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## 人权理事会

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#### 议程项目 3

增进和保护所有人权——公民权利、政治权利、  
经济、社会和文化权利，包括发展权

## 少数群体问题独立专家盖伊·麦克杜格尔的报告

增编

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### 内容提要

卢旺达政府因其主动采取的诸多行动和积极做法，促进了社会愈合、发展和增长，必须予以褒扬。颇为重要的是，政府承认仍面临诸许多挑战，包括全创造持久稳定与和平条件方面的挑战。

政府为构建起每个身为卢旺达国民背后的统一和凝聚力，削减族裔成份的摧毁力所作的努力，是值得赞赏之举。鉴于该国基于族裔的暴力史，迄今所取得的进步程度令人印象深刻。然而，卢旺达社会仍普遍存在着以族裔划分的观念。只要这种现象存在，就不应将坦诚地探讨这些问题列为禁忌。促进国家统一的进程与个人和各个族群享有言论自由和隶属某一族裔群体的身份自由认同权并不抵触。禁止煽动族裔仇恨或灭绝种族行为的法律和政策，也必须同时全面符合各项国际人权义务所保护的言论自由。

卢旺达境内无以计数的族群自我认定为巴特瓦人。政府将他们划定为“历史上受排斥的人民”。目前，这些人被主流社会排挤至边缘，生活在水深火热之中，在一贫如洗的境况下挣扎。他们作为一个居民群体，受教育和卫生保健的程

\* 报告的内容提要以所有正式语文分发。报告载于附件，仅以提交语文和法文本分发。

度极低，居住在无法避风遮雨的窝棚里，而他们在国家公共生活中几乎就不存在。他们被逐出了其世代传承生活的森林，既不问他们是否同意，也不给予赔偿；面临广泛的歧视，特别是就业方面的歧视，且毫无维持生计的可靠手段。政府虽设立起了一些援助方案，然而，这些方案对全体巴特瓦人却毫无效用。

## Annex

### Report of the independent expert on minority issues on her mission to Rwanda (31 January–7 February 2011)

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## **I. Introduction**

1. The independent expert conducted an official visit to Rwanda from 31 January to 7 February 2011. She consulted with senior representatives of the Ministries of Foreign Affairs and International Cooperation, Justice, Local Government, Community Development and Social Affairs, and Education. She met with the National Unity and Reconciliation Commission, the National Commission for the Fight against Genocide and the Commission in charge of Social Affairs, Human Rights and Social Issues in the Chamber of Deputies and the Senate. In addition she met with the Rector and faculty from the National University of Rwanda, the Ombudsman, the National Human Rights Commission, the Rwanda Demobilization and Reintegration Commission, and IBUKA, an umbrella organization for genocide survivor associations. The independent expert was honoured to visit the Gisozi Memorial Centre and pay her respects to the victims of genocide.

2. The independent expert thanks the Government of Rwanda for extending an invitation to her and for its cooperation with her mandate in the preparation and conduct of her visit. The independent expert also wishes to thank the numerous non-governmental organizations (NGOs), both national and international, academic institutions, and others that have provided information and assistance to her.

3. The independent expert travelled to Kigali and to different regions where she consulted with people in their communities, some of whom self-identify as Batwa and others formerly recognized as Hutu and Tutsi. She visited villages in the vicinity of Kigali, near Musanze in the Northern Province, and around Butare in the Southern Province. At the invitation of the National Unity and Reconciliation Commission, she visited a community in Gahini in the Eastern Province. At the invitation of the National Human Rights Commission, she visited another community in Muhanga in the Southern Province.

## **II. Methodology**

4. The independent expert's evaluation of minority issues in Rwanda is based on the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and other relevant international standards, from which she has identified four broad areas of concern. These are: (a) the protection of a minority's survival, through combating violence against them and preventing genocide; (b) the protection and promotion of the cultural identity of minority groups and the right of national, ethnic, religious or linguistic groups to enjoy their collective identity and to reject forced assimilation; (c) the guarantee of the rights to non-discrimination and equality, including ending structural or systemic discrimination and the promotion of affirmative action when required; and (d) the guarantee of the right to effective participation of members of minorities in public life, especially with regard to decisions that affect them. She applies a gender perspective in all areas of her work.

5. The independent expert does not rely solely on numerical factors in her assessment of which groups constitute a minority within societies. The independent expert focuses her work on national, ethnic, religious and linguistic groups whose generally non-dominant positions within their societies demand protection to allow them to exercise all their rights, including minority rights to the fullest. In some countries, a distinct group constituting a numerical majority may be oppressed by a smaller group which is using its political or economic dominance to deny certain rights to other groups.

6. In the following report, the independent expert details relevant information that she gained from her consultations in-country and additional research and information from credible sources. She has tried to record faithfully the views of the Government, to the extent permitted by restrictions on the length of this report.

### **III. Protection of the right to cultural and ethnic identity**

#### **A. Government views on ethnicity and the root causes of the 1994 genocide**

7. According to the Government of Rwanda,<sup>1</sup> during the pre-colonial era, Rwandans swore allegiance to the same monarch, had the same culture, the same language, “Kinyarwanda”, and lived together on the same territory. At that time, Rwandan identity was closely related to clans. Belonging to the same clan implied that the persons concerned were of the same origin. The Government claims that myths related to the origin of the Hutu, the Tutsi and the Batwa contradict the fact that all shared the same ancestral father, “Kanyarwanda”.

8. In the pre-colonial era, “Tutsiness” and “Hutuness” were social classifications or classes that were not static. For example, mechanisms existed for social promotion (Tutsification) for Hutus and for the Batwa, including through the acquisition of a herd of cows. Equally, “Tutsification” could result from a decision by the King, marriage with a Tutsi or adoption by a Tutsi. The reverse phenomenon, “Hutufication”, considered a kind of social demotion, could occur if, for example, a Tutsi person was deprived by some means of their cattle herds. Therefore “Tutsiness” and “Hutuness” did not have a genetic dimension.

9. The Government maintains that distinct ethnic groups exist only when they each belong to a different community of language, culture, history or territory. It claims, however, such differences have never existed in Rwanda. Therefore it concludes that only one ethnic group exists in Rwanda – the Banyarwanda.

10. The colonial period was characterized by a strategy of divide and rule. Ethnic identity was highly manipulated and institutionalized in administrative organs during the colonial era. The population became indoctrinated with colonialists’ theories of ethnicity. Even in post-colonial Rwanda, divisionism and discriminatory practices were further entrenched. Identification cards had ethnic classifications. Access to Government services, such as education and service employment, was based on an ethnic-quota system. Ethnic divisions were made a part of daily lessons in schools. Corrupt leaders exploited the system for political gains. The ultimate result was the 1994 genocide.

11. Current-day Government officials consistently repeat this ethno-historical analysis. It underpins the national legislative and policy framework implemented by the current Government for the promotion of a single Rwandese national identity, unity and reconciliation. Under this framework, ethnic minorities are not recognized as existing in Rwanda, the use of terminology that refers to different ethnic groups is strongly discouraged and all references to Bahutu, Batutsi or Batwa are banned from official documents.

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<sup>1</sup> The following information is summarized from analysis provided by the Government in its thirteenth to seventeenth periodic report to the Committee on the Elimination of Racial Discrimination (CERD/C/RWA/13-17).

## B. International law and identity in Rwanda

12. While the independent expert recognizes the unique history of Rwanda, the policies of the Government must be assessed as against the State's obligations under international human rights law. Article 27 of the International Covenant on Civil and Political Rights establishes 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". The question of the existence of minorities is addressed by the Human Rights Committee in its general comment No. 23 (1994) on the rights of minorities, which elaborates 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".

13. Considering identification with particular racial or ethnic groups, the Committee on the Elimination of Racial Discrimination has stated in its general recommendation No. 8 (1990) on identification with a particular racial or ethnic group (art. 1, paras. 1 and 4) that "such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned". Furthermore, the African Commission on Human and Peoples' Rights, at its thirty-fourth Session, in November 2003, recalled "the emphasis given in international law to self-identification as the primary criterion for the determination of who constitutes a minority or indigenous person".<sup>2</sup> International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries also recognizes the principle of self-identification. Article 1, paragraph 2, states that "self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply".

14. The right of individuals to freely identify themselves as belonging to an ethnic, religious or linguistic group is therefore well-established in international law. It is also notable that the existence of a common language or culture does not necessarily negate the possibility of ethnic difference, but may rather be evidence of assimilation of different population groups over generations. Domestic law relevant to ethnicity, identity, minority status, equality and non-discrimination should recognize such rights and ensure that no individual or group suffers from any disadvantage or discriminatory treatment on the basis of their freely chosen identity as belonging to (or not belonging to) an ethnic, religious, linguistic or any other group.

15. The country's National Unity and Reconciliation Commission undertook a survey and produced a report in October 2010 entitled *Rwanda Reconciliation Barometer*.<sup>3</sup> The survey revealed that some 60 per cent of people consider themselves Rwandans not identified along ethnic lines and indicates that ethnicity is increasingly less relevant in post-genocide Rwanda. Some 97 per cent of respondents exhibited a strong preference for a national Rwandan identity and national values. It is nevertheless acknowledged in the

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<sup>2</sup> Resolution ACHPR/Res.65 (XXXIV) 03 on the adoption of the report of the African Commission's Working Group on Indigenous Populations/Communities.

<sup>3</sup> United Nations Development Programme (UNDP)-Department for International Development, Institute for Justice and Reconciliation (IJR) and the Institute of Research and Dialogue for Peace (Kigali, 2010).

report that “many research participants indicated that they believed that references to ethnicity or ethnic groups are prohibited in Rwanda”.<sup>4</sup>

16. The Institute of Research and Dialogue for Peace, a Kigali-based social research institution, also conducted research on social cohesion in 2010 to evaluate the impact of ethnicity on social life, using a quantitative and qualitative approach.<sup>5</sup> While noting that “strictly speaking, ethnic groups do not exist in Rwanda”,<sup>6</sup> it continues: “however, the social reality of the ethnic group is there and influences life in society, the political decisions and the quality of social life...the ethnic logic can also become a mechanism of reasoning which consists in thinking and acting as a member of an ethnic group”. Consequently, “it would be nonsense to declare that there are no ethnic groups in Rwanda ... every Rwandan is able to tell you his/her ethnic group but on the other side, everybody hesitates to discuss the ethnic issues except within the ethnic group where he/she belongs. The ethnic consciousness has become a reality over the years”.<sup>7</sup>

17. The Institute emphasized that inter-ethnic relationships have improved. However, while 53 per cent of people assessed the relations between Rwandans as “good” or “very good”, some 46.9 per cent of the population remains cautious about social harmony and considers that major challenges to social cohesion remain. According to the Institute, the underlying mistrust among ethnic groups remains and building a strong national identity requires long-lasting solutions regarding secondary identities, particularly ethnic identity. According to the Institute’s report, the “challenges to social cohesion include extremist speeches by some politicians, the murders of some genocide survivors during *gacaca* trials, the lack of opportunities to organize a constructive debate around ethnic issues, and persisting ethnic bias in the management of public affairs”.<sup>8</sup>

18. Several NGOs have expressed concern regarding the Government’s position on ethnicity and noted that refusal to acknowledge ethnic difference and monitor relative equality effectively allows discrimination in any sphere of society to continue unimpeded. One international NGO states that: “The current government’s policy that everyone is Rwandan and no minority ethnic groups exist in the country does not address the deep-rooted tensions that continue to exist in Rwandan society. Moreover, it allows a situation to develop in which a group can enjoy a de facto position of privilege, while others are forbidden to challenge it”.<sup>9</sup>

19. In its May 2009 concluding observations on Rwanda, the Human Rights Committee stated: “the Committee is concerned about the non-recognition of the existence of minorities and indigenous peoples in Rwanda” (CCPR/C/RWA/CO/3, para. 22). Equally, the Committee on the Elimination of Racial Discrimination expressed concern in its March 2011 concluding observations on Rwanda that the Government’s priority of national unity was likely to ignore the specificities of certain groups, including the Batwa (CERD/C/RWA/CO/13-17, para. 9). The Committee urged the Government to take into account the specificities of each of the groups that make up its population.

<sup>4</sup> The report notes that this perception is incorrect. The report states that, contrary to popular belief, it is not ethnic, but rather economic cleavages that are most divisive in Rwandan society today.

<sup>5</sup> Institute of Research and Dialogue for Peace, “Ethnic identity and social cohesion in Rwanda: Critical analysis of political, social and economic challenges” (2010).

<sup>6</sup> *Ibid.*, p. 10.

<sup>7</sup> *Ibid.*, pp. 10–11.

<sup>8</sup> *Ibid.*, p. 4.

<sup>9</sup> Minority Rights Group International, “Submission to the Committee on the Elimination of Racial Discrimination – Rwanda” (2011).

## IV. Protection of distinct groups and prevention of genocide

20. Understandably, one of the highest priorities of the Government has been to guarantee security and prevent a recurrence of genocide or ethnic-based violence.

### A. Domestic law

21. Article 9 of the 2003 Constitution commits the Government to “fighting the ideology of genocide and all its manifestations, eradication of ethnic, regional and other divisions and promotion of national unity”. Law No. 18/2008 of 23 July 2008 relating to the Punishment of the Crime of Genocide Ideology was promulgated in October 2008. Under the law, the crime of genocide ideology is defined as:

“Behaviour manifested by facts aimed at dehumanizing a person or a group of persons with the same characteristics in the following manner:

1. threatening, intimidating, degrading through defamatory speeches, documents or actions which aim at propounding wickedness or inciting hatred;
2. marginalising, laughing at one’s misfortune, defaming, mocking, boasting, despising, degrading, creating confusion aiming at negating the genocide which occurred, stirring up ill feelings, taking revenge, altering testimony or evidence for the genocide which occurred;
3. killing, planning to kill or attempting to kill someone for purposes of furthering genocide ideology.”

The sentence for genocide ideology is imprisonment for 10–25 years and a fine of up to 1 million Rwandan francs.

22. According to article 1 of Law No. 47/2001 on Prevention, Suppression and Punishment of the crime of Discrimination and Sectarianism, sectarianism is defined under the law as “the use of any speech, written statement or action that divides people, that is likely to spark conflicts among people, or that causes an uprising which might degenerate into strife among people based on discrimination”.

23. The laws of Rwanda on genocide ideology, sectarianism and divisionism have been severely criticized by NGOs, including on the grounds that it is unclear what acts constitute crimes under the laws and that they violate the right to freedom of expression. Amnesty International has described the laws as “broad and ill-defined” and stated that “the vague wording of the laws is deliberately exploited to violate human rights”.<sup>10</sup> Other human rights groups maintain that the laws could be used to prosecute those who make benign references to ethnic identity or who seek to advocate for ethnic rights. Credible allegations have been made that charges of “divisionism” and “genocide ideology” have been used to silence dissent and obstruct the activities of legitimate political opposition (see chapter VI on political participation below). Government-sponsored surveys have revealed that it is commonly understood by Rwandans that references to ethnicity or ethnic groups are prohibited by law.<sup>11</sup> In April 2010, the Government announced a review of the law on genocide ideology to respond to these criticisms and pertinent recommendations by the country’s development partners.

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<sup>10</sup> Amnesty International, *Safer to Stay Silent: The chilling effect of Rwanda’s laws on ‘genocide ideology’ and ‘sectarianism’* (London, 2010), p. 7.

<sup>11</sup> National Unity and Reconciliation Commission, *Rwanda Reconciliation Barometer*.



24. The Committee on the Elimination of Racial Discrimination recommended that “the State party contemplate revising Law No. 18/2008 ... with a view to making the definition of ‘the ideology of genocide’ in article 2 more specific, and to include intention as one of the constituent elements of this crime listed in article 3, and thus to provide all the guarantees of predictability and legal security required of a criminal law and prevent any arbitrary interpretation or application of this law” (CERD/C/RWA/CO/13-17, para. 14).

## B. Institutional initiatives

25. The independent expert met with the National Commission for the Fight Against Genocide created under the 2003 Constitution but active only since 2008. The mandate of the Commission requires it to, inter alia, design and implement strategies for fighting genocide and its ideology; coordinate remembrance activities and preserve memorial sites; and provide assistance to genocide survivors. Its mandate allows the Commission to undertake educational activities in schools and to work to preserve the memory of the genocide among new generations.

26. *Ingando*, a practice which originated in pre-colonial Rwanda, refers to ceasing normal activities in order to reflect on and find solutions to national challenges.<sup>12</sup> The National Unity and Reconciliation Commission formally reintroduced *Ingando* as a tool to foster peaceful coexistence within post-genocide communities. The first participants were ex-combatants returning from the Democratic Republic of Congo, followed by students, genocide survivors, prisoners, community leaders and women. *Ingandos* are now carried out countrywide and frequently co-facilitated with communities. *Ingandos* entail participation at residential camps for up to two months’ duration. Five central themes are: analysis of the country’s problems; history; political and socio-economic issues; rights; obligations; and leadership.

27. Historically, *Itorero ry’igihugu*<sup>13</sup> was a national educational and mentoring institution for leadership with lessons including history, philosophy, sociology, oral literature, ethics, theology, political and military sciences, law, and patriotism. In 2007, the *Itorero* system was reintroduced to encourage people from different social groups to discuss issues such as good governance, national unity, reconciliation, justice, economic development and social problems. Government officials state that more than 87,000 people have participated in this civic education and training.<sup>14</sup> Plans exist to extend the programme throughout the country.

28. The National Service of Gacaca Jurisdictions highlighted that the Rwandan judicial system was overwhelmed by the aftermath of the genocide and had itself been decimated. Over 120,000 prisoners alleged to have committed genocide needed to be processed through the conventional judicial system. The capacity to investigate and prosecute was severely limited. Confronted by the need to speed up the justice process, avoid impunity and find a solution that also contributed to strengthening unity and reconciliation, the Government looked to a traditional system of conflict resolution and participatory justice at the community level. The *gacaca* system was introduced and modernized in 2001.<sup>15</sup>

29. The Government highlights that, since *gacaca* courts commenced work in 2002, 1,211,412 cases have been tried and completed throughout the country. Emphasis was placed on confessions and reduced or community-based sentences were offered to those

<sup>12</sup> See: [http://www.nurc.gov.rw/index.php?option=com\\_content&view=article&id=50&Itemid=12](http://www.nurc.gov.rw/index.php?option=com_content&view=article&id=50&Itemid=12)

<sup>13</sup> See [www.nurc.gov.rw/reconciliation-tools/itorero.html](http://www.nurc.gov.rw/reconciliation-tools/itorero.html).

<sup>14</sup> See <http://allafrica.com/stories/201103210066.html>.

<sup>15</sup> For more information, see [www.inkiko-gacaca.gov.rw](http://www.inkiko-gacaca.gov.rw).

pleading guilty. A survey reported that over 80 per cent of Rwandans believed that *gacaca* courts made positive contributions in terms of facilitating the successful reconciliation of Rwandans and delivering justice.<sup>16</sup>

30. Criticisms levelled at the *gacaca* system included that: it did not meet international due process standards; judges had little or no legal training being appointed only as “people of integrity”; no defence counsel was available to offenders; the process lacked safeguards to prevent false accusations; some judges, survivors and witnesses were threatened or killed; some judges were corrupt or themselves implicated in crimes; and the sentences were not proportionate to the crimes. International experts questioned the degree to which the process fulfilled obligations to prosecute genocide perpetrators.

31. The Government has responded that *gacaca* judges did receive training and technical assistance provided by legal experts of the National Service of *gacaca* Courts. Incompetent or corrupt judges were denounced and expelled. In the Government’s view, it was most important that *gacaca* courts were “mainly a conciliatory justice” with simple procedures and the active participation of the concerned population.

32. Now that the *gacaca* process has ended, there are concerns over how new returnees will be reintegrated into their former communities and how tensions arising from their return will be handled. Many Rwandans refugees, including ex-Rwandan Armed Forces (ex-FAR) combatants and members of the *interahamwe* militia, have returned to Rwanda and tensions around their return have been processed through the *gacaca* village-level courts. The independent expert visited the Mutobo demobilization camp, where returnees from the Democratic Republic of Congo to Rwanda are following reintegration programmes before return to their old communities. She met former combatants of the Democratic Forces for the Liberation of Rwanda recently returned from years spent in the Democratic Republic of Congo, who indicated that there are many others who wish to return. The winding-up of the *gacaca* courts may leave a crucial gap in the punishment and reintegration process.

33. With regard to *gacaca*, the Institute of Research and Dialogue for Peace states that: “this popular and proximity justice has inevitably hurt many people who need to be healed in order to achieve social cohesion”.<sup>17</sup> The Institute nevertheless concludes that it: “responds clearly to the need for justice and launches a debate on ethnic issues ... it opens the wounds that need to be healed in order to achieve social cohesion. Politically speaking, it would not be fair to leave the pending post-Gacaca conflict without creating a mechanism to bring people together. The framework of debate that has been created by Gacaca is very relevant and creates opportunities to solve ethnic conflicts.”<sup>18</sup> The Government emphasizes that a strategy to deal with any problems that may result from the conclusion of the *gacaca* courts is being formulated by the National Unity and Reconciliation Commission, which has started a programme known as “community dialogue” meant to deal with such issues.

### C. Gender-based crimes

34. It is estimated that in the region of 250,000–500,000 mostly minority Tutsi women and girls were raped during the genocide. This led to groundbreaking jurisprudence developed by the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law

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<sup>16</sup> National Unity and Reconciliation Commission, *Rwanda Reconciliation Barometer*, p. 64.

<sup>17</sup> Institute of Research and Dialogue for Peace, “Ethnic identity and social cohesion in Rwanda: Critical analysis of political, social and economic challenges”, p. 14.

<sup>18</sup> *Ibid.*, pp. 35–36.

Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 that recognized that rape could be a constituent element in the crimes of genocide and crimes against humanity. The Tribunal secured important convictions in this regard and documented a more detailed picture of the Rwandan genocide than had previously existed of any such events.<sup>19</sup>

35. The country's domestic genocide law recognizes rape and sexual torture as category one crimes – acts of genocide and crimes against humanity. The *gacaca* courts were able to consider rape cases following an amendment to the genocide law in 2008. Cases of sexual violence involving some 6,808 persons were transferred to *gacaca* courts. Specialist training was provided to *gacaca* judges and such cases were required to be considered in closed sessions to protect survivors. Trauma counsellors were also made available. However, according to Human Rights Watch, “rape victims uniformly expressed disappointment at having to appear in *gacaca* rather than conventional courts, as *gacaca* proceedings – even behind closed doors – failed to protect their privacy.”<sup>20</sup>

36. In September 2009, the Committee on the Elimination of Discrimination against Women noted its concern that “equal access to justice and appropriate protection and support may not be guaranteed for all women and girl [rape] victims within the framework of the comprehensive process of prosecution of perpetrators that is ongoing at international and national levels” (CEDAW/C/RWA/CO/6, para. 23). The Committee urged Rwanda to continue to ensure appropriate protection, support and equal access to justice for the women victims of sexual violence during the genocide.

37. Genocide survivors constitute a group with particular challenges that must be addressed with sensitivity. While most belong to the formerly recognized Tutsi minority, moderate Hutu and Batwa were also victims. Credible evidence indicates that survivors continue to face harassment, violence and trauma. Many women survivors live with HIV/AIDS as a result of rape. The independent expert met with IBUKA (which means “remember” in Kinyarwanda), which represents genocide survivors and works to protect their rights and address their needs.

38. Estimates suggest that as many as 70 per cent of the rape survivors are HIV-positive.<sup>21</sup> In a 2004 report, African Rights, a human rights organization, detailed the fact that the majority were lacking basic needs such as shelter, adequate food and medication.<sup>22</sup> African Rights stated, “we find that genocide rape victims in Rwanda lead a uniquely troubled existence”. Their research revealed that “most genocide rape victims suggest that they will never feel comfortable in groups where there is a possibility of meeting relatives of the men who raped them, or simply of exposing themselves to a community they believe betrayed them”. Survivors of sexual violence reportedly continue to experience significant gaps in access to healthcare and only an estimated 28 per cent of households affected by HIV/AIDS are able to afford treatment. Organizations such as the Association of the Widows of the Genocide (AVEGA AGAHOSA) provide support networks for women, improve their living conditions and provide medical and psychological support.

<sup>19</sup> Patricia Viseur-Sellers, “‘Tokyoisation’ of the ICTR’s Gender Jurisprudence”, paper to the Conference on Interface between Peace and International Justice in Africa, 22–23 June, 2007, Accra.

<sup>20</sup> Human Rights Watch, *World Report 2010: Country summary – Rwanda* (2010).

<sup>21</sup> Anne-Marie de Brouwer and Sandra Ka Hon Chu, eds., *The Men Who Killed Me: Rwandan Survivors of Sexual Violence* (Vancouver, 2009, Douglas & McIntyre).

<sup>22</sup> See [www.preventgbvafrica.org/sites/default/files/resources/brokenbodies.africanrights.pdf](http://www.preventgbvafrica.org/sites/default/files/resources/brokenbodies.africanrights.pdf).

## V. Protection of the rights to non-discrimination and equality

### A. Legal framework and institutions

39. Rwanda is a party to the Convention on the Elimination of All Forms of Racial Discrimination and other core human rights treaties mandating non-discrimination. Under article 1 of the 2003 Constitution, “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.”

40. The Criminal Code establishes penalties for hate speech, discriminatory acts of public officials, discrimination in the supply of public goods and services, employment discrimination, and physical attacks. There are also anti-discrimination provisions in the Labour Code, the General Statute of Public Service, Organic Law No. 20/2003 concerning Education in Rwanda and legislation relating to the justice sector, including the police. Furthermore, according to the Government, Law No. 47/2001 on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism has been instrumental in the fight against discrimination in post-genocide Rwanda. Thereunder, discrimination is defined 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 the international conventions to which Rwanda is party.

41. The National Human Rights Commission was established under the constitution with a mandate to, inter alia, examine human rights violations committed by any person on Rwandan territory, with special emphasis on violations by Government bodies and agents. The Commission is required to raise awareness of human rights among the Rwandan population and organize relevant training programmes, prepare and disseminate annual and human rights reports and initiate legal proceedings against anyone who commits human rights violations. The Commission reports are transmitted to the parliament and other State bodies and are available to the public.

42. The Office of the Ombudsman<sup>23</sup> has a mandate to fight against injustices and corruption, which includes obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. It receives from individuals or independent associations complaints made against public officials or organs and private institutions. It can request explanations, carry out investigations, review laws and submit cases to concerned institutions for settlement. The Government notes that the Commission and the Ombudsman’s office play important roles in the country’s non-discrimination policy. Other important steps also have been taken by the Government to decrease the salience of ethnic categories, such as eliminating the requirement to state ethnicity on identity cards.

43. However, the Government’s policy of non-recognition of ethnic groups restricts opportunities for individuals and communities to formally lodge complaints regarding discrimination and to pursue such complaints. The Committee on the Elimination of Racial Discrimination expressed its concern regarding the lack information on complaints, prosecutions, sanctions and reparations relating to instances of racial discrimination apart from those linked to the 1994 genocide (CERD/C/RWA/CO/13-17, para. 19).

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<sup>23</sup> Established by the 2003 Constitution in its article 182 and by law No. 25/2003 of 15th August 2003.

44. The absence of complaints to Government bodies cannot be interpreted as an absence of discrimination. A survey by the Institute of Research and Dialogue for Peace indicates that ethnic-based discrimination remains a problem in Rwandan society.<sup>24</sup> Some 36.5 per cent of interviewees believed that ethnic-related injustices exist in the labour market, justice system, public administration and service sector. The Government's own research documented in the *Rwanda Reconciliation Barometer* notes that 31.5 per cent of respondents "agreed" or "strongly agreed" with the statement: "although ethnic discrimination is banned in Rwanda, it still occurs". Some 30.5 per cent of respondents "agreed" or "strongly agreed" that "Rwandans still judge each other on the basis of ethnic stereotypes".

45. Although Kinyarwanda, English and French are all official languages of Rwanda, some sources noted that the Government was pursuing a policy to promote the use of English, which favours those members of the population who lived in Anglophone countries while in exile. A 2008 Government decree to replace French with English<sup>25</sup> in 2010 as the language of instruction from elementary school grade three had a significant impact on French-speaking teachers and administration staff. The Government states that there is no discrimination on the basis of language and that promotion of English in education and Government affairs is for economic reasons and to facilitate Rwandan membership in Anglophone regional integration organizations.

46. Numerous non-governmental sources contend that independent research and qualitative data reveal that persons belonging to certain identifiable groups face disadvantages or inequalities. Official population surveys, census or other data disaggregated on the basis of ethnicity are not available in Rwanda because of the Government's policy to not recognize ethnic categories. At least one Government body, however, has decided there is a need for disaggregated data in ensuring access of some vulnerable groups to services and in monitoring that access. The 2011 Ministry of Local Government's National Social Protection Strategy<sup>26</sup> notes that "when undertaking monitoring we will ensure that data is disaggregated so that we can effectively track the inclusion of priority vulnerable categories in social protection programmes". It is notable that this report states that "disaggregation of data will take place by, for example, sex, age, disability, ethnicity and status as genocide survivors", which appears to be inconsistent with the Government position of non-recognition of ethnicity and consequently ethnic data.

47. The Constitution allows for consideration of affirmative action, however not explicitly based on ethnicity. Article 14 states that: "the State shall, within the limits of its capacity, take special measures for the welfare of the survivors of genocide ... the disabled, the indigent and the elderly as well as other vulnerable groups". In addition, under article 9, paragraph 4, of the Rwandan constitution, women are granted at least 30 per cent of posts in decision-making organs. In the *National Social Protection Strategy*, the Ministry of Local Government states that it seeks to help historically marginalized peoples in Rwanda and, "in particular, we will enable them to overcome their disadvantages by providing positive discrimination in terms of access to benefits from public services" (p. 33). Batwa and NGO representatives nevertheless emphasize that, while some groups, including women and genocide survivors, are afforded special measures, other highly disadvantaged groups are not.

<sup>24</sup> Institute of Research and Dialogue for Peace, "Ethnic identity and social cohesion in Rwanda: Critical analysis of political, social and economic challenges".

<sup>25</sup> See <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154364.htm>.

<sup>26</sup> Available from [www.ilo.org/gimi/gess/RessShowRessource.do?ressourceId=23208](http://www.ilo.org/gimi/gess/RessShowRessource.do?ressourceId=23208).

48. Government representatives noted that pre-genocide policies had been based on an ethnic quota system for access to secondary and higher education, training and Government employment, based on the percentage of each ethnic group in the general population. That quota-based system was instituted by the Hutu-led Government in reaction to the privileges previously afforded to those identified as Tutsi. The post-genocide Government, in its effort to eliminate ethnicity as a basis for privileges, made a strong commitment to a merit-based system based solely on test scores. There are currently no affirmative action programmes for those who may have in the past faced disadvantage or discrimination.

## **B. The situation of Batwa communities in Rwanda**

49. While the Constitution rejects ethnic classifications, it does recognize an undefined group referred to as “historically marginalized people”. The 2011 National Social Protection Strategy states that: “historically marginalised people – who number around 25-30,000 in total – are believed to experience higher levels of poverty and worse social indicators than the general population, although little objective data is available” (p. 13). While the Batwa are considered to be in the category of “historically marginalized people”, there is a lack of clarity with regard to the category’s precise official definition. It is evident that the Government also includes other vulnerable groups among the category.

50. The Senate Commission in charge of Social Affairs, Human Rights and Social Issues published the *Report on the Conditions of Some Rwandans Disadvantaged Throughout History* (the Senate Report), widely understood to be focused on the Batwa. This report highlighted that: “some people still have the attitude of despising them, of not seeing them as genuine human beings, and they address them in words fuelling discrimination”.<sup>27</sup>

51. The Senate Report concluded that “these Rwandans have special and serious problems to be solved as a matter of urgency”, including: “not seeing themselves as people with importance and rights; living like animals, as they have no adequate accommodation; not having any land to cultivate or to be used for development activities; not having property or crafts to help them earn a living; not utilizing healthcare services; lacking income and jobs; not having their children in school; early marriage or promiscuity; ignorance; and not socializing with other Rwandans”. NGOs that the independent expert consulted stated that these findings remain accurate and little progress has been made in improving the situation of the Batwa.

52. The lack of disaggregated official statistics means that problems, including poor socio-economic conditions and declining Batwa numbers, are not apparent in official data. Disaggregated data would help reveal the full extent of such problems and allow informed and targeted policy and programme responses. Batwa representatives emphasize that a Government policy to treat all as equal has as a consequence the failure of national Government and local authorities to acknowledge or respond to their particular economic and social circumstances.

53. In May 2009 the Human Rights Committee stated its concern regarding reports that members of the Batwa community are victims of marginalization and discrimination (art. 27 of the Covenant). The Committee recommended that Rwanda: “should take steps to ensure that members of the Batwa community are protected against discrimination in every

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<sup>27</sup> Rwanda, Senate Chamber, Commission in charge of Social Affairs, Human Rights and Social Issues, *Report on the Living Conditions of Some Rwandans Disadvantaged Throughout History* (Kigali, 2007).

field, that they are provided with effective remedies in that regard and that they take part in public affairs” (CCPR/C/RWA/CO/3, para. 22).

## 1. Identity

54. Batwa representatives emphasize their ethnic and cultural distinctiveness.<sup>28</sup> It was noted by Batwa NGOs that Batwa have distinctive dialects and intonation comprehensible only to other Batwa, and unique elements of culture and customs. In contrast to the Government’s official version of the country’s ethnic history, Batwa historical narrative maintains that they were the original inhabitants of Rwandan forests following hunter-gatherer subsistence livelihoods. As other ethnic groups encroached onto their territories bringing livestock farming and cultivation, the Batwa were forced to move to ever more remote areas of forest. In the modern era, widespread subsistence and commercial agriculture, national parks and tourism development have forced Batwa to leave the remaining areas of forest which they occupied.

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

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

57. In 2011, the Committee on the Elimination of Racial Discrimination expressed regret at the Government’s policy of not recognizing the Batwa community as an indigenous people (CERD/C/RWA/CO/13-17, para. 11). The African Peer Review Mechanism of the African Union produced a country report in November 2005,<sup>29</sup> which stated: “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”. The Government was called upon to initiate an in-depth dialogue with the Batwa.

58. The Government stated in response that, “the Batwa community continues to have a disproportionate number of vulnerable members, and seem not to benefit sufficiently from the ongoing social economic integration of all Rwandans ... the Government has never had a policy of assimilation, since that is comparable to socio-cultural genocide ... it is clear that a targeted response to their specific problems is recommended and shall be reflected in the plan of action”.<sup>30</sup>

## 2. Housing, land and income

59. In most Batwa communities visited by the independent expert, housing conditions were far below minimum standards and frequently not suitable for human habitation.

<sup>28</sup> The independent expert visited Batwa communities near Kigali, Musanze in the Northern Province and outside Butare in the Southern Province.

<sup>29</sup> African Peer Review Mechanism, “Country Review Report of the Republic of Rwanda”, November 2005, p. 62.

<sup>30</sup> *Ibid.*, p. 52.

Shelters were commonly small and fragile constructions of sticks, grass, plastic sheeting and/or pieces of textile. They provided little protection from the elements, including frequent heavy rainfall. These communities were commonly located on steeply sloping hillsides that were not conducive to anything but small-scale shelters, but frequently housed whole families including children.

60. In December 2010, the Government's "Bye Bye Nyakatsi" programme required demolition of thatched roofed homes (*nyakatsi*) to be replaced by iron-roofed structures. NGOs are concerned that local authorities have demolished the houses of Batwa before any replacement houses or appropriate assistance has been provided. While the programme is not solely for the Batwa, the Batwa may be disproportionately affected, since they commonly live in rudimentary thatched shelters, exist in conditions of disadvantage and vulnerability and are poorly equipped to respond to difficulties created by the premature dismantling of their homes.

61. In one community near Butare, community members spoke from the remains of their homes, which they said had been demolished just prior to the independent expert's visit, leaving them without shelter and forced to rely on neighbours. A plot had been cleared for construction, but no houses had been provided. In every Batwa community visited with national NGOs, communities asked her to convey their plight to the Government and request urgent provision of adequate housing.

62. The Ombudsman's office stated that Batwa benefit equally from Government programmes to provide housing and iron roofing, but frequently sell the roofing provided or knock down the walls of houses to create a single room. Batwa were frequently referred to as "ignorant" and not capable of benefiting from Government assistance. Officials stated that they had received no complaints from Batwa, but undertook to assess the situation of the communities identified. Batwa representatives told the independent expert that discriminatory treatment and lack of confidence created barriers to their filing complaints with authorities.

63. Many Batwa are land-less agricultural labourers or, lacking paid employment, exist through begging or charity. Batwa-rights NGOs noted that Batwa were not used to land ownership or managing finances and often lacked cultivation skills enabling them to adapt to life outside of the forest. In recent years, pottery has become an important source of income and a significant aspect of Batwa identity. However, lack of access to clay and cheap modern alternatives to traditionally crafted pots have limited income from this activity. Many Batwa today live in extreme poverty.

64. The Ombudsman stated that under a Government public works programme, people without income are given work by the district authorities including cleaning and road maintenance. While Batwa should have access to this programme, it was evident that some communities were living in remote areas and under conditions of extreme hardship and that such Government assistance was failing to reach them.

65. The "Girinka" programme, a "One Cow per Poor Family" programme, aims to provide poor families occupying more than 0.7 hectares of land with a cow. NGOs point out that many Batwa do not have land that is suitable for livestock, and often lack animal husbandry skills, making them largely unable to meet the criteria for participating in or benefit from this programme.

### 3. Health

66. Community members described the effects of their living conditions on their health and highlighted inadequate health-care provision. In Bwiza, a Batwa community near Kigali, high infant mortality rates, short average lifespans and falling population numbers are in stark contrast to the general population growth. Community members described



frequently experiencing hunger and children showed obvious signs of malnutrition. Poor shelters and exposure to cold and rain have negative implication for Batwa health along with limited sources of drinking water.

67. According to representatives of the Community of Potters of Rwanda,<sup>31</sup> their research had demonstrated that the percentage of Batwa who had health-insurance coverage was declining. In Bwiza, community members said that the Batwa in that community had not benefited from the Government programme of subsidized insurance cards for the poorest members of society. Certain individuals displayed wounds clearly requiring medical treatment. The Government that “all indigents and other vulnerable persons have their health insurance paid by Government (Some 650,000 to 700,000 persons, including the historically marginalized people)”.<sup>32</sup>

68. Batwa representatives emphasized the effects of poverty on the lives and health of Batwa women. Women in extreme poverty and with poor education and health information may be vulnerable to high rates of HIV/AIDS and sexually transmitted diseases. Poor levels of education and medical information also play a role. Very high infant mortality rates are a manifestation of poor living conditions and lack of access to adequate maternal health care.

#### 4. Education

69. Research indicates that Batwa children experience significant obstacles to their right to education relative to other population groups, including low levels of enrolment, particularly at the post-primary level, very high dropout rates and poor education outcomes. According to a survey conducted by the Community of Potters of Rwanda,<sup>33</sup> only 23 per cent of Batwa can read and write. Very few Batwa proceed to higher education institutions. Research<sup>34</sup> in 2008 and 2009 revealed that 54 per cent of Batwa women and girls interviewed had not been to school.

70. The Government and NGOs highlighted that the Ministry of Education had initiated a policy of free primary and secondary education for children from marginalized and other vulnerable families in State schools in 2008/9. The Government has achieved commendable successes in the field of education and notes that Rwanda is close to reaching universal education in primary and secondary school. Primary school enrolment stands at 94 per cent for boys and 96.5 per cent for girls. However, the poor living conditions of some Batwa families are clearly affecting the ability of Batwa children to attend school or achieve good education outcomes. In one community visited near Musanze, hunger was highlighted as the primary factor contributing to poor school attendance. Batwa representatives also stated that children face discrimination in school and are often “chased away” from the classroom.

#### 5. Government responses

71. The Government states that it “doesn’t deny the existence of a people called Batwa [but] refutes the tendency to allege that the Batwa population of Rwanda constitutes an

<sup>31</sup> In 2007, the principal organization representing the Batwa had to change its name from Community of Indigenous People of Rwanda to Community of Potters of Rwanda to adhere to Government regulations not allowing formal recognition of distinct ethnic or indigenous groups. See <http://www.unhcr.org/refworld/topic,463af2212,488edf812,4a66d9a737,0.html>.

<sup>32</sup> Comments by the Government of Rwanda dated July 2011 on the draft report.

<sup>33</sup> “Enquête sur la condition de vie socio-économique des ménages bénéficiaires de la Communautés rwandais”, January 2004, p. 14.

<sup>34</sup> Kathryn Ramsay, “Uncounted: the hidden lives of Batwa women” (2010, Minority Rights Group International).

ethnic group or an indigenous people”.<sup>35</sup> It acknowledged that, in accordance with the policy on rural settlement and programme of natural forests and national parks, Batwa and other Rwandans were removed from forests and relocated to organized settlements across the country through a consultative process. The Government asserts that by living in organized settlements, historically marginalized people have greater access to essential services and are better able to benefit from socio-economic opportunities and assistance programmes.

72. The Government notes that historically marginalized people benefit from a variety of Government programmes such as universal education for all, the “One Cow per Poor Family” programme and other programmes as set out in Rwanda’s vision 2020 Umurenge Programme and Poverty Reduction Strategy Paper, among others (see CERD/C/RWA/13-17, paragraph 192). The independent expert visited villages, including Gahini in the Eastern Province and in Muhanga in the Southern Province, with the National Human Rights Commission and the National Unity and Reconciliation Commission, in which Batwa individuals and families appeared well-integrated into wider communities. They had housing on a par with other families in the community, plots of land and were pursuing activities such as pottery and small-scale cultivation.

73. Batwa community members in those villages stated that they had received Government support to build tin-roofed housing. Some families had also benefited from the “One Cow per Poor Family” programme. They expressed general satisfaction with service provision including education and health care. However these examples stand in marked contrast to the situation of Batwa communities visited by the independent expert with NGOs.

## VI. Protection of the right to effective political participation

74. The Government reports that all Rwandans are fully represented in the national governance structures and the judiciary. Under article 9, paragraph 4, of the Constitution, women are granted at least 30 per cent of posts in decision-making organs. In 2003, women occupied slightly above 48 per cent of parliamentary seats, while, in the 2008 parliamentary elections, women won over 56 per cent of seats. However, since no ethnically disaggregated data exists and discussion of ethnicity is taboo, it is difficult to assess the extent to which significant ethnic diversity exists within decision-making bodies, particularly with respect to the leadership within those bodies.

75. The Batwa are particularly poorly represented in political structures and decision-making bodies. Eight seats in the Senate are reserved for representatives of historically marginalized people, however, it remains unclear which groups this quota was designed to assist. Currently there is only one Batwa Senator, who is appointed by the President rather than elected by the Batwa themselves. There are no Batwa in the Chamber of Deputies. The independent expert visited Batwa communities during local elections and was informed that Batwa candidates rarely achieve the required support since non-Batwa are unlikely to vote for them. Candidates are required to have six years of education which effectively excludes many Batwa. Batwa representatives claim that out of approximately 3,500 local officials, only about a dozen are Batwa.

76. The Constitution establishes a decentralized system which empowers elected local governments to plan and implement programmes (CERD/C/RWA/13-17, para. 149). While this policy of decentralization of administration offers the potential for localities to respond

<sup>35</sup> Comments by the Government of Rwanda dated July 2011 on the draft report

more effectively to local circumstances, the needs of certain excluded groups such as the Batwa are not being met due to their poor participation and representation in political life even at the local level.

77. The Senate Report of 2007 stated: “it is noticeable that leaders do not go up to them in order to know their problems ... do not go and see them so as to listen to their concerns ... [and] are not sufficiently concerned about their problems”.<sup>36</sup> It was evident from the independent expert’s consultations that local authorities continue to pay insufficient attention to Batwa issues.

78. The independent expert was informed that some political parties had been banned and certain opposition politicians arrested and detained. A 2010 Amnesty International report<sup>37</sup> states, “political opposition groups were intimidated, harassed and prevented from registering in the run-up to the 2010 presidential elections, as happened during the 2003 presidential elections and 2008 legislative elections. A 2009 Media Law placed undue restrictions on press freedom ... Restrictions on freedom of expression and association, compounded by ambiguous ‘genocide ideology’ and ‘sectarianism’ laws ... have a cumulative effect in silencing dissent in Rwandan society.”

79. The Government states that some political parties have been lawfully refused registration on the grounds that they contravene the Constitutional prohibition of political parties based on race, ethnic group or tribe and that do not reflect the unity of the people of Rwanda. It notes, however, that the law governing political parties is under review. A draft new law provides that registration will be administered by an independent institution, the Rwanda Governance Board. It has also informed the independent expert of other planned reforms in the regulation of media and access to information.

80. Two opposition parties, PS-Imberakuri and FDU-Inkingi, reportedly with a support base among the Hutu, have allegedly faced restrictions and their respective leaders, Bernard Ntaganda and Victoire Ingabire, were imprisoned and unable to contest 2010 elections. Mr. Ntaganda is accused of divisionism and genocide ideology and Ms. Ingabire faces accusations of links with a terrorist group in eastern Democratic Republic of Congo. Such activities may serve to fuel perceptions, conveyed to the independent expert by sources inside and outside Rwanda, that political freedoms are restricted and that an ethnic-based political elite exists, and is resistant to meaningful democratic reforms.

## VII. Conclusions and recommendations

**81. The Government of Rwanda must be commended for many of its post-genocide initiatives and positive practices to promote healing and transformation, development and growth. It is now a country that is unrecognizable in comparison to 1994 – a country of increasing opportunity, prosperity and stability. Importantly, the Government also acknowledges that many challenges remain, including to fully establish and maintain the conditions for lasting stability and peace based on equality for all.**

**82. The 1994 genocide decimated Rwanda along ethnic lines. Group identity and divisions, whether real, perceived, or socially constructed, nevertheless existed and were tragically deepened by those shocking events. Seventeen years after the genocide, it is difficult for an outside observer to fully assess the extent to which different ethnic**

<sup>36</sup> *Report on the Conditions of Some Rwandans Disadvantaged Throughout History*, sect. III.2.1.

<sup>37</sup> Amnesty International, *Safer to Stay Silent*, p. 12.

identities remain salient. However, 17 years is too short a period for such tragic memories to be erased.

83. Efforts by the Government to forge unity through a national Rwandan identity and to diminish the role of ethnicity as a destructive force are laudable. It is also important to guarantee the rights of individuals and communities to freely express their ethnic identity and culture. These are not incompatible, but Government suppression of identity is inconsistent with this second value. In fact, rather than suppressing discussion of ethnicity, at crucial points, Government may need to be explicit in demonstrating that all people are equal regardless of ethnicity by deliberately including members of all groups in every Government decision-making body, as has been done to recognise the equality of women.

84. In order to achieve the goals of social cohesion, unity and reconciliation, legitimate group-based concerns need to be expressly addressed and those rights fulfilled. Where inequalities based on ethnicity have existed, whether intentionally or de facto, corrective special measures must be undertaken to establish equal enjoyment of rights. A critical tool to implement this policy is the collection and publication of data regarding all aspects of the socio-economic situation in the country and political participation that is disaggregated along ethnic and socio-religious lines.

85. Social cohesion, particularly in States with a history of ethnic-based violence, is a long-term goal that is best achieved through dialogue; open and constructive discussion and uncensored debate that allows grievances to be aired and solutions to be sought transparently and collectively. In this respect, the national dialogues on issues relevant to ethnicity, national identity and reconciliation undertaken by the Institute of Research and Dialogue for Peace, in collaboration with government, are highly commendable. It is a public process which has been useful to assess progress, identify challenges, and build confidence.

#### A. Reconciliation mechanisms

86. An important part of the difficult healing process achieved to date has been brought about through dialogue and the courage to come together – victims and perpetrators – to confront the past. Despite enormous challenges and significant deficiencies, the *gacaca* court system has been instrumental in creating a pathway for communities to move forward. An in-depth analysis of the *gacaca* court process and its outcomes is beyond the scope of this report.

87. Nevertheless, the independent expert urges the Government, as it brings the *gacaca* process to a close, to put in place a long-term strategy that recognizes the continuing need for community-centred reconciliation mechanisms. Reconciliation must be considered to be an ongoing process. Alleged perpetrators of genocide continue to return to Rwanda from neighbouring countries and settle back into communities where their crimes were committed. Returns open wounds in the community that must be addressed through a community process. Furthermore, precautions must be taken to ensure the security of individuals and the community as a whole.

88. The situation and needs of women who suffered rape and other sexual violence and who may be living with HIV/AIDS must be given high priority, including to ensure their access to life-saving medication.

## **B. Laws relating to genocide ideology and divisionism**

89. The current wording of Rwandan laws relating to genocide ideology, divisionism and sectarianism is problematic and ill-defined. Equally, implementation of the laws has gone considerably beyond the limits to freedom of expression envisaged in article 20, paragraph 2, of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. These laws must be revised as a matter of urgency and safeguards should be implemented to guarantee that they are not used to silence dissent or restrict the legitimate activities of political opposition. Limitations on freedom of expression should be strictly necessary and proportionate to the aims envisaged under the law. Additionally, the legal standard of intentionality must be reflected clearly in the legislation. The independent expert is encouraged that the Government has stated its plan to re-draft the laws to respond to criticisms.

90. While there are important anti-discrimination provisions in the Criminal Code and other legislation, Rwanda should adopt comprehensive anti-discrimination legislation, which should include measures to prohibit discrimination and establish effective civil penalties for discriminatory acts by both State and private actors. The legislation should provide for effective, transparent enforcement mechanisms which can be accessed easily by all.

## **C. Political participation**

91. The effective and meaningful participation of all groups in the political arena can be a pivotal element in avoiding violent conflict. In post-conflict and post-genocide societies this can be particularly important, demonstrating that all groups within society, both those who previously held power and those who may have faced exclusion from political structures, are represented and can play a full role in shaping decisions affecting them. Perceptions that political power is dominated by members of one group can lead to tensions and instability.

92. Rwanda must be commended for successes in incorporating women into the political leadership positions at the national and local levels. It is equally important that individuals who may self-identify as belonging to different ethnic backgrounds also feel effectively represented in national and local Government and in senior positions in the civil service. It is important to ensure that the judiciary and the civil service, including the police and military, reflect the full diversity within Rwandan society. The independent expert urges the Government to consider implementation of relevant recommendations of the second session of the Forum on Minority Issues on the thematic subject of minorities and effective political participation (contained in document A/HRC/13/25).

## **D. The situation of the Batwa**

93. The Batwa people face discrimination in Rwandan society. They have been forcibly removed from their ancestral forest lands without consent or compensation and deprived of their traditional livelihoods. Many are living in extreme hardship and poverty on the margins of mainstream society. Irreversible damage has been caused to the distinct lifestyles, livelihoods, cultures and traditional practices of communities by their displacement.

94. The Government should acknowledge the Batwa as a distinct population group and put focused energy into designing and implementing targeted programmes to improve their conditions. The Batwa should participate in a meaningful way in all stages of policy formulation, programme design and implementation of decisions that affect them.
95. The Government should compensate displaced Batwa communities and, pursuant to effective consultation with those communities, develop initiatives to reconnect them with their ancestral habitats and cultural practices, recognize their rights to the natural resources of the forests, and develop programmes that value and preserve the traditional practices of their forest livelihoods.
96. The Government must be commended for the programmes that it has instituted to date that are targeted to benefit those who are considered the poorest people in every community, such as the “One Cow per Poor Family” programme, work relief for those who are unemployed and subsidies for housing, health insurance, and school costs, and initiatives that it outlines in its National Social Protection Strategy of 2011.
97. However, many Batwa communities are failing to benefit fully from Government initiatives and, in some instances, are facing negative impacts as a result of the manner in which certain initiatives are implemented at the local level. While not discriminatory per se, some policies and programmes may have a disproportionate negative impact on Batwa due to their disadvantaged situation. Equally, due to their social distance from and relative lack of contact with the mainstream society, Batwa are failing to take advantage of positive policies.
98. Batwa families should be allocated land sufficient for them to engage in agriculture or livestock farming and should receive the necessary training. Targeted poverty alleviation programmes should be developed with vocational training specifically targeted to their particular needs as a population group transitioning from a hunter-gathering livelihood and assistance to find employment.
99. Specific programmes to encourage and enable greater enrolment of Batwa children in primary and secondary schools are critical. A holistic approach must be taken that addresses the stigma that confronts Batwa children in schools. The independent expert draws the Government’s attention to the recommendations of the first session of the Forum on Minority Issues and the right to equal quality education and encourages implementation of those recommendations relevant to the situation of the Batwa.
100. The Government programme to demolish all *nyakatsi* houses should be reviewed urgently to ensure that it has not impacted negatively on vulnerable individuals, families or communities. Local authorities should act only according to strict guidelines ensuring that no person is left without shelter due to their actions.
101. Batwa women and children are particularly vulnerable to the effects of discrimination, social exclusion and poverty and their situation merits particular focused attention including ensuring adequate maternal and infant health care, access to education, adequate housing, food security, access to water and sanitation and protection from violence, including sexual violence and exploitation. The Government should undertake research and formulate specific, targeted programme responses as appropriate.
102. The Government should acknowledge the stigma attached to and discrimination against Batwa that exists in Rwandan society and assess the ways in which that stigma may be creating obstacles to the successful impact of programmes to address the inadequate living conditions faced by Batwa. That analysis should

inform the redesign of programme initiatives in order to improve effectiveness. Additionally, the Government should undertake a national public education campaign to combat stigma against the Batwa in consultation with and involving the Batwa themselves.

103. There is a lack of detailed information available regarding the overall situation of Batwa, their population, the location of distinct communities and their socio-economic position. To fully understand their problems and respond appropriately, it is necessary for the Government to undertake further research of both a quantitative and qualitative nature. The plan (part of the National Social Protection Strategy) to tabulate socio-economic data by ethnicity should be implemented urgently and the results made widely accessible.

104. The Government should act on the analysis and recommendations contained in the Senate's *Report on the Living Conditions of Some Rwandans Disadvantaged Throughout History* and other relevant Government and civil society reports.

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