

Supplemental Report  
on the  
First Periodic Report of Uganda  
to the  
African Commission on Human and Peoples' Rights

State Party report submitted May 2006

Submitted by



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## **EXECUTIVE SUMMARY**

This supplemental report has been prepared by the United Organisation for Batwa Development in Uganda (UOBDU) and the international NGOs the Forest Peoples Programme (FPP) and International Work Group for Indigenous Affairs (IWGIA), in order to provide the African Commission on Human and Peoples' Rights with information about the situation of the indigenous Batwa people of Uganda and to comment on Uganda's First Periodic Report to the Commission.

Originally, the Batwa (so-called 'Pygmy' peoples) were forest-dwelling hunter-gatherers, based in the Great Lakes region of central Africa, and they are widely accepted as the original inhabitants of the region. The estimated Batwa population is 80,000 to 100,000 people, with approximately 6,700 living in Uganda, mainly in the south-west. The Batwa self-identify as indigenous, however in violation of its international obligations and despite the Commission's recognition of the Batwa as an indigenous people in Africa, Uganda does not recognise them as such. Indeed, the government simply states in its Periodic State report that "Uganda is composed of 56 different indigenous communities. These groups are segregated under four major ethnicities, which are, the Bantu, the Nilotics, the Nilo Hamites and the Luo."

The Periodic State report neglects to mention the Batwa people at all, despite the fact that they remain extremely vulnerable and marginalized due to the discrimination, landlessness, poverty and social exclusion they face. The Batwa experience systematic and pervasive discrimination from government and other sectors of society, and their rights as indigenous peoples are neither recognized nor respected in practice. This failure to recognize the Batwa's collective rights also contributes to violations of their individual rights. Uganda has failed to adequately address the wholesale dispossession of the Batwa's traditional lands, territory and resources, brought about primarily through the government's creation of national parks, and does not have in place any measures to address their resulting dire living conditions – including conditions tantamount to involuntary servitude – or their discrimination and socio-political exclusion within Uganda society.

Based on the information contained in this report, the following series of suggested questions are respectfully proposed:

### **Preliminary Comments**

*Question 1: Why does the Periodic State report have no mention or coverage of the Batwa?*

### **Right to Existence as Peoples**

*Question 2: What legislative, administrative and other measures is Uganda taking to officially recognize the Batwa as indigenous peoples, as that term is understood in international law?*

### **Indigenous Land Rights**

*Question 3: What measures is Uganda taking to recognize and protect the collective rights of the Batwa under Articles 20, 21, 22 and 24 of the Charter?*

*Question 4: What is the government doing, in practice, to recognize the Batwa's rights to their ancestral lands and territories? Does it intend to restore their right to own, control and use their traditional lands and resources and to compensate them for the loss of any lands which for factual reasons cannot be restored?*

*Question 5: What process does Uganda intend to follow to resolve the issue of Batwa rights to land and resources, and how will the Batwa's effective participation be assured?*

### **Right to Work and Prohibition of Slavery**

*Question 6: What is the government doing to decrease the unemployment rates and eliminate employment exploitation of the Batwa, some of which could be classified as contemporary forms of slavery?*

*Question 7: What income-generating projects is the government establishing to promote Batwa rights, and how is it ensuring these projects properly accommodate the Batwa's interests, culture and way of life?*

### **Economic, Social and Cultural Rights and Right to Non-Discrimination**

*Question 8: What measures is Uganda taking to ensure that Batwa people have full and equal access to healthcare services and medicine, as guaranteed by Article 16 of the Charter?*

*Question 9: What measures is Uganda taking to ensure that disaggregated quantitative and qualitative data on the Batwa's healthcare situation is gathered to help determine and meet their special needs?*

*Question 10: What measures is Uganda taking to combat the extraordinary rates of illiteracy among the Batwa and to ensure that all Batwa children enjoy full and equal access to education, as guaranteed by Article 17 of the Charter?*

*Question 11: What measures does Uganda propose to implement to respond to the high drop-out rate of Batwa children from schools, and will it implement special measures to respond to the special needs of Batwa children's education as was done for the pastoralist community in Karamoja?*

*Question 12: What measures will Uganda take to ensure that disaggregated quantitative and qualitative data on the Batwa's education situation is gathered to help determine and meet their special needs?*

*Question 13: What measures is Uganda taking to ensure that the Batwa's dire housing situation, including their inadequate housing standards and their lack of security of tenure, are addressed in law and in practice pursuant to Article 14 of the Charter?*

### **Right to Participation in Political Affairs and Development**

*Question 14: What institutional mechanisms are being put in place to ensure full and effective Batwa participation in decisions that affect them?*

## **The Submitting Organizations**

1. Uganda's first periodic report ("Periodic State report") was submitted in May 2006 pursuant to article 62 of the African Charter on Human and Peoples' Rights ("the Charter"), and will be examined by the African Commission on Human and Peoples' Rights ("the Commission") at its 40th session in November 2006.
2. The United Organization for Batwa Development in Uganda, the Forest Peoples Programme and the International Work Group for Indigenous Affairs ("the submitting organizations") respectfully submit this supplementary report to the Commission in order to provide it with information about the situation and rights of the indigenous Batwa peoples in Uganda and to comment on Uganda's Periodic State report.
3. The United Organisation for Batwa Development in Uganda (UOBDO) aims to support Batwa in South West Uganda to address their land issues and other socio-economic problems and to help them develop sustainable livelihoods. UOBDO, registered in 2001, is a national NGO formed by Batwa. All Batwa are eligible to join and the organization's governing board is made up of Batwa from three districts of South West Uganda who are elected at UOBDO's periodic General Assemblies.
4. The Forest Peoples Programme (FPP) is an international human rights organisation founded in 1990 and based in the United Kingdom. FPP supports forest peoples in their struggle to control the use of their lands and resources, and works to put human rights issues at the heart of the debate about forests. FPP helps to create space for forest peoples to negotiate their demands through their own representative institutions and to determine their own futures. FPP supports forest peoples to develop sustainable activities that enhance their dignity and the protection of the environment. FPP has been working with the indigenous Batwa of the Great Lakes region since 1995 and with the Ugandan Batwa since 1999.
5. The International Work Group for Indigenous Affairs (IWGIA) is an international human rights organisation based in Denmark. IWGIA is a non-profit, politically independent, international membership organisation, and was established in 1968. The aim of IWGIA is to support indigenous peoples worldwide in their struggle for self-determination. IWGIA's activities focus on human rights work, documentation and dissemination of information, and project activities in co-operation with indigenous organisations and communities. IWGIA has worked with indigenous issues in Africa since the 1990s.

### **I. Preliminary Comments**

6. The submitting organizations note, firstly, that the Periodic State report fails to address the Charter as required, and instead reports on the provisions of the International Covenant on Civil and Political Rights. Indeed, it appears that the report is only a slightly modified version of Uganda's Initial State report to the Human Rights Committee, dated 14 February 2003.<sup>1</sup> Therefore, it is difficult to provide comments on the report as it relates to the guarantees set forth in the Charter.

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<sup>1</sup> UN Doc. CCPR/C/UGA/2003/1

7. The Periodic State report makes no mention of the Batwa as indigenous peoples in Uganda. Indeed, it purports to identify all Ugandans as ‘indigenous’ by stating in paragraph 3.1 that “Uganda is composed of 56 different indigenous communities. These groups are segregated under four major ethnicities, which are, the Bantu, the Nilotics, the Nilo Hamites and the Luo.” Information about the Batwa and their human rights situation is therefore wholly lacking in the Periodic State report.

### Suggested Question

**Question 1:** Why does the Periodic State report have no mention or coverage of the Batwa?

## II. The Indigenous Batwa people: past and present

8. Originally, the Batwa were forest-dwelling hunter-gatherers, living and practising a traditional cultural and economic way of life in the high mountainous forest areas around Lake Kivu and Lake Edward in the Great Lakes region of Central Africa. The Batwa are widely accepted as the first inhabitants of the region, who were later joined by farmers and pastoralists. The Batwa are still to be found living in Rwanda, Burundi, Uganda and eastern Democratic Republic of Congo, with an estimated total population of 86,000 to 112,000. As their traditional forested territories were destroyed by agriculturalists and pastoralists or gazetted as nature conservation areas, the Batwa were forced to abandon their traditional lifestyle based on hunting and gathering. Some were able to develop new means of survival as potters, dancers and entertainers. Others became dependent on occasional work and begging. Virtually all were rendered poor and landless.
9. As their traditional forested lands and territories fell under the control of agro-industry and conservation agencies, the Batwa became squatters living on the edges of society. They encountered prejudice and discrimination from the dominant society, which referred to them as “pygmies”. This marginalized existence and discrimination continues largely unabated today. Their customary rights to land have not been recognized and they have received little or no compensation for their losses, resulting in a situation where the majority of Batwa remain landless and are living in extreme poverty.<sup>2</sup>
10. While accurate figures are difficult to determine and estimates from different sources vary, it is believed that approximately 6,700 Batwa now live within the present State boundaries of Uganda, mainly in the south-west region. These Batwa are former inhabitants of the Bwindi, Mgahinga and Echuya forests, from which they have been evicted and excluded over time by State action. The English colonial administration established conservation zones on these traditional forested territories in the 1930s, and as recently described by the Commission,

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

*The establishment of the Bwindi and Mgahinga National Parks for gorillas in 1991 enabled the authorities to evict the Batwa definitively from the forest.*<sup>3</sup>

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

*In the proposed project area there is a small group of Batwa (ca. 600-1000 people, less than one percent of the total target population), forest dwellers who once occupied what are now the BINP and MGNP. When these areas became Forest and Game Reserves in the 1930's, with human occupation and hunting formally banned, these forest dwellers began to shift out of the shrinking forest area and began spending more time as share-croppers and laborers on their neighbors' farms. However, they still had access to many forest resources and the forests continued to be economically and culturally important to them. The gazettement of the areas as national parks has virtually eliminated access to these opportunities for all local people, but the impact has been particularly harsh on the Batwa because they are landless and economically and socially disadvantaged, and have few other resources or options.*<sup>4</sup>

12. At the time the MBIFCT was established, the World Bank required the Government of Uganda to provide an Indigenous Peoples Plan to ensure the participation and benefit of the Batwa.<sup>5</sup> The World Bank approved this plan and provided funding four years later for the commission of an anthropological and socio-economic study of the local Batwa to assess the need for revising the Indigenous Peoples Plan.<sup>6</sup> The resulting report recommended recognizing Batwa use rights to certain resources in the parks, rights of passage to sacred sites, the attribution of forest and farmland to evicted communities, capacity building, and educational, health and economic assistance. However, these recommendations were not fully implemented. Instead,

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<sup>3</sup> African Commission on Human and Peoples' Rights, *Report of the Working Group on Indigenous Populations/Communities* (2005) (hereafter 'WGIP 2005 report'), p.22

<sup>4</sup> World Bank, *Uganda: Bwindi Impenetrable National Park and Mgahinga Gorilla National Park Conservation*, Global Environment Facility, Project Document 12430 – UG. Global Environment Coordination Division, World Bank, Washington DC, (January 1995), Annex 6. Further information on the devastatingly negative impact of these World Bank/GEF funded conservation areas on the Batwa of south west Uganda can be found at: Kenrick, J., and UOBDU, *The Batwa of South West Uganda: World Bank Policy on Indigenous Peoples and the Conservation of the Bwindi and Mgahinga National Parks*, Forest Peoples Programme, Moreton-in-Marsh, 2000; Jackson, D., *Implementation of international commitments on traditional forest-related knowledge: Indigenous peoples' experiences in Central Africa*, Forest Peoples Programme, Moreton-in-Marsh 2004; Kabanankye, K. and Wily, L, *Report on a Study of the Abayanda Pygmies of South Western Uganda*, Kabale, Mgahinga and Bwindi Impenetrable Forest Conservation Trust, 1996; Lewis (2000), above note 2; Nelson and Hossack (2003), above note 2.

<sup>5</sup> World Bank Operational Directive 4.20

<sup>6</sup> Kabanankye and Wily report, above note 4.

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

13. The parks were created without consulting with or seeking the consent of the indigenous Batwa as required by international law. A statement by a representative of the MBIFCT at the 5<sup>th</sup> World Park Congress in 2003 confirms that "As National Parks, access to forest products was denied to the communities ... This government action without consultation with locals created a lot of local communities' hostility against the protected areas."<sup>7</sup>
14. It was not until this non-consensual park creation occurred that the violation of Batwa land rights became fully evident. As one researcher has noted, "despite the gazetting of their forests [in the 1930s], Batwa continued to consider Bwindi, Mgahinga and Echuya forests as their own during this period. With the establishment of Bwindi and Mgahinga as national parks under the administration of Uganda National Parks in 1991, the Batwa came to realize how thoroughly they had lost their lands and resources."<sup>8</sup>
15. The most acute impact of the Batwa's forced eviction and exclusion from their ancestral lands is severe landlessness. After the park creation in 1991, 82 percent of Batwa were entirely landless, living either as squatters on the land of others, on government land or on church land.<sup>9</sup> Even as recently as 2004, 44 percent of Batwa were found to not even have land on which to build a hut,<sup>10</sup> and landless Batwa have nowhere to go.
16. As a result of their exclusion from their ancestral forests and the loss of their traditional lifestyle, the majority of Ugandan Batwa also suffer severe poverty, discrimination and socio-political exclusion. The Batwa are seen by the dominant society as backward and childish, incapable of speaking for or representing themselves. They are presumed to be thieves and are considered dirty, ignorant and immoral. They are often not allowed to draw water from a well at the same time as others, and intermarriage with other ethnic groups is frowned upon.<sup>11</sup>
17. Such discrimination is still widespread in rural areas and impacts negatively on Batwa lives on a daily basis. Discrimination, poverty and exclusion directly affect the Batwa's ability to find work and positions of responsibility in Ugandan society. The majority of Batwa communities remain isolated from the rest of Ugandan society due to their poverty and the mutual distrust that exists between the Batwa and Uganda's other ethnic groups, as well as their lack of access to information and low self-confidence in being able to take advantage of opportunities open to them. Although there is one Batwa senator in Rwanda and several Batwa political representatives in

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<sup>7</sup> Geo Z. Dutki, *Mgahinga and Bwindi Impenetrable Forest Conservation Trust Fund*, Vth World Parks Congress: Sustainable Finance Stream, September 2003, Durban, p.2

<sup>8</sup> Lewis, above note 2 at p 20.

<sup>9</sup> Kabanankye and Wily, above note 4 at p. 116.

<sup>10</sup> United Organisation of Batwa Development in Uganda (UOBDU), *Report about Batwa data*, August 2004, Uganda, p.3.

<sup>11</sup> Lewis, above note 2 at pp. 13-18.

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.

18. 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 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.<sup>12</sup>*

### III. The Charter

19. Uganda ratified the Charter on 10 May 1986.

#### A. Right to Existence as Peoples

##### *Article 20 – Right of Peoples to Existence*

20. Article 20 of the Charter guarantees to all peoples the right to existence.
21. Despite this, Uganda has neglected to recognize the existence of the Batwa as indigenous peoples pursuant to international law. For example, Uganda's Initial State report to the UN Committee on the Rights of the Child in 1996 stated that no ethnic group was officially regarded as indigenous in the country.<sup>13</sup> Similarly, as indicated above, Uganda's Periodic State report makes no mention of the Batwa and simply characterizes all 56 ethnic groups in Uganda as 'indigenous'. The cumulative effect of this has been to render the Batwa unrecognized as indigenous peoples, unable to enjoy their collective rights, and without proper or any recourse to remedies for violations of those rights.
22. The Commission has pointed out that while there is no single definition of indigenous peoples, there are internationally accepted indicators which can help to identify who

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<sup>12</sup> 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>

<sup>13</sup> UN Doc. CRC/C/3/Add.40 (17 June 1996), para 283

the indigenous peoples of Africa are. In this respect, the Commission has noted the important distinction that must be made between people who are indigenous or aboriginal to Africa in a general sense and peoples who are indigenous in the modern analytical sense contemplated by international law. A proper analysis of indigenesness for purposes of international human rights law and protection thus focuses

*on self-definition as indigenous and distinctly different from other groups within a state; on a special attachment to and use of their traditional land whereby their ancestral land and territory has fundamental importance for their collective physical and cultural survival as peoples; [and] on an experience of subjugation, marginalization, dispossession, exclusion or discrimination because these peoples have different cultures, ways of life or modes of production than the national hegemonic and dominant model.<sup>14</sup> (emphasis in original)*

23. While the notion of aboriginality, or first inhabitant status, has been widely dismissed in recent years as a defining characteristic of groups that constitute indigenous peoples in international law, the Batwa are recognized as even meeting that definition. “Oral traditions common to all major ethnic groups in the region, as well as western historians, concur in identifying the Batwa as the first inhabitants [of the Great Lakes region],” and even Ugandan school books describe them as such.<sup>15</sup> The Commission has likewise recognized the aboriginality of Central Africa’s so-called pygmies as ‘very clearcut’.<sup>16</sup>
24. Applying the modern analytical framework in the African context, indigenous peoples are “first and foremost (but not exclusively) different groups of hunter-gatherers or former hunter-gatherers and certain groups of pastoralists.”<sup>17</sup>
25. Commencing with self-definition, it is clear that the Batwa identify as indigenous, an association that has been supported by several studies and official documents.<sup>18</sup> The Commission itself has observed that

*Those identifying as indigenous peoples in Africa have different names, are tied to very differing geographical locations and find themselves with specific realities that have to be evoked for a comprehensive appreciation of their situation and issue. The peoples who have identified with the worldwide indigenous peoples movement in their struggle for recognition of fundamental human rights are mainly different groups of hunter-gatherers and pastoralists...Among hunter-gatherer communities, the ones that are best known are the Pygmies of the Great Lakes region.<sup>19</sup>*

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<sup>14</sup> WGIP 2005 report, above note 3 at pp. 92-93

<sup>15</sup> Lewis, above note 2 at p.7

<sup>16</sup> WGIP 2005 report, above note 3 at p. 92

<sup>17</sup> Id, p. 89

<sup>18</sup> Luling, V. and Kenrick, J., *Forest foragers of tropical Africa. A dossier on the present condition of the ‘pygmy’ peoples*, Survival International, London. pp.vi and 1

<sup>19</sup> WGIP 2005 report, above note 3 at p. 15

26. Similarly, the Batwa have a very strong and long-standing attachment to their traditional lands, which since time immemorial and prior to their exclusion formed an integral part of their economic, social and cultural modes of expression and survival. As noted in the World Bank commissioned anthropological and socio-economic study of the Batwa,

*The resource area of each group [of Batwa] was large, covering sometimes some hundreds of square kilometres, allowing for a very low person/resource density and a diversity of resources. The members of each group possessed a unique knowledge and affiliation to their own resource area, acknowledged by neighbouring groups as 'belonging' to the home group. In this way, territory, or what [Batwa] themselves refer to as umwanya waacu 'our place' evolved, consolidated and was maintained in a stable condition over not hundreds, but thousands of years.<sup>20</sup>*

27. Thus, for millennia, the Batwa maintained and developed a relationship with specific areas of forest land. "The forest was their home. It provided them with sustenance and medicines, and contained their sacred sites," among other things.<sup>21</sup> Moreover, the Batwa continue to view their traditional territories as their property – in its broadest sense – and consider that they are unjustly denied their right to maintain and further develop their various relationships to those territories by virtue of Uganda's acts and omissions.
28. Finally, as noted above and described in further detail below, the subjugation, marginalization, dispossession, exclusion and discrimination of the Batwa in Uganda is widely known and well documented.

#### Suggested question

**Question 2:** *What legislative, administrative and other measures is Uganda taking to officially recognize the Batwa as indigenous peoples, as that term is understood in international law?*

### B. Indigenous Land Rights

***Article 14 – Right to Property; Article 20 – Right of Peoples to Self-Determination; Article 21 – Right of Peoples to Free Disposition of Natural Wealth and Lawful Recovery and Compensation in the event of Spoliation; Article 22 – Right of Peoples to Economic, Social and Cultural Development; Article 24 – Right of Peoples to a General Satisfactory Environment***

29. Article 14 of the Charter provides that the right to property shall be guaranteed. Article 20 guarantees the right of peoples to self-determination, while Article 21 ensures to peoples the right to freely dispose of their natural wealth and to lawful recovery of property and adequate compensation in the event of spoliation. Article 22 guarantees the right of peoples to economic, social and cultural development. Finally,

<sup>20</sup> Kabanukye and Wily, above note 4 at p. 99

<sup>21</sup> Lewis, above note 3 at p 3

Article 24 provides that all peoples shall have the right to a general satisfactory environment favourable to their development.

30. In the context of indigenous peoples, these rights – taken separately and as a whole – signal a clear obligation on States parties to respect and protect the right to the ownership, control, use and enjoyment of ancestral lands, territories and resources.
31. The Commission has noted that “the protection of rights to land and natural resources is fundamental for the survival of indigenous communities in Africa and such protection relates both to *Articles 20, 21, 22 and 24* of the African Charter.”<sup>22</sup>
32. This finding is consistent with the wealth of existing international jurisprudence on indigenous land rights. For instance, the right of peoples to self-determination in international law has been repeatedly acknowledged as including the right of indigenous peoples to their traditional lands.<sup>23</sup> It has likewise been confirmed that “all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence.”<sup>24</sup> This right is also affirmed in, among others, Articles 3 and 25-30 of the UN Declaration on the Rights of Indigenous Peoples, approved by the Human Rights Council in June 2006.<sup>25</sup>
33. Similarly, in respect of cultural development, the UN Human Rights Committee has noted that

*culture manifests itself in many forms, including a particular way of life associated with the use of land resources, specially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.*<sup>26</sup>

34. The UN Committee on the Elimination of Racial Discrimination has also observed that the loss of traditional lands and resources jeopardizes the cultural integrity of indigenous peoples. It has urged States:

*to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or*

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<sup>22</sup> WGIP 2005 report, above note 3 at p. 21

<sup>23</sup> Among others, *Concluding Observations of the Human Rights Committee: Canada, 20/04/2006*. UN Doc. CCPR/C/CAN/CO/5; *Concluding Observations of the Human Rights Committee: Brazil, 01/12/2005*. UN Doc. CCPR/C/BRA/CO/2; *Concluding Observations of the Human Rights Committee: Norway, 25/04/2006*. UN Doc. CCPR/C/NOR/CO/5; *Concluding Observations of the Human Rights Committee: Mexico, 20/07/99*. UN Doc. CCPR/C/79/Add.109, 20 July 1999, para.19; *Concluding Observations of the Human Rights Committee: Norway, 01/11/99*. UN Doc. CCPR/C/79/Add.112, paras 10 and 17; *Concluding Observations of the Human Rights Committee: Australia, 28/07/2000*. UN Doc. A/55/40, paras. 498-528, 24 July 2000, para. 3; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Russian Federation, 12/12/2003*. UN Doc. E/C.12/1/Add.94, at para. 11 and 39.

<sup>24</sup> *Concluding Observations of the Human Rights Committee: Canada, 07/04/99*. UN Doc. CCPR/C/79/Add.105, 7 April 1999, para. 8

<sup>25</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, approved by the Human Rights Council, UN Doc. A/HRC/1/L.3, 23 June 2006

<sup>26</sup> UN Human Rights Committee, General Comment No. 23, UN Doc. CCPR/C/21/Rev.1/Add.5 (26 April 1994) at para. 7

*otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.*

35. The importance of land to not only the identity but also the internationally recognized human rights of indigenous peoples is beyond question. As the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples has observed, “...land, territory and resources together constitute an essential human rights issue for the survival of indigenous peoples ...”.<sup>27</sup> In particular,

*[f]rom time immemorial indigenous peoples have maintained a special relationship with the land, their source of livelihood and sustenance and the basis of their very existence as identifiable territorial communities.*<sup>28</sup>

36. The UN Special Rapporteur on indigenous land rights has similarly observed that

*(i) a profound relationship exists between indigenous peoples and their lands, territories and resources; (ii) this relationship has various social, cultural, spiritual, economic and political dimensions and responsibilities; (iii) the collective dimension of this relationship is significant; and (iv) the intergenerational aspect of such a relationship is also crucial to indigenous peoples’ identity, survival and cultural viability.*<sup>29</sup>

37. The Batwa in Uganda have been completely dispossessed of their ownership, use, enjoyment and control of their ancestral lands, territories and resources through the creation of the national parks – with concomitant adverse impacts on their livelihood, living standards, cultural expression, social and economic well-being, and very survival as a people – in violation of their rights to self-determination, to property, to dispose of their natural wealth, to practice and develop their culture, and to a satisfactory environment favourable to their development.

38. The gravity of this has been acknowledged by the UN Committee on the Elimination of Racial Discrimination, which stated that it is “concerned by reports of the difficult human rights situation of the Batwa people, particularly in relation to the enjoyment of their rights over lands traditionally occupied by them”.<sup>30</sup>

39. Certain Ugandan authorities have made passing reference to Batwa land rights and have noted the link between the Batwa evictions (and resulting landlessness) and their poverty. A report by Uganda’s Ministry of Gender acknowledges that:

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<sup>27</sup> *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, submitted pursuant to Commission resolution 2001/57, UN Doc. E/CN.4/2002/97, at para. 57.*

<sup>28</sup> *Ibid.*, para.39.

<sup>29</sup> *Indigenous peoples and their relationship to land: Final working paper prepared by Mrs. Erica-Irene A. Daes, Special Rapporteur, UN Doc. E/CN.4/Sub.2/2001/21, at para.20.*

<sup>30</sup> *Concluding observations of the Committee on the Elimination of Racial Discrimination: Uganda. 02/06/2003, CERD/C/62/CO/11, 2 June 2003, para. 14.*

*traditionally, [Batwa] were forest dwellers, but they have recently suffered eviction from forest-land (Mgahinga Game Reserve) because of voluntary and involuntary factors. These factors include population pressure due to “newcomers” entering their land and the biodiversity conservation movements in the early 1990s, which limited their access to forested areas. Thus, they have lost their territorial rights and accessibility to ancestral forested lands. The entire community of Batwa are poor and depend on begging as a form of livelihood. Most are landless – out of about 2,000 Batwa pygmies in Western Uganda, only 74 have land – and are widely regarded as people ‘with no rights’.*<sup>31</sup>

40. The same report recommended that “freedom and means of livelihood of minorities should be respected, especially with regard to land use.”<sup>32</sup>
41. The country’s 2000 Poverty Reduction Strategy Paper, known as the “Poverty Eradication Action Plan” (PEAP), noted that “[a]t the level of the household, poverty is related to rural residence ... to land shortage”.<sup>33</sup> Uganda’s Social Development Sector Strategic Investment Plan has also recognised that “the landless ...are likely to be poor”.<sup>34</sup>
42. Uganda’s 1995 Constitution and 1998 Land Act are progressive in responding to communities’ own concepts of land rights and administration of these rights. For instance, they both recognize customary forms of land ownership.<sup>35</sup> However, these instruments have been of little benefit to the indigenous Batwa who have already been forcibly excluded from their customary ancestral forest lands and territories.<sup>36</sup>
43. The creation of the parks, the exclusion of the Batwa from them and the government’s acts and omissions since then have also violated the Batwa’s rights to lawful recovery of property and adequate compensation as provided in Article 21. No or wholly inadequate compensation was provided for the displaced Batwa, either in cash or as alternative lands. Part of the MBIFCT Batwa component was a land-purchase scheme to compensate the evicted Batwa for their forcible expulsion from the forests. Despite this, there were delays in land purchase, and a shortfall of funds has meant that hundreds of Batwa families remain without land or permanent homes, or any other form of compensation or reparation for the forcible expulsion from their traditional lands. Moreover, the MBIFCT has not transferred title to the individual Batwa for whom it has purchased land and continues to hold these titles in its own name.
44. Farmers, on the other hand, who had cleared parts of the 1930s gazettement areas for their farms “received recognition of their land rights and the vast majority of the available compensation. The Batwa, who owned the forest and had lived there for

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<sup>31</sup> Government of Uganda, *Social protection in Uganda: A study to inform the development of a framework for social protection in the context of the poverty eradication action plan*, Ministry of Gender, Labour and Social Development, p.44 .

<sup>32</sup> *Id.*, p.45

<sup>33</sup> Government of Uganda, *Poverty Reduction Strategy Paper: Uganda’s Poverty Eradication Action Plan*, Ministry of Finance, Planning and Economic Development, Kampala, 2000, p.8.

<sup>34</sup> Government of Uganda, *The social development sector strategic investment plan 2003-2008*, Ugandan Ministry of Gender, Labour and Social Development, p.5.

<sup>35</sup> Constitution (1995), Art. 237(3); Land Act (1998), Art. 2

<sup>36</sup> Jackson, above note 4 at p.52

generations without destroying it or its wildlife, only received compensation if they had acted like farmers, and destroyed part of the forest to make fields.”<sup>37</sup>

#### **Suggested questions:**

**Question 3:** *What measures is Uganda taking to recognize and protect the collective rights of the Batwa under Articles 20, 21, 22 and 24 of the Charter?*

**Question 4:** *What is the government doing, in practice, to recognize the Batwa’s rights to their ancestral lands, territories and resources? Does it intend to restore their right to own, control and use their traditional lands, territories and resources and to compensate them for the loss of any such property which for factual reasons cannot be restored?*

**Question 5:** *What process does Uganda intend to follow to resolve the issue of Batwa rights to land and resources, and how will the Batwa’s effective participation be assured?*

### **C. Right to Work and Prohibition of Slavery**

#### **Article 15 – Right to Work; Article 5 – Right to Dignity and Prohibition of Slavery**

45. Article 15 provides that every individual has the right to work under equitable and satisfactory conditions. Article 5 recognizes and protects the right to respect of human dignity and provides that all forms of exploitation and slavery shall be prohibited.
46. Ninety-eight percent of Batwa adults of working age living in south-west Uganda were reported to be unemployed in 2004.<sup>38</sup> To survive, many Batwa work merely as casual labourers on the farms of neighbouring communities and receive as compensation only “the right to stay on the landlord’s property, cultivate a small piece of his land and [receive] handouts of food and old clothing.”<sup>39</sup>
47. This situation not only highlights the failure of Uganda to protect the Batwa’s rights to equitable conditions of work, it evidences the extreme and unchecked employment exploitation of the Batwa in what can only be considered as a situation akin to bonded labour or slavery.

#### **Suggested questions:**

**Question 6:** *What is the government doing to decrease the unemployment rates and eliminate employment exploitation of the Batwa, some of which could be classified as contemporary forms of slavery?*

**Question 7:** *What income-generating projects is the government establishing to promote Batwa rights, and how is it ensuring these projects properly accommodate the Batwa’s interests, culture and way of life?*

<sup>37</sup> Lewis, above note 2 at p. 20

<sup>38</sup> UOBDU, above note 10 at pp. 11, 15, 19.

<sup>39</sup> ACODE, *Living on the Margins: The Deprivation of Community-Based Property Rights of the Batwa Pygmies of South Western Uganda* (2005), p. 9

#### **D. Economic, Social and Cultural Rights and Right to Non-Discrimination**

***Article 14 – Right to Property; Article 16 – Right to Health; Article 17 – Right to Education; Articles 2 and 3 – Right to Non-discrimination and Equal Protection of the Law***

48. Article 2 of the Charter provides that rights and freedoms should be enjoyed by all individuals without discrimination on grounds, among other things, of race or ethnicity, and Article 3 guarantees to all individuals equal protection of the law.
49. Article 16 guarantees the right to enjoy the best attainable state of physical and mental health, while Article 17 enshrines the right to education.
50. These economic and social rights, together with the economic and social aspects of the right to property in Article 14, have not been realised for the Batwa and are significantly under-realized in comparison with the general Ugandan population. The main reasons the Batwa give for their poor access to social services is lack of means and discrimination from other sectors of Ugandan society. This situation highlights the discriminatory nature of access to these rights in Uganda and the failure of the State to ensure equal protection of the law.
51. For instance, Batwa peoples in Uganda do not enjoy equal access to health services. One of the main reasons is that most Batwa do not have enough money to pay for consultations and medicine.<sup>40</sup> Some Batwa have reported discrimination and poor treatment from health workers and fellow patients.<sup>41</sup>
52. Batwa are regularly left out of health programmes and projects, and one study has found that Batwa childhood mortality was more than double that of the general population.<sup>42</sup> Batwa women are more prone to ill health than Batwa men due to their childbearing role. They are also mainly responsible for the children's wellbeing. Batwa women and girls are at risk from the beliefs of other groups in Uganda, who believe that a non-Batwa man who sleeps with a Batwa woman can be cured of back-ache and/or protected against HIV/AIDS, both of which put Batwa women and girls at increased risk of sexual assault as well as infection and STDs.<sup>43</sup> The Batwa's lack of access to their traditional herbs and medicines as a result of their exclusion from their traditional forested territories also contributes to poor health.
53. Unfortunately there is virtually no government statistical information available on the status of Batwa women's or children's health, and the government's lack of disaggregated data means that there is a paucity of information on which to determine the special measures required to recognize and realize the health rights of Batwa people.
54. The Batwa also suffer inordinately low rates of primary and secondary school attendance. Despite the fact that "most Batwa see education as critical in their desire

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<sup>40</sup> Lewis, above note 2 at pp. 14-15.

<sup>41</sup> *Ibid.*; Jackson, above note 4 at p.13.

<sup>42</sup> Kabanukye and Wily, above note 4 at pp. 72-74.

<sup>43</sup> Jackson, above note 2 at p.13.

for a better standard of living”,<sup>44</sup> 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.<sup>45</sup> In Kisoro only 30 percent of Batwa children attend primary school, and in Kabale around 40 percent of Batwa children go to primary school.<sup>46</sup>

55. Although the numbers of Batwa girls and boys who start primary school are similar, the participation of Batwa girls at secondary school drops dramatically, because families tend to invest in their son’s education, believing that girls will marry and be supported by their partners. Literacy rates for Batwa women in the Great Lakes region are generally much lower than literacy rates of Batwa men.<sup>47</sup>
56. Compared with a literacy rate of almost 70 percent for adults over fifteen in the population as a whole,<sup>48</sup> there is no single member of the Ugandan Batwa community who can read and write proficiently. This is a unique situation for the Batwa community in Central Africa, amongst whom a handful of individuals in all other countries have either finished schooling or adult education.
57. The main reasons Batwa children give for non-attendance and abandonment of school are: (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 like food, clothing and shelter.<sup>49</sup> Even if Batwa children start primary school, the pressure on them to leave is enormous, either in the search of income and food for their families, or because they are forced to live as street children.<sup>50</sup>
58. 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 health care 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.*<sup>51</sup>

59. That Committee has also recommended that “the school environment itself must ... reflect the freedom and the spirit of understanding, peace, tolerance, equality of sexes,

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<sup>44</sup> Lewis, above note 2 at p.26.

<sup>45</sup> UOBDU, above note 10 at p.3.

<sup>46</sup> *Id.*, pp. 8, 13.

<sup>47</sup> Jackson, above note 2 at p.14.

<sup>48</sup> United Nations Development Programme, Human Development Report (2005), Country Sheet for Uganda, available at <http://hdr.undp.org/statistics/data/countries.cfm?c=UGA>.

<sup>49</sup> UOBDU, above note 10 at pp. 8, 13.

<sup>50</sup> *Id.*, p. 3.

<sup>51</sup> UN Doc. CRC/C/UGA/CO/2, 23 November 2005, paras. 30, 81 and 82

and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.”<sup>52</sup>

60. 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.”<sup>53</sup> 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 like 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 continued access by Batwa children to education, and these children continue to be discriminated against in the provision of education services at all levels.
61. An assessment by Adventist Development and Resettlement Aid has noted that due to economic disadvantage, Batwa parents cannot even provide scholastic materials for their children’s education, and Batwa children often cannot afford to attend schools which can be over 18 kilometres from their homes.<sup>54</sup> Save the Children Uganda’s Programme Manager for Basic Education has noted:

*the Twa community is a very disadvantaged community in Uganda ... There is virtually no participation of the Twa [Batwa] in modern schooling, which calls for urgent intervention.*<sup>55</sup>

62. UNICEF’s 2001 evaluation report of the Ugandan Complementary Opportunities for Primary Education (COPE), asserts that “economic necessities are the principal force excluding children from schooling” and “children whose parents do did not attend school and/or who do not have need for literacy and numeracy in their economic activities ... are also forces pushing away children from formal schooling.”<sup>56</sup>
63. A 2003 report by the Ugandan Ministry of Finance on the achievements of the Poverty Reduction Strategy Paper underlines the need for positive discrimination on behalf of particularly marginalised groups. The report says: “The biggest challenge is with areas that suffer both poor access and quality problems. To this effect, Government has made deliberate efforts to provide special education programs for the hard-to reach areas. In case of Karamoja, a special program of ABEK (Alternative Basic Education for Karamoja) is in place”.<sup>57</sup> The programme is designed to deliver education to nomadic pastoral children; however Uganda has not made similar efforts on behalf of the Batwa.

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<sup>52</sup> UN Committee on the Rights of the Child, *General Comment No. 1: The aims of education*: 17/04/200, CRC/GC/2001/01, para.19.

<sup>53</sup> Above note 33, pp. 8, 10.

<sup>54</sup> Adventist Development and Resettlement Aid (ADRA), *Pygmy Children Sponsorship Program*, Uganda, 2004.

<sup>55</sup> Charles, Wabwire, *Save the Children Uganda: Kasese-Bundigyo Field Visit Report*, Kisoro, 2004.

<sup>56</sup> Dewees, A., *An Economic Analysis of the COPE Program in Uganda: Current Costs and the Recommendations for Meeting the Educational Needs of Disadvantaged Children*, UNICEF, 2000, p.26.

<sup>57</sup> Government of Uganda, *Uganda Poverty Status Report 2003*, Ugandan Ministry of Finance, Planning and Economic Development, p.154.

64. The Batwa's housing situation is similarly dire. As one recent study found,

*The majority of the Batwa live in very poor housing conditions characterized by makeshift housing structures made of sticks, mud and grass-thatched roofs. The houses are often overcrowded with several extended family members living in tiny dwellings. Worse still, when it rains, their houses often leak. The Batwa people consider it normal for rainwater to leak into their huts, which demonstrates their pathetic situation and state of despair.<sup>58</sup>*

65. Further, a large proportion of Batwa are living without any security of tenure. As noted earlier,<sup>59</sup> as many as 44 percent of Batwa are completely landless. They remain transient squatters constantly looking for somewhere they can lodge until they are moved on. Exploitation by landlords is common, with many Batwa working the farms of others in exchange for the temporary right to stay on the landlord's property.

66. One Batwa woman described the situation in this way:

*These people who let us stay on their land, they call on us to cultivate. If we refuse they say 'Move away, we no longer want you.' We are not settled here, because other local people are pressing the landowners saying 'What do you need Batwa for?' and at any time we may have to shift and settle elsewhere. If the owners are sympathetic, they move us to another bit of land, which we fertilise for them by living on it. The landlords don't let us put up toilets because they don't want anything permanent on their land, or holes which could be a problem for cultivation later. But if they catch us defecating in the fields, they are angry. My daughter was caught and was forced to remove the faeces with her hands.<sup>60</sup>*

67. The African Commission has established that the Article 14 right to property, considered in combination with other rights such as the Article 16 right to health, includes a right to housing.<sup>61</sup> Both the Commission and other international human rights bodies have recognized that this right extends beyond the right to a roof over one's head. The UN Committee on Economic, Social and Cultural Rights has confirmed that the right to housing must be interpreted to mean the right to *adequate* housing, comprising such factors as "adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost".<sup>62</sup>

68. The Committee went on to observe that among the indicators of adequate housing is legal security of tenure. Tenure may take on any number of forms, however,

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<sup>58</sup> Above note 39 at p. 6

<sup>59</sup> See para 15 of this report

<sup>60</sup> Interview with a middle-aged Batwa woman, Nyakabande/Kisoro, Uganda, May 2003, noted in Jackson, D "Nowhere left to go; land loss and cultural degradation. The Twa of the Great Lakes", in World Rainforest Movement, *WRM Bulletin*, Issue No. 87, October 2004.

<sup>61</sup> Communication 155/96, 15th Annual Activity Report (2001-02), para 60-61

<sup>62</sup> UN Committee on Economic, Social and Cultural Rights, *General comment No. 4: The right to adequate housing* (1991), in *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.7 (12 May 2004), p. 19 at para 7

“notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.”<sup>63</sup>

#### **Suggested questions:**

**Question 8:** *What measures is Uganda taking to ensure that Batwa people have full and equal access to healthcare services and medicine, as guaranteed by Article 16 of the Charter?*

**Question 9:** *What measures is Uganda taking to ensure that disaggregated quantitative and qualitative data on the Batwa’s healthcare situation is gathered to help determine and meet their special needs?*

**Question 10:** *What measures is Uganda taking to combat the extraordinary rates of illiteracy among the Batwa and to ensure that all Batwa children enjoy full and equal access to education, as guaranteed by Article 17 of the Charter?*

**Question 11:** *What measures does Uganda propose to implement to respond to the high drop-out rate of Batwa children from schools, and will it implement special measures to respond to the special needs of Batwa children’s education as was done for the pastoralist community in Karamoja?*

**Question 12:** *What measures will Uganda take to ensure that disaggregated quantitative and qualitative data on the Batwa’s education situation is gathered to help determine and meet their special needs?*

**Question 13:** *What measures is Uganda taking to ensure that the Batwa’s dire housing situation, including their inadequate housing standards and their lack of security of tenure, are addressed in law and in practice pursuant to Article 14 of the Charter?*

### **E. Right to Participation in Political Affairs and Development**

#### ***Article 13 – Right to Political Participation; Article 22 – Right of Peoples to Development***

69. Article 13 of the Charter guarantees to every citizen the right to participate freely in the government of his or her country. Article 22 guarantees the right of peoples to development. In the context of indigenous peoples, these two provisions – despite one relating to individual rights and the other to collective rights – can be seen as inter-related, since such peoples are often denied a voice, either individually or as a collective, in political and developmental decisions which affect them.
70. International law recognizes the right of indigenous peoples to participate meaningfully in decisions which affect them. For instance, ILO Convention No. 169 provides that indigenous peoples have “the right to decide their own priorities for the

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<sup>63</sup> Id para 8(a)

process of development ... and they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.”<sup>64</sup> Similarly, the UN Declaration on the Right to Development notes that “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.”<sup>65</sup> Article 19 of the UN Declaration on the Rights of Indigenous Peoples likewise recognizes the right of indigenous peoples to participate in decisions which affect them.<sup>66</sup>

71. As discussed above, the Batwa were never consulted and in no way participated in the decision to create conservation areas, despite the fact that these decisions led to their eviction and exclusion from their ancestral lands. Further, because of the Batwa’s marginalization, social exclusion, low education levels, and severe poverty, they are not able to meaningfully and actively participate in local or national political affairs.
72. While Uganda’s Constitution neglects to deal expressly with indigenous peoples, it does state that “Minorities have a right to participate in decision-making processes and their views and interests shall be taken into account in the making of national plans and programmes.”<sup>67</sup> In pursuance of Article 32 of the Constitution, an Equal Opportunity Commission (EOC) was established, with the objective of ensuring that everyone has equal access to, participation in, and enjoyment of benefits accruing from development programmes and services.<sup>68</sup> Uganda has recognized that numerous social groups remain “marginalized or excluded from the benefits of development” and that to address this imbalance a plan was required that would create “an enabling environment for social protection and social transformation of communities, while the vision is a better standard of living, equity and social cohesion.”<sup>69</sup>
73. Despite these efforts, and the fact that Uganda has some of the more progressive policies related to land and poverty alleviation in the region, implementation is still ineffective and the Batwa feel left behind in Uganda’s development process. There has been little to no Batwa participation in the formulation of development strategies, policies and projects in general and there is no institutional mechanism for future Batwa participation. There was no Batwa participation in the formulation of Uganda’s Poverty Reduction Strategy Paper, and there are no legal guarantees or remedies giving effect to the internationally guaranteed rights of indigenous peoples to meaningfully participate in and, in some cases, give or withhold consent to development policies, programmes and initiatives that affect them.

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<sup>64</sup> *Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries*, 27/6/89, Art.7.1.

<sup>65</sup> UN Declaration on the Right to Development, G.A. res. 41/128, annex, 41 U.N. GAOR Supp. (No. 53) at 186, U.N. Doc. A/41/53 (1986), Art. 2(3)

<sup>66</sup> Above note 25

<sup>67</sup> Constitution, Article 36

<sup>68</sup> Article 32 of the Ugandan Constitution states: “Notwithstanding anything in this Constitution, the State shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.”

<sup>69</sup> Government of Uganda, *The social development sector strategic investment plan (SDIP) 2003-2008: Integrating human progress with economic growth for sustainable development*, Ministry of Gender, Labour and Social Development (MGLSD), December 2003, p. iv

**Suggested question:**

*Question 14: What institutional mechanisms are being put in place to ensure full and effective Batwa participation in decisions that affect them?*

**IV. Conclusion**

74. Numerous individual and collective rights as set out in the Charter are unrecognized and unrealized for the Batwa people in Uganda, including their collective rights to existence, to their traditional land, territories and resources, to a general satisfactory environment, to culture, and to development, and their individual rights to health, education, equitable conditions of work, political participation, and to be free from conditions akin to slavery. Their rights to non-discrimination and equal protection of the law are systematically violated by both government and society at large.
75. At a recent meeting with an UOBDU staff member and a lawyer supporting the Batwa, a government representative expressed a willingness to engage in dialogue with the Batwa on certain issues related to the national parks. The submitting organisations hope that this preliminary dialogue evolves and ultimately addresses the rights of the Batwa, and we respectfully request that the Commission encourage Uganda to pursue further dialogue with the freely chosen representatives of the Batwa towards this end and to take prompt legislative, administrative and practical steps to alleviate the situation of the Batwa and to recognize and enforce the full spectrum of their rights.