

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

RESEARCH AND INFORMATION VISIT TO THE REPUBLIC OF BURUNDI *March - April 2005*



AFRICAN COMMISSION
ON HUMAN AND
PEOPLES' RIGHTS



INTERNATIONAL
WORK GROUP FOR
INDIGENOUS AFFAIRS



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27 March - 9 April 2005

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2007



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LIST OF ABBREVIATIONS

ACHPR/African Commission – African Commission
on Human and Peoples’ Rights

FNL – Forces Nationales de Libération
/ National Liberation Forces

IRIN – Integrated Regional Information Networks

NGO – Non-governmental organisation

ONUB – United Nations Mission in Burundi

UCCDD – Union chrétienne pour le développement des déshérités
/ Christian Union for the Development of the Disinherited

UNICEF – United Nations Children’s Fund

UNIPROBA – Unissons-Nous pour la Promotion des Batwa
/ Let us unite for the advancement of the Batwa

Working Group – African Commission’s Working Group
on Indigenous Populations/Communities

PREFACE

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

In order to achieve a better basis on which to advance discussions and formulate recommendations, the African Commission set up a Working Group on Indigenous Populations/Communities (Working Group) in 2001. The Working Group then comprised three ACHPR Commissioners, three experts from indigenous communities in Africa and one international expert on indigenous issues. The Working Group implemented its initial mandate by producing the comprehensive document "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities" on the human rights situation of indigenous peoples and communities in Africa (the full report can be downloaded from <http://www.iwgia.org.sw163.asp>).

The report was adopted by the African Commission in November 2003, and published in a book format in 2005. The report is the African Commission's official conceptualisation of, and framework for, the issue of indigenous peoples' human rights in Africa.

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

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

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

intended to facilitate constructive dialogue between the African Commission, the various African Union member states, as well as other interested parties. This dialogue should be undertaken in accordance with the provisions of the African Charter on Human and Peoples' Rights.

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

Kamel Rezag Bara
Commissioner
Chairman of the African Commission's Working
Group on Indigenous Populations/Communities

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, 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 on indigenous Populations/Communities to relevant people and institutions.

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 the 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 'Bambend-jelé' 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 conflict between the two dominant ethnic groups, the Tutsis and the Hutus. This bipolarization of the Burundian political scene has been prejudicial to 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 technical assistance provided by UNIPROBA (Unissons-Nous pour la Promotion des Batwa / Let us unite for the advancement of the Batwa), a national human rights and development NGO that focuses on Batwa in Burundi. The Mission was particularly assisted by the Honourable 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 af-

fairs, 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 and 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 the 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 the Batwa community, their children's lack of access 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. The 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 the 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 enjoy their rights and fundamental freedoms on the same basis as the majority of Burundians.

In light of this report's findings, the African Commission's Working Group on Indigenous Populations/Communities makes the following recommendations:

- A. *To the African Commission on Human and Peoples' Rights:*
1. Call upon the Burundian government to extend to other sectors of public affairs the measures of positive discrimination related to their Batwa's representation in Parliament and Senate;

2. Undertake a more thorough study into the practice of bondage still affecting countless Batwa in Burundi;
3. 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;
4. Visit Burundi, together with Rwanda and Uganda;
5. Exert pressure on the Burundian government, the United Nations agencies and other development agencies to focus on the education of Batwa children;
6. 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;
7. Support the publication of this report in Kirundi and its dissemination in Burundi.

B. To the Government of Burundi:

1. Extend Batwa representation to other national and local governmental structures, building on the positive steps already taken to ensure Batwa representation in the Parliament and Senate;
2. 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;
3. Take urgent action to implement in practice the law of 1976 prohibiting the practice of bondage;
4. Ensure that Batwa will be represented in the Land Commission which is soon to be established;
5. Include Batwa representatives in the Commission on Truth and Reconciliation;
6. Ensure fair treatment for the Batwa, especially in disputes relating to land matters;
7. Provide protection to the Batwa during situations of armed conflict.

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 freedom from the practice of bondage. The final section presents the Working Group's recommendations. The words 'Twa' and 'Batwa' are used interchangeably in this mission report.

I. GENERAL OVERVIEW OF BURUNDI

1.1 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 the 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, who consequently left their land behind. The new occupants acquired land titles over many of 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 to 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 land.

1.2 *Legal context*

Following a peace accord signed in Arusha in 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 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 has 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.

II. MEETINGS HELD

2.1 *Meeting with the Office of the Prosecutor of Chibitoke*

The Mission met with the Office of the Prosecutor of Chibitoke, one of the provinces of Burundi. Among other concerns, the Mission’s members

raised the issue of arbitrary arrests, of which Batwa complain frequently. With regard to some cases, the Office of the Prosecutor highlighted the Batwa's lack of knowledge of the law as one of the main causes of the legal harassment to which they are often victim. At the time of the visit, two Batwa were in detention. The visit provided an opportunity to successfully request their release.

2.2 *Meeting with the Minister of Human Rights*

The Mission held a meeting with the Burundian Minister in charge of human rights. 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 the Batwa face in Burundi.

The forgotten nature of indigenous rights, the 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 the Batwa. Numerous other facts were highlighted by the Minister including the need for an effective census of the Batwa, the ministry's availability to support all the Batwas' actions, the thorny land issue which confronts the Batwa, the lack of a national policy on Batwa to overcome their marginalisation, the recognition of the Batwa as 'indigenous', the existence within the ministry of mechanisms that could help the 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 that the 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 on in this report).

2.3 *Meeting with the human rights section of the United Nations Mission in Burundi*

The Mission also met with a representative of the human rights section of the United Nations Mission in Burundi (ONUB), to whom a copy of the report of 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 of public life and their culture faces serious risk 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 the setting up of telephone hotlines for victims of violations are some of the many human rights activities that the ONUB has carried out in a general manner. However, the representative of ONUB confirmed that his office was in the process of identifying the particular problems the Batwa are confronted with, for potential targeted actions in favour of this community.

2.4 *Meeting with the Minister in charge of Education*

The Minister in charge of National Education in Burundi also held 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 of educating 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 'poor children's' mechanism, 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.

2.5 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 that indigenous Batwa people were recognised in the Constitution like any other Burundian citizen, and explained the option taken by his government to include all Burundians in the process of development. He explained that the rule was not to exclude anybody and to share everything. The interlocutor of the Mission subsequently referred to the recent cases of arson committed against Batwa 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. The Mission raised the issue of international instruments relevant to indigenous peoples, which Burundi has yet to ratify.

2.6 Meeting with the Burundian Office of the United Nations High Commissioner for Human Rights

On another occasion, the Mission met with the Office of the High Commissioner 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 had been handed over to the United Nations 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 houses in certain provinces were mentioned as examples. Various programs, such as the setting up of national observers and training 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 attention in particular 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 do their utmost to ensure that the Batwa profit from the on-going process of establishing institutions, democracy and justice in the country.

2.7 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, expressed appreciation of 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 as 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 their still incomplete integration. In conclusion, the Senators promised to stand by the Batwa cause and to provide whatever support needed to Batwa NGOs.

2.8 Meeting with the Minister of Social Affairs and the Promotion of Women

The Burundian Minister of Social and Women's Affairs paid 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 creating 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 did not have a program specifically set up for the Batwa in general, nor the Batwa women in particular. Finally, the Minister promised to improve her ministry's collaboration with local Burundian NGOs that work with the Batwa.

2.9 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 a 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.

2.10 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 had 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 a 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.

2.11 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 that 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.

2.12 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 of 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. He pointed out that land plots which had been distributed in areas intended as natural reserves would be reclaimed by the State and the occupants of the plots in question re-established elsewhere.

The Minister spoke also about the Batwa of Kayanza Province who harvest bamboo in the Kibira forest reserve. The authorities had, he said, taken a decision to confiscate bamboo from that forest each time it reached

the market. The same measures, he said, would 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 the Batwa face, the Minister recommended that the Honourable Libérate Nicayenzi, who was accompanying the Mission, should carry out a census of all the landless Batwa in Burundi and identify vacant public lands which could be made available to this section of the Burundian population.

2.13 Meeting with Christian Aid/Burundi

The Mission also met 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 the 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” (UNI-PROBA) would increasingly collaborate with other local and international organizations which work for the Batwa cause, such as League ITEKA. Moreover, the 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 a reduction in 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 Batwa pottery projects to Burundi.

2.14 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 Operational Directive 4.20. 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 'Small Grants' programme which is available for financing various projects for the Batwa of Burundi. The World Bank representative also promised to organize a meeting with the Honourable Libérate, whom he also asked to present a project focusing on the Batwa and to submit it to their office for financial support.

2.15 Meeting with CARE International/Burundi

The Mission had a thorough discussion with the Coordinator of Economic Development at 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 the 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 at 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 carried out by UNIPROBA.

2.16 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 following the explanations provided by the Mission, the Minister made some commitment to taking measures aimed 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 the Honourable Libérate, President of UNIPROBA, in cooperation with the Head of the Subcommittee of Social Affairs of the Burundian National Assembly should 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.

2.17 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, who 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 Batwa in Burundi, as well as the number of Batwa in prison, were the two essential points discussed by 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 into the full extent of the phenomenon and together put in place mechanisms aiming at eradicating it.

Concerning arrests, arbitrary detentions and imprisonments of Batwa, the Minister asked UNIPROBA, as well as the 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 could 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.

2.18 Meetings with the Press

The Mission held a press conference with many local journalists. A press officer from the United Nations Mission in Burundi (ONUB) and over a dozen journalists from local radio stations, newspapers and television channels attended this press conference held at the 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.

2.19 *Field trips*

The Mission carried out a few field trips, including a visit to an area in Chibitoke province where a land dispute had caused the forced displacement of some one hundred Batwa. Two Batwa Senators, members of UNIPROBA's executive, the Governor of Chibitoke province, the local Prosecutor and a number of local military authorities also participated in this field trip. Another field trip visited different projects of the NGO UCEDD for the Batwa in 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 is 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 and the human rights violations which this section of the population is facing.

III. THEMATIC ISSUES

3.1 *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 of over 8 million inhabitants only has a surface area of 27 834 km². It is one of the African countries with a high population density, estimated at approximately 300 inhabitants per km².

Second, most of the forest land which traditionally belonged to the Batwa has been transformed into either national parks or forest reserves. Indeed, Law No.1/1008 of 1 September 1986 on the Land Law in Burundi distinguishes between two categories of land, namely state land and non-state land. 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.

At the judicial level, the problem of land ownership facing “Pygmy” people of central African countries seems to stem from an injustice instilled by land ownership laws since colonial times. Indeed, many of the above mentioned land ownership and forest laws base the protection of customary land ownership rights on visible and material occupation and use of the land, thus ignoring the fact 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 to 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 the 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 to join a field visit by a Governor of a province in order to assist in finding a solution to a similar land dispute, which was based on the following facts:

The Batwa community in question, from Kasenyi village in the commune of Buganda in Chibitoke province, is made up of approximately 12 households or families, totalling about 60 people. This Batwa community has lived on this ancestral land of theirs

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 boundaries between the two communities.



Photo: Zephyrin Kalimba (2005)

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

Composed of old people, children and a few pregnant women, the Batwa refugee community remained in this situation without any support or assistance whatsoever. In addition to physical and corporeal attacks, as well as the burning down of some houses, members of the protagonist community accused the same Batwa of rebellion, of moving the boundary stones and of malicious destruction. 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 of the Governor of the province, a Batwa Senator, the local Prosecutor, local military and administrative authorities, representatives of UNIPROBA and members of the Mission from the Working Group on Indigenous Populations/Communities of 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 awaiting a final solution to the dispute through the courts.

3.2 The right to education

The Batwa suffer from exclusion because of the Burundian education system. Their lack of access to land and the stereotypes and contempt of other Burundians from which they suffer 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 poverty, 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 imagine himself at school, surrounded by other children pointing fingers at him with attitudes of contempt and driven by stereotypes. The Mission noted also a lack of reliable data on the schooling of Batwa children.

3.3 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 aimed at putting 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 that 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, it is not without criticism, the following issues being most worthy of note:

- The reference to Batwa or Twa in terms of numbers rather than % as is the case for the two major ethnic groups (Hutus and Tutsis),
- 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 political posts provided for women in general, does not seem to take into account the double discrimination from which indigenous women suffer;

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- 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.

3.4 *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 or any other task deemed unworthy. The servants have almost no rights and are not regarded as human beings on the same footing 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 also prohibits this practice. These domestic standards are unfortunately not followed up by international commitments because Burundi has not yet ratified the Supplementary Convention on the Abolition of Slavery, the Slave trade, and Institutions and Practices Similar to Slavery or the African Charter on the Rights and Welfare of the Child.

3.5 *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 the IRIN agency, confirmed that several dozen Burundian Batwa had actually taken refuge in Rwanda. The Mission did not have the chance to visit the Batwa community in question but Mr. Kalimba committed himself to collecting more information on their situation.

IV. RECOMMENDATIONS

With regard to the above findings, the African Commission's Working Group on Indigenous Populations/Communities makes the following recommendations:

- A. *To the African Commission on Human and Peoples' Rights:*
1. Call upon the Burundian government to extend to other sectors of public affairs the measures of positive discrimination related to their Batwa's representation in Parliament and Senate;
 2. Undertake a more thorough study into the practice of bondage still affecting countless Batwa in Burundi;
 3. 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;
 4. Visit Burundi, together with Rwanda and Uganda;
 5. Exert pressure on the Burundian government, the United Nations agencies and other development agencies to focus on the education of Batwa children;

6. Closely monitor the situation of the Batwa of Burundi who are at risk from being easy targets of violence during the forthcoming elections in the country;
7. Support the publication of this Report of the Working Group in Kirundi and its dissemination in Burundi.

B. To the Government of Burundi:

1. Extend Batwa representation to other national and local governmental structures, building on the positive steps already taken to ensure Batwa representation in the Parliament and Senate;
2. 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;
3. Take urgent action to implement in practice the law of 1976 prohibiting the practice of bondage;
4. Ensure that Batwa will be represented in the Land Commission which is soon to be established;
5. Include Batwa representatives in the Commission on Truth and Reconciliation;
6. Ensure fair treatment for the Batwa, especially in disputes relating to land matters;
7. Provide protection to the Batwa during situations of armed conflicts.