

**Submission of the Forest Peoples Programme  
Concerning the Republic of Rwanda  
and its compliance with the International Covenant on Civil and  
Political Rights**

**The Rights of Indigenous Peoples in Rwanda**

**5 October 2006**



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## Submitting Organization



The Forest Peoples Programme (FPP) is an international NGO, founded in 1990 and registered as a *Stichting* in the Netherlands with its main office in the United Kingdom. FPP works in partnership with indigenous, tribal and forest peoples throughout the world to help them secure their individual and collective rights and maintain control of their lands, natural resources and livelihoods. FPP's six main goals are:

- To gain recognition for forest peoples' rights and interests in policies and programmes.
- To support forest peoples to build their capacity to claim and exercise their human rights.
- To counter top-down policies and projects that affect forest peoples.
- To promote community-based, sustainable forest management.
- To coordinate NGO actions on forests in line with forest peoples' visions.
- To link up indigenous and forest peoples' movements at the regional and international level.

FPP has worked with indigenous peoples in Central Africa since 1991 and in Rwanda since 1993, and has published several reports on the situation of indigenous peoples in this region and elsewhere.<sup>1</sup> Address: 1c Fossey Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK. Tel: (44) 01608 652893; Fax: (44) 01608 652878; Email: [info@forestpeoples.org](mailto:info@forestpeoples.org).

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<sup>1</sup> For example: Mulvagh, L and Nelson, J (2005), "Central Africa: Great Lakes region and Cameroon", in *The Indigenous World 2005*, (IWGIA, Denmark); FPP and CED (2005), *Protecting and encouraging traditional sustainable use in Cameroon: Customary use of biological resources by local and indigenous peoples in Western Dja Reserve, Cameroon* (FPP, Moreton-in-Marsh); Caruso, E (2005), *The Global Environment Facility in Central Africa: A desk-based review of the treatment of indigenous peoples' and social issues in a sample of 14 biodiversity projects*, (FPP, Moreton-in-Marsh); Jackson, D (2004), *Implementation of International Commitments on Traditional Forest-Related knowledge: Indigenous Peoples' experiences in Central Africa*, (FPP, Moreton-in-Marsh); Nelson, J and Hossack, L (Editors) (2003), *Indigenous Peoples and Protected Areas in Africa – From principles to practice*, (FPP, Moreton-in-Marsh); Jackson D (2003), *Twa Women, Twa Rights in the Great Lakes Region of Africa*, (MRG, London); Lewis J and J Knight, (1995) *The Batwa of Rwanda: Assessment of the Situation of the Batwa and Promotion of Batwa Rights in Post-War Rwanda*, (WRM and IWGIA, UK & Denmark).

## Executive Summary

The Human Rights Committee will consider and adopt a list of issues on the country situation of Rwanda in the absence of a State report at its forthcoming session in October-November 2006. This NGO report has been prepared to provide the Committee with information concerning the situation of the indigenous Twa people of Rwanda. It is intended to assist the Committee to formulate questions to the State with regard to its compliance with the International Covenant on Civil and Political Rights.

A number of specific questions have been proposed in relation to the situation and rights of indigenous Twa people guaranteed under the Covenant. These questions and a summary of our reports main points are repeated here:

1. The rights of the indigenous Twa of Rwanda to freely dispose of their natural wealth, to be secure in their means of subsistence, and to practice, enjoy and maintain their culture, as guaranteed by Articles 1 and 27 of the Covenant are neither recognised in law nor respected in fact. The Twa have been completely dispossessed of their traditional lands, territories and resources and have been denied their means of subsistence on an ongoing basis.

***Suggested question 1: What specific measures (legislative, administrative, other) has the Government of Rwanda taken to give effect to the rights of indigenous Twa as guaranteed under Articles 1 and 27?***

2. The denial of access to conservation areas previously established on traditional Twa lands and territories represents a continuing violation of the Twa's rights as provided for in Articles 1 and 27. The Twa's right to participate in decisions that may affect them concerning the management, use and benefit-sharing of these areas is neither guaranteed in law nor respected in practice. The Twa are no longer able to practice their traditional livelihood and culture based on forest-dwelling hunting and gathering, and their survival as a distinct people is severely threatened.

***Suggested question 2: What specific remedial measures has the Government of Rwanda taken to provide for the restoration of an adequate land and resource base in which the Twa can attain security of person and property, continue their culture and way of life, and freely pursue their own economic, social and cultural development, and does it intend to compensate the Twa for the loss of their traditional lands, where for factual reasons these cannot be returned?***

3. Unable to access their ancestral lands and practice traditional cultural and economic activities, the Twa now perceive their pottery and dancing as the principle expression of their cultural integrity and ethnic distinctiveness, as well as their main source of income. However, Rwanda's recently promulgated land law threatens the Twa's access even to clay, an essential natural resource in pottery production, by declaring previously communal land as state-owned and managed, and prioritising agriculture on these lands.

***Suggested question 3: What measures has the Government of Rwanda taken to ensure that the Twa continue to enjoy access to and use of land and other resources, for example clay deposits, in order to carry out cultural and economic activities guaranteed under Article 27 of the Covenant?***

4. Very few Twa individuals currently own land, and their extreme landlessness is a root cause of the severe poverty, marginalisation and discrimination they experience. The majority of Twa land-holders do not practice cultivation on their land, however the land law allows for state expropriation of land that is not used “in a productive way”, which is deemed to include agriculture and animal-husbandry.

***Suggested question 4:*** *What measures has the Government of Rwanda taken to give effect to the Twa’s rights to land and to participate in decisions that may affect them, including prior consultation and free and informed consent, particularly with regard to possible expropriation of non-agricultural land?*

5. Rwandan law fails to address the systematic illegal expropriation of Twa land by Bantu neighbours and local authority representatives. Pervasive discrimination in Rwandan society means that malfeasants often steal Twa land with impunity, leaving the Twa unable to obtain legal redress because of their extreme poverty and social isolation.

***Suggested question 5:*** *How does the Government of Rwanda propose to address the high rates of illegal expropriation of Twa land, and what remedies and special measures has it put in place through which the Twa can challenge such theft or which require the State to intervene on their behalf?*

6. The Twa experience systematic discrimination in the form of unequal treatment and racial stereotyping from other sectors of Rwandan society and the State, leading to extreme social isolation.

***Suggested question 6:*** *In accordance with Articles 2 and 26 of the Covenant, what specific action has the Rwandan Government taken to diminish the conditions which have caused and help to perpetuate discrimination against the indigenous Twa of Rwanda and to enforce existing national legislation that currently prohibits such discrimination?*

7. The Twa’s situation is considerably worse than the national population, particularly with regard to access to health and education services, and the Twa experience disproportionately worse living conditions than the rest of Rwandan society. The Twa’s poverty and social exclusion create a vicious circle, each reinforcing the other, perpetuating their impoverished and marginalised situation and ensuring that their levels of participation in Rwanda’s social and political affairs is disproportionately low.

***Suggested question 7:*** *In accordance with Article 2 of the Covenant, what specific measures (administrative, judicial, other) is the Rwandan Government taking to address the specific problems experienced by the Twa, particularly Twa women and children, and to address the Twa’s low levels of participation in Rwandan society and public affairs?*

8. The Twa face severe difficulties in accessing judicial and other remedies in Rwanda, and further violations often occur in their search for justice, such as arbitrary arrest and detention. Several documented cases reveal systematic violations of the Twa’s rights to a fair trial and impartial hearings, particularly related to land expropriation cases.

***Suggested question 8:*** *In accordance with Articles 2, 14 and 26 of the Covenant, what has the Government of Rwanda done to ensure the Twa enjoy equal treatment and equal access to*

*justice, including effective and accessible domestic remedies, and that further violations of Twa rights do not occur as they seek judicial and other redress?*

9. The Rwandan Government fails to recognise the Twa as a distinct ethnic group and an indigenous people, and appears to be adopting a policy of (cultural) assimilation. Forced assimilation of the Twa without regard for their ethnic or cultural distinctiveness constitutes a violation of their rights guaranteed by Articles 1 and 27 of the Covenant. The national ban on reference to ethnicity constitutes an obstacle to Twa advancement, further compounds the violations of their rights under Articles 1 and 27, and represents a violation of their right to freedom of expression, as guaranteed by Covenant Article 19.

***Suggested question 9:*** *What measures has the State take to recognise the Twa as a distinct ethnic group and as an indigenous people?*

***Suggested question 10:*** *What measures has the State taken to specifically target Twa advancement while addressing the problem of (cultural) assimilation?*

11. The Rwandan Ministry of Justice has refused to register the largest national Twa representative organisation, until it omits the words ‘Twa and ‘indigenous’ from its name and statutes. This failure represents a violation of Article 22 of the Covenant as it prevents the Twa from forming and joining an association that seeks to represent their interests and promote their socio-economic development.

***Suggested question 11:*** *What measures has the Rwandan Government taken to accord permanent legal registration to CAURWA (Community of Indigenous People of Rwanda), thus ensuring that the Twa’s rights to freedom of association, as guaranteed by Covenant Article 22, are respected in fact?*

## I. Indigenous Peoples in Rwanda – Basic Information

1. The indigenous Twa people living in Central Africa were originally hunter-gatherers in the high altitude forests of the Great Lakes region. It is widely accepted that the forest-dwelling Twa were the first inhabitants of Rwanda, who were later joined by migrating farmers and animal-herders.<sup>2</sup> Although there has never been a national demographic census, the total estimated number of Twa in Rwanda is approximately 33,000, which represents 0.4% of the national population.<sup>3</sup>
2. The indigenous Twa of Rwanda are the most deprived and marginalised sector of society in one of the poorest and most densely populated countries in Africa.<sup>4</sup> As their ancestral forests were cleared by incoming farming peoples, the Twa were forced to give up their traditional lifestyle and cultural practices and subsist on the fringes of settled agricultural society. Some were able to survive as potters and entertainers at the Royal Courts, and a few were gifted land by the traditional kings ('*Mwamis*'), but by the 1970s many had become landless beggars due to the continuing take-over of their forest lands for agriculture, agro-industry, commercial forestry plantations and wildlife conservation areas. The last forest-dwelling Twa were forcibly evicted from the Gishwati forest in the late 1980s by a World Bank-funded industrial eucalyptus plantation and dairy project aimed at relieving human pressure on forests. Rwandan Twa have thus been dispossessed of their traditional lands and territory and denied their means of subsistence, a situation that persists to this day. The Twa's extreme landlessness is a root cause of the severe poverty, marginalisation and discrimination they experience.<sup>5</sup>

## II. Human Rights Situation of Indigenous Peoples in Rwanda – General Overview

3. As the Twa lost their forest lands, territories and resources, they started to experience increasing stereotyping by the rest of Rwandan society as morally, physically and intellectually deficient; gradually becoming social outcasts, despised for their ethnic origins. The Working Group on Indigenous Populations/Communities of the African

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2 See, for example, African Commission on Human and Peoples' Rights (ACHPR) and International Work Group for Indigenous Affairs (IWGIA) (2005), *Report of the African Commission's Working Group of Experts on Indigenous Peoples/Communities, 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 at its 28<sup>th</sup> ordinary session*, (Gambia, Denmark)(hereinafter "ACHPR Working Group on Indigenous Populations/Communities (2005)"), which states that "all the Batwa Pygmies of Central Africa recognise their common ancestors as being the first hunter/gatherer inhabitants of the tropical forests", p.16; United Nations Office for the Coordination of Humanitarian Affairs Integrated Regional Information Network (April 2006), *Minorities Under Siege: Pygmies Today in Africa: IRIN In-Depth* (IRIN, Nairobi); Nelson, J and Hossack, L (Eds.) (2003), *Indigenous Peoples and Protected Areas in Africa – From principles to practice*, op. cit.; Jackson D (2003), *Twa Women, Twa Rights in the Great Lakes Region of Africa*, op. cit.; Kenrick, J and Lewis, J (2001), 'Evolving Discrimination against the Forest People ('Pygmies') of Central Africa', in *Indigenous Affairs: Racism Vol. 1/01* (IWGIA, Denmark); Lewis J (2000), *The Batwa Pygmies of the Great Lakes Region*, (MRG, London); Lewis J and J Knight (1995), *The Batwa of Rwanda: Assessment of the Situation of the Batwa and Promotion of Batwa Rights in Post-War Rwanda*, op. cit.

3 This estimate is taken from a national survey conducted in 2003 by the Forest Peoples Programme, CAURWA (Community of Indigenous Peoples of Rwanda), and the Office of National Statistics of the Rwandan Ministry of Finance. The results were published in a report: CAURWA (2004), *Enquête sur les conditions de vie socio-économique des ménages bénéficiaires de la Communauté des Autochtones Rwandais* (CAURWA, Kigali).

4 Rwanda has a Human Development Index of 159 and is rated as a Part 1 Least Developed Country by the OECD/DAC. Rwanda's population is now approximately 9 million, with an average population density of 366 people per square kilometre, making it the most densely populated country in Africa. See: UNDP (2005), *Human Development Report 2005: International Cooperation at a Crossroads; Aid, Trade and Security in an Unequal World*, (New York); International Bank for Reconstruction and Development/World Bank (2006), *World Development Report 2007: Development and the Next Generation*, (Washington, DC), p. 289.

5 ACHPR Working Group on Indigenous Populations/Communities (2003), op. cit., p.18



Commission on Human and Peoples' Rights (hereinafter "ACHPR Working Group") has noted that:

*In Rwanda ... the Batwa suffer from marginalization, discrimination and extreme poverty, and they are neglected in all areas of development. Prejudice means they are considered undeveloped, intellectually backward, hideous, unsavoury characters or sub-human. The Batwa are allowed to share nothing with the Hutus or Tutsis, neither food nor drink. Even sitting down with a Batwa would be considered an insult or a dishonour to the friends and family of any Hutu or Tutsi who agrees to do so. If an individual non-Batwa should sympathise with the Batwa and become their friend, his peers will treat him as ridiculous or mentally disturbed.*<sup>6</sup>

4. During the 1994 genocide, an estimated 30 percent of the Twa were killed, compared with 14 percent of the total population, because they were targeted by both sides.<sup>7</sup> The United Nations' Special Rapporteur on the situation of human rights in Rwanda also noted the disproportionate targeting and loss of Twa life during the 1994 genocide in two of his annual reports.<sup>8</sup> This is part of a larger pattern of pervasive and tolerated discrimination against Twa that persists to this day and is manifest in almost all of their dealings with neighbouring peoples and the State.
5. The Rwandan Twa are part of a larger Twa population numbering 80,000-100,000 people, living in the Great Lakes area of central Africa (Rwanda, Burundi, south west Uganda and eastern Democratic Republic of Congo). There are strong social and cultural relationships between the Twa in these four countries and they have links to other so-called "Pygmy" peoples and indigenous peoples throughout the region. The Human Rights Committee (hereinafter "the Committee") has previously observed that indigenous "Pygmy" peoples in neighbouring Democratic Republic of Congo are subject to racial discrimination that transcends discrimination experienced by other groups, stating that it is "concerned about the marginalisation, discrimination and occasional persecution suffered by the countries' numerous minorities, particularly the pygmies (article 27 of the Covenant)."<sup>9</sup>
6. The Twa of Rwanda experience similar discrimination and, as a direct result, their current situation is considerably worse than the national population.<sup>10</sup> For example, the United Nations Committee on the Elimination of Racial Discrimination has previously

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6 ACHPR Working Group on Indigenous Populations/Communities (2005), op. cit., p.35. Note that the appellations 'Batwa' and 'Twa' are interchangeable.

7 Lewis J and J Knight, (1995) *The Batwa of Rwanda: Assessment of the Situation of the Batwa and Promotion of Batwa Rights in Post-War Rwanda*, op. cit.

8 *Report on the situation of human rights in Rwanda submitted by M. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994*, UN Doc. E/CN.4/1996/68, 29/1/1996, pp.12-13; and *Report on the situation of human rights in Rwanda submitted by M. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994*, UN Doc. E/CN.4/1997/61, 20/1/1997, p.11.

9 United Nations Human Rights Committee, *Observations finales du Comité des droits de l'homme : République Démocratique du Congo (version non éditée)*, UN Doc. CCPR/C/COD/CO/3, 27 March 2006, (Unofficial translation by the author)

10 CAURWA, (2004), *Enquête sur les conditions de vie socio-économique des ménages bénéficiaires de la Communauté des Autochtones Rwandais*, op. cit.; FPP & CAURWA (2004), *Conditions de vie de la population Batwa au Rwanda*, PowerPoint presentation comparing the results of CAURWA's survey with national statistics, see: [www.forestpeoples.org](http://www.forestpeoples.org).

noted that the Twa are “treated as second class citizens.”<sup>11</sup> The Rwandan authorities have admitted that the “[Twa] community continues to have a disproportionate number of vulnerable members, and seem not to benefit sufficiently from the national policy that supports socio-economic integration of all Rwandans.”<sup>12</sup> The Twa’s poverty and social exclusion create a vicious circle, each reinforcing the other, perpetuating their indigence and marginalisation, and ensuring that their levels of participation in Rwanda’s social and political affairs is disproportionately low (see Sections IV and V below).

7. In addition to historical eviction from their traditional lands, with no prior consultation, compensation or other reparations, the Twa continue to be denied access to their lands that are now under the management of state and nongovernmental conservation agencies, and are thus completely unable to practice their traditional way of life and culture. The recently adopted land law<sup>13</sup> has failed to address the issues of Twa rights and landlessness and further threatens their livelihoods by permitting state-led expropriation (see Section III below).
8. The percentage of Twa who currently own land – almost all of which is outside of their traditional territory – is extremely small compared to the national average, and the plot size is also disproportionately smaller. Furthermore, Twa land-owners continue to experience high rates of illegal expropriation by neighbouring Bantu and local authority representatives (see Section III below). Other sectors of Rwandan society see the Twa as powerless to stop them, and the Twa are unable to obtain effective legal redress because of their extreme poverty and social isolation and the absence of effective judicial remedies that take into account their rights and situation (see Section V below).
9. Finally, consistent with the pervasive discrimination they experience generally, the Twa do not enjoy equal access to justice in Rwanda, and Twa defendants and prisoners experience inhuman and degrading treatment at the hand of the authorities (see Section IV below).<sup>14</sup> All this is compounded by the Rwandan authorities’ failure to acknowledge the Twa as a distinct ethnic group and as an indigenous people and its refusal to legally register the largest national Twa representative organisation in the country (see Section V below).

### **III. Indigenous Twa land, resource and subsistence rights and the right to enjoy their culture**

#### **(a) Articles 1 and 27 – violations and denials of the Twa’s rights to land, resources, subsistence, and culture**

10. The Committee has repeatedly observed that indigenous peoples enjoy the right to self-determination, particularly in connection with their traditional lands,<sup>15</sup> and that “all

11 United Nations Committee on the Elimination of Racial Discrimination, *Prevention of Racial Discrimination, including Early Warning and Urgent Procedures: Rwanda*. 19/08/94. UN Doc. A/49/18, paras.53-72, para. 52.

12 NEPAD APRM (New Partnership for African Development African Peer Review Mechanism) (June 2006), *Country Review Report of the Republic of Rwanda*, p.139. See Section V(a) for a further discussion of this report.

13 Republic of Rwanda, *Law No 08/2005 of 14/07/2005 Determining The Use And Management Of Land In Rwanda*.

14 See, for example: CAURWA (2002), *Rapport Annuel 2002*, (Kigali, Rwanda); CAURWA (2003), *Rapport Annuel 2003*, (Kigali, Rwanda).

15 *Inter alia*, *Concluding Observations of the Human Rights Committee: Canada*, 20/04/2006. UN Doc.

CCPR/C/CAN/CO/5; *Concluding Observations of the Human Rights Committee: Brazil*, 01/12/2005. UN Doc.

CCPR/C/BRA/CO/2; *Concluding Observations of the Human Rights Committee: Norway*, 25/04/2006. UN Doc.

CCPR/C/NOR/CO/5; *Concluding Observations of the Human Rights Committee: Mexico*, 20/07/99. UN Doc.

peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (article 1(2)).”<sup>16</sup> The same is also the case for the United Nations Committee on Economic, Social and Cultural Rights in relation to Article 1 of the International Covenant on Economic, Social and Cultural Rights.<sup>17</sup> In so doing, the Committees have made explicit and reinforced the relationship between indigenous peoples’ rights to their traditional territories and resources and the right to self-determination. For indigenous peoples, the right to self-determination establishes a right to own and control their territories and resources and to be effectively involved in decision-making processes that may affect them. This right is also affirmed in, *inter alia*, Articles 3 and 25-30 of the UN Declaration on the Rights of Indigenous Peoples, approved by the Human Rights Council in June 2006.<sup>18</sup>

11. The Rwanda Twa have been denied their rights under Article 1 of the International Covenant on Civil and Political Rights (hereinafter “the Covenant”), particularly the rights under the second sub-paragraph of that article, on an ongoing basis. They have been entirely dispossessed of their traditional lands, territory and resources and their traditional means of subsistence, which are found in their forest territories. A disproportionately high percentage of Twa are now forced to live mostly as beggars or in situations that are tantamount to bonded labour on the lands of others. This has occurred in part through gradual encroachment and in part through specific acts and omissions attributable to Rwanda. For example, national parks have been established in Twa lands, without prior consultation or their consent, and today they are excluded, sometimes by force, if they try to access these areas.
12. Rwanda has both facilitated and acted to dispossess the Twa and it has not adopted any specific remedial measures to either protect the rights of the Twa when these are violated by private persons nor to provide for the restoration of an adequate land and resource base in which the Twa can attain security of person and property, continue their culture and way of life, and freely pursue their own economic, social and cultural development. In addition to depriving the Twa of their traditional means of subsistence, Rwanda’s acts and omissions have seriously threatened the survival of the Twa as a distinct people and cultural collectivity.

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CCPR/C/79/Add.109, 20 July 1999, para.19; *Concluding Observations of the Human Rights Committee: Norway*, 01/11/99. UN Doc. CCPR/C/79/Add.112, paras 10 and 17; and *Concluding Observations of the Human Rights Committee: Australia*, 28/07/2000. UN Doc. A/55/40, paras. 498-528, 24 July 2000, para. 3.

16 *Concluding Observations of the Human Rights Committee: Canada*, 07/04/99. UN Doc. CCPR/C/79/Add.105, 7 April 1999, para. 8

17 *Inter alia*, *General Comment No. 15, The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*. UN Doc. E/C.12/2002/11, 26 November 2002, at para. 7; and *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Russian Federation*. 12/12/2003. UN Doc. E/C.12/1/Add.94, at para. 11 and 39 --

11. *The Committee is concerned about the precarious situation of indigenous communities in the State party, affecting their right to self-determination under article 1 of the Covenant. The Committee notes that the Law of 2001 On Territories of Traditional Nature Use of Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation, which provides for the demarcation of indigenous territories and protection of indigenous land rights, has still not been implemented.*

39. *The Committee, recalling the right to self-determination enshrined in article 1 of the Covenant, urges the State party to intensify its efforts to improve the situation of the indigenous peoples and to ensure that they are not deprived of their means of subsistence. The Committee also encourages the State party to ensure the effective implementation of the Law on Territories and Traditional Nature Use.*

18 *United Nations Declaration on the Rights of Indigenous Peoples, approved by the Human Rights Council*. UN Doc. A/HRC/1/L.3, 23 June 2006.

13. In *Apirana Mahuika et al. vs. New Zealand*, the Committee held that Article 1 could be read conjunctively with Article 27 of the Covenant,<sup>19</sup> and that “the provisions of article 1 may be relevant in the interpretation of other rights protected by the Covenant, in particular article 27.”<sup>20</sup> In that case, the authors contended that the *Treaty of Waitangi (Fisheries Claims) Settlement Act* expropriated their commercial fishing resources in violation of Articles 1 and 27. In resolving this issue, the Committee explained that:

*With the Settlement, Maori were given access to a great percentage of quota, and thus effective possession of fisheries was returned to them. In regard to commercial fisheries, the effect of the Settlement was that Maori authority and traditional methods of control as recognised in the Treaty [of Waitangi] were replaced by a new control structure, in an entity in which Maori share not only the role of safeguarding their interests in fisheries but also the effective control.*<sup>21</sup>

14. Therefore, the criteria to be employed in assessing if Article 1(2) is satisfied is whether indigenous peoples enjoy ‘effective possession’ and ‘effective control’ over their natural wealth and resources, which includes their traditional lands and territories. In the case of Rwanda, the Twa enjoy neither effective possession nor effective control. To the contrary, they are in an extremely precarious situation and are effectively denied any enjoyment of the rights protected by Article 1, either by themselves or in conjunction with the related rights protected by Article 27 of the Covenant.

15. Article 27 of the Covenant states that:

*In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.*<sup>22</sup>

16. This provision protects linguistic, cultural and religious rights, and in the case of indigenous people, includes land, resource, subsistence and participation rights.<sup>23</sup> The Committee has noted that the right to enjoy a particular culture “may consist in a way of

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19 *Apirana Mahuika et al. v. New Zealand*, (Communication No. 547/1993, 15/11/2000), UN Doc. CCPR/C/70/D/547/1993 (2000), at para. 3 -- “When declaring the authors’ remaining claims admissible in so far as they might raise issues under articles 14(1) and 27 in conjunction with article 1, the Committee noted that only the consideration of the merits of the case would enable the Committee to determine the relevance of article 1 to the authors’ claims under article 27.”

20 Ibid, para. 9.2. See, also, *J G A Diergaardt (late Captain of the Rehoboth Baster Community) et al. v. Namibia*, Communication No. 760/1997. UN Doc. CCPR/C/69/D/760/1997 (2000), at para. 10.3 (“the provisions of Article 1 may be relevant to the interpretation of other rights protected by the Covenant, in particular Article 25, 26 and 27.”) See, also, M. Scheinin, *The Right to Self-Determination under the Covenant on Civil and Political Rights*. In, P. Aikio and M. Scheinin (eds.) (2000), *Operationalizing the Right of Indigenous Peoples to Self-Determination*, (Institute for Human Rights, Åbo Akademi University, Turku).

21 Ibid., para. 9.7.

22 *International Covenant on Civil and Political Rights*, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49

23 *Communication No 167/1984, Bernard Ominayak, Chief of the Lubicon Lake Band, v. Canada*, Report of the Human Rights Committee, 45 UN GAOR Supp. (No.43), UN Doc. A/45/40, Vol. II, 4 October 1990, page 1. See also: *Communication No 197/1985, Kitok v. Sweden*, Report of the Human Rights Committee, 43 UN GAOR Supp. (No.40) UN Doc. A/43/40, 28 September 1988, page 221; *Communication No. 24/1777, Lovelace v. Canada*, Report of the Human Rights Committee, 36 UN GAOR Supp. (No. 40) 166, UN Doc. A/36/40 (1981); *Communication No. 511/1992, I. Lansman et al. v. Finland*, UN Doc. CCPR/C/52/D/511/1992; and *Communication No. 671/1995, J Lansman et al. v. Finland*, UN Doc. CCPR/C/58/D/671/1995.

life which is closely associated with territory and its use of resources”,<sup>24</sup> and interpreted Article 27 to include the “rights of persons, in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong”.<sup>25</sup>

17. The Committee has further stated that “[t]he enjoyment of those rights [under Article 27] may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.”<sup>26</sup> This point was reiterated by the Committee in its Concluding Observations on Chile in 1999:

*When planning actions that affect members of indigenous communities, the State party must pay primary attention to the sustainability of the indigenous culture and way of life and to the participation of members of indigenous communities in decisions that affect them.*<sup>27</sup>

18. The Committee recognises that the subsistence and other traditional economic activities of indigenous peoples form an integral part of their culture, and that significant interference with such activities can detrimentally affect their cultural integrity and survival. Article 27 prohibits all activities that represent a denial of the right to enjoy culture, which can include involuntary relocation, severe environmental degradation and a denial of access to subsistence areas and areas of cultural and religious significance.
19. The Committee on the Elimination of Racial Discrimination has similarly observed that the loss of traditional lands and resources continues to jeopardize the cultural integrity of indigenous peoples. It has urged States:

*to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.*<sup>28</sup>

20. The Twa’s rights as guaranteed under Article 27 are not recognised in any way in Rwandan law. Agriculture and agro-industry have severely depleted the natural resources and forests on which the Twa depended for their livelihood.<sup>29</sup> Further, the

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<sup>24</sup> Human Rights Committee, *General Comment No.23: the rights of minorities (Art.27)*, UN Doc. CCPR/C/21/Rev.1/Add.5, 8 April 1994, para. 3.2

<sup>25</sup> *Bernard Ominayak, Chief of the Lubicon Lake Band, v. Canada*, *ibid.*

<sup>26</sup> *General Comment No. 23*, op. cit., para. 7.

<sup>27</sup> *Concluding Observations of the Human Rights Committee: Chile, 30/03/99*. UN Doc. CCPR/C/79/Add.104, 30 March 1999, para. 22.

<sup>28</sup> Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII on the Rights of Indigenous Peoples*, UN Doc. CERD/C/51/Misc.13/Rev.4, 18 August 1997, paras. 3 and 5

<sup>29</sup> As Rwanda’s population increased from one to seven million inhabitants between the 1940s and 1980s, increasing demands for farming and pasture lands resulted in the country’s forests (including those in conservation areas) being drastically reduced from approximately 30 percent of the total land area to seven percent. The dramatic loss of biological resources particularly affected the Twa, who depended on the forest for their livelihood and food security. Despite conservation protection measures first put in place in 1974, the forests were further depleted after the 1994 genocide by the

creation of protected areas<sup>30</sup> and the ongoing denial of access to these national parks have resulted in the Twa being completely dispossessed of their traditional lands and territories, depriving them of the ability to continue their traditional livelihood and culture based on forest-dwelling hunting and gathering.

21. The precarious situation of the Twa must be understood in the historical context of these acts and omissions that – although some may pre-date Rwanda’s ratification of the Covenant in 1976 – continue to violate the Twa’s land, resource and cultural rights and have a negative impact on their livelihoods and cultural integrity today. The Committee has noted – for example, in *Lovelace v. Canada* – that the State’s obligations under the Covenant can still apply in such situations.<sup>31</sup>
22. In 1974, national legislation was adopted banning specific activities in Rwanda’s national parks, including hunting, fishing and animal trapping,<sup>32</sup> thereby criminalizing the Twa’s traditional livelihood and cultural activities in those areas. This legislation remains in force today, constituting an ongoing violation of Twa land, resource and cultural rights and a severe threat to their cultural integrity. It is not uncommon for indigenous people to report that they have been shot at or branded ‘poachers’ and harassed or worse should they try to access their traditional forest lands. The State and conservation agencies have failed to ensure that the Twa share any benefits from the creation and management of Rwanda’s protected areas, for example, only three Twa are employed in the Volcanoes National Park, and four in the Nyungwe Natural Forest.<sup>33</sup>
23. Some older Twa living in southern Rwanda recall hunting in the Nyungwe forest. However, having been denied access to their forests for two or more generations, the majority of Twa in Rwanda are at great risk of losing what remains of their forest knowledge. The ACHPR Working Group has noted the pernicious effects that losing access to their traditional forest lands has had on indigenous peoples elsewhere in the Great Lakes region:

*Those who have preserved their customs and forest-based way of life [in DRC] have managed to escape a possible situation of exploitation. The Batwa who have been driven out of their forests have become the poorest of the poor, marginalized from society and suffering the same discrimination as the Batwa in Rwanda and*

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need to rehabilitate thousands of refugees returning to Rwanda after long periods of exile. The refugees were mostly accommodated in the protected areas, including two-thirds of the Akagera National Park and the Gishwati Forest.

30 All of Rwanda’s existing nature conservation areas were first established in the 1920s by colonial powers in traditional Twa lands with no prior consultation, and without their free, prior and informed consent. This includes the Volcanoes National Park, the Nyungwe National Forest, and the Akagera National Park, all of which still exist today. The Gishwati Forest also formed part of the Twa’s ancestral forest lands, although this was virtually destroyed to meet the needs of returning refugees following the 1994 genocide. After independence, the Rwandan authorities’ attempted to centralise conservation management by creating the Rwandan Office of Tourism and National Parks (ORTPN) with a mandate to protect the country’s natural resources and prevent destabilisation of protected zones. Conservation agencies implicated in the management of Rwanda’s national parks include the Dian Fossey Gorilla Fund (DFGF) and the International Gorilla Conservation Programme (IGCP).

31 *Lovelace v. Canada*, op. cit.

32 Republic of Rwanda, *Statutory Order of 26 April 1974*.

33 Kalimba, Z (2001) *The situation of the Batwa forest dwellers and conservation of the Volcanoes National Park and Nyungwe Natural Forest*, in Nelson, J. and Hossack, L. (2003) *Indigenous peoples and protected areas in Africa: From principles to practice*, op. cit

*Burundi. They are considered immoral, dirty, deceitful and uncivilised and Batwa children are considered to be good for nothing.*<sup>34</sup>

24. The forced expulsion of the remaining forest-dwelling Twa communities from the Volcanoes National Park and the Nyungwe Forest Reserve was carried out by conservation projects in 1988.<sup>35</sup> The last forest-dwelling Twa in Rwanda were forcibly cleared from the Gishwati forest in the late 1980s to make way for World Bank-financed commercial eucalyptus and dairy projects. These acts denied the Twa their right to practice, enjoy and maintain their culture, to be secure in their means of subsistence, and to freely dispose of their natural wealth. In further violation of their rights guaranteed under the Covenant to participate in decisions that may affect them, none of the evictions were carried out in consultation with the Twa or received their prior informed consent, and the expelled Twa have not received any compensation or other reparation for their losses.
25. Rwandan law does not provide any mechanism nor recognise any right of indigenous Twa to be consulted about and participate in decisions that may affect them. The continuing denial of access to conservation areas in Rwanda and failure to recognise their right to determine their own lifestyle represents further violations of the Twa's rights to have access to and protection of their vital subsistence and cultural resources as well as their sacred sites.<sup>36</sup> Leading experts have noted that:

*there remain a large number of government and conservation workers who do not believe that indigenous people such as the Pygmies have the right to pursue their traditional lifestyle, or even only certain aspects of it such as camping in the forest, collecting wild honey and hunting. Quite commonly such people assume that Pygmies do not have the right to determine their own lifestyle but rather should become farmers, herders and labourers. These assimilationist presumptions still guide most thinking by outsiders in relation to Pygmies. Most Pygmies in the [Central African] regions visited expressed the desire to have a share in farming and animal husbandry, but they also want access to their traditional resources and the right to practice their traditional lifestyle.(...) In Rwanda, despite positive statements, there is very little evidence that conservation authorities have the*

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34 ACHPR Working Group on Indigenous Populations/Communities (2005), op. cit., p.36. It is of extreme relevance to the situation of the Rwandan Twa that in DRC the loss of forest knowledge has become a further reason for the authorities and conservation agencies to continue to restrict their access to the forest. See Barume, A (2000), *Heading Towards Extinction? Indigenous Rights in Africa: The Case of the Twa of the Kahuzi-Biega National Park, Democratic Republic of Congo*, (IWGIA, Denmark).

35 The effect has been to render the indigenous Twa of Rwanda as 'conservation refugees'. This term was developed to describe the massive and debilitating impact of conservation activities on indigenous peoples in Central Africa, such as the establishment of national parks, which "puts the rights of nature before the rights of people" and which has resulted in the forcible dispossession and displacement of indigenous peoples. See Dowie, M, *Conservation Refugees: When protecting nature means kicking people out* in Orion Magazine, Nov/Dec 2005, available online at: <http://www.oriononline.org/pages/om/05-6om/Dowie.html>. See also: Jackson, D (2003) *Twa women, Twa rights in the Great Lakes region of Africa*, op. cit.; Nelson, J. and Hossack, L. (2003) *Indigenous peoples and protected areas in Africa: From principles to practice*, op. cit.; ACHPR Working Group on Indigenous Peoples/Communities (2003), op. cit.; Lewis, J (2000) *The Batwa Pygmies of the Great Lakes Region*, op. cit.; Woodburn, J, *Indigenous discrimination: the ideological basis for local discrimination against hunter-gatherer minorities in sub-Saharan Africa*, in Ethnic and Racial Studies, Vol.20, No.2, 1997, pp.345-361; Lewis, J. and J. Knight, (1995), *The Batwa of Rwanda: Assessment of the Situation of the Batwa and Promotion of Batwa Rights in Post-War Rwanda*, op. cit.

36 *Concluding Observations of the Human Rights Committee: Australia*, 28/07/2000, op. cit., para.3; *Communication No 549/1993: France. 29/12/97. Hopu and Bessert v. France*, UN Doc. CCPR/C/60/D/549/1993/Rev.1 (Jurisprudence), para. 10.3

*intention of establishing participative or co-management regimes with indigenous people.*<sup>37</sup>

26. The Committee has noted that Article 27 requires that “necessary steps should be taken to restore and protect the titles and interests of indigenous peoples in their native lands...” and that “securing continuation and sustainability of traditional forms of economy of indigenous minorities (hunting, fishing and gathering), and protection of sites of religious or cultural significance for such minorities...must be protected under article 27...”<sup>38</sup>
27. Cumulatively, the ongoing acts and omissions by Rwanda rise to the level of denying the Twa their rights as a people under Article 1 and, in most cases (the nature reserves in particular), constitute *de facto* extinguishment of their rights that continues to negatively affect them today. The Committee has previously stressed “that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant.”<sup>39</sup> In so doing, the Committee has admonished against governmental acts that would unilaterally infringe on indigenous peoples’ ownership, control and enjoyment of their rights to lands and natural resources and determined such infringements to be incompatible with the right to self-determination.
28. The continuing denial of access to conservation areas constitutes a violation of the Twa’s right to lands and resources, subsistence, and participation, to the detriment of their cultural integrity and survival. The failure by the Rwandan authorities to address these violations and provide the Twa with redress constitutes an ongoing violation of their rights. Rwanda must take positive measures to ensure that the Twa’s right to restitution of lands and resources taken without their consent for conservation purposes, or to compensation in lieu in cases where lands cannot be returned for factual reasons, is legally recognised and protected in fact.<sup>40</sup>

***Suggested question 1:*** *What specific measures (legislative, administrative, other) has the Government of Rwanda taken to give effect to the rights of indigenous Twa as guaranteed under Articles 1 and 27?*

***Suggested question 2:*** *What specific remedial measures has the Government of Rwanda taken to provide for the restoration of an adequate land and resource base in which the Twa can attain security of person and property, continue their culture and way of life, and freely pursue their own economic, social and cultural development, and does it intend to compensate the Twa for the loss of their traditional lands, where for factual reasons these cannot be returned?*

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37 Cernea, Prof. M.M. and Dr. K. Schmidt-Soltau, (2003), *National Parks and Poverty Risks: Is Population Resettlement the Solution?* Paper presented to the World Parks Congress, Durban, South Africa, September 2003, p.10.

38 *Concluding Observations of the Human Rights Committee: Australia*, 28/07/2000, op. cit., paras 10 and 11.

39 *Concluding observations of the Human Rights Committee: Canada*. 07/04/99, op. cit., para. 8. In accord, *Concluding observations of the Human Rights Committee: Australia*. 28/07/2000, op. cit., para. 8.

40 The right and remedial measure of restitution of indigenous peoples’ lands and resources previously incorporated into protected areas is discussed in Mackay, F (2002), *Addressing Past Wrongs: Indigenous Peoples and Protected Areas: The Right to Restitution of Lands and Territories*, (FPP, Moreton-in-Marsh).



**(b) The 2005 Land Law and ongoing violations of Twa land, resource, subsistence and participation rights**

29. Rwanda's recently revised land legislation contains no specific provisions to address historic or ongoing violations of Twa land, resource, subsistence and participation rights, and presents a further threat of forced expropriation of Twa-owned land. No other Rwandan law contains such provisions either. Article 3 of *Organic Law No. 08-2005 Determining the Use and Management of Land in Rwanda* declares that:

*With exceptions of the rights given to people, the state has supreme powers to manage all the national land, and this is done in public interest aimed at sustainable, economic development and social welfare, in accordance with procedures provided for by law. In that regard, it is the state that guarantees the right to own and use the land*<sup>41</sup>

30. The land law also stipulates that: “[t]he state has the responsibility of giving land to persons who were denied their rights of landlordship”,<sup>42</sup> but no special provisions have been made for the Twa who were forcibly expelled from their traditional lands with no compensation or restitution. In light of the specific measures already taken to help rehabilitate returning refugees to Rwanda (including resettlement in the country's largest conservation area and the creation of new villages throughout the country to house them), this provision appears primarily to apply to people who fled Rwanda in 1959 (during the first post-independence waves of ethnic violence) and 1994, who have since returned to find their land taken by others.
31. In interpreting Article 27, the Committee has noted that “economic activities may come within the ambit of article 27, if they are an essential element of the culture of an ethnic community”.<sup>43</sup> The Committee has also noted that indigenous peoples may adapt traditional livelihood methods while still enjoying protection of the Covenant. For example:

*The right to enjoy one's culture cannot be determined in abstracto but has to be placed in context. In this connection, the Committee observes that article 27 does not only protect traditional means of livelihood of national minorities, as indicated in the State party's submission.*<sup>44</sup>

32. And:

*article 27 does not only protect traditional means of livelihood of minorities, but allows also for adaptation of those means to the modern way of life and ensuing technology.*<sup>45</sup>

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41 *Organic Law No 08-2005 of 14-07-2005 Determining the Use and Management of Land in Rwanda*, op. cit., Article 3, (emphasis added).

42 Ibid., Article 87.

43 *I Lansman et al v. Finland*, op. cit., para 9.2; *J. Lansman et al. vs. Finland*, op. cit., para 10.2; *Apirana Mahuika et al v. New Zealand*, op. cit., para 9.3.

44 *I Lansman et al v. Finland*, ibid.

45 *Apirana Mahuika et al. v. New Zealand*, ibid., para 9.4.

33. Relative to the national Rwandan population, landlessness is 3.5 times greater among Twa households (43% vs. 12%); and land holdings of less than 0.2<sup>ha</sup> are more prevalent (81 % vs. 32%). In Rwanda, pottery production is closely associated with the Twa, who turned to this activity several centuries ago as they began to lose access to their forests as they were cut down by incoming farming peoples. Over time, as the Twa became completely dispossessed of their traditional lands and territories and could no longer practice livelihood and cultural activities such as hunting and gathering, they came to view pottery and dance as their principle expression of their cultural as well as one of their main means of income.
34. Without land of their own, the Twa were until very recently able to share access to certain valley wetlands under an informal communal tenure system which still remained in some areas.<sup>46</sup> This system gave a measure of protection to the Twa's access to clay, an essential natural resource in pottery production. However, it is not recognised in the new land law, which states that "[t]he following shall be included in the private state owned land: swamps that may be productive in terms of agriculture".<sup>47</sup>
35. Several local authorities charged with implementing this provision have interpreted the law to deny Twa access to clay in marshland areas previously governed by the communal system. Despite pleas to the local authorities to redress this situation, some individual Twa communities have only been able to regain access after the direct intervention of a representative Twa association advocating on their behalf. Denying the Twa's access to land and natural resources essential to a secure means of subsistence and the ability to practice distinct cultural practices constitutes a further violation of their rights as contained within Articles 1 and 27 of the Covenant.
36. Only a few Twa with land currently practice agriculture and animal husbandry,<sup>48</sup> and only then because they have benefited from development projects that provided intensive training and inputs, without which they do not have the necessary farming knowledge. The new land law threatens further state-directed expropriation of non agricultural Twa lands, with no mitigating provisions to allow for consultation with the Twa or their prior and informed consent.
37. For example, Article 3 of the land law declares that: "The state also has rights to expropriation due to public interest, settlement and general land management." Article 62 further states that: "Any person who owns land must use it in a productive way and in accordance with its nature and intended purpose". The same article further defines the use of land in a productive way as to "protect it from erosion, safeguard its fertility and ensuring its production in a sustainable way" (emphasis added). Anyone using another's land (for example, a leaseholder) is also obliged to use it "in a productive manner."

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46 During the post-independence period and more recently in the post-genocide period, many Bantu customary communal land tenure systems fell into abeyance, however the Twa continued to benefit from access alongside Bantu farmers in many swamps and marshlands where the system was still recognised and practiced. See: Liversage, H. (2003) *Overview of Rwanda's Land Policy and Land Law and Key Challenges for Implementation. Briefing Document, DFID and Ministry of Lands, Resettlement and Environment*, p. 14

47 Organic Law No 08-2005 of 14-07-2005 *Determining the Use and Management of Land in Rwanda*, op. cit., Article 14(4).

48 The proportion of Twa farming their own lands is negligible compared to the national population (0.1% vs. 80%). See: CAURWA (2004), *Enquête sur les conditions de vie socio-économique des ménages bénéficiaires de la Communauté des Autochtones Rwandais*, op. cit.

38. Article 64 clarifies that the State regards productive use within the terms of the law as:

*Any land with crops or buildings, land with forests in a manner that does not degrade environment, land which has been prepared for planting seeds, land that has been under fallow for not more than three (3) years, land in which crops have been harvested, as well as land for grazing either by individuals, associations or organizations with legal personality*

39. Land that the State does not consider being productively used, and which is therefore at risk of state-sponsored expropriation, includes “land ... meant for agriculture but without crops or other plants at least up to a half (1/2) of its area”, and “land meant for grazing which is not used for the same in an appropriate manner or if it has no pasture for animals up to at least one half (1/2) of its area”.<sup>49</sup> No protection is provided by this or any other law in Rwanda to ensure that non-farming Twa land holders are consulted prior to dispossession or give their free, prior and informed consent to expropriation of their lands under these provisions if the State considers the area to be unproductive.
40. Furthermore, Rwandan law fails to address the systematic despoliation of Twa land by Bantu neighbours and local authorities, and provides no adequate remedies or special measures through which the Twa can challenge such theft or which require the State to actively intervene on their behalf. There have been numerous cases where local authority representatives and Bantu neighbours have forcibly expelled Twa from their land and taken over its occupation.<sup>50</sup> For example, the case of Mr. Emmanuel Kayihura of Muhanga district, who was forcibly expelled from two plots of land in 2004 and is still waiting return of his land, despite appeals to the district and provincial level authorities and the Ombudsman.<sup>51</sup>
41. Another case involves a Twa farming cooperative that was allocated ten rice paddy plots for cultivation by the authorities in Huye province, and on which they paid regular taxes. Five of these blocks were expropriated by non-Twa associations cultivating areas of the same marshland. When the Twa association appealed to the sector-level authorities they were told to accept what had happened and continue working on the remaining five plots. The authorities only agreed to reverse their decision and return the land after a national Twa organisation intervened in negotiations on the association’s behalf. Without the NGO’s advocacy, it seems the authorities were on the point of expropriating the Twa association’s remaining plots and also allocating them to other cultivators.<sup>52</sup>
42. Pervasive discriminatory attitudes against the Twa by other sectors of Rwandan society, including the authorities, mean that malfeasants believe they can act in this way with

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49 Ibid., Article 65.

50 See, for example, CAURWA (2005), *Rapport Annuel 2005*, (CAURWA, Kigali); CAURWA (2004), *Rapport Annuel 2004*, op. cit.; CAURWA (2003), *Rapport Annuel 2003*, op. cit.; Jackson, D (2003), *Twa women, Twa rights in the Great Lakes region of Africa*, op. cit.; Jackson, D (2004), *Implementation of International Commitments on Traditional Forest-Related knowledge: Indigenous Peoples’ experiences in Central Africa*, op. cit.; CAURWA (2003), *Mémoire Adressé Aux Décideurs Politiques : La loi Foncière et la situation foncière des Batwa au Rwanda*, (CAURWA, Kigali); Lewis, J (2002), *The Batwa Pygmies of the Great Lakes Region*, op. cit.

51 CAURWA (2005), *Rapport Annuel 2005*, ibid., p. 21

52 CAURWA (2006), *Rapport d’Activités Trimestriel avril- juin 2006*, op. cit., p. 13.

impunity, and sometimes with good reason.<sup>53</sup> In this regard, the ACHPR Working Group has noted that:

*The Batwa are brutalised and the victims of erroneous judgements passed by the legal system against them in order to appropriate their land.*<sup>54</sup>

43. The Twa's extreme indigence and social isolation means they often lack the confidence to challenge these crimes and report them to the relevant authorities, and the financial and other resources to access legal assistance. The State has not adopted any measures to ensure that the Twa are able to access prompt and effective remedies that are appropriate to and take into account their situation. Many Twa, like the association noted in paragraph 41 *ante*, are therefore unable to avail themselves of a domestic remedy without the (free) intervention of a civil society organisation or NGO.
44. Access to judicial and other remedies and equal treatment by the judicial system are keystones of human rights. The situation of the Twa and the violation of these rights are discussed further in Section IV below.

***Suggested question 3:*** *What measures has the Government of Rwanda taken to ensure that the Twa continue to enjoy access to and use of land and other resources, for example clay deposits, in order to carry out cultural and economic activities guaranteed under Article 27 of the Covenant?*

***Suggested question 4:*** *What measures has the Government of Rwanda taken to give effect to the Twa's rights to land and to participate in decisions that may affect them, including prior consultation and free and informed consent, particularly with regard to possible expropriation of non-agricultural land?*

***Suggested question 5:*** *How does the Government of Rwanda propose to address the high rates of illegal expropriation of Twa land, and what remedies and special measures has it put in place through which the Twa can challenge such theft or which require the State to intervene on their behalf?*

#### **IV. Articles 2 and 26 – Non-discrimination and equal treatment; Articles 9 and 14 – freedom from arbitrary arrest and detention and the right to a fair trial; and Articles 7 and 10 – cruel and inhuman treatment**

##### **(a) Articles 2 and 26 – Discrimination against the Twa and lack of equal treatment and equal access to justice**

45. Article 26 of the Covenant entitles all persons to equality before the law and equal protection of the law, and prohibits any discrimination under the law, guaranteeing equal

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<sup>53</sup> Additionally, there are numerous instances where individuals have taken advantage of the Twa's lack of knowledge and experience; their desperate food insecurity; and their need for resources to meet immediate basic needs in order to purchase Twa land at prices well below the local average. This has affected a large percentage of the Twa who had inherited land that was originally gifted by the pre-colonial kings. In some cases, with the (financial) assistance of national and international agencies, the Twa are able to buy back their land. In most, however, they remain landless and without redress. See CAURWA (2003), *Mémoire adressé Aux Décideurs Politiques : La loi Foncière et la situation foncière des Batwa au Rwanda*, op. cit.

<sup>54</sup> African Commission Working Group on Indigenous Populations/Communities (2005), op. cit., p.35.

and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In its interpretation of Article 26, the Committee has noted that it “prohibits discrimination in law or in fact in any field regulated and protected by public authorities”.<sup>55</sup>

46. In further explanation of Article 26, the Committee has indicated that:

*...the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant.*<sup>56</sup>

47. Article 2(1) of the Covenant requires States to ensure that individuals enjoy the rights contained within the Covenant “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” In its interpretation of Article 2, the Committee has noted that “States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction”, and that “This aspect calls for specific activities by the States parties to enable individuals to enjoy their rights.”<sup>57</sup>

48. The Committee has noted that the rights of indigenous peoples protected under Article 27:

*depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group.*<sup>58</sup>

49. Rwandan legislation prohibits discrimination, and guarantees citizens equality. For example, Article 11 of the Constitution states:

*All Rwandans are born and remain free and equal in rights and duties. Discrimination of whatever kind based on, inter alia, ethnic origin, tribe, clan, colour, sex, region, social origin, religion or faith, opinion, economic status, culture, language, social status, physical or mental disability or any other form of discrimination is prohibited and punishable by law.*<sup>59</sup>

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<sup>55</sup> Human Rights Committee, *General Comment No. 18: Non-discrimination*, 10/11/89, para. 12

<sup>56</sup> Human Rights Committee, *General Comment No. 18*, op. cit., para. 10

<sup>57</sup> Human Rights Committee, *General Comment No. 03: Implementation at the national level (Art. 2)*, 29/07/81, para. 1.

<sup>58</sup> Human Rights Committee, *General Comment No. 23*, op. cit., para. 6.2

<sup>59</sup> Official Gazette of the Republic of Rwanda, Year 42 No. Special of 4 June 2003, *The Constitution of the Republic of Rwanda*, Article 11.

50. Article 16 further states that: “[a]ll human beings are equal before the law. They shall enjoy, without any discrimination, equal protection of the law”. Article 46 declares: “Every citizen has the duty to relate to other persons without discrimination and to maintain relations conducive to safeguarding, promoting and reinforcing mutual respect, solidarity and tolerance.”
51. Some of the forms of discrimination experienced by the indigenous Twa of Rwanda have been noted above. In particular, discrimination is based on the failure to recognise the Twa’s rights to enjoy their culture; to own and control their traditional lands and resources; to accord the Twa equal access to health, education and other services; ensure equal and humane treatment; and equal access to justice.
52. National legislation adopted by Rwanda’s transitional authorities in 2001 has made discrimination and sectarianism crimes punishable by fine and imprisonment. This law,<sup>1</sup> which is still in force today, defines discrimination as:
- any speech, writing, or actions based on ethnicity, region or country of origin, the colour of the skin, physical features, sex, language, religion or ideas aimed at depriving a person or group of persons of their rights as provided by Rwandan law and by International Conventions to which Rwanda is party.*<sup>60</sup>
53. At the time this law was adopted, the Speaker of Parliament was quoted as saying “this organic law is in compliance with our national development policies and strategies because it provides a flexible framework that makes it possible and legal to enforce positive discrimination in favour of vulnerable groups like the Batwa, the disabled and the girl child.”<sup>61</sup> One year earlier, the Executive Director of the Rwandan National Unity and Reconciliation Commission publicly recognised that discrimination against the Twa exists and noted how the State intended to address the situation.<sup>62</sup>
54. Despite these assurances, there have been no national policies or programmes to target the Twa’s specific needs to help reduce the extreme indigence and social isolation that have resulted from historic and continuing violations of their rights. Regardless of the national provisions prohibiting discrimination in Rwandan law, indigenous Twa continue to suffer discrimination on a daily basis, particularly with regard to employment practices and wages; unequal access to health, education and other services; unequal and inhumane treatment; and unequal access to justice. As the ACHPR Working Group has noted:

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60 Republic of Rwanda, *Law N° 47/2001 of 18/12/2001 Instituting Punishment for Offences of Discrimination and Sectarianism*, Article 1(1).

61 Vincent Biruta was quoted in: United Nations Office for the Coordination of Humanitarian Affairs Integrated Regional Information Network for Central and Eastern Africa, *CENTRAL AND EASTERN AFRICA: IRIN-CEA Weekly Round-up 96 [2011026]*, 27 October 2001.

62 In an interview with the United Nations’ Office for the Coordination of Humanitarian Affairs Integrated Regional Information Network, Aloise Inyumba was quoted as saying: “*The marginalisation of the Twa people is a dark side of our society.*” She went on to say that: “[*The Twa*] have been systematically forgotten as if they don’t exist,” and confirmed that the NURC had specifically sought the Twa’s views on reconciliation and had recommended affirmative action in terms of free education and health services for the Twa. She concluded by noting that: “*We also want the few that are educated to be given priority when it comes to employment.*” United Nations Office for the Coordination of Humanitarian Affairs Integrated Regional Information Network for Central and Eastern Africa, *GREAT LAKES: IRIN Focus on the Twa people*, 5 July 2000.

*Forming a numerical and political minority, and being a dispersed population with the lowest level of social status, the Batwa have been unable to overcome their difficulties in order to defend their rights and resist arbitrary violence. They are treated as inferior, and are hence the victims of scorn and exploitation. The Batwa are ... the victims of racist and discriminatory attitudes on the part of the rest of the population.*<sup>63</sup>

55. As noted in Section III above, high rates of landlessness mean that the proportion of Twa farming their own lands is negligible compared to the national population (0.1% vs. 80%). Without land of their own to either farm or practice their traditional forest-based lifestyle, the majority of Twa must support their livelihoods through other means. However, lack of education and discrimination from other sectors of Rwandan society lead to high rates of unemployment and unequal working conditions and practices. For example, compared to the national population, thirty times as many Twa are not economically active (30% vs. 1%), casual labour is 7.5 times more prevalent (69% vs. 9%) and Twa labourers are routinely paid less than labourers of other ethnic groups.<sup>64</sup>
56. Unequal pay scales, and the high proportion of Twa who are out of work, mean that Twa household incomes are very low. As a result, the Twa experience disproportionately worse living conditions than the rest of Rwandan society. For example, housing made of straw or plastic sheeting is 6.5 times more common amongst Twa households (20% vs. 3%), and households without latrines are seven times more common (35% vs. 5%). Twa reliance on non-potable water is twice as high (37% vs. 19%). The Twa's poor living conditions result in a heavy burden of illness, yet only 7% can afford to become members of local health insurance schemes, the main means of rural healthcare support. The ACHPR Working Group has noted the effects that extreme poverty and discrimination have Twa health:

*The Batwa experience high rates of infant mortality. The authorities recognise that infant mortality levels amongst the Batwa are extremely high and out of all proportion to their number. The Batwa suffer serious difficulties in the area of diet and nutrition and Batwa children suffer from chronic malnutrition...Due to lack of money to buy medicines and the discrimination they face, the Batwa do not go to health centres and they are left to hope that the illness will cure itself or they practice self-medication. Many Batwa – especially children under 5 - die from malaria as they cannot afford treatment. The Batwa have a very low level of child vaccination and they are exposed to the most dangerous diseases (tetanus, whooping cough, measles, polio). Expecting mothers do not go to health centres, they do not receive the necessary vaccinations and they generally give birth at home under non-hygienic conditions. Many Batwa mothers and children thus die during child delivery.*<sup>65</sup>

57. Compared with the national population, twice as many Twa have never attended school (51% vs. 25%), net primary school enrolment is less than two-thirds (48% vs. 78%) and adult literacy is less than half (23% vs. 52%). The school drop out rate is 11 times higher among Twa children (56% vs. 5%), who cite marginalisation and lack of means as the main causes. There are no known Twa currently in tertiary education, and only five Twa

<sup>63</sup> ACHPR Working Group on Indigenous Populations/Communities (2005), op. cit., p.35.

<sup>64</sup> Jackson (2003), *Twa women, Twa rights in the Great Lakes Region of Africa*, op. cit.

<sup>65</sup> ACHPR Working Group on Indigenous Populations/Communities (2005), op. cit., p.53.

have been known to graduate from university. The ACHPR Working Group has noted the insidious causes and effects of discrimination on Twa children's education:

*The reason for this contempt and discrimination is that the Batwa children are badly dressed, badly fed, and unsure of other children because of the isolation in which they live. The contempt of some of the teachers is for instance reflected in the fact that when a Batwa child makes an error, the teacher will claim that the child is good for nothing, backward or mentally retarded. Due to their poverty, the Batwa parents cannot afford to buy the required school materials such as uniforms, books, pens, etc. The consequence of all this is that the great majority of Batwa children do not go to school.*<sup>66</sup>

58. The Committee on the Rights of the Child has expressed its concern at the situation of Twa children, including their "limited access to basic social services, including health care, immunization and education, and the violation of their rights to survival and development, to enjoy their own culture and to be protected from discrimination."<sup>67</sup>
59. Twa women suffer from discrimination both as Twa, and as women. The lack of land particularly affects Twa women's ability to provide food for the family. Twa women's incomes are 58% those of Twa men, and only 21% are literate compared with 26% of Twa men. Although primary school enrolment is roughly equal for Twa boys and girls, far fewer girls attend secondary school.<sup>68</sup> Twa women participate less than men in public meetings and know less about national policies and programmes. Few Twa women have positions of responsibility in community affairs and then only at the lowest administrative level of the sector.<sup>69</sup>
60. The ACHPR Working Group has noted the regional trend of low representation by indigenous peoples in local and national affairs:

*The Batwa/pygmies in the Great Lakes Region are very weakly represented in decision making bodies. This prevents them from participating in discussions and decision making processes which have far reaching consequences for their own future.*<sup>70</sup>

61. The ACHPR Working Group further stated that:

*Political empowerment and recognition is important in order to ensure that indigenous peoples participate in and are represented in political processes. Indigenous peoples may be represented in the legislative assemblies and other political structures of their respective states, but their representation is in many cases either minimal or ineffective, hence the issues that concern them are not adequately addressed. This is caused by many structural factors including lack of own educated professionals. This is indirectly a violation of article 13(1) of the*

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<sup>66</sup> Ibid., p.56.

<sup>67</sup> United Nations Committee on the Rights of the Child, *Concluding Observations: Rwanda (unedited version)*, UN Doc. CRC/C/15/Add. 234, 4 June 2004, para. 75. The Committee on the Rights of the Child recommended that Rwanda assess the situation of Twa children, produce an action plan to protect their rights, and seek adequate means and measures to ensure birth registration and healthcare; however the State does not appear to have taken this recommended action to date.

<sup>68</sup> Jackson (2003), *Twa women, Twa rights in the Great Lakes Region of Africa*, op. cit.

<sup>69</sup> Ibid.

<sup>70</sup> ACHPR Working Group on Indigenous Populations/Communities (2003), op. cit., p.32.



*African Charter that guarantees all citizens the right to participation in government of their own country.*<sup>71</sup>

62. At present, the Twa's participation in local and national level decision-making bodies is extremely low.<sup>72</sup> This lack of engagement compounds the ongoing violations of the Twa's rights under Articles 1 and 27 of the Covenant which guarantee indigenous people the right to self-determination and to participate in decisions that may affect them.
63. In accordance with Article 2 and Article 26 of the Covenant, the State is obliged to take specific action to diminish the conditions which have caused and help to perpetuate discrimination against the Twa, and to enforce existing national legislation that currently prohibits such discrimination.
64. The failure by the Rwandan Government to enact and implement legislation and other measures to recognise and give effect to Twa rights to maintain, practice and enjoy their culture, especially as culture relates to land, resource and subsistence rights; to participate in decisions that affect them; and to provide redress for the gross violations of these rights that has resulted in total dispossession of their traditional lands contravenes Article 2 of the Covenant. Article 2 requires the State to take positive legal and other measures to give effect to the rights recognized in the Covenant; however the absence of such measures in Rwanda denies the Twa access to domestic remedies required to enforce their rights in contravention of other rights set forth in the Covenant.

***Suggested question 6:*** *In accordance with Articles 2 and 26 of the Covenant, what specific action has the Rwandan Government taken to diminish the conditions which have caused and help to perpetuate discrimination against the indigenous Twa of Rwanda and to enforce existing national legislation that currently prohibits such discrimination?*

***Suggested question 7:*** *In accordance with Article 2 of the Covenant, what specific measures (administrative, judicial, other) is the Rwandan Government taking to address the specific problems experienced by the Twa, particularly Twa women and children, and to address the Twa's low levels of participation in Rwandan society and public affairs?*

**(b) Articles 9 and 14 - Arbitrary arrest and detention of the Twa and violations of their right to a fair trial**

65. Despite the existence of national legislation to ensure non-discrimination and equal treatment, the Twa face severe difficulties in accessing judicial and other remedies in fact. For example, there is the documented case of the Sikubwabo family in Muhazi district whose land was expropriated, but, when they complained to the District authorities, four members of the family (including a one year old child) were imprisoned in the police "cachot" for five days without charge.<sup>73</sup> They were only released and had their land returned to them following the intervention of a national Twa organisation;

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<sup>71</sup> Ibid., p.31.

<sup>72</sup> There are currently no Twa parliamentarians and no known Twa representatives at the Provincial or District level authorities, and only one Twa senator.

<sup>73</sup> CAURWA (2005), *Rapport Annuel 2005*, op. cit., p.25. "Cachots" are small local detention centres that were originally established to hold suspects during pre-trial custody and the detention of prisons suspected of participating in the genocide. Originally guarded by "gendarmes", (army personnel under the Ministry of Defence), they are now under the control of the Communal Police who are governed by the Ministry of Internal Affairs. Holding the family in the cachot for five days also constitutes a violation of national legislation that states suspects can only be held for a period of three days without charge.

however the restitution of their land by the District authorities took some time, even after the Provincial authorities intervened to order them to do so. In addition to being a clear violation of the Twa's rights to equal treatment and equality before the law, this case is also a violation of Article 9(1) of the Covenant, which states that: "No one shall be subjected to arbitrary arrest or detention."

66. A further case involves a Twa widow, Mrs Oulérie Mukamura, of Rwamagana District, whose land was expropriated by some neighbours after her husband's death, claiming that they had bought the land from him.<sup>74</sup> Mrs. Mukamura took her case to the local "Abunzi" mediation committee, which decided that she must concede her land, even though there was no proof of purchase or transfer of title presented at the hearing or at any other time.<sup>75</sup> In addition to being a further example of violations of Twa rights under Articles 2 and 26, this case is also a clear breach of Mrs. Mukamura's rights under Article 14 of the Covenant which ensures equality before the courts and the right to a fair hearing.<sup>76</sup> Without the intervention of civil society organisations on her behalf, Mrs. Mukamura would not have the necessary resources to pursue an appeal against the Abunzi's decision, as she is currently doing.<sup>77</sup>
67. A further case also highlights the serious violations of the Twa's rights under Article 14. In July 2003, the national Twa organisation, CAURWA, became aware of a case involving two Twa men accused of theft (Mr. Gatorano Mwambari and Mr. Sibomana). Mr. Mwambari died during the commission of the crime of which they were accused; however there were conflicting reports as to whether this was by shooting or by grenade, and there appears to have been no investigation into his death. Following his arrest for theft, Mr. Sibomana was imprisoned in the Huye District prison (South Province), however his file was not transferred to the prosecutor until 26 April 2005, following which CAURWA were assured by the president of the District court that a date for trial would be set soon thereafter. Despite repeated requests as an interested party acting on behalf of the accused, CAURWA has been unable to obtain copies of the authorities' investigations into the alleged theft.<sup>78</sup> At time of writing this report, Mr. Sibomana is still awaiting trial. The protracted delay from the time of his incarceration to trial represents a clear violation of Mr. Sibomana's rights, particularly to be tried without undue delay as guaranteed by Article 14(c) of the Covenant.

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74 CAURWA (2006), *Rapport d'Activités Trimestriel avril juin 2006*, op. cit., pp.14-15.

75 Community-level arbitration committees, known as "Abunzi", were established in 2005 as part of the national judicial reforms. They are intended to resolve disputes at the local sector level, particularly in relation to land conflicts. For example, Article 53 of the 2005 land law states: "*Matters arising from land disputes are heard by competent courts and through procedures provided for by law. Before the matter is taken to the court, the parties to the dispute are required to seek a solution of the problem from the mediation committee at Sector level. This concerns the land that has no authentic title deeds.*" There are currently 1,545 Abunzi committees working under the governance of the Rwandan Ministry of Justice and comprised of local community representatives who are trained in conflict resolution. See Republic of Rwanda, Ministry of Finance and Economic Planning, (January 2006), *Rwanda and the Brussels Programme of Action: Submission to UN-OHRLS by the Government of Rwanda for the mid-term review of the Implementation of the Programme of Action for the Least Developed Countries*, p. 3.

76 When interpreting Article 14, the Committee has noted that: "The provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized", Human Rights Committee, *General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14)*, 13/04/84, para.4.

77 Mrs Mukamura's case is being closely monitored by Hagaruka, the national Rwandan women's and children's organisation, and CAURWA, who have also provided her with *pro bono* legal assistance to pursue an appeal against the Abunzi mediation committee's decision.

78 CAURWA (2006), *Rapport d'Activités Trimestriel avril juin 2006*, op. cit., p.13.

68. The facts of these specific cases highlight the insidious effects that pervasive discrimination in Rwandan society has on the Twa's rights to equality and fair and impartial hearings before local-level tribunals. They also serve to highlight the acts and omissions of Rwanda which result in repeated disregard for the Twa's rights to equal treatment and access to effective and accessible domestic remedies as guaranteed by Articles 2 and 26 of the Covenant. A further example of discriminatory treatment against a Twa prisoner that also led to gross violations of Articles 7 and 10 is described below.

***Suggested question 8:*** *In accordance with Articles 2, 14 and 26 of the Covenant, what has the Government of Rwanda done to ensure the Twa enjoy equal treatment and equal access to justice, including effective and accessible domestic remedies, and that further violations of Twa rights do not occur as they seek judicial and other redress?*

**(b) Article 7 and Article 10 – Violations of the Twa's right not to be subjected to inhuman or degrading treatment or punishment, and to be treated with humanity and with respect**

69. Article 7 of the Covenant states that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." When interpreting Article 7, the Committee has noted that it is complemented by the provisions of Article 10(1), which states that: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

70. In its interpretation of Article 10(1), the Committee has noted that:

*not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons.*<sup>79</sup>

71. The Committee has also noted that this provision must be implemented "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."<sup>80</sup>

72. Rwandan law also protects the country's citizens from physical and other abuse. For example, Article 15 of the Constitution states that: "Every person has the right to physical and mental integrity. No person shall be subjected to torture, physical abuse or cruel, inhuman or degrading treatment." Additionally, Principle 34 of the Principles for the Protection of all Individuals Subject to All forms of Detention or Imprisonment declares that:

*If a person under detention or imprisonment dies or disappears during the period of his detention or imprisonment, a judicial or other authority shall order an enquiry into the causes of death or disappearance, either on its own initiative, or at*

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<sup>79</sup> Human Rights Committee, General Comment No. 21: Replaces general comment 9 concerning humane treatment of persons deprived of liberty (Art. 10). 10/04/92., para. 3.

<sup>80</sup> Ibid., para. 4.

*the request of a family member of the individual or at the request of any person with knowledge of the affair.*<sup>81</sup>

73. Despite these provisions, there have been reported cases of physical and other abuse of Twa citizens and mistreatment of Twa prisoners that appear to have been inadequately investigated by the Rwandan authorities. One of these involves the particularly harrowing death of a Twa prisoner in custody in the Gikongoro provincial prison on 7<sup>th</sup> July 2002.<sup>82</sup>
74. The individual in question, Mr. Biturira, was sent into the prison latrine to retrieve a mobile phone belonging to a member of prison staff that had dropped down a toilet. Overcome by the fumes, he fell more than 20 metres to the bottom of the latrine and died. Despite complaints to the prison and local authorities, the victim's family were unable to retrieve his body for burial or receive any compensation, and the case remained unresolved for several months.
75. In October 2002, unable to secure redress, the victim's family approached a national Twa organisation to intervene on their behalf. During its enquiries, the organisation was told by the prison Director that Mr. Biturira's death was his own fault for having gone into the latrine in the first place; that as a prisoner he had no rights; and that there was no right of compensation for his family. Further enquiries by the organisation revealed that although the local police had carried out a preliminary investigation, they had failed to forward the file to the local prosecutor by the time of the NGO enquiries.<sup>83</sup>
76. The organisation ensured that various different levels of the authorities were informed of the case, including the local police, the prosecutor, the provincial authorities, the higher police authorities, the Minister of Justice, and the National Human Rights Commission; however the case remained unresolved until 2004, when two individuals were charged with causing Mr. Biturira's death, including the prison staff member who had dropped the phone down the toilet and another prisoner who had, however, disappeared following his release from jail that year. In late 2004, over 24 months after Mr. Biturira's death, the case was transferred for a hearing at the District level tribunal, but was postponed due to the inception of reforms to Rwanda's judicial system. By early 2006 the District tribunal had acquitted the accused, but in June 2006 the prosecutor had launched an appeal to the Provincial level tribunal. This appeal is still waiting to be scheduled for hearing, but despite ongoing intervention by the NGO on its behalf, the victim's family have still to receive compensation.

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81 Unofficial translation of ST/HR/Rev.5 (Vol.I/Part 1) *Principle 34, of the Principles for the Protection of All Individuals Subject to Any Form of Detention or Imprisonment*, p. 275.

82 CAURWA, (2003), *Rapport Annuel 2003*, op. cit. p. 19; CAURWA (2004), *Rapport Annuel 2004*, op. cit., p.18; CAURWA (2006), *Rapport d'Activités Trimestriel avril juin 2006*, op. cit., pp.12-13.

83 Dossier No. RMP: 93899/S3/KD/NYV, RP: 997/7/03, as reported in CAURWA (2006), *Rapport d'Activités Trimestriel avril juin 2006*, ibid.

**V. Article 27 and Article 22 – Violations of the Twa’s identity rights and freedom of association**

**(a) Article 27 - Failure to recognise the Twa as a distinct ethnic group and an indigenous people**

77. The Committee has declared that: “The terms used in article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language”<sup>84</sup> In further interpretation of Article 27, the Committee has stated that: “Article 27 confers rights on persons belonging to minorities which “exist” in a State party”,<sup>85</sup> and that: “The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.”<sup>86</sup>
78. Despite the widespread recognition that the Twa are both a numerical minority and the “first inhabitants” of Rwanda,<sup>87</sup> the national authorities fail to recognise the Twa as a distinct ethnic group or as an indigenous people. For example, in its 2003 State report to the Committee on the Rights of the Child, the Government of Rwanda declared that: “Because of the social, cultural and political situation in Rwanda, there are no persons belonging to a minority or indigenous group.”<sup>88</sup>
79. As part of the process of unity and reconciliation being led by the authorities, and with a view to avoiding any repetition of the 1994 genocide, Rwandan law makes it an offence to refer to ethnicity. For example, Article 9(2) of the Constitution declares that: “The State of Rwanda commits itself to conform to the following fundamental principles and to promote and enforce the respect thereof: ...eradication of ethnic, regional and other divisions and promotion of national unity”.
80. Instead of identifying themselves ethnically, citizens are encouraged to identify themselves only as ‘Rwandan’. Organisations and individuals who refer to ethnicity are often labelled “divisionist” by the authorities, who claim that all Rwandans share a common language, religion and culture and that any differences are not ‘ethnic’ but the result of the colonial ‘divide and rule’ policy which was perpetuated by subsequent post-independence administrations. The Government argues that their policy has helped create stability within Rwanda; however respected observers have noted that the proscription against discussing ethnicity on the grounds that it is ‘divisionist’ is also used to silence political or social commentary by labelling it as ethnically motivated.<sup>89</sup>

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84 Human Rights Committee, *General Comment 23*, op. cit., para 5.1.

85 Ibid., para. 5.2.

86 Ibid.

87 The Twa identify and are identified by other Rwandans as ‘Twa’ and ‘Abasangwabutaka’ (“original inhabitants”); and as such are recognised as members of a distinct ethnic group. The principle of self-identification is well established: see, for example, Committee on the Elimination of Racial Discrimination, *General Recommendation No. 08: Identification with a particular racial or ethnic group* (Art.1, par. 1 & par. 4). 22/08/90. UN Doc. A/45/18, which states that: “*The Committee on the Elimination of Racial Discrimination, Having considered reports from States parties concerning information about the ways in which individuals are identified as being members of a particular racial or ethnic groups or groups, Is of the opinion that such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned.*”

88 Committee on the Rights of the Child, *Second periodic reports of States Parties due in 1998: Rwanda*, UN Doc. CRC/C/70/Add.22, 8 October 2003, para. 366.

89 See, for example, Human Rights Watch (May 8, 2003), *Rwanda Preparing for Elections: Tightening Control in the Name of Unity*. The Government has declared that ethnic reference can be a way of promoting “genocidal” tendencies. A 2003 Parliamentary Commission report accused several civil society organizations, schools and churches of promoting “genocide

81. While referring to ethnicity in Rwanda – by using terms like “Twa” and “Abasangwabutaka”<sup>90</sup> – has become politically sensitive for the Twa themselves, the State’s approach has been inconsistent. While some parts of government forbid it – claiming it is unconstitutional and “hinders reconciliation”<sup>91</sup> – others are known to openly make specific reference to such terms, including President Kagame. Of particular note is the debate surrounding Article 82(2) of the Constitution, which states that:

*The Senate shall be composed of twenty six (26) members serving for a term of eight years (8) and at least thirty per cent (30 %) of whom are women. In addition, former Heads of State become members of the Senate upon their request as provided for in paragraph 4 of this article. Those twenty six (26) members are elected or appointed as follows: ...eight (8) members appointed by the President of the Republic who shall ensure the representation of **historically marginalized communities** (emphasis added)*

82. In a 2004 national newspaper article, President Kagame was quoted as saying “As you are aware, Rwanda has experienced a long period of bad governance and the women and Batwa have been the main victims of this unhappy history. So, very soon I will execute my constitutional obligation in their favour.”<sup>92</sup> He was confirming his intention to nominate Twa and women to the Senate, after having these groups in mind while drafting of the Constitutional provision on appointing ‘historically marginalised communities’. Other national policy and programme documents have also made specific reference to the Twa.<sup>93</sup> Nevertheless, despite his public assurance, the President failed to nominate any Twa to the Senate.
83. Regarding the State’s treatment of the Twa, a recent NEPAD (New Partnership for African Development) Peer Review report noted that: “With respect to the Batwa minority, the approach adopted by the authorities was based on a policy of assimilation. There appears to be a desire to obliterate distinctive identities and to integrate all into some mainstream socio-economic fabric of the country.”<sup>94</sup>

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ideology and ethnic division” among Rwandans. As a result, the independent human rights organisation, LIPRODHOR (League for the Promotion and Defence of Human Rights), which had been critical of the government’s human rights record, was banned and six of its officials fled the country in fear of their security and arrest. The dissolution was widely condemned by the international community. The EU called on the government to ensure that those accused were deemed innocent until proven guilty, and asked for further clarification of the terms “ideology of genocide” and “divisionism”, urging the government to allow freedom of expression.

90 Rwandans often use the Kinyarwanda term ‘Abasangwabutaka’ to refer to the Twa, which literally translates as ‘original inhabitants’ – see Annex 1.

91 For example, the Ministry of Justice has stated that it is unconstitutional in a letter to the national Twa organisation, CAURWA (see section (b) below), while in a newspaper article the Executive Secretary of the National Unity and Reconciliation Commission is quoted as saying: “We are all Rwandans, so I don’t want to hear the phrase *abasangwabutaka* again, since it hinders reconciliation.” (see Annex 1).

92 The New Times, *Kagame to appoint Batwa Senators*, No. 587, Kigali, 20-21 September, 2004, pp. 1-2. See Annex 2.

93 For example, National Poverty Reduction Programme, Ministry of Finance and Economic Planning (June 2002), *The Government of Rwanda Poverty Reduction Strategy Paper*, p.73, para. 250. Also see paragraphs 54 and 55 *ante*. President Kagame has also nominated a prominent Twa activist to the national NEPAD commission.

94 NEPAD APRM (New Partnership for African Development African Peer Review Mechanism) (June 2006), *Country Review Report of the Republic of Rwanda*, op. cit., 51. The report went on to recommend that the Government initiate an in-depth dialogue with the Twa “since they are resisting the policy of assimilation which they claim to be victims of” (p.136). The Government response was that: “[The Twa’s] integration into the Rwandan social economic mainstream continues to be a voluntary but inevitable process necessitated by changing times. It’s important to mention that the government has never had a policy of assimilation, since that is comparable to socio-cultural genocide. As a community however, it is clear that a targeted response to their specific problems is recommended and government has already initiated programmes to do so.” (p. 137) However, at the time this Government response was written no such programmes were known to be in place.

84. The ACHPR Working Group has noted that the failure to recognise the Twa's ethnic and indigenous identity extends to the general population:

*Generally, the attitude of the rest of the population is that they would prefer the Batwa to settle down, abandon their traditional way of life and imitate their own way of earning a living. The Batwa, for their part, would prefer positive encouragement in order to affirm their rights before people try to convince them they are equal to the rest of society. Most Batwa are so marginalized and impoverished that they cannot envisage any change in their situation and integration programmes are insufficient to eliminate this situation.*<sup>95</sup>

85. The ban on referring to ethnicity not only violates the Twa's freedom of expression as guaranteed by Article 19 of the Covenant, it also contributes to the ongoing violation of their rights to land, resources, and culture, and obstructs potential dialogue with the State about addressing past wrongs. It creates obstacles for Twa advancement, as they are not starting on a level playing field with other sectors of Rwandan society, and policies directed at Rwandan society generally do not reach the Twa – as noted by the Government itself (see Section IV above). Any acts and omissions of Rwanda which lead to the forced assimilation of the Twa without regard for their ethnic and cultural distinctiveness constitute further violations of their rights as guaranteed by Articles 1 and 27 of the Covenant.

***Suggested question 9:*** *What measures has the State take to recognise the Twa as a distinct ethnic group and as an indigenous people?*

***Suggested question 10:*** *What measures has the State taken to specifically target Twa advancement while addressing the problem of (cultural) assimilation?*

**(b) Article 22 – Failure to legally register the largest national Twa representative organisation, CAURWA**

86. Article 22 of the Covenant guarantees the right to freedom of association. Rwandan law also protects this right, for example Article 35 of the Constitution states: "Freedom of association is guaranteed and shall not require prior authorization."
87. The failure by the authorities to allow reference to ethnicity and recognise the Twa as a distinct ethnic group and an indigenous people has also led to the direct refusal by the Government to legally register the country's largest national Twa representative organisation, because it uses the terms 'Twa', 'Indigenous' and 'Abasangwabutaka' in its name and statutes. This represents a violation of the State's obligations under Article 22 of the Covenant and Article 25 of the Constitution, as it prevents the Twa from forming and joining an association that seeks to represent their interests and promote their socio-economic development.
88. In June 2004, the President of CAURWA (Community of Indigenous People of Rwanda) received a letter from the Ministry of Justice (known as "MINIJUST") stating it could

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<sup>95</sup> ACHPR Working Group on Indigenous Populations/Communities (2005), op. cit., p.35.

not be legally registered as its name and statutes do not respect the Rwandan Constitution.<sup>96</sup> CAURWA is the largest national organisation representing Twa interests in Rwanda.<sup>97</sup>

89. CAURWA appealed against the MINIJUST decision to the Ombudsman, who replied that the terms 'CAURWA', 'Abasangwabutaka', and 'Autochtone' (the French word for "indigenous"), brought to mind Rwanda's bad history.<sup>98</sup> He further stated that CAURWA should revise its statutes in order to ensure and maintain unity and reconciliation and the fight against all forms of discrimination. Having found no redress with the Ombudsman, CAURWA continued its negotiations with the authorities, including informal and formal meetings with the Minister of Justice and other MINIJUST staff, and the National Unity and Reconciliation Commission.
90. Meanwhile, CAURWA received a further letter from the Ministry of Local Affairs (known as "MINALOC"), stating that it too would only give the organisation its annual legal registration after CAURWA had done "everything that has been asked in conformity with the Rwandan Constitution", and until such time as it has done so, CAURWA should stop all its activities.<sup>99</sup>
91. Despite being dated 9 November, CAURWA did not receive the MINALOC letter until 24 November 2006, shortly after the African Commission on Human and Peoples' Rights examination of Rwanda's country report, during which the Commissioners had made several references to the Twa. CAURWA's Director is a member of the African Commission's Working Group of Experts on Indigenous Populations/Communities, and he had presented the Commissioners with a 'shadow report' on the situation of the Twa which was used to form the basis of the Commissioners' questions.<sup>100</sup> According to a

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96 Letter from Edda Mukabagwize, Minister of Justice, to Juvenal Sebishwi, President of CAURWA, subject: "Personnalité juridique sollicité", Ref: 907/04.01/SC, dated 28/06/2005. Under current legislation, Rwanda operates a two-tier national registration process for national nongovernmental organisations. Permanent legal registration (known as "personnalité juridique") is accorded by MINIJUST. CAURWA had originally applied for their "personnalité juridique" in 2002. As this process is known to take some time, a second interim registration process (known as "acquis de droit" and "agrément provisoire") is administered by the Ministry of Local Affairs. This accords organisations with annual registration, which CAURWA successfully obtained in 2002 and 2003 after it was constituted as a nongovernmental organisation under Rwandan law.

97 CAURWA is a non-partisan non-profit making membership association that has both Twa and non-Twa members and beneficiaries and employs Twa and non-Twa staff. CAURWA's vision is "A country without discrimination or marginalisation, where all citizens enjoy equal social, economic, civil, political and cultural rights." Its goal is to strengthen the capacity of the Twa to enable them to actively participate in their socio-economic development and defend their rights in order to improve their living conditions. CAURWA's projects currently support over 140 cooperative associations (3,043 members) in farm and off-farm income-generating activities, adult literacy and children's school education, human rights and advocacy. CAURWA has an estimated 15,215 beneficiaries (46% of the national Twa population), and includes the European Commission and the United Nations amongst its international donors.

98 Letter from Tito Rutaremara, Ombudsman, to Juvenal Sebishwi, President of CAURWA, subject: "Conseil sur le problème nous soumis", Ref: OMB.03/629/10/04/UE, dated 08/10/2004

99 Letter from Protais Musoni, Minister for Local Administration, Global Development and Social Affairs to Juvenal Sebishwi, President of CAURWA, subject: "Agrément provisoire sollicité", Ref: 3884/07/043/11/04, dated 09/11/2004.

100 Jensen, M (2004), *IWGIA Report: The 36<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, Dakar, Senegal – 23<sup>rd</sup> November to 7<sup>th</sup> December 2004* (IWGIA, Denmark), pp. 5-8. Four Commissioners asked questions pertaining to the situation of the Twa in Rwanda, including Commissioner Babana (Mauretania), Commissioner Nyanduga (Tanzania), Commissioner Rezag Bara (Algeria) and Commissioner Chigovera (Zimbabwe). Commissioner Chigovera pointed out to the Rwanda State representatives that the Committee on the Elimination of Racial Discrimination has urged Rwanda to recognize the Batwa as indigenous peoples and to respect their rights as provided for under CERD (p. 6). He also pointed out that the African Commission has recognized the Twa as an indigenous minority that suffers marginalization and discrimination, and wanted to know what the government has done to improve their situation. He asked the State representatives to confirm if the rejection of CAURWA's legal registration had anything to do with the word "indigenous" as being perceived as divisive in Rwanda, pointing out that self-identification has been accepted as the basis for indigenous peoples and for their own cultural identification (p. 7).



report by another a member of the ACHPR Working Group, the Government representative replied that all Rwandans are indigenous, that the Twa's claims "are more imaginary than real divisions", that "the issue of the Batwa belongs to the books and not to the present reality", and that "the Batwa cannot go back to any forests".<sup>101</sup> The State representative also launched a personal verbal attack on CAURWA's Director.<sup>102</sup>

92. Despite the demand by MINALOC that CAURWA cease its activities, the organisation received verbal permission from MINIJUST to continue while it carried out a nationwide consultation with Twa communities and its membership over how to respond to the authorities' demands. During these consultations, Twa participants confirmed that they wanted to continue to be known as 'Twa' and 'Abasangwabutaka', that they thought CAURWA should keep its name and statutes, and that the authorities should accept this as neither term can be deemed 'divisionist' or promoting a 'genocidal' ideology.<sup>103</sup> They also called on the authorities to address the problems of Twa land expropriation, access to education and healthcare services.
93. A welcome development occurred in June 2006, when MINALOC granted temporary registration, but this was only until 8<sup>th</sup> December 2006. Thus, the issue of CAURWA's permanent legal registration remains pending and unresolved.

***Suggested question 11:*** What measures has the Rwandan Government taken to accord permanent legal registration to CAURWA (Community of Indigenous People of Rwanda), thus ensuring that the Twa's rights to freedom of association, as guaranteed by Covenant Article 22, are respected in fact?

## **VI. Conclusions and Recommendations**

94. The rights of the indigenous Twa of Rwanda to freely dispose of their natural wealth, to be secure in their means of subsistence, and to practice, enjoy and maintain their culture, as guaranteed by Articles 1 and 27 of the Covenant are neither recognised in law nor respected in fact. The Twa have been completely dispossessed of their traditional lands, territories and resources and have been denied their means of subsistence on an ongoing basis.

***Suggested question 1:*** What specific measures (legislative, administrative, other) has the Government of Rwanda taken to give effect to the rights of indigenous Twa as guaranteed under Articles 1 and 27?

95. The denial of access to conservation areas previously established on traditional Twa lands and territories represents a continuing violation of the Twa's rights as provided for in Articles 1 and 27. The Twa's right to participate in decisions that may affect them concerning the management, use and benefit-sharing of these areas is neither guaranteed in law nor respected in practice. The Twa are no longer able to practice their traditional livelihood and culture based on forest-dwelling hunting and gathering, and their survival as a distinct people is severely threatened.

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<sup>101</sup> Ibid, pp.7-8.

<sup>102</sup> Ibid. p. 7.

<sup>103</sup> CAURWA (August 2004), *Rapport final de la Consultation Nationale sur la question du nom et statuts de la CAURWA*, p. 2

***Suggested question 2:*** What specific remedial measures has the Government of Rwanda taken to provide for the restoration of an adequate land and resource base in which the Twa can attain security of person and property, continue their culture and way of life, and freely pursue their own economic, social and cultural development, and does it intend to compensate the Twa for the loss of their traditional lands, where for factual reasons these cannot be returned?

96. Unable to access their ancestral lands and practice traditional cultural and economic activities, the Twa now perceive their pottery and dancing as the principle expression of their cultural integrity and ethnic distinctiveness, as well as their main source of income. However, Rwanda's recently promulgated land law threatens the Twa's access even to clay, an essential natural resource in pottery production, by declaring previously communal land as state-owned and managed, and prioritising agriculture on these lands.

***Suggested question 3:*** What measures has the Government of Rwanda taken to ensure that the Twa continue to enjoy access to and use of land and other resources, for example clay deposits, in order to carry out cultural and economic activities guaranteed under Article 27 of the Covenant?

97. Very few Twa individuals currently own land, and their extreme landlessness is a root cause of the severe poverty, marginalisation and discrimination they experience. The majority of Twa land-holders do not practice cultivation on their land, however the land law allows for state expropriation of land that is not used "in a productive way", which is deemed to include agriculture and animal-husbandry.

***Suggested question 4:*** What measures has the Government of Rwanda taken to give effect to the Twa's rights to land and to participate in decisions that may affect them, including prior consultation and free and informed consent, particularly with regard to possible expropriation of non-agricultural land?

98. Rwandan law fails to address the systematic illegal expropriation of Twa land by Bantu neighbours and local authority representatives. Pervasive discrimination in Rwandan society means that malfeasants often steal Twa land with impunity, leaving the Twa unable to obtain legal redress because of their extreme poverty and social isolation.

***Suggested question 5:*** How does the Government of Rwanda propose to address the high rates of illegal expropriation of Twa land, and what remedies and special measures has it put in place through which the Twa can challenge such theft or which require the State to intervene on their behalf?

99. The Twa experience systematic discrimination in the form of unequal treatment and racial stereotyping from other sectors of Rwandan society and the State, leading to extreme social isolation.

***Suggested question 6:*** In accordance with Articles 2 and 26 of the Covenant, what specific action has the Rwandan Government taken to diminish the conditions which have caused and help to perpetuate discrimination against the indigenous Twa of Rwanda and to enforce existing national legislation that currently prohibits such discrimination?

100. The Twa's situation is considerably worse than the national population, particularly with regard to access to health and education services, and the Twa experience disproportionately worse living conditions than the rest of Rwandan society. The Twa's poverty and social exclusion create a vicious circle, each reinforcing the other, perpetuating their impoverished and marginalised situation and ensuring that their levels of participation in Rwanda's social and political affairs is disproportionately low.

***Suggested question 7:*** In accordance with Article 2 of the Covenant, what specific measures (administrative, judicial, other) is the Rwandan Government taking to address the specific problems experienced by the Twa, particularly Twa women and children, and to address the Twa's low levels of participation in Rwandan society and public affairs?

101. The Twa face severe difficulties in accessing judicial and other remedies in Rwanda, and further violations often occur in their search for justice, such as arbitrary arrest and detention. Several documented cases reveal systematic violations of the Twa's rights to a fair trial and impartial hearings, particularly related to land expropriation cases.

***Suggested question 8:*** In accordance with Articles 2, 14 and 26 of the Covenant, what has the Government of Rwanda done to ensure the Twa enjoy equal treatment and equal access to justice, including effective and accessible domestic remedies, and that further violations of Twa rights do not occur as they seek judicial and other redress?

102. The Rwandan Government fails to recognise the Twa as a distinct ethnic group and an indigenous people, and appears to be adopting a policy of (cultural) assimilation. Forced assimilation of the Twa without regard for their ethnic or cultural distinctiveness constitutes a violation of their rights guaranteed by Articles 1 and 27 of the Covenant. The national ban on reference to ethnicity constitutes an obstacle to Twa advancement, further compounds the violations of their rights under Articles 1 and 27, and represents a violation of their right to freedom of expression, as guaranteed by Covenant Article 19.

***Suggested question 9:*** What measures has the State take to recognise the Twa as a distinct ethnic group and as an indigenous people?

***Suggested question 10:*** What measures has the State taken to specifically target Twa advancement while addressing the problem of (cultural) assimilation?

103. The Rwandan Ministry of Justice has refused to register the largest national Twa representative organisation, until it omits the words 'Twa' and 'indigenous' from its name and statutes. This failure represents a violation of Article 22 of the Covenant as it prevents the Twa from forming and joining an association that seeks to represent their interests and promote their socio-economic development.

***Suggested question 11:*** What measures has the Rwandan Government taken to accord permanent legal registration to CAURWA (Community of Indigenous People of Rwanda), thus ensuring that the Twa's rights to freedom of association, as guaranteed by Covenant Article 22, are respected in fact?

## In brief Sixty five onfess

By Magnus Mazimpaka

Gitarama- Sixty five residents of Muhanga district, Gitarama province have openly confessed their role during the 1994 genocide.

This was during a mass organized by the ADPR Church and was attended by about five hundred residents.

The Mayor of Muhanga district, Didas Bimanyimana, thanked those who testified and urged them to sensitize others.

Muzonyi ADPR diocese has played a big role in sensitizing and mobilizing its followers to reveal their role in the 1994 massacre.

# 'Do not use the term 'Abasangwabutaka'

www.newtimes.co.rw

By Magnus Mazimpaka

Umutara-The Executive Secretary of the National Unity and Reconciliation Commission, Fatuma Ndagiza (pictured right), has asked residents of Rukara District to desist from using the expression abasangwabutaka (original inhabitants), which generally refers to the Batwa ethnic group.

She said this while visiting

unity and reconciliation associations that support her commission in Umutara Province.

"We are all Rwandans, so I don't want to hear the phrase 'abasangwabutaka' again, since it hinders reconciliation," Ndagiza warned.

Ndagiza further said that if this persisted, it would become the new basis for discrimination in the country, yet all Rwandans are set to fight discrimination. During the function, Ndagiza

donated a total of Frw 500, 000 to the Abanyarwanda unity and reconciliation association and a further Frw 500, 000 to one of the orphanages in the area.

**"We are all Rwandans,  
the phrase  
'abasangwabutaka'  
hinders reconciliation."**



## Annex 2

Article in The New Times, 20-21 September 2004.

# Kagame to appoint Batwa Senators

By Silver Bugingo

President Paul Kagame has confirmed that he would early next year nominate persons from the Batwa ethnic group to fill some of the remaining six Senate posts, in a bid to involve them in the mainstream politics of the country.

Kagame made the

revelation while reacting to a recent question on whether he personally believes that there are 'historically marginalized communities' as envisaged in new Rwandan Constitution and whether he would consider them for Senatorial appointment. "That is obvious. I personally participated in

the constitutional-making process and ensured that the emancipation of the marginalized communities was constitutionally provided for," he noted adding that he would soon fill the vacancies from among the Batwa and women groups.

Article 82 (c) confers discretionary powers to the President of the Republic

of Rwanda to appoint eight of the twenty-six member Senate, from among the 'historically marginalized Rwandan communities'.

The communities are not, however, specified in the Clause but the President said that the Batwa ethnic group and women have

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## Kagame to appoint Batwa Senators

From Page 1

historically borne the brunt of political discrimination more than any other category of the Rwandan population.

"As you are aware, Rwanda has experienced a long period of bad governance and the women and Batwa have been the main victims of this unhappy history. So, very soon I will execute my constitutional obligation in their favour," he said.

Speculation about whom the President is likely to elevate to the title of Senator among the handful elite Batwa, are mixed. An independent source that is well versed with the political terrain hinted at Elie Mpayimana, a journalist by training and former Commissioner with the National Unity and Reconciliation Commission as the most suitable candidate for the Senate seat.

Others think that if president happens to appoint more than one person from the Batwa community to the legislature, Zephyrin Karimba, a Director General for a Local Batwa Minority rights group (CAURWA), could also land the high profile job. However, other pundits have are reserved on

should, therefore, be allowed to stay in the Gishwati and Nyungwe forests to continue their traditional food gathering and hunting activities for livelihood," one official noted on condition of anonymity.

Though the President was not categorical on whether he would divide the vacancies between the beneficiaries, political pundits believe that the womenfolk have comfortably been elevated to very high decision-making positions in all the three arms of the state and other statutory bodies that they would not grumble if they were not considered for the Senate posts.

Besides being the country with the highest percentage of Women Parliamentarians in the world at 49.2%, Rwanda has reasonable women representation in the Cabinet with four full Ministers and five State Ministers among whom is the most senior cabinet minister according to Rwandan protocol, the Minister for the Presidency, Solina Nyirahabimana.

Other senior women cabinet members holding key portfolios are Edda Mukabagwiza for Justice, Drocella Mugorewera for Lands