



**University of Oklahoma College of Law
International Human Rights Clinic
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This report concerns indigenous peoples in the Republic of Uganda and surveys Uganda's compliance with certain human rights obligations. The government of Uganda employs a domestic meaning for the term "indigenous" that differs from an international consensus of what "indigenous" usually conveys. This report, while recognizing Uganda's unique terminology, uses "indigenous peoples" to indicate peoples whose ways of life differ from the dominant society, and often depend on access to traditional lands and resources. The report and attached annex focus on four selected areas: (1) Access to Land; (2) Health; (3) Education; and (4) Employment, Political, and Gender Discrimination. The Clinic notes the expressed intent of the government of Uganda to comply with its international commitments. Each section of this report includes recommendations for continuing Uganda's domestic accomplishments and maintaining fidelity to its international obligations.

I. ACCESS TO LAND

Normative and Institutional Frameworks

International Instruments: Article 17 of the Universal Declaration of Human Rights, if deemed to be evidence of customary international law, may be binding on Uganda. Articles 8(b), 10 and 26 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) would bind Uganda if the UNDRIP is determined to be evidence of customary international law. Uganda acceded to the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1987. As of 1980, Uganda is a party to the Convention on the Elimination of All Forms of Racial Discrimination (CERD). In 1986, Uganda ratified the African Charter on Human and Peoples' Rights, which provides for: self-determination (Article 20); economic, social and cultural development (Article 24); and guarantees the right to property (Article 14).

Domestic Undertakings: The 1995 Constitution requires the state to adhere to international law. Article 237 of the Constitution provides that land in Uganda belongs to its citizens. Article 26(1) guarantees the right to own property individually or collectively. Article 26(2) grants the government the power to take property for the public interest but protects customary interests in property by recognizing the right to fair and equitable compensation. Article 36 guarantees ethnic minorities the right to participate in government decision-making processes. Section 3(1) of the Land Act of 1998 protects the right to customary ownership of land. Section 42 provides for a Land Fund to resettle persons rendered landless by government action and to assist citizens in acquiring title to land. The Land Acquisition Act of 2000, in sections 3(3), 5 and 6, provides that compulsory acquisitions by the government be accompanied by notice and prior compensation. Under Section 8, the government shall void compulsory acquisitions which contravene these provisions. The Ministry of Lands created the Uganda National Land Policy of 2011 in part to redress land injustices against vulnerable groups.

Human Rights on the Ground

Forcible Eviction and Lack of Access to Land: Indigenous groups such as the Batwa, Benet and Karamojong peoples have been forcibly evicted from their traditional lands and deprived of their traditional means of subsistence without participation in the decision process or adequate compensation or resettlement assistance. These groups suffer acute landlessness, intertribal conflict, poverty, ill health, and lack of access to food and water. A few indigenous communities have been temporarily resettled onto government or privately owned land, but the vast majority lack rights or access to land and fend for themselves with the help of relief organizations. The Batwa live as squatters

and sharecroppers on the land of private landowners, where their labor and rights are regularly exploited.

Compensation: In 1995, the World Bank set aside a trust fund to compensate the Batwa for the loss of their crops and permanent structures from forced evictions, but most Batwa were excluded from compensation because in cultural practice they did not use land to farm or establish permanent structures. Moreover, the compensation element of the trust was eliminated in 2002 after trust funds were invested off-shore and then lost. In 2005, the Uganda High Court in *Uganda Land Alliance v. Uganda Wildlife Authority and the Attorney General* recognized the right of a large Benet community to return to their traditional lands and remain undisturbed, and directed the government to return their lands and grant compensation. The government has not complied with the court order, and has arrested or removed Benet people found in these areas. The government plans to de-gazette—remove from the national park system—a portion of the land previously appropriated from the Karamojong people. However, a 2009 country report on Uganda published by the International Labour Organization and the African Commission on Human and Peoples' Rights states the land will be leased to private overseas investors rather than restored to the Karamojong as compensation.

Customary Land Rights: Most of the land in Uganda is owned or managed under customary tenure. Indigenous groups holding land under customary tenure do not have documentation. Section 4(1) of the Land Act of 1998 established a mechanism to acquire a certificate of customary ownership but it has not yet been implemented and does not include already evicted groups.

Recommendations

- Implement a mechanism enabling indigenous groups to obtain certificates of customary ownership to any untitled lands they currently occupy or may occupy in the future.
- Provide compensation to indigenous groups who were forcibly evicted from traditional lands without compensation, consultation, or consent.
- Consider the partial return of protected areas to indigenous communities and the provision of other government lands for the permanent resettlement of communities unable to reclaim a portion of their traditional lands.
- Create a dispute resolution process and complaint filing mechanism for indigenous peoples to inexpensively adjudicate land takings and register complaints.
- Consult with representatives of the Batwa, Benet, and Karamojong peoples and other displaced groups in the implementation of the Uganda National Land Policy.
- Comply with the court order handed down by the Uganda High Court in *Uganda Land Alliance v. Uganda Wildlife Authority and the Attorney General*.
- Actively participate in international and regional meetings on indigenous peoples and minorities and sensitize local governments to the needs of indigenous communities.

II. HEALTH

Normative and Institutional Framework

International Instruments: The ICESCR recognizes in Article 12 “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” Article 16 of the African Charter also asserts the right of “every individual” to “enjoy the best attainable state of physical and mental health,” and requires party states to “take the necessary measures to protect the health of their people.” Article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified in 1985, addresses women’s access to health care, including pre- and post-natal services and adequate nutrition. Article 2 of the Convention on the Rights of the Child (CRC), ratified

in 1990, obligates state parties to protect the health of children, especially those from vulnerable groups such as indigenous peoples.

Domestic Undertakings: The Health Sector Strategic Plan III (2010/11-2014/15) prioritizes human resource development to mitigate Uganda's shortage of health care workers. The 1964 Public Health Act authorized the creation of vaccination programs. The National Malaria Control Strategic Plan aims to prevent and treat infections, and the HIV/AIDS Strategic Plan reflects the government's current approach to curbing the infection rate and treating those already infected.

Human Rights on the Ground

Access to safe water and sufficient food are urgent concerns affecting the health of all of Uganda's indigenous peoples. There is a high risk of malnutrition for the Karamojong, due to the difficulty of growing food on semi-arid land with little water access. The Batwa also lack sufficient food and safe water, and Benet children have suffered from malnutrition following their displacement from Mt. Elgon. Malaria is a particular threat for indigenous communities, especially during the rainy season and in more humid areas. Inadequate shelter to protect from mosquitoes intensifies the problem. The malaria rate is high for the Benet, who have been displaced to lower, mosquito-infested elevations. Batwa children are also at a heightened risk of malaria due to inadequate housing. Over 1 million Ugandans are HIV positive. There is a lack of specific data on infection rates of indigenous peoples, but health and civil society workers report increasing infections in indigenous communities. A belief that sex with Batwa women will cure AIDS has caused a particularly high incidence of rape and resulting HIV infection in Batwa communities. Access to health services is problematic for all indigenous groups—often due to a lack of services in remote areas—compounding existing medical problems. The Batwa face a particularly difficult time accessing healthcare because sometimes services are directly denied them even if they can reach a clinic. This contributes to a disproportionate death rate for Batwa women in pregnancy and labor. Reproductive health services and access to family planning are a challenge for indigenous women in general.

Recommendations

- Prioritize making safe water available to indigenous communities, and incorporate their needs in water sector planning.
- Facilitate training of indigenous persons to become community health workers in the public sector of Uganda's understaffed health care system, through targeted recruiting and government support for attending schools and vocational programs.
- Provide vaccinations to children in indigenous communities, administered in programs that cooperate with community leaders to educate parents about the benefits of immunization and promote their participation.
- Combat malaria by encouraging local governments in affected areas to provide materials to improve substandard housing, and specifically target indigenous communities for distribution of insecticide treated mosquito nets.
- Support local governments in developing mobile health clinics that bring services to indigenous communities, and compile disaggregated health data about their particular needs.

III. EDUCATION

Normative and Institutional Framework

International Instruments: ICESCR Article 13 recognizes the right to compulsory primary education for everyone, and 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. CEDAW 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.” CRC Article 28 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 requires a state party to take measures encouraging school attendance and reducing dropout rates. Concerning Article 29, state parties agree that education of the child “shall be directed to” respect for cultural identity, language and values. Article 17 of the African Charter on Human and Peoples’ Rights provides that every individual “shall have the right to education and may freely take part in the cultural life of his community.” The United Nations Development Programme’s Millenium Development Goals (MDG) 2 calls for achievement of universal primary education by 2015.

Domestic Undertakings: Article 30 of the Constitution guarantees that all persons have the right to education. Article 34 of the Constitution reaffirms a child’s right to basic education, leaving the responsibility with both the state and the parents of the child. Universal Primary Education (UPE) was implemented in 1997 with Universal Secondary Education (USE) following in 2007. These were intended to eliminate school fees but do not provide for school uniforms or lunches. Recognizing childrens’ inability to participate in formal education due to the semi-nomadic lifestyle common in Karamoja, in 1998 the government introduced Alternative Basic Education for Karamoja (ABEK).

Human Rights on the Ground: According to the National Development Plan of 2010-2015 (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. The government cites “limited access to education for marginalized groups” along with inadequate physical infrastructure as constraints in the education sector. Remoteness, discrimination and lack of financial resources represent the largest barriers to education of Batwa communities. With only one secondary school per sub-county in rural areas, teachers and students must walk great distances to reach school. Remote primary schools will also lump grades together due to scarcity of teachers. Keeping children in school also represents a challenge when they lack adequate food. Success keeping children in school through programs which provide lunches has been observed. Concerning UPE, some schools continue charging unauthorized fees. In Karamoja net enrollment is at 35%. In sharp contrast, net enrollment of the country is approximately 84%, putting Uganda on the path to achieve the MDG 2 target of 100% enrollment by 2015 if it can overcome these wide disparities. As for higher education, few can afford the tuition and expenses associated with universities. According to a report by Uganda to the African Commission “there is overwhelming demand for functional adult literacy in the whole country.”

Recommendations

- Collect statistics reflecting gender and minority status of school attendance and performance at all levels in order to have a clear knowledge of what the situation on the ground is.
- Provide additional primary and secondary schools in each sub-county so that all children in the county would live within a reasonable walking distance.
- Develop creative ways to provide access to education in rural communities such as bussing teachers to remote areas on a regular basis.

- Implement an effective system to report the illegal collection of primary school fees.
- Provide lunch at school to encourage attendance, and provide school uniforms.
- Develop a program to increase functional adult literacy in indigenous communities.
- Introduce a plan toward free higher education as required by ICESCR Article 13.

IV. POLITICAL, GENDER, AND EMPLOYMENT DISCRIMINATION

Normative and Institutional Frameworks

International Instruments:

Uganda acceded to the International Covenant on Civil and Political Rights (ICCPR) in 1995. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, adopted by the UN General Assembly (Resolution 47/125) in 1982, says in Article 4(1) that States should act to ensure that minorities exercise their rights “without any discrimination and in full equality before the law.” Uganda has not acceded to ILO Convention No. 169 regarding Indigenous Peoples.

Domestic Undertakings:

The 1995 Constitution of Uganda, Article 36, states that “[m]inorities have a right to participate in decision-making processes, and ... shall be taken into account in the making of national plans.” Article 180(2)(c) requires local governments to enact laws providing affirmative action of marginalized groups. The National Objectives and Directive Principles of State Policy in the Constitution, Part XI, states “[t]he State shall give the highest priority to . . . measures that protect and enhance the right of the people to equal opportunities.” The Local Government Act provides for representation of marginalized groups at local government levels. The 2006 Employment Act states “discrimination in employment shall be unlawful.” The act specifically mentions a person shall not be discriminated against for ethnic origin or tribe.

Human Rights on the Ground

Uganda has a domestic legal framework that is potentially consistent with international obligations to address the human rights issues of indigenous peoples. However, indigenous communities’ remoteness, lack of education, and appearance are barriers to employment. Indigenous peoples were not consulted during development of the national Poverty Eradication Action Plan (2004/5-2007/8). Indigenous women face “double discrimination” within their own communities and in Uganda generally, limiting opportunities for employment. The small population of most indigenous peoples renders them politically powerless. None hold elected seats in central government, removing them from the decision-making process. Many indigenous peoples reside in remote locations, limiting access to justice. The compound discrimination against indigenous peoples is historic, cultural, and systemic in spite of positive and affirming laws.

Recommendations

- Adopt Affirmative Action policies for indigenous peoples in government similar to the existing gender requirements.
- Recognize indigenous peoples in the category of “minorities” in the Constitution.
- Expand decentralization efforts to develop indigenous peoples’ self-government.
- Demonstrate political will to address indigenous peoples’ concerns, developing a monitoring system to measure progress.
- Consider a process to engage indigenous communities directly in decision making processes, and help promote sensitivity to indigenous peoples and the issues they face.
- Consider accession to ILO Convention 169 on indigenous and tribal peoples in independent countries.