

REPORT ON THE BURUNDI OFFICE
OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

Summary of Recommendations

*(by Ian Martin,
July 1998)*

1. Programme

1.1 The current political context is the most favourable since the Office was established, and all three components - the observation mission, the technical cooperation programme and the legal assistance programme - have valuable roles to play. (Para.11)

1A. Observation

1A.1 It is highly desirable to establish local presences, but the current number of observers does not adequately allow for this: each of the four teams should consist of at least four observers, while additional officers should be assigned central responsibility for investigations, detention, and internally displaced people. (Para.17)

1A.2 More should be done to build relations leading to regular confidential exchanges of information with the humanitarian NGOs: this should be the consistent responsibility of one officer. (Para.18)

1A.3 Cooperation with NGOs should not only be in the context of human rights promotion activities, but should include exchange of information about the human rights situation and particular incidents. (Para.18)

1A.4 The highest priority should be given to coordination of the Office's observation functions, to ensure effective use of limited human resources, to plan a strategy and setting priorities in investigating the most serious aspects of the human rights situation, and for ensuring follow-up with the authorities. (Para.19)

1A.5 There should be further discussions with the Government to ensure that notice of travel has to be given only when this is genuinely necessary for security reasons, and to press for confidential access to all detainees. (Para.21)

1B. Technical cooperation

1B.1 The programme of assistance to the administration of justice, currently being prepared by UNDP in discussion with OHCHR, should be a joint project. It should include not only training costs but also funds to meet urgent material needs of the justice system, directed according to priorities identified by OHCHR. (Para.25)

18.2 UN agencies should increase and formalize their coordination in relation to activities promoting human rights and peace. (Para.27)

18.3 The Office should re-assess the contribution it can make to national capacity-building. Some assistance for the Ministry of Human Rights should be incorporated either in the next phase of the technical cooperation project, or in the UNDP good governance project. It should be an objective of OHCHR to institutionalize the national capacity for human rights promotion to the maximum extent possible, including in the Centre for the Promotion of Human Rights and the Prevention of Genocide. (Para.28)

18.4 The Office should now develop a strategy for NGO capacity-building, and as well as continuing to cooperate with NGOs in promotional events, should hold periodic meetings at which the Office's overall work is discussed and information facilitating cooperation is shared with NGO representatives. This might be ensured by allocating an overall responsibility for NGO liaison to an international staff member directly responsible to the Director. (Para.29)

1C. Legal assistance

1C.1 The current team of six lawyers should be doubled to 12 for the year ahead. OHCHR should plan towards the phasing out of direct UN involvement in legal representation after a further year, if this can then be adequately provided through external or national NGOs. The international presence should disengage from direct representation, focus on a systematic analysis of the judicial system, and undertake further training of national lawyers. (Paras.33-34)

2. Guidance

2.1 An officer should be assigned to develop existing materials into a Field Guidance Manual for Burundi. (Para.20)

3. Management, administration and finance

3.1 The Office should be restructured so as to better integrate the three components. This might take the form of three substantive units: Observation, Justice (bringing together the legal assistance and training activities), and Promotion (bringing together promotional work currently divided between the Observation Mission and the media and education teams of the technical cooperation component). (Para.35)

3.2 The highest priority should be given to the recruitment of a Deputy, with strong management skills, through whom the Director should manage all units. The Deputy Director should ensure good internal consultation, communication and personnel management. A management group should meet regularly and ensure consistent communication with all staff. (Para.36)

3.3 Staff should be recruited and graded on the basis of specific job descriptions. UNVs should be utilized according to the extent of their professional qualifications and experience. (Para.37)

3.4 Maximum efforts should be made to overcome the split between UNOPS and Secretariat procedures in the administration of the Office. This may require that governments should be asked to pay contributions for the technical cooperation programme in Burundi directly to an appropriate UNOPS account instead of to the Voluntary Fund for Technical Cooperation. (Para.39)

3.5 A logistics officer should be recruited, and the necessary authority delegated, to ensure the management of vehicles in an efficient and transparent manner. (Para.40)

4. Security

4.1 There is a need to clarify relationships among the Director, team leaders, OHCHR security officers, and the Coordinator of the Security Cell under the Designated Official. (Para.42)

4.2 The new senior security officer should make a fresh assessment of logistical and communications requirements from a security perspective. (Para.42)

4.3 The minimum requirement, once offices are open in Gitega and Ngozi, would seem to me to be five security officers, but this is a matter on which the new senior security officer should make his own recommendation. (Para.43)

5. Staffing

5.1 The initial objective for expansion of the Office should be for an international staff of 38, as set out in Para.44.

5.2 Any additional recruitment should attempt to improve the gender balance of the international staff, and diversify the regional representation. (Para.45)

5.3. The Director should be asked to make recommendations regarding the future size of the national professional and support staff consistent with whatever international staffing is agreed. (Para.46)

6. The peace process and the future

6.1 A larger, locally-based international human rights presence could be an element of an eventual peace agreement. Burundi could be an appropriate context for a joint UN/GAU human rights presence. (Paras.47-48)

REPORT ON THE BURUNDI OFFICE
OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

1. The Office of the High Commissioner for Human Rights in Burundi (OHCHR/B) has developed in three stages, and has been managed and financed as three components. The Office was opened in Bujumbura on 15 June 1994, with a mandate of technical assistance and advisory services. This programme was formalized in an agreement between the Government of Burundi and the High Commissioner signed on 22 June 1995. It covered human rights education and training; training fellowships; information and documentation; production of teaching and promotional materials; assistance to the Government's Centre for Human Rights Promotion; support to human rights organizations and civil society; human rights assistance to the army, gendarmerie and police; and assistance to the judicial system.

2. In March 1995, a statement by the Chairman of the Security Council and the resolution of the Commission on Human Rights on Burundi encouraged the High Commissioner to add human rights observers to the Office, and the Commission decided to appoint a Special Rapporteur. A visit by the High Commissioner was followed by an exchange of letters in April 1995, and an agreement of cooperation signed on 8 November 1995. This agreement created *La Mission des Nations Unies pour l'Observation des Droits de l'Homme au Burundi* (hereafter the Observation Mission), as a component part of the Office. Its activities include informing itself on the general human rights situation in Burundi, with particular reference to the rights to life, to integrity and security of the person, and to freedom of expression, association and peaceful assembly; receiving communications regarding alleged human rights violations, raising cases or situations with the Government, and ensuring follow-up with the competent authorities; and reporting to the High Commissioner, who would communicate information to the Special Rapporteur and other mechanisms or institutions, taking into account the response of the authorities. The agreement provides for complete freedom of movement throughout the country, including freedom of investigation, and access to all places of detention and interrogation. The Government agreed to the deployment of 35 observers. Due to delays over funding agreed in principle by the European Commission, the first group of five observers arrived in Burundi only in April-May 1996.

3. The third component is the legal assistance programme

¹So named since May 1998. It was previously known as the Human Rights Field Operation in Burundi (HRFOB), and in Burundi as the Centre des Nations Unies pour les Droits de l'Homme (CNUDH).

(assistance judiciaire), which operates on the basis of an agreement reached with the Government and the Bar Association in September-October 1996, to provide legal representation to those accused of crimes committed in the crisis of October 1993 and to the victims. It was envisaged that this would be undertaken by two national and two international lawyers (with translators/interpreters), coordinated by a national consultant, before each of the three courts of appeal.

4. I visited Burundi 19 June - 3 July 1998, accompanied by Mr Gilbert Bawara, Human Rights Officer in the Africa Team of the Activities and Programmes Branch. I had extensive discussions with the Director and the international and national staff of all three components of the Office. I met the Ministers of Justice, Human Rights (*Ministre des Droits de la Personne Humaine, des Réformes Institutionnelles et des Relations avec l'Assemblée Nationale*), and Defence, and the Minister for the Peace Process; the President of the National Assembly; and the Director of the Centre for the Promotion of Human Rights and the Prevention of Genocide. I also met representatives of civil society, including human rights NGOs, the churches and the Bar Association; diplomatic representatives of the OAU, Belgium, France, Germany, Sweden, the USA and the Vatican; the Director of the UN Office in Burundi and representatives of UN agencies including OCHA, UNDP, UNESCO, UNHCR, UNICEF, and WFP; and international humanitarian NGOs. (The UN Resident Coordinator was absent from Burundi, and a newly-designated ICRC head of delegation had not yet arrived.) I visited Gitega, one of the two towns outside the capital where OHCHR has an office for the legal assistance programme and where it is intended to deploy international staff of the Observation Mission in the near future.

5. At 1 July 1998, the staffing situation was as follows. In addition to the Director, there were 14 human rights observers, including one UN Volunteer (UNV). The technical cooperation programme was staffed by one international professional (who also coordinated the legal assistance programme), and six national officers. The legal assistance programme employed three national consultants and six national advocates. There was an international administrative officer, a communications officer provided by the Norwegian Refugee Council (NRC), and three security officers (including one UNV). The international staff thus totalled 21 (18 UN staff, two UNVs, and one NRC). Thirty national support staff - administrative, secretarial, interpreters, drivers and cleaners - were employed under the three different components. Some of the functions of both international and national staff could not be exclusively allocated to the component under which they were funded.

²A new senior security officer has arrived since my visit, bringing this total to 22.

Political context: relations with the Government

6. The Office was established under the power-sharing Government which followed the traumas of October 1993: the assassination of elected President Melchior Ndadaye, Hutu massacres of the minority Tutsi and bloody retaliation by the Tutsi-dominated army against the Hutu population. (The addition of the Observation Mission was formally requested jointly by the Hutu President and the Tutsi Prime Minister.) Escalating violence led the Government to request regional military intervention, but this request was soon followed by the July 1996 coup which led to Major Pierre Buyoya being declared President, and the imposition by regional states of economic sanctions against Burundi. A new form of power-sharing has recently been commenced: on 6 June 1998 President Buyoya and the President of the National Assembly reached an Agreement on the Political Platform of the Transition Regime, following which a transitional constitution was adopted by the National Assembly, a Hutu from the PRODEBU parliamentary group became one of two Vice-Presidents and a new ethnically-balanced Cabinet was appointed. On 21 June talks in Arusha under the mediation of former President Nyerere led to a declaration committing the Government, political parties and rebel groups to serious peace negotiations. A suspension of hostilities was to be declared by 20 July, when a second session of the negotiations was to open. But the Hutu rebel group CNDD-FDD said it was not bound by the Declaration, signed by a leader it had repudiated, and the Government said that the intended cessation of hostilities applied to armed factions and not to government forces, which would continue to undertake police actions and defend the population. There were substantial hostilities in southern provinces in the first half of July.

7. The relationship of OHCHR with the Government has gone through difficult periods. At the end of January 1997 the Government issued a strong public attack on the Office's December 1996 report, accusing it of being politically biased and influenced by "lobbies which support the terrorist and genocidal groups who want to inflict war on Burundi"; there was reported to be a high degree of hostile opinion among military circles against a number of the observers. During the subsequent visit of the High Commissioner to Burundi in February 1997, it was agreed that a liaison mechanism would be established, but for some months the Office was unable to secure regular liaison meetings with the Government. The Special Rapporteur has also experienced difficulties, particularly in a period beginning with the 1997 Commission on Human Rights: the Government for some time would not agree to a further visit by the Special Rapporteur and asked for his mandate to be terminated, but his fourth visit was finally agreed in November 1997.

8. The relationship of recent months is however an excellent one. The current Ministers of Justice and of Human Rights maintain close collaboration with the Office, and there are weekly meetings between representatives of the Office and an

inter-ministerial entité de liaison, presided over by a senior official of the Ministry of Human Rights. The entité has been undertaking visits to the provinces, in the course of which it is seeking to ensure positive cooperation from local authorities with OHCHR. Both these Ministers have retained their portfolios in the new Cabinet, while the June 1998 Political Platform places considerable emphasis on human rights and the promotion of the rule of law, and the broadening of the political base of the Government should only have a further positive influence on its human rights commitment. The relationship with the military has improved significantly.

9. The 21 June Arusha declaration indicates that the external negotiations will include the question of justice and the fight against impunity, and the judicial system. These are to be addressed in one of five negotiating commissions, the Commission on Democracy and Good Governance.

10. The International Commission of Inquiry concerning the assassination of the President of Burundi on 21 October 1993 and the massacres that followed, established by the Secretary-General at the request of the Security Council, recommended in its final report of July 1996 that international jurisdiction should be asserted with respect to acts of genocide against the Tutsi minority committed in October 1993. However, it believed that it was not possible to carry out an adequate international investigation of these acts "while the present situation persists in Burundi". The Government formally asked the Security Council to establish an International Criminal Tribunal for Burundi in October 1996 and has continued to press this request, which is supported by the Special Rapporteur. The Security Council and the Secretary-General have not judged that the necessary political conditions have existed. The Secretary-General has informed the Government that he is willing to study the possibility of increasing UN assistance to strengthen judicial institutions in Burundi, and reiterated this publicly during his 7 May 1998 visit to Bujumbura.

11. The current political context is the most favourable since the Office was established, and all three components - the observation mission, the technical cooperation programme and the legal assistance programme - have valuable roles to play. Of course this political situation can still go either way. It could slip back into the resurgence of Tutsi and Hutu extremists, and intensification of civil war. But there is real hope that the internal and external processes of political compromise will go forward. If so, OHCHR could play, and could be called upon to play, a still greater role.

The Observation Mission

12. The Observation Mission has operated with several handicaps. By the time the first observers arrived, the armed conflict had intensified, and security considerations have severely restricted

travel. Logistical constraints have exacerbated the limitations: until recently, the Office did not have radio communication, the number of vehicles was inadequate, and they were not properly equipped. Armoured vehicles requested in November 1997 are not yet available (after lengthy exchanges with New York, they were finally ordered in May for delivery by August 1998). Travel to some zones has been completely excluded as UN security precautions have been toughened, so that incident sites on the collines have been virtually inaccessible from 1997. Missions to some other areas travel with Burundi army escorts, inhibiting communication with some members of the local population. For security reasons, the Office acceded to a Government request that it give the Government 48 hours notice of planned missions, and in practice it often gives a longer period of notice.

13. The freedom of movement which exists in theory under the Agreement has been limited not only by real security considerations, but also by other restrictions imposed by the authorities. During the period of regroupement, observers required written permission by the governor to move around several provinces. Access to witnesses has been extremely restricted where the population are in sites for internally displaced people guarded by the security forces. Where local authorities say they have not received the notice of a mission given by the Office, they often will not let observers function. The Agreement states that the Mission "has the possibility to meet in private with any detainee": in practice, private interviews are permitted in some places of detention, while elsewhere observers are not allowed private interviews or even to see detainees individually. The Government has said that its reading of the Agreement is that the Mission does not have a right to private interviews, but only the "possibility" if granted by the authorities.

14. These handicaps mean that the Office has never been in a position to present a comprehensive picture of the human rights situation in Burundi. However, the observers have been able to collect credible testimony from first-hand witnesses in many cases of massacres in the countryside, as well as disappearances in the city. These have been put to the Government through the weekly meeting with the *entité de liaison*, in monthly reports and in correspondence. Even in the recent period of relative openness and cooperation, the response from the Government has been extremely inadequate: promises of investigations rarely have an outcome, and the formal responses to the monthly reports are more concerned with rebuttal than with serious efforts to pursue even those cases where the evidence is strongest.

15. The Office has recently intensified its efforts to visit prisons and other places of detention, and in May-June 1998 visited 10 of the 11 prisons. These currently hold over 9,000 prisoners, in accommodation with an official capacity of 3,650. The additional number of detainees held in *cachots* is unknown, but is probably over a thousand: the Office has visited only a limited number of these, mainly in the chief towns of the

accessible provinces. In addition to some deliberate ill-treatment, general conditions are deplorable. In one prison (Ngozi), where the prison population is around 2,300 in a prison built for 400, 335 prisoners died in the six months October 1997-March 1998, mostly from disease and/or malnutrition.³ Only about 20% are convicted prisoners, and some of the pre-trial prisoners are held for long periods pending investigation of minor offences. The Office's concern is shared by the Minister of Justice, who has undertaken visits himself and ordered other action, resulting in releases which have led to some reduction in the prison population from its peak in February 1998. The Office should give sustained attention to detention conditions. If the ICRC resumes detention visits in Burundi, guidelines for cooperation should be proposed, drawing upon those agreed in Rwanda, under which the ICRC plays the leading role in addressing physical conditions of detention, OHCHR plays the leading role in addressing the legal status of detainees, and the two organizations cooperate in addressing ill-treatment of detainees.

16. Burundi has the largest internally displaced population in a region of mass displacement: some 650,000 people, 11% of the country's population, are currently squatting in camps and makeshift sites, chiefly in the western provinces.⁴ The policy of mandatory regroupement has now ended, but this huge number of IDPs should remain a priority for the Office's monitoring, as regards the conflict-related human rights violations which contributed to their displacement, their vulnerability to violations while displaced, and the conditions for their return (where the action of the authorities to bring about return has sometimes involved further violations). Currently the number of returning refugees is small, and UNHCR Burundi has not seen the usefulness of a comprehensive memorandum of understanding with OHCHR. If however major returns take place and OHCHR is able to expand its local monitoring, a definition of the principles and practice of complementarity would become necessary, and it might be wise to anticipate this.

17. In mid-June the Director restructured the Observation Mission in order to establish teams for four regional sub-offices, each covering 3-5 provinces: Bujumbura, Gitega, Ngozi and Bururi. Security assessments have been carried out for Gitega and Ngozi, and observers are soon to be posted there; it is less certain when security conditions will permit the posting of the fourth team to Bururi. In principle, it is highly desirable to establish local presences, since this increases the possibility that the observers will have some preventive impact, the speed

³This death rate per thousand exceeds the death rate in Gitarama Prison in Rwanda in 1995, which led to an international outcry and exceptional UN measures.

⁴Further details are in "Regroupment Revisited - An outline analysis of the status of Burundi's IDPs", OCHA, Bujumbura, June 1998, from which this is taken.

of response to incidents requiring investigation, and the development of relations with local authorities and the local population. However, the current number of observers does not adequately allow for this: with four observers retained for central coordination and reporting functions, two teams are composed of three observers and two (the two which cover the most troubled western provinces) of only two observers. Observers allocated to teams based in Bujumbura must also continue to fulfil other general responsibilities. In my opinion, each of the four teams should consist of at least four observers, while additional officers should be assigned central responsibility for investigations, detention, and internally displaced people. This is reflected in my overall staffing proposals below (para.44).

18. The greatest knowledge of conditions in the zones most severely affected by the conflict, and of the situation of internally displaced people, is to be found within the humanitarian organizations. Although the Office attends the weekly meeting of humanitarian organizations, more needs to be done to build relations leading to regular confidential exchanges of information with the humanitarian NGOs: this should be the consistent responsibility of one officer. National human rights organizations have been extremely limited in their own field work, but there has been recent improvement in the objectivity and outreach of the principal such organization: it is important that cooperation with such NGOs should not only be in the context of human rights promotion activities, but should include exchange of information about the human rights situation and particular incidents.

19. By all accounts, the coordination of the Observation Mission has, until the restructuring of mid-June, seriously failed in its responsibilities for ensuring effective use of limited human resources, for planning a strategy and setting priorities in investigating (within security constraints) the most serious aspects of the human rights situation, and for ensuring follow-up with the authorities, including good preparation for meetings with the Government's *entité de liaison*. It is essential that the new structure, and any subsequent changes, gives the highest priority to ensuring that these functions are performed well.

20. Commendable efforts have been made to provide newly-arrived observers with training: the last training course was a four-day programme. OHCHR has not developed its own internal guidance for observers or other staff, but has made some use of the Field Guidance developed by HRFOR in Rwanda. Substantial work was done by a former training and methodology officer from HRFOR, who also worked on the draft OHCHR Training Guide for Human Rights Monitoring, in preparing a Field Guidance Manual for Burundi.³

³This was done in his spare time on an unsolicited, voluntary basis, while he was employed by UNICEF.

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This has however not been completed, and since the draft chapters are in English, has not been reviewed by the Director. An officer should be assigned to produce a shorter but complete Manual in French.

21. There should be further discussions with the Government to ensure that notice of travel has to be given only when this is genuinely necessary for security reasons, and to press for confidential access to all detainees.

Technical cooperation

22. The technical cooperation programme has been evaluated in July 1995 and June 1997.⁶ This report does not constitute a further evaluation, but attempts to assess the broad future directions which appear to me appropriate in the present context, and to suggest how this work might be further integrated within the overall work of the Office.

23. The current project document, signed in October 1997, envisaged five elements: justice; media; civil society; human rights education; and a human rights chair at the Military Academy. International personnel were intended to have oversight of the justice and human rights education elements, to participate as consultants in training journalists, and to take up the chair at the Military Academy. In practice the only international staff member since 1996 has been the expert responsible for the justice element, who was also asked to coordinate the legal assistance programme. There are two national officers currently working in the justice element; two in the media element; and one each in the civil society (NGOs and young people) and education elements. There has been no attempt to fill the chair at the Military Academy since a candidate was rejected by the Government on the grounds of his Zairean nationality in 1996, but the Minister of Defence and the Director now feel that it is appropriate to proceed with filling this. A training seminar for military magistrates is being carried out in July 1998. 16

24. The Office has made a significant contribution to training personnel of the justice system: it has organized 15 training events for specific categories of personnel, usually in groups of 30-35 participants, including magistrates in the courts and tribunals, clerks, judicial police and prison officials. Its practical experience of the defects of the functioning of the judicial system through the legal assistance programme, the legal

⁶Christian Nouveau and François Roux, *Rapport de la Mission d'Evaluation du Projet d'Assistance Technique en Republique du Burundi*, August 1995; and Herbert Herzog, *Rapport de la Mission d'Evaluation des Projets "Renforcement de l'Etat de Droit" et "Assistance Judiciaire"*, June 1997.

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expertise of its Director and other staff, and its established cooperation with the Ministry of Justice all mean that it is the agency best-equipped to continue such work in Burundi. The posting of observers in regional offices will enable it to provide further diagnosis, assistance and feedback on the local functioning of the justice system.

25. As noted above (paras.9-10), the internal and external negotiations place a further emphasis on promoting the rule of law and strengthening the justice system, and the Secretary-General has undertaken to consider increased UN assistance in this respect. UNDP is currently preparing a good governance programme, including assistance to the administration of justice, in discussion with OHCHR. It is desirable that this should be a joint project, of the kind envisaged in the Memorandum of Understanding between UNDP and the HCHR. Funding available from UNDP may reduce the requirements from the Voluntary Fund for Technical Cooperation, and ideally should include not only training costs but also funds to meet urgent material needs of the justice system, which could be directed according to priorities identified by the Office as it becomes more locally engaged.

26. The Office has played a significant role in promoting the incorporation of human rights education in the official curriculum, already achieved for the universities and primary schools, and currently in preparation for secondary schools; in training teachers; and in preparing teaching materials. It has projected human rights in the media, with regular radio and television broadcasts, as well as publicizing the work of OHCHR itself. It has organized or participated in a wide range of human rights promotion seminars, particularly aimed at young people.

27. A large number of seminars take place in Bujumbura addressing human rights issues or peace promotion, organized by different agencies, and the Office needs to develop a clearer strategy for its own contribution. UN agencies in particular should increase and formalize their own coordination: UNESCO, UNICEF and UNDP, as well as OHCHR, are all involved. The emphasis should shift from the capital to the provinces: OHCHR's regional teams need to have access to funding for promotional activities. The international staff within the Observation Mission with promotional functions and the national staff within the technical cooperation programme need not only to work together, as to some extent is already the case, but to become a fully integrated team, planning and implementing a promotional strategy.

28. The Office should re-assess, in an environment which has become more favourable, the contribution it can make to national capacity-building. The Ministry for Human Rights has developed a plan (*Politique Sectorielle du Ministère des Droits de la Personne Humaine, des Réformes Institutionnelles et des Relations avec l'Assemblée Nationale*) which is frank in its acknowledgement of Burundi's problems and serious in its commitment to address

these. At the beginning of April, the Minister wrote to the Director formally requesting financial assistance for the human rights work of the Ministry. Some assistance for the Ministry should be incorporated either in the next phase of the technical cooperation project, or in the UNDP good governance project. The Ministry is also responsible for the Centre for the Promotion of Human Rights and the Prevention of Genocide, which the Minister hopes to revitalize. It was an original aim of the technical cooperation programme to assist the Centre, and although it is too soon to assess how far the Centre can now become effective, it should be an objective of OHCHR to institutionalize the national capacity for human rights promotion to the maximum extent possible.

29. The report of the consultant who last evaluated the technical cooperation programme, and some of my own discussions with NGOs, reflected criticism of the extent to which the Office has developed a strategy for supporting human rights organizations. Until recently the context for this had been unfavourable, and some NGOs have no doubt had unrealistic expectations of the extent to which the Office could benefit them financially. But the Office should now develop a strategy for NGO capacity-building, and as well as continuing to cooperate with NGOs in promotional events, should hold periodic meetings at which the Office's overall work is discussed and information facilitating cooperation is shared with NGO representatives. This might be ensured by allocating an overall responsibility for NGO liaison to an international staff member directly responsible to the Director.

Legal assistance

30. I found unanimous agreement that the Office's legal assistance programme has been of great importance. It has substantially overcome initial hostility towards perceived assistance for génocidaires, to gain a high degree of public acceptance. The only two Hutu members of the bar work within the team, but the programme has won mutual acceptability of Tutsi lawyers representing Hutu defendants in cases involving ethnic killings. The proportion of defendants acquitted has increased, and the proportion sentenced to death has decreased. The significance of the programme consists not only in the enhanced degree of justice for individuals, but in the very great importance for Burundi of increased acceptance that justice is possible across the ethnic divide.

31. Opinion was also unanimous that the presence of international lawyers has contributed significantly to these positive results. National lawyers and judges themselves testify that they have learned from the international lawyers, and that the participation of the latter has significantly improved due process. There was less unanimity as to whether or not such

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international participation continued to be necessary: some felt it was no longer indispensable, while others argued that it remained important for a further period.

32. The programme has experienced a number of difficulties. It has been less successful in being able to represent victims, since whereas the accused are accessible in prison and fully aware of the programme, the victims are scattered throughout the countryside: even if they are aware of proceedings involving them, transport is a major problem for both victims and witnesses. Sessions have been suspended or postponed when international lawyers were already in the country. Despite the continuity ensured through the national consultants, the arrival of international lawyers only just before trials begin has meant insufficient contact between the international lawyers and those they are to represent. Funding has been precarious, and there has been disagreement over appropriate levels of remuneration for national lawyers. Logistical support has not been assured, and the needs of the legal assistance programme have therefore further stretched the resources of the Office as a whole.

33. The current team of six national lawyers is now swamped with demands for representation. The Director has proposed a doubling of the team to 12, and I support this for the year ahead. At the same time, it is important to plan towards the phasing out of direct UN involvement in legal representation. The Belgian NGO, *Avocats sans Frontières*, which is the main provider of legal representation in the genocide trials in Rwanda, is planning to begin representation in Burundi from September. There is a danger that representation by a one-country NGO will not be so readily accepted as impartial as the UN programme has come to be, and it will not have the same relationship to the wider effort to improve the functioning of the justice system. The national NGO, *Iteka*, is also increasing its involvement. OHCHR will need, with the Ministry of Justice and the Bar Association, to ensure that there is good coordination of these efforts, and in the framework of this coordination should plan towards the phasing out of UN provision of legal representation after a further year, if this can then be adequately provided through external or national NGOs.

34. The direct involvement of the Office in legal representation has provided the most practical diagnosis of the defects of the current functioning of the justice system, and is thus highly complementary to the training carried out in the technical cooperation programme. The international presence could in future disengage from direct representation and focus on a systematic analysis of the judicial system, as experienced in the implementation of the legal assistance programme; explore ways of improving representation of the accused and the victims; and undertake further training of national lawyers.

Management, administration and finance

35. For the historical reasons explained above (paras.1-3), as well as the nature of funding, the Office has largely been managed as three separate components. Staff in both the Observation Mission and the technical cooperation component complain of a lack of communication within the Office as a whole, and believe that there would be benefits from greater integration. The communication problems are not solely the result of the tripartite structure, since they evidently exist also within the Observation Mission, which has been poorly coordinated. But both the synergies between different aspects of the work, and the communication within the Office as a whole, would benefit from a more integrated structure. I suggested to the Director a structure according to which the Office would have three substantive units: Observation, Justice (bringing together the legal assistance and training activities), and Promotion (bringing together promotional work currently divided between the Observation Mission and the civil society, media and education teams of the technical cooperation component). A possible organigram is attached as Annex A. It is essential that the bifurcation in the administration of the Office referred to below (para.39) is overcome in order to facilitate this.

36. It has already been agreed in principle for some time between the Director and APB that the Office should have a Deputy Director. I recommend that the highest priority should be given to the recruitment of a Deputy, with strong management skills, through whom the Director should manage all three substantive units, as well as the administrative unit and the security team. This would allow the Director to concentrate on the heavy representational demands, while the Deputy Director should ensure good internal consultation, communication and personnel management. The Director and Deputy Director, the coordinators of the three substantive units, the security officer and the administrative officer could constitute a management group which should meet regularly and ensure consistent communication with all staff.

37. As has been the case in most other field presences, staff have been recruited without a pre-defined structure and job descriptions. They have been accorded personal grades on recruitment, and the Director has followed seniority when allocating roles within the changing structure of the Office. UN Volunteers have been assumed to be junior to staff with professional contracts. This does not guarantee that staff with more senior grades are in fact suitable for supervisory positions, nor does it easily allow the ability and country experience of staff on lower grades to be recognized and fully utilized. Once some stability can be given to the staffing and therefore the structure of the Office, staff should be recruited and graded on the basis of specific job descriptions. UNVs should be utilized according to the extent of their professional qualifications and experience.

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38. The Office has suffered acute administrative and financial problems. Technical cooperation projects ground to a halt in early 1998, because although the latest project document was signed in October 1997, the January-June 1998 allotment was only received in late June; as a result, only two projects could be implemented in the first half of the year. The legal assistance programme ran out of funds in early 1998. Several requests for the authorization of petty cash since January 1998 have gone unanswered. Some local staff have remained on SSAs, and thus do not receive hazard pay and are not covered by medical or life insurance. Administrative circulars are not routinely sent to the Office.

39. Some of the problems are those also experienced in other field operations as a result of the delays in Secretariat procedures, and are intended to be addressed by the transfer of administrative responsibility to UNOPS. Some have resulted from shortfalls in voluntary contributions for the different components of the Office. But a particular complexity is that the three components have required separate allotments, drawing upon different sources of funding. With the administration of the Observation Mission and the legal assistance programme through UNOPS, one source of complexity will be eliminated, and there will be greater stability and security for the international and national staff in these components, who have been offered six-month contracts. Unfortunately, it has not been possible to transfer funds for the technical cooperation component to UNOPS, so the administration of the Office will continue to be split. This will create different categories of international and local staff, and militates against the needed integration of OHCHR. Ironically, the technical cooperation staff, who used to have longer contracts on more secure funding, will initially at least have the shorter contracts. Maximum efforts should be made to overcome these differences, which may require that governments should be asked to pay contributions for the technical cooperation programme in Burundi directly to an appropriate UNOPS account instead of to the Voluntary Fund for Technical Cooperation.

40. Attention is being given to OHCHR's vehicle and equipment needs in the context of the liquidation of HRFOR. A shortage of vehicles in the past, combined with the failure to manage and allocate them in an efficient and transparent manner, has been a source of considerable tension within the Office. This was not overcome during the period when there was a logistics officer seconded by the NRC, but it is important that a logistics officer is recruited, and the necessary authority delegated, for this to be addressed.

OHCHR Cambodia is in a similar situation, although the components and their funding sources differ.

Security

41. The very serious security issues for the Office, in particular the Observation Mission, only began to be addressed when a well-qualified senior security officer was sent there in February 1997. However he was soon diverted to the investigative missions in the DRC, and the security team in Burundi thereafter lacked leadership and continuity, and became riven with disputes. Logistical requirements essential to security were not met, so that visits to the provinces continued to be carried out without radio communications, and in vehicles which were not in good condition or properly equipped. There were disagreements among the Director, the security officers and observers, who on occasion were required to go on missions over their reluctance and that of the security officer.

42. The logistical and communications situation is much improved, although long-awaited armoured vehicles have yet to arrive. An assessment visit has just been undertaken by the experienced HRFOR communications officer from Kigali. A security officer of recognized seniority has been recruited and has taken charge of the security team since my visit. The acting chief of the team had already carried out what seem to me to be sound security assessments regarding the posting of observers to Gitega and Ngozi (where there are already UNHCR and other expatriates). The new senior security officer will no doubt want to make a fresh assessment of logistical and communications requirements. There is also a need to clarify relationships among the Director, team leaders, OHCHR security officers, and the Coordinator of the Security Cell under the Designated Official. While the senior security officer is an adviser to the Director, his advice on security matters should be overruled only in the most exceptional circumstances, if at all.

43. With the arrival of the senior security officer, there are four members of the security team. The minimum requirement, once offices are open in Gitega and Ngozi, would seem to me to be five: one each in these offices, and two additional to the senior security officer to accompany teams travelling from Bujumbura, meet needs in Bujumbura itself, and cover the leave or other absences of colleagues. But this is a matter on which the senior security officer should make his own recommendation when he has had a sufficient opportunity to assess the situation.

Staffing

44. The current international staffing is 22 (as set out in para.5, plus the subsequent arrival of the senior security officer). The proposed staffing table submitted by the Office in June 1998 is for 58 (not including international lawyers as consultants for the legal assistance programme). I do not disagree with the proposals, but in view of the fund-raising challenge and the need for improved management of the Office, I

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recommend that the initial objective should be a more modest expansion. My recommendation, following the structure suggested in the organigram and particular staffing proposals included above, is as follows:

Director	1
Deputy Director	1
Senior Secretary	1
Human Rights Officers	
Direction (Reports, Government Liaison, NGO Liaison)	3
Justice	2
Observation (Coordination, Investigations, IDPs, Detention)	4
Promotion	2
Regional Offices (4x4)	16
Administration (Logistics, Communications)	3
Security	<u>5</u>
 Total	 <u>38</u>

45. Any additional recruitment should attempt to improve the gender balance of the international staff, and diversify the regional representation. Currently of the 22 international staff, only 4 are women.

46. I am not attempting to make recommendations regarding the future size of the national professional and support staff. The Director should be asked to make recommendations consistent with whatever international staffing is agreed. However, as indicated above (para.33), I support his recommendation that for the year ahead the number of national lawyers in the legal assistance team should be increased from 6 to 12.

The peace process and the future

47. The Government would welcome a larger, locally-based international human rights presence. It is possible - and in my opinion desirable - that this could be an element of an eventual peace agreement. The Government seems certain to resist any military presence to observe the cessation of hostilities (even the return of the unarmed CAU military observer presence which was withdrawn after the 1996 coup and the imposition of sanctions), but a civilian human rights presence would probably be acceptable and could be a key element of reconciliation in the provinces.

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48. At a time when the other countries of the Great Lakes are proving inhospitable to an effective human rights presence, Burundi offers a context where there is a genuine wish to see a strengthened UN human rights role. If the OAU is not to return in the form of a military observer mission, Burundi could also be an appropriate context for a first joint UN/OAU human rights presence. If this could be accomplished successfully, it would be of positive significance for the region as well as for Burundi.

Ian Martin
July 1998

Annex 3

