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TECHNICAL ASSISTANCE AND CAPACITY-BUILDING

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

Summary

The present report covers the independent expert's ninth and tenth visits to Burundi, which were conducted from 2 to 8 December 2007 and from 29 June to 12 July 2008.

The independent expert submitted a report on his eighth visit to the country from 20 to 26 May 2007 to the General Assembly at its sixty-second session (A/62/213). In that report, he suggested that the Government speed up the process of establishing a truth and reconciliation commission and a special tribunal, and called upon the Burundian authorities to fully investigate incidents of sexual violence and bring to justice those who committed such crimes. In addition, the independent expert asked the Government to implement the findings of the judicial commission on the Muyinga massacre and to investigate fully the Gatumba massacre.

In the present report, the independent expert notes that the overall human rights situation in Burundi has deteriorated. More than 4,000 cases of human rights violations were committed in the first half of 2008 by law enforcement and administration of provinces. Most violations registered related to cases of ill-treatment, rape, torture of suspects by police officials and violations of due process by police and judicial officials. These issues are taken to the officials in charge in the Government by the Human Rights and Justice Section of the United Nations Integrated Office in Burundi (BINUB) in the context of its monitoring activities.

* Late submission.

During his visit in December 2007, the independent expert noted that the President of the Republic had reached an agreement with the main opposition groups and formed a new Government after six months of crisis. However, the crisis resurfaced in March 2008, when the ruling party, the Conseil national de défense et de la démocratie-Forces de défense et de la démocratie (CNDD-FDD), decided to remove several members of Parliament, and subsequently the First Vice-President of the National Assembly, from its ranks. The political crisis deepened in May 2008, when the President of the National Assembly, a member of the ruling party, requested the Constitutional Court to decide on the question of whether the parliamentarians who had rebelled against the ruling party could continue to remain as members of Parliament. In a decision widely seen as politically inspired rather than legally correct, the Court ruled that the 22 rebels had lost the right to sit in Parliament. The President quickly replaced them with other members of the ruling party, thereby regaining the majority in Parliament, which the ruling party had lost as a result of the rebellion.

The independent expert is deeply concerned about this decision. In his view, the Court appears to have been enlisted by the executive to serve a specific political objective, thereby bringing into question its independence and credibility. By acting in this compliant manner, the Court has lent credence to the widely-held belief that the whole machinery of justice in Burundi is beholden to the executive.

The independent expert therefore calls on the Government to open dialogue with all political parties in order to avoid any institutional and political crisis, which would have a negative impact on the human rights and stability of the country. He further requests the international community to remain engaged with the Government to allow that matter to be solved.

The independent expert reiterates his call to the international community to support the Government in its efforts for the reform of the justice system and, more broadly, for humanitarian and development assistance.

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I. INTRODUCTION

1. The present report is submitted pursuant to Human Rights Council resolution 6/5, in which the Council decided to extend the mandate of the independent expert on the human rights situation in Burundi for a further year. The independent expert, who was entrusted with this mandate by the Commission on Human Rights in 2004, was requested to submit a final report to the Council at its ninth session on the effectiveness and efficiency of the measures applied in practice.

2. The present report covers the independent expert's ninth and tenth visits to Burundi, which were undertaken from 2 to 8 December 2007 and from 29 June to 12 July 2008, respectively. The report addresses the general human rights situation in Burundi, with a special focus on:

(a) Progress made by the Government of Burundi in creating the necessary conditions for the enjoyment of human rights;

(b) The political situation and its impact on human rights, including the implementation of the comprehensive ceasefire agreement signed by the Government and the Forces nationales pour la libération (FNL-Palipehutu) on 7 September 2006;

(c) Progress in the investigation into the massacre of some 30 suspected rebels by military personnel in Muyinga between May and August 2006;

(d) Implementation of recommendations on the reform of the justice system and the establishment of transitional justice mechanisms;

(e) Progress made by the Government in the process of establishing a credible and independent national human rights commission.

3. 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 his interlocutors and counterparts for their contribution to the success of his mission.

4. During his visits, the independent expert met the First Vice-President of the Republic, the Minister for Foreign Affairs and International Cooperation, the Minister for National Solidarity, Human Rights and Gender Issues, the deputy-Minister in charge of human rights and gender and the Attorney-General. He also met the tripartite steering committee on national consultation, which provided him with information on the work of the body. In addition, he met representatives of various human rights non-governmental organizations, including civil society organizations. Other people he met included the Executive Representative of the Secretary-General for Burundi and his deputy, the Representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and Director of the Human Rights and Justice Section of the United Nations Integrated Office in Burundi (BINUB), the representative of the United Nations Children's Fund, the Ambassador of Belgium, the

Ambassador of the African Union, the Ambassador of France, the European Commission Head of Delegation, the chargé d'affaires of the Netherlands and the Head of the Department for International Development of the United Kingdom.

5. The independent expert visited the Rumonge prison in the province of Bururi and the Mpimba prison in Bujumbura Mairie. In Mpimba prison, he interviewed the former chairman of the ruling party Conseil national de défense et de la démocratie-Forces de défense et de la démocratie (CNDD-FDD) on the circumstances of his arrest, detention and trial at the Supreme Court.

6. In the present report, the independent expert briefly highlights the most significant events during the period under review. He also sets out the efforts made by the Government of Burundi to create conditions for the enjoyment of human rights; human rights trends and violations; the sequence of the implementation of his recommendations; and issues that are still outstanding. Finally, he makes a number of recommendations to improve the human rights situation in Burundi.

II. ASSESSMENT OF PROGRESS MADE BY THE GOVERNMENT IN CREATING THE NECESSARY CONDITIONS FOR THE ENJOYMENT OF HUMAN RIGHTS

7. The independent expert was appointed as holder of the mandate in April 2004, at a time when Burundi was going through a transitional period, following the 2000 Arusha Peace and Reconciliation Agreement. During that period, the transitional Government was faced with a multitude of challenges associated with the post-conflict governance, including:

- (a) Lack of a consensus constitution;
- (b) Lack of an elected parliament;
- (c) Absence of an integrated national army;
- (d) Absence of an integrated national police force;
- (e) A parallel justice system;
- (f) The phenomenon of child soldiers;
- (g) Political prisoners arising from the period of internal conflict;
- (h) Demobilization;
- (i) Lack of a free media;
- (j) Routine abuse of human rights;
- (k) General widespread poverty.

8. A solution to the above challenges is essential for the functioning of a modern State and are appropriate yardsticks for measuring how far the recent successive Governments of Burundi, beginning with the two transitional Governments up to the current administration, have moved towards creating the necessary conditions for the establishment of an environment in which human rights can be enjoyed.

New constitutional order

9. At the time of the appointment of the independent expert, the country had no constitution that addressed the historical injustices that had precipitated the ethnic conflicts which had engulfed the country since 1994. The conflict resulted in the death of approximately 300,000 people before it was finally brought to an end by the Arusha Peace Agreement, which created a new constitutional dispensation for Burundi. The new Constitution was submitted to the population for its consideration in 2005 through a referendum. In a rare show of solidarity in Burundi, the new Constitution received a resounding endorsement by the people and set the stage for the first democratic elections since 1993.

Democratic elections

10. The elections, which were overseen by a newly created independent electoral commission and were won by CNDD-FDD, were hailed by most observers as reflecting the will of Burundian people. They resulted in the elections of new members of the National Assembly, the Senate and the President, local administrations and the establishment of the current administration.

New national army

11. The civil war had produced two rival armies that needed to be moulded into a national army if the peace that had resulted in the creation of new State institutions was to be consolidated. The integration of these two mutually distrusting forces into a national army was seen as one of the most challenging tasks for the leadership of the country. Many, if not most observers gave little chance to the successful achievement of the goal of a national army within the time that it has taken for it to be achieved. Three years later, the Burundian army has a national outlook within the framework of the Arusha Agreement, which in this respect gives the two ethnic communities equal representation in the forces.

New national police force

12. As was the case with the military, the two rival armies had their own police forces that had to be nationalized. This has now been achieved and Burundi now has a police force that is integrated and consistent with the Arusha Agreement.

Demobilization

13. The demobilization of former combatants in the rebel forces was a matter of great concern to both the Government of Burundi and the international community, particularly when considering that there were, and still are, few opportunities for employment. A programme funded by the World Bank to enable demobilized combatants to return to civilian life succeeded in at least temporarily addressing the problem.

Parallel justice systems

14. The former rebel group that joined the peace process under the Arusha Agreement ran its own separate judicial system that dispensed justice in an informal way. People accused of criminal or other violations of the law were subjected to trial outside the institutional machinery of justice, and were therefore deprived of the usual judicial safeguards. Those convicted were held in informal custodial institutions under the control of the rebels. This parallel system of justice has now been abolished since the integration of rebel forces into the national security ones.

Child soldiers

15. The conflict produced the phenomenon of child soldiers, who either joined the rebel movement voluntarily or were conscripted. One of the greatest challenges facing the Government was how to deal with these children following the cessation of hostilities. The problem was partly solved thanks to the collaboration of the international community and the transitional and current Governments of Burundi. There are still allegations of child soldiers among the remaining rebel movement of FNL-Palipehutu.

Political prisoners

16. The war in Burundi generated a large number of self-declared “political prisoners”, who had been arrested by the Government forces and detained. Following the Arusha Peace Agreement and the subsequent elections, the Government released many of these prisoners, some of whom had spent long periods in detention, either without ever having been brought to court to face charges, or having served sentences which included, in some cases, the death penalty. This solution has defused a potentially explosive problem, but has at the same time resulted in the release of people who have committed serious crimes, such as murder and rape.

Emergence of a free media

17. A culture of free information has been virtually absent in Burundi, as each succeeding Government has sought to control information, which is available to the public through the use of Government-controlled radio and television. Following the introduction of the new constitutional dispensation, a new and independent media began to assert itself, but inevitably ran into problems with the new Government. Following a period of intense conflict, during which a number of journalists were arrested, beaten and imprisoned, the media are now free to report on all manner of things, including matters of public interest.

Birth of civil society

18. Until recently, Burundi had one of the weakest civil society presences in the region. As was the case with the media, its emergence after the new political changes was not without trauma. At first, the Government appeared determined to control or destroy emerging non-governmental organizations, many of which were active in advocating greater accountability on the part of public officials. After systematic harassment, which included imprisonment of some actors, an uneasy calm now prevails.

Social programmes

19. On the social and cultural fronts, the current Government has taken some commendable steps to implement programmes that have contributed to the realization of certain economic, social and cultural rights. Notable examples in this regard are decisions to provide universal primary education and free medical assistance to expectant mothers and children under five years of age, which were implemented in 2006. These programmes were announced by the Government without adequate preparation, but are being partially implemented with the support of the development partners of Burundi.

20. The little progress that recent Governments of Burundi have made in the social sector is the result of collaboration with the international community. Such examples have been noted by the independent expert and are covered in his previous reports. The independent expert interpreted his mandate as entailing work with, rather than against, the Burundian authorities, with a view to helping them realize the goal of the promotion and protection of human rights. The Government of Burundi deserves to be congratulated on the efforts that they have made to find solutions to these difficult problems within a relatively short period of time.

III. POLITICAL AND INSTITUTIONAL CONTEXT

21. Relations between the Government and opposition parties deteriorated in the second half of 2007. The situation was characterized by the harassment of members of the opposition, dissenting members of the ruling party and tension between the Government and Parliament. Opposition political parties issued statements against the ruling party and called on members of their own parties who had been appointed to ministerial positions in the Government to leave them. The National Assembly was also paralyzed during that period owing to the absence of opposition parliamentarians. The situation worsened in August 2007, when the residences of five prominent opposition political figures were attacked with grenades in Bujumbura by unidentified individuals. The main opposition party, the Front pour la démocratie au Burundi (FRODEBU), publicly accused the Government of having carried out the attacks. Three of the targeted members of the opposition belonged to a group of 67 Members of Parliament who had addressed a letter to the President on 16 August 2007, expressing concern at the tense political situation and urging him to reopen dialogue with the opposition.

22. At the time of the independent expert's visit in December 2007, the situation had improved. The President of Burundi and political parties from the opposition had reached an agreement to form a new Government to reflect the composition of Burundian society and, to some extent, the provisions of the interim Constitution. The agreement provided for the allocation of ministries on the basis of the number of seats that a party had won in Parliament in the elections. The new Government is composed of ministers and deputy-ministers representing both genders and different political parties and ethnic groups.

23. In February 2008, shortly after the agreement was reached, the situation worsened when a political crisis erupted at the National Assembly. Parliamentarians from the opposition boycotted all sessions to protest against the methods used by the ruling party to dismiss the First Vice-President of Parliament at the end of January 2008.

24. In March 2008, unidentified individuals threw grenades at the houses of four members of Parliament. The targets included the residence of the former national Assembly First Vice-President, as well as those of three dissidents of the ruling party. The attacks seemingly corroborated the security concerns expressed by 46 parliamentarians in a letter sent to the Secretary-General on 28 February 2008.
25. Following the appointment of the new cabinet on 14 November 2007, the political situation in December remained fragile. By April 2008, the political bickering and gridlock in Parliament persisted, leading to a decision by the chairman of the ruling party to write to the President of the National Assembly, requesting him to refer the situation of rebel members of Parliament belonging to the ruling party to the Constitutional Court for consideration. In compliance with that request, the matter was referred to the Court, which ruled that the 22 members were sitting in Parliament in violation of the Constitution. The members concerned lost their seats in Parliament, after which the President appointed new party loyalists to replace them, thus allowing the ruling party to regain its majority in Parliament.
26. The decision was widely condemned by jurists and ordinary Burundians, who regarded it as a clear attempt by the executive to use the judiciary for political objectives. The independent expert spoke to representatives of the affected members of Parliament, the international community in Burundi, as well as to the head of the local bar association, and was informed that the articles of the Burundi Constitution relied on by the Constitutional Court to arrive at this decision were irrelevant to the case. In their view, the decision was politically motivated.
27. The decision by the Constitutional Court has exacerbated the precarious political situation. The independent expert met representatives of all major political parties, including the ruling party. Opposition parties complained about the lack of political space, as they faced harassment by security organs of the State whenever they wanted to hold meetings; while the ruling party was free to hold rallies without any hindrance whatsoever, opposition parties were barred from holding any meetings at all. The independent expert was given letters written by the authorities to FRODEBU, which clearly stated that they were forbidden from holding any meetings. This situation is aggravated by the fact that, for all intents and purposes, the campaign for the 2010 elections is now under way. Denying other political parties the right to hold meetings is tantamount to denying them the right to compete in the forthcoming elections. Furthermore, the Government has refused to register one political party from the opposition.
28. The political situation is further complicated by the fact that the leadership of the FNL movement had returned to the capital without official status. While the return of the leadership of FNL-Palipehutu to Bujumbura is a positive development, it has complicated the political equation owing to the lack of progress in the implementation of the ceasefire agreement. FNL-Palipehutu demanded to be registered as a political party and that their forces be integrated in the security apparatus of the country. The Government rejected this demand and proposed instead that, in accordance with the ceasefire agreement, the combatants be gathered at designated camps; after the verification process, some of them could be absorbed in the security organs, while others would be demobilized. With regard to registration of the party, the Government has pointed out that the name, which has ethnic connotations, is unacceptable as it offends the country's Constitution.

29. The lack of dialogue between the Government and the opposition, the ban on meetings by opposition parties and the lack of progress in finding a mutually acceptable solution with FNL-Palipehutu have created a highly explosive situation in Burundi. The threat of violent confrontation is widely evoked in Burundi, and should not be taken lightly, for several reasons. Firstly, the history of the use of violence to settle political disputes in Burundi is undeniable. Since gaining its independence, the country has never known real peace, as parties seeking to assert their perceived rights, or some presumed justice, have resorted to the use of armed force against their opponents. These periodic outbreaks of violence have led to serious violations of human rights. Secondly, the presence of firearms (estimated to be about 300,000) in the hands of the population constitutes a real threat to peace in an atmosphere that is politically complex. Thirdly, there is a large pool of discontented demobilized combatants with no gainful employment, whose susceptibility to political manipulation cannot be doubted. Fourthly, the current economic situation in the country, characterized by high unemployment, high prices of commodities and perennial food shortages, forms a ready-made breeding ground for recruitment.

30. The opposition politicians have appealed for intervention by the international community if the prospect of a bloody conflict is to be averted. However, the Government does not seem to see the need for such intervention and still believes that the country is going well and the Parliament is functioning well since the exclusion of the 22 parliamentarians.

31. The independent expert appeals to the international community to help Burundians find a solution to the current crisis. It is evident that the international community is fully aware that there is an impending danger to peace in Burundi, however, it seems too constrained by self-imposed diplomatic niceties, or too preoccupied with the semblance of a functioning Parliament - be that at the expense of the Constitution - to speak plainly to the protagonists. The independent expert recommends that, whatever the constraints, the international community must engage with the Government and the opposition in order to prevent another crisis in the country.

A. Security

32. The security situation is characterized by an increase in armed attacks mainly targeting cars by alleged FNL members. As a result, a significant number of civilians were killed during the reporting period. Some of the victims were members of the opposition or former demobilized combatants of CNDD-FDD. Moreover, it was reported that 18 people, members of opposition parties, were allegedly murdered in early 2008 by members of the Service national de renseignement (SNR). This information was corroborated in Burundi by members of civil society and by the United Nations.

33. The independent expert was also informed that FNL had split and that several combatants had left the movement to join the demobilization centre in Bujumbura Rural. The FNL leadership rejected this allegation and blamed the Government for creating dissidents to weaken FNL-Palipehutu and its armed wing. A group claiming to be made up of FNL dissidents arrived in August 2007 in Bujumbura Rural and joined a temporary demobilization centre in Citiboke. On 4 and 5 September 2007, an armed confrontation broke out between self-declared FNL dissidents and loyalists in Bujumbura Mairie and Cibitoke provinces. As a result, more than 20 FNL dissidents were killed and a significant number of local residents left their homes for fear of further attacks.

34. On 28 December 2007, alleged FNL-Palipehutu members simultaneously attacked three Forces de défense nationale (FDN) positions in the commune of Musigati Bubanza province. The attack led to the killing of one FDN soldier and the wounding of another, together with a civilian. A house was also destroyed and inhabitants of three collines in the commune were forced to leave their homes during the night for security reasons. Another confrontation took place on 9 January 2008, in the same commune, during which five alleged FNL members were reportedly killed and three FDN soldiers were wounded.

35. In another development, hostilities broke out between FNL-Palipehutu and FDN on the evening of 17 April 2008. According to information gathered during the mission, FNL was responsible for opening hostilities with heavy weapons on the Government forces around Bujumbura. There was indiscriminate shelling of targets in Bujumbura as well as in the surrounding provinces, with civilian casualties and damage caused to civilian installations, including the University of Burundi, diplomatic missions and private residences. There were reports of retaliation against civilians and the use of civilian installations as shields, in addition to military operations in populated areas. For example, on 21 April 2008, three civilians were killed and eight wounded during different attacks in Gihanga commune, Bubanza province. In addition, two alleged FNL members were killed by FDN soldiers in Bugarama commune, Bujumbura Rural province.

36. As a result, the Government arrested more than 1,000 alleged FNL members, including 17 girls who were in secondary schools in Bujumbura Rural province. The girls were released upon the intervention of the communal authorities. On 24 April 2008, the Human Rights and Justice Section of BINUB visited 38 alleged FNL members in two holding cells in Bujumbura Mairie province and several others in Kayanza province holding cells in April 2008. This situation has been quite worrying as there have already been reports of human rights violations regarding such arrests. The fact that alleged FNL members were arrested and detained although they did not participate in combat or are not accused of any alleged offence is a clear violation of the ceasefire agreement.

B. Transitional justice

37. The independent expert noticed some progress towards the establishment of the mechanisms of transitional justice in Burundi. The Government and the United Nations signed an agreement on 2 November 2007 for the establishment of a tripartite steering committee, composed of representatives of the Government, civil society and the United Nations. Its role is to organize national consultations on transitional justice mechanisms. While the establishment of the committee represents an important step forward, questions related to the special tribunal and its relationship with the truth and reconciliation commission remain. These should be the subject of further discussions between the United Nations and the national authorities at an appropriate time in order to ensure that the most serious crimes committed during the Burundian conflicts are investigated and perpetrators are brought to justice.

38. The independent expert learned that the steering committee had been faced with the problem of lack of funds and logistics, which had hindered the start of its work. Some members of the committee complained about the lengthy procedures for disbursement of the Peacebuilding Fund. At the time of the visits, funding for the project, some 100 million United States dollars, had been approved by the Fund. It is important to recall that the steering

committee was unable to work properly because of lack of respect of the agreement of 2 November 2007. Several meetings were adjourned unilaterally by the president of that committee. It was reported that some representatives of the Government and civil society were under pressure from the Government to focus the work of the committee on national reconciliation rather than on the truth and reconciliation commission and the special tribunal.

39. The whole process was to run for 12 months from the approval of the project by the Peacebuilding Fund in June 2008. It is obvious that there will be a delay in the process because of the methodology proposed by the members of the steering committee, which requires all members to participate in all consultations in the country, instead of having separate meetings under the leadership of each member. Given the size of the country and the maximum numbers of the participants expected, this methodology will inevitably create an additional burden on the committee.

40. In the meantime, some members of the diplomatic corps and international non-governmental organizations have set up a group called the "Friends of Burundi", to support the transitional justice process. The aim of this initiative is to reiterate the interest of the international community in the process and to foster dialogue between stakeholders. It is to be composed of the representatives of the European Union, the African Union, Norway, South Africa, Switzerland and the United States of America.

C. Independent national human rights commission

41. Progress was made in the process of establishing an independent national human rights commission during the reporting period. The Government of Burundi had included the establishment of such a commission in the formulation of its poverty reduction strategic plan as a priority for the period 2006-2009. In his reports to the General Assembly (A/61/360, para. 118) and to the Human Rights Council (A/HRC/4/5, para. 91), the independent expert recommended that the international community should support the Government in establishing a credible and independent human rights commission in order to reinforce the national capacity to protect and promote human rights in Burundi.

42. The international community, through the Peacebuilding Commission, approved a project to support preparatory consultations in view of the establishment of an independent human rights commission. The Preparatory consultations were launched at a major gathering on 26 December 2006 by the President of Burundi. The project is one of a number of priority projects for peace consolidation in Burundi and was coordinated by the ministry in charge of human rights. It also benefited from the support of other partners, namely BINUB, OHCHR and the United Nations Development Programme. The inaugural workshop was followed by a series of sensitization activities, such as seminars and media debates on national human rights institutions, between May and December 2007, in all regions of the country. Participants included human rights non-governmental organizations, the media, religious groups, defence and security forces, women and youth groups, the Batwa minority group and community elders (*Bashingantahe*).

43. The workplan and the budget of the proposed commission were approved on 25 February 2008 by the follow-up technical committee, which was composed of members of the Government and civil society. However, the budget was not included in the national budget because of the absence of an enabling law.

44. During his second visit, in June 2008, the independent expert was informed that the law on the mandate, composition and functioning of the independent national human rights commission was under consideration by the Government. However, it remains to be seen whether that law will provide a strong mandate to the commission according to the Paris Principles. In this regard, the independent expert calls on the Government of Burundi to approve the draft law that was presented by the Ministry of Human Rights and present it to Parliament without delay.

IV. HUMAN RIGHTS SITUATION

A. Major human rights violations and abuses

1. Violations of the right to life

45. During the reporting period, several cases of violations of rights to life were committed by law enforcement agencies and the rebel movement. For example, police officers killed two SNR members in Rutana province on 10 December 2007. The police claimed that they were killed during an operation to dismantle a network of bandits. This claim was contradicted by civil society representatives and the local population, who indicated that the victims' bodies were found tied together in the river on 11 December 2007, with bullet wounds in the temple, which suggested that they had been summarily executed.

46. It was reported that FNL-Palipehutu combatants summarily executed a man and his two sons accused of witchcraft in Bujumbura Rural in November 2007. It seems that the victims were in conflict with their neighbours over a plot of land. This act demonstrates the incapacity of governmental forces to protect civilians in Bujumbura rural areas, where FNL combatants are still operating.

47. A soldier was arrested on 25 September 2007 in Makamba for allegedly killing a man whose motorcycle he had taken and kept on the premises of the fifth military region. At the time of the visit, the independent expert was not able to confirm whether he was still in detention. In addition, on 30 September an SNR staff member killed a civilian in Quartier Heba, Kamenge commune, in Bujumbura Mairie province. After the killing, members of the public attempted to lynch the killer. He was rescued by the authorities, taken to a hospital, then transferred to a safe place.

2. Violations of the right to physical integrity

48. Respect for the right to physical integrity improved slightly in the second half of 2007. This might be the result of intensive advocacy and training sessions organized by human rights non-governmental organizations and BINUB. During his visit the independent expert was told that the training sessions targeted law enforcement personnel as well as the administrators who had allegedly been involved in physical abuse of suspects. However, in the first half of 2008, allegations of ill-treatment committed by the security forces and the combatants of

FNL-Palipehutu remained a great concern. For example, a 20-year-old female student from Kabonga high school, Nyanza-Lac town in the province of Makamba was raped by a military officer on 25 September 2007. The victim also received injuries to the face and abdomen because she attempted to resist the act. Relatives of the perpetrator put pressure on her to marry the officer. The girl resisted and brought the case to justice. The authorities opened an investigation and arrested the perpetrator. In December 2007, the independent expert was informed that the perpetrator was in custody at the fifth regional military region awaiting military trial.

49. It was also reported that some cases of violation of the right to physical integrity were committed by the police during operations to combat acts of banditry. In some cases, police opened fire against criminals without trying to arrest them; in other cases, violence was committed during acts of robbery against the public. One of the most serious cases was the killing of a man and the injury of another by a police officer in an attempted robbery in Ngozi province on 24 November 2007. In reaction to this act, it is reported that the public beat the police officer to death.

3. Violations of the rights to assembly and freedom of expression

50. Freedom of expression and the right to assembly in Burundi are of great concern to opposition parties. The Government, through province governors and commune administrators, has consistently denied the exercise of these rights to opposition parties. According to information received, only the ruling party can organize meetings without authorization. This practice has been denounced by several non-governmental organizations and civilian organizations in Burundi.

51. The independent expert received copies of several letters from administrators of various provinces in which the authorities denied opposition parties the right to organize ordinary meetings. For example, on 9 March 2008, the administrator of Matongo commune in the province of Kayanza sent a letter to the President of FRODEBU of that commune, in which he stated that all FRODEBU meetings were forbidden. He further explained that this decision had been taken by the governor of the province on 20 February 2008. According to Burundian law, such political meetings do not require any authorization from the authorities; the organizers of such meetings need only to send a note to the local administration for information.

52. The independent expert is very concerned about the violations of the right to freedom of assembly in Burundi. The Government appears to be determined to muzzle any political party that might challenge the ruling party during the coming elections in 2010. This situation is very worrying because the ruling party controls all administration in the country. Some administrators who were elected from other political parties have been removed by the Government, especially in Bujumbura Rural province. Continuation of the situation may lead to confrontations between law enforcement agencies and the opposition because the latter confirmed that they will organize meetings by force if they are prevented from doing so peacefully.

53. The independent expert appeals to the Government to stop such discriminatory policies, as they may lead to serious confrontations between the Government and the political parties affected. In this regard, the international community must play an active role in providing technical assistance to the Government in order to better handle the preparation of the

forthcoming elections. The international community must be more engaged in order to secure an appropriate environment for this process; otherwise, Burundi could be plunged into another cycle of violence, which would threaten the stability of the region.

4. Sexual violence

54. There has been an increase in cases of sexual violence in Burundi since the last trimester of 2007. From January to September 2007, the Human Rights and Justice Section of BINUB registered 609 cases of sexual violence, including rapes. Sexual violence against women and children remains widespread. A significant increase in the incidence of gang rape has been recorded since the beginning of 2008. The majority of cases are committed by civilians, including minors. Most cases do not reach court because the perpetrators are released during the pre-judicial investigations, or escape from police cells. Cases that reach court reportedly rarely reach a judgement because procedures are too lengthy and cumbersome for both the victims and witnesses. It is reported that some of the cases are committed within police premises; for example, on 17 January 2008, at about 10 p.m., in the holding cell of Musaga commune, Bujumbura Mairie province, a police officer raped a 16-year-old girl. A second officer also attempted to rape her, but was stopped from doing so by another police officer, who was alerted by the screaming of the victim. The police officers were arrested on 19 and 20 January, respectively. However, on the night of 20 to 21 January, the perpetrators escaped from the police station, though one was later arrested the same night.

55. Many cases of sexual violence continue to be settled amicably outside the court. Families of the offenders continue to offer compensation to the families of the victims or propose that the offenders marry the victims. This practice is allegedly conducted with the support of some administrative and police officials. Consequently, the phenomenon of sexual violence remains high and there is little hope that it will decline in the foreseeable future.

56. This phenomenon will not be ended until the criminal justice system is reformed and laws are in line with international human rights standards. The current laws have contributed to the impunity for rape. Non-governmental organizations believe that all levels of authority, from the relevant ministries to the commune, should be more involved in the fight against sexual violence. They need to make a public commitment to tackle this issue and order the relevant law enforcement agencies to punish the perpetrators of sexual violence with extreme severity, according to the provision of the law. The Ministry of National Solidarity, Human Rights and Gender Issues explained that the increase in the incidents might be related to more reporting to the police because of the sensitization which the Government, the United Nations and civil society have been carrying out since the sixtieth anniversary of the Universal Declaration of Human Rights.

57. The independent expert was informed that the draft family and inheritance law had been analysed in 2006 by the Government. Discussions on this law have been ongoing for more than eight years and it is important that the Government submit it to Parliament as soon as possible.

B. Impunity

1. Gatumba massacre

58. No progress has been made by the Government of Burundi to address the massacre of 119 Congolese people in Gatumba, where mostly children and women were killed in September 2004. According to the authorities, a judicial investigation commission was established in October 2004 by the Ministry of Justice to identify the perpetrators. Two people were arrested in connection with the massacre. The Government explained that the commission could not produce a report because of lack of cooperation from the Government of the Democratic Republic of the Congo. The Prosecutor-General stressed that the commission would have to go to that country to interview people who might have information on the massacre. Unfortunately, the Government of Burundi did not make any request to its counterpart in the Democratic Republic of the Congo to appoint a magistrate for that commission. According to civilian sources, FNL-Palipehutu was involved in the massacre and the Government feared that the publication of the report would jeopardize the peace process with FNL-Palipehutu.

59. As mentioned above, the authorities of Burundi arrested two people who had allegedly participated in the massacre. During his visits, the independent expert met one of them; the man not only denied his involvement, but also informed him that he had never been taken to court since his arrest in 2004. The independent expert appeals to the Prosecutor-General to take the detainee to court for a fair trial.

60. The independent expert is very concerned about the lack of interest of the Government in the massacre, despite Security Council resolution 1577 (2004), in which the Council requested the Government to investigate the matter and ensure that those responsible were brought to justice. The independent expert is of the opinion that only continued pressure from the international community will convince the Government to get to the bottom of this matter.

2. Muyinga massacre

61. In his previous reports (AHRC/4/5, A/62/213), the independent expert expressed his great concern at the lack of political will to bring to justice those who participated in the Muyinga massacre;¹ indeed, there appears to be an attempt by the Government to use all kinds of legal and administrative technicalities to prevent full disclosure of the facts pertaining to the massacre. The findings of the various commissions set up by the Government to investigate the case have never been made public. The Prosecutor-General informed the independent expert that the case was transferred to the Auditorat militaire court in April 2007, because the third commission had found that no civilians had been involved in the massacre. The Auditorat militaire confirmed that they had received the case, investigations were ongoing and that the case would be heard within months. The Prosecutor added that all information gathered by the commissions has been added

¹ Between May and July 2006, about 30 people were arrested, disappeared or summarily executed in Muyinga.

to the case. However, there will be no public report on the Musinga massacre because all the commissions were judicial and not political. The decision not to release the report was taken in conformity with criminal law in Burundi.

62. It should be recalled that several judicial inquiries into the Musinga massacre have been held in the past two years. They disclosed the involvement of some civilians, the former commander of the 4th military region Colonel Vital Bangirimana and some of his officers. Two officers were arrested in September 2006, but Colonel Bangirimana was transferred to FDN Headquarters in Bujumbura in the middle of 2007. The accused officers testified before the members of the judicial commission of inquiry that Colonel Bangirimana had ordered the removal of 31 people from the military camp and their transfer to the Ruvubu Park, where they were executed. In October 2006, the president of the first commission of inquiry issued a warrant for the arrest Colonel Bangirimana, but it was never executed.

63. On 21 January 2008, Colonel Bangirimana left Burundi for the United Republic of Tanzania. Before leaving, it is reported that he made a public announcement, alleging the involvement of some senior members of the Government in the massacre. He claimed that he had received an order from the Minister for Defence to execute all suspected members of FNL-Palipehutu in Musinga province. The Minister denied these allegations in a press conference.

64. The Government of Burundi confirmed that, on 6 February 2008, an extradition request had been addressed to the Government of the United Republic of Tanzania concerning Colonel Bangirimana. In addition, a formal order was reportedly sent to all police and military staff to arrest him if seen on Burundian territory. The request, however, remains to be implemented by the Government of the United Republic of Tanzania.

65. At the time of his most recent visit, the independent expert noted that no concrete action had been taken to extradite Colonel Bangirimana since he fled Burundi. Moreover, on 3 June 2008, the military court declared that it had no jurisdiction to hear the case because the two military officers who had been charged had been demobilized by the institution. The independent expert regrets that the military court did not consider the status of the perpetrators at the time they committed the crime. An appeal was lodged by the defence lawyer against the decision of the military court, but it is not known when the case will be heard.

66. The independent expert regrets that civilians from the administration who were arrested in connection with the massacre were released by the Prosecutor-General without trial. The Prosecutor-General ignored the conclusions of the two first investigations, which implicated the Director of the intelligence office in Musinga and other members of the local council who allegedly arrested the victims and transported them to the military camps in the Director's car. Such a decision rejects the lack of political will of the Government to bring to justice those accused of participating in the massacre.

67. The lack of transparency and commitment by the Government of Burundi to fight impunity remains a matter of great concern to the independent expert, who is of the view that the Government is not interested in prosecuting the perpetrators of this heinous massacre. It prefers instead to use dilatory tactics until the international community loses interest in the matter.

C. Judicial reform

68. The administration of justice remains weak and contributes to an increase in cases of mob justice which is prevalent in the country. From January to June 2008, more than 23 cases of mob justice were reported in almost all provinces. Victims of mob justice include people suspected of all manner of offences, even those suspected of practising witchcraft. Lack of confidence in the police and the judiciary are a major explanation for this trend. In addition, allegations of interference by political and executive organs in the judicial functions to shield the perpetrators of most cases of human rights violations contribute to the weakness of the judiciary.

69. Prisons in Burundi remain overcrowded. The system is faced with serious challenges in terms of lack of capacity and equipment. The majority of detainees in most prisons have been awaiting trial for more than a year. There is no clear procedure for detainees to challenge their pretrial detention. The lack of capacity of the judiciary to investigate and the poor management of cases contribute to the overcrowded situation in prisons. The Prosecutor's office has not been very successful in taking an active part in the management of cases before hearings. The practice of taking cases to court without a proper investigation and the failure to apply rules of procedure consistently are also contributing factors. Poor record-keeping and the lack of coordination in handling witnesses and suspects have often resulted in non-appearance before courts. In addition, it was reported that court files often disappeared.

70. Detention beyond the legal limit, illegal detention and detention for minor offences were among the main irregularities noticed. In most cases, prolonged detentions were attributed to a lack of means to transport detainees from holding cells to courts for hearings or from cells to prisons. Several strikes by non-magistrate judicial personnel during the reporting period further delayed the handling of cases.

71. In his previous reports (A/HRC/4/5, para. 91; A/62/213, para. 61), the independent expert called upon the international community to support the effort of the Government of Burundi to reform the judiciary. During his visits, it was noted that the European Union, the Department for International Development of the United Kingdom and the United Nations were funding the rehabilitation of some judicial infrastructures in Burundi. Two projects to be funded by the Peacebuilding Fund had been approved and implemented: to rehabilitate courts, and for the enforcement of judgements passed by courts. Several courts had been refurbished and equipped by the European Union and international non-governmental organizations. Different international non-governmental organizations and BINUB have provided training for judicial personnel. With the collaboration of OHCHR, the draft revised penal code was submitted to Parliament in the second half of 2007, while the draft revised procedural penal code is still with the Government.

72. However, those programmes and investments cannot achieve the desired results if the Government and judicial personnel do not commit themselves to reinforcing the administration of justice and respecting due process with regard to the cases brought to court. The Government should provide more resources to the judicial system and judges should be more accountable for actions taken or omitted during their professional activities. Allegations of corruption and lack of professionalism in dealing with criminal cases need to be fully investigated in order to restore public confidence.

D. Economic, social and cultural rights

73. As in the independent expert's previous reports, violations of economic, social and cultural rights remain a great concern. The Government put in place a programme of free primary education in 2006. The programme has received support from the international community through bilateral and multilateral cooperation. Some development cooperation programmes have provided long-term support to the Ministry of Education to improve education in Burundi. According to information received, more classrooms will be built, teachers will be trained and materials supplied.

74. A programme of free medical care for pregnant women and children under 5 years of age has been launched, although hospitals and health centres are still waiting for allowances from the Government, which arrive with huge delays. In addition, there are still cases of people who are forcibly kept in hospital because they cannot pay their medical fees.

75. The independent expert visited Maison Shalom, a non-governmental organization in Ruyigi, run by a remarkable woman named Maggie Banakiste, that provides a home for orphans of war, who are handed back to relatives once they have been traced. Maison Shalom has just opened a new hospital, which provides health care for mothers and children. All individuals have access to the hospital through an integrated programme based on reciprocity. This hospital shows how community-based initiatives can ensure the enjoyment of the rights of vulnerable groups, and economic and social rights to its direct beneficiaries and the whole community.

E. Activities of the human rights community

76. Many promotion and capacity-building activities were carried out during the period under review by the Human Rights and Justice Section of BINUB, human rights non-governmental organizations and the Ministry for Human Rights in Burundi. These activities targeted stakeholders in the judiciary, military, law enforcement and civil society organizations. They addressed a wide range of issues, such as juvenile justice, due process, family law, sexual violence, land issues and transitional justice.

77. Furthermore, the United Nations and the community of human rights non-governmental organizations organized a number of promotional events to mark the end of the 16-day campaign against sexual violence and the 59th anniversary of the Universal Declaration of Human Rights on 10 December 2007. On 7 February 2008, the deputy Minister for Human Rights and Gender Issues and the Representative of OHCHR officially launched a one-year campaign aimed at promoting the Universal Declaration on Human Rights in the media on the occasion of its 60th anniversary. The ceremony was followed by a discussion on the contents of the Declaration with media professionals, representatives of the central administration and of national and international organizations.

78. In this context, different thematic activities were organized in many parts of the country during the period under review, including awareness-raising initiatives, training sessions, workshops, media debates and media educational programmes. In this regard, BINUB and OHCHR organized a workshop on 18 and 19 February 2008 on the follow-up to the recommendations of the Committee against Torture. A total of 15 representatives from ministries, law enforcement, civil society, medias, the magistrature, the Bar association and

others took part in the event, which was officially launched by the deputy Minister for Human Rights and Gender Issues. Participants made recommendations to the Government in relation to legal reform, the independence of judges and lawyers, sexual violence and conditions of detention.

79. Furthermore, the Human Rights and Justice Section of BINUB held a regular monthly briefing for the diplomatic corps and United Nations agencies in Burundi to inform them about the development of human rights. These briefings addressed many issues related to the current human rights situation, such as the establishment of transitional justice mechanisms, the situation of the judiciary and penitentiaries and the setting-up of an independent national commission on human rights.

V. CONCLUSIONS AND RECOMMENDATIONS

To the Government of Burundi

80. **The independent expert urges the Government to allow all political parties to carry out their political activities without undue restrictions. He further urges the Government to allow the registration of all political parties in compliance with the Constitution.**

81. **The independent expert calls upon the Government and FNL-Palipehutu to continue their work in all mechanisms foreseen by the Comprehensive Ceasefire Agreement in order to implement it fully and without delay.**

82. **The independent expert welcomes the signature of the peacebuilding project by the Government and the United Nations to organize national consultations on the establishment of a truth and reconciliation commission, and urges the Government to speed up the process of establishing transitional justice mechanisms, in fulfilment of its international undertakings to this end.**

83. **The independent expert calls upon the Burundian authorities to investigate incidents of sexual violence fully and to bring those who have committed such crimes to justice.**

84. **The independent expert commends the Government of Burundi and the Peacebuilding Fund and the Office of the United Nations High Commissioner for Human Rights for supporting the process to establish a national human rights commission, and urges the Government and Parliament to ensure that the law enabling the commission is in line with the Paris Principles.**

85. **Since his previous report to the General Assembly, the independent expert notes that no progress has been made by the Government of Burundi to conclude its investigations into 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.**

86. **The independent expert deplores the failure of the Government to prosecute individuals involved in the Muyinga massacre and urges the authorities to bring those responsible for it to justice.**

87. The independent expert calls upon the Government to investigate all human rights violations and bring its perpetrators to justice.

To the international community

88. The independent expert urges the international community to use all means possible to ensure that the process leading to the 2010 elections, and the elections themselves, are free and fair.

89. The independent expert thanks the international community for its support to reform the justice system in Burundi, particularly the Peacebuilding Commission. He urges it to redouble its efforts to allow the country to achieve an impartial justice system with a solid infrastructure.

90. The independent expert calls on the United Nations and the Regional Initiative on Burundi to remain engaged with the Government of Burundi in order to better assess the situation and provide technical assistance to the Government prior to the organization of the elections in 2010.

91. The independent expert urges the international community to press the Government of Burundi to complete the investigation into the Gatumba and Muyinga massacres and to prosecute the perpetrators.

92. The independent expert encourages the Peacebuilding Commission to continue supporting the Government of Burundi in disbursing the necessary funds to implement the development plan for the period 2007-2008. In this regard, he calls upon the Government of Burundi and the implementing partners to strengthen their cooperation and coordination in order to avoid any delay in the reconstruction of Burundi.

93. The independent expert commends the international community for its pledges. He urges the community of donors to release the funds pledged at the Paris, Geneva, Brussels and Bujumbura conferences, and recommends that the international community support the efforts of the Government of Burundi to respect and promote human rights.
