



LAND CASE STUDY

The Benet's struggle to secure their land

Summary

Government gazetted the land of the indigenous Benet people into Mt. Elgon Crown Forest back in the year 1993 without consultation or the consent of the community. The Benet were allowed to stay in the forest but under strict rules like restriction on cultivation, keeping goats etc. A series of events gradually reduced the rights of the Benet who were not only oppressed by government but also suffered even more from oppression meted on them by other communities in the region. Uganda is party to several international protocols including the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs) which oblige states, among others, to recognize the

social, cultural, spiritual, economic, environmental and political value of land to indigenous peoples and other communities with customary tenure systems.



Interview with Yeshe Arapson the Chairman MEBIO, Elder Chemengech Arapkures (centre) and Benjamin Mutambukah the author of the article. Photo by Chebet Mungech

Context and problem

The initiative is located in Kween District of Eastern Uganda, close to the Kenyan border. The area of interest is in the three sub counties of Kwoyir, Kitawoi and Benet where the majority of the Benet live. The Benet who are also derogatorily referred to by their Sabinu neighbours as the Ndorobo, Mosopishiek or Ogiek have for over 500 years inhabited the forest and moorland on Mt. Elgon. The Benet describe their rangelands as stretching from Sironko river in the West eastwards across Suam river into Kenya, then again past river Lwakhakha back into Uganda as far as river Manafa.

In their original habitat, the Mt. Elgon forest, the Benet were involved in rearing sheep and cattle, harvesting honey and limited growing of potatoes and wheat. They would then barter their products with maize which the Sabinu neighbours in the lowlands were growing.

In 2013 a census was conducted of the Benet people in the three districts of Bukwo, Kween and Kapchorwa. It was found that they numbered 8,500 with the majority of them (4,500) living in Kween. In the 2014 national census, it was established that in Kween district an average household was made up of 5.2 members meaning that the Benet in the district would approximately come from 865 households.

Form of community resilience seen as natural resource aggression

In 1970, there was a drought and a wild fire destroyed a big part of the forest where the Benet were living. For the first time in 1971 the community planted maize to supplement what they could hunt and gather from the scorched environment. Because the land was virgin, the yields were very good which among other things created envy among their neighbours.



Healthy gardens (l-r) of maize, potatoes and wheat as evidence of fertility of the land of the Benet. Photos by Chebet Mungech and Benjamin Mutambukah

This marked a shift from the practice where only small tracts of land had been cultivated on the mountain for growing potatoes and wheat. For once, large areas were now opened for maize growing. The opening of land previously forested alerted the government to conclude erroneously that the forest had been encroached upon. In reality though, it was the same inhabitants that had adopted a different lifestyle to cope with the limited survival options that the forest was now offering. The Benet community of course continued to maintain that they were not encroaching since to them they were simply utilising their land differently.

The government took the community to court. During the proceedings, the community maintained their stand that they were in no way encroaching on public forest land but rather

using what was legitimately their land. They were able to successfully argue and satisfy the court that indeed they were rightful owners of the land. The court instructed the District Police Commander to write a letter to the central government to the effect that the Benet were the real owners of the land. That was a major victory born out of community efforts.

As a follow-up, government sent the Regional Forest Officer from Mbale to visit the area. He went up the mountain to the moorland where he found Benet settlements. He asked the community if they were paying graduated tax to government which they proved to be true. He asked them if they were represented in the district council and they said they had none of their own in the council but were represented by the Sabiny from the lowlands. Unfortunately, the two communities had divergent interests and challenges and the Sabiny had no interest in protecting those of the Benet.

In 1973, government through the Regional Forest Officer asked the community to choose and settle in areas in the forest below the moorland where maize could grow so that facilities like schools, health centres and roads could be developed for them. Some members of the community who were not scared of the task of clearing the thick forest took courage and accepted to be resettled. Others, however, opted to remain in the forest.

In 1983, government directed that the land that the Benet were occupying should be demarcated for them to resettle. The decision was made without consulting the people who were already occupying the land. They were largely not aware that they were required to apply for the land which disadvantaged them compared to the Sabiny officials who were better informed. The latter took advantage to apply for the land, get allocation and evict some of the Benet who were already occupying the land. Some of the Benet had to bribe the officials to get allocated pieces of land whereas others ended up getting nothing at all.

Government violence to displace communities

During the resettlement, not all the Benet were moved. Between 1988-1990, government sought to resettle those previously left out. Some did not want to be moved and resisted which was met with violence from the state after the Forest Department gave them one day's notice to leave. Houses were burnt, livestock confiscated and the community forcefully moved to Kween District. Many Yatui Benet, however, resisted the resettlement and opted to stay in the forest living in caves or under trees notwithstanding the constantly threat from the Uganda Wildlife Authority.

Response

Objectives :

The deprivation of the Benet's access to their land despite numerous cases of demonstrating the legitimacy of their claim to the same has been the motive behind this community's incessant drive to claim what is legitimately their own.

Strategy/activities and stakeholders

The resources required were mainly financial as well as technical skills. The financial resources for the court case came from Action Aid Uganda while the Uganda Land Alliance provided the necessary support in consolidating the evidence that was crucial in winning the case. MEBIO also galvanized the community in mobilizing and presenting the case to court and the delegation that met the President.

In 1993, finally the government carried out a survey of the area allocated to the Benet in 1983. In the process it emerged that the actual area originally said to be between river Kaptokwoi and Kare to the West and East respectively and the 1936 boundary and a natural cliff to the North and South respectively initially estimated to be 6,000 hectares was actually 7,500 hectares. The 6,000-hectare

resettlement area was finally de-gazetted from the National Park in 2002 by parliament. Government since then considered those occupying land beyond the 6,000 hectares in the Benet County and Kwoti Parish of Tingey County to be encroachers in the national park.



Despite restrictions against grazing in the National Park, our team found these cows grazing in the park. This is because the land occupied by the Benet and their Sabiny neighbours is densely populated and cultivated leaving little space for grazing. Photo by Chebet Mungech

This threat of eviction prompted the community with the support of two NGOs, Action Aid Uganda and Uganda Land Alliance, to bring a case against the Uganda Wildlife Authority and the Attorney General seeking for the Benet's right to retain ownership of the 1,500 hectares. This resulted into a ruling in favour of the community in a consent order and decree dated 27 October 2005. In part, the ruling states:

"That it is hereby declared that the Benet Community residing in Benet Sub-County including those residing in Yatui Parish and Kabsekek Village of Kween County and in Kwoti Parish of Tingey County are historical and indigenous inhabitants of the said areas which were declared a Wildlife Protected Area or National Park; That it is hereby declared that the said Community is entitled to stay in the said areas and carry out agricultural activities including developing the same undisturbed; That the Respondents take all steps necessary to de-gazette the said area as a Wildlife Protected Area or National Park pursuant to this Consent Judgment, after a physical inspection of the boundary with the Benet Community."

This court order has never been implemented nearly 13 years down the road.

On the 16 February 2008 Yatui Benet, a sub-group of the Benet, in the former Benet resettlement area were violently evicted by the Uganda Wildlife Authority. In the four-month period following eviction, before the community were temporarily allocated land in Kisito, Kwosir Sub-County of Kween District, the community had to take refuge with relatives, or find shelter in caves or under trees. The 'temporary' land allocation process was also riddled with procedural unfairness and corruption, with some community members having to bribe officials to get the land they needed. This community was originally supposed to stay in the temporary place for only six months but till now (2018) the people still languish in 'temporary' settlements. The negative effects of this long term stay in 'temporary' settlement include:

- a) People cannot invest anything of long term nature on the land like decent housing or growing permanent crops like trees which are crucial for firewood and building materials;
- b) There is minimal interest in sustainably developing the land since anytime they may be asked to leave;
- c) There is a state of permanent land tenure insecurity; and
- d) Limited land space since the allocations were meant for short term use only.

On 5th February 2011 a Benet delegation met President Museveni at his home in western Uganda and explained to him how they had been forced off their land and the suffering they were undergoing. The President directed the Prime Minister stating that ".....those families have been displaced apparently living in rocks. This is unacceptable at all." He further directed the concerned ministries to de-gazette the London portion of the National Park so that those families could be resettled permanently. In compensation, the communities were to receive building and planting materials and improved livestock for re-stocking. The possibility

of allowing the community to sustainably graze in the moorland was also supposed to be considered. Resettlement was supposed to start immediately.

On 11th April 2016, another presidential directive was issued on the same subject. This time it said that the Ogiek Ndorobos (a derogatory name for the community by the majority Sabiny)

“should settle in the moorland permanently on condition that no illegal activities are carried out on the said land such as cultivation, deforestation and poaching. The perimeter is between Chepukut and Rwokok rivers, the remaining parts should be interacting for the national park. I am directing that no any authority should disturb the community anymore and I am told that the community used to respect the forest but they changed and resorted to poaching so they should be sensitized about it.”

The denial of the Benet people's access to their land despite numerous cases demonstrating the legitimacy of their claim has been the motive towards this community's incessant drive to claim what is legitimately their own.

Results

The Benet were able to win a case against Government for their right to ancestral land. They were also able to get two Presidential directives in their favour. However, government has dragged its feet in implementing the judgement of the High Court. It may take time for the judgement to be implemented but the community for now has in its hands a document to support their legal claim to the land in question.

This has led to other parties like Forest Peoples Programme and International Work Group for Indigenous Affairs picking up interest in the case and supporting submission of the issue to the African Commission on Human and Peoples Rights meeting in Banjul in 2015.

The community, MEBIO and its local and international NGO friends have scored some

successes most especially obtaining a consent judgement in their favour in 2005 that they should have free access to the land they were being evicted from.

In 2011, the President directed the Prime Minister to resettle 400 Benet families that had been evicted by government in 1986. This was followed by another directive in 2016 where it was said that the Benet 'should settle in the moorland permanently on condition that no illegal activities are carried out on the said land such as cultivation, deforestation and poaching.'

The consent judgement and two presidential directives above can be cited as successes for the community efforts. However, the challenge remains that the implementation of these has openly been ignored.

“In 1983, government directed that land occupied by the Benet should be demarcated for them. In the process they sent the Sabiny officials to do the demarcation. The officials instead brought their relatives; friends and in laws and allocated them the land. We were chased and told to go back up the mountain. All sorts of inhuman treatment was meted on all those who dared to offer any form of resistance.” Elder Chemengech Arapkures, Age 68, Tekandet Village, Kwosir Sub county, Kween County, Kween District. Interviewed at his home on 18th June 2018.

Finally, for the presentation of the case to the African Commission on Human and Peoples Rights (ACHPR), financial and technical assistance was obtained from the Forest Peoples Programme and the International Work Group on Indigenous Affairs. Unfortunately, when the Uganda government was called upon to respond to the Benet issue at the ACHPR, the delegation dodged the issue saying they had to go back to Kampala and consult. It is not clear if the presidential directive of 2016 has any relationship with the Banjul meeting. However, the situation on the ground is that the plight of the community has remained the same.



Waterfalls like the one in the picture have important social attachment for the Benet. Photo by Chebet Mungech

Lesson learnt:

The message is clear that many African countries do not put into practice what the legal and policy frameworks say. Minorities and pastoralist communities in the continent are very fast losing land to governments and private investors without caring about the original users of those lands. In Uganda alone, there are a number of other cases like the Batwa in Kisoro district whose land was converted into Mgahinga National Park, leaving them homeless. In Kasese district, the Basongola are victims of the same fate with their land converted into Queen Elizabeth National Park. The Karamojong pastoralists have over half their land still under reserve and worse still with a big chunk of that being in the wetter green belt where pasture is more readily available during the dry season.

Similar cases exist in Kenya, Tanzania, and Namibia, where indigenous people are displaced, abused or killed for the extension of leisure areas such as for tourism. More action is

required especially by the international NGOs to support the efforts at national or continental levels to wrestle the land of the affected communities from state agencies and private capital posing as investors. There is need for global effort to cause states to respect the rights of the land of the minorities especially those that are parties to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Labour Organisation (ILO) Convention 169, or the VGGTs.

Conclusion

The situation of ethnic minorities in general is precarious even at global level. In the case of the Benet, we see a case where government departments and agencies are speaking different languages. While it is recognised that the community should repossess its land, no efforts are being directed towards the realisation of that. There is an urgent need to galvanise NGO efforts to support the community to follow up on the already attained successes and ensure that government is held to account

as well as actualising the provisions of Uganda's Constitution and the National Land Policy.

- There is need to scale up the pressure at political level by using all lawful means to highlight the challenges faced by the community. Local initiatives would include any of the following:
 - Submitting the case to the Court of Appeal
 - Presentation of the case to the ongoing Commission of Inquiry
- Address the issue to the Uganda Human Rights Commission
- In the extreme case, the Benet can take the action taken by their cousins the Ogiek of Kenya and take the case to the African Court of Human and Peoples' Rights or follow the example of the Maasai and take their case to the East African Court of Justice.

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Who is AFSA?

The Alliance for Food Sovereignty in Africa is a broad alliance of civil society actors who are part of the struggle for food sovereignty and agroecology in Africa. It is a network of networks, currently with 34 members active in 50 countries. Its members represent smallholder farmers, pastoralists, fisher folk, indigenous peoples, faith-based institutions, women's and youth groups and environmentalists from across Africa. The core purpose of AFSA is to influence policies and promote African solutions for food sovereignty.

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