

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

**REPORT OF THE RESEARCH AND INFORMATION
VISIT TO BURUNDI**

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By

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REPORT ON THE RESEARCH AND INFORMATION VISIT TO BURUNDI

Executive summary

Mr. Zephirin Kalimba, a member of the African Commission's Working Group on Indigenous Populations/Communities, carried out a research and information visit to Burundi from 27 March to 9 April 2005. He was accompanied by Dr. Albert K Barume, Head of the Africa legal and human rights programme for Forest Peoples Programme¹, and a member of the advisory network of experts to the Working Group:

According to the terms of reference, the visit aimed to:

- Inform the Burundian government, civil society organizations and associations, development agencies as well as various actors interested in the report and the efforts of the African Commission's Working Group on Indigenous Populations/Communities;
- Collect information relating to the human rights situation of indigenous peoples in Burundi, in order to prepare a subsequent report for the African Commission on Human and Peoples' Rights;
- Distribute the report of the African Commission's Working Group of Experts on indigenous populations/communities.

Burundi is a country of approximately 8 million inhabitants, subdivided into three main ethnic groups, namely the Hutu (approximately 84%), the Tutsi (approximately 14%), and the Batwa (approximately 2%). The latter section of Burundian society constitutes part of the indigenous peoples known as 'Pygmies', recognized as the oldest dwellers of African tropical forests that cover much of central Africa. As several studies attest, the 'pygmies' living in central Africa number approximately 300.000 and are called by different names from country to country: 'Aka' or 'Bambendjelé' in Congo-Brazzaville, 'Bagyeli', 'Baka', and 'Medzan' in Cameroon, 'Batwa', or 'Efe' in the Democratic Republic of Congo, Rwanda, Burundi and Uganda.

Burundi is also a country whose recent history has been characterized by cycles of armed conflicts between the two dominant ethnic groups, the Tutsis and the Hutus. This bipolarization of the Burundian political scene has been prejudicial towards the indigenous Batwa peoples whose access to public office, education, health care, land and other fundamental rights remains well below the national average. And yet, this country has ratified various international instruments that guarantee special protective measures in favour of any community that, like the Batwa, identifies itself as indigenous.

However, Burundi is one of the rare central African countries where the situation of the Batwa is increasingly hopeful. The Batwa community is currently represented in the Parliament and the Senate by one and three members respectively. Moreover, the Burundian Constitution guarantees three seats in the Parliament and three in the Senate for the Batwa community.

This research and information visit benefited from a technical assistance provided by UNIPROBA (Unissons Nous la Promotion des Batwa: Let us unite for the advancement of the

¹ Forest Peoples Programme is a United Kingdom-based human rights NGO that works with indigenous forest peoples in numerous countries.

Batwa), a human and development national NGO that focuses on Batwa in Burundi. The Mission was particularly assisted by Honorable Libérate NICAYENZI, a Twa female member of the Burundian Parliament, who also took part in all the meetings held by the members of the mission.

The mission met with several officials, international organizations and members of civil society. Officials included, the Deputy Speaker of the Parliament, members of the Senate, the ministers in charge of social affairs, education, foreign affairs, human rights, justice, land and public health. The Mission met also with the United Nations Mission in Burundi (ONUB), the Office of the United Nations High Commission in Burundi, the country office of the World Bank, the UNICEF office, and several other international NGOs including CARE International, Christian Aid/Great Britain. Several national human rights NGOs were also visited, including, League ITEKA, the Batwa NGO UNIPROBA, and different private and public press agencies.

It emerged from all these meetings that Batwa of Burundi are recognized as one of the most vulnerable sections of the Burundian population. The majority of the Mission's interlocutors stressed the high level of poverty in Batwa community, the inaccessibility of their children to education, their inaccessibility to land and health care, their quasi-institutional exclusion from employment, as well as the threat of extinction of their culture. Batwa were for example recently expelled from their ancestral land by other communities and public institutions. Furthermore, thousands of Batwa communities' continue to face the inhuman practice of bondage.

Despite the bleak picture of Batwa's current conditions, almost all governmental, intergovernmental, international or non-governmental organizations or structures met in Burundi do not have in place action plans which are specifically conceived to help the Batwa of Burundi to enjoy their rights and fundamental freedoms on the same basis as the majority of Burundians.

In the light of the above findings, the African Commission's Working Group of Experts on Indigenous Populations recommends:

A. The African Commission to:

- Call upon the Burundian Government for extension to other sectors of public affairs the measures of positive discrimination for their Batwa's representation in Parliament and Senate;
- Undertake a more thorough study on the practice of bondage still affecting countless Batwa in Burundi;
- Convince the Burundian government to ratify the African Charter on the Rights and Welfare of the Child as well as the Supplementary Convention on the Abolition of Slavery, the Slave trade, and Institutions and Practices Similar to Slavery ;
- Visit Burundi together with Rwanda and Uganda;
- Exert pressure on the Burundian government, the United Nations agencies and other development agencies for a focus on the education of Batwa children;
- Closely monitor the situation of the Batwa of Burundi who are at risk of being easy targets of violence during the forthcoming elections in the country;
- Support the publication of the report in Kirundi and its dissemination in Burundi.

The Government of Burundi to

- Building on the positive steps already taken to ensure Batwa representation in the Parliament and Senate, it is recommended to extend Batwa representation to other national and local governmental structures.
- Create national sectoral policies within key areas such as land, health care, education and employment in order to enable the Batwa to enjoy rights and fundamental freedoms on a par with other Burundian citizens.
- Take urgent action to implement in practice the law of 1976 prohibiting the practice of bondage.
- Ensure that Batwa will be represented in the Land Commission, which is soon to be established.
- Include Batwa representatives in the Commission on Truth and Reconciliation.
- Ensure fair treatment for the Batwa, especially on disputes relating to land matters.
- Provide protection to the Batwa during situations of armed conflicts.

This report is subdivided into four sections. The first section gives a general socio-political picture of Burundi. The second section presents the numerous meetings held in Burundi by the Mission. The third section deals with some key thematic issues, namely the right to land, the right to education, the right to participate in public affairs and the freedom from the practice of bondage. Lastly, the final section consists of recommendations to the Working Group and the African Commission. The words 'Twa' and 'Batwa' are used interchangeably in this mission report.

Section I. General overview of Burundi

I.1. The social, administrative and political make-up

The Republic of Burundi is a country of approximately 8 million inhabitants. It has 16 Provinces and a capital city with a rank of Province. With a surface area of approximately 27 834 km², this country has a density of about 300 inhabitants per km². These figures reveal the acuity of the land issue in a country whose economy depends primarily on agriculture. In 1972, the land issue was exacerbated by a massive emigration into Tanzania of Burundian refugees. The new occupants acquired land titles over the abandoned plots. Since then, any attempts towards a large-scale return of refugees face the problematic issue of land redistribution.

The current Burundian state has its origins in the German colonization which commenced at the beginning of the 19th century. Burundi became a United Nations Trust Territory after the Second World War, which ended with the victory of the Allies over Germany. On the 1st July 1962, Burundi gained political independence from Belgium. The country is bordered to the North by Rwanda, to the West by the Democratic Republic of the Congo, and to the East and the South by Tanzania.

Political life in Burundi is dominated by a power struggle between the two main ethnic groups, the Hutus and the Tutsis. The turning point of that conflict seems to be 1972, when in reaction to an attack, a predominantly Tutsi army loyal of President Michombero launched reprisals against the Hutus, who were thus forced to flee the country. Since then, various successive governments have been trying to solve the thorny issue of the refugees' return.

I.2. Legal context

Following a peace accord signed in Arusha/Tanzania by various political protagonists, with the exception of the "Forces Nationales de Libération"(FNL), Burundi adopted a Post-Transition Interim Constitution on 20 October 2004.

In addition, Burundi is party to several international instruments of paramount importance for indigenous peoples, including the International Covenant on Civil and Political Rights (ratified by Burundi on 9 May 1990), the International Convention on the Elimination of All Forms of Racial Discrimination (ratified by Burundi on 20 October 1977), the Convention on the Elimination of All Forms of Discrimination against Women (ratified by Burundi on 8 January 1992), the Convention on the Rights of the Child (ratified by Burundi on 10 October 1990), the Convention on Biological Diversity (ratified by Burundi on 15 April 1997), and the African Charter on Human and Peoples' Rights (ratified by Burundi on 20 July 1983).

The provisions of these international instruments "form an integral part of the Constitution of the Republic of Burundi", as it is specified by a provision of the current supreme law of the country. It is to be noted however, that Burundi remains one of the rare African countries that have not yet ratified the Supplementary Convention on the Abolition of Slavery, the Slave trade, and Institutions and Practices Similar to Slavery as well as the African Charter on the Rights and Welfare of the Child.

Section II. Meetings

II.1. Meeting with the Office of the Prosecutor of Chibitoke

The Mission had a discussion with the Office of the Prosecutor of Chibitoke, Chibitoke being one of the Provinces of Burundi. Among other concerns, the Mission's members raised the issue of arbitrary arrests, which Batwa complain about frequently. With regard to some cases, the Office of the Prosecutor stressed that Batwa's lack of knowledge of the law could be one of the main causes of the legal harassments of which they are often victims. At the time of the visit, two Batwa were in detention. They were released immediately on a request made by the Mission.

II.2. Meeting with the Minister of Human Rights

The Mission held a meeting with the Burundian Minister in charge of human rights at his office. Mrs. Libérate NICAYENZI, a Twa female Member of Parliament, also participated in the meeting, from which it emerged that the Minister is fully aware of the extreme marginalization Batwa face in Burundi. Frequent violations of human rights that affect members of this community, the recent destruction of their houses by other communities in some provinces, and the non-existence within his Ministry of a service dealing specifically with indigenous Batwa were all pointed out by the Minister as challenges.

However, the Minister underlined the lack of resources, and sometimes of political will to improve the human rights situation of Batwa. Numerous other facts were highlighted by the Minister including the need for an effective census of Batwa, the thorny land issue which confronts the Batwa, the lack of a national policy on Batwa, the recognition of Batwa as 'indigenous', the existence within his ministry of mechanisms that could help Batwa, for example a hotline for victims of human rights violations,

Finally, the Mission exchanged with the Minister on measures his government had taken to eradicate the still prevalent practice of bondage Batwa continue to be victims of in some provinces, despite the fact that the customary practice of bondage is outlawed by the Constitution (the practice of bondage is dealt with further below in this report).

II.3. Meeting with the human rights section of the United Nations Mission in Burundi (ONUB)

The Mission met also with a representative of the human rights section of the United Nations Mission in Burundi (ONUB), to whom a copy of the report by the African Commission's Working Group on indigenous populations/communities was handed. The interlocutor was well aware of the severe marginalization that affects the Batwa of Burundi, as they are excluded from various sectors public life and as their culture faces serious risks of extinction.

The representative of the ONUB's human rights section stressed that so far his section had only been providing general assistance in the area of human rights, without making distinctions between social groups. Training, monitoring human rights violations and a setting up of telephone hotlines for victims of violations, are some of the many human rights activities that the mission has carried out in a general manner. However, the representative of ONUB confirmed that his office was in a process of identifying the particular problems the Batwa are confronted with for the purposes of targeted actions in favour of this community.

II.4. Meeting with the Minister in charge of Education

The Minister in charge of Burundian National Education held also a meeting with the Mission, and a fruitful exchange of ideas took place between the two parties. The Minister stressed that the Burundian government, in general, and his ministry in particular, had chosen the option to educate indigenous Batwa children alongside all other Burundian children in order to improve their integration.

After having received a copy, the Minister stressed the importance of this Report of the Working Group and praised the efforts made by the African Commission to promote indigenous peoples' rights. In addition, he pointed out several mechanisms within his ministry which could be beneficial to Batwa children, such as the mechanism 'poor children', for whom the government pays school fees and stationery. The educational programme for girls, supported by UNICEF, was also mentioned by the Minister as a mechanism by which Batwa children manage to access education. Several other important issues emerged from the meeting, primarily that:

- The Burundian government does not have disaggregated statistical data on the education of indigenous Batwa children;
- The marginalization and the extreme poverty of the Batwa parents prevents the majority of Batwa children from attending school and completing school cycles;
- The Burundian government is well aware of the need for focused attention on the situation of the Batwa;
- Close cooperation between the Ministry of Education and Batwa NGOs could significantly contribute to improving the situation.

II.5. Meeting with the Ministry of Foreign Affairs

The Director General of the Burundian Ministry of Foreign Affairs was personally mandated by the Minister to speak to the Mission. Two other senior staff from the Ministry also took part in the meeting. A copy of the Report of the Working Group was handed to them, in addition to explaining the African Commission on Human and Peoples' Rights' efforts on the issue of indigenous peoples.

The Mission's main interlocutor took good note of the document and promised to submit a detailed accurate report to the Minister. He also reiterated the recognition of indigenous Batwa people in the Constitution as any other Burundian citizen, and the option taken by his government to include all Burundians in the process of development. He explained that the rule is not to exclude anybody and to share everything. The interlocutor of the Mission subsequently referred to the recent cases of arson committed on Batwa's houses, pinpointing the acts as typical examples of the serious human rights violations, which the Batwa community is faced with. Finally, he stressed the importance of education as one of the major ways to combat the marginalization of the Batwa. With the Ministry of Foreign Affairs, the Mission raised the issue of international instruments relevant to indigenous peoples, which Burundi is yet to ratify.

II.6. Meeting with the Burundian Office of the United Nations High Commissioner for Human Rights

At another occasion, the Mission met with the Office of the High Commission for Human Rights in Burundi, to whom copies of the Report were also given. It was pointed out during the conversation that daily monitoring of human rights violations in Burundi has been handed over to the United Nations Peacekeeping Mission in Burundi (ONUB). However, the Office of the High Commissioner did recognize the precarious human rights situation of the Batwa in Burundi. The recent cases of malicious destruction of Batwa's houses in certain provinces were mentioned as examples. Various programs, such as the setting up of national observers and trainings of local NGOs, were pointed out by the Office as examples of human rights mechanisms which could benefit the Batwa. However, it appeared that the Office did not have any program specifically set up for the indigenous Batwa community of Burundi.

In terms of future prospects, the Office of the High Commissioner for Human Rights in Burundi promised to: distribute the Report of the African Commission to other United Nations agencies in Burundi; continue advocating that special attention be given to the situation of the Batwa; support the efforts of the Burundian government and those of the African Commission; collaborate more closely with local Batwa NGOs; and to do their utmost to ensure that the Batwa profit from the on-going process of establishing institutions, democracy and justice in the country.

II.7. Meeting with members of the Senate

The Mission had a very profitable discussion with the Chair and other members of the Burundian Senate's subcommittee on social issues, education, health, youth, and culture. The meeting took place at the Senate. The members of the Mission handed copies of the Report to the Senators, appreciated the constitutional recognition of the indigenous Batwa of Burundi and presented the efforts of the African Commission in the field of indigenous peoples' rights.

All the Senators present recognized the importance of the constitutional recognition of the Batwa, but they similarly stressed that much remains to be done before the Batwa can enjoy all rights on the same footing with other Burundians. The inaccessibility of the Batwa to land, employment, various public services as well as the recent destruction of their dwellings by neighbouring communities were, they argued, all signs of inadequate protection of the Batwa. In concluding, the Senators promised to stand by the Batwa cause and to provide whatever needed support to Batwa's NGOs.

II.8. Meeting with the Minister of Social Affairs and the Promotion of Women

The Burundian Minister of Social and Women's Affairs paid a particular attention to the Mission's objectives and to the African Commission's efforts with regard to indigenous peoples' rights. The Minister stressed her concern with the double discrimination that Batwa women suffer from, and she suggested a creation of a team within her Ministry with the mandate to deal specifically with the issue. She also promised to read the report attentively, duplicate and distribute it to the ministry's different partners as well as to her staff.

The Minister also recognized that her department continue not to have a program specifically set up for the Batwa, in general and Batwa women in particular. Finally, the Minister promised to improve her ministry's collaboration with local Burundian NGOs that work with the Batwa.

II.9. Meeting with Madam the Deputy Speaker of Parliament

The Mission met with Madam the Deputy Speaker of the Burundian Parliament. After having handed over a copy of the Report, the Mission talked about the efforts that the African Commission on Human and Peoples' Rights' is currently undertaking for the protection of indigenous peoples. Madam the Deputy Speaker appreciated the courtesy of presenting her with the report. She recognized the historical injustices that the Batwa of Burundi have suffered, and stressed her government's efforts to redress the past. . She mentioned the fact that Burundi is the only country in the region where Batwa are represented in high-level political institutions such as the Parliament and the Senate. Nevertheless, she recognized that much remains to be done in other sectors of Burundian public life, in particular with respect to education, access to employment, health care and other similar services.

At the end of the meeting, Madam the Deputy Speaker expressed the wish to see the Batwa culture valued again. She also insisted on the usefulness of sharing interregional experiences, and promised to ensure that different Parliamentary Commissions take the particular situation of the Batwa into account each time they debate a national issue. She also promised to have the report duplicated and to make copies available to all Parliamentary Commissions.

II.10. Meeting with League ITEKA

League ITEKA is one of the large non-governmental Burundian human rights NGOs. It is operational in all the provinces of the country and has approximately 80 permanent staff. The Mission discussed the efforts of the African Commission with regard to indigenous peoples' rights with the Executive Secretary of the organisation. The interlocutor, like most of the others, recognized that his organization had not yet created a programme particularly for the Batwa. However, he insisted on the fact that his NGO has various mechanisms and programmes which could be beneficial to the Batwa in general, such as the program of monitoring human rights violations throughout the country, training programmes and legal assistance to the poorest.

In recognition of the new character of indigenous peoples' rights, League ITEKA expressed the wish to see the report disseminated among Burundian NGOs. The organization indicated that it was ready to provide a helping hand to any undertaking in that direction.

II.11. Meeting with UNICEF/Burundi

With UNICEF/Burundi's representatives, the Mission handed copies of the report, and discussed the various programmes being implemented by this United Nations agency in Burundi. It emerged from the discussion that there was no specific UNICEF programme for the Batwa. However, the Mission was informed that the Agency had just commissioned a study on the Batwa in Burundi in order to understand the particular difficulties and discriminations, which this section of the population faces. After a detailed presentation of UNICEF/Burundi's activities, the Mission seized the opportunity to pinpoint international standards requiring special attention to the benefit of indigenous peoples. The Convention on the Rights of the Child as well as the African Charter on

Human and Peoples' Rights were among the international instruments that the Mission and the UNICEF representatives discussed.

The conversation ended with UNICEF promising to take good note of the report, use it and examine ways and means to implement its recommendations. The work of this United Nations agency on children affected by conflicts, sexual violence and its campaigns for the education of girls are all activities within which specific programmes for the Batwa could be established.

II.12. Meeting with the Ministry of the Environment and Regional Planning.

The meeting with the Ministry of Environment and Regional Planning focused on this Ministry's prerogatives on land and environmental issues affecting Batwa communities. The Minister told the Mission that he had never received a dossier dealing specifically with the Batwa's difficulties in accessing land. However, he insisted on the fact that his Government has committed itself to enforce land and environment laws, which are often violated. He pointed out for example that land plots which had been distributed in areas intended to be natural reserves would be regained by the State and the occupants of the plots in question would be reinstated elsewhere.

The Minister spoke also about the BATWA of the Kayanza Province who tend to harvest bamboos from Kibira forest reserve. The authorities had, he said, taken a decision to confiscate bamboos from that forest each time they reach the market. The same measures, he said, will apply to those extracting sand and stones from the Ntakangwa River for the construction of houses in Kigobe.

In reaction to the particular problems that Bata faces, the Minister recommended the Honorable Libérate NICAYENZI, who was accompanying the mission, to carry out a census of all the landless Batwa in Burundi and to identify vacant public lands which could be made available to this section of the Burundian population.

II.13. Meeting with Christian Aid/Burundi

The Mission met also representatives of Christian Aid, an international British NGO. The head of programmes of Christian Aid/Burundi was delighted by the report and the efforts made by the African Commission with regard to indigenous peoples. He mentioned different activities carried out by his organization for the benefit of Batwa through the Christian Union for the Development of the Disinherited (UCCDD), namely the schooling of children, farming activities, and adult literacy programs.

In terms of advice and suggestions, Christian Aid/Burundi wished that the organization "Let Us Unite for the Advancement of Batwa" (UNIPROBA) would increasingly collaborate with other local and international organizations which work for the Batwa cause, such as League ITEKA. Moreover, Honourable Libérate was encouraged to refer the problematic issue of Batwa land ownership to the Burundian Parliament, and to organize a conference bringing together different actors working to improve the situation of the Batwa in Burundi.

The Mission urged the NGO Christian Aid to improve and increase its interventions for the benefit of the Batwa in different sectors, and especially in the sectors of education and farming. Responding to this observation, the representative of Christian Aid made some clarifications about

the reduction of their support to schooling as a strategy of inciting Batwa parents to take responsibility for their children's schooling, the need for a regional approach to the question of the Batwa and the possibility of extending the Rwandan experience of pottery project to Burundi.

II.14. Meeting with a World Bank representative

The mission met with a representative of the World Bank's national office in Burundi. The visit to the World Bank was partly justified by the internal policy of this international financial institution on indigenous peoples, namely the Operational Directive 4.20. After having presented a copy of the report and outlined recent efforts of the African Commission in relation to the issue of indigenous peoples' rights, the Mission brought up particular problems which the indigenous Batwa community of Burundi faces in the sectors of land, education, health and employment.

The interlocutor of the Mission promised to transmit the report to the World Bank's Resident Representative in Burundi upon his arrival. Furthermore, the Mission was informed of the programme 'Small Grant' which is available for financing various projects for the Batwa of Burundi. The World Bank representative also promised to organize a meeting with Honourable Libérate, whom he also asked to present a project focusing on the Batwa and to submit it to their office for financial support.

II.15. Meeting with CARE International/BURUNDI

The Mission had a thorough discussion with the Coordinator of Economic Development at the Care International in Burundi. After receiving with appreciation a copy of the report, the interlocutor gave a short overview of the activities carried out by his NGO for indigenous Batwa of Burundi in the areas of farming, trade, women's development and human rights.

CARE International works with the Batwa in different provinces of Burundi. Along with the NGO UNIPROBA, it has built 80 houses for 80 Batwa households in BUTERERE district. The same activity has been undertaken for the Batwa of NGOZI. But to the time of the Mission's visit, Care International/Burundi was unsure about the impact of its activities, as its local partners do not seem to report back.

In terms of suggestions, CARE International BURUNDI proposed the organization of a conference for all the stakeholders involved in improving the development of the Batwa, with a view to making an inventory of activities in terms of who does what, where, how and with whom. According to Care International, this task could be well-carried out by UNIPROBA.

II.16. Meeting with the Minister of Public Health

Health is an important aspect of indigenous peoples' rights in general and particularly of the Batwa of Burundi. That is why the Mission found it important to meet the Burundian Minister of Health. The Minister received the copy of the African Commission Report positively. He was also very attentive of the efforts of the African human rights mechanism on the situation of indigenous peoples.

After a conversation, which lasted more than one hour, the Mission noted that the Burundian Health Ministry did not have any programme designed specifically for the Batwa. However, at the end of

the conversation and the explanations provided by the Mission, the Minister committed himself to taking certain measures aiming at improving health care for the Batwa and to implement some of the recommendations of the Report by the African Commission.

The Minister also suggested that Honourable Libérate, President of UNIPROBA, in cooperation with the Head of the Subcommittee of Social Affairs of the Burundian National Assembly produce a document on the situation relating to the Batwa's rights to health, including reference to the African Charter and the Working Group's Report.

II.17. Meeting with the Minister of Justice

A copy of the report of the African Commission's Working Group on indigenous populations/communities was presented to the Burundian Minister of Justice, was also given an overview of the efforts of the African human rights system with respect to indigenous peoples.

From the outset, the Minister declared that all Africans were indigenous and that the Burundian Batwa were excluding themselves from the rest of the population of the country by wanting to be qualified as indigenous. The mission seized this opportunity to clarify the concept of indigenous peoples, as presented in the Report of the Working Group.

The practice of bondage in a format comparable to slavery, which continues to affect several thousands of the Batwa in Burundi, as well as the number of Batwa in prison, were the two essential points discussed between the Mission and the Minister. Concerning the practice of bondage, the Minister of Justice admitted its existence in Burundi and recognized the pressing need to put an end to this dehumanizing custom. He also promised to carry out field visits with UNIPROBA in order to inquire the full extent of the phenomenon and together put in place mechanisms aiming to eradicate it.

Concerning arrests, arbitrary detentions and imprisonments of Batwa, the Minister asked UNIPROBA as well as honourable Libérate to draw up a list of all the Batwa in detention in Burundi, and to submit it to him so that together they can examine the possibilities of assisting the Batwa who are languishing in Burundi's prisons. Finally the Minister mentioned the will and the efforts of his government to relieve the misery and to fight the exclusion of the Batwa.

II.18. Meetings with the Press

The Mission held a press conference with several local journalists. A press officer from the United Nations Mission in Burundi (ONUB), and over a dozen of journalists from local radio-stations, newspapers and television attended this press conference held at Hotel Amahoro in Bujumbura. The presentation of the report of the African Commission and its efforts on indigenous peoples' rights were the two main topics presented by the Mission to the press. Several journalists wanted to know more about the objectives and aims of the African Commission, the applicability of the concept 'indigenous' in Africa, the reasons for the visit to Burundi, etc. Subsequent to this press conference and debate, several media houses spoke about the visit in various programmes and articles.

II.19. Field trips

The Mission carried out few field trips, including a visit to an area Chibitoke province where a land dispute had caused forced displacement of some one hundred Batwa. Two Batwa Senators, members of UNIPROBA's executive, the Governor of the Chibitoke province, the local Prosecutor and a number of local military authorities also participated in this field trip. Another field trip visited different projects by the NGO UCEDD in favour of the Batwa in the Gitega province. During another field trip, the Mission met one more group of Batwa who had been displaced from their ancestral land in Rukoba. They had apparently been driven out by a neighbouring community with whom they are disputing the land in question. The Governor of the Province was said to have taken up the case, for which a solution was yet to be found. A Batwa community in Buterere District, in the municipality of Bujumbura, was also visited by the Mission. The members of UNIPROBA who accompanied the Mission took the opportunity to sensitize their members on issues relating to HIV/AIDS and various other phenomena which affect the daily life of the Batwa in Burundi.

On all these occasions, the Mission not only communicated the contents of the African Commission's Report to the communities and local authorities, but it also used the opportunity to inquire about on-going efforts and projects for the Batwa, the extent of this community's marginalization of and the human rights violations which this section of the population is facing.

Section III Thematic issues that captured the Mission's attention

III.1. The issue of land

The Batwa of Burundi are faced with an acute problem of inaccessibility to land. Three main reasons seem to cause this situation, which is particular to the Batwa. First, land is a rare commodity in Burundi. This country with over 8 million inhabitants has only a surface area of 27 834 km². It is one of the African countries with a high density, estimated at approximately 300 inhabitants per km².

Second, most of the forest land which traditionally has belonged to the Batwa has been transformed into either national parks or forest reserves. Indeed, the Law No.1/1008 of 1st September 1986 on the Land law in Burundi distinguishes between two categories of land, namely state land and non-state land. The state land is partly constituted of land, which is seen as vacant. A new law on the issue of land is currently being discussed in the Burundian Parliament.

Generally speaking, the problem of landownership confronting "pygmy" people of central African countries seems to stem from an injustice instilled by landownership laws since colonial times. Indeed, much of the before-mentioned landownership and forest laws base the protection of customary landownership rights on visible and material occupation and use of the land, thus ignoring that hunter-gatherers or nomads leave very few visible signs on the land and territories they occupy or use. And since some peoples' use and occupation of land gives the appearance of unoccupied land, lands belonging to such communities are often treated as vacant and consequently devoted for public use or given to private individuals.

Lastly, the Batwa of Burundi are frequently victims of spoliations of land by their non-Batwa fellow-citizens. This situation results from prejudices, negative stereotypes and contempt from

which the Batwa continue to suffer in this country. Several cases of this kind of behaviour and attitudes were reported to the Mission. Among the most recent illustrations, is a case in Gitega province, where a local administrative authority is said to have been implicated. The Mission was even invited by a Governor of a province to the field visit in order to assist in finding a solution to a similar land dispute, which was based on the following facts:

The concerned Batwa community from Kasenyi village in the commune of Buganda in the Chibitoke province is made up of approximately 12 households or families, making about 60 people. This Batwa community has lived on this ancestral land of their since times immemorial. Around the 1970s, a neighbouring Hutu community began to covet the land of the Batwa. In 1987, a judgment by a local Court of Mubi settled the case and fixed the limits between the two communities.

On 22 March 2005, the same Hutu community re-attacks the Batwa community. Following this incident, six Batwa people are wounded, three of their houses are burned down and the remainder of the community is forced to take refuge in a health centre located several km away from their village.



Composed of old people, children and a few pregnant women, the Batwa refugee community remains in this situation without any support or assistance whatsoever. In addition to physical and corporeal attacks as well as burning down some houses, members of the protagonist community accused the same Batwa of rebellion, of moving the boundary stones and of malicious destruction to the public prosecutor's office. As

a result, two elderly people from the Batwa community were arrested and detained.

On 29 March 2005, an investigative mission visited the area. It was made up by the Governor of the province, a Batwa Senator, the local Prosecutor, local military and administrative authorities, representatives of UNIPROBA and members of a Mission from the Working Group on indigenous populations/communities from the African Commission.

On the basis of conversations and discussions with the protagonists in the conflict as well as with various other local sources, it was agreed that: the protagonists should each refrain from undertaking any provocative action and that the displaced should return to their villages while waiting for a final solution to the dispute through the courts

III.2. The right to education

The inaccessibility to land, their inadaptability of the education system, the stereotypes and contempt, by other Burundians, from which they suffer from seem to be the root causes of the high illiteracy rates within the Batwa communities. UNIPROBA estimates the rate of illiteracy among

the Batwa to be over 78 percent. The Twa child, already traumatized by misery is not equipped to face school. He has nothing to eat, no clothing and no school materials. Often overwhelmed by inferiority complexes, a Twa child can hardly see himself at school surrounded by other children pointing fingers at him with attitudes of contempt and driven by stereotypes. The Mission noted also a non-existence of reliable data on the schooling of Batwa children.

III.3. The right to participate in the management of the State's public affairs

The Batwa of Burundi are represented in Parliament by a female Deputy and three persons in the Senate. In October 2004, the Republic of Burundi adopted a new constitution. This instrument has its background in a peace agreement signed in Arusha aiming to put an end to a long inter-ethnic war. This agreement or political settlement rests on the principle of political power sharing between the two major ethnic groups, the Hutus and Tutsis. However, through its Article 7, Protocol I, the agreement recommends "*the promotion, on a voluntary basis, of disadvantaged groups in particular the Batwa, in order to correct the imbalances existing in all the sectors*".

Pursuant to the above-mentioned agreement, Law No.1/018 of 20 October 2004 on the Promulgation of the Post-transition Interim Constitution of the Republic of Burundi was adopted. In Article 164, this supreme law stipulates that the National Assembly will be composed of 60% Hutus and 40% Tutsis. Furthermore, the same provision specifies that three Members of Parliament should come from the Twa ethnic group and they should be co-opted in accordance with the Electoral Code. Article 180 of the Constitution also specifies that the Senate must include three people from the Twa ethnic group. In addition to these constitutional provisions, the Law on the Electoral Code specifies through its Article 150 that the three Batwa Senators will be co-opted by the Independent Electoral Commission, composed of 6 members; three are Hutus and three Tutsis.

This constitutional recognition of the extreme marginalization of the Batwa in Burundi is unique in the sub-region and deserves support. However, one could make the following remarks:

- The reference to Batwa or Twa in terms of numbers rather than % as it is the case for the two major ethnic groups (Hutus and Tutsis), remains questionable,
- The Independent Electoral Commission, incidentally qualified to co-opt the Batwa Senators, will only be composed of the two large ethnic groups;
- The representation of Batwa is not guaranteed in other sectors of national life particularly the economy, the civil service, etc;
- The fact that Batwa women have not been guaranteed a quota within the 30% of the political posts provided for women, does not seem to take into account the double discrimination of which indigenous women suffer from;
- In the same way, the Law on the organization of Municipal Authorities does not guarantee the representation of Batwa and yet it is at this level that more efforts should be concentrated.

III.4. The practice of bondage of the Batwa

According to several corroborating testimonies, certain sections of the Batwa community in Burundi continue to suffer from the practice of bondage. This customary practice entails that a Twa or a whole Twa family is bound to an individual, Hutu or Tutsi, or a family for whom he or she works without any payment. The master families refer to the people in bondage as 'my Batwa or Twa' as if the latter were goods that one can own. The majority of the victims work as cow herdsman, free ploughmen, house servants and any other task deemed indecent. The servants have

almost no rights and are not regarded as human beings on the same footings as their masters. The children of a family in bondage do not have access to school and are condemned to inherit the status of their parents.

According to an estimate by UNIPROBA, the number of Batwa in bondage could be as high as 8.000 people, but the extent of the problem is probably greater because servants and masters are still reluctant to denounce the practice. One of the Burundian Ministers that the Mission met recognized the existence of the practice within his own family and promised to put an end to it.

Bondage is however prohibited by Article 26 of the Constitution of Burundi: "No one should be held in slavery or in bondage. Slavery and slave trade are prohibited in all their forms ". A Decree of 1976 prohibits also this practice. These domestic standards are unfortunately not followed by international commitments because Burundi has not yet ratified the Convention against practices similar to slavery, the African Charter on the Rights and Welfare of the Child.

III.5. Batwa refugees

The Mission was also informed of a wave of Batwa, who are reported to have fled into neighbouring Rwanda in March 2005 after they were attacked by other Burundians, who accused them of voting for opposing political parties. The information released by several media, including IRIN agency, confirmed that several dozens of Burundian Batwa had actually taken refuge in Rwanda. The Mission did not have the chance to visit the concerned Batwa community but Mr. Kalimba committed himself to collect more information on their situation.

Section IV. Recommendations

With regard to the above findings, the African Commission's Working Group of Experts on Indigenous Populations recommends:

A. The African Commission to:

- Call upon the Burundian Government for extension to other sectors of public affairs the measures of positive discrimination for their Batwa's representation in Parliament and Senate;
- Undertake a more thorough study on the practice of bondage still affecting countless Batwa in Burundi;
- Convince the Burundian government to ratify the African Charter on the Rights and Welfare of the Child as well as the Supplementary Convention on the Abolition of Slavery, the Slave trade, and Institutions and Practices Similar to Slavery ;
- Visit Burundi together with Rwanda and Uganda;
- Exert pressure on the Burundian government, the United Nations agencies and other development agencies for a focus on the education of Batwa children;
- Closely monitor the situation of the Batwa of Burundi who are at risk of being easy targets of violence during the forthcoming elections in the country;
- Support the publication of the Report of the Working Group in Kirundi and its dissemination in Burundi.

The Government of Burundi to

- Building on the positive steps already taken to ensure Batwa representation in the Parliament and Senate, it is recommended to extend Batwa representation to other national and local governmental structures.
- Create national sectoral policies within key areas such as land, health care, education and employment in order to enable the Batwa to enjoy rights and fundamental freedoms on a par with other Burundian citizens.
- Take urgent action to implement in practice the law of 1976 prohibiting the practice of bondage.
- Ensure that Batwa will be represented in the Land Commission, which is soon to be established.
- Include Batwa representatives in the Commission on Truth and Reconciliation.
- Ensure fair treatment for the Batwa, especially on disputes relating to land matters.
- Provide protection to the Batwa during situations of armed conflicts.

APRIL 2005
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