

Political Presentation of Batwa Minority in Burundi:

**A Promising Government of Unit and
Reconciliation**

By Richard Ntakirutimana¹

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¹ Richard Ntakirutimana is a scholar and human rights, advocate. He holds a master's degree in Law, human rights and democratization from the University of Pretoria and a master's degree in governance and development from Antwerp-Belgium.

Introduction

Batwa are indigenous peoples originally populating the forests in the Great Lakes region of Africa. They have gradually lost their traditional lands through a combination of a long process of forced eviction in the name of development and national park establishment. The population size of Batwa is not known for many reasons, which include disease and famine. According to the Indigenous World 2019, it shows that the Batwa population in Burundi amounts to 100,000 and 200,000 individuals living across the country.² This study draws attention particularly to the political inclusion of the Batwa as Burundi's "First People". To this end, this paper is divided into three parts. In the first section, the article considers the political inclusion of Batwa under the current political regime, looking more specifically at the source of power and the exploitative nature of the Burundi constitution. The second section focuses on the human rights situation of indigenous people as well as the position Burundi holds in rectifying international instruments with respect to and promotion of their rights. Finally, the paper is concluded with suggestions.



Burundi got her independence in 1972 from Belgium. The independent country initially preserved its monarchy. In 1965, Burundi held a multi-party election, which turned into a one-party system through a military coup in line with a broad trend on the African continent. Political liberalization in the context of structural adjustment framework paved the way for multi-party elections in June 1993.³ Burundi celebrated the successful instant democratization of another election in June 1993 in which the Hutu

² IWGIA 'Indigenous World 2019-Burundi. <<https://www.iwgia.org/en/burundi/3492-iw2019-burundi.html>> (accessed on 1 March 2021).

³ Vandeginste, S. 'Power-sharing as a fragile safety valve in times of electoral turmoil: the cost and benefits of Burundi's 2010 elections' (2011) 49(2) *Journal of Modern African Studies* 315-335.

Melchoir Ndadaye from *the Front for Democracy in Burundi (FRODEBU)* party was elected head of State. However, only four months later, part of the incumbent (Tutsi-dominated) regime imposed its veto to protect its vested interests, which led to another military coup in October 1993, followed by many dignitaries' assassinations.⁴ The assassinations and military coup created large-scale, very often inter-ethnic massacre, and a civil war between the predominantly Tutsi government army and predominantly Hutu rebel forces that lasted until August 2005. The civil war brought the then President of South Africa Nelson Mandela to call for mediation between rebels and the government through what they called the initial peace accord, which was signed in August 2000 in Arusha (Tanzania) between the *Union for National Progress (UPRONA)* (and a number of small, predominantly Tutsi, parties) and *Frodebu* (and a number of other small, predominantly Hutu, parties), the government of Tutsi army and the national assembly of Burundi that period.

Also, the principle of peace agreement focused on the creation of a three-year transitional government with a transitional period divided into two 18 months' intervals headed by a Tutsi and a Hutu; legislative power was to be exercised by a National Assembly of at least 100 members and a Senate comprising of two delegates from each province (one Tutsi and one Hutu). At the time of transitional period, a new constitution was to be produced and approved by the Senate and National Assembly, and an independent electoral commission established to organise elections. Again, the peace agreement used a standard formula of applying a system of power-sharing between political parties (rebel movements would supposedly be registered as parties) and ensuring the presence of ethnic and gender plurality within the political structure. However, after the signing of the peace agreement and being observed by so many faces, it took a whole year for the transitional government to be well constituted and another five years to elect democratic government.⁵

In between April and July 2001 there were two attempted coups. Some elements of the Burundi ruling class with an ethnic base used their political resources to delay implementation. Once the political leaders understood the machinations of western donors, they sought to rearrange their politics to suit. There were several petitions for and against candidates for leadership. Regional states decided that Buyoya should be the Transitional President for the first 18-month period with Dometien Ndayizeye (G7 & FRODEBU) as Vice-President. They threatened further sanctions if Buyoya failed to abide by

⁴ See Above (n2) 315-335.

⁵ Daley, P. "The Burundi Peace Negotiations: An African experience of peace-making (2007) *Review of African Political Economy* 345-346.

the conditions; even then, he later sought to change the clause in the Constitution that prevented him from running as President. The transitional government sworn in on 1 November 2001 had 26 Cabinet posts, of which 14 went to Hutus; Tutsis retained the key ministries of defence, foreign affairs and finance. Four women party members were made ministers. During this period of transitional, two Hutu rebel groups – the CNDD-FDD and Palipehutu-FNL were still fighting because they were part of the accord of peace agreement.

In November 2003 a peace agreement between the transitional government which was established by peace agreement and the main Hutu rebel movement (CNDD-FDD) was signed. This accord paved the way for the general elections of 2005, which were recognised as free and fair by the European Union⁶ and were won by the former rebel movement, with some observers calling Burundi a beacon for Central Africa (Peterson 2006). The newly elected President, Pierre Nkurunziza (Hutu, CNDD-FDD) accommodated the Batwa minority for the first time in the political history of Burundi by including them in the legislature.

⁶ Rapport final Mission d'observation électorale de l'Union Européenne au Burundi <<https://aceproject.org/en/regions/africa/BI/burundi-final-report-legislative-elections-eu-2005/view>> (accessed on 6 June 2021).

1.1 The Characteristics of Burundi

Burundi is a small landlocked country in East-Central Africa, bordering Rwanda, Tanzania, and the Democratic Republic of the Congo. Its total area is 10,750 square miles (27,830 square kilometers). The country is situated on a high plateau, with an altitude ranging from 2,532 feet (772 meters) at Lake Tanganyika in the west to 8,760 feet (2,670 meters) at the highest point, Mount Heha. The country lies along the East African rift valley and experiences occasional tremors and earthquakes. Forty-four percent of the land is arable, but only 9 percent is planted with permanent crops. One-third of the country is used as pastureland. The most fertile areas are in the highlands, where temperatures are moderate and rainfall averages sixty inches (152 centimeters) a year. The mountain slopes are dense with trees. The plateau is also wooded, particularly at the higher altitudes. Primarily farming is for subsistence but other crops are also cultivated, mostly tea and coffee. Some natural resources include nickel, uranium, rare earth oxides, peat, cobalt, copper, platinum, vanadium, niobium, tantalum, gold, tin, tungsten, kaolin, and limestone.

Burundi's society is composed of four ethnic identities: the dominant group are Hutu, (approximately 85%), followed by Tutsi (14), and the Twa and some Ganwa (1%),⁷ sharing the same territory and language. Power, however, has long rested with the [Tutsi](#) minority, which historically has controlled the army. Few fundamental cultural differences are distinguishable between the two major groups. Both groups speak Rundi (Kirundi). Such linguistic homogeneity is rare in sub-Saharan Africa and emphasizes the historically close cultural and ethnic ties among the peoples in Burundi. The other groups include the [Twa](#) Pygmies and a sprinkling of Swahili-speaking peoples from Tanzania and the Democratic Republic of the Congo.⁸ Common perceptions of Tutsi as uniformly tall and graceful and of Hutu as short and stocky do not fit the reality of physical variations because the two groups have frequently intermarried over the centuries. Traditionally, the Hutu have been farmers, while the Tutsi have been pastoralists.⁹ Some regional status differences exist among the Tutsi, with the Tutsi-*Banyaruguru* clan found primarily in the north of the country and the Tutsi-*Babima* primarily in the south. Historically, the Tutsi-*Banyaruguru* generally dominated precolonial Burundi, while the Tutsi-

⁷ Vandeginste, S. 'Power-sharing, conflict and Transitional in Burundi: Twenty Year of Trial and Error' (2009) 44(3) *African Spectrum* 63-86.

⁸ Burundi Culture, see <<https://www.everyculture.com/Bo-Co/Burundi.html>> (accessed on 24 April 2021).

⁹ Newbury, D. 'Precolonial Burundi and Rwanda: Local Loyalties, Regional Royalties' (2001) 34(2) *International Journal of African Historical Studies* 268.

Bahima have generally dominated Burundi since independence.¹⁰ Society was originally organized around family and clan loyalties. At the beginning of the 16th century, these ties were adopted to include a Tutsi monarchy. Intervening between the *King (Mwami)* and the masses was a princely class (*Ganwa*) that kept the ordinary Tutsi and Hutu on equal footing. The relationship between the two groups began to change during the colonial period when the German and Belgian colonial administrators favoured the Tutsi over the Hutu, which resulted in ethnic disparities and political instability until early 2000s.

1.2 Political History of Burundi

Burundi was a Monarchy long before the arrival of colonialism, and it is among the few countries in Africa whose borders were not determined by colonial rulers.¹¹ In 1885, Germany declared present-day Burundi and Rwanda as part of its sphere of influence, forming part of a territory called German East Africa; however, Germans did not begin to settle in the area until 1906. They made a deal with the Tutsi King, guaranteeing him protection from his enemies in exchange for following German commands, thus making the King a puppet. The European conflict of World War I spread to the African continent, and in 1916 Belgium sent 1,400 troops to Burundi. They wrested control of the land from the Germans with little opposition. In 1923, Burundi and Rwanda officially declared a Belgian mandate by the League of Nations. The territory was known as Ruanda-Urundi. After Belgium replaced Germany, Burundi continued to implement the administrative system's challenges, using the divide and conquer strategy by undermining the King's traditional system of governance.¹² In this regard, to achieve their mission, Belgium played off the two main groups against each other, the Hutu and Tutsi, and naming them to be of ethnic identity rather than Burundians with shared values and culture. The consideration of Hutu and Tutsi categories undermined traditional state structures over time, creating polarization between the two groups, the Hutu and Tutsi up to date. Between 1928 and 1934, Belgium introduced new administrative reforms that favored the Tutsis over the Hutu majority, treated them as superior and born to rule at the expense of the Hutu, described as servants. For instance, before the conquest of the Europeans (Germany and Belgium), the King appointed chiefs by assuring that regional governors came from all that is, Hutu, Tutsi, and '*Ganwa*'¹³ Groups. Conversely, the colonial administrative system reform replaced all positions filled by Hutu Chiefs with

¹⁰ See Above (n8) 274.

¹¹ See Above (n7).

¹² J.D Nkuruzinza. 'The origin and persistence of state fragility in Burundi' (2017) 8.

¹³ Ganwa Group is the descendants of the King / royal aristocracy.

Tutsi and *Ganwa* such that the proportion of Hutu chiefs was reduced from 20% in 1942 to 0% in 1945.

The administrative reform created massive marginalization of Hutu and Batwa by the Tutsi and *Ganwa* groups. On 18 September 1961, Burundi organized a parliamentary election, and UPRONA political party (Unité pour le Progrès National), founded by Louis Rwagasore, son of King Mwami Mwambutsa IV, head of state of Burundi at once won a landslide victory, his party taking 58 of the 64 seats. On 28 September 1961, Rwagasore was nominated by Parliament as the Prime Minister, and he was murdered on 13 October 1961.¹⁴ Rwagasore's victory was a surprise to the Belgian administration. Considering him a nuisance, they had done everything to prevent him from engaging in political life. Rwagasore, even though democratically elected as head of state, was put under house arrest and told to refrain from political activities before being assassinated. In this respect, Belgian colonial leaders further attributed to the creation of fragility in Burundi. They helped political opponents kill Rwagasore, a national hero for independence, who had been able to unite Hutus and Tutsis behind his independence project, which was coupled with a clear development vision.

In early independence, there were two groups known as Casablanca and Monrovia Groups. Casablanca was favouring pan-Africanism and deep integration of the continent as the best way forward for Burundi. At the same time, Monrovia, also stood for pan-Africanism but not at the expense of national statehood.¹⁵ After independence, political elites started to fight for power which led to government instability, and between 1962 to 1966, there was no government in place to rule for more than one year. Thus, this caused massive political violence and in October 1965, a group of Hutu leaders, frustrated by what they perceived as their marginalization, attempted to topple the government but failed.¹⁶ In this regard, President Micombero (1966–76), President Bagaza (1976–87), and President Buyoya (1987–93) all took power by military coups, and they were all Tutsis of the UPRONA party from Bururi Province.¹⁷ The state functioned through clientelism, patronage, and rent-seeking. State institutions were used to accumulate wealth and to protect individual interests. There were episodes of intense violence, most notably the genocide of 1972¹⁸, followed by increased

¹⁴ Poppe, G. 'The murder of Burundi's prime Minister's Louis Rwagasore' (2015) 157, *Afrika focus* — Volume 28, Nr. 2, 2015 — pp. 156 -164

¹⁵ See Above (n2).

¹⁶ Hutu in Burundi wanted to copy what happened in Rwanda in 1959, where Hutu's viewpoint was that they should guarantee de facto power as the majority population.

¹⁷ Curtis, D. 'The International peacebuilding paradox: Power Sharing and Post-conflict governance in Burundi' (2012) 112/446 *African Affairs* 72-91.

¹⁸ In the spring of 1972 Burundi experienced massive bloodletting. Burundi's agonies did not begin nor end with what is sometimes referred to in Burundi as *ikiza*, the "scourge". Although the number of victims will never be known,

repression and purges of Hutu from political, military, and economic structures. President Buyoya, however, implemented an important program of reforms. Reacting to the harsh military reprisals against the Burundian population in Ntega and Marangara communes in 1988, international donors placed heavy pressure on Buyoya and his regime to open up political space. Buyoya also faced rising internal pressure, most notably from a group of leading Hutu intellectuals who wrote him an open letter in reaction to the massacres and social injustices perpetrated by the state.

In 1988, Buyoya reshuffled his cabinet and named an equal number of Hutu and Tutsi ministers, including a new Hutu Prime Minister. In line with the international democratic enthusiasm of the early 1990s, donors continued to push for multi-party democracy and further reforms. In March 1992, a new Burundian constitution was adopted by referendum. The new Constitution was based on the principles of democracy and multi-party politics and included several provisions that referred to Burundi's diversity and national unity, providing a precursor to more formal power-sharing governance arrangements later. Democratic elections were held in 1993. Three known political parties took part in the election, which were Front for Democracy in Burundi (FRODEBU), Union for National progress (UPRONA) and People's Reconciliation Party led by Pierre Claver Sendegeya.

The incumbent, *Buyoya*, believed that he would win these elections since he had extended the proportions of people who benefited from the state's patronage by opening state structures to some Hutu. Instead, the winner of the elections was *Melchior Ndadaye*, from the predominantly Hutu party Front pour la démocratie au Burundi (FRODEBU). Interestingly, President *Ndadaye* appointed a government that was attentive to political divisions in the country. Even though FRODEBU won 65 out of 81 seats in the National Assembly, *Ndadaye* formed a government consisting of 7 Tutsi and 15 Hutu ministers and named a Tutsi Prime Minister. In addition, out of the 22 ministers, seven came from the opposition UPRONA party and two others from other opposition parties. The government also included at least one person from each of Burundi's 16 provinces. Still, many Tutsi feared the replacement of the established Tutsi elite in public sectors and the military, and the return of an enormous number of Hutu refugees (and their land claims).

In October 1993, President *Ndadaye* and other high-ranking FRODEBU members were assassinated by the Tutsi dominated army, less than five months after they took office. These assassinations sparked

estimates range between 150,000 to 300,000 (Kiraranganya, 1985: 76) To reduce a complicated drama to its simplest common denominator, the vast majority of those killed were of Hutu origins, representing approximately 80 per cent of a total population then numbering approximately four million; the perpetrators were drawn overwhelmingly from the Tutsi minority, accounting for some 15 per cent of the population, its representatives holding full control over the armed forces and the government.

into inter-ethnic massacre across the country. In January 1994, a power-sharing arrangement was negotiated, which led to the election of Cyprien Ntaryamira by the Parliament. Cyprien Ntaryamira was later killed in the plane crash with the Rwandan president Juvénal Habyarimana on 6th April 1994 that led to the Rwandan genocide. Subsequent negotiations produced the Government Convention signed by twelve political parties in September 1994. However, this agreement gave the presidency to the Hutu-dominated FRODEBU party, which won the 1993 elections and Prime Ministership to the Tutsi-dominated UPRONA party, which came into being since independence. The existing veto system led to a complete paralysis of presidential and parliamentary power and loss of control of the army by the intuitive.

Quickly, discouraged by the impotence of the civilian government in the face of the Tutsi parties and the army, some of the Hutu politicians decided to rejoin the armed rebel groups such as the CNDD (Council for the Defence of Democracy), Frolina (National Liberation Front) and Palipehutu (Hutu People's Liberation Front). The army responded to the growing threat of guerrilla infiltration in the country by terror campaigns against the population and by ethnic cleansing in certain areas, including the capital, Bujumbura. This environment of violence led the government in Burundi to seek a regional military intervention in the spring of 1996. This was the situation on 25 July 1996 when Major Pierre Buyoya, who had previously been in power between 1987 and 1993, overthrew the then President Sylvestre Ntibantunganya to become Head of State.

The coup d'Etat in July 1996 led to the other countries in the region, Tanzania, Kenya, Uganda, Rwanda, Zaire and Ethiopia, who had been in regional consultation since the end of 1995, imposing sanctions on Burundi. The regional position was that Pierre Buyoya's government should return to a constitutional form of rule, based on multi-party system which the new President himself first outlined back in 1992. A new solution was to be tried: for the first time the main objective was to involve all parties in negotiations. In imposing sanctions, the countries of the region were, for the first time, taking a confrontational approach to the military government in Burundi.

Motivated by guilt at not having reacted in time to the situation in Rwanda, the international community's reaction to Burundi's crisis was disproportionate for a country of Burundi's strategic importance. Starting in 1993 a strategic importance and especially from 1994, a dozen special envoys and mediators, and many non-governmental international agencies tried to prevent an outbreak of a third genocide in the region and find a solution to the Burundi problem. The Secretary General of the United Nations proposed sending a multinational peace-keeping force. Given the complexity of the

situation, however, it was difficult to foresee who would be killing who. Excluded from government since independence, the Hutu demanded adequate representation in government, administration, the army, education and state enterprises. Having won the 1993 elections and been removed from power once again by the army in 1996, they wanted a return to the democratic system which had put them in power before. For their part, the Tutsi justified their hold on power by arguing that a Tutsi-dominated army was the best defence against genocidal ideology. The conflict between the two moved from the field of political debate to the battlefield, to the various negotiation processes. The Hutu were fighting for "democracy" which, for the minority Tutsi meant extermination. The Tutsi were fighting against a genocidal ideology, which justified excluding the Hutu from power. This was the backdrop to the peace negotiations that began in 1998 in Arusha.

1.3 The Arusha Peacebuilding Process

The next concerted attempt at peacebuilding in Burundi was the Arusha peace process. Negotiations restarted in 1998, with a peace agreement in 2000 and many subsequent agreements. In Burundi, current governance structures are based mainly on the principles established in the Arusha agreement and on the 2005 constitution that followed. Three elements of the Arusha peace process are notable. First, many different actors were involved in peacebuilding during the Arusha period. At least 17 international NGOs based in Burundi between 1994 and 2006 focused on peacebuilding/conflict resolution. Extensive regional diplomatic involvement and international support were hugely significant. In 1994, the Organization of African Unity (OAU) had called on former Tanzanian President Julius Nyerere to become the mediator in the crisis in Burundi. In 1995, the Presidents of Burundi, Rwanda, Uganda, and Zaïre created the Regional Peace Initiative on Burundi, in which regional leaders would discuss the crisis and assist the Burundians in deciding on the means to achieve peace, stability, and reconciliation. Uganda chaired the Regional Initiative and continued to do so throughout the entire peace process. Nyerere was a Special Envoy of the region to Burundi, and he later became a facilitator of the Arusha peace negotiations until he died in 1999. After Nyerere's death, Nelson Mandela became the facilitator of the Arusha negotiations.¹⁹ Mandela's involvement was key since his prominent role meant that the South African government had a strong desire to see the peace process succeed. The peace process would likely have collapsed if not for South African involvement, especially its security guarantees, which included sending a protection force in October 2001. This

¹⁹ Vandeginste, S. 'Power-Sharing, Conflict, and Transition in Burundi: Twenty Years of Trial and Error' (2009) 65

South Africa Protection Support Detachment (SAPSD) consisted of 700 troops to protect Burundian politicians who had returned from exile to take part in the transitional institutions.

Indeed, the Arusha Peace agreement took place in the Tanzanian town of Arusha signed in August 2000, and entered into force in November 2001. The peace agreement was signed by the 19 signatories representing the Government of Burundi, the National Assembly, and 17 political parties. These political parties were divided into two interest groups based upon ethnic ideology – the “G-7” of Hutu dominated parties and the “G-10” of Tutsi dominated parties, although the degree of ethnic allegiance among these parties varied. The peace agreement could not bring an end to the hostilities, but it provided for major institutional reforms. The Arusha Peace and Reconciliation Agreement was a comprehensive document, addressing four key matters: 1) It provided an in-depth historical analysis of the “nature of the conflict, problems of genocide” and guarantees of non-repetition; 2) It provided for transitional arrangements and constitutional principles of the post-transition constitution to promote democracy and good governance; 3) It called for peace and security for all through the adoption of a ceasefire and a reform of the security sector; 4) It defined how the reconstruction and development should be achieved through rehabilitation and resettlement of refugees and victims, physical and political reconstruction, and economic and social development.

The CNDD-FDD and the Burundian authorities signed six agreements between 2002 and 2003 that included a ceasefire, transformation of CNDD-FDD into a political party, power-sharing arrangements, and the integration of their members into the security forces. The party CNDD-FDD won the presidential election in 2005 and has been the leading political party in Burundi since then. The PALIPEHUTU-FNL and Burundian authorities signed five agreements (between 2006 and 2009): these provide for a ceasefire, the integration of PALIPEHUTU-FNL into security forces, and the transformation of PALIPEHUTU-FNL into a political party. These two sets of agreements also include provisional immunity for the members of the two-armed groups, provisions related to the return of refugees, and the demobilization, disarmament and reintegration of rebels. Overall, these various peace agreements introduced a complex institutional framework that includes ambitious political, judiciary and military power-sharing arrangements and provides for the creation of various commissions to deal with specific groups.

Both the Arusha peace accord and the 2005 Constitution define “ethnicity” as a major cause of the conflict. These texts figure three principles to redress the issue: minority political parties should be

included in the democratic process; the protection and integration of ethnic, cultural and religious minority groups into the general system of governance; and national security and justice should be restructured to guarantee the security of all Burundians, including the ethnic minorities (as described in the preamble of the constitution). Throughout the constitution, these principles are translated into the political and legal structures by requiring the representatives of reformed public institutions (the government, the legislative power, the army, the police, etc.), to represent the ethnic diversity of Burundian society in their composition and the undertaking of their duties.

1.4 Power-sharing under CNDD-FDD Government

I have drawn insights from the ethnic power-sharing at the level of political institutions that is constitutionally engineered by a system of guaranteed representation of ethnic segments in the national assembly and the municipal councils, and further, as far as the executive branch is concerned, in the government the presidency (with two vice-presidents of different ethnic groups). In many African states, minority interests have not been taken into account,²⁰ and failed to include and integrate ethnic minority groups in the political state fully. This may cause group conflict and possibly erode the democratic legitimacy of political systems.²¹ The political power-sharing in Burundi is achieved based on ethnic quota. In case the composition of elected bodies is not following the constitutional quota, additional members are co-opted. The Hutu overwhelming demographic majority proportionality is not strictly applied but rather combined with an overrepresentation of the Tutsi and Twa minorities. Guaranteed representation of Tutsi ranges from 1/3 (local municipality administrators) to 40% (government and national assembly) and 50% (Senate). In combination with qualified majority requirements (either two-thirds or three-quarters) that apply to the enactment of legislation and other legislature powers (e.g., the election of members of the national electoral commission), this grants a de facto veto right to Tutsi members of Parliament.

²⁰ Slimane, S. Recognizing minorities in Africa <<https://minorityrights.org/wp-content/uploads/old-site-downloads/download-43-Recognizing-Minorities-in-Africa.pdf>> (accessed on January 2021)

²¹ Jacobs, L. & Hooghe, M. 'Advocates of their community? The conditionality of stereotyping of ethnic minority politicians on television news' (2016) 4.

2.1 The Context of Twa Representation in Burundi

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) highlights the importance of ensuring effective participation of indigenous peoples in decision-making at all levels. Notably, Article 5 of the UNDRIP differentiates between indigenous peoples' right to internal decision-making (developing and maintaining their self-governance institutions) and their right to external decision-making (participating fully in the political, economic, social, and cultural life of their respective States). The significance of indigenous peoples' involvement in external decision-making is underscored by the 2014 IPU Declaration of Santa Cruz de la Sierra. It affirms that meaningful participation of indigenous peoples at all levels of government and parliament is necessary to ensure public policies are sensitive to their situation, needs, and aspirations, and sufficient resources are provided to accompany that. Burundi comes closer than any other African country to put a consociational power-sharing model²² into practice. One of the pillars of consociationalism is the proportional representation of societal segments within the legislature (Lijphart,1977). Burundi's National Assembly – which together with the Senate comprises the legislature – comprises at least one hundred directly elected members. Whatever the result of the elections, the assembly's composition must respect certain ethnic and gender quotas. Article 128 of the 2005 Constitution imposes a 60 percent Hutu and 40 percent Tutsi "corrected" proportionality (Vandeginste, 2009), with a minimum of 30 percent female MPs.²³ The adoption of legislation requires a two-thirds majority in Parliament, offering a de facto veto to Tutsi MPs. Electoral candidates are listed alongside explicit mentioning of their ethnic affiliation. In cases where the electoral results are not under the required quota, additional members have to be co-opted by the electoral commission. This constitutional provision requires the co-optation of three members representing the Batwa in Parliament. Furthermore, in the Senate, regarding ethnic parity in which Hutu and Tutsi members are represented, three Batwa members must be co-opted (Article 169). The Constitution does not give the mandate to the Batwa to participate in the executive. It is, however, vital to underscore that these provisions have not proven simply hollow words. In particular, after the 2005 and 2010 elections, the modalities laid down in the electoral code have been implemented effectively. This means that the Constitution does not explicitly impose any quota on Batwa representation at the municipality level; the electoral code allows the local electoral commission to co-opt a Batwa representative if a Batwa candidate has not been elected (Article 181).

²² Arend, L. 'Democracy in Plural Societies: A Comparative Exploration (1977), Yale University Press

²³ Vandeginste, S. 'Political Representation of Minorities as Collateral Damage or Gain: The Batwa in Burundi and Rwanda' (2014) 7 in *Africa Spectrum*, 49, 1, 3-25., see Article 128 of the Constitution of 2005 as amended in 2018.

This legal engineering of ethnicity has now become a remarkably smooth institutionalized practice. However, there is no Twa at the municipality level due to the technical issue of the Constitution and electoral code. In this regard, three cases were filed to the Constitutional Court, but they did not go so far as to challenge the principle of guaranteed minority political representation itself.²⁴ The cases, all settled by the Court in August 2010, merely dealt with the more technical question of which associations could be recognized as legitimate Batwa organizations, whose members could then be co-opted into the legislative assemblies. Although the Batwa obtained guaranteed political representation in the Burundian legislature, the same policy was not applied to the Batwa in the executive branch (in contrast to the 30 percent of ministerial positions reserved for Hutu/Tutsi women in the security sector). The absence of guaranteed representation of the Batwa in these two crucial spheres, the executive and security, indicates the limitations of peace negotiations as foundational moments for the effective political participation of minority rights.

As far as the composition of the typically consociational grand-coalition government is concerned, research into the Arusha Peace Agreement's preparatory works did not find any proposal submitted to the negotiations table that guaranteed representation of the Batwa in the executive branch. The most obvious explanation for this is that the number of ministerial positions is inevitably more limited than seats in the legislature. Because 17 political parties participated in the negotiations, guaranteeing a Ministerial position to a non-veto player who was not present in Arusha was not an attractive option for the negotiating parties, who did not want to see their slice of the political cake further reduced. The same concern did not prevent gender criteria from being taken into consideration. Guaranteeing 30 percent of ministerial positions to women does not harm Tutsi and Hutu elites' interests, whereas guaranteeing a Ministerial position to the Batwa does.

In contrast to the Arusha negotiations, they focused on a 'classical' power-sharing deal between incumbents and insurgents and not on the consociational power-sharing agreement that had already been agreed upon in Arusha. As the Batwa were not included in this arrangement, they have not been given a chance to raise their marginalization and discrimination concerns, not because of lack of interest, but they were not among the fighting groups. Furthermore, mediators did not recognize Twa

²⁴ The judgements (in case files RCCB 236, RCCB 237 and RCCB 238) were published in the *Bulletin Officiel du Burundi* (No. 11bis/2012 of November 2012) and can be consulted on the website *Droit, Pouvoir et Paix au Burundi / Law, Power and Peace in Burundi*, <www.uantwerp.be/en/faculties/iob/research-and-service/centre-for-the-study/dpp-Burundi/constitution/cour-constitutional/arr-ts-cc-const-2005/>

as a group that needs political attention in power-sharing in Burundi. Likewise, none of the Batwa were sufficiently educated to analyse the country's ongoing political discussion during that time.

2.2 For the first time, a Batwa has been appointed Minister in Burundi

*"I will not fail the unity charter, the constitution and other laws will uphold unity among Burundians, peace, and justice for all, [and] fight the ideology of genocide and discrimination,"*²⁵ president Ndayishimiye said while taking his oath, reports the Reuters news agency. In his speech during the inauguration, Mr. Ndayishimiye committed to be the father of all without discrimination. Article 128 of the Constitution, state *'The Government is composed of the Prime Minister and other ministers. It is open to all ethnic groups. It is composed of at most 60% Hutu ministers and at most 40% Tutsi ministers. The minimum composition of 30% female is assured.*

The President has taken the opportunity to appoint Ms. Imelde Sabushimike, from the minority Batwa ethnic group, as Minister for Solidarity, Social Affairs, and Human Rights to ensure that all ethnic groups are presented. Sabushimike has formerly worked for UNIPROBA, an NGO that aims to defend the Batwa communities' rights. Sabushimike's appointment makes history as it is for the first time that a person from the minority Batwa ethnic group has been appointed to such a high-level office in the Great Lakes Region. What does this mean to the community of Batwa in Burundi? Although Burundi's Constitution does not give Batwa a position in the executive branch, CNDD-FDD has shown reconciliation and unity for Burundian's citizens. Through their organizations, the Batwa feel supported and understood; they are eager to engage the Minister to advocate for their concerns and grievances. However, it will be crucial to analyze whether their representation in Parliament and having one Minister under CNDD-FDD can improve and erase their marginalization and improve their social condition. This should be seen from two angles. First, the population ratio of the Batwa in Burundi and secondly, their social-economic status. The Batwa in Burundi are a minority, they are economically poor and only few are well educated. Today, the country of Burundi does not consider them as a unique group that needs special attention and a special national budget to uplift their living standards. Even the educational background for those who are nominated to represent others in the Parliament can be critical. The logic behind this truth is that the Twa are serving the leading party having been denied to participate on the negotiation table.²⁶ Some of the Batwa

²⁵ BBC News 'Burundi's Evariste Ndayishimiye is sworn in as president 20 June 2020, <<https://www.bbc.com/news/world-africa-53084769>> (accessed on 19 January 2021).

²⁶ Dilwoeth, A. 'The CNDD-FDD (Nkurunziza) and the use of child soldiers (2006) 4. Available at <https://www.files.ethz.ch/isn/22734/case_study_Burundi_CNDD-FDD.pdf> (accessed on 8 May 2021)

community members criticize the way their representatives are appointed by Burundi's electoral commission. For instance, the educational level of Twa representatives is critical and questionable, "as said by one prominent human rights Twa activist Yves Minani". The community members do claim that their representatives cannot challenge the government due to their academic level. Usually, the electoral commission nominates those who cannot raise hands and ask in the Parliament, which is profit for the government to minimize potential scrutinizing threat on the government's side. However, on the other hand, the Batwa see the opportunities of having parliament members through ways of accessing information on national politics and putting forward their concerns to government institutions. Furthermore, the Batwa persist in guaranteeing their position in the executive branch to struggle for climbing the political ladder.

2.3 Batwa human rights in Burundi

The Republic of Burundi is a member of the United Nations and the African Union. It has ratified a range of UN Human Rights Conventions and has made binding international commitments to adhere to the standards laid down in these universal human rights documents. Burundi abstained from voting when The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted and signed in 2007.²⁷ Burundi has not ratified the ILO Convention No.169 on Indigenous and Tribal Peoples in Independent Countries.²⁸ Burundi has no specific legislation addressing the situation of the Twa, the primary legal reference for their rights is the current Constitution, which was approved by a popular referendum in 2005. The Constitution prohibits any form of exclusion based on ethnicity or regionalism. Twa organizations have criticized the place given to them within the Constitution and claim an equal representation. They point out, among others, that articles dealing with the ethnic composition of the government (art. 128) and public administration (art. 143) assign percentages to the Hutu (60 percent), to the Tutsi (40 percent), and women (30 percent) but do not take the Twa into account.²⁹ Twa women are also grossly underrepresented within the 30 percent women quota. It has consequently recommended that a 10% representation within authorities and administration be appropriate,³⁰ and that Twa women inclusion in the gender quota needs to be protected. It has been

²⁷ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted and signed in 2007 <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf> (accessed on 20 January 2021).

²⁸ Ratifications of C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169), <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:31231:Q> (accessed on 25 January 2021).

²⁹ IWGIA 'Burundi Country Technical Notes on Indigenous Peoples' Issues'(2014) 14.

³⁰ Burundi Forum August 2014

argued that the revised Constitution permits Twa to run for elections or be elected on the groundwork of their thoughts as a substitute rather than being co-opted. This would suggest that they had the right to form political parties or to run as an independent.³¹

Other legislation and policies such as Land Act (2011),³² and the Forest Policy (2012) do not have specific provisions for the rights of the Twa, even if the Forest Policy has a much more participatory approach than the Forest Code from 1985.³³ Twa representatives advocate for Burundi to follow the Republic of Congo's example and adopt a law protecting and promoting indigenous peoples.³⁴ Having a national institution dealing exclusively with Twa issues and funded by the state is another aspiration. This body should inter alia make concrete propositions to the state regarding integrating the Twa minorities, such as adopting and implementing affirmative action policies in its favour.³⁵

³¹ See IWACU, 03-01-2014, <http://www.iwacu-burundi.org/blogs/securite-environnement> [accessed 03.12.2020].

³² Law no.1/13 of August, 2011 revising Land Code of Burundi.

³³ The policy promotes, for example, the forest management based on partnership between stakeholders, in particular with neighboring communities, and re-introduces sustainable user-rights to forest resources, which are virtually not allowed by the 1986 code.

³⁴ Burundi Forum, August 2014, op. cit The Republic of Congo adopted in 2011 the Law on the Promotion and Protection of the Rights of the Autochthonous Population.

³⁵ Ntumarubusa, F. "Le combat pour l'intégration," 2011, p. 68.

3. Conclusion

Following the discussion in the previous section, it is evident that the power-sharing arrangement in Burundi recognizes the Twa. The 2005 constitution guaranteed Batwa representation only in the National Assembly and the Senate (but nowhere else), with three co-opted members in both chambers in Parliament, and with no veto power even when it comes to legislation that affects the significant interests of this inferior societal segment. This illustrates that descriptive representation may provide access to decision-making channels but does not suffice to protect the interests of the represented segment. The possibility in which Batwa can have a voice is to empower them in all sectors of the nation and to continue to integrate them into political positions.

In conclusion, the protection and promotion of the rights of indigenous people of the Batwa are better respected in Burundi compared to other neighbouring countries. However, Burundi should introduce and ratify a binding international treaty that will promote and protect the rights of Batwa indigenous communities. This is more pertinent for Batwa to reclaim their land dispossession that occurred during colonial period throughout after independence. Indeed, such an international instrument must address the question of tenure security as the existing rights and claims of indigenous communities to their ancestral lands that remains up to this date primarily unregulated in Burundi. Although, there are progressive developments made so far as regards the representation of Batwa in both the National Assembly and Senate, this is far from being sufficient. This paper advocates for introducing a national commission for Batwa that could take up particular situations of insecurity, such as land tenure. In addition, by guaranteeing the Batwa political positions from local up to national level, the Burundian government will become a role model for the inclusion of first peoples and upholding indigenous rights in the Great Lakes Region.

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