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OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Interim report of the independent expert on the situation of
human rights in Burundi, Akich Okola***

* This report is submitted late in order to include the most up-to-date information possible.

Summary

The present report is submitted pursuant to Human Rights Council decision 1/102, in which the Council decided to extend exceptionally for one year, all the mandates, mechanisms, functions and responsibilities of the Commission on Human Rights. Subsequently, the independent expert on the situation of human rights in Burundi who has been entrusted with this mandate by the Commission on Human Rights since 2004 was requested to submit a report to the Human Rights Council at its fourth session. The report covers the independent expert's sixth and seventh visits which were undertaken from 7 to 14 October 2006 and 14 to 27 January 2007, respectively.

The independent expert's fifth visit to the country was undertaken from 29 May to 10 June 2006 and he submitted a report on this visit at the General Assembly at its sixty-first session (A/61/360). He also made an oral presentation to the Human Rights Council at its second session, on 27 September 2006, to update his last report prepared for the sixty-second session of the Commission on Human Rights (E/CN.4/2006/109).

In his last report (A/61/360), the independent expert had commended the Government of Burundi for the programmes put in place with a view to ensuring the realization of economic and social rights, including free primary education and free health care for expectant mothers and children under 5 years of age. He noted that those programmes, although they were supported by the international community, still needed greater support to be fully implemented.

The independent expert expressed concern at the persistent violations and abuses of civil and political rights, the weak and inefficient administration of justice, the delay in the establishment of the transitional justice mechanisms, and the growing intolerance of the Government of Burundi towards criticism from the opposition parties and the civil society.

In view of the tremendous challenges to the reconstruction and the development of Burundi, the independent expert had called upon the international community to support the country and encouraged all human rights actors to pursue their efforts and strengthen their coordination with a view to achieving better protection and promotion of human rights.

He had concluded his presentation to the Human Rights Council with a series of recommendations to all stakeholders, aimed at consolidating the young democracy in Burundi, increasing support to the justice system, and improving the promotion and the protection of human rights in general.

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I. INTRODUCTION

1. The present report covers the independent expert's sixth and seventh visits which were undertaken from 7 to 14 October 2006 and 14 to 27 January 2007, respectively. The report will address the general situation in Burundi with a special focus on:

- The implementation by the Government of programmes aimed at providing universal free primary education and access to free health care for children under 5 years of age and expectant mothers;
- The political situation, including the signature of a comprehensive ceasefire agreement between the Government and the Forces nationales pour la libération (FNL) on 7 September 2006;
- The arrest, detention and acquittal of the alleged coup plotters, including the former President and the former Vice-President of the Republic;
- The arrests and killings perpetrated in Muyinga between May and August 2006 and the judicial investigation thereon.

2. The independent expert wishes to thank the Government of Burundi for its cooperation during his visits and, in particular, for allowing access to all officials he had expressed the wish to meet and to all institutions and places necessary for the discharge of his mandate. He also wishes to thank all those whom he met for their contribution to the success of his missions.

3. During his sixth and seventh visits, the independent expert met the first and second Vice-Presidents of the Republic, the Minister of National Solidarity, Human Rights and Gender Issues, the Minister of Justice, the Minister of Foreign Affairs, the Minister of Health, the permanent secretary of the Minister of Foreign Affairs and International Cooperation, the Attorney-General, the President of the Supreme Court, and the chairperson of the Bar Association. He also met representatives of the major political parties, such as the spokesperson of the ruling party, the Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie (CNDD-FDD), the secretary-general of the Front pour la démocratie au Burundi (FRODEBU), the spokesperson of the Mouvement de rassemblement pour la réhabilitation du citoyen (MRC) and the spokesperson of the Conseil national pour la défense et la démocratie (CNDD) whose leader had fled the country for political reasons. The independent expert met the representative of Human Rights Watch and various local non-governmental organizations (NGOs) working in the field of human rights, including Ligue Itoka, Association for the Protection of the Human Rights of Prisoners and Detainees (APRODH), Action des chrétiens pour l'abolition de la torture (ACAT), Organisation de lutte contre les malversations économiques (OLUCOME), the representatives of the journalists' associations and private radio stations (Radio publique africaine, Bonesha and Isanganiro), and trade unions representatives. Other personalities he met include the Deputy Representative and Executive Representative of the Secretary-General of the United Nations in Burundi, the representative of the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the director of the Human Rights Division within the United Nations Operation in Burundi (ONUB), the representative

of UNICEF, the diplomatic corps, namely the Ambassador of Belgium, the Ambassador of France, the Ambassador of the African Union, the Head of delegation of the European Union, the Chargé d'affaires of the United States Embassy, the Chargé d'affaires of the European Union delegation and the Chargé d'affaires of the African Union delegation.

4. The independent expert undertook visits to Mpimba prison and field visits to the provinces of Muyinga, Ngozi and Ruyigi. He met the Governor and the prosecutor of Muyinga, the Attorney-General and the special adviser to the Governor of Ngozi. He also met the administrator of the commune of Mwumba and the representative of Action Against Hunger in Ngozi province. The independent expert also met one survivor of the Muyinga massacre. At the end of both visits, he held a press conference on his findings.

5. In the present report, the independent expert briefly highlights the most significant events, which occurred during the period under review, from July 2006 to January 2007. He also sets out the human rights trends and violations, and presents to the Human Rights Council his recommendations for improving the human rights situation in Burundi.

II. GENERAL SITUATION

6. The visits of the independent expert were undertaken against a backdrop of tension caused by new developments on the political and human rights landscape. On the political front, a ceasefire agreement had been signed between the Government and the Forces nationales pour la libération and its armed wing, the Parti national pour la libération du peuple hutu (FNL-Palipehutu) on 7 September 2006 and its implementation had not yet been completed. Tensions between Government and the ruling party, on the one hand, and the opposition parties, the civil society and the media, on the other, had escalated in the first half of 2006 and culminated in July and August 2006 with the arrest and detention of the former President, Domitien Ndayizeye, and the former Vice-President, Alphonse-Marie Kadege, and other prominent members of Burundian society accused of plotting a coup to overthrow the Government of Burundi. Some of them were tortured by security forces. However, when the independent expert visited Burundi in January 2007, this tension had eased considerably after the acquittal of five of the seven persons accused of plotting a coup and the release of journalists who had also been detained.

7. Serious misunderstandings among senior members of the ruling party, which resulted in the resignation of the second Vice-President of Burundi, on 5 September 2006, had seriously intensified by January 2007 and the party had become polarized into two groups. These divisions threaten to destabilize the country in the near future and, if they persist, the Government's attention might be diverted from implementing its reform programme.

8. The procedure of indictment and the rights of the seven persons accused of plotting a coup against the Government were not respected during the pretrial detention. As a result of mounting internal and international pressure for the speedy trial of the detainees, the latter were tried in December 2006 and five of them, including the former President and the former Vice-President, were acquitted in January 2007.

9. The relationships between the Government, on the one hand, and the civil society and the press, on the other, had deteriorated during the period covered by the independent expert's sixth visit in October 2006, particularly following the arrest and detention of four journalists on allegations of divulging secrets of a judicial investigation and spreading false information related to State security. The media association condemned this action and asked the Government to put an end to the violation of the freedom of expression. At the time of the independent expert's seventh visit in January 2007, the situation had improved and the media of Burundi were reporting on all public matters without any interference from the Government.

10. In spite of the above-mentioned improvements, the Musinga massacre and the way the judiciary and the Government handled the case raised concern as to the intention of the Government. Early October 2006, the Government appointed a judicial commission to investigate this issue following outcries by Burundians and the international community. The commission submitted its report to the Government in October 2006 and, according to information received by the independent expert, recommended the arrest of a number of people, including the regional commander. The appropriate warrants have been subsequently issued; however, they have not been executed on the claim that further investigations needed to be carried out. There appears to be no purpose to be served by further investigations and the only purpose served by this decision is to give the Government time to cover up the massacre.

11. With respect to the comprehensive ceasefire agreement signed by the Government and the FNL-Palipehutu on 7 September 2006, four phases in the implementation have been foreseen: (a) the establishment of a joint verification mechanism; (b) the disengagement of the forces; (c) the liberation of prisoners accused of collaborating with the movement; and (d) the implementation of provisions 3 and 3.1 of the annexure II to the ceasefire agreement, which stipulate that "from the start of the effective implementation of the ceasefire, the members of the Palipehutu-FNL shall enjoy provisional immunity for acts committed during the armed struggle until the signing of the Ceasefire Agreement. A procedure for the release of political prisoners and prisoners of war shall also start".¹ It is within this framework that, on 1 October 2006, the President of the Republic of Burundi signed a decree creating a verification mechanism on the status of combatants.

12. Regarding economic and social rights, the Government is forging ahead with the implementation of its programmes granting universal primary education and free medical care for children under 5 years of age and expectant mothers, which were launched at the beginning of 2006.

13. On the whole there appears to be a general improvement in the situation of human rights in Burundi as a result of the ceasefire agreement signed between the Government and Palipehutu-FNL, although some serious violations, such as the Musinga massacre, and the arrest of the alleged coup plotters on unsubstantiated evidence, marred this commendable development.

¹ The text of the Comprehensive Ceasefire Agreement is available at: http://unburundi.org/facts/doc/Ceasefire_7-9-06.pdf.

The independent expert wishes to commend all those who have contributed to the improvement of the situation in Burundi, including the Government, the civil society, the media and the international community, and calls upon the Government of Burundi to build on this development so that the culture of respect for human rights can continue to grow in Burundi.

14. During the reporting period, on 25 October 2006, the Security Council adopted unanimously resolution 1719 (2006) in which it decided to establish a United Nations Integrated Office in Burundi (BINUB) for an initial period of 12 months, commencing on 1 January 2007, to support the Government in its effort towards the long-term peace and stability throughout the peace consolidation phase. BINUB is replacing ONUB whose mandate was ended on 31 December 2006.

III. TRANSITIONAL JUSTICE MECHANISMS

15. Discussions have been going on between the Government of Burundi and the United Nations for more than two years regarding the establishment of a truth and reconciliation commission and a special tribunal for Burundi. Although these mechanisms were expected to be put in place in September 2005, this deadline has not been met mainly because of the ambivalent attitude of the Government of Burundi towards the special tribunal.

16. During both visits in October 2006 and January 2007, the independent expert discussed further with the Government and other stakeholders the key issues regarding these mechanisms. In October 2006, the Government indicated that a delegation from United Nations headquarters and OHCHR was about to come to Burundi before the end of the year to clarify the principles of non-immunity or amnesty for genocide, war crimes and crimes against humanity as well as the neutrality and independence of these bodies.

17. In January 2007, the independent expert was informed that the mission of the delegation had been postponed till February 2007. The Government reaffirmed that this mission was necessary and reiterated its readiness to discuss the way forward to the establishment of the twin mechanisms. In addition, on the occasion of celebration of the Human Rights Day, on 10 December 2006, the Head of State announced that the Government was currently discussing with the United Nations the modalities of setting up the truth and reconciliation commission in Burundi. However, the time frame within which this body will be established has not been indicated.

IV. HUMAN RIGHTS SITUATION

18. The situation of human rights was expected to improve following the signature of the ceasefire agreement, especially in the provinces where FNL was operating (Bujumbura Rural, Bubanza and Cibitoke). In these areas, confrontations between government forces and FNL have ceased. A law granting FNL combatants provisional immunity has been enacted but it is still opposed by FNL on the grounds that the text does not clearly state the name of the beneficiaries. However, despite the ceasefire agreement, violations and abuses continued to be reported countrywide, although they have decreased in number.

A. Major human rights violations and abuses

1. Violations of the right to life

19. During the reporting period, the security forces of the Government of Burundi were involved in various violations of the right to life. Besides the Muyinga massacre, reports confirmed that many people were summarily executed by the military forces and, to some extent, by agents of the Service national de renseignement (SNR) and members of FNL. In this regard, the independent expert received specific information about the execution of four men who had been arrested on 4 August 2006 by an agent of SNR and a police officer in the commune of Kamenge (province of Bujumbura). According to this information, the victims had been taken to a secret detention place in Kamenge where they had been tortured. On 14 August, they were transferred to the police station in the commune of Kinama. Later, police officers and agents of SNR transferred them to an unknown destination. The next day, residents of the commune of Kinama discovered their bodies riddled with bullets, wounds and injuries. Five individuals, four police officers and one SNR agent, were subsequently arrested and detained in connection with the killings. The Human Rights Division of ONUB interviewed one of the detainees, the former SNR agent, who admitted killing the four men and said that he had been paid and given an automatic Kalashnikov by SNR to carry out the killings. He showed to the interviewers a letter signed by the SNR general administrator who granted him authorization to identify and to arrest “FNL criminals” and requested that military and police personnel assist him in his task.

20. Nine mutilated bodies were recovered from the Ruzizi River/Lake Tanganyika late October 2006. The victims were all adult men, some showing signs of bullet or machete wounds and/or mutilation with hands/head amputated. So far, none of the nine victims has been identified nor the motive of their death established. Local officials reported that they had been buried on the day they were found. However, there is still no information regarding the circumstances of their death. Local authorities believed that the perpetrators might be combatants of FNL. According to information gathered on this issue, it seems that no investigation has been conducted to identify the perpetrators and bring them to justice.

2. Violations of the right to physical integrity

21. During the reporting period, the independent expert was informed of more than 200 cases of violations of the right to physical integrity. Government forces (Forces de défense nationale), police and SNR agents, as well as administrative authorities were responsible for those reported violations perpetrated in the provinces of Bujumbura Rural, Bubanza, Gitega, Cankuzo and Muyinga. The main causes of these violations can be attributed to the lack of political will to punish the perpetrators and the lack of training of the security forces. Most of the cases were reported to the relevant institutions; however, no action has been taken against the perpetrators.

22. Despite the acknowledgement of these violations, the Government of Burundi did not demonstrate its willingness to tackle this issue. It has been reported that many members of SNR were implicated in acts of torture. One of the major cases of torture occurred in SNR facilities during the detention of three high-level officials in July and early in August 2006. The independent expert who visited the detainees at Mpimba prison in October 2006 confirmed that the prisoners had been physically mistreated, which was later verified by medical report. This case will be further examined below (see paragraphs 43-56).

23. In addition, the police were allegedly responsible for various forms of ill-treatment and torture. The human rights section of BINUB reported such cases on a daily basis. In the province of Bururi, five individuals were reportedly ill-treated by the police at the time of their arrest on 8 October 2006. Other cases of ill-treatment by the police were reported in the commune of Kigobe/Bujumbura Mairie, involving nine individuals (including six suspected FNL members). Six more individuals, all of whom had visible marks of injuries on their bodies, including partial or complete paralysis of one or both hands, had been reportedly beaten/ill-treated by the police in Kayanza province. The seven others had been reportedly beaten by the police of the Cumba Zone position in Muyinga, in collaboration with the Cumba *chef de zone*. In the province of Kirundo, two detainees alleged they had been tied up and beaten respectively by the *chef de colline* and *chef de cellule*, upon their arrest.

24. Furthermore, the Forces de défense nationale (FDN) had been involved in violations of the right to physical integrity. These violations were committed sometimes during the arrest. For example, on 14 September 2006, a resident of Muriwe colline, Mubuga zone (commune and province of Gitega) was allegedly beaten up by two soldiers from the 22nd battalion of FDN. The victim was reportedly beaten with a stick and slapped. The soldiers claimed to have acted in self-defence, alleging that the victim had attacked them while resisting arrest. On 23 October 2006, around 8 p.m., the Commander of the military position of Village 3, Gihanga Commune (province of Bubanza) arrested two individuals for allegedly robbing a boutique. The two accused were driven to the military position where they were tied up. One of them was released earlier the same day but the second one who denied any involvement in the theft was kept overnight and severely beaten. The victim sustained serious injuries and has threatened to file a complaint for assault and battery.

25. The independent expert is very concerned at the increasing number of cases of torture registered during the reporting period. Reports confirmed that this kind of violation was widespread in the country notwithstanding the training offered by the human rights section in BINUB. The independent expert noted that administrative authorities and members of FDN were involved in many cases of torture during the process of arrest. He called upon the government authorities to bring the perpetrators to justice.

3. Arbitrary and illegal arrests and detentions

26. Arbitrary arrests have been rising over the reporting period. They include cases of prolonged stay in police custody, detention in illegal places and lengthy pretrial detention. Some of the cases observed by the human rights monitors included people who were detained for minor charges upon instruction from administrative authorities, mostly commune administrators and *Chef de zone* and *collines*. These violations were higher in September 2006 after the signature of the ceasefire agreement between the Government of Burundi and FNL-Palipehutu. It seems that many young Burundians tried to register in FNL-Palipehutu, particularly in the northern regions, in order to take advantage of the demobilization process. Consequently, 87 minors were allegedly arrested illegally, of which 26 reportedly acknowledged being FNL members. A number of them were held in Ngozi prison before being transferred to Muyinga where the administrators of the respective communes were authorized to request their release. Among them were eight persons accused by police of attempting to recruit on behalf of FNL (of which four were transferred to Makamba), and two others who admitted to being FNL members.

4. Violations of the freedom of opinion and expression

27. The rights of freedom of opinion and expression deteriorated in Burundi from April 2006 to November 2006. The Government used all means to undermine the independence of the media in Burundi, especially those who did not share its views. In many cases, journalists were arrested and prosecuted. Some ministers issued threats against the stand of the private media. Many disturbing incidents of intimidation were reported, including tailing of journalists by intelligence (SNR) officers, anonymous telephone calls and e-mails threatening to close down radio stations and threats against relatives of journalists. During the reporting period, three journalists, Mathias Manirakiza, director of Radio Isanganiro, Serge Nibizi, editor-in-chief of Radio publique africaine (RPA), and Domitile Kiramvu, an RPA reporter, were arrested for broadcasting information that authorities claimed could “disturb public order and security” and also for “revealing information about a judicial process”.

28. On 28 November 2006, together with Leila Zerrougui, Chairman of the Working Group on Arbitrary Detention and Ambeyi Ligabo, Special Rapporteur on promotion and protection of the freedom of opinion and expression, the independent expert addressed an urgent appeal to the Government of Burundi, requiring clarification and independent investigation and fair trial concerning the three journalists. To date, the Government has not responded to the special rapporteurs.

29. On 14 December 2006, a prosecutor asked a Bujumbura court to sentence each of the three journalists to three years’ imprisonment. In addition, the prosecutor also asked the court to impose a fine of 300,000 Burundian francs (approximately US\$ 290) on the journalists, plus an extra fine at the magistrate’s discretion to serve as reparation.

30. The actions of the Government were condemned by international media NGOs such as Reporters without Borders, International Freedom of Expression Exchange and Journalists en Danger, etc. They called upon the Government to put an end to the violation of the rights to freedom and release all journalists that were arrested.

31. On a positive side, on 4 January 2007, the three independent radio journalists detained at Mpimba prison were acquitted. Following their acquittal national human rights organizations drafted a joint declaration to express their satisfaction at the decision of the court and to reiterate the importance of the respect of the Constitution and the right to a fair trial during judicial proceedings.

32. The independent expert also confirmed that the legal representatives of the Cercle d’initiative pour une vision commune (CIVIC) and the chairman of the OLUCOME who were arrested respectively on 10 May and 16 August 2006 because of their statements against some officials in the Government, were released. In addition, the Agence burundaise de presse (ABP) journalist, Aloys Kabura, based in Kayanza, who received a jail sentence in Ngozi on 31 May 2006, was released on 30 October 2006 after completing his sentence. He had been convicted by the trial court (*tribunal de grande instance*) in Kayanza to serve five months in prison for making inflammatory statements against the Government.

5. Forced labour

33. There has been a continuation of cases of forced labour in the provinces of Makamba, Bururi and Bujumbura where the populations are compelled to do forced labour (delivery of firewood, water or supplies) by some local administrators and police and military authorities. Some authorities on the basis of a well-established system claim that these tasks are communal tasks. Recently, the independent expert was informed that FDN soldiers, in Mugoboka, Bujumbura Town Council (Bujumbura Ville), were forcing children to regularly perform various tasks for the soldiers and threatening them with beatings if they refused. It has also been reported that in Kayogoro Commune (province of Makamba), FDN soldiers from Nyentakara position continue to harass the local population and confiscate bicycles for their own use. The *Chef de zone* admitted collaborating with the soldiers for fear of reprisals. A group of four soldiers led by the position's *Chef de poste* also allegedly beat up members of the public who showed solidarity with a person, whom the soldiers were trying to arrest and could not find.

34. In the commune of Kibago (province of Makamba), human rights monitors informed the independent expert that a civilian died on 18 November 2006, as a result of injuries sustained in a beating by an FDN soldier from Nyakazi position for non-compliance with his orders to cut and transport firewood.

35. Such violations were reported also in the provinces of Bururi and Cankuzo where members of the army and the police forced the population, including internally displaced persons, to fetch water and firewood for them. Those who resisted were threatened and ill-treated. Despite numerous efforts by human rights monitors, mainly in the form of awareness-raising sessions, to deter State agents from continuing this practice, reports of local residents being forced to provide or carry firewood in western provinces continued to be received.

6. Sexual violence

36. Three hundred and eighty nine cases of rape of women and minors from all provinces of Burundi were reported during the last five months of 2006. The western provinces were the most affected by this phenomenon. This figure reflects a decrease in the number of cases reported compared to the same period in 2005. This reduction can be attributed to the prospect of legal action being pursued against the perpetrators, the awareness-raising exercises and the involvement of administrative and political authorities in the struggle against this curse. However, it is still taboo to discuss sexuality within the communities, and some of the victims remain silent because they are not aware that there can be legal consequences for these crimes. Furthermore, some administrative authorities continue to recommend out-of-court settlements as a preferred option. Whilst in most cases the victims have received the necessary medical care in due time, often through the assistance of specialized NGOs, impunity for the alleged perpetrators of such crimes remains the norm.

37. So far, in the commune of Nyarusange (province of Gitega), eight women were allegedly raped by a number of police agents of the same commune between April and May 2006. They filed complaints for sexual violence against agents of the *Police de sécurité intérieure* (PSI) of

the commune, with the local administration. Three of the victims, primary school students, are reportedly pregnant; one of which just had an abortion. The alleged perpetrators are reportedly asking to marry the victims in conformity with local traditions.

B. Administration of justice

38. On the occasion of the Human Rights Day, on 10 December 2006, the President of Burundi recognized that the prisons were overcrowded in Burundi. In December 2006, there was an inmate population of 8,000 persons for a prison capacity of 4,050. The President requested that the justice system solve the problem of lengthy pretrial detention in order to reduce prison population. In addition, the President issued a decree on 22 December 2006 to commuting the sentences of some categories of prisoners. However, at the time of the independent expert's mission, this measure had not been implemented.

39. As was mentioned in the previous reports (E/CN.4/2006/109, para. 69 and A/61/360, paras. 86-93), the administration of justice needs to be reformed in accordance with the provisions of the Arusha Agreement. The justice system is still weak owing to lack of equipment, poor training of staff, interference by politicians and corruption. Consequently, the population has largely lost faith in the system, leading to mob justice. For example, 27 persons suspected of "witchcraft" or rapes were reportedly mobbed, and some killed, in Muyinga, Ngozi, Kayanza, Gitega, Cibitoke and Bujumbura Rural.

40. A new development in the sector includes the nomination of the new magistrates to form the second chamber of the Supreme Court. However, the Burundian Bar Association expressed concern about this decision claiming that some of the magistrates would not have sufficient experience.

41. Several detention centres throughout the country were regularly visited by human rights monitors who noted the lack of properly maintained registers and several cases of arbitrary detention and of failure to follow proper procedures with regard to the holding of persons in detention. Besides, the state of cleanliness and hygiene was not good. In October 2006, 138 cases of delays in the legal processing procedures, 114 cases of illegal detention and several other cases of detention for outstanding debts and civil matters, 74 cases of alleged members or collaborators of FNL, 34 cases of detained minors in the same prison as adults were reported.

42. The continuing trend of illegal arrest and detention, detention for civil matters, mixing of minors and adults at prison facilities, poor sanitation in the facilities, and non-respect of legal delays regarding pretrial detention as well as overcrowding of prisons continue to be matters of great concern. Human rights and ONUB Child Protection monitors continued to assess the situation at Mpimba prison in order to investigate the condition of minors accused of collaboration with the FNL, and they were able to assess the condition of 65 minors accused of involvement in armed groups. Their ages varied between 12 and 17 years. Only nine of them were released. Several actions are continuing including a follow-up on progress of these cases and individual files, as well as a research by the NGO Terre des Hommes, which delivers humanitarian support.

C. Arrest, detention and release of the alleged coup plotters

43. The independent expert met the seven persons detained in Mpimba central prison twice during his visit in October 2006 (see paragraphs 6 and 21-23, above). The detainees complained about their illegal arrest and continued detention. The former President Domitien Ndayizeye was arrested in Bujumbura with a warrant signed by the Attorney-General on 21 August 2006, following a special meeting of the Senate Bureau on 20 August to lift his parliamentary immunity. He was then questioned by the Attorney-General for several hours before being transferred to Mpimba central prison, on the charge of *Atteinte à la sûreté intérieure de l'État*.

44. The former President joined six other persons, mostly prominent opposition figures, arrested between 31 July and 3 August 2006, and facing the same charge, namely: Ala former Vice-President Alphonse-Marie Kadege, the secretary-general of the Parti pour la reconciliation du peuple (PRP), Deo Niyonzima, the president of FNL-Icanzo, Alain Mugabarabona, the advisor to the Ministry of Defence, Colonel Damien Ndarisigaranye (FDN), lawyer Isidore Rufyikiri and Tharcisse Ndayishimiye (alias "Maconco"). While six of them had been detained at the SNR headquarters since their arrests between 31 July and 3 August, Colonel Rudadi and former CNDD-FDD officer Anicet Niyongabo were arrested with Mugabarabona at his house on 31 July, released on 2 August, and then rearrested after they voluntarily presented themselves at the prosecutor's office on 9 August for a hearing after which all eight suspects were placed in preventive detention at Mpimba prison. Colonel Rudadi and Anicet Niyongabo were both released on 11 August, although both had "confessed" to their involvement in a coup plot during a press conference prior to their rearrest on 9 August. Their release increased speculation as to the real reasons for the detention of the others, who had all denied their involvement in any plot.

45. Legal procedures were only respected in the arrest of one of the six, Alain Mugabarabona. The others were reportedly detained without arrest warrant or, in some cases, on the grounds of a search warrant signed by the General Administrator of the intelligence service (SNR).

46. Three of the detainees had been tortured during interrogation at SNR headquarters: Alphonse-Marie Kadege, Déo Niyonzima, and Colonel Damien Ndarisigaranye. All three gave similar reports: they had been hanged face down by hands and feet, and beaten with various instruments, including metal and plastic wires and rods. All had scars on their bodies that supported their allegations.

47. In reaction to the alleged acts of torture committed during interrogation at SNR headquarters, the Representative of OHCHR in Burundi addressed several authorities. The Minister of External Relations and Cooperation, and the Minister of Defence acknowledged that serious mistakes were made by intelligence agents with regard to the treatment during interrogation of those arrested and that the Government did not condone this kind of act. Assurances were given by the President and the Minister of Defence that the allegations of torture would be fully investigated and the perpetrators would be sanctioned.

48. Regarding the accusation, all detainees believed it was entirely concocted by the Government. They explained how the intelligence service had tried to use one of the detainees, Mr. Mugabarabona, to persuade him to implicate the other suspects. The latter had later withdrawn his accusation, which led to confusion.

49. By the time the independent expert visited Burundi in October 2006, the detainees had appeared in court twice and a ruling had been issued for their provisional release, but it had been countermanded by an appeal from the Attorney-General who ordered their continued detention. All detainees felt that the procedure related to their detention was not respected. However, on 27 October the Supreme Court reversed its decision of 6 October to release the seven pending trial and ruled in favour of the appeal submitted by the Attorney-General to keep them in detention.

50. On 7 November 2006, former Vice-President Alphonse-Marie Kadege and Tharcisse Ndayishimiye were summoned before the court for questioning by the Attorney-General. Ndayishimiye reportedly testified against Kadege, accusing him of taking part in meetings to plot a coup, but was reportedly unable to back up his testimony when challenged by Kadege's lawyer. Ndayishimiye was transferred the following day to Muyinga prison, apparently for security reasons. He reportedly told two fellow detainees that he had been promised payment by SNR in return for testifying against Kadege.

51. On 24 November 2006, the Supreme Court started and immediately adjourned the trial of six of the seven alleged coup plotters after the defendants demanded the replacement of two judges, whose impartiality they questioned. One of the seven defendants, Tharcisse Ndayishimiye, did not appear. He was transferred to Muyinga prison on 7 November after allegedly admitting accepting payment by SNR to testify against former Vice-President Kadege.

52. Following five public hearings, the Court adjourned the trial on 22 December 2006 to consider the verdict. The main evidence produced by the prosecution consisted of statements made (and later retracted) by co-defendants Alain Mugabarabona and Tharcisse Ndayishimiye and of a taped recording of a telephone conversation in which a person, who according to the prosecution was Mr. Mugabarabona, explained to a witness (an FDN officer) how the alleged coup would be carried out. Mr. Mugabarabona categorically denied that the voice on the tape was his. The defendants' lawyers produced two witnesses who claimed that the tape had been made at the Presidential Palace by the President's chief communications advisor. At the public hearing on 22 December, the prosecution requested a life sentence for six of the accused whilst the defence insisted that they should be released.

53. Several government officials, including the Minister of Foreign Affairs and the Minister of Defence (himself named by the prosecution), made public statements suggesting that the Government was distancing itself from the allegations of a coup plot.

54. During the visit by the independent expert in January 2007, the Supreme Court acquitted five of the seven individuals who had been incarcerated at Mpimba prison since August 2006. The five acquitted were former President, Domitien Ndayizeye, former Vice-President, Alphonse-Marie Kadege, Isidore Rufyikiri, Déo Niyonzima and Colonel Damien Ndarisigaranye. The two prosecution witnesses, Tharcisse Ndayishimiye and Alain Mugabarabona, were sentenced respectively to 15 and 20 years in prison. The decision was announced during a regular session of the Court by the spokesperson of the Court who stated that the Court had ruled that the five who were acquitted could not be convicted based on

testimony of a single person (Alain Mugabarabona). He went on to explain that, on the other hand, the conviction of Tharcisse Ndayishimiye and Alain Mugabarabona was based on their confessions.

55. The acquittal of the five alleged coup plotters vindicates the widely held view that the charges against them were manufactured by the Government for the sole purpose of intimidating and silencing its critics. This view, shared by the independent expert, is supported by the fact that after promising to advance evidence to sustain its claim, the prosecution failed to produce any credible evidence of a coup plot. Acquittal of the accused prisoners was largely due to pressure from within Burundi, bolstered by the international community, for a speedy and fair trial. The court decision does not, in the view of most observers, demonstrate independence and impartiality of the judiciary in Burundi as claimed by sections of the Government. In this respect, it should be recalled that the judiciary had been mostly compliant and did its best to accommodate the wishes of the State for the continued detention of the accused persons during the pretrial phase, even when mounting evidence indicated that the charges were baseless.

56. At the same time, one may not conclude that justice was fully served as two of the seven accused persons have been convicted and sentenced to 15 and 20 years, respectively, although the evidence on the basis of which they were convicted is suspect. Their conviction has led many observers to suggest that its sole purpose was to validate the Government's claim that there was indeed a plan for a coup. The independent expert appeals to the judiciary in Burundi to correct this miscarriage of justice.

D. The Muyinga massacre

57. According to officials and human rights defenders, in May 2006, chiefs of collines and police officers arrested a group of some 30 persons in different collines in the province of Muyinga, following the instruction of the SNR office in Muyinga. The victims were accused of being members of FNL and were taken to SNR detentions facilities before being transferred to Mukoni military camps in Muyinga. In August 2006, residents discovered 19 bodies in the Rivubu River, some of them sustained injuries while others were beheaded.

58. The independent expert met one survivor of this tragedy who gave details on the circumstances of the execution. According to him, some 36 persons had been arrested and detained in Mukoni camp. He remembers that a guard had explained to him what their fate would be and who was giving orders. He also remembers the first group of inmates taken out of the prison and remembers thinking that they were going to be transferred to Randa (a transit camp for FNL combatants). He managed to jump out of the pickup which was taking them to Ruvubu camp and was later helped by sympathetic villagers and subsequently by human rights actors. He believed that out of the 36 persons arrested, 16 were killed and the remaining reported missing. Those missing have not been seen by their families and it is assumed that they were also killed.

59. The independent expert discussed this matter with the Attorney-General who informed him that a commission had been appointed to carry out investigations on the tragedy. The Minister of Justice confirmed that this commission had already finished its work and had submitted its report to the Attorney-General in October 2006 who claimed that the report was not

complete. Therefore, another commission was about to be set up to continue the investigation. The independent expert learned from other sources that the report was issued, but that its implementation had been opposed by members of the Government. In a speech delivered at the celebration of Human Rights Day in the province of Bubanza, the President of Burundi reaffirmed the determination of his Government to bring the perpetrators of this massacre to justice. However, he questioned the findings contained in the report of the commission concerning the number of persons who disappeared.

60. The human rights community has expressed great concern regarding the disappearance of the victims and the lack of political will to bring to justice all the perpetrators. The prosecutor in Muyinga who started the investigation was reportedly threatened by the Commander of the fourth military region. The prosecutor was positive that the victims had been arrested on suspicion of their membership to FNL, detained in Mukoni camp, and later extracted to be killed at night and dumped in the Ruvubu River. As a result of his investigation, he ordered the arrest of the head of SNR in Muyinga along with his driver. SNR chief was then formally charged with “abduction and complicity” in murder. Two military officers who confessed to participating in the disappearance and execution of the victims were arrested by the Chief of Martial Military Court.

61. According to information provided to the independent expert by human rights defenders in Burundi, the judicial commission interviewed many people in the province of Muyinga and collected evidence on the circumstances of the disappearance and execution of the victims. Among those interviewed by the commission was the FDN commander of the fourth military region, the Giteranyi and Buhinyuza administrators and Giteranyi’s PSI Chef de poste. The reports recommended that the administrators of Buhinyuza and Giteranyi, as well as the commander of the fourth military region and three other chiefs of collines be arrested for planning and participating in this massacre. The warrant of arrest of the commander was issued, but it has been suspended by order of the office of the Attorney-General.

62. The independent expert noted a lack of institutional will to shed light on the circumstances surrounding the forced disappearance and execution of those 30 persons between May and August 2006 in Muyinga. Instead, there appears to be an attempt by the Government to wish away the truth. The prosecutor in charge of this case was transferred, and it is suspected that his transfer was the result of the Government displeasure with his role in the investigation. Some of the witnesses and families of the victims are reported to have been intimidated and threatened by local administrations and soldiers of the fourth military region.

E. Economic, social and cultural rights

63. The independent expert met representatives of the Batwa community three times during his previous visits (see E/CN.4/2006/109, paras. 59 and 60; A/61/360, paras. 83-85), and had called the attention of the international community on the peculiar situation of the Batwa in Burundi. The community remains marginalized and discriminated against in all areas of life in Burundi, and although they now enjoy a measure of political representation in the Parliament and Senate under the new Burundi Constitution, it has not translated into corresponding opportunities in the Government and its institutions.

64. During his seventh visit to Burundi, the independent expert visited the Batwa community of Zege in the province of Gitega. The representative of the community, which comprises 60 families complained about discrimination which has consequences on the realization of their fundamental human rights, such as the right to food, to proper housing, to land ownership as well as the access to water supply. They submitted a petition in this respect and further explained that their children were dropping out of school because of hunger. Some of them also complained that members of other Burundi communities were taking hold of their plots of land. The independent expert encouraged the community to take advantage of the measures adopted by the Government regarding free primary education, free health care for expectant mothers and children under 5 years, and of the newly set up Commission on land and other properties, in which the Batwas were represented.

65. The independent expert visited Maison Shalom, an NGO in Ruyigi, which provides a foster home for orphans of war who are handed back to relatives once those have been traced. Maison Shalom also ensures professional training and reintegration to former combatants and other categories of young persons abandoned or neglected by their families, among them the blind, the deaf, the mute, the HIV positive. All are trained according to their abilities with a view to enabling them to earn their living when they leave the facility. Maison Shalom has extended its services to the whole community through the different activities it promotes, such as agriculture, livestock, sewing, mechanics and entertainment, among others. Maison Shalom is an outstandingly successful community-based initiative which ensures the enjoyment of the rights of the child and the economic and social rights to its direct beneficiaries and the whole surrounding community.

66. Food security is a perennial problem in Burundi due mainly to overpopulation. The situation has been worsened this year by unusually heavy rains, which have destroyed crops. The independent expert visited a centre in the north of Burundi, which takes care of malnourished children. During the time of the visit, 100 children were admitted to this centre. The NGO Action Against Hunger works at providing food to the most affected children of Mwumba commune and is facing growing challenges due to the increasing number of malnourished children and lack of resources. Unfortunately, not all children in need have access to this programme. The administrator of this commune informed the independent expert that more than 50 persons have already died because of the famine. All northern provinces have been affected by this crisis and, consequently, residents continue to immigrate to other provinces in Burundi, to Rwanda and to the United Republic of Tanzania. In this regard, many children were reported to have dropped out of school in 2006/07 because of lack of food. The Government of Burundi declared that 9 provinces out of 14 are under emergency and need assistance.

67. As mentioned in the independent expert's last reports (E/CN.4/2006/109, para. 62 and A/61/360, paras. 95 and 96), the Government had put in place a programme of free primary education. This programme had resulted in opportunity for many children who would otherwise be unable to obtain basic education. The international community has given its full support to the programme, and although it has encountered many problems, it is working fairly well. The international community needs to continue to extend its support in order to facilitate the full implementation of this programme.

68. Early in 2006 the Government commenced a programme to provide free health care for expectant mothers and children under 5 years of age. The programme, though underfunded, has been well received and would benefit from receiving greater support from the international community.

69. The independent expert was informed that the Poverty Reduction Strategy Paper (PRSP) has been prepared in collaboration with the donor community. A conference involving the donor community and the Government of Burundi is scheduled for 15 and 16 March 2007 to discuss the PRSP and should, hopefully, lead to an agreement on funding for the programmes and projects contained therein. The independent expert can only regret that the document ignores the question of runaway population growth in Burundi, which threatens not only to wipe out any gains the programme may yield, but also to create serious social problems.

70. Concerns were raised regarding the ever-deepening poverty amid a general tendency toward corruption and embezzlement, with scandals sometimes implicating high-ranking officials within the Government and the ruling party. Frequent strikes and growing discontent of civil servants are often motivated by widespread poverty. Besides, the number of unemployed keeps increasing.

F. Promotion and protection of human rights

71. Human rights monitors of United Nations institutions and bodies together with non-governmental partners conducted numerous human rights awareness-raising and capacity-building activities countrywide, catering to a cross-section of the society, including both civilians and government officials.

72. Human rights officers of BINUB also supported the Ministry responsible for the promotion and protection of human rights through the provision of training and capacity-building for members of its staff.

73. The Ministry of Justice and Integrated Human Rights Office conducted a “validation” workshop on the draft revised penal code. Revisions were submitted for consultation and comment to legislators, members of the legal profession and the civil society. The revised Penal Code was then approved by the Cabinet and will be sent for adoption to the Parliament shortly. Major changes to the Code, aimed at bringing it in line with international standards, include the abolition of the death penalty, the inclusion of international crimes and the improvement of the protection of women and children. Most controversial were the abolition of the death penalty and the legal definition of rape, which will be taken up by Parliament. The new Code is expected to be adopted by Parliament and promulgated by the President during 2007.

74. BINUB, in collaboration with the Ministry of National Solidarity, Human Rights and Gender, organized a seminar on “the different types of human rights violations and violations of international humanitarian law and how they can be addressed”. Many recommendations were made by participants, including the creation of a school for military personnel and the integration of human rights in the school curricula. Participants also underlined the importance of ensuring separation of powers and the independence of the judicial system.

75. Other activities were carried out by the national and international, governmental and non-governmental organizations working in the field of human rights in Burundi. These activities included briefing the diplomatic corps on concerns relating to justice and impunity in Burundi, with particular emphasis on the Muyinga case. Meetings have so far taken place with the ambassadors of France, Belgium, the European Union and the Holy See with the view to defining a common strategy to address Government obligations to respect due process, the independence of the judiciary and ensure prosecution of human rights violators.

76. Training sessions for law enforcement agents countrywide are continuing, with a focus on the legal human rights framework, legal and ethical conduct, crime prevention and detection, human rights investigations and protection of vulnerable groups. The same training sessions were conducted for tribunal de grande instance and prosecution magistrates, police commissioners and prison directors. In addition specific training has also been conducted on gender-based violence and its impact on development.

77. The human rights section of BINUB organized seven open debate sessions with representatives of the media, members of the civil society, administrative officials and members of the judiciary during the reporting period. Tools to assist creating human rights awareness were produced to disseminate the human rights language in Burundi, including a booklet in Kirundi illustrating the Universal Declaration of Human Rights and a comic book illustrating the human rights situation of the Burundian woman.

IV. CONCLUSIONS AND RECOMMENDATIONS

To the Government of Burundi

78. The independent expert expresses concern about the threats against the families of the victims of the Muyinga massacre and deplores the failure to prosecute individuals implicated in the disappearance and summary execution of suspected FNL members held in military custody in the province of Muyinga between May and August 2006.

79. The independent expert commends the Government of Burundi for creating a judicial commission to look into this matter and recommends that the Government implement the findings of this commission and ensure that those responsible are sanctioned.

80. The independent expert welcomes the decision made by the Supreme Court of Burundi to release five detainees accused of preparing a coup against the Government of Burundi. The independent expert expresses concern at the condemnation of two of them and urges the judiciary to complete the preparation of the record of the trial speedily so that those convicted can file their appeal.

81. The independent expert urges the Government of Burundi to speed up the process of establishing the transitional justice mechanism in fulfilment of its international undertakings to this end.

82. Since its last report, the independent expert notes that no progress has been made by the Government of Burundi to conclude its investigations on the Gatumba massacre and bring the perpetrators to justice. He reiterates his concern to the Government of Burundi and the international community on this matter.

83. The independent expert calls upon the Burundian authorities to take measures to deal with increasing incidents of sexual violence.

84. The independent expert calls upon the Government and FNL to implement the ceasefire agreement signed on 7 September 2006 as soon as possible.

85. The independent expert commends the Government of Burundi for the measures it has recently taken to provide an environment in which the media and the civil society can work with greater freedom.

To the international community

86. The independent expert commends the international community, particularly the Regional Initiative on Burundi, the Security Council, the African Union and the Executive Representative of the Secretary-General, for their efforts in assisting Burundi to attain and consolidate peace.

87. The independent expert commends the people of Burundi, the civil society in Burundi and the international community for their role in ensuring that justice was done in the case of those accused of attempted coup.

88. The independent expert calls upon the international community to increase its support for humanitarian and development assistance in order to deal with the famine crisis in the northern part of Burundi.

89. The independent expert urges the international community to support the Government of Burundi in the realization of the campaign against HIV/AIDS, priority development programmes and human rights.

90. The independent expert commends Maison Shalom for its work and its leadership, and calls upon the international community to support this initiative and through it the enjoyment of human rights by all Burundians who have been deprived of their dignity by the war and the slow pace of reconstruction and economic recovery.

91. The independent expert encourages the international community to increase its support for the Burundian justice system, in particular regarding the transitional justice mechanisms and the establishment of a National Human Rights Commission.

92. The independent expert urges the community of donors to release the funds pledged at the Paris, Geneva and Brussels conferences and recommends that the international community support the efforts of the Government of Burundi to encourage respect for and promotion of human rights and to secure lasting peace.

93. The independent expert encourages the Peace Building Commission to continue supporting the Government of Burundi in disbursing the necessary funds to implement the development plan for 2007-2008.

94. The independent expert welcomes the establishment of BINUB, and commends the international community and civil society for their role in the protection and promotion of human rights and encourages them to strengthen their cooperation in this regard.

95. He urges the international community to press the Government of Burundi to complete investigation regarding the Gatumba massacre and to prosecute the perpetrators of the massacre.

96. The independent expert calls upon the international community to urge the Government to desist from taking measures, which may destabilize Burundi.
