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**Human Rights Council****Thirty-third session**

Agenda items 2 and 10

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General****Technical assistance and capacity-building****Report of the United Nations Independent Investigation on  
Burundi (UNIIB) established pursuant to Human Rights  
Council resolution S-24/1\****Summary*

This is the final report of the United Nations Independent Investigation on Burundi (UNIIB) established pursuant to Human Rights Council Resolution S-24/1. The report covers violations and abuses of human rights from 15 April 2015 to 30 June 2016. The experts find that gross human rights violations have and are taking place, committed primarily by State agents and those linked to them. These gross violations are systematic and patterned and impunity is pervasive. While the crisis continues and even though the level of overt violence has declined, the overall level of oppression and control over the society has increased, manifested by arbitrary deprivations of life, enforced disappearances coupled with credible allegations of unacknowledged places of detention, in addition to cases of torture, other forms of ill-treatment and arbitrary detention on a massive scale. Freedoms of expression, association and assembly are virtually non-existent. Victims and witnesses are the targets of reprisals. Without determined interventions by the Government of Burundi and a renewed robust engagement by the international community, including the United Nations and the African Union, the country's downwards spiral is unlikely to be reversed, endangering not only the rights of individuals concerned but also the overall security of the region. The experts cannot exclude that some instances of these gross human rights violations amount to crimes against humanity, and urge for independent international judicial processes to bring the alleged perpetrators to justice.

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

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## I. Introduction

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

2. The resolution’s focus is on the current and ongoing crisis, which started in April 2015. The experts were requested “to issue a final report and participate in an enhanced interactive dialogue on the human rights situation [with the Council] at the thirty-third session”.

3. In January 2016, the High Commissioner for Human Rights appointed three independent experts to undertake the United Nations Independent Investigation on Burundi (UNIIB): Mr. Christof Heyns, UN Special Rapporteur on extrajudicial, summary or arbitrary executions (elected as chair); Ms. Maya Sahli-Fadel, African Commission on Human and Peoples’ Rights, Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa; and Mr. Pablo de Greiff, UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence. UNIIB was thus composed of two experts from the UN and one from the African Union system, and in that sense was a joint UN/AU undertaking. Active investigations ceased at the end of June 2016.

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

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

6. The OHCHR established a secretariat to support UNIIB, which was composed of five Human Rights Officers and based in Bujumbura from April to September 2016.

7. Christof Heyns presented an oral update on behalf of UNIIB to the Human Rights Council on 22 April 2016. The current report is the final UNIIB report. The experts requested the United Nations High Commissioner for Human Rights, whose office is the repository of the archives of UNIIB, to grant access to information for purposes of accountability, where confidentiality and protection concerns have been addressed to relevant accountability mechanisms. Additionally, UNIIB has compiled a list of alleged perpetrators who were repeatedly named by victims and witnesses as responsible for gross human rights violations, to be shared with such mechanisms.

8. UNIIB thanks the Government for its cooperation in relation to the country visits and the deployment of the Secretariat. At the same time, UNIIB faced several challenges, including the fact that two of its four planned visits could not be carried out. Some victims and witnesses feared reprisals. Because of the reported presence of, and surveillance by, agents of the intelligence service and members of the ruling party youth wing, UNIIB refrained from carrying out investigations at some sites to protect witnesses and victims. While the initial access of UNIIB to government officials was relatively good, this deteriorated over time.

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

10. Despite the constraints, UNIIB was able to collect and verify a sufficient amount of information to substantiate its conclusions.

## II. Methodology

11. UNIIB conducted a total of 227 interviews, in some cases with multiple parties. The interviews included Government officials, politicians, members of civil society in Bujumbura, Makamba, and Giceta. UNIIB also conducted field visits in the Democratic Republic of the Congo, Rwanda, Tanzania, and Uganda to interview, among others, 182 refugees. Following a call for submissions on its website,<sup>1</sup> UNIIB received 57 submissions. It also conducted an extensive review of other relevant material, including reports by the UN and international and national human rights organizations.

## III. Legal framework

12. UNIIB discharged its mandate against applicable standards of international human rights law, international criminal law, and international refugee law, as well as the Burundian Constitution and other domestic laws.

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

14. Burundi has ratified a range of human rights treaties, including the ICCPR (1990), ICESCR (1990), CAT (1993), and the African Charter on Human and Peoples' Rights (1989). It is also a party to the Rome Statute (2004). The Constitution of Burundi recognises the right to life (art 24), the right to be free from torture or cruel, inhuman or degrading treatment of punishment (art 25) and guarantees the independence of the courts (art 209).

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<sup>1</sup> <http://www.ohchr.org/EN/HRBodies/HRC/UNIIB/Pages/UNIIB.aspx>

<sup>2</sup> See chapter II, Draft Articles on Responsibility of States for Internationally Wrongful Acts, International Law Commission, 2001.

<sup>3</sup> Article 2 (3) ICCPR.

<sup>4</sup> Human Rights Committee, General Comment n° 31, para. 18. See also African Commission on Human and Peoples' Rights General Comment No.3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4) (2015) para.15.

15. Burundi is a member of the Human Rights Council and was a member of the Council when Resolution A/HRC/S-24/1 which established UNIIB was adopted, by consensus.

16. States carry the primary responsibility to respect, protect and ensure human rights to all within their jurisdiction. The sovereignty of States is an important and respected pillar of the current global order. However, sovereignty provides neither justification for violations of human rights, nor an excuse for impunity.

17. The experts' group established its findings on a "reasonable grounds to believe" standard of proof. It received a reliable body of information, consistent with other material, based on which a reasonable and ordinarily prudent person would have reason to believe that such an incident or pattern of conduct has occurred.

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

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

19. The situation in Burundi also has to be understood within its broader regional context, where violence in one country almost inevitably generates spill-over effects into its neighbours and affects regional security.

20. A decade-long civil war ended with the signature of the 2000 Arusha Peace and Reconciliation Agreement for Burundi (Arusha Agreement), providing for power-sharing arrangements between the various socio-political and ethnic groups. The Arusha Agreement heralded the longest period of relative peace since independence.

21. In 2014, a dispute emerged over the question whether President Pierre Nkurunziza was entitled in terms of the Arusha Agreement and the Constitution to run for a further term ('third term'). A corresponding draft law to amend the Constitution was defeated in the National Assembly on 22 March 2014. Despite widespread local resistance and appeals by the international community, including by the African Union, the International Conference on the Great Lakes Region (ICGLR) and the East African Community (EAC), the ruling party, the CNDD-FDD, designated President Nkurunziza as its candidate on 25 April 2015.

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

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

24. Following an attempted coup on 13 May 2015, the Government, both in rhetoric and in practice, associated demonstrators, mostly civilians, with the military coup leaders, and expanded the scope of reprisals to include anyone opposed to the President or the ruling party or who was suspected of having participated in demonstrations. The Government used the security apparatus - the Burundi National Police (PNB), the National Intelligence Service (SNR), and the National Defence Force (FDN) as well as the youth wing of the ruling party, the Imbonerakure, against political opponents to carry out part of the below mentioned gross violations and a general clamp-down on civil society.

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

26. Following an attack on four military bases in and around the capital (11 December 2015), the security forces used indiscriminate violence. Anyone suspected of opposing the Government was at risk, including State Officials, agents of the SNR, and even senior military officers. Gross human rights violations within the security forces, in a tit-for-tat fashion, have become a salient feature of the crisis.

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

28. In December 2014, four months before the current crisis erupted, and after having been engaged in Burundi for over a decade, the Security Council mandate of the United Nations Office in Burundi (BNUB) was not renewed. However, once the crisis started various international initiatives were launched. These have included a fact-finding mission by a Delegation of the African Commission on Human and Peoples' Rights; various African Union and European Union resolutions; the – now stalled - dialogue promoted by the East African Commission; visits by various African heads of State; the European Union's decision on the suspension of direct aid; a visit by the UN Security Council; a review of a special report by the Committee against Torture; an early warning procedure initiated by the Committee for the Elimination of Racial Discrimination and the deployment of AU observers.

29. The report by the African Commission on Human and Peoples' Rights represents the views of the primary human rights monitoring body of the African Union, based on their on-site visit.<sup>5</sup> Notably, the report describes the violations committed by the Government security personnel and affiliated groups as “pervasive and systematic”, and as “serious and massive”.<sup>6</sup> The report calls for the deployment of “an international police mission”<sup>7</sup> and the establishment of “an independent internationally supported special tribunal in Burundi.”<sup>8</sup>

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

31. On 29 July 2016, the Security Council adopted Resolution 2303, authorising the deployment of a maximum of 228 UN police officers.<sup>9</sup> Its implementation is categorically rejected by the Government.

32. On 3 June 2016, the UN Department of Peace Keeping Operations announced it had decided not to replace the 280 Burundian police officers in the UN peacekeeping operation in the Central African Republic at the end of their duty. Some Burundian AU or UN peacekeepers have reportedly refused to return to Burundi for fear of repression against soldiers considered close to the opposition.

33. There are persistent allegations by the Government of Burundi that its neighbour Rwanda is involved in supporting anti-Government groups within Burundi. Critics of the

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

<sup>6</sup> Para 110.

<sup>7</sup> Para 169 (h).

<sup>8</sup> Para 172 (c).

<sup>9</sup> Security Council Resolution 2303 S/2016/659, 29 July 2016, Para 14.

Government allege that members of the Interahamwe are used by the Burundian authorities to supplement its own security structures.

## V. Principal findings

34. No one can quantify exactly all the violations that have taken place and that continue to take place in a situation as closed and repressive as Burundi during the period covered by UNIIB's mandate.

35. According to some estimates more than one thousand people have been killed as part of the crisis.<sup>10</sup> Thousands have reportedly been tortured, unknown numbers of women victims of various forms of sexual crimes, hundreds of people disappeared, and thousands illegally detained.<sup>11</sup>

36. A particularly telling figure – because it can be more easily externally verified – is the number of people who have fled the country since the crisis began. UNHCR puts the number of people who have sought refuge in neighbouring countries since April 2015 at 286,036 (as of 25 August 2016).<sup>12</sup> The International Organization for Migration (IOM) reports 109,459 people displaced (as of 31 August 2016).<sup>13</sup> Clearly many people on the ground believe they see signs of the horrors of the past repeating itself and flee.

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

### A. Arbitrary deprivations of life

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

39. UNIIB found that the large majority of victims have been identified as people who were opposed or perceived to be opposed to the third mandate of President Nkurunziza or of members of opposition parties.

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

40. The information received and verified by UNIIB supports the conclusion that executions have been committed on a large scale by the security forces, often supported by the Imbonerakure. From among the many testimonies UNIIB heard, we highlight the following examples.

<sup>10</sup> FIDH, Burundi: a bloody first year of challenged presidency for Pierre Nkurunziza, 28 July 2016 - <https://www.fidh.org/en/region/Africa/burundi/burundi-a-bloody-first-year-of-challenged-presidency-for-pierre>

<sup>11</sup> See, e.g. HRW's compilation of reports on Burundi available at: [https://www.hrw.org/sites/default/files/supporting\\_resources/burundi\\_compendium\\_2016\\_web\\_version\\_4.pdf](https://www.hrw.org/sites/default/files/supporting_resources/burundi_compendium_2016_web_version_4.pdf).

<sup>12</sup> <http://data.unhcr.org/burundi/regional.php>

<sup>13</sup> This may however also include those displaced by natural disasters. [https://www.humanitarianresponse.info/fr/system/files/documents/files/note\\_dinformation\\_humaitaire\\_31\\_aout\\_2016.pdf](https://www.humanitarianresponse.info/fr/system/files/documents/files/note_dinformation_humaitaire_31_aout_2016.pdf).

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

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

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

## **2. Reports of mass graves**

44. Allegations of mass burials of those executed during these incidents have been widely reported.<sup>14</sup> Initial satellite imagery suggests that bodies may have been buried in mass graves during this period, including in Bujumbura (in Kanyosha and Mpanda) and Bubanza. UNIIB received testimony corroborating the existence of mass graves. Reported intimidation by members of the Imbonerakure and SNR of persons in possession of information on this topic give further credibility to the testimony.

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

## **3. Targeted assassinations**

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

47. Armed elements in opposition to the Government have also been involved in several murders, notably targeted assassinations. UNIIB documented a case where a member of the Imbonerakure was burnt alive. Grenade attacks have also allegedly been carried out by these armed elements, causing casualties among the population. From May 2015 to

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<sup>14</sup> <https://www.amnesty.org/en/press-releases/2016/01/burundi-satellite-evidence-supports-witness-accounts-of-mass-graves/>



February 2016, OHCHR Burundi documented several cases of grenades thrown by unknown individuals in public places, mainly in Bujumbura.

48. Apparent examples of tit-for-tat targeted assassinations within the Army – particularly threatening to the integration of the armed forces – include the killings of several senior Army officers belonging either to the pre-Arusha Agreement Burundian Armed Forces (ex-FAB) or to the former rebel group “Armed Political Parties and Movements” (ex-PMPA) and the apparent retaliatory killings of alleged supporters of the regime within the forces. Among the most emblematic examples are the killings of General Adolphe Nshimirimana on 2 August 2015; General Karakuza on 25 April 2016; and Colonel Darius Ikurakure on 22 March 2016. The latter was shot dead in the compound of the headquarters of the Army Joint Staff.

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

## **B. Enforced disappearances**

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

51. Marie-Claudette Kwizera, Treasurer of the CSO Ligue ITEKA was allegedly arrested on 10 December 2015 by the SNR and has not been seen since. More recently, on 22 July 2016, Jean Birgimana, journalist at Iwaku newspaper, was also allegedly arrested by the SNR and is missing since then.

52. Moreover, UNIIB received information and names from witnesses concerning the existence of a group of twelve well-known SNR, police, and military agents who have allegedly been responsible for many cases of enforced disappearances, and who report directly to the inner circle of the Executive.

## **C. Torture and cruel, inhuman or degrading treatment**

53. The use of torture or other cruel, inhuman or degrading treatment or punishment against opponents to the third term and targeted opposition members or their relatives, to extract information or as punishment, has been a common feature of the crisis. UNIIB conducted 65 interviews with witnesses and/or victims of torture or ill-treatment. Elements of the SNR, the PNB, the Imbonerakure and, to a lesser extent, the FDN, are consistently identified as the perpetrators, and some individuals, including senior figures of the security apparatus, have been repeatedly cited.

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

- Attaching weights to testicles;
- Crushing of fingers and toes with pliers;
- Detention in a closed container;
- Forcing families to stay next to the dead body of a relative;
- Forcing the victim to sit on acid, broken glass or nails;
- Gang rape of a mother in the presence of her children;
- Injections of a yellow liquid in the testicles and other parts of the body, leading to paralysis;
- Knife and machete stabs;
- Lashes using preheated electric cable or iron bars;
- Progressive burning with a blowtorch or gas cylinder;
- Progressive electrocution;
- Pulling a cord attached to the testicles;
- Sprinkling the victim with a mixture of water and sand and rubbing this with a broom so that it fills the pores of the skin (known as "Ubutoteza" in Kirundi);
- Tightly tying a person's arms in the back for several days;
- Insults and humiliating speech, including with an ethnic dimension;
- Poking of fingers in the eyes of the victim;
- Tying the victim up by the feet upside down (known as "Amagurizege" in Kirundi).

55. No national preventive mechanism as required under CAT has been set up by the Government.

#### **D. Sexual and Gender-Based Violence**

56. The crisis has exacerbated the already prevalent issue of sexual and gender-based violence in Burundi. Sexual and gender-based violence is one of the patterns of violations that emerge from UNIIB's investigations. Incidents recorded by UNIIB from Burundian refugee women and girls reveal various forms of sexual and gender-based violence experienced in Burundi and during their flight.

57. Witnesses and victims indicated to UNIIB that many women who fled the country were subject to sexual violence during their flight by Imbonerakure, unidentified armed men, and border guards, including as a punishment for leaving the country 'while there was no war'.

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

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

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

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

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

62. Several reports by international, regional and national organizations have condemned the conduct of the Burundian Security Forces during the demonstrations.<sup>15</sup> The authorities now insist that the demonstrations were never peaceful. The information collected by UNIIB indicates that the Police used excessive force against demonstrators who had been chanting slogans against the President, with some of them throwing stones, and blocking intersections. None of this merited law enforcement officers using firearms, including against fleeing demonstrators. Moreover, even after having gained control over the demonstrators, the police generally arrested and beat up demonstrators, notably young men, in flagrant violation of the international standards on the use of force.<sup>16</sup>

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

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

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

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

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

<sup>15</sup> A/HRC/32/30.

<sup>16</sup> See for example the Basic Principles on the use of Force and Firearms by Law Enforcement Officials 1990.

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

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

69. Prison overcrowding is alarming with a 300 per cent occupancy rate in some prisons. The Mpimba prison in Bujumbura, which the UNIIB team visited, was built to house 800 prisoners; instead there were 3,800 detainees present.

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

#### **Unacknowledged places of detention**

71. Although the Prosecutor General of the Republic has formally denied the existence of unacknowledged places of detention, UNIIB concludes that there are reasonable grounds to believe that the Security Forces and Imbonerakure have established several such sites.

72. A number of victims interviewed by UNIIB identified the exact places of their detention to UNIIB. Some of these locations include:

##### *In Bujumbura:*

- a green painted house around the office of the Apostolic Nuncio;
- an uninhabited house in Mutakura area, located between 8th and 9th street;
- secret cells in the premises of the SNR;
- the Bar “Iwabo Nabantu” in Kamenge, which belonged to the late General Adolphe Nshimirimana;
- the basement of the headquarters of CNDD-FDD at Ngagara;
- the basement of the residences of Mr. Bunyoni, Minister of Public Security, in Kinanira and Gasekebuye;
- the containers serving as military positions next to the water supply distribution company building (REGIDESO) in Kigobe, close to the National Assembly;
- the police-manned “Chez Ndadaye”, next to the cemetery Ndadaye;
- the water supply distribution company building (REGIDESO) in Ngagara, near King Khaled Hospital;
- the containers serving as military positions next to REGIDESO, in Kigobe;

##### *In Ngozi:*

- the Bar “Chez Nyamugaruka” at Vyegwa;

- the houses of President Nkurunziza in Mwumba commune;
- the basement of the SNR.

## G. Ethnically charged language

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

74. On 24 August 2016, the United Nations Special Adviser on the Prevention of Genocide issued a press statement expressing his concern at inflammatory statements made by public officials that could constitute incitement to violence.<sup>17</sup> The press release followed a great number of statements made by public officials, and had a specific reference to a statement of 16 August published on the CNDD-FDD website by the (then) President of this political party and President of the National Assembly, Pascal Nyabenda. The Special Adviser's alert stressed that Nyabenda's statement has "the potential to inflame ethnic tensions, both within Burundi and outside its borders."<sup>18</sup> The statement further suggested that the genocide in Rwanda was a fabrication of the international community.<sup>19</sup>

75. The experts are gravely concerned about the general trend of ethnically divisive rhetoric by the Government,<sup>20</sup> which may carry a serious potential of the situation spiralling out of control, including beyond Burundi's borders. This is all the more fatal as the integration of ethnicities was one of the main achievements of the implementation of the Arusha Agreement.

76. The experts urge the Burundian Government and its officials to refrain from such acts, and call upon all relevant stakeholders, in particular the African Union and the United Nations, to scrupulously monitor the situation,<sup>21</sup> and take the necessary steps to prevent further mass violations.

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

## H. Freedom of expression and association

78. Burundian civil society actors, notably human rights defenders and journalists, have been primary targets of systematic repression by authorities. Since this has been widely reported, the following only sketches some of the cases that members of civil society organizations and media outlets described to UNIIB.

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

80. Moreover, international arrest warrants have been issued against leaders of civil society organizations, namely Justine Nkurunziza of the Civil Society Coalition for the

<sup>17</sup> See <http://www.un.org/apps/news/story.asp?NewsID=54757#.V8UilU1f3cs>.

<sup>18</sup> Ibid.

<sup>19</sup> See also

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20215&LangID=E>

<sup>20</sup> CAT/C/BDI/CO/R.2/Add.1 (advance version), para. 11.

<sup>21</sup> See <http://www.un.org/apps/news/story.asp?NewsID=54757#.V8UilU1f3cs>.

Monitoring of Elections (COSOME), Pacifique Nininahazwe of FOCODE, Vital Nshimirimana of FORSC, Gatogato John Vianney of the Association of Catholic Law Practitioners in Burundi (AJCB) and Armel Niyongere of ACAT-Burundi.

81. Independent journalists have been subjected to harassment, death threats, arrests, torture, and the closure of their offices and/or destruction of their equipment.

82. On 13 May 2015, following the attempted coup, men in uniforms and Imbonerakure reportedly attacked with heavy weapons the following independent radio stations: Radio publique africaine (RPA), Bonesha FM, Isanganiro, and Renaissance Broadcasting. Shortly before, Rema FM, a radio known to be very close to the Government, had been destroyed by people protesting against the third term, just after the announcement of the coup.

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

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

85. The Government argues the situation is close to being normal, that stations are having licenses restored, and that the remaining ones have not filed the necessary applications. Some radio stations were indeed issued licences. However, there are legitimate questions as to whether the outlets whose licenses have been restored are indeed the same: their staffing, content, and editorial views appear fundamentally changed.

86. As with the other violations in this report the victims are not only those outside Government. There is also no room for dissenting positions within government circles or the ruling party.

87. The atmosphere of repression has manifested itself in the Government’s harsh reaction to students scribbling on photos of President Nkurunziza; reportedly, hundreds of students were suspended in May 2016 and close to 60 detained by the SNR, while 16 schools in Bujumbura were occupied by the police (10 of which remained under police control during a prolonged period of time).<sup>22</sup> Discussions with the Minister of Education did not reassure the experts about an understanding of the importance of the school system as an incubator of democratic values.

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

## **I. Economic and social rights**

89. Civil war in Burundi had a devastating effect on the economy and living standards. However, after the Arusha Agreement was signed, and especially after 2005, a return to

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<sup>22</sup> <http://www.news24.com/Africa/News/burundi-school-kids-deface-portraits-to-defy-president-20160620-4>

peace and stability allowed for sustainable economic growth of between 4 and 5 per cent, with corresponding improvements in the health and education sectors.<sup>23</sup>

90. Reforms in the education sector led to increases in primary-school enrolment<sup>24</sup> and reforms in the health sector led to improvements in access and in some basic health and life expectancy indicators.<sup>25</sup>

91. The political crisis, however, is reversing such progress. The climate of violence and repression has disrupted economic activity leading to a 20 per cent decline in official revenues in fiscal year 2015, to declining purchasing power, and to disruptions given the suspension of aid to the official sector. Overall, the World Bank estimates that the economy contracted by 2.5 per cent in 2015.<sup>26</sup>

92. There is no sector of the economy that has not been affected by the crisis. The public sector provides jobs for 80 per cent of salaried employees in Burundi (a small percentage of the economically active population).<sup>27</sup> The economic crisis has not only led to limited recruitment in the public sector, but to the apparent politicization of hiring; the restricted numbers of posts made available are allegedly reserved for members of the ruling party.

93. Half of the youth in Burundi are estimated to be unemployed. The majority of the demonstrators against the third presidential mandate were youths, and the high unemployment rate may provide a large source of recruitment for nascent rebel movements and the Imbonerakure.

94. The agricultural sector, which employs 90 per cent of the economically active population has been affected both by displacement of persons and by the land conflicts that such displacement generates.<sup>28</sup>

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

96. State expenditure for the health sector has also been reduced. Conditions in hospitals have deteriorated,<sup>29</sup> particularly outside the capital, with cases of beds being shared by four patients. The health service has also been affected by a deficit in personnel as some practitioners have left the country as a result of the political crisis.

## J. Burundian refugees and IDPs

97. The number of refugees from the crisis as well as internally displaced people is provided above (Paragraph 2). The outflow of refugees rose substantially during specific periods: following the attempted coup d'état in May 2015; during the July 2015 presidential elections; and following the attack on military camps in December 2015. The outflow has continued afterwards at a slower pace, partly due to increased restrictions to leave the country, with numerous checkpoints set up in border provinces of Burundi.

98. UNIIB's investigations confirmed the impact of the political crisis on the massive outflow. Refugees interviewed in the Democratic Republic of the Congo, Rwanda,

<sup>23</sup> World Bank national accounts data, and OECD National Accounts data, 2015.

<sup>24</sup> <http://allinschool.org/wp-content/uploads/2015/02/OOSC-2014-QW-Burundi-Primary-final.pdf>.

<sup>25</sup> [http://www.who.int/bulletin/africanhealth2014/improving\\_access\\_to\\_health\\_care/en/](http://www.who.int/bulletin/africanhealth2014/improving_access_to_health_care/en/)

<sup>26</sup> <http://www.worldbank.org/en/country/burundi>

<sup>27</sup> <http://www.heritage.org/index/country/burundi>

<sup>28</sup> <http://www.worldbank.org/en/country/burundi/overview>

<sup>29</sup> [http://www.unicef.org/appeals/files/UNICEF\\_Burundi\\_Humanitarian\\_SitRep\\_30Oct2015.pdf](http://www.unicef.org/appeals/files/UNICEF_Burundi_Humanitarian_SitRep_30Oct2015.pdf)

Tanzania, and Uganda, listed the following as their reasons for leaving: reprisals or fear of reprisals by SNR and the Imbonerakure; for having participated in demonstrations or providing material or financial support to demonstrators; for refusing to join the Imbonerakure; defecting to the opposition or having divergent opinions from the CNDD-FDD; being family members of people who had been arrested; the general climate of insecurity; supporting opposition parties; and land-related conflicts, most of which were allegedly political in nature.

99. The majority of refugees live in precarious conditions in camps. In addition, credible allegations of infiltrations of some camps or refugee locations by the SNR and the Imbonerakure, contribute to the climate of fear and insecurity among refugees.

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

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

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

### **A. The lack of an independent Judiciary**

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

103. The institutional dominance of the executive branch over the judiciary is now compounded by an executive branch whose members have used violent methods against its (perceived) opponents. This new situation has resulted in victims not filing complaints against the perpetrators of violations of human rights, and no longer using the justice system as a vehicle to settle differences.

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

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

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

106. Given the ongoing political crisis, UNIIB is concerned by the difficulties faced by the Truth and Reconciliation Commission to implement its important mandate: to uncover



the truth about the events that the country experienced between 1962 and 2008, and to start a process of transitional justice and collective forgiveness.

107. UNIIB reiterates the concerns already raised with respect to the Commission by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, namely i) the de-prioritisation of the "truth seeking" function in favour of the pardon process, ii) insufficient resources to carry out its mandate, and iii) concerns over the protection of victims and witnesses

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

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

109. The Burundian Independent National Commission on Human Rights (CNIDH) has issued one report since the crisis erupted.<sup>30</sup> The report downplays gross human rights violations by indicating minimal numbers. As an illustration, for the whole of 2015, the report refers to 27 cases of torture and ill-treatment in contrast to 250 cases of torture and ill-treatment documented by OHCHR between April 2015 and April 2016.

110. The Commission did issue a press release concerning the arrest of the school children for scribbling on the pictures of the President.<sup>31</sup>

111. The Commission which is currently still accredited with the A status will be reviewed by the Global Alliance of NHRIs (GANHRI) sub-committee on accreditation in November 2016 in view of the allegations of partiality levelled against it by international and Burundian human rights organisations against the institution.

### **D. National Commissions of Inquiry**

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

113. For example, the report of the Commission "charged with shedding light on the insurrectionary movement triggered on 26 April 2015" only established responsibilities of individuals and organisations involved in organising the demonstrations, while ignoring the human rights violations committed by the security forces.

114. Another Commission, set up to "shed light on the deaths of 11 and 12 December 2015 and on the allegations of the existence of mass graves", concluded that allegations of the existence of mass graves and the occurrence of extra-judicial executions were unfounded. These findings contradict the results of the investigations carried out by UNIIB.

115. UNIIB regrets that the practice of setting up commissions of inquiry appears to be a means for the Burundian authorities to circumvent accountability for State perpetrators of grave violations of human rights.

<sup>30</sup> [http://www.cnidh.bi/sites/default/files/CNIDH\\_Rapport%20annuel%202015%20.pdf](http://www.cnidh.bi/sites/default/files/CNIDH_Rapport%20annuel%202015%20.pdf)

<sup>31</sup> [http://www.cnidh.bi/sites/default/files/CNIDH\\_Rapport%20annuel%202015%20.pdf](http://www.cnidh.bi/sites/default/files/CNIDH_Rapport%20annuel%202015%20.pdf)

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

116. In assessing the human rights situation in Burundi, the experts have looked for indications of cooperation from Burundi's authorities with the international human rights system. They are seriously concerned by the apparent increasing reluctance of those authorities to engage with the international human rights system. A salient example is the refusal of the Burundian government to participate in the second session of dialogue with the UN Committee against Torture (29 July 2016), the first time a State delegation has chosen this course of action.<sup>32</sup>

117. UNIIB notes with concern the approach of the Government of Burundi to automatically offer a blanket denial of almost all alleged human rights violations.

## F. International crimes

118. The above assessment relates largely to the question of State responsibility for human rights violations. However, the mandate of the experts also covers individual responsibility.<sup>33</sup>

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

120. Article 7 of the Rome Statute provides that a number of crimes including murder, imprisonment, torture, persecution against any identifiable group, and enforced disappearances, amount to crimes against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.. The term "crimes against humanity" refers to "a campaign or operation carried out against the civilian population"<sup>34</sup>. Hence, the crimes cannot be random or isolated, but need to form part of an overall State policy.<sup>35</sup> The state policy, however, does not need to be explicitly articulated but may be inferred.<sup>36</sup>

121. The "widespread" or "systematic" elements of the attack against civilians are to be read disjunctively. The term "widespread" refers to attacks committed on a large scale and directed against a multiplicity of victims.<sup>37</sup> The term "systematic" refers to the "organised nature of the acts of violence and the improbability of their random occurrence."<sup>38</sup>

<sup>32</sup> [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear\\_en\)/21B0C18B43F340AEC1257FFF0056A147?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/21B0C18B43F340AEC1257FFF0056A147?OpenDocument)

<sup>33</sup> Resolution S-24/1 para 17 (c).

<sup>34</sup> Situation in the Republic of Kenya: Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 80.

<sup>35</sup> See also Prosecutor v. Dusko Tadic, IT-94-1-T, Opinion and Judgement, 7 May 1997 (Tadic TC Judgement), para. 648. See also, Kenya Authorization decision, para. 94.

<sup>36</sup> See also Tadic Trial Chamber Judgement, para. 653.

<sup>37</sup> International Law Commission, Draft Code of Crimes against the Peace and Security of Mankind, 1996 (ILC Draft Code), Article 18, commentary para. 4; see also Kenya Authorization decision, para. 95.

<sup>38</sup> Kenya Authorization decision, 31 March 2010, para. 96; Prosecutor v. Blaskic, IT-95-14-A, Judgement, 29 July 2004, para. 101.

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

123. In view of the facts summarised in this report, the experts cannot exclude that some of the above analysed incidents amount to crimes against humanity.

124. Given the country’s history, the danger of the crime of genocide also looms large. The Group of experts recommends that independent international processes determine accountability for possible international crimes (see below).

## VII. Conclusions and recommendations

### A. Conclusions

125. **UNIIB found abundant evidence of gross human rights violations as well as human rights abuses by the Government and people whose actions can be attributed to the Government. Human rights abuses by third parties have also taken place. However, the responsibility for the vast majority of these violations should be laid at the door of the Government.**

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

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

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

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

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

- (a) Are there changes in the movements and flows of people (in particular increased flows of *return*)?
- (b) Are there increases in the space for free expression and for the activities of civil society?
- (c) Does the sense of intimidation wane?
- (d) Do inflammatory statements, particularly on the part of senior authorities, decrease?
- (e) Does the confidence in State institutions, including the security sector, improve?
- (f) Do institutions respond promptly and effectively to claims of citizens regarding possible violations or abuses?
- (g) Have institutions not only responded to those claims effectively but have they established initiatives to prevent new violations?

131. There are serious concerns on all these fronts.

132. UNIIB is gravely concerned about the fact that these violations and the lack of accountability are ‘patterned.’ UNIIB’s investigations suggest that the numbers, modes of operation, alleged perpetrators, the apparent identity of victims, the apparent motivation of the violations, and the lack of either remedial or preventive action on the part of State authorities, show that they are not simply the result of ‘chance,’ ‘bad apples,’ provocation, or other type of ‘necessity.’ The robust correlation between the violations and particular political incidents also suggests strongly that they are the result of deliberate choices. UNIIB’s investigations suggest widespread and systemic patterns of violations, and of the sort that calls for, among other things, judgments of State and individual responsibility for perpetrators and of effective remedies for victims by an international processe.

133. We are deeply concerned about the tendency of the Government to adopt a mindset by which it views itself as if it were under a total onslaught from the international community, and indeed to be in conflict with the UN and other human rights bodies, as opposed to be engaged in a common pursuit to address the challenges faced by the country.

134. The role of observers on the ground – in the capital and elsewhere where violence takes place - is crucial. Rumors are rife in the country, and uncertainty fuels insecurity. Accountability is impossible without reliable facts.

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

136. While there is no simple way to characterize the ethnic dimension of the crisis in Burundi, the experts are alarmed that in a context in which so much had been achieved through the Arusha Agreement to de-ethnicize political contestation, State officials, including at the highest levels, use language that can only provoke (previously bridged) division and mistrust both among ethnic groups in Burundi, and beyond its borders. Those divisions are starting to manifest themselves within the security forces, the ethnic integration whereof was both one of the signal successes of the Arusha Agreement, and a bulwark against a tragic relapse into ethnic strife, both within Burundi and outside.

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

## **B. Recommendations**

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

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

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

140. All youth militias urgently need to be disarmed. This disarmament should be scrupulously monitored by international actors. While this takes place, the ruling party, in particular, should disavow the use of violence or threats of violence by its youth wing and ensure that it does not assume any sort of policing function.

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

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

143. The Government must as a priority establish an effective torture prevention mechanism, in accordance with its obligations under the Convention Against Torture. The international community should assist in this venture.

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

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

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

147. The Government must immediately cease its reprisals and threats against individuals who have cooperated with UNIIB, and other human rights mechanisms and organisations.

148. The deployment of AU human rights and military observers should be completed and expanded in numbers and in the areas beyond the capital that they cover. Their status should be recognised through a Memorandum of Understanding and their reports should not be subject to clearance by the Government.

149. The Government must urgently comply with Security Council Resolution 2303.

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

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

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

#### **To non-state actors**

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

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

154. In light of the ineffectual accountability institutions set up by the Government, independent international judicial processes must consider whether international crimes were committed. All relevant stakeholders, in particular the African Union and the United Nations, must remain seized with the matter, monitor scrupulously the situation,<sup>39</sup> and take the necessary steps to prevent further mass violations with ethnical connotations.

155. In case the Government continues to fail to comply with Security Council Resolution 2303 and if the violations continue, the experts call on the United Nations, particularly the Security Council, to discharge effectively its mandate to ensure peace and security, and to protect, without prejudice to the primary responsibility of the Burundi authorities and the basic principles of peacekeeping in line with

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<sup>39</sup> See <http://www.un.org/apps/news/story.asp?NewsID=54757#.V8UilU1f3cs>.

S/PRST/2015/22, the civilian population from threat of physical violence, under chapter VII of the United Nations Charter.

156. A Commission of Inquiry should be established immediately to continue the work accomplished by UNHCR, giving due consideration to the continuation of the collaboration between the UN and the AU in this regard. The Inquiry should be mandated to ensure individual accountability and share the findings with the Security Council for targeted sanctions and with judicial processes, when established. This mandate must include investigating the allegations about cross-border armed groups operating in Burundi, including the possible involvement of other States. This investigation must have sufficient resources and warranties and access to specialized ballistic and forensic expertise.

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

158. The UN system should establish the means to scrutinise its own actions in Burundi, particularly the end of the United Nations Office in Burundi. It should also examine whether its Human Rights up Front initiative has been effective on the ground and take appropriate remedial measures.

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

160. The African Union is the guarantor of the Arusha Agreement and it must ensure that it plays a key role in ensuring its long term success. The various AU bodies should take steps to ensure greater consistency in their approach to ensure this.

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

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

163. The international community should make its intentions clear that it will step up the pressure if the human rights situation does not improve, and even more so if it further deteriorates. Measures taken should be targeted and proportional so as to minimize their impact on the population.

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