

**AN EXAMINATION OF THE CIVIC AND POLITICAL RIGHTS OF THE
BATWA ETHNIC MINORITY GROUP IN THE LOCAL
GOVERNANCE OF UGANDA.**

BY

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1153-01024-00965

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**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL
FULFILLMENT FOR THE REQUIRMENT FOR THE AWARD OF THE
BACHELOR DEGREE OF LAWS AT KAMPALA
INTERNATIONAL UNIVERSITY.**

JULY, 2019

DECLARATION

I IRANKUNDA PATRICIA declare that this dissertation is my work and has never been submitted for the award of any academic qualification before.

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Date: 22nd - 07 - 2019.....

APPROVAL BY SUPERVISOR

I certify that I have supervised this study and that in my opinion, it conforms to the acceptable standards of scholarly presentation and is fully adequate in scope and quality as a dissertation in partial fulfillment for the award of a bachelor degree of laws of Kampala international university.

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Date.....22/08/2017.....

DEDICATION

I dedicate this work primarily to the almighty God for his guidance and mercy throughout my studies. I also dedicate this work to my mother Nyiramugisha Vastine and the entire family for the support, love and care they have given me throughout my studies.

ACKNOWLEDGEMENT

I would like to thank my supervisor professor NORMAN MUGARURA for all the help offered in making the dissertation what it is now.

My gratitude also goes to my lovely mother, Nyiramugisha Vastine for her endless and tireless encouragement and financial support while I was studying and even doing my research.

I would also like to sincerely thank my grandfather Justice Patrick Tabaro and uncle Nkurunziza Vallence for their continuous support never failing in any way during my studies .

It would be unfair to forget to thank my sister Resty Kamahoro and my Brother Nizeyimana Rober for the courage they gave me .

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The Equal opportunities commission Act, 2007.

LIST OF CONVENTIONS.

The United Nations Declaration on the Rights of Indigenous Peoples, 2007.

The International Covenant on Civil and Political Rights 1966.

The African Charter on Human and People's Rights 1981.

The Convention on the Elimination of all Forms of Racial Discrimination 1965.

The International Labour Organisation Convention 169.

The International Covenant on Economic, Social and Cultural rights 1996.

LISTS OF ACRONYMS.

UOBDU	United Organization for Batwa Development in Uganda.
IMPP .	Indigenous Minority Peoples Plan.
BMCT.	Bwindi Mgahinga conversation Trust .
ICCPR.	International Covenant on Civil and Political Rights.
UN.	United Nations.
NGO .	Non Governmental Organization.
UNNGOF .	Uganda National NGO Forum.
UPE .	Universal Primary Education.
USE .	Universal Secondary Education
BCLR	Butterworth Constitutional Law Reports.
IRIN News.	Intergrated Regional Information Networks N ews.
ILO	International Labour Organisation
LCI	Local Council I
LCII	Local Council II
LCIII	Local Council III
LCV	Local Council V
CERD	Convention on the Elimination or all Forms of all Forms of Racial Discrimination.
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

ABSTRACT

The research examines the civic and political right of the Batwa in the local governance of Uganda. It is a constitutional right that all peoples regardless of their origin and status gave a right to participate in making decisions that affect them in all public forums. However the Batwa compared to other ethnic groups in the country, have remained victims to various forms of discrimination which is evident in some policies, programmes and practices relating to rights such as self-determination

The research also examines the causes of marginalization of the Batwa , the measures adopted by government in promoting their rights ,the legal and institutional framework that govern their civic and political rights .

The research methodology was qualitative where primary and secondary resources will be used in undertaking the research.

The research is to enhance the Batwa's participation and enjoyment of their civil and political rights by emphasizing on non-discrimination and equality in participation. The findings were that the Batwa are continuously being discriminated against, this is because they are considered illiterate and backward thus are not given a chance to participate in decision making.

The constitution of the Republic of Uganda, 1995 and the Local Government Act, Cap 243 recognize the right to participation by all persons in the affairs of government. However fair participation of indigenous people has remained a challenge.

government initiatives to conserve the forested areas by protecting flora and fauna through the Uganda Wild Life Authority.

The Batwa as a minority group in Uganda is characterized by the following: Historically and continued suffering discrimination and disempowerment on economic, social, political, cultural grounds¹.

- Landless. This is because of threatened livelihood to access land and natural resources to which they depend as hunters and gatherers.
- The threat to extinction this is due to stigmatization and integration.
- Loss of culture/ identity
- Lower health and education indicators than those of dominant community.

The Batwa have been segregated by their neighboring communities particularly the Bakiga and the Bafumbira as they are often perceived as backward and primitive. Neighboring communities do not even wish to socialize with them and consider it abominable to eat and drink with them, due to this segregation the Batwa are often forced to live in isolation from their neighbors.

The Batwa population in Uganda is about 6000 with the majority living in southern western districts of Uganda. Their size is quite different from other tribes in Uganda, the men and women rise to an average of four feet or less in height, the tallest man among the Batwa would be the shortest among the neighboring communities

¹ Ministry of Education and Sports, 'Vulnerable & Marginalised Groups' Framework for the Uganda Secondary Education Expansion Project', Draft report Vol. 1 March 2019. <www.education.go.ug> accessed on 6th April 2019.am

1.1.2 Conceptual Background

In East Africa the Batwa ethnic minority groups are found in countries 'of **Rwanda, Congo, Burundi and Uganda**. In Uganda particularly they are found in areas of **Kisoro, Rubanda, Kabale, Kanungu, Kasese and Lwengo**. These are the most voiceless ethnic minority group in Uganda.

1.2 Statement of Problem.

The Batwa have not been able to exercise their civic and political rights because they are a marginalized group. The marginalization has been because of, among others, lack of civic knowledge, discrimination in education, health, housing, ownership of land and employment. This has led to suppression, oppression and exploitation that threaten to eradicate the Batwa completely from Uganda.²

1.3 Justification of study.

In this study, the researcher examines the causes of marginalization of the Batwa and how it has been addressed. There is not enough research carried on the subject of this study of the Batwa in local administration in Uganda.

1.4 General Objective of the Study.

To examine the civic and political rights of the Batwa ethnic minority group in the local governance of Uganda.

²Kabananukye and Willy, 'A quest for the right to participation for the Batwa in Uganda' 1996 <<https://repository.up.ac.za>> Accessed on 15th April, 2019.

1.5 Specific Objectives

- (a) To identify the causes of marginalizations of Batwa's in the local governance in Uganda.
- (b) To analyze the measures adopted by the government of Uganda in addressing the civic and political rights of the Batwa.
- (c) To examine the legal and institutional framework governing the civic and political rights of the Batwa.

1.6 Research Questions

- a) What are the causes of marginalization of Batwa's civic and political rights in Uganda?
- b) What is the legal and institutional framework on the protection of the civic and political rights of the Batwa?
- c) What are the measures taken by government of Uganda to promote the civic and political rights of the Batwa?

1.6 Methodology.

This research methodology will be qualitative where by primary and secondary data sources will be reviewed and internalized in under taking the study.

The researcher examined the practical conspiracies of the Batwa as minority group and how they have been denied in the local governance in Uganda.

1.7 Scope of Study

This research was conducted in the districts of Kisoro, Kanungu, kabala, Rubanda, and Lwengo in uganda.

1.7.1Time Scope;

This research shall be limited to a period between 1991 to 2019 because it was between this period that the Batwa were deprived of their ancestral lands and natural resource bases through unjust state policies and legislation especially the MBIFNP (Mgahinga and Bwindi Impenetrable Forest Conservation).This will help to better exploit the information needed for the research fully.

1.8 Literature Review.

This is a review on what has been published on the topic by other scholars and other researchers about or related to the rights of the Batwa in Uganda and other foreign states where indigenous or minority groups are discriminated against even though legal instruments provide for protection of rights of all citizens, theirs is ignored.

The Batwa are a special case, it is generally accepted that since they ceased to live entirely in the forest long before it was gazzeted, then however a mixture of official management policies demographic /social changes have created a dynamic situation characterized by an accelerated exodus of Batwa outside their traditional residencies, to live with other ethnic groups outside the forest, suffice to say their livelihoods remained finely intertwined with the forest. Today the Batwa live in serfdom in ramshackle huts,

doing all the hard and mental jobs for their landlords, including guarding crops in exchange for food and a small patch of land on which to build.

Martinez Cobo, defined indigenous people as those with historical continuity with pre-invasion and pre-colonial developments on their land and also consider themselves as different from other member of society.³ The Batwa in Uganda have been deprived of their rights to property and have been denied a right to live in the forested area which was originally their land.

Some minorities were physically eliminated, either by mass expulsion, other minorities were coercively assimilated, in yet other cases minorities were treated as resident aliens, subjected to physical segregation and economic discrimination that denied political rights.⁴

Frans Viljoen provides that the source of protection for indigenous people falls within the constitutional and legal provisions that guarantee rights for everyone. This protection for Batwa can be addressed through international, regional and domestic legal framework.⁵

The failure to realize the existence of minorities, and consequently to deal with the problems faced by minorities, has been among the key factors that have caused Uganda to fail to achieve a society based on the rule of law, social cohesion and equal

³ Martinez cobo, 'Study of the problem of discrimination against indigenous populations', 1986 <<https://www.un.org>> accessed on 8th September 2014.

⁴ Will kymlicka, 'Multicultural citizenship' <www.oxfordscholarship.com> accessed on 17 march 2019.

⁵ Frans Viljeon, 'perspectives on the rights of minorities and indigenous peoples in Africa', 2010. <legal.un.org> accessed on 11 may 2011.

opportunity.⁶ It is evident that there is an urgent need to conscientize Ugandan policymakers and the public about the need to recognize the reality and existence of minorities in Uganda. It is true that in Uganda the Batwa are not afforded an equal opportunity with the other members of the society basically in the field of Education, property, and health. They thus remain a discriminated and unlucky race in Uganda.

In **Mayagna community of Awas Tingni v Nicaragua**; the court held that for indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to the future generation.⁷ The 1995 constitution of the republic of Uganda does not give a definition of indigenous people which led to the Batwa filing a petition in the constitutional court of Uganda in 2003 to get redress for violation of their land rights in Uganda. However ever since this petition we have seen an increased violation of the human rights of the Batwa minority group.

The Batwa in Uganda can organize themselves and take steps to fight for their rights to participation especially in programs of the government that affect them. Generally this has been done where the Batwa organized themselves and formed "UOBDU" United Organisation for Batwa Development in Uganda, which helps fight for the Batwa's rights in Uganda.

⁶Wairama Baker, 'Uganda: The marginalization of minorities' <worldcat.org>2001 accessed on 17 march 2019.

⁷Mayagna Awas Tigni community v Nicaragua. 2001 <<https://www.eser-net.org>>accessed on 3rd April 2019

They have voters or as eligible candidates .the reason for their inability to participate stems from their lack of civic knowledge, discrimination in terms of education, status, health housing, ownership of land and employment among others. This has led to marginalization, oppression and exploitation that eventually threaten to eradicate the Batwa completely from Uganda.⁸

The government of Uganda must develop and disseminate a comprehensive and all including program to all eligible voters, including the ethnic minority groups like the Batwa people, this would be to them about their civic and political rights through civic education. The kind of civic knowledge must be passed on to all voters (women, men, minority groups, youth and others)well before each election. This must continue throughout the election process to avoid conflicts and riots because of voter dissatisfactions.”⁹

A journalist Julius Odeke wrote, In the recent concluded local council elections, communities like the Batwa and Bavanuma in Bundibugyo ;the Bagabo and Bakingwe in Kasese do not have any political representation in communities such as the Batwa, Banyabindi, Bakingwe, Bagabo and Bavanuma to date, lack of political representation at LC III Level and this makes it difficult to contribute to the formation and implementation of policies that affect the governance of such minority communities in the country.

⁸ Andrea Marilyn Pragashini, 'assimilation of the Batwa: a cruel reality'2013<<https://cfmuganda.wordpress.com/>>. Accessed on 12 April:2019

⁹KibukaMusoke, M & Alemiga, J, 'Civic and Political Rights of the Batwa in the Local Governance at village level' The case of Kanungu District, 2008<<https://apsdpr.org/>>accessed on 14 March 2019.

1.9 Conclusion.

In the review, most publications on the rights of the Batwa suggest that despite the fact that they are a minority group, their rights to land ,participation in government programs /and other rights must be respected as they are also considered citizens in that country.

CHAPTER TWO

CAUSES OF MARGINALIZATION OF BATWA IN LOCAL GOVERNANCE IN UGANDA

2.1 Introduction

The Batwa are among the groups most affected by unresolved historic injustice involving their territories, resources and cultures and often this situation is aggravated by their weak voice in the political arena.

Therefore even societies decide to confront the violation of the Batwa's rights its often inadequately addressed, thus the tendency to focus on abuses suffered by such minorities has coincided with the international community recognition of minority's people and human rights.

For instance the international Labour organisation adopted convention 169 which recognizes, inter-alia, the state's responsibility for the participation of indigenous peoples¹⁰.

In addition the United Nations Declaration on the Rights of indigenous peoples recognizes that indigenous people have a right to maintain and strengthen their legal, political, social economic and cultural institutions and to participate in the state in which they live¹¹.

¹⁰ International Labour Organisations, convention Geneva 1989 Article. 2.

¹¹ United Nations Declaration on the Rights of Indigenous Peoples 2007 Article. 7 & 8.

Political rights refer to all individuals to participate in decisions that affect their lives, and effective participation including among other things, voting standing for election, membership of a political party is important.

The Batwa people often have little knowledge of the existing legal framework, the courts of the courts system in general, as a consequence they often lack confidence to actively engage in law, and they have fewer opportunities of receiving education.

When indigenous people's rights to self-determination are denied, the repercussions are felt by its individual members and overall indigenous communities are destroyed or become more vulnerable to destruction thus the good to argue that the right to self-determination is a pre-requisite to enjoyment of all other rights¹².

In areas where indigenous peoples are not recognized on the basis of their status as indigenous peoples ways of respecting and recognizing them must be identified.

By virtue of Article 3 of the United Nations Declaration on the Rights of indigenous peoples provide "indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely peruse their economic, social and cultural development¹³.

Minorities have also tried to seek recourse in formal courts however these courts are faced with inefficiency and corruption. The role of courts in protecting minority rights was aptly captured in the South African case of **State Vs Makwanyane and**

¹² United Nations working group on indigenous populations, statement by Aboriginal & Torres strait Islander commission 1994.

¹³ United Nations Declaration on the Rights of Indigenous Peoples 2007, Article 3.

Machunu¹⁴, The very reason for vesting the power of Judicial review of all legislation in the courts was to protect the rights of minorities and others who cannot protect their rights adequately through the democratic process. Those who are entitled to claim this protection include the social outcasts and marginalized people of our society. It is only if there is a willingness to protect the worst and the weakest amongst us, that all of us can be secure that our own rights will be protected.

In 2010 the Kenya constitution recognized marginalized and special interest groups who have been marginalized for a long time and guarantees empowerment, equity and justice.

In addition the Njemps, an indigenous group in Kenya with a distinct history and language like the Batwa. Before the High Court of Kenya argued that they were an indigenous minority group and that a member of their community had never and could never represent them in parliament because the demarcation of the constituency boundaries in Baringo made them a perpetual minority¹⁵.

For a political system to be truly democratic, it has to allow minorities a voice of their own to articulate their distinct concerns. Participation is a clear constitutional recognition of a minority to participate in the States political process and influence state policies¹⁶.

¹⁴ State Vs makwanyane and Machunu 1995 (3)SA391(CCT) BCLR

¹⁵ Ken shingledecker, unreached people's of Kenya project : other masai people report (njemps, ndorobo, 1982 Daystar communication available at <https://books.google.co.ug> accessed on fourth June 2019

¹⁶ Patricia Achan Okira, Equality in Treatment: 'Towards a Quest for the Rights to Participation of Batwa in Uganda', 2015. < <http://repository.Up.ac.za/handle/2263/52368>> accessed on 17th June 2019.

The Batwa's rights to exist, be treated without discrimination, the preservation of their cultural identity, freedom of conscience, freedom of association and their participation in public life had been violated.

In Rwanda, the Batwa expressed strong concerns about how the local gacaca prosecutorial mechanism, put in place to deal with genocide perpetrators, would protect minority rights: there were no Batwa elected judges for the gacaca for example¹⁷.

2.2 The right to vote and be voted for by the Batwa ethnic minority group in their communities.

Civic knowledge is the process of educating voters about their rights and their political systems for an election to be democratic. The Batwa know very little or totally nothing about their civic rights, they have insufficient knowledge on casting their ballots and being part of the voting process. The Constitution of Uganda 1995 states that it's a right of every citizen of Uganda who is of eighteen years and above to register as a voter for public election¹⁸.

However, the government has not considered the Batwa as eligible voters yet they are also citizens of Uganda. There are no mechanisms and programmes for the Batwa to fully participate in an election. These programmes would at least help them know where and how to register. The Batwa however lack voting materials such as money lack voting materials such as money to be eligible for registration and also the required

¹⁷ Integrated Regional Information Networks news June 6, 2001, <<http://www.irinnews.org>> accessed on forth June. 2019.

¹⁸ Article 50.

level of education. They further face discrimination from the Neighboring society which refers to them as pygmies this has always made them feel inhuman in the society¹⁹.

Generally because of their physical natural appearance (very short people), they are discriminated against on the aspects of education, health life and election. They are usually treated like wild animals because they are considered violent and hence cannot be trusted with leadership²⁰. In addition people perceive them as savage, wild, ignorant and unclean which contributes to their discrimination in society²¹.

Table 2.1: Showed the following on civic awareness by the Batwa table 1²².

Right freedom	Frequency	Percentage
Every Ugandan has a right to participate in affairs of the government	11	30.4%
Every adult has a right to participate in political activities in the country	12	32.0%
Every Ugandan has equal protection before the law.	10	28.3%
Every Ugandan has equality and freedom from all forms of discriminate	9	26.1%

¹⁹ Kibukamusoke, M & Alemiga, J, 'Civic and political rights of the Batwa minority in Local Governance at Village level: The case of Kanungu District', 2018.

²⁰ Kabanankye and Willy, 'A quest for the right to participation for the Batwa in Uganda' 1996 <<https://repository.up.ac.za>> accessed on 15th April, 2019.

²¹ 19 Ibid

²² Dr. Martha Kibuka Musoke, Research Journal Vol. 4/No.5 June 2016 ISSN 2347-8241 <www.researchjournal.com> accessed on 8th May, 2019.

Every Ugandan has freedom of thoughts, expression, religion, movement assembly and association.	9	26.1%
Minorities such as national ethnic religious and linguistic minorities have rights as described above	7	17.8%

This showed that 30.4% of the Batwa know that every Uganda has a right to participate in the affairs of government; only 17.8% know that minorities such as national ethnic, religious and linguistic minorities have rights.

The finding also indicated that the Batwa are either not aware of being represented or do not have any representation at the various level of political leadership which include LC I, LC II, LC III, and LC V levels.

Thus representation of the Batwa in local council and other political leadership roles is not encouraged; there are usually one or two posts at the village level. The Batwa are therefore represented by people from other ethnic groups thus the Batwa are supposed to silently accept policies made by non Batwa, a condition they don't accept voluntarily but there are few Batwa leaders. However even those that are voted for it depends on their degree of assimilation and not because of their capacity to fight for the rights of the Batwa²³.

²³ Kibukamusoke, M & Alemiga, J. Civic and political rights of the Batwa minority in Local Governance at Village level: The case of Kafungu District, 2018

2.3 Causes of Batwa marginalization

2.3.1 Discrimination

Discrimination is the established practice that denies privileges to a certain class because of age, race, sex, nationality or religion²⁴.

The Batwa face discrimination politically, socially and Economically, they have very little access to meaningful Education and employment, the Batwa area also below average height which makes them look like small children.

This natural appearance has led the Batwa to being discriminated. There is also a popular perception of the Batwa as barbaric, savage, wild, uncivilized, ignorant and unclean which contributes to their discrimination and exclusion from mainstream society²⁵.

2.3.2 Education

The Constitution of the Republic of Uganda 1995, guarantees a right to Education to every persons²⁶. The objective is that the state shall promote free and compulsory basic Education and take appropriate measures to afford every citizen equal opportunity to attain the highest Educational Standard²⁷.

And that it shall be the duty to the state and parents of the child to provide him/her with basic Education²⁸. The need for education is crucial especially for the Batwa

²⁴Bryan A. Garner, 'Black's Law Dictionary' 8th Edition Page 500.

²⁵ 23 ibid

²⁶Article 30.

²⁷National Objective and Directive Principles of state policy, objective xviii.

²⁸ Constitution of the Republic of Uganda 1995 Article 32 (2).

indigenous peoples and its limited access has been hampered by discrimination, physical exclusion and inadequate resources²⁹.

Despite the Batwa's appreciation of Education, they have not embraced and taken advantage of the Education programme.

The Batwa have continued to experience difficulties due to extreme poverty and marginalization in making attempts to access the right to Education.

Their children do not enjoy this right on the same footing as other Ugandan children. According to Uganda's Equal opportunities policy, although UPE had provided opportunities for child Education, the Marginalised groups faced with challenges in respect to enjoyment of the Right of Education³⁰.

It is thus due to this discrimination and extreme poverty that the Batwa remain uneducated hence illiterate that they cannot be able to vote or be voted for since they are unable to read and write.

The demographic result from that Batwa population census 2016 show that more than half of the Batwa population (52.9%) have never attained any formal education. It also shows that only 0.5% of the population have attained tertiary level of education, 53% of those who have never attained any formal education are females³¹.

²⁹Minority Rights Group International, 'Minorities and Indigenous People: Justice and Peaceful Development' (2006) London, UK.

³⁰ Government of Uganda, 2nd Draft Nation Equal Opportunities Policy, Uganda Ministry of Gender Labour and Social Development, P.5, July, 2015.

³¹ 30 ibid

Table 2.2: Showing percentage of Batwa level of education per district³².

Education level	District			
	Kabala	Kanungu	Kisoro	Total
No education	54.7	39.8	57.7	1.868
PRIMARY	44.5	54.6	41.0	1.520
Secondary	0.4	4.8	1.0	59
Tertiary	0.4	0.8	0.4	16
Total	807	776	1880	3,463

However in some districts like Rukungiri there are Organisations that carry out empowerment initiatives such as the Rukungiri functional literacy resource center (RFLRC) whose aim is to build capacity of selected community champions among the Batwa communities within particular villages there after the Batwa who are trained pass on the same skills to other groups the skills include writing and reading³³.

As we have seen, their political representation is severely limited in society in which they live.

In the aspect of education because they cannot afford to take their children to school. This is because of poverty related circumstances, stigma and lack of scholastic materials despite the fact that the government has provided universal primary education. This

³² Kak'uru Phares Kosia, 'Bwindi Mgahinga conservation Trust. Batwa Population Census Report'2016.

³³ Kibukamusoke, M & Alemiga, J, 'Civic and political rights or the Batwa minority in Local Governance at Village level: The case of Kanungu District', 2018.

lack of education is one of the strong factors that explain a continued marginalization of the Batwa in the community.

In addition they lack access to information and have low self-confidence in being able to take advantage of opportunities open to them³⁴.

Although there are Batwa holding positions in Rwanda and Burundi, there are no known Batwa holding political positions in Uganda.

This shows that the Batwa ethnic minority group are discriminated against and marginalized politically. They have very little or no access to meaningful type of education to transform their lives as compared with other communities as they can't afford such services which partly contributes to the denial of the Batwa voting right in Uganda.

2.3.3 Unemployment

Unemployment is the state of being unemployed.

Lack of Education and Discrimination are basically the causes of unemployment among the Batwa they have no access to formal employment. This is because they need to have a certain level of Education and Speak English in order to be employed³⁵.

The Batwa people have suffered both emotionally and psychologically because they cannot afford money to sustain them through an election process this for example includes registration, campaign printing posters and paying agents and petitioning in

³⁴ 33 ibid

³⁵ Ewelina Kawozynska, 'Batwa: the most marginalized people in Uganda', 6th June, 2014.

case of grievances because the money required is far too high for the Batwa since they have no formal kind of employment.

They seem to have lost their social dignity that is why they have lost identity and are discriminated when applying for employment which suppresses their civic and political rights which makes people from other communities look at them as illegitimate candidates for any political office³⁶.

Civic knowledge should be the best aspect of promoting the rights of the Batwa to encourage them participate in elections. This has been limited among the Batwa yet most of them are illiterate and discriminated against in the activities of the community such as voting activities. Yet through these activities they can be equipped with power to vote and help them change their society for a better wellbeing.

It is the duty of the government especially the body in charge of election management to educate voters and inform them of the type of election to be held, the polling station, date and location. This voter education can even be carried out on the day of election, there should be posters explaining the voting process and how to mark the ballot³⁷.

It is agreed that to be marginalized as an ethnic minority group is bad enough, but to be a part of such a group as a woman makes it even more disastrous to the process of ensuring that all people enjoy their civic and political rights³⁸.

For one to have civic knowledge, one has to have civic knowledge and one has to be able to demand a free and fair democratic process³⁹.

³⁶KibukaMusoke, M & Alemiga, J, 'Civic and Political Rights of the Batwa in the Local Governance at village level. The case of Kanungu District', 2008<<https://apsdpr.org>>accessed on 14 March 2019.

³⁷ Karen Mossberger, 'Digital Citizenship: The internet, society and participation', (2007).

³⁸Markus and Conner, 'How to thrive in a multi-cultural world', Penguin Publishing group 2013.

The Batwa themselves lack sensitization and are thus not treated as citizens of Uganda who fully enjoy rights under the constitution of Uganda. It's blamed on the electoral commission whose one of the functions is to formulate and implement voter Educational programmes related to Election.

The constitution of the Republic of Uganda 1995⁴⁰, provides that every Ugandan citizen has the right to participate in the affairs of government, individually or through his or representatives in accordance with law this has been contrary as regards the Batwa who are not treated or recognized as citizens of Uganda.

The Batwa being a minority in this region, it denies them the opportunity to compete favorably with the rest because they always go with the majority. As such, this has caused ethnic complex in the region especially towards election time, there is a tendency of insurgencies. And this minority group always suffers when the big tribes fight each other the Batwa are not represented in leadership/ political/ structures⁴¹.

This surely has led to much of the grievances ignored by the government of Uganda despite the fact that there are NGOs that take a step to voice out the Batwa's Grievances.

The Batwa need special protective measures to be able to attain a state of normalcy in society, they should be recognized on the basis of suffering disempowerment as well as discrimination in economic social and political spheres.

³⁹ Prentice Ronbinson, 'Conjugation made easy ' (2010).

⁴⁰ Article 38.

⁴¹ Elizabeth Asiu, 'The vulnerable and marginalized framework by the National information technology Authority Uganda' at page 36 April 2015.

And being faced with such situations, they have to raise their voices saying “Enough is enough” and begin a long and winding path in search of recognition of their legitimate rights.

CHAPTER THREE

MEASURES ADOPTED BY THE GOVERNMENT TO ADDRESS THE CIVIL AND POLITICAL RIGHTS OF THE BATWA

3.1 Introduction

The issue of the institutional participation of minorities in the political and legal system brings us to questions of "consociation democracy" (Power sharing and constitutional devices to ensure effective participation). "Government by the people" means that everyone is entitled to take part in political decision making entitled to take part in political decisions making either directly or by freely chosen representatives⁴².

Democracy should ideally serve the best way of ensuring that everyone can make their interests felt in the common political arena. The dilemma is that the majorities easily overlook the interests of minorities even when the minorities participate on equal basis⁴³.

The Batwa of Uganda submitted a petition to the constitutional court of Uganda on 8th February 2013 seeking recognition of their status as indigenous peoples under international law and redress for continuous human rights violations such as and evictions from their ancestral forest by the government of Uganda they have suffered high levels of discrimination in the Ugandan society and are not treated as citizens, these human rights violations include lack of political representation and participation,

⁴² Patricia Achan Okira, Equality in Treatment: 'Towards a Quest for the Rights to Participation of Batwa in Uganda', 2015. < <http://repository.Up.ac.za/handle/2263/52368> > accessed on 17th June 2019.

⁴³ *ibid*

access to education etc. yet positive measures to redress the violation of Batwas human rights should be the governments priority⁴⁴.

In relation to what should be government's priority, government job is defined as "Defending the rights and freedoms of the individuals is what government job is. Administering justice when those rights are infringed upon is what government job is"⁴⁵.

On March 2016, the government of Uganda launched the country's National Social protection policy, the policy is premised on the provisions of the constitution of the Republic of Uganda, laws that address the issues of risks and vulnerabilities as well as regional and signed onto. The policy is also consistent with National policies⁴⁶.

The National objectives and Directive principles of state policy stipulate;

The state shall give, the highest priority to the enactment of legislation establishing measures that protect and enhance the right of the people to equal opportunities in development⁴⁷.

In addition, all Ugandans shall enjoy rights and opportunities, access to education, health services etc⁴⁸.

The constitution enjoins the state to take affirmative action in favour of marginalized groups.

⁴⁴ ibid

⁴⁵ Chris Holbrook, 'government , forcing restrictions or enforcing liberty', 28th/7/2017 <https://www.ipmn.com/government-enforcing-liberty>(accessed on 17th June 2019).

⁴⁶ Patricia Achan Okira, Equality in Treatment: 'Towards a Quest for the Rights to Participation of Batwa in Uganda', 2015. < <http://repository.Up.ac.za/handle/2263/52368>> accessed on 17th June 2019.

⁴⁷ Constitution of the Republic of Uganda 1995 Objectives xi(1).

⁴⁸ Constitution of the Republic of Uganda 1995 Objective xiv(b).

Uganda's vision 2040 envisages a social protection system where the government recognizes the need to provide assistance to people who are vulnerable other by location, social class, gender and disability⁴⁹.

3.2 Establishment of the Human Rights Commission

Article 51, provides for the Uganda Human Rights commission whose functions are envisaged in Article 52 as;

- (d) To formulate, implement and oversee programmes intended to inculcate in the citizens of Uganda awareness of their civil responsibilities and an appreciation of their rights and obligations as free people;
- (e) To monitor the governments compliance with international treaty and convention obligations on human rights, and to perform such other functions as may be provided by law⁵⁰.

This shows that the framers of the constitution had in mind the rights of minority groups and other groups whose human rights may be infringed upon.

Further, the ministry of gender labour and social development has developed an Indigenous Minority Peoples plan (IMPP) for the Batwa in Kisoro district this plan is based on consultations with the Batwa and key stakeholders currently working in the area as well as the leadership of Kisoro District. So as to meet the rights and interests

⁴⁹ Ibid pg 21

⁵⁰ Constitution of the Republic of Uganda 1995.

of the Batwa this is in line with the provision of the International Labour Organisation Convention 169⁵¹.

3.3 Establishment of the Local Government

The constitution of Uganda establishes the local government⁵². This is aimed at decentralizing power from the central government to the lower levels.

Decentralization is the transfer of legal, administrative and political authority to make decisions and manage public functions from the central government to local councils⁵³.

This system in Uganda can be traced way back to the colonial days. However it was not until the rise of the national Resistance Movement (NRM) government to power under the leadership of Yoweri Kaguta Museveni that decentralization was accorded the prominence it enjoys in the country today.

The local Governments have a mandate of offering services nearer to the people these service ranges from basic community infrastructure, universal primary education to probationary and community based services. Local government is also claimed to promote political harmony and stability by inculcating a community spirit, facilitates accountability and is generally more efficient therefore decentralization creates a more efficient administrative structure that has improved service delivery.

⁵¹ Article 6.

⁵² Article 180 (2) (c)

⁵³ Constitution Republic of Uganda 1995 Article 176

For example: The Local Government Act provides for representation of two councilors one female and one male⁵⁴ which are open to everyone in the community including the Batwa.

3.4 Education

"Education is the most powerful weapon which you can use to change the world"⁵⁵.

In addition education is a right granted to all persons in Uganda per the Uganda constitution 1995⁵⁶.

The government introduced universal primary education UPE in 1997, with the intention to offer free primary school education (The idea that all children should be able to attend primary school for free) and in 2007 universal secondary education (USE) was also introduced⁵⁷.

Universal Primary Education (UPE) commonly known as "Bonabasome" is a government aided program at primary level. Under this program, every eligible Ugandan child is admitted from P.1 to P.7. Despite being a government program a parent also has a role to play like providing scholastic materials, lunch uniform pay examination fees at school.

⁵⁴Section 10.

⁵⁵Nelson Mandela.<[http:// brainyquotes.com](http://brainyquotes.com)> accessed on 17th June 2019.

⁵⁶Article 30.

⁵⁷The observer reporter 'third story of UPE in Dokolo Schools' December 2017 available at [https:// observer .Uganda](https://observer.uganda) accessed on the 17 June.

However Universal Primary Education has not helped the Batwa to a large extent because of some challenges such as lack of food to eat at lunch, Batwa's negative attitude towards formal Education, the discrimination environment etc.

Proportion of school going age Batwa, learner per District in 2016⁵⁸.

Table 3.1: Showing proportion of school going age Batwa learners per district.

District	Child in school		Total
	Yes %	No %	
Kabala	55.0	45.0	318
Kanungu	72.4	27.6	421
Kisoro	50.8	48.2	929
Total	57.1	42.9	1668

The results indicate that 57.1% of school going Batwa learners attend school and reasons why the 42.9% of Batwa are not attending school, include the following;

⁵⁸Kakuru Phares' Kosia, Bwindi Mgahinga conservation trust Batwa Census Report¹, 2016.< bwinditrust.org/docs/2017/BMCT>accessed on 17th June 2019.

Poverty, Batwa children in school still need some extra attention as they do not have access to basic school requirements like uniforms, shoes and other scholastics.

Batwa parents lack awareness of the importance of education and prefer using their children for domestic chores.

Examples of Batwa that have studied and reached university level include Alice Nyamihanda (Uganda's first Batwa pygmy graduate) and Elias Segitondo. It is through this Education that the Batwa can attain their right to participation, this is because for one to be elected he/she must have ascertained a certain level of Education and more so should be able to read and write⁵⁹.

The Government has taken positive steps towards the Education Status of the Batwa one of which is through ratification of international human rights instrument which emphasize the right to Education for indigenous peoples like the Batwa in Uganda.

For example the International Covenant on Economic, Social and Cultural Rights (CESCR) recognizes the right to compulsory primary and higher level of education and free levels of education⁶⁰.

The African Charter Stipulates that every individual shall have the right to education⁶¹. The charter also imposes a duty to the state to educate and promote respect of the rights and freedoms in the charter.

⁵⁹ Elizabeth Asui, 'The vulnerable and Marginalized framework by the National Information Technology Authority Uganda '2015

⁶⁰ Article 13.

⁶¹ Article 17

3.5 Ratification of Treaties

The ratification of treaties Act Cap 204 provides for the procedure for ratification of treaties in accordance with article 123 of the constitution. Where Article 123 mandates the president may make treaties, conventions, agreements or other arrangements between Uganda and any other country or between Uganda and any international organization or body in respect of any matter⁶².

In relation to that, the Uganda Human rights commission is given the mandate to monitor the governments compliance with international treaty and convention obligation on human rights; and to perform such other functions as may be provided by law⁶³.

The Uganda government takes the initiative of ratifying Regional and international instruments that provide for the protection and welfare of minorities and thus agrees to comply with such treaties. And once the provisions of these treaties are domesticated into our national laws, then it's a guarantee that the minority rights to participation are put into force.

The CCPR⁶⁴ places more attention on political processes which include election process and access public office by indigenous people.

3.6 The establishment of Non-Governmental Organizations (NGO's)

The 1995 constitution of Uganda allows NGO's in Uganda to participate in peaceful activities to influence government policies⁶⁵.

⁶²Constitution of the Republic of Uganda 1995 Article 123.

⁶³ Constitution Republic of Uganda 1995 Article 52 (h).

⁶⁴International Covenant on Civil and Political Rights. 1996.

At the same time the NGO Act allows the government of Uganda to exercise considerable control over the operations of NGO's for example. An NGO is prohibited from operating in Uganda unless it has a valid permit issued by the bureau⁶⁵.

Many Organisations around the world dedicate their efforts to protecting human abuses they maintain extensive websites documenting violations and calling for remedial action, both at a governmental and grassroots level.

NGO's have played a primary role in focusing the international community on human rights issues. They also monitor the actions of governments and pressure them to act according to human rights principles.

The Uganda National NGO Forum (UNNGOF) was launched in 1997. Many NGOs had realized the need to engage government and the donor community on policy issues and poverty concerns. Also government found it important to involve civil society organizations (CSOs) in the design and implementation of policies and programmes, the idea of UNNGOF was to establish an organisation that would represent CSOs while bringing together national NGO's international NGOs and other citizen Organisations and interest groups form all thematic areas⁶⁷.

⁶⁵Article 38 (2).

⁶⁶NGO Registration Act , Section 31(1).

⁶⁷Research and Innovation, ' Uganda National NGO forum of Strategic Plan',2016 available at <https://ec.europa.eu> accessed on 18th june 2019

3.6.1 United organisation for Batwa Development.

This is a Batwa directed, community based organisation based in Kisoro created in 2000. It is registered as an NGO in Uganda under No. S 5914/8374 with improving their lives so they can live on equal footing with other Ugandan citizens⁶⁸

Their vision is a Batwa community that is dignified empowered, educated and recognized. And their mission, is to promote the rights and build the capacity of the Batwa through formal and informal education skills development livelihood support, health programmes and to advocate for the promotion and protection of their human rights.

This organisation provides education, legal support etc. to the Batwa in Kisoro, Kabale districts.

3.6.2 BMCT (Bwindi Mgahinga Conservation Trust);

Helps in school construction, education support and provision for food for some Batwa

In relation to these NGO's the Batwa are also assisted by the faith based Organisations such as lift up Jesus, this supports the Batwa by building houses, education, food and providing beddings to them⁶⁹.

These Organisations have basically played an important role in educating the Batwa by sponsoring the Batwa boys and girls in schools such as Alice Nyamihanda (Uganda's

⁶⁸ Karsten Tadie, 'The Batwa of Uganda', 2010. available at <https://uobdu.wordpress.co> accessed on the 18th June 2019

⁶⁹ Kisoro district, 'Uganda management of social risk and gender violence prevention and response report' 2017 available at documents. World bank.org accessed on 18th June 2019

first Batwa pygmy graduate) sponsored and supported by Bwindi Mgahinga conservation trust, Elias Segitondo supported by UOBDU United organisation for Batwa development in Uganda. These Batwa were able to make it to university level⁷⁰.

⁷⁰ ibid

CHAPTER FOUR

LEGAL AND INSTITUTIONAL FRAMEWORK IN GOVERNING THE CIVIC AND POLITICAL RIGHTS OF THE BATWA.

4.1 Introduction

In Uganda, the rights of the Batwa minority are being recognized in national constitutional framework i.e. in some national laws, international laws and in judicial decisions. However access to justice remains a challenge for the Batwa people because they are not recognized.

4.2 National Laws

4.2.1 The Constitution of the Republic of Uganda 1995, (as amended)

The constitution of Uganda is a product of participation and consultations⁷¹.

Article 21 (1) provides that all persons are equal before and under the law in all spheres of political, cultural life and shall enjoy equal protection of the law⁷².

And that a person shall not be discriminated against on grounds of sex, race, ethnic origin or tribe⁷³.

Despite of the above provision, the Batwa have faced continued discrimination in their community. "Discrimination" in this instance means giving a different treatment to

⁷¹ N. Baraaza, 'Legal and Policy framework for citizen participation in East Africa: A comparative analysis' paper prepared for the LOGO-Link write-shop at the institute of Development studies, Brighton, July 29th August 9-2002.

⁷² Constitution of the Republic of Uganda 1995.

⁷³ Ibid Article 21.

different persons attributable only to their respective description of race, ethnic origin, tribe etc.

Article 32 (1) mandates the state to take affirmative action in favour of marginalized groups on the gender, age or any other reason created by history or custom, for the purpose of redressing imbalances which exist against them⁷⁴.

Unfortunately the Batwa of Uganda have not featured in ensuring debate based on affirmative action.

By virtue of the 1995 Constitution of the Republic of Uganda, minorities have a right to participate in decision making processes and their views and interest shall be taken into account in the making of national plans and programmes⁷⁵.

Article 38 states that every Uganda citizen has the right to participate in the affairs of government individually or through his or her representative in accordance with the law⁷⁶.

The constitution of the Republic of Uganda also captures the essence that it is not only the individual rights that are protected but also group rights⁷⁷.

Basically the Batwa ethnic minority are not aware of this right because they have no access to such information which would be at their dispose through education⁷⁸.

⁷⁴Constitution of the Republic of Uganda 1995.

⁷⁵Article 36.

⁷⁶Constitution of the Republic of Uganda 1995.

⁷⁷Article 20(2).

⁷⁸Constitution of the Republic of Uganda 1995 Article 38.

Furthermore, the 1995 Constitution of Uganda there is an establishment of the Uganda Human Rights Commission whose functions are to formulate implement and oversee programmes intended to inculcate in the citizens of Uganda awareness of their civil responsibilities and appreciation of their rights and more so monitor the governments compliance with the international treaty on human rights⁷⁹.

The Uganda Human Rights Commission is one of the leading statutory human rights institutions in Africa and has been cited as a success in so far as national Human rights are concerned.

It is also the state's constitutional mandate to eliminate discrimination and inequalities against any individual on grounds of race, color ethnic minority tribe, political opinion and the need to take affirmative action on favour of groups marginalized on the basis of gender, age or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them⁸⁰.

The Equal Opportunities Act gives full effect to Article 32(1)

4.2.2 The Equal Opportunities Act, 2007

The Equal Opportunities Act⁸¹, provides for elimination of discrimination among marginalized groups. The Act mandates parliament of enact laws, including laws for the establishment of the Equal Opportunities commission⁸², which was established in 2008

⁷⁹Article 51 & 52.

⁸⁰Equal Opportunities Commissions Act 2007.

⁸¹The Equal Opportunities Commission Act no 2 of 2007.

⁸²Section 2.

to eliminate discrimination and inequalities against a group of persons like the Batwa on grounds of age, sex, race, colour, ethnic origin etc.

4.2.3 Local Government Act, 2007

Article 180 (2) (c) provides for the local government to enact laws to provide for affirmative action for all marginalized groups referred to in Article 32 of the constitution⁸³.

Representation of marginalized Groups at all local levels would encourage participation by the Batwa in leadership at Local levels. The Local Government Act provides for representation by two councilors with disability one male and one female⁸⁴.

The constitution emphasizes participatory democracy and provides for a decentralized local government system as an instrument for delivering this democratic at the grassroots level.

One of the Local Government's Act objective is to ensure democratic participation in and control of decision making by the people concerned". Its framers at least had in mind democracy, popular participation and good governance which are all important in the promotion of human rights.

The Local Government Act is silent on the question of Human Rights however in its long title its described as; An Act to amend, consolidate and streamline the existing law on local government in line with the constitution to give effect to the decentralized and

⁸³Constitution of the Republic of Uganda 1995

⁸⁴Section 10.

devolution of functions, powers and services, to provide for decentralization at all levels of local governments to ensure good governance and democratic participation in and control of decision making by people⁸⁵.

They are thus stakeholders in the arena of civic and police human rights at the local level.

4.3 The International Legal Framework

Relating to the protection of the indigenous people's right to participation.

According to Kuper, 'Indigenous' is a term that is essentialist with claims for specific rights which are not different to those made by the right wing parties of Europe⁸⁶.

Natan Lerner, in a book 'Group Rights and Discrimination in International law; provide some special measures that should be adopted for protection of specific groups including indigenous peoples;⁸⁷.

He attempts to summarize law dealing with discrimination of indigenous peoples but does not discuss the right to participation for the indigenous communities.

Frans Viljeen, in an article 'Legal protection of indigenous peoples rights in Africa, states that the source of protection for indigenous peoples falls within the constitutional and legal provisions that guarantee rights for everyone⁸⁸.

⁸⁵Local Government Act Cap 243.

⁸⁶A. Kuper, 'Return of the native' 'The New Humanist', September 2003.

⁸⁷Natan Lerner, 'Group Rights and Discrimination in International Law' (1991) Martinus Nijhoff Publishers (London).

⁸⁸F. Vijoer, 'Legal Protection of indigenous people's rights in Africa, perspectives on the rights of minorities and indigenous peoples in Africa'(2010)'<<https://www.legal.un.org>> accessed on 20th June 2019.

This protection for Batwa can be addressed through international, Regional and domestic legal framework.

Participation as a right to minority groups is very important because better decision making arises from public involvement in the process of development of policies and programmes.

Several International Human Rights Instruments urge state parties to protect the rights of minorities to participation. The concept of participation is enshrined in different Human Rights Instruments.

The United Nations⁸⁹ appealed for special rights to be afforded to groups vulnerable to marginalization.

There is no universally accepted definition of "minorities" the word is actually interpreted differently in separate societies⁹⁰.

The challenge to arriving at an acceptable definition lies in a variety of situations in which minorities exist. The United Nations Human Rights Committee⁹¹ has stated that defining a minority under the international covenant on civil and political rights should not be the description of government, but an objective definition.

⁸⁹United Nations, Charter of the United Nations, 24 October 1945.<www.coursehero.com>.accessed on 20th June 2019.

⁹⁰IRIN, in depth: Minorities under siege-indigenous people and minorities: available at www.assault, available at www.Irinnews.org (accessed on 19th June 2019).

⁹¹This is a human rights treaty body that monitors the implementation of the international convention on civil and political rights among state parties.

It is important to note that any disempowered group regardless of its numerical size could be considered a minority⁹².

The international law stands as an inspiration towards the recognition of the rights to participation by indigenous peoples, the international covenant on economic, social and cultural rights⁹³, and International Covenant on Civil and Political Rights⁹⁴ are very important bookcase they recognize the principle of equal rights and nondiscrimination as stipulated in Article 1 of the two covenants.

The CCPR further confers a right to participation which places more attention on Political processes which include conducting elections and accessing public offices by the indigenous peoples⁹⁵.

The CCPR in Article 27 stipulates that;

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right to community with other members of their group, to enjoy their own culture, to profess and practice their own religion and to use their own language⁹⁶.

Participation through a free and fair election encourages fair competition among the independent candidates. The addressed under the international law provisions which

⁹²K. Kabanukye & D Kwagala, 'Culture, Minorities and Linguistic Rights in Uganda': The case of Batwa and the IK. HURIPEC working paper No. 11 June, 2007. <www.researchgate.net>accessed 20th June 2019.

⁹³The International Covenant on Economic, Social and Cultural Rights (CESCR), GA res. 2200 A (XXI), 21 UN GAOR SUPP. (no. 16) at 49, UN Doc. A/6316 (1996).<www.ohchr.org> accessed on 19th June 2019.

⁹⁴International Covenant on Civil and Political Rights (CCPR), GA res 2000A (XXI), 21 UN GAOR SUPP (1996)

⁹⁵Human Rights Committee, on CCPR (Fiftieth session, 1994) UN Doc. CCPR/C/21/ Rev. 1/ Add.5 (1994).

⁹⁶Ibid Article 27.

have already been domesticated in Uganda especially on their right to participation both in Civil and Political Rights.

4.3.1 The International convention on the elimination on all forms of Racial Discrimination, 2007

⁹⁷The CERD committee made provisions to the effect that discrimination should be discouraged and that state parties should recognize and protect the rights of indigenous peoples to participate the development, control and not to use their resources without their free consent⁹⁸.

In Paragraph 4 (d)⁹⁹ the committee calls upon state parties to ensure that members of the indigenous peoples have equal rights in respect to effective participation in public life and that no decisions directly relating to their rights to effective participation addressed through government agencies when planning to implement policies for the citizens in the country.

4.3.2 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),1966.

The UN Declaration on Indigenous peoples¹⁰⁰ is important in the protection and promotion of the right of indigenous peoples. The Declaration Outlaws Discrimination

⁹⁷International Convention on the Elimination of All forms of Racial Discrimination. GA res 2106 (XX)I Annex. 20 UN GAUR SUPP. (No. 14) at 47, UN Doc A/6014 (1966) 660 U.N.T.S 195, entered into force Jan 4, 1969.

⁹⁸General Recommendations XXIII (51) concerning indigenous persons adopted at the committee's 1235th meeting, on the 18th August 1997. UN Doc CERD/C/51 Misc. 13 Rev. 4 (CERD).

⁹⁹International Covenant on the Elimination of Racial Discrimination 1996.

¹⁰⁰United Nations Declaration on the rights of indigenous peoples, September, 2007, available at <https://www.daccessdds.un.org/> accessed on 19th June 2019).

against indigenous peoples and encourages their participation in all matters that concern them.

The declaration was passed by the UN Human Rights Council on the 29th June 2006¹⁰¹.

It recognizes the right of indigenous people to participate in and maintain their distinct political and legal systems thus, their right to fully participate in making their decisions especially in the political, economic, social and cultural life of the state¹⁰².

Article 19 provides that the indigenous people have the right to make their choice at the level of decision making in matters that affect them. This is further supported by Article 20 which provides that states must obtain the free consent of indigenous peoples before implementing or adopting any legislative measures that are likely to affect them. The Declaration contains several provisions relating to participation of indigenous peoples in managing their own affairs.

The Batwa's Right to participation fits within the UNDRIP.

4.3.3 The International Labour Organization (ILO) Convention 169 1989.

The ILO Convention 169¹⁰³ which was adopted in 1989 is the most significant convention at the international level on indigenous people's rights.

¹⁰¹On the 23rd June 2006, the Human Rights Council adopted the UN Declaration on the Rights to indigenous peoples as proposed by the chairperson Rapporteur of the working group of the commission on Human Rights and it was recommended to the General Assembly for approval<<http://en.wikipedia.org>>accessed on 21st June 2019.

¹⁰²International Convention on of Racial Discrimination 1966, Article 4.

¹⁰³The ILO was formed in 1919 to promote rights at work, encourage decent employment opportunities, and enhance social protection<<http://www.ilo.org>> accessed on 21st June 2019.

The convention 169 protects the right of people whose way of life and existence were threatened by dominating cultures.

The convention encourages states to consult with the indigenous peoples before taking decisions which affect them and thus provides that (a) consult the peoples concerned through appropriate procedures and in particular through their representative institutions whenever consideration is being given to legislative or administrative measures which may affect them¹⁰⁴.

The convention encourages indigenous peoples to take part in the process of formulation, implementation and evaluation of plans and programmes aimed at National and Regional developments that concern them.

With regard to participation the ILO convention 169 mandates states to apply domestic laws to indigenous peoples. If states adopted this provision in their domestic laws then the Batwa's Rights would be promoted in Uganda.

¹⁰⁴International Labour Organisation 1989 Article 6.

4.4 Regional level

4.4.1 Protection under the African charter on Human and people's rights (1981)

The African charter protects the rights of indigenous peoples and encourages them to identify themselves as indigenous peoples. The charter uses the term "peoples" in its provisions. However the African commission has not provided a clear interpretation of the term "peoples".

In *Katangese Congress Vs Zaire*¹⁰⁵ the right to self-determination by the Katangese people was violated under Article 20(1) of the African Charter, however this application was dismissed for lack of proof of denial to participate in government which paved way for the indigenous peoples to make similar claims for protection of their right to self-determination.

This case provides a persuasive authority that the Batwa community can use to promote their rights to participation in decision making.

The foregoing discourse has demonstrated that there is no shortage of international instruments dealing with civil and political rights to which Uganda is party, however, these have not be put in practice and this has shown that these civil and political rights are still being abused in some instances massively. Likewise, the Bill of Rights in chapter 4 of the 1995 constitution is also perhaps the most elaborate ever, providing for such

¹⁰⁵Katangese people's congress V Zaire, (2000) ACHRLR 72 (ACHPR 1995).<www.worldcourts.com> accessed on 21st June 2019.

rights. They were intended to be applied to better the lot of the people to whom they relate. As it is the ordinary Batwa have little to do with the content of these laws.

Involving the Batwa minorities in actual decision making is a legal requirement under the national laws and other international laws, and thus there should be a sanction for not doing so, this is because they also need to see that their input will be taken aboard.

In conclusion, chapter four examine Uganda's domestic, Regional and international legal framework in promoting the right to participation of the Batwa which is one of the indigenous tribes in Uganda. This right to participation by the Batwa is accommodated within the above mention frame work which lay emphasis on non-discrimination and equality in participation.

CHAPTER FIVE

RECOMMENDATIONS/ CONCLUSIONS

5.1 Conclusion

The study concludes that a lot remains to be done in respect to the enforcement of this right to participation.

The situation of the Batwa ethnic minority needs to be addressed urgently and their problems solved. Though the government has developed legislations and policies which seemingly create equality, they in reality lack equality due to patterns of marginalization and discrimination.

Therefore, a question should be asked, 'What is independence'? for the Batwa they have not yet attained independence for their enjoyment to their rights are always hampered with. It's thus urged that inclusion of the Batwa will advance their right to participation create harmony and equality in Uganda thus solving the problems that the Batwa are facing today.

5.2. Findings of the study

There is a find that the Batwa are continuously being discriminated against in relation to decision making and making of choices that affect their rights. This is because they are treated differently from other indigenous people and that's why they are referred to as backward and primitive.

There is a finding that the universal primary education has failed to benefit the Batwa children due to poverty and discrimination they face in schools. However the right to education is guaranteed in Article 30 of the 1995 constitution. Article 34 enjoins it is responsibility of the state and parents to offer basic education to address the high level of illiteracy in Uganda.

There is a finding that the Batwa have no seats reserved for them at the local levels. However according to the local government Act, it provides for representation of marginalized groups at all local levels for example representation for two youth councilors one male and one female, two councilors with disabilities, one male and one female.

There is a finding that the legal and institutional frame work governing the civic and political rights of the Batwa have not been effective this is due to government failure to comply with the national and international laws that stipulate the rights of such indigenous people. Article 51 of the 1995 constitution creates a Uganda human rights commission whose functions among others under Article 52 are to monitor governments compliance with international treaty and conventions obligations on human rights.

5.3 Recommendations

5.3.1 Discrimination

I recommend that the Government (parliament) should domesticate International Conventions that safe guard the rights of Minority ethnic groups.

Parliament should enact specific laws in protecting minority ethnic groups with privileges

Government should put in place affirmative action plans for minority ethnic groups..

5.3.2 Education

I recommend the need to investigate how UPE and USE can be made more responsive and inclusive of the Batwa. This will help fight the levels of illiteracy among the Batwa minority group. In addition, Provide full scholarships to all the Batwa learners and support interventions that will break the barriers to their retention and completion in school.

5.3.3 Representation

I recommend the need to ensure the effective representation of indigenous people in local and national governance structures. This would improve their lives and wellbeing both in the political, social and economic arena. There's also need to reserve seats at local level for the Batwa which will ensure that the right to participate for the Batwa is given full attention.

The parliament should enact laws that cater only for the Batwa's rights and include non discrimination with in its provisions.

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