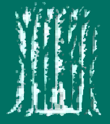
Land Rights and the Forest Peoples of Africa



Historical, Legal and Anthropological Perspectives

O. Overview: Analysis & Context 1. Burundi
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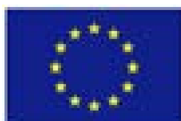
Land rights and the forest peoples of Africa
Historical, legal and anthropological perspectives

No 4 **Historical and contemporary land laws and their impact on indigenous peoples' land rights in Rwanda**

Chris Huggins

May 2009



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This report is the fourth country study in a series examining indigenous peoples' land rights in the forested countries of Africa. All the reports in the series are:

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Historical and contemporary land laws and their impact on indigenous peoples' land rights in Uganda: The case of the Batwa
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Historical and contemporary land laws and their impact on indigenous peoples' land rights in Rwanda

Chris Huggins[*]

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1 A contested history

There is much controversy about the early history of what is now the territory of Rwanda. Some sources suggest that the country's ethnic groups were originally socio-economic classifications, and are hence not truly ethnic at all.[1] Others take a more primordialist view of ethnic origin. According to one Batwa oral account:

> Our ancestors were the first to occupy this territory when it was totally forested... Their happiness and pleasure in their way of life and the adequacy of their resources in their environment were disrupted by the land tillers (Hutu) who came second... they overran the forest and our ancestors were forced to shift from time to time further away from the machete and hoe. By the time the . . . (Batutsi) arrived along with their herds of cattle the forest had nearly vanished.[2]

This version of history, incorporating waves of migration by different socio-ethnic groups in Rwanda, is not mentioned in historic accounts by the current Government of Rwanda. Official accounts do not discuss the distant origins of the territory, starting instead from the point at which the monarchy had already been established.[3] Whichever theory one ascribes to, however, it is clear that the Batwa were the earliest inhabitants and have always been seen by other communities as having a special indigenous status.[4]

The status of the Batwa as indigenous is acknowledged by the Rwanda population and by scholars. Customarily, prior to the development and expansion of the centralised Rwandan state, control over land used for agriculture or grazing was essentially obtained from the act of clearing that land. When land had been used previously by Batwa, the clearers of the land gave the Batwa small payments to acknowledge the previous claim of the Batwa to the area.[5]

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[1] See e.g. an interview with Basil Davidson by Martin Sommers, published in *De Morgen* 1 August 1994, cited in Pottier (2002) p 113

[2] Lewis and Knight (1995)

[3] For example, the government website on the history of Rwanda commences with the statement, 'Pre-colonial Rwanda was a highly centralised Kingdom presided over by Tutsi kings who hailed from one ruling clan.' Pages accessed at http://www.gov.rw/government/historyf.html on November 27th, 2008. See also Republic of Rwanda (1999)

[4] The issue of migration, and of whether pre-colonial society was 'harmonious', are particularly contested. Various authors discuss the role of migration in the history of Rwanda, including Vansina (2004) and Mamdani (2001). The National Museum of Rwanda in Ngoma town (formerly known as Butare) has permanent exhibitions indicating that the Batwa pre-date other groups.

[5] Des Forges (2006)

In addition, some local leaders would be ritually 'enthroned' by the Batwa. Likewise, according to the oral tradition of the royal court, the semi-mythical founding hero of the monarchy was nurtured by a Batwa.[6] The inclusion of a Mutwa in such a key role is intended to signify the consent of the indigenous population for the monarchic dynasty.

By the early 19th century, many Batwa had been forced out of their forest habitats due to a combination of deforestation by farmers and the socio-political ascendancy of the other ethnic groups in the country. Over time, most Batwa were to some extent incorporated into wider Rwandan society, albeit in a marginal position, generally as clients of wealthier patrons. Many linguistic and cultural differences between the different socio-ethnic groups in the country disappeared. However, some Batwa remained on the peripheries of society, inhabiting the remaining forests. The Batwa self-identify as a minority, and were identified as 'Twa' on national identity documents until ethnic differentiation on these cards was abolished after the genocide. They also retain a great number of songs, dances, oral narratives and other cultural artefacts which clearly identify their Batwa identity. The Batwa therefore meet all four of the recommended principles to be taken into account in any possible definition of indigenous peoples, as put forward by the UN Working Group on Indigenous Populations. [7]

1.2 Pre-colonial land tenure systems

Customary Batwa systems of land access or tenure were collective in nature, organised around the rights of specific clans, and based on concepts of seasonal land-uses over very wide areas of largely forested land. Those Batwa who were forced to leave the forests and survive on the margins of Rwandan society struggled to integrate their forest based customary land tenure system alongside the tenure systems of their more powerful agricultural and pastoral neighbours. As a result much of the Batwa vocabulary relating to their forest based land tenure seems to have disappeared, or been appropriated.

In agricultural systems, which have generally been associated with the Bahutu, land rights were vested in individuals recognised to have cleared the land, known as *abakonde*, who then granted parcels of land to members of their kin groups (lineages). The *abakonde* could also grant land to individuals outside of their kin group, who were known as clients, or *abagererwa*. In this case, access to the land often depended on regular payments in kind, especially through labour, from the clients to the *abakonde*.[8]

With the expansion of the Rwandan state, much land came under the control of the Mwami, and was administered by his representatives. Access to this land depended on political allegiance to the Mwami as well as the payment of tribute, often in the form of labour. Access to land could be withdrawn temporally or permanently, and was in general quite insecure.[9] At times, especially in the late 19th and the early 20th Centuries, labour requirements associated

[6] Chretien, J-P. « Pouvoir d'Etat, Autorite Mystique et Societe Civile », in *Revue Canadienne des Etudes Africaines* 15. Cited in Lewis and Knight (1995)

[7] These principles are (a) priority in time, with respect to the occupation and use of a specific territory; (b) the voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organisation, religion and spiritual values, modes of production, laws and institutions; (c) self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and (d) an experience of subjugation, marginalisation, dispossession, exclusion or discrimination, whether or not these conditions persist. See Stavenhagen (2004).

[8] Des Forges (2006)

[9] Andre (1998)

with this tenure system became extremely arduous and a cause of much anger. Even by the end of the nineteenth century, some inhabitants of what is now Rwanda opposed the Mwami's control over the land.[10]

These historically documented tenure systems do not match with the customary Batwa systems of land access. There are a number of reasons for this, with the primary reason being the numerical dominance of other ethnic communities in Rwanda.

Secondly, both colonial and Rwandan tenure systems tend to recognise and reward investments in land of human labour– such as the construction of buildings, or the clearing of forest for cultivation. The Batwa, when practicing their customary livelihoods in forested areas, leave few signs of 'investment' despite maintaining a regular presence and management over large areas, and deriving spiritual, economic, and social goods and services from their presence. As a result the forested areas customarily used by Batwa have been treated by other socio-economic groups as 'vacant', and their land claims have been ignored.[11]

In addition, socio-cultural differences may have meant that Batwa tenure systems did not 'translate' easily across socio-ethnic groups. Unlike most sedentary or pastoralist communities, Batwa communities do not have 'chiefs' or the equivalent, who would claim authority for decisions over land access over a particular territory. This is in stark contrast to the hierarchical socio-political systems which developed amongst the Bahutu and Batutsi in Rwanda.

Furthermore, when faced with competition or disputes, Batwa have historically utilised avoidance strategies in preference to warfare or negotiation.[12] This may have meant that boundary-formation, a natural result (or a tool) of disputes over resource-access between competing communities, may have been less significant than is the case in other communities.

However, this is not to say that Batwa did not have their own indigenous tenure arrangements. Amongst those Batwa who continue to base their livelihoods on forest products, particular clans are recognised to have rights to specific areas of forest.[13] Certain areas were identified as belonging to the Batwa, such as 'the great Twa swamp' (known as Mruschachi) in the North of the country.[14] The construction of houses clearly proves that the Batwa occupied, as well as 'used', their customary forest territories.

1.3 The origins of colonialism in Rwanda

While 'state structures' in the form of the monarchy, have existed for centuries in what is now central Rwanda, the colonial period commenced relatively recently. Located far from any sea port, Rwanda was one of the last parts of Africa to be colonised. Prior to the arrival of the Germans in Rwanda, the European powers attempted to retroactively legitimise the

[10] Des Forges (2006)

[11] African Commission on Human and People's Rights/ International Work Group for Indigenous Affairs (2005)

[12] Lewis, J (2000)

[13] Lewis, J (2000)

[14] Louis (1963) p 155

colonisation of the majority of the African continent through the 1884 Berlin conference. [15] The conference determined that states could only maintain claims over colonial territories if they could demonstrate an ability to actively and effectively control their territories, through securing treaties of cession with African leaders.[16] If this could not be demonstrated, the Berlin Conference empowered other states to claim colonial status over such territory.

According to the terms of an 1890 agreement between Germany and Britain, the area that is now Rwanda and Burundi was attached to German East Africa.[17] An Anglo–German agreement signed at Brussels on May 14, 1910, delimited the present Rwanda–Uganda boundary.[18] It was argued that local African leaders had ceded their territory to Germany through treaty. However, as described below, no treaties were signed with Batwa leaders.

It was not until 1894 that the first German entered modern-day Rwanda. The *Mwami* (King) died the following year, and the ensuing succession struggle allowed Germany to enter the country and claim the area as its colony. At this point, the territory which is now known as Rwanda was administered as part of a larger entity known as Ruanda-Urundi.[19] The Colonial regime supported the Mwami, and helped him to expand, through conquest and political manoeuvring, his control over what is now Rwandan territory.[20] The Mwami and his local subordinates (chiefs and sub-chiefs) hence continued to wield considerable power over all land during the colonial period.

1.4 Treaty-making in the colonial period

A treaty was made between the Germans and the Mwami Musinga in 1897.[21] Many people, of all ethnicities, sought to avoid coming under the control of the Mwami's agents.[22] Even those who paid some form of 'tribute' to the Mwami's agents may not necessarily have self-identified as his subjects. The Germans had to use threats in order to have the population fulfil some of the Mwami's requests.[23]

Those Batwa households who were firmly attached to the royal court, and performed specialised functions, such as entertaining, spying, or hunting, received land from a Mwami. A tiny minority were made sub-chiefs, and one clan of Rwanda was ennobled.[24] However, the vast majority of Batwa remained far removed from the royal court, geographically, politically and socially. Despite being approached by the colonial regime, they refused to talk to the

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[15] Participants in the conference included Britain, Germany, France, Belgium, Spain, Portugal and Italy, Russia, Turkey, Austria/Hungary, the Netherlands, Denmark, Norway, Sweden, and the USA.

[16] See e.g. Lindley (1926) and Shaw (1986)

[17] Agreement between the British and German Governments, respecting Africa and Heligoland, Berlin, 1 July 1890.

[18] Agreement between Great Britain and Germany Settling the boundary between Uganda and German East Africa. Signed at Brussels, 14 May 1910. British and Foreign State Papers, Vol. 107, Part I, 1914.

[19] Rwanda was established as separate sovereign country following the promulgation of United Nations General Assembly Resolution no. 746 (XV) of 1960, concerning the partition of the Belgian trust territory of Ruanda-Urundi into the two states of Rwanda and Burundi.

[20] See Steering Committee of the Joint Evaluation of Emergency Assistance to Rwanda (1996), Chapter 4

[21] Louis (1963) p 105

[22] Desforges (2006)

[23] Ruanda Jahresbericht 1913/14,I/A/8; cited in Louis (1963) p 158

[24] Lewis (2000), cited in Thiebou (2006)

Germans, simply withdrawing into the most remote areas they could. But they were also separated from the rest of the Rwandan population. Those living in the North of the country were particularly peripheral, living from hunting. Generally, 'both the Hutu and the Tutsi scorned the Twa, and regarded them as outcasts; a few Twa mingled with some Hutu.'[25] The Germans reported that the Batwa were 'despised, feared, hated by the other natives, and excluded from the community of eating.'[26]. Batwa almost never intermarried with other socio-political groups.[27] In 1902–1903, a German officer travelling the more remote parts of the country reported that the territory was at peace, but that 'the only trouble came from the persecuted Twa'.[28] This picture suggests that even those Batwa who submitted in some fashion to the will of the Mwami's chiefs, did so under duress.

No treaties were made between the colonial regime and the Batwa.[29] The Batwa as a socio-ethnic group cannot therefore be said to have ceded their rights, except to the extent that they could be validly considered subjects of the Mwami. Only a small group, such as those Batwa attached to the royal court, could truly be considered 'subjects'. But the extent of discrimination faced by most Batwa indicates that they were not truly assimilated or integrated into the state structure. Under colonial-era international law, therefore, German policies on land under Batwa customary control lacked any legal basis that would have been conferred from a Treaty or from Batwa status as subjects of the Mwami.

1.5 Land tenure under German rule

Let us now consider which implications these societal structures had in terms of land tenure. During the 23-year German colonial period, a policy of indirect rule was followed, and the Mwami and his chiefs continued to make most decisions over land tenure across the country. Land used for colonial enterprises, such as administrative offices or churches was treated differently– a 1885 decree established a dual system, with compulsory registration of occupancy rights for non-Rwandans, and customary tenure for Rwandans. Importantly, land registered under this system was recognised to represent a use right which had been gifted or sold by the *Mwami* – whose customary supreme authority over the land was therefore given a written legal status. The state continues to claim ultimate ownership of land to this day. However, this does not mean that the state enjoys unregulated, absolute control over the land within its borders. The State does, by virtue of sovereignty, have jurisdiction over its territory, which includes the power to define and regulate private property rights and certain powers of eminent domain; however, this does not invalidate the private property rights of its citizens. [30]

The conception of private property rights which was imposed by the Germans, and reinforced by the Belgians, was a European conception, and one which was founded upon a cultural bias towards agriculture.[31] Accordingly, the kind of rights recognised and granted were individual

[25] Louis (1963) p 107, citing German annual reports from before 1914

[26] Undated memorandum by Gudovious, the official German Resident of Rwanda, cited in Louis (1963) p 148. Given the racist views held by colonial agents at the time, particularly the 'Hamitic myth' regarding the origin of the Tutsi, it is important to be sceptical of 'primordial' readings of ethnicity in colonial documents. However, that does not mean that we should necessarily reject all the information available in colonial reports, rather that we should be cautious in our interpretation of it.

[27] Vansina (2004) p 36

[28] Louis (1963) p 121

[29] Louis (1963) p 107

[30] McNeil, K. *Common Law Aboriginal Title* (1989) cited in Gilbert (2006) p 26

[31] Gilbert (2006) p 24

rights. Collective rights to land, such as those exercised by the Batwa, were not recognised under colonial law.

1.6 Land tenure under Belgian rule and the post-colonial regimes

At the end of the First World War Rwanda became a Trust Territory under the League of Nations, which mandated Belgium as the administrative authority for Ruanda-Urundi. The years 1926–1933 are associated with the major administrative and economic changes imposed by the Belgian authorities. The Belgians codified some customary practices regarding land and cattle, transferring some customary practices into written form. The Belgian administrators gave enforcement powers over these regulations to local officials and to a system of 'native' courts. This had the result of creating serious land tenure insecurity for the vast majority of the population, including the Batwa.

Under the Mwami, there were usually three types of chief with authority over a 'hill' community, which may have provided a balance of power, or at least the opportunity for 'forum shopping' – local people could try to influence more than one of the chiefs in order to get what they wanted. In 1929, the Belgians ordered that these three positions be fused into one.[32] The result was that the system as a whole became more oppressive, with the agents of the Mwami more easily able to abuse their powers to evict or dispossess the less powerful.[33]

The Government enacted legislation to restrict access to areas of primary forest, putting in motion a process of exclusion which eventually culminated in Batwa communities being completely prohibited from continuing to live, hunt, or gather the products of the forest areas. For example, The Albert National Park, now the Volcanoes National Park, was created in 1929 and the Gishwati forest was declared a national reserve in the 1930s. Other areas peripheral to the forests were converted to state land.

[32] Prunier (1994)

[33] Andre (1998)

2 Independence and its consequences for Batwa land rights

The late 1950s saw increased anger at domination by the Belgian colonial regime and the Rwandan chiefs and sub-chiefs who administered the country. Following the 1959 'social revolution' that overthrew the *Mwami* and led to attacks on his local representatives, a referendum was held under the auspices of the UN to establish whether Rwanda should become a Republic or remain a kingdom: the population voted overwhelmingly for a republic. The 1961 legislative elections swept the main Bahutu party, the MDR-P, into power. On 1 July 1962, Rwanda attained independence and broke with Burundi, establishing the Republic of Rwanda. The constitution of 1962 recognised the land tenure reforms instituted by the Belgians as legally binding.[34]

While the validity of 'customary' land rights has been upheld in subsequent land laws, there have been no documented references to specifically Batwa land tenure systems in Rwandan land laws. This is important because there has been no valid legal provision which demonstrates a clear and plain intention to extinguish the indigenous title to land. These criteria – valid laws which demonstrate clear intent, for 'compelling and substantial' reasons – are the international legal standard, developed from jurisprudence around the world. [35] Batwa territorial rights therefore retain legal validity.

A 1976 decree-law abolished the legal power of the chiefs over land, but left the underlying dual structure of registered and customary systems intact, as local authorities enjoyed much of the power previously controlled by the chiefs. Land tenure insecurity continued to be an important issue, especially in terms of expropriation by agents of the state.

2.1 Batwa land losses after independence

The post-independence regimes also expropriated large amounts of land from citizens, without compensation particularly in the late 1980s and early 1990s.[36] Batwa were direct victims of uncompensated land expropriation by the state, and in their position at the bottom of the social hierarchy, they were preyed upon by other citizens who had been dispossessed of land by the state.

The fact that some Batwa had enjoyed a favourable relationship with the monarchy added to the generalised discrimination against them. Some of the land given to Batwa by the King or his agents was seized, without any legal basis or compensation, during the 'social revolution' of 1959.[37] Other fields were taken later, or were sold for token payments (often small amounts of food) by Batwa households suffering from food insecurity. This phenomenon has been witnessed in indigenous territories around the world.[38] Indigenous groups often interpreted such deals in terms of their customary tenure systems, which were founded entirely on the concept of common ownership. From a customary viewpoint, land will always be considered 'Batwa land'. From this perspective, only user rights could be sold. This fundamental cultural

[34] Bruce (1998)

[35] Gilbert (2006) p 73 and Xanthaki (2007) p 247. Notwithstanding these criteria, the UN Human Rights Committee has identified extinguishment of indigenous land rights as a human rights violation.

[36] Miller (2007)

[37] Lewis and Knight (1995)

[38] Gilbert (2006)

disconnect and misunderstanding means that many 'sales' should in fact be seen as manipulative, and hence legally dubious.

Outright theft was also a problem. For example, a Batwa community which had been given an entire hill in Mugambazi, Kigali Prefecture by the Mwami during the colonial period, saw some 75% of its land forcibly taken by Bahutu neighbours.[39] Few local administrators would consider the complaints of affected Batwa, siding with the Bahutu. Batwa rarely have recourse to impartial justice mechanisms, and continue to be victims of institutionalised discrimination.[40]

Many Batwa who had seen their fields taken from them moved to live with relatives who had managed to continue to live on land given to them by the monarchy. A 2004 survey of Batwa land ownership found that 43% of households were landless, compared to a landlessness rate of 12% within the general population of Rwanda. Of those Batwa households with land, 46% own less that 0.15 hectares. According to recent data, about 40% of the Batwa community members now rely on begging as their primary source of livelihood.[41]

Batwa land was not only expropriated through local mechanisms, this also occurred on a larger scale. The First and Second Republics established protected forest areas from which Batwa inhabitants were evicted. The Batwa hunters of Nyungwe area were evicted from the forest in 1988 when it was re-classified into a National Park and a military training zone. Some 4,500 Batwa living in Gishwati forest and what is now the Volcanoes National Park were evicted from these areas by the 1990s. The Batwa were not consulted before or during the evictions, nor did they receive compensation or assistance with resettlement.[42] The World Bank, which funded the project in Gishwati, conceded that, 'no resettlement program was foreseen under the project and the Batwa became internally displaced persons.'[43] In 1992, advocacy by the church and local NGOs resulted in the allocation of some 359 hectares of land for 420 Batwa families, but the Batwa argued correctly that this does not equate to fair compensation for the abuses suffered by them, and the loss of their access to honey, fruit, and other forest products.

The loss of access to and ownership of their traditional territories, in addition to the loss of their forest products, represent a major historical injustice. International standards provide for the relocation of indigenous peoples from their lands only as an 'exceptional measure' and only with their free and informed consent. [44] Where their consent is withheld, relocation can only take place only after public enquiries which provide the opportunity for effective representation of the peoples concerned.[45]

The relocation should be temporary, and in addition to receiving compensation, the community concerned should be moved to areas that resemble as closely as possible their

[39] Lewis and Knight (1995)

[40] African Commission on Human and Peoples' Rights (2005)

[41] Norwegian People's Aid (2007)

[42] Jackson (2002)

[43] World Bank, quoted in Kalimba, Z. *Etude Sur L'Impact Affectant sur les Peuples Autocthones Par Projet No: 1039-RW Finance par la Banque Mondiale dans la Prefecture de Gisenyi-Rwanda*. CAURWA. Cited in Griffiths and Colchester (2000)

[44] International Labour Organization (1989) Article 16.2

[45] Ibid.

home areas.[46] Arbitrary seizures of land from indigenous peoples are in breach of a range of international legal provisions in force for Rwanda, including article 17 of the Universal Declaration of Human Rights, which states that:

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

UN human rights treaty bodies have consistently found that compensation is an inadequate form of redress. This is because indigenous peoples have particularly profound relationships with specific territorial areas. Land is not only an economic resource but one that has social, political and spiritual dimensions.'[47]

CERD states that only when restitution of lands was 'for factual reasons' impossible, 'the right to restitution should be substituted by the right to just fair and prompt compensation.'[48] The Human Rights Committee of the United Nations and the International Law Commission have stated that restitution comes first among the forms of reparation.[49]

Article 21 (2) of the African Charter of Human and Peoples Rights also provides for the right to restitution, and adequate compensation.

Given the scarcity of remaining primeval forest in Rwanda, it is highly unlikely that areas similar to their traditional lands could be found, and restitution of their rights to occupy and use their traditional forest and marshland territories is arguably the only appropriate form of redress. Restitution of Batwa ownership rights in these areas is not in principle inconsistent with the maintenance of protected area status, and the State and the Batwa can negotiate specific management issues as part of the restitution process.

2.2 The position of the current government on the Batwa's indigenous status

The Rwandan government refuses to acknowledge that the Batwa are an indigenous people. The sensitivity of the issue relates to the Rwandan genocide, and specifically the targeting and stereotyping by Bahutu extremists of the Batutsi as 'foreigners' who originated elsewhere (and hence, according to this twisted logic, should be expelled or killed) .[50]

However, it is important to understand that a country's population may be composed of groups that have all migrated to the territory at some point in the past and such immigration in no way affects the rights of citizens. Nor does the presence of an indigenous population – either in the sense of the first occupants or as distinct cultural collectivities that self-identify as such – negate or otherwise impair the rights of citizenship.

[46] Cobo, *Study of the Problem of Discrimination*, U.N. doc. E/CN.4Sub.2/1983/21/Add.8, para558, cited in Gilbert (2006) p 144

[47] Hitchcock and Vinding (2004)

[48] CERD, General Recommendation No. 23: Indigenous Peoples, UN Doc. A/52/18, annex V, para. 5; cited in Gilbert (2006) p 147

[49] Gilbert (2006) p 153-154; Report of the International Law commission, 53rd session (23 April-1 June and 2 July-10 August 2001), cited in Kameri-Mbote (2006)

[50] There is insufficient space to address issues of identity in the genocide, but readers are directed to G. Prunier, 'The Rwanda Crisis: History of a Genocide, 1959 –1994', Fountain Publishers, Kampala, (1996); and Human Rights Watch/ Alison Des Forges, 'Leave None to tell the Story: Genocide in Rwanda'. Human Rights Watch, New York. (1999)

Ethnic discourse has been essentially criminalised in Rwanda. Article 33 of the Constitution states that, 'Propagation of ethnic, regional, racial or discrimination or any other form of division is punishable by law.' The text of the law on 'divisionism' is very broad, to an extent that it risks violating equal protection and freedom of expression guarantees under the Constitution.[51] The ban on ethnic self-identification is also a violation of the right to freedom of expression guaranteed by Article 19 of the International Covenant on Civil and Political Rights. In addition, the United Nations Committee on the Elimination of All Forms of Racial Discrimination (CERD) has frequently noted that the principle of non-discrimination requires states parties – of which Rwanda is one – to take account of the cultural characteristics of ethnic groups.[52] Recognition of indigenous rights is a requirement under international law.

As observed by the Eminent Panel of the African Mechanism's report on Rwanda, '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.'[53] The government has failed to acknowledge the special status of the Batwa and uphold its responsibilities to redress the abuses of Batwa rights, including land rights, under international and Rwandan law.

Arguably the most active and significant Rwandan organisation advocating for the rights of the Batwa was until recently called the Communauté des Autochtones Rwandais (Community of Indigenous Peoples in Rwanda, known by its French acronym, CAURWA). The government refused to provide this organisation with the legal status necessary for it to operate, arguing that its focus on the Batwa violates the Constitution.[54]

Faced with little alternative, but against the wishes of many of its members, CAURWA changed its name in 2007 to COPORWA (Communauté des Potiers Rwandais), or Organisation of Rwandan Potters.[55]

In April 2000, Rwanda's National Unity and Reconciliation Commission recognised that discrimination against the Batwa was so significant that it recommended affirmative action in favour of the Batwa in terms of education and health services.[56] Discrimination continues today.[57]Discrimination of this magnitude requires special measures to correct the massive disparity, as stated in Articles 1(4) and 2(2) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) Articles 1(4) and 2(2) and the general provisions outlawing discrimination of the African Charter on Human and People's Rights. These international legal norms also require that the government of Rwanda produces disaggregated data sets on socio-economic indicators, in order to assess the extent to which the Batwa have been historically and are presently marginalised.

[51] Under Article 34, Freedom of speech is guaranteed so long as it does not 'not prejudice public order and good morals, the right of every citizen to honour, good reputation and the privacy of personal and family life', or ' prejudice the protection of the youth and minors'. Republic of Rwanda (2003),

[52] See MacKay (2007)

[53] New Partnership for Africa's Development (2006)

[54] Human Rights Watch (2006)

[55] Pottery is a common occupation for the Batwa. See www.caurwa.org, accessed on 20 September, 2008

[56] African Commission on Human and Peoples' Rights (2005)

[57] Bureau of Democracy, Human Rights, and Labor (2006)

Importantly, the Batwa have 'seen themselves as a colonised people: first by agriculturalists, then by pastoralists in many areas, and finally by Europeans.'[58] This self-identification as a colonised people is highly significant, given the fact that no codified land tenure system specific to the Batwa survives today. As individuals, extended families or as a larger community, the Batwa continue to define themselves in terms of their socio-ethnic identity. They are also defined as such by other Rwandans, who continue to discriminate against them in everyday life.[59] The Batwa maintain cultural traditions, particularly in the form of song and dance, that identify their cultural origins and signify difference from other forms of Rwandan performance. These artistic expressions may include oral evidence of historical claims to land.[60] Similarly, under international law, Batwa rights to maintain their various relationships to their traditional territories must be protected, and it is the existence of such relationships that gives rise to rights of restitution or other remedies.

[58] Lewis, J (2000)

[59] Matthews (2006)

[60] In countries such as Canada, oral evidence in the form of song or traditional folk-history has been accepted in legal hearings over indigenous land rights.

3 Contemporary land law

Efforts to develop a comprehensive land law were first made in 1995 and gained momentum by the late 1990s, but the law was not promulgated until 2005. Several analysts have commented on the potential negative impacts of the 2005 Organic Land Law on smallholders.[61] This section will look only at aspects of the law which are likely to have particular impacts on Batwa households.

During meetings which were billed as 'open consultations' on the land law, a Ministry of Agriculture representative blocked a discussion of how Batwa livelihood rights were being undermined by the new land law, claiming (falsely, according to reports) that they had already been answered by previous consultations.[62] The result of this, in conjunction with the problems affecting the most vocal Batwa organisation, CAURWA, was that very few of the Batwa's concerns were officially acknowledged, let alone addressed, during finalisation of the land law. The UN Human Rights Committee has noted that 'indigenous populations should have the opportunity to participate in decision-making on matters that concern them.'[63] The Committee has also stated in General Comment 23 (50) that such participation should be *effective* rather than merely token. The CERD has also emphasised the importance of ensuring the 'informed consent' of indigenous groups over issues affecting their land rights.[64] Though the consultations between the Rwandan government and civil society regarding the land law were fairly extensive, it is clear that the 'informed consent' of Batwa communities has neither been sought nor given regarding key aspects of the land law.[65]

Few if any references are made to indigenous rights of use or management of land and natural resources in other Rwandan pieces of legislation.

3.1 The relationship between statutory and customary land tenure

Article 7 of the Organic Land Law states that customary and statutory rights are protected equally. Due to population pressure and social changes, most 'customary' land ownership in Rwanda has become highly individualised, contrary to most parts of Africa where customary tenure includes some form of collective ownership.

However, the case of the Batwa is unique in Rwanda, because customary common-property regimes, particularly relating to forest areas, remain relevant to Batwa communities. It is deeply unfortunate then that collective land ownership rights are not recognised under the law. Land registered under a recent pilot scheme was registered under the name of a single individual, though family members can claim an 'interest' in the land. The exact legal rights of those with such 'interest' have yet to be defined.

[61] See e.g. Musahara and Huggins (2005); Pottier (2006); Desforges (2007)

[62] Miller (2007)

[63] Mexico, A/40/49/40 (1994) cited in Xanthaki (2007) p 253

[64] Xanthaki (2007) p 254

[65] It is important to note that consultation does not refer only to discussions or negotiations, but also to mechanisms such as the establishment of local advisory boards, informed involvement in management plans, site visits, and traditional resource use studies. See Xanthaki (2007) p 256

For the Batwa, customary rights arguably include access to marshes in order to collect clay for pottery, a traditional craft that many Batwa see as part of their culture and identity, and access to forest for beekeeping, hunting and gathering. The 2005 land law put all marshes under the control of the state. In practice, access to many marshes has been granted to agricultural cooperatives. Batwa communities now lack easy access to clay and either pay for access to it, or risk being sanctioned under environmental legislation for taking clay from marshes.

3.2 Land consolidation

Article 20 of the Organic Land Law concerns the 'consolidation' of land, a controversial subject in Rwanda. Due to the fragmentation of ancestral lands through inheritance, and the buying and selling of land throughout history, most Rwandan families own several small parcels of farmland which tend to be located in different parts of the same locality. The different micro-climatic conditions, soil-types and hydrological conditions found in each location allow the household to spread the risk of crop failure, to manage agricultural labour requirements and to diversity agricultural production, for example by planting different crops in each field. However the Government has generally characterised traditional land-uses in negative terms. The 2004 land policy states that the consolidation of plots will be 'encouraged' to allow a more economical use of land resources.[66] Adjacent plots will be planted with the same crop to allow for larger-scale monoculture. The owners of the consolidated plots would then have to agree on a common crop, planting regime, and weeding and harvesting schedule.

Accordingly, Article 20 gives the Minister for Agriculture the power to 'approve' the consolidation of small plots. The wording of this Article suggests that the motivation for land consolidation would come from the residents themselves, and government staff also emphasise that the process will be voluntary.[67] However, there are concerns that in practice, local authorities may apply pressure on households and communities in order to essentially force them to consolidate their fields. Local people are frequently coerced into following supposedly 'voluntary' policies, through the threat of sanctions which do not have any legal basis.[68]

Two factors may make Batwa more vulnerable to the potentially negative impacts of any consolidation exercise. First, the Batwa are subject to discrimination by neighbours and by local administrators. They may be less able to negotiate the terms of agricultural production on consolidated parcels. Secondly, the Batwa tend to be especially vulnerable to food insecurity and extreme poverty. They rely heavily on diversified income-generating strategies and tend to have little in the way of savings or food stocks. This makes them ill-equipped to become involved in mono-crop agriculture, in which investments are made in the production of a single crop in order to gain a financial benefit at the point of harvest.

[66] Republic of Rwanda (2004) section 5.6.1 b

[67] See e.g. Musahara and Huggins (2005)

[68] See Human Rights Watch (forthcoming) and OSSREA, 'Rapid and Extensive Assessment of Performance Management Contracts – Imihigo'. OSSREA Rwanda Chapter, Kigali. July 2007

3.3 Subdivision of small plots of land

Article 20 makes it illegal to subdivide landholdings smaller than one hectare, for example through sale or through splitting a plot between two or more inheriting children. The Batwa, who typically own extremely small parcels of land, will be almost uniformly affected by this provision. This law will force Batwa households to pass the family landholding to only one, or some, of those legally and customarily entitled to inherit the family land.[69] This may prove to be a significant a source of disputes and economic complications within Twa households.

3.4 Potential Under-Representation of Batwa within Land Administration Systems

Land commissions exist at national, district, and Kigali City levels and local land committees are in the process of being established at the sector and cell levels. The Sector level land commission has a number of important responsibilities, such as confirming the land rights of local residents, and monitoring use of marshlands. It would therefore seem imperative that at least some Batwa representation was included in the sector committees, should Batwa citizens be found in the sector. However, no provision is made for Batwa representation. It is clear that international law requires, at a minimum, participation by freely chosen Batwa representatives.[70] The particular perspectives and vulnerabilities of Batwa households are likely to be overlooked. In addition, the requirement that the committee members have completed their secondary school education may also make it more difficult for Batwa, only half of whom receive any schooling, from being appointed to the commission.[71]

3.5 Access to marshlands

Article 29 of the Organic Land Law outlaws customary claims to marshlands, which are claimed as state land. Increasingly, marshes are accessed only by agricultural cooperatives which specialise in the production of a single commercial crop – typically rice, or maize. The Batwa find it increasingly difficult to access clay, and may find it difficult to join agricultural cooperatives, due to lack of money for membership fees, or general discrimination.

3.6 Registration of land

Importantly, Article 30 of the Organic Land Law states that Registration of land is 'obligatory'. No time frame is given for registration, and it is simply noted that procedures for registration will be developed by the Minister for lands. The land law is therefore contradictory, providing legal status for some kinds of customary land ownership on the one hand, whilst demanding registration of land on the other hand. The obligation to register land could in fact undermine local land rights, if the process for land registration was itself onerous. It is unclear how unregistered land claims will be treated, in theory and in practice.

Clearly, much rests on the nature of the land registration procedures under development, and the ways in which they will be implemented nationwide. Key issues, particularly in terms of Batwa land rights, involve the cost of registering a parcel, the safeguards against fraud during

[69] Customarily, only males inherit land in Rwanda, but women have been legally entitled to inherit since the promulgation of a law on succession in 1999

[70] See e.g. Articles 1, 25, 27of the ICCPR; Article 5(c) of the CERD; Article 20 of the African Commission on Human and Peoples' Rights, Articles 18 and 19 of the UN Declaration on the Rights of Indigenous Peoples

[71] Education statistics are provided in CAURWA (2004)

the registration process (especially due to the high rates of illiteracy amongst Batwa), and the extent to which past injustices will be addressed. Few Batwa have been able to pursue land claims in the formal justice system, and some may continue to be discriminated against in local dispute resolution mechanisms. Any system which involves significant costs, or exposes landowners to increased risk of dispossession, is unlikely to be utilised by the Batwa.

3.7 State powers to confiscate land

The Organic Land Law, under articles 72 to 77, grants the local administration powers to confiscate land – temporarily at first, but with the potential for permanent confiscation – if land is not utilised 'productively' and if measures are not put in place to ensure environmental protection. No compensation is offered when such land is confiscated.[72]

As the precise nature of productive use and environmental protection have yet to be adequately defined, these clauses could represent a major risk for Batwa households. The mention of 'specific plants certified by relevant authorities' is a reference to the policy of agricultural specialisation and commercialisation. Under this policy, households living in specific sectors are required to produce specific kinds of crops, District and sector level administrators have signed 'performance contracts' which commit them to particular levels of production of the particular crop.[73]

As mentioned above, evidence already suggests that compulsion is being used to ensure that these 'performance targets' are met. Any imposed shift from traditional agricultural practices to production of commercial crops is likely to involve considerable risks for the affected households.[74] Mono-cropping of commercial crops, which is being increasingly encouraged and in some places insisted upon by local administrators, puts an end to this range of risk-aversion and biodiversity conservation activities. As a chronically food-insecure group, the Batwa are particularly vulnerable to rapid changes in their production systems.

In conclusion, it is clear that the law will have potentially disproportionate impacts on the Batwa, and hence may not comport with non-discrimination and equal protection norms at both national and international levels. The Government of Rwanda is therefore required under international laws to put in place special mechanisms to protect its Batwa citizens from the unequal impacts of implementation of the land law.

3.8 Distribution of land to the landless by the State

Article 87 of the Land Law gives the state the responsibility to distribute land to 'those denied their right to landlordship', though this category is not defined.[75] The land policy states that land should be identified for the resettlement of the landless, but refers to the landless only in terms of the so-called 'old case' Batutsi refugees who fled the country in 1959 and the years that followed.[76] However, indigenous communities have a legal claim that, through

[72] Republic of Rwanda (2007)

[73] Asiimwe (2008a)

[74] Huggins and Musahara (2004)

[75] The term 'landlordship' apparently refers here to rights of leasehold. Organic Land Law suffers from an unclear use of vocabulary which is probably related to the process of translation between the three official languages (Kinyarwanda, English and French)

[76] While the vast majority of the 'old case' refugees were Tutsi, a small minority of Batwa people also fled Rwanda during the 1950s and early 1960s and may also be included in this category

discriminatory practices and laws which contravene international human rights conventions, they have been denied their land rights. This argument could apply to both those evicted, from forested areas which were then categorised as national parks; and those who have lost access to land outside of the national parks. The latter group have suffered from discrimination by authorities when faced with land disputes; or were expropriated by the state without due process being followed and compensation being paid. These groups could all claim to have been denied a right to land ownership.

3.9 Constitutional guarantees

Given the many problematic aspects of the 2005 Organic Land Law, it is pertinent to examine the Rwandan constitution, which as the supreme body of law in the country provides some fundamental human rights guarantees. The Constitution does not make explicit reference to the Batwa, but it does make reference to 'historically marginalised Rwandan communities,' a phrase which was generally understood during the constitution-making process to refer to the Batwa. Article 14 states that the government will take special measures to assist 'vulnerable groups', though this category is not defined. Article 82 confers discretionary powers to the President of the Republic of Rwanda to appoint eight of the 26-member Senate, from among historically marginalised communities. The Constitution commits the government to 'building a State committed to promoting social welfare and establishing appropriate mechanisms for ensuring social justice'[77]

Article 51 of the Constitution provides protections for 'cultural traditions and practices.' This clause can be interpreted to guarantee Batwa rights to practice cultural traditions such as those which involve particular natural resources and territorial affiliation, such as hunting and gathering activities. The same article requires the State, 'to preserve the national cultural heritage as well as genocide memorials and sites.'[78] Cultural heritage encompasses a broad range of practices, including language, art, and sacred sites, and in the case of indigenous groups, is firmly embedded and linked to customary territories.

Unfortunately for the Batwa, none of these aspects of the Constitution, which bind the Government to protect and promote the rights of the Batwa, have been implemented. Since the Constitution was promulgated, members of the government claim that the Batwa are not included in the category of 'historically marginalised Rwandan communities'. The government has recognised that the Batwa need special assistance, but has yet to acknowledge that the Batwa continue to face institutionalised discrimination, and has been unwilling to give them a clear legal status. Due to the historical and contemporary injustice against the Batwa, and the extreme socio-economic hardship they face, the Batwa should be systematically included within the 'vulnerable' category as recommended by the report of the African Peer Review Mechanism, and as 'historically marginalised'.[79]

[77] Republic of Rwanda (2003), Article 9

[78] Republic of Rwanda (2003)

[79] New Partnership for Africa's Development (2006)

4 International human rights law and its consequences for Rwanda

Rwanda has ratified a number of relevant human rights conventions, including the *African Charter on Human and Peoples' Rights* , the *International Covenant on Civil and Political Rights (*ICCPR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and the Convention on the Elimination of All Forms of Racial Discrimination. Rwanda is also a party to the Convention on Biological Diversity (CBD). Rwanda voted in favour of *the United Nations Declaration of the Rights of Indigenous Peoples.* The Convention on the Rights of the Child, which Rwanda ratified in 1990, protects the rights of the indigenous or minority child to 'in community with other members of his or her group, to enjoy his or her own culture', which includes access to land and natural resources in the case of the Rwandan Batwa.[80]

4.1 General human rights legislation

The African Commission on Human and Peoples' Rights Working Group of Experts on Indigenous Populations/Communities has stated that because Article 1 of the International Covenants is part of international law, ratified by many African states, that 'there is an obligation on African states to honour rights granted to indigenous peoples under common Article 1 of the ICCPR and the ICESR as well as Article 27 of the ICCPR.'[81]

Article 1 of the ICCPR states that, 'in no case may a people be deprived of its own means of subsistence.' As described in section 2.2 above, the Batwa have lost lands due to state-sponsored dispossession and the state's failure to put in place anti-discriminatory measures to limit 'land-grabbing' and manipulative land transactions. This has deprived the Batwa as a community, and as individuals, of their primary means of subsistence, a situation which demands a remedy.

Under Article 15.1(a) of the ICESCR, governments are bound to respect the right of minorities to 'take part in cultural life.' The UN Committee on Economic, Social and Cultural Rights has stated that this right includes 'the right to benefit from cultural values created by the individual *or the community*' (emphasis added). This provides some legal support for indigenous claims to collective land rights (rather than individual rights to land) and access to clay and forest products. The UN Human Rights Committee has affirmed that if any activity is 'an essential element in the culture of an ethnic community', as pottery certainly is for the Batwa, then the criminalisation of this activity represents a violation of 27 of the ICCPR, which guarantees minorities the right to *'enjoy their own culture.'*[82]

Article 14 of the African Charter on Human and Peoples' Rights guarantees the right to property, though this right is conditional on the public interest. Rwanda's definitions of public interest differ from international best practice in significant ways. The law on expropriation provides a very broad definition of the public interest, and the Minister in

[80] Article 30 of the Convention

[81] MacKay (2007) citing Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities. Submitted in accordance with 'Resolution on the Rights of Indigenous Populations/Communities in Africa' Adopted by the African Commission on Human and Peoples' Rights at its 28th ordinary session. Copenhagen: AfCOM/IWGIA 2005, at p 78

[82] Xanthaki (2007) p 256

charge of Expropriation can declare other kinds of activities to be in the public interest. Third parties, such as private developers, can initiate expropriation, which will be implemented by the government. This 'market-led expropriation' represents a significant risk to the Batwa, and other Rwandan citizens.

Article 20 of the African Charter on Human and Peoples' Rights protects the collective property rights of 'peoples' and is not explicitly condition by the public interest requirement. The right of people to own property in association with others is enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).[83] This binds the Government of Rwanda to develop legislative means for the traditional collective land rights of Batwa communities to be secured.

Article 21 of the ACPHR guarantees communities the right to locally-occurring natural resources and binds states to adequately compensate communities for loss of access to natural resources. The text specifies that where land has been lost, 'the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.' This article supports aspects of the ICESCR and CBD noted above, as well as Article 5 of the CERD.

4.2 International Environmental Legislation

The African Convention on the Conservation of Nature and Natural Resources, which Rwanda ratified in 1979, is intended 'to preserve the traditional rights and property of local communities and request the prior consent of the communities concerned in respect of all that concerns their access to and use of traditional knowledge'.[84] Free, prior and informed consent is also a requirement under the ICERD and ILO Convention 169.[85]

Art. 8(j) of the CBD, to which Rwanda is a Party, requires the Rwandan government to elaborate and implement access agreements with the Batwa to allow access to areas customarily utilised by Batwa communities and to allow sustainable use of forest products.

Article 10(c) of the CBD binds the signatory parties to 'protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.' The government is therefore legally required to *encourage* those traditional Batwa practices – such as hunting, gathering, beekeeping and other activities customarily practiced within forested areas which are now protected areas – which are compatible with conservation and sustainable use.

4.3 Legislation designed specifically to protect indigenous rights

ILO Conventions 107, and more recently 169, provide specific protection for indigenous rights, and ILO monitoring bodies have confirmed and broadened this protection in their decisions. Rwanda is not a signatory to ILO Convention No. 169, but this convention is nonetheless of significance for the situation faced by the Batwa. As argued by legal experts,

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[83] Gilbert (2006) p 98

[84] African Commission on Human and Peoples' Rights (2007)

[85] Gilbert (2006) p 81

the convention is 'meaningful as part of a larger body of developments that can be understood as giving rise to new customary international law with the same normative thrust.'[86]

Importantly, Convention 169, in its optional protocol, provides for the recognition of indigenous land tenure systems.[87] Given the lack of attention paid to Batwa land tenure systems in the past, this aspect of customary law requires the Government to acknowledge the existence of Batwa land tenure systems in general, and to recognise the specific Batwa land claims under this system. In relation to this, ILO Convention 169 protects indigenous peoples from manipulation used to appropriate their land.[88] This protection should be provided in Rwanda, given the widespread complaints from Batwa that they have been tricked into selling land in return for small tokens. Redress should be provided for Batwa households affected by these kinds of manipulative transactions.

International customary law also demonstrates that even historical injustices committed decades in the past should be redressed, for example through restitution.[89] Despite the general principle that law should be non-retroactive, redress should be provided for historical injustices, even if they are far beyond the national equivalent of the statute of limitations. This is because the historical injustices in question have led to continuing violations of basic rights. International legal jurisprudence has shown that 'cessation of an ongoing violation is an essential element of the right to an effective remedy.'[90]

4.4 Enforcement of international law in Rwanda's courts

Rwandan law establishes the primacy of international legal instruments over domestic legislation. The President negotiates and ratifies international treaties and agreements, though the ratification of certain treaties is subject to prior authorisation by Parliament.

Rwanda has frequently delayed in fulfilling its reporting responsibilities or legal domestication processes under international treaties, and has cited lack of resources and capacity as the reason for these delays.

International experts are unaware of attempts to take the Government to court in Rwanda over its inability to fulfil its duties under international law.[91] However, some cases have been launched on the basis of the Constitution, though not on matters pertaining to land issues or the Batwa.[92] Access to justice is an issue, especially for the poorer members of society, due to the costs involved in retaining legal representation.

[86] Anaya (1996) p 49

[87] Optional Protocol, December 16, 1996, 999 UNTS 302; cited in Anaya (1996) p 106

[88] Gilbert (2006) p 98

[89] Kameri-Mbote (2006)

[90] Gilbert (2006) p 159

[91] Email communication with international legal reform and human rights organisation with a Kigali office, 4 November 2008

[92] Email communication with international human rights organisation with a Kigali office, 14 November 2008.

5 Conclusions and recommendations

The ability of the Batwa to exercise their rights over their customary lands and territories is important not only from the perspective of justice, but from a development viewpoint as well. Indeed, the survival of the Batwa as an indigenous cultural group is threatened by their current status as landless or extremely land-poor.

The unwillingness of the Government of Rwanda to recognise the Batwa as indigenous, and the risks that Batwa organisations will be labelled 'divisionist' for using ethnic terminology, have meant that few policies or programmes exist to protect and promote Batwa rights to land, natural resources, and cultural practices. The ideological objections of the ruling party to the Batwa claim to indigenous status may be overcome if less emphasis is publicly placed on the idea that the Batwa were the 'first owners of the land', and more is placed on their status as a particularly vulnerable group, and their self-identified cultural distinctiveness in Rwanda as an essentially formerly forest-dwelling population. The Batwa's indigenous status in no way threatens the rights of other Rwandan citizens under the constitution and laws of the country.

Some indigenous communities have argued that while they enjoy indigenous status, they should also be entitled to the rights of minorities, as the two categories overlap significantly. While continuing to seek indigenous status, Batwa communities and their representatives and advocacy organisations would be helped if the constitutional term 'historically marginalised groups' was given a precise legal definition. This definition would bring clarity on whether the Batwa are legally included in this category.

International legal experts agree that the majority of indigenous claims to land are in broad agreement with current international legal standards, as discussed in section 4 above. International customary law requires the Government to acknowledge the existence of Batwa land tenure systems. In conjunction with Batwa rights organisations, local and Rwandan civil society organisations specialising in land rights, the government should conduct micro-level research into traditional Batwa land tenure systems and establish how those systems have been affected over time.

Following criticism by the NEPAD African peer review mechanism, steps were taken by the Government to ensure that Batwa households were identified and prioritised for access to some social welfare programmes. As yet there are no programmes or policies related to land rights, though some Batwa families appear to be gaining access to housing and small parcels of land through ad hoc settlement programmes which primarily target genocide survivors. Local media have reported that such programmes are being delayed due to lack of resources.[93]

Recommendations

- It is clear that the Batwa will only be able to continue to advocate for their rights if increased and sustained diplomatic and international support is forthcoming. Donor states, UN and African human rights bodies should insist that the Government of Rwanda fulfil its obligations under national and international law.

[93] Mudingu (2008)

- The Government of Rwanda should recognise the Batwa as an indigenous group.
- As provided for under Article 87 of the Land Law, the Government should distribute land to the Batwa as a landless group. The government, along with Batwa communities, should use participatory and transparent methods to comprehensively 'map' the historic dispossession of the Batwa from their lands and devise appropriate and equitable remedies.
- A well-funded independent commission should be established to investigate the ways in which the Batwa have been denied access and ownership rights, from the pre-colonial period to the present day, and design mechanisms and benchmarks by which the denial of these rights can be redressed. As required by international law, the legal questions around Batwa land rights should be resolved according to indigenous customs, traditions and means of proof.[94]
- In conjunction with the findings of the commission discussed in the recommendation above, community-based initiatives should be immediately developed in full consultation and collaboration with Batwa organisations and communities to manage sustainable access to forest areas. These initiatives should not be a substitute to a more permanent resolution of the question of Batwa rights to forest environments, but should rather be intended as 'stop-gap' measures whilst permanent solutions are found.
- The fragile situation of wildlife in forested areas, especially the National Parks and reserves, will mean that access to these areas should be carefully planned using participatory decision-making systems. It will be important to recognise and address the diverse interests and livelihoods approaches inherent within Batwa communities. Key to the success of such approaches are transparency and impartial monitoring mechanisms.
- As noted above, modalities for affordable and sustainable access by Batwa pottery communities to clay should be developed. Batwa communities' rights to manage clay-wetlands should be restored, using sustainable production models, in order that clay can be made available to Batwa pottery associations at an easily affordable price.
- Given the particular status of the Batwa, the constitution arguably binds the government to create a similar Ministry or special, permanent mechanism dedicated to ensuring social justice for the Batwa.
- The definition of the public interest should be revised in keeping with international norms.
- The Organic Land Law should be revised, following consultation with Batwa representatives, in order to ensure that the specific land tenure systems of the Batwa and their rights to land and natural resources are protected.
- Training on indigenous rights and the specific case of the Batwa should be introduced for all land tenure professionals in Rwanda. Independent monitoring of the land registration process and special dispensation for indigenous households, will be necessary. The Government and donor organisations should provide Batwa-rights organisations with sufficient funds, access and other resources to provide awareness raising and monitoring services during the land registration process.

[94] For issues around indigenous forms of proof in international law, see Xanthakis (2007) p 283

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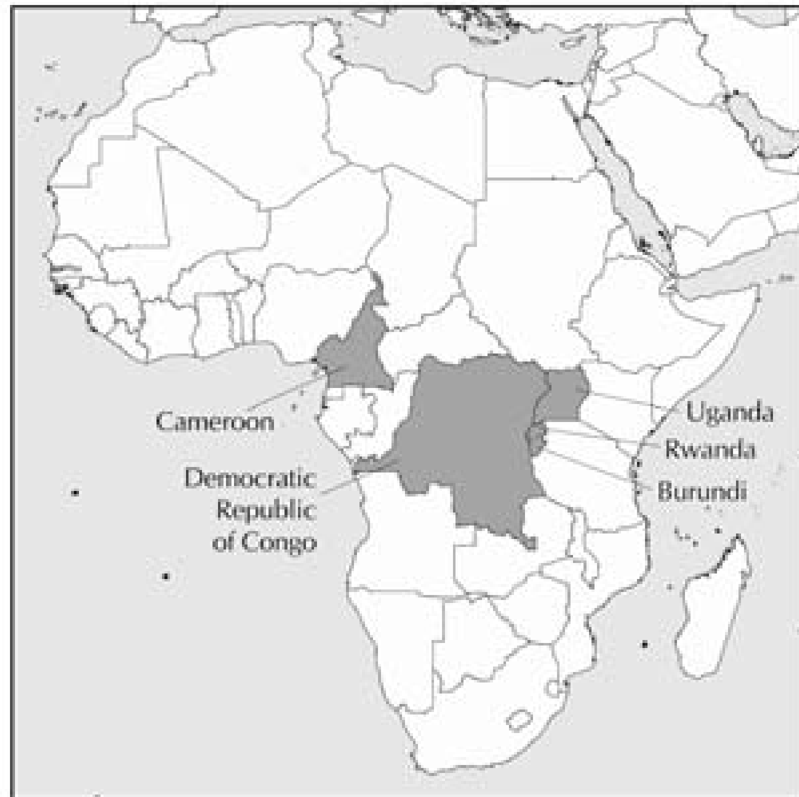
Timeline of historical and legal developments pertaining to land law in Rwanda

Year	Event
By early 1800s	Many Batwa forced out of their forest habitats due to deforestation by farmers and the socio-political ascendancy of the country's other ethnic groups
1884	**German protectorate**
1885	Decree established a dual system, with compulsory registration of occupancy rights for non-Rwandans, and customary tenure for Rwandans
1890	**Agreement between Germany and Britain: the area that is now Rwanda and Burundi was attached to German East Africa**
1894	**The territory, now known as Rwanda, administered as part of a larger entity known as Ruanda-Urundi**
1897	Treaty signed between Germany and the Mwami Musinga
1910	**Anglo–German agreement signed at Brussels on May 14 delimits the present Rwanda–Uganda boundary**
1916	**Belgian occupation**
1922	Part of League of Nations Trust Territory mandate of Ruanda-Urundi under Belgium
1926-1933	Major administrative and economic changes imposed by the Belgian authorities: codification of some customary practices regarding land and cattle; some customary practices transferred into written form
1929	• The Belgians order that the three types of chief positions existing under the Mwami be fused into one; • Establishment of the Albert National Park (now the Volcanoes National Park)
1930's	Gishwati forest declared a national reserve
1946	**United Nations Trust Territory under Belgium**
1959	'Social Revolution': some of the land given to Batwa by the King or his agents is seized, without any legal basis or compensation
1962	• **July 1, Rwanda attains independence; breaks with Burundi, establishing the Republic of Rwanda** • The 1962 Constitution recognises the land tenure reforms instituted by the Belgians as legally binding
1976	Decree-law abolishes the chiefs' legal power over land, but maintains the underlying dual structure of registered and customary systems

Year	Event
1979	Rwanda ratifies the African Convention on the Conservation of Nature and Natural Resources
Late 1980s - early 1990	Large amounts of land expropriated from citizens without compensation – Batwa are direct victims
1988	The Batwa hunters of Nyungwe area are evicted from the forest, which is re-classified as a National Park and a military training zone
By 1990s	Some 4,500 Batwa living in Gishwati forest, now the Volcanoes National Park, evicted from these areas
1990	Rwanda ratifies the UN Convention on the Rights of the Child
1992	Advocacy by the church and local NGOs results in the allocation of some 359 hectares of land for 420 Batwa families, but the Batwa argue correctly that this does not equate to fair compensation for the abuses suffered by them, and their loss of access to honey, fruit, and other forest products
1995	Start of efforts to develop a comprehensive land law (finally promulgated in 2005)
2000	Rwanda's National Unity and Reconciliation Commission recognises significant discrimination against the Batwa and recommends affirmative action in favour of the Batwa for education and health services
2003	The 2003 Constitution of the Republic of Rwanda mentions 'historically marginalized Rwandan communities' and provides protections for 'cultural traditions and practices'
2004	• National Land Policy 'encourages' consolidation of plots to allow more economical use of land resources • Batwa land ownership survey: 43% of Batwa households are landless, compared to 12% of Rwanda's general population. Of those Batwa households with land, 46% own less than 0.15 hectares
2005	Organic Land Law: land registration is 'obligatory' but customary and statutory rights also gain equal protection; all marshes come under state control; 'consolidation' of land prohibits subdivision of landholdings below one hectare; local administration have powers to confiscate land not utilized 'productively'
2007	• Law Relating to Expropriation in the Public Interest • About 40% of Batwa community rely on begging as their primary source of livelihood • CAURWA (Communauté des Autochtones Rwandais, or Community of Indigenous Peoples in Rwanda) is renamed COPORWA (Communauté des Potiers Rwandais, or Organization of Rwandan Potters) after the government refused its operating licence, arguing that its focus on the Batwa violates the Constitution



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