

REPORT OF THE AFRICAN COMMISSION'S WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES

MISSION TO THE REPUBLIC OF RWANDA

1-5 December 2008



African Commission on
Human and Peoples' Rights



IWGIA

International Work Group
for Indigenous Affairs



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African Commission on Human
and Peoples' Rights
(ACHPR)



International Work Group
for Indigenous Affairs

2010

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ABBREVIATIONS AND MAIN TERMS

The Charter	African Charter on Human and Peoples' Rights
ACHPR	African Commission on Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
Batwa/Twa	Used interchangeably
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
COPORWA	Community of Potters in Rwanda
CRC	Convention on the Rights of the Child
DRC	Democratic Republic of Congo
Genocide survivors	Rwandan citizens, mostly Tutsi, who survived the 1994 genocide
Historically marginalised	A term used by the Government of Rwanda to describe the Batwa and other vulnerable groups

Hutu/ Bahutu	Used interchangeably
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
Returnees	Rwandan citizens who fled the country during its internal conflicts and returned after 1994
Tutsi/ Batutsi	Used interchangeably
Vulnerable peoples	These includes the Batwa, the returnees and the genocide survivors
WGIP	Working Group on Indigenous Populations / Communities

PREFACE

The African Commission on Human and Peoples' Rights (ACHPR or African Commission), which is the human rights body of the African Union, has been debating the human rights situation of indigenous peoples since 1999. Indigenous peoples are some of the most vulnerable and marginalized groups on the African continent, and their representatives have, since the 29th Ordinary Session of the African Commission in 2001, participated in the ACHPR's sessions. The indigenous representatives have given strong testimonies to their situation and the human rights violations they suffer from. Their message is a strong request for recognition and respect, as well as a call for improved protection of their civil, political, economic, social and cultural rights. It is also a request for the right to live as peoples and to have a say in their own future, based on their own culture, identity, hopes and visions. Indigenous peoples, moreover, wish to exercise these rights within the institutional framework of the nation state to which they belong. The African Commission has responded to this call. The African Commission recognizes that the protection and promotion of the human rights of the most disadvantaged, marginalized and excluded groups on the continent is a major concern, and that the African Charter on Human and Peoples' Rights must form the framework for this.

In order to achieve a better basis on which to advance discussions and formulate recommendations, the African Commission set up a Working Group on Indigenous Populations/Communities (Working Group) in 2001. The Working Group implemented its initial mandate by producing the comprehensive document "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities" on the human rights situation of indigenous peoples and communities in Africa (the full report can be downloaded from <http://www.achpr.org>). The report was adopted by the African Commission in November 2003, and published in a book format in 2005. The report is the African Com-

mission's official conceptualisation of indigenous peoples' human rights in Africa.

In 2003, the Working Group was given the mandate to:

- Raise funds for the Working Group's activities, with the support and cooperation of interested donors, institutions and NGOs;
- Gather information from all relevant sources (including governments, civil society and indigenous communities) on violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Undertake country visits to study the human rights situation of indigenous populations/communities;
- Formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Submit an activity report at every ordinary session of the African Commission;
- Co-operate when relevant and feasible with other international and regional human rights mechanisms, institutions and organisations.

On the basis of this mandate, the Working Group has developed a comprehensive activity programme. This programme includes undertaking country visits, organising sensitisation seminars, cooperating with relevant stakeholders and publishing reports, all with a view to protecting and promoting indigenous peoples' rights in Africa.

This report is part of a series of country-specific reports produced by the Working Group, and adopted by the African Commission on Human and Peoples' Rights. These country-specific reports emanate from the various country visits undertaken by the Working Group, all of which have sought to engage with important stakeholders such as governments, national human rights institutions, NGOs, intergovernmental agencies and representatives from indigenous communities. The visits have sought to involve all relevant actors in dialogue on indigenous peoples' human rights, and to inform them of the African Commission's position. The reports not only document the Working Group's visits but are also intended

to facilitate constructive dialogue between the African Commission, the various African Union member states, and other interested parties.

To date, the Working Group has undertaken visits to Botswana, Burkina Faso, Burundi, Central African Republic, Democratic Republic of Congo, Gabon, Kenya, Namibia, Niger, Libya, Republic of Congo, Rwanda and Uganda. These country visits have been undertaken during the years 2005-2010, and the reports are published once adopted by the African Commission. Hopefully, the reports will contribute to raising awareness of indigenous peoples' situation in Africa, and prove useful for establishing dialogue and identifying appropriate ways forward for improving indigenous peoples' situation in Africa.

It is hoped that, via our common efforts, the critical human rights situation of indigenous peoples will become widely recognized, and that all stakeholders will work to promote and protect indigenous peoples' human rights in their respective areas.

Commissioner Musa Ngary Bitaye
Chairperson of the African Commission's Working Group
on Indigenous Populations/Communities

ACKNOWLEDGEMENTS

The African Commission on Human and Peoples' Rights expresses its appreciation to the government of the Republic of Rwanda for inviting its Working Group on Indigenous Populations/Communities (WGIP) to undertake a promotional mission to the country, and for putting at the disposal of its delegation all the necessary facilities and personnel to ensure the success of the mission.

The African Commission is grateful to the authorities for their hospitality and support during the mission. A special note of appreciation is extended to the officials of the Government and the National Commission for Human Rights who found time to meet with and accompany the delegation to various meetings and site visits, in spite of their busy schedules.

The African Commission would also like to extend its appreciation to the civil society organisations that assisted it during the mission and would in particular like to thank COPORWA and its officials.



MAP OF RWANDA

EXECUTIVE SUMMARY

The African Commission's Working Group on Indigenous Populations/Communities (WGIP) undertook a mission to the Republic of Rwanda from 1- 5 December 2008. The delegation comprised:

- Commissioner Musa Ngary Bitaye – Member of the African Commission and Chairperson of the WGIP
- Dr. Melakou Tegegn, Member of the WGIP
- The mission was supported by Mr. Francis Ngarhodjim, Legal Officer at the Secretariat of the African Commission.

Objectives and Terms of Reference of the mission

The general objective of the mission was to execute the mandate of the WGIP and of the African Commission. The terms of reference of the mission were, inter alia:

- Gather information on the situation of the Batwa community in Rwanda;
- Engage the Government of Rwanda in dialogue on the situation of the Batwa community in Rwanda;
- Engage civil society on its role in promoting and protecting the rights of the Batwa community; and
- Visit and discuss with the Batwa the problems affecting the enjoyment of the rights guaranteed under the African Charter on Human and Peoples' Rights (the Charter).

Brief history of Rwanda

The Republic of Rwanda has a troubled history of internal conflict and genocide attributed to ethnic and racial policies of colonisation, first un-

der Germany in 1897, when it was administered jointly with Burundi, as Rwanda-Urundi, then later in 1916 under the Belgians, who are said to have exacerbated the racial policies, and finally under the League of Nations in 1924, after which it gained independence in 1962.

Prior to its independence, the ethnic violence which erupted in 1959 between the Tutsis and Hutus resulted in a massive exodus of Tutsis into neighbouring countries as refugees. The tension and skirmishes between the two main ethnic groups deteriorated into full blown civil war.

In spite of peace efforts under the Arusha Accords, the internal conflict between the Hutus and Tutsis degenerated into genocide in which over 800,000 Tutsis and moderate Hutus were killed during a period of 100 days in 1994. The Rwanda Patriotic Front took power in 1994 and stopped the genocide.¹

Geography

Rwanda is located in the Great Lakes Region of East-Central Africa, and covers an area of 26,338 sq km. The country is bordered by Uganda to the north, the Democratic Republic of the Congo (DRC) to the west, Tanzania to the east, and Burundi to the south. Rwanda is a hilly country with a temperate climate comprising two rainy seasons.²

Population and ethnic composition

The country has a population of about 11 million people composed mainly of Hutus (more than 80%), Tutsis (about 14%), Twa (less than 2%) and other ethnic groups.

International human rights obligations

The Republic of Rwanda is a State Party to a number of international and regional human rights instruments, including the African Charter on Hu-

1 en.wikipedia.org/wiki/History_of_Rwanda

2 www.infoplease.com

man and Peoples' Rights (the Charter), the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the Protocol to the African Charter on Human and Peoples' Rights on the establishment of the African Court on Human and Peoples' Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

However, the country has yet to ratify other important human rights treaties which impact on the rights of indigenous populations/communities such as International Labour Organisation (ILO) Convention 169 on Indigenous and Tribal Peoples.

Meetings held during the mission

During the mission, the delegation met and held fruitful discussions with a wide range of stakeholders and institutions, including indigenous organisations, in a bid to be properly informed about the situation of indigenous populations/communities in the country. The delegation met with government officials from various ministries working either directly or indirectly with indigenous populations/communities. The delegation also met with some members of the legislature as well as with some international and local organisations based in Rwanda. The delegation also visited Batwa indigenous communities in various localities.

Observations of the delegation

The delegation noted that following the 1994 genocide, and in a bid to reinforce national unity and prevent future ethnic conflicts, the government of Rwanda adopted a policy according to which there is only one community in Rwanda composed of all Rwandans (*Banyarwanda*).

Law No 47/2001 of December 2001 instituting punishment for offences of discrimination and sectarianism provides for penalties to be imposed on people for divisionism, a poorly-defined term often used interchangeably with sectarianism, meaning: “the use of any speech, written statement, or action that divides people, that is likely to spark conflicts among people, or that causes an uprising which might degenerate into strife among people based on discrimination.”

The former distinction of groups into *Bahutu*, *Batutsi* and *Batwa* is proscribed, and mentioning it is even a criminal offence (*divisionism*). As a result of that policy, the Government of Rwanda does not consider the Batwa as a distinct indigenous people. However, the Government recognises the particular situation of Batwa people by categorising them as “historically marginalised populations” and, to that end, has adopted a series of measures to improve their living conditions, as well as integrating them into mainstream Rwandan society. The African Commission would like to commend the government for the various initiatives taken to improve the lives of those it refers to as historically marginalised persons, which includes the Batwa indigenous community.

Despite the measures put in place to improve their living conditions, the situation of the Batwa remains precarious: their educational level remains very low, and far below the national average; they do not have access to land; they suffer from discrimination, especially with respect to access to employment; and they do not participate equally with other communities in the management of public affairs.

Conclusion

The African Commission notes the positive measures adopted by the government of the Republic of Rwanda to promote the well-being of the Batwa community, in particular the provision of free education, health insurance and shelter. The Commission is, however, of the view that there is room to do more and calls on the government to intensify its programmes and policies to ensure greater protection of the rights of the Batwa.

The African Commission has adopted a number of recommendations that seek to assist the government in achieving this goal. The recommen-

dations are made with due regard to the measures already taken by the government and also bearing in mind the socio-economic and political situation of the country.

Recommendations

The government of Rwanda is called upon to:

1. Officially recognise the Batwa community as an indigenous population;
2. Take steps to ratify ILO Convention 169 and implement the UN Declaration on the Rights of Indigenous Peoples and implement the Declaration in its legislation, policies and development programmes;
3. Adopt affirmative action measures to guarantee the representation of the Batwa at all levels of decision making;
4. Sensitise the Batwa on their rights as well as other populations to respect the rights of the Batwas;
5. Consult the Batwa before taking any measures that may affect their lives, including measures to improve their living conditions, access to accommodation, water and other basic services such as health and education;
6. Take into account the Batwa's culture and way of life in designing development and poverty alleviation programmes;
7. Take concrete measures to combat the stigma and discrimination suffered by the Batwa;
8. Guarantee the Batwa's rights to land and natural resources, including adequate compensation in case of dispossession;
9. Adopt measures that promote and protect the traditional and indigenous knowledge of the Batwa;
10. Carry out a study on the socio-economic situation of the Batwa with a view to adopting an appropriate strategy to enhance their condition;
11. Guarantee the Batwa's cultural and religious rights by allowing them to enter the forests and reserves to fulfil their cultural and religious rituals;

12. Take concrete measures, including sensitisation and provision of incentives to encourage the enrolment and the continuation of Batwa children in schools;
13. Construct schools closer to the Batwa communities and train teachers to teach in their mother tongue as well as develop curriculum adaptable to their way of life;
14. Adopt measures to address the acute poverty of the Batwa caused by the government resettlement policy, including the provision of vocational training and micro-finance schemes;
15. Adopt and implement a policy of disaggregated data on the Batwa population in Rwanda, particularly with regard to government efforts on education, health, housing, employment and representation in all decision-making organs of all levels of government;
16. The Human Rights Commission and civil society organisations in the country should collaborate to develop appropriate programmes to sensitise stakeholders on the concept and rights of indigenous populations in the country;
17. The African Commission should collaborate with the government and other relevant stakeholders in the country to enhance the protection of the rights of indigenous communities.

INTRODUCTION

The African Commission on Human and Peoples' Rights (ACHPR) was established under Article 30 of the Charter with the main mandate of promoting and protecting human and peoples' rights in Africa.

In order to effectively carry out its mandate, the ACHPR decided to establish Special Mechanisms, including Special Rapporteurs and Working Groups on thematic human rights issues. These special mechanisms carry out the same kind of mandate as the ACHPR – that is to promote and protect human rights - in their respective areas of specialisation. One such special mechanism is the Working Group on Indigenous Populations/Communities (WGIP) established by the ACHPR at its 28th Ordinary Session held in Cotonou, Benin, in October 2000. The Working Group was mandated to:

- examine the concept of indigenous people or communities in Africa;
- study the implications of the African Charter on Human and Peoples' Rights and well-being of indigenous communities, especially with regard to the right to equality (Art. 2 and 3), the right to dignity (Art. 5), to protection against domination (Art. 19), to the promotion of cultural development and identity (Art. 22);
- consider appropriate recommendations for the monitoring and protection of the rights of indigenous communities; and
- Submit a report to the African Commission.

In 2003, the WGIP presented a Report to the ACHPR in which it gave an overview of the situation of indigenous populations in Africa and conceptualised its approach to indigenous issues within the framework of the Charter. The Report was adopted by the ACHPR in 2003 and was published and widely disseminated. The Report is the official conceptualisation and framework within which the African Commission promotes

and protects the rights of indigenous populations and communities on the continent.

Preparation of the Mission

The Secretariat of the African Commission began exchanging “*Notes Verbales*” with the Ministry of Foreign Affairs of Rwanda regarding the mission in 2007. In 2008, the government of the Republic of Rwanda officially agreed to the ACHPR’s request for a mission of the WGIP.

In consultation with the Secretariat of the ACHPR, a draft programme for the mission was prepared with the Ministry of Foreign Affairs and the Ministry of Justice of Rwanda. The programme was finalised with contributions from COPORWA, a local NGO working with the Batwa community in Rwanda.

The delegation of the WGIP comprised:

- Commissioner Musa Ngary Bitaye – Member of the African Commission and Chairperson of the WGIP;
- Dr. Melakou Tegegn – Member of the WGIP.

The mission was supported by Mr. Francis F Ngarhodjim, Legal Officer at the Secretariat of the ACHPR.

Terms of Reference of the Mission

One of the tasks of the WGIP is to gather information on the situation of indigenous populations/communities in the respective African Union member states, and to examine the rights to equality, dignity, protection from discrimination, self-determination and promotion of cultural development and identity of indigenous populations.

The specific terms of reference of the mission were, inter alia, to:

- Gather information on the situation of the Batwa community in Rwanda;

- Engage the Government of Rwanda in dialogue on the situation of the Batwa community in Rwanda;
- Engage civil society in its role of promoting and protecting the rights of the Batwa community; and
- Visit and discuss with the Batwa the problems affecting the enjoyment of the rights guaranteed under the African Charter on Human and Peoples' Rights (the Charter).

As part of its promotional mandate, the WGIP undertakes missions to States Parties to engage in dialogue with relevant stakeholders, including, among others, the government, civil society organisations, academia, and indigenous communities themselves, with a view to enhancing the protection of the rights of indigenous peoples.

I. BACKGROUND INFORMATION ON RWANDA

History

Although divergences persist with regard to the issue of which community was the first to inhabit the territory today known as Rwanda, it is generally admitted that Hutus are farmers, Tutsis are cattle breeders, and Twa live as hunter-gatherers.

Rwanda and Burundi were both colonised by Germany in 1897 and governed together as one colony known as Ruanda-Urundi. When World War I started and Germany invaded Belgium, Belgian troops in Congo (Democratic Republic of Congo) occupied Ruanda-Urundi in 1916. At the end of the war, Ruanda-Urundi remained under Belgian control through a mandate granted by the League of Nations in 1924. The Belgian colonial administration divided the Rwandan population into Hutu, Tutsi and Twa, favouring the Tutsi minority and using the Tutsi aristocracy to rule the colony. Hutus were subject to forced labour and were supervised by Tutsis. From 1933 on, the Belgian colonial administration introduced identification cards in Rwanda indicating, among other things, the "race" of their bearer, who was either a Muhutu, a Mututsi, or a Mutua. In 1957, Hutu leaders in Rwanda published a *Hutu Manifesto*, preparing their supporters for a future political conflict to be conducted entirely on ethnic lines.³

In 1959, ethnic violence erupted when a Hutu political leader, Dominique Mbonyumutwa was beaten up by Tutsi rivals in Gitirama. Thousands of Tutsis were forced to flee to neighbouring countries.⁴

Elections were organised in 1960 and were won by Gregoire Kayibanda. He headed a provisional government that led the country to independence in 1962 and he became the first President of Rwanda in October 1961 after his party, the Party of the Movement for the Eman-

3 <http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ad24#ixzz0ncS4jJ9I>

4 www.historyworld.net/

icipation of the Hutu People (PARMEHUTU),⁵ won the parliamentary elections. The Kayibanda regime continued labelling people according to their ethnic group, and put in place a quota system limiting Tutsis' access to schools and civil service employment to a maximum of 9%.

In December 1963, Tutsi rebels entered Rwanda from neighbouring Burundi and, in reaction, the government declared a state of emergency. During the following months, 14,000 Tutsis were killed and hundreds of thousands more sought refuge in neighbouring countries. In July 1973, Gregoire Kayibanda was toppled by his defence minister, Major General Juvenal Habyarimana, in a military coup.

In 1986, the Habyarimana regime announced its opposition to the return of refugees who had fled the country as a result of the ethnic violence in 1959. In reaction, some Rwandan refugees, mainly Tutsis, decided to overthrow the Habyarimana regime by creating an armed rebel group, the Rwandan Patriotic Front (RPF). The Habyarimana regime created a Hutu militia, the *Interahamwe*, to counter the RPF.

From 1992 on, President Habyarimana started to lose the support of Hutu extremists, for agreeing to peace talks with the RPF. The Government and the RPF reached an agreement in August 1993, known as the Arusha Accords.

On 6 April 1994, President Habyarimana was killed in a plane crash and this triggered the 1994 genocide. The RPF resumed their military activities and took power in July 1994.

Geography

Rwanda is located in the Great Lakes Region of East-Central Africa, and covers an area of 26,338 sq km. The country is bordered by Uganda to the north, the Democratic Republic of the Congo (DRC) to the west, Tanzania to the east, and Burundi to the south. Rwanda is a hilly country with a temperate climate comprising two rainy seasons.

5 In French "*Parti du Mouvement pour l'émancipation du peuple hutu*»

Administration

The Republic of Rwanda is divided into five provinces (*Intara*), and further subdivided into thirty districts (*Akarere*). The Akarere (district) is the basic political-administrative unit of the country. The Akagari organisational structure is the smallest politico-administrative unit of the country and hence closest to the people. The provinces are:

- North Province
- East Province
- South Province
- West Province
- Kigali Province

Demographics

The 2008 estimate of the population of Rwanda stands at over 10 million people with about 42% in the 0-14 years age bracket, 55% in the 15 – 64 years bracket and around 2.4% over 65 years. The population growth rate is about 2.7% and the birth rate is about 40 births per 1000, while the death rate is about 14 deaths per 1000. Life expectancy at birth is approx. 50 years – 49 for male and 51 for female.

The population consists of three main ethnic groups - the Hutus, who comprise the majority of the population (85%), are farmers of Bantu origin. The Tutsis, about 14% before the Genocide (probably around 10% now) are a pastoral people who arrived in the area in the 15th century, and the Twa (about 1%) are hunter-gatherers and are identified as indigenous peoples.

Indigenous population in Rwanda – the Twa⁶

The **Twa**, also known as **Batwa**, are a people who are the oldest recorded inhabitants of the Great Lakes Region of Central Africa. Current Twa

6 Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Rwanda : Twa*, 2008.

populations are found in the nations of Rwanda, Burundi, Uganda, and the eastern portion of the Democratic Republic of Congo.

When the Hutu, a Bantu-speaking people, arrived in the region, they subjugated the Twa. Around the 15th century AD, the Tutsi, a Bantu-speaking Nilotic people, subsequently arrived and dominated both the Twa and the Hutu. For several hundred years, the Twa have been a very small minority in the area (currently about 1% in Rwanda and Burundi) and have had little political role. The Twa can thus claim to be the original inhabitants of Rwanda, being related to other first "Pygmy" peoples of Central Africa.

As farming and herding Hutu and Tutsi encroached on and cleared their ancestral forests, the Twa were increasingly forced to abandon their traditional lifestyle and culture. On the margins of the new society, some survived by making and selling pottery. By the 1970s, agriculture and conservation schemes had created ever-greater pressures on the Twa, rendering many landless, without consultation or compensation.

In the late 1980s, all remaining forest-dwelling Twa were evicted from the Volcanoes National Park, the Nyungwe Forest Reserve and the Gishwati Forest. As a result of this land confiscation, the Twa have lost much of their traditional forest knowledge. Increasing poverty brought on by the loss of their livelihoods in turn led other Rwandans increasingly to stigmatize Twa as social outcasts.

Despite their limited numbers, there is a widespread Hutu perception that the Twa are sympathetic to the Tutsis, reinforced by the involvement of some Twa in Burundi in the overwhelmingly Tutsi army. Very many Twa were killed in the 1994 war and genocide. The Unrepresented Nations and Peoples Organization (UNPO) estimates that around 10,000 people, more than a third of the Twa population of Rwanda, were killed and that a similar number fled the country as refugees. UNPO reports discrimination against Twa in the distribution of food and other supplies in the refugee camps.

Current situation

Traditionally, the Twa have been a semi-nomadic "hunter-gatherer" people of the mountain forests. Due to the clearing of the forests for agricul-

ture, logging, development projects, or the creation of conservation areas, the Twa have been forced to leave these areas and establish new homes. As they seek to develop new means of sustaining their communities (such as agriculture and livestock development), most are now landless and live in poverty. The ancestral land rights of the Twa have never been recognized by their governments and no compensation has been given for lands lost.

Twa children have little access to education. According to the survey conducted by the CAURWA (now COPORWA) in 2004, only 23% of the Batwa can read and write, compared to 52% of the overall Rwandan population. In 2004, only 34% of the Batwa were attending school.⁷ Moreover, the Batwa have limited representation in local and national government. Due to their Pygmy ancestry, they continue to suffer ethnic prejudice, discrimination, violence, and general exclusion from society. Batwa men struggle with alcoholism, known to occur in communities facing cultural collapse as they can no longer carry out traditional roles and provide for their families. By 2007, begging was the primary source of livelihood for 40% of Rwanda's Batwa.

While the Batwa have adapted to the changes in their environment by adopting new economic activities and thus traditions and identities, they continue to face challenges to their survival. Today much of the available land, apart from areas reserved for wildlife conservation and environmental protection, is now under cultivation. Unable to access their ancestral lands and practice traditional cultural and economic activities, the Batwa now perceive their pottery as an expression of their present day identity; however, since cheap industrialized products are now readily available, pottery has become a "loss making" activity. Despite this, the Batwa cling to the activity for its cultural and social significance. Not only do they consider it an ancestral tradition, it also carries a social importance in their current day society. The process of digging the clay and carrying it to their settlements allows for socialization and a sense of community amongst Batwa potters. However, in Rwanda the shared access marshes where Batwa harvest clay under an informal communal tenure system are fast becoming collectivized rice-growing plantations

7 CAURWA. "Enquête sur la condition de vie socio-économique des ménages bénéficiaires de la Communautés des autochtones rwandais". January 2004, p. 14-15

due to a 2005 land policy change. They thus now face another crisis as they lose another occupation that defines Batwa identity and provides social livelihood.

Twa are widely stigmatized by both Hutus and Tutsis, who consider them ignorant and uncivilized. Taboos surround eating together or even using utensils used by Twa. Social and economic integration of Twa in Rwandan society is extremely limited; these indigenous people can be characterized as a disadvantaged and marginalized caste. The Twa also remain disadvantaged in education, healthcare and land rights, but the government of Rwanda, bent on denying ethnicity, has threatened to cut off all assistance to the Twa and their organisations if they continue to consider themselves a distinct people.

In 2004, the Rwandan Justice Ministry refused to grant legal status to the Twa-rights NGO *Communauté des Autochtones Rwandaises* (CAURWA) unless it stopped identifying the Twa as Rwanda's first inhabitants, and stopped referring to Twa people. In April 2006, the Secretary General of the Rwandan Ministry of Justice explained to IRIN News that, "Such ethnic divisions have only caused conflicts between the people of this country.... It is now time to pass over these petty differences and pursue the goal of national unity that will benefit everyone in Rwanda."

In 2007, CAURWA was forced to change its name, as the government refused to budge on the issue of renewing the charity's licence until it dropped the word "indigenous" from its title.

II. MEETINGS HELD AND VISIT TO COMMUNITIES

Meeting at the Faculty of Law, National University of Rwanda

The mission held a meeting with **Mr. Lambert Dushimimana, Vice-Dean of the Faculty of Law of the National University of Rwanda in Butare**. After a brief introduction of the mandate and structure of the African Commission and the Working Group on Indigenous Populations/Communities, Commissioner Bitaye explained the purpose of the mission. He mentioned states' obligation under Article 26 of the Charter to take measures to disseminate the rights, freedoms and duties under the Charter, especially through human rights education. Issues raised by the mission included the situation of indigenous populations in Rwanda, and whether human rights, especially the rights under the Charter, are taught at the National University of Rwanda.

Regarding the situation of indigenous populations, the mission was informed that there is no indigenous population in Rwanda and that all the communities in Rwanda share the same territory, the same culture and the same language, despite attempts by the former colonial masters to divide them into ethnic groups. These are rather socio-economic groups, including farmers, pastoralists and hunter-gatherers. The mission was also informed that there are historically marginalised communities, those that are disadvantaged as a result of their low level of education and involvement in the management of public affairs, and that the Government has put in place programmes and strategies to integrate them into the mainstream society through assistance and affirmative actions.

On human rights education, the mission was informed that, at the Faculty of Law, International Human Rights Law is taught as an optional course of two credit hours (representing a total of 30 hours). For the 2008 academic year, 30 students out of a total of 60 had registered for the course. From next year, the course will become compulsory and will be extended to all the faculties of the National University of Rwanda.

The Vice-Dean raised the concern that the concept of indigenous peoples could constitute a threat to the security and sovereignty of states. The delegation explained that the concept of indigenous peoples goes beyond identity, to embrace issues related to security, development and the enjoyment of the rights guaranteed in the Charter.

Further responding to the issues raised by the Vice-Dean, the mission explained that although there is no internationally accepted definition of the concept of indigenous people, there is an international consensus on the essence of the concept and on the main characteristics of indigenous peoples. In Africa, the recognition of the concept is even more controversial due partly to the fact that independent African states continue to perpetuate the marginalisation suffered by indigenous communities during the colonial era. These communities were considered by former colonial masters as backward due to their way of life and their livelihood, which do not tally with the economic system put in place during colonisation and maintained by independent African states. In many instances, the livelihood of indigenous populations can benefit the country economically, if well understood and exploited.

On the risk of conflict and threat to the sovereignty of the State, the mission explained that the promotion and protection of the rights of indigenous communities in Africa will not affect the sovereignty of states. The African Commission in its jurisprudence has upheld the decision taken by the OAU to maintain borders inherited from colonisation. In *Congrès du Peuple Katangais v. Zaïre*, the African Commission ruled that peoples' right to self-determination shall be exercised within the borders of existing states and in line with international law. The mission added that only the non-recognition of indigenous peoples' right to self-determination within the borders of states can lead to conflicts and threats.

Meeting with the Mayor of the Gisagara District

The mission held a meeting with the **Mayor of the Gisagara District, Mr. Leandre Karekezi. Mrs. Donahela Uwingabiye, Deputy Mayor and Mr. Jean-Claude Gakumba, Coordinator of Specific Programmes at the Southern Province** also participated in the meeting.

The mission was informed that the population of the district is about 280,000 people, including 2,196 “historically marginalised people” (the Batwa) (368 families). The main achievements of the Government in favour of indigenous populations in the district were highlighted, including achievements with respect to housing, access to healthcare, education, employment, prevention of HIV/AIDS, literacy and good governance.

In the area of housing, there is an ongoing settlement programme for vulnerable groups, including historically marginalised people, returnees, and genocide survivors. 234 families have already benefited from the programme.

With respect to access to health care, the government has put in place a health insurance scheme for the most vulnerable, whereby half of the fees are covered by the Government, and vulnerable persons are required to pay the remaining fees of 1,000 Rwandan francs annually. The 1,000 Rwandan francs fee is waived for the Batwa. In 2008, 1,956 historically marginalised people out of a total of 2,196 benefited from the programme.

Regarding employment, the Mayor said that historically marginalised people in the district are involved in various economic activities, including pottery, farming, cattle breeding, road building and other remunerated activities under the *Vision 2020 Umurenge Programme* (VUP). The Government has also initiated a policy called “*one family, one cow*” aimed at providing vulnerable families, including historically marginalised people, with a cow each. Five Batwa families received cows in 2008.

On the prevention of HIV/AIDS, the Mayor indicated that there is a campaign to prevent HIV/AIDS in the district, with special focus on the Batwa. 476 indigenous people have undergone voluntary screening, of whom 2.1% tested HIV positive. Sensitisation campaigns are also being conducted in the district, with the assistance of other partners, such as the Association of HIV/AIDS Affected and Infected Widows (*Association des veuves vulnérables affectées et infectées par le SIDA -AVVAIS*).

With regard to education, the mission was informed that indigenous children benefit from free primary and secondary education.

In the area of good governance, the Mayor indicated that indigenous people sit in *gacaca* courts and participate in local defence groups and in village and cell councils. According to the Mayor, they are not represented in the sector and district councils as a result of their low level of educa-

tion. Ten indigenous people were also among the 600 to 800 people that benefited from the *itorero* civic education organised for community leaders.

The mission visited a settlement in Gisagara where an indigenous woman had just received a cow under the “*one family, one cow*” programme, and the village of Kivugiza, in Gabiro cell, Gishubi sector, where 20 houses have been built for vulnerable people, consisting of 10 Batwa family houses and 10 family houses for survivors of the 1994 genocide. There is no school and no health centre in the village. The nearest school is in Gishubi (4 km away) and the nearest health centre is in Gisagara (about 8 km).

The populations in Kivugiza were allocated lands where they grow potatoes, cassava and beans. Each family also received a goat from the Government and the sum of 600,000 Rwandan Francs (RWF) is allocated annually to the village. The villagers in Kivugiza are organised in a cooperative called *Twisungane* (“living together”) composed of historically marginalised people and genocide survivors.

The mission also stopped at the Dahwe village where houses had been built for 18 Batwa families and 14 other vulnerable families.

Meeting at the National Commission for Human Rights

The mission had a meeting at the National Commission for Human Rights (NCHR) with the Chairperson, **Mrs. Zainabo Sylvie Kayitesi**, the **Vice-Chairperson**, **Mr. Deogratias Kayumba**, and other members and staff of the NHRC.

The mission was informed that the NCHR is a key institution in the promotion and protection of human rights in Rwanda. The members of the NCHR are appointed by the Senate, upon nomination by the Government, after consultation with other stakeholders. The independence of the NCHR is constitutionally entrenched. The members of the NHRC enjoy immunity and have the power to investigate human rights violations everywhere in the country, refer situations of human rights violations to the Prosecutor or to the Court directly. The NCHR can access any document and take testimony from any person.

The annual report of the NCHR is presented to both Chambers of Parliament during a plenary session, and Parliament can adopt a resolution

calling for the implementation of the NCHR's recommendations. The NCHR can also prepare specific (thematic) reports to be submitted to the President of the Republic. In 2006, the NCHR prepared a specific report on the situation of the Batwa, highlighting their difficulties, analysing their problems and making recommendations for the improvement of their situation. Following the Report, the Senate decided to carry out investigations into the situation of the Batwa.

When the NCHR receives complaints of human rights abuses, it conducts investigations and then writes to the authorities concerned, making recommendations as to the measures to be taken to redress the human rights violation. The NCHR provides follow-up on compliance with its recommendations. The mission was informed that, in 2007, in 500 cases, victims of human rights violations obtained redress following the intervention of the NCHR. In case of non-compliance with the recommendations, the NCHR can submit a specific report to the President, including its findings, recommendations and the failure of the authorities concerned to implement the recommendations.

Regarding the Batwa, the mission was informed that the NCHR carried out on-site visits to 8 districts in 2008. In 2006, the NCHR conducted investigations into the welfare of the Batwa in order to assess whether their fundamental rights are guaranteed. Following the investigations, the NCHR issued a specific report to the President, with copies to the Ministry of Local Government, Good Governance, Community Development and Social Affairs. The NCHR found many challenges facing the Batwa community, including lack of housing, access to health care, food, education, land, hoes, seeds, unemployment, early or illegal marriages, and made recommendations to improve the situation.

The mission was informed that the situation has drastically changed since the 2006 Report as the government has embarked on many projects to satisfy the basic needs of all vulnerable communities, including the building of houses, and the provision of free healthcare through a health insurance scheme. The mission was also informed that the attitude of the Batwa, who continue to refuse any change in their way of life, hinders their development. For instance, with respect to land, the delegation was told that Batwa people sell their own land and even the iron sheets of the houses built for them by the Government, and they keep moving from place to place.

Meeting at the National Unity and Reconciliation Commission

The mission had a meeting with **Mrs. Fatuma Ndangiza, Executive Secretary of the National Unity and Reconciliation Commission (NURC)**. The mission was informed that the NURC was established in 1999 but that its origin dates back to the 1993 Arusha Peace Agreement between the former regime and the Rwandan Patriotic Front. The Executive Secretary informed the mission that before colonisation, Tutsi, Hutu and Twa were social classes characterised by social mobility. She said that these social classes were transformed by the Belgian coloniser into ethnic groups, even races, favouring one group to the detriment of others. The post-colonial regime continued with the discriminatory policies put in place by the coloniser, and this culminated in the 1994 genocide.

The objective of the NURC is to promote peace, tolerance and unity in Rwanda. The NURC carries out its mandate through various activities, including civic education, using both formal civic education focused on human rights and duties, gender equality, and democratic values, and traditional civic education in the form of a retreat (*ingado*) bringing all members of the communities together to explore ways of solving the problems of the community, peace building and conflict management and sensitisation campaigns.

The Executive Secretary indicated that low levels of education and stigmatisation have hindered the full participation of the Batwa in civic education programmes and expressed the need to educate both the Batwa themselves and the society as a whole in order to change their behaviour, combat stereotypes and change the attitude of society towards them.

She also indicated that the Batwa are given priority in all Government projects, with a view to integrating them into society.

Visit to the Kanombe village

The mission visited Kanombe village near Kigali where Batwa families have been relocated. Thirty-six (36) Batwa families were brought to the site from Kicukiro district in 2007, but only 7 were given government

houses. Twenty-six (26) families are living in houses rented for them by the district. In Kucikiro, they used to earn their living from pottery and work on other communities' farms. Most of them were born in Kucikiro but their parents come from different regions of the country. In Kanombe, they live with other communities, benefit from the Government health insurance scheme, and free education for their children. Before they arrived at the new site, the Government promised to provide them with food for their first six months in Kanombe but they received the promised food assistance for the first month only.

The main concerns of the Batwa community in Kanombe include the lack of land for agriculture, and the lack of clay and firewood for pottery. Furthermore, it is not easy for them to find jobs in the neighbourhood or in town because they lack the necessary qualifications or suffer from discrimination. They have many projects, including a project for the building of modern kitchens, but they lack the necessary funds to implement them.

Other areas of concern include healthcare and housing. With respect to healthcare, their health insurance cards were issued in Kicukiro and are not accepted at the health centre in Kanombe.

On the issue of housing, the mission was informed that there are still 29 families who need Government houses because the houses rented for them by the district are small, and parents are obliged to share rooms with children.

Meeting with the Director-General of the Rwandan Tourism and National Park Authority (*Office rwandais du tourisme et des parcs nationaux - ORTPN*)

The mission had a meeting with **Mrs. Rosette Chantal Rugamba, Director-General of the Rwandan Tourism and National Park Authority (*Office rwandais du tourisme et des parcs nationaux - ORTPN*)**.

The mission was informed of the activities that the ORTPN, directly or through other partners, has carried out or is carrying out in favour of the communities living near the three national parks of Volcano, Akagara and Nyungwe. She said that nobody had ever lived in the parks and that people only used to go to the forest to hunt, gather medicinal plants and

fetch water. She also said that, in terms of the law, everybody that enters the forest without the prior authorisation of the competent authorities is considered a poacher. She informed the mission of the measures being taken to satisfy local communities' needs outside the forest, including building water points, planting trees, supporting pottery, building houses to prevent them from going into the forest, and involving them in the preservation and the management of national parks.

Visit to the Batwa populations of Kinigi and Nyange

On Wednesday 3 December 2008, the mission visited the Batwa people in the sectors of Kinigi and Nyange (Musanze District, Northern Province).

On the Kinigi site, 17 Batwa families were living on one hectare of land. In line with Government policy, half of the land at the site is used by the Batwa community for cultivating pyrethrum, which they then sell to local entrepreneurs. The Batwa families are not allowed to go to the forest to hunt, collect firewood or fetch water. The Sector is building houses for 10 families and there is a plan to build houses for the remaining seven families.

Some of the Batwa who are yet to be housed live in very difficult conditions, with no proper accommodation. They live in very small shacks made of leaves and sticks, using tree branches and leaves as bedding; they have no jobs, some of them are beggars, and according to them, they cannot work because they are hungry and lack the required qualifications.

On the Nyange site, houses had been built for six families. They farm in association with and with support from an NGO called AIMPO (African Indigenous and Minority Peoples Organisation).

The main concerns of these Batwa communities include the problem of hunger, which prevents them from working and forces children to drop out of school; the lack of land for farming, the loss of traditional knowledge through lack of use of the forest, especially in respect of forest conservation, and the lack of education and qualifications, which makes it difficult for them to find work.

Meeting with the Gorilla Organisation

The mission held discussions with **Mr. Emmanuel Bugingo**, Rwanda Programme Manager of the Gorilla Organisation. Mr. Bugingo informed the mission that the Batwa used to live in the forest but that they were evicted by the Government, without compensation, in 1973 to protect the gorillas. He also mentioned the measures taken by the Government and other partners to satisfy the needs of the Batwa outside the forest. He evoked the challenges facing the Batwa in their new lifestyle, including their mindset, which is different from that of mainstream society, making it difficult for them to integrate; difficult living conditions; housing problems and ignorance, and highlighted the actions of Gorilla Organisation in assisting the Batwa, including buying land and building houses for them, paying for their health insurance and carrying out adult education programmes in the community.

Visit to the District of Gakenke

The mission visited the District of Gakenke (Northern Province) where houses have been built for four Batwa families. The families were brought from Rushasi Sector three years ago. They never lived in the forest but used to go there to hunt, collect firewood and water.

The Batwa community in Gakenke faces many challenges, including the fact that the houses are built on a floodplain and this is very inconvenient during the rainy season. One of the houses has no door and no window. Children attend school but some of them drop out as a result of a lack of support from the district in terms of food and school equipment; they have difficulty in obtaining firewood and clay for pottery, and difficulties in communicating with the District Mayor largely due to stigmatisation by officials.

Meeting with the Community of Potters of Rwanda (COPORWA)

The mission had a meeting with the Community of Potters of Rwanda (COPORWA). The meeting was attended by the President, the Director

and other staff members of COPORWA. **Mrs. Jacqueline Bakamurera**, Assistant Attorney-General, **Mrs. Christine Umubyeyi**, Legal Advisor at the National Commission for Human Rights, and **Mr. Eugene Rusanganwa**, Legal Officer at the Ministry of Justice were also present at the meeting.

The mission was briefed about COPORWA, including its background, its establishment, mandate and main activities. The fact that the original name had to be changed as a condition for registration was also mentioned. The mission was informed that COPORWA is involved in education programmes for Batwa people (both formal education and adult literacy), promotes income-generating activities, conducts advocacy work and is involved in socio-economic activities. The association's main difficulty has been a lack of funding, especially before the Government officially recognised the association in 2007.

The mission was also informed of the main challenges facing the Batwa people, including socio-economic problems: extreme poverty, hunger, lack of shelter, land problems, lack of education and qualification, unemployment, stigma, and non-representation in decision-making bodies.

Meeting with Ministries

The mission had a meeting with members of the Government, including **HE Mr. Tharcisse Karugama**, Minister of Justice and **HE. Mrs. Christine Nyantanyi**, Minister of State in Charge of Local Government. The meeting was also attended by **Mrs. Jacqueline Bakamurera**, Assistant Attorney-General, **Mr. Amandin Rugira**, Permanent Secretary in the Ministry of Justice, **Mr. Guillaume Kavarunganda**, Protocol Officer at the Ministry of Foreign Affairs, **Mrs. Christine Umubyeyi**, Legal Advisor at the National Commission for Human Rights, and **Mr. Eugene Rusanganwa**, Legal Officer at the Ministry of Justice. The media were also present but were enjoined by the Minister of Justice not to participate or ask any questions.

The mission was informed that the concept of indigenous populations does not apply to the African context, especially in Rwanda where there is only one community living together, speaking the same language and sharing the same culture. The Minister of Justice indicated that Rwanda

is a victim of distorted history and that the divisions within Rwandan society came from the transposition, in the Rwandan context, of the divisions in Belgian society between the Flamand and the Wallon. He said that the situation in Rwanda and in Belgium were not the same.

The Minister recognised, however, that there are, in Rwanda, communities that have become marginalised because of their lifestyle, and that the Government is putting in place measures to improve their living conditions. He indicated that the Batwa are no longer hunters because there is almost no forest in Rwanda and that, in any case, they never lived in the forest and were never evicted.

The Minister of Local Administration informed the mission that the historically marginalised communities were so called because of their backward culture. She said that they are not the only vulnerable community in Rwanda, and that the Government has put in place a 5-year programme with five directions (education, health, shelter, citizenship and income-generating activities) to improve the living conditions of all vulnerable communities.

The Minister of Justice emphasised that what is important is to take the Batwa people out of self-pity and empower them, through education and other forms of assistance, to take care of themselves. He indicated that the 2005 Land Law does not take away the right of individuals to land ownership, but seeks to improve the use of land for better productivity by putting together adjacent plots. He added that such a consolidation is rendered necessary by the fact that Rwanda is a very densely populated country.

On the issue of political representation, the Minister of Justice stated that it will come by itself once the Batwa people have the required education and qualifications.

Commissioner Bitaye, in response, emphasised the importance of recognising the Batwa as an indigenous community in order to enable the government to adopt appropriate policies and best practices so that the Batwa can enjoy their rights and freedoms guaranteed under the Charter.

Meeting with the Vice-Speaker of the House of Deputies

On 5 December 2008, the mission met with **Ambassador Polisi Denis**, MP, Vice-Speaker of the House of Deputies of the Lower Chamber of the Rwandan Parliament.

The Vice-Speaker informed the mission that the African Charter had been transposed in Rwanda on three levels: the Constitution, which includes a Bill of Rights, the Organic Laws and the Ordinary Laws, all of which protect human rights and prohibit discrimination.

Regarding the Batwa population, the Vice-Speaker indicated that the investigation conducted by the Senate and the National Commission for Human Rights was not aimed at protecting the Batwa population as an indigenous people because there is no indigenous population in Rwanda as people share the same territory, the same language and the same culture. The purpose of the investigations was to understand the socio-economic situation of the Batwa and make sure that measures taken by the Government to improve their living conditions are being implemented.

III. ANALYSIS AND OBSERVATIONS

General observations

Following the 1994 genocide, which claimed more than 800,000 lives⁸ and left over 2 million people as refugees, in order to reinforce national unity and prevent future ethnic conflicts, the government of Rwanda adopted a policy whereby there is only one community in Rwanda composed of all Rwandans (*Banyarwanda*). The former distinction between *Bahutu*, *Batutsi* and *Batwa* is now proscribed and mentioning it is even a criminal offence (*divisionism*). As a result of this policy, the Government of Rwanda does not consider the Batwa as an indigenous people. However, the Government does recognise the particular situation of the Batwa people, categorising them as “historically marginalised populations”, adopting a series of measures to improve their living conditions, and encouraging their integration into Rwandan society. The Government uses the term “vulnerable people” to include not only the historically marginalised populations, the Batwa, but also the genocide survivors and “returnees”.

Measures taken in favour of vulnerable communities include building houses, free healthcare through a health insurance scheme, free primary and secondary education, and the promotion of income-generating activities.

Despite the measures put in place to improve their living conditions, the situation of the Batwa remains precarious: their education level remains very low, and far below the national average; they do not have access to land; they suffer from discrimination, especially with respect to access to employment; and they do not participate equally with other communities in the management of public affairs.

8 1,000,000 according to the Rwandan Government

Specific issues

Recognition of indigenous populations

The Government of Rwanda, for the reasons mentioned above, does not recognise the Batwa as an indigenous population and refers to them as *historically marginalised populations*. Such non-recognition deprives the Batwa of the rights associated with the concept of indigenous populations, even though the Batwa are clearly distinct from the dominant society, both Hutu and Tutsi, due to their different way of life and culture, clearly recognised and manifested by the dominant society in the form of discrimination, marginalisation and disdain of the Batwa. The Government's policy of integration is a recognition of the "exclusion" of the Batwa from the larger society and, at the same time, a failure to recognise and respect the distinct nature of Batwa society and the plurality it contributes to Rwandan society.

Considering the Batwa as part of the Rwandan society without any distinction other than the fact that they have been historically marginalised has led to the adoption of inappropriate measures to address the needs of the Batwa people without consulting them. In some instances, the Batwa are not even aware of the measures being taken in their favour. At the Kinigi site, the mission noticed that the Batwa community living there were not aware that they owned the land and thought that the land belonged to the company buying the pyrethrum which, under the Government policy, they are obliged to cultivate on half of the land under cultivation.

Right to land and natural resources

Rwanda is one of the most densely populated countries in Africa and land is a big problem. Forests are rare and have been transformed into natural reserves and parks. The mission received conflicting information regarding the eviction of the Batwa from the forests. The mission noted that many Batwa do not have ownership over the lands they live on or cultivate. According to the survey conducted by CAURWA (now CO-

PORWA) in 2004, 43% of Batwa families have no access to land, compared to 12% of families nationally. 78% of Batwa families are tenants on the land they are cultivating. Moreover, 43% live on lands of less than 0.5 ha.⁹

Right to housing

The mission noted that the Government, at the level of districts, was building houses for the Batwa and for other vulnerable persons as a collective or one community in certain locations, pursuant to its policy of integrating the Batwa into Rwandan society. However, very few houses have been built so far and many Batwa families that have been evicted from their former settlements are yet to be sheltered. At the Kinigi site, no houses have been built and indigenous populations there live in tiny shelters made of sticks and leaves. In Kanombe village near Kigali, 36 indigenous families had been brought to the site from Kicukiro district in 2007 but only seven families had been given government houses and 26 families are living in houses rented for them by the District.

Although the initiative of building houses for the Batwa is to be commended, the mission deplors the fact that the beneficiaries are not consulted in the process of relocation and housing. As a result, some houses are built on flood plains' causing great inconvenience during the rainy season, and others are built in areas where it is difficult for the Batwa to get clay for their pottery.

Right to education

The mission was informed by both Government officials and the Batwa community of measures taken by the Government to guarantee free primary and secondary education for Batwa children. Batwa children and other vulnerable children are exempt from paying primary and secondary school fees. However, the absence of other incentives and assistance

9 CAURWA. "Enquête sur la condition de vie socio-économique des ménages bénéficiaires de la Communautés des autochtones rwandais". January 2004

make it difficult for the Batwa children to attend school. Hindering factors include stigma attached to being an indigenous child, poverty, hunger, difficulty in getting uniform and school stationery. According to the survey conducted by the CAURWA (now COPORWA) in 2004, only 23% of the Batwa can read and write compared to 52% for the overall Rwandan population. In 2004, only 34% of Batwa were attending school.¹⁰

Right to work

The Batwa are traditionally hunter-gatherers and potters. The transformation of the forests of Rwanda into national parks and game reserves has made it impossible for the Batwa to continue their hunting activities. The Batwa also encounter difficulty in getting clay for pottery, since the clay required may not be available in the area to which they have been relocated. The lack of ownership of land also makes it difficult for them to engage in farming activities.

According to the CAURWA survey (2004), the average monthly income of the Batwa is 5 426 Rwandan Francs (10 USD). This is insufficient to feed a Batwa family of approximately 5 persons. This leads to begging and reinforces marginalization and exclusion. It is also important to mention that more than 30% of the Batwa were unemployed at the time of the survey.¹¹

The Government has been encouraging the Batwa to start practising other professions such as woodwork, masonry, or providing labour for road construction and house building, but they lack the requisite skills/qualifications and are often discriminated against due to the stigma they suffer through being Batwa. Some of the recurrent stigma associated with the Batwa people is that they are lazy and have a propensity to alcoholism.

The mission noted the other initiatives taken by the Government, through local institutions, to assist vulnerable people, including the Batwa, such as starting or consolidating income-generating activities, for instance the “*one cow, one family*” policy, and the distribution of goats to vulnerable families in the village of Kivungiza in Gisagara District.

10 CAURWA. “Enquête sur la condition de vie socio-économique des ménages bénéficiaires de la Communautés des autochtones rwandais”. January 2004, p. 14-15

11 Idem

Right to political participation/self-determination

The Constitution of Rwanda guarantees the right to participate in government directly or through freely elected representatives without discrimination. The mission received information regarding the participation of the Batwa in the management of public affairs. In Gisagara District for instance, the mission was informed that Batwa are represented in the management of villages and cells. They are not represented beyond the village and cell level on the grounds that they lack the required qualifications.¹²

The mission deplored the lack of a policy of affirmative action aimed at progressively ensuring that the Batwa participate in the management of public affairs at all levels.

Right to health

The Government has put in place a health insurance scheme (*mutuelle de santé*) for vulnerable people. The total cost of the health insurance scheme for an individual is 2,000 Rwandan Francs, of which the Government pays half and the vulnerable person contributes the other half. For the Batwa, the entire cost is borne by the Government.

The general impression from the discussions with the Batwa is that there is no difficulty in using the health insurance scheme, except that in some areas the health centre is quite far from villages to which the Batwa have been relocated. For instance, in the village of Kivugiza (Gishubi Sector, Gisagara District), the nearest health centre is in Gisagara (about 8 km away).

Another difficulty in respect of access to healthcare is that, despite the existence of the health insurance scheme, some Batwa do not make use of it. There is therefore a need for more sensitisation and follow-up.

There is also the issue of the traditional healthcare system, as indigenous knowledge is being lost because it is not used as a result of the prohibition on Batwa going to the forests to collect the needed leaves and barks.

12 The mission was informed that there used to be one representative of the Batwa community in the Senate, but he unfortunately passed away a few days before the mission was carried out.

Law on divisionism

Law No 47/2001 of December 2001 instituting punishment for offences of discrimination and sectarianism provides for penalties to be imposed on people for divisionism, a poorly-defined term often used interchangeably with sectarianism, meaning: "the use of any speech, written statement, or action that divides people, that is likely to spark conflicts among people, or that causes an uprising which might degenerate into strife among people based on discrimination." Article 8 of the law sets forth the penalties for engaging in divisionism to the effect that any person who makes public any speech, writing, pictures or images or any symbols or radio airwaves, television, in a meeting or public place, with the aim of discriminating [against] people or sowing sectarianism [divisionism] among them is sentenced to between one year and five years of imprisonment and fined between five hundred thousand (500,000) Rwandan Francs [or US \$1000] and two million (2,000,000) Rwandan Francs [or US \$4,000] or only one of these two sanctions.

CONCLUSION AND RECOMMENDATIONS

The African Commission notes the positive measures adopted by the government of the Republic of Rwanda to promote the well-being of the Batwa community, in particular the provision of free education, health insurance and shelter. The Commission is, however, of the view that there is room to do more and calls on the government to intensify its programmes and policies to ensure greater protection of the rights of the Batwa.

The Commission has adopted a number of recommendations that seek to assist the government in achieving this goal. The recommendations are made with due regard to the measures already taken by the government and also bearing in mind the socio-economic and political situation of the country.

The Government of Rwanda is called upon to:

1. Officially recognise the Batwa community as an indigenous population;
2. Take steps to ratify ILO Convention 169 and implement the UN Declaration on the Rights of Indigenous Peoples and implement the Declaration in its legislation, policies and development programmes;
3. Adopt affirmative action measures to guarantee the representation of the Batwa at all levels of decision making;
4. Sensitise the Batwa on their rights as well as other populations to respect the rights of the Batwas;
5. Consult the Batwa before taking any measures that may affect their lives, including measures to improve their living conditions, access to accommodation, water and other basic services such as health and education;
6. Take into account the Batwa's culture and way of life in designing development and poverty alleviation programmes;

7. Take concrete measures to combat the stigma and discrimination suffered by the Batwa;
8. Guarantee the Batwa's rights to land and natural resources, including adequate compensation in case of dispossession;
9. Adopt measures that promote and protect the traditional and indigenous know-how of the Batwas;
10. Carry out a study on the socio-economic situation of the Batwa with a view to adopting an appropriate strategy to enhance their condition;
11. Guarantee the Batwa's cultural and religious rights by allowing them to enter the forests and reserves to fulfil their cultural and religious rituals;
12. Take concrete measures, including sensitisation and provision of incentives to encourage the enrolment and the continuation of Batwa children in schools;
13. Construct schools closer to the Batwa communities and train teachers to teach in their mother tongue as well as develop curriculum adaptable to their way of life;
14. Adopt measures to address the acute poverty of the Batwa caused by the government resettlement policy, including the provision of vocational training and micro-finance schemes;
15. Adopt and implement a policy of disaggregated data on the Batwa population in Rwanda, particularly with regard to government efforts on education, health, housing, employment, representation in all decision-making organs at all levels of government.;
16. The Human Rights Commission and civil society organisations in the country should collaborate to develop appropriate programmes to sensitise stakeholders on the concept and rights of indigenous populations in the country;
17. The African Commission should collaborate with the government and other relevant stakeholders in the country to enhance the protection of the rights of indigenous communities.

