

Alternative Report *for the* CERD Review of Rwanda

Submitted by

International Organization for Self-Determination and Equality (IOSDE)
in collaboration with Association of Global Development of Batwa in Rwanda (ADBR)

to the United Nations Committee on the Elimination of Racial Discrimination (CERD)
89th Session / April-May 2016

3 April 2016

“conflicts do not arise because people demand their rights but because their rights are violated”¹

¹ The African Commission’s Working Group of Experts on Indigenous Populations/Communities (ACWGIP), *Report Submitted in Accordance with the Resolution on the Rights of Indigenous Populations/Communities in Africa*, Adopted by the African Commission on Human and Peoples’ Rights, 28th ordinary session, 2005, p. 88.

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The Situation of the Batwa² in Rwanda
with a view to Eliminating all Forms of Racial Discrimination

CERD Articles 2, 5 and 7

Recommendations

1. De-criminalize self-identification and legally ensure the safety of Batwa identifying and claiming rights as indigenous both collectively and individually.

2. Improve legislation governing and affecting NGOs and civil society “with a view to bringing the legislation into compliance with international human rights norms and standards governing freedom of expression and association.”³ including as per the 2014 recommendations of Maina Kiai, *Special Rapporteur on the rights to freedom of peaceful assembly and of association*,⁴ and the reply statement of the Chair of the Parliamentary Standing Committee on Unity, Human Rights and Fight against Genocide and some of the committee’s members “acknowledging that the legislation governing NGOs can be improved”.⁵

3. Adopt the recommendations of the Report of the African Commission’s Working Group on Indigenous Populations/Communities: Mission to the Republic of Rwanda, 1-5 December 2008, adopted by the African Commission on Human and Peoples’ Rights at its 47th Ordinary Session, 12-26 May 2010, with special attention to effective, genuine and active Batwa representation at all levels of decision-making:

“Recommendations. The government of Rwanda is called upon to:

1. Officially recognize 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 fulfill 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;

² The Batwa are also known as the Pygmies, Ge-Sera and Abatwa among other names; this Report will use ‘Batwa’.

³ See Maina Kiai, A/HRC/26/29/Add.2, para. 59.

⁴ Ibid.

⁵ Ibid.

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.”⁶

4. Officially recognize the Batwa as an Indigenous People.

5. With full Batwa participation, decision-making, input and Free, Prior and Informed Consent (FPIC), examine potential of Batwa traditional processes and methods, *Ingando* or other process to engage in to set aside time, space and attention to how best to go about recognizing the Batwa as an Indigenous People in Rwandan law and policy and implementation of Indigenous Rights in Rwanda:

“26. Ingando, a practice which originated in pre-colonial Rwanda, refers to ceasing normal activities in order to reflect on and find solutions to national challenges. The National Unity and Reconciliation Commission formally reintroduced Ingando as a tool to foster peaceful coexistence within post-genocide communities. The first participants were ex-combatants returning from the Democratic Republic of Congo, followed by students, genocide survivors, prisoners, community leaders and women. Ingandos are now carried out countrywide and frequently co-facilitated with communities. Ingandos entail participation at residential camps for up to two months’ duration. Five central themes are: analysis of the country’s problems; history; political and socio-economic issues; rights; obligations; and leadership.”⁷

I. Introduction

1. As less than 1% of the population of Rwanda and the smallest ethnic population in Rwanda, the Indigenous Batwa People, one of the oldest surviving tribes in Africa and the oldest recorded inhabitants of the Great Lakes Region of Central Africa (later met by farmers and pastoralists),⁸ and whom Rwanda does not recognize as indigenous, are an extremely vulnerable people with endangered culture and lifeways. Estimates state that 30% of the Batwa in Rwanda were killed during the 1994 genocide in Rwanda, making them the most-affected group in the country, proportionately.⁹ Yet, the Batwa were not formally recognized as victims of the genocide. Today, Batwa survival and continuation as an Indigenous People remains at-risk.¹⁰ The Batwa currently reside in Rwanda, Burundi, Uganda and eastern Democratic Republic of Congo, as well around the world as migrants, asylum seekers and refugees.

2. Originally the Batwa were forest-dwelling hunter-gatherers in the high mountainous forest areas in the area of Lake Kivu in Rwanda (Gishwati and Nyungwe forest) and Lake Edward in Democratic Republic of Congo. The Batwa lived and practiced a semi-nomadic cultural and economic way of life in connection to the forest area, a source of physical, emotional and spiritual lifeway and wellness. The Batwa depended on the forests for medicine, ritual and religion, food, basket weaving, firewood, saleable items, home building material, tools, hunting and spare time, all a part of a community and an inheritance of

⁶ *Report of the African Commission’s Working Group on Indigenous Populations/Communities: Mission to the Republic of Rwanda*, 1-5 December 2008, adopted by the African Commission on Human and Peoples’ Rights at its 47th Ordinary Session, 12-26 May 2010.

⁷ Gay McDougall, A/HRC/19/56/Add.1.

⁸ Jérémie Gilbert, *Nomadic Peoples and Human Rights*, Routledge: 26 Mar 2014, p. 45-46; Christopher Taylor, *Sacrifice as Terror: Rwandan Genocide of 1994*, Oxford: Berg Publishers: 1999, p. 39-41, 68-75

⁹ Jérémie Gilbert, p. 45.

¹⁰ See, for example, “The Batwa people face discrimination in Rwandan society. They have been forcibly removed from their ancestral forestlands without consent or compensation and deprived of their traditional livelihoods. Many are living in extreme hardship and poverty on the margins of mainstream society. Irreversible damage has been caused to the distinct lifestyles, livelihoods, cultures and traditional practices of communities by their displacement.” From Gay McDougall, *Report of the independent expert on minority issues, Addendum: Mission to Rwanda*, from the Human Rights Council, Nineteenth session, Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 28 November 2011, A/HRC/19/56/Add.1, para. 93.

culture, knowledge, wealth of natural resources and family. However the Batwa were increasingly forced without free, prior and informed consent to abandon their traditional lifeways for settled lifestyles in non-forest areas, when their traditional forest territories were progressively destroyed by agriculturalists and pastoralists and/or set aside by States and other interests as nature conservation areas- the Batwa in turn losing vast amounts of valuable lifeways and knowledge.¹¹ The Batwa were displaced from their own holistic, self-sustaining, sustainable and ecological forest culture to the margins of Rwandan society, in turn developing difficult means to survive as potters, entertainers and dancers in the face of loss of traditional home and livelihood.

3. Recognition of the Batwa as an Indigenous People and affording the Batwa the Rights of Indigenous Peoples on the part of the State of Rwanda is necessary for the safety of the Batwa,¹² not least as a pre-requisite for eventual safe return of Batwa refugees and asylum seekers around the world, as well as security for Rwanda-based Batwa organizations, groups, communities and leaders identifying as having own distinct history, identity, culture and communities as indigenous to the region.¹³ The Rights of Indigenous Peoples are create equality and equal treatment between all people and peoples of the world or an area, State or region, not least as a form of remedy to their losses in the face of settlerism, colonialism, expansionism, business and State interests and the like. This legal comprehension is adopted by the African Commission on Human and Peoples' Rights (ACHPR),¹⁴ to which Rwanda is beholden through its

¹¹ Forest Peoples Programme, *Submission Concerning the Republic of Rwanda and its Compliance with the ICCPR*, 2006, p. 14, <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/rwandahrcreport06eng.pdf>.

¹² In more detail, see Sigrun Marie Moss, "Beyond Conflict and Spoilt Identities: How Rwandan Leaders Justify a Single Recategorization Model for Post-Conflict Reconciliation", *Journal of Social and Political Psychology*, Vol. 2, No.1 (2014), Special Thematic Section on '20 Years after Genocide: Psychology's Role in Reconciliation and Reconstruction in Rwanda':

"To solidify their meta-narrative, the Rwandan leaders repeat it and have disallowed all disputing narratives, making their version the only available (Reyntjens, 2004). The before-mentioned genocide ideology laws effectively limit the discussion of ethnicity, as emphasized by an agency official (O2) (07.11): 'You can't expect to operate within politics in this country based on ethnicity. You have to be within the allowed structures here, and here in Rwanda you cannot talk about these things openly.' A political leader (P3) (11.12) said it was necessary: 'For me the fact that there are laws that punish and reprimand all sorts of divisionism is something very positive.' The 2001 genocide ideology law made ethnic self-identification criminal (with severe ramifications: up to 30 years in prison, and fines of up to US\$8800; Thomson, 2009). Through such measures, alternative narratives are silenced and demobilised. The government legitimizes these laws with reference to internal stability, to hinder 'ethnic' mobilisation, but also to counter claims of dual genocide, of the genocide in fact being a civil war, and more broadly, of former and current Tutsi oppression of Hutu. Such claims are effectively outlawed in Rwanda (again playing into the point above on the category defining and narrative defining power of a subgroup), and are thereby limited to the diaspora. With reference to this 'outside' ideology, an agency official (O1) (11.12) emphasised: 'I think we still have to put strength in combating this outside ideology, because they influence people too much.' This discourse is thus externalised, made into something the Rwandan people needs protection against. Rwanda has repeatedly been accused of human rights violations and denial of freedom of speech in maintaining their identity narrative. Thomson (2013) found that many farmers see the main effect of the unity and reconciliation mechanisms in the exclusion of groups from political organisation. Similarly, Reyntjens (2011, p. 30) criticises the Rwandan identity narrative that there are no Hutu and Tutsi, and calls it a 'concealment of domination by Tutsi.'"

¹³ See Maina Kiai, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Addendum: Mission to Rwanda*, from Human Rights Council, Twenty-sixth session, Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 16 September 2014, A/HRC/26/29/Add.2 :

"III. Legal framework to prevent and punish the crime of genocide and its impact on the exercise of the rights to freedom of peaceful assembly and of association

12. In the wake of the 1994 genocide, the post-conflict Government of the Rwandan Patriotic Front built a legal framework to prevent it from ever happening again. The Special Rapporteur paid particular attention to the following legal provisions of the Organic Law 01/2012/OL on instituting the Penal Code.

Article 136 punishes the crime of sectarianism. Law 47/2001, in article 1, paragraph 2, defines sectarianism as "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". In the case of an association, including a political party, found guilty of sectarianism with grave consequences on the population, a court may decide under article 6 of the Law to dissolve it and fine it up to RF 20 million (US\$ 29,390)."

¹⁴ "19. In Africa, the term indigenous populations or communities is not aimed at protecting the rights of a certain category of citizens over and above others. This notion does not also create a hierarchy between national communities,

ratification of the African Charter of Human Rights. Indigenous Rights are a necessary adaptation of human rights with the purpose of survival of indigenous culture, ways of life, traditions and persons on equal footing to other groups, peoples, persons and citizens. Access to land rights and especially traditional land rights and medicinal, familial and cultural practices, health care in general, education, and especially Batwa-determined education within that, remain illusive under harsh practices of discrimination without indigenous recognition, i.e. recognition in real historical context.

II. Legal Personality and Identity

4. In its May 2009 concluding observations on Rwanda, the Human Rights Committee (HRC) stated: “the Committee is concerned about the non-recognition of the existence of minorities and indigenous peoples in Rwanda.”¹⁵ Rwanda has grappled with the heavy task of re-building its nation and people(s) following the horrific genocide of 1994 that left so many people(s) lost and wounded from division. More than 800,000 lives were lost and 2 million people displaced as refugees due to the 1994 genocide in Rwanda. To re-build a national unity and prevent future ethnic conflicts, the Rwandan Government developed a policy in which there is only one group in Rwanda, composed of all Rwandans, *Banyarwanda*. Distinction as Indigenous Batwa can be deemed a criminal offence, under the legal codification of *divisionism*¹⁶. Thus, Rwanda does not consider the Batwa as an Indigenous People; the government instead recognizes the Batwa as a “historically marginalised population”, demarcating a partial Batwa situation. But in a ironic twist, the very laws and policies Rwanda has enacted to prevent genocide, discrimination and violence in turn over the long run in Rwanda do not fully prevent these things from happening to the Batwa as they are integrated into the current model of Rwandan Government nation-re-building and maintenance. At the same time, as a signatory to both the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) and the UN Convention on the Elimination of all forms of Racial Discrimination (CERD), as well as the African Charter and other Human Rights instruments, Rwanda has agreed to obligations to recognize, fulfill, protect and promote, and not discrimination against, Indigenous Peoples and the Rights of Indigenous Peoples. To not recognize the Batwa as indigenous creates a situation of discrimination against and further endangerment of total eradication of Batwa history, self-identity and tradition.

5. The label of “historically marginalized population” is only suitable under international law standards if the Batwa themselves have been consulted and self-determined this title; however this is not the case, as the identity label is a construction of nation-building of the State; as one IOSDE Batwa contact states clearly, “Batwa know who they are.” The Batwa consider themselves to be indigenous peoples, and the State of Rwanda continues to refuse their indigenous identity. For the Batwa, state policy has reinforced their marginalisation and invisibility.¹⁷ Shortly after the genocide, in 1995, the Rwandan Batwa formed an advocacy group called Community of Indigenous Rwandans (CAURWA). However, this ethnic-identity-based self-identifying was rejected by the nation-re-building Rwandan State in the post-conflict narrative via new legal codification. In turn, the government refused to register CAURWA because of the word 'Indigenous' in the group's name, leaving the group's funding and capacity to function as a legitimate NGO threatened and impossible. As a result, CAURWA was forced to become COPORWA, or *Communaute des Potiers Rwandais* (Organization of Rwandese Potters) in 2007, the same year of UN General Assembly adoption of the UNDRIP and Rwanda's ensuing obligations therein.

but rather tries to guarantee the equal enjoyment of the rights and freedoms on behalf of groups, which have been historically marginalized.” From *Advisory Opinion Of The African Commission On Human And Peoples' Rights On The United Nations Declaration On The Rights Of Indigenous Peoples*, adopted by the African Commission on Human and Peoples' Rights at its 41st ordinary session, May 2007, p. 4

¹⁵ CCPR/C/RWA/CO/3, para. 22.

¹⁶ *Law No 47/2001 of December 2001* instituting punishment for offences of discrimination and sectarianism.

¹⁷ Laura A. Young, “A challenging nexus: Transitional justice and indigenous peoples in Africa”, in *Indigenous People in Africa: Contestations, Empowerment and Group Rights*, Eds. Laher, Ridwan, SingiOei, Korir, Africa Institute of South Africa: 5 May 2014, p. 129.

6. Rwanda ratified the African Charter of Human Rights in 1983. In 2003 the African Commission's Working Group of Experts on Indigenous Populations/Communities (ACWGIP) produced a report, following the African Commission on Human and Peoples' Rights (ACHPR) development of an official framework for the issue of 'the human rights of indigenous populations'. ACWGIP acknowledges that all Africans are 'indigene' to Africa, and states that the term 'indigenous' should only be equated with 'original inhabitants' in "certain very clear-cut cases like the San of Southern Africa and the pygmies of Central Africa."¹⁸ The ACHPR upholds the following working criteria for 'indigenous' criteria:

"The concept [of indigenous populations] in effect embodies the following constitutive elements or characteristics, among others (See page 93 of the Report of the ACHPR's WGIP, adopted by the ACHPR):

- Self-identification;
- A special attachment to and use of their traditional land whereby their ancestral land and territory have a fundamental importance for their collective physical and cultural survival as peoples;
- A state of subjugation, marginalisation, dispossession, exclusion, or discrimination because these peoples have different cultures, ways of life or mode of production than the national hegemonic and dominant model"¹⁹

7. In 2006, a New Partnership for Africa's Development (NEPAD) African Peer Review Mechanism (APRM) report on Rwanda found that the government's actions with respect to the Batwa were based on "a policy of assimilation ... [and] a desire to obliterate distinctive identities and to integrate all into some mainstream socio-economic fabric of the country."²⁰ In addition, COPORWA (the afore mentioned Communaute des Potiers Rwandais / Organization of Rwandese Potters) has had observer status at the African Commission on Human and Peoples' Rights since 2008. In May 2009 the UN Human Rights Committee (HRC) stated its concern regarding reports that members of the Batwa community are victims of marginalization and discrimination, a situation in violation of Art. 27 of the UN International Covenant on Civil and Political Rights (ICCPR); the HRC recommended that Rwanda "should take steps to ensure that members of the Batwa community are protected against discrimination in every field, that they are provided with effective remedies in that regard and that they take part in public affairs."²¹ Yet, due to non-recognition as indigenous in Rwanda, lack of effective protection and remedy regarding violations against the Batwa continues to further enforce and perpetuate discrimination and harm to Batwa survival as an Indigenous People.²²

8. In December 2015 the Hon. Minister of Justice/Attorney General of the Republic of Rwanda officially stated continued government opposition to the use of 'indigenous' as a term in Rwanda during the consideration of the consultations of the UN HRC Universal Period Review (UPR) of Rwanda:

"During the review, some recommendations which were not in line with our national priorities and the Governance principles applied in Rwanda did not enjoy the support of Rwanda and were therefore not accepted.

Specifically, recommendations relating to the Batwa as indigenous Rwandans or a distinct group of citizens separate from other Rwandans were rejected and they will continue to be rejected. That there are indigenous Rwandans in Rwanda is not true and is not supported by any scientific or historical finding. Indeed in Rwanda the notion of indigenous and other

¹⁸ The African Commission's Working Group of Experts on Indigenous Populations/Communities (ACWGIP), *Report Submitted in Accordance with the Resolution on the Rights of Indigenous Populations/Communities in Africa*, 2003.

¹⁹ *Advisory Opinion Of The African Commission On Human And Peoples' Rights On The United Nations Declaration On The Rights Of Indigenous Peoples*, adopted by the African Commission on Human and Peoples' Rights at its 41st ordinary session, May 2007, p. 4.

²⁰ African Peer Review Mechanism (APRM), Country Review: Report of the Republic of Rwanda, June 2006, para. 153.

²¹ CCPR/C/RWA/CO/3, para. 22

²² Gay McDougall, *Report of the independent expert on minority issues, Addendum: Mission to Rwanda*, from the Human Rights Council, Nineteenth session, Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 28 November 2011, A/HRC/19/56/Add.1, para. 43.

citizens is more of a political invention than a fact of history. We know of a factual definition of indigenous peoples in various parts of the world and no Rwandans fit the definition. That said, today is the wrong time for such politics. National policy today is about building Rwandanness.”²³

9. Rwanda did, however, accept the following UPR recommendation: “79.20. Adopt measures aimed at reducing poverty in the Batwa community, and its full integration in society (Chile).”²⁴ Along these lines, for full integration into society as per recommendation 79.20, recognition of full Batwa identity, including as indigenous, and thus traditional and self-identified Batwa indigenous culture, history, lifeways and traditions therein, and in consultation with the Batwa themselves, is necessary. To not recognize an Indigenous People means that the very rights enshrined in the UNDRIP meant to prevent genocide,²⁵ especially cultural genocide²⁶, of Indigenous Peoples are not attainable, respected or upheld by the State, further endangering an Indigenous People to cultural, community and life decimation.

10. Unless and until special measures are taken for the Batwa in Rwanda as a legal personality as an Indigenous People, so as to allow the Batwa equal footing as culturally and historically distinct and different in accordance with their true traditions, the loss to Batwa culture and lifeways will continue to be immense and even irreversible- the very situation adoption and implementation of Indigenous Rights are meant to prevent. The following section of this Report will elaborate on this.

III. Conflicting Versions of History and Identity; Cultural Decimation

11. In the context of *descent*,²⁷ currently the ‘inheritance’ for Batwa in the State of Rwanda is an inability to identify as Indigenous Batwa, which counters Rwanda’s commitments to CERD and Durban Declaration and Programme of Action, among other treaties and as-mentioned. Differences between the stories of histories and identities therein between the Rwandan Government and the Batwa and international experts provides for a complex situation. Below is a description of the Rwandan Government current position, as summarized by UN expert Gay McDougall from review of Rwanda’s 13th-17th Periodic Report to CERD:

“III. Protection of the right to cultural and ethnic identity
Government views on ethnicity and the root causes of the 1994 genocide

7. According to the Government of Rwanda, during the pre-colonial era, Rwandans swore allegiance to the same monarch, had the same culture, the same language, ‘Kinyarwanda’, and lived together on the same territory. At that time, Rwandan identity was closely related to clans. Belonging to the same clan implied that the persons concerned were of the same origin. The Government claims that myths related to the origin of the Hutu, the Tutsi and the Batwa contradict the fact that all shared the same ancestral father, ‘Kanyarwanda’.”²⁸

12. Other sources, such as Minority Rights Group International (MRGI) and the afore-mentioned African Commission’s Working Group on Indigenous Populations/Communities and the African

²³ Remarks by the Hon. Minister of Justice/Attorney General of the Republic of Rwanda at the High level Stakeholders’ Consultation on Rwanda’s Second Universal Periodic Review, 17 December 2015.

²⁴ Annex 2: List of 67 Recommendations Accepted by Rwanda, http://www.minijust.gov.rw/fileadmin/Documents/International_Reports/UPR_Report_Annex_2-Recommendations.pdf

²⁵ See, for example, UNDRIP Article 2.

²⁶ See, for example, UNDRIP Article 8.

²⁷ See, for example, CERD General recommendation 29 (Descent), 2002, A/57/18: “*Reaffirming also* the condemnation of discrimination against persons of Asian and African descent and indigenous and other forms of descent in the Durban Declaration and Programme of Action [...] adopt some or all of the following measures: 1. Measures of a general nature: (a) Steps to identify those descent-based communities under their jurisdiction who suffer from discrimination, [...] including [...] inability or restricted ability to alter inherited status; [...] 6. Civil and political rights (aa) Ensure that authorities at all levels in the country concerned involve members of descent-based communities in decisions which affect them;”

²⁸ Gay McDougall, A/HRC/19/56/Add.1.

Commission on Human and Peoples' Rights, have different versions from that of the Rwandan Government as described above- versions placing the Batwa as the having the right to claim themselves as "the original inhabitants of Rwanda" and as having been "subjugated" by the Hutu and subsequently the Tutsi, *prior* to European colonialism.²⁹

13. The following paragraphs provides a recap of the version of Batwa history, culture and identity in the eyes of the Batwa themselves:

"Identity

54. Batwa representatives emphasize their ethnic and cultural distinctiveness. It was noted by Batwa NGOs that Batwa have distinctive dialects and intonation comprehensible only to other Batwa, and unique elements of culture and customs. In contrast to the Government's official version of the country's ethnic history, Batwa historical narrative maintains that they were the original inhabitants of Rwandan forests following hunter- gatherer subsistence livelihoods. As other ethnic groups encroached onto their territories bringing livestock farming and cultivation, the Batwa were forced to move to ever more remote areas of forest. In the modern era, widespread subsistence and commercial agriculture, national parks and tourism development have forced Batwa to leave the remaining areas of forest that they occupied.

55. Community representatives in the vicinity of Musanze near the Volcanoes National Park stated that they were forced from the forests to areas on the lower slopes of the volcanoes after 1994. Some community members stated that they wished to return to the forest and traditional hunter-gatherer ways of life, but could no longer access the forests and their forest-based food and medicinal sources. The distinct hunter-gatherer identities of the Batwa and their deep knowledge of the forests have undoubtedly been lost by new generations.

56. NGOs working on Batwa rights note that, after the 2003 Constitution and the legislation and national policy which followed came into force, they faced accusations of 'divisionism' when using the term Batwa, making claims for distinct Batwa identity or advocating for Batwa rights as such."³⁰

²⁹ See the following from the *Report of the African Commission's Working Group on Indigenous Populations/Communities: Mission to the Republic of Rwanda*, 1-5 December 2008, adopted by the African Commission on Human and Peoples' Rights at its 47th Ordinary Session, 12-26 May 2010, p. 26:

"I. Background Information on Rwanda

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 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.

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

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

³⁰ Gay McDougall, A/HRC/19/56/Add.1.

14. The passage above alerts the world to the dire situation of ongoing Batwa loss of traditional forest related culture- hunter-gatherer knowledge, livelihood, sustenance and traditions, medicines, lifeways, passing on of said culture to children, and family bonds and traditions therein, as well as the legal-political conditions regarding State definitions, for example, concerning ‘divisionism’ and the blocking of Batwa self-determination/identification and advocacy for a better and more equal life for all, including indigenous Batwa, therein.³¹ Despite having endorsed the UNDRIP in 2007, Rwanda internally discriminations against the Batwa in preventing them to evoke it and claim Indigenous Rights, identity and status that would enable them to save their distinctly Batwa culture from decimation, not least through claims to traditional lands for indigenous lifeways and community purposes or remedy, reparations and redress.

IV. Discrimination against Batwa organizations, groups, leaderships and NGOs

15. What freedoms and rights do Batwa NGOs based in Rwanda have? Has the legislation governing NGOs been improved as per the 2014 recommendations of Maina Kiai, *Special Rapporteur on the rights to freedom of peaceful assembly and of association*?

16. In 2000, the UN Sub-Commission on the Promotion and Protection of Human Rights passed Resolution 2000/4 on Discrimination Based on Work and Descent, which provides that “discrimination based on work and descent is a form of discrimination prohibited by international human rights law”.³² However, current ideology in the Rwandan Constitution, continued in its 2015 amendment, places the Constitution “as the supreme law of the land” and “prohibits any discriminatory acts,”³³ supplemented by Criminal Law No. 47/2001 instituting punishment for offences of discrimination and sectarianism; the Criminal Law’s preamble states “to punish anyone found guilty of fuelling conflicts among Rwandans and sowing divisions among them”.³⁴ The Constitution and Criminal Law operate in tandem to effectively prohibit self-identification as a member of an ethnic group, because doing so could be considered as divisive. In its 2015 Report on Rwanda Amnesty International stated that, “Human rights defenders were subjected to personalized attacks and threats and faced intimidation and administrative obstacles. Space for criticism of the country’s human rights record by civil society was almost non-existent. The human rights community remained weakened, with individuals taking a pro-government position in their work or employing self-censorship to avoid harassment by the authorities. [...] People continued to be imprisoned for the legitimate exercise of their rights to freedom of association or of expression.”³⁵

17. For Batwa in Rwanda, this means fear of State retaliation for identifying as ‘indigenous’. NGOs in Rwanda working on Batwa issues must have names, goals and works adhering to Rwandan Government

³¹ “The right of individuals to freely identify themselves as belonging to an ethnic, religious or linguistic group is [...] well-established in international law. [...] Domestic law relevant to ethnicity, identity, minority status, equality and non-discrimination should recognize such rights and ensure that no individual or group suffers from any disadvantage or discriminatory treatment on the basis of their freely chosen identity as belonging to (or not belonging to) an ethnic, religious, linguistic or any other group.” Gay McDougall, A/HRC/19/56/Add.1, para. 14.

³² UN Sub-Commission on the Promotion and Protection of Human Rights, Resolution 2000/4 on Discrimination Based on Work and Descent, 2004, E/CN.4/Sub.2/RES/2004, para 1.

³³ Republic of Rwanda, 13th-17th Periodic Reports, 9 August 2010, CERD/C/RWA/13-17, para 28.

³⁴ The United States State Department Country Report on Human Rights Practices 2014, Rwanda 2015 states: “In August 2013 the government signed into law a revised genocide ideology law that introduced international definitions for genocide and narrowed the scope of what constitutes ‘genocide ideology’ and related offences to a more specific range of actions and statements. Specifically, the law states that ‘genocidal ideology’ must be clearly linked to specific acts or statements, rather than the broader ‘aggregate of thoughts’ standard defined in the 2008 law. International and local human rights organizations, including Human Rights Watch and the Rwandan League for the Promotion and Defense of Human Rights (LIPRODHOR), welcomed the revised law but expressed concern that, despite clearer protections and narrower definitions, the government still could use the law to restrict freedom of speech and press.” from US Department of State (USDOS), Country Report on Human Rights Practices 2014, Rwanda: 25 June 2015, http://www.ecoi.net/local_link/306282/429661_en.html, accessed 02 April 2016.

³⁵ Amnesty International Report 2014/15 - Rwanda

prohibition of the term and identity of indigenous.³⁶ As Susan Thompson elaborates, this has meant organizations working for the Batwa are placed in the position of justifying their focus on a subset of the population without breaching government law and policy.³⁷ As Brett Hartley points to, the Rwandan government reinforced discrimination based on descent and work when it forced CAURWA to change its name by replacing ‘indigenous’ with ‘potters’.³⁸

18. Maina Kiai, *Special Rapporteur on the rights to freedom of peaceful assembly and of association*, detailed in his 2014 Report on Rwanda the dire situation of NGOs in Rwanda, highlighting comparison the strict requirements of NGOs as compared to the private business sector.³⁹ More alarmingly, Kiai raised concern regarding government interference with the functioning of non-governmental organizations, reminding the Rwandan government of the boundaries of good practice therein:

“64. The independence and ability of associations to run their internal affairs without external interference are of paramount importance in the exercise of the right to freedom of association.

[...] 69. In order to protect the autonomy and independence of NGOs, the Special Rapporteur is of the view that any partnership between the Government and civil society should be voluntary rather than compulsory. In the development field, NGOs should be able to determine and operate within their priority areas of concern without interference or direction by authorities, including working on issues that authorities do not consider to be priorities. The power of innovation is enhanced through openness. A multiplicity of interventions and approaches will serve to strengthen the capacity of the sector to respond to the needs of beneficiaries and ultimately, to all Rwandans.

[...] 71. The Special Rapporteur is troubled by the climate of suspicion and self-censorship within civil society. NGOs show little openness among themselves, and do not dare to discuss issues which they deem controversial for fear of retaliation...”⁴⁰

19. Moreover, because markets have been flooded with cheap manufactured products world-wide and in Rwanda, an enforced and limited ancestral descent inheritance identity limited to pottery-making does not create work or financial gain; the Batwa practice pottery for cultural and social significance, both as ancestral tradition and a social importance in current day society. Additionally and more problematically, like losing traditional forest and forest ways in the face of land loss, a violation of Indigenous Rights, the shared access (via informal communal tenure system) marshes where Batwa in Rwanda have harvested clay are becoming collectivized rice-growing plantations, due to a 2005 land policy change, creating further threat to and decimation of Batwa *indigenous* existence. In addition to inducing a societal environment of “climate of suspicion and self-censorship within civil society” as described by Special Rapporteur Maina Kiai above, criminalization or prohibition of Batwa identity as indigenous overall and a forcing of a singular livelihood-based identity as permitted by the State has only exacerbated the discrimination and threat to lifeway, culture, preservation of living knowledge and holistic well-being the Batwa face.

V. Genocide, Justice and Transition

20. Laura A. Young partially describes in a scholarly article marginalization of the Batwa by Rwanda’s process of justice post-genocide in the following passage:

³⁶ For example as mentioned earlier in the situation of Communauté des Autochtones Rwandais (CAURWA), forced to remove ‘Autochtones’ / ‘indigenous’ from its name, replacing it with ‘potters’ (now COPORWA).

³⁷ Susan Thompson, “Ethnic Twa and Rwandan National Unity and Reconciliation Policy”, 7 Peace Review, 2009, p. 318.

³⁸ Brett Hartley, “Rwanda’s Post-Genocide Approach to Ethnicity and its Impact on the Batwa as an Indigenous People: An International Human Rights Law Perspective”, *QUT Law Review*, Volume 15, Issue 1: 2015, p. 68.

³⁹ Maina Kiai, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Addendum: Mission to Rwanda*, from Human Rights Council, Twenty-sixth session, Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 16 September 2014, A/HRC/26/29/Add.2. paras. 56, 58, 59.

⁴⁰ Maina Kiai, A/HRC/26/29/Add.2.

“Apart from the legal framework, other transitional justice mechanisms also marginalized the Batwa as actors in Rwanda's transition. Batwa expressed strong concerns about how the local gacaca prosecutorial mechanism, put in place to deal with genocide perpetrators, would protect minority rights. The community expressed concerns about there being no Batwa-elected judges for the gacaca and the fact that it would be hard to find Batwa witnesses for trials, given the community's extremely small numbers. The choice of gacaca as a 'traditional' Rwandan justice mechanism also raises issues of whose tradition is employed in the post-conflict justice landscape. Scholars suggest that in reality the present day gacaca has little substantive relation to any traditional system that may have existed in Rwanda because it has been so substantially appropriated by the state. It is unclear whether it ever was traditionally used in Batwa communities.”⁴¹

21. In fact, it was CAURWA (the once ‘Community of Indigenous Rwandans’ turned ‘Potters’/COPORWA) that explicitly expressed concern over looming exclusion of the Batwa from the gacaca justice process:

“In an interview with the Hirondele News Agency, Zephyrin Kalimba, coordinator of the Communaute des autochtones rwandais, a group which defends Twa interests, stated that ‘among the Batwa [plural of Twa], there will not be any Inyangamugayo [elected judges]. We are a community that has been left aside.’ Kalimba also foresees a lack of reliable Batwa witnesses available for trials of Batwa, because their community is so small. Kalimba accordingly fears that his community will be ignored during the election of gacaca judges. ‘Now is the time to see how the case of the Batwa might be considered as unique,’ said Kalimba, noting both the minority status of the Batwa and their marginalization by Rwandan authorities since independence in 1962.

Kalimba estimates that there are some 20,000 Batwa left in Rwanda of an estimated 30,000 before the 1994 genocide. ‘We had 10,000 Batwa killed during the genocide. They were not killed by Batwa, but by both Hutus and Tutsis. [The Batwa] should be regarded as survivors of the genocide. To date, the government of Rwanda has taken no action to support the Batwa community.’ He added that the Rwandan government had not officially recognized the Batwa as survivors of genocide. [...] Kalimba has called on the government of Rwanda to consider the Batwa as ‘a neutral party’ in the Rwandan conflict, which was essentially between Tutsis and Hutus.”⁴²

22. Of particular concern are serious reports of false criminal accusations against and imprisonments and detainments of Batwa, both in living in Rwanda and abroad as migrants, refugees or asylum seekers, and some of whom lost their entire families during the genocide, for alleged roles of involvement in the genocide and/or other crimes as-identified by the State. Meanwhile, a virtual eradication of Batwa voice and visibility from the genocide narrative disables and even potentially criminalizes discussion on the matters from an indigenous perspective if at all. One unanswered question arising of what role post-genocide Batwa advocacy for Batwa Indigenous Rights may play in the formulation of the allegations.⁴³

⁴¹ Laura A. Young, p. 129.

⁴² From “Twa community concerned over gacaca system”, IRIN (Integrated Regional Information Networks) News, <https://www.irinnews.org/report/21981/rwanda-twa-community-concerned-over-gacaca-system>

⁴³ The United States State Department Country Report on Human Rights Practices 2014, Rwanda 2015 states: “Other major human rights problems included arbitrary or unlawful killings, torture, harsh conditions in prisons and detention centers, arbitrary arrest, prolonged pretrial detention, and government infringement on citizens’ privacy rights. The government restricted freedoms of speech, press, assembly, and association. [...] The government restricted and harassed local and international nongovernmental organizations (NGOs), particularly organizations that monitored and reported on human rights. [...] Although the constitution and law prohibit such actions, there were numerous reports the government monitored homes, movements, telephone calls, e-mail, other private communications, and personal and institutional data. There were reports of government informants working within international NGOs, local civil society organizations (CSOs), religious organizations, and other social institutions. [...] The 2012 penal code revised the crime of ‘spreading rumors aimed at inciting the population to rise against the regime’ to ‘spreading false information with intent to create a hostile international opinion against the Rwandan state,’ with much more severe penalties, including life in prison for acts committed during wartime and seven to 10 years in prison for acts committed during peacetime. [...] Human rights NGOs expressed fear of the government, reported SSF monitoring of their activities, and self-

23. Later, the transitional truth-seeking mechanism, the National Unity and Reconciliation Commission (NURC), was made into a permanent government body. Young details,

“The work of this commission also reflects the Catch-22 for Batwa in Rwanda's transition. In 2010, the NURC published findings from its reconciliation barometer, a nationwide survey using a representative sample to assess Rwandans' feeling about transitional justice, specifically reconciliation. One particular survey item is of keen interest, in that it asked participants to identify who should be the primary parties involved in reconciliation efforts in the country. While the 'Hutu and Tutsi ethnic groups' was one of the responses, Batwa as parties to the reconciliation effort were not specifically identified in any of the response options.”⁴⁴

24. The intersectionality of the situation for women and children being especially of concern with lack of formal documentation of the Batwa situation in a holistic indigenous context as well as how Batwa women have been exploited during war and the genocide of 1994. As one Batwa states,

“Depuis tous les temps, le sexe féminin Batwa a été exploité sexuellement avec une arrogance qui prétendait que les filles et femmes Batwa guérissent le dos des Bahutu et Batutsi. Ce mythe qui ne tient pas debout persiste même aujourd'hui au 21^e siècle. Pendant la guerre et le génocide de 1994, elles ont été violées et par les Interahamwe que par l'armée des libérateurs sans qu'une enquête soit faite par les instances juridiques compétentes. Il faudrait mettre fin à ces pratiques malsaines et dénigrantes; et reconnaître que les filles et femmes Batwa sont des êtres humains comme les autres femmes.”⁴⁵

25. The alarming absence of identifying Batwa as victims in the genocide can be seen in education materials now used for reconciliation tools among youth, schools, communities and families – the publication “*Tugire Ubumwe; Let's Unite! Teaching Lessons from the Rwanda Genocide*” in its depiction of Batwa ‘potters’ exhibits that the Batwa were not victims of the genocide, and as a result still have in-tact families. More disturbing and discriminatory for a nation striving to re-build on truth, is that this depiction creates a prejudicial reasoning to the notion that Batwa were not victims of the genocide – that they somehow were untouched by the genocide because they have always been regarded as insignificant and ignorant... followed by captions and pictures showing a father ignorant to education as the main situation of the Batwa in the context of ethnic divisiveness. The Batwa son states to his Hutu and Tutsi schoolmates, “Me, I am lucky, my family is still there” while a caption reads “The potters have always been regarded as insignificant and ignorant. That is why the genocide did not affect them.”⁴⁶ This reconciliation tool not only exhibits the lack of fair inclusion of Batwa in participation of creating reconciliation positions, tools and processes in light of own experiences and loss in the genocide, but also the complete and blatant denial of the destruction the genocide caused to Batwa communities and families as well as the fact that Batwa suffered the largest loss of life in proportion to population size, and as collateral damage in the conflict between the other ethnic groups, ie the Hutus and the Tutsis, as described above by Zephyrin Kalimba, coordinator of the then-named COPORWA.

censored their comments. An international NGO working on human rights issues experienced delays during the annual registration process that it attributed to government opposition to the group's work. In June the Justice Ministry published an assessment of the NGO HRW in the New Times newspaper that claimed HRW was engaged in a 'deliberate, sustained, and politically motivated propaganda campaign against the Government of Rwanda.'” *from* US Department of State (USDOS), Country Report on Human Rights Practices 2014, Rwanda: 25 June 2015, http://www.ecoi.net/local_link/306282/429661_en.html, accessed 02 April 2016.

⁴⁴ Laura A. Young, p. 129.

⁴⁵ Unofficial rough translation: “Female Batwa have always been sexually exploited with an arrogance that expected Batwa girls and women to heal the back of Hutu and Tutsi. This myth continues today even in the 21st century. During war and the genocide of 1994, they were violated and by the Interahamwe as liberators by the army, without an inquiry made by the competent legal authorities. These derogatory and unhealthy practices must be put to an end; to recognize that Batwa girls and women are human beings like other women.”

⁴⁶ http://www.un.org/en/preventgenocide/rwanda/pdf/Tugire_Ubumwe.pdf, p. 6

VI. Conclusion

26. Thus, while the Batwa have been stated by many to have experienced the most loss of lives proportionate to population during the genocide, they have been virtually erased from the Rwandan Government's nation-re-building narrative in the justice and reconciliation process as victims, creating further victimization; this even in the narrative as relayed in reconciliation materials to youth, schools and children, exacerbating the discrimination against Batwa as an Indigenous People affected by their surrounding societal environment into the next generation(s). Furthermore, as a State-imposed identity is being forced onto the Batwa, a host of treaties Rwanda is party to are being violated, including the UN CERD as well as the UNDRIP, African Charter, Convention on the Rights of the Child, ICCPR and ISCESR, UDHR and more.

27. In fact, it is the very eradication of narrative, awareness and protection of and respect for the genocidal experiences, holistic lifeways, histories and self-identification of Indigenous Peoples that has historically and continues to be a primary State-building method around the world when indigenous territories are deemed to be within State borders, and not least for the purpose of State-based centralized power, economy-building and business.

28. However, proper analysis, attention, negotiation and redress *without* discrimination against the Batwa as an Indigenous People will lead to necessary next steps of healthy remedies, diversity and respect for all within the healing nation of Rwanda, including the Batwa.