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### Human rights situations that require the Council's attention

## Report of the Commission of Inquiry on Burundi<sup>\*</sup>, <sup>\*\*</sup>

### *Summary*

Numerous serious human rights violations have been documented since May 2019 in connection with the 2020 elections. The perpetrators were seeking to deprive the main opposition party of any chance of winning the election. These violations were mainly committed by members of the Imbonerakure youth league of the ruling party and by local officials who continue to enjoy nearly total impunity. Officers of the National Intelligence Service and the police often participated in or supported such violations or, in the case of the police, sometimes stood by and allowed the perpetrators to act. The judiciary has also taken part in this repression.

The survey on the economic underpinnings of the State has shown that corruption and illicit financial flows have a negative impact on the enjoyment of human rights in Burundi. Aside from the political transition currently under way, most risk factors still remain, and far-reaching reforms are required to improve the situation in the medium and long term.

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\*\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



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## **I. Introduction**

### **A. Mandate**

1. The Commission of Inquiry on Burundi was created by Human Rights Council resolution 33/24, adopted on 30 September 2016, to conduct a thorough investigation into human rights violations and abuses committed in Burundi since April 2015, to determine whether any of them may constitute international crimes, to identify their alleged perpetrators and to formulate recommendations for ensuring that such perpetrators are held accountable for their acts. The mandate was extended for three additional one-year terms. In its resolution 42/26 adopted on 27 September 2019, the Human Rights Council also mandated the Commission to further investigate, inter alia, the respect and enjoyment of political, civil, economic and social rights in the electoral context, in particular with regard to the economic underpinnings of the State.

2. The membership of the Commission remains unchanged: Doudou Diène (Senegal), who has chaired the body since 1 February 2018; Lucy Asuagbor (Cameroon), a member since 5 March 2018; and Françoise Hampson (United Kingdom of Great Britain and Northern Ireland), appointed on 22 November 2016.

3. The Commission has looked into violations and abuses committed since May 2019, paying special attention to those related to the May 2020 electoral process,<sup>1</sup> and to violations of the rights of the child committed since 2015. As part of its investigation into the economic underpinnings of the Burundian State, it sought to identify practices in the country's economy that were conducive to human rights violations. As part of its analysis of risk factors, it has identified those to be taken into account in the context of the current political transition.

4. In 2020, the Commission presented two oral briefings to the Human Rights Council. The present report summarizes the final conclusions of its investigations, which will be detailed in a separate document.<sup>2</sup>

### **B. Cooperation by Burundi with the Commission**

5. The Human Rights Council once again requested the Government of Burundi to cooperate fully with the Commission, to authorize it to conduct visits to the country and to provide it with all the information necessary to carry out its mandate. The Commission sought to engage in a dialogue with the Burundian authorities through the Permanent Mission of the Republic of Burundi to the United Nations Office and other international organizations in Geneva, in particular to allow for an exchange of information and to reflect the position of the Government of Burundi as much as possible in its report. All of the Commission's correspondence went unanswered.

### **C. Methodology**

6. The Commission undertook visits to Uganda, Rwanda and the United Republic of Tanzania. Members of the Commission also met with representatives of the African Union, the European Union and various States. However, the health crisis related to the coronavirus (COVID-19) pandemic and the travel restrictions imposed by many States beginning in March 2020 prevented the Commission from making some planned visits. To adapt as best possible to the new constraints, the Commission carried out more remote interviews. During the fourth term of its mandate, it held a total of more than 300 face-to-face or remote interviews with victims, witnesses and other sources, residing either in Burundi or in other countries, in addition to the nearly 1,300 testimonials collected since the beginning of its

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<sup>1</sup> Information relating to the hill district (colline) elections of 24 August 2020 is only covered in additional document A/HRC/45/CRP.1, available on the Commission's website.

<sup>2</sup> A/HRC/45/CRP.1.

work. The Commission deplores the fact that persons who have worked with it have faced intimidation and reprisals.

7. The Commission continued to apply the same methodology and the same standard of evidence, “reasonable grounds to believe”, which are fully consistent with internationally accepted guidance and practice for this type of inquiry.<sup>3</sup>

#### **D. Applicable law**

8. The applicable law is still international human rights law and international criminal law.<sup>4</sup> As Burundi has not ratified any new treaties, it is party to the same conventions as previously.

9. The withdrawal of Burundi from the Rome Statute of the International Criminal Court, which took effect on 27 October 2017, does not discharge the country from the obligations arising therefrom while it was a party to the treaty<sup>5</sup> or from its obligations under customary international law concerning international crimes. The Commission has referred to the definitions of crimes set forth in the Rome Statute, which are reflected in the Criminal Code of Burundi.

## **II. Main developments**

### **A. Developments within international and regional bodies**

10. During the period covered by the present report, no special rapporteur or working group visited Burundi and no visits were planned. Special procedures mandate holders sent a communication to the Government regarding a case of an alleged human rights violation.<sup>6</sup> The Government did not respond. The Working Group on Arbitrary Detention adopted two opinions in which it concluded that Germain Rukuki (a human rights defender) and Alexis Sebahene (a soldier held in pretrial detention since August 2015) were being arbitrarily detained.<sup>7</sup>

11. On 30 October 2019, the Security Council held a formal meeting to consider the situation in Burundi, during which the Special Envoy of the Secretary-General for Burundi, Mr. Kafando, announced that he was stepping down. Since then, the Security Council has been able to hold just two closed-door informal dialogues, in February and June 2020.

12. The targeted sanctions adopted by the European Union against four Burundian nationals responsible for the violent crackdown in 2015, including Gervais Ndirakobuca, who was appointed Minister of the Interior, Community Development and Public Security on 28 June 2020, have been renewed until October 2020. Several countries that are not in the European Union have aligned themselves with this decision. The sanctions adopted by the United States of America are being maintained against 11 Burundian nationals, including Alain-Guillaume Bunyoni, the Prime Minister since 24 June 2020, and Gervais Ndirakobuca.

13. The investigation opened on 25 October 2017 by the Prosecutor of the International Criminal Court into crimes against humanity committed in Burundi between 26 April 2015 and 26 October 2017 is continuing.

<sup>3</sup> See Office of the United Nations High Commissioner for Human Rights, *Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice*, document HR/PUB/14/7.

<sup>4</sup> A/HRC/36/54 and Corr.1, paras. 9–11. See also A/HRC/36/CRP.1, paras. 37–50 (document available on the Commission’s website).

<sup>5</sup> International Criminal Court, Rome Statute of the International Criminal Court (17 July 1998), art. 127.

<sup>6</sup> JAL (joint allegation letter) BDI 1/2020.

<sup>7</sup> A/HRC/WGAD/2019/37 and A/HRC/WGAD/2020/25.

## B. Developments in Burundi

### 1. Electoral process

14. Presidential, legislative and communal elections were held on 20 May 2020, in accordance with the timetable set by the Independent National Electoral Commission. The official election campaign for the three elections on 20 May opened on 27 April and closed on 17 May. According to the Electoral Code, candidates and political parties were only allowed to campaign during this period, and between 6 a.m. and 6 p.m.

15. The campaign and the election took place without international observers. Those who were to be sent by the East African Community declined to come after the Government of Burundi announced that as part of the fight against COVID-19 they would be placed in a two-week quarantine upon arrival, meaning until the day after the election.

16. On 25 May 2020, the chair of the Independent National Electoral Commission announced the provisional results of the elections, whereby Évariste Ndayishimiye won the presidential election with more than 68 per cent of the vote and Agathon Rwasa came in second, with 20 per cent. In a statement issued on 27 May, the Burundian Catholic Bishops' Conference said that its 2,716 observers deployed to specific polling stations had reported "numerous irregularities" and that the bishops wondered "whether they might undermine the declared result".<sup>8</sup>

17. On 4 June 2020, the Constitutional Court dismissed a complaint from the Congrès national pour la liberté (CNL) challenging the provisional results and denouncing massive fraud and irregularities. It announced that Évariste Ndayishimiye had been elected with 68.7 per cent of the vote. Agathon Rwasa, who at the same time had been elected as a member of parliament, said that he took note of this decision. The ruling party, the Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie (CNDD-FDD), also won the legislative and communal elections by large margins.

18. On 8 June 2020, the incumbent President, Pierre Nkurunziza, died unexpectedly, according to official reports, from cardiac arrest. On 12 June, the Constitutional Court ruled that the newly elected President, Évariste Ndayishimiye, should be sworn in immediately, and he came into office on 18 June. In his inaugural speech, which had its share of ambiguous and contradictory statements, he promised to reconcile the country through dialogue, to combat impunity, to improve the human rights situation and to protect the population. He also called on refugees to return home. However, he called into question whether there had actually been a political crisis in 2015 and pronounced an unduly limited concept of certain civil liberties, supposedly based on Burundian culture.

19. On 24 June 2020, Alain-Guillaume Bunyoni, who had been Minister of Public Security since 2015, was appointed Prime Minister, and Prosper Bazombanza, from the Union pour le progrès national, was named Vice-President. The civilian chef du cabinet under the Nkurunziza presidency was reappointed, as was the spokesperson. On 28 June, a new Government of 15 members was formed, including 5 women, comprising mainly persons from the previous regime, representing the CNDD-FDD hardliners' wing. Since then, dozens of members of the military have been promoted, including some high-ranking officers regularly cited for involvement in serious human rights violations since 2015. On 10 July, the Senate approved the 18 provincial governors chosen by the President, including 3 women and 6 senior military officers, thereby breaking with the practice of appointing civilians to these key positions.

20. On 20 July 2020, the CNDD-FDD party won 34 of the 36 Senate seats elected by local councillors.<sup>9</sup>

<sup>8</sup> See [www.eglisecatholique.bi/index.php/fr/vie-de-l-eglise/communiqués/communiqué-de-la-conference-des-évêques-catholiques-du-burundi-sur-le-scrutin-du-20-mai-2020](http://www.eglisecatholique.bi/index.php/fr/vie-de-l-eglise/communiqués/communiqué-de-la-conference-des-évêques-catholiques-du-burundi-sur-le-scrutin-du-20-mai-2020).

<sup>9</sup> Three Twa senators were co-opted.

## 2. Security incidents

21. Burundi has had several serious security incidents. On 22 October 2019, an armed clash took place in Bubanza Province between the Burundi defence and security forces and an armed group. The Red Tabara opposition group claimed responsibility. On 16 November 2019, in Cibitoke Province, a Burundian army position was attacked by a group of heavily armed individuals. The Government of Burundi accused Rwanda of being responsible for the attack, and Rwanda formally denied the accusation. Between 19 and 23 February 2020, in Bujumbura Province, there were reports of an armed group and several exchanges of gunfire with law enforcement agencies. The official account of this incident reported 22 armed criminals and 2 police officers killed and 6 of the assailants captured. However, several of the armed men were shot dead after being captured by Imbonerakure-backed security forces.

## 3. Transitional justice

22. On 14 January 2020, the president of the Truth and Reconciliation Commission presented the progress report for 2019. The Commission identified 142,505 Burundians killed or missing from the time of independence in 1962 until the end of the civil war in December 2008. The Commission reportedly has information on the conditions in which the victims were killed or reported missing, and on the perpetrators. The Truth and Reconciliation Commission also located thousands of mass graves, in all provinces. Since the beginning of 2020, it has unearthed more sites and has exhumed thousands of human remains. The victims' clothing and the material used to kill them – mainly in 1972, when the victims were principally Hutus – will be kept in a museum.<sup>10</sup>

## 4. Health situation

23. Burundi has faced a cholera epidemic since June 2019, an epidemic-scale “upsurge” of malaria cases since January 2019 and the COVID-19 pandemic since March 2020, and it has had to prepare for a possible outbreak of the Ebola virus, which has been circulating in the Democratic Republic of the Congo since 2018.

24. For months, the Government of Burundi denied that there was actually a serious health situation in the country, for example refusing to qualify the malaria “upsurge” as an epidemic or to acknowledge the existence of the COVID-19 outbreak, since, according to former President Nkurunziza, Burundi was protected from it “by the grace of God”. On 12 May 2020, in the midst of the pandemic, the Government declared four World Health Organization officials *persona non grata*, including the Organization's representative in the country. Burundi was one of the only countries with positive cases of COVID-19 that did not adopt any restrictions on gatherings, which, on the contrary, increased during the election campaign. According to the country's official data, as of 20 July 2020, out of a total of 9,461 tests carried out, 328 cases of COVID-19 had been detected, with only 1 death reported. Such figures have regularly been criticized for being excessively low.

25. Since the death of President Nkurunziza on 8 June 2020, the authorities have stressed the need to take barrier measures and have encouraged people with symptoms to visit health centres, although information about the true scale of the pandemic continues to be lacking. In his speech of 30 June 2020, President Ndayishimiye said that the COVID-19 pandemic was “the greatest enemy” of the Burundian people.

## 5. Humanitarian situation

26. As at 30 June 2020, according to the Office of the United Nations High Commissioner for Refugees, 333,703 Burundians were still refugees in bordering countries, 6,423 had been repatriated from the United Republic of Tanzania since 1 January 2020 and 3,247 new arrivals had been officially registered in neighbouring countries.

27. In 2020, according to the figures agreed by the Office for the Coordination of Humanitarian Affairs and the Government of Burundi, 1.7 million persons are in need of

<sup>10</sup> See [www.ppbd.com/index.php/ubum/imibano/9-actualite/15519-parlement-presentation-du-rapport-annuel-des-activites-de-la-commission-verite-et-reconciliation](http://www.ppbd.com/index.php/ubum/imibano/9-actualite/15519-parlement-presentation-du-rapport-annuel-des-activites-de-la-commission-verite-et-reconciliation).

humanitarian assistance and 1.7 million are suffering from food insecurity. There are still about 100,000 persons internally displaced within their own country, the majority of whom are economically vulnerable women heads of household.<sup>11</sup>

### III. Situation of human rights

#### A. Main trends

28. In the context of the 2020 electoral process, which began in 2019, human rights violations took on a political dimension. Above all, they affected the right to security and freedom, but also the right to life and to be free from torture or ill-treatment, as well as civil liberties. The victims were mainly opposition political parties and their members, as well as journalists and independent media outlets. Violent clashes took place between members of the ruling party and the CNL, but there was no mass violence, specifically thanks to the international community's, and the Commission's, calls for calm and reminders that political leaders were responsible for the actions of their activists.

29. The perpetrators of these human rights violations were mainly members of the Imbonerakure and local administrative officials acting alone or jointly with the police or the National Intelligence Service. In cases of arbitrary arrest and detention, the responsibility lies mainly with police and National Intelligence Service officers, but also with members of the judiciary.

30. The vast majority of victims have been deprived of their right to an effective remedy due to the lack of independence and impartiality of the judiciary, which is still plagued by corruption. It has remained a tool of repression against the political opposition and has also been used to censor the press and human rights defenders.

#### B. Violations in the context of the electoral process

##### 1. Weakened political opposition

31. Opposition political parties and their members, mainly from the CNL, considered the main rival of the ruling party, suffered serious human rights violations, which intensified in the run-up to the elections. The aim was to weaken or even eliminate the chances of the CNL winning the election by preventing it from carrying out certain political activities, including campaigning, by intimidating its members, candidates and representatives in order to discourage them from carrying out their work and even by destroying the property and crops of some of its members. On election day, the aim was to prevent certain opponents from voting freely and in secret and to prevent representatives appointed by the opposition parties from observing the vote. Independent candidates and candidates from other parties were more rarely targeted, which attests to the organized and targeted nature of such acts.

##### *Right to liberty*

32. Dozens of CNL activists, including those in positions of responsibility within the party as well as candidates for legislative and communal elections, were arbitrarily arrested and detained, for example for campaigning outside the officially designated days and hours while wearing the party's cap or symbol, holding illegal meetings or seeking to "disrupt the election". Some were arrested following physical clashes with members of the Imbonerakure attempting to disrupt election rallies. While most were released after a few days or weeks, some were sentenced to relatively heavy sentences of several years in prison after hastily arranged trials with expedited procedures, while others remained in pretrial detention.

33. The judiciary continued to be used often as a tool of political repression and to be biased in favour of the CNDD-FDD party. The Imbonerakure involved in clashes with

<sup>11</sup> Office for the Coordination of Humanitarian Affairs, Burundi Situation Report, updated on 21 July 2020. Available at <https://reports.unocha.org/en/country/burundi>.

members of the CNL have rarely been prosecuted or punished. The Ministry of Public Security has consistently identified members of the CNL as responsible for “90 per cent” of such incidents, without bothering to carry out investigations.

*Right to life and physical integrity*

34. Several members of the CNL have been murdered in reprisal for their political activities. Violent clashes between the Imbonerakure and members of the CNL have resulted in injuries and deaths on both sides. Members of the Imbonerakure have also beaten up activists from the CNL individually or in small groups; some victims have been seriously injured, and some of these incidents constitute a form of torture.

*Right to take part in the conduct of public affairs*

35. Acts aimed at preventing certain opposition party candidates from standing for election have taken various forms. In addition to threats, physical violence and arbitrary arrest and detention, the authorities have also made abusive use of legal means to prevent them from running.

36. The Independent National Electoral Commission rejected the applications of 4 of the 10 candidates who filed for the presidential election and of several opposition party lists for the legislative election in some provinces, mainly invoking the lack or invalidity of documents proving respect for ensuring an ethnic or gender balance. However, it offered no opportunity to correct such failures. The Constitutional Court has generally validated such decisions, with few exceptions.

37. On 18 May 2020, the State Prosecutor of the Republic requested the Independent National Electoral Commission to remove 59 candidates from the CNL from the lists for the legislative and communal elections, as the candidates were being prosecuted, with some held in pretrial detention and others officially wanted. On 19 May, the chair of the Independent National Electoral Commission sent their names to the heads of the provincial electoral commissions. Indeed, according to the Electoral Code, persons in pretrial detention temporarily lose their voting rights and as such cannot be candidates in legislative and communal elections.<sup>12</sup> Such provisions are not only incompatible with the right to be presumed innocent; combined with the arbitrary mass detention of candidates from the CNL, they are an abusive restriction on the right to stand for election.

*Freedom of peaceful assembly and association*

38. Before the election campaign began, local officials imposed arbitrary restrictions on the CNL for the opening or inauguration of certain offices, as well as for the holding of legitimate activities such as the organization of private or public meetings. Dozens of the party’s offices were vandalized or were partially or totally destroyed, but the arrests following such events mainly targeted the party’s own members, who were accused of trying to harm the ruling party.

39. During the election campaign, numerous election rallies were organized across the country by all the competing political parties. While most generally went well, several meetings of the CNL were disrupted or encountered obstacles. Members of the Imbonerakure, often with the support of local officials, tried to prevent some of them by occupying the venues that had been declared in advance with the local authorities.

*Freedom of expression*

40. Particularly virulent messages of hatred and hostility towards political opponents of the CNDD-FDD party, sometimes with an ethnic dimension, circulated on social networks without eliciting the authorities’ condemnation or rebuke. The head of the CNL has regularly been presented by CNDD-FDD officials as an ally of “the country’s enemies” and “colonists”, or as a “puppet” of former President Pierre Buyoya. Such divisive comments

<sup>12</sup> Republic of Burundi, Organic Act No. 1/11 of 20 May 2019 amending Act No. 1/20 of 3 June 2014 on the Electoral Code, arts. 5.1, 125 (a) and 183 (f).



have fuelled and even legitimized hostility towards members of the party. In addition, the party's candidates have been arrested and prosecuted merely for criticizing local officials or authorities or their actions.

## 2. Independent observers muzzled

### *Press*

41. Journalists have been intimidated and threatened, including with death, to prevent them from doing their work independently or covering sensitive issues. Some have been forced to seek permission from local authorities to travel, especially within the country. The case of the four journalists of the Iwacu independent press group is representative of the problem; they were sentenced on 30 January 2020 to two and a half years in prison for "a failed attempt of complicity in undermining the internal security of the State" under articles 16 and 607 to 626 of the Criminal Code, for having gone to cover reports of an armed clash between Burundian soldiers and an armed group on 22 October 2019. They were immediately arrested when they arrived at the scene. Their conviction has been condemned by several independent United Nations experts.<sup>13</sup> That notwithstanding, on 5 June 2020 the Ntahangwa Court of Appeal upheld the verdict.

42. The press continued to be closely monitored by the National Communication Council. In October 2019, the Council presented the Code of Conduct for the Media and Journalists in the 2020 Election Period, which obliges the media to work in synergy and prohibits the reporting of results other than those officially announced by the Independent National Electoral Commission or the use of opinion polls as a source of information. The fact that the Code was drawn up by the National Communication Council without consultation with professionals and that it de facto restricts freedom of the press has been denounced by the independent media.

### *Human rights defenders and non-governmental organizations*

43. The Government continued to make use of the judicial system to muzzle civil society. For example, on 4 February 2020, some 20 human rights defenders and journalists in exile opposed to a third term for President Nkurunziza went on trial in absentia and without their representation by counsel. Human rights defenders continue to be arbitrarily detained, including Germain Rukuki and Nestor Nibitanga, who were respectively sentenced to 32 and 5 years of imprisonment.

44. As a result of the measures taken in 2018 to increase control over foreign non-governmental organizations (NGOs) and their activities, in February 2020 such NGOs were ordered to submit lists of their employees, including information on their ethnicities. On 20 March 2020, the Government announced that those that did not respect the ethnic balance would be "cancelled" and that inspections would be undertaken.

## 3. Population under control

45. Control of the population by the Imbonerakure, often based on intimidation, including forced recruitment into the CNDD-FDD party, has increased in recent years. With the electoral process, such practices continued, though they were directed more at the members of the CNL.

46. The fact that the Imbonerakure are everywhere in the hill districts and in the joint security committees is a matter of concern even within the Government. The permanent secretary of the National Security Council reiterated that the joint committees should not replace either the police or the judiciary, that they should not organize night patrols without the police and, above all, that they should be more inclusive so as to earn greater public trust. On 3 March 2020, the Minister of the Interior called for the suspension of marches organized by young people affiliated with political parties, who were chanting songs and slogans, until the beginning of the election campaign.

<sup>13</sup> See <https://news.un.org/fr/story/2020/02/1062201>.

47. The impact of such statements was limited because they were late in coming and were in contradiction with earlier instructions. On 15 January 2020, the permanent secretary of the National Security Council had mentioned the need to revitalize the joint committees and to “control population flows and movements of travellers and to keep track every day of the foreigners staying in every household and at every hotel”.

48. Part of the population continued to be forced by the Imbonerakure and local officials to make contributions in cash or in kind, including to support the CNDD-FDD party, to organize political rallies or to give gifts to the party’s candidates.

49. Some people were prevented from participating in rallies organized by the CNL, in particular owing to a lack of transport, while others were forced to participate in those organized by the CNDD-FDD party, as markets were closed down for the occasion. Some voters had no choice but to vote for the ruling party in the various elections because they could not vote in private or they were subjected to intimidation.

50. Children were forced to participate in political meetings organized by the CNDD-FDD party, as their classes were suspended. School principals threatened to lower students’ grades for the subject entitled “education” if they failed to take part. On election day, students, including minors, were forced to vote by local officials or school principals, who gave them the voting cards of deceased or exiled voters.

51. The electoral process took place at a time when the Burundian authorities were underestimating the effect of the COVID-19 pandemic and even made use of the pandemic for electoral purposes. The authorities insisted on organizing the elections without taking adequate measures to protect the population. They encouraged people to participate in massive CNDD-FDD electoral rallies and refused to communicate transparently about the extent of the pandemic or the risks involved. They even threatened to punish those who took early protective measures. Sick people were afraid to go for treatment or screening. Such action violated the right to health, and even the right to life.

#### 4. Women in the electoral process

52. In 2020, 52 per cent of Burundian voters are women. The Constitution provides for a 30 per cent gender quota system, which has been implemented under the Electoral Code through a co-opting mechanism and blocked lists. Burundi ranks among the countries in Africa<sup>14</sup> with the highest rate of women elected to national and decentralized office, for example with 39 per cent of the National Assembly and 41 per cent of the Senate. In accordance with the constitutional quota, 5 of the 15 ministers in President Ndayishimiye’s Government are women. However, on average, only 12 to 18 per cent of those appointed or elected to institutions without gender quotas, such as provincial governorships or hill district councils, have been women. This shows the importance of special measures to accelerate the achievement of de facto equality between men and women in the country.

53. In the context of the electoral process, women members of opposition parties were victims of arbitrary arrest and detention, but also of intimidation and threats, particularly when the electoral lists were published. Such actions were aimed at discouraging them from actively participating in the electoral process or at blocking them from exercising their civil liberties.

54. The electoral violence experienced by women is different from that affecting men. It is inherently sexist<sup>15</sup> and is also linked to the preservation of traditional gender roles and structural gender inequalities.<sup>16</sup> Burundian women who engage in politics face multiple forms of discrimination, as there is a perception that political activity is difficult to reconcile with their roles as wives and mothers. Such prejudices, all of which block women from exercising their fundamental freedoms, exist both in the private sphere and in the political parties. The

<sup>14</sup> See Economic Commission for Africa, *Women in decision-making spheres in Africa*, fact sheet, June 2019.

<sup>15</sup> A/73/301, para. 33.

<sup>16</sup> *Ibid.*, para. 13.

difficulties and violence suffered by women in the opposition is made worse by the general climate of intolerance towards the political opposition.

55. The Commission was unable to document sexual violence directly related to the electoral process, in part owing to time constraints. Because of the trauma and stigma attached to such acts, victims are often discouraged from immediately reporting them. Nevertheless, the Commission has continued to document cases of sexual violence committed *inter alia* for political reasons, as reported in paragraph 58 of this document.

## C. Other violations

56. The Commission had to conduct its investigations in exceptional circumstances owing to the COVID-19 pandemic. It had to cancel several missions to the countries bordering Burundi. In addition, it gave priority to investigating violations committed in the context of the elections and to the economic underpinnings of the State, in accordance with its mandate. Consequently, the Commission has not been able to gather sufficient evidence to corroborate certain allegations of violations of economic and social rights, such as the rights to an adequate standard of living, work or education, nor has it been able to comment on the evolution of certain trends mentioned in its previous report (A/HRC/42/49).

### 1. Right to life

57. People with a specific profile, such as currency traders and former members of the FAB (the former Burundian army), have been found dead a few days after their disappearance, obviously having been executed. The police have also conducted operations in which people have been summarily executed instead of being apprehended. Bodies bearing signs of violence continue to be found in public places, and the authorities make no attempt to establish the victims' identities or the circumstances of their death. Recently, to set an example, two police officers received sentences for killing civilians with their service weapons, in a welcome first step in the fight against police impunity.

### 2. Torture and sexual violence

58. Acts of torture continued to be committed, including sexual and gender violence affecting mostly women and girls, but also men. Such violence was aimed at intimidating, controlling, repressing or punishing women and men for their supposed or actual political opinions, their refusal to join the ruling party or their links with an armed movement. These include cases of gang rape, but also the infliction of blows or burns on the genitals, buttocks or breasts and cases of forced nudity. Such violence was committed mainly by members of the Imbonerakure or of the police during visits or attacks on the victims' homes, but also in the context of arrest or detention by the National Intelligence Service. Women have been raped after their repatriation to Burundi.

59. The Commission is concerned about the structural nature of sexual violence in Burundi, as the testimonials collected since 2015 demonstrate that this type of violence persists and confirm the trends identified in its previous reports. Despite various programmes designed to facilitate access to justice for the most vulnerable persons, and specifically women, and the fact that there has been better judicial treatment of cases of gender violence,<sup>17</sup> most victims of sexual violence have received direct or indirect threats and have not dared to report on the perpetrators or to seek assistance. This is *inter alia* due to the high number of perpetrators who are members of the security forces or the Imbonerakure, who have continued to enjoy almost total impunity.

### 3. Returnees

60. Some returnees have continued to face hostility from local officials and the Imbonerakure, who have intimidated and threatened them and have stolen their return kits.

<sup>17</sup> Republic of Burundi, *Rapport national d'évaluation de la mise en oeuvre de la Déclaration et du Programme d'actions de Beijing*, May 2019, pp. 13 and 32.

Returnees have sometimes been victims of serious violations that have forced them to go back into exile.

#### 4. Rights of the child

61. Since the beginning of the crisis in 2015, children have regularly been victims of violations of their human rights, including their rights to liberty, security and physical integrity; they have, in particular, been victims of sexual violence, as well as violations of their freedom of opinion and association through forced recruitment into the Imbonerakure or, in the case of younger children, into the CNDD-FDD “Little Eagles”.

62. Burundian children, especially girls, have suffered from the effects of the political crisis, as they have been severely affected by violations of the rights of their parents and other members of their families. Some parents have lost the means to support their families as they have had to flee the country. The disappearance or murder of a family member, especially a father, has also left families unable to provide for children’s basic needs.

63. Families have been separated as a result of these violations, including when they have fled the country, and many children have been left orphaned. More than half of Burundian refugees are thus children, and a large number are unaccompanied.<sup>18</sup> Many boys and girls have been traumatized by serious violations of the rights of family members, which they have often seen first-hand. Many need psychosocial and even medical care.

### D. Economic underpinnings of the State

64. Corruption, misappropriation of public funds, including funds from international development assistance, conflicts of interest and the illegal protection of interests underpin the functioning of the Burundian economy, especially in the most lucrative sectors such as mining or government contracts, even though most of this behaviour is criminalized under Burundian law.

65. In Burundi, a patrimonial concept of power dates back many years. It is the result of a structural problem of sharing of resources, linked to the weakness of the economy, and of the means of industrial production in particular, as well as the scarcity of land. The only way to gain access to resources is by taking power or being close to it, including through illicit economic and financial means.<sup>19</sup> This is one of the root causes of human rights violations in Burundi, as the perpetrators of such violations seek to eliminate all political opposition in order to ensure that a minority remains in power and has access to wealth. As long as such practices persist, there will be no incentive to carry out an in-depth reform of the system so as to respect and protect human rights and combat corruption; quite the contrary.

66. The effects of such economic malfeasance are worrying in view of the extreme poverty in which more than 70 per cent of Burundians live. The State has been deprived of crucial resources to finance the realization of human rights, both for economic, social and cultural rights such as access to health, education, food and water, and for civil and political rights. For example, less than 5 per cent of the Burundian population has access to electricity, and access to water and sanitation remains very low.<sup>20</sup> The average length of schooling is 3.1 years instead of the planned 11.3 years,<sup>21</sup> and 1.7 million Burundians are food-insecure. The judicial system is sorely lacking in resources, which contributes to widespread corruption

<sup>18</sup> See Office of the United Nations High Commissioner for Refugees, *Burundi Regional Refugee Response Plan: January 2019–December 2020*.

<sup>19</sup> See also A/HRC/39/CRP.1, paras. 120 and 142–149 (document available on the Commission’s website).

<sup>20</sup> World Bank, The World Bank in Burundi, “Burundi – Overview”. Available at <https://reports.unocha.org/en/country/burundi>.

<sup>21</sup> United Nations Development Programme, *Country information note on the Human Development Report 2019: Burundi*. Available at [http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/BDI.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/BDI.pdf).

within the judiciary and subjugates it to the executive branch.<sup>22</sup> The situation is so bad that the authorities have forced the already poor population to financially support the organization of the 2020 elections and various projects.<sup>23</sup>

## 1. Corruption

67. Corruption takes many forms and specifically includes trading in influence and abuse of office or power. To obtain a mining licence, a large sum of money must be paid to certain persons holding high political or administrative positions or to senior CNDD-FDD officials, either directly or through intermediaries. Some of those who benefit from this also hold shares in mining companies, sometimes through front operations. The Commission has also received allegations that there are similar practices in most sectors of the Burundian economy, especially when foreign companies want to invest in Burundi.

## 2. Misappropriation of public funds

68. From a global perspective, the Commission drew on a study of official development assistance disbursements from the World Bank to the poorest countries, carried out by economists who showed that between 1990 and 2010 there was a strong link between such payments and residents' transfers to tax havens.<sup>24</sup> The Commission relied on public data from the World Bank listing the amounts paid out per quarter and per project and the amounts of assets held by Burundian residents abroad, published by the Bank for International Settlements from 2010 to 2019.<sup>25</sup> In this period, there is clearly a correlation for assets held in Belgium, Switzerland and Luxembourg. The holdings in question are those of natural or legal persons with residence in Burundi, but such persons are not necessarily nationals. There may be legal grounds for such transfers, but the extent of the coincidence calls for further investigation.

69. The Commission has received credible allegations of misappropriation of public funds intended for various development projects financed by international assistance. For example, some Burundian families whose property was expropriated for the construction of public projects did not receive the planned compensation, which reportedly had been partially misappropriated. The Government of Burundi has publicly acknowledged that such misappropriation has taken place in connection with the construction of the presidential palace in Gasenyi.<sup>26</sup>

70. The construction of the Jiji and Mulembwe dams was to be accompanied by the payment by the Government of Burundi of US\$ 14.3 million for the electrification of local villages and compensation for those whose property was expropriated.<sup>27</sup> However, the finance bills provided much lower amounts for the compensation. The difference between these budgets and the amounts called for in the development assistance thus raises some questions.

71. Mining agreements between private companies and the State generally provide for the payment by the company of annual compensation to the communes and the payment of hundreds of thousands of dollars for the economic and social development of the region. However, the Commission has reasonable grounds to believe that under several mining concession agreements, a significant portion of these funds has not been received by the intended recipients or has not materialized in development projects on the ground. This raises

<sup>22</sup> A/HRC/39/CRP.1, paras. 462–579; and A/HRC/36/CRP.1, paras. 318–320 (document available on the Commission's website).

<sup>23</sup> A/HRC/39/CRP.1, paras. 634–646.

<sup>24</sup> J.J. Andersen, N. Johannesen and B. Rijkers, "Elite Capture of Foreign Aid: Evidence from Offshore Bank Accounts", *Policy Research Working Paper 9150* (World Bank, 2020).

<sup>25</sup> Bank for International Settlements, "Banks' cross-border positions on residents of Burundi". Available at <http://stats.bis.org/statx/srs/table/A6.2?c=BI&p> (accessed 6 August 2020).

<sup>26</sup> See [www.dw.com/fr/construction-dun-nouveau-palais-pr%C3%A9sidentiel-des-burundais-expropri%C3%A9s-attendent-toujours/a-41072323](http://www.dw.com/fr/construction-dun-nouveau-palais-pr%C3%A9sidentiel-des-burundais-expropri%C3%A9s-attendent-toujours/a-41072323).

<sup>27</sup> See <http://documents.worldbank.org/curated/en/241731548424957473/pdf/PHJIMU-Rapport-dAudit-1-janv-au-30-Juin-2018.pdf>.

questions about what happened to those payments and, if they were not made, why the State did not seek to enforce the terms of those contracts, that were supposed to benefit its people.

72. Lastly, despite the fact that since 2016, the \$800 monthly pay of Burundian military personnel deployed in the African Union Mission in Somalia has been transferred directly by the African Union into their personal bank accounts in order to avoid any misappropriation, the Commission has reasonable grounds to believe that the Government of Burundi has continued to systematically tap into part of the pay using surreptitious means.

73. Most of the country's technical and financial partners are aware of the risk of diversion of funds. They have taken steps to minimize the risk by ceasing to contribute directly to the State budget, instead supporting operational partners such as non-governmental organizations, or directly paying the beneficiaries of their assistance. However, the measures that are taken are not always sufficient.

### **3. Conflicts of interest and the illegal protection of interests**

74. On the basis of publicly available information, the Commission has noted numerous cases of conflict of interest to which the authorities have turned a blind eye, even though, without being an offence in itself, such a situation is conducive to corruption, favouritism and the illegal protection of interests, which for their part are offences under Burundian law.

75. For example, despite the fact that article 142 of the Constitution prohibits ministers from engaging in any other activities, one of President Nkurunziza's ministers has retained his position as director of a civil engineering company that may do work in areas falling within his competence as a minister. Also, a senior government official has his own communications company, which has been awarded government contracts in the area directly under his responsibility. Several senior officials or assistants to ministers have been appointed to the boards of companies operating in fields covered by their ministerial portfolios.

76. The Commission has also received credible allegations that several persons holding high political or administrative positions, including within the CNDD-FDD party, own significant shares in companies holding veritable monopolies, either in law or in practice, for the marketing of certain products or services in the country.

### **4. Government contracts**

77. Government contracts are awarded in Burundi with very little transparency and much abuse of privately agreed-upon terms that often benefit those close to the people in power, which facilitates corruption and misappropriation of public funds. In 2017, government contracts accounted for more than 215 billion Burundian francs (or over \$111 million) – or more than a quarter of the current expenditure of the State's estimated annual budget – including 18 billion francs (or about \$9 million) in privately negotiated agreements.<sup>28</sup> Practices such as overcharging and under-delivery of services are common. For example, some goods such as vehicles have been purchased at two to three times their current market value, and roads have very quickly fallen into disrepair after being built.

### **5. Customs fraud**

78. Several products, including minerals such as gold, but also coffee and oil, are exported or imported without being officially declared, for example by means of the corruption of certain authorities, thus depriving the State of substantial tax revenues. Despite the fact that the publicly available information on the country's international trade is fragmentary, the Commission had noted significant inconsistencies which are a matter of concern. Of course, such discrepancies can be explained in part by reporting or accounting errors, differences in the calculation of market values and the application of different exchange rates. However, given their magnitude, such differences raise the possibility of large-scale customs fraud and shed light on the general lack of transparency in this area.

<sup>28</sup> See [www.armp.bi/files/Rapports/Rapports%20Annuels/ARMP\\_RAPPORT\\_ANNUEL\\_2017\\_Version\\_du\\_20\\_avril\\_2018\\_pdf.pdf](http://www.armp.bi/files/Rapports/Rapports%20Annuels/ARMP_RAPPORT_ANNUEL_2017_Version_du_20_avril_2018_pdf.pdf).

## 6. Graft

79. The Commission has obtained evidence that several persons holding high political or administrative positions, including within the CNDD-FDD party, have real estate holdings and/or assets in foreign countries, sometimes under a front name, and that they or members of their entourage hold directors' positions in several companies based abroad, including in South Africa, Kenya and Belgium. In addition, the assets of several Burundian officials, particularly in real estate, appear to be completely out of proportion with their official remuneration.

80. In view of the corruption in the Burundian economy and allegations of the payment of large sums of money to those same persons in order to obtain operating licences, particularly in the mining sector, the Commission has reasonable grounds to believe that those officials have enriched themselves illegally. It is worth noting that Burundian elected officials do not systematically declare their assets to the Supreme Court at the beginning and end of their terms of office, as required, however, by articles 95 and 159 of the Constitution.

## E. Responsibilities

### 1. Responsibility of the Burundian State

81. Once again, the Commission has found that the Burundian State can be held responsible for the acts constituting human rights violations documented in this report.<sup>29</sup>

82. The actions of agents of the State, particularly officers of the National Intelligence Service and the police, but also of the administrative authorities that represent the State in the provinces, municipalities, districts and hill districts, are directly attributable to the Burundian State, in conformity with its obligation to respect human rights and ensure that its agents refrain from violating them.

83. The Imbonerakure often act alone or sometimes in the presence of representatives of the police, the National Intelligence Service or local authorities. They enjoy considerable latitude in carrying out their activities, conferred on them by the Burundian authorities who have the means to control them, as well as almost total impunity. Imbonerakure are still regularly – indeed, almost routinely – used to supplement or replace the security forces, particularly in rural areas, at the request or with the consent of members, including senior officials, of the National Intelligence Service, the police, the Office of the President and local authorities. Some have military material and equipment reserved in principle for the defence and security forces, such as elements of military uniforms and boots, which attests to their central role within the formal and informal security structures of the Burundian State. When the conduct of the Imbonerakure is acknowledged and adopted by agents of the State, when they act on the instructions of such agents or when they act in “complete dependence” on or under the “effective control” of such agents, the Burundian State is directly responsible for their actions.

84. In the rare cases in which the Imbonerakure reportedly acted outside these scenarios, the nearly general impunity they enjoy following their acts also means that the responsibility of the Burundian State is engaged, in conformity with its obligation to protect human rights. Indeed, the State must, when it is aware or should have been aware of violations or abuses committed by third parties, undertake effective investigations and prosecutions, which has not generally been the case.

### 2. Responsibility of armed groups

85. Because the Commission has not had access to victims and the Government has repeatedly refused to pass on information, the Commission has been unable to corroborate the information it has received on the involvement of armed groups in human rights violations, in particular in relation to security incidents involving them.

<sup>29</sup> See A/HRC/36/54 and Corr.1, A/HRC/39/63 and A/HRC/42/49.

## IV. International crimes

### A. Constituent elements and types of crimes

86. The Commission still has reasonable grounds to believe that crimes against humanity, as defined in the Rome Statute, have been committed in Burundi. These crimes include murder, imprisonment or other severe forms of deprivation of physical liberty, torture, rape and other forms of sexual violence of comparable gravity and political persecution.<sup>30</sup>

87. The Commission has documented violent incidents committed during the electoral process in various provinces by different perpetrators who had similar types of modus operandi and a common objective, namely to prevent the political opposition from winning the communal, legislative and presidential elections of 20 May 2020 and to allow the CNDD-FDD party to remain in power. Such incidents can therefore be described as “systematic attacks” deliberately targeting civilians. The objective of winning the elections by any means and staying in power was regularly reiterated by representatives of the Government and the CNDD-FDD party, as well as by local authorities. The fact that the candidates, agents and local officials of the CNL were almost exclusively targeted shows that there was a strategy against the party, considered to be the main rival of the CNDD-FDD party in the elections. The alleged perpetrators of these international crimes are necessarily informed of this objective, which means that they must understand the backdrop against which they act.

### B. Individual responsibility

88. The Commission has updated its list of alleged perpetrators of crimes against humanity, which remains confidential in order to protect sources and to respect the presumption of innocence of the alleged perpetrators. However, the Commission reserves the right to share the list. The Commission is extremely concerned about the fact that some of the individuals on the list hold senior positions in the new Government and have been promoted within the defence and security forces since the new President, Mr. Ndayishimiye, took office.

## V. Risk factors

89. Common risk factors of criminal atrocities indicating a possible deterioration of the human rights situation in the context of the electoral process have diminished with the current political transition, but none have entirely disappeared. The structural ones remain unchanged.<sup>31</sup> It is still crucial to take tangible measures to bring about positive change.

90. Risk factor 1, relating to an unstable political, economic and security environment, is still present: the security situation remains volatile, as evidenced by various incidents that have taken place since October 2019 and recurrent tensions with some neighbouring countries; many Burundians, both inside and outside the country, are in a humanitarian emergency; the country is going through a serious economic crisis and the majority of the population is living in abject poverty; and some political tension remains, with allegations of massive electoral fraud and repression of the CNL. One way of mitigating political tension is for the authorities to stop violations of the rights of political opponents.

91. Risk factors 2 and 3 relate to the general impunity enjoyed by the main perpetrators of serious human rights violations. They are linked to the weakness of State structures capable of preventing or stopping such violations. To reduce their occurrence, it is indispensable to ensure the independence and impartiality of the judiciary. However, it is difficult to foresee positive developments in this regard as long as the perpetrators of the violations, including the Imbonerakure, continue to enjoy nearly total impunity.

<sup>30</sup> A/HRC/36/CRP.1, paras. 682–691.

<sup>31</sup> See A/HRC/42/49.



92. Risk factor 4 is the existence of motives, aims or other motivating factors justifying the use of violence against specific groups. The existence of economic interests linked to the preservation of power, which is the key to control over the distribution of the country's resources, is an important element. The authorities must fight corruption and misappropriation of funds more effectively, including at the highest level of the State, to mitigate this risk factor. The Truth and Reconciliation Commission should adopt a more inclusive approach in its work and integrate the other dimensions of transitional justice into its activities in order to reduce the risk that grievances from the past and the desire for revenge might be used for political purposes.

93. Risk factor 5, which relates to the ability of potential perpetrators to commit criminal atrocities, cannot be mitigated as long as the Imbonerakure remain everywhere to be seen in the public sphere and substitute themselves for the law enforcement and security forces, including in joint security committees.

94. The lack of mitigating factors (risk factor 6) such as a strong, organized and representative national civil society and free, diverse and independent media remains a serious concern. President Ndayishimiye's remarks on this subject during his inaugural address were not reassuring. The possibility of opening a democratic space, which can take place immediately, is a key indicator of the direction that the new Government will take. A resumption of cooperation with the entire United Nations system, including the Office of the United Nations High Commissioner for Human Rights, but also with international non-governmental organizations working on human rights, would be another important mitigating factor.

95. Risk factor 7, which relates to a climate and circumstances conducive to violence and human rights violations, including the politically motivated exploitation of identity, past events or motives to resort to violence, worsened with the elections of 2020. Provocative statements and incitement to hatred aimed at political opponents, sometimes with an ethnic dimension, increased. The authorities should take measures to effectively combat violations of the fundamental human rights of political opponents and acts of violence, including sexual violence, against women and children, and to punish the perpetrators of hate speech.

96. The main triggering factor (risk factor 8), which was the various 2020 elections, has disappeared. However, the new authorities in Burundi still perceive the measures taken by the international community as a threat to the State's sovereignty. In the long term, the allegations of massive fraud during the elections of 20 May 2020 are also likely to weigh on the legitimacy of the people who have just come to power. It remains to be seen whether attacks on the life, physical integrity, liberty and security of members of the opposition parties perpetrated during the electoral process will continue or will stop in the coming months.

97. The continued presence of all these risk factors provides an objective basis with which to grasp the reality of the human rights situation in Burundi. Just as the international community's vigilance helped to limit the level of violence during the electoral process, it is crucial in the transitional period for the human rights situation during the first months of the new Government to be followed with the utmost attention by the international community. The international community must not miss this opportunity to call for specific measures along these lines.

## VI. Conclusions and recommendations

98. **The Commission has reasonable grounds to believe that serious human rights violations – some of which may constitute crimes against humanity – have been committed since May 2019, mainly in the context of the 2020 electoral process. In particular, it has documented cases of violations of the right to life, numerous cases of arbitrary arrest and detention, torture and other ill-treatment, cases of rape and sexual violence and violations of key civil liberties. The main perpetrators have been the Imbonerakure, local administrative officials, police officers and agents of the National Intelligence Service. They have continued to enjoy nearly total impunity.**

99. Children suffer the harmful effects of the many human rights violations that have been committed since 2015. The country's economic system is underpinned by corruption and misappropriation of public funds, including funding from international development assistance, to the benefit of high-ranking persons in the Government and administration who have thus enriched themselves illegally. Such practices are not isolated cases, but the result of a system based on a patrimonial concept of power, and they are directly linked to the human rights violations committed since 2015.

100. The main risk factors, particularly those with a structural dimension, are still present. They can only disappear if the new authorities take concrete action.

101. In view of the historical depth of the Burundian crisis and the partly structural dimension of human rights violations, and taking into account the principle of the responsibility to protect the people of Burundi, including in the context of the political transition under way in the country, as well as the measures likely to mitigate risk factors, the Commission first reiterates its previous recommendations.<sup>32</sup> Those recommendations remain entirely valid and relevant, particularly those addressed to the Burundian authorities concerning measures to be given priority in order to put an end to human rights violations and international crimes, to combat impunity and to improve the human rights situation in the country, including the reopening of the democratic space and the protection of civil liberties. Its recommendations for longer-term measures relating to the review of the legal framework and the reform of the judiciary remain crucial.

102. The Commission also makes the following recommendations to the Burundian authorities:

- (a) To reopen the country office of the Office of the United Nations High Commissioner for Human Rights;
- (b) To immediately release human rights defenders and journalists who have been arbitrarily detained, as well as all political prisoners, including those from opposition parties arrested and detained in the context of the 2020 elections;
- (c) To guarantee the safety, freedom and physical integrity of members of opposition parties, including the Congrès national pour la liberté, and to ensure that they are not subjected to intimidation, harassment or any form of discrimination as a reprisal for their political activities;
- (d) To restore all civil liberties to enable future elections to be free, credible and transparent;
- (e) To stop the Imbonerakure from usurping the functions of the security forces and the judiciary and to prosecute and punish, as an example, those who have been involved in violations, or alternatively to dissolve the Imbonerakure;
- (f) To reform the Joint Human Security Committees to make them more inclusive and to limit the scope of their competence;
- (g) To fulfil the specific obligations of the authorities with regard to women's rights and the rights of the child;
- (h) To put an end to the recruitment of children by the Imbonerakure and to disband the CNDD-FDD party's "Little Eagles";
- (i) To establish psychosocial care services for child victims and witnesses of serious human rights violations, particularly among returnees;
- (j) To ensure access to justice and appropriate medical and psychosocial services for victims of sexual violence, including male victims;
- (k) To establish a 30 per cent quota for women on hill district councils;
- (l) To resume full cooperation with the World Health Organization;

<sup>32</sup> See annex III.

(m) To take measures to effectively combat economic misfeasance, in particular by ensuring transparency, competition and the establishment of objective and pre-established criteria for the awarding of government contracts, as well as an effective system of domestic remedies, and to investigate allegations of cases of ill-gotten gains;

(n) To become a party to the Extractive Industries Transparency Initiative and to implement the related standards;

(o) To systematically publish the annual budget, as implemented;

(p) To ensure that senior political and administrative officials systematically make a public declaration of their assets upon taking office and at the end of their term.

103. The Commission recommends that opposition rebel groups refrain from violence.

104. For the international community, in keeping with its duty of vigilance, the Commission has the following recommendations:

(a) To maintain an independent international mechanism that can objectively monitor the human rights situation in Burundi, including through the monitoring of risk factors and the implementation of the Commission's recommendations;

(b) To base the resumption of international cooperation with Burundi and the lifting of sanctions on tangible progress in the area of human rights and the fight against impunity and corruption;

(c) To ensure that refugees are not forced to return to Burundi until conditions in the country are favourable and to request free access to returnees to assess their situation;

(d) To support civil society organizations active in the field of human rights in Burundi, in particular for investigations and public reporting.

105. The Commission recommends that States and international organizations funding international development assistance programmes strengthen their procedures to minimize the risk of misappropriation of funds and systematically investigate allegations that they receive in order to ensure that such assistance is fully utilized for the intended purposes and to the benefit of the intended beneficiaries.

106. To the United Nations system, including its agencies, the Commission makes the following recommendations:

(a) In accordance with the human rights due diligence policy, to provide support only when there are guarantees that those who are to benefit from it are not perpetrators of serious human rights violations, either individually or institutionally, and not to provide such support when there have been credible allegations in this regard or when the competent authorities fail to take the necessary corrective or mitigating measures;

(b) To strengthen support for the response to sexual and gender-based violence in order to better address the specific needs of victims, including among refugees.

Annexes

Annexe I

I. Carte du Burundi



## Annexe II

## Correspondances avec le Gouvernement du Burundi

## 1. Note verbale envoyée à la Mission permanente du Burundi le 22 août 2019

NATIONS UNIES  
DROITS DE L'HOMME  
HAUT-COMMISSARIAT



UNITED NATIONS  
HUMAN RIGHTS  
OFFICE OF THE HIGH COMMISSIONER

HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS  
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REFERENCE: 2019/COI/BRD/NV/33

La Commission d'enquête sur le Burundi présente ses compliments à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève et souhaite l'informer que ses trois Commissaires : M. Doudou Diène (Président), Mme Françoise Hampson et Mme. Lucy Asuagbor (membres) seront à Genève pour la présentation de leur rapport final à la quarante deuxième session du Conseil des droits de l'homme qui aura lieu le 17 septembre 2019.

La Commission saisit cette opportunité pour solliciter une rencontre avec son Excellence Monsieur Rénovat Tabu, Représentant permanent du Burundi auprès de l'Office des Nations Unies à Genève pour discuter des questions relatives aux travaux de la Commission. La Commission propose une rencontre le 06 septembre 2019 à 09 :00. Toute communication à cet égard, notamment pour convenir d'un lieu de rencontre qui soit mutuellement acceptable peut être adressée à notre secrétariat : Mme Françoise Kenfack, assistante administrative, courriel: [fkenfack@ohchr.org](mailto:fkenfack@ohchr.org).

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



Genève, le 22 Août 2019

Mission permanente de la République du Burundi  
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et des autres organisations internationales à Genève  
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## 2. Note verbale envoyée à la Mission permanente du Burundi le 2 septembre 2019



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REFERENCE: 2019/COI/BRD/NV/35

La Commission d'enquête sur le Burundi présente ses compliments à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève et la prie de trouver ci-joint une version avancée de son rapport final A/HRC/42/49 qui sera présentée à la quarante-deuxième session du Conseil des droits de l'homme.

La Commission saisit cette opportunité pour informer la Mission permanente du Burundi qu'elle tiendra une conférence de presse le 4 septembre 2019 à 13 heures, afin de présenter les conclusions de son enquête contenues dans le rapport ci-joint.

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



Geneva, 2 September 2019 2019

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**3. Lettre envoyée à la Mission permanente du Burundi  
le 4 octobre 2019**



**COMMISSION OF INQUIRY ON BURUNDI**  
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4 October 2019

REFERENCE: 2019/COI/BRD/NY/1

Excellency,

On behalf of the Commission of Inquiry on Burundi, following the presentation of our report at the latest session of the Human Rights Council in Geneva, I have the honour to seek a meeting with your Excellency during our upcoming visit to New York. You may be aware that Commissioner Françoise Hampson and I are due to present the report to the United Nations General Assembly on Wednesday, 23 October 2019.

If your availability so permits, we would be pleased to meet on Monday, 21 October 2019, at 9.00 a.m. at UNHQ. The specific meeting room will be conveyed to your office in due course. Communication regarding the proposed meeting may be directed to [coiburundi@ohchr.org](mailto:coiburundi@ohchr.org).

Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read "D. Diène".

Doudou Diène  
President  
Commission of Inquiry on Burundi

His Excellency  
Mr. Albert Shingiro  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative  
Permanent Mission of the Republic of Burundi to the United Nations in New York  
E-mail: [ambabunewyork@yahoo.fr](mailto:ambabunewyork@yahoo.fr)

#### 4. Lettre envoyée à la Mission permanente du Burundi le 4 février 2020



United Nations Nations Unies

**COMMISSION D'ENQUÊTE SUR LE BURUNDI**  
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Le 4 février 2020

REFERENCE: 2020/COI/BRD/Lettre/03

Excellence,

J'ai l'honneur de me référer à la résolution 42/26 adoptée par le Conseil des droits de l'homme des Nations Unies le 27 septembre 2019, par laquelle il a décidé de proroger le mandat de la Commission d'enquête sur la situation des droits de l'homme au Burundi. Je souhaite réitérer la volonté de la Commission d'instaurer un dialogue avec les autorités burundaises en vue de l'accomplissement de son mandat, conformément à l'esprit de coopération voulu par le Conseil. Je vous réaffirme donc la disponibilité des membres de la Commission pour vous rencontrer en marge de la 43<sup>ème</sup> session du Conseil en mars 2020.

Le Conseil des droits de l'homme dans sa résolution 42/26: « engage vivement le Gouvernement burundais à tenir dûment compte des recommandations que la Commission d'enquête a formulées dans ses rapports et à les mettre en œuvre, notamment en vue de réduire sensiblement les risques recensés dans le rapport le plus récent de la Commission, en particulier dans le contexte électoral ».

Les attaques et les incidents sécuritaires qui ont eu lieu à Masare, zone Muyebe, commune Musigati, province de Bubanza, le 22 octobre 2019, ainsi qu'à Marura, commune de Mabayi, province de Cibitoke, dans la nuit du 16 au 17 novembre 2019 sont à cet égard très préoccupants. Les incidents récents attestent de la pertinence de l'analyse de la Commission concernant les facteurs de risque dans le contexte des élections à venir (voir A/HRC/42/49 et A/HRC/42/CRP.2). Il est donc urgent que votre Gouvernement prenne des mesures adéquates et pertinentes afin d'atténuer les risques notamment en ce qui concerne l'instabilité en matière de sécurité (facteur de risque no. 1), l'absence de facteurs atténuants (facteur de risque no. 6), l'existence de circonstances propices à la perpétration d'atrocités criminelles (facteur de risque no. 7) et l'existence de facteurs déclencheurs (facteur de risque no. 8). Parmi les recommandations contenues dans le dernier rapport de la Commission qui sont les plus à même d'avoir un impact rapide et de contribuer à un climat électoral apaisé, je souhaite mettre en avant les suivantes :

Son Excellence  
Monsieur Rénovat Tabu  
Ambassadeur extraordinaire et plénipotentiaire  
Représentant permanent de la République du Burundi  
auprès de l'Office des Nations Unies  
et des autres organisations internationales à Genève  
Rue de Lausanne 44  
1201 Genève  
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« • Se réengager de manière constructive et coopérative avec tous les mécanismes internationaux et régionaux des droits de l'homme et le Haut-Commissariat aux droits de l'homme, en leur permettant d'assurer pleinement et librement leurs mandats de suivi des droits de l'homme ;

- Prendre les mesures nécessaires afin de garantir la liberté d'établissement, d'organisation et de fonctionnement des ONG étrangères et locales, y compris en révisant les lois les régissant ;

- Prendre les mesures nécessaires afin de garantir la liberté d'information dans le pays et le droit des médias locaux et internationaux d'exercer leurs activités conformément aux standards internationaux, y compris en révisant les lois sur la presse et le CNC ;

- Garantir la jouissance effective des libertés publiques, notamment les libertés d'opinion, d'expression, d'accès à l'information, d'association, d'assemblée et de religion, y compris en mettant fin à toute pratique de recrutement forcé au sein du parti au pouvoir et de sa ligue des jeunes ;

- Garantir que tous les partis politiques puissent mener leurs activités légitimes en toute liberté et sécurité, dans un climat de tolérance politique, notamment en sanctionnant tout propos d'incitation à la haine et à la violence contre les autres partis politiques et leurs membres ;

- Garantir dans la pratique l'indépendance structurelle de la CENI, notamment en révisant le décret la régissant afin que sa composition soit inclusive et équilibrée, et renforcer les capacités de ses membres aux échelons municipaux et provinciaux ;

- Permettre l'accès d'observateurs électoraux indépendants, internationaux et régionaux, et leur garantir, ainsi qu'aux observateurs nationaux issus de la société civile ou des partis politiques, une liberté de mouvement et d'action avant, pendant et après les élections ;

- Libérer immédiatement tous les prisonniers politiques arrêtés et détenus en lien avec l'exercice de leurs droits démocratiques ;

- Mettre fin à l'impunité des Imbonerakure en exerçant un contrôle sur eux pour éviter l'usurpation des fonctions des forces de sécurité ou de la justice, et faire cesser leurs activités répressives et démonstrations de force sur les collines ;

- Mettre fin à toutes les contributions illégales. »

Je suis confiant que divers acteurs de la communauté internationale, et particulièrement le Bureau du Haut-Commissariat aux droits de l'homme, seront prêts à appuyer votre Gouvernement afin de les mettre en œuvre.



## COMMISSION D'ENQUÊTE SUR LE BURUNDI

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D'autre part, je vous adresse une liste de questions sur la situation des droits de l'homme au Burundi (voir annexe), dont certaines avaient déjà été demandées à votre Gouvernement dans mon courrier daté du 2 avril 2019, resté malheureusement sans réponse. Au vu des facteurs de risque identifiés dans le dernier rapport de la Commission, ces points sont importants pour surveiller l'évolution de la situation, mais également permettre d'inclure dans notre rapport final d'avantage d'informations sur les éventuelles atteintes aux droits de l'homme. A cet égard, j'espère que les conclusions des enquêtes menées par votre Gouvernement sur les incidents sécuritaires du 2 octobre et du 16-17 novembre 2019 seront partagées avec la Commission ou rendus publics.

Veillez accepter, Excellence, les assurances de ma plus haute considération.

A handwritten signature in black ink, appearing to read "Diène".

M. Doudou Diène  
Président de la Commission d'enquête sur le Burundi



## COMMISSION D'ENQUÊTE SUR LE BURUNDI

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**Annexe - Questions sur la situation des droits de l'homme au Burundi**

Pouvez-vous nous transmettre toutes les informations et données à votre disposition concernant :

- Les incidents sécuritaires et les exactions commises sur le territoire du Burundi dans lesquels l'implication des groupes armés d'opposition burundais est présumée, notamment les incidents du 22 octobre et du 16-17 novembre 2019 et les conclusions des enquêtes menées à ce sujet par le Gouvernement du Burundi ;
- Les statistiques désagrégées des cas de violences graves contre les femmes et les enfants depuis juin 2019 et les mesures prises par le Gouvernement burundais pour prévenir et lutter contre celles-ci ;
- Les statistiques des cas de violations et atteintes au droit à la vie depuis juin 2019 et les mesures prises par le Gouvernement burundais pour prévenir et lutter contre celles-ci ;
- Les enquêtes et poursuites judiciaires dans les cas d'atteintes aux droits de l'homme ainsi que celles contre des membres présumés de groupes armés burundais d'opposition ;
- Le nombre et l'état des enquêtes ouvertes dans les cas de violation des droits de l'homme et de poursuites judiciaires contre les principaux auteurs présumés de telles violations ;
- Les mesures prises par le Gouvernement burundais pour mettre en œuvre les recommandations de la Commission, principalement celles soulignées dans la présente lettre ;
- Les mesures prises pour enquêter sur les allégations de disparitions forcées, y compris afin de rechercher, localiser et la libérer les personnes disparues et, en cas de décès, d'exhumer, identifier les personnes disparues et restituer leurs restes ;
- Les mesures prises pour garantir l'indépendance objective des institutions nationales des droits de l'homme, notamment leur indépendance structurelle et financière, ainsi que les moyens et les méthodes de travail qui leur permettent de travailler de manière indépendante ;
- Les mesures prises pour garantir les libertés d'expression, d'information, de circulation, d'association et de réunion pacifique, notamment celles des partis politiques d'opposition et de leurs membres, ainsi que le droit à la liberté et à la sécurité de ces derniers ;
- Les mesures prises par le Gouvernement du Burundi pour prévenir et lutter contre les déclarations provocatrices, les campagnes de propagande ou d'incitation à la haine, notamment sur la base de l'origine ethnique ou géographique, de l'opinion politique, ou du sexe, notamment dans le contexte du processus électoral ;
- Les mesures prises afin de garantir la protection des burundais qui ont décidé de rentrer volontairement au Burundi après avoir pris refuge à l'étranger, notamment contre les possibles exactions commises à leur encontre par les autorités locales et les Imbonerakure, et faciliter leur réintégration dans leurs communautés d'origine, ainsi que les mécanismes mis en place pour vérifier de manière indépendante la situation de ces personnes ;
- Les mesures prises pour garantir l'existence et fonctionnement d'un mécanisme d'alerte rapide permettant de prévenir des atrocités criminelles ;



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- Les statistiques désagrégées concernant les épidémies de malaria et de choléra depuis juin 2019 (nombre de cas enregistrés, nombre de décès) et les mesures prises pour lutter contre ces épidémies.

**5. Note verbale envoyée à la Mission permanente du Burundi  
le 13 juillet 2020**



United Nations

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REFERENCE: 2020/COI/BRD/NV/11

La Commission d'enquête sur le Burundi présente ses compliments à la Mission permanente de la République du Burundi auprès de l'Office des Nations Unies et des autres organisations internationales à Genève et la prie de trouver ci-joint, la présentation orale qu'elle présentera le 14 Juillet 2020 au Conseil des droits de l'homme.

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

A handwritten signature in blue ink, appearing to be 'WHA', written over a horizontal line.

Genève, le 13 juillet 2020

Mission permanente de la République du Burundi  
auprès de l'Office des Nations Unies  
et des autres organisations internationales à Genève  
Rue de Lausanne 44  
1201 Genève  
Fax: +41 22 732 77 34  
Email : mission.burundi217@gmail.com

## Annexe III

### Recommandations antérieures faites par la Commission

#### 1. Recommandations faites en 2019

##### Version française

103. La tenue des élections de 2020 est un facteur de risque important. Afin qu'elles puissent se dérouler dans un climat apaisé tout en étant justes, libres, transparentes et crédibles, la Commission adresse aux autorités burundaises les recommandations suivantes :

- a) Mettre en œuvre toutes les recommandations précédentes de la Commission<sup>33</sup>, qui restent plus que jamais valables et pertinentes, notamment celles concernant les mesures prioritaires afin de faire cesser les violations des droits de l'homme et les crimes internationaux, de lutter contre l'impunité, et d'améliorer la situation des droits de l'homme dans le pays, ainsi que celles à moyen et à plus long terme relatives à la révision du cadre juridique et à la réforme du système judiciaire ;
- b) Diligenter sans délai des enquêtes indépendantes et effectives sur les cas de violations documentés par la Commission depuis 2015, afin de permettre l'instauration d'un climat de confiance et de tolérance politique encourageant une participation inclusive dans le processus électoral ;
- c) Se réengager de manière constructive et coopérative auprès de tous les mécanismes internationaux et régionaux des droits de l'homme et du Haut-Commissariat aux droits de l'homme, en leur permettant d'assurer pleinement et librement leurs mandats de suivi des droits de l'homme ;
- d) Assurer l'indépendance structurelle et financière des mécanismes nationaux des droits de l'homme et renforcer la capacité de leurs membres ;
- e) Prendre les mesures nécessaires afin de garantir la liberté d'établissement, d'organisation et de fonctionnement des ONG étrangères et nationales, y compris en révisant les lois qui les régissent ;
- f) Prendre les mesures nécessaires afin de garantir la liberté d'information dans le pays et le droit des médias locaux et internationaux d'exercer leurs activités conformément aux normes internationales, y compris en révisant les lois sur la presse et le Conseil national de la communication ;
- g) Garantir la jouissance effective des libertés publiques, notamment les libertés d'opinion, d'expression, d'accès à l'information, d'association, d'assemblée et de religion, y compris en mettant fin à toute pratique de recrutement forcé au sein du parti au pouvoir et de sa ligue des jeunes ;
- h) Appliquer les Lignes directrices sur l'accès à l'information et les élections en Afrique et les Lignes directrices sur la liberté d'association et de réunion en Afrique de la Commission africaine des droits de l'homme et des peuples ;
- i) Garantir que tous les partis politiques peuvent mener leurs activités légitimes en toute liberté et sécurité, dans un climat de tolérance politique, notamment en sanctionnant tout propos d'incitation à la haine et à la violence contre les autres partis politiques et leurs membres ;
- j) Garantir, dans la pratique, notamment en révisant le Code électoral, le droit à prendre part à la gestion des affaires publiques sans discrimination ;
- k) Garantir, dans la pratique, l'indépendance structurelle de la Commission électorale nationale indépendante, notamment en révisant le décret la régissant afin que sa composition soit inclusive et équilibrée, et renforcer les capacités de ses membres aux échelons municipal et provincial ;

<sup>33</sup> Voir annexe III (A/HRC/36/54 et Corr.1, par. 85 à 94 ; et A/HRC/39/63, par. 85 et 86).

l) Permettre l'accès d'observateurs électoraux indépendants, internationaux et régionaux, et leur garantir, ainsi qu'aux observateurs nationaux issus de la société civile ou des partis politiques, une liberté de mouvement et d'action avant, pendant et après les élections ;

m) Appliquer les Directives pour les missions d'observation et de suivi des élections de l'Union africaine ;

n) Permettre aux opposants politiques de rentrer d'exil afin de participer aux élections de 2020, et garantir leur liberté et leur sécurité, notamment en annulant les mandats d'arrêt contre ceux qui n'ont pas utilisé ou prôné la violence ;

o) Libérer immédiatement tous les prisonniers politiques arrêtés et détenus en lien avec l'exercice de leurs droits démocratiques ;

p) Renforcer la formation des forces de maintien de l'ordre, afin d'éviter les mauvais traitements et d'assurer une gestion pacifique des foules ;

q) Appliquer les Lignes directrices pour le maintien de l'ordre par les agents chargés de l'application des lois lors des réunions en Afrique, et le manuel de formation y relatif, élaborés par la Commission africaine des droits de l'homme et des peuples ;

r) Mettre fin à l'impunité des Imbonerakure en exerçant un contrôle sur eux, afin d'éviter l'usurpation des fonctions des forces de sécurité ou de la justice et de faire cesser leurs activités répressives et démonstrations de force sur les collines ;

s) Mettre fin à toutes les contributions illégales.

104. À tous les partis politiques burundais, qu'ils participent ou non aux élections, la Commission recommande de s'abstenir de tout acte violent et de toute incitation à la haine et à la violence, notamment dans le contexte des élections de 2020.

105. Aux groupes rebelles d'opposition, la Commission recommande de s'abstenir de tout acte violent et de toute incitation à la haine et à la violence.

106. À la communauté internationale, y compris l'Union africaine et le système des Nations Unies, la Commission adresse les recommandations suivantes :

a) Renouveler le mandat de la présente Commission pour une année supplémentaire ;

b) Continuer à suivre l'évolution de la situation des droits de l'homme au Burundi dans le contexte des élections de 2020 et, conformément aux principes de prévention et d'alerte précoce, faire régulièrement l'évaluation des risques, afin de permettre, en cas de détérioration, que soient développées et mises en œuvre des stratégies de réponse adaptées ;

c) Mettre tout en œuvre pour assurer la tenue d'un dialogue inter burundais inclusif afin de régler la crise politique ;

d) Soutenir le renforcement des capacités des observateurs électoraux internationaux, régionaux et nationaux ;

e) Envoyer des observateurs régionaux ou internationaux uniquement si leur liberté d'action est garantie dans la pratique ;

f) S'assurer que l'aide humanitaire parvient intégralement à la population ;

g) Répondre à l'appel de financement du Haut-Commissariat des Nations Unies pour les réfugiés en faveur des réfugiés burundais ;

h) S'assurer que le suivi des rapatriés se fait dans la durée, de manière plus fréquente et transparente.

107. Plus particulièrement, la Commission recommande au système des Nations Unies, conformément à l'initiative Les droits de l'homme avant tout, d'intensifier la promotion des droits de l'homme relevant des mandats propres aux agences et programmes concernés, de même que la collecte et la publication de données objectives et fiables sur la situation au Burundi.

108. Aux États membres du Conseil de sécurité, la Commission recommande de maintenir le Burundi dans le programme de travail du Conseil, au regard des facteurs de risque identifiés, et d'inviter la Commission à lui rendre compte de ses conclusions.

### Version anglaise

109. The 2020 elections pose a major risk. To ensure that they are peaceful, fair, free, transparent and credible, the Commission makes the following recommendations to the Burundian authorities:

(a) Give effect to all the Commission's previous recommendations, which are more well-founded and relevant than ever, including those concerning priority measures to end human rights violations and international crimes, combat impunity and improve the human rights situation in the country and the medium- and longer-term recommendations on reforms to the legal framework and the judicial system<sup>34</sup>;

(b) Conduct prompt, independent and effective investigations into the cases of violations documented by the Commission since 2015 with a view to creating a climate of trust and political tolerance conducive to inclusive participation in the electoral process;

(c) Re-engage constructively and cooperatively with all international and regional human rights mechanisms and the Office of the United Nations High Commissioner for Human Rights, enabling them to carry out their human rights monitoring mandates fully and freely;

(d) Ensure that national human rights mechanisms are institutionally and financially independent and build the capacity of their members;

(e) Take the measures necessary to ensure that foreign and domestic NGOs can be freely established and organized and that they can operate freely, including by amending the laws regulating them;

(f) Take the measures necessary to ensure freedom of information in the country and the right of local and international media to operate in accordance with international standards, including by amending the laws on the press and the National Communication Council;

(g) Guarantee the effective enjoyment of civil liberties, including the freedoms of opinion, expression, access to information, association, assembly and religion, not least by ending all forced recruitment to the ruling party and its youth league;

(h) Follow the Guidelines on Access to Information and Elections in Africa and the Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights;

(i) Ensure that all political parties can engage in legitimate activities in complete freedom and security, in an environment of political tolerance, including by punishing any incitement to hatred and calls for violence against other political parties and their members;

(j) Ensure, in practice, the right to participate in the conduct of public affairs without discrimination, in particular by amending the Electoral Code;

(k) Ensure, in practice, the institutional independence of the Independent National Electoral Commission, including by amending the decree governing it to make certain that its composition is inclusive and balanced, and strengthen the capacity of its members at the municipal and provincial levels;

(l) Provide access to independent international and regional election observers and ensure that they and national observers from civil society or political parties enjoy freedom of movement and action before, during and after the elections;

(m) Follow the Guidelines for African Union Electoral Observation and Monitoring Missions;

<sup>34</sup> See annex III (A/HRC/36/54 and Corr.1, paras. 85–94, and A/HRC/39/63, paras. 85–86).



(n) Allow political opponents to return from exile to participate in the 2020 elections and guarantee their freedom and security, including by revoking warrants for the arrest of those who have not used or advocated violence;

(o) Immediately release all political prisoners arrested and detained in connection with the exercise of their democratic rights;

(p) Make the training provided to law enforcement agencies more robust to avoid ill-treatment and ensure the peaceful control of crowds;

(q) Follow the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa and the related training manual, both developed by the African Commission on Human and Peoples' Rights;

(r) End the impunity of the Imbonerakure by exercising control over them so as to ensure that the functions of the security forces or the judiciary are not usurped and put an end to their repressive activities and shows of force in the hills;

(s) End all illegal contributions.

110. The Commission recommends that, whether they participate in the elections or not, all political parties in Burundi refrain from violence and incitement to hatred or violence, particularly against the backdrop of the 2020 elections.

111. The Commission recommends that opposition rebel groups refrain from violence and incitement to hatred or violence.

112. For the international community, including the African Union and the United Nations system, the Commission has the following recommendations:

(a) Renew the mandate of the Commission for an additional year;

(b) Continue to monitor developments in the human rights situation in Burundi in the context of the 2020 elections and, in accordance with the principles of prevention and early warning, carry out regular risk assessments to enable the development and use of appropriate response strategies in the event of deterioration;

(c) Make every effort to ensure that an inclusive inter-Burundi dialogue is held to resolve the political crisis;

(d) Support capacity-building for international, regional and national election observers;

(e) Send regional or international observers only if their freedom of action is guaranteed in practice;

(f) Ensure that all humanitarian aid reaches the population;

(g) Respond to the appeal made by the Office of the United Nations High Commissioner for Refugees for funds for Burundi refugees;

(h) Ensure that returnees are monitored in a sustained and more regular and transparent manner.

113. In particular, the Commission recommends that the United Nations system, in accordance with the initiative Human Rights Up Front, take stronger measures to promote human rights, under the mandates of the relevant agencies and programmes, and to collect and publish objective and reliable data on the situation in Burundi.

114. In view of the risk factors that have been identified, the Commission recommends that the States members of the Security Council keep Burundi on the Council's programme of work and that the Council invite the Commission to report to it on its conclusions.

## 2. Recommandations faites en 2018

### Version française

115. La Commission recommande au Gouvernement burundais, comme mesures prioritaires :

- a) De mettre immédiatement un terme aux violations graves des droits de l'homme commises par des agents de l'État et des Imbonerakure ;
- b) D'établir, avec le soutien de la communauté internationale, des mécanismes ad hoc chargés d'enquêter sur les violations des droits de l'homme et de poursuivre les auteurs de crimes de droit international qui ne font pas l'objet d'une enquête par la Cour pénale internationale ;
- c) D'établir, avec le soutien de la communauté internationale, une entité indépendante chargée de faire la lumière sur les cas de disparition signalés depuis avril 2015, de localiser les possibles fosses communes, d'exhumer et d'identifier les corps ;
- d) De prendre des mesures pour que les victimes de torture et les femmes ayant subi des violences sexuelles aient accès à des soins appropriés, en particulier un libre accès à tous les soins de santé sexuelle et reproductive, ainsi qu'à un soutien psychologique ;
- e) D'appliquer les Lignes directrices sur la lutte contre les violences sexuelles et leurs conséquences en Afrique de la Commission africaine des droits de l'homme et des peuples ;
- f) De contrôler les hausses des prix, en particulier en revoyant l'augmentation des taxes et des impôts qui porte atteinte au droit à un niveau de vie suffisant de la population, et en supprimant les contributions qui touchent disproportionnellement les personnes les plus pauvres ;
- g) De coopérer avec les mécanismes internationaux des droits de l'homme, notamment :
  - i) En accueillant à nouveau des missions de procédures spéciales ;
  - ii) En mettant en œuvre les recommandations de l'examen périodique universel, des organes conventionnels et des procédures spéciales, notamment en établissant un mécanisme national d'élaboration des rapports et de suivi ;
- h) D'autoriser le Haut-Commissariat des Nations Unies aux droits de l'homme à reprendre sans entrave l'ensemble de ses activités au Burundi ;
- i) De signer et de mettre en œuvre le mémorandum d'entente avec l'Union africaine et de permettre le déploiement complet des 100 observateurs des droits de l'homme.

116. La Commission recommande également au Gouvernement burundais, à moyen et plus long termes :

- a) De réviser la loi organique du 8 mars 2018 portant révision de la loi n° 01/03 du 24 janvier 2013 portant missions, composition, organisation et fonctionnement du Conseil national de la communication afin de garantir l'indépendance de ce dernier ;
- b) De ratifier la Convention internationale pour la protection de toutes les personnes contre les disparitions forcées ;
- c) De réviser les dispositions du Code de procédure pénale pour les mettre en conformité avec les normes internationales, en particulier les dispositions relatives aux délais de garde à vue et de contrôle de la détention, aux perquisitions de nuit et sans mandat, à la procédure de « flagrance », à l'infraction d'« atteinte à la sûreté intérieure de l'État », et à celles accordant une impunité de jure aux magistrats et aux officiers de police judiciaire ;
- d) De mettre fin aux détentions arbitraires et d'améliorer les conditions de détention :
  - En appliquant les Lignes directrices sur les conditions d'arrestation, de garde à vue et de détention provisoire en Afrique de la Commission africaine des droits de l'homme et des peuples ;

- En garantissant le contrôle de la légalité des détentions et leur conformité avec les droits de l'homme ;
- e) Faute d'un système judiciaire indépendant et performant, de coopérer pleinement avec la Cour pénale internationale dans l'enquête qu'elle a ouverte le 25 octobre 2017 ;
- f) D'engager une réforme en profondeur du système judiciaire afin de garantir son indépendance, son impartialité et son effectivité, notamment :
  - i) En appliquant les Directives et les Principes sur le droit à un procès équitable et à l'assistance judiciaire en Afrique de la Commission africaine des droits de l'homme et des peuples ;
  - ii) En publiant les conclusions des états généraux de la justice de 2013 et en réunissant les acteurs du secteur et les partenaires internationaux pour discuter des mesures de suivi ;
  - iii) En augmentant le budget du secteur de la justice et en garantissant son autonomie de gestion ;
  - iv) En revalorisant la rémunération des magistrats des juridictions ordinaires ainsi que les moyens et l'équipement à leur disposition ;
  - v) En informatisant les greffes ;
  - vi) En revoyant la composition du Conseil supérieur de la magistrature afin que ses membres soient en majorité désignés par leurs pairs ;
  - vii) En revoyant les procédures de nomination, d'affectation, de notation et d'avancement des magistrats afin qu'elles ne dépendent pas du pouvoir exécutif ;
  - viii) En veillant au respect strict du principe d'inamovibilité des magistrats du siège ;
  - ix) En protégeant et en garantissant l'indépendance du système judiciaire en interdisant toute ingérence dans le fonctionnement de la justice par des autorités gouvernementales, des membres du parti au pouvoir ou par des membres des corps de défense et de sécurité, et en prenant des sanctions contre ceux qui influencent, ou cherchent à influencer, le fonctionnement de la justice ;
  - x) En développant des programmes d'aide juridictionnelle pour les plus vulnérables ;
  - xi) En renforçant les mécanismes de protection de victimes et de témoins, ainsi que leur efficacité, pour restaurer la confiance de la population et pour encourager les témoins à s'exprimer sans crainte pour leur sécurité ;
- g) De mettre en place, en consultation avec les bénéficiaires, un programme de réparations des victimes des violations des droits de l'homme qui comprenne des réparations matérielles, symboliques, individuelles et collectives, et qui ne soit pas dépendant de la condamnation des auteurs ;
- h) D'établir le fond étatique pour les victimes de torture prévu par la loi et en conformité avec l'Observation générale n° 4 de la Commission africaine des droits de l'homme et des peuples sur la Charte africaine des droits de l'homme et des peuples, concernant le droit à réparation des victimes de torture et autres peines ou traitements cruels, inhumains ou dégradants (art. 5) ;
  - i) D'établir un fond pour l'indemnisation des victimes de détention arbitraire et illégale ;
  - j) De réformer le secteur de la sécurité :
    - i) En s'assurant que des éléments extérieurs n'accomplissent pas des activités de défense ou de sécurité ;
    - ii) En délimitant clairement les rôles des différents corps de défense et de sécurité, en particulier du SNR ;

- iii) En suspendant les membres des corps de défense et de sécurité suspectés d'être impliqués dans des violations des droits de l'homme jusqu'au terme des enquêtes et des procédures judiciaires ;
- iv) En établissant des procédures strictes et transparentes de sélection qui intègrent des mécanismes de vérification des antécédents ;
- v) En renforçant le contrôle civil et démocratique des corps de défense et de sécurité, en particulier du SNR ;
- k) De s'acquitter de ses obligations internationales de respecter, de protéger et de garantir les droits économiques et sociaux :
  - i) En élaborant et en mettant en œuvre les budgets de l'État de manière à utiliser au maximum les ressources disponibles pour assurer le respect des droits de l'homme à la population appauvrie par la crise politique, en particulier des droits à l'alimentation, à l'eau et à la santé, et pour développer des indicateurs désagrégés, y compris par genre, pour mieux informer ses politiques ;
  - ii) En entreprenant, en consultation avec les populations travaillant dans le secteur agricole, notamment les femmes, des réformes visant une meilleure protection des droits des femmes et une meilleure utilisation des terres pour l'agriculture, et en développant des perspectives de travail en dehors du secteur agricole ;
  - iii) En utilisant une approche fondée sur les droits de l'homme pour régler les conflits fonciers dont ceux touchant les personnes ayant fui le Burundi avant et après 2015 ;
  - iv) En mettant fin à toute considération politique dans les processus de recrutement au sein de l'administration publique, des sociétés publiques et des sociétés mixtes.

117. La Commission recommande aux partis politiques et aux groupes armés d'opposition de s'abstenir de toute attaque sur le territoire burundais et de tout discours appelant à la violence, et de s'engager dans la recherche d'une solution durable à la crise politique.

118. La Commission recommande à l'Union africaine de donner une place importante, dans sa recherche d'une solution durable à la crise au Burundi, au respect des droits de l'homme et au rejet de l'impunité, tels que prévus par son Acte constitutif.

119. La Commission recommande aux partenaires techniques et financiers du Burundi :

- a) De suspendre ou de maintenir la suspension de toute aide budgétaire directe au Gouvernement en l'absence de priorisation des ressources internes en faveur des objectifs de développement durable et des droits économiques et sociaux de la population, et de mesures effectives contre la corruption ;
- b) De cibler les dons et les financements attribués au Gouvernement sur des projets en faveur des besoins de la population et de s'assurer que ceux-ci sont gérés efficacement et de manière transparente ;
- c) D'évaluer régulièrement l'impact des sanctions financières sur la population burundaise.

120. La Commission recommande aux garants de l'Accord d'Arusha, en leur qualité d'acteurs engagés en faveur d'une paix durable au Burundi, de continuer à chercher une solution pérenne à la crise politique et des droits de l'homme qui préserve et garantit les acquis de l'Accord d'Arusha.

### **Version anglaise**

121. The Commission recommends that the Government of Burundi take the following measures as a matter of priority:

- (a) Put an immediate end to the gross human rights violations being committed by agents of the State and Imbonerakure;

(b) With the support of the international community, establish ad hoc mechanisms with a mandate to investigate human rights violations and to prosecute perpetrators of international crimes that are not being investigated by the International Criminal Court;

(c) With the support of the international community, establish an independent body with a mandate to investigate the cases of disappearance reported since April 2015, locate potential mass graves, and exhume and identify the remains;

(d) Take measures to ensure that victims of torture and women survivors of sexual violence have access to appropriate care, including free access to all sexual and reproductive health services and to psychological support;

(e) Implement the Guidelines on Combating Sexual Violence and its Consequences in Africa adopted by the African Commission on Human and Peoples' Rights;

(f) Control price increases, in particular by reviewing duty and tax increases that are undermining the population's right to an adequate standard of living and by abolishing contributions that disproportionately affect the poorest sectors;

(g) Cooperate with international human rights mechanisms, in particular by:

- (i) Resuming the practice of allowing special procedures mandate holders to conduct missions to Burundi;
- (ii) Implementing the recommendations of the universal periodic review, treaty bodies and special procedures, including by establishing a national mechanism for reporting and follow-up.

(h) Authorize the Office of the United Nations High Commissioner for Human Rights to resume all its activities in Burundi without hindrance;

(i) Sign and implement the memorandum of understanding with the African Union and permit the full deployment of the 100 human rights observers provided for therein.

122. For the medium and longer terms, the Commission also recommends that the Government of Burundi:

(a) Amend the Organization Act of 8 March 2018 amending Act No. 01/03 of 24 January 2013 on the mandate, composition, organization and functioning of the National Communication Council with a view to ensuring the latter's independence;

(b) Ratify the International Convention for the Protection of All Persons from Enforced Disappearance;

(c) Amend the Code of Criminal Procedure to align its provisions with international standards, in particular the provisions on time limits for police custody and on oversight of detention, night-time and warrantless searches, the *flagrante delicto* procedure and the offence of "undermining the internal security of the State", and provisions that grant de jure impunity to judges and to officers of the criminal investigation police (*police judiciaire*);

(d) Put an end to arbitrary detention and improve conditions of detention by:

- (i) Implementing the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa adopted by the African Commission on Human and Peoples' Rights;
- (ii) Ensuring that detention is subject to oversight measures for assessing its legality and compatibility with human rights.

(e) In the absence of an independent and efficient judicial system, cooperate fully with the International Criminal Court in the investigation opened on 25 October 2017;

(f) Undertake an in-depth reform of the judicial system to ensure its independence, impartiality and effectiveness, including by:

- (i) Implementing the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa adopted by the African Commission on Human and Peoples' Rights;

- (ii) Publishing the conclusions of the national forum on the justice system held in 2013 and convening a meeting of justice-sector stakeholders and international partners to discuss follow-up action;
  - (iii) Increasing the budget for the justice sector and ensuring that it is managed autonomously;
  - (iv) Raising the pay levels of judges in the ordinary courts and increasing the resources and facilities available to them;
  - (v) Computerizing court registries;
  - (vi) Reviewing the composition of the Judicial Service Commission to ensure that the majority of its members are appointed by their peers;
  - (vii) Reviewing procedures for the appointment, assignment, evaluation and promotion of judges to ensure that such procedures are not dependent on the executive branch;
  - (viii) Ensuring strict observance of the principle that judges should have security of tenure;
  - (ix) Protecting and safeguarding the independence of the judiciary by prohibiting any interference in the administration of justice by government authorities, members of the ruling party or members of the defence and security forces, and imposing penalties on anyone who influences or seeks to influence the administration of justice;
  - (x) Developing legal aid programmes for persons belonging to the most vulnerable groups;
  - (xi) Strengthening victim and witness protection mechanisms and improving their effectiveness in order to restore public trust and encourage witnesses to come forward without fear for their safety.
- (g) In consultation with the beneficiaries, establish a reparations programme for victims of human rights violations, ensuring that material, symbolic, individual and collective reparations are made available regardless of whether or not the perpetrators are convicted;
- (h) Establish the State fund for victims of torture provided for by law, in conformity with general comment No. 4 on the African Charter on Human and Peoples' Rights, adopted by the African Commission on Human and Peoples' Rights, concerning the right to redress for victims of torture and other cruel, inhuman or degrading punishment or treatment (art. 5);
- (i) Establish a compensation fund for victims of arbitrary and unlawful detention;
- (j) Reform the security sector by:
- (i) Ensuring that outsiders are not involved in defence or security activities;
  - (ii) Clearly defining the roles of the various defence and security forces, in particular the National Intelligence Service;
  - (iii) Suspending members of the defence and security forces who are suspected of involvement in human rights violations until the relevant investigations and judicial proceedings have concluded;
  - (iv) Establishing rigorous and transparent selection procedures that include vetting mechanisms;
  - (v) Strengthening democratic civilian control over the defence and security forces, in particular the National Intelligence Service.
- (k) Meet its international obligations to respect, protect and fulfil economic and social rights by:
- (i) Developing and implementing State budgets in such a way as to maximize the use of available resources to ensure that the human rights of the sectors

impoverished by the political crisis are respected, in particular the rights to food, water and health care, and to develop indicators disaggregated by factors such as gender in order to better inform its policies;

- (ii) In consultation with population groups working in the agricultural sector, including women, undertaking reforms with the aim of better protecting women's rights and making better use of land for agriculture, and developing employment opportunities outside the agricultural sector;
- (iii) Taking a rights-based approach to the settlement of land conflicts, including those involving persons who fled Burundi either before or after 2015;
- (iv) Ending the inclusion of any political considerations in hiring processes for the civil service, State enterprises and public-private enterprises.

123. The Commission recommends that political parties and armed opposition groups refrain from engaging in any attacks on Burundian territory and from any speech calling for violence, and that they join the effort to find a lasting solution to the political crisis.

124. The Commission recommends that the African Union, in its efforts to find a lasting solution to the crisis in Burundi, give priority to respect for human rights and the rejection of impunity, as provided for in its Constitutive Act.

125. The Commission recommends that the technical and financial partners of Burundi:

(a) Suspend, or maintain the suspension of, any direct budget support to the Government until such time as priority is given to the allocation of domestic resources for the fulfilment of the Sustainable Development Goals and the economic and social rights of the population, and effective measures are taken against corruption;

(b) Ensure that grants and financing provided to the Government are earmarked for projects to meet the population's needs, and ensure that such funding is managed effectively and transparently;

(c) Regularly evaluate the impact of financial sanctions on the people of Burundi.

126. The Commission recommends that the guarantors of the Arusha Agreement, in their capacity as committed proponents of a lasting peace in Burundi, continue to seek a durable solution to the political and human rights crisis that will preserve and safeguard the achievements of the Arusha Agreement.

### **3. Recommandations faites en 2017**

#### **Version française**

##### *1. Aux autorités burundaises*

127. De mettre immédiatement un terme aux violations graves des droits de l'homme commises par des agents de l'État et des Imbonerakure sur lesquels l'État exerce un contrôle ;

128. D'enquêter sur ces violations et s'assurer que les auteurs présumés soient jugés dans les meilleurs délais, dans des procédures crédibles, indépendantes et équitables, et que les victimes obtiennent une juste réparation. Dans le cas où les auteurs présumés sont des agents de l'État, les suspendre jusqu'au terme de l'enquête et de la procédure judiciaire;

129. De prendre des mesures concrètes pour une amélioration rapide de la situation des droits de l'homme, notamment en :

- Annulant les mandats d'arrêt contre des dirigeants de médias, d'organisations de la société civile et de partis politiques qui n'ont pas utilisé ou prôné la violence, et permettant leur retour en toute sécurité au Burundi ;
- Levant la suspension et la radiation des médias et organisations de la société civile, leur permettant de reprendre leurs activités en toute indépendance, et revoyant les lois adoptées en 2017 sur les organisations non-gouvernementales burundaises et internationales ;

- Libérant immédiatement tous les prisonniers politiques ;
  - S'assurant que toute personne arrêtée soit détenue dans un lieu de détention officiel et que des observateurs nationaux et internationaux soient autorisés à leur rendre visite ;
  - Veillant à ce que les officiers de police judiciaire ne soient pas habilités à mener des perquisitions sans mandat et de nuit comme envisagé dans les projets d'amendement du Code pénal et du Code de procédure pénale ;
  - S'assurant que des individus qui n'y sont pas légalement habilités, en particulier des Imbonerakure, ne conduisent pas des activités de maintien de l'ordre ou n'y prennent pas part, y compris dans des lieux de détention, et qu'ils ne portent pas des uniformes militaires ou de police ou ne soient pas en possession d'armes ;
  - Poursuivant les auteurs de discours haineux ou appelant à la violence ;
  - Mettant fin aux menaces, intimidations et actes d'extorsion par des agents de l'État et des Imbonerakure ;
  - Permettant aux victimes de violences sexuelles et de torture d'avoir accès à des services médicaux et psychosociaux ;
130. D'engager une réforme en profondeur du système judiciaire, notamment en :
- Publiant les conclusions des états généraux de la justice qui se sont tenus en 2013 à Gitega ;
  - Revoyant la composition du Conseil national de la magistrature afin que ses membres soient en majorité désignés par leurs pairs ;
  - Revoyant les procédures de nomination, d'affectation, de notation et d'avancement des magistrats afin qu'elles ne dépendent pas du pouvoir exécutif ;
  - Veillant au respect strict du principe d'inamovibilité des magistrats du siège ;
  - Protégeant et garantissant l'indépendance du système judiciaire en interdisant toute ingérence dans le fonctionnement de la justice par des autorités gouvernementales, des membres du parti au pouvoir ou des membres des corps de défense et de sécurité, et en prenant des sanctions contre ceux qui influencent, ou cherchent à influencer, le fonctionnement de la justice ;
  - Développant des programmes d'aide juridictionnelle pour les plus vulnérables ;
  - Renforçant les mécanismes de protection de victimes et de témoins, ainsi que leur efficacité, pour restaurer la confiance de la population et encourager les témoins à s'exprimer sans crainte pour leur sécurité ;
131. De s'assurer que les membres des corps de défense et de sécurité respectent les droits de l'homme en toutes circonstances et servent les intérêts de la population dans son ensemble et pas uniquement ceux du parti au pouvoir, notamment en :
- Renforçant le contrôle civil des corps de défense et de sécurité et l'indépendance des organes chargés de ce contrôle créés par la Constitution, en particulier le Parlement, la Commission nationale indépendante des droits de l'homme et l'Ombudsman ;
  - Remédiant à la carence constitutionnelle de contrôle civil du SNR ;
  - Prenant des mesures pour vérifier les antécédents, notamment en matière de droits de l'homme, des agents des corps de défense et de sécurité et intégrant ces mesures à une refonte des procédures de recrutement et d'avancement de ces agents ;
132. De revenir sur sa décision de se retirer du Statut de Rome et coopérer pleinement avec la CPI dans la procédure d'examen préliminaire en cours et, si une enquête est ouverte, poursuivre cette coopération et assurer la protection des victimes et témoins ;
133. D'autoriser le HCDH à reprendre ses activités de documentation des violations des droits de l'homme au Burundi, suspendues depuis octobre 2016 ;



134. De signer et mettre en œuvre le mémorandum d'entente avec l'Union africaine et permettre le déploiement complet des 100 observateurs des droits de l'homme et des 100 experts militaires, décidé en 2016 ;

135. De coopérer avec les mécanismes des droits de l'homme des Nations Unies en accueillant à nouveau des missions des procédures spéciales et en mettant en œuvre les recommandations récentes des organes de traité ;

136. De s'engager activement dans la voie d'une résolution durable de la crise politique, notamment dans le cadre d'initiatives de dialogue engagées au niveau international.

2. *Aux partis politiques et groupes armés d'opposition*

137. De mettre immédiatement un terme aux atteintes aux droits de l'homme et aux actes de violence commis par leurs membres ;

138. De s'abstenir de tout discours appelant à la violence et s'engager dans la recherche d'une solution durable à la crise politique au Burundi.

3. *Au Conseil des droits de l'homme*

139. De prolonger le mandat de la Commission pour une durée d'un an aux fins d'approfondir et de poursuivre ses enquêtes en raison de la persistance des violations graves des droits de l'homme et des atteintes à ceux-ci et en l'absence d'autres mécanismes spécifiques en mesure de mener des enquêtes indépendantes et approfondies sur la situation des droits de l'homme au Burundi ;

140. De demander au Haut-Commissaire des Nations Unies aux droits de l'homme de faire un rapport sur l'évolution de sa coopération avec le Gouvernement du Burundi aux prochaines sessions du Conseil.

4. *À la Cour pénale internationale*

141. D'ouvrir dans les plus brefs délais une enquête sur les crimes commis au Burundi au vu des conclusions contenues dans le présent rapport et d'autres informations à sa disposition.

5. *Au Conseil de sécurité des Nations Unies*

142. De prendre dûment compte des présentes conclusions de la Commission et de la persistance de violations graves des droits de l'homme dans toute discussion sur le Burundi et, dans ce contexte, de veiller à la mise en œuvre effective de la résolution 2303 (2016) ;

143. De saisir la CPI de tout crime de droit international qui serait commis au Burundi après le 27 octobre 2017 ;

144. De prendre des sanctions individuelles contre les principaux auteurs présumés de violations graves des droits de l'homme et de crimes de droit international au Burundi.

6. *Au Secrétaire général des Nations Unies*

145. De veiller à ce que le respect des droits de l'homme et la restauration de l'État de droit soient parmi les priorités de son Envoyé spécial sur le Burundi ;

146. De veiller à ce qu'aucun auteur présumé de violations des droits de l'homme ou de crimes de droit international au Burundi ne soit recruté dans des missions de maintien de la paix des Nations Unies.

7. *Aux États Membres des Nations Unies*

147. D'accorder *prima facie* le statut de réfugié aux demandeurs d'asile burundais et de veiller au respect strict du principe de non-refoulement, ainsi qu'à la protection des réfugiés ;

148. De poursuivre, au titre de la compétence universelle, les auteurs présumés de crimes de droit international commis au Burundi se trouvant sur leur territoire ;

149. De maintenir, en l'absence de toute amélioration de la situation des droits de l'homme dans le pays, les sanctions individuelles et la suspension de l'aide directe au Gouvernement burundais ;

150. De fournir une assistance technique aux autorités burundaises, dans la mesure où ces dernières font preuve d'une véritable volonté politique, afin de mener des enquêtes crédibles et indépendantes, notamment en matière d'autopsie, d'exhumation et d'identification des corps ;

151. De soutenir la mise en place de services médicaux et psychosociaux spécialisés, notamment pour les victimes de torture et de violences sexuelles ;

152. De soutenir les autorités burundaises, si celles-ci font preuve d'une véritable volonté politique, dans tout effort de réforme du système judiciaire et du secteur de sécurité qu'elles voudront engager aux fins d'améliorer la situation des droits de l'homme.

8. *À l'Union africaine*

153. De reprendre l'initiative dans la recherche d'une solution durable à la crise au Burundi fondée sur le respect des droits de l'homme et le rejet de l'impunité, tels que prévus par son Acte constitutif, et s'y engager activement ;

154. De veiller à ce qu'aucun agent de l'État burundais accusé de violations des droits de l'homme ou de crimes de droit international ne soit recruté dans des missions de maintien de la paix de l'Union africaine ;

155. De s'assurer que l'équipe complète de ses observateurs des droits de l'homme et experts militaires soit rapidement déployée au Burundi ;

156. D'envisager, en cas de persistance de la situation actuelle au Burundi, l'application de l'article 4 h) de son Acte constitutif, autorisant l'Union africaine à intervenir dans un État membre dans certaines circonstances, notamment en cas de crimes contre l'humanité.

9. *À la Communauté des États d'Afrique de l'Est*

157. De s'assurer que l'amélioration rapide de la situation des droits de l'homme soit une priorité dans ses efforts de médiation.

10. *Aux garants de l'Accords d'Arusha de 2000, en leur qualité d'acteurs engagés en faveur d'une paix durable au Burundi*

158. De se réunir le plus rapidement possible en vue de trouver une solution pérenne à la crise politique et des droits de l'homme au Burundi.

**Version anglaise**

1. *The Burundian authorities should:*

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

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

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

- Withdrawing the warrants for the arrest of heads of media outlets, civil society organizations and political parties who have neither used nor advocated violence, and permitting their safe return to Burundi;
- Lifting the suspension and reversing the revocation of the licences of media and civil society organizations, permitting them to resume their activities with complete

independence and reviewing the laws adopted in 2017 concerning non-profit organizations and foreign non-governmental organizations;

- Immediately releasing all political prisoners;
- Ensuring that every person arrested is detained in an official place of detention and that national and international observers are allowed to visit them;
- Ensure that criminal investigation officers (officiers de police judiciaire) are not authorized to conduct searches without a warrant, including at night, as envisaged in the draft amendments to the Criminal Code and the Code of Criminal Procedure;
- Ensuring that individuals lacking legal authorization, particularly the Imbonerakure, do not perform or participate in law enforcement activities, including in places of detention, and do not wear military or police uniforms or possess weapons;
- Prosecuting individuals who incite hatred or violence;
- Putting an end to threats, intimidation and acts of extortion by State officials and the Imbonerakure;
- Giving victims of sexual violence and torture access to medical and psychosocial services.

162. Undertake a thorough reform of the judiciary, in particular by:

- Publishing the conclusions of the General Convention on the Judiciary (États généraux de la justice) held in Gitega in 2013;
- Reviewing the composition of the Superior Council of Magistrates (Conseil supérieur de la magistrature) so that the majority of its members are designated by their peers;
- Reviewing the nomination, posting, evaluation and promotion procedures of magistrates so that they do not depend of the executive;
- Ensuring the respect of the principle of security of tenure for judges;
- Protecting and guaranteeing the independence of the judiciary by prohibiting all interference in their functions by governmental authorities, members of the ruling party or security and defence forces, and imposing sanctions on those who influence, or seek to influence, the functioning of the judiciary;
- Developing legal aid programmes for the most vulnerable;
- Reinforcing the protection mechanisms for victims and witnesses, as well as their efficiency, in order to restore people's confidence in the system and to encourage witnesses to testify without fear for their security.

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

- Reinforcing civilian control over the military and the independence of the competent organs created by the Constitution to supervise this control, in particular the Parliament, the National Human Rights Commission and the Ombudsman;
- Implementing civilian control over the National Intelligence Service (Service national de renseignement) in line with the Constitution;
- Conducting background checks, in particular on human rights, on defence and security forces and incorporating these measures into reforms of the recruitment and career progression of these agents.

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

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

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

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

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

2. *Political parties and armed opposition groups should:*

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

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

3. *The Human Rights Council should:*

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

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

4. *The International Criminal Court should:*

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

5. *The United Nations Security Council should:*

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

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

176. Impose individual sanctions against the principal alleged perpetrators of gross human rights violations and international crimes in Burundi.

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

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

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

7. *The States Members of the United Nations should:*

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

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

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

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

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

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

8. *The African Union should:*

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

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

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

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

9. *The East African Community should:*

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

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

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

## Annexe IV

### Indicateurs des facteurs de risque communs identifiés dans le Cadre d'analyse des atrocités criminelles (A/70/741-S/2016/71)

#### Version française

##### *Facteur de risque 1. Situations de conflit armé ou autres formes d'instabilité*

- a) Conflit armé international ou non international ;
- b) Crise sécuritaire provoquée, entre autres, par la dénonciation d'accords de paix, un conflit armé dans les pays voisins, des menaces d'interventions étrangères ou des actes de terrorisme ;
- c) Crise ou urgence humanitaire, pouvant être causée notamment par une catastrophe naturelle ou une épidémie ;
- d) Instabilité politique provoquée par un changement de régime ou un transfert de pouvoir soudain ou irrégulier ;
- e) Instabilité politique provoquée par des luttes de pouvoir ou la montée en puissance de mouvements d'opposition nationalistes, armés ou radicaux ;
- f) Tension politique provoquée par des régimes autocratiques ou une lourde répression politique ;
- g) Instabilité économique provoquée par une pénurie de ressources ou des différends concernant leur utilisation ou leur exploitation ;
- h) Instabilité économique provoquée par une crise grave de l'économie nationale ;
- i) Instabilité économique provoquée par la misère, un chômage de masse ou de profondes inégalités horizontales ;
- j) Instabilité sociale provoquée par une résistance à l'autorité de l'État ou à ses politiques ou par des protestations de masse contre celles-ci ;
- k) Instabilité sociale provoquée par l'exclusion ou des tensions fondées sur des questions d'identité, leur perception ou leurs formes extrémistes.

##### *Facteur de risque 2. Antécédents de violations graves du droit international des droits de l'homme et du droit international humanitaire*

- a) Restrictions ou violations graves, passées ou actuelles, des droits consacrés par le droit international des droits de l'homme et le droit international humanitaire, surtout si elles sont caractérisées par un comportement systématique observé préalablement et si elles visent des groupes, populations ou personnes protégés ;
- b) Actes de génocide, crimes contre l'humanité, crimes de guerre ou incitation à les commettre, survenus dans le passé ;
- c) Politique ou pratique d'impunité ou de tolérance à l'égard de violations graves du droit international des droits de l'homme et du droit international humanitaire, d'atrocités criminelles ou de l'incitation à les commettre ;
- d) Inaction, réticence à utiliser ou refus d'utiliser tous les moyens possibles pour faire cesser des violations graves prévues, prévisibles ou persistantes du droit international des droits de l'homme et du droit international humanitaire ou des atrocités criminelles probables, ou incitation à les commettre ;
- e) Maintien d'une aide à des groupes accusés de participer à des violations graves du droit international des droits de l'homme et du droit international humanitaire, notamment des atrocités criminelles, ou non-condamnation de leurs actes ;

f) Justification de violations graves du droit international des droits de l'homme et du droit international humanitaire ou d'atrocités criminelles, rapports partiels les concernant ou refus de les reconnaître ;

g) Absence de processus de réconciliation ou de justice transitionnelle après un conflit, ou politisation de ce processus ;

h) Méfiance généralisée envers les institutions de l'État ou entre différents groupes en raison de l'impunité.

*Facteur de risque 3. Faiblesse des structures de l'État*

a) Cadre juridique national n'offrant pas une protection suffisante et efficace, notamment par la ratification et l'incorporation dans le droit interne des instruments relatifs au droit international des droits de l'homme et au droit international humanitaire ;

b) Manque de ressources au sein des institutions nationales, en particulier les institutions judiciaires et celles chargées de l'application des lois et de la protection des droits de l'homme, et manque de représentation adéquate ou de formation ;

c) Absence de justice indépendante et impartiale ;

d) Absence de contrôle civil efficace des forces de sécurité ;

e) Niveaux élevés de corruption ou mauvaise gouvernance ;

f) Absence ou insuffisance de mécanismes externes ou internes de contrôle et de responsabilité, notamment que les victimes peuvent saisir pour demander réparation ;

g) Manque de sensibilisation et de formation des forces militaires, des forces irrégulières, des groupes armés non étatiques et des autres acteurs concernés au droit international des droits de l'homme et au droit international humanitaire ;

h) Manque de capacité de vérifier que les moyens et méthodes de guerre sont conformes aux normes du droit international humanitaire ;

i) Manque de moyens pour la réforme ou le renforcement des institutions, notamment par une aide régionale ou internationale ;

j) Ressources insuffisantes pour mettre en œuvre des mesures globales de protection des populations.

*Facteur de risque 4. Motivations ou incitations*

a) Motivations politiques, en particulier celles visant l'acquisition ou la consolidation du pouvoir ;

b) Intérêts économiques, notamment ceux fondés sur la préservation et le bien-être des élites ou de groupes d'identité, ou sur le contrôle de la répartition des ressources ;

c) Intérêts stratégiques ou militaires, notamment ceux fondés sur la protection ou la saisie de territoires et de ressources ;

d) Autres intérêts, notamment ceux visant à rendre une zone homogène dans son identité ;

e) Menaces réelles ou perçues comme telles de groupes, populations ou personnes protégés contre les intérêts ou les objectifs des auteurs d'actes criminels, notamment l'impression de déloyauté envers une cause ;

f) Appartenance ou adhésion réelle ou perçue comme telle de groupes, populations ou personnes protégés à des groupes d'opposition armés ;

g) Idéologies fondées sur la suprématie d'une certaine identité ou sur des versions extrémistes de l'identité ;

h) Politisation de griefs, de tensions ou de cas d'impunité issus du passé ;

i) Traumatisme social provoqué par des situations de violence passées auxquelles il n'a pas été donné de suite satisfaisante et qui ont engendré des sentiments de perte, de déplacement et d'injustice et un désir possible de revanche.

*Facteur de risque 5. Capacité de commettre des atrocités criminelles*

a) Disponibilité de personnel et d'armes et munitions ou de moyens financiers publics ou privés permettant de les acquérir;

b) Capacité de transporter et déployer du personnel et de transporter et distribuer des armes et des munitions;

c) Capacité d'encourager ou de recruter de nombreux partisans au sein de populations ou de groupes et disponibilité de moyens pour les mobiliser;

d) Solide culture d'obéissance à l'autorité et de conformité au groupe;

e) Présence d'autres forces armées ou de groupes armés non étatiques ou existence de liens avec de tels forces ou groupes;

f) Présence d'acteurs commerciaux ou d'entreprises pouvant jouer un rôle déterminant en fournissant des biens, des services ou d'autres formes d'appui pratique ou technique contribuant à soutenir les auteurs;

g) Appui financier, politique ou autre d'acteurs nationaux influents ou riches;

h) Appui armé, financier, logistique ou autre, notamment sous la forme d'entraînement, fourni par des acteurs extérieurs, notamment des États, des organisations internationales ou régionales ou des entreprises privées.

*Facteur de risque 6. Absence de facteurs atténuants*

a) Insuffisance ou absence de processus d'autonomisation, de ressources, d'alliés ou d'autres éléments qui pourraient contribuer à la capacité des groupes, populations ou personnes protégés de se protéger eux-mêmes;

b) Absence de société civile nationale solide, organisée et représentative et de médias nationaux libres, diversifiés et indépendants;

c) Absence d'intérêt et d'attention des acteurs de la société civile internationale ou d'accès aux médias internationaux;

d) Absence ou présence limitée des Nations Unies, d'organisations non gouvernementales internationales ou d'autres acteurs internationaux ou régionaux dans le pays ayant accès aux populations;

e) Absence d'adhésion ou de participation effective de l'État à des organisations internationales ou régionales établissant des obligations afférentes au statut de membre;

f) Manque de contact, d'ouverture ou de relations politiques ou économiques avec d'autres États ou organisations;

g) Coopération limitée de l'État avec les mécanismes internationaux et régionaux des droits de l'homme;

h) Manque de volonté des parties à un conflit d'engager un dialogue, de faire des concessions et de solliciter l'appui de la communauté internationale, ou absence d'incitations à le faire;

i) Réticence ou échec des États Membres de l'Organisation des Nations Unies ou des organisations internationales ou régionales à aider un État à assumer sa responsabilité de protéger ses populations contre les atrocités criminelles, ou à agir lorsque l'État n'assume manifestement pas cette responsabilité, ou indifférence à cet égard;

j) Manque de soutien des États voisins pour ce qui est de protéger les populations à risque en quête de refuge : fermeture des frontières, rapatriement forcé ou restrictions en matière d'aide;



k) Absence de mécanisme d'alerte rapide permettant de prévenir des atrocités criminelles.

*Facteur de risque 7. Circonstances propices ou action préparatoire restreignant les droits fondamentaux*

a) Suspension d'institutions vitales de l'État ou ingérence dans ces institutions, ou mesures provoquant des modifications de leur composition ou l'équilibre des pouvoirs, en particulier s'il en résulte l'exclusion ou une sous-représentation de groupes protégés ;

b) Renforcement de l'appareil de sécurité, réorganisation ou mobilisation de celui-ci contre des groupes, populations ou personnes protégés ;

c) Acquisition de grandes quantités d'armes et de munitions ou d'autres objets pouvant être utilisés pour causer des dommages ;

d) Création de milices ou de groupes paramilitaires, ou intensification de l'appui à de tels milices ou groupes ;

e) Imposition d'un contrôle strict sur l'utilisation des moyens de communication ou interdiction d'y avoir accès ;

f) Expulsion ou refus d'autoriser la présence d'organisations non gouvernementales, d'organisations internationales, de médias ou d'autres acteurs pertinents ou imposition de lourdes restrictions à leurs services et déplacements ;

g) Augmentation du nombre de violations du droit à la vie, de l'intégrité physique, de la liberté ou de la sécurité de membres de groupes, populations ou personnes protégés, ou adoption récente de mesures ou de lois qui leur portent atteinte ou constituent une discrimination délibérée envers eux ;

h) Augmentation du nombre d'actes de violence graves contre les femmes et les enfants ou création de conditions facilitant la commission d'agressions sexuelles contre eux, notamment comme instrument de terreur ;

i) Imposition de conditions de vie délétères ou déportation, appréhension, regroupement, ségrégation, évacuation, déplacement ou transfert forcés de groupes, populations ou individus protégés vers des camps, des zones rurales, des ghettos ou d'autres lieux désignés ;

j) Destruction ou pillage de biens ou d'installations essentiels à des groupes, populations ou personnes protégés, ou de biens liés à l'identité culturelle et religieuse ;

k) Marquage de personnes ou de leurs biens au motif de leur appartenance à un groupe ;

l) Politisation accrue de l'identité, d'événements du passé ou de motifs de se livrer à la violence ;

m) Augmentation du nombre de déclarations provocatrices, de campagnes de propagande ou d'incitations à la haine visant des groupes, populations ou personnes protégés.

*Facteur de risque 8. Facteurs déclencheurs*

a) Déploiement soudain de forces de sécurité ou déclenchement d'hostilités armées ;

b) Débordement de conflits armés ou graves tensions dans les pays voisins ;

c) Mesures prises par la communauté internationale, perçues par un État comme menaçant sa souveraineté ;

d) Changements de régime, transferts de pouvoir ou modifications du pouvoir politique des groupes, survenant soudainement ou irrégulièrement ;

e) Atteintes à la vie, à l'intégrité physique, à la liberté ou à la sécurité de dirigeants, de personnalités éminentes ou de membres de groupes opposés ; autres actes de violence graves, notamment attentats terroristes ;

- f) Manifestations religieuses ou actes réels ou perçus comme tels d'intolérance religieuse ou d'irrespect, notamment en dehors des frontières nationales ;
- g) Actes d'incitation ou propagande haineuse visant des groupes ou des personnes particulières ;
- h) Recensement, élections, activités essentielles liées à ces processus ou mesures qui les déstabilisent ;
- i) Changements soudains affectant l'économie ou la population active, résultant notamment de crises financières, de catastrophes naturelles ou d'épidémies ;
- j) Découverte de ressources naturelles ou lancement de projets d'exploitation ayant de graves incidences sur les moyens de subsistance et la viabilité de groupes ou de populations civiles ;
- k) Commémoration de crimes du passé ou d'épisodes traumatiques ou historiques pouvant exacerber les tensions entre groupes, notamment la glorification d'auteurs d'atrocités ;
- l) Actes liés aux processus d'établissement des responsabilités, en particulier s'ils sont perçus comme injustes.

### **Version anglaise**

#### *Risk factor 1. Situations of armed conflict or other forms of instability*

- (a) International or non-international armed conflict;
- (b) Security crisis caused by, among other factors, defection from peace agreements, armed conflict in neighboring countries, threats of external interventions or acts of terrorism;
- (c) Humanitarian crisis or emergency, including those caused by natural disasters or epidemics;
- (d) Political instability caused by abrupt or irregular regime change or transfer of power;
- (e) Political instability caused by disputes over power or growing nationalist, armed or radical opposition movements;
- (f) Political tension caused by autocratic regimes or severe political repression;
- (g) Economic instability caused by scarcity of resources or disputes over their use or exploitation;
- (h) Economic instability caused by severe crisis in the national economy;
- (i) Economic instability caused by acute poverty, mass unemployment or deep horizontal inequalities;
- (j) Social instability caused by resistance to, or mass protests against, State authority or policies;
- (k) Social instability caused by exclusion or tensions based on identity issues, their perception or extremist forms.

#### *Risk factor 2. Record of serious violations of international human rights and humanitarian law*

- (a) Past or present serious restrictions to or violations of international human rights and humanitarian law, particularly if assuming an early pattern of conduct and if targeting protected groups, populations or individuals;
- (b) Past acts of genocide, crimes against humanity, war crimes or their incitement;
- (c) Policy or practice of impunity for or tolerance of serious violations of international human rights and humanitarian law, of atrocity crimes, or of their incitement;

(d) Inaction, reluctance or refusal to use all possible means to stop planned, predictable or ongoing serious violations of international human rights and humanitarian law or likely atrocity crimes, or their incitement;

(e) Continuation of support to groups accused of involvement in serious violations of international human rights and humanitarian law, including atrocity crimes, or failure to condemn their actions;

(f) Justification, biased accounts or denial of serious violations of international human rights and humanitarian law or atrocity crimes;

(g) Politicization or absence of reconciliation or transitional justice processes following conflict;

(h) Widespread.

*Risk factor 3. Weakness of State structures*

(a) National legal framework that does not offer ample and effective protection, including through ratification and domestication of relevant international human rights and humanitarian law treaties;

(b) National institutions, particularly judicial, law enforcement and human rights institutions that lack sufficient resources, adequate representation or training;

(c) Lack of an independent and impartial judiciary;

(d) Lack of effective civilian control of security forces;

(e) High levels of corruption or poor governance;

(f) Absence or inadequate external or internal mechanisms of oversight and accountability, including those where victims can seek recourse for their claims;

(g) Lack of awareness of and training on international human rights and humanitarian law to military forces, irregular forces and non-State armed groups, or other relevant actors;

(h) Lack of capacity to ensure that means and methods of warfare comply with international humanitarian law standards;

(i) Lack of resources for reform or institution-building, including through regional or international support;

(j) Insufficient resources to implement overall measures aimed at protecting populations.

*Risk factor 4. Motives or incentives*

(a) Political motives, particularly those aimed at the attainment or consolidation of power;

(b) Economic interests, including those based on the safeguard and well-being of elites or identity groups, or control over the distribution of resources;

(c) Strategic or military interests, including those based on protection or seizure of territory and resources;

(d) Other interests, including those aimed at rendering an area homogeneous in its identity;

(e) Real or perceived threats posed by protected groups, populations or individuals against interests or objectives of perpetrators, including perceptions of disloyalty to a cause;

(f) Real or perceived membership of or support for armed opposition groups by protected groups, populations or individuals;

(g) Ideologies based on the supremacy of a certain identity or on extremist versions of identity;

- (h) Politicization of past grievances, tensions or impunity;
- (i) Social trauma caused by past incidents of violence not adequately addressed and that produced feelings of loss, displacement, injustice and a possible desire for revenge.

*Risk factor 5. Capacity to commit atrocity crimes*

- (a) Availability of personnel and of arms and ammunition, or of the financial resources, public or private, for their procurement;
- (b) Capacity to transport and deploy personnel and to transport and distribute arms and ammunition;
- (c) Capacity to encourage or recruit large numbers of supporters from populations or groups, and availability of the means to mobilize them;
- (d) Strong culture of obedience to authority and group conformity;
- (e) Presence of or links with other armed forces or with non-State armed groups;
- (f) Presence of commercial actors or companies that can serve as enablers by providing goods, services, or other forms of practical or technical support that help to sustain perpetrators;
- (g) Financial, political or other support of influential or wealthy national actors;
- (h) Armed, financial, logistic, training or other support of external actors, including States, international or regional organizations, private companies, or others.

*Risk factor 6. Absence of mitigating factors*

- (a) Limited or lack of empowerment processes, resources, allies or other elements that could contribute to the ability of protected groups, populations or individuals to protect themselves;
- (b) Lack of a strong, organized and representative national civil society and of a free, diverse and independent national media;
- (c) Lack of interest and focus of international civil society actors or of access to international media;
- (d) Lack of, or limited presence of, the United Nations, international non-governmental organizations or other international or regional actors in the country and with access to populations;
- (e) Lack of membership and effective participation of the State in international or regional organizations that establish mandatory membership obligations;
- (f) Lack of exposure, openness or establishment of political or economic relations with other States or organizations;
- (g) Limited cooperation of the State with international and regional human rights mechanisms;
- (h) Lack of incentives or willingness of parties to a conflict to engage in dialogue, make concessions and receive support from the international community;
- (i) Lack of interest, reluctance or failure of States Members of the United Nations or members of international or regional organizations to support a State to exercise its responsibility to protect populations from atrocity crimes, or to take action when the State manifestly fails that responsibility;
- (j) Lack of support by neighbouring States to protect populations at risk and in need of refuge, including by closure of borders, forced repatriation or aid restriction;
- (k) Lack of an early warning mechanism relevant to the prevention of atrocity crimes.

*Risk factor 7. Enabling circumstances or preparatory action*

- (a) Imposition of emergency laws or extraordinary security measures that erode fundamental rights;
- (b) Suspension of or interference with vital State institutions, or measures that result in changes in their composition or balance of power, particularly if this results in the exclusion or lack of representation of protected groups;
- (c) Strengthening of the security apparatus, its reorganization or mobilization against protected groups, populations or individuals;
- (d) Acquisition of large quantities of arms and ammunition or of other objects that could be used to inflict harm;
- (e) Creation of, or increased support to, militia or paramilitary groups;
- (f) Imposition of strict control on the use of communication channels, or banning access to them;
- (g) Expulsion or refusal to allow the presence of non-governmental organizations, international organizations, media or other relevant actors, or imposition of severe restrictions on their services and movements;
- (h) Increased violations of the right to life, physical integrity, liberty or security of members of protected groups, populations or individuals, or recent adoption of measures or legislation that affect or deliberately discriminate against them;
- (i) Increased serious acts of violence against women and children, or creation of conditions that facilitate acts of sexual violence against those groups, including as a tool of terror;
- (j) Imposition of life-threatening living conditions or the deportation, seizure, collection, segregation, evacuation or forced displacement or transfer of protected groups, populations or individuals to camps, rural areas, ghettos or other assigned locations;
- (k) Destruction or plundering of essential goods or installations for protected groups, populations or individuals, or of property related to cultural and religious identity;
- (l) Marking of people or their property based on affiliation to a group;
- (m) Increased politicization of identity, past events or motives to engage in violence;
- (n) Increased inflammatory rhetoric, propaganda campaigns or hate speech targeting protected groups, populations or individuals.

*Risk factor 8. Triggering factors*

- (a) Sudden deployment of security forces or commencement of armed hostilities;
- (b) Spillover of armed conflicts or serious tensions in neighbouring countries;
- (c) Measures taken by the international community perceived as threatening to a State's sovereignty;
- (d) Abrupt or irregular regime changes, transfers of power, or changes in political power of groups;
- (e) Attacks against the life, physical integrity, liberty or security of leaders, prominent individuals or members of opposing groups; other serious acts of violence, such as terrorist attacks;
- (f) Religious events or real or perceived acts of religious intolerance or disrespect, including outside national borders;
- (g) Acts of incitement or hate propaganda targeting particular groups or individuals;

- (h) Census, elections, pivotal activities related to those processes, or measures that destabilize them;
  - (i) Sudden changes that affect the economy or the workforce, including as a result of financial crises, natural disasters or epidemics;
  - (j) Discovery of natural resources or launching of exploitation projects that have a serious impact on the livelihoods and sustainability of groups or civilian populations;
  - (k) Commemoration events of past crimes or of traumatic or historical episodes that can exacerbate tensions between groups, including the glorification of perpetrators of atrocities;
  - (l) Acts related to accountability processes, particularly when perceived as unfair.
-