

# **Civil society alternative report to the Committee Against Torture on Burundi**

## **July 2016**

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**58<sup>th</sup> session, 25 July – 12 August 2016**

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## 1. Introduction

1. Burundi is currently experiencing a deep socio-political crisis. One of its main factors is considered to be the contested management of the 2015 electoral process. Numerous consequences have already resulted from this crisis on both security and diplomatic levels. Due to a large amount of information coming from both the United Nations Organisation and the civil society, reporting many exactions in the country, the Committee against torture requested from the Burundian government a special report on the basis of article 19, paragraph 1 of the Convention against Torture. This request was also motivated by the absence of information from Burundi on the follow up of the Committee's concluding observations on the second periodic report of the State.

2. The Committee asked the State Party's report to cover the following specific points:

- The investigations on the allegations of summary executions, arbitrary arrests, acts of torture and ill-treatment against members of the opposition, journalists, human rights defenders and their families, and every other person perceived as a supporter of the opposition in 2015;
- The investigation on the armed attack against Pierre Claver Mbonimpa in 2015 August and the abduction and murder of his son Welly Nzitonda in November 2015;
- The investigations on the allegation of acts of torture against the National Intelligence Service (Service national de renseignement – SNR);
- The investigations on the allegations of murders and acts of torture from the young *Imbonerakure* against people perceived to be supporters of the opposition;
- The implementation of the recommendations subject to the follow-up process (about the allegations of acts of torture, extrajudicial killings and political violence).

3. Following this demand from the Committee, the Burundian civil society, along with international non-governmental organisations decided to regroup in order to submit an alternative report to the Committee. Thus, ACAT Burundi, the Campaign SOS-Torture/Burundi, CAVIB, CB-CPI, COSOME, CPAJ, FORSC, RCP, FOCODE, and the ITEKA league collaborated to the redaction of this alternative report with the support of CCPR Centre, FIACAT, EHAHRDP, OMCT, and TRIAL International. To elaborate on this report, a workshop gathering this coalition of Burundian NGOs, as well as delegates from CCPR Centre and OMCT, was held on 30, 31 May and 1 June 2016. During this workshop, presentations about the Convention against torture and the functioning of the Committee were given. After the workshop, the NGOs present were divided into working groups and each group was assigned a specific topic to research and draft. The workshop ended on the presentations of these works by each group.

4. Finally, this first version of the report was revised by the INGOs participating in this process in order to better respond to the Committee's standards. Additionally, Burundian NGOs were asked to answer questions formulated by the INGOs based on the first version in order to create to a complete and precise report.

## 2. Executive summary

5. This report was drafted by a coalition of Burundian NGOs with the support of several INGOs in order to draw Committee's attention to a number of concerns following the Committee's request for a special report from Burundi. This request was justified by the deterioration of the situation in Burundi since 2005 which worsened over the last year due to the announcement of the candidature of the President Pierre Nkurunziza for a third term. The citizen movement that was organised following this announcement was severely repressed.

6. Even though torture is defined and criminalized in the Burundian Criminal Code, this criminalisation is not in line with the Convention against torture. In fact, the crime of torture is still subject to a statute of limitation. Moreover, according to the Burundian Military Criminal Code, acts of torture from soldiers are not criminalised contrary to what is provided by article 4 of the Convention. These issues regarding criminalisation of torture contribute to the impunity in this area.

7. Another concern is the prison overcrowding in Burundi. This leads to numerous issues regarding the diet and health of the detainees, particularly because it increases the risk of spreading disease. This issue has become even more important since April 2015 after young people and other protestors of the third term of Pierre Nkurunziza were arrested. Thus, the occupancy rate of the Burundian prisons is of nearly 205% over the whole territory and can rise up to 480% in some prisons. Burundian prisons have recently faced food shortages which has made the detainees' situations of even worse. Moreover, despite the fact that it acceded to the Optional Protocol to the Convention against Torture (OPCAT), Burundi has still not created a national preventive mechanism against torture.

8. Faced with assassinations and allegations of acts of torture, judicial authorities have opened investigations in certain cases. However, there are still no results in a number of them, which could be likened to a denial of justice. At the same time, it is important to note the lack of comprehensive and open information about complaints, investigations, prosecutions, and convictions relating to acts of torture and ill treatment where responsibility is assigned to State agents, and the sanctions and reparation granted to victims or their successors.

9. In its final observations, in 2014, the Committee against Torture (CAT) had asked the government of Burundi to provide information on the open investigations, the legal proceedings, and the sentences issued with regard to specific cases, namely the Niyonzima case, the Gahungu case, the Nyamoya case and the Bukuru case. However, no progress has been registered so far.

10. The absence of independence of Burundian judges and the precarity of their working conditions are important factors contributing to the prevailing impunity in Burundi. Judges are subject to pressure from the executive branch, and their extremely difficult working conditions have led to alienation of judges among the more experienced magistrates. In August 2013, the General Assembly of Judiciary was held in Gitega, but the proposals for the improvement of the justice sector have never been implemented. At the time of writing, the

final report of the General Assembly of the Judiciary, which the Ministry of Justice was meant to publish, had still not been made public. This demonstrates the lack of willingness of the Government of Burundi to foster the real independence of its justice system.

11. Following Pierre Nkurunziza's decision to run for a third term in office, and the subsequent political crisis, gross human rights violations have become widespread. These include extrajudicial killings, torture and other degrading treatments, arbitrary arrests and unlawful detention, enforced disappearances, and sexual violence.

12. Reports of extrajudicial killings, including political assassinations, have increased significantly since the beginning of the political crisis. Including the identification and documentation of mass graves. Following the attack against military camps on 11 December 2015 – carried by unidentified individuals – repression against the youth from neighborhoods that protested Nkurunziza's third term became particularly violent and resulted in numerous extrajudicial killings. Similar crimes were committed against activists, members of the opposition parties, and former members of the National Armed Forces. Most of these killings were committed by the National Defence Force (FDN), the National Police (PNB), and the National Intelligence Service (SNR).

13. With the intensification of the political crisis in Burundi, the use of torture and ill-treatment has increased exponentially. These acts are mainly committed at the time of arrest, including during transit between the place of arrest and detention facilities, and in the detention centres themselves. However, the proliferation of secret places of detention and lack of access for NGOs makes it increasingly difficult to document cases of torture and ill-treatment. Victims include government opponents and people suspected of belonging to rebel movements. It is particularly worrying that even though in most cases those responsible for torture crimes are state agents whose identity is known, impunity remains widespread, especially when the perpetrators are officials from the National Intelligence Services (*Service Nationale de Renseignements* – SNR), members of the *Imbonerakure* militia or the national police.

14. Human rights organisations in Burundi are also highly concerned about hundreds of cases of arbitrary arrest and illegal detention. Between 9 December 2015 and 31 March 2016, the SOS-Torture Burundi Campaign has identified 736 victims of arbitrary arrests. The Office of the United Nations High Commissioner for Human Rights in Burundi (OHCHR-B) has reported 3477 arbitrary arrests between April 2015 and April 2016, confirming the scale of the phenomenon. In most cases, these arrests are used as a form of repression and intimidation against the population in neighbourhoods where protests have been held against the President's third term. Moreover, these arrests are conducted in violation of the rules of criminal procedure, without a warrant and without any legal basis. The relatives of wanted persons are regularly arrested by the Burundian police in violation of fundamental legal safeguards.

15. Despite Burundi's signature of the International Convention on the Protection of All Persons from Enforced Disappearances of 6 February 2007 and the Universal Periodic Report's recommendation of January 2013, Burundi has yet to ratify it. Thus the Committee on Enforced Disappearances does not dispose of the necessary competence to

receive and consider communications from or on behalf of individuals subject to the jurisdiction of the Republic of Burundi. Since Pierre Nkurunziza's decision to run for a third term in office, more and more cases of enforced disappearances have taken place amongst demonstrators, members of civil society, former military personnel ex FAB and youths protestors, mainly of Tutsi ethnicity. Moreover, government officials, police forces and other national intelligence and security services are allegedly implicated in the commission of these disappearances. There are neither established police investigations, nor court records available as magistrates operate under executive supervision. The judiciary is not able to carry out investigations and lodge complaints against state agents. Paradoxically, the perpetrators of these crimes are even rewarded with promotions to senior levels, which further incites the commission of crimes.

16. Since April 2015, sexual and gender based violence has increased, in particular since women have organized two protests independently from their husbands, brothers and sons. Several cases of rape have been reported and rape has been used as a method of repression by the security forces and by members of the *Imbonerakure* militia. They systematic methods in order to facilitate rape by separating men and women during mass arrests and detaining women for a longer period of time, thus increasing risks of unwanted pregnancies and the transmission of AIDS. Moreover, songs encouraging rape are sung during activities organized by the ruling party. The Government uses a policy of denial that does not recognize the existence of such violence and rape against women. Despite the existence of medical evidence and the referral of some cases to Burundian ministry of justice, there is a climate of impunity as the perpetrators of these crimes are directly or indirectly affiliated with the ruling party.

17. In this context, the Burundian civil society, together with international non-governmental organisations formulate the following recommendations:

Absence of an absolute prohibition of torture (Articles 2 and 4)

- ***Take all necessary steps to incorporate provisions into its Military Criminal Code that establish that acts of torture and ill-treatment committed by soldiers constitute an offence without any statute of limitations and with sentences proportionate to the gravity of such acts and irreducible;***
- ***Amend the Burundian Criminal Code to remove any statute of limitations for the crimes of torture and ill-treatment.***

Conditions of persons deprived of their liberty (Article 11)

- ***Take all necessary steps to reduce prison overcrowding in particular by encouraging alternatives to imprisonment and by limiting the use of pre-trial detention;***
- ***Take all necessary measures to guarantee healthy and sufficient food and access to healthcare for all detainees;***
- ***Carry out investigations of allegations of ill-treatment in detention and make sure that all the authors of such acts are prosecuted and sanctioned proportionately to the gravity of such acts.***
- ***Engage in a participative and inclusive process to establish an effective and independent National Preventive Mechanism in line with the guidelines of the***

***Subcommittee on the Prevention of Torture and allocate it the necessary funds and human resources for it to operate effectively and independently;***

- ***Guarantee access to places of deprivation of liberty to civil society and that it can make recommendations to the authorities.***

Persistence of impunity as a result of the lack of prompt and impartial investigations (Article 12)

- ***Take urgent measures to ensure that all allegations of arbitrary killings are met with swift, impartial and independent investigations to identify perpetrators, regardless of their status, and prosecute them, and if found guilty, sentence them to appropriate sanctions;***
- ***Inform the Committee of the results of on-going investigations, of prosecutions initiated and convictions and sentences relating to the allegations of extrajudicial executions mentioned above;***
- ***Publish the report of the August 2013 General Assembly of the Judiciary;***
- ***Ensure the independent recruitment of judges as outlined in the law governing the magistracy;***
- ***Effectively and fully implement decisions of international human rights instruments, including the Committee Against Torture and the Working Group on Arbitrary Detentions, and inform the Committee of the results, including on-going investigations, prosecutions initiated, convictions, sentences and reparations.***

Extra-judicial executions

- ***To immediately stop extrajudicial killings;***
- ***To undertake urgent measures in order to ensure that all alleged cases of arbitrary deprivation of the right to life be the object of prompt, unbiased and independent investigations, so as to identify, prosecute and adequately punish those responsible;***
- ***To inform the Committee, in writing, about the results of the open investigations, the proceedings initiated, and the sentences pronounced with regard to the alleged cases of extrajudicial executions above described;***
- ***To ratify the Optional Protocol to the International Covenant on Civil and Political Rights, in order to enable the submission of individual communications to the Human Rights Committee for cases of arbitrary deprivation of the right to life, when victims do not obtain justice before national jurisdictions.***

Torture and ill-treatment

- ***Reaffirm unequivocally the absolute nature of the prohibition of torture and make it publicly known that anyone who commits such acts, is an accomplice to them or tacitly permits them, will be held personally responsible before the law;***
- ***Take urgent steps to ensure that in all cases of alleged torture and ill-treatment, prompt, impartial and independent investigations are undertaken to identify those responsible, regardless of their status, that they are prosecuted and if found guilty, are sentenced to appropriate sanctions;***

- ***Ensure adequate redress for victims of torture under Article 14 of the Convention and General Comment No. 3 of the Committee Against Torture;***
- ***Guarantee civil society organisations unimpeded access to places of detention and the possibility of making recommendations to the authorities;***
- ***Proceed immediately with the closure of all secret detention sites, initiate investigations and prosecute those responsible for torture and ill-treatment in such places.***

#### Arbitrary arrests and unlawful detentions

- ***Discontinue the practice of arrests made by State agents with the pretext of checking “household identification books” and take the necessary measures to ensure that grounds for arrest comply with Burundian law;***
- ***Revise the Criminal Procedure Code to set a reasonable limit for the duration of preventive detention; guarantee that persons held in police custody or on remand have the fundamental legal safeguards applied, including the right to be promptly informed in writing about the reasons for their arrest, information about their rights, access to a lawyer and a doctor of their choice, communication with loved ones, access to legal aid for people living in poverty and the right to be brought before a judge as soon as possible;***
- ***Take the necessary legislative measures to ensure that the period of police custody does not exceed 48 hours and that all detained persons are brought before an independent judicial authority within 48 hours after their arrest to ensure control of the grounds for arrest and the renewal of custody;***
- ***Monitor compliance with legal safeguards by all public officials and punish those who do not respect them.***

#### Enforced disappearances

- ***To ratify as soon as possible the Convention for the Protection of All Persons from Enforced Disappearance, which Burundi signed on 6th February 2007.***
- ***To instruct state agencies to make every effort to search and find the actors of civil society, opposition activists and other figures reported missing, especially those who were previously being monitored by the order enforcement agencies;***
- ***Enable families of missing persons to have access to useful information regarding the conditions of detention and the circumstances in which their relatives disappeared;***
- ***Instruct law enforcement and security bodies on the need to respect human rights, including during questioning;***
- ***Set up a commission of independent and impartial investigation into cases of disappearance on the one hand and allegations of rape and violence against women on the other.***

#### Sexual violence

- ***Take urgent measures to prevent the commission of acts of sexual or gender-based violence by agents of the National Police of Burundi and the National Intelligence***



***Service, as well as youths affiliated to the ruling party;***

- ***Take urgent steps to ensure that all acts of violence against women are subject to a due investigation which is diligent, effective and impartial, and that the perpetrators are prosecuted and sentenced according to the severity of their actions;***
- ***Ensure that female victims of rape receive care and appropriate medical assistance;***
- ***Identify and implement measures to support victims psychologically and socially.***

### **3. General context**

18. Since the National Council for the Defence of Democracy and Forces for the Defence of Democracy (Conseil national pour la défense de la démocratie et Forces de défense de la démocratie - CNDD-FDD) became the governing party in 2005, the human rights situation and the functioning of the justice system have steadily deteriorated in Burundi. This is evidenced by the following examples: the arrest and detention of former high leaders of the country such as President Domitien Ndayizeye<sup>1</sup>, serious acts of torture inflicted to former Vice-President Alphonse Marie Kadege in 2006, the assassinations perpetrated against National Liberation Forces (FNL) activists, whose corpses were then thrown in the Ruvubu in 2007, the assassination of Ernest Manirumva in 2009 and several other crimes committed by the regime which remained unpunished.

19. In August 2010, Pierre Nkurunziza was re-elected President of the Republic of Burundi, after an electoral process marked by the strong contestation of the opposition. The victory of CNDD-FDD in the local, parliamentary and presidential elections of 2010 has resulted, according to several international observers, to a *“political impasse that risks reversing a decade’s progress”*<sup>2</sup>.

20. This political impasse resulted in particular from the decision of the opposition, regrouped within the Democrats Alliance for a Change in Burundi (ADC- Ikibiri), to boycott the parliamentary and presidential elections, following allegations of irregularities and massive fraud in the electoral system, regarding the local elections in May 2010.

21. Between 24 May and 7 September 2010, the United Nations Integrated Office in Burundi (BINUB) has recorded 280 arrests in the rank of the opposition. From 23 June to 5 July 2010, 12 cases of torture involving high-ranking officials from the National Intelligence Service (Service National de Renseignement - SNR) and high-ranking police officers have been denounced by the BINUB to the government. Numerous calls criticized these cases of extrajudicial killings in which agents from the SNR would have been involved. These cases remain unpunished. Of the few cases in which pursuits were engaged, there was no adequate condemnation or sufficient compensation in the light of the relative facts<sup>3</sup>.

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<sup>1</sup> Former President of the Republic of Burundi, Domitien Ndayizeye was arrested on 21 August 2006 for its presumed participation to the attempted coup. He was then detained in the central prison of Mpimba until he was acquitted by the Supreme Court of Burundi on 15 January 2007.

<sup>2</sup> International crisis group, *Burundi: from electoral boycott to political impasse*, 7 February 2011.

<sup>3</sup> See part 4. A. 3) Persistence of impunity as a result of the lack of prompt and impartial investigations

22. In its resolution on the situation in Burundi on 20 December 2011, the United Nations Security Council noted “*with grave concern continued human rights violations, in particular extrajudicial politically motivated killings and torture, and restrictions on civil liberties, including harassment, intimidation and restrictions on the freedom of expression, association and assembly of opposition political parties, media and civil society organizations*”, and called upon “*the Government of Burundi to protect the civil liberties and to fight impunity, particularly by ensuring that those responsible for incidences of torture, extrajudicial killings and mistreatment of detainees are brought to justice*”<sup>4</sup>.

23. Since 2013, the “Kiriba Ondes Case”<sup>5</sup> has created an atmosphere of suspicion and resulted in violations of civil liberties such as the detention of the human rights activist, Pierre Claver Mbonimpa for more than 5 months in 2015. This case, which remains unclear as of today, has contributed a lot to the deterioration of civil liberties<sup>6</sup>.

24. In September 2014, a triple murder was committed at the catholic parish of Kamenge against three sisters of Italian origin and investigations carried out by the African Public Radio (Radio Publique Africaine- RPA) revealed that senior officers from the Police and the SNR were involved in this crime. The disclosure of this investigation caused the imprisonment of the Burundian journalist and Director of the RPA, Bob Rugurika, whose liberation was only granted under the pressure of the international community.

25. After the outgoing president, Pierre Nkurunziza, announced on 25 April 2015 his candidacy for a third term, a large protest movement was set in motion by citizens and peaceful demonstrations were organised across the country. These demonstrations, in which organisations of the civil society, political parties from the opposition and a large movement of Burundian women and girls took part, requested the respect of the Arusha Peace and Reconciliation Agreement and the Constitution of the Republic of Burundi. These peaceful demonstrations in protest of a third term for President Pierre Nkurunziza were violently repressed by the police which operated alongside the *Imbonerakure* militia<sup>7</sup>.

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<sup>4</sup> Security Council, Resolution on the situation of Burundi, 2011, S/RES/2027

<sup>5</sup> The “Kiriba Ondes Case” concerns military trainings of the young persons of the CNDD-FDD, the *Imbonerakure*, on the territory of the Democratic Republic of the Congo, under the orders of high-ranking officers of the National intelligence Service (SNR). These trainings started in 2013 and continued in 2014. Activists from the Burundian civil society and in particular Pierre Claver Mbonimpa have denounced those trainings which cost him to be imprisoned in 2014. Later on, those facts were confirmed by the MONUSCO’s reports.

<sup>6</sup> The « Green Friday » campaign gathered various groups of the civil society and the media to support Pierre Claver Mbonimpa after his arrest on Friday 16 May 2014. His supporters wore green t-shirts every Friday to protest against his imprisonment. Authorities did not just forbid the peaceful marches held to support Mr. Mbonimpa, they also arrested three members of APRODH (Association pour la Protection des Droits Humains et des Personnes Détenues) who wore these t-shirts, on 22 May 2014. A campaign of demonization was then conducted, followed by serious threats against leaders of the campaign.

<sup>7</sup> APRODH reports that more than a thousand Burundians were murdered until December 2015; several thousands more, in majority young people, were arrested and are still detained in prisons while repressive cases were open against them. More than 250000 Burundians fled the country, including several leading figures. Cases of torture, rape, kidnapping are still happening – this ordeal is not well reported since it took place after the destruction of independent medias by the police as a consequence of an aborted coup on 13 May 2015. According to the same report published by APRODH, more than 130000 were injured between April and December 2015.

26. Thus, after the aborted coup of 13 May 2015, a campaign of repression was orchestrated against the demonstrators, who were treated as rebels and considered coup plotters. As a consequence, most human rights defenders currently live in hiding or were forced into exile. Indeed, civil society and human rights defenders were principally targeted by this repression. In July 2015, The State of Burundi proceeded to close the bank accounts of ten civil society organisations, as well as those of their representatives. Shortly after, the Minister of Home Affairs, Pascal Barandagiye decided to suspend the activities of some of the key human rights organisations.

27. Furthermore, on 14 May 2015, an attack was conducted against the Bumerec hospital by defence and security forces and the hospital was damaged. On the same day, the media: RPA, Radio Isanganiro, Radio Television Renaissance, Rema FM radio and Radio Bonesha were set on fire by the Burundian police and almost every independent reporter was forced into exile.

28. It is worth noting that many leaders of the political parties of the opposition, including M. Zedi Feruzi (President of OPD-Zigamibanga party) and Patrice Gahungu (Spokesperson of the same party) were murdered. However, the motivation and the perpetrators of these murders have not been found yet. Other officials from the Movement for solidarity and development party (Mouvement pour la solidarité et le développement - MSD) have gone missing, were murdered, or were forced into exile.

29. On 11 and 12 December 2015, armed groups, who are not yet identified, attacked military camps in Bujumbura, as well as the military camp of Mujejuru in the Bujumbura province. Following these attacks, defence and security forces together with the *Imbonerakure* militia, murdered young people from neighbourhoods considered opposed to Pierre Nkurunziza's third term, such as Nyakabiga, Ngagara, Musaga, Cibitoke and Mutakura. According to a report published by the SOS-Torture campaign in Burundi, the spokesperson of the Burundian army claimed that 87 people considered as rebels were killed but other independent sources report that the number of death was far higher. Several corpses were discovered in these neighbourhoods. SOS-Torture/Burundi reported for instance Kinanira 1 (33 corpses), Kinanira 2, (54 corpses), Nyakabiga (55 corpses), Mutakura (4 corpses) and Citiboke (4 corpses)<sup>8</sup>. After these attacks of 11 and 12 December 2015, around twenty soldiers were imprisoned based on their ethnicity and were tried several times without being assisted by the counsel of their choice.

30. In the Bujumbura Province, seven young people, previously detained in Ijenda's cell in the municipality of Mugongo Manga, were summarily executed in Mukike by the Commander of Camp Mjejuru, Major Mairus Gahomera. The seven young people were then buried in a mass grave located on the hill Kanyunya. Investigations opened by the military prosecutor's office have never resulted in the arrest of this military officer mentioned in several cases of summary killings of young demonstrators opposed to Pierre Nkurunziza's third term. In the meantime, several members of the defence forces were murdered, including retired high-ranking ex-FAB officers. Thus, the divisions within the army and the

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<sup>8</sup> Report SOS-Torture / Burundi no. 1 of 19 December 2015 available at <http://sostortureburundi.over-blog.com/2016/01/sos-torture-burundi-n-1.html>

police that appeared since the aborted coup of 13 May 2015, grew and evolved into a cleansing of ex-FAB, including –but not limited to– Tutsi officers, and many senior officers of the Burundian army were murdered.

#### **4. State of implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

31. The State party has ratified or acceded to a number of important international instruments:

- The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in May 2012;
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in October 2013;
- The Convention on the Rights of Persons with Disabilities, in May 2014;
- The Optional Protocol to the Convention on the Rights of Persons with Disabilities, in May 2014.

32. It should be noted that some provisions of the Code of Criminal Procedure have been implemented regarding alternatives to imprisonment, however only with regard to juvenile justice, in order to give effect to the Convention. In particular, two rehabilitation centers for minors have been created in Rumonge and Ruyigi.

33. Several Bills have been introduced before the Parliament:

- The Bill on the prevention and repression of gender based violence, adopted by the National Assembly on 17 December 2015;
- The Bill on the prevention and repression of human trafficking and the protection of victims of human trafficking adopted by the National Assembly on 20 August 2014<sup>9</sup>;
- The Bill on the protection of victims and witnesses, adopted by the National Assembly on 20 April 2016<sup>10</sup>.

34. However, despite some positive achievements, many concerns still remain on various subjects including the non-implementation of the recommendations of the Committee against Torture and the systematic persistence of acts of torture and other cruel, inhuman or degrading treatment.

#### **A. Implementation of recommendations contained in the Concluding observations of the Committee Against Torture**

35. Many extortions have been committed over the last few months and years and remain unsanctioned. This impunity is due to a multiplicity of factors including the absence of criminalization of torture in the Military Criminal Code. Moreover, because of the precarious

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<sup>9</sup> This law has been promulgated and came into force on 19 October 2014.

<sup>10</sup> This law was then transmitted to the Senate that has amended it. It was recently sent back to the National Assembly.

working conditions of judges, this profession has been largely neglected and the number of judges are insufficient compared to the numerous cases. The lack of independence and the corruption of judges, in addition to the lack of human resources, contribute to this impunity.

### **1. Absence of an absolute prohibition of torture (Articles 2 and 4)**

36. According to the Convention against torture, State parties have the obligation to include in their national law the absolute prohibition of torture. This aims to prevent the occurrence of this phenomenon. The absolute prohibition of torture is clearly stated in article 2 of the Convention that states that no circumstances can ever justify torture.

37. However, torture is not absolutely prohibited in Burundi. As it was previously raised by the Committee against torture during Burundi's last review in 2014<sup>11</sup>, that some provisions of the Military Criminal Code are not in line with the international commitments of Burundi regarding the fight against torture. In fact, acts of torture are not criminalized in conformity with article 4 of the Convention when they are committed by soldiers. It is necessary for acts of torture and ill-treatment committed by soldiers to be criminalized without any statute of limitations and with irreducible sanctions proportionate to the gravity of such acts.

38. Moreover, if torture is defined and criminalized under ordinary law, in conformity with article 1 of the Convention against torture, the public prosecution is limited by a 20 to 30 year statute of limitations depending on the circumstances<sup>12</sup>.

39. Also, the many dysfunctions in the structure and organization of public forces, in particular in the PNB and SNR, contribute to this impunity. The PNB and SNR are still governed by presidential decrees and not by organic laws as provided in the Constitution.

#### **Recommendations:**

- ***Take all necessary steps to incorporate provisions into its Military Criminal Code that establish that acts of torture and ill-treatment committed by soldiers constitute an offence without any statute of limitations and with sentences proportionate to the gravity of such acts and irreducible;***
- ***Amend the Burundian Criminal Code to remove any statute of limitations for the crimes of torture and ill-treatment.***

### **2. Conditions of persons deprived of their liberty (Article 11)**

#### **a) Conditions of detention that can be considered as cruel, inhuman or degrading treatment**

40. The situation in prisons and cells in Burundi is very worrying.

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<sup>11</sup> Committee against Torture, Concluding observations on the second periodic report of Burundi, CAT/C/BDI/CO/2, para. 9

<sup>12</sup> Articles 146, 204 and following of the Burundian Criminal Code

41. The independent expert was particularly concerned by prison overcrowding and the insanitary conditions. The former UN independent expert on the human rights situation in Burundi, Mr. Okola, stated in May 2010 that pre-trial detention was a cause of prison overcrowding *“this has exacerbated the already deplorable condition of most of Burundi’s prisons and detention centers”*<sup>13</sup>.

42. It should be noted that with the current crisis in Burundi since April 2015, the Burundian authorities have deprived thousands of persons criticizing the third mandate of Pierre Nkurunziza, including many young persons, of their liberty. This situation has aggravated the detention conditions<sup>14</sup>.

43. Given the high number of people detained by the authorities since April 2015, the prison conditions have drastically deteriorated.

44. The following table gives an overview of the prison overcrowding in Burundi on 5 May 2016:

| PRISONS        | PRISON CAPACITY | PRISON POPULATION | NUMBER OF PRE-TRIAL DETAINEES |            | OCCUPANCY RATE |
|----------------|-----------------|-------------------|-------------------------------|------------|----------------|
|                |                 |                   | Men                           | Women      |                |
| BUBANZA        | 100             | 245               | 102                           | 4          | 245.00%        |
| BURURI         | 250             | 232               | 144                           | 1          | 92.80%         |
| GITEGA         | 400             | 747               | 364                           | 16         | 186.75%        |
| MPIMBA         | 800             | 3,259             | 2,369                         | 81         | 407.38%        |
| MURAMVYA       | 100             | 483               | 270                           | 7          | 483.00%        |
| MUYINGA        | 300             | 390               | 136                           | 9          | 130.00%        |
| NGOZI (F)      | 250             | 97                |                               | 25         | 38.80%         |
| NGOZI (H)      | 400             | 1,303             | 643                           |            | 325.75%        |
| RUMONGE        | 800             | 940               | 336                           | 10         | 117.50%        |
| RUTANA         | 350             | 207               | 60                            | 3          | 59.14%         |
| RUYIGI         | 300             | 589               | 369                           | 14         | 196.33%        |
| CENTRE RUYIGI  | 72              | 33                |                               |            | 45.83%         |
| CENTRE RUMONGE | 72              | 34                |                               |            | 47.22%         |
| <b>TOTAL</b>   | <b>4,194</b>    | <b>8,559</b>      | <b>4,793</b>                  | <b>170</b> | <b>204.08%</b> |

45. This prison overcrowding has negatively impacted the detainees’ health. In Rumonge prison, around ten detainees have been hospitalized outside of the penitentiary establishment because of several cases of malaria within the prison. In fact, the clinic of the

<sup>13</sup> High Commissioner for Human Rights, M. Okola, *International community should continue to assist Burundi in fulfilling its international human rights obligations (La communauté internationale devrait continuer d’aider le Burundi à honorer ses obligations internationales relatives aux droits de l’homme)*, 28 May 2010 – unofficial translation

<sup>14</sup> See part 4. c) Arbitrary arrest and illegal detention

prison was already full with around 60 detainees suffering from malaria. This high number of cases of malaria is mostly due to the absence of mosquito nets in the prison<sup>15</sup>.

46. The diet of detainees is also a significant issue in prison. As an example, in Ngozi, the prison has supply shortage for nearly 8 months from the end of 2015 until the beginning of 2016. The prison was lacking salt and oil for the detainees, which can cause grave health consequences. The ICRC responded to this crisis and provided supplies to all penitentiary establishments throughout the country<sup>16</sup>.

47. At last, some detainees also face ill-treatment within the prisons. One of the main examples of ill-treatment concerns the persons that were presumed to have participated in the putsch and currently detained in the Gitega prison. They have been subjected to various forms of ill-treatment including their placement in isolation and the prohibition or monitoring of their visits. They have been subjected to a derogatory regime (the ordinary regime is stated in the Prison Regulations). They were also subjected to intimidation and attempts of abduction etc<sup>17</sup>. The persons arrested during the events of 11 December 2015 have also been detained in degrading conditions. In fact, during their transfer to the prison of Murambya on 16 December 2015, several persons testified that “*some of them weren’t wearing any shirt and some didn’t even have shoes and were shaking because they were cold*”. Two of the prisoners were even wounded by gunshots. However, the detainees in the most critical state were hospitalized in the Muramvya hospital<sup>18</sup>.

**Recommendations:**

- ***Take all necessary step to reduce prison overcrowding in particular by encouraging alternatives to imprisonment and by limiting the use of pre-trial detention;***
- ***Take all necessary measure to guarantee healthy and sufficient food and access to healthcare for all detainees in practice;***
- ***Carry out investigation on allegation of ill-treatment in detention and make sure that all the authors of such acts are prosecuted and sanctioned proportionately to the gravity of such acts.***

**b) The absence of National Preventive Mechanism against torture (NPM)**

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<sup>15</sup> Report SOS-Torture / Burundi no. 16 of 2 April 2016 available at <http://sostortureburundi.over-blog.com/2016/04/sos-torture-burundi-n-16.html>

<sup>16</sup> Report SOS-Torture / Burundi no. 19 of 23 April 2016, available at <http://sostortureburundi.over-blog.com/2016/04/sos-torture-burundi-n-19.html>; Report SOS-Torture / Burundi no. 21 of 7 May 2016 available at <http://sostortureburundi.over-blog.com/2016/05/sos-torture-burundi-n-21.html>

<sup>17</sup> Report SOS-Torture / Burundi no. 23 of 21 May 2016, available at <http://sostortureburundi.over-blog.com/2016/05/sos-torture-burundi-n-23.html>

<sup>18</sup> Report SOS- Torture / Burundi no. 2 of 25 December 2015, available at <http://sostortureburundi.over-blog.com/2016/01/1-de-couverte-de-trois-corps-a-cibitoke-trois-corps-ont-e-te-de-couverts-mardi-22-de-cembre-2015-sur-la-route-nationale-cibitoke-ka>

48. Another concern is the lack of national preventive mechanism against torture in Burundi as required by the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to which Burundi acceded to on 18 October 2013.

49. The Burundian authorities should engage as soon as possible in a participative and inclusive process to nominate and establish an independent and effective NPM in conformity with the guidelines provided by the Subcommittee on the Prevention of Torture. In particular, it is necessary that this NPM has access to all places of deprivation of liberty at any time and that it could carry out ad hoc visits without prior notification. The necessary funds and human resources should be allocated for it to operate effectively and independently. The State party should also guarantee free access to civil society to places of deprivation of liberty and allow it to make recommendations to the authorities.

**Recommendations:**

- ***Engage in a participative and inclusive process to establish an effective and independent National Preventive Mechanism in line with the guidelines of the Subcommittee on the Prevention of Torture and allocate it the necessary funds and human resources for it to operate effectively and independently;***
- ***Guarantee access to places of deprivation of liberty to civil society and that it can make recommendations to the authorities.***

**3. Persistence of impunity as a result of the lack of prompt and impartial investigations (Article 12)**

50. Article 12 states that State Parties should ensure that the competent authorities immediately conduct an impartial investigation whenever there are reasonable grounds to believe that an act of torture has been committed<sup>19</sup>.

51. In some cases of killings and allegations of acts of torture, judicial authorities have opened investigations; however, many have not yielded any results, which can be likened to a denial of justice. Similarly, it should be noted that the absence of comprehensive data and disaggregated information on the complaints, investigations, prosecution, and convictions relating to acts of torture and ill-treatment attributed to State agents, including the sanctions and remedies granted to victims or their successors in title. The cases mentioned below illustrate this situation.

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<sup>19</sup> It is best fitting to note that the criminal legislation of Burundi does not provide an explicit requirement to prosecutors of the Republic to order an investigation of office in the event of an allegation of torture. In that regard, the Committee Against Torture has demanded that the State of Burundi, in its concluding observations in 2007, to clarify “*the obligation of competent authorities to conduct proprio motu impartial investigations, in a systematic manner, in all cases where there are reasonable grounds to believe that acts of torture has been committed.*”



#### a) Absence of prompt and impartial investigations

**52. *The assassination of journalist Christophe Nkezabahzi and his family*** : Christophe Nkezabanizi was a journalist at National Radio and Television of Burundi. While he was at home in the district of Ngage with his wife and children, who were 14 and 15 years old at the time, were murdered by the police. Witnesses claimed to have seen police officers in charge of the protection of institutions, arrive in numbers following grenade explosions and shots fired in the same neighbourhood. **To this day, no investigations aimed at apprehending the perpetrators of this crime have been conducted.**

**53. *The attempted assassination of Pierre Claver Mbonimpa and the assassination of his son Welly Nzitonda and son-in-law Pascal Nshimirimana*** : At the beginning of August 2015, Pierre Claver Mbonimpa was nearly assassinated by members of the SNR in complicity with the Burundian Police. He had to be evacuated to Belgium in order to undergo appropriate medical treatment. Subsequently, his son-in-law Pascal Nshimirimana was murdered on 9 October 2015. The next month in November 2015, his own son Welly Nzitonda was murdered after having been arrested by the chief of police of Cibitoke, and detained in prison in the same area<sup>20</sup>. **To this day, no steps have been taken to clarify the circumstances, motives and perpetrators of these crimes.**

**54. *Charlotte Umugwaneza*** : Charlotte Umugwaneza was a member of the OLUCOME and of the MSD, a political party of the opposition, and was active during the peaceful protests. Her naked body was found in a rural province in the country on 17 October 2015, a few days after being kidnapped, with serious injuries to the eyes, face and body. She was abducted and forced into a car with tinted windows, and some sources confirmed having seen her in an SNR prison. **No serious investigation has been conducted to ensure that justice is done in this case.**

**55. *The assassination events of 3<sup>rd</sup> October in Cibitoke*** : On 3 October 2015, 11 people were murdered on Ryakanyoni street in the urban commune of Cibitoke by members of the police. While shootings had begun in the neighbourhood earlier the same day, the police opened fire on the group, which included a person with physical disabilities. The bodies of the victims remained exposed in the street for several hours, and some were mutilated. **No serious investigations to arrest or prosecute the perpetrators have since been conducted.**

#### b) Ongoing investigations without results

56. In many cases, particularly those involving members of the SNR, the *Imbonerakure* militia, or defence and security forces, investigations have been opened but remain without results to this day.

57. This is the case for the following:

**58. *Général Adolphe Nshimirimana*** : On 2 August 2015, General Adolphe Nshimirimana, ex-

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<sup>20</sup> According to information provided by the Fédération Internationale des Droits de l'Homme: "Burundi: Assistance for the son of Pierre Claver Mbonimpa, Mr Welli Nzitonda," 2 November 2015, available at <https://www.fidh.org/fr/themes/defenseurs-des-droits-humains/burundi-assassinat-du-fils-de-pierre-claver-mbonimpa> - in French

chief of the SNR was murdered. His name was cited in different cases of violations of human rights, in particular the murder of human rights defender Ernest Manirumva. An investigation was opened, and as a result four members of the military were arrested; however, **they have so far failed to clarify the circumstances, motives and potential perpetrators of the assassination**<sup>21</sup>.

**59. Colonel Jean Bikomagu:** On 15 August 2015, a retired officer and former Chief of Staff of the Burundian army, was assassinated in front of his house located in the Kabondo district of Bujumbura. The investigations carried out by the Burundian authorities have yet to establish who is responsible or to apprehend the suspects in this crime<sup>22</sup>.

### c) Ongoing investigations with non-credible results

60. While the Burundian authorities have actually opened investigations in some cases, the follow-up and results have not been satisfactory, and call into question the credibility of the Burundian justice system.

**61. Massacres committed on 11 and 12 December 2015 (Jean Bosco Surwavuba and Marius Gahomera):** Following the massacres committed on 11 and 12 December 2015, the government of Burundi, through a press release of the Office of the Prosecutor General of the Republic, quickly announced the opening of case RMPG 713/BJB to elucidate the circumstances of deaths of persons killed after the attack of military camps. A team of three judges of the Public Ministry was put in place, for one month, to shed light on the allegations of extrajudicial executions.

62. On 10 March 2016, the General Prosecutor of the Republic, Mr Valentin Bagorikunda, presented the results of the Ad Hoc committee through a report<sup>23</sup>, whose objectives seemed to be more focused on defending against the allegations of extrajudicial executions and mass graves than establishing the facts and the prosecutions of the suspected perpetrators of these violations.

63. He officially confirmed the killing of 79 enemy combatants with weapons and in uniform<sup>24</sup>. He also specified that no mass graves were discovered in any location cited by Amnesty International<sup>25</sup>. On the other hand, the Mayor of Bujumbura recognised the

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<sup>21</sup> Agence Bujumbura News, "The assassination of Lieutenant General Nshimirimana and Colonel Bikomagu; Investigations continue," 2 September 2015, available at <https://bujanews.wordpress.com/2015/09/02/assassinat-du-lieutenant-general-nshimirimana-et-colonel-bikomagu-des-enquetes-continuent/> - in French

<sup>22</sup> *Ibid.*

<sup>23</sup> Ministry of Justice, "Report on the Commission to shed light on the allegations on the extrajudicial executions during the fighting that followed the attack against four military camps on 11 December 2015," March 2016, available at [http://www.burundi-forum.link/IMG/pdf/rapport\\_de\\_la\\_commission\\_sur\\_les\\_attaques\\_contre\\_les\\_camps\\_militaires\\_1\\_.pdf](http://www.burundi-forum.link/IMG/pdf/rapport_de_la_commission_sur_les_attaques_contre_les_camps_militaires_1_.pdf) - in French

<sup>24</sup> The Government of Burundi, "Press Release on the Friday attacks", 14 December 2015, available at <http://burundi.gov.bi/spip.php?article572>

<sup>25</sup> Amnesty International, "Burundi: Satellite images confirm the existence of mass graves," 29 January 2016, available at <http://www.amnesty.fr/Nos-campagnes/Crises-et-conflits-armes/Actualites/Burundi-des-images-satellites-confirment-existence-de-fosses-communes-17460> - in French

existence of a mass grave containing 30 people, which had been discovered in Mutakura on 29 February 2016. However, he announced in a press conference that the victims were people buried by “insurgents”<sup>26</sup>.

64. It is important to specify that the members of the Ad Hoc Committee had established three criteria to elucidate the circumstances of the killings in these neighbourhoods. Among these criteria was the manner in which the combatants were dressed. On this point, the report only pointed out that among the victims, “*some bodies were wearing military or police uniforms*”<sup>27</sup> with a supporting evidence photo of a corpse wearing a police uniform. The report made no comment on the numerous photos published by media and human rights organisations<sup>28</sup>.

65. Nevertheless, the General Prosecutor of the Republic recognises the unclear circumstances of the deaths of seven captured combatants in Mujeuru, in Bujumbura province. Accordingly, he had announced the opening of case RMP 713/BJB against Jean Bosco Surwavuba, Head of Post Rwibaga at the time of the events and Major Marius Gahomera to establish responsibilities in this matter.

66. However, this high judicial authority does not mention if the two defendants, against whom heavy charges of extrajudicial executions have been brought, are in preventive detention. In fact, the report of the Commission, already collects the difficulties encountered by the Public Ministry to prosecute Major Gahomera, since he “*did not comply with the summons of the Commission, which is why the other legal remedies are being sought out to apprehend him*”<sup>29</sup>.

67. In addition to the fact that he has not been suspended or placed in preventive detention, Major Gahomera continues to commit human rights violations. On 4 April 2016, he arrested five teachers in the commune of Mukike, accusing them of having been clandestinely trained in the handling of weapons at ISCAM and possessing weapons without authorisation. Nobody knows where these teachers were taken.

68. Through the report of the Commission, it is therefore clear that the public Ministry is far from shining light on the allegations of extrajudicial executions. In addition, the Office of the Prosecutor General highlights its limitations to prosecute a police officer against whom heavy charges have been brought for the summary execution of seven suspected combatants under arrest. He has not responded to the summons of the judges who are members of the investigative commission.

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<sup>26</sup> *Radio Publique Africaine*, “30 bodies discovered in a mass grave,” 2 March 2016, available at <http://www.rpa.bi/index.php/component/k2/item/2151-une-trentaine-de-corps-decouverts-dans-une-fosse-commune> - in French

<sup>27</sup> Ministry of Justice, “Report on the Commission to shed light on the allegations on the extrajudicial executions during the fighting that followed the attack against four military camps on 11 December 2015,” March 2016, available at [http://www.burundi-forum.link/IMG/pdf/rapport\\_de\\_la\\_commission\\_sur\\_less\\_attaques\\_contre\\_les\\_camps\\_militaires\\_1\\_.pdf](http://www.burundi-forum.link/IMG/pdf/rapport_de_la_commission_sur_less_attaques_contre_les_camps_militaires_1_.pdf) - in French

<sup>28</sup> Iwacu, “Controversy around the mass grave,” 7 March 2016, available at <http://www.iwacu-burundi.org/controversie-autour-dun-chaarnier/> - in French

<sup>29</sup> Report of the Commission, p. 15

69. On the results of this Ad Hoc commission put in place by the General Prosecutor of the Republic, the human rights organisation Human Rights Watch (HRW) already sounded the alarm in their last report of 13 April 2015 on Burundi, noting that *“in Burundi, the investigations of the government ignored the abuse of states forces”*<sup>30</sup>. According to the investigations carried out by this organisation, *“there is no evidence to suggest that the victims had participated in the attacks against military installations. Some victims were found lying in a row, face in the earth, and seemed to have been killed by shots to the back or head. Others survived with grave wounds. Security forces also carried out large scale arbitrary arrests in both neighbourhoods”*<sup>31</sup>.

**70. Ernest Manirumva:** On the morning of 9 April 2009 at 7am, the inhabitants of south Mutanga, a neighbourhood of Bujumbura, discovered the body of Ernest Manirumva, former Vice-President of the Anti-corruption and Economic Malpractice Observatory (OLUCOME), lying in the garden of his residence, next to his car. An important gathering was formed a few minutes before the arrival of the Minister of National Defence at the time and the Lieutenant-General Germain Niyoyankana, and many members of the National Police. The body was bloodied, including on the head and arms, and seemed to have suffered several hits from a wounding object. Three national commissions have been put in place and the report of the third commission, alongside the report of the Federal Bureau of Investigation (FBI) requested that DNA samples be taken from senior members of the police and the national intelligence service, but nothing has been done to this day. In a case brought against certain alleged authors, the Burundian judiciary has not implemented the requests of the civil party, in particular regarding additional investigations into persons mentioned in several reports<sup>32</sup>. In February 2012, the European Union made a statement on independence of justice in Burundi. It referred in particular to the trial for the assassination of Mr Manirumva and forcefully asserts: *“it is important that the justice system in Burundi do everything they can to ensure that thorough investigations are conducted in accordance with the code of criminal procedure [...] In order to support the independence of justice, all those appointed in the judicial procedures should be auditioned without distinction”*<sup>33</sup>.

Paragraphe 11.b) : Inform the Committee, in writing, of the outcomes of the investigations and judicial proceedings that are opened and on the convictions and sentences handed down regarding both the above-mentioned reports and those referred to in the list of issues (CAT/C/BDI/Q/2/Add.1, paras. 9, 10, 12, 13 and 15), including the killings that occurred during and in the wake of the 2010 elections and more recent events, such as the killings of several members of religious minorities.

**71. Deogratias Niyonzima :** Deogratias Niyonzima was arrested on 1 August 2006 and brought to the Intelligence Agency (SNR) headquarters, where he was questioned about an alleged coup against the regime. Severe torture led Deogratias Niyonzima to confess his

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<sup>30</sup> Human Rights Watch “The investigations of the government ignored the abuse of State Forces,” 13 April 2016, available at <https://www.hrw.org/fr/news/2016/04/13/burundi-les-enquetes-du-gouvernement-passent-sous-silence-les-abus-des-forces> - in French

<sup>31</sup> *Ibid.*

<sup>32</sup> Report of the Federal Bureau of Investigation (FBI) and the report of the third National Commission to investigate the case of Ernest Manirumva

<sup>33</sup> “Local Declaration to the European Union on the Independence of Justice in Burundi,” 13 February 2012.

involvement. After being arbitrarily detained in the SNR cells for eight days, the victim was transferred to Mpimba central prison. M. Niyonzima spent six months in deplorable physical and sanitary conditions. Following his release, the victim and his family began receiving death threats, and eventually had to leave the country. M. Niyonzima unsuccessfully complained to Burundian authorities.

72. M. Niyonzima's case was brought before the Committee against Torture on 23 July 2012. The latter issued a favorable decision on 21 November 2014. However, no further action was taken in order to guarantee the implementation of such decisions. Particularly, no legal proceedings were initiated with regard to the acts of torture inflicted on the victim. As a result, and a year and a half after the CAT's decision, M. Niyonzima has yet to receive reparations for the human rights violations he suffered almost 10 years ago.

**73. Patrice Gahungu, spokesperson for the UPD-Zigamibanga party :** Executive advisor of the opposition party "Union pour la paix et le développement" (UPD), Patrice Gahungu was arrested in Bujumbura on 1 July 2010 by SNR agents. He was severely tortured over the course of five days, before being arbitrarily detained for another 5 days in the SNR cells. These facts were repeatedly reported to the investigating magistrate, and constituted the basis of a complaint submitted to the Public Prosecutor. However, no investigation was opened at that time.

74. Mr. Gahungu's case was submitted to the CAT on 30 July 2012. The Committee issued a favorable decision in August 2015: while the decision was communicated to both parties on 27 August 2015, no further action was taken. In its decision, the CAT recommended Burundi to "take all measures necessary to prevent threats or violent acts against the petitioner, in particular for submitting a complaint"<sup>34</sup>. Spokesperson for his political party, Mr. Gahungu was murdered on 7 September 2015, shortly after the assassination of Mr. Zed Feruzi, President for the UPD-Zigamibanga party. Mr. Gahungu's murder has yet to be solved.

**75. Mr. François Nyamoya :** Mr. Nyamoya is a well-known lawyer in Burundi who worked for one of the opposition parties. On 27 July 2011, Mr. Nyamoya was asked to appear before the Prosecutor General's Office. Questioned for two hours, he was not presented with the charges against him. Mr. Nyamoya was then arbitrarily detained in Mpimba central prison. On 19 August 2011, two days after being brought before the Council Chamber, Mr. Nyamoya was granted temporary release. However, on 2 September 2011, the Appellate Court ruled in favor of Mr. Nyamoya's detention. As a result, the lawyer was released on 17 February 2012 – seven months after his incarceration.

76. Mr. Nyamoya's case was brought before the United Nations Working Group of Arbitrary Detention (WGAD) on 1 November 2011. The latter issued a decision favorable to the victim on 15 October 2012<sup>35</sup>.

77. However, domestic authorities have yet to grant Mr. Nyamoya reparation, and close the case built against the him.

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<sup>34</sup> CAT, *Patrice Gahungu v. Burundi*, 522/2012, 10 August 2015, unofficial translation.

<sup>35</sup> WGAD, *François Nyamoya v. Burundi*, 7-2012, 15 October 2012.

**78. Léandre Bukuru, MSD party activist :** Léandre Bukuru, a political activist from the MSD party, was taken from his house in Gitega on 13 November 2011 by armed individuals dressed as police officers. The victim's body was found the following day in Giheta. Under the command of deputy superintendent Michel Nurweze – Rwembe – the victim was decapitated, and his head thrown in a latrine. After the burial of Mr. Bukuru was rushed by the SNR and domestic authorities, the victim's family began to receive threats and was eventually forced to leave the country. While open, the case has yet to lead to the prosecution of those responsible and the provision of reparations to the victim's family.

**d) Other elements favouring impunity**

➤ **Lack of independence of the judiciary**

79. The independence of the judiciary in Burundi is guaranteed by all regulatory texts, including the Constitution of the Republic of Burundi, the Arusha Agreements for peace and reconciliation, and the Judges Statute. In reality, most of the senior officials of the justice system are subjected to pressure by the executive, and their promotion is dependent on the "zeal" with which they defend its interests. The judges who refuse to comply with the instructions of the executive are rapidly subjected to forced transfers, often far from their families and at their expenses<sup>36</sup>. The management of the careers of judges has become a matter of the ruling party and does not constitute a guarantee for the protection of rights and public freedoms.

80. In August 2013, the General Assembly of Judiciary was held in Gitega, but the proposals for the improvement of the justice sector have never been implemented. These proposals included a recommendation with regards to the independence of the Supreme Court of Burundi and the composition of the Higher Council of the judiciary. At the time of writing, the final report of the General Assembly of the Judiciary, which the Ministry of Justice was meant to publish, had still not been made public. This demonstrates the lack of willingness of the Government of Burundi to foster the real independence of its justice system.

➤ **The precarious working conditions of judges**

81. The nobility of the mission entrusted to the judges (impartial justice, without any consideration of the person, integrity, loyalty and dedication to the cause of justice, etc.) contrasts with the remuneration which they receive and which is placed far below that of the executive and legislative powers. Judges struggle to meet their basic needs (food, housing and transportation) and to ensure the survival of his family, despite the fact that his rank demands additional expenditures. The precarious living conditions on the one hand and the requirement of professionalism on the other have caused a significant disaffection of judges by those most experienced. Article 4 of the Act governing the judges states that judges must be selected through competitive examinations. However, it is becoming common for the executive to appoint judges to fill the disaffection mentioned above.

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<sup>36</sup> East and Horn of African Human Rights Defenders Project, "2015; Burundi at a Turning Point", 2 February 2016, p. 41

➤ **Corruption as a threat to the justice system in Burundi**

82. The phenomenon of corruption in the judicial service is not addressed by the authorities who demonstrate a certain laxity, which on its own creates legal insecurity for the citizens. Civil society organisations in Burundi are greatly concerned by the many malfunctions and failures of the justice system of Burundi, in particular the insufficient number of judges, the inadequacy of the resources allocated and the lack of independence of the judiciary in terms of interference of the executive power.

83. Organisations are also concerned by the absence of fundamental procedural guarantees including access to a lawyer in the different stages of judicial proceedings as well as legal aid. The State has the obligation to ensure equal access to justice for all of its citizens, and the Bar Association of Burundi has under the law governing the profession of lawyers and the R.O.I. of the order of lawyers of Burundi, the monopoly of legal assistance before the courts. However, according to a study by *Lawyers Without Border*, “the State does ensure or finances only minor aspects of the legal aid provided to the population”<sup>37</sup>.

84. The most striking case is that of the harassment of defence lawyers in the case of the suspected *putschists* of 13 May 2015, where the defendants were forced to plead without the assistance of lawyers of their choice. Article 166 of the Code of Criminal Procedure requires the assistance of a lawyer when the offence for which the accused is prosecuted for is punishable in the penal servitude of at least twenty years. Some the lawyers for the defence in the case of the alleged *coup* leaders have been forced to flee the county as a result of the threats and harassment they have been subject to.

**4. Violations of the right of victims to lodge a complaint and the protection of victims against reprisals (Article 13)**

85. In accordance with Article 13 of the Convention against Torture, each State Party is obliged to guarantee to any person claiming to have suffered acts of torture the right to lodge a complaint with the relevant national authorities, who must then immediately proceed to an impartial examination of the case.

86. Burundi has recently adopted a law on the protection of witnesses and victims in order to facilitate the workings of the Truth and Reconciliation Commission (*Commission Vérité et Réconciliation*, or CVD). However, this law has still not been promulgated, and the scope of consultation has been very limited. In fact, civil society organisations, members of opposition parties, the victims and the organisations which represent the victims have not been included in the law-making process. The voting of such an important law without a broad-reaching and diverse consultation creates problems of appropriation and furthermore could stoke controversies, as has been the case with the implementation of transitional justice mechanisms.

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<sup>37</sup> *Avocats Sans Frontières*, “Study on the basis of the legal assistance in Burundi”, June 2011, available at [http://www.academia.edu/7573252/Etude\\_sur\\_laide\\_l%C3%A9gale\\_et\\_lassistance\\_judiciaire\\_au\\_Burundi](http://www.academia.edu/7573252/Etude_sur_laide_l%C3%A9gale_et_lassistance_judiciaire_au_Burundi)

87. The Burundian State does not guarantee the right to lodge a complaint with the purpose of this leading to an immediate and impartial examination of the alleged facts. Furthermore, the State has taken no efficient measures in order to protect the victims and witnesses who are subject to persecution. For example, according to an enquiry led by the FOCODE on the forced disappearance of Mr. Hugo Haramategeko, President of the NADEBU party, threats were made to members of his family. Furthermore, as mentioned above, Patrice Gahungu was assassinated several days after a decision of CAT, which had asked the Burundian state, as well as others, to ensure his protection.

#### **5. The non-invocation of any statement obtained under torture as evidence in any proceedings (Article 15)**

88. Article 15 of the Convention against Torture strictly prohibits State Parties from using statements obtained through torture or through any other mistreatment as evidence in legal proceedings against the victim. This ban also applies to statements made by a tortured person about his or herself, as well as to statements made regarding third parties.

**89. The Committee has recalled several times that Article 15 of the Convention against Torture is rooted in the absolute prohibition of torture. It notes that the general nature of the terms of Article 15 stems from this absolute character of the prohibition of torture, and consequently implies that each State Party is obliged to verify whether statements used in proceedings for which it is competent have not been made under torture.**

90. However, the Burundian public media in particular has presented numerous cases of those who have been arrested and tortured as having confessed to the crimes with which they were charged, in clear violation of Article 15. The case of Déogratias Niyonzima, mentioned above, is particularly representative of this trend. Arrested on the 1<sup>st</sup> August 2006 and taken to the SNR's general headquarters, he was interrogated about an alleged attempt to stage a coup d'état. He was severely tortured and eventually admitted his participation. After several months of detention, Mr. Niyonzima has been freed and has since firmly denounced these statements to the Burundian authorities. Since the beginning of the crisis in April 2015, such stories have become increasingly commonplace.

91. It is abundantly clear that acts of torture inflicted on the various persons who have been arrested and detained have the general aim of obtaining confessions. The mistreatment stops as soon as the detainee signs an official report in which he or she admits either their alleged guilt, or the guilt of opposition leaders or civil society activists.

#### **B. Allegations of torture and arbitrary deprivation of the right to life in the context of the political crisis (2015-2016)**

92. It is recommended that the State take all necessary measures to investigate all credible information relating to extrajudicial killings, including political assassinations, arbitrary arrests, and torture and other degrading treatment against members of the opposition, journalists, human rights defenders and their families, and any other person identified as supporting the opposition in 2015. Please indicate whether these investigations have led to the prosecution of security forces members or any other authority or responsible person, as well as the results of such investigations.



93. Following Pierre Nkurunziza's decision to run for a third term in office in April 2015, and the subsequent political crisis, gross human rights violations have become widespread. These include extrajudicial killings, torture and other degrading treatments, arbitrary arrests and unlawful detention, enforced disappearances, and cases of sexual violence.

94. It is worth emphasizing that the cases presented below constitute a sample of the current human rights situation in Burundi: their role is to illustrate the increase in such crimes.

### 1. Extrajudicial executions

95. The beginning of the political crisis marked a dramatic increase in the number of extrajudicial killings throughout the country. In November 2015, the United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein indicated that there had been an undeniable number of "documented extrajudicial killings, including alleged political assassinations"<sup>38</sup>.

96. As previously mentioned<sup>39</sup>, Amnesty International<sup>39</sup> has identified and documented the presence of mass graves in Burundi, demonstrating "a deliberate attempt by domestic authorities to conceal the scale of the killings committed by armed forces, and to prevent the truth from coming out"<sup>40</sup>. In this regard, Mr. Zeid called for urgent investigations of the alleged existence of nine mass graves in the city and its surroundings<sup>41</sup>. Following the report from the investigation committee established by the Ministry of Justice and led by the Attorney General, Assistant Secretary-General for Human Rights Ivan Simonović requested more detailed and credible investigations in relation to the mass graves allegations<sup>42</sup>.

97. In this regard, the country's obligation – stemming from national law as well as international commitments – to initiate thorough, effective, independent, and unbiased investigations of all known cases of human rights violations has not been respected. This obligation refers to a wide range of elements, including the identification, the prosecution, and the punishment of all those responsible, as well as the provision of reparation to victims.

**98. *The attack against military camps on 11 December 2015 was followed by a violent crackdown on residential neighborhoods that protested President Pierre Nkurunziza's third term*** : On the morning of 11 December 2015, an unidentified armed group attacked four

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<sup>38</sup> OHCHR, « *Le Burundi à « un tournant extrêmement dangereux » - Zeid Ra'ad Al Hussein*, press release, 10 November 2015

<sup>39</sup> Please see section A) 3) b).

<sup>40</sup> Amnesty International, "*Burundi: des images satellites confirment l'existence de fosses communes*", 29 January 2016, available at <http://www.amnesty.fr/Nos-campagnes/Crises-et-conflits-armes/Actualites/Burundi-des-images-satellites-confirment-existence-de-fosses-communes-17460> - in French

<sup>41</sup> OHCHR, "*Nouvelle vague « alarmante » de violations des droits humains au Burundi*", 15 January 2016, available at <http://www.un.org/apps/newsFr/storyF.asp?NewsID=36434#.V35ZozfAa7Y>

<sup>42</sup> ONU, "*Burundi: un responsable de l'ONU en charge des droits de l'homme juge la situation toujours préoccupante*", 22 march 2016, available at <http://www.un.org/apps/newsFr/storyF.asp?NewsID=36884#.V2VZMTdGv-Y>

military camps<sup>43</sup>. A violent repression against, and extrajudicial killings of, the youth living in the neighborhoods that protested President Pierre Nkurunziza's third term followed. These extrajudicial killings are said to have been committed by members of the National Defence Force. For instance, an inhabitant of Nyakabiga described how police officers would choose their victims from a group of young people bound hand and foot. Police officers would then kill them, without even fearing eye witnesses<sup>44</sup>.

99. Moreover, it is important to underline that a striking gap between the official estimation of individuals killed, established by the National Defence Force Spokesperson, and the number put forward by independent sources<sup>45</sup>.

100. In this context, the SOS-Torture/Burundi campaign has, among others, identified the following cases<sup>46</sup> :

101. **Sub-Lieutenant Hermès Nduwingoma** : The lifeless body of Sub-Lieutenant Hermès Nduwingoma was found in Nyakabiga, while the victim had been identified among the injured following the attacks against military camps on 11 December 2015. His family indeed confirmed that Mr. Nduwingoma, accompanied by a colleague, had sought medical treatment. On his way to the hospital, the victim was taken away by two police vans. Police officers then abandoned the body, riddled with bullets. Mr. Nduwingoma's family was told that the victim had been brought to the King Khaled public hospital's morgue. However, the army never officially announced the death of Mr. Nduwingoma to his family. Moreover, the victim's family was forced to postpone the funeral, following an order from the Institut Supérieur des Cadres Militaires (ISCAM) Major, to 31 December 2015. An investigation into the circumstances of the victim's death was given as a reason to delay the funeral. However, the results of such investigation have yet announced<sup>47</sup>.

102. **Raoul** : Living on 14<sup>th</sup> Avenue in Nyakabiga, Raoul was known to be mentally disabled. A witness reported seeing police officers tying the victim's hands and shooting him in the

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<sup>43</sup> Please see section 3 on general context.

<sup>44</sup> Report SOS-Torture / Burundi no. 1 of 19 December 2015, available at <http://sostortureburundi.over-blog.com/2016/01/sos-torture-burundi-n-1.html>; SOS-Torture/Burundi Campaign, Report on grave human rights violations observed in Burundi, 11 December 2015 – 11 March 2016, published on 29 April 2016, available at <http://sostortureburundi.over-blog.com/2016/05/rapport-sur-les-violations-graves-des-droits-de-l-homme-observees-au-burundi-11-decembre-2015-11-mars-2016.html> - in French

<sup>45</sup> Please see section 3 on general context.

<sup>46</sup> SOS Torture / Burundi Campaign, Report on grave human rights violations observed in Burundi, December 11, 2015 – March 11, 2016, published on April 29, 2016, available at <http://sostortureburundi.over-blog.com/2016/05/rapport-sur-les-violations-graves-des-droits-de-l-homme-observees-au-burundi-11-decembre-2015-11-mars-2016.html> - in French

<sup>47</sup> Rapport SOS-Torture / Burundi no. 1 du 19 décembre 2015, accessible sur [http://www.fiacat.org/IMG/pdf/SOS\\_Torture\\_Burundi\\_Numero\\_2\\_.pdf](http://www.fiacat.org/IMG/pdf/SOS_Torture_Burundi_Numero_2_.pdf) ; SOS Torture/Burundi Campaign, Report on grave human rights violations observed in Burundi, December 11, 2015 – March 11, 2016, published on 29 April 2016, available at <http://sostortureburundi.over-blog.com/2016/05/rapport-sur-les-violations-graves-des-droits-de-l-homme-observees-au-burundi-11-decembre-2015-11-mars-2016.html> - in French

head. Another injury to Raoul's head led a witness to suggest that police officers had also used a knife<sup>48</sup>.

103. **Innocent Ntahombaye** : A neighborhood milkman, Innocent Ntahombaye had lived on 16<sup>th</sup> Avenue for over 15 years. According to an eye witness, police came into the enclosure where Mr. Ntahombaye was selling milk, under the pretense of looking for armed youth. Innocent Ntahombaye was then taken by these police officers, and found dead on 11 December 2015. The victim's body has however disappeared. A witness reported that Mr. Ntahombaye had never led any activity other than selling milk, and does not believe official declarations according to which every person killed was part of armed groups that clashed with police and military officers during the 11 December attacks<sup>49</sup>.

104. **Prosper Ndayishimiye** : Mr. Ndayishimiye was first-year student at Great Lakes University, in Bujumbura, and lived in the Nyakabiga neighborhood. A classmate reported that the victim had been killed by a bullet to the stomach. As happened with the majority of the victims reported murdered by security forces in the Nyakabiga neighborhood, Mr. Ndayishimiye's body was taken away by official vans. As a result, his parents in the Mwaro province could not make proper funeral arrangements and bury their son<sup>50</sup>.

105. In the months that followed, many other cases of extrajudicial, summary or arbitrary executions have been documented. For example, the SOS-Torture/Burundi campaign has documented among others the following cases:

106. **Mr. William Nimubona, activist from the FNL opposition party** : The body of William Nimubona was found near the Carama Secondary Technical School, in the northern area of Bujumbura, on 3 January 2016. The victim was an activist working for Mr. Agathon Rwasa's opposition party, the FNL. More particularly, Mr. Nimubona was the head of the Kavumu section, in the Kamenge area. Eye witnesses reported seeing armed forces tying the victim's hands and shooting him<sup>51</sup>.

107. **Mr. Laurant Gasasuma, former member of the Burundi Armed Forces (FAB)** : Mr. Gasasuma, a former member of the national Armed Forces, was killed on the night of 31 January 2016, in the Gikoto neighborhood, in the Musaga area of southern Bujumbura. Two of his children were injured in the attack. Witnesses reported that half a dozen young members of the ruling party (CNDD-FDD), accompanied by the *Imbonerakure* militia, were responsible for the killing of Mr. Gasasuma<sup>52</sup>.

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<sup>48</sup> Report SOS-Torture / Burundi no. 1 of 19 December 2015, available at <http://sostortureburundi.over-blog.com/2016/01/sos-torture-burundi-n-1.html>

<sup>49</sup> *Ibid.*

<sup>50</sup> Report SOS-Torture / Burundi no. 1 of 19 December 2015, available at <http://sostortureburundi.over-blog.com/2016/01/sos-torture-burundi-n-1.html>

<sup>51</sup> Report SOS-Torture / Burundi no. 4 of January 2016, available at <http://www.fiacat.org/rapport-sos-torture-burundi-no-4>

<sup>52</sup> Report SOS-Torture / Burundi no. 8 of 6 February 2016, available at [http://www.fiacat.org/IMG/pdf/SOS\\_Torture\\_Burundi\\_numero\\_8.pdf](http://www.fiacat.org/IMG/pdf/SOS_Torture_Burundi_numero_8.pdf)

108. **Ndaruseheye, a detainee in Rutana prison** : A detainee in Rutana prison, called Ndaruseheye, was killed by a police officer outside the walls of the detention center on 14 February 2016. Witnesses reported that the perpetrator, named Claude, was not assigned to prison security but to a municipal position in Rutana. The police officer shot three bullets in the victim's chest, about 30 meters away from the prison, in a banana plantation – where Ndaruseheye was later found<sup>53</sup>.

109. **Justin, beaten to death by SNR agents** : A young man named Justin, who usually went by “Badadi”, was arbitrarily killed on 8 April 2016, in the Kanyosha area of the Ruziba neighborhood, in southern Bujumbura. Originally from Mutambu, Justin was killed by SNR agents. Witnesses reported seeing SNR agents answering a call from a neighborhood woman, and then beating the victim to death. Justin succumbed to his injuries, despite passersby having rushed him to a health center. Justin's murder has yet to be investigated<sup>54</sup>.

110. **Mr. Melchior Hakizimana, deputy head of the opposition party MSD in Muhanga** : Mr. Hakizima, deputy head of the MSD party in Muhanga, in the northern area of the country, was killed on 10 April 2016. Witnesses reported that the victim was stabbed repeatedly, before being abandoned in the latrine close to his house. One of his young sons found his lifeless body the following morning. Domestic authorities arrested the young boy – despite him being a minor. The victim's family believe that the killing of Mr. Hakizima was a political assassination<sup>55</sup>.

#### Recommendations:

- **To immediately stop extrajudicial killings;**
- **To undertake urgent measures in order to ensure that all alleged cases of arbitrary deprivation of the right to life be the object of prompt, unbiased and independent investigations, so as to identify, prosecute and adequately punish those responsible ;**
- **To inform the Committee, in writing, about the results of the open investigations, the proceedings initiated, and the sentences pronounced with regard to the alleged cases of extrajudicial executions above described ;**
- **To ratify the Optional Protocol to the International Covenant on Civil and Political Rights, in order to enable the submission of individual communications to the Human Rights Committee for cases of arbitrary deprivation of the right to life, when victims do not obtain justice before national jurisdictions.**

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<sup>53</sup> Report SOS-Torture / Burundi no. 10 of February 2016, available at <http://www.fiacat.org/sos-torture-burundi-no10>

<sup>54</sup> Report SOS-Torture / Burundi no. 18 of 16 April 2016, available at <http://sostortureburundi.over-blog.com/2016/04/sos-torture-n-18.html>

<sup>55</sup> *Ibid.*

## 2. Torture and ill-treatment

111. The use of torture and ill-treatment in Burundi has increased exponentially with the intensification of the political crisis. The UN High Commissioner for Human Rights reports “widespread and growing use of torture and ill-treatment by government security forces”<sup>56</sup>, with 651 cases of torture recorded between April 2015 and late April 2016, mainly committed between April and July 2015, October 2015 and between December 2015 and April 2016 - periods corresponding to “phases of intensified repression against government opponents and people suspected of belonging to rebel movements”<sup>57</sup>.

112. Torture and ill-treatment take place mainly at the time of arrest, including during the journey between the place of arrest and detention facilities and in the detention centres themselves, which are scattered across urban and rural areas of the country. Unfortunately, the SNR facilities in Bujumbura are well known for this phenomenon. For example, one of the SNR cells regularly cited in torture case files is located above the Regina Mundi cathedral in the district of Rohero in Bujumbura, where General Cyrille Ndayirukiye, the “second in command” during the coup attempt, was detained from 15 to 18 May 2015.

113. Upon his arrest, General Ndayirukiye was beaten, resulting in serious injuries and the loss of hearing in his right ear. During his detention, he was denied treatment and the right to contact his family and lawyers. The General has also been the victim of humiliating and degrading treatment perpetrated by men of lower rank. He has suffered repeated death threats and was forced to make public statements, including urging people to stop protests against the third mandate of Pierre Nkurunziza.

114. Another infamous unofficial SNR cell called “Iwabo W'abuntu” is situated in the Kamenge neighbourhood, inside a cafe owned by General Adolphe Nshimirmana, head of the SNR who was murdered on 2 August 2015.

115. Also of serious concern is the proliferation of secret detention facilities. We would like to mention in particular the existence of containers used as secret places of detention in Kigobe and an illegal police detention centre named “Chez Ndadaye” where torture is perpetrated on a regular basis. Among the torture techniques employed there, Amnesty International reports the use of electrical cables and truncheons to beat the detainees<sup>58</sup>.

116. Similarly, SOS Torture / Burundi emphasises the existence of a “gite” belonging to the Burundi Tea Board (*Office du Thé du Burundi* - OTB), the publicly owned tea company, where two young men from the town of Mugamba were detained for two days, after being

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<sup>56</sup> OHCHR, Torture and illegal detention on the increase in Burundi, press release of April 16, 2016, available at: <http://www.ohchr.org/FR/NewsEvents/Pages/TortureDetentionAuBurundi.aspx> in French - unofficial translation

<sup>57</sup> Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Burundi, 17 June 2016, accessible at <https://t.co/1YN13e2TL6> in French - unofficial translation

<sup>58</sup> Amnesty International, Burundi. Torture used to extract confessions and crush dissent, August 24, 2015, accessible at: <https://www.amnesty.org/en/latest/news/2015/08/burundi-torture-used-to-extract-confessions-and-crush-dissent/>

tortured by soldiers during their arrest. The men were detained on May 6, 2016 for collaborating with armed groups, both have been missing since 8 May 2016<sup>59</sup>.

117. Torture and abuse are perpetrated in secret detention facilities, making it increasingly difficult to document these cases systematically. The same problem exists for official places of detention, since human rights organisations are constantly denied access to prisons, especially SNR facilities. This situation is especially problematic because as has already been pointed out in previous reports<sup>60</sup>, NGOs play a fundamental role in the identification of cases of torture and ill-treatment, because there are no state statistics on this problem.

118. Most cases of torture and ill-treatment identified by NGOs happen at the time of the arrest. The following cases illustrate this practice.

119. On 5 February 2016, several young students were tortured after they were arrested in Cibitoke. Bruises and strap marks were observed on their bodies after they were tied up and subjected to violence. Some of the victims reported that Lieutenant-Colonel Darius Ikurakure and his men carried out the operation<sup>61</sup>. This Lieutenant Colonel had been regularly involved in repression against opponents of the third term of President Pierre Nkurunziza, and was murdered on 22 March 2016.

120. On 15 February 2016, during mass arrests carried out by police and SNR agents, an individual was tortured with bayonets by the police anti-riot Squad (*Brigade anti-émeute* - BAE) according to witnesses on the orders of Commissioner Desire Uwamahoro, a recurring name in cases files of summary executions and torture<sup>62</sup>.

121. On 22 February 2016, following a grenade attack in a market, a young student named Kennedy Nduwimana was arrested and beaten severely by plainclothes men in Kamenge. This young man was accused of throwing a grenade and was lynched and tortured on site by the population in the presence of police officers. Witnesses have stated that his fingernails were torn out before he was taken away by SNR agents.

122. In addition, some media sources have reported information about the use of poison by defence agents, security guards and SNR to target those protesting against the third term of Pierre Nkurunziza, as well as against members of the attempted coup in different prisons, including exiled civil society leaders, media professionals and leaders of opposition political parties.

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<sup>59</sup> Report SOS Torture / Burundi no. 22 of 14 May 2016, available at: <http://sostortureburundi.over-blog.com/2016/05/sos-torture-burundi-n-22.html> - in French

<sup>60</sup> Burundi, Civil society report on the implementation of the Convention against Torture in response to the list of points to be undertaken (CAT/C/BDI/Q/2/Add.1), October 2014

<sup>61</sup> SOS Torture/Burundi Campaign, Report on grave human rights violations observed in Burundi, December 11, 2015 – March 11, 2016, published on April 29, 2016, available at <http://sostortureburundi.over-blog.com/2016/05/rapport-sur-les-violations-graves-des-droits-de-l-homme-observees-au-burundi-11-decembre-2015-11-mars-2016.html> - in French

<sup>62</sup> *Ibid.*

123. SOS-Torture Burundi has collected testimony from Mr. Egide Nkuzimana who was forced to flee Burundi after being arrested and detained for several days following a raid on his home on 28 December 2015. At the time of the raid, Mr. Nkuzimana says he recognised Lieutenant-Colonel Darius Ikurakure and Commissioner Desire Uwamahoro. The victim has said that he was accused of holding a stock of weapons and was tied up and beaten repeatedly by police officers and members of the riot squad. While being led into a dungeon in the Kinam area, his torturers injected him with something using a needle which caused paralysis in his left arm. After several days in detention during which he was denied the right to consult a doctor, he was finally released and fled Burundi. He is still afraid that his whole body has been affected and that his arm will have to be amputated<sup>63</sup>.

124. Although in most cases those responsible for crimes of torture are state agents whose identity is known, impunity continues to be widespread. The provisions contained in Articles 205, 206, 207, 208 and 209 of the new Penal Code prohibit torture and establish penalties that range from 10 years' imprisonment to a life sentence if the torture resulted in the death of the victim. However, as already noted, officials are rarely punished, especially when they belong to the SNR, the *Imbonerakure* militia or the national police.

#### **Recommendations:**

- ***Reaffirm unequivocally the absolute nature of the prohibition of torture and make it publicly known that anyone who commits such acts, is an accomplice to them or tacitly permits them, will be held personally responsible before the law;***
- ***Take urgent steps to ensure that in all cases of alleged torture and ill-treatment, prompt, impartial and independent investigations are undertaken to identify those responsible, regardless of their status, that they are prosecuted and if found guilty, are sentenced to appropriate sanctions;***
- ***Ensure adequate redress for victims of torture under Article 14 of the Convention and General Comment No. 3 of the Committee Against Torture;***
- ***Guarantee civil society organisations unimpeded access to places of detention and the possibility of making recommendations to the authorities;***
- ***Proceed immediately with the closure of all secret detention sites, initiate investigations and prosecute those responsible for torture and ill-treatment in such places.***

### **3. Arbitrary arrests and unlawful detentions**

125. Human rights organisations in Burundi are highly concerned about the hundreds of cases of arbitrary arrests and illegal detention that in particular target those considered to be opponents to the regime of President Nkurunziza.

126. In the majority of cases, these arrests are conducted in violation of the rules of criminal procedure, without a warrant and without any legal basis. The prosecution often ignores the

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<sup>63</sup> Report SOS Torture / Burundi no. 5 of 15 January 2016, available at <http://sostortureburundi.over-blog.com/2016/05/sos-torture-burundi-n-5.html> - in French

situation of those who have been arrested and who are detained incommunicado, without any possibility of contacting their families and lawyers. Even when there is a legal basis for the detention, the legal time limits of police custody and preventive detention are systematically exceeded<sup>64</sup>.

127. The most commonly-used grounds for these arrests include possession of weapons, recruiting combatants, providing accommodation and supporting the rebels, collaborating with armed groups, participating in protests against the President's third term and saw a result of checks on work permits or "household identification books" (*cahiers des ménages*). These books, which detail the people living in each household, have now become mandatory but are nevertheless without any legal basis. They therefore constitute a form of repression in the districts which are protesting against the third term of the Burundian president.

128. To give an idea of the magnitude of this situation, between April 2015 and the end of April 2016, the Office of the High Commissioner for Human Rights in Burundi (OHCHR-B) documented 5881 cases of arrest and detention, including at least 3477 described as arbitrary<sup>65</sup>.

129. Between 9 December 2015 and 31 March 2016, the SOS-Torture Burundi Campaign identified 736 victims of arbitrary arrests, including 315 identified victims and 420 unidentified victims<sup>66</sup>.

130. A closer analysis of these cases shows that the targeted areas are mainly neighbourhoods that are alleged by the local administration in Bujumbura to be protesting against the third term of President Nkurunziza, as well as the provinces of Bururi and Makamba, where the population has experienced several waves of mass arrests.

131. The first of these "raids" took place the day after an attack on military camps, on 11 December 2015, when the police arrested sixty-eight young people in Bujumbura, in the neighbourhoods of Musaga and Nyakabiga - the two main areas where repression by the police and the army took place - on charges of "*participating in armed gangs, illegal possession of firearms and violation of state security*"<sup>67</sup>. These sixty-eight young people

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<sup>64</sup> Articles 32 and 40 of the new Code of Criminal Procedure of April 2013 specify that the custody period is for 7 days, renewable once with the authorisation of a government law officer. Articles 110 and following of the Code of Criminal Procedure regulate preventive detention and set a deadline of 30 days, after which, preventive detention can be extended by a reasoned decision for a month and so on, month by month, as long as the public interest requires. However, pretrial detention may only exceed twelve months if the events appear to constitute an offence for which the punishment provided by law is not more than 5 years' imprisonment.

<sup>65</sup> Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Burundi, 17 June 2016, available at <https://t.co/1YN13e2TL6> - in French

<sup>66</sup> SOS-Torture / Burundi Campaign, Report on grave human rights violations observed in Burundi, December 11, 2015 – March 11, 2016, published on 29 April 2016, available at <http://sostortureburundi.over-blog.com/2016/05/rapport-sur-les-violations-graves-des-droits-de-l-homme-observees-au-burundi-11-decembre-2015-11-mars-2016.html> - in French

<sup>67</sup> Report SOS Torture / Burundi no. 3 of 31 December 2015, available at <http://sostortureburundi.over-blog.com/2016/01/sos-torture-burundi-n-3.html> - in French



were first of all held in SNR cells, then in Mpimba central prison in the Musaga neighbourhood before being transferred aboard two trucks to the Muramvya prison (about 50 kilometres north of Bujumbura) on 16 December 2015. Witnesses inside the prison at the time of the events say that many detainees arrived in critical condition. *“Some were not wearing shirts; others had no shoes and were trembling with cold”*. They also saw two prisoners who arrived with *“bullet wounds”*<sup>68</sup>.

➤ ***Mass arrests as a form of repression and intimidation against the population in neighbourhoods where protests have taken place***

132. Many cases of mass arrests have taken place. It is important to mention the following cases:

- On the morning of 11 May 2016, police conducted mass arrest operations in the district of Musaga. Witnesses indicate that nearly 200 people, mostly young men, were rounded up. They were all sent to the municipal offices in Musaga and were left for many hours sitting in the sun waiting to be identified. Four of the young men were detained by police in the afternoon at the end of the operation and taken to the SNR; the others were released. Similar arrests were also conducted on 13 May 2016 in the same area where hundreds of young people were arrested. At the end of the operation, only one young man was still being held in police detention. The operation was conducted by a number of police officers, including the special anti-riot brigade who have been active in the repression since the beginning of the crisis, and who went directly into schools during classes and arrested the young students<sup>69</sup>.
- On 29 May 2016, police arrested dozens of people during raids in the neighbourhood of Bwiza in Bujumbura, following systematic checks on the “household identification books”. Around a dozen people continue to be held in custody at the municipal police station. During the arrests, police officers demanded bribes from the arrested persons in exchange for their release<sup>70</sup>.
- On 30 May 2016, other raids were conducted in Cibitoke by police officers and soldiers. During this operation, witnesses report that agents who had come to check the “household identification books” forced men and women to undress publicly under the pretext of proving that they were not hiding guns on their person<sup>71</sup>.
- On 4 June 2016, the police carried out raids in the Musaga area. A hundred young people were arrested and taken away by police officers. Inhabitants in the area complain of incessant arbitrary arrests carried out by the police who do not inform

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<sup>68</sup> Report SOS Torture / Burundi no. 1 of 19 December 2015, available at <http://sostortureburundi.over-blog.com/2016/05/sos-torture-burundi-n-1.html> - in French

<sup>69</sup> Report SOS Torture / Burundi no. 22 of 14 May 2016, available at <http://sostortureburundi.over-blog.com/2016/05/sos-torture-burundi-n-22.html> - in French

<sup>70</sup> Report SOS Torture / Burundi no. 25 of 4 June 2016, available at [https://www.fiacat.org/IMG/pdf/SOS-Torture\\_Burundi\\_numero\\_25-1.pdf](https://www.fiacat.org/IMG/pdf/SOS-Torture_Burundi_numero_25-1.pdf) - in French

<sup>71</sup> *Ibid.*

the relatives as to the whereabouts of their detained family member<sup>72</sup>.

133. In April and May 2015, similar raids were also held in the town Mugamba, province of Bururui, which for week was subjected to harsh repression, sometimes violently, at the hands of agents from the State security services against people protesting about the third term of President Nkurunziza.

134. The people of Mugamba are also increasingly concerned about the approach of 15 June 2016 which was set by President Pierre Nkurunziza as the date when order and security would be restored in the town. On 1<sup>st</sup> June, the President did in fact visit the town of Mugamba in order to strongly warn residents to disarm and leave armed groups within two weeks. Residents fear that there will be a purge in the town purely because they demonstrated against the President's third term<sup>73</sup>.

➤ ***Relatives of wanted persons are being arrested***

135. Relatives of wanted persons are regularly arrested by the Burundian police without any legal basis and in violation of fundamental legal safeguards. The cases below illustrate this practice:

- On 6 April 2016, five people were arrested in the town of Burambi in Rumonge. Among them two minors, Alfred Dusengimana aged 14 and Thierry Ndayizeye aged 17, were arrested in place of their father, a former soldier named Côme Niyongabo<sup>74</sup>.
- On 7 April 2016, three young men, Jimmy Ngendangezwa, Déo Gahungu and Joseph Nahayo, were arrested in Bujumbura in place of their relatives or parents who were wanted persons.
- On the afternoons of 12 and 13 April 2016, Fiacre Ntacobakimvuna, a high school student, and Patrice Ngobera, a retired military officer, were arrested in the district of Mukike in Bujumbura by a military officer and appointed commander of the Mujejuru camp, Major Gahomera. Witnesses indicate that Mr. Ngobera was arrested in place of his son as the army did not find him at home when they arrived. Both men were transferred to Bujumbura on 14 April 2016 by the same officer, but their relatives do not know where they are being held.
- On 9 June 2016, the day after two SNR agents were killed, two men named Augustin Nkunuzimana and Jean Berchmans Shabandi were arrested in the Nyagasasa area of the Mugamba district, in Bururi province. Witnesses indicate that the police were actually looking for the nephew of Mr. Shabandi, and that both men were arrested

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<sup>72</sup> Report SOS Torture / Burundi no. 26 of 11 June 2016, available at [https://www.fiacat.org/IMG/pdf/SOS-Torture\\_Burundi\\_numero\\_26.pdf](https://www.fiacat.org/IMG/pdf/SOS-Torture_Burundi_numero_26.pdf) - in French

<sup>73</sup> *Ibid.*

<sup>74</sup> Report SOS Torture / Burundi no. 17 of 8 April 2016, available at [https://www.fiacat.org/IMG/pdf/SOS-Torture\\_Burundi\\_numero\\_17.pdf](https://www.fiacat.org/IMG/pdf/SOS-Torture_Burundi_numero_17.pdf) - in French

in his place<sup>75</sup>.

#### Recommendations:

- ***Discontinue the practice of arrests made by State agents with the pretext of checking “household identification books” and take the necessary measures to ensure that grounds for arrest comply with Burundian law;***
- ***Revise the Criminal Procedure Code to set a reasonable limit for the duration of preventive detention; guarantee that persons held in police custody or on remand have the fundamental legal safeguards applied, including the right to be promptly informed in writing about the reasons for their arrest, information about their rights, access to a lawyer and a doctor of their choice, communication with loved ones, access to legal aid for people living in poverty and the right to be brought before a judge as soon as possible;***
- ***Take the necessary legislative measures to ensure that the period of police custody does not exceed 48 hours and that all detained persons are brought before an independent judicial authority within 48 hours after their arrest to ensure control of the grounds for arrest and the renewal of custody;***
- ***Monitor compliance with legal safeguards by all public officials and punish those who do not respect them.***

#### 4. Enforced disappearances

136. Burundi has not ratified the Convention for the Protection of All Persons against Enforced Disappearance, although it signed it on 6 February 2007.

137. In January 2013, during the Universal Periodic Review, a recommendation was made<sup>76</sup> to the State of Burundi in the direction of the ratification of the Convention for the Protection of All Persons against Enforced Disappearance. At the same time, the recommendation requested that the State recognise the competence of the Committee on Enforced Disappearances to receive and consider communications from individuals or on behalf of persons under the jurisdiction of the Republic of Burundi in accordance with Articles 31 and 32. This recommendation was accepted by the State, but to date the country still has not ratified the Convention.

138. On the ground, we note that since the declaration of the third term by the President of the Republic, several cases of enforced disappearances against protesters, former military FAB, and young people residing in protesting neighbourhoods<sup>77</sup> are increasing day by day:

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<sup>75</sup> Report SOS Torture / Burundi no. 26 of 11 June 2016, available at [https://www.fiacat.org/IMG/pdf/SOS-Torture\\_Burundi\\_numero\\_26.pdf](https://www.fiacat.org/IMG/pdf/SOS-Torture_Burundi_numero_26.pdf) - in French

<sup>76</sup> Recommendation made by Mexico and Argentina, Report of the Working Group on Burundi, page 18, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/BI/A\\_HRC\\_10\\_71\\_Burundi\\_F.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/BI/A_HRC_10_71_Burundi_F.pdf)

<sup>77</sup> The majority belonging to the Tutsi ethnic group

➤ **Members of civil society**

139. **Albert Dushime:** On the night of 21 November 2015, Dushime, a visual artist working at the Living Museum of Bujumbura and President and Legal Representative of the PICA-Umurundi Association (Indoor Promotion of Culture and Art), was arrested by the Commissioner of the provincial police in Kirundo, Jacques Nijimbere. He was then taken on the vehicle of Mr. Joseph Mathias Niyonzima (nicknamed Kazungu) SNR, who himself came to issue the order to take Dushime to the capital, Bujumbura, to be imprisoned there. Since then, Mr. Albert Dushime has not been found or heard from. He is still wanted by his family who have not heard from him.

140. **Marie-Claudette Kwizera:** On 10 December 2015, Ms. Kwizera, Treasurer of the ITEKA League (a leading human rights organisation in Burundi), was abducted by officers from the National Intelligence Service. According to information gathered by the authors of this report, two days later, (12 December), a Secret Service agent named Mr. Dieudonné Bigirimana (known as "Taïzon") had issued to the family a promise to release Ms. Kwizera in exchange for a ransom of about 2 000 euros. This sum was paid to him, but the release did not take place. The family finally decided to file a complaint. The investigation of that complaint led, on 4 January 2016, to the arrest of Mr. Bigirimana<sup>78</sup>. In addition, agent "Taïzon" and a family member who had approached Ms. Kwizera, were arrested and imprisoned in early January. According to some reports, "Taïzon" was released in absolute silence.

141. It should be noted that forty-three days after this disappearance, the Burundian authorities still refused to provide information on the fate of the latter or her whereabouts. Faced with this silence, the Observatory for the Protection of Defenders of Human Rights (FIDH-OMCT joint program) called upon the UN Working Group on Enforced or Involuntary Disappearances to locate her as soon as possible<sup>79</sup>.

➤ **Members of opposition political parties**

142. **Charles Mutoniwabo and Pascal Ndimurukundo:** Mr Mutoniwabo, nicknamed Maggiore, a member of the opposition party 'Movement for Democratic Solidarity', was arrested along with fellow party member Pascal Ndimurukundo on 22 December 2015. He was at the top of a list of candidates running for legislative elections in Cibitoke province. The arrest was made in the north Mutanga district in the city of Bujumbura. Several witnesses reported that it was conducted by a SNR agent named Joseph Mathias Niyonzima (nicknamed Kazungu), known for his alleged involvement in several atrocities.

143. The families of the two men visited all the prisons in Bujumbura city, including the intelligence service, but found no trace of them. Relatives of the family, however, revealed to organisations defending human rights (the authors of this report) that they had received several ransom demands in order to see their relatives again. The interlocutors informed

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<sup>78</sup> FIDH Press release, "Burundi: No news of Marie-Claudette Kwizera since her abduction, the Observatory captures the United Nations", 22 January 2016, available on <https://www.fidh.org/fr/themes/defenseurs-des-droits-humains/burundi-sans-nouvelle-de-marie-claudette-kwizera-depuis-son>

<sup>79</sup> *Ibid.*

the NGOs that their fear and anxiety has been increasing daily since they were informed of similar ransoming practices being conducted by the police or intelligence service, which sometimes end in executions.

144. **Mme Christa Bénigne Irakoze and M. Eddy Claude Ndabaneze:** On 29 December 2015, Ms. Irakoze received a phone call around 9:30am whilst she was at home in Rubirizi, in the Mutimbuzi district of rural Bujumbura. Before going to the meeting place of her correspondent, she drove through north Mutanga in Bujumbura Town where she picked up Eddy Claude Ndabaneze, a former officer of the Burundian army. Arriving at the place of rendezvous in Rubirizi a few hours later, Ms. Irakoze and Mr. Ndabaneze were stopped by armed men led by Lieutenant Colonel Darius Ikurakure, Commandant du Camp Bataillon Génie de Combat of Muzinda. Upon their arrest, according to witnesses, the two captives were beaten before being loaded into a military pick-up vehicle, which then headed in the direction of Mutakura in Bujumbura Town. Since that time, the relatives of the two captives have lost all trace of them.

145. **Hugo Haramategeko:** On 9th March 2016, Mr. Hugo Haramategeko, a senior official of the State, was reported missing since his arrest by the National Police at his home in Bujumbura. He would have been abducted from his home by six heavily-armed men in police uniform. No arrest warrant was presented to him. The family announced that this political opponent and leader of the New Alliance for the Development of Burundi (NADEBU) was arrested at his home by members of the security forces of the Anti-Riot Brigade. Concerned for his safety, the family has heard no news of him<sup>80</sup>.

➤ **Ex Members of the FAB (Forces Armées Burundaises - Burundian Armed Forces) of the Tutsi ethnic group**

146. **Simon Masumbuko:** On 27 March 2016, Simon Masumbuko, a former FAB officer and Deputy-Chief of Police of the Air, Borders and Foreigners (PAFE) north of the country in Muyinga, was abducted by a SNR agent. Witnesses speak of a kidnapping conducted by an officer of the National Intelligence Service named Claude aboard a pickup, who stayed for two days in the same hotel as the victim. Since his disappearance, the family has expressed great concern for the safety of the OPP 2 and, to date, they have had no news of his place of detention in case he is still alive.

147. **Serge Nkurikiye:** On 2 April 2016, Master-Corporal Serge Nkurikiye, a soldier of the army working at the Mess of the Bujumbura garrison officers, was arrested by agents of the National Intelligence Service in the south of the city of Bujumbura. To this day, his relatives say they have no news of him and ask the authorities to inform them of his fate.

148. **Vianney Nsengiyumva:** On 3 April 2016, Vianney Nsengiyumva, nicknamed in the military "Gishubi" and employed in the care service at the Kamenge military hospital, was arrested and reported missing in the Cibitoke area (north of Bujumbura) by agents of the

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80 After his arrest, civil society organisations - namely the Iteka League via its President - alerted the entire national and international community via the Inzamba and Humara radio networks that this politician has not been killed like M. Zed Feruzi, former president of the party UPD Zigamibanga and his spokesman Patrice GAHUNGU.

SNR. He was taken to a location unknown to his family and loved ones, who reported a kidnapping. According to his family he paid the price of his membership to the old FAB army (before the merger with the former rebel movements including the CNDD FDD currently in power).

149. **Placide Mpawenayo:** On 4 April 2016, a Master-Corporal Placide Mpawenayo was reported missing by SNR agents. He was seen for the last time visiting the Kamenge area (north of Bujumbura) where he was responding to the call of his superior. Said superior is the First Sergeant Major Ndayishimiye, a logistics officer of Camp Muzinda assigned to the Combat Engineering Battalion led by the late Lieutenant Colonel Darius Ikurakure accused of numerous abuses and violations of human rights before his assassination on March 22nd 2016. Like all other cases of arrests or military abductions, Master-Corporal Placide Mpawenayo is also from the former Burundian Armed Forces (ex-FAB). To date, his relatives and comrades have no news of him.

150. **Savin Nahindavyi:** On 1 May 2016, an officer of the SNR in Bujumbura named Savin Nahindavyi of the Tutsi ethnic group, was reported missing from his workplace by colleagues from the Hutu ethnic group. According to sources from his family, the victim had gone to work for the night shift and nobody has seen him since. His wife confirms to have been in contact with him via telephone on the day of his abduction.

- **Young protesters from neighbourhoods largely of the Tutsi ethnic group, foreigners from Rwanda and other young opponents of the Hutu ethnic group who are against the illegal mandate of the President of Burundi**

151. **Placide Biraboneye:** On 6 April 2016, a young man named Placide Biraboneye was arrested and reported missing in the morning, near the market known as "Siyoni", located in the industrial section of the Ngagara area. Of Rwandan nationality, he worked as a distributor for a local mineral water company. Witnesses report that the man was taken away by police who were travelling in a civilian car without registration plates. Witnesses are concerned about the kidnapping because they could not identify the officers or their home unit in order to find the possible whereabouts of this man.

- **Involvement of state officials in cases of enforced disappearances**

152. **According to information gathered by the authors of this report, most cases described above would** have been committed by police officers and others of the National Intelligence Service. Several witnesses declared that they had seen police officers and agents of the National Intelligence Service involved in these kinds of cases of enforced disappearance. The fact that, in these cases, the material identified as state property has been used, supports this theory.

- **Lack of judicial and police investigation**

153. In Burundi, the independence of the judiciary is not effective. Magistrates are overshadowed and feel indebted to the executive, whose agents are guilty of abductions and enforced disappearances. The magistrates who are supposed to conduct investigations

to bring these cases to light find themselves unable to open credible judicial investigations to shed light on cases of enforced disappearance. Eager to benefit from the good graces of the executive, they show no enthusiasm to carry through investigations and punish the perpetrators who are the servants of the state.

154. More worrisome, police, agents of the National Intelligence Service, etc. who break the law by conducting this kind of exaction of enforced disappearances and other crimes, are promoted to various senior ranks as a sign of gratitude instead of being severely punished in order to eradicate this scourge. To illustrate this, reference must be made to the case of Desire Uwamahoro, a police officer who has been cited in several crimes against civilians. Instead of sanctions against the charges brought against him, he received a certificate of merit from the Minister of Public Security, Alain Guillaume Bunyoni, and was recently promoted to Commander of the Anti-riot Police. It is the same case for General Bisaganya, who received a prize from Pierre Nkurunziza on the day of commemoration of the independence of Burundi on 1st July 2015, even though this police officer was involved in the shooting of protesters in April and May 2015.

#### **Recommendations :**

- ***To ratify as soon as possible the Convention for the Protection of All Persons from Enforced Disappearance, which Burundi signed on 6th February 2007.***
- ***To instruct state agencies to make every effort to search and find the actors of civil society, opposition activists and other figures reported missing, especially those who were previously being monitored by the order enforcement agencies;***
- ***Enable families of missing persons to have access to useful information regarding the conditions of detention and the circumstances in which their relatives disappeared;***
- ***Instruct law enforcement and security bodies on the need to respect human rights, including during questioning;***
- ***Set up a commission of independent and impartial investigation into cases of disappearance and allegations of rape and violence against women.***

## **5. Sexual and gender-based violence**

155. Sexual and gender-based violence have been a reality in Burundi for several years. The period of crisis in the country since April 2015 has worsened the situation. Indeed, as the crisis deepened, girls as well as women who participated tentatively in the demonstrations have felt the need to take an initiative independent of their husbands, brothers and sons to organise protests on 10 May 2015 and 13 May 2015. This has led to some of the violence subsequently perpetrated against them.

156. Some obstacles prevent the identification of all the victims, who fear reprisals; moreover, Burundian culture renders sexual issues taboo. Despite these obstacles, the authors of this report have been made aware of various case of rape, including:

➤ **Use of rape as a method of repression**

157. During the period of peaceful protest against the third mandate of Pierre Nkurunziza, several cases of rape committed by security forces and young people affiliated with the ruling party were reported. The mode of operation consisted of the police breaking into houses under the pretext of searching for hidden weapons, then separating the men from the girls and/or women and committing acts of rape upon the latter.

158. Another method consisted of organising mass roundups, arresting people on football pitches or in unofficial prisons. In this case, acts of separation were carried out and the females were systematically raped. They were often released after 72 hours, after which time the risk of unwanted pregnancies and transmission of HIV / AIDS has increased.

159. Moreover, when community service or events are organised by the ruling party, songs encouraging young *Imbonerakure* to rape women and girls perceived as opponents are sung.

160. Up until March 2016, the information gathered from the SERUKA Centre, specialising in assisting young girls and women in general (and sexual violence in particular), has reported 545 new cases of sexual violence in Bujumbura, including 14 cases which were committed by uniformed men and 24 by armed persons.

161. A young woman, M.A, agreed to testify and explained that three young *Imbonerakure* came to her home and raped her after threatening her with a gun. Other victims say that on the 11th and 12th December 2015, following the attack against military camps, police entered their homes to look for weapons, forced the women to go inside their homes and raped them alternately.

162. Other witnesses reported rapes in the said protesting districts, and one victim reported to have paid money to escape rape.

163. In April 2016, 10 North Mutanga girls were raped purely because of their membership to the political party Sahwanya FRODEBU.

➤ **Impunity for perpetrators of violence against women**

164. The perpetrators of all these crimes are not punished. Some cases have been brought before the Burundian judiciary with evidence provided by doctors, but the perpetrators are not worried because they belong particularly to defence and security forces as well as the SNR, or else they are civilian members of the ruling party.

165. Hence, in January 2016, an official from the Buyengero school administration accused of a rape confirmed by the doctor was not worried despite an arrest warrant being issued against him by the prosecutor of Rumonge.

➤ **Government denial**



166. Faced with allegations of violence against women, the attitude of the authorities is one of plain denial. Indeed, on 3rd January 2016 in Geneva, the assistant of the Minister of the Interior and Patriotic Training Mr. Terence Ntahiraja denied all these cases in the following terms: "We have never had a report that would relate such cases of rape... In recent days there have been a lot of montages formulated by some opponents to power, to the ruling party... to demonise the national police, the army, why not the government."

167. On the same date, the Minister in charge of the Rights of the Human Person, Social Affairs and Gender, Mr Martin Nivyabandi, downplayed the seriousness of the situation without denying it in these terms: "These rapes are not necessarily related to events that we have experienced since April 2015... it is an unfortunate social phenomenon that deplored by all of society, but the government is in the process of taking strong measures to curb the power"<sup>81</sup>.

**Recommendations :**

- ***Take urgent measures to prevent the commission of acts of sexual or gender-based violence by agents of the National Police of Burundi and the National Intelligence Service, as well as youths affiliated to the ruling party;***
- ***Take urgent steps to ensure that all acts of violence against women are subject to an investigation which is diligent, effective and impartial, and that the perpetrators are prosecuted and sentenced according to the severity of their actions;***
- ***Ensure that female victims of rape receive care and appropriate medical assistance;***
- ***Identify and implement measures to support victims psychologically and socially.***

## **6. Recommendations**

- ***Take all necessary steps to incorporate provisions into its Military Criminal Code that establish that acts of torture and ill-treatment committed by soldiers constitute an offence without any statute of limitations and with sentences proportionate to the gravity of such acts and irreducible;***
- ***Amend the Burundian Criminal Code to remove any statute of limitations for the crimes of torture and ill-treatment;***
- ***Take all necessary step to reduce prison overcrowding in particular by encouraging alternatives to imprisonment and by limiting the use of pre-trial detention;***
- ***Take all necessary measure to guarantee healthy and sufficient food and access to healthcare to all detainees in practice;***
- ***Carry out investigations on allegations of ill-treatment in detention and make sure that all the authors of such acts are prosecuted and sanctioned proportionately to the gravity of such acts;***

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81 RFI, "Crise au Burundi: recrudescence des violences sexuelles à Bujumbura", 3 January 2016, accessible at <http://www.rfi.fr/afrique/20160103-burundi-recrudescence-viols-quartiers-contestataires>

- *Engage in a participative and inclusive process to establish an effective and independent National Preventive Mechanism in line with the guidelines of the Subcommittee on the Prevention of Torture and allocate it the necessary funds and human resources for it to operate effectively and independently;*
- *Guarantee access to places of deprivation of liberty to civil society and that it can make recommendations to the authorities;*
- *Take urgent measures to ensure that all allegations of arbitrary killings are met with swift, impartial and independent investigations to identify perpetrators, regardless of their status, and prosecute them, and if found guilty, sentence them to appropriate sanctions;*
- *Inform the Committee of the results of on-going investigations, of prosecutions initiated and convictions and sentences relating to the allegations of extrajudicial executions mentioned above;*
- *Publish the report of the August 2013 General Assembly of the Judiciary;*
- *Ensure the independent recruitment of judges as outlined in the law governing the magistracy;*
- *Effectively and fully implement decisions of international human rights instruments, including the Committee Against Torture and the Working Group on Arbitrary Detentions, and inform the Committee of the results, including on-going investigations, prosecutions initiated, convictions, sentences and reparations.*

#### Extra-judicial executions

- *To immediately stop extrajudicial killings;*
- *To undertake urgent measures in order to ensure that all alleged cases of arbitrary deprivation of the right to life be the object of prompt, unbiased and independent investigations, so as to identify, prosecute and adequately punish those responsible ;*
- *To inform the Committee, in writing, about the results of the open investigations, the proceedings initiated, and the sentences pronounced with regard to the alleged cases of extrajudicial executions above described ;*
- *To ratify the Optional Protocol to the International Covenant on Civil and Political Rights, in order to enable the submission of individual communications to the Human Rights Committee for cases of arbitrary deprivation of the right to life, when victims do not obtain justice before national jurisdictions.*

#### Torture and ill-treatment

- *Reaffirm unequivocally the absolute nature of the prohibition of torture and make it publicly known that anyone who commits such acts, is an accomplice to them or tacitly permits them, will be held personally responsible before the law;*
- *Take urgent steps to ensure that in all cases of alleged torture and ill-treatment, prompt, impartial and independent investigations are undertaken to identify those responsible, regardless of their status, that they are prosecuted and if found guilty, are sentenced to appropriate sanctions;*
- *Ensure adequate redress for victims of torture under Article 14 of the Convention*

*and General Comment No. 3 of the Committee Against Torture;*

- *Guarantee civil society organisations unimpeded access to places of detention and the possibility of making recommendations to the authorities;*
- *Proceed immediately with the closure of all secret detention sites, initiate investigations and prosecute those responsible for torture and ill-treatment in such places.*

#### Arbitrary arrests and unlawful detentions

- *Discontinue the practice of arrests made by State agents with the pretext of checking “household identification books” and take the necessary measures to ensure that grounds for arrest comply with Burundian law;*
- *Revise the Criminal Procedure Code to set a reasonable limit for the duration of preventive detention;*
- *Guarantee that persons held in police custody or on remand have the fundamental legal safeguards applied, including the right to be promptly informed in writing about the reasons for their arrest, information about their rights, access to a lawyer and a doctor of their choice, communication with loved ones, access to legal aid for people living in poverty and the right to be brought before a judge as soon as possible;*
- *Take the necessary legislative measures to ensure that the period of police custody does not exceed 48 hours and that all detained persons are brought before an independent judicial authority within 48 hours after their arrest to ensure control of the grounds for arrest and the renewal of custody;*
- *Monitor compliance with legal safeguards by all public officials and punish those who do not respect them.*

#### Enforced disappearances

- *To ratify as soon as possible the Convention for the Protection of All Persons from Enforced Disappearance, which Burundi signed on 6th February 2007;*
- *To instruct state agencies to make every effort to search and find the actors of civil society, opposition activists and other figures reported missing, especially those who were previously being monitored by the order enforcement agencies;*
- *Enable families of missing persons to have access to useful information regarding the conditions of detention and the circumstances in which their relatives disappeared;*
- *Instruct law enforcement and security bodies on the need to respect human rights, including during questioning;*
- *Set up a commission of independent and impartial investigation into cases of disappearance on the one hand and allegations of rape and violence against women on the other.*

#### Sexual violence

- *Take urgent measures to prevent the commission of acts of sexual or gender-based violence by agents of the National Police of Burundi and the National Intelligence*

*Service, as well as youths affiliated to the ruling party;*

- *Take urgent steps to ensure that all acts of violence against women are subject to a due investigation which is diligent, effective and impartial, and that the perpetrators are prosecuted and sentenced according to the severity of their actions;*
- *Ensure that female victims of rape receive care and appropriate medical assistance;*
- *Identify and implement measures to support victims psychologically and socially.*



*This project has been funded with support from the European Commission.*

*This publication reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.*