

The Batwa Indigenous People of Uganda and Their Traditional Forest Land: Eviction, Non-Collaboration and Unfulfilled Needs

Norman Mukasa
PhD, International and Intercultural studies
Deusto University
normanmukasa@gmail.com

ABSTRACT

The growing literature about the Batwa indigenous people in Uganda has uncovered the interplay between global power, local realities, and current interventions. However, this literature has not adequately focused on the relationship between the eviction of numerically small indigenous groups from their land and their consequent plight. Therefore, this study reviews available literature on the events, processes, and consequences of the Batwa eviction from their traditional forest land in the early 1990s. The literature reviewed suggests that the application of international standards was not respected; it also shows that the Batwa were evicted without their free, prior, and informed consent. Additionally, the total resettlement of the Batwa has failed dramatically; they face appalling economic, health, and social conditions. In conclusion, the paper asserts that a greater international control of compliance (by international and national actors) with applicable standards must be observed, and sincere measures to redress the Batwa land eviction ought to follow guiding instruments on the rights of indigenous people.

Keywords: Batwa, land eviction, indigenous peoples, social plight

1. INTRODUCTION

The events, processes, and consequences surrounding the eviction of the Batwa from their traditional land demonstrates how well-meant development projects can ruin the lives of small groups of indigenous people (Tumushabe and Musiime, 2006; Zaninka, 2001; Zaninka and Kidd, 2008; Blomley, 2003; Namara, 2006). Notably, the Batwa, also called Pygmy,¹ are a group of former hunter-gatherers of southwest Uganda, whose livelihood dramatically changed after their eviction from the forest land in the early 1990s (Lewis, 2000; Kabanankye and Wily, 1996). The nature of their expulsion suggests that there was a violation of their traditional land ownership right.² Indeed by a stroke of a pen, the policy instrument to protect the Bwindi Impenetrable and Mgahinga national parks together with the highly endangered - and highly valued - flora and fauna (mountain gorillas) left more than ninety percent of the Batwa landless (Ahebwa, Van Der Duim and Sandbrook, 2012).

1 This is a derogatory word which is used mainly by other ethnic groups to mock or marginalize the Batwa or even discriminate against them (Lewis, 2000, p. 5)

2 The resolution adopted by the General Assembly 61/295 expressed concern that "...indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests."(United Nation, 2008 United Nations Declaration on the rights of indigenous Peoples, pp.1-15)

The situation of the Batwa discredits, in a way, Uganda's commitment to indigenous people's rights. On the one hand the country is a signatory to International Conventions, including the Elimination of All Forms of Racial Discrimination and the African Charter on Human and Peoples' Rights, and, locally, article 20 of the Uganda Constitution³ is against all sorts of discriminatory practices. On the other, the discrimination and marginalization suffered by the Batwa seem to suggest the violation of international instruments.⁴ Locally, the difficulty is that the constitution considers all ethnic groups as indigenous (Constitution of Uganda, 1995). However, the African Commission clearly recognizes the Batwa as identifying with the worldwide indigenous peoples' movement in their struggle for recognition of their fundamental rights (ACHPR, 2005). In addition, the legal framework over land and natural resources in Uganda (the Land Act of 1998 and the National Environment Statute of 1995), protects customary interests on land and the traditional use of land but restricts the customary forest land rights of indigenous peoples (Mwanga, Mukhwana, Zaninka, & Kidd, 2009, p. 483).

Beyond the case of Uganda, the problem of defining an indigenous people and indigenous peoples' rights is a complex debate in many other parts of Africa. The report of the African Commission on Human and Peoples' Rights' Working Group on Indigenous Populations/Communities, adopted by the Commission in 2005, discusses the problem of definition at length. The report repeats the old argument that all Africans are indigenous to Africa given that the European colonialists left all of black Africa in a subordinate position which is very similar to indigenous people elsewhere.

"...if the concept of indigenous is exclusively linked with a colonial situation, it leaves us without a suitable concept for analyzing the internal structural relationships of inequality that have persisted from colonial dominance." It continues that:

"Africa's Indigenous Peoples have their own specific features that reflect from the specific feature of the African state and its role. They have specific attachment to their land and territory; they have specific cultures and mode of production that are distinct from the groups that dominate political, economic and social power."⁵

Within this unfolding debate, the current study inclines towards the definition of indigenous people by the African Commission because of its relevancy to the African context. The commission defines indigenous people as those "whose culture and ways of life is subject to discrimination and contempt and whose very existence is under threat" (ACHPR, 2005). In addition, domestic policies and international conventions considered in the discussion include: the Wildlife Statute of 1996 and the Environment Statute of 1994;⁶ the African Charter on Human and Peoples' Rights of 1986; the Indigenous and Tribal Populations Convention of 1957 (No. 107) and the Indigenous and Tribal

3 Article 20 of the Ugandan constitution states that "...no person shall be treated in a discriminatory manner by any person acting... in the performance of any public office or any public authority,"

4 The right to equality and non-discrimination is guaranteed in the general recommendation No.23 (18/8/1997) of the Convention on the Elimination of all Forms of Racial Discrimination of 1969 and in Article 7 of the Universal Declaration of Human Rights among others.

5 The African Commission on Human and Peoples' Rights '(ACHPR) Report of the African Commission's Working Group on Indigenous Populations/Communities, 2005.

6 It provides guidelines on natural resource management for the benefit of all the people of Uganda and local communities.

Peoples Convention of 1989 (ILO Convention No. 169)⁷; and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007.⁸

This review is based on the most relevant human rights standards pertaining to indigenous peoples' right to land. The African Charter on Human and Peoples' Rights of 1986 guarantees property rights and, in case of dispossession, it recognizes the right to recover their property and be compensated.⁹ However, a provision in this charter states that this right could be encroached upon in the interest of the public need or in the general interest of the community.¹⁰ In many cases, governments have exploited this provision to displace and evict indigenous people. Certainly, use of that provision to displace Indigenous Peoples (henceforth, IPs) is unjust because the same African Charter guideline can be interpreted with reference to other international human rights instruments and decisions.¹¹ In that respect, the UNDRIP, as an international instrument, acknowledges the "right to lands, territories and resources which they [indigenous people] have traditionally owned, occupied or otherwise used or acquired."¹² This Article of UNDRIP also deliberates on the right to own, use, develop, and control the lands, territories and resources that IPs "possess by reason of traditional ownership or other traditional occupation or use."¹³ Another basic international standard is the International Labor Organization (ILO) convention. The ILO has adopted two conventions pertaining to IPs: the ILO 107 of 1957 and ILO 169 of 1989 which came in force in 1991. However, their content is only partially applicable in Africa, since African states have not yet ratified these instruments.¹⁴ This puts advocacy for Indigenous Peoples' rights in a precarious position.

The main challenge to this paper's analysis is that some of these guidelines and conventions came into effect after 1991, the year the Batwa were evicted from their traditional land. In spite of that challenge, the paper explores whether the appalling conditions of the Batwa are a result of continuous marginalization due to land eviction. It also analyzes whether their plight would have been averted had better international and national control of compliance, with applicable standards, been met before and after eviction plans. To achieve the intended objective, several events, documents and positions of various actors in the eviction of the Batwa are reviewed. The review illustrates that difficulties facing the Batwa indigenous community, especially with regard to land and natural resources have not been fully redressed, and that they arise from an initial disregard of applicable standards for free, prior and informed consent that must precede eviction.

7 The standards in ILO Convention No. 169 establish a basic framework for protection of indigenous and tribal Peoples under international law, which organizations like the World Bank and the United Nation Development Programmes (UNDP) take into account when developing their own programmes or policy affecting Indigenous people.

8 With 24 introductory paragraphs and 46 articles, the United Nation Declaration on the Rights of Indigenous Peoples 2007 covers a range of human rights and fundamental freedoms related to IPs, namely the right to preserve and develop their cultural characteristics and distinct identities, ownership and use of traditional lands and natural resources, and protection against genocide

9 African Charter, Articles 20, 21, 22 and 24; these articles are considered vital in the Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities

10 Ibid, Article 14

11 Ibid, Article 60

12 UNDRIP, Article 26 (1)

13 Ibid, Article 26 (2)

14 ILO 107 is ratified by only a few African countries and ILO 169 by none.

2. METHODOLOGY

This paper is exclusively prepared on the basis of existing literature. It includes both academic sources and documents by indigenous and non-indigenous organizations engaged in advocacy for Indigenous Peoples' rights. Notably, only a part of the literature reviewed places land eviction and the social plight of indigenous groups as its primary concern. In most cases, land eviction is not the primary focus and information on indigenous people's livelihoods and conditions is often fragmented and unsystematic. Most of the texts lack conceptual and analytical frameworks. However, this material is still worth taking into account given that it offers new empirical information or new perspectives.

The review partially reflects or represents the growing body of literature because it concentrates on the right of IPs to land, among other rights, and their livelihoods and living conditions. The challenge is that it is not always easy to distinguish sharply between indigenous and non-indigenous ethnic groups in Africa. Neither is it easy to distinguish between Indigenous Peoples' rights and human rights, as these rights often overlap in both application and context. It was nevertheless necessary to make some conceptual distinctions, in order to identify and understand the case of the Batwa in Uganda.

This paper targets a wide audience, including researchers, grassroots organizations, non-governmental organizations (NGO), policy-makers, and the local community associations interested in the issues of Indigenous Peoples' rights in Africa and Uganda.

3. WHO ARE THE BATWA IN UGANDA?

The Batwa of the great lakes region are a marginalized ethnic group found in Uganda, Rwanda, Burundi, and the Democratic Republic of Congo (Lewis, 2000; Kidd and Zaninka, 2008). In Rwanda and Burundi, they are called Twa. In the Democratic Republic of Congo, they are the Twa, Mbuti, or Bayanda. In Uganda, the Batwa people are also called Bayanda. They range between 3,000 - 3,700 people in Uganda; almost 0.02 percent of the total population (UBOS, 2002). They were formerly forest hunter-gatherers, who today live in the Kisoro, Rukungiri, and Kabale districts surrounding the Bwindi Impenetrable and Mgahinga Gorilla National Parks in southwestern Uganda as illustrated in the map below.

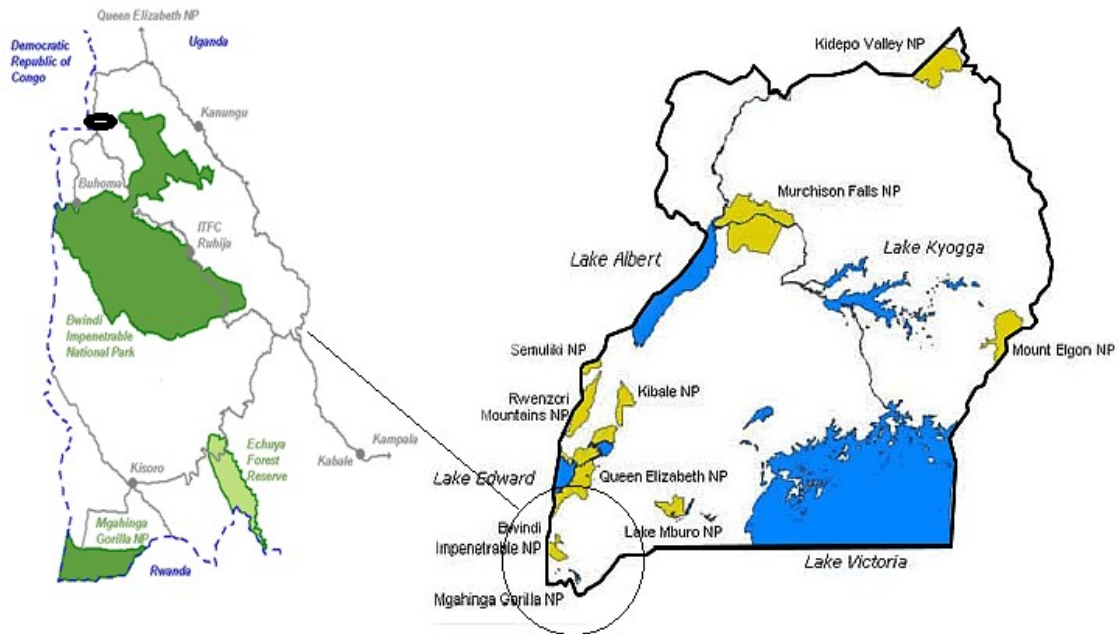


Figure 1: The location of the Batwa in Uganda (extraction on the left shows the protected area—the Bwindi Impenetrable National Park, the Mgahinga Gorilla National Parks, the Echuya Forest Reserve and its neighborhood)
(Source: Mukasa, 2012—adapted)

The available history of the Batwa identifies them with the mountain forests. In a historical account, Zaninka (2001) laments that until the 16th century the Batwa people were the only inhabitants of the regions of the Bwindi Impenetrable National Park, the Mgahinga Gorilla National Parks and the Echuya Forest Reserve. They were later joined and marginalized by incoming groups of farmers and shepherds. In addition, cross-generational stories of these people show that the forefather of the Batwa (called Gihanga) had three sons (Gatwa, Gahutu and Gatutsi). They suggest that his son Gatwa, the forefather of the Batwa people, received bows, spears, and arrows for hunting. As a result of these stories, hunting is cherished by the Batwa and the Garama underground lava cave (hidden in the Gahinga Mountains) is a sacred place for the Batwa (Mukasa, 2012; Lewis, 2000). The ILO 169¹⁵ recognizes and respects this relationship between the lands and territories of indigenous peoples and their distinct spiritual, cultural, and economic structures.

As suggested by other authors, the marginalization of the Batwa can be seen in the social, political, and economic walks of life (Kidd, 2008; Kidd & Zaninka, 2008). They are discriminated based on their physical appearance and their heritage as forest dwellers, and are labeled pygmies^{16, 17} in a pejorative way. Their marginalization is now visible in the education sector, local and national government offices, and the activities of mainstream society. Additionally, due to this marginalization, little has been done to keep and maintain their original language amidst pressure from dominant non-Batwa groups. Some linguists claim that the original language of the Batwa has disappeared due to marginalization and pressure from the "other" (Kabanankye & Kwagala, 2007). In an emblematic case, the first

15 Article 13 (1)

16 Scott & Carol Kellermann, Pygmies.net (2002-2004).

17 Their marriage costumes, unfulfilled needs and sociocultural attachment to the forest are covered in the report of the Parliament's Equal Opportunities Committee's Working Visit to Bundibugyo and Kisoro in 2007

Mutwa to graduate with a university degree lamented in a BBC interview that, after evicting her forefathers from the forest, the concern is not only their loss of land but also their loss of culture (Vishva Samani-BBC, 2010).¹⁸

4. EVICTION OF THE BATWA: POLICY HISTORY

“The Bwindi Impenetrable National Park (BINP), which covers 331 km², is the largest tract of natural forest remaining in Uganda, and is the only area in East Africa containing an unbroken ecological continuum of lowland and transitional and montane forest. BINP is extremely rich in mammalian diversity. The park is home to some 120 species, including the mountain gorilla, and is equally rich in the variety of bird species (330). Though much smaller at 48 km² ... MGNP is one of the few areas in Uganda that contains Afro-montane and Afroalpine vegetation, as well as a number of rare species, such as the golden gueron monkey and eleven endemic species of birds” (World Bank 2007)

Natural resource legislation in Uganda has changed over time and so has the access of local people to these resources. Initially, the customary rules and practices of the local communities regulated hunting, the collection of medicinal plants, and other forms of resource extraction until colonial legislation on access to wild flora and fauna came into effect in the 1900s (for instance the 1926 game ordinance and the 1952 National park Ordinance) (Republic of Uganda, 2008, p. 1). However, the last blow to the Batwa was the 1991 resolution that awarded the Bwindi Impenetrable Forest and the Mgahinga Gorilla Reserve the status of national parks (Republic of Uganda, 1999). This action led to the eviction of people, mostly the Batwa, residing and carrying out activities around the protected area. For the Batwa, exclusion from the forest area without free, prior and informed consent (Kidd & Zaninka, 2008; Tumushabe & Musiime, 2006), meant abandoning the livelihood which they depended on (Nakayi, 2009). This eviction and the insufficient process of compensation meant that most of the Batwa had to survive as landless laborers, dependant on small payments from powerful farmers, or even as beggars (Kenrich, 2000:11). The process also defied the relocation guidelines of the ILO 169.¹⁹ The eviction policy history can be summarized in three phases (Namara, 2006, p. 44):

1. First, pre-gazette era (absence of forest boundary and peoples accessed forest resources);
2. Second, forest reserve or reserved era (beginning of state sanctioning of access to forest resources);
3. Finally, post-gazette/national park era (with strict policing and removing the people from the forest resource).

Below is a chronological outline of the evolution of legislation on conservation between 1932 and 1996:

Table 1: Evolution of BINP and MGNP conservation policy

Year	Policy and parties involved	Remarks
1932	Bwindi and other forests first gazetted as Kasatoro and Kayonza crown forest reserves by the British colonial	The forest continued to be economically and culturally important and accessible for the Batwa.

¹⁸ A story about the first Batwa University graduate covered by Vishva Samani of BBC News, Uganda on 29th October 2010 <http://www.bbc.co.uk/news/world-africa-11601101>

¹⁹ ILO 169, Article 16 (2) stipulates the measures to be undertaken in event of relocation

	power.	
1942	The BINP & MGNP were combined and gazetted as impenetrable central crown forests	The colonial office strategy was conservationist but respected the IPs rights and access to the forest.
1961	The forest reserves were additionally gazetted as a gorilla sanctuary	The report by FPP and UOBDU finds no clear effects of the policy on the Batwa at that time
1964	The Forest and Farm Act were introduced in Uganda	Use of hunting dogs, possession of hunting weapons, residing, hunting, and farming in the forest was made illegal
1988-1989	UNPs and Games department presented a report to the executive government to make Bwindi Impenetrable forest and Mgahinga Gorilla reserve National Parks	Bwindi forest would become BINP and Mgahinga gorilla reserve would become MGNP
1991	The 13th August 1991 resolution turned the two forest and game reserves into BINP following the earlier May 1991 resolution that had gazette MGNP	The Batwa were definitively evicted and restricted from access to the forest, without any resettlement and compensation
1996	In 1996, the conservation body (UNPs) which implemented Tourism Resource Sharing, merged with the Game Department to form the UWA	UWA realized the 1994 revenue sharing arrangement lacked an institutional and a legal framework

Source: Based on FPP reports; UWA policy, 1996; Ahebwa, Van der Duim and Sandbrook, 2012

There was resistance during the eviction which saw local, aggressive retaliation to the paramilitary conservation agenda. There were conflicts between the park staff and local communities (both Batwa and non-Batwa). Evidence suggests that the local people set sixteen fires in and around the parks in protest over denied access to forest resources and wild food (Nowak, 1995 cited from Ahebwa, Van der Duim, & Sandbrook, 2012, p. 381). Following this scuffle, the government confronted its failure to single-handedly implement and monitor the protected areas by enacting a wildlife statute that introduced collaborative management of the forest resource with local communities (Namara, 2006, p. 41). This government initiative was also preemptive, responding to ever-diminishing human, material, and financial resources to manage the protected areas in the face of resistance.

In 1996, Kabanaukye and Wily's comprehensive assessment of the Batwa's situation five years after their eviction from the forest made rigorous recommendations to address the failures. This assessment was in line with the World Bank's OD 4.²⁰ requirements, and a baseline study on consultation with, and

²⁰ In 2000, the Batwa formed their organization called the United Organization for Batwa Development in Uganda (UOBDU). Under the leadership of this organization, Batwa Representatives have signed some declarations with the

compensation for, IPs. The recommendations, though not adequately acted upon (Zaninka, 2001, p.178) until 2001, are the most evident demonstration of the unfulfilled needs following the exclusion of the Batwa in 1991. The assessment made the following recommendations:

- There was an urgent need to redress the injustice suffered by the Batwa, as a result of their exclusion from the forests, so that the Batwa could gain access to the 60% of Trust funding allocated to projects proposed by local community associations, via capacity-building;
- The Batwa are strongly connected to their ancestral vicinity due to its embodiment in their networks of social relations, thus any redistribution of land should have taken place in the areas where the Batwa lived;
- The recognition of and an urgent solution for the cultural and economic needs of the Batwa connected to use of the forests ancestral land;
- It also noted that the Batwa feel marginalized in the social service sector—health, education, community networks, and representation—because they do not feel welcome in health clinics. Indeed, the study quotes health workers who laugh about visiting Batwa households and express the sentiment that “the Batwa need everything for free”.

In 2001, a case study assessment of the impact of the conservation agenda on the Batwa by Zaninka (2001) carried out a compelling analysis which demonstrated that the Batwa, as those most affected by the dispossession and lack of accessibility to the forest resource, should have adequate participation in the conservation project (both representation in the decision-making process and allocation of benefits). The Batwa were not generally involved if the community project aimed to redress their exclusion from the forest. Specifically, the assessment noted that the Batwa lack the necessary "expertise" and would be in a better place to hold a dialogue with the Trust within the context of their "own representation committee"²⁰ (Zaninka, 2001 p184). Another finding by this study was that the continuous funding of schools, clinics, and other projects from which the Batwa do not benefit due to discrimination would simply continue to exacerbate the situation for the Batwa if their share in land distribution and restoration of their forest access is excluded from the debate. The author also vehemently noted that: "Eight years after eviction and four years after the [1996 assessment] study's urgent recommendation, the Batwa had still not been given land on which to settle."

In 2008, an exhaustive and eloquently presented Ph.D. dissertation by Kidd (2008) concluded that ".....the current predicament of the Batwa has been constructed by external forces and that Development discourse continues to construct this marginalized position..... a fundamental shift in the paradigm of the 'Modern World' is needed to allow the Batwa, and other Indigenous Peoples, to be seen not as 'Exotic Others' but as equal participants in an interconnected world where multiple ways of knowing and being are mutually supported and validated" (Kidd 2008 p. 2). The summary of this same work is one of the most elaborate empirical investigations on the Batwa's livelihood and condition after their eviction. Using the dominant discourses analysis, the author challenges the development agency in what he calls a failure to respond to Batwa consent. According to Kidd, it is possible those agencies may not have believed that the Batwa were able to fully participate in the processes. In his thesis, the author finds that the modernist paradigm—development intervention—has failed the Batwa in that whilst the development interventions explicitly tried to support and empower the Batwa, they implicitly

government. In 2011, they participated in constructing a 3-D model of the forest area using their traditional knowledge.

dis-empowered them "by reserving them to positions of submission and inadequacy." The author summarizes the Batwa condition after their eviction as follows: "...the Batwa today live in bonded labor arrangements with their local neighbors and exist as a despised and marginalized group, positioned on the margins of Ugandan society" (Kidd, Christopher, 2008).

Additionally, Kidd and Zaninka, 2008 and Kenrick, 2000 pp. 11-13 claim that there has been little or no Batwa involvement in the management of their former traditional lands and only some of the Batwa had access to the forest under a multiple-use program in order to collect valuable forest resources. Kenrick, 2000 p.13 asserts that the multiple-use programs (including establishing forest access for bee-keeping, gathering medicinal herbs, and basket-making materials), are limited to some organized groups in some parishes. Yet, these organized groups rarely include Batwa and do not tend to consider ways of using the forest mentioned by the Batwa, such as collecting firewood and house building materials, hunting small animals, or worshipping ancestors.

In 2008, the UNHCR profile report categorically stated that after eviction the Batwa become vulnerable. They were forced to seek membership of religious charity groups as a survival strategy; members of these religious groups would get clothing, food, spiritual renewal, and other benefits to sustain their family's needs in after the eviction. This shows how much the cultural heritage, identity, and livelihoods of the Batwa are at stake. Despite the situation mentioned above and emerging work on the Batwa, the relationship between the Batwa land eviction and social plight has not received much attention. Yet, those who have analyzed this relationship barely focus on the interplay between global power, local realities, and current interventions.

Therefore, although conservationists classified the forest territory as highly protected areas (national parks), following claims of illegal logging and the extinction of gorillas (Hamilton, Cunningham, Byarugaba, & Kayanja, 2000), it is clear that the Batwa have suffered the negative consequences, given that it was after 2000 that they founded a Batwa advocacy organization which has to-date struggled to advocate, follow-up, and bridge the gap between the Batwa community and the authorities.

This review of policy history and related research brings the paper to explore the Bwindi Impenetrable and Mgahinga Gorilla National Park conservation project.

5. BWINDI IMPENETRABLE AND MGAHINGA GORILLA NATIONAL PARK: CONSERVATION PROJECT

"Gorilla tourism is Uganda's top tourism attraction. A Gorilla permit will go for \$600 (about Shs1.6m) in January next year [2014], up from \$500 (Shs1.3m). "It is the mainstay of our tourism industry. 80 per cent of the tourism income comes from business related to gorillas,"

(The Executive director of Uganda Wildlife Authority, Mr. Andrew Seguya—in the Sunday Monitor September 15, 2013)

The Bwindi Impenetrable National Park (BINP) and the Mgahinga Gorilla National Park (MGNP) are located in south-western Uganda and are home to valuable flora and fauna. This led the World Bank to commit itself to a financial grant of US \$4.3 million in May 1991. The grant was an endowment under the Global Environment Facility (GEF) and administered through an established trust called the Mgahinga Bwindi Impenetrable Forest Conservation Trust (MBIFCT) (GEF, 1995). In addition to the GEF endowment by the World Bank, USAID contributed US\$ 900,000 for 1995 to 1997, while the

Dutch government also provided further funding of US\$ 2.7 million for 1997 to 2000. This financing came to a total value of US \$8.3 million in 2000.²¹

Apparently, there is conflicting evidence on the conservation project's success, which to a large extent depends on the perspective of the analysis. Studies that focus on commercialization or conservation find the project a success (GEF, 1995; Wild and Mutebi, 1996; GEF, 2007; Namara, 2006). On the other hand, critics focus their analysis on the merits of the project in line with the fulfillment of applicable standards for indigenous peoples' rights. This paper inclines towards the latter perspective. Certainly, capitalizing on a narrow aim of establishing the MBIFCT to provide long-term financing for park management activities, specialized research, and small development projects for local communities surrounding the two parks may posit success (The World Bank assessment report, 2007; GEF, 2007). However, the broader analysis pertains to whether socioeconomic activities, support for park management activities, and local community projects corresponded to the interests of the people (the Batwa inclusive), in a fair way that was in keeping with local and international instruments.

The "neo conservation model" is built on the pivotal idea of the participation and involvement of IPs in decision-making before, during, and after well-intended global or local projects to infringe their territories. In the case in question, management of the conservation project comprised the local, NGOs, and government representatives. The fourteen members on this board (nine voting members and five non-voting members) are in charge of the day-to-day running of the trust fund and evaluating of the projects from the Local Community Steering Committee (LCSC). The LCSC (comprising twelve voting members of the local community) was supposed to have at least one Batwa on it (other documents refer to three Batwa). The issue of implementing mechanism for representation of the Batwa as a discriminated group was one of the conditions tabled by the Dutch government (funded the MBIFCT between 1997-2000), but reports indicate that the required number of Batwa representatives and a committee from which representatives could be drawn was not met by 2000. On this matter Kenrick (2000: 8) pointedly demonstrates the failure of the Trust fund management to work towards Batwa participation on committees, even though "a Batwa committee has long been budgeted for in the Trust's budget, and was one of the steps agreed by the Trust and the Dutch Embassy as a precondition for Embassy funding of the Batwa component of the Trust's work."

5.1 Meeting the Bank's directives

".....the bank will not fund projects that indigenous people do not support. Its rules demonstrate how the Government and the World Bank must plan and carry out projects that could affect IPs and how they must try to prevent, or at least reduce, any harm that the project might cause to them."

(The World Bank's IPs Policy (OP/BP 4.10)²²

The attempt to violate the key ideas of free, prior and informed consent occurs when free participation and equal involvement in the conservation process is not up to the established standards. In this review, respecting the rights of the Batwa does exclude World Bank/GEF funding. The bitter reality is that

21 All figures are based on the article by Ray Victorine and Christine Oryema Lalobo 2000 "Building Conflict into Cooperation: Case study of the Mgahinga and Bwindi Impenetrable Forest Conservation Trust" https://www.cbd.int/doc/nbsap/finance/CaseStudyTrustFunds_UgandaBwindi_Nov2001.pdf

22 The World Bank policy consists of two documents: the Operational Policy 4.10 on IPS and the Bank Procedure 4.10 on Indigenous Peoples the two replaced O.D 4.20, Indigenous Peoples, dated September 1991

without the GEF's support for conservation, enforcement of eviction probably would not have been possible in practice. So, the displacement and absence of meaningful consultation has little to do with the absence of funds to resettle the Batwa, but more to do with neglecting a responsibility and duty to uphold the IPs' right to customary land (OP/BP) 4.10.

According to most reports, whenever the marginalization of IPs is propagated through government organs, middle managers of the national park, and the local non-Batwa, it becomes easy to override the directives or standards. Although the bank's policy for financing projects in territories where indigenous people live states that "the Bank requires the borrower to engage in a process of free, prior, and informed consultation [...and] results in broad community support to the project by the affected Indigenous Peoples," the issue is that the IPs are rarely part of the authority (legal structure)²³ to decide what amounts to free, prior,²⁴ informed consultation.²⁵ So, the indigenous people must be well informed and represented because evidence shows that the process of free, prior consultation was entirely symbolic for the Batwa (See UOBDU, FPP, and IWGIA reports) and often the Batwa, like IPs elsewhere, were excluded from the consultation process (Kenrick, 2000; Kidd, 2008). Three points resonate from the studies reviewed:

Widespread resistance to meaningful Consultation and Participation (OP/BP 4.10) of Batwa by non-Batwa, and some officials suggests that in reality, effective implementation of "meaningful consultation" and "informed participation" on the ground was slow and obstructed.

The comprehensive baseline survey prior to project commencement (a requirement in OP/BP 4.10) was only adhered to in 1995, four years after the expulsion of the Batwa.

What the trust board perceived as local community support in the form of schools, clinics, and the like were for the benefit of other local people but not the Batwa. Thus, instead of closing the gap between the Batwa and other local people, it actually increased it.

Lastly, under the special consideration section of the World Bank OP/BP 4.10, land and related natural resources²⁶ are addressed comprehensively. The loophole is that the borrower is mandated to pay particular attention to customary rights, land and natural resources, and cultural and spiritual value when carrying out a social assessment. The World Bank guidelines give the national legal systems discretion in appropriation of these rights thus the marginalized IPs often lose out. Therefore, faced with the government paramilitary eviction from the two national parks, the Batwa did not have proper legal representation as a group and due to discrimination, the arbitration process brought about enormous suffering for the Batwa. It took more than five years from the eviction date for the first household to be compensated and for government bureaucrats to formulate working policies.

23 Some OP/BP 4.10 are loosely open to disempowering the IP, say were indigenous people lack legal capacity building or don't have their organization advocacy organization, then Paragraph 17. Which suggests, giving procedure to legally recognized rights to lands and territories that IPs have traditionally owned or customarily used or occupied (such as land titling projects), is void.

24 It violates the OP/BP 4.10 on IPs "Free, Prior, and Informed Consultation..."

25 Based on the BP 4.10 July,2005 "free, prior, and informed consultation" is consultation that occurs freely and voluntarily, without any external manipulation, interference, or coercion, for which the parties consulted have prior access to information on the intent and scope of the proposed project in a culturally appropriate manner, form, and language"

26 Although the procedure is not well elaborated, the World Bank OP/BP 4.10 on Ips, suggests that special considerations apply when IPs are closely tied to land, forests, water, wildlife, and other natural resources.

Therefore, the Batwa were caught-up in two opposing worlds: the conservationists who ended their forest-dwelling livelihood; and the local non-Batwa who, with impunity, exploited their labor.

6. SUCCESSFUL CONSERVATION OR THE PLIGHT OF THE BATWA

This section of the paper attempts to identify common trends in the materials reviewed on the topic of conservation and the plight of the Batwa.

The aspect of customary land rights seems to have been outweighed during the eviction process and efforts to redress the damage have neither been coordinated nor timely. Moreover, the issue of a customary right²⁷ to land and resource usage is well stipulated in the World Bank special consideration and other international instruments. The Bank supports the observation of customary laws, values, customs, and traditions, but not formal legal titles to land and resources issued by the State, when dealing with IPs (OP 4.10). The delay, which was uncoordinated and untimely in nature, was visible in the Batwa land eviction; the first purchase of land for evicted Batwa people was in 1999, with 69.7 acres distributed to only 10% of those Batwa who needed land. More land purchases for the Batwa ensued with the collaboration of other stakeholders (like Adventist Development and Relief Agency (ADRA), the Kinkizi Diocese resettlement at Kitariro, Missionaries Dr. Scott and Carol Kellermen). This process was uncoordinated and part of a charity initiative.

The government and the international community violated the Operative Directive 4.20 (now changed to OP and BP 4.10) when both omitted (directly or indirectly) the critical standards of the eviction of IPs in the case of the Batwa. The response to this crisis has been to mitigate the social, economic, and human rights devastated after the eviction of the people (Kabanukye & Wily, 1996). Notably, donations of land and housing support have been boosted by lobbying from civil society and the Batwa organization's proposals; for instance, the approval of a US\$ 5 levy on every gorilla permit sold and the Batwa trail, together with other new projects. The levy became effective in August 2005 and is disbursed after every two years for communities around the conservation area (Ahebwa, Van der Duim, & Sandbrook, 2012).

The documents reviewed give rise to one crosscutting problem in relation to natural resources found in indigenous peoples' territories; the authorities undermine the common voice of the marginalized. In this case of the Batwa, by 1991, the legal structure for the participatory management of the forest resource was missing and it was five years later that the Uganda Wildlife Statute of 1996 was enacted and a further three years later before the Uganda Wildlife Policy of 1999 was agreed on. The statute and policy provided for collaborative management between the local communities and the UWA Uganda (Republic of Uganda, 1996; Republic of Uganda, 1999). However, it is important to keep in mind that meaningful participation and compensation were always too little too late.

Although the community conservation approach (CCA) reduces animosity between local communities and authorities, it took the government a long time to involve the local communities in the management of the forest resource.²⁸ Advocates of CCA attribute the approach to winning minds and sharing

27 The ILO 169, in its Article 14 affirms that states should recognize and effectively protect IPs' collective rights to ownership and possession.

28 Cernea & Schmidt-Soltau, (2003) detail six conservation cases in the Congo basin ecosystem of central Africa with nine national parks and illustrate the dilemma facing scholars and professionals in upholding biodiversity conservation versus people resettlement where relocated. Furthermore, they note that the denial of access to resources might have unidentifiable

responsibility for wildlife management (Namara, 2006). On paper at least, many human right groups and the international development community recommend the involvement of local people (World Bank Group, 2011; ACHPR, & IWGIA, (2005; ACHPR, 2006). Many authors criticize the (local and international) authorities for the delay and the discriminatory nature of compensation which targeted cultivators with farmland but not the Batwa hunter-gathers (Lewis, 2000, p.20; Kabanankye & Wily, 1996; Kenrick, 2000; Kabanankye & Kwagala, 2007; Nakayi, 2009, p.5).

In essence, it was unfair to the Batwa to allocate 60% of the Conservation Trust funds to local communities through financing small projects (that demonstrate a positive impact on conserving the park diversity and a non-consumptive use of forests), instead of considering their full resettlement. In some reports it was found that the local non-Batwa resisted the special representation of the Batwa and allegedly ignored the Batwa on the basis of illiteracy (failure to speak, write, and read English).²⁹ On this point, the condition of the Batwa today, as reported by recent studies, is still appalling (cf. Kidd, 2008). The 2011 CARE-Uganda survey (the Combating Child Mortality (CCMB) illuminates these conditions. The survey concluded that being landless was connected to the Batwa living in squatter systems of overcrowded and temporary shelter; these conditions are associated with the high prevalence of malaria, alcoholism, and poor sanitation related diseases like diarrhea (CCMB, 2011). For the young generation of Batwa, these poor living conditions are related to high drop-out rates from school, early marriage and long-term inter-generational discrimination.

7. CONCLUSION

Most discussions of the eviction of the Batwa from their land have paid scant attention to global power, interventions, and the local context. This study has aimed to show that well-intended projects—in this case, conservation of the Bwindi impenetrable and Mgahinga Gorilla National Parks—can indeed be an ally (or not) to numerically small groups of indigenous people. There are positive attributes to well-managed eviction where free, prior, and informed consultant is meaningful to small indigenous groups. In addition, offering special provisions for indigenous people may open up avenues to dealing with more topical issues such as the social, economic, and political marginalization of the Batwa, culture, and other emergent issues. In the Batwa communities, these issues are forgotten, suppressed, or ignored, requiring more work and engagement. It is worth reconfiguring, deconstructing, and reconstructing the negative aspects of eviction of the Batwa to enhance indigenous rights in the face of global and national power. In this case, international control of compliance with applicable standards must be solid. Specifically, communication channels between the Batwa and others could be reactivated fruitfully to enhance customary land rights, the identity of the Batwa and their meaningful participation in the socio-economic and political dynamics of the entire community.

Special representation of the Batwa should not be perceived by others (including local non-Batwa and forest middle managers) as a privilege, but as a right and redress for long-held discrimination of the group. The system of sharing forest revenue benefits, delayed resettlement, and competition without recognizing minority rights or the position of the Batwa could be questioned and subverted. Furthermore, changes in national constitutions, laws and policies to ensure that indigenous people have

effects on the attitudes of local people towards the protected area itself.

²⁹ See the report of the parliamentary equal opportunities committee's working visit to Bundibugyo and Kisoro in 2007.

a fair share could require promotion, enforcement, enactment, and implementation to be put into place. Equally, the adoption of temporary special measures that could accelerate equal opportunities between the Batwa and others is necessary, including affirmative action programs.

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