



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



The Rights to Indigenous people to the enjoyment of Human Rights to Land and Natural Resources.

Rebecca Apio¹, Lilian Achola², Emmanuel Egaru³, Freda Orochi⁴, Rebecca Atayo², Betty Odur⁴

¹Trocaie Uganda, Landnet Uganda; ²Landnet Uganda; ³Land Justice Network; ⁴Uganda Land Alliance

**Paper prepared for presentation at the
“2019 WORLD BANK CONFERENCE ON LAND AND POVERTY”
The World Bank - Washington DC, March 25-29, 2019**

Copyright 2019 by author(s). All rights reserved. Readers may make verbatim copies of this document for non-commercial purposes by any means, provided that this copyright notice appears on all such copies.



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



Abstract

The indigenous people in Uganda comprise of former hunters/gatherer communities such as the Bennet and the Batwa also known as Twa. They also include minority groups who include the Irk, the Karamojong and the Basongora. Ancient communities of hunters and gatherers, living in forested areas and practicing their cultural and economic way of life. The above group of people do not enjoy fundamental human rights like other Ugandans. They suffer discrimination, severe poverty and exclusion. The discrimination and marginalisation experienced by the indigenous communities range from lack of security of tenure, marginalisation in terms of political representation, poor education and provision of social services, negative stereotyping and segregation. They have common experience of state-induced landlessness and historical injustices caused by the creation of conservation areas. Their right to both land and other natural resources are well established under international and national legislation yet ignored and not implemented thus human rights violation

Key Words: Discrimination, human rights, Indigenous people, protection, legal framework.



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



Introduction

The indigenous people of Uganda include the Benet, the Batwa, the IK, the Karamojong and the Basongora. The government of Uganda however does not specifically recognize them as indigenous peoples.

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

Human Rights Abuses inflicted on the Indigenous communities.

Rights of the indigenous people to enjoy their fundamental human Rights have been hampered by various kinds of human rights abuses ranging from being evicted from their land, beaten up, raped, shot and killed by UWA forest guards. They lack decision-making power to ably make decision over matters that affect their lives.

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

The indigenous people have never benefitted from the exploitation of protected areas. Revenues generated from activities now taking place on their lands are considered in the public interest. The magnitude of all this is that they have been evicted from their ancestral lands without their free prior and informed consent



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



and without adequate compensation. Land restitution, resettlement, compensation, and positive measures to redress the violations of the Batwa's human rights should be a governmental priority, but these issues are simply not on the agenda.

The legislative framework on protection of indigenous people.

Despite the tremendous achievements Uganda has made in terms of its legal and policy framework, the human rights and especially the rights to land of the indigenous people have remained a far cry.

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

Article 36 of the 1995 Constitution of Uganda specifically mentions the “protection of rights of minorities” and the need for “affirmative action for marginalized groups” Article 32. As a member of the Coalition for the Rights of the Indigenous and Minority Groups (IMGs) in Uganda, considerable efforts are needed by Government and other stakeholders to prevent the marginalization on the basis of their cultural identity and – at worst – their cultural elimination; ensure access to justice for IMGs by providing free legal representation through public interest litigation, and translating existing legislation into local indigenous languages and providing information in user friendly formats. The urgency of affirmative action is needed.

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



Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019



This non recognition is inconsistent with regional and international human rights law, notably Articles 19-24 of the African Charter, the UN Declaration on the rights of indigenous peoples; Article 1 of the International Covenant on Civil and Political Rights; Article 1 of the International Covenant on Economic, Social and Cultural Rights' Articles 1 and 5 of the International Convention on the Elimination of All forms