



# 13 YEARS IN LIMBO

FORCED EVICTIONS OF THE BENET IN THE NAME OF CONSERVATION

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# GLOSSARY

| WORD   | DESCRIPTION  |
|--------|--|
| BLG    | Benet Lobby Group  |
| CAT    | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture) |
| CERD   | Committee on the Elimination of Racial Discrimination  |
| CESCR  | Committee on Economic, Social and Cultural Rights  |
| CHR    | United Nations Commission on Human Rights  |
| DESA   | United Nations Department of Economic and Social Affairs   |
| DISO   | District Internal Security Officer   |
| DPC    | District Police Commander  |
| DPP    | Director of Public Prosecutions  |
| ECOSOC | United Nations Economic and Social Council   |
| EOC    | Equal Opportunities Commission   |
| FGM    | female genital mutilation  |
| GDP    | Gross domestic product   |
| HCII   | Health Centre Level Two  |
| HCIII  | Health Centre Level Three  |
| HCIV   | Health Centre Level Four   |
| HRC    | Human Rights Council   |
| ICCPR  | International Covenant on Civil and Political Rights   |
| ICESR  | International Covenant on Economic, Social and Cultural Rights   |
| IDP    | Internally displaced person  |
| ILO    | International Labour Organization  |
| KCCA   | Kampala Capital City Authority   |

| WORD   | DESCRIPTION  |
|--------|--|
| LC     | Local Council  |
| MENP   | Mount Elgon National Park  |
| MRG    | Minority Rights Group  |
| NDC    | Nationally Determined Contribution                               |
| NEMA   | National Environmental Management Authority                      |
| NFA    | National Forestry Authority                                      |
| NGO    | Non-governmental organizations                                   |
| OPM    | Office of the Prime Minister                                     |
| PENHA  | Pastoral and Environmental Network in the Horn of Africa         |
| RDC    | Resident District Commissioner                                   |
| TBA    | Traditional birth attendant                                      |
| UGX    | Uganda shillings   |
| UHRC   | Uganda Human Rights Commission                                   |
| ULA    | Uganda Land Alliance   |
| UN     | United Nations   |
| UNDRIP | United Nations Declaration on the Rights of Indigenous Peoples   |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| UNGA   | United Nations General Assembly                                  |
| UNFCCC | United Nations Framework Convention on Climate Change            |
| UPDF   | Uganda People's Defence Force                                    |
| UPF    | Uganda Police Force  |
| UPS    | Uganda Prisons Service   |
| UPR    | Universal Periodic Review  |
| UWA    | Uganda Wildlife Authority  |

# 1. EXECUTIVE SUMMARY

On 16 February 2008, Ugandan authorities forcibly evicted 178 Indigenous Benet families from Benet forest, Mount Elgon, Sebei region (Bukwo and Kween districts), in eastern Uganda, rendering them homeless. Over a decade later, when Amnesty International visited Mount Elgon, members of the Indigenous Benet community were still living in temporary resettlement sites and reeling from the effects of the forced evictions.

This report focuses on the plight of the Benet Indigenous peoples of Mount Elgon; however, this is just one of many cases of forced evictions in Uganda. The experience of the Benet peoples speaks to the broader need for the Ugandan government to prevent forced evictions for all, in both law and practice.

Amnesty International's findings are based on research conducted during missions in Uganda in December 2019 and March 2020, as well as remotely, including conducting telephone interviews. The organization interviewed 61 people who had been forcibly evicted from their homes in 2008 documenting their experiences and how the forced evictions have impacted their human rights. Interviews were also conducted with eight experts and representatives of international organizations supporting the community. The research reviewed documentary evidence, including medical and police reports, court judgments and photographs. Between 2 and 10 March 2020, Amnesty International also interviewed 13 Ugandan government officials. Preliminary findings were shared with Uganda's Prime Minister, the Attorney General, the Minister of Education and Sports, the Minister of Health, the Minister of Environment and Water, the Minister of Lands, Housing and Urban Development, the Minister of Tourism, Wildlife and Antiquities, the Chairperson of the Uganda Human Rights Commission, and the Chairperson of the Equal Opportunities Commission.

This report documents multiple interrelated and interconnected violations of the rights of the Indigenous Benet peoples by the Uganda National Forestry Authority (NFA) and the Uganda Wildlife Authority (UWA), backed by the Uganda People's Defence Force (UPDF). The Benet face a multi-generational struggle dating back to the loss of their ancestral land in 1920 when the British colonial protectorate classified the moorland and grasslands of Mount Elgon as a forest reserve. Subsequent governments are responsible for new violations, including several violent forced evictions since 1983, further deepening the plight and poverty of this community.

In 2004, the Uganda Land Alliance (ULA) filed a legal suit, *Uganda Land Alliance, Ltd. v. Uganda Wildlife Authority*,<sup>1</sup> in the High Court of Uganda on behalf of the Benet community, for enforcement of their right to use their forest land. On 27 October 2005, in a judgment commonly referred to as the "Consent Judgment", which was settled and agreed to by the affected Benet community, the UWA, and the Attorney General of Uganda, the court recognized the Benet as the historical and indigenous inhabitants of the forest that the government had classified a national park in 1993. The judgment underlined the need to "redress the imbalance" facing the Benet in education, infrastructure, health, and social services, provided for under Article 32 of Uganda's Constitution. This implicitly acknowledged the community's disadvantaged position compared to similar populations in the realization of these rights.

Instead of enforcing the judgment, less than three years later, in 2008, authorities, including UWA and UPDF officers, evicted hundreds of Benet people without their free, prior, and informed consent. This further hindered the community's access to healthcare and education, despite the court judgment indicating that access to these rights needed to be redressed. Now, thirteen years after the 2008 forced evictions, the Benet still live in temporary resettlement camps. Not permitted to build permanent structures, they live in small mud huts constructed from sticks and mud, with no access to electricity and potable water. Insecurity of land tenure impacts their livelihood, including crop and animal farming.

The wildlife authority has denied Benet people access to their ancestral lands in Mount Elgon forest. This restriction has impacted the Benet peoples' agropastoral lifestyle and other economic, social, and cultural practices such as the right to access cultural sites for rituals, fruit gathering, bee keeping, and hunting. The government has not compensated them for destruction of property or loss of livelihoods. Benet have reported that UWA rangers have beaten and killed members of their community for entering or trying to enter the

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<sup>1</sup> *Uganda Land Alliance, Ltd. v. Uganda Wildlife Authority*, Miscellaneous Cause No. 0001 of 2004, High Court of Uganda at Mbale.

forest. Park authorities have further extorted payments to release Benet domestic animals impounded after entering the national park.

The report finds that living in the temporary settlement camps has further marginalized the Benet in terms of fair and equitable access to water and sanitation, healthcare, and education. Difficult and impassable terrain and limited and costly transport affects accessibility to these services. The temporary camps are about 1,900 metres above sea level with more than 300 metres between the highest and lowest points of the land. The terrain is characterized by steep slopes and unstable or uneven surfaces. The main form of transport uphill is a donkey. Benet living in the resettlement camps must climb at least 300 metres down to the nearest motorable road, though when it rains these are impenetrable for most motor vehicles, including four-wheel drives. Mount Elgon experiences torrential rains, which have previously washed away people's homes and crops. According to the Uganda National Meteorological Authority it can rain at any time of the year. On 30 April 2020 landslides killed three Benet people, injured seven and displaced many families, further highlighting the Benet's precarious living environment.

The Government of Uganda has failed to provide adequate water and sanitation for the Benet people at these resettlement sites. Despite Mount Elgon being a water catchment area for eastern Uganda and western Kenya, Benet in camps in Cheberen parish, for example, had no protected water source and collected water at least 400 metres from where they lived. The community members are not able to regularly use toilets as there are only a few pit latrines scattered throughout the settlement, insufficient for the inhabitants. These are usually constructed less than 20 feet from structures where people sleep and cook. Many Benet, especially children, practice open defecation, near or in streams of water. This impacts communities that access water downstream, increasing their risk of exposure to food and water-borne diseases.

Benet people encounter several challenges accessing healthcare. Many do not go to the hospitals because of difficult terrains that are muddy and impassable, especially during rainy seasons, and due to the prohibitive cost of treatment or medication, even though consultation is free. Many of them believe they can use their traditional medicinal herbs as treatment. Some of the Benet people interviewed told Amnesty International that sick Benet people have died while being carried by people on their backs through impassable roads to get to health facilities.

Schools are not within safe physical reach for Benet children, as pupils must walk through steep, muddy terrain to access them. This report also highlights poor infrastructure in the schools, impeding quality education. Out of seven primary and four secondary schools, only two have adequate infrastructure, such as desks and enough classrooms. Of the two, one is a private primary school and the other is a girls-only secondary school focused on stopping female genital mutilation (FGM). When Amnesty International visited the other public schools, the organization saw damaged classrooms and walls. In some classrooms many chairs and desks were broken, and in other classrooms there were no desks or chairs for pupils. Despite free universal primary education, many Benet parents cannot afford to pay the UGX 7,500 (about USD 2) monthly fee many schools charge for their school feeding program. As a consequence, the schools do not give these children meals. Poverty and cultural practices have forced many girls and boys to drop out before completing primary education.

The Benet have further alleged killings, unlawful use of force and firearms, including shootings, beatings, torture and other cruel, inhuman and degrading treatment, involving UWA officers, especially, during conflict between the wildlife authority and the community when community members enter the forest.

While the Ugandan government claims that human activities in the forest have affected water catchment for downstream communities and that the ecosystem needs regeneration, the state has an obligation under international human rights law to ensure that any regeneration exercise fully complies with human rights. It should be administered through participatory, accountable, and non-discriminatory processes, including free, prior and informed consent, allowing Indigenous peoples to give or withhold consent to a project that may affect them or their land.

In a landmark ruling on 25 January 2019 in the case *Muhindo & Others vs. the Attorney General*,<sup>2</sup> the High Court of Uganda found that there are no adequate procedures governing evictions. The High Court declared that Uganda's lack of adequate procedures governing evictions violates the rights to life, dignity, and property under articles 22, 24, and 26 of Uganda's Constitution. In addition, the High Court took judicial notice that evictions in Uganda have resulted in various human rights violations. By failing to put in place adequate safeguards against forced evictions, the Ugandan government has violated the human rights of those affected.

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<sup>2</sup> *Muhindo & 3 Ors vs. the Attorney General* (Miscellaneous Cause No.127 of 2016) [2019] UGHCCD 2, on file with Amnesty International.

Despite this court ruling, forced evictions continue to be carried out in Uganda. In protected wildlife and forest areas, they are mainly conducted by the UWA. When individuals are subject to court orders to evict, or in general situations when the Ugandan government has issued an ultimatum for residents to vacate land, evictions are usually conducted by the Uganda Police Force (UPF). Kampala Capital City Authority (KCCA) enforcement officers evict residents in city dwellings in Kampala, while the UPDF is called in, at times, to reinforce other security units during evictions.

In March 2020, the Ministry of Lands, Housing and Urban Development issued a directive halting evictions while public health measures were in force prohibiting the movement of people to contain COVID-19. At the time of writing this report it is not yet clear whether the ban on evictions has been lifted, however, Amnesty International is aware of at least three other communities that faced imminent evictions in 2021. These include the Maragoli of Kiryandongo, a group of Indigenous people in western Uganda. As of January 2021, more than 35,000 people from over 2,300 families have been forcibly evicted from their homes in Kiryandongo by Ugandan security forces to make way for the industrial farming projects of multinational companies. These evictions have happened every year since 2017.

In the run up to Uganda's January 2021 general election, as in previous elections campaigns, politicians made promises to Benet families that they would be allocated land. Yet the Benet land problem remains more politicised than remedied.

On 12 May 2021, President Yoweri Museveni was sworn in as President of Uganda for sixth term. Amnesty International calls on President Museveni's administration to reverse the practice of forced evictions and put in place adequate safeguards to prevent them. The Government of Uganda must meaningfully and effectively consult with the Benet people to obtain their free, prior and informed consent for decisions that affect them, including any decision regarding permanent settlement. As the Ugandan government adopts and implements policies to end deforestation, restore natural forests and tackle climate change, it is important that authorities ensure that these measures do not result in human rights violations and must avoid using climate change mitigation measures to justify human rights violations. The government should pursue its goal of wildlife and environment conservation in a manner that does not violate the human rights of the Benet Indigenous peoples.

This report also includes recommendations for the Prime Minister, the Attorney General, Ministry of Tourism, Wildlife and Antiquities, Ministry of Education and Sports, Ministry of Health, and the Equal Opportunities Commission (EOC). Amnesty International calls on each of these stakeholders to end and address reported cases of human rights violations and discrimination, including putting an end to forced evictions.



## 2. METHODOLOGY

Amnesty International conducted research in Mount Elgon, Uganda in December 2019 and March 2020. Concerns about the Indigenous Benet community had originally been brought to the organization's attention by human rights groups working on land rights in Uganda.

The Mount Elgon region is home to the Indigenous Benet people who have lived in the area for several generations, since before it was declared a forest reserve in 1920. The colonial government's categorization of the land as a forest reserve, and the demarcation of the reserve's boundary by subsequent governments, has resulted in the Benet people being forcibly evicted, losing their land, and being subjected to violence by the Ugandan authorities. Many Benet people still live in fear of being evicted again.

In December 2019, Amnesty International researchers conducted individual interviews with 61 people – 22 women and 39 men – who had been forcibly evicted from their homes in 2008. Four of the men and three of the women were over 60 years old, and 11 of the men and six of the women were below 35 years of age. Three of the men identified as persons living with disabilities. Those interviewed now live in Arkut, Sabu, Matupswu, Yatui, Kortow, Topot, Kotsoy and Cheberan temporary resettlement camps. All of them were interviewed about their experience of the evictions in 2008 and their enjoyment of human rights since. Most interviews took place in the Benet language with interpretation into English, with a small number in English and Kiswahili. Amnesty International has anonymised interviewees' identifying details in several cases for security reasons. Follow up telephone interviews were conducted with 11 people.

Amnesty International also interviewed eight people from two international organizations: four from groups providing support to the community, and two experts who have worked on issues facing the Indigenous Benet people since 1983. Researchers reviewed 208 pieces of documentary evidence including photographs, video recordings, letters, reports, court documents, police records, and medical records. Photographs and videos have been verified by the Amnesty International Digital Verification Corps. Documentary evidence is consistent with witnesses' account of events.

In March 2020, Amnesty International visited five health centres and 11 schools, including four secondary schools and seven primary schools, in the locality of the temporary resettlement camps. The water and sanitation situation at the resettlement sites was also assessed during this visit.

Between 2 and 10 March 2020, Amnesty International interviewed government officials including the Prime Minister; the acting Executive Secretary and the Director of Monitoring and Inspections, Uganda Human Rights Commission (UHRC); the Deputy Director-Field Operations, Uganda Wildlife Authority (UWA); the Commandant of the Land Protection Unit, Uganda Police Force (UPF); Programme Officer – Education, Uganda National Commission for United Nations Educational, Scientific and Cultural Organization (UNESCO); and the Commissioner in the Department of Relief, Disaster Preparedness and Management of the Office of the Prime Minister (OPM). On 17 February 2020, Amnesty International wrote letters and conducted follow up telephone calls to the Equal Opportunities Commission (EOC), the Speaker of the Parliament, the Minister of Health, the Minister of Lands, Housing and Urban Development, the Minister of Justice and Constitutional Affairs, the Attorney General, the Minister of Tourism, Wildlife and Antiquities, and the Minister of Gender, Labour and Social Development requesting meetings but did not received responses.

On 3 August 2020, Amnesty International wrote to the Minister of Education and Sports, Minister of Health and the Commissioner for Disaster Preparedness and Management in the OPM requesting information regarding the human rights concerns emerging from our research. On 1 September 2021, Amnesty International wrote to the Prime Minister, the Attorney General, the Minister of Education and Sports, the Minister of Health, the Minister of Environment and Water, the Minister of Lands, Housing and Urban Development, the Minister of Tourism, Wildlife and Antiquities, the Chairperson, Uganda Human Rights Commission (UHRC), and the Chairperson, EOC, sharing our preliminary research findings and requesting information. At the time of the publication, only the Ministry of Health had responded, indicating its openness to further engagement regarding the issues raised. The Office of the Attorney General which had requested for more time to respond to Amnesty International was yet to respond by the date agreed.



*\*A number of Benet interviewed stated that they claimed the Mount Elgon forest as their ancestral land but a mapping exercise has not been carried out.*

# 3. BACKGROUND

**“In Uganda, land rights of ethnic minorities as ancestral and traditional owners, users and custodians of the various natural habitats are not acknowledged even though their survival is dependent upon access to natural resources. The establishment of national parks and conservation areas managed by government... often take place at the expense of the rights of such ethnic minorities.”<sup>3</sup>**

Ministry of Lands, Housing and Urban Development, The Uganda National Land Policy, February 2013

## THE BENET PEOPLE OF MOUNT ELGON

The Benet also derogatorily called Ndorobo, “primitive people of the mountain”,<sup>4</sup> are a hunter-gatherer and pastoralist community from Mount Elgon, Uganda. They are divided into three subgroups by their geographical location: the central moorlands; Yatui to the east; and Kwoti to the west.<sup>5</sup>

The UWA states that Mount Elgon “is home to two tribes, the Bagisu and the Sabiny, with the marginalized Ndorobos forced to dwell deep within the forest of Benet.”<sup>6</sup> They have lived within the Mount Elgon moorland and grasslands before it was made a forest reserve by the British colonial government in 1920.<sup>7</sup> The issue of Benet land alienation dates to the colonial period.<sup>8</sup>

The Constitution of Uganda lists 56 Ugandan “indigenous communities”,<sup>9</sup> as of 1st February 1926, making every Ugandan community indigenous. The list of 56 leaves out many smaller ethnic communities such as the Benet and the Basongora.<sup>10</sup> The Benet are considered a sub-group of one of the 56. In official documents, such as identity cards, the Ugandan government has categorized the Benet as a sub-group of the Sabiny people of Kapchorwa district.<sup>11</sup> They however have a different culture, including forest traditions, although they speak a different dialect of the same language. This categorization is used in government communication, including in a report from the Office of the Prime Minister (OPM), which noted the Benet “...were the indigenous and historical forest dwellers of the high mountain forests and moor-lands of the Sabiny community that were the official category of persons who were removed from the Mt. Elgon National Park and were the true and lawful beneficiaries of the 6000 hectares of land that government had earmarked for the resettlement exercise.”<sup>12</sup>

Although the Constitution of Uganda does not specifically recognize the Benet as Indigenous peoples and offers no express protection for Indigenous peoples, it places a mandatory duty on the government to take affirmative action in favour of groups marginalized based on gender, age, disability, or any other reason created by history, tradition or custom<sup>13</sup> for the purpose of redressing imbalances against them.

<sup>3</sup> Ministry of Lands, Housing and Urban Development, The Uganda National Land Policy, Land Rights and Ethnic Minorities, February 2013, p. 17.

<sup>4</sup> Amnesty International interview with three Benet elders, Mount Elgon, December 2019. The term Ndorobo has more than one translation, is used across Eastern Africa and applied to several different peoples, usually smaller, more marginalized ones.

<sup>5</sup> “The Benet vs Mount Elgon National Park”, 2021, [arcgis.com/apps/Cascade/index.html?appid=f846a164cbe74dd696766894c9450a84](https://arcgis.com/apps/Cascade/index.html?appid=f846a164cbe74dd696766894c9450a84)

<sup>6</sup> Uganda Wildlife Authority (UWA), “Mount Elgon at a glance: Park at a Glance”, [ugandawildlife.org/explore-our-parks/parks-by-name-a-z/mount-elgon-national-park](https://ugandawildlife.org/explore-our-parks/parks-by-name-a-z/mount-elgon-national-park)

<sup>7</sup> Interview in person with Moses Mwanga, Benet elder and cultural chairman, 10 December 2019; Interview in person with Charles Tumwesigye, Deputy Director Field Operations, Uganda Wildlife Authority (UWA), 6 March 2020; Interview in person with Yesheo Alex, Coordinator, The Mount Elgon Benet Indigenous Ogiek Organization, 10 December 2019.

<sup>8</sup> The International Union for Conservation of Nature (IUCN), “From Conflict to Collaboration: People and Forests at Mount Elgon, Uganda”, July 1998, on file with Amnesty International.

<sup>9</sup> Third Schedule, Article 10(a), Constitution of the Republic of Uganda.

<sup>10</sup> International Work Group for Indigenous Affairs (IWGIA), “Indigenous peoples in Uganda”, 18 March 2021, [iwgia.org/en/uganda/4255-iw-2021-uganda.html](https://iwgia.org/en/uganda/4255-iw-2021-uganda.html)

<sup>11</sup> Copies of identification cards of those who identify themselves as Benet, on file with Amnesty International.

<sup>12</sup> Office of the Prime Minister (OPM), “A Report on the Reverification of Land for Resettlement of the Benet People of Sebei Sub-Region on the Mt. Elgon National Park”, June 2014, p. 7, para. 4.

<sup>13</sup> Article 32 of the Constitution of Uganda.

Despite the Ugandan government's reluctance to assign the status of Indigenous people to these communities, in its first Universal Periodic Review (UPR) report to the UN Human Rights Council (HRC) in 2011, the state noted that "Uganda has indigenous communities who include the Batwa in the West; *Benet in the Mt. Elgon region [emphasis added]*; the Tepeth in Karamoja; and others in other remote locations."<sup>14</sup>

## LEGAL FRAMEWORK FOR INDIGENOUS PEOPLES' RIGHTS IN UGANDA

The UN Committee on the Elimination of Racial Discrimination (CERD), in its General Recommendation 23 on the rights of Indigenous peoples, provides that "states parties... recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories."<sup>15</sup>

Uganda has not ratified the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention (ILO Convention 169), which guarantees the rights of indigenous and tribal peoples. Uganda was absent from voting when the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly (UNGA) on 13 September 2007, although it was subsequently endorsed by the government indicating its commitments to the rights of Indigenous peoples. According to UNDRIP, and the UN Framework Convention on Climate Change (UNFCCC), to which Uganda is a signatory, the Ugandan government must protect the rights of Indigenous peoples who are particularly affected by climate change, which negatively impacts Indigenous peoples' rights to life, health, food, water, housing, and livelihoods.

Further, the African Charter on Human and Peoples' Rights (African Charter) provides for individual and collective rights, including the rights to equality and human dignity, including for Indigenous peoples. Articles 2, 3 and 5 of the African Charter provide for individual rights, including for individuals in indigenous communities. The African Charter expressly recognizes and protects collective rights through the term 'peoples' in its title and provisions.<sup>16</sup> As the jurisprudence of the African Court states, the collective rights apply to Indigenous peoples as communities that make up member states,<sup>17</sup> including Uganda.

In its report, "Indigenous Peoples in Africa: The Forgotten Peoples", the African Commission on Human and Peoples' Rights (African Commission) lists the Benet among three examples of Indigenous peoples in Uganda.<sup>18</sup> This report explicitly rejects the position of some African states that "'indigenous' is not applicable in Africa as 'all Africans are indigenous'"<sup>19</sup> because African peoples were in Africa before they were colonized by Europeans. It states that Indigenous peoples should be identified based on criteria including marginalization, domination by other communities, spiritual, cultural, and economic attachment to land.<sup>20</sup>

In May 2017, the African Court on Human and Peoples' Rights (the African Court) delivered a landmark judgment on the Ogiek community land rights case: *African Commission on Human and Peoples' Rights v. Republic of Kenya*.<sup>21</sup> The judgment found that the eviction of Ogiek community from the Mau Forest in Kenya by the Kenya Forestry Service violated several provisions of the African Charter, including the right to property (Article 14), freedom from discrimination (Article 2), right to life (Article 4), freedom of religion (Article 8), the right to culture (Article 17(2) and (3)), the right to freely dispose of wealth and

<sup>14</sup> UN Human Rights Council (HRC), Working Group on the Universal Periodic Review, "National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 – Uganda", 22 July 2011, A/HRC/WG.6/12/UGA/1, p. 22. Emphasis added.

<sup>15</sup> CERD, General Recommendation 23 on the rights of Indigenous peoples, para. 5.

<sup>16</sup> African Charter on Human and Peoples' Rights (African Charter): Right to equality and freedom from domination (Article 19), right to existence (Article 20), right to natural resources (Article 21), right to economic, social and cultural development (Article 22), right to peace and security (Article 23), right to a satisfactory environment (Article 24).

<sup>17</sup> African Commission on Human and Peoples' Rights v. Republic of Kenya, ACTHPR, Application No. 006/2012 (2017), paras. 198-199.

<sup>18</sup> The African Commission on Human and Peoples' Rights, "Indigenous Peoples in Africa: The Forgotten Peoples", the African Commission's work on Indigenous Peoples in Africa", ("The Forgotten Peoples"), 2006, p. 16.

<sup>19</sup> "The Forgotten Peoples", p. 12.

<sup>20</sup> "The Forgotten Peoples", p. 10.

<sup>21</sup> *African Commission on Human and Peoples' Rights v. Republic of Kenya*, ACTHPR, Application No. 006/2012 (2017), 29 October 2017, available at [escr-net.org/caselaw/2017/african-commission-human-and-peoples-rights-v-republic-kenya-acthpr-application-no](http://escr-net.org/caselaw/2017/african-commission-human-and-peoples-rights-v-republic-kenya-acthpr-application-no)

natural resources (Article 21), the right to development (Article 22), and Article 1 which obliges all member states to uphold the rights guaranteed by the Charter.<sup>22</sup>

In an earlier judgment in November 2009, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya* (the Endorois case),<sup>23</sup> the African Commission found that there were “violations resulting from the displacement of the Endorois community, an indigenous community, from their ancestral lands, failure to adequately compensate them for property loss, disruption of the community’s pastoral enterprise and violations of the right to practice their religion and culture, as well as the overall process of development of the Endorois people.”<sup>24</sup>

The two cases confirm that the African Charter protects Indigenous peoples’ rights to land, culture, religion, development and that they “have a leading role to play as guardians of local ecosystems, and in conserving and protecting land and natural resources.”<sup>25</sup>

In 2020 the African Commission passed a resolution calling on member states to respect, protect, and realise the right to adequate housing, including by “putting an end to all forms of forced evictions, in particular evictions carried out for development purposes; ensuring that evictions are only carried out as a last resort after all alternatives to eviction have been provided and that all evictions comply with international and regional standards; adopting legislative and other measures to ensure that legal procedures are complied with prior to any eviction and making available remedies that are likely to result in the right to reparation either in the form of *restitutio in integrum* or monetary compensation; taking concrete measures to confer security of tenure to all people lacking such protection, with prior and informed consent of the affected people; and ensuring that any alternative housing provided to people complies with international and regional standards on the right to adequate housing.”<sup>26</sup>

The African Commission reiterated this position in November 2018, calling on the Ugandan government to comply, during a national dialogue on the impact of extractive industries on indigenous communities organized by the African Commission Working Group on Indigenous Populations/Communities in Africa with the Uganda Human Rights Commission and the International Work Group for Indigenous Affairs in Kampala, Uganda.<sup>27</sup>

A 2010 report by the UN Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples addressed the situation of the Benet. The UN Special Rapporteur observed that “the need to consult with indigenous peoples is especially heightened when their relocation from their traditional lands is at issue, given the profound effects on them that such relocations invariably have. Because the relocation of indigenous peoples who have strong cultural and material connections to the lands from which they are removed implicates threats to a range of human rights, the establishment of national parks and conservation areas should not result in the relocation of indigenous peoples as a general matter.”<sup>28</sup>

Despite this international legal framework, the Ugandan government is yet to officially recognize Indigenous cultures and peoples. Its statements about Indigenous peoples and Indigenous peoples’ rights have been contradictory. In 2020, the Ministry of Education and Sports stated that “to satisfy the World Bank policy for identification of Indigenous peoples the government identifies... the traditional hunters/gatherers Batwa, Benet, Tepeth and Ik communities” as Indigenous peoples since they have historically suffered, and continue to suffer disempowerment and discrimination on economic, social, and cultural grounds.<sup>29</sup> The

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<sup>22</sup> ESCR-Net, *African Commission on Human and Peoples’ Rights v. Republic of Kenya*, ACtHPR, Application No. 006/2012 (2017), 29 October 2017, available at [escr-net.org/caselaw/2017/african-commission-human-and-peoples-rights-v-republic-kenya-acthpr-application-no](http://escr-net.org/caselaw/2017/african-commission-human-and-peoples-rights-v-republic-kenya-acthpr-application-no)

<sup>23</sup> *Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) v. Kenya*, ACHPR 276/2003 (2009), 25 November 2009, [achpr.org/sessions/descions?id=193](http://achpr.org/sessions/descions?id=193)

<sup>24</sup> *Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) v. Kenya*, ACHPR 276/2003 (2009), 25 November 2009, [achpr.org/sessions/descions?id=193](http://achpr.org/sessions/descions?id=193)

<sup>25</sup> Minority Rights Group International, “Huge victory for Kenya’s Ogiek as African Court sets major precedent for indigenous peoples’ land rights”, 26 May 2017, [minorityrights.org/2017/05/26/huge-victory-kenyas-ogiek-african-court-sets-major-precedent-indigenous-peoples-land-rights/](http://minorityrights.org/2017/05/26/huge-victory-kenyas-ogiek-african-court-sets-major-precedent-indigenous-peoples-land-rights/)

<sup>26</sup> Resolution on the right to adequate housing and protection from forced evictions, ACHPR/Res.231, 2012.

<sup>27</sup> The African Commission, “Final Communiqué on the National Dialogue on the Rights of Indigenous Peoples and Extractive Industries”, 27 to 28 November 2018, Kampala, Uganda, November 2018, available at [www.achpr.org/news/viewdetail?id=5](http://www.achpr.org/news/viewdetail?id=5)

<sup>28</sup> HRC, Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, James Anaya, 15 September 2010, A/HRC/15/37/Add.1, para. 416.

<sup>29</sup> Ministry of Education and Sports, “Uganda Secondary Education Expansion Project (USEEP): Social Assessment”, updated 15 April 2020.

policy that the Ministry cites – “World Bank Operational Policy on Indigenous Peoples, OP 4.10”<sup>30</sup> – became obsolete in 2018 and the relevant policy for Indigenous peoples at the time was “ESS7: Indigenous peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.”<sup>31</sup>

## THE PROHIBITION OF FORCED EVICTIONS

According to the UN Commission on Human Rights, forced evictions are a gross violation of human rights, especially the right to adequate housing. A forced eviction is the removal of people against their will from the homes or land they occupy without legal protections and safeguards.

A forced eviction does not refer to any eviction by the state where force is used; it refers specifically to an eviction that does not comply with due process. The UN Committee on Economic, Social and Cultural Rights, the expert body that provides authoritative guidance on the implementation of the International Covenant on Economic, Social and Cultural Rights, defines forced evictions as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.

Under international human rights law, evictions can only be a last resort once all feasible alternatives have been explored and appropriate procedural protections are in place. Safeguards include:

- An opportunity for genuine consultation with those affected.
- Adequate and reasonable notice for affected people before the eviction.
- Information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all affected.
- Government officials or their representatives to be present during the evictions.
- Anyone carrying out the eviction to be properly identified.
- Evictions not to take place in particularly bad weather or at night unless the affected people consent.
- Provision of legal remedies.
- Provision, where possible, of legal aid to people who in need of it to seek redress from the courts.

Governments must ensure that no one is rendered homeless or vulnerable to the violation of other human rights because of eviction. Adequate alternative housing and compensation for losses must be availed to those affected before eviction.<sup>32</sup>

The Committee on Economic, Social and Cultural Rights (CESCR) requires authorities to immediately provide just compensation and sufficient alternative accommodation after evictions so that no one is rendered homeless because of the eviction.<sup>33</sup>

Despite this international legal framework, there are no adequate laws, policies or procedures governing evictions in Uganda. The High Court of Uganda in *Muhindo & Others vs Attorney General* found that the Ugandan government’s failure to enact a comprehensive legal framework and procedure protecting those facing eviction breached the rights to life, dignity, and property under Articles 22, 24, 26, 27, and 45 of the Constitution of Uganda.<sup>34</sup>

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<sup>30</sup> The World Bank, “Operational policy 4.10 on indigenous peoples”, July 2005, [ppfdocuments.azureedge.net/3905.pdf](https://ppfdocuments.azureedge.net/3905.pdf)

<sup>31</sup> The World Bank, “The World Bank Environmental and Social Framework: Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities”, 2017, [thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf#page=89&zoom=80](https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf#page=89&zoom=80), pp. 77 – 89.

<sup>32</sup> CESCR, General Comment 7 on Forced Evictions, paras. 15 and 16.

<sup>33</sup> Committee on Economic, Social, and Cultural Rights (CESCR), General Comment 7 stipulates that states must also ensure that no one is rendered homeless or vulnerable to the violation of other human rights because of consequence of eviction. Adequate alternative housing and compensation for all losses must be made available to those affected prior to eviction.

<sup>34</sup> *Muhindo & 3 Ors Vs Attorney General* (Miscellaneous Cause No. 127 of 2016) [2019] UGHCCD 2, on file with Amnesty International.

# LAND TENURE SYSTEM IN UGANDA

Land ownership and occupation is important in Uganda, as agriculture contributes 43% of the country's gross domestic product (GDP), makes up over 90% of exports earnings, and employs 80% of the workforce.<sup>35</sup>

According to the Pastoral and Environmental Network in the Horn of Africa (PENHA), a charity researching pastoral and agro-pastoral development in the Horn of Africa,<sup>36</sup> about 23% of Ugandans are pastoralists who are almost exclusively cattle herders.<sup>37</sup> A similar portion of the population is agropastoral, with livestock significantly contributing to their livelihoods and incomes.<sup>38</sup>

The Constitution of Uganda, adopted in 1995,<sup>39</sup> and the Land Act (Cap.227) recognize four types of land tenure: customary; freehold; *Mailo*;<sup>40</sup> and leasehold.<sup>41</sup>

Customary tenure refers to the traditional institutions and rules that communities have created to administer land and natural resources. In 2015, the Government of Uganda introduced certificates for owners of customary land. Under the Land Act “[a]ny person, family or community holding land under customary tenure on former public land may acquire a certificate of customary ownership in respect of that land”.<sup>42</sup> The certificate proves land ownership, which is held in perpetuity. This is the most common form of land tenure in Uganda, covering almost 80% of land.<sup>43</sup>

Land in central Uganda<sup>44</sup> is mainly held under *Mailo* tenure. In *Mailo* ownership, land acquired and registered through the 1900 Buganda agreement<sup>45</sup> is owned in perpetuity with under a land title. Tenants are recognized and have rights to live on and utilize the land.<sup>46</sup> Some minimal parts of other regions, such as Ankole in south-western Uganda, Bunyoro in western Uganda, and Toro sub-regions, also in western Uganda, also use this form of land tenure.<sup>47</sup>

Freehold tenure refers to individualized private ownership, including registration of title in perpetuity and full ownership powers. Transactions involving freehold land are governed by the Registration of Titles Act (Cap. 230).<sup>48</sup>

The leasehold system is contractual and allows parties to define the terms and conditions of access and usage for a period, in exchange for rent.<sup>49</sup>

With a population of more than 43 million people<sup>50</sup> and a population growth rate of about 3.3% per annum,<sup>51</sup> there are only about 600,000 registered landowners in Uganda, representing just over 0.01% of the population. Tenants and customary owners are estimated to be over 20 million. It is also estimated that less than 50% of individual land in rural areas is formally registered.<sup>52</sup>

The Land Act establishes areas of “common land use in communally-owned land”. It provides that “the purposes for which land may be set aside for common use [include] (a) the grazing and watering of livestock; (b) the hunting; (c) the gathering of wood fuel and building materials; (d) the gathering of honey

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<sup>35</sup> Second National Development Plan (NDPII) 2015/16 – 2019/20, p. 52.

<sup>36</sup> Pastoral and Environmental Network in the Horn of Africa (PENHA), [penhanetwork.org/about-us/who-we-are/](http://penhanetwork.org/about-us/who-we-are/)

<sup>37</sup> PENHA, “Uganda”, [penhanetwork.org/uganda](http://penhanetwork.org/uganda)

<sup>38</sup> PENHA, “Uganda”, [penhanetwork.org/uganda](http://penhanetwork.org/uganda)

<sup>39</sup> Article 237, Constitution of Uganda, Chapter 15: Land and Environment.

<sup>40</sup> The term refers to an area of land allotted under a system of freehold land tenure in Uganda, introduced as part of the 1900 Buganda Agreement, which granted ownership in perpetuity to landlords and protected rights to tax-paying tenants. The term also refers to the land tenure system itself.

<sup>41</sup> Ministry of Lands, Housing and Urban Development, “The Uganda National Land Policy”, February 2013, p. 17.

<sup>42</sup> Section 4, the Land Act (Cap. 227).

<sup>43</sup> Oxfam, “Certificates of Customary Ownership yet to guarantee women’s land security”, 24 March 2021, [uganda.oxfam.org/latest/press-release/certificates-customary-ownership-yet-guarantee-women%E2%80%99s-land-security](https://www.oxfam.org/latest/press-release/certificates-customary-ownership-yet-guarantee-women%E2%80%99s-land-security)

<sup>44</sup> The Kingdom of Buganda is situated in the Central region of Uganda. Originally, the Kingdom of Buganda covered parts of the north-western and western margins of Lake Victoria between the Nile in the East and Lake Albert in the West.

<sup>45</sup> The Buganda Agreement, signed on 10 March 1900 – six years after the Kingdom of Buganda, then known as Uganda, was declared a British Protectorate based on a treaty made in 1893 with the Kabaka (King) of Buganda – stipulated that Kabaka should exercise direct control over the people of Buganda and made formal the relationship between the Kingdom of Buganda and the British Uganda Protectorate.

<sup>46</sup> A. B. Mukwaya, “Land Tenure in Buganda: Present Day Tendencies”, East African Studies No. 1. (1953), p. 15.

<sup>47</sup> Ministry of Lands, Housing and Urban Development, “The Uganda National Land Policy”, February 2013, pp. 1 -2.

<sup>48</sup> Ministry of Lands, Housing and Urban Development, “The Uganda National Land Policy”, February 2013, p. 33.

<sup>49</sup> Ministry of Lands, Housing and Urban Development, “Transactions Procedures Series 3: How to acquire a Leasehold Land Title”, March 2011, on file with Amnesty International.

<sup>50</sup> Uganda Bureau of Statistics, “Population Clock 43,164,383”, October 2021, <https://www.ubos.org/>

<sup>51</sup> “Final report of the implementation of the land governance assessment framework in Uganda: Population and human settlements”, 2014, p. 22.

<sup>52</sup> Remarks by Bart Katureebe, Chief Justice of Uganda, at the official opening of the consultative meeting on development of guidelines on land evictions held on the 31 July 2019 at Imperial Royale Hotel, Kampala, on file with Amnesty International.

and other forest resources for food and medicinal purposes; (e) such other purposes as may be traditional among the community using the land communally.”<sup>53</sup>

The National Environment Statute further mandates the wildlife authority to “identify those elements, objects and sites in the natural environment which are of cultural importance to the various peoples of Uganda”.<sup>54</sup> However, these laws also allow Ugandan authorities managing forests to prohibit human activities by declaring a forest area a specially protected forest.<sup>55</sup>

The state has officially declared (gazetted) Benet land as a protected forest by using these two statutes.

Private individuals, communities, and state agencies such as UWA, UPF and Uganda Prisons Service (UPS) are parties to land disputes across different parts of Uganda, which at times result in forced evictions.

## UGANDAN WILDLIFE LAWS

The main law that regulates conservation management of wild animals and plants in Uganda is the Uganda Wildlife Act, 2019 that repealed the Uganda Wildlife Act, Cap.200 enacted in 1996.<sup>56</sup> The law provides for the continuation of the UWA, established under the repealed law,<sup>57</sup> as a semi-autonomous state agency managing 10 national parks, including the Mount Elgon National Park, and protected wildlife reserves, community wildlife management areas and wildlife sanctuaries.<sup>58</sup>

The Uganda Wildlife Act provides for community involvement in wildlife conservation, including through equitable sharing of its benefits, and the establishment of a “Community Wildlife Committee”<sup>59</sup> for each wildlife conservation area<sup>60</sup> to manage this process. However, it also introduces punitive measures for communities living in these areas. 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.<sup>61</sup> Such penalties may increase conflict between Indigenous peoples and the wildlife authority, especially where communities have insufficient land to graze cattle outside the forest. These fines may also increase corruption, as community members have been asked by UWA employees for bribes to avoid prosecution.

The 2019 wildlife law retained several provisions of the repealed 1996 law that are relevant to the Benet people, for example, allowing UWA to establish guidelines for community access to neighbouring conservation areas which are crucial to their survival historically.<sup>62</sup> The law also repealed provisions such as UWA’s powers to “resettle any persons resident in a wildlife conservation area or in a specific area of the wildlife conservation area or outside it and, where resettlement is done within a wildlife conservation area, prescribe the permitted measures of land use.”<sup>63</sup>

Other laws that are used for wildlife management in Uganda include the National Environment Act, 2019. This provides for sustainable environmental management through a coordinating, monitoring, regulatory and supervisory agency known as National Environment Management Authority (NEMA) established under the National Environment Statute, 1995.<sup>64</sup> The law mandates NEMA to address emerging environmental issues, including climate change and biodiversity offsets.<sup>65</sup> Similarly to the Uganda Wildlife Act, the National Environment Act provides 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 standards.”<sup>66</sup>

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<sup>53</sup> Sections 23 of the Land Act (Cap. 227). *Emphasis added*.

<sup>54</sup> Section 50.

<sup>55</sup> Sections 2, 32 of the Land Act (Cap. 227), and Article 46 of the Statute No.4, National Environment Statute, 1995.

<sup>56</sup> The short title is the Uganda Wildlife Act.

<sup>57</sup> Section 5, Uganda Wildlife Act.

<sup>58</sup> Uganda Wildlife Authority (UWA), [ugandawildlife.org/](http://ugandawildlife.org/)

<sup>59</sup> According to Section 20 of the Act, Community Wildlife Committee’s role is to advise UWA on the day-to-day management of a wildlife conservation area, and to advise the local communities on matters of wildlife conservation and development around conservation areas.

<sup>60</sup> Section 20, Uganda Wildlife Act.

<sup>61</sup> Section 29, Uganda Wildlife Act.

<sup>62</sup> Section 26 (2), Uganda Wildlife Act, Cap.200.

<sup>63</sup> Section 26 (5), Uganda Wildlife Act, Cap.200.

<sup>64</sup> Section 8, National Environment Act, 2019.

<sup>65</sup> Section 9, National Environment Act.

<sup>66</sup> Section 5, National Environment Act.



## PATTERNS OF FORCED EVICTIONS IN UGANDA

The Benet are not alone in experiencing forced evictions conducted in the name of upholding wildlife laws and conservation management policies, or carried out due to land tenure disputes, including between customary and freehold land holders.

In May 2018, Ugandan soldiers and UWA forcibly evicted communities in Apaa, northern Uganda, claiming that they had settled in a wildlife reserve.<sup>67</sup> By May 2018, more than 250 homes had been burnt and destroyed, leaving hundreds of people, including children, homeless. Similar unlawful and violent evictions continued in 2019. Between January and May 2019, UWA rangers forcibly evicted communities in Apaa, burning homes, looting property, and attacking community members.<sup>68</sup>

In September 2018, security forces, including from the UPDF and UPF, evicted 350 residents of Lusanja village in Wakiso district,<sup>69</sup> in Uganda's capital Kampala, demolishing their 40 homes. This forced eviction was carried out to give the vacant land to a Ugandan businessman who had obtained a court order.<sup>70</sup> On 14 December 2018, a High Court judge ruled that the evictions were illegal.<sup>71</sup> As with the Benet, UPF officers used teargas and beat up the Lusanja residents to force them out, before bringing down their houses.<sup>72</sup>

Hundreds of residents of Mubende district, central Uganda, have been forcibly evicted from their homes after decades of land ownership disputes.<sup>73</sup> In 2015, the UN CESCR, in its concluding observations on Uganda's initial report, called on the Ugandan state to take immediate steps to "ensure that the rights of those forcibly evicted from Mubende district are restored."<sup>74</sup>

Ugandan media also reported that in February 2019, in Hoima, in western Uganda, police evicted over 500 families in four villages from their homes to pave the way for construction of an oil waste treatment plant. The eviction was based on a court order in favour of the businesses, issued by a Hoima court.<sup>75</sup> On 23 September 2019, the Office of the President intervened and required the Hoima Resident District Commissioner to direct the Director of Public Prosecutions (DPP) to investigate the matter.<sup>76</sup> Media reports indicate that since 2012 over 1,000 households in the oil-rich Albertine region have been affected by forced evictions. Many of these have arisen because of court orders in favour of business owners.<sup>77</sup>

On 8 December 2016, President Museveni established the Commission of Inquiry into Land Matters chaired by Justice Catherine Bamugemereire,<sup>78</sup> to inquire into the effectiveness of law, policies and processes of land acquisition, land administration, land management and land registration in Uganda.<sup>79</sup> Between 2017 and 2019, the Commission<sup>80</sup> received 8,528 complaints from 123 of the country's 135 districts.<sup>81</sup> The number of cases reflects the extent of contentious land disputes in Uganda. The Uganda Media Centre reported that the President stated that "the Commission's report gives government what he described as a 'soft landing' to handle cases of eviction, among others".<sup>82</sup> Despite this commitment by the President to resolve cases of evictions, at the time of this publication, the report of the Commission of Inquiry had not been made public.

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<sup>67</sup> Amnesty International, "Urgent Action: Hundreds Left Homeless by Forced Evictions", 15 May 2018, [amnesty.org/download/Documents/AFR5984092018ENGLISH.pdf](https://www.amnesty.org/download/Documents/AFR5984092018ENGLISH.pdf)

<sup>68</sup> Amnesty International, "Urgent Action: Apaa communities attacked and forcibly evicted", 30 April 2019, [amnesty.org/en/wp-content/uploads/2021/05/AFR5902622019ENGLISH.pdf](https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR5902622019ENGLISH.pdf)

<sup>69</sup> Daily Monitor, "Lusanja eviction: Where was the missing link?", 27 October 2018, [monitor.co.ug/uganda/oped/commentary/lusanja-eviction-where-was-the-missing-link--1786072](https://www.monitor.co.ug/uganda/oped/commentary/lusanja-eviction-where-was-the-missing-link--1786072)

<sup>70</sup> Housing and Land Rights Network, Habitat International Coalition, "Lusanja", 12 October 2018, [mail.hlrn.org/violation.php?id=p21paqc=#YLzclfkzbdC](https://mail.hlrn.org/violation.php?id=p21paqc=#YLzclfkzbdC)

<sup>71</sup> Opedo and 16 Ors v Kiconco (Civil Revision-2018/33) [2018] UGHCLD 63, 14 December 2018, on file with Amnesty International.

<sup>72</sup> Opedo and 16 Ors v Kiconco (Civil Revision-2018/33) [2018] UGHCLD 63, 14 December 2018, on file with Amnesty International.

<sup>73</sup> ESCR-Net, "Mubende Coffee Plantations and the Bitter Taste of Eviction", 20 February 2017, [escr-net.org/events/2017/mubende-coffee-plantations-and-bitter-taste-eviction](https://escr-net.org/events/2017/mubende-coffee-plantations-and-bitter-taste-eviction)

<sup>74</sup> CESCR, "Concluding observations on the initial report of Uganda", E/C.12/UGA/CO/1, 18 July 2015, p. 10.

<sup>75</sup> The Independent, "10,000 families face forceful eviction in Hoima", 6 January 2021, [independent.co.ug/10000-families-face-forceful-eviction-in-hoima/](https://www.independent.co.ug/10000-families-face-forceful-eviction-in-hoima/)

<sup>76</sup> The Uganda Radio Network, "President's Office Intervenes in Hoima Land Evictions", 26 October 2019, [ugandaradionetwork.net/story/presidents-office-intervenes-in-hoima-land-evictions](https://ugandaradionetwork.net/story/presidents-office-intervenes-in-hoima-land-evictions)

<sup>77</sup> "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.

<sup>78</sup> Set up vide Legal Notice No. 2 of 2017.

<sup>79</sup> The Judiciary, "Land Inquiry Starts Work", available at [judiciary.go.ug/data/news/319/Land%20Inquiry%20Starts%20Work.html](https://judiciary.go.ug/data/news/319/Land%20Inquiry%20Starts%20Work.html)

<sup>80</sup> The Commission started work on 3 May 2017 and presented its final report to President Museveni on 29 July 2020.

<sup>81</sup> Uganda Media Centre, "President Museveni receives Bamugemereire Land Commission Report", 29 July 2020, available at [www.mediacentre.go.ug/media/president-museveni-receives-bamugemereire-land-commission-report](https://www.mediacentre.go.ug/media/president-museveni-receives-bamugemereire-land-commission-report)

<sup>82</sup> Uganda Media Centre, "President Museveni receives Bamugemereire Land Commission Report", 29 July 2020, available at [www.mediacentre.go.ug/media/president-museveni-receives-bamugemereire-land-commission-report](https://www.mediacentre.go.ug/media/president-museveni-receives-bamugemereire-land-commission-report)

The Ugandan government still lacks adequate procedures governing evictions as determined by the High Court in the case of *Muhindo & Others vs Attorney General*.<sup>83</sup> In this case, the court took judicial notice that evictions in Uganda have always resulted in human rights violations.

In March 2020, the Ministry of Lands, Housing and Urban Development in Uganda issued a directive halting any evictions while public health measures were in place prohibiting the movement of people to contain the COVID-19 pandemic. It is unclear when the evictions ban was to end. Despite this, at least three communities faced threats of evictions in 2021, including another Indigenous community, the Maragoli of Kiryandongo, in western Uganda. On 23 April 2021, Beti Kamya-Turwomwe, Minister of Lands, Housing Urban Development, while meeting with affected people in Nyamitete, Mutunda Sub-county in Kiryandongo, ordered a multinational company Kiryandongo Sugar Limited to halt any further evictions until a conclusive decision is reached.<sup>84</sup> At the time of writing this report, more than 35,000 people from over 2,300 families have been evicted from their homes in Kiryandongo to make way for industrial farming projects of multinational companies.<sup>85</sup> Forced evictions in Kiryandongo have happened yearly since 2017.<sup>86</sup>

On 19 August 2021, in a landmark ruling, Uganda's Constitutional Court found that UWA illegally evicted the Batwa, another Indigenous people, from their ancestral land in Mgahinga forest, southwestern Uganda. The Constitutional Court ordered appropriate affirmative measures to address the situation of the Batwa Indigenous people following the evictions, which it described as illegal.<sup>87</sup> According to the Court, the Batwa owned the whole or part of the area on which forest is located "in accordance with their customs and/or practices."<sup>88</sup> They inhabited the forest for many generations, since before the beginning of colonial rule in Uganda. However, due to the adoption of policies promoting the establishment of protected areas, successive Ugandan governments – starting with the colonial government in 1930 and including in 1991 the current administration – declared parts of the Mgahinga forest to be national parks or forest reserves. These included Echuya Forest Reserve, Mgahinga Gorilla Game Park, and Bwindi Impenetrable Forest National Game Park.<sup>89</sup> The court further found that the Ugandan government did not adequately compensate the affected community which left them "a landless, destitute people... and left them a disadvantaged and marginalized people."<sup>90</sup>

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<sup>83</sup> Five applicants successfully sought a declaration that the lack of adequate procedures governing evictions violates the rights to life, dignity, and property under articles 22, 24, and 26 of the Constitution of Uganda.

<sup>84</sup> Daily Monitor, "Lands minister halts Kiryandongo evictions", 26 April 2021, [monitor.co.ug/uganda/news/national/lands-minister-halts-kiryandongo-evictions-3377020](https://monitor.co.ug/uganda/news/national/lands-minister-halts-kiryandongo-evictions-3377020)

<sup>85</sup> Amnesty International, "Uganda 2020", April 2021, [amnesty.org/en/countries/africa/uganda/report-uganda/](https://www.amnesty.org/en/countries/africa/uganda/report-uganda/)

<sup>86</sup> Amnesty International, "Uganda 2020", April 2021, [amnesty.org/en/countries/africa/uganda/report-uganda/](https://www.amnesty.org/en/countries/africa/uganda/report-uganda/)

<sup>87</sup> United Organisation for Batwa Development in Uganda (UOBDU) & 11 Ors vs. the Attorney General, Uganda Wildlife Authority and National Forest Authority, (Constitutional Petition No. 003 of 2013) [2021].

<sup>88</sup> UOBDU & 11 Ors vs. the Attorney General, UWA and NFA, (Constitutional Petition No. 003 of 2013) [2021].

<sup>89</sup> According to the affidavit of Charles Tumwesigye, Deputy Director Field Operations, UWA, UOBDU & 11 Ors vs. the Attorney General, UWA and NFA, (Constitutional Petition No. 003 of 2013) [2021].

<sup>90</sup> UOBDU & 11 Ors vs. the Attorney General, UWA and NFA, (Constitutional Petition No. 003 of 2013) [2021].

# 4. CONTEXT

## THE HISTORICAL MOUNT ELGON LAND QUESTION

**“The Benet people have lived within the Mount Elgon forest before it was made a forest reserve by the British colonial government in 1920.”<sup>91</sup>**

David Mukhwana, Programmes Manager, Kapchorwa Civil Society Organization Alliance

Mount Elgon is an extinct volcano on the border of Kenya and Uganda. The mountain is 80 kilometres in diameter and rises over 3,000 metres above the surrounding plains to a height of 4,321 metres. It covers about 112,385 hectares within the Mbale, Kapchorwa, Bukwo and Kween districts in eastern Uganda.<sup>92</sup>

The British Protectorate in Uganda made Mount Elgon moorland and grassland a forest reserve in 1920 and, in 1936, established the Mount Elgon Crown Forest, imposing a public protected area on the Benet's ancestral land in the forest. With this, the colonial government also introduced punitive rules restricting hunting, including arrests and imprisonment.<sup>93</sup>

In 1968, after independence, the Ugandan government, after surveying the Mount Elgon Crown Forest set new boundaries and called the area Mount Elgon Forest Reserve.<sup>94</sup> In 1983, the government gave 6,000 hectares of high altitude forest to a land allocation committee coordinated by the Kapchorwa District Local Administration.<sup>95</sup> The intention was to allocate this 6,000 hectares to 200 Benet families who were forest dwellers and were living within the reserve's boundaries.<sup>96</sup> None of the committee members were from the Benet community, but sub-committees were created at zonal levels to support allocation, and the Benet communities were represented in the sub-committees by their village chiefs.<sup>97</sup>

Nonetheless, according to a UWA report, land allocation committee members only allocated land to few affected Benet, while allocating unknown amount of land to themselves,<sup>98</sup> their families and associates.<sup>99</sup> The Minority Rights Group (MRG), an international human rights organization working on the rights of ethnic, national, religious and linguistic minorities and Indigenous peoples, reported on 6 November 2014 that a massive “land grab” by local leaders during the 1983 resettlement had left more than half of the 2,800 Benet population landless.<sup>100</sup> A 2017 UWA report to the Prime Minister, for example, lists 39 civil servants and other people who irregularly acquired land meant to be allocated to the Benet in 1983.<sup>101</sup> Community leaders, especially members of the local council (LC)<sup>102</sup> – composed of LCI, LCII and some LCIII chairpersons in the affected areas – “... started forging sale agreements to support claims of change of land

<sup>91</sup> Interview in person with David Mukhwana, Programs Manager, Kapchorwa Civil Society Organization Alliance, 10 December 2019.

<sup>92</sup> UWA, “Mount Elgon National Park”, [ugandawildlife.org/explore-our-parks/parks-by-name-a-z/mount-elgon-national-park](http://ugandawildlife.org/explore-our-parks/parks-by-name-a-z/mount-elgon-national-park) **Error! Hyperlink reference not valid.**

<sup>93</sup> “The Benet vs Mount Elgon National Park”, [arctgis.com/apps/Cascade/index.html?appid=f846a164cbe74dd696766894c9450a84](http://arctgis.com/apps/Cascade/index.html?appid=f846a164cbe74dd696766894c9450a84)

<sup>94</sup> Interview in person with Charles Tumwesigye, Deputy Director Field Operations, UWA, 6 March 2020. This is also corroborated by five scholarly articles and NGO reports about the history of the Mount Elgon National Park.

<sup>95</sup> According to a 2017 UWA report that analyses the problems encountered in management of Mount Elgon National Park, the 1983 land allocation report composed of District Commissioner (who was the chairperson) and nine other government officers drawn from certain state departments such as security, local administration, forestry, education, and planning.

<sup>96</sup> OPM, “A Report on the Reverification of Land for Resettlement of the Benet People of Sebei Sub-Region on the Mt. Elgon National Park”, June 2014, p. 7, para. 4.

<sup>97</sup> Interviews in person and by phone with 11 affected people and three members of groups that represent the community between 10 December 2019 and 6 March 2020.

<sup>98</sup> Uganda Human Rights Commission (UHRC), “11th Annual Report of the Uganda Human Rights Commission”, 2008, p. 88, on file with Amnesty International.

<sup>99</sup> UWA, “Report on encroachment of Mt. Elgon National Park – the challenges and recommendations: A UWA report that analyses the problems encountered in management of Mt. Elgon National Park”, March 2017, on file with Amnesty International.

<sup>100</sup> Minority Rights Group (MRG), “Eviction of Indigenous Benet in Uganda risks conflict”, 6 November 2014, [minorityrights.org/2014/11/06/eviction-of-indigenous-benet-in-uganda-risks-conflict/](http://minorityrights.org/2014/11/06/eviction-of-indigenous-benet-in-uganda-risks-conflict/)

<sup>101</sup> UWA, “Report on encroachment of Mt. Elgon National Park – the challenges and recommendations: A UWA report that analyses the problems encountered in management of Mt. Elgon National Park”, March 2017, on file with Amnesty International.

<sup>102</sup> The local council (LC) is established by the Local Governments Act 1997. LCs are a form of local elected government within administrative units of Uganda headed by an elected chairperson who appoints their executives. Since the district is made of several counties, sub counties, down to the villages, the ranks of the LCs reflect this structure with an LCV representing a district, LCIV representing a county, LCIII a sub county, LCII a parish (made up of several villages), whereas LCI represents a village.

ownership...”<sup>103</sup> Later, after the UWA report, some land users who erroneously benefited in the 1983 land allocation process willingly agreed to relinquish part of their land to resettle landless Benet.<sup>104</sup> This process has not been concluded.

It has also emerged that the land allocation committee erroneously allocated to people 7,500 hectares of land, instead of the 6,000 hectares allocated by government, thereby creating a false boundary.<sup>105</sup> This boundary has since been unofficially referred to as a “cliff boundary”, since the surveyors expanded the area as far as they could, until a natural boundary, cliffs, became the boundary markers.<sup>106</sup> The cliff boundary, also known as the “redline boundary”, demarcates a “grey area” which is both settled by evicted Benets and is within Mount Elgon National Park.<sup>107</sup>

The National Forest Authority (NFA) managed Mount Elgon Forest Reserve until 1993 when the Ugandan government declared it a national park – Mount Elgon National Park – and transferred its management to the UWA.<sup>108</sup> While the authorities managing the protected area changed, the area remained protected and the boundaries unchanged. In 1993, the UWA began a new process of evicting people from the then protected national park.

The misallocations of land had given some Benet no option but to continue to live in the forest. Many Benet people affected by the 1983 evictions had been excluded by allocation committee from the resettlement exercise for the 6,000 hectares of land. Therefore, some of those who had been excluded moved back to land inside the 1983 cliff boundary. Wildlife authorities harassed and intimidated them and told them that they would forcefully evict them again.<sup>109</sup>

In addition, an unknown number of Benet allocated land by the land allocation committee sold their land and moved back to the forest to preserve their way of life.<sup>110</sup> Amnesty International was able to analyze 15 agreements used for the land transactions.<sup>111</sup> Some other non-Benet people moved into the forest too.<sup>112</sup> According to UWA, when Mount Elgon National Park was gazetted in 1993, people encroached into the forest reserve and destroyed the forest ecosystem significantly.<sup>113</sup> According to UWA, the lifestyle of the Benet people changed significantly after 1983, from environmental preservers to destroyers. UWA claims that the Benet people in the forest cut down trees and removed native vegetation to create space for crop cultivation and other purposes such as housing. Their population was also growing very fast.<sup>114</sup>

There were also other internally displaced persons (IDPs) that moved into the Mount Elgon Forest Reserve in the 1970s because of insecurity from Karimojong and Pokot<sup>115</sup> cattle rustlers<sup>116</sup> creating another category of marginalized persons. While the Ugandan government holds that they are not original inhabitants of the forest and have no right to claim settlement, these, and other persons, including former workers of sawmills,

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<sup>103</sup> UWA, “Report on encroachment of Mt. Elgon National Park – the challenges and recommendations: A UWA report that analyses the problems encountered in management of Mt. Elgon National Park”, March 2017, on file with Amnesty International.

<sup>104</sup> A list of the land users included land users who benefitted and irregularly noting the quantity of land that they were willing to relinquish. The list is included in the annex to UWA report that analyses the problems encountered in management of Mount Elgon National Park, March 2017, on file with Amnesty International.

<sup>105</sup> Interview in person with Charles Tumwesigye, Deputy Director Field Operations, UWA, 6 March 2020.

<sup>106</sup> UWA, “Report on encroachment of Mt. Elgon National Park – the challenges and recommendations: A UWA report that analyses the problems encountered in management of Mt. Elgon National Park”, March 2017, on file with Amnesty International.

<sup>107</sup> Interview in person with Charles Tumwesigye, Deputy Director Field Operations, UWA, 6 March 2020. This is also corroborated by five scholarly articles and NGO reports about the history of the Mount Elgon National Park.

<sup>108</sup> Interview in person with Charles Tumwesigye, Deputy Director Field Operations, UWA, 6 March 2020. This is also corroborated by five scholarly articles and NGO reports about the history of the Mount Elgon National Park.

<sup>109</sup> Interview in person with Charles Tumwesigye, Deputy Director Field Operations, UWA, 6 March 2020. This is also corroborated by five scholarly articles and NGO reports about the history of the Mount Elgon National Park.

<sup>110</sup> OPM, “A Report on the Reverification of Land for Resettlement of the Benet People of Sebei Sub-Region on the Mt. Elgon National Park”, June 2014, p. 7, para. 4. This was also corroborated through interviews in person and by phone with 10 affected community members, two government officials and three civil society representatives between December 2019, and March 2020, and UHRC, “11th Annual Report of the Uganda Human Rights Commission”, 2008, p.88, on file with Amnesty International.

<sup>111</sup> 13 contracts of sale of land for diverse dates between 1984 and 2001.

<sup>112</sup> Interviews in person with government officials and civil society representatives, December 2019, and March 2020. This is also corroborated through interviews by phone with three affected community members and two NGO representatives interviewed between 10 December 2019 and 19 August 2020.

<sup>113</sup> Interview in person with Charles Tumwesigye, Deputy Director Field Operations, UWA, 6 March 2020. This is also stated in two UWA reports and a report from the OPM, on file with Amnesty International.

<sup>114</sup> Interview in person with Charles Tumwesigye, Deputy Director Field Operations, UWA, 6 March 2020. This is also stated in two UWA reports and a report from the OPM, on file with Amnesty International.

<sup>115</sup> Uganda ethnic communities: The Karimojong and the Pokot are both part of the listed indigenous communities of Uganda’s as of 1 February 1926, under the Constitution of Uganda.

<sup>116</sup> People who steal farm animals, especially cattle.

are among those found in the forest after 1983 and evicted alongside Benet people.<sup>117</sup> Many have also remained landless, marginalized, and vulnerable to human rights violations.<sup>118</sup>

In 1993, UWA engaged surveyors to trace the 1968 forest boundary and found the erroneous boundary created by the 1983 allocation committee. In 1996, the Ugandan government established an inter-ministerial task force to re-examine the Benet land acquisition problem and present recommendations. One of the six options presented was that the state adopts the 1983 boundary line established by the then land allocation committee. The task force accepted this proposal.<sup>119</sup> This development led the Benet people to create an implementation committee in 1997, to consult with other stakeholders on how to implement that option.<sup>120</sup>

By 2008, UWA discovered that people, including the Benet, now occupied almost 8,500 hectares of land, as opposed to the planned 6,000 hectares, or the 7,500 hectares that the allocation committee had erroneously issued. This created a further 2,500 hectares in conflict, especially after UWA forbade people from building permanent structures anywhere above the cliff boundary, thereby re-establishing the original boundary of the Mount Elgon National Park and moving it back from the cliff boundary.<sup>121</sup> This discovery led to further attempts to recover the 2,500 hectares of land from the community.

Subsequently, it is within these 2,500 hectares that armed UWA officers, among others, have subjected the Indigenous Benet peoples to human rights violations, including forced evictions, deprivation of the right to adequate housing, deprivation of dignity and right to life. In February 2008, UWA carried out violent forced evictions, followed by other sporadic evictions of individuals and their households within the same year.<sup>122</sup>

## THE 2008 FORCED EVICTIONS

*“UPDF and UWA. As long as they had the guns, they were government.”*

- An older Benet community member, responding to a question asking who evicted her from her house.

On the evening of 16 February 2008, more than 20 armed UWA officers, backed by UPDF officers, forcibly evicted 178 Indigenous Benet families from their homes in the Mount Elgon forest.<sup>123</sup> Many Benet interviewed could not remember the exact day of the week when the evictions happened. A few Benet people interviewed recalled that they had come from a wedding ceremony and that it was Saturday.<sup>124</sup>

The Uganda Wildlife Authority (UWA) is a semi-autonomous government agency that conserves and manages Uganda's wildlife for the people of Uganda and the world.<sup>125</sup> The Authority is now under the Minister of Tourism, Wildlife and Antiquities<sup>126</sup> with an executive director responsible for the day-to-day operations, including management of UWA staff, referred to as UWA officers. They may possess firearms in the course their duties.<sup>127</sup>

The Uganda People's Defence Forces (UPDF) is the country's military, composed of land forces, air forces and any other services prescribed by parliament.<sup>128</sup> The UPDF is headed by the Chief of Defence Forces who is responsible for the command, control, and administration of the Defence Forces.<sup>129</sup> The Chief of Defence Forces is an appointee of the President who is the Commander-in-Chief of the Defence

<sup>117</sup> OPM, “A Report on the Reverification of Land for Resettlement of the Benet People of Sebei Sub-Region on the Mt. Elgon National Park”, June 2014, pp. 7-8.

<sup>118</sup> OPM, “A Report on the Reverification of Land for Resettlement of the Benet People of Sebei Sub-Region on the Mt. Elgon National Park”, June 2014, pp. 7-8.

<sup>119</sup> OPM, “A Report on the Reverification of Land for Resettlement of the Benet People of Sebei Sub-Region on the Mt. Elgon National Park”, June 2014, p. 9, para. 2.

<sup>120</sup> OPM, “A Report on the Reverification of Land for Resettlement of the Benet People of Sebei Sub-Region on the Mt. Elgon National Park”, June 2014, p. 9, para. 2.

<sup>121</sup> Interview in person with Charles Tumwesigye, Deputy Director Field Operations, UWA, 6 March 2020.

<sup>122</sup> Interview with Agnes Kabajuni, Africa Regional Manager, Minorities Rights Group and Eunice Olembo, Africa Legal Officer, Minorities Rights Group, 5 December 2019.

<sup>123</sup> OPM, “A Report on the Reverification of Land for Resettlement of the Benet People of Sebei Sub-Region on the Mt. Elgon National Park”, June 2014, on file with Amnesty International.

<sup>124</sup> Thirty-three interviews in person with affected Benet people, Mount Elgon, December 2019.

<sup>125</sup> UWA, Uganda Wildlife Authority, “Conserving for generations: About”, [ugandawildlife.org/about/uganda-wildlife-authority](http://ugandawildlife.org/about/uganda-wildlife-authority)

<sup>126</sup> Ministry of Tourism, “Wildlife and Antiquities, About us”, [tourism.go.ug/about-us](http://tourism.go.ug/about-us)

<sup>127</sup> Sections 17 and 18 of the Uganda Wildlife Act, 2019.

<sup>128</sup> Section 3 of the Uganda Peoples' Defence Forces Act, 2005.

<sup>129</sup> Section 8 of the Uganda Peoples' Defence Forces Act, 2005.

Forces.<sup>130</sup> The Defence Forces are mandated to preserve and defend the sovereignty and interior integrity of Uganda; to cooperate with civilian authority in emergencies including natural disasters; to foster harmony and understanding between the Defence Forces and civilians; and to engage in productive activities for development.<sup>131</sup> In this report, any reference to UPDF refers to the land forces.

According to some Benet, they had started hearing about the planned forced evictions while at the community's trading centre during the day.<sup>132</sup> Later that afternoon, several UWA officers came to their villages and announced that the community members had two hours to vacate the land or face arrest.<sup>133</sup> Many had not heard anything about the evictions at all. The UWA officers came back after 5pm, backed by UPDF officers carrying firearms, batons, and sticks.<sup>134</sup> Accordingly, it was at that point that UWA and UPDF land force soldiers used violence, burned, and demolished houses and granaries to force more than a thousand Benet people to leave their homes.<sup>135</sup> The forced evictions started in the evening and continued into the night.<sup>136</sup> The park rangers used batons to beat people and destroy their houses. Some affected persons interviewed told Amnesty International that UPDF officers watched from a distance and were not as actively involved in the forced evictions as UWA officers.<sup>137</sup> According to witnesses, officers from the two authorities also took unidentified number of cattle belonging to Benet people.<sup>138</sup> On the morning of 17 February 2008, the two government agencies came back to clear the remaining villages.<sup>139</sup>

Those interviewed identified UWA officers by their uniform: green camouflage combat clothes, similar coloured caps, and jungle boots. They also had badges on their uniform with UWA markings. UPDF soldiers were identified by their camouflage uniform with green and white frog-patterns. This attire is consistent with UWA<sup>140</sup> and UPDF<sup>141</sup> uniforms in 2008. No interviewees were able to effectively describe the types of firearms that officers from the two security forces carried.<sup>142</sup>

In some cases, affected people reported the dire impact the forced evictions had on them. As their homes were demolished, hundreds of those evicted, mostly women, were forced to live in caves while men lived under trees. The men took turns to protect the caves.<sup>143</sup> Benet people reported that soon after the evictions the community experienced two deaths of older people;<sup>144</sup> three deaths of babies and the sick;<sup>145</sup> three miscarriage of pregnancies;<sup>146</sup> and loss of cattle.<sup>147</sup> Since the community members affected did not report this at the time, the occurrences are not recorded in police reports or court documents. A woman, Cheruto (not her real name) narrated how after the 16 February 2008 evictions, she lost a four-month pregnancy and stayed for almost one week with a dead foetus in the womb.<sup>148</sup>

***"UWA came and chased people and burned homes. People who were evicted moved to nearby caves. I got a miscarriage two days after eviction as a result of carrying heavy luggage [during the eviction]. I was five months pregnant."***<sup>149</sup>

-Chemutai Mutai

<sup>130</sup> Clause (1) of Article 98 of the Constitution of Uganda.

<sup>131</sup> Uganda Peoples' Defence Forces Act, 2005, regulation of the Uganda Peoples' Defence Forces in accordance with article 210 of the Constitution of Uganda.

<sup>132</sup> Interviews in person with six affected Benet people, Mount Elgon, December 2019.

<sup>133</sup> Interviews in person with five affected Benet people, Mount Elgon, December 2019.

<sup>134</sup> Interviews in person with 13 affected Benet people, Mount Elgon, December 2019.

<sup>135</sup> Interviews in person with 33 affected Benet people, Mount Elgon, December 2019.

<sup>136</sup> Interviews in person with 33 affected Benet people, Mount Elgon, December 2019.

<sup>137</sup> Interviews in person with 21 affected Benet people, Mount Elgon, December 2019.

<sup>138</sup> Interviews in person with 4 affected Benet people, Mount Elgon, December 2019.

<sup>139</sup> Interviews in person with 33 affected Benet people, Mount Elgon, December 2019.

<sup>140</sup> Section 3 of Penal Code (Declaration of Uganda Wildlife Authority Uniform) Order, 2004, "The [UWA] uniform shall have the following features – (a) plain green colour with matching belt and boots; (b) distinctive UWA logo appearing on the top right hand upper arm of the shirt and on the cap...".

<sup>141</sup> "Uganda Peoples' Defence Forces Marks, Accessories, Insignia, Decorations and Uniform (Under Section 160 of the Uganda Peoples' Defence Forces Act, 2005)", *The Uganda Gazette*, Vol. CXII, No. 46, 18th September 2019. On file with Amnesty International.

<sup>142</sup> Interviews in person with 13 affected Benet people, Mount Elgon, December 2019.

<sup>143</sup> Interviews in person with six affected Benet people, Mount Elgon, December 2019.

<sup>144</sup> Interviews in person with two affected Benet people, Mount Elgon, December 2019.

<sup>145</sup> Interviews in person with three affected Benet people, Mount Elgon, December 2019.

<sup>146</sup> Interviews in person with 3 affected Benet people, Mount Elgon, December 2019.

<sup>147</sup> Interviews in person with 16 affected Benet people, Mount Elgon, December 2019.

<sup>148</sup> Interviews in person with a member of the Benet community, 12 December 2019.

<sup>149</sup> Interview in person with an affected Benet woman, Mount Elgon, December 2019. Not her real name.

Free, prior and informed consent is a demonstration of Indigenous peoples' right to self-determine their political, social, economic, and cultural priorities through the right to be consulted and participate and the right to their lands, as affirmed by the UNDRIP. The United Nations Committee on the Elimination of Racial Discrimination issued an authoritative interpretation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) that called on states to respect Indigenous Peoples' right to free, prior and informed consent.

There was no participation and consultation of the Benet people to obtain their free, prior and informed consent before the 2008 forced evictions, despite the international legal requirement that Indigenous peoples must have access to all relevant information to make decisions. Every Benet person that Amnesty International interviewed unequivocally stated that they were not consulted, nor was a notice sent to them before the forced evictions.<sup>150</sup> Government officials interviewed by Amnesty International would not confirm or deny consultation and participation of the community beforehand.<sup>151</sup> It has therefore to be concluded that the state denied the Benet the right to participate, and failed to obtain their consent, which must be a collective process. Emblematic of the lack of free, prior and informed consent, OPM's Commissioner in the Department of Relief, Disaster Preparedness and Management told Amnesty International that the government reached the decision to resettle the Benet in consultation with several government ministries including the Ministry of Tourism, Wildlife and Antiquities, Water and Environment, NFA, NEMA, UWA and the OPM.<sup>152</sup>

In an official report, UWA notes that "in February 2008, when a Belgian tourist Annick Van De Venster<sup>153</sup> was killed by thugs who were suspected to be hiding amongst the settlers inside the National Park, UWA responded by removing all settlers above the 1983 cliff boundary."<sup>154</sup> The forced evictions were apparently in response to the death of a tourist, although UWA also claims that they had discovered that continued human presence in the forest was affecting the ecosystem's functioning.<sup>155</sup> It later emerged that none of the people who confessed to Annick Van De Venster's murder, who were on 6 June 2014 convicted of this crime, came from the Benet villages.<sup>156</sup>

Almost six months after the evictions, in July 2008, the government started resettling the landless displaced Benet, through UWA and the local government of Kapchorwa and Bukwo<sup>157</sup> districts, supported by NGOs. The three authorities opened two temporary settlement sites upland near the boundaries that UWA had demarcated for the Mount Elgon National Park at Kisito and in Kapchorwa and Bukwo districts.<sup>158</sup> These sites are now in Kween district, which was created on 1 July 2010.<sup>159</sup> Most of the Benet people forcefully evicted in 2008 live in temporary resettlement sites in Kisito village, Yatui parish of Kween district.<sup>160</sup> Over time, the Benet have given the villages in the camps additional names: Arkut, Sabu, Matupswu, Yatui, Kortow, Topot, Kotsoy and Cheberan. The camps are also within the redline that forms the original boundary of the Mount Elgon National Park, therefore, part of the national park, according to UWA.<sup>161</sup>

The resettlement process lasted three years. In 2009, in Amanang resettlement area, it was marred by occurrences like 1983 where land allocation committee members only allocated land to few affected Benet while allocating unknown amounts of land to themselves, their families, and associates. UWA reported that members of the Bukwo district resettlement committee allocated themselves land intended for the

<sup>150</sup> Interviews in person with more than 61 affected Benet people, Mount Elgon, December 2019.

<sup>151</sup> Interviews in person with four government officials, including Deputy Director Field Operations, UWA, March 2020.

<sup>152</sup> Interview in person with Martin Owor, Commissioner in the Department of Relief, Disaster Preparedness and Management of the Uganda OPM, 6 March 2020.

<sup>153</sup> 35-year-old woman, Annick Van De Venster was shot dead in the Mount Elgon National Park on 5 February 2008. According to media reports, on 19 February 2008 a gang of six men confessed to killing her but only four of them were later convicted. The four, according to General Court Martial records, traded in firearms, and had killed Annick Van De Venster on their way back from Kenya where they had gone to sell guns.

<sup>154</sup> UWA, "Report on encroachment of Mt. Elgon National Park – the challenges and recommendations: A UWA report that analyses the problems encountered in management of Mt. Elgon National Park", March 2017, on file with Amnesty International.

<sup>155</sup> UWA, "Report on encroachment of Mt. Elgon National Park – the challenges and recommendations: A UWA report that analyses the problems encountered in management of Mt. Elgon National Park", March 2017, on file with Amnesty International, p. 4.

<sup>156</sup> Interview in person with Charles Tumwesigye, Deputy Director Field Operations, UWA, 6 March 2020.

<sup>157</sup> Both districts are in Eastern Uganda and border Mount Elgon.

<sup>158</sup> UWA, "Report on encroachment of Mt. Elgon National Park – the challenges and recommendations: A UWA report that analyses the problems encountered in management of Mt. Elgon National Park", March 2017, on file with Amnesty International, p. 4.

<sup>159</sup> Kween district, "Overview", [kween.go.ug/lg/overview](http://kween.go.ug/lg/overview)

<sup>160</sup> UWA, "Report on encroachment of Mt. Elgon National Park – the challenges and recommendations: A UWA report that analyses the problems encountered in management of Mt. Elgon National Park", March 2017, on file with Amnesty International, p. 4.

<sup>161</sup> Interviews in person with 49 affected Benet people, Mount Elgon, December 2019.

resettlement of the landless and sold some more.<sup>162</sup> The Minister of Tourism ordered a review of the resettlement process, which resulted in the resettlement of more affected people in 2011.<sup>163</sup> In all these processes, the affected Benet people were never consulted and, in the end, not everyone affected was provided resettlement. For those who were resettled, temporarily, the quality of the land was not appropriate for their culture and way of life.<sup>164</sup>

Since the forced evictions in 2008, the Benet, through their representatives, have made numerous requests to the government to permanently solve their landlessness. However, the state continues to propose or make decisions without consulting them. A UWA representative told Amnesty International that OPM is responsible for ensuring free, prior and informed consent.<sup>165</sup> In March 2017, UWA, without consulting the Benet, wrote a report to the Prime Minister<sup>166</sup> recommending the permanent resettlement of Benet living in the temporary camps by moving them to land degazetted for purposes of resettling the landless.<sup>167</sup> This is indicative of how decisions are made regarding the Benet people and their land issues: Decisions about the Benet are made without their involvement.<sup>168</sup>

## THE BENET AND FOREST CONSERVATION

*“The rangers have made our forest their business enterprise, minting lots of money through such dubious means as selling logs to unscrupulous businesspeople.”<sup>169</sup>*

- Yesho Alex, Coordinator, The Mount Elgon Benet Indigenous Ogiek Organization

In justifying evictions since 1983, the Ugandan government reports that “[it] got concerned about the changing lifestyle of the Benet community and their impact to the forest ecosystem.”<sup>170</sup> The state has reported that many years of human entry and activities, including deforestation in the Mount Elgon forest, has depleted water by affecting water catchment areas. They say this has impacted lowland communities, especially in the Sebei sub-region, including Sironko, as well other communities in Mbale, Teso, and the fisheries in Bisina, Opeta and Kyoga. According to UWA, at the time of gazetting the Mount Elgon National Park in 1993, the forest reserve was so heavily encroached and degraded that they had to engage surveyors to trace the 1968 forest boundary.<sup>171</sup>

While the state has not substantiated its claim that the Benet were harming the environment, in an UWA report to the OPM on resettling the Benet back in the forest, UWA warns that “... the continued parceling of land to the communities from the forest will lead to ecosystem degradation and dis-functioning. This will create a bigger problem than what government is anticipating solving. The livelihoods of many people will be negatively affected.”<sup>172</sup>

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<sup>162</sup> UWA, “Report on encroachment of Mt. Elgon National Park – the challenges and recommendations: A UWA report that analyses the problems encountered in management of Mt. Elgon National Park,” March 2017, on file with Amnesty International, p. 3.

<sup>163</sup> UWA, “Report on encroachment of Mt. Elgon National Park – the challenges and recommendations: A UWA report that analyses the problems encountered in management of Mt. Elgon National Park”, March 2017, on file with Amnesty International, p. 3.

<sup>164</sup> Interviews in person with 57 affected Benet people, Mount Elgon, December 2019.

<sup>165</sup> Interview in person with Charles Tumwesigye, Deputy Director Field Operations, UWA, 6 March 2020.

<sup>166</sup> Interview in person with Charles Tumwesigye, Deputy Director Field Operations, UWA, 6 March 2020.

<sup>167</sup> OPM, “Report on the re-verification of land for resettlement of the Benet people of Sebei sub-region of the Mt. Elgon National Park”, June 2014, on file with Amnesty International.

<sup>168</sup> OPM, “Report on the re-verification of land for resettlement of the Benet people of Sebei sub-region of the Mt. Elgon National Park”, June 2014, on file with Amnesty International.

<sup>169</sup> Interview in person with Yesho Alex, Mount Elgon, 8 December 2019.

<sup>170</sup> Tarsis Bazana Kabwegyere, Minister in Charge of General Duties, OPM, Statement to Parliament on resettlement of the Benet/Ndorobo landless people in Sebei sub-region, 11 December 2014. *Emphasis added.*

<sup>171</sup> Interview in person with Charles Tumwesigye, Deputy Director Field Operations, UWA, 6 March 2020.

<sup>172</sup> UWA, “Report on encroachment of Mt. Elgon National Park – the challenges and recommendations: A UWA report that analyses the problems encountered in management of Mt. Elgon National Park”, March 2017, on file with Amnesty International.



Mount Elgon forest was declared a forest reserve in 1938 by the British Colonial Administration under the Forest Department largely due to its water catchment value.<sup>173</sup> According to the Ugandan government, at the time the state allowed the Benet to live in the forest the community was significantly smaller. Even as the management of the Mount Elgon Forest changed between 1936 and the early 1970s, they allowed the Benet to rear cattle. The community was, however, not allowed to burn charcoal or firewood and were prohibited from cultivating land within the gazetted forest. The British Colonial rule provided strict regulations on Benet's animal husbandry, livestock-raising practices, and hunting.<sup>174</sup> In 1970, there was a drought and wildfire destroyed a large part of the forest where the Benet were living. In 1971, the community planted maize for the first time, to supplement what they could hunt and gather from the scorched environment.<sup>175</sup>

UWA acknowledges that the Benet previously lived on hunting, gathering, and keeping of livestock on a small scale. They claim that in the 1970s and 1980s other non-Benet people came to live in the forest, fleeing from intercommunal clashes, for example, clashes caused by Karamojong and Pokot cattle rustlers. According to UWA, immigration changed the Benet's lifestyle. UWA reports that after non-Benet communities came into the forest, the Benet participated in trade and agricultural activities, including planting of crops that were destructive to the forest ecosystem, overgrazing, indiscriminate timber cutting and commercial agriculture.<sup>176</sup> The government also believes that there are many imposters, pretending to be genuine Benet people, who cut tree cover for crop production.<sup>177</sup>

According to a United Nations Development Programme (UNDP) for the United Nations Environment Programme (UNEP) report commissioned at the request of the Ministry of Water and Environment, forest cover in the Mount Elgon region has significantly reduced over the last 20 years.<sup>178</sup> This trend is largely attributed to agricultural expansion into previously forested areas. It is closely associated with vast deforestation, wetland degradation and biodiversity loss. Middle slope and down slope locations have the highest deforestation from increasing human population and rising demand for wood products such as timber, poles, firewood, and charcoal, as well as for agricultural land. The report states that the upslope areas of Mount Elgon, most of the area now protected by UWA, show lesser degradation than the lower areas, and attributes this to reduced human activities because of steep terrain and climatic conditions.<sup>179</sup>

Much as UWA accuses the Benet of damaging the forest in the national park and causing the ecosystem degradation, 10 Benets interviewed by Amnesty International researchers said that UWA officials in the Mount Elgon area connive with illegal timber loggers. These illegal loggers are depleting the forest cover at a disturbing rate, including by logging some tree species to which the Benet attach spiritual and cultural significance.<sup>180</sup> Although these allegations were corroborated by local NGOs, Amnesty International has not been able to verify them independently.<sup>181</sup> Further, in response to UWA's accusations that the Benet are contributing to deforestation, Benet elders denied these accusations, stating that the Benet are "friends of nature" and that their ancestors have passed on indigenous knowledge on forest conservation which the authorities have failed to tap into.<sup>182</sup>

The Benet elders explained their role in protecting the forest, rather than destroying it, stating how they have lived in the Mount Elgon forest for years rearing livestock including cows, sheep, and goats and beekeeping. Their beehives were traditional, made from dead trunks of wood, a tradition that they maintain.<sup>183</sup> Seven

<sup>173</sup> UWA, "Report on encroachment of Mt. Elgon National Park – the challenges and recommendations: A UWA report that analyses the problems encountered in management of Mt. Elgon National Park", March 2017, on file with Amnesty International.

<sup>174</sup> "The Benet vs. Mount Elgon National Park", 2020, [arcgis.com/apps/Cascade/index.html?appid=f846a164cbe74dd696766894c9450a84](https://arcgis.com/apps/Cascade/index.html?appid=f846a164cbe74dd696766894c9450a84)

<sup>175</sup> Alliance for Food Sovereignty in Africa (AFSA), "Land Case Study: The Benet's struggle to secure their land", 2017, [afsafira.org/wp-content/uploads/2019/04/the-benets-struggle-to-secure-a4-1.pdf](https://afsafira.org/wp-content/uploads/2019/04/the-benets-struggle-to-secure-a4-1.pdf)

<sup>176</sup> UWA, "Report on encroachment of Mt. Elgon National Park – the challenges and recommendations: A UWA report that analyses the problems encountered in management of Mt. Elgon National Park", March 2017, on file with Amnesty International, p. 2.

<sup>177</sup> Interviews in person with four government officials and three NGO representatives, Kampala and Mount Elgon, March 2020.

<sup>178</sup> Ministry of Water and Environment, "Ecosystem based adaptation in Mount Elgon ecosystem: Vulnerability Impact Assessment (VIA) for the Mt Elgon Ecosystem Report", December 2013, [undp.org/sites/default/files/downloads/undp\\_ugandaunepunep-wcmc\\_2013\\_uganda\\_via\\_pop\\_vs.pdf](https://undp.org/sites/default/files/downloads/undp_ugandaunepunep-wcmc_2013_uganda_via_pop_vs.pdf), p. 22.

<sup>179</sup> Ministry of Water and Environment, "Ecosystem based adaptation in Mount Elgon ecosystem: Vulnerability Impact Assessment (VIA) for the Mt Elgon Ecosystem Report", December 2013, [undp.org/sites/default/files/downloads/undp\\_ugandaunepunep-wcmc\\_2013\\_uganda\\_via\\_pop\\_vs.pdf](https://undp.org/sites/default/files/downloads/undp_ugandaunepunep-wcmc_2013_uganda_via_pop_vs.pdf).

<sup>180</sup> Interviews in person with 10 Benet community members, December 2019, and March 2020.

<sup>181</sup> Interviews in person with five NGO representatives, December 2019, and March 2020.

<sup>182</sup> Interviews with 13 affected Benet people and five NGO representatives, December 2019, and March 2020.

<sup>183</sup> Interviews with 13 affected Benet people, Mount Elgon, December 2019, and four telephone interviews with Mande David, Kibet Cornel, and Chebet Mungech, community members and representatives of groups that represent the community, August 2021.

people interviewed described how the beehives were made from old trees that had fallen in the forest, and out of bamboo trunks.<sup>184</sup> Community representatives showed Amnesty International some of the beehives currently made this way.<sup>185</sup> They explained that their houses were not made of timber but hard sticks from tree branches.<sup>186</sup> The Benet obtained their medicines from tree bark without felling trees. The women also wove baskets from bamboo, bartering them with communities in the lowland, such as the larger Sabiny, for other food products such as maize.<sup>187</sup>

According to UWA, any move to degazette the protected land and allocate it to the Benet will be detrimental since fresh land allocation within the park to the Sabiny and Benet would trigger political mobilization of people in the Bagisu sub-region to agitate and “invade” the park. The Bagisu is among the communities that came to live on the Mount Elgon Forest in the 1970s. Members of the Bagisu community feel that they also have a claim to the forest.<sup>188</sup> A UWA representative interviewed by Amnesty International stated that such an “invasion” would lead to further destruction of the Mount Elgon ecosystem and create a bigger conflict among communities.<sup>189</sup>

***“The long-term strategy should be to decongest mountainous areas by resettling people in other districts.”<sup>190</sup>***

- UWA report (2017)

The wildlife authority further believes that there is a political interest in the forests. While explaining the cycle of forced evictions in Mount Elgon over the years, the Commissioner in OPM’s Department of Relief, Disaster Preparedness and Management informed Amnesty International that “politicians around the MENP [Mount Elgon National Park] have on many occasions promised people land from the park to get votes from them. It is on this basis that during every election, people enter the park, destroy it, and later are forced out. As the park regenerates, then another election comes, people enter and getting them out becomes difficult and confrontational.”<sup>191</sup>

During a visit to the Benet resettlement camps by the Permanent Secretary in the Ministry of Lands, on 1 August 2020, six months before the 2021 elections, the Permanent Secretary announced that Uganda’s Cabinet had directed the Ministry to degazette part of the Mount Elgon National Park. This would involve removing 8,250 hectares from the national park classification, and permanently resettle the Benet by giving these 8,250 hectares of land to people evicted by the UWA in Sebei region.<sup>192</sup> Less than a month before the election, on 26 December 2020, the Eastern Uganda Chairperson for the ruling National Resistance Movement (NRM) party Mike Mukula announced that the government planned to give Benet people regulated access to Mount Elgon National Park. This promise was made while addressing a Benet community gathering at Kwasir Girls Secondary School.<sup>193</sup> More than a year later, the Permanent Secretary’s announcement has not been implemented. It remains unclear how many people are to be resettled in the 8,250 hectares, if this will be done at all, and whether this will solely apply to Indigenous Benet peoples, or other groups forcibly evicted from the forest since 1983.

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<sup>184</sup> Interviews with three affected Benet people, Mount Elgon, December 2019, and four telephone interviews with Mande David, Kibet Cornel, and Chebet Mungech, community members and representatives of groups that represent the community, August 2021.

<sup>185</sup> Photos on file with Amnesty International.

<sup>186</sup> Interviews with 13 affected Benet people, Mount Elgon, December 2019, and four telephone interviews with Mande David, Kibet Cornel, and Chebet Mungech, community members and representatives of groups that represent the community, August 2021.

<sup>187</sup> AFSA, “Land Case Study: The Benet’s struggle to secure their land”, 2017, [afsafrica.org/wp-content/uploads/2019/04/the-benets-struggle-to-secure-a4-1.pdf](https://afsafrica.org/wp-content/uploads/2019/04/the-benets-struggle-to-secure-a4-1.pdf)

<sup>188</sup> Interviews by phone with four NGO representatives, 7 September 2020. Reference also to UWA, “Report on encroachment of Mt. Elgon National Park – the challenges and recommendations: A UWA report that analyses the problems encountered in management of Mt. Elgon National Park”, March 2017, on file with Amnesty International.

<sup>189</sup> Interview in person with Charles Tumwesigye, Deputy Director Field Operations, UWA, Kampala, 6 March 2020.

<sup>190</sup> UWA, “Report on encroachment of Mt. Elgon National Park – the challenges and recommendations: A UWA report that analyses the problems encountered in management of Mt. Elgon National Park”, March 2017, on file with Amnesty International.

<sup>191</sup> Interview in person with Martin Owor, Commissioner in the Department of Relief, Disaster Preparedness and Management of the Uganda OPM, Kampala, 6 March 2020. *Emphasis added.*

<sup>192</sup> “Uganda: Govt Orders UWA to Surrender 8,000 Hectares to Kween Locals”, *All Africa*, 3 August 2020, [allafrica.com/stories/202008031068.html](https://allafrica.com/stories/202008031068.html)

<sup>193</sup> Video issued on 27 December 2020 by a representative of a group that represents the community. Verified by three NGO representatives from the community.

## HUMAN RIGHTS AND CONSERVATION

The Ugandan government is implementing an exclusionary fortress conservation model that entrusts forests to state security agencies and, at times, politicians, at the expense of respecting the rights of Indigenous peoples. In this way, the forest conservation agenda is being used to facilitate the violation of human rights. However, it does not have to be this way. In fact, rights such as the right to a clean environment, as recognized by the Constitution of Uganda<sup>194</sup>, can, and should, be protected while also ensuring Indigenous peoples can enjoy their full range of human rights.

Indigenous people should be involved in conservation interventions, such as community consultation, indigenous-led conservation, co-management, and community participation, and indigenous cultural or ecotourism which the UNEP World Conservation Monitoring Centre reports to have worked effectively in various jurisdictions.<sup>195</sup>

Many of the world's remaining natural ecosystems are found largely on the lands of Indigenous peoples, who have often proven to be better than governments at protecting against deforestation and biodiversity loss.<sup>196</sup> A worldwide comparison of 40 government-protected areas and 33 community-managed forests found that "as a whole, community managed forests presented lower and less variable annual deforestation rates than [government] protected forests".<sup>197</sup> In many cases, Indigenous peoples and local communities are achieving conservation outcomes that are at least equivalent to those of government-managed protected areas, at a fraction of the cost.<sup>198</sup>

There is also evidence that conservation and climate mitigation efforts are more successful when women, Indigenous peoples and local communities are guaranteed tenure rights and have greater access to and control over the land and forests they have customarily used or managed.<sup>199</sup> This is because security of tenure, including recognition of customary land ownership, gives reassurances to individuals and communities against dispossession, therefore facilitating their stronger involvement in forest management.<sup>200</sup> Security of tenure also facilitates the ability of communities to make changes to, and investments in, sustainable farming that can advance climate change adaptation and mitigation.<sup>201</sup> Access to land and security of tenure for women increases women's conservation efforts, raising their environmentally beneficial agricultural investments, including their willingness to engage in tree planting and sustainable soil management.<sup>202</sup> It also addresses long-term problems affecting Indigenous peoples, such as poverty.

Implementing participatory and Indigenous-led forest conservation measures is consistent with Uganda's commitment to the right to the environment. For example, The National Environment Act provides for the right to a clean and healthy environment and obliges each person to protect the environment. It also establishes NEMA to address environmental issues.<sup>203</sup>

Uganda is also a party to the UN Framework Convention on Climate Change (UNFCCC) and the 2015 Paris Agreement on climate change. Based on its commitment under these two agreements, and human rights treaties to which it is a party, Uganda has obligations to prevent or minimize the adverse impacts of climate change on people and the enjoyment of their human rights by taking adequate action to reduce greenhouse gas emissions. On 26 June 2018, Uganda signed the first Nationally Determined Contribution (NDC) Partnership Plan in Africa. While submitting its first NDC under the Paris Agreement in October 2015, Uganda committed to contribute to emission reduction in multidimensional ways, including through tree

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<sup>194</sup> The Constitution of Uganda, National Objectives and Directive Principles of State Policy, Article XXVII, the environment.

<sup>195</sup> United Nations Environment Programme World Conservation Monitoring Centre (UNEP-WCMC), "A toolkit to support conservation by indigenous peoples and local communities: Building capacity and sharing knowledge for Indigenous Peoples' and Community Conserved Territories and Areas (ICCAs)", 2013, [sgp.undp.org/images/ICCA\\_toolkit\\_FINAL\\_18may2013.pdf](http://sgp.undp.org/images/ICCA_toolkit_FINAL_18may2013.pdf), pp. 12 – 91.

<sup>196</sup> Thomson Reuters Foundation, "To conserve nature, protect human rights", 3 June 2021, [news.trust.org/item/20210603135601-wshfn/](https://news.trust.org/item/20210603135601-wshfn/)

<sup>197</sup> L. Porter-Bolland and others, "Community managed forests and forest protected areas: An assessment of their conservation effectiveness across the tropics", *Forest Ecology and Management*, 2012, p. 6.

<sup>198</sup> Rights and Resources Initiative, *Cornered by Protected Areas* (previously cited), p. 10.

<sup>199</sup> F. Seymour and others, *Evidence Linking Community-Level Tenure and Forest Condition: An Annotated Bibliography*, Climate and Land Use Alliance, 2014, p. iii; CLARA, *Missing pathways to 1.5°C* (previously cited), p. 5; IPCC, *Special Report on Land* (previously cited), Chapter 7, p. 667.

<sup>200</sup> Clientearth, *Communities at the Heart of Forest Management: How Can the Law Make a Difference?*, 2019, [documents.clientearth.org/wp-content/uploads/library/2019-02-01-communities-at-the-heart-of-forest-management-ce-en.pdf](https://documents.clientearth.org/wp-content/uploads/library/2019-02-01-communities-at-the-heart-of-forest-management-ce-en.pdf)

<sup>201</sup> IPCC, *Special Report on Climate Change and Land, Summary for Policymakers* (previously cited), p. 29; ActionAid, *Principles for a Just Transition in Agriculture* (previously cited), p. 11.

<sup>202</sup> IPCC, *Special Report on Climate Change and Land* (previously cited), Chapter 7, p. 719.

<sup>203</sup> Section 5, the National Environment Act, 1995.

planting, afforestation, and reforestation programmes.<sup>204</sup> The state submitted its fourth country engagement update report for 2020 in January 2021 and is due to submit another report in 2022.<sup>205</sup>

As the Ugandan government adopts and implements policies to end deforestation, restore natural forests and tackle climate change, it is important that authorities ensure that these measures do not result in human rights violations and must avoid using climate change mitigation measures to justify human rights violations. The Ugandan government should instead recognize the Benet's tenure rights in the restitution of forest land, alongside promoting and implementing conservation approaches that have positive effects for communities and nature.

The UN Department of Economic and Social Affairs (DESA) reiterates that forced evictions have negative consequences on the rights of Indigenous peoples and fail to recognize their natural custodianship of the environment and ecosystems. It proposed dialogue between states and Indigenous peoples to reach binding agreements that will acknowledge the legitimate interests of wildlife conservation but also recognize and guarantee communities' rights under UNDRIP.<sup>206</sup>

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<sup>204</sup> Ministry of Water and Environment, Republic of Uganda, "Uganda's intended nationally determined contribution (INDC) October 2015", [unfccc.int/sites/ndcstaging/PublishedDocuments/Uganda%20First/INDC%20Uganda%20final%20%2014%20October%20%202015.pdf](https://unfccc.int/sites/ndcstaging/PublishedDocuments/Uganda%20First/INDC%20Uganda%20final%20%2014%20October%20%202015.pdf), p. 6.

<sup>205</sup> Nationally Determined Contribution (NDC), "Uganda: Quarter 4 Country Engagement Update Report", 2020, [ndcpartnership.org/countries-map/country?iso=UGA](https://ndcpartnership.org/countries-map/country?iso=UGA)

<sup>206</sup> UN Department of Economic and Social Affairs, "Indigenous Peoples: Environment", [un.org/development/desa/indigenouspeoples/mandated-areas1/environment.html](https://un.org/development/desa/indigenouspeoples/mandated-areas1/environment.html)

# 5. HUMAN RIGHTS

## VIOLATIONS AGAINST THE

### BENET PEOPLE

“Since [ethnic] minorities occupy land based on precarious and unprotected land rights systems, they are exposed to constant evictions, removals and displacements. In some cases, government is non-compliant with the provisions of the Constitution which provide for prompt, adequate and fair compensation prior to taking of possession”<sup>207</sup>

Ministry of Lands, Housing and Urban Development, The Uganda National Land Policy

In 2004, the Uganda Land Alliance (ULA) filed a legal suit, *Uganda Land Alliance, Ltd. v. Uganda Wildlife Authority*,<sup>208</sup> in the High Court of Uganda, on behalf of the Benet community, for enforcement of their right to use their forest land. On 27 October 2005, in a judgment commonly referred to as the “Consent Judgment”, which was settled and agreed to by the affected Benet community, the UWA, and the Attorney General of Uganda, the court recognized the Benet as the historical and indigenous inhabitants of the forest that the government had classified a national park in 1993. The judgment underlined the need to “redress the imbalance” facing the Benet in education, infrastructure, health, and social services, provided for under Article 32 of Uganda’s Constitution. This implicitly acknowledged the community’s disadvantaged position compared to similar populations in the realization of these rights. Instead of enforcing the judgment, less than three years later, authorities forcibly evicted them without obtaining their free, prior, and informed consent, worsening the community’s access to the right to health and education that the court judgment indicated needed redressing.

Over 16 years later, the Ugandan government has disregarded these orders from the 2005 Consent Judgment, to take affirmative steps to redress imbalances experienced by Benet in education, infrastructure, health, and social services.<sup>209</sup> From broken pre-election promises, to outright rejection of court orders, the Benet lack both political and legal protections from the state and its entities. The 2008 forced evictions rendered hundreds of Indigenous Benet families homeless, increasingly marginalized, and vulnerable to human rights violations. This is contrary to the CESCR General Comment 7 on the right to adequate housing, which affirms that “evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.”<sup>210</sup> In the 2008 resettlement exercise which began six months after the forced evictions, UWA assured Benet families that the resettlement camps were a temporary six-month measure, before the state would relocate them to alternative land. Thirteen years later, the affected Benet still live in the “temporary camps”.<sup>211</sup>

Since 1983 the UWA has denied the Benet people access to their ancestral lands in Mount Elgon forest. This restriction has impacted their agropastoral lifestyle and other economic, social, and cultural practices such as the right to access cultural sites for rituals, fruit gathering, bee keeping, basket weaving and hunting and gathering.<sup>212</sup> The Benet people used to farm animals such as cows, sheep, and goats to produce foods such as milk and meat. They bartered baskets with non-Benet communities in the lower lands for additional

<sup>207</sup> Ministry of Lands, Housing and Urban Development, “The Uganda National Land Policy, Land Rights and Ethnic Minorities”, February 2013, p. 17. *Emphasis added.*

<sup>208</sup> *Uganda Land Alliance, Ltd. v. Uganda Wildlife Authority*, Miscellaneous Cause No. 0001 of 2004, High Court of Uganda at Mbale, 2005.

<sup>209</sup> *Uganda Land Alliance, Ltd. v. Uganda Wildlife Authority*, Miscellaneous Cause No. 0001 of 2004, High Court of Uganda at Mbale, 2005.

<sup>210</sup> General Comment 7 on the right to adequate housing – forced evictions, para. 16.

<sup>211</sup> Interviews in person with 50 affected Benet people, Mount Elgon, December 2019.

<sup>212</sup> Interviews in person with 10 affected Benet older persons, Mount Elgon and three NGO representatives, December 2019.

food products such as maize.<sup>213</sup> By denying the Benet people their cultural identity and socio-economic rights, including by restricting access to the forest, UWA is disregarding the Consent Judgment from Mbale High Court which recognizes the Benet community as the historical and Indigenous inhabitants of Benet sub-county, Yati Parish, Kabsekek village, Kween County, Kwoti Parish of Tingey county.<sup>214</sup> With the signing of the Consent Judgment, the Ugandan government acknowledged that the Benet people have a legal interest, that is they have the right to possess or use the land from where they were evicted. Such customary land rights are protected under Article 237 of the Constitution of Uganda and Section 3 of the Land Act.

## RIGHT TO LAND AND ADEQUATE HOUSING

Uganda is party to the African Charter that reiterates the duty of states to recognize and protect Indigenous people's rights to land and natural resources. Uganda is also party to the UDHR<sup>215</sup> and the ICESCR<sup>216</sup> that protect everyone's right to an adequate standard of living, including adequate housing. The ICESCR in its General Comment No. 4, observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. General Comment No. 7, observes that states must "... ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available"<sup>217</sup> to individuals evicted.

Despite these legal obligations, the Benet enjoy neither adequate housing, nor unimpeded access to their land.

*"I slept under a huge tree, about 20 people for one night. Rains were coming. We had to look for caves that were not occupied. We found Moguso caves. We were about 50-80 people in it. Men, women and children."*<sup>218</sup>

- Ndege Joseph, 55-year-old-man

After the 2008 forced evictions and before being moved into the temporary settlement camps six months later, many Benet people lived under trees, in caves and in IDP camps set up in Kwosir sub-county of Kween district<sup>219</sup> by NGOs, including ActionAid Uganda.<sup>220</sup> Well-wishers and NGOs distributed tents and other items to some families.<sup>221</sup> At least 51 families lived in caves after the 2008 evictions.<sup>222</sup> Many others lived with relatives or friends who were not affected by the forced evictions, until the temporary government resettlement exercise started in August 2008.<sup>223</sup>

The OPM reported that there were 490 households in the temporary camps as of 2011.<sup>224</sup> According to the OPM, 254 households/families, representing over 1,960 people, were resettled.<sup>225</sup> However, families in the camp increased, including as new families were formed, and according to UWA, 441 families remained in the temporary camps, as of 2017.<sup>226</sup> This number could have increased further since those who were children at the time of the eviction have grown up and started their own families. Amnesty International could not immediately establish why there is a significant increase in numbers listed to be resettled even after accounting for new families formed during that period.

<sup>213</sup> Interviews by phone with David Chemutai, Mande David, Kibet Cornel, and Chebet Mungech, community members and representatives of groups that represent the community, Mount Elgon, July and August 2021.

<sup>214</sup> *Uganda Land Alliance, Ltd. v. Uganda Wildlife Authority*, Miscellaneous Cause No. 0001 of 2004, High Court of Uganda at Mbale, 2005.

<sup>215</sup> Article 25 of the UDHR.

<sup>216</sup> Article 11 of the ICESCR.

<sup>217</sup> General Comment 7 on the right to adequate housing – forced evictions, para. 16.

<sup>218</sup> Interviews in person with Ndege Joseph, Mount Elgon, 13 December 2019.

<sup>219</sup> This land is still under UWA management.

<sup>220</sup> Interviews in person with 29 affected Benet people, Mount Elgon, December 2020.

<sup>221</sup> Interviews in person with 14 affected Benet people, Mount Elgon, December 2019.

<sup>222</sup> Interviews in person with 12 affected Benet people, Mount Elgon and follow up interviews by phone with three NGO representatives, December 2019, and March 2020.

<sup>223</sup> Interviews in person with nine affected Benet people, Mount Elgon, December 2019.


<sup>224</sup> Tarsis Bazana Kabwegyere, Minister in Charge of General Duties, OPM, "Statement to Parliament on resettlement of the Benet/Ndorobo landless people in Sebei sub-region", Art. 12 (ii), 11 December 2014.

<sup>225</sup> OPM, "Government statement on the resettlement of the landless Benet people in Sebei sub-region of Mt. Elgon", 31 January 2020, on file with Amnesty International.

<sup>226</sup> UWA, "Report on encroachment of Mt. Elgon National Park – the challenges and recommendations: A UWA report that analyses the problems encountered in management of Mt. Elgon National Park", March 2017.

United Nations Basic Principles and Guidelines on Development-Based Evictions and Displacement provide that “all persons, groups and communities have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education.”<sup>227</sup> It further provides that, no resettlement shall take place until such time as a comprehensive resettlement policy consistent with the guidelines and internationally recognized human rights principles is in place; that the right of affected persons, groups and communities to full and prior informed consent regarding relocation must be guaranteed and that governments must provide all necessary amenities, services and economic opportunities at the proposed site.<sup>228</sup>



 A typical household in Matupsoo Village, Bukwo District, Uganda. © Amnesty International

While the OPM set up a process to permanently resettle affected Benet in May 2014,<sup>229</sup> most Benet families have now lived in deplorable conditions in the temporary settlement for 13 years.<sup>230</sup> Benet interviewed told Amnesty International that they lived in semi-permanent structures that are weak and unsafe: this was verified by Amnesty International researchers who observed the huts in the temporary camps. Though the structure sizes vary, they are small mud huts constructed from sticks and mud, with the smallest having a conical foundation of about 4 metres diameter.<sup>231</sup> The structures seen have a pointed thatched roof, usually made with grass and other local materials, though a few are roofed with iron sheets. None of the structures

<sup>227</sup> UN Basic Principles and Guidelines on Development-based Evictions and Displacement, Annex 1, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18, 2007, para. 16.

<sup>228</sup> UN Basic Principles and Guidelines on Development-based Evictions and Displacement, Annex 1, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18, 2007, para. 56.

<sup>229</sup> According to the “Report on the Reverification of Land for Resettlement of the Benet People of Sebei Sub-Region on the Mt. Elgon National Park”, the land recovery team constituted was composed of Disaster Management Officers from the OPM, staff from UWA, physical planners and surveyors from Ministry of Lands, Housing and Urban Development. The team travelled to the affected area on 13 and 14 May 2014 where they held meetings with district leaders in Sebei sub-region, former land allocation committees of 1983 and 2008, and the then land users.

<sup>230</sup> Interviews in person with 40 affected Benet people, Mount Elgon, December 2020.

<sup>231</sup> Interviews by phone with David Chemutai, Mande David, Kibet Cornel, and Chebet Mungech, community members and representatives of groups that represent the community, July and August 2021.

observed had access to electricity and piped water. Many did not have toilets and those that did had a pit toilet constructed very close to the houses, usually not more than six metres from structures where Benet families sleep and cook.<sup>232</sup> Benet families use firewood for cooking, and lanterns that burn kerosene/paraffin for lighting at night.<sup>233</sup>

UWA officials have cautioned the Benet against constructing permanent structures.<sup>234</sup> Their inability to construct permanent homes has meant that many Benet continue to live with relatives and friends, especially those were allocated permanent land to resettle in previous land allocation. Amnesty International met Kirui Paul (not his real name) who said that after feeling that he was burdening his relatives since 2011, he returned to the forest despite the associated risks.<sup>235</sup>

None of the Benet evicted in 2008 have been compensated, including, for destruction of property and loss of livelihoods, 13 years later.<sup>236</sup> Uncertain land tenure has also meant that they cannot do anything meaningful with the land, such as build more permanent structures.<sup>237</sup>

After pressure from various institutions, including President Yoweri Museveni who wrote to the Prime Minister on 5 February 2011<sup>238</sup> and 27 August 2012<sup>239</sup>, in June 2014 the OPM confirmed that it had completed a verification exercise of the landless Benet and others.<sup>240</sup> The OPM stated that it had cross-checked names on resettlement lists from 2008 and 2011. According to the 2014 OPM report, the government conducted the verification exercise and lists were discussed in public meetings, where photographs and details of affected people were taken. Only 441 households – comprising of 316 Benet households from the temporary camps in Kween district and 125 Benet households from Bukwo district – were deemed eligible for permanent resettlement.<sup>241</sup> The government stated that the lists were later displayed on notice boards at the district headquarters of Kapchorwa, Kween and Bukwo and in the affected sub-county offices, for further scrutiny by affected people.<sup>242</sup> Affected Benet people told Amnesty International that they learnt about the list through representatives of NGO groups that support them.<sup>243</sup>

Several Benet people complained that they were missing from lists displayed on notice boards at districts. Others complained that the lists had names of non-Benet people, implying that the OPM favoured other communities requesting compensation.<sup>244</sup> Many who were under 18 at the time of the evictions or when the lists were prepared were counted as part of the parents' household and may be omitted. Seven of the affected people interviewed turned 18 years after the 2008 forced evictions.<sup>245</sup>

As previously noted, on 1 August 2020, the Permanent Secretary in the Ministry of Lands communicated a government directive to degazette 8,250 hectares of land, allocating this to the landless Benet for resettling the people whose land had been encroached upon by UWA.<sup>246</sup> Despite government authorities, including the President, creating substantial expectations for the Benet people, no permanent resettlement has yet taken place.<sup>247</sup>

In the African Union human rights system, two landmark rulings regarding the Ogiek in 2017 and Endorois in 2010, affirmed that Indigenous peoples have communal right to their ancestral land. In the Ogiek case,

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<sup>232</sup> Interviews by phone with David Chemutai, Mande David, Kibet Cornel, and Chebet Mungech, community members and representatives of groups that represent the community, July and August 2021.

<sup>233</sup> Interviews by phone with David Chemutai, Mande David, Kibet Cornel, and Chebet Mungech, community members and representatives of groups that represent the community, July and August 2021.

<sup>234</sup> Interviews in person with 40 affected Benet people, Mount Elgon, December 2019.

<sup>235</sup> Interview in person with an affected Benet person, Mount Elgon, 12 December 2019.

<sup>236</sup> Interviews in person with 54 affected Benet people, Mount Elgon, December 2019.

<sup>237</sup> Interviews in person with 12 affected Benet people, Mount Elgon, December 2019.

<sup>238</sup> President Yoweri Museveni, State House letter to the Prime Minister, 5 February 2011, on file with Amnesty International.

<sup>239</sup> President Yoweri Museveni, State House letter to the Prime Minister, 27 August 2012, on file with Amnesty International.

<sup>240</sup> While many Benet people have a genuine claim over land dating back to 1983, Amnesty International obtained sale documents indicating that some Benet people sold their land to members of other communities, including the Sabiny or to other Benet people, who offered to purchase their land, after the permanent resettlement exercises in 1983 and 1993. While Amnesty International has seen only 15 sale agreements to support this claim, it is understood there could be more, as interviews with state authorities' representatives and community members corroborated this information. One interviewee told Amnesty International that she had to sell her land to get money to pay school fees for her children.

<sup>241</sup> OPM, "A Report on the Reverification of Land for Resettlement of the Benet People of Sebei Sub-Region on the Mt. Elgon National Park", June 2014, p. 13, para 3.

<sup>242</sup> OPM, "A Report on the Reverification of Land for Resettlement of the Benet People of Sebei Sub-Region on the Mt. Elgon National Park", June 2014, p. 13, para 3.

<sup>243</sup> Interviews in person with 23 affected Benet people, Mount Elgon, December 2020.

<sup>244</sup> Interviews in person with nine affected Benet people, Mount Elgon, December 2019.

<sup>245</sup> Interviews in person with seven affected Benet people, Mount Elgon, December 2019.

<sup>246</sup> NTV Uganda, Dorcas Okalany Permanent Secretary in the Ministry of Land, 2 August 2020, video clip on file with Amnesty International.

<sup>247</sup> Interviews by phone with David Chemutai, Mande David, Kibet Cornel, and Chebet Mungech, community members and representatives of groups that represent the community, July and August 2021.



the African Court on Human and Peoples' Rights found that the Kenyan state had failed to make the case that preservation of the forest justified the forced eviction of the Ogiek, and that "the Ogiek population, has the right under Article 21 of the Charter to enjoy their right to development".<sup>248</sup> In the Endorois case, the African Commission on Human and Peoples' Rights required the Kenyan government to "recognise rights of ownership to the Endorois and reconstitute Endorois ancestral land."<sup>249</sup> The International Covenant on Economic, Social and Cultural Rights (ICESCR) obliges states to show that they are taking steps, using their maximum available resources, to protect the right to an adequate standard of living and to ensure non-discrimination.

## RIGHT TO CULTURE AND CULTURAL IDENTITY

*"In July 2019 UWA officers slashed my Irish potatoes crop from my farm, saying I was cultivating where I was not supposed to."*<sup>250</sup>

- Chebet Matayo, 39-year-old man

The Benet have distinct religious, spiritual and cultural practices that are closely linked with the Mount Elgon forest area. When interviewed by Amnesty International, older persons among the Benet said that they were led by prophets while living in the forest. Some of their cultural practices linked to the forest include twin childbirth rituals where the Benet would visit specific parts of the forest to celebrate the birth of twins. With the restrictions placed on their entry into the national park, the Benet cannot access these shrines, which are only found in their ancestral land.<sup>251</sup> The community also performed rituals in specific areas of the forest during circumcision of boys as a rite of passage.<sup>252</sup> The Benet elders reported that they also had elders and prophets who would go to selected caves in the forest for religious rituals; since the evictions, these rituals are no longer possible.<sup>253</sup>

The main sources of livelihood and food for the Benet people have also changed significantly. They are now forced to cultivate Irish potatoes, maize, and other crops, under very stringent conditions enforced by UWA, which prohibit them from cultivating land beyond certain designated areas.<sup>254</sup> The authorities have repeatedly destroyed their crops in areas undesignated for cultivation, mostly outside their assigned resettlement camps.<sup>255</sup> The wildlife authority's restrictions on movement into the national park has meant that the Benet can no longer access traditional water points, grazing sites, and salt lick areas.<sup>256</sup>

*"I had beehives in Yatui [an area in the forest] and I used to sell honey to have money. I also used to make and sell beehives. I have 12 children, only eight go to school since I don't make enough on the temporary land allocated to me to take all my children to school."*<sup>257</sup>

- Cheptalach Patrick, 41-year-old man

According to the Benet people, there are insufficient grounds to graze cattle. Some who have attempted to take their cattle back for grazing and to access the minerals at the salt lick areas have been arrested and had their cattle confiscated by UWA officials, despite a 2019 government policy for dealing with people and livestock found trespassing in UWA protected areas. The policy includes how to consult with communities on better ways to deal with confiscated animals.<sup>258</sup> It underscores the importance of UWA engagement with local communities and other stakeholders to secure their appreciation and long-term support for wildlife conservation.<sup>259</sup> It also details a resource access programme, which allows communities to access selected resources in protected areas. This access is enabled through negotiation and "signing of Resource Access

<sup>248</sup> *African Commission on Human and Peoples' Rights v. Republic of Kenya*, ACTHPR, Application No. 006/2012 (2017).

<sup>249</sup> *Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) v. Kenya*, ACHPR 276/2003 (2009), 25 November 2009, [achpr.org/sessions/descions?id=193](http://achpr.org/sessions/descions?id=193)

<sup>250</sup> Interview in person with Chebet Matayo, Mount Elgon, 13 December 2019.

<sup>251</sup> Interviews in person with 10 affected Benet older persons, Mount Elgon, December 2019.

<sup>252</sup> Interviews in person with 10 affected Benet older persons and three NGO representatives, Mount Elgon, December 2019.

<sup>253</sup> Interviews in person with 10 affected Benet older persons and three NGO representatives, Mount Elgon, December 2019.

<sup>254</sup> Interview in person with 12 affected Benet people, Mount Elgon, December 2019 and interviews by phone with David Chemutai, Mande David, Kibet Cornel, and Chebet Mungech, community members and representatives of groups that support the community, Mount Elgon and Kampala, July, and August 2021.

<sup>255</sup> Interviews in person with 28 affected Benet people, Mount Elgon, December 2019.

<sup>256</sup> Interviews in person with 12 affected Benet people, Mount Elgon, December 2019.


<sup>257</sup> Interview in person with Cheptalach Patrick, Mount Elgon, 10 December 2019. *Emphasis added.*

<sup>258</sup> UWA, Uganda Wildlife Authority (2019) Community Conservation Policy, [ugandawildlife.org/phocadownload/conservation-publications/Community-Conservation/Uganda\\_Wildlife\\_Authority\\_Community\\_Conservation\\_Policy.pdf](http://ugandawildlife.org/phocadownload/conservation-publications/Community-Conservation/Uganda_Wildlife_Authority_Community_Conservation_Policy.pdf)

<sup>259</sup> UWA, Uganda Wildlife Authority (2019) Community Conservation Policy, [ugandawildlife.org/phocadownload/conservation-publications/Community-Conservation/Uganda\\_Wildlife\\_Authority\\_Community\\_Conservation\\_Policy.pdf](http://ugandawildlife.org/phocadownload/conservation-publications/Community-Conservation/Uganda_Wildlife_Authority_Community_Conservation_Policy.pdf), p. 8.

Agreements or Memoranda of Understanding (MoU) which would enable communities to access resources such as fish, reeds, grass, poles, bamboo shoots, medicinal plants, water and bee hive placement sites among others.”<sup>260</sup> Despite this policy, Benet people are not consulted and are asked to pay fines for impounded animals.<sup>261</sup> Some such payments could amount to extortion since many Benet told Amnesty



 Benet beekeepers. © Amnesty International

International that UWA officers often do not produce formal receipts or invoices, and sometimes also demand bribes, as an alternative to formal fines.<sup>262</sup>

At least 33 Amnesty International interviews with Benet people included allegations of UWA officers impounding cattle and charging Benet people between UGX 10,000 (about USD 3) and UGX 20,000 (about USD 6) per animal to return them.<sup>263</sup> An NGO representative who has worked with the community for over 20 years and a Benet community leader separately told Amnesty International that UWA officers’ demand could go up to UGX 50,000 (about USD 15) for each animal impounded.<sup>264</sup>

In 2019, the new Uganda Wildlife Act introduced penalties for individuals whose animals are found in national parks. The penalties are not calculated per animal impounded. According to the law, the penalties for introducing a domestic animal, or letting a domestic animal stray, into a conservation area go up to UGX 10 million (about USD 3,000) with up to 20 years in prison, or both.<sup>265</sup> Cultural Survival, an international Indigenous Peoples’ rights organization, stated in a report prepared for Uganda’s third UPR review that park rangers “extracted money in exchange for returning Benet people’s livestock.”<sup>266</sup>

In January 2021 the Benet community, through its leadership, held marches to protest the impounding of animals and harassment by UWA rangers. They demanded the implementation of a previous statement made by Mike Mukula,<sup>267</sup> NRM Chairperson for eastern Uganda, on 26 December 2020, when he said that the government should allow the Indigenous Benet peoples’ regulated access to Mount Elgon National Park.<sup>268</sup> These protests led to a meeting between UWA and Benet

community leaders on 18 March 2021 where the leaders, Kween District Local Government officials and UWA officials verbally agreed to allow community members regulated access to Mount Elgon National Park.<sup>269</sup> Community members subsequently proposed a Memorandum of Understanding (MoU) to ensure

<sup>260</sup> UWA, Uganda Wildlife Authority (2019) Community Conservation Policy, [ugandawildlife.org/phocadownload/conservation-publications/Community-Conservation/Uganda\\_Wildlife\\_Authority\\_Community\\_Conservation\\_Policy.pdf](http://ugandawildlife.org/phocadownload/conservation-publications/Community-Conservation/Uganda_Wildlife_Authority_Community_Conservation_Policy.pdf), p. 9.

<sup>261</sup> UWA invoices obtained from Benet people in 2019 displaying amounts of money to be paid for animals impounded, on file with Amnesty International.

<sup>262</sup> Interviews in person with 25 affected Benet people, Mount Elgon, December 2019.

<sup>263</sup> Interviews in person with 33 affected Benet older persons, Mount Elgon, December 2019. Amnesty International obtained invoices from some affected persons, on file with Amnesty International.

<sup>264</sup> Interview in person with Mukhwana David, Programs Manager, Kapchorwa Civil society Organization Alliance, 10 December 2019; Interview in person with David Chemutai, Benet community leader, 17 May 2021.

<sup>265</sup> Director of Public Prosecutions, “Wildlife offences in Uganda: ‘Points to Prove’ – A Guide for Prosecutors and Investigators including the new Uganda Wildlife Act 2020, Sample Charges and Standard Operating Procedures”, 2019, [hawen.org/index.php/documents/12-wildlife-offences-in-uganda-points-to-prove/file](http://hawen.org/index.php/documents/12-wildlife-offences-in-uganda-points-to-prove/file)

<sup>266</sup> “Cultural Survival Observations on the State of Indigenous Human Rights in Uganda Prepared for HRC: 3rd Cycle of Universal Periodic Review of Uganda”, July 2021, [culturalsurvival.org/sites/default/files/CS%20UPR%20submission\\_Uganda%20July%2015%202021.pdf](http://culturalsurvival.org/sites/default/files/CS%20UPR%20submission_Uganda%20July%2015%202021.pdf), para. 8.4.

<sup>267</sup> Three interviewed Benet community leaders reported having captured an audio recording of Mike Mukula, Eastern Uganda Chairperson of the National Resistance Movement (NRM), making an address to the Benet Indigenous Peoples at Kworsir Girls Secondary School, Eastern Uganda, 26 December 2020.

<sup>268</sup> Interviews by phone with three community leaders and two NGO leaders, January, February, March, and May 2021.

<sup>269</sup> Interviews by phone with three community leaders and two NGO leaders, January, February, March, and May 2021.

regulated access, including for cattle grazing.<sup>270</sup> UWA declined to sign the MoU and on 12 April 2021, going against the 2019 policy, instead issued a notice “reiterating that grazing of livestock within the Park is an illegal act under Sections 29(e) of the Uganda Wildlife Act, 2019.”<sup>271</sup>

The allegations about UWA officials impounding cattle and charging hefty fines has also been previously documented. On 5 August 2016, a group representing the Benet community, the Mount Elgon Benet Indigenous Ogiek Group, wrote to President Museveni expressing grievances over human rights violations by UWA officers, including rape, use of live ammunition against Benet people, impounding cattle and charging hefty fines for their release. They listed 347 cases of individuals who had to pay undue fines to collect their animals from UWA confinement between 2008 and August 2016.<sup>272</sup> The lobby group calculated the fines totalled UGX 39,859,000 (about USD 10,770).<sup>273</sup>

Several Benet people interviewed by Amnesty International stated that UWA officials also demand pre-payments of unspecified amounts to allow individuals access to Mount Elgon National Park to graze their animals. According to those interviewed, UWA officials receiving these monies do not provide invoices for community members who make those payments.<sup>274</sup>

## RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH

*“There are no roads. We have to carry critically sick people in chairs or wheelbarrows when taking them to hospital.”<sup>275</sup>*

- Chemos David, 34-year-old man

Though the Ministry of Health reported plans to abolish user fees for public healthcare in 2001, Ugandans still pay for curative, preventive, rehabilitative and promotive health services.<sup>276</sup> While Benet people are entitled to access these free health services, facilities available in their area are not equipped to meet their health care needs and are physically difficult to get to.<sup>277</sup>

The temporary resettlement camps are around 1,900 metres (6,200 feet) above sea level, with over 300 metres between the highest and lowest points of the land.<sup>278</sup> The camps are located high above the surrounding areas where other communities settled. As a result, the Benet living in these camps need to go down dangerous and steep hillsides to access many essential services. Even accessing the nearest health facility is challenging. The main form of transport uphill are donkeys. People must also climb down at least 300 metres to access a motorable road to use an ambulance. The only certain commercial public transport up the mountain is motorcycles. However, Amnesty International observed first-hand how motorcycles are not reliable during rainy and muddy seasons.<sup>279</sup> Even the motorable roads are impenetrable for most motor vehicles, including four-wheel drives, because of the terrain and mud when it rains. It can rain at any time of the year in Mount Elgon and torrential rain has previously washed away people's homes and crops.<sup>280</sup>

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<sup>270</sup> Memorandum of Understanding between Uganda Wildlife Authority and Kween District Local Government, March 2021, on file with Amnesty International.

<sup>271</sup> UWA, Letter to the District Chairperson LC V, Kween District Local Government, 12 April 2021, on file with Amnesty International.

<sup>272</sup> Mt. Elgon Benet Indigenous Ogiek Group, Letter to President Yoweri Museveni, 5 August 2016, on file with Amnesty International.

<sup>273</sup> Mt. Elgon Benet Indigenous Ogiek Group, Letter to President Yoweri Museveni, 5 August 2016, on file with Amnesty International.

<sup>274</sup> Interview in person with Mukhwana David, Programs Manager, Kapchorwa Civil society Organization Alliance, 10 December 2019; Interview by phone with David Chemutai, Benet community leader, 17 May 2021.

<sup>275</sup> Interview in person with Chemos David, Mount Elgon, 19 December 2019.

<sup>276</sup> Ministry of Health, “Health Sector Strategic Plan III: 2020/11-2014/15”, 2015, p. 5.

<sup>277</sup> Interviews in person with 13 affected Benet people, Mount Elgon, December 2019.

<sup>278</sup> Kween District, “Overview: 2021”, [kween.go.ug/lg/overview](http://kween.go.ug/lg/overview)

<sup>279</sup> Visit to Mount Elgon, December 2019 and March 2020.

<sup>280</sup> Uganda National Meteorological Authority, “The State of Climate of Uganda in 2018”, July 2019, pp. 11-14, [unma.go.ug/download/state-of-climate-2018/?wpdmdl=731&refresh=609c3389613bc1620849545](http://unma.go.ug/download/state-of-climate-2018/?wpdmdl=731&refresh=609c3389613bc1620849545), on file with Amnesty International.



Likil Health Centre II, Kapchorwa District, Uganda © Amnesty International

Amnesty International verified the distance between the temporary settlements and seven health facilities where Benet people report seeking treatment. Of these seven health facilities, the closest, a level two health centre (HCII), is about two kilometres away. The Ugandan Ministry of Health also noted this in its response to the summary of our research findings. With the lack of access to public transport and the lack of motorable roads, the only way the Benet can access this healthcare facility is by foot. HCII is a dispensary facility supposed to be equipped to treat common diseases like malaria. They only provide outpatient care and community outreach services. It is headed by an enrolled nurse, working with a midwife, two nursing assistants and a health assistant treating common diseases, and offering antenatal care and immunization.<sup>281</sup> Benet people complain that the HCII facility in their area is not well-equipped, without suitable medical equipment, insufficient medicine, and not enough medical personnel, and that the clinic provides less than what it is meant to.<sup>282</sup> However, according to the Ugandan Ministry of Health, a HCII should be equipped to “take care of around 75% of the health problems” of a community that it serves.<sup>283</sup>

The closest main hospitals to the temporary settlement camps are Bukwo General Hospital and Kapchorwa Hospital, about 14 kilometres away. The Kapchorwa Main Referral Hospital is over 40 kilometres away. Mbale and Kumi Orthopaedic hospitals are further away: 110 and 170 kilometres respectively. Kumi Orthopaedic Hospital is the only specialist hospital that can attend to bone and joint ailments. Benet community members who suffered brutalities such as shootings from UWA reported that they were treated at Kumi Orthopaedic Hospital.<sup>284</sup>

In 2016, the Ministry of Health developed a framework for improving the quality of healthcare including improved access to health care. The Ministry of Health stated its intention to deliver “healthcare that is timely, geographically reasonable and provided in a setting where skills and resources are appropriate to need.”<sup>285</sup>

Amnesty International found that the closest level three health centre (HCIII), which serves 10,000 people, in addition to HCII services, and provides in-patient, simple diagnostic, and maternal health services, is around 14 kilometres from the temporary camps. It is managed by a clinical officer,<sup>286</sup> a role established to assist in the provision of diagnosis and treatment of patients in primary healthcare to rural communities.<sup>287</sup> In addition to clinical work, clinical officers are also often responsible for administration of centres.<sup>288</sup> Clinical officers in Uganda are categorized as “allied health professionals”, a term used to describe the wide range of health professionals who are not doctors or nurses.<sup>289</sup>

<sup>281</sup> Ministry of Health, “Health Sector Strategic Plan III: 2020/11-2014/15”, 2015, pp. 4-5.

<sup>282</sup> Interviews in person with 39 affected Benet people, Mount Elgon, December 2019.

<sup>283</sup> Ministry of Health, “Sector Grant and Budget Guidelines to Health Facilities II, III and IV, and General Hospitals - non-wage recurrent grants for FY 2020/2021”, 2020, p. 7, [budget.go.ug/sites/default/files/HEALTH%20FACILITY%20GUIDELINES.pdf](http://budget.go.ug/sites/default/files/HEALTH%20FACILITY%20GUIDELINES.pdf)

<sup>284</sup> Interviews in person with 11 affected Benet people, Mount Elgon, December 2019.

<sup>285</sup> Ministry of Health, “Health Sector Quality Improvement Framework and Strategic Plan: 2015/16 – 2019/20”, June 2016, p.2.

<sup>286</sup> Ministry of Health, “Health Sector Strategic Plan III: 2020/11-2014/15”, 2015, p. 4.

<sup>287</sup> Makerere Medical School, “Bridging the Health Gap in Uganda: The Surgical Role of the Clinical Officer”, *African Health Sciences*, v.5(1) 2005 MarPMC1831898, March 2005, available at [www.ncbi.nlm.nih.gov/pmc/articles/PMC1831898/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1831898/)

<sup>288</sup> Makerere Medical School, “Bridging the Health Gap in Uganda: The Surgical Role of the Clinical Officer”, *African Health Sciences*, v.5(1) 2005 MarPMC1831898, March 2005, available at [www.ncbi.nlm.nih.gov/pmc/articles/PMC1831898/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1831898/)

<sup>289</sup> Section 9 of the Allied Health Professionals Act Cap. 268.



There is only one level four health centre (HCIV) that offers pre- and post-natal services.<sup>290</sup> While treatment in the health facility is free of charge, patients sometimes do not find basic diagnostics such as laboratory blood and urine tests.<sup>291</sup> Patients are then sent to major health centres outside the area to do diagnosis that requires laboratory tests.<sup>292</sup> Lack of capacity to offer specialized services, coupled with the lack of necessary items and systems/structures for offering the services such as doctors, diagnostic equipment and medicine, makes people prefer to travel to Kapchorwa Hospital, more than 40 kilometres away.<sup>293</sup> According to the Ministry of Health, a HCIV should target a population of a 100,000 people and be able to provide preventive, promotive, outpatient, curative, maternity, and inpatient health services. The facilities are also supposed to deliver emergency surgery, blood transfusion and laboratory services<sup>294</sup>

The level I to IV clinics available to the Benet also have fewer facilities and health care personnel than they are meant to have according to the Ugandan Ministry of Health guidelines for designation, establishment and upgrading of health units.<sup>295</sup>



One of the poor roads in Mount Elgon region © Amnesty International

Almost every Benet person that Amnesty International interviewed cited the distance to health clinics, difficulties finding transport, poor roads, and the costs of travel as major barriers to accessing treatment when sick. Three Benet people interviewed told Amnesty International that sick Benet people have died while being carried by people on their backs through the impassable roads, trying to get them to health facilities.<sup>296</sup>

***“In March 2019, Chekwer Moses was unwell. He died when neighbours were carrying him to the hospital.”<sup>297</sup>***

- Chepkemioi Sisco, 21-year-old-man

<sup>290</sup> Ministry of Health, “Health Sector Strategic Plan III: 2020/11-2014/15”, 2015, p. 4.

<sup>291</sup> Interview in person with a nurse, Mount Elgon, 9 March 2020.

<sup>292</sup> Interviews in person with 13 affected Benet people, Mount Elgon, December 2019.

<sup>293</sup> Interviews in person with 13 affected Benet people, Mount Elgon, December 2019.

<sup>294</sup> Ministry of Health, “Guidelines for Designation, Establishment and Upgrading of Health Units”, 2011, on file with Amnesty International, p. 6.

<sup>295</sup> Ministry of Health, “Guidelines for Designation, Establishment and Upgrading of Health Units”, 2011, on file with Amnesty International.

<sup>296</sup> Interviews in person with three affected Benet people, Mount Elgon, December 2019.

<sup>297</sup> Interview in person with Chepkemioi Sisco, Mount Elgon, 8 December 2019.

Uganda is a state party to the International Covenant on Economic Social and Cultural Rights. The CESCR has reaffirmed that “[h]ealth is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.”<sup>298</sup> The CESCR identifies the right to health to extend, beyond timely and appropriate health care, to the underlying determinants of health including access to safe and potable water and adequate sanitation and housing.<sup>299</sup> The forced evictions of the Benet, their resettlement for several years into temporary camps with deplorable housing conditions, lack of clean water and unhygienic sanitary facilities, violates their right to health.

Article 16 of the African Charter provides that “... every individual shall have the right to enjoy the best attainable state of physical and mental health” and obliges state parties to take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.<sup>300</sup> In the CESCR definition of accessibility of health facilities it notes that this has to include physical accessibility where health facilities, goods and services are available within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, among others.<sup>301</sup>

The CESCR also requires that health goods and services are also scientifically and medically appropriate and of good quality, including health facilities being staffed with skilled medical personnel, and providing scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.<sup>302</sup> Most Benet people told Amnesty International that they do not go to government health facilities in their locality<sup>303</sup> because they feel that the health centres often do not have the enough medications for ailments, including painkillers.<sup>304</sup> None of the government healthcare facilities near the temporary camps have diagnostic facilities such as testing laboratories.<sup>305</sup>

In identifying and exploring the key features of an effective, integrated, and accessible health system from the perspective of the right to health, the UN Special Rapporteur on the Right to Health finds that, “a health system must be respectful of cultural difference. Health workers, for example, should be sensitive to issues of ethnicity and culture. Also, a health system is required to consider traditional preventive care, healing practices and medicines. Strategies should be in place to encourage and facilitate indigenous people, for example, to study medicine and public health. Moreover, training in some traditional medical practices should also be encouraged.”<sup>306</sup>

Benet women informed Amnesty International that they preferred using traditional birth attendants (TBAs) while giving birth, unless or until they encounter complications.<sup>307</sup> Many Benet persons who spoke to Amnesty International did not attribute this to inaccessibility of maternal health facilities, but rather because that was the practice they were used to. While TBAs can contribute to efforts to reduce maternal morbidity and mortality, poorly trained TBAs might intervene in ways that are damaging to women’s health.<sup>308</sup>

***“I have delivered all my 9 children at home! All my children and their wives too [deliver at home].”<sup>309</sup>***

- Kokop Makas, 85-year-old woman

Some Benet women reported that they choose to use TBAs to deliver their babies since they cannot afford the associated costs for healthcare charged in government and private health facilities. Many quoted the distance as the reason they do not go to hospital. At least 15 women told Amnesty International that they have delivered all their children at home with TBAs.<sup>310</sup>

<sup>298</sup> CESCR, General Comment 14 on the right to the highest attainable standard of health.

<sup>299</sup> CESCR General Comment 14 on the right to the highest attainable standard of health.

<sup>300</sup> Article 16, African Charter.

<sup>301</sup> CESCR, General Comment 14 on the right to the highest attainable standard of health.

<sup>302</sup> CESCR, General Comment 14 on the right to the highest attainable standard of health.

<sup>303</sup> Interviews in person with 53 affected Benet people, Mount Elgon, December 2019.

<sup>304</sup> Interviews in person with 29 affected Benet people, Mount Elgon, December 2019.

<sup>305</sup> Interview in person with a nurse, Mount Elgon, 9 March 2020.

<sup>306</sup> Paul Hunt, “Promotion and protection of all human rights, civil, political, economic, social, and cultural rights: Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”, A/HRC/7/11, 31 January 2008, para. 44.

<sup>307</sup> Interviews in person with 10 affected Benet people, Mount Elgon, December 2019.

<sup>308</sup> World Health Organization, United Nations Population Fund & United Nations Children’s Fund (UNICEF), “Traditional birth attendants: A Joint WHO/UNFPA/UNICEF Statement”, 1992, [apps.who.int/iris/handle/10665/38994](https://apps.who.int/iris/handle/10665/38994)

<sup>309</sup> Interview in person with Kokop Makas, Mount Elgon, 12 December 2019.

<sup>310</sup> Interviews in person with 15 affected Benet people, Mount Elgon. December 2019.

*"I had complications with one of pregnancies. I had to walk to Kwosir Health Centre while bleeding."*<sup>311</sup>

- Chemutai Eunice, 27-year-old woman

General Comment 3 on the African Charter protects the right to a dignified life by requiring a broad interpretation of states' responsibilities to protect life, including the "responsibility to address more chronic yet pervasive threats to life, for example with respect to preventable maternal mortality, by establishing functioning health systems."<sup>312</sup>

Uganda is also a state party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In the CEDAW General Recommendation 24, "...state parties shall ensure to women appropriate services in connection with pregnancy, confinement, and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation."<sup>313</sup>

Article 14 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) guarantees women's right to health, including sexual and reproductive health. It provides for, "... the right to adequate, affordable health services at reasonable distances, including information, education and communication programs for women, especially those living in rural areas."<sup>314</sup>

## RIGHT TO WATER AND SANITATION



 ↑ Kaptang River, Matuspoo Village, Bukwo District, Uganda. © Amnesty International

<sup>311</sup> Interview in person with Chemutai Eunice, Mount Elgon, 9 December 2019.

<sup>312</sup> General Comment 3 on the African Charter focusing on the right to life, Article 3, November 2015.

<sup>313</sup> CEDAW, General Recommendation 24 on Article 12 of the Convention (Women and Health), para. 2.

<sup>314</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol), Article 14.2(a).

Mount Elgon is a water catchment area for eastern Uganda and western Kenya where farming, the mainstay of the economy, relies on rainfall for water.<sup>315</sup> While sufficient water is available to Benet, Amnesty International observed that Benet walk an average of 100 metres from their homes to a source of water, in this case, surface water bodies such as rivers, streams, or groundwater. Those interviewed told Amnesty International that they do not regularly use toilets since there are only a few pit latrines available, scattered throughout the households.<sup>316</sup> Community members practice open defecation and eliminate faecal waste in farms and, at times, as observed by Amnesty International, in hidden rocks close to, or in, streams of water. This practice is harmful to their health and the health of communities that access water downstream.

In 2008, the UHRC reported that Benet living in Cheberen parish had no protected water source and collected water at least 400 metres from where they lived: "...Consequently, it is hard for them to access clean water."<sup>317</sup> This situation had not changed when Amnesty International visited the area. Amnesty International observed how waste disposal in water upstream can impact communities downstream, where women and girls fetch water for domestic use. The Benet people living in the lowland face increased risks of food and water-borne diseases caused by unsafe water and poor sanitation and hygiene practices.

The Constitution of Uganda provides that every Ugandan has a right to a clean and healthy environment.<sup>318</sup> The National Water and Sewerage Corporation Act, the Local Government Act, and the National Water Policy, all guarantee access to clean water for all. Yet the Ugandan government provided resettlement sites for Benet people without proper sanitation and water.

The UNGA Resolution on the human right to water and sanitation provides that the right to safe and clean drinking water and sanitation is a human right that is essential for the full enjoyment of life and all human rights.<sup>319</sup> Lack of access to safe, sufficient and affordable water, sanitation and hygiene facilities have a devastating effect on the health, dignity and prosperity of the Benet people and other communities in the area, and has significant impact on the realization of other human rights. This resolution further "...calls upon states and international organizations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all."<sup>320</sup>

The CESCR General Comment 14, while stating the normative content of Article 12 of the ICESCR, interprets the right to health as an, "...inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health."<sup>321</sup>

## RIGHT TO EDUCATION

*"My children are wasting time in school. Those with money take their children to private boarding schools where there is quality education. My children will stop going to school after primary school since they may opt to get married."*<sup>322</sup>

- Kokop Emmanuel, 51-year-old woman

Article 30 of the Constitution of Uganda guarantees all persons the right to education. Article 17 of the African Charter also guarantees the right to education and obliges states to ensure that everyone has access to education. Article 13 of the ICESCR recognizes the right to education for all. Furthermore, the CESCR recognizes education as both a human right and an indispensable means of realizing other rights.<sup>323</sup> It also

<sup>315</sup> UWA, 'Report on encroachment of Mt. Elgon National Park – the challenges and recommendations: A UWA report that analyses the problems encountered in management of Mt. Elgon National Park', March 2017.

<sup>316</sup> Interview in person with five affected Benet people and three NGO representatives, Mount Elgon, March 2020.

<sup>317</sup> UHRC, 11th Annual Report of the Uganda Human Rights Commission, 2008, on file with Amnesty International, p. 89.

<sup>318</sup> Article 39, Constitution of Uganda.

<sup>319</sup> General Assembly, "Human right to water and sanitation", Resolution 64/292, A/RES/64/292, 3 August 2010, para. 1.

<sup>320</sup> General Assembly, "Human right to water and sanitation", Resolution 64/292, A/RES/64/292, 3 August 2010, para. 2.

<sup>321</sup> CESCR, General Comment 14 on the right to the highest attainable standard of health.

<sup>322</sup> Interview in person with Kokop Emmanuel, Mount Elgon, 8 December 2019.

<sup>323</sup> CESCR, General Comment 13 on the right to education.



clarifies that the right to education encompasses the right to free and compulsory primary education, and increasing access to secondary, technical, vocational, and higher education.<sup>324</sup>

The Ugandan government introduced free universal primary education in 1997 and universal secondary education in 2007. According to the Ministry of Education and Sports, only 20% of secondary schools in Uganda are government owned. 80% of secondary schools are owned by either the private sector (69%) or communities (11%).<sup>325</sup> Government schools, which are on average larger, cater for more than 50% of enrolments.<sup>326</sup> Since Uganda established universal primary education policies, it enhanced access and improved enrollment in the country.<sup>327</sup> Private schools also charge school fees which discourages many from taking their children to private schools. In public schools, class sizes are regularly more than 100 pupils, and educational equipment is basic.

There are also other costs, for both state and private, such as cost of uniforms, books, writing equipment and meals.<sup>328</sup> Despite free universal primary education, many Benet parents cannot afford to pay the UGX 7,500 (about USD 2) per child monthly fee that many schools charge for the school feeding program.<sup>329</sup> As a result, the schools do not give these children school meals.<sup>330</sup> Many Benet do not take their children to school because of these costs.

*“My [seven] children don’t go to school. I have no money to educate them.”*<sup>331</sup>

- Kwaroria Alex, 38-year-old man

Amnesty International visited the following primary schools in the locality of the Benet temporary settlements: Benet Primary School, Kwasir Primary School, Mengya Parents Boarding Primary School, Mengya Primary School, Piswa Primary School, Kere Primary School, and Yatui Primary School. Of the seven schools Amnesty International visited, one is privately owned, one is community owned, while the other five are government owned. The schools visited represent one eighth of the 40 schools in the Kween district where the Benet live.<sup>332</sup>

Amnesty International verified that out of the four secondary schools and seven primary schools, only two have adequate infrastructure such as desks and sufficient classrooms for learning. Of the two, one is a private primary school and the other is a girls-only secondary school constructed to promote stopping female genital mutilation (FGM). 13 parents interviewed told Amnesty International that they cannot afford to enrol their children in either of the two schools.<sup>333</sup> The other public schools had damaged classrooms and walls. In some classrooms, many chairs and desks were broken, and in other classrooms there were no desks or chairs for learners. Pupils sit on the ground.

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<sup>324</sup> CESCR, General Comment 13 on the right to education.

<sup>325</sup> Ministry of Education and Sports, “Uganda Secondary Education Expansion Project (USEEP): Social Assessment”, updated 15 April 2020.

<sup>326</sup> Ministry of Education and Sports, “Uganda Secondary Education Expansion Project (USEEP): Social Assessment”, updated 15 April 2020.

<sup>327</sup> APHRC, “The quality of Education in Uganda: A Case of Iganga and Mayuge Districts”, May 2016, [aphrc.org/wp-content/uploads/2019/07/FINAL-FILE-Design-draft-8-Education-IV-big-report-25th-August-2016.pdf](http://aphrc.org/wp-content/uploads/2019/07/FINAL-FILE-Design-draft-8-Education-IV-big-report-25th-August-2016.pdf)

<sup>328</sup> “Helping Uganda Schools”, *International Teacher Magazine*, 2020, [consiliumeducation.com/itm/2021/01/01/hugs/](https://consiliumeducation.com/itm/2021/01/01/hugs/)

<sup>329</sup> Interviews in person with Benet parents, two teachers and a former board of governor member of a primary school, December 2019, and March 2020.

<sup>330</sup> Interviews in person with Benet parents, two teachers and a former board of governor member of a primary school, December 2019, and March 2020.

<sup>331</sup> Interview in person with Kwaroria Alex, Mount Elgon, 11 December 2019. *Emphasis added.*

<sup>332</sup> Ministry of Education & Sports, “List of All Primary and Secondary Schools in Uganda and Enrolment”, 7 January 2020.

<sup>333</sup> Interviews in person with Benet parents, two teachers and a former board of governor member of a primary school, December 2019, and March 2020.



One of the primary schools in the locality of the Benet temporary settlements © Amnesty International

The poor infrastructure in these schools affects quality education. The CESCR provides that part of a state's obligation in implementing the right to education is to ensure that "[f]unctioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the state party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water..."<sup>334</sup>

The United Nations Children's Fund (UNICEF) advocates for stronger collaboration between education and water, sanitation, and hygiene sectors, to improve water and sanitation in schools, as well as nutritional interventions and strengthening of the school curriculum, as central to quality education.<sup>335</sup> In its manual for rights-based, child-friendly schools, UNICEF recommends a healthy, hygienic, and safe learning environment, with adequate water and sanitation facilities and healthy classrooms.<sup>336</sup> The CESCR has made clear that "... education must be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a "distance learning" programme)."<sup>337</sup>

While some of the remaining primary and secondary schools are at least two kilometres from the temporary settlement camps, accessibility is challenging. The roads from the resettlement sites to these schools are often impenetrable for most motor vehicles because of the terrain and mud. There is no public transport in the area.<sup>338</sup> In 2008, the UHRC noted "that the Benet community living in Cheberen had two schools, namely Chemanga Senior Secondary School and Kapchekwop Secondary School. But these schools were quite a distance away from the communities they were meant to serve. Students who were unable to go to

<sup>334</sup> CESCR, General Comment 13 on the right to education.

<sup>335</sup> UNICEF, "Eastern and Southern Africa: Quality education and learning – UNICEF advocates for quality learning for every girl and boy, especially those in greatest danger of being left behind", [unicef.org/esa/education](https://www.unicef.org/esa/education)

<sup>336</sup> UNICEF, "Child-Friendly Schools Manual", March 2009, [unicef.org/media/66486/file/Child-Friendly-Schools-Manual.pdf](https://www.unicef.org/media/66486/file/Child-Friendly-Schools-Manual.pdf)

<sup>337</sup> CESCR, General Comment 13 on the right to education.

<sup>338</sup> Interviews in person with Benet parents, two teachers and a former board of governor member of a primary school, December 2019, and March 2020.

these schools were exploited to provide cheap labour on other people's plantations.”<sup>339</sup> While Amnesty International could not readily ascertain this, we observed school going age boys looking after cattle and transporting farm produce using donkeys, and girls collecting firewood during school time.

Poverty and cultural practices have forced many girls and boys to drop out before completing primary education. Many girls leave school after turning 12 to be married off.<sup>340</sup> Many boys exit school to work on farms and look after animals.<sup>341</sup> Based on the 2014 national population and housing census in the larger Kween district where the temporary camps are located, the primary school attendance rate was 84.3% for boys, 87.9% for girls, and 86.0% in total. At the secondary school level, this number drops significantly: from 86.0% who attend primary education to 38.9% who attend secondary education,<sup>342</sup> 37.8% male and 40.1% female.

According to the UN Department of Economic and Social Affairs (DESA), Indigenous peoples' children are likely to arrive at school hungry, ill, and tired, and ethnic and cultural discrimination at schools is also a major obstacle to equal access to education, causing poor performance and higher dropout rates. The DESA notes that “... Indigenous girls, in particular, experience difficult problems related to unfriendly school environments, gender discrimination, school-based violence and sometimes sexual abuse, all of which contribute to high dropout rates.”<sup>343</sup>

The Ministry of Education and Sports notes that “[g]iven the circumstances of the Ik, Tepeth and Benet, it is almost impossible to raise the number of school going age students for lower secondary education proportionate to their population unless efforts are made at the foundation level to enrol all eligible children, keep them in primary school and successfully complete P.7<sup>344</sup> in order to boost their secondary education. It is therefore recommended that greater efforts be made at primary level as a step-by-step establishment of a secondary school in the community is undertaken.”<sup>345</sup>

This confirms the Ugandan government's awareness that Benet children are disadvantaged compared to much of the rest of the country in accessing education, especially universal primary education.

## RIGHTS TO LIFE, LIBERTY, SAFETY AND DIGNITY

Amnesty International documented allegations of killings, unlawful use of force and firearms, including shootings, beatings, torture and other cruel, inhuman and degrading treatment, involving UWA officers. The Benet community members affected, in some cases the elders, told Amnesty International that they reported these cases to the UPF, to the UHRC,<sup>346</sup> and to political leaders, including President Museveni.<sup>347</sup> In October 2020, *The Independent*, a Ugandan publication, reported that the Chief Warden of Mount Elgon National Park dismissed allegations of torture by rangers, but stated that reported incidences could be attributed to a few errant rangers not sanctioned by UWA.<sup>348</sup>

### UNLAWFUL USE OF FORCE AND FIREARMS, TORTURE AND OTHER ILL-TREATMENT

*“UWA disturbs people going for firewood. Women who have been raped [by UWA officers] sometimes keep quiet for fear that their husbands would send them away.”<sup>349</sup>*

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<sup>339</sup> UHRC, “11th Annual Report of the Uganda Human Rights Commission”, 2008, on file with Amnesty International, p. 86. *Emphasis added.*

<sup>340</sup> Interviews in person with Benet parents, two teachers and a former board of governor member of a primary school, December 2019, and March 2020.

<sup>341</sup> Interviews by phone with David Chemutai, Mande David, Kibet Cornel, and Chebet Mungech, community members and representatives of groups that represent the community, July and August 2021.

<sup>342</sup> Uganda Bureau of Statistics (UBOS), “Education: A Means for Population Transformation: The National Population and Housing Census 2014”, November 2017.

<sup>343</sup> UN Department of Economic and Social Affairs, ‘Indigenous Peoples: Education,’ [un.org/development/desa/indigenouspeoples/mandated-areas1/education.html](https://un.org/development/desa/indigenouspeoples/mandated-areas1/education.html)

<sup>344</sup> In Uganda, primary school has an official entry age of six and a duration of seven grades; P.7 is the seventh grade.

<sup>345</sup> Ministry of Education and Sports, “Uganda Secondary Education Expansion Project (USEEP): Social Assessment”, updated 15 April 2020.

<sup>346</sup> 21 government documents including summons, internal memos, correspondences, and letters between 2009 and 2017 about the state of the Benet land issues, on file with Amnesty International.

<sup>347</sup> 21 government documents including summons, internal memos, correspondences, and letters between 2009 and 2017 about the state of the Benet land issues, on file with Amnesty International.

<sup>348</sup> “Benet residents battle disability meted by UWA”, *The Independent*, 26 October 2020, [independent.co.ug/benet-residents-battle-disability-meted-by-uwa/](https://independent.co.ug/benet-residents-battle-disability-meted-by-uwa/)

<sup>349</sup> Interview in person with Kokop Geoffrey, Mount Elgon, 11 December 2019.

- Kokop Geoffrey, 75-year-old male

Amnesty International interviewed 26 people who claimed that UWA officers beat them between 2008 and 2019 after finding them inside the national park. Six had medical reports detailing injuries consistent with police reports made to the UPF.<sup>350</sup> More than 10 others did not have medical evidence and stated that they had not sought treatment or had lost medical records.<sup>351</sup> Many people interviewed said that they did not report their cases to the UPF since the police had not acted on previous cases reported.<sup>352</sup> The NGO Cultural Survival reported that “since April 2020, park rangers have allegedly shot seven Benet community members and they have also raped and otherwise attacked Benet people.”<sup>353</sup>

On 24 August 2020, community members took an unconscious 36-year-old woman, Janet Sumbule, to Benet Health Centre (HCIII) and reported to Kwasir Police Post that she was assaulted by an UWA officer, using a gun.<sup>354</sup> According to the medical report, Janet Sumbule was brought into the health facility while unconscious with injuries to her head, neck, abdomen and back. The examining medical officer referred her to Kapchorwa General Hospital for management and further investigation.<sup>355</sup> Community representatives told Amnesty International that no arrests have been made regarding this case.<sup>356</sup>

Three representatives of organizations supporting the Benet allege that on 16 July 2020, UWA officers shot Simotwo Leonard on his left lower thigh when he was found herding animals inside the national park.<sup>357</sup> According to the three who took Simotwo Leonard to the hospital and to the police, he reported the incident to the Bukwo police and was treated at the Bukwo General Hospital where a medical examination revealed that he suffered a “through and through injury” i.e., a bullet leaving both an entry and an exit wound.<sup>358</sup>

On 24 September 2014, an UWA officer allegedly shot Chelangat David, then aged 21, on his shoulder,<sup>359</sup> while inside the park. According to police records, he reported to the UPF at Kwasir. To date, arrests have not been made in conjunction with the case.<sup>360</sup> He sustained a penetrative wound and neck pain that were treated at the Kumi Orthopaedic Centre.<sup>361</sup> According to a letter from the UHRC to UWA, seen by Amnesty International, UWA took responsibility for treating Chelangat David.<sup>362</sup>

Community members also accuse UWA officers of severely beating Cheptibin Bureto in September 2012. Relatives of Cheptibin Bureto suspect that UWA officers attached to Chebere UWA post in Mount Elgon National Park found him in the forest and beat him into a coma. His relatives recorded statements at Kamkuriat Police Post and the UHRC<sup>363</sup> regional offices in Soroti, eastern Uganda. By the time Cheptibin Bureto died, in May 2019,<sup>364</sup> no arrests had been made in conjunction with the case.<sup>365</sup>

Amnesty International wrote to the Ugandan government in September 2021 to ask for responses to these allegations but received no reply.

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<sup>350</sup> Interviews in person with six affected Benet people, Mount Elgon, December 2019.

<sup>351</sup> Interviews in person with 21 affected Benet people, Mount Elgon, December 2019.

<sup>352</sup> Interviews by phone with three representatives of organizations supporting the community, 13 September 2020.

<sup>353</sup> Cultural Survival, “Observations on the State of Indigenous Human Rights in Uganda: Prepared for HRC: 3rd Cycle of Universal Periodic Review of Uganda, 40th Session of the HRC”, July 2021 [culturalsurvival.org/sites/default/files/CS%20UPR%20submission\\_Uganda%20July%2015%202021.pdf](https://culturalsurvival.org/sites/default/files/CS%20UPR%20submission_Uganda%20July%2015%202021.pdf), para. 8.4,

<sup>354</sup> Interviews by phone with four representatives of organizations supporting the community, August 2020.

<sup>355</sup> Medical examination of an injured person report for Janet Sumbule, 24 August 2020, on file with Amnesty International.

<sup>356</sup> Interview by phone with four representatives of organizations supporting the community, between August 2020 and August 2021.

<sup>357</sup> Interview by phone with three representatives of organizations supporting the community, August 2020.

<sup>358</sup> Medical and police records, on file with Amnesty International.

<sup>359</sup> Medical and police records, on file with Amnesty International.

<sup>360</sup> Interview in person with Chelugoi Isaac, 11 December 2020.

<sup>361</sup> Medical and police records, on file with Amnesty International.

<sup>362</sup> Head of Kapchorwa Field Office, Uganda Human Rights Commission (UHRC), Letter to the Chief Warden, UWA, 27 February 2014.

<sup>363</sup> Complaint No. UHRC/96 of 2012, on file with Amnesty International.

<sup>364</sup> Interviews in person with seven affected Benet people, Mount Elgon, December 2019.

<sup>365</sup> Interviews in person with seven affected Benet people, Mount Elgon, December 2019.



 ↑ A Benet man showing a condition from injuries after he was beaten by UWA officers. © Amnesty International

Amnesty International documented 12 separate incidents where community members said that UWA officers detained them when they were caught grazing cattle in the forest. Most claimed that UWA officers took them to their staff quarters and locked them in there for a night. They then asked the arrested persons to call relatives and friends to bail them out with bribes.<sup>366</sup> Three people told Amnesty International how UWA arrested them on different dates and forced them to spend nights in a construction pit partly filled with water in UWA's staff quarters. Two spoke of how UWA officers locked them in their houses for a night until relatives or friends bailed them out.<sup>367</sup> Kemboi (not his real name) told Amnesty International how he was arrested by UWA officers while herding five cows. The arresting officer took him to his house where he used a rope to tie him to his bed for a night. He told Amnesty International that the owner of the cows came and paid UGX 50,000 (about USD 14) the next day to have Kemboi and his cattle released.<sup>368</sup>

Articles 6 and 7 of the African Charter and ICCPR provide for the right to personal liberty and protection from arbitrary arrest, and the right to fair trial. A criminal trial is fair only if the rights of the accused have been respected throughout the process. The incidents described above are all considered arbitrary detentions, as according to the victim's accounts they were not charged or taken to court and were released after paying bribes to UWA officers.

Uganda is a state party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) which states that "[n]o exceptional circumstances whatsoever, whether a state of war

<sup>366</sup> Interviews in person with 12 affected Benet people, Mount Elgon, December 2019.

<sup>367</sup> Interviews in person with five affected Benet people, Mount Elgon, December 2019.

<sup>368</sup> Interview in person, 8 December 2019.

or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture”<sup>369</sup>. The Constitution of Uganda guarantees, “... the right not to be subjected to torture, inhumane, cruel or degrading treatment or punishment.”<sup>370</sup> Uganda also has a Prevention and Prohibition of Torture Act, enacted in 2012, which criminalises torture, declares evidence obtained through torture inadmissible in legal proceedings and makes provision for restitution, rehabilitation, and compensation for victims of torture. The Act extends criminal liability for torture to individuals and non-state actors.<sup>371</sup> The incidents described above, where the interviewees allege they were arbitrarily detained in a pit of water, are violations of the prohibition on torture or other cruel, inhuman, or degrading treatment or punishment

Many people interviewed were reluctant to report torture and other ill-treatment by UWA rangers to government authorities, especially the police, as previous reports from the community had not been acted on.<sup>372</sup> Others were scared that reporting violations could place them at risk of arrest for “entering (a) wildlife protected area without permission.”<sup>373</sup> This is an offence under Section 30 of the Uganda Wildlife Act 2019.<sup>374</sup>

To date, the state has failed to conduct prompt, effective, independent and impartial investigations into reported cases and other allegations, creating a climate of impunity.<sup>375</sup> The state has also violated the right to remedy.

### ALLEGATIONS OF KILLING BY UWA

The Benet Lobby Group (BLG), an organization supporting the community, informed Amnesty International that at least seven people had been killed by UWA rangers, between the 2008 eviction and when this research was conducted.<sup>376</sup> Families of some of the deceased persons in the cases reported by BLG provided Amnesty International with police and hospital documents. They included Yeshe Leonard Sokwo, 28 years at the time of his death,<sup>377</sup> Simotwo Fred, 30 years old at the time of his death,<sup>378</sup> and Kiplimo Clinton, 20 years at the time of his death.<sup>379</sup>

A Minority Rights Group (MRG) report published on 27 August 2020 that stated that, “[the Benet] community has registered at least [seven] shootings that allegedly involved UWA Rangers” between April 2020 and the date the report was produced.<sup>380</sup>

A Ugandan police report indicates that Yeshe Leonard Sokwo, who was shot inside the Mount Elgon forest on 19 May 2012, died while undergoing treatment at Kapchorwa General Hospital.<sup>381</sup> He had entry and exit bullet wound on the left knee and a wound on the head. The cause of death was identified as “profuse haemorrhage” with the medical examiner adding the gunshot wound to the knee as another significant contribution to his death.<sup>382</sup> According to UPF report, he was found with no weapon.<sup>383</sup>

Simotwo Fred was killed on 29 June 2016. Community members reported to the police that they discovered his body inside Mount Elgon National Park.<sup>384</sup> The post-mortem report reveals cause of death as brain contusion, severe haemorrhage, and spinal cord trauma.<sup>385</sup>

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<sup>369</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2(2).

<sup>370</sup> Article 24, Constitution of Uganda.

<sup>371</sup> Prevention and Prohibition of Torture Act, Sections 4 and 5.

<sup>372</sup> Interviews in person with 21 affected Benet people, Mount Elgon, December 2019.

<sup>373</sup> Interviews in person with 19 affected Benet people, Mount Elgon, December 2019.

<sup>374</sup> The first offence attracts a maximum fine of UGX 7,000,000 (about USD 1970) or 10 years imprisonment, or both, while the second offence attracts a maximum fine of UGX 10,000,000 (about USD 2,800) or 20 years imprisonment, or both.

<sup>375</sup> Interviews with 26 affected Benet people, Mount Elgon, December 2019.

<sup>376</sup> Interviews by phone with four representatives of organizations representing the community, between 6 December 2019 and 5 June 2021. The representatives shared a list of recorded cases of human rights violations that have affected the Benet people between 13 December 2019 and on 5 June 2021.

<sup>377</sup> Ministry of Health, Medical Certificate of Cause of Death, 20 May 2012, on file with Amnesty International.

<sup>378</sup> Uganda Police Force (UPF), Post-mortem report, Bukwo Police Station Reference Police case file CRB325 – 29/09/16, 29 September 2016, on file with Amnesty International.

<sup>379</sup> UPF, Post-mortem report, Bukwo Police Station Reference Police case file CRB544/2020, 3 November 2020, on file with Amnesty International.

<sup>380</sup> MRG, “Five decades down the line, we shall not relent...”, 27 August 2020, [minorityrights.org/2020/08/27/we-shall-not-relent/](https://minorityrights.org/2020/08/27/we-shall-not-relent/) Emphasis added

<sup>381</sup> Bukwo General Hospital, referral note to Kapchorwa General Hospital, 19 May 2012, on file with Amnesty International

<sup>382</sup> Ministry of Health, Medical Certificate of Cause of Death, 20 May 2012, on file with Amnesty International.

<sup>383</sup> UPF, Post-mortem report at the request of D/CPL Okia Robert, Bukwo Police Station, 20 May 2012, on file with Amnesty International.

<sup>384</sup> Interviews by phone with four representatives of organizations representing the community, August 2020.

<sup>385</sup> UPF, Post-mortem report, Bukwo Police Station Reference Police case file CRB325 – 29/09/16, 29 September 2016, on file with Amnesty International.



Kiplimo Clinton was killed on 2 November 2020. Community members allege that they discovered his body inside Mount Elgon National Park. The post-mortem report reveals cause of death as axillary artery hemorrhage.<sup>386</sup> Police at Bukwo Police Station reported that his body was discovered inside the Mount Elgon National Park but fail to give any further circumstances or information about the death.<sup>387</sup> In the request to Bukwo General Hospital for post-mortem examination, the UPF indicate that the presumed cause of death is “shooting.”<sup>388</sup>

Amnesty International put these allegations to a UWA representative who refused to comment on these specific cases but did not deny that UWA officers have in some instances killed community members found in the forest. The UWA representative stated that “... at least five UWA officers have also been killed by members of the Benet community inside the forest since 2008.” UWA stated that the killings of the UWA officers happened on 30 November 2008, 9 June 2009, 30 October 2014, 30 June 2016, and 4 July 2019.<sup>389</sup> He said that some Benet people carry firearms and confront UWA officials inside the park.<sup>390</sup> The community has refuted attacking UWA officers, stating that they carry sticks and sometimes machetes while herding cattle, to cut bushes, while UWA officers have guns.<sup>391</sup>

Allegations of unlawful killings by UWA officers must be thoroughly and independently investigated and, if there is sufficient admissible evidence, perpetrators tried before independent, impartial, and effective civilian courts that meet international fair trial standards.

Right to life is protected by Article 4 of the African Charter which obligates its member states to “prevent arbitrary deprivations of life caused by its own agents, and to protect individuals and groups from such deprivations at the hands of others. It also imposes a responsibility to investigate any killings that take place, and to hold the perpetrators accountable.”<sup>392</sup> Further, governments are obliged to take steps towards preventing “arbitrary deprivations of life and to conduct prompt, impartial, thorough and transparent investigations into any such deprivations that may have occurred, holding those responsible to account and providing for an effective remedy and reparation for the victim or victims, including, where appropriate, their immediate family and dependents.”<sup>393</sup> All organs of government and state authorities are also responsible for violations of the right to life.<sup>394</sup>

Uganda is also a state party to the ICCPR and is legally obliged to respect, protect and fulfil the right to life under Article 6. Any force used by must be necessary and proportionate to achieve a legitimate goal. The use of force and firearms is subject to the UN Code of Conduct for Law Enforcement Officials (1979) and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990). Under these standards, intentional lethal force and firearms may only be used when strictly unavoidable to protect against imminent threat of death or serious injury.<sup>395</sup>

## RIGHT TO ACCESS EFFECTIVE REMEDY FOR HUMAN RIGHTS VIOLATIONS

*“I am writing to you in connection with the need to resettle 400 (four hundred) families of the Benet sub-group of the Sabiny people of Sebei region. These families used to live in the Mt. Elgon Forest National Park on the Sebei side.”<sup>396</sup>*

- President Yoweri Museveni

The signing of the 2005 Consent Judgment signified that the Benet have a legal interest in the forest land that they were evicted from, as customary land holders.<sup>397</sup> Despite this judgment, the Ugandan government forcibly evicted the Benet people, and failed to address multiple other violations resulting from the forced

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<sup>386</sup> UPF, Post-mortem report, Bukwo Police Station Reference Police case file CRB544/2020, 3 November 2020, on file with Amnesty International.

<sup>387</sup> UPF, Request for post-mortem examination, Bukwo Police Station, 3 November 2020, on file with Amnesty International.

<sup>388</sup> UPF, Request for post-mortem examination, Bukwo Police Station, 3 November 2020, on file with Amnesty International.

<sup>389</sup> Interview in person with Charles Tumwesigye, Deputy Director Field Operations, UWA, 6 March 2020.

<sup>390</sup> Interview in person with Charles Tumwesigye, Deputy Director Field Operations, UWA, 6 March 2020.

<sup>391</sup> Interview by phone with four representatives of organizations representing the community, September 2020.

<sup>392</sup> General Comment 3 on the African Charter focusing on the right to life, Article 2, November 2015.

<sup>393</sup> General Comment 3 on the African Charter focusing on the right to life, Article 7, November 2015.

<sup>394</sup> General Comment 3 on the African Charter focusing on the right to life, Article 7, November 2015.

<sup>395</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 9. *Emphasis added.*

<sup>396</sup> President Yoweri Museveni, letter to the Rt. Hon. Prime Minister, Ref. No. PO/3, 5 February 2011, on file with Amnesty International.

<sup>397</sup> Customary land tenure is a land system recognized under Article 237 of the Constitution of Uganda 1995 (as amended), as well as section 3 of the Land Act, Cap 227.

evictions. Disregarding the Consent Judgment further violates Uganda's obligations under international law to enforce domestic judgments for reparation against individuals or entities liable for the harm suffered.<sup>398</sup>

Despite authorities, including the UPF, UHRC, EOC and the President,<sup>399</sup> being made aware of recurring violations of human rights, they have not responded to them. When the Benet have reported crimes by the UWA against their community, the UPF has failed to investigate them impartially and effectively. This situation continues to deny the Indigenous Benet peoples their right to adequate, effective, prompt, and appropriate remedies.

Amnesty International has reviewed relevant correspondence between President Museveni and Prime Minister Rugunda, and between Prime Minister Rugunda and various other branches and agencies of government, including the Parliament of Uganda.<sup>400</sup> In a letter to the Prime Minister dated 5 February 2011, President Museveni directed that "the 400 families of the Benet subgroup of the Sabiny people of the Sebei region who had originally settled in the in the Mt. Elgon forest National Park be resettled."<sup>401</sup> These correspondences confirm that the Ugandan government is aware of the forced evictions issues and associated human rights violations.

Failure to compensate affected Benet people for destruction of property and loss of access to traditional land and livelihoods during forced evictions violates Uganda's international human rights obligations.<sup>402</sup> The CESCR instructs that "where those affected [by forced evictions] are unable to provide for themselves, the state party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available."<sup>403</sup> The African Charter further provides for the right to justice in Articles 3, 4, 5, 6 and 7.

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<sup>398</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly Resolution 60/147, 16 December 2005

<sup>399</sup> Mt. Elgon Benet Indigenous Ogiek Group, Letter to President Yoweri Museveni, 5 August 2016, on file with Amnesty International.

<sup>400</sup> 21 government documents including summons, internal memos, correspondences, and letters between 2009 and 2017 about the state of the Benet land issues.

<sup>401</sup> President Yoweri Museveni, Letter to Prime Minister Ruhakana Rugunda, 5 February 2011.

<sup>402</sup> The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly Resolution 60/147, 16 December 2005.

<sup>403</sup> General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, para. 16. *Emphasis added*.



# 6. CONCLUSION AND RECOMMENDATIONS

## CONCLUSION

Forced evictions constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, and the human rights of Indigenous peoples. Forced evictions also expose people to other human rights violations, including of the right to food, water, health, education, work, security of the person, security of the home, and freedom from cruel, inhuman, and degrading treatment, and freedom of movement.

The multiple interrelated and interconnected human rights violations that the Indigenous Benet people of Mount Elgon have suffered, following violent forced evictions by the state, have deepened the poverty and disparities experienced by this community, leaving them landless, marginalized, and at risk of further rights violations. They have been left to live in makeshift temporary resettlement sites provided by the state, without equitable or adequate access to public services such as healthcare or education, and are prohibited from building adequate, safe, hygienic housing. Through forced eviction from their customary land, the state has further denied these Indigenous peoples their right to their ancestral lands and violated their right to maintain their cultural identity. These actions contravene regional and international standards that guarantee individuals – and Indigenous peoples collectively – the right to freely to participate in cultural life. The Benet people had long established ways of living independently, but now, in their temporary housing and on land that they cannot develop, they are denied their rights to participate fully in economic, social, political, and cultural life.

The Benet people's situation is made worse by insufficient resources that make essential services such as education and health unaffordable to many of them. Where these services are free, community members are unable to travel to health facilities or lack the resources to pay for associated services such as fees for school feeding programs to keep their children in school. Public schools are either inadequately resourced or run-down, or physically inaccessible from the settlements. The Benet contend with insufficient and poorly maintained infrastructure, including broken or unsanitary toilets, including pit latrines. Health facilities that are most easily accessible to the Benet cannot offer diagnostic services and often do not have essential medicine. The community also allege facing other human rights violations, including killings, arbitrary arrests and detention and other inhuman treatment by Uganda Wildlife Authority officers and its representatives as they stop community members from entering the forest.

The Ugandan government has not only failed to protect the Benet Indigenous peoples from human rights violations, but it has also disregarded a domestic court ruling affirming the Benet's customary land rights and failed to offer appropriate remedies to redress the situation adequately, effectively, and promptly. Instead, the state has forcibly evicted the Benet, without consultation or notice. The Benet have been subjected to arbitrary arrests and extortion, and live-in perpetual fear. Community members have been scared to report allegations of killings to the police or, where they have done so, these allegations do not appear to have been investigated.

In Uganda, the state has regularly responded to environmental and other concerns, such as the desire to ensure forest conservation, by resorting to forced evictions. Amnesty International's research has found that state agencies carrying out the evictions have done so without due process, consultation, adequate notice, or compensation, and in some instances have used excessive force against communities. The Benet people are one group who have suffered in this way, but they represent just one of the many groups who have experienced forced evictions. This speaks to the broader need for the Ugandan government to prevent forced evictions in law and practice.

States have an obligation to tackle climate change and conserve natural ecosystems. However, in their efforts to address climate change and biodiversity loss, states must not resort to measures that directly or indirectly violate human rights. Conservation areas must not be created on the lands of Indigenous peoples without their full participation in the decision-making, and their free, prior, and informed consent. Conservation laws and policies must also respect the land rights of Indigenous peoples and favour community-based forest management, in which communities, including Indigenous peoples, are given security of tenure on the land they have traditionally occupied and are fully recognized as co-managers of the forests and other natural ecosystems.

The Benet land and housing problem caught the attention of politicians and government again most recently during the 2021 electioneering period. Uganda Cabinet's directed the Ministry of Lands to degazette 8,250 hectares of Mount Elgon National Park and to give this land to people evicted by the UWA. This decision, which is yet to be implemented, was made without the meaningful participation of those most impacted, the Benet.

## RECOMMENDATIONS

To address specific issues raised in this report, Amnesty International recommends:

### TO THE PRESIDENT

- Recognize the Benet as Indigenous people and further recognize their right to their ancestral lands in Mount Elgon.
- Ensure that all Benet people who were subject to forcible evictions have access to effective remedy and reparations, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.
- Make public the report on the findings of The Commission of Inquiry into Land Matters and ensure meaningful public participation and observance of the rule of law while analysing and proposing changes in the land systems and laws.

### TO THE OFFICE OF THE PRIME MINISTER

- Implement the 2005 Consent Judgement from the *Uganda Land Alliance, Ltd. v. Uganda Wildlife Authority*<sup>404</sup> case.
- Provide remedy and reparations for forcibly evicted families in Mount Elgon. Such reparation should include adequate alternative housing for those rendered homeless, access to livelihood opportunities including access to grazing land, rehabilitation, compensation for all losses and guarantees of non-repetition.
- In the design, planning, implementation and monitoring of decisions related to climate and forest conservation: respect, protect and fulfil the right to information and participation, as well as to freedom of expression and assembly, particularly ensuring the participation of marginalized groups and the right of Indigenous peoples to free, prior, and informed consent, as well as the right to access effective remedy for human rights violations.

### TO THE MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS

- Develop and adopt legislation establishing guidelines for evictions that comply with international human rights law and standards. Such legislation should include requirements to ensure:
  - evictions and displacements are minimized by first seeking alternatives;
  - evictions can only take place in 'exceptional circumstances';
  - in cases of the 'exceptional circumstances,' there are operational procedures to be followed by both state and non-state actors at each stage of the eviction process – before, during and after – in compliance with international human rights standards.

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<sup>404</sup> *Uganda Land Alliance, Ltd. v. Uganda Wildlife Authority*, Miscellaneous Cause No. 0001 of 2004, High Court of Uganda at Mbale.

- Execute its obligations under the 2005 Consent Judgment from the *Uganda Land Alliance, Ltd. v. Uganda Wildlife Authority*<sup>405</sup> case, and recognize Benet people as Indigenous people and as the historical and indigenous inhabitants of Benet Sub County, Yatui Parish, Kabsekek village of Kween County, Kwoti Parish of Tingey County.
- Investigate all allegations of crimes by UWA documented in this report and ensure that all persons responsible are prosecuted before civilian courts in proceedings that meet international fair trial standards without the use of death penalty. Ensure that all victims of human rights violations have prompt, accessible, affordable, and transparent access to justice.
- Propose comprehensive revisions of the Uganda Wildlife Act, 2019 to allow for co-management of conservation areas by the state and Indigenous peoples and ensure that any punitive measures only apply to individuals who do not belong to communities that have a spiritual and cultural relationship with the land in question.
- Ensure that court rulings are implemented and those government agencies failing to do so are held to account.

#### **TO THE MINISTRY OF TOURISM, WILDLIFE AND ANTIQUITIES**

- Conduct prompt, effective, and independent investigations into all alleged human rights violations, including killings, arbitrary arrests and detention and other inhuman treatment by Uganda Wildlife Authority officers or any of its representatives.
- Ensure transparency and accountability by revealing how the Ministry will ensure justice for victims of violations by the UWA and how it will bring about reparation, including redress and compensation, to the surviving victims and relatives of any deceased victims.
- Engage with Indigenous peoples as partners in wildlife conservation by consulting with them to develop protocols for co-management of conservation areas and adhere to human rights standards in promoting and ensuring the protection, development, and effective management of wildlife resources of the country, including in Mount Elgon region.
- Develop an effective system for monitoring of UWA officers, a robust mechanism for investigating complaints of corruption, and disciplinary measures when UWA officers are found guilty of corruption.
- Ensure that UWA trains its rangers to international standards and that all UWA staff are subject to effective review and accountability. Wildlife authorities must report publicly on how they are meeting human rights norms.

#### **TO THE MINISTRY OF HEALTH**

- Ensure that there are regular and affordable transport facilities available so that Benet can safely access the healthcare they need.
- Ensure that the health centres are equipped to meet the needs of the Benet and other people living in the area, including adaptability to their cultural practices.
- Ensure that all Benet, in particular women and adolescent girls, have access to comprehensive sexual and reproductive health services including adequate skilled maternal health care in the community.

#### **TO THE MINISTRY OF EDUCATION AND SPORTS**

- Take steps to address the causes of low rates of enrolment in primary and secondary school among the Benet.
- Ensure that state schools in the locality are properly equipped with safe and functioning classrooms, desks, chairs, other necessary equipment and learning materials.
- Ensure that pupils have access to safe water and sanitation facilities.
- Take steps to ensure that the inability pay does not deprive any child from accessing school meals, uniforms, books, and education.

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<sup>405</sup> *Uganda Land Alliance, Ltd. v. Uganda Wildlife Authority*, Miscellaneous Cause No. 0001 of 2004, High Court of Uganda at Mbale.

- Ensure that there is regular, affordable and reliable transport and road infrastructure for students going to school.

## **TO THE MINISTRY OF WATER AND ENVIRONMENT**

- Provide adequate and accessible infrastructure, to remove barriers that negatively affect access to water and access to improved sanitation:
  - Immediately ensure that all resettlement sites are provided with safe sanitation with a view to ending open defecation;
  - Take steps to ensure that residents of resettlement sites have access sufficient safe potable water to fulfil their domestic requirements;
  - Where water sources have been polluted, take steps to clean these sources to protect the rights to water and health of all those living in the vicinity;
  - Equip all permanent housing sites with sufficient infrastructure to guarantee sufficient safe water and sanitation.
- Ensure that climate action does not inadvertently or deliberately violate human rights. Ensure that climate action reduces, rather than increases, inequality, including through adhering to human rights standards in promoting and ensuring the protection, rational and sustainable utilization, development and effective management of water and other environment resources for socio-economic development of Uganda, including in Mount Elgon region.
- Work with Indigenous peoples, with their free, prior, and informed consent, to integrate their traditional knowledge and practices into policies and programmes to mitigate the impact of climate change in Uganda as recommended by the African Commission on Human and Peoples' Rights in 2018.
- Take all feasible steps to protect human rights from climate change, including through ambitious and human rights-consistent climate change mitigation and adaptation measures, while ensuring that all such measures respect, protect and fulfil human rights.
- Adopt and implement forest and other natural ecosystem conservation laws, policies and measures that avoid a forest-centric or a "fortress-conservation" approach, or any other approach that can result in human rights violations. Ensure that conservation laws, policies and measures favour community-based forest management in which communities, including Indigenous peoples, are given security of tenure on the land they have traditionally occupied and are fully recognized as co-managers of the forests and other natural ecosystems.
- Ensure that conservation laws, policies and measures are developed with the full and meaningful participation of all affected people, and respect the free, prior, and informed consent rights and land rights of Indigenous peoples.

## **TO THE MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT**

- Enforce an explicit prohibition on forced evictions in all circumstances and develop and adopt guidelines for evictions that comply with international human rights law.
- Prioritize the provision of permanent housing to all those who were rendered homeless by the forced evictions in Mount Elgon National Park.
- Ensure that any alternative housing provided to people complies with international and regional standards on adequacy of housing.
- Take immediate measures to confer security of tenure to all people lacking such protection, in genuine consultation with affected people and communities.
- Ensure that all those forcibly evicted from Mount Elgon can continue with their way of life including practice their traditional livelihoods. For this, they must have access to the forest, including grazing areas and sites which are of cultural and spiritual significance, as well as for non-timber forest produce.
- The ministry must also take urgent steps to ensure that the Benet are supported in every way to access an adequate standard of living including by making land available to them for cultivation
- Consult with the Benet people to agree boundaries that will not put them in conflict with the UWA.

- Investigate allegations of illegal acquisition of land intended for the Benet and hold all those involved in the misallocation of land to account.

## **TO INDEPENDENT COMMISSIONS**

### **Equal Opportunities Commission**

- Investigate the cases of social-economic imbalances that the court took note of in the Consent Judgment in the *Uganda Land Alliance, Ltd. v. Uganda Wildlife Authority*<sup>406</sup> case, including in relation to education, infrastructure, health, and social services.

### **Uganda Human Rights Commission**

- Conduct prompt, effective, and independent investigations regarding all alleged human rights violations, including killings, arbitrary arrest and detention and other inhuman treatment in accordance with its mandate.
- Provide technical support to Indigenous peoples to help them prepare and file complaints before it when their rights are violated, as recommended by the African Commission on Human and Peoples' Rights in 2018.
- Ensure that all victims of forced evictions have access to effective remedy and reparations, which includes restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.

## **TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

- Follow up on its call on the Ugandan government to incorporate into its domestic legislation international standards that recognize, promote, and protect the rights of Indigenous peoples
- Follow up on its call on the Ugandan government to develop and adopt legislation establishing guidelines for evictions that comply with international human rights law and standards.
- Call on the Ugandan government to immediately cease forced evictions and ensure that any evictions comply with international and regional laws and standards.
- Urge Uganda to take immediate measures to confer security of tenure to all people currently lacking such protection, in genuine consultation with the affected people and communities.
- Call on the Ugandan government to ensure that any alternative housing provided to people complies with international and regional standards on adequacy of housing.
- Urge Uganda to ensure that all victims of forced evictions have access to effective remedy and reparations, which includes restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.

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<sup>406</sup> *Uganda Land Alliance, Ltd. v. Uganda Wildlife Authority*, Miscellaneous Cause No. 0001 of 2004, High Court of Uganda at Mbale.

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# 13 YEARS IN LIMBO

## FORCED EVICTIONS OF THE BENET IN THE NAME OF CONSERVATION

In February 2008, Ugandan authorities carried out forced evictions in the Mount Elgon forest, in the Bukwo and Kween districts of Uganda, displacing almost 200 families of the Benet Indigenous people. Thirteen years later, when Amnesty International visited Mount Elgon in December 2019 and March 2020, the Benet people were still reeling from the effects of the forced evictions.

This report documents multiple interrelated violations of the rights of the Benet Indigenous people. These include several violent forced evictions, dating back to 1983, by the Uganda National Forestry Authority and Uganda Wildlife Authority, backed by the Uganda military, the Uganda People's Defence Force, all in the name of conservation.