

CRITICAL STORIES OF CHANGE



The Benet Community of Uganda

Mountains of Trouble

A story about a community's struggles in achieving land rights, identity and recognition.

By Okwaare S. and Hargreaves S.
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Background

Critical Stories of Change

This is one of a series of Critical Stories of Change, which tell of the role ActionAid plays in changing the lives of people living in poverty. In their openness, self-criticism, detailed analysis, and celebration of the active role of others, the stories are not just self-congratulatory ‘good practice case studies’. These stories are bristling with life, and are intended to impart the insights of a friend.

Development organisations often make claims for their work and achievements. Yet, in the struggle to address the causes of poverty and injustice, we are just one of many players. What we rarely get to know is how significant our contributions are amongst the other factors that influence outcomes. Critical Stories of Change aim to explore how change (both negative and positive), and potential change, happens, or is stalled, from the perspectives of different stakeholders, as well as exploring who the change benefits. These stories hopefully capture the full complexity of organisations’ development interventions and experiences and aim to provide insights for all those engaged in the struggles against poverty and injustice. This story is especially relevant to those working on land rights struggles.

The stories express the authors’ points of view. There will be other perspectives. They are not intended to be objective and neither are they ActionAid policy documents. The stories are a snapshot in time. Each refers to events which are ongoing and the story of these continues.

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Glossary & Acronyms

Affirmative action – positive discrimination by the government towards those who have suffered historical injustice and marginalization. This action could take the form of provision of social services, additional budget allocations, educational scholarships, tax exemptions etc.

AAU – ActionAid Uganda Country Programme.

Batwa – a group residing in the Kisoro district, 500km from Kampala. The Batwa are also found in Rwanda, Democratic Republic of the Congo (DRC) and Burundi. The Batwa were dispossessed of their ancestral land when the British colonial rulers gazetted a Crown Forest Reserve in 1932. Successive layers of dispossession culminated in the eventual loss of access rights when their land was declared a Game Park in 1991, and they were physically forced off the land.

Benets/Benet Community – The Benet community is a historical term which was used to describe the contested area of Mount Elgon where Ndorobo and settlers currently reside. The terms ‘Benet’ and ‘Benet community’ were revitalised to describe the people in that area (both settlers and Ndorobo) for the purposes of pursuing the legal strategy.

Benet Consultative Committee (BCC) – an organisation unifying the Ndorobo and the settlers for the purposes of the legal struggle around land rights.

Benet Lobby Group (BLG) – a Ndorobo grassroots organisation which entered into partnership with AAU in 1999.

Benet Settlers Association (BESA) – an organisation of the settler Sabiny residing on Mt Elgon.

Civil Society Organisation (CSO) – organisations outside the state which have a civic responsibility.

Consent Judgement / Decree – a court judgement arrived at by agreement between the parties to a case and endorsed by the court, but settled before full court proceedings.

Gazette – an official journal that publishes the texts of the new laws and government decisions.

Ndorobo – the indigenous Benets, the first occupants of Mt. Elgon.

Ogiek – an indigenous people living mainly in Kenya’s Mau and Mt. Elgon Forests, who are fighting to remain in their ancestral homeland. The former government tried to force them out of the forests, allegedly to protect the environment. They are also engaged in a long struggle with the Government of Kenya for recognition of their rights as guardians of these forests.

Parish – geographic unit for local administration.

Settlers – People that originate in the lowlands (Sabiny), who fled cattle rustlers and took refuge in the highlands, i.e. Mt. Elgon, and were allocated land under the government resettlement scheme in 1983. The term also refers to a group known as ‘the needy’ who had no land at all.

Uganda Land Alliance (ULA) – set up in 1995, this is a consortium of 44 national and international NGOs as well as individuals, lobbying and advocating for fair land laws and policies that address the land rights of the poor, disadvantaged and vulnerable groups and individuals in Uganda.

Uganda Wildlife Authority (UWA) – an organisation established in August 1996 by the Uganda Wildlife Statute, which merged the Uganda National Parks and the Game Department. It is governed by a Board of Trustees appointed by the minister responsible for wildlife.

SECTION 1

The Story of the Benet Land Struggle

The year is 2002. The memo is stark and urgent. It is from the ActionAid Uganda (AAU) land rights desk officer in Kapchorwa district – east of Kampala in Uganda. Addressed to the AAU Policy Manager and copied to the Uganda Land Alliance (ULA), the memo speaks in graphic terms of an escalation in harassment by warders of the Uganda Wildlife Authority (UWA) against peasants in the Yatui, Kwoti and Kapsekek parishes. These parishes are located above (outside) the disputed 1983 and 1993 boundary lines of the newly created Mt. Elgon National Park¹.

According to the memo, seven persons have been seriously assaulted and advised to leave the area within two weeks. Several grass-thatched houses and food gardens have been destroyed and 52 head of cattle confiscated. The peasants are at their wits' end seeking the wherewithal to pay for redemption of the animals because, as the memo clarifies, "failure to pay the extortion money could lead to being framed for more serious offences such as poaching or lumbering which would lead to parting with more money and even prosecution and sentencing in prison. The people are now living in fear unless serious steps are taken to reverse the situation".

The Benet people have for long decades struggled for the recognition and restoration of their rights to land, and faced repression from successive Ugandan Government

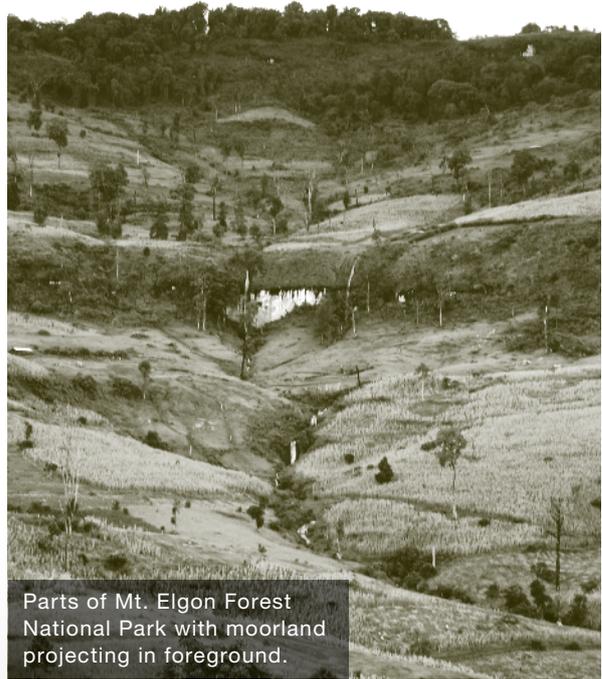
authorities in the course of this struggle. Their current hope to reverse the situation hinges on the outcome of one important court case filed on their behalf: "Miscellaneous Case No. 001 of 2004: Uganda Land Alliance Ltd (Applicant) versus Uganda Wildlife Authority and Attorney General (Respondents)".

Indeed, come Judgement Day on October 27 2005 and hundreds of Benets make the gruelling 84 km journey from Benet sub-county to the High Court in Mbale town, west of their district. They are from all walks of life: young and old; mothers and daughters; cabbage farmers and cattle herders; basket weavers and honey gatherers; councillors and clan ritual specialists. For most, this is their fifth visit to Mbale High Court tracking the progress of this case. They are filled with feelings of anticipation and anxiety. Would the verdict truly signal the reversal of their woes? Would their rights – fought for through physical defence, through efforts to mobilize public opinion in their favour, through advocacy directed towards parliamentarians and decision makers – be legally recognised? Would this mark the point of critical change from domination, discrimination and exclusion to entitlement, recognition of their way of life and security of person and property? Would state infringements end? Would their ancestral lands now comprised in Mt. Elgon Forest National Park revert firmly to their occupation and use?

¹ The text uses the terminology 'above' and 'below' the boundary line, rather than 'inside' and 'outside' as it reflects that the National park is on a hill. 'Above' the line is inside the forest park. Below the line is outside the park.

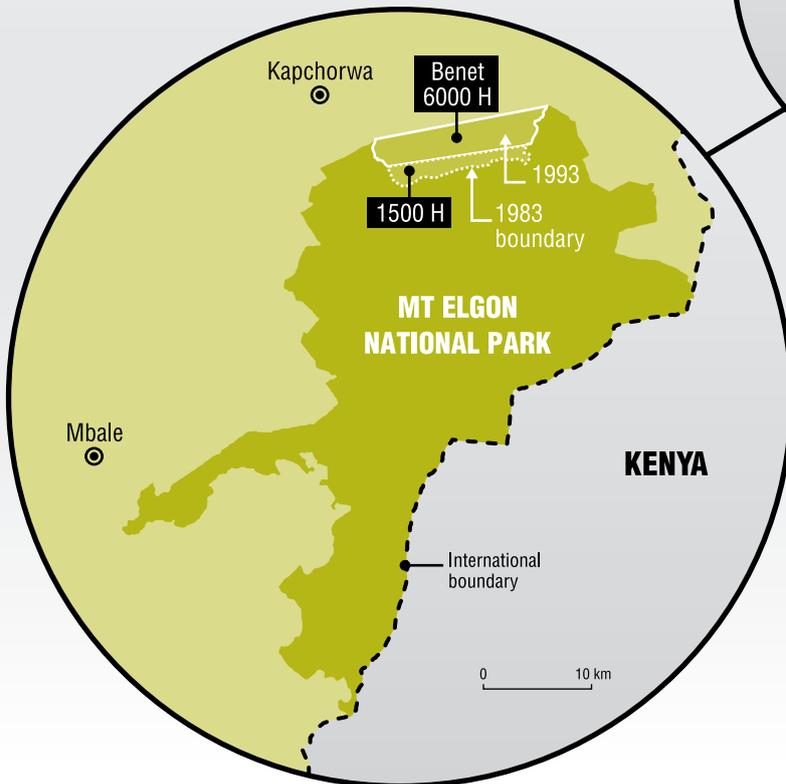
The mountain

Mt. Elgon is a solitary volcano of the geological era known as Pleistocene which lasted until about 10,000 years ago, when modern humans first appeared. The mountain straddles the Uganda/Kenya border, rises to 4,320 meters above sea level and supports a diverse mountain forest and extensive shrub vegetation. It is one of Uganda's most important water catchments, regulating water flows to streams and rivers that serve millions of people on both sides of the border.



Parts of Mt. Elgon Forest National Park with moorland projecting in foreground.

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The court judgement was issued in the form of a **Consent Judgement/Decree**, which is arrived at by agreement between the parties to a case and is endorsed by the court, but settled in advance of full court proceedings.² Amongst the terms of the Judgement was the recognition of the Benet community as the “historical and indigenous” inhabitants of the area; their right to live and conduct ‘agricultural activities’ in the areas they currently inhabit; and the right to immediate redress for imbalances in education, infrastructure, health and social services.

“The Benet case against government was a first of its kind in Uganda. It has far reaching consequences for minority and indigenous groups whose rights to access and control their land should be given due consideration under the National Land Policy”

ActionAid Uganda, 2004

The Benets were supported for over a decade by AAU and the ULA, a national network of land rights organizations of which AAU forms a part. Both organizations are well known crusaders for the land rights of vulnerable groups and communities in different parts of the country. AAU has been active in eastern Uganda for just under a decade. Formal contact between a Benet grassroots organization, the Benet Lobby Group (BLG) and AAU dated back to 1999. AAU and ULA supported the Benet community to take the UWA and the government to court, and assisted them to build an advocacy strategy surrounding the court case.

The Benet victory showed that powerful grassroots initiatives, coupled with the partnership solidarity of rights-based CSOs, can... bring about a change from marginality to entitlement for landless and vulnerable communities.

The Consent Judgement was hailed as a success – AAU, the ULA and other CSOs interpreted the court victory as the vindication of an approach which places rights at the centre of their work. The Benet victory showed that powerful grassroots initiatives, coupled with the partnership solidarity of rights-based CSOs, can, through a legal strategy, bring about a change from marginality to entitlement for landless and vulnerable communities. This is a story of a small community organizing, fearlessly taking on the might of the Ugandan State and winning!

Critical Story of Change

ActionAid wanted to explore the perceived victory of the Benet Land Rights struggle and consequent successful legal challenge through a **Critical Story of Change**.

In exploring the court verdict and talking with ULA and AAU officials closely involved with this struggle for land rights, the strong impression created is one of a story of change from marginality and vulnerability to recognition, entitlement and security of tenure. It is a story of how AAU, a rights-based CSO, made the bold foray in 1999 into supporting the Benets as an indigenous and minority community.

² A consent judgement is like any other court judgement. The only difference is that it is reached by negotiation rather than a judgement by the standing judge of the court before full court proceedings. The judge still orders the government bureaucracy to implement. AAU and ULA have been fighting for this to be actualised since October 27th 2005, since none of the required changes have thus far taken place.

It is a story of how AAU forged a way of working that empowered a community, built its organization, and supported its struggles. This partnership resulted in a court victory that recognizes land rights lost and compels the state to remedy its past actions of dispossession. In some respects, this is a story which underlines the value of AAU's vision of rights and its approach of working in partnership to realize those rights.

As one begins to dig below the surface of this apparent 'success' story, however, multiple discourses emerge. The Benet were formed of two groups who had lived in apparent harmony. However, a story of conflict and contestation between the indigenous Ndorobo on the one hand and the late-coming settlers on the other has emerged. This conflict has emerged despite AAU's efforts to adopt the concept of a Benet community and work for a 'united front' of the settlers and the indigenes against the State as land predator. The fragile idea of 'community' has been unable fully to contain the simmering resentments of the indigenous Ndorobo-Benets against the settler Benets for land dispossessions, and perceived discrimination and mistreatment.

Deep in the theme of contradiction and conflict lies a contested understanding about land and its role in economic, social and cultural life. One current is a developmentalist, more economics-centred focus to which AAU, ULA and the settlers subscribe. A second current embeds in land a more holistic, historical and cultural/social focus, which we might describe as indigenous. It is the former which has strongly influenced the development of the legal strategy, and the interpretation of the Benet legal strategy as a victory for the Benets and for the supporting CSOs. But there remains a question around whether the court case has really made a difference in resecuring the latter.

Perspectives and methodologies

A Critical Story of Change is both a perspective and a methodology. As a perspective it emphasizes the values of grassroots democracy, informed participation and consensual engagement on issues. As a methodology it documents change as a process of learning and reflection; delving into the context, motives, interests and relationships surrounding the key protagonists involved. The story of change is gathered through a collective exploratory process and presented as an open-ended, discursive narrative. The abiding objective is to raise questions that provoke a deeper sense of understanding, criticism and self-criticism, about the assumptions, concerns, perspectives, challenges and dynamics of the change as a process. Each story is one of many potential angles on a change process. Each story has gone through negotiation and compromise to reach its text version. By no means does the full stop at the end signal the end of a change process. The process will continue and the story will support actors to understand the processes in which they have been involved.

There were several questions to explore through this **Critical Story of Change**: How did the community decide that fighting it out in the courts was the best strategy to force the State to recognize their land rights? Was the legal victory indeed a victory and, if so, for whom? What underpinned the 'success' of this legal strategy, and what were its implications for the wider land struggle? How much does this success give hope to similar struggles elsewhere? What was going on in this apparently 'united' community? What had AAU and ULA's role been and what lessons does their approach and methods offer for other actors engaged in similar support efforts?

Highlights of the Benets' Land Struggle

Year	Event
1920s	Mt. Elgon declared a Crown Forest ostensibly to protect vegetation cover on the mountain. Colonial authorities recognize Ndorobo as the indigenous inhabitants of the area but this gives them no land rights.
1936	Mt. Elgon declared a Forest Reserve. Ndorobo-Benets left to dwell in the forest because their numbers are considered too small to endanger the mountain eco-system
1957	10 Ndorobo Benet women who had gone to barter their crafts for food in the Ngenge plains contract malaria and die instantly on their return to the mountains. Benet start to consider growing own food.
1971	A bad drought and extensive forest fires force the Ndorobo-Benets to add food cultivation to their traditional livelihood strategies of hunting, gathering and forest pastoralism.
1972	Ndorobo-Benets are declared encroachers because of their agricultural activities. 20 Ndorobo-Benets mobilized by Moses Mwanga (current BLG leader) gather at a sacred site (Kok) in the mountains to form Benet Pressure/Lobby Group to fight for their land rights.
1973	Government sets aside land for resettlement of the Ndorobo-Benets and asks them to move over a ten-year grace period.
1982	Preparation for resettlement exercise by the Forest Department.
1983	6,000 hectares of land taken from forest reserve to resettle Ndorobo Benet formally.
1984	2,872 Ndorobo Benet families resettled but more land goes to non-indigenous Benets. Some Ndorobo-Benets refuse to be relocated from the reserve due to poor mobilization and fear of land insecurity.
1989	Mt. Elgon Forest Reserve elevated to the status of a Forest Park. Park authorities tighten on hunting, grazing and agricultural activities by Ndorobo-Benets.
1990	Yatui Parish of the eastern Benet goes up in flames as park rangers, on government orders, evict so – called encroachers. Government claims 90 per cent success rate but many Ndorobo Benet still resettle above the 1983 line.
1993	Government declares Mt. Elgon a National Park and resurveys the 6,000 hectares. It is declared to in fact be 7,500 hectares. The government thus declares 1,500 hectares of land as now illegal and inside the Park.
1994	Fierce protests and advocacy by all Benets including memorandum to government opposing the 1993 survey boundary, force the government to set up an inter-ministerial task force to study the magnitude of the problem and make recommendations to the government. The study recommends that the 1983 line is adopted.
1997	The Benet Implementation Committee set up to operationalise the recommendations of the task force proposes that the non-Benet people who had acquired a share of the 6,000 hectares be compensated for their developments, and land be distributed to cater for Benet people still living above the line inside National Park.
1999	Uganda enters into partnership with Benet Lobby Group; it strengthens the organisational and advocacy focus on the root causes of poverty and marginalisation and facilitates the Benet to critically engage centres of power and influence. Government construes some of their joint grassroots activities as incitement and blames Benets for intensified agricultural 'encroachment'.

Year	Event
2000-2001	UWA steps up surveillance and armed operations against Benets. People and animals killed, food gardens damaged and household property confiscated or destroyed. AAU assists BLG to lobby the district council and meet with Ministers in Kampala. Intensified mobilization of the community takes place to raise awareness of their land rights. Top BLG leaders are accused of fomenting ethnic strife over land.
March 2002	Parliament approves the Park boundary. Parliamentary Sessional Committee on Natural Resources visits the Benet area to communicate the verdict of parliament. UWA declares that 1983 land allocation null and void. This prompts the affected non-indigenous Benets to form Benet Settlers Association (BESA) and threaten court action.
May 2002	Benet sub county chairman (also BLG leader) writes a Memorandum on “The Benet Conflict in Mt. Elgon National Park in Kapchorwa District” to the President of Uganda. In response, the State Minister for Tourism visits the area “to resolve the issues raised in the memorandum”. However harassment and intimidation continue.
October 2002	ActionAid Uganda facilitates a two-day workshop involving Kapchorwa District Council, BLG and BESA which results in formation of the Benet Consultative Committee (BCC) “to steer the land rights struggle of all the people of Benet”. The workshop participants unanimously resolve to institute legal proceedings against the Government of Uganda “should dialogue not yield fruits”.
January 2003	A “mammoth public gathering” at Benet sub county headquarters, also facilitated by ActionAid Uganda, “unanimously authorises the sub country Council of Benet to proceed and mandate the ULA to pursue the legal option with a view to retaining the land for the people of Benet sub county.”
August 2003	ULA lawyers file notice to sue UWA and Government of Uganda. No response received within stipulated 45 days.
February 2004	First hearing of Benet land case takes place in the High Court. UWA files a defence but government asks for settlement out of court, which court grants
April 2004	Mobilisation for court case heightens rights awareness and militancy among Benets. A non-Benet brings a tractor to plough the land of a Benet – the tractor is burnt. The two BLG leaders Mwanga and Kiptala are arrested – and accused of malicious damage to property, inciting violence, conspiracy to commit felony etc. Family money of the Benets, combined with individual contributions, pays for the legal defence.
October 2004	Second hearing of Benet land case. Respondents’ lawyers ask for postponement.
February 2005	Third hearing of Benet land case. Respondents’ lawyers again request for postponement.
April 2005	Fourth hearing of Benet land case. Judge issues judgement ultimatum for October 27th. Meanwhile Mwanga and Kiptala win separate case against them.
October 2005	Fifth hearing and delivery of Consent Judgement.

SECTION 2

A History of Dispossession and Resistance

Where is the justice? They shot my sons like they were some criminals. God is my witness; let them say what they want. Maybe for them it is a small problem. But for me it is a big burden on my heart. I grieve for the dead and I worry about my grandchildren.

Kokoperikana Saima, mother of two young men slain by UWA game rangers

As you drive along the snaking Kamnargut-Mengya road eastward from Kapchorwa town boundary, you go through 10 kms of breathtaking agricultural land. The maize crop stretches as far as the eye can see and you would be forgiven for thinking that resettlement has resulted in a good deal for the Ndorobo–Benets, who would be able to grow food on their land. However, what you might not realise is how this represents a shift from their past way of life as hunter gathers.

Near the village of Taragon – now high in the mountains – you have the most beautiful view of Mt. Elgon, looming high above you, shot through by a powerful waterfall, and covered by luxurious green slopes. Sheer beauty, peace and abundance – “how fortunate the Ndorobo-Benets are to be living in a place such as this” you muse.

Infrastructure and people residing on these hectares were declared ‘illegal’ – no consultation, no consideration, and no compensation.

In the village a round of storytelling by members of the Benet community reminds you of the painful and deeply uncertain life of the Ndorobo-Benets. You are told that in 1993 UWA stopped the building of a primary school. The reason? Resettlement land, which had been assigned to the Benets in 1983, was only formally surveyed by the Ugandan Government in 1993. On concluding the survey, the government declared that 1500 hectares of land, already given out, occupied and farmed by the Ndorobo, were ‘mistakenly’ assigned and should be restored to the National Park. Infrastructure and people residing on these hectares were declared ‘illegal’ – no consultation, no consideration, and no compensation.

Further along the road at Mengya trading centre, there is more evidence of brutal state land grabbing in the name of conservation. Opposite the Mengya Boarding Primary School stands a mud and wattle house that has remained unoccupied for almost six years. The ‘secret’ behind the desertion lies in the backyard of the house where a cemented grave is marked simply:

Stephen Chelangat
Born 15/1/1972
Died 2/9/2000

Stephen and his brother Saima were out with other young men grazing cattle in a ‘Wildlife Protected Area’ when they were spotted by Park rangers. The zealous National Park security men set upon the group and Stephen and Saima were shot dead. Twenty of the animals suffered a similar fate. Others were confiscated. When their father received the tragic news, he collapsed and died.

The house was abandoned and locked up when the men's widows, no longer able to endure any more hardships, abandoned the resettlement area. The nine orphans were left with their widowed grandmother, Koperikana Saima.

To compound their misery, the notorious park boundary line of 1993 has 'condemned' as illegal the Chelangat graves, and the Mengya Primary School which the Chelangat orphans attend. These are both outside the 1983 park boundary.

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Symbol of a community's suffering: the Chelangat family beside the grave of a son slain by UWA rangers.

A story of repeated dispossessions

The Ndorobo-Benets have been chased down, raped (eight cases are cited) and killed (another eight cases are mentioned) by representatives of the UWA. This pattern has repeated itself over and over again since the Benet's first land dispossession in the 1920s. Understanding the historical context is important.

Land was key to the colonization of Uganda (and other African nations) and under colonial policy, "the right of dealing with waste and unoccupied land accrued to Her Majesty by virtue of her right to the protectorate."³ The land was deemed to be "waste" and "unoccupied" because the colonized communities were portrayed as lacking any concept of 'ownership'. As Sorrenson put it:

*Sovereignty, if it can be said to exist at all in regard to territory, is held by small Chiefs or Elders, who are practically savages; even the idea of tribal ownership in land is unknown except in so far as certain tribes usually live in a particular region and resist the intrusion of weaker tribes, especially if the intruders belong to another race... the idea of ownership is probably connected rather with crops and cattle than with land temporarily occupied by them... Her Majesty, might, if she pleased, declare them to be Crown Land.*⁴

In 1920 Ndorobo land was grabbed by the colonial authorities and declared Crown Forest. This dispossession was confirmed in 1936 when the land was designated as a Forest Reserve. While the colonial authorities observed that the Ndorobo were the historical

3 M.K. Sorrenson (1968), *Origins of European Settlement in Kenya*, Oxford University Press (Nairobi, London).

4 As above.

and indigenous inhabitants of the area, this recognition of Ndorobo indigenesness carried no legal implication of ownership.

The Ndorobo-Benets were left to dwell in the forest but were not permitted to keep goats, and were denied any social infrastructure because this would be incompatible with Forest Reserve policy. They were, however, compelled to pay a graduated tax, initially in kind and later in cash.⁵

A turning point for the Ndorobo came in 1972 when they were formally declared encroachers in the Forest Reserve. They were blamed for cultivating crops in the forest, livestock rearing and for overpopulating the area. According to the UWA, Ndorobo numbers and livelihood practices had become “damaging and incompatible with the fragile ecosystem of the mountain”. This was a significant escalation of the dispossession crusade: now the Ndorobo’s indigenous knowledge and their capacity to manage forest resources were being delegitimized as well.

Following representations by the Benet Pressure Group, a forerunner of the Benet Lobby Group, the state decided to gather all Ndorobo in one area. The Ndorobo were given a ten-year grace period (1972-1982) to resettle. This exercise awakened bitter memories of a similar exercise between 1963 and 1965, and was quietly resisted.

In 1983 the government excised 6000 hectares from Mt. Elgon Forest Reserve for resettlement of the Ndorobo. This exercise, hurriedly planned and executed within a period of only fourteen days, brought the persistent marginalization of and discrimination against the Ndorobo-Benets

to a head. The exercise was, by government admission, grossly mishandled, and did not achieve its objective of resolving the Benet problem.

In a “Brief on the Benet problem” to their Minister of Tourism, Trade and Industry (August 2003), the Uganda Wildlife Authority had the following to say about the resettlement exercise:

The beneficiaries who were the marginalized Benet community did not understand the purpose of the exercise and value of land they were being allocated. Although the Land Allocation Committee was aware that the Benets were the indigenous dwellers of the forest, land was mainly allocated to non-Benet Sabiny who constituted those displaced by Karimojong cattle rustlers from Ngenge plains and other opportunistic individuals. Some forest department officials at the time also took the opportunity to allocate large chunks of land to themselves. The Sabiny were socially and economically more influential than the Benet and knew the value of land. Consequently they took advantage of the marginalized social position and ignorance of the Benets to manipulate the situation and acquired most of the land within the 6000 hectares area excised from the reserve. The few Benets who managed to get land were persuaded to sell it off to the non-Benets at give away prices and were encouraged to go back to the forest reserve.

Unbelievably, the resettlement area was not surveyed before the allocation got underway. Ten years later, in 1993, the authorities formally surveyed the area and ‘discovered’ an over-allocation of 1500 hectares dating back to 1983. And so once again without consulting the affected communities, the ‘informal’ 1983 boundary line was moved and the 1500 hectares were placed back inside the Park. The hundreds of families living on and drawing livelihoods from this land were effectively declared ‘illegal’, in addition to the communities who had settled above the 1983 line.

⁵ This tax, levied only on men, was introduced as a poll tax during the colonial era. It is important since the Benet did not receive any benefits in terms of social services.

The warriors of resistance

This history of dispossession of the Ndorobo-Benets is also a history of disobedience and resistance. From the flouting of colonial 'rules' about the keeping of goats and the production of food crops, to the resistance to resettlement exercises, to the legal challenge mounted against the Ugandan government in the early 2000s, the history of the Benets has been a courageous story of struggle and defence.

In the 1940s, the Ndorobo mobilized significant resistance to the payment of graduated tax because they were not receiving any social services in return. Later, in 1972, in response to government pressure on the Benets regarding their agricultural activities, Moses Mwanga (the current BLG leader) gathered twenty Benets at the Kapkoros sacred site in the mountains to form the Benet Pressure/Lobby Group to fight for their land rights. This enabled the land struggle to obtain ancestral blessings from the Workoyontet ('God's messengers'). Both of these resistances were micro organized according to age groups, which is a socio-cultural mechanism for self-organisation amongst the Ndorobo.⁶ Right from its early beginnings, the land struggle of the Ndorobo has been culturally embedded, and has helped them to retain and affirm their ethnic identity. This has been a powerful source of resistance and in part explains why the Ndorobo-Benets have succeeded in so effectively mobilizing power and discipline in support of their land struggle.

Right from its early beginnings, the land struggle of the Ndorobo has been culturally embedded, and has helped them to retain and affirm their ethnic identity.

In 1994, the Ndorobo and settler Benets worked together to mount fierce protests and advocacy including the delivery of a Memorandum to the government opposing the 1993 survey boundary. These actions forced the government to set up an inter-ministerial task force to study the magnitude of the problem and make recommendations. The study recommended changes to the 1993 Park boundaries to exclude all of the land that had been earmarked for settling the Benets in 1983. In 1997, the Benet Implementation Committee, set up to operationalise the recommendations of this task force, proposed that the non-Ndorobo who had acquired a share of this land be compensated for their developments, and that the land so freed up be redistributed to the Ndorobo-Benet still residing within the boundaries of the National Park. This was a challenging decision to take, and indeed it may have led to the increased tensions between Ndorobo and settler Benets. However, it shows a recognition that the allocation process had been unfair and yet that the non-Ndorobo should have compensation. None of these outcomes would have been possible without the Benets' organization and continued pressure on the government.

In 1999, the Benets entered into a partnership with AAU. Through a process of capacity building, organized peer exchanges to other minority and indigenous groups in Kenya and Uganda, advocacy support, and contact with organized landless groups from other parts of the world, the Benets intensified their struggle.

⁶ Age group formations are based on male circumcision rites of passage. The rites take place every two years. The groups were historically organised to defend the Ndorobo but in more recent times assist with resolving social problems.

Preparing a court case with peer exchange

A series of peer exchanges with the Ogieks, an indigenous community in Kenya also struggling for land rights, powerfully informed the Benet approach to their court case. During the exchange the Ogieks explained to the Benets that their court hearing was a special day in their own land rights struggle; it was a day to show their unity, and publicize their cause. The Ogieks held peaceful demonstrations carrying banners and placards with different statements on their plight and demands. This coming together rekindled their spirits and renewed their energies. Inspired by the Ogiek experience, the Benets took the opportunity to rally, organize and publicize their cause at their own court hearings over 2004 and 2005. The Benets and AAU believe that these moments of togetherness and unity, experienced by the collective and visible to decision-makers and the wider public, profoundly influenced the course of their struggle and the ensuing court victory of October 2005.

These varied struggles brought a heightened national profile to the Benet struggle, but also resulted in an intensified programme of harassment and intimidation by the UWA, now increasingly threatened, and difficult to hold accountable to the task force recommendations. The public and increasingly vocal stance of the Benets was further amplified as they entered into an alliance with the non-Ndorobo-Benets (the Sabin or settlers) and collectively forged the Benet Settlers Association (BSA).

Over the next few years, the collective Benets lobbied different levels of government, from district level up to Parliament. But these efforts were to no avail. In January 2003, the Benets resolved to pursue a legal challenge against the UWA and the Ugandan government, bringing a new and challenging dimension to their decade-long resistance efforts.



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SECTION 3

The Legal Struggle for Land Rights

“We had the support of the district leaders and the understanding of the Parliamentary Sectoral Committee on Tourism, Social Services and Equal Opportunities. However none of them seemed capable of restraining UWA from harassing and killing our people.”

Moses Kiptala

The case was filed under Article 50 (2) of the Constitution of the Republic of Uganda and under Rule 3 (1) of the Fundamental Rights and Freedoms. AAU and ULA were of the clear view that the constitutional right to own land had been violated. James Nangwala, the lawyer appointed to represent the interests of the Benet community, summed it up in these words: “We went to court to secure land rights; what we were looking for was freedom of occupancy, and freedom from harassment by government machinery.”

Warren Nyamugasira, the ULA Chairman, suggests that the option to go to court was something of a last resort because they had tried everything else without meaningful results.

There were no other options left. The undertakings by Uganda Wildlife Authority (UWA) to do something about the plight of the Benets were on and off. Indeed UWA’s conduct had increasingly

turned aggressive towards the Benets because it treated them as encroachers. The local authorities in Kapchorwa district were basically on their knees. Without some drastic action, such as a court decision, they had reached the end of the road. Between ourselves (ULA & AAU), the driving consideration was the opportunity presented to file a test case. But such a case would be sensitive and therefore difficult for AAU to undertake on their own because it could take on a political angle and be counterproductive should they be portrayed as a ‘foreign organization’ meddling in Uganda’s affairs.

One of the Benet leaders, Moses Kiptala, seems to concur. The legal strategy, he says, was born out of frustration and a frank assessment of the forces ranged against the Benet cause.

The political route seemed to hold no further promise. True, we had the support of the district leaders and the understanding of the Parliamentary Sectoral Committee on Tourism, Social Services and Equal Opportunities. However none of them seemed capable of restraining UWA from harassing and killing our people. We had even petitioned to see the President of Uganda but the President sent a Ministerial delegation to the district whose recommendations did not yield sufficient remedies. We were convinced after consultations with the lawyers and amongst ourselves that court action would be more decisive in calling UWA to book.

James Nangwala, the lawyer, says the legal strategy was attractive because its success in the Benet case was almost a foregone conclusion:

First, here was a case where people in authority sit in their offices and take decisions which affect people while acting on information or misinformation, and unconcerned for the consequences of their actions. Second, what the government was doing was compulsory acquisition of land in a manner which called into question the Constitutional rights of the people to own land. Hence public litigation was a sound proposition.

The lawyer proceeded on the grounds that although the Benets were historical inhabitants of Mt. Elgon forest, gazetted as a Wildlife Protected Area, efforts to resettle them had been “unsuccessful, left them uncertain of their tenure and security and exposed them to further harassment and

untold suffering”. The legal strategy aimed to compel the court to declare three specific entitlements for the Benets:

- The right to stay, cultivate and carry out economic and related activities undisturbed until properly resettled and compensated.
- The right to own land, cultivate and graze thereon and the right not to be treated inhumanly.
- The right not to be marginalized on the basis of their history by legally obliging the government to undertake affirmative action to redress imbalances in access to education and social services.

Judgement Day

It was the 27th October 2005 and the courtroom of the Eastern Region High Court in Mbale town was sardine-tin jammed with Benets – women and men, old and young, ragged and well dressed. All of the seats were filled up, and Benets were flowing out of the courtroom door into the passages and corridors. Although ActionAid had provided some transport, it was not enough, and many Benets had got there independently by any and all modes of transport – tractor, taxi, bus, bicycle and foot – to hear what justice they might obtain in this High Court of Uganda. Never in the long history of the Mbale Court had so many people pressed their way into a single courtroom. Everyone was wondering who these people were and what they were doing there.

When the Benet case was called, silence descended upon the court and hundreds of focused and hopeful Benet eyes came to rest on their lawyer as he stood and lifted his arms to the court room to indicate the witnesses to this case. All Benets stood as witnesses, and those in the corridors and court entrance shuffled and craned to show their faces to the Judge. The Judge was mesmerised

– what a powerful sight to see so many people come to present their cause. He had already seen their file, but seeing the Benets in such numbers most certainly challenged and moved him. ActionAid believes that the case would not have gone in its favour without this powerful Benet representation.

After considering their file, the Judge and the lawyers retreated into his Chamber for a few moments. The judgement in favour of the Benets was communicated by their lawyers in a field adjoining the court house. It was as if the heavens had opened – community members sang, danced and rejoiced. This was one of the real and unforgettable moments of a lifetime. This verdict was made possible because of the commitment, struggles, hopes and dedication of the Benet community.

The Benet community as a whole felt elated that they could now go back to occupy and use the land without fear of constant surveillance and threat, since the court had recognized their historical claims to the land.

Sarah Okwaare, an AAU staff member working with the Benet community.

The court judgement was issued in the form of a **Consent Judgement/Decree**, which **represents a compromise** but one which carries an implication that one of the parties to the case – the State in this case – was in a weaker position.⁷ Specifically the Consent Judgement decreed five terms:

1. The Benet Community, including Yatui, Kwoti and Kabasekek Parishes, is “historical and indigenous” to the area declared a Wildlife Protected Area or National Park.
2. The Benet Community has the right to live and conduct “agricultural activities” in the areas they currently inhabit.
3. The Uganda Wildlife Authority (UWA) and the Attorney General must collaborate with the Benet Community and de-gazette the areas in which the Benet people reside.
4. Beginning in Financial Year (FY) 2005/2006, the Attorney General must take immediate steps to “redress the imbalance” facing the Benet Community in education, infrastructure, health and social services in the spirit of Article 32 (1) of the constitution in lieu of general damages.
5. The Attorney General and UWA must meet the Benet people’s legal costs.

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.

High Court of Uganda (2005) Consent Judgement and Decree

Both AAU and ULA welcomed the Consent Judgement as a landmark in the land struggles of minority and marginalised peoples in Uganda because:

- They thought that it implicitly recognised indigeneness as a basis for land claims against the state.
- It offered solutions to longstanding grievances of the Benets that had not been addressed through other avenues.
- It reflected a growing appreciation by the courts of the value of public interest litigation.
- It offered a ‘model’ of grassroots stirrings and empowerment.

The victory of the Benet legal strategy, according to Sarah Okwaare, may be attributed to: firstly, the minority nature of the community (34,000 according to the 2002 Census), which poses little political risk to the state; secondly, the willingness of the government to negotiate; and finally, to the high level of organization and strategic, principled leadership of the Benet community struggle. The success of their case hinged on support and solidarity, not just from civil society organizations, but also from lower echelons of the State such as district and sub-county councils. AAU played an important advocacy role influencing the Kapchorwa district leadership to support the Benet cause.

Observers have argued that legal victory owed much to the focus of the lawyer on a sound technical-legalistic approach to the rights issue. In his view, the matter concerned the violation of the Benets’ right to own land, in this case the land lying between the ‘two lines’. In his words: “This case had nothing to do with politics but the Land Act (1998) and the Constitution of Uganda; what was at stake was simply compulsory acquisition of land by the State through extending the Park boundary into Benet territory

⁷ As mentioned above, a consent judgement is similar to any court judgement. However, it is a settlement before full court proceedings.

as marked out by the 1993 line. If you are taking away land belonging to another you must compensate or give another land.”

But following close on this victory, cracks started to appear in what on the surface appeared to be a unified Benet community. The court outcome had confirmed the land rights of the “historical and indigenous inhabitants”, and had required the State to institute affirmative action measures, but who were the worthy recipients of this legal largesse? The Ndorobo, who regarded themselves as the legitimate indigenous inhabitants and heirs? Or the whole Benet community – a cobbled together entity comprising both indigenes and settlers? Any tensions between these two groups had been sleeping as they sought a unified front against a common enemy (the UWA). The later court case, and the advocacy strategy surrounding it, required a united community. Having obtained a favourable judgement, the historical tensions between the indigenes and settlers broke to the surface.

Community means an assemblage of human beings living in a defined geographical area and identified by common history, common culture or common residence in that area.

Uganda Wildlife Act 1996 Part 1.1 Interpretation

It is therefore pertinent to probe AAU and ULA's interpretation of the Consent Judgement as a victory for marginal and indigenous groups in the Ugandan context. Who won? And who lost? What new ground has the Consent Judgement actually broken and for whom? What was ActionAid's specific impact? What does the judgement promise for similar struggles elsewhere? In rights struggles, whose definition of the terms of legal struggle really counts? Is it the lawyers', the civil society organisations' (CSOs) or the community's? If the legal struggle were fought on a different basis – that of indigenous land rights – and not a technical-legal perspective, what would be the prospects of a victory such as this?



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Basket weaving placed Ndorobo women at the centre of the forest craft economy both as skilled workers and barterers of the products with the food grown by the lowland (Sabiny) communities.

SECTION 4

Peeling Back the Layers – Uncovering Conflict and Contestation

The **Critical Story of Change** process opened in Kapchorwa town with preliminary explorations involving members of the BLG. On the second day, discussion was beginning to wind down for the afternoon, when a man confidently strolled into the conference room. He wore an engaging smile as he turned to greet Sarah Okwaare, the AAU staffer, and then the researchers, before warmly saluting the BLG officials.

AAU's approach: building unity

Fostering unity among the 'Benet community' was an important aspect of AAU's work with the Benets. In October 2002, AAU facilitated a workshop in which there was open discussion about the conflict between the Ndorobo and the settlers. The workshop resolved that the parties would work together towards a common cause. The Benet Settlers' Association (representing settlers) and the Benet Lobby Group (representing the Ndorobo) were amalgamated into one group called the Benet Consultative Committee, which aimed to defend the land rights of all the people of Benet. A four-person (all male) committee was constituted to steer the land rights struggle for the Benets.

Sarah Okwaare explains that the need for unity arose from concerns about government's efforts to divide and cause conflict in this community.

AAU and ULA believe that the action to form a united front of the Benets was a major success factor in their land rights struggle, especially the legal victory over the UWA in court.

It was Moses Mwanga, the BLG Leader, who introduced the newcomer to us. "This is Mr. William Cheptegei. He is from the Benet area but he is not an indigenous person. We joined forces to pursue the Benet case in the High Court but our objectives are essentially different." These remarks elicited a roar of approving banter from fellow Benets. Cheptegei, a rather ebullient personality, was not flustered – at least not outwardly.

This seemed a dramatic expression of the divergence of understandings regarding the land rights experience. More specifically, it seemed that those who perceive themselves as Benet indigenes were determined to (re)-assert the primacy of their case and interests.

Sarah Okwaare, who had worked with this community since 1999, was visibly taken aback. "I am very surprised. Something has happened or is happening which I do not understand. And to express such [sentiments] now could undo a lot of our work and complicate the future for them. William [Cheptogei] has worked wholeheartedly with them from the very beginning. He is a hard worker and is very well informed on Benet issues." 'Them' was apparently a reference to the indigenous Benets.

Sarah was initially inclined to treat Mwanga's remarks as a bit unfortunate, perhaps impertinent, but most assuredly personal. "When you have spoken to other leaders in the BLG and to William himself, you may get a different story. I have worked very closely with all these people. Their personal views notwithstanding, they appreciate the internal and external value of sticking together."

A number of intriguing questions were emerging here. To what extent were Mwanga's seemingly isolated, audacious and uncharitable remarks shared by other Benets? Who is a Benet and how do they come to know their distinctiveness? What community memories, knowledge, experiences and historical sites define their indigenesness in the Benet area? Was the issue of indigenesness only being highlighted now? Or was it always there as the main text for the community with land rights simply a sub-text? Did AAU and ULA share this perspective? How was this perspective reflected in their 'land rights work' with a 'marginalized community'?

Contestation between Ndorobo and settlers

Relations between settlers and Ndorobo had been strained through the 1970s and into the 1990s when Ndorobo land in the forest reserve was occupied by immigrants/settlers of the Sabiny sub-ethnic group who were escaping insecurity in low lying areas of Ngenge sub county. This marks the beginning of the land conflict that pitted these two groups against one another. The irony is that the settlers had also been rendered landless in their ancestral domain through circumstances slightly different from the Ndorobo. Both groups were landless and dispossessed – through State actions and repressions in the case of the Ndorobo, and through State inaction to secure their lands in the case of the settlers –, yet these groups appear pitted against each other.

Was the issue of indigenesness only being highlighted now? Or was it always there as the main text for the community, with land rights simply a sub-text?

Conflict between the two groups deepened in the early 1990s when the resettlement of the Benets (collectively referring to both groups) onto the 6000 hectares of land excised from the Forest Reserve favoured the better organized, and possibly more savvy, settlers. According to Okwaare, the land allocation committee had only a minority representation of the Ndorobo, the allocation was done hurriedly with no effort to involve the Ndorobo, and to cap it all, "there was not enough sensitization of the Ndorobo on the implications of the land allocation for their indigenous rights to the forest. Many believed that the forest was their ancestral domain from which they could never be evicted. Consequently 700 families of the Yatui Ndorobo continued to stay above the 1983 line, effectively landless on their own land".

The Ndorobo perceive that while a small number of settlers received land allocations of between two and three acres, the majority received allocations of around 30 acres. They also believe that the majority of the Ndorobo, on the other hand, received allocations of between one and two acres, with only a few receiving allocations of between two and three acres. Empirically tested or not, these perceptions are powerful and inform a deep-seated resentment of the settlers who are perceived to have cheated the Ndorobo of their land.

The Ndorobo have drawn parallels between the settlers and the UWA, which as key protagonist and successor to preceding governmental authorities has most directly and violently dispossessed the Ndorobo. In a November 2006 session with members of the BLG, the Ndorobo made an analysis of who they perceive to be their friends, enemies and fence sitters. Their foremost enemy: the government, which has "used the UWA to kill us and take our land", followed by the settlers, who have taken "our land".

Given this antagonistic position of the indigenes towards the settlers, how did they come to enter a 'strategic alliance' and form a joint association with the settlers to advance a common struggle for land – land which they perceived as their own and believed the settlers had duped them out of? What was motivating the Ndorobo? They had worked together with the settlers in the past – what was the strategy and what was the change?

Aside from the obvious reality of both groups occupying the resettlement areas, with land rights protected under the 1998 Land Act, the Ndorobo might have been motivated by

the following less obvious factors. Firstly, from what the BLG said, AAU and ULA were committed to supporting a unified Benet community. In order to access the necessary legal, financial, organisational and 'moral' support from the two CSOs, the Ndorobo must have been under some pressure to reconcile their claim with that of the settlers.

Secondly, the Ndorobo had read the political and social context sharply, and were cognisant of the reality that support from the district council, other political actors and wider society would more likely be obtained by entering into a 'front' with the settlers.

AAU's approach: rights and local leadership

AAU first established its presence in the Kapchorwa district in 1999. At this time, the organisation was in transition from a service delivery approach to a rights-based approach to development. To gain entry into the community, AAU first concentrated on building schools, health units and supplying seedlings to the Benets and other 'disturbed' areas of Ngenge. The next phase of work focused on building political consciousness through mobilizing and training. In the case of the Benets, AAU's strategy was to build upon the work that had already started. The community was already organized, had made a thorough analysis of their situation, and had begun advocacy of their cause to local government officials and parliamentarians. According to AAU's analysis, what was needed was for the community to continue to take leadership and ownership of development processes in their own context. AAU was designated the role of partner and ally to the Benet struggle, bringing in a technical and wider outlook.

At the time Moses Mwanga, the BLG leader, was also the long-serving representative of his Kween county on the district council. He recalls:

I told AAU that we were the only people using donkeys for transport in the district,

I spoke of lack of social services in our area and of our longstanding landlessness. I looked deliberately in the faces of other Kapchorwa leaders and asked them, "How long will the indigenous Benets remain landless while their land is being occupied by other people who have somewhere else to go?" First they bowed their heads, then they looked up and clapped, more or less agreeing with what I had said. From that moment our bond with AAU was sealed.

AAU seeks social transformation through rights and access to justice for the poor and marginalized. This vision can only be achieved when the affected communities take the lead on the change they want to see. This 'lead' is achieved through widespread consciousness-raising so that people see themselves as subjects deserving of human dignity, and by assisting them to understand and claim their rights. This consciousness-raising is undertaken through organizing, training, leadership development and methods such as exchange processes. Change is also brought about through coalition or network-building, research, and by influencing media and policy. Read together, these elements all comprise what AAU refers to as its rights-based approach to development or social change.

Finally, it may also be that they had anticipated a wider award – not just the recognition of existing rights, but expanded resettlement terms, and a negotiated set of rights to access, use and benefit from forest resources. This would have carried particular benefits and rewards for the Ndorobo.

Having obtained a judgement which affirms the Benets as historical and indigenous inhabitants to the area, the political and social pressure to maintain this strategic ‘unity’ of Ndorobo and settlers had collapsed. The war against the ‘principal’ enemy – the UWA and government – had to some extent been won, and the Ndorobo were moving into position to fight the ‘enemy in their midst’ for an interpretation and implementation of the Consent Judgement which would advance their best interests.

The origins and effect of the ‘unity’ strategy

With hindsight, was AAI correct to have supported the unified ‘Benet’ identity and build a legal challenge against the State? To what extent were ActionAid responsible for also accentuating any differences? We have already heard from AAU that some elements within the government were manipulating ethnic tensions in the hope of deflecting attention from the massive state dispossessions of the Benets dating back to the 1930s, and of undermining the potential for a successful court challenge against the State. AAU were justifiably concerned, then, to counter these efforts by the State.

AAU’s approach: promoting gender equality

Over 100 Benets, a third of them women, were trained in human rights with a strong focus on land rights. Training in the latter was provided by the Uganda Land Alliance. “Before we attended these trainings, we had little idea of how much government owed the community in terms of social service delivery,” confesses Moses Kaptala.

AAU as part of its attention to rights and justice had a strong focus on supporting women’s participation in productive and decision-making arenas. AAU worked towards creating awareness on women’s land and more general human rights through formal training and through the dissemination of materials outlining women’s rights in relation to the Constitution and the 1998 Land Act.

AAU also linked women leaders and activists from the Benet community to organizations, such as the Uganda Women Network (UWONET), which champions women’s land rights in Uganda. And AAU encouraged women to take their land cases to the Land Rights Information Centre in Kapchorwa.

This Centre helped the Benet women because there was no charge for services, as opposed to government structures which demand at least \$2 to open up a file. This service charge excluded single and widowed women who have no sources of cash income.

While much progress has been achieved towards deepening women’s rights, there is still much to be done. In working out how to implement the Consent Judgement, attention will have to be given to identifying women’s interests in relation to land and detailing how these will be served. There are deep cultural inhibitions on and constraints to women owning or inheriting land. Awareness-raising amongst all actors – government and community – will be important, as will legal and constitutional arguments in favour of women’s land rights. The same is required for the court order for affirmative action: what are women’s interests in relation to affirmative action? How can these be satisfied through whatever agreements are made on how to go about implementing the Judgement?

A baseline survey carried out in Kapchorwa district in 1999 had clearly established “landlessness, powerlessness and marginalization” of the Ndorobo as a key challenge to be addressed. An AAU-ULA three-district study (including the Benet area) of women’s land rights had “revealed gross land violations for women in particular, and the Benet community in general.”

The themes of poverty and socio-economic marginalization (founded on unequal access to resources, and violations in access and ownership rights) and gender discrimination were established.

AAU and its staff were well aware of the differences between the settlers and the Ndorobo, and the discriminations underlying and shaping indigenous identity in particular. Land-holding patterns were perceived to be, and in actuality may have been, unequal between the Ndorobo and the settlers. To cap it all, the settlers also wielded the bureaucratic-political power in the local administration which could exert considerable influence on how the issue was represented at the national level.

AAU’s primary strategy was to work with a unified community. Limited attention was paid by AAU, at this time, to the potential implications of submerging the indigenous rights agenda of the Ndorobo to the settlers’ interests. AAU’s understanding of the relationship between the land question and issues of identity and indigenesness were still emergent at this time. With hindsight, this is recognized as a dimension which should have received more attention.

It is possible that AAU and its staff may have been wary of developing an advocacy focus on issues which could portend a ‘subtle threat’ to social cohesion or which could polarize existing cultural-ethnic divides and

Limited attention was paid by AAU, at this time, to the potential implications of submerging the indigenous rights agenda of the Ndorobo to the settlers’ interests.

tensions. The challenge for AAU was that if they were immediately to take up the land issue in the manner articulated by their BLG partners, would they risk accusations of creating or fanning divisions between the two ethnic groups? If they pushed to the issue of indigenous rights would they be accused of stoking the fire of civil unrest? Had they in fact already been partly doing this? It is worth noting that in undertaking awareness activities, ActionAid may have contributed to increasing the Ndorobo-Benets’ awareness of their own identity. Before ActionAid had intervened, the Ndorobo-Benets had been trying to distance themselves from that term, but had reappropriated it after hearing of their rights, to distinguish themselves from the settlers.

In the event, AAU opted for a cautious approach. “We avoided raising controversial issues prematurely. We needed to be sure that the community understood our mission and that BLG gained capacity to successfully engage the District leadership” says Okwaare.

The legal vision and strategy may also have been compromised by the unity strategy. If the legal strategy had been founded on the primary interests of the Ndorobo a clear case of historical and ancestral (in effect, indigenous) land rights could have been pursued. Similarly, if a separate legal case for the settlers had been advanced this could have focused on proving their occupancy rights and provided the basis for resettlement.

The AAU approach: building advocacy and networks

AAU supported the Benets in building deeper understanding and skills for lobbying and advocacy. This capacity was built through formal training and practical accompaniment as the Benets planned and implemented their advocacy initiatives. AAU linked the community to organizations that were championing land rights work in Uganda and beyond, such as the Uganda Land Alliance. A Land Rights Information Centre was established in Kapchorwa to bring land rights and information services closer to the people. This Centre helped the Benet struggles by providing information on land related laws and policies of Uganda, as well as other international legal instruments upon which they could draw. It was, importantly, also a source of knowledge and information on other legal aspects related to the UWA and its actions against the community.

In September 2004, AAU, together with the Kenya Land Alliance, organized a learning exchange between the Benet and Ogiek communities. Both communities faced very similar problems and could share their experiences especially on the litigation strategy, tools and methods they used during the court proceedings. This was the first of a series of exchange visits. There was a hope that through these exchanges a cross-border network or initiative of grassroots indigenous land rights organizations would emerge. AAU saw this as an important component of their emergent rights-based approach to land work.

We had heard about them [the Ogieks]; how harshly they have been treated by the dominant immigrant neighbours as well as successive ruling regimes and also heard about [them] taking government to court

over their land... One day, in a meeting with ActionAid we expressed strong wish to meet with the Batwas [an indigenous community in the South-Western part of Uganda, on the border with Rwanda] and the Ogieks. Sarah [Okwaare] was all for the idea because ActionAid wanted cross-border initiatives of all landless indigenous communities to come together to share experience and learn from each to fight for our birthrights.

Moses Mwanga, Chairman, Benet Lobby Group

Moses Mwanga, the Chairman of the BLG, remarked that ActionAid brought 'development' to the Benets; amplified their voices out of the wilderness of Mt. Elgon and the limited platform for lobbying and pressure that the district council in the locality offered; and helped them expand their range of influence through networks, media contacts and influential people in the government. This support brought a new profile to the Benet cause.

Moses Kiptala agrees. When asked what kind of 'capacity building' they had obtained from AAU and what difference it had made to their struggle for land rights. His answer was forthright: "Certainly we are more knowledgeable about human rights and how Government have cheated us out of social services and other entitlements. Before those seminars we had no idea what infrastructure and services the Government is obliged to deliver". Later he said, "ActionAid sharpened our thinking about human rights and we were enabled to make new demands to Government. Moreover they marketed our problems so effectively that our plight is now a national and international issue".

Unity and compromise

Sarah Okwaare points out that if you compare the Ogieks and the Batwa with the Benets, “we see that both communities are still miles behind the Benets”. In part, this is because of the level of disorganization (in the Batwa) and the disunity (in the Ogiek). Political contestation and power struggles amongst the Ogieks have led to three different factions, each with their own position and relationship to government. This reality has divided and held back their land rights struggle.

During a later exchange with the Ogieks in 2006 as part of this Story of Change process, Moses Mwanga, the BLG chairman, mentioned that by forging unity, the potential for ‘justice’ was compromised. To the Ogiek people he said:

We had a similar situation of disunity which involved the settlers and us, the indigenous people. ActionAid counselled us for unity. We went along reluctantly because in a struggle you need both hope and patience. So, we united to fight the court case first; the rest we shall sort out during implementation. Justice cannot be forced or cheated forever; it may come when you are old or even no longer there. But we have to keep working for it without letting ourselves to be manipulated by the State or the donors.

We have a complex case here of a layering of land rights which are in conflict with one another, an issue which does not seem to have been adequately grappled with in the legal strategy.

Identities and land rights concepts in conflict

According to Mwanga and Kiptala, the BLG leaders, the Ndorobo consider Mt. Elgon as their traditional land:

...on which we have depended for our physical, cultural and spiritual well-being since time immemorial. In other words we have a special, deep-rooted relationship to this land which neither the government nor the settlers can ever have or possibly understand. Theirs is basically an economic relationship; for us the forest is a life-line which keeps alive our past, strengthens our present and safeguards our future. Because of our special attachment to the forest, our lifestyles and our perceived isolation in the mountains, we are regarded by our lowland brothers as well as many government and district officials as primitive, backward looking and no longer capable of living in the forest without destroying it. This is not true.

The tension between the settlers and the Ndorobo is underscored by this very different notion, experience and understanding of land and land rights. This difference concerns the issue of indigenesness and indigenous identity.

How do the Ndorobo understand their indigenesness, and how does this shape their quest for land rights? For the Ndorobo the struggle has been a dual quest: for land for settled agricultural production, as well as for a legal restoration of their rights to the forest, their ancestral land. This is captured in a memorandum of understanding with AAU to render the Ndorobo support for restoring their historical and indigenous rights in “our ancestral lands including the forest territory... the forest resources, the cattle salt licks in the mountains, Saramek and other cultural sites and memories, [without which] we shall cease to exist as a Ndorobo community.”

But if the struggle has been so strongly about holding on to a particular way of life, why is land – as an agricultural resource cut free from its cultural and spiritual moorings – seemingly the foremost issue of the Benet campaign? According to Moses Kiptala, “Sometimes I have felt there is a difference in understanding between us and those people from town. They tend to think that getting social services and land certificates is all we want. When I tell them that we want even the forest air and our sacred areas, they take it lightly.”

Although AAU talks about the Benets as an indigenous group, and refers to this as a land rights struggle of a minority and indigenous group, how is this concept of ‘indigenusness’ really understood? What is it about the Ndorobo-Benets that is considered indigenous? And how did the idea of indigenusness inform AAU’s support for the legal case and the wider land rights struggle?

AAU’s thinking was reflected in a key working paper “The Advocacy History of Land Rights Struggle of a Minority People: The case of the Benets of Mt Elgon in Eastern Uganda” authored by Sarah Okwaare in September 2004. In it she describes the Ndorobo as the “original inhabitants of Mt Elgon moorlands and grasslands... bonafide occupants of Mt Elgon Forest, their cradle land and thus protected by the 1995 constitution of Uganda and the Land Act (1998)”. Hence indigenusness is tied to aboriginality which the colonial state and its successors have violated under the cover of ‘gazetting’ and ‘protecting’ the area.

[In AAU’s thinking] land has not primarily been identified as a repository of Ndorobo spirituality, which defines their relationships to nature and other communities.

“... those people from town ... tend to think that getting social services and land certificates is all we want. When I tell them that we want even the forest air and our sacred areas, they take it lightly.”

Moses Kiptala

Related to this, the concept of indigenusness that AAU has evolved encompasses recognition of discrimination and exclusion – by the state at national and local levels – of the Benet indigenous people.

AAU also linked indigenusness to the preservation of traditional livelihoods and culture of the Ndorobo: namely, forest pastoralism, hunting, gathering and bamboo craft technology whose “continuation and sustainability” it decried as being in peril because of “insensitive conservation policies”.

How does one reconcile the express wish on the part of AAU to obtain justice for a marginalized minority indigenous group, with a legal strategy which substantially fails to acknowledge an indigenous claim, and instead runs the risk of locking the Ndorobo into a narrow identity as sedentarised agriculturalists and individualised landholders?

How does one reconcile the express wish on the part of AAU to obtain justice for a marginalized minority indigenous group, with a legal strategy which substantially fails to acknowledge an indigenous claim?

The predominant line of thinking is that an indigenous identity is backward and anti-developmental, as it condemns the Ndorobo to retrogressive livelihoods of 'chasing antelopes' when they could presumably be engaging in a 'developmental' and forward-looking settled agricultural production. The other line of thinking denies the pastoral identity of the Benets, past or present, and therefore delegitimizes the Benet claims over the forest reserve.

The dominant thinking about land, however, is of a developmentalist and western orientation, and it is this that has shaped the legal strategy and its outcome. To both AAU and ULA the critical change from marginality to entitlement would follow a path of securing land from the state as a base for material livelihoods. Land has not, in this analysis, primarily been identified as a repository of Ndorobo spirituality, which defines their relationships to nature and other communities.

The main fault line, therefore, lies within the legal system itself, which is quite incapable of imagining, speaking about or formulating a claim founded on indigenous land rights. So the compromises evident in this case are rooted in the law and the western legal training of lawyers and land advisors. The law provides for a very narrow and conservative interpretation of land rights. This is also the diagnosis of the Benet indigenes who contend that the "the struggle for restoration of our land rights and the capacities that go along with that has been largely shaped by existing land laws" (Moses Mwanga).



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Mukandayiseyo Petrona: Life has been difficult out of the forest but we do not want to go back.

SECTION 5

Conclusions, Questions and Implications

We have traversed close to a century to try and understand more fully the meaning and significance of the mobilisation of the Benet ‘community’ and the Consent Judgment, hailed as a great success by at least two of the actors in this story – the AAU and the ULA.

The interest in this particular case stems from ActionAid’s global movement towards ways of working which give primacy to rights and justice. This approach is evolving in practice. It is, therefore, absolutely critical that we understand, explore and learn from these examples of practice to deepen our ways of working for change. This case had been presented as a strong precedent for indigenous land rights. The Benet land rights struggle, we were told, was an excellent example of ActionAid organising and advocating support for marginalised groups, and of how we can strategically use legal frameworks to define and secure rights lost or violated.⁸

We began to explore the story as a ‘tale of two lines’. This was also the basis upon which the legal strategy has been conceptualised and fought – at least, amongst the lead CSO actors, AAU and ULA. In their view, the Benet land question, as it could be fought strategically within the legal system, was defined by the 1983 and 1993 boundary

disputes between community and state. As the ULA Chairman put it when asked about the content of the land rights they were pursuing, “What we were fighting for was the boundary line and not trying to maximize what happens within that line for either of the two hitherto in-fighting groups.”

The lawyer for the ULA saw the matter as one concerning the violation of land ownership in the area between the two lines. In his view, “If you are taking away land belonging to another you must compensate or give another land. That was not done. The law requires the land to be gazetted after consulting the people. There was no such a thing.” Therefore, restore the sanctity of the 1983 line – as the Consent Judgement did – and the community would have won back their land rights.

But as the story was told, new questions began to emerge. Conflicts had (re) surfaced quite shortly after the Consent Judgement and refused to be quietened. At one level, these conflicts between the indigenous Ndorobo and the settlers are underpinned by reportedly unequal distribution of resettlement land, and a history of undermining and poor treatment of the Ndorobo by the settlers. Scratch a little bit deeper, and we see that this conflict is really about the layering of historical rights of occupancy and ownership. And dig just a bit deeper, and we see that the conflict is importantly about the meaning which these different groups attach to land and its role in their cultural, social and spiritual lives. The Ndorobo have a strong historical and indigenous attachment to land, while the settlers have a more rational, developmental and economic

⁸ For information on rights of indigenous people it is worth looking at: ILO 169 Convention: <http://www.unhchr.ch/html/menu3/b/62.htm> UN Declaration on Rights of Indigenous People: <http://www.un.org/esa/socdev/unpfii/en/drip.html>

orientation to land. Land for them is mainly an economic asset which is farmed to support livelihoods. This latter orientation to land is one understood and supported by the CSO actors who have walked alongside the Benets in their land struggle.

In short, this story is most centrally about a contestation between those who advocate for ancestral land rights – the Ndorobo – and those focused on a more individualised, economic approach to land in which land is more or less divested of its spiritual, cultural and social significance. This latter position is upheld by the majority of the protagonists in this story – the AAU, the ULA and the settlers, and also some arms of the government and the courts. This may, in part, explain a ‘successful’ judgement in favour of the Benet ‘community’.

Thus the notion of indigenusness (meaning ancestry) that the BLG, representing the Ndorobo, fought to get articulated in Consent Judgement was subordinated to the notion of inhabitants in the geographical sense. This undoubtedly was to the benefit of the settlers. It is unlikely that AAU had anticipated or desired this outcome. It will certainly fuel the very intra-community tension and mistrust that AAU has sought to contain.

These different conceptions of land rights are likely to have meanings that we acknowledge but don’t fully understand. The Western and economic orientation, deeply inscribed in law, carries the weight of the legal system, the court and its representatives (lawyers and Judges alike), and is endorsed by many of those working in CSOs. In short, it is a world of power and influence. The weakly supported or understood indigenous conceptualisation of the world of land rights stands barely a chance. But there is clearly a need to grasp that an indigenous relationship to land may not be a relationship to land in general, but a relationship to a particular tract of land and the histories, traditions and cultural practices tied up with that tract.

Comments of Ndoboro Benet on their relationship with the land

Ndiwa Kapcheronge

Ndiwa has been raided twice by the pack rangers they burnt his hut and uprooted the crops. On both occasions he had to change sites and create new structures. Speaking with equanimity he said:

I refuse to leave the forest because it is our land. Our survival and culture depends on this mountain forest. Because we have the forest we (the Mosopbishek) have managed to hold on to our important cultural ceremonies. It is good to have land for farming but if we lose the forest completely, we will face more problems; we will become like those in the lowland who are abandoning their culture.

Moses Mwanga

We believed very strongly right from the beginning that the struggle was as much about the forest as about the resettlement land. When you evict a people from their ancestral land as has been done to the Ndorobo, they lose their identity. The cultural means of learning disappear if there is no link to the physical (forest) territory.

Moses Kiptala

It is true land has been overemphasized because of the mandate of our partners and because we were formulating the most effective way to approach the courts for action. But we remain firm that without those other things – the forest resources, the salt licks the cultural sites and remember, we are traditionally cattle keepers of the moorlands – we shall cease to exist as a Ndorobo community. Obviously we cannot accept that.

AAU had begun working in partnership with the BLG, a grassroots organization of the Ndorobo, whom everyone including AAU refer to as the indigenous and historical inhabitants of Mt. Elgon. Thus, there was recognition that the original Benet community were/are the Ndorobo. But as a consequence of deciding to file a case against the government and UWA, AAU and ULA re-used the concept of a Benet community to embrace all the inhabitants in living in Benet who happened to have been affected by the boundary adjustments that accompanied the gazetting of the Elgon National Park.

For AAU, ULA and BESA (the settler association) the first and foremost issue at this point was for the Benet inhabitants to gain back land illegally taken (i.e. without compensation) by the State and UWA. The State too shared their perspective, since it dealt with the Benet case not as one involving ancestral claims but rather as one affecting 'encroachers' on land it had earmarked for a 'public and national interest'.

Is the Consent Judgement a victory? Who has won and who has lost? Revisiting these questions after many months of investigation and exploration, they now appear a little simplistic and naïve. Against what framework were we trying to measure victory? For whom were we trying to assess it?

Considering the merits of the case from the perspective of the Ndorobo we must conclude that the Consent Judgement is not a great victory nor is it a strong or clear precedent for indigenous land rights. But was it a victory for land rights struggles more generally?

A court ruling in favour of a group demanding that the state acknowledge its historical role in dispossession, its obligation to compensate, and its obligation to provide affirmative action in services for a marginal group could lay the basis for wider claims and demands in the future. In this respect, the Judgement is a victory that we must acknowledge.

This uncritical support for sedentarisation of the Ndorobo-Benet... decouples the Benet indigenes from the forest, and diminishes their entitlement as an indigenous community.

The Judgement could also eventually prove to be the basis for indigenous land rights settlements. What can be done now to assert the indigenous land rights of the Ndorobo? All the actors in the Benet case are certainly aware of the UWA/Government Report characterizing the 1983 land allocations mostly to non-Ndorobo as fraudulent. Consequently a ministerial committee recommended in 1997 that non-Benet people i.e. non-indigenes who received land through this settlement, be compensated for their developments and land be redistributed to the genuine Benets (i.e. Ndorobo-Benets). The proposal was eventually shelved due partly to the conflict it would create. Does it follow that the entitlement the Sabiny settlers have seemingly won in Ndorobo-Benet territory is defective? Would AAU and ULA be willing to test this in the courts?

Another approach could be for civil society to assist the BLG to press for application of customary law under which the Ndorobo-Benets enjoy ancestral claim over the forest lands. The Constitution of Uganda as well as the Land Act 1998 provide for customary entitlement as one of four types of legitimate land claim. Customary occupants can acquire the private certificated inheritable title to land, but legal title for communal ownership is only conferred if a communal land association is incorporated. Under customary arrangements, the Benets have systems for dealing with those who trespass on their recognized territory. The Ndorobo-Benets assert that each

trespasser's condition is judged on its merits. Undeserving cases are sent back to the elders of the areas from which they originated. Under this law, deserving Sabiny such as those displaced by cattle raiders from the lowlands of Ngenge could be accommodated, while those who merely took advantage of the situation to grab land would lose what they had fraudulently acquired. No court can pass on or affirm a defective land title.

Linked to the above, the AAU and ULA could also support the Ndorobo to press an expanded notion of land rights through a negotiated legal agreement for co-management of the forests as an ancestral right. This package of rights should include the right to graze, harvest, bury, and conduct other cultural and spiritual activities etc., encompassing the full range of cultural, social and economic relations to land enjoyed by the Ndorobo. The only right referred to in the Judgement is the right of the Benet community to live and conduct 'agricultural activities' in the areas they currently inhabit. This uncritical support for sedentarisation of the Ndorobo-Benets, initially implied in the resettlement programme by UWA and now emphasized in the legal strategy and judgement, decouples the Benet indigenes from the forest, and diminishes their entitlement as an indigenous community.

Benets have been killed, raped, had their houses burnt down and lost countless head of cattle. Justice will only have been obtained when these injustices are recognized as human rights violations and are fully compensated for.

Can an exclusive focus on land rights offer justice for indigenous and minority peoples that have suffered multiple forms of discrimination and disadvantage?

This story leaves us with a few implications and even more questions. In cases such as these where there are contending groups, multiple overlapping rights to land, and legitimate claims against the state by different groups such as the Ndorobo and the settlers, it may make sense to split the cases. In this story, a non-unity strategy could have offered radical potential to acknowledge different categories of land rights of the two groups, and a much wider potential for restoration and compensation. At the same time, it is not clear that we can entrust the courts with legal struggles for justice which the law has limited potential to advance and interpret. We may need to use the law, but we should recognize and work very strategically around its flaws and limitations.

There are also wider issues and questions. An organisation does not just create change by its tangible actions and the results of these in terms of policy gains. It also creates change by the ways in which it disseminates and deepens particular frameworks or conceptions of reality in the course of its actions. These frameworks may be very problematic, and may have tangible consequences, such as the questions around deepening of the land rights of the Benet settlers. The key may be to remain conscious of these frameworks and to actively seek out and articulate their effects – to continually check that all players have a shared analysis and to see struggles as processes which are ongoing.

In the course of their struggles for land and justice, the Benets have suffered brutal repression by the UWA and its predecessors. Benets have been killed, raped, had their houses burnt down and lost countless head of cattle. Justice will only have been obtained when these injustices are recognized as human rights violations and are fully compensated for. Can an exclusive focus on land rights offer justice for indigenous and minority peoples that have suffered multiple forms of discrimination and disadvantage? What does a broad commitment to rights and justice imply for AAU's work with the Benets in the future?

What role does ActionAid need to play to ensure that the war, and not just the battle,

is won? ActionAid plans and budgets for a particular policy gain – in this case winning the court case – but is this strategy using ActionAid's rights-based approach to its fullest extent? Is ActionAid really supporting rights holders to enjoy their rights? How can each gain be followed through so that human rights eventually become real?

Clearly, there are small but significant implications of this Benet story that we can understand, but there is a lot we cannot. This Critical Story of Change has no doubt fulfilled its purpose in posing some new questions and thoughts. We may not yet fully grasp these, but we hope they may shape new efforts to support struggles for land rights, and indigenous land rights in particular.



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Staying put: Ndiwa Kapcheronge, a Benet Ndorobo Sage and victim of two UWA raids still hangs on in the forest.

A postscript – No longer the tale of two lines, but merely one line

In the period 16th to 23rd February 2008, an estimated 1250 Benets of Yatui Parish were evicted by a combined force of the Uganda People's Defence Forces (UPDF) and the UWA. This is in clear violation of the terms of the Consent Judgement handed down by the High Court of Uganda on the 27th October 2005.

The eviction seems to have been triggered by the murder of a Belgian woman tourist at Hunters Cave in the Park just a few days earlier.

The evictees, mainly women and children, are reported in New Vision (3rd June, 2008) to be living in caves and under trees on the cliffs of Mt. Elgon. In this same article, the Kapchorwa District Chairman appealed to government and CSOs to bring in urgent food aid to avert a crisis.

On 27th February 2008, the Minister of State for Tourism, Hon. Serapio Rukundo, following an earlier meeting at his office in Kampala, travelled to Kapchorwa to witness what had taken place in the community. On 12th and 14th of March 2008, the full Minister, Hon. Janet Mukwaya travelled to Kapchorwa to visit the community.

The government has resolved to resettle the evictees. The district Chairperson and the Resident District Commissioner in conjunction with the UWA officials have been tasked with the responsibility of identifying suitable resettlement land. 'Transit' land – land for temporary settlement – has been identified and it is proposed that each evicted household will receive two acres for temporary settlement until such time as land for permanent settlement has been identified and prepared. Each household

is likely to receive between five and ten acres of land, depending on the number of family members, at the permanent site. The temporary resettlement process was targeted for completion by September 2008, and the government plans to have all Yatui evictees permanently settled by June 2009.

During this period AAU has supported the district officials and Benet Lobby Group to meet prominent policy and decision makers to address the plight of the evictees. The case has been profiled in the media. AAU has also facilitated an analysis of the conflict and shared these outcomes with all the stakeholders as part of the process of building the case for addressing the situation of the Benets in general, and the Yatui evictees in particular. AAU has helped to convene a National Consultative meeting with the Members of Uganda's parliament from Eastern Uganda to put pressure on the government to act expeditiously on this matter.

As a result of these efforts, AAU indicates that the government has faced mounting public and moral pressure to act speedily. In March 2009 most of the evictees had been resettled. However, they have not been allocated as much land as they had before and the process has been slow. This means that many families will miss the planting and farming season for a second year and are being offered little support or compensation.

This postscript is an information update and does not offer commentary or analysis on the response of the government or of the supporting CSOs. Thanks to Chemisto Satya Ali, Coordinator, Kapchorwa, Eastern Region, ActionAid Uganda for his support in compiling the information.

What is the Knowledge Initiative?

Critical Stories of Change are supported by the Knowledge Initiative (KI), a new organisation within ActionAid. In undertaking Critical Stories of Change, KI is reflecting the importance ActionAid attaches to the generation and use of knowledge for empowerment and action. KI works within and outside ActionAid, aiming to help civil society organisations and others to realise their individual and organisational potentials as generators of knowledge for progress, and for empowering poor and marginalised people to use their own and other's knowledge as a source of power. It does this by creating new alliances and networks for experiential training and learning, action research and the pursuit of alternatives systems of power.

For comments and feedback on Critical Stories of Change, please contact:

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ActionAid is an international anti-poverty agency working in over 40 countries, taking sides with poor people to end poverty and injustice together.

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