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Report of the independent expert on the situation of human rights in Burundi, Fatsah Ouguerouz*

Summary

This report follows on from the first visit of the independent expert in Burundi from 8 to 17 November 2010 and deals with general developments in the human rights situation in Burundi together with related institutional matters as at 15 February 2011.

The report analyses the political and security situation of the country during the period of communal, presidential, legislative, senatorial and district elections. Overall, the elections were conducted in accordance with international standards and the irregularities observed were not such as to call into question their validity. However, the independent expert notes that a number of acts of violence were committed before and after the electoral campaign and that several opposition party meetings were not allowed to take place. He reports numerous claims that members of the opposition political parties were arrested and held. The report also covers various incidents involving political violence, in particular clashes between young activists, grenade attacks and killings.

Concerning the institutional context, the independent expert notes that "national consultations" were held throughout the country on the establishment of a truth and reconciliation commission and a special tribunal to prosecute those responsible for serious violations of human rights and international humanitarian law perpetrated during the various conflicts that had taken place in Burundi. These national consultations ended in March 2010 and the report was transmitted to the Head of State of Burundi on 20 April 2010. Significant advances have also been made towards the establishment of an independent national human rights commission, through the adoption of a law establishing such a commission, vested with substantial powers.

The independent expert reports further on the main allegations of human rights violations brought to his attention, in particular violations of the right to life and to physical integrity, largely attributed to State officials. He notes, in particular, allegations of extrajudicial executions of at least nine persons in August, September and October 2010 by

* Late submission.

law enforcement officers. It is also reported that the freedom of expression of several journalists and human rights defenders was curtailed during the period under consideration. Lastly, the independent expert draws attention to the slowness of the justice system and to the poor prison conditions observed.

The independent expert concludes his report with a series of recommendations addressed to the Government of Burundi and to the international community. He urges the Government, in particular, to engage in constructive dialogue with all the opposition parties; to ensure the prompt investigation of allegations of human rights violations and to see to it that those responsible are brought to justice as early as possible; to continue and intensify the efforts already initiated to reform the justice system of Burundi, notably in regard to the recruitment and independence of the judiciary; to set up in the near future transitional justice mechanisms with a view to completing the process of national reconciliation and speedily to make the independent National Human Rights Commission operational in full conformity with the Paris Principles. The independent expert calls on the international community to increase its support for the Government of Burundi in several fields, in particular capacity-building of the justice system.

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I. Introduction

1. This report is submitted in pursuance of Human Rights Council resolution 16/34 of 13 April 2011, in which the Council invited the expert to report to it on his activities at its seventeenth session and to participate in an interactive dialogue.

2. This report follows on from the first visit of the independent expert in Burundi from 8 to 17 November 2010 and covers general developments in the human rights situation in Burundi together with related institutional matters, as at 15 February 2011.

3. During that first visit to Burundi, the independent expert sought information on the matters covered by this report directly from the largest possible number of those involved. At the level of the authorities of the country, he met the Secretary-General of the Ministry of Foreign Affairs and International Cooperation, the Minister of National Solidarity, Human Rights and Gender Issues, the Minister of Justice, the Prosecutor-General, the Chief of Staff of the Director of the National Information Service, the Chief of Staff of the Defence Force, the Auditor-General (military prosecutor), the Director-General of Prisons, the Director of Mpimba Prison, the President of the ruling party Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie (CNDD-FDD) and members of the tripartite steering committee (CPT) responsible for the national consultations on the establishment of transitional justice mechanisms in Burundi. The independent expert had also expressed a desire to meet the Minister of Foreign Affairs, the Minister of the Interior, the Minister of Public Security, the President of the National Assembly and the President of the Republic or, alternatively, the first Vice-President. Those meetings did not take place, however. The independent expert also met representatives of a number of political parties not represented in Parliament, local and international non-governmental organizations and representatives of the Batwas community, as well as several senior officials of the United Nations Integrated Office in Burundi, members of the diplomatic corps (Belgium, France, Netherlands, United States of America), the representative of the British Department for International Development (DFID), the Special Representative of the African Union and the Executive Secretary of the International Conference on the Great Lakes Region. The independent expert wishes to thank again all his interlocutors for their willingness to meet him and for their precious insights.

4. The independent expert also wishes to commend the Government of Burundi, which demonstrated its spirit of cooperation throughout the visit. He thanks the Government for granting most of his requests for meetings and for permitting him to visit all the places necessary for him to discharge his mandate. Lastly, he thanks the United Nations country team, in particular the Office of the United Nations High Commissioner for Human Rights in Burundi, which contributed to the success of his mission.

5. In this report, the independent expert briefly retraces the political situation, the 2010 elections and the establishment of the new Government. He then goes on to describe the changing human rights situation during the period under consideration and the process of establishing the National Human Rights Commission. He concludes by making several recommendations to improve the situation of human rights in Burundi.

II. General situation of the country

A. Political situation

1. The communal, presidential, legislative, senatorial and district elections

6. The communal, presidential, legislative, senatorial and district elections were held respectively on 24 May, 28 June, 23 July, 28 July and 7 September 2010.

7. Twenty-four political parties and five independent candidates took part in the communal elections. Following those elections, CNDD-FDD obtained 64 per cent of the vote, the Forces nationales de libération (FNL) 14 per cent, the Union pour le progress national (UPRONA) 6 per cent, Sahwanya-Front pour la démocratie au Burundi (FRODEBU) 5 per cent, the Mouvement pour la solidarité et la démocratie (MSD) 4 per cent and the Union pour la démocratie et le développement-Zigamibanga (UPD-Zigamibanga) 2 per cent of the vote. The 18 other political parties and independent candidates shared the remaining votes, representing about 5 per cent of the total.

8. The very day that the results were announced, they were disputed by a group of 12 opposition political parties, including FNL, Sahwana-FRODEBU, CNDD, MSD and UPD, which alleged that there had been massive fraud and irregularities. Those opposition parties complained of rigging through ballot box stuffing by the CNDD-FDD ruling party. The group also questioned the neutrality of the Independent National Electoral Commission (CENI) and called for a new ballot. Initially, the parties involved refused to refer the matter to the competent judicial organs; subsequently, they lodged appeals with the independent provincial electoral commission, in accordance with electoral law. However, CENI rejected the appeals on the grounds that the information provided by the appellants had not been substantiated.

9. For their part, the national and international observers in place in the country before and during the electoral process stated that the elections had been conducted in accordance with international standards and that the irregularities and shortcomings noted in their organization were not such as to call into question their validity.

10. On 1 June 2010, FNL, Sahwana-FRODEBU, CNDD, MSD and UPD-Zigamibanga, followed on 4 June by UPRONA, withdrew their respective candidates from the presidential elections. Six other opposition parties subsequently joined up with the aforementioned parties and the 12 parties together thus formed a political coalition known officially as the "Alliance des démocrates pour le changement au Burundi" (ADC-Ikibiri). This coalition, accusing the international community of being biased in favour of CNDD-FDD in that it had recognized the results of the communal elections, asked its elected councillors not to serve in the communal councils.

11. Despite the withdrawal of these opposition parties, the presidential elections took place on 28 June. The outgoing President, Pierre Nikuronziza, who was the only candidate, was re-elected with 91 per cent of the vote, notwithstanding the opposition's call to boycott the election. CENI announced a voter turnout of 76 per cent, as against 91 per cent in the communal elections. International observers noted that some technical improvements had been made in the arrangements for the presidential election, particularly in the counting of votes. Nevertheless, the independent expert received reports that several acts of violence had been committed before and after the campaign and that meetings organized by opposition parties had been banned. In addition, he heard numerous allegations that members of the opposition political parties had been arrested and detained.

12. Despite the decision taken by the ADC-Ikibiri coalition to boycott the legislative elections, they took place on the scheduled date, 23 July 2010, with the participation of

CNDD-FDD, UPRONA and FRODEBU-Nyakuri. CNDD-FDD came out clearly ahead with 81 seats, followed by UPRONA with 17 seats and FRODEBU-Nyakuri with 5 seats. A participation rate of 66 per cent was announced. International observers considered that the ballot had been well organized and had been conducted peacefully. They nevertheless expressed regret that several members of the opposition had been arrested and that CENI had been reluctant to take steps to enhance the transparency of the electoral process.

13. On 28 July, CENI called for the election of senators by the communal councillors even though a number of those councillors had not taken their seats in the communal councils owing to the boycott decided by ADC-Ikibiri. Only CDDD-FDD and UPRONA presented candidates. Following the senatorial elections, CNDD-FDD won 32 of the 34 seats to be filled, thereby consolidating its majority within all the political institutions.

14. As for the elections of the colline or district councils and the colline or district chiefs, they took place without incident on 7 September 2010. Of the 14,534 representatives elected, 2,286 were women.

2. Formation of the new Government

15. On 29 July 2010, the Head of State officially appointed the commune administrators of 105 of the 129 communes in the country, following their election by the communal councillors. The election of commune administrators won by the opposition parties was initially held up by a call from ADC-Ikibiri to its elected councillors not to take their seats in the communal councils. Subsequently, in some communal councils, the seats were gradually taken by elected officials of the opposition who defied the boycott called by ADC-Ikibiri or by other candidates on the rosters of councillors. At the time of writing this report, 127 of the 129 communal councils had been set up.

16. On 26 August 2010, President Pierre Nkurunziza was sworn in for a second term of office. In his investiture speech, he announced that security, national reconciliation, transitional justice and the fight against corruption would be the priorities of his new Government. A few days later, the President, in accordance with the Constitution, formed a new Government, composed of 21 members.

B. Economic and social situation

17. In the second quarter of 2010, the Government made an assessment of its strategic framework for combating poverty (CSLP 2007–2010). The results of the assessment were mixed in terms of economic growth, poverty reduction and the creation of a pro-business environment. However, it clearly reveals gains in terms of peacebuilding. The process of developing the second stage of the strategy began in September 2010.

18. Furthermore, on 16 September 2010, the Government published its 2010 report on the Millennium Development Goals (MDGs), which showed that a great deal remained to be done to achieve those Goals by 2015. The United Nations Development Programme, while acknowledging the possibility of attaining the Goals in respect of universal primary education and making significant progress in the field of health, has stated that it would be difficult to achieve the Goal of eradicating extreme poverty and hunger in Burundi by 2015.

19. It should be noted that the results achieved under the Millennium Development Goals are the outcome of initiatives taken by the Government of Burundi in 2006 to guarantee free and universal primary education but also free health care for pregnant women and children under the age of five. The independent expert regrets, however, that insufficient resources were allocated to ensure the effective implementation of those measures.

20. During his mission, the independent expert gathered information from a number of partners who assist the Government in giving effect to those measures. Those partners provided substantial support for the school enrolment of children and for the promotion of free access to health care. Notwithstanding the problems encountered by the Government of Burundi in its action, the independent expert considers that it should be encouraged in its efforts. The independent expert consequently calls on the international community to continue and increase its cooperation with Burundi.

C. Security situation

21. The security situation was marked by heightened tension between the various political players in the run-up to the communal, presidential and legislative elections. A number of incidents involving political violence, in particular clashes between young activists and grenade attacks, occurred during the months of May and June 2010, when the first ballots were held. These acts of violence could be explained by the immaturity of some of the political players and their lack of trust in CENI, suspected of bias. The relative inability of the justice system to prosecute those responsible for acts committed in the past could be a further reason for the recurrence of the political violence observed before the presidential and legislative elections. Several observers present in Burundi reported that some of those responsible for those acts of violence had been shown indulgence by the CNDD-FDD ruling party. As an example, they referred to the violence perpetrated by CNDD-FDD youth to prevent political meetings of FNL youth in Bwabarange commune in Kirundo, in the north of the country.

22. Between 9 and 25 May 2010, eight major clashes occurred in various parts of the country between groups of young people claiming allegiance to the ruling party and other such groups belonging to the opposition parties. The clashes ended immediately after the communal elections of 24 May 2010. According to some observers, violence was spontaneous or accidental. In the night of 12 June 2010, however, following the official publication of the results of the communal elections, confirming the landslide victory of the ruling party, unknown persons carried out grenade attacks in civilian areas. The attacks increased during the period preceding the presidential elections of 28 June 2010. At least 72 grenade attacks were recorded, increasingly targeting specific locations, notably the offices of the independent provincial electoral commission (CEPI), in Muyinga province, and an alcoholic drinks outlet, in Kayanza province. The last-mentioned attack left some 20 casualties. Stones were also thrown at 13 vehicles of the United Nations Integrated Office in Burundi. The attacks were believed to have been perpetrated by former staff members of the former United Nations Operation in Burundi (ONUB).¹ Four persons suspected of being involved in the attacks were arrested by the police on 20 June 2010 and transferred to Mpimba prison on 7 July 2010.

23. The independent expert was informed that the security situation had deteriorated on 16 June 2010 when several young people had congregated around FNL headquarters to prevent the arrest of the leader of that party, Agathon Rwasa. Clashes occurred between those young people and members of the national police of Burundi (PNB) who managed to get into the building. Four FNL sympathizers were wounded and 32 others arrested. Agathon Rwasa is believed to have left his home in Bujumbura on 16 July and to have fled the country. Other opposition leaders also fled the country, fearing threats, intimidation or persecution because of their political activity. Those leaders included Pascaline Kampayano

¹ The mandate of ONUB ended on 31 December 2006. It was replaced by BINUB.

of UPD-Zigamibanga, Leonard Nyangoma of CNDD, Alice Nzomukunda of ADR and Alexis Sinduhije of MSD.

24. The security situation became more fraught in the north-west part of the country in September and October 2007, particularly in several communes in the provinces of rural Bujumbura, Bubanza and Cibitoke. There were killings and armed robberies of homes and shops. Thus, on 10 and 11 September 2010, 10 corpses were discovered in Gihanga commune (Bubanza province). They were identified as those of residents of the commune and were buried on the bank of the Rusizi river owing to their state of advanced decomposition. Then again, on 15 September 2010, a group of armed men in military uniform killed 11 persons and wounded 15 others in a sugar cane plantation belonging to the Tanganika Business Company. In addition, the police and administrative authorities discovered in the Gatumba area of Mutimbuzi commune (rural Bujumbura province) some 20 bodies in the Rusizi river at the Congolese border; 18 of them, four of whom were wearing boots and military uniform, were found by fishermen in the period between 7 and 21 September 2010. Local people confirmed that three of the bodies had been decapitated.

D. Institutional situation

1. Transitional justice

25. The establishment of transitional justice mechanisms forms an integral part of the Arusha Peace and Reconciliation Agreement for Burundi, signed on 28 August 2000. In its resolution 1606 of 15 June 2005, the United Nations Security Council recommended the establishment of two mechanisms, one judicial and the other non-judicial. The Security Council requested the Secretary-General to undertake negotiations with the Government of Burundi to that end. The negotiations, which were conducted in March 2006 and March 2007, focused on the setting up of a truth and reconciliation commission and a special tribunal to prosecute those responsible for serious violations of human rights and international humanitarian law committed during the various conflicts in Burundi. Following those negotiations, it was agreed that there would be no amnesty for the crime of genocide, crimes against humanity or war crimes; that the people of Burundi would be consulted about ways and means of establishing such mechanisms; and that the national consultations would be conducted by a tripartite steering committee.

26. From July to December 2009, the tripartite steering committee, composed of six members representing the Government of Burundi, the United Nations and civil society, organized national consultations throughout the 17 provinces of the country. For those living in the diaspora, consultations were also held in Dar es Salaam and in Brussels, on 14 and 21 March 2010 respectively.

27. The national consultations were completed in March 2010. A copy of the report dated 20 April 2010 was transmitted to the Head of State of Burundi and another, a few days later, to the Executive Representative of the Secretary-General of the United Nations in Burundi. However, at the time of the independent expert's visit, the report had not yet been officially delivered. Civil society organizations in Burundi then questioned the real desire of the Government to establish transitional justice mechanisms and expressed concern about a possible manipulation of the report. During his visit, the independent expert expressed regret about the delay in putting the mechanisms in place and called on the authorities to publish the final report of the national consultations. The delay could however be due to the exceptional length of the electoral process, which mobilized a large part of the administration. The report of the national consultations was finally handed to the Head of State and to the Executive Representative of the Secretary-General of the United Nations at an official ceremony held on 7 December 2010. The report is being disseminated in the

country and is now available on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR).² The independent expert noted with satisfaction the statements made by the Head of State, who spoke of transitional justice as one of his priorities, thus confirming the commitment that he had expressed in his investiture speech of 27 August 2010. The expert hopes that this priority will be translated into reality. It would be necessary in that regard for the concerns and proposals put forward by Burundian civil society during the national consultations to be, to the fullest possible extent, taken into consideration in the establishment of transitional justice mechanisms.

2. Independent National Human Rights Commission (CNIDH)

28. Significant advances have been made towards the establishment of the independent national human rights commission. In January 2010, the Government, in the Council of Ministers, adopted a bill designed to serve as the legal basis of the commission. The bill was sent to Parliament some months later. However, it was not able to be discussed by Parliament because of the communal, presidential and legislative elections. During his visit to Bujumbura, the independent expert was informed by the Government that the law establishing the commission would be put to the vote and promulgated by the end of 2010.

29. The independent expert reminded the Government that, in its resolution 9/19 (A/HRC/RES/9/19), the Human Rights Council had called on Burundi to establish an independent human rights commission in accordance with the Paris Principles.³ The independent expert also informed the Government of his concerns as to whether the bill was in line with the requirements of the Paris Principles, particularly with regard to the appointment procedure and status of members of the commission. The bill as initially transmitted to Parliament contained provisions that did not make it possible to guarantee the independence of that institution, given that the executive selected and appointed members of the commission on the basis of a list of names submitted by the various originating bodies. The Paris Principles give key importance both to the method of appointment of members of the commission and to the effective participation of civil society in the process. Satisfactory representation of the various components of the population within the commission offers a guarantee of its independence and hence of its credibility in the eyes of the population and of national and international observers.

30. It should be noted that the process of establishment of the independent national human rights commission was supported by national and international partners who wish that institution to be given powers for the promotion and protection of human rights in Burundi. Some of those partners, particularly non-governmental organizations, forwarded their comments to the Government concerning the conformity of the bill to the Paris Principles. On 23 December 2009, the Office of the United Nations High Commissioner for Human Rights transmitted to the Government its comments on the method of appointment of members of the commission and on the institution's budget. During his visit to Burundi, the independent expert expressed regret that those comments had not been taken into account in the bill submitted to Parliament.

31. The law establishing CNIDH was finally adopted by Parliament on 14 December 2010. The independent expert notes with satisfaction that that law takes into account most of the comments made by the Office of the United Nations High Commissioner for Human

² See <http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/BIIndex.aspx>.

³ General Assembly resolution 48/134 of 20 December 1993 on national institutions for the promotion and protection of human rights (see document A/RES/48/134 of 4 March and its Annex entitled *Principles relating to the status of national institutions for the promotion and protection of human rights*).

Rights and the concerns that he had himself expressed regarding the initial bill during his visit to Burundi, in particular his comments and concerns regarding the independence and impartiality of the Commission. The law was approved by the Senate on 24 December 2010 and promulgated by the President of the Republic on 5 January 2011.

32. The independent expert welcomes the establishment of the Commission, which is composed of seven members and vested with significant powers. He now calls for it to be rapidly and effectively put in place in accordance with the Paris Principles and invites all Burundi's partners to give their support to its establishment and to the launching of its activities.

3. Ombudsman

33. The independent expert notes with satisfaction the adoption of Act No. 1/103 of 25 January 2010 on the organization and operation of the Office of the Ombudsman. Under the terms of article 6 of the Act, the Ombudsman is responsible for examining complaints and investigating cases of administrative mismanagement and human rights violations committed by officials of the State; making recommendations to the competent authorities; performing mediation between the administration and citizens; seeking generally to foster rapprochement and reconciliation between political and social forces at the request of the President of the Republic; and observing the operations of Government offices.

34. The independent expert welcomes the establishment in November 2010 of the Ombudsman institution, which was provided for in the Arusha Peace and Reconciliation Agreement. As it has only existed for short while, the independent expert has not yet had time to make an objective assessment of its role and effectiveness. He will deliver his assessment of the institution following his next visit to Burundi.

III. Situation of human rights

A. Main allegations of violations of human rights and fundamental freedoms

1. Violations of the right to life

35. During the period under consideration, law enforcement officers, and more specifically the National Police of Burundi (PNB) and the National Defence Force (FDN), are reported to have been involved in various violations of the right to life. Law enforcement officers are thus said to have summarily executed nine persons in August, September and October 2010. It is alleged that, on 26 August, the police arrested a person in Musigati (Bubanza province) whom they executed that same day on the grounds that the person had laid an ambush; the person is reported to have been buried on 27 August 2010 by the commune authorities and the police without the family being informed. It is also alleged that four other persons, arrested by the police on 7 September 2010 in Buganda (Cibitoke province), were summarily executed on the same day. The police stated that they had been attacked when seeking to escort those persons to the place where a theft had been committed in order to identify other thieves. According to the judicial police, the victims were hit by bullets on the upper right-hand side of their spines, in the forehead, in the chest, in the thighs and in the middle of the thorax. The authorities and the police buried the bodies on 8 September 2010 without contacting the families. In addition, six other persons are reported to have been arrested on 2 October 2010 in Buganda commune (Cibitoke province) by the National Defence Force on the basis of information from the intelligence services. It is alleged that those persons were handed over to the police in Buganda, who held them in its cells. At about 11 p.m. on the very day of their arrest, the

police are reported to have taken three of those persons to an unknown destination. Their bodies were found in the Ruzizi river in the Gatumba area, Mutimbuze commune (rural Bujumbura province) on 5, 6 and 9 October 2010. A member of the Forces nationales de libération is also reported to have been executed on 7 September 2010 by elements of FDN in Gitaramuka, Ruziba area, Kanyosha commune, Bujumbura Mairie, as he was trying to escape. On 27 September, the FDN Chief of Staff confirmed to the United Nations Human Rights and Justice Division that elements of FDN had been involved.

36. On 16 November 2010, the Prosecutor-General informed the independent expert that he had set up a commission composed of four magistrates and two officers of the judicial police to investigate the aforementioned violations and submit its report to the Office of the Prosecutor-General within a month. He said that the establishment of the commission was warranted by the seriousness and complexity of the matter. The independent expert informed him of his concern, however, given that the commission was still not operational three weeks after being established. The commission was supposed to deliver its report on 25 November 2010. However, at a press conference on 24 December 2010, the Minister of Justice stated that the commission had not been able to complete its work through lack of financial resources. The independent expert finds the lack of success of this initiative to be regrettable as he considers that it can only contribute to the general sense of impunity prevailing in Burundi. He therefore urges the Government to provide the commission with the resources needed for it to operate properly.

37. During his meeting with the Prosecutor-General, the independent expert recalled that a similar commission had been set up to investigate the assassination of the Vice-President of the Observatory to Combat Economic Corruption and Malpractice (OLUCOME),⁴ and that the matter was still under investigation. The independent expert considers it the duty of the prosecution service to bring proceedings against those suspected of human rights violations without it being necessary to set up commissions.

2. Violations of the right to physical integrity

38. The independent expert received reports from various sources of an increase in the number of cases of violations of the right to physical integrity. Mostly, it was said that those responsible were intelligence officers and the victims were members of the opposition arrested on the grounds of their alleged involvement in grenade attacks during the electoral campaign preceding the presidential and legislative elections. For example, from May to late October 2010, the BINUB Human Rights and Justice Division recorded at least 76 cases of violations of the right to physical integrity, including 18 cases of torture attributed to the National Intelligence Service (SNR) and the National Police of Burundi (PNB), 55 cases of ill-treatment by elements of SNR and PNB, and three cases of ill-treatment by FDN officers. It is to be noted that practically no case of torture was reported in Burundi during the two years preceding the 2010 electoral process.⁵ The resurgence of such cases of torture may be considered to be due, in particular, to the fact that their perpetrators have remained unpunished.

⁴ Ernest Manirumva, Vice-President of the Observatory to Combat Economic Corruption and Malpractice (OLUCOME), a Burundian NGO based in the Mutanga district in the south of Bujumbura, was assassinated in the night of 8 to 9 April 2009 at his home by unidentified persons, who also looted his house and are believed to have stolen several documents relating to the activities of his organization.

⁵ See paragraph 33 of report A-HRC/16/CRP/1 of 29 September 2010.

39. The independent expert met several persons held in Mpimba prison in Bujumbura, who stated that they had been beaten and threatened with death by SNR officers during their interrogation.

40. The adviser to the Executive Office of the Union pour la démocratie et le développement (UDP), himself a former police officer, stated that he had been arrested in the company of two members of FNL on 1 July 2010 by the police and SNR agents at a petrol station in Bujumbura on his way back from the FNL office in northern Mutanga. On arriving at the petrol station, he had seen two vehicles approach. One of them was an SNR van. The driver, whom he identified, was accompanied by officers who had formerly been his colleagues in the police. He alleges that the police officers fired shots into the air to intimidate him, then overpowered him and took him directly to the SNR office.

41. The UDP adviser told the independent expert that he had been struck by four police officers during his interrogation, in the presence of the Chief of Staff of the Director-General of the SNR and the deputy Director of PNB. The questions put to him were said to concern the grenade attacks carried out in certain districts of the capital. He alleges that he was then struck in the back with a large stone by an officer whom he was able to identify. He added that he had been slapped and beaten with pliers by a demobilized former soldier, who ripped off part of his ear with pliers and then forced him to swallow it. The independent expert was able to see the scars on the victim's ear. The UDP adviser went on to say that other officers had beaten him all over his body, particularly on the buttocks, genital organs, face, nose, forehead and feet. When he tried to stop the bleeding from his nose with his hands, he was reportedly told to swallow his own blood. United Nations observers were able to see for themselves that a part of his ear had been severed, that his nose and feet were swollen and that his buttocks were blistered. The victim stated that he had suffered such acts of torture until Monday, 5 July 2010 and that he had then been held in the toilets for five days.

42. The victim further stated that, on 5 July 2010, the Chief of Staff of the Director-General of SNR ordered the duty officer to take him out of the dungeon before the arrival of the United Nations observers, who visited the SNR cells on that date. He was taken to the shore of Lake Tanganyika, where he remained until the end of the visit. On his way there, at the place of the monument known as "chez Ndadaye", an SNR officer told him to say his last prayer before being executed.

43. According to the UDP adviser, an officer of the judicial police then drew up a report and asked him to sign it. He said that he had refused to sign the record of the interrogation on the grounds that the officer of the judicial police had not asked any specific question during the interrogation. He stated that he had filed a complaint through his lawyer against the officers who had mistreated him on SNR premises, but that there had not as yet been any judicial follow-up to his complaint.

44. The Government of Burundi informed the independent expert that the police authorities had taken disciplinary measures against some hundred police officers who had violated the institution's code of ethics. The independent expert regrets, however, that SNR did not investigate the alleged commission of human rights violations by intelligence agents against persons held in that institution's cells. The independent expert considers that the question of human rights will not be resolved in Burundi so long as the authorities continue to deny the alleged violations. The Burundian authorities should consequently shed light on the human right violations alleged to have been committed on SNR premises in order to restore the people's trust in the security forces.

45. The independent expert nevertheless notes that the senior management of the institution conducted disciplinary investigations into certain human rights violations committed by the National Defence Force. The independent expert was informed indeed

that several of those responsible for such violations had been arrested and that the military prosecutor's office had begun an investigation. Such was said to be true of an FDN commander believed to have physically abused, and ordered others to physically abuse, an individual forcibly removed from a police station in Bwiza commune on the morning of 15 July 2010. The individual concerned had gone to the police station in response to a summons sent to him by an officer of the judicial police regarding the theft of a motorcycle belonging to the commander in question.

46. Several people said to the independent expert that most of the victims of ill-treatment or torture were frightened of reporting the abuses they claimed to have suffered or to file complaints with the competent courts. Their fears were said to be due to threats and intimidation from police and security service officers. The independent expert reminded the Prosecutor-General at the Supreme Court that the judicial authorities were obligated to investigate torture allegations promptly, even in the absence of a complaint filed by victims. Victims must be able to trust the justice system. They must be assured, in particular, that measures will be taken to protect them. Failure to prosecute those alleged to be responsible for acts of torture or ill-treatment can only contribute to the establishment of a climate of impunity, which in turn can only encourage such acts.

3. Violations of freedom of expression and assembly

47. According to reports received by the independent expert, several cases of violations of the freedom of expression of journalists and human rights defenders were recorded in Burundi during the period under consideration. Violations took the form, in particular, of anonymous phone calls, wrongful summonses, arbitrary arrest and imprisonment. The authorities state that effective freedom of expression is guaranteed in the country, pointing to the existence of a large number of radio stations and newspapers in Bujumbura. They stress, however, that freedom of expression must be exercised within the proper limits and that it carries with it certain responsibilities on the part of journalists and human rights defenders. They claim that certain journalists and human rights defenders are in fact members of the opposition.

48. Some media outlets and human rights NGOs are for their part convinced that the Government seeks to muzzle and silence criticism. They quote as an example the withdrawal on 18 May 2010 by the Ministry of Foreign Affairs and International Cooperation of the work permit of the Human Rights Watch researcher Neel Ghoshal. That decision is said to have been taken following the publication, on 14 May 2010, of a report concerning certain lapses in the prevention of crimes with political connotations and appropriate investigations in Burundi. On 20 May 2010, 11 national and international NGOs issued, by way of protest, a communiqué in which they stated that this measure was a form of intimidation against human rights defenders and called on the Government to take into account the report of Human Rights Watch and to apply its recommendations in order to prevent and punish human rights violations with political connotations.

49. Against this background, on 26 March 2010 two national NGOs, the Observatory to Combat Economic Corruption and Malpractice ((OLUCOME) and the Association for the Protection of Human Rights and Prisoners (APRODH) issued a joint statement to the effect that their respective presidents, Gabriel Rufyiri and Pierre Claver Mbonimpa, had received death threats.

50. Member parties of the Alliance des démocrates pour le changement au Burundi (ADC-Ikibiri) have also reported threats and obstacles to the exercise of the right of assembly. On 15 November 2007, the independent expert met a delegation from the Alliance who handed him a memorandum listing alleged human rights violations, in particular arrests followed by detention, violations of the right of assembly and ill-treatment. The Minister of the Interior is said to have written to all the political parties

prohibiting them from forming political coalitions outside the electoral period. According to the members of ADC-Ikibiri, the particular concern of the authorities in place is to prevent that coalition from operating so as to eliminate any form of serious opposition. Numerous activists and leaders of the coalition in possession of official documents of the coalition are reported to have been arrested and imprisoned. For example, the aforementioned memorandum refers to members of the ADC-Ikibiri coalition who were arrested, detained and brutalized by security forces on 9 June 2007 as they were on their way to Rumonge to organize a meeting. It would appear that the security forces have received clear instructions from the Government to prevent any political meeting of that coalition during the electoral period. The independent expert met members of that coalition in Mpimba prison in Bujumbura; they told him that they had not been brought before a judge to confirm or quash the detention measure, as required by the Code of Criminal Procedure of Burundi.

51. During his visit to Mpimba prison, the independent expert also met Jean Claude Kavumbagu, journalist and director of the agency Net Press. He had been arrested at his office on 17 July 2010 by the inspector of police of the western region under an arrest warrant delivered by the prosecutor at the court of first instance in Bujumbura Mairie. Mr. Kavumbagu stated that he had been brought before a magistrate for questioning. He had been arrested for having published an article, on 12 July 2010, criticizing the Burundian security forces and calling into question their ability to defend the country against any attack from the El Shabab group. The article had been written in the wake of the attacks carried out on 11 July 2010 in Kampala, Uganda, and the threats brandished against Burundi by that group of Somali insurgents owing to the presence of Burundian troops within the African Union Mission in Somalia (AMISOM).

52. After two hours of interrogation, without his lawyer being present, Mr. Kavumbagu was officially charged with treason and immediately transferred to Mpimba prison. He was so charged under article 570 (2) of the Burundian Criminal Code, which prohibits any Burundian "in time of war [from participating] knowingly in an attempt to demoralize the Army or the Nation with the object of impairing national defence". Treason is punishable by life imprisonment. However, the competent authorities had not explicitly declared that Burundi was at war, which would warrant the charge of treason as defined in the Criminal Code. It follows that pretrial detention was ordered by an examining magistrate without any legal basis. Under the terms of article 71 of the Code of Criminal Procedure, pretrial detention can be ordered on the sole condition that it is the only way of preserving evidence, maintaining public order, protecting the accused person, putting an end to the offence or preventing its recurrence, or ensuring that the accused person remains at the disposal of the courts.

53. Accompanied by his lawyer, Mr. Kavumbagu appeared for the second time before the Prosecutor-General, who again questioned him about the charges against him. His lawyer took the opportunity to request that his client be released on bail. The Prosecutor-General promised to respond to that request within the next 48 hours, but instead, he transferred the case to a judge who confirmed the detention measure. Mr. Kavumbagu appealed against that decision to the Bujumbura court of appeal, which confirmed it in a decision dated 9 November 2010.

54. During his meeting with the Minister of Justice and the Prosecutor-General at the Supreme Court, the independent expert expressed concern about the situation of Mr. Kavumbagu. He considered that the continued detention of the journalist was not necessary in the circumstances and asked for him to be brought to trial as speedily as possible. His interlocutors assured him that the trial was imminent. The independent expert notes to his regret, however, that at the time of writing this report, the judicial authorities have still not set a date for the trial.

4. Slowness of the justice system and poor prison conditions

55. During his visit to Mpimba prison, the independent expert met several detainees. They complained about prison conditions and the slowness of the justice system. This slowness and the improper use of pretrial detention exacerbate health conditions in the prison, which currently holds four times as many prisoners as it can accommodate. The independent expert conveyed to the Director of Prisons his concerns regarding prison conditions.

56. The independent expert conveyed the same concerns to the Minister of Justice. He also drew the Minister's attention to the slowness of the courts' handling of certain cases and to the improper use of pretrial detention, which is one of the causes of the overcrowding of prisons, particularly at Mpimba prison. He noted how little progress had been made in the investigation of the assassination on 9 April 2009 of the Vice-President of the Observatory to Combat Economic Corruption and Malpractice (OLUCOME) and other serious human rights violations.

57. In response, the Minister of Justice undertook to examine the possibility of speeding up court proceedings and of arranging for alternative penalties for minor offences.

B. Reform of the justice system

58. The inadequacy of the legal framework, the shortage of qualified personnel and the lack of material, financial and logistic resources are undoubtedly major obstacles to the sound administration of justice in Burundi. Although there has been some progress in the past five years, particularly in infrastructure rehabilitation and construction and in capacity-building of the judiciary, significant challenges still remain.

59. Judicial independence is one of the weakest points of the Burundian justice system. During the period covered by this report, no significant progress was achieved in strengthening the independence of the judiciary. The Status of Magistrates Act has not yet been revised in such a way as to guarantee the effective independence of magistrates, and particularly the irremovability of members of the judiciary. Magistrates are not always recruited on a competitive basis and the Supreme Council of Justice, which guarantees the independence of the judiciary, is not involved in their recruitment. The role of the Supreme Council of Justice in disciplinary matters is also marginal. Thus, some magistrates expressed the opinion that they had been transferred to another court because of the decisions that they might have handed down in a particular case. The independent expert drew the attention of the Minister of Justice to these shortcomings. The Minister gave his assurances that measures would be taken to revitalize the role of the Supreme Council of Justice in matters both of discipline and of recruitment.

60. In addition to the lack of independence of the judiciary, the Burundian justice system suffers from a lack of qualified personnel, from an historical ethnic imbalance in its membership, from a relative ignorance of national laws and international standards and from insufficient financial and logistic resources. To remedy this situation, the Government has adopted a number of measures. In particular, it has undertaken a rebalancing effort on the basis of ethnic origin and gender and has made salary adjustments. The Minister of Justice also informed the independent expert that in future members of the judiciary would be recruited by competitive examination.

IV. Recommendations

A. To the Government of Burundi

61. The independent expert encourages the Government to establish the necessary conditions for all political parties to exercise their activities freely, both individually and within coalitions. He also urges the Government to engage in constructive dialogue with all opposition parties.

62. Concerned about the slowness of certain judicial procedures, the independent expert urges the competent Burundian authorities to speed up investigations relating to the assassination of the Vice-President of OLUCAME, the human rights violations alleged to have been committed on the premises of the intelligence service and the extrajudicial executions reported in the provinces of rural Bujumbura, Bujumbura Mairie, Buzanza and Cibitoke. In addition, he urges the authorities to see to it that those responsible for those acts are brought to justice as speedily as possible.

63. The independent expert urges the Government of Burundi to do everything in its power to bring promptly to justice members of the defence and security forces and all other persons suspected of having perpetrated serious violations of human rights.

64. The independent expert asks the Government of Burundi to continue and to intensify its efforts to reform the Burundian justice system, particularly with regard to the recruitment and independence of the judiciary.

65. The independent expert welcomes the official submission to the Head of State of the report of the national consultations on the establishment of transitional justice mechanisms and its publication. He calls on the Government to set up in the near future transitional justice mechanisms so as to complete the process of national reconciliation.

66. The independent expert welcomes the adoption of the law establishing the independent National Human Rights Commission. He invites the Government to set up that Commission rapidly in full conformity with the Paris Principles.

B. To the international community

67. The independent expert calls on the international community to press the Government of Burundi to create a climate conducive to the full and free exercise of the activities of all Burundian political parties and to encourage them and the Government to engage in a constructive dialogue.

68. The independent expert calls on the international community to increase its support to the Government of Burundi in several fields, in particular in the capacity-building of the justice system.

69. Lastly, the independent expert encourages the international community to assist the Government in effectively establishing and putting into operation the independent National Human Rights Commission and transitional justice mechanisms.