

**JOINT ALTERNATIVE / SHADOW REPORT TO THE UGANDAN
GOVERNMENT'S COMBINED PERIODIC REPORT FOR THE PERIOD
2013-2022, ON THE AFRICAN CHARTER ON HUMAN AND
PEOPLES' RIGHTS**

SUBMITTED TO

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BY

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TABLE OF CONTENTS

I.	INTRODUCTION	3
II.	ARTICLES 2 AND 3: PROHIBITION OF DISCRIMINATION AND RIGHT TO EQUALITY BEFORE THE LAW	3
III.	ARTICLE 4, 5, 6, 7 AND 11 RIGHT TO LIFE AND INTEGRITY OF PERSONS, RIGHT TO PROTECTION FROM TORTURE, INHUMAN AND DEGRADING TREATMENT AND SLAVERY, LIBERTY AND SECURITY OF THE PERSON, RIGHT TO FAIR HEARING AND FREEDOM OF ASSEMBLY	5
IV.	ARTICLE 14: RIGHT TO PROPERTY	7
V.	ARTICLE 16: THE RIGHT TO THE BEST ATTAINABLE STATE OF PHYSICAL AND MENTAL HEALTH	9
VI.	ARTICLE 17: RIGHT TO EDUCATION AND CULTURAL RIGHTS	10
A.	Right To Education (Article 17 (1))	10
B.	Cultural Rights (Article 17 (2) &17 (3))	10
VII.	ARTICLES 19, 20, 21, AND 22: PEOPLES RIGHTS TO EQUALITY, SELF- DETERMINATION, FREELY DISPOSE OF WEALTH AND NATURAL RESOURCES, ECONOMIC, SOCIAL AND CULTURAL DEVELOPMENT..	11
A.	Right to Equality of Peoples (Article 19)	11
B.	Right to Self-Determination (Article 20)	13
C.	Right to Freely Dispose of Wealth and Natural Resources (Article 21)	13
D.	Right to Economic, Social and Cultural Development (Article 22)	14

I. INTRODUCTION

1. This report is submitted in terms of **Rules 79(3) and 80(4) of the Rules of Procedure of the African Commission (2020)** and offers alternative information in response to the combined periodic report from the Government of Uganda, submitted to the African Commission on Human and Peoples' Rights (ACHPR) pursuant to Article 62 of the African Charter ON Human and Peoples' Rights (African Charter) for the period 2013-2022 (Ugandan's 2013-2022 Combined Report). It focuses largely on the extent to which the Ugandan government has adhered to its obligations under the African Charter concerning indigenous peoples and communities.
2. This report is informed by the current political, legal and social environment in Uganda. Specifically, the information in the report is drawn from diverse sources, including the 1995 Constitution of Uganda and other laws, information from various institutions, including Amnesty International¹ as well as from sources within the indigenous and ethnic minority communities.
3. Reacting to Ugandan's combined 2013-2022 Report to the ACHPR, our report highlights some of the human rights violations that these communities are facing that have been overlooked. It refers to situations or developments that occurred between January 2017 and August 2023. Its focus is on issues around access to education, health services, land and natural resources, political participation, and citizenship recognition concerning the Batwa (Kabale, Rubanda Kisoro and Kanungu), Banyabindi (Kasese), Batuku (Ntoroko), Mosopisyek of Benet (Kapchorwa, Kween and Bukwo), Bagungu (Buliisa), Maragoli (Kiryandongo and Masindi), Tepeth (Moroto) and Ngikutio (Karenga).
4. This report has been developed jointly by various marginalized and indigenous groups under the convening of the Benet Lobby Group (BLG), Benet Mosop Indigenous Community Association (BMCA), African International Christian Ministry (AICM), and Action for Batwa Empowerment Group, with support from Minority Rights Group International (MRG).

II. ARTICLES 2 AND 3: PROHIBITION OF DISCRIMINATION AND RIGHT TO EQUALITY BEFORE THE LAW

2. The Uganda Periodic Report (p.31) highlights the Government's commitment to eliminating all forms of discrimination by putting in place legislative, policy and institutional frameworks to fight any form of discrimination in line with SDG 5.
3. In this context, it is worth underscoring that Article 10 of the 1995 Ugandan Constitution provides for the right of Ugandan citizenship by birth to members of 'indigenous communities' that were already within the boundaries of Uganda by 1926 and that are set out in the Third Schedule to the Constitution. Although the number of communities included under the Third Schedule has increased to 65 with the constitutional amendments of 2005, the list is not representative of all the indigenous communities in Uganda. Groups such as the Mosopisyek, the Maragoli, Bakingwe, Bahaya, Baziba, Saboat, Bagabu, Paluo, the Ugandan Somali, and many others are left out, and consequently, they are unable to fully enjoy their socio-economic rights, such as being excluded from access to public services as well as their civic and political rights.

¹ 13 Years in Limbo: Forced Eviction of the Benet in the Name of Conservation

4. This systemic discrimination takes place despite Article 21(2) of the Constitution prohibits direct and indirect discrimination *inter alia* on grounds of race, ethnic origin, tribe and birth. Even for communities that are formally recognized as ‘indigenous’ under the Third Schedule's list, de facto discrimination is still a huge problem in Uganda. This discrimination takes the form of a lack of respect for and protection of indigenous peoples’ ancestral land rights and the ways of life consequent on secure ownership and use of those lands, and a lack of equal access to quality basic and fundamental services that the government should offer.

Discrimination in Access to Justice and Land Rights

8. Laws relating to land, forests, conservation, and wildlife, as well as government actions relating to land and resource use and allocation, also continue to discriminate against indigenous peoples. The creation and maintenance of environmentally protected areas, for example, disproportionately impacts indigenous peoples, including the Mosopisyek of Benet of Mt. Elgon. This is particularly concerning because in the landmark case against Kenya² the African Court on Human and Peoples’ Rights expressly ruled that conservation could not be used to justify the eviction of indigenous peoples from their ancestral lands.
9. Moreover, the ACHPR has already raised its concern regarding the situation of the Mosopisyek of Benet in a statement dated 4th October 2022, recommending urgent action to the Ugandan Government³. Despite this, attacks against members of Mosopisyek of Benet and other indigenous peoples and their eviction from public nature reserves regrettably remain ongoing. A wave of evictions took place between June 2022 and April 25 2023 and targeted the Mosopisyek of Benet Indigenous community living within and around the boundaries of the Mount Elgon National Park (MENP) during the cold, rainy season of 2023. This follows numerous forceful evictions of the Mosopisyek of Benet by state agencies such as UWA and UPDF from their ancestral land at Mt. Elgon and other parks without their free, prior and informed consent.
10. Further, Uganda has failed to implement a 2005 High-court consent judgment that directs the Government to de-gazette parts of the national park for the benefit of the Benet.⁴ Instead, in July 2019, Uganda passed new regulations without carrying out any consultation with the affected indigenous peoples - that increased penalties for livestock found grazing in their ancestral land and de facto, justifying systematic violations of indigenous peoples’ rights.
11. This situation reflects the ongoing obstacles standing in the way of indigenous communities being able to fully realise their rights in Uganda. Access to justice also remains a problem for Indigenous peoples in certain instances where the courts or legal aid systems are inaccessible or nonexistent. In addition, when indigenous peoples complain of arbitrary, discriminatory or oppressive actions by the state, its agents or third parties, they are frequently ignored, with public officials refusing to report their

² African Commission on Human and Peoples' Rights v. Republic of Kenya, ACtHPR Judgment of 26 May 2017, Application no. 006/2012 ('Ogiek judgment'), para. 10.

³ African Commission on Human and Peoples’ Rights, “Urgent call for the cessation of multiple rights violations against the Benet Mosopisyek Community in the Republic of Uganda”, <https://achpr.au.int/index.php/en/news/press-releases/2022-10-04/urgent-call-cessation-multiple-rights-violations-benet-mosopisyek>.

⁴ Eunice Nsikak Olembo, “Five Decades down the line, we shall not relent . . .”, MINORITY RIGHTS GROUP, Aug. 27, 2020, <https://minorityrights.org/2020/08/27/we-shall-not-relent/>.

complaints, or worse, arbitrarily detain or harass the complainants. Individuals from the Mosopisyek of Benet Indigenous community who have reported incidents of violence, harassment, or destruction of property to the police have been met with police officers who are unresponsive or unwilling to act, even refusing to report their complaints.

Recommendations

1. In consultation with Indigenous Peoples, amend the Constitution to officially recognize and respect the rights of Indigenous Peoples, according to their self-determination, to grant them full citizenship rights and to end any unjust discrimination based on birth, race, ethnicity or any other ground.
2. To amend the Third Schedule to the Constitution by updating the list of indigenous peoples in Uganda to include those indigenous peoples who are left out from the list.

III. ARTICLE 4, 5, 6, 7 AND 11 RIGHT TO LIFE AND INTEGRITY OF PERSONS, RIGHT TO PROTECTION FROM TORTURE, INHUMAN AND DEGRADING TREATMENT AND SLAVERY, LIBERTY AND SECURITY OF THE PERSON, RIGHT TO FAIR HEARING AND FREEDOM OF ASSEMBLY

12. Article 22 of the Ugandan Constitution guarantees the right to life and requires that the state must take positive measures to fulfil this right. For indigenous peoples, the right to life is directly related to their ancestral lands. Indigenous peoples' ancestral lands and resources are indeed central to their existence in at least two ways: for their survival (supply of food, shelter, traditional medicines, etc.), and for their way of life (encompassing cultural and religious rituals, social organization, and their identity). Any eviction from or damage done to these lands has a severe impact on indigenous peoples' right to life. Denial of ownership and access to ancestral lands amounts to continuing, disproportionate and unjustified interference with indigenous peoples' right to life. Indigenous communities such as the Mosopisyek of Benet of Mt. Elgon and the Batwa have been forcefully evicted and displaced from their traditionally inhabited lands as a result of non-recognition of their communal land rights.
13. With specific reference to the situation of the Mosopisyek, it is worth noting by way of background, that in 1993 the Ugandan government declared the Mount Elgon area a national park (MENP) and transferred its management to the Uganda Wildlife Authority (UWA) in 1996, without, among others, seeking the free, prior, and informed consent of the community, providing fair and adequate compensation and failing to provide to its members adequate settlement solutions and other forms of protection - further denying the community the right to their ancestral lands.
14. The community obtained a Consent Judgment in 2005 recognizing their right to their ancestral lands in Mt. Elgon. However, since then, the Government of Uganda has refused to enforce the terms of the judgment, which among others, allows the Mosopisyek of Benet to access and use their ancestral lands according to their traditional lifestyle as part of the settlement reached. Failure to respect the terms of the Consent Judgment has resulted in a myriad of human rights violations perpetrated against the community by the UWA and the Uganda National Forestry Authority (NFA), backed by the Uganda People's Defense Force. These violations of shooting and killing of Mosopisyek community members, acts of burning houses, beating, sexual assault, maiming, destruction of property, confiscation of livestock and others, aimed at preventing them to access and use their ancestral land are documented in the Amnesty

International Report “*Uganda: 13 Years in limbo: Forced evictions of the Benet in the name of conservation*”, and are captured in several complaints addressed to the ACHPR’s Working Group on Indigenous Populations/Communities and Minorities in Africa, on behalf of the Benet.

15. Many human rights violations perpetrated by UWA officials against the members of the Benet Mosop community continue to date. At present, the Mosopisyek of Benet live scattered across the upper belt of Bukwo, Kween and Kapchorwa districts within the boundaries of the MENP. They are not permitted to build permanent structures; they live in small huts constructed from sticks and mud, with no access to electricity, potable water and other social amenities. The insecurity of land tenure impacts their livelihood, including crop and animal farming. Many still live in fear of being evicted again.
16. Since October 2022, the community has suffered escalating and relentless attacks. Among the most grievous violations include: on 28th December 2022 a 16-years-old Mosopisyek girl was raped by an UWA agent; and on 10th February 2023, a 45-years-old man was shot dead by rangers who had found him collecting firewood in Mt Elgon forest. More than 1,295 animals have been impounded and owners charged atrocious fines before the animals are released. For example, on 18 October 2022, to release 55 cows, owners were charged 2,750,000 Ugandan Shilling.
17. Additionally, between October 2022 and June 2023, more than 85 houses were burnt down: on 28th April 2023, 8 acres of crops were destroyed and 33 houses demolished, leaving community members with no shelter and at the risk of hunger. The affected villages include Kaptorokwo (Ligil parish, Benet sub-county), Kapnoibei village, (Teriet parish, Kwoti sub-county) in Kapchorwa district and Kital (Cheberen parish, Kaseko sub-county) in Kween district. Women and children have been disproportionately affected by this heinous conduct as they were left without shelter during the rainy season.
18. During the same time, more than 50 Mosopisyek have been arrested. For example, in the first week of June 2023, UWA agents arbitrarily arrested more than thirty members of the community. Two of the arrested people were transferred to a remand centre in Luzira, hundreds of kilometres away, without the knowledge of their families who spent more than a week looking for them.
19. These violations perpetrated against the members of the Mosopisyek community demonstrate that the Ugandan Government has failed to guarantee the right to life and integrity of persons, the right to protection from torture, inhuman and degrading treatment, as well as the right to liberty and security of the person and has been unable or unwilling to prevent and mitigate acts of violence.
20. The right to peaceful assembly is guaranteed in Article 29(1)(d) of the Ugandan Constitution. However, the Benet have repeatedly experienced harassment, assault, arbitrary arrest and detention at the hands of the police and park guards not only when they access their ancestral lands or question or try to resist evictions but also during non-violent protests.
21. For example, in response to ongoing violations of their rights, the Mosopisyek of the Benet organized a peaceful assembly on July 15, 2022, near the UWA Piswa station, to request UWA to cease their illegal activities. This peaceful assembly too, was met with threats and violence, with one community member being forcefully thrown to the ground. The peaceful assemblies were resumed outside of Piswa UWA station on August 10 and 14 by the Mosopisyek community members. The peaceful assemblies resulted in

reprisal acts by UWA agents with even more animals being impounded, (approximately) thirty cows and thirty sheep.

22. Threats against human rights defenders are also on the rise. On August 11, 2022, the Benet Mosop Community Association (BMCA) leaders received many intimidating messages from a former MENP ranger threatening to make (evidently false) statements to the UWA that the community intended to form a militia, that they were rebels, and planning to steal arms to form that militia.

Recommendations

1. Urge the Government of Uganda to uphold human rights commitments to recognize, respect and protect the rights of the Mosopisyek of Benet indigenous people, and ensure that international human rights standards, including the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), are fully integrated into conservation policies and management plans across all other protected areas in Uganda;
2. Ensure that agents of the UWA and other agents of the Government refrain from further harassing, intimidating or inciting others to harass or intimidate indigenous human rights defenders advocating on behalf of their community's rights and indigenous community members when they attempt to access their ancestral lands;
3. Urge the Government of Uganda to promptly and exhaustively investigate allegations of harassment of indigenous members and human rights defenders, provide protection to victims of harassment to ensure their safety and provide redress;
4. Urge the Government of Uganda to refrain from taking any steps that criminalize indigenous activists and human rights defenders on account of any advocacy undertaken on behalf of their respective communities.

IV. ARTICLE 14: RIGHT TO PROPERTY

23. Ugandan's 2013-2022 Combined Report (p.43) highlights the constitutional guarantees provided in Article 26 of the Constitution. The Article provides that in cases of acquisition of land for public use or in the interest of defence, public safety, public order, public morality or public health, there shall be prompt payment of fair and adequate compensation *prior* to taking of possession or acquisition of the property. This seemingly neutral provision does not consider the historical economic marginalization that indigenous communities have been subjected to. Indigenous peoples have lost control of their ancestral lands thereby being denied the ability to freely exercise their right to property.
24. The Government of Uganda in practice is continuing to resist efforts by indigenous communities- particularly forest-dwelling communities whose ancestral lands have been gazetted into conservation areas- to regain ownership of the said lands recognized and protected under the law. This perpetuated the land crisis faced by many forest-dwelling communities, resulting in a cycle of dispossession and economic disenfranchisement.
25. Case in point, the majority of Batwa do not officially own land as evidenced by the Bwindi Mgahinga Conservation Trust (BMCT) Batwa Census Report (2020, covering Kigezi Sub-region). The report highlights that 56.4% of Batwa in Bwindi Mgahinga Conservation Area (BMCA) do not have access to land and Kisoro District is the worst affected with

71.9% of Batwa living as squatters on other people's land compared to other districts in the region⁵. Some ethnic minorities have sought legal redress to reclaim their ancestral lands. These include the Banyamindi in 2019,⁶ through the Equal Opportunities Commissions as well as the Mosopisyek of Benet Community as highlighted in the section on Discrimination and Access to Land Rights. Whereas both communities received positive judgements, from both the Equal Opportunities Commission and the High Court of Mbale respectively, the Government of Uganda is yet to fully implement these decisions.

26. The discovery of natural resources such as oil and gas and gold in the Albertine Region and Karamoja Regions respectively has come as a blessing in terms of boosting economic growth and creating jobs for Ugandans. Whereas the Government of Uganda committed to recognizing and safeguarding the rights of all landowners in the area where mineral resources have been discovered, this has not been the case⁷. The extraction process has greatly disadvantaged the locals leading to displacement from specific areas where oil has been discovered as well as from where oil refineries are set to be built. The oil development in Uganda's Albertine Graben threatens the livelihoods of the Bagungu people, while also damaging their environment without adequate compensation⁸.
27. Uganda wildlife laws, including the Uganda Wildlife Act of 2019 and the National Environment Act of 2019 provide for the protection and sustainable use of wildlife resources and equitable sharing of benefits that arise from biodiversity conservation. It also states that one of its principles is to ensure that the "processes of environmental management and human development have due regard to international human rights standards⁹. However, the situation on the ground (as highlighted in the Sections on Discrimination in Access to Justice and Land Rights -paragraphs 8 - 11 of this report) has been far from having due regard to international human rights standards. Punitive measures within these laws, for example, community members' domestic animals straying into a wildlife conservation area attracts a fine of up to UGX 7 million (about USD 2,100) or up to 10 years in prison, or both. For repeat offenders, the fine goes up to UGX 10 million (about USD 3,000) with up to 20 years in prison or both.¹⁰ Such penalties increase conflict between Indigenous peoples and the wildlife authority, especially since these communities have insufficient land to graze cattle outside the forest where they are squatting due to their evictions from the forest. These fines have also led to corrupt practices as official receipts are not issued to community members upon the payment of the fines, as well as community members being asked by UWA employees for bribes to avoid prosecution.

Recommendations:

⁵ Bwindi Mgahinga Conservation Trust (BMCT), Batwa Population Census Report 2020, Unpublished

⁶ Daily Monitor, Government ordered to resettle displaced Banyabindi in Kasese, 21st Aug.2019, <https://www.monitor.co.ug/uganda/news/national/government-ordered-to-resettle-displaced-banyabindi-in-kasese-1843870>

⁷ Ministry of Lands, Housing and Urban Development, The National Land Policy, Feb 2013 Chap.5; 3.8.30, <https://www.jlos.go.ug/index.php/document-centre/land-justice/366-uganda-national-land-policy/file>

⁸ Oil Politics and Land Tenure Changes in Uganda: Understanding the Curse of Dispossession in the Albertine Region", African Social Science Review, Volume 10, Number 1, Article 7, May 2019, p. 187.

⁹ Section 5, National Environment Act.

¹⁰ Section 29, Uganda Wildlife Act

1. Adopt rights-based approaches to conservation and natural resource co-management and recognize and ensure the right of indigenous peoples to be fully and effectively consulted in all matters relating to their land and resources;
2. Take immediate steps to implement the 2005 Consent judgment¹¹ that recognizes the ancestral rights and claims of the Mosopisyek of the Benet community to the Mount Elgon National Park as well as taking immediate steps to secure the ancestral land of other indigenous peoples and halt evictions of indigenous and ethnic minorities from their lands.
3. Enact a law that recognizes the principle of free, prior and informed consent (FPIC) in the management of land and natural resources;
4. Enact legislation that allows for ethnic minorities and indigenous peoples to govern, conserve and manage their lands, even when these lands overlap with public forest lands, in line with their right to property and self-determination under the African Charter.

V. ARTICLE 16: THE RIGHT TO THE BEST ATTAINABLE STATE OF PHYSICAL AND MENTAL HEALTH

29. The Government of Uganda reiterates its commitment to taking necessary measures to ensure that every individual attains the best state of physical and mental health (Ugandan's 2013-2022 Combined Report p.45). As per the Government of Uganda periodic report (p.19) access to healthcare (as measured by the proportion of people within a 5-kilometre radius of a health facility) is currently at 91% (UNHS 2019/20) compared to 84% in 2016, and with 81% of lower-level primary health care facilities (Health Centre IVs) offering caesarean section compared to 60% 5 years ago.
30. However, in areas where indigenous communities and ethnic minorities such as the Batwa and Mosopisyek of Benet are found, the question of access to healthcare is compounded by several issues including accessibility to healthcare facilities due to long distances to be covered as well as poor road networks, understaffing, inadequately equipped and poorly stocked pharmacies lacking in basic medication whereby patients are advised to buy from private drug shops yet they cannot afford due high level of poverty.
31. For the Batwa, the assessment carried out by the Africa International Christian Ministry, Ministry (AICM) in 2021 in the Kigezi Sub-region found that most Batwa communities (69%) do not access the nearest standard health facility within a radius of 5km. 94% of Batwa could not afford to pay for charges on health care services at private facilities and 67% of Batwa reported a lack of medicine in their local health facilities.¹²
32. The Mosopisyek of Benet Community who live in the Temporal Settlement within the Mount Elgon National Park face an even more peculiar challenge because no permanent structures can be built in the Temporal settlement. As such those living in the Temporal settlement are forced to go down from the mountain for health services which poses a great risk in case of emergencies such maternal related services or epidemic outbreaks.

¹¹ The Republic of Uganda, High Court of Mbale, Consent Judgement and Decree (2005)

¹² African International Christian Ministry (AICM), Assessment on the access of Education and Health Services among the Batwa population in Southwestern Uganda (2021), unpublished

Recommendations:

1. The government should construct and adequately equip more health facilities in areas occupied by ethnic minorities, and elevate and upgrade Health Centres III to Health Centres IV so that antenatal and other services come nearer to the local community to minimize deaths that are occasioned by long distances.
2. The government through the Ministry of Health should establish outreach programmes to the areas occupied by these ethnic minorities. Identify community health workers and Village Health Teams from among them.

VI. ARTICLE 17: RIGHT TO EDUCATION AND CULTURAL RIGHTS

A. Right To Education (Article 17 (1))

33. Ugandan's 2013-2022 Combined Report (p.47) indicates that the Government has over the years, increased investment in education, allocated a percentage of the National Budget to the education sector and ensured timely delivery of capitation grants to schools and gets support from various education development partners.
34. Whereas Article 30 of the Ugandan Constitution guarantees the right to education for all, the right is not equally enjoyed by all Ugandans. However, this is only on paper. The reality on the ground for indigenous communities and minorities paints a completely different picture. Indigenous peoples and minorities face additional challenges that hinder their right to education. The right to education for indigenous and ethnic minorities who often are found in the remotest parts of the country, is characterized by lack of infrastructure, lack of adequate learning materials, and inadequate distribution of critical staffing.
35. According to The Bwindi Mgahinga Conservation Trust' Batwa Census Report (2020)⁹, 49.8% of Batwa never went to School and only 0.3 % of Batwa had tertiary/University education. Further, AICM's education and health access assessment report (2021) also revealed that 64% of Batwa household heads did not attend school, and school dropout rates among Batwa children were high at 51.4 %¹⁰. In the Benet Temporal Settlements classroom structures are still of poor quality, built of mud and timber due to the government restrictions on the construction of permanent structures in Temporal Settlements.
36. The historical economic marginalisation faced by minority communities and indigenous peoples further contributes to poverty levels that limit available economic opportunities that have negatively affected the education of indigenous and minority communities. In as much as education is free, children of ethnic minorities like the Batwa do not attend school regularly and, therefore experience high school dropout rates since they cannot afford the cost of educational materials such as school uniforms, and scholastic materials among others.

B. Cultural Rights (Article 17 (2) &17 (3))

37. Article 17 (2) and (3) of the African Charter states that every individual may freely take part in the cultural life of his community and that the state has a duty to promote and protect morals and traditional values recognized by the community.

38. Uganda's Vision 2040 emphasizes the development of a national value system to promote patriotism and enhancement of national identity and nurturing an appropriate ideological orientation
39. However, despite this vision, indigenous communities and ethnic minorities face additional violations of their right to culture through development initiatives that destroy the cultural sacred sites for some of these communities such as the Bagungu found in Buliisa District where some 32 sacred sites in the area have been threatened by oil development in the Albertine area.¹³ Systematic restrictions on access to religious and cultural sacred sites and restriction on the ability to maintain a way of life based on their ancestral lands (as pastoralists and hunter-gatherers) thus denying the fundamental basis of their right to culture and identity.
40. Over the years, the hunter-gatherer way of life, a characteristic of indigenous and ethnic minorities such as the Batwa, has been undermined, and considered primitive, unviable and outmoded, with the indigenous groups being forced to adopt a sedentary lifestyle and a 'modern' livelihood system.

Recommendations:

1. Uganda's Government should fast-track the construction of schools in areas occupied by ethnic minorities and equip them with qualified and adequate critical staff and adequate learning and teaching materials to improve and increase access to education and enhance retention in schools and completion as was recommended and accepted in the 2022 Universal Periodic Review;
2. The government should institute bursary schemes for secondary schools to enable them to afford other school requirements than fees and higher institutions targeting specifically ethnic minority children as a way of affirmative action;
3. Ensure that indigenous peoples have access to their religious and cultural sacred sites to enjoy their right to culture as espoused in the African Charter and the Constitution.

VII. ARTICLES 19, 20, 21, AND 22: PEOPLES RIGHTS TO EQUALITY, SELF-DETERMINATION, FREELY DISPOSE OF WEALTH AND NATURAL RESOURCES, ECONOMIC, SOCIAL AND CULTURAL DEVELOPMENT

A. Right to Equality of Peoples (Article 19)

41. Ethnic minorities and indigenous peoples have faced double marginalization and have been unable to access justice even where there have been explicit rulings in their favour delivered by judicial and quasi-judicial institutions at the national level. For example, the 2005 Consent Judgement that was delivered by the High Court of Mbale recognized ancestral rights and claims of the Mosopisyek of Benet Community to present-day Mount Elgon National Park. 18 years down the line, the lack of implementation of the consent judgement violates the Mosopisyek 's right of access to justice.
42. The lack of implementation of court decisions delivered in favour of ethnic minorities and indigenous communities means that most members of these communities have no

¹³ <https://www.africanews.com/2023/08/23/as-oil-activities-encroach-on-sacred-natural-sites-a-small-ugandan-community-feels-besiege/>

reliable source of livelihood and are struggling under harsh living conditions. These communities generally have poor infrastructure and lack access to socio-economic amenities to support a better life. This includes:

- i) Lack of access to adequate healthcare;
- ii) Lack of access to quality education;
- iii) Ongoing violations of socio-economic and cultural rights stemming from lack of access to their ancestral lands;
- iv) Lack of a remedy (including the restitution and compensation for dispossession of ancestral lands);
- v) Conflict and insecurity related to lack of secure tenure of ancestral lands.

43. Article 20 of the Constitution provides that the rights and freedoms of all individuals in Uganda shall be respected, upheld and promoted by all organs of State in Uganda. Article 21(1) provides that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and every other aspect and shall enjoy equal protection of the law. Given the above, Uganda capitalizes on equality, non-discrimination, and non-dominance and upholds respect for the rule of law and good governance.

44. As highlighted in Paragraph 6 of this report, the Ugandan Constitution provides for the right of Ugandan citizenship by birth to members of 'indigenous communities' that are set out in the Third Schedule to the Constitution. The list is however not representative of all the indigenous communities in Uganda. Groups such as the Mosopisyek of Benet (Kween District), the Maragoli (Kiryandongo, Masindi, and Hoima), the Paluo in Kiryandongo District, the Baziba in Rakai District, The Bagabu in Kasese District, the Sabaot in Namusidwa District, the Bahaya (Rakai District), Basese, Bagay left out.

45. The lack of formal recognition of ethnic minorities and indigenous peoples in Uganda has played a pivotal role in the historical injustices that they have endured. Formal recognition of ethnic groups at risk of statelessness will pave the way for indigenous people - who do not have any recognized legal existence until now - to not only receive identity documents, enrol in school, access health services and seek lawful and gainful employment but most importantly will allow them to preserve their distinct culture and identity and enhance greater inclusion. For indigenous peoples in Uganda, the impact of the risk of statelessness has resulted in forced assimilation, loss of language and the denial of social, economic and economic rights as well as civil and political rights.

Recommendations:

1. The Government of Uganda must take immediate steps to reconstitute the Mosopisyek of the Benet's ancestral land, including the land recognised under the 2005 Benet Consent Judgment, in consultation with the same community, and desist from adopting any measures that prejudice their right to access their ancestral land and natural resources and related IPs rights recognized under the African Charter and international law;
2. Consider repealing the Third Schedule to the Constitution as the schedule does not reflect the fluidity of ethnicity in the African context, nor does it take into consideration the impact of colonial boundaries on ethnic compositions in bordering states;
3. In the alternative, undertake an exhaustive study to identify all the self-identifying ethnic minority communities missing from the Third Schedule;

4. Endorse the adoption of the Draft Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa and to ratify it;
5. Adopt and ratify the draft protocol because as a member state of the African Union, the Draft Protocol is the principal African draft treaty dealing with the right to nationality and the eradication of statelessness;
6. Ratify the 1961 Convention on the Reduction of Statelessness.

B. Right to Self-Determination (Article 20)

46. The right to self-determination includes the right of a people to freely pursue its economic development. The adaptation of 'fortress conservation' policies and laws as a way of conserving Ugandan forests has pushed indigenous communities out of their ancestral lands. Their traditional economic system of sustainable hunting and gathering, which they have identified with, is challenged, which in turn affects the right of access to key services such as education and health. They have been forced to assimilate into more 'conventional' economic livelihood systems such as arable cultivation and livestock keeping since hunter-gathering (historically the basis of a sustainable income for those people) depends entirely on the resources available in the forests from which they have been evicted and excluded.
47. Full respect and realization of the right to self-determination means that the Government of Uganda must recognize the collective right of indigenous peoples and ethnic minorities to choose their own way of life, to maintain continuity in their local land and resource knowledge, livelihoods and determine themselves the nature of their development visions and trajectories. Given the inextricable connection between the realization of the right to self-determination to maintaining a connection to their ancestral lands and resources, the Government of Uganda must put a halt to the forced eviction and exclusion of indigenous peoples from their lands and facilitate restitution and legal recognition of their right to own their ancestral lands and resources.

Recommendations:

1. Recognize and support the traditional, social, economic, and cultural systems of indigenous peoples, and invest in promoting and facilitating their chosen ways of life and development trajectories to the same degree as more 'conventional' economic development activities such as agriculture and industry.

C. Right to Freely Dispose of Wealth and Natural Resources (Article 21)

48. Article 244 of the Ugandan Constitution provides for the enactment of legislation by Parliament to regulate the exploitation of minerals and the sharing of royalties. The right of indigenous peoples and ethnic minorities to freely dispose of their wealth and natural resources within their traditional ancestral lands flows from the right to self-determination and includes the right to give or withhold their free, prior and informed consent to any use or exploitation of resources and lands, whether for commercial, infrastructure, or conservation purposes.
49. Lack of transparency around the disposal of natural resources traditionally owned by indigenous and ethnic minorities and the lack of recognition of their right to ancestral lands means that indigenous and ethnic minorities have lost and continue to lose control and access to their natural resources without their free, prior and informed consent and without any fair and adequate compensation. They are consequently denied both the potential wealth of their land per the livelihoods they would have chosen and any

equitable share of the benefits accruing from the imposed large-scale use or extraction of natural resources on their lands including from tourism, oil and gas exploration. This is the case with the Mosopishek of Benet and the Bagungu in Buliisa District.

Recommendations:

1. Fast-track the enactment of laws, policies and guidelines, including Ministry of Gender, Labour and Social Development on the Draft National Equity Guidelines for Natural Resources Dependent and Surrounding Communities on benefit sharing and further strengthen the institutional frameworks that govern the exploitation, management and utilization of natural resources to protect the right of indigenous peoples to give or withhold their consent to those activities, and to ensure fair and equitable sharing of economic benefits with indigenous communities;
2. Pay adequate compensation to communities for all the losses previously suffered in respect of the use and exploitation of natural resources on their land by the state or third parties, and ensure the restitution of lands and natural resources to indigenous peoples from which they have been previously dispossessed;
3. Pay royalties to indigenous communities from existing economic activities and ensure that they benefit from any opportunities arising from the use of their resources, for instance, employment possibilities;
4. Provide disaggregated data on the impacts of utilization, exploitation and infrastructure.
5. Abandon the misconceived and ineffective ‘fortress conservation’ approach to environmental conservation, forest and watershed protection, and instead implement a national conservation strategy based on reinstating and protecting indigenous peoples’ ownership, control and protection of their ancestral lands and resources;
6. Include indigenous peoples and their conservation knowledge in environmental projects and policies, including in related employment opportunities.

D. Right to Economic, Social and Cultural Development (Article 22)

50. The Constitution of Uganda provides for the right to economic, social and cultural development under Articles 26, 29, 30, 31, 37 and 40. Ugandan’s 2013-2022 Combined Report highlights that Uganda is a party to the International Covenant on Economic Social and Cultural Rights. As a State party, Uganda is required to take deliberate measures to enable the populace to enjoy their economic and cultural rights.
51. The right to development, as pronounced by the ACHPR, is two-pronged. The Commission expanded on the right to development as involving consultation and obtaining free, prior and informed consent in processes relating to development (planning, decision-making, implementation and monitoring), as well as the substantive outcomes that are achieved by the development, evidenced e.g. by better well-being indicators such as better health, incomes, educational attainment etc. In this way, the right to development includes process and outcomes, but indigenous peoples and ethnic minorities in Uganda have been excluded from both dimensions. The Government of Uganda has not adhered to the international standards of Free, Prior and Informed Consent.
52. The lack of consultation with communities or concern for their self-determined development interests demonstrates an absence of a rights-based, transparent and

participatory approach to the conceptualization and implementation of projects. Failure by the state to consult, ensure meaningful participation and seek the free, prior and informed consent of indigenous peoples in economic development activities implies that the freedom to exercise choice, and the right to self-determination which are central to the right to development have not been guaranteed for indigenous and ethnic minorities.

Recommendations:

1. Adopt legislation operationalizing the principle of free, prior and informed consent in Ugandan law, particularly concerning development and conservation projects.