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## Human Rights Council

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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

#### Technical assistance and capacity-building

## Report on the independent investigation on Burundi carried out pursuant to Human Rights Council resolution S-24/1\*

### *Summary*

The present report, which was prepared pursuant to Human Rights Council resolution S-24/1, covers violations and abuses of human rights committed in Burundi from 15 April 2015 to 30 June 2016. The independent experts who carried out the investigation have found that gross human rights violations have been committed, primarily by State agents and those linked to them. They have also found that these gross violations are systematic and patterned and that impunity is pervasive. While the crisis continues and even though the level of overt violence has declined, the overall level of oppression and control over society has increased, as manifested by arbitrary deprivations of life, enforced disappearances coupled with credible allegations of individuals being held in unacknowledged places of detention, cases of torture and other forms of ill-treatment and arbitrary detention on a massive scale. Burundians are almost completely unable to enjoy their freedoms of expression, association and assembly. Victims and witnesses are the targets of reprisals. Without a determined intervention by the Government of Burundi and a renewed robust engagement by the international community, including the United Nations and the African Union, the country's downward spiral is unlikely to be reversed, endangering not only the rights of individuals but also the overall security of the region. The independent experts cannot exclude that some instances of gross human rights violations may amount to crimes against humanity and call for the establishment of independent international judicial processes to bring the alleged perpetrators to justice.

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\* The present report was submitted after the deadline in order to reflect recent developments.

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## I. Introduction

1. In its resolution S-24/1 of 17 December 2015, the Human Rights Council requested the United Nations High Commissioner for Human Rights to urgently organize and dispatch on the most expeditious basis possible a mission by independent existing experts to Burundi, to undertake swiftly an investigation into violations and abuses of human rights with a view to preventing further deterioration of the human rights situation and to make recommendations on the improvement of the human rights situation and on technical assistance to support reconciliation and the implementation of the Arusha Peace and Reconciliation Agreement for Burundi.

2. The focus of the Human Rights Council was on the current and ongoing crisis, which started in April 2015. In its resolution S-24/1, the Council requested the independent experts to issue a final report and participate in an enhanced interactive dialogue on the human rights situation in Burundi at its thirty-third session.

3. In January 2016, the High Commissioner appointed three independent experts to carry out the independent investigation on Burundi: the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (elected as Chair); the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff; and the African Commission on Human and Peoples' Rights Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa, Maya Sahli-Fadel. Since two of the experts were from the United Nations and one was from the African Union system, the investigation was a joint United Nations-African Union undertaking. Active investigations ceased at the end of June 2016.

4. By a letter dated 11 January 2016, the Office of the United Nations High Commissioner for Human Rights (OHCHR) informed the Government of Burundi of the appointment of the experts and proposed a framework of four country visits by the experts and the deployment of observers on the ground.

5. The Government did not respond to the request for the first visit, which consequently did not take place. Visits took place from 1 to 8 March and from 13 to 17 June 2016. The last visit (scheduled for September 2016), could not take place because of security considerations.

6. OHCHR established a secretariat to support the independent experts: five Human Rights Officers were based in Bujumbura from April to September 2016.

7. The Special Rapporteur on extrajudicial, summary or arbitrary executions presented an oral update on the investigation to the Human Rights Council on 22 April 2016. Moreover, the independent experts have requested the High Commissioner, whose Office functions as a repository for the archives related to the investigation, to grant access to information for the purposes of accountability. In parallel, confidentiality and protection concerns have been addressed to the relevant accountability mechanisms. In addition, the independent experts have compiled a list of alleged perpetrators who were repeatedly named by victims and witnesses as responsible for gross human rights violations, to be shared with such mechanisms.

8. The independent experts thank the Government for its cooperation in relation to the country visits and the deployment of Secretariat staff. They note, however, that they also faced several challenges, including in respect of the fact that two of their four planned visits could not be carried out. Some victims and witnesses feared reprisals. Moreover, because of the reported presence of, and surveillance by, agents of the intelligence service and

members of the ruling party's youth wing, the independent experts refrained from carrying out investigations at some sites to protect witnesses and victims. While initial access to government officials was relatively good, it deteriorated over time.

9. Several government officials said they were not in a position to provide information, but would do so in writing afterwards. By a letter dated 19 July 2016, the independent experts addressed specific questions to the Government, to which they followed up by a letter dated 1 September 2016. In that last letter, they also offered to provide technical capacity to document the alleged mass graves. Regrettably, no response was received until the day when the report was completed; the response consisted of a blanket denial of all violations.

10. Despite the constraints, the independent experts were able to collect and verify enough information to substantiate their conclusions.

## II. Methodology

11. The independent experts conducted a total of 227 interviews, in some cases with multiple parties. Among those interviewed were government officials, politicians and members of civil society in Bujumbura, Muramvya and Gitega. The independent experts also conducted field visits to the Democratic Republic of the Congo, Rwanda, Uganda and the United Republic of Tanzania to interview, among others, 182 refugees. Following an online call for submissions website,<sup>1</sup> the independent experts received 57 submissions. An extensive review of other relevant material, including reports by the United Nations and international and national human rights organizations, was carried out.

## III. Legal framework

12. The independent experts discharged their mandate against applicable standards of international human rights law, international criminal law and international refugee law, as well as the Constitution of Burundi and other domestic laws.

13. Under international human rights law, States are required to respect human rights and to ensure that their own representatives do not violate those rights, for example by using unwarranted force. States are also responsible for the actions of non-State actors that may be attributed to them, for example informal groups that operate with their endorsement or acquiescence.<sup>2</sup> States must moreover protect those within their jurisdiction against human rights abuses by non-State actors. In addition, States must, at a minimum, ensure accountability for gross human rights violations and abuses.<sup>3</sup> If a State fails to ensure accountability for the arbitrary deprivation of life, such a failure in itself constitutes a separate violation of the right to life.<sup>4</sup>

14. Burundi has ratified a number of human rights treaties, including the International Covenant on Civil and Political Rights (1990), the International Covenant on Economic, Social and Cultural Rights (1990), the Convention against Torture and Other Cruel,

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<sup>1</sup> See [www.ohchr.org/EN/HRBodies/HRC/UNIIB/Pages/UNIIB.aspx](http://www.ohchr.org/EN/HRBodies/HRC/UNIIB/Pages/UNIIB.aspx).

<sup>2</sup> See General Assembly resolution 56/83, annex, chap. II.

<sup>3</sup> Article 2 (3) of the International Covenant on Civil and Political Rights.

<sup>4</sup> Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 18. See also African Commission on Human and Peoples' Rights, general comment No. 3 (2015) on the African Charter on Human and Peoples' Rights: the Right to Life (art. 4), para.15.

Inhuman or Degrading Treatment or Punishment (1993) and the African Charter on Human and Peoples' Rights (1989). It is also a party to the Rome Statute of the International Criminal Court (2004). The Constitution of Burundi recognizes the right to life (art. 24) and the right to be free from torture or other cruel, inhuman or degrading treatment or punishment (art. 25), and guarantees the independence of the courts (art. 209).

15. Burundi is a member of the Human Rights Council and was a member of the Council when resolution S-24/1 was adopted by consensus.

16. States carry the primary responsibility for respecting, protecting and ensuring the human rights of all within their jurisdiction. While the sovereignty of States is an important and respected pillar of the current global order, sovereignty provides neither a justification for violations of human rights nor an excuse for impunity.

17. The independent experts established their findings on a "reasonable grounds to believe" standard of proof, in other words on a reliable body of information that was consistent with other material and 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.

#### **IV. Background to the current crisis**

18. The history of Burundi, before and after independence (1962), has been marked by repeated cycles of intense violence, including between ethnic communities.

19. The situation in Burundi also has to be understood within the broader regional context, as violence in one country almost inevitably has spillover effects involving its neighbours and affects regional security.

20. A decade-long civil war ended with the signature, in 2000, of the Arusha Agreement, which provided for power-sharing arrangements between the various sociopolitical and ethnic groups. The Arusha Agreement heralded the longest period of relative peace since independence.

21. In 2014, a dispute emerged over the question of whether the President, Pierre Nkurunziza, was entitled by the terms of the Arusha Agreement and the Constitution to run for a third term of office. A draft law aimed at amending the Constitution in order to make a third term possible was defeated in the National Assembly on 22 March 2014. Despite widespread local resistance and appeals by the international community (including by the African Union, the International Conference on the Great Lakes Region and the East African Community), the ruling party — the Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie (CNDD-FDD) — designated President Nkurunziza as its candidate on 25 April 2015.

22. On 5 May 2015, the Constitutional Court of Burundi validated the constitutionality of President Nkurunziza's candidacy for an additional term. Some of the controversies around that decision are mentioned below.

23. A wave of protests accompanied the announced candidacy. Initially, the protests consisted largely of non-violent street demonstrations, but the authorities soon turned to the use of force to disperse the protesters and, more generally, to smother political dissent.

24. Following an attempted coup on 13 May 2015, the Government, both in its rhetoric and in its practice, associated demonstrators, mostly civilians, with the military coup leaders and expanded the scope of reprisals to include anyone opposed to the President or the ruling party or anyone suspected of having participated in demonstrations. The Government used the security apparatus — the National Police, the National Intelligence Service and the National Defence Force — and the youth wing of the ruling party, the

Imbonerakure, against political opponents to carry out some of the gross violations mentioned below and, in general, to clamp down on civil society.

25. The security forces frequently conducted violent cordon-and-search operations in the so-called opposition neighbourhoods of Bujumbura (Musaga, Ngagara, Kanyosha and Nyakabiga) to track down demonstrators.

26. Following an attack on four military bases in and around the capital on 11 December 2015, the security forces used indiscriminate violence. Anyone suspected of opposing the Government was at risk, including State officials, agents of the National Intelligence Service and even senior military officers. Gross human rights violations within the security forces, carried out tit for tat, became a salient feature of the crisis.

27. Non-State actors have engaged in human rights abuses such as assassinations of government officials and throwing grenades into public areas, killing civilians.

28. In December 2014, four months before the current crisis erupted, the Security Council did not renew the mandate of the United Nations Office in Burundi (BNUB), which had been engaged in Burundi for over a decade. Once the crisis started, however, various international initiatives were launched, including a fact-finding mission by a delegation of the African Commission on Human and Peoples' Rights, the adoption of various African Union and European Union resolutions, the launch of a dialogue (now stalled) promoted by the East African Community, visits by various African Heads of State, the European Union decision on the suspension of direct aid, a visit by the Security Council, the review of a special report by the Committee against Torture, an early-warning procedure initiated by the Committee for the Elimination of Racial Discrimination and the deployment of African Union observers.

29. The report of the delegation of the African Commission on Human and Peoples' Rights contains the views of the primary human rights monitoring body of the African Union.<sup>5</sup> Notably, the delegation describes the violations committed by government security personnel and affiliated groups as "pervasive and systematic" and as "serious and massive";<sup>6</sup> it calls for the deployment of "an international police mission"<sup>7</sup> and the establishment of an independent, internationally supported special tribunal in Burundi.<sup>8</sup>

30. The African Union Peace and Security Council decided in December 2015 to deploy 5,000 peacekeepers to Burundi. The decision was reversed before it was presented to the Assembly of Heads of State and Government, following the statement by Burundi that the deployment would be treated as an invasion. In the meantime, following a visit by a high-level delegation, the African Union decided to deploy 100 human rights observers and 100 military observers. To date, only 45 human rights observers and 24 military observers have been deployed. The Government has not yet signed a memorandum of understanding with the African Union about the observers. In addition, the Government insists on "clearing" the observers' reports before they are submitted to African Union bodies.

31. On 29 July 2016, the Security Council adopted resolution 2303 (2016), by which it authorized the deployment of a maximum of 228 United Nations police officers. Implementation of the resolution has been categorically rejected by the Government.

32. On 3 June 2016, the Department of Peacekeeping Operations of the Secretariat announced its decision not to replace the 280 Burundian police officers in the United

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<sup>5</sup> Available from [www.achpr.org/files/news/2016/05/d218/achpr\\_report\\_fact\\_finding\\_eng.pdf](http://www.achpr.org/files/news/2016/05/d218/achpr_report_fact_finding_eng.pdf).

<sup>6</sup> *Ibid.*, para. 110.

<sup>7</sup> *Ibid.*, para. 169 (h).

<sup>8</sup> *Ibid.*, para. 172 (c).

Nations peacekeeping operation in the Central African Republic at the end of their tour of duty. Some Burundian African Union or United Nations peacekeepers have reportedly refused to return to Burundi for fear of retaliation against soldiers considered close to the opposition.

33. There are persistent allegations by the Government of Burundi that neighbouring Rwanda is involved in supporting anti-Government groups in Burundi. Critics of the Government allege that members of the Interahamwe are used by the Burundian authorities to supplement its own security structures.

## V. Principal findings

34. No one can quantify exactly all the violations that have taken place during the reporting period and that continue to take place in a situation as closed and repressive as Burundi.

35. According to some estimates, more than 1,000 people have been killed during the crisis.<sup>9</sup> Thousands more have reportedly been tortured, unknown numbers of women have been subjected to various forms of sexual crime, hundreds of people have disappeared and thousands have been illegally detained.<sup>10</sup>

36. A particularly telling figure, and one that can be more easily verified, is the number of people who have fled the country since the crisis began. The Office of the United Nations High Commissioner for Refugees puts the number of people who have sought refuge in neighbouring countries since April 2015 at 286,036 (as at 25 August 2016).<sup>11</sup> The Office for the Coordination of Humanitarian Affairs reports that 109,459 people have been displaced (as at 31 August 2016).<sup>12</sup> Clearly, many people on the ground believe they see signs of the horrors of the past repeating themselves and flee.

37. The independent experts provide below an overview of some of the violations that have been investigated.

### A. Arbitrary deprivations of life

38. No official figures of the number of people killed during the crisis are available and the system of accountability is virtually non-existent. OHCHR has informed the independent experts that it verified 564 executions between 26 April 2015 and 30 August 2016. Given the constraints under which OHCHR operates, this is clearly a conservative estimate.

39. The independent experts found that the large majority of victims were people who were opposed or were perceived to be opposed to a third mandate for President Nkurunziza or who were members of opposition parties.

<sup>9</sup> See <https://www.fidh.org/en/region/Africa/burundi/burundi-a-bloody-first-year-of-challenged-presidency-for-pierre>.

<sup>10</sup> See, e.g., the compilation of reports by Human Rights Watch on Burundi available from [https://www.hrw.org/sites/default/files/supporting\\_resources/burundi\\_compendium\\_2016\\_web\\_version\\_4.pdf](https://www.hrw.org/sites/default/files/supporting_resources/burundi_compendium_2016_web_version_4.pdf).

<sup>11</sup> See <http://data.unhcr.org/burundi/regional.php>.

<sup>12</sup> This may however also include those displaced by natural disasters. See [https://www.humanitarianresponse.info/fr/system/files/documents/files/note\\_dinformation\\_humanitaire\\_31\\_aout\\_2016.pdf](https://www.humanitarianresponse.info/fr/system/files/documents/files/note_dinformation_humanitaire_31_aout_2016.pdf).

**1. Executions committed by the security forces and those who work with them**

40. The information received and verified by the independent experts support the conclusion that executions have been committed on a large scale by the security forces, often with the support of the Imbonerakure. From among the many testimonies that were heard, the independent experts highlight the examples below.

41. On the morning of 26 April 2015, 16-year-old Jean Népo was returning from Sunday Mass at St. Joseph's church in Bujumbura. Near the University Porte d'Afrique, Jean met demonstrators chanting slogans against a third term for the President. The police dispersed the demonstrators who were throwing stones. According to witnesses, a police commissioner ordered one of his officers to kill Jean, who had remained at the scene while the crowd had dispersed. Jean reportedly begged the police to let him live, saying: "I could be your child. I beg you. Save me." As the officer hesitated, the commissioner pulled out his gun and shot the young man twice in the head. No investigation has been initiated by the authorities into the case.

42. The independent experts received first-hand information confirming the involvement of the Imbonerakure in murders of perceived opposition sympathizers. Thus, a former member of the Imbonerakure testified that he had participated in the killing of 20 individuals in Bujumbura, including two Imbonerakure members who had warned persons of plans to execute them. The witness added that Imbonerakure members were expected to arrest all those who opposed the third mandate, were against the President or did not collaborate with CNDD-FDD. The bodies of those executed in these cases were reportedly placed in bags, transported across the Ruzizi River using makeshift boats and buried in the Democratic Republic of the Congo.

43. The attacks of 11 December 2015 by armed groups on four military camps, three in Bujumbura and one in the province of Bujumbura Rural, were followed by operations during which security forces allegedly committed massive violations of human rights, notably a high number of extrajudicial executions of youths. The independent experts received testimonies confirming such extrajudicial executions and indicating that the official number of 87 killed during the two-day attacks was very conservative.

**2. Reports of mass graves**

44. Allegations of mass burials of those executed during the above-mentioned incidents have been widely reported.<sup>13</sup> Initial satellite imagery suggests that bodies may have been buried in mass graves during that period, including in Bujumbura (in Kanyosha and Mpanda) and Bubanza. The independent experts received testimony corroborating the existence of mass graves. Reported intimidation by members of the Imbonerakure and National Intelligence Service officers of persons in possession of related information give further credibility to the testimony.

45. The proper forensic examination of alleged mass graves calls for specialized expertise. In the meantime, the sites concerned must be left undisturbed. The independent experts offered to arrange for the alleged sites to be properly recorded, so that they could be investigated in full at a later stage, but the Government has not responded to the offer.

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<sup>13</sup> See <https://www.amnesty.org/en/press-releases/2016/01/burundi-satellite-evidence-supports-witness-accounts-of-mass-graves>.



### 3. Targeted assassinations

46. A former senior officer of the National Defence Force confirmed to the independent experts the existence of several lists of people, including civilians and military personnel, to be eliminated by the security forces.

47. Armed elements in opposition to the Government have also been involved in several murders, notably targeted assassinations. The independent experts documented a case of a member of the Imbonerakure being burned alive. Grenade attacks have also allegedly been carried out by the armed elements, causing casualties among the population. From May 2015 to February 2016, the OHCHR office in Burundi documented several cases of grenades thrown by unknown individuals in public places, mainly in Bujumbura.

48. Apparent examples of tit-for-tat targeted assassinations within the army — particularly threatening to the integration of the armed forces — include the killings of several senior army officers belonging either to the pre-Arusha Agreement Burundian armed forces or to the Armed Political Parties and Movements (a former rebel group), and the apparent retaliatory killings of alleged supporters of the regime within the forces. Among the most emblematic examples are the killings of General Adolphe Nshimirimana on 2 August 2015, of General Athanase Karakuza on 25 April 2016 and of Colonel Darius Ikurakure on 22 March 2016. The latter was shot dead in the compound of the headquarters of the army's joint staff.

49. Human rights activists and their relatives have been primary targets. For instance, on 3 August 2015 Pierre Claver Mbonimpa, a leading human rights activist and representative of the Association for the Protection of Human Rights and of Detainees, was shot in the cheek and arm during an apparent assassination attempt. On 6 August 2015, his son, Welly Fleury Nzitonda, was arrested; he was later killed in the Mutakura neighbourhood of Bujumbura. On 9 October 2015, Mr. Mbonimpa's son-in-law, Pascal Nshimirimana, was killed by firearm and grenades as he was returning home in Ngangara.

### B. Enforced disappearances

50. Many persons have disappeared since the beginning of the crisis, often following their arbitrary arrest by the security forces, notably the National Police and the National Intelligence Service. The victims include members of the opposition members and civil society and demonstrators. The independent experts met relatives of people arrested by elements of the security forces who were never seen again. They were unable to obtain any information from the authorities regarding the fate or whereabouts of the persons concerned.

51. Marie-Claudette Kwizera, Treasurer of the civil society organization Ligue Iteka was allegedly arrested on 10 December 2015 by the National Intelligence Service and has not been seen since. On 22 July 2016, Jean Birgimana, a journalist for the *Iwaku* newspaper, was also allegedly arrested by the National Intelligence Service and has been missing since then.

52. The independent experts have also received information and names from witnesses concerning the existence of a group of 12 well-known intelligence, police and military agents who have allegedly been responsible for many cases of enforced disappearances and who report directly to the inner circle of the executive branch.

### C. Torture and other cruel, inhuman or degrading treatment or punishment

53. The use of torture and other cruel, inhuman or degrading treatment or punishment against those opposed to a third term for the President and against opposition members or their relatives, either to extract information or as punishment, has been common during the crisis. The independent experts conducted 65 interviews with witnesses and victims of torture or ill-treatment. Elements of the National Intelligence Service, the National Police, the Imbonerakure and, to a lesser extent, the National Defence Force, are consistently identified as the perpetrators, and some individuals, including senior figures of the security apparatus, have been repeatedly cited.

54. From various testimonies, the independent experts were able to establish a non-exhaustive list of forms of torture and other ill-treatment to which the victims were subjected at the hands of the security forces:

- (a) Attaching weights to testicles;
- (b) Crushing fingers and toes with pliers;
- (c) Detaining a person in a closed container;
- (d) Forcing families to stay next to the dead body of a relative;
- (e) Forcing the victim to sit in acid or on broken glass or nails;
- (f) Gang raping a woman in the presence of her children;
- (g) Injecting a yellow liquid in the testicles and other parts of the body, leading to paralysis;
- (h) Inflicting knife and machete stabs;
- (i) Inflicting lashes using preheated electric cables or iron bars;
- (j) Progressively burning with a blowtorch or gas cylinder;
- (k) Progressively electrocuting;
- (l) Pulling a cord attached to the testicles;
- (m) Sprinkling the victim with a mixture of water and sand and rubbing the mixture with a broom so that it fills the pores of the skin (known as “*ubutoteza*” in Kirundi);
- (n) Tightly tying a person’s arms behind the back for several days;
- (o) Using insults and humiliating speech, including with an ethnic dimension;
- (p) Poking fingers in the eyes of the victim;
- (q) Tying the victim up by the feet upside down (known as “*amagurizege*” in Kirundi).

55. No national preventive mechanism has been set up by the Government as required under Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### D. Sexual and gender-based violence

56. The crisis has exacerbated the already prevalent issue of sexual and gender-based violence, which is one of the patterns of violations that has emerged from the independent

experts' investigations. Incidents recorded by the independent experts from Burundian refugee women and girls reveal various forms of sexual and gender-based violence experienced both in Burundi and beyond, during flight from the country.

57. Witnesses and victims told the independent experts that many of the women who had fled the country were subjected to sexual violence, while in flight, by Imbonerakure members, unidentified armed men and border guards, including as a punishment for leaving the country "while there was no war".

58. The independent experts obtained credible information indicating that many Burundian women and girls related to males who opposed a third term for the President, or who were perceived as political dissidents, became the targets of physical and sexual violence by elements of the security forces.

59. In a number of cases documented by the independent experts, the victims were sexually mutilated. For instance, in August 2015 a woman in Cibitoke was sexually mutilated by Imbonerakure members who were searching for her husband. She stated that when they did not find him, they tied her hands behind her back and hit her. She added: "They put their hands inside my vagina until the uterus came out. I was left alone bleeding, screaming. The neighbours came out and they tried to put my uterus back in place."

60. In Cibitoke, a witness stated that in April 2015 armed men dressed in military uniforms entered her neighbour's house. The following day, the witness found her neighbour dead, with wood inserted in her vagina.

61. The independent experts also recorded first- and second-hand allegations of sexual violence against men, in particular in detention. In May 2015, a man detained by the National Intelligence Service for 18 days was reportedly forced to spread his legs and was severely beaten on his genitals, causing permanent erectile dysfunction. A male student who refused to join the Imbonerakure was reportedly picked up by classmates and taken to a house where he was reportedly handcuffed and raped by three men while others watched.

## **E. Excessive use of force**

62. Several reports by international, regional and national organizations have condemned the conduct of the Burundian security forces during the demonstrations.<sup>14</sup> The authorities now insist that the demonstrations were never peaceful. The information collected by the independent experts indicates that the police used excessive force against demonstrators who had been chanting slogans against the President, with some of them throwing stones and blocking intersections. None of these actions merited law enforcement officers using firearms, including against fleeing demonstrators. Moreover, even after having gained control over the demonstrators, the police generally arrested and beat up demonstrators, notably young men, in flagrant violation of the international standards on the use of force.<sup>15</sup>

63. The independent experts visited the quarters of the anti-riot brigade in Bujumbura. Among the commanders there seemed to be very little awareness of alternative techniques of managing demonstrations or the use of non-lethal weapons. When asked whether the members of the unit had received special training, the commanders said that they had not and the answer to the question about how the members had been selected was "physical strength".

<sup>14</sup> See, e.g., A/HRC/32/30.

<sup>15</sup> See, e.g., the Basic Principles on the use of Force and Firearms by Law Enforcement Officials (1990).

64. Protest in the form of public demonstrations (except if organized by the authorities) hardly occurs any more, by all accounts not because there is less reason to protest, but because of fear of the consequences.

## **F. Arbitrary or unlawful arrests and detention, including mass arrests**

65. Arbitrary arrests and detention have been a cornerstone of the repression in Burundi and have opened the way for a wide range of other human rights violations. Arbitrary arrests and detention surged after 26 April 2015, targeting individuals demonstrating against a third term for the President. After the attempted coup of May 2015, the authorities intensified the repression. The National Intelligence Service, the National Police, the Imbonerakure and the National Defence Force reportedly tracked down opponents, notably through cordon-and-search operations and raids in the so-called opposition neighbourhoods of Bujumbura.

66. According to testimony received by the independent experts, the security forces would typically bring arrested persons to temporary detention sites before sorting them according to their presumed collaboration with armed opposition groups or involvement in the movement against a third term.

67. Persons arrested by the security forces would often be subjected not only to physical abuse but to extortion, asked to pay “ransoms” of 4-5 million Burundian francs to middle men in an attempt to secure their release.

68. Mass arrests have become common during the crisis, both in certain neighbourhoods of the capital and at the borders. The security forces engage in almost daily raids in the so-called opposition neighbourhoods of Bujumbura. Early in the morning, police officers arrive heavily armed, encircle the targeted area by ordering all occupants of the houses to empty their homes for the purpose of searches. Some are arrested. Young people aged 18-35 are particularly targeted. This practice creates a climate of fear and panic in the neighbourhoods concerned.

69. Prison overcrowding is alarming, as there is a 300 per cent occupancy rate in some prisons. Mpimba prison in Bujumbura, which the independent experts visited, was built for 800 prisoners but was housing 3,800 instead.

70. The investigations confirmed an abuse of pretrial detention and a practice of prolonged detention without charges. During their visit to Mpimba prison, the experts encountered several very young detainees who had reportedly been arrested during the demonstrations in the first half of 2015 but who had not yet been put on trial for any offence.

### **Unacknowledged places of detention**

71. Although the Prosecutor General of the Republic has formally denied the existence of unacknowledged places of detention, the independent experts conclude that there are reasonable grounds to believe that the security forces and the Imbonerakure have established several such sites.

72. A number of victims interviewed by the independent experts identified the exact places of their detention, which include:

- (a) In Bujumbura:
  - (i) A green painted house near the office of the apostolic nuncio;
  - (ii) An uninhabited house in the area of Mutakura, located between 8th and 9th streets;

- (iii) Secret cells on the premises of the National Intelligence Service;
- (iv) The bar called “Iwabo Nabantu”, in Kamenge, which belonged to the late General Nshimirimana;
- (v) The basement of the headquarters of CNDD-FDD at Ngagara;
- (vi) The basement of the residences of the Minister of Public Security, Alain Bunyoni, in Kinanira and Gasekebuye;
- (vii) The containers serving as military positions next to the building of the water supply distribution company, REGIDESO, in Kigobe, close to the National Assembly;
- (viii) The police-manned site known as “Chez Ndadaye”, next to the cemetery of Ndadaye;
- (ix) The REGIDESO building in Ngagara, near King Khaled Hospital;
- (x) The containers serving as military positions next to the REGIDESO building, in Kigobe;
- (b) In Ngozi:
  - (i) The bar called “Chez Nyamugaruka”, at Vyegwa;
  - (ii) The houses of President Nkurunziza in Mwumba commune;
  - (iii) The basement of the National Intelligence Service.

## G. Ethnically charged language

73. Various cases of ethnically divisive language have been documented.

74. On 24 August 2016, the Special Adviser on the Prevention of Genocide issued a press statement expressing his concern at the inflammatory statements made by public officials that could constitute incitement to violence.<sup>16</sup> The Special Adviser referred to a large number of comments made by public officials and specifically to the statement published on 16 August on the CNDD-FDD website by the then President of that political party and President of the National Assembly, Pascal Nyabenda, which the Special Adviser warned had “the potential to inflame ethnic tensions, both within Burundi and outside its borders”.<sup>17</sup> In his statement, Mr. Nyabenda also suggested that the genocide in Rwanda was a fabrication of the international community.<sup>18</sup>

75. The independent experts are gravely concerned about the general trend of ethnically divisive rhetoric by the Government,<sup>19</sup> which may lead to the situation spiralling out of control, including beyond the borders of Burundi. The potential for this to happen is all the more serious given that the integration of ethnicities was one of the main achievements of the Arusha Agreement.

76. The independent experts urge the Government and its officials to refrain from such acts and call upon all relevant stakeholders, in particular the African Union and the United

<sup>16</sup> See [www.un.org/apps/news/story.asp?NewsID=54757#.V8UiU1f3cs](http://www.un.org/apps/news/story.asp?NewsID=54757#.V8UiU1f3cs).

<sup>17</sup> Ibid.

<sup>18</sup> See also [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20215&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20215&LangID=E).

<sup>19</sup> See CAT/C/BDI/CO/2/Add.1, para. 18.

Nations, to scrupulously monitor the situation<sup>20</sup> and to take the steps necessary to prevent further mass violations.

77. The independent experts obtained evidence of several cases of the use of ethnically divisive language. For example, in July 2015 a Tutsi woman from Nyakabika was picked up by four men in police uniform in Bujumbura and taken to the woods. She was reportedly severely beaten, stabbed in the breast and raped by all four men. One of them reportedly told her: “I do this because I want you to carry my Hutu children.”

## **H. Freedom of expression and association**

78. As has been widely reported, Burundian civil society actors, notably human rights defenders and journalists, have been primary targets of systematic repression by the authorities. Below are just some of the cases that members of civil society organizations and media outlets have described to the independent experts.

79. On 23 November 2015, the activities of the 10 leading civil society organizations were “temporarily” suspended by ministerial decree, and the bank accounts of some of them, as well as of those of their executives, were frozen.

80. International arrest warrants have been issued against leaders of civil society organizations, namely Justine Nkurunziza of the Civil Society Coalition for the Monitoring of Elections, Pacifique Nininahazwe of Forum pour la conscience et le développement, Vital Nshimirimana of the Forum for Strengthening Civil Society, Gatogato John Vianney of the Association of Catholic Jurists in Burundi and Armel Niyongere of Action by Christians for the Abolition of Torture in Burundi.

81. Independent journalists have been subjected to harassment, death threats, arrests and torture and have had their offices closed or their equipment destroyed.

82. On 13 May 2015, following the attempted coup, men in uniform and Imbonerakure members reportedly used heavy weapons to attack the following independent radio stations: Radio publique africaine, Bonesha FM, Isanganiro and Renaissance Broadcasting. Shortly before, Rema FM, a radio station known to be very close to the Government, was destroyed by people protesting against a third term for the President, just after the announcement of the coup.

83. On 2 August 2015, the Burundi correspondent of Radio France Internationale and Agence France-Presse was arrested by the police as he was taking pictures at the scene of the assassination of General Nshimirimana, former Head of the National Intelligence Service and a man close to the President. He was taken to the National Intelligence Service headquarters, where a commander ordered that he be given the “daily ration”, in other words that he be beaten 100 times with a stick. He was eventually released and treated for a perforated eardrum, a broken finger, broken bones in the legs and toes, and internal bleeding. No investigations into the incident have been initiated to date.

84. On 13 October 2015, a reporter from a local television station was killed at the entrance of his house, allegedly by police officers of the Unit for the Protection of Institutions. His wife and two children were reportedly forced to kneel for over two hours beside the body, pending a decision on their fate. They were eventually executed, along with another relative, by the same people.

85. The Government argues that the situation is close to being normal, that stations have had their licences restored and that those that still have not had their licences restored have

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<sup>20</sup> See [www.un.org/apps/news/story.asp?NewsID=54757#.V8UilU1f3cs](http://www.un.org/apps/news/story.asp?NewsID=54757#.V8UilU1f3cs).

not filed the necessary applications. Some radio stations have indeed been issued licences, but there are legitimate questions as to whether the outlets whose licences have been restored are indeed the same: their staffing, content and editorial views appear fundamentally changed.

86. As with the other violations recorded in the present report, the victims are not only those outside the Government. Even within government circles or the ruling party, there is no room for dissenting positions.

87. The atmosphere of repression has manifested itself in the Government's harsh reaction to students scribbling on photographs of President Nkurunziza; hundreds of students were reportedly suspended in May 2016 and close to 60 were detained by the National Intelligence Service, while 16 schools in Bujumbura were occupied by the police (10 of which remained under police control for a prolonged period).<sup>21</sup> Discussions with the Minister of Education did not reassure the independent experts that the importance of the school system as an incubator of democratic values was understood.

88. There are worrying signs of a personality cult being built around the President.

## I. Economic and social rights

89. The civil war in Burundi has had a devastating effect on the economy and living standards. After the Arusha Agreement was signed, however, and especially after 2005, a return to peace and stability allowed for an economic growth of between 4 and 5 per cent, with corresponding improvements in the health and education sectors.<sup>22</sup>

90. Reforms in the education sector have led to increases in primary school enrolment<sup>23</sup> and reforms in the health sector have led to improvements in access and in some basic health and life expectancy indicators.<sup>24</sup>

91. The political crisis, however, is reversing such progress. The climate of violence and repression has disrupted economic activity, leading to a 20 per cent decline in official revenues during the fiscal year 2015, to declining purchasing power and to disruptions given the suspension of aid to the official sector. Overall, the World Bank estimates that the economy contracted by 2.5 per cent in 2015.<sup>25</sup>

92. There is no sector of the economy that has not been affected by the crisis. The public sector provides jobs to 80 per cent of salaried employees in Burundi (a small percentage of the economically active population).<sup>26</sup> The economic crisis has not only led to limited recruitment in the public sector, but to the apparent politicization of hiring; the small number of posts available are allegedly reserved for members of the ruling party.

93. It is estimated that half of all young people in Burundi are unemployed. The majority of the demonstrators against a third presidential mandate were youths, and the high unemployment rate may provide a large source of recruitment for nascent rebel movements and the Imbonerakure.

<sup>21</sup> See [www.news24.com/Africa/News/burundi-school-kids-deface-portraits-to-defy-president-20160620-4](http://www.news24.com/Africa/News/burundi-school-kids-deface-portraits-to-defy-president-20160620-4).

<sup>22</sup> See <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=BI>.

<sup>23</sup> See <http://allinschool.org/wp-content/uploads/2015/02/OOSC-2014-QW-Burundi-Primary-final.pdf>.

<sup>24</sup> See [www.who.int/bulletin/africanhealth2014/improving\\_access\\_to\\_health\\_care/en](http://www.who.int/bulletin/africanhealth2014/improving_access_to_health_care/en).

<sup>25</sup> See [www.worldbank.org/en/country/burundi](http://www.worldbank.org/en/country/burundi).

<sup>26</sup> See [www.heritage.org/index/country/burundi](http://www.heritage.org/index/country/burundi).

94. The agricultural sector, which employs 90 per cent of the economically active population, has been affected both by the displacement of persons and by the land conflicts that such displacement generates.<sup>27</sup>

95. Education has also been affected by the displacement of both students and teachers and by cuts in subsidies to the school canteens on which many students depend.

96. State expenditure for the health sector has also been reduced. Conditions in hospitals have deteriorated,<sup>28</sup> in particular outside the capital, where beds are sometimes shared by as many as four patients. The health service has also been affected by a deficit in personnel as some practitioners have left the country as a result of the political crisis.

## **J. Burundian refugees and internally displaced persons**

97. The number of refugees and internally displaced people resulting from the crisis is provided in paragraph 36 above. The outflow of refugees rose substantially during specific periods: following the attempted coup d'état in May 2015, during the July 2015 presidential elections and following the attack on military camps in December 2015. The outflow has since continued at a slower pace, partly owing to increased restrictions on leaving the country, including in the form of numerous checkpoints in border provinces.

98. The independent experts' investigations have confirmed the link between the political crisis and the massive outflow of Burundians. Refugees interviewed in the Democratic Republic of the Congo, Rwanda, Uganda and the United Republic of Tanzania listed the following reasons for leaving: reprisals or fear of reprisals by National Intelligence Service and the Imbonerakure for having participated in demonstrations or having provided material or financial support to demonstrators, for refusing to join the Imbonerakure, for defecting to the opposition or having opinions that are different from those of CNDD-FDD, for being family members of people who have been arrested or for supporting opposition parties. The general climate of insecurity and land-related conflicts, most of which were allegedly political in nature, were also cited as reasons.

99. The majority of refugees live in precarious conditions in camps. In addition, credible allegations that some camps or refugee locations have been infiltrated by the National Intelligence Service and the Imbonerakure contribute to a climate of fear and insecurity among refugees.

100. While there are no precise statistics on persons displaced specifically because of the crisis throughout Burundi, the raids on the so-called opposition neighbourhoods of Bujumbura and the general repression against a real or perceived opposition has resulted in large-scale displacement.

## **VI. Failure of domestic accountability mechanisms**

101. The State is responsible for ensuring accountability for human rights violations. The Government of Burundi is blatantly failing to meet its obligations to promptly, thoroughly and impartially investigate and prosecute violations; to bring the alleged perpetrators to justice and sentence those who are found guilty to a punishment commensurate with the seriousness of their actions, including those occupying positions of authority; to provide

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<sup>27</sup> See [www.worldbank.org/en/country/burundi/overview](http://www.worldbank.org/en/country/burundi/overview).

<sup>28</sup> See [www.unicef.org/appeals/files/UNICEF\\_Burundi\\_Humanitarian\\_SitRep\\_30Oct2015.pdf](http://www.unicef.org/appeals/files/UNICEF_Burundi_Humanitarian_SitRep_30Oct2015.pdf).



victims with effective remedies and adequate reparation; and to take steps to prevent recurrence.

### **A. Lack of an independent judiciary**

102. The current crisis has further entrenched the existing systemic and institutional dominance of the executive branch over the judiciary.

103. The institutional dominance of the executive branch over the judiciary is now compounded by an executive branch whose members have used violent methods against its (perceived) opponents. This new situation has resulted in victims not filing complaints for violations of human rights and not using the justice system to settle differences.

104. In a well-known illustrative case of the pressures faced by the judiciary, the Vice-President of the Constitutional Court, Sylvère Nimpagaritse, went into exile and made public the threats received by the Court's judges to change their ruling on the legality of the third-term bid of President Nkurunziza. The independent experts received credible reports about the intense pressure placed on members of the Court to rule in favour of the President. Some of the former justices of the Court who supported a third term were reportedly offered lucrative positions as a reward.

105. Another emblematic case is the trial in relation to the failed coup of 13 May 2015, which was a benchmark to assess the credibility and independence of the judicial system. It resulted in a series of systematic denials of judicial guarantees.

### **B. Truth and Reconciliation Commission**

106. Given the ongoing political crisis, the independent experts are concerned by the difficulties faced by the Truth and Reconciliation Commission to implement its important mandate: to uncover the truth about the events that took place in Burundi between 1962 and 2008, and to start a process of transitional justice and collective forgiveness.

107. The independent experts reiterate the concerns already raised with respect to the Truth and Reconciliation Commission by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, namely: (a) the de-prioritization of the truth-seeking function in favour of the pardon process; (b) the fact that insufficient resources have been made available to the Commission to carry out its mandate; and (c) concerns over the protection of victims and witnesses.

108. The concerns identified by the Special Rapporteur are exacerbated by the challenges posed by the current crisis. At a moment when public liberties are suspended and expressing disagreement with the Government has become a ground for persecution, when many key witnesses are currently exiled and when gross human rights violations are taking place once again, it is difficult to see how the Truth and Reconciliation Commission will be able to discharge its mandate in a meaningful manner.

### **C. National Human Rights Commission**

109. The Burundian Independent National Commission on Human Rights has issued one report since the crisis erupted.<sup>29</sup> In it, the Commission downplays the extent of the gross human rights violations that have been committed by indicating minimal numbers. As an

<sup>29</sup> See [www.cnidh.bi/sites/default/files/CNIDH\\_Rapport%20annuel%202015%20.pdf](http://www.cnidh.bi/sites/default/files/CNIDH_Rapport%20annuel%202015%20.pdf).

illustration, for the whole of 2015 only 27 cases of torture and ill-treatment are mentioned in the report, in contrast to the 250 cases of torture and ill-treatment documented by OHCHR between April 2015 and April 2016.

110. The Commission did issue a press release concerning the arrest of schoolchildren for scribbling on pictures of the President.<sup>30</sup>

111. The Commission, which is currently still accredited with A status, will be reviewed in November 2016 by the Global Alliance of National Human Rights Institutions subcommittee on accreditation in view of the allegations of partiality levelled by international and Burundian human rights organizations against the institution.

#### **D. National commissions of inquiry**

112. Since the beginning of the crisis, the Office of the Prosecutor General has set up three commissions of inquiry into human rights abuses.

113. The commission charged with shedding light on the insurrectionary movement triggered on 26 April 2015 established, in a report, only the responsibilities of individuals and organizations involved in organizing the demonstrations, ignoring the human rights violations committed by the security forces.

114. Another commission, set up to shed light on the deaths of 11 and 12 December 2015 and on the allegations of the existence of mass graves, concluded that allegations of the existence of mass graves and the occurrence of extrajudicial executions were unfounded. These findings contradict the results of the investigations carried out by the independent experts.

115. The independent experts regret that the practice of setting up commissions of inquiry appears to be a means for the Burundian authorities to circumvent accountability by State perpetrators of grave violations of human rights.

#### **E. Lack of meaningful cooperation with the international human rights system**

116. In assessing the human rights situation in Burundi, the independent experts have looked for indications of cooperation between State authorities and the international human rights system. They are seriously concerned by the apparent increasing reluctance of those authorities to engage with the international human rights system. A salient example is the refusal of the Government to participate in the second session of dialogue with the Committee against Torture (29 July 2016), the first time a State delegation has chosen such a course of action.<sup>31</sup>

117. The independent experts note with concern the approach of the Government of automatically offering a blanket denial of almost all alleged human rights violations.

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<sup>30</sup> Ibid.

<sup>31</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20325&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20325&LangID=E).

## F. International crimes

118. The above assessment relates largely to the question of State responsibility for human rights violations. However, the mandate of the international experts also covers individual responsibility.<sup>32</sup>

119. On 25 April 2016, the Office of the Prosecutor of the International Criminal Court started a preliminary examination of alleged crimes under the Court's jurisdiction committed in Burundi since April 2015. The preliminary examination focused on allegations of killing, imprisonment, torture, rape and other forms of sexual violence, and cases of enforced disappearance.

120. Article 7 of the Rome Statute provides that some crimes, including murder, unjust imprisonment, torture, persecution against an identifiable group and enforced disappearance, amount to crimes against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. The term "crimes against humanity" refers to "a campaign or operation carried out against the civilian population".<sup>33</sup> Hence, the crimes cannot be random or isolated, but need to form part of an overall State policy.<sup>34</sup> The State policy, however, does not need to be explicitly articulated but may be inferred.<sup>35</sup>

121. The "widespread" or "systematic" elements of the attack against civilians are to be read disjunctively. The term "widespread" refers to attacks committed on a large scale and directed against a multiplicity of victims.<sup>36</sup> The term "systematic" refers to the "organized nature of the acts of violence and the improbability of their random occurrence".<sup>37</sup>

122. According to article 6 of the Rome Statute, genocide entails, among other things, the killing or causing serious bodily harm "with the intent to destroy, in whole or in part, a national, ethnic [or] racial group".

123. In view of the facts summarized in the present report, the independent experts cannot exclude that some of the incidents analysed herein amount to crimes against humanity.

124. Given the country's history, the danger of the crime of genocide also looms large. The independent experts recommend that independent international processes determine accountability for possible international crimes.

<sup>32</sup> See Human Rights Council resolution S-24/1, para. 17 (c).

<sup>33</sup> International Criminal Court, decision pursuant to article 15 of the Rome Statute on the authorization of an investigation into the situation in Kenya, 31 March 2010, para. 80.

<sup>34</sup> *Ibid.*, para. 94. See also *Prosecutor v. Duško Tadić*, case No. IT-94-1-T, opinion and judgment of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991, 7 May 1997, para. 648.

<sup>35</sup> See also *Prosecutor v. Duško Tadić* opinion and judgment, para. 653.

<sup>36</sup> International Law Commission, 1996 draft code of crimes against the peace and security of mankind, para. 4 of the commentary to draft article 18. See also: International Criminal Court, decision pursuant to article 15 of the Rome Statute on the authorization of an investigation into the situation in Kenya, para. 95.

<sup>37</sup> International Criminal Court, decision pursuant to article 15 of the Rome Statute on the authorization of an investigation into the situation in Kenya, para. 96, and *Prosecutor v. Blaškić*, case No. IT-95-14-A, judgment of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991, 29 July 2004, para. 101.

## VII. Conclusions and recommendations

### A. Conclusions

125. The independent experts found abundant evidence of gross human rights violations and of human rights abuses by the Government and people whose actions can be attributed to the Government. Human rights abuses by third parties have also taken place. Responsibility for the vast majority of these violations should, however, be laid at the doorstep of the Government.

126. The high levels of open violence witnessed by Burundi at the end of 2015 no longer prevail but that does not mean that the situation is moving in the right direction. As one interlocutor told the independent experts, “what you see here is the peace of a loaded gun”. Repression has become less open and therefore more difficult to trace, but it is more systematic and is increasing. The accountability mechanisms are exceedingly weak and impunity is endemic, which allows cycles of violence to continue unabated.

127. Moreover, during the course of the investigation it became clear that more and more people who would otherwise have confronted repression have fled the country or are too scared to speak out or take action. Any reduction in the violence has occurred, to a significant extent, as a result of increased oppression. Any semblance of opposition to the Government is dealt with ruthlessly and seemingly without fear of accountability.

128. As one interlocutor said: “Civilian space, if closed up long enough, dies.” What is needed is not merely for the situation to be stabilized: it must be reversed. Civil society and the social fabric have been weakened to such an extent that a concerted effort will be required to establish the conditions for a democratic State based on human rights and the rule of law.

129. It is the distinct impression of the independent experts that Burundian society is becoming more and more repressive, less tolerant of dissent and more closed to the outside world. Unless specific steps are taken by the Government, the population and the international community, very little of what human beings around the world value and need to lead dignified lives will be available to Burundians in the years and indeed the months to come.

130. Virtually nothing is being done by way of providing effective remedy to victims, including bringing perpetrators to justice, or to prevent a recurrence of the violations. Decreases in some indices of overt violence can be interpreted as improvements in the human rights situation in the country only if certain conditions are satisfied. Relevant questions include:

- (a) Are there changes in the movement and flow of people (in particular, are more people returning to Burundi)?
- (b) Are there increases in the space for free expression and for the activities of civil society?
- (c) Is the sense of intimidation waning?
- (d) Is the number of inflammatory statements, in particular on the part of senior authorities, decreasing?
- (e) Is the confidence in State institutions, including the security sector, improving?

(f) Are institutions responding promptly and effectively to claims by citizens regarding possible violations or abuses?

(g) Are institutions responding to those claims effectively and are they establishing initiatives to prevent new violations?

131. There are serious concerns on all those fronts.

132. The independent experts are gravely concerned about the fact that the violations and the lack of accountability are “patterned”. The independent experts’ investigations suggest that the number, modes of operation, alleged perpetrators, apparent identity of the victims, apparent motivations and the lack of either remedial or preventive action on the part of the State authorities show that the violations are not simply the result of chance, “bad apples”, provocation or necessity. The robust correlation between the violations and particular political incidents also strongly suggests that they are the result of deliberate choices. The investigations also suggest that widespread and systemic patterns of violations are taking place, of the sort that call for, among other things, judgments of State, individual responsibility for perpetrators and effective remedies for victims through an international process.

133. The independent experts are deeply concerned about the tendency of the Government to view itself as being under an onslaught from the international community, and indeed as being in conflict with the United Nations and other human rights bodies, as opposed to being engaged in a common pursuit to address the challenges faced by the country.

134. The role of observers on the ground, in the capital and wherever else violence takes place, is crucial. Rumours are rife in the country and uncertainty fuels insecurity. Accountability is impossible without reliable facts.

135. The attention of the international community may have helped to put a damper on the more overt manifestations of violence, but it is clear that the crisis continues. Most stakeholders agree that an inclusive political settlement aimed at establishing a system based on strong institutions that protect the rule of law and human rights is required, but the political process has largely stalled.

136. While there is no simple way to characterize the ethnic dimension of the crisis in Burundi, the independent experts are alarmed that, in a context in which so much was achieved through the Arusha Agreement to remove the ethnic component from the area of political contestation, State officials, including at the highest levels, use language that can only provoke previously bridged divisions and fuel mistrust among ethnic groups both in Burundi and beyond its borders. Those divisions are starting to manifest themselves within the security forces, the ethnic integration of which was both a signal success of the Arusha Agreement and a bulwark against a tragic relapse into ethnic strife, inside and outside Burundi.

137. The independent experts also express alarm about the potential threat to peace and security in the Great Lakes region posed by the events they were mandated to investigate. In a region with a history of complicated ethnic relations with significant cross-border consequences, stalemated political initiatives, continuing and systematic gross human rights violations that may amount to crimes against humanity, a humanitarian crisis involving massive flows of internally displaced persons and refugees, the disruption to trade and the rampant impunity, to cite only the most obvious factors, cannot be ignored by the international community.

## **B. Recommendations**

### **To the Government of Burundi**

138. The Government must immediately halt the gross and other human rights violations committed by its agents and other entities whose actions can be attributed to it, such as the Imbonerakure, and put into place effective accountability mechanisms and processes.

139. There is no way out of the crisis without a comprehensive political settlement. The Government should demonstrate, in word and in deed, its commitment to a political settlement, including through its active participation in the Arusha peace talks alongside all those involved in the crisis. It should refrain from any effort to manipulate the inter-Burundian dialogue for its own ends.

140. All youth militias urgently need to be disarmed. The disarmament should be scrupulously monitored by international entities. At the same time, the ruling party, in particular, should disavow the use of violence or threats of violence by its youth wing and ensure that it does not assume any sort of policing function.

141. All government officials must refrain from using hate or divisive speech. Those using such language should be prosecuted and hateful and divisive sentiments should always be publically disavowed, especially by high-ranking authorities.

142. The Government must take all the steps necessary to strengthen the independence of the judiciary. It should, with immediate effect, in law, rhetoric and practice, reaffirm its commitment to the principle of judicial independence and refrain from taking any action, including the levelling of direct or indirect threats to the judiciary, that undermines it. In the medium and long terms, it is crucial to resume the stalled discussions about constitutional reforms leading to limiting the power of the executive branch over the judiciary in terms of the appointment, promotion and disciplining of judges.

143. The Government must as a priority establish an effective torture prevention mechanism, in accordance with its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The international community should assist in that venture.

144. The Government must immediately cease using the intelligence services and the police force, in particular, as armed instruments in defence of a partisan political project. In the medium and long terms, ambitious and thorough security sector reforms, regarding both personnel and structural readjustments and review, will be necessary in order to establish an intelligence service and a national police force that all Burundians can trust. Effective civilian oversight mechanisms must be established over the security sector. Such mechanisms should be multi-layered and dispersed, so that oversight does not become a tool for the executive branch to exert political control over the security sector.

145. The integration of the armed forces stemming from the Arusha Agreement was a cornerstone of the peace that Burundi enjoyed for the first time in its history. The quota system should not be undermined, either overtly or covertly, either through the creation of special units that fail to conform to the agreed-upon distribution of positions or through the manipulation of budgets for different units of the forces to the same end.

146. The Government must cooperate with the international human rights system, including treaty bodies such as the Committee against Torture. It should also cooperate with efforts to monitor the human rights situation on the ground.

147. The Government must immediately cease its reprisals and threats against individuals who have cooperated with the independent experts and other human rights mechanisms and organizations.

148. The deployment of African Union human rights and military observers should be completed and expanded in terms of their numbers and the areas they cover, to include regions beyond the capital. Their status should be recognized through a memorandum of understanding and their reports should not be subject to clearance by the Government.

149. The Government must urgently comply with Security Council resolution 2303 (2016).

150. The Government must stop its reprisals and threats against Burundian refugees abroad. Any repatriation of refugees must be undertaken in compliance with international human rights standards and be aimed at facilitating the return of displaced persons to their areas of origin.

151. The Government must ensure that the rights to freedom of expression and association are fully enjoyed by all citizens and groups. It must therefore cease all interference with the media and non-governmental and other civil society organizations in the country.

152. The Government should immediately ratify, without reservations, the International Convention for the Protection of All Persons from Enforced Disappearance.

#### **To non-State actors**

153. All non-State actors must prioritize the protection of civilians and refrain from committing human rights abuses.

#### **To the United Nations system and the African Union**

154. Given the ineffectiveness of the accountability institutions set up by the Government, independent international judicial processes must consider whether international crimes were committed. All relevant stakeholders, in particular the African Union and the United Nations, must remain seized of the matter, monitor the situation scrupulously<sup>38</sup> and take the steps necessary to prevent the occurrence of further mass violations with ethnic connotations.

155. Should the Government continue to fail to comply with Security Council resolution 2303 (2016) and should the violations continue, the independent experts call upon the United Nations, in particular the Security Council, to discharge effectively its mandate to ensure peace and security, and to protect, without prejudice to the primary responsibility of the Burundian authorities and the basic principles of peacekeeping set out in the statement by the President of the Security Council of 25 November 2015 (S/PRST/2015/22), the civilian population from threat of physical violence, under chapter VII of the Charter of the United Nations.

156. A commission of inquiry should be established immediately to continue the work accomplished by the independent experts, giving due consideration to the continuation of the collaboration between the United Nations and the African Union in that regard. The commission should be mandated to ensure individual accountability and share the findings with the Security Council with a view to

<sup>38</sup> See [www.un.org/apps/news/story.asp?NewsID=54757#.V8UilU1f3cs](http://www.un.org/apps/news/story.asp?NewsID=54757#.V8UilU1f3cs).

applying targeted sanctions, through judicial processes. The mandate must include the task of investigating the allegations of cross-border armed groups operating in Burundi, including the possible involvement of other States. In conducting its investigations, the commission must have sufficient resources and warranties, as well as access to specialized ballistic and forensic expertise.

157. The monitoring role of OHCHR on the ground must be expanded and strengthened, both in terms of the numbers and the expertise of its Human Rights Officers, ensuring comprehensive territorial coverage.

158. The United Nations system should scrutinize its own actions in Burundi, in particular the decision to end the mandate of the United Nations Office in Burundi. It should also examine whether the Human Rights Up Front initiative has been effective on the ground and take appropriate remedial measures.

159. The United Nations and the African Union should phase out the use of Burundian troops in peacekeeping operations while the crisis continues.

160. The African Union is the guarantor of the Arusha Agreement and must make sure to play a key role in ensuring the long-term success of the Agreement. The various African Union bodies concerned should take steps to ensure greater consistency in their approach to ensuring that that happens.

161. The East African Community has the lead role in the current negotiations. Understanding that without the cooperation of the Government there can be no success, the Community needs to do its utmost to get the process out of its current stalled state.

162. The citizens of Burundi are not helped by the country's friends and neighbours who shield the Government from abiding by its national and international human rights obligations. All countries, in particular those with close relations with Burundi and those that have historically played an important role, including in the process leading to the Arusha Agreement, should exercise their good offices unambiguously in defence of the human rights of the citizens of Burundi.

163. The international community should make it clear that it intends to increase the pressure if the human rights situation does not improve or deteriorates. It should take measures that are targeted and proportional so as to minimize the impact on the population.

164. The Human Rights Council should consider whether Burundi can remain a member of the Council given the terms of paragraph 8 of General Assembly resolution 60/251.

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