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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 eleventh, twelfth and thirteenth visits to Burundi, which were conducted from 19 to 30 January 2009, from 30 November to 11 December 2009, and from 23 to 29 May 2010, respectively.

The Independent Expert submitted a report on his ninth and tenth visits to the country from 2 to 8 December 2007, and from 29 June to 12 July 2008, to the Human Rights Council at its ninth session (A/HRC/9/14). In that report, he welcomed the agreement between the Government and the United Nations regarding national consultations, facilitated by the Peace Building Project, on the establishment of a Truth and Reconciliation Commission and a Special Tribunal. Ever since, he has consistently urged the Government to speed up the process of establishing these transitional justice mechanisms in fulfilment of its international commitments to this end. He also called upon the Government and the Parliament to ensure that the law establishing the National Human Rights Commission is passed without further delay and in line with the Paris Principles. Finally, the Independent Expert noted that no progress has been made by the Government of Burundi in its investigations into the Gatumba and Munyinga massacres and bringing the perpetrators to justice.

In the present report, while noting some achievements in terms of peace-consolidation, institution and capacity building, and the enactment of some progressive laws, the Independent Expert observes a significant deterioration in the situation of human rights before and during the 2010 electoral period. He further scrutinizes progress in establishing transitional justice mechanisms and an independent national human rights commission. He also points to areas of concern, including impunity, the situation of vulnerable groups, gender-based violence, the judiciary, prison conditions and the overall situation in terms of economic, social and cultural rights.

Regarding the electoral context, clashes between politically affiliated youth, as well as several apparently politically motivated killings were reported ahead of the communal elections of 24 May 2010. Amid allegations of procedural irregularities, the security situation worsened, with a massive increase in grenade attacks. Seventy-two of

them were recorded in June prior to the presidential elections of 28 June, which was marked by three large explosions in Bujumbura. Numerous reports alleging arbitrary arrests, intimidation, and ill-treatment of members of the opposition were also shared with the Expert. It is particularly regrettable that allegations of torture reappeared, following two years during which no systemic use of torture had been reported. All these issues are being addressed by the Human Rights and Justice Division of the United Nations Integrated Office in Burundi (BINUB) in the context of its monitoring and reporting activities throughout the country.

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## I. Introduction

1. The present report is submitted pursuant to Human Rights Council Resolution 9/19 adopted in September 2008, in which the Council decided to extend the mandate of the Independent Expert on the situation of human rights in Burundi until an independent human rights commission is established. On 21 April 2010, the Independent Expert requested permission from the Human Rights Council (HRC) to submit his final report related because his mandate was coming to an end without an independent human rights commission having been established. By letter dated 25 May 2010, the President of the Council granted the Independent Expert permission to submit the present report. However, due to unforeseen circumstances, the Expert was unable to attend the 14<sup>th</sup> session. He therefore suggested that the report should be circulated as a conference paper during the interactive dialogue with the HRC's members during the 15<sup>th</sup> session. However, the Independent Expert recommends that the Human Rights Council decide on a more predictable way for the mandate holder on Burundi to update it on the human rights situation until the establishment of an independent human rights institution.

2. The present report covers the Independent Expert's eleventh, twelfth and thirteenth visits to Burundi, which were, respectively, conducted from 19 to 30 January 2009, from 30 November to 11 December 2009, and from 23 to 29 May 2010, and particularly focuses on:

- Progress made by the Government in creating conditions conducive to the full enjoyment of human rights;
- The political situation and its impact on the full realization of human rights, including during the electoral period;
- Implementation of recommendations regarding the establishment of transitional justice mechanisms and progress made by the Government in relation to the creation of an independent national human rights commission;
- Progress in the investigation of the Muyinga and Gatumba massacres as well as of the murder of the Vice-President of OLUCOME;
- The independence of the judiciary and prison conditions;
- The overall situation of economic, social and cultural rights.

3. The Independent Expert wishes to thank the Government of Burundi for its cooperation during his visits to the country, in particular, for facilitating access to all officials he wished to meet as well as to all institutions and places he visited in discharging his mandate. He also wishes to thank all his interlocutors and counterparts for their contributions to the success of his missions.

4. During his visits, the Independent Expert met the First Vice-President, the Minister of Foreign Affairs, the Minister of the Interior, the Minister for Human Rights and Gender, and the Minister of National Solidarity, Repatriation, and National Reconstruction, the Vice-Minister for Human Rights and Gender, the Attorney-General, the Permanent Secretary in the Ministry of Foreign Affairs, the Governor of the Province of Ruyigi, representatives of political parties, civil society organizations, representatives of the Batwa community in Bujumbura and Ruyigi, and representatives of the media. Within the United Nations, he met with the Executive Representative of the Secretary-General for Burundi and his deputy, the Representative of the Office of the High Commissioner for Human Rights (OHCHR) and Director of the Human Rights and Justice Division of the United Nations Integrated Office in Burundi (BINUB) as well as other staff members of BINUB and United Nations Agencies. Meetings were also organized with the diplomatic

community, including with representatives of the African Union, Belgium, France, the Netherlands, the United Kingdom, the United States of America and the European Commission. In addition, the Independent Expert visited the prisons of Rumongue in the Province of Bururi and Mpimba in Bujumbura Mairie.

5. In the present report, the Independent Expert highlights the most significant events which occurred 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 the issues that are still outstanding. Finally, he presents to the Human Rights Council some recommendations which could contribute to improve the human rights situation in Burundi.

## **II. Assessment of progress made by the Government in creating conditions conducive to the enjoyment of human rights**

6. Since his appointment by the Commission on Human Rights in 2004, the Independent Expert witnessed a number of achievements, including the putting in place of a new constitutional order, the end of the last rebel movement's armed struggle and its transformation into a political party, the formation of a new national army and a new national police force, and the demobilization of former combatants. Some recent positive developments relate to the adoption of a revised Criminal Code and the introduction of free primary education as well as of infant and maternal health programmes.

### **A. Adoption of a revised Criminal Code**

7. The revised Criminal Code, which, inter alia, abolishes the death penalty, defines and prohibits torture, and criminalizes genocide, war crimes, and crimes against humanity, constituted a landmark in the consolidation of the rule of law. The Code was adopted by the Parliament on 22 November 2008 and entered into force after its publication in official press in December 2008. Whereas it is laudable that it raises the minimum age of criminal responsibility, 15 years is still low and should be reconsidered. Equally, while I welcome the clearer definition of rape and criminalization of sexual harassment, I am concerned by some gaps remaining in this regard, such as the fact that the burden of proof of acts of sexual violence rests with the victim (for more detailed discussion, see IV.A.6 below).

### **B. FLN registered as political party**

8. The last remaining armed group that had refused to sign the Arusha Accords – the Palipehutu-FNL (Party for the Liberation of the Hutu People – National Force for Liberation) – signed a ceasefire agreement in 2006. The party was officially registered on 21 April 2009 and began disarmament, as well as demobilisation of three hundred and forty children that it declared having in its ranks, completed in December 2009. The Independent Expert commended the Government and the FNL for the spirit of cooperation they had demonstrated in implementing the cease-fire agreement.

### **C. Free education and medical assistance**

9. While the Independent Expert applauds the Government's achievements further to its 2006 decisions to provide universal primary education and free medical assistance to expectant mothers and children under five, he expresses concern over the lack of financial

and human resources of the relevant institutions to implement these decisions, which appear to have been taken without adequate preparation and budgeting. However, it is noteworthy that they are being partially implemented with the support of the development partners.

### III. Political and institutional context

#### A. Elections

10. Since elections were last held in 2005, the country has struggled to establish a rule of law culture. The 2010 local, presidential and legislative elections could have provided an opportunity to build the foundations of the democracy and to promote the rule of law.

11. The Independent Expert notes with concern a provision of the electoral code that allows for the suspension of electoral rights of anyone who finds him/herself in any form of pre- or post-trial detention, as there is a risk that it may be used to silence its opponents. This is exacerbated by the fact that the law in its current form does not provide any procedural safeguards relating to the prevention of the arbitrariness of such detention. The Independent Expert was further concerned at the significant number of arrests of political opposition members during the election period.

12. Furthermore, members of the youth wing of the ruling party *Conseil National pour la Défense de la Démocratie- Forces de Défense et de la Démocratie* (CNDD-FDD), the “*Imbonerakure*”, have reportedly been deployed by state officials in various functions, for example, to undertake community patrols, to guard premises and accompany public and police officials during arrests. The Independent Expert also received credible reports that CNDD/FDD has been using its young supporters to harass and intimidate members of other political parties and that opposition parties use the same tactics against CNDD/FDD in retaliation.

13. While commending the international community for the contribution it made in assisting Burundi in its reconstruction work, he noted with concern that its efforts timed at addressing the deteriorating political situation bore limited fruits. He also called for immediate and active intervention by all friends of Burundi to encourage dialogue, reconciliation and compromise with a view to peace consolidation.

14. On 24 May 2010, the Independent Expert was able to observe communal elections in one of the polling stations. During this exercise he talked to voters, observers from political parties, polling station clerks and security officers. Based on his necessarily patchy observations, he found that the process generally went smoothly and peacefully. These impressions were confirmed by reports from international observers suggesting that the elections were transparent despite some logistical challenges.

15. However, the Independent Expert also received reports from political parties of some irregularities relating to the organization of communal elections, including the counting of votes, which might have helped the ruling party to win the local elections by a larger margin than they would have otherwise. Representatives of opposition parties also indicated that the elections had not been totally fair as the ruling party, during the electoral campaign, benefited from the advantages of incumbency by using official Government vehicles and continued campaigning beyond the legal campaign deadline. They further alleged that intimidation, threats and arrests had been used against opposition members starting many months prior to the communal elections. Furthermore, they claimed that a number of their supporters had been killed by supporters of the ruling party and state security agents.

## **B. Transitional justice**

16. On 2 November 2007, the Government and the United Nations signed an agreement regarding the holding of national consultations on transitional justice mechanisms and the establishment of a Tripartite Steering Committee (a body consisting of representatives of the Government, the United Nations and civil society organizations in charge of organizing these consultations). The consultations started in July 2008 and were concluded in April 2010. Their objective was to seek the views of the population of Burundi on the establishment of a truth and reconciliation commission and a special tribunal. Throughout the process, the Expert had repeatedly urged the Government to take all necessary measures to create an environment in which victims and witnesses of human rights violations could participate in the national consultations without fear.

17. The report on the consultations was finalized in April 2010, but has not yet been published since the President of the country was not able to officially receive it during the electoral period. In addition, no agreement has been reached yet on some outstanding issues, such as the independence of an eventual Prosecutor for the Tribunal Special, and the relationship between the Truth Commission and criminal justice institutions. In the Independent Expert's assessment, ensuring that transitional justice mechanisms are not politically manipulated remains a challenge.

18. The Independent Expert expresses concern at the pace of the implementation of the Transitional Justice agenda. While congratulating the Government of Burundi and its international partners on the completion of the national consultations, he nevertheless notes that it has taken five years for this modest start to be achieved. He also calls on the international community to take a more proactive stance on this matter to ensure that the authorities carry forward this critical agenda in line with their obligations under the Arusha Accord and the relevant Security Council resolutions of 1606 (2005), 1719 (2006), 1791 (2007), 1858 (2008) and 1902 (2009).

## **C. Independent national human rights commission**

19. National human rights institutions play a key role in protecting and promoting human rights at the national level. They can also act as an interface between the State and civil society. It is therefore essential that they are independent in order to be credible and effective.

20. The Independent Expert recalls that, in 2006 the President of Burundi committed to establishing an independent national human rights commission a commitment reiterated by the Government during the Universal Periodic Review of Burundi in 2008, when it added that this would be done in accordance with the Paris Principles. The Government also indicated that a draft law had been produced following consultations with all stakeholders and that it was to be transmitted to the Parliament. OHCHR, BINUB's Human Rights and Justice Division, the United Nations Development Programme and the United Nations Peace Building Fund provided technical and financial assistance to the process.

21. However, in October 2009, an Inter-Ministerial Commission amended the draft law, granting the President of the Republic full control of appointments to the Commission (and simultaneously removing the role of the Parliament). The draft law nonetheless went to Parliament in January 2010, but its consideration has been postponed until after legislative elections. In view of delays in passing the legislation, the PBF extended its assistance three times, most recently until 31 December 2010. However, the major delays in the adoption of a law consistent with the Paris Principles carry the risk losing further financial support from the PBF.

22. The Independent Expert recalled that an independent national human rights commission that complies with the Paris Principles would provide a mechanism for the hearing of human rights violations and for addressing grievances, therefore playing a stabilizing role. Therefore, the Government should promptly review the amended draft law and take into consideration the concerns raised by the Office of the High Commissioner for Human Rights regarding the independence, the appointment process and the rank of the future commissioners. Also, the budgetary autonomy of the institution needs to be addressed.

## **IV. Human rights situation**

### **A. Major human rights violations and abuses**

#### **1. Violations of the rights to assembly and freedom of expression**

23. The Independent Expert observed that the situation of civil and political rights, particularly with respect to freedom of expression, association and assembly, has significantly deteriorated since his last report. Opposition parties and civil society organizations allege having been subjected to targeted violence and intimidation, including arbitrary arrests or detention. A number of opposition members were reportedly attacked while trying to open new offices or chapters. Since 2009, reports alleging politically motivated assassinations have been reported. The Independent Expert noted that, while this situation had somewhat improved in the period leading up to communal elections, it deteriorated again before Presidential elections.

24. In addition, the Independent Expert received reports that the number of violations of freedom of expression and assembly has increased, most notably since mid-2009: on 23 November 2009, the Interior Ministry decided to cancel the registration of FORSC (*Forum pour le Renforcement de la Societe Civile*), a network of civil society organizations that included many human rights organizations, pointing out that the network's registration in May 2006 had been irregular since some of its constituent members had been registered by other ministries. In response, over three hundreds NGOs addressed an open letter to the President to denounce it and alleged death threats against human rights defenders. In the first week of January 2010, the Interior Ministry confirmed annulment of the registration despite strong reactions from civil society and the international community and an earlier announcement to defer its implementation. Following negotiations by the parties and intervention by the international community, the implementation of the decree was suspended in February 2010 to allow FORSC to re-enter the process. The Independent Expert commended the Minister for his decision to restore the registration of FORSC, but noted with concern that the Minister appears to have been motivated by politics, rather than law. The Independent Expert feared that the decision by the Government to deregister FORSC in November 2009, and the decision to cancel the work permit of the representative of Human Rights Watch on 18 May 2010, appeared to be a warning to civil society organizations. The Independent Expert stressed that the right to freedom of opinion and expression of all human rights defenders should be protected and not sanctioned.

25. Civil society leaders as well as journalists have frequently reported having been threatened. For instance, on 26 March 2010, two Burundian NGOs, OLUCOME (*Observatoire de Lutte contre la Corruption et les Malversations Economiques*) and APRODH (*Association pour la Protection des Droits Humains et des prisonniers*) issued a joint statement declaring that their presidents had received death threats.

26. In the electoral context, Human Rights and Justice Division of the United Nations mission received weekly reports from opposition political parties alleging that they had



been prevented from meeting, although they had followed the established procedures, including providing communal authorities with written notifications. It is communal administrators who have reportedly been actively preventing such meetings through phone calls, although the law requires answers in writing. Opposition parties have also frequently alleged that the reasons provided were often flimsy: from a variety of possible examples, one prohibition indicated a prior request for the same venue from the ruling party; on the day, however, no such meeting took place.

27. The first months of 2010 have also been marked by clashes between politically affiliated youth, with most incidents allegedly involving the *Imbonerakure*, youth groups affiliated to the ruling party. For instance, on 17 January, the FNL reportedly experienced disturbances while opening its offices in Bwanbarangwe Commune. While the authorities indicated that the FNL had duly followed the procedures pertaining to the holding of meetings, the *Imbonerakure*, as well as other members of the ruling party, reportedly disrupted the FNL meeting by shouting hostile slogans and throwing rocks. A member of the FNL was admitted to the hospital after the incident. Similarly, on 24 January 2010, clashes occurred in Busoni commune between the *Imbonerakure* and the FNL, reportedly leaving at least ten people injured. Eight clashes were reported between 9 and 25 May in Bujumbura and the Northern provinces.

28. During his visits to Burundi, the Independent Expert met with a number of individuals and received additional reports about persons arrested and detained, many without trial, charged with “threats to the security of the State” and “slandering the Head of State.” The Independent Expert also noted a number of alleged violations of the right to a fair trial, e.g. of the Government using procedures resulting in lengthy pre-trial detention. In Mpimba prison, he interviewed the former chairman of the ruling party (CNDD-FDD) regarding the circumstances of his arrest, his detention and his trial at the Supreme Court.

## **2. Persons with albinism**

29. Since August 2008, six persons with albinism have been killed by Burundians and Tanzanians based on superstition, such as the belief that limbs of Albino people make one wealthy. The Burundian Government responded by assembling 30 persons with albinism in a temporary shelter in the Province of Ruyigi, East of Burundi, to ensure their protection, which the Independent Expert visited in December 2009. The Independent Expert was deeply concerned about this measure that could, in the long term, contribute to the further stigmatization of this group. However, during his thirteenth visit, he noted with satisfaction that the house had been closed and the residents returned to their families with no subsequent reports of violent acts.

30. Information sharing between the Governments of Burundi and Tanzania, combined with the valiant efforts of the Public Prosecutor in Ruyigi had resulted in prosecutions of eleven perpetrators. Those who were accused of involvement in attacks on people with albinism were tried in July 2009. However, two more persons with albinism were reported murdered on 2 May 2010. The alleged perpetrators were apparently arrested. While commending the Public Prosecutor of Ruyigi for such action, the Independent Expert regrets that the Government failed to make any public statement condemning these horrible crimes. He calls on the Government of Burundi to take a stance against such crimes and prosecute the perpetrators.

## **3. Violations of the right to life**

31. The Independent Expert noted with concern that violations of the right to life persisted throughout 2009 and then increased in the second quarter of 2010. In particular, he urged Burundi’s authorities to tackle the problem of deaths of inmates in the custody of the *Police Nationale du Burundi* (PNB). He also urged the Government of Burundi to

ensure that those responsible for the brutal assassination of Ernest Manirumva, the Vice-President of the anti-corruption NGO *l'Observatoire de Lutte contre la Corruption et les Malversations Economiques* (OLUCOME), are expeditiously brought to justice.

32. The Human Rights and Justice Division continues to encourage the Government to investigate deaths in police holding cells as well as the death of Vice-president of OLUCOME. In this context, the Independent Expert reminded the Government that the death of the Vice-president of the anti-corruption organization is an indication of serious restrictions of to the freedom of expression in Burundi, that those who choose to exercise it freely are in danger, and that the perpetrators must be brought to justice.

#### **4. Violations of the right to physical integrity**

33. The Independent Expert noted the unabated frequency through 2009 and 2010 of violations of the right to physical integrity, and expressed grave concern reports received in the midst of the electoral period indicating that torture had resumed in Burundi. Some detainees claimed that they were beaten by state agents during interrogation. They allegedly were asked to reject their political affiliation and forced to confess that were participating in activities aimed at destabilizing the country. In this regard, the Independent Expert urged the Government to ensure that firm action is taken against the State agents found responsible, and that the significant progress achieved in this area previously, most notably during the past two years, sustained.

#### **5. Gender equality and sexual and gender-based violence**

34. While the Independent Expert expressed satisfaction at the inclusion of clearer definitions as well as of stricter penalties for rape and sexual violence into the revised Criminal Code, he was concerned at the slow progress made in effectively tackling sexual violence against women and children, as a large number of incidents continued to be reported and, according to some, even had increased. It was evident that there was ample need for further awareness-raising, and that impunity prevailed. He noted that, unless appropriate action was taken by the judiciary, this situation was unlikely to change.

35. In particular, sensitivity in dealing with complaints regarding rape appears to remain a challenge for the law-enforcement and justice system. There are only few female police officers, and agents have little experience in and receive almost no training on, trauma counselling or rape prevention. Also other avenues providing for trauma counselling and psychological healing efforts seemed to be scarce. Noting that out of court settlements appeared to be the main means of redress; gender-based violence frequently resulted in the re-victimization of a rape victim by family members with a stake in the settlement. Such settlements were insufficient and unacceptable and measures should be taken to discourage them.

36. While many reportedly are held in detention in relation to petty crimes or waiting to be charged and tried, on the other hand, crimes related to sexual and gender based violence, including rape, go largely unnoticed. Reportedly, sex crimes are considered 'trivial' by the police and not taken seriously in the justice system.

37. Moreover, cumbersome legal processes, mostly before male judges, and the onus on the victims and their family to prove that an act of sexual violence occurred are major deterrents to bringing cases before the criminal justice system. The Independent Expert therefore stressed the urgent need to combat sexual violence, including through raising awareness regarding its roots and manifestations within the communities.

38. The revised Criminal Code adopted in April 2009 by the Parliament criminalizes same sex relationship. In this context, on 5 December 2008, the Independent Expert on the human rights situation in Burundi, jointly with three other Special Rapporteurs of the

Human Rights Council, sent an allegation letter to the Government of Burundi, requested it to review the provision criminalizing homosexuality and to reconsider its decision on this matter, as it had undertaken during the Universal Periodic Review in December 2008. However, the provision has so far remained unchanged. The Independent Expert therefore observes that discrimination on the basis of sexual orientation continues to pose a potential threat.

39. The Independent Expert further deplored the fact that the law on inheritance, which had been under discussion for four years, has still not been adopted. He urged the Government to urgently take appropriate measures, including considering good practices in the region, particularly from countries of the Eastern Africa region, to expedite the process and promote women's rights.

## **B. Impunity**

### **1. Gatumba massacre**

40. No progress has been made in addressing the massacre of at least 152 Congolese refugees in Gatumba, mostly children and women, in September 2004. The Independent Expert urges the Government to pursue the case as a matter of urgent priority.

### **2. Muyinga massacre**

41. The Independent Expert commends the Government for its efforts to bring to justice those responsible for the Muyinga massacre. The progress made so far by the prosecution, demonstrated that the Government is determining to root out the culture of impunity. However, he notes that a number of individuals suspected to have been involved in the incident have not yet been apprehended and tried for the offence, and urges the Government to pursue them so that this matter could be brought to a closure.

### **3. Other killings**

42. In an interview on 6 January 2009, the president of a prominent anticorruption organization, *l'Observatoire de Lutte contre la Corruption et les Malversations Economiques* (OLUCOME), reported that his staff were subjected to intimidation and threats. On 8 April 2009, OLUCOME Vice President, Ernest Manirumva, was assassinated and documents pertaining to cases he was working on were allegedly stolen. The Independent Expert expressed dismay that a third consecutive commission to investigate the murder has been established.

## **C. Judicial reform**

### **1. Independence of the judiciary**

43. The judicial and penitentiary system, central to the transition of the country, still present significant deficiency. Despite an increasing number of training to capacitate judges and magistrates, law enforcement agents and other officials, as well as numerous measures of assistance by the international community, the judicial and penitentiary system are failing to live up to expectations of the people.

44. The Independent Expert observed that a well-functioning judicial system is crucial for any society to create the conditions for sustainable peace and development. Reports of lack of independence of judges, commissioners and magistrates, the taking of bribes and extortion practices, and a considerable backlog of cases are a great concern.

45. Significant numbers of people in pre-trial detention are awaiting trial, some for as long as seven years. In late 2009, the Independent Expert visited Mpimba prison in Bujumbura, designed to hold a maximum of 800 people but which then held three thousands four hundred and forty-four detainees and thirty three newborn babies. According to November 2009 figures, only 776 of these detainees had been sentenced, while 2677 were being held in pre-trial detention. Many of these detainees languished in prison due to minor misdemeanours, such as petty theft.

46. Guarantees for judicial independence have not found form as rules and regulations, and disciplinary sanctions. This renders the judiciary vulnerable to interference by the Executive. The ways in which a number of cases involving political actors or members of civil society have been handled has lead to a widespread perception that courts are political tools. Confidence is low in the ability of courts to deal effectively with any possible election-related conflicts. Additionally, there is no legal aid system in Burundi.

47. There is speculation that should the election be perceived as rigged, opposition parties will seek to disturb the peace. Burundi has failed to establish an independent judiciary, and reports of bribery and extortion are common. The lack of an independent judiciary is especially worrying in the electoral context as a variety of tools of manipulation could be used against political opponents. Judges who attempt to maintain independence have been reportedly transferred, suspended from service, and subject to harassment and death threats. Measures for transparent recourse if irregularities occur during the election process remain to be seen. Impunity and corruption are rampant in the judicial system.

## **2. Prison conditions**

48. The Independent Expert was pleased to see that conditions of detention in the Central Prison of Mpimba had improved and commended the international community for its support to the reform of the penitentiary system. The Independent Expert found conditions in the women's quarters greatly improved. However, he found men and boys living in extremely over-crowded and sub-standard conditions, as well as poor security. While the Criminal Code revised in April 2009 raised the minimum age of criminal liability from 13 to 15 years, this age is still low for the consideration of minors in the judicial system, and boys are often mixed with adult males in contradiction of international standards. A number of detainees were reportedly recommended for release after being held by prison authorities apparently to little avail.

49. As evidence of growing discontent of these conditions, disturbances in prisons are common, as witnessed by the Independent Expert during his twelfth visit, in the male ward at Mpimba Prison. Calls have been made by detainees for better conditions and more efficient and transparent handling of cases. The failure to afford detainees a prompt hearing is a clear breach of the fundamental right of due process and a violation of arbitrary detention.

50. The Independent Expert deplores the overuse of pre-trial detention, which has led to overcrowded prisons now housing roughly four times the number of detainees and prisoners that they were built to hold. This has exacerbated the already deplorable conditions of most of Burundi's prisons and detention centers.

## **D. Economic, social and cultural rights**

### **1. Overall economic and social conditions**

51. The Government had made efforts to address economic, social and cultural rights as a matter of priority. It put in place programmes of providing for free primary education and maternal and infant health care in 2006. This programme has received support from the

international community through bilateral and multilateral cooperation. Despite these efforts, Burundi remains one of the poorest countries in the world. Access to medical care, education and other social services remains elusive to most, with a dilapidated infrastructure and many qualified professionals having fled during the years of conflict, leaving gaps that civil society and international donors are trying to fill.

## **2. Returned refugees and displaced persons**

52. As part of peace consolidation, Burundians are tasked with creating a more inclusive society. This includes reintegrating returnees who fled the conflict at varying stages, some as early as 1972. Since 2005, around 50 000 families have reportedly returned from neighbouring countries such as the Democratic Republic of Congo, Rwanda and Tanzania, and others have attempted to return to their communities after having been displaced.

53. To aid in this return process, “peace” settlements were being set up throughout the country to provide modest housing, food aid and a potential livelihood through farming. This was particularly important given the shortage of land in Burundi and that many families return to their former homes to find them occupied. The Independent Expert noted that despite the significant efforts for reintegration of displaced Burundians, conditions for returnees were dire, and additional efforts would be needed to raise them out of abject poverty.

54. With few sources of employment and scarce opportunities for new investments, economic development is stalled, with direct risks for the potential of election-related instability. The Independent Expert informed the authorities that with the scarcity of resources available in Burundi, the failure to share them with the less fortunate could be a major threat during and after the election period.

## **E. Activities of the international community**

55. In keeping with the joint plans established by BINUB and OHCHR, the integrated mission’s Human Rights and Justice Division has steadily monitored and reported violations throughout Burundi’s seventeen provinces, regularly engaged with authorities to tackle these challenges, and provided a variety of training designed to promote and protect human rights within state institutions, including the security forces and prisons. The Division has also provided extensive support, counsel and advocacy in legislative reform efforts, most notably regarding the revision of the criminal code, as well as concerning judicial reform, through activities as diverse as training in court management to translation of the revised Criminal Code into Kirundi.

56. In addition, the Division has also strongly advocated for the urgent passing of legislation that would enable the establishment of an independent national human rights commission in full conformity with the Paris Principles. It also ought, within the framework of its role in the Tripartite Steering Committee, to translate Burundi’s transitional justice commitments, made within the political context of the peacemaking process at Arusha, into a national project.

## **V. Conclusions and recommendations**

### **A. Conclusions**

57. **The Independent Expert notes that Burundi has made significant progress since the beginning of his mandate in 2004 and that he has witnessed several**

achievements in terms of peace, the adoption of a new constitution, the election of the President, members of the National Assembly and Senate, the establishment of national institutions, such as the army and the police, and the enactment of progressive laws. However, the Independent Expert cautions that much remains to be done in order for human rights to be fully protected.

## **B. Recommendations**

**To the Government of Burundi:**

58. The Independent Expert calls upon the Government to expedite the process of establishing transitional justice mechanisms taking into account national consultations held in this regard and to prosecute those who committed human rights violations in the past.

59. Noting with concern that the process of establishing an independent human rights commission appears to be stalled, the Independent Expert urges the Government to establish that commission as soon as possible and in full conformity with the Paris Principles.

60. Noting with concern increased restrictions on freedoms of expression, opinion and assembly, the Independent Expert urges the Government to ensure that political parties are neither prevented from registering nor from organizing meetings; that civil society organizations have favourable working conditions and are not threatened.

61. The Independent Expert calls on the Governments of Burundi and Tanzania to continue strengthening cooperation in order to prevent further attacks on persons with albinism and make sure those perpetrators are brought to justice. He further calls on the Government to take effective measures to prevent discrimination against this minority.

62. The Independent Expert calls upon the Government to fully implement procedures and mechanisms ensuring judicial accountability for sexual and gender-based violence and increasing awareness and access to justice for the victims.

63. The Independent Expert commends the Government for the revision of the Criminal Code and calls on the new legislature power to expedite the adoption of the Criminal Procedure Code, the laws on heritage and freedom of association in conformity with international human rights standards.

64. The Independent Expert urges the Government to conclude its investigations into the Musinga and Gatumba massacres, the recent murders of political parties' members and civil society figures and as matter of priority.

**To the international community:**

65. The Independent Expert thanks the international community for its continuous support to the Government of Burundi.

66. The Independent Expert appeals to the international community to encourage both the Government and the opposition parties to avoid any situation that may lead the country to violence and instability.

67. The Independent Expert urges the international community to press the Government of Burundi to increase efforts to combat impunity, in particular on investigations into the Musinga and Gatumba massacres, and into the numerous crimes of sexual violence and politically motivated killings, to ensure that perpetrators are brought to justice.

68. The Independent Expert commends BINUB, in particular the Human Rights and Justice Division, for its efforts in assisting the Government to promote and protect human rights, and encourages BINUB to increase efforts in strengthening the justice sector.

69. The Independent Expert thanks the Human Rights Council for having accepted his request to update it after the end of his mandate and regrets that other commitment retained him from attending the 14<sup>th</sup> session. He requests the Human Rights Council to invite his successor to present interim reports until the establishment of an independent human rights commission by the Government of Burundi.

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