United Nations A/HRC/36/54

General Assembly

Distr.: General
11 August 2017
English
Original: French

Human Rights Council
Thirty-sixth session
11-29 September 2017
Agenda item 4
Human rights situations that require the Council's attention

Report of the Commission of Inquiry on Burundi*

Summary

The Commission of Inquiry on Burundi was created by Human Rights Council resolution 33/24, adopted on 30 September 2016, to conduct a thorough investigation into human rights violations and abuses committed in Burundi since April 2015, to determine whether any of them may constitute international crimes and to identify their alleged perpetrators.

The Commission can confirm the persistence of extrajudicial executions, arbitrary arrests and detentions, enforced disappearances, torture and cruel, inhuman or degrading treatment and sexual violence in Burundi since April 2015. Most of these violations were committed by members of the National Intelligence Service, the police, the army and the youth league of the ruling party, commonly known as the Imbonerakure. The Commission emphasizes the scope and the gravity of the documented violations, which, in some instances, entailed serious physical and psychological trauma for the victims. Human rights abuses were also committed by armed opposition groups, but these proved difficult to document.

The Commission has reasonable grounds to believe that crimes against humanity have been committed in Burundi since April 2015.

Without a real willingness on the part of the Burundian authorities to combat impunity and guarantee the independence of the judiciary, the perpetrators of these crimes will remain unpunished. The Commission therefore requests the International Criminal Court to initiate, as soon as possible, an investigation into the situation in Burundi since April 2015.

* The annexes to the present document are being circulated in the language of submission only.

GE.17-13865 (E) 310817 110917

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I. Introduction

A. Mandate

1. The Commission of Inquiry on Burundi (hereinafter "the Commission") was created for a period of one year by Human Rights Council resolution 33/24, adopted on 30 September 2016, to conduct a thorough investigation into human rights violations and abuses committed in Burundi since April 2015 and, in particular, to assess their extent, determine whether they constitute international crimes, identify their alleged perpetrators and formulate recommendations on steps to be taken with a view to guaranteeing that the latter, regardless of their affiliation, are held accountable for their acts.

2. On 22 November 2016, the President of the Human Rights Council appointed Fatsah Ouguergouz (Algeria), Reine Alapini Gansou (Bénin) and Françoise Hampson (United Kingdom) as members of the Commission, which was chaired by Mr. Ouguergouz. The Commission members were assisted by a secretariat established by the Office of the United Nations High Commissioner for Human Rights.

3. The Commission presented two oral briefings during the thirty-fourth and thirty-fifth sessions of the Human Rights Council in March and June 2017. The present report summarizes the final conclusions of its investigations, which will be detailed in a separate document.[1]

B. Cooperation by Burundi with the Commission

4. In its resolution 33/24, the Human Rights Council urged the Government of Burundi to cooperate fully with the Commission of Inquiry, to authorize it to conduct visits to the country and to provide it with all the information necessary to fulfil its mandate. Notwithstanding that request, the Government of Burundi refused any form of dialogue or cooperation with the Commission in spite of several initiatives by the latter.

5. In fact, as of the completion of the present report, the Commission had sent three notes verbales to the Permanent Mission of Burundi in Geneva and two letters to the Minister for Foreign Affairs.[2] It requested the Burundian authorities to grant it access to the country and to inform it of their views on the human rights situation in Burundi, particularly in regard to attacks against agents of the State or members of the ruling party. These requests have gone unanswered.

C. Methodology

6. Following the practice of other commissions of inquiry which had been denied access to the territory covered by their mandate, the Commission visited neighbouring countries (Uganda, the Democratic Republic of the Congo, Rwanda and the United Republic of Tanzania) and other countries hosting Burundian refugees. These visits, as well as numerous contacts from a distance, enabled the Commission to conduct more than 500 interviews with victims, witnesses and other sources.

7. The Commission adopted the same standard of proof as most of the commissions of inquiry on human rights, namely "reasonable grounds to believe". It therefore took care to collect a body of reliable and consistent information on the basis of which a reasonable and ordinarily prudent person would have reason to believe that an incident or pattern of conduct had occurred.

8. In addition to the lack of cooperation on the part of the Government and the latter's refusal to grant it access to the country, the Commission was faced with the difficulty of

[1] Detailed final report of the Commission of Inquiry on Burundi.

[2] See annex II.

conducting an inquiry on Burundi when victims and witnesses are still afraid to talk about their experiences. In the short period of time allotted to it, the Commission could not conduct a thorough investigation of certain cases and cover all the violations and abuses. It was nevertheless able to document a significant sample.

D. Applicable law

9. Burundi is a party to seven of the principal international human rights instruments: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the two Optional Protocols thereto, and the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto. It is also a party to the African Charter on Human and Peoples' Rights and other relevant African instruments.

10. Burundi has ratified the Convention on the Prevention and Punishment of the Crime of Genocide and, since 2004, has been a party to the Rome Statute of the International Criminal Court.[3] However, on 27 October 2016, it notified the Secretary-General of the United Nations of its decision to withdraw from the latter treaty. Since such withdrawal does not take effect until one year has elapsed, that notification did not affect the work of the Commission, which conducted its juridical analysis using the definition of crimes contained in the Rome Statute.

11. The Commission did not regard international humanitarian law as being applicable within the framework of its mandate insofar as, given the sporadic nature of the attacks carried out or claimed by armed groups in Burundi since April 2015, the existence of a non-international armed conflict could not be inferred therefrom.[4]

II. Human rights situation

A. Main trends

12. The political crisis that Burundi has faced since 2015 has been compounded by a grave human rights crisis. Although warning signs of that situation had been observed before 25 April 2015,[5] President Pierre Nkurunziza's announcement on that date of his decision to seek a new term in office was followed by a significant deterioration in the human rights situation. The Commission documented violations that were frequently of an extremely cruel nature, particularly extrajudicial executions, arbitrary arrests and detentions, enforced disappearances, acts of torture and other cruel, inhuman or degrading treatment and sexual violence. Such violations had already been reported by the United

[3] On 25 April 2016, the Prosecutor of the International Criminal Court opened a preliminary examination to determine whether crimes falling within the Court's jurisdiction had been committed in Burundi.

[4] Article 1, paragraph 2, of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts, stipulates that "this Protocol shall not apply to […] isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts".

[5] Inter alia by the Human Rights Committee, the Committee against Torture, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Rapporteur on the situation of human rights defenders.

Nations High Commissioner for Human Rights,[6] the United Nations independent investigation on Burundi[7] and the African Commission on Human and Peoples' Rights.[8]

13. The large number of testimonies collected by the Commission clearly show that the demonstrations which began in April 2015, the failed coup d'état in May 2015 and the attacks against four military installations in and around Bujumbura on 11 December 2015 constituted decisive stages in the escalation of violence in 2015. This climate conducive to human rights violations continued in 2016 and 2017, maintained by hate speech on the part of the authorities and members of the ruling party — the Conseil national pour la défense de la démocratie-Forces de défense de la démocratie (CNDD-FDD) — and also by the pervasive impunity that was aggravated by a judiciary lacking independence. Some violations have been committed in a more clandestine, but equally brutal, manner since 2016.

14. The victims, mostly young men (with the exception of victims of sexual violence), were invariably opponents of the Government or perceived as such: demonstrators against Pierre Nkurunziza's candidature in the presidential election of 2015; members of opposition political parties, particularly the Mouvement pour la solidarité et la démocratie, and the Forces nationales de libération, as well as their relatives; members of the former Burundian Armed Forces ("ex-FAB");[9] members of civil society; journalists; persons suspected of supporting or participating in the failed coup; and members and sympathizers of armed opposition groups or persons who, having gone into exile, were thereby suspected of joining those groups. The Commission also noted a phenomenon of recruitment of the population into CNDD-FDD and its youth league, the Imbonerakure. Any resistance often led to human rights violations.

15. The Commission's interviews revealed a climate of deep and widespread fear: fear of testifying in view of the risk of reprisals, fear of persecution, even in exile, and fear of returning to the country. In mid-July 2017, the Burundian refugee population was estimated at 417,098 persons,[10] i.e. around 4 per cent of the country's total population. Many members of civil society, as well as journalists, remain in exile and international arrest warrants have been issued against some of them. Those who are still in Burundi have to work underground. The Government has suspended or revoked the licences of the principal independent media and human rights organizations.

16. The violations of civil and political rights have had a direct impact on the enjoyment of economic, social and cultural rights due to the restriction of freedoms, particularly freedom of movement, and the decision taken by the main donors to suspend much of their direct aid to the Government as a consequence of those violations. The deteriorating economic situation has, in turn, exacerbated the phenomenon of extortion, which has taken various forms, including ransom demands by agents of the State, the release of detainees in exchange for payment, the imposition of new taxes on an already impoverished population, and extortion by Imbonerakure.

B. Responsibility

1. The State's responsibility for the conduct of its organs

17. Under international law, including human rights law, the State is responsible for the conduct of its organs regardless of whether they exercise legislative, executive, judicial or any other functions, whatever position they hold in the organization of the State and

[6] See A/HRC/32/30.

[7] See A/HRC/33/37.

[8] Report of the African Commission on Human and Peoples' Rights on its fact-finding mission to Burundi (7-13 December 2015).

[9] The term "ex-FAB" refers to members of the former Burundian Armed Forces, the majority of whom were Tutsis. The Burundian army found itself in a deeply divided state after the attempted coup in May 2015 and this led to marginalization of the "ex-FAB" and their subjection to human rights violations.

[10] Office of the United Nations High Commissioner for Refugees, 20 July 2017.

whatever their character as an organ of the central Government or of a territorial unit of the State.[11] The Commission was able to ascertain that, since April 2015, the defence and security forces have been the principal perpetrators of human rights violations in Burundi, even when they acted jointly with non-State actors such as the Imbonerakure.

18. Members of the National Intelligence Service, including senior officials, in Bujumbura and in several provinces have committed acts for which the State can be held responsible, including extrajudicial executions, arbitrary arrests and detentions, enforced disappearances, acts of torture and cruel, inhuman or degrading treatment and sexual violence. The National Intelligence Service reports directly to the President of the Republic and its operations are managed by an Administrator General.

19. The Burundian National Police have played an active role since the first demonstrations against President Nkurunziza's candidature for a new term in office. Since April 2015, police officers have committed summary executions, arbitrary arrests and detentions, enforced disappearances, acts of torture and cruel, inhuman or degrading treatment and sexual violence. Some units, including the Unit for the Protection of Institutions (*Appui à la protection des institutions*) and the Anti-Riot Brigade, which was established in September 2015, have been particularly implicated in gross violations of human rights.

20. The Burundian army (National Defence Force), which kept a low profile at the beginning of the crisis, has played an increasingly active role in the repression of real or presumed opponents. In the testimonies collected by the Commission, military personnel have been identified as the alleged perpetrators of summary executions, arbitrary arrests, torture and cruel, inhuman or degrading treatment. Among the units involved in grave violations of human rights, the Commission has identified the Special Brigade for the Protection of Institutions, the Combat Engineer Battalion (Camp Muzinda) and the Support Battalion of the First Military Region (Camp Muha) in Bujumbura.

21. The Commission also documented cases in which local administrative authorities committed or ordered the commission of human rights violations, including arbitrary arrests.

22. A number of testimonies showed that, in reality, the State operates largely through a parallel structure based on personal ties inherited from the time when certain CNDD-FDD authorities were waging an underground armed struggle; these ties were strengthened in response to the opposition of some party members who, starting in 2014, had said they were not in favour of a new term in office for President Nkurunziza.[12] Major decisions, including those that have given rise to gross violations of human rights, are allegedly taken not by the Government but by the President and his entourage of "generals", including the Minister of Public Security, the Administrator General of the National Intelligence Service, the heads of the President's civil cabinet and office of police affairs, and the Secretary General of CNDD-FDD. This entourage apparently transmits its decisions through a parallel chain of command, the structure of which varies from one branch and one province to another, with the result that subordinates might sometimes hold more power than their superiors. For example, the Commission ascertained that the Deputy Inspector General of the Police had more power than the Inspector General.

2. Responsibility of the State for the conduct of non-State individuals or groups

23. Under international law, including human rights law, the State may be held generally responsible for the wrongful conduct of non-State individuals or groups when the latter are acting in "complete dependence"[13] on the State. It might also be held responsible

[11] Article 4, paragraph 1, of the articles on responsibility of States for internationally wrongful acts (General Assembly resolution 56/83).

[12] Many high-ranking CNDD-FDD members informed President Nkurunziza of their opposition to his candidature in the 2015 election. Most of them were subsequently forced to flee the country out of concern for their safety.

[13] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*.

in cases in which non-State individuals or groups act on its instructions or under its direction or its "effective control"[14] and also when its own agents acknowledge and adopt the conduct of non-State groups.[15] Bearing these principles in mind, the Commission examined the question of the responsibility of the Burundian State for the acts committed by Imbonerakure, whose involvement in extrajudicial executions, arbitrary arrests and detentions, enforced disappearances and acts of torture and cruel, inhuman or degrading treatment and sexual violence it was able to document.

24. The Commission cannot infer the "complete dependence" of the Imbonerakure on the Burundian State, as this would imply "a particularly great degree of State control over" the persons or entities in question.[16] A certain alignment[17] of the Imbonerakure (and, more generally, of CNDD-FDD) with the Government's policy should nevertheless be emphasized.

25. The Commission was, however, able to establish that members, including senior officials, of the National Intelligence Service, the police, the army and the President's office have close ties to some Imbonerakure, to whom they give instructions or directives to commit human rights violations.

26. In some cases, the Commission was also able to establish the exercise of "effective control" by agents of the State over some Imbonerakure. Numerous witnesses testified that Imbonerakure were present alongside police and intelligence officers, including in detention centres, when violations were committed and that Imbonerakure were seen wearing the same uniforms and carrying the same weapons as the police or the army in the presence and in full view of members of those forces. Moreover, as far as the Commission is aware, very few Imbonerakure have been prosecuted or convicted, and this, in itself, is indicative of a certain degree of indulgence on the part of the Burundian authorities which suggests the existence of a form of control.

27. The Commission also received reports to the effect that some Imbonerakure arrested individuals and handed them over to the National Intelligence Service or the police. This indicates that their conduct was acknowledged and adopted by the authorities.

3. Responsibility of armed opposition groups

28. The Commission received reports concerning targeted attacks by armed opposition groups against military and police posts, as well as more large-scale attacks such as those in Kayanza Province in July 2015 and in and around Bujumbura on 11 December 2015. On the other hand, the Commission was unable to obtain information concerning attacks against civilians by organized armed groups with a known structure. The obstacles to these investigations were partly attributable to the difficulty of gaining access to witnesses, many of whom are in Burundi, and to the fact that the Burundian Government shared no information with the Commission.

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[14] See article 8 of the articles on responsibility of States for internationally wrongful acts; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*; and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*.

[15] Article 11 of the articles on responsibility of States for internationally wrongful acts. In its general comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4), the African Commission on Human and Peoples' Rights expressed the view that a State could be held responsible for killings by non-State actors if it approved, supported or acquiesced in those acts.

[16] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*.

[17] The International Court of Justice nevertheless requires "systematic alignment" in order to demonstrate "complete dependence" (ibid.).

C. Human rights violations and abuses

1. Right to life

29. The Commission received numerous testimonies concerning violations of the right to life for which the Burundian State can be held responsible. These violations include excessive use of deadly force by the defence and security forces during the demonstrations between April and June 2015. In some cases, the police allegedly took action following acts of violence by demonstrators which led to the death of police officers and members of the ruling party.[18] Members of the Unit for the Protection of Institutions (*Appui à la protection des institutions*), the Anti-Riot Brigade and the Combat Engineer Battalion also committed extrajudicial executions in some neighbourhoods of Bujumbura, including on 13 October 2015 in Ngagara and on 31 October 2015 in Buringa (Bubanza Province). In reprisal for armed attacks against several military positions in Bujumbura and Mujejuru (Bujumbura Province) on 11 December 2015, police and military personnel summarily executed dozens of persons in Bujumbura Mairie, including in Nyakabiga and Musaga. The bodies of persons who had been executed were also found in the commune of Mukike (Bujumbura Province). The extrajudicial executions that took place in December 2015, on a scale that exceeded those reported since April 2015, were accompanied or followed by torture, rape and arbitrary arrests.

30. According to several testimonies, after the events of December 2015 the local administrative authorities ordered bodies to be buried in common graves, particularly in Kanyosha (Bujumbura Mairie) and Mpanda (Bubanza Province). On 29 February 2016, the mayor of Bujumbura informed the media of the discovery of a common grave in Mutakura (Bujumbura Mairie), asserting that the bodies were those of CNDD-FDD sympathizers who had been killed by members of the opposition.[19] Only access to all the alleged sites of common graves, as well as forensic studies and more thorough investigations, would make it possible to determine the validity of those allegations.

31. The Commission received reports of extrajudicial executions of members of the security forces, particularly members of the former Burundian Armed Forces ("ex-FAB"). For example, General Athanase Kararuza, security and defence adviser to the First Vice-President, together with his wife, his daughter and a bodyguard, were killed in Bujumbura by members of the police and the army on 25 April 2016.

32. According to some testimonies, people have died while in the custody of law enforcement agencies, including in places of detention.

33. Lifeless bodies have regularly been found in several provinces, often with their arms tied behind their back, and sometimes decapitated. In several cases, the authorities have ordered the interment of these bodies without identifying the victims and without any credible investigation, thereby failing in their duty to protect the right to life. In other cases, the victims were identified as persons who opposed President Nkurunziza's candidature for a new term in office or as members of opposition parties. Corpses, sometimes weighed down with stones, have been found in the Rusizi River and Lake Tanganyika. Witnesses asserted that persons arrested by the police, military personnel or Imbonerakure had been taken into the Rukoko forest and executed there.

34. The Commission also received reports of summary executions by Imbonerakure, acting either as auxiliaries of the defence and security forces or on their own initiative. For example, on 5 August 2015 in Cibitoke (Bujumbura Mairie), members of the Imbonerakure, accompanied by police officers, executed two men after ordering them to kneel with their hands in the air.

[18] These acts do not fall within the framework of the Commission's mandate. Since they were not committed by organized groups, they do not constitute human rights abuses, but acts that are punishable under Burundian criminal law.

[19] This assertion was repeated in the March 2016 report of the commission established by the Attorney General to investigate the events of 11 December 2015.

35. The Commission noted several cases of targeted assassination and attempted assassination attributed to members of the National Intelligence Service or the police, such as the assassination of Zedi Feruzi, leader of the Union pour la paix et le développement-Zigamibanga opposition party, on 23 May 2015; the attempted assassination of Pierre Claver Mbonimpa, President of the Association burundaise pour la protection des droits humains et des personnes détenues, on 3 August 2015; and the execution of his son, Welly Nzitonda, on 6 November 2015.

36. The Commission also collected information on assassinations committed by persons whose identity and responsibility it was unable to establish, such as the assassinations of General Adolphe Nshimirimana, the former head of the National Intelligence Service, on 2 August 2015; Colonel Jean Bikomagu, retired, on 15 August 2015; Patrice Gahungu, spokesperson of the Union pour la paix et le développement, on 7 September 2015; Pascal Nshimirimana, son-in-law of Pierre Claver Mbonimpa, on 9 October 2015; Lieutenant Colonel Darius Ikurakure on 22 March 2016; Hafsa Mossi, member of the East African Legislative Assembly, on 13 July 2016; and Emmanuel Niyonkuru, Minister of Water, Environment, Land Management and Urban Planning, on 1 January 2017. Major General Prime Niyongabo, Army Chief of Staff, and Willy Nyamitwe, communications adviser to the President of the Republic, escaped assassination attempts during which other persons were killed on 11 September 2015 and 28 November 2016 respectively.

2. Enforced disappearances

37. Arrest and detention conditions in Burundi are conducive to enforced disappearances. The Commission received several testimonies concerning persons who disappeared after being arrested by members of the National Intelligence Service and/or the police. By way of example, on 9 March 2016, nine policemen, guided by an Imbonerakure travelling in a police vehicle, arrested Hugo Haramategeko, leader of the Nouvelle alliance pour le développement du Burundi party, in Bujumbura. His family has not heard from him since. In some cases, members of the National Intelligence Service or the police have demanded ransoms from the relatives of disappeared persons. Augustin Hatungimana, a member of the Mouvement pour la réhabilitation du citoyen-Rurenzangemero party, who was arrested by the police in Bujumbura on 9 December 2015, is still missing. His family paid 600,000 Burundian francs to persons presenting themselves as intelligence agents and offering to find him.

38. The context, characterized by numerous cases of disappearance and, frequently, the existence of one or more particular elements, such as the profile of the persons targeted — political opponents, members of civil society or “ex-FAB” — and threats made against the victims prior to their disappearance or subsequently received by their relatives in connection with their disappearance, affords reasonable grounds to fear enforced disappearances. In such cases, the authorities have an obligation to open an independent and effective investigation. For example, Savin Nahindavyi, an intelligence officer, disappeared on 1 May 2016; one of his superiors subsequently presented his condolences to the family but his body was never found. Several testimonies also suggest that intelligence agents or members of the police were involved in the disappearances of Marie-Claudette Kwizera, treasurer of the Ligue Iteka human rights organization, on 10 December 2015; Jean Bigirimana, a journalist working for the Iwacu newspaper, on 22 July 2016; and Oscar Ntasano, a former senator and owner of the Nonara Hotel in Bujumbura, on 21 April 2017.

39. Identification of the bodies discovered and exhumation of bodies by the authorities might enable missing persons to be traced.

3. Right to liberty and security of person

40. The Commission found that the most frequently reported human rights violations consisted in arbitrary arrests and detentions, which, in many cases, led to other violations such as extrajudicial executions, enforced disappearances, acts of torture and cruel, inhuman or degrading treatment and sexual violence.

41. The arbitrary nature of the arrests is attributable to the fact that the persons making them, such as Imbonerakure, either were not authorized to do so or failed to respect the

procedures prescribed by law. Moreover, many victims were not informed of the reasons for their arrest.

42. The Commission is also concerned about draft amendments to the Criminal Code and the Code of Criminal Procedure which, in some cases, would enable criminal investigation officers to conduct searches without a warrant, including at night.

43. In many cases documented by the Commission, the persons arrested were taken to the National Intelligence Service or police cells and subjected to torture or ill-treatment before being released or transferred to prisons. Several testimonies referred to secret places of detention located, for example, within the headquarters of the National Intelligence Service in Bujumbura or in private houses or containers in different provinces, where detainees were deprived of any contact with the outside world.

44. Most of the detainees did not enjoy the safeguards prescribed by the International Covenant on Civil and Political Rights and by Burundian law, such as access to a lawyer and to medical care, the possibility of petitioning a court to rule on the legality of their detention, and the right to receive visits. Many victims were also detained in conditions that constituted cruel, inhuman or degrading treatment and for periods extending beyond the maximum allowable time of police custody, namely seven days renewable once only, which is already excessive.[20] The practice in regard to release is often random; publicity about an arrest, or acquaintance with a person within the State apparatus, can facilitate release. In many cases, exorbitant amounts of money have been demanded by members of the National Intelligence Service, the police, the judiciary or the Imbonerakure for the release of detainees or their transfer to prisons.

4. Torture and other cruel, inhuman or degrading treatment

45. The Commission has documented a persistent practice of torture and ill-treatment since April 2015. Numerous witnesses identified the headquarters of the National Intelligence Service, situated near Bujumbura Cathedral, as a place where such acts occurred, while others referred to a police detention centre known as “Chez Ndadaye”, which was used mainly in 2015 by the Anti-Riot Brigade, among others. Several other detention centres run by the police and the National Intelligence Service in Bujumbura and other provinces, as well as some unofficial places of detention, were also mentioned.

46. The victims interviewed by the Commission mentioned recurrent methods of torture, including beatings with clubs, rifle butts, bayonets, iron bars, metal chains or electric cables, as a result of which some victims’ bones were broken and other victims lost consciousness; long needles thrust into victims’ bodies or unidentified substances injected into them; nails ripped out. Some victims were placed beside human remains or forced to eat faeces. Rapes were also committed and acts of torture inflicted on the genital organs of victims. Detainees were forced to witness executions, convinced that they would be the next victims. Acts of torture and ill-treatment were often accompanied by insults, including of an ethnic nature, and threats to kill the victims with firearms or grenades. In many cases these acts caused severe and enduring physical and psychological trauma.

47. Victims described conditions of detention that may constitute cruel, inhuman or degrading treatment, such as prison overcrowding, denial of adequate food and medical care, denial of access to toilet facilities, and failure to separate adults from minors as was the case at the National Intelligence Service in Bujumbura.

5. Sexual violence

48. Notwithstanding their fears of stigmatization, the Commission was able to interview more than 45 victims of sexual violence whose ages ranged from 8 to 71 at the time when the acts were committed. The real number of victims, mostly women but also a few men and children, is probably much higher. The most recent of these acts of sexual violence took place in 2017.

[20] The international norm is 48 hours.

49. Most of the cases documented by the Commission involved rape or attempted rape committed while police officers or members of the Imbonerakure, sometimes acting together, were in the process of arresting the victim's spouse or a male relative accused of belonging to an opposition party, taking part in demonstrations or refusing to join CNDD-FDD, although such crimes also occurred while the victims were at home alone. These acts were frequently accompanied by offensive gender-based, political and/or ethnic remarks. The Commission wishes to emphasize the extreme cruelty of some of these acts of violence. For example, a female minor was raped by three Imbonerakure wearing police uniforms beside the body of a relative whom they had killed. Two women were raped by several men, including Imbonerakure, who subsequently mutilated their genital organs. The Commission also heard the testimonies of women who had been raped by Imbonerakure or police officers at roadblocks or near the borders because they were attempting to flee.

50. Sexual violence has been used as a means of torture to obtain information or confessions from detainees. These acts include rape, forced nudity, infliction of severe wounds on, and injection of unknown substances into, male genital organs, and the hanging of weights on testicles. The Commission heard the testimony of a female victim of rapes, including gang rapes, committed over a period of four days, inter alia by police officers in a National Intelligence Service cell with a view to obtaining information.

51. Acts of sexual violence have left the victims with severe and enduring physical and psychological trauma. Women have contracted HIV, fallen pregnant or suffered miscarriages and several men are suffering from erectile, urinary and other problems.

6. Freedom of expression

52. The restrictions on freedom of expression noted since April 2015 have continued. In contrast to previous years when Burundi had a dynamic civil society and numerous independent media, the democratic space enabling journalists to express themselves freely has been severely restricted. The Government closed four private radio stations in April and May 2015, in some cases after they were destroyed by law enforcement units. Only one of these radio stations, Radio Isanganiro, has been authorized to resume broadcasting since February 2016.[21] In November 2016, the National Communications Council suspended one of the station's programmes because it broadcast a song entitled "Human rights for journalists". The Union burundaise des journalistes (Burundian Union of Journalists), which had denounced attacks on press freedom on numerous occasions, was suspended in October 2016. Many journalists remain in exile and international arrest warrants have been issued against some of them.

53. The Commission is concerned at instances of hate speech since April 2015. Such language, heard both in public speeches and in informal comments by Burundian authorities and leaders and members of CNDD-FDD, particularly Imbonerakure, is intended to intimidate and sometimes dehumanize opponents by equating them with animals. The use of terms such as "cockroaches" or "bugs" is disturbing, particularly as they were used in the past to refer to Tutsis, especially in Rwanda. Such speech perpetuates confusion between political opponents and that ethnic group.

54. A video circulated in April 2017 showed around a hundred Imbonerakure chanting a call to "impregnate female opponents so that they can give birth to Imbonerakure". Following condemnation by the United Nations High Commissioner for Human Rights,[22] the ruling party's National Secretary for Information and Communication promised sanctions against the culprits.[23] A "judicial file" has apparently been opened,[24] but the Commission has received no information concerning follow-up on that file,

[21] The Rema FM radio station, which is close to the ruling party, was also destroyed in May 2015. It resumed broadcasting in 2016.

[22] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21505&LangID=E.

[23] CNDD-FDD press release No. 0002-17-SNIC, 5 April 2017.

[24] Statement by the Permanent Representative of Burundi before the Human Rights Council, 15 June 2017.

notwithstanding the State's obligation to take action.[25] Moreover, Imbonerakure have made similar calls in various provinces.

7. Freedoms of association and assembly

55. Freedom of association continues to be restricted. Only two of the civil society organizations, mostly working on human rights-related issues, which had been suspended or whose accounts had been frozen by the Government in the latter part of 2015 have been able to resume their activities in Burundi. On 19 October 2016, the Ministry of the Interior announced the revocation of the licences of the Association burundaise pour la protection des droits humains et des personnes détenues, the Forum pour le renforcement de la société civile, the Forum pour la conscience et le développement, Action des chrétiens pour l'abolition de la torture (ACAT Burundi) and the Réseau des citoyens probes. Five days later, the same Ministry suspended the licences of the Coalition de la société civile pour le monitoring électoral, the Coalition burundaise pour la Cour pénale internationale, SOS-Torture/Burundi (even though it was established abroad) and the Ligue Iteka. The latter's licence was revoked on 3 January 2017 after it published a report on the deteriorating human rights situation in Burundi. The heads of the Coalition de la société civile pour le monitoring électoral, the Forum pour le renforcement de la société civile, the Forum pour la conscience et le développement and ACAT Burundi have been under international arrest warrants since 2015.

56. The Commission is concerned at the promulgation in January 2017 of a law on Burundian non-profit organizations, and another on foreign non-governmental organizations, certain provisions of which considerably strengthen the authorities' control over the activities and resources of those entities.

57. Opposition parties cannot meet freely or carry out their activities in Burundi. Their members are under constant pressure to join the ruling party and many of them have been arrested, tortured or killed.

8. Freedom of movement

58. A number of persons have been arrested, ill-treated and, in certain instances, raped at roadblocks set up by police and Imbonerakure, or solely by Imbonerakure, near the borders, particularly with Rwanda and the United Republic of Tanzania. Others have been forced to pay large sums of money to police or Imbonerakure or have had their belongings taken. Some persons have been threatened, arrested or tortured for helping people to flee the country. Several members of the families of individuals who left the country have been threatened and some have been subjected to arbitrary arrest and detention or have been reported missing.

59. Some persons who have visited neighbouring countries, particularly Rwanda, have been arbitrarily arrested or tortured on their return to Burundi because the authorities allegedly accused them of collaborating with armed groups said to be based in those countries.

60. The Burundian authorities have taken measures that hamper freedom of movement, as exemplified by the "household record booklets" in which the head of each household is required to list all his dependants, as well as visitors. These booklets, which are inspected by the police during raids on homes, are allegedly intended to enable law enforcement officials to keep track of the population. In a general context of heightened surveillance by the authorities, this measure has the effect of discouraging professional or private travel.

9. Dysfunctions in the judiciary and other institutions

61. The Commission collected testimonies concerning undue pressure brought to bear on judges and prosecutors by their peers and also by members of the Government or the ruling party. Several lawyers have left the country, in some cases after receiving threats. According to the information available to the Commission, very few criminal proceedings

[25] Article 20, paragraph 2, of the International Covenant on Civil and Political Rights.

have been instituted against alleged perpetrators of human rights violations. The commissions of inquiry established by the Attorney General in the wake of the events of April 2015, the killing of nine persons in the Ngagara neighbourhood on 13 October 2015 and the events of 11 December 2015 did not act with impartiality, as demonstrated by their reports, which the Commission examined.

62. The Commission noted long delays in judicial proceedings, the holding of some sensitive trials on prison premises, which deterred observers from attending, and summary trials conducted pursuant to the "expedited" procedure, applicable to those allegedly caught in the act. By way of example, 1 police officer, 7 military personnel and 12 civilians who had been arrested in connection with the attack on the military camp at Mukoni (Muyinga Province) on the night of 23-24 January 2017 were tried without a lawyer on 26 January. The Muyinga provincial court sentenced them to heavy prison terms without regard to their claims that they had been tortured while in detention, to the point where some of the defendants were unable to stand during the trial.

63. The judiciary's lack of independence, which has long been observed in Burundi, has aggravated the impunity prevailing in the country. In August 2013, the first National Forum on the Justice System, the report of which has never been made public, emphasized the executive branch's influence over the National Judicial Service Commission, which is chaired by the Head of State and composed mainly of members appointed by the Government. The executive branch's ascendancy over the judicial branch is also apparent in the appointment of judges and the fact that they may be transferred, which runs counter to the principle of the irremovability of judges. The Ministry of Justice controls the promotion of judges and may propose their suspension or dismissal.

64. The Commission also noted the lack of independence of the national institutions for monitoring the authorities' actions in the field of human rights, namely the Independent National Human Rights Commission[26] and the Ombudsman, ever since the leaders and certain members of those institutions were replaced in 2015 and 2016.

III. International crimes

A. Crimes against humanity

1. Constituent elements of crimes

65. Article 7, paragraph 1, of the Rome Statute defines crimes against humanity as acts "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack". Article 7, paragraph 2 (a), further stipulates that "'attack directed against any civilian population' means a course of conduct involving the multiple commission of acts […] against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack". In the light of the information obtained, the Commission has reasonable grounds to believe that an attack against the civilian population has been taking place in Burundi since April 2015. That attack has consisted in the multiple commission of acts covered by the Rome Statute[27] against a largely civilian population consisting in particular of opponents of the Government or persons perceived as such.[28] The fact that members of the security forces are among the victims in no way changes that categorization.[29]

[26] In November 2016, the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions recommended that the Independent National Human Rights Commission should be downgraded to "B" status. The final decision is to be taken in 2017.

[27] See part II of the present report.

[28] See part II.A of the present report.

[29] In *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, the International Criminal Tribunal for Rwanda ruled that the presence of certain non-civilians within the targeted population did not change the civilian character of that population.

66. The Rome Statute requires the existence of a State or organizational policy to commit the attack. However, in the case law of the International Criminal Court and other international criminal tribunals, that policy need not be of an official nature. In the *Blaškić* case, the International Tribunal for the Former Yugoslavia ruled that the intent to commit an attack need not necessarily be declared expressly or even stated clearly and precisely. It may be surmised from the occurrence of a series of events, including "the overall political background against which the criminal acts are set; […] the general content of a political programme, as it appears in the writings and speeches of its authors; […] the mobilization of armed forces; […] [and] the scale of the acts of violence perpetrated".[30] In the case of Burundi, the violations and abuses documented by the Commission are set against the background of a political crisis which began in April 2015, with the demonstrations against Pierre Nkurunziza's candidature in the presidential election, and intensified after the failed coup d'état in May 2015 and the use of violence by armed groups and unidentified persons against agents of the State and, in particular, against military camps on 11 December 2015. These acts led to a mobilization of the defence and security forces in order to repress any form of real or presumed opposition to the Government, and this continued into 2017. The hate speech aimed at opponents by authorities and representatives of CNDD-FDD at all levels is indicative of a general political will to suppress any dissenting opinion. Moreover, the International Criminal Court has ruled that, in exceptional circumstances, a State's policy may "be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack".[31] The fact that, generally, the alleged perpetrators of violations have not been prosecuted, or pressure has been brought to bear to prevent any prosecution, can be interpreted as a deliberate failure by the Burundian State to take action and, therefore, as encouragement on its part.

67. The Rome Statute stipulates that the attack must be "widespread or systematic", these two conditions not being cumulative. In the case of Burundi, the number of violations, their commission in several provinces and the multiplicity of victims, perpetrators and institutions involved point to the widespread nature of the attack. Its systematic nature can be inferred either from "an organized plan in furtherance of a common policy", which the Commission has reasonable grounds to believe in view of its observations in the preceding paragraph, or from "patterns of crimes" such that the latter constitute a "non-accidental repetition of similar criminal conduct on a regular basis",[32] the existence of which the Commission has documented.

68. Finally, the Rome Statute requires that the attack must have been carried out "with knowledge". In this regard, it is not necessary to prove that the perpetrator knew the details of the attack, since such knowledge may be deduced from "indirect evidence" such as the circumstances in which the attack occurred.[33] The Commission therefore believes, in the light of the information at its disposal, that the alleged perpetrators whom it was able to identify, most being members of the National Intelligence Service, the police, the army and the Imbonerakure, could not have been unaware of the background against which their acts were set, given their functions in the State's security apparatus or their indoctrination within CNDD-FDD.

[30] *The Prosecutor v. Tihomir Blaškić*, judgment of 3 March 2000.

[31] International Criminal Court, *Elements of crimes*, p. 5, footnote 6. International Tribunal for the Former Yugoslavia, *Prosecutor v. Zoran Kupreškić et al*., judgment of 14 January 2000.

[32] International Criminal Court, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, decision of 30 September 2008.

[33] International Tribunal for the Former Yugoslavia, *Prosecutor v. Duško Tadić a/k/a "Dule"*, judgment of 7 May 1997, *The Prosecutor v. Tihomir Blaškić* and *Prosecutor v. Kunarac et al*., judgment of 22 February 2001; International Criminal Tribunal for Rwanda, *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, judgment of 21 May 1999; and International Criminal Court, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* and *The Prosecutor v. Jean-Pierre Bemba Gombo*, decision of 15 June 2009. See also A/CN.4/680.

2. Types of crimes

69. The Commission, having established that the elements of crimes against humanity are present, examined the types of crimes committed in Burundi since April 2015. As a result, it has reasonable grounds to believe that the violations and infringements of the right to life that were perpetrated by agents of the State, particularly the extrajudicial executions and the deaths attributable to an excessive use of force by law enforcement agencies and Imbonerakure, may constitute "murders" under the Rome Statute.[34]

70. The Commission also finds that the many cases of arbitrary detention in National Intelligence Service and police cells and unofficial places of detention may constitute "imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law" under the Rome Statute.[35] Moreover, the violations frequently committed during detention, including the inhuman conditions in which detainees have been held, add to the gravity of those acts.

71. The actions of members of the security forces, sometimes assisted by Imbonerakure, which the Commission categorized as acts of torture and cruel, inhuman or degrading treatment constitute "torture" under the Rome Statute[36] insofar as they were systematically intended to inflict "severe physical or mental pain or suffering upon one or more persons" while such persons were "in the custody or under the control of the perpetrator".[37]

72. Cases of rape committed by police officers and/or Imbonerakure in the course of arrests of opponents or reprisals against female members of the families of opponents constitute "rape" under the Rome Statute.[38] The other cases of sexual violence, particularly in detention, documented by the Commission may constitute, under the Rome Statute, "any other form of sexual violence of comparable gravity", "torture" or "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health".[39]

73. The various violations committed by agents of the State or Imbonerakure against members of opposition parties — particularly members of the Forces nationales de libération and the Mouvement pour la solidarité et la démocratie — or their relatives may also constitute crimes of "persecution" under the Rome Statute.[40] These crimes were politically motivated and the victims were targeted by reason of their real or presumed affiliation with opposition parties.[41] Furthermore, in certain cases of sexual violence, the targeting of women having family ties with political opponents may constitute gender-based persecution.

74. With regard to enforced disappearances, the Commission was able to establish, from the viewpoint of international human rights law, some cases of disappeared persons whose arrest or detention was confirmed by witnesses but whose disappearance was subsequently denied by the Burundian authorities.[42] However, at the current stage of its investigations, the Commission cannot reach the same conclusion from the viewpoint of international criminal law, under which the perpetrator of such arrest, detention or abduction must have been aware that it would be followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of the victim, or the perpetrator of a refusal to acknowledge the detention must have known that the victim was detained.[43] The Commission does not rule out the possibility that this element may be deduced from indirect evidence, such as a background characterized by arbitrary arrests and detentions, a climate of widespread persecution and the existence of particular facts such as threats

[34] Article 7, paragraph 1 (a).
[35] Article 7, paragraph 1 (e).
[36] Article 7, paragraph 1 (f).
[37] International Criminal Court, *Elements of crimes*, p. 7.
[38] Article 7, paragraph 1 (g).
[39] Article 7, paragraphs 1 (g), (f) and (k).
[40] Article 7, paragraph 1 (h).
[41] International Criminal Court, *Elements of crimes*, p. 10.
[42] See part II.C.2 of the present report.
[43] International Criminal Court, *Elements of crimes*, p.11.

preceding or following the disappearances. In the many cases in which, from the human rights viewpoint, the Commission only has reasonable grounds to fear that enforced disappearances have occurred, further evidence will need to be gathered within the framework of a more thorough investigation before these acts can be categorized as enforced disappearances under international criminal law.

B. Genocide

75. Although, within the context of certain violations such as arrests, torture and sexual violence, the Commission was able to show that Tutsis were targeted by insults of an ethnic nature, it is not in a position to establish the existence of a political will to destroy that ethnic group "in whole or in part", as required by the definition of genocide given in article 6 of the Rome Statute.

76. The Commission nevertheless remains concerned about certain speeches by State authorities and officials of the ruling party. Although such statements do not constitute direct and public incitement to commit genocide,[44] they help to create a dangerous climate of hate and to terrorize the population, and could rekindle ethnic tensions.

C. Individual responsibility

77. The Commission has reasonable grounds to believe that the above-mentioned crimes against humanity are attributable primarily to State officials at the highest level and to senior officers and members of the National Intelligence Service, the police, the army and the Imbonerakure.

78. The Commission has drawn up a non-exhaustive list of alleged perpetrators of crimes against humanity, accompanied by information concerning specific acts that they are suspected to have committed or ordered. It has made a distinction between direct responsibility and the responsibility of military commanders and superiors, as provided for in the Rome Statute.[45]

79. Given the need to respect the presumption of innocence and to protect victims and witnesses, the Commission has decided not to publish that list, which will be placed in the safekeeping of the United Nations High Commissioner for Human Rights. The latter may share it with any competent body and/or court conducting credible investigations or seeking to gather information on individuals or institutions pursuant to a United Nations mandate.

D. Accountability mechanisms

80. In view of the lack of independence of the Burundian judiciary and the impunity enjoyed in respect of the gross violations committed by agents of the State and members of the ruling party, including the Imbonerakure, the Commission believes that the Burundian State is neither willing nor able genuinely to investigate or prosecute those violations.[46] It therefore falls to the International Criminal Court to investigate those violations and establish criminal responsibility in respect thereof.

[44] Article III of the Convention on the Prevention and Punishment of the Crime of Genocide and article 25, paragraph 3 (e), of the Rome Statute.

[45] Article 28 of the Rome Statute.

[46] Article 17, paragraph 1 (a), of the Rome Statute.

IV. Conclusions and recommendations

A. Main conclusions

81. **In the light of its investigations, the Commission finds that extrajudicial executions, arbitrary arrests and detentions, enforced disappearances, acts of torture and cruel, inhuman or degrading treatment and sexual violence have persisted in Burundi from April 2015 to the time when the present report was drafted.**

82. **The Commission has reasonable grounds to believe that several of these violations, committed mostly by members of the National Intelligence Service, the police, the army and the Imbonerakure, constitute crimes against humanity.**

83. **The Commission notes that the democratic space has been considerably reduced since 2015 and a climate of deep fear is affecting Burundians even in the countries to which they have fled. In the Commission's view, the risk that the refugees might be subjected to gross violations of human rights if they are sent back to Burundi necessitates strict respect for the principle of non-refoulement[47] on the part of the host countries.**

B. Recommendations

84. **On the basis of the above conclusions, the Commission recommends as follows:**

1. The Burundian authorities should:

85. **Put an immediate end to the gross human rights violations being committed by agents of the State and Imbonerakure over which the State exercises control;**

86. **Investigate these violations, ensure that their alleged perpetrators are prosecuted promptly in accordance with credible, independent and fair procedures and that the victims obtain just reparation and, where the alleged perpetrators are agents of the State, suspend them from their duties pending the completion of the investigation and the judicial proceedings;**

87. **Take practical measures to bring about a rapid improvement in the human rights situation, in particular by:**

- **Withdrawing the warrants for the arrest of heads of media outlets, civil society organizations and political parties who have neither used nor advocated violence, and permitting their safe return to Burundi;**
- **Lifting the suspension and reversing the revocation of the licences of media and civil society organizations, permitting them to resume their activities with complete independence and reviewing the laws adopted in 2017 concerning non-profit organizations and foreign non-governmental organizations;**
- **Immediately releasing all political prisoners;**
- **Ensuring that criminal investigation officers (*officiers de police judiciaire*) are not authorized to conduct searches without a warrant, including at night, as envisaged in the draft amendments to the Criminal Code and the Code of Criminal Procedure;**
- **Ensuring that individuals lacking legal authorization, particularly Imbonerakure, do not perform or participate in law enforcement activities, including in places of detention, and do not wear military or police uniforms or possess weapons;**
- **Prosecuting individuals who incite hatred or violence;**

[47] Article 33, paragraph 1, of the Convention relating to the Status of Refugees.

- **Putting an end to threats, intimidation and acts of extortion by agents of the State and Imbonerakure;**
- **Giving victims of sexual violence and torture access to medical and psychosocial services;**

88. **Undertake a thorough reform of the judiciary;**

89. **Ensure that members of the defence and security forces respect human rights in all circumstances and serve the interests of the population as a whole, not solely those of the ruling party;**

90. **Reconsider their decision to withdraw from the Rome Statute, cooperate fully with the International Criminal Court in the ongoing preliminary examination and, if an investigation is initiated, continue that cooperation, inter alia by ensuring the protection of victims and witnesses;**

91. **Authorize the Office of the United Nations High Commissioner for Human Rights to resume its documentation of human rights violations in Burundi, which has been suspended since October 2016;**

92. **Sign and implement the memorandum of understanding with the African Union and permit the full deployment of 100 human rights observers and 100 military experts that was decided upon in 2016;**

93. **Cooperate with United Nations human rights mechanisms by once again receiving special procedures missions and implementing the recent recommendations of treaty bodies;**

94. **Actively seek a lasting solution to the political crisis, inter alia through international initiatives to promote dialogue.**

2. Political parties and armed opposition groups should:

95. **Put an immediate end to human rights abuses and acts of violence committed by their members;**

96. **Refrain from any incitement of violence and participate in the quest for a lasting solution to the political crisis in Burundi.**

3. The Human Rights Council should:

97. **Extend the Commission's mandate for a period of one year to enable it to conduct further and more thorough investigations in view of the persistence of gross human rights violations and abuses and the absence of other specific mechanisms capable of undertaking independent and thorough investigations into the human rights situation in Burundi;**

98. **Request the Office of the United Nations High Commissioner for Human Rights to report, at the forthcoming sessions of the Council, on the development of its cooperation with the Burundian Government.**

4. The International Criminal Court should:

99. **Initiate, as soon as possible, an investigation into the crimes committed in Burundi in the light of the conclusions contained in the present report and other information at its disposal.**

5. The United Nations Security Council should:

100. **Take due account of the Commission's conclusions, as well as the persistence of gross violations of human rights, in any discussion on Burundi and, in this context, ensure the effective implementation of resolution 2303 (2016);**

101. **Refer to the International Criminal Court any international crime that might be committed in Burundi after 27 October 2017;**

102. **Impose individual sanctions on the principal alleged perpetrators of gross human rights violations and international crimes in Burundi.**

6. The Secretary-General of the United Nations should:

103. **Ensure that respect for human rights and restoration of the rule of law are among the priorities of his Special Envoy for Burundi;**

104. **Ensure that no alleged perpetrator of human rights violations or international crimes in Burundi is recruited for United Nations peacekeeping missions.**

7. The States Members of the United Nations should:

105. **Grant prima facie refugee status to Burundian asylum seekers and ensure strict respect for the principle of non-refoulement and refugee protection;**

106. **Prosecute, in accordance with the principle of universal jurisdiction, alleged perpetrators of international crimes committed in Burundi who are found to be in their territory;**

107. **Maintain, in the absence of any improvement in the human rights situation in Burundi, the individual sanctions and the suspension of direct aid to the Government;**

108. **Provide technical assistance, inter alia in respect of autopsies, exhumations and identification of bodies, to enable the Burundian authorities to conduct credible and independent investigations;**

109. **Support the establishment of specialized medical and psychosocial services, especially for victims of torture and sexual violence;**

110. **Support the Burundian authorities in any judicial and security sector reform endeavours that they might wish to undertake in order to improve the human rights situation.**

8. The African Union should:

111. **Retake the lead in seeking a lasting solution to the crisis in Burundi based on respect for human rights and rejection of impunity, as provided for in its Constitutive Act, and play an active role in that process;**

112. **Ensure that no agent of the Burundian State who is accused of human rights violations or international crimes is recruited for African Union peacekeeping missions;**

113. **Ensure that the full complement of African Union human rights observers and military experts is deployed rapidly in Burundi;**

114. **Consider, in the event that the current situation in Burundi persists, the application of article 4 (h) of the Constitutive Act of the African Union, under which it is authorized to intervene in a member State in certain circumstances, particularly in the event of crimes against humanity.**

9. The East African Community should:

115. **Ensure that a rapid improvement of the human rights situation is a priority in its mediation efforts.**

10. The guarantors of the Arusha Agreement of 2000, in their capacity as committed proponents of a lasting peace in Burundi, should:

116. **Meet with a view to finding a lasting solution to the political and human rights crisis in Burundi.**

Annexes

I. Map of Burundi

Map No. 3753 Rev. 9 UNITED NATIONS
February 2016

Department of Field Support
Geospatial Information Section (formerly Cartographic Section)

II. Correspondence with the Government of Burundi

1. Note verbale sent to the Permanent Mission of Burundi on 20 December 2016

NATIONS UNIES
DROITS DE L'HOMME
HAUT-COMMISSARIAT

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

Commission d'enquête sur le Burundi

REFERENCE: 2016/COI/BRD/NV/1

Le Haut-Commissariat des Nations Unies aux droits de l'homme à Genève présente ses compliments à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève, et a l'honneur de l'informer que les membres de la Commission d'enquête sur le Burundi, nommés par le Conseil des droits de l'homme le 22 novembre 2016, seront à Genève du 23 au 27 janvier prochain.

L'objet de cette première réunion de travail des Commissaires sera de déterminer leurs termes de référence basés sur leur mandat, de s'accorder sur un plan d'enquête, sur les aspects méthodologiques de leur travail et sur leurs programmes de missions, en prenant en compte que la Commission devra notamment présenter une mise à jour orale aux 34ème et 35me session du Conseil des droits de l'homme et un rapport final à la 36ème session de celui-ci

Durant leur séjour à Genève, les Commissaires souhaiteraient également rencontrer les représentants des Etats membres du Conseil, et en premier lieu bien entendu celui du pays concerné, Son Excellence M. Rénovat Tabu, représentant permanent de la République du Burundi, de préférence le mercredi 25 ou le jeudi 26 janvier à l'heure qui lui conviendrait le mieux.

Le Haut-Commissariat des Nations Unies aux droits de l'homme saisit cette occasion pour renouveler à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève les assurances de sa haute considération.

Genève, le 20 décembre 2016

HUMAN RIGHTS
UNITED NATIONS

Mission permanente de la République du Burundi
auprès de l'Office des Nations Unies
et des autres organisations internationales à Genève
Rue de Lausanne 44
1201 Genève
Fax: +41 22 732 77 34
Email : mission.burundi@bluewin.ch

2. Note verbale sent to the Permanent Mission of Burundi on 24 January 2017

NATIONS UNIES
DROITS DE L'HOMME
HAUT-COMMISSARIAT

UNITED NATIONS
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HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

Commission d'enquête sur le Burundi

REFERENCE: 2017/COI/BRD/NV/2

Le Haut-Commissariat des Nations Unies aux droits de l'homme à Genève présente ses compliments à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève, et, faisant suite à la note verbale envoyée le 20 décembre 2016, a l'honneur de lui rappeler que les membres de la Commission d'enquête sur le Burundi, nommés en vertu de la résolution du Conseil des droits de l'homme A/HRC/RES/33/24, sont à Genève du 23 au 27 janvier 2017.

Les commissaires, M. Fatsah Ouguergouz, Mme Reina Alapini Gansu et Mme Francoise Hampson, souhaiteraient rencontrer son H.E.M. Rénovat Tabu, représentant permanent de la République du Burundi, afin de discuter du mandat qui leur a été confié par le Conseil des droits de l'homme.

Le Haut-Commissariat des Nations Unies aux droits de l'homme saisit cette occasion pour renouveler à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève les assurances de sa haute considération.

Genève, le 24 janvier 2017

HUMAN RIGHTS UNITED NATIONS

Mission permanente de la République du Burundi
auprès de l'Office des Nations Unies
et des autres organisations internationales à Genève
Rue de Lausanne 44
1201 Genève
Fax: +41 22 732 77 34
Email : mission.burundi@bluewin.ch

3. Note verbale dated 26 January 2017 from the Permanent Mission of Burundi

AMBASSADE DE LA REPUBLIQUE DU BURUNDI EN SUISSE

MISSION PERMANENTE DE LA REPUBLIQUE DU BURUND A GENEVE

NOTE VERBALE

N°: 204.02.17/1062/RE/2017

La Mission Permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres Organisations Internationales à Genève présente ses compliments au Haut Commissariat des Nations Unies aux Droits de l'Homme à Genève et a l'honneur de se référer à la Note Verbale 2017/COI/BRD/NV/2 l'informant que les membres de la Commission d'enquête sur le Burundi sont à Genève du 23 au 27 janvier 2017 et qu'ils souhaiteraient rencontrer Son Excellence Monsieur l'Ambassadeur, Représentant Permanent de la République du Burundi à Genève, pour porter à sa connaissance que le Gouvernement du Burundi a catégoriquement rejeté le rapport de l'EINUB pour des raisons dûment établies.

Le Gouvernement du Burundi a par conséquent rejeté la résolution A/HRC/RES/33/24 du Conseil des Droits de l'Homme imposée malgré sa demande de coopération et de négociations à laquelle les initiateurs ont réservé une fin de non recevoir.

Ainsi, comme le Burundi a rejeté cette résolution et tous ses corollaires, la Mission Permanente de la République du Burundi à Genève trouve infondé de rencontrer les membres de la Commission d'enquête sur le Burundi pour discuter du mandat qui leur a été confié par le conseil des Droits de l'Homme.

La Mission Permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres Organisations Internationales à Genève saisit cette occasion pour renouveler au Haut Commissariat des Nations Unies aux Droits de l'Homme à Genève, les assurances de sa haute considération.

Fait à Genève, le 26/01/2017

MISSION PERMANENTE DU BURUNDI GENEVE

HAUT COMMISSARIAT DES NATIONS UNIES AUX DROITS DE L'HOMME

GENEVE

44 Rue de Lausanne - 1201 genève - Tel: +41 (0) 22 732 77 05 - Fax: +41 (0) 22 732 77 34
Email: mission.burundi@bluewin.ch

4. Note verbale sent to the Permanent Mission of Burundi on 6 February 2017, together with a letter addressed to the Burundian Minister for Foreign Affairs and International Cooperation

NATIONS UNIES
DROITS DE L'HOMME
HAUT-COMMISSARIAT

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

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PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL.: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

Commission d'enquête sur le Burundi

REFERENCE: 2013/CO/BSRD/NV/3

La Commission d'enquête sur le Burundi présente ses compliments à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève et la remercie de bien vouloir transmettre la lettre ci-jointe à Son Excellence Monsieur Alain Aimé Nyamitwe, Ministre des relations extérieures et de la coopération internationale de la République du Burundi, avec copie à Son Excellence Monsieur Martin Nivyabandi, Ministre des droits de la personne humaine, des affaires sociales et du genre de la République du Burundi.

La Commission d'enquête sur le Burundi saisit cette occasion pour renouveler à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève les assurances de sa haute considération.

Genève, le 6 février 2017

HUMAN RIGHTS
UNITED NATIONS

Mission permanente de la République du Burundi
auprès de l'Office des Nations Unies
et des autres organisations internationales à Genève
Rue de Lausanne 44
1201 Genève
Fax: +41 22 732 77 34
Email : mission.burundi@bluewin.ch

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Commission d'enquête sur le Burundi

REFERENCE: 2017/COI/BRD/Lettre/03

Genève, le 6 février 2017,

Excellence,

Nous vous adressons la présente lettre dans le cadre du mandat qui nous a été confié par la résolution 33/24 du Conseil des droits de l'homme établissant la Commission d'enquête sur le Burundi.

Nous avons à deux reprises cherché à rencontrer Son Excellence Monsieur Rénovat Tabu, Représentant permanent de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève. Dans une lettre en date du 26 janvier 2017, Son Excellence Monsieur Tabu nous a fait part de son refus de nous rencontrer en raison du rejet par votre Gouvernement de la résolution 33/24.

Nous regrettons vivement cette décision que nous espérons ne pas être une position de principe de votre Gouvernement à l'égard de notre Commission. Comme vous le savez, la résolution 33/24 du Conseil des droits de l'homme nous a notamment chargé de « *dialoguer avec les autorités burundaises et toutes les autres parties prenantes (...) afin de fournir l'appui et les conseils nécessaires à l'amélioration immédiate de la situation des droits de l'homme et à la lutte contre l'impunité.* »

Par la présente lettre, nous tenons à vous assurer que nous envisageons notre mandat dans cette perspective de dialogue constructif et que nous tenons à prendre pleinement en compte vos observations et points de vue dans l'exécution de notre mandat. C'est dans cette optique que nous vous sollicitons, et à travers vous le Gouvernement que vous représentez, pour avoir accès au territoire du Burundi afin de dialoguer avec les autorités burundaises et mener à bien notre mandat d'investigation.

S.E.M. Alain Aimé Nyamitwe
Ministre des relations extérieures et de la coopération internationale
de la République du Burundi.

.../...

NATIONS UNIES DROITS DE L'HOMME — UNITED NATIONS HUMAN RIGHTS

La République du Burundi est membre du Conseil des droits de l'homme et se doit par conséquent de coopérer avec les mécanismes comme le nôtre, établis par cet organe. À cet égard, la résolution 33/24 demande « *instamment au Gouvernement burundais de coopérer pleinement avec la Commission d'enquête, de l'autoriser à effectuer des visites dans le pays et de lui fournir toutes les informations nécessaires à l'exécution de son mandat.* » Nous savons l'engagement exprimé à plusieurs reprises par votre Gouvernement à œuvrer en faveur de la promotion et la protection des droits de l'homme, nous espérons que cet engagement se concrétisera par une coopération avec notre Commission.

Quelle que soit votre décision, nous continuerons, dans un souci de transparence et d'impartialité, à vous tenir au courant de nos travaux. Nous invitons dès à présent les autorités burundaises à nous faire parvenir toutes les informations qu'elles jugeront nécessaires ou utiles à une appréciation objective de la situation des droits de l'homme au Burundi.

Nous vous remercions, Excellence, de l'attention que vous voudrez bien porter à notre requête et vous prions de croire à l'expression de nos sentiments distingués,

M. Fatsah Ouguergouz

Mme Reine Alapini Gansu

Mme Françoise Hampson

Cc :

- S.E.M. Joaquin Alexander Maza Martelli, Président du Conseil des droits de l'homme.
- M. Zeid Ra'ad Al Hussein, Haut-Commissaire des Nations Unies aux droits de l'homme.
- S.E.M. Martin Nivyabandi, Ministre des droits de la personne humaine, des affaires sociales et du genre de la République du Burundi.

5. Note verbale sent to the Permanent Mission of Burundi on 13 March 2017

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Commission d'enquête sur le Burundi

REFERENCE: 2017/COI/BRD/NV/

La Commission d'enquête sur le Burundi présente ses compliments à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève et la remercie de bien vouloir trouver ci-jointe la présentation orale que M. Fatsah Ouguergouz, le Président de la Commission, va lire lors du dialogue interactif sur le Burundi prévu ce jour au Conseil des droits de l'homme.

La Commission d'enquête sur le Burundi saisit cette occasion pour renouveler à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève les assurances de sa haute considération.

HUMAN RIGHTS UNITED NATIONS

Genève, le 13 mars 2017.

Mission permanente de la République du Burundi
auprès de l'Office des Nations Unies
et des autres organisations internationales à Genève
Rue de Lausanne 44
1201 Genève
Fax: +41 22 732 77 34
Email : mission.burundi@bluewin.ch

6. Note verbale sent to the Permanent Mission of Burundi on 20 March 2017, together with a letter addressed to the Burundian Minister for Foreign Affairs and International Cooperation

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COMMISSION D'ENQUÊTE SUR LE BURUNDI

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REFERENCE: 2017/COI/BRD/NV/015

La Commission d'enquête sur le Burundi présente ses compliments à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève et la remercie de bien vouloir transmettre la lettre ci-jointe à Son Excellence Monsieur Alain Aimé Nyamitwe, Ministre des relations extérieures et de la coopération internationale de la République du Burundi, avec copie à Son Excellence M. Alain Guillaume Bunyoni, Ministre de la sécurité publique, et à Son Excellence Monsieur Martin Nivyabandi, Ministre des droits de la personne humaine, des affaires sociales et du genre.

La Commission d'enquête sur le Burundi saisit cette occasion pour renouveler à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève les assurances de sa haute considération.

Genève, le 20 mars 2017

Mission permanente de la République du Burundi
auprès de l'Office des Nations Unies
et des autres organisations internationales à Genève
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1201 Genève
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Réf.: 2017/COI/BRD/04

Genève, le 20 mars 2017

Excellence,

Suite à notre lettre du 6 février dernier dans laquelle nous vous exprimions notre volonté de maintenir un dialogue constructif avec le Gouvernement burundais, comme nous y invite la résolution 33/24 du Conseil des droits de l'homme établissant notre Commission, nous prenons à nouveau contact avec vous afin d'obtenir de la part des autorités burundaises des informations qui pourraient nous aider dans notre travail.

Vous trouverez ci-joint une copie de nos termes de référence, qui précisent que nos enquêtes porteront sur les violations des droits de l'homme et atteintes à ceux-ci commises depuis avril 2015 par toutes les parties au Burundi.

Dans un souci d'impartialité et d'objectivité, nous souhaiterions recevoir de la part des autorités burundaises toute information utile à la compréhension de la situation des droits de l'homme au Burundi pendant la période couverte par notre mandat. Nous vous serions reconnaissants de bien vouloir nous faire parvenir des informations détaillées sur les atteintes aux droits de l'homme commises depuis avril 2015, notamment à l'encontre de membres du Gouvernement ou du Conseil national de défense de la démocratie – Forces pour la défense de la démocratie (CNDD-FDD), d'autorités administratives ou de membres des forces de défense et de sécurité burundaises, afin que nous puissions enquêter sur ces cas.

Nous souhaiterions également recueillir de votre part des informations portant sur d'éventuelles enquêtes ou poursuites judiciaires qui auraient été menées sur ces atteintes et sur leurs auteurs présumés. Par « atteintes » aux droits de l'homme, nous entendons les exactions commises par des entités non-étatiques ou leurs membres.

À notre connaissance, en effet, un certain nombre de membres du Gouvernement, du parti au pouvoir et des forces de défense et sécurité burundaises ont été tués ou ont été victimes d'autres actes de violence depuis avril 2015.

.../...

S.E.M. Alain Aimé Nyamitwe
Ministre des relations extérieures et de la coopération internationale
de la République du Burundi

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COMMISSION D'ENQUÊTE SUR LE BURUNDI

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Parmi les cas sur lesquels nous souhaiterions recevoir des informations de votre part, il y a notamment le meurtre du Général Adolphe Nshimirimana, le 2 août 2015; l'attaque contre le Général-major Prime Niyongabo, Chef d'Etat-major, le 11 septembre 2015; l'assassinat du Lieutenant-Colonel Darius Ikurakure, le 22 mars 2016; l'attaque contre le Ministre des droits humains, des affaires sociales et du genre, M. Martin Nivyabandi, le 24 avril 2016 ; l'attaque à l'encontre du Conseiller en communication du Président de la République, M. Willy Nyamitwe, le 28 novembre 2016 ; le meurtre du Ministre de l'eau, de l'environnement, de l'aménagement du territoire et de l'urbanisme, M. Emmanuel Niyonkuru, le 1er janvier 2017, ainsi que plusieurs attaques contre des représentants du parti CNDD-FDD et des membres de la Police Nationale Burundaise commises depuis avril 2015 à Bujumbura et dans d'autres provinces.

Nous vous remercions par avance des informations que vous voudrez bien partager avec nous sur ces cas, ainsi que sur tout autre incident ou cas qui mériterait une attention de notre part.

La Commission d'enquête reste disponible pour rencontrer les autorités burundaises afin d'échanger sur cette demande d'information ainsi que sur son travail de manière plus générale.

Nous vous remercions, Excellence, de l'attention que vous voudrez bien porter à notre requête et vous prions de croire à l'expression de nos sentiments distingués,

M. Fatsah Ouguergouz

Mme Reine Alapini Gansou

Mme Françoise Hampson

Cc :

- S.E.M. Aimée Laurentine Kanyana, Ministre de la justice et Garde des sceaux de la République du Burundi
- S.E.M. Martin Nivyabandi, Ministre des droits humains, des affaires sociales et du genre de la République du Burundi
- S.E.M. Alain Guillaume Bunyoni, Ministre de la sécurité publique de la République du Burundi