

**United Nations Integrated Management Team report for the Universal Periodic Review –  
Burundi – Third Session, December 2008**

**I. Introduction**

1. This report was drafted by the United Nations Integrated Management Team (UNIMT) in Burundi<sup>i</sup>. Due to space constraints, this report will not be exhaustive but rather highlight the main issues, which are addressed by the UNIMT in the country. For a more detailed presentation of the work performed by the UNIMT, one may refer to the United Nations Integrated Peace Building Strategy and the Strategy Framework for Peace Building.

**II. Background and framework**

1. Constitutional and legislative background

2. The 2005 Constitution contains, in its second Title, a Charter on the rights and fundamental duties of individuals and citizens, which are articulated in 56 articles. In addition, its article 19 incorporates the Universal Declaration of Human Rights and the main international human rights treaties ratified by Burundi. Since then, Burundi ratified new instruments, such as the two Optional Protocols to the Convention on the Rights of the Child respectively in November 2007 and June 2008.

3. End of 2007, a law on asylum was finally adopted with the support of UNHCR. However its promulgation is still pending due to drafting errors. This new law brings together various legislations relating to the reception and protection of refugees and establishes the *Office National pour la Protection des Réfugiés et Apatrides* (ONPRA). However, a conflict of competence between Ministries may hamper its smooth implementation and therefore further arrangements need to be found.

4. Nevertheless, the national legislation does not incorporate yet all the provisions included in international human rights instruments. Therefore, Burundi is in the process of adopting revised criminal and criminal procedure codes. However, due to the stalemate of the institutions, more particularly the National Assembly, the criminal code could not be discussed and passed so far.

5. In addition, Burundi is planning to adopt a new law on inheritance, matrimonial regimes and gifts in order to correct the existing inequalities between men and women in that regard. There are still diverging views, notably regarding the procedure to follow. While the Government envisages organizing national consultations prior to the adoption of the law, the civil society would prefer them to be launched after the law is passed.

6. Finally, there are discussions in Burundi towards the adoption of a specific law on the rights and protection of children.

2. Institutional and human rights structure

7. Since the establishment of the last Government in November 2007, there is a Ministry of National Solidarity, Repatriation and National Reconstruction, Human Rights and Gender, which

is seconded by a Vice-Ministry in charge of Human Rights and Gender, the two positions being held by women.

8. The Cabinet of Ministers discussed in June 2008 the draft law establishing a National Independent Human Rights Commission. This draft law was validated during a workshop held in Bujumbura on 2 November 2007, which gathered all national constituencies, the United Nations and the civil society. In the current draft, two commissioners will be in charge of the situation of women and children.

9. In addition, at the working level, UNICEF supported various Ministries in establishing multi-sectoral fora in charge of coordinating assistance and protection of the most vulnerable, like the Platforms on juvenile justice in collaboration with BINUB and the Ministry of Justice and on children living and working on the streets in collaboration with the Ministry in charge of Human Rights.

10. Land disputes are numerous due to the scarcity of lands with regard to the population. The massive return of refugees does exacerbate further the tensions. Therefore, the establishment of the National Commission on Lands and Other Properties (CNTB - "*Commission Nationale des Terres et Autres Biens*") is a useful initiative but the backlog in its work indicates the necessity of further resources, and for a more substantial reform of the land policy.

### 3. Policy measures

11. While the Government did not adopt yet a National Human Rights Plan of Action, it developed sectoral plans of action, such as the 2006-2009 Sectoral Plan on Justice and the 2007-2011 National Plan of Action for Orphans and Vulnerable Children.

## **III. Promotion and protection of human rights on the ground**

### 1. Cooperation with human rights mechanisms

12. The Office of the High Commissioner for Human Rights in Burundi (OHCHR-Burundi) was established in 1995 and has since worked in close collaboration with the Government. Today, the Office is integrated with the BINUB's Human Rights component and together they continue to help the Government in setting up a National Human Rights Plan of Action, which is not yet adopted. In addition, in close collaboration with the Government, they implement several programmes, which will be described in this document. In September 2007, Burundi lobbied in order to get the mandate of the independent Expert on Burundi extended for one more year, although many members of the Human Rights Council were not in favour of such a decision. Mr. Akich Okola made two visits to Burundi since the adoption of this Human Rights Council's resolution, respectively in December 2007 and in June-July 2008.

13. Burundi is still late in reporting to the various treaty bodies. However, it did so recently to the Committee against Torture and the Committee on the Elimination of Discrimination against Women. In 2008, the Ministry in charge of Human Rights established special units in charge of the drafting of reports to treaty bodies.

2. Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Equality and non-discrimination

14. There is a de facto and de jure discrimination against women in Burundi and the Committee on the Elimination of Discrimination against Women, in its recent concluding observations (CEDAW/C/BDICO/4 – 1 February 2008), made a series of recommendations in order to correct this situation. The Code of the Persons and the Family contains many discriminatory rules in addition to negative cultural practices and traditional attitudes, which serve to perpetuate women's subordination in the family and society. 90% of the Burundian population live in rural areas; therefore there is a special need to work on these negative practices and attitudes, which are deeply anchored in the society. Regarding education, the Ministry of Education took the necessary measures, with the support of the international community to almost reach a net enrolment parity between boys and girls in primary education (ratio is at 0,96). However, in secondary and higher education, significant disparities remain.

15. In this regard, the new provisions contained in the 2000 Arusha Agreement and in the 2005 Constitution to correct these gender inequalities need to be supported further in amended legislation and the sensitization of the population at large must be enhanced.

16. Discrimination does exist for people belonging to vulnerable groups. The Constitution and new legislation provides for example for a better representation of the Batwa in the national institutions but the situation of this specific group request further action in order to correct these inequalities. More generally, people belonging to vulnerable groups are not fully enjoying their rights. For example, in spite of a policy for free primary education and free health care for children below the age of five and pregnant women, many people cannot afford education for their children (notably for secondary education) or health care.

B. Right to life, liberty and security of the person

17. All these rights are protected in the 2005 Constitution. While the UNIMT noticed an improvement over the past years, violations of these rights remain relatively common (during the first semester of 2008, BINUB registered 202 victims of violations to the right to life and right to physical integrity. However, when the hostilities resumed from 17 April to 26 May 2008, the number of such cases considerably increased). The National Burundian Police (PNB) is involved in much more cases than the National Defence Force (FDN) and the National Intelligence Service (SNR). In addition, too many cases remain unpunished. Older case files, such as the 2004 Gatumba and 2006 Muyinga massacres as well as the 2006 Kinama summary executions, did not lead to any court's decisions so far. Regarding the Muyinga killings, the Military Court decided on 3 June 2008 that it was not competent and handed over the case to the Public Prosecutor for him to seize civil jurisdiction. In spite of numerous trainings for the security forces provided by BINUB, the UN agencies and other international and national actors, these violations continue to be reported. This is mainly due to impunity and to a lack of discipline in the security forces ranks. Furthermore, in early 2008, a series of targeted assassinations took place mainly in Bujumbura but also in other provinces. In August 2007 and in April 2008, the houses of members of the Parliament belonging to the opposition were the target of grenade attacks. Although a

commission of inquiry was established after these two events, no public reports were released in this regard and alleged perpetrators were not identified. It shall also be mentioned that death penalty is still applicable, although a moratorium was decided. The draft revised criminal code excludes this sentence

18. Another main issue is for Burundi to deal with crimes from the past, more precisely crimes of genocide, crimes against humanity and war crimes. The Government of Burundi accepted to establish transitional justice mechanisms, namely a Truth and Reconciliation Commission (TRC) and a Special Tribunal. On 2 November 2007, in the presence of the President of the Republic, the Government and the United Nations signed a framework agreement on the establishment of the Tripartite Steering Committee for National Consultations on Transitional Justice Mechanisms. After some delay, the project on these National Consultations was eventually signed on 18 June 2008. They are the preliminary step before the establishment of the TRC and the Special Tribunal. In addition, it was agreed upon that children would not be prosecuted but would rather benefit from special protection measures.

19. Both parties to the conflict recruited and used child soldiers in hostilities. Between 2004 and 2006, 3,013 child soldiers recruited by the signatory armed forces or armed groups were demobilized and reintegrated into their families or foster families. They benefited from formal or vocational training and were provided with medical and psychosocial assistance. In 2007, 220 additional children were separated from the alleged Palipehutu-FNL dissidents and are at the time of this report in a rehabilitation programme run by the National Commission in charge of Demobilization, Reintegration and Rehabilitation. The Government is also ready to demobilize any child, which may still be in the ranks of the Palipehutu-FNL of Agathon Rwasa, although there is no available list or estimates at the time of this report.

20. Further to the consideration of the first report of the Secretary-General on children and armed conflict in Burundi (S/2006/851 et Corr.1), the Security Council's Working Group adopted a series of recommendations on 8 November 2006 regarding the disarmament, demobilization and reintegration of child soldiers, sexual violence against children and preventive measures in order to reduce the number of human rights violations concerning children. The Security Council's Working Group considered the second UN Secretary General report (S/2007/686) on 6 December 2007 and expressed its concerns at the delay in the implementation of the 2006 Comprehensive Ceasefire Agreement between the Government of Burundi and the Palipehutu-FNL. It was notably seriously concerned at reports indicating further recruitment of children by the Palipehutu-FNL.

21. Sexual violence against women and children, mainly girls, remains a major issue of concern and tends to be pandemic (2707 cases registered by NGOs in 2007 and 354 rape cases registered by BINUB during the first five months of 2008). UNICEF is providing assistance to centres taking care of victims of sexual violence in five Provinces (Muyinga, Ruyigi, Makamba, Cankuzo and Bujumbura Rural). In 2007, 917 victims were provided with medical, psycho-social and legal assistance in these centres. 56% of the victims are children and 63% are below the age of 19 years. An increase of cases of sexual violence was noticed over the past five years. Many actors are involved in the fight against sexual violence and an integrated approach should be established in the near future in order to tackle this phenomenon on the long term. It should be noted that only a small percentage of all reported cases involves State agents. A large majority of

the reported cases involves individuals, who are either from the family of the victims, people they know or persons who are living close to the victims. The above-mentioned Security Council's Working Group expressed its concern, on 6 November 2007, at the high incidence rate of sexual violence in Burundi and called upon the Government to further address this situation by appropriate measures.

22. In 2004, the International Committee of the Red Cross, ECHO, UNFPA and UNICEF produced a training manual addressed to health personnel for a global assistance to victims of sexual violence. 2,000 copies of this manual were distributed across the country. The health personnel were also trained but there is still a need for an improved holistic assistance towards children victims of sexual violence in order to better reply to their specific needs. The Ministry of Education adopted internal rules and regulations for primary and secondary schools in order for them to allow pregnant girls to stay in school and continue in school after delivery. However, many cases of exclusions continue to be reported across the country.

### C. Administration of justice and the rule of law

23. In addition to the two draft laws mentioned above (criminal and criminal procedure codes), which will harmonise national legislation with international human rights standards, the Government is implementing several projects with the support of BINUB and UN agencies. For example, there are two projects financed by the Peace Consolidation Funds which deal with the administration of justice. The first one aims at the enforcement of unexecuted court judgments and rulings since 1994 and therefore at the diminution of violence, notably through mob justice. Members of the judiciary were trained for this purpose and a listing of unexecuted decisions is ongoing. The second one provides for the construction and renovation of 17 *tribunaux de résidence* (the lowest level court in the Burundian judicial system) in order to facilitate access to justice.

24. The situation in the eleven jails in the country is also addressed by the international community in collaboration with the Government. It should be noted that most of these jails are overcrowded (in June, for example, the occupation rate in the Ngozi prison was at 420%) and that children are not separated from the adult population. An explanation to this situation is the large proportion of inmates in pre-trial detention (about two-third of the prison population) due to the deficiencies in the interactions between prison administration and judicial authorities. As a consequence, BINUB in collaboration with the General Directorate of Penitentiary Affairs and local NGOs, catalogued and analysed judicial and penitentiary files in all jails in order to assist in the reduction of the penitentiary population. Training was provided to all relevant actors to improve the situation.

25. The absence of a specific juvenile justice system is a major issue of concern for the about 400 children detained in jails and a few more hundreds kept in police holding cells, where they are always kept in detention with adults. In order to address this situation UNICEF, with all relevant national and international actors, created a platform for juvenile justice under the leadership of the Ministry of Justice. In addition, BINUB started a pilot project in the Northern Provinces in 2007, which should eventually be extended to the whole country. All relevant stakeholders in those provinces have now received training on international standards regarding juvenile justice. The new criminal code is notably providing for the increase of the minimum age of criminal

responsibility from 13 to 15 years, new measures in order to enhance due process, the reduction of sentences applicable to children and the use of measures alternative to the deprivation of liberty.

D. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

26. In Burundi, the right to freedom of religion and belief is widely respected and the UNIMT was not aware of any case in this regard over the past year. The same applies to the freedom of the press, although some cases were recently noticed. On 3 June, the Bujumbura Court of Appeal acquitted four journalists, which were accused of threatening State security in November 2006. In February 2008, there were several cases of intimidations against journalists. Several officials held speeches during which they accused journalists of “divisive statements or statements intended to lead to uprisings”. In this connection, the premises of a private owned radio station were surrounded by a group of individuals, including former demobilized persons. In addition, a journalist of this radio station was summoned on several occasions to the Public Prosecutor’s Office in Bujumbura after a complaint was lodged by a State official.

27. The right to freedom of association and peaceful assembly is generally respected but some incidents were noticed in 2008. For example, the press conference organized by a new political movement (*Mouvement pour la Sécurité et la Démocratie*) was interrupted by the police on 12 April 2008, while fifteen demonstrators, who protested against the Supreme court’s ruling regarding the former CNDD-FDD President, Hussein Radjabu, were arrested by the police on 15 April and eventually released a week later.

28. On 6 June 2008, a controversial decision of the Constitutional Court declared that 22 members of the National Assembly, who left the ruling party CNDD-FDD, were seating in the National Assembly in violation of the Constitution. They were then replaced by other persons, which led to a wave of protests from the opposition parties, which alleged that the Court violated the Constitution.

E. Right to work and to just and favorable conditions of work

29. Working conditions are still precarious in the country. On 1 May 2007, the President of the Republic announced an increase by 34% of all civil servants’ salary. However, this promise has not yet been met and this gave rise to several strikes organised by various unions. Other sectoral groups went on strike over the past year, such as the non-magistrate personnel of the courts.

30. In June 2008, the Ministry of Civil Service, Labour and Social Security organised with the financial and technical support from UNICEF a one-week-long campaign on the worst forms of child labour. In order to speed up the implementation of the provision of both 138 and 182 ILO Conventions, a steering and a technical committee should be established.

31. In addition, BINUB registered sporadic cases of forced labour committed by either the FDN or the PNB, targeting respectively the local population and detainees.

#### F. Right to social security and to an adequate standard of living

32. After successive crises, the standard of living of the population (90% live in rural areas) remains precarious. About 70% of the population is living below the poverty line. Access to drinking water and other commodities is not guaranteed for a large majority of the population. The same applies for access to quality health care. The President of the Republic announced in 2005 a free medical care policy for children below the age of five and for pregnant women. However, hospitals and health centres complained because the Government does not pay them its contribution on time, as provided for in this policy. In addition, there are still cases of patients, who are forcibly kept in hospitals because they could not pay their medical fees.

33. According to governmental data, orphans and other vulnerable children amount to more than 837,000, including 250,000 orphans. The Ministry of National Solidarity, Repatriation and National Reconstruction, Human Rights and Gender drafted a national policy, which has not yet been validated by the Government. The National Anti-AIDS Council set up a National Action Plan for Orphans and Vulnerable Children for the years 2007-2011, which is articulated around four priorities: HI/AIDS prevention for young people; protection of orphans and vulnerable children, prevention of mother-to-child infection; and paediatrician treatment. Assistance to orphans and vulnerable children in this Plan is global and emphasizes the community approach.

#### G. Right to education and to participate in the cultural life of the community

34. During his inaugural address on 26 August 2005, the President of the Republic declared that from the beginning of academic year 2005- 2006, primary education would be free of charge. However, there is still a need for more schools, classrooms and well-trained teachers. Therefore, most of the classes are overcrowded (up to 200 pupils in a classroom in some schools), a situation, which is not conducive to a quality education. Therefore, the international community is providing assistance to the Government to meet his promises. For example, UNICEF rehabilitated (53 in 2007) and built new classrooms (769 in 2007 and 132 during the first semester 2008). In addition, it equipped classrooms with benches for children and desks and chairs for teachers, built latrines and water points. UNICEF also distributed school kits for the most vulnerable children (more than 400,000 in 2007-2008 and 350,000 will be distributed during the school year 2008-2009 to vulnerable children from the Provinces with the lowest education indicators).

35. In January 2008, the Government of Burundi and UNESCO organised a workshop to validate the 2008-2013 UNESCO National Education Support Strategy (UNESS) document in order to reach the Education for All goal. With respect to the most vulnerable children, for example, UNESCO runs a programme for the education of street children. In 2008, 2123 such children were assisted by UNESO in five provinces.

36. In 2007 and in early 2008, UNICEF worked closely with the National Assembly and the Senate for the establishment of a Child Forum. After consultations carried out throughout the country, elections will be organised in July 2008 in the various constituencies of Burundi for its first meeting to be held in August 2008. The representation in this Forum will respect an ethnic,

social and gender balance. The civil society will be involved in these elections in order to preserve a political independence for this body.

37. UNICEF also supports the Government of Burundi in its efforts for an institutional reinforcement and an improvement of the quality of education, notably through its assistance to the implementation of the Integrated Development of the Young Child and the Education for Girls policies. UNICEF is also providing support for a better coordination within the school system, as well as in capacity building for teachers. Finally, UNICEF works with the Ministry of Education for the enhancement of pre-school and parent's education.

38. The Ministry of Education and Scientific Research along with UNESCO and OHCHR-Burundi are working on the implementation of the World Program for Human Rights Education. Teachers continue to be trained and school manuals were revised in that regard.

#### H. Refugees, repatriated and expelled persons

39. In addition to several refugee camps in Burundi, hosting mainly Congolese citizens, Burundi is facing a massive return of Burundian refugees, mainly from the United Republic of Tanzania, after the latter decided in 2008 to close two camps hosting refugees since 1993 by June 2008 and only retain the last camp until the end of 2008.

40. This decision has led to an acceleration of returns since the beginning of 2008. Tanzania is also host to Burundian refugees since 1972 whose return started in March 2008. Due to their extended exile, this caseload faces greater difficulties when attempting to recover their lands. As for Burundian refugees in the DRC, discussions are underway that should lead to a Tripartite agreement allowing for their return. Burundi's capacity to absorb all returnees remains an issue, notably for them to freely access health care for 3 months and secondary education for two year as set by the Government.

41. In addition, Tanzania has decided to expel all Burundians considered as irregular migrants on its territory. Since 1 January 2008, about 3,600 persons have returned to Burundi, bringing the total of expulsions to 20,215 since September 2006. According to estimates, another 20,000 persons could be further expelled. The main patterns of human rights violations regarding these persons are as follows: property spoliation (43%), family separation (45%), physical violence, arbitrary arrest and detention prior to expulsion (7%). Early 2008, in partnership with the Government Project for the Reintegration of War-Affected Persons (PARESI), UNICEF and UNHCR started a joint programme to assist these persons with their reintegration.

42. As mentioned earlier, the scarcity of land has made even more difficult the reintegration of returnees and expellees, and the resettlement of internally displaced persons. The Government of Burundi established the National Commission on Lands and Other Properties (CNTB) in 2006 to process and settle land disputes involving persons affected by the successive socio-political crises. Funding in 2007-2008 from the Peace Building Fund and other international donors to the CNTB is helping strengthen the capacity of this Commission. The backlog of cases at the CNTB is huge with several thousand cases still pending. In addition to supporting this institution, the international community is working with the Government towards the adoption of a national land policy, as a first step toward land reform.

43. Burundi is not party to the 1954 or 1960 Conventions on statelessness. However, Burundi's Constitution and its membership of regional organizations show this country's commitment to resolving statelessness and Burundi citizenship is granted to persons risking otherwise statelessness. The new law refers to statelessness but does not deal specifically with this issue and there is still no mechanism to gather information on these persons.

#### I. Internally displaced persons

44. Research on 2007 on IDPS in the southern provinces confirmed that these persons were displaced first between 1993 and 2000 due to the socio-political crises faced by Burundi, and in 2005-2006 following drought and climate hazards. Some returns have been noted but many IDP sites have become permanent villages. In April and May 2008, new forced population movements have been registered due to the resumption of combat in northern provinces and around Bujumbura.

#### J. Human rights and counter-terrorism

On 2 July 2008, the National Assembly adopted a law for the ratification of the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism.

### **IV. Achievements, best practices, challenges and constraints**

45. In spite of the long period of conflict and widespread poverty, the Government of Burundi endeavors to implement international human rights standards as spelled out in the Constitution through several policies (free primary education; free health care for children below the age of 5 and for expecting mothers; justice plan; etc.); legal reform (law on asylum, draft revised criminal and criminal procedure codes), the establishment of institutions (projects for an Independent National Human Rights Commissions and for transitional justice mechanisms). However, much still needs to be done in order to implement the international and regional human rights treaties, which Burundi has ratified.

46. More efforts need to be done to reduce further gender discrimination, which is still anchored in laws, culture and traditions. Sexual violence against women and children remains a large scale phenomenon, which needs to be appropriately tackled through an integrated national plan of action. In addition, the fight against impunity should be a priority guaranteed by systematic investigation of human rights violations and by the prosecution and sentence of perpetrators of these violations. The protection of the rights of vulnerable people is another aspect to be taken into consideration, to provide them with an adequate standard of living and more generally to allow them to fully enjoy their rights. The massive return of refugees and of expelled persons adds to the difficulties faced by the country, which needs to develop a national land policy and land reform in order to reduce current tensions provoked by the scarcity of lands.

47. The issue of food insecurity, with an agricultural production of 40% less than expected and increased food prices, is also adding to this already complex situation. Burundi as one of the four countries with the highest debt is undergoing a major economic and livelihoods crisis. This may cause potential social instability. This is already impacting on the well-being and welfare of

children and women. A worsening of the situation may cause long lasting destructing effects on the hardly gained human rights benefits.

## **V. Recommendations**

### 48. Legal reform

- Adopt the draft revised criminal and criminal procedure code;
- Draft and adopt a new law on inheritance, matrimonial regimes and gifts in order to suppress gender inequalities;
- Draft and adopt a Children's Act encompassing all relevant international instruments related to child rights and child protection;
- Amend the Code of the Persons and the Family in order to suppress gender inequalities.

### 49. Institutions

- Adopt the law on the establishment of the Independent National Human Rights Commission;
- Promote inter-ministerial steering committees to ensure better coordination on policies implementation on issues such as the fight against Sexual Gender Based Violence, assistance and protection to Orphans and Vulnerable Children, Justice;
- Strengthen the operational and decisional capacities of the National Commission on Land and Other Properties at the local level.

### 50. Policies to address human rights issues

- Adopt as a priority a National Human Rights Plan of Action;
- Discuss, draft and adopt a land national policy and a land reform.

### 51. Transitional justice

- Speed up the organization of national consultations in order to establish the Truth and Reconciliation Commission and a Special Tribunal;
- Continue to take into account and implement the approach of special protection measures for children.

### 52. Sexual violence against women and children

- Adopt an integrated National Policy and Plan of Action to fight against sexual violence against women and children, which should adopt a holistic approach dealing with prevention, repression and assistance to victims.

### 53. Child Soldiers

- Ensure close follow up, monitoring and support to child soldiers reintegrated into their families and communities of origin;

- Ensure that demobilization centres for child soldiers and implementing partners respect the International Standards of DDR and child protection rules and that relevant staff is appropriately trained and skilled.

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<sup>i</sup> BINUB, UNICEF, UNHCR, UNESCO and OHCHR took part in the drafting of this report.