

LIVING ON THE MARGINS OF LIFE

The Plight of the Batwa Communities of South Western Uganda

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LIST OF ACRONYMS

ACODE	Advocates Coalition for Development and Environment
ACHPR	African Charter on Human and People's Rights
ADRA	Adventist Development and Relief Agency
AICM	African International Christian Ministries
CARE	Carry American Relief Everywhere
CBO	Community Based Organization
CBNRM	Community Based Natural Resource Management
CBPRs	Community Based Property Rights
CFM	Collaborative Forest Management
COU	Church Of Uganda
CPAI	Community Protected Area Institution
HURINET	Human Rights Network
ICESCRs	International Covenant on Economic, Social and Cultural Rights
IKRC	Indigenous Knowledge Resource Centre
LC	Local Council
LECs	Local Environment Committees
MBIFCT	Mgahinga and Bwindi Impenetrable Forest Conservation Trust
MUP	Multiple Use Program
NFA	National Forestry Authority
NGO	Non-Governmental Organization
REPAP	Rights Equity of Protected Areas Program
RFLRC	Rukungiri Functional Literacy Resource Centre
PRA	Participatory Rural Appraisal
PRIMEWEST	Productive Resource Investments for Managing the Environmental Western Region, Uganda
SDA	Seventh Day Adventists
SIDA	Swedish International Development Agency

UN	United Nations
UOBDU	United Organization for Batwa Development in Uganda
USAID	United States Agency for International Development
UWA	Uganda Wildlife Authority

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This paper is part of a continuing effort by the Advocates Coalition for Development and Environment (ACODE) to bring the plight of indigenous and other marginalized communities living around protected areas in Uganda and within the East African region onto the national, regional and international policy agenda. It is premised on the realization that effective recognition of Community-Based Property Rights (CBPR) will not only enhance the cause of conservation by putting the human populations at the centre of the current natural resources policy and legislative forms. Rather, it is a viable mechanism through which Government may achieve their national development objectives such as poverty eradication, strengthening the rule of law and respect for fundamental human rights.

The studies on CBPR are being undertaken under the Environmental Democracy Programme (EDP) to systematically and persistently explore the links between environmental governance, democratization and poverty eradication. We are indebted to the Ford Foundation and the Department for International Development (DFID) for supporting ACODE's work under this programme. We acknowledge the financial support provided under ACODE's partnership with the CARE Rights and Equity Programme in Protected Areas (REPA) which supported the fieldwork upon which this report is founded.

During the process of undertaking this study, we met and learnt from countless individuals who were always willing to share their ideas, thoughts and perspectives. For lack of space, we are unable to acknowledge each of them individually but we are grateful to all of them for sharing their vast knowledge and experience. Nevertheless, we would like to single out Christine Nantongo, CARE Advocacy Manager, and Dr. Scott and Carol Kellermann for their thoughtful and insightful ideas that enriched our analysis. Jessica Troell, David Mutekanga, Agripinah Namara and Catherine Benson are also acknowledged for peer reviewing the draft report. ACODE staff, in particular Arthur Bainomugisha and Vicky Luyima are acknowledged for taking time to critically review the final report of this paper.

EXECUTIVE SUMMARY

The meaning and scope of the concept of Community-Based Property Rights (CBPR) has become a dominant feature of conservation and development policy discourse over the last decade. The debate has largely been shaped by the growing trends where governments have continued to appropriate traditional lands for conservation and development activities that have resulted into large scale dislocation and widespread disenfranchisement of sections of our society. However, the need to rethink the meaning and the application of Community-Based Property Rights has been given momentum by the need to carefully articulate and effectively implement social and economic protection programmes both as a means of promoting sustainable management of natural resources and eradication of poverty. Consequently, the apparent mixing of the concept of CBPR with associated concepts such as Community-Based Natural Resources Management (CBNRM) or Collaborative Forestry Management (CFM) and Community Conservation has presented major difficulties in implementing CBPR regimes at the national level.

Building on a concept paper on Community-Based Property Rights recently published by ACODE,¹ this study sought to provide further conceptual clarification of the concept of CBPR by applying a case study approach. It demonstrates how the alienation of CBPR of indigenous and minority communities can undermine rural livelihoods and disenfranchise the citizenry. The study revolves around the Batwa community who were uprooted from the Bwindi and Mgahinga area. The history, socio-cultural setting and economic set up of the Batwa present a unique challenge for both conservation and development practitioners. Occupying stretches of tropical forest reserves in Uganda, Democratic Republic of Congo, Burundi and Rwanda, there are an estimated 300,000 Batwa remaining globally. In Uganda, their uprooting from the forest reserves to create room for the establishment of Mgahinga and Bwindi Impenetrable Forest National Parks (MBIFNP) caused significant social and economic dislocation, which has not been helped by decades of widespread political marginalization and general disenfranchisement. In this study, we are able to learn from the Batwa communities and their representatives how several decades of interventions by the broad range of actors including development agencies and philanthropy organizations has not helped their plight.

Through the voices of the Batwa themselves, we are able to learn of the diversity, scope and content of the wide range of actors as well as the numerous but un-coordinated interventions: the Government moved on a pacifying mission to save the Batwa and other park riparian communities from the forest; international and local NGOs on a conservation crusade to save the mountain gorilla from the

¹ See, Tumushabe Godber (2005). The Theoretical and Legal Foundations of Community Based Property Rights in East Africa. ACODE Policy Research Series No. 12, 2005.

Batwa; and the Church on an evangelical mission to harvest the Batwa souls for Christ. Yet, all these interventions are seen by the Batwa communities and other commentators as victims of “cut-throat” competition, lack coordination and in most cases being a little too late. The study argues that for a long time, the interventions focused on the “hardware” side of actions (resettlement, healthcare, education services, etc) and lacked a “software” component that would target at building the confidence of the Batwa communities and giving them a voice in policy and decision making processes that affect their wellbeing. The study advocates a shift from the current approaches to a careful reconsideration of the plight of the Batwa in a more rights-based context and the need to give the Batwa a voice of their own.

Evidence from the interactions with the Batwa community representatives clearly validates and demonstrates the argument that the problems faced by the Batwa should be seen in a broader context of failure on the part of Government to adequately secure community-based property rights of the rural populations through appropriate institutional mechanisms, policy and legislation. This is further validated by the fact that although the Government of Uganda fully subscribes to international legal instruments that guarantee these rights, there are generally no deliberate programmes by Government to secure, promote and integrate them into the overall rights framework as provided for in the national constitution.

In addition to the general recommendations presented in the paper, the study makes four specific recommendations:

- There is a need to amplify the voices of the Batwa to enable them and by themselves articulate their agenda in local, national and international policy fora. This could be achieved through a variety of ways including drama, mentoring, etc. This recommendation should be implemented with a view to creating and building confidence among the Batwa community and their leaders as a strategy for their enfranchisement.
- The Batwa communities are well aware that they were deprived of their land rights and access rights by the international community and the Government of Uganda through the creation of MBIFNP. They view their ever-worsening plight as a continuous indictment not only on the Government of Uganda but also on the international community who have benefited from the establishment of the National Park. To that extent, their pursuit of restitution and compensation from whatever fora that may be available is not only a legitimate rights agenda but also an act of self-empowerment.
- With only an estimated 6,000 Batwa remaining in Uganda,² there is need for a more aggressive affirmative action focusing on provision of appropriate and

quality health and education services, assisting in the establishment of Batwa community institutions as well as programmes to ensure the preservation and respect for the cultural identity of the Batwa. Future interventions should also be considered bearing in mind that there is a need for regional coordination on this issue since Batwa communities are also found in other countries in the Great Lakes Region.

- Finally, it is observed that the problem of marginalization and disenfranchisement being experienced by the Batwa community is partly a symptom of a bigger problem of lack of recognition of community-based property rights of indigenous peoples within the region. At the foundation of this problem is the continuing alienation of communal lands during conflicts and land use conflict situations. The evidence provided in this study clearly shows that in cases of conflicts or land use conflicts, the first victim is more than often the loss of rights by the local or indigenous communities. At the broader level therefore, there is a need for a more comprehensive research agenda to further analyze and map out potential conflict areas, identify key drivers of those conflicts and to suggest mitigating measures.

² It is important to note that there are generally no reliable estimates of the Batwa population in Uganda. An unpublished survey conducted by the Forest Peoples' Programme, estimates that the Batwa population in the three districts of Kanungu, Kisoro and Rukungiri are around 2,500. After factoring in Budibujo which was not included in the survey, the survey estimates that the total remaining population of the Batwa could be between 3,000-4,000 only, as per telephone conversation between Eunice Musiime and Peninah Zaninka, Programme Officer, Forest Peoples' Programme. September 6, 2005.

*".....Batwa are law abiding citizens of this beloved nation but as a minority group we have faced too much discrimination and prejudice among the communities we live in, especially the local political and religious leaders. This is mainly in terms of land distribution, education and provision of social services like awareness campaigns about the dangers of AIDS and other diseases. We don't have priests to bury our dead even though we are believers....."*³

1. INTRODUCTION

Since colonial times, indigenous communities world over have been deprived of their ancestral lands and/or their natural resource bases through unjust state policies and legislation. Despite the persistent struggles by indigenous peoples and human rights organizations against the forceful eviction and appropriation of the lands of indigenous communities, this unjust practice continues unabated up to today. Conservation approaches pursuing protectionist and exclusionist policies have continued to alienate the rights of indigenous peoples largely negating considerations for livelihoods, equity and human rights protection. The continuing marginalization of communities such as the Batwa in Uganda, Rwanda and the Democratic Republic of Congo brings into sharp focus the need to fully integrate and incorporate Community-Based Property Rights (CBPR) in the emerging policy framework as well as the national and international regime of human rights protection. However, the conceptual misunderstanding of the scope and character of CBPR is leading to significant policy distortions in the attempt to integrate these rights in national policy and legislation. Consequently, the need to develop a more practical understanding of the concept and the relevance of its application in policy and practice is urgent.

This paper is a detailed examination of the concept of CBPR. Through the voices of the Batwa communities of South West Uganda, the concept of CBPR is shifted from theory to practice. In greater detail, the paper analyzes the scope of coverage of community-based property rights in national policy and legislation, the legal basis for the existence of these rights in international law as well as the practice of CBPR in the context and unique situation of the Batwa communities in South West Uganda. It is argued that the precarious situation or marginalization and disenfranchisement in which the Batwa communities find themselves is only symptomatic of a bigger national problem of failure to integrate human rights and livelihood concerns of minority and indigenous communities in the scheme of national human rights protection, conservation theory and development practice.

³ John Rwubaka, 2005. "We Batwa face discrimination" in *The New Vision*, November 9, 2005. Kampala.

The findings, analysis and recommendations in this paper are presented in 7 sections. The first section gives an overview of the paper and discusses the methodology that was used to undertake the study. Sections 2 and 3 present a general background to the study, brief chronology of the creation of the Bwindi and Mgahinga national parks, a process that led to the progressive alienation of the land and access rights of the Batwa communities. This section also presents a detailed exposition on the historical and current conditions of the Batwa community in Southwest Uganda. While not attempting to be exhaustive, section four analyses several interventions that have been undertaken by different actors to address the plight of the Batwa communities currently living in South West Uganda. In section five, the paper analyzes selected international and national legal instruments that can be evoked to protect and promote resource rights of minority and indigenous communities such the Batwa communities. Section six contains a set of specific and general recommendations of what needs to be done to address the plight of the Batwa and the broader national policy question of land and land use conflicts in Uganda.

2. THE METHODOLOGY

This paper is based mainly on a review of the literature on community-based property rights, the sociological history of the Batwa communities and generally conservation literature focusing on forestry and wildlife management in Uganda and elsewhere. A comprehensive review of Uganda's policy and legal documents as well as international legal instruments was undertaken. The literature was particularly helpful in our analysis of the nature of the problems facing the Batwa but in particular, in establishing whether the property rights of the Batwa could be said to have a foundation in law, morality, politics or other forms of legitimate interests.

The findings from the literature were then tested and validated by undertaking field work to get first hand information and interaction with the largest communities of the Batwa. The fieldwork involved visiting and interviewing people in organizations working with the Batwa that are based in Kampala. In addition, the researchers interviewed various individuals and representative of the Batwa in the districts of Kabale and Kisoro as well as Buhoma Sub-Country in Kanungu District. The discussions were based on guiding questions that were prepared by the researchers, although most interviews were kept informal to allow free exchange of information. The study areas were selected based on the high concentration of Batwa living within those areas. However, the survey area fairly represents an overall picture of the Batwa population as a whole in South Western Uganda.

3. THE CREATION OF BWINDI AND MGAHINGA NATIONAL PARKS AND THE LEGITIMIZATION OF THE BATWA DISENFRANCHISEMENT

The Southwestern region of Uganda is endowed with a wide range of ecosystems, ranging from savannah grasslands to high altitude wetlands and to alpine vegetation. The high biodiversity in these ecosystems, including the endangered mountain gorilla, (*Gorilla gorilla beringei*) has made this region a focal conservation area. There are five National Parks and four Central Forest Reserves. Bwindi Impenetrable National Park and Mgahinga Gorilla National Park are two of the remaining areas of intact and relatively undisturbed afro-montane forest in Southwest Uganda. The other area is the Echuya Central Forest Reserve. Bwindi Impenetrable National Park is the largest of the afro-montane forests, with total area of 330.8 Km². It is the home of about 330 mountain gorillas, about half of the world population.⁴

Since the 1920s, there have been ongoing conservation efforts in the forest areas of Mgahinga, Semliki, Bwindi and Echuya. Bwindi Montane Forest was first gazetted as Kasatoro and Kayonza Crown forest reserves in 1932 due to its ecological and economic importance.⁵ In 1942, the two forest reserves were combined and gazetted as the Impenetrable Central Crown Forest. In 1961 the Forest Reserve was additionally gazetted as a gorilla sanctuary.⁶



Figure 1: A Mountain Gorilla (Photo courtesy of UWA)

In 1991 the conservation area was elevated to the status of a National Park by a resolution of the National Resistance Council passed on 13th August 1991, and became Bwindi Impenetrable National Park.⁷ The elevation of the area to national park status was mainly driven by the need to accord the highest level of protection to the forest due to its unique biological value as well as being a major catchment area for the Nile system.⁸

⁴ Mutebi, Jackson (2003). Co-managed Protected Area: From Conflict to Collaboration: Experience of Bwindi Impenetrable National Park. Paper presented to CARE Uganda.

⁵ Uganda Wildlife Authority (2000). Mgahinga Bwindi Conservation Area General Management Plan, 2000-2010.

⁶ Protected Area System Plan for Uganda Vol.4, 1999; See also General Notice No. 584 of 1961 as amended by legal Notice No.53 of 1962.

⁷ Statutory Instrument Supplement No. 3 of 1992.

⁸ Hamilton, Alan., et al. 1990. Proposed Bwindi (Impenetrable) Forest National Park: Results of Public Enquiry and Recommendations for Establishment. (Mimeo).

⁹ Legal Notice No.21 of 1930.

¹⁰ Statutory Instrument No. 216 of 1964 as amended by Statutory Instrument No. 136 of 1965.

Table 1: History of the formation of Bwindi Impenetrable and Mgahinga National Parks

Year	Name	Status
1933	Kasotooro and Kayonza	Central Forest Reserve
1943 1961	Bwindi Impenetrable Bwindi Impenetrable Central Crown	Central Forest Reserve Game Sanctuary
1991 1930	Forest Bwindi Impenetrable National Park Mgahinga	National Park Gorilla Sanctuary
1941	Mgahinga	Game Reserve
1991		National Park

Mgahinga Gorilla National Park was originally established as a forest reserve. It was later gazetted as a gorilla sanctuary managed by the game department.⁹ In 1941 the area was upgraded to a game reserve¹⁰ and in May 1991 it was elevated to National Park status so as to protect the gorilla population and the forests that were greatly undermined by the high rate

of forest clearing caused by the high population levels in the area. The park boundaries were aligned on the original boundaries of the gorilla game sanctuary and the name of the park was subsequently changed to Mgahinga Gorilla National Park.¹¹ Because of the proximity of the two parks to each other and similarity of conditions and challenges of management, Uganda Wildlife Authority placed them under one management unit called Mgahinga Bwindi Conservation Area.

As a result, one General Management Plan was prepared for the two parks. Whereas there was genuine cause for the creation of protected areas in these areas especially to preserve the declining mountain gorilla population,¹² these activities have had a tremendous impact on the livelihoods of the Batwa and other Park riparian communities. For the Batwa communities, they were uprooted from the forest and exposed to the vagaries of a cash economy largely characterized by settled agriculture. Today, the situation of the Batwa is one where they have failed to adapt their nomadic and hunter-gatherer life-style to the contemporary

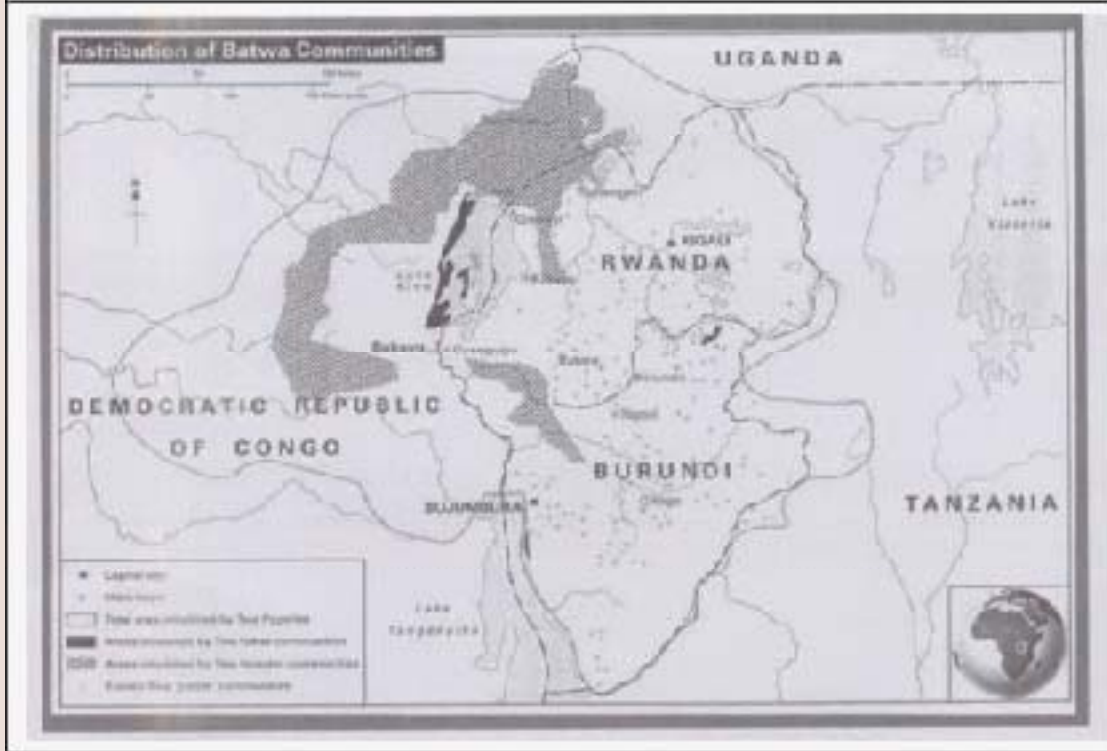
¹¹ Statutory Instrument No. 27 of 1991 as amended by Statutory Instrument Supplement No. 3 of 1992.

¹² Kenrick Justin, 2000. The Batwa of Southwestern Uganda: World Bank Policy on Indigenous Peoples and the Conservation of the Bwindi and Mgahinga National Parks.

demands of today's society.

4. RETRACING A HISTORY OF HUMAN RIGHTS VIOLATIONS: THE CASE STUDY OF THE BATWA COMMUNITIES OF SOUTH WESTERN UGANDA

Figure 2 Distribution of the Batwa communities within the Great Lakes Region



4.1 Background

The Batwa are an indigenous community, believed to be the original inhabitants of the equatorial forests of the Great Lakes Region of Central Africa.¹³ They are believed to be part of a network of African forest-dwelling hunter-gatherer communities scattered all over the continent. Many scholars have tried to give a historical account of the Batwa but perhaps the most far reaching account that seems to explain the apparent dominant negative perceptions about this community is that given by Edward Tyson in his account of the Pygmy in *The Anatomy of a Pygmy Compared with that of a Monkey, an Ape and a Man* published in 1751.¹⁴ In *Anatomy of a Pygmy*, Tyson compares the anatomy of an infant chimpanzee to the human anatomy and to the anatomy of monkeys and apes. He described in anatomical

¹³ Lewis Jerome. 2000. The Batwa Pygmies of the Great Lakes Region. Minority Rights Group.

¹⁴ Tyson, Edward (1751). *The anatomy of a Pygmy compared with that of a monkey, an ape and a man*. 2nd Edition. T. Osborne. London.

detail the morphological differences between man and his specimen and between the specimen and other primates of his interest. He concluded that “his pygmy” was no man, nor yet the Common Ape; but a sort of animal between both.

In 1904, approximately 153 years after the publication of Tysons work, Ota Benga, a Pygmy of the Congo Forests was captured and brought from the Belgian Congo by an “African explorer” Samuel Verner. In 1904, Ota Benga was exhibited at the St. Louis World Fair in the United States and later transferred to the Bronx Zoo in New York Zoological Park. According to different accounts, the exhibition of Ota Benga was immensely popular and extremely controversial.¹⁵ The black community in the United States was outraged while some churchmen feared that exhibition of Ota Benga could convince people to begin to believe in Darwin’s theory of evolution. Nevertheless, for the time Ota Benga was on exhibition, he was so popular to the extent that up to 40,000 visitors were recorded on his side of the stall every Sunday. According to the same accounts, although he was later to leave the Zoo, with time, Ota Benga grew homesick, hostile and despondent. He was later to commit suicide by shooting himself ending his life in 1916.

The *Anatomy of the Pygmy* and the Ota Benga story have provided the lens within which the international community has often viewed the Batwa and other forest dwelling communities of Africa. It is this misrepresentation that has had devastating effects upon their populations. The general perception that the Pygmies in general and the Batwa in particular are barbaric, wild, uncivilized, untidy, ignorant, and above all else, sub-human seems to be at the foundation of their consistent exclusion from the mainstream of society and their continuing marginalization. These perceptions ignore the fact that the heroic acts of *Ota Benga* and the resilience exhibited by all the Batwa communities within the Great Lakes Region are a clear testimony of the continuing struggles by minority groups around the world to defend their inherent right to life, security and livelihoods.

It is, perhaps as a result of this perception that for the last half a century, international conservation groups have “conspired” with national governments and international financial institutions including the World Bank to forcibly evict the Batwa communities from their ancestral dwellings without any form of compensation or other recourse. In the case of the Batwa, the irrelevance or inadequacy of the pacification initiatives of Government, the evangelizing mission of the church and the conservation crusade of Non-Governmental Organizations (NGOs) have pushed the community on the margins of society and the fringes of extinction. By 1996, it was estimated that the total population of the Batwa globally was 300,000, mostly found in Rwanda, Burundi, Democratic Republic of Congo, Cameroon, Gabon and Central African Republic.¹⁶

¹⁵ See for example Bergman, Jerry (1997). Ota Benga: The Story of the Pygmy on Display in a Zoo. Available online at www.rae.org/otabenga.html. Accessed on August 24, 2005.

¹⁶ Kabanankye, Kabann, et al. (1996). Report on a study of the Abayanda (Batwa) Pygmies of South West Uganda for Mgahinga and Bwindi Impenetrable Forest Conservation Trust. IK Resource Center.

4.2. *The social status of the Batwa*

According to the 2002 population census, the Batwa population in Uganda is about 6000, with the majority living in the Southwestern districts of Kabale, Kisoro, Kanungu, Bundibugyo and Rukungiri.¹⁷ The size of the Batwa is quite different from other tribes in Uganda, the men and women rise to an average of four feet or less in height, the tallest man among the Batwa would be the shortest among the neighboring community, the Bakiga. Traditionally, the Batwa lived as hunters and gatherers, residing in temporary huts and caves, deriving sustenance from forest resources like honey, wild fruits, mushrooms and vegetables.¹⁸ Each clan collectively owned an area of forest within which they derived food and herbal medicine for their sustenance.¹⁹ According to a study undertaken in 1996, the Batwa reside in about 53 separate settlements falling within 41 villages. On average each settlement is composed of about 10 households. The household sizes range from single to 17 member households.²⁰ Despite living in different settlements, the Batwa have strong social relations and recognize themselves as a community. They share close attachments to certain areas within concomitant social formations that appear to derive directly from the ancient past.²¹ Marriages normally take place within the clans though marriage among members of an individual settlement is rare because of the close relations amongst such persons. Batwa still practice social norms and customs normally associated with clanship similar to majority of other tribes in East and Central Africa. However, due to the resettlement programme most Batwa are never sure of their clan leader and where he lives.²²

Previously, the Batwa did not attend formal education. However with development assistance by church-based organizations and other NGOs, the literacy levels of Batwa is gradually improving. The details of the education intervention by different actors are discussed in the subsequent sections.



Figure 3: A typical Batwa Pygmies settlement (Fieldworkshop photo)

¹⁷ Republic of Uganda (2002). National Housing and Population Census Report. Uganda Bureau of Statistics. Kampala.

¹⁸ Lewis, op.cit, Note 13

¹⁹ Kabanukye, Kaban., opcit Note 16.

²⁰ Kabanukye, Kaban., supra.

²¹ According to the respondents interviewed during the study, the Batwa have close relations and understanding of the plight of fellow Batwa living within Uganda and in neighboring countries like Congo, Rwanda, Burundi and Cameroon.

²² Kabanukye, Kaban., opcit Note 16.

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, a scenario that could be said to demonstrate both their pathetic situation and state of despair, but also their resilience when confronted with changes in obtaining ecological conditions.

A small percentage of Batwa own basic cooking and eating utensils, farm hoes and pangas, woven mats and stools while others use implements and hoes belonging to their landlords. A substantial number sleep on beds made of dried grass, leaves or ferns and eats food cooked in embers due to scarcity of firewood. However, the trend is gradually changing as a result of the fact that, the Batwa are increasingly accessing basic necessities from their neighbors, the Church of Uganda (C.O.U), NGOs and researchers. The donations are sometimes received with suspicion on belief that it is meant to buy their loyalty to the church for labor.²³

For several decades, Batwa communities have been segregated and marginalized by their neighboring communities, particularly the Bakiga and the Bafumbira. This often stems from the resentment of their hunting and gathering practices, often perceived by other communities as backward and primitive. Some of their neighbors do not even wish to socialize with them and consider it abominable, to eat or drink with them, marry their daughters or even sit on the same bench. Due to this segregation, the Batwa were often forced to live in isolation from their neighbors and collect water from different sources from those used by other communities. Others have concluded that, this state of affairs has often led their children to abandon schools sighting discrimination at the hands of bullying by pupils from other tribes.²⁴

Further, general access to health care in the rural areas is limited as there is a severe lack of clinics or hospitals and those that do exist are under staffed and poorly equipped. However the Batwa's access to the limited health care is further exacerbated by their marginalization by the dominant communities. A medical needs survey undertaken in 1999 observed the lack of safe drinking water, latrines, schools, clinics, and access to government health care facilities as the major problems faced by the Batwa. For example, the child mortality rate for Batwa was 41% while for non-Batwa was 17% while infant mortality rate for Batwa was 21% and for non-Batwa 5%.²⁵

²³ Kabanukye, Kaban., opcit Note 16.

²⁴ Interview with Peninah Zaninka during the field study in April 2005.

²⁵ Kristin, Rudd., (2002).Development and Primary Health Care in under served Populations: A case study of the Work of Dr. Scott and Carol Kellermann.

In addition, Batwa suffer injustice and discrimination in LC Courts and there are numerous accounts of bias in adjudication of disputes between Batwa and other communities. As a result, many Batwa are discouraged from filing complaints in local council courts. The Batwa are also inhibited by the fees charged on filing complaints in these courts, which render access to the courts too expensive for them.

Despite the historically acrimonious relations between the Batwa and their neighbors, the surrounding communities are continuously influencing Batwa culture and language as a result of the interactions between the two groups. For example, the language of the Batwa living in Kabale and Kisoro districts is increasingly becoming more of a mixture of Kinyarwanda and Congolese.²⁶ This is due to the social relations between Batwa women and men of neighboring communities leading to children of mixed background. Increasingly, cases of defilement of Batwa girls by neighboring communities are being reported,²⁷ putting them at risk of HIV/AIDS. The explanation for these increasing cases of defilement is that there is a dominant belief among the neighboring communities that when an HIV infected man has sexual intercourse with a Mutwa woman, he shall be cured from the HIV virus.²⁸ In addition while Batwa girls have relationships with non-Batwa men, the Batwa men cannot access non-Batwa women in other communities. As such Batwa complain of lack of women to marry and possible extinction. Further still, the non-Batwa men abandon the Batwa women, following sexual affairs with them and many Batwa children do not know their fathers.²⁹

From a religious perspective, the Batwa have strong cultural and traditional beliefs and consider themselves as people nearer to God than the other communities. They believe that upon creation, God placed them in the forest as their home and appointed them custodians of the forests. As a result, they attach a high level of significance to the forests as their home and place of worship. They maintained special sites in Mgahinga and Bwindi forests used for ritual purposes. They believed that God dwells in the forest and by living in the forest they are nearer to God. Consequently, they consider it a religious obligation to live in harmony with the environment for fear of offending their God by destroying His dwelling place.³⁰

²⁶ Kayeeye, W. M., (2004). The Batwa of South Western Uganda and the African International Christian Ministry Intervention Programme.

²⁷ Thawite John. 2004 Batwa King Back to School, New Vision August 31, 2004 available at <http://www.aegis.com/news/nv/2004/NV040858.html> 8/19/2005.

²⁸ No medical evidence was found during the course of this study to affirm or dismiss this assertion.

²⁹ Thawite, *ibid*.

4.3. *Leading an Economic Life that Knows no Socio-Economic Rights*

Previously, due to their small population and subsistence patterns of extraction of natural resources, the Batwa activities traditionally did not have significant adverse impacts on the environment. The Batwa and other communities carried out logging/pit sawing, hunting and beekeeping in the forests, as the major economic activities.³¹ Their resource utilization patterns were in tandem with sustainable natural resource use. By the early 19th century, a number of agricultural and pastoral tribes migrated into the forest areas of central Africa due to population growth. The agriculturalists cleared forest areas for cultivation, a practice that disrupted the lives of the Batwa by displacing them from their ancestral lands and destroying the resource base on which they relied for their hunter-gatherer lifestyle.

Currently, Batwa communities engage in a wide range of economic activities. Some households raise animals like goats, sheep and chickens. On average, each household owns at least two animals. According to available evidence, no household is known to own cattle. Animals like goats and sheep are a source of meat and bride price to the Batwa. A substantial number of Batwa are engaged in self-employment and undertake a range of activities. For example, the Batwa living around Echuya forest access raw materials from the forest to make crafts, spears, arrows and walking sticks sold to neighboring communities. Others are local herbalists and provide herbs and spiritual treatment to local communities. Another significant proportion of Batwa are engaged in collection of firewood and raw materials for crafts from nearby forests, and wetlands, which are sold or exchanged with their neighbors for food.

Some Batwa are employed as stock-minders, laborers in gardens and servants in the households of their neighbors. Others form groups that provide labor and engage in brick laying or provide entertainment at social functions.³² It is also established that a small percentage is engaged in salaried employment, Uganda Wildlife Authority (UWA) employs 3 Batwa in Bwindi Impenetrable National Park. According to UWA officials, the number would be bigger but Batwa illiteracy levels affect their ability to acquire employment. However with the rise of tourism in that area, the Batwa have become so money-minded that they charge a fee for everything they do. The money received is often spent on buying alcohol.³³ To date, the major economic problem facing the Batwa is limited access to land and

³¹ Lewis, op.cit, note 18.

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

³³ Thawite, op.cit Note 32.

insecure land tenure. Land constitutes the most critical resource for production of goods and services and it is the major, if not the only means of deriving livelihood for the majority of the rural people. Lack of land tenure security for a big number of Batwa households exacerbates their problems. Their tenure is so insecure, which leaves them at the mercy of the landlords. This discourages them from carrying out meaningful developments on the land that could provide more income.³⁴ The Batwa without land often live as beggars, depending on handouts from neighboring communities.³⁵

In a 1996 study by Kabanukye, it was found that more than 82% of the Batwa were landless while a small percentage occupied land as private owners (about 74 households). About 9.4% occupied land belonging to the government, 10% were living on Church of Uganda land while 80% lived on land belonging to private landlords.³⁶ However, following interventions by NGOs and Mgahinga Bwindi Impenetrable Forest Conservation Trust, more Batwa are increasingly accessing land on which they cultivate food crops like maize, peas, sorghum, millet and sweet potatoes among others. Related to their landless situation is the high level of exploitation by the dominant neighbors. Most of the Batwa work as laborers on the farms of neighboring communities and do not receive payment for their labor other than the right to stay on the landlord's property, cultivate a small piece of his land and receiving handouts of food and old clothing.

Another economic constraint is lack of access to forest resources like honey, wild game and fruits on which the Batwa had depended for successive generations. This again was caused by the elevation of Bwindi and Mgahinga conservation areas to National Park status. The elevation of the forests reserves meant that the Batwa could no longer access any of the forest products. When a programme codenamed Multiple Use Programme (MUP) was conceived by Carry America Relief Everywhere (CARE) and Uganda Wildlife Authority (UWA) to allow limited access to forest products, the Batwa have not benefited as will be expounded on later in section five. The result of lack of access to forest products has led to shortage of nutritious foods for children leading to high levels of malnutrition. The Batwa can no longer access herbs from the forests for medicinal purposes, yet the majority cannot afford to pay for health services.

4.4. Decades of Political Disenfranchisement: The Batwa Enduring Struggle for Political Recognition

Generally, the Batwa did not maintain elaborate political structures. Their small social groupings meant that consensus decision-making was possible and controlling leadership unnecessary.³⁷ To this end, the idea of one individual holding authority over others was generally unacceptable among the Batwa and it was

³⁴ Kabanukye, op.cit, Note 28.

³⁵ Kabanukye, ibid.

³⁶ Kabanukye, ibid.

inconceivable that a person would hold inherited authority as a king or chief.³⁸ Although there were no formal community leaders, individuals with special skills were recognized and held in high esteem. These individuals acted as consultants and tutors of the children of the Batwa in their respective disciplines of excellence. Examples of persons commanding positions of influence among the Batwa include: gifted hunters, herbalists, craftsmen and entertainers, among others.³⁹

In the post-resettlement period, there is increasing recognition among the Batwa of the need for a more formal political organizational structure and leadership. This realization could be said to be a product of two major factors. First, the increasing awareness of the existence of other Batwa communities within East and Central Africa and the common values and aspirations shared by these communities which has fueled a strong desire among the Batwa to unite.⁴⁰ Secondly, the hardships and marginalization encountered by the Batwa over the last four decades, particularly the loss of their ancestral lands, has led to recognition that collective action and strong leadership are necessary to overcome these problems and assert their rights.

In more recent years, there have been a number of individuals commanding great influence among the Batwa and occupying positions equivalent to opinion leaders. Notable among these personalities is Rwubaka, who is seen by a substantial number of the Batwa as a "chief". Rwubaka's influence is largely due to the success he has attained as a businessman and leader of a registered cooperative society that has provided self-employment to youthful Batwa engaged in pottery. Due to his popularity, Rwubaka has been used as a contact person to Batwa communities by churches and other organizations working with the Batwa. Rwubaka is a member of United Organization for Batwa Development in Uganda (UOBDU) and he is one of the Batwa that runs the UOBDU office. He also acts as a mediator or representative of Batwa in situations of conflict with neighboring communities.⁴¹

In the present day political dispensation and political structures, the historical political exclusion of the Batwa communities is also reflected in their limited participation in local government structures. As of 1996, only five Batwa held positions of responsibility on the local village councils but there was no single Mutwa on the parish or higher councils in the Districts.⁴² There are several factors that explain the minimal participation or influence of the Batwa in local politics. First, the Batwa constitute a very small proportion of the overall population in the districts where they reside. As a result, it is very difficult for them to secure

³⁷ Lewis, *op.cit.*, Note 36.

³⁸ Lewis, *ibid.*

³⁹ Lewis, *ibid.*

⁴⁰ This trend is also reflected by the situation in Rwanda where the Batwa have organized themselves into strong socio-political organizations to fight for their rights especially in the post-genocide period. See Overeem, Pauline, 1994. *Batwa: Final Report. A Report of the Unrepresented Nations and Peoples Organization (UNPO) with APB investigating the situation of the Batwa People of Rwanda, September 28-December 15, 1994.* UNPO. The Hague.

⁴¹ Interview with Kabann Kabanukye, 3rd January 2005.

positions of leadership through local elections based on universal adult suffrage. Second, the fact that the majority of the Batwa are landless or squatters on other people's land means that they are generally perceived as temporary residents and not suitable to be elected to leadership positions. Third, the traditional perception among other communities that the Batwa are backward and primitive makes it difficult for the Batwa to influence decision-making in any way, as well as be elected to positions of responsibility. Finally, the Batwa have a negative perception of the local council administration and view it as an institution that has served to perpetuate their marginalization.⁴³ This is highlighted by accounts of biased decisions made by local council courts in favor of other communities. Yet the result of this pervasive lack of political participation and representation means that the Batwa cannot articulate their issues in the decision-making fora that could enable them to realize their rights.

All in all, the few voices among the Batwa community members and the evidence from the growing dearth of literature available all point to living human conditions that amount to flagrant violations of individual and community human rights. From the time of the creation of the national parks and the resultant disenfranchisement of the Batwa communities, Government and other interventionists continue to treat minority and indigenous rights issues not as a human rights issue but as a conservation and development agenda. Yet, amidst this lack of recognition of the human rights of the Batwa communities, there are vivid signs of resilience and determinations characterized by an emerging civic consciousness among Batwa community leaders. It is this civic consciousness that needs to be scaled up by change agent organizations.

5. A DECADE OF INTERVENTIONS: TOO LITTLE TOO LATE

It is now slightly more than a decade since the establishment of Bwindi Mgahinga Impenetrable Forest National Park and the eviction of the Batwa from their ancestral lands. Over this period, there has been numerous efforts by a variety of organizations pursuing varied objectives but all of them proclaiming to help the Batwa community. Generally, these organization can be grouped in three broad categories: Government; international and national conservation NGOs; and religious organizations. The interesting observation to make here is that while pursuing varied objectives: pacification by the Government, saving biodiversity by NGOs, and evangelization by the church; and working independently of each other in practice, they are united by a perceived sense of purpose –all claiming to work to improve the plight of the Batwa. In that regard, it is relatively easy to generally categorize their interventions for the purpose of a deeper analysis of

⁴² Kabanukye, *op.cit*, Note 41.

⁴³ Personal interviews with members of the Batwa communities interviewed during the field study.

their scale, scope and success. Generally, all these interventions that have been executed to date can be categorized into resettlement schemes, provision of health services, human rights advocacy, and provision of education among others.

5.1. *A resettlement programme that never was: The World Bank is an accomplice*

The major player in resettling the Batwa has been the Mgahinga Bwindi Impenetrable

Box 1: A World Bank Led Intervention: The case of Mgahinga Bwindi Impenetrable Forest Conservation Trust.

Mgahinga Bwindi Impenetrable Conseravtion Trust (MBIFCT) was established in 1991. The Trust was capitalized with an endowment of US\$43 million dollars. It was envisaged that the income from the fund would provide a sustainable source of funding to contribute to the conservation of the biological diversity in the two parks. The Trust fund is established as a legal entity independent of both the Government of Uganda and the other stakeholders such as the Global Environment Facility. Its administrative and operation structures were elaborated by over a three years period beginning 1992. In 1995, the Trust became operational and the GEF grant was declared effective triggering the funds to be transferred to an offshore Asset Management Account. Additional funding in operational funds has mainly been provided by the United Agency for International Development and the Netherlands Government.

The overall objective of the MBIFCT is the protection of the two national parks. Its funds are supposed to be spent on the park management (20%), research (20%) and local communities through supporting small projects (60%). Community projects not exceeding US\$ 1,000 including park management projects regardless of their magnitude of funding.

The Trust is governed by a Trust Management Board with representation from a board range of stakeholders including Government of Uganda agencies, local and international NGOs, research institutions and representatives of the riparian districts. Actual project screening and approval of small projects is the responsibility of the Local Community Steering Committee which is comprised of 3 persons representing the three districts of Kisoro, Rukungiri and Kanungu, 2 wardens, 2 representatives from women's groups and representatives of selected NGOs working in the area. In principle, there is supposed to be 1 representative of the Batwa but this has never happened. The Batwa representative is supposed to be drawn from the Batwa Representation Committee. However, although the establishment of the Representation Committee has long been established budgeted for by the Trust and was one of the preconditions for the Netherlands Embassy funding of the Batwa Component of the Trust's work, the Committee has never been established.

Like many other organizations that have tried to implement programmes targeting the Batwa communities, the Trust work has been a case of too little too late. For the first two years of the Trust operations (1995-1998), no specific programmes targeting the Batwa were implemented. Although the GEF project document clearly pointed out that the Trust "will be tasked with assisting the Batwa to identify and articulate their needs and to gain effective representation in the Trust's decision-making processes, there is currently no evidence of meaningful representation within the official funding, decision-making and management of the Trust. Instead the Trust has focused and perhaps registered measurable degree of success in "hardware" type of interventions including supporting a total of 641 children in 36 primary schools in Kanungu, Kabale and Kisoro, supporting two secondary students and buying land for Batwa communities.

Forest Conservation Trust (MBIFCT). MBIFCT has a programme, which specifically seeks to address the needs of the Batwa. It is under this programme that land was bought for the Batwa. The first phase of Trust land purchase for Batwa communities began in 1999. At that time, 69.7 acres of land was bought and distributed to 38 Batwa households, constituting less than 10% of those needing land. A total of 326 acres of land have since then been bought for the Batwa and distributed in fractions of 1.5 acres to each household. Such an amount is hardly enough to carry out agriculture.⁴⁴ Although MBIFCT has made significant progress in resettling the Batwa, the land titles remain with the Trust until such time the Trustees feel transfer of title to the Batwa would be

appropriate. However, no criterion has been given to determine the appropriate time. This raises serious questions of security of tenure for the Batwa. Secondly,

⁴⁴ Kenrick, Justine., op.cit., Note 12.

according to the MBIFCT Administrator, while the trust is cognizant of the plight of the Batwa as the original inhabitants of the forest, the Trust is kin and careful not to alienate other impoverished communities by overemphasizing the Batwa issue. Indeed, in 1996 when the trust funds were limited, the programme targeting the Batwa was suspended.

Other organizations that have bought land are the Adventist Development and Relief Agency (ADRA)- a religious organization. ADRA initially worked with the Batwa in Bundibugyo in 1994 on a resettlement programme that was cut short due to lack of funding. In December 2004, ADRA bought 88 acres of land for 85 Batwa families in Rubuguri and Mutorere parishes in Kisoro district. Under this arrangement, each family got one acre of land. However, the legal title to this land has not yet been transferred to the Batwa families though they are currently using the land as their own.⁴⁵

In addition, Kinkizi Diocese of Church of Uganda established a resettlement at Kitariro, North of Bwindi forest in 1992. The Diocese procured five acres of land which now provides a living place for 80 Batwa, a church, a school and a small clinic. In Kanungu district two missionaries (Dr. Scott and Mrs. Carol Kellermann) had previously bought 15 acres of land for Batwa resettlement where about ten households have been resettled. In January 2005, they bought another 100 acres near Bwindi forest for the Batwa. The land is yet to be surveyed and allocated to the beneficiary Batwa households. Unlike ADRA and MBIFCT who hold the title in trust for the Batwa communities, the Kellermans pass on the title to the Batwa who sign using their thumbs. Consequently, although the various Batwa communities have been resettled to a

Box 2: An example of a Church led Intervention: The Kinkizi Diocese (COU). Kellermann Initiative

In the early 1990s, Kinkizi Diocese of the Church of Uganda begun its Batwa outreach programme with support from the Episcopal Medical Missions Foundations. The aim of the programme was to alleviate absolute poverty among the Batwa community. The programme sought to purchase land for Batwa families to build homes and begin farming so that they can cease to be squatters. The Diocese also constructed a nursery school and a health center in Kitariro. In 1999 a Batwa workshop was held and Kinkizi Diocese programme on the Batwa was assessed. Several challenges were identified which include; lack of medicines in the health centre, poor sanitation in the settlements as the initiative had not built latrines and the Batwa complained the land was not enough to undertake any meaningful smallholding.

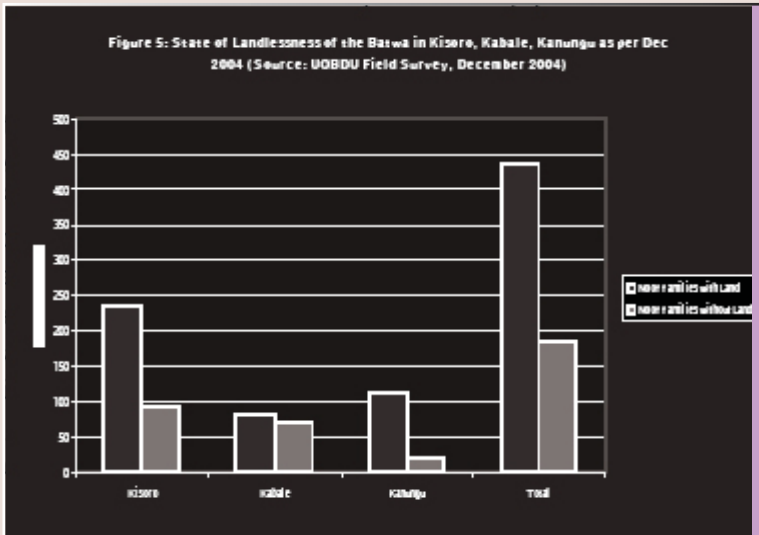
Later in 1999, the Episcopal Medical Mission sent Dr. Scott and Carol Kellermann to undertake a medical Needs Survey. The Kellermanns' survey findings confirmed the assessment of the 1999 Batwa workshop, highlighting the issues affecting the Batwa to be lack of proper housing facilities, safe drinking water, latrines, schools, clinics, land, high level of malnutrition and respiratory infections, coupled with lack of access to government healthcare and inability to pay for treatment. This impressed upon the Kellermanns the dire situation of the Batwa and they returned in 2000 to Buhoma Sub County in Kanungu to attempt to address the above problems.

The major distinction between the Kellermanns' intervention and other initiatives is that it goes beyond the medical mission, and seeks to address other poverty related issues. The Kellermanns' initiatives also encompass activities covering agriculture, sanitation, education and land acquisition. In addition to these specific interventions, in early 2005, the Kellermanns initiated a forum to coordinate all actors in Kanungu working with the Batwa. So far one meeting was held where organizations stated what areas they were addressing the future plans. The forum provided one of those rare opportunities where the different actors shared amongst themselves the nature and scope of their interventions with regard to the problems facing the Batwa.

⁴⁵ Interview with Booker M Ajounga -Public Relations Officer, ADRA. 8 January 2005.

great extent, the issue of lack of security of tenure in respect to ADRA and MBIFCT is still a problem in the resettlement scheme and will need to be addressed.

Another drawback in the resettlement programmes has been that in some areas, the Batwa refused to settle on the lands bought for them. They explained to the researchers that the land was not good for agriculture. A case in point is Mukungu parish in Kisoro where the community refused to move to the land bought for them, save for only one family.



Bwindi Impenetrable National Park and Mgahinga Gorilla National Park Conservation project was created with support from the Global Environment Facility. The project goal was to establish a fund to manage the two national parks and build community support for sustainable management of the areas. However the World Bank Operational

Directive related to indigenous people states that for any project that affects indigenous people, the borrower should prepare an indigenous people's development plan.⁴⁶ The directive requires the borrower on the basis of a social assessment and in consultation with the affected indigenous communities, to prepare an indigenous peoples plan. The plan should set out the measures through which the borrower will ensure that (a) indigenous peoples affected by the project receive culturally appropriate social and economic benefits and when potential adverse effects on indigenous peoples are identified, those adverse effects are avoided, minimized, mitigated or compensated. The failure by the World Bank to follow through and ensure effective compliance with its own operational directives makes it a major accomplice in a resettlement programme that never was. Indigenous peoples plans have been successfully developed under similar circumstances for other Bank projects and could be used as a model for the Batwa.

5.2. Education

Another area of intervention has been in the education sector with several attempts to raise the literacy levels of the Batwa. Several church-based organizations and

⁴⁶ World Bank Operational Directive O.D 4.20 that has been replaced with Operational Policy and Bank Policy 4.10.

individuals have supported the costs of Batwa children's education. As of 2004, there were approximately seven Batwa students attending secondary school, and approximately 600 in primary school.⁴⁷ Because of the external support being received, it is expected that the number of Batwa students enrolled at the secondary school level will increase to an average of 20 per year. It is worth noting that Batwa children are known to be bright and perform well in class.⁴⁸

A significant number of Batwa are also increasingly attending functional adult literacy training programmes and are performing well. For example with the support of the Ministry of Gender and Social Development and funding from the Swedish International Development Agency (SIDA), ADRA started a Functional Adult Literacy program in Kisoro district in which 350 of the 9000 learners in the two-year program were Batwa. In addition, ADRA funded the construction of Mabuyemeru Primary School in Kisoro for Batwa children. ADRA is also engaged in training and supporting Batwa in alternative subsistence livelihoods, such as on-farm activities and fishing. As a result of these trainings the Batwa are increasingly adopting a more settled life and engaging in productive activities like agriculture and small-scale trade. Whereas this represents a positive trend in the lives of the Batwa, the big challenge remains finding sponsors for the Batwa students to enroll in secondary schools since most of their parents still cannot afford to pay school fees.⁴⁹

A major issue with the educational initiatives being undertaken with the Batwa is the high number of children that have dropped out of school once enrolled. For example, Nchundura Primary School had enrolled 25 Batwa but within a period of two months, only 4 pupils remained. This high drop out rate could be linked to the difficult conditions under which the Batwa children are forced to study, characterized by hunger, discrimination and erratic class attendance due to poor health. The challenge for organizations working in this area, therefore, will be to address these underlying conditions in order to keep the Batwa children in school.⁵⁰

5.3. *Access to the forest resources*

In 1992, Cunningham⁵¹ carried out an ethnobotanical survey in Bwindi to identify the plant species used by local communities. Recommendations from this

⁴⁷ The students are, Nyamarihanda Alice -S3 at Seseme Girls Secondary School in Kisoro, Ndaruhutse Alex-S1 at Busanza Secondary School in Kisoro, Arentere Rosemary-S3 attending St. Maria Goret in Kabale, Fabice Saturday -S1 in Kabale, Kenneth Tunyamubwona- S1 at King College Buddo.

⁴⁸ Interview with Dr and Mrs Kellerman during field work in Kanungu District in April 2005.

⁴⁹ Interview with Peninah Zaninka, Program Officer, Forest Peoples Programme in April 2005.

⁵⁰ Interview with Dr. Scot and Carol Kellermann, OpCit Note 50.

survey included the need to establish low impact, specialist resource use within designated multiple use zones inside Bwindi Impenetrable National Park and the provision of substitutes for high impact, general uses of forest resources on farms outside. In 1993, Uganda National Parks headquarters, basing on the results and recommendations of the 1992 survey, established a system of extractive resource use, later changed to “multiple use,” to allow communities to access medicinal plants, basket materials, seedlings of indigenous tree species and bamboo rhizomes to plant on farms and foot access to spiritual and cultural sites. After it was institutionalized in the Wildlife Act,⁵² a Memorandum of Understanding was signed between UWA and the communities to grant access to negotiated forest products. The Multiple Use Program (MUP) was expected to contribute to reducing the costs of forest management in addition to promoting communities traditional rights to the forests. The MUP involved establishing forest access for bee keeping, gathering medicinal herbs and basket making materials, but this is limited to some associations in some parishes around the peripheral parts of the park, covering 20% of the total forest area.

Unfortunately, these associations rarely included the Batwa, and the designated uses for the Program did not include many of those most frequently mentioned by the Batwa, such as collecting firewood, wood for building materials, hunting small animals or worshipping ancestors in the forest. The Uganda Wild Life Authority in collaboration with NGOs like CARE is in the process of revisiting the current arrangements for controlled access to the forest resources. It is recommended that special mechanisms should be devised to ensure that the Batwa also benefit from this programme.

5.4. *Evangelization Mission of the Church*

Batwa pygmies were not evangelized by the colonial or post-colonial missionary activities, until recently when church based organizations started working with them. Both the Seventh Day Adventists church (SDA) and the Church of Uganda (COU) are trying to teach the Batwa to turn away from their “forest gods” and convert to Christianity. At least four bishops of the Church of Uganda in the three Southwestern districts have established projects to assist Batwa, mostly relating to education and food supplies. The Church of Uganda in Ntandi, Bundibugyo has been supplying clothing, blankets, and food (posho, sugar and salt) but also evangelizing them to convert to Christianity. What is apparent therefore is a series of church led initiatives that combine “saving both body and souls.” The level of penetration of the Christianity may be evidenced by the apparent widespread usage of Christian names. Although some Batwa portray themselves as Christians,

⁵¹ Cunningham.1996. People, Park and Plant Use. Recommendations for Multiple use Zones and Development Alternatives around Bwindi Impenetrable National park, Uganda. People and Plants working paper 4, UNESCO, Paris.

⁵² Government of Uganda. 2000. The Wildlife Act, Cap 200. See also the Uganda Wildlife Statue, 1996.

it seems they do so for convenience. Others such as those in Kisoro move from one denomination to another depending on which Christian organization “treats them best.”⁵³

5.5. *Confronting the Problem of Marginalization*

African International Christian Ministries (AICM) has attempted to encourage the dominant communities to stop marginalizing the Batwa. The relationship between dominant communities and the Batwa is improving. For example when a non-Mutwa dies, the Batwa participate in the burial arrangements and vice versa. In Kabale, some Batwa have been invited to join associations formed by the Bakiga, which is the dominant ethnic tribe that has long discriminated against the local Batwa populations. Recalling that previously a non-Mutwa would not sit next to a Mutwa at a gathering, the fact that currently the Batwa have started sharing food on the same plate with non-Batwa is an indication that the neighboring communities are gradually accepting the Batwa.

5.6. *Empowerment Initiatives*

The United Organization for Batwa Development in Uganda (UOBDU) was founded with support from Forest Peoples Programme to empower Batwa communities.⁵⁴ UOBDU has an office in Kisoro and the Batwa representatives on the committee run this organization. They travel from community to community to undertake needs - assessments, and provide information on how to embark on self-initiatives that will uplift the living standards of the Batwa. UOBDU also provides the results of their needs - assessments to other groups working with the Batwa.⁵⁵ Through this initiative, Batwa representatives had the opportunity to travel to Washington, D.C. and meet directly with the World Bank staff at a workshop in 2000.⁵⁶

The biggest challenge to the successful operation of the UOBDU has been lack of sufficient funds to run the organization. Hence the officers have expressed a lack of commitment and motivation to undertake the necessary work.⁵⁷ Another challenge to the operation of this organization has been limited management capacity of its officers. It was originally envisaged that the Batwa themselves would run the organization. However due to low literacy levels among the Batwa, it has been difficult to identify competent people to run the organization.⁵⁸ There is a need to build the capacity of members of this organization to actively take part in the management and advocacy for the rights of the Batwa.

⁵³ Kayeye, W.M., op.cit.

⁵⁴ The main aim of the Forest Peoples' Programme is to support indigenous and tribal forest peoples to: promote their collective and individual rights; secure their lands and manage their natural resources; carry out sustainable community development; educate policy makers, agencies and civil society about their concerns and aspirations.

⁵⁵ Kabanukye, op.cit, Note 53.

⁵⁶ Kenrick, op.cit, Note 51.

⁵⁷ Interview with Peninah Zaninka, Program officer, Forest Peoples Programme in April 2005.

In the area of empowerment, another organization that seeks to empower the Batwa is the Rukungiri Functional Literacy Resource Center (RFLRC). Their aim is to build capacity of selected community champions among the Batwa communities within particular villages. Thereafter the trained Batwa would pass on the skills to a larger group. The skills include writing and reading and Participatory Rural Appraisal (PRA) skills to enable the Batwa identify and develop projects to improve their livelihoods. During the field study, the research team had the privilege to attend the graduation ceremony of the three Batwa men at RFLRC (See figure 6). Consequently, reports from the field indicate that the three Batwa who were trained have helped the communities in their settlements to start self-help initiatives. This is a new initiative, which if well implemented, promises to empower the Batwa to articulate their concerns and identify development initiatives that would uplift their status.

Figure 6: Representatives of the Batwa and ACODE Researchers at a graduation function after completing training in PRA techniques conducted by RFLRC



5.7. *Revenue Sharing*

The Uganda Wildlife Act includes provisions requiring the Uganda Wildlife Authority, as the Government of Uganda lead agency on wildlife management, share revenue from the parks with local communities. UWA is obliged to pay 20% of the park entry fees to the communities surrounding the park.⁵⁹ The purpose is to achieve equitable distribution of benefits from protected areas. Secondly it is also meant to solicit local community support for conservation initiatives to ensure the long-term viability of these protected areas. These communities have foregone benefits following the gazettement of the parks. However the revenue sharing around Bwindi and Mgahinga gorilla national parks has not been without challenges in the implementation.

The revenue to be shared from the parks is 20% of the park entry fees, which is

⁶⁸ During the course of conducting this study, we were only able to talk to one officer who was available in the Organization's offices.

⁶⁹ Wildlife Act, Cap 2000. Law of Uganda, Revised Edition, 2000. Section 69(4).

about US \$ 15, per person. Yet the gorilla tracking permits, which cost about US\$ 360 for foreign tourists, brings in the majority of the revenue. In 2004, gorilla-tracking accounting for 43% of UWA's annual income was the major source of internally generated income. Communities have questioned the equity of limiting revenue sharing to entry fees, and have also pointed to the lack of transparency with respect to the total revenue collected by UWA and the delays in disbursements that are received.⁶⁰ An additional issue is related to the fact that nearly all projects funded by the revenue sharing programme are social infrastructure projects. Around Bwindi Impenetrable Forest National Park, during phase one (1996-1998) the following projects were funded: three feeder roads, ten school buildings and six health centers. Since the beginning of phase two in 2002, a number of infrastructure projects including nine school buildings, three old school buildings, five feeder roads, three new health units and one community hall for four parishes are either under construction or completed.⁶¹

The above situation might be caused by the design of the revenue sharing guidelines which provides that the projects to be selected should benefit the whole community and not an individual and the project should be in line with the district development plans. The limited participation of the communities in selecting the projects to be funded is a major constraint and should be addressed.

Box 3: A case of intervention by an international NGO-Care International in Uganda

CARE International is a US based international NGO with offices in a number of countries around the world. It established its offices in Uganda in 1969 as CARE International in Uganda (CARE Uganda). Since that time, CARE Uganda has worked with people and communities living near protected areas, whose livelihoods are affected by reduced access to natural resources. In 1988 CARE International started to implement a development extension and conservation project for communities living adjacent to the Bwindi forest. In the early 1990s, CARE took lead in the design and piloting of the new conservation initiatives including collaborative management of wildlife protected areas. Working with the Uganda Wildlife Authority, CARE Uganda was instrumental in the initiation of a series of activities including joint training of park staff, problem animal control, the establishment of Community Protected Area Institutions (CPI), etc.

However, it is the area Multiple Use Programme (MUP) where CARE Uganda has had an enduring influence as far as a "people centered" conservation agenda is concerned. The MUP provides the framework and establishes the rules upon which communities are able to access selected forest products. The first Memorandum of Understanding (MoU) for a multiple use scheme was signed between Uganda National Parks (the predecessor to the Uganda Wildlife Authority) and the community of Mpungu, covering 20% of the total forest area subsequently two other MoUs were signed with two other parishes – Nteko and Rutugunda. However, the absence of a clear operational policy and guiding principles in the early stages of Multiple Use Programme undermined the effective implementation of the Programme Based on its experience; CARE Uganda was instrumental in advocating for the inclusion of provisions relating to multiple use in the revised wildlife legislation which was enacted in 1996.

In its current form, the Multiple Use Programme involves guaranteeing access to the forest for the bee keeping, gathering medicinal herbs and basket making materials. The Programme is based on the concept of forest user groups which sign the MoU with the relevant Park Authorities. By the nature of the forest user groups, communities such as the Batwa are excluded from access. According to a review of the Multiple Use Programme conducted in April 2005, a single Mutwa old woman was found to belong to a forest user association and according to her testimony; she had never attempted to have access to the forest on account of old age.

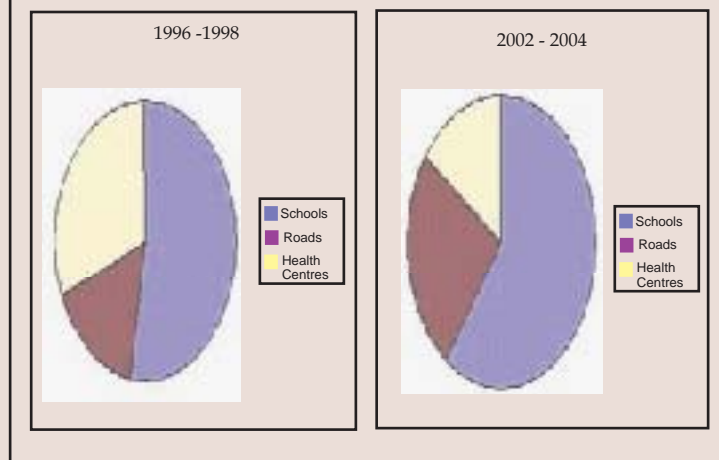
Based on its long experience working with the Batwa and other park riparian communities, CARE has since 2001 expanded the scope of its activities to encompass more "software" intervention including advocacy, empowerment and development of champions among the Batwa CARE is also supporting the Rukungiri Functional Literacy Resource Centre to take a leadership role in training and empowering the Batwa community members.

⁶⁰ Discussions at the Multiple Use Programme workshop organized by CARE on 17th February 2005 at White Horse Inn Kabale.

⁶¹ Uganda Wildlife Authority (2004). Revenue Sharing Programme White paper.

The above situation raises two policy issues; first is lack of community participation especially the Batwa in the decision-making for what projects to be funded which leads to inappropriate projects. For example the Batwa have not benefited from social projects because without providing lunch at school, the Batwa children drop out of the schools and in the case of health centers, the Batwa do not have the money to buy medicine so they do not go to these health centers. The problem rests with the

Figure 7: Revenue sharing project by share of funding for selected years



institutional framework in place to support the revenue sharing interventions, which is weak. The Community Protected Area Institutions (CPI)⁶² that are responsible for screening and selecting the revenue sharing projects have been mandated to advise the community as to what projects should be selected and also to advise the local council administration on what projects to approve.

The contradictory roles mandated to the CPI create a conflict of interest as to whose interests are advanced in project selection and approval. Experience from the field reveals that CPI has had limited success on the described roles. To date the CPI has only been able to report back to communities on the amount of Revenue Sharing money the PA management is availing for community projects. The low level of legal literacy and knowledge of local community user rights exhibited by CPI members, undermine the capacity of CPI as an institution to hold UWA and Local Government accountable to the local communities. Whereas CPI members say they know their roles and power, they claim that they are surrogates of the PA managers and district administrators due to lack of financial resources.⁶³ The issue of who can legitimately and effectively represent the community interests remains partially unresolved and that might hurt the initial efforts to advocate for a strong decision-making role for the communities' vis-à-vis the management of the park.

Secondly, there is no Batwa representation on the CPI and hence no one to ensure Batwa issues are clearly articulated and prioritized. The reason for the lack of representation is simple: the Batwa are not represented on the local councils where the Local Environment Committees (LECs) are drawn from. In turn, the CPIs are drawn from the LECs. There is need to devise mechanisms to ensure that the Batwa are represented in some of the decision making fora, in addition to strengthening the CPI as an institution to promote the rights of the communities

⁶² Uganda Wildlife Authority (2000). A report of the Revenue Sharing Programme around Protected Areas.

⁶³ Mutebi, Jackson (2003). Co-managed Protected Area: From Conflict to Collaboration, Experience of Bwindi Impenetrable National Park.

including the Batwa.

In addition, limiting the actual revenue shared to park entry fees and not including the more profitable gorilla-tracking fees is at the core of the equity questions underlying the Revenue Sharing Programme itself. According to a field assessment of revenue sharing projects by Good Hope Foundation, only 40% of the projects undertaken through the program have actually been completed.⁶⁴ Good Hope Foundation found that this is due to the fact that the money returned to the communities is insufficient for their completion and that UWA has consistently failed to monitor project implementation.

Revenue sharing programmes should provide adequate incentives for conservation as well as yield sufficient revenue for district councils and the central government. The local governments should not take on management burdens for non-consumptive values without gaining control of the more lucrative aspects of the resource. Without authority being transferred from the central government to the local communities, then privileges and not rights will have been devolved. Therefore, the local resource users should play a more active role in terms of making decisions on what projects should be funded by the Revenue Sharing resources. The role of the CPIs should be streamlined either as a body to represent the interest of the communities but not act as an advisor to both communities and the local government responsible for approving projects.

5.8. Health Care

In Kanungu district, two missionaries – Dr. Scott and Mrs. Carol Kellermann have chosen to focus their missionary work on the Batwa community especially in the area of healthcare. During the field study we interviewed Dr. and Mrs Kellermann who have founded a permanent clinic at the Batwa settlement at Kitariro with funding from the Diocese of West Dallas, United States. This clinic serves the Buhoma sub county area, although Dr. Scott Kellermann performs mobile health clinics at Byumba and Mukono in the neighboring sub counties. The Kellermanns do not charge any fees for their services, which raises questions of sustainability of this project. Related to their healthcare, the Kellermanns are engaged in several community projects intended to improve the sanitary and drinking water conditions. They educate and supply the Batwa with equipment to build pit latrines. The limitation of the Kellermann interventions is that their healthcare is largely curative rather than preventative. There is a need to scale up community health education as a preventative method. The table below shows a summary of major interventions by selected actors working with the Batwa.

⁶⁴ CARE Uganda (2004). A report on the Annual Advocacy Clinic; Pursuing Environmental Rights and Entitlements in South Western Uganda. CARE Right and Equity in Protected Areas Programme.

As already seen in section four, the plight of the Batwa has been degenerating at worst or the interventions have been characterized by tokenism at best. There is clearly a need for all actors to take a step back

Actor	Area of Intervention
Mpigi Wildlife Inspectorate Forest Conservation Trust	Recreation, Rehabilitation
Uganda Wildlife Authority	Recreation, Rehabilitation
CRP Uganda	Recreation, Rehabilitation, Conservation
Uganda Conservation Trust	Recreation, Rehabilitation
Church of Uganda	Recreation
Uganda Wildlife Inspectorate	Recreation
MBIFCT	Recreation, Conservation

and reflect on why all their interventions, either individually or collectively, have not helped alleviate the short-term living conditions of the Batwa or the long-term strategic issues of empowerment and inclusion. It could be argued that what actually needs to be done is for all the actors to rethink their intervention ethic. It is apparent that the establishment of the Bwindi Mgahinga National Park and the intervention programmes that followed such as the establishment of the Bwindi Mgahinga Conservation Trust Fund and the work of major conservation NGOs such as WWF, CARE International, IGCP, and many others were largely driven by traditional approaches among conservation organizations where conservation is considered as the end in itself. Indeed, the execution of Integrated Conservation and Development Programmes (ICDPs), often paternalistic in nature and being implemented by organizations that had not particular expertise or track record in poverty eradication and community empowerment could easily illustrate this point.

For many of the actors, including the MBIFCT or the Government agencies such as Uganda Wildlife Authority, the success of their programmes is judged on whether biodiversity of the area has been “sustainably managed and conserved” and not whether the living conditions of communities such as the Batwa have been improved. It appears that what is needed is a radical departure from this traditional conservation ethic and shift to the one that puts the communities that have been adversely affected by translocation of their populations at the centre of the intervention programmes being pursued. Among other things, there is a need to work towards abandoning the paternalistic approach often guided by the fact that “we have the money and we can fix the problem” to one that focuses on supporting local empowerment and inclusion and the emergence of “champions” that can adequately articulate the concerns and interests of the Batwa and other marginalized communities at different fora.

6. THE LEGAL FOUNDATION OF THE RIGHTS OF INDIGENOUS COMMUNITIES: BATWA IN INTERNATIONAL LAW AND PRACTICE

Over the last half a century, international law has been evolving a set of international legal and soft law norms and principles regarding recognition and protection of the rights of indigenous peoples and minority groups such as the Batwa of Southwest Uganda. The variety of these instruments cover such rights as the right to cultural identity and cultural heritage, land and land rights, self-determination, economic development, environment and health rights, etc. As demonstrated in the discussion below, it is clear that the Batwa as an indigenous forest community and minority group is entitled to protection under international law.

The first international instrument that promotes human rights generally is the United Nations Declaration on Human Rights.⁶⁵ The Declaration was adopted by the United Nations General Assembly in December 1948. Article 17 of the Declaration guarantees the right to own property either individually or in association. To safeguard this right, the Declaration proscribes arbitrary acquisition of property. Article 22 of the declaration requires states to promote the right to social security and economic development. This right includes the freedom to exercise economic, social and cultural rights, rights that are indispensable to the dignity of mankind.

To realize the rights enumerated in the Declaration, three international agreements were concluded in 1966: the International Covenant on Civil and Political Rights (ICCPR);⁶⁶ the United Nations Convention on the Elimination of All Forms of Racial Discrimination;⁶⁷ and the International Covenant on Social, Economic and Cultural Rights (ICESCRs).⁶⁸

General and specific aspects of indigenous peoples' rights were articulated throughout the ICCPR. For example, Article 1 of the Covenant contains the self-determination clause, which calls upon states to grant indigenous groups the right to freely determine their political status and freely pursue their economic, social and cultural development. This article implicitly recognizes the right to exploit natural resources in pursuit of social and economic development. Hence the denial of indigenous peoples' right to own, use and exclude them from exploiting natural resources is in contradiction to the right to self-determination. Additionally, Article 27 of the convention specifically provides that:

⁶⁵ United Nations General Assembly Resolution 217 A (111) of 10th December 1948.

⁶⁶ United Nations (adopted on 16 Dec 1966 and put into force on 21 Oct 1976), The United Nations Covenant on Civil and Political Rights.

⁶⁷ *Supra*, note 18.

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own

The Covenant further guarantees the right to own natural resources including the freedom to freely dispose of their natural wealth and resources.⁶⁹ In addition, the Covenant prohibits States and other actors from depriving people or individuals of their means of subsistence, under any circumstances.⁷⁰ This provision is perhaps the most instructive in as far as safeguarding Community-Based Property Rights of indigenous peoples in general and addressing the historical injustices occasioned to the Batwa community in particular. The article implies that deprivation of indigenous communities like the Batwa, of their ancestral lands and the resultant denial of access to these lands not only constitutes a violation of their right to sustenance but also undermines their constitutional right to life.

In addition to the ICCPR, the United Nations Convention on the Elimination of All forms of Racial Discrimination was also adopted by the United Nations General Assembly during the same year.⁷¹ Article 1 of the Convention defines racial discrimination as a distinction, exclusion, restriction or preference based on... descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, or human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The International Covenant on Social Economic and Cultural Rights (ICSECRs) entered into force in 1976. Uganda ratified the Covenant in 1987. Article 1 re-affirms the right to self-determination established by the International Covenant on Civil and Political Rights. The covenant recognizes the right to property and proscribes acts which lead to the deprivation of peoples' property especially property from which they derive their subsistence.⁷² In general the Covenant gives economic, social and cultural rights the same level of importance to other human rights thus giving a platform for promoting CBPRs as fundamental human rights. The Covenant seems to put to rest the huge debate in the international community, which is still persisting that those economic rights such as the right to property are second generation rights and not readily enforceable.⁷³ The Czech jurist Karel Vasak at the International Institute of Human Rights in Strasbourg initially proposed the division of human rights into three generations in 1979. He

⁶⁹ *ibid*, Article 5d(v).

⁷⁰ Article 17(2) states that no one shall be arbitrarily deprived of his property.

⁷¹ Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965.

⁷² Article 1(2).

⁷³ Wikipedia Encyclopedia Three generations of Human Rights available at http://en.wikipedia.org/wiki/three_generations_of_human_rights 8/8/2005.

opined that first generation human rights deal essentially with liberty, and are fundamentally civil and political in nature such as freedom of speech, right to a fair trial and freedom of religion. Second generation human rights relate to equality and are fundamentally social, economic and cultural in nature such as the right to work. Lastly third generation human rights focus on fraternity such as the rights of solidarity. The third generation rights cover group rights and collective rights such as right to self-determination, to economic and social development.⁷⁴

In 1981, the African Charter on Human and Peoples Rights (Banjul Charter) was adopted but entered into force on 21st October 1986.⁷⁵ At a theoretical level, the African Charter represents the highest commitment by African States to promote and protect human rights of African peoples. Pursuant to Articles 2, 3, and 5, the rights to equality and human dignity belong to all individuals, including individual members of indigenous communities. The Banjul Charter also recognizes collective rights of “peoples”, a concept that has been interpreted by a number of scholars to symbolize recognition of the unique lifestyles of indigenous and local African communities thus the need for the protection of their aspirations and rights under Articles 19-24. Further more, Article 62 requires member states to submit reports every two years on the measures they have taken to implement the provisions of the African Charter.⁷⁶

In 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child.⁷⁷ Article 2 of the Convention provides for non-discrimination against children. Article 17 provides for the right to education on human rights and on a group’s own cultural identity, language and values. Article 29 and Article 30 state that children of minorities or indigenous origin shall not be denied the right to their own culture, religion or language. In the context the children of indigenous communities like the Batwa, the Convention is of significant importance for the realization of their aspirations to educate their children and exercise their spiritual and cultural rights prior to the establishment of conservation areas.

Another international instrument relevant to CBPR and generally the rights of indigenous communities is Convention 169 concerning indigenous and tribal peoples in newly independent countries adopted by the General Conference of the International Labor Organization (ILO) in 1989. The Convention enjoins Member States of the International Labor Organization to respect and promote the cultures and spiritual values of indigenous communities and collective rights that they enjoy in relation to their lands or territories. Some of the rights recognized

⁷⁴ Wikipedia, *ibid*.

⁷⁵ Adopted recalling Decision 115(XVI) of the Assembly of Heads of State and Government at its sixteenth ordinary session held in Monrovia, Liberia in 1979.

⁷⁶ During this study, the researchers could not establish the existence of any record that suggests that Uganda has ever submitted any reports as required by the Charter.

⁷⁷ See UN General Assembly Resolution 44/25 of November 20, 1998.

under the Convention include the right of ownership and possession of lands that indigenous peoples have traditionally occupied and the right of access to lands from which they have traditionally derived sustenance. The Convention calls for greater participation by, and consultation with, indigenous groups in decisions that affect their rights. For example, Article 16 requires states to protect indigenous communities from eviction from their lands. In instances where it is necessary to acquire their lands in public interest, states are required to seek their informed consent and provide them with adequate compensation.

Other than international human rights instruments, the rights of indigenous peoples, which would encompass CBPR, have also found widespread support in the work of the World Bank and international environmental instruments. The table below

Year	Instrument	Provisions Relevant to CBPRs
1948	Universal Declaration of Human Rights	Art. 17 - Right to own property Art. 21 - Right to social security and economic development
1966	International Covenant on Civil and Political Rights	Art. 1 - Right to self-determination Art. 17 - Prohibits arbitrary deprivation of property Art. 20 - Right to ethnic, religious and language
1966	International Covenant on the Elimination of All Forms of Racial Discrimination	Art. 2 - Prohibits actions from discrimination Art. 7 - Right to equality before the law
1976	Convention on Social Economic and Cultural Rights	Art. 1(1) - Right to self-determination Art. 1(2) - Right to property
1978	African Charter on Human and Peoples Rights	Art. 2, 3, and 5 - Rights to equality and human dignity belong to all individuals Art. 18-24 collective rights of people
1989	Convention on the Rights of the Child	Art. 2 - Non-discrimination of children Art. 29, 30 - Right to their own culture, religion or language
1989	ILO Convention 169	Art. 14 - Right of ownership of land traditionally occupied
1991	World Bank Operational Directive 4.20 on Indigenous Peoples now replaced with Operational Policy and Bank Policy 4.10	<ul style="list-style-type: none"> • Social assessment by the borrower; • The plan requires the borrower to engage in a process of community consultation • Prepare an indigenous peoples plan
1992	The Rio Declaration on Environment and Development	Principle 3 - indigenous peoples have a vital role in environmental development
1992	Convention on Biological Diversity	Art. 1 - Right to equal and equitable sharing of the benefits arising from the use of genetic resources recognizes the traditional role of indigenous peoples and communities in conservation

constitutes a summary of CBPR relevant provisions from selected international legal instruments. In particular, the World Bank Operational Directive 4.20, which was adopted in 1991 established specific requirements for dealing with the rights and interests of indigenous communities in Bank funded projects.⁷⁸ The directive implores the borrower on the basis of a social assessment and in consultation with the affected indigenous peoples' communities, to prepare an indigenous peoples plan. The plan should set out the measures through which the borrower will ensure that (a) indigenous peoples affected by the project receive culturally appropriate social and economic benefits and when potential adverse effects on indigenous peoples are identified, those adverse effects are avoided, minimized, mitigated or compensated.

During the 1980s and the 1990s, the global environmental discourse triggered by the work of the World Commission on Environment and Development (WCED)⁷⁹ and the United Nations Conference on Environment and Development put the

⁷⁸ From July 2005, OD 4.20 will be replaced by Operational Policy and Bank Policy 4.10.

issue of rights of indigenous communities on the global environmental agenda. During the hearings of the Commission, a representative of one of the indigenous peoples in India put the plight of communities such as the Batwa in perspective. He is quoted submitting before the Commission as follows:

Based on its general findings, the WCED observed that “the standard for a just and humane policy for such groups is the recognition and protection of their traditional rights to land and the other resources that sustain their way of life-rights they may

“...The only possible place for the Krenak people to live and to re-establish our existence, to speak to our Gods, to speak to our nature, to weave our lives is where our God created us. It is useless for the Government to put us in a very beautiful place, in a very good place with a lot of hunting and a lot of fish. The Krenak people, we continue dying and we die insisting that there is only one place for us to live.

My heart does not become happy to see humanity's incapacity. I have no pleasure at all to come here and make these statements. We can no longer see the planet that we live upon as if it were a chess-board where people just move things around. We cannot consider the planet as something isolated from the cosmic.

We are not idiots to believe that there is possibility of life for us outside of where the origin of our life is. Respect our place of living, do not degrade our living conditions, respect this life. We have no arms to cause pressure, the only thing we have is the right to cry for our dignity and the need to live in

define in terms that do not fit into standard legal systems.” The Commission further emphasized the need to ensure that the recognition of traditional rights went hand in hand with measures to protect the local institutions that enforce responsibility in resource use since the existence of such institutions was an inherent feature of these communities.⁸¹

The observations and recommendations of the World Commission on Environment and Development were subsequently reflected in the outcomes of the United Nations Conference on Environment and Development (UNCED).⁸² The Rio Declaration - the political statement of the UNCED recognized the vital role that indigenous peoples played in the conservation and management of the environment. In Principle 22 of the Declaration, States affirmed their commitment to recognize and duly support the identity, cultures and interests of indigenous

⁷⁹ See, Our Common Future: Report of the World Commission on Environment and Development, 1987. Oxford University Press. Oxford and New York.

⁸⁰ Ibid, pp 115.

⁸¹ Ibid, pp115.

⁸² Rio de Janeiro, 1992.

peoples and to ensure their effective participation in the sustainable development process. The Convention on Biological Diversity⁸³ – one of the legally binding instruments adopted by the Conference contained elaborate provisions on the protection of indigenous peoples, traditional knowledge and practices.⁸⁴

The most recent efforts by the international community to recognize the rights of indigenous communities are contained in the Draft United Nations Declaration on the Rights of Indigenous Peoples 1994.⁸⁵ The Draft Declaration contains provisions for cultural development, protection of cultural property, religious freedom, and control of education.⁸⁶ Arguably, the most significant right established under this regime is the right to self-determination, which, broadly construed, encompasses the right to autonomous control over local territory and resources. Connected with this right, the Draft Declaration accords compensation to indigenous groups that have been deprived of their traditional means of subsistence and/or restitution of lands previously occupied. The realization of the bulk of rights accorded under this regime, including identity, maintenance of tradition, and intellectual and cultural property rights, is recognized to be dependent on the realization of territorial and resource rights. In broad terms the draft declaration lays a strong foundation for promoting the aspirations of the indigenous people like the Batwa especially seen in regard to their land rights, religious and cultural rights and their identity as an indigenous community whose rights have been violated for several decades.

The international legal instruments discussed above clearly show that over the last half a century, there has developed adequate jurisprudence that suggests that the rights of indigenous communities are now backed by sufficient *opinio Juris* and consistent state practice. It is therefore tenable to argue that the rights of communities such as the Batwa and many others have their legal basis in international law.⁸⁷ It is also important to recognize that the United Nations Education, Scientific and Cultural Organization declared Bwindi and Mgahinga National Parks as a Natural World Heritage site in 1994. To this extent, the international community has a legal, political and moral responsibility to effectively and adequately address the plight of the Batwa community. Yet, the current plight of the Batwa and their persistent marginalization and disenfranchisement is a major indictment on both the international community and the Government of Uganda which has committed itself to the above principles as expressed in its ratification of several of the instruments discussed above.

⁸³ Nairobi, 1992.

⁸⁴ Ibid, article 8.

⁸⁵ For details, see the following resolutions of the United Nations High Commissioner for Human Rights: 1985/22 of 29 August 1985; 1991/30 of 29 August 1991; 1992/33 of 27 August 1992 and 1993/46 of 26 August 1993.

⁸⁶ Article 29.

⁸⁷ Tumushabe, Godber, *opcit*, note 1.

7. COMMUNITY-BASED PROPERTY RIGHTS IN NATIONAL POLICY AND LEGISLATION

In the preceding section, we have argued that the wide range of international legal and political instruments clearly establish the necessary framework for confronting the challenges and problems experienced by communities such as the Batwa and many others living on the margins of nature and on the fringes of democracy and prosperity. However, many of these communities have been evicted from nature and are treated as “second class” citizens. This section analyzes the recent legislative progress at the national level and examines whether that progress creates the necessary material conditions to address the plight of the Batwa by recognizing and enforcing their rights as articulated in the existing constitutional, policy and legal instruments.

7.1. *Constitutional Guarantees on Community-Based Property Rights*

The current Ugandan Constitution was only promulgated 10 years ago.⁸⁸ As such, the Constitution is considered among some of the most progressive constitutional instruments in the world with specific provisions for the protection of human rights and the creation of institutions that are supposed to guarantee the enjoyment of these rights. Indeed, the 1995 Constitution, in its declaratory principles as well as its substantive parts makes both general and specific provisions for the protection of individual, group and collective rights, and establishes mechanisms and procedures for their enhancement and protection. Although a detailed exposition of the various provisions relevant to human rights, minority rights, etc is not possible given the scope of this paper, it is only imperative that a number of key issues are highlighted for purposes of emphasis.

A number of key constitutional principles contained in the National Objectives and Directive Principles of State Policy either directly or indirectly relate to the Batwa situation. For example, principle XI provides that “*The state shall give the highest priority to the enactment of legislation establishing measures that protect and enhance the right of people to equal opportunities in development.*” The National Objectives and Directive Principles of State Policy also enjoin the State to “take necessary to bring about balanced development of the development areas of Uganda” and to “take special measures in favor of the development of the least developed areas.” Principle XIV further articulates the commitment of the state to protect and promote the social and cultural well being of the people of Uganda, and enjoins the State to ensure that “all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing.....”

⁸⁸ Republic of Uganda. 1995. The Constitution of the Republic of Uganda.

Although it has been argued that the constitutional provisions enshrined in the National Objectives and Directive Principles of State Policy are essentially not justiciable and hence unenforceable, they nevertheless provide the foundation and an interpretation aid to the more substantive provisions of the constitution. In this regard, and in addition to the various provisions relevant to CBPR and the case of marginalization and disenfranchisement of the Batwa, two specific issues need to be highlighted.

First, the 1995 Constitution contains a comprehensive bill of rights, covering civic and political rights, economic, social cultural rights as well as collective rights. In particular, article 26(1), guarantees the right to own property either individually, or in association with others. The article provides a constitutional foundation for collective ownership of property –an essential element in CBPRs regimes. To safeguard this right, the Constitution proscribes arbitrary acquisition of property and calls on parliament to enact legislation regulating acquisition of property by government in public interest. In addition, the Constitution seeks to ensure that persons affected in cases of compulsory acquisition of property are adequately compensated prior to the acquisition of their property. Seen from the historical context where the State compulsorily appropriated private property without compensation, this provision represents a major achievement in the struggle for property rights in general and recognition of collective property rights in particular.

Secondly, the constitution clearly recognizes that certain individuals and groups of persons may fail to enjoy or enforce their rights secured under the constitution as a result of different forms of incapacity. Consequently, the Constitution seeks to broaden the concept of *locus standi* by empowering⁸⁹ persons or organizations to bring representative actions on behalf of persons or groups of persons whose rights have been violated. This provision is of great significance to the poor and marginalized communities who often lack the financial and technical capacity to access justice or seek redress from judicial and administrative tribunals. Considering the traditional restrictive application of the doctrine of *locus standi*, which limited public interest litigation, this provision is of great significance in ensuring that disadvantaged groups like the Batwa access justice through legal representation by persons or humanitarian institutions engaged in public interest litigation. Indeed, since the Constitution was promulgated in 1995, a number of public interest cases have been brought to the courts and other systems of redress in support of marginalized but technically and financially constrained groups. Box 4 is an example of a case handled by ACODE on behalf of the Members of Butamira Forest Pressure Group whose tree farming interests in Butamira Forest Reserve were terminated by Government

⁸⁹ The Constitution of the Republic of Uganda, 1995. Article 50(2).

Box 4: Effective Legal Representation in Defense of CBPR: The Case of Butamira Forest Reserve

In an unprecedented major environment and human rights public interest litigation over the defects degazattement of Butamira Forest Reserve, ACODE won the case against the Government of Uganda represented by the Attorney General and the National Environment Management Authority (NEMA). The battle for the preservation of Butamira Forest Reserve dates way back to the year 2000 when Government terminated the tree farming rights of members of Butamira Environment Pressure Group and allocated the Reserve to Kakira Sugar Works (KSW) to enable the company expand their sugar plantation. The case which was instituted by ACODE on behalf of the tree farmers in Butamira Forest Reserve sought to challenge the permit granted to KSW to change the forestry land to sugar cane growing on a number of grounds including contravention of the Constitution and the Land Act, contravention of the doctrine of public trust, violation of the right to a dean and healthy environment, failure on the part of the respondents in discharging their constitutional and statutory duties. In a 29 paged Ruling delivered on July 11, 2005, his Lordship Hon Mr. Justice Rubby Aweri Opio of the High Court of the Uganda ruled in favor of the applicant and granted all orders sought except the order for restoration of the environment Citing approvingly the provisions of article 50 of the Constitution of the Republic of Uganda, Justice Opio made the following observation with respect of public interest representative actions.

“The importance of the above law (Article 50) is that it allows any individual or organization to protect the rights of another even though that individual is not suffering the injury complained of or does not know that he is suffering from the alleged injury. To put it in the biblical sense the Article makes all of us our “brother’s keeper”. In that sense it gives all the power to speak for those who cannot speak for their rights due to their ignorance, poverty or apathy. In that regard, I cannot hide any pride to say that our Constitution is among the best the World over because it emphasizes the point that violation of any human right of fundamental right of one person is violation of the right of all”. (Source – Misc Cause No. 0100 of 2004)

to enable it allocate the reserve to Kakira Sugar Works for sugar cane growing.⁹⁰

An equally important relevant constitutional provision with respect to the situation of the Batwa is contained in article 32. This article enjoins the State “to take affirmative action in favour of groups marginalized on the basis of gender, age disability or any other reason created by history, tradition or custom for purposes of redressing imbalances that exist against them.”

In this regard the constitution mandates parliament to enact appropriate laws including laws for the establishment of an equal opportunities commission for the purpose of giving full effect to Article 32(1). Indeed, in the recent past, special interest groups that consider themselves marginalized especially women have sought to invoke the provisions of article 32. Unfortunately, the Batwa and other marginalized and disenfranchised communities of Uganda have not featured at all in the ensuing debate based on affirmative action.

Indeed, it has been argued that these constitutional provisions provide the legal and political basis for addressing the historical injustices that have been occasioned against Batwa by account of which they remain a marginalized, excluded and an endangered community. They provide a basis for taking specific political or legal action to recognize the Batwa as an indigenous people and for restoring

⁹⁰ For details on the controversy surrounding Butamira Forest Reserve, see Tumushabe, Godber and Bainomugisha, Arthur, 2004. Constitutional Reform and Environmental Legislative Representation in Uganda: A Case Study of Butamira Forest Reserve. ACODE Policy Research Series, No. 10, 2004. ACODE, Kampala; Tumushabe, Godber, et al, 2001. Sustainably Utilizing our National Heritage: Legal Implications of the proposed Degazattement of Butamira Forest Reserve. ACODE Policy Research Series, No. 4, 2001. ACODE, Kampala.

their ancestral rights to the forestlands of southwestern Uganda.⁹¹ The challenge facing our generation, therefore, is how to take advantage of such provisions and move away from constitutional rhetoric in order to make the plight of the Batwa a truly national and international concern and ensure that their community-based property rights are recognized, protected and promoted.

7.2. CBPR in National Policy and Legislation: Legislative Progress, Limited Action

Like in the case of the Constitution, many policies and pieces of legislation contain provisions that are akin to community-based property rights. The best examples of policies that allude to the policy recognition of CBPR include: the National Environment Management Policy;⁹² the Uganda Wildlife Policy;⁹³ the Forestry Policy;⁹⁴ and the National Fisheries Policy⁹⁵ among others. While clearly alluding to the need to ensure that communities leaving around protected areas and other common property resources participate in their management and benefit from them, there is clearly no policy commitment to recognize the community-based property rights of these communities. The current policies have largely been informed by the contemporary notions of conservation such as community conservation in wildlife, collaborative management in forestry, or co-management in fisheries. Both the Government and the non-governmental organizations that have sought to assist communities such as the Batwa have largely proceeded on this conservation crusade guided by patronizing notions of sustainable utilization, wise use, etc.

This policy failure to clearly recognize, protect and promote Community-Based Property Rights as a special rights regime that could assist in giving conservation a “human face” and enable the country discharge its constitutional commitments and international obligations is also reflected in the legislation developed pursuant to these policies. All major legislation governing the ownership, management and disposal of key natural resources only focusses on conservation and do not give indigenous communities such as the Batwa the right of ownership over their ancestral lands or even recognize, guarantee and promote their rights of access to these resources. This deficiency is clearly apparent in the National Environment Act,⁹⁶ the Uganda Forestry and Tree Planting Act,⁹⁷ the Uganda Wildlife Act,⁹⁸ and all the other relevant legislation.⁹⁹

For its part, the Land Act seeks to guarantee individual and collective rights in land as recognized under the Constitution. The recognition of customary land tenure,¹⁰⁰

⁹¹ Tumushabe, Godber (2005). *opcit*, note 1.

⁹² Republic of Uganda (1994). *The National Environment Management Policy for Uganda, 1994*. Ministry of Environment and Natural Resources. Kampala.

⁹³ Republic of Uganda (1999). *The Uganda Wildlife Policy, 1999*. Ministry of Trade, Tourism and Industry/Uganda Wildlife Authority. Kampala.

⁹⁴ Republic of Uganda (2001). *The National Forestry Policy, 2001*. Ministry of Water, Lands and Environment. Kampala.

⁹⁵ GoU (2004), “The National Fisheries Policy”.

and the provisions for the legal establishment of communal land associations¹⁰¹ could be considered to provide the necessary legal basis for the recognition of the land and resource rights of the Batwa. However, the ancestral rights of the Batwa which were alienated through the creation of Bwindi Mgahinga National Park is no longer a matter of customary law to settle but rather, it is a matter of restitution and compensation that has to be founded on the current constitutional dispensation and international commitments to protect and promote the rights of such marginalized communities.

Indeed, it is tenable to conclude by arguing that the current national policy and legal regimes fall far short of the aspirations, rights and interests of the Batwa and other marginalized indigenous communities in Uganda. They are neither served by the interests of Government pacifist agencies, conservation crusaders or religious evangelizers. The current approaches especially by conservation agencies to make provisions for such notions as community conservation, collaborative management, co-management, etc or by whatever name so called serves only two purposes: secure the property rights superiority of Government agencies while pushing the Batwa and other indigenous communities into further marginalization, despair and eventual distinction. Indeed, any future discourse on the rights of such communities that suggests that CBPRs of indigenous communities are served by the current notions of conservation need to be looked at as being diversionary and as a veiled attempt to perpetuate further exclusion and marginalization. What is needed therefore is a more systematic and integrated campaign that focuses on ensuring coordination of current and future interventions, promoting the emergence of voices and champions among the Batwa community and complementing these with protracted public interest actions. All efforts should ensure that the rights of the Batwa as articulated in the Constitution of Uganda and relevant international instruments are recognized, protected and promoted in a manner that is consistent with other national development objectives.

8. TAKING RESPONSIBILITY: CHANGING THE PLIGHT OF THE BATWA COMMUNITY IN THE CONTEXT OF CBPR

In this paper, it has been clearly demonstrated that the plight of the Batwa is a shame on the rest of humanity and shows the inability of institutions of Government and the international community to respond to the human needs and suffering of minority population, indigenous peoples and other marginalized communities. Yet, a number of facts are clear from this research work: first, the

⁹⁶ The National Environment Act, Cap 153. Laws of Uganda, Revised Edition, 2000.

⁹⁷ GoU (2003); The National Forestry and Tree Planting Act. Act No. of 2003.

⁹⁸ The Uganda Wildlife Act, Cap 200. Laws of Uganda, Revised Edition, 2000.

⁹⁹ Tumushabe, Godber, op.cit, note 1.

¹⁰⁰ Land Act, Cap 227 of the Laws of Uganda. Also see the Land Act, No. 16 of 1998.

¹⁰¹ Ibid.

ancestral lands of the Batwa were expropriated in due disregard of their traditional rights and fundamental human rights. Secondly, there is sufficient international law jurisprudence and consistent state practice to suggest that the expropriation of the Community-Based Property Rights of indigenous communities is contrary to international law. Consequently, the current state of affairs and situation of the Batwa community in Southwestern Uganda is an indictment on the international community for their inability to act to stop an ongoing “genocide.” Thirdly, with the exception of the Constitution, the rest of the national policy and legislation in Uganda not only disregards the rights of indigenous forest communities such as the Batwa. It also undermines their interests and entrenches their marginalization through conservation concepts that only treat the symptoms and not the fundamental causes of their marginalization and disenfranchisement. Finally, most of the interventions by the different actors have been largely characterized by tokenisms, short-termism, adhocism and paternalistic tendencies. What is therefore needed is an entire paradigm shift in not only the design of future interventions but also the theoretical foundations and the legal basis for such interventions.

The foregoing section highlights some of the interventions that need to be undertaken in order to change the status quo, improve the livelihood conditions of the Batwa, build their confidence and restore their dignity as a community as a means of their effective integration in society.

8.1. *Restitution of the Land Rights of the Batwa*

Restitution is a technical legal term that refers to a form of legal relief or process by which land and other property that was forcibly removed from its owner is restored or compensation of equivalent value provided. As already argued, the Batwa were uprooted from their ancestral lands and left to live on the margins of both nature and life. On the contrary, the international community and the Government of Uganda have benefited from the establishment of Bwindi and Mgahinga National Parks at the expense and suffering of this community. The rights of the Batwa to both the land and the resources on these lands are well established under international and national legislation. The most appropriate remedy for them is for Government to restore their rights and facilitate them to live with dignity and confidence.

“Diehard” conservationists and deep ecologists may argue that it is practically impossible to restore the ownership of the lands that now constitute Bwindi and Mgahinga national parks to the custodianship of the Batwa. Indeed, in spite of the constitutional provisions and the obligations incurred in this regard under the numerous international legal instruments, the Government of Uganda has not showed any interest or taken the responsibility to remedy the wrongs and injustice occasioned against the Batwa. In any case, given the fact that Bwindi and Mgahinga National Parks are now considered global heritage sites and are

recognized as such by the United Nations Education, Scientific and Cultural Organizations (UNESCO), such restoration would only be achieved by way of payment of adequate compensation that is equivalent in value of the land that was expropriated. However, by its very nature, restitution is a judicial remedy often secured through a judicial process. It is unlikely that the Batwa have the financial and technical ability to pursue restoration in various judicial fora. What is needed therefore is for public interest organizations such as ACODE and others to enter into an alliance with philanthropy organizations and the Batwa institutions to pursue legal action to ensure that the Government of Uganda and the international community meet their international law and constitutional obligations towards the Batwa communities.

8.2. *Affirmative Action for the Batwa*

The current plight of the Batwa could be alleviated through aggressive affirmative action. As has been argued elsewhere in this paper, article 32 of the Constitution enjoins Government to take action in support of marginalized and disadvantaged groups. However, the current debate on affirmative action is confined to the traditional issues of gender, people with disability, etc. Perhaps, this is the time for Government to invoke the provisions of article 32 and articulate a comprehensive affirmative action programme for the Batwa community in Southwest Uganda and wherever they may be. Such affirmative action could cover such areas like access to forest resources, revenue sharing arrangements, education, health services, housing, etc. Indeed, organizations representing the Batwa could learn from the experience of other marginalized groups such as women and disabled who have benefited from affirmative action. As an immediate action there is need for leadership to policy advocacy organizations advocating for the interests of the Batwa to bring their issues into the work of the Parliamentary Sub-Committee on Equal Opportunities. ACODE in corroboration with both national and international partners could take up this noble note given its practical experience in policy advocacy.

8.3. *Establish a Batwa Peoples' Development Forum*

We have already noted that previous and current interventions to assist the Batwa communities have mainly suffered from lack of coordination, tokenisms, duplication and cost inefficiency. The scope of this study could not allow the authors to further explore on how much funding has been committed to the cause of the Batwa ever since they were uprooted from their lands. What is apparent though is that many actors have attempted to implement different kinds of interventions at different times. What is therefore needed is to ensure that there is a forum where Batwa representatives can interface with those institutions that elect to engage in activities to support the Batwa. Unfortunately, the current plight of the Batwa has created

an insatiable demand for all sorts of interventions and many actors driven by all kinds of motivations have been rushing to supply interventions conceived and executed by those actors. The establishment of the proposed Forum would create the most legitimate framework that brings together the Batwa representatives and development organizations to share, harmonize and execute interventions that are relevant to the interests and welfare of the Batwa.

In addition to the above specific recommendations, two general issues need to be addressed as a means of mitigating similar occurrences in future. These are:

8.4. Development of a National Indigenous Peoples' Plan

When Bwindi and Mgahinga National Parks were established, neither the Government of Uganda nor the international agencies involved such as the World Bank ensured the development of an indigenous peoples plan. This is in spite of the fact that the development of such a plan was a required under the World Bank Operational Directive 4.20. The rationale for the Indigenous peoples' plan is to ensure that indigenous people benefit from development projects and to avoid or mitigate potentially adverse effects on indigenous people. In the case of Bwindi and Mgahinga, the World Bank and other development agencies supported the establishment of the Mgahinga Bwindi Impenetrable Forest Conservation Trust. However, in the absence of a coherent plan, the interventions by the Trust like many of the other organizations have been characterized by adhocism and tokenism. At worst, the Trust has also focused mainly on public service projects such as construction of schools and health centres. At best, the Trust has been engaged in acquiring land for the Batwa communities with varying degrees of success.

8.5. National Mapping of Potential Land Conflicts: A Future Research Agenda

Finally, the case of the Batwa and their current state of marginalization and disenfranchisement is largely a symptom of state failure to anticipate and deal with land related conflicts. Bwindi and Mgahinga National Parks is a classic case of land use conflicts where "powerless" human communities are caught in the midst of a global and national conservation agenda. However, similar minority and indigenous communities scattered across the country and within the East Africa region could find themselves in the same situation. What is needed therefore, is a more comprehensive research and advocacy agenda that targets to mapping out areas of potential land conflicts, understanding the drivers of such potential conflicts and proposing the necessary policy action to mitigate the negative impacts of marginalized indigenous communities.

9. CONCLUSION

The case of the Batwa of Southwest Uganda, their current plight characterized by marginalization, exclusion and disenfranchisement represents one of the biggest global and national neglect against indigenous communities. Since the time of Belgian Congo's Ota Benga to date, the international community and national governments have continued to reap money from the lands and resources that traditionally belonged to the Batwa and other forest dwelling communities. They have left conservation crusaders to take full responsibility for the development of these communities. These conservation organizations have executed this mandate with varying degrees of success and failure. As observed, most of the interventions can be characterized as "hardware" kind of interventions focusing mainly on provision of basic services such as housing, healthcare, education etc. These interventions have not been helped by the paternalistic approach that has been used to implement them. What is needed then is a fundamental paradigm shift that elevates "software" interventions in terms of rights advocacy, empowerment, affirmative action and development of community champions, etc to the policy arena. This will help build the confidence and civic consciousness of the Batwa and other target indigenous communities and enable them pursue their rights at different fora.

REFERENCES

Tyson, Edward (1751). *The anatomy of a Pygmy compared with that of a monkey, an ape and a man*. 2nd Edition. T. Osborne. London.

Bass, S., Reid, H., Satterthwaite, D., Steele, P., (Eds.), 2005. *Reducing Poverty and Sustaining the Environment: The Politics of Local Engagement*. Earthscan Publications Ltd. London. Sterling, VA.

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

Kabananukye, Kabann, et al. (1996). *Report on a study of the Abayanda (Batwa) Pygmies of South West Uganda for Mgahinga and Bwindi Impenetrable Forest Conservation Trust*. IK Resource Center.

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

Kayeeye, W. M., (2004). *The Batwa of South Western Uganda and the African International Christian Ministry Intervention Programme*.

Overeem, Pauline, 1994. *Batwa: Final Report. A Report of the Unrepresented Nations and Peoples Organization (UNPO) with APB investigating the situation of the Batwa People of Rwanda, September 28-December 15, 1994*. UNPO. The Hague.

Tumushabe, Godber, (2005). *The Theoretical and Legal Foundations of Community-Based Property Rights in East Africa*. ACODE Policy Research Series, No. 12, 2005. ACODE, Kampala.

Tumushabe, Godber and Bainomugisha, Arthur, 2004. *Constitutional Reform and Environmental Legislative Representation in Uganda: A Case Study of Butamira Forest Reserve*. ACODE Policy Research Series, No. 10, 2004. ACODE. Kampala;

Tumushabe, Godber, et al, 2001. *Sustainably Utilizing our National Heritage: Legal Implications of the proposed Degazetment of Butamira Forest Reserve*. ACODE Policy Research Series, No. 4, 2001. ACODE, Kampala.

World Bank Operational Directive O.D 4.20 that has been replaced with Operational Policy and Bank Policy 4.10

Cunningham.1996. People, Park and Plant Use. Recommendations for Multiple use Zones and Development Alternatives around Bwindi Impenetrable National park, Uganda. People and Plants working paper 4, UNESCO, Paris

Mutebi, Jackson (2003). Co-managed Protected Area: From Conflict to Collaboration, Experience of Bwindi Impenetrable National Park (Unpublished).

CARE Uganda (2004). A report on the Annual Advocacy Clinic; Pursuing Environmental Rights and Entitlements in South Western Uganda. CARE Right and Equity in Protected Areas Programme (Unpublished)

Our Common Future: Report of the World Commission on Environment and Development, 1987. Oxford University Press. Oxford and New York.

Selected Government of Uganda policy and legal documents

Republic of Uganda. 1995. The Constitution of the Republic of Uganda.

_____ ; (1994) The National Environment Management Policy for Uganda, 1994. Ministry of Environment and Natural Resources. Kampala.

_____ ; (1999). The Uganda Wildlife Policy, 1999. Ministry of Trade, Tourism and Industry/Uganda Wildlife Authority. Kampala.

_____ ; (2001). The National Forestry Policy, 2001. Ministry of Water, Lands and Environment. Kampala.

_____ ; (2000) The National Environment Act, Cap 153. Laws of Uganda, Revised Edition, 2000.

_____ ; (2002). National Housing and Population Census Report. Uganda Bureau of Statistics. Kampala.

_____ ; (2000). The Wildlife Act, Cap 200. Laws of Uganda. Revised Edition, 2000.

Statutory Instrument No. 216 of 1964 as amended by Statutory Instrument No. 136 of 1965

Statutory Instrument No. 27 of 1991 as amended by Statutory Instrument Supplement No. 3 of 1992.

PUBLICATIONS IN THIS SERIES

Tumushabe, G. W., Bainomugisha A., and Muhwezi, W., (2000), Towards Strategic Engagement: NGO Relations and the Quest for NGO Law Reform in Uganda. *ACODE Policy Research Series, No. 1, 2000.*

Kameri - Mbote, P., (2000), The Operational Environment and Constraints for NGOs in Kenya: Strategies for Good Policy and Practice. *ACODE Policy Research Series, No.2, 2000.*

Tumushabe, G. W., (2001), The Precautionary Principle, Biotechnology and Public Interest Environmental Litigation: Complexities in Litigating New and Emerging Environmental Problems. *ACODE policy Research Series, No. 3, 2001.*

Tumushabe, G. W., Mwebaza R., and Naluwairo R., (2001), Sustainably Utilising our National Heritage: Legal Implications of the Proposed Degazetment of Butamira Forest Reserve. *ACODE Policy Research Series, No. 4, 2001.*

Tumushabe, G. W., Bainomugisha, A., et al: (2003), Sustainable Development Beyond Rio + 10: Consolidating Environmental Democracy in Uganda Through Access to Justice, Information and Participation. *ACODE Policy Research Series, No. 5, 2003.*

Mugenyi, O., Naluwairo, R., (2003), Uganda's Access to the European Union Agricultural Market: Challenges and opportunities. *ACODE Policy Research Series, No. 6, 2003.*

Mugenyi, O., Naluwairo, R., (2003), Democratizing EPA Negotiations: Challenges for Enhancing the Role of Non State Actors. *ACODE Policy Research Series, No. 7, 2003.*

Kameri - Mbote, P., (2004), Towards a Liability and Redress System under the Cartagena Protocol on Biosafety: A Review of the Kenya National Legal System. *ACODE Policy Research Series, No. 8, 2004.*

Kabudi, P. J., (2004), Liability and Redress for Damage Caused by the Transboundary Movement of Living Modified Organisms (LMOs) Under the Cartagena Protocol on Biosafety: A Review of the Tanzania National Legal System. *ACODE Policy Research Series, No. 9, 2004.*

Tumushabe, G. W., Bainomugisha, A., (2004), Constitutional Reform and Environmental Legislative Representation in Uganda: A Case Study of Butamira Forest Reserve in Uganda. *ACODE Policy Research Series, No. 10, 2004.*

Musiime, E., Keizire, B., Muwanga, M., (2005), Organic Agriculture in Uganda: The Need for A Coherent Policy Framework. *ACODE Policy Research Series, No. 11, 2005.*

Tumushabe, G., (2005), The Theoretical and Legal Foundations of Community Based Property Rights in East Africa. *ACODE Policy Research Series, No. 12, 2005.*

Bainomugisha, A., Mushemeza, D. E., (2006), Deepening Democracy and Enhancing Sustainable Livelihoods in Uganda: An Independent Review of the Performance of Special Interest Groups in Parliament. *ACODE Policy Research Series, No. 13, 2006.*

Mugenyi, O., Zeija, F., (2006), The East African Customs Union Protocol: An Audit of the Stakeholders' Participation in the Negotiation Process. *ACODE Policy Research Series, No. 14, 2006.*

Naluwairo, R., (2006), From Concept to Action: The Protection and Promotion of Farmers' Rights in East Africa. *ACODE Policy Research Series, No.15, 2006.*

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