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Political Representation of Minorities as Collateral Damage or Gain: The Batwa in Burundi and Rwanda

Stef Vandeginste

Abstract: There is a remarkable discrepancy between the political representation of the Batwa ethnic minority group in Burundi compared to in Rwanda. Whereas Rwanda's focus on citizenship prevents the Batwa from claiming recognition as a politically salient societal segment, Burundi's governance model, characterized by ethnic, consociational power-sharing, guarantees the political representation of the Batwa in the legislative assemblies. The difference is mainly due to the various modalities of political transition that both countries have experienced. While in Rwanda, regime change came about through a military victory, Burundi's transition from conflict to peace involved a long and complex peace-negotiations process, with international mediators viewing the armed conflict and its resolution in explicitly ethnic terms. The Arusha Peace and Reconciliation Agreement was a foundational moment for the recognition of the political participation rights of the Batwa in Burundi, despite the fact that they were not actively involved in Burundi's armed conflict, or in the peace negotiations. The comparative analysis in this paper offers insights into the potential of peace processes with respect to improved minority-rights protection following violent conflict.

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Keywords: Burundi, Rwanda, peace conditions, constitutional principles, minority rights, Batwa

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Often referred to as “false twins”, neighbouring Burundi and Rwanda have each experienced extremely violent armed conflicts and political transitions. Despite important historical and demographic similarities, one of the major differences between the countries is the way each has handled and engineered ethnic identity as part of post-conflict reconstruction and state-building processes.

In countries that have experienced ethnically driven intercommunal violence of tremendous intensity, challenges relating to stabilization and liberalization are logically daunting. Political participation of minorities is one important dimension of post-conflict state-building. On the one hand, political participation can be considered a human rights objective in itself; for example, the United Nations Forum on Minority Issues has recommended that governments recognize “the diversity within their respective societies with respect to race, ethnicity, religion and language” and that they adopt “measures to ensure effective and sustainable minority political participation” (UN HCHR 2011: 17). On the other hand, insofar as societal warfare is rooted in political horizontal inequalities (Stewart 2008), political participation can also be considered an instrumental step toward preventing the reoccurrence of armed conflict.

The aim of this paper is to compare post-conflict Burundi and Rwanda from the particular perspective of political participation rights of the Batwa¹ ethnic minority group. In so doing, the study adds a generally overlooked layer to the overwhelming majority of literature on genocide and armed conflict in Burundi and Rwanda that refers to the Batwa literally as a footnote in the history of both countries. Furthermore, this paper seeks to explore the reasons behind the two different approaches. In addition to ideological-value-based political preferences, interest-based rational choices by political elites as well as historical path-dependency come to mind as possible explanations. Beyond the particular situation of the Batwa in the two case-study countries, this paper also sheds light on the potential of peace negotiations and power-sharing agreements as foundational moments for improved minority-rights protection after violent conflict. In so doing, it contributes to scholarly debate on the success or weakness of particular types of civil war termination (military victory versus negotiated settlement), which is all too often narrowly considered in the literature, in terms of the duration of war and the likelihood of a resumption of armed hostilities (Toft 2010; Mukherjee 2006). Finally, the paper offers some additional insights into the circumstances and dynamics

1 We use the terms Twa (root) and Batwa (plural) interchangeably throughout this paper, although we recognize that this is grammatically questionable.

that may allow for enhanced political participation by historically marginalized indigenous minorities (see also Mouiche 2011).²

Contested Numbers and Identity Labels

It is, for a variety of reasons, impossible to tell how many Batwa live in Burundi or Rwanda. After acceding to independence on 1 July 1962, Burundi has never held a population census that has surveyed ethnicity. Rwanda's 1991 census did register ethnicity, but the census report itself noted that because of the socio-political context, some people preferred not to identify themselves as members of a minority group (République Rwandaise, Ministère du Plan 1994: 122). The majority of existing literature proceeds on the assumption – despite its being based on population estimates that date back to the early 1950s (Ngayimpinda 1998: 45–46) – that in both Burundi and Rwanda the Batwa account for approximately 1 per cent of the total population: a small demographic minority compared to the 85 per cent Hutu and 14 per cent Tutsi who, combined, make up the vast majority of the estimated total respective populations of approximately 11 million (Burundi) and 12 million (Rwanda) (CIA 2013). It is unclear whether these figures are still accurate, keeping in mind that up to 30 per cent of the Batwa are estimated to have died during the 1994 Rwandan genocide and massacres (Lewis 2000: 23).

More important than the quantitative aspect, there has been a long-standing academic and politically instrumentalized debate on whether Hutu, Tutsi and Twa constitute ethnic groups, or rather indicate social status and class (Goyvaerts 2000). Likewise, the applicability of concepts such as “minority” and “indigenous people” – of which there is no universally accepted definition – has been subject to considerable discussion. Throughout the recent history of both countries, and in line with a general risk of politicization of those concepts observed elsewhere (Kenrick and Lewis 2004), political (ab)use of the labelling of societal groups has been rife.

Suffice it to say here that the classical (*objective*) markers of ethnic identity (such as language, region or religion) are not useful when it comes to distinguishing between Hutu, Tutsi and Twa. Although some writings – not least by colonial anthropologists such as Hiernaux (1974)³ – character-

2 The author would like to thank the two anonymous reviewers along with the editors for their most helpful comments.

3 There is general agreement in the literature that colonial rule has rigidified, manipulated and exacerbated existing “ethnic” divisions.

ize the Batwa on the basis of their physical appearance (Desouter 1992) and their pygmy aboriginality (Lewis 2000), most of the literature (old and new) describes the Batwa with reference to their economic activity, their livelihoods and their social status. The Batwa are mostly referred to as forest people, hunters, gatherers or potters. In terms of their status in society, the Batwa are invariably situated at the bottom of the social hierarchy. In theory, this leaves room for “fluid” identity on the basis of social mobility, which – in some rare cases – happened when Hutu shed their ethnic identity and became Tutsi through what was known as *kwibutura*, which occurred after their accumulation of cattle and, therefore, wealth (Mamdani 2001: 70). However, such upward mobility has not occurred in the case of the Batwa (Thibon 2004: 341).

For the purpose of this paper, we adopt the *subjective* approach put forward by the UN Committee on the Elimination of Racial Discrimination (CERD), which identifies individuals as members of a particular racial or ethnic group on the basis of their own self-identification (UN CERD 1990). The African Commission on Human and Peoples’ Rights (ACHPR), in its definition of indigenous peoples, also uses the principle of self-identification as the key criterion (ACHPR 2006: 11). With respect to Burundi and Rwanda, Hutu, Tutsi and Twa are undeniable identity markers as well as socially and politically salient categories; this means that the circumstances of these groups are relevant to the analysis of political representation and participation in Burundi and Rwanda. Recent doctoral research on Rwanda’s *ingando* solidarity and re-education camps confirms a strong self-identification within the groups as Hutu, Tutsi and Twa (Nsanzubuhoro Ndushabandi 2013: 424).

Batwa Political Representation in Burundi and Rwanda

Burundi

According to Lemarchand (2007), Burundi comes closer than any other African country to putting Lijphart’s model of consociational power-sharing 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 – is composed of at least one hundred directly elected members. Whatever the result of the elections, the composition of the assembly must respect certain ethnic and gender

quotas. Article 164 of the 2005 Constitution imposes a 60 per cent Hutu and 40 per cent Tutsi “corrected” proportionality (Vandeginste 2009), with a minimum of 30 per cent female MPs. 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 mention of their ethnic affiliation. In cases where the electoral results are not in accordance with the required quota, additional members can be co-opted by the electoral commission. This constitutional provision also requires the co-optation of three members representing the Batwa. Furthermore, in the Senate, which is composed on the basis of ethnic parity as far as Hutu and Tutsi members are concerned, three Batwa members must be co-opted (Article 180). It is important to underscore that these provisions have not proven simply hollow words, but that, after the 2005 and 2010 elections, they were implemented in accordance with the modalities laid down in the electoral code. Although 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). This legal engineering of ethnicity has now become a remarkably smoothly institutionalized practice. Three cases were brought before the Constitutional Court, but they did not go so far as to challenge the principle of guaranteed minority political representation itself. 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.⁴

Rwanda

Rather than accommodating ethnic diversity, Rwanda has opted for a radically different, integrationist approach based on the eradication of ethnic identity as a relevant factor from public life, including in the field of politics. Ethnicity is rejected as a colonial divide-and-rule instrument which, after independence, gave rise to Hutu dictatorship and genocide

4 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*, <<https://www.uantwerp.be/en/faculties/iob/research-and-service/centre-for-the-study/dpp-burundi/constitution/cour-constitutionnel/arrts-cc-const-2005/>>.

against the Tutsi minority (Hintjens 2008). Through *ingando* solidarity and re-education camps, an official historical “truth” is passed on to students, released prisoners, returnees, civil servants, demobilized soldiers and other participants (NURC 2006: 59; Nsanzubuhoro Ndushabandi 2013). Instead of ethnic-group identity, individual civic identity is put forward as a strategy for eradicating the divisions of the past. Therefore, it is not surprising that Rwandan legislation does not recognize the existence of the Batwa as a minority or indigenous people, let alone guarantee their political representation. However, there is one provision in the Constitution which, at first sight, indirectly refers to the need for the political inclusion of the Batwa. Regarding the composition of the Senate – which alongside the Chamber of Deputies comprises the Rwandan legislature – the Constitution stipulates that eight (out of 26) senators should be appointed by the president of the republic, “who shall ensure the representation of historically marginalized communities” (Article 82, Constitution of the Republic of Rwanda). During the consideration of Rwanda’s report to the UN Human Rights Committee in 2009, the Rwandan representative stated that one Twa senator had been appointed on the basis of this provision (UN HRC 2009: 3). Although it would be impossible – and, in fact, probably amount to a criminal offence under Rwanda’s anti-divisionism legislation – to inquire about the ethnic composition of the legislative assemblies, it is generally assumed that there are no Batwa in the Chamber of Deputies, and only a very limited number among the local officials (UN GA 2011: 18). International human rights supervisory bodies, at the level of the UN and the African Union alike, have systematically expressed great concern over Rwanda’s denial of the existence of the Batwa as an ethnic group, a minority or an indigenous people. The African Peer Review Mechanism country report on Rwanda described its approach as based on a policy of assimilation and “a desire to obliterate distinctive identities” (APRM 2005: 55-56). Referring to Rwanda’s successful and internationally applauded efforts to include women in political leadership positions – which involves the use of constitutional quota requirements – the UN Independent Expert on Minority Issues stressed the need for the country to adopt measures which ensure 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” (UN GA 2011: 21).

Importance and Consequences of (the Lack of) Political Representation

Guaranteed representation of minorities in legislative assemblies does not ensure effective political participation. However, it is generally accepted that underrepresentation of minorities (whether intentional or not) deprives these groups of a voice in political decision-making processes, and renders them more vulnerable to exclusion and discriminatory policies that negatively affect their enjoyment of economic, social and cultural rights (UN HCHR 2011: 16).

As a result of Rwanda's policy *vis-à-vis* ethnic identity, it has become even more difficult for national and international groups to support the Batwa. In 2004, the Ministry of Justice threatened to stop non-governmental organizations from funding projects specifically targeting the Batwa if the group continued to be designated as indigenous (Beswick 2011: 502), and requested that the main civil society organization, Communauté des Autochtones Rwandais (CAURWA, Community of Indigenous Rwandans), change its name or risk being shut down on charges of ethnic divisionism (Thomson 2009: 319). The Universal Periodic Review mechanism of the UN Human Rights Council also suggested that measures be intensified "to improve access by minority groups and indigenous people to basic social services" (UN HRC 2011: 19); however, Rwanda considered this recommendation as either not applicable or irrelevant.

While the Batwa in Burundi may not be much better off than Batwa in Rwanda in terms of their income and social status at the present time, the situation of the former is, at the very least, different to the extent that national representatives and international support groups can openly conduct research into their situation, publicly voice their grievances, and seek political support for their plight (see, for instance, ASF 2013). The organization Unissons-nous pour la Promotion des Batwa (UNIPROBA, Let's Unite for the Promotion of the Batwa) is quite visible in the local media, and its chairperson, Libérate Nicayenzi, also a senator, actively takes up the cause of the Batwa at the national and international level (Warrilow 2008: 19).

Explaining the Difference

Did the two countries' political leaderships simply make different choices from the range of possible policy options on how to handle minorities (Hadden 2005) and, if so, what explains that difference in choice? Or is the difference more a matter of (post-conflict) context than of choice? A

number of possible reasons come to mind when trying to explain the remarkable differences between the political representation of the Batwa in Burundi and Rwanda. This section looks into these possible explanations, formulated here as hypotheses. In general, the explanations relate to three different types of factors: values, interests and path-dependency. First, the difference may be due to an ideological variation. Insofar as it is a social construct, ethnicity may be engineered differently in the two countries – for instance, in accordance with value-based policy objectives such as unity and reconciliation. Second, interests, rather than values, may motivate and explain the choices made by newly incumbent elites. In this scenario, the engineering of ethnic identity is driven by rational choice, political expediency and self-interest. Third, even after violent transitional “earthquakes”, successor elites may not have complete freedom of choice. On the one hand, a fair degree of governance continuity may result from a long-standing political culture. On the other hand, path-dependency may mean that elite choices are in reality largely determined by antecedents and, in this particular case, the modality of political transition. All of these explanatory categories are, to some extent, relevant for understanding the differences between Burundi’s and Rwanda’s approaches to Batwa minority rights, which we will characterize mainly as the “collateral gain” (Burundi) and “collateral damage” (Rwanda) of both countries’ transition processes.

Hypothesis 1: Rwanda and Burundi attach different levels of importance to national unity.

Under this first hypothesis, Rwanda’s failure to guarantee political representation of the Batwa as an indigenous or ethnic minority group is a logical consequence of the importance it attaches to unity. The term “unity” appears more than twenty times in Rwanda’s May 2003 Constitution, and is one of the guiding principles and foundations of its political institutions. An essential element in Rwanda’s approach to unity is the stated desire to reduce the negative impact of ethnic identity and the ethnic segmentation of society. Seen from this perspective, the recognition of ethnic identity and diversity as politically relevant features inevitably risks societal divisions that led to the 1994 genocide being perpetuated. Rather than guaranteeing political representation to a given group because of its ethnic identity, a case can be made that treating all citizens of Rwanda equally is the most appropriate way to ensure broad-based political participation, including among those who happen to self-identify as Batwa (UN CERD 2010). However, while applauding Rwanda’s efforts to forge unity through a national identity, the UN Independent Expert on Minority Issues notes

that this objective should not be considered incompatible with the right and desire of individuals and communities to freely express their ethnic identity and culture. She concludes that the Rwandan 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 recognize the equality of women” (UN GA 2011: 20). This almost reads as an implicit reference to the Burundian approach to unity. Indeed, contrary to what the hypothesis suggests, unity is a fundamental value that also underpins Burundi’s constitutional set-up and political institutions. The Charter of National Unity was adopted by referendum in February 1991. This text – which granted itself an almost supra-constitutional status as an “irrevocable pact” – was adopted before the introduction of multi-partyism in 1992. Nevertheless, the charter remains an important political document, and its adoption continues to be commemorated every year. Unity also features prominently in Burundi’s 2005 Constitution, and in presidential speeches it is systematically referred to as a fundamental value. However, unlike Rwanda, Burundi’s approach explicitly combines unity with a recognition of the country’s ethnic diversity, and with a commitment to protect and include ethnic, cultural and religious minorities as a general principle of good governance.

In other words, even though unity is, not surprisingly, a top priority in a country emerging from ethnically driven societal warfare and genocide, this prioritization in itself is not sufficient to explain the difference between Burundi’s and Rwanda’s approaches to political representation of the Batwa. It is also important to note that while, in certain countries, the recognition of minority rights may induce a risk of “balkanization” – when demands for self-determination ultimately lead to secessionist movements (Gilbert 2013: 434-435) – this is not likely to occur in Burundi and Rwanda, where ethnic groups do not live in distinct territories.

Hypothesis 2: The differences in treatment of the Batwa in current-day Rwanda and Burundi reflect the two countries’ different historical handling of the social and political status of the Batwa.

This second hypothesis relates to the fact that the historical precedents, tradition and continuity of the political culture characterizing the period before the transition may decisively affect post-conflict practices. Seen from this angle, political representation of the Batwa in Burundi (and, in Rwanda, its absence) might simply be in line with long-standing approaches and old ideas. While theoretically appealing, this hypothesis

fails to explain the difference between the current status of political representation of the Batwa in Burundi compared to in Rwanda. Without going into detail here, there is general agreement in the literature that under both colonial rule and postcolonial regimes, the Batwa were socially and politically marginalized in both countries.

Lemarchand (1994: 15) referred to the Batwa in Burundi as “always marginal, in terms of both numbers and status” and “excluded from the realm of public discourse”. Rodegem’s collection of proverbs (Rodegem 1983) expressing traditional wisdom in Burundi reveals the extent to which the Batwa have generally been considered as an inferior category of people, sometimes even situated somewhere between humans and animals, as in *Abatwa ntibasangira n’abantu* (“It is forbidden for Batwa to share things with humans”) (CNDD 1998: 3). As far as Burundi’s more recent political history is concerned, it should be noted that prior to the Arusha Peace and Reconciliation Agreement of August 2000 (see below), the Batwa did not benefit from guaranteed political representation under the first multi-party democratic Constitution of 13 March 1992. Regarding the Batwa in Rwanda, Mukwiza Ndahinda (2011: 227) also found that most studies concur that the Batwa were “resented, if not despised by both Hutus and Tutsis, who considered them as socially inferior”. Even in precolonial times – before the colonial “ethnicization” of Hutu, Tutsi and Twa – the latter could not intermarry or even share a meal or a drink with members of the other groups (Gahungu 2013: 26). In conclusion, seen from a historical perspective, the Batwa have been equally marginalized in both countries.

Hypothesis 3: Batwa political representation (or its absence) is a collateral effect of the different modality of transition in the two countries.

This third hypothesis establishes a link between the political representation of the Batwa in each of the two countries and the modality of that country’s political transition. Rwanda’s civil war came to an end through the military victory of the insurgents, while in Burundi peace was obtained through a negotiated settlement between incumbents and insurgents. Although, quite paradoxically, the Batwa were not a relevant factor of military or political importance during any of the two armed conflicts, their current political representation in both countries is largely determined by the characteristics of the conflict-to-peace transition. As will be explained in more detail below, this is by far the most convincing explanation.

In Rwanda, genocide broke out with the shooting down of the presidential airplane of President Juvenal Habyarimana on 6 April 1994. Although a peace agreement had been signed in August 1993, and some (unsuccessful) attempts had been made to establish a power-sharing transitional government, this event gave rise to a second and final stage in the civil war, which had started in October 1990 when the Tutsi-dominated Rwandan Patriotic Front (RPF) invaded the country from its bases in Southern Uganda to fight the Hutu-dominated government. Parallel to the genocide – which took the lives of approximately one million people in approximately one hundred days – civil war between the RPF and the government forces resumed, and subsequently ended when the RPF took over the capital city of Kigali in early July 1994. The government troops and extremist Hutu militia were defeated and settled across the border in Eastern Zaire (as the Democratic Republic of the Congo was called at that time). Nearly twenty years later, the cross-border spillover of the Rwandan war continues to destabilize this part of the Central African Great Lakes region. In the immediate aftermath of its military victory, the RPF paid lip service to the peace agreement of August 1993. However, after this brief initial rhetorical adherence to the principle of broad-based inclusive governance, the dominance of the RPF in all political, military and economic spheres soon gave rise to a de facto one-party state – a dictatorship, according to some (Reyntjens 2004), and a case of visionary developmental patrimonialism, according to others (Booth and Golooba-Mutebi 2012).

Rather than violent overthrow, negotiated settlement was the modality of Burundi's transition from conflict to peace. Civil war in this case broke out on 21 October 1993, when the first democratically elected Hutu president, Melchior Ndadaye, was assassinated. This event triggered years of civil war between Hutu-dominated rebel movements and a Tutsi-dominated government army, with neither of the two sides being able to defeat the other. Peace negotiations started in June 1998, initially under Tanzanian (former President Julius Nyerere) and later under South African (former President Nelson Mandela) mediation. An initial (and, with the benefit of hindsight, decisive) peace accord was signed in Arusha on 28 August 2000 between a group of ten predominantly Tutsi parties led by President Pierre Buyoya and his party *Unité et Progrès National* (UPRONA, Unity and National Progress) and a group of seven predominantly Hutu parties led by the *Front pour la Démocratie au Burundi* (FRODEBU, Front for Democracy in Burundi). Later, peace agreements with rebel movements, signed in November 2003 and September 2006, did not alter the main provisions of the Arusha Peace and Reconciliation Agreement, which

contained a constitutional blueprint that later became the (currently recognized) Constitution of 18 March 2005. The subsequent peace agreements are essentially characterized by two types of power-sharing (Vandeginste 2009): First, they contain “classical” political and military power-sharing arrangements between the incumbent government and the insurgents. Second, they lay down the foundations of Burundi’s ethnic power-sharing system, which is characterized by the typically consociational features described above (proportionality, ethnic quota and grand-coalition government). Therefore, our third hypothesis clearly brings us to the essence of the difference between both countries: Peace negotiations created the momentum for granting political representation to the Batwa minority in Burundi – a momentum that did not exist in Rwanda.

In both countries, the armed conflict essentially came down to a struggle for political power between competing groups that were largely divided along Hutu versus Tutsi lines. Neither in the Rwandan nor in the Burundian armed conflict did the Batwa play a meaningful role. The effect of the modalities through which both armed conflicts came to an end on the current political representation of the Batwa can therefore be seen as collateral and unintended. Below, we will look at *how* this modality of transition in Burundi paved the way for guaranteed political representation for the Batwa. However, before addressing this question, let us briefly return to Rwanda.

Rwanda: When Interests Meet Values in Rejecting Political Representation of the Batwa

Why is it that twenty years after its military victory the dominant party – the RPF – continues to shy away from guaranteeing political representation to the Batwa and, more fundamentally, recognizing their distinct group identity? In addition to the above-mentioned importance attached to the value of unity as one of the foundations of post-genocide Rwanda, it is clear that interests explain why the Batwa in Rwanda continue to suffer from the collateral damage that resulted from the country’s transition modality. Looking beyond the specific case of Rwanda, it is obvious that when one ethnic group controls the country, it has every interest in portraying its regime as being based on citizenship in order to counter claims for inclusiveness by other groups, and to consolidate its hegemony. Rwanda arguably offers an interesting illustration of McCrudden and O’Leary’s general reservations *vis-à-vis* civic integrationist models:

What is deemed to be civic is rarely devoid of ethnic content and therefore rarely neutral. The civic is rarely a true fusion of diverse ethnic influences; it is more usually a “secularized” version of the culture of the dominant group. [...] The dominant group, or the most likely dominant group, tends to define itself as civic and to deem its minority challengers as ethnic. Differently put, when the dominant ethnic group controls public institutions, it is able to define what is “civic”. (McCrudden and O’Leary 2013: 131)

This is all the more true in the case of a politically dominant demographic minority group, such as the Tutsi in Rwanda (see also Hintjens 2008 and Reyntjens 2004).

Recognizing the political and societal relevance of the existence of the Batwa as a distinct ethnic group would arguably not be *directly* harmful to the incumbent government. Indeed, the Batwa do not constitute a meaningful political or military threat to the current regime, nor can the absence of political representation of the Batwa be seen as an act of “political vengeance” *vis-à-vis* a militarily defeated ethnic group. There is, however, a clear *indirect* risk and potential cost associated with acknowledging the Batwa’s ethnic distinctiveness. Rwanda recognizing its own ethnic diversity and societal segmentation might spur political mobilization, with representatives of Hutu rural masses voicing grievances of political exclusion, demanding more equitable political representation, and calling for discrimination to be addressed by international forums. In this context, it is worth recalling that the concept of “minority” as defined by international human rights agencies is not based on numerical factors but rather on a group’s non-dominant position in society (UN GA 2011: 4). In other words, the concept not only applies to the Batwa, but could also be applicable to the Hutu, who represent a demographic majority. This may lead to demands by Hutu political representatives for a Burundi-style consociational power-sharing system, in which Rwanda’s incumbent elites inevitably risk losing out on positions. Under the current citizenship-centred paradigm and discourse of “Rwandanicity”, such Hutu demands can easily be (and are) discarded as divisionism, in itself an interesting narrative of justification for repressing political opposition (Niesen 2010). In summary, recognizing the political participation rights of the Batwa might open doors for Hutu demands and legitimize a debate around their grievances. The incumbent regime’s interests are therefore incompatible with recognition of the need for political representation of the Batwa minority. The Batwa are indirect, unintended and therefore collateral victims of the political dominance of a party whose leadership belongs to a demographic

minority group (the Tutsi), and which has no interest whatsoever in a public debate on Hutu political participation.

Burundi's Peace Negotiations Process as the Avenue toward Batwa Political Representation

We will now try to unravel how Burundi's modality of political transition, and more particularly the Arusha peace negotiations process (1998–2000), gave rise to the current guaranteed political representation of the Batwa minority in Burundi's legislative assemblies. This part of our analysis starts with a paradox: The Batwa did not fight or negotiate, yet they benefitted from the peace negotiations (collateral gain).

The Absence of the Batwa from the Battlefield

It is worth recalling that at no point in Burundi's political history was there a Batwa rebel movement entailing an armed struggle against the Burundian government. As hinted at above, Burundi's civil war was rooted in an armed struggle for political power that pitted the predominantly Tutsi government and army against two predominantly Hutu armed rebellion groups. The oldest of these two groups was the Forces Nationales de Libération (FNL, National Liberation Forces), which signed a peace agreement with the government in September 2006 and was the armed wing of a clandestine political movement established by Hutu refugees in Tanzania in 1980 that was quite tellingly called the Parti pour la Libération du Peuple Hutu (PALIPEHUTU, Party for the Liberation of the Hutu People). The more recent and important rebellion group was the Conseil National pour la Défense de la Démocratie – Forces de Défense de la Démocratie (CNDD-FDD, National Council for the Defense of Democracy – Forces for the Defense of Democracy), which signed a peace agreement with the government in November 2003. It was established in 1994 as an offshoot of FRODEBU, which was led by Burundi's first democratically elected Hutu president, Melchior Ndadaye, who was assassinated on 21 October 1993 by elements of the Tutsi-dominated Burundian government forces.

Neither of the two predominantly Hutu armed rebel movements campaigned for the political rights of the Batwa minority. Nor did the Batwa community side with either of the two movements. In other words, at the time the peace negotiations kicked off in June 1998, no armed group had put the long-standing discrimination and exclusion of the Batwa minority on its political agenda.

The Absence of the Batwa from the Negotiations Table

The Batwa did not have a direct impact on the peace negotiations. For one thing, they did not have the capacity to act as spoilers of the peace process, a role defined by Stedman (1997: 5) as “leaders and parties who believe that peace emerging from negotiations threatens their power, worldview and interests and use violence to undermine attempts to achieve it”. Although the Burundi peace negotiations did involve a number of non-veto players, which are defined by Cunningham (2013: 40) as actors other than those “who have the capability to be spoilers, whether or not they actually spoil a settlement”, this was not the case for the Batwa, who were not invited. Indeed, several of the negotiating parties and signatories of the Arusha Peace and Reconciliation Agreement of August 2000 were non-veto players; they were small political parties that did not have any military capacity, but were nevertheless invited to the negotiations table by the mediator. Although the presence of non-veto players around the negotiations table made it predictably more difficult to reach an agreement – with several small Tutsi parties indeed appending reservations to their signature – the case can be made that the involvement of such players (such as civil society groups) is useful to overcome deep societal divisions and to avoid sending the signal that the only way to get one’s voice heard is through armed violence (Cunningham 2013: 44). However, one might expect such non-veto players to claim a piece of the political cake to be shared, rendering a negotiated settlement somewhat less attractive for the main negotiating parties, who do have spoiling capacities (see also below).

Quite paradoxically, although the Batwa were not involved in the Arusha peace process alongside other non-veto players, they did manage to obtain guaranteed political representation in the legislative assemblies. The next two sections address this paradox. On the one hand, it is part of a global trend that peace negotiations and accords offer a window of opportunities for groups in society other than the conflicting parties that are directly involved in the armed struggle. On the other hand, the main negotiating parties in the Arusha peace process did not grant a guaranteed stake to the Batwa minority in the positions that matter most – namely, the executive branch and the security sector.

Peace Negotiations as Foundational Moments

Contemporary peace agreements often contain power-sharing provisions. They ensure access to political, military, territorial or economic power to the groups that were previously fighting each other (Hartzell and Hoddie

2007). From a human rights perspective, such power-sharing deals are likely to have primarily negative effects in that they often guarantee de facto or de jure impunity to those responsible for war crimes and other human rights violations committed during the armed conflict (Vandeginste and Sriram 2011). Furthermore, these deals send the signal that the use of armed violence as a way of securing power pays off, and may thus have a worrisome demonstration effect (Tull and Mehler 2005). However, contemporary peace agreements that provide for power-sharing frequently also contain new constitutional blueprints. The latter often include provisions that guarantee political representation to women and traditionally underrepresented groups. This conforms to the increased relevance of human rights standards in peace negotiation processes in general since the 1990s (Bell 2003). Women's rights have become remarkably more prominent in peace agreements since the adoption of UN Security Council Resolution 1325 in October 2000 (Aroussi and Vandeginste 2013: 189). Although there is no equally authoritative text that deals with minority rights in the context of peace negotiations, other international soft-law standards have been developed and often make it to the negotiations table, particularly if peace mediators put them on the agenda. In this way, peace negotiations create a forum for the trickling-down of international standards, and sometimes become foundational moments for new governance mechanisms, including in the sphere of minority-rights protection (Sriram 2013). Therefore, from one perspective, the attention given to Batwa political representation during Burundi's Arusha peace negotiations can be seen as illustrative of a wider global trend.

In addition, there is a more specific, Burundi-related reason for why the Arusha peace process gave rise to the guaranteed political representation of the Batwa in the legislature. In their account of the South African role in the Burundi peace process, Bentley and Southall rightly pointed out that both Nyerere and, even more so, Mandela viewed the Burundian conflict in quasi-South African terms (Bentley and Southall 2005: 75). In terms of his conflict analysis, Mandela approached the Burundian situation in explicitly ethnic terms. In terms of his conflict-resolution strategy, he therefore logically insisted on the need for ethnic power-sharing that, in particular, contained guarantees for the demographic Tutsi minority, which existentially feared bare Hutu majority rule. Handling the conflict in primarily ethnic terms inevitably also meant recognizing the existence and political salience of the Batwa ethnic minority group. Therefore, even though they were absent in Arusha, the Batwa benefitted from the conflict-resolution approach to what was essentially considered by the mediator as Hutu–Tutsi strife. Furthermore,

Tutsi representatives turned out to be indirect allies of the Batwa. Although at the start of the political liberalization process, which was initiated by President Buyoya in 1989, the Tutsi-dominated UPRONA party (at that time Burundi's only party) rejected the political relevance of the country's ethnic segmentation (which is strikingly similar to the position now adopted by the RPF in Rwanda), their strategy had completely changed ten years later. Realizing that they no longer controlled Burundi politically and militarily, as they had under single-party rule until 1992, Tutsi negotiators in Arusha favoured a highly sophisticated ethnic power-sharing deal with assurances that their political survival would not depend on post-conflict electoral results that would, in all likelihood, lead to a Hutu-dominated government. In the end, Hutu party representatives accepted the complex quota system, corrected proportionality, and qualified majority requirements in parliament referred to above. Despite the Batwa's absence, they clearly benefitted from the complex "micro-management" of Burundi's post-conflict ethno-political cohabitation between Hutu and Tutsi in Arusha.

The Limits of Burundi's Power-Sharing Deal for the Batwa Minority

Although the Batwa (as well as women) 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 per cent of ministerial positions reserved for women), or in the security sector. The absence of guaranteed representation of the Batwa in these two crucial spheres is indicative of the limitations of peace negotiations as foundational moments for the effective political participation of minorities.

As far as the composition of the (typically consociational grand-coalition) government is concerned, our research into the preparatory works of the Arusha Peace Agreement 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. In light of the fact that 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 per cent of ministerial positions to women does not harm the interests of Tutsi and Hutu elites,

whereas guaranteeing a ministerial position to the Batwa does. An interesting parallel with Rwanda comes to mind here: Contrary to the risks associated with guaranteed political representation of the Batwa (see above), a quota system to ensure seats for women in Rwanda's parliament does not have any political cost – but, rather, considerable reputational benefits – for the dominant party, RPF (Burnett 2008).

As far as composition of the police and the armed forces is concerned, it is important to note that the Arusha peace negotiations were but one (albeit major) step in a peace process that could not possibly have come to an end with the signing of the Arusha Peace Agreement in August 2000. As noted above, the two main rebel movements, CNDD-FDD and PALIPEHUTU-FNL, joined the peace talks later on. Although the Arusha Peace Agreement laid down the general principles of ethnic cohabitation of Tutsi and Hutu in the new security forces, the real negotiations about military power-sharing were held three years later, during talks between the interim government (established on the basis of the Arusha Peace Agreement) and the CNDD-FDD. The agenda of these peace negotiations had an important power-sharing dimension, but, compared to the Arusha negotiations, they were much more 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, and which was not called into question in these later talks. As a result, the Batwa were almost inevitably left out of the picture when the composition of the new security forces was discussed after the Arusha talks, and eventually agreed upon in November 2003.

Conclusion

Although ideological-value-based accounts of the difference between the policies in place in Burundi and Rwanda that address political participation of the Batwa ethnic minority may seem attractive at first sight, they are not convincing. Both countries declared unity to be a major objective of post-conflict stabilization and state-building. In the Rwandan case, unity is based on the rejection of societal segmentation and ethnic identities; on the Burundian side, unity is strived for in combination with recognition of ethnic diversity and a complex political and constitutional engineering of ethnicity. A combination of elite interests and path-dependency sheds a more convincing light on the differences in the political representation of the Batwa in the two countries. Rwanda's dominant political party, which has its roots in a successful armed struggle against a regime that represented a demographic majority (Hutu) and oppressed the minority (Tutsi),

has no interest in building a post-conflict polity on the basis of ethno-political cohabitation, or recognizing the Batwa as a distinct ethnic-minority group or indigenous people. In relation to their political representation, the Batwa in Rwanda have therefore suffered from collateral damage caused by the country's modality of political transition. Burundi, on the other hand, offers interesting insights into how peace-negotiation processes and consociational power-sharing agreements can constitute foundational moments for political representation of minority groups that are not at the heart of the violent conflict. Burundi's Batwa clearly benefitted from the negotiated settlement of an armed conflict that was essentially viewed by the international mediator as ethnic Hutu-Tutsi strife. At the same time, it is obvious that guaranteed political representation is no panacea for problems related to inequality in development opportunities or to discrimination of a group that has traditionally been marginalized in society. The Burundian situation also illustrates the limits of what peace processes can offer to minority groups that have been neither party to the armed conflict nor invited to the negotiations table.

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Politische Repräsentanz von Minderheiten als Kollateralschaden oder Vorteil: Die Batwa in Burundi und Ruanda

Zusammenfassung: Ein Vergleich der politischen Repräsentanz der ethnischen Minderheit der Batwa in Burundi und Ruanda offenbart einen bemerkenswerten Unterschied: Während der Focus in Ruanda auf der

Staatsbürgerschaft liegt und die Batwa nicht als Segment der Gesellschaft und politische Entität anerkannt sind, garantiert die Regierungsform Burundis – in der Machtteilung zwischen ethnischen und politischen Gruppen vorgesehen ist – die politische Repräsentanz der Batwa in den Parlamenten. Diese Diskrepanz ist vor allem auf die Unterschiede im Transitionsprozess beider Länder zurückzuführen. Während der Regimewechsel in Ruanda durch den Sieg in einer militärischen Auseinandersetzung zustande kam, bestand die Transition in Burundi in einem langwierigen, komplexen Friedensverhandlungsprozess unter Mitwirkung internationaler Mediatoren, die den bewaffneten Konflikt und seine mögliche Lösung ausdrücklich als ethnische Frage sahen. Mit dem Arusha Peace and Reconciliation Agreement wurde daher in Burundi auch das Recht der Batwa auf politische Partizipation anerkannt, trotz der Tatsache, dass sie am bewaffneten Konflikt und an den Friedensverhandlungen nicht aktiv beteiligt waren. Die vorliegende vergleichende Analyse verschafft Einsichten in das Potenzial von Friedensprozessen, zu einem besseren Schutz von Minderheitenrechten nach einem bewaffneten Konflikt beizutragen.

Schlagwörter: Burundi, Ruanda, Friedensbedingungen, Verfassungsgrundsätze, Minderheitenrechte, Batwa