

GIFTED BY NATURE, DISPOSSESSED BY PARLIAMENT

The Plight of Mpungu Community in Kanungu District



Mugyenyi Onesmus

ACODE Policy Briefing Paper, No. 16, 2006

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LIST OF ACRONYMS

BINP	Bwindi Impenetrable National Park
ICFR	Impenetrable Central Forest Reserve
MBIFCT	Mgahinga and Bwindi Impenetrable Forest Conservation Trust
MTTI	Ministry of Tourism, Trade and Industry
NRM	National Resistance Movement
UWA	Uganda Wildlife Authority

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1. INTRODUCTION

In March 2002, the Seventh Parliament passed a resolution that formally gazetted and recognized the alterations of the boundaries of Bwindi Impenetrable National Park (BINP) to include the six villages of Mpungu Parish, Kanungu District. This is an area on the peripheral of BINP, astride Mbwa River commonly referred to as Mbwa Tract. The area is comprised of the villages of Ahakikome, Karukara, Kanyashogi, Kyogo, Murushasha and Rukungwe. This resolution was based on erroneous belief that the six villages constituted part of what was once Bwindi Impenetrable Forest Reserve where the residents had been compensated to vacate and find alternative settlement.

Whereas the proposed extension was meant to affect only part of Mbwa tract found in Kabale (that had earlier been surveyed and the owners compensated), it however turned out that land belonging to local communities in Kanungu District was also included in the proposal by the Ministry of Tourism, Trade and Industry (MTTI) to Parliament and thus subsequently gazetted to constitute part of the National Park. In effect the inclusion of the areas of Mbwa Tract found in Kanungu district as part of BINP, technically meant the appropriation of community land without their consent and without provision of compensation to the affected community in accordance with the provisions of the Constitution of the Republic of Uganda. The resolution by Parliament gazetting the area marked the final step in the alienation of community land by the government and set the stage for the prevailing dispute.

The dispute involves a section of farmers in Mpungu, Kanungu district whose land was alienated and gazetted as part of Bwindi Impenetrable National Park and Kanungu district administration on one hand and the Uganda Wild life Authority (UWA), a statutory body in charge of management of Protected Areas on behalf of the government of the Republic of Uganda on the other.

Following the above events ACODE carried out a study to determine the genesis of the dispute and to explore the alternative means of resolving the dispute. The purpose of this briefing paper is three fold: First, the paper provides information to the policy makers and particularly Parliament on the illegality of its resolution that formally alienated and gazetted the six villages of Mpungu Parish in Kanungu to constitute part of Bwindi Impenetrable National Park. Second, this paper highlights the injustice that has been occasioned on the people of Mpungu parish that has remained unresolved for over six years notwithstanding the community's concerted effort to have the matter amicably resolved. Third, this paper provides options of solving the dispute.

2. PROBLEM CONTEXT

There have been on going conservation activities within most of the area currently occupied by Bwindi Impenetrable National Park (BINP) since 1932, when it was first gazetted as Kasatoro and Kayonza Crown Forest reserves.¹ During this period the two forest reserves were managed separately and both covered about

¹ Bwindi/Mgahinga Conservation Area General Management Plan, 2000-2010

207 sq.km.² Since then, a number of changes have taken place within this protected area.

In 1948, the two forest reserves were combined to form the Impenetrable Central Forest Crown Reserve (ICFR) covering 298 sq.km. In 1961, two other local forest reserves were incorporated into the Central forest reserve and the total area rose to 320 .8 sq.km. At the same time the ICFR was gazetted an animal sanctuary so as to protect the Mountain Gorilla and other species found in the forest reserves. As a result the ICFR assumed dual authority as a forest reserve and game sanctuary³.

The current land dispute over the ownership and user rights within Mbwa Tract can be directly traced back to some of the recommendations contained in a 1984 research report by Butynski.⁴ One of the recommendations in the report was the annexation of Mbwa Tract to the then ICFR. According to the report, this annexation was a necessary measure for controlling the heavy siltation of River Mbwa caused by soil erosion from the neighboring cultivated areas. The report emphasized that the siltation not only affected the use of the river for domestic needs by the local communities but also caused floods and endangered the gorillas, which used this part of the reserve as their home range. In this regard, the report called for the extension of the boundary of the park to the Ruhinja -Mpungu-Kitahurira road a measure that would lead to the appropriation of the land of communities living within the proposed extension.

² Protected Area System Plan for Uganda Vol.4, 1999 and General Notice No. 584 of 1961 as amended by legal Notice No.53 of 1962.

³ Butynski, T. M. (1984), Ecological survey of the Impenetrable (Bwindi) Forest, Uganda and its conservation and Management.

⁴ Ibid.

In 1985 the Government of Uganda through the Minister of Agriculture unilaterally issued a directive for the extension of the Boundary of the protected area from river Mbwa Southwards to the road starting from Kabale to then Rukungiri Border towards Kabale.⁵ Whereas the recommendation in the Butynski report called for the annexation of the whole Mbwa Tract to the park, the directive was only effected in the part of Mbwa Tract found in the present Kabale District and did not affect the areas found in the present Kanungu District. This was largely due to a number of factors, which include: -

- a) Existence of many homesteads in this stretch making it untenable to displace the communities in this part of Mbwa Tract;
- b) There were several tea gardens in the area thus extending the ICFR not only meant destruction of the plantations but would also lead to loss of the economic livelihoods of the communities resident in the area; and
- c) There were no endangered species like the case of Kabale where the main reason advanced for the inclusion of part of the Tract in Kabale to the ICFR was that the area had a concentration of *Entandrophragma exolsis* (Mahogany), which was being threatened by pit sawyers.⁶

In 1991 Parliament enacted a law gazetting the ICFR as Bwindi Impenetrable National Park.⁷ Under the instrument establishing the Park, the park area was expanded from 320.8 sq.km to 330.8

⁵ UWA (2002), Presentation to Kanungu District Council on the resolutions of Parliament about the boundary changes around the Mbwa Tract.

⁶ Interview with Mr. John Muhima (July 14 2005), Vice Chairperson LCV, Kanungu District.

⁷ Statutory Instrument Supplement No. 3 of 1992.

sq.km upon the incorporation of the 10 sq. km stretch of the Mbwa Tract found within Kabale District. It is important to emphasize that the boundaries of the National Park during this period did not include parts of the Mbwa Tract located within the Present Kanungu District.

In 1993 a survey aimed at compensating farmers occupying parts of Mbwa Tract that had been gazetted as national park land was undertaken. This survey only covered the area of Nyakashunju within Kabale District along the Ruhinja Mpungu road to the present Kanungu-Kabale border point. Within Kanungu the survey covered areas where the park boundary leaves the road at the Mbwa River up to Kitahurira Ranger outpost. Upon compensation of the communities living within the surveyed area, they were relocated and conservation measures undertaken in the affected area to allow for the natural regeneration to take place. It is important to note that, since 1993 the park boundaries were clearly demarcated, known and respected by both the local communities and the National Park authorities. In essence the Mbwa Tract area to the west along the road starting at the Kabale -Kanungu border point, Kanyashongi, Harujarambo, Hakikome to Kitahurira ranger post (save for the slopes overlooking the Mbwa Tract) was not included in the survey and therefore left intact as land belonging to the communities adjacent to the park.

In March 2002 Parliament passed a resolution that officially gazetted and recognized the alterations of the boundaries of Bwindi National Park to include the Mbwa Tract area following recommendations from the Ministry of Tourism, Trade and Industry. Whereas the proposed extension was meant to affect only part of Mbwa Tract found in Kabale (that had earlier been

surveyed and the owners compensated), it however turned out that land belonging to local communities in Kanungu District had been erroneously included in the proposal by the MTTI and thus subsequently gazetted as park land⁸.

The affected six villages cover 770.47 acres with a population of 3695 people who are basically peasants.⁹ This stretch of land is a major source of food and income for the people of Mpungu. In terms of land use 64% of the area is covered by settlement and seasonal food crops, 7.5% banana plantation, 20.65% tea plantation, 7.2% grazing land, 0.06% coffee plantation and 0.6% tree plantation. Since 2002, the residents of the affected areas through their local leaders have been struggling unsuccessfully to reverse the resolution of Parliament. The Uganda Wild Life Authority (UWA), which is a responsible government agency, has since then clarified that their recommendation to the ministry of Tourism, Trade and Industry that formed the basis for Parliamentary resolution that formally alienated and gazetted the community land was done in error, but the ministry has not taken a positive step to address the situation.

The problem therefore, is that the government action of alienating community land and gazetting it as a national park without following the established legal procedure is unconstitutional and a violation of the people's rights of which government is the custodian.

⁸ Interview with Mr. Benon Mugyerwa (July 15 2005), Community Conservation Officer, BINP.

⁹ Kanungu District Local Government (2005), Assessment of Land and Property for People using Mbwa Tract, Mpungu Sub-County, Kanungu District.

3. STAKEHOLDER'S VOICES

3.1 Voices from the Community Members Affected by the Dispute

The disputed land comprises of various plots owned by different farmers either individually or collectively as family land. In total about 120 families reside within Mbwa Tract and would be seriously affected if it were decided to evict them from the area. The farmers do not have titles to the land but rather own the land customarily. Most of the families have occupied the land for a very long period of time and it has been passed on from one generation to the other. The study further revealed that the majority of the affected community members are strongly opposed to the suggestion of being compensated for their land so as to relocate to other areas while a small proportion expressed willingness to sell their land to the park. Mr Bazirebye Moses, 32 years, one of the respondents affected by the dispute had this to say;

We have grown up here; we cannot be shifted anywhere else because this is our ancestral land. We depend on this land for our food and income. We have no other source of income and do not know whether or how we will survive.

The Community Protected area Institution (CPI) chairperson-Caleb Tumwesigye, observed:

Since time immemorial there has been a clear demarcation of the boundaries between the parkland and land owned by the adjacent communities. For a very long period, the local people and the protected area management has strictly observed these boundaries.

In this regard the local community was shocked to hear that their land had been gazetted as parkland without their knowledge and consultation.

The chairperson further noted that a few farmers especially the rich want to sell their land and relocate else where, but the majority of the poor farmers do not conceive of ever parting with their land.

The Chairman LC1, Rukungwe Village Cell-Mr.Turyahirwa Deo, 35 years expressed concern that a large proportion of the residents are threatened with eviction. He observed that the residents have co-existed peacefully with the park for a long period and that the process of forceful acquisition of peoples land would drastically affect this relationship and might lead to retaliation from the communities in the form of encroachment on park land or burning up of sections of the park. He therefore called for laying strategies that would lead to consensus between the park management and the local population so as to peacefully resolve the dispute.

The leaders observed that between April and May 2005 a team of district surveyors carried out an assessment of the land in dispute to determine the nature of the developments, the value of the land and developments thereon and the number of people on the land. They pointed out that during the survey, they rejected the valuation of their properties on individual basis but rather agreed that the report should reflect the total sum of all properties and land of the affected community. This was meant to avoid the possibility of being misinterpreted by UWA/ Government. The community was worried that their participations in the assessment exercise can be construed to

constitute consent to compensation and the findings of the study could be used to determine the amount of compensation due to each farmer and thereby forcefully relocate them.

3.2 The Position of Kanungu District Administration

The district administration shared similar views with most of the concerns raised by the people of Mpungu Sub County. The district leaders observed that they were deeply shocked to learn that land belonging to local farmers in its jurisdiction can be gazetted as park land without being consulted. According to the LC Vice Chairperson Mr. John Muhima, the district learnt of the gazettelement of community land in Mbwa Tract through an official communication from UWA to the district council dated December 7, 2004. In general, UWA in its communication admitted that the gazettelement of community land in Mbwa Tract was purely a mistake and that UWA was to undertake measures necessary to address this mistake. In this regard UWA requested the District to carry out an assessment of the demographic and socio-economic implications of the gazettelement of the land in question and make a report that would guide the process of reviewing the boundaries of the disputed land. The report was completed but no action has been taken to reverse the decision.

The District believes that the gazettelement of community land in Mbwa Tract was a mistake that might have arisen from the assumption that, during the process of compensating and relocating the communities that lived within part of Mbwa Tract in Kabale, the residents of the other part of the Tract found in Kanungu district had also agreed to be compensated and in fact received compensation. As a result the district is convinced that since UWA and government are fully aware of this mistake, the

proper course of action is to take all necessary measures to rectify the mistake. The district is optimistic that UWA is committed to the degazettement of the disputed land and restoring it to its rightful owners (the local community). This optimism is based on the fact that not only has UWA admitted the mistake but has also financed the cost of the survey and assessment of the land and properties of the affected communities. In addition UWA has expressed no interest in taking over the land though the final decision rests with parliament.

As regards the options available in resolving the dispute, the study revealed that the district administration is strongly opposed to any suggestions to compensate the affected communities so as to allow the park to legally take up the disputed land. On the contrary, the district administration is committed to ensuring that the land is degazetted and restored to the local farmers. According to the LCV Vice Chairperson:

The District sees no case for contention since the land in question has always been clearly demarcated as community land and the park boundaries have been known to the park management and the local people. It is therefore incumbent on UWA/government to rectify its mistake and restore the park boundaries to their original status.

There are several factors that explain the strong opposition by the district administration to the annexation of the disputed land to BINP as an option to resolving the dispute. These factors include the socio-economic, cultural and administrative implications that are likely to arise if the land in question is allocated to the BINP. These factors are briefly explained below:

Loss of Revenue and Source of Livelihood

Economically, Kanungu district generates a large proportion of revenue from taxes on tea products and Mpungu Sub County alone contributes about 14% of the total tea production in the District. The tea produced in this area is largely bought by Kayonza Growers Tea factory. In addition Mbwa Tract area generates about 70% of the total tea production of Mpungu Sub County. In this regard annexing the disputed land to the park will not only affect the revenue of the district but also seriously impact on the production capacity of the leading tea factory in Kanungu district. Related to this is the fact that tea is the major source of income to the farmers in Mpungu Sub County. In the recent past the government has invested heavily in the affected area with over 200 hectares planted with about two million (2,000,000) tea plantlets under the Strategic Crop Intervention Programme (SCIP). Therefore, the livelihoods of the people of Mpungu Sub County as well as the viability of Mpungu sub county administration would be drastically affected if the land is allocated to the park.

Loss of Buffer Cropping and Vamine invasion

It is also important to note that the tea plantations in Mbwa Tract area have for long acted as a buffer crop against crop raiding animals from the park and were therefore suitable for areas near the park. In this regard, annexation of this land to the park would expose the adjacent farms and crops to animals from the park and cause severe loss to the local farmers. This will in the long run affect hitherto good relations between the park management and the community.

Social Breakdown of Families

Socially the majority of persons living in Mbwa Tract are poor and their basic assets are the farms on which they derive sustenance. Relocating them would not only leave them landless and homeless but would also lead to social breakdown of families. Linked to these fears is the fact that some of the Bakiga who had re-settled in Kibaale following the evictions in the Kabale part of the tract, are being harassed and pushed out of those areas. In this regard, the district feels that evicting the residents of Mbwa Tract will cause a serious problem of landlessness in the district.

In light of the implications above, the district administration feels that UWA/government should work hand in hand with the District council and the affected communities to ensure that the areas erroneously gazetted are degazetted so that BINP retains its original boundaries prior to the evolution of the dispute.

3.3 The Position of Uganda Wildlife Authority (UWA)

It is important to note that since 2002, UWA has clearly admitted that, in the gazettelement of the boundaries of BINP in 2002 extra land belonging to the local community in Mpungu sub county was included as part of park land.¹⁰ In this respect UWA has on a number of occasions expressed willingness and taken steps to resolve the land dispute over Mbwa Tract.

¹⁰ Source: Uganda Wildlife Authority communication to the Chairperson Kanungu District. Dated February 4th, 2005.

¹¹ Ibid.

According to UWA, the gazettement of community land as parkland in Mbwa Tract was a mistake caused by problems in communication between its field team at Bwindi and the Protected Area Assessment (PAA) Team based in Kampala.¹¹ In specific terms UWA is of the opinion that there was misinterpretation of the message concerning the Mbwa Tract area meant for gazettement that led to inclusion of extra land than what had been proposed. As a result, the parliamentary resolution of March 27, 2002 gazetted extra land that was never intended to form part of BINP. UWA further concedes that the inclusion of parts of Mbwa Tract belonging to local communities adjacent to BINP was done without any prior consultations of the communities that are currently staying and owning the land.

Upon realizing that extra land had been included in the gazettement, UWA explained the issue to the Parliamentary Sectoral Committee on Tourism, Trade and Industry for advice. As a result the Committee visited BINP in September 2003 to ascertain the disputed land and make appropriate recommendations on resolving the dispute. Following the said visit, the Committee advised UWA to make an assessment of the families affected (with their properties) so as to gather information that would guide the process of making an appropriate decision.

Acting on the recommendations of the committee, UWA formally communicated the issue to Kanungu District administration. In its communication UWA proposed that the District Council discusses the issue in its sitting on December 22, 2004 to allow

¹¹ Ibid.

the assessment of the property of the affected families and make a report that would form the basis of an appropriate resolution of the matter. The report has been submitted to the Ministry of Tourism, Trade and Industry but it has not been acted upon.

There is ample evidence that UWA is strongly committed to finding an amicable settlement of the land dispute with the communities adjacent to the park. This is demonstrated by its efforts as discussed above and more especially the fact that UWA is fully aware that if an amicable settlement is not reached with the affected communities, the situation is likely to escalate and may threaten the existence of the entire National Park. This is summed up in the words of the park community conservation warden, who observed:

To ensure that the park is not endangered by the neighboring communities and to promote harmonious relations with the communities adjacent to the park, the disputed land should be restored to the local communities. UWA has never had any interest in the disputed land. The danger/risk associated with annexing the disputed land to the park outweighs the benefits that would be derived by the park.

4. THE LEGAL IMPLICATIONS OF THE GAZETTEMET AND POLICY OPTIONS

4.1 Legal Implications of the Gazettement of Mbwa Tract

The government is fully aware that the disputed land belonged to the local farmers of Mpungu Sub-county and that it was

erroneously gazetted as park land. Whereas the farmers do not have certificates of title to the said land they enjoy land rights as customary occupants of the land and as such their rights are guaranteed under both the Constitution of the Republic of Uganda and the Land Act. In specific terms Article 237(3) recognizes customary tenure as one of the forms of tenure obtaining in Uganda. Related to this is article 26, which provides that “every person has a right to own property either individually or in association with others”. In the same breadth S.3 of the Land Act recognizes customary tenure while S. 31 of the same Act protects customary occupants from eviction from their land.

It should be emphasized that though Article 26 (2) of the Constitution empowers government to compulsorily acquire private property (including land) in public interest, the government is obliged to follow the due process established under the Constitution and the Land Acquisition Act. In specific terms Article 26 (2)(c) requires that compulsory acquisition should only take place upon prompt payment of fair and adequate compensation to the affected person or group of persons prior to the taking of possession or acquisition of the property. In addition, the affected communities are entitled to statutory notice of the intentions of government in regard to acquisition of their property¹². However, Mbwa Tract was gazetted without the prior assessment and payment of compensation to the affected communities and without giving statutory notice of the proposed actions to the affected communities. It naturally follows that this action was not only a mistake but also a violation of the constitutional rights of the

¹² Section 3(3) of the Land Acquisition Act, chapter 226, requires the Minister to serve a copy of the gazette notice to the proprietor of the land.

affected communities thus rendering the gazettelement process unconstitutional.

The constitution further provides for the right to access a court of law by any (aggrieved) person with an interest or right in the property subject to compulsory acquisition.¹³ In this regard the farmers affected by the gazettelement of Mbwa Tract have the option of seeking redress from courts of law especially in regard to challenging the constitutionality of the process. This is in light of the fact that they were neither notified nor compensated prior to the gazettelement of their land, actions that were clearly in violation of the Constitution.

4.2 Policy options for Resolving the Land Dispute

4.2.1 Pursuing Degazettment Process

The land dispute can be resolved by pursuing the option of degazettelement through parliament. This would entail UWA and the MTTI submitting a proposal for the review of the parliamentary resolution that erroneously gazetted Mbwa Tract thus creating the prevailing dispute. This option is strongly supported by UWA, Kanungu District Council and was part of the recommendations made by Sectoral Committee on Tourism, Trade and Industry, following their visit of the disputed land. It is imperative to note that, whereas UWA/government admits that the land in question was erroneously gazetted as parkland, correcting this error would entail pursuing the degazettelement process to amend the parliamentary resolution. Uganda Wildlife

¹³ The Republic of Uganda, the 1995 Constitution. Article 26 (2)(c).

Authority has played its part and what remains is the Ministry of Tourism, Trade and Industry to expedite the process.

The affected community can also in their own capacity petition parliament through their member of parliament. Upon presentation of a successful petition parliament can review the gazettelement resolution.

4.2.2 Pursuing Court Action

The second option would constitute pursuing redress from courts of law as a means of challenging the legality of the gazettelement process and seeking orders for the degazettelement of the land erroneously included as park land. As earlier observed, the gazettelement of Mbwa Tract was done without the prior notification of the affected communities and without prior payment of fair and adequate compensation as required by the Constitution and the Land Acquisition Act. In this respect, the gazettelement process was done in violation of the constitutional provisions on the right to property. Therefore, the affected communities can petition court challenging the constitutionality of the gazettelement of Mbwa Tract and seek orders for the restoration of their land rights.

This option is more precise and reliable in comparison to the parliamentary process discussed above. However, a court order will cause an embarrassment to the state and it is more prudent to pursue an amicable settlement unless where the ministry of Tourism, Trade and Industry and parliament declines to expedient an amicable settlement of the issue.

4.2.3 Maintaining the Status Quo and Compensation

The third option is for the government to maintain the status quo and pay the affected communities compensation for their land and property. This option however, would be unconstitutional since the proper legal procedure was not followed. The state may invoke its constitutional powers to compulsorily acquire disputed land on the premise of public interest. However, the implications of this option are two fold:

First, the action will taint the image of government and UWA, in light of the manner in which the acquisition was done. The memories are still fresh on how the Batwa community in the same area was dispossessed of their common property rights without being provided with alternative source of livelihood and their population is now almost extinct. The Benet in Kapchorwa successfully challenged government when an attempt was made to dislodge them from their ancestral lands in the name of conservation.

Second, the acquisitions will endanger the co-existence of the communities and the park. Indeed as the 5th IUCN World Park Conference recognized, as long as the parks and protected areas remain islands surrounded by hungry and angry communities, their existence and that of their biodiversity will remain threatened. Therefore, in order to ensure that the park is not endangered by the neighboring communities and to promote harmonious relations with the communities adjacent to the park, the disputed land should be restored to the local communities.

5. CONCLUSION

In spite of the value that the rural poor attach to their land in the fight against poverty, the government and its agencies have on different occasions and more especially in establishment of protected areas infringed upon their land rights. Since the colonial period, the communities whose land rights are alienated are more often neither meaningfully involved in decision making nor adequately compensated prior to the establishment of these protected areas. The Batwa in Western and South Western Uganda and the Benet in Eastern Uganda are examples of victims of this unfair and unconstitutional practice. The gazettement of the Mbwa Tract in violation of the constitutional provisions is a classic example of the recent injustices occasioned to communities without redress. Indeed that's why there is need for government action on this matter to restore confidence in the population and restore its image in the crusade to fight injustice and poverty.

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