



**University of Oklahoma College of Law**  
**International Human Rights Clinic**  
**The United States of America**

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Report on the Republic of Uganda for the Twelfth Session of the UPR  
Working Group of the Human Rights Council, 3 - 14 October 2011

**ANNEX**

**Prepared by**

**Students**

Lori Murphy, J.D. Candidate, 2012

Ryan Patterson, J.D. Candidate, 2011

Nazareth M. Haysbert, J.D. Candidate, 2012

Jeff Riles, Jr., J.D. Candidate, 2012

Alvaro Baca

**Professors**

Cheryl Wattley

Lindsay Robertson

Peter Krug

Taiawagi Helton

**14 March 2011**

## Annex

### International Instruments

*The Republic of Uganda became bound to the following relevant international instruments as of the dates listed:*

**Convention on the Elimination of All Forms of Racial Discrimination (CERD)**

21 November 1980

**Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

22 July 1985

**African [Banjul] Charter on Human and Peoples' Rights**

10 May 1986

**International Covenant on Economic, Social, and Cultural Rights (ICESCR)**

21 January 1987

**Convention on the Rights of the Child (CRC)**

17 August 1990

**International Covenant on Civil and Political Rights (ICCPR)**

21 June 1995

*The following United Nations Declarations contain provisions that are relevant to indigenous peoples of Uganda and which might serve as evidence of rules of customary international law:*

**Universal Declaration of Human Rights**

Article 17

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.<sup>1</sup>

**Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities**

Article 4(1)

States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.<sup>2</sup>

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<sup>1</sup><http://www.un.org/en/documents/udhr/index.shtml#atop>

<sup>2</sup><http://www2.ohchr.org/english/law/minorities.htm>

## **Declaration on the Rights of Indigenous Peoples**

### Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
  - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
  - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
  - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
  - (d) Any form of forced assimilation or integration;
  - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.<sup>3</sup>

### Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.<sup>4</sup>

### Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.<sup>5</sup>

### Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.<sup>6</sup>

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<sup>3</sup><http://www.un.org/esa/socdev/unpfii/en/drip.html>

<sup>4</sup>*Id.*

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

## **Introduction**

1. In January 2011, members of the International Human Rights Clinic of the University of Oklahoma College of Law (IHRC-UOCL) conducted a research trip to Kampala and southwest Uganda to compile information about the situation of Uganda's indigenous peoples. Clinic students met with representatives from civil society and several government ministries in an effort to synthesize a broad range of perspectives on the status of indigenous peoples in Uganda. This report incorporates input from the Uganda Human Rights Commission and the following Ministries: Local Government; Water and Environment; Gender, Labour and Social Development; Energy and Minerals; and Lands, Housing, and Urban Development. The IHRC-UOCL's research also benefitted from consultation with representatives of local and international NGOs concerned with the welfare of indigenous peoples, and members of the Makerere University Faculty of Law. In addition to these administrative, advocacy, and academic viewpoints, this report reflects the direct concerns of two indigenous Batwa communities the IHRC was able to visit.

2. The geography of Uganda is diverse with deserts and plains in the north, rainforests in the southwest and the Nile river basin in the south along Lake Victoria. Oil deposits were recently discovered in the west, near Lake Albert bordering the Democratic Republic of the Congo.

3. On October 9, 1962, the Republic of Uganda attained independence from the United Kingdom. The present Constitution of the Republic of Uganda recognizes as

“indigenous” (see below at #6) 56 groups that were present in Uganda in 1926, and confers citizenship on them.<sup>7</sup> The Parliament of Uganda is the legislative body, with the President serving as both head of state and head of government with broad appointment power. In 2005, after a constitutional amendment, a ban on political parties was lifted and the first partisan elections took place in February 2011. Yoweri Museveni was re-elected as President, an office he has held for 25 years.

4. The Republic of Uganda is a dualist state<sup>8</sup>. For an international instrument to come into force domestically action must be taken by Parliament, but it is unclear what specific action Parliament must take in order for a treaty to have force of law domestically.<sup>9</sup> Article 123(1) of the Constitution states that the “President or a person authorized by the President” may enter into treaties and “other arrangements” with international bodies. Under clause (2) Parliament “shall make laws to govern ratification of treaties, conventions or other arrangements made” subsequent to clause (1). However, there is debate as to the execution of treaties domestically, specifically whether international instruments can be self-executing.<sup>10</sup>

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<sup>7</sup>Kabaann I. B. Kabanukye, *Culture, Minorities, and Linguistic Rights in Uganda : The Case of the Batwa and the Ik*, HURIPEC Working Paper No. 11, available at: [http://huripec.mak.ac.ug/working\\_paper\\_11.pdf](http://huripec.mak.ac.ug/working_paper_11.pdf).

<sup>8</sup>C. Mbazzira, *Uganda: Constitutional, Legislative, and Administrative Provisions Concerning Indigenous Peoples*, Country Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples’ Rights on the constitutional and legislative protection of the rights of indigenous peoples in Uganda, available at: [http://www.chr.up.ac.za/chr\\_old/indigenous/country\\_reports/Country\\_reports\\_Uganda.pdf](http://www.chr.up.ac.za/chr_old/indigenous/country_reports/Country_reports_Uganda.pdf).

<sup>9</sup>Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>10</sup>*Id.*

5. The decentralization of government in Uganda, initiated by President Museveni in 1992, “provided for the transfer of powers and resources to local governments at the district level” from a previously centralized government.<sup>11</sup> It “hinges...on ‘service delivery’ and the ‘devolution of power,’ both of which do not necessarily involve the conscious adoption of a human rights framework.”<sup>12</sup> The central government sets general policies and supplies funding, and local governments are responsible for implementation. Therefore monitoring and oversight are crucial to ensure local governments carry out national policies in accordance with international obligations. Because of historic and ongoing discrimination, it may be especially important to evaluate the effectiveness of local governments in respecting and protecting the rights of indigenous peoples within their jurisdiction.

6. Referenced throughout this report are different groups of indigenous peoples of the Republic of Uganda. While there is “no precise definition of ‘indigenous peoples’ in international law...the prevailing position is that such a definition is not necessary for purposes of protecting their human rights.”<sup>13</sup> Determining what peoples in Uganda are indigenous for the purposes of international law is complicated by the fact that the Republic of Uganda assigns a meaning to the term “indigenous” that is different from its usage in the international community. The 1995 Constitution of Uganda lists 56 “indigenous communities as of 1<sup>st</sup> February, 1926,”<sup>14</sup> intending to comprise all the

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<sup>11</sup>Rose Nakayi, *Decentralization and the Situation of Selected Ethnic and Racial Minorities*. Human Rights and Peace Centre (HURIPEC), Faculty of Law Makerere University. HURIPEC Working Paper No. 15, July 2007, available at: [http://huripec.mak.ac.ug/working\\_paper\\_15.pdf](http://huripec.mak.ac.ug/working_paper_15.pdf).

<sup>12</sup>*Id.*

<sup>13</sup>*Indigenous and Tribal Peoples’ Rights Over Their Ancestral Lands and Natural Resources*, Inter-American Commission on Human Rights, III(A)(25). <http://cidh.org/countryrep/Indigenous-Lands09/Chap.III-IV.htm#III.A>

<sup>14</sup>Third Schedule, Article 10(a)

African people groups present within the borders of the British Protectorate of Uganda at that time. While the IHRC-UOCL acknowledges Uganda's distinct domestic terminology, this report's usage reflects an understanding of the term "indigenous peoples" in the context of

those particular groups who have been left in the margins of development and who are perceived negatively by dominating mainstream development paradigms, whose cultures and ways of life are subject of discrimination and contempt and whose very existence is under threat of extinction.<sup>15</sup>

The report also recognizes the special attachment to the traditional lands of indigenous peoples. Generally, the government of Uganda refers to indigenous peoples as ethnic minorities.<sup>16</sup> The greatest significance of this divergence in vocabulary relates to the rights afforded indigenous peoples. The African Commission on Human and Peoples' Rights (ACHPR) recognizes that "[a] key characteristic... is that the survival of their particular way of life depends on access and rights to their traditional lands and the natural resources thereon."<sup>17</sup> In addressing the terminology distinction regarding "minorities" and "indigenous peoples," the ACHPR notes that "[t]he crucial difference between minority rights and indigenous rights is that minority rights are formulated as individual rights whereas indigenous rights are collective rights.... Some of the most

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<sup>15</sup>*Report of the African Commission's Working Group on Indigenous Populations/Communities*, adopted by the African Commission on Human and Peoples' Rights at its 28th Ordinary Session, at 59.

<sup>16</sup>Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>17</sup>*Indigenous Peoples in Africa: The Forgotten Peoples?: The African Commission's work on indigenous peoples in Africa*, African Commission on Human and Peoples' Rights, at 10.  
<http://www.achpr.org/english/Special%20Mechanisms/Indegenous/ACHPR%20WGIP%20Report%20Summary%20version%20ENG.pdf>

central elements in the indigenous rights regime are the collective rights to land, territory, and natural resources.”<sup>18</sup>

7. Many different ethnic and linguistic groups are located in Uganda. It is estimated that 23 Bantu speaking groups migrated into the land that comprises modern-day Uganda around 500 BCE.<sup>19</sup> At the beginning of the 14<sup>th</sup> century, Bantu speaking tribes were considered dominant.<sup>20</sup> Modernly, Bantu is widely used by 2/3rds of Uganda.<sup>21</sup> In 1894, Britain declared Uganda a protectorate.<sup>22</sup> Under British control, not only was there an influx of British culture, politics, and law, but the English language was also institutionalized in Uganda as the official language.<sup>23</sup> The introduction of English as a lingua franca was seen as an effort to centralize government and harmonize the various ethnical, linguistic, and cultural distinctions found amongst the various groups in Uganda.<sup>24</sup>

8. The most recent 2002 Uganda Census reported the population at 24.2 million, with an average household size of 4.7.<sup>25</sup> The percentage of the population living in urban areas is

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<sup>18</sup>*Id.* at 13, 14.

<sup>19</sup>Kabaann I. B. Kabanankye, *Culture, Minorities, and Linguistic Rights in Uganda : The Case of the Batwa and the Ik*, HURIPEC Working Paper No. 11, available at: [http://huripec.mak.ac.ug/working\\_paper\\_11.pdf](http://huripec.mak.ac.ug/working_paper_11.pdf).

<sup>20</sup>*Id.*

<sup>21</sup>*Id.*

<sup>22</sup>*Id.*

<sup>23</sup>*Id.*

<sup>24</sup>*Id.*

<sup>25</sup>Uganda Bureau of Statistics, <http://www.ubos.org/index.php?st=pagerelations2&id=16&p=related%20pages%202:2002Census%20Results>.

12%.<sup>26</sup> The U.S. State Department estimated the population of Uganda at 32.7 in 2009,<sup>27</sup> a growth of 8.5 million in just seven years.

9. Peoples within Uganda that have been identified as indigenous by international bodies include the Batwa, Benet, and Karamojong. While the report addresses these peoples explicitly, there are other people groups in Uganda who may be considered indigenous by international criteria. Direct discussion of these three most well-documented indigenous peoples should not be taken as a dismissal of other peoples in Uganda who may be indigenous under international law. The recommendations made in this report can apply more broadly to other marginalized indigenous communities.

10. The Batwa are traditionally a forest dwelling people, estimated to comprise around 6,700<sup>28</sup> to 10,000<sup>29</sup> persons spread throughout the southwestern districts of Bundibugyo, Rukungiri, Kisoro, Kanugu, and Kabale.<sup>30</sup> “There is a popular perception of the Batwa as barbaric, savage, wild, uncivilized, ignorant, and unclean, which has legitimized their exclusion from mainstream society.”<sup>31</sup> The 1991 gazetting—claiming as public land for use as a national park—of the Bwindi forest, the historic home of the Batwa people in Uganda, left them landless and without a means of livelihood. With no steady means of survival, no permanent residence, and often relying on inconsistent hand-outs from relief

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<sup>26</sup>*Id.*

<sup>27</sup>U.S. Dept. of State, Background Note: Uganda. <http://www.state.gov/r/pa/ei/bgn/2963.htm>.

<sup>28</sup>*The Indigenous World: Uganda*, 2009. 483.

<sup>29</sup>Republic of Uganda Ministry of Lands, Housing, and Urban Development

<sup>30</sup>C. Mbazzira, *Uganda: Constitutional, Legislative, and Administrative Provisions Concerning Indigenous Peoples*, Country Report of the Research Project by the ILO and the ACHPR on the constitutional and legislative protection of the rights of indigenous peoples: Uganda, 2009. Page 9.

<sup>31</sup>*Id.*

organizations,<sup>32</sup> some Batwa work as landless laborers for very little pay, often being paid in liquor or small amounts of food instead of money to buy enough food to sustain their families.<sup>33</sup> A Batwa community tenuously settled at Rwamahano reported to the IHRC-UOCL that they routinely suffered abuses by their neighbors, including the theft of their chickens, which had been supplied by an NGO. This community, whose situation is similar to that of many Batwa settlements, also lacks adequate housing, subjecting them to malaria and other illnesses. Hunger due to inadequate food supplies is standard. A Mutwa<sup>34</sup> man at Rwamahano told members of the Clinic, “We feel like we have been cursed by God.”

11. The Benet people, who currently number about 20,000, have lived in the forests surrounding Mt. Elgon near the Kenya border for over 200 years.<sup>35</sup> Most Benet have been temporarily resettled to areas outside the national park owned in part by the Uganda Wildlife Foundation and a private landowner.<sup>36</sup> This situation has proved unsustainable in the long term, as “a number of abuses especially by the local level protected officials, incidents of burning houses in the protected areas and beating of women and children have been reported.”<sup>37</sup>

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<sup>32</sup>Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>33</sup>*Id.*

<sup>34</sup>“Mutwa” is singular and “Batwa” is plural.

<sup>35</sup>Mbazzira, ILO/ACHPR Report, at 13.

<sup>36</sup>James Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, A/HRC/12/34/Add.1, 18 Sep. 2009. 85.

<sup>37</sup>Mbazzira, ILO/ACHPR Report, at 13.

12. The Karamojong, unlike many other marginalized groups and indigenous peoples, have a fairly large population with estimates ranging from 370,000<sup>38</sup> to nearly one million.<sup>39</sup> They reside primarily in the Karamoja region of northeast Uganda, in the districts of Kotido, Kaabong, Moroto, and Nakapiripirit.<sup>40</sup> Because they are historically pastoralists whose culture revolves around cattle, but they have lost most of their ancestral grazing land to gazetting, they already faced severe problems sustaining themselves that have been exacerbated by drought and violence in the region.<sup>41</sup> While periodic cattle raids have historically been a part of Karamojong life, increased pressure on limited resources due to land reduction has led to more frequent raiding, and a government effort to disarm the Karamojong by force.<sup>42</sup> The forced disarmament has led to violent “clashes between the UPDF [Uganda People’s Defense Force] and the Karamojong warriors, resulting mainly in the death of the latter.”<sup>43</sup> However, “once disarmed, the Karamojong lack the necessary protection from raiders coming across the border with Kenya and from other tribes within Karamoja.”<sup>44</sup> Due to an ongoing shortage of food and the land necessary to produce it, as well as increased violence resulting from this resource deprivation and military action, thousands of Karamojong people have fled the Karamoja region and are currently living on the streets of Kampala and other cities.<sup>45</sup>

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<sup>38</sup>*Id.* at 11.

<sup>39</sup>James Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, A/HRC/12/34/Add.1, 18 Sep. 2009, at 85.

<sup>40</sup>*Id.*

<sup>41</sup>Report of the African Commission’s Working Group on Indigenous Populations/Communities, at 58.

<sup>42</sup>Mbazzira, ILO/ACHPR Report, at 12.

<sup>43</sup>*Id.*

<sup>44</sup>Joel Wesley Gackle et al., *Karamajong Street Children and Adults in Kampala, Uganda: A Situational Analysis Investigating the Root Causes, Issues Faced, and Current Responses*, 2006. 27.

<sup>45</sup>*Id.*

## I. ACCESS TO LAND

### *The Problem*

13. The importance of land to the human rights of indigenous peoples is beyond question.<sup>46</sup>The United Nations Special Rapporteur on the Rights of Indigenous Peoples observed that “from time immemorial indigenous peoples have maintained a special relationship with the land, their source of livelihood and sustenance and the basis of their very existence as identifiable territorial communities.”<sup>47</sup>Similarly, the African Commission on Human and Peoples’ Rights has declared that the protection of rights to land and natural resources is fundamental to the survival of indigenous peoples in Africa,<sup>48</sup> noting that historically, the denial of rights and access to land has been used as an instrument to marginalize and control such groups.<sup>49</sup>

14. As in many other countries, land operates at the center of social, cultural, and religious life in Uganda,<sup>50</sup> and the distribution of land determines relations of political and economic power between social classes.<sup>51</sup> Rights recognized as fundamental in international law<sup>52</sup> are enshrined in domestic law. Land in Uganda belongs to its citizens and the State is obliged under the 1995 Constitution of Uganda, the National Environment

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<sup>46</sup> Supplemental Report on the First Periodic Report of Uganda to the African Commission on Human and Peoples’ Rights submitted by Forest Peoples Programme on 30 Oct. 2006, page 13.

<sup>47</sup> Alternative Report to the Second Periodic Report of Uganda to the African Commission on Human and Peoples’ Rights submitted by Forest Peoples Programme on 13 May 2009. Page 14.

<sup>48</sup> *Indigenous Peoples in Africa: The Forgotten Peoples?: The African Commission’s work on indigenous peoples in Africa*, African Commission on Human and Peoples’ Rights, page 14.

<sup>49</sup> *Id.*

<sup>50</sup> Report by the government of Uganda to the African Commission on Human and Peoples’ Rights Presented at the 44th Ordinary Session Abuja, Federal Republic of Nigeria November 10th-24th 2008 at 52; Uganda National Land Policy, 2011, pages 1, 4.

<sup>51</sup> *Id.*

<sup>52</sup> The right to property and compensation for government takings is a general principle of international law which has become enshrined within regional and international instruments such as the African Charter on Human and People’s Rights.

Statute of 1995, and the Land Act of 1998 to protect customary interests in land.<sup>53</sup> Furthermore, the Constitution requires compensation for government appropriations.<sup>54</sup> Nevertheless, the government has excluded many of Uganda's indigenous groups from their ancestral lands without compensation, and in many cases, without alternate land allocation, resulting in the diminution of Uganda's ability to fulfill, and of the capacity of indigenous groups to realize, a number of the fundamental rights contained in domestic law and the various regional and international instruments to which the state is a party.

## **Normative and International Framework**

### ***International Instruments***

15. An obligation that could arise under international customary law is the Universal Declaration of Human Rights, which under Article 17 provides for the right to own property individually or as a group and that no one should be arbitrarily deprived of property.<sup>55</sup> This provision may be binding on Uganda if determined to be evidence of customary international law.

16. Article 26 of the United Nations Declaration on the Rights of Indigenous Peoples recognizes that indigenous peoples have a right to their traditional lands and resources and to own, use, develop, and control the lands they traditionally occupied.<sup>56</sup> Furthermore, states are to give legal recognition and protection to these lands and resources. Article

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<sup>53</sup> Constitution of the Republic of Uganda article 237; the National Environment Statute of 1995 Article 46(5); the Land Act of 1998, Section 3(1).

<sup>54</sup> Constitution of the Republic of Uganda, Article 26.

<sup>55</sup> The Universal Declaration of Human Rights, Article 17.

<sup>56</sup> United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), G.A. res. 61/295, at 18, U.N. GAOR, 107<sup>th</sup> Plen. Mtg., 13 Sep. 2007. Article 26.

8(b) requires redress for “any action which has the aim or effect of dispossessing them from their lands . . . or resources.”<sup>57</sup> Article 10 provides that indigenous peoples have the right not be forcibly removed from their lands or territories and that no relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation.<sup>58</sup> Article 20(2) requires that indigenous peoples deprived of their means of subsistence and development be entitled to just and fair redress.<sup>59</sup> Article 28(1) recognizes the right of indigenous peoples to fair, just and equitable compensation for property taken without their free, prior, and informed consent.<sup>60</sup> In accordance with article 32(1), “States shall provide effective mechanisms for just and fair redress for any projects affecting their lands or resources, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.”<sup>61</sup> These provisions would bind Uganda if the DRIP is determined to be evidence of customary international law.

17. Uganda acceded to the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 21 January 1987. Article 1(1) states that all peoples have the right to self-determination, and by virtue of this right, to freely pursue their economic, cultural and social development.<sup>62</sup> Furthermore, article 1(2) provides that in no case may a people

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<sup>57</sup>UNDRIP, Article 8(b).

<sup>58</sup>UNDRIP, Article 10.

<sup>59</sup> UNDRIP, Article 20(2).

<sup>60</sup>UNDRIP,Article 28(1).

<sup>61</sup>UNDRIP,Article 32(1).

<sup>62</sup>The International Covenant on Economic, Social and Cultural Rights (ICESCR),Article 1(1).

be deprived of its own means of subsistence.<sup>63</sup>The ICESCR imposes an affirmative obligation on Uganda to fulfill these rights.

18. Uganda acceded to the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1980. Article 5 of the Convention provides for the collective right to property.<sup>64</sup> In General Recommendation 23 to the Convention, the Committee on the Elimination of Racial Discrimination called upon state parties to “recognize and protect the rights of indigenous peoples to own, develop, control, and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used, without their free and informed consent, to take steps to return those lands and territories”<sup>65</sup>

19. Uganda ratified the African Charter on Human and Peoples’ Rights (ACHPR) in 1986. Article 14 guarantees the right to property and provides for the lawful recovery of property and adequate compensation in case of spoliation.<sup>66</sup> Article 20 guarantees the right of peoples to self-determination,<sup>67</sup> Article 22 guarantees the right of peoples to economic, social and cultural development,<sup>68</sup> and Article 24 guarantees the rights of peoples to a general satisfactory environment favorable to their development.<sup>69</sup> These rights signal an affirmative obligation on Uganda to respect and protect the right of indigenous groups to the ownership, control, use and enjoyment of their ancestral lands.

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<sup>63</sup>ICESCR, Article 1(2).

<sup>64</sup> Convention on the Elimination of All Forms of Racial Discrimination (CERD), Article 5.

<sup>65</sup>UN Committee on the Elimination of Racial Discrimination (CERD), *CERD General Recommendation VII Relating to the Implementation of Article 4 Legislation to Eradicate Racial Discrimination*, 23 August 1985, A/40/18, available at: <http://www.unhcr.org/refworld/docid/453882fe22.html>.

<sup>66</sup> African Charter on Human and Peoples’ Rights (ACHPR), Article 14.

<sup>67</sup>ACHPR, Article 20.

<sup>68</sup> ACHPR, Article 22.

<sup>69</sup> ACHPR, Article 24.

20. Uganda has not acceded to the International Labor Organization (ILO) Convention 169, which is the only binding international instrument still open for ratification dedicated specifically to the rights of indigenous and tribal peoples. Among its provisions, it guarantees protection of indigenous peoples' rights in land,<sup>70</sup> and protection from forced removal.<sup>71</sup>

### ***Domestic Undertakings***

21. The 1995 Constitution requires that Uganda abide by international law, an area of law that has extensive requirements relating to indigenous land issues. The Government of Uganda has taken steps to protect the land rights of its citizens through the Constitution and the Land Act. Article 237 of the Constitution provides that land in Uganda belongs to its citizens,<sup>72</sup> and recognizes divergent systems of land tenure.<sup>73</sup> Article 26 of the Constitution guarantees the right to own property either individually or in association with others and protects property owners from being deprived of property without proper mechanisms under the law.<sup>74</sup> The Constitution also allows for expropriations of land as necessary for public use or in the interest of defense, public safety or health.<sup>75</sup> Nevertheless, the state is mandated to provide fair and adequate compensation to all citizens prior to the compulsory taking or acquisition of their land.<sup>76</sup> Article 36

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<sup>70</sup> International Labor Organization Convention No. 169, Articles 13 and 14.

<sup>71</sup> ILO Convention No. 169, Article 16.

<sup>72</sup> Constitution of the Republic of Uganda, Article 237.

<sup>73</sup> Constitution of the Republic of Uganda Article 237. Land is vested in the citizens of Uganda and is owned in customary, freehold, mailo (quasi-freehold) and leasehold tenure.

<sup>74</sup> Constitution of the Republic of Uganda, Article 26.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

guarantees the right of minorities to participate in government decision-making processes.<sup>77</sup>

22. The Land Act of 1998 implements the provisions of the Constitution,<sup>78</sup> protects communal ownership and traditional use of land,<sup>79</sup> creates a landlord-tenant system which allows occupants of land to enjoy security of occupancy,<sup>80</sup> and provides for the local regulation and management of customary lands.<sup>81</sup> Section 4(1) of the Land Act protects communal land ownership and states that “any person, family or community holding land under customary tenure may acquire a certificate of customary ownership in respect of that land.”<sup>82</sup> The Land Act in section 42 also provides for a Land Fund to resettle persons rendered landless by government action, to give loans to tenants by occupancy so that they can register their interests in occupied land, and to assist citizens in acquiring titles.<sup>83</sup> The National Environment Statute of 1995 provides for the protection of customary interests in land and the traditional uses of land.<sup>84</sup> At the time these instruments took effect, indigenous groups had already been dispossessed of their lands.

23. The Land Acquisition Act of 2000 in sections 3(3), 5 and 6 provides that compulsory appropriations by the government must be accompanied by notice and prior

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<sup>77</sup> Constitution of the Republic of Uganda, Article 36.

<sup>78</sup> Land Act of 1998, Section 3(1).

<sup>79</sup> Land Act of 1998, Section 4(f).

<sup>80</sup> Land Act of 1998, Sections 30 and 32.

<sup>81</sup> Land Act of 1998, Section 4(e).

<sup>82</sup> Land Act of 1998, Section 4(1).

<sup>83</sup> Land Act of 1998, Section 42.

<sup>84</sup> National Environment Statute of 1995, Article 46(5).

compensation.<sup>85</sup> Section 8 of the Land Acquisition Act encourages the government to void compulsory acquisitions that fail to follow the law.<sup>86</sup>

24. The Uganda National Land Policy created by the Ministry of Lands, Housing and Urban Development includes a priority to redress “historical land injustices which led to loss of land rights by certain communities and vulnerable groups.”

### **Human Rights on the Ground**

#### ***Communal Ownership of Land***

25. Uganda covers a total area of about 241,038 square kilometres and approximately 82% of which is land.<sup>87</sup> 42% of the total land is arable and can be used to grow crops, although only about 21% of the land is utilized, mostly in the south, for agriculture and other uses.<sup>88</sup> Although the Constitution provides for four distinct forms of tenure, most land is owned or managed under customary tenure, the most relevant form of land tenure applicable to indigenous groups.<sup>89</sup> This land tenure system is based on communal ownership and use of land and land is considered common property to which all individuals can claim rights of ownership. Communal land is also owned in perpetuity.<sup>90</sup> Section 27 of the Land Act defines the rights and duties of members of a community using common land. Among other rights, these communities have the right to make

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<sup>85</sup> Land Acquisition Act of 2000, Sections 3(3), 5 and 6.

<sup>86</sup> Land Acquisition Act of 2000, Section 8.

<sup>87</sup> National Development Plan (2010/11 – 2014/15) at 160.

<sup>88</sup> *Id.*

<sup>89</sup> C. Mbazzira, *Uganda: Constitutional, Legislative, and Administrative Provisions Concerning Indigenous Peoples*, Country Report of the Research Project by the ILO and the ACHPR on the constitutional and legislative protection of the rights of indigenous peoples: Uganda, 2009, Part II, Section 8, available at: [http://www.chr.up.ac.za/chr\\_old/indigenous/country\\_reports/Country\\_reports\\_Uganda.pdf](http://www.chr.up.ac.za/chr_old/indigenous/country_reports/Country_reports_Uganda.pdf).

<sup>90</sup> Land Act of 1998, Section 4(h).

reasonable use of the land and to exclude non-members of the community from using the land.<sup>91</sup> Statutory duties include restrictions on transfer of occupancy rights without consent of the community.<sup>92</sup>

### ***Forced Evictions and Lack of Access to Land***

26. Historically, the Batwa people depended on the forest lands as a source of identity and livelihood, believing it to be a gift from God.<sup>93</sup> They lived nomadically within the forest, knowing it thoroughly, completely dependent on its resources, hunting and gathering fruit to survive.<sup>94</sup> The Batwa claimed collective ownership of forest lands.<sup>95</sup> Consequently, the land was available for all members of the community to use.

27. Initially, the dispossession of the Batwa was almost entirely de jure. Beginning in the 1930s, the British colonial government passed laws which established conservation zones on Batwa inhabited territories in southwestern Uganda.<sup>96</sup> The gazettement of the Bwindi and Mgahinga forests in 1991 in order to protect endangered mountain gorillas resulted in the forcible eviction of the Batwa from their ancestral homelands.<sup>97</sup> Dispossession of forest lands through the creation of the national parks contributed to cultural, social and

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<sup>91</sup> Land Act of 1998, Section 27.

<sup>92</sup> Land Act of 1998, Section 28.

<sup>93</sup> C. Mbazzira, *Uganda: Constitutional, Legislative, and Administrative Provisions Concerning Indigenous Peoples*, Country Report of the Research Project by the ILO and the ACHPR on the constitutional and legislative protection of the rights of indigenous peoples: Uganda, 2009, Part I, Section 1.2.1; Report of the African Commission's Working Group on Indigenous Populations/Communities, *Research and Information Visit to the Republic of Uganda*, (2006). Page 46.

<sup>94</sup> *Id.*

<sup>95</sup> Rose Nakayi, *Historical and Contemporary Land Laws and their impact on indigenous peoples' land rights in Uganda: The Case of the Batwa. Land Rights and the Forest Peoples of Africa: Historical, Legal and Anthropological Perspectives*. Moreton-in-Marsh, UK: Forest Peoples Programme, 2009. Page 1.

<sup>96</sup> James Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, A/HRC/15/37/Add.1, 30 Sep. 2010. Para. 392.

<sup>97</sup> *Id.*

economic collapse.<sup>98</sup> Intertribal conflict and severe shortages of food, shelter, clothing<sup>99</sup> and access to land accompanied the forced evictions.<sup>100</sup>

28. Although several Batwa communities have been resettled on lands donated by nongovernmental organizations or local governments,<sup>101</sup> and a few individuals have been granted title to small pieces of land in fee,<sup>102</sup> the majority of Batwa are still landless and live as squatters and sharecroppers on privately owned land situated in areas around the national parks.<sup>103</sup> A 2007 report published by the Batwa representative organization UOBDU provides:

After the park creation in 1991, 82 percent of Batwa were entirely landless . . . In 2004, 44 % of Batwa were found to not even have land on which to build a hut. Data collected in 2007 . . . show that the landless in Kisoro represent 50.4%, Kabale 61.4%, Kanungu 20.9%, while Mbarara, Katovu and Ntungamo landless represent 100% of the total house-holds.<sup>104</sup>

29. Furthermore, the Batwa are denied any access to the lands they formerly controlled.<sup>105</sup> They have no involvement in the management of protected areas and do not benefit from it.<sup>106</sup> They cannot cultivate traditional medicines or visit sacred sites, with the result that some traditional cultural and religious practices have been

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<sup>98</sup>*Id.*

<sup>99</sup>Mbazzira, ILO/ACHPR Report, at Part I, Section 1.2.1.

<sup>100</sup>*Id.*

<sup>101</sup> It is important to note here that the Batwa do not own donated land outright. It is held in trust for them by various relief organizations such as the African International Christian Ministries (AICM), the Church of Uganda and the Adventist Relief Agency. Many non-Batwa have exploited this insecurity of tenure to their advantage. Often settlement on these lands is conditional on involvement with certain activities, such as farming, which is not a common cultural practice of the Batwa.

<sup>102</sup>Interviews with 783, 911 and 364.

<sup>103</sup> James Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, A/HRC/15/37/Add.1, 30 Sep. 2010. 85.

<sup>104</sup>UOBDU, Batwa Data of December 2007, Districts of Kisoro, Kabale, Kanungu, Mbarara, Katovu, and Ntungamo at 6.

<sup>105</sup>James Anaya, A/HRC/15/37/Add.1, 30 Sep. 2010 at Para. 392.

<sup>106</sup>*Id.*

lost.<sup>107</sup> Forced to abandon their traditional lifestyles, with no steady means of survival, no permanent residence, and often relying on inconsistent hand-outs from relief organizations<sup>108</sup> some Batwa citizens perceive themselves as a cursed and colonized people forced to beg on the streets and sentenced to work as landless laborers for little to no pay.<sup>109</sup>

29. The Batwa have faced exploitation by landowners and other non-Batwa groups.<sup>110</sup> It is reported that Batwa are commonly used as scarecrows in the fields of private landowners.<sup>111</sup> Huts built to house Batwa laborers hired to work the fields during harvest season are reportedly burnt to the ground after the fields are harvested.<sup>112</sup> Batwa are reportedly paid very low wages for their work, and are often paid in-kind with food and cheap liquor.<sup>113</sup> The theft of farming supplies and food provided by relief organizations has been reported.<sup>114</sup>

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<sup>107</sup>*Id.*

<sup>108</sup> Although several organizations advance their interests, including the United Organization for Batwa Development in Kisoro and the Batwa Development Program in Bwindi, several interviewees and reports indicate a lack of coordination and cooperation among the organizations working with the Batwa. One well-known organization reportedly communicates only sporadically with the Batwa community at Rwamahano. Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law; GEF Impact Evaluation, Case Study: Impacts of Creation and Implementation of National Parks and of Support to Batwa on their Livelihoods, Well-Being and Use of Forest Products. Impact. Evaluation Information Document No. 10 prepared by Agrippinah Namara, September 2007, page 3, available at: [http://www.thegef.org/gef/sites/thegef.org/files/documents/Impact\\_Eval-AIR\\_2007-Annual\\_Impact\\_Report.pdf](http://www.thegef.org/gef/sites/thegef.org/files/documents/Impact_Eval-AIR_2007-Annual_Impact_Report.pdf).

<sup>109</sup> Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>110</sup> See footnote 59.

<sup>111</sup> Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>112</sup> Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>113</sup> Personal Interviews, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>114</sup> Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

30. The Benet people, like the Batwa in the southwest, were removed from their lands in eastern Uganda upon the creation of national parks and conservation areas. Through the early 1900s, the British Protectorate and later the independent government of Uganda declared the area around Mount Elgon a forest reserve, although the Benet continued to live there.<sup>115</sup> Conservation programs initiated in the 1970s and 1980s finally led to the forced eviction of the Benet from lands gazetted to form Mount Elgon National Park in 1993.<sup>116</sup> Most Benet have been temporarily resettled to areas outside the national park, which are owned in part by the Uganda Wildlife Foundation and a private landowner.<sup>117</sup> These temporary resettlements have been found to be inadequate.<sup>118</sup> The displaced communities living on these lands are prohibited from establishing permanent housing and the private landowner does not allow the cultivation of crops.<sup>119</sup> Benet individuals are regularly threatened and sometimes evicted from temporary settlements by government agents working for the Uganda Wildlife Authority.<sup>120</sup>

31. Among the Karamojong people, land is perceived by the community as the fundamental and often only productive asset.<sup>121</sup> The Karamojong region is also one of the

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<sup>115</sup> The Batwa were actually recognized by the British as the legal owners of the area in the 1920s. Report of the African Commission's Working Group on Indigenous Populations/Communities, *Research and Information Visit to the Republic of Uganda*, (2006), available for download at: <http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/Books/ACHPR%20Uganda.pdf>.

<sup>116</sup> Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, A/HRC/12/34/Add.1, 18 September 2009, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/145/82/PDF/G0914582.pdf>.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> C. Mbazzira, *Uganda: Constitutional, Legislative, and Administrative Provisions Concerning Indigenous Peoples*, Country Report of the Research Project by the ILO and the ACHPR on the constitutional and legislative protection of the rights of indigenous peoples: Uganda, 2009, Part I, section 1.2.2, p. .

poorest and least developed areas of the country. 90% of Karamojong ancestral land was gazetted by the government to form game and forest reserves in the 1940s,<sup>122</sup> including Pian-Upe Wildlife Reserve and Kidepo Valley National Park.<sup>123</sup> Although legally, the Karamojong are outlawed from the parks without a permit, a large number of Karamojong still live in these areas.<sup>124</sup> In 2006, a government attempt to evict the Karamojong from this land by compulsory acquisition proved unsuccessful.<sup>125</sup> A portion of gazetted land in the Karamoja region is slated to be de-gazetted, but the exact location or amount of land to be de-gazetted is unclear. Several reports claim that the government plans to lease the land to overseas investors for their private use.<sup>126</sup> The Karamojong people have stated their desire to negotiate with any outside investors over the lease of land, believing the land which is to be de-gazetted is still rightfully theirs to alienate as they wish.<sup>127</sup>

### ***Laws Providing Compensation for Forced Evictions Are Unenforced***

32. With regards to compensation, the actions of the government appear to be inconsistent with Uganda's international law obligations and domestic laws. When the

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<sup>122</sup> Report of the African Commission's Working Group on Indigenous Populations/Communities, *Research and Information Visit to the Republic of Uganda*, 58 (2006).

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> "Uganda." *The Indigenous World, 2009*. Copenhagen: International Work Group for Indigenous Affairs (2009). Page 480.

<sup>126</sup> Mbazzira, *Uganda: Constitutional, Legislative, and Administrative Provisions Concerning Indigenous Peoples*, Country Report of the Research Project by the ILO and the ACHPR on the constitutional and legislative protection of the rights of indigenous peoples: Uganda, 2009, Part I, section 1.2.2, p. 12-13; Report of the African Commission's Working Group on Indigenous Populations/Communities, *Research and Information Visit to the Republic of Uganda* (2006). Page 59.

<sup>127</sup> Report of the African Commission's Working Group on Indigenous Populations/Communities, *Research and Information Visit to the Republic of Uganda* (2006). Page 59.

government evicted the Batwa from their ancestral forest lands and gazetted the Bwindi and Mgahinga forests as national parks in 1991, government assistance was not provided to the Batwa and no efforts were made to resettle or compensate the evicted populations.<sup>128</sup> Although section 42 of the Land Act provides for a Land Fund to compensate and resettle communities whose lands had been appropriated by the government, there is a perceived lack of political will to use the Land Fund to resettle or compensate the Batwa.<sup>129</sup> Much of the Fund has been funneled to areas which have been stricken by natural disasters such as devastating mudslides.<sup>130</sup>

33. In 1995, as part of the Mgahinga and Bwindi Impenetrable Forest Conservation Trust Fund, the World Bank set aside funds to compensate the Batwa for the loss of their land, noting that the group had been particularly adversely affected by the creation of the national parks.<sup>131</sup> Funds were used to compensate evicted farming communities for the loss of their crops and permanent structures but this compensation scheme did not benefit the Batwa,<sup>132</sup> as historically the Batwa did not farm or establish permanent fixtures on land within the forests.<sup>133</sup> To date, the conservation trust fund purchased 326 acres of land to compensate the Batwa<sup>134</sup> but did not transfer title to the lands.<sup>135</sup> Moreover, the

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<sup>128</sup> James Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, A/HRC/15/37/Add.1, 30 Sep. 2010. Para.392.

<sup>129</sup> Personal Interviews, January 2011. Records of interview on file at the University of Oklahoma College of Law. The interviewees did not foresee Batwa compensation from the Land Fund taking place within the next twenty to thirty years.

<sup>130</sup>*Id.*

<sup>131</sup> James Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, A/HRC/15/37/Add.1, 30 Sep. 2010. ¶ 392.

<sup>132</sup>*Id.*

<sup>133</sup>*Id.*

<sup>134</sup> Report of the African Commission's Working Group on Indigenous Populations/Communities, *Research and Information Visit to the Republic of Uganda* (2006).Page 48.

<sup>135</sup>*Id.*

purchase of 326 acres was insufficient to provide more than a few Batwa with land.<sup>136</sup>

Compensation for the Batwa through the trust was eliminated in 2002 after the World Bank lost a significant portion of the funds it had set aside through bad investments in the off-shore stock market.<sup>137</sup>

34. In the 1980s, the government of Uganda carried out a land resettlement program in the region around Mount Elgon already declared a forest reserve.<sup>138</sup> The Benet occupying areas these areas were resettled just outside the reserve on land which at the time comprised an estimated 7500 hectares.<sup>139</sup> Apparently, the government had intended the Benet to resettle a smaller area comprising 6000 hectares.<sup>140</sup> In 1993, the government surveyed the Benet resettlement area, discovered it to be 7500 hectares, instituted a gazetting action and declared the additional 1500 hectares to be part of Mount Elgon National Park.<sup>141</sup> Six thousand people who had been living in this area were evicted without participation in the decision process or adequate compensation or resettlement assistance and were rendered landless.<sup>142</sup>

35. In 2004, Action Aid International Uganda and the Uganda Land alliance with assistance from Oxfam, sued the government on behalf of the Benet to reclaim the 1,500

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<sup>136</sup> Rose Nakayi, Historical and Contemporary Land Laws and their impact on indigenous peoples' land rights in Uganda: The Case of the Batwa, *Land Rights and the Forest Peoples of Africa: Historical, Legal and Anthropological Perspectives*. Moreton-in-Marsh, UK: Forest Peoples Programme, 2009. Page 20.

<sup>137</sup> Peter Poole, Cultural Mapping and Indigenous Peoples: A Report for UNESCO, March 2003. Page 8.

<sup>138</sup> Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, A/HRC/12/34/Add.1, 18 Sep. 2009. Page 85.

<sup>139</sup> 1 hectare is equal to 10,000 square meters. 7,500 hectares is approximately 18,352 acres of land.

<sup>140</sup> The government had not surveyed the land at the time the Benet were initially resettled. Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, A/HRC/12/34/Add.1, 18 Sep. 2009. Page 85.

<sup>141</sup> *Id.*

<sup>142</sup> Rose Nakayi, Historical and Contemporary Land Laws and their impact on indigenous peoples' land rights in Uganda: The Case of the Batwa, *Land Rights and the Forest Peoples of Africa: Historical, Legal and Anthropological Perspectives*. Moreton-in-Marsh, UK: Forest Peoples Programme, 2009. Page 22.

hectares.<sup>143</sup> On October 27, 2005, the High Court of Uganda handed down a Consent Judgment and Decree finding that the members of the Benet community evicted from the 1500 hectare area declared to be protected national park land were “historical and indigenous inhabitants” of the said area and were entitled to “stay and carry out economic and agricultural activities including developing the same undisturbed.”<sup>144</sup> The Court ordered the government to take all necessary steps to de-gazette these areas,<sup>145</sup> and issued an injunction forbidding the Uganda Wildlife Authority from “evicting or disturbing” the Benet, and awarded compensation.<sup>146</sup>

36. In February 2008, the Uganda Wildlife Authority evicted 1400 Benet people attempting to return to land the Consent Judgment had ordered de-gazetted.<sup>147</sup> In April 2008, the Minister of Tourism ordered this group into two temporary settlement areas owned in part by the Uganda Wildlife Foundation and a private landowner.<sup>148</sup> Incidents of harassment, arrest and death have accompanied further attempts by the Benet to return to these lands.<sup>149</sup>

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<sup>143</sup> *Id.*

<sup>144</sup> Report of the African Commission’s Working Group on Indigenous Populations/Communities, *Research and Information Visit to the Republic of Uganda*, 54 (2006).

<sup>145</sup> Rose Nakayi, Historical and Contemporary Land Laws and their impact on indigenous peoples’ land rights in Uganda: The Case of the Batwa, *Land Rights and the Forest Peoples of Africa: Historical, Legal and Anthropological Perspectives*. Moreton-in-Marsh, UK: Forest Peoples Programme, 2009. Page 23.

<sup>146</sup> Report of the African Commission’s Working Group on Indigenous Populations/Communities, *Research and Information Visit to the Republic of Uganda*, 54 (2006).

<sup>147</sup> Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, A/HRC/12/34/Add.1, 18 September 2009, page 85.

<sup>148</sup> *Id.*

<sup>149</sup> Wambi Michael. "Carbon Trading Scheme Pushing Indigenous People off Their Land In Uganda - Global Warming - Zimbio." Zimbio - Interactive Magazine. 31 Aug. 2009. Web. 10 Mar. 2011. <<http://www.zimbio.com/Global+Warming/articles/2NdGRgjYxYL/Carbon+Trading+Scheme+Pushing+Indigenous+People>>.

### *Laws Provide Limited Security of Land Rights*

37. British colonialism introduced individualized ownership and title to Uganda, conferring property rights in land areas with already existing indigenous land rights systems, resulting in a complicated system of land tenure and widespread overlap of land rights.<sup>150</sup> The ambiguity of ownership and widespread conflict over rights has negatively impacted long-term investments in energy<sup>151</sup> and agriculture,<sup>152</sup> offering major challenges for the future management and administration of land.<sup>153</sup>

38. Most land in Uganda is owned or managed under customary tenure,<sup>154</sup> generally without any form of documentation. 95% of land owners do not have land titles to guarantee security of tenure.<sup>155</sup> Land rights delivery under customary tenure is slow, corruption-prone and largely based on memory.<sup>156</sup> To protect customary land ownership, section 4(1) of the Land Act provides that indigenous groups holding land under customary tenure may acquire a certificate of customary ownership with respect to that land.<sup>157</sup> However, the mechanism for issuing certificates of customary ownership has not been implemented,<sup>158</sup> making it difficult for indigenous peoples to secure adequate rights to land.

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<sup>150</sup> The Uganda National Land Policy, 2011, Page 2.

<sup>151</sup> *Id.* at page 6.

<sup>152</sup> National Development Plan (2010/11 – 2014/15).83.

<sup>153</sup> See generally the executive summary of the Uganda National Land Policy, 2011 at 2.

<sup>154</sup> C. Mbazzira, *Uganda: Constitutional, Legislative, and Administrative Provisions Concerning Indigenous Peoples*, Country Report of the Research Project by the ILO and the ACHPR on the constitutional and legislative protection of the rights of indigenous peoples: Uganda, 2009. Page 46.

<sup>155</sup> *Id.*

<sup>156</sup> The Uganda National Land Policy, 2011, page 37.

<sup>157</sup> Land Act of 1998, section 4(1).

<sup>158</sup> The committees to be formed and provided the authority to issue certificates of customary ownership under section 4(1) of the Land Act were never put in place. Rose Nakayi, *Historical and Contemporary Land Laws and their impact on indigenous peoples' land rights in Uganda: The Case of the Batwa*, *Land*

39. The divergent systems of land tenure in Uganda have also produced a situation where legal title in land may be vested in a person not necessarily in occupation of the land.<sup>159</sup> As a result of being evicted from ancestral lands and rendered landless, indigenous groups like the Batwa, Benet and Karamojong have been resettled or occupy land for which they do not own legal title.<sup>160</sup> To mitigate potential conflict, the Land Act created a landlord-tenant system which would categorize indigenous groups as lawful or bona fide occupants or tenants by occupancy on these lands.<sup>161</sup> Under the laws of Uganda, bona fide occupants or tenants by occupancy are guaranteed security of occupancy as long as rent is paid to the landlord.<sup>162</sup> The Land Amendment Act of 2010 also provides tenants by occupancy with the option to buy an ownership interest (the right of first refusal) over land if the landlord wishes to sell.<sup>163</sup>

40. Despite its intentions, the landlord-tenant system does not adequately secure land rights for vulnerable indigenous groups. Evictions of bona fide tenants and tenants by occupancy are commonplace.<sup>164</sup> Although the Land Amendment Act of 2010 criminalizes eviction of tenants<sup>165</sup> this provision has not been adequately enforced.<sup>166</sup>

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*Rights and the Forest Peoples of Africa: Historical, Legal and Anthropological Perspectives.* Moreton-in-Marsh, UK: Forest Peoples Programme, 2009. 21.

<sup>159</sup> C. Mbazzira, *Uganda: Constitutional, Legislative, and Administrative Provisions Concerning Indigenous Peoples*, Country Report of the Research Project by the ILO and the ACHPR on the constitutional and legislative protection of the rights of indigenous peoples: Uganda, 2009. 48.

<sup>160</sup> *Id.*

<sup>161</sup> Land Act of 1998, sections 30 and 32.

<sup>162</sup> Land Act of 1998, section 32 and Land Amendment Act of 2010, section 32(A)(1).

<sup>163</sup> *Id.*

<sup>164</sup> C. Mbazzira, *Uganda: Constitutional, Legislative, and Administrative Provisions Concerning Indigenous Peoples*, Country Report of the Research Project by the ILO and the ACHPR on the constitutional and legislative protection of the rights of indigenous peoples: Uganda, 2009, 48; Uganda National Land Policy, 2011, page 6.

<sup>165</sup> Land Amendment Act 2010, section 92(1)(e).

### ***The Uganda National Land Policy: A Model for The Region?***

41. In 2001, the Ministry of Lands, Housing and Urban Development created the National Land Policy Working Group for the purpose of developing a comprehensive and clearly defined national land policy for the Republic of Uganda.<sup>167</sup> Consensus among stakeholders emerged at the National Land Conference held in May 2010,<sup>168</sup> which led to the adoption of strategies which are now presented in the Uganda National Land Policy of 2011.

42. First among its guiding principles, the policy provides that land “is a natural gift for the citizens of Uganda to hold, own, enjoy, use and develop individually or in association with others.”<sup>169</sup> Amongst its objectives, the policy proposes to “redress historical injustice to protect land rights of groups and communities marginalized by history or on the basis of . . . ethnicity and other forms of vulnerability . . .”<sup>170</sup> Importantly, the policy recognizes that the land rights of vulnerable groups have been “inadequately protected or poorly enforced”<sup>171</sup> and singles out for special redress the diminished land rights of these groups.<sup>172</sup>

43. The policy tackles the subject of compulsory acquisitions, noting that historically, the central government had consistently failed to exercise its power responsibly or

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<sup>166</sup>The Uganda National Land Policy 2011. Page 6.

<sup>167</sup>Foreword to the Uganda National Land Policy 2011. Page 1.

<sup>168</sup>The Batwa and other indigenous groups were not directly involved in the formulation of the new land policy.

<sup>169</sup> The Uganda National Land Policy, Chapter 1, Section 1.5(5)(i).

<sup>170</sup> The Uganda National Land Policy, Chapter 1, Section 1.4(4)(iv).

<sup>171</sup>Executive Summary to the Uganda National Land Policy, 2011. Page 2.

<sup>172</sup>*Id.* at page 3.

consistently within the public interest or to provide local governments with sufficient capacity to provide adequate compensation for lands appropriated at the local level.<sup>173</sup>

The policy proposes to centralize the appropriation of property within the national government.<sup>174</sup>

44. To protect customary rights to land, the policy proposes a mechanism to register land rights under customary tenure.<sup>175</sup> It also identifies as a critical issue the lack of clarity and certainty of land rights within Uganda's land tenure systems<sup>176</sup> and proposes measures to disentangle the overlap and conflict of rights over registered land.<sup>177</sup>

45. For the Batwa, Benet and Karamojong peoples, perhaps the most important policy statement is contained in Chapter 3, Section 3.8, which states: "Government shall, in its use and management of natural resources, recognize and protect the right to ancestral lands of ethnic minority groups."<sup>178</sup> To implement this policy, the government proposes establishing statutory regulations to recognize land tenure rights of minorities to ancestral lands,<sup>179</sup> protect these rights against arbitrary evictions,<sup>180</sup> consider land swapping or compensation or resettlement for future expropriations,<sup>181</sup> and the payment of compensation to ethnic minorities evicted from their lands for conservation purposes in

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<sup>173</sup>The Uganda National Land Policy, Chapter 2, Section 2.3(10).

<sup>174</sup>*Id.* at 2.3(12)(iii).

<sup>175</sup> The Uganda National Land Policy, Chapter 3, Section 3.3(40)(i).

<sup>176</sup>Executive Summary to the Uganda National Land Policy, 2011.

<sup>177</sup> See Generally, Chapter 3 of the Uganda National Land Policy.

<sup>178</sup>The Uganda National Land Policy, Chapter 3, Section 3.8(59).

<sup>179</sup> The Uganda National Land Policy, Chapter 3, Section 3.8(59)(i)(a).

<sup>180</sup> The Uganda National Land Policy, Chapter 3, Section 3.8(59)(i)(b).

<sup>181</sup> The Uganda National Land Policy, Chapter 3, Section 3.8(59)(i)(c).

the past.<sup>182</sup> The policy provides a single unit the authority to plan and administer these proposed measures and strategies.<sup>183</sup> While it remains to be seen whether Uganda will implement these policies and to what effect, the creation of the national land policy signals the intent to implement domestic and international obligations.

## **II. Health**

### **Normative and Institutional Framework**

#### ***International Instruments***

46. While Uganda acceded to the CERD in 1980, it has not recognized the competence of Article 14, which provides for individual complaints to be addressed to the Committee on the Elimination of Racial Discrimination once domestic remedies are exhausted. So an effective domestic redress system is especially important in meeting the needs of Uganda's indigenous peoples.<sup>184</sup> Ensuring that indigenous communities have practical access to medical services will best help Uganda maintain the international norms expressed in the CERD. Article 5 articulates "[t]he right to public health, medical care, social security and social services,"<sup>185</sup> regardless of "race, colour, descent, or...ethnic origin."<sup>186</sup> Article 24 of the UNDRIP also recognizes that "[i]ndigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right."<sup>187</sup> The UNDRIP further articulates that "[i]ndigenous

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<sup>182</sup> The Uganda National Land Policy, Chapter 3, Section 3.8(59)(ii).

<sup>183</sup> Executive Summary to the Uganda National Land Policy, 2011. Page 3.

<sup>184</sup> The Uganda Human Rights Commission (UHRC) is one appropriate forum for claims by indigenous people and communities, but the the UHRC's heavy case load may limit the efficacy of this approach.

<sup>185</sup> CERD, Article 5(e)(iv).

<sup>186</sup> CERD, Article 1.

<sup>187</sup> UNDRIP, Article 24(2).

peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.”<sup>188</sup>

47. Article 12 of the CEDAW addresses women’s access to health care, including pre- and post-natal services and adequate nutrition.<sup>189</sup>

48. Article 16 of the African Charter provides: “1. Every individual shall have the right to enjoy the best attainable state of physical and mental health. 2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”<sup>190</sup> In calling for sustainable health and medical attention for “every individual,” the African Charter includes the needs of indigenous peoples.

49. The ICESCR provides in Article 12 that:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
  - (b) The improvement of all aspects of environmental and industrial hygiene;
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

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<sup>188</sup> UNDRIP, Article 24(1).

<sup>189</sup> CEDAW, Article 12.

<sup>190</sup> ACHPR, Article 16.

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.<sup>191</sup>

Uganda has taken or expressed intent to take domestic initiatives consistent with the rights articulated in the ICESCR (addressed below under Domestic Undertakings). Because of their frequent lack of access to services, indigenous communities should be specially targeted in these programs to ensure they benefit from the resources available. In the case of access to medical services as expressed in Article 12(2)(d), the indigenous peoples of Uganda face considerable obstacles<sup>192</sup> (see below at #61, #62).

50. Uganda ratified the Convention on the Rights of the Child (CRC) on 17 August 1990. Article 2 specifies that States Parties must “respect and ensure” the rights of children, especially the children of marginalized groups such as indigenous peoples.<sup>193</sup> Article 6 “recognize[s] that every child has the inherent right to life,”<sup>194</sup> and calls on states to “ensure to the maximum extent possible the survival and development of the child.”<sup>195</sup> The prioritizing of disease control, hygiene, and child health found in the ICESCR is echoed in Article 24 of the CRC, which specifically calls for the availability of “adequate nutritious foods and clean drinking water.”<sup>196</sup> This article also calls for “preventive health care, guidance for parents and family planning education and services.”<sup>197</sup> It should be noted that Article 30 extends special acknowledgement that the rights of indigenous children are included in the CRC.

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<sup>191</sup>ICESCR Art. 12

<sup>192</sup>Report of the African Commission’s Working Group on Indigenous Populations/Communities, *Research and Information Visit to the Republic of Uganda*, (2006).Page 49.

<sup>193</sup>CRC Art.2(1), Art. 2(2)

<sup>194</sup>CRC Art. 6(1)

<sup>195</sup>CRC Art. 6(2)

<sup>196</sup> CRC, Article 24(2)(c).

<sup>197</sup> CRC, Article 24(2)(f).

### *Domestic Undertakings*

51. The Public Health Act of 1964 represents Uganda’s first commitment to addressing health threats nationwide, initially developed to combat smallpox and address public sanitation and hygiene. The act also authorized the implementation of other vaccination programs as public health threats emerged.

52. The National Health Policy (NHP II)<sup>198</sup> notes that “[d]uring the post-independence era (1962-1971) Uganda was one of the countries with best health indices and a vibrant health care system in Africa. Two decades of civil unrest followed and the health care system collapsed.”<sup>199</sup> A more stable political environment and the locally-targeted nature of Uganda’s now decentralized government could provide a framework to support a healthcare system capable of returning Uganda to the leading end of health indices. But the needs of indigenous peoples must be consistently incorporated in planning and prioritized in practice, to mitigate the generally poor health situation in indigenous communities.

53. The Health Sector Strategic Plan (HSSP) III, which also records the policy implementation goals of Uganda’s government in addressing public health, emphasizes

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<sup>198</sup> As revised in 2009.

<sup>199</sup> Government of Uganda Ministry of Health, Draft *National Health Policy: Reducing Poverty Through Promoting People’s Health*. May 2009 Version. Available at: [http://www.health.go.ug/National\\_Health.pdf](http://www.health.go.ug/National_Health.pdf).

“[h]uman resource management and development.”<sup>200</sup> This reflects an attempt to address the serious personnel shortage in the health sector. “The present number of health staff (Doctors, nurses, midwives) available in the country...amount to 59,000, with a ratio of 1 to 1,818 people.”<sup>201</sup> The World Health Organization recommends at least one health worker for every 439 people,<sup>202</sup> highlighting the crisis level shortage of health workers in Uganda.

54. The importance of safe, sufficient water is articulated in the National Water Policy, adopted in 1999. The policy is “based on the principal of ‘some for all, rather than all for some.’”<sup>203</sup> As expressed in an article published by the National Water and Sewerage Corporation, Uganda recognizes that

water is a basic right as quoted in the U.N. Charter and the Millenium Development Goals (MDGs). However, today many persons are still devoid of safe drinking water and sanitation services....Therefore, enabling theun-served to obtain access to basic water supply and safe sanitation, shouldbe the first priority of any country’s water policy.<sup>204</sup>

55. The Uganda National Malaria Control Strategic Plan (UNMCSP) includes a priority to “Target particularly the economically disadvantaged (poor) or difficult to reach populations (IDP [Internally Displaced Persons], nomads etc.).”<sup>205</sup> But the situation on the ground indicates implementation has been lacking in indigenous communities.

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<sup>200</sup>HSSP III 3.6.2, available at:[http://www.health.go.ug/docs/HSSP\\_III\\_2010.pdf](http://www.health.go.ug/docs/HSSP_III_2010.pdf) (20).

<sup>201</sup>*Id.*

<sup>202</sup>*Id.*

<sup>203</sup>Uganda National Water Development Report, 2005. 12.

<sup>204</sup> David S. Isingoma, *Financial Versus Economic Analysis of Water Supply Projects: The Facts*, THE WATER HERALD (National Water and Sewerage Corp.), Apr.-Sep. 2010. 5. Available at <http://www.nwsc.co.ug/publications03.php>.

<sup>205</sup> [http://www.health.go.ug/mcp/Uganda%20NMCSP%202005-10%20\\_Final.pdf](http://www.health.go.ug/mcp/Uganda%20NMCSP%202005-10%20_Final.pdf)

56. The National HIV&AIDS Strategic Plan 2007/8-20011/12 (NSP) has aimed to reduce new infections by 40% over its timeframe,<sup>206</sup> but disaggregated statistics regarding indigenous communities are unavailable. The plan’s“activities focus on a multi-sectoral approach on control: outlining three major goals in the areas of reducing prevalence, mitigating effects of the epidemic and strengthening the national capacity to respond to the epidemic.”<sup>207</sup>It highlights a general intention to expand the availability of antiretroviral therapy (ART).The NSP recognizes “stagnant and worsening HIV trends in Uganda,” with sexual transmission accounting for 76% of new infections.<sup>208</sup>As addressed below at #59, some indigenous communities may face particular threats from new infections via sexual assaults.

### **Human Rights on the Ground**

57. Water and food security are interrelated problems for Uganda’s indigenous peoples, as illustrated by the situation of the Karamojong people. Risk of malnutrition<sup>209</sup> is high for the Karamojong, due to the problem of food production on limited and semi-arid land, with limited access to water.<sup>210</sup> The Batwa also lack sufficient food and access to safe water,<sup>211</sup> and the Benet are also affected by malnutrition.<sup>212</sup>

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<sup>206</sup><http://www.aidsuganda.org/Publications/nsp.pdf>

<sup>207</sup>National Union of Disabled Persons of Uganda (NUDIPU), <http://www.nudipu.org.ug/aids.php>.

<sup>208</sup><http://www.aidsuganda.org/Publications/nsp.pdf>

<sup>209</sup> ICESCR, to which Uganda is a party, articulates in Article 11 “the right of everyone to be free from hunger”.

<sup>210</sup>Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>211</sup>Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>212</sup> Anaya report at 86

58. Benet communities are also at risk for malaria infection. The UNMCSP reports “63% of the [general population of Uganda] exposed to high and 25% to moderate malaria transmission levels.”<sup>213</sup> The malaria rate is high for the Benet because following the gazetting of Mt. Elgon, they have had to move to lower elevations, which are more mosquito-infested areas than their traditional lands.<sup>214</sup> For a Benet child “a mosquito bite is like a death sentence.”<sup>215</sup> Batwa children, too, are at heightened risk of malaria during the rainy season due to inadequate housing.<sup>216</sup>

59. HIV/AIDS is another threat to the health of Uganda’s indigenous peoples. Batwa communities have begun to particularly suffer from HIV infections, due to a belief in the surrounding communities that sex with Batwa women will cure AIDS. Health and social workers report<sup>217</sup> that this myth has caused a particularly high incidence of rape and resulting HIV infection in many Batwa communities.<sup>218</sup>

60. Parents in indigenous communities have sometimes declined to participate when immunizations are offered, due to a mistrust of government health care workers injecting their children.<sup>219</sup>

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<sup>213</sup> [http://www.health.go.ug/mcp/Uganda%20NMCS%202005-10%20\\_Final.pdf](http://www.health.go.ug/mcp/Uganda%20NMCS%202005-10%20_Final.pdf)

<sup>214</sup> Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>215</sup> Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>216</sup> Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>217</sup> Personal Interviews, January 2011. Records of interviews on file at the University of Oklahoma College of Law.

<sup>218</sup> D. Jackson, *Twa Women Twa Rights in the Great Lakes Region of Africa*, Minority Rights Group, 2003.13.

<sup>219</sup> Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

61. Access to health services is a problem for Uganda's indigenous peoples in general, largely because of a shortage of services in remote areas.<sup>220</sup> Health care tends to be inaccessible and often prohibitively expensive.<sup>221</sup> The Uganda Land Alliance surveyed 600 households in predominantly Karamojong Irriri sub-county in Moroto, and found the average distance to a health center was 6.8 kilometers.<sup>222</sup>

62. The Batwa face a particularly difficult time accessing healthcare because even if they are able to reach a clinic, they are often unable to pay for treatment. Sometimes services are denied them because of discrimination alone.<sup>223</sup> This contributes to a disproportionate death rate for Batwa women in pregnancy & labor.<sup>224</sup> In 2006 the African Commission's Working Group on Indigenous Populations/Communities reported that the "child mortality rate for Batwa was 41% while for non-Batwa it was 17% and that the infant mortality rate for Batwa was 21% and for non-Batwa 5%."<sup>225</sup> A 1/5 infant mortality rate and 2/5 childhood mortality rate is a crisis in any population, and is all the more urgent for a people with a population of less than 10,000. The African Commission report also noted that "[t]he Batwa's limited access to traditional herbs and medicine, due to eviction

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<sup>220</sup>Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>221</sup>Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>222</sup>Samia Liaquat Ali Khan, Poverty Reduction Strategy Papers: failing minorities and indigenous peoples, Minority Rights Group International, 2010, page 24, available at: [http://www.reliefweb.int/rw/lib.nsf/db900sid/ASAZ-87YGB4/\\$file/MRG\\_Aug2010.pdf](http://www.reliefweb.int/rw/lib.nsf/db900sid/ASAZ-87YGB4/$file/MRG_Aug2010.pdf).

<sup>223</sup>Jackson, abovenote 29, page 13; Personal Interviews on file at the University of Oklahoma College of Law.

<sup>224</sup>Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>225</sup>Report of the African Commission's Working Group on Indigenous Populations/Communities' Research and Information Visit to the Republic of Uganda, 14-17, 24-29 July 2006. Page 49.

from their traditional lands, also contributes substantially to their poor health situation.”<sup>226</sup>

### **III. Education**

#### **Normative and Institutional Framework**

##### ***International Instruments***

63. The Republic of Uganda is a state party to several international agreements explicitly providing for education. ICESCR article 13 recognizes the right to compulsory primary education for everyone, as well as the “progressive introduction of free education” at both secondary and higher levels of education. Article 13.2 calls for the general availability and accessibility of secondary education “in its different forms, including technical and vocational education on the basis of capacity.”<sup>227</sup>

64. The Republic of Uganda ratified the CEDAW with no apparent reservations, declarations, or understandings. Article 10 concerns the right to education and equal opportunities for women. Including the equal opportunity to benefit from “scholarships and other study grants,” the reduction of drop-out rates for women and “access to specific educational information to help ensure the health and well-being of families including information and advice on family planning.”<sup>228</sup>

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<sup>226</sup> *Id.*

<sup>227</sup> ICESCR article 13.

<sup>228</sup> CEDAW, Article 10.

65. The Republic of Uganda is a state party to the International Covenant on Civil and Political Rights (ICCPR) as of 21 June 1995<sup>229</sup> and does not have any apparent reservations, declarations or understandings to the treaty.<sup>230</sup> Article 18 of the ICCPR refers to the responsibility of the state party to have respect for religious liberties of parents and legal guardians, including the “religious and moral education” of their children.<sup>231</sup>

66. Article 28 of the CRC recognizes the right of everyone to free and available compulsory primary education and making “higher education accessible to all on the basis of capacity by every appropriate means.” Article 28 also requires a state party to take measures that encourage school attendance and reduce dropout rates.<sup>232</sup> Concerning article 29, state parties agree that in part, education of the child “shall be directed to” respect for cultural identity, language and values. This is in addition to developing respect for the country from which the child may originate and civilizations different from his/her own.<sup>233</sup>

67. Article 17 of the African Charter on Human and People’s Rights provides that every individual “shall have the right to education and may freely take part in the cultural life of his community.”<sup>234</sup> Article 25 requires that state parties present to the Charter “shall

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<sup>229</sup> UNHRC.

<sup>230</sup> Uganda acceded to the optional protocol on 14 November 1995, but made reservation to article 5. For purposes of this discussion it is not necessary to consider the reservation, as it pertains to the optional protocol and not the body of the treaty to which this discussion references.

<sup>231</sup> ICCPR, Article 18.

<sup>232</sup> CRC, Article 28.

<sup>233</sup> CRC, Article 29.

<sup>234</sup> ACHPR, Article 17.

have the duty” to educate and promote the respect of the “rights and freedoms” in the Charter, including the obligation to make sure “these freedoms and rights as well as corresponding obligations and duties are understood.”<sup>235</sup>

### *Domestic Undertakings*

#### Constitutional Provisions

68. The following are several constitutional provisions providing for education:

69. Educational objectives

- (i) The State shall promote free and compulsory basic education.
- (ii) The Stateshall take appropriate measures to afford every citizen equal opportunity to attain the highest educational standard possible.
- (iii) Individuals, religious bodies and other nongovernmental organisations shall be free to found and operateeducational institutions if they comply with the general educational policy of thecountry and maintain national standards.<sup>236</sup>

70. Right to education

“All persons have a right to education.”<sup>237</sup>

71. Rights of Children<sup>238</sup>

The right to know and be cared for by their parents or those entitled by law to bring them up. (2) A child is entitled to basic educationwhich shall be the responsibility of the State and the parents of the child. (3)No child shall be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs. (4) Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health orphysical, mental, spiritual, moral or social development.(5) For the purposes of clause (4) of this article, children shall be persons under the age of sixteen years.

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<sup>235</sup> ACHPR, Article 25.

<sup>236</sup> Const. objective XVIII.

<sup>237</sup> *Id.* at art. 30.

<sup>238</sup> Const. Art. 34.

### Domestic Legislation

72. Uganda introduced Universal Primary Education (UPE) in 1997 and Universal Secondary Education (USE) in 2007.”<sup>239</sup>UPE refers to the “state funded universal primary education [program] where tuition fees are paid by Government where the principle of equitable access to conducive, quality, relevant and affordable education is [emphasized] for all children of all sexes, categories and in special circumstances.”<sup>240</sup>

USE “means the state funded universal secondary education [program] providing obstacle free post primary education.”<sup>241</sup>

73. UPE provides for the elimination of school fees and the provision of “books, good sanitary facilities and similar services, but not food or uniforms.”<sup>242</sup>

74. “Under the Ministry of Education, a thematic curriculum has been introduced and children from Primary 1-3 use local languages as a medium of instruction for easy learning and promotion of cultural development”<sup>243</sup>

75. The Equal Opportunities Commission Act of 2007 “gives effect to the state’s constitutional mandate of eliminating discrimination” and to take affirmative action in favor of marginalized groups.<sup>244</sup>

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<sup>239</sup>Report by the government of Uganda to the African Commission on Human and Peoples’ Rights Presented at the 44th Ordinary Session Abuja, Federal Republic of Nigeria November 10th-24th 2008 at 16.

<sup>240</sup>Education Act 2008.Page 9.

<sup>241</sup>*Id.*

<sup>242</sup>Report of the African Commission’s Working Group on Indigenous Populations/Communities, page 50.

<sup>243</sup>Report by the government of Uganda to the African Commission on Human and Peoples’ Rights Presented at the 44th Ordinary Session Abuja, Federal Republic of Nigeria November 10th-24th 2008, page 19.

<sup>244</sup>UNESCO World data on education 2010/11 at 2-3.

76. The Education Act of 29 August 2008 provides that basic education shall be provided and enjoyed by everyone and article 13 makes primary education universal and compulsory for all children aged 6 years.

77. In 1998 the government introduced Alternative Basic Education for Karamoja (ABEK). It was developed as a response to the recognition of an inability of children to participate in formal education due to the semi-nomadic lifestyle common in Karamoja.<sup>245</sup> However, according to a 2008 report from Minority Rights Group International its “impact has been limited due to a lack of technical capacity.”<sup>246</sup> Furthermore, the report quotes a District Education Officer as saying that “in Karamoja, parents believe that if their daughters attain formal education they will become less competent wives, prostitutes or run off to marry non-Karamajong men who will divert them from the Karamajong way of life.”<sup>247</sup> The rate of primary school enrollment in Karamoja is approximately 35%.<sup>248</sup> This is in severe contrast to the national enrollment rate of 84% cited in Uganda’s 2007 Progress Report concerning the MDG’s.<sup>249</sup>

### **Human Rights on the Ground**

78. While visiting two Batwa communities in the southwest of the country, representatives from each emphasized an understanding that education is critical to their

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<sup>245</sup> Alternative Basic Education for Karamoja, a Review Report submitted to Save the Children in Uganda, August 2006, page 1.

<sup>246</sup> *A Double Bind: The Exclusion of Pastoralist Women in the East and Horn of Africa*, Minority Rights Group International, page 10.

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> Millennium Development Goals, Uganda’s Progress Report 2007, at 19.

survival. However, in one of the communities they were quick to mention the discrimination they and their children face from the dominant community.

79. The Batwa community of Rwamahano is set high in the hills adjacent to the forest in which they once lived. They are among the most impoverished in the world and it is not uncommon for them to go several days without water or food. As a consequence of their poverty, the children are derided by other students from the dominant community for the way in which they smell or how their clothes look. Three years ago the NGO African International Christian Ministry (AICM) built a primary school consisting of grades 1-3 for the community. Teachers instruct in the local language and English. It is the only school to serve a Batwa community exclusively.

80. Another Batwa community, supported by the Batwa Development Program (BDP), is keenly aware of the need for education among their people. In an interview, one of their representatives stressed the importance for the children in his community to learn English in order to have more opportunities for the future.<sup>250</sup> This particular group benefits greatly from the BDP, which supports children through providing school fees (for private institutions and boarding schools), shoes, clothes and food. The community also has easy access to water.

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<sup>250</sup>Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

81. Primary education is provided for 6-12 year olds. It reaches the children through a network of approximately 16,600 public and private schools throughout the country. 73.8% of these schools are public.<sup>251</sup>

82. Secondary education is provided by approximately 914 government-run and 1,994 private schools, with rural based schools accounting for 37.8% of the total.<sup>252</sup>

83. According to the 2010-2015 National Development Plan (NDP) “efficiency and quality of secondary education remains very low due to poor management of school resources.” It also cites the “inequitable deployment of teachers” as a problem in the efficiency and quality of secondary education.<sup>253</sup>

84. There are reports that indicate, “many primary schools implementing UPE continue to charge unauthorized fees for textbooks or other real or imaginary services.”<sup>254</sup> These extra charges include but are not limited to examination fees, interview fees, building funds, etc. and serve to “inhibit access to primary education.”<sup>255</sup>

85. The government cites “limited access to education for marginalized groups including children with disabilities and those in post-conflict areas ” along with inadequate physical infrastructure as constraints to performance in the education sector.<sup>256</sup>

86. The government only has funding for 65% of the teachers needed. The government does not have the funding necessary to pay for all of the teachers needed to provide

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<sup>251</sup>National Development Plan (2010/11 – 2014/15), page 209.

<sup>252</sup>*Id.* at page 211.

<sup>253</sup>*Id.* at page 213.

<sup>254</sup>New Vision Uganda, *UPE Schools Still Charging Illegal Fees*, 23 Feb. 2010, 2010 WLNR 3890282.

<sup>255</sup> Millennium Development Goals, Uganda’s Progress Report 2007, page 20.

<sup>256</sup> National Development Plan (2010/11 – 2014/15), pages 218-219.

universal primary and secondary education as required in the applicable domestic legislation. Further impeding recruitment of the teachers necessary are teacher salaries. Salaries for public educators are approximately 40% of a comparable job in the private sector. This makes it especially difficult to recruit highly skilled teachers. Once a teacher has the commensurate experience to qualify for a more advanced position in public education they will more than likely have already gone into the private sector. Further compounding the problem is that about 50% of the population is under fifteen years. The government is not able to keep up with the growing demand on the universal education systems.<sup>257</sup>

87. While school enrollment nationwide is relatively high at 84%, rates for completion of school are much lower. They “have actually fluctuated between 48% in 2006 and 60% in 2004.”<sup>258</sup>

88. The Report of the African Commission’s Working Group on Indigenous Populations/Communities cites four key impediments to educating Batwa children; 1) a “lack of funds to buy uniforms, school materials and lunch;” 2) harassment from other students; 3) a lack of land and housing; and 4) the need to support their family in meeting urgent basic needs such as food, clothing and shelter.”<sup>259</sup>

89. There are several barriers for Batwa communities regarding access to education. Remoteness represents one of the biggest obstacles. Schools are difficult to reach, and both teachers and students often must walk many miles to reach a school. Another

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<sup>257</sup> Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>258</sup> Millennium Development Goals, Uganda’s Progress Report 2007, page 20.

<sup>259</sup> Report of the African Commission’s Working Group on Indigenous Populations/Communities. Page 49.

problem regarding the remoteness of schools is that often times teachers will go to a remote post in order to be put on a government payroll, only to request transfers as soon as it is possible. Remote primary schools will also lump grades together due to scarcity of teachers. For example, it is common for levels 1-5 to be taught in the same room by the same teacher.<sup>260</sup>

90. Many Batwa are not aware of their rights or that their children are entitled to free universal primary education. However, some parents are unwilling to put their children in school. This seems to be the result of multiple factors including; an inability to see a future for themselves or their children and discrimination faced by their children at the hands of students from the dominant community. These factors also contribute to a high dropout rate among the Batwa. Furthermore, it seems education that education is perceived as a luxury. However, there has reportedly been success keeping children in school through programs which provide food in school.<sup>261</sup>

91. No Mutwa<sup>262</sup> in Uganda has ever been to law school. Only one has received a university education in Uganda.<sup>263</sup> While Batwa in Burundi and Rwanda are reportedly more successful, including one Mutwa in Rwanda who is a member of parliament.

92. Cost appears to be the biggest impediment to university education. Most cannot afford the tuition and expenses associated with university. Four thousand government sponsorships are awarded annually for university education, although approximately

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<sup>260</sup> Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>261</sup> Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>262</sup> “Mutwa” is singular and “Batwa” is plural.

<sup>263</sup> <http://www.bbc.co.uk/news/world-africa-11637295>

100,000 students are eligible for university, as determined through a standardized examination process.<sup>264</sup>

## **IV. Employment, Political, and Gender Discrimination**

### **Normative and Institutional Framework**

#### *International Instruments*

93. Uganda has adopted the following relevant instruments: The African Charter on Human and People's Rights, The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of all Forms of Racial Discrimination.

94. The Declaration of the Rights of Persons Belonging to Minorities in Article 4 (1) says, "States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law." Uganda has recognized the Declaration on the Rights of Persons Belonging to Minorities.<sup>265</sup>

95. The UN Declaration of the Rights of Indigenous Peoples, Article 18 states that:

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.<sup>266</sup>

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<sup>264</sup>Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>265</sup>Kabann I.B. Kabanankyeet. al., Culture, Minorities, and Linguistic Rights in Uganda : The Case of the Batwa and the Ik, HURIPEC Working Paper No. 11 (2007).

<sup>266</sup>Declaration on the Rights of Indigenous Peoples (UNDRIP), G.A. res. 61/295, at 18, U.N. GAOR, 107<sup>th</sup> plen. Mtg., 13 Sep. 2007.

This declaration generally contemplates that indigenous groups need to be consulted, taken into account, and their free and informed consent obtained.<sup>267</sup> The declaration also explicitly recognizes the right to self-determination.<sup>268</sup> If determined to be evidence of customary international law, these provisions could be binding on Uganda.

### *Domestic Undertakings*

94. There is a domestic debate over referring to the people groups at issue as indigenous or as minorities. The similar traits of these groups define them; anthropologically speaking, “[g]enerally, minorities can be grouped or categorized according to shared ethnic, religions, linguistic or cultural characteristics.”<sup>269</sup> They acknowledge a common identity on that basis.<sup>270</sup> Most indigenous populations in Uganda have a common identity based on their groupings, present situations, and similar historical circumstances. This distinction of definition also carries legal and practical meaning. Chapter 4, section 36 of the Ugandan Constitution is for example, entitled: “Protection of rights for minorities.”<sup>271</sup> Specifically that “[m]inorities have a right to participate in decision-making processes, and their views and interests shall be taken into account in the making of national plan

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<sup>267</sup> See generally UNDRIP, Articles 10, 11, 15, 17, 19, 28, 29, 30, 32, 36 and 38. (See also, *Indigenous and Tribal People’s Rights Over Their Ancestral Lands and Natural Resources*, Inter-Am. C.H.R., OEA/Serv.L/V/II doc. 56/09 ¶ 103 (2010), discussing the general obligation of states to consult indigenous groups.

<sup>268</sup> “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.” *Id* at page 13.

<sup>269</sup> Rose Nakavi, *Decentralization and the Situation of Selected Ethnic and Racial Minorities*, HURIPPEC Working Paper No. 15 (2007). Page 4.

<sup>270</sup> *Id.*

<sup>271</sup> Constitution of the Republic of Uganda, Ch. 4, § 36.

and programmes.”<sup>272</sup> The only reference to the word “indigenous” in the Constitution relates to a prerequisite for a grant of citizenship (see above at #6).

95. The government of Uganda should consider developing a methodology for addressing this distinction to not only synchronize its domestic undertakings with relevant international instruments, but also to comport with its current decentralization efforts. Local governments, or local councils, as a result of their proximity to and association with indigenous peoples need appropriate resources and support for addressing the complex situation.

96. In the context of political representation, the term “minorities” in Uganda has historically meant women, youth, and persons with disabilities and generally has not referred to racial minorities or marginalized ethnic groups.<sup>273</sup>

97. Affirmatively, the Constitution of Uganda allows for the “right to participate in the decision making process.”<sup>274</sup> This is a specific grant given to “minorities” by the Constitution of Uganda, unlike the blanket protections found in international instruments, and could be applicable to indigenous peoples. Likewise, Uganda’s legal framework requires women to comprise one third of government representation. Similarly, this domestic undertaking is in harmony with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), whose purpose is to “ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political

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<sup>272</sup>*Id.*

<sup>273</sup>Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>274</sup>Constitution of the Republic of Uganda, Ch. 11 § 176.

rights.”<sup>275</sup> However, one of the manifestations of discrimination is the inability of indigenous peoples, and especially indigenous women, to practically gain representation in government.

98. Uganda’s domestic law in general comports with international norms. However, the absence of indigenous peoples in Uganda’s government stimulates discrimination because they are not represented, and consequently their issues can be readily overlooked. Furthermore, holding no representation in local or central government demonstrates a lack of validation in spite of legal recognition and citizenry.

Article 180 (2) c of the 1995 Constitution provides for local government to enact laws to provide for affirmative action for all marginalized groups. Additionally, the Local Government’s Act Cap 243 Laws of Uganda provide for representation of marginalized groups at all local government levels. Section 10 specifically provides for two youth councilors, one male and one female, two councilors with disabilities, one male and one female, and two women councilors.<sup>276</sup>

Arguably people might be generally be swept in under the language “marginalized groups.” Again, the distinction of the international legal community’s definition of indigenous, and the domestic use has practical implications.

99. Uganda’s progressive legal framework consistent with international obligations is the foundational piece in ensuring equality to indigenous groups. However, “[a] favorable legal framework is insufficient for due protection of their rights if it does not go hand in

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<sup>275</sup> CEDAW, Introduction.

<sup>276</sup> Rose Nakavi, *Decentralization and the Situation of Selected Ethnic and Racial Minorities*, HURIPEC Working Paper No. 15 (2007).Page 4.

hand with policies and actions by the State to *ensure application* of and effective compliance with the provisions which the sovereign State has undertaken to apply.”<sup>277</sup>

### ***Human Rights on the Ground***

100. Of the 56 “indigenous” groups recognized in the Constitution of Uganda, “many have modernized or abandoned their old culture and look at those who have not with discontent.”<sup>278</sup> Discrimination for those groups comes as a result of their political powerlessness, small size, extreme poverty, distinct culture, and remote access.<sup>279</sup>

101. Many of Uganda’s indigenous and minority groups exist in geographic locations that are difficult to access. This presents challenges in providing them with services, according to the Ministry of Water and Environment.<sup>280</sup> However, the decentralization of Uganda’s government has improved providing services to remote places.

102. Indigenous peoples are underrepresented in all sectors of government.<sup>281</sup> Specifically, the Batwa peoples in Uganda receive a lot of attention from the International Community, through various aid organizations like CREDO, Minority Rights Group International, and the Bwindi Community Hospital. But, as of January 2011, no Batwa

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<sup>277</sup>*Indigenous and Tribal People’s Rights Over Their Ancestral Lands and Natural Resources*, Inter-Am. C.H.R., OEA/Serv.L/V/II doc. 56/09 ¶ 44 (2010).

<sup>278</sup>Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>279</sup>*Id.*

<sup>280</sup>Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>281</sup>Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

members had yet been elected to Parliament in Uganda, as they have been in Rwanda and Sudan.<sup>282</sup>

There has been little or no Batwa participation when development strategies are formulated, and the situation is the same with regard to other types of policies or programmes. There was, for example, no Batwa participation when Uganda's Poverty Reduction Strategy Paper was developed. Most acutely, there is no institutional mechanism by which Batwa people, in the future could be involved in such political or decision-making processes.<sup>283</sup>

The small size of most of the indigenous people groups severely limits their political organization and capability, so they are absent from the "decision making process."<sup>284</sup>

103. Indigenous women face these general challenges, and face "double discrimination" as a result of being discriminated against in their own group, and generally in Uganda.<sup>285</sup>

Generally speaking, 68% of the women in Uganda report domestic violence, according to the Ugandan Demographic and Healthy Survey compiled by the Ugandan Bureau of Statistics.<sup>286</sup> The survey does not extrapolate data for indigenous peoples. The Millennium Development Goals cites the lack of a Domestic Relations Bill as a challenge Uganda faces on its path towards equality.<sup>287</sup>

104. Aside from general political discrimination, indigenous groups similarly face challenges in employment. Proving employment discrimination is difficult. Generally

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<sup>282</sup>Report of the African Commission's Working Group on Indigenous Populations/Communities, *Research and Information Visit to the Republic of Uganda* (2006).Page 53.

<sup>283</sup>*Id.*

<sup>284</sup>*Id.*

<sup>285</sup> Minority Rights Group Int'l, *Samia Liaquat Ali Khan: Poverty Reduction Strategy Papers: failing minorities and indigenous peoples*(2010).

<sup>286</sup> Uganda Demographic and Health Survey, Uganda Bureau of Statistics, August 2007.

<sup>287</sup>U.N. Dept. of Economic and Social Affairs (DESA), Statistics Division, *Millennium Development Goals: Uganda's Progress Report*, 28, (2007).

speaking for an individual or group who lives in poverty, the payment of fees and the level of sophistication needed to file a complaint in the Uganda court system can create problems with access to justice.<sup>288</sup> Testimonies revealed that because a lack of resources among indigenous communities can make maintaining hygiene difficult, it is very difficult for them to be successful in job interviews.<sup>289</sup> The inability of many of these Ugandan citizens to obtain jobs perpetuates their poverty.

105. The African International Christian Ministry reports that there is still no Mutwa employed by the government and that lack of representation connects to discrimination experienced by the Batwa and other groups like them.<sup>290</sup>

106. However, the government of the Republic of Uganda has policies adopted by the Ministry of Gender, Labour, and Social Development's Equal Opportunities Commissions that provide some recourse.<sup>291</sup> The commission's policy provides for transportation, and languages services.<sup>292</sup> The Ministry likewise is statutorily mandated to measure gender, labor, occupational safety and health, orphans and other vulnerable children, and people with disabilities as a mechanism of promoting social development. Indigenous peoples could be explicitly included in these mandates to empower existing state structures to protect their rights.

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<sup>288</sup>Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>289</sup>*Id.*

<sup>290</sup>Personal Interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>291</sup>Personal interview, January 2011. Records of interview on file at the University of Oklahoma College of Law.

<sup>292</sup>*Id.*

107. ILO Convention No. 169 also recognizes the aspirations of indigenous peoples to control their own institutions, ways of life and economic development “within the legal framework of the state in which they live.”<sup>293</sup> Uganda has not acceded to this convention, but an example of its principles at work is the Batwa Development Programme (BDP), a local NGO. The BDP illustrates an endeavor to support indigenous people in directing their own destinies. They have an Executive Committee governing board comprised of eight Batwa leaders elected by their communities who are working to develop a sustainable economy, educate their children, and market their traditional crafts to the general public. Similar development programs in other regions, particularly if supported by government policies, could help drive compliance with international norms and promote economically sustainable practices for indigenous communities.

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<sup>293</sup>*Indigenous and Tribal People’s Rights Over Their Ancestral Lands and Natural Resources*, Inter-Am. C.H.R., OEA/Serv.L/V/II doc. 56/09 ¶ 165 (2010), available at: <http://cidh.org/countryrep/Indigenous-Lands09/TOC.htm>.

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