

REPORT OF THE AFRICAN
COMMISSION'S WORKING GROUP ON
INDIGENOUS POPULATIONS/COMMUNITIES

RESEARCH AND INFORMATION VISIT TO
THE REPUBLIC OF UGANDA

14-17, 24-29 July 2006

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African Commission on
Human and Peoples' Rights
(ACHPR)



International
Work Group
for Indigenous Affairs

2009

**REPORT ON THE AFRICAN COMMISSION'S WORKING GROUP
ON INDIGENOUS POPULATIONS/COMMUNITIES**

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LIST OF ABBREVIATIONS

ACODE	Advocates Coalition for Development and Environment
ADOL	Action for Development of Local Communities
ADRA	Adventist Development and Relief Agency
ACHPR	African Commission on Human and Peoples' Rights
AFLI	African Leadership Institute
AIC	African Inland Church
CEDAW	Convention for the Elimination of all Forms of Discrimination Against Women
CEMIRIDE	Centre for Minority Rights Development
CRC	Committee on the Rights of the Child
CSOs	Civil Society Organizations
DANIDA	Danish International Development Agency
EIA	Environmental Impact Assessment
EOC	Equal Opportunities Commission
ESIP	Education Strategic Investment Plan
GEF	Global Environmental Facility
GDP	Gross Domestic Product
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
HURIPAC	Human Rights and Peace Centre
IDPs	Internally Displaced Persons
ILO	International Labour Organization
KIU	Karamoja Implementation Unit
LG	Local Government
LRA	Lords Resistance Army
MBIFCT	Mgahinga and Bwindi Impenetrable Forest Conservation Trust
MRG	Minority Rights Group International
NGO	Non-Governmental Organization
PEAP	Poverty Eradication Action Plan
PUWR	Pian Upe Wildlife Reserve
TOR	Terms of Reference
UIA	Uganda Investment Authority
UHRC	Uganda Human Rights Commission
UNDP	United Nations Development Programme
UOBDU	United Organization for Batwa Development in Uganda
UPDF	Uganda Peoples Defence Forces
UWA	Uganda Wildlife Authority

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Hon. Omwony Ojwok, David Pulkol and Hon. Terrence Achia were extremely informative and also admirable in their simplicity and honesty. We are grateful for their time and valuable information.

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Members of the Batwa Pygmy community and the Karamojong who shared information on their own personal experiences and lives were very generous. Our hearts go out to them as we express many thanks for their time and openness.

The African Commission on Human and Peoples' Rights also gave very valuable comments when the report was presented to them at Ezulwini, Swaziland on 14th May 2008, and some of their comments contributed to the improvement of the report. For their interest and comments, we express much gratitude.

PREFACE

The African Commission on Human and Peoples' Rights (ACHPR or African Commission), which is the human rights body of the African Union, has been debating the human rights situation of indigenous peoples since 1999. Indigenous peoples are some of the most vulnerable and marginalized groups on the African continent, and their representatives have, since the 29th Ordinary Session of the African Commission in 2001, participated in the ACHPR's sessions. The indigenous representatives have given strong testimonies about their situation and the human rights violations they suffer. Their message is a strong request for recognition and respect, as well as a call for improved protection of their civil, political, economic, social and cultural rights. It is also a request for the right to live as peoples and to have a say in their own future, based on their own culture, identity, hopes and visions. Indigenous peoples, moreover, wish to exercise these rights within the institutional framework of the nation-state to which they belong. The African Commission has responded to this call. The African Commission recognizes that protecting and promoting the human rights of the most disadvantaged, marginalized and excluded groups on the continent is a major concern, and that the African Charter on Human and Peoples' Rights must form the framework for this.

In order to achieve a better basis on which to advance discussions and formulate recommendations, the African Commission set up a Working Group on Indigenous Populations/Communities (Working Group) in 2001. The Working Group then comprised three ACHPR Commissioners, three experts from indigenous communities in Africa and one international expert on indigenous issues. The Working Group implemented its initial mandate by producing the comprehensive document "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities" on the human rights situation of indigenous peoples and communities in Africa (the full report can be downloaded from <http://www.achpr.org>). The report was adopted by the African

Commission in November 2003, and published in book format in 2005. The report is the African Commission's official conceptualisation of indigenous peoples' human rights in Africa.

In 2003, the Working Group was given the mandate to:

- Raise funds for the Working Group's activities, with the support and cooperation of interested donors, institutions and NGOs;
- Gather information from all relevant sources (including governments, civil society and indigenous communities) on violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Undertake country visits to study the human rights situation of indigenous populations/communities;
- Formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Submit an activity report at every ordinary session of the African Commission;
- Co-operate when relevant and feasible with other international and regional human rights mechanisms, institutions and organizations.

On the basis of this mandate, the Working Group has developed a comprehensive activity programme. This programme includes undertaking country visits, organising sensitisation seminars, cooperating with relevant stakeholders and publishing reports, all with a view to protecting and promoting indigenous peoples' rights in Africa.

This report is part of a series of country-specific reports produced by the Working Group and adopted by the African Commission on Human and Peoples' Rights. These country-specific reports emanate from the various country visits undertaken by the Working Group, all of which have sought to engage with important stakeholders such as governments, national human rights institutions, NGOs, intergovernmental agencies and

representatives from indigenous communities, both women and men. The visits have sought to involve all relevant actors in dialogue on indigenous peoples' human rights, and to provide information on the African Commission's position. The reports not only document the Working Group's visits but are also intended to facilitate constructive dialogue between the African Commission, the various African Union member states, as well as other interested parties.

To date, the Working Group has undertaken country visits to Botswana, Burkina Faso, Burundi, Central African Republic, Gabon, Namibia, Niger, Libya, Republic of Congo Rwanda and Uganda. These country visits have been undertaken during the years 2005-2009, and the intention is that the reports will be published once adopted by the African Commission. Hopefully, the reports will contribute to raising awareness of indigenous peoples' situation in Africa, and prove useful for establishing dialogue and identifying appropriate ways forward for improving indigenous peoples' situation in Africa.

It is hoped that, via our common efforts, the critical human rights situation of indigenous peoples will become widely recognized, and that all stakeholders will work to promote and protect indigenous peoples' human rights in their respective areas.

Commissioner Musa Ngary Bitaye
Chairperson of the African Commission's Working Group
on Indigenous Populations/Communities

EXECUTIVE SUMMARY

The Uganda Country Research and Information Visit was undertaken by Dr. Naomi Kipuri who is a member of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights and Mr. Singoei Korir, the director of the Centre for Minority Rights Development (CEMIRIDE) based in Kenya, in his capacity as a member of the Working Group's advisory network of experts.

According to the Terms of Reference, the Research and Information Visit was to disseminate information to government, regional/local authorities, the national human rights institution, human rights organizations, international agencies, indigenous peoples' organizations, the media etc. about the report and position of the African Commission on the rights of indigenous populations and to gather information about the human rights situation of indigenous peoples in the country.

The visit was also designed to update the Working Group on the human rights situation of the Batwa Pygmies of Western Uganda as well as the situation of pastoralists in the north and north-eastern parts of the country. It also sought to identify the challenges faced by these communities and by the government and other stakeholders in addressing the human rights situations of indigenous communities.

The Uganda Research and Information Visit took place from 14th to 17th and then from 24th to 29th July 2006. The report contains findings, analysis and conclusions as well as recommendations on how to improve the human rights situation of indigenous populations in Uganda.

In terms of methodology, the Research and Information Visit used interviews and a focus on a group discussion approach in its consultations with the Batwa and Karamoja communities.

Schedule 3 of the Ugandan Constitution (1995) refers to 56 indigenous communities in the country. Both the Batwa and Karamojong are among the 56 communities named in the schedule as indigenous peoples. However, the Ugandan Constitution's understanding of the term "indigenous" is one in which "all Africans are indigenous to Africa". This is, however, not the manner in which the term "indigenous peoples" is understood by the African Commission on Human and Peoples' Rights nor by international law. The African Commission identifies indigenous peoples according to the following characteristics:

*"The overall characteristics of groups identifying themselves as indigenous peoples are that their cultures and ways of life differ considerably from the dominant society, and that their cultures are under threat, in some cases to the point of extinction. A key characteristic for most of them is that the survival of their particular way of life depends on access and rights to their traditional lands and the natural resources thereon. They suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society. They often live in inaccessible regions, often geographically isolated, and suffer from various forms of marginalization, both politically and socially. They are subjected to domination and exploitation within national political and economic structures that are commonly designed to reflect the interests and activities of the national majority. This discrimination, domination and marginalization violates their human rights as peoples/communities, threatens the continuation of their cultures and ways of life and prevents them from being able to genuinely participate in decisions regarding their own future and forms of development"*¹.

Groups in Uganda who fall under these criteria for indigenous peoples are nomadic or semi-nomadic hunter-gatherers or pastoralists, such as the Batwa, Benet and Karamojong. There is therefore a gap between the manner in which the Ugandan government perceives the term "indigenous peoples" and the manner in which it is employed by the African Commission and by international organizations such as the UN agencies.

¹ Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities. p. 89. Adopted by the African Commission at its 34th Ordinary Session, November 2003.

Despite the disparate understanding of the term “indigenous peoples”, the Ministry of Gender, Labour and Social Development, the Uganda Human Rights Commission (UHRC) and Care Uganda undertake specific work focusing on vulnerable ethnic minority groups. Indigenous peoples (as the term is understood by the African Commission) are included in the work on vulnerable communities. In the Ugandan context, apart from the United Organization for Batwa Development in Uganda (UOBDU) among the Batwa, very few human rights organizations, far less development institutions, are aware of ongoing global and regional developments relating to indigenous peoples.

There seems to be a terminological confusion regarding the understanding of the concept of indigenous peoples, and there is a need to provide more clarity on the criteria for identifying indigenous peoples in the Uganda context if policy options in favour of indigenous communities in the country are to be pursued.

More specifically, the Research and Information Visit Team noted that the *Batwa* have been made landless and resource poor since their forceful eviction from the Bwindi-Mgahinga Game Park. Currently, the Batwa engage in a wide range of economic activities. Around 9.4% of the Batwa occupy land belonging to the government and 10% are living on Church of Uganda land while 80% live on land belonging to private landlords.

The *Benet* hunter-gatherers were evicted from the Kapchorwa Protected Area during the early 1970s and, in 2005, they commenced successful legal action against the Uganda government. The Benet case, supported by both Action Aid International Uganda and the Uganda Land Alliance, is the most significant legal case involving indigenous peoples’ land rights in a country whose judiciary has been perceived as having a measure of independence from the executive.²

Uganda has several types of pastoralists: nomadic pastoralists and transhumant pastoralists. Some of the nomadic pastoralists, such as the *Ba-songora*, are returnees from the Democratic Republic of Congo and Tanzania who left the country to escape the severe conflicts in the North. On

2 Interview with Advocate Nagwalla, Kampala, July 2006.

their return, they found their former lands occupied and have become landless and are referred to as “strangers”. Some of them live in protected areas as squatters.

The *Karamojong* of Northern Uganda, the main nomadic pastoral community in Uganda, have been excluded from economic, social and political development for decades due to insecurity and the presence of over 40,000 small arms obtained at various stages, particularly during the departure of Dictator Idi Amin. Ninety percent of the Karamoja region belongs to the government, either as gazetted forests or national parks. The Karamojong are able to access most areas because they possess guns. However, the government plans to de-gazette some of the areas in order to offer concessions to a private company for agricultural purposes. The Karamojong are supporting the de-gazettement but they claim the area to be their ancestral territory and they demand that they themselves must negotiate with the developer.

The 1995 Ugandan Constitution is very progressive. A number of key constitutional principles contained in the National Objectives and Directive Principles of State Policy either directly or indirectly relate to the situation of indigenous communities in Uganda. The Constitution contains a comprehensive Bill of Rights, covering civic and political rights; economic, social and cultural rights; and collective rights. Unfortunately, historically marginalized indigenous communities such as the Batwa of Uganda have not featured at all in the ensuing debate based on affirmative action. The Local Government's Act Cap 243 Laws of Uganda 2000 also provides for representation of marginalized groups at all local government levels. At the local level, while pastoralists are represented, the Batwa are not.

Uganda has ratified the African Charter on Human and Peoples' Rights, and has signed the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, among others. The Research and Information Visit Team to Uganda was, however, unable to obtain a full status report on Uganda's reporting compliance. Uganda only submitted its first periodic report to the African Charter on Human

and Peoples' Rights in March 2006. The first periodic report consolidates three pending reports.

This report from the Research and Information Visit to Uganda contains key recommendations both to the government of Uganda, to the African Commission and to the international community. These are as follows:

To the Government of Uganda:

1. Recognize the Batwa and the pastoralists in Uganda as indigenous peoples in the sense in which the term is understood in international law, and make appropriate legislative provision in this respect.
2. Ratify ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries.
3. Return portions of protected areas to indigenous communities, and institute sharing of benefits accruing from the use of resources in those areas.
4. Provide compensation for lands that were alienated without consultation or consent, as a way of reducing the vulnerability of indigenous peoples.
5. Conduct research on the activities of the Uganda Peoples Defence Forces (UPDF) soldiers undertaking the disarmament programme with a view to controlling their brutality and human rights violations, especially in the Karamoja Region.
6. Institute a regional disarmament, small arms and weapons control and conflict resolution process that involves the participation of northern and north-eastern neighbours, particularly Kenya and Sudan.
7. Involve and encourage traditional/indigenous leadership and other indigenous management structures in order to increase community participation and informed consent on matters affecting their lives, including disarmament.
8. Work with DANIDA to reinstate the DANIDA-funded integrated disarmament programme.

9. Address the problem of Internally Displaced Persons (IDPs) and protect them from exploitation and human rights abuses in urban centres.
10. Address the situation of indigenous women and children among the IDPs in urban slums by supplying them with basic needs such as food and shelter.
11. Address the very vulnerable situation of indigenous women in general.
12. Implement the Equal Opportunities Framework in order to address the needs and rights of indigenous communities in Uganda, particularly the hunter-gatherers and pastoralists.
13. Conduct a study on the Batwa as recommended by the Committee on the Rights of the Child (CRC) and develop a plan of action – involving the Batwa at all stages – to address all aspects of discrimination and marginalization.
14. Adopt adequate means and measures to ensure that Batwa communities, including children, are provided with information regarding birth registration procedures, access to healthcare facilities and education.
15. Ensure that effective and culturally sensitive education programmes are in place in the Karamoja Region.
16. Replicate positive experiences developed from the Alternative Education for Karamoja programme in other similar areas.
17. Ensure the effective representation of indigenous peoples in local and national governance structures.

To the African Commission on Human and Peoples' Rights:

1. Conduct a Mission to Uganda to deepen dialogue with the government on various human rights issues affecting indigenous peoples/communities in the country.

To the International Community:

1. Follow up on successful programmes and replicate positive lessons. The Alternative Education for Karamoja programme has re-

mained at the pilot stage for ten years. The successes realized ought to be implemented in other similar areas.

2. Reinstate the DANIDA-funded integrated disarmament programme.



MAP OF UGANDA

1. INTRODUCTION

The Uganda Research and Information Visit was undertaken by Dr. Naomi Kipuri, who is a member of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights. She was accompanied by Mr. Korir Singoei, the director of the Centre for Minority Rights Development (CEMIRIDE) based in Kenya and a member of the advisory network of experts to the Working Group.

According to the Terms of Reference (TOR), the main objectives of the Research and Information Visit to Uganda included the following:

- To disseminate information to government, regional/local authorities, the national human rights institution, human rights organizations, international agencies, indigenous peoples' organizations, the media etc. about the report and position of the African Commission on the rights of indigenous populations;
- To gather information about the human rights situation of indigenous peoples in the country; and
- To submit a report to the ACHPR.

Detailed terms of reference are found in Appendix 1 to this report.

1.1 Methodology

The Research and Information Visit team used flexible interviews with the various actors it met. It also used a focus group discussion approach in its consultations with the Batwa and Karamojong communities. The team also relied on secondary information from publications, action research reports from NGOs and other documentation from various bod-

ies, including the media, on the status of indigenous communities in Uganda.

1.2 Work Plan

The team arrived in Kampala on the morning of 14th July and met with Care Uganda, mainly to share copies of the African Commission's report on indigenous populations/communities and to plan a visit to the Batwa communities where Care works. The team then made a courtesy call to the Ministry of Foreign Affairs where a plan for visiting indigenous communities was later formulated.

Two African Commission missions to Uganda (each with their own mandate) had been timed simultaneously with this Research and Information Visit focusing on indigenous peoples. This led to some confusion and logistical complications at the Ministry of Foreign Affairs, resulting in the Research and Information Visit being undertaken in two rounds. The first round took place from 14th-17th July and the second from 24th-30th July 2006. When the team commenced the second round of the visit on 24th July 2006, the Ministry provided a legal officer from the Ministry of Justice to accompany the team for the duration of the visit. See Appendix 2 for programme and people interviewed.

2. BACKGROUND AND SOCIAL DEMOGRAPHIC FEATURES

Uganda is a land-locked country measuring 236,040 sq km. It is situated in East Africa and bordered by Tanzania to the south, Kenya to the east, Sudan to the north, Burundi to the south-west and the Democratic Republic of Congo (DRC) to the west. According to the 2002 Housing and Population Census, Uganda has a total population of 26 million people comprising 57 different ethnic groups, all of whom are named in the country's current Constitution.³

A large part of the southern, south-western and south-eastern parts of Uganda are of high arable farming potential, with high rainfall and deep and fertile soils. However, the north-eastern part of the country is arid and semi-arid with an annual rainfall of only 700 mm.

Uganda's current Gross Domestic Product (GDP) is estimated at US\$ 39,390,000,000 and the country has registered an average economic growth rate of over 5% for the last 4 years. This positive outlook is, however, not matched by other indicators such as infant mortality, which stands at 66.15 deaths/1,000 live births and life expectancy, standing at 52.67 years due to the high mortality occasioned by the high HIV/AIDS rate in the country. This stood at 530,000 cases in 2003.⁴

Politically Uganda, like many African countries, has a weak state and a weak public administration, with poor governance structures and top down decision-making, this notwithstanding the fact that decentralization of governance is provided by the Constitution. Trained government personnel are few and so are the police and the armed forces. Because of this, the presence of government is mainly felt in urban centers, making effective implementation and maintenance of law and order difficult to achieve. For example, Uganda has less than 15,000 police officers and,

3 Uganda Bureau of Statistics. 2002. *National Housing and Population Census Report*

4 Uganda Bureau of Statistics. 2002. *National Housing and Population Census Report*

according to the superintendent of police in charge of small arms and weapons, “7,000 are needed to police Karamoja alone adequately.” As a result of this, when government intervenes in a crisis situation, such as in relation to disarmament, it does so through a brutal army. This leaves behind distrust and disharmony among the concerned communities.

Participatory processes of governance require consultation. However, when government attempts to consult with communities, it bypasses the respected traditional leadership and deals with young and semi-literate people who are not respected by the communities. This has a tendency to peripheralize indigenous governance structures without replacing them with any adequate and successful governance. It is expected that, with the recent plans for decentralization, appropriate mechanisms for consultation will be put in place and the situation may improve.

3. HISTORY

Uganda acquired its independence from Great Britain in 1962 and Milton Obote became the first Prime Minister. It had been a colony for over 50 years, during which the British Empire exerted its supreme economic and civilizing mission in Uganda and effectively abrogated traditional systems of social and political organization in the country by subordinating them to the British system under the Foreign Jurisdiction Act of the United Kingdom.⁵

The strategic location of Uganda at the headwaters of the Nile generated a great deal of interest in the West generally, and in the United Kingdom more specifically, insofar as its control would assure the security of Egypt, which was the priceless crown in the colonial economic and military master plan for the continent. So great was this interest that the British government invested heavily in the opening up of the Uganda railway, whose construction consumed colossal sums of money and, in its wake, demanded recompense through a more rigorous colonial enterprise and taxation, not only in Uganda itself but in neighboring Kenya, where exclusive arable territories were set apart as White highlands for commercial agricultural development.

Colonial domination in Uganda took the form of indirect rule. In its most pristine form, indirect rule ensured minimum disruption of local socio-political relations to the extent that they were subordinated and responsive to colonial control and manipulation. As many Ugandan communities were organized along clear social constructs such as chieftaincies or kingships, the role of central government in augmenting social change was undertaken with ease. However, this was not so for some communities, such as the Karamojong, whose social agents were out of sync with the colonial mindset, a fact which resulted in a much more aggressive

⁵ See for Instance **Oloka Onyango**, *Judicial Power and Constitutionalism in Uganda: A Historical Perspective*, in *Uganda: Studies in Living Conditions, Popular Movements and Constitutionalism*, p. 463

role of the state in reforming the social order of that community. The differences in power exerted by the colonial state over different communities in Uganda constituted an important historical construction of the crisis faced by some of those communities today, such as the Karamojong.⁶

The dictatorial regime of Idi Amin (1971-79) was responsible for the deaths of some 300,000 opponents. Guerrilla war and human rights abuses under Milton Obote (1980-85) claimed at least another 100,000 lives. During the 1990s, under the Museveni-led revolution, the government promulgated non-party presidential and legislative elections. It was not until the amendment of the Ugandan Constitution in 2005 that the country converted into a multi-party state, with no term limit imposed on the Presidency.

6 **Ocan Charles. 1994.** Pastoral Crisis and Social Change in Karamoja. In Mohammed Mamdani et al, *Uganda: Studies in Living Conditions, Popular Movements and Constitutionalism*, (1994, Vienna) JEP & CBR, p. 99. Ocan for instance posits that the role of the state and the nature of its operations is traceable to the behavior of the colonial government.

4. CONSTITUTIONAL/LEGAL AND POLICY FRAMEWORK AND THE INDIGENOUS QUESTION – WHICH RIGHTS ARE GUARANTEED IN WHAT INSTRUMENTS

The current Ugandan Constitution was only promulgated 10 years ago, so it is a fairly recent document, and its utility in responding to the challenges of marginalization must bear in mind this fact. It is also significant in that it was developed through a comprehensive and consultative process. *“It took the Commission nearly four years to collect views from all stakeholders in Uganda, including intellectuals, bureaucrats, villagers, the army and as many people as possible. There were meetings where views were solicited as well as written memoranda in all languages. The Commission completed its work in 1993 and its report paved the way for the enactment of the Constitution of Uganda of 1995.”*⁷

It is noteworthy that the 1995 Ugandan Constitution, in its declaratory principles as well as its substantive parts, makes both general and specific provisions for the protection of individual, group and collective rights, and establishes mechanisms and procedures for their enhancement and protection. A number of key constitutional principles contained in the National Objectives and Directive Principles of State Policy either directly or indirectly relate to the situation of indigenous communities in Uganda. For example, principle XI provides that, *“The state shall give the highest priority to the enactment of legislation establishing measures that protect and enhance the right of people to equal opportunities in development.”* The principles also enjoin the State to *“take necessary measures to bring about balanced development of all areas of Uganda”* and to *“take special measures in favour of the development of the least developed areas.”* Principle XIV further

7 Kituo Cha Katiba Fact Finding Mission Report on the Kenya Constitutional Review Process, at www.kck.org

articulates the commitment of the state to protect and promote the social and cultural well-being of the people of Uganda, and enjoins the state to ensure that *“all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing...”*

Secondly, the 1995 Constitution contains a comprehensive Bill of Rights, covering civic and political rights; economic, social and cultural rights; and collective rights. Article 20 (2) clearly captures the essence that it is not just individual rights that are constitutionally protected but group rights as well. In particular, Article 26 (1) guarantees the right to own property either individually or in association with others. The article provides a constitutional foundation for collective ownership of property, which again should be solicitous to the interests of indigenous and ethnic minority communities.

An equally important relevant constitutional provision with respect to the situation of the historically marginalized indigenous communities is contained in Article 32. This article enjoins the state *“to take affirmative action in favour of groups marginalized on the basis of gender, age disability or any other reason created by history, tradition or custom for purposes of redressing imbalances that exist against them.”* In this regard the Constitution mandates Parliament to enact appropriate laws, including laws for the establishment of an Equal Opportunities Commission (EOC), for the purpose of giving full effect to Article 32(1). Indeed, in the recent past, special interest groups that consider themselves marginalized, especially women, have sought to invoke the provisions of Article 32. Unfortunately, historically marginalized indigenous communities such as the Batwa of Uganda have not featured at all in the ensuing debate based on affirmative action.

Again, the Constitution of Uganda (1995) in Article 36 clearly guarantees the rights of ethnic minorities to fully participate in the development process as well as in decision-making that affects their welfare.

Article 37 of the 1995 Constitution also provides for the enjoyment of cultural rights consistent with human rights norms, including by

“maintain(ing) and promot(ing) any culture, cultural institution, language, tradition, creed or religion in association with others”.

Article 180 (2) c of the 1995 Constitution provides for local government to enact laws to provide for affirmative action for all marginalized groups referred to in Article 32 of the same Constitution. The Local Government’s Act Cap 243 Laws of Uganda 2000 provide for representation of marginalized groups at all local government levels. Section 10 specifically provides for two youth councillors, one male and one female, two councillors with disabilities, one male and one female, and two women councillors.

One would have expected therefore that with such an impressive and progressive constitutional framework, legislation and policies that would ensure substantive enjoyment of rights by ethnic minorities and indigenous people in Uganda would have been put in place. This has not been the case, however, over 10 years on since the enactment of this Constitution.

According to the Advocates Coalition for Development and Environment (ACODE),⁸ many policies and pieces of legislation contain provisions that are akin to community-based property rights. The best examples of policies that allude to the policy recognition of community-based property rights include the National Environment Management Policy, the Uganda Wildlife Policy, the Forestry Policy and the National Fisheries Policy, among others. While clearly alluding to the need to ensure that communities living around protected areas and other common property resources participate in their management and benefit from them, ACODE’s view is that there is clearly no policy commitment to recognize the community-based property rights of these communities, arguing that *“...current policies have largely been informed by the contemporary notions of conservation such as community conservation in wildlife, collaborative management in forestry, or community management in fisheries all of which are patronizing of communities they seek to protect”.*

⁸ Interview of Research and Information Visit Team with Arthur Bainomugisha, Advocates Coalition for Development and Environment

For its part, the Land Act seeks to guarantee individual and collective rights in land as recognized under the Constitution. The recognition of customary land tenure and the provisions for the legal establishment of communal land associations in this legislation could be considered to provide the necessary legal basis for the recognition of the land and resource rights of communities such as the Batwa and the Karamojong. However, the ancestral rights of the Batwa and Karamojong, which were alienated through the creation of Bwindi and Mgahinga National Parks and Pian Upe Wildlife Reserve (PUWR), are no longer a matter for customary law to settle but rather a matter of restitution and compensation that has to be founded on the current constitutional dispensation and international commitments to protect and promote the rights of such marginalized communities. Unfortunately, indigenous marginalized groups in Uganda have, to date, not pursued the legal remedies provided by the Land Act.

And even where policies begin to focus on the specific problems of indigenous communities and minorities, there is very limited budgetary support, which therefore reduces the policies to mere paper commitments.⁹ Such is the case with the Poverty Eradication Action Plan's (PEAP) focus on pastoralist development in Uganda. The PEAP espouses the key priority areas for public-sector support in Uganda. The revised PEAP 2004-5, in an unprecedented shift, includes progressive priorities for pastoralist development. However, this is largely limited to the production sector, ignoring major issues in other sectors such as marketing.

The reasons for this lack of fit, according to participants in a workshop organized by Minority Rights Group International (MRG) and the Human Rights and Peace Centre (HURIPAC) in July 2003, is mainly the lack of a legal definition of the term "ethnic minorities" in the Constitution, which has meant that majority communities may claim to be minorities on the basis that they have been denied one entitlement or the other. This ambiguity remains unresolved. Secondly, the lack of institutions charged with taking forward the whole question of addressing and understanding marginalization contributes to this limited understanding.

⁹ See **Korir Singoei**. 2004. *Country Discussion Paper, Facilitating pastoralists' inclusion in PRSP Processes in Kenya*, presented during the Inter-Parliamentary Workshop hosted by Panos Eastern Africa in Kampala, June 2004.

Institutions such as the Uganda Human Rights Commission (UHRC), which has undertaken laudable work in other respects,¹⁰ has demonstrated a fairly limited appreciation of the problematique of indigenous communities and, in all its reports to Parliament, has failed to focus in any major way on this issue. This is quite curious in the light of the broad mandate it has in terms of advancing the human rights of all people in Uganda as per the Constitution and international standards, which the country has ratified. The few times it has focused on indigenous peoples and ethnic minorities have been in relation to xenophobia and related intolerance. For instance, in its 6th Annual Report, the UHRC highlights cases of xenophobia in Kabale involving the Abafururuki and the indigenous Banyoro over land,¹¹ but fails to completely analyse the major drivers and the structural and historical causations of that conflict. A similar situation is repeated in the 7th Annual Report, where cases of xenophobia are exposed involving various communities in Hoima, Masindi and Teso districts.¹² To its credit, the UHRC has always interrogated the situation of human rights in Northern Uganda and Karamoja in its annual reports, including undertaking substantive monitoring of the disarmament programme in Karamoja.¹³ This notwithstanding, the human rights situation of the Karamojong remains thorny.

It is noted that even when such institutions exist, budgetary capacity and coordinative constraints make them unable to respond to the concerns of indigenous peoples and ethnic minorities, for they must first seek to placate populous and dominant demands. For instance, the UHRC is so underfunded that the discharge of its mandate is compromised. In 2001/2 it received budgetary support of 1.7 billion Uganda shillings against 6.9 billion required; in 2002/3 it received Uganda shillings 2.7 billion instead of 8.9 billion; while in 2003/4 it received 2.5 billion against 8.6 billion required.¹⁴ Similarly, in the same year in which the revised PEAP recognized the role of pastoralism in poverty eradication amongst practition-

10 The Uganda Human Rights Commission is one of the leading statutory human rights institutions in Africa, and has been cited as one of the success stories insofar as national human rights institutions are concerned

11 UHRC, 6th Annual Report, page 44

12 UHCR, 7th Annual Report, page 127

13 UHCR, 6th Annual Report, page 42

14 UHCR, 6th Annual Report, page 45

ers of this livelihood, the budget for the Ministry of Karamoja Affairs, which deals with the bulk of pastoralist areas, was fundamentally reduced, demonstrating the perfunctory nature of state commitment to pastoral development.

Moreover, the state has come down heavily against state institutions perceived as independent, and likely to frustrate its political agenda. For instance, UHRC was the subject matter of a Cabinet discussion, during which its dissolution and downgrading was proposed. The National Youth Councils¹⁵ have also experienced similar threats.

In the analysis of the Research and Information Visit Team, the lack of development on this issue is a correlative of power relations. As indigenous peoples and minorities do not constitute a significant political bloc, the political costs of making policy interventions and substantive budgetary commitments seem, in the minds of those in power, to be unjustified.

15 National Youth Councils are creatures of statute, the National Youth Council Statute Act (Cap 31a of 220), and are intended to mobilize youth in Uganda to engage in productive ventures.

5. UGANDA'S HUMAN RIGHTS RECORD

Uganda has ratified most of the key human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the UN Convention for the Elimination of Racial Discrimination, the UN Convention on the Rights of the Child and the UN Convention for the Elimination of all Forms of Discrimination against Women (CEDAW). It has also ratified the African Charter on Human and Peoples' Rights, and has signed the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Uganda was also one of the countries that voted in favour of the adoption of the UN Declaration on the Rights of Indigenous Peoples in the UN General Assembly in September 2007. Uganda is one of the few African countries to have ratified the first optional protocol to the International Covenant on Civil and Political Rights, which allows individuals in Uganda to submit complaints to the Human Rights Committee. A full list of ratifications is set out in the table below.

International/Regional Instrument	Signature	Ratification	Accession
International Covenant on Economic, Social and Cultural Rights		21st June 1983	
International Covenant on Civil and Political Rights		21st June 1995	
Optional Protocol to the International Covenant on Civil and Political Rights		14th Nov. 1995	

International/Regional Instrument	Signature	Ratification	Accession
Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty		Not ratified	
International Convention on the Elimination of All Forms of Racial Discrimination		21 Nov 1980	
International Convention on the Elimination of All Forms of Discrimination Against Women		30 Jul 1980	
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment		3 Nov 1986	
Convention on the Rights of the Child	17 Aug 1990	17 Aug 1990	6 May 2002
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts			
Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour		21 Jun 2001	
Convention on the Prevention and Punishment of the Crime of Genocide		14 Nov 1995	
Rome Statute of the International Criminal Court	17 Mar 1999		

International/Regional Instrument	Signature	Ratification	Accession
African [Banjul] Charter on Human and Peoples' Rights	18 Aug 1986	10 May 1986	
Convention Governing the Specific Aspects of Refugee Problems in Africa	10 Sep 1969	24 Jul 1987	
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	18 Dec 2003		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	1 Feb 2001	16 Feb 2001	
African Charter on the Rights and Welfare of the Child	26 Feb 1992	17 Aug 1994	

Source: <http://www1.umn.edu/humanrts/treaties.htm> & www.achpr.org

The Research and Information Visit Team to Uganda was, however, unable to obtain a full status report on Uganda's reporting compliance. However, it is certain that ratification of international and regional instruments has not been matched with reporting, or with substantive, compliance. For instance, Uganda's 2nd periodic report on the UN Convention on the Rights of the Child was only considered by the Committee in 2005, by which time Uganda was lagging behind in its reporting obligations, as the 3rd and 4th reports were pending.¹⁶ Uganda has only just submitted its first periodic report to the African Charter on Human and Peoples' Rights in March 2006 and three more reports are pending.¹⁷

16 CRC/C/15/Add.270, 30th September 2005

17 See: http://www.achpr.org/english/state_reports/40_Uganda%20periodic%20report_Eng.pdf

Moreover, there was no evidence of attempted implementation by the State of Concluding Recommendations or Observations issued by human rights institutions. For instance, the Committee on the Rights of the Child raised concern at the situation of children belonging to minorities, including Batwa children. It recommended, *inter alia*, that a study be conducted by the state, *“To assess the situation and needs of Batwa children and elaborate a plan of action...to protect rights of those children...”* The research team was never informed of any such study having been commissioned nor any plans in place to do so by the government since 2005 when the recommendations were issued.

6. CONCEPTUALIZATION OF INDIGENOUS PEOPLES IN UGANDA

This section of the report discusses the concepts of indigenous peoples and ethnic minorities as understood by the Ugandan state and how they are applied on a practical level to address the situation of indigenous peoples in the country.

Uganda's Constitution (1995) refers to 56 indigenous communities in Schedule 3 and places the date for determining indigeneity at 1926.¹⁸ This schedule was recently amended to include other minorities which have sought to assert their right to identity, including the Aliba, Aringa, Banyabutumbi, Banyaruguru, Barundi, Gimara, Ngikutio, Reli and Shana. Both the Batwa and Karamojong are specifically named in Schedule 3 as indigenous peoples.

The Ugandan Constitution's understanding of the term "indigenous" is, however, one whereby "all Africans are indigenous". As officials at the Ministry of Foreign Affairs observed:

"The Constitution of Uganda does not make any distinction between any of her communities since all of them are indigenous and listed in schedule 3 of the Constitution."

This is not the manner in which the term "indigenous peoples" is understood, either by the African Commission on Human and Peoples' Rights or by international law. The African Commission identifies indigenous peoples according to the following characteristics:

¹⁸ In 1926 significant border adjustments were made in Uganda, including the transfer of Rudolf province from Uganda to Kenya by the British, hence demarcating the frontiers of the present day Uganda. 1926 is also the year in which the Nile treaty for the utilization of the river Nile waters was signed by the British. The Ugandan government therefore seems to rely on a colonial construct, the arbitrary creation of state borders, to determine indigeneity.

“The overall characteristics of groups identifying themselves as indigenous peoples are that their cultures and ways of life differ considerably from the dominant society, and that their cultures are under threat, in some cases to the point of extinction. A key characteristic for most of them is that the survival of their particular way of life depends on access and rights to their traditional lands and the natural resources thereon. They suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society. They often live in inaccessible regions, often geographically isolated, and suffer from various forms of marginalization, both politically and socially. They are subjected to domination and exploitation within national political and economic structures that are commonly designed to reflect the interests and activities of the national majority. This discrimination, domination and marginalization violates their human rights as peoples/communities, threatens the continuation of their cultures and ways of life and prevents them from being able to genuinely participate in decisions regarding their own future and forms of development.”¹⁹

Groups in Uganda who fall under these criteria for indigenous peoples are nomadic or semi-nomadic hunter-gatherers or pastoralists, such as the Batwa, Benet and Karamojong.

The term “ethnic minorities” in Uganda, however, seems to be generally accepted as constituting communities that have been excluded or discriminated against on the basis of age, sex, disability or any other basis created by history, custom or tradition. But even with this understanding, controversy still abounds, for in the experience of many Ugandan communities, history, tradition and customs have conspired at one period or another to render such communities vulnerable. Such is the view of researchers, including Wairama Baker, who posits that “...in Uganda, no group has serious ethnic (numerical), linguistic, religious, economic or political advantage”, hence the challenge in identifying the possible beneficiaries of minority rights protection. Yet for others, such as Kabanankye, a foremost researcher on ethnicity and Batwa community issues, terminology does not seem to deter interrogation of marginalization. He therefore pro-

¹⁹ Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities p. 89, adopted by the African Commission at its 34th Ordinary Session, November 2003.

ceeds to argue that “negative stereotypes about ethnic minorities are so profoundly ingrained that it is rare for organisations claiming to ‘develop’, ‘integrate’ or ‘assimilate’ them to consult them as they are considered ‘backward’ and without opinions worth listening to” (Kabanankye, 2000). In this manner, he raises indicators that are specifically germane to indigenous people, especially under Convention 169 of the International Labour Organization (ILO), the UN Declaration on the Rights of Indigenous Peoples and, more importantly, the African Commission’s Report on Indigenous Populations/Communities in Africa.

In this vein, and according to the Uganda Human Rights Commission (UHRC), a statutory body established under an Act of Parliament with the mandate to advance human rights in Uganda, marginalization and vulnerability are key ingredients in determining the minority situation of a community and group. This view is shared by the Ministry of Gender, Labour and Social Development, which emphasizes in its Social Development and Investment Plan the rights of ethnic minorities to participate meaningfully in the development process without exclusion, discrimination or marginalization.

In an interview with the Secretary and two Commissioners of the UHRC, the Uganda Research and Information Visit Team was seized with more insight as to the reasons behind the state’s resistance to the term “indigenous” peoples in Uganda. It was argued that the state was constrained in accepting the international standards relevant to the term “indigenous” peoples due to a number of reasons:

- The multi-ethnicity of the country and its nationhood project;
- Pressure over land and increased population;
- Government policy that everybody is free to own property in any part of the country, which diminishes the place of ancestral land;
- The fact that some of the cultures pursued by traditional communities were untenable in the pursuit of modernity;
- And the fact that (in the case of the Karamojong who have challenged state security) they cannot fit the picture of a weak “underdog”.

The above assertion, however, seems to be contradicted by some government departments. According to the Terms of Reference of the Ministry of Gender, Labour and Social Development, whose aim is to develop a database of ethnic minorities in Uganda for purposes of mapping and programming, there is an acknowledgement that:

"...despite all the efforts put in the drafting of impressive documents, no tangible interventions have been designed to comprehensively address the challenges of ethnic minority, including establishment of a database where their challenges can easily be captured by policy makers for effective service delivery interventions through accurate targeting."

The Research and Information Visit Team finds that it is correct to argue that indigenous peoples suffer from particular human rights violations, even to the extent that some groups are on the verge of extinction. It is also clear that the negative stereotyping and discrimination to which indigenous peoples are subjected, results in "...dispossession of these peoples' land and natural resources" which, in turn, leads to impoverishment and threatens their cultures and survival as peoples.

The Equal Opportunities Commission report captures the dilemma of the Ugandan government which, while denying the indigeneity of some communities, also recognizes that policy failure and poverty are perpetrated by this lack of coherent understanding of the scope and nature of the challenges experienced by indigenous communities. The emphasis on culture and language rights in this government paper again demonstrates the spotlight around group and identity issues, which are central to the struggle of indigenous peoples across the world.²⁰

The Ugandan government's understanding of indigeneity contrasts with that of the African Commission's Working Group on Indigenous Populations/Communities, which has outlined its approach as follows: "*[the term] Indigenous people has come to have connotations and meanings that are much wider than the question of 'who came first'. It is today a term and a global movement fighting for rights and justice for those particular groups who have*

²⁰ Report of the Legal & Parliamentary Affairs Committee on the Government White Paper, 20 December 2004.

been left on the margins of development and who are perceived negatively by dominating mainstream development paradigms, whose cultures and ways of life are subject to discrimination and contempt and whose very existence is under threat of extinction.”²¹

The foregoing conceptual and terminological confusion seems, however, not to have constrained work on issues affecting these communities in Uganda. A number of civil society organizations (CSOs) and some government departments have adopted a rights-based approach in their work, which focuses attention on the need to deconstruct development as seen from the perspective of the most marginalized group, ensuring that development is facilitative in giving voices to such groups. This widespread approach has in a sense therefore begun to spotlight the vulnerability of groups such as the Batwa in the development logic. The Ministry of Gender, Labour and Social Development, the UHRC and Care Uganda have undertaken specific work focusing on vulnerable peoples. Among the multilateral development agencies, the European Union and DANIDA have specifically designed projects targeting indigenous peoples, particularly the hunter-gatherer Batwa and Benet communities as well as pastoralists.

The Research and Information Visit Team observed, however, that neither government institutions nor mainstream civil society organizations were actively engaged with the developments taking place within the indigenous peoples' movement globally as well as within the African region. It is noted that this non-engagement is not deliberate but represents the internal incoherence and contradictions within the broad indigenous peoples' movement itself around the globe, which is sometimes patronized by few groups and organizations. In the Ugandan context, apart from the United Organization for Batwa Development in Uganda (UOBDU) among the Batwa, very few human rights and even fewer development institutions are aware of ongoing global and regional developments relating to indigenous peoples. The need to open up the space of engagement need not be emphasized.

²¹ *Report of the African Commission on Human and Peoples' Rights Working Group of Experts on Indigenous Populations/Communities*, p. 87

While low participation of civil society organisations (CSOs) in processes relating to standard-setting on indigenous issues is largely due to a lack of awareness, the Ugandan state, on the other hand, rationalizes its non-engagement with the indigenous peoples' movement on the basis of fear of ethnic conflagration and dismemberment, which would upset its long and costly programme for the peaceful coexistence of communities within the Ugandan polity.²²

In conclusion, the Research and Information Visit Team notes that it is clear that, in Uganda, there is a terminological and conceptual confusion insofar as the term "indigenous peoples" is concerned. The government's position as articulated in the Constitution is that all Ugandan scheduled communities are indigenous. Despite the Ugandan state's recognition of all Ugandans as indigenous peoples, it also recognizes that some of its peoples are particularly vulnerable and marginalized. On this basis, some Ugandan government departments provide special attention to indigenous hunter-gatherer and pastoralist communities, as the government departments do recognize the hunter-gatherers' and pastoralists' unique features and experience of marginalization. Indigenous peoples, as understood by the African Commission, are *de facto* seen as a special category by some government departments, though the terminology used is at variance with that of the African Commission and the international community.

The need to provide more coherence and deeper understanding in relation to the terminology of indigenous peoples/communities and ethnic minorities is therefore important if policy options in favour of indigenous communities in the country are to be further pursued.

Many communities suffer from marginalization in Uganda. However, systemic and entrenched marginalization has been the particular experience of most pastoralists and hunter-gatherer communities in Uganda. This report will focus on the Batwa Pygmies and the Karamojong pastoralists as classic cases of institutionalized exclusion of indigenous peoples while also profiling the status of the Benet (hunter-gatherers) and Basongora /Bahima (pastoralists).

²² Interview with Ministry of Foreign Affairs Official

7. THE BATWA PYGMIES: A COMMUNITY ABANDONED

The Batwa Pygmies are an indigenous community believed to be the original inhabitants of the equatorial forests of the Great Lakes Region of Central Africa.²³ According to the 2002 population census, the Batwa population in Uganda is about 6,000, with the majority living in the south-western districts of Kabale, Kisoro, Kanungu, Bundibugyo and Rukungiri.²⁴ Traditionally, the Batwa lived as hunters and gatherers, residing in temporary huts and caves, deriving sustenance from forest resources such as honey, wild fruits, mushrooms and vegetables.²⁵ Each clan collectively owned an area of forest within which they derived the food and herbal medicine for their sustenance.²⁶ According to a study undertaken in 1996, the Batwa reside in about 53 separate settlements falling within 41 villages. On average, each settlement is composed of about 10 households. The household sizes range from single to 17 member households.²⁷

From a religious perspective, the Batwa have strong cultural and traditional beliefs. They believe that, upon creation, God placed them in the forest as their home and appointed them custodians of the forests. As a result, they attach a high level of significance to the forests as their home and place of worship. They maintained special sites in the Mgahinga and Bwindi forests used for ritual purposes. They believe that God dwells in the forest and, by living in the forest, they are nearer to God. Consequently, they consider it a religious obligation to live in harmony with the environment for fear of offending their god by destroying His dwelling place.²⁸

23 Lewis, Jerome. 2000. *The Batwa Pygmies of the Great Lakes Region*, Minority Rights Group International.

24 Uganda Bureau of Statistics. 2002. *National Housing and Population Census Report*.

25 Lewis, Jerome. Op cit.

26 Kabanankye, K. and Wily, L. 1996. *Report on a study of the Abayanda (Batwa) Pygmies of South West Uganda for Mgahinga and Bwindi Impenetrable Forest Conservation Trust*. IK Resource Center.

27 Ibid.

28 Interview with African International Christian Mission in Kisoro

The activities of the Batwa traditionally did not have significant adverse impacts on the environment. The Batwa and other communities carried out logging/pit sawing, hunting and beekeeping in the forests, as the major economic activities.²⁹ Their resource utilization patterns were in tandem with sustainable natural resource use.³⁰

Currently, Batwa communities engage in a wide range of economic activities. Some households raise animals such as goats, sheep and chickens. On average, each household owns at least two animals. Unfortunately, no household is known to own cattle. Animals such as goats and sheep are a source of meat and bride price for the Batwa. A substantial number of Batwa are engaged in self-employment and undertake a range of activities. For example, the Batwa living around the Echuya Forest access raw materials from the forest to make crafts, spears, arrows and walking sticks that are sold to neighboring communities. Others are local herbalists and provide herbs and spiritual treatment to local communities. Another significant proportion of Batwa are engaged in collection of firewood and raw materials for crafts from nearby forests and wetlands, which are sold or exchanged with their neighbors for food.³¹ Some Batwa are employed as stock-minders, laborers in gardens and servants in the households of their neighbors. Others form groups that provide labor and engage in bricklaying or provide entertainment at social functions.³²

7.1 Landlessness

In 1996, a study by Kabanankye showed that more than 82% of the Batwa were landless while a small percentage occupied land as private owners (about 74 households). Around 9.4% occupied land belonging to the government and 10% were living on Church of Uganda land while 80% lived on land belonging to private landlords.³³

29 Lewis, Jerome. Op. cit.

30 Ibid.

31 ACODE (Advocates Coalition for Development and Environment) research.

32 One of the popular groups is called the Mukungu Batwa cooperative group. It was formed to raise capital for purchasing land and buying farm implements. The group provides farm labor, transports foodstuffs to markets and provides entertainment for a fee. Though it gets assistance from the local Church of Uganda Diocese, it is largely self-reliant and self-directed.

33 Kabanankye, K. and Wily, L. Op. cit.

The Batwa have, to a large extent, been made landless and/or been dispossessed of their ownership, use and control of their ancestral lands and the adjoining natural resources. This process of landlessness and dispossession has primarily taken place due to the creation of national parks such as the Bwindi and Mgahinga National Parks in areas traditionally occupied by Batwa people. The establishment of national parks has thus been made feasible by the forcible eviction of Batwa from their traditional lands. Typically, no or little compensation has been provided for the displaced Batwa, be it in terms of cash or as alternative land.

This development has had very negative impacts on the Batwa's livelihood. They have been prevented from upholding their standard of living, based on their access to and utilization of the natural resources found in their ancestral lands, and this has led to serious impoverishment among them. They have also been prevented from maintaining some of their cultural and religious practices, which are linked to specific places on their lands. Access to land and the resources thereon provides the foundation for the Batwa's lifestyle, and without such access their lives and source of livelihood is at stake.

The Administrator of Mgahinga and Bwindi Impenetrable Forest Conservation Trust (MBIFCT), a trust established by the Global Environmental Facility (GEF) in 1991 to conserve biodiversity and transfer benefits to communities adjacent to the park, indicated that the trust has to date purchased over 326 acres of land for distribution to the Batwa.³⁴ However, the Trust still holds the title to these lands,³⁵ a fact which militates against the community's security of tenure. Similarly, the Adventist Development and Relief Agency (ADRA), a religious organization, has bought land for the resettlement of the Batwa but the beneficiaries, most of whom do not have titles to the land purchased for their benefit, are, according to interviewees, mostly those Batwa who demonstrate zeal in embracing the teachings of the associated religion.

³⁴ Interview with the Administrator of the MBIFCT

³⁵ Report of Advocates Coalition for Development and Environment (ACODE). This report also indicates that ADRA's land purchase initiative for the Batwa also does not transfer titles to the Batwa.

7.2 Poor Health Situation

The Batwa's access to healthcare is limited, and the few available statistics indicate that their health situation is below the national average. A medical needs survey undertaken in 1999 observed the lack of safe drinking water, latrines, schools, clinics and access to government healthcare facilities as the major problems faced by the Batwa. As examples it could be mentioned that the child mortality rate for Batwa was 41% while for non-Batwa it was 17% and that the infant mortality rate for Batwa was 21% and for non-Batwa 5%.³⁶ Some of the main reasons for the Batwa's limited access to healthcare facilities are a lack of cash to pay for the consultations and medicine as well as discrimination on the part of staff and patients. The Batwa's limited access to traditional herbs and medicine, due to eviction from their traditional lands, also contributes substantially to their poor health situation.

7.3 Lack of Education

The Batwa also suffer inordinately low rates of primary and secondary school attendance. Despite the fact that many Batwa see education as critical to improving their living conditions, data compiled by UOBDU indicates that, in 2004, there were only five Batwa children in secondary school in the three districts of Kabale, Kanungu and Kisoro, where an estimated 70 percent of the Batwa population in Uganda resides.³⁷ In Kisoro only 30 percent of Batwa children attend primary school, while in Kabale around 40 percent of Batwa children go to primary school.³⁸

The main reasons for non-attendance and abandonment of school appear to be: (a) lack of funds to buy uniforms, school materials and lunch; (b) harassment from other students; (c) lack of land and housing; and (d) the need to support their family in meeting urgent basic needs such as food,

36 Rudd Kristina. 2002. *Development and Primary Health Care in under served Populations: A case study of the Work of Dr. Scott and Carol Kellermann* (Unpublished).

37 **United Organization for Batwa Development in Uganda (UOBDU)**. 2004. *Report about Batwa data*, August 2004, Uganda, p. 3.

38 *Ibid*, pp. 8, 13.

clothing and shelter.³⁹ Even if Batwa children start primary school, the pressure on them to leave is enormous, either in the search for income and food for their families, or because they are forced to live as street children.⁴⁰

The UN Committee on the Rights of the Child has acknowledged the extreme deficiencies in Batwa children's enjoyment of their rights to education and healthcare in Uganda and recommended in 2005 that the government

- a. *Undertake a study to assess the situation and the needs of Batwa children and to elaborate a plan of action, involving leaders of the Batwa community, to protect the rights of those children and ensure access to their social services; and*
- b. *Adopt adequate means and measures to ensure that Batwa communities, including children, are provided with information regarding birth registration procedures, access to health-care facilities and education.*⁴¹

The Ugandan authorities have recognised the difficulties that the poor and marginalised in Uganda face in trying to access education. Uganda's Poverty Reduction Strategy Paper acknowledges that "*low incomes also lead to poor ... and limited education.*"⁴² The state has adopted an Education Strategic Investment Plan (ESIP) which includes strategies for ensuring equal access for all to all levels of education. Within the framework of the ESIP, a Universal Primary Education scheme has been put in place. This scheme consists of scrapping primary school fees and providing things such as books, good sanitary facilities and similar services, but not food or uniforms. Despite these efforts, however, there have been no specific measures undertaken by the Ugandan authorities to ensure the continued access of Batwa children to education, and these children continue to be discriminated against in the provision of education services at all levels.

³⁹ *Ibid*, pp. 8, 13.

⁴⁰ *Ibid*, p. 3.

⁴¹ UN Doc. CRC/C/UGA/CO/2, 23 November 2005, paras 30, 81 and 82.

⁴² **Government of Uganda, 2000.** *Poverty Reduction Strategy Paper: Uganda's Poverty Eradication Action Plan*, Ministry of Finance, Planning and Economic Development, Kampala, 2000, pp. 8, 10.

There was no empirical evidence to demonstrate that an increase in the enrolment of Batwa children at schools had actually been registered.

7.4 Marginalization

Discrimination against the Batwa is still widespread in rural areas. Discrimination, poverty and exclusion directly affect the Batwa's ability to find work and positions of responsibility in Ugandan society. The majority of Batwa communities remain isolated from the rest of Ugandan society due to their poverty and marginalization and this impacts negatively on their possibility of taking advantage of opportunities open to them. Although there is one Batwa senator in Rwanda and several Batwa political representatives in Burundi, there are no known Batwa holding positions of political responsibility in Uganda today. Access to health, education and other social services is also extremely low among Batwa communities, and their housing conditions are extremely dire and precarious.⁴³

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

"The entire community of Batwa are poor and depend on begging as a form of livelihood. Most are landless – out of about 2,000 Batwa pygmies in Western Uganda, only 74 have land – and are widely regarded as people 'with no rights'. Tax exemption for this group is taken as a sign that the government does not recognise them. Although other minorities are represented in parliament through NGOs and CBOs, the Batwa pygmies are not. Other ethnic groups despise them. They rarely eat on the same plate with neighbours. Although, they have been living in isolation, they have not escaped the HIV/AIDS epidemic. Their housing conditions are very poor and they lack access to social services such as running water

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

*and health facilities. This group can be seen as chronically poor. Their children experience high rates of malnutrition and there is societal discrimination against them. As a result of all these problems, they are demotivated as a group and seem to be resigned to their situation.*⁴⁴

7.5 The Batwa in Kisoro

The Research and Information Visit Team met the Batwa in Kisoro, some 300 or so kilometers from Kampala, the Ugandan capital. Having been evicted from the Bwindi and Mgahinga forests to make way for conservation, the 20 or so families were so desolate and had lost all hope of returning to the forest. In response to an open-ended question on whether they wanted to go back to the forest, the representatives of the Batwa indicated that they did not aspire to return to Bwindi. However, they did indicate that they miss having access to the forest for medicines and other forest products and to carry out their cultural practices such as worship. They also indicated that, since they are no longer living their traditional lifestyle in the forest, they are desperately in need of income-generating activities to alleviate their extreme poverty.

While organizations such as Care Uganda are supporting the community by “*Strengthening UOBDU to effectively represent their constituencies; Empowering Batwa women, men & youths with information, skills and exposure to analyse their own situation and do vision-based planning, mobilize and effectively use both internal & externally generated resources, and participate in & influence local development processes; and work with government agencies such as LG & UWA, and the private sector to respond to service delivery and downward accountability for the Batwa minority*”,⁴⁵ the community remains on the periphery of development, and is in dire danger of extinction. The Batwa language in particular is endangered as Batwa have been forced to adopt the languages of their dominant neighbours for survival. For example, the language of the Batwa living in Kabale and Kisoro districts is

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

⁴⁵ CARE Uganda Batwa Empowerment project documents

increasingly becoming more a mixture of Kinyarwanda, Congolese, Kifumbira and Kikiga.⁴⁶

All the Batwa interviewed expressed the fact that they would like to have access to the forest mainly for food to supplement the poor quality of food that they are now getting and also to access fuel wood and indigenous medicinal herbs, which are essential for their well-being.

7.6 Lack of Participation

There has been little or no Batwa participation when development strategies are formulated, and the situation is the same with regard to other types of policies or programmes. There was, for example, no Batwa participation when Uganda's Poverty Reduction Strategy Paper was developed. Most acutely, there is no institutional mechanism by which Batwa people, in the future, could be involved in such political or decision-making processes.

46 Interview with Sam Besigye of Care Uganda at Kabale

8. THE BENET

Another hunter/gatherer community is the Benet people who are found in the north-east corner of the country (near Mount Elgon). They used to be hunter/gatherers but when they began cultivating, they were evicted from their land without compensation or alternative settlement. Their story is also one of expropriation of productive resources and deprivation.

Despite being recognised as legal owners of the area by the British in the 1920s, the Benet saw huge chunks of their land forcibly removed in 1993 after the Ugandan government turned Mount Elgon into a national park. During the eviction process, national park rangers confiscated animals and equipment which the now agricultural-dependent community members relied on for their existence.

In 2005, the Benet commenced legal action against the Ugandan government and won.⁴⁷ In the ruling, Justice J.B. Katutsi of the Ugandan High Court found the occupation of the land by the Uganda Wildlife Authority (UWA) to be illegal and returned the land to the Benet saying that they were the “*historical and indigenous inhabitants*” of the land and were entitled to “*stay and carry out economic and agricultural activities including developing the same undisturbed*”. The judge also issued an injunction forbidding the Uganda Wildlife Authority from “*evicting or disturbing*” the Benet, tasking them to de-list the area as a national park from all maps and literature. The judge also called on the government to redress the lack of “*education, infrastructure, health and social services*” caused when the land was deemed a national park, and awarded the Benet costs.

⁴⁷ The case was a consent judgment based on an improper survey (i.e. a technicality) – and not a judicial decision on disputed merits.

The Benet case, supported by both Action Aid International Uganda⁴⁸ and the Uganda Land Alliance, is the most significant legal case involving indigenous peoples' land rights in a country whose judiciary has been perceived as having a measure of independence from the executive. This case greatly encouraged the Batwa and other indigenous communities that it is possible to fight for their rights through legal means.

48 See www.actioaidinternational/ug.org (assessed 25.9.2006)

9. THE UGANDAN PASTORALISTS

Uganda has several types of pastoralists:

- There are nomadic pastoralists, who are the Bahima (a term referring to all nomadic pastoralists in the south-western part of the country). Some time ago, they were expelled from Uganda and they moved to neighbouring countries, mainly the Democratic Republic of Congo and Tanzania. Following some political problems in those countries, some pastoralists, referred to as the Basongora, returned to Uganda. They are presently occupying a game reserve and coming into conflict with farmers in the region. Some of them are armed.
- The agro-pastoralists who lost all their livestock because of socio-political factors and are now pure farmers.
- Then there are the Karamojong in the north-eastern part of the country. They are transhumant pastoralists, moving only seasonally, and they own sophisticated arms largely obtained from the armory located in their area during various political upheavals in the country.

This section of the report will focus on the historical and current context of the Karamojong and the Basongora.

9.1 The Karamojong: Invincible “Warriors” or Neglected People?

The present day Karamoja region comprises the districts of Kotido, Kaabong, Moroto, and Nakapiripirit (Abim District having been carved out of Kotido). It borders Sudan to the north and Kenya to the east and

north-east. It covers 27,200 km sq. and has a population of 955,245, comprising 10 different social groupings with largely similar dialects, with the exception of a few that are quite distinct. The main social group that is referred to as Karamojong (Karimojong) includes the Matheniko, Pian and Bakora. The other social groups include the Pokot (who also live in Kenya), Tepeth, Nyang'ia, Nyakwae, Jie, Dodoth, Ik (Teuso), Napore and Labwor.

The main ecological characteristic of the region is inadequate and unreliable rainfall, with amounts averaging 350 mm to 1500 mm per annum. The result of this rainfall pattern is a low resource base characterized by seasonal variations in productivity. Since 5 out of 6 crops are bound to fail, the Karamojong practice cultivation to the extent permitted by weather constraints. Without irrigation and given the non-viability of crop cultivation, the only rational form of livelihood in the region is pastoralism, and a type that allows for seasonal mobility of herds to allow for optimal utilization of variable natural resources.

Traditionally, cattle-rustling was a significant pastime since large numbers of livestock were needed for bride-wealth during marriage. But the raids were minor and the impacts were insignificant. However, with the availability of guns and increased underdevelopment of the area, the exercise has become violent and perhaps, for some, an alternative to securing a livelihood. It was reported that some people hire out their guns and get paid from the loot acquired from raids.⁴⁹ People settle scores using guns and often they are not arrested. When they are, they are not charged since mechanisms for the observance of law and order and the rule of law are either dysfunctional or are not synchronized. With the escalation of hostility, there has been an increase in deprivation and further marginalization.

9.2 Pastoralists: Controlled but not Developed

The marginalization of pastoralists dates back to the colonial period when Karamoja region was largely un-administered. During the early part of

⁴⁹ Interview with the Africa Leadership Institute, ADOL and Karamoja Disarmament and Development programme, and Internally Displaced Persons from Karamoja.

the 20th century, long-distance traders exchanged ivory for guns and this essentially started the proliferation of arms. This made livestock acquisition easy and, in the absence of government, the trade went on unnoticed. When the government realized what had been going on, it was decided that, in order to reduce the costs of administration, pacification and conquest, it would control and secure the area. A garrison was established to effect the pacification process, which was achieved by shooting people, burning their houses and seizing their livestock.

Despite the availability of arms in the area, only small raids were undertaken. However, this changed in 1955 when the first big raid was undertaken by the Karamojong on the Teso. It resulted in the death of 22 people and the rustling of 2,000 head of cattle. Thereafter, inter-community raids became regular and this prompted the deployment of a special paramilitary police force in 1961. By independence in 1961, disarmament was aimed at collecting all instruments of violence in Karamoja, including spears.

Since the colonial period, all post-independence administrations have been preoccupied with the need to control Northern Uganda. This being the official policy, an attempt at development did not become part of the agenda. Control often involved punitive measures imposed on a collective basis, even to the present time.

During the colonial period, it was reported that a signboard informed visitors that they were now *“entering Karamoja, the human zoo”*. In later years, the hardship of the area was attested to by the hardship allowance received by personnel working in the area. Because of this neglect, it is as if officially it has been agreed that *“Karamoja can wait for development”*. In recent decades, with few votes being obtained from the region, it was reported that political players insinuated at one time that to win votes they *“can do without Karamoja”*.

9.3 Pian Upe National Reserve: whose Resource?

Besides being neglected, 90% of Karamoja has belonged to the government either as gazetted forest or National Park since the 1940s. One of the

protected areas situated in Karamoja is the 2,304 km² Pian Upe Wildlife Reserve (PUWR). The government is seeking to de-gazette 1903 km² of the Pian Upe Wildlife Reserve for use by an investor for an agricultural and agro-industry project. The investor is the African Integrated Development Association, a company whose activities in Uganda are overseen by a Libyan NGO, the World Islamic Call Society.

It is envisaged that the de-gazettement will take place in a two-tier process. Custody of the land will change from the Uganda Wildlife Authority (UWA) to the Uganda Investment Authority (UIA). Then the UIA will lease it out to a successful investor for development. The transition of land-use change of the PUWR from conservation to an agricultural and agro-industry complex calls for an Environmental Impact Assessment (EIA), which was not undertaken. The PUWR has peculiar characteristics: it was set aside for conservation of biodiversity and is a unique and fragile ecosystem and a source of livelihood for the indigenous pastoral Karamojong people.

The project is estimated to cost US\$ 77 million and aims to facilitate the economic growth of Karamoja region through an integrated area development approach. Intensive irrigated agriculture and agro-processing industries will act as the long awaited mobilizing impetus to accelerate attitudinal change among the Karamojong people from a nomadic life to a life based on settled agriculture. It is envisaged that the project will facilitate development of infrastructure, create employment, improve the livelihood of the Karamojong and bring about enlightenment and modernization of the Karamojong society.

The people of Karamoja, while not resisting the de-gazettement of Pian Upe National Reserve, are claiming that it should revert to them as their ancestral land by right and that they, in turn, could negotiate with the investor.

Procedurally, local people are supposed to obtain legal permits to access resources in protected areas. However, because they are armed and the government has no means of policing forests and Wildlife Parks, all protected areas in Karamoja are presently accessible for dry and wet season

grazing. This may not be the case for long unless significant policy measures are taken.

9.4 Pastoralists or Ranchers: Divergent Development Models

Official misconception about the kind of development needed in the area has also contributed to further neglect and implementation of unsuitable forms of development interventions in the area. From the official side, the dominant development discourse and model being promoted focuses on modern ranching techniques and settling of nomads as the only way of achieving development for pastoralists. An important official is reported to have stated publicly that,

"If you speak in favour of pastoralism, you are being romantic because it is a backward system..." (reported by the African Leadership Institute: 16th July 2006).

In the process, transhumance and nomadic pastoralism as a way of life and livelihood, perceived as a primitive form of livelihood, is disparaged. Conversely, ranching is promoted and supported with the necessary infrastructure – fencing, paddocks, marketing facilities - as seen in southwestern parts of the country. This is to provide models for indigenous pastoralists.

Although 60% of the local revenue in the Karamoja region is derived from the livestock sector, only 5% is invested in the sector. There is no infrastructure, no water facilities, no markets, few schools and few health facilities.

Livestock products are the 4th leading export earner in the form of hides and skins which are exported to Italy, South America and the Far East. Locally, pastoralists also contribute significantly to the national economy.

National budgetary allocations show that 60% to 90% is allocated for the improvement of crops and farming in general, while only 10% is allocated to livestock and fisheries. The pastoralist program does not look at livelihood issues in respect of pastoralists.

The government is not keen on investing in the livestock sector and therefore has not secured land or other resources needed to support the sector. Because of this, in the UNDP Human Development Index, the pastoralist areas score the poorest figures. Hence poverty has a pastoralist dimension. They have no security of tenure, no access to markets, no access to primary healthcare, no water, no schools and no infrastructure. They remain the active poor.

Traditional systems of water management and grazing have all failed and human rights violations escalate through the disarmament exercise with impunity.

9.5 Disarmament, Displacement and Human Rights Violations

Six disarmament exercises have been undertaken in Karamoja since 1961. The first took place during the Obote period 1961/1962, the second in 1964 when the government used militia from other communities to seize livestock. Four hundred soldiers were killed.

Idi Amin's regime of 1971-79 maintained a military presence in Northern Uganda. He is most remembered for enforcing a dress code whereby the wearing of traditional outfits was outlawed in preference for Western clothing. In a protest demonstration against this policy in 1973, the government responded by killing 300 Bakora people. After the overthrow of Idi Amin in 1979, Karamojong broke into the second battalion barracks in Moroto and helped themselves to an unspecified number of guns and ammunition. This ushered in a new era in the politics of Karamoja. It sparked off a series of unprecedented cattle raids that continue to this day against neighbours and each other but, more importantly, against the state which is perceived as an enemy ("*ariang*").

The third disarmament exercise took place in 1983/84 and was launched after a one-month ultimatum to the warriors to hand in their guns. Thereafter, the operation to recover illegal arms led to seizures of livestock,

burning of homes and killing and displacement of many people. Some fled to Kenya with their livestock to escape the onslaught.

In 1986, Museveni came to power and a fourth disarmament exercise aimed at demobilization and disarmament was initiated. This led to egregious human rights violations against the Karamojong. This policy resulted in war between the UPDF (Uganda Peoples Defence Forces) and the warriors. Villages were burnt and people killed. In 1987, 200 soldiers were killed, eight of whom were officers. A formation of a 20 km long stretch of soldiers cordoned off Karamoja and 80 Karamojong were killed. Some Karamojong again had to flee into Kenya to escape further reprisals. After this a pact was reached and hostilities ceased for a while.

In 2001, the government decided to resume the disarmament exercise. In November, Museveni launched the fifth disarmament exercise. People were mobilized for a peaceful disarmament following consensus. Out of 40,000 guns, 8,000 were handed over voluntarily within the first two months. Civil military liaison centres were formed for the exercise to progress. Then the momentum dropped and, in May 2002, the grace period ended and force started to be used. People were arrested and 2,000 guns were forcefully collected. The exercise ended in bloodshed on both sides and it was called off.

In March 2006, the sixth disarmament exercise was carried out. Part of the election promise to dominant communities neighboring the Karamojong was that the community would be disarmed by whatever means possible, including forceful disarmament.

At the time of the Research and Information Visit, disarmament was still ongoing, although the lead funder of the integrated disarmament, DANIDA, had pulled out of the project citing state non-cooperation and lack of transparency. Reports and photographs of people killed and houses burned were presented to the Research and Information Visit Team. Men have fled their homes and women and children have been left without protection. It was reported that this situation has resulted in Karamojong girls being sold for 2,000 Kenya Shillings to Kenya and Sudan so that

their families can get food. Prices for accessing markets and to water livestock have increased.

The Africa Leadership Institute, a Ugandan policy NGO, has advised the government to review the disarmament exercise. They prepared a letter to be signed by the 13 Members of Parliament. But nine of them are new and are still undergoing orientation, so not all of them have agreed to sign the letter.

Overall, disarmament exercises have therefore become mechanisms for human rights violations by security personnel. It was reported that security personnel operate "safe houses"⁵⁰ to intimidate people. This is still going on to the present day.

It is apparent that there has been no willingness on the part of government to follow methods of participatory processes of disarmament. Instead, forceful disarmaments keep being implemented every few years with the same results, failure accompanied by grave human rights violations.

Following disagreement between UNDP and the government of Uganda on the method of disarmament, the former finally decided to suspend its (US\$900,000) operations in the region in July 2006. The Karamoja Disarmament and Development Programme, a five-year programme renewed in March 2006, involved all stakeholders and had strategic development interventions. This has left the community in an even more vulnerable situation, without any plan of what is to happen.

Many young Karamojong have had to flee to Kenya as refugees and their situation could be equally as bad as their IDP (Internally Displaced Persons) relatives.

As a direct consequence of the violence, displacement and human right violations in Karamoja, large numbers of Karamojong have had to flee to urban centres as Internally Displaced Persons (IDPs) and their numbers are increasing by the day. Karamojong IDPs, including many women

⁵⁰ "Safe house" is a euphemism for a non-designated detention and torture building.

with children, are now a frequent sight on the streets of Kampala, Jinja and other big cities as they beg for basic necessities in order to stay alive.

In these urban centres, the Karamojong IDPs live very precarious lives with no sources of livelihood, residing in sub-human slum dwellings and exploited by unscrupulous landlords. The Research and Information Visit Team visited a slum in Bushenyi where more than 800 Karamojong live. Those who manage to beg for 400 Uganda Shillings can sleep under the shelter of a large iron-roofed mud-walled building with an earth floor. Children and babies are charged a further 200 Uganda Shillings. Since many Karamojong cannot afford that daily amount, they sleep and cook outside, even when it rains. It was raining the day the team visited and most of the Karamojong were outside. They were poor, miserable and idle.

During the interviews, all of them talked of discrimination and exploitation in the city and the fact that they had no control over their lives. They all wished to return home, if only the insecurity problem could be resolved.

9.6 The Basongora, Bahima, Banyankole and Banyarwanda Pastoralists: Strangers or Ugandan Returnees?

The Basongora are sometimes referred to as Banyankole, Banyarwanda or Bahima. They comprise nomadic pastoralist returnees from the Democratic Republic of Congo (DRC) and Tanzania who previously fled the civil war that had dogged the country for decades. In March 2006, they were expelled from a National Game Park (Viruga) in the eastern part of the DRC where they had been living since 1995. By 5th May 2006, there were 15,553 Basongora, half of whom were women and children. Of these, more than 1,000 (comprising 259 families) were relocated to an agricultural farm in Bukonzo County in Kasese District with the help of local and international NGOs. But they lacked adequate shelter, food and clean water. Following a prolonged drought in Kasese, many livestock died and the price of meat fell to 200 Uganda Shillings (equivalent to US 12

cents), which meant that people had little access to cash. Even when clean water was available they could not afford to pay 200 Uganda Shillings for a 20-litre jerry can.

Large numbers of other Ugandan pastoralists were evicted from Bukoba in Tanzania in February 2006 after having lived in the area since 1990. During the eviction exercise, there were clashes between the pastoralists and the local police force (Sunga Sungu) as the latter tried to confiscate some livestock. Since February, they have pitched camp at the Nakivale Refugee Settlement Camp, with large herds.

Nomadic pastoralists have also been evicted from Teso Wetlands in the Teso region of Uganda. They have settled in the eastern part of the country with some cattle, but they have become infected with foot and mouth disease. The herdsmen have resorted to selling off their cattle cheaply to traders from different parts of the country to avoid total losses since they do not have drugs and vaccines to control the disease. However, the two districts were under quarantine as of January 2006 as a result of an outbreak of foot and mouth disease. The quarantine restricts movements of livestock from the districts and also the sale of unpacked dairy and other livestock products.

Quarantine regulations are violated both by the issuing authorities and by pastoralists themselves. Some people move their livestock at night (which is illegal) to selling points and, when they are caught, the livestock is impounded and some cattle starve to death (Monitor, 27th May, 2006). On conviction, owners are charged 7,000 Uganda Shillings. Livestock is also impounded when the owners fail to produce papers to prove purchase or ownership. Since owners of livestock do not ordinarily have papers proving ownership, it is clear that many pastoralists find themselves robbed of their livelihoods and their human rights violated.

Many pastoralists do not believe that the quarantine regulations are genuine and they rather believe that they are simply an unfair means of political control of livestock movement. This view was supported by planned demonstrations to the Minister in Charge of Agriculture, Animal

Husbandry and Fisheries and by seeking audience with the President (Daily Monitor, 26th June 2006).

Pastoralists are also threatened with evictions since they are accused of fueling insecurity in the areas into which they have moved. They are also accused of degrading the land through overgrazing and of causing deforestation by cutting down trees for charcoal burning.

Following a long drought in Isingiro and Rakai districts in southern Uganda, lakes and swamps have started to dry up. Some of the pastoralists have requested that the management of Lake Mburo National Park allow them to access the Game Park. Some have also requested that the park be de-gazetted. However, the area is a proposed Ramsar Site of special significance (Monitor, p.13, 16th June 2006) whose protection suggests the involvement of all stakeholders.

10. STATE RESPONSES TO ADDRESSING DEVELOPMENT CHALLENGES

Despite the resistance of the government of the Republic of Uganda to the term “indigenous peoples”, it has actually taken some action to address specific situations relating to the situation of indigenous peoples in the country. A few of these measures are listed below.

10.1 A Progressive Constitution

The Constitution of Uganda is one of the most progressive constitutions on the continent. It was created through a participatory process and all communities have their names imprinted on it. Those who were originally forgotten are continuously being added to it. This demonstrates a willingness on the part of government to be inclusive and proactive and shows that there is room for dialogue on difficult situations, including the unique and challenging situation of indigenous peoples/communities.

10.2 Ministry in Charge of Karamoja Affairs

The Ministry in Charge of Karamoja Affairs was an initiative started in order to focus on and address the unique problems and development challenges of Karamoja and its peoples. A Cabinet Minister from the area with long experience in seeking solutions to problems specific to pastoralists was put in charge. Despite the good intentions, however, the implementation of the planned programs was poorly carried out, leading to mismanagement and collapse. Ultimately, the well-designed programmes ended up making little change to the livelihoods of the people for which they were intended.

10.3 Alternative Education for Karamoja

Alternative Education for Karamoja was a very successful pilot education programme uniquely suited to the nomadic way of life. Although it was supported by EU funding, it was carried out under the auspices of the Ministry of Education. Few countries in the region can boast of such successes as those achieved through this unique experiment. However, because of the failure of government to address the conflict and insecurity in the region, it may dilute the positive intentions.

10.4 Equal Opportunities Commission (EOC)

Despite official denial of the concept of indigenous peoples, Uganda recognizes the diversity of its communities and realizes that stratification exists on the basis of history, culture, tradition, socio-economic and regional schism. It is because of this realization that Uganda has decided to:

- Remove discrimination;
- Redress the imbalance as reflected in Article 31 (2) of the Constitution "*all human beings are born free and equal in dignity and rights...*"
- Take affirmative action into the next phase of completing the unfinished business of ensuring the marginalized peoples (and their communities), the voiceless, are heard very loud and clear; the powerless are empowered; lack of access is improved through promotion of equal opportunities for all, and equitable allocation of productive resources and wealth (Concept paper of the Ministry of Labour, Gender and Social Development, 19th Sept. 2005, p. 5).

To implement the principles outlined in the concept paper, policies are expected to be formulated and administrative measures put in place to increase awareness of equal opportunities practices and help in the elimination of unfair discrimination. Offenders will also be punished in order to discourage the trend of discrimination, as opportunities are created for the vulnerable and marginalized groups to access and utilize the available resources.

The Commission is still too young for its efficacy to be assessed, and serious human rights violations continue to take place.

10.5 De-gazettement of Protected Areas

De-gazettement of some areas (earmarked during the colonial period as game areas) to be set aside for human settlement has been applauded as a positive action since it considers human beings to be more important than wildlife. Yet de-gazettement for investors with no appropriate investment measures being implemented is yet another flaw on the part of the state.

10.6 Poverty Eradication Action Plan and the Recognition of Pastoralism

The Revised Poverty Eradication Action Plan (PEAP) substantially recognizes pastoralism as a critical mode of production which needs budgetary support under the Medium Term Expenditure Framework, aimed at addressing pastoralists' poverty.

11. RECOMMENDATIONS

In light of the above findings, the Working Group on Indigenous Populations/Communities makes the following recommendations:

11.1 Recommendations to the Government of Uganda

1. Recognize the Batwa and the pastoralists in Uganda as indigenous peoples in the sense in which the term is understood in international law, and make appropriate legislative provision in this respect.
2. Ratify ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries.
3. Return portions of protected areas to indigenous communities, and institute sharing of benefits accruing from the use of resources in those areas.
4. Provide compensation for lands that were alienated without consultation or consent, as a way of reducing the vulnerability of indigenous peoples.
5. Conduct research on the activities of the Uganda Peoples Defense Forces (UPDF) soldiers undertaking the disarmament programme with a view to controlling their brutality and human rights violations, especially in the Karamoja Region.
6. Institute a regional disarmament, small arms and weapons control and conflict resolution process that involves the participation of northern and north-eastern neighbours, particularly Kenya and Sudan.
7. Involve and encourage traditional/indigenous leadership and other indigenous management structures in order to increase community participation and informed consent on matters affecting their lives, including disarmament.

8. Work with DANIDA to reinstate the DANIDA-funded integrated disarmament programme.
9. Address the problem of Internally Displaced Persons (IDPs) and protect them from exploitation and human rights abuses in urban centres.
10. Address the situation of indigenous women and children among the IDPs in urban slums by supplying them with basic needs such as food and shelter.
11. Address the very vulnerable situation of indigenous women in general.
12. Implement the Equal Opportunities Framework in order to address the needs and rights of indigenous communities in Uganda, particularly the hunter-gatherers and pastoralists.
13. Conduct a study on the Batwa as recommended by the Committee on the Rights of the Child (CRC) and develop a plan of action – involving the Batwa at all stages – to address all aspects of discrimination and marginalization.
14. Adopt adequate means and measures to ensure that Batwa communities, including children, are provided with information regarding birth registration procedures, access to healthcare facilities and education.
15. Ensure that effective and culturally sensitive education programmes are in place in the Karamoja Region.
16. Replicate positive experiences developed from the Alternative Education for Karamoja programme in other similar areas.
17. Ensure the effective representation of indigenous peoples in local and national governance structures.

11.2 Recommendations to the African Commission on Human and Peoples' Rights

1. Conduct a Mission to Uganda to deepen dialogue with the government on various human rights issues affecting indigenous peoples/communities in the country.

11.3 Recommendations to the International Community

1. Follow up on successful programmes and replicate positive lessons. The Alternative Education for Karamoja programme has remained at the pilot stage for ten years. The successes realized ought to be implemented in other similar areas.
2. Reinstate the DANIDA-funded integrated disarmament programme.

APPENDIX 1 - TERMS OF REFERENCE

Research and Information Country Visits form part of the activities stipulated in the work plan of the Working Group of the African Commission's Working Group on Indigenous Populations/Communities. These visits are to be undertaken by members of the ACHPR Working Group on Indigenous Populations/Communities and/or by associated experts from the resource network. They will be people who are very familiar with the situations and live near the proposed countries. The Uganda Research and Information Country visit will be undertaken by Naomi N. Kipuri and Korir A. Singoei.

The visits are generally intended to facilitate the gathering of additional information, to increase sensitisation about the African Commission's report on indigenous populations/communities and other activities that are of relevance to the human rights situation of indigenous peoples in Africa.

Objectives

The main objectives of the research and information country visits are to:

- Disseminate information to governments, regional/local authorities, national human rights institutions, human rights organizations, international agencies, indigenous peoples' organizations, the media etc. about the report and position of the African Commission on the rights of indigenous populations.
- Gather information about the human rights situation of indigenous peoples.
- Submit a report to the ACHPR.

The aim is to organize small information meetings in connection with the Research and Information Country Visits with the different stakeholders.

Issues to be addressed

The Research and Information Country Visits will examine all relevant issues relating to the human rights situation of indigenous peoples in the country visited. The issues to be examined depend on the situation of the indigenous peoples in the specific country to be visited, and the focus may be different from country to country. However, as a general rule the visits should include key issues such as:

- Constitutional recognition
- Legislative protection
- Rights to political representation
- Political, social and economic marginalization
- Rights to land and natural resources
- Rights to development
- Rights to education, health, and other social services, etc.
- Protection from discrimination.
- Government programmes aimed at improving the lives of indigenous peoples
- Gender issues with specific relevance to indigenous peoples.

If relevant, issues such as indigenous peoples' positions in situations of war and armed conflict (including the situation of women) should be included.

Terms of reference (TOR) specific to Uganda

In the case of Uganda, the Research and Information Visit will seek to update the African Commission on the human rights situation of the Batwa Pygmies of Western Uganda as well as the situation of pastoralists in the north and north-eastern parts of the country. These are communities who are found in remote parts of the country and who are alleged to have experienced isolation and political, social and economic marginalization. Consequently, they have not adequately enjoyed human rights in the same measure as the rest of the mainstream population groups. The Research and Information Visit will seek to identify the challenges faced by

these communities and by the government and other stakeholders in addressing the human rights situations of these indigenous communities.

Duration

The Uganda Research and Information Visit will take place from 14th to 26th July 2006. Five days have been allocated for planning and report writing, bringing the total number of days for the visit to 18.

Methodology

The Research and Information Visit will employ a range of methods to obtain the relevant qualitative and quantitative information. First, secondary sources from books, reports and other documentation will be consulted whenever these are available and they will be referenced. Structured but flexible interviews will be used during the one-to-one interviews with representatives of the state and NGOs and with the target communities. At least five international organizations, five national NGOs and five Community-Based Organizations will be consulted/interviewed. Further, the meetings with the communities and the media will adopt a focus group discussion approach so as to generate maximum information in a non-formal context.

Reporting

From the Research and Information Visit, a report will be prepared and submitted to the Chairperson and other members of the Working Group on Indigenous Populations/Communities and to the Secretariat of the African Commission; thereafter the report will be presented by the Chairperson of the Working Group to an Ordinary Session of the ACHPR for consideration and adoption.

After adoption, the report will be published in the name of the African Commission, acknowledging the contribution and support of other partners and stakeholders thereto.

The report will contain findings, analysis and conclusions as well as recommendations on how to improve the human rights situation of indigenous populations in Uganda. It will also contain recommendations to the ACHPR.

The report must be submitted to the Chairperson of the Working Group on Indigenous Populations/Communities no later than one month after the completion of the visit.

APPENDIX 2 – PROGRAMME WITH PEOPLE INTERVIEWED

Persons met	Date	Place
Frank Muhereza	15/07/06	Centre for Basic Research
Richard Nabudere	25/07/06	Police H/Quarters, Kampala
Peter Amodoi	27/07/06	Danida, Kampala
Oscar Okech	15/07/06	Africa Leadership Inst. Kampala
Sam Besigye	16/07/06 26/07/06	CARE Uganda, Kisoro
Sarah Namuli	25/07/06 29/07/06	Northern Uganda Data Centre
Wilson Oriemo	25/07/06	Northern Uganda Data Centre
Tobias Onweng Angua	17/07/06	Uganda Manant Inst. Kampl.
Gordon Mwesigye, Sec. General	25/07/06	UHRC, Kampala
Nathan Byamukama	25/07/06 29/07/06	UHRC, Kampala
Prof. Walipo	25/07/06	UHRC, Kampala
Christine Bisabwa	25/07/06	UHRC, Kampala
Rosette Nyirinkindi Katungye	14/07/06 24/07/06	Ministry of Foreign Affairs Kampala
Benon Kayemba	14/07/06 24/07/06	Ministry of Foreign Affairs Kampala
Solicitor General	14/07/06	Kampala
Hon. Omwony Ojwok	15/07/06	Ministry of Finance
David Pulkol	24/07/06 29/07/06	Afr. Leadership Institute
Osinde Owor	28/07/06	Ministry of Gender
Kabann Kabanankye	14/07/06	Researcher, Kampala
J. Mboya	14/07/06	Researcher, Kampala

Allen Musabyi		CARE, Uganda - Kampala
Darlington Lorika	14/07/06	ADOL, Kampala
Sarah Nambasa	14/07/06	Legal Off. Min. of Justice
Penninah Zaninka	26/07/06	UOBDU, Kisoro
Juliet Nakato	14/07/06	MRG, Kampala
Abel Tukahirwa	26/07/06	Bwindi/Mgahinga C.Trust
Timothy Turahira	26/07/06	AIC Mission
Juliet Egonyu	29/07/06	FIDA, Kampala
Arthur Bainamugisha	29/07/06	ACODE, Kampala,
D'Pollak Oyolo	27/07/06	KIU, Sheraton, Kampala
Hon. Terrence Achia Sodium	28/07/06	Kampala
James Nangwala	28/07/06	Kampala, Benet case Lawyer

APPENDIX 3 — PEOPLE MET IN GROUPS

18 Batwa community members at Kisoro.

These comprised more than 25 women, men and children met just on the outskirts of Kisoro.

Eight Karamojong community members, IDPs in Kampala.

- Mzee Lopei
- Lowua Francis
- Sara Namedi
- D. Mario
- Elizabeth Elau
- Ana Mangat
- Nangiro Luke
- Hon. Achia Terrence

APPENDIX 4 — REFERENCES

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