

SUBMISSION TO THE HUMAN RIGHTS COMMITTEE



Minority Rights Group (MRG)

African Initiative for Mankind Progress Organisation (AIMPO)

Women's Organisation for Promoting Unity (WOPU)

Review of RWANDA

List of Issues Prior to Reporting (LOIPR)

Focus on the Right to Participate in Public Affairs and the Freedom of Peaceful Assembly and Association in Rwanda with a particular focus on the situation of Historically Marginalised People (HMPs) the indigenous Batwa.

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I. ABOUT SUBMITTING ORGANISATIONS

Minority Rights Group is an international NGO working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC), observer status with the African Commission on Human and Peoples' Rights (ACHPR) and is a civil society organisation registered with the Organisation of American States (OAS).

African Initiative for Mankind Progress Organisation (AIMPO) is a local organisation in Rwanda with its head office in Kigali, Rwanda, that strives to advance the rights and interests of Historically Marginalised People (HMP), formally known as Batwa communities in Rwanda. Its mission is to: 1) promote the individual and collective rights of HMP/Twa Communities, 2) facilitate sustainable development in HMP/Twa Communities and 3) accelerate the Social, Political and Economic Integration of Twa Communities in Rwandan society. In its operations, AIMPO covers the sectors of Musanze, Kinigi, Nyange and Shingiro in Musanze District; Bigogwe, Kabatwa, Mukamira, Muringa and Shyira in Nyabihu District; Manyagiro, Byumba and Miyove in Gicumbi District; and Kigali City.

Women's Organisation for Promoting Unity (WOPU) is a local organisation with an office in Kigali, Rwanda. Since its inception in 2013, WOPU has been striving to eradicate extreme poverty and hunger among Historically Marginalised People, with emphasis on women, through advocacy on various programmes adopted in Rwanda. In its operations, WOPU mainly covers the sectors of Butaro, Kinyababa and Cyanika in Burera District in Northern Province; sectors of Gatunda, Tabagwe and Karangazi in Nyagatare District; Nyagihanga, Ngarama and Muhura in Gatsibo District; and Kigali City

II. BACKGROUND

1. Rwanda is a State Party to numerous international and regional human rights instruments, including at the regional level the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and the Protocol to the African Charter on Human and Peoples' Rights on the establishment of the African Court on Human and Peoples' Rights¹. Rwanda is also a party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW). Rwanda is, however, not yet a party to the Convention on Enforced Disappearances (CED)².
2. Rwanda is a state party to the International Covenant on Civil and Political Rights (ICCPR), having acceded to it on April 16th, 1975. It has also acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (CCPR-OP2) on December 15th, 2008. Rwanda is not, however, a party to the ICCPR's First Optional Protocol, which allows individuals to petition the Human Rights Committee if they believe their human rights have been violated by the state³.
3. The Batwa (also known as "Twa") are an indigenous people living across the Great Lakes Region in Uganda, the Democratic Republic of Congo, Burundi and Rwanda. Following the 1994 Genocide, the Rwandan government, through **Law Number 47/2001 on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism**, informally known as "the Divisionism Law", decided to ban ethnic identity from public discourse and identity through the introduction of the collective term 'Historically Marginalised Peoples' or 'HMP' label as a method of collective identification. Introduced in the Constitution of Rwanda in 2003, the HMP category has no official definition⁴ and is often thought to apply unilaterally to 'all people left behind by history', including women, people with disabilities, Muslims, and the Batwa. According to the unpublished Senator's Report of 2019, the Batwa made up about 36,000 of a population of 12 million at the time⁵.

¹ Report of the African Commission's Working Group on Indigenous Peoples/Communities (2010). Report of the African Commission's Working Group on Indigenous Peoples/Communities: Mission to Rwanda 1-5 December 2008. p. 18.

² https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=145&Lang=EN

³ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=145&Lang=EN

⁴ Article 80(2) of the Constitution of Rwanda of 2003, as revised in 2015.

⁵ The Senate Commission on Social Affairs, Human Rights and Social Issues Senate report, 2019 'Overlooking the living condition of historically marginalised people in Rwanda' unpublished report, Rwanda Senator Chamber.

4. However, this law, despite positive objectives, adversely affects all domains of Batwa's lives. It leads to the denial of their existence and specific condition as a minority group, an indigenous people or as a separate marginalised community. Twa communities, activists, and civil society organisations can no longer mobilise around the Batwa identity and culture. This blanket category does not address the specific barriers to Batwa integration.
5. Over several decades, the Batwa were gradually evicted from their traditional lands owing to a combination of deforestation initiatives, conflict leading to violence, and conservation and development projects. The remaining forest-dwelling Batwa of what are now Volcanoes National Park, Gishwati Forest, and Nyungwe National Park in Rwanda were expelled as recently as 1994 without consultation, free prior and informed consent, or adequate compensation. These communities were integrated into Rwandan society at the lowest level, forced to adopt a sedentary way of life with inadequate state support and little, if any, resources.
6. The Batwa live in scattered villages where they form a small number of families. As a result of societal discrimination, the Batwa often practice intra-marriage, resulting in a higher frequency of genetic diseases.
7. Batwa currently face three main challenges: socio-economic deprivation, high unemployment and acute political marginalisation.
8. In Rwanda, the exclusion of Batwa is particularly important, and the implementation of the Batwa's constitutional rights remains poor. With no land or legal status, living in extreme poverty, Batwa exist on the fringes of Rwandan society. Discrimination against Batwa is high both at societal and institutional levels. Batwa are largely absent from decision-making organs and government structures, undermining their capacity to participate in the public and political life of the country. Currently the Twa have only one Senator, appointed in 2020, officially representing them in the national Senate. This position is one of the eight appointed by the President to represent the historically marginalised groups. The additional restrictions imposed by the existence of the "Divisionism Law" restrict the ability of the Batwa as a community to form any political parties or organisations based on their ethnicity or other factors that could be perceived as leading to division.
9. Under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the right of Indigenous people to self-determination establishes a right to own, use, develop and control the land, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, and to be effectively involved in decision-making processes that may affect their rights. By not being recognised as indigenous peoples, Rwanda creates conditions that result in a denial of the Batwa's rights and protections as laid out in UNDRIP, in a manner that also violates Rwanda's obligations under the Covenant.

III. FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION (Articles 21 and 22)

10. Rwanda has domesticated the rights to freedom of peaceful assembly and association, as outlined in Articles 21 and 22 of the ICCPR, through constitutional and legal provisions. Articles 35 and 36 of the Constitution of the Republic of Rwanda guarantee the right to freedom of association, enabling citizens to register community-based organisations to advocate for their rights.
11. However, Batwa civil society organisations, as well as community members, human rights defenders and activists, can no longer mobilise around the Batwa identity and culture and advocate for the specific rights of the Batwa as an indigenous people, which is a prerequisite for internal self-determination, guaranteed by the ICESCR and ICCPR Common Article 1, as it would be deemed a violation of the aforementioned Law 47/2001. Instead, they make use of the ‘Historically Marginalised Peoples’ or ‘HMP’ label as a method of collective identification. The term HMP does not address the specific barriers to Batwa integration, like participating in decision-making organs on matters that affect their rights and raising their concerns.
12. In 2004 the then Rwandan Justice Ministry refused to grant legal status to the Twa-rights NGO Communauté des Autochtones Rwandaises (CAURWA, Community of Indigenous People of Rwanda) unless it stopped identifying the Twa as Rwanda’s first inhabitants and stopped referring to Twa / Batwa people. The ministry said that the use of the word “autochtone” (“indigenous” in French) and the word “Batwa” violated the Rwandan Constitution. The government could not put their stamp of approval on CAURWA’s organisational mission and objectives because it has “Batwa” written all over it.
13. In 2007, CAURWA was forced to change its name to COPORWA (Community of Rwandese Potters), as the government refused to renew the charity license under the name CAURWA until it had dropped the word ‘indigenous’ from its title.⁶

IV. RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS (Article 25)

14. Article 54 of the Rwandan Constitution states that “(P)olitical organisations are prohibited from basing themselves on race, ethnic group, tribe, clan or other division.” The Government has stated that some political parties have been refused registration based on grounds of parties based on race, ethnic group or tribe and that do not reflect a unity of the Rwandese.⁷
15. There is almost a complete lack of representation of Twa in government. According to Article 82, paragraph 2 of the Rwandan Constitution, eight members of the Senate must be appointed by the president to ensure representation of historically marginalised groups. The minimum requirement to be a candidate is six years of education, effectively excluding

⁶ <https://minorityrights.org/communities/twa-2/>

⁷ HRC Report of the Independent Expert on Minority issues: Mission to Rwanda.

many Twa. Those candidates who meet the education requirements are rarely able to gain the support of non-Twa who are unlikely to vote for them. In the current composition of the Senate, there is one representative from the Twa Community, appointed by the President in 2020.

V. RIGHT TO NON-DISCRIMINATION (Article 26)

16. Rwanda has promoted unity and reconciliation among Rwandans through a series of programmes, in line with Article 10 of the Rwandan constitution of 2003 revised in 2015⁸ that provides that any form of discrimination is forbidden. However, Batwa have continued to face societal and institutional discrimination. For instance, in local government elections, Batwa who are candidates frequently face indirect discrimination and vilification during electoral campaigns. Many Rwandans still have an attitude of despising them, of not seeing them as genuine humans, and use racial slurs to address them. Batwa are commonly perceived and referred to within the Rwandan society as non-human beings, unintelligent, or backward and unreasoning people.⁹ This situation of vilification and discrimination has also been documented and reported in the Senator Report of 2019 on the living conditions of Historically Marginalised People in Rwanda.¹⁰
17. In state-facilitated national dialogue sessions like *Umushyikirano* that take place in Kigali, the capital city of Rwanda, every December of the Year and bring together all institutions, the private sector, the diaspora, and others, Batwa representatives and organisations are not invited to participate. Batwa representatives and organisations are not represented at national commissions that deal with national issues, such as the National Commission of Unity and Reconciliation, National Commission against Genocide and National Commission of Human Rights. Although the Constitution of 2003, as revised in 2015, acknowledges Historically Marginalised People (art 80.2), the Government does not recognise Batwa as a structurally marginalised group but considers them among the general category of the poor.
18. Additionally, since data is not disaggregated by ethnicity or indigenous status, the degree of discrimination is difficult to quantify and measure through official statistics. It makes it nearly impossible for Rwandan national authorities to assess if, where and when discrimination is an obstacle to the implementation of their policies for example to eradicate poverty.

⁸ Rwanda National Constitution of 2003 Rev 2015, Article 10: Fundamental principles The State of Rwanda commits itself to uphold the following fundamental principles and ensuring their respect, paragraph 2°, Eradication of discrimination and divisionism based on ethnicity, region or any other ground as well as the promotion of national Unity.

⁹ Report on the Living Conditions of Some Rwandans Disadvantaged Throughout History

¹⁰ Senator report, 2019 'Overlooking the living condition of historically marginalised people in Rwanda' unpublished report, Rwanda Senator Chamber.

VI. SUGGESTED QUESTIONS FOR THE GOVERNMENT OF RWANDA

- What concrete measures is Rwanda taking to minimise the discrimination of the Historically Marginalised People/Twa Community?
- Outline the progress authorities have made in implementing the Committee's 2016 recommendations concerning freedom of expression
- Outline the progress authorities have made in safeguarding the right to participate in public affairs of human rights defenders and members of the Historically Marginalised People/Twa Community.
- What affirmative action steps are being taken or put in place to ensure full or adequate representation of the Batwa as a special interest group in the Rwandan government and other decision-making bodies?
- In its Concluding observations on the fourth periodic report of Rwanda, the Human Rights Committee in Paragraph 48 observed that the Republic of Rwanda should strengthen its programmes to promote equal opportunities and access to services for the Batwa Community and increase its members' participation in decision-making processes and decisions that affect them. What steps has the government of Rwanda taken to fulfil this?