Land Rights and the Forest Peoples of Africa

Historical, Legal and Anthropological Perspectives

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O. Overview: Analysis & Context 1. Burundi
2. Cameroon 3. DRC 4. Rwanda **5. Uganda**

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No 5 Historical and contemporary land laws and their impact on indigenous peoples' land rights in Uganda: The case of the Batwa

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0 *Overview: Analysis & Context*
Valérie Couillard, Jérémie Gilbert, Justin Kenrick and Christopher Kidd
1 Burundi
Historical developments in Burundi's land law and impacts on Batwa land ownership
Jean-Pierre Amani
2 Cameroon
The influence of historical and contemporary land laws on indigenous peoples' land righs in Cameroon
Samuel Nguiffo, Pierre Étienne Kenfack and Nadine Mballa
3 Democratic Republic of Congo
The dispossession of indigenous land rights in the DRC: A history and future prospects
Prosper Nobirabo Musafiri
4 Rwanda
Historical and contemporary land laws and their impact on indigenous peoples' land rights in Rwanda
Chris Huggins
5 Uganda
Historical and contemporary land laws and their impact on indigenous peoples' land rights in Uganda: The case of the Batwa
Rose Nakayi

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Historical and contemporary land laws and their impact on indigenous peoples' land rights in Uganda:

The case of the Batwa

Rose Nakayi

Acronyms

ACHPR	African Charter on Human and Peoples' Rights
CARE	Christian Action Research and Education
CBD	Convention on Biological Diversity
CERD	Committee on the Elimination of Racial Discrimination
CFM	Collaborative Forest Management
FPP	Forest Peoples Programme
IBEACO	Imperial British East African Company
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
MBIFCT	Mgahinga and Bwindi Impenetrable Forest Conservation Trust
MUP	Multiple Use Programme
OIC	Order in Council
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UOBDU	United Organization for Batwa Development in Uganda

Contents

I Introduction

Over the past century, indigenous people in the Great Lakes Region of Central and East Africa have become economically, politically and socially marginalised. This is due to the interplay of several factors including development activity, political instability, population growth, deforestation, and ethnic discrimination and stigmatisation. Prominent among such indigenous groups are the Batwa of south-west Uganda, who suffer abject poverty, exclusion, and denigration from both agriculturalists and pastoralists.[1]

Currently, the majority of the Batwa live in or near the forest, which is a source of their livelihood and culture.[2] Many Batwa who have been evicted from the forest derive their sustenance from casual labouring and begging.[3] The Batwa face the eight major impoverishment risks within the displacement process: landlessness; joblessness – since the forest was the main source of livelihood;[4] homelessness; marginalisation;[5] increased mortality;[6] food insecurity; loss of access to common property resources; social disarticulation arising from the forced change of lifestyle.[7]

The plight of the Batwa is attributed to the blatant deprivation of customary land rights. Long before today's state of Uganda was formed, their rights to land were collective, founded on a clan rather than an individual basis.[8] They lived in harmony with their surrounding natural

[1] Woodburn, (1997), p 345.

[2] This is in Kisoro District around Bwindi and Mgahinga National Park (The Uganda Bureau of Statistics report of 1991 states a population of 935 Batwa in this area). See also Kabananukye and Wily, (1996), p 19.

[3] Penninah and Kenrick, (2002), p 1.

[4] Cernea and Schmidt (2003) note that the difficulty of introducing alternative income-generating activities to mitigate income losses arising from conservation underlines the fact that monetary compensation is not an option for hunter–gatherers.

[5] Additionally, the Batwa suffer injustice and discrimination in local council courts. There is bias against them in the adjudication of their complaints, especially if the adversary is from the dominant community. Ultimately, the Batwa are discouraged from filing complaints in the local council courts. They are further curtailed by the exorbitant fees charged for filing such complaints. For a further look at the marginalisation facing the Batwa in their daily social life, see Tumushabe and Musiime (2006).

[6] A medical needs survey undertaken in 1999 reported the major problems faced by the Batwa to be the lack of: safe drinking water, latrines, schools, clinics, and access to government health care facilities. The child mortality rate for the Batwa was 41%, while for non-Batwa it was 17%; infant mortality rate for the Batwa was 21%, for non-Batwa 5%. For a detailed study, see Rudd (2002).

[7] Cernea and Schmidt (2003), p 1.

[8] Lewis (2000), p 17.

environment in the high mountainous forest areas around Lake Kivu and Lake Edward.[9] The forest was their main source of livelihood; it met their needs for medicine, food, construction materials, other socio-economic activities, and spiritual needs. Honey, animal meat and skins were major articles for exchange.[10] Medicinal plants and scented woods could also be exchanged for cultivated foods, metal, or money.[11]

The Batwa's land rights have been slowly but surely eroded to the point of extinction. They lost their forest land gradually, by means legal and illegal. Key among these was Legal Notice No. 21 of 1930 by the Colonial Government, which gazetted Mgahinga Forest as a gorilla sanctuary. The final blow to the Batwa's substantive rights to the forest land came in the Forest Act of 1947 and the National Parks Act of 1952, which recognised only access rights for communities like the Batwa. Subsequent post-independence legislation did not repeal these laws but built on their precedent, leaving the Batwa's substantive land rights obscure. In 1991, the Batwa were formally evicted without compensation from the forest, although they have maintained access to it clandestinely. As a result of eviction, a hunter–gatherer community has been turned into an overwhelmingly landless cultivating or labouring group.

Article 26 of Uganda's Constitution protects all Ugandans' right to 'property'. Article 21 forbids any discrimination on grounds of ethnicity. Failure to recognise and protect the Batwa's interest in their ancestral land, therefore, amounts to a violation of their Constitutional rights.

Laws passed in the pursuit of environmental protection or preservation raise pertinent issues about the Batwa's land rights in Uganda today. In order to boost tourism, the government of Uganda has focused on natural resources such as forests and game parks, which have been classified as reserves under government conservation policies. Conservation of such areas is also a sign of cooperation with the international community in the fight against global warming. This study shows how the Wildlife Act (2000) and National Environment Act (1995) deviate from the supposed government obligation to protect the Batwa's land rights. The Batwa were not involved in the processes leading to the establishment of game parks in the forest areas that they occupied, nor have they participated in the establishment, management or planning of protected areas. Worse still, the Batwa were ignored in the aftermath of their eviction. The government did not put in place adequate and comprehensive compensation to all dispossessed Batwa. Compensation was paid to a few, and only in response to lending conditionalities set by the World Bank. No measures were taken to facilitate the Batwa's transition to settlement.[12] At present, the Batwa are caught between two opposing worlds: that of agriculturalists and cultivators, who wish to exploit them, and that of conservationists, who by closing the forest have put an end to their hunting and gathering,[13] and rendered them landless.[14]All of this should be viewed against the backdrop of international human rights instruments (to which Uganda is party) that provide for a wide range of rights that a country should avail to its people generally, including indigenous peoples. These include (but are not

[9] FPP, UOBDU and CARE (2008), p 1.

[10] Kingdom (1990), p 238.

[11] *Ibid.*

[12] *Ibid.*, p 247.

[13] *Ibid.*

[14] *Ibid.*, p 238.

limited to) the International Covenant on Civil and Political Rights[15] and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).[16]

If land rights are actually able to empower vulnerable groups and communities such as the Batwa, they have to be conceived in a way that is understandable and acceptable to these communities, while also conforming to international standards.[17] These standards require that indigenous peoples' rights to their traditionally owned lands, territories and resources be regularised in accordance with their customary laws and tenure systems. A close look at the historical and contemporary land and environmental laws in Uganda in relation to the Batwa's land rights reveals glaring loopholes in this case.

1.1 The Batwa in Uganda: A historical overview

Oral tradition and historians agree that the Batwa are the original inhabitants of the forest areas of the Great Lakes region of central Africa, where they lived as hunters and gatherers. In south-western Uganda, the Batwa have lived around the forests of Bwindi Impenetrable National Park (321 km²), Mgahinga Gorilla National Park (33.7 km²) and Echuya Forest Reserve (34 km²). The Batwa's history can be traced in this area, present-day Bufumbira county in Kigezi district, on the northern frontier of what is now Rwanda, an area inhabited solely by the Batwa until the mid-sixteenth century. These high-altitude forests, known as the 'domain of the bell' after the bells on their dogs' collars, belonged to the Batwa.[18]

Mist rising from Bwindi Impenetrable National Park Photo: Chris Kidd

The first Tutsi moved into this area after 1550, and recognised the Batwa as the rightful owners of the high-altitude forests. Around 1750, the first nine Kiga Bahutu clans arrived in the area in a bid to escape the oppressive Tutsi monarchy in Rwanda.[19] The Batwa affiliated themselves to and identified with these clans and distinguished themselves and these allies from numerous

[15] Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entering into force on 23 March 1976, in accordance with Article 49. Uganda ratified it on 21 September 1995. See http://www.unhchr.ch/pdf/report.pdf, accessed on 16 October 2008.

[16] Adopted by the General Assembly 13 September 2007.

[17] Tindifa (2007), p 11.

[18] Lewis (2000), p 19.

[19] *Ibid.*

others that came and occupied the region later.[20] The Batwa became embroiled in conflicts among the Batutsi and the Bahutu, in which Belgian, German and British colonial forces also involved themselves. In 1912, the British took control of Kigezi–Bufumbira and continued to rule this area along with the rest of Uganda until 1962, when Uganda gained her independence.[21]

The Batwa fall into the category described by Article 1 of the International Labour Organisation (ILO) Convention 169, which spells out the definition of tribal and indigenous people. The Convention applies to:

> (a) Tribal peoples in independent countries 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 or by special laws or regulations;
>
> (b) Peoples in independent countries 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 colonisation 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.

It further provides that self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

The Batwa are aptly described by both of these clauses. They maintain that they are the first inhabitants of the areas they occupy, and that the communities that have come recently to live there, including the Tutsi and Bakiga, have their origins outside this area, the majority having migrated from Rwanda.[22] The Batwa insist that, unlike these other tribes, they have no origins elsewhere, no immigration history, that they are truly the indigenous people of the area and are thus the rightful inhabitants of the forest areas of Central Africa, including the Echuya, Bwindi and Mgahinga forests of south-western Uganda.[23]

A recent study by Kabananukye[24] calculates the Batwa population in Uganda as 5,591; 0.0286% of the country's total population. According to the Uganda Bureau of Statistics' most recent census (2002), the majority of the Batwa live in south-western Uganda, in the six districts of Kisoro, Bushenyi, Kabale, Kanungu, Mubende and Rukungiri, with the population in each district ranging between 366 and 935. Kisoro district has the largest Batwa population (935), followed by Bushenyi (779). The rest are scattered thinly in all districts of Uganda.[25] This dispersion has worked against the solidarity of the Batwa and has been a contributory factor to the weakness of their voice in demanding land rights and an end to unlawful evictions.

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[20] *Ibid.*

[21] *Ibid.*

[22] Kingdom (1990), p 248.

[23] Lewis (2000), p 14.

[24] Kabananukye (2006), p 11.

[25] *Ibid.* The same is also reflected by the Uganda Bureau of Statistics.

The Batwa have lost access to, and use of, their land in various ways. The combination of environment conservationists supported by donor agencies on the one hand, and the Ugandan Government on the other, have been at the forefront of evicting the Batwa from their land in a bid to establish national parks and forest reserves.[26] If the environmental campaign at first appears defensible – it aims to prevent the complete destruction of forested areas, which no doubt would have an adverse climatic effect, ultimately threatening lives – it nevertheless is a well-meaning 'movement' with grave shortcomings.

In Uganda, the conservation era began in the 1920s with the colonial protection of Bwindi, Mgahinga and Echuya forests. Bwindi was first gazetted as Kasatoro and Kayonza Crown Forest Reserves in 1932 owing to its ecological and economic importance.[27] In 1942, the two forest reserves were combined and gazetted as Impenetrable Central Crown Forest. In 1961, the Forest Reserve was additionally gazetted as a Gorilla Game Sanctuary.[28] The Batwa were ignored in the process of gazetting their forest areas.[29]

In the turbulent days of President Idi Amin's rule (1971–79), little attention was paid to the forests. The governments of the day seem to have prioritised their grip on the mantle of leadership over anything secondary, such as forest protection. This was a blessing for the Batwa; they continued to hunt and gather in the forest, which they still considered their own. There is evidence that widespread commercial hunting and timber extraction, and some mining, occurred. Most of those organising and carrying out these commercial activities were not Batwa.[30]

In 1991, the conservation area was elevated to the status of a National Park by a resolution of the National Resistance Council passed on 13 August 1991, and became Bwindi Impenetrable National Park.[31] Prohibiting people from these forest areas put an end to the Batwa lifestyle of forest hunting and gathering. Financial compensation was given to only a few Batwa households. The injustices in compensation have been documented. Many Batwa worked and camped on others' farms. They were classified as landless squatters or workers and received no restitution, despite the forest being their ancestral territory. Instead their employers received compensation for the huts that the Batwa had erected on their land.[32] In Mgahinga, the process was so intimidating that at least five Batwa households fled the region. Most of the compensation went to farmers who had been destroying the forest since the 1930s.[33]

Amid all these injustices, World Bank funding was directed to the Mgahinga and Bwindi Impenetrable Forest Conversation Trust, which was established in 1991 and became functional in 1995. In order to establish the Trust, the World Bank required an assessment of the impact

[26] *Ibid.*, p 14.

[27] Uganda Wildlife Authority, Mgahinga Bwindi Conservation Area General Management Plan, 2000–2010, Kampala, (2000); see Tumushabe and Musiime (2006), p 3.

[28] General Notice No. 584 (1961) as amended by Legal Notice No. 53 (1962).

[29] Lewis (2000), p 20.

[30] Kingdom (1999), p 20.

[31] Statutory Instrument supplement No. 3 (1992).

[32] Lewis (2000), p 20.

[33] *Ibid.*

of conservation measures on the Batwa of the area.[34] Under their requirements, the Batwa had to be granted 'prior and meaningful consultation' and 'informed participation', to ensure that their needs are adequately met rather than further marginalised by the process of conservation.[35] In the same vein, the Bank's operational policy, which covers, *inter alia*, 'the involuntary taking of land and the involuntary restriction of access to legally designated parks and protected areas resulting in diverse impacts on the livelihoods of the displaced persons', were not implemented to the letter. The World Bank calls for a resettlement policy framework for all cases of displacement that recognises customary land rights[36] and also ensures that the displaced persons are 'informed about their options and rights pertaining to resettlement; consulted on, offered choices, and provided with technically and economically feasible resettlement alternatives; and provided prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project'.[37] The World Bank further notes that

> the displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.[38]

However, the assessment of the Batwa's situation was carried out in 1995, four years after the evictions. It concluded that in view of the Batwa's strong attachment to their ancestral land, and their embedded networks of social relations, any land reallocation had to take place without displacing the Batwa.[39] This would maintain and strengthen their existing social, historical and ancestral ties. It further gave the Batwa rights to certain resources in the parks and access to sacred sites, allocated forest and farm land to evicted communities, and bestowed capacity building, educational and health assistance.[40] The recommendations would have guaranteed the Batwa a viable life, had they ever been implemented.

By reason of their direct and continuous contact with the forest, the Batwa were in a better position than outsider conservationists to make decisions for the forest. Not only would continued occupation provide the Batwa with access to their territory, it would also provide the state with a people who would utilise the environment in a sustainable manner. It would be in the Batwa's own interests to ensure minimum negative exploitation of their heritage.[41] The Batwa have lived as part of nature in the forests, hunting and gathering for centuries. The irony of this is that without the Batwa in the forest, there might well have been nothing left to conserve. It is the Batwa who have preserved the forest until now, and in whose keeping the forest has flourished.

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[34] See World Bank (2005), accessed on 20 April 2009.

[35] *Ibid.*

[36] Cernea and Schmidt (2003), p 13.

[37] World Bank (2001).

[38] *Ibid.*, p 1.

[39] *Ibid.*

[40] Lewis (2000), p 20.

[41] ACHPR and IWGIA (2005), p 42.

The volcanic soils of Mgahinga occupied by the Batwa are very fertile and thus ideal for farming. The Batwa have been the victims of fierce land grabbing by migrant farmers seeking such promising lands; in fact, this process began as far back as the 19th century.[42] By taking advantage of the Batwa's hunger, and offering food in exchange for land, their unscrupulous neighbours have increased the Batwa's land loss.[43] Poverty has diminished the Batwa's ability to defend their rights.

Typical Batwa village: Kamugemanyi community in Kisoro district Photo: Téa Braun

This wave of forest conservation has been catalysed by the defects in the various laws enacted to deprive the Batwa of their forest lands. These laws date as far back as the early 19th century. They have since acquired a few amendments to reflect political, economic or social changes. Some of these later laws recognised the forest inhabitants and accorded them some nominal rights, but these are routinely breached when evictions are carried out. Such laws exist only on paper; they may be passed in order to make a statement to the international community, while remaining useless to the people they are intended to protect. This is discussed in more detail below.

[42] *Ibid.*, p 3.

[43] *Ibid.*, p 17.

II Pre-colonial era: survival of the fittest or land rights for all?

2.1 The pre-colonial era and communal land ownership

Pre-colonial Uganda was inhabited by a number of tribes who mostly belonged to four main ethnic language groups. The different ethnic groups had their own traditions and cultural norms relating to land, but they had one feature in common: land was communally held under customary land tenure. Radical title to land was always vested in the community as a corporate entity rather than in the political organs through which control of the territory or the resources was exercised.[44]

Present-day Uganda:
The northern Nilotic groups occupy the areas around Gulu and Lira, Nilo-Hamites around Moroto and Soroti, Sudanic groups around Arua, and the Bantu around Masaka and Jinja. The Batwa areas are in the south west, to the south of Lake Edward, and only became part of Uganda in 1912.
Map source: Central Intelligence Agency

Beyond its political significance, land is regarded by these tribes not merely as a factor of production but first and foremost as the medium that defines and binds together social and spiritual relations within and across generations. Issues about ownership and control are therefore as much about the structure of social and cultural relations as they are about access to material livelihoods, and this may explain why the debate on land revolves round the dynamics of lineages and cultural communities.[45]

Given the above, there is no doubt that control over land and its resources not only constituted sovereignty over the very spirituality of society but also placed land at the centre of the struggle for identity and survival. It is clear from these land-use and management patterns that land and livelihoods were closely intertwined; and this relationship determined whether a

[44] Akinyi (2006), p 212.

[45] *Ibid.*, p 213.

community farmed, tended livestock, fished, hunted, or pursued a combination of these.[46] Land also served an important social function in connecting people with their spirits.[47] The land was communally owned and available to anyone, who was expected, in turn, to use it with care and to protect it from being grabbed by strangers.

In the pre-colonial era, the Batwa held their forest land communally. Each clan within the Batwa collectively owned an area of the forest. Although free movement from one area to another was common, different clans always stayed in their own clan area.[48] The community was more important than the individual. The forest lands they occupied provided all they needed to survive as a community, from food to sacred places. Despite living in different settlements, the Batwa have strong social relations and recognise themselves as a community. They share close attachments to certain areas, with concomitant social formations that appear to derive directly from the ancient past.[49] They still practise social norms and customs normally associated with clanship similar to other tribes in east and central Africa. The concept of individualisation of land rights was and remains undesirable to the Batwa.[50]

Such was the arrangement of land relations on the eve of colonisation. The colonialists decided not to maintain such systems and the rights to land inherent in them. They disregarded them and established a system alien to Ugandan communities.

An important criticism influencing the decision of the colonialists was the mistaken assumption that land held commonly is prone to irresponsible use by the members of the community holding it. This explains the biases in later colonial policies and legislation relating to customary tenure, policies that had a direct impact on the Batwa's land rights.

[46] Kenya Human Rights Commission (2000), p 1.

[47] The forests contained sacred sites, where the Batwa worshipped. They were mountains or streams where the Batwa felt connected to their gods.

[48] Lewis (2000), p 9.

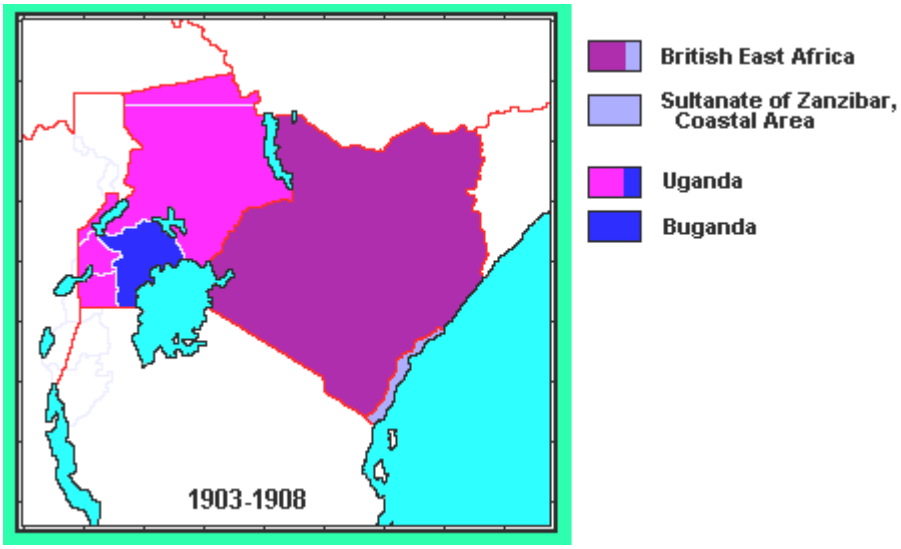
[49] Tumushabe and Musiime (2006), p 7.

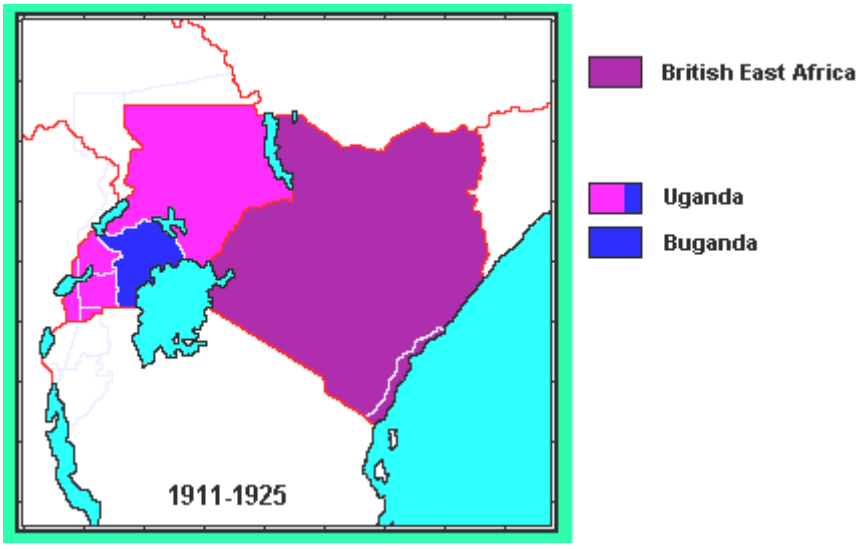
[50] *Ibid.*, p 17.

III Indigenous land rights in the colonial and post-independence eras

3.1 British establishment of effective control

Under the 1890 Anglo-German Agreement, Kenya and Uganda were recognised as falling within the British sphere of influence. From 1890 to 1894, the Imperial British East African Company (IBEACO) controlled Uganda.[51] The south-western part of Uganda (where the Batwa are) was then part of Rwanda, and became part of present-day Uganda only in 1912.





Source: http://www.zum.de/whkmla/histatlas/eastafrica/bea19031908lg.gif
http://www.zum.de/whkmla/histatlas/eastafrica/bea19111925lg.gif

[51] Morris and Read (1966), pp 7–8.

It is important to determine whether the attainment of territorial sovereignty by the colonial masters over geographical areas occupied by the Batwa extinguished pre-existing rights in land. One case that addressed this question is that of Mabo and others vs Queensland,[52] in which it was found that: 'a mere change in sovereignty does not extinguish native title to land'.

Similarly, the Supreme Court of Belize, in the 'Maya' case,[53] held that:

> the acquisition of sovereignty over Belize, first by the Crown and later by independent governments, did not displace, discharge or extinguish pre-existing interests in and rights to land ...[54]

In the light of these authorities, the colonial definition of the boundaries of Uganda and subsequent independence do not in themselves extinguish the pre-existing customary rights of the Batwa to land.

Nevertheless, the British sought to extend and consolidate their rule and influence through the signing of treaties. After the Anglo-German Agreement of July 1890, IBEACO's representative signed a treaty with the Kingdom of Buganda purportedly granting the Kabaka and his kingdom protection. The Kabaka in return acknowledged the supremacy of the company.[55]

In 1894 Uganda was declared a Protectorate by Britain. The British adopted a system of indirect rule using Buganda Kingdom as the nucleus from which to extend their influence to the rest of Uganda.[56] Thus the laws passed in Buganda would eventually have an impact on the whole country, including the Batwa. During this time the Batwa are barely mentioned, owing to the fact that their area was under German control.

3.1.1 The land regulations of 1897

The Land Regulations of 1897[57] introduced individual ownership through land alienation in the place of customary holdings. Since customary land rights were not defined in state law, the land rights that developed during colonial rule were based on western jurisprudence and notions of property relations. The Land Regulations gave the Governor power to grant a certificate to any person to hold land for 21 years.[58] Land lawfully held prior to the regulations, or occupied by any person under customary title, would not be granted. Batwa customary ownership rights were thus safeguarded. However, the requirement for 'documentary title' as evidence of ownership of land has persisted to the detriment of the Batwa, who don't possess documents of title, and for whom documentary title could not have applied to their communally owned land.

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[52] High Court of Australia, 'Mabo vs Queensland (No. 2)', 1992, 145 CFR IFC 92/04, specifically paragraphs 61–62.

[53] Supreme Court of Belize, Aurelio Cal on behalf of the Maya Village of Santa Cruz and others v The Attorney General of Belize and others, Claim No. 171, 2007.

[54] *Ibid.*, paragraphs 77–8.

[55] Cannon (1961).

[56] Morris and Read (1966), p 4. 'Uganda' is a Swahili word.

[57] Laws of Uganda Protectorate, Revised Edition, 1923, Vol. 23, Chapter 97. This was regulation No. 4 of 1897, commencing on 10 July.

[58] *Ibid.*, Regulation No. 9.

From the onset of British rule, all communities could remain in possession of the land they occupied only if they proved 'cultivation and regular use'. The phrase 'regular use' is unlikley to include hunting and gathering, since cultivators had to be settled in one place for their land to be recognised as 'cultivated and/or regularly used' and therefore possibly owned.

3.1.2 The 1900 Buganda Agreement: the new regime of land rights

Through the 1900 Buganda Agreement, the British aimed to entrench the agricultural economy by alienating land and creating individual ownership tenure.[59] This system replaced customary land tenure and created security of tenure for individuals rather than communities, posing a threat to communal land rights holders. It had the effect of redistributing land and extinguishing existing rights to land of a number of communities in Uganda. Forests were vested in Britain's Uganda Administration,[60] and the agreement reiterated and entrenched the earlier concepts of 'waste and uncultivated lands' which was also vested in the Uganda Administration. The rest of the land in Uganda was declared Crown land. All persons occupying such lands were now customary tenants of Her Majesty's Government represented by the Uganda Administration. A landholding system akin to the British system of tenures and estates was ushered into the legal regime in Uganda.[61]However, their Lordships in the Nigerian case of Amodu Tijan vs The Secretary, Southern Nigeria admit that in most parts of the British Empire, native title is conceptually unique and does not necessarily fit within the English concepts of 'tenure' and 'estates'.[62]

In other jurisdictions colonised by the British, such as Papua New Guinea, recognition of customary land rights was the general rule rather than the exception.[63] In East African countries, the reverse was true.[64] The allocation of land under the 1900 Buganda agreement is seen as vesting forest land under the control of the Uganda administration. However, British Colonial Constitutional Law held, in effect, that rights to lands in ceded territories were not affected by a change in sovereignty and persisted until such time as the legislator acted to bring about a change in the system. Arguably, this provision in the 1900 Buganda Agreement did not affect the status quo of the Batwa's claim to their land since they were not part of Uganda until 1912. The case cited above of Amodu Tijan vs The Secretary, Southern Nigeria[65] offers a persuasive precedent. In this case, the Government of the Colony acquired certain lands for public purposes. The Privy Council upheld the appellant's claim to compensation on the basis that he had a mere right of control and management of the land rather than ownership. This decision could be celebrated as standard-setting on the claims to compensation for loss of land rights to new governments of British colonies. Today, if this rule was replicated in Uganda for the benefit of the Batwa, the chances are high that it would deliver them justice.

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[59] Morris and Read (1966), p 20.

[60] Article 21 of the agreement provided that throughout the agreement the phrase 'Uganda Administration' shall be taken to mean the general government of the Uganda Protectorate.

[61] See Milsom (1976), p 39.

[62] UK Government, 2 Appeal Cases 399, Privy Council decision of 11 July 1921.

[63] Mugambwa (2007), p 40. Note that successive governments maintained the status quo ante. To date, 97% of land in Papua New Guinea is held under customary tenure.

[64] *Ibid.*

[65] UK Government, 2 Appeal Cases 399, Privy Council decision of 11 July 1921.

3.1.3 The 1900 Toro and 1901 Ankole Agreements: land rights as dispensable privileges?

After the agreement with Buganda, agreements were signed with the other centralised kingdoms of Toro in 1900 and Ankole in 1901. As before, all 'waste land', forests and minerals become the property of Her Majesty's Government. What were formally rights over land were reduced to 'privileges of accessing', say, forest lands for forest products. In both agreements the forests were taken over by the British.

While the above groups that comprise Uganda entered into treaties of cession with the British, the Batwa made no such treaties and the cessions did not apply to them. The Batwa have the unique position of being one of the few known groups that did not cede ownership and other rights to the British.

3.1.4 Colonial administration of justice and sensitivity to indigenous peoples' rights

In order to create redress mechanisms, in 1902 the Order in Council (OIC) vested administrative power and all right in Crown lands in the Commissioner, and created a court that had jurisdiction over all persons and upon all issues in the Protectorate.[66] The OIC had a 'guidance' clause that safeguarded native law and custom. It provided that:

> In all cases, civil and criminal, to which natives are parties, every court shall … be guided by native law so far as it is applicable and is not repugnant to justice and morality or inconsistent with any Order in Council …

The introduction of the 'repugnance' clause by the British was used to test which rules of native law would be reserved. In relation to Batwa rights to land in particular, there seems to be nothing in Batwa native law (in their unwritten culture and customs) that is inconsistent or repugnant to the OIC to warrant erosion or extinction as a custom. In this case the OIC does not extinguish such laws governing the Batwa's land rights. Moreover, the Supreme Court of Belize in the Maya case says that extinguishment of rights or interests in land is not to be lightly inferred, but there must be clear and plain legislative intent and action to that effect.

3.1.5 Sowing seeds of exclusionary politics: relegating the Batwa

Decisions concerning particular policies were reached unilaterally with minimal or no participation or influence by the natives. It was not until 1945 that three Africans were appointed to the Legislative Council.[67] In 1950, due to increased agitation, African representation was increased to eight.[68] During the period that Africans were not represented, laws such as that of 1930 gazetting Mgahinga Forest as a gorilla sanctuary were passed. Under such laws, the Batwa were – in written law, if not in actual practice – evicted from Bwindi, Mgahinga and Echuya forests by the colonial government to create conservation zones.

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[66] Morris and Read (1966), p 19. For details about the Order in Council, see Laws of Uganda, Vol. VI, 'Uganda Order in Council, 1902'.

[67] The three representatives were from Buganda, the Eastern Province, and the Western Province.

[68] Morris and Read (1966), pp 25–27.

To the colonialists and the collaborating native Africans, the Batwa's hunting and gathering life style was wrongly perceived as a backward stage of human evolution. This understanding underscored the exclusionary policies that negatively affected Batwa land rights. Consulting them on how to govern or regulate forest areas that they occupied and therefore had rights over was seen as a waste of time.[69] This exclusionary politics has carried into the present, as is evident in the near non-participation of Batwa in local government structures: there is no single Mutwa on parish or higher levels of leadership such as District councils.[70]

Nineteen years after the 1903 Crown Lands Ordinance, the British passed the Crown Lands (Declaration) Ordinance 1922.[71] This Ordinance converted all land into Crown land, save that for which a document was issued as proof of ownership. Since there is no record to show that any Mutwa or Batwa community has ever been issued with a document in proof of their title to the land, overemphasis on documents as a prerequisite for redress only further entrenched the injustices against the Batwa.

3.1.6 Were the environmental laws at the time in defence of the Batwa?

In 1932, the present day Bwindi Impenetrable National Park had its northern sectors first gazetted,[72] and the boundaries were marked to keep out the community.[73] Oral records indicate that the Batwa and surrounding communities were simply told that the boundary had been created,[74] and they had to seek permission to get products like wood. Hunting was restricted to large animals.[75] It appears that the community continued to hunt secretly, and if they met the forest guards they would give them meat and would then be let go.[76] The Forest Act of 1947 sought to protect the forest from encroachment by cultivators.[77] The Forest Act and the National Parks Act extinguished the Batwa's substantive rights and safeguarded only access rights.

However, even these safeguarded rights were restricted to usufructory rights such as access to forest produce not declared reserved. Besides, the savings clause envisaged only 'taking out' produce from the forests, whereas the Batwa were and are forest dwellers. The safeguards were not enough to guarantee the Batwa's substantive land rights.

The National Parks Act[78] gave the Minister the power to declare any area of land a national park, and to prohibit people without permits from accessing it. The Act prescribed the conditions under which any person may reside in such parks. The law does not state whether it

[69] *Ibid.*, p 26.

[70] Tumushabe and Musiime (2006), p 12.

[71] Laws of the Uganda Protectorate, Vol. II, 1923, Cap 100, p 800. The Ordinance came into force on 22 March.

[72] Mwebaza (2006), p 55.

[73] *Ibid.*, p 56.

[74] *Ibid.*, p 58.

[75] *Ibid.*

[76] *Ibid.*

[77] Kingdom (1990), pp 235–49; Laws of Uganda, Cap. 246.

[78] Laws of Uganda, Cap. 227.

was to be applied retrospectively to those – like the Batwa – who were already resident in the parks before it came into force.

One progressive piece of legislation in relation to Batwa land rights at the time is the 1959 Game (Preservation and Control) Act[79]. Section 41 provided that:

> Nothing in this subsection shall render unlawful…
>
> (b) in the case of an area declared to be a game reserve under the Provisions of section 38 of the Act, the residence therein of any person, his wife and children if such person was actually resident therein on the 1st July 1959 or
> (c) in the case of an area declared to be a game reserve under section 39 of this Act, the residence therein of any person , his wife and children, if such person was actually resident therein on the date of such declaration.

While the Batwa were among those recognised as lawful residents, having resided there prior to 1 July 1959, the law did not recognise the Batwa's different land use. Protection of residence rights is not in any way equivalent to reinstatement of customary ownership rights. The Batwa are a hunter–gatherer community and it is not clear from the law whether the mention of cultivation and depasture without hunting and gathering was by design or default.

The same rights are recognised in the more recent Uganda Wildlife Act 2000,[80] which recognises that individuals who have property rights in land in conservation areas may carry out activities for the sustainable management and utilisation of wildlife, as long as those activities do not adversely affect wildlife. It provides for the management and control of land use there by the persons and communities living in the area. That is to say, it presumes that it is possible for wildlife and those persons and communities to co-exist, and for wildlife to be protected. It provides for the historic rights of individuals in conservation areas, and provides that the Authority may establish guidelines for communities neighbouring conservation areas to access resources crucial to the survival of those communities.

Suffice it to say that the above provisions affirm the Batwa's rights to live in the forests or National Parks. They simply regulate their stay in the forests and certainly do not warrant their eviction. The Authority, however, has met none of these obligations. Although an assessment was carried out in 1991 to establish the impact of gazetting Bwindi forests and the Mgahinga Gorilla National Park, this was 'forced' upon the state by the World Bank as a condition of its funding the intervention programmes of the Government of Uganda in the two national parks. The assessment was in fact carried out four years after gazetting, when the Batwa had already been evicted.

> The Batwa were at no time engaged in meaningful discussion in the process leading to the gazetting of the forests as protected areas. The Batwa had no knowledge that the process was even taking place, in contravention of Article 2 of the African Convention on the

[79] *Ibid*., Cap. 226.

[80] *Ibid*., Cap. 200.

> Conservation of Nature and Natural Resources (1968) to which Uganda is a party,[81] and which seeks to ensure that conservation, utilisation and development of faunal resources is in accordance with scientific principles and with due regard to the best interests of the people. The first step to protecting the interests of the people is involving them in the decision making process.

The Uganda Wildlife Act expressly states that the Authority may, in accordance with any procedures or policies in force, resettle any person resident in a wildlife conservation area or in a specific area of the wildlife conservation area or outside it.[82] All the above laws have had the potential to uphold the rights of the Batwa, for they lived in the forests that were now protected places and their eviction thus violate their land rights. But none of the progressive aspects of these laws have been implemented. In practice the Batwa have not even been allowed access to, let alone settlement in, the forest. Programmes intended to facilitate Batwa access include the Multiple Use Programme (MUP), set up to allow communities neighbouring the protected areas to access resources. [83] However, Forest Peoples Programme (FPP), United Organiztion for Batwa Development in Uganda (UOBDU) and Christian Action Research and Education (CARE) have noted some of the obstacles to the functioning of these potentially positive projects: 'The small amount of resource use that does accrue to local communities is not adapted to Batwa needs, and they are thus once again excluded and marginalized by the MUP and CFM [Collaborative Forest Management] programmes.'[84] Those helped by the MUP have rarely included the Batwa.[85] The needs of the Batwa have not been addressed, even though they had the customary rights to the forest land which connotes 'ownership' in Uganda.

3.1.7 Post-independence era: Batwa land rights in turbulent Uganda (1962–75)

Uganda attained independence in 1962, but by and large the laws remained the same. Under the Public Land Act of 1962, indigenous Ugandans continued to have a right to occupy any unalienated public land without prior consent, but this right was not absolute since the Act allowed the relevant government body to override customary rights to grant public land as freehold or leasehold.

In 1969, under the Public Lands Act, customary tenure was recognised and upheld, in that land could be occupied by customary tenure without grant, lease or license from the controlling authority. The rights of customary land owners were strengthened by provisions that meant that any application to turn public land which was occupied by customary tenure into freehold or leasehold required evidence of the consent of the occupier to the controlling authority. The Public Lands Act did not change the situation for the Batwa, however, nor did the 1975 Land Reform Decree of Idi Amin's military government, since Batwa customary rights had already been extinguished under the Forest Act of 1947 and the National Park Act of 1952.

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[81] This Convention entered into force on 16 June 1969. See text at http://www.africa-union.org/root/au/Documents/Treaties/Text/Convention_Nature%20&%20Natural_Resources.pdf, accessed on 16 October 2008.

[82] Uganda Wildlife Act 1996, Section 25 (5).

[83] Cunningham (1990), p 2.

[84] FPP, UOBDU and CARE (2008), pp 3–5.

[85] *Ibid.*

IV Land rights

4.1 The contemporary laws: a missed opportunity?

The coming to power of the National Resistance Movement (NRM) in 1986 saw Uganda on the road to social, economic and political transformation in all aspects of governance, at least in the initial years.

4.1.1 Land rights for all? A look at the 1995 Constitution of Uganda

In 1993, the country established a Constituent Assembly. This included members from the districts of Kisoro, Bushenyi and Rukungiri, where most of the Batwa are found, but none of them was a Mutwa. The Assembly formulated the 1995 Constitution which makes provision for fundamental rights and freedoms of individuals. It further states that these are not granted by the State, rather they are inherent.[86] The Constitution also recognises collective and individual rights to land.

4.1.1.1 Protection from Discrimination

Article 21 of the Constitution provides for equality and freedom from discrimination; no person shall be discriminated against on any of the following (among other) grounds: race, ethnic origin, tribe, birth, creed or religion, social or economic standing.[87]

Article 21 (3) defines 'to discriminate' as meaning to give different treatment to different persons attributable only or mainly to their descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability. Article 26 of the Constitution of Uganda protects the right to property, which extends to an interest in or a right over property. The laxity of the government in not recognising Batwa's landholding rights is discriminatory, and inconsistent with Article 26.

Despite such express provisions on property and against discrimination, the Batwa continue to be discriminated against by both the mainstream population and the Government.[88] According to Article 21, every person or group is entitled to practise their social and cultural life in the way that they want to, including using their land the way that they see fit, and other ethnicities must accord them respect.[89]

Under Article 36, the Constitution provides that minorities have a right to participate in decision-making processes. The Constitution does not define the concept of minorities – presumably the Batwa must be considered as such, numerically and on other grounds. Recognising the Batwa as a minority group is a positive step, but does not guarantee that they can enjoy their rights as an 'indigenous' people. Indeed, the matter would be settled if the constitution referred to them as a 'minority' but accorded them a package of rights or

[86] Constitution of Uganda 1995, Article 20 (2).

[87] *Ibid.*, Article 21 (2).

[88] Lewis (2000), p 13.

[89] *Ibid.*, p 7.

protections due to indigenous peoples in International Law. The Batwa are not accorded these protections. In fact, the Constitution defines indigenous communities in Uganda in a way that makes every community in Uganda indigenous. Wiessener argues that it is imperative to delimit what exactly constitutes an 'indigenous people'.[90] Now that there seems to be no such delimitation in the Constitution, the Batwa, who are in reality more indigenous than other groups, are not given the special protection they deserve.

Article 32 provides that 'the State shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.' This provision is broad based, not conclusive or exhaustive. It follows that the Batwa can be read into the provision as marginalised, and therefore entitled to affirmative action. Of course the best way forward would be their recognition as indigenous people. Indeed, the Batwa define themselves as indigenous and are recognised (including in language) by others as the first inhabitants, a concept that the Constitution does not address. The Batwa certainly are marginalised and entitled to the protections afforded by the Constitution, and Batwa rights to lands and resources should be recognised in a manner that is broadly consistent with the international norms pertaining to indigenous peoples.

Parliament is enjoined to make relevant laws to give full effect to clause (1) of the Article 32. All in all, despite the existence of some general provisions in the Constitution, the Batwa remain marginalised and discriminated against with no access to land resources. The politics of numbers operates against them. They have not yet sought recourse in relation to the above-mentioned constitutional provisions, nor have they sought to invoke persuasive aboriginal title jurisprudence norms in the court system.

4.1.1.2 Vesting land in the citizens: land rights for all?

Article 237 of the Constitution vests land in the citizens of Uganda to be held in accordance with customary, freehold, mailo and leasehold land tenure systems. With the exception of leasehold, all the other systems had been abolished by the 1975 Land Reform Decree, and were reinstated by the 1995 Constitution.

The Article explicitly states that 'land in Uganda belongs to the citizens of Uganda'; the claim to ownership, however, must be on the basis of one of the tenure systems mentioned above. This replaces the earlier draconian paradigm of the state owning all land as public land. Had it not been for the 1947 and 1952 legislations that extinguished their customary ownership rights, the Batwa would be in a better position to assert them under the 1995 Constitution.

The framers of the Constitution placed great importance on the protection of customary land owners. According to Article 237 (4), all Ugandan citizens owning land under customary tenure may acquire a certificate of ownership of their land, and land under customary tenure may be converted to freehold landownership by registration. Clearly this ought to have afforded the Batwa protection against eviction as customary tenants. However, the Batwa had customarily owned land that is of special interest to the government – forest land. This leads to a conflict between the Constitution and other environmental laws that prohibit habitation in forests. The

[90] Wiessener (1999), p 3.

Constitution, as the supreme law of the land, should prevail in this matter, and lead to the conclusion that the Batwa were illegally evicted from their forests.

4.1.1.3 Compulsory acquisition of land and its effect on the Batwa's land rights

Article 26[91] of the 1995 Constitution of Uganda provides for the right to own property either individually or in association with others, but elsewhere the Constitution envisages circumstances under which the government may want to take over private land compulsorily for various reasons. The provisions for compulsory acquisition of land by the government have been cited as justification for the government's deprivation of indigenous peoples such as the Batwa of their ancestral land. However, this requires a formal procedure, which involves all the stakeholders: that is, the government and the people who own or occupy the land that the government seeks compulsorily to acquire.

The National Forestry Authority, uses Article 26 (2) (a) of the Constitution to justify the eviction of the Batwa by asserting that the forests are needed for public use, in the name of environmental safety and public health. Contrary to the well-established, internationally acknowledged norms of Constitutional interpretation, however, the government is not reading Article 26 (2) (a) as a whole, and uses 'partial provisions' of the Constitution to justify and cover up some of its actions that violate human rights. The same Article states that the compulsory taking possession or acquisition of property has to be made under a law which makes provision 'for prompt payment of fair and adequate compensation, prior to the taking or acquisition of the property'. In the absence of this, the eviction of the Batwa (although initiated long before the Constitution was promulgated) is unconstitutional. The Benet case discussed later in this paper sets a precedent on this matter.

4.1.1.4 The Land Acquisition Act 2000[92]

Article 237 (2) (a) of the Constitution provides that the Government or local government may, subject to Article 26 of the Constitution, acquire land in the public interest. To make this Article operational, the Land Acquisition Act states that any compulsory acquisition that does not abide by the law is null and void. The law requires that the Minister must declare which land is to be purchased compulsorily for a public purpose, and, if a plan of the land has been made, declare a place and time at which the plan may be inspected.[93] The Minister must cause a copy of every declaration to be served on the registered proprietor of the land or on the controlling authority and on the occupier. The notice must be served to persons having an interest in the land, and the assessment officer decides whether and how much compensation must be paid.

The Batwa were evicted by government agencies without prompt payment of fair and adequate compensation, without due process, and in violation of the provisions of the National Park Law that safeguarded occupancy rights. The Mgahinga and Bwindi Impenetrable Forest Conservation Trust (MBIFCT) started buying parcels of land as some sort of compensation for

[91] The provision is a replica of Article 13 of the 1967 Constitution of the Republic of Uganda.

[92] Laws of Uganda, Cap 226. The Act is, with a few amendments, a replica of the Land Acquisition Act 1965, which commenced on 2 July that year – three years after independence – as Act 14 of 1965.

[93] Land Acquisition Act 2000, Section 3 (2).

the Batwa in 2000.[94] Even then, not all evicted Batwa got part of this land, since a total of only 326 acres was bought. The farmers who destroyed the forest lands in the 1930s to establish farms received recognition of their 'land rights', and many of them received compensation.[95]

The Land Acquisition Act requires involvement in the acquisition process of the community likely to be affected by compulsory acquisition. No such forum has been provided to the Batwa to organise and present their objections. Their interests have not been considered, despite the express and instructive provision calling for compensation of the deprived interest through compulsory acquisition.

The Government's actions through its agents have thus contravened the Constitution and the Land Acquisition Act and have been prejudicial to the Batwa. Fortunately, Article 26 (2) (b) (ii) provides for the right of access to a court of law by any person who has an interest in or right to property. This gives the Batwa a forum for redress. The Batwa, however, have lacked the capacity or legal representation to access the courts to claim their rights.

4.1.1.5 The Land Act 1998[96]

The Act was intended to implement the provisions under the 1995 Constitution.

Land tenure systems and the Batwa

Following the Constitution, section 2 of the Land Act recognises three land tenure systems and provides for their incidents (rights accruing to a particular tenure system). However, the notions underlying the freehold, mailo and leasehold tenure systems leave the Batwa in a precarious situation. First, the pre-requisite of owning land under the freehold and mailo tenures is registration, and the presupposition here is individual land ownership, a practice not traditional to the Batwa, whose tenure on land has always been customary. After their eviction and without evidence of title, the Batwa can only be squatters on the land owned by others under any of the above tenure systems.

Customary tenure – section 3 (1) of the Act – is governed and regulated by a group's customary rules and norms. In essence, customary law regulates the use of such land which is mainly communal, based on clans, with individual usufruct rights over some specific parcels of the land. The Act provides that such customary land is owned in perpetuity. The Batwa communally held their land, governed by their customary law. Lewis puts it succinctly: 'Many Batwa communities conceive of their rights over land in terms of collective rights, often clan rights rather than individual title. This is especially true of forest dwelling Batwa.'[97]

Following Article 237 (4) (a) of the Constitution, Section 4 (1) of the Land Act provides that: 'Any person, families or community holding land under customary tenure on former public

94 Penninah and Kenrick (2002), pp 1–2.

95 Lewis (2000), p 20. The author notes that some Batwa were turned away because the compensation fund had been used up by payments to non-Batwa affected parties.

96 At the time of writing, the Land Act had been amended twice, in 2002 and 2004. There was yet another controversial Land Amendment Bill in 2008, which was shelved owing to lack of consensus on its content from various sections of the public.

97 Lewis (2000), p 17.

land, may acquire a certificate of customary Ownership in respect of that land …'[98] Under Section 8 (1) of the Land Act, this certificate is deemed to be conclusive evidence of the customary rights and interest endorsed on the certificate. This provision cannot help the Batwa, however, since they no longer hold their customary land, and the committees that are supposed to issue the certificates of customary ownership under the Act have never been put in place.

4.1.1.6 The right to participate in environmental decision-making and natural resources management: shutting out the Batwa?

The public's right to participate in decision-making is central to good governance and the protection of human rights. In executing its role of protecting the environment and natural resources, the government of Uganda has flouted this principle.

The National Environment Management Policy of 1995 was drawn up to carry out the obligation to conserve and promote the rational use of natural resources.[99] The policy includes the statement that the participation of the people in managing resources is intended not only to enlist their support but also to influence change in behaviour and attitudes and act as an incentive to use resources sustainably. Section 3 (2) (b) of the Statute provides for its guiding principle to encourage maximum participation by the people of Uganda in the development of policies, plans and processes for the management of the environment.

Candidates for local environmental committees are drawn from the Parish Local Council Committees, but the Batwa are left out and thus are not represented.[100] Apparently, Ugandan government officials cite low education and literacy levels as the obstacles to the Batwa's participation.[101]

Those whose livelihood is affected directly by natural resources should be involved throughout the development process and not just as and when it suits bureaucrats and policy makers, as has been the case in the Batwa's land struggle.[102] Mike Dombeck notes that most 'resource issues today are less dependent on technical matters than they are on social and economic factors.'[103] Gazetting without public participation is the process that has prevailed in Uganda.

4.1.2 Land administration, control and dispute resolution mechanisms: do they accommodate the Batwa's land rights?

Following the Land Act 1998, the Uganda Land Commission manages all natural resources and reserved lands vested in the Central government. Section 56 – following Article 240 (1) of the

[98] Former public land means land previously administered under the Public Lands Act of 1969, prior to the Land Reform Decree of 1975.

[99] National Environment Management Policy for Uganda 1995, chapters 2–3.

[100] FPP, UOBDU and CARE (2008), p 7.

[101] *Ibid.*, p 8.

[102] Mwebaza (2006), p 12.

[103] Michael Dombeck, Former Chief of the USDA –The Forest Service (1997–2001), at http://74.125.95.132/search?q=cache:Sojj-quyfYYJ:www.fs.fed.us/aboutus/history/chiefs/dombeck.shtml+Mike+Dombeck+resource+issues+economic+social+factors&cd=1&hl=en&ct=clnk&gl=us . Accessed on 19 April 2009.

Constitution – provides for district land boards to be set up in every district charged with facilitating the registration and transfer of interests in land, and approving applications for certificates of customary owners. They are obliged to take into account different customary land tenure systems in the district, and it was envisaged that involving land committees would avert injustices likely to be faced by local people. However, the committees are not yet established (for lack of funds) and therefore of no help to the Batwa in securing their land rights.

Section 44 (6) provides for a platform upon which groups of people living around environmentally sensitive areas can have an input into the status of such areas. Thus if and when a Batwa community demands that the land in the Bwindi and Mgahinga National Parks and Echuya Forest Reserve be reviewed, they should be listened to and their reservations or concerns taken into account. The Batwa, however, have protested about their lack of such input and the lack of recognition of their land rights, but nothing has been done to remedy their situation.

4.1.2.1 Dispute resolution institutions

The 1995 Constitution ushered in District Land Tribunals to deal with land disputes in accordance with their local knowledge about the district and traditional customs. The tribunals, however, are suspended owing to lack of funds. The Land Act was passed in 1998, long after the eviction of the Batwa, but has not been fully implemented. This should be rectified.

Courts of Law: a beacon of hope?

The Courts of Law in Uganda are an appropriate tool through which indigenous peoples can seek to enforce their rights. This is seen in the case of Uganda Land Alliance v. Uganda Wildlife Authority and the Attorney General (High Court Miscellaneous Case No. 0001 of 2004). The areas around Mt Elgon that the Benet, an indigenous peoples, occupied were declared a Wildlife Protected Area or National Park, despite the fact that the Benet have lived there since time immemorial. In 1983, the government carried out a land resettlement programme. The Benet were allotted land to settle on and cultivate. A decade later, the government averred that this land had been incorrectly estimated, and asserted that some of the Benet were living in areas that they were not supposed to occupy.[104] Consequently, in 1993 the Government decreed that all the Benet who were living beyond newly established boundaries were considered encroachers and were no longer permitted to live on the lands they had inhabited for centuries.[105] No land was provided to the displaced Benet, who thereby became landless.

After numerous unsuccessful lobbying meetings between the Benet community and the Government, in 2004 the Uganda Land Alliance, with assistance from Oxfam and ActionAid Uganda, took the Government to court on behalf of the Benet to reclaim their historical indigenous lands. A consent judgment was reached on 27 October 2005, which consented:

[104] *Oxfam Partner News*, Vol. 2, No. 1, February 2006, p 1.

[105] *Ibid.*

> That it is hereby declared that the Benet Community residing in Benet Sub County … are historical and indigenous inhabitants[106] of the said areas (mentioned above) which are 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 …
>
> That the second Respondent takes affirmative action in favour of the said Community to redress the imbalance which presently exists in the said areas in terms of education, infrastructure, health and social services in the spirit of Article 32 (1) of the Constitution.

This was a landmark case in the struggle for the land rights of African indigenous peoples. Not only did the court recognise that the Benet were entitled to their lands, but also provided for the recognition of other rights that the Benet were being systematically or negligently denied.

The Court invoked Article 32 of the Constitution, which provides for affirmative action in favour of marginalised groups. The challenge now lies in implementation. History attests to the non-compliance of the Government with the decisions passed by courts, especially if they are not in the Government's favour. Nevertheless, the case created a beacon of hope for the indigenous peoples, and trust in the judicial system to exercise its powers in the protection of their rights. This judgment should not be over emphasised as a precedent for other indigenous groups such as the Batwa, however, since the case was decided on a technicality: the Government had resettled the Benet and later asserted that they were illegally occupying that land. This is very different from the plight of the Batwa, which includes eviction, the lack of a proper resettlement plan, and no compensation.

The Uganda Human Rights Commission

The Commission – under Articles 51 and 52 of the Constitution – could initiate investigations into the human rights violations against indigenous peoples, but it has not done so. It has dwelt mainly on the protection of the rights of groups such as children, women and persons with disabilities.

The Land Fund: a twinkle of unrealised hope for the Batwa?

Section 41 of the Land Act provides for a Land Fund that is supposed to be utilised to, among other things, resettle persons who have been rendered landless by government action and to assist other persons to acquire title.[107] The Land Fund could help the Batwa to achieve and protect their remaining land rights. Unfortunately, where it has been functioning, the Fund management is marred with corruption and lacks sufficient money.

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[106] Reference to the Benet as indigenous inhabitants differs from the concept of 'indigenous group' as internationally understood. It means that the Benet are indigenous to the region they inhabit and not to the country; this would reduce their bargaining power in claiming protection as an indigenous group in Uganda.

[107] Land Act 1998, Sections 41 (3), 41 (4) (c) and (d).

The 1995 Constitution and the 1998 Land Act provide for a minimum basis for pursuing Batwa land rights. If and when Batwa complain to authorities, however, there is collusion between the authorities and the offending party against the interests of the Batwa. Consequently, the Batwa may need support from sympathetic agencies or individuals to help them to lodge complaints.[108]

[108] Lewis (2000), p 14.

V International human rights law

Uganda is a signatory to various international and regional human rights instruments, for example the International Covenant on Economic Social and Cultural Rights (ICESCR) 1966,[109] the International Covenant on Civil and Political Rights (ICCPR) 1966,[110] and regional instruments such as the African Charter on Human and Peoples' Rights (ACHPR) 1981.[111] It therefore has an obligation to ensure that all rights provided for in the above instruments are enjoyed by the indigenous peoples in Uganda, including the Batwa.

Article 17 of the 1948 Universal Declaration of Human Rights guarantees the right to own property either individually or in association. Article 14 of the ACHPR affirms that:

> 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 the provisions of appropriate laws.

This provision has been called the most far-reaching claw-back in the Charter.[112] There is a high propensity for states to use legislation to limit the rights of indigenous peoples under the justification of article 14. In order to provide indigenous peoples with watertight rights to their land under this article, the African Commission ought to balance the interests of the indigenous peoples with other imperatives; such as development or environmental protection. The Commission should also determine whether any limitation under Article 14 is justified.

The Commission has in its earlier jurisprudence applied similar test(s). For example, the Constitutional Rights Project case[113] involved the military government of Nigeria proscribing certain newspapers and sealing off of their premises. Dealing with an alleged violation of articles 7 and 9 of the African Charter, the Commission found that:

> The justification of limitations must be strictly proportionate with and absolutely necessary for the advantages which follow. … a limitation may not erode a right such that the right itself becomes illusory.[114]

The African Commission thus brings home the principle that every limitation of rights under the charter must be proportionate to achieving a specific aim; anything beyond that is not tenable.[115] Interpreting the limitation to the right to property under the American

[109] Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966; entered into force 3 January 1976, in accordance with Article 27.

[110] See note 15.

[111] Organisation of African Unity, Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

[112] Odinkalu (2002), p 191.

[113] Constitutional Rights Project, Civil Liberties and Media Rights Agenda v. Nigeria, African Commission on Human and Peoples Rights, Communications Nos. 140/94, 141/94, 145/95, 1999.

[114] *Ibid.*, Communication No. 60/91, 1995, paragraph 42.

[115] See the case 'Relating to Certain Aspects of the Laws on the Use of Language in Education in Belgium' v. Belgium (Application no. 1474/62; 1677/62), Strasbourg, 23 July 1968.

Convention,[116] the Inter-American Court made an important point on this matter in the Saramaka case.[117] It said that the crucial factor to be considered is whether the restriction amounts to a denial of the indigenous peoples' traditions and customs in a way that endangers the very survival of the group and of its members.[118] Other standards set under the Inter-American system are that the restriction must be previously established by law, necessary, proportional, and aim to achieve a legitimate objective in a democratic society.[119] The continued survival of an indigenous people should be the guiding principle, and should trump any other reasons for limiting indigenous people's rights under Article 14 of the ACHPR.

In the Constitutional Rights Project case, the Commission stated: 'To permit national law to take precedence over international law would defeat the purpose of codifying certain rights in international law and indeed, the whole essence of treaty making.'[120] In this regard, international law should take precedence over Uganda's land and environmental legislations, which limit the Batwa's land rights to the extent that their protection under international human rights law is made illusory.

5.1 Human rights

International human rights law recognises the link between the right to property (land) and other rights, including cultural rights. In particular, Indigenous people's land rights tend to be inextricably linked to their culture, thereby making it pertinent to address this link. Article 27 of the ICCPR connotes that ethnic, religious or linguistic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture. Dealing with the right to culture under Article 27 of the ICCPR in the Lansman case,[121] it was stated:

> The Committee recalls paragraph 7 of its General Comment on article 27, according to which minorities or indigenous groups have a right to the protection of traditional activities such as hunting, fishing … and that measures must be taken 'to ensure effective participation of members of minority communities in decisions which affect them'.

Following the Lansman case is the case of Saramaka peoples v. Suriname,[122] where the safeguards were laid down. For the state's action of granting concessions within the territory of indigenous people not to amount to a denial of their survival, the state must abide by the following: a) it must ensure effective participation of the members of the indigenous peoples in

[116] See Article 21 (1) of the American Convention on Human Rights, OAS Treaty Series No. 36, 1144 UNTS 123, entered into force 18 July 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc. 6 rev. 1, 1992, p 25.

[117] Inter-American Court of Human Rights, case of Saramaka People v. Suriname, Judgement of 28 November 2007.

[118] *Ibid.*, paragraph 16.

[119] See Sawhoyamaxa Indigenous Community of the Enxet People v. Paraguay, case 322/2001, Report No. 12/03, Inter-American Commission on Human Rights, OEA/Ser. L/V/II. 118, doc. 5, rev. 2, 2003.

[120] Constitutional Rights Project, Civil Liberties and Media Rights Agenda v. Nigeria, African Commission on Human and Peoples Rights, paragraph 40.

[121] The Human Rights Committee in Lansman *et al.* v. Finland, Communication No. 511/1992, UN Doc. CCPR/C/52/D/511/1992 (1994), paragraph 9.5.

[122] Inter-American Court of Human Rights, case of Saramaka People v. Suriname, Judgement of 28 November 2007.

conformity with their customs and traditions regarding any development plan in their territory; b) the state must guarantee that they receive reasonable benefit from any such plan within their territory; c) prior environmental and social impact assessment must be carried out under the state's supervision; the safeguards are intended to preserve and protect the special relationship that indigenous people have with their territory and to ensure their survival.[123]

The Saramaka case further establishes a rule that in case of large-scale development or investment projects that would have a major impact within the territory of an indigenous people, the State has a duty to go beyond mere consultation with the indigenous people, and obtain free, prior and informed consent according to their customs and traditions.[124] The above authorities are persuasive on the importance of consultation with the Batwa prior to gazetting their forest areas.

Eviction of the Batwa from the forests greatly impacted on their cultural life. According to Oloka-Onyango, the right to culture is an omnibus right which encompasses or affects many related rights.[125] The connection of the lands where mineral or natural resources are found to the people who live there also has profound cultural, religious, and spiritual implications, not to mention the rights to shelter and to property.[126] When indigenous communities are evicted from the forests or their traditional land, they lack access to food, medicinal plants, and so on. In the Yakye Axa case, the Yakye Axa community was denied access to its traditional land during the 10 years that its claim was going through administrative process. The Inter-American Commission found the state of Paraguay in violation of Articles 4, 21, and 25 of the American Convention on grounds including: the prohibition of the community from accessing their ancestral land to engage in traditional subsistence activities during the time the administrative process was pending; and the failure of the state to provide them with medicinal and nutritional assistance that they used to get from their traditional habitat, which they could no longer access owing to the actions of the state.[127]

The Inter-American Commission has further dealt with claims of the right to culture. In the case of Kichwa peoples of the Sarayaku community and its members v. Ecuador,[128] oil exploration activities in the Sarayaku's territory without their consent gravely affected the cultural life of the community. The Commission found a violation of the Sarayaku's right to culture, since the activities of the oil-exploration companies affected the traditional forms of life of the Sarayaku and their interactions with their ancestral habitat.

From the above, it is clear that there is a link between land, culture and, to some extent, other rights such as to health and food. If African States and the African Commission (in its contentious jurisdiction) recognise such concepts, indigenous land rights can in the long run be realised. Similarly, the principles discussed above indicate how progressive the

[123] *Ibid.*, paragraph 17.

[124] *Ibid.*, paragraph 22.

[125] Oloka-Onyango (2005), p 1257.

[126] *Ibid.*, p 1258.

[127] Yakye Axa Indigenous Community of the Enxet–Lengua People v. Paraguay, Case 12.313, Report No. 2/02, Inter-American Commission on Human Rights, OEA/Ser. L/V/II. 117, doc. 1, rev. 1, 2003.

[128] Hereinafter referred to as the Sarayaku case, Report No. 64/04, Petition 167/103, Inter-American Commission on Human Rights, OEA/Ser.L/v/ii.122, doc. 5, rev. 1, 2005.

Inter-American system of human rights has been in protecting the rights of indigenous peoples. The African system could take a leaf from the Inter-American book, in an effort to engender progressive jurisprudence on the protection of indigenous peoples in Africa.

The 1981 African Charter on Human and Peoples' Rights promotes and protects the rights to equality and human dignity of all individuals, including individual members of indigenous communities. It also recognises collective rights of 'peoples'. Unfortunately, this concept of 'peoples' is not clear; neither is it certain that it can be used to pursue indigenous people's land rights. The African Commission encountered this concept in the case of Katangese Peoples' Congress v. Zaire,[129] but did not define it. It has been argued that the Commission has paved the way for the protection of indigenous peoples through the concept of 'peoples' rights'.[130]

At the international level, the United Nations (UN) General Assembly adopted in 1989 the Convention on the Rights of the Child.[131] Articles 29 and 30 of this Convention state that children of minority or indigenous origin shall not be denied the right to their own culture, religion or language.

The other equally important international instrument is the Convention on Biological Diversity (CBD), which Uganda ratified in 1993. Decision VII. 28 (on Protected Areas) of the CBD's 2004 Seventh Conference of the Parties (COP7) enjoins the states parties to ensure full and effective participation of and full respect for the rights of indigenous and local communities in the establishment, management and planning of protected areas, in line with Article 8(j) of the CBD. This should be consistent with national law and applicable international obligations. The FPP, UOBDU and CARE review of Uganda's implementation of the CBD Programme of Work on Protected Areas observes that there have been no consultations with or participation on the part of the indigenous Batwa in respect of such a process.[132]

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) notes the very close link between indigenous peoples controlling land and/or territory, the enjoyment of other rights, and development in accordance with their aspirations.[133] Denial of the Batwa's right to occupy their ancestral land thus breaches an established norm in international human rights law, and leads to violation of a chain of rights guaranteed therein.

The fact that the UNDRIP is a 'Declaration' weakens it's enforceability within the jurisdictions of its member states, since it provides for no enforcement mechanism at the international level. However, since it restates norms that are contained in other international human rights instruments, it is a key interpretive tool in resolving issues under specific instruments, say the

[129] Communication No. 75/92, 1995. Other cases by 'peoples' include Malawi African Association & others v. Mauritania, Communication Nos. 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98, 2000, where the black population of Mauritania accused the government of marginalising them, and filed a Communication to the Commission for violation of rights under the African Charter, including Articles 18 and 19.

[130] Bojosi and Wachira (2006), p 383.

[131] Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989; entered into force 2 September 1990, in accordance with Article 49.

[132] FPP, UOBDU and CARE (2008), p 3.

[133] This can be inferred from Paragraph 9 of the Preamble to the UN Declaration on the Rights of Indigenous Peoples.

African Charter on Human and Peoples' Rights, the ICCPR, ICESCR, in so far as they provide for rights of indigenous persons.

One of the highlights of the UNDRIP is its 'consent' clause in Article 10: that indigenous peoples shall not be forcibly removed from their lands or territories without their free, prior and informed consent. The 2007 Declaration would not be used to test the eviction of the Batwa of south-western Uganda that took place in 1993 (a human rights treaty might work however, for example the International Convention on the Elimination of all Forms of Racial Discrimination [ICERD] of 1965, ratified by Uganda in 1980[134]). The ICERD prohibits discrimination against persons and groups of persons on various grounds including ethnic origin, which has been interpreted to include indigenous status. States parties to the ICERD are obliged to recognise, respect and guarantee the right 'to own property alone as well as in association with others' without discrimination. In its 1997 General Recommendation No. 23, the CERD [Committee on the Elimination of Racial Discrimination] called upon states parties to

> recognise 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 these lands and territories.[135]

According to Article 287 of the 1995 Constitution, however, Uganda uses the incorporation doctrine to assert that in order to enforce international obligations in the domestic courts, the international law must have been domesticated either as stand-alone legislation or as sections in other laws passed by parliament. Clearly the government has been good at ratifying, and taking no steps to domesticate. In these circumstances, enforcing human rights under an international instrument means using the institutions provided for in the conventions/ covenants: that is, Commissions or courts where applicable. It is only when the Batwa are assisted by civil society organisations or support agencies that they can trigger the available international avenues in pursuance of their land rights.

[134] Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965; entered into force 4 January 1969, in accordance with Article 19. Text at http://www.hrcr.org/docs/CERD/cerd.wpd, accessed on 16 October 2008.

[135] General Recommendation XXIII (51) concerning Indigenous Peoples adopted at the Committee's 1235th meeting, on 18 August 1997. UN Doc. CERD/C/51/ Misc.13/Rev.4.

VI Conclusion and recommendations

Conclusion

This study reveals that the historical land, forest and environmental legislation in Uganda have done little to protect the Batwa's substantive land rights to their forest lands in south-western Uganda. The Batwa are the traditional owners of this forest land, having occupied it before the arrival of the Tutsi and Hutus in 1550 and 1750 respectively. Through Uganda's pre-independence legislation, the substantive rights of the Batwa to their forest land was denied. They were not consulted before any legislation or agreement was signed. By virtue of the Forest Act (1947) and National Park Act (1952), the traditional/customary right of the Batwa to their land was denied. From this point on, they were not the legal owners of Bwindi , Mgahinga or Echuya, and their final eviction in 1991 further escalated their landlessness, poverty and suffering. Even as the forest declines as a source of physical survival, their society is structured in profound relation to the forest, and depends upon its continued existence as such and their continued access to it.[136] The various guarantees in the 1995 Constitution and in rights set out in related forests legislation and international instruments in support of indigenous peoples' land rights have hardly been implemented.

It is clear from the history of Uganda that majority groups are in a better position to claim land rights. The State has a duty to cater for its entire people at the same level, but in reality there is disparity of treatment. The Batwa lost their land without adequate compensation, and it is against this background that the study makes its recommendations.

Recommendations

For the Batwa

Batwa organisations should sensitise all the Batwa communities about their land rights as provided for in the laws and the Constitution. The Batwa or Batwa organisations should vindicate their land rights through the available local institutions such as the courts, with the help of legal aid. They should seek adequate compensation and programmes for settlement, reinstatement in the forest or alternative forest land where they can be resettled. If unsuccessful, the Batwa should file a communication at the African Commission of Human and Peoples' Rights under the African Charter seeking a remedy for the violation of their rights under the Charter, arising from their eviction and the failure of the state to protect their rights.

Alternatively, the Batwa could lobby both local and international civil society organisations to take up their cause. These could adopt a dialogical approach of encouraging government to come up with a concrete plan of action on how to deal with the plight of the Batwa. The issues may include a periodic and continuous review of the system of benefit sharing, reinstatement and adequate compensation.

[136] Kabananukye and Wily (1996).

For the Government

There should be equal protection under the law and affirmative action in favour of indigenous groups such as the Batwa, to enable them to enjoy the rights and entitlements accorded to all Ugandans. There should be ratification and domestication of international human rights instruments on indigenous peoples.

Government should publicly recognise the violation of the Batwa's land rights and, by means of thorough consultation with them, ensure due and adequate compensation, or should consider reinstatement of the Batwa to their forest land if they so desire.[137] Portions of land that were used as burial grounds should be returned to the Batwa at all costs.

The Government should implement provisions of the 1998 Land Act that offer protection to the Batwa against eviction. Following their eviction from their traditional forests areas, the Batwa acquired a status of tenants/squatters on others' farm land, making them susceptible to evictions. They should be protected against eviction, and compensated if they are evicted. In addition, the government should make a policy through which the protection of indigenous peoples becomes mainstream in all government departments and local governments.

In the event that the Batwa cannot be reinstated, the government should ensure continuous and mutually acceptable sharing with the Batwa of the benefits made as a result of the deprivation of their rights to their traditional territory. They should be consulted on what they consider appropriate benefit-sharing for the community and the individual(s), in the light of their customs and traditions.

For civil society organisations

Civil society organisations should design programmes in consultation with the Batwa to discuss their rights to land, how these link to other rights, and how to pursue them in cases of abuse. Further, they should monitor governments' adherence to its obligations to protect indigenous peoples and should take action, in consultation with the Batwa, such as bringing suits/actions aimed at alleviating their plight at the domestic level. The Constitution, in Article 50(2), provides for the notion of any person or organisation bringing an action against the violation of another person's or group's human rights. His Lordship Hon Mr Justice Rubby Aweri Opio of the High Court of the Uganda emphasised the importance of this representative action or public interest litigation:

> … our Constitution is among the best the World over because it emphasises the point that violation of any human right or fundamental right of one person is violation of the right of all.[138]

Civil society organisations should take initiatives at the regional level, including seeking advisory opinions on human rights issues from the African Commission. An example might be

[137] See UOBDU, CARE and FPP, 'Regional Consultation with Batwa Communities on their Land Rights and Partner Meeting', May 2006. Some Batwa expressed a desire to be reinstated back in the forest as a remedy to their current suffering.

[138] High Court of Uganda, ACODE v Attorney General and the National Environment Management Authority (NEMA), Miscellaneous Case No. 0100 of 2004.

the application of ACHPR Article 14, on indigenous peoples, to the Batwa. They could also file test lawsuits at regional level in pursuance of the Batwa's land rights.

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Timeline of historical and legal developments pertaining to land law in Uganda

1550	First Tutsi move into Batwa area (present day Bufumbira county in Kigezi district, south-western Uganda)	
1750	First nine Kiga Bahutu clans arrive in Batwa area	
1890	**Imperial British East African Company (IBEACO) controls Uganda**	**Anglo-German Agreement: Uganda comes under British control**
1894		**Uganda declared a Protectorate by Britain**
1897	Land Regulations introduce individual ownership	
1900	Buganda Agreement replaces customary land tenure and secures tenure for individuals rather than communities. Forests are vested in 'Uganda Administration' (government of the Uganda Protectorate)	
1900-1901	Toro and Ankole Agreements. All 'waste land', forest and minerals become the property of Her Majesty's Government	
1902	The Order-in-Council: • vests administrative power and all right in Crown lands in the Commissioner • creates a court with jurisdiction over all persons and upon all issues in the Protectorate	
1912	South-western part of present-day Uganda (formerly part of Rwanda) becomes part of Uganda	**The British take control of Kigezi-Bufumbira**
1920s	Beginning of the conservation era; start of colonial protection of Bwindi, Mgahinga and Echuya forests	
1922		Crown Lands (Declaration) Ordinance converts all land without documentary proof of ownership into Crown land
1932	Present-day Bwindi Impenetrable National Park gazetted as Kasatoro and Kayonza Crown Forest Reserves	
1942	Kasatoro and Kayonza Crown Forest Reserves are combined and gazetted as Impenetrable Central Crown Forest	
1945	First three Africans appointed to the Legislative Council	
1947	Forest Act seeks to protect the forest from encroachment by cultivators (also see 1952)	
1950	Another five Africans appointed to the Legislative Council, now totalling eight	

1952 National Park Act (in conjunction with Forest Act of 1947) extinguishes Batwa customary ownership rights and allows them only limited access to their land. The Act prescribes conditions of residence in parks; it empowers the Minister to declare any land a national park and to prohibit unauthorised access

1959 Game (Preservation and Control) Act recognises the rights of people residing in any reserve prior to 1 July 1959. However, as the law does not recognise the Batwa's type of land use this does not reinstate their customary ownership rights

1961 Impenetrable Central Crown Forest Reserve is additionally gazetted as a Gorilla Game Sanctuary

1962 **Uganda's independence**

1968 African Convention on the Conservation of Nature and Natural Resources seeks to ensure that faunal resources are managed in accordance with scientific principles and with due regard to the best interest of the people

1969 Public Lands Act recognises customary tenure but does not change the situation of the Batwa, since their customary rights had already been extinguished by the Forest Act (1947) and the National Parks Act (1952)

1971 **President Idi Amin's rule**

1975 Land Reform Decree fails to change the situation for the Batwa (for the same reasons as the Public Lands Act of 1969)

1979

1986 **National Resistance Movement comes to power**

1991 Bwindi conservation area is elevated to Bwindi Impenetrable National Park resulting in eviction of the Batwa largely without compensation. Brings an end to Batwa lifestyle of forest hunting and gathering

Mgahinga and Bwindi Impenetrable Forest Conservation Trust is established (becoming functional in 1995)

1995

- New Constitution recognises individual and collective rights to land; it vests land in the citizens of Uganda
- National Environment Act

1998 Land Act recognises leasehold, mailo and freehold as tenure systems, and offers protection to the Batwa against eviction, but this latter dimension of the law has never been implemented

2000 Uganda Wildlife Act recognises that people with property rights may carry out activities for the sustainable management and utilisation of wildlife, if the activities do not adversely affect wildlife

2005 High Court recognises the Benet Community's land rights

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