

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

African Commission on Human &  
Peoples' Rights

Commission Africaine des Droits de  
l'Homme et des Peuples

---

48, Kairaba Avenue, P.O Box 673, Banjul, The Gambia Tel: (220) 4377721 - 23; Fax: (220) 4390 764  
E-mail: [achpr@achpr.org](mailto:achpr@achpr.org); Web [www.achpr.org](http://www.achpr.org)

---

**REPORT OF THE MISSION OF PROMOTION TO BURUNDI BY  
COMMISSIONER MOHAMED ABDELLAHI OULD BABANA**

# **REPORT OF THE MISSION OF PROMOTION TO BURUNDI**

## **SUMMARY**

### **I. INTRODUCTION**

### **II. TERMS OF REFERENCE AND PRELIMINARY OBSERVATIONS**

- A. Terms of reference and legal framework**
- B. Preliminary Observations**

### **III. ORGANISATION OF THE MISSION**

- A. Reception of the delegation and organisation of work**
- B. Consultations and site visits**

### **IV. CONCLUSION AND RECOMMENDATIONS**

- A. CONCLUSION**
- B. RECOMMENDATIONS**

### **V. ANNEXURE: LIST OF PERSONALITIES ENCOUNTERED**

## I. INTRODUCTION

1. The African Commission on Human and Peoples' Rights (ACHPR) is the mechanism for the promotion and protection of human rights in Africa, created in 1987, in application of the African Charter on Human and Peoples' Rights (the African Charter) which was itself adopted by the Assembly of Heads of State and Government of the former OAU, on the 25<sup>th</sup> June 1981 in Nairobi, Kenya.
2. Having entered into force on the 21<sup>st</sup> October 1986, this African Charter confers a mandate of promotion and protection of human rights to the African Commission.
3. In the implementation of its mandate and to guarantee the monitoring of the promotion and protection of human rights within State Parties, the African Commission decided, at its 25<sup>th</sup> Ordinary Session held from the 26<sup>th</sup> April to 5<sup>th</sup> May in Bujumbura, Burundi, to carry out missions of promotion in the said State Parties during the inter-session period.
4. The African Commission entrusts each Commissioner with the responsibility of monitoring the human rights situation in a certain number of State Parties which fall under their respective portfolios within the African Commission.
5. In consequence, it is the responsibility of the Commissioner concerned to establish or to maintain contact with human rights activists by means of promotional missions with a view to :
  - Ensuring that all developments in the field of human rights are brought to the attention of the African Commission;
  - Convey support from the African Commission to the efforts being deployed in favour of human rights both by the Government, by NGOs and other members of civil society and by International Organisations active in the field.
6. Towards this end the terms of reference of the promotional mission involve a scheduling of meetings with the representatives of :
  - Political, administrative and legal Authorities.
  - NGOs and other members of civil society as well as international organisations working in the field in Burundi.
7. Burundi ratified the African Charter on Human and Peoples' Rights on the 28<sup>th</sup> July 1999 and presented its initial Report in conformity with Article 62 of this Charter at the 27<sup>th</sup> Ordinary Session of the African Commission (27<sup>th</sup> April – 11<sup>th</sup> May 2000 in Algiers, Algeria); Burundi's first Periodic Report is therefore due since May 2002.

8. It is in this context that a delegation of the African Commission led by Commissioner Mohamed Abdellahi Ould Babana, responsible for Burundi within the African Commission carried out a mission of promotion to Burundi from the 4<sup>th</sup> to 11<sup>th</sup> February 2004.

## II. TERMS OF REFERENCE AND PRELIMINARY OBSERVATIONS

### A. TERMS OF REFERENCE AND LEGAL FRAMEWORK

#### a. Terms of Reference

9. *The African Commission had already carried out a promotional mission to Burundi (14<sup>th</sup> – 21<sup>st</sup> March 2000), led by Commissioner Julienne ONdzil-Gnelenga.*

10. *In consequence, Commissioner Babana's promotional mission was aimed at ensuring the follow-up of the objectives of the previous promotional mission carried out by the African Commission in Burundi, notably to reinforce the publication and implantation of the African Charter and to convey the contribution of the African Commission in terms of support and encouragement to this country, victim of civil war, in its quest for peace and security necessary for the strengthening of its national democratisation and reconciliation process.*

11. *Commissioner Babana's mission also aimed at:*

- ✓ *Gathering first hand information on the human rights situation from the Government, from NGOs, United Nations Agencies, Political Parties, Religious Leaders, and from any person member of civil society involved in this area generally;*
- ✓ *Drawing the attention of the competent Burundi Authorities to the need to respect its obligations in conformity with the provisions of Articles 1 and 62 of the African Charter on Human and Peoples' Rights, notably with regard to the presentation of Periodic Reports to the African Commission on Human and Peoples' Rights by State Parties;*
- ✓ *Promoting the process of ratification of the Protocol to the African Charter relative to Women's Rights in Africa and to the establishment of the African Court of Human and Peoples' Rights;*

b. Legal Framework

12. Burundi had accepted a series of obligations in the area of Human Rights at the national, regional and international levels.
13. It also accepted the transitional Constitutional Act of June 1998, the laws and regulations, the jurisprudence and the Peace Accord concluded on the 28<sup>th</sup> August 2000 in Arusha (Tanzania), under the mediation of Nelson Mandela who succeeded the late President Julius Nyerere of Tanzania in this task.
14. At the regional level, Burundi notably ratified the African Charter on Human and Peoples' Rights and at the international level, this country ratified or acceded to several international human rights instruments namely:
  - The Universal Declaration of Human Rights;
  - The International Convention on Civil and Political Rights;
  - The International Convention on the Elimination of all Forms of Racial Discrimination;
  - The Convention for the Prevention and Suppression of the Crime of Genocide;
  - The Four Geneva Conventions of the 12<sup>th</sup> August 1949 relative to the protection of civilians during times of war and their additional protocols;
  - The ILO Conventions, notably on the abolition of forced labour, night work for women, child labour, freedom of trade unionism and equality in remuneration between the male and female labour for work of equal value;
  - The International Convention against Torture;
  - The Convention relative to the abolition of Slavery;
  - The 28<sup>th</sup> July 1951 Convention relative to the Status of Refugees;
  - The 30<sup>th</sup> November 1973 International Convention on the elimination and suppression of the crime of Apartheid ;
  - The 26<sup>th</sup> November 1968 Convention on the inalienability of war crimes and crimes against humanity;
  - The International Convention relative to the Rights of the Child, etc.

## B. PRELIMINARY OBSERVATIONS

15. Situated in Central Africa, in the Great Lakes region, Burundi has a surface area of 27,834 sq. kms and shares borders with:
  - Rwanda in the North;
  - The Democratic Republic of Congo (DRC) in the West, and Tanzania in the East and South.
16. Bordered by Lake Tanganyika up to Bujumbura its Capital which has about 300,000 inhabitants, Burundi constitutes a link between Central, Eastern and Southern Africa.
17. Totalling about 7 million inhabitants of whom more than 90% live in the rural areas, Burundi's population is made up of three ethnic groups: The Twa (5%), the Tutsi (13%) and the Hutu (80%), with the same culture, the same language, the Kirundi, which is the national and official language alongside French;
18. Young people aged less than 20 years represent more than half of the population of Burundi of whom about 60% are women. Burundians practice Catholicism, Protestantism, Islam and Animism.
19. Formerly colonised by Belgium, Burundi has, since its accession to Independence on the 1<sup>st</sup> July 1962, been torn by armed conflicts, ethnic massacres and massive population movements.
20. Burundi adopted a new Constitution in 1992 but, the assassination of the President of the Republic from the Hutu ethnic group in 1993 and the military coup d'etat of 1996 destroyed the co-habitation between the Hutu and the Tutsi, dragging the country into a situation of serious and massive violations of human rights and into a civil war which is still going on in spite of the Arusha Peace Accords.
21. In spite of the efforts being deployed by the Burundians, of the help provided by the African Union and the United Nations, the civil war has been going on for 11 years with the following consequences:
  - The deterioration of the economic and social situation of the country which is especially worsened by an economic embargo imposed by the neighbouring countries to the detriment of the living conditions of the Burundi populations of whom the percentage living under the poverty

threshold rose from 39.73% in 1993 to more than 57.21% in 1998;

- In the legal context, those brought to justice denounce the partial application of the law and attention is often drawn to the overcrowding in the prisons with the attendant implications in terms of violations of remand deadlines, slowness of proceedings and unhealthy detention conditions;
- At the political level, the Transitional Constitutional Act of 1998 established Executive, Legislative and judiciary Powers which asserts its autonomy vis à vis the two other Powers;
- Furthermore, the security situation remains a matter of concern as is evidenced by the assassination of the Apostolic Nuncio in Bujumbura and the murderous attacks of the Movement known as the National Liberation Forces (NLF) up to Bujumbura;

22. However, Burundi is determined to pursue its efforts towards the restoration of total peace, which made the NLF, the only rebel movement engaged in armed resistance, accept contact with the Government through a meeting in Amsterdam, the Netherlands, with the President of the Republic, H.E. Mr. Domitien Ndayizeye.
23. Moreover, all of the principal political movements of the country are participating in negotiations with a view to signing an Agreement for power sharing, which hopefully should lead to the consensual adoption of a Constitution and bring an end to both the transition and the crisis after the holding of the general elections in October 2004.

### **III. ORGANISATION OF THE MISSION OF PROMOTION IN BURUNDI**

#### **A. RECEPTION OF THE DELEGATION AND ORGANISATION OF WORK**

24. The African Commission's promotional mission to Burundi was led by Commissioner Mohamed Abdellahi Babana, accompanied and assisted by Mr. Jules Batchono, Jurist responsible for Promotional Matters in the Secretariat of the African Commission in Banjul, The Gambia.

25. Commissioner Babana's delegation arrived in Bujumbura on the 1<sup>st</sup> February 2004 as arranged, but was compelled to leave on the 11<sup>th</sup> instead of the 13<sup>th</sup> February due to flight difficulties.
26. The Burundian Authorities made the necessary arrangements for the reception of Commissioner Babana's delegation at Bujumbura Airport by 2 representatives of the Ministry of Institutional Reform, Human Rights and Relations with the National Assembly including Madam the Permanent Secretary of H.E. the Minister, 2 representatives of the Civil Society and the State Protocol.
27. This warm and cordial welcome facilitated the contact and mutual understanding between the African Commission's delegation and the Burundian Authorities, which contributed to the success of the promotional mission, which started on the 3<sup>rd</sup> instead of the 4<sup>th</sup> February 2004, in spite of certain organisational difficulties.
28. Indeed, Commissioner Babana's mission embarked on its activities without the draft work programme which is usually presented by the Authorities of the host country and adopted by the mission during a collaborative meeting: The mission was practically carried out on the basis of appointments gleaned sometimes by the delegation itself.
29. However, Commissioner Babana's delegation wishes to express its profound gratitude to the Burundi Government, particularly to the Ministry of Foreign Affairs, to H.E. the Minister for Institutional Reform, Human Rights and Relations with the National Assembly and to his colleagues, to the representatives of NGOs and to all other individuals who spared no effort in ensuring the success of the African Commission's mission to Burundi.

## **B. PERSONALITIES ENCOUNTERED AND SITE VISITS**

30. On arrival, Commissioner Babana's delegation did not receive the traditional programme of pre-established appointments from the Authorities of the host country which serves as a basis for its activities but this delegation was able to meet the representatives of the political, administrative and legal Authorities as well as those of the Civil Society, those from the Office of the High Commissioner of Human Rights and from the High Commissioner for Refugees in Burundi in the following order:



1. **Day of the 3<sup>rd</sup> February:**

**Meeting with Mrs. Habonimana Solange, Deputy Legal Representative and Mrs. Ndahigeze Ancilla, Coordinator of the Group of Women's Associations and NGOs of Burundi (CAFOB/B)**

31. The meeting took place at the Headquarters of the CAFOB/B and after the exchange of greetings Commissioner Babana made a presentation on the mandate and work of the African Commission, and on the objectives of his mission of promotion to Burundi;
32. Although Commissioner Babana's presentation was brief, he also dilated on the Protocol relative to the Rights of Women in Africa, the African Charter on the Rights and Welfare of the Child, the African Court of Human and Peoples' Rights. In concluding Commissioner Babana asked questions relative to the freedom of association, the human rights situation particularly with regard to women and children and on the relations of cooperation between the Government and the NGOs;
33. The representatives of the CAFOB/B first of all presented the structure, aims and objectives as well as the activities of their organisation and pointed out notably that:
  - ✓ The situation of women was developing positively but was often challenged by difficulties related to traditional practices, to the consequences of the war and insecurity, and the issue of rape, particularly that of minors, the spread of the HIV/AIDS pandemic, poverty which affects women and children and in particular orphans from the war and massacres of ethnic groups. The Women's Organisation also encounters difficulties which are especially hard to overcome;
  - ✓ The Government has good relations with Civil Society, in particular with the NGOs and the CAFOB/B enjoys this cooperation especially in the context of the execution of projects of sensitization in the area of human rights and of national reconciliation;
  - ✓ From a general perspective the fundamental freedoms such as the right to association are protected in spite of the war, but the situation is complex since certain human rights violations like summary and arbitrary executions are still carried out by both the rebels and the Government;

34. Commissioner Babana urged the CAFOB/B to pursue its activities towards national reconciliation, the restoration of peace with a view to reinforcing the combat against poverty, rape and other ills from which women in particular suffer most.
35. Commissioner Babana handed over documents relating to the African Commission, the Protocol on the Rights of Women in Africa, the Protocol establishing an African Court of Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child to the representatives of the CAFOB/B;
36. Commissioner Babana requested the CAFOB/B to contribute more to the improved knowledge of the African Charter in Burundi, to intervene with the Burundi Government on the matter of the presentation of its Periodic Report to the African Commission, on the ratification of the Protocol on the Rights of Women in Africa, on the African Charter on the Rights and Welfare of the Child and on the rapid establishment of the African Court on Human and Peoples' Rights;

## 2. Day of 4<sup>th</sup> February

### **Audience with H.E. Mr. Déogratias Rusengwamihigo, Minister of Institutional Reform, Human Rights and Relations with the National Assembly:**

37. The audience took place in the Office of H.E. the Minister and after the usual exchange of greetings, Commissioner Babana presented the mandate and work of the African Commission. He then went on to mention the personalities and organisations that his delegation wished to meet before posing any questions.
38. The Minister made his excuses to Commissioner Babana's mission for the deficiencies in the organisation of his work and then outlined the achievements and projects of his Department in the area of promotion and protection of human rights. He then pointed out that the policy of his Ministry, which coordinates the structures and activities of promotion and protection of human rights aims at the establishment of a culture of human rights through education and sensitization;
39. The Minister further explained that the collaboration and discussions for the creation of the National Human Rights Commission are underway and that the necessary measures will be taken with regard to the presentation of Burundi's Periodic Report. Measures would also be taken to respond to Commissioner Babana's appeal for the ratification of the regional legal human rights instruments;

40. The Minister intimated that the Bwampamyé case had been re-opened before the Burundi Courts but it had been classified as no case to answer due to the default of the plaintiff;
41. The Minister also indicated that the situation in Burundi requires a better understanding on the part of the African Commission and the African Union to enable them enhance their contribution to a negotiated settlement of the Burundi crisis within the framework of the Arusha Accord;
42. Commissioner Babana congratulated Minister Déogratias for his goodwill and for the information which would indeed provide a better understanding of the human rights situation in Burundi and gave him some documents relative to the mandate and work of the African Commission;

**- Audience with H.E. Mr. Salvator Ntihabose, Minister of National Education**

43. The meeting took place in the Office of Minister Salvator, and after the usual exchanges, Commissioner Babana presented the work and mandate of the African Commission, touched on the issue of ratification of the legal human rights instruments, notably the African Charter on the Rights and Welfare of the Child, the Protocol relative to Women's Rights in Africa;
44. Commissioner Babana also underscored the need for the Burundi Government to present its outstanding Periodic Reports to the African Commission and Burundi's contribution towards the rapid setting up of the African Court on Human and Peoples' Rights, etc;
45. Commissioner Babana further requested clarifications on the implementation of the right to education, on the introduction of human rights education in the school system, on the place of the girl child in the school and in the professional training centres, and on the Bwanpamyé case which had been the subject of a ruling by the African Commission, etc;
46. The clarifications advanced by the Minister related notably to:
  - The free education system in Burundi;
  - The efforts being deployed to keep girls in the educational system for as long as possible on the one hand, and on the other, to combat illiteracy which affects about 60% of women;
  - The preparation of teaching aids to disseminate human rights education in the educational system;
  - The projects aimed at achieving 100% education of children of school going age, in the short term;

47. The Minister also outlined the difficulties faced by his Department in terms of infrastructure, human resources and teaching materials due to the crisis which was aggravating the poverty of the populations and which thereby reduced the State's resources to zero;
48. He explained that the Bwampamye case had been classified without outcome by the competent legal Authorities who had re-opened the proceedings in execution of the ruling by the African Commission;
49. The Minister in conclusion pointed out that his Government would take the necessary measures with regard to the presentation of its outstanding Periodic Reports and the ratification of the regional legal human rights instruments mentioned in Commissioner Babana's presentation;
50. Commissioner Babana thanked the Minister and requested his personal intervention with his Government for a rapid solution to the Bwampamye case which has been pending for four years;

**- Meetings with the representatives of the United Nations Specialized Agencies:**

51. Commissioner Babana's delegation was received respectively by:
  - Mr. Neyaga Kaba, Delegate of the Office of the United Nations High Commission for Refugees in Bujumbura, on the 6<sup>th</sup> February 2004 in his office;
  - Moro Munganga, Acting Delegate of the Office of the United Nations High Commissioner for Human Rights in Bujumbura, on the 4<sup>th</sup> February 2004, at the Institution's Head Office, with two of his colleagues in attendance;
52. The exchange of views and of information with each of the representatives of the United Nations Specialized Institutions working in the field related notably to the mandate and work of the African Commission, to the human rights situation in general and to that of vulnerable persons in particular, including foreign refugees in Burundi and Burundian refugees returning from exile, to persons repatriated from refugee camps;
53. The discussions with the UN Institutions also related to parallel justice with the denouncing of the elements of the NLF (the sole movement which is still carrying on the rebellion), to the cooperation between the Government and the United Nations Institutions, to the situation from the military and political

perspectives and within the framework of the Arusha Peace Accord and to the ongoing negotiations;

54. The discussions with the representatives of the United Nations Agencies were very fruitful for Commissioner Babana's mission which was able to verify certain information already in its possession as well as obtain new, highly pertinent information;

**- Meeting with Mr. Adrien Ndayisaba, Executive Secretary of the Burundian Human Rights League "ITEKA"**

55. The meeting took place at the Headquarters of the ITEKA which enjoys Observer Status with the African Commission, after two failed appointments due to the unavailability of its representatives;

56. Commissioner Babana accepted the apologies presented by the Executive Secretary of ITEKA to whom he briefly presented the work of the African Commission, the African Charter on the Rights and Welfare of the Child and the Protocol on the Rights of Women in Africa which Burundi has not yet ratified, then the matter of the rapid establishment of the African Court of Human and Peoples' Rights;

57. Commissioner Babana also asked questions relative to human rights and to ITEKA's programmes;

58. Mr. Adrien Ndayisaba first of all explained about the restructuring of his NGO and pointed out in particular that:

- ✓ The effects of the war and the spread of poverty is having a considerably damaging effect on the effective enjoyment of human rights even if the enjoyment of collective rights is protected;
- ✓ The situation of economic, social and cultural rights is of great concern, which seriously exposes the vulnerable groups of the populations to violence, exclusion and destitution;
- ✓ In the context of its programmes, ITEKA cooperates with the Government for the execution of projects relating to training in and popularization of human rights. In collaboration with the UNHCR, ITEKA also carries out repatriation exercises and monitoring of camped individuals, of the reinstallation of returnees, etc;

### **3. Day of the 6<sup>th</sup> February**

#### **- Visit to the Ngagara Refugee Camp in Bujumbura**

59. Since prior arrangements had not been made for this visit Commissioner Babana's mission was only able to meet a few refugee leaders in the Camp who expressed their regrets at not having been informed of this visit by the delegation which should have been received by the entire group of refugees;
60. Commissioner Babana expressed his understanding and explained to them about the work and mandate of the African Commission, about the OAU/AU Convention of the 20<sup>th</sup> June 1974 governing Specific Aspects of the problems of Refugees in Africa which was ratified on the 31<sup>st</sup> October 1975 by Burundi and about the 28<sup>th</sup> July 1951 United Nations Convention relative to the status of Refugees, as well as its Protocol to which Burundi is signatory;
61. The refugees intimated that they were about 800 Congolese nationals in the Ngagara Camp and had been abandoned without any assistance from the Government and the UNHCR since, for security reasons, they had refused to be transferred to another Camp outside Bujumbura;
62. They added that they no longer receive any supplies and that even their water supply had been cut off, etc. and in conclusion, they requested Commissioner Babana to intervene with the Burundian Authorities and the Office of the UNHCR so that their food supplies could be resumed;
63. Commissioner Babana conveyed the African Commission's moral support to the refugees of the Ngagara Camp and offered them advice and words of encouragement before handing them some copies of the African Charter on Human and Peoples' Rights;

#### **- Meeting with NGO representatives**

64. Commissioner Babana's delegation met with Mrs. Laurence Ndadaye, widow of the President of the Republic who had been assassinated in 1993 and Chairperson of the Melchior Ndadaye Foundation which enjoys Observer Status with the African Commission, with Mr. Bararunyeretse Pasteur, Director of the Centre for the Promotion of the Rights of the Individual and the Prevention of Genocide and Chairman of the Government Commission of the Rights of the Individual, with the Honourable Laurent Gahungu, Secretary General responsible for the Coordination of the Burundi Association for the Defense of the Rights of Prisoners (BADP), with Mr. Louis-

Marie Nindorera, National Director of Global Rights as well as with Maitre Segatwa Fabien, Legal Counsel for Mr. Gaetan Bwampamyé (Communication No. 231/99 – Lawyers without Borders and G. Bwampamyé/Burundi) which was the subject of a ruling by the 28<sup>th</sup> Ordinary Session of the African Commission and which has still not been executed by the Burundi Government;

65. Maitre Segatwa Fabien was received at Commissioner Babana's Hotel but the meetings with each of the other members of the mission took place either in the office or in the respective NGO's headquarters;
66. On each occasion, Commissioner Babana presented the aim and objectives of his mission, namely the African Charter and the work of the African Commission, the African Charter on the Rights and Welfare of the Child, the Protocol relative to Women's Rights in Africa as well as the Protocol on the establishment of the African Court of Human and Peoples' Rights, before asking any questions;
67. At the meeting with Commissioner Babana's mission the participants all started by presenting their respective organisations and by providing some responses to the questions raised by the delegation, notably:
  - ✓ The Bwampamyé case was re-opened before the Courts in execution of the ruling by the African Commission and after a provisional decision pending the final ruling, Bwampamyé's lawyers called for dismissal with no case to answer, in order to safeguard against any future impartiality in case of a referral;
  - ✓ These lawyers now await the opportunity to re-open the proceedings in the Appeal Court on the basis of a provisional decision pending the final ruling;
  - ✓ The proceedings on the assassination of the President Melchoir Ndadaye are under review and in this regard, an independent Commission has been set up in relation to the current peace negotiations;
  - ✓ The right to life is better protected but the regular army and the rebels continue to carry out summary and arbitrary executions especially in the rural areas (case of the Mboza hill, District of Gisovu, Ruyaga Division);
  - ✓ The rebels loot the farms of the country folk especially at the time of harvest as happened in the Muyira and Kirombwe Divisions; Fortunately, due to pressure by

the Burundian Army the elements of the NLF (the only movement still remaining in the rebellion), are constrained to limit their movements;

- ✓ There are about 8,000 to 9,000 individuals in the country's prisons of whom 25% are condemned under common law and the remainder are detained for reasons relating to the Burundian crisis (genocide, ethnic massacres);
- ✓ Abuse of remand regulations is quite frequent (on average detainees spend 5 to 6 years without a hearing), notably in the Ngozi prison where 95% of the detainees are in this situation;
- ✓ The detention conditions are extremely difficult as certain prisons constructed to hold 400 to 800 persons, like the Mpimba Central Prison in Bujumbura, currently hold 2,000 to 3,000 detainees who often live in unhygienic conditions with neither health care nor proper food, live in promiscuity, without separation of quarters for the women, minors, adults and hardened criminals, and with all the harmful consequences that this can bring about; For instance, women are harassed resulting in unwanted pregnancies, spread of HIV/AIDS and contact between young children and hardened criminals;
- ✓ But it should be noted that the Mpimba Central Prison in Bujumbura has benefited from NGO assistance and now has a separate wing for women and minors, and better still, this prison also has training centres open to women and small children as is the case in certain other prisons (Ngozi) which has also benefited from NGO assistance;
- ✓ The independence of the judiciary undoubtedly has shortcomings, due essentially to the challenging of the impartiality of Magistrates whose weakness in terms of staff and even lack of training are often detrimental to a fair hearing even at the lowest level;
- ✓ In consequence this state of affairs destroys the confidence of individuals in the justice system which is considered as a means of domination by some over the rest;
- ✓ Progress registered in the reform of the Criminal Code since 1998 is however aimed at guaranteeing a better future and protection of human rights and with the



restoration of durable peace and the consolidation of national reconciliation;

68. In concluding the discussions, Commissioner Babana always invited the heads of NGOs to strengthen their relations of cooperation with the Government which carries first responsibility for protecting human rights in the country, to inform the African Commission of any legal rulings which violate human rights by means of Communications/complaints and to ensure by all possible means sensitization to human rights, the publication and popularization of the African Charter;
69. Furthermore, Commissioner Babana invited the NGOs to exert pressure for the ratification of the regional human rights instruments by the Government such as the Protocol relative to Women's Rights in Africa and the African Charter on the Rights and Welfare of the Child;
70. Commissioner Babana ended by advising the NGOs to press for the presentation of the Burundian Periodic Report to the African Commission as well as for the execution of the ruling made by the 28<sup>th</sup> Ordinary Session of the African Commission relative to Communication No. 231/99 – Lawyers without Borders (on behalf of Gaetan Bwampamye) / Burundi and to improve cooperation with the African Commission through information exchanges;

#### **4. Day of the 10<sup>th</sup> February**

##### **Audience with Dr. Jean Kamana, Minister of Public Health**

71. The meeting took place in the Office of the Minister, assisted by Dr. Louis Mbonoko, Inspector General of Public Health. Once the formalities and greetings had been completed Commissioner Babana outlined the aims and objectives of his mission, presented the African Charter and the work of the African Commission before going on to raise questions relating to the enjoyment of the right to good health;
72. In reply, Minister Jean Kamana indicated, among other things, that:
  - ✓ The efforts being made by the Ministry in the construction of health centres, in the training of health workers, in carrying out vaccination exercises against illnesses like polio, measles, tuberculosis, etc. had been blocked by the crisis which is unending, as well as the consequences of the embargo which worsened the situation;

- ✓ Malaria and HIV/AIDS are health problems which are particularly serious for Burundi which registers about 2,000,000 cases of malaria each year;
- ✓ Like in the other countries of the Great Lakes region, the prevalence of HIV/AIDS (+16%) is moving towards a catastrophic dimension and this situation gave rise to the creation of a Ministry specially responsible for HIV/AIDS;
- ✓ The creation of this Ministry for AIDS aims first of all at guaranteeing the improved mobilisation of resources, in particular international aid including assistance from the United Nations system which is not as forthcoming as it should;
- ✓ We are on the point of launching an Action Plan to link the prevention of HIV/AIDS to its treatment medically through sensitization and even for health care in general;
- ✓ But, there again, we have a problem of resources as the State's capacity to ensure execution of projects is extremely reduced due to the crisis;
- ✓ The strategy for sensitizing the populations should also concentrate on the issue of rape;
- ✓ There again we are faced with a problem of resources since a lot of resources are required to guarantee monitoring of rape cases;
- ✓ The private sector participates in the area of health care but its intervention hardly improves the situation due to the extreme poverty of the populations;
- ✓ The issue of Female Genital Mutilation does not exist in Burundi but the health of Women and Children is a matter of concern;

73. Commissioner Babana thanked the Minister for this information and requested his personal intervention with the Government for:

- The ratification of the regional human rights instruments that Burundi has not yet ratified;
- The presentation of Burundi's last Periodic Report to the African Commission;

- Burundi's contribution to the rapid establishment of the African Court on Human and Peoples' Rights whose Protocol has just entered into force;

74. Commissioner Babana further explained to the Minister that the African Commission was in a position to provide technical assistance for the preparation of Burundi's Periodic Report and handed him a copy of the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child and the Protocol relative to Women's Rights in Africa;
75. Commissioner Babana also informed the Minister that in conformity with the vision of the African Union, State Parties should respect the provisions of the African Charter and adopt viable programmes for poverty alleviation so as to facilitate the effective enjoyment of economic, social and cultural rights;
76. In consequence, Burundi should do its utmost to put an end to the crisis and concentrate effectively on its human development programmes;

**- Audience with H.E. Mrs. Kavabuha Icoyitungiye Juliette, Minister of Social Welfare and Women's Affairs:**

77. The meeting took place in the Office of Her Excellency the Minister and after the exchange of greetings, Commissioner Babana provided clarifications relating to the mandate and work of the African Commission, and to the aims and objectives of his mission of promotion to Burundi;
78. Commissioner Babana also spoke about the matter of the rapid establishment of the African Court which requires Burundi's contribution before requesting the Minister's intervention in the ratification by Burundi of the Protocol relative to the Rights of Women in Africa and of the African Charter on the Rights and Welfare of the Child;
79. Commissioner Babana then asked questions relative to the human rights situation in Burundi, particularly Women's rights, to conditions in detention centres, to the creation of the National Human Rights Commission, to the national reconciliation and restoration of peace process, to the presentation of Burundi's Periodic Report to the African Commission as well as the execution of the ruling relative to the Communication No. 231/99 (Bwampamyé/Burundi case), etc.
80. In response, Her Excellency the Minister gave the following information:

- ✓ The current civil war and insecurity in Burundi have a negative influence on the human rights situation in general and on Women's Rights in particular;
- ✓ However, efforts were being made in favour of human rights, particularly with regard to Women's Rights, within the framework of a programme essentially based on education for the development of a culture of human rights;
- ✓ Thanks to education and sensitization, the status of women was developing positively;
- ✓ Thus, women were participating more and more in national management issues as was the case in the negotiations for the Arusha Peace Accord at which women were represented;
- ✓ However, women's participation is still insufficient as in Arusha women only had a consultative voice in the negotiations;
- ✓ Efforts are on-going for the promotion of women's rights and it is in this context that a sensitization exercise is being carried out in collaboration with other Ministries (Education, Health, Public Service, Justice etc.) and with NGOs so as to bring about the necessary reforms adopted by Parliament for the improvement of the legal status of women;
- ✓ The sensitization campaign is oriented towards the populations in general so as to make them contribute towards reducing the weight of traditional practices and in particular towards the women themselves in order to strengthen their organisational capacities with a view to enhancing their participation in the decision making process;
- ✓ The war contributes to the violation of human rights, notably in the detention centres where there is overcrowding, to promiscuity between men, women and children, to slowing down of procedures, particularly legal procedures, iniquitous hearings, corruption, impunity etc., but we are working to ensure that peace and national reconciliation allow a better protection of human rights;
- ✓ In Burundi the phenomenon of female genital mutilation does not exist, but forced marriages and polygamy are rife in the rural areas, especially in

Muslim areas, and rape, particularly that of under age girls are more and more frequent from the towns to the rural areas, with the spreading of HIV/AIDS as an important consequence;

- ✓ Thanks to the efforts of the Burundian Parties, to assistance from the African Union and from the International Community significant perspectives of national reconciliation and the restoration of peace in Burundi are evident from the current negotiations for the application of the Arusha Peace Accord which should bring an end to the crisis;
- ✓ The creation of the National Human Rights Commission is also part of this consideration but it is worthy of note that discussions relating to this National Human Rights Commission are already on the table and it has already been the subject of two workshops held in Bujumbura;
- ✓ The Government of Burundi will take the necessary measures to fulfil the expectations of the African Commission with regard to the ratification of the Protocol on the Rights of Women in Africa, of the African Charter on the Rights and Welfare of the Child and in contributing to the rapid establishment of the African Court on Human and Peoples' Rights as well as the presentation of Burundi's outstanding Periodic Reports;
- ✓ Burundi would like to continue to rely on the support of the African Commission in its quest for national reconciliation, peace and the promotion of human rights;

81. Commissioner Babana congratulated Her Excellency Minister Kavabuha for the information and for her commitment with regard to the ratification of the regional legal human rights instruments and the presentation of her Government's outstanding Reports to the African Commission;

82. Finally, Commissioner Babana handed copies of documents relative to the mandate and work of the African Commission to Her Excellency the Minister.

## CONCLUSIONS AND RECOMMENDATIONS

### A. Conclusions:

83. Commissioner Babana's mission encountered difficulties due notably to the lack of preparation for his activities by the Authorities of the host country. Thus the draft programme for the appointments was not ready on the arrival of the delegation, and in spite of a working session held to smooth out "eventual programming difficulties" this draft programme was never established by the competent Authorities who however expressed their apologies for this;
84. The consequences of this situation on the organisation of the mission compelled Commissioner Babana's delegation to try and complete, through observation, the elements of information acquired during meetings which most of the time were fraught with serious organisational deficiencies;
85. However, Commissioner Babana's delegation was able to note that:
  - ✓ Considered as an act of solidarity by the African Union, Commissioner Babana's promotional mission was, as a result, received by all of its Burundian counterparts who showed enormous goodwill and openness;
  - ✓ With the positive developments in the implementation of the 2000 Arusha Peace Accord, the security situation in the country is improving where the effort to achieve national reconciliation and the application of the Peace Accord have been given priority, as has been done for the promotion and protection of human rights;
  - ✓ From a general perspective, Burundians are re-discovering the advantages of the communality of their culture which is manifested through the Kirundi, the language common to all the ethnic groups in the country for the past few centuries;
  - ✓ Burundians have also effectively discovered that peace and security really constitute an indispensable prerequisite for the restoration of the democratisation process, for the elimination of the constraints to the harmonious development of human rights and for the eradication of poverty, which justifies their efforts towards ending the crisis through the application of the Arusha Peace Accord;

- ✓ The human rights situation in Burundi is undoubtedly deplorable, but the promotion and protection of these rights remain a major concern;
  - ✓ The creation of a Ministry for AIDS to deal with the ravages being caused by HIV/AIDS, the existence of the freedom of the press (several FM radio stations exist and operate without hindrance), the radio broadcasts devoted to human rights issues are indications of the genuine concern for human rights in this country;
  - ✓ Overall, the developments in the application of the Arusha Peace Accord provide Burundi with reasons to hope for an outlet from this crisis towards which the country is working determinedly;
86. In parallel with the efforts being deployed within the framework of the application of the Arusha Peace Accord and the reforms already achieved or are in the pipeline (legal status of women and children, the Criminal Code, improvement of the living and working conditions of the magistracy, etc) Burundi has, at the international and regional levels ratified an impressive battery of legal human rights instruments.
87. However what is most reassuring is that the Burundi Government has promised to pursue its course and to ratify in the very near future the Protocol relative to Women's Rights in Africa and the African Charter on the Rights and Welfare of the Child in particular;
88. Furthermore, Burundi maintains good relations of cooperation with the African Union, the United Nations, the African Commission on Human and Peoples' Rights and with NGOs, notably those working on the ground in interior of the country;
89. Yet, Burundi continues to encounter enormous difficulties which constrain the effective enjoyment of human rights by the populations; These difficulties are linked to the civil war and can be analysed as follows:
- ✓ The survival of a highly reduced rebellion which however continues to maintain an situation of war and insecurity;
  - ✓ The problem of rape which also affects men but which has more victims among the women, especially young girls and widows resulting from ethnic group massacres with the consequence of increased spread of HIV/AIDS;

- ✓ The resentment on the one hand among individuals suspected or judged guilty of tribal massacres and who often find themselves illegally detained in difficult prison conditions, and on the other hand those who are actually victims of tribal massacres, notably the widows and orphans who are reduced to destitution;
- ✓ The poverty linked to the lack of security notably in the rural areas, in a country where the quasi totality of the population survives on agriculture;
- ✓ The problems due to the reinstallation of internally displaced persons and returnees, who come back sometimes after 30 years of exile;

## **B. Recommendations**

### **1. TO THE BURUNDI GOVERNMENT**

90. The Government of the Republic of Burundi needs to:

- ✓ Reinforce the efforts being made towards the restoration of a lasting peace through the implementation of the Arusha Peace Accord;
- ✓ Ratify the international and regional legal instruments, notably the Protocol relative to Women's Rights in Africa, the African Charter on the Rights and Welfare of the Child and endeavour to present Burundi's outstanding Periodic Reports to the African Commission;
- ✓ Pursue the on going reforms with a view to reinforcing the legal status of Women and the restoration of the conditions of fair hearing in the law courts;
- ✓ Take adequate measures to improve the living conditions in the detention centres and to guarantee the respect for human rights in the said centres;
- ✓ Make the necessary arrangements for the execution of the ruling made by the 28<sup>th</sup> Ordinary Session of the African Commission relative to Communication No. 231/99 – Lawyers without Borders (on behalf of Gaetan Bwampamyé) / Burundi;



- ✓ Guarantee a better involvement of Civil Society, particularly women and young people in the management of the country's affairs, notably in the implementation of the Arusha Peace Accord;
- ✓ Take the necessary measures or strengthen those already in place for the implementation of a general plan for poverty alleviation which is affecting the populations so mercilessly;
- ✓ To take parallel measures for the reinforcement of lucrative activities for women and the education and training of girls;
- ✓ To effect maximum implementation of educational projects for children of school going age, in the short term;
- ✓ Ensure the continuation and strengthening of measures already in place within the framework of the combat against HIV/AIDS and to take appropriate and urgent measures for putting an end to the problem of rape, in particular that of young girls;
- ✓ Make all the necessary arrangements for the creation of the National Human Rights Commission of Burundi;
- ✓ Enhance relations of cooperation with the NGOs, the international institutions working on the ground, with the African Commission, the African Union and the United Nations with a view to restoring lasting peace and the promotion and protection of human rights.

## **2. TO CIVIL SOCIETY ORGANISATIONS**

91. The Civil Society Organisations should:

- ✓ Request and obtain Observer Status with the African Commission to enable them better contribute to the promotion and protection of human rights;
- ✓ Collect documentation and pertinent information relative to human rights and put them at the disposal of the Government and the African Commission for appropriate action;

- ✓ Maintain and strengthen relations of cooperation with the African Commission and the Government in the promotion and protection of human rights;
- ✓ Promote awareness and popularization of the African Charter and exert the necessary pressure on the Government for the fulfilment of its obligations, notably those relating to the African Charter;
- ✓ Set up networks for exchanges in information, experiences and solidarity;

### **3. TO THE AFRICAN COMMISSION**

92. The African Commission should:

- ✓ Pay greater attention to its relations of cooperation with Burundi with a view to enhancing its understanding of the human rights situation in this country by intensifying its missions of promotion there;
- ✓ Provide the African Union with all the necessary information for a better understanding of the human rights situation in Burundi;
- ✓ Request the African Union and the International Community to support the poverty alleviation programmes in Burundi;
- ✓ To request the African Union and the United Nations to intensify their efforts in the States of the Great Lakes region to enable them contribute effectively to the consolidation of peace within their territories and in the sub-region;

## **V. LIST OF DIGNITARIES ENCOUNTERED DURING THE PROMOTIONAL MISSION IN BURUNDI**

### **A. Political, Administrative and Legal Authorities:**

- H.E. Déogratias Rusengwamihigo, Minister for Institutional Reform, Human Rights and Relations with the National Assembly
- H.E. Salvator Ntihabose, Minister of National Education
- H.E. Jean Kamana, Minister of Public Health
- H.E. Kavabuha Icoyitungiye Juliette, Minister for Social Welfare and Women's Affairs

- Mrs. Séraphine Rucakumugufi, Permanent Secretary, Ministry for Institutional Reform, Human Rights and Relations with the National Assembly

**B. Representatives of Civil Society:**

- Mrs. Habonimana Solange, Deputy Legal Representative (CAFOB/B)
- Mrs. Ndahigeze Ancilla, Coordinator (CAFOB/B)
- Mr. Adrien Ndayisaba, Executive Secretary (“ITEKA”)
- H.E. Laurence Ndadaye, Chairperson of the Melchior Ndadaye Foundation
- Mr. Bararunyeretse Pasteur, Director (CPRIPG)
- Hon. Laurent Gahungu, Secretary General (BADP)
- Mr. Louis Marie Nindorera, National Director (GLOBAL RIGHTS)

**C. Representatives of International Institutions :**

- H.E. Mr. Neyaga Kaba (Representative of the UN High Commission for Refugees)
- Mr. Moro Munganga, Administrator (High Commission for Human Rights)
- Mrs. Solange V. Vasse, Head of the Observation Unit (High Commission for Human Rights)
- Mr. Pollock Ndonodji (High Commission for Human Rights)