

**RIGHT TO LAND: A HUMAN RIGHTS SITUATION AMONG THE  
BATWA AND BENET INDIGENOUS PEOPLE OF UGANDA**

**To be submitted to the Expert Mechanism for its Annual Study on the  
Rights of Indigenous People in the Context of Land Rights**

**By**

**African International Christian Ministry (AICM)**

## **The Submitting Organization**

African International Christian Ministry (AICM) is a Non-Governmental Organization, non-denominational, Non-Partisan and Not for Profit making Organization founded in 1983 by Bishop Enoch W.M Kayeeye.

AICM is legally registered with the Uganda National NGO Bureau with a strategic focus in the areas of Human rights advocacy & lobbying, psychosocial Support to vulnerable communities, humanitarian work & disaster management, support to vulnerable children, community empowerment through Functional Adult Learning (FAL) & acquisition of skills through vocational/ skills training), improved community health, nutrition, water & sanitation; and livelihood for the highly marginalized and vulnerable communities in Uganda who include the indigenous communities through agriculture & VSLA.

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## **1.0 Introduction**

The submission is made to the Expert Mechanisms on the Rights of Indigenous People (EMRIP), particularly on Batwa and Benet Indigenous People of Uganda.

The two Indigenous Peoples' Communities (Batwa and Benet) experience landlessness and historical injustices caused by the creation of conservation areas in Uganda. Batwa and Benet have been forced to leave their ancestral lands for many years and continue to experience various Human Rights violations, including marginalization, poverty, malnutrition and violence today.

The submission to EMRIP for its annual study on the rights of Indigenous People focuses on Land Rights and other various human rights violations meted on Batwa and Benet, including continued forced evictions and/or exclusions from ancestral lands without community consultation, consent, or adequate (or any) compensation; violence and destruction of homes and property, including livestock; denial of their means of subsistence and of their cultural and religious life through their exclusion from ancestral lands and natural resources; and consequently, their continued impoverishment, social and political exploitation and marginalization.

This submission to EMRIP is in line with the objectives and focus of the study: "Recognition of a right to land/establishment of processes to adjudicate land rights/involvement of indigenous peoples (articles 25, 26, 27, 30, 32 of the UNDRIP)."

## **2.0 The Legal Framework in relation to the Batwa and Benet Indigenous Peoples' land rights in Uganda**

The Uganda legal framework cited in this submission on the right to land reveals the impact of the legal framework on the indigenous peoples in relations to what the study considers such as:

- The extent to which domestic law, policies or practices relating to the recognition and protection of indigenous peoples' right to own, live and use their lands, territories and resources conforms with the UNDRIP.
- The extent to which these laws, policies, practices respect the traditions and land tenure systems of indigenous peoples.
- Positive examples of processes established by States to recognise and adjudicate the rights of indigenous peoples to their lands, territories and resources and the extent to which indigenous peoples are involved in this process.
- Experiences from Land Tribunals that have a mandate to identify and recognize indigenous ownership and usufruct rights to lands and extent to which these experiences are positive, and if not why not. The extent to which they apply or respect indigenous customary law when assessing land claims.
- Good practices of demarcation, including self-demarcation by indigenous peoples, and titling.

- The role of national courts in land rights conflicts, the extent of knowledge within the legal profession on UNDRIP and indigenous peoples' rights, and the extent to which national courts refer to the UNDRIP and international human rights law in interpreting indigenous people's rights. The relationship between national litigation and subsequent claims to regional human rights tribunals. Unintended consequences of successful land claims (violence, fatigue.)
- Extent to which States apply the norm of free, prior and informed consent for the approval of projects affecting indigenous peoples lands, territories and resources.

## **2.1 Uganda's National Land Policy**

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

The policy recognizes that pastoral communities have been disadvantaged through loss of “land rights to conservation projects, mainly national parks and other government projects including government ranches. This has led to depletion of their resources or landlessness.

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

The Uganda National Land Policy (2013) and the Draft Rangeland Management Policy tend to deal with Land Issues of pastoral communities, but in both documents power is vested in state to regulate Public use of Land in the interest of socio-economic welfare and development.

In the National Land Policy, where land has been already parceled and given out to other owners through legal but unjust means, the Constitution under the principle of sanctity of property confers the rights to such owners notwithstanding its being a loss to the indigenous communities. With the levels of education and exposure in most of these communities (Batwa and Benet) still low, it will be an uphill task to compete with international capital in the struggle to repossess or retain control over rangelands.

## **2.2 The 1995 Uganda Constitution**

The 1995 Constitution of Uganda offers no express protection for Indigenous People but Article 32 places a mandatory duty on the State to take affirmative Action in favor of groups that have been historically disadvantaged and discriminated against.

The provision in Article 32 was designed and envisaged to deal with the historical disadvantages of children, people with disabilities and women- this has provided the basic legal source of affirmative action in favor of Indigenous People in Uganda, where Batwa and Benet Fall.

Further in the 1995 Ugandan Constitution, Article 237, and vests land in the citizens. It provides for four lands tenure systems under which land can be owned as customary, free hold and Mailo or Leasehold.

The constitution further directs the involvement of the people of Uganda in Development. Section X.: *“The state shall take all necessary steps to involve the people in the formulation, implementation, of development plans and programs which affect them”*.

The same demands that the development should not only be balanced but also special measures in favor of less developed areas like Benet which have been neglected for a long time are envisaged.

### **2.3 The Land Act of 1998 and the National Environment Statute of 1995**

This was meant to protect customary interests in Land and traditional uses of forests. However, these laws also authorize the government to exclude human activities in any forest areas by declaring it a protected forest, thus nullifying the customary land rights of indigenous People, more especially the Batwa and Benet in Uganda.

Under Section 4.8; Land Rights of Ethnic Minorities, Paragraph 58; (a) Government of Uganda shall, in its use and management of natural resources, recognize and protect the right to ancestral lands of ethnic minority groups;(b) Government of Uganda shall pay prompt, adequate and fair compensation to ethnic minority groups that are displaced from their ancestral land by government action. It was on basis of this section that the Camp for the Batwa in Kengoma and Kanyashande cells, Kanyantorogo sub-county, Kunungu District near the Matanda command area were established.

The policy provides for affirmative action in favor of marginalized groups current settlement through establishment of regulations by Statutory Instrument to:(a)Recognize land tenure rights of minorities in ancestral lands; (b)Document and protect such de fact occupation rights against illegal evictions or displacements;(c)Consider land swapping or resettlement or compensation in the event of expropriation of ancestral land of minorities for preservation or conservation purposes;(d)Set terms and conditions for displacement of minorities from their ancestral lands in the interest of conservation or natural resources extraction.

### **3.0 The Batwa and Benet Indigenous Peoples of Uganda**

Batwa and Benet Indigenous people in Uganda have a common experience of state induced landlessness and Historical injustice caused by the Creation of conservation areas in Uganda. Batwa and Benet have experienced various Human Rights violations, including continued forced evictions or exclusion from ancestral land without community consultation, consent or adequate compensation.

### **3.1 Batwa**

Batwa Indigenous People live in South Western Ugandan Districts of Bundibugyo, Kisoro, Kanungu, Kabale and Rubanda, with a Population estimated by Uganda Bureau of Statistics (UBOS, 2014) to be 6,700 People making 0.2 per cent of the Population.

Batwa's Land Rights issues dated way back in 1930s and in 1991 when the British Colonial Government established Conservation zones on the traditional forested territories (Bwindi, Mgahinga and Echuya) which had been home to the Batwa and the establishment of Bwindi and Mgahinga National Parks for Gorillas aided the final eviction of Batwa from the forests.

When Conservation zones and National Parks were created, the compensation efforts for the affected Batwa communities focused on the creation of "multiple-use zones" within the parks and grants of small parcels of land to a small minority of Batwa were given. Due to flawed implementation and institutional discrimination, Batwa access to park resources through the multiple-use zones has not materialized on any meaningful basis.

The National parks were created without consulting with or seeking the consent of the indigenous Batwa as required by international law. A statement by a representative of the BMCT at the 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".

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. The most acute impact of the Batwa's forced eviction and exclusion from their ancestral lands is severe landlessness. Batwa People remain isolated from the rest of the Ugandan society due to their poverty and mutual distrust that exists between Batwa and Uganda's other ethnic groups.

#### **3.1.2 Violation of Batwa's rights**

Batwa communities continue to suffer landlessness, high poverty levels, high mortality rates, low education levels, violence and discrimination as they try to access their basic human rights.

##### **Garama Cave Agreement**

Uganda Wildlife Authority (UWA) and United Organization for Batwa Development in Uganda (UOBDU) had reached a formal agreement (MoU) regarding the employment and revenue sharing of the Tourism Project at Garama Cave. According to this agreement Batwa were to be employed as Tour Guides and UOBDU tasked with overall management of Batwa involvement. This was a positive action by the Government for the Batwa. However, after the

Batwa Constitutional Court Petition, UWA terminated the agreement; this was at disadvantage of Batwa since they lost both the revenue and their forest Land.

### **3.2 The Benet**

The Benet indigenous people (also referred to as Ndorobo) just like the Batwa in South West Uganda suffer state induced Landlessness and historical injustices emanating from the creation of Mountain Elgon Crown forest by the British Colonial Administration in 1936.

Benet Indigenous People currently live North Eastern Uganda in the Districts of Bukwo, Kween and Kapchorwa. Originally, the Benet lived into three Subgroups by Geographical location (the Benet in the Central Part of the Moorland, The Yatui in the Eastern Part and The Kwoti in the Western Part of Mountain Elgon). Uganda Bureau of Statistics (UBOS, 2014) estimated Benet Population to be 8, 500 people. The Benet describe their range-lands as stretching from Sironko river in the west eastwards across Suam river into Kenya, then again passed Lwakhakha river back into Uganda as far as Manafa river.

The creation of Mountain Elgon Crown forest in 1936 and its subsequent status change to forest reserve in 1951 resulted into restricted hunting, restrictions on cultivation and keeping goats affected the Benet People severely. This prompted the Benet to write letter to the Government requesting alternative land for cultivation.

In 1961, civil conflict between the Benet neighbors', the Sabiny and Bagisu around the time Uganda was gaining Independence from the British led to some displacement and separation of the Benet community who later were divided into three groups (Kwoti Benet, Benet Benet, and Yatui Benet).

Uganda's Independence took place in 1962 and the protected area status of Mountain Elgon changed from forest reserve to Central Forest reserve in 1968. Benet's formal request for additional land was eventually responded to by the Government which indicated that Benet could be allowed access to land for cultivation.

Finally, in 1983, without prior information or consultation, the Benet's were told to come and ask for land. The process was marked by lack of information, the Benet's not being aware of the land allocation criteria or how much land was there for them. It is also reported that the process also discriminated against the Benet as it was a requirement that all applicants should have a "three tax tickets", which Benet were far less likely to have than Sabiny by virtue of the Benet's forest-based way of life.

The Yatui Benet remained unaffected by the 1983 resettlement and Land allocation process since they were not included and continued to live in the crown forest. Consequently between 1988 and 1990, a Local Government initiative was embarked on, recognizing that some communities including Yatui Benet had not moved to the resettlement area. This then resulted into violent evictions by forest department. The violent evictions affected the villages of Sabu and Arakat, houses were burnt, and cattle confiscated, on the basis of the community's refusal to join the rest of the Benet who had been moved to Kween District.

Kapchorwa District Council settled some of the Yatui Benet in the area allocated in 1983 and in 1992, Mountain Elgon forest was gazetted to Mountain Elgon National Park. The Uganda Wildlife Authority (UWA) took responsibility of Mountain Elgon Park following its creation by the 1996 Wildlife Act.

A 1993 Survey demarcating the 6,000 Hectares, resettlement area found that the area occupied by the Yatui Benet in 1990 and part of the 1983 allocation were inside the protected area and amounted in total to around 1,500 Hectares more than the planned 6,000 Hectares (the total resettlement area was therefore around 7,500 Hectares). The 6,000 Hectares resettlement area was finally gazetted from the National Park in 2002 by Parliamentary vote.

### **3.2.1 Violation of Benet's rights**

Benet Indigenous Peoples' communities continue to suffer violence met on them by Uganda Wildlife Authority (UWA) and Forest Guards till today amidst delay in enforcement of the 27<sup>th</sup> October 2005, consent judgment.

On 16th February 2008, Yatui Benet's in the Benet Resettlement were violently evicted by UWA in four Months following evictions before temporary allocation of the land in Kisito, Kwosir Sub-County, in Kween District. The community had to find Shelter in Caves, under trees or with relatives. Exclusion and dispossession of the Benet land has led to numerous and severe human rights abuses. There are numerous specific instances of assaults, shootings, deaths and rapes of Benet community members by UWA over the years, including the 2006 shooting and killing of an 8 Years old Boy. All these reported to police and Human Rights Commission, but no action taken.

To date, the failure to act by the Government, the Local Police, Uganda Human Rights Commission and Local Government in responding to Benet community complains has allowed UWA to act with impunity and negated the Benet community's right to remedy. International conservation agencies appear either unaware or unwilling to act in response to the appalling human rights situations the protected area status of the evictions has caused the Benet.

The Benet Indigenous People are suffering the long-standing impacts of their eviction and enforced separation from ancestral forest lands territories and resources in the National Park.

The impoverishment of the Benet has been caused both by the dispossession and by the discriminating resettlement and land allocation processes which were corrupt and favored certain groups at the expense of the Benet.

## **4.0 Litigation on land rights of Batwa and Benet**

### **Batwa case**

On 8th February 2013, the Batwa people filed a petition before the Constitutional Court of Uganda in order to gain redress for the violation of their land rights. The petition is still pending; as yet no decision has been taken by the Constitutional Court. Since the petition was filed there has been additional violence, and the human rights situation of the Batwa has not



changed. The case has been used by the Uganda Wildlife Authority (UWA) as an excuse to exclude the voice of the Batwa from a collaborative agreement with the Uganda Wildlife Authority (UWA/ UOBDU), which aims to involve the Batwa in the management of a tourism project taking place on their ancestral lands.

### **Benet Case**

In 2002, Benet with support from Action Aid and Uganda Land Alliance (ULA) filed a court case against Uganda Wildlife Authority (UWA) and the Attorney General which led to a settlement agreed by the High Court of Mbale in a “consent order and decree” approved by a judge and dated 27 October 2005 for which the Benet are still waiting to get a court settlement implemented. The settlement stated that the ‘said Community is entitled to stay in the said areas and to carry out agricultural activities, including developing the same undisturbed; that the respondents take all steps necessary to de-gazette the said area as a Wildlife Protected Area or National Park pursuant to this Consent Judgment, after a physical inspection of the boundary with the Benet Community’

## **5.0 Conclusion**

Indigenous Peoples Rights to land and their other human rights have been violated in Uganda immensely. However, Batwa and Benet got the greatest share as their only possession, their ancestral Land is taken away; they have continued to live in a situation of landlessness in the past decades. This has made them vulnerable to discrimination and extreme marginalization resulting into high levels of poverty among them

We therefore urge expert mechanism committee to consider the Land Rights violations the Two (2) Indigenous Peoples’ communities (Batwa and Benet) face in their annual study and form the core basis of the recommendation to the Office of United Nations Commissioner on Human Rights.

Ultimately, this submission is done in the hope that the studies and advice of the Expert Mechanism provide a better understanding of the provisions of the Declaration and propose concrete actions that States, indigenous peoples, civil society, national human rights institutions, international organizations, businesses and others can take in order to further its implementation.