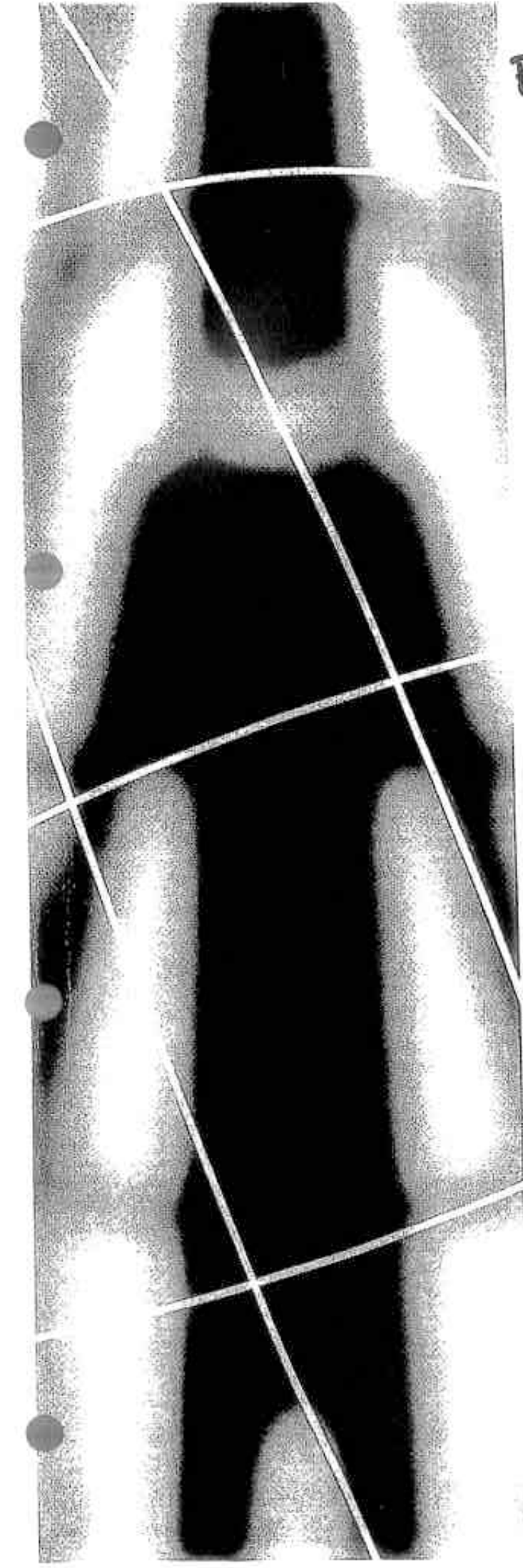




Lone Lindholt

Burundi (95)

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Burundi 1998-1999: Human Rights and Politics



LONE LINDHOLT, CAND. JUR., PH.D (LAW)

**BURUNDI 1998-1999:
HUMAN RIGHTS AND POLITICS**

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Lone Lindholt

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PREFACE

The research for this analysis was carried out in the course of 1998 and 1999 as part of my position as senior analyst with the Danish Centre for Human Rights, and in this respect commissioned and financed by the Danish Ministry of Foreign Affairs.

A large number of people have made it possible for me to carry out this work, both during my visit to Burundi in November 1998 and during various meetings in Denmark, Europe and Africa during this period, and I am very grateful for their assistance.

Some of them acted as discussion partners and provided valuable input to the earlier drafts of the study, and while I followed their advice and incorporated most of it, I also exercised my own judgement. Regrettably, I had to limit the inclusion of new materials as events unfolded in order to finalize the report, and to omit subjects where I did not have either reliable sources of information or sufficient knowledge. Therefore, I should stress that I have the sole responsibility for the conclusions and findings, as well as for any errors or alleged misinterpretations.

In this respect, I must thank in particular Bill Yates, Tony Jackson and Ivan Campbell, International Alert, London; Lennart Wohlgemuth and Kajsa Overgaard, the Nordic Africa Institute, Uppsala, Sweden; Hanna Kristensen, the Danish Burundi Committee; Jens Weise Olsen and Jesper Wodschow Larsen, Danish Immigration Service; Peter Ellehøj, and Dorteia Damkjær, Danish Ministry of Foreign Affairs; Alison Dillworth, Amnesty International, London; René Lemarchand, emeritus professor, University of Florida; and Flemming Alsbjörn, Rehabilitation and Research Centre for Torture Victims, Copenhagen.

Furthermore, Sergio Pinheiro, the former United Nations Special Rapporteur on Burundi and Brigitte Lacroix, desk officer at UNHCHR, Geneva, have both been very forthcoming, particularly in relation to meetings in Geneva and Copenhagen.

Garba Diallo at the International Peoples' College, Helsingør, Denmark, provided me with the opportunity to meet and exchange views with participants in the dialogue meetings between the Burundian expatriates in Scandinavia and representatives of the Government, an opportunity for which I am very grateful.

In relation to my visit to Burundi in 1998, the Minister for Human Rights and Parliamentary Relations, Eugene Nindorera, and his staff were extremely generous and hospitable, and following my wishes facilitated meetings with government and civil society representatives; without whose input this analysis could not have been made. The same goes for Thomas Rideaus at the Swedish Embassy in Bujumbura, the staff at

HRFOB, and the many other committed individuals and organisations I met with during that particular week.

The Embassy of Burundi in Stockholm has also been helpful, particularly in connection with the provision of government materials on Burundi.

Finally, I owe thanks to my colleagues Hans-Otto Sano, Fergus Kerrigan and Birgit Lindsnaes at the Danish Centre for Human Rights, who have provided ongoing support and feedback. Student assistants Pernille Kjeldgaard, Karen Løvschal and Katia Nielsen have provided invaluable assistance throughout the process by doing the tedious work of photocopying, procuring and sorting out materials, surfing the net for IRIN updates, news flashes and UN reports, and doing endless corrections on the text as it materialised.

Copenhagen, February 2000

Lone Lindholt

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EXECUTIVE SUMMARY

INTRODUCTION

The objective of the analysis is to provide, in a coherent form, a situation and perspective analysis of Burundi, with a particular focus on the political scene and its various actors, and on the legal and actual state of human rights in the country. Current developments will be analysed with the purpose of estimating the impact of conducive and counteractive factors in relation to a continued process towards pluralism, peace and respect for the rule of law in Burundi. The conclusions will form the basis for a set of recommendations for Denmark's potential human rights assistance in Burundi.

In order to provide the necessary data for this analysis, developments in Burundi have been closely followed since the end of 1997 with a particular focus on the political scene. Primary and secondary sources include reports, analyses, interviews and exchanges with observers and stakeholders within as well as outside Burundi.

To this effect a one-week visit to Bujumbura was carried out in November 1998.

SECURITY

As violent clashes continue to occur in several provinces, Burundi must still be described as a country in a state of war. It should be noted, however, that in contrast to the earlier periods of popular unrest, where civilians from the two main ethnic groups have carried out mutual massacres on each other, civilians are now extensively caught in the middle of clashes between the army on the one hand and armed rebel groups.

In the beginning of 1998, it was primarily in the province of Bujumbura Rural that violence took place; not simply because the rebels had chosen the capital as their primary target, but also due to its proximity to the border of the Democratic Republic of Congo (DRC) and location on the north eastern coast of Lake Tanganyika. In spite hereof, Bujumbura itself has been considered to be relatively safe, at least until August 1999, when the violence moved into the suburbs of the city itself.

In the beginning of 1999, the violence continued in Bujumbura Rurale, and on a lesser scale also in the bordering provinces of Bubanza, Bururi and Muramvya, but not in the most northern province of Cibitoke which borders directly on DRC and Rwanda. Since August 1999, the violent conflict in and around Bujumbura escalated, leading to a severe increase in civilian casualties and displacement in the province. The other province, which in 1999 has seen a steady increase in violence, is Makamba in the

south. Here armed groups operate across the border from Tanzania, which has housed large numbers of refugees, thereby providing a military as well as a political base for extremist Hutu groups. This indicates that, in addition to the conflict in DRC, which has a regional perspective and has attracted much attention, the more constant tension between Burundi and Tanzania, exacerbated but not directly caused by the DRC conflict, remains a more permanent problem.

POLITICS

The political scene in Burundi is complex and all analytical conclusions must therefore be drawn cautiously. It has features in common with Rwanda, in the sense that both conflicts have been played out between the two main ethnic groups, Hutu and Tutsi, in a context of intra-regional alliances and movement across the borders, primarily of large numbers of refugees. Finally, the massacres in one of the countries against one or the other ethnic group has fuelled the fear always present as a simmer but only occasionally erupting in full-scale violence in the other country. However, even though there have been times in the history of Burundi, most notably in 1972 and in 1993, where massacres on a scale bordering on or amounting to genocide have taken place, the country has not seen anything similar to the planned, organised and massive genocide in Rwanda in 1994.

The political arena in Burundi is characterised by two extremely important features: Firstly, the fighting between the two main fronts has not just taken place on the military but also on the political scene where political groups, in general, have operated alongside their own military counterparts. This makes negotiations for peace and power-sharing more difficult, but on the other hand also increases the sustainability of their results since the implementation of a cease-fire is ultimately in the hands of the armed groups and the military. Secondly, each front in itself is presently split between the moderate factions, who can see the opportunity of a consolidation of the process of peace and power-sharing which has taken hold in the last year, and the radical extremist groups, who continue the battle and who refuse or are afraid to cease their attacks for fear of becoming vulnerable to counter-attacks.

The history of Burundi politics since independence is characterised by a succession of Tutsi military regimes, where one front of the army has repeatedly taken power from another in bloodless coups: in 1966, in 1976, in 1987, and in 1996. The only exception was when Pierre Buyoya gave way to Melchior Ndadaye through democratic elections, and that lasted only three months, from June to October 1993, when the latter was ousted and killed by the military. However, in spite of its brevity, this period must be considered extremely important even today, firstly, since it was the first time that the Hutu majority was in charge of government and secondly, since the current political setting still, to some extent, is based on the political construction of 1993.

In spite of the extent to which the current regime may be committed to peace and reconciliation, it is still hampered by the dissent among its own ranks and can only move forward to the extent that the connection with the radical groups is not severed, in which case the history of Burundi could indicate the ever-present danger of a new military coup. Among the Hutu segments of the population, a Tutsi military government has consistently been tantamount to constant fear of harassment and disregard for life and security, and even direct and systematic persecution and killings. The scepticism towards the present regime and its political approach must be viewed on this background. Finally, it is disabled by not representing the majority of the population, remaining a minority regime stemming from a military assumption of power, rather than a democratically elected government with a pluralistic base, which has limited rather than facilitated its achievements.

Most accurately, the current political landscape can be described as complex, but also fragmented. In particular, the main opposition parti FRODEBU is suffering from a severe division, i.e. both between its external and internal wings and between different factions of the latter. Likewise, the two wings of CNDD-FDD have been separated for a long time, and the other government party, UPRONA, has experienced similar leadership confrontations over its leadership. These conflicts have been particularly visible in relation to the Arusha process, notwithstanding the differing root causes.

INSTITUTIONS AND ORGANISATIONS

There are positive signs of a sincere wish by Buyoya to achieve a higher degree of legitimacy of his governance, by taking steps towards a greater degree of power sharing. Most notably has been the enlargement of the number of parliamentary seats in 1998 with the inclusion of more representatives from FRODEBU, and from civil society. Secondly, the willingness of the government and UPRONA to participate in the peace negotiations in Arusha is also a positive sign, as are the initiatives taken to strengthen the respect for human rights, both at the level of dialogue and through concrete initiatives. Here, the Ministry for Human Rights, Institutional Reform and Parliamentary Relations plays a leading role, enhanced also by the widely shared respect accredited to the Minister because of his integrity and commitment.

The enlarged Parliament sits in regular sessions, and plays an active role in the legislative process. A coalition of female parliamentarians is also active in seeking to address issues concerning the status of women. It should be noted that the opportunity for civil society organisations to obtain seats in Parliament in 1998 has enabled some of them to play a more direct and influential role in relation to those areas in which they work. On the other hand, others have declined such positions, claiming that it would conflict with their ability to fulfill an independent role as "watchdogs", particularly in a

fragile situation where human rights abuses are still committed by the various branches of the army and the civilian government.

A national Council of "*Bashingantahe*", has the responsibility of considering issues relating to national unity, peace and reconciliation, and following regularly the situation in this area. Moreover, it is responsible for reporting back to the President of the republic and the Parliament, as well as working for the rehabilitation of the traditional institution of "*Ubushingantahe*" as an instrument of "social cohesion".

A parliamentary Human Rights Commission operates as one out of five parliamentary commissions and addresses human rights issues in the legislative process.

In addition, a Liaison Committee of relevant ministers supervises the human rights situation, and acts as a facilitator for cooperation with the Human Rights Field Operations in Burundi (HRFOB) and others.

At present, Burundi does not have an independent Human Rights Commission, and there are currently no efforts under way to establish such an organ, particularly because the current political climate would make it difficult for such an institution to operate with the necessary independence. Instead, the role of registering and monitoring the state of human rights in the country lies directly with the Ministry for Human Rights, while a centre under the Ministry takes care of promotional aspects. Finally, the role of supervising and criticising government action, or the opposite, in relation to human rights protection is seen as lying mainly within the domain of human rights organisations.

In addition to a small number of NGO's working in the field of human rights, there are a larger number of organisations focusing on vulnerable groups such as women, children and youth. While some of them have a high level of capacity in terms of qualified manpower and infrastructure, others operate with very limited resources, as they have suffered from prosecution in a politically hostile climate for several years, from international isolation, and from lack of available funding.

INTERNATIONAL RELATIONS AND FACTORS

In July 1996, the neighbouring countries, led by Tanzania, effectuated an embargo on Burundi as a reaction to Buyoya's military coup. When the Arusha peace process started in June 1998, the international community and the states in the region began to realize that the rationale for keeping in place the sanctions was diminishing, and out of proportion with the severe consequences it had on the civilian population. The sanctions were lifted in January 1999 at the regional summit.

The Arusha peace process was initiated in the period following the assassination of the democratically elected President Ndadaye in 1993, and Nyerere was given a mandate from the OAU to mediate in the Burundi conflict. However, it was not until June 1998 that the Government and the main parties agreed to meet at the negotiating table in Arusha under the auspices of the Nyerere Foundation, though it was considered by many that the venue and the mediator were biased due to the continuing tension between Burundi and Tanzania. However, the simmering disagreement between the main parties on either side on the question of leadership and whether or not to respect a cease fire or to continue fighting, now erupted. As a consequence hereof the Arusha peace process and its decisions do not fully include the military groups, most notably the armed wing of CNDD, the FDD. Already at the first session a declaration which was to provide the foundation for further talks, including the establishment of a number of committees, was signed by the parties. The process, which includes committee meetings in between ordinary sessions, was initially expected to last at least until June 1999. Total costs of the process so far amount to at least US \$ seven million. As of September 1999, the process was not completed and was further complicated by the illness and death of Nyerere in October 1999.

Just before Buyoya assumed power in 1996, the UN Security Council decided to monitor the situation in Burundi closely. In April 1996, the UN Human Rights Commission decided to appoint a Special Rapporteur on Burundi whose mandate has been extended each year since then. At the same time, the Office of the High Commissioner for Human Rights decided to deploy a mission of observers, HRFOB, which carries out a number of activities related to the monitoring and promotion of human rights. The UN has two technical assistance programmes in Burundi, one on the strengthening of rule of law and another on legal assistance, both of which are administered by HRFOB.

A number of international organisations are monitoring the development of the situation in Burundi, in addition to carrying out promotional activities such as hosting seminars etc. In the last couple of years there have been almost no bilateral donors present in Burundi, except for those providing emergency assistance. However, in light of the recent changes in the political climate more donors may consider coming back to Burundi.

In December 1998, a UN Consolidated Inter-Agency Appeal for a total of US \$ 86,3 million was issued to fund activities in Burundi, including US \$ 9,9 million for the areas of human rights and justice. The appeal for 2000 was scaled down to US \$ 70 million, of which US \$ 6,2 millions was earmarked for justice and human rights. Throughout 1999, an increasing number of bilateral donors, including France and Belgium, have pledged their support for Burundi despite of the absence of a functional peace accord or even a cease-fire, including France and Belgium.

HUMAN RIGHTS

Formally, there is a legal foundation for protecting human rights in Burundi, as most of the essential international human rights instruments have been ratified, including the two international covenants, the conventions on torture, discrimination against women, children and genocide, and the regional African human rights conventions.

On the domestic level, the military decree issued in 1996, setting aside the constitution from 1992, was itself replaced by the new Transitional Constitution in June 1998. The Bill of individual rights and duties herein, which is almost identical to the one found in the two previous instruments, contains a full catalogue of civil and political rights as well as economic, social and cultural rights, and individual duties similar to those found in the African Charter.

Conspicuously absent from the Bill, however, are provisions concerning the rights of women, the right to health and medical attention, and, most notably, the lack of provisions stipulating the right to access to the courts, i.e. the right to have one's case heard within a reasonable amount of time by an impartial court as well as the right to appeal.

In reality, a broad scope of human rights violations continue to occur. Some of these violations stem from the specific fabric of society, e.g. differences of opportunity between ethnic groups and between men and women, lack of resources and infrastructure, and as a result of domestic as well as regionally based threats to security. It should be noted that those who have monitored the situation on a regular basis over recent years, most notably the UN Special Rapporteur, have repeatedly stressed the need for assistance to the administration of justice as well as to humanitarian causes.

Firstly, the lack of security in various parts of the country means that the lives and personal integrity of civilians are repeatedly violated by members of the armed forces as well as by armed groups. Incidents of torture, forced disappearances and arbitrary arrests and detention still occur. Particularly in the province of Bujumbura Rurale the situation has deteriorated considerably in late 1999.

Secondly, there are currently around 10,000 persons in detention, the absolute majority of whom are awaiting trial, and the number has continued to increase in the last year. In combination with inadequate resources to maintain the physical structures of the detentions, as well as over-crowding and dissatisfactory sanitary conditions, the death rate among detainees is high. In many cases, the situation does in fact amount to violations of freedom from cruel, inhuman and degrading punishment and treatment.

Thirdly, the judicial system is markedly over-worked and under-equipped, thus making it unable to deal with the current burden of persons awaiting trial, including the preparation and investigation of case files and the provision of legal assistance. The wider implication hereof is the danger of a continued state of impunity for those responsible for human rights violations since the early 1990s, especially if one takes into consideration that those currently in power are also, to a large extent, allied or identical with those allegedly responsible for the violations. Furthermore, this state of impunity will undermine the process of reconstructing a society based on the rule of law, which is closely related to the political process.

Fourthly, the ethnic balance in public administration, in the judicial system and within the army is still a threat to freedom from discrimination against the Hutu population. Recognising that it will take a long time for measures of affirmative action to have a significant impact, the task of ensuring the principle of equality for all regardless of ethnic origin or political observance is immense and crucial to a further consolidation of the political platform. In this respect, professionalisation of the judiciary and other government bodies with a view to eradicating the exercise of "negative solidarity" is crucial, and already identified as being a priority.

Fifthly, following eruptions of violence in different provinces, several hundred thousand Burundians (300,000 in some 50 sites in Bujumbura Rurale alone), are currently internally displaced. The displacements stem from the government's policy of regroupment which has also had a negative impact on the freedom of movement and residence as well as on the agricultural production.

Sixthly, the economic and social consequences of the war and the embargo on Burundi has caused a severe decline in the standard of living of the population. In particular, living conditions of women and children have deteriorated to a level which endangers their fundamental economic and social rights.

CONCLUSIONS AND RECOMMENDATIONS

In 1998, Burundi progressed slowly but relatively steadily from an absolute state of crisis to a situation which allowed for cautious optimism in the beginning of 1999. However, in recent months, the deteriorating security situation in connection with the uncertain future of the Arusha process, has again given rise to serious concern. It is important to emphasize that a political platform based on moderates from both sides of the ethnic and political spectrum has been established, and even though it is yet not an expression of full power-sharing it is an important step. However, it should be kept in mind that all of these developments take place on the ruins of an abortive attempt to introduce democracy in Burundi in 1993. The history of Burundi indicates that things could still go wrong. For instance, there continues to be considerable mistrust between

the various opponents, such as members of the diaspora outside Burundi and the military. The main threats to the current relative stability and dialogue come from extremist forces on both fronts who may cause a fragmentation of existing political parties and alliances, thereby deepening internal rifts even further. If, on the other hand, the platform continues to attract more and more support, it could, at some stage, become strong enough to withstand the assaults from the extremists.

The internal political process has progressed somewhat, even though the deep internal splits and rifts between different alliances should not be underestimated. Assuming that external peace negotiations also continue and produce tangible results, it will be necessary to give more attention to addressing the question of various human rights violations as indicated above.

In this respect, it is encouraging to note the positive signs within some sections of the civilian administration and government structures of a commitment to the respect for human rights, which provides a basis for dialogue and an opportunity for providing assistance.

Similarly, the capacity, commitment and openness towards constructive dialogue among civil society organisations also makes them appropriate as partners in various programmes, particularly, as most of them operate with very limited resources.

Given that the needs of the penitentiary system and the various levels of the administration of justice, which are interrelated, are so vast, efforts should be made to analyse more closely how Danish involvement could effectively contribute to an immediate as well as a long-term amelioration of the situation. In this context, direct aid is one option only, while others include international bi- and multilateral cooperation as well as participation in international fora such as the UN Commission on Human Rights and the General Assembly.

It is evident that there is a need for capacity building, in the form of training and material assistance, among relevant sections of the administration as well as human rights NGO's. As mentioned above, there are indeed opportunities for providing such assistance in cooperation with local partners who have the basic capacity to implement programmes.

However, it is essential that coherence with existing programmes of technical assistance is ensured, so that any activity is geared towards maximum impact. This is particularly important in a situation like the current one where a "vacuum" of donor support may suddenly be filled by a plurality of different actors. In particular, the good relationship between the government and HRFOB should be respected and utilised to

ensure that programmes have the necessary support and endorsement from all relevant parties.

In this respect, well documented lessons from Rwanda, could be useful, insofar as many of the problems, if not on the same scale, are similar and thus may call for similar solutions. The fact that a genocide on the same scale as the one which took place in Rwanda in 1994 has not occurred in Burundi, should give cause for cautious optimism, especially given that the number of people awaiting trial in Burundi is only around ten percent of that of Rwanda.

It is therefore recommended that a pre-appraisal mission is sent to Burundi to examine the possibilities of cooperation with various partners in the human rights field, conditional on improvements in the security situation.

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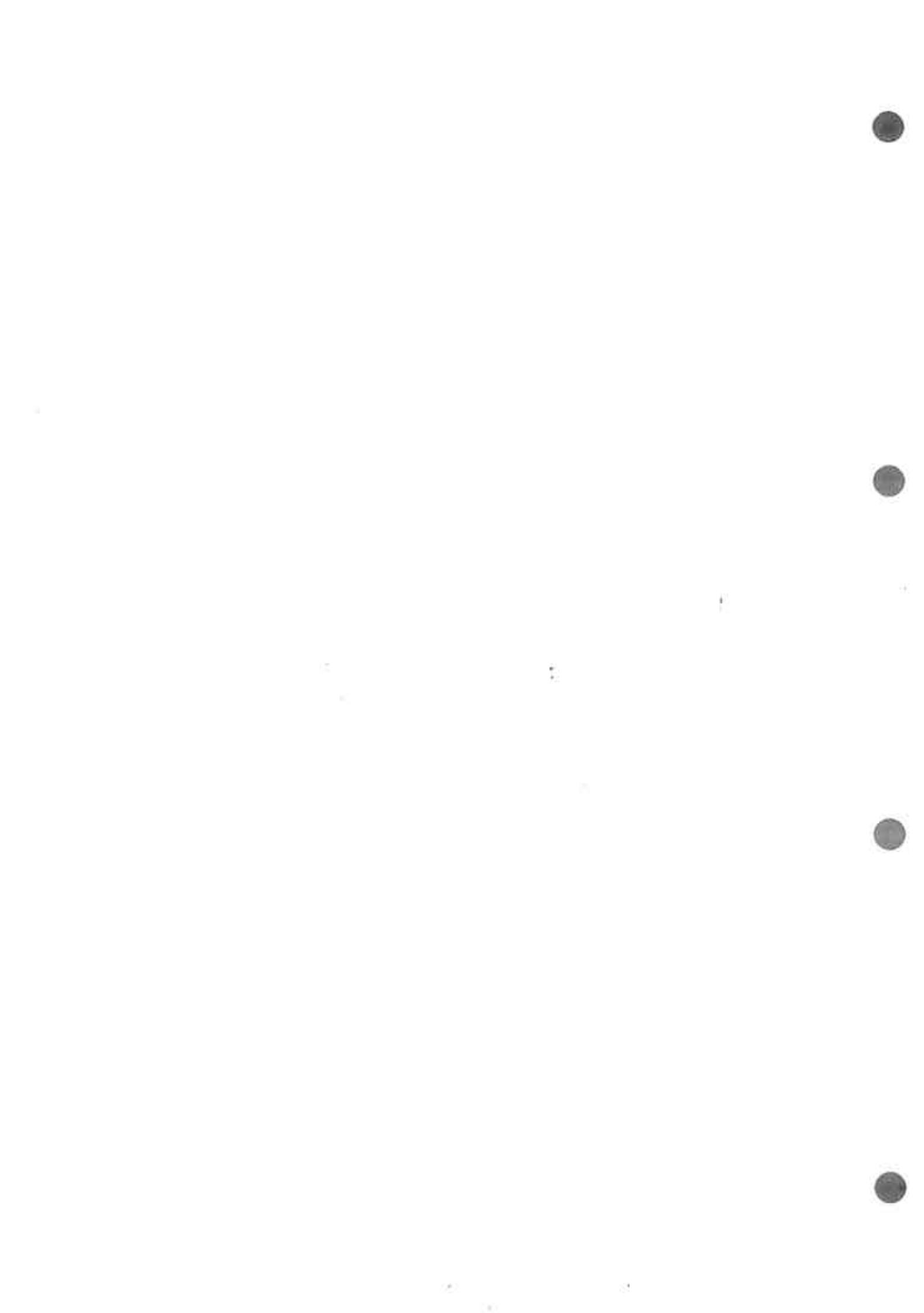
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MAIN REPORT



I. INTRODUCTION

The purpose of this study is to present and examine the various aspects of the current state of affairs in Burundi concerning politics and human rights, in order to substantiate prospects and considerations in relation to Danish involvement in the human rights field in Burundi.

In the last couple of years there has been a growing interest and pressure on behalf of various stakeholders in Burundi and in Scandinavia towards Danish human rights assistance, in the form of repeated calls and letters, project applications, requests for meetings etc., many of them directed towards the Danish Centre for Human Rights (DCHR). It is in light hereof that this study has been carried out in order to provide a firmer basis on which it can be decided what course of action to take.

In the summer of 1997, when this study was initiated, the situation looked less than auspicious: the military coup by Buyoya had taken place a year before, and the international community was unanimously condemning this apparent putsch of a democratically elected government, by endorsing a policy of sanctions and diplomatic isolation. In addition to this, the regional crisis involving Rwanda and, later, the Democratic Republic of Congo (DRC), with militant Hutu rebel groups seriously endangering security in these countries. Clashes between the aforesaid groups and the armed forces continued to lead to the deaths of hundreds of civilians, and the ethnic polarisation led to mutual accusations of genocide against either group. Finally, to top up the sense of crisis and hopelessness, the government of Burundi had just executed six persons previously sentenced to death after "unfair" trials, carried out in a legal system dominated by an appalling lack of capacity and flagrant violations of human rights guarantees.

In consequence hereof, the DCHR has been hesitant to respond favourably to the requests for assistance, recognising the extreme complexity of the situation in Burundi, which makes it particularly difficult to grasp the mechanisms impacting on developments in the field of human rights and politics.

However, a continuous observation of the situation revealed that towards the first half of 1998 things started to change for the better, slowly and unreliably at first, and increasingly shadowed by the increasing crisis in DRC. Signals were indicating that political changes were taking place, although the human rights situation did not improve and even, to some extent, deteriorated. This had several causes, such as of a growing number of persons in pre-trial detention, the sanctions taking effects, and the constant lack of basic security.

With the introduction of the Transitional Constitution in mid-1998, the enlargement of the National Assembly and the commencement of the long-awaited peace negotiations in Arusha, some people brutally questioned: how serious is the Government in its commitment to human rights, peace and reconciliation? - to which extent are the

initiatives an attempt of "window-dressing" for the benefit of the international community and the majority of the population ? - and, even if the Government is sincere, what are the prospects of sustainability of the initiatives, and how likely is it that the transition will continue steadily towards real power-sharing or even democracy? - if the Tutsi "hardliners" only consented to Arusha because it was necessary in order to have the sanctions lifted, what motivation exists for them to continue the dialogue for peace ? - and how is success or failure in relation to the external or the internal processes linked ?

This analysis should be seen as an attempt to demonstrate and understand the complexities of the situation and its various elements in relation to the above questions. It covers a number of issues, from the internal political process, over the internal and external institutions and organisations involved in the process, to a summary of the main areas of human rights concern and the extent and nature of the problems here.

Concerning methodology, it should be noted that this analysis is primarily a desk study, insofar as only a one-week visit in November 1998 has been paid to Burundi to date. Sources include news bulletins from IRIN, reports from international organisations and the United Nations Special Rapporteur, notes, speeches and background papers from meetings and conversations with visiting Burundians as well as with those living in Denmark, from international researchers and experts on Burundi, and from available literature.

The study was completed in a final draft form in the beginning of November 1999, and finalised in January 2000. Developments since the beginning of November have therefore only to a limited degree been described in the study. Mainly key events, such as the appointment of Nelson Mandela as new mediator in the peace process, have been included.

II. SECURITY

During the latter half of 1997 and the first half of 1998, the security situation remained critical with frequent and violent clashes between the military and the rebels particularly, in the northern and western provinces of Cibitoke and Bubanza, in Bujumbura Rurale, and in the Bururi and Makamba province in the south. In other words, all the provinces along the western border of Burundi, towards Lake Tanganyika and DCR in the west and the Rwandese province of Cyangugu in the North, were been affected.

In January 1998, the fighting moved very close to the capital on 2 January, when the rebels launched a massive attack on military installations around Bujumbura International Airport. While rumours have it that they came close to taking control of the airport, the army was able to drive off the rebels, however, as a result of their retreat to and through neighbouring villages between 200 and 300 persons were reported to have been killed.

Clashes continued in the affected provinces throughout the month of January, while the army carried out "mopping up"- operations in the communes around Bujumbura, and on 27 January the rebel group PALIPEHUTU warned against an imminent attack on Bujumbura, urging foreigners to flee and declaring that they had moved their headquarters to the city. However, their intentions were not entirely fulfilled as the army continued to carry out operations to root out the rebels from the villages and hills surrounding the city. The following day the minister of defence was killed in a helicopter crash in connection with his participation in a reconciliation meeting in Giteka, allegedly because of weather conditions.

Clashes between the army and the rebels in the west and the south continued throughout February and March 1998, resulting in the deaths of hundreds of persons, including civilians. In the beginning of April the Government voiced concern over security in Bujumbura Rurale, particularly in the displaced persons' camps, a situation which was to deteriorate further in 1999 (see below).

On 20 April, the minister responsible for internal affairs and state security reported that the rebels were massing near Bujumbura, and that they had "bunkered down" in the villages. He declared, though, that it was a "far weaker force" than the one which attacked in January.

In spite of the killings around the capital, the city of Bujumbura was reported to be relatively safe, with life progressing more or less normally.

As of November 1998, the general picture was that while the central, southern and eastern regions were reported to be increasingly safe, a number of serious incidents occurred in Bujumbura Rurale (and along the coast of the lake), undoubtedly related to the war in DRC.

This situation remained relatively stable into the first months of 1999, so that the majority of incidents involving rebel attacks as well as military counter actions affecting civilians (see below) occurred in the province of Bujumbura Rurale. In 1999, there have, however, been incidents of rebel attacks and army action in the provinces of Bubanza and Bururi, Muramvya (just east of Bujumbura Rurale), Makamba and Ruyigi.¹

Nevertheless, the insecurity seems to prevail primarily in Bujumbura Rurale, which has been described as being "extremely volatile" with daily clashes between the army and the rebels, some of which can be heard even in the capital itself², and in the Makamba province where rebels have attacked villages and displaced persons' camps close to the Tanzanian border. The situation here has lately been described as "fluid" with some people fleeing and others returning to their homes. This unrest resulted in large numbers of internally displaced persons, up to an estimated peak of around 40,000 in three different locations in Bujumbura Rurale in March.³ In February 1999, the Red Cross estimated the number of internally displaced persons in Makamba as being around 30,000, and stated that since August 1998, 5,000 new refugees had moved to camps in Tanzania, where one camp alone houses around 82,000 Burundian refugees.⁴ Naturally, this has exacerbated already existing tension between the Governments of Burundi and Tanzania, exemplified by a formal *note verbale* to the Tanzanian authorities that 500 Burundian rebels attempted to infiltrate the border in late March, and that they were supported by a group from one of the refugee camps in Tanzania.⁵

On more recent occasions, the army has allegedly been involved in the killing of large numbers of civilians in connection with or as a means of retaliation against rebel attacks.

¹ Broederlijk Delen, Brussels (www.burundi.org), updates 48-52; IRIN Updates.

² OCHA Bulletin 1 - 15 March 1999.

³ OCHA Bulletin 1 - 15 March 1999.

⁴ International Federation of Red Cross and Red Crescent Societies, Weekly News 05/99, 5 February 1999.

⁵ UNHCR Country Update, 14. April 1999.

On 3 or 4 November 1998, an incident took place on the border between Busenge and Rutovu communes of Bujumbura Rurale where the army killed a large number of civilians. The actual number varies a great deal in the sense that witnesses described the number of victims as being at least 100, whereas the army in a statement, issued on 12 November, estimated that there had been a total of 38 casualties. Also, the more precise circumstances vary, even if it seems clear that the killing was related to an incident some days earlier where a group of rebels had attacked a displaced site in the area a few days before, killing five or six persons and stealing cattle. According to non-governmental sources the attack was an act of retaliation, based on a suspicion by the army that the local population was harbouring the rebels. According to the army, the civilians killed were taken hostage by the rebels, which the army was not aware of, and therefore they were killed in the cross-fire between rebel and army forces.

In addition, it was reported that between 15 and 18 November, members of the armed forces allegedly killed approximately 30 civilians in Rugembe, Bujumbura Rurale.⁶

The fact that the government took the situation seriously enough to establish a commission of investigation comprising soldiers, military police and representatives of various ministries, carrying out an on-site investigation, is positive. However, apart from the statement recognising the responsibility of the army there has been no official indication that any further disciplinary action was taken against those responsible. According to OCHA, the Office of the High Commissioner for Human Rights in Burundi attempted to send an observer mission to the area on 11 and 12 November, but was denied access to the site.⁷

Another large-scale loss of civilian lives occurred in Makamba Province in the period between 14 and 29 January 1999, where between one and two hundred civilians were killed. The picture of the events is relatively similar to the one described above, i.e. caused by an initial rebel attack on the community, where many people died. According to witnesses the army then retaliated against the population by burning a house with 30 civilians and killing many more outside the house. On the same day there was also an attack on a nearby church and both attacks allegedly took place because the army claimed that the population was supporting the rebels. In this case, however, no official commission of investigation was established, and the Government

⁶ Burundi Bureau, Analysis Document no. 4, Bujumbura/Bonn, 3. December 1998.

⁷ IRIN Weekly Round-Up 46-98, IRIN Update no. 544 (12 November 1998); OCHA Humanitarian Operations in Burundi - Information Bulletin - November 2 - 15 1998.

accepted no responsibility for the loss of civilian life, claiming that they had entered on the side of the population thereby protecting civilians from the rebels. These series of massacres led to the displacement of nearly 30,000 people in the region in need of emergency assistance.⁸

In the context of identifying indicators on government commitment to ensure human rights and eradicate impunity, the incidents themselves are important even if they merely serve to indicate the attitude of the armed forces. But so is also the willingness of the government, in addition to that of the army itself, to take appropriate action against the perpetrators. As has been shown above the Government's policy in this respect has only given rise to limited optimism.

The warning from the US State Department of 18 March urging all US Citizens to leave Burundi "because of the uncertain security situation" may seem dramatic particularly since the same warning given in relation to Uganda and Rwanda only called for caution. As stated by OCHA, however, it should be kept in mind that the warning was primarily related to the killing of eight tourists, including two Americans in a national park in North-Western Uganda, and that it was simply a re-issue of an earlier warning dating back to 1995 in which it was stated that the warning "is unrelated to any substantial developments in Burundi". The Government of Burundi reacted by issuing a counter statement to the effect that they did not want to be associated with incidents occurring in other countries. Furthermore, they stressed that in spite of disturbances in some areas, which were being dealt with, the situation did not prevent humanitarian organisations from carrying out their work in the field.⁹

In June 1999, FNL, the armed wing of PALIPEHUTU, urged foreigners to leave Bujumbura due to an imminent invasion as they had set out to "finalise the task of restoring peace in Burundi", claiming also that Uganda, Rwanda and Somalia had sent troops to Burundi. The fact that the group almost simultaneously denied any links with the other main rebel group, the CNDD-FDD faction, and announced the formation of FALINA, a "single liberation movement" functioning under ILUNA, the existing umbrella group, does not indicate that these threats are likely to be carried through.¹⁰

⁸ IRIN (Reuters), 29 January 1999 and 1 February 1999.

⁹ OCHA Bulletin 16 - 31 March 1999.

¹⁰ Agence France-Presse, 12 June 1999; IRIN Update no.692, 14 June 1999.

On the other hand, it gives rise to concern to note the intensification of the fighting in the province of Bujumbura Rurale¹¹, culminating in a series of attacks by armed rebel groups and counter-attacks by the military between 10 and 12 August, leading to the deaths of several hundred civilians around Bujumbura.¹²

There has been a relatively strong response from the international community, in the form of statements from the Secretary-General of the United Nations, from the Presidency of the European Union and from the US State Department, all of whom voiced concern over the killing of civilians, and urged the Burundian Government to establish an internal investigation into the events and bringing those responsible to justice. They expressed their support for the still fragile peace process and urged all parties to respect it. Finally, the US State Department asked the Government to ensure that "human rights organisations and others" would be allowed to carry out independent investigations. The Government responded by saying, indirectly, that the rebels were responsible for the incident, and, with an implicit reference to the demand of the US, further stressed that an investigation was under way and that it itself had the means and skills to investigate the matter.¹³

On 29 August, the violence so far culminated in a series of attacks by armed rebel groups in the suburbs of Bujumbura. The rebels were reported by Government sources to have killed around 38 civilians, mostly women and children, while the army stated that it had killed around 20 rebels in its efforts to drive them out of the capital. In a contesting statement the representative of FDD, Jerome Ndiho, claimed that it was the army which had moved out of the capital to kill around 30 Hutu civilians suspected of supporting the rebels. Again, the UN Secretary-General responded by strongly condemning the acts and reiterated his request to the rebels to end all attacks against civilians and to respect international human rights standards.¹⁴

Since then, violence has continued to escalate in the area, with intensified attacks by rebels followed by counter-action by the armed forces. As a consequence, the army has re-assumed the policy of grouping the civilian population in camps, allegedly for their protection - see also section on freedom of movement below.

¹¹ See for instance IRIN update no. 713, 13. July 1999.

¹² Conflicting statements as to whether the army or the rebels were guilty of the majority of the killings of civilians have been disputed as have the number of casualties: Amnesty International quoted sources indicating that more than 100 civilians had been killed, whereas the Government spokesman denied that the number of casualties were that high; IRIN Update no. 736, 16 August 1999.

¹³ United Nations 19 August; European Union, 27 August; US State Department, 18 August 1999; IRIN Update no. 740, 20 August 1999.

¹⁴ Reuters, August 29 and 30; IRIN 30 August 1999, United Nations 31 August 1999.

On 12 October, an incident took place which seemed to highlight the state of violence and lack of security in Burundi, particularly from the point of view of the international community. During a UN inter-agency assessment mission to a displaced persons' camp in the Rutana province, close to the Tanzanian border, the team was attacked by what was later identified by the Government as rebel forces belonging to FDD.¹⁵ Seven Burundian nationals were killed together with two staff members of international organisations, i.e. the resident coordinator for UNICEF Luis Zuniga, and Saskia von Meijenfeldt, logistics officer for World Food Programme. As a result, the UN operations entered into "Security Phase Four", making all but essential staff leave the country, and causing international organisations to halt their activities.¹⁶

Since then, reports of violent clashes between the army and rebel forces have continued to give rise to great concern as have the extremely grave situations in the displaced persons' camps. At the same time, the Arusha peace process came to a halt caused by the death of the mediator President Nyerere (see below). In a day-long debate in the UN Security Council, the situation in Burundi was described as "precarious", and a strengthening of the peace process was stressed as being increasingly imperative. At the same time the need for the donor community to expand assistance to Burundi was affirmed.¹⁷

On the basis of this analysis one may conclude, that Burundi is far from being a country at peace. Furthermore, it is unfortunate that much of the insecurity takes place around the capital as this hampers access to other areas, thereby causing international donors and agencies to be less willing to send staff to Burundi for fear of their safety. The security situation in 1998 had improved somewhat, from a general state of insecurity to the northern areas bordering Rwanda referred to as being increasingly safe, also for travel by road.¹⁸ However, the situation is still extremely volatile particularly around Bujumbura and in the south, with a sharp deterioration in late 1999 relating primarily to unfolding events in DRC.¹⁹

¹⁵ Agence-France Presse, IRIN, 15 December 1999.

¹⁶ United Nations press statement, IRIN, 13 and 19 October 1999.

¹⁷ UN Security Council, press release, 12 November 1999, IRIN.

¹⁸ Conversations with government officials and HRFOB in November 1998.

¹⁹ For an analysis of the recent cease-fire agreement in DRC and the prospects for peace, see report from International Crisis Group of 20 August 1999, pointing out that the groups which will have to be disarmed also include the Burundian FDD, although Burundi has not officially been declared a combatant in the conflict.

A final observation of importance would be that, contrary to what could have been expected, the spill-over from the war in DRC has been relatively limited, especially considering the level of unrest in the region in general. An indication of this is the relative lack of incidents and internal displacements in Cibitoke Province north-west of Bujumbura (forming a "pocket" into the border area between Rwanda and DRC), at least until the latter half of 1999. It should also be kept in mind that the capital of Bujumbura is situated less than 30 kilometres from the DRC border, and could thus explain the intensity of rebel attacks and military counteraction in Bujumbura Rurale, which could easily have given rise to a far higher level of insecurity in the capital itself. Paradoxically, the prospects for peace in DRC may now have reverse effects on the situation in Burundi, as rebel activity may move back to the latter. This has indeed been the case since August 1999 when the western part of the country and, particularly, Bujumbura Rurale has become increasingly unsafe²⁰, a development which started at the same time as a cease-fire and peace negotiations in DRC seem to materialise.

In contrast, it would seem that the massacres and general unrest in the Makamba Province have their primary roots in the conflict with Tanzania, allegedly exacerbated by accusations of rebel attacks across the border from the refugee camps in western Tanzania hosting large numbers of Burundian refugees. Admittedly, the developments in DRC have far-reaching consequences for the entire region, in the sense that they affect the general situation of the majority of the population in both Rwanda and Burundi, involving all the countries bordering Lake Tanganyika. Still, the existing tension between Burundi and Tanzania impacted by the number of displaced persons and their alliances across the borders of the two countries will probably in itself remain a source of ongoing conflict regardless of the outcome of the war in DRC.²¹ Finally, it is on this background that the criticism of Nyerere, former President of Tanzania, as the primary facilitator of the Arusha peace negotiations, shall be viewed and understood (see below).

²⁰ See for instance IRIN Update no. 742, 24 August 1999.

²¹ In August 1999 the defence ministers of both countries signed an agreement regarding increased border security, where Tanzania obligated itself not to allow the rebels to use the bases in Tanzania for cross-border attacks and preventing banditry by armed groups and "indisciplined soldiers" along the coast of Lake Tanganyika, while Burundi in return pledged to take the necessary measures to increase the security situation which would allow refugees in Tanzania to return home; Panafrikan News Agency, 12 August 1999.

III. THE POLITICAL SCENE

1. Historical background

In order to facilitate a basic understanding of the extremely complex nature of the political scene and the various alliances and conflicts which have determined and will probably continue to impact current and future political development significantly, I have found it necessary to draw up a short historical overview of the developments since the re-assumption of power by Buyoya in July 1996.

Since independence in 1962 the political scene in Burundi has been complex, and may briefly be characterised as a predominantly authoritarian regime under a continuing rule of the (Hima) Tutsi/military hegemony, where different factions and individuals in series of more or less bloodless coups have taken power from one another. The only exception was a short but very significant interlude of democracy in 1993, when Buyoya handed over power to Ndadaye after general elections, but was then quickly taken over by the military Tutsi faction. However, remains of the non-authoritarian political framework established around that time, with political parties, a National Assembly functioning at least to some extent, a (transitional) Constitution, other government institutions and an active civil society, are still in place. Though institutions such as these do not all constitute the pillars of a democratic state, they may form the basis for a democratisation process, or at least for some form of power-sharing between opposing forces in society. Nonetheless, it should still be kept in mind that the current political scene, however way one tends to look at it, comprises two groups with unequal powers in opposite proportion to their number, i.e. a fundamentally non-democratic setting.²²

The political spectrum is diverse and broad. Most clear-cut are the profiles at either end, i.e. the extremist Hutu and Tutsi groups which also form the basis of political parties such as CNDD/FDD, PALIPEHUTU, FROLINA, RPB, PP and PL with a Hutu basis on one side, and the Tutsi parties of PARENA, PIT, PRP, ANADDE, AV-INTWARI, ABASA, RADDES and INKINZO on the other. However, across the centre the correspondence between ethnic background and allegiance with either UPRONA or FRODEBU has been less "automatic", in the sense that members of the Hutu ethnic group have supported UPRONA and Tutsis have backed FRODEBU. In

²² For an in-depth historical analysis of the changing political situation in Burundi since independence, the most prominent authors are Lemarchand (1994), Reyntjens (1996 and 1994), Reyntjens and Vandeginste (1997) and Braeckman (1996). See also Cervenka and Legum, 1994, for an analysis of the events surrounding and following the events in 1993, especially the Government Convention of 1994.

other words, the basis for the current platform of cooperation is not new, despite of the persecution of FRODEBU-members and supporters between 1993 and 1996.²³

A relatively new occurrence is the formation of large alliances across party lines, which, to a large extent, can be ascribed to the Arusha process (see below). In late September 1999 a new political grouping, Convergence Nationale pour la Paix et la Reconciliation (CNPR), was formed, including UPRON, FRODEBU (the internal wing), and the small Tutsi parties RADDES, ANNADDE, INKINZO, PIT, Parti Liberal, PRP and PSD.²⁴ As a response to this, the grouping Alliance Nationale pour le Changement, ANAC, was formed in the end of November, bringing together the secretary general of FRODEBU's external wing, Domitien Ndayizeye, as well as the vice president of PARENA, Cyrille Baranciva, representatives of the parties PP, Abasa and RPB, two members of the National Assembly, Andre Biha and Terence Nahimana, former Premier Minister, Anatole Kanyenkiko, and Pierre Claver Rurerekana of SOJEDEM.²⁵

In the eyes of the population, the current military regime has a problem of legitimacy, due to the consistent abuses of power in recent decades, e.g. numerous incidents of killings and other forms of violations by the military against the population, relating to apparent insurgency in various regions, but showing an unnecessary harshness and lack of respect for life and integrity of persons. The rebel groups (also split into many different factions internally in disagreement) have also used the ethnic argument to mobilise the population, whilst resorting to violence against it at the same time. In short, none of the political actors are free from suffering from a problem of legitimacy in relation to the population, whose interests they are supposed to defend. This problem is further enhanced by the lack of multi-party elections which would otherwise give the voters a chance to show their support for one party or the other.

A key element, utilised by as well as victimising, the various political elements is fear, e.g. of the potential and likelihood for violence between different groups.

²³ Ibid.; for a more current analysis of the various political parties and their positioning in relation to the current situation, see in particular the reports of the International Crisis Group (ICG) (Burundi's Peace Process: The Road From Arusha (20/07/98); Internal and Regional Implications of the Suspension of Sanctions (04/05/99); and Proposals for the resumption of bilateral and multilateral co-operation (04/05/99). See also thematic issues of African Studies Review (April 1998) and Politique Africaine (December 1997) as quoted below.

²⁴ IRIN Update no. 771, 4 October 1999.

²⁵ IRIN Update no. 816, 6 December 1999.

Unfortunately, this has been well nurtured by the developments in the neighbouring countries of Rwanda, in particular, and later also in Congo, where people from the two ethnic groups have killed each other in great numbers.²⁶

The collective scepticism which seems to surround any steps taken by the current regime in relation to positive reforms and a more inclusive power structure, should be viewed in light of the following three elements: first of all, it is a minority rule which bases its existence on a military coup rather than a democratic process; secondly, it is a government which, viewed objectively, is seen as being directly as well as indirectly responsible for a variety of human rights abuses, even if some or most of these can be explained with a reference to the extremely difficult overall situation of Burundi in these years. And, thirdly, the fact that an attempt towards democratisation has failed once before, as recently as in 1993, would lead many people to question whether the same could happen again as well as whether the government would be capable of basing its political work on a democratic platform. Of course that question can also be answered more positively, in the sense that the current regime, which once more has Buyoya in the lead, may learn from the previous failure and use it to ensure that changes are made at a pace which will enable even the Tutsi extremists to accept it or at least refrain from disrupting the process.

In this light one possible strategy of maintaining the present power structure intact and only gradually expand it with other groups, which under other circumstances could have indicated a lack of honest commitment to change, may be a viable option at least in a short-term intermediary perspective, even though it does not necessary lead to, and will at least delay, a process of democratisation. Alternative options would be the initiation of a more radical process of power-sharing, including popular participation in the form of free and fair elections with the likely result of a complete change of government like in 1993. It would also, however, imply the risk of throwing Burundi back into a state of confrontation between different fronts, thus resulting in a loss of the fragile framework of governance and platform of negotiation which has been put in place in the last year. In this respect, an idealist demand for immediate democratisation and full respect for human rights may be tempered with a more pragmatic approach where the main objective should be to evaluate and ensure the direction rather than the speed with which it is pursued.

As Burundi should be looked upon as a country which is presently in a unique situation, an attempt to understand its political set-up should not be made through comparison with that of any other state. It seems, however, tempting to compare it with

²⁶ In relation to the inter-play of ethnicity, politics and the regional dimension, see in particular the sources quoted above, as well as Kadende-Kaiser and Kaiser in *African Studies Review*, 1997; Lemarchand 1994 and 1995; Ndikumana in *African Studies Review* 1998.

Rwanda in light of the similarities of ethnic composition and polarisation and because of their recent history of violence between these different ethno-political fronts. Still, emphasizing the differences rather than the similarities between the two countries highlights the distinct traits of the Burundian situation, and thus contributes to a better understanding of its complexities.

Firstly, the current regime in Rwanda is largely based on a cluster of people, "*akasu*"²⁷, with a shared background, i.e. having survived the genocide in 1994 either as *rescapées* in the country or coming back from exile in neighbouring countries where many of them have served in the military together, even though internal conflicts and oppositions are also seen.²⁸ In contrast, the dominant forces among the ruling circles in Burundi have suffered from more visibly manifested and long-term internal splits and rivalry, as will be seen below.

Secondly, Rwanda had a majority Hutu based government for several decades, from independence in the 1960s up to the genocide in 1994. In Burundi, as will be seen below, the Tutsi minority continued to rule during the same period.

Thirdly, the armed rebel groups fighting the government since 1994 in Rwanda have used active warfare rather than political dialogue as their primary medium of expression, which has, to a large extent, disabled the establishment of peace negotiations. In Burundi, on the other hand, the large number of political parties representing different fractions of government and army as well as opposition and rebel sides is a distinguishing feature of the Arusha peace process.

To sum up, the political scene comprises a number of actors²⁹, all of whom play a role in relation to the current situation. Firstly, the current power basis of President Buyoya is dominated by the Tutsi military which may decide to remove him if he moves too quickly away from the direction desired by the more radical wings. Secondly, the civil representation of the Tutsi group i.e. the UPRONA party as well the remaining small parties. Thirdly, the political platform established in the last year, including representatives of FRODEBU and other small parties primarily from the National Assembly constitutes another important factor. The opponents are represented by

²⁷ The term, which means "little house", was used to describe the group of people around President Habyarimana, Reyntjens 1994 p. 189f.

²⁸ For a critical exposure, see "The Killings Resume: Preparing For the Next Rwandan War", Jean-Pierre Mugabe, Strategic Policy, 4-1999.

²⁹ See also Ndikumana, 1998, in African Studies Review who outlines the three "critical factors of antagonism", i.e. ethnicity, regionalism and a politicized military, as well as the geopolitical regions of the Bururi and Mukamba in the south (controlling the military and the government), Muramvya (the seat of the national intelligentsia and the monarchy), and the rest of the country.

extremists on either side, i.e. the hard-line militarist Tutsis in the army and in the political movement, and the equally uncompromising Hutu parties and rebel groups. Other actors include the National Assembly, public service and government institutions, the Tutsi-dominated judiciary and university, civil society organisations, including domestic and international human rights NGO's, the independent media and the churches³⁰, the international community, neighbouring states and the large exile communities. A final actor, which unfortunately seems to have been reduced to more of an object of abuse rather than a powerful determining force, is the general population of Burundi, the men and women suffering from the effects of violence, economic hardship, and a general lack of empowerment.³¹

The following sections outline, in chronological order, developments on the political scene in recent years. In particular, key milestones, such as the assumption of power by Buyoya in July 1996, the adoption of the Transitional Constitution and other initiatives inaugurating the formal period of transition, and the current status of August 1999.

a. July 1996: Buyoya resumes power

In the years following the "sneaking coup"³² in 1993, the political paralysis in Burundi had reached extreme heights. The massacre of 340 ethnic Tutsis by rebels in Gitega on 20 July 1996, triggered the military coup on 25 July, re-instating Buyoya as President. President Ntibantunganya took refuge in the American Embassy in Bujumbura, and was later allowed to leave it unhindered (see below, under freedom of movement).

In relation to Burundi, a highly pragmatic approach to the military coup of 1993 would be to view it at least as a change from a deadlock situation, to a progressive cementing and reflection of an (unfortunate and negative) development rather than a disruptive change in itself. This is an interpretation which may very uncomfortably challenge the sensitivities of one who believes in the value and sanctity of democracy, but may nevertheless have some truth to it if applied with extreme care ! Even if it seemed to

³⁰ On the role of the churches, see Longman, 1998, in *African Studies Review*.

³¹ In this light, it is interesting to consider a trend mentioned several times during my visit in November 1998. Sources included a.o. the coalition of female parliamentarians, who had found that in particular women in rural areas, who had been most hardly affected by the crisis, seemed to be increasingly willing to cooperate with one another in spite of ethnic differences, simply motivated by a pragmatic need for mutual support for themselves and their children. If this is a general development, it contradicts the polarisation maintained and enforced by extremist groups on either side, and illustrates the crisis of legitimacy between the political movements and the population.

³² A term used by Reyntjens, 1996, p. 18f.

end hopes of democratisation with a grim note of finality, at least the actions of the military now had the advantage of clarity since the "political-military negotiators" became more visible on the arena rather than remaining in the shadows.³³

Some constructive steps were taken by the new regime, including the restoration of the National Assembly³⁴ and the operation of political parties which had been banned in 1993. These two conditions satisfied the requirements of the regional summit, whereas the third requirement, the commencement on immediate and unconditional negotiations by all parties to the conflict, was not fulfilled, thereby resulting in an initiation and continuation of a policy of sanctions. In any case, prospects were bleak already from the beginning, given that the preconditions for such negotiations had been less than positive for a long time, and hostilities between the army and the extremist groups on both sides continued and intensified towards the end of 1996. Furthermore, the militarisation of local administration continued, and by September 1996 seven provinces were under a military governor, while two others had a military vice-governor.³⁵

Fortunately, the assumption of power by the new regime meant that the violent extremist Tutsi groups, particularly the youth organisation SOJEDEM, were now to a large extent kept under control, thereby diminishing violence in Bujumbura. The government's control of the extremist Tutsi groups was exercised simply by enrolling them into the army. Another example was the enrollment of 2250 university students to military camps in February 1997.³⁶ As PARENA, the party of former president Bagaza, was recognized a similar threat, it was decided to place him under house arrest. Furthermore, six members of the party leadership were arrested between January and March 1997, following an attempted coup and the explosion of mines in central Bujumbura on 12 March 1997.

As stated above, the various fronts and their respective political parties have faced internal disagreement, thus indicating that the conflict in Burundi cannot merely be ascribed to two opposing ethnically based fronts, but rather indicates a more complex political scene. Other examples of disagreement between different fronts are the violent clashes between the armed wings of the two opposition fronts, PALIPEHUTU and CNDD, which took place during August 1997 in the provinces of Cibitoke and Bubanza, and which led to the killing of more than 600 civilians. Yet another example is the resistance among members of the Tutsi-based UPRONA party to participation in

³³ Ibid., p. 7.

³⁴ By Decree of 13 September 1996.

³⁵ Ibid., p. 8.

³⁶ Ibid., p. 10.

the UNESCO-sponsored meeting "Building the Future in Burundi", in Paris from 26-28 September 1997, a meeting in which the government had agreed to participate in, albeit without a high degree of optimism.

Naturally, the assumption of power by Buyoya gave rise to difficult times for FRODEBU, i.e. ousting it from power formally as well as in reality to some extent the withdrawal from power also happened by choice by virtue of a decision not to cooperate with the new regime, for instance when six members of the party, who had been nominated as ministers in the new government of 2 August 1996, were subsequently excluded from the party. Furthermore, a number of FRODEBU members left Burundi, and either joined the ranks of CNDD-FDD or the diaspora. There were, however, members of FRODEBU who continued to carry out their functions, the most notable being Léonce Ngendakumana, the Speaker of the National Assembly.³⁷ He was later charged for his involvement in the 1993 massacres and denied the right to travel abroad between 1996 and March 1998 (see below under freedom of movement).

After two years, important steps had been taken towards increased inclusion of all fronts in building a broader political platform, motivated, among other factors, by the imminent expiration of the mandate of the existing National Assembly on 29 June. As will be seen below the road has now been paved for a longer period of transition.

b. May 1998: beginning of the period of transition

In late 1997 and early 1998³⁸, negotiations between the Government and the National Assembly were initiated to prepare for a transitional Constitution, five years after the elections.

In 1998, the motivation for both the President and the members of the National Assembly to find a solution to the looming crisis caused by the National Assembly's mandate running out was clear, when considering that the result of not finding a solution to the problem would have weakened the position of both sides considerably:

On the one hand the President had an interest in the continued existence of the National Assembly, not to mention the added positive value of not merely maintaining status quo but also of being seen by the outside world as a constructive contributor towards peace and stability in Burundi. The support of National Assembly during the last two years may have been neither of real significance nor sincere, as claimed by some who see the National Assembly as merely having a rubber-stamping effect. At the same time, however, the formal endorsement by the National Assembly of the Presidents'

³⁷ Reyntjens, 1997, p. 11.

³⁸ IRIN says May 98, but the process started already in late 1997.

decisions and Decrees has provided at least some semblance of accountable and transparent governance, if not democracy, to the decision-making and legislative process in Burundi. If the National Assembly had been dissolved following the expiration of its mandate, it would have left Burundi in every respect as a military dictatorship, without even a semblance of pluralistic legitimacy. Particularly in the current situation, where Burundi is trying to demonstrate positive progress and to satisfy its critics at the international and regional level in order to achieve a lifting of the sanctions against it, it would have been a very negative signal.

On the other hand, the National Assembly has been severely hindered in its functions due to the death and/or exile of a large number of its members, leaving those still in seat in a precarious position in light of the more or less subtle oppression from the military rulers. A decision not to endorse a new Constitution (hereby extending their own mandate) or the inauguration of President Buyoya would have been noticed among outside observers as a sign of the underlying conflict and differences of opinion between the President and the National Assembly. At the same time, however, this would also have cut the members off from any continued participation in the decision making process. However diminished this power may already be in effect, it still provides some opening for dialogue and action, and to some extent serves to facilitate some influence by the members of the National Assembly, collectively as well as individually.

On 6 June 1998, the Agreement on a Political Platform for the Transitional Regime was signed by President Buyoya and Ngendakumana, President of the National Assembly, outlining the principal and institutional foundation for the government. This political programme stresses the need for cooperation of all parties in building a partnership for peace in Burundi, where the institutions operate in a spirit of inclusion of all members of society. It will have the responsibility of finding lasting solutions to the fundamental problems of the crisis in accordance with the primary priorities of the people towards peace, security and stabilisation of the country, including the restructuring of the institutions to represent all political and social forces. In their work, the transitional institutions shall learn from the past and avoid a discourse of confrontation and undermining, in favour of one of dialogue, collegiality, consensus and complementarity for peace, and restore and affirm the State's authority. In order to achieve this, individuals working within the institutions must exhibit responsible leadership and be capable of putting themselves above ethnic and partisan interests.³⁹

³⁹ See also Ndikumana, 1998, in *African Studies Review*, who stresses the failure of the nation state as well as the need to re-write the social contract.

The Agreement addresses a number of these questions. On the issue of *peace*, parties are urged to form a solid consensus and embark on a programme of popular education for peace. On the issue of *democracy*, the need for institutional reform is stressed, and mechanisms which create diversions, corruption and conflict must be replaced with those promoting good governance, popular participation, transparency and the Rule of Law, including a programme of popular reflection, dialogue and education system. In relation to the question of *genocide*⁴⁰, the organisations and various political institutions and civil society must be mobilised to consolidate an inter-ethnic ideology of "never again!", establishing concrete mechanisms for the prevention, repression and eradication of the crime of genocide. It is suggested that international mechanisms such as a commission of enquiry and a penal tribunal are empowered to deal with this particular aspect. *Justice* is to take the form of an impartial, independent and rigorous judiciary, and the fight against impunity is recognised as fundamental in the process. Moreover, in light of the recognition that the present system suffers from ethnic imbalances, particularly at the levels of prosecution and the higher levels of justice (see below under human rights practices), a programme of reform is commenced. Also, the Government and the National Assembly reaffirm their belief in the institution of Ubushingantahe as a mechanism consolidating peace, social cohesion and reconciliation. In relation to the issue of *security*, the need for institutional mechanisms and durable solutions are stressed, including addressing ethnic imbalance and partiality by ensuring equal access to the armed forces for all segments of society, as well as education of their members. The improvement of the situation of the internally and externally *displaced*, and those who have become widows or orphans as a result of the crisis, remains a high priority of the Government and a large programme is to be instated in this area. Finally, in relation to *economic and social* questions, it is recognised that the increased poverty of the population as a result of the crisis and the embargo is also an obstacle to peace. A programme of economic reconstruction and revitalisation, including strengthening of commercial life and development of the private sector, as well as areas such as education, health, training and infrastructure, is necessary.

The Agreement outlines necessary areas of institutional reform, first and foremost, the Transitional Constitution adopted on the same day.⁴¹ It takes effect from its date of promulgation until the date of promulgation of its replacement, i.e. the extent of the transitional period is not at this point determined (art. 1 and 2). Its objective is to provide for institutions which are to facilitate the transitional period, the purpose of

⁴⁰ On the use of the term "genocide", see Lemarchand, 1998, in *African Studies Review*, who outlines the necessary dual strategies of healing, in the form of a Truth and Reconciliation Commission, and power-sharing.

⁴¹ Decret-loi No. 1/000 du 6 Juin 1998 portant promulgation de l'Acte Constitutionnel de Transition de la République du Burundi.

which is to ensure and consolidate peace and security, reconciliation of the people, consolidation of national rather than ethnic conscience, fight ethnicity and genocidal ideology, educate political actors and the population in the values of democracy, promote good governance, and set in motion a dynamic process towards negotiating a viable solution to the conflict in Burundi.

In addition, the Agreement states the changes to be made at the legislative level, where the National Assembly is enlarged by from 81 to 121 members to include representatives of other political parties as well as civil society.⁴² At the executive level, the office of the Prime Minister is replaced by two Vice-Presidencies, where the First Vice-President is in charge of political and administrative matters, and the Second Vice-President is responsible for economic and social affairs. Finally, at the judicial level, the Constitutional Court is reinstated⁴³ to decide on the constitutionality of laws and to interpret the provisions of the Constitution. In addition, this institution shall also appoint the members of the National Assembly in accordance with the law adopted in this respect, i.e. the Decree-loi no. 1/002 adopted on 15 June.

In the beginning of June 1999, the Government unveiled a "plan for society", according to which the transitional period should be extended to a total of ten years, thereby creating a "period of stabilisation" envisaging a democracy "based on consensus" during which the transitional government, led by the head of state, will be assisted by two vice-presidents. They will each represent one of the ethnic camps (similar to the current arrangement), and within this 10-year period the two groups will agree to exchange the leadership. Also, an expansion of the current National Assembly to accommodate leaders currently living outside the country as well as those groups represented in Arusha but currently lacking representation in the National Assembly has been proposed, as well as an "ethnically balanced" Senate. The reaction among the opposition has been, at least, to stress that such plans would have to be discussed in Arusha, and CNDD declared that this would not make it stop its armed fighting.⁴⁴

c. 1999: the current political scene: factions on all sides

Since the end of November 1998, there seems to be a general agreement that a fragile platform in the centre of the political spectrum has been established with the collaboration of progressive forces from FRODEBU as well as UPRONA (see above).

⁴² Decret-loi No. 1/002 du 15 Juin 1998 portant élargissement de l'assemblée nationale.

⁴³ Decret-loi No. 1/001 du 15 Juin 1998 portant organisation et fonctionnement de la Cour Constitutionnelle ainsi que la procédure applicable devant elle.

⁴⁴ IRIN Updates no. 686, 4 June, and no. 689, 9 June 1999 1999; The East African, June 2, 1999 (African News Online).

However, a major obstacle to its further consolidation and expansion, and in this respect to a stabilisation of the internal political dialogue at least among the decision makers, is the increasing splits *within* the existing parties, primarily FRODEBU and UPRONA, which makes it difficult for those who want to secure the political platform to gain sufficient support; and, secondly, the threat from those extremist groups *outside* the two main parties on both sides who seek to demolish the platform. The fact that the latter, too, are split in different fronts, such as the continuous struggle between the CNDD and the FDD, may at first glance seem to be to the advantage of those seeking peace and stability, because it prevents the extremist groups from entering into alliances geared towards structured and effective de-stabilisation. In the current situation, however, where efforts especially in Arusha are aimed at negotiating a lasting cease fire and even permanent peace, the absence of an accountable and significant negotiating party among the extremist and armed groups becomes a distinct disadvantage.

The split within UPRONA, expressing the conflict outlined above but possibly based on other factors as well, is between Buyoya and his ally, the interim president of the party Luc Rukingama, who is in favour of joining the Arusha process, and the leader of the party, Charles Mukasi, who was voted out of the party's Central Committee in October 1998. The confrontation between the two factions even necessitated the assistance of police and gendarmes to break up a party meeting in February 1999.⁴⁵

The split within FRODEBU, between the external wing headed by the exiled party president, Jean Minani, and the internal wing by Ngendakumana, who is also president of the National Assembly, has increasingly deepened, with the signing of the partnership agreement by the internal group.⁴⁶ As a result, the party is also divided in relation to the segregation of the parties in the Arusha process, which has recently seen the emerging of three distinct groupings across FRODEBU lines (see below). Also, within the internal faction of the party there are severe conflicts, an expression of which is the suspension of a dozen members by the party secretary-general Augustin Nzojibwami, who in turn was suspended by the party's National Management Committee.⁴⁷ His suspension was confirmed by the president in exile, Jean Minani, whose faction saw the secretary-general as being too closely related to Buyoya and UPRONA.⁴⁸ Some of the internal manoeuvring within FRODEBU could also be seen as an expression of various members' attempt to gain more power and influence within

⁴⁵ IRIN Update no. 606, 10 February 1999.

⁴⁶ International Alert, Annual Review and Report January 1998 - April 1999.

⁴⁷ Reyntjens 1999 p. 9f.

⁴⁸ Burundi: Internal and regional implications of the suspension of sanctions, International Crisis Group, 4 May 1999.

the transitional governmental structure, as an implicit acceptance that it will be piloted by Buyoya, even if the hard-liners wish such a solution to be subject to negotiation and not simply concession.⁴⁹

In May 1998, the split within CNDD, which had led to the formation of a joint CNDD-FDD organisation already in April, led to the suspension of the CNDD leader, Leonard Nyangoma, who was replaced by the party's chief-of-staff, Colonel Jean-Bosco Ndayikengurukiye. At the same time, other high-ranking members of the part were suspended for "treason".⁵⁰

The new proposal to further expand the National Assembly to include parties already represented in Arusha will broaden the political spectrum, i.e. in the sense that more of the small parties will be accorded at least a formal degree of involvement in the process. Whether this will satisfy the demand for real influence of these parties, or whether it will only further nurture the polarisation between extremists on both ends of the spectrum, and in the worst case, contribute to a paralysis of the political process, remains to be seen.

A characteristic of all the main parties in Burundi is the distinction between their political and their military wings, which in many cases has deepened into actual rifts and conflicts concerning the choice between confrontational and more cooperative approaches, is an unfortunate factor which in the end could lead to a separation of factions along those lines. In such a case the Government would find itself threatened from its external and internal opponents, as well as from conflicts between each party's military and civil wings, as viewed in particular within CNDD and FDD. Most concretely, this would make it difficult to obtain a cease-fire or even lasting peace, which is especially important as the continued insecurity is a constant de-stabilising factor for Burundi.

Finally, a crucial element in the political process is the influential Burundian refugee community in North America, Africa and Western Europe, many of whom are based in Denmark. The current government recognises that it needs their support of its policy, as well as their skills and qualifications, and has therefore tried to convince them to return. In this respect, efforts have been especially made to ensure the sceptic diaspora that they can trust the Government's good intentions and ability to fulfill them.⁵¹ This

⁴⁹ International Alert, Annual Review and Report, January 1998 - April 1999.

⁵⁰ IRIN Update no. 413, 9-11 May 1998.

⁵¹ Examples are the "dialogue meetings" held all over Europe, some under the auspices of International Alert (see their annual report), and by other institutions. On 7 March 1998, a so-called "Burundi Day" was held at the International Peoples' College in Elsinore, Denmark, followed by a week-long seminar in May 1999. These initiatives allow individuals with different backgrounds to come

highlights the significance of the appointment of Gerard Ngendabanka, a member of FRODEBU and former Minister of Justice who has lived in Denmark as a refugee, as new Public Prosecutor in December 1998. The appointment, which was generally received as an appropriate indication of the Government's commitment to a reform of the justice system, could also be seen as an important signal to the diaspora that they should have nothing to fear from the current regime if they wished to return. It would be consistent with statements made during visits by several Burundian members of the National Assembly and government delegations to Europe since 1996, and could therefore be viewed as a political gesture. An argument voiced among leading NGO's during my visit which in theory would have some merit, would be that a strong person with close ties to the current government would have been in a better position to ensure that the various levels of the prosecution respect the principle of non-discrimination on the basis of ethnic origin. On the other hand, the steps taken in recent months by the new Public Prosecutor to release pre-trial detainees etc. are positive signs not only of his commitment but also of his power to implement improvements.

together and informally exchange views and experience on the situation in Burundi, and in this manner a constructive dialogue is facilitated.

IV. INSTITUTIONS AND ORGANISATIONS

1. The National Assembly

In June 1993, general elections were held under Ndadaye's brief government. A total of 81 members of the National Assembly were elected in 16 constituencies, and out of these, 65 seats were occupied by members of FRODEBU, while the remaining 16 were given to members of UPRONA. The general unrest and targeting on FRODEBU members in the following years (see above), meant that a large number of these seats were in effect vacated because their members were killed or had fled into exile.

As a result of the adoption of the law on the expansion of the National Assembly to 121 seats in June 1998 (see above), 40 new seats were to be filled. It should be noted that the law contains a number of criteria to be fulfilled by the prospective members. Most of these are uncontroversial, such as the requirement for Burundian nationality by birth or naturalisation, a minimum age of 25, and incompatibility with other public functions except that of a university professor. However, the condition that all candidates must reside in Burundi at the time of designation could potentially rule out candidates from the diaspora.⁵²

Of the forty seats, 12 were reserved for members of the political parties other than FRODEBU and UPRONA, and of these 8 seats were occupied by a representative from each of the following parties: RADDES, PRP, RPB, Av. INTWARI, PSD, INKINZO, PP and PIT. The four remaining parties eligible to send candidates (ANADDE, Parti Liberal; PARENA and ABASA) have so far not done so.⁵³ While RADDES is the only party not represented at the commencement of the Arusha Process, the expansion of the National Assembly did not allow for the representation of CNDD/FDD, PALIPEHUTU and FROLINA who otherwise participate in Arusha.

Furthermore, the law stated that the seats left vacant by existing members in the National Assembly should be filled by the relevant parties themselves. As a result, UPRONA did not change any of its seats, but FRODEBU instated 21 new members from the constituencies of Bubanza, Bujumbura Rurale, Cibitoke, Gitega, Kayanza, Kirundo and Ngozi.

Finally, the remaining 28 seats have been filled with representatives from civil society, elected after consultation between the President of the Republic, the President of the National Assembly, and the President and Vice-President of the Bashingantahe. In

⁵² Decret-loi No. 1/002, 15 June 1998, portant clargissement de l'assemblée nationale, article 7.

⁵³ Institutions - Assemblée Nationale, www.burundi.gov.bi/assbn.htm.

practice, individuals have been asked to assume the positions and various NGO's and other organisations and institutions have been invited to send candidates. It should be noted that they have each chosen either to accept such positions, hoping to gain influence on important processes in their field, or have chosen to remain outside the National Assembly for fear of losing their ability to function independently.⁵⁴

In summary, one could argue that the current National Assembly has not been established through a participatory process of election, but by delegation from the Head of State, and that as such it lacks popular participation otherwise expected in a representative institution, even if the selection of the candidates has been left up to each of the parties.

Out of the 121 members of the National Assembly only 16 are women, who have formed a coalition across the floor. Their activities include lobbying for the adoption of new Codes, for instance in relation to family law, particularly aimed at improving the situation of women in society, who in general suffer from a combination of economic difficulties, insecurity, displacement and widowhood, coupled with traditional structures of disadvantage.

The National Assembly is in session twice a year for two months at a time, the first session starts in April and the next in October. In the first session agreement was reached on the national budget for 1999. Moreover, issues relating to various aspects of children's welfare, such as access to education and re-integration of refugee children into society, general issues of good governance and democracy, and the possibilities of redressing the ethnic imbalance of the armed forces, were discussed.⁵⁵ During the spring session of 1999, the Assembly adopted a new Code of Criminal Procedure as a step in the implementation of its plan for the reform of the judicial system (see below).

One of the five permanent working commissions under the National Assembly is the *Human Rights Commission*⁵⁶, which addresses various issues relating to the promotion of human rights in Burundi. It has 15 members, nine of whom are among the newly

⁵⁴ The latter is the case for ITEKA, the dominant human rights organisation, and some individuals, while some of the smaller NGO's have opted for the chance of increased influence.

⁵⁵ Meeting with the Human Rights Commission under the National Assembly; OCHA Bulletin 18 December 1998 - 3 January 1999.

⁵⁶ Not to be confused with an independent national human rights institution established in accordance with the 1991 Paris Principles. See Lindsnaes and Lindholt, 1999, in relation to standards to be fulfilled by such an institution. An earlier attempt to establish a National Human Rights Commission fell through, in particular because the Minister for Human Rights did not support it on the grounds that it would be very difficult for such an institution to function independently in the current context (his own statement during our meeting in Bujumbura, November 1998).

appointed members, and is composed of five representatives from FRODEBU (four of these are new members), five from civil society, and two from UPRONA, including its President and First Secretary.

The Council of Ubushyamba for National Unity and Reconciliation is one out of four National Councils, laid down by Section IX of the Constitution. Its members are appointed by the President of the Republic, and chosen from "persons recognised by their moral integrity" and their interest in the life and unity of the country.⁵⁷ In addition to serving as a consultative organ for the President of the Republic and the National Assembly, the role of the institution is to reflect on matters pertaining to peace and reconciliation, e.g. to follow the developments in this area within Burundi, to produce periodic reports on these issues, and to take the necessary action aiming at its re-establishment as an instrument of peace and social cohesion. It represents an attempt to re-vitalise a traditional Burundian institution of conflict resolution, and hereby brings a cultural dimension to the promotion of peace and reconciliation. However, by drawing on notions of respectability and adherence to traditional values, including the exclusive access of men only to serve in this capacity, and its application to a local rather than a national or even regional context, attention should be paid to ensure that the institution is still geared to meet the requirements of today's Burundian society.⁵⁸

2. The Government and the administration

When comparing the composition of the current government, 22 Ministers and two Vice-Presidents,⁵⁹ with the number of post held by each end of the political spectrum, FRODEBU and its supporters have filled at least 10 of the above positions. Most of these are related to the social and development sphere, e.g. the office of the First Vice-President, in charge of political and administrative affairs, and the Ministries of External Relations and Cooperation, Education, Communal Development, Social Action and Women, Agriculture and Public Works. In comparison, the UPRONA side has only filled around half of this number of ministerial posts. However, they include important positions such as the office of the Second Vice-president in charge of economic and social affairs, the Ministries of Finance, Communication, Peace Process, Energy and Mines and Resettlement of Refugees and the Internally Displaced. Three posts are held by the army, including the Ministries of Interior and Public Security, National Defence, and Transport, Post and Telecommunications. All of these must be considered essential in a situation of national crisis, as they give a potential high level of control. The two Ministers of Public Health, and Human Rights, Institutional

⁵⁷ The 1998 Transitional Constitution, sections 150 - 152.

⁵⁸ Paper for "Cours de Formation en Résolution Traditionnelle des Conflits", Club Convergences, Bujumbura, 1-2 April 1999.

⁵⁹ Unofficial information, provided by Government representative.

Reform and Relations with the National Assembly are chosen from civil society, while the Minister of Justice is a magistrate.

A Government Liaison Committee, consisting of representatives from the Ministry of Justice, Ministry of the Interior and Public Security, Ministry of National Defence and representatives from the Cabinet of the President, has been appointed to address human rights issues. The primary responsibility of this Committee is to ensure cooperation between the Government of Burundi and the UN Human Rights Field Operation through weekly meetings, to examine allegations of human rights violations by state agents, and to respond to criticism from domestic or international organisations.⁶⁰

As of August 1997, a reshuffle in the administration of Burundi resulted in the transfer of human rights matters from "Ministere des Droits de la Personne Humaine, de l'Action Sociale et de la Promotion de la Femme" to "Ministere des Droits de la Personne Humaine, des Reformes Institutionnelles et des Relations avec l'Assemblee Nationale". As a result, the issue of human rights protection and promotion is now given a more prominent position, especially thanks to the leadership of the highly and widely respected Minister Eugene Nindorera. However, the ability of the Ministry to take substantive action is still stymied by its lack of funding and infrastructure; on the national budget for 1999 the total amount of funds allocated for this Ministry is just over Bfr 35 million, or 0,04 percent of the gross annual budget - only the Ministry for the Resettlement of Refugees and the Internally Displaced receives even less. The staff of the Ministry consists of a Chief of Cabinet, a Director General, two Directors and four advisors, all of whom have a university degree. The activities of the Ministry so far includes the elaboration of a sectoral policy and a plan of action for the fight against genocide, reorganisation of the Liaison Committee, the establishment of a Coordination Committee for the project "Strengthening the Rule of Law", reform of the statutes of the Centre for Promotion of Human Rights and Prevention of Genocide (see below), monitoring of the international obligations following Burundi's ratification of international human rights conventions, organisation and participation in various seminars and round tables at the national level concerning human rights questions, and identification of national and international human rights organisations with a view to instituting a policy of cooperation with these. In April-May 1999 the Ministry facilitated the hosting of the semi-annual session of the African Commission of Human and Peoples' Rights in Bujumbura.

Under the Ministry a Centre for Promotion of Human Rights and Prevention of Genocide has been established, originating from 1992, but recreated under the Ministry in May 1998, with the purpose of carrying out the promotional work of the Ministry in the field of human rights and prevention of genocide. Its mandate includes a wide range

⁶⁰ Conversation with Eugene Nindorera, Bujumbura, November 1998.

of activities in relation to popular education and sensitization, e.g. diffusion of human rights instruments and principles to all sectors of the population, establishment a documentation centre on human rights open to the public, cooperation with NGO's, supporting the publication of reports, encouraging research and deliberations concerning peaceful conflict resolution, etc.⁶¹ As the Ministry itself, the Centre suffers from insufficient funds, but has still been able to produce various seminar reports and a comprehensive directory of NGO's and institutions in the field of protection and promotion of human rights, prevention of genocide, youth, women and children etc.⁶²

3. Non-governmental organisations

Considering the difficulties and isolation resulting from the crisis, and compared to other countries in the region such as Rwanda, the indigenous NGO community in Burundi is relatively large and active, with most of the organisations established between 1993 and 1997. The above Directory counts more than 10 organisations alone engaged in the protection and promotion of human rights and prevention of genocide. Another 19 institutions are involved in the prevention of genocide and the promotion of peace ideals. In addition, some target directly on the situation of women and children (11 and 20 respectively), and others on religious and other matters.⁶³

The capacity and infrastructure of the NGO's differ, some of them operate under very modest conditions while others are more advanced, but they are generally in need of capacity building and other support. Their situation is dominated by lack of funding exacerbated by the absence of donor support to Burundi since 1993. As such, their work reflects the political situation in the country, i.e. with a tendency to work in the capital along existing ethnic polarities with a limited popular basis. In addition, some of them suffer from the previous systematic targeting on opponents of the military regime, in particular progressive Tutsi and Hutu intellectuals, resulting in the deaths or exile of many of their staff and supporters. Nonetheless, many of the organisations exhibit a willingness and capacity for entering into a frank and constructively critical dialogue with the government, and for openly addressing relevant issues when necessary.⁶⁴

⁶¹ Decret No. 100/081 of 29 May 1998 portant creation du Centre de Promotion des Droits de la Personne Humaine et de Prevention de Genocide (C.P.D.H.G.).

⁶² Catalogue des associations, des ONG's et des institutions Burundaises appelees a contribuer a la promotion, a la protection et a la defense des droits de la personne humaine ainsi qu'a la prevention du genocide. August 1998, C.P.D.H.G., Ministry of Human Rights, Institutional Reform and Relations with the National Assembly.

⁶³ C.P.D.H.P.G. Directory; Ibid.

⁶⁴ On the issue of human right NGOs in Burundi since 1990, see Gillet, 1997, in *Politique Africaine*.

One of the most prominent human rights organisation is *Ligue Burundaise des Droits de l'Homme (ITEKA)*, established in 1994 and based in Bujumbura. Their infrastructure is well established, main activities include regular publication of newsletters, reports and statements, etc. In spite of their close relations with the Ministry of Human Rights⁶⁵, they have continuously addressed appropriate criticism of the Governments and agents of the State for human rights violations, for instance in connection with military operations leading to the killing of civilians, but also in relation to the Transitional Constitution, freedom of organisation, torture in the prisons, and conditions in prisons and centres for the displaced after visits to these. Most lately, the organisation has reacted to the violence in the Makamba province, criticising human rights violations committed by both sides in the conflict and urged all parties to respect the rules of humanitarian law and strive towards peace. Another activity has been the organisation of consultations with civil society on the peace process.⁶⁶

Other human rights organisations to be mentioned are *Ligue Burundaise pour la Defense et la Promotion des Droits d'Homme (SONERA)*, established in August 1993, and reported to be closely associated with the Tutsi genocide survivors' groups, just as *Fondation Melchior Ndadaye pour les Droits de l'Homme, la Démocratie et le Développement* has strong ties with FRODEBU, as indicated by its name. The organisation *Fondation pour l'Unité, la Paix et la Démocratie*, established by Buyoya in 1994 after he lost the 1993 elections, and primarily working in the field of promotion of human rights and peace through the elaboration of various reports, and closely connected to the Faculty of Law, University of Burundi. Another organisation to be taken note of is *Compagnie des Apôtres pour la Paix (CAP)*, established in 1996, and dedicated to the promotion of peace and national unity. It has been viewed with some controversy by the Burundian diaspora because of the active role played by Libère Bararunyeretse, alleged putschist, but is also known for its constructive role in bringing together different sides in the conflict.

A relatively small organisation, *l'Association Burundaise pour la Défense des Droits des Prisonniers*, founded in 1995 and re-vitalised in February 1997, should be mentioned and commended for their work in relation to the situation of prisoners, a very vulnerable group because of the problems of detention and administration of justice (see below). Since this is an area which at times is considered to be particularly controversial and difficult to understand by the general public, particularly when the organisation stresses the need for allocation of resources to prisoners, they experience lack of understanding from both the authorities and the public. The mandate of the

⁶⁵ Eugene Nindorera is the founder and brother of the current head of the organisation.

⁶⁶ ITEKA. Bulletin d'Information, no. 33, May-June-July 1998; Declaration of 6 May 1999; Consultations au sein de la société civile sur le processus de paix au Burundi. Rapport-synthèse final, Gitega, 7-10 October 1998.

organisation includes monitoring the processing of dossiers and the provision of legal, medical and other support to prisoners. So far the main emphasis has been on achieving permission to go into the prisons.⁶⁷

The leading women's organisation is *CAFOB*, the collective of women's organisations, which among its activities has carried out a campaign to have more female members of the National Assembly, and another campaign directed at gaining the acceptance of women at the negotiations in Arusha.⁶⁸

Organisations with observer status at the African Commission on Human and Peoples' Rights include *Ligue Burkinabe des Droits de l'Homme et des Peuples*, based in Geneva, *Sonera*, and *Association pour le Progres de la Femme et de l'Enfant (ASBL-IGAA)*.

⁶⁷ C.P.D.H.P.G. Directory; reports from the various organisations; notes of meetings, November 1998.

⁶⁸ International Alert, Annual Review and Report, January 1998 - April 1999.

V. INTERNATIONAL RELATIONS AND FACTORS

The situation relating to human rights and politics in Burundi is to the largest extent a domestic matter. However, at the same time the regional aspects have become extremely important, given the developments on the political scene of the Great Lakes region over the last couple of years. From the outside, the external process may thus seem to be the more important because it is more visible, but it is nevertheless essential to maintain a relative balance in priority between the two processes and to recognise the difference between them. In this context it has been interesting to learn that the views expressed by a number of government, party and NGO representatives during my visit in November 1998 indicated that they considered the domestic political process to be by far most important and relevant to the solving of Burundi's problems. There are, however, areas where the international context is extremely significant, in particular the embargo, the peace negotiations, and relations with the UN and donors, as well as with other Great Lakes countries such as Rwanda and Tanzania.

A note should be made at this stage on the alleged involvement of Burundi in the conflict in the Democratic Republic of Congo (DRC), which escalated in August 1998. On the one hand, DRC has continuously alleged that Rwanda and Uganda as well as Burundi have invaded its territory, and has lodged a complaint with the African Commission on Human and Peoples Rights in Banjul as well as with the International Court of Justice against all three countries.⁶⁹

With similar consistency, the Government of Burundi has maintained its neutrality in the crisis, in spite of a rather unfortunate statement by the First Vice-president that when war threatens, "you go beyond your front door"⁷⁰, i.e. troops move into foreign territory. The concerns openly voiced by the Government of Burundi in relation to the continuous fighting and rebel infiltrations across its borders and the potential risk to its own internal security should probably be taken seriously enough, given that Bujumbura is located only around 15 kilometres from the DRC border.

The UN Special Rapporteur on DRC in his report to the Human Rights Commission did not implicate Burundi in the crisis, except from stressing the warning of UNHCR that it could not protect 12,000 Hutu Burundian refugees in Uvira in DRC.⁷¹

⁶⁹ IRIN Update no. 626, 10 March 1999, citing Gabon's Africa Number One radio (i.e. yet to be confirmed by the Secretariat of the African Commission); ICJ press release 854, 23 June 1999.

⁷⁰ IRIN Update no. 654, 21 April 1999.

⁷¹ Report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Mr. Roberto Garretón to the Human Rights Commission (E/CN.4/1999/31, 8 February 1999).

An interesting statement from a Congolese rebel leader expressing that there were around 2,000 Burundian soldiers in the east of DRC, but that they were fighting against their own Hutu guerillas under FDD, also supports the position of the Burundian Government.⁷²

Lately, the conflict seems to have escalated with DRC threatening to attack Bujumbura, allegedly following an incident where Burundian helicopters had overflowed the area of Baraka just across the border. While the Government of Burundi has stressed its non-offensive approach, it has nevertheless maintained that it would retaliate in case of an attack. Also, allegations that the Burundian authorities should have detained 760 Congolese refugees were refuted, claiming that they had been well received and allowed to stay or return according to their own wishes.⁷³

Finally, the peace agreement concerning DRC adopted by the parties in August does not include Burundi as an aggressive party, although it calls for the disarmament of the rebel forces. All of these statements indicate that even though there would naturally be some degree of involvement of Burundian actors in the crisis in DRC, it has not escalated to the level seen with respect to Uganda and Rwanda.

1. Sanctions

The neighbouring states did not respond favourably to the seizure of power by Buyoya. Already at the end of July 1996, a proposal by the late president Nyerere of Tanzania for decreeing a complete embargo on Burundi was adopted by the regional states and reconfirmed on 25 September and 12 October 1996. It is interesting to observe that while the Francophone summit in Ouagadougou in December 1996 did not harshly criticise the new regime, the regional summit in Arusha in February insisted on maintaining the sanctions.⁷⁴

Other actors than the regional states, such as the UN, were not unequivocally supportive of the sanctions, i.e. while praising the initiative of the regional leaders they did not specifically endorse sanctions.⁷⁵ The reason for this ambivalence was essentially the legitimate concerns for the deterioration of the situation for the civilian population and the inability of the relief agencies in providing humanitarian assistance due to the continued lack of security, resulting in the killing of three ICRC delegates in

⁷² Agence France Presse, 2 June 1999.

⁷³ IRIN Updates no. 678 (25 May 1999), no. 679 (26 May 1999), no. 685 (3 June 1999) and no. 689 (9 June 1999).

⁷⁴ Reyntjens, 1997, p. 7.

⁷⁵ UN Security Council Resolution 1072 of 30 August 1996.

June 1996. On the other hand, the reticence of the UN also meant that its ability to contribute to the administration of the sanctions was reduced, and until the later establishment of the technical Regional Sanctions Coordinating Committee the embargo was uncoordinated, leaving it up to individual countries to decide on how to implement it.⁷⁶

Throughout 1997, and the first half of 1998, the sanctions remained in place, and in October 1997 the Regional Sanctions Coordinating Committee even discussed a tightening of the sanctions in order to put increased pressure on Buyoya.

In 1997, a study was carried out by several American academics of the impact of economic sanctions in Burundi from July 1996 through April 1997. The study concluded that the economic effects on the population were severe, that compliance with the restrictions were lax, that they created serious operational difficulties for the humanitarian agencies, and that the political impacts were at best unclear and may even have led to increased tension in the region. The report ended by asking the fundamental question “- about the point at which the humanitarian repercussions associated with sanctions become so substantial that they discredit the measures themselves. Is it morally or legally acceptable to impose and maintain an embargo against a country in severe humanitarian crisis with an already suffering civilian population ?”.⁷⁷

The first clear signs of generally diminishing support for the sanctions were seen at the beginning of the Arusha process in June 1998 (see below), illustrating the close connection between the two. At this stage, some of the main donors (EU, UNDP, UN, France and Belgium) expressed a will to resume cooperation, also in recognition of the fact that while the sanctions did not seem to have had a serious effect on the regime, the civilian population was severely affected, thereby involving risk of a humanitarian disaster.

Favouring a (conditional) lifting of sanctions was seen also in the UN Security Council⁷⁸ and the OAU⁷⁹. Among neighbouring countries as well as among international observers a softening attitude was felt, in the sense that everybody still agreed that “progress” was the requirement - but how far it must be taken and how

⁷⁶ Report on Regional Sanctions Against Burundi, UN Department of Humanitarian Affairs, 9 December 1997.

⁷⁷ Hoskins and Nutt, p. 91.

⁷⁸ Statement of the Security Council, 17 February, 1999 (Africa News, 18 february 1999).

⁷⁹ In fact, the OAU refrained from taking an explicit position on the issue, and only took note of the “willingness expressed” by the regional leaders in Kampala “- to re-examine the issue of sanctions” once the Arusha-negotiations were to be resumed; OAU Council of Ministers, 68. Session, Ouagadougou, June 1998, decision CM/Dec.406 (LXVIII).

“irreversible” it must be, and whether the latter was in fact not a myth, considering the history and complexity of the situation in Burundi and the region, was the issue. The domestic effects of the sanctions were also taken into consideration, particularly in light of the fact that while the regime was only to a limited degree affected by the sanctions, the effects on the population were increasingly severe, with prices soaring, also on food, and with the non-availability of imported goods. In addition, petrol was heavily rationed, and had the negative effect of preventing those interested in a progressive mutual dialogue with the population from venturing into the countryside.⁸⁰

In November 1998, Buyoya charged the neighbouring countries with having a “hidden agenda” of maintaining the sanctions, claiming that by adding to the requirements for lifting the sanctions, Burundi would be pressed into accepting a “ready-made” peace.⁸¹

Already in December 1998, Nyerere declared that he was prepared to propose the lifting of regional sanctions, informing the European Union development ministers of this proposal. In contrast, CNDD-FDD in a similar statement urged the European Union Council of Ministers to oppose the lifting of the sanctions, on the grounds that Burundian military continued to massacre the civil population. The EU Council of Ministers in charge of aid in November 1998 hailed the progress in the peace process and “welcomed Nyerere’s intention to propose a lifting of sanctions”.⁸²

At this time the international pressure for the lifting of sanctions was unmistakable; the Conflict Resolution Committee of the OAU meeting in Ouagadougou declared that Burundi had fulfilled all the conditions for lifting the sanctions.⁸³ Another report stressed accurately that the sanctions had reached their “sell-by” date and should be lifted, both because the conditions had been fulfilled, as most of the regional leaders (with the exception of Uganda, Tanzania and Nyerere himself) were ready to accept, and finally because the humanitarian costs on the population had increased to a heavy burden.⁸⁴

A final contributing element was the general situation in the region, i.e. Laurent Kabila had increasingly replaced Buyoya as the “bad boy” of the region, the crisis in DRC had weakened the regional solidarity with a need for Rwanda and Uganda to ally

⁸⁰ Conversations with representatives of the Ministry of Human Rights, the Constitutional Court, the coalition of female members of the National Assembly and the Human Rights Commission under the National Assembly, November 1998.

⁸¹ IRIN Update no. 552.

⁸² IRIN Update no. 559; Agence France-Presse, 30 November 1998.

⁸³ IRIN Update no. 571.

⁸⁴ ActionAid; IRIN no. 584.

themselves with Burundi against DRC, and there were a number of growing contradictory interests between Burundi and Tanzania.⁸⁵ All this contributed towards a continued inclusion of Burundi in the "good company" of states, which would be stressed by a lifting of the sanctions.

On 23 January 1999, the seventh regional summit on the conflict in Burundi was held, following shortly after the fourth round of the Arusha negotiations. Here, the leaders of Uganda, Tanzania, Kenya, Rwanda, Ethiopia, Zambia and DRC, as well as the OAU Secretary General and Nyerere, decided that the progress in the political situation of Burundi was satisfactory, and with a view to providing further impetus to the Arusha peace negotiations, it was decided that the economic sanctions on Burundi should be lifted. The suspension was unconditional and indefinite, but would, however, still be subject to review.⁸⁶ The lifting of sanctions took effect on 28 January at the end of the summit, and the decision was welcomed by the Secretary-General of the UN and others.

2. Arusha

As a response to the Burundi conflict, the OAU had already at an early stage appointed former President of Tanzania, J.K. Nyerere, as mediator with the aim of bringing together the warring parties for constructive discussions, a process which had progressed steadily until June 1996. When his efforts resulted in a political settlement which did not receive unanimous support, he had to warn the parties that an international military intervention to support the Government in restoring order might be necessary, a decision which was considered positively by the first Regional Summit in Arusha on 25 June. Ironically, the nervousness among the Tutsi army and radical parties engendered by these signals, contributed significantly to the coup one month later.⁸⁷

The process of peace negotiations outside Burundi between the Government and the opposition started with Arusha I in June 1998, two years after Buyoyas' assumption of power, and only after the Government had initially laid down conditions related to the lifting of sanctions, causing a deadlock for several months. Represented at the negotiations were the Government and the National Assembly, FRODEBU, UPRONA,

⁸⁵ ICG, 4 May 1999; see also section relating to the Arusha process and to the role of the refugees in Tanzania.

⁸⁶ Joint Communiqué, IRIN, 23 January 1999.

⁸⁷ Report on Regional Sanctions against Burundi, UN Department of Humanitarian Affairs, 9 December 1997.

CNDD (but not its armed wing, FDD), Palipehutu, FROLINA, PARENA, PL, PP, PIT, PSD, ABASA, INKINZO, AVINTWARI, PRP and RPB. Civil society was represented by the Chamber of Commerce, women's and youth organisations.

When evaluating the results, one has to keep in mind the context and historical difficulties which had preceded it (see above), and the indication of a willingness to meet was therefore a major feat in itself. This is particularly the case since extremists on both fronts will have the least to gain as they will be marginalised and less influential against a broad coalition of moderates dedicated to peace, and are therefore not immediately motivated to negotiate. Secondly, the parties agreed to a continuation of the process through further meetings over the following months. Thirdly, a number of committees dealing with the nature of the conflict were established. The various issues to be dealt with by the committees are: "the nature of the conflict", including genocide and exclusion; "democracy and good governance"; "peace and security for all"; "reconstruction and economic development"; and "guarantees for the application of a peace agreement". Finally, the parties agreed to a cease fire until the commencement of the next round of negotiations planned for July.⁸⁸

No reference was made in the Declaration to economic sanctions. The Government expressed a number of reservations concerning the venue and the dubious neutrality of Tanzania in the process, and most importantly concerning a strong reservation to the demand for suspension of hostilities, claiming that it should apply only to the armed factions and not to the army. The split within CNDD, whose chairman Nyangoma had signed the Declaration, led its armed wing FDD to declare immediately that they did not consider themselves bound by the Declaration. This split became evident already in February 1998, when Nyangoma was ousted as president of CNDD-FDD and replaced by Ndayikengurukiye, in charge of military operations. Though Nyangoma has maintained his official position as leader, and represented CNDD in Arusha with the support of Nyerere, it does complicate the situation, and has regrettably led to an upsurge of violent incidents apparently as an expression of FDD's way of stating its continued status as a factor to be reckoned with.⁸⁹

The parties agreed to meet one month later, in July 1998, and the primary issue addressed here was how to assure the funds necessary to carry out the negotiations, as well as technical issues. It was noted already at this stage that the Nyerere Foundation seemed to have some problems with its capacity and experience in relation to the management of the initiative.⁹⁰

⁸⁸ Declaration by the Participants in the Burundi Peace Negotiations. (Seminar report).

⁸⁹ Burundi's Peace Processes: The Road From Arusha, International Crisis Group, 20 July 1998.

⁹⁰ The East African, 3 August, 1998, www.burundi.org

After the third session in Arusha in November 1998, the Nyerere Foundation estimated that at least six peace negotiations rounds would be necessary, and that the plan would be to have rounds four, five and six in January, April (later moved forward to May) and June 1999, before the final round in August 1999 to discuss the implementation of the results. A good indicator that small progress continued to be made is perhaps the statement at this time that Tanzania would no longer be opposed to the lifting of sanctions provided that the peace negotiations reach an "irreversible" stage.⁹¹

The committees met for the first time in December 1998 and again in March 1999, and at that time Nyerere urged the various committees to speed up their work, in light of the fact that not all of them had even managed to adopt their agenda, including the Committee on Governance and Human Rights.⁹²

A major issue in relation to the Arusha Process has been the inclusion of all parties, with increasing pressure on Nyerere to include as spokesperson for CNDD-FDD, not the relatively isolated Leonard Nyangoma, but the leader of the military faction, Ndaykengurukiye.⁹³ This might in theory increase the chances of a durable cease-fire, but at the same time the mediator was confronted by the difficult dilemma that Nyangoma had threatened to arm himself if he was not considered the primary spokesman, a situation which could have led to an increase in the violence rather than the opposite. Negotiations between the various parties concerning the inclusion of both wings were carried out in January 1999, but when the talks started the CNDD-FDD representative had not yet been officially invited, even though they participated in the corridors, as they had previously done. At this stage the costs of the process again were discussed, since it was estimated that the costs at this stage had reached a level of more than US \$ 1 million, and that a total of US \$ 6 million would be needed before June 1999. This was used by Nyerere to motivate the parties to work speedily, since the prospects of donor funding for the negotiations were limited.⁹⁴

After the meetings in March, concern was expressed over the slow progress of the talks. The reasons for the delay were either claimed as being technical, but UPRONA also accused the Hutu-dominated parties of stalling the process.⁹⁵ The parties met again

⁹¹ Africa News Online, 13 November 1998; www.africa_news.org.

⁹² Fondation Hirondelle, 18 March 1999; www.burundi.org.

⁹³ Conference in Nairobi arranged by CAP, bringing together Burundians in exile as well as from within the country, late December 1998; IRIN Update no. 573.

⁹⁴ IRIN-CEA Weekly Round-Up, 22 January 1999.

⁹⁵ IRIN Update no. 632, 18 March 1999.

in April to discuss the nature of the conflict, but entered into disagreement about the influence of events in Rwanda on the crisis in Burundi.⁹⁶

When the committees met in May, the facilitator stressed that serious issues would be debated, although a final accord reached in June would be considered premature. At this stage, the government stressed its strong belief that the rebel CNDD-FDD faction should be present at the talks, as a prerequisite to a viable solution to the crisis, and the agreement between CNDD-FDD and Nyerere was that in that case it would have to be as a separate body rather than under the banner of CNDD represented by Nyangoma. In exchange for this, CNDD-FDD spokesman Ndiho admitted that if the negotiations were serious, a suspension of hostilities, if not a full cease-fire, would be discussed.⁹⁷

It was the hope that the various committees could have produced a joint working document, which could serve as the basis for the fifth round of discussions to be resumed in the beginning of July. Unfortunately, this was not possible, and instead the 18 parties formed three groupings, all of whom had carried out their own strategy work, apparently with the acceptance of the facilitator Nyerere. The three groups are first of all the pro-government "Partnership group", including members of the National Assembly and UPRONA and the internal faction of FRODEBU. The so-called "Moshi group" consists of Hutu-based political parties, including RPB, PL, CNDD, Frolina and Palipehutu, and finally the "Group of Eight" comprises members of the small Tutsi-based parties.⁹⁸

After the round of negotiations in July 1999 the general atmosphere was sour, with the G8 Tutsi group accusing the Government of participating with Hutu rebels, FDD calling for separate negotiations with the Government, and with CNDD/FDD proposing that the whole process be moved to Burundi to include all sectors of society. The mediator on his side accused the participants of having wasted "time, money and hope" in achieving nothing productive, particularly worrying in light of the estimate around the same time that donor funding for the process had amounted to over US \$ 7 mio.⁹⁹

The round of negotiations which was scheduled to begin on 6 September but was postponed to 13 September, in light of the sharply deteriorating security situation, was preceded by internal talks between the Government, the National Assembly, and the four "large parties" of FRODEBU, UPONA, PARENA and CNDD. Without having solved the question of the participation of the FDD representative Ndayikengurukiye, it

⁹⁶ IRIN Update no. 650, 15 April 1999.

⁹⁷ IRIN Update no. 668, 11 May 1999.

⁹⁸ See for instance IRIN Update no. 714, 13 July 1999.

⁹⁹ IRIN 13 July and 16 July, Agence France Presse, 17 July.

was still hoped for that the debate in the various committees would be productive. It was indicated, at the completion of the session, that the next series of talks, scheduled to commence in late October or early November, would be the one where the various committees would conclude their work so that a date for the signing of the agreement could be set.¹⁰⁰ However, the illness and death of Nyerere in October left the process floating, and the outcome was therefore left even more unsure. In November, CNDD, PARENA and FRODEBU proposed as their choice of mediators either Masire, former President of Botswana, Kaunda, former President of Zambia, and Malecela or Warioba, both former Tanzanian Prime Ministers.¹⁰¹ Still, when the Great Lakes regional Presidents met in early December, the final choice fell on Nelson Mandela as the new mediator.¹⁰²

On the one hand, the division along ethnic lines is unfortunate since it paves the way for an ethnic polarisation which will enable the extremists on either front to have a greater impact. On the other hand, the positive aspect of this is that it facilitates the coherent contribution of only three factions sharing basic views, rather than the "cacophony" of 18 different groups. Also, one might argue that the existing differences between various fronts are merely presented more visibly in this manner, but without a deepening of the underlying rifts. Finally, it illustrates again that the major question relating to the roots and expressions of the crisis in Burundi is whether the ethnic or the political element in the polarisation is the strongest, suggesting that the latter is probably both the most accurate as well as the most productive, but also the most complex answer.

3. International bodies

The United Nations decided, by virtue of Security Council Resolution 1072 of 30 August 1996, to monitor developments of the situation in Burundi, and requested the Secretary-General to report back to it on all aspects of the situation, including the progress of the negotiations. He was also encouraged to prepare contingency plans for the provision of international humanitarian assistance, and to prepare for the establishment of an "international presence" to help "consolidate the cessation of violence" in Burundi.

In April 1996, at its 52th Ordinary Session, the UN Commission for Human Rights decided to appoint as Special Rapporteur on the situation in Burundi the Brazilian Paulo Sérgio Pinheiro, who proceeded to regularly visit the country before and after the

¹⁰⁰ Fondation Hirondelle, 13 September 1999; IRIN Update 761, 20 September 1999.

¹⁰¹ IRIN Update no. 791, 1 November 1999.

¹⁰² Africanews, IRIN, 17 December 1999.

coup a few months later, and to report on the various aspects of the situation. His mandate was renewed in 1997, in 1998 and again in 1999.¹⁰³ The reports reflect a balanced criticism of the situation, but increasingly also stress the need for international assistance and support to the fragile progress of political power-sharing, while stressing that the needs in the human rights field, particularly in relation to the administration of justice and securing of the rule of law, are alarming. In August 1999, Pineiro resigned and was replaced by Marie-Therese Aissata Keita of Cote d'Ivoire, professor of contemporary history at the University of Abidjan Cocody and Director of the Institut d'Etudes Politiques of Yamoussoukro.¹⁰⁴

Parallel to the activities of the Commission, the Office of the High Commissioner for Human Rights decided in April 1996 to deploy a mission of observers in Burundi (HRFOB), and in accordance with a series of annually renewed agreements it has pursued a number of activities since then. Apart from regularly monitoring the situation in the country, when security permits it, and continuously monitoring the various aspects related to human rights and the administration of justice, the mission carries out promotional activities in relation to human rights, such as education and promotion, training and other activities of support to the justice sector, supporting the media, the youth NGO's, all under its Technical Cooperation Programme. Finally, a Legal Assistance Programme provides a number of (currently 6) international lawyers to work in cooperation with Burundian advocates for the defense of persons accused of having committed various crimes relating to the 1993 crisis, in addition to "restoring confidence" in the judiciary system and indirectly contributing to the reduction of the number of death sentences, as well as speeding up the judicial procedure for those having committed minor infractions.¹⁰⁵

The UN Office for the Coordination of Humanitarian Activities based in Bujumbura monitors the situation in Burundi, and their semi-monthly reports are an extremely useful source of information on political and humanitarian developments.

There are two primary programmes of technical assistance between the UN and the Government of Burundi, the primary being "Strengthening the Rule of Law", which follows up the initial project in this field dating back to 1994. The objectives of this programme are consolidation of the administration of justice, human rights education and training of the armed forces, the media and civil society. The government implementing agencies are the Ministries of Justice, of Defence, of Education and of

¹⁰³ Human Rights Commission Resolutions 1996/1 of 27 March 1996, 1997/77 of 18 April 1997, 1998/82 of 24 April 1998 and 1999/10 of 23 April 1999, all of whom have been confirmed by later Resolutions by the Economic and Social Council.

¹⁰⁴ UNHCHR Press Release, 16 August 1999, www.unhchr.ch

¹⁰⁵ See www.unhchr.ch/html/menu2/5/part1.htm for an overview.

Human Rights. The second programme "Legal Assistance to Burundi" was implemented in February 1997, and provides lawyers to defend the accused and the victims before the Appeal Courts through provision of assistance to legal authorities in their fight against impunity.

HRFOB has played an important role in collaboration with the Government, and it is a reflection on both parties that a successful and constructive partnership has been established¹⁰⁶, making it an appropriate choice for the channelling of donor funds in many cases. As an example, Belgium, Luxembourg, the Netherlands, Sweden and Norway have all contributed to the programmes.¹⁰⁷ One cannot help noting the difference in appreciation of HRFOB from HRFOR in Rwanda, which received heavy criticism both from the Government and from outside observers, eventually contributing to the termination of its agreement with the Government of Rwanda in July 1998. Unfortunately the activities have been severely reduced since October 1999.

The African Commission on Human and Peoples' Rights has directly addressed the situation of human rights in Burundi, expressing its "deep concern regarding the crisis and its political and catastrophic humanitarian implications for the region and its effects on the civilian population" and calling upon the Governments of the region "to review their decision on the embargo - with a view to ameliorating the sufferings of Burundians".¹⁰⁸ The decision to hold the semi-annual session of the African Commission in Bujumbura in April 1999 should also be viewed as a way of strengthening the progress made within the last year, at the same time as participants in the session were admonished not to interfere in the domestic affairs of the country during their stay in Burundi.

A number of international NGO's and institutions are monitoring the situation in Burundi on an ongoing basis, and issue extremely valuable reports on various aspects of the situation in relation to politics and human rights. These include Search for Common Ground, International Alert, International Crisis Group, Human Rights Watch and Amnesty International. The Nordic Africa Institute based in Uppsala, Sweden, has for several years followed the situation, and the Centre for Peace and Conflict Research

¹⁰⁶ Conversations with HRFOB staff and management and with relevant Ministries in November 1998, who all indicated that the level of mutual confidence is high and communication easy and constructive. Also representatives of foreign missions and local NGO's expressed appreciation for the constructive approach of HRFOB.

¹⁰⁷ UN Voluntary Fund for Technical Cooperation, Status of Project Implementation, www.unhcr.ch/html/menu2/9/vftc/1projsta.htm.

¹⁰⁸ The African Commission on Human and Peoples' Rights, 24th Ordinary Session, October 1998, Banjul, Gambia.

in Copenhagen is also involved in the Burundi peace process. In January 1999 the Belgium-based *Avocats Sans Frontières* initiated activities in Burundi to assist in the legal defense, inspired by a similar project in Rwanda.

The difficulty encountered by organisations working in Burundi, as well as in the region in general, is the extremely complex context, combined with a tendency for all parties to exercise some degree of bias in relation to the perception of a given state of affair and prospective developments - one might say that Truth has more faces in the Great Lakes region than in almost any other place, since the perceived reality of different individuals varies extensively ! This apparent lack of objectivity, combined with an extreme scarcity of "hard facts" in the form of statistics, figures, and even accurate information due to the severity and rapid developments of the situation as well as lack of security, not to mention language barriers, therefore makes research and analysis extremely difficult, particularly since it is most often necessary to rely on secondary sources. Nonetheless, the plurality of sources of information is extremely valuable for an attempt to put together a coherent picture, and the balanced and careful approach of most of these organisations makes their findings and conclusions invaluable.

4. Donors

In the last couple of years Burundi has been isolated; both diplomatically as a result of the coup in 1996, and in effect by virtue of the embargo on transport, which meant that commercial flights were restricted until the end of 1998 when Kenya Airways opened a twice weekly route from Nairobi, still reserved for humanitarian and NGO-workers. Finally, the precarious security situation in the country and in the region had until fairly recently made Bujumbura a less desirable place to visit, given the proximity to the border with DRC and the violence just outside the capital (see section on security above).

One of the first initiatives in relation to assistance to other areas than humanitarian aid, was the signing of an agreement between the Government and UNDP in May 1998, allocating around US \$ 900,000 for a programme of activities aimed at supporting the peace process and national reconciliation, in particular by promoting human rights and enforcing the capacity of the National Assembly and civil society with a view to ensuring better governance.¹⁰⁹

However, after the changing of the political landscape in the summer of 1998, with a re-configuration of government institutions, and with the initiation of the Arusha process, resulting in the lifting of sanctions in January 1999, diplomatic and other

¹⁰⁹ IRIN Update no. 414, 12 May 1998.

contacts have increasingly been resumed¹¹⁰, and bilateral donors have expressed an greater willingness to consider resumption of aid programmes.

In November 1998 there were virtually no bilateral donor agencies present in Burundi, and many of the organisations working in the region were related to different church missions¹¹¹, focussing almost exclusively on providing emergency aid.

On 7 December 1998, a United Nations Consolidated Inter-Agency Appeal for Burundi was issued in Geneva, covering the activities of a number of UN agencies to address the humanitarian crisis in Burundi, DRC, Uganda and Tanzania. The basis for the initiative in relation to Burundi was a meeting held in August 1998, where OCHA assembled UN agencies and NGO's, launching a process of joint strategic planning for humanitarian activities, which formed the basis for the Consolidated Appeal. While its short-term goals focus on emergency aid, reintegration and reconstruction, the long-term goals are decreased dependence on humanitarian assistance, sustainable reintegration of all conflict-affected people, including refugees abroad as well as those internally displaced, and the re-establishment of the rule of law. The total funding requirements for the year of 1999 are US \$ 83,6 million, out of which US \$ 9,9 million are allocated for Justice and Human Rights. The operational objectives in this area are: improving the administration of justice through the training of judicial personnel and providing equipment; promoting the revision of laws in accordance with international standards; increasing general human rights knowledge, and providing human rights training to teachers and members of local NGO's; contributing to the eradication of impunity; providing defense counsel to 3,000 defendants; monitoring the conditions of arrest and detention; monitoring the situation of people forced to flee their homes; and investigating violations of human rights and produce regular reports that include comments from the Government contact group.¹¹²

In June 1999, the International Crisis Group issued a report containing proposals for the resumption of multi- as well as bi-lateral assistance to Burundi, discussing pros and cons relating to the rapid assumption of development aid, stressing that the situation in Burundi is still in a fragile and complex process, and in particular warning against uncritical resumption of aid without careful review of its impact on existing structures. As short-term priorities, the report suggests reconstruction and priority support for health, education and agriculture, as well as job creation, re-integration of refugees and

¹¹⁰ One example is the Japanese government's official recognition of the Buyoya regime in late December, on the grounds that it had confirmed that "Buyoya now controls all the country's territory"; IRIN Update no. 573.

¹¹¹ One example is the Catholic Relief Services (Update March 1999, ReliefWeb, 1 March 1999).

¹¹² United Nations Consolidated Inter-Agency Appeal for Burundi, January - December 1999, UN Office for the Coordination of Humanitarian Activities, 7 December 1999.

the internally displaced, demobilisation and the reinsertion of combatants into the community, and foreign debt relief. As medium and long-term priorities are mentioned, in addition to support for the health and education sectors, economic reform programmes and economic and social infrastructure, support for sectors forming the foundations of a state of law and support for the peace process. More specifically, it recommends support for police training, support for the media, support for the penal and judiciary systems, for the rehabilitation of the local justice system, support for professional training of lawyers and magistrates, support for the National Assembly, and finally for citizen-based associations.¹¹³

In May 1999, the Japanese government pledged US \$ 1 million for the resettlement of refugees and internally displaced in Burundi, intended to contribute to the realisation of political stability in Burundi through the improvement of social and economic rehabilitation. Recently the Chinese government has given a grant worth US \$ 25 million to Burundi, to be used in accordance with its "priorities".¹¹⁴

However, as discussed above the sharply deteriorating security situation in late 1999 has kept most of the international actors from providing much assistance in Burundi, even that of a purely humanitarian and immediate nature.

¹¹³ Justice in Burundi: Situation Report, June 1999, Tony Jackson - International Alert, London.

¹¹⁴ IRIN Updates no. 674 of 19 May 1999 and no. 682 of 31 May 1999.

VI. HUMAN RIGHTS

1. Legal

a. International law

Burundi is a party to a number of international human rights instruments, most of which have been acceded to between 1990 and 1993, none of them with reservations. The conventions include the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), (but neither the First nor the Second Optional Protocols), the Convention on the Prevention of Torture, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Political Rights of Women, and the Convention on the Rights of the Child. Burundi is also a party to the Convention on the Status of Refugees and to the four Geneva Conventions and their Additional Protocols. The latest instrument to which Burundi has become a party is the Convention on the Prevention and Punishment of the Crime of Genocide in January 1997.

Burundi has also been a party to the African Charter on Human and Peoples' Rights since August 1989, and to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa since 1975. In April 1999, while hosting the 25th Ordinary Session of the African Commission Burundi expressed its commitment to ratify the Protocol establishing an African Court of Human Rights.

b. Domestic law

In connection with the 1996 military coup, a Decree was adopted, setting aside the 1992 Constitution, to take effect from 25 July 1996 during the period of transition and until the promulgation of a new Constitution (art. 3), i.e. for an indeterminate period of time. The human rights chapter in the 1992 Constitution has been included in the Decree which hereby contains a full catalogue of material human rights provisions, including a number of individual obligations, indicating the influence of the African Charter.

The Decree obligates the transitional institutions to ensure respect for the rights and duties of the Universal Declaration of Human Rights, the African Charter on Human and Peoples Rights, the international human rights instruments as well as the Charter of National Unity, and states that restrictions on human rights can only be imposed by law (art. 4).

As a result of the process described above, a Decree was adopted on 6 June 1998 promulgating the new Transitional Constitution adopted by the National Assembly on 4 June. It can best be described as a combination between the 1992 Constitution and the Decree of 1996, and contains in section III articles 12 through 54 (under the heading "Des droits de la personne humaine, des devoirs de l'individu et du citoyen") a bill of individual rights and duties. The provisions herein are, with a few exceptions, identical to those of the two earlier Constitutions, providing a comprehensive catalogue of rights and freedoms.

The rights contained in it are, broadly described, similar to those found in a number of other modern constitutions. The *civil and political rights* encompass: the right to life, personal security and physical integrity, and freedom from torture and cruel, inhuman or degrading punishment or treatment; freedom from discrimination on the basis of sex, ethnic origin etc.; the right to be presumed innocent, to be judged only on the basis of a law in a public process and with the right to defence and all the necessary requirements to enjoy that right; the right to privacy and freedom from interference in correspondence; freedom of movements and residence and the right to asylum; freedom of thought, conscience, religion and opinion; freedom of expression, association and assembly; participation in the governance process and the right to hold public office, and finally the protection of the family and the institution of marriage, including the rights of children to special protection. The *economic, social and cultural rights* include the right to training, education and culture, the right to work, to equal pay for equal work and to defend labour rights, and the immaterial rights to artistic production.

Where the heritage of the African Charter is most visible, going back to the 1992 Constitution, is in the extensive catalogue of *individual duties*, which stipulates the duty for all Burundians to strengthen and enforce national solidarity, preserve the harmonious development of the family and respect one's parents, regard others without discrimination, preserve Burundian cultural values, and respect and protect public goods and property; the duty to fulfill one's civil obligations and carry out public functions with loyalty and integrity, the duty to defend national and territorial integrity, not to compromise state security, to safeguard the peace, democracy and social justice; and to contribute through one's efforts to the construction and prospering of society.

As can be seen from this summary a number of the provisions in the international instruments ratified by Burundi are also repeated in the Constitutional Bill of Rights. However, a number of provisions found even in the African Charter, such as the mentioning of rights of women, the right to access to the courts, including the right to have one's case heard within a reasonable amount of time by an impartial court and the right of appeal, and the right to the best attainable physical and mental health and medical attention, are not found in the Constitution. Also, the comprehensive inclusion of individual duties, seen in light of the relatively summary nature of the formulation of

the rights, further strengthens the notion that the protection of rights in the Burundian Constitution(s) may still be far from the provisions of the international instruments ratified by it. The extent to which Burundi formally fulfills its international obligations will have to be determined on other grounds, such as the character of the statutes and court practice.

Also, more important is article 12 of the Constitution according to which "The respect for the rights and freedoms proclaimed and guaranteed by the Universal Declaration of Human Rights, the various international human rights conventions, the African Charter on Human and Peoples' Rights and the Charter of national unity is guaranteed by the present Constitution"¹¹⁵. The most constructive interpretation of this provision would be to read it as a general clause incorporating these instruments into domestic law at the level of the constitution, rather than at the level of statutes, and in this manner to ensure that these rights are given the highest possible status. This would also be in conformity with the principle of direct application found in other states following the Francophone legal tradition. An opposite interpretation, according to which article 12 should be understood as the international instruments being valid domestically only to the extent that they have been repeated in the Bill of Rights, would seriously limit the protective scope of human rights law in Burundi, and should therefore not be supported.

2. Actual human rights practices

A characteristic of most of the analyses seen so far in relation to Burundi is that they tend to focus on political developments in the country, rather than on the state of affairs in relation to various aspects of human rights, apart from such issues as basic security, refugees, etc. An area such as the situation in relation to administration of justice is relatively unexplored by the various external observer reports, and even in those areas where reports are available, there is still a gap in time between the actual situation, subject to both positive and negative and more or less rapid developments, and the analysis reports.¹¹⁶

¹¹⁵ My own translation.

¹¹⁶ The main reports in this area from Amnesty International, Human Rights Watch, International Crisis Group, US Department of State etc. do not go much beyond the end of 1998. At the time of writing this report the latest available report from the Human Rights Field Operations in Burundi included developments up to December 1998. The latest report from the UN Special Rapporteur was completed in October 1998, owing to an accident incurred by him during his latest visit to Burundi, and supplemented by a short oral statement at the session of the Human Rights Commission in Geneva in April 1999. Finally, in June 1999 a report on the justice situation in Burundi was published by International Alert.

One explanation may be that everyone has been biding their time, waiting for some level of political stability to be reached before considering the provision of assistance. And until it is decided by the individual donor agency or organisation that the political climate in Burundi makes more substantive efforts of cooperation desirable and/or durable, the need for a more systematic surveying and analysis of "problem profiles", i.e. the character and extent of the challenges to be met in a given area, is not perceived. Combined with the resistance and/or inability of the national authorities in providing statistics, etc., it may often be difficult to determine the extent and nature of various human rights problems, to analyse their origins and effects, and to adopt a comprehensive strategy for addressing them.

The following analysis will therefore be brief in all areas, restricting itself to a general outline of problems and tendencies, and merely illustrating that human rights problems and violations are prevalent in many different areas, but that the root causes of each type of violations may be different. In this manner the human rights analysis complements that of the political and historical scene above, by indicating the degree of manifested government commitment in light of the nature and scale of the particular problem, as well as the needs for improvement viewed through the needs and allocations of a given area.

a. Administration of justice, fair trial, detention, rule of law

As an effect of the crisis in Burundi, particularly since 1993, the inevitable result in relation to the justice system is that the task with which it is faced has grown in proportion with, or surpassing, its ability to handle it: while the numbers of persons arrested has continued to rise over the years, and the demand for eradication of impunity has risen, a similar demand for the respect for human rights of pre-trial detainees in relation to a fair, impartial and speedy trial with all guarantees of defence as well as satisfactory detention conditions is voiced. At the same time this places an almost impossible burden on a system suffering from ethnic imbalance, a lack of qualified personnel at all levels as well as a limited base of recruitment for the judiciary, and the results of an economic embargo as well as the reticence of external donors to involve themselves in Burundi following from this.

Already in his initial reports the UN Special Rapporteur remarked on and stated his deep concern for "the almost complete destitution in which the Burundi legal system operates", with the courts of appeals, prosecutors and judicial officials lacking everything in relation to material equipment, as well as from adequately trained personnel. In addition, he stressed the negative impact of the ethnic imbalance of the judiciary on its impartiality and credibility with the population. Since then he has constantly stressed the urgent need for reform in this area, as well as the need for material and other forms of international assistance in recognition of the inability of

Burundi to solve these problems alone in the current situation of political and economic crisis. Other organisations have criticised the situation as well, including Amnesty International and other international organisations, and domestic NGO's such as ITEKA.¹¹⁷

It is important to note that the government of Burundi has itself shown a remarkable openness towards admitting that the problems relating to fair trial in Burundi should be solved, and that it is primarily the responsibility of the government itself, an improvement in approach which has also favourably been noted by the Special Rapporteur.¹¹⁸

An important step has been the elaboration of a comprehensive plan for reform and modernisation of the judicial and penitentiary system in Burundi, presented by the Ministry of Justice in March 1999¹¹⁹, which is remarkably frank in its outline of the complexity of the problems faced and the detail in which it addresses the status, strategies and needs of specific areas. By virtue of its extensive nature it provides an insight into causes and effects of the current problems in the administration of justice in Burundi, identifies significant actors and channels, and outlines policies including suggestions for various initiatives down to the level of reform of individual laws, as well as a Plan of Action 1999 - 2001 for the Ministry of Justice. Some of the proposed steps have already been taken to implement it, such as the adoption of a new Criminal Procedure and Evidence Code in May 1999.¹²⁰

In the following the developments in recent years and the current situation in a number of areas will be outlined, with a view to presenting a more specific image of the problems in this area.

i. Detention

First of all, a significant factor in relation to the deterioration of the system, is that the number of persons arrested on various charges, primarily related to the killings in 1993, has increased significantly in recent years. In June 1995, the total population of detainees stood at 4,586, a number which has increased almost steadily with 2,000 every year up to 5,586 in the end of November 1995, to 7,525 in December 1996, to 9,491 in January 1998, and peaking at 9,700 in February 1998. At the end of August

¹¹⁷ UN Special Rapporteur on Burundi, February 1997 sec. 27 ff.; see list of reports in bibliography.

¹¹⁸ See statements by the UN Special Rapporteur and by the representative of the Burundian delegation at the 55th session of the Human Rights Commission, Geneva, April 1999.

¹¹⁹ Plan de réforme et de modernisation du système judiciaire et pénitentiaire Burundais, Ministère de la Justice, Mars 1999.

¹²⁰ Press release, Agence Burundaise du Presse, 3 May 1999.

1998, the total prison population stood at 9,895 persons, and in November 1998 the figure was indicated as being around 10,000. The estimates on the current number of persons in detention vary, from 9,400 indicated by the government over around 10,000 to 15,000 estimated by domestic and international observers in March-April 1999. In addition to the numbers listed above, however, one should add an unknown number of persons detained in *cachots* under the prosecution offices, as well as in unofficial and military facilities, and the actual number could therefore differ considerably. Given that there does not seem to be reports of a significant increase in the number of arrests made, the official number would probably still be around 10,000 or less, whereas the unofficial figure could be several thousand higher.¹²¹

As a consequence the capacity of the prisons in Burundi has declined sharply in spite of the general amnesty in October 1993, which led to a reduction from 7,000 to between 2,000 and 3,000.¹²² In August 1998, the total capacity was estimated at a total of 3,650, i.e. only little more than one third of the capacity needed to house the prison population at that time. The rate of overcrowding varies greatly among the 11 facilities, but only in Ryigi and in Rumonge prisons are the numbers of capacity and actual population almost the same. In the womens' section of Ngozi prison there is even an over-capacity, since only 86 out of 250 places are filled. In contrast to this stands the mens' section of the same prison, where 2,898 men are held in facilities estimated to have a capacity of 400 - an overcrowding of 700 percent!¹²³

Naturally, the conditions of detention have deteriorated as a result of the increasing over-crowding, to the extent that it amounts to a structural violation of the inmates freedom from cruel, inhumane and degrading treatment; hygienic and sanitation conditions are disastrous, and inmates suffer from malnutrition and illness. All of this, in addition to repeatedly reported incidents of torture, abuse and ill-treatment, has led to an alarmingly high mortality rate among prisoners.¹²⁴ Following a field trip by the National Assembly's Justice and Human Rights Commission in May 1999, they concluded that "those condemned to death live in such deplorable conditions that they run the risk of dying before their executions".¹²⁵

¹²¹ Reports of the UN Special Rapporteur on Burundi; Plan de réforme et de modernisation du système judiciaire et pénitentiaire Burundais, Ministère de la Justice, Mars 1999; Danish Immigration Service Report, June 1999, p. 24; Meetings with observers and government officials, Bujumbura, November 1999.

¹²² Report of the UN Special Rapporteur on Burundi, November 1995, sec. 102.

¹²³ Report of the UN Special Rapporteur on Burundi, 13 October 1998, Appendix II (Detention statistics as of 27 August 1998).

¹²⁴ Report of the UN Special Rapporteur on Burundi, 13 October 1998, sec. 40 - 49.

¹²⁵ Referred to and translated by Tony Jackson, International Alert, June 1999.

In relation to this, note should be taken of the fact that even though a certain and effective repression against those who have committed crimes is important to contribute to the eradication of impunity, it must still not be at the expense of ensuring that principles concerning humane detention conditions are respected.¹²⁶ In this respect one could finally maintain that while eradicating impunity is an important prerequisite for reconciliation in Burundi, so is the popular knowledge be that those held in custody by the State, i.e. detainees, were treated with respect for their human dignity.

Note should be taken of the adoption of the new Criminal Procedure and Evidence Code which will establish strict criteria for the issuing of warrants for pre-trial detention to be used only as an exception rather than as the main rule as is the case today. Its implications on the current situation in the prisons and *cachots* are potentially far-reaching and beneficial if it is applied to persons already in detention and not simply to those newly arrested after the promulgation of the Code, and if in such a case due regard for the sentiments of the population is paid to ensure the safety of those released as well.

ii. The process of justice

The justice system in Burundi is composed of the following elements:¹²⁷

- 125 *tribunaux de résidence*, based at the communal level. They are manned by 457 magistrates, most of whom have little or no formal legal training, and have to work in a context of very limited material resources, insecurity etc.
- 17 *tribunaux de grande instance*, one in each province and in the city of Bujumbura, with around 80 magistrates, many of whom have an "adequate" level of training. To each tribunal is attached a *parquet*, and the magistrates at this level have also jurisdiction over the specialised 2 *tribunaux du travail* and 1 *tribunal du commerce*.
- 3 *Cours d'appel*, based at Bujumbura, Gitega and Ngozi, also with a *parquet* attached, and with around 25 magistrates in total; the reform programme suggest the establishment of a fourth *Cour d'appel* to be established a Bururi, to help alleviate the bottlenecks in the criminal system, particularly since these courts are competent to deal with the serious crimes of which most of the defendants are accused.¹²⁸

¹²⁶ "L'objectif d'une répression sûre et efficace ne doit pas être compromis au profit de l'humanisation des détentions". Ministère de la Justice, p. 59.

¹²⁷ Plan for reform of the justice system, Ministry of Justice, Burundi, March 1999, pp. 2ff.

¹²⁸ Ibid., p. 55.

- 1 *Cour Suprême*, divided into three chambers (*Judiciaire, Administrative and Cassation*), with 10 magistrates, and the *Parquet Général de la République*.

In addition, there are 2 *Cours administratives*, and the *Cour Constitutionnelle*, newly re-established by the Transitional Constitution in 1998.

Finally, under the military system there are 5 *Conseils de guerre* and one *Cour militaire*, and it is emphasized that the military *auditorat* functions "under the order and in the name of" the *Procureur General*, even though they are not formally under the Ministry of Public Affairs. Also, it should be noted that the reform programme underlines that the confusion concerning the submission of civilians under the military jurisdiction if just one member of the armed forces is involved in a given case must be completed and the law changed, so that it will instead be under the jurisdiction of the civilian court.¹²⁹

The number of persons in detention who have been tried and sentenced by the criminal chambers has grown at a more or less similar pace as the arrests, from 796 in June 1995 to 903 in November 1995, to 1,332 in December 1996 and to 1,792 in January 1998. As of 27 August 1998, the total number of persons sentenced had increased slightly to a total of 1,822.¹³⁰ This means that the percentage of persons in pre-trial detention, who have not been brought before a judge, has remained steadily at around 82 percent and only in August 1998 dropped to around 75 percent of the entire prison population, a far from satisfactory balance, and one which it will naturally be increasingly difficult to reduce. No comparative statistics for the last 10 months since then are available, but viewed in light of the seeming stagnation in the number of arrests and to the extent that the rate of the courts has continued at the same pace as before or even increased their speed in handling cases, the percentage should be going down, however slowly.

An indication that the Government is considering these issues is seen from the decision of August 1999 to temporarily release some 169 persons accused of minor offences, all of whom had been in preventive detention for more than two years. This step was taken after an investigation conducted by the Ministry of Justice, which revealed numbers similar to those stated above. The investigation expressed the hope that up to 50 percent of these cases could be dealt with by September 1999.¹³¹

¹²⁹ Ibid., p. 56.

¹³⁰ Reports of the UN Special Rapporteur; in spite of its detailed character in other areas, the Ministry of Justice's Plan for reform of the judiciary has no indication of the current number of post- or pre-trial detainees respectively.

¹³¹ IRIN Update no. 739, 19 August 1999.

All in all, the Burundian justice system is thus faced with the challenge of 8,000 pre-trial detainees who will need to have their cases brought before the courts within a reasonable time, a staggering amount in light of the fact that only about 1,000 cases have been completed in the last four years (see above). Given that the courts of appeal are in most cases the lowest, and only, instance empowered to deal with capital cases consisting most of the charges, the fact that the total number of cases dealt with by the three chambers in 1997 was 213¹³², further illustrates the problems of capacity at this level. All in all 1,317 persons have been sentenced by the three courts of appeal between February 1996 and February 1999, 78 of these in the first 1999 session.

The Bar Association has currently 44 advocates, with 29 registered at the "*Grand Tableau*", i.e. empowered to deal with cases before the higher instance courts and tribunals, while 15 are registered at the "*Petit Tableau*". The presence and assistance of advocates is indispensable for the full respect of human rights as stated in the Constitution, as well as facilitative of an increased speed, efficiency and quality of the trial, and it is evident that the limited number of advocates is in total disproportion to the immense case load to be dealt with. Also, there is no government-funded legal aid programme set up to provide free legal assistance to the general public. Another problem, dealt with below as well, is that the advocates in almost all cases are from a Tutsi background, and this may in itself be detrimental to their integrity, effectiveness and zeal in defending persons of Hutu origin; in some cases, however, this suspected partiality has been perceived as a positive factor by some defendants who have expected that the ethnic "link" between their advocate and the judge, also a Tutsi, could further their case!¹³³

Therefore the various initiatives taken in this area by domestic and international NGO's such as ASF and the Human Rights Field Operations under comprehensive donor-funded programmes (see above) are a major contribution in this area. Finally, this is an area where the situation much resembles that of Rwanda, and where the experience from efforts carried out here in the last five years may prove useful.¹³⁴

¹³² Of these, 71 were death sentences, 40 sentences of life imprisonment, 40 sentences of 20 years imprisonment, and 62 acquittals; UN Special Rapporteur, 13 February 1998. Out of the 78 tried in 1999 the Chambers had handed down a total of 15 death sentences (13 of these from the Court of Appeal in Ngozi, and one for each of the other two!) and 15 life sentences; Burundi-Justice: Bilan de première session des chambres criminelles édition 1999, www.burundi.gov.bi.

¹³³ Conversation with various representatives of organisations and institutions, Bujumbura, November 1998.

¹³⁴ One example could be the project on training of judicial defenders in Rwanda which is run by the Danish Centre for Human Rights and funded by several donors.

The police force in Burundi, including the *Police de l'Air, des Frontières et des Étrangers*, the *Gendarmerie* and the *Police de Sécurité Publique* is currently divided between different Ministries, with the *Police Judiciaire des Parquets* under the Ministry of Justice. There are, however, tentative plans to consider the unification of the police force under one Ministry.¹³⁵

iii. Impartiality and impunity

Over the years the fairness of the judicial procedure has been questioned from many sides, and particularly the fairness of the trials in relation to lack of defence, but also delays in the proceedings of the trial, poor investigation, and a tendency towards summary trials lasting only between 15 and 30 minutes, also in capital cases, which is clearly inadequate. Here, the human right to a speedy trial should not be taken so far as to compromise the fairness of the trial itself, particularly in light of the severity of the cases. Furthermore, the critics have also stressed that given that most of those facing trials are from the Hutu ethnic background and accused with crimes committed against Tutsi segments of the population following the killing of Ndadaye in 1993, the almost exclusive domination by Tutsis of the system of justice has in practice as well as in theory seriously endangered the fairness of the trial against these people.¹³⁶

Whether or not this is still the case to the same extent as before, remains to be examined more closely, recognising that the dis-equilibrium of the justice system, including members of the Bar, is unfortunate. However, there are signs of constructive intentions of key actors in the government and the justice apparatus to instil a sense of obligation towards principles of independence and integrity among the members of the judiciary with a view to eradicating the so-called "negative solidarity" with one's own group. Furthermore, when such efforts are directed at the population in general, one cornerstone for the rule of law in Burundi is under construction, particularly given that the situation cannot easily be remedied, primarily because of the insufficient base for recruitment (see below).¹³⁷

Closely linked to the issue of impartiality is also the question of impunity, so that those who have committed crimes against others receive appropriate punishment, i.e. proportional to their crimes, that it affects all those involved on an equal basis, and that violations of human rights are addressed regardless of the background or position of the

¹³⁵ Plan for reform of the justice system, Ministry of Justice, Burundi, March 1999, pp. 4 and 50.

¹³⁶ Amnesty International, "Burundi: Justice on Trial", 30 July 1998; UN Special Rapporteur on Burundi, 7 October 1996.

¹³⁷ Plan for reform of the justice system, Ministry of Justice, Burundi, March 1999, pp. 17f; conversations with Minister for Human Rights and the President of the Constitutional Court among others.

person(s) involved. In short, not only must justice be done, it must also be seen to be done, i.e. be visible to the public.

As discussed above in relation to security there have only been few attempts by the government to take disciplinary action against members of the armed forces who have allegedly perpetrated acts of human rights violations against members of the public. Also, most of those imprisoned and accused of acts of violence against members of another ethnic group are Hutus, and it has been criticised that violations of human rights by the Tutsis during the same period are not addressed with similar diligence.¹³⁸

Most notably, the prosecution of those allegedly responsible for the murder of Ndadaye in 1993, which had been initiated by President Ntibantunganya and continued by Buyoya, has seemed to progress at a very slow rate before the Supreme Court, with witnesses not being sufficiently presented or even disappearing and rumours of interference in the process. In May 1999, the Supreme Court settled the case by sentencing five people to death for their involvement in the killings, with the alleged ringleader, an army officer, currently in exile. Out of the total 79 persons who were charged, 36 received sentences ranging from one to 20 years. 38 persons were acquitted, including senior army officials such as the former army chief of staff, the former defence minister and a colonel in charge of the Presidents' security. While the completion of the trial demonstrated a valid attempt of ending impunity in Burundi, the reaction among Ndadayes' supporters was that this was not sufficient, expressed by the reaction of the leader of CNDD-FDD Ndayikengurukiye, who immediately accused the government of simply seeking to "eliminate five annoying witnesses" which would then not reveal those who instigated the killing. He finally argued that the trial should have been conducted by an international tribunal. In August 1999, the new general prosecutor announced that the trial would be revised, since certain elements of the penal code were allegedly violated, utilising the available "means of recourse".¹³⁹

b. Other rights

i. Life and security; physical integrity

As described in the first section of this report, the massive problems of security and unrest in many provinces seriously endangers the life and safety of all civilians. The perpetrators of these violations are in many cases the armed rebel groups, but also

¹³⁸ Amnesty International, "Burundi: Justice on Trial", 30 July 1998; UN Special Rapporteur on Burundi, 7 October 1996.

¹³⁹ Amnesty International, Justice on Trial, 30 July 1998; IRIN Update no. 672, 17 May 1999 and no. 673, 18 May 1999; IRIN Update no. 729, 5 August 1999.

members of the armed forces have in several cases been claimed as responsible for the killing of even large numbers of individuals in the course of military action (see section II 1. above).

In total, it is estimated that hundreds of thousands of civilians have been killed in Burundi since 1993, and several hundred in 1999 alone.¹⁴⁰ A report published by Amnesty International in August 1999 states that "at least 500 civilians are reported to have been killed by government soldiers in Rural Bujumbura alone between November 1998 and March 1999, and scores are reported to have been killed since".¹⁴¹ The report was dismissed by the Government's military spokesman on the grounds that it was based on lies and that Amnesty International did not have their own investigators in the country; a response similar to that which was given to the organisation's claim that close to 500 civilians had been killed earlier in August.¹⁴²

There have been continuous reports of forced disappearances, extrajudicial executions and the use of torture throughout 1998, most of which have been committed in connection with military operations, or by members of the police and the armed forces. In the case of the latter, incidents of abuse are in particular linked to the *cachots* as centres for pre-trial detainees, and must be viewed as a separate factor adding to the extremely poor conditions outlined below.¹⁴³

At least 53 people were sentenced to death in 1998, and 260 people were under death sentences by the end of the year. This number had more than doubled between December 1997 and October 1998, and living conditions in Mpimba Prison further deteriorated to an inhumane level.¹⁴⁴ No executions of civilians have been carried out since July 1997, and it is estimated that it is unlikely that the executions will be carried out, since the Government realises that it may be politically unwise to do so.¹⁴⁵

¹⁴⁰ Amnesty International, *Justice on Trial*, 30 July 1998.

¹⁴¹ Amnesty International, *Burundi. No respite without justice*, 16 August 1999.

¹⁴² IRIN Update no. 736, 16 August 1999.

¹⁴³ Amnesty International Annual Report 1999; UN Special Rapporteur on Burundi reports, February 1998, sec. 22 and 27, and October 1998, sec. 48. See also Report of the Special Rapporteur on Torture (E/CN.4/1998/38/Add.1), Report of the Special Rapporteur on torture. Summary of cases transmitted to governments and replies received (E/CN.4/1998/43), Report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1998/68/Add.1), and Report of the Special Rapporteur on extra-judicial, summary or arbitrary executions. Country situations (E/CN.4/1998/72).

¹⁴⁴ UN Special Rapporteur on Burundi, October 1998, sec. 49.

¹⁴⁵ Danish Immigration Service Report, June 1999, p. 29.

However, one exception is the execution of Corporal Bonaventure Ndikumana on 28 July in a military camp following his sentencing to death by the Bujumbura Military Court for the murder of another officer.¹⁴⁶

ii. Movement; residence

There are no general restrictions on personal freedom of movement in Burundi, though a nation-wide night curfew is enforced, allegedly for security reasons. Following the rebel attacks around Bujumbura in August, the curfew was extended by two hours, and now runs from 10 pm to 6 am. The security situation may also make travel and residence inside specific areas such as the province of Makamba and parts of Bujumbura Rurale province, inadvisable. In September, Radio France Internationale reported that the main road between Bujumbura and Bugarama in the north was closed "to allow operations against the rebels to proceed". This statement was refuted as false by the Minister of Defence (see below under freedom of expression).¹⁴⁷

With regard to travel abroad, passports are issued by the authorities, but bureaucracy may be slow. Also, persons who have deserted the army or refused to perform civil service may not be able to get a passport.¹⁴⁸ The roads to Rwanda are open as is traffic on Lake Tanganyika to ports in Tanzania. Since the lifting of the embargo in January 1999, several domestic and international airlines operate services throughout the week to various destinations on the continent. There are no direct flights to and from Europe.

Already in June 1997, the government allowed the former president Ntibantungaya to leave the premises of the American Embassy in Bujumbura, where he had taken refuge after Buyoya's assumption of power.¹⁴⁹

In March 1998, the government allowed the Speaker of the National Assembly, Leonce Ngendakumana, to travel abroad. However, this was only after legal proceedings against him had been dropped for lack of evidence in connection with his alleged involvement in the 1993 ethnic massacres, which had led the Government to ban his travel abroad since 1996.

In the last year the Government, in collaboration with various non-governmental organisations such as CAP (see above), has carried out a policy of dialogue with the

¹⁴⁶ Amnesty International, 29 July 1999.

¹⁴⁷ IRIN Update no. 753, 8 September 1999.

¹⁴⁸ Official sources state that this is not the case, while other sources claim that a person in this situation would not be able to get a passport or leave from the airport; Danish Immigration Service Report, June 1999, p. 35.

¹⁴⁹ UN Special Rapporteur on Burundi, 7 October 1997.

exile groups in Europe and elsewhere, attempting to convince as many as possible to return to Burundi and contribute to the re-building of society.¹⁵⁰ Initially there has been a great degree of scepticism, since many of those in exile fled during times of violence and persecution of Hutus and members of FRODEBU and other opposition groups. The safe return from exile in Denmark and subsequent appointment of Gerard Ngendabanka as Public Prosecutor should be viewed in that light as well. Most recently, the government has adopted a policy of authorising dual nationality, so that persons residing in exile will have the opportunity to have a Burundian passport as well as that of their country of residence.

In 1997, the UN Special Rapporteur criticised the Governments' policy of forcibly regrouping the rural population in camps, particularly, in the provinces of Karuzi, Bubanza, Cibitoke and Ruyigi, which had been initiated in February 1996 and further intensified from October 1996. The policy was instigated allegedly with a view to protect the population from rebel attacks, but also for the purpose of popular control and the elimination of supply and recruitment bases for the rebels.¹⁵¹ Later this policy was temporarily abandoned, but given that it is so closely linked to the developments in the security situation, it is perhaps not surprising that it was pursued again in September 1999 in Bujumbura Rurale, hereby causing an increase in the number of internally displaced persons from 80,000¹⁵² to around 300,000 in the Province alone, or three-quarters of its population.¹⁵³ Moreover, the policy has given rise to serious concern in the international community due to the difficulties of meeting the basic needs of most of the people in the camps and the wider implications following from the temporary inability of the farmers to cultivate their land.

The number of internally displaced persons in the country was thus around 500,000 - 600,000 in the beginning of 1999 (similar to the number of October 1998), and less than the original estimate of the almost 670,000 estimated by OCHA in April 1998).

¹⁵⁰ Examples are the meetings held in Elsinore, Denmark, in March 1998 and in May-June 1999, where the tension had visibly decreased between the first and second meeting. Also, delegations of Burundian parliamentarians have visited Europe and the Nordic countries on several occasions.

¹⁵¹ UN Special Rapporteur on Burundi reports, February 1997 sec. 56; March 1997, sec. 8; October 1997, sec. 54ff.

¹⁵² Danish Immigration Service Report, June 1999, p. 32; UN Special Rapporteur Report, October 1998 sec. 32; IRIN Update no. 752, 7 September 1999.

¹⁵³ US Information Agency, IRIN 4 October 1999.

By the end of the year, the number had risen to an estimated 790,000.¹⁵⁴ In total it is estimated that more than 1.1 million Burundians have been internally and externally displaced since the crisis in 1993 - 1994.¹⁵⁵

Adding to the gravity of this picture is the number of around 300,000 refugees currently residing in neighbouring countries of DRC, Rwanda and Tanzania. At least 80 percent of these are residing in Tanzania¹⁵⁶, and while many have returned to their homes in Burundi, the camps are filled with new refugees fleeing the war. In their regional report on the Great Lakes region of 19 August, OCHA stated that "Such an insensible "ballet" of human beings within and outside the boundaries of their own countries is of serious concern especially in view of the limited capacity of humanitarian organisations to address the needs of the concerned affected populations".¹⁵⁷ In relation to the situation in DRC, the continued warfare has here led to massive numbers of returnees in the last year,¹⁵⁸ as well as Congolese refugees fleeing into Burundi. The latter has given rise to some diplomatic confrontation, lately over the alleged forced detention by Burundian authorities of 760 Congolese refugees who had fled by boat across Lake Tanganyika to Rumonge. These allegations were denied by the Burundian authorities.¹⁵⁹

This is one area where the regional dimension of the conflict in Burundi is seen most clearly, to the extent that an in- or decrease in violent conflict in one country or province will result in a corresponding number of refugees and/or returnees in the neighbouring areas, within as well as across country borders. Given that this flux has the magnitude of tens of thousands of persons, the implications will always be serious, particularly since farming in the region (important for the food security of the population as well as for the financial situation of each country) depends on regularity and relative security.

Finally, the irony of the situation in Burundi is that once the situation is considered to be relatively stable, large numbers of refugees will return, leading to an increase in the population, and necessitating that large-scale resettlement policies are prepared. This again will demand that difficult issues, such as the question of access to land and

¹⁵⁴ OCHA, December 1999, IRIN 29 December 1999.

¹⁵⁵ Agence France Presse, IRIN, 2 October 1999.

¹⁵⁶ Ibid.

¹⁵⁷ Statement by the UN Special Rapporteur to the UN Human Rights Commission, Geneva, 31 March 1999; Danish Immigration Service Report, June 1999, p. 32; IRIN Updates no. 659, 28 April 1999 and no. 690, 10 June 1999; OCHA, 19 August 1999.

¹⁵⁸ Danish Immigration Service Report, June 1999, p. 32.

¹⁵⁹ IRIN-CEA Weekly Round-Up 22, 29 May - 4 June 1999.

returning of houses to their original owners, will have to be considered and solved in a manner which will contribute to peace and reconciliation between different segments of the population. If this is not taken into account, the return of refugees, which in itself is a sign of relative peace, may instead lead to a deepening of the internal conflict with unforeseeable consequences.¹⁶⁰

iii. Participation in the political process; expression, association, organisation, assembly

As mentioned above the Government has in the last year taken some steps to facilitate increased popular participation in the political process. Most notably, the enlargement of the National Assembly with representatives from NGOs and civil society must be considered a positive contribution to the peace process even if the effects on the NGO's may in some cases involve an additional risk of loss of independence. Also, efforts made by various instances, such as the Ministry for Human Rights and the group of female members of the National Assembly, to meet with the population in most provinces with a view to explaining the current political process may seem like a positive step, as does the establishment of local human rights committees.¹⁶¹

Regardless of this, the picture of popular participation in Burundi still remains fairly critical. No elections have been held since 1993, and the majority of the population is still excluded from political processes as a result of the problems relating to insecurity, economic and social hardship, lack of education and other facilities, etc. In addition, it can be questioned whether the current National Assembly and the party representatives still represent their electoral foundation adequately, and whether the peace process in Arusha, and even to some extent the internal partnership process, sees much involvement of the general public at all, considering that the complex political alliances on both fronts have taken on a life of their own.

In this respect, the continued acts of violence imposed on the population by members of the armed forces but in particularly also by the rebel groups would seem to be less constructive than an attempt to gain support by respecting and adhering to the needs of the population.

¹⁶⁰ Here the experience from similar efforts in Rwanda may be useful, as this is one area where the situation of Rwanda since 1994 is much similar to that of present day Burundi. See reports of the UN Special Representative for Rwanda; Lindholt and Sano, DCMR 1998.

¹⁶¹ Statement of the Minister for Human Rights, Institutional Reform and Relations with the National Assembly to the 55. Session of the Human Rights Commission in Geneva, 31 March 1999; meetings with female members of the National Assembly, Bujumbura, November 1998.

As indicated above, Burundi has a multitude of parties, some of whom are represented in the National Assembly and in the Arusha negotiations. The systematic persecution of the opposition which during and after the crisis in 1993 led to the death and exile of members of FRODEBU and others, has now ended, and even former members of radical opposition groups such as PALIPEHUTU and CNDD who refrain from stepping out and publically agitating for the views of their organisations can still reside in Bujumbura without risks, or could so at least until the violence escalated there in late 1999.¹⁶²

In relation to the freedom of expression, the role played by the so-called "hate-radio"¹⁶³ in the region in the 1990s is ominous, indicating that this is a freedom which must be balanced in a responsible manner.

In Burundi, there are a number of governmental as well as commercial radio stations which broadcast in Kirundi, French and Swahili and have access to the international news services.

There are no formal restrictions on the press in the form of censorship. However, all papers must comply with the requirement for statutory deposit, in the form of registration before publication, with the Ministry of the Interior or the Provincial Governor, i.e. 24 hours for periodicals and 4 hours for daily newspapers. After several newspapers were accused of violating the ethic principles guiding freedom of the press in the course of 1996 leading to the closure of most of these, newspapers and periodicals continue to be subject to close scrutiny. In addition, the internal difficulties and rifts of many political parties have negatively affected the scope of the press, as many of the papers are run by these parties. Finally, the consequences of the embargo and the failing infra-structure has meant that the cost of papers has gone up.¹⁶⁴

Recent months have seen a deterioration of the climate in relation to the media. In June 1999, the head of the press agency Net Press was arrested for non-compliance with the requirements of registration of newspapers, even if it was claimed by his counsel that Net Press was not subject to this particular provision but only subject to requirements for radio and television, raising speculations about whether the motivation for the move

¹⁶² Danish Immigration Service Report, June 1999, p. 22f.

¹⁶³ Numerous reports on the instigation of the 1994 genocide in Rwanda testify to the role of anti-Tutsi propaganda spread through the media. In light of this the UN Security Council directed the UN Secretary-General to evaluate whether an upsurge of violence in the spring and summer of 1996 was related to "hate-radio" broadcasts in Bujumbura; Miskel and Norton, 1998, in *Global Governance*.

¹⁶⁴ UN Special Rapporteur on Burundi report, February 1997 sec. 58ff; US Department of State, February 1999. www.notesrelief.web.int

was politically oriented.¹⁶⁵ Furthermore, in September the Minister of Defence refuted a statement by Radio France Internationale, claiming that they were openly supporting the rebels, and warning the military commanders to consider journalists as enemies, i.e. an authorisation to treat them as legitimate military targets. Both the Committee to Protect Journalists and Human Rights Watch sharply criticised these statements, and a few days later the Ministry denied that such an order had been given, ensuring that journalists were free to move throughout the country without threats from the army, and claiming that the comment from the Minister had merely been interpreted "in bad faith".¹⁶⁶

A new law was passed in 1998 "allowing greater control of the activities of national and international NGO's"¹⁶⁷. On the one hand, this facilitates greater cooperation between the human rights NGO's and the Ministry of Human Rights as well as with the Centre for the Promotion of Human Rights, and may eventually make the carrying out of various partnership programmes able and possible. On the other hand, it also increases the risk of interference with the independence and unhindered implementation of NGO activities, particularly, in the field of human rights where the political implications are imminent.

Albeit, the freedom of assembly is protected by the Transitional Constitutional, the Government enforces a ban on political demonstrations.

iv. Non-discrimination

The balance between the main ethnic groups is around 85 percent Hutu, 14 percent Tutsi and 1 percent Twa, the latter group having been even further marginalised as a result of the crisis and almost completely excluded from political influence. As shown above, the conflict between various groups seems to be markedly oriented towards struggles for power and social and economic differences. Still, the dominant position of the Tutsi ethnic minority group over the Hutu majority is an unsurmountable obstacle to the recognition of the legitimacy of the present regime, although steps have more recently been taken to mitigate its consequences to some extent.

The low degree of Hutu representation in the army and in the administration of justice (see above) severely stains their legitimacy in the eyes of the population, especially since the history of Burundi has not exactly instilled a sense of trust in these

¹⁶⁵ International Freedom of Expression Exchange, 21. June 1999. www.africa_news.org

¹⁶⁶ IRIN Update no. 755 and Human Rights Watch, 10 September 1999; IRIN Update no. 756, 13 September 1999.

¹⁶⁷ Amnesty International Annual Report 1999.

institutions for that reason. The fact that this has been recognised by the Government¹⁶⁸ is a step in the right direction, but unfortunately the situation is difficult to improve within a short period of time. It is particularly in relation to the administration of justice as well as to the occupation of senior positions in the army that a sufficient recruitment base, i.e. people of Hutu origin with the necessary secondary level education, is lacking. This is to a large extent caused by the systematic targeting of intellectual and educated Hutus in the last decades, to the extent that families during times of crisis refrained from sending their children to school, but also because those who have the qualifications are now, to a large extent, dead or in exile. This makes it all the more important for the Government to carry out a policy directed at convincing refugees and their families from Europe and USA to return, so that the country may benefit from their skills as well as from their children.

At the level of primary education it has been reported that there is a fair balance between the representation of the two ethnic groups, while the percentage of Hutu students drops at the level of high school. As a result, institutions of higher education, particularly University of Burundi, are considered to reflect the ethnic imbalance, so that only around 400 out of 6,000 university students in Burundi have a Hutu background, and a very limited number of these study law.¹⁶⁹ Therefore, the prospects of changing the composition of the various sections pertaining to the administration of justice, i.e. the judiciary, prosecutors and advocates, remain slim, if the standards of admission are not lowered. The long-term solution would imply a fundamental effort to improve the educational system from the bottom. However, in light of the lengthy time frame and the current crisis in the region, this is not likely to create results in the near future.

v. Women and children

The situation of women and children in Burundi is generally serious, as a result of war, lack of security and further exacerbated by the economic sanctions. Women are further disadvantaged, because of the traditional lack of equality between men and women which is still predominant in rural areas.

The fact that many households are headed by women and widows could be utilised to re-define female roles in society, though the lack of equality between men and women in relation to inheritance laws prevent women from gaining the same access to the

¹⁶⁸ See for instance: Plan de réforme et de modernisation du système judiciaire et pénitentiaire Burundais, Government of Burundi, March 1999; conversations with various ministries and government officials, Bujumbura, November 1998.

¹⁶⁹ Danish Immigration Service Report, June 1999, p. 28.

limited resources as men. This also serves as a limiting factor in relation to the status of women in society in general. An example here is the selection to serve at the *Bashingantahe*, at present reserved exclusively for men, although the wife may serve in a parallel capacity for women.¹⁷⁰ As mentioned above there are only 16 women currently holding seats in the National Assembly, and only one female Minister.

In the displaced persons' camps, women also constitute the biggest group, and at the same time, the most vulnerable, i.e. in relation to attacks when gathering firewood and as targets of rape and other sexual violence, often resulting in the death of the victim. More than half of the persons diagnosed with HIV/AIDS are women.¹⁷¹

In relation to the administration of justice and detention, the number of women in detention in August 1998 amounted to a total of 268, 73 percent of whom had not been tried and sentenced. Moreover, a total of 104 minors and 57 infants was registered in the prisons. As stated above, an unknown number of people held in the *cachots* or in military detention should be added to each of the above groups.¹⁷²

Naturally, the children of Burundi are among those who suffer most from the crisis. They are particularly vulnerable to the reduction and/or loss of family during violent attacks as well as in a refugee situation. Children under the age of 15 have been systematically recruited by the Hutu rebel groups, and in addition to widespread recruitment into the official army, Tutsi armed groups of young men between the ages of 12 and 25 have been formed with the encouragement of government authorities.¹⁷³

Access to primary education is often denied on the basis of schools having been destroyed and not rebuilt in many areas, teachers having been killed or fled, or due to a lack of facilities in refugee camps. This tendency is confirmed by the decline in primary school attendance from 51 percent in 1992 to 25 percent in 1996/97. Even basic medical care, for instance in relation to vaccinations, is increasingly denied for similar reasons, exacerbated by the economic crisis following from the implementation of the sanctions. As a result of all these factors, the infant mortality rate has passed from 111 in 1992 to 136 in 1996, an alarming increase indicating the severity of the situation in the population as a whole.¹⁷⁴

¹⁷⁰ Paper for "Cours de Formation en Résolution Traditionnelle des Conflits", Club Convergences, Bujumbura, 1-2 April 1999.

¹⁷¹ UN Special Rapporteur Report on Burundi, October 1998.

¹⁷² UN Special Rapporteur Report on Burundi, October 1998, Appendix II.

¹⁷³ Human Rights Watch report, 19 April 1999.

¹⁷⁴ Figures are taken from UN Special Rapporteur Report on Burundi, October 1998, sec. 50.

VII. CONCLUSIONS AND RECOMMENDATIONS

1. Conclusions

On the basis of all the different sections dealt with above, it is possible to conclude that the political history of Burundi since independence has been turbulent, and that Burundi must still be described as a country in a state of war, in the sense that violent clashes continue to occur in several provinces. Unfortunately, the last months of 1999 have seen an escalation of the violence around the capital with an increase in rebel activity, followed by retaliation by the armed forces and displacement of the majority of the population in Bujumbura Rurale. All in all, a violent conflict with regional dimensions and implications.

It should be noted, however, that in contrast to the earlier periods of popular unrest, where civilians from different ethnic groups have carried out massacres on each other as well as suffering from large-scale killings by the army (for instance in 1972), it is now predominantly the latter which dominates. In this manner, clashes between the army, on the one hand, and armed rebel groups (many of these with a political power base as well), on the other, where civilians are extensively caught in the middle, has led to thousands of deaths and displacements in the last years. This could imply that the nature of the conflict has changed, from being mainly ethnically motivated and stemming from frictions in the communities, to being more driven by forces and causes at the level of national and regional politics - i.e. an increasing manipulation and enhancement of the ethnic conflict to serve political and other goals of those who have an interest in continued violence in Burundi. As a consequence, the majority of the population is increasingly reduced to passive victims of the conflict, caught in the middle of violent clashes between forces which do not necessarily represent their interests or desires. However, the seeming change could simply be a sign that political machinations, which have continuously fuelled the conflict, have simply become visible due to the decreasing willingness of the majority of the population to be drawn into acts of violence against their own neighbours.

The political scene in Burundi is complex, and all analytical conclusions must therefore be drawn cautiously. It has features in common with Rwanda, in the sense that both conflicts have been played out, if not originated in tensions, between the two main ethnic groups, Hutus and Tutsis, in a context of intra-regional alliances and movement across the borders, primarily of large numbers of refugees. Finally, massacres in one of the countries against one ethnic group or the other have fuelled the fear always present as a simmer but only occasionally erupting in full-scale violence in the other country. However, even though there have been times in the history of Burundi, most notably in 1972 and in 1993, where massacres on a scale bordering on or amounting to genocide

have taken place, the country has not seen anything similar to the planned, organised and massive genocide in Rwanda in 1994. It is therefore important to recognise and maintain the distinction between developments in the two countries.

The political arena in Burundi is characterised by two extremely important features: Firstly, the fighting between the two main ethno-political fronts has not just taken place on the military but also on the political scene, where the armed groups in general have operated alongside their own political counterparts. This has both made negotiations for peace and power-sharing more difficult but has also increased the sustainability of their results. Secondly, each front in itself is split, presently between the moderate factions who can see the opportunity of a consolidation of the process of peace and power-sharing which has taken hold in the last year, and the radical extremist groups, who continue the battle and who refuse or are afraid to cease their attacks for fear of becoming vulnerable to counter-attacks.

The current political landscape can therefore most accurately be described as complex, but also as fragmented. In particular, the main opposition party FRODEBU is suffering, not only from a severe split between its external and internal wing but also from factionalism within the latter. Likewise, the two wings of CNDD-FDD have also been separated for a long time. Finally, the other Government party UPRONA has experienced similar confrontations over its leadership. These conflicts are particularly visible in relation to the Arusha process, even though their root causes have a different background.

In spite of how good the intentions of the current regime may or may not turn out to be, it is still hampered by the dissent among its own ranks, and can only move forward to the extent that the connections with the radical groups are not severed, in which case the history of Burundi could indicate the ever-present danger of a new military coup. Among the Hutu segments of the population, a Tutsi military government has consistently been synonymous with constant fear of harassment and disregard for life and security, and even direct and systematic persecution and killings. The scepticism towards the present regime must be viewed on this background. Finally, whichever way one looks at it, the current regime is disabled by neither formally nor in effect being representative of the majority of the population. It remains a minority regime stemming from a military assumption of power, rather than a democratically elected government with a pluralistic base, which has limited rather than facilitated its achievements.

There are indications that Buyoya wishes to be seen as striving for a higher degree of legitimacy of his governance, by taking steps towards a greater degree of power sharing. Most notable has been the enlargement of the National Assembly in 1998 with the inclusion of more representatives from the opposition party FRODEBU as well as

from civil society. The real test, however, will be the extent to which such reform is also reflected in the composition of the provincial and lower levels of the administration, as well as within the police, the army and the various sections of the justice system. Secondly, the willingness of the Government and at least of one of the factions of the ruling party UPRONA to participate in the peace negotiations in Arusha is also a positive sign. Both at the level of dialogue and through concrete action, initiatives have been taken to strengthen the respect for human rights. Here, the Minister for Human Rights, Institutional Reform and Relations with the National Assembly plays a leading role, enhanced also by the widely shared respect accredited to the Minister because of his personal integrity and commitment. This also applies to the Minister of Justice, who plays an essential role in relation to a number of the issues discussed above.

In short, a fragile platform across the centre of the political spectrum has been established and may serve as a formal framework for a softening of the polarisation, thereby paving the way for increased dialogue. In light of its obvious shortcomings in relation to representation and popular legitimacy, the justification for supporting it should not be an unconditional condoning of the current regime. On the other hand, the motivation for providing any kind of support to the government should not be based on the mere lack of a viable alternative, both because civil society does provide such alternative avenues of cooperation, but also because there are constructive elements, e.g. the ministries of human rights and justice, which represent a positive approach as well as an acute need of support of any kind. In the current situation such support would stimulate it to continue to move in a constructive direction and to implement its policies effectively. At the same time, the strengthening of civil society institutions in the human rights field is important, not just because they in themselves play an essential role for the empowerment and inclusion of the population in the process of democratisation and respect for human rights, but also because they are complimentary to the state institutions in this respect. The ultimate objective should be an improvement of the human rights situation as outlined above and an evaluation of relevant actor on the basis of their ability to impact positively on the situation.

It is difficult, if not impossible, to determine the extent to which the sanctions against Burundi have contributed to the process of dialogue and reform. They have undoubtedly had some effect on the political development, however in terms of social and economic rights rather than civil and political, it is clear that the negative effects of the sanctions on the population as a whole have been severe, contributing to a sharp decline in economic welfare. For this reason, the lifting of sanctions should be welcomed, a fact which gradually seems to be shared by an increasing number of multi- and bi-lateral donors and international organisations. At the same time, however, the "aid sanctions" were not as readily lifted, and donors have been reticent to return to Burundi, particularly in light of the recent deterioration of the security situation.

The fact that Burundi, to a larger extent than would otherwise have been expected, has been able to avoid intense involvement in the crisis in DRC should be noted. At the same time, attention should be paid to ensure that this remains so, given that it may jeopardise the fragile stability in Burundi. The fact that Burundi is only indirectly a party to the peace agreement should not be overlooked, so that even if it will hopefully still benefit from the general disarmament in the region and the increased international presence which should follow from an implementation of the peace agreement, attention should be paid to ensure that the tension in the region does not merely shift to another geographical area. In this respect, the population of the refugee camps, primarily in Tanzania, should be recognised as an important element in relation to the regional political situation.

Also, the commencement and progression of the Arusha peace negotiations should be noted, given that the obstacles with which it has been faced at times have seemed insurmountable. Even if the process has been much criticised and have given rise to concerns as to whether useful results can be obtained from it or not, it is still too early to determine the outcome. However, the fact that this process attracts a lot of attention from the international community, partly because it is covered by the media, should not detract from the fact that the internal political process is still extremely valuable, insofar as it solidifies the foundation on which the results of Arusha are to be implemented and vice-versa. In short, the two processes are mutually complimentary and deserve equal support and attention.

A fundamental structure for the protection and promotion of human rights is in place, i.e. a functioning judiciary, inter-governmental bodies such as the Human Rights Commission under the National Assembly and the Liaison Committee. The task of ensuring that human rights are in focus both in society and in the political process falls on the Ministry for Human Rights along with the Centre for Promotion of Human Rights, and these institutions therefore play an important role in this respect, even though they are severely disabled by the minimal amount of government funding they receive. Also, civil society is represented by a number of organisations, and although several of them suffer from a general lack of resources, they are in a position to participate constructively in the process. In this respect attention should be paid to the involvement of several NGO's in the political process through their representation in the National Assembly, even if this may also in some instances have the drawback of potentially undermining their capacity to serve as independent "watchdogs".

Moreover, it should be emphasized that social forces recognising the need for the protection and promotion of human rights in Burundi still, to a large extent, are limited to the donors, some segments of the political elite and a small number of civil society

organisations and individuals. Thus, there is still a need for involving the large majority of the population in the human rights as well as the political dialogue, and to reach an agreement on these matters throughout society.

The legal foundation for protecting human rights in Burundi is already in place, as most of the essential international human rights instruments have been ratified, including the two international covenants, the conventions on torture, discrimination against women, children and genocide, and the regional African human rights conventions. The bill of individual rights and duties in the 1998 Transitional Constitution, which is almost identical to that found in the two previous instruments, contains a catalogue of civil and political rights as well as economic, social and cultural rights, and individual duties similar to those found in the African Charter.

In reality, a broad scope of human rights violations continue to occur. Some of these are mainly due to structural factors, e.g. differences of opportunity between various ethnic groups and between men and women, lack of resources and infrastructure, and as a result of domestic as well as regionally based threats to security. While the government may not be able to adequately deal with these problems, it should still strive to the greatest possible extent to alleviate their consequences. Other violations, particularly those committed by representatives of the various arms of government and their representatives, should be recognised as falling within the scope of government accountability, and should be prevented at all costs. In particular, impunity relating to such violations should not be tolerated.

The lack of security in various parts of the country means that the lives and personal integrity of civilians are repeatedly violated by members of the armed forces in the course of military action, as well as by armed groups. Incidents of torture, forced disappearances and arbitrary arrest and detention continue to occur.

There are currently around 10,000 persons in detention, the absolute majority of whom are awaiting trial, a number which has risen in the last year. In combination with the lack of adequate resources to maintain the physical structures of the detentions, as well as over-crowding and lack of satisfactory sanitary conditions, the death rate among detainees is high, and in many cases the situation amounts to violations of freedom from cruel, inhuman and degrading punishment and treatment.

The judicial system is seriously over-worked and under-equipped, making it unable to deal with the current burden of persons awaiting trial, including the preparation and investigation of case files and the provision of legal assistance. The wider implication of this is the danger that a continued state of impunity for those responsible for human rights violations since the early 1990s will further undermine the process of

reconstructing a society based on the rule of law, an issue which is closely related to the political process as well.

The ethnic imbalance in the public administration, in the judicial system and within the army is still a threat to freedom from non-discrimination against the Hutu population. Recognising that measures of affirmative action will not have an immediate impact, the task of ensuring the principle of equality for all regardless of ethnic origin or political observance is immense and crucial to a further consolidation of the political platform. In this respect, professionalisation of the judiciary and other government bodies with a view to eradicating the exercise of "negative solidarity" is crucial, but also realised as being a priority.

More than 10 percent of the population are currently internally displaced, following eruptions of violence in different provinces, but also resulting from the government's policy of regroupment, which is also detrimental to the freedom of movement and residence, as well as the agricultural production.

In relation to rights relating to participation in the political process, including freedom of association, etc., basic principles are respected to some extent, though there are also serious shortcomings in this area, most predominantly the lack of access to popular participation in the political process, respect for freedom of the media etc.

The economic and social consequences of the war as well as the embargo against Burundi has caused a severe decline in the general population's standard of living, and especially in living conditions of women and children which have deteriorated to a level endangering fundamental economic and social rights.

Looking from the outside, it can not be determined whether the direction taken by the political forces in Burundi in the last three years represent a real commitment to an eventual and genuine democratisation process or window-dressing by a regime determined to hold on to its power, in the sense that positive developments take place side by side with continuing reports of human rights violations. Looking at the steps taken and the general development throughout 1998 and the first half of 1999, the conclusion would until then have been that there had at least been some significant progress in a situation which had otherwise steadily deteriorated since the murder of Ndadaye in 1993.

However, without negating some of the progress made, the sharp increase in violence and unrest in the latter months, and the extremely high numbers of internally displaced people forced into regroupment camps towards the end of 1999 coupled with the uncertainty of the peace process, do give rise to despair over the immediate prospects of peace in Burundi. Though this also entails that relief and development initiatives are

halted, it should still be kept in mind that the immediate and pressing need for constructive international support, as outlined above, only continues to grow. Therefore, assistance should be resumed as soon as the security situation permits it, recognising that the danger of waiting too long is that it may ultimately be too late.

2. Recommendations

On the basis of the conclusions drawn above, the following is recommended:

- In a conflict as complex as that of Burundi, there is a tendency among outside observers to generalise and over-simplify the issues at stake, and to do so from a subjective angle. It is important that the situation is viewed as objectively and with as much room for its complexities as possible.
- With regard to the political process, all attempts at dialogue must be strengthened and supported with a view to including all stakeholders in the process, and to broaden and enforce the platform. In this respect, it is important to look at the concrete action and initiatives taken by the current government, and evaluate them on a pragmatic basis, hereby assisting the Government in measuring its progress.
- The achievements of the Arusha process so far, even if limited, should be recognised, particularly, in light of the obstacles with which they are faced, and everything possible should be done to ensure their continued progress and materialisation into concrete and implementable results in the next months.
- Similarly, the importance of the internal partnership platform involving various political parties should be noted. Particular as it is less visible to outside observers, attention should be paid to ensure that it is acknowledged at the same level as the Arusha process, that continuous information of its progress is made available, and that it is supported in any possible manner. In addition, it should be continuously and appropriately expanded to include a growing number of parties and individuals so as to become an increasingly participatory process accessible to the entire population of Burundi.
- A number of government institutions directed at the protection and promotion of human rights are currently in place, and their role should be recognised as vital to the improvement of the situation in Burundi. Given that they suffer from lack of material and human resources and in light of the immensity of their tasks, everything should be done to provide them with the appropriate assistance. Furthermore, these institutions should demonstrate their commitment to human rights promotion and protection by using every given opportunity to address the

issues at stake in society and to seek to have as concrete and extensive an impact as possible.

- Civil society organisations play an important complementary role to that of the government institutions in promoting and protecting human rights, in addition to being important focal points for popular dialogue and participation in the peace and democracy process in Burundi. The organisations are in need of capacity building and support in a number of areas which will increasingly enable them to carry out their work and achieve influence in their respective areas of concern, without jeopardising their independence and integrity.
- The justice system in Burundi is in a critical situation, i.e. faced with an acute lack of capacity hampering its ability to deal with current challenges. An intense strengthening of the institutions and other initiatives, including the consideration of alternative means of dealing with the large number of persons facing trial, should be initiated and supported with a view to providing immediate assistance to the people affected by it, i.e. detainees and their families. Such measures should include an elaboration of a strategy for the improvement of detention facilities and the right to a fair trial by an independent court with access to legal representation, while also addressing the immediate humanitarian needs of those awaiting trial. This is one area where the experience of similar efforts in Rwanda should be utilised.
- In all of the above mentioned areas the international community must invest "risk-taking" capital in support of government and NGO activities as a realisation of intervention at this early stage, where progress is still fragile, is crucial, particularly as the needs of large segments of the population, including detainees, refugees and the internally displaced, are acute. At the same time, the government of Burundi should be prepared in a convincing manner to prove to the international community that its commitment to human rights and democracy is sincere, among other things by providing the maximum amount of support to institutions and organisations in the field.
- At the same time as immediate help, especially to the justice sector, is provided to Burundi, long-term solutions to the various problems should be elaborated and supported and serve as indicators of strategy for short-term immediate assistance as well. This should naturally be done in dialogue and cooperation between donor and recipient, with mutual respect for the expertise and established priorities. In this respect, the existence of coordinated and comprehensive programmes, with mechanisms of implementation already in place, should be taken into consideration.

- At the concrete level, it is recommended that a Danish pre-appraisal mission, conditional upon sufficient amelioration of the security situation in Bujumbura, is sent to Burundi in order to explore and survey the opportunities for providing assistance to Burundi in the field of human rights and democratisation.

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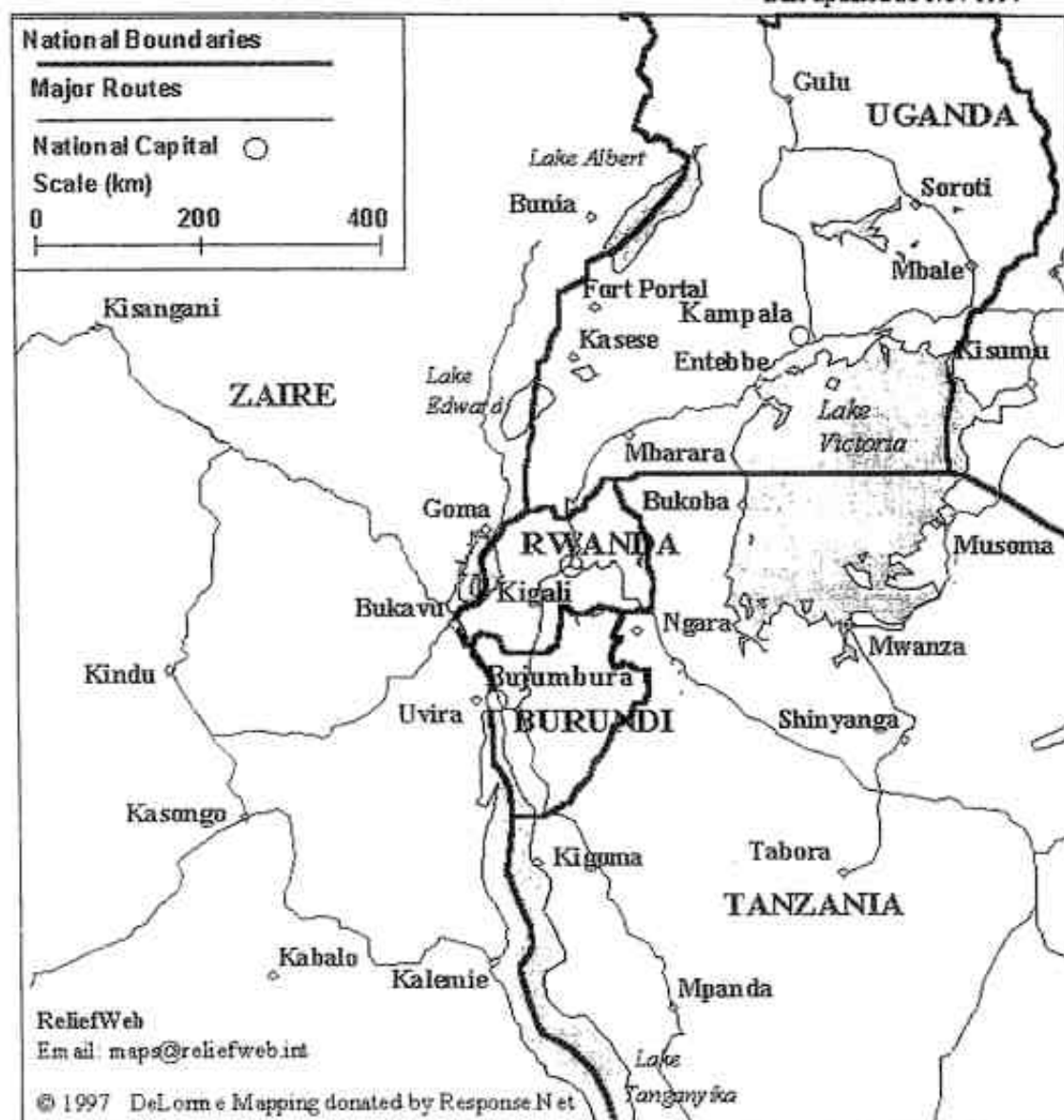
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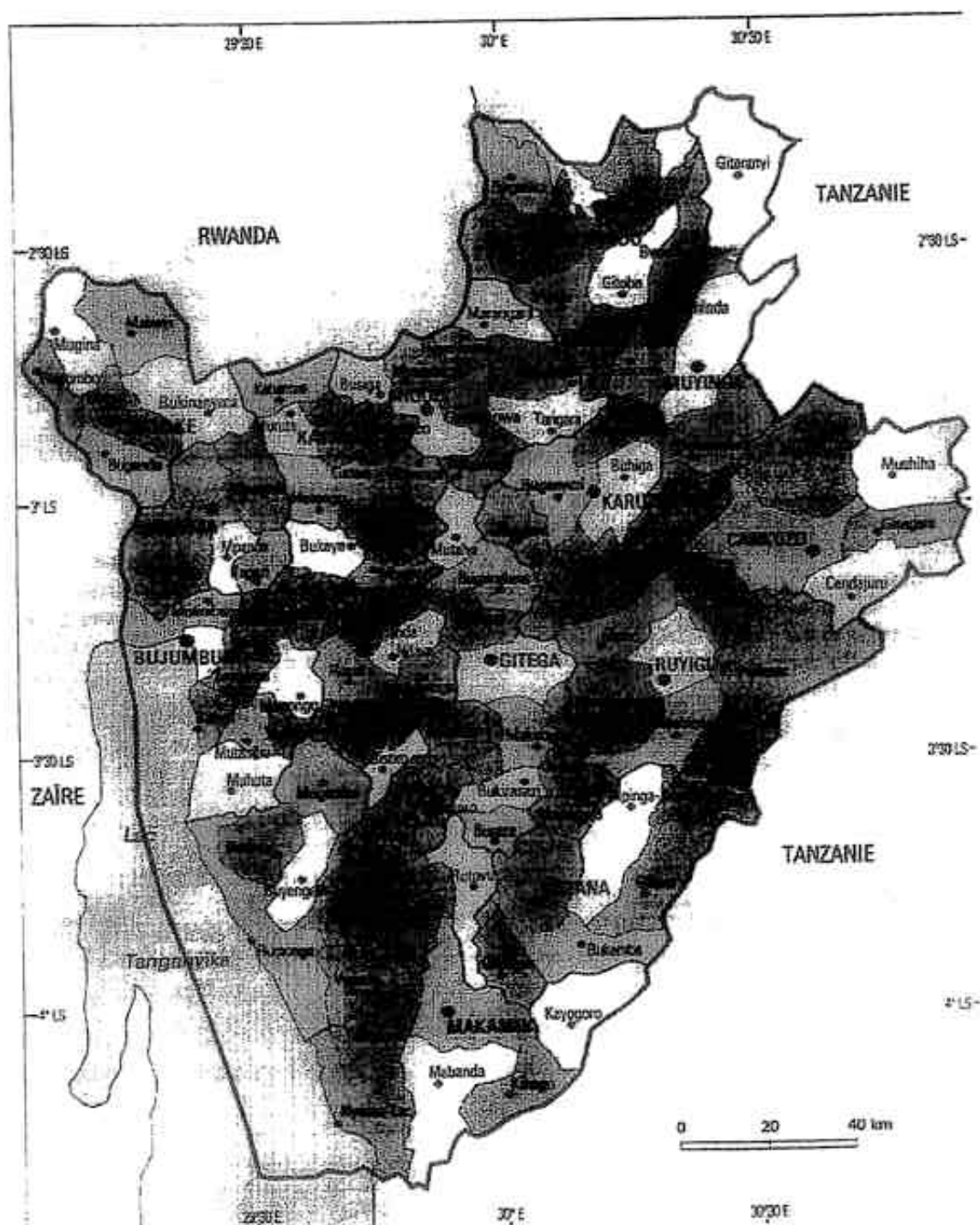
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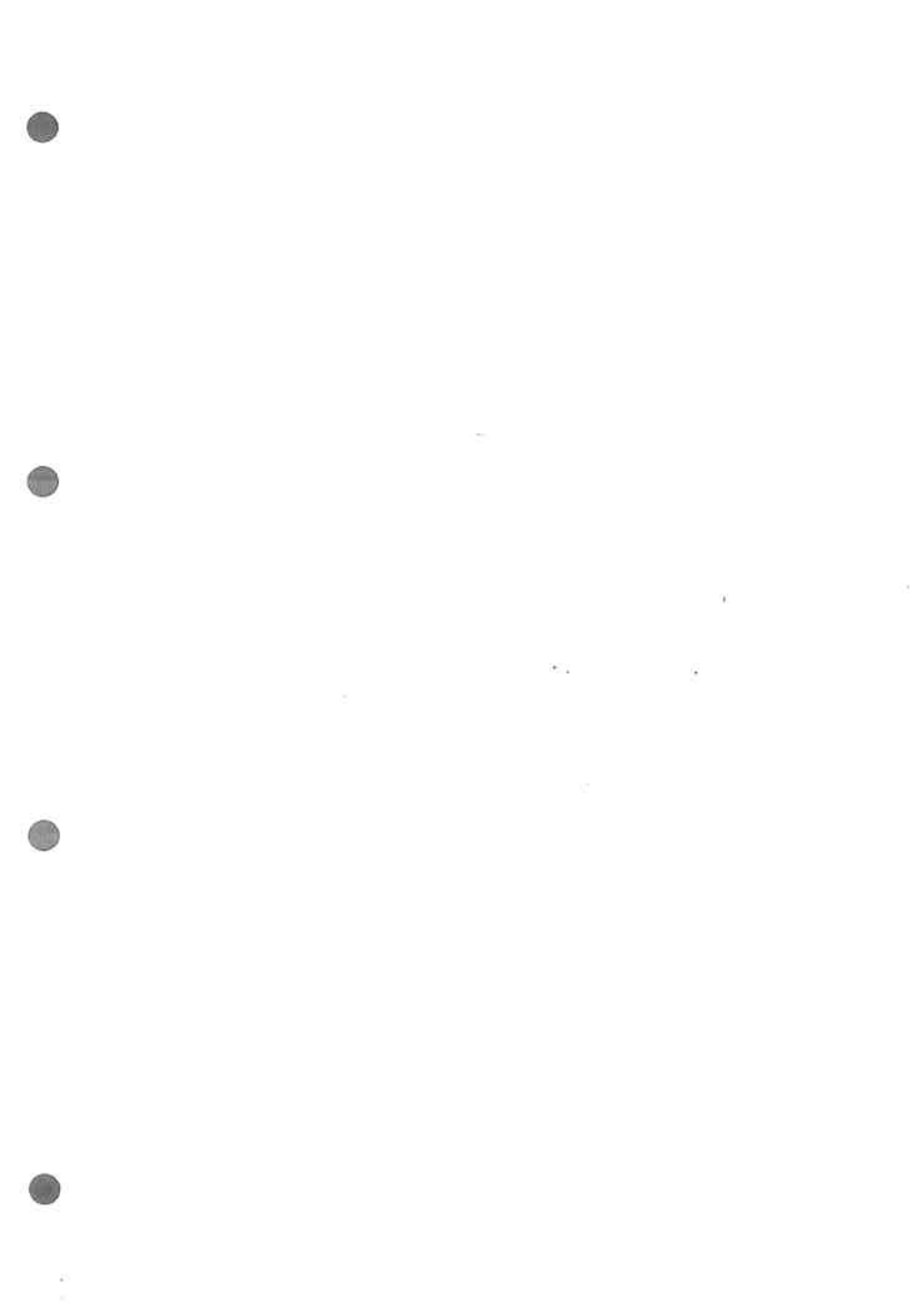
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Burundi 1998-1999: Human Rights and Politics

Lone Lindholt

This study analyses the situation in Burundi with respect to human rights and politics as it developed throughout 1998 and 1999. The analysis includes an overview of the domestic political scene, of institutions of governance such as the National Assembly and the administration, and civil society organisations in the field of human rights. The role of external factors such as the international sanctions, the Arusha peace process and the international society present in Burundi is discussed as well. In the field of human rights, an overview of the domestic and international law is followed by a separate analysis of areas such as administration of justice, the right to fair trial, life and security, freedom of movement, residence and non-discrimination. The study thus attempt to provide a balanced overview of the complex and complicated situation of Burundi today, concluding with a set of recommendations for future consideration.

The fieldwork was carried out during a visit to Bujumbura in November 1998.

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