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TECHNICAL ASSISTANCE AND CAPACITY-BUILDING

**Report of the United Nations High Commissioner
for Human Rights on the situation of human rights
and the activities of her Office in Burundi***

* Late submission.

Summary

In its resolution 9/19, the Human Rights Council invited the Office of the United Nations High Commissioner for Human Rights to report to the Council at its twelfth session on progress on the situation of human rights in Burundi and on its activities, and to make recommendations on suitable independent mechanisms for the promotion and protection of human rights in Burundi. The present report is submitted to the Council pursuant to this resolution and is the first report on Burundi submitted by the High Commissioner.

During the reporting period, the highly politicized environment has manifested itself in disturbing trends in restrictions on civil and political rights and in targeted violence. The rights to freedom of expression, association and assembly have repeatedly been denied to opposition and civil society groups. The legal framework for the protection of human rights, while significantly improved through a newly revised Criminal Code, has stagnated with respect to other key laws. The application of the law is impeded by structural deficiencies in the judicial sector, often resulting in impunity.

The Government was roundly applauded for its commitment to establishing a strong institutional framework for the protection of human rights, notably in the form of an independent national human rights commission, an ombudsman, a truth and reconciliation commission and a special tribunal. All these initiatives, however, have suffered from serious delays over recent years. In the absence of such bodies, particularly a national human rights commission, the advice of the international human rights mechanisms becomes even more critical in helping Burundi address its many human rights challenges. While Burundi is striving to catch up with its treaty reporting obligations, its cooperation with the special procedures system of the Human Rights Council needs to be improved.

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I. INTRODUCTION

1. The consolidation of peace remains the main challenge facing Burundi in the building of an environment conducive to the protection of human rights. Long and intense efforts to end the conflict culminated in the conclusion of the historic Arusha Peace and Reconciliation Agreement for Burundi (Arusha Agreement) of August 2000, in which the Government of Burundi, the National Assembly and all the main political parties agreed to end more than a decade of armed hostilities between the majority Hutus and minority Tutsis, estimated to have cost the lives of approximately 500,000 Burundians between 1972 and 2000. Pursuant to the Arusha Agreement, a new constitution was elaborated and adopted by referendum in 2005, establishing terms by which the two ethnic groups would share power, and recognizing fundamental human rights for all Burundians. The Arusha Agreement also provided for the establishment of transitional justice mechanisms to bring to justice the perpetrators of the gross violations of human rights of the past and thus help the country to achieve national reconciliation and peace. In 2005, the first democratic elections in 12 years were held, which led to the formation of a broad-based power-sharing Government.

2. At the start of 2009, the only remaining armed group in Burundi was the Palipehutu-FNL (Party for the Liberation of the Hutu People-National Forces of Liberation). The Comprehensive Ceasefire Agreement (CFA) signed with this group in September 2006 was followed by an agreement in 2008 to remove the ethnic denotation in its title and allow it to enter the political process. In April 2009, agreement was reached to integrate thousands of FNL combatants into the security forces, to disarm and demobilize thousands more, and to release all associated children. Implementation is foreseen to be completed within the year. The armed conflict has thus now seen a formal end.

3. A key element of this hard won peace were the agreements concluded between the Government and the CNDD-FDD (National Council for the Defence of Democracy-Forces for the Defence of Democracy) in 2003 and subsequently with the FNL in 2006, by which “provisional immunity”¹ from prosecution was granted to members of both groups, as well as those within the Government, who had committed “politically motivated crimes”, pending the establishment of a truth and reconciliation commission and a special tribunal. While not defining what would constitute “politically motivated crimes”, both agreements explicitly excluded genocide, war crimes, and crimes against humanity from provisional immunity.

4. Underlying positive developments in the peace process are worrisome trends in the practical enjoyment of human rights in Burundi. Ahead of the elections scheduled for 2010, violations of freedom of expression, association and assembly, reportedly politically motivated assassinations, and the emergence of violent militant youth groups affiliated with political parties have been observed. The levels of criminality and extreme poverty and the mismanagement of basic social services continue to be serious factors in insecurity in the country.

5. Burundi today stands at a crossroads. Its ability to hold free and fair elections, its will to establish truly independent institutions that are legally and practically enabled to serve as

¹ Law No. 1/32 of 22 November 2006 and decree No. 100/357 of 20 December 2006.

instruments for the peaceful resolution of past and present conflicts and to ensure meaningful protection of human rights, and its resolve to take special measures for the most vulnerable in society will demonstrate the depth of Burundian democracy. This report presents the state of the legal and institutional framework for the promotion and protection of human rights, the progress being made towards their strengthening, and the most salient recent developments.

6. The human rights presence of the United Nations in Burundi consists of the Division of Human Rights and Justice based in the United Nations Integrated Office in Burundi (*Bureau intégré des Nations Unies au Burundi* or BINUB). The Division is staffed and resourced by the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Development Programme (UNDP) and the Department for Peacekeeping Operations (DPKO). Its main functions are to monitor the situation of human rights in Burundi, provide technical advice and support for the improvement of the realization of human rights, and promote the overall level of awareness of human rights among the population and among specific target groups, guided by the recommendations of the international human rights treaty monitoring bodies, the independent expert on the situation of human rights in Burundi of the Human Rights Council, and the recommendations of the Council on Burundi. Its mandate stems from Security Council resolution 1719 (2006), which established BINUB, and the two memoranda of understanding concluded between OHCHR and the Government of Burundi in 1995.

II. LEGAL REFORM

7. The most significant development in legal reform was the enactment, on 22 April 2009, of Law No.1/05 revising the Criminal Code, which abolishes the death penalty, defines and prohibits torture, and criminalizes genocide, war crimes, and crimes against humanity. It also raises the minimum age of criminal liability, strengthens the punishment of violence against women and children, provides a clearer definition of rape, and criminalizes sexual harassment.

8. However, in its article 567, the Criminal Code also criminalizes homosexuality. This provision infringes the right of everyone to protection from illegal or arbitrary interference on his or her privacy, which is provided for under article 17 of the International Covenant on Civil and Political Rights, as well as the right to non-discrimination established under all the human rights treaties.

9. Efforts have also been undertaken to revise the Criminal Procedure Code. In 2007, the United Nations supported the Government in the formulation of the text, but no progress has been made to date on scheduling its presentation to the Council of Ministers and to Parliament. Other key laws that need to be brought into line with international standards and await enactment include those on inheritance, land ownership, not-for-profit organizations, the establishment of a national human rights institution and ombudsman, and the status of the judiciary.

10. Although under article 19 of the Constitution, international human rights law forms an integral part of domestic law, in practice international law is rarely if ever alluded to in the courts in Burundi.

III. RESTRICTED POLITICAL RIGHTS AND TARGETED VIOLENCE

11. Reports alleging violations of civil and political rights by Government officials and members of the ruling party have rapidly increased since mid-2008. Reports of restrictions on political rights, notably the rights to freedom of expression, assembly and association and the right to participate in public affairs, as well as of targeted violence and intimidation, have been received from an array of sectors, including opposition political parties, civil society and trade unions. A variety of figures active in public life have been subjected to threats or to lengthy and complicated trial processes, resulting in their detention over protracted periods of time.

A. Political parties

12. Between August 2008 and mid-June 2009, the United Nations received over 40 reports from around the country of prohibition of, or interference with, meetings of opposition political parties. Between 6 and 9 May 2009, for example, six FNL party members were detained in Ngozi province for holding a meeting; a meeting of UPD-Zigamibanga (*l'Union pour la paix et le développement*), had been banned in Musinga province; and two students affiliated with the MSD (*Mouvement pour la solidarité et la démocratie*) had been arbitrarily detained in Mwaro province. A number of restrictions have been directed at the Front for Democracy in Burundi (Sahwanya-FRODEBU) and UPD-Zigamibanga, which have also had party symbols such as flags stolen or destroyed.

13. Other opposition groups have been blocked from registering as political parties. The MSD was prevented for months from registering on the grounds that its name at that time, the Movement for Security and Democracy (*Mouvement pour la sécurité et la démocratie*), usurped the function of ensuring security, which was the sole prerogative of the State. Its president, Alexis Sinduhije, was detained on 12 November 2008. Sinduhije's continued detention prevented him from registering the group as a political party even after the group was renamed the Movement for Solidarity and Democracy. He was acquitted of the charge of slandering the Head of State and released on 12 March 2009. On 8 June 2009, the application for registration was submitted and approved.

14. A number of public figures are also being held in custody pending lengthy trial processes, including former parliamentarians Gérard Nkurunziza and Pasteur Mpawenayo. Former CNDD-FDD President Hussein Rujaburwa was detained on 27 April 2007 on charges of conspiring to threaten the internal security of the State and for slandering the Head of State. On 3 April 2009, he was found guilty of the first charge and sentenced to 13 years of servitude. Non-governmental organizations (NGOs) have called attention to irregularities in the treatment of this case, alleging obstruction on the sharing of evidence and the infliction of torture.

B. Civil society

15. Civil society organizations regularly report on violations of their right to freedom of expression, along with repeated intimidation and interference in their activities. For instance, journalist Jean-Claude Kavumbagu was detained in September 2008 on charges of slandering the Head of State in relation to an article he published regarding the President's expenditures during a State visit. Kavumbagu was acquitted of these charges and released in March 2009.

16. In an interview on 6 January 2009, the president of an anti-corruption NGO, OLUCOME (*Observatoire de lutte contre la corruption et les malversations économiques*), reported that his staff were subjected to intimidation and threats. On 8 April, OLUCOME Vice-President, Ernest Manirumva, was killed and documents pertaining to cases he was working on were allegedly stolen. The killing has been denounced by civil society as a targeted assassination motivated by political interests.

17. The Government of Burundi initiated a police and judicial investigation in the days that followed. In May, it banned a demonstration planned by civil society organizations to protest against the lack of any discernible progress in the investigations, which at the time of writing had led to no arrests. Other public demonstrations that were banned include a second attempt by civil society organizations to protest against the OLUCOME case and a demonstration against the attacks committed on persons with albinism. The only demonstrations that have been allowed to take place in the capital over the past year were organized by the ruling party in support of the proposed criminalization of homosexuality, or organized by the Government and international partners commemorating the United Nations International Day in Support of Victims of Torture.

18. A draft law has been elaborated by the Government, with inputs from civil society, to establish the legal status of not-for-profit organizations and cooperative and professional associations. It is currently pending finalization.

C. Trade unions

19. Strikes have intensified since May 2007, after the announced 34 per cent increase in the salaries of civil servants did not materialize. Delivery of basic supplies and sometimes of salaries has not always been forthcoming. The Government has thus faced significant discontent from civil servants, particularly in the justice, media, education and health sectors. Representatives of medical unions declared publicly that they had been threatened by members of the National Intelligence Service.

20. The vice-president of the union of non-magistrate workers at the courts of Burundi, Juvénal Rududura, was arrested in September 2008 after having publicly alleged irregularities in the recruitment process at the Justice Ministry. Rududura was tried in the anti-corruption court, the jurisdiction of which was contested. Rududura was detained throughout the process until 8 July, when he was provisionally released by the Prosecutor's Office. The legal basis for his provisional, rather than definitive, release has been widely questioned.

D. Militant youth groups

21. A disturbing trend has emerged since late 2008 involving groups of politically affiliated youth who jog in numbers through neighbourhoods shouting intimidating chants and who are referred to by both international and national observers as "militia". Members of the youth wing of the ruling CNDD-FDD, the *Imbonerakure*, have reportedly been deployed by State officials in various functions, for example, undertaking community patrols, guarding premises and accompanying - in numbers and sometimes bearing weaponry - public and police officials during arrest procedures. All the major political parties are known to have youth wings and reports have been received of outbursts of violence throughout the country attributed to these youth groups, with the trend most pronounced in the countryside.

E. Violations committed by the National Forces of Liberation (FNL)

22. Until its demobilization in April 2009, the FNL set up parallel administrations, mostly in the north-west region, where abuses by them went virtually unchecked. The abuses attributed to the group, which include kidnapping, rape, assault, murder, and robbery, surged during the weeks prior to the April ceasefire, many of which were attacks on Government and CNDD-FDD premises and followers, but also against unrelated civilians and dissidents from its own ranks. With the disarmament of the FNL movement and its accreditation as a political party, any acts of violence by them are now treated as crimes and, in fact, the number of abuses attributed to them has declined. Efforts are under way to ensure their smooth transition to peacetime life, such as through the provision of education and vocational training and the extension of microcredits.

IV. JUDICIAL INDEPENDENCE AND ACCOUNTABILITY

23. The legacy of the crises in the Burundian judiciary is a lack of qualified personnel, a history of ethnic imbalance within the judiciary, a lack of fluency in national and international law, and a lack of material, financial and logistical means to perform its functions.

24. Within this overall context, the justice sector exercises little independence. Contrary to the Code on the Magistracy (*Statut de la magistrature*), recruitment examinations for magistrates are not held and the Ministry of Justice appoints magistrates without consulting the Superior Council of the Magistracy (*Conseil supérieur de la magistrature*). Similarly, contrary to national law, the Council is rarely consulted on the appointment of judges.

25. The United Nations has received allegations of interference in the functioning of the judicial sector, including transfers of judges in contradiction of constitutionally established procedures, and threats made against judges treating sensitive cases. For instance, on 13 May 2009, the United Nations received a letter from a magistrate who claimed to have been kidnapped and assaulted by unidentified individuals wearing police uniforms. A number of judges have been transferred to different regions on the grounds that they do not fully comprehend the proper functioning of public service.

26. One controversial case is Case RCCB 213 of 5 June 2008, in which the Constitutional Court ruled that parliamentarians who had left the ruling party were occupying their seats unconstitutionally in the National Assembly. The parliamentarians in question were removed and replaced by members of the ruling party.

27. The law on the status of magistrates sets forth procedures for sanctions and discipline. In Burundi, the responsibility for guaranteeing accountability rests first with the heads of jurisdictions and court presidents, and secondly with the Superior Council of the Magistracy and the Office of the Inspector General of the Ministry of Justice. However, these two organs rarely enforce sanctions for misconduct. Article 211 of the Constitution allows citizens to petition the Superior Council of the Magistracy and an ombudsman office, but neither the complaints procedures of the Council nor the ombudsman office is in operation.

28. The Council is also tasked with upholding standards of judicial professionalism and performing duties with respect to the nomination, recruitment, and transfer of judges. However, the Council is itself impeded by a lack of independence. In a memorandum submitted to the

Minister of Justice in February 2008, the Union of Magistrates of Burundi (SYMABU) highlighted concerns about the composition of the Council, the promotion of judges with inadequate professional experience to the Supreme Court, and the management of court budgets by the Ministry of Justice.

29. Accessing justice is impeded by the lack of a legal aid system, whose establishment is encouraged by the Human Rights Committee in its general comment No. 32 (1997) on the right to equality before courts and tribunals and to a fair trial. Defendants are rarely provided with lawyers, even in criminal cases.²

30. The malfunctioning of the judiciary in turn impacts on already deplorable prison conditions. Illegal and prolonged preventive detention is common, which has resulted in overcrowding of prisons by roughly four times their capacity. This has worsened prison conditions that were already in violation of international standards, including in respect of separation of children from adults and minimum space, food and medical requirements. Obligations to conduct prompt judicial review of the legality of each detention, provided for under article 9 of the International Covenant on Civil and Political Rights, are routinely breached as a result of apparent arbitrariness in rulings frequently non-compliant with established procedures, and a general failure to enforce court rulings.

31. The Government has taken a variety of measures, notably in redressing ethnic and gender imbalances as well as revising the salary scales of judges. The Ministry has established a coordination team to ensure coherence among all interventions, including those of civil society, bilateral donors and United Nations agencies. Assistance lent by the United Nations in this sector includes the renovation of prisons and construction of courthouses; extensive training for magistrates on judicial ethics and assistance in revising the Code on the Magistracy. A United Nations Peacebuilding Fund (PBF) project focused on building the capacities of magistrates to enforce unexecuted judgements, was successfully concluded in March 2009. However, many challenges remain. The judiciary is overwhelmed with pending cases and magistrates presently enforce their own decisions, which is costly, unsustainable, and legally problematic.

32. A number of emblematic cases serve as a test of the will of the Government to combat impunity in respect of serious crimes. Among them is the trial for the murder of four presumed members of Palipehutu-FNL in the Kinama Commune of Bujumbura in August 2006. The case was presented in court on 3 April 2009 but no verdict has been issued, despite the lapse of the two-month time limit prescribed in law.³ Another pertains to the massacre of Congolese refugees in Gatumba in 2004, for which, to date no judicial action has taken place. No convictions have yet been rendered for the assassinations of the representatives of the World Health Organization in 2001 or of those of UNICEF (the United Nation Children's Fund) in 1999.

² Law No. 01/014 *portant réforme du statut de la profession d'avocat*, article 55.

³ Criminal Procedure Code, article 130.

V. THE SECURITY SECTOR - THE POLICE, INTELLIGENCE AND DEFENCE FORCES

33. The security sector remains a high priority area for human rights monitoring and interventions. NGOs report a possibly declining but continued use of torture by the Burundian National Police (*Police nationale du Burundi*, or PNB), and to a lesser extent, by the National Intelligence Service (*Service national de renseignement*, or SNR). Arbitrary detention, the non-registration of detainees, and failure to separate children from adults in detention remains widespread. The most common sites of torture and ill-treatment, according to information collected in the course of human rights monitoring by the United Nations, are PNB detention cells. To a lesser extent, members of the National Defence Forces (*Forces de la défense nationale*, or FDN) have also been cited in violations.

34. The most notorious recorded episode attributed to the FDN was the abduction and massacre of 31 civilians in Muyinga province between June and August 2006. A military tribunal was convened in October 2008 which led to some convictions, including that of the regional Commander. While welcoming the fact that the massacre was dealt with in court, for many observers the case is not closed. They note the absence of any case pursued against the civilians suspected of involvement; the absence of damages awarded to the families of the victims; and violations of due process.

35. The peace negotiations with the FNL resulted in an agreement to integrate 3,500 FNL and 250 FNL dissident combatants⁴ into the security forces. Integration was completed on 22 April, with none put through a vetting process.

36. Internal procedures exist within each of the security sector institutions - the police, the intelligence service and the defence forces - to investigate and bring to prosecution crimes committed by their members, but many crimes remain unaccounted for. General oversight of these institutions is exercised by the Parliamentary Commission for Security and Defence, which is composed of elected civilian officials.

37. As part of its general monitoring of human rights, the United Nations tracks incidents reportedly involving State agents. It also delivers training to security sector institutions on military ethics, codes of conduct, gender and human rights. With torture now explicitly prohibited in the new Criminal Code,⁵ which defines torture as set forth in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, BINUB will be able to help these institutions to establish rules and procedures to prevent torture and to sanction it when it happens.

⁴ Rebel combatants who withdrew from the FNL.

⁵ Articles 204-209.

VI. BASIC SOCIAL SERVICES

38. The underlying conditions are not conducive to ensuring respect for human rights in Burundi. The crises experienced by Burundi have resulted in widespread destruction of the physical infrastructure such that socio-economic conditions have yet to recover to pre-crisis levels. Its Human Development Index (HDI) ranking is 166 out of the 177 countries for which the HDI is calculated.⁶ While the country is making some progress towards some of the Millennium Development Goals (MDGs), none are expected to be achieved by 2015.⁷ The United Nations estimates that only 30 per cent of the population has access to quality basic social services.⁸

39. The Government has attempted to address the situation through measures to provide free universal education and to provide certain kinds of free basic medical services. Recently, the President announced new policies to create a universal social security system, provide health-care services for all workers, and provide free malaria treatment for all Burundians.⁹ These commitments need to be translated into realistic national strategies for their sustainable implementation, particularly in light of the high fertility rate.¹⁰

40. At present, the social services are unable to guarantee adherence to acceptable standards of operation in regard to three important aspects: the coverage and quality of services rendered, the sustainability of their operation, and accountability guarantees to ensure that abuses will be prevented and sanctioned. All the basic social services are characterized by grossly inadequate material supplies, strong urban-rural disparities, and generally low capacity to apply good practices in their respective areas. Over the past year, the provision of basic social services has been disrupted by strikes in the education and health sectors. These developments have compounded the problems occasioned by the free delivery of some services, which has led to exponential growth in the demand for them, which it has not been possible to accommodate within the existing infrastructure and human resources.

41. Much of the lack in the provision of basic social services has been covered by the international community, generally with positive results. Assistance from the United Nations has enabled, inter alia, the construction of nearly 900 classrooms, a reduction in severe malnutrition

⁶ See http://hdr.undp.org/en/media/HDR_2007/2008_EN_Complete.pdf.

⁷ International Monetary Fund, "Burundi: First Review Under the Three-Year Arrangement Under the Poverty Reduction and Growth Facility-Staff Report", Country Report No. 09/93, March 2009.

⁸ "Rapid evaluation and strategic analysis", October 2008, internal working document of the United Nations system in Burundi prepared in the context of the development of the United Nations Development Assistance Framework (UNDAF) for 2010-2014, p. 37.

⁹ In a speech to the nation, 30 April 2009.

¹⁰ Between 6 and 7 per cent, see footnote 8 above, p. 35.

from 7.6 per cent in 2005 to 5.6 per cent in 2007, and a steep rise in the vaccination rate of infants aged 0-12 months. On 29 January 2009, US\$ 832 million of Burundi's foreign debt owed to all its creditors was written off by the Bretton Woods institutions under the Enhanced Highly Indebted Poor Countries (HIPC) Initiative.¹¹

42. No discernable progress has been made in the area of accountability and the rectification of the laws, structures, processes and practices in these sectors to conform to international standards. Reports continue to be received of public schoolteachers having raped a student or enticed her (most are girls) to engage in sex in exchange for favours - incidents that are rarely followed by investigations or punitive action. In general, the high demand for services declared free for all has led many working in those sectors to demand informal fees. In extreme cases, the inability to pay leads to deprivation of liberty. A common and widely denounced practice is that of private and public hospitals detaining patients, sometimes for months at a time, for inability to pay their medical bills.

43. Among the most urgent tasks for Burundi is ensuring the right to food. Only 19 per cent of the population is food-secure and as many as 46 per cent are chronically malnourished.¹² Recurring climatic shocks, increasing demographic pressures and declining harvest yields, compounded by the destruction during the crisis of distribution channels for goods and services, have had a direct impact on the level of food security. The world hunger index reveals that the level of hunger in Burundi is "extremely alarming".¹³ International cooperation, mainly through the World Food Programme, helps to compensate for the food deficit. However, claimable guarantees for ensuring that the right to food is realized for all, on the basis of non-discrimination, are yet to be institutionalized at the national level.

44. It is imperative that Burundi comply with its international human rights obligations to create an adequate and sustainable social safety net for all, to help prevent socio-economic inequalities from becoming destabilizing factors in the post-conflict period. A process is under way to devolve certain functions to local administrations, which risks creating further disparities among and within the provinces, but also creates opportunities for better management of basic social services that are more attuned to local circumstances and demands.

VII. GROUPS AT RISK

A. Attacks on persons with albinism

45. At the time of writing, 14 persons with albinism had been attacked in Burundi since September 2008: 9 were killed; 4 escaped; and one boy of 4 years of age disappeared.

¹¹ In net present value (NPV) terms, see World Bank, press release No. 2009/211/AFR, 29 January 2009 available at <http://go.worldbank.org/2FQEKTYIY0>.

¹² World Food Programme (<http://www.wfp.org/countries/burundi>).

¹³ Global Hunger Index of the International Food Policy Research Institute, 2008.

Ten of the victims were minors. It is believed that stronger law enforcement in Tanzania has transplanted the activities of networks that traffic in albino body parts in Burundi, where the authorities have responded less vigorously.

46. The Government's response has been largely limited to an exchange of information with the Tanzanian authorities and the establishment of protective assembly areas, including in local schools, government buildings and other available spaces. Arrests were made in March, after a prosecutor in Ruyigi province made use of extraordinary judicial procedures to expedite the dossiers. Eleven persons were tried and sentenced. Information on the investigations of at least six of the attacks has not been made public. Most importantly, the beliefs and therefore the market for albino body parts continue to exist, engendering fears that attacks may recur.

B. The continuing vulnerability of children

47. The vulnerability of children in Burundi is acute. In over 80 per cent of the cases of sexual violence reported to United Nations human rights monitors, the victims were minors. No juvenile justice system is in place to deal with children in conflict with the law.

48. A new approach is reflected in the Criminal Code promulgated in April 2009, which raises the age of criminal liability from 13 to 15 years, revises prison sentences applicable to minors and provides, inter alia, for their education, placement in an institution that promotes their rehabilitation and alternatives to the deprivation of liberty. It also sets out a number of specific offences affecting children - including domestic violence, abandonment of a child, kidnapping, pornography, and prostitution of children.

49. The challenge now is to translate these legislative developments into feasible programmes. Currently, Burundi has no rehabilitative educational services, nor any procedures for alternative sentencing. While Burundian law provides for the protection and care of victimized children, such measures are effectively limited to the forfeiture of parental authority and are rarely applied. Parents of children taken into custody are rarely contacted, minors' records are not marked for prompt treatment, failure to separate minors from adults in detention is widespread, and deprivation of liberty is widely used as an easy measure of sanction rather than as a last resort.

50. In cooperation with other concerned ministries, United Nations agencies and international and local civil society organizations, the Ministry of Justice has established a coordination group on juvenile justice, which is currently developing a national strategy and action plan for 2009-2010 that, if adopted by the Ministry, should lead to the establishment of a juvenile justice system.

51. In the Bujumbura Declaration of 17 January 2009, the FNL agreed to the immediate and unconditional release of children associated with it. In May, the last group of such children were reunited with their families. Another 40 children associated with a dissident faction of the FNL were processed separately.

C. Sexual and gender-based violence

52. One of the most endemic human rights violations in Burundi is sexual and gender-based violence (SGBV). Reporting SGBV is difficult in the conditions that prevail in Burundi, where perpetrators are often civilians from a shared social unit, whether the family, school, or community. Reports are common of raped women being pressured by their families to accept out-of-court settlements that range from payments to the family to marriage to the rapist. Nevertheless, the figures are revealing: the Seruka Centre, a leading non-governmental organization that provides free services to SGBV victims, reported receiving nearly 1,600 victims in 2008. Better protection should now be afforded under the new Criminal Code, which contains a clearer definition of rape and criminalizes harassment.

53. BINUB has led a process of mapping out all SGBV-related interventions undertaken by the United Nations and its agencies in Burundi and of establishing an integrated strategy on this basis. Under a joint programme, BINUB and the United Nations Development Fund for Women (UNIFEM) have organized a variety of seminars and workshops on Security Council resolution 1325 (2000) on women and peace and security. In partnership with a local NGO, BINUB delivered a training of trainers programme aimed at strengthening capacity for tackling SGBV and establishing a network of women occupying elected positions at the community level. Another project envisaged for the immediate future foresees the setting up of pilot care centres that will bring a range of services - legal, medical, social and psychosocial - to victims in a coordinated fashion.

D. The Batwa

54. Comprising 1 per cent of the population, the Batwa people have been little able to influence national debates about the issues that affect them. While there is no national statistical base for tracking changes in their socio-economic status, the available information suggests that the Batwa experience even more acutely the daunting challenges experienced by Burundians generally. Other challenges faced by the Batwa people include inadequate access to land,¹⁴ weak school attendance rates, inadequate housing, non-registration of marriages and births, alleged bias in judicial procedures and lack of revenue-generating activities and thus of opportunities for economic advancement. These challenges are compounded by the fact that many members of the Batwa community do not seem to appreciate the importance of having national identity cards and therefore commonly do not take the initiative to obtain them.

VIII. INCHOATE HUMAN RIGHTS INITIATIVES

A. An independent national human rights commission

55. In December 2006, the President of Burundi committed himself to establishing an independent national human rights commission. A project was launched in 2006 through the PBF, and is currently under the direction of the Ministry of Human Rights and Gender, to support the Government to undertake this initiative with the technical and substantive support of

¹⁴ UNIPROBA, “*Rapport sur la situation foncière des Batwa du Burundi*”, August 2008.

the United Nations. The project provides for technical assistance for the establishment of the commission, extensive awareness-raising activities, as well as material assistance and in-depth training for the commission once established. An initial draft law was produced in this context through a participatory process which was modified upon review by the Council of Ministers in November 2008.

56. On analysing the degree of conformity of the draft law as adopted by the Council of Ministers with the principles relating to the status of national institutions (the Paris Principles), OHCHR found that it failed to conform in important ways with respect to the functions and powers of the commission and the minimum qualifications, composition and appointment process of commissioners. At the time of writing, the Government had indicated that the draft law would be reconsidered by the Council of Ministers.

B. The transitional justice mechanisms

57. The Arusha Agreement foresaw the establishment of three transitional justice mechanisms, namely an international commission of judicial inquiry, a national truth and reconciliation commission (TRC), and an international criminal tribunal. The first two mechanisms were aimed at shedding light on the cycles of violence suffered by Burundi since its independence in 1962, characterized by divisions among the three ethnic components of Burundian society: the Hutu, the Tutsi and the Batwa. It was envisaged that the tribunal would judge and punish those found guilty of crimes of genocide, war crimes, and crimes against humanity.

58. In conformity with Security Council resolution 1606 (2005), negotiations were initiated with the Government of Burundi to proceed with the establishment of the transitional justice mechanisms. Two rounds of consultations were held, in 2006 and 2007, advancing discussions on the establishment of a TRC and judicial remedies, the latter taking the form of a proposal for a special tribunal as the negotiations proceeded. The imperative of consulting the Burundian people was also agreed upon so that their views would be reflected in the establishment of the mechanisms. However, no conclusions were reached on the questions of amnesty, the independence of the prosecutor and the relationship between the TRC and the special tribunal. The question of amnesty was discussed extensively during the May 2007 visit of the then United Nations High Commissioner for Human Rights, Louise Arbour, and was settled in Burundian law in the revised Criminal Code of 2009, which explicitly precludes amnesties for the crime of genocide, crimes against humanity and war crimes.¹⁵

59. A second matter where progress was made during the visit of the former High Commissioner concerned the practical arrangements for the organization of the national consultations. To this end, the former High Commissioner and the President agreed to establish a tripartite steering committee, composed of representatives of the Government, the United Nations, and civil society. The Tripartite Committee for National Consultations on Transitional Justice (TSC) was established in November 2007 through the signing of the Framework Agreement by the First Vice-President of the Republic and the Executive Representative of the Secretary-General for Burundi. The TSC is now supported by its own

¹⁵ Criminal Code 2009, article 171, paragraph 2.

management unit responsible for the administrative and logistic organization of the consultations and a team of 22 national field assistants, who will conduct the individual interviews and group meetings that comprise the consultations. The organization of the national consultations is supported by a project implemented under the PBF that is administered by UNDP.

60. While progress on the fulfilment of the Government's commitments to establishing transitional justice mechanisms has been slow, the national consultations on the prospective mechanisms began in July 2009. The United Nations has worked through the TSC to ensure the participation of women's groups and civil society organizations in the consultations and the inclusion of a gender-sensitive perspective in the consultations.

61. National and international civil society organizations have created a network to monitor the national consultations and established, with the TSC, the modalities for its activities. They will complement the efforts of the TSC to ensure that the objectives of the consultations are known and understood, to monitor for any attempts to distort the outcome, and in due course to help make known the outcome of the consultations. The United Nations is also making efforts towards the same ends by conducting awareness-raising programmes for civil society, the media, and select professional groups, in keeping with the encouragement of the Security Council in a press statement "... to accelerate wider consultations on the establishment of transitional justice mechanisms".¹⁶

C. Interaction with the international human rights mechanisms

62. On all of the issues raised in the present report, Burundi could benefit from the objective expert advice of the international human rights mechanisms. Burundi's record of interaction with these mechanisms has been mixed. It has engaged little with the special procedures of the Human Rights Council: of the 13 communications that were sent in the past three years, the Government has replied to none. So far only two thematic mechanisms have visited the country: the independent expert on the question of human rights and extreme poverty in 1999 and the Representative of the Secretary-General on human rights of internally displaced persons in 2000.

63. Burundi has generally cooperated with the independent expert on the situation of human rights in Burundi. It is recalled that the Human Rights Council, in its resolution 9/19, decided that the mandate of the independent expert would be extended until an independent national human rights commission had been established, and invited the independent expert to report on his activities to the Human Rights Council at the session following the establishment of the commission.

64. Burundi has recently made efforts to submit the outstanding reports due under the international human rights treaties to which it is a party. Since 2006, it has submitted the reports due to the Committee against Torture, the Committee on the Elimination of Discrimination against Women, and the Committee on the Rights of the Child. It has also submitted its report under the Universal Periodic Review procedure of the Human Rights Council, which was examined in December 2008. However, it is over 10 years late in submitting the reports due to

¹⁶ SC/9676 AFR/1858, 9 June 2009.

the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the Committee on the Elimination of Racial Discrimination, and is nearly a year late in submitting the next report due to the Committee against Torture.

65. The Government has established, with the assistance of the United Nations, an inter-ministerial network of human rights focal points responsible for the elaboration of reports to treaty bodies. A project is currently being implemented within BINUB to help the Government prepare most of its overdue reports and under which a training programme was organized in early July 2009 for the focal points. The project will support the research, field visits, and other preparatory work necessary to facilitate the preparation, within one year, of reports due to the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the Committee against Torture, as well as on the African Charter on Human and Peoples' Rights.

IX. CONCLUSIONS

66. **The progress made in recent years in the consolidation of peace has brought about conditions in which it is possible today to address the human rights challenges in Burundi. A major challenge on the national agenda is the organization of free, fair and peaceful elections in 2010, in which the rights of Burundians to choose their representatives should be exercised. This presupposes that Burundians are able to enjoy their fundamental freedoms of expression, association and peaceful assembly, to discuss their options in a climate free from intimidation, and to ensure that their choice is an informed one. It also presupposes that the national institutions responsible for the peaceful resolution of any conflicts that may arise are able to perform this function in strict accordance with the law.**

67. **As illustrated, however, the trends observed are not reassuring. The vibrant press in Burundi is subject to a growing trend to stifle, through criminal procedures, certain kinds of criticism that should be the subject of open discussion - and, if warranted, investigation - in a truly democratic society. While individuals are generally free to associate themselves with other like-minded persons, those united in a political movement have reported frequent obstruction and interference. Even as the overall security situation is improving, there are growing reports of targeted violence and the emergence of new forms of organized intimidation that, if left unchecked, may undermine the credibility of the elections.**

68. **Impunity remains prevalent. Justice, not granted in courts, tends to be claimed in the streets. Courts faced with women and children subjected to sexual violence are often distant psychologically and physically, costly, unaware of the national and international legal norms that they must apply, and ultimately unable to execute the judgements they render. The gravest violations of human rights in Burundi's history remain unaccounted for; nine years after the Arusha Agreement, the transitional justice mechanisms have yet to be established.**

69. Burundi can show how far it has progressed in the protection of human rights by demonstrating how it protects its most vulnerable. More generally, lasting peace, security, and development will not be achievable as long as the threats to human survival persist, not only those inflicted by human agency, but also those of impersonal phenomena, not least hunger and poverty.

70. Burundi faces daunting challenges, but it also has unprecedented opportunities. It has already taken steps towards meeting a basic precondition - committing itself to guaranteeing universal access to basic social services. If it guides the decentralization process according to international human rights law, it should be able to provide these services in ways that address local realities. If Burundi opens its budgetary processes to public scrutiny through transparent consultative processes, it should be able to ensure more effective delivery of such services and, moreover, to invest in the productive sectors that can spur development within available means. Free from debt servicing, Burundi now has a unique opportunity to ensure adequate financial support for this.

71. The issues raised in this report have already been presented to the Human Rights Council in numerous reports by the independent expert on the situation of human rights in Burundi, by the treaty bodies that have examined the reports submitted by Burundi, as well as by the Government itself through the Universal Periodic Review procedure. It has been recommended to the authorities to take a number of actions and, with respect to most, they have pledged to do so.

72. The extent to which democracy and respect for human rights have taken root in Burundi will be demonstrated by its ability and will to take concrete and meaningful steps towards the implementation of these recommendations. The OHCHR, through the Division of Human Rights and Justice of BINUB stands ready, as it has been since opening a country office in 1995, to assist the Government and the people of Burundi in this process.

X. RECOMMENDATIONS

Legal reform

73. It is recommended that:

(a) The Government undertake wide-ranging consultations on the draft revision of the Criminal Procedure Code and, taking into consideration the outcome, expeditiously enact a new Criminal Procedure Code that gives effect to the new Criminal Code;

(b) The provision of the new Criminal Code criminalizing homosexuality be repealed.

Political rights

74. It is recommended that:

(a) The law enforcement agencies and judiciary take urgent measures to prevent abusive application of the charges of “slander against the Head of State” and “threat to

State security” so as to permit individuals and political parties to exercise their legitimate right to freedom of expression and their right to participate in public affairs;

(b) The law enforcement agencies promptly investigate all claims by members of political parties, trade unions, civil society, and other groups, of threats they have been subjected to and institute effective measures for the protection of those receiving such threats;

(c) The voter registration process be undertaken expeditiously, with a view to ensuring that all those with the right to vote are included and that concerted efforts are made to ensure the inclusion of members of society who tend to be marginalized from political participation, including women, members of the Batwa community, and the illiterate;

(d) The Government promptly and effectively end violence by militant youth groups for political purposes, including those associated with both the party in power and with opposition groups and that it actively combat all efforts to intimidate voters by investigating all claims of threats or violence, including those attributed to youth groups, and by bringing the instigators of violence to justice;

(e) The assassination of Ernest Manirumva be promptly and thoroughly investigated and that the perpetrators be prosecuted to the full extent of the law.

Independence of the judiciary and accountability

75. It is recommended that:

(a) The status, functions and management of magistrates and the composition of the Superior Council of the Magistracy be guaranteed in law, with a view to ensuring the independence of the judiciary, and that the associated laws, rules and regulations be implemented;

(b) Law enforcement authorities take urgent measures to prevent further illegal and arbitrary detentions and undertake a process of registering all detainees and ensuring that they are regularly brought before a competent court to determine the legality of their continued detention;

(c) The judiciary, prosecutors and police develop a concrete plan by which all detainees are brought to trial within a reasonable time or released, and that they ensure the rights of suspects to due process are assured, including for persons accused of grave crimes;

(d) The investigations and final settlement, in a court of law, of the cases presented in paragraph 32 be pursued vigorously and expeditiously and that the remaining persons responsible for the 2006 Muyinga massacre not already tried and sentenced be brought to justice, with full respect for their right to due process.

Security sector

76. It is recommended that:

(a) The security and defence forces strengthen internal but independent mechanisms for investigating allegations of human rights violations committed by their personnel, and if warranted, for bringing such cases to justice;

(b) The Parliamentary Commission for Security and Defence ensure vigorous oversight of institutional accountability processes, in accordance with the Constitution.

Social services

77. It is recommended that:

(a) The Government establish a mechanism for transparent public scrutiny of budgetary processes and develop a concrete plan for investment in basic social services from the funds that will be freed up from debt servicing;

(b) Civil society more actively advocate for and make use of such a mechanism of scrutiny to define the minimum core content of economic and social rights in Burundi and to ensure that the budget is used to guarantee these rights for all, free from discrimination of any kind.

Groups at risk

78. It is recommended that:

(a) A concrete national programme be established by the law enforcement authorities to protect persons with albinism from further attacks;

(b) The Government organize, with international support and in cooperation with national NGOs, a nationwide public education programme on albinism;

(c) The Council of Ministers adopt the national strategy on juvenile justice, the associated action plans, and the revised Criminal Procedure Code and move expeditiously towards ensuring their implementation, particularly with regard to establishing special chambers and conditions of incarceration that conform to international standards on juvenile justice;

(d) The judiciary ensure the speedy trial of juveniles in conflict with the law and favour alternatives to incarceration when appropriate;

(e) Public institutions, especially the police, prosecutors and judiciary, effectively address sexual and gender-based violence cases and that a mechanism to monitor their treatment be established in addition to investigating and prosecuting all cases, including where the victim is a child;

(f) The Ministries concerned develop a plan for the full implementation of the Goma Declaration on Eradicating Sexual Violence and Ending Impunity in the Great Lakes Region of 18 June 2008;

(g) The Government launch an outreach programme to sensitize the Batwa to the need for national identity cards and how they may be obtained.

Transitional justice mechanisms

79. It is recommended that:

(a) The Government take all necessary measures to ensure that the national consultations on transitional justice and ensuing processes take place in a secure environment, free from intimidation or interference;

(b) The Government make efforts towards the definitive resolution of the two remaining points on which agreement is still pending, namely the independence of the prosecutor and the relationship between the truth and reconciliation commission and the special tribunal, in accordance with international principles and with the assistance of the United Nations;

(c) The Government, in accordance with the agreement reached on those two points and in full consideration of the results of the national consultations and its international agreements, proceed to establish a truth and reconciliation commission and a special tribunal.

Human rights mechanisms

80. It is recommended that:

(a) The Government of Burundi adopt a clear, time-bound plan to ensure that a law will be enacted expeditiously establishing a national human rights commission in full conformity with the Paris Principles;

(b) Burundi submit its outstanding reports due under the international human rights treaties as soon as possible;

(c) Burundi accept the recommendation emanating from the Universal Periodic Review to issue a standing invitation to the special procedures of the Human Rights Council and, in particular, that it invite the Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on the independence of judges and lawyers;

(d) Burundi consider the ratification of the treaties not yet ratified and accept the individual complaints procedures.

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