terms of the court order, it appears the Government took the view that the court order was difficult to implement.

On 5 February 2011, prompted by a Benet/Sabiny delegation to President Museveni's home town in Mbarara, the President wrote a letter to the Prime Minister about the Benet concerning the need to resettle 400 Benet families that were subject to enforcement to leave the forest reserve in 1986, in which President Museveni stated: *"Since that time, the families have been displaced apparently living in rocks. This is not acceptable at all"*. The President's letter went on to direct the Prime Minister and all concerned ministries to take a number of steps including degazettement of part of the national park, an investigation into two killings by UWA guards and other measures.

¹⁶ Consent Judgment and Decree, Uganda Land Alliance, Ltd. v. Uganda Wildlife Auth., Miscellaneous Cause No. 0001 of 2004 (High Court of Uganda at Mbale)

The President's letter also asked why the Ministry of Environment and UWA could not employ themselves more usefully in educating communities about the importance of the river catchment areas of Mt. Elgon and elsewhere. It is probable that the shootings referred to in the President's letter are the shootings by UWA guards of brothers Chelangat Mutei and Seikoria Mutei (who were grazing cattle) and Moses Arapkiwanuka (who was collecting firewood), all from the Benet community. If it is, and as far as the Benet are aware, there was no investigation by the Inspector General of Police into the shootings in response to the President's letter. The shooting of Chelangat Mutei and Sikoria Mutei had been reported to the police at the time by their grandmother, Erkana 'Koko'Mutei, who was told by the police that there was nothing they could do.

Exclusion and dispossession of the Benet has led to numerous and severe human rights abuses over the last few decades, during and since the major evictions which took place in and around 1990 and subsequently. Community members continue to maintain a strong connection and reliance on their traditional land and resources in the national park, including for grazing cattle, collecting firewood, medicinal herbs, visiting for prayers or offering sacrifice to their ancestors. Many have tried to return to the forest, or use the park as they have little or no alternative land and forest to feed their families and keep them warm. However, when caught doing so, they have been shot and killed or beaten up by UWA forest guards.¹⁷ Families that have tried to move back into the forest have faced further evictions, with reports of this happening as recently as 2008. UWA shootings of Benet community members have taken place in March 2014, October 2014 and most recently in March 2015 when two Benet were shot. They sustained serious injuries and are now undergoing treatment in Mbale Hospital..

There are numerous specific instances of assaults, shootings, deaths and rapes of Benet community members by UWA over the years, including the 2006 shooting and injuring of an 8-year old boy which was reported to the police and Soroti office of the Uganda Human Rights Commission, in response to which no action appears to have been taken. Rapes have taken place such as Kokop Ericana and Justine Kasuro (which were reported to police) but most rapes are not reported by women to their husbands, for fear that they will be divorced due to fear of possible HIV infection:

- On 24 July 1999 Titus Sande was shot by UWA from behind in the upper leg (leaving him disabled) and his wife was raped, during a forced eviction. This was the first evictions that took place in Yatui ancestral homeland when he refused to come out of the forest and was caught in 1999. He reported this to Kapkwata police station but no action was taken. In February 2008, Titus Sande's child died of starvation or related illnesses, following a further eviction which forced him and his family (and others from the community) to find shelter in a cave where they did not have enough food.

¹⁷ See allegations below.

- On the 13 July 2002, Chelangat and Sikoria Mutei were shot dead by UWA outside their house in Cheptaituch and their cattle impounded. When their mother reported this to the police she was told there was nothing they could do.
- In 2006, Cherotich Dison (8 year-old boy) was shot and injured by UWA near his home and his family's cows in Sasut Village. This was reported to the police and Soroti office of the UHRC, but no action appears to have been taken.
- In 2008 Mzee Moris Kangara was shot dead by the UWA during the eviction from his home in Kapsekek.
- In November 2009, Alex Cheminugwa's brother was shot in the leg by UWA and died, after complaining about being forcibly resettled from Kapsekek. When they tried to bring the body to town to get a post mortem, their vehicle was blocked by the police and UWA. He was therefore buried without a post mortem taking place.
- On 23 March 2011, Moses Musaveni was shot in the leg by UWA on 23 March 2011 when collecting firewood. His leg was subsequently amputated. Far from getting justice for this excessive use of force, Moses was in fact prosecuted for trespass, but the case was either dismissed or no sentence was imposed.
- On 24 March 2014, Moses Maikut Chekwane was shot and badly injured by a UWA guide while he was farming his plot, even though this is outside the National Park boundary. It is rumoured that the UWA guard was a Karamojong who has since fled. UWA appear to have accepted that the shooting should not have happened, but have not followed up on this e.g. by paying for medical costs.
- On 24th October 2014, Chelangat David was shot from the back by UWA rangers near the park boundary. He was first hospitalized at Kapchorwa main hospital with serious injuries before being moved to Kumi hospital. He was shot in the back while trying to escape from the park where he had been grazing his cows.¹⁸
- In March 2015, Timothy son of Kitawoi was shot in the chest and in the same month, Alex and Denis were shot in the legs by UWA officials and sustained serious injuries while grazing adjacent to the park and are admitted in Mbale Hospital. Nothing has been done by either UWA or the police to ensure that the perpetrator(s) are brought to answer charges.

To date, the failure to act by local police, Uganda Human Rights Commission (UHRC) and local government in response to community complaints has allowed the UWA to act with impunity and negated the Benet communities' right to remedy. International conservation agencies appear either unaware or unwilling to act in response to the appalling human rights situation the protected area status of the area has caused the Benet.

¹⁸ All of these allegations have been collected through various testimonials directly received and informally documented by the Benet organisation MEBIO. Women do not report rapes to their husbands or to the police. There are no official police reports available for these allegations because they are not being taken seriously and remain unreported on police records.

In summary, the Benet indigenous people is suffering the long-standing impacts of their eviction and enforced separation from ancestral forest lands, territories and resources in the National Park. The impoverishment of the Benet has been caused both by this dispossession and by the discriminatory resettlement and land allocation processes, which were corrupt and favoured members of the politically dominant ethnic groups at the expense of the Benet. This has led to the situation where Benet now have little or no land to farm and keep cows in resettlement areas, with some relying on the charity of others or casual labour. In addition, the Benet are deeply concerned by the ongoing destruction of their ancestral territories of what is now called Mount Elgon National Park. The forest is becoming further degraded due to timber and logging by individuals who are collaborating with some of the UWA staff to harvest timber including from trees sacred to the Benet. As outlined above the legal case filed by the Uganda Land Alliance in 2002 has not resulted in any legal relief for the Benet, as the Government failed to respect the terms of the court order.

The Benet people hope to bring to the attention of the ACHPR the precarious situation of its communities in the hope that the ACHPR can work with the Uganda government and the Benet to come up with a lasting solution to their problems.

The Benet people hope to bring to the attention of the UWA the precarious situation of its communities in the hope that the ACHPR can work with the Uganda government and the Benet to come up with a lasting solution to their problems. The appeal of the Benet People to the Ugandan Government, relevant Ministries, and the UWA is therefore as follows:

1. The Ugandan Government, including relevant Ministries and UWA should recognize and protect the rights of the Benet peoples to own the lands and natural resources they have traditionally owned, used and acquired. This should be through a fully participatory process through which the Benet identify their original land through their own tenure system. Benet lands and natural resources should be granted protected legal status by means of restitution – i.e. official legal recognition of Benet lands in and around Mount Elgon as the Benet’s traditional homeland that must be legally recognized as owned collectively by the Benet people who can therefore benefit from free control, access and enjoyment of our ancestral lands in line with both international legal standards and in conformity with Uganda’s constitutional provisions.
2. The UWA should acknowledge the Benet indigenous management of Mount Elgon Forest. Special consideration should be given to the use, preservation, and legal protection of the Benet’s traditional knowledge of the environment and resource conservation in their forest. On the basis of a full restitution of their traditional lands and forests, they also ask that wherever necessary, they will be given whatever additional support and resources they need (by government and/or international conservation NGOs) to help them to restore and protect the biodiversity and environmental services of Mt. Elgon.

3. Crucially, the Benet demand that Government commissions an independent judge-led investigation with the full and transparent participation of UWA to investigate all rights abuses meted out by UWA staff and other public bodies to date. In this regard, justice should not only be done through recognition of past harms, but adequate compensation should also be provided for the victims and their families, for properties that were lost and burned, and cattle stolen, and personal injury etc. at the hands of the UWA and other public bodies.

2.3 Uganda's National Land Policy: Implications for Pastoralist Communities¹⁹

On 30th August 2013, Uganda gazetted a National Land Policy. It has eight objectives including among others the need to “redress historical injustices to protect the land rights of groups and communities marginalised by history or on the basis of gender, religion, ethnicity and other forms of vulnerability to achieve balanced growth and social equity.”

The policy recognizes that pastoral communities have been disadvantaged through loss of “land rights to conservation projects, mainly national parks and other government projects including government ranches. This has led to depletion of their resources or landlessness. Privatisation of communal grazing lands and other pastoral resources has forced some pastoral communities and ethnic minorities to invade other people’s land or to encroach on protected areas in their neighbourhood.”

The policy further states that in the case of “Karamoja, the colonial government set aside extensive tracts of land for hunting and conservation. In 1962, 94.6% of land in Karamoja was under reserved status. This status was reviewed by the Uganda Wildlife Authority in 1998 and was reduced to 53.8% of the total land area.” Karamoja is the most pastoral part of Uganda comprising nearly 10% of the country’s land surface.

To redress the challenges facing pastoral communities, the policy proposes among others that pastoral lands should be held, owned and controlled by designated pastoral communities as common property under customary tenure. It also calls for action to protect pastoral lands from indiscriminate appropriation by individuals or corporate institutions under the guise of investments. Another suggested intervention is to promote the establishment of Communal Land Associations and the use of communal land management schemes among pastoral communities.

Given that there is already an increasing level of interaction between pastoral and sedentary communities as well as other land users, the policy calls for the establishment of

¹⁹ The information in this section was provided by *Benjamin B. Mutambukah, Coordinator, Coalition of Pastoralist Civil Society Organisations, Uganda*. The sources referred to are: Protocol Establishing the East African Common Market; The Uganda National Land Policy of 2013; The Constitution of the Republic of Uganda 1995 as amended 2006; The Republic of Uganda, Background to the Budget 2014/2015, Kampala June 2014.

efficient mechanisms for the speedy resolution of conflict over pastoral resources in pastoral communities and sedentary communities. Land will also be zoned to establish appropriate agro-ecological zones, pastoral resource areas and access, maintaining an equitable balance between the use of land for pasture, agriculture, energy, industry and for wildlife protection.

There is an acknowledgement that even when the Uganda Constitution provides for prompt payment of fair and adequate compensation, prior to taking of possession or acquisition of the property, appropriation of communal pastoral land has not always been compliant. Therefore, it is provided that future land take over must consider “land swapping, resettlement or compensation for pastoral communities displaced by government from their ancestral lands.”

Given the fact that pastoral communities largely occupy lands that traverse international territories, the policy provides that government shall “establish mechanisms for flexible and negotiated cross-border access to pastoral resources among clans, lineages and communities for their mutual benefits.” Whereas this statement is made with good intentions, the differences in land laws and tenure systems in East Africa appear to be an obstacle to realisation of this strategy. Indeed even the East African Common Market Protocol vests access to and use of land and premises under the governance of divergent “national policies and laws of the Partner States.”

The passing of the National Land Policy is indeed a good landmark but for the rangelands communities (minorities and pastoralists) there are still a number of issues to resolve:

- First of all, where land has been already parcelled and given out to other owners through legal but unjust means, the Constitution under the principle of sanctity of property confers the rights to such owners notwithstanding its being a loss to the indigenous communities.
- Secondly, policies and indeed laws tend to favour the stronger parties. With the levels of education and exposure in most of these communities still low, it will be an uphill task to compete with international capital in the struggle to repossess or retain control over rangelands.
- Another challenge acknowledged in the land policy is the lengthy and costly implementation process that involves among others the “design of appropriate legislation, the establishment of institutional requirements and preparation of a program of activities based on the strategies. Programming should be preceded by consulting key stakeholders within Government, Parliament, local authorities and communities. There is also need to have cooperation with agencies in sectors involved in land use and natural resources management, as well as non state actors.” All these processes will take long and in the meantime pastoral community lands may continue to be encroached on. It is also possible that funding for the implementation of the policy will not be easily forthcoming at least not in the immediate future given the conflicting priorities like the 2016 national elections, roads and dams. The long term trend too indicates that the land sector is

consistently grossly underfunded. In the current national budget (2014/2015), it has been allocated a mere 0.7% of the budget a marginal increase from 0.2% the previous year. Government says that “Budgets allocations reflect Government’s priorities, but should also take account of the distribution of absorptive capacity across government spending units.”

In conclusion, the policy has some good news for the pastoralists, however, it is not clear how historical injustices will be corrected so that pastoral communities may regain control of the land they were disposed of. It is also still hard to see the policy implemented in the near future given the cost implications and the various interests at stake. All the same, the Civil Society Organisations (both local and international) must utilise the available space to keep the communities aware of what government has committed itself to do and demand through the various levels of governance that these are fulfilled.

3. The Constitution of Uganda and the definition of indigenous peoples

The Constitution of Uganda provides a list of indigenous communities under its Third Schedule. This list is essentially one of citizenship by birth, as it enumerates the 56 tribes/communities that were present in Uganda as of 1 February 1926.²⁰ It bears no compatibility with the definitions of indigenous peoples under international and regional human rights law – in particular the emphasis on the right to self-identification – and can therefore not be interpreted as a similar legal protection of the rights of indigenous peoples within the meaning of international and regional human rights law.

Uganda has neglected to recognize the existence of indigenous peoples pursuant to international law. For example, Uganda's Initial State report to the UN Committee on the Rights of the Child in 1996 stated that no ethnic group was officially regarded as indigenous in the country.²¹ Similarly, as indicated above, Uganda's periodic state reports make no mention of the Batwa people, the Benet people, pastoralist groups or any other indigenous peoples; it fails to recognise the existence of indigenous peoples on their territory. The cumulative effect of this has been to render the indigenous peoples unable to enjoy their collective rights and without adequate recourse to remedies for violations of those rights.

The African Commission on Human and Peoples' Rights ('African Commission') has pointed out that while there is no single definition of indigenous peoples, there are internationally accepted indicators, which can help to identify who the indigenous peoples of Africa are. In this respect, the African Commission has noted the important distinction that must be made between people who are indigenous or aboriginal to Africa in a general sense and peoples who are indigenous in the modern analytical sense contemplated by international law. A proper analysis of indigenusness for the purpose of international human rights law and protection thus focuses

*on self-definition as indigenous and distinctly different from other groups within a state; on a special attachment to and use of their traditional land whereby their ancestral land and territory has fundamental importance for their collective physical and cultural survival as peoples; [and] on an experience of subjugation, marginalization, dispossession, exclusion or discrimination because these peoples have different cultures, ways of life or modes of production than the national hegemonic and dominant model (emphasis in original).*²²

This non recognition is inconsistent with regional and international human rights law, notably Articles 19-24 of the African Charter, the UN Declaration on the rights of indigenous

²¹ This list does not include the Benet.

²² African Commission on Human and Peoples' Rights, Report of the Working Group on Indigenous Populations/Communities (2005), pp. 92-93

peoples; Article 1 of the International Covenant on Civil and Political Rights; Article 1 of the International Covenant on Economic, Social and Cultural Rights' Articles 1 and 5 of the International Convention on the Elimination of All forms of Racial Discrimination.

4. Uganda ignoring recommendations made by human rights bodies

Accepting that this is the first examination of Uganda by the Committee based on their initial report, and in addition to concerns relevant to the Covenant in particular, the submitting organisations wish to highlight a worrying lack of due regard by Uganda for the recommendations of other human rights bodies on previous occasions. This is presented to the Committee with a view to ensuring that Uganda can be recommended to take practical steps towards meeting its international human rights law commitments generally, including those under the Covenant.

4.1 No efforts shown to implement the recommendations of the African Commission on Human & Peoples' Rights

At least since its 40th session held in 2006, the African Commission has been requesting that the Republic of Uganda provides specific information on the human rights situation of indigenous peoples in Uganda. The concluding observations of 2006 recommended that the State Party to the African Charter: *“Ensure that the rights of indigenous people and other vulnerable groups are respected”*.²³ Also in 2006, the Working Group on Indigenous Populations/Communities of the African Commission led a country visit to Uganda and in the course of this visit, met with governmental authorities responsible for human rights. A series of recommendations were issued following this visit but there appears to be no implementation or intention on the government's part to follow up on these recommendations.

In 2009, the African Commission noted the: *“The apparent lack of political will to take measures to realize the rights of indigenous populations especially the Batwa people as guaranteed under the Charter.”*²⁴ It also expressed concerns regarding the *“exploitation, the discrimination and the marginalization of indigenous populations, in particular the BATWA people of Uganda, who are deprived of their ancestral lands and live without any land titles”*²⁵. These findings led the African Commission to recommend that Uganda should: *“Adopt measures to ensure the effective protection of the rights of indigenous populations especially the BATWA people as guaranteed under the Charter by establishing laws that protect land rights and natural resources of indigenous populations”*.²⁶

In 2011, after receiving the Fourth Periodic report of Uganda and noticing its continued silence on the rights of indigenous peoples in Uganda, the African Commission noted again:”

²³ African Commission on Human and Peoples' Rights, Concluding Observations and Recommendations on the Second Periodic Report of the Republic of Uganda, Adopted at the 40th Ordinary Session of the African Commission on Human and Peoples' Rights held from 15 to 29 November 2006, Banjul, The Gambia, paragraph 27.

²⁴ African Commission on Human and Peoples' Rights, Concluding Observations and Recommendations on the Third Periodic Report of the Republic of Uganda, Adopted at the 45th Ordinary Session of the African Commission on Human and Peoples' Rights held in May 2009, Banjul, The Gambia, paragraph 21.

²⁵ *Ibid*, at paragraph 39

²⁶ *Ibid*, at recommendation I.

the apparent lack of political will to take adequate measures to realize the rights of indigenous populations as guaranteed under the Charter."²⁷ The African Commission also stressed the lack of implementation of its preceding concluding observations and recommended again that Uganda: "*adopts measures to ensure the effective protection of the rights of indigenous populations as guaranteed under the African Charter by establishing laws that protect land rights and natural resources of indigenous populations*".²⁸

In 2010, the African Commission also adopted a decision on the Endorois people of Kenya, a case that bears clear similarities with the indigenous peoples of Uganda. This decision constitutes applicable jurisprudence in Uganda. The African Court on Human and Peoples Rights has equally adopted standards that are applicable to Uganda, in March 2013 it issued an order of provisional measures in respect of the situation of the Ogiek of the Mau, prohibiting land transactions in the Mau Forest Reserve protected area and other actions likely to prejudice the Ogiek's claim.²⁹

4.2 Recommendations from other international human rights bodies equally ignored

Equally, other international human rights mechanisms have expressed concerns and demanded that Uganda provides information and implements the rights of indigenous peoples. The Committee on the elimination of all forms of racial discrimination (The 'CERD Committee') in 2003 stated that it was: "*concerned by reports of the difficult human rights situation of the Batwa people, particularly in relation to the enjoyment of their rights over lands traditionally occupied by them, and requests information on their situation in accordance with general recommendation XXIII.*"³⁰ In its recommendation XXIII on indigenous peoples adopted in 1997, the Committee was observing that the loss of traditional lands and resources jeopardizes the cultural integrity of indigenous peoples. It urged all States:

"to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt

²⁷ African Commission on Human and Peoples' Rights, Concluding Observations and Recommendations on the Fourth Periodic Report of the Republic of Uganda, Adopted at the 49th Ordinary Session of the African Commission on Human and Peoples' Rights held in November 2011, Banjul, The Gambia, paragraph 12 I).

²⁸ African Commission on Human and Peoples' Rights, Concluding Observations and Recommendations on the Fourth Periodic Report of the Republic of Uganda, Adopted at the 49th Ordinary Session of the African Commission on Human and Peoples' Rights held in November 2011, Banjul, The Gambia, paragraphs 13 vi) and 15 xiv)

²⁹ *African Commission on Human and Peoples' Rights v. The Republic of Kenya*, (15 March 2013) Order of Provisional Measures from the ACHPR, sitting in Arusha, Tanzania.

³⁰ UN Committee on the Elimination of all Forms of Racial Discrimination, 62nd session, 3-21 March 2003, CERD/C/62/CO/11 2 June 2003, paragraph 14

compensation. Such compensation should as far as possible take the form of lands and territories.”³¹

The Committee on the Elimination of all forms of Discrimination Against Women also noted with concern the situation of Batwa women in Uganda and urged the State Party to:

“continue to intensify the implementation of gender-sensitive poverty reduction and development programmes in rural and urban areas and to pay particular attention to the Batwa women in the development of such programmes. The Committee also reiterates its recommendation that the State party continue to develop targeted policies and support services for women aimed at alleviating and reducing poverty.”³²

The CERD Committee has also previously articulated the principles applicable to establishment of protected areas in indigenous peoples’ territories, which is particularly relevant to the situations of the Batwa and Benet. Two main inter-related rules have been held to apply in that context by the CERD Committee: first, in 2002, the Committee held that “no decisions directly relating to the rights and interests of members of indigenous peoples be taken without their informed consent” in connection with a game reserve in Botswana.³³ Such measures were expressed as necessary *both* in the “*establishment* of national parks, and as to how the effective *management* of those parks is carried out” in the Committee’s recommendations to Ethiopia in 2007.³⁴

Second, with regard to a national park in Sri Lanka, the Committee called on the state to “recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.”³⁵ As an example of implementing this rule in practice, the Committee called on Namibia in 2008 “to strengthen laws and policies aimed at ensuring that national parks established on the ancestral lands of indigenous communities allow for sustainable economic and social development compatible with the

³¹ *General Recommendation XXIII (51) on Indigenous Peoples*, adopted at the 1235th meeting of CERD on 18 August 1997, UN Doc. A/52/18

³² Committee on the Elimination of Discrimination against Women, Forty-seventh session, 4–22 October 2010, CEDAW/C/UGA/CO/7, paragraph 40

³³ *Concluding observations of the Committee on the Elimination of Racial Discrimination: Botswana*. 23/08/2002. UN Doc. A/57/18, paras. 292-314, at 304.

³⁴ *Concluding observations of the Committee on the Elimination of Racial Discrimination: Ethiopia*. 20/06/2007. UN Doc. CERD/C/ETH/CO/15, at para 22. Our emphasis. These recommendations from the Committee are consistent with Decision VII/28 on Protected Areas, adopted by the 7th Conference of Parties to the CBD in 2004, *supra* at note 2.

³⁵ *Concluding observations of the Committee on the Elimination of Racial Discrimination: Sri Lanka*. 14/09/2001. UN Doc. A/56/18, paras. 321-342, at 335. Human Rights Committee has also addressed this issue. In July 2000, it explained that Article 27³⁵ of the International Covenant on Civil and Political Rights requires that “necessary steps should be taken to restore and protect the titles and interests of indigenous persons in their native lands ...” and; “securing continuation and sustainability of traditional forms of economy of indigenous minorities (hunting, fishing and gathering), and protection of sites of religious or cultural significance for such minorities ... must be protected under article 27....” *Concluding observations of the Human Rights Committee: Australia 28/07/2000*. UN Doc. CCPR/CO/69/AUS, at paras. 10 and 11.

cultural characteristics and living conditions of those indigenous communities”.³⁶ Finally, in relation to the historical dispossession of indigenous peoples from conservation areas established on their lands and territories (in violation of both these inter-related rules), the Committee also called on Namibia to “take steps to return those lands and territories or to provide adequate reparation measures”.³⁷

UN Special Rapporteurs have also called on the Ugandan government in relation to the situation of the Benet people of Uganda. In May 2009, the Special Rapporteur on the human rights and fundamental freedoms of indigenous people, James Anaya, together with the Special Rapporteur on the right to food, Olivier de Schutter, the Special Rapporteur on the right to adequate housing as a component of the rights to an adequate standard of living and on the right to non-discrimination in this context, Raquel Rolnick, and the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin found that

“400 members of the Benet indigenous people were forcibly resettled from a 1,500 hectare area within the Mount Elgon National Park in February 2008. The evicted people were part of a larger group of Benet people who had been resettled during the 1980s into what is known as the Benet Resettlement Area, to make way for what would be the Mount Elgon National Park. However, because the Government did not originally survey the resettlement area, it did not notice that this area was 7,500 hectares and not the originally intended area of 6,000 hectares. After surveying the area in 1993, the Government evicted around 6,000 people residing in the extra 1,500 hectares, which it then declared to be part of the National Park. These people were allegedly evicted without alternate land allocation and received no compensation. Reportedly, the Government has persistently attempted to evict Benet families living in the area, thus resulting in the eviction of February 2008.

The 2008 evictions allegedly occurred despite the fact that, according to a 27 October 2005 Consent Judgment and Decree of the Ugandan High Court (“Consent Judgment”), the 1,500 hectare area in question has to be withdrawn from its designation as a National Park area and the indigenous Benet inhabitants therein were entitled to stay within the area undisturbed and carry out their agricultural activities. The temporary resettlement area to which the Benet were moved is

³⁶ *Concluding observations of the Committee on the Elimination of Racial Discrimination: Namibia. 19/08/2008.* UN Doc. CERD/C/NAM/CO/12, at para 19. A very similar recommendation was made to Ethiopia in the Committee’s 2007 concluding observations, *supra* at note 14, at para 22. Related to this is the recommendation made by the Committee in relation to the compatibility of respecting the San people’s rights in the context of a game reserve, where it urged Botswana to consider “all possible alternatives to relocation”. *Concluding observations of the Committee on the Elimination of Racial Discrimination: Botswana. 4/04/2006.* UN Doc. CERD/C/BWA/CO/16, at para 12.

³⁷ *Id. (Namibia).* In order to satisfy the Committee’s General Recommendation 23 (indigenous peoples) at para 5, reparations should only replace restitution where for factual reasons restitution is impossible. Where enforcement measures taken in relation to ecosystem conservation included violence, abuse of power and inhuman and degrading treatment of indigenous peoples, the Committee urged Congo to conduct “thorough official investigations” and “to bring any perpetrators to justice and ensure they are punished” (see *Concluding observations of the Committee on the Elimination of Racial Discrimination: Congo. 23/03/2009.* UN Doc. CERD/C/COG/CO/9, at 13.

reportedly inadequate for them to sustain their traditional agricultural practices and maintain their traditional livelihoods. In some resettlement areas, Benet families are given inadequate amounts of land for subsistence; and, according to information received, in one resettlement within a privately owned area, they are not allowed to cultivate any crops and are prohibited to set up permanent housing units by both the private landowner and the Uganda Wildlife Authority.

According to allegations received by the Special Rapporteurs, the Uganda Wildlife Authority has been seeking payments of as much as 600,000 Uganda shillings in exchange for the Benet's permanent resettlement outside the Mount Elgon National Park, contrary to the provisions of the Consent Judgment which allow them to live just outside of the National Park. It has also been alleged that Benet individuals are regularly threatened by the Uganda Wildlife Authority and sometimes forcibly evicted from their temporary dwellings, which has brought them constant insecurity and prevented them from conducting their traditional subsistence activities as well as deprived them of sufficient and adequate food, leading to the deaths of at least two children. The Uganda Wildlife Authority and Ugandan police frequently arrest community members, especially those involved in advocacy against forceful evictions and displacement, and that Benet community members have also been subject to alleged beatings by Uganda Wildlife Authority officials when they search for food or firewood within areas considered to be part of the National Park.”³⁸

In its report of 2010, the UN Special Rapporteur on the human rights and fundamental freedoms of indigenous people, James Anaya explained that, having had no responses from the government of Uganda he proceeded to cross-check the information submitted and declared it:

“sufficiently credible to indicate a pressing problem requiring the attention of the Government and urges the Government to take corrective measures as needed. In a spirit of constructive dialogue and cooperation, the Special Rapporteur presents the following observations, which include a series of recommendations, in hopes that they assist the Government in addressing the situation of the Benet people in Eastern Uganda. (...) Information received by the Special Rapporteur indicates that there has been no effective recognition of the Benet peoples' land or natural resource rights before, during or after the establishment of the Mt. Elgon National Park. It is apparent that even after having been displaced to the resettlement areas, the Benet continued to experience the lack of legal certainty as to their rights to the lands they have occupied and to the natural resources they have sought to access for traditional subsistence activities.”³⁹

³⁸ CASES EXAMINED BY THE SPECIAL RAPPORTEUR (JUNE 2009 – JULY 2010), A/HRC/15/37/Add.1, 15 September 2010, paragraphs 400-402 to Accessible at: <http://unsr.jamesanaya.org/cases-2010/31-uganda-situation-of-the-benet-community-living-in-the-kapchorwa-district-of-eastern-uganda-on-the-edges-of-mount-elgon>

³⁹ *Ibid*, paragraphs 404 and 406.

This was communicated in another letter dated 1 April 2010 by the Special Rapporteur to the Ugandan government and apparently once again ignored.

The same report from the Special Rapporteur goes on to explain that the situation of the Benet bears some similarities with other indigenous peoples in Uganda and Africa and that the State party should be reminded of international standards pertaining to indigenous peoples, such as the UN Declaration on the Rights of Indigenous Peoples and several recommendations and decision from the African Commission, including the Endorois decision. This is another clear statement that Uganda's ignorance of international and regional human rights standards has to stop.

4.3 National level standards also not implemented

Certain Ugandan authorities have made passing reference to Batwa land rights and have noted the link between the Batwa evictions (and resulting landlessness) and their poverty.

A report by Uganda's Ministry of Gender acknowledges that:

*"traditionally, [Batwa] were forest dwellers, but they have recently suffered eviction from forest-land (Mgahinga Game Reserve) because of voluntary and involuntary factors. These factors include population pressure due to "newcomers" entering their land and the biodiversity conservation movements in the early 1990s, which limited their access to forested areas. Thus, they have lost their territorial rights and accessibility to ancestral forested lands. The entire community of Batwa are poor and depend on begging as a form of livelihood. Most are landless – out of about 2,000 Batwa pygmies in Western Uganda, only 74 have land – and are widely regarded as people 'with no rights'."*⁴⁰

The same report recommended that *"freedom and means of livelihood of minorities should be respected, especially with regard to land use."*⁴¹

The country's 2000 Poverty Reduction Strategy Paper, known as the "Poverty Eradication Action Plan" (PEAP), noted that *"[a]t the level of the household, poverty is related to rural residence ... to land shortage"*. Uganda's Social Development Sector Strategic Investment Plan has also recognised that *"the landless...are likely to be poor"*.⁴²

Uganda's 1995 Constitution and 1998 Land Act are progressive in responding to communities' own concepts of land rights and administration of these rights. For instance, they both recognize customary forms of land ownership.⁴³ However, these instruments

⁴⁰ Government of Uganda, *2002 Social protection in Uganda: A study to inform the development of a framework for social protection in the context of the poverty eradication action plan*, Ministry of Gender, Labour and Social Development, p.44

⁴¹ *Ibid.* p.45

⁴² Government of Uganda, *Poverty Reduction Strategy Paper: Uganda's Poverty Eradication Action Plan*, Ministry of Finance, Planning and Economic Development, Kampala, 2000, p.8.

⁴³ Constitution (1995), Art. 237(3); Land Act (1998), Art. 2

have been of little benefit to the indigenous peoples, who have already been forcibly excluded from their customary ancestral forested lands and territories.

5. Why is Uganda not implementing indigenous peoples' rights?

This question is illustrated below via a detailed look at the way in which Uganda responded to concerns on indigenous peoples' rights discussed in the context of periodic state reporting at the African Commission.

5.1 Points raised by the African Commission in 2009

Some of the submitting organisations were present at the public discussion held following the examination of the State report in 2009. Among others, the following points were verbally raised by the African Commission:

- The report of the mission conducted by the Working Group in 2006 was not addressed by the delegation.
- How the fund for land reform was addressing the specific problems of indigenous peoples.
- The issue of indigenous peoples in general; what is the current situation in Uganda?
- The perpetuating of colonial attitudes by the people in authority towards the Batwa, who are treated rather like children, or people who are socially and intellectually backwards. The need to reform the current policies, which repeat the errors committed during colonization because they seek to assimilate the Batwa into the majority.
- The fact that Batwa culture and language is disappearing.
- For the Batwa, the forest is not just a means of basic subsistence, it is also a place of worship and religion.
- The State report makes no mention of the rights of the Batwa when discussing articles 19 to 24 of the African Charter and none at all of the Batwa in the whole report. On pages 55 and 56 it talks about pastoralists but makes no mention of the Batwa peoples near the parks in southern Uganda. Does this amount to a denial of the existence of the Batwa indigenous people?
- The need to clarify why there was no compensation following a project funded by the World Bank that led to forced evictions connected with the creation of the Mgahinga and Bwindi protected areas. According to reports, there was supposed to have been compensation but nothing has been done to compensate the Batwa.
- There is a clear need for affirmative action to be taken with regard to the Batwa.
- In Burundi and Rwanda, there are political representatives of Batwa origin; why are there none in Uganda?
- The Working Group visited Uganda in 2006 and produced a report, which was sent to the State for comment. However, as of 2009, the African Commission had received no comments from the State.

5.2 Uganda's response

Uganda's answers to these many questions were very brief. Although the delegation exercised its right of reply for about an hour, little time was spent responding to the specific questions the African Commission Members asked about the Batwa as listed above. The State said that it was aware of the presence of the Batwa and that it recognised them as a marginalised group but that there was a problem with regard to recognising them as an indigenous people because recognising the Batwa as such would encourage other minorities to ask for their rights to be similarly recognised.

This is an argument that was qualified as a 'misconception' by the African Commission's Working Group on indigenous populations/communities:

"One of the misconceptions regarding indigenous peoples is that to advocate for the protection of the rights of indigenous peoples would be to give special rights to some ethnic groups over and above the rights of all other groups within a state. This is not the case. The issue is not special rights. As explained above, the issue is that certain marginalized groups are discriminated in particular ways because of their particular culture, mode of production and marginalized position within the state. This is a form of discrimination which other groups within the state do not suffer from. It is legitimate for these marginalized groups to call for protection of their rights in order to alleviate this particular form of discrimination.

(...)

Another misunderstanding is that talking about indigenous rights will lead to tribalism and ethnic conflict. This is, however, turning the argument upside down. There exists a rich variety of ethnic groups within basically all African states, and multiculturalism is a living reality. Giving recognition to all groups, respecting their differences and allowing them all to flourish in a truly democratic spirit does not lead to conflict, it prevents conflict. What does create conflict is when certain dominant groups force through a sort of "unity" that only reflects the perspectives and interests of certain powerful groups within a given state, and which seeks to prevent weaker marginalized groups from voicing their particular concerns and perspectives. Or, put another way: conflicts do not arise because people demand their rights but because their rights are violated. Finding ways to protect the human rights of particularly discriminated groups should not be seen as tribalism and disruption of the unity of African states. On the contrary, it should be welcomed as an interesting and much needed opportunity in the African human rights arena to discuss ways of developing African multicultural democracies based on respect for, and the contributions of, all ethnic groups.

The ACHPR recognizes the concern of those who feel that the term 'indigenous peoples' has negative connotations in Africa, as it was used in derogatory ways during European colonialism and has also been misused in chauvinistic ways by some post-colonial African governments. However, notwithstanding the possible negative connotations of the word itself, it has today become a much wider internationally recognized term by which to understand and analyse certain forms of inequalities and repression, such as those suffered

by many pastoralists and hunter-gatherers in Africa today, and by which to address their human rights sufferings.”⁴⁴

During the examination of the State report in 2009, Uganda also said that it would look into the possibility of restoring land to the Batwa, that it valued and recognised the spiritual or religious dimension that land had for the Batwa and that tenure should be organised on the basis of that attachment to land. Lastly, the delegation said that it was not acquainted with the report of the Working Group’s 2006 visit and asked for it to be sent to them again.

Following this the Country visit report of the Working Group was published in 2009 and a number of detailed recommendations were once again issued with the publication of the report. It appears that Uganda did not react. In September 2010, the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, expressed concerns that it had no response from the Government of Uganda following its letter dated 18 December 2009, and noted that:

“the Government of Uganda indicated before the African Commission during the presentation of its second periodic report in May 2009 that it plans to look into giving land back to the Batwa people. The Special Rapporteur welcomes this remark and hopes that the Government of Uganda will do so, in consultation and with the full participation of the Batwa. In this connection, the Special Rapporteur calls attention to the provisions in the United Nations Declaration on the Rights of Indigenous Peoples regarding indigenous land rights, including articles 10, 26(1), 26(3) and 32(2). The Special Rapporteur also takes note of the need for concerted measures to provide for the health, housing, education and overall social and economic wellbeing of Batwa people.”⁴⁵

This report is presented in May 2015, on the occasion of the 55th session of the Committee with regard to Uganda’s initial report. Unfortunately despite the previous recommendations of other human rights bodies and the attention given by the Committee to the rights issues necessary for compliance with the Covenant in the context of indigenous peoples, **the initial report of the Republic of Uganda unfortunately does not address the situation of indigenous peoples in the manner or to the extent required to ensure the progressive realisation of the rights in the Covenant.**

⁴⁴ “Indigenous peoples in Africa: the forgotten people?” The African Commission’s work on indigenous peoples, 2006, pages 11-13.

⁴⁵ CASES EXAMINED BY THE SPECIAL RAPPORTEUR (JUNE 2009 – JULY 2010) A/HRC/15/37/Add.1, 15 September 2010

6. Recommendations

The organisations submitting this alternative report respectfully request that the Committee:

Expresses deep concern at the current state of the Batwa, Benet and pastoralist indigenous peoples' social, economic and cultural rights in Uganda, in particular the most egregious violations of the Covenant, including those caused by the following: violence (including rape, and use of fatal force); forced eviction and involuntary resettlement; and, exclusion from ancestral lands and resources compromising the very cultural integrity of those peoples.

Urges the government of Uganda to recognise the existence of indigenous peoples in Uganda and implement their rights, as per international and regional law;

Recommends that the historical injustice faced by the Batwa people, the Benet people and pastoralist groups be fully acknowledged and that national legislation and policy be adapted to address the landlessness, marginalisation and discrimination caused by the creation of conservation areas;

Calls once again on Uganda to respond to the multiple appeals from international and regional human rights bodies and mechanisms regarding the situation of indigenous peoples in Uganda;

Reiterates that the argument presented by Uganda on the possible problems with the recognition of indigenous peoples' rights are based on misconceptions examined and deconstructed in its 2006 report on indigenous peoples in Africa and should not interfere with the implementation of indigenous peoples rights;

Recommends that the agreement between UWA and UOBDU be revisited in order to continue to provide the Batwa members of this organisation with the benefits they were entitled to before the constitutional court case was filed.

Recommends that the order of settlement ordering degazettement of the Benet's ancestral lands be implemented.

Recommends that urgent and appropriate measures are put in place to protect indigenous women from sexual and other forms of violence;

Recommends that urgent and appropriate measures are put in place to stop the illegal shootings and murder of Benet individuals by the Uganda Wildlife Authority and prompt investigations of those case already in existence;

Recommends that the new National Land policy be implemented with a view to redress historical injustices experiences by indigenous peoples, and that the rights of pastoralist communities in particular be interpreted and implemented in line with international law;