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**Human Rights Council**

**Forty-fifth session**

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Agenda item Point 4

**Human rights situations that require the Council’s attention**

 **Detailed Final Report of the Commission of Inquiry on Burundi**[[1]](#footnote-1)\*

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5. Introduction

1. This report is submitted by the Commission of Inquiry on Burundi (hereinafter “the Commission”) pursuant to Human Rights Council resolution A/HRC/RES/33/24, adopted on 30 September 2016.

 A. Mandate

 1. Resolution 33/24 of the Human Rights Council

2. Paragraph 23 of Human Rights Council resolution 33/24 states that the Human Rights Council “Decides to create for a period of one year a commission of inquiry to carry out the following tasks:

a) To conduct a thorough investigation into human rights violations and abuses in Burundi since April 2015, including on their extent and whether they may constitute international crimes, with a view to contributing to the fight against impunity;

b) To identify alleged perpetrators of human rights violations and abuses in Burundi with a view to ensuring full accountability;

c) To formulate recommendations on steps to be taken with a view to guaranteeing that the authors of these violations and abuses, regardless of their affiliation, are held accountable for their acts;

d) To engage with the Burundian authorities and all other stakeholders, in particular United Nations agencies, civil society, refugees, the field presence of the Office of the High Commissioner in Burundi, authorities of the African Union, and the African Commission on Human and Peoples’ Rights, in order to provide the support and expertise for the immediate improvement of the situation of human rights and the fight against impunity;”.

3. On 22 November 2016, the President of the Human Rights Council announced that he had appointed the following persons as members of the Commission of Inquiry on Burundi: Fatsah Ouguergouz (Algeria), President of the Commission, Reine Alapini Gansou (Benin) and Françoise Hampson (United Kingdom)[[2]](#footnote-2).

4. Paragraph 25 of Human Rights Council resolution 33/24 states that “all the resources necessary for the implementation of [the] mandate [of the Commission] shall be provided by the Office of the United Nations High Commissioner for Human Rights]”. To this end, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has provided the Commission with a specialized secretariat as well as the necessary administrative, technical and logistical support for the execution of its mandate.

 2. Interpretation of the mandate

5. The members of the Commission of Inquiry held their first meeting from 23 to 27 January 2017 in Geneva. They took that opportunity to interpret the scope of the mandate entrusted to them by the Human Rights Council.

 (a) Subject-matter jurisdiction (*ratione materiae*)

6. Paragraph 23 (a) of resolution 33/24 states that the Commission will conduct “thorough investigation into human rights violations and abuses in Burundi [...], their extent and whether they may constitute international crimes”.

7. By “human rights violations”, the resolution refers to, according to the current definition, all violations of rights guaranteed by national and international law by State agents or entities. By “human rights abuses”, the resolution refers to, in accordance with current practice, abuses committed by organized non-State entities with a known structure, or their members.

8. Given the size of its mandate and the relatively short time given to implement it, the Commission decided to focus first and foremost on human rights violations and their more serious abuses, in particular those likely to constitute crimes under international law. The Human Rights Council requested that the Commission establishes the extent of violations and abuses committed in Burundi and to “determine whether they constitute crimes under international law”[[3]](#footnote-3). The Commission interpreted “crimes of international law” as “the most serious crimes of concern to the international community as a whole” as defined in the Rome Statute[[4]](#footnote-4). In this report, the Commission focused on highlighting certain emblematic cases and events.

 (b) Personal jurisdiction (*ratione personae*)

9. Paragraph 23 of resolution 33/24 tasks the Commission to “identify alleged perpetrators of human rights violations and abuses in Burundi with a view to ensuring full accountability”.

10. The Commission carefully distinguishes between human rights responsibility that only concerns the Government of Burundi for acts committed by its agents, individuals or groups acting under its authority or control[[5]](#footnote-5) and individual accountability in regards to international criminal law[[6]](#footnote-6). In this regard, the Commission has, as far as possible, sought to identify the alleged perpetrators of crimes under international law and the chains of command in order to establish, inter alia, the responsibility of the military commanders or superiors under the Rome Statute[[7]](#footnote-7).

11. In particular, the Human Rights Council expressed “grave concern about the reports that most of the violations and abuses are being committed by the Burundian security forces and the Imbonerakure (members of the ruling party’s youth league) in a climate of impunity”[[8]](#footnote-8). Nevertheless, in the interest of impartiality, the Commission considered the allegations of human rights violations and abuses committed by all parties - not only government security forces and authorities, but also armed groups, or their members, in Burundi[[9]](#footnote-9).

 (c) Territorial jurisdiction (*ratione loci*)

12. Paragraph 23 (a) and (b) of resolution 33/24 limits the geographical scope of the Commission of Inquiry investigation “to Burundi”, meaning, to investigate violations and abuses committed on Burundian territory, which includes those committed on Burundian soil by non-State entities, or their members, based abroad.

 (d) Temporal jurisdiction (*ratione temporis*)

13. Paragraph 23 (a) of resolution 33/24 states that the Commission will carry out “a thorough investigation into the human rights violations and abuses committed in Burundi since April 2015 [...]”. The resolution therefore clearly sets the beginning of the Commission’s mandate, which coincides with the first demonstrations against Pierre Nkurunziza’s candidacy for the presidential election. Due to editorial requirements, the Commission had to finalize its report to the Human Rights Council at the end of July 2017[[10]](#footnote-10). Nonetheless, the Commission continued its investigations after that date. The results of all the investigations are reflected in this report.

14. The members of the Commission are aware that monitoring and investigation work on human rights violations and abuses committed since April 2015 in Burundi has already been conducted by the country office of the High Commissioner for Human Rights and by the United Nations Independent Investigation on Burundi (UNIIB) established by Resolution A/HRC/S-24/1 of the Human Rights Council. The Commission has therefore considered the findings of the High Commissioner for Human Rights in the report submitted to the Human Rights Council during its thirty-second session in June 2016[[11]](#footnote-11) as well as the finding of the UNIIB report submitted to the Council during its thirty-third session in September 2016[[12]](#footnote-12). However, the Commission is an independent body. It has therefore carried out its own investigations and has systematically verified and corroborated the information gathered by the organs and mechanisms that previously conducted investigations into the situation in Burundi. Additionally, the Commission also has a mandate which covers a longer period, extending until September 2017.

 B. Cooperation with the Commission

 1. Cooperation of Burundi with the Commission

15. In paragraph 24 of resolution 33/24, the Human Rights Council “urges the Government of Burundi to cooperate fully with the commission of inquiry, to authorize it to conduct visits to the country and to provide it with all the information necessary to fulfil its mandate.” Despite this provision, the Government of Burundi, though a member of the Human Rights Council and therefore required to cooperate with the bodies established by the Council, has refused to cooperate with the Commission for the duration of its mandate.

16. During the interactive dialogue on Burundi at the thirty-third session of the Human Rights Council on 27 September 2016, the Permanent Representative of Burundi publicly deplored the context in which the Commission was established, noting that resolution 33/24 had been adopted “unfairly and scandalously [...] without any cooperation or consensus [from Burundi] despite the country’s strong demand”. He stated that it would be “impossible for the Commission to work with Burundi when we know the conditions of its implementation.”

17. Since the beginning of its mandate, and as expressly requested by resolution 33/24, the Commission has attempted several times to engage in a dialogue with the Burundian authorities[[13]](#footnote-13). On 20 December 2016, the Commission sent a first note verbale to the Permanent Mission of Burundi in Geneva to request a meeting with the Permanent Representative, followed by a second note verbale on 24 January 2017. On 26 January 2017, the Permanent Mission of Burundi informed the Commission in a note verbale that, as Burundi had rejected Human Rights Council resolution 33/24, it was not prepared to receive members of the Commission.

18. On 6 February 2017, the Commission sent a letter to the Minister of Foreign Affairs and Cooperation of Burundi calling on the Government of Burundi to access to the country in order to discuss with national authorities and carry out its investigations. It also invited the Government to send any information it deemed useful for an objective assessment of the human rights situation in Burundi. This correspondence has remained unanswered. In another correspondence addressed to the Minister of External Relations of Burundi on 20 March 2017, the Commission, mindful to obtain the point of view of the Government of Burundi, once again called on the Burundian authorities to share any information they deemed relevant on the human rights situation in the country since April 2015. In particular, the Commission requested detailed information on human rights violations against members of the Government or the ruling party, the *Conseil national pour la défense de la démocratie-Forces de défense de la démocratie* (CNDD-FDD), administrative authorities or members of the Burundian security forces[[14]](#footnote-14). The Commission has also expressed its willingness to collect information on any investigations or prosecutions allegedly carried out in connection with these attacks and their alleged perpetrators. This correspondence also remained unanswered[[15]](#footnote-15).

19. Following the first oral presentation of the Commission of Inquiry at the thirty-fourth session of the Human Rights Council on 13 March 2017, the Permanent Representative of Burundi stated that his delegation “disagreed with its contents, the drafting methodology and with the process that created the Commission”. The Permanent Representative of Burundi also indicated that the statement of the Commission repeated “all the false allegations contained in the UNIIB report”. The Permanent Representative of Burundi stated that his Government had sent comments on the UNIIB report but they were never taken into account. He indicated that until the dispute with UNIIB was settled, it would be impossible for his Government to work with the Commission[[16]](#footnote-16). The Permanent Representative of Burundi reiterated the same argument at the thirty-fifth session of the Human Rights Council in June 2017, during which the Commission made its second oral presentation[[17]](#footnote-17).

20. On 28 August 2017, the Commission sent a copy of its report to the Permanent Mission of Burundi in Geneva, one week before its official publication. The Permanent Mission did not acknowledge receipt of this correspondence. However, several representatives of the Government of Burundi and the ruling party have publicly criticized the content of the Commission's report, particularly on social media. On 12 September 2017, Philippe Nzobonariba, the spokesperson of the Government of Burundi, held a press conference during which he stressed that the Commission was created “illegally” without the agreement of the Burundian authorities to respond to a “hidden agenda” intended to undermine the image of Burundi. He also criticized the Commission for relying solely on testimonies collected outside Burundi from “criminals” who had fled the country, and for not investigating attacks by armed groups committed on Burundian soil[[18]](#footnote-18). On 14 September 2017, the Commission received information regarding comments from the Government of Burundi on its report. Although these were not sent directly to the Commission[[19]](#footnote-19), they are included in the appendix[[20]](#footnote-20).

 2. Cooperation of other countries with the Commission

21. Following the practice of other commissions of inquiry which had been denied access to the territory covered by their mandate, the Commission visited neighbouring countries of Burundi to meet with victims, witnesses, and other sources. The Commission also conducted interviews in other countries hosting Burundian refugees. In this regard, the Commission wishes to thank the Governments of Uganda, the Democratic Republic of the Congo, Rwanda, and Tanzania for granting access to their territories, as well as the other countries and organizations that were willing to facilitate the implementation of its mandate.

 C. Methodology

 1. Sources

22. The Commission collected information from a wide range of sources. Although the Government of Burundi did not grant access to its territory, the Commission collected information from people based in Burundi, as well as in several other countries. The Commission has tried, where possible, to conduct face-to-face interviews with these persons. However, for security reasons, for the protection of witnesses or due to the lack of access to the Burundian territory, the Commission had to conduct some interviews remotely. In these cases, the Commission particular attention to verify the credibility and veracity of the information collected.

23. The practice of Commissions of inquiry and fact-finding missions distinguishes between “primary sources” and “secondary sources”. The former have more value than the latter since the information provided by these sources has been directly collected by the Commission. On the other hand, secondary sources are used to corroborate primary sources or to provide information to better understand the context in which human rights violations and abuses have occurred.

24. The Commission considered as primary sources, among others:

* Testimony from victims of human rights violations and abuse, eyewitnesses, family members or close acquaintances of victims who have direct information regarding the events in question;
* Testimony from other persons who have direct and reliable information about human rights violations or abuses, or the circumstances in which they were committed or ordered;
* Statements by alleged perpetrators of human rights violations or abuses;
* Satellite images, photos, videos and sound recordings from reliable sources that the Commission has been able to authenticate;
* Documents that support direct testimony, such as medical documents attesting to victims' injuries, correspondence, copies of judgments or other legal documents;
* Public and official information, such as laws, regulations, guidelines, declarations, as well as other documents and official policies of the Government of Burundi.

25. The Commission considered the following sources, among others, as secondary:

* The submissions made to the Commission, particularly following the call for information published on its web page[[21]](#footnote-21) ;
* Reports from the United Nations, countries, non-governmental organizations (NGOs), research institutes, or any other entity that the Commission has considered credible and reliable on the human rights situation in Burundi;
* The Commission's interviews with reliable and credible persons who have developed expertise on Burundi and the human rights situation in that country;
* Interviews conducted by other persons or organizations but which the Commission has not had the opportunity to corroborate itself.

26. In total, the Commission conducted more than 500 interviews with victims, witnesses, and other sources. The Commission has also received several written communications containing information or allegations of human rights violations. The conclusions in this report are supported by references in the footnotes to interviews considered by the Commission to be reliable and credible[[22]](#footnote-22). To protect victims and witnesses, the sources are not identified in this report. The vast majority of the persons interviewed by the Commission spoke on the condition that their testimony be treated confidentially. In most cases, this choice was motivated by the fear of reprisals as well as by the more general climate of fear prevailing in Burundi. For the same reasons, the Commission chose not to include other details in its possession that would allow the identification of victims or witnesses, such as specific locations, exact dates, or the particular circumstances of certain events.

 2. Standard of proof

27. The Commission decided to adopt the same standard of proof as most of the international commissions of inquiry on human rights, namely “reasonable grounds to believe”[[23]](#footnote-23). This implies that, in order to corroborate its findings, the Commission made sure to collect a body of reliable and consistent information on the basis of which a reasonable and ordinarily prudent person would have reason to believe that an incident or pattern of conduct had occurred. This standard of proof is lower than the one used by the courts to determine a person’s guilt or establish a State’s responsibility, beyond a “reasonable doubt”[[24]](#footnote-24). However, it is this standard of proof that allows, for instance, the Pre-Trial Chamber of the International Criminal Court (ICC) to issue, upon the request of the Prosecutor, an arrest warrant or a subpoena for an individual[[25]](#footnote-25).

28. With this in mind, the Commission paid particular care and attention to corroborate the numerous information submitted to or collected by the Commission. This consisted in verifying each piece of information by obtaining concordant information from at least two other independent and reliable sources and, if this proved impossible, to discard the original information. This need for corroboration was not always necessary or possible. Information provided by a reliable primary source may in some cases only need to be corroborated by one independent and reliable additional source, which may include the investigator's own findings[[26]](#footnote-26). In other cases, acts of sexual violence or torture for example, it may be very difficult to corroborate the victim's story with another independent source, particularly if the victim did not receive medical assistance. In such cases, corroboration was possible through an assessment of the details of the victim’s story’s details by assessing the details and credibility of the victim's story, by trying to determine whether the details match publicly available information, and by establishing if the acts reveal a pattern that corresponds to other similar cases[[27]](#footnote-27).

29. In any case, the Commission never relied solely on published information or testimonies collected by other organizations, whether these organizations are United Nations agencies, Burundian or international NGOs, or other entities. When the information collected from these sources seemed to provide relevant leads, the Commission itself systematically verified this information before confirming or invalidating it.

 3. Protection of victims and witnesses

30. As a rule, the Government of the country subject to an international investigation is primarily responsible for the protection of persons who have exchanged information with the body conducting the investigation. In this case, since the Government of Burundi refused to cooperate with the Commission and did not authorize access to its territory, the question of Burundi's responsibility for protecting the victims and witnesses with whom the Commission was in contact with is not a real option.

31. In addition, allegations of reprisals and threats against Burundians who had previously collaborated with international human rights mechanisms, or who have testified to representatives of the United Nations, NGOs or journalists, have prompted the Commission to pay particular attention to the protection of victims, witnesses and all other sources. To achieve this, the Commission has developed procedures based on the standards established by the United Nations Office of the High Commissioner for Human Rights (OHCHR)[[28]](#footnote-28). The standards themselves are articulated around the guiding principles of do no harm[[29]](#footnote-29), confidentiality, and participation[[30]](#footnote-30). The Commission also made sure not to make promises it cannot keep regarding the security of those it has been in contact with. When the risk of retaliation, or the perception of such risks, were too great for someone wishing to cooperate, the Commission systematically decided not to collect the testimony of the person in question so as not to expose them to any additional danger, actual or perceived.

 4. Information backup and archiving

32. Like other commissions of inquiry and fact-finding missions, the Commission used a confidential and secure database made available by OHCHR. The transcripts of the interviews conducted by the Commission, as well as all the documentation it collected, are stored in this database. Only members of the Commission and its secretariat had access to the database for the duration of the Commission's mandate, with OHCHR only providing the necessary technical support.

33. The Commission has chosen not to publish in this report the list of alleged perpetrators that it was able to identify. The list is available in the database, which will be handed over to the United Nations High Commissioner for Human Rights at the end of the Commission's mandate. The Commission authorizes the High Commissioner for Human Rights to share the information contained in the database with any competent body and jurisdiction that will conduct independent and credible investigations to shed light on human rights violations and abuses in Burundi, or who will seek to gather information about individuals or institutions under a UN mandate. However, access to the information contained in the database should be granted only to the extent that witnesses will have given their consent for the sharing of the information in their testimony.

 D. Applicable law

34. Burundi is a State with a monistic tradition in which the standards contained in international treaties are theoretically an integral part of the national law and can therefore, in principle, be directly invoked before national jurisdictions. International law applicable to events falling within the purview of the Commission’s mandate covers international human rights law and international criminal law.

35. International humanitarian law is not relevant in this case. It applies in the context of international or non-international armed conflicts whose definitions are provided by the 1949 Geneva Conventions and their Additional Protocols, which Burundi is party to. International armed conflicts involve at least two States[[31]](#footnote-31) while non-international armed conflicts are characterized by clashes between government forces and non-governmental armed groups, or between armed groups.

36. As the Burundian State is not involved in an inter-state conflict, the Commission considered whether the situation prevailing in the country since April 2015 could be described as a non-international armed conflict, especially since there have been several attacks by armed groups on Burundian territory. In this regard, common Article 3 of the Geneva Conventions refers to armed conflicts “not of an international character occurring in the territory of one of the High Contracting Parties”. Article 1, paragraph 2, of the Protocol additional to the Geneva Conventions relating to the protection of victims of non-international armed conflicts, stipulates that “this Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts”. However, the analysis of the attacks carried out or claimed by armed groups in Burundi since April 2015 clearly shows their isolated and sporadic nature, which does not allow the Commission to conclude that there is a non-international armed conflict in Burundi during the period covered by its mandate[[32]](#footnote-32).

 1. International Human Rights Law

37. Article 19 of the Constitution of Burundi states that “The rights and duties proclaimed and guaranteed, among others, by the Universal Declaration of Human Rights, the International Pacts related to human rights, the African Charter on Human and Peoples’ Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child are an integral part of the Constitution of the Republic of Burundi”[[33]](#footnote-33). However, in many countries with a monistic tradition like Burundi, the standards of international law are, in practice, rarely considered by magistrates.

 (a) Universal Conventions

38. Burundi is party to seven of the main international human rights instruments, namely:

* The International Covenant on Civil and Political Rights (ICCPR)[[34]](#footnote-34);
* The International Covenant on Economic, Social and Cultural Rights ICESCR)[[35]](#footnote-35);
* The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)[[36]](#footnote-36);
* The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol[[37]](#footnote-37);
* The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[[38]](#footnote-38);
* The Convention on the Rights of the Child (CRC) and its two Optional Protocols[[39]](#footnote-39); and
* The Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol[[40]](#footnote-40).

39. By ratifying the CAT, Burundi accepted the inquiry process provided for in article 20 of the Convention and the individual complaint procedure provided for in article 22. Similarly, Burundi has accepted the individual complaint procedure provided by the CRPD.

40. As a party to the above-mentioned treaties, Burundi is obliged to cooperate with the implementing bodies established based on these treaties.

 *Treaty Bodies*

41. In recent years, the Government of Burundi has submitted several periodic reports to treaty bodies, including the Committee on the Rights of the Child in 2010, the Human Rights Committee in 2014 and the Committee on Economic, Social and Cultural Rights in 2015[[41]](#footnote-41).

42. In December 2015, the Committee against Torture, which had already discussed Burundi in 2014[[42]](#footnote-42), requested the Government of Burundi to submit a special report[[43]](#footnote-43) to respond to allegations of serious violations of the CAT reported by, among others, the United Nations High Commissioner for Human Rights and the United Nations Secretary-General’s Special Adviser on the Prevention of Genocide. The Government of Burundi submitted this report to the Committee in June 2016. A delegation of the Burundian Government, led by the Minister of Justice, participated in the first review session of the report on 28 July 2016, but, in an unprecedented case, did not attend the second meeting on 29 July 2016, during which the delegation was to answer questions by members of the Committee from the first meeting. On the same day, the Government of Burundi informed the Committee by note verbale that, in its view, the dialogue with the members of the Committee concerned issues and a report submitted by civil society that had not been shared beforehand and, consequently, the delegation requested additional time to review the report[[44]](#footnote-44). Through a note verbale issued on 29 July 2016, the Committee challenged these assertions, while calling on the Government of Burundi to pursue the dialogue. In its concluding remarks[[45]](#footnote-45), the Committee regretted this lack of cooperation and expressed “its deep concern” following the disbarment procedure from the Bar Association initiated by the Public Prosecutor of the Court of Appeal of Bujumbura against four lawyers who had contributed to the drafting of an alternative report submitted to the Committee[[46]](#footnote-46). The Committee also requested the Government of Burundi to submit by 12 October 2016 a special follow-up report on all the measures taken to implement the overall recommendations made in its concluding observations. The Government of Burundi submitted a report within the prescribed period. According to the Committee, however, this submission is more a response to the concerns raised by the Committee when considering the special report than a follow-up to the recommendations formulated during that meeting[[47]](#footnote-47).

43. On 26 October 2016, the Government of Burundi submitted its fifth and sixth periodic reports to the Committee on the Elimination of Discrimination against Women, which regretted that the climate of political instability since April 2015 had contributed to an increase in sexual and gender-based violence by agents of the defence and security forces as well as Imbonerakure[[48]](#footnote-48). In 2016, during its 90th (August 2016) and 91st (November-December 2016) sessions, the Committee on the Elimination of All Forms of Racial Discrimination used its early warning mechanism and urgent actions twice regarding the human rights situation in Burundi.[[49]](#footnote-49)

 *Human Rights Council*

44. Burundi is a member of the Human Rights Council since 2015 and until 2018. On 2nd October 2015, at its thirtieth session, the Human Rights Council adopted a resolution expressing concern over the human rights situation in Burundi[[50]](#footnote-50) and requesting the United Nations High Commissioner for Human Rights to make an oral presentation at its thirty-first session, in March 2016, and to submit a written report at its thirty-second session, in June 2016[[51]](#footnote-51).

45. On 17 December 2015, the Human Rights Council organized a special session on Burundi, during which it requested the High Commissioner for Human Rights “to urgently organize and dispatch on the most expeditious basis possible a mission by independent existing experts” to undertake an investigation into violations and abuses of human rights committed in Burundi since April 2015[[52]](#footnote-52). These experts[[53]](#footnote-53) visited Burundi in March and June 2016, before being declared *personae non grata* by Burundian authorities following the presentation of their report. This report[[54]](#footnote-54), submitted during the thirty-third session of the Human Rights Council in September 2016, served as a basis for Resolution 33/24 establishing the current Commission.

 *Special procedures*

46. In 2013, the Government of Burundi issued a standing invitation to special procedures mandate holders. Following this invitation, the Special Rapporteur on Human Rights Defenders visited the country in November 2014[[55]](#footnote-55) and the Special Rapporteur for the promotion of truth, justice, reparation and guarantees of non-recurrence in December 2014[[56]](#footnote-56). The Independent Expert on minority issues and the Working Group on Enforced or Involuntary Disappearances formulated a request to visit Burundi in 2009. However, they did not obtain a positive response from the authorities. In August 2015, the Special Rapporteur on extrajudicial, summary or arbitrary executions made a request for a visit, which was also rejected. On the other hand, the Government of Burundi accepted the invitation of the Special Rapporteur on the independence of judges and lawyers in 2010, but he has been unable to visit to date[[57]](#footnote-57).

 (b) Regional and subregional conventions

47. At the regional and subregional levels, Burundi is a member of the African Union (AU), as well as the East African Community (EAC), the Economic Community of Great Lakes Countries (CEPGL) and the International Conference on the Great Lakes Region (ICGLR), whose headquarters are in Bujumbura.

 *Regional law*

48. Within the framework of the AU, Burundi is party to the African Charter on Human and Peoples' Rights (ACHPR)[[58]](#footnote-58) and its protocol establishing the African Court on Human and Peoples’ Rights[[59]](#footnote-59), the African Charter on the Rights and Welfare of the Child[[60]](#footnote-60), and the AU Convention Governing the Specific Aspects of Refugee Problems in Africa[[61]](#footnote-61). Burundi has signed but has not yet ratified the African Charter on Democracy, Elections and Governance[[62]](#footnote-62) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa[[63]](#footnote-63).

 *Sub-regional law*

49. Article 6 of the EAC Treaty, signed on 30 November 1999 in Arusha, Tanzania, stipulates that “good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and people’s rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights” are among the core principles of the EAC. The Treaty establishing the EAC also put in place an East African Court of Justice (EACJ) whose mandate is to ensure that EAC member States comply with the provisions of the Treaty[[64]](#footnote-64). Although it does not have a specific mandate on human rights, the EACJ has developed jurisprudence on human rights based in particular on the ACHPR[[65]](#footnote-65).

50. Burundi joined the Pact on Peace, Stability and Development in the Great Lakes Region, signed in Nairobi in December 2006. The Pact entered into force in June 2008. The Pact includes 10 legally binding protocols, including the Protocol on Democracy and Good Governance, the Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination, the Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children, and the Protocol on the Protection and Assistance to Internally Displaced Persons.

 2. International Criminal Law

51. In the area of international criminal law, Burundi is party to the Convention on the Prevention and Punishment of the Crime of Genocide. Burundi is also party to the Rome Statute of the International Criminal Court (ICC), which it ratified on 21 September 2004. It is based on this ratification that on 25 April 2016, the ICC Prosecutor opened a preliminary examination to determine whether crimes within the jurisdiction of the Court had been committed in Burundi since April 2015[[66]](#footnote-66).

52. On 27 October 2016, the Government of Burundi notified the United Nations Secretary-General, the depositary of the Rome Statute, of its intention to withdraw from the treaty. However, this notification did not have any incidence on the mandate of the Commission since article 127 of the Rome Statute stipulates that a “State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute.” Given that the withdrawal will only be effective one year after its notification, it will not take place before 27 October 2017 in the case of Burundi. The Commission therefore based its work on the Rome Statute, which remained in force throughout its mandate.

53. In its work of characterizing the violations and abuses committed since April 2015 in Burundi, the Commission also referred to customary international law[[67]](#footnote-67) and the jurisprudence of international jurisdictions, particularly the international criminal courts for the former Yugoslavia (ICTY) and Rwanda (ICTR).

54. Paragraph 23 (a) of Resolution 33/24 of the Human Rights Council calls on the Commission to assess the extent of human rights violations and abuses in Burundi since April 2015 and to determine whether they constitute crimes under international law. By “crimes under international law”, the Commission understood the “most serious crimes of concern to the international community as a whole.” as defined in Article 5 (1) of the Rome Statute, namely: the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

 (a) The crime of Genocide

55. The crime of genocide is defined in article 6 of the Rome Statute, which stipulates that “genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

a) Killing members of the group;

b) Causing serious bodily or mental harm to members of the group;

c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

d) Imposing measures intended to prevent births within the group;

e) Forcibly transferring children of the group to another group.”[[68]](#footnote-68)

56. In this definition, the intentional element (*mens rea*) is of paramount importance. In the case of *Kayishema and Ruzindana*, the ICTR held that “or the crime of genocide to occur, the *mens rea* must be formed prior to the commission of the genocidal acts. The individual acts themselves, however, do not require premeditation; the only consideration is that the act should be done in furtherance of the genocidal intent.”[[69]](#footnote-69) The jurisprudence of the International Criminal Tribunals and the ICC has clarified the factors to be considered when reaching a conclusion regarding the perpetrator of the crime of genocide. The existence of a specific plan is not necessarily required although it can constitute proof of this intention[[70]](#footnote-70).

57. The intent to destroy must target “whole or part” of a group. By this expression, the Rome Statute intends to specify that the complete annihilation of an entire group is not required. The intent to destroy must concern a high number or at least a substantial part of the group, as was recalled by the ICTR in the Kayishema and Ruzindana and Bagilishema cases[[71]](#footnote-71). The target group must be “a national, ethnical, racial or religious group”[[72]](#footnote-72).

58. The Rome Statute, like the Convention on the Prevention and Punishment of the Crime of Genocide, states that the intent must be to destroy “in whole or in part, a national, ethnic, racial or religious group, as such”. With this expression, international criminal law insists that the victim or victims of the act are not chosen based on their individual identity but because of their belonging to the group[[73]](#footnote-73).

59. Article III of the Convention on the Prevention and Punishment of the Crime of Genocide also stipulates that in addition to the act constituting a crime of genocide, the following acts will also be punishable: “conspiracy to commit genocide”, “attempt to commit genocide”, “complicity in genocide”, as well as “direct and public incitement to commit genocide”. The Convention on the Prevention and Punishment of the Crime of Genocide further provides that the Contracting State has an obligation both to punish and to prevent the crime of genocide, “whether committed in peacetime or in time of war”[[74]](#footnote-74).

 (b) Crimes against humanity

60. Crimes against humanity, under article 7 (1) of the Rome Statute are “any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” The acts referred to in Article 7 (1) of the Rome Statute include:

a) murder,

b) extermination,

c) enslavement,

d) deportation or forcible transfer of population,

e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law,

f) torture,

g) rape,

h) sexual slavery,

i) forced prostitution,

j) forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity,

k) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law,

l) enforced disappearances of persons,

m) the crime of apartheid, and

n) other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health[[75]](#footnote-75).

61. “Attack” may include many of the acts listed above[[76]](#footnote-76). The attack must be “widespread or systematic”, these conditions not being cumulative. For an attack to be widespread, it must be carried out on a large scale and affect a plurality of victims[[77]](#footnote-77). However, there is no minimum threshold to define this scale. The systematic nature refers to the organized nature of the acts of violence manifesting itself through the existence of a policy or a preconceived plan, even if this policy or plan has not necessarily been adopted officially by the State[[78]](#footnote-78).

62. Article 7 (1) of the Rome Statute specifies that the attack must be “directed against any civilian population”. For the affected population to be qualified as civilian, it needs to be composed of a majority of civilians. In the Kayishema and Ruzindana case, the ICTR was able to highlight that the presence of certain non-civilians in the target population did not change the character of that population nature[[79]](#footnote-79).

63. Finally, the Rome Statute states that the attack must be conducted “knowingly”. In Kayishema and Ruzindana, the ICTR noted: “The perpetrator must knowingly commit crimes against humanity in the sense that he must understand the overall context of his act [...]. Meaning that the accused must know that his act(s) is part of a widespread or systematic attack on a civilian population and pursuant to some kind of policy or plan.”[[80]](#footnote-80)

 (c) War crimes and acts of aggression

64. War crimes as defined in Article 8 of the Rome Statute may take place in international or non-international armed conflicts. The crime of aggression, referred to in Article 8 bis of the Rome Statute, can only take place in the context of an international armed conflict. Since the Commission concluded that there was no armed conflict in Burundi during the period covered by its mandate, it did not examine the potential existence of war crimes or crimes of aggression in Burundi.

 E. Responsibilities

64. In paragraph 23 (b) of resolution 33/24, one of the tasks of the Commission is “to identify alleged perpetrators of human rights violations and abuses in Burundi with a view to ensuring full accountability”. The Commission has interpreted this provision as a request to analyse the issue of responsibilities both from an international human rights law perspective in the case of human rights violations and abuses and from an international criminal law perspective in the case of crimes under international law[[81]](#footnote-81).

 1. Responsibility in international human rights law

 (a) General principles

66. Standards relating to the protection of human rights are an integral part of international law that stipulates that every internationally wrongful act of a State entails the international responsibility of that State.[[82]](#footnote-82) There is an internationally wrongful act of a State when conduct consisting of an action or omission is attributed to the State under international law; and constitutes a breach of an international obligation of the State.[[83]](#footnote-83)

 (b) Attribution of conduct

67. Draft articles on Responsibility of States for Internationally Wrongful Acts, adopted in 2001 by the International Law Commission (ILC)[[84]](#footnote-84), considers a number of situations which may entail the responsibility of a State, including the unlawful conduct of one of its organs, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State[[85]](#footnote-85). The State may also be held liable for “the conduct of a person or entity which is not an organ of the State [...] but which is empowered by the law of that State to exercise elements of the governmental authority [...]”[[86]](#footnote-86). The State is also partially responsible for acts committed by its own agents in collaboration with non-State agents or entities.

68. If the responsibility of the State is engaged, as has just been described, by the behaviour of its agents, persons, or entities who, through their prerogatives may be considered as State agents, it may also be engaged by the behaviour of non-State agents or entities. This is the case when an agent or a non-State entity “is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct”[[87]](#footnote-87) or if and to the extent that the State acknowledges and adopts the conduct which is not attributable to it[[88]](#footnote-88). There is a conflict in international jurisprudence regarding the notion of control. The International Court of Justice (ICJ) has adopted the notion of “effective control”[[89]](#footnote-89), while the International Criminal Tribunal for the former Yugoslavia (ICTY) introduced the notion of “overall control”[[90]](#footnote-90). In both cases, however, the State is held accountable not only for the participation of its agents or entities in the financing, equipment, and training of a non-State group, but also for their participation in the organization, coordination, or planning of operations conducted by this group. The difference between “effective control” and “overall control” lies in the fact that, in order to be established, the former requires, unlike the latter, the issuance of specific orders or instructions by the State to the non-State group, as well as State control during each operation conducted by the group[[91]](#footnote-91).

 (c) Breach of an obligation

69. According to Article 2 of the Draft Articles of the International Law Commission, there is an internationally wrongful act of a State when conduct consists of an action or omission. Article 12 of the same Draft Articles stipulates that “there is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character”. The international obligation of the State can thus be of conventional or customary origin. Regarding its nature, it can consist of an obligation of result or conduct.

70. In international human rights law, States have a threefold obligation: to respect the rights contained in the human rights treaties to which they are parties; to protect individuals from any violation or abuse of those rights, and to fulfil those rights. These obligations may consist of either an obligation to refrain (negative obligation) or an obligation to act (positive obligation); the conduct constituting a violation of the international obligation of the State will consist of either an action or an omission by the State. The obligation to respect human rights generally consists of an obligation to refrain, while the obligations to protect and fulfil those rights consists of an obligation to act. For example, the ACHPR stipulates that States Parties must both ensure that “every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter” (Article 2) and “shall undertake to adopt legislative or other measures to give effect to them”(Article 1)[[92]](#footnote-92). Similarly, Article 2 of the ICCPR states:

“1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.”

71. Thus, a State is in breach of its obligation to respect human rights guaranteed by a treaty to which it is a party when the action of one of its agents or one of its organs infringes on said rights. A State is also in breach of its international obligation when the action violating that right is committed by agents or non-State groups acting on orders or specific directions from the State or following its directives or being under its control[[93]](#footnote-93). The African Commission on Human and Peoples’ Rights has gone further. In its general comment on the right to life, the Commission considered that “a State can be held responsible for killings by non-State actors if it approves, supports or acquiesces in those acts”[[94]](#footnote-94).

72. The State can also be held liable when it fails to protect human rights, especially when it knows or should have known of the risk of a human rights violation or abuse. In this case, the State is liable if it does not take the necessary measures to prevent such violation. In such a situation, the State is not responsible for the act itself but for its failure to prevent it. Similarly, the State may be held responsible for human rights abuses that it has allowed to be committed by non-State forces on its territory when it has not taken the necessary measures to ensure that investigations are carried out on these attacks and that their perpetrators are arrested. The State is also obliged to ensure that perpetrators are accountable to national jurisdictions and that victims, when necessary, receive compensation.

73. The State must also adopt policies, practices and a standard-setting corpus designed to protect and ensure respect for the human rights contained in the treaties to which it is a party. Certain international human rights conventions are very specific in this respect and even stipulate that the State has the obligation to sanction the violation as well as the attempt, complicity or participation in the commission of said violation. This is the case, for example, of the Convention against Torture, article 4 (1) of which states that “every State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture”. Article 20 of the ICCPR, by stating that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”, also requires States parties to sanction in law and in fact incitement to commit these acts.

 2. Responsibility in international criminal law

74. Article 25 (2) of the Rome Statute stipulates that. “A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.” Article 25 (3) outlines the different circumstances in which an individual may be held responsible: “Under this Statute, a person is criminally responsible and may be punished for a crime within the jurisdiction of the Court if that person:

(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;

(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

(c) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

(d) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission; Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime;

(g) With regard to the crime of genocide, it directly and publicly incites others to commit it;

(h) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose”.

75. In any case, the psychological element is critical in establishing the responsibility of an alleged perpetrator of an international crime. Article 30 (1) of the Rome Statute states that: “A person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge”. According to the Statute, “intent” is measured when: ‘a) In relation to conduct, that person means to engage in the conduct; b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events’[[95]](#footnote-95). Regarding knowledge, “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events”.[[96]](#footnote-96) Superior orders or prescription of law are not grounds for excluding criminal responsibility[[97]](#footnote-97) unless the alleged perpetrator “was under a legal obligation to obey orders of the Government or the superior in question; [...] did not know that the order was unlawful; and [that] the order was not manifestly unlawful”.[[98]](#footnote-98) In addition, article 27 of the Rome Statute states that “official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute [...]”.

76. The Rome Statute specifies two cases in which an individual may be held responsible for an act committed by another person: the responsibility of military commanders and that of superiors. Article 28 (1) of the Statute states that “A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where: (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.”[[99]](#footnote-99)

77. Responsibility of superiors is not limited to the armed forces but applies more generally. Article 28 (a) thus provides that “A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where: That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.” However, since Article 33 of the Rome Statute provides that the order to commit genocide and crimes against humanity is always manifestly unlawful, the subordinate who executes such an order will be prosecuted in the same manner as the ordering superior.

 F. Historical, political and diplomatic context

 1. Historical context

78. Since its independence on 1st July 1962, Burundi has experienced political instability characterized by waves of violence, massacres and political assassinations where the ethnic factor, exploited since the colonial period[[100]](#footnote-100), has often taken over[[101]](#footnote-101). This violence culminated in 1972 in what some authors have described as the genocide of a portion of the Hutu population by the Tutsi led Government of Burundi[[102]](#footnote-102) followed by the assassination of President Melchior Ndayaye in 1993, a democratically elected Hutu. The assassination of President Ndadaye by elements of the Tutsi-dominated Burundian army resulted in the massacres of Tutsis in retaliation, which in turn triggered repression by the armed forces against the Hutu population. These events were the cause of an extremely brutal armed conflict that lasted for about 15 years and caused the deaths of tens of thousands of people. The International Commission of Inquiry established in 1995 pursuant to United Nations Security Council Resolution 1012 found “acts of genocide against the Tutsi minority”[[103]](#footnote-103). Some of these acts took place at the same time as the genocide in Rwanda, which was triggered by the attack on 6 April 1994 on the plane carrying Rwandan President Juvenal Habyarimana and his Burundian counterpart Cyprien Ntaryamira[[104]](#footnote-104).

79- On 28 August 2000, after several years of negotiations, 19 signatories, including the then-government of Burundi, the National Assembly and two groups of political parties respectively representing Hutus and Tutsis, agreed, under the auspices of Nelson Mandela, the then South African President, on the final text of the Arusha Agreement for Peace and Reconciliation in Burundi to end the lingering political crisis and lay the foundations for the rule of law in the country[[105]](#footnote-105). This Agreement recognized the existence in Burundi of a conflict which is “fundamentally political, with extremely important ethnic dimensions”[[106]](#footnote-106) and to remedy this situation, the agreement established ethnic quotas intended to distribute political power and positions equally between Hutus and Tutsis in the administration and the defence and security forces. Many Burundians view the Arusha Agreement, and particularly the principle of ethnic representation in public institutions, as a cornerstone of the country's march towards peace and democracy.

80. The *Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie* (CNDD-FDD), led by Pierre Nkurunziza, and the PALIPEHUTU-*Forces nationales de libération* (FNL) of Agathon Rwasa only signed the global ceasefire agreements in 2003 and 2006, respectively[[107]](#footnote-107). The FNL officially only disarmed and turned into a political party in April 2009[[108]](#footnote-108).

 2. Political context

81. The Arusha Agreement included a transition period of 36 months. However, it is only in February 2005 that a new Constitution was adopted by referendum and promulgated on 18 March 2005. Pierre Nkurunziza, candidate of the CNDD-FDD, was elected, President of the Republic by the Parliament on August 19th 2005 after the legislative and senatorial elections of July 2005. In June 2010, he was confirmed as Head of State following elections by direct universal suffrage that were boycotted by most opposition parties. These elections were followed by a wave of political killings targeting in particular members and former members of the FNL[[109]](#footnote-109).

82. The two terms of Pierre Nkurunziza as President have been the focus of discussions that led to the 2015 political crisis. Although it is not within the purview of the Commission to adopt a position on a constitutional issue that is outside the scope of its mandate, it is important, for a better understanding of the political context in Burundi, to mention that opponents of Pierre Nkurunziza's candidacy in 2015 used the Arusha Agreement, whose Article 7 (3) state that the President of the Republic “shall be elected for a term of five years, renewable only once. No one may serve more than two presidential terms. Article 96 of the 2005 Constitution adopted the same principle but went further and indicated that “the President of the Republic is elected by direct universal suffrage for a term of five years renewable once”. Having been elected in 2005 by indirect suffrage[[110]](#footnote-110), the supporters of Pierre Nkurunziza consider his victory in 2010 as his first election by direct universal suffrage. For them, he was allowed to run in the 2015 presidential election.

83. The debate on the issue of Pierre Nkurunziza's possible candidacy for the 2015 presidential election began well before that date. On 21 March 2014, amendments to the Constitution, some of which had been interpreted as intended to allow the President to stand for election “a third time”[[111]](#footnote-111) in the presidential election, were rejected by a single vote in the National Assembly[[112]](#footnote-112).

84. This debate led to aggravated political situation and growing tensions between the Government on the one hand, civil society activists and some independent media on the other. Already on 8 March 2014, a march organized in Bujumbura by members of the opposition party *Mouvement pour la Solidarité et la Démocratie* (MSD) led to clashes with the police, as well as numerous arrests of MSD members. On the same day, clashes between police and MSD members at the party headquarters and the hostage taking of two police officers by members of the MSD resulted in a 6-month suspension of the party and an arrest warrant being issued for Alexis Sinduhije, the head of the party. Following an expedited trial, which took place within the framework of a “flagrante delicto” procedure, 21 people were sentenced to life imprisonment and 27 others, including three minors, received sentences that went from three to ten years imprisonment. On 16 May 2014, human rights defender and president of the Association for the Protection of Human Rights and Detained Persons (APRODH), Pierre Claver Mbonimpa, was arrested and charged with breach of national security after mentioning on a radio broadcast allegations of arming and military training of Burundian youth in the Democratic Republic of Congo (DRC) by State agents. He was finally released for medical reasons on 29 September 2014 under the pressure of the international community after falling seriously ill in prison. In January 2015, Bob Rugurika, director of the African Public Radio (RPA), was arrested and charged with complicity to murder and several other charges after airing a report on RPA in which one interviewee implicated some authorities of the National Intelligence Service (SNR) in the assassination of three Italian nuns in Burundi in 2014. A month later, Bob Rugurika was released on bail. The arrests of Pierre Claver Mbonimpa and Bob Rugurika sparked significant and spontaneous demonstrations of support.

 (a) Demonstrations against a new term for Pierre Nkurunziza

85. The issue of the “third term” of President Nkurunziza monopolized political life during the first months of 2015. Even within the CNDD-FDD, the date of the congress for the designation of the candidate to the presidential election was repeatedly postponed due to dissensions among the members. On 18 February 2015, Major-General Godefroid Niyombare, Administrator of the SNR, was sacked after expressing in an internal memo his disagreement with the President of the Republic. On 25 March 2015, 17 members of the CNDD-FDD, including influential members or who held important positions within the party, sent a letter to the President of the Republic expressing their opposition to the idea that he stands for re-election in the presidential polls[[113]](#footnote-113). Several CNDD-FDD members who publicly took a stand against Pierre Nkurunziza's new candidacy were excluded from the party and in some cases forced into exile. For their part, opposition parties attempted to organize themselves in two coalitions that soon experienced divisions, preventing them from appointing a common candidate. In addition, more than 300 civil society organizations launched a campaign called "Stop the Third Mandate" in late January 2015.

86. Finally, on 25 April 2015, Pierre Nkurunziza was confirmed as the CNDD-FDD candidate in the presidential election. This decision sparked a wave of protests the next day, first in Bujumbura and then in some provinces. Major demonstrations were violently dispersed by the police; scores of protesters were arrested; others were killed or wounded[[114]](#footnote-114). However, the demonstrations continued in several neighbourhoods of Bujumbura, particularly in Cibitoke, Musaga, Ngagara and Nyakabiga. On 27 April 2015, the RPA and the Press House[[115]](#footnote-115) were closed following orders from the Government[[116]](#footnote-116).

87. On 26 April 2015, the Senate petitioned the Constitutional Court for a motion to interpret Articles 96 and 302 of the Constitution on the option for the Head of State to seek re-election. On 5 May 2015, the Constitutional Court issued an opinion endorsing that possibility[[117]](#footnote-117) despite the dissenting opinion of the Vice-President of the Court, Sylvère Nimpagaritse, who after being pressured and threatened, had to leave the country.

 (b) Attempted coup

88. On 13 May 2015, Major General Niyombare announced the dismissal of President Nkurunziza over the radio, taking advantage of his trip to Dar-es-Salaam for an EAC Heads of State summit. This power grab was seen in a positive light by a portion of the population who took to the streets of Bujumbura to celebrate the coup. However, on 14 May 2015, clashes broke out between the soldiers who had tried to overthrow the Government and the part of the army that remained loyal to the President. These combats resulted in the defeat of the first group. After announcing the failure of the coup, Major General Niyombare managed to flee, but other senior officers allegedly involved in the coup attempt, including the former Defence Minister, General Cyrille Ndayirukiye, and Police Commissioner Zénon Ndabaneze, were arrested. President Nkurunziza returned to Burundi on 15 May 2015.

89. On the 18th of the same month, the movement “Stop the Third Mandate” called for the pursuit of the protests. Several demonstrations, mainly in Bujumbura in the Musaga, Kanyosha, Cibitoke, Kinama, Nyakabiga, Buyenzi and Ngagara neighbourhoods, resulted in violent clashes with police officers, some of whom fired live ammunition on the crowds. Some protesters also hardened their position and resorted to violence. In response to the attempted coup and the continuation of the protests, the Government intensified its campaign of repression targeting in particular members of the defence and security forces suspected of having supported or being involved in the attempt coup, members of opposition parties, civil society activists and journalists. The RPA and the Bonesha FM, Isanganiro and Radio-Télévision Renaissance radio stations, briefly reopened during the coup, were set on fire and looted. The same happened to the REMA FM radio station, which is close to the CNDD-FDD. All these radio stations have stopped broadcasting in Burundi and several journalists and civil society actors had to flee the country[[118]](#footnote-118).

 (c) Elections

90. The municipal and legislative elections were held on 29 June 2015. The previous day, the outgoing President of the National Assembly, Pie Ntavyohanyuma, a member of the CNDD-FDD, announced his defection from Brussels. On 7 July 2015, the Independent National Electoral Commission announced the victory of the CNDD-FDD which won 77 seats of a 100 in the National Assembly.

91. On 17 July 2015, several opponents of President Nkurunziza, including Jean Minani, Agathon Rwasa, and former Presidents Domitien Ndayizeye and Sylvestre Ntibantunganya announced that they would not participate in the presidential election. The latter took place on 21 and 24 July 2015. Pierre Nkurunziza was declared the winner with 69.41% of the votes and the Constitutional Court validated his election on 30 July 2015. On 27 July 2015, the United Nations Electoral Observation Mission in Burundi (MENUB), deployed in the country since 1st of January 2015 pursuant to 2137 (2014) of the UN Security Council found that the overall environment of the presidential election “was not conducive for an inclusive, free and credible electoral process”[[119]](#footnote-119).

92. Meanwhile, the senatorial elections were held on 24 July 2015. On 27 July 2015, Parliament proceeded to open its first session. Agathon Rwasa, leader of the FNL, was elected as First Vice-President of the National Assembly on 30 July 2015. Two days earlier, some opposition members in exile announced in Addis Ababa (Ethiopia) the creation of a political platform: the National Council for the respect of the Arusha Agreement and the Restoration of Rule of Law in Burundi (CNARED)[[120]](#footnote-120).

 (d) Post-election violence

93. Violence and repression of any critical voice or alleged opponent by the Government continued in the wake of the elections and become more intense. In his inaugural speech on 20 August 2015, Pierre Nkurunziza gave the police two months to restore security throughout the country. Subsequently, police operations in Bujumbura neighbourhoods deemed to be supporting the opposition increased, as did the arrests of persons accused of joining or supporting armed opposition groups, some of whom had begun sporadic attacks.

94. Several assassinations or murders or attempted assassinations or murders, including of leading figures, took place from August 2015[[121]](#footnote-121). On 2 August 2015, General Adolphe Nshimirimana, President Nkurunziza's right-hand man and former Administrator General of the SNR, was killed in Bujumbura in a rocket attack. The following day, human rights defender Pierre Claver Mbonimpa was shot and seriously injured. His son-in-law and one of his sons were murdered on 9 October and 6 November 2015, respectively. On 15 August 2015, Colonel Jean Bikomagu, former Chief of Staff of the Burundian Armed Forces (FAB)[[122]](#footnote-122), was murdered outside his home in Bujumbura. On 7 September 2015, Patrice Gahungu, the spokesperson of *Union pour la paix et le développement* (UPD)-Zigamibanga opposition party, was assassinated. Zedi Feruzi, president of the same party, was assassinated in May. On 11 September 2015, the Chief of Staff of the Army, Major General Prime Niyongabo, escaped an attack which claimed the lives of several people.

95. In August 2015, a commission of inquiry set up by the Attorney General of the Republic described the demonstrations against the “third term” of the President of the Republic as an “insurrectional movement”[[123]](#footnote-123). The report contains a list of “insurgents” that includes members of the opposition and civil society accused, inter alia, of undermining the internal security of the State, illegal possession of firearms, participation in an insurrectional movement, murder, assassinations as well as assault and battery. On 12 October 2015, the Attorney General of the Republic issued international arrest warrants against members of the opposition and civil society in exile.

96. On 2 November 2015, President Nkurunziza, in a speech to the nation, issued a five-day ultimatum to people who detain firearms illegal to surrender them. Thereafter, search operations by the police took place in several neighbourhoods of Bujumbura. On 23 November 2015, the Minister of the Interior issued a decree suspending the activities of 10 civil society associations that were under investigation for participation in an “insurrectional movement”, including Pierre Claver Mbonimpa’s APRODH. This decision came after that of the Attorney General of the Republic to freeze the bank accounts of several organizations of civil society[[124]](#footnote-124)..

97. The month of November 2015 also saw an increase in attacks, sometimes with heavy weapons, by unidentified individuals and armed groups, targeting in particular the defence and security forces.

 (e) Events of 11 December 2015

98. This trend culminated on 11 December 2015 when unidentified armed elements stormed four military installations: Ngagara camp north of Bujumbura, the “Base Camp” of the armed forces and the Military Academy (ISCAM) both located in Musaga (Bujumbura Mairie), and Mujejuru camp in the province of Bujumbura. These attacks led to a new brutal repression and violent operations by the police and the military, supported by the Imbonerakure (CNDD-FDD youth league) in several parts of the capital, including Nyakabiga and Musaga, where many people, many of them civilians, were killed[[125]](#footnote-125).

99. On 17 December 2015, the Attorney General of the Republic created a commission of inquiry into these events. The findings of this commission were published in March 2016[[126]](#footnote-126). This report concluded that four soldiers and four policemen were killed versus 79 “combatants” who lost their lives, as well as 87 captured. These figures do not match those put forward by several NGOs as well as the UN High Commissioner for Human Rights who, on 15 January 2016, revealed the existence of at least nine mass graves in Bujumbura and its surrounding area “said to contain at least 100 bodies, all of whom might have been killed on 11 December 2015”[[127]](#footnote-127).

 (f) Continuing violence and repression

100. There was no claim of responsibility for the attacks of 11 December 2015 against military installations. At the same time, the number and activity of armed opposition groups increased throughout 2016. After the Forces républicaines du Burundi (FOREBU) and the Mouvement de la résistance populaire (MPR), both created in December 2015, the Résistance pour un État de droit au Burundi (RED-Tabara), the Union des patriotes pour la révolution (UPR), the Force de libération de la démocratie au Burundi (FLDB) et the Mouvement patriotique chrétien (MPC) made their appearance in January, February and May 2016, respectively[[128]](#footnote-128).

101. Killings and murders of civilians, as well as attacks on leading figures, also continued in 2016 and 2017[[129]](#footnote-129). On 22 March 2016, Lieutenant-Colonel Darius Ikurakure, Commander of the Combat Engineer Battalion (Muzinda camp), was killed in the headquarters of the Burundian National Defence Force. On 21 April 2016, Lieutenant-Colonel Emmanuel Buzubona was assassinated. On 24 April, the Minister of Human Rights, Social Affairs and Gender, Martin Nivyabandi, and his wife narrowly escaped a grenade attack. The next day, General Athanase Kararuza, security and defence advisor in the office of the First Vice- President, was killed, together with his wife, daughter and his aide-de-camp. On 13 July 2016, Hafsa Mossi, a parliamentarian with the Legislative Assembly of the East African Community, was murdered. On 28 November 2016, the communication advisor to the President of the Republic, Willy Nyamitwe, was wounded in an attack that killed one of his bodyguards. On 1st of January 2017, Emmanuel Niyonkuru, the Minister of Water, Environment, Land Use Planning and Urban Development, was shot dead.

102. Several arrests of persons accused of threatening the safety of the State continued to take place, while at the same time, an increase in the number of kidnappings and disappearances was observed, including by the United Nations High Commissioner for Human Rights[[130]](#footnote-130).

103. Restrictions on civil liberties also continued despite the authorization in February 2016 for Radio Isanganiro to broadcast again - but with greater control by the Government - and the lifting of suspension for the association Parole et action pour le réveil des consciences et l’évolution des mentalités (PARCEM) and the unfreezing of the accounts of the Association des juristes catholiques du Burundi a month later. By contrast, on 19 October 2016, the Ministry of the Interior issued an order to permanently revoke the registration of five of the main civil society associations suspended since November 2015. This order also suspended five more organizations on 24 October[[131]](#footnote-131). Ligue Iteka, one of the oldest human rights organization in Burundi, was definitively revoked on 21 December 2016. In January 2017, the Burundian authorities adopted two restrictive laws on NGOs[[132]](#footnote-132). On 4 April 2017, the Minister of the Interior suspended for six months the MSD opposition party, accused of being involved in the training of an armed group and inciting violence and hatred[[133]](#footnote-133). In July 2017, the Ministry of the Interior issued an order for the suspension of the RPA for the disruption of public safety even though the findings of the official investigation into the destruction of the media houses (including the RPA) in May 2015 have yet to be published[[134]](#footnote-134). In addition, a revision of the Penal Code and the Code of Criminal Procedure was initiated in 2017. Some amendments, if adopted, would allow security forces to conduct warrantless searches, including at night, and seize electronic data, particularly e-mails[[135]](#footnote-135).

104. The next elections in Burundi are scheduled for 2020. In May 2017, President Nkurunziza launched a campaign calling on the population to contribute financially to the organization of these future elections. The President himself appears to have deposited five million Burundian francs (about USD $2,864)[[136]](#footnote-136) at the Central Bank of Burundi for this purpose[[137]](#footnote-137). The Commission is aware of other requests for contributions addressed to the population. A constitutional review process is also underway, as explained below.

3. Diplomatic context:

105. Since 2015; in response to the political and human rights crisis in Burundi, several governments, international and regional stakeholders have mobilised but have had limited impact to date.

 (a) United Nations

106. On 1 January 2015, in the wake of the closure of the United Nations Office in Burundi (BNUB)[[138]](#footnote-138), the United Nations Electoral Observation Mission in Burundi (MENUB) launched its operations, in accordance with resolution 2137 (2014) of the Security Council, with the mandate to monitor the electoral process in the country. On 13 March 2015, members of the Security Council visited Burundi and called for the parties involved to work together to ensure free, transparent and inclusive elections.[[139]](#footnote-139) The United Nations High Commissioner for Human Rights, also visited Burundi in April 2015 and deplored the rising tensions in the lead up to the elections, “stoked by an increase in politically motivated harassment, intimidation and acts of violence, as well as a reported rise in hate speech.” He condemned, in particular, the violence and intimidation by Imbonerakure.[[140]](#footnote-140)

107. Following the violence that stemmed from the first protests against Pierre Nkurunziza’s mandate to the 2015 presidential election, the United Nations unsuccessfully attempted to initiate an international mediation. The Special Representative of the Secretary General of the United Nations, Saïd Djinnit, appointed facilitator in the Burundi crisis on 5 May 2015, had to relinquish his functions on 10 June 2015 following accusations of bias in favour of the Burundian authorities by members of the opposition and the civil society. A few weeks later, his successor, Abdoulaye Bathily, was also forced to withdraw after the Government of Burundi disavowed him.

108. In a presentation to the United Nations Security Council on 9 November 2015, the High Commissioner for Human Rights noted that Burundi was at a “turning point” that could lead to further violence with regional repercussions[[141]](#footnote-141). The UN Secretary-General’s Special Adviser on the Prevention of Genocide, Adama Dieng, warned the Security Council of the risks of escalating violence along ethnic lines in Burundi.[[142]](#footnote-142) On 12 November 2015, the Security Council adopted Resolution 2248 condemning the human rights violations committed in Burundi and requested regular updates on the human rights situation[[143]](#footnote-143).

109. Following this resolution, Jamal Benomar, appointed on 9 November 2015 as Special Adviser to the UN Secretary-General on Conflict Prevention with the mission of coordinating efforts in the Burundi crisis, made his first visit to Burundi. On 30 November 2015, he presented options for a future United Nations presence in Burundi after the end of MENUB’s mandate in December 2015. To date, this presence consists of the deployment of a team tasked with providing assistance for an inclusive political dialogue and supporting efforts towards disarmament and security improvements.

110. On 29 July 2016, faced with the deterioration of the situation in Burundi - which the Security Council had denounced several times in late 2015 and the first half of 2016[[144]](#footnote-144) - the Security Council adopted Resolution 2303 authorizing the deployment of 228 UN police officers in Burundi. The Government of Burundi rejected this option, resulting in a strained relationship with the United Nations; the deployment of the police force never took place. The relationship between the Government of Burundi and the United Nations continued to deteriorate after the publication on 20 September 2016 of the UNIIB report on “possible crimes against humanity” in Burundi[[145]](#footnote-145), as well as after the creation of the present Commission by Resolution 33/24 of the Human Rights Council. In parallel, the Burundian Government announced on 7 October 2016, its intention to withdraw from the ICC, as well as its decision to consider *personae non grata* the members of UNIIB and to suspend its host agreement with the OHCHR office in Burundi.

111. In a letter to the Secretary-General of the United Nations in November 2016, President Nkurunziza requested the replacement of Special Adviser Jamal Benomar. On 12 March 2017, Mr. Benomar presented the report of the Secretary-General to the United Nations Security Council on the situation in Burundi. At the end of the presentation, members of the Security Council “were alarmed by the increasing numbers of refugees leaving the country and disturbed by reports of torture, forced disappearances and killings”[[146]](#footnote-146).

112. On 5 May 2017, the Secretary-General of the United Nations announced the appointment of Michel Kafando, the former transitional President of Burkina Faso, as United Nations Special Envoy for “promoting peace and sustainable development in Burundi" and to "assist the efforts of the East African Community in fostering political dialogue between Burundian stakeholders”[[147]](#footnote-147). Michel Kafando visited Burundi for the first time in June 2017 and submitted a report to the Security Council on 26 July 2017[[148]](#footnote-148). On 2 August 2017, the President of the Security Council made a statement in which he reiterated the Council’s concern about the political situation in Burundi and the lack of implementation of resolution 2303 (2016), as well as “reports of torture, forced disappearances and extrajudicial killings” and “the persisting political impasse in the country and the attendant serious humanitarian consequences”.[[149]](#footnote-149) He regretted “the decision by the Government of Burundi to suspend all cooperation and collaboration with the Office of the United Nations High Commission for Human Rights (OHCHR), present in the country since 1995” and called on the Government of Burundi to cooperate with the Commission of Inquiry on Burundi.

 (b) African Union

113. The African Union (AU) has also mobilised since the beginning of the crisis in Burundi. On 14 June 2015, the AU Peace and Security Council called for the resumption of dialogue and announced that it would be sending human rights observers and military experts to Burundi. Some of these military experts could only be deployed until after the presidential election, the Government having, in the interim, refused to issue visas.

114. On 17 October 2015, the AU Peace and Security Council instructed the African Commission on Human and Peoples' Rights to investigate human rights violations committed in 2015. Pursuant to that decision, a fact-finding mission visited Burundi from 7 to 13 December 2015. The mission denounced the “serious and massive” human rights violations by Burundian security forces as well as affiliated groups. It also called for the deployment of an “international police mission”[[150]](#footnote-150).

115. On 17 December 2015, the AU Peace and Security Council adopted a resolution agreeing to send a peacekeeping force of 5,000 troops to Burundi (known by its acronym MAPROBU). However, this decision was not implemented after the Government of Burundi declared that if the AU persisted in wanting to deploy MAPROBU, these troops would be considered as an “invasion and occupation force”[[151]](#footnote-151). In exchange, the AU decided to send 100 human rights observers and 100 military observers to Burundi. In the absence of an agreement with the Burundian authorities, only 32 human rights observers and 10 military experts were deployed as of 1 February 2017[[152]](#footnote-152). Since the failed deployment of MAPROBU, the AU has been less active on the Burundi issue.

 (c) Sub-regional mediation

116. On 13 July 2015, the East African Community (EAC) appointed Ugandan President Yoweri Museveni as mediator in the Burundi crisis. President Museveni visited Burundi in July 2015 and tasked Crispus Kiyonga, his Minister of Defense, with pursuing the talks.

117. They were both quickly confronted with the continued refusal by the Government of Burundi to engage with people who, according to the authorities, were involved in the May 2015 coup attempt and with the organizations that took part in the “*Halte au troisième mandate*” movement. The mediation also had to contend with a major part of the opposition who, consistently, considered the new mandate of Pierre Nkurunziza as illegitimate.

118. The Burundian authorities have also regularly called for the talks to be held in Burundi, rather than in neighboring countries. They also requested that the process launched by the EAC be paired with the one spearheaded by the National Commission for the Inter-Burundian Dialogue (CNDI), created by presidential decree on 23 September 2015 and whose work was officially launched on 19 January 2016 [[153]](#footnote-153). On 12 May 2017, CNDI submitted to the President of the Republic its final report whose main proposal, according to the communiqué issued on that occasion, “concerns the need to amend the Constitution”. The CNDI noted that “the majority of Burundians who were consulted share the desire to remove presidential term limits, although another significant part of the population believes that term limits constitute a guarantee for democracy”[[154]](#footnote-154). By 16 November 2016, the Council of Ministers had already approved the establishment of a commission tasked with proposing amendments to the Constitution. It was officially created by decree on 15 March 2017 and its members appointed on 12 May 2017[[155]](#footnote-155).

119. On 2 March 2016, the EAC appointed Benjamin Mkapa, former Tanzanian President, as facilitator in the Burundi crisis. Based on the recommendations adopted at the EAC Heads of State Summit on 8 September 2016, Mkapa developed a roadmap that he submitted for consultation to President Nkurunziza during a visit to Burundi in early December 2016. Following this visit, Mkapa was strongly criticized by CNARED and several member organizations of the platform “*Halte au troisième mandate”* for stating that the issue of legitimacy of the current mandate of President Nkurunziza was no longer relevant and that the main challenge in Burundi was the preparation of free and fair elections in 2020. Since then, Mkapa has organized several dialogue sessions in Burundi and outside the country, without any significant progress.

120. At the 18th Ordinary Summit of the EAC Heads of State in Dar es Salaam on 24 and 25 May 2017, Mkapa submitted a progress report in which he highlighted the persistence of a tensed political situation and the lack of good will by the Government of Burundi to engage in an inclusive dialogue.

 (d) Individual sanctions and suspension of aid

121. In October and November 2015, the European Union (EU) and the United States imposed targeted sanctions (travel ban and assets freeze) against several Burundian political figures[[156]](#footnote-156).These sanctions remain in place.

122. In addition, several countries, including Belgium, France, Germany, the Netherlands and the United States, have suspended a substantial part of their cooperation with Burundi on the basis of numerous reports of serious human rights violations in the country. On 14 March 2016, following a consultation process with the Government of Burundi, and after noting the lack of positive developments in the human rights situation in Burundi, the EU decided, pursuant to Article 96 of the Cotonou Agreements between the EU and African, Caribbean and Pacific (ACP) States, to suspend direct financial support to the Burundian administration. The suspension also included its budget support. However, the EU maintained funding for several projects to ensure the population’s access to basic services[[157]](#footnote-157).

G. Main Burundian stakeholders

1. Political Institutions:

123. The political institutions of Burundi are embedded in the Constitution adopted by referendum on 28 February 2005 and enacted on 18 March 2005.

1. Executive power

124. The constitutional system of Burundi is presidential and respects the separation of powers. Executive power is “exercised by a President of the Republic, two Vice-Presidents of the Republic and members of the Government”[[158]](#footnote-158). According to Article 95 of the Constitution, “the President of the Republic is elected by direct vote for a term of five years renewable once”[[159]](#footnote-159). The President “exercises regulatory power and ensures the execution of laws”[[160]](#footnote-160). He exercises his powers by decrees, countersigned, if necessary, by the Vice-President and the relevant minister[[161]](#footnote-161). He is the Head of Government and chairs the Council of Ministers. He appoints ministers in consultation with the two Vice-Presidents[[162]](#footnote-162). He also makes appointments to senior civilian and military positions[[163]](#footnote-163).

125. The President is assisted by the services of “the Office of the President”, responsible for supporting him in the preparation, organization and execution of his functions[[164]](#footnote-164). These services include a civilian cabinet, under the management of General Gabriel Nizigama since August 2016[[165]](#footnote-165), a cabinet in charge of military affairs headed by General Ildephonse Habarurema, and a cabinet responsible for police matters under General Gervais Ndirakobuca, a.k.a “Ndakugarika” *(“I'm going to kill you”)*[[166]](#footnote-166). Willy Nyamitwe, appointed as Ambassador Extraordinary and Plenipotentiary in 2017, is the Senior Advisor to the President in charge of Communication.

126. The First and Second Vice-Presidents, currently Gaston Sindimwo[[167]](#footnote-167) and Joseph Butore[[168]](#footnote-168), are appointed by the Head of State after prior approval by Parliament[[169]](#footnote-169). Each has a specific role. Under Article 122 of the Constitution, the First Vice-President “ensures the coordination in the political and administrative areas, while the Second Vice-President “ensures the coordination of the economic and social areas”.

127. The Government, for its part, “defines and implements national policy in the framework of decisions taken by consensus during the Council of Ministers”[[170]](#footnote-170). Its composition must reflect the ethnic and political diversity of the country[[171]](#footnote-171). The ministries whose duties are covered by the mandate of the Commission include the Ministry of Justice under Aimee Laurentine Kanyana[[172]](#footnote-172), the Ministry of Human Rights, Social Affairs and Gender headed by Martin Nivyabandi, the Ministry of Public Security overseen by Chief Police Commissioner Alain-Guillaume Bunyoni,[[173]](#footnote-173) the Ministry of Interior and Patriotic Training under by Pascal Barandagiye[[174]](#footnote-174), and the Ministry of National Defense and Veterans led by Emmanuel Ntahomvukiye[[175]](#footnote-175). Members of the Government, in order to implement the decrees of the President and the orders of the Vice-Presidents, adopt implementation measures through ministerial orders[[176]](#footnote-176). Each Minister “reports to the President of the Republic on the performance of their Ministry and the use of allocated funds”[[177]](#footnote-177).

128. The Administration must also reflect the diversity of the population of the Burundian nation[[178]](#footnote-178). Pursuant to law n°1/08 of 28 April 2011 on the overall organization of public administration, this entity is composed of the “Services of the Government Superstructure” which include the services of the offices of the President and the two vice-Presidents; the “Central Services”, among which the structures in charge of coordinating ministerial cabinets and the directorates general, all under the authority of a minister; the “Decentralized Services” under the central authority but placed within local authorities (provincial administrations) or abroad (external services and “decentralized communities”).

1. Local authorities

129. Burundi is subdivided into provinces, communes, zones and *collines*. Following the latest modification of the territorial organization in 2015[[179]](#footnote-179), Burundi comprises 18 provinces[[180]](#footnote-180), divided into communes, which in turn are divided into zones and close to 3,000 *collines* and neighbourhoods [[181]](#footnote-181), subdivisions of zones.

130. The President appoints a Governor in each province, after consultation with the Vice-Presidents and confirmation by the Senate. The Governor oversees the coordination of administrative services in the province[[182]](#footnote-182).

131. Communes are administered by a communal council of 25 members elected through direct voting for five years[[183]](#footnote-183). The communal council in turn elects a communal administrator who is both “the legal representative of the commune and the population in his area”, and of the State[[184]](#footnote-184). As such, he “is responsible for the implementation of laws and regulations”. Within the territorial limits of his jurisdiction, the administrator exercises police power. To that end, he takes any police measure which he considers useful for the maintenance of public order and security[[185]](#footnote-185). He exercises direct hierarchical authority over the detachment of police assigned to his commune[[186]](#footnote-186).

*132. Collines* and neighborhoods are administered by *colline* or neighborhood councils composed of five members elected by direct vote for five years. The member with the greatest number of votes serves as the *colline* or neighborhood chief. The latter is “the promoter of social peace and development within his constituency” and must organize at least once every three months a meeting open to all residents of the *colline* or neighborhood to analyze, among other things, the prevailing political and security situation[[187]](#footnote-187).

1. Legislative power

133. Legislative power, or Parliament, is composed of a National Assembly and a Senate. The members of the National Assembly are elected for five years through a proportional representation list ballot[[188]](#footnote-188). Senators are elected, based on two senators per province, by an electoral college composed of members of the communal councils of the said province[[189]](#footnote-189). The National Assembly and the Senate must represent the ethnic diversity of the country and include a minimum percentage of women[[190]](#footnote-190). Since August 2015, Pascal Nyabenda and Révérien Ndikuriyo are, respectively, President of the National Assembly[[191]](#footnote-191) and President of the Senate.

134. Pursuant to Article 158 of the Constitution, “Parliament votes the laws and controls the actions of the Government”. The basic guarantees and obligations of the citizen, such as “the safeguarding of individual freedom, the protection of civil liberties, and the obligations imposed in the interests of national defense and public safety, upon the person and property of the citizens”, are within the scope of the law. [[192]](#footnote-192)

2. Judicial system[[193]](#footnote-193)

 (a) Jurisdictions

135. Pursuant to Article 205 of the Constitution, “justice is administered by courts and tribunals throughout the territory of the Republic on behalf of the Burundian people”. The Supreme Court is the highest ordinary court and guarantees the proper application of the law by the courts[[194]](#footnote-194). The President of the Republic, upon proposal from the Minister of Justice after consultation with the Superior Council of Magistracy and approval of the Senate, appoints the members of the Supreme Court[[195]](#footnote-195). This court is divided into three chambers: the competent judicial chamber (trial and appeal jurisdiction), the administrative chamber (trial and appeal jurisdiction), and the appeals chamber.

136. There are three courts of appeal composed of a president, a vice-president, advisers and registrars[[196]](#footnote-196). Located in Bujumbura, Gitega and Ngozi, they hear all decisions on appeals rendered by the High Courts, in civil matters as well as in criminal cases. The courts of appeal also rule as a court of first instance on offenses committed by civil servants and judges.

137. At the lower level, 18 regional courts (*tribunal de grande instance*), one in each province, receive appeals in civil and criminal cases from the judgments rendered by local courts of residence. These regional courts are also seized as courts of first instance of all actions in civil and criminal matters for which competence is not assigned to another jurisdiction[[197]](#footnote-197).

138. At the base of the pyramid of ordinary courts are the local courts of residence[[198]](#footnote-198). Located at the communal level, these courts hear civil matter disputes whose value does not exceed 1,000,000 Burundian francs (around 573 US dollars). In criminal cases, the court of residence rule, among other things, on offenses punishable by two years of imprisonment and may award damages and interest resulting from the offense, without limitation, unless the victim decides to refer to another civil court.

139. Burundi also has specialized courts, including the administrative courts[[199]](#footnote-199), which hear disciplinary disputes regarding civil servants, the Anti-Corruption Court[[200]](#footnote-200), which has jurisdiction over corruption offenses, as well as the Military and the Constitutional Courts. Military courts have two jurisdictions[[201]](#footnote-201). The Martial Court rules in the first instance on cases of military officials and assimilated civil servants with a rank lower than major as well as the civilians who have violated firearm regulations. In the event of a conflict of jurisdiction between the military courts and the ordinary courts, the latter are preferred[[202]](#footnote-202). The military court’s second jurisdiction rules on appeals against the decisions of the court martial. It also hears cases related to offenses committed by officers as well as civil servants of equivalent status with a rank equal to or higher than major.

140. The President of the Republic, after approval by the Senate, appoints the seven members of the Constitutional Court for a renewable period of 6 years.[[203]](#footnote-203). Its main task is to ensure the constitutionality of laws and regulatory acts in matters other than those falling within the scope of the law. It is also responsible for issues relating to “respect for the Constitution, including the Charter of Fundamental Rights, by State bodies and other institutions” and rules on the regularity of presidential and legislative elections[[204]](#footnote-204).

 (b) Office of the Public Prosecutor

141. Article 223 of the Constitution stipulates that “a Public Prosecutor Office to the Supreme Court shall be established” and its members shall be appointed by the President of the Republic after a proposal from the Minister of Justice following consultation with the Superior Council of Magistracy and the approval of the Senate.

142. The prosecution coordinates all the activities of the Office of the Public Prosecutor. At the helm of this entity, the Attorney General (*Procureur général de la République*) may fully direct and conduct prosecutions in all jurisdictions. Valentin Bagorikunda held this position for eight years before being replaced by Sylvestre Nyandwi in August 2016. Under the authority of the Office of the Public Prosecutor, prosecution offices within the courts of appeal are responsible for exercising the functions of the Office of the Public Prosecutor in these courts as well as in the administrative courts within their jurisdiction. The public prosecutors attached to trial courts cover the trial courts and the courts of residence of their jurisdiction[[205]](#footnote-205).

143. The Auditor General of the Military Court, the Auditor to the War Council and the Chief Prosecutor to the Anti-Corruption Court exercise the functions of Public Prosecutor in their respective jurisdictions[[206]](#footnote-206). They are all under the direction and supervision of their superiors and under the orders of the Chief Prosecutor.

144. In its mission of implementing the law and court decisions, the judicial police assist the Office of the Public Prosecutor. This police branch searches for criminals, compiles evidence against them, and presents the offenders before the Office of the Public Prosecutor. They may also proceed with their provisional arrest, search homes and seize property in accordance with the law and under the supervision of the Office of the Public Prosecutor. The judicial police has been integrated into the Burundian National Police (PNB) since the harmonization of the different police units[[207]](#footnote-207). The judicial police is under the administrative control of the Ministry of Public Security but executes its duties under the supervision of the Office of the Public Prosecutor. Each prosecutor's office has a police station, and, in each commune, there is a police unit where at least one judicial police officer works.

145. Insofar as it is responsible for preventing any threat to the State, the constitutional order and public security, and for detecting any types of activity likely to create socio-political insecurity, any act of terrorism, any unlawful trafficking and any attempt to setup a criminal organization, the National Intelligence Service (SNR) is called upon to act in support of judicial institutions, particularly in criminal matters. As stipulated in article 8 of law n°1/04 of 2 March 2006 on the establishment, organization and functioning of the SNR, “in its missions related to breaches on national security, the SNR is duty bound to carry out investigations on legal cases which it submits to the Office of the Prosecutor for prosecution. Within this framework, the intelligence services are subject to the provisions of the Code of Criminal Procedure in regards to police custody and pre-trial detention”. However, the staff of the SNR have a special status and are under the direct authority of the President of the Republic[[208]](#footnote-208).

 c) The Bar

146. The legal profession is organized into a professional body – the Bar Association of Burundi – with a legal personality. The Bar Association is administered by a Council, which elects the Chairperson of the Bar Association. The Chairperson represents the Association before the public authorities. The Bar Association autonomously manages the legal profession, particularly the admission to the bar, the ethics and conduct of lawyers[[209]](#footnote-209). Members of the Bar Association exercise a monopoly on the legal profession[[210]](#footnote-210).

 (d) The prison administration

147. Law n°1/026 of 22 September 2003 on the prison system designates, under the title “prison administration authority”, the staff under the directorate-general for prison affairs within the Ministry of Justice, as well as prison directors and their close collaborators[[211]](#footnote-211). The law states that “each prison establishment is administered by a director assisted by as many deputy directors as necessary”, all appointed by the Ministry of Justice “with due regard to ethnic and gender balance”[[212]](#footnote-212).

148. Security and order within the prisons, as well as the reception, registration, guarding and escort of prisoners, are the responsibility of the prison police, which in turn depends on the General Inspectorate of the Burundian National Police[[213]](#footnote-213). Regarding the reception of detainees, “no one may be admitted to a penitentiary establishment except by virtue of a lawful detention order”[[214]](#footnote-214). Where such is not the case, detention is considered “arbitrary”[[215]](#footnote-215).

149. Law n°1/026 of 22 September 2003 outlines the rights and duties of detainees who, without exception, must be treated “with humanity, respect and with the inherent dignity of the human person at any given time”[[216]](#footnote-216). These rights include the right to food, the right to hygiene, health and clothing, the right to communicate and freedom of worship.

3. Other institutional stakeholders

1. Independent National Human Rights Commission

150. The Independent National Human Rights Commission (CNIDH) was established by decree on 11 May 2000[[217]](#footnote-217), but only took shape in 2011[[218]](#footnote-218). The National Assembly elected a Commission of seven members. The CNIDH, which has four branches in Ngozi, Gitega, Makamba and Bujumbura Mairie, has a dual mandate to protect and promote human rights. It receives complaints about human rights violations and can conduct investigations. It has the power to refer matters to courts and can conduct visits to detention centers to prevent torture, inhuman and degrading treatment. The CNIDH is responsible for drawing the attention of the Government to all the cases of violations it has documented so that adequate measures can be taken. In terms of promotion, the CNIDH organizes awareness-raising and training activities[[219]](#footnote-219).

151. The CNIDH has an “A Status” with the Global Alliance of National Human Rights Institutions (GANHRI). From 2011, it demonstrated independence and courage in an otherwise tense political context. However, from 2014, several stakeholders expressed concern about the level of independence of the CNIDH. For instance, the Human Rights Committee and the Committee against Torture in their concluding observations in 2014[[220]](#footnote-220), as well as the Committee on Economic, Social and Cultural Rights in its concluding observations of 2015[[221]](#footnote-221), expressed their concerns about the independence and the credibility of the CNIDH. These concerns were due in particular to a lack of independence in the renewal process of two commissioners in 2014 and a lack of resources allocated by the Government. The Special Rapporteur on the situation of human rights defenders reiterated these concerns in 2015[[222]](#footnote-222). On 23 April 2015, five members of the CNIDH, including its President, were replaced. Jean-Baptiste Baribonekeza was then elected President of the Commission and occupies this position to date.

152. Since April 2015, as noted by, among others, the United Nations High Commissioner for Human Rights, the CNIDH has had a tendency to minimize the number and seriousness of human rights violations committed in the country in its reports and press releases. More generally, the statements of the CNIDH since April 2015 do not reflect the extent of the violations reported in the country. During the discussions on Burundi at the Human Rights Council in March and June 2017, the CNIDH President reported on an improvement in the security and human rights situation in the country while calling on the Government to reconsider its decision to suspend media and non-governmental organizations and to resume its cooperation with human rights mechanisms. On 28 July 2017, the CNIDH issued a press release, in which it “notes with satisfaction a clear improvement in the security and human rights situation throughout the country”[[223]](#footnote-223). It also recommended that the International Criminal Court “close the preliminary examination initiated on 25 April 2016 on the situation in Burundi with a decision allowing the Burundian justice system to be given the opportunity to address all the complaints concerning crimes that may have been committed in Burundi”[[224]](#footnote-224).

153. In November 2016, the GANHRI Sub-Committee on Accreditation (SCA) conducted an extraordinary review of the CNIDH, recommending that the Commission be re-accredited to B status. The SCA found that “the CNIDH has not spoken out in such a way as to promote the protection of human rights in response to credible allegations of gross violations of human rights committed by the authorities. This silence denotes a lack of independence. Therefore, the SCA is of the view that the CNIDH is acting in a manner that seriously compromises its compliance with the Paris Principles”[[225]](#footnote-225). The final decision will be taken in 2017.

154. The Commission of Inquiry met with the President of the CNIDH on 10 March 2017 who pledged to collaborate with the COI and to support the implementation of its mandate. On 12 June 2017, in the absence of an actual follow-up, the Commission sent a letter to the President of the CNIDH asking him to share any useful information on the human rights situation, and on the serious cases of human rights violations and abuses, particularly those committed since the beginning of 2017. This letter remained unanswered, as have most of the requests made informally by the secretariat of the Commission to obtain a copy of the annual report of the activities of the CNIDH for 2016[[226]](#footnote-226). However, the Commission was able to obtain, through its own resources, a copy of its 2015 annual report and the report covering the first half of 2017.

155. On 11 September 2017, the President of the CNIDH made a public statement in which he repeated some of the criticisms by Burundian authorities against the Commission’s report. He noted that the Commission had only conducted interviews outside Burundi without considering the views of the authorities[[227]](#footnote-227), but he did not indicate that the Government of Burundi denied the Commission access to the country and has not seen fit to share relevant information with the Commission.

 (b) Ombudsman

156. The Ombudsman is an institution provided for in the Constitution whose article 237 stipulates that the Ombudsman “receives complaints and conducts investigations into mismanagement and violations of the rights of citizens by public officials and the judiciary and makes recommendations on the matters to relevant authorities.” However, the institution was only established five years after the adoption of the Constitution, by law n°1/03 of 25 January 2010. The Ombudsman has an office in Bujumbura with a human rights department as well as regional branches in Ngozi and Makamba. The Ombudsman submits an annual report to both houses of Parliament[[228]](#footnote-228).

157. After approval by the Senate, a three-quarters majority of the members of the National Assembly appoint the Ombudsman for a non-renewable term of six years. In November 2016, Edouard Nduwimana, former Minister of Interior and Second Vice-President of the National Assembly, replaced Mohamed Rukara. The opposition criticized this appointment because of Edouard Nduwimana’s repressive policies against the opposition parties, media and civil society when he was Minister of Interior[[229]](#footnote-229). In early September 2017, Edouard Nduwimana met with the facilitator Benjamin Mkapa. Following this meeting, he stated that another meeting would be organized in October 2017 as part of the inter-Burundian dialogue. However, for the Government, this meeting should be the last one[[230]](#footnote-230).

3. Defence and security forces

158. Under article 110 of the Constitution of Burundi, “the President of the Republic is the Commander-in-Chief of the Defence and Security Forces”. The Constitution also establishes an advisory body – the National Security Council –“in charge of assisting the President of the Republic and the Government in the formulation of security policy, in monitoring the country’s situation in the area of security and the development of defence, security and law enforcement strategies in the event of a crisis”[[231]](#footnote-231). The President of the Republic chairs the National Security Council. The two Vice-Presidents and the Ministers with the portfolios of public security, interior, external relations, national defence and justice are ex-officio members of the National Security Council, which also has nine other members appointed by the President of the Republic[[232]](#footnote-232).

159. Under Article 245 of the Constitution, Burundi’s defence and security forces consist of a National Defence Force, a National Police and a National Intelligence Service. The current defence and security forces are the result of a fusion, after the Arusha Agreement, between the existing defence and security forces prior to the civil war, including the Armed Forces of Burundi (FAB), and elements from different armed groups. These entities must respect the ethnic balance of the country.

160. Since the 2000s, Burundi participates in peacekeeping efforts, within the framework of the United Nations or the African Union. In June 2017, 767 soldiers, 10 police officers and 13 Burundian military experts were deployed in United Nations peacekeeping missions[[233]](#footnote-233). Burundi is the second largest contributor to the African Union Mission in Somalia (AMISOM) with 5,432 military personnel[[234]](#footnote-234). Assignment to a peacekeeping mission is considered in Burundi as a reward, the salary that the members of the Burundian defence and security forces earn in this context being much higher than the prevailing wage in Burundi.

1. **The Burundi National Defence Forces**

161. Pursuant to the Constitution, the Burundian National Defence Force (FDNB) is “under the highest authority of the President of the Republic who is its Supreme Commander”[[235]](#footnote-235). Organic law n°1/04 of 20 February 2017 recalls that the President is responsible for appointments to high-ranking military functions[[236]](#footnote-236). Furthermore, he is the only one with the power to authorize the FDNB to participate in operations for the defence of the Nation, restoration of order and public safety[[237]](#footnote-237). The organic law stipulates that the FDNB may intervene in support of the police, “exceptionally in the maintenance and restoration of public safety upon official requisition by the authorized authority [...]”[[238]](#footnote-238). This new provision confirms the possibility of deploying the FDNB in police operations. A requisition by the authorized administrative authority must be made in writing, citing the legal provision under which it is requested[[239]](#footnote-239).

162. The FDNB is under the direct command of the Chief of Staff of the Burundi National Defence Force, assisted by a Deputy Chief. Currently, Major-General Prime Niyongabo, in office since 2012 and Brigadier General Joseph Ndayishimiye, hold these functions respectively[[240]](#footnote-240). Organic law n°1/04 of 20 February 2017 states that the Army Chief of Staff, in addition to the command and administration of the FDNB, is responsible for “implementing the Government’s defence policy”[[241]](#footnote-241).

163. Organic law n°1/04 of 20 February 2017 also restructures the organization of the FDNB. Under law n°1/019 of 2004, the FDNB was under the command of the General Staff, comprised of a joint staff, a training staff and a logistics staff as well as a navy command, an aviation command and specialized units[[242]](#footnote-242). Law n°1/019 of 2004 further provided that the FDNB was to be divided into military regions within the national territory[[243]](#footnote-243). The organic law simplifies the structure and centralizes the command at the level of the Chief of Defence Staff by removing the subordinate staff as well as the military regions. Article 23 of the organic law stipulates that the FDNB includes “the Central Services of the General Staff (EMG/FDNB), the components; namely the land, navy and air forces; as well as the specialized units”. The EMG/FDNB is now organized into a dozen services that for the most part already existed. These include the administration and staff management service (G1)[[244]](#footnote-244), the military intelligence service (G2)[[245]](#footnote-245), training and operations department (G3), the logistics service (G4)[[246]](#footnote-246), as well as the military courts and the public prosecution service to these jurisdictions.

164. The organic law also specifies the composition of the FDNB. The land force includes a General Staff, divisions, support weapons brigades and a combat engineer battalion (BGC)[[247]](#footnote-247). Specialized Units include the Special Protection Brigade for Institutions (BSPI), which is currently under the command of Colonel Dominique Nyamugaruka. BSPI is in charge of the protection of the presidential institution inside and outside the country, high-ranking officials and sensitive locations such as the presidential palace, ministries and the General Staff of the FDNB, as well as executing any special mission assigned to it by these headquarters.[[248]](#footnote-248)

165. The organic law provides that the FDNB “may resort to reserve personnel composed of citizens of any ethnic group, trained militarily for this purpose by the FDNB and former career soldiers for a maximum of two years after retirement age”[[249]](#footnote-249). Some observers criticized this reference to “any ethnic group” in this new provision because they see it as a means of circumventing the FDNB’s ethnic balance guaranteed under article 61 of the organic law[[250]](#footnote-250).

1. Burundi National Police

166. Organic law n°1/03 of February 2017[[251]](#footnote-251) defines the missions of the Burundian National Police (PNB), whose main tasks consists of maintaining and restoring public order, “protecting the population and providing assistance to persons in danger and in distress”[[252]](#footnote-252). The organic law extends the powers of the PNB in the case of public events and meetings. Not only can the PNB intervene upon the written requisition of the administrative authority, but also they have the power to prohibit an event “that could be detrimental to public order and safety”. In this case, the PNB is accountable to the hierarchical and administrative authority[[253]](#footnote-253). The organic law also provides that “by order of the law” or a legitimate authority, the PNB can disperse and/or neutralize any armed or unarmed assembly formed to invade, plunder, pillage properties, harm people as well as to oppose the implementation of the law, a judgment, a decision or any other binding measure[[254]](#footnote-254).

167. The organic law also reaffirms the role of the President of the Republic as “Supreme Commander of the PNB”, in charge in particular of making appointments to the highest levels of the PNB[[255]](#footnote-255). The Inspector General of the PNB assisted by a Deputy Inspector General (formerly Director General and Deputy Director General) are responsible for the management and day-to-day administration of the PNB. To date, these functions are carried out respectively by Police Commissioners André Ndayambaje and Godefroid Bizimana[[256]](#footnote-256), both under the direct authority of the Minister of Public Security, Chief Police Commissioner Alain-Guillaume Bunyoni, in this role since August 2015[[257]](#footnote-257).

168. The PNB, composed of officers, brigadiers, agents and support staff, includes two types of structure: a centralized and a decentralized one[[258]](#footnote-258). The centralized structure has four police headquarters and seven technical offices. Organic law n°1/03 of February 2017 reorganized the headquarters; placing them “under the authority of the Inspector General of the PNB”[[259]](#footnote-259). The police headquarters of internal security[[260]](#footnote-260) now manage the prison police. The police headquarters of internal security is divided into six central police stations, which in addition to prison affairs; manage teaching, training and operations, intelligence, administration and logistics, as well as the specialized units[[261]](#footnote-261). These include the traffic and road safety police under the command of Alfred Innocent Museremu until August 2017; the police division responsible for protecting state institutions (API), under the command of Alexander Muyenge. API is responsible for providing the security of the President of the Republic and protecting the institutions in coordination with BSPI and the Rapid Response Mobile Group (GMIR) whose mission is to provide a rapid response throughout the country in case of emergency[[262]](#footnote-262). The other three police headquarters cover respectively judicial police[[263]](#footnote-263), migration[[264]](#footnote-264) and training[[265]](#footnote-265).

169. The PNB’s centralized structure also includes technical offices to assist the General Inspectorate in fulfilling its mission, including the Office of Operations and Training and the Intelligence Bureau. The Office of Operations and Training consists of specialized services and units, including the anti-riot brigade (BAE), created by ordinance in September 2015 to “prevent and manage major events and serious acts of terrorism”[[266]](#footnote-266).

170. The decentralized police structure includes regional police headquarters covering at least three provinces, provincial police headquarters and communal police headquarters[[267]](#footnote-267). Each entity is divided into three police substations responsible respectively for the internal security police, judicial police and migration. At the helm of a regional police headquarters is a regional police commissioner, assisted by three deputy police commissioners, all under the direct responsibility of the Inspector General of the PNB[[268]](#footnote-268). Similarly, a provincial police commissioner runs the provincial police headquarters, and a communal police commissioner will be in charge of the communal police headquarters[[269]](#footnote-269).

 (c) National Intelligence Service

171. Provided for in article 245 of the Constitution, the National Intelligence Service (SNR), commonly known as the “Documentation”, was established and is governed by law n°1/04 of 2 March 2006, which gives it broad powers. Article 3 of this law stipulates that SNR’s mission “is research, centralization and processing of all intelligence in the areas of politics, security, economy and society necessary for the information and orientation of Government’s action with a view to ensure the security of the State. The role of the SNR consists of:

* Preventing all threats against the State,
* Collecting, centralizing and controlling any information that may contribute to the protection of the State and its institutions, as well as the safeguarding of international relations and economic prosperity,
* Detecting types of activities that may create insecurity, incite hatred and/or violence, or cause changes in State institutions through anti-democratic means,
* Identifying any attempt at political, ethnic, religious, regionalist or any other type of manipulation aimed at destabilizing institutions,
* Preventing any threat to the constitutional order, public security, territorial integrity and national sovereignty,
* Detecting any act of terrorism, illicit trafficking and any attempt to establish criminal organizations,
* Detecting malfunctions and malpractices within the State services,
* Providing information on any threat to the country’s ecological environment.”

172. Article 4 of law n°1/04 of 2006 stipulates that the SNR reports to the President of the Republic with its day-to-day operations managed by an Administrator General assisted by a Deputy Administrator General. General Étienne Ntakirutimana, a.ka “Steve”, is the current Administrator General. He was appointed in April 2015 after the dismissal of General Godefroid Niyombare, who replaced General Adolphe Nshimirimana in 2014. The Administrator General plans, coordinates and controls all the activities of the SNR[[270]](#footnote-270). Without prejudice to the powers of the Public Prosecution, the Administrator General of the SNR or his deputy may take any legal measure necessary for the accomplishment of their mission[[271]](#footnote-271). He reports directly to the President of the Republic[[272]](#footnote-272).

173. The SNR is organized into five departments, including the department of domestic intelligence[[273]](#footnote-273), which “is responsible, *inter alia*, for researching, centralizing and processing information related to internal security; preventing destabilizing activities of a political or social nature”[[274]](#footnote-274). The department of domestic intelligence oversees 18 provincial officers, who in turn supervise sector agents. The mission of the department of foreign intelligence is to detect and prevent any destabilizing activity launched from outside the country as well as any act of terrorism.

174. The SNR is composed of administrators, intelligence officers and intelligence inspectors recruited “in strict compliance with the balance provided for by the Constitution”. They each have the rank of judicial police officer with general jurisdiction over any offense covered in the missions of the SNR[[275]](#footnote-275).

5. Political Parties

175. The creation and the activities of political parties in Burundi are governed by Title III of the Constitution, which establishes a multiparty system and guarantees “the non-interference of public authorities in the internal functioning of the parties”[[276]](#footnote-276) as well as law n°1/16 of 10 September 2011 amending law n°1/006 of 26 June 2003 on the organization and functioning of political parties. Specifically, this law requires political parties to “prioritize the promotion and protection of the fundamental human rights, the lawful promotion of the rule of law, the respect for and the defense of democracy, territorial integrity and national sovereignty; individual and collective rights and freedoms, as well as the prohibition of intolerance, ethnicity, regionalism, xenophobia and the use of violence in all its forms”. This law also forbids political parties to “set up any military or paramilitary organization”[[277]](#footnote-277). Law n°1/16 of 2011 also provides for an accreditation process with the Ministry of Interior prior to any creation of a political party. The Minister of Interior may suspend a political party for a maximum of six months or request the administrative chamber of the Supreme Court to dissolve it if the political party disturbs public order or threatens the security of the State[[278]](#footnote-278). Any challenge to these decisions can be brought to the Supreme Court.

 (a) *Conseil national pour la défense de la démocratie-Forces de défense de la démocratie*

The Party

176. The *Conseil national pour la défense de la démocratie-Forces de défense de la démocratie*, in power since 2005, emerged from the resistance to the October1993 coup marked by the assassination of President Melchior Ndadaye. This resistance, composed mainly of Hutus, initially brought together several parties who opposed the party *Union pour le progrès national* (UPRONA) – a predominantly Tutsi party– among which the *Front pour la démocratie au Burundi* (FRODEBU) and the *Parti pour la libération du peuple Hutu* (PALIPEHUTU). A joint headquarter was established under the name *FDD-Intagoheka*[[279]](#footnote-279) to coordinate military operations. However, after just three months of existence, this military coalition fell apart due to rivalries, particularly between the members of the FDD-Intagoheka and the *Forces nationales de libération* (FNL), the armed wing of PALIPEHUTU. The political alliance was also short-lived and ended in September 1994 when FRODEBU accepted to join the Government of national unity alongside UPRONA. In the process, the CNDD was created with the FDD-Intagoheka becoming its military wing.

177. Since 1994, the evolution of the CNDD-FDD has been characterized by several internal divisions, starting with the ousting of Léonard Nyangoma in 1998 from the leadership of the CNDD by Jean-Bosco Ndayikengurukiye, the FDD Chief of Staff[[280]](#footnote-280). The latter was removed in 2001 in favor of Pierre Nkurunziza. The CNDD-FDD did not commit to the Arusha Agreement in 2000. It is only in 2003 that a comprehensive cease-fire agreement was concluded between the Burundian authorities at the time and CNDD-FDD. Article 2 of the agreement stipulated that this cease-fire agreement was “an integral part of the Arusha Agreement for Peace and Reconciliation in Burundi”, even though CNDD-FDD had criticized its contents three years earlier; in particular, the institutionalization of an ethnic balance, which they believed, did not reflect reality[[281]](#footnote-281).

178. The CNDD-FDD registered officially as a political party in 2005 in order to take part in the first elections held since the end of the civil war. Hussein Radjabu, a former comrade in arms, replaced Pierre Nkurunziza, candidate to these elections, as the leader of the party. However, Hussein Radjabu was removed from his post in February 2007 and two months later, was arrested and sentenced to 13 years in prison in April 2008 for breaching national security[[282]](#footnote-282). His supporters then joined forces in two new parties: CNDD-FDD “respectful of the rule of law” and the *Union pour la paix et le développement (UPD)-Zigamibanga*. That same year, Alice Nzomukunda, who resigned as Second Vice-President in 2006, founded the *Alliance démocratique pour le renouveau* (ADR). The latest major split within the CNDD-FDD was on the eve of the 2015 presidential election when several influential members of the party opposed Pierre Nkurunziza’s desire to run for re-election[[283]](#footnote-283). Most of them, commonly known as “*frondeurs*”, then went into exile in 2015, some to campaign in opposition parties outside of Burundi.

179. In deciding to become a political party, the CNDD-FDD adopted statutes during the congress held in Gitega in August 2004. These statutes, amended in 2016[[284]](#footnote-284), outline the objectives of the party. The statutes highlight “the promotion and protection of the fundamental human rights, the lawful promotion of the rule of law, respect for and defence of democracy; territorial integrity and national sovereignty; individual and collective rights and freedoms, as well as the prohibition of intolerance, ethnicity, regionalism, xenophobia and the use of violence in all its form”.

180. The statutes of the CNDD-FDD have put in place a complex structure that distinguishes the “entities” from the “statutory bodies” of the party, including the National Congress and the Executive Committee[[285]](#footnote-285). The National Congress is composed of members of the Executive Committee, one delegate per communal assembly, the treasurer general of the party, the deputy treasurer general, a delegate of the national governing body of each movement integrated into the party and invited personalities with no voting rights[[286]](#footnote-286). On the other hand, the Executive Committee brings together the members of the Council of Elders and the legal representation of the party[[287]](#footnote-287). The latter is composed of the political bureau, which is supported by national executive secretaries, commissioner generals, the party spokesperson, and national representatives of the youth league - *Imbonerakure* -, the women league - *Abakenyererarugamba* - and the league of veterans[[288]](#footnote-288).

181. Following the latest special congress of the CNDD-FDD in August 2016, a new leadership was designated. Evariste Ndayishimiye was appointed Secretary General[[289]](#footnote-289), Joseph Ntakarutimana, Deputy Secretary General, and Zénon Ndaruvukanye, Treasurer General. All three serve with Gélase Ndabirabe, National Secretary in charge of the party’s social affairs, monitoring and evaluation at the Council of Elders, which is chaired by the Head of State. Godelieve Nininahazwe was appointed National Secretary for political, administrative and legal affairs; Nancy Ninette Mutoni in charge of communication; Anastase Minani in charge of ideology, mobilization and diaspora; Emmanuel Sinzohagera in charge of development; Athanase Hatungimana in charge of socio-cultural issues; and Sylvestre Ndayizeye in charge of managing leagues affiliated to the party[[290]](#footnote-290).

Imbonerakure

182. Imbonerakure, whose name means “those who see far”, form the CNDD-FDD youth league. Made up of men and women aged 18 to 35, Imbonerakure are organized in a pyramid structure similar to that of the CNDD-FDD, from national level to the *colline*s via the communes. At each level, there is a person responsible for supervising the activity of the members. Up until the special congress of the CNDD-FDD in August 2016, the President of Imbonerakure was Denis Karera. Since the congress, the leadership of the movement is now in the hands of Sylvestre Ndayizeye who was appointed as CNDD-FDD National Secretary in charge of managing the leagues affiliated to the party.

183. Since 2014, information has been circulating on military training of some Imbonerakure in Burundi and the Democratic Republic of the Congo as well as reports of weapons distribution.[[291]](#footnote-291). In April 2014, a BNUB internal memo sent to the United Nations headquarters in New York reported on army and police weapons as well as uniforms allegedly distributed by two generals to Imbonerakure and demobilized soldiers in Rumonge, in the South of the country[[292]](#footnote-292). Several senior officials, including the two Vice-Presidents, the Minister of Public Security and the President of the CNDD-FDD have denied these allegations[[293]](#footnote-293).

 (b) The political opposition

184. Since the adoption of law n°1/25 of 14 November 2012, political opposition has a legal status in Burundi[[294]](#footnote-294). This law stipulates that “no leader, no activist of the political opposition can suffer sanctions because of their political opinions” and that “no attack can be brought to his freedom to come and go for reasons other than those provided for by the laws in force”[[295]](#footnote-295). Any member of the opposition may appeal to the administrative chamber of the Supreme Court if they consider that there was a violation of their rights. However, law n°1/25 of 2012 states that “no one shall take advantage of these rights [granted to opposition parties] to disrupt peace and security of the country, without incurring the penalties provided in and punishable under the Penal Code of Burundi”[[296]](#footnote-296). The law also recognizes the status of “Leader of the Opposition”, which effectively applies to the president of the opposition party with the largest number of parliamentarians[[297]](#footnote-297).

185. Political opposition remains divided. The history of the CNDD-FDD, briefly outlined above, has shown the many divisions that can exist within the same party. Such splits and rivalries have long existed in opposition parties and between various political groups opposed to the CNDD-FDD. Some Burundians have given the name of “*nyakurisation*” - from “*nyakuri*” meaning “genuine” in Kirundi - to the phenomenon of splits within parties from the Government’s attempts to “repossess” some of them[[298]](#footnote-298). The result is that several opposition parties have a wing officially recognized by the Government, which in general supports the CNDD-FDD, and an “unrecognized” wing that continues to act like an opposition party.

186. The main opposition parties in Burundi today are the *Union pour le progrès national* (UPRONA) split between the Charles Nditije wing and the Abel Gashatsi wing[[299]](#footnote-299); the *Front pour la démocratie au Burundi* (FRODEBU)[[300]](#footnote-300), divided between FRODEBU-*Sahwanya*, and FRODEBU-*Nyakuri*[[301]](#footnote-301); the *Conseil national pour la défence de la démocratie* (CNDD)[[302]](#footnote-302); the *Mouvement pour la solidarité et le développement* (MSD)[[303]](#footnote-303); the *Union pour la paix et le développement* (UPD) - *Zigamibanga*[[304]](#footnote-304) and the *Forces nationales pour la libération* (FNL), divided between the Agathon Rwasa wing, the Jacques Bigirimana wing and the FNL *Iragi rya gahutu* led by Jacques Kenese[[305]](#footnote-305). Several leaders of these parties have been in exile since 2015 or 2016.

187. In July 2015, eight opposition political parties in exile[[306]](#footnote-306) joined members of the “*Halte au troisième mandat*” civil society platform and four former political figures[[307]](#footnote-307) to create the National Council for the Respect of the Arusha Agreement for Peace and Reconciliation in Burundi and for the Rule of Law (CNARED)[[308]](#footnote-308). Agathon Rwasa’s FNL disassociated themselves from this opposition coalition when their leader agreed to serve as the first Vice-President of the National Assembly in July 2015. In November 2015, the “*Halte au troisième mandat*” movement announced its withdrawal from CNARED[[309]](#footnote-309). In May 2016, the UPD-Zigamibanga disassociated itself from CNARED[[310]](#footnote-310), which has also seen internal rivalries since its creation. Its current president, Charles Nditije, was elected in March 2017[[311]](#footnote-311).

6. Armed opposition groups

188. Like the political opposition, the armed opposition is divided into several groups, with most of them, relatively new, officially announcing their existence after the attacks of 11 December 2015. However, some attacks were claimed before that date such as the one that targeted Burundian troops in Kayanza province in July 2015[[312]](#footnote-312).

 (a) National Liberation Forces

189. An armed wing of the PALIPEHUTU party since the 1980s, the *Forces nationales pour la libération* (FNL) has a long history as an armed group. The fighting faction regrouped around General Aloys Nzabampema is the fruit of internal rivalry and splits in the FNL and seems to have no close relationship with the political branch of the party. General Nzabampema coordinates its military operations while the political leadership of the movement is ensured by Isidore Nibizi, former Burundian Ambassador to Russia. The FNL Nzabampema are believed to be mainly active in South Kivu in the DRC. They also carry out sporadic incursions into the western provinces of Burundi.

 (b) Forces Républicaines du Burundi

190. Lieutenant-Colonel Édouard Nshimirimana, former Transmissions Director in the FDNB[[313]](#footnote-313) announced the creation of the *Forces Républicaines du Burundi* (FOREBU)[[314]](#footnote-314) on 23 December 2015. The FOREBU are led by General Godefroid Niyombare, former Administrator General of the SNR and former Chief of Staff of the Army who spearheaded the coup attempt in May 2015. Former members of the Burundian defense and security forces constitute the FOREBU. These include their spokesperson - former Police Commissioner Édouard Nibigira - and General Philbert Habarugura, who seems to be commanding the troops, assisted by a Chief of Staff, Colonel Jules Ndihokubwayo[[315]](#footnote-315). FOREBU announced its intention to continue the armed struggle as long as the Government of Burundi refuses to participate in an inclusive dialogue. They sometimes conduct joint operations with RED-Tabara and, among their actions, claim the assassination of Lieutenant-Colonel Darius Ikurakure in March 2016[[316]](#footnote-316).

191. On 27 August 2017, a communiqué announced that FOREBU had been renamed *Forces populaires du Burundi* (FPB) and were now under the command of Major-General Jérémie Ntiranyibagira. The former spokesperson for the Burundian armed forces, Adolphe Manirakiza, became the Communications Officer. When contacted by Radio France Internationale (RFI), the latter explained that this reorganization was due to “internal divisions on political issues” and a desire to be “henceforth politically neutral, as the defence and security forces should be”[[317]](#footnote-317). A FOREBU tweet, dated 28 August 2017, nonetheless denied that the movement had changed its name and organization chart[[318]](#footnote-318). In fact, it appears that FPB is a new wing.

 (c) Résistance pour un Etat de droit

192. The *Résistance pour un État de droit* (RED-Tabara) officially announced its existence on 4 January 2016, but its Chief of Staff, Melchiade Biremba, a former member of the MSD, suggested that this group has existed since 2010[[319]](#footnote-319). Previously, the group was allegedly called FRONABU (*Front national burundais*) - Tabara and has been active since around 2011 in the East of the Democratic Republic of the Congo. According to a statement dated 1 February 2016, the spokesperson of RED-Tabara is David Ihotorihirwa[[320]](#footnote-320). RED-Tabara claims to have the same objectives as CNARED but pursues them through different means[[321]](#footnote-321). According to some sources, this movement is allegedly linked to Alexis Sinduhije, the president of the MSD party, who has been under sanctions by the United States since December 2015[[322]](#footnote-322). Alexis Sinduhije has publicly denied this information[[323]](#footnote-323), but several sources have indicated that RED-Tabara is largely made up of members or former members of MSD and that there are links between this armed group and the party[[324]](#footnote-324). There have been rumors of recent defections of members from RED-Tabara joining FOREBU. RED-Tabara denied these rumors in a statement on 28 August 2017[[325]](#footnote-325).

 (d) Other armed opposition groups

193. Several other armed groups have come forward since December 2015, although their make-up, importance or capacity has not been established. There is little known about most of these groups. They include *Mouvement de la résistance populaire* (MRP)[[326]](#footnote-326), *Union des patriotes pour la révolution* (UPR) [[327]](#footnote-327), *Force de libération* *de la démocratie au Burundi* (FLDB)[[328]](#footnote-328), *Mouvement patriote chrétien* (MPC) [[329]](#footnote-329) and *Malibu-Front patriotique du salut* (Malibu-FPS)[[330]](#footnote-330).

1. Human Rights Situation

 A. Main trends

194. The political crisis in Burundi since 2015[[331]](#footnote-331) was coupled with a serious human rights crisis. Although the premises for this situation were observed before 25 April 2015, President Nkurunziza’s announcement on that date of his decision to run for a new term resulted in a significant deterioration of the human rights situation. The Commission has documented serious and often extremely brutal violations, including extrajudicial executions, arbitrary arrests and detentions, enforced disappearances, torture and other cruel, inhuman or degrading treatment, and sexual violence. These types of violations had already been observed by the United Nations High Commissioner for Human Rights[[332]](#footnote-332), the United Nations Independent Investigation on Burundi (UNIIB)[[333]](#footnote-333) and the African Commission on Human and Peoples’ Rights[[334]](#footnote-334).

195. It is clear from the large number of testimonies received by the Commission that the demonstrations that began in April 2015, the failed *coup d’État* of May 2015 and the attacks on four military camps in Bujumbura and its surroundings on 11 December 2015 constituted decisive steps in the escalation of violence in 2015. This climate, conducive to human rights violations, remained in 2016 and 2017, fueled in particular by hate speeches by Government authorities and members of the ruling party[[335]](#footnote-335), as well as widespread impunity, aggravated by a lack of independence of the judiciary. Some violations have been committed more covertly, but just as brutally since 2016.

196. The common denominator between victims, mostly young men (with the exception of victims of sexual violence), is that they are members of the opposition or perceived as such. They include protesters against the candidacy of Pierre Nkurunziza in the 2015 presidential election, members of opposition political parties (in particular the MSD and the FNL) as well as their relatives, members of the former Burundian Armed Forces (ex-FAB)[[336]](#footnote-336), members of civil society, journalists, people suspected of having supported or participated in the failed coup of 2015, members or sympathizers of armed opposition groups, or people going in exile and suspected of joining these groups. The Commission also noted a recruitment trend of the population in the CNDD-FDD and Imbonerakure. Resistance has often been a source of human rights violations.

197. The Commission’s interviews with victims and witnesses revealed a deep and widespread climate of fear: dread of testifying for fear of reprisals[[337]](#footnote-337), fear of returning home despite repeated calls from the Government, but also fear of being pursued while in exile. Several victims told the Commission of their feelings of insecurity even outside Burundi, particularly in Kenya, Uganda, DRC and Tanzania, where some claimed to have recognized SNR and Imbonerakure agents[[338]](#footnote-338). Although the Commission has not been able to verify the presence of Burundian agents or Imbonerakure outside the country, it still found, among the refugees interviewed, genuine fear of being killed or attacked where they are or of being forcefully repatriated to Burundi. The Commission heard testimony from refugees who received anonymous threats by telephone or written messages, and some who were even attacked physically[[339]](#footnote-339).

198. Early September 2017, Burundi’s refugee population is believed to be at 407,633 persons[[340]](#footnote-340), an estimated four per cent of the country’s total population. Many members of civil society and journalists remain in exile, and some are the subjects of arrest warrants, and those still in Burundi are forced to work clandestinely. Main independent media and human rights organizations have been suspended or deregistered by the Government.

199. Violations of civil and political rights have had a direct impact on the enjoyment of economic, social and cultural rights because of, among other things, restrictions on freedoms, and the suspension of a large portion of the direct assistance to the Government provided by the major donors as a consequence of these violations. The rapid and pronounced deterioration of the economic landscape since 2015 has in turn exacerbated the phenomenon of extortion, which has taken various forms. The types of extortion include ransom demands by State agents or the release of individuals against payment; new taxes imposed on an already impoverished population; pressure to contribute financially to various expenses of the Government or ruling party; or acts of extortion under threat by Imbonerakure. Many Burundians interviewed by the Commission have complained of growing economic difficulties. Nevertheless, the Commission, due to lack of time, access to the country and cooperation from the Government, could not carry out an in-depth investigation with regards to economic, social and cultural rights in Burundi[[341]](#footnote-341).

 B. Accountability

200. Paragraph 23 (b) of resolution 33/24 instructs the Commission “to identify the alleged perpetrators of human rights violations and abuses committed in Burundi in order to fully comply with the principle of responsibility”.

201. The Commission thus sought to establish whether Burundian State agents or bodies, or individuals or non-State entities acting on the instruction or under the control of the State, were the perpetrators of human rights violations and as a result of such violations, they have engaged the responsibility of the Government of Burundi.

1. State responsibility for the behaviour of its entities

202. Under international law, the State is responsible for the conduct of its organs, whatever their function - legislative, executive, judicial or otherwise -, their position in the state organization, or their nature - whether they belong to the central government or to a territorial community[[342]](#footnote-342). The Commission has reasonable grounds to believe that since April 2015 the defence and security forces have been the main perpetrators of human rights violations in Burundi, even when acting jointly with non-State agents such as the Imbonerakure.

203. Members of the National Intelligence Service (SNR), including high-level officials in Bujumbura and several provinces, have committed acts engaging the State’s responsibility including extrajudicial executions, arbitrary arrests and detentions, enforced disappearances, acts of torture and cruel, inhuman or degrading treatment and sexual violence.

204. The Burundian National Police (PNB) played an active role in the first demonstrations against the candidacy of President Nkurunziza for a new presidential term. Since April 2015, members of the PNB have committed extrajudicial executions, arbitrary arrests and detentions, enforced disappearances, torture and cruel, inhuman or degrading treatment and sexual violence. Some units, including the Support Unit for the Protection of Institutions (API) and the Anti-Riot Brigade (BAE) created in September 2015, have been particularly involved in serious human rights violations.

205. The Burundian National Defence Force (FDNB), which only played a background role at the very beginning of the crisis, has been increasingly active in suppressing actual or perceived opponents. Members of the FDNB were identified in the evidence collected by the Commission as alleged perpetrators of extrajudicial executions, arbitrary arrests, torture and cruel, inhuman or degrading treatment. Among the units involved in serious human rights violations, the Commission identified the Special Brigade for the Protection of Institutions (BSPI), the Combat Engineer Battalion (BGC, Muzinda Camp) and the Support Battalion of the First Military Region (Muha Camp) in Bujumbura.

206. The Commission has also documented cases where local administrative authorities have committed or ordered the commission of human rights violations, in particular arbitrary arrests.

207. In addition, the Government of Burundi is responsible for the conduct of judicial authorities that have not prosecuted or tried their agents who are alleged perpetrators of human rights violations. The obligation to protect human rights requires the State to prosecute and try perpetrators in order to punish them and to ensure the victims’ right to reparation. By not fighting against impunity, the State encourages the repetition of human rights violations and the commission of other violations.

1. State responsibility for the behaviour of individuals or non-State groups

208. Generally speaking, under international law, including human rights, the State may be held accountable for the unlawful conduct of individuals or non-State groups when they are in “complete dependence” of the State[[343]](#footnote-343). Its responsibility can also be held on a case-by-case basis when non-State individuals or groups act on its instructions, directives, or under its “effective control”[[344]](#footnote-344) but also when its own agents recognize and adopt the behavior of non-State groups[[345]](#footnote-345). With this information in mind, the Commission considered the issue of responsibility of the State for acts committed by Imbonerakure, whose involvement in extrajudicial executions, arbitrary arrests and detentions, enforced disappearances, torture and cruel, inhuman or degrading treatment and sexual violence was documented by the Commission. As early as 2008, several reports had already revealed Imbonerakure’s involvement in the commission of human rights abuses and intimidation of genuine or perceived opponents of CNDD-FDD, especially during pre-election periods[[346]](#footnote-346). In 2016, the Committee against Torture also expressed concern regarding reports of “corroborating information that [the] [Imbonerakure] [...] group received weapons and training from the authorities of the State party and that, working with the police and members of the National Intelligence Service, it performs arrests and, on its own, it engages in acts of repression with full impunity”[[347]](#footnote-347).

“Complete dependence”

209. “Complete dependence”, if proven, triggers the responsibility of the State for all acts committed by persons or organs under its control that, as such, may be regarded as its agents or de facto organs. However, international case law has held that “to equate persons or entities with State organs when they do not have that status under internal law must be exceptional, for it requires proof of a particularly great degree of State control over them”[[348]](#footnote-348). In view of the available information, the Commission cannot conclude that Imbonerakure is fully dependent on the Burundian State.

210. Indeed, international jurisprudence has made it clear that the fact that a State has provided “considerable military and financial resources” to individuals or organizations is not sufficient to conclude that they are in “complete dependence” *vis-à-vis* of the State[[349]](#footnote-349). To do so, the systematic alignment of these individuals or organizations on the policy of the State must be proven. Furthermore, international judges have repeatedly considered that the fact that the State created the body in question constitutes an additional indication of complete dependence[[350]](#footnote-350).

211. In the case of Imbonerakure, the Commission heard testimony that members of the defence and security forces, particularly from the SNR, sent some Imbonerakure to undergo military training in the Democratic Republic of the Congo, particularly prior to April 2015[[351]](#footnote-351). On several occasions, they were provided with weapons[[352]](#footnote-352), as well as money after missions[[353]](#footnote-353), especially during the period covered by the mandate of the Commission. However, given this information, it is difficult to conclude that Imbonerakure were being provided with “considerable” military and financial resources.

212. Similarly, although a certain alignment of Imbonerakure or more broadly CNDD-FDD[[354]](#footnote-354) , with the policy of the Burundian Government, or indeed shared views and objectives between the two entities, can be demonstrated; especially when reading CNDD-FDD press releases or in light of the slogans pronounced during the marches or demonstrations organized by CNDD-FDD and its youth league, all in support of the policy of President Nkurunziza and his government[[355]](#footnote-355) ; the Commission is not in a position to define this alignment as systematic[[356]](#footnote-356). In particular, the Commission cannot exclude a certain margin of autonomy of Imbonerakure vis-à-vis the Burundian Government, particularly in the commission of acts contrary to human rights.

213. In addition, the Imbonerakure group was not established by the Burundian Government but by the CNDD-FDD party[[357]](#footnote-357). Some testimonies indicated that a group of Imbonerakure, often referred to as the “demobilized group”[[358]](#footnote-358), had been trained, armed and paid from 2006 by General Adolphe Nshimirimana (Administrator General of the SNR from 2004 to 2014) in order to conduct operations in violation of human rights[[359]](#footnote-359). If this information turns out to be true, Imbonerakure as a whole could not be considered as an organ created by the Burundian Government, because the league itself was founded by CNDD-FDD on which it depends statutorily. Nevertheless, if this information were proven true, one may wonder to what extent this smaller group of “demobilized” could not be an entity under the complete dependence of the Burundian State.

Instructions and Guidelines

214. Article 8 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts[[360]](#footnote-360) provides that “the conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct”. In view of this provision, the Commission has received reports of close links between members, including senior officials of the SNR, the PNB[[361]](#footnote-361), the Army[[362]](#footnote-362) and the Office of the President[[363]](#footnote-363), on the one hand, and some Imbonerakure on the other hand. The latter received instruction(s) from the first group to violate human rights, including specific orders to kill certain opponents or critics. The Commission has also documented specific cases of Imbonerakure acting on the instruction of other State agents, for instance, the *chefs de zone*[[364]](#footnote-364).

“Effective control”

215. Article 8 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts, mentioned above, also provides for the attribution of the conduct of a person or group of persons to a State if such persons act under its control. The International Court of Justice (ICJ) has clarified the concept of control by introducing the qualification of “effective control”[[365]](#footnote-365) that must be demonstrated “in respect of each operation in which the alleged violations occurred, not generally in respect of the overall actions taken by the persons or groups of persons having committed the violations”.[[366]](#footnote-366) International case law has identified a number of criteria including the involvement of Government officials in the financing, equipment and training of the targeted individuals or groups, their participation in the organization, coordination or planning of operations, the issuing of precise orders or instructions, and state control during each operation[[367]](#footnote-367).

216. As mentioned above, the Commission collected several testimonies of Imbonerakure receiving weapons from Burundian State agents, as well as money after completion of missions and, in some cases, military training. The Commission also received information on some Imbonerakure operating dressed in police or army uniforms and weapons in full view and in the presence of members of these forces[[368]](#footnote-368).

217. The Commission has also been able to establish on the basis of testimony it collected, as described above, that in a number of cases, State agents, mainly from SNR, PNB, FDNB, and the Office of the President had contributed to the organization, coordination or planning of Imbonerakure operations, including the issuance of specific orders or instructions.

218. Numerous testimonies have also reported the presence of Imbonerakure alongside members of the national police (PNB) or Intelligence service (SNR), including in detention centers, when human rights violations were committed[[369]](#footnote-369). In these particular cases, this presence confirms a form of State control over Imbonerakure, at least a co-participation of the latter in the commission of acts contrary to human rights. In certain circumstances, for example during operations in neighborhoods where police or military did not know the inhabitants individually, Imbonerakure from these neighborhoods acted as informers, guiding the security forces’ agents and helping them to identify the future victims of human rights violations[[370]](#footnote-370).

219. In 2017, in response to questions from the NGO Human Rights Watch, Nancy-Ninette Mutoni, the CNDD-FDD Executive Secretary in charge of communication and information, explained that Imbonerakure are involved in “joint human security committees”[[371]](#footnote-371) which include civilians, authorities, administrative agents and members of the defence and security forces. Nancy-Ninette Mutoni said that within these committees, Imbonerakure “have not only the right but also the duty to monitor and report any suspicious movements and acts to the police”[[372]](#footnote-372). This is in line with a statement by the Minister of the Interior, cited in 2016 by the Committee against Torture[[373]](#footnote-373), who said Imbonerakure are part of the national security strategy in joint human security committees. The Commission was not able to verify whether these joint committees were truly functional, as the National Security Council recently called for their “revitalization so that they are operational on all the *collines* or neighborhoods, zones and communes”.[[374]](#footnote-374) If the statements of the CNDD-FDD’s Executive Secretary for communications and information and the Ministry of Interior reflected reality, Imbonerakure's involvement in the joint committees would also confirm the effective control of the Burundian State on members of the CNDD-FDD youth league.

Recognition and adoption

220. Article 11 of the Draft Articles on State Responsibility for an Internationally Wrongful Act provides that “conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.” The Commission received reports that Imbonerakure have made arrests and handed over the apprehended individuals to SNR or PNB[[375]](#footnote-375). By accepting these illegally apprehended individuals, the SNR and PNB agents have adopted and recognized this unlawful behavior.

221. As noted above, the Commission also received evidence of Imbonerakure having operated with police and army uniforms and weapons in full view and in the presence of members of these forces. In these cases, it could be demonstrated that State agents recognize and acknowledge that Imbonerakure operate in uniforms and with weapons that they are not allowed to carry and that, in these circumstances, they commit acts contrary to human rights.

Violation of the obligation to protect human rights

222. Finally, the Commission wishes to emphasize that the Burundian State has the obligation to protect human rights on its territory, particularly when it is aware or should have been aware of the risk of their violation by non-State individuals and groups and fails to take the necessary measures to prevent their violation. By failing to take such preventive measures, the Burundian State is in violation of its obligation to protect human rights. The State also violates this obligation by not taking the necessary steps to ensure that investigations are conducted on these violations and that their perpetrators are arrested, prosecuted and punished. The Burundian Government, by not fighting against impunity, encourages the repetition of human rights violations and the commission of other human rights abuses.

Responsibility of armed opposition groups

223. The Commission collected information on targeted attacks by armed opposition groups against military and police positions, as well as more large-scale attacks such as those in Kayanza Province in July 2015 and on 11 December 2015 on four military facilities in Bujumbura and Mujejuru in the province of Bujumbura. The Commission also received reports on assassinations of members of the defence and security forces and of CNDD-FDD, including Imbonerakure, in Bujumbura and in other towns of the country.[[376]](#footnote-376).

224. Despite several attempts, the Commission experienced challenges in its efforts to conduct a detailed investigation on attacks and assassinations against civilians and members of the defence and security forces, attributed to armed opposition groups. Consequently, the Commission was unable to determine if the perpetrators of these attacks belonged to an organized armed group with a known structure and, if so, to identify the group. However, the Commission noted that some attacks and assassinations of civilians and government agents have been claimed by leaders of armed group[[377]](#footnote-377), but was unable to gather the necessary information to corroborate these claims.

225. The obstacles to these investigations are partly attributable to the lack of access to witnesses, many of whom are in Burundi since the Commission did not receive authorization to enter the country but also due to the refusal of the Burundian Government to share information with the Commission despite various requests to that effect.

226. The difficulty in investigating these cases is also linked to the lack of clarity with regards to these armed opposition groups whose structure, chain of command, capacities and operating methods remain vague. This is mainly due to the internal dissensions and alliances that are constantly made and broken between these groups, their members and some of their leaders. Furthermore, according to testimonies collected by the Commission, these groups do not have a fixed territorial base, their members move from one country to another between Rwanda and the DRC[[378]](#footnote-378) for some groups.

227. The Commission analyzed the CNIDH reports covering the year 2015 and the first half of 2017[[379]](#footnote-379). From reading the 2015 report, it appears that “armed groups”, “armed elements”, “organized groups” and “armed individuals” allegedly committed violent acts, although no details were provided on the identity of these groups or individuals, or their origin[[380]](#footnote-380). The CNIDH did not share any information on this subject with the Commission, despite a specific request addressed to its President.

C. Human rights violations and abuses

 1. Right to life

228. In its resolutions 30/27, S/24/1 and 33/24 adopted in 2015 and 2016, the Human Rights Council expressed concern on the allegations related to violations of the right to life in Burundi, especially the extra judicial executions. The United Nations High Commissioner for Human Rights and UNIIB have also highlighted this type of human rights violation and abuse in their respective reports to the Human Rights Council[[381]](#footnote-381), as did the Committee against Torture in its concluding observations dated 9 September 2016[[382]](#footnote-382).

 (a) Applicable law

 (i) International Law

229. The right to life is guaranteed under article 3 of the UDHR, article 6 (1) of ICCPR, article 6 of the CRC and article 10 of CPDH. Furthermore, it is a non-derogatory right in the case of “exceptional public danger which threatens the existence of the nation and is proclaimed by an official act”[[383]](#footnote-383).

230. Extrajudicial, summary or arbitrary executions are the most flagrant violations of the right to life. “Execution” refers to the State agent status of the perpetrator or the State agent’s approval of the crime being committed. The term “extrajudicial” refers to the absence of judicial procedure. The State has the duty to prevent extrajudicial executions by State agents. In accordance with the principles on the effective prevention of extra judicial, arbitrary and summary executions and the effective means of investigating them[[384]](#footnote-384), it is imperative to carry out in-depth, swift and impartial investigations into these acts, and if these investigations are conclusive, prosecute the perpetrators in court[[385]](#footnote-385). The fact that a State fails to conduct investigations into allegations of arbitrary deprivation of the right to life is considered as a violation of the right to an effective remedy[[386]](#footnote-386), and of the right to life itself[[387]](#footnote-387).

231. The Code of Conduct for Law Enforcement Officers[[388]](#footnote-388) and the basic principles on the use of force and firearms by law enforcement officers[[389]](#footnote-389) restrict the use of force and firearms by law representatives “whether nominated or elected, who exercise police powers and in particular powers of arrest and detention”[[390]](#footnote-390). These legislations provide that this use must be “necessary”, namely that no other means can be used to prevent a crime or detain a suspect, “legal”; such usage aims at preventing crimes or carrying out arrests provided for by Law; and “proportional” to the pursued objective and the gravity of the act that it seeks to punish[[391]](#footnote-391). These conditions apply to all situations in which law enforcement officers must use force, including in the handling of public demonstrations.

232. Moreover, the State bears the responsibility to protect the life of people in detention. Deaths in detention can be considered as extrajudicial executions when they result from excessive and unjustified use of force by State agents, from torture or cruel, inhumane and degrading treatment by the same agents, or from the inability of prison authorities to protect the life of the detainees, for example as a result of poor detention conditions or violence from other detainees[[392]](#footnote-392). The burden of proof is then on the authorities who must provide an explanation, otherwise the death will be considered *prima facie* as a violation of the right to life[[393]](#footnote-393). The authorities must conduct thorough and impartial investigations as soon as possible in order to confirm or rule out this presumption[[394]](#footnote-394).

233. The State is also responsible for violations of the right to life committed by non-State agents acting in support of State actors. Even if these agents do not receive direct orders from State authorities, the executions that they carry out for the State or with its consent are likely to constitute extra judicial executions[[395]](#footnote-395).

 (ii) Regional Law

234. The right to life is guaranteed under article 4 of the ACHPR and article 5 of the African Charter on the Rights and Welfare of the Child. The latter provision states “this right shall be protected by law”.

 (iii) National Law

235. Article 24 of the Burundian Constitution states, “all women and all men shall enjoy the right to life”. The Burundian Criminal Code details the judgements that can be pronounced against the perpetrators of intentional homicide, i.e., committed “with the purpose of attacking a given individual” and manslaughter which results in death “due to a lack of caution or prudence, clumsiness, carelessness, lack of attention, negligence or failure to provide security or care as required by law or regulations, but without the intent to attack anyone’s life”[[396]](#footnote-396). Amongst intentional homicides, the Criminal Code distinguishes murders, which consist of intentionally taking someone’s life and “premeditated murders”. Both are punishable by life imprisonment. Mutilating or searching a dead body is considered an aggravating circumstance and qualified as a barbaric act[[397]](#footnote-397).

 (b) Facts

236. Violations and abuses of the right to life are not a new phenomenon in Burundi. In 2014, the Human Rights Committee expressed concern regarding “reports that a large number of people were killed, some of them by members of the security and defence forces, particularly in the aftermath of the 2010 elections, and that investigations leading to the apprehension, prosecution and punishment of the perpetrators have not been carried out in all cases”[[398]](#footnote-398). Furthermore, the Commission noted that the situation has deteriorated since April 2015. The ongoing political crisis in the country, characterised by a climate of violence and generalised impunity, has led to an increase of violations and abuses of the right to life, first and foremost, by members of the security and defence forces; but also, by Imbonerakure acting under the control of State agents; as well as individuals that the Commission was unable to identify. Targeted assassinations have also occurred, including against Government officials or State agents; and the perpetrators remain unknown.

237. According to several testimonies collected by the Commission, the main victims of violations and abuses of the right to life have a profile similar to that of victims of other serious human rights violations perpetrated since April 2015. They are, for the most part, members of opposition parties, people suspected of being sympathisers of these parties or of belonging to armed opposition groups, citizens opposed to President Nkurunziza’s new term, individuals who participated in the 2015 demonstrations as well as ex-FAB. In several cases, violations of the right to life also affected family members of the targeted people[[399]](#footnote-399).

238. The commission collected information on numerous grenade attacks that took place in 2015, 2016 and 2017 in the city of Bujumbura as well as in several provinces, sometimes at close intervals, and even on a daily basis during certain periods. Grenades were thrown in public places such as bars or other popular public gatherings, killing and injuring several people. Some attacks affected people who are either members or close to the ruling party. In the majority of cases, the identity of the perpetrators as well as the motives behind the attacks remain unknown and the people who threw the grenades were able to escape.

 (i) Violations of the right to life

239. The Commission documented several acts in violation of the right to life, which by virtue of the identity of presumed perpetrators - State agents or people acting under their authority - are violations of human rights. These violations engage the responsibility of the Burundian State.

 i. Main perpetrators

240. The Commission collected testimony indicating that different components of the defence and security forces were responsible for a large number of extra judicial executions since April 2015. The majority of presumed perpetrators of these violations are members of the National Police (PNB), particularly some of its specialised units such as the API and the BAE or the SNR. Elements of FDNB namely from the Combat Engineer Battalion (camp Muzinda) were also mentioned by several witnesses.

241. In addition, many witnesses reported cases of extra judicial executions committed jointly by Imbonerakure and members of the defence and security forces, mainly the police, SNR and, to a lesser extent, the Army[[400]](#footnote-400). An example, documented by the commission, is that of Paul and Meschak Ramazani[[401]](#footnote-401), killed in Bujumbura by Imbonerakure and police officers. According to information received by the Commission, on 5 August 2015 in Cibitoke, in Bujumbura, there were clashes between Imbonerakure and the police on one hand, and young people on the other hand. Following these confrontations, the Imbonerakure and the police officers arrested Paul and Meschak Ramazani. They were asked to kneel down and to put their hands in the air. Then they killed them[[402]](#footnote-402).

ii. Main violations

242. Most violations of the right to life committed from April 2015 are linked to the political crisis in Burundi. Some events that marked this crisis are conducive to such violations. The repression of the demonstrations which started in 2015 and the failed coup d’état in May 2015; characterised by the disproportionate use and often indiscriminate lethal force by the defence and security forces; the operations conducted during the second half of 2015 in some neighbourhoods of Bujumbura, as well as the response to the attacks on military facilities in Bujumbura and its surroundings on 11 December 2015 were particularly devastating. The Commission also collected corroborating information on targeted killings attributed to State agents and on cases of deaths in detention.

243. The Commission was shocked by the brutality of the forms of violations of the right to life in Burundi since 2015, including targeted killings[[403]](#footnote-403), the decapitation of bodies[[404]](#footnote-404), the executions of several members of the same family[[405]](#footnote-405) or the murder of parents in the presence of their children[[406]](#footnote-406). Several people were killed after being threatened by SNR agents, police officers, military or Imbonerakure[[407]](#footnote-407).

 Disproportionate and indiscriminate use of lethal force during demonstrations in April and June 2015.

244. According to testimony collected by the Commission, members of defence and security forces - mainly police officers - used disproportionate and indiscriminate lethal force by utilizing live ammunitions on demonstrators protesting Pierre Nkurunziza’s candidacy to the presidential election announced on 25 April 2015. Several people died and others were seriously injured mainly in Bujumbura but also in other provinces, particularly in Makamba[[408]](#footnote-408). The United Nations High Commissioner for Human Rights, in his presentation to the Human Rights Council in June 2016 reported that 39 civilians, including two minors, succumbed to the injuries caused by the police in the city of Bujumbura and in the provinces of Bujumbura and Mwaro[[409]](#footnote-409). CNIDH in its 2015 annual report reported two students killed by police officers during the demonstrations in June 2015 in the communes of Mugamba and Matana, in the province of Bururi[[410]](#footnote-410).

245. One person told the Commission about the deliberate and illegal use of lethal force against protesters by police officers that they observed during the first days of the demonstrations.

*“A young man called Elvis Munezero was killed on the first day of the demonstrations, 26 April 2015, in Mutakura. A police officer shot him in the heart at close range [...] I was there [...] the chief of police called [X] told the police officers ‘Why are you running away? You must control these people. Use the tear gas! Use your weapons! You have weapons. These young people only have stones’. He was angry. Then he himself started shooting in the crowd [...] I saw him shoot [...] Elvis was the very first victim during the demonstrations. Later, another boy who was 15 or 16 years old was shot in the head [...] He was called Komezamahoro [...] He was killed […] the same day as Elvis”*[[411]](#footnote-411).

246. In some cases, law enforcement officers used lethal force following violent acts by protesters that caused the death of police officers and members of the ruling party. In the report quoted above, the United Nations High Commissioner for Human Rights referred to the murder of two police officers, two soldiers and an Imbonerakure during the demonstrations. In its August 2015 report, the commission of inquiry “in charge of exposing the insurrectional movement triggered on 26 April 2015” created by the Public Prosecutor state that an Imbonerakure was burned alive on 7 May 2015 in Nyakabiga (*Bujumbura Mairie*) by “insurgents”[[412]](#footnote-412). The Commission strongly condemns these acts of violence perpetrated by protesters or other people, even if they do not fall within its mandate since they were not committed by organised groups with a known structure and therefore likely to be human rights abuses[[413]](#footnote-413).

247. However, the Commission collected information indicating that the response of the security forces to these acts did not respect the principle of proportionality and was often indiscriminate. A victim explained to the Commission how a police officer shot him:

“*I was protesting [...] police officers came in big numbers. They were using tear gas. The protesters were throwing stones and other projectiles, but they had no weapons [...]. The police officers pushed us back and we fled [...]. While I was in my compound, I heard a Police chief say to other police officers that they must shoot anyone they see in the neighbourhood because rebels had gone there to hide [...]. A police officer [...] first shot a young man wounding him to the head [...]. Another police officer was hiding near the gate. Because of the smoke, I had not seen him. He shot a young man in the abdomen and then he shot me [...]. After he shot me, I heard him say to other police officers ‘I killed the person that we were looking for’”*[[414]](#footnote-414).

248. The Commission noted that police officers did not all behave the same way towards the protesters. Some police officers did not obey orders requesting them to use lethal force against the protesters and some even tried to protect them. A police officer interviewed by the Commission gave the following testimony:

*“My deputy was an officer who had been part of the rebellion in CNDD-FDD [...]. When I was absent, he ordered the police officers to beat and brutalise the protesters […]. Police officers informed me of this. Some police officers under my authority did not want to execute the orders, but my deputy forced them to. He instructed police officers to take sticks and beat the protesters, to arrest them for a few hours and to insult them”*[[415]](#footnote-415).

 Violent clashes and disproportionate usage of force at Bumerec Hospital

249. The use of disproportionate force by law enforcement agencies was also observed following the *coup d’État* on 13 May 2015. The Commission also collected information on the behaviour of law enforcement agents at Bumerec Hospital in Bujumbura. On 14 May 2015, soldiers supporting the *coup d’État* who had been injured were admitted in the hospital after exchanging gunfire with members of the defence and security forces loyal to President Nkurunziza. According to several sources, members of the police, Army and SNR as well as Imbonerakure who were in pursuit of the wounded soldiers erupted in the compound of the hospital. Gunshots were exchanged between them and the soldiers who were defending the patients or protecting the hospital. Members of the defence and security forces broke down the doors to find the wounded soldiers and left with at least three of them; including a woman. The Commission does not know the fate of the wounded soldiers. The hospital’s infrastructure and medical equipment was extensively destroyed. The violent attack against Bumerec Hospital, the destruction of its infrastructure and medical equipment as well as the kidnapping of wounded individuals constitutes a serious impediment to the enjoyment of the right to health. The Commission was not able to establish the number of people killed or wounded during this attack[[416]](#footnote-416).

 Extra judicial executions during operations of defence and security forces in Bujumbura in 2015.

250. The Commission collected several testimonies on extrajudicial executions by members of defence and security forces during their operations in the second half of 2015 in some neighbourhoods in Bujumbura. According to authorities, the main objective of these operations, consisting of house searches, was to arrest and disarm the opponents. Police officers often surrounded neighbourhoods for many hours forbidding the inhabitants to enter or leave these neighbourhoods.

251. According to information collected by the Commission[[417]](#footnote-417), on 1 July 2015, following the murder of a police officer by armed individuals in the neighbourhood of Mutakura (Bujumbura Mairie*)*, police officers; under the authority of a police chief and a high-ranking member of the police attached to the Office of the President; carried out a search operation in that neighbourhood firing in all directions on their way. Police officers came into the compound of a resident of Mutakura, Pantaléon Hakizimana, accusing him of hiding weapons, and then killed him and his twin sons, Frank and Fleury Hakizimana who were 22 years old. They also burned down their house. A witness told the Commission that the police officers stopped their abuse only after soldiers intervened and ordered them to leave the area3. “*If the army soldiers had not intervened, we would have more casualties”* stated the witness[[418]](#footnote-418)*.*

252. The Commission collected information on extrajudicial executions that took place on 13 October 2015 in Ngagara (Bujumbura Mairie). These violations took place in the context of an important operation carried out by API agents following an attack by unidentified individuals on three API police agents that killed one and wounded the other two. API agents killed many residents of the area including a RTNB camera operator, Christophe Nkezabahizi.

253. On this last case, the Commission collected corroborating information indicating that what was presented by the commission of inquiry established by the Attorney General as a case of murder by neighbourhood youth[[419]](#footnote-419) ; was actually a clear case of summary execution[[420]](#footnote-420). People heard by the Commission confirmed that Christophe Nkezabahizi was at home with his family when API agents knocked on his gate. The journalist took his RTNB badge and went to open for them. When he arrived at the gate, the police officer shot him at close range, then went into his house and forced his wife, Alice Niyonzima, his 16-year-old daughter, Inès Kamikazi, his 14-year-old son, Trésor Irakoze and Évariste Mbonihankuye, another family member working at the International Organisation of Migration, to come out in the street where they executed them. Several witnesses confirm that the officer in charge of the API detachment on that day killed Christophe Nkezabahizi. A witness said:

“*After having shot a neighbour, the police officers went to Christophe’s house and they knocked on the gate [...]. As soon as [Christophe] opened the gate, the police officers did not even give him a minute: they slapped him several times [...] [The officer in charge of the API detachment] shot Christophe on his forehead, at close range [...] [A lady shot Alice in the head at close range and the head blew up [...] After, the police shot Evariste in the forehead, and then shot Kamy [Kamikazi] [...] Trésor, who was weak and suffering from malaria, also received a bullet. The police officers shot him last. He did not die on the spot, but due to lack of assistance, he died”*[[421]](#footnote-421).

254. Contrary to this version of events, the commission of inquiry established by the Attorney General concluded that Christophe Nkezabahizi and his family members were executed by young people; some of whom had attacked the police[[422]](#footnote-422). However, several testimonies collected by this Commission indicate that police officers were looking for his house and had asked residents to give them directions to the house. A witness also mentioned that, just before the murder of Christophe Nkezabahizi and his family “*the chief of police was talking on radio* *[…] The neighbours in front heard […] [someone say]: ‘They are all there’. The police officers seemed to wait for orders”*[[423]](#footnote-423).

255. During this operation, police officers also killed several other people including a domestic employee who worked at Christophe Nkezabahizi’s house and a bar employee in the neighbourhood[[424]](#footnote-424). The commission of inquiry established by the Attorney General reported the death of 10 people in total, including five family members of Christophe Nkezabahizi, a police officer and four other people[[425]](#footnote-425). The commission refuted any implication of API agents in the executions of 13 October 2015 and attributed them to “young people” or to “criminals”.

256. On 31 October 2015, a joint detachment of Anti-riot Brigade (BAE) and combat engineering battalion (camp Muzinda) opened fire on a funeral convoy in Buringa (Bubanza province). According to information availed to the Commission[[426]](#footnote-426), military and police officers fired on the convoy of a bus and three cars. Imbonerakure were helping to catch members of the convoy that were trying to escape. According to witnesses, military and police personnel killed several people[[427]](#footnote-427). Talking about this incident, the Police spokesperson announced one death amongst the members of the convoy. He mentioned that the members of the convoy refused that the police search their cars and said that some members of the convoy shot in the air as they were running away[[428]](#footnote-428). Even if this version of facts was true, the response from the joint detachment of the Anti-riot Brigade and the Combat Engineering battalion is no less disproportionate.

257. The Commission received several testimonies reporting that on 9 December 2015, a group of military and police personnel, under the command of SNR and police officers, carried out an operation in Mutakura (Bujumbura Mairie) during which they forced young people outside of their houses and lined them up on the side of the road. They then divided them in two groups. The first group was made up of five young men who lived together. The police officers fired on these five young men and killed them, then told the other young people to go back home[[429]](#footnote-429). According to the police spokesperson, as cited in the media, all the young people; two of them had just been released from prison; allegedly attacked the police officers with grenades and the police officers responded[[430]](#footnote-430).

 Extra judicial executions in response to the attacks of the military facilities on 11 December 2015

258. The violence observed in the second half of 2015 culminated in December 2015 with the attack by unidentified armed people on three military facilities in Bujumbura and in Mujejuru camp in Bujumbura on 11 December 2015. The illegitimate, disproportionate and indiscriminate use of force by the defence and security agencies observed during and after the demonstrations; from April to June 2015; reached an unprecedented scale in the aftermath of these attacks. The commission of inquiry created by the Attorney Generaé on the attacks of 11 December 2015 said “loss of human life estimated at 79 combatants, 4 military personnel and 4 police officers”[[431]](#footnote-431). These conclusions do not align with those of the High Commissioner for Human Rights or of UNIIB in their respective reports to the Human Rights Council[[432]](#footnote-432), nor with those of several national and international organisations of human rights who investigated these events[[433]](#footnote-433). It is also clear from different sources and witnesses heard by the Commission that the death toll was higher.

259. Following information collected by the Commission, military and police officers executed dozens of people in Bujumbura Mairie, namely in the neighbourhoods of Nyakabiga and Musaga[[434]](#footnote-434). The Commission collected several testimonies indicating that not all the victims were combatants, as reported by the commission of inquiry created by the Attorney General but also included several civilians. Pictures of bodies with hands tied in the back and in civilian outfits, lying in the streets of some neighbourhoods in Bujumbura were circulated through the media[[435]](#footnote-435).

260. The Commission collected damning testimonies on the cruelty of some members of defence and security agencies following the attacks on 11 December 2015. A witness said to the Commission:

“*[On] 11 December 2015 [...] several people were killed by military personnel. Their bodies were dragged in the street. I was able to identify some of them […] Amongst the victims were [X], found in Musaga, near the catholic church on the third, and [Y] whose body was found at the same place. They were both students in secondary school. There were almost 40 other bodies that I did not know”*[[436]](#footnote-436).

A man arrested with several other people by military personnel told the Commission: “*We found many other people who were tied up and brought there [in a military camp]. [The military personnel] said ‘Lie down and look up to the sky’ […] we were almost 60; all aligned, all men. Then they started shooting us one by one. The first person was shot in the head. The person who ordered the shooting was [a military officer] […] they were systematically shooting at the people who were lined up. They killed many people that day […] they shot them one by one; at close range […] They put the gun on the head of each person. The gun was touching the head. They would shoot at a person and the blood would splutter onto the person next to them. […] A soldier was shooting and [the officer] gave orders. [The officer] was present; he was supervising. The military personnel who was shooting said to each person: ‘Say your last prayer, small dog’ […] [X] said [to the military personnel] ‘Come here and shoot’”*[[437]](#footnote-437).

261. The day after the attack, many residents of the targeted neighbourhoods were able to see the extent of the executions that took place. A witness who gave names of several of her friends killed on 11 December 2015; reported:

“*For two days, the neighbourhood of Musaga was closed to traffic in order to allow for the removal of bodies […] when I came out to see what was going on; the police officers ordered me to go back inside. But I had time to see several dead bodies of people I did not recognize”*[[438]](#footnote-438).

Another person interviewed by the Commission gave the following testimony: “*On 12 December, we came out and saw dead bodies in the streets. Amongst the dead bodies, I recognized one [...] I met him at the university. His body was on the road between Nyakabiga I and Kigwati, with two other dead bodies that I did not recognize”*[[439]](#footnote-439)*.*

262. In the context of the response of defence and security agencies to the attack on 11 December 2015, the Commission collected information on individual cases of extra judicial executions. Hence, an officer candidate at the *Institut des cadres militaires* (ISCAM), Hermès Nduwingoma, was wounded during the attack on ISCAM. SNR agents arrested him with a colleague as he was going to the hospital for medical attention and they took him to the SNR headquarters in Bujumbura. On 12 December 2015, witnesses reported having seen pictures of his dead body. After about a week, his body was found at the morgue of the *Roi Khaled* hospital with a disfigured face and two bullet wounds around the shoulder blade[[440]](#footnote-440). The Commission was not able to obtain information on the progress of the case file opened by Prosecution on this case as indicated in the annual report of 2015 of the CNIDH[[441]](#footnote-441).

263. The Commission has also received information on the extrajudicial executions outside of Bujumbura Mairie, in the context of retaliation by security forces in the wake of the attacks on Mujejuru military camps (Bujumbura province). According to this information, seven young men were apprehended on 11 December 2015 in relation to the attack and taken to a police post in Mugongomanga commune (province of Bujumbura). Then, a major in the Army, accompanied by several military personnel, requested the police to hand over the young men, which they did. On 12 December 2015, their bodies were found on Kanyunya colline, Rukina zone, Mukike commune (Bujumbura province)[[442]](#footnote-442). The Prosecution opened a file on this case[[443]](#footnote-443). The Commission was not able to collect information on the progress of this case.

264. The extra judicial executions committed on 11 December 2015 were accompanied by several arbitrary arrests, acts of torture, rapes and other sexual violence, described in other parts of the present report[[444]](#footnote-444).

 Executions or targeted attempts of extra judicial executions

265. The Commission collected corroborating information on several assassinations or attempted targeted assassinations attributed to SNR agents, police and military officers, targeting members of the opposition or the civil society or people perceived as Government opponents.

266. Zedi Feruzi, President of the opposition party *Union pour la Paix et le Développement* (UPD)-*Zigamibanga*, was killed on 23 May 2015 while he was going home in Ngagara (Bujumbura Mairie). According to the testimonies collected by the Commission[[445]](#footnote-445), API police officers, in a car, ambushed him and killed him along with one of his bodyguards. Two other people were wounded. Before these events, members of CNDD-FDD had tried to convince Zedi Ferruzi to rally a coalition to support the candidacy of Pierre Nkurunziza to the presidential election. Some of these solicitations were coupled with threats, namely by representatives from CNDD-FDD and members of the defence and security agencies. Following the assassination of Zedi Ferruzi, in a communiqué published on 24 May 2015, the Burundian Government declared having “instructed the competent bodies to promptly conduct investigations in order to shed light on this fact and to seriously punish these criminals”[[446]](#footnote-446). To the Commission’s knowledge, to date, no one has been prosecuted.

267. On 3 August 2015, Pierre-Claver Mbonimpa, founder and President of APRODH, was seriously wounded in an assassination attempt in Bujumbura. Late afternoon, as he was getting ready to leave work, he saw a SNR informer that he knew ride around his office on a motorbike. The same person then followed his car and after they passed Kinama, he shot him and a bullet hit him in the face and the neck. Pierre-Claver Mbonimpa was evacuated to a hospital in Belgium where he stayed for several months. An investigation file (RMP 153248/BI) was opened[[447]](#footnote-447), but to this day; no one has been prosecuted for this assassination attempt. The man who shot Pierre-Claver Mbonimpa was killed a few weeks later[[448]](#footnote-448).

268. In the evening of 7 September 2015, armed individuals assassinated Patrice Gahungu, UPD-Zigamibanga spokesperson, as he was going home in the neighbourhood of Gihosha in Bujumbura[[449]](#footnote-449). According to some witness accounts, the presumed perpetrators were Imbonerakure acting under orders and support of SNR agents[[450]](#footnote-450). The assassination of Patrice Gahungu took place a few months after that of Zedi Feruzi, the President of the party, on 23 May 2015[[451]](#footnote-451). The police spokesperson indicated in the media that Patrice Gahungu may have been assassinated by the opposition[[452]](#footnote-452).

269. On 6 November 2015, the son of Pierre-Claver Mbonimpa, Welly Nzitonda, 24 years old, was killed after being arrested by the police along with several people. According to information received by the Commission, the presumed perpetrator of this assassination was a police officer on duty in Bujumbura Mairie. An investigation file (RMPG 718.Bis/N.TH) was opened but to the Commission’s knowledge, the case is still open to date[[453]](#footnote-453). According to the Government, Welly Nzitonda died “on the battlefield” as he was getting ready; along with others; to throw a grenade against police officers in Mutakura[[454]](#footnote-454). None of the source consulted by the Commission confirmed the official version on the death of Welly Nzitonda.

270. Police and military officers from several units killed General Athanase Kararuza, ex-FAB, security and defence advisor in the office of the Vice-President, on 25 April 2016 as he was dropping his daughter at school in Bujumbura[[455]](#footnote-455). Before the assassination, military officers from Muzinda camp; armed with rocket-launchers and Kalashnikovs; were seen not far from the road that the General used every morning to go to work. A group from the API police led by a high-ranking officer of the same unit blocked the road that would have allowed General Kararuza’s vehicle to escape the ambush. The attack resulted in not only the death of General Kararuza; hit by several bullets; but also, in that of his wife Consolate Gahiru, his daughter; Danielle Mpundu; and that of one of his bodyguards. The General’s daughter was left for dead before an ambulance arrived to take her to the hospital. She died at the hospital on 28 April 2016. General Kararuza had privately shared with some of his colleagues the exactions committed by the Government. In April 2016, an API vehicle had followed his own vehicle twice in Bujumbura. A vehicle with tinted windows; often used by SNR agents; was seen around the house a few days before his assassination.

 Deaths in detention

271. The Commission received information on cases of people dying in detention under the control of defence and security forces after their arrest[[456]](#footnote-456). It is the responsibility of the Burundian State to provide explanations on these cases by promptly carrying out thorough and impartial investigations

272. In fact, several detainees died at SNR, some due to acts of torture[[457]](#footnote-457). A person detained at SNR in 2016 said:

*“I was taken alone at night in another room where there were already two dead bodies […] It was the body of a 30 to 35 years old man [...] His naked body was on the floor […] The second body; also naked; was that of a man in his twenties. He was laying on the floor [...] [A SNR officer] talked to me saying, ‘Your fate will be the same [as theirs]’.”*[[458]](#footnote-458)

Another witness detained at the SNR headquarters at the end of 2015 said: “*They put us in a room for interrogation. They asked us ‘Where are the weapons that you used and the uniforms that you took?’ [...] Many people died [...]. Some people were killed right in front of me. The officer[X] came and shot some people in the head with his handgun. I saw him shoot five people”*[[459]](#footnote-459).

273. Accused of endangering the internal security of the State; Eddy Claude Nyongera, an ex-FAB military officer, was arrested on 14 September 2016 at the FDNB headquarters and then driven to SNR where he died the same day[[460]](#footnote-460). The following day, the police spokesperson said in the presence of judicial police officers that Eddy Claude Nyongera had taken a grenade “and wanted to pull the pin out; probably to throw out to other police officers who were present and they fought in order to stop him from doing so. They saw that the grenade was going to explode; the officers of the judicial police run away and the grenade exploded killing him on the spot. [...] We think that he wanted to end his life probably because of the revelations he had just made or for personal reasons”[[461]](#footnote-461). The Commission believes that only a thorough and impartial investigation will be able to determine the cause and circumstances of the death of Eddy Claude Nyongera. To this day, the Commission is not aware that such an investigation has been opened. A police officer who spoke to the Commission said “*In my opinion, the suggestion that Nyongera committed suicide with a grenade is ridiculous. Individuals are not interrogated in a room where grenades are within their reach”*[[462]](#footnote-462)*.*

274. The Commission also collected information on suspicious movements of detainees in the middle of the night suggesting that several of them may have been executed[[463]](#footnote-463). A survivor testified:

“*Towards the end of 2015 [...] Imbonerakure arrested us in the neighbourhood and took us [to a military camp] where we were beaten [...]. We were taken to SNR [...]. Towards three in the morning, police officers took us into a vehicle. They were hooded. After 20 minutes in the car, I found myself in a hangar. Then*, *three of my co-detainees were killed one by one with a bullet in the head”*[[464]](#footnote-464).

275. Several other witnesses, particularly those who had been detained at SNR in Bujumbura, stated that, during the night, SNR agents would come to take some detainees from the cells and would take them to unknown destinations. These detainees would not return to their cells. The Commission was unable to establish their fate nor confirm whether they are still alive.

276. Witnesses asserted that persons arrested by the police or military personnel or Imbonerakure had been taken into the Rukoko forest and executed there. Later, some of the bodies were weighed down with stones before being thrown in Rusizi River[[465]](#footnote-465). One of the survivors told the Commission:

“*The police officers put me, along with two other detainees, in a truck and took us to Rusizi River through Rukoko forest [...]. The two detainees were executed in cold blood by the river and thrown in the current. A police officer [...] executed each detainee with a sharp knife stab to the neck. The two were tied up separately”*[[466]](#footnote-466).

iii. The failure of the State to carry out its responsibility to protect

277. If the Burundian State failed in its duty to respect the right to life because of acts committed by its agents or Imbonerakure acting under their control, the Commission also has reasons to believe that the Government has systematically failed to fulfil its responsibility to protect. Considering the information collected by the Commission, it is clear that few “independent, thorough and effective”[[467]](#footnote-467) investigations have been carried out and concluded on the allegations of violations of the right to life committed by defence and security forces. An emblematic case is that of a major in the Army cited as the presumed perpetrator of violations in the report of the investigation commission established by the Attorney General on the attack of the military facilities on 11 December 2015[[468]](#footnote-468). This major was never arrested nor prosecuted and still holds a position within FDNB[[469]](#footnote-469), even though he was involved in other cases of serious violations of human rights[[470]](#footnote-470).

 Dead bodies found regularly and buried without investigations

278. Since April 2015, and throughout 2016 and 2017, dead bodies were regularly found in several provinces, often with arms tied up in the back, sometimes decapitated[[471]](#footnote-471). Corpses, sometimes weighed down with stones, have been found in the Rusizi River and other rivers as well as in Lake Tanganyika[[472]](#footnote-472). Others were discovered in the street, including in Bujumbura. In several cases, the authorities have ordered the burial of these bodies without identifying the victims and without any credible investigation, thereby failing in their duty to protect the right to life. In other cases, especially in 2015, some victims were identified as part of the opposition to President Nkurunziza’s new term in office or as members of opposition parties. The phenomenon of discovery of dead bodies has become so common that it no longer elicits any reaction except for brief mentions in the media and in civil society reports. Given the lack of information on the circumstances surrounding the death of these people, on the identity of the presumed perpetrators and, in some cases, the identity of the victims, the Commission was not in a position to carry out thorough investigations and can therefore not opine on this matter. However, the Commission would like to draw attention to the gravity of this phenomenon and insist on the responsibility of the Burundian authorities to carry out effective investigations on each death.

 Allegations of mass graves

279. The High Commissioner for Human Rights[[473]](#footnote-473), the UNIIB[[474]](#footnote-474), as well as several organisations of human rights[[475]](#footnote-475) reported allegations concerning the existence of mass graves, namely in Buringa and Mpanda (province of Bubanza) and in Kanyosha (Bujumbura Mairie), following events of 11 December 2015. On 29 February 2016, the mayor of Bujumbura announced to the media the discovery of mass graves in Mutakura (Bujumbura Mairie), stating that the dead bodies are those of sympathisers of CNDD-FDD killed by opposition members[[476]](#footnote-476). The commission established by the Attorney General to investigate the events of 11 December 2015 repeated this assertion in its report. The said commission, rejecting namely the allegations of mass graves in Mutimbuzi, Kanyosha and Bugarama reported by the *Ligue Iteka*, declared that “all the sources proved that the burial of the dead bodies found in different combat zones in Bujumbura town was done in official cemeteries namely those in Mpanda and Kanyosha”[[477]](#footnote-477).

280. Contrary to these conclusions, the present Commission received testimonies attesting to the use of mass graves by the authorities in order to bury the bodies of the people killed in the wake of the attacks on military facilities in Bujumbura and its environs on 11 December 2015[[478]](#footnote-478). In particular, the Commission received information on the existence of mass graves in Kanyosha and Mpanda. Concerning mass graves in Kanyosha, a witness said:

“*On 12 December 2015 [...], I saw pick-up trucks, which are usually used by heads of zone in Bujumbura Mairie, bring a lot of bodies. They enlisted the help of neighbours to bury the bodies. I saw with my own eyes three pick-up trucks bring bodies to bury them in the mass graves for two days [...] Police officers in the national police blue uniform brought the dead bodies[...] Everybody is afraid. Nobody wants to talk about it”*[[479]](#footnote-479).

281. The operational programme for the satellite application of UNITAR[[480]](#footnote-480), UNOSAT, took satellite images of the sites of the alleged mass graves in early November and end of December 2015. The images analysed by UNOSAT led to the conclusion that the earth was moved during that period in two areas in Kanyosha and in two areas in Mpanda cemetery.

282. With the information currently available on mass graves, the Commission believes that only an actual access to the presumed sites as well as medico-legal expertise and thorough investigations could help determine whether these allegations are well founded as well as circumstances surrounding the deaths of people buried in the mass graves.

 (ii) Violations of the right to life

283. The Commission documented several acts infringing the right to life, which were committed neither by State agents nor by individuals under their control and can therefore not be characterised as human rights violations. The presumed perpetrators of these acts - Imbonerakure acting on their own or members of armed opposition groups - belong to organised structures. According to the definition retained by the Commission, their acts can therefore be considered as human rights abuses[[481]](#footnote-481).

 i. Violations of the right to life by Imbonerakure

284. The Commission received several testimonies on violations of the right to life by Imbonerakure in different provinces[[482]](#footnote-482). These abuses, committed by Imbonerakure alone, outside of the control of State agents, illustrate the climate of violence and widespread impunity in that, according to witnesses heard, these Imbonerakure were not afraid to be held accountable for their acts. A person whose father, a FNL member, was executed by Imbonerakure in 2015 testified:

“*Young Imbonerakure in civilian clothes, armed with knives stormed into our home. They kicked and broke down the door and came inside the house. They killed my father [...]. After the death of my father [...] we went to the police to file a complaint [...]. Since then, there has been no arrest in connection to this murder. [A year later], investigations are still incomplete”*[[483]](#footnote-483)*.*.

A woman talked about the murder of her child by Imbonerakure in 2016 and the lack of response from the authorities: “*I was attacked by Imbonerakure […]. They threw a grenade in my room killing […] my child [...] They were all in civilian clothes […] While throwing the grenade, the assailants screamed: ‘We killed him!’ [...] The grenade came through a window that is close to the road [...] the following day; I went to the police to file a complaint [...]. The police said that there was no evidence to support my complaint. [...] No one was arrested, despite my accurate denunciation of Imbonerakure of the colline”*[[484]](#footnote-484).

285. By not carrying out investigations on these cases despite the complaints filed by the victims, the Burundian authorities also fail to fulfil their duty to protect.

286. The witnesses who spoke to the Commission also attributed some attacks against opposition members to Imbonerakure, both in Bujumbura as well as in the provinces[[485]](#footnote-485). The son of an opposition party member gave the following account:

“*After the failed* coup d’État *on 13 May 2015, Imbonerakure […] came [to my father’s house] […]. As soon as they entered, they first stabbed him in the flank and then in the throat […], killing him on the spot […]. When we understood that our father had just been killed, we left through a window and fled. While running away, [our brother] […] was hit by a grenade thrown by Imbonerakure”*[[486]](#footnote-486).

ii. Violations of the right to life by armed opposition groups.

287. Despite several attempts, the Commission was not able to collect direct testimonies or detailed violations of the right to life by armed opposition groups due to the difficulty to reach families of the victims and witnesses who are, for the most part, in Burundi. In addition, the Government of Burundi shared no information on these violations despite repeated requests from the Commission[[487]](#footnote-487).

288. The Commission is concerned by calls to violence against the Burundian Government by several armed opposition groups[[488]](#footnote-488), as well the claiming of responsibility for some attacks by armed groups. For example, the directorate general of *Mouvements Alliés pour la Libération du Burundi MALIBU-FPS*, claimed responsibility for the attack on the Mukoni military camp in Muyinga on 24 January 2017; attributing it to its armed wing, *le Front Patriotique du Salut* (FPS)[[489]](#footnote-489). The work of the Commission was however made difficult by the fact that several armed groups sometimes claimed responsibility for the same attack. That was the case for the attacks carried out on 21 January 2016 in Cibitoke (Bujumbura Mairie) for which RED-Tabara and FOREBU both claimed responsibility.

289. However, the Commission was able to hear some members of armed opposition groups. Some admitted their affiliation to the armed opposition groups that carried out attacks on Burundian territory[[490]](#footnote-490). One admitted having participated in attacks to sabotage the 2015 presidential election[[491]](#footnote-491). This account corroborates an interview given to the media by Général Léonard Ngendakumana, during which he admitted that armed opposition groups were behind grenade attacks during the election in July 2015[[492]](#footnote-492).

 **(iii) Other killings and assassinations**

290. The Commission collected information on actual or attempted killings and assassinations committed by people whose identity or responsibility it was not able to confirm. These killings and assassinations targeted members of the opposition or people perceived as such as well as members - or their relatives - of the Government or the ruling party. The Commission also collected information on several assassinations of military, police personnel and members of SNR and Imbonerakure. It is clear from the collected testimonies that some victims were specifically targeted. The modus operandi, threats against relatives killed; before or after the killings; as well as the indifference of the authorities in prosecuting the perpetrators raise fears of a possible involvement of State agents in some cases.

291. On 9 October 2015, Pascal Nshimirimana, son-in-law of the human rights activist, Pierre Claver Mbonimpa, himself a victim of an assassination attempt two months before[[493]](#footnote-493), was killed in Ngagara, commune Ntahangwa, in Bujumbura. Unidentified armed individuals shot him in front of his house as he was waiting for the gate to be opened[[494]](#footnote-494). Pascal Nshimirimana, a trader, was not known for his political activities nor as a human rights activist. It appears that he was killed on account of his father-in-law’s activities. An investigation was opened but, to the knowledge of the Commission, no conclusion has been reached[[495]](#footnote-495).

292. The Commission collected information on several cases of assassination or murder of representatives or members of the opposition parties MSD and FNL[[496]](#footnote-496). For example, the body of Charlotte Umugwaneza, vice-president of MSD in Cibitoke zone (Bujumbura Mairie), was found on 17 October 2015 not far from Bujumbura. Some sources consulted by the Commission attributed his assassination to State agents[[497]](#footnote-497).

 Assassinations and assassination attempts of the members of Government and CNDD-FDD

293. The Commission received information on targeted assassinations or assassination attempts of State authorities, members or close associates of the ruling party. Despite several attempts, the Commission was not able to carry out thorough investigations on these cases because of lack of access to the Burundian territory and lack of collaboration of Burundian authorities. Some of these cases are however worth mentioning.

294. On 24 April 2016, Martin Nivyabandi, Minister of Human Rights, Social and Gender Affairs and his wife survived a grenade attack in Bujumbura[[498]](#footnote-498). The Minister and his wife were slightly wounded. The perpetrators of this attack remain unknown. The Commission has no information on the progress of investigations in this matter.

295. On 13 July 2016, in Gihosha neighbourhood in Bujumbura, unidentified people assassinated Hafsa Mossi, a Burundian parliamentarian at the legislative assembly in the East African Community (EAC) and member of CNDD-FDD. According to the police spokesperson, her assassins were aboard a vehicle with Tanzanian registration[[499]](#footnote-499). The Commission was not able to obtain first-hand accounts on the circumstances and motives behind this assassination. The Commission took note of the declaration of the Supreme Court spokesperson on 9 November 2016 stating that the Ntahangwa Court had opened a case file and four people had been apprehended[[500]](#footnote-500).

296. On 28 November 2016, armed individuals attacked Willy Nyamitwe, the main communication advisor of the President of the Republic, in Mutimbuzi commune (Bujumbura province). One of his security agents was killed and the other wounded. Willy Nyamitwe was wounded on the arm. n 30 November and 1 December 2016, Burundian authorities arrested three military officers including two colonels, in relation to this attack[[501]](#footnote-501).

297. On 1 January 2017, just after midnight, unidentified armed individuals assassinated Emmanuel Niyonkuru, Minister of Water, Environment, Spatial and Urban Planning. In a declaration to RFI on 1 January 2017, the police spokesperson described the circumstances of his death as follows “Around 45 minutes after midnight, when the Minister was driving home in his car [...] in Rohero 2, close to the university campus in Mutanga, once he was inside his compound; somebody shot him three times with a handgun. The Minister died on the spot”. On 7 January 2017, in a communiqué, the Attorney General, Sylvestre Nyandwi, indicated that an investigation was under way[[502]](#footnote-502).

 Assassinations and assassination attempts of members of the defence and security forces.

298. The Commission collected information on the assassination and assassination attempts of members of FDNB in 2015 and 2016. These acts targeted the military personnel close to the Government as well as members of the armed forces known as Government critics or perceived as such, namely due to their past as ex-FAB or as presumed sympathisers of military personnel who participated in the attempted *coup d’État* in 2015. The following cases, presented in a chronological manner, are amongst the most emblematic ones:

299. On 2 August 2015 in Kamenge (Bujumbura Mairie), individuals in military uniform assassinated General Adolphe Nshimirimana, former Director General of SNR, along with three of his bodyguards. The assassination of this very influential individual, close to President Nkurunziza, cited by several witnesses as involved in serious human rights violations for several years, was followed by the attempted assassination of the human rights activist Pierre Claver Mbonimpa, one of the most known figures of the Burundian civil society[[503]](#footnote-503). Several observers saw a link between the two events and interpreted the attempted assassination of Pierre-Claver Mbonimpa as a retaliation of the assassination of General Adolphe Nshimirimana. Several military and police personnel were arrested in relation to this assassination[[504]](#footnote-504). Their trial commenced on 1 August 2016 but to the knowledge of the Commission, no conclusion has been reached to date.

300. On 15 August 2015, an armed individual killed retired colonel Jean Bikomagu, former Chief of Staff of Burundian Armed Forces (FAB) in his vehicle in front of his house in the neighbourhood of Kabondo in Bujumbura[[505]](#footnote-505). His 16-year daughter who was in the vehicle with him was seriously wounded. Military and police officers quickly arrived at the crime scene. Sometime later, Willy Nyamitwe, the President’s communications advisor, announced that Colonel Bikomagu had just been assassinated at his home and that a sum of money was stolen[[506]](#footnote-506). The Commission was informed that people close to Colonel Bikomagu told him of a plan to assassinate him but that he made light of the threats. Some people close to him were also threatened after his assassination. The killing of Colonel Bikomagu happened two weeks after that of General Adolphe Nshimirimana. After the death of the latter, Imbonerakure assembled in a meeting in Kamenge, called for vengeance and for the death of Colonel Bikomagu[[507]](#footnote-507). The Commission has no information on the progress of investigations related to the assassination of Colonel Bikomagu[[508]](#footnote-508).

301. On 11 September 2015, armed individuals in military uniform, aboard a *pick-up,* attacked a convoy of the Chief of Staff of FDNB, General-Major Prime Niyongabo, in Bujumbura. Four military personnel in the escort of General-Major Niyongabo, a female police officer and two assailants were killed while another assailant was arrested. General-Major Niyongabo was not wounded[[509]](#footnote-509). On 28 March 2017, the regional court of Muha (*tribunal de grande instance*) condemned three military personnel to life imprisonment and two civilians to a 10-year prison term following their accusation in this case[[510]](#footnote-510).

302. On 22 March 2016, Lieutenant-Colonel Darius Ikurakure, commandant of the combat engineering battalion (Muzinda camp), was killed on the premises of the FDNB headquarters. Several witnesses, including several people who spoke to the Commission, mentioned the involvement of Darius Ikurakure in serious human rights violations, especially since 2015. Circumstances surrounding his assassination remain obscure. A witness said:

*“In general, Lieutenant-colonel Darius would come to read the noticeboard every day at the same time. It seems that his assassin had observed him for several weeks and identified his habits such that they knew that he will be in front of the noticeboard at that precise moment. That is where he was executed”*[[511]](#footnote-511).

Another source said: “*Killing someone inside the headquarters requires having accomplices on the inside. The headquarters is a closed compound, militarised with high walls”*[[512]](#footnote-512).

303. On the same day, Major Didier Muhimpundu, an ex-FAB who worked at the army headquarters health services, was killed in Bujumbura. According to information collected by the Commission[[513]](#footnote-513), two individuals in a vehicle with no registration number shot him twice as he was coming out of a restaurant. A bullet hit him in the head and another in the heart. There were police officers on duty near the crime scene. At the time of his assassination, vehicles with police and army personnel were making the rounds near his house and a few hours before his death, a police vehicle followed his car. According to a witness interviewed by the Commission:

“*There were no arrest made in relation to this assassination. Police officers and investigators were too afraid to follow the investigation to its conclusion”*[[514]](#footnote-514).

304. On 7 April 2016; in the evening; three unidentified individuals shot and killed Captain Elie Mugabonuwundi, radiologist at the military hospital in Mirango II neighbourhood, in Kamenge zone, Ntahangwa commune in Bujumbura[[515]](#footnote-515). They allegedly threw a grenade in his home, one of which exploded without causing damages. According to some sources, Captain Mugabonuwundi had refused to respond to some requests from people close to power that he felt were in violation of his professional ethics[[516]](#footnote-516).

305. On 20 April 2016, unidentified men, armed with guns and grenades, killed Colonel Emmanuel Buzubona, as he was going to his home in Kinama (Bujumbura Mairie)[[517]](#footnote-517). Even though he was a former FDD rebel, Colonel Buzubona was well known for his critical views of the Government[[518]](#footnote-518).

306. On 24 April 2016, in Gatunguru in Mutimbuzi commune (Bujumbura province), unidentified armed individuals attacked the home of a SNR officer, Donatien Ndabigeze. Men in military fatigues broke into his home. They threw a grenade at his wife, killing her on the spot, and killed his brother-in-law by gunshots. They then exchanged fire with Donatien Ndabigeze and threw a grenade in his direction, injuring his leg. Before this attack, Donatien Ndabigeze had received threats, including from military personnel[[519]](#footnote-519).

307. On 25 May 2016, armed individuals assassinated a retired colonel, Lucien Rufyiri, ex-FAB and former staff member of the United Nations Security Services in front of his home in Bujumbura. As he was going home, four men in a car with tinted windows approached him in front of his gate and started talking to him. Colonel Rufyiri came out of his vehicle to continue the conversation. Three of the four men then rushed towards him to force him to enter their car. As Colonel Rufyiri was resisting, the driver of the car pulled out a gun and shot him several times. According to some witness accounts, Colonel Rufyiri had a land dispute with Imbonerakure as well as with two influential generals within CNDD-FDD[[520]](#footnote-520).

 2. Enforced disappearances

308. Based on reports by the United Nations High Commission for Human Rights and UNIIB[[521]](#footnote-521), the Human Rights Council condemned the enforced disappearances in Burundi in resolution 33/24, adopted on 30 September 2016[[522]](#footnote-522). UNIIB had in fact documented new cases of missing persons since April 2015, “often following an arbitrary arrest by security forces, namely the police and SNR”[[523]](#footnote-523). The Committee Against Torture was also concerned in 2016 with cases of enforced disappearance targeting “young men suspected of participating in demonstrations, members of the civil society opposed to the third mandate [...] as well as members of the opposition”, while indicating that “in some cases, ransoms were demanded by members of the police force”[[524]](#footnote-524). The Working Group on Enforced or Involuntary disappearances examined six cases of enforced disappearance in Burundi since April 2015[[525]](#footnote-525); some are included below.

 (a) Applicable law

 (i) International Law

309. Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance defines the latter as “arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”. Burundi signed this treaty in 2007 but has not ratified it yet. As a signatory State, Burundi is nevertheless bound not to act contrary to the object or the purpose of the Convention[[526]](#footnote-526). Burundi is also bound to respect the provisions of the Declaration on the Protection of All Persons Against Enforced Disappearance adopted by the General Assembly that codifies International Customary Law in this matter[[527]](#footnote-527).

310. By their characteristics, enforced disappearances also violate the rights enshrined in other international conventions, which Burundi is party to, namely the right to the liberty and security of the person provided for in article 9 of the ICCPR. They are also serious abuses of the right to life recognised by the ICCPR, the Convention of the Rights of Children (CRC) and the Convention of Rights of Persons with Disabilities (CRPD). In addition, the Human Rights Committee has stated that enforced disappearances, because they consist of detaining people indefinitely with no contact with the outside world and outside of the protection from the Law, were “indivisible” from acts of torture or cruel, inhuman or degrading treatment[[528]](#footnote-528). The Committee stated that the family members who remain without any information in the missing person during a long period are also victims of torture or cruel, inhuman or degrading treatment[[529]](#footnote-529).

311. As soon as there is reasonable ground to believe or even to fear that a person was a victim of enforced disappearance, the authorities have the obligation to conduct thorough and impartial investigations[[530]](#footnote-530). If the authorities do not do so, they risk violating the right to an effective remedy provided for by article 2 of the ICCPR.

 (ii) Regional law

312. There is no specific African convention on the protection of persons against enforced disappearance. Disappearance that can be qualified as enforced from the perspective of international law is no less of a violation of the right to life, in cases where the missing person has been killed, as well as a violation of the right to physical and moral integrity of the person, the right not to be subjected to torture and other cruel, inhuman or degrading treatment, the right to a fair trial, the right to physical and mental health and the right to a healthy family life, all provided for by ACHPR[[531]](#footnote-531). Similar provisions exist in other African treaties, such as the Protocol to the ACHPR on the Rights of Women in Africa and the African Charter for the Rights and Wellbeing of the Child[[532]](#footnote-532).

 (iii) National law

313. The Burundian Criminal Code mentions enforced disappearance amongst violations that amount to crimes against humanity and defines them as “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State [...] or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time”[[533]](#footnote-533).

314. Article 244 of the Burundian Criminal Code provides that “whoever, by violence, tactics or threats, illegally confined or causes the illegal confinement, abducted or causes the abduction of any person, shall be punished by a sentence of one-to-five-year imprisonment”. The same provision states: “If the abduction or the illegal confinement is committed by a person wearing a uniform or bearing an official or apparently official insignia, or under a false name or with a false warrant from the public authorities, the penalty is five to ten years prison term”. In cases when the abducted or sequestered person was subjected to barbaric acts, the perpetrator is punishable by a 10 to 20 years prison term. In addition, similarly to the international law on human rights, enforced disappearance can amount to acts of torture or to cruel, inhuman or degrading treatment; also sanctioned by the Criminal Code.[[534]](#footnote-534)

 (b) Facts

315. Testimonies collected by the Commission have made it possible to confirm the persistence of enforced disappearance and other disappearances from April 2015 to 2017. The Commission also consulted reports from CNIDH[[535]](#footnote-535) and human rights organisations[[536]](#footnote-536), which confirm this trend. The Commission was however unable to verify all the cases reported by these organisations, given the limited time for the fulfilment of its mandate.

316. The Commission is aware that, in the past, some missing persons in Burundi were found alive. They had gone missing either because they were secretly detained, sometimes for long periods[[537]](#footnote-537), or for other reasons. Therefore, the Commission does not rule out that some of the missing persons, including the ones cited in this chapter, may be found later. Nevertheless, it befalls the State to conduct investigations on the potential participation of his agents or persons working with its acquiescence, such as Imbonerakure, in cases of enforced disappearance. The fact that some Burundian authorities did not respond to various requests of information from the Commission has hindered verifying some allegations or collecting the authorities’ point of view.

317. On 29 June 2017, speaking on the radio the Minister of Justice, Aimée Laurentine Kanyana, announced that all persons alleging disappearance had a month to file a complaint with the competent jurisdiction and any case brought forward after that deadline will be filed without follow-up[[538]](#footnote-538). Aside from the fact that the imposed deadline is short and arbitrary and does not consider the gravity of the phenomenon of disappearances nor the pain of the victims’ relatives, it is important to recall that enforced disappearances are continuous human rights violations. The Working Group on Enforced Disappearances has in fact stipulated in its general comment “on enforced disappearance as a continuous crime” that “enforced disappearances are prototypical continuous acts. The act begins at the time of the abduction and extends for the whole period that the crime is not complete, that is to say until the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual”[[539]](#footnote-539). Consequently, no limits should be imposed on the victims’ family access to justice and reparation, nor on that of the victims themselves in case they survive.

 (i) Context

318. The conditions in which arrests are made by Burundian law enforcement agencies promote enforced disappearance[[540]](#footnote-540). In many cases, victims are arrested by members of the defence and security forces aboard vehicles often without licence plates[[541]](#footnote-541). The Commission also collected several accounts indicating that the persons arrested were not systematically registered in SNR or police detention centres, which leaves no evidence of their arbitrary arrest[[542]](#footnote-542). A detainee testified:

“*We were transferred to SNR near the cathedral [of Bujumbura] [...] Our names were not added to the register. We were incarcerated in the ceiling of a toilet; our hands and feet tied up and we were not given food”*[[543]](#footnote-543).

Another detainee highlighted *:”In the detention place [of the police] ‘Chez Ndadaye’[[544]](#footnote-544) [...] none of the prisoners were recorded in any of the registers”*[[545]](#footnote-545).

319. The Commission made a distinction between cases for which there is sufficient ground to believe that they are enforced disappearances and those for which there is sufficient reasons to suspect that they are. In the first category, the Commission received information allowing it to confirm the existence of elements included in the definition of enforced disappearance by the International Convention for the Protection of All Persons Against Enforced Disappearance, namely deprivation of liberty by State agents or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person[[546]](#footnote-546). In the second category, the Commission was not in a position to confirm the existence of all these elements but has reasonable grounds to fear that the persons targeted were victims of enforced disappearance due to their profile that suggests that they were targeted, the modus operandi, the conditions and context in which their disappearance took place, namely the generalised context of non-respect of judicial guarantees during arrests and detentions.

320. The Commission also received information on cases of disappearance for which it has no sufficient information to conclude that there are reasonable grounds to believe or fear that they are cases of enforced disappearance, including abduction cases by Imbonerakure in which it was not possible to demonstrate the authorization, support or acquiescence of Burundian authorities. Similarly, the Commission also collected information on cases that it was not able to corroborate for lack of time or access to Burundi or to the victims’ relatives. Some of these cases should be thoroughly investigates and can ultimately be analysed by the United Nations Working Group on Enforced Disappearances, the Committee on Enforced Disappearance or any other mechanism or jurisdiction carrying out credible investigations.

321. The Commission noted that, in its 2015 annual report, CNIDH found 19 cases of abduction or enforced disappearance that happened in the course of 2015, including that of Marie-Claudette Kwizera, treasurer of Ligue Iteka, who went missing since 10 December 2015[[547]](#footnote-547). This case was also documented by the Commission and is included in this report[[548]](#footnote-548). In its bi-annual report for the first half of 2017, CNIDH indicated having been called upon 20 times during this period on allegations of abduction and enforced disappearance; including that of Pacifique Birikumana, driver at the bishopric of Ngozi; also documented by the Commission[[549]](#footnote-549).

322. In many cases, following disappearance, the missing persons’ relatives were subjected to pressure, intimidation or threats linked to the disappearance from police or SNR officers or Imbonerakure; forcing them to live in hiding or to flee the country[[550]](#footnote-550).

 (ii) Cases in which there is sufficient ground to believe that they are enforced disappearance

323. The Commission collected corroborating information on cases of arrested and detained persons by defence and security agents who were never found by their family. Two of them were members of opposition parties. These emblematic cases clearly show the impunity enjoyed by law enforcement agencies in a context of generalised political persecution.

 Augustin Hatungimana

324. Augustin Hatungimana, alias “Tarpon”, was responsible for the youth within the opposition party MRC-Rurenzangemero in Cibitoke (Bujumbura Mairie) and had taken part in the demonstrations against the new mandate of President Nkurunziza in 2015. According to the testimonies collected by the Commission[[551]](#footnote-551), on 9 December 2015, police officers aboard a *pick-up* arrested Augustin Hatungimana in Cibitoke, accusing him of giving weapons to the youth in the area. At the time of the arrest, which took place in the presence of an SNR officer, police officers fired in the air to disperse the crowd that was around and then took Augustin Hatungimana to an unknown destination. Relatives of Augustin Hatungimana were later informed that he may be detained at SNR and SNR agents requested for 600,000 Burundian francs (around 344 American dollars) to organise his release. That sum was given to them but Augustin Hatungimana was not released. On 13 December 2015, police officers from BAE, led by an officer from that unit, came to Augustin Hatungimana’s home. They threatened and beat some of his relatives and burnt his possessions and those of his family. The alarm was raised by civil society organisations[[552]](#footnote-552) and searches to find him were conducted but no information was obtained on where he was detained or his fate.

 Bernard Baranjoreje

325. Bernard Baranjoreje was responsible for youth engagement in the political party MSD in Bujumbura Mairie. According to information collected by the Commission[[553]](#footnote-553), on 19 January 2016 at the end of the day, police officers, led by a SNR officer aboard a *pick-up* without licence plates arrested Bernard Baranjoreje in a bar in Kigobe in Bujumbura. One of the police officers said, “Bernard, you are still alive?”. The police officers arrested and handcuffed several other people who were in the same place, then; after verifying their identity; they released them and went with Bernard Baranjoreje to an unknown destination. Since then, he has never been seen. His relatives undertook several initiatives to find him, namely in detention centres but they were all unsuccessful.

 Hugo Haramategeko

326. Hugo Haramategeko was the president of an opposition party *Nouvelle alliance pour le développement du Burundi* (NADEBU). According to testimonies collected by the Commission[[554]](#footnote-554), early morning on 9 March 2016, police officers guided by an Imbonerakure, aboard a police vehicle belonging to a high-level State official, came to the home of Hugo Haramategeko in Mutakura (Bujumbura Mairie). A police officer asked Hugo Haramategeko to disclose his identity. The latter showed his identity card and the police officers took him in the car in the direction of Cibitoke. Thinking that he was going to be detained at the Cibitoke police station, his relatives went there, but the police officers on duty told them that he was not there. According to some sources, the vehicle aboard which Hugo was went towards Bubanza province. His relatives alerted human rights activists and filed a complaint with CNIDH. Despite searches undertaken, Hugo Haramategeko was not found in any official detention centres and his fate remains unknown[[555]](#footnote-555).

327. Seized with this matter, the Working Group on Enforced or Involuntary Disappearances, under its urgent action procedure, transferred the case of Hugo Haramategeko to the Burundian Government on 4 July 2016[[556]](#footnote-556).

 Jean Bigirimana

328. The journalist Jean Bigirimana had worked for Rema FM (radio close to the ruling party) before joining the independent media group Iwacu in June 2016. He also collaborated with Infos Grands Lacs site.

329. According to information collected by the Commission[[557]](#footnote-557), on 22 July 2016, SNR and police agents arrested Jean Bigirimana on the road linking Bugarama to Muramvya (Muramvya province) and took them in direction of Muramvya. From that day, his relatives have had no news from him despite various searches done, namely in the detention centres. An officer of the judicial police in Muramvya informed one of Jean Bigirimana’s relatives that the police in that province had not arrested him. The police spokesperson, Pierre Nkurikiye, also denied that the police had arrested Jean Bigirimana and assured that they will continue to investigate the case “under the authority of the Public Prosecutor's office”[[558]](#footnote-558).

330. At the beginning of August 2016, a team of journalists from Iwacu went to Muramvya province several times to look for their missing colleague. Officials from the police, SNR, public prosecutor’s office in Muramvya and CNIDH representatives accompanied them for some visits[[559]](#footnote-559). During one such field visits done without an official in tow, the journalists discovered two bodies in Mubarazi River. A few days later, two bodies were pulled out of the river and brought to the mortuary in Muramvya. In the absence of her husband’s colleagues who could have supported and advised her, Jean Bigirimina’s wife went to establish if one of the bodies found was her husband’s but was not able to identify him. The two bodies were in a state of advanced decomposition and one of them was decapitated. The police spokesperson said that none of the bodies was that of Jean Bigirimana[[560]](#footnote-560).

331. As reported in the media, in June 2017, the wife of Jean Bigirimana received a threatening letter which read “You spend your time travelling the world discrediting the image of your native country; just as your husband had started to do; you will soon join him where he is incarcerated [...]. We will not be held accountable for your blood”[[561]](#footnote-561).

332. Jean Bigirimana’s family filed a complaint with the criminal investigation department (*commissariat général de la police*) in Bujumbura in July 2016. This case was also referred to the Working Group on Enforced or Involuntary Disappearances, which sent a request for information to the Government of Burundi on 2 September 2016[[562]](#footnote-562).

 Pacifique Birikumana

333. Pacifique Birikumana, driver at the bishopric of Ngozi, was not known for his involvement in political activities. According to information collected by the Commission[[563]](#footnote-563), on 8 April 2017, Pacifique Birikumana was requested as part of his driving duties, to take a team of military officers to Gitega. Upon his return to Ngozi, he went to a bar to have a drink with his friends. The following day, his relatives tried to contact him in vain. The Commission collected information according to which SNR agents arrested Pacifique Birikumana. Despite searches conducted in different detention places, Pacifique Birikumana is still missing to date. His disappearance was mentioned in the CNIDH report for the first semester of 2017 as well as in a declaration from FOCODE[[564]](#footnote-564).

 (iii) Cases where there is reasonable grounds to fear enforced disappearance

334. The Commission collected information on other cases where some indices, such as the profile of the victims or the presumed perpetrators, the modus operandi and the context point to enforced disappearances.

 Innocent Ndayikeza

335. Innocent Ndayikeza was member of MSD and a taxi driver. He had rented his car to RFI journalists who covered the demonstrations against President Nkurunziza’s new term in 2015. According to information collected by the Commission[[565]](#footnote-565), in the morning of 27 July 2015, two men posing as clients asked Innocent Ndayikeza to drive them to town. Once aboard his vehicle, they allegedly forced him at gunpoint to drive them to an unknown destination. In the afternoon, relatives tried to reach him on his cell phone in vain until someone with a strong Swahili accent, who did not speak Kirundi well answered the phone. The following afternoon, the body of Innocent Ndayikeza was discovered, hands tied, in Nyabugete in Bujumbura Mairie. The victim had a broken neck and several wounds on his face. Two weeks before his disappearance, Innocent Ndayikeza had received several calls from an Imbonerakure asking him to meet up for a drink.

 Albert Dushime

336. According to testimonies collected by the Commission[[566]](#footnote-566), Albert Dushime was arrested in the night of the 21 to 22 November 2015 by police officers in Kirundo province. The police officers accused him of participating in an armed attack in Kirundo on 21 November 2015. A SNR officer, who was in Kirundo at the time of his arrest allegedly asked a police officer that they let him take the detainee to Bujumbura. The police officers allegedly handed Albert Dushime to this officer and Albert Dushime was never again seen. A photo of him tied up next to two men in police uniform made the rounds on social media shortly after his arrest[[567]](#footnote-567). A civil society organisation reported a statement by the police spokesperson according to which Albert Dushime was indeed arrested[[568]](#footnote-568). In November 2016, Albert Dushime’s family lawyer filed a complaint with the prosecution’s office at Muha High Court. This complaint was never concluded.

 Marie-Claudette Kwizera

337. According to testimonies collected by the Commission[[569]](#footnote-569), on 10 December 2015, Marie-Claudette Kwizera, treasurer of the human rights organisation *La Ligue Iteka* and employee of the National telecommunication office in Burundi (ONATEL), received a call from a person who wanted to meet with her as she was leaving the eye clinic on *Boulevard de l’UPRONA* in Bujumbura. As she was asking her interlocutor their identity and the purpose of the meeting, a car with tainted windows stopped where she was. Unidentified persons came out of the car and forced her into it. Her relatives started searching for her that very night but did not find her in any of the detention centres.

338. A person questioned by the Commission said that a SNR agent requested a sizeable amount of money from the family of Marie-Claudette Kwizera, but even though the requested amount was paid, the victim was not found[[570]](#footnote-570). In its 2015 annual report, the CNIDH noted the case of Marie-Claudette Kwizera saying that the SNR agent cited above “denied having received the money […] and indicated, during the investigations in this case, having only promised to carry out investigations to try and find the victim”[[571]](#footnote-571).

339. In its comments on EINUB report, the Government indicated that a file (RMP 154370/EB) on the disappearance of Marie-Claudette Kwizera was opened[[572]](#footnote-572), but the Commission has not found any information on the progress of this file.

340. The case of Marie-Claudette Kwizera is being examined by the UN Working Group on Enforced or Involuntary Disappearances[[573]](#footnote-573) and has been publicly raised by several other mandate holders of the special procedures of the Human Rights Council[[574]](#footnote-574).

 Savin Nahindavyi

341. Savin Nahindavyi, a SNR agent, went to work on 1 May 2016 and has not been seen since then[[575]](#footnote-575). His relatives searched for him in SNR and several other detention centres in vain. The day after his disappearance, a SNR agent assured his family that a diligent investigation into his case would be done. A week later, even before the conclusion of the investigation, one of the Savin Nahindavyi’s supervisors expressed his condolences to one of his relatives,

342. Savin Nahindavyi had moved to a house that he had just built in Gasekebuye to comply with a request from his hierarchy that reproached him of living in the “dissenting” neighbourhood of Musaga in Bujumbura. According to some testimonies collected by the Commission, his supervisors suspected him of being the whistle-blower in favour of the people detained at SNR.

343. The UN Working Group on Enforced or Involuntary Disappearances is examining the case of Savin Nahindavyi[[576]](#footnote-576).

 Oscar Ntasano

344. Oscar Ntasano is a businessperson, owner of the hotel Nonara in Bujumbura. Member of CNDD-FDD, he had been a Senator from 2005 to 2010 and a representative in the General Assembly for Makamba province from 2010 to 2015. According to several testimonies collected by the Commission[[577]](#footnote-577), shortly before his disappearance, Oscar Ntasano had been in contact with a man named Lambert Bitangimana for a property transaction. On 20 Avril 2017, Oscar Ntasano went to his office and then, accompanied by two of his employees, Thierry Ngendabanka and Rémy Nsabumuremyi, went to one of his properties in Bujumbura where he was to meet with Lambert Bitangimana. Oscar Ntasano and his two employees were never seen after.

345. On 25 April 2017, the police announced having found a damaged vehicle on 22 April in Gashoho, in Muyinga province, in which the body of LambertBitangimana was found. The police indicated that the deceased had abducted Oscar Ntasano and his two employees[[578]](#footnote-578). However, testimonies collected by the Commission, as well as photos circulating on the internet[[579]](#footnote-579), indicated that the body of Lambert Bitangimana had signs of strangulation on the neck. In addition, the licence plates of the vehicle found were not those of Oscar Ntasano’s vehicle.

346. According to information collected by the Commission, Lambert Bitangimana had allegedly worked for SNR and took part to activities that involve potential human rights violations. The Commission also received testimonies indicating that Oscar Ntasano had allegedly been threatened by Burundian authorities in relation to a contract that he was about to sign with the United Nations for the rental of hotel Nonara as office space. Allegedly, a high-ranking official of the Burundian Government would have requested half of the contractual amount and threatened to kill him if he refused.

347. The Commission received information on the arrest of several people in relation to this case but was not able to confirm how far the follow up process on this case had gone.

 (iv) Other cases of disappearance

348. Witnesses told the Commission about instances of abduction committed by men who were often armed, identified by some witnesses as Imbonerakure. They broke into the homes of members of opposition parties or demonstrators against President Nkurunziza’s new mandate in the middle of the night and took them to unknown destinations[[580]](#footnote-580). For these cases, the Commission was not able to establish a sufficient level of corroboration to attest that there are reasonable grounds to believe, or even fear, that these are cases of enforced disappearance and that the identified perpetrators, such as Imbonerakure, were acting in collaboration with State agents. However, given the recurrence of this type of abduction and the profile of the people targeted, the Commission cannot ignore them.

349. For example, in May 2015, in Bubanza province, some Imbonerakure came to the home of a man who had refused to join the ruling party and took him to an unknown destination. Since that day, he has never been seen again[[581]](#footnote-581). In another case, Imbonerakure kidnapped an opposition activist in December 2015 in Bujumbura province. His family has no news of him since that day[[582]](#footnote-582). Another witness account collected by the Commission reported the abduction of a member of an opposition party, active in the campaign against President Nkurunziza’s new term, by unidentified men in July 2016 in Cibitoke province[[583]](#footnote-583).

350. The Commission also received information on an ex-FAB who disappeared in Muyinga province since March 2016. A police officer, suspected of involvement in several cases of human rights violations, who stayed in the same hotel as the victim, allegedly took him to an unknown destination aboard a SNR pick-up[[584]](#footnote-584).

351. The Commission recognizes that the general climate of insecurity that prevails in Burundi fosters abductions by diverse unidentified groups. In cases of abduction, it is particularly difficult to establish responsibilities. A witness has, for example, reported the abduction of a person by unknown individuals in August 2016:

“*The body of [X] who was a [...] student at the University of Burundi was found [...] [Two weeks earlier], as [X] was going out to buy something in the neighbourhood […], a vehicle with tinted windows took him to an unknown destination”*[[585]](#footnote-585).

352. The allegations related to mass graves and the regular discovery of bodies, sometimes decapitated, in the streets or rivers, then buried without prior identification nor investigations represent additional uncertainties and reinforce the climate of insecurity[[586]](#footnote-586).

 (v) Ransom demands

353. Testimonies collected by the Commission report ransom demands primarily to relatives of the missing persons by SNR and police agents, or individuals who introduce themselves as such. In exchange of sometimes large sums of money, these individuals promise to reveal where the missing person and sometimes where their body is, alleging that they had been killed[[587]](#footnote-587). These individuals then took advantage of the extreme vulnerability of the relatives of the missing person, for example in the cases of Augustin Hatungimana and Marie-Claudette Kwizera mentioned above[[588]](#footnote-588). A victim said that while in detention:

“*[A] SNR official told my family that I was dead and that they can go and look for my body at [X location]. He wanted money. My family was looking for me everywhere; [Family members] went to SNR. This official told them that if they gave him money, he would show them where my body was. The family gave him 1.5 million Burundian francs [around 860 USD] but they left disappointed”*[[589]](#footnote-589).

 (vi) Consequences for the families and the relatives of the missing persons

354. In addition to the threats that the relatives of the missing persons receive, the phenomenon of enforced disappearance has damaging consequences on the life of families and relatives of the victim. In fact, the Commission noted the particular vulnerability of women, spouses of the victims, once their spouse disappears. These women, once home alone, are subjected to diverse violations. In the words of the wife of a missing person:

“*My husband was very involved in the movement against the illegal third term of Pierre Nkurunziza […] He has been missing since 13 May 2015, the day of the failed* coup d’État*, and I found myself alone without knowing where he was. I do not know if he is still alive or if he has been killed [...] I was forced to flee the country and to abandon everything as I was afraid of being kidnapped, raped or jailed”*[[590]](#footnote-590).

355. The relatives of the missing persons reported to the Commission the continuous trauma, which they are subjected to. The daughter of a missing person confided:

“*I am constantly in the throes of the image of my father which follows me everywhere. I see him in the streets in my dreams”*[[591]](#footnote-591).

 3. Right to liberty and security of the person

356. Since 2015, the Human Rights Council has condemned the arbitrary arrests and detentions, including “mass arbitrary arrests”, “against members of civil society, journalists, members of the opposition and demonstrators, including young demonstrators”, in Burundi[[592]](#footnote-592). In its resolution of September 2016, the Council had deplored in particular “the existence of clandestine places of detention, which include secret cells within national intelligence service (SNR) compounds, and private residences of high-level officials”[[593]](#footnote-593). This resolution was adopted based on reports of the United Nations High Commissioner for Human Rights and UNIIB, both of which have highlighted the increasing number of arbitrary arrests and detentions since April 2015[[594]](#footnote-594). In 2016, the Committee against Torture and the Committee on the Elimination of Discrimination against Women have also expressed concern regarding this trend[[595]](#footnote-595).

(a) Applicable law

 (i) International law

357. The right to liberty and security of the person is guaranteed under Article 9 of the UDHR and Article 9 of the ICCPR. The first paragraph of the latter provision states that “everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law”.

358. Arrest which “means the act of apprehending a person for the alleged commission of an offense or by the action of an authority”[[596]](#footnote-596) is arbitrary under the ICCPR if it is not based on reasons provided by law or in accordance with statutory procedures[[597]](#footnote-597). Article 9 (2) of the ICCPR further provides that every person arrested shall be informed of the reasons for his or her arrest at the time of their arrest and of the charges against them within a short period of time[[598]](#footnote-598). The arresting officers may only use proportional force and only when required.

359. Detention, which the ICCPR defines as a deprivation of liberty, can only be carried out under article 9 (1) of the Covenant “on such grounds and in accordance with such procedure as is established by law”. Detention will be arbitrary if a person is deprived of his or her liberty without being suspected of a crime or offense or for the sole purpose of, for example, extracting information from a person or putting pressure on a person[[599]](#footnote-599). Similarly, detention should follow legally prescribed procedures, including the definition of the authorities empowered to authorise and prolong detention[[600]](#footnote-600), as well as several limitations, including the maximum length of time a person can be detained before being presented to a judge[[601]](#footnote-601).

360. The Human Rights Committee clarified that the term “arbitrary” does not only mean “contrary to the law” but should be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability[[602]](#footnote-602). Consequently, an arrest and/or detention may be contrary to the ICCPR if it complies with the legislation in force but the provisions contained in it are unreasonable or unjust, or where the deprivation of liberty is not necessary or is disproportionate[[603]](#footnote-603).

361. The Human Rights Committee further recalled that persons awaiting trial should only be detained in exceptional circumstances for a short period of time[[604]](#footnote-604). The Committee also considered that, on the basis of Article 14 (3) (b) of the ICCPR, “everyone charged with a criminal offense shall have the right to [...] have adequate time and facilities for the preparation of his defence and to communicate with counsel of their own choosing”, people in detention awaiting trial are entitled access to legal counsel at all stages of the proceedings, including in the initial interrogation by the police[[605]](#footnote-605). A measure of deprivation of liberty that could originally be justified may become arbitrary over time when it is no longer necessary or no longer just[[606]](#footnote-606). It will also be arbitrary to detain a person in inhuman conditions. Article 10 (1) of the ICCPR states that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. In this regard, The Human Rights Committee has considered that “persons deprived of their liberty enjoy all the rights set forth in the Covenant, subjected to the restrictions that are unavoidable in a closed environment”[[607]](#footnote-607).

362. Article 9 (4) of the ICCPR further provides that “anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order so that a court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is unlawful”. If the arrest or detention is found to be unlawful or arbitrary, the victim has a "right to compensation" under Article 9 (5) of the ICCPR.

363. Detention in secret places is prohibited under international law, because it may facilitate the use of torture and ill-treatment and may even constitute a form of such treatment[[608]](#footnote-608). The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, recommends: “to ensure that secret places of detention and interrogation are abolished”[[609]](#footnote-609). The Human Rights Committee has also insisted that States detain persons only in “places officially recognised as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends”[[610]](#footnote-610).

364. Article 37 of the Convention on the Rights of the Child further provides that State Parties shall ensure that “no child shall be deprived of his or her liberty unlawfully or arbitrarily” and that in cases where the detention of a minor is made necessary, the child is to be “treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. Every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, except in exceptional circumstances”[[611]](#footnote-611).

 (ii) Regional law

365. Along the same lines as the ICCPR, Article 6 of the ACHPR stipulates that “every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously legally applicable by law. In particular, no one may be arbitrarily arrested or detained”.

 (iii) Domestic law

366. Article 39 of the Constitution of Burundi provides that “No one shall be deprived of his or her liberty, save in accordance with the law. No one may be charged, arrested, detained or tried except in cases that are determined by the law promulgated prior to the facts of which he or she stands accused”. The requirement of legality of detention is also recalled in Article 42, which stipulates that “no one may be subjected to security measures except in accordance with the provisions prescribed by the law, in particular for reasons of public order or State security”. Legal guarantees, particularly in cases of deprivation of liberty, are for their part recalled in Articles 38 (the right to be tried in a court of law within a reasonable amount of time), 39 (the right to be defended by legal counsel), and 40 (the presumption of innocence).

367. Article 46 of the Constitution provides that “no child shall be detained except as a last resort, in which case the duration of the child’s detention shall be as short as possible. Any child has the right to be separated from detainees over 16 years old and to benefit from detention treatment and conditions suitable to their age”. Finally, Article 23 of the Constitution provides that “no one shall be treated arbitrarily by the State or its entities. The State has the obligation to compensate any person who is a victim of arbitrary detention caused by the Government or its entities”.

368. Article 52 of the Burundian Code of Criminal Procedure provides that “freedom [is] the rule, detention the exception”. However, the Code of Criminal Procedure allows for an arrest to be conducted in three circumstances. A person may be apprehended in an investigation to be brought before a competent judicial authority, provided that he or she is suspected of having committed an offense punishable by at least one year or if there is serious indications of guilt, serious reasons for flight risk or that his or her identity is unknown or unreliable. In this case, the apprehended person must be presented to a judicial authority at most within 36 hours of their arrest[[612]](#footnote-612). The investigative officer is also authorised to carry out judicial arrests when a person is suspected of having committed an offense and provided that he or she immediately informs the Public Prosecutor[[613]](#footnote-613). Finally, in the so-called “*flagrance*” procedure, a person can be apprehended if he or she is committing or has just committed a crime[[614]](#footnote-614). In this case, anyone is entitled to seize the alleged offender in the event of a serious threat to the security of property, people or the State and in the absence of a competent judicial authority, provided however, that the alleged offender is brought immediately to the nearest competent authority, who must in turn inform the Public Prosecutor[[615]](#footnote-615). In this context, police custody cannot in any case exceed 36 hours, after which the arrested person must be brought before a competent judicial authority[[616]](#footnote-616).

369. The Code of Criminal Procedure stipulates that “the Officers of the Public Prosecutor’s Office: [...] shall take all necessary measures to end with immediate effect any arbitrary or illegal detention and retention that they observe. Additionally, if the facts constitute a criminal or a disciplinary offense or both, they shall initiate the appropriate legal proceedings, [...] and refer them to the competent judicial authority. Where it is determined and proven that guilty pleas or any other information was obtained by torture, duress or any other unethical means, the pleas and evidence thereof obtained shall be considered invalid”[[617]](#footnote-617).

Draft revisions of the penal code and the code of criminal procedure

370. Plans for the revision of the Penal Code and the Code of Criminal Procedure are in progress at the time of writing of this report[[618]](#footnote-618). Amendments adopted by the Government in May 2017[[619]](#footnote-619) were submitted to the Justice and Human Rights Commission of the National Assembly on 6 June 2017[[620]](#footnote-620). The present Commission of Inquiry, which was able to obtain a copy of these drafts, considers that some of the proposed amendments are problematic, in particular the one which introduces the possibility for police investigators to carry-out searches without a warrant and at night in cases of flagrancy and certain other infractions[[621]](#footnote-621). The proposed revision also stipulates that “police investigators, who commit offenses which are absolutely necessary and with the explicit consent of the Public Prosecutor, are exempt from prosecution within the framework of their mission and for the purpose of its success or in order to guarantee their own safety or that of others involved in the operation [...]. These offenses cannot be more serious than the ones for which they are being committed and must be proportional to the pursued objective”[[622]](#footnote-622). In the current context of human rights violations by State agents, the Commission is concerned that these new provisions may be misused and, in doing so, increase the risk of human rights violations and reinforce impunity.

(b) Facts

371. Arbitrary arrests and detentions are the most significant human rights violations documented in Burundi during the period covered by the mandate of the Commission. Most of them result in further violations, including extrajudicial executions, enforced disappearances, torture and cruel, inhuman or degrading treatment, and sexual violence[[623]](#footnote-623). The findings and conclusions of the Commission regarding the arbitrariness of arrests and detentions in Burundi go beyond the already worrisome ones expressed by the Independent National Human Rights Commission (CNIDH), notably in its report covering the first half of 2017[[624]](#footnote-624).

 (i) Main victims

372. As with the other human rights violations outlined in this report, victims of arbitrary arrests and detentions include known or perceived opponents to the Government[[625]](#footnote-625), particularly protesters against a new term for President Nkurunziza or people suspected of participating in the protests, members of political parties, particularly FNL or MSD, or suspected sympathisers of these parties, as well as members of civil society organisations, journalists and other people who have denounced human rights violations[[626]](#footnote-626). Ex-FABs have also been targeted[[627]](#footnote-627), as well as individuals who refused to join the CNDD-FDD or who refused to contribute money to the party[[628]](#footnote-628).

373. Nevertheless, the information received by the Commission shows that the profile of persons arbitrarily arrested and detained is more varied than that of victims of other human rights violations. Not all of them were members of the opposition or had expressed opposing views to the Government or the ruling party. Many seem to have been arrested randomly because they were in the wrong place at the wrong time, especially during the 2015 demonstrations or during raids by Defence and Security Forces in certain areas of Bujumbura during which the police targeted and apprehended a large number of young men. Some of those who were arrested and detained were actually members of armed opposition groups, but many others, according to the testimonies collected by the Commission, were arrested in the absence of any evidence of their alleged involvement in crimes or offenses or even in legitimate activities which would have displeased the authorities.

374. Some of the victims of arbitrary arrests and detentions interviewed by the Commission were subjected to ethnic insults as soon as they were arrested[[629]](#footnote-629). In some cases, the alleged ethnic origin of the victim was sufficient to identify the victim as being with the armed opposition[[630]](#footnote-630). One victim gave the following testimony:

“*My brother [...] was [killed] [...] while he was on his motorcycle and he died on the spot [...] When I went to the crime scene to claim his body, I was immediately tied up by the police [...] They told me that I must first show the weapons, from Rwanda, that we have in our possession. They added that they know all Tutsis [from a certain neighbourhood of Bujumbura] have firearms that they received from the Rwandan Government*”[[631]](#footnote-631).

 (ii) Main perpetrators

375. Police officers were most often cited as perpetrators by the victims of arbitrary arrests and detentions[[632]](#footnote-632). Specific police units, including the Support Unit for the Protection of Institutions (API)[[633]](#footnote-633), the Anti-riot Brigade (BAE)[[634]](#footnote-634), and the Rapid Intervention Mobile Group (GMIR)[[635]](#footnote-635), were mentioned in several testimonies collected by the Commission. SNR agents[[636]](#footnote-636) and members of the FDNB[[637]](#footnote-637) have also been named. Arrests have often been carried-out by members of several Defence and Security Forces operating together, for instance, SNR agents or soldiers accompanying the police[[638]](#footnote-638).

376. Several witnesses reported the presence of Imbonerakure during arrests by members of the Defence and Security Forces[[639]](#footnote-639). In some cases, individuals identified by witnesses as Imbonerakure assisted the police or the SNR agents in identifying people to be arrested, particularly during the 2015 demonstrations and the search operations[[640]](#footnote-640). A witness of the protests in Bujumbura in April 2015 stated:

“*Young people wearing civilian clothes on motorcycles helped the Police to arrest protesters. These young men had arrived slightly before the Police [...] they were with [police] commander [X]. The young ones arrested the protesters and placed them in his pickup truck*”[[641]](#footnote-641).

377. In other cases, the Imbonerakure carried out arrests by themselves[[642]](#footnote-642). A member of an opposition party testified:

*“[In] 2017, [men] had come to my workplace to ask me for 15,000 Burundian francs [about US $8.50] for the headquarters of the CNDD-FDD. I refused to pay [...] When I got home [...], I found [these men] on the road. They beat me so badly that I fainted. [They] had wooden sticks [...] He said that they were beating up ‘those who do not hear’ [...] I woke up in the holding cell of the Judicial Police [...] I know that [these men] were Imbonerakure [...] they wore tee shirts with the emblem of the ruling party*”[[643]](#footnote-643).

 (iii) Arbitrary arrests

378. The Commission considers that many arrests were arbitrary because the proceedings did not abide by international law, as described above, nor Burundian law. Many people were not informed of the grounds for their arrest, or were given reasons which had no legal basis, such as being a member of an opposition party or the fact of living in a so-called dissenting neighbourhood of Bujumbura[[644]](#footnote-644).

379. Other cases contained glaring errors in the arrest and detention procedures. For example, a person interviewed by the Commission was arrested even though the name on the arrest warrant was not theirs[[645]](#footnote-645). Another person, once released from prison, received a release order[[646]](#footnote-646) bearing the name of a prison in which they had not been detained[[647]](#footnote-647).

380. The Commission also received reports of acts of violence during arrests, when the use of violence itself was not necessary[[648]](#footnote-648). For instance, a person who was severely beaten during their arrest in 2016 by Imbonerakure, SNR agents and soldiers, provided the following account:

*“[SNR agents and an Imbonerakure I know] arrested and accused me of distributing food to [Burundian] rebels in Rwanda. They beat me while asking me how I was able to distribute food to the rebels [...] I said I was not with an armed group and that I was with CNDD-FDD [...] they tied me up. Then I was beaten with eucalyptus tree branches, and they kicked me with their feet [...] [They] tore my clothes and [...] they kicked me with military boots. [...]”*[[649]](#footnote-649).

A student also reported: “*After arresting me, the police took my phone. Then they beat me up and slapped me. They kicked me with their boots. The neighbours saw what was happening. They shouted, ‘Do not kill this kid!’ The police told them that if they continued shouting, they would be taken away just like me*”[[650]](#footnote-650).

 (iv) Arbitrary detentions

381. Many people, who were apparently arrested for political reasons or individuals who were arrested because the authorities suspected them of being linked to opposition parties or groups, were detained at SNR premises in Bujumbura. Some were transported there directly[[651]](#footnote-651), others were first detained at a police holding cell[[652]](#footnote-652). Some, among those who had been arrested in provinces located far from the capital city, had also been transferred to SNR headquarters in Bujumbura[[653]](#footnote-653). Others were detained at the provincial offices of the SNR. One person reported that once the detainees arrived at SNR headquarters in Bujumbura, SNR agents proceeded to sort them in order to distinguish between alleged political opponents from other detainees[[654]](#footnote-654). Detainees spent several days or weeks at the SNR before being released, very often without any formal procedures[[655]](#footnote-655), or transferred to a prison where they often remained for months awaiting trial[[656]](#footnote-656).

382. In numerous testimonies received by the Commission, the detention was arbitrary because it had no legal basis, since the victim was deprived of their freedom without ever being formally charged with a crime or an offense[[657]](#footnote-657). This was particularly true for individuals who were detained in locations which had been deliberately kept secret in order to avoid any form of procedure and control[[658]](#footnote-658). Other individuals interviewed by the Commission had been charged with offenses resulting in lengthy sentences, such as “undermining the internal security of the State”, “participation in armed groups”, “participation in an insurrectional movement”, and in some cases, these offences have nothing to do with the alleged acts that they may have committed. A victim recounted how she was arrested and charged with illegal possession of firearms after filling a complaint about her brother’s murder by Imbonerakure:

“*While I was waiting for an answer [to my complaint] [...] [Police officers, Imbonerakure and the neighbourhood chief arrested me] [...] Another person then came and accused me of carrying weapons in my vehicle [...] The police did not say anything at the time of my arrest and [a] wanted person notice was shown to me at the police station [...] The judicial police officer and [the person who had accused me] hit me then they turned to [my relative who had accompanied me] and they hit him until the police chief intervened. After his intervention, [the person who had accused me] then accused [my relative] of slapping him and [my relative] was subsequently detained for three days [...] Personally, I was detained in a holding cell of the judicial police [...] for two weeks and one day. Then, I was transferred to the prison*”[[659]](#footnote-659).

383. The Commission also received testimonies about family members of wanted individuals who were detained in their place[[660]](#footnote-660). For example, in 2015, the wife of an ex-FAB police officer who was accused of holding meetings with other ex-FAB against the Government, was detained for a week after her husband’s boots were discovered inside the family home. Notwithstanding his supervisor’s assurances that they were work boots, and that his only mistake was keeping them at home, the Prosecutor kept the woman in detention for one week and only released her after a sum of money had been paid[[661]](#footnote-661).

384. Also, in many cases, detention was arbitrary because it was not in accordance with the fundamental guarantees of detention. Some detainees reported that their names had not been recorded in detention registers[[662]](#footnote-662), thereby facilitating disappearances[[663]](#footnote-663). To the best of the Commission’s knowledge, those arrested are rarely informed of their rights and few had access to a lawyer[[664]](#footnote-664). When lawyers did intervene, it was usually during the trial phase; most of the detainees interviewed by the Commission did not receive any legal assistance at the beginning of their detention. A person who had been arrested among others at a police checkpoint in 2015 testified to the following:

“*The police informed us we could not continue [...] They took us to a place I did not know, to a house with a fence. They closed the door. I asked, ‘Am I under arrest? If so, I must inform my family’. The head of the SNR slapped me and said, ‘If you continue, I will kill you’ [...] I asked to see a lawyer. He then said to me, ‘You don’t know where you are. Wait. We will bring a lawyer tomorrow’. [The next day] we saw the head of the SNR with police officers. They handcuffed us and took us to the SNR in Bujumbura. [...] [Eight days later], I was transferred to [a provincial] central prison. The Prosecutor [of the province] asked the SNR for my file. They replied that there was no file on me [...] I appeared before a judge. The judge asked me why I was here and what the charges against me were. I said that there were none. The judge told me that I could leave [...] I was released the same evening*”[[665]](#footnote-665).

385. The United Nations Standard Minimum Rules for the Treatment of Prisoners[[666]](#footnote-666) further provides that “an accused shall be allowed to immediately inform their family of their detention and shall be given all reasonable facilities for communicating with family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.”[[667]](#footnote-667) However, the Commission has collected several testimonies from people who had been detained in holding cells of SNR in Bujumbura, of police stations and other locations without their families knowing where they had been taken or if they were still alive. Although this practice is contrary to international law as well as Burundian legislation[[668]](#footnote-668), these detainees were not allowed to communicate with their families or to receive any visit[[669]](#footnote-669). A man, arrested in December 2015, was held in solitary confinement for several weeks in a secret SNR holding cell. His family and his friends thought he was dead, until he was transferred to a prison[[670]](#footnote-670). A man who was tortured by Imbonerakure in the presence of a police officer in a police station in 2016 testified:

“*I stayed in the same cell, under close surveillance and without ever receiving any visits. The police officers intimidated any visitor who wanted to approach me*”[[671]](#footnote-671).

386. In a significant number of cases documented by the Commission, the legal period of detention had been exceeded. In the case of police custody, this period is seven days, renewable once[[672]](#footnote-672). The extension must be decided by a public prosecutor. This duration, which is not aligned with the international standard of 48 hours[[673]](#footnote-673), was not often respected and people arrested had been transferred to prisons even before a decision on their pre-trial detention had ever been reached[[674]](#footnote-674). According to testimonies collected by the Commission, some of those arrested remained in prison for weeks, sometimes months[[675]](#footnote-675). One person reported being detained for 18 days at the SNR in 2015:

“*It was [an agent of the SNR] who came to arrest me [...] [The police officers who were with him] put me in a van, and stabbed me four times in the shoulder, leg, back, buttocks [...] I was imprisoned at the SNR for 18 days. I ate only [once] a day. I was not allowed to receive any visitors. I was [then] transferred to the central prison*”[[676]](#footnote-676).

Another victim testified: “[*In] May 2015, I was arrested by [...] police officers [...] they beat me up and I fainted [...] When I regained consciousness, I was at the SNR [...] I stayed there for [29 days]*”[[677]](#footnote-677).

387. Detainees were not in a position to introduce an appeal for a court to decide on the legality of their detention[[678]](#footnote-678). This is mostly the case of people who were secretly detained without any due legal or administrative process[[679]](#footnote-679). In addition, their family members were unable to lodge an appeal because they had no information about their fate.

388. The legal period was also exceeded in several cases of pre-trial detention[[680]](#footnote-680), which according to Burundian legislation, is a maximum of one month. This duration can be extended, on a monthly basis by a panel of three magistrates of the relevant jurisdiction[[681]](#footnote-681). A victim testified:

*“[In 2015], I entered the central prison of Mpimba [...] I spent eight months there without being questioned, then I was summoned to the Prosecution’s office [...] I was interrogated by the Prosecutor, and he decided to place me in pre-trial detention. [A person who worked for the prosecutor’s office] helped me by monitoring my case and [sending] it to the court. This is how I was sentenced to one year of imprisonment and a fine of 100,000 Burundian francs [equivalent to around 57 US dollars]. I still had two months [of detention to do] which I spent in jail. I was released [in] 2016*”[[682]](#footnote-682).

389. Others remained in detention despite the issuance of a release order by a competent authority, or after being acquitted by a court or after serving their sentence[[683]](#footnote-683). One individual, arrested in March 2016, reported the following:

“*I appeared before the court [*tribunal de grande instance*]. Then I was sent back to the central prison [...] [Approximately one month later], I received a summons for the purpose of my release. The Prosecutor refused to release me despite the release order citing the seriousness of my case: because I allegedly belonged to a rebel movement. After spending approximately one year in prison [...], a State Commission came to prison [...] on the same [day], this Commission decided I was to be released*”[[684]](#footnote-684).

* One MSD member who had been sentenced to one year in prison in 2016 said that after serving his sentence, the prison director did not want to release him: *“I was to be released on [date] because I had been tried and sentenced to one year. But [on that date], the prison director refused to release me. He said, ‘When it comes to MSD, I have no decision-making powers. I have to ask those who are responsible for your incarceration’. He accused me of giving money to CNARED. In the end I was released [...] by presidential pardon”*[[685]](#footnote-685)*.*

390. Many of the victims interviewed by the Commission were held in conditions constituting cruel, inhumane or degrading treatment, which makes their detention arbitrary[[686]](#footnote-686). Women arbitrarily detained have suffered sexual violence[[687]](#footnote-687). Minors were detained with adults in particularly difficult circumstances, and some were tortured[[688]](#footnote-688). A minor, arrested and beaten at the SNR in Bujumbura, testified:

“*They came to arrest me while I was alone at home. [...] [I was taken] to the SNR [...] We [the witness and other young people] were beaten and we screamed in pain [...] I cried a lot and I thought I was going to be killed; my mom did not know where I was [...] At the SNR, same as at [the prison], I was incarcerated with adults [...] [for 19 days]*”[[689]](#footnote-689).

 (v) Unofficial detention facilities

391. The Commission interviewed several persons who had been detained in secret detention facilities, exempt from any control by authorized national and international bodies such as the CNIDH and the Office of the High Commissioner for Human Rights[[690]](#footnote-690). This is particularly true for certain concealed rooms at SNR headquarters in Bujumbura[[691]](#footnote-691). One person described being hidden in the trunk of a car in the SNR compound[[692]](#footnote-692) and another was hidden in the ceiling above the toilet during a visit from observers[[693]](#footnote-693). Several witnesses interviewed by the Commission mentioned the existence of a secret room where detainees were tortured[[694]](#footnote-694). Victims described some areas as darkened and sound-proof chambers[[695]](#footnote-695).

392. Other persons interviewed by the Commission testified that they had been detained in private homes in Bujumbura[[696]](#footnote-696) and in several provinces[[697]](#footnote-697); others had been detained in containers[[698]](#footnote-698), including some located on private properties. One individual reported that his residence, as well as the residence of one of his neighbours, had been occupied by soldiers and used as places of detention[[699]](#footnote-699). The victims described very harsh detention conditions in these unofficial places. A person interviewed by the Commission was supposedly detained for more than three months without ever knowing where she was[[700]](#footnote-700).

393. Several victims testified that they had been tied and blindfolded by SNR agents and police officers while they were being transported to secret locations and sometimes even while they were in detention. Therefore, they were not always in position to identify nor locate these places of detention[[701]](#footnote-701). One victim described being blindfolded during the full four days of their detention in 2016:

“*I was arrested [...] by police officers [...] they blindfolded me [...] they took us to a place where there were no windows. It was, I believe, a house with dark rooms. [...] I stayed there for four days [...] they left me blindfolded during my detention. They only took the blindfold off to show me pictures. They wanted me to identify those who had participated in the demonstrations against the third term. I think the house was in Bujumbura*”[[702]](#footnote-702).

394. Some detainees, who were held in secret locations, witnessed the presence of other detainees, which may suggest that the number of people detained in these places is much higher than the number of testimonies received by the Commission on this matter. Those who were detained at these places also reported being tortured and mistreated[[703]](#footnote-703).

395. The Commission also received reports of civilians being held in military camps, especially in the aftermath of the attacks on military installations in and around Bujumbura on 11 December 2015[[704]](#footnote-704).

 (vi) Extortion practices

396. In most cases, release from detention appears to be random. However, media campaigns about the arrest or knowing someone in the State apparatus may facilitate release[[705]](#footnote-705). The financial resources of the prisoner or his/her family can often be a determining factor in their release or continuing detention.

397. In many cases, outrageous amounts of money have been demanded by members of SNR, police, prosecutor’s office and sometimes Imbonerakure for the release or transfer of detainees to prisons where the conditions of detention are relatively better[[706]](#footnote-706). However, even after disbursing these sums, some detainees still had to wait. A victim testified:

*“[An SNR agent] asked me how much money I had in my account [...] [He] said, ‘If you agree to give me that amount, I will change your punishment’. [I gave him said amount] [...] I was returned to my cell for two weeks. Despite the payment of the ransom, I was beaten by police officers every evening*”[[707]](#footnote-707).

398. The practice of paying sums of money in exchange of release existed in Burundi well before 2015. However, the information available to the Commission suggests that this practice expanded from April 2015, in a context where arrests were numerous and economic conditions were increasingly difficult. Some State agents, as well as Imbonerakure, exploited the vulnerability and the fear of detainees as well as their families in order to demand more and more money from them, sometimes on several occasions. The identity of those on the receiving end vary. They include ordinary police officers, who in some cases have helped to release people or facilitated their clandestine departure[[708]](#footnote-708). Other recipients of these ransoms include high-ranking SNR police officers or agents, including some whose names have been frequently mentioned by witnesses interviewed by the Commission[[709]](#footnote-709). Imbonerakure, despite the fact that they have no authority to detain, have in some cases received money to intervene for someone’s release[[710]](#footnote-710).

399. Others were simply released without any legal proceedings after several days in detention, reinforcing the arbitrariness of their initial detention[[711]](#footnote-711).

 4. Torture and other cruel, inhuman or degrading treatment

400. Based on the information gathered by the United Nations High Commissioner for Human Rights and UNIIB[[712]](#footnote-712), the Human Rights Council condemned in 2015 and 2016, in Resolutions 30/27, S/24/1 and 33/24, the cases of torture and other cruel, inhuman or degrading treatment or punishment in Burundi[[713]](#footnote-713). UNIIB concluded in its report submitted to the Human Rights Council in September 2016 that “the use of torture or other cruel, inhuman or degrading treatment against third term opponents and specific members of the opposition or their relatives in order to extract information or as punishment was a characteristic of the crisis”[[714]](#footnote-714). The High Commissioner for Human Rights also noted that the cases of torture in Burundi “are for the most part; the work of police and intelligence agents during arrests or detentions in police stations and SNR offices”[[715]](#footnote-715). This finding was echoed by the Committee against Torture in its concluding observations of 9 September 2016 in which it deplored “the recent increase in acts of torture associated with the political crisis”[[716]](#footnote-716).

(a) Applicable law

 (i) International law

401. The prohibition of torture and other cruel, inhuman and degrading treatment is an international as well as an absolute standard that States are not supposed to ignore and must respect and protect in all circumstances[[717]](#footnote-717). This restriction is provided for in article 7 of the UDHR, article 7 of the ICCPR, article 5 (b) of CERD, article 37 (a) of the CRC, and most importantly by the CAT. In 2013, Burundi ratified the Optional Protocol to the CAT, but to date, has not authorized a visit of the Subcommittee on the Prevention of Torture. On 16 July 2017, the Subcommittee announced its intention to visit Burundi,[[718]](#footnote-718) which, along with 13 other countries, was listed as countries that, a year after the entry into force of the Optional Protocol to the CAT, had not yet put in place a National Prevention Mechanism against torture as required by article 17 of the same Optional Protocol.

402. According to Article 1 (1) of the CAT, torture is an act defined by several elements: “severe pain or suffering, whether physical or mental” it causes, the intention of the author to inflict such suffering, and the desired objectives, “for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind”. Torture is an act which “is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” The Committee against Torture has stated in this regard “where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts”[[719]](#footnote-719).

403. The CAT does not clearly define cruel, inhuman or degrading treatment. Article 16 (1) of the Convention specifies that they are not acts of torture but that, similar to acts of torture, these acts “are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. The Committee against Torture has indicated that “in comparison to torture, ill-treatment may differ in the severity of pain and suffering and does not require proof of impermissible purposes”[[720]](#footnote-720). The term ‘degrading’ also refers to the aspect of humiliation or debasement that is not necessarily caused by acute pain or suffering[[721]](#footnote-721).

404. Death threats may also constitute acts of torture or ill-treatment if they are made for the purpose of inflicting severe physical and mental suffering on the victim. Generally speaking, death threats may constitute human rights violations when they are made by government agents or persons acting on their behalf or with their consent[[722]](#footnote-722). The violation may also occur when the authorities fail to take appropriate legal steps to end death threats or to prosecute the authors of these threats[[723]](#footnote-723). Similarly, the authorities must take the necessary measures to bring to an end any death threat(s) from non-State Agents. Failure on their part to do so may constitute a human rights violation[[724]](#footnote-724).

 (ii) Regional law

405. The prohibition of torture and cruel, inhuman or degrading treatment is provided for in article 5 of the ACHPR and articles 16 and 17 of the African Charter on the Rights and Welfare of the Child. In addition, the African Commission on Human and Peoples’ Rights adopted in 2008 Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa. These guidelines recall, that “circumstances such as state of war, threat of war, internal political instability or any other public emergency, shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment”. Similarly, “notions such as necessity, national emergency and public order shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment”. Furthermore, “superior orders shall never provide a justification or lawful excuse for acts of torture, cruel, inhuman or degrading treatment or punishment”[[725]](#footnote-725).

 (iii) Domestic law

406. Article 25 of the Constitution of Burundi provides that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Under the Burundian penal code, torture and other cruel, inhuman or degrading treatment committed by “a public official or any other person acting in their official capacity or at their instigation or with their consent or acquiescence”[[726]](#footnote-726) is punishable by a prison sentence of 10 to 15 years. Article 208 of the Penal Code states that “Circumstances such as state of war, threat of war, internal political instability or any other public emergency, shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment. Orders from a superior or public authority shall never provide a justification or lawful excuse for acts of torture, cruel, inhuman or degrading treatment or punishment”.

407. The Penal Code also punishes “intentional bodily harm” which is punishable by a prison sentence of two to eight months[[727]](#footnote-727). The offense will be aggravated, and the perpetrator may be sentenced to between two and ten years of imprisonment when “the blows or injuries have caused permanent illness or work disability; or if it has resulted in the full loss of function of an organ or a serious mutilation or if bodily harm is perpetrated against a pregnant woman with the perpetrator being aware of the pregnancy”[[728]](#footnote-728). Article 222 of the Penal Code further provides that “anyone who intentionally mutilates another person’s body or one of his or her limbs or organs or renders the limb or organ unable to carry out its function or leaves a person unable to work or with a disability or a permanent mental illness, or who seriously and permanently disfigures a person, shall be punished by a prison sentence of five to ten-years”.

(b) Facts

 (i) Torture

408. Practices of torture and cruel, inhuman or degrading treatment existed in Burundi well before the period covered by the mandate of the Commission. In 2014, in its concluding observations on Burundi’s second periodic report, the Human Rights Committee was already “concerned by reports that many people have been subjected to torture by members of the police, defence and security forces and intelligence services”, “by claims that the persons responsible enjoy impunity”, “by the fact that an effective mechanism is not in place for receiving and investigating allegations of torture by the police and defence forces”. The Committee was also concerned “about the obstacles that prevent victims from filing complaints, including the fear of retaliation. The Committee notes with concern that the courts admit as evidence confessions that have been obtained through torture”[[729]](#footnote-729). However, from April 2015 onwards, there was a surge of cases of torture and ill-treatment. The methods used as well as the accompanying threats have also increased in brutality. The Commission noted the almost systematic recourse to torture or cruel, inhuman and degrading treatment of alleged opponents of the Government or the ruling party, particularly by SNR and police agents[[730]](#footnote-730). In this chapter, the Commission has compiled information on cases of torture and cruel, inhuman or degrading treatment, mainly in the context of detention. However, these illegal practices are not limited to incarceration[[731]](#footnote-731).

 Main victims

409. Most torture victims are young men, sometimes minors, and to a lesser extent older men as well as women. The profile of these victims bears some similarities. In most cases, the victims are suspected of having participated in the demonstrations against a new mandate for President Nkurunziza, residents of Bujumbura neighbourhoods where demonstrations took place from April to June 2015 and later were the scene of tensions with law enforcement, members or perceived supporters of opposition parties, in particular FNL and MSD, ex-FAB, members of the defence and security forces suspected of participating or supporting the failed coup of May 2015, suspected members or collaborators of armed groups, especially after the attacks on military camps in Bujumbura and its surroundings in December 2015 and the attack on the Mukoni Camp (province of Muyinga) in January 2017. Lastly, some of the victims had tried to flee the country and hence were suspected of wanting to join armed opposition groups.

410. Several victims interviewed by the Commission explained that during the torture or ill-treatment sessions they endured, the perpetrators of these acts wanted them to confess their involvement in the actions referred to in the previous paragraph or to admit their alleged affiliation to armed opposition groups. The perpetrators also wanted their victims to reveal the existence and location of alleged weapons caches, to report members of armed opposition groups or to provide any information related to the functioning of these groups[[732]](#footnote-732). Some detainees were also tortured because the authorities suspected them or members of their family, of having shared information with the media or international organisations[[733]](#footnote-733).

 Alleged perpetrators

411. In most cases, the torture victims interviewed by the Commission named SNR agents and the PNB among the alleged perpetrators of these acts of torture. Some also mentioned members of the FDNB, particularly during the crackdown that followed the attempted coup of May 2015 and the attacks on military installations in December 2015 and January 2017. Several victims indicated that they recognized officials, including high-ranking individuals, from the defence and security forces among the perpetrators and the sponsors of these acts of torture, both at national and provincial level. Some of these officials personally participated in the commission of acts of torture or ill-treatment[[734]](#footnote-734). In other cases, these officials allegedly directly instructed subordinates to torture detainees and these acts supposedly took place in their presence[[735]](#footnote-735).

412. While Stae agents were the main group responsible for acts of torture and cruel, inhuman, or degrading treatment, several testimonies collected by the Commission show that Imbonerakure acted as auxiliaries to the PNB and the SNR[[736]](#footnote-736), as well as the FDNB[[737]](#footnote-737), particularly when it came to questioning and arresting. In some cases, they handed over the person they arrested to members of the security forces who then proceeded to torture them[[738]](#footnote-738). Imbonerakure also participated in sessions of torture or ill-treatment in collaboration with government agents or in their presence[[739]](#footnote-739). A victim tortured by soldiers in 2015, whose scars were still visible following the abuse she suffered, reported the following:

“*A soldier kicked me [...] He called two people dressed in plain clothes. One was an Imbonerakure called [X]. Both Imbonerakure and the soldier hit me. The soldier was using his belt and the Imbonerakure had sticks. They all hit me at the same time and kicked me all over my body*”[[740]](#footnote-740).

 Types and methods of torture

413. The victims interviewed by the Commission stated that they had been tortured for several hours or days, especially at the beginning of their detention. Some were tortured in several locations and by agents from different institutions, such as members of the police force or the army, as well as members the SNR[[741]](#footnote-741).

414. The most recurrent methods of torture identified by the Commission consisted of:

* beating the victim on different parts of the body or in some cases all over the body with electric wires[[742]](#footnote-742), sticks[[743]](#footnote-743), gun butts[[744]](#footnote-744), truncheons [[745]](#footnote-745), belts[[746]](#footnote-746), iron rods[[747]](#footnote-747), wooden planks studded with nails[[748]](#footnote-748) or other objects, in some cases causing fractures on the victims or making them lose consciousness;
* kicking[[749]](#footnote-749) or walking on the victim[[750]](#footnote-750);
* slapping or hitting the victim on their ears[[751]](#footnote-751);
* Tying the victim with their hands behind their backs, tying their hands and feet with ropes or laces from military boots before hitting or walking on the victims[[752]](#footnote-752);
* pouring cold water on the victim[[753]](#footnote-753);
* forcing the victim to sit or kneel on bottle caps or sharpened stones[[754]](#footnote-754);
* utilising pliers on different parts of the victim's body, including their nails[[755]](#footnote-755);
* striking the victim with sharp objects such as bayonets, machetes or knives[[756]](#footnote-756);
* placing a hot iron on the victims[[757]](#footnote-757);
* pulling the victims’ teeth[[758]](#footnote-758);
* pouring liquid, sometimes scalding hot, on the victims or forcing the victim to drink the liquid[[759]](#footnote-759);
* pressing long needles into the victims’ body[[760]](#footnote-760);
* lacerating the victims with heated knife edges, machetes or bayonets[[761]](#footnote-761).

415. For example, in 2016, a minor at the time of the incident, was arrested in Bujumbura by police officers accompanied by Imbonerakure and an SNR officer. The minor told the Commission that he was tortured at the SNR headquarters where he was detained for three months:

“*A police officer tied me to [a tree] with the rope that had been used to tie my hands and feet. I was in a horizontal position [...] [Police officers and Imbonerakure] brought truncheons and iron bars, they started beating me. Between 1 pm and 5 pm, they started beating me to see if I would give up the names of other protesters. They hit me very hard [...] I screamed in pain and the police officers cut out a piece of my shirt and they gagged me*”[[762]](#footnote-762).

416. Other victims, mostly men, testified that they had been sexually tortured, mainly through forced nudity scenes or hanging heavy bottles or jerry cans filled with water, sand or earth on their genitals[[763]](#footnote-763). In 2015, police officers arrested a young man in Bujumbura, accusing him of knowing the existence of a weapons cache. He was detained at the Special Bureau of Investigations (BSR) where he was beaten by police officers with iron bars. A few days later, two men took him to another province, where he was detained and tortured in a container:

*“The container was divided into two parts. A smaller part of 2m x 1.5m where the prisoners were kept. In the other, larger part of the container, people were subjected to torture sessions [...] In the detention room, there were reinforced iron rings welded into the roof of the container to which we were attached using two iron chains [...] Bottles of 1.5 litres filled with water were brought and attached to our testicles [...] We suffered this form of torture for four days in a row and during the day, we were left attached. From time to time, the length of the chain was extended to bring us closer to the ground and a chair was brought so that we could rest our feet, but we always remained in the same position, with arms and body in a T-shape [position]. [...] my testicles were so swollen that I could not walk. I asked permission to go to the hospital. I was told that the torture sessions that were waiting for me would be more painful than the previous ones*"[[764]](#footnote-764).

417. Testimonies gathered by the Commission also show that SNR or police officers, sometimes assisted by Imbonerakure, forced victims to eat, smear themselves with or lie in human faeces and/or to drink human urine[[765]](#footnote-765).

418. In January 2017, several soldiers and civilians arrested in connection with the attack on the Mukoni Camp were tortured by SNR agents in Muyinga Province. The agents were looking for information on the attack and the identities of the suspected assailants. Among those arrested, some were also beaten by Imbonerakure, supervised by provincial agents of SNR in Muyinga. Some of the victims were hit all over the body with long iron bars or sticks. Others experienced abuse aimed at violating their dignity, such as being forced to eat faeces. A senior SNR provincial officer ordered, supervised and participated in these acts of torture[[766]](#footnote-766).

 Death threats while in detention

419. To obtain confessions or information during torture sessions, several victims were threatened with death. SNR and police officers threatened, among other things, to blow them up with grenades, to amputate a part of their bodies, or to shoot them[[767]](#footnote-767). A man arrested by a police officer in Bujumbura in 2016 recounted his story to the Commission:

*“[The police officer] ordered his bodyguards to hit me. They hit me everywhere on the body. They threatened me and they tied my arms behind my back. Then they put me in my van [...] [The police officer] said [...] ‘Try and see if you can escape!’ He told his bodyguards: ‘Hit him! Kill that fool!’ They all hit me [with] [sticks] and rifle butts [...] [The police officer] took a bayonet and said, ‘If you do not reveal the location of the weapons you are hiding and where you conduct the youth training, we will kill you right now’[...] I was stripped naked. I was still tied up with a rope around my arms*”[[768]](#footnote-768).

A member of an opposition party was arrested and threatened with death by a senior SNR provincial agent in 2015. This agent, who was accompanied by police officers, placed him inside a vehicle with other detainees and took him to a place he was unable to identify. It was close to a river and in a different province. He made the following statement to the Commission:

*“[The SNR provincial agent] said,’We are going to kill you and throw your bodies into the river’[...] they forced us to lay down on our stomachs [...] they tried to make us confess [that we] collaborated with the rebels [...] [The SNR provincial agent] said, ‘Where are the rifles? […] Where are they? You [either] agree or you die’.*”

The detainees were then taken to the SNR headquarters in Bujumbura, where young people dressed in civilian clothes, described by the witness as *“neither police officers nor soldiers”*, hit them with iron bars and kicked them with their feet. Later: *“The SNR agents [...] accused [me] of being [a] rebel [...] Behind me, another [agent] was interrogating a detainee. [...] He had been shot in the leg and was bleeding. The agents were hitting him like a snake while he was bleeding. [...] [The agent] who questioned me said: ‘You see, you do not have enough strength to resist that. You will die if you do not spill what you know’.”[[769]](#footnote-769)*

420. To increase pressure, the perpetrators sometimes threatened to attack the family members of victims who did not or could not provide information[[770]](#footnote-770). A minor, tortured at SNR headquarters in Bujumbura, reported the following:

“*Three police officers dressed in civilian clothes came to take me and they placed me in a room. They asked me if I had a mother. I replied, ‘Yes’. They asked if I loved my mother. I said, ‘Yes, very much’, and they asked me if I had [brothers and sisters]. I said [Yes] and they asked me if I [loved them]. I replied, ‘Yes’. So the police officers told me to give them the names of the insurgents in the neighbourhood as well as the places where they kept their weapons [...] One of them told me that they were going to get my mother and [my brothers and sisters] to kill them in front of me; they were going to see if this is not going to make me tell them where the weapons were*”[[771]](#footnote-771).

421. The Commission interviewed people who were not only tortured but were forced to watch the execution of detainees, convinced that they would be next. For instance, a man arrested by police officers in Bujumbura in 2016 was first tortured and threatened with death by the arresting officers who accused him of collaborating with soldiers involved in the coup attempt, then, he was forced to witness the execution of several other detainees:

“*The police officers told me, ‘regarding what we told you, do you agree or not? Otherwise, you will die. Tell us [...] who do you collaborate with’, I replied that I haven’t done anything wrong [...] they said, ‘Just tell us where you keep the weapons’ [...] the other detainees loudly proclaiming [...] their innocence [...] I saw the police officers executing them using knives. I saw it with my own eyes. They used knives and machetes. They died on the spot. [...] I watched all of that. It was a way of torturing me. [...] I said [to the police officers]: ‘Do not kill me like that. Kill me with bullets’. They said, ‘You'll see how we are going to kill you’ [...]. [A police officer] grabbed an iron bar and said, ‘Say one last word and we are going to kill you’.*”[[772]](#footnote-772)

422. Other detainees were placed next to dead bodies, sometimes beheaded ones, in order to convince them that they would suffer the same fate if they did not make the expected confession or if they did not provide the requested information[[773]](#footnote-773). A man detained at the SNR in Bujumbura in 2016 stated:

“*[An API police officer and an SNR agent] beat me severely with rifle butts and iron bars [...] In the SNR cell, I was with 22 other detainees. [...] Around 6 pm, I was taken alone to another room where there were already two dead bodies. [An SNR agent] then told me, ‘You will receive the same fate as these Tutsis’.*”[[774]](#footnote-774)

 Insults of an ethnic nature

423. Several testimonies revealed that, in some cases, the ethnicity of the victim was an aggravating factor and that some perpetrators of acts of torture had insulted the victims because of their ethnicity. A man tortured by police officers and SNR agents in 2015 repeated the insults that were directed against him to the Commission:

“*They tortured me in another room, not in front of the other detainees. I was insulted: ‘You, the Tutsis [...] you will all end up on the clothesline, we will wash and iron you, and then we will hang you on the clothesline. You are cockroaches, you think you are smarter, you are going to end up like the Tutsis of Rwanda, and no one is going to help you’.*”[[775]](#footnote-775)

A young man arrested by police officers in Bujumbura in 2016 and tortured by SNR agents testified: “*We were told to place ourselves in push-up position. They brought batons and started beating us in this position. They told us that the number of blows was going to be doubled for the one who would scream [...] [A police officer] came and insulted me saying: ‘he is a little Tutsi dog’. The other police officers laughed [...] We were told to sit on the floor with our legs stretched and they started to hit the soles of our feet with batons [...] [A police officer] came and told the other officers that they did not know how to hit and [that he] would show them how to do it. [He] started beating me on the soles of my feet with a baton. I said to him: ‘Please! Please! [...]’ [The police officer] asked me if I thought [he] could have a Tutsi [child] like me, and I stopped talking*”[[776]](#footnote-776).

Another man detained at the SNR headquarters in 2015 described to the Commission the acts of torture he suffered, accompanied by ethnic insults: *“Without asking [any] questions, the police officers slapped me. I fell to the ground. There were around 12 police officers [...] they put me in the pickup truck. They forced me to lay down in the vehicle, underneath the [vehicle’s] seat, and [then] they trampled on [top of] me. They said to me, ‘You pretend to have a slender body and yet you have to squeeze yourself [underneath] there. We must reduce you in size’. One of them put the barrel of his rifle under my nose and said, Do you smell this? Do you smell the [gun] powder?’ They told me: ‘[...] you, sons of bastards, imbeciles, sons of Tutsis!’ The insults continued at SNR headquarter where I was tortured: They asked, ‘Where are you from?’ I said, ‘From Bujumbura’ [...] they said, ‘We want to know your origins. Where do your parents and grandparents come from?’ [...] Then an officer came in [...] He jumped in the air and landed on my belly. He said, ‘[You] think you are going to escape, you [Tutsis]!’.”[[777]](#footnote-777)*

424. The Commission has collected other testimonies with descriptions of insults from police officers and SNR agents against Tutsi detainees. Examples of name calling include: “dirty Tutsis”[[778]](#footnote-778), “*Inkende*” (monkeys)[[779]](#footnote-779), “*Imbwa zaba* Tutsi” (Tutsi dogs)[[780]](#footnote-780) or “Tutsi insurgents”[[781]](#footnote-781).

 Places of torture

425. Two places of torture in the city of Bujumbura were mentioned by several victims of torture. The first one is the SNR headquarters located in the Rohero district, near Regina Mundi Cathedral[[782]](#footnote-782). Before getting there, victims arrested in Bujumbura often transited first through police holding cells in the capital’s neighbourhoods, while those who are apprehended in the provinces often go through the provincial office of the SNR or police holding cells at the municipal or provincial level.

426. Witnesses described the headquarters of the SNR in Bujumbura as an actual torture centre where detainees were tortured in various locations, including secret cells located, for example, in the basement and inside unfinished buildings[[783]](#footnote-783). One witness told the Commission that torture sessions took place at the SNR every day in 2015[[784]](#footnote-784). The Commission also received more recent accounts of torture. For instance, a member of an opposition party tortured in 2016 was detained in an isolation cell for 21 days to force him to disclose the names of participants in the protests. He stated:

“*Even members of my family could not see me, neither could the observers from the African Union, because they [SNR agents] were hiding me. They hid me more than seven times. At the SNR, there are garages where vehicles are parked, and they put me in the trunk of a vehicle in which there was a crate. They could only put in one person, and it can be locked*”[[785]](#footnote-785).

A man arrested in 2015 by a local SNR official in Bujumbura was taken to their headquarters in a van: “*I heard the driver ask [the SNR officer], ‘Where are we taking him? In Kamenge?’ [The Officer] said to drive me to the SNR close to the Cathedral. In the van, [in addition] to the driver and [the officer ...], there were six police officers dressed in their uniforms. There was a construction site at the SNR, and my interrogation took place in that unfinished building [...] When you enter in the SNR, there are different places where people are tortured. You are tortured upon arrival by the person who receives you [...] I was hit by [a police officer] on the ankle, on the buttocks and on the back of my neck with wooden planks that had nails in them*”[[786]](#footnote-786).

427. The second place of torture often mentioned by the victims is the headquarters of BAE, located at ‘Chez Ndadaye’, near the Independence Square in Bujumbura. The police seem to have used this place especially in 2015 and early 2016 to detain and torture people who had participated in the demonstrations[[787]](#footnote-787). A witness who worked nearby indicated that he heard shouting several times in 2015 and saw pickup trucks entering at the end of the day with people tied up on board[[788]](#footnote-788). A victim of torture in January 2016 stated the following to the Commission:

“*At the time of my arrest, [the police officers] hit me with the butts of their rifles. I fainted and later found myself in the camp commonly referred to as ‘Chez Ndadaye’. There were other young people there too. The [police] chief asked us three times the same question: ‘Are you rebels?’ We all denied. At this point, the police commissioner hit us on the neck, pelvis and on the back of the ankle. I was beaten more harshly than the others [...] [The police commissioner] insisted on asking the same question about belonging to the rebellion to one of us [...] that person was around 20 years old. Then, he drew his pistol and executed the young man with a bullet in the head*”[[789]](#footnote-789).

428. Torture took place in other official police detention centres in Bujumbura, including the BSR[[790]](#footnote-790) and the Musaga police station[[791]](#footnote-791). Other detainees were tortured by soldiers, at Muha Camp[[792]](#footnote-792). People detained by the SNR were tortured not only at its headquarters, but also in other places, including Kamenge[[793]](#footnote-793), as well as in the provincial offices of the SNR, for instance in Kayanza[[794]](#footnote-794) and Muyinga[[795]](#footnote-795). Other people were tortured in police detention facilities in several provinces, including provinces of Rumonge and Cibitoke[[796]](#footnote-796).

429. Detainees were also tortured in unofficial detention sites[[797]](#footnote-797). The places most commonly mentioned by the victims are containers, especially in Kamenge[[798]](#footnote-798); private houses, sometimes abandoned or unfinished, in Bujumbura[[799]](#footnote-799). The victims were not always able to precisely locate these places because they were brought there blindfolded or with a hood over their heads[[800]](#footnote-800). Another unofficial torture site is the bar called ‘*Iwabo w’Abantu’* which belonged to General Adolphe Nshimirimana, the former Administrator General of the SNR. This bar was located on the outskirts of town when exiting Bujumbura[[801]](#footnote-801); and a house in Kayanza Province[[802]](#footnote-802). Some people have also been tortured in the bush or in forests[[803]](#footnote-803).

 (ii) Cruel, inhuman or degrading treatment

430. In addition to these cases of torture, the Commission has documented many instances of cruel, inhuman or degrading treatment. These treatments were sometimes inflicted by police officers, SNR agents and militaries, working in some cases with Imbonerakure. The nature of these treatments also includes poor detention conditions which the Commission documented through several testimonies and that the CNIDH also highlighted on several occasions in their reports[[804]](#footnote-804).

 Cruel, inhuman or degrading detention conditions

431. Many victims interviewed by the Commission were detained in conditions constituting cruel, inhuman or degrading treatments, for example in toilets[[805]](#footnote-805), cubicles[[806]](#footnote-806) or windowless and darkened rooms[[807]](#footnote-807). Victims were sometimes naked[[808]](#footnote-808). Witnesses reported the presence of numerous detainees in narrow cells and overcrowded jail cells, with no separation between adults and minors, for example at SNR in Bujumbura[[809]](#footnote-809). A victim of torture, detained for over a month in a container in a province in 2015, testified:

“*In total, we were 31 people held in a small cell inside a container. We stayed naked for the duration of our detention there*”[[810]](#footnote-810).

A member of an opposition party tortured at the SNR in 2015 described his conditions of detention: “*My cell was four square meters. We were around forty prisoners: 20 standing, 20 laying down. We took turns to sleep. All the prisoners, adults and minors, were placed together. We [the detainees] took care of those who had been severely tortured. I was considered as one of them by the other detainees, so they let me sleep [...] all the 40 men relieved themselves in the same cell [...] there were minors amongst us. I lost 12 kilos during my detention at the SNR*”[[811]](#footnote-811).

432. Detainees were sometimes deprived of sufficient food or drinking water[[812]](#footnote-812), as reported by a young man detained in a container in Bujumbura in 2015, along with 15 people:

“*When I arrived in that container [...] I did not get anything to drink or eat during the three days I spent there. The conditions were so bad that one day a prisoner urinated in another's mouth to rehydrate him [...]. During the day, it was very hot in the container and at night it was very cold*”[[813]](#footnote-813).

433. Other detainees were denied access to any personal hygiene or restrooms[[814]](#footnote-814). A man detained in 2016 in the cell of a provincial police brigade made the following statement:

“*At night, the Imbonerakure [in the cell] fetched water. There was a section of the cell called ‘mondis’, where one relieves himself. If you were new or an opponent, you were placed there. They splashed water on the floor and forced us to lie down on the wet cement. That is where I had to sleep. ‘Mondis’ was like a place one is sent for punishment*”[[815]](#footnote-815).

A man detained at a provincial police station in 2016 stated, “*There, the situation was very difficult. There was no communication with the outside world. I was not allowed to go to the bathroom. I relieved myself in my cell using a small container that had been provided for that purpose. One day, police officers brought me a meal prepared by my family. They spilled it on the floor to see if my family had not passed a message through the food*”[[816]](#footnote-816).

434. Despite the torture and ill-treatment that often resulted in serious injuries and other health issues, many victims were denied access to adequate medical care[[817]](#footnote-817). A young man, who was a minor at the time and had been injured as a result of abuse, spent 12 days at the SNR in 2016 without receiving any care[[818]](#footnote-818). A man arrested in Bujumbura in 2015 and tortured at the SNR reported:

“*At the SNR there was no medical treatment, even if we were sick or injured. They leave you injured or sick. Even if we die, it did not matter to them [...] they broke my nose [...] they used cables to hit detainees. Some of these cables were plugged in and had electricity, but not all of them. In my case, they did not hit me with cables but with irons, similar to clothing irons. The iron was plugged in. They raised the temperature [of the iron] until it was very hot, then they put the iron on me, on my back and on my neck*”[[819]](#footnote-819).

435. In the few cases where victims were able to see a doctor in detention, the care they received was insufficient or inadequate. A victim tortured in 2016 at SNR headquarters in Bujumbura told the Commission that he was hit with a concrete bar while lying on his stomach, and he received an injection in his right testicle, which caused generalized pain before he fainted. When he woke up in his cell, he noticed that his penis was swollen:

“*The doctor saw me, and I showed him where it hurt the most and he gave me Paracetamol. I asked him why he was only giving me that [...] He told me to take it, that it was going to help me*”[[820]](#footnote-820).

436. Recognizing the ill-treatment inflicted upon the detainees, SNR agents in Bujumbura sought to hide some of the victims of torture from the oversight of international bodies that monitor detention conditions and the respect for the detainees’ human rights, in particular the United Nations Office of the High Commissioner for Human Rights in Burundi and the African Union human rights observers[[821]](#footnote-821). A victim of torture, detained at the SNR in Bujumbura in 2015, told the Commission:

“*There is a place within the SNR where badly tortured people were hidden. There are secret cells inside the SNR. We can hear screams, but we cannot pinpoint the exact location*”[[822]](#footnote-822).

437. SNR agents put pressure on some detainees instructing them not to meet with those observers or tried to monitor or control their interviews[[823]](#footnote-823). For instance, a man arrested by a senior SNR official in Bujumbura in 2015 and detained at SNR headquarters testified:

“*Two days after my interrogation, the human rights people came [...] and we were warned not to divulge anything during their visit [...] during the interviews with the human rights people, SNR agents were next to us, and we were not free to say what we wanted to. People whose eyes had been gouged out or who had become disabled due to torture were hidden in a room*”[[824]](#footnote-824).

 (iii) Consequences of torture and cruel, inhuman or degrading treatment on victims

438. Many of the victims of torture and/or ill-treatment that the Commission met with presented serious physical (multiple scars, partial disability) and psychological scars[[825]](#footnote-825). Some victims had fractures, lost their teeth, suffered from partial paralysis, various pain, some of which are long-term, as well as urinary or genital infections.

439. Victims of sexual torture, who in some cases had been injected with unknown drugs during their detention, complained of their testicles being atrophied or erectile dysfunctions long after the fact[[826]](#footnote-826). A man tortured at the SNR in 2015 stated to the Commission:

“*I was hit so many times on the genitals. I was told to bend over with my arms on my knees, and I was kicked in the genitals. Since then, because of the beatings, I am unable to have sexual intercourse. I do not get erections anymore. I have become impotent”*[[827]](#footnote-827).

440. Several victims of torture told the Commission that they need psychological and medical support. A particularly striking case is that of a man who, after being shot in the leg during the events of 11 December 2015, was later arrested and tortured at the SNR in Bujumbura, where agents had cut off two of his fingers because he had refused to admit that he was in a rebel group. He also witnessed, unwillingly, violent abuse inflicted upon other detainees. Since then, he suffers from severe psychiatric disorders[[828]](#footnote-828). Another victim of torture, who was arrested following the same events and who had a near-death experience, is also in a fragile psychological state since witnessing summary executions in a military camp in Bujumbura[[829]](#footnote-829).

441. The Commission has also documented several deaths of victims of torture in SNR holding cells in Bujumbura and other detention facilities[[830]](#footnote-830). A young man, a victim of torture himself at the SNR in 2015 stated:

“*There were four other people in the cell, all adults. One hour later, one of them died. There was blood coming out of his nose and mouth. I did not see when he was tortured*”[[831]](#footnote-831).

Another man who was arrested and tortured by police officers in 2016 reported the following: “*They took me by force and put me in the vehicle [...] There was another young man in the car. His arms and legs were tied up. He was very dirty and in a poor condition. [...] We were told to get out of the car and stand. I came out but the young man could not get out because he had an issue with his spine. [...] [Later] he died in the car. They had hit him on the head. I saw something white coming out of his nose*”[[832]](#footnote-832).

The Commission also documented the death of a torture victim in a police holding cell in the Muramvya Province. He died in June 2017 from the beating he received from three Imbonerakure accompanied by the head of the CNDD-FDD in the province[[833]](#footnote-833).

 Consequences for the families of the victims

442. The families of torture victims were not spared either during the detention or after the release of their loved ones. Some families were harassed and threatened by police officers, SNR agents or Imbonerakure[[834]](#footnote-834)*.*

443. The family members of torture victims often live in anguish, fear and despair until they find their relatives and they are released. Several victims of torture told the Commission that their close relatives cried after seeing the poor condition they were in upon their release[[835]](#footnote-835).

 5. Sexual Violence

444. In 2016, the United Nations Office of the High Commissioner for Human Rights and the UNIIB, in their respective reports to the Human Rights Council, reported cases of sexual violence in Burundi since April 2015[[836]](#footnote-836). On this basis, the Human Rights Council condemned the “sexual and gender-based violence” in Burundi in its Resolution 33/24, adopted on 30 September 2016[[837]](#footnote-837).

445. In November 2016, in its concluding observations on the fifth and sixth periodic reports of Burundi, the Committee on the Elimination of Discrimination against Women indicated that it was “seriously concerned about the exacerbation of violence against women in the State Party since the onset of the internal conflict in April 2015”[[838]](#footnote-838). The Committee expressed its disappointment towards “the lack of demonstrated efforts by the State Party to document cases of sexual violence having occurred during the conflict, widespread impunity owing to the absence of investigation, prosecution and punishment of the perpetrators of violence against women in conflict and victims’ lack of access to justice and reparations”[[839]](#footnote-839). In September 2016, the Committee against Torture stated that it was “alarmed at the numerous corroborated allegations of sexual violence against women as a means of intimidation and repression during protests and searches conducted by the police, military or members of the Imbonerakure youth group in Bujumbura neighbourhoods said to be opposition’s neighbourhoods”[[840]](#footnote-840).

(a) Applicable law

 (i) International law

446. Sexual violence, namely acts of a sexual nature committed without the consent of a person, undermines the physical and psychological integrity of the victim and, from a legal standpoint, it violates several rights which are enshrined in international conventions. Among these, we have the right to security of the person, the right to be protected against torture and other cruel, inhuman or degrading treatment and the right to the enjoyment of the highest attainable standard of physical and mental health[[841]](#footnote-841).

447. Sexual violence constitutes a violation of international human rights law when committed by a public official, at their instigation or with their consent or acquiescence but also when the State does not demonstrate due diligence in protecting people from sexual violence by non-State officials and entities, including by investigating acts of sexual violence and prosecuting the perpetrators of such acts in accordance with domestic and international law[[842]](#footnote-842).

448. Victims of sexual violence can be men, women or children. However, practice has shown that women are among the most vulnerable. The Declaration on the Elimination of Violence against Women, adopted by the United Nations General Assembly in 1981, defines “violence against women” as “any act of gender-based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”[[843]](#footnote-843).

1. **Regional and sub-regional law**

449. In 2003, Burundi signed the Protocol to the ACHPR on Women’s Rights in Africa but has yet to ratify it. On the other hand, Burundi is party to the Pact on Security, Stability and Development in the Great Lakes Region, as well as its Protocol on the Prevention and Suppression of Sexual Violence against Women and Children[[844]](#footnote-844). This Protocol is legally binding and defines sexual violence as including, among others, rape, sexual harassment, assault, aggression or mutilation of female reproductive organs, forced pregnancy, sexual exploitation or coercion, infection of women and children with sexually transmitted diseases, or any other act of comparable seriousness. The Protocol requires member States to commit to preventing and suppressing sexual violence towards women and children by taking preventive, penalising and repressive measures in accordance with domestic and international law.

1. **Domestic law**

450. Along the same lines of the Rome Statute, the Burundian Penal Code stipulates that “rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilisation or any other form of sexual violence of comparable gravity” are among the acts that may constitute crimes against humanity[[845]](#footnote-845). In addition, the Burundian Penal Code devotes an entire section to rape[[846]](#footnote-846), an offence that is characterized by four factors: “(1) Any man, regardless of age, who uses his sexual organ to penetrate, even superficially, the sexual organ of woman or any woman, regardless of age, who forces a man to introduce, even superficially, his organ into hers; (2) Any man who uses his sexual organ, a part of his body or any other object to penetrate, even superficially, the anus, mouth or any other body cavity of a woman or man; (3) Any person who introduces any part of their body or any type of object, even superficially, in the female sexual organ; (4) Any person who forces a man or woman to penetrate, even superficially, his/her anal, buccal orifice with a sexual organ”[[847]](#footnote-847).

451. Rape is punished by 5 to 15 years of imprisonment. The sentence will be further increased - from 15 years to life in prison - if aggravating circumstances are found, such as, an underage or vulnerable victim, when the perpetrator abuses the authority derived from their functions, the crime is committed by a group, if the perpetrator is carrying a weapon, if the rape resulted in death, serious impairment of health or has left significant physical or psychological impacts, or if the rape was preceded, accompanied or followed by acts of torture or cruelty[[848]](#footnote-848).

452. The Burundian Penal Code stipulates that “the official capacity of the perpetrator of a sexual violence offence shall in no way exempt them from liability or constitute a justification for reduced sentencing”. Similarly, “hierarchical order or directive from legitimate civilian or military authority does not, in any way, exonerate the perpetrator of a sexual violence related offense from being accountable”[[849]](#footnote-849).

453. These provisions were confirmed in law n° 1/13 of 22 September 2016 “on the protection of victims and the prevention and repression of gender-based violence”[[850]](#footnote-850) whose adoption was welcomed by the Committee on the Elimination of Discrimination against Women[[851]](#footnote-851). Article 53 of this law provides that “a prison sentence of 12 to 15 years and a fine of 100,0000 to 500,000 (equivalent to 57US$ to 286 US$) will be imposed on any person in a position of public authority, entrusted with public service, holding a public mandate, any court officer, judge, prosecution or investigating officers who has, implicitly or explicitly, demanded or imposed sexual acts in order to act or refrain from acting in the exercise of their functions”. The various offenses contained in the Penal Code are also recalled, but the law adds, among others, acts of sexual mutilation, “any act of intimidation for the purpose of abandoning a judicial procedure regarding gender-based violence”, and psychological and emotional abuse (i.e., “acts of intimidation, threats, insults, derogatory remarks towards a spouse”[[852]](#footnote-852). The law encourages the Government to take all the necessary awareness-raising measures for the prevention of gender-based violence and provides for the creation of a “specialized unit or a focal point for gender-based violence” within every police station, at “reception centres and shelters that care for the victim”, as well as a specialized chamber on gender-based violence in every regional court (*tribunal de grande instance*)[[853]](#footnote-853).

(b) Facts

1. **Main victims**

454. The Commission was able to interview 49 victims of sexual violence[[854]](#footnote-854), as well as conduct interviews with other sources. The actual number of victims is probably much higher, given the reluctance of many victims to denounce the sexual violence they endured due to, in particular, fear of retaliation, stigmatisation or rejection by their own community - whether the victim is a man or a woman. Sexual violence documented by the Commission dates as far back as April 2015, and the most recent cases were from January 2017.

455. Among these 49 victims[[855]](#footnote-855), 31 were female, including three who were minors at the time of the facts, and 18 male victims, including one minor. The youngest victim was only eight years old when an Imbonerakure, who was looking for her father, a member of an opposition party, found her alone at home and raped her. The oldest victim was 71 years old at the time of the facts.

456. The profiles of the victims of sexual violence interviewed by the Commission share some similarities: several victims or their family members participated or were accused of participating in the 2015 demonstrations[[856]](#footnote-856); the victims were members or were accused of being members of opposition parties, in particular MSD or FNL[[857]](#footnote-857).

457. According to testimonies collected by the Commission, the comments made by the perpetrators and the circumstances under which they committed the sexual violence reveal common motives: to punish the victims or their relatives for their participation or support, in the protests against a new mandate of President Nkurunziza and, more broadly, for their political affiliation or that of relatives to an opposition party. For instance, one victim, a protester in 2015, gave the following testimony:

*“[Several] men [...] Imbonerakure came to my house [...] they raped me in the presence of my husband whom they had tied up [...] [and they killed him] in front of me. [...] They poured a product in my face [...] they insulted me, saying: ‘Do that again and you will see’. My husband and I participated in the street protests*”[[858]](#footnote-858).

A man also testified to the following: “*At the Documentation [headquarters of intelligence services], they hit me [...] I participated in the demonstrations. I am against the third term. They fondled my genitals. I fainted and after three hours, I regained consciousness, I felt that they had raped me*”[[859]](#footnote-859).

A woman also testified about her rape in 2015 in her house in Bujumbura: “*I was alone [...] they raped me. Men, Imbonerakure, entered my room. They pulled me out of bed and threw me on the floor. They tore up my dress and said, ‘You are from the wrong ethnic group’. One pinned my arms; another immobilized my legs and a third one penetrated my vagina with his penis [...] I fainted so I do not know if I was raped by [all my attackers]. They wore long black waterproof coats. They accused me of not being a member of their party*”[[860]](#footnote-860).

458. Sexual violence was also committed during the crackdown that followed the attacks on military camps in Bujumbura and its surroundings on the 11 December 2015[[861]](#footnote-861). For example, a woman who was arrested by police officers and raped in Bujumbura made the following testimony:

“*On 11 December 2015, the neighbourhood was surrounded. At 9:00 am, we heard someone knocking at the gate. My [mother] did not want us to open and the gate was forced open. Shots were fired in the air to intimidate everyone [...] When the police officers came in, they ransacked everything and broke the television, telling us to show them where [one of my relatives] had hidden the weapons. They searched and nothing was found. They took me in a police pick-up truck in which there were already other people I could not see due to the hood that the police officers placed on me [...] We were taken to a place that I cannot recognize, and I was left alone in a cramped room and I could not stand [...] The man who was interrogating me [...] asked me to undress. That man raped me [...] I asked for forgiveness, but he did not want to stop and he said to me, ‘I will not stop as long as you have not told me where your [relative] left weapons’.*”[[862]](#footnote-862)

459. In general, sexual violence appears to have been committed to impose a form of domination over women and men with links to opposition parties or movements[[863]](#footnote-863). Some victims were also targeted because they were not members of the CNDD-FDD or because they had refused to join or participate in its meetings[[864]](#footnote-864). Some victims claimed they were targeted because of their ethnicity in addition to other reasons often linked to their political affiliation[[865]](#footnote-865).

460. The Commission noted the unique vulnerability of women to sexual violence during or after the arrest, following the disappearance or death of their male spouse or relative. Female victims were targeted, when alone and defenceless, to further dishonour their male relative as well as the family unit in general. Women reported to the Commission that they were raped by Imbonerakure after they killed their husband or relative[[866]](#footnote-866). For example, in 2015, a group of men killed a supporter of an opposition party and raped his wife a few days later at her home[[867]](#footnote-867). Another victim stated that Imbonerakure killed her father in April 2015 in Bujumbura before raping her[[868]](#footnote-868).

461. Some women and girls were raped in the presence of their relatives, which not only resulted in their humiliation but also permanently damaged their dignity[[869]](#footnote-869). For instance, a victim reported that in 2015, she was raped by men in military uniform with dark blue berets in Bujumbura. One of the men raped her in front of her husband before killing him, then another raped her in front of her child[[870]](#footnote-870). Another woman testified about the abduction of her husband by a group of unknown men in 2015. A few weeks later, some of the men returned to her home and one of them raped her in front of her child[[871]](#footnote-871).

462. Most cases of sexual violence on men documented by the Commission occurred during their detention. Rape was used on the victims as a means to extract information or confessions, just like other forms of torture[[872]](#footnote-872), and, according to the victims, to humiliate them and undermine their masculinity[[873]](#footnote-873). For example, a man testified about the abuse he experienced at SNR headquarters in Bujumbura:

“*They held my testicles with iron pliers, and I bled around my penis. They wanted me to reveal the location of the weapons and to admit that I worked with [an opposition leader]*”[[874]](#footnote-874).

1. **Alleged main perpetrators**

463. The Commission interviewed 27 victims of sexual violence perpetrated by State agents. Given the identity of the perpetrators, these acts constitute human rights violations. Most of this sexual violence was perpetrated by police officers and/or SNR agents[[875]](#footnote-875). In some cases, they acted together; in others, these acts were committed jointly with the Imbonerakure[[876]](#footnote-876). In this scenario, Imbonerakure acted on orders or under the control of State agents, therefore, the responsibility of their acts falls on the Government[[877]](#footnote-877). For example, one victim explained that she was raped by an Imbonerakure in the presence of two SNR agents at the SNR headquarters in Bujumbura in 2015[[878]](#footnote-878). Another testified being raped at her home in 2016 by a group of 6 to 10 people, including Imbonerakure and “two police officers in blue uniforms”[[879]](#footnote-879).

464. Out of these 27 cases of sexual violence, 21 took place in detention centres, most of them at the SNR headquarters in Bujumbura. A victim testified to their rape by two police officers at the SNR, in Bujumbura, in 2015:

“*Two people in police uniform took me to [a] room [...] The two police officers smoked something in a pipe and one of them blew smoke on me and I fainted. I know they raped me [...] but I do not know how many people [did rape me]*”[[880]](#footnote-880).

465. The Commission heard testimony from 10 victims of sexual violence who reported being raped by Imbonerakure[[881]](#footnote-881). Sexual violence committed by Imbonerakure, without any links to a State agent, is a human rights violation[[882]](#footnote-882). A victim testified:

“*I was tied up by the Imbonerakure [...] they were in civilian clothes. They were around 23 or 26 years old. The one who raped me had a sort of eagle tattooed on [his body] – it’s the emblem of the CNDD-FDD party*”[[883]](#footnote-883).

466. Other accounts referred to Imbonerakure as wearing police uniforms. For instance, a girl was raped at her home in Bujumbura in 2015 by individuals in police uniform whom she identified as Imbonerakure. The men were looking for her brother who had left the Imbonerakure group. In retaliation, they killed one of her parents and then raped the girl near the body of the parent they had just killed[[884]](#footnote-884).

467. Another victim testified that several people whom she assumes to be Imbonerakure came to her home and raped her:

“*One of them slapped me. Another struck me in the back with a rifle butt and the pain was so intense that I fainted. They picked me up while I was unconscious and took me to my room. When I regained consciousness, I heard: ‘Show us the weapons’. There were [several] of them in my room. One took my right arm, the other my left arm and another took my feet. They raped me one after the other. They all inserted their penis into my vagina. I was screaming and they placed their hand on my mouth [...] [They] savagely raped me, one after the other. Then, they inserted a wooden pestle and other pieces of wood into my vagina, very deep, tearing my uterus [...] I do not know the names of these men. They were the same age as my sons. They wore police uniforms*”[[885]](#footnote-885).

1. **Types of sexual abuse**

468. The distinctly cruel and brutal nature of sexual assaults had a significant impact on the Commission. The perpetrators’ intention to punish and brutalize their victims highlights the inhumane aspect of these assaults and attempts. For instance, some Imbonerakure wearing police uniform told a victim whom they had raped and later mutilated: “*We have to kill her*”. “*No, killing her would not be the same as torturing her properly*”, “*We have to break her*”[[886]](#footnote-886). According to another victim’s testimony, protesters and members of opposition parties, who had been arrested, were forced into raping other prisoners, particularly at the HQ of the SNR in Bujumbura[[887]](#footnote-887). A man arrested in 2015 explained:

“*Two SNR agents forced me as well as 4 other prisoners to have sexual intercourse […]. Initially, I refused, and they burned me using electrical shocks on my chest and shoulders. One person had to crouch and the other four had to penetrate him, and we would take turns crouching. The agents said that after this we would all become friends. The other four prisoners were executed the next day*”.[[888]](#footnote-888)

469. The main forms of sexual abuse reported to the Commission are rape[[889]](#footnote-889), genital mutilation[[890]](#footnote-890), forced nudity, infliction of severe wounds and the injection of unknown substances in male genitals as well as the suspension of weights to the testicles[[891]](#footnote-891). The victims often suffered more than one form of sexual abuse.

470. In each of the reported rape cases, there was vaginal or anal penetration of the victim under threat, coercion and/or control of the perpetrator. These sexual abuses also constitute acts of torture and/or cruel, inhumane and degrading treatments.[[892]](#footnote-892) Several rape cases documented by the Commission were gang rape[[893]](#footnote-893). For instance, a woman in a detention centre of the SNR was subjected to multiple rapes for four days. Six men, all police officers, raped her to obtain information about the alleged activities of a family member[[894]](#footnote-894). A victim, who was a minor at the time of the facts, also spoke out about her rape by three men, including Imbonerakure and men wearing police uniforms:

“*A man tied my hands in front with a rope (one which is normally used to tie goats) and I was raped by three men […] they pushed me to the ground. I was on the ground, trying to push them away. One of them slapped me around my eyes and I could not see anymore. He put his hand on my mouth so that I would not scream. The three men raped me. They said ‘We have to kill her, shoot her because she has seen us’. Another said: ‘She is going to die anyway, we can break her’. The three of them inserted their sex into mine, one after the other. One kicked me in the head, and I passed out*”[[895]](#footnote-895).

471. The Commission collected two testimonies of women whose genital organs were mutilated after being gang raped by men whom they identified as Imbonerakure[[896]](#footnote-896). One of them reported that in 2015, four Imbonerakure killed her husband in front of her, due to his links to an opposition party. This happened in Bujumbura. Then, the same men raped her, one after the other. Following the rape, they cut her clitoris using a sharp instrument and inserted pieces of wood in her vagina[[897]](#footnote-897).

472. Forced nudity was used to humiliate and belittle the victims but also to obtain information. Men were coerced into undressing during interrogation sessions or before being beaten on the genitals[[898]](#footnote-898). Women have also been victims of forced nudity while in detention or in their homes before being raped[[899]](#footnote-899).

473. The Commission received several testimonies on cases of sexual violence during detention. For example, a man who had participated in demonstrations against the new mandate of President Nkurunziza indicated that in 2015, the Imbonerakure apprehended him in Bujumbura and took him to the headquarters of the SNR. During his detention, he was thrown against a wall and raped by an Imbonerakure in the presence of two SNR agents[[900]](#footnote-900).

474. The Commission had discussions with several men who were severely beaten, sometimes naked, on the genitals, by SNR officers using metal bars, electric cables, bayonets, or other objects. They were also repeatedly kicked on their genitals. Some were forced to expose their genital parts so they could be beaten from behind[[901]](#footnote-901). A victim testified to the following:

“*SNR agents put me in a vertical position with my legs straight and my back bent parallel to the ground. I was injured on my genital organs. […] I was kicked in my genitals very hard and multiple times*”*[[902]](#footnote-902)*.

475. The Commission has also received numerous testimonies of prisoners who explained how SNR agents and police officers suspended weights on their genital organs, injected an unidentified liquid substance in the testicles, crushed or squeezed testicles with their hands or metal clamps. These sexual abuses have caused inflammation, bleeding and extreme pain to the genital areas, preventing the victim from getting up and walking[[903]](#footnote-903). A survivor testified:

“*I was hanging from the ceiling tied with a rope. [SNR agents] beat me up very hard with a metal wire. They took a five-litre water tank. They filled it with water. They tied the tank to my testicles […]. [X] was giving orders to the police officers who executed his commands. They left me with the tank tied and told me they would leave to let me think. They left the room for 30 minutes and [X] came back alone. He asked me if I had time to think. I told him that what I had said was the only truth. There was a table just underneath me, but my feet could not reach the table. He took the table away. Then he climbed on the table to cut the rope. I fell to the floor. The tank was still tied to me*”*[[904]](#footnote-904)*.

Another victim stated the following: “*SNR agents undressed me and injected something in my right testicle. After the injection I felt pain all over my body and I passed out*”*[[905]](#footnote-905)*.

476. A former member of an opposition party, detained and tortured for four days in a windowless house in Bujumbura in 2016, reported that police officers had threatened to cut off his penis if he refused to answer their questions[[906]](#footnote-906).

477. The Commission also documented a case of attempted rape. In December 2015, police officers entered a woman’s house looking for documents related to the protests. Some of these men tried to rape her[[907]](#footnote-907).

1. **Time and location**

478. The sexual abuses reported by the victims took place from April 2015 to January 2017. Most of these abuses were committed in Bujumbura[[908]](#footnote-908), but the Commission also received testimonies about such violations in other locations[[909]](#footnote-909).

479. As stated above, all the men interviewed by the Commission have been victims of sexual abuse during their detention[[910]](#footnote-910). Most of the women suffered sexual abuse in their homes[[911]](#footnote-911), others whilst trying to flee the country[[912]](#footnote-912) or, similarly to men, in their place of detention[[913]](#footnote-913).

480. According to information gathered by the Commission, the detention centres where sexual abuses have been committed include those of the SNR[[914]](#footnote-914) and a police station in the Province of Bujumbura[[915]](#footnote-915). Some acts of sexual violence were also committed in non-official detention centres. Such places include the inside of a container[[916]](#footnote-916), unidentified locations[[917]](#footnote-917) or even a forest[[918]](#footnote-918). A supporter of an opposition party testified about his rape by several men wearing police uniforms in an unidentified house in Bujumbura in 2016:

“*They injected something in my left arm […] I did not see what they injected […] I had a hood on. The car started and after a few minutes I fell into a deep sleep only to wake up in the middle of the night in a dark house […] I could not see anyone, but I could hear voices. I was alone in a room […] I woke up in severe pain especially around my ribs and anus. I had been raped […] I noticed that my trousers and underwear had been pulled down; there was sperm on my trousers and clothes*.*[[919]](#footnote-919)*”

481. As previously mentioned, women were often raped in their homes. For example, a victim was raped in 2015 in Bujumbura after police officers had arrested and detained her husband who was a member of an opposition party. While the victim was home alone, police officers showed up and took turns raping her. The following is her statement:

“*There were [several] men. They were wearing […] blue uniforms, which had ‘police’ written on them. [Some] came in and the [others]stayed outside […] Police officers were holding my arms like a cross and a third one entered the house and started undressing me […] As I struggled, bending down so I wouldn’t be undressed, I slammed into the wall; someone covered my mouth with their hand to stop me from screaming […] I was lying on my back on the cement floor, facing the ceiling and one by one, they took turns and had sexual intercourse with me while two were holding my arms and talked among themselves: ‘You, you go, you finish, you go’. They undid their trousers quickly saying ‘Quick, me too’ […] One was holding my legs spread as wide as possible and another was holding my arms. One said: ‘Cover her eyes so that she does not see who is having [sexual] intercourse with her’ […] they took turns in raping me at will, they inserted their penis in my vagina*”*[[920]](#footnote-920)*.

482. The Commission spoke with two women raped by Imbonerakure or police officers as they tried to flee the country[[921]](#footnote-921). Police officers at a roadblock near the border raped one of them in 2016. She testified as follows:

“*The first roadblock was guarded by police officers who asked me where I was going […] they refused to let me continue and told me that because I kept lying, they were going to show me. They told me to go [in a small house] […] I thought I was going to spend the night there […] they forced me into the small house, and I begged them to let me go in exchange for money. They did not want the money […] they spread my legs open with ropes normally used for military tents and tied my hands and feet. Several of them raped me taking turns*.”*[[922]](#footnote-922)*

1. **Verbal abuse**

483. Several victims mentioned ethnic, sexist and/or political verbal abuse during the sexual assaults[[923]](#footnote-923). For instance, a woman, who was raped while in detention, reports the following remarks by police officers: “*Why are you bothering us? Your regime is part of the past; we will rape you as much as we want […] you are lucky, we should have killed you because we do not want your kind [ethnic group] in this country*”[[924]](#footnote-924).

484. Tutsi women in particular were targets of verbal abuse[[925]](#footnote-925). As an example, a victim reported being the subject of ethnic and sexist insults:

“*Two police officers […] trampled my feet while opening my legs saying: ‘We want to see the sex of a Tutsi’. I [screamed] loudly and no one came to my help. […]. They showed me some razor blades and [threatened me] saying, ‘If you don’t agree, we will cut your vagina’. Since I knew they were ruthless I accepted under duress […] one by one they had sexual intercourse with me*”*[[926]](#footnote-926)*.

485. Another victim testified to being the target of political and ethnic insults from two Imbonerakure who raped her following the attacks on military camps in Bujumbura and its surrounding area on 11 December 2015. The victim, who lived in a so-called “riotous” neighbourhood, reported the following:

“*They told me: ‘Why did you stay in this damn neighbourhood?’ […] They asked me about my ethnic group […] they insulted and accused me of working for the political opposition. ‘Since you live [here], you must be with the opposition’ […] they told me I was a ‘*mujeri’ *[meaning ‘stray dog’, a term used to designate members of the opposition] […] I was dragged on the ground […] and my head started bleeding. Then, they said, ‘Now that you can see blood you are going to start talking’. […] They told me to take off my underwear […]. I understood that they were going to rape me […] I tried to defend myself […] they said: ‘We are not going to kill you, but we are going to teach you a lesson instead […] others like you will realize that this country is ruled by men. We fought to get to where we are, and no one is going to remove us’.”*[[927]](#footnote-927)

486. Some of the rapists told their victims that they had to get pregnant to give birth to CNDD-FDD supporters[[928]](#footnote-928). The Commission heard the testimony of a victim, a member of an opposition party who was gang raped by Imbonerakure and police officers in 2016:

“*Before killing [my husband] they started raping me in my home, it was a group of six to ten people […] they were Imbonerakure and police officers, two of them were wearing a blue uniform. As they started to rape me, they told me they wanted me to have their babies so that they would become Imbonerakure*”[[929]](#footnote-929).

487. These cases happened in a context where songs calling for “the impregnation of women of the opposition” were heard at the ruling party’s gatherings[[930]](#footnote-930).

488. In addition, some men, sexually abused while in detention, also suffered from ethnically motivated verbal abuse[[931]](#footnote-931). For example, a man, raped in detention, was insulted by police officers: “*Tutsi bastard, did you think we were not going to catch you*? *We are going to kill you, and nobody will know where to find your remains*”[[932]](#footnote-932). A man was severely beaten in the genital area and insulted by a police officer. The latter told him “*We are going to take down all the Tutsi*”[[933]](#footnote-933). An Imbonerakure who raped a man in detention told him: “*A Tutsi who is against the ruling party deserves to be burnt*”[[934]](#footnote-934).

1. **Other abuses motivated by political belief**

489. The Commission also documented 12 cases of rape by men whom the victims have not been able to identify[[935]](#footnote-935). While these abuses cannot be labelled as human rights violations or abuses due to uncertainty regarding the perpetrators’ identity, the Commission considers nevertheless that these cases deserve to be reported given the reasons provided by the alleged perpetrators at the time and the victim’s profile.

490. Indeed, some victims seem to have been targeted because members of their family refused to join the Imbonerakure or the CNDD-FDD, they were members of an opposition party, or they had supported the demonstrations against the new mandate of President Nkurunziza. Others indicated that they were raped after the disappearance, kidnapping or arrest of their husband or male relative; presumed members of the opposition[[936]](#footnote-936).

491. Several victims reported being raped by men in civilian clothes, sometimes hooded; some of them wore long black coats, raincoats, or police/military uniforms[[937]](#footnote-937). For example, an elderly woman whose son, a member of an opposition party, was abducted testified to the following:

“*I did not recognize the men who came to my house […] A week after the abduction of my son […] three men came back. I was raped by two of them […] I think I caught some disease that causes the swelling of my legs; my feet have been very swollen since the rape. I also have pain around my kidneys […] they were wearing army trousers. I think it was the same people who took my son since they wore the same kind of clothes*”*[[938]](#footnote-938)*.

492. Another victim testified to being (anally) raped in 2015 by men she believes to be members of CNDD-FDD; one of them had an eagle (symbol of the party) tattooed on his body. These men were looking for her husband who had participated in the protests. However, he had been killed the previous month. She testified to the following:

“*One of them told me they had come to teach me a lesson and asked me: ‘Where is your husband? Who killed him?’ They told me I had a misplaced sense of pride […] one of the men asked me: ‘Do you know who I am?’ I said no and he went on saying he was internationally renowned. He took his shirt off and he had an eagle tattooed on his body […] I told him I did not know him, and he slapped me. I felt dizzy, fell and passed out. When I regained consciousness, I felt a terrible pain in my lower abdomen because they had forced my legs open […] but the worst pain was in my anus. […] The next day I had terrible back pains and I miscarried a two-month pregnancy […] those men had tried to twist my breast and sometimes I relapse and my breast turns black and hurts*”*[[939]](#footnote-939)*.

493. The Commission received the testimony of a young woman who was gang raped in 2015 at the same time as her mother in their own home. Some men had abducted her father and brother who had refused to join the Imbonerakure. A few days later, three strangers came and raped the two women. The young woman managed to escape after the rape but had to leave her mother behind who was still being raped[[940]](#footnote-940).

494. A woman reported that in 2016, unidentified men took her brother and husband away; both were members of an opposition party. At the time of their arrest, the victim was not at home. In 2017, once she had returned, two men, who told her that they had killed her husband, raped her[[941]](#footnote-941).

1. **Obligation to carry out investigations**

495. Broadly speaking, most of the victims interviewed by the Commission have rarely filed a complaint with the authorities: they said they do not trust the legal system after seeing that perpetrators of human rights violations and abuses are not punished. Furthermore, most of the victims interviewed by the Commission had fled Burundi not long after the sexual abuse[[942]](#footnote-942). Nevertheless, the Burundian authorities are required to investigate these cases but as far as the Commission knows, these investigations are yet to be carried out.

(c) Consequences of sexual violence for the victims and their families

496. The victims of sexual violence must deal with multiple consequences both at physical and psychosocial level. These consequences directly affect the survivors but also their families and the social fabric in general. Reproductive and sexual health of the victim is one of the areas that is directly affected; relatives who have testified to the rape of a loved one also need psychosocial assistance.

497. Several victims who spoke with the Commission did not receive access to health care within the required time. This has aggravated the consequences of sexual violence. Multiple victims fled the country immediately after the rape and were not able to obtain urgent medical care 72 hours after the rape, including anti-HIV treatments and contraception. For instance, in 2015, a woman who was raped and mutilated by four men whom she believes were Imbonerakure left the country a few days after the trauma whereas she needed urgent surgery. Before fleeing the country, she was taken to a clinic in Burundi but only basic care was provided to stop the haemorrhage[[943]](#footnote-943). Other victims, fearing stigmatization, decided to treat themselves before going into exile[[944]](#footnote-944) or have been to a clinic but did not disclose they had been raped[[945]](#footnote-945). However, some of the victims the Commission met indicated that they received treatment in Burundi and/or in exile, including anti-HIV treatments and contraception[[946]](#footnote-946).

498. The victims that the Commission interviewed rarely had access to health care while in exile due to lack of information, fear of stigmatization or because the free services provided to refugees were not adapted, especially for male victims of sexual violence. These men are often too ashamed to see a doctor and receive the necessary treatment, which is usually reserved for women[[947]](#footnote-947). A man admitted to being so traumatized by the rape that he did not manage to tell the doctor who was treating him for another medical illness[[948]](#footnote-948). Yet, several male victims suffer from erectile dysfunction, urinary problems or chronic pain in the genital area[[949]](#footnote-949). A man testified that he had a testicle removed after being severely wounded and becoming impotent[[950]](#footnote-950). In psychological terms, the male victims interviewed by the Commission told us they lacked sexual desire, felt isolated or were subject to post-traumatic stress disorders[[951]](#footnote-951).

499. Some female victims interviewed by the Commission have contracted the HIV virus following their rape[[952]](#footnote-952), they suffer from vaginal infection and other recurrent gynaecological issues or have difficulties having sexual intercourse[[953]](#footnote-953). Some of them have had miscarriages[[954]](#footnote-954). Others become pregnant and now have to raise children that are the result of rape[[955]](#footnote-955). Multiple victims suffer from psychosocial consequences. A victim reported that her partner abandoned her after she confessed she was raped[[956]](#footnote-956). Another victim shared her desire to commit suicide after the rape[[957]](#footnote-957), and another begged those who had been raping her for four days to kill her, as she could no longer stand the pain. She testified to the following:

“*I spoke to one of the police officers saying: ‘I am suffering too much, please finish me off?’ He replied: ‘We cannot kill you as long as you have not talked’.*”*[[958]](#footnote-958)*

6. Freedom of expression

(a) Applicable law

 (i) International human rights law

500. Article 19 of the UDHR and the ICCPR guarantees freedom of expression. The latter provides: “(1) everyone shall have the right to hold opinions without interference. (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either verbally, in writing or in print, in the form of art, or through any other media of his choice. (3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals.”

501. In its General Comment of Article 19 of the ICCPR,[[959]](#footnote-959)the Human Rights Committee indicates that freedom of expression covers a wide scope. It is concerned with “political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse”, and it comprises several means of expression. The Committee has focused especially on the media’s freedom of expression since “a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights.” The Committee elaborated “on the importance of freedom of expression for the conduct of public affairs and the effective exercise of the right to vote. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues and to inform public opinion without censorship or restraint”. The restrictions outlined in Article 19 (3) should be, according to the Human Rights Committee, “provided by law”[[960]](#footnote-960); and they must adhere to the strict tests of necessity to attain a legitimate and proportionate objective.

 (ii) Regional and sub-regional rights

502. Article 9 of the African Charter on Human and Peoples’ Rights provides that “every individual shall have the right to receive information and every individual shall have the right to express and disseminate his opinions within the law”. The treaty establishing the EAC provides for the States Parties to ensure the “promotion and protection of human and people’s rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights”[[961]](#footnote-961). Along the same lines, a “Protocol on the management of information and communication” supplements the Pact on Peace, Stability and Development in the Great Lakes region and guarantees freedom of expression and the press.

 (iii) Domestic law

503. Freedom of expression is enshrined in the Burundian Constitution[[962]](#footnote-962). In regards to other public freedoms, the Burundian Penal Code provides that “any discriminatory and detrimental act to the freedom and rights granted to the individual by law, executed or ordered by a civil servant or public official or a depositary or agent of authority will receive a prison sentence of fifteen days to one year and a fine of ten thousand Francs[[963]](#footnote-963) or one of these penalties only[[964]](#footnote-964).

504. In May 2015, the Burundian Parliament adopted law n°1/15[[965]](#footnote-965) amending law n°1/11 from 4June 2013, which required journalists to communicate their sources in certain cases and limited the media’s possibility to publish information regarding national authorities, the police forces as well as economic and financial issues[[966]](#footnote-966). The new law removes these provisions, which had been criticized, among others, by the Special Rapporteur of the United Nations on the situation of human rights advocates[[967]](#footnote-967). The Human Rights Committee also denounced these provisions during the analysis of the second periodic report on Burundi in 2014[[968]](#footnote-968). The new law guarantees the protection of sources as well as the journalists’ right to freely investigate and comment on public matters[[969]](#footnote-969).

505. Furthermore, law n°1/15 maintains the considerable powers of the National Communication Council (CNC), the national organ in charge of the regulation of the media chaired by Karenga Ramadhani since March 2016. The CNC issues press cards to Burundian journalists and accreditation to foreign journalists. It has the authority to withdraw them or to address “warnings to all defaulting press institution or journalists”. The National Communication Council can also suspend the “circulation, distribution and sale of newspapers, periodicals and all other forms of information, the broadcasting of a program, the operations of a radio station or television or of a press agency if they are not in compliance with the law”[[970]](#footnote-970). The structure and functioning of the CNC, as set out in law n°1/03 from 24 January 2013 amending law n°1/18 of 25 September 2007 is under the authority of the executive branch. The President of the Republic, in consultation with the Vice president, appoints members of the CNC for a renewable three-year period.

506. The new Electoral Code adopted on 3 June 2014 ensures freedom of election propaganda and open and accessible use of the media by candidates and political parties, subject to maintaining public order and to ensuring that insults or defamatory declarations are prohibited[[971]](#footnote-971).

(b) Violations of freedom of expression

507. Radio stations are the main sources of information in Burundi since televisions are too expensive for most Burundians and newspapers as well as online media have lower coverage due to the poor literacy rate of the population. Up until April 2015, media pluralism prevailed in Burundi. The media had relative freedom of expression; in particular when reporting allegations of human rights violations despite repeated intimidation by the Government. In 2014, the Human Rights Committee expressed concerns regarding “information referring to threats including physical ones and acts of harassment and intimidation targeting journalists and proffered by police and security forces”. During his visit to Burundi in 2014, the Special Rapporteur of the United Nations on the situation of the human rights defenders noted: “Certain categories of defenders are particularly vulnerable, including journalists”[[972]](#footnote-972). In 2014 and early 2015, the Burundian authorities became particularly sensitive to certain coverage by independent journalists. They considered those reports as hostile. For instance, the Office of the Prosecutor summoned at least four journalists in 2014 for investigating allegations of weapons distribution to Imbonerakure[[973]](#footnote-973). On 20 January 2015, Bob Rugurika, Director of Radio Publique Africaine (RPA), one of the most popular radio stations in the country, was arrested for broadcasting a report that mentioned the role of high-ranking SNR officers in the murder case of three Italian nuns in September 2014. He was released on bail on 19 February 2015 and fled Burundi in May of the same year.

508. Until 2015, Burundi had several private radio stations, in addition to the National Radio-Television of Burundi (RTNB). The main ones were Radio Bonesha FM, Radio Insanganiro, RPA and Radio Renaissance, who also had a television channel. Although the Government often accused these four radio stations of being close to the political opposition, they were able to keep broadcasting.

509. However, this situation changed in April and May 2015 when the Burundian Government closed the majority of private radio stations. Except for Radio Isanganiro, the other stations have not been authorized to reopen after being ransacked during the May 2015 coup. The pressure exercised on the media has been constant. During the period covered by the Commission’s mandate, journalists have been threatened, imprisoned and suffered ill-treatments and many of them have been forced into exile. As far as print media is concerned, Iwacu is the only private media of relevance that has been able to continue functioning in Burundi[[974]](#footnote-974) and this, despite its director’s exile, the disappearance of one of its journalists[[975]](#footnote-975) as well as the pressure and threats experienced by some of its reporters.

 (i) Pressure, control and closing of the media

510. The change of attitude of the Government towards private media is linked to the first demonstrations in April 2015 against the announcement of Pierre Nkurunziza’s bid for the presidential election. On 27 April 2015, the Government closed RPA as well as the Press House, which hosted the studio of the “Media Synergy” platform, a joint undertaking that brought together the main private radio stations in Burundi. A witness interviewed by the Commission described the event:

“*On 27 April 2015 […] [a police commissioner] came with police officers to close the Press House. He also closed RPA in the afternoon of the same day […] He was with SNR agents in civilian clothes who were giving orders […] [The Administrator General of the SNR] was in the vicinity*”*[[976]](#footnote-976)*.

511. Things took a turn for the worse after the *coup* attempt. On 13 May 2015, RPA which had temporarily resumed broadcasting during the *coup*, was attacked and burned down. On the same day, private radio stations Bonesha FM, Insanganiro and Radio-Television Renaissance were looted, burned down or destroyed as well as Radio-Television Rema, a radio station close to the ruling party[[977]](#footnote-977). On 14 May 2015, the RTNB temporarily stopped broadcasting after being the scene of heavy weapons fighting between loyalist forces and troops involved in the coup.

512. Following these events, the Attorney General, Valentin Bagorikunda, launched two investigations: one on the destruction of the radio stations and the second on the private media who broadcasted the message of the *coup* leader, namely the radio stations Insanganiro, Bonesha FM, RPA and Radio-Television Renaissance. To this day, the results of these investigations are unknown.

513. On 10 June 2015, the Attorney General addressed a correspondence to the President of the Press House [[978]](#footnote-978)authorizing the reopening of the studio. However, the letter also indicated that “due to ongoing legal investigations, access to the studio is strictly prohibited to the following media as well as their respective staff: Radio Bonesha FM, Radio-Television Renaissance, Radio RPA (Bujumbura and Ngozi), Radio Isanganiro and Radio Humuriza FM.” This decision, as well as the suspension of the radio stations themselves, has had a direct impact on the freedom of the Burundian people to receive information from sources other than those controlled by the Government.

514. On 19 February 2016, the CNC officially authorized Radio Rema to resume its activities during a press conference. Radio Insanganiro was also authorized to resume its activities provided that they sign a commitment contract with the CNC in which they pledge to provide “balanced and objective information” and not undermine national security[[979]](#footnote-979). A new management team replaced the old one, whose director, chief editor and several other journalists are still in exile to this day.

515. Despite this, Radio Insanganiro remains under pressure. On 26 October 2016, a letter signed by the Chair of the CNC notified the radio station of the suspension of its program “*Karadiridimba*” (“That which advances”), which gave a voice to the Burundian diaspora. This program was suspended for broadcasting “a song that does not conform to professional standards as well as democratic and ethical values”. The title of the song was “Human Rights for Journalists”. On 4 April 2017, Joseph Nsabiyabandi, the chief editor of the radio station, was summoned to SNR headquarters in Bujumbura. He was interrogated about his alleged collaboration with Humura and Inzamba, two Burundian radio stations broadcasting from abroad that were set up by journalists from RPA, Insanganiro, Bonesha and Renaissance radio stations after the destruction and the closure of their respective stations, followed by their exile in 2015[[980]](#footnote-980).

516. The Burundian authorities continued to exert pressure on private media in 2017. On 24 October 2016, the Minister of the Interior and Patriotic Education, Pascal Barandagiye, signed a ministerial ordinance announcing the provisional suspension of the *Union Burundais des Journalistes* (UBJ) and four other non-profit organizations that were considered as “disrupting State order and security[[981]](#footnote-981).” The UBJ, a journalists’ union, had been unrelenting in denouncing abuses related to freedom of the press. At the time of writing of this report, the Union has not been able to resume its activities. Its president, like many other journalists, lives in exile since May 2015.

517. On 21 June 2017, the CNC announced in a communiqué that, since several media had not signed the terms of reference required to operate in Burundi, it was therefore calling on all media to regularize their situation before 31 July 2017[[982]](#footnote-982). On 3 July 2017, the CNC also called Radio Bonesha FM, Radio-Television Renaissance and RPA to “regularize their situation before the CNC takes the appropriate administrative measures”, referring to the dispute that these media have with the legal system[[983]](#footnote-983). As described below[[984]](#footnote-984), most of the directors of these radio stations are the targets of international arrest warrants. On the 12th of the same month, the Minister of the Interior, through an ordinance and based on a correspondence sent by the Attorney General on 15 March 2017 referencing possible convictions, announced the suspension of RPA, “given that it is obvious that RPA is guilty of acts against public order and breaching national security”[[985]](#footnote-985).

518. Furthermore, the Burundian authorities have strengthened their control over public media. This fact was stressed by witnesses interviewed by the Commission:

“*The mission of RTNB is to support the actions of the Government and in order to do so; it mobilizes its resources to cover the activities of the President of the Republic, the Vice-President, the President of the National Assembly and of the Senate […]. At the end of 2016, the President of the Republic summoned the former director general of RTNB, the director of the national radio, the director of the national television and the Minister of Information to remind them of the key role they play in the dissemination of information favourable to the authorities and to CNDD-FDD. He also stressed the need to conceal information on the reality of the socioeconomic situation of the country*”[[986]](#footnote-986).

 (ii) Pressure, threats and violence against journalists

519. On top of the pressure exercised on the media since 2015, Burundian journalists have been harassed, threatened and abused on numerous occasions. A great many journalists who worked for private media were coerced into leaving the country and remain in exile.

520. Harassment and threats from the authorities against journalists have increased since the announcement of the official candidacy of Pierre Nkurunziza and after the closing of Radio RPA on 27 April 2015. A witness interviewed by the Commission declared the following:

“*After the closing of RPA, there was a manhunt against RPA journalists. They tried to arrest them. They also tried to retrieve their equipment […] A SNR and police team came looking for me at my place. I was not there*”[[987]](#footnote-987).

Another source reported “*On 27 April 2015, I received a phone call from a neighbour who asked me if I was expecting someone at home since there were people who had asked when I get back home. I told him I was not expecting anyone. I then called a friend who is a police officer and who works at the station close to where I lived. He told me: ‘I was just about to call you, you have to be careful, there are people who want to eliminate you’. He also added that I should not return home straight away […] I remained in hiding. I also heard that my family is targeted […] I moved my family to another location*”[[988]](#footnote-988).

521. This situation worsened after the attempted *coup* on 13 May 2015 when the authorities accused several private radio stations of colluding with the *coup* leaders (“*putschistes*”). A journalist from a private radio station reported the following:

“*After the attempted coup, I was threatened by the police […] telling me to be careful because if I was caught I would be killed […]. Friends within SNR, the Government and the police used to come by my place, since we were very good friends. Later, we became sworn enemies until the day someone told me: ‘be careful, they are holding meetings here and they are discussing your arrest’.*”[[989]](#footnote-989)

522. On 22 May 2015, the Office of the Prosecutor summoned Innocent Muhozi, the Director of Radio-Television Renaissance. He appeared before the Deputy Public Prosecutor who asked him to explain his activities on the day of the *coup* and the declaration of General Niyombare broadcasted on the radio. No case was brought against him.[[990]](#footnote-990)

523. In the following months, violence against journalists, particularly by defence and security agents increased in scale and seriousness. On 2 August 2015, SNR agents arrested and beat the correspondent of Radio France International (RFI) and Agence France Presse (AFP), Esdras Ndikumana in front of several witness. He was taking pictures at the scene of the murder of General Adolphe Nshimirimana in Bujumbura. The President’s communication advisor, Willy Nyamitwe, who stood a few metres away from the scene, apparently did not intervene[[991]](#footnote-991). SNR agents then took Esdras Ndikumana to their headquarters where he was severely beaten with clubs and metal bars, including on the soles of his feet. SNR agents took his belongings and broke his finger to remove his ring. According to information obtained by the Commission, Esdras Ndikumana was then taken to one of the SNR’s directors. When Esdras told him he had been mistreated, he allegedly answered “*You are lucky to get out of this alive*”[[992]](#footnote-992). On 13 August 2015, the Office of the President issued a statement expressing the Burundian authorities’ desire to “immediately investigate these acts from another era and to determine their circumstances so that the perpetrators can be prosecuted in accordance with the law”[[993]](#footnote-993). Despite complaints filed by the victim, RFI and AFP in October 2015, no suspect has been arrested to this day.

524. On 13 October 2015, a RTNB cameraman, Christophe Nkezabahizi, his wife, daughter, son and nephew were killed by API police unit in their home in Ngagara, Bujumbura[[994]](#footnote-994). The police killed several more people in the neighbourhood during this operation. Corroborating testimonies collected by the Commission indicate that Christophe Nkezabahizi was specifically targeted[[995]](#footnote-995). Before this incident, the director of RTNB had asked Christophe Nkezabahizi to surrender all the video recordings he had taken of the demonstrations. It also appears that Christophe Nkezabahizi might have admitted that he felt he was being followed, including on the day of his assassination.[[996]](#footnote-996)

525. The Commission also collected the testimony of a journalist who described the acts of torture he suffered at SNR headquarters after being arrested by the police in 2015, in Bujumbura:

“*Inside [the SNR premises] they took my shoes and clothes. They ripped my shirt […]. At that point it became an ordeal. They told me to lie down. They took clubs, big sticks and metal bars. They hit me randomly, in a disorganized way. There were electric cables hanging from the ceiling, with no light bulbs. They took these cables and put them all over my body, on my arms, my sides, everywhere. Several men came in and out. Some wore civilian clothes; others were in police uniform, […] they asked me questions and kept hitting me […] they asked, ‘Why are you here?’ ‘Why are you still in Burundi?’ They asked me: ‘Where were you on the 13th of May?’ while still hitting me*”*[[997]](#footnote-997)*.

526. On 16 November 2015, the Office of the Prosecutor summoned the Director of Iwacu newspaper, Antoine Kaburahe, in relation to the investigations of the attempted *coup* of May 2015[[998]](#footnote-998). He received a second notice of appearance but, after being informed that there was a significant risk he would be arrested, he decided to flee the country[[999]](#footnote-999). The authorities issued an arrest warrant against him after his departure.

527. Pressure and violence against journalists continued in 2016. After the events of 11 December 2015 and the repression that followed, the authorities became more sensitive to the work done by independent media. Thus, on 28 January 2016, Jean-Philippe Remy, a French journalist from *Le Monde* and Phil Moore, a British photographer, were arrested during a police operation in Nyakabiga, Bujumbura. They were taken to SNR headquarters. They were released the following day with no charges but their equipment was not returned to them. The Commission also heard the testimony of a young man who was arrested, detained and tortured by SNR in 2016. The agents who were doing the interrogation accused him of working for a private radio station.[[1000]](#footnote-1000)

528. On 2 February 2016, the Secretary General of the Supreme Court of Burundi issued a press release compiling the list of *putschistes* who fled abroad and who are the subjects of international arrest warrants. In this list, there are seven journalists namely: Innocent Muhozi, director of Radio-Television Renaissance; Bob Rugurika, director of RPA; Anne Niyuhire, director of Radio Insanganiro; Patrick Nduwimana, director of Radio Bonesha FM; Patrick Mitabaro, editor-in-chief of Radio Isanganiro; Arcade Havyarimana, reporter for the same radio and Gilbert Niyonkuru, journalist for RPA. However, the international arrest warrant issued for Antoine Kaburahe, Director of Iwacu, was cancelled on 19 February 2016 but he did not go back to Burundi fearing for his safety.

529. In a press release from 30 May 2016, the Ministry of Public Security strongly condemned “any individual who intentionally short circuits the normal investigation procedure and who engages in assigning criminal acts to whomever they want; to justify their bias, interests and barely concealed political convictions. This is the case of journalist Esdras Ndikumana and certain social media activists, whose aim is to divide Burundians and promote crime and violence”[[1001]](#footnote-1001).

530. In 2016, several journalists were arrested[[1002]](#footnote-1002) while others were victims of violence. The Commission received a testimony according to which Nestor Ndayitwayeko, journalist for RPA in the province of Rutana was attacked in a bar in the commune of Rutana in July 2016. A high-ranking police officer, at provincial level, allegedly beat him up, accusing him of collaborating with the enemies of the Government. Nestor Ndayitwayeko left the country in August 2016. He fell sick and passed away in November 2016[[1003]](#footnote-1003).

531. On 22 July 2016, Jean Bigirimana, an Iwacu journalist who previously worked for Radio Rema, disappeared in the province of Muramvya. He was last seen being escorted by SNR agents[[1004]](#footnote-1004).

532. The Commission learnt of several cases reported in 2016 by different international NGOs such as the International Federation for Human Rights (FIDH)[[1005]](#footnote-1005), Reporters without Borders (RSF)[[1006]](#footnote-1006), Human Rights Watch[[1007]](#footnote-1007), Amnesty International[[1008]](#footnote-1008) and Defend Defenders[[1009]](#footnote-1009). Other sources include national organizations such as the Iteka League[[1010]](#footnote-1010). Due to time constraints, the Commission has not been able to verify each of these cases.

533. During the ceremony organized for World Press Freedom Day on 5 May 2017, Nestor Bankumukunzi, the Minister of Information, indicated that his Government was looking forward to the return of exiled journalists in Burundi[[1011]](#footnote-1011). However, according to information collected by the Commission, more than 100 journalists have found refuge outside of Burundi to this day. Journalists from radio stations closed by the Government, who are refugees in Rwanda, created the Inzamba and Humura radio stations[[1012]](#footnote-1012). Other journalists created SOS Medias, an online platform on social media[[1013]](#footnote-1013). Independent journalists who remained in Burundi must be extremely careful or work undercover in order to collect information, which they then send to media based outside of the country. A journalist confided in the Commission: “We report 30% of what we know. We work in a minefield”[[1014]](#footnote-1014).

 (iii) Other violations of freedom of expression

534. Broadly speaking and beyond the restrictions in terms of media freedom and the abuse against journalists, the whole repression executed by the Government can also be analysed through the lenses of freedom of speech. As demonstrated by the violations and abuse described in this report, the victims include individuals who took part in demonstrations in May and June 2015, supporters of the “*Halte au 3ème mandat*” campaign, members of opposition parties or individuals perceived as opponents. Since April 2015, it has become particularly dangerous to express viewpoints that are not aligned with those of the authorities and the leadership of the ruling party or to denounce the abuses committed. On 9 June 2017, the mayor of Bujumbura prohibited a press conference of the parliamentary group of *Amizero y’abarundi* coalition (“Hope of Burundians”) composed approximately of thirty parliamentarians from FNL- Agathon Rwasa and UPRONA. To justify this decision, the mayor explained that this coalition had no legal existence and therefore the parliamentarians could not express themselves publicly even though the same group has seats in Parliament.[[1015]](#footnote-1015)

535. If the silencing of any opposing voice mainly affected the members of the opposition, the same phenomenon was observed during the first months of 2015 within the CNDD-FDD against the so-called “dissenters” who, at all levels of the party, opposed the President’s third term. Seventeen of them, most of them high ranking within the party hierarchy, addressed a letter to the President in March 2015 advising him not to stand again for re-election. The letter denounced the influence of the current Minister of Public Security, Alain-Guillaume Bunyoni, and the former Administrator General of the SNR, Adolphe Nshimirimana. Others expressed the same point of view before or after this initiative. Amongst the “dissenters”, those who persisted were removed from their positions and were persecuted. The Commission met some “dissenters” who had escaped targeted assassinations or arrests and had to flee the country[[1016]](#footnote-1016). One of them reported to the Commission that a CNDD-FDD official who was favourable to President Nkurunziza’s third term declared at that time: “*They are lucky we are not in the bush anymore, otherwise we would have killed all the opponents*”[[1017]](#footnote-1017). Some family members of these dissenters, who stayed behind, have also been targets of persecution[[1018]](#footnote-1018).

536. The repeated violations of freedom of expression have also had an impact on the work of civil society organizations, especially those that work for the protection of human rights. The Commission collected testimonies of members of human rights associations who experienced persecution after making public statements on allegations of human rights violation, like the one described further in this report[[1019]](#footnote-1019). One of them received death threats from a member of SNR after participating in a program broadcasted by an international radio station in 2015[[1020]](#footnote-1020). Another CSO member was arrested and tortured by SNR after reporting human rights violations on a radio station. After his subsequent release, he fled the country.[[1021]](#footnote-1021)

537. The restriction of freedom of expression has also affected other parts of society. For instance, a lecturer from a foreign university, working in partnership with Burundian colleagues, noticed that since 2015, they seem less keen to talk about the situation when in the country for fear that their conversations might be intercepted. He noted the following:

“*They don’t seem to be comfortable when they communicate via email or phone. They are afraid that they might be wiretapped […] there is paranoia and distrust*”[[1022]](#footnote-1022).

(c) Incitement to discrimination, hostility and violence

 (i) Applicable international law

538. Article 20 of the ICCPR provides that: “(1) Any propaganda for war shall be prohibited by law and (2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” In its General Comment no. 11 on this article,[[1023]](#footnote-1023) the Human Rights Committee insists that “The prohibition under paragraph 1 extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations, while paragraph 2 is directed against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the State concerned”[[1024]](#footnote-1024). The Human Rights Committee also believes that “States Parties which have not yet done so should take the measures necessary to fulfil the obligations contained in Article 20 and should themselves refrain from any such propaganda or advocacy.”[[1025]](#footnote-1025)

539. The International Convention on the Elimination of all Forms of Racial Discrimination provides that “States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form”[[1026]](#footnote-1026). The |Convention also requires that States Parties adopt positive measures, particularly by declaring “an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts”. Also, the State Parties “shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.”[[1027]](#footnote-1027)

 (ii) Domestic law: an adequate legislative arsenal

540. In its General Comment no.11, the Human Rights Committee indicates that, for Article 20 of the ICCPR “to become fully effective there ought to be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation”. Burundian law fulfills this requirement by prohibiting and punishing racial or ethnic hate speeches. Article 253 of the Penal Code provides that “whoever expresses racial aversion or hatred, incites, encourages or commits an act which is likely to provoke this aversion or hatred, is punished with six months to two years penal servitude and by a fine of ten thousand Francs [6 US$] up to a hundred thousand Francs [approximately 57 US$] or by one of these sentences only”.

541. Article 78 of the Constitution refers to political parties, which according to the provision, “may not promote violence, exclusion, or hate in any of their forms, notably those based on ethnic, regional, religious or gender affiliation.” Along the same lines, law n°1/010 from 10 September 2011 governing political parties, makes it mandatory for all parties to promote the refusal of intolerance, ethnicity, regionalism, xenophobia and calls for violence in all its forms[[1028]](#footnote-1028). The law also states that political parties must commit in writing to fight against all political ideology and all acts that promote violence, hatred or discrimination based on ethnic group, region, gender and religion.[[1029]](#footnote-1029)

 (iii) Calls for armed struggle from leaders or opposition armed groups

542. The Commission has documented clear and direct calls for armed struggle against the Burundian Government from armed groups of the opposition as well as from a leader of an opposition party.

543. Since its creation in December 2015, FOREBU[[1030]](#footnote-1030) has announced wanting “to remove Nkurunziza from power to restore the “Arusha Agreement” and Burundian Democracy.”[[1031]](#footnote-1031) On 15 May 2017, its leader, Godefroid Niyombare, declared in an interview with the weekly Jeune Afrique “*it is not excluded that one day FOREBU will move to armed struggle. For the moment, we have limited ourselves to one-off operations against military installations. The most significant, in December 2015, did not go well because we were not prepared. We are organizing ourselves so we are ready when the day comes*.”[[1032]](#footnote-1032)

544. On 31 January 2016, RED-Tabara[[1033]](#footnote-1033) urged “all Burundians, the diaspora in particular as well as the true friends of Burundi to contribute to this armed struggle forced by Pierre Nkurunziza”[[1034]](#footnote-1034). On 23 February 2016, the chief of staff of the movement, Melchiade Biremba, made the following statement to Jeune Afrique: “*We have decided to take up arms and disregard the visits from the United Nations or African Heads of State because we believe Nkurunziza’s resignation cannot be gained through negotiations. Once we have attained our objective, we will disarm*”[[1035]](#footnote-1035).

545. On 14 June 2016, Alexis Sinduhije, president of opposition party MSD, which allegedly has links with RED-Tabara, stated during a radio interview with Deutsche Welle that he “*supports any action against Nkurunziza, whether armed, peaceful or even silent. That is clear.*” [[1036]](#footnote-1036) However, he later denied the idea that he was the leader of an armed group.[[1037]](#footnote-1037)

546. In a statement on 16 May 2015, Isidore Nibizi and Aloys Nzabampema, from FNL, talked about the “use of force” to disarm the Imbonerakure and to resolve the crisis that is affecting Burundi[[1038]](#footnote-1038).

 (iv) Calls for national, racial or religious hatred which constitutes incitement to discrimination, hostility or violence

547. The Commission has documented calls for hatred, representing incitement to hostility or violence against opponents to the Government. These include members of opposition parties, demonstrators who demonstrated against the President’s new term or anyone speaking against the decisions and policies of the Government, and even combatants who joined opposition armed forces. These calls were made by Government officials, from local to high-ranking authorities as well as members of CNDD-FDD.

548. These calls, which had been previously recorded, increased from April 2015 in a particularly tense electoral and post-electoral context characterized by acts of violence by State agents, armed groups or unidentified individuals. In November 2015, the Minister of Public Security, Alain Guillaume Bunyoni allegedly stated the following during a speech, reported by the media and which the Commission obtained a translated version:

“*Even if the security forces fail to restore security, we have a population of nine million people that only needs a signal […] in a few minutes they would be here […] who then would survive amongst those who do not follow our path?*”[[1039]](#footnote-1039).

549. President Nkurunziza allegedly made the following promises in a speech given in Bubanza on 14 January 2016: “General Rodrigue Bunyoni[[1040]](#footnote-1040) died like a dog because he was against the ruling party. Soon, you will see all his companions die the same way as he did”[[1041]](#footnote-1041). End of 2016, during a “prayer crusade” and according to witnesses present in Gitega on 28 December 2016 and in Rutana on 30 December 2016, the President repeated that “divine fire” would destroy “all Burundians who refuse for Burundi to become a Kingdom of God through its leaders elected by the people”[[1042]](#footnote-1042). More recently, on 24 February 2017, according to several witnesses, the Head of State was apparently more direct and declared in a public speech during community service in Bubanza: “we are going to find a proper cure for all the naysayers, like we did in 2015. May all children be aware, may they grow up with stones to be thrown against anyone who is against institutions chosen by the people.”[[1043]](#footnote-1043)

550. The Commission documented other appeals from high-ranking officials, local administrative authorities, security forces or the CNDD-FDD calling for the destruction of opponents. For instance, the President of the National Assembly, Pascal Nyabenda, allegedly declared on 6 August 2016, during community Service in Bubanza that “we must suffocate[[1044]](#footnote-1044) those who hide behind the insurgency [against Pierre Nkurunziza] and those in favour of a transition.”[[1045]](#footnote-1045)

551. The Commission has documented several songs chanted by Imbonerakure that clearly call for violence, including sexual violence, against opponents[[1046]](#footnote-1046). These songs chanted during community service, physical exercise, marches or demonstrations engage the responsibility of the Burundian Government since it did nothing to prevent them or punish its authors.

552. In April 2017, a video circulated on social media which showed hundreds of Imbonerakure in the commune of Ntega (Kirundo Province) repeating a dozen times a song calling for the “*impregnation of opponents so that they give birth to Imbonerakure*”[[1047]](#footnote-1047). Following the condemnation by the United Nations Office of the High Commissioner for Human Rights[[1048]](#footnote-1048), the National Secretary in charge of Information and Communication in the CNDD-FDD party promised to punish the guilty ones[[1049]](#footnote-1049). In his statement before the Human Rights Council on 15 June 2017, the Permanent Representative of Burundi in Geneva indicated that an investigation had been opened under the reference D15/79/2017/NG. However, the Commission has not received any information confirming these proceedings despite the State’s obligation to act. On the contrary, the First Vice-President of the Republic considered these songs as being an integral part of Burundian culture and minimized their impact during an interview on the online radio station Bujumbura International 1 on 21 May 2017[[1050]](#footnote-1050). According to witnesses present at the time, the First Vice-President allegedly maintained this position during the launch of the CNIDH’s strategic plan on 25 April 2017 in Bujumbura[[1051]](#footnote-1051). The Ombudsman, Edouard Nduwimana, also minimized the content of these chants during an interview on 26 May 2017 published on Ikiriho website in which he declared: “*Had it not been for the political context or the apprehension that some feel toward the Imbonerakure, this song was not a bad one. When I say ‘*Tera inda umukeba*’ (impregnate an opponent), it does not mean to rape them: one can impregnate without raping. Similar songs have been chanted for a long time and under different circumstances without affecting public opinion. […] the song itself symbolizes the intention of the Imbonerakure to bring everyone together so that in the end, everybody, all the young people can become Imbonerakure and this, in politics, is fair game. If they can achieve this, all the better. But if this is done by raping, that would be very dangerous. However, ‘Gutera inda’ and raping are different things. Rather, the Imbonerakure would be very happy to marry girls from the opposition so that they can give birth to Imbonerakure*”[[1052]](#footnote-1052).

553. The Commission has documented other cases in which the Imbonerakure chanted a similar song calling for “impregnating the opponents” on 6 May 2017 in Bujumbura, near Independence Square[[1053]](#footnote-1053) as they were heading to an event organized by the CNDD-FDD. Since April 2015, the Commission has documented several similar songs chanted by Imbonerakure or members of CNDD-FDD. They call for the brutalization, and even extermination of opponents to the ruling party and the Government. Certain expressions are repeated in these songs, such as: “punish them”, “stomp them”, “correct them”, “crush them” or “burn them”[[1054]](#footnote-1054).

554. On 18 April 2017, the United Nations Office of the High Commissioner for Human Rights issued a statement in response to the abovementioned video and referenced similar songs chanted by Imbonerakure on other occasions; namely on 1 April 2017 during a parade in Kayanza, on 8 April 2017 during the inauguration of a CNDD-FDD antenna in Ruyigi as well as on several other occasions at the end of the week during Imbonerakure meetings in the province of Makamba[[1055]](#footnote-1055).

555. The Commission noted the use of animal names aimed at dehumanizing opponents in speeches by government officials or CNDD-FDD members and in songs chanted by CNDD-FDD supporters; particularly Imbonerakure[[1056]](#footnote-1056). The terms “dog” and “stray dog” are recurrent. For instance, according to witnesses present, on 11 February 2017 during a CNDD-FDD meeting in Kayogoro (Makamba province), the President of the Senate allegedly said, “*Not punishing dogs causes stray and gaunt dogs to multiply*”. On 12 January 2016, during a meeting on security at the provincial level, the governor of Rutana province appears to have stated “*We have to punish Burundi’s enemies. The members of the opposition, those stray and gaunt dogs that bark*.”[[1057]](#footnote-1057)

556. The repeated use of insect names such as “roaches”, “cockroaches”, “worms”, “ants” in chants by Imbonerakure is worrisome because some of these terms were used in the past to designate the Tutsis, particularly during the period preceding the genocide in Rwanda in 1994.

557. On 30 May 2017, a video circulated on social media showing young girls in CNDD-FDD attire in the middle of a huge crowd[[1058]](#footnote-1058). The speaker during this event asks them questions to which they replied as if they were reciting a lesson. The dialogue was the following:

“*Speaker: Have you forgotten the dark past of the country?*

*Children: No, no we have not forgotten. After overcoming danger, we often forget it. We know what happened in Burundi in 1965, 1972, 1988 as well as the unprecedented crisis of 1993 when President Melchior Ndadaye was savagely assassinated and the blood of many Burundians was spilt.*

*Speaker: And you, Imbonerakure, do you consider this to have ended?*

*Children: Definitely not! The leopard cannot change its spots. Those who only think about their own selfish interests are always on the lookout like red ants. The others surprise me when they say they are giving a knowing wink to the government. On the contrary, they want to insidiously harm us like lice that bites while hiding in your trousers*.” [[1059]](#footnote-1059)

558. On 30 January 2016, a song chanted in the presence of the President of the Senate contained the following language: “*May the cockroaches not multiply in front of us, may they not get stronger before us*”[[1060]](#footnote-1060). The same song was chanted on several other occasions by members of the CNDD-FDD in January 2016 in Kirundo Province.[[1061]](#footnote-1061)

559. In some cases, the discourse was explicitly directed at the Tutsis. For example, the sentence “*The Tutsis are like goat ears, that do not hear until they are roasted*” was repeated several times[[1062]](#footnote-1062). In any case, the regular association - explicit or implicit – between political opponents and this particular ethnic group perpetuates a worrisome confusion.

560. Although on a smaller scale, the Commission also noted that members of opposition parties have sung chants containing hateful content. The same type of content can also be found in anonymous pamphlets found in several provinces. Animal terms have been used in those leaflets to designate members of the CNDD-FDD and sometimes Hutus. The term “dog” is recurrent as well as “pigs” or “moles”. President Nkurunziza is often compared to a “bat”.[[1063]](#footnote-1063)

7. Freedom of association and assembly

(a) Freedom of association

 (i) Applicable international and regional law

561. Article 20 of the Universal Declaration of Human Rights and Article 22 of the International Covenant on Civil and Political Rights guarantee freedom of association. The latter provides: “(1) everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. (2). No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.”

562. Article 10 of the African Charter on Human and Peoples’ Rights also protects freedom of association: “(1) Every individual shall have the right to free association provided that he abides by the law.” Article 10 (2) also states that: “Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association”. The obligation of solidarity in Article 29 aims to “preserve and strengthen the national independence and the territorial integrity of his country and to contribute to his defence” especially when the nation is under threat. The African Court on Human and Peoples’ Rights[[1064]](#footnote-1064), in line with the African Commission[[1065]](#footnote-1065) interpreted this provision by making the freedom not to associate the corollary of the freedom of association. The Court also stated that “freedom of association is negated if an individual is forced to associate with others” since “freedom of association implies freedom to associate and freedom not to associate”[[1066]](#footnote-1066).

 (ii) Domestic law: an increasingly restrictive legislation

563. Article 32 of the Constitution provides that “freedom of assembly and association is guaranteed as well as the right to create associations and organizations in accordance with the law”.

564. The framework regarding associations in Burundi distinguishes between foreign non-governmental organizations (ONGE) and national non-profit associations (ASBL). Until 2017, these two types of associations were regulated respectively by law n°1/011 (23 June 1999) on “amendments to law n°1/033 (22 August 1990) on the cooperation framework between the Republic of Burundi and foreign non-governmental organizations.” Local non-profit associations were regulated by law n°1/11 (18 April 1992) “on the organic framework of non-profit associations.” In 2015, the Special Rapporteur on the situation of human rights defenders criticized the latter, regretting the presence of “a number of provisions detrimental to associative movement”, particularly “the lack of clarity in the approval process which sometimes results in abuse and this accreditation remains conditional to the goodwill of administrative authorities”[[1067]](#footnote-1067).

Non-profit national organizations (ASBL)

565. In 2009, the Government initiated a revision process of law n°1/11 (1992), which resulted in the adoption of law n°1/02 (27 January 2017) “on the organic framework of the ASBL”. However, this new law does not address the concerns expressed in 2015 by the Special Rapporteur on the situation of human rights defenders vis-à-vis the draft law, particularly on the “very complex registration process”[[1068]](#footnote-1068).

566. Law n° 1/02 (2017) gives broad powers to the Ministry of the Interior to suspend a not-for-profit association as noted by the Special Rapporteur on the situation of human rights defenders when this law was still in its draft phase. The law stipulates that “upon request from the Public Prosecutor, the Administrative Court can order the closure of the premises and the suspension of activities of an association guilty of disrupting public safety or breaching national security.” However, before seizing the court, the law allows the Ministry in charge of accreditation of associations to take, on its own initiative or upon request from a third party, suspension measures not exceeding two months”[[1069]](#footnote-1069). The vagueness of “threat to public safety or breach of national security” leaves much discretion to Burundian authorities to suspend a not-for-profit association.”

567. Furthermore, the Burundian Government has the right of scrutiny and control over the activities of the associations given that Article 82 of law n°1/02 provides that “all activities of associations need the approval of the Minister of the Interior or the relevant technical ministry. Failure to do so will result in sanctions.” The law also states that “the Minister in charge of not-for-profit organizations has monitoring and evaluation rights on the field activities of associations.”

568. The Special Rapporteur on the situation of human rights defenders also regretted that the draft law “provides restrictions on the creation of coalitions of organizations” since it only authorizes “groupings, coalitions and assimilations […] only amongst not-for-profit organizations who work on the same subject matter and subject to the provisions of this law[[1070]](#footnote-1070). Article 41 of law n°1/02 (2017) confirms this restriction which the Special Rapporteur had considered as “going against freedom of associations to choose their cause and their mode of functioning” thus breaking the momentum which are so beneficial to the vitality of human rights defenders”[[1071]](#footnote-1071).

569. Finally, it is worth noting that law n°1/02 (2017) extends the control of Burundian authorities over the actual resources of not-for-profit organisations. Indeed, the law states that “all financial resources of foreign origin should be processed through the Central Bank and should be accompanied by supporting documents showing the origin and the intended use of said resources.”[[1072]](#footnote-1072)

Foreign non-governmental organizations (ONGE)

570. Law n°1/01 on “the general cooperation framework between the Republic of Burundi and foreign non-governmental organizations”, adopted on 23 January 2017, replaced law n°1/011 from 23 June 1999. The new law significantly strengthened the Government’s control over foreign NGO’s resources and activities. Thus, foreign NGOs that wish to settle and work in Burundi must “pay 500 United States dollars, representing a non-refundable administrative fee which has no impact on the accreditation process” that takes place at the level of the Ministry of External Relations and International Cooperation[[1073]](#footnote-1073). This Ministry represents “a one-stop shop for the management of all the relationships between the government and foreign NGOs” and once an NGO is operational, the Ministry “can, at any given time, control and review their general and financial management”[[1074]](#footnote-1074). In addition, all foreign NGOs must open foreign currency bank accounts within the Bank of the Republic of Burundi and “transfer a third of their budget on the accounts before the signing of a cooperation agreement” with the Government [[1075]](#footnote-1075).

 (iii) Facts

571. Freedom of association in Burundi has experienced restrictions since April 2015. However, this situation is not new. Already in 2014, in its concluding remarks during the second periodical report on Burundi, the Human Rights Committee indicated that it was “concerned by the numerous obstacles and impediments to the exercise of the freedom to form associations”[[1076]](#footnote-1076). That notwithstanding, before 2015, civil society associations, as well as the media, always enjoyed a certain level of freedom in Burundi and often denounced human rights violation despite constant threats and intimidations from the authorities[[1077]](#footnote-1077).

572. Civil society in Burundi has experienced some politicization and pressure from the Government. The Special Rapporteur on the situation of human rights defenders had already noted the following during his visit to the country in November 2014: “A considerable challenge for civil society is its polarization and politicization. It is of concern to the Special Rapporteur that some associations appear to be favoured by the Government because of their political alignment. This has led to some grievances within the traditionally independent civil society.”[[1078]](#footnote-1078)

573. For a long time, the Burundian Government accused independent civil society organizations of being close to the political opposition or even of being part of it. These accusations grew stronger in 2015 when 304 organisations joined the campaign “*Halte au troisième mandat*” launched on 26 January 2015 against President Nkurunziza’s bid for the presidential election.[[1079]](#footnote-1079) Following the demonstrations of April 2015 and the attempted *coup* in May 2015, these organizations, as well as others, have experienced even more pressure. Additionally, their directors have been targets of prosecution from the authorities.

Suspension, freezing of accounts and exclusion of civil society organizations

574. During his inauguration speech on 20 August 2015, President Nkurunziza warned civil society associations, urging them “not to interfere in political affairs and avoid any word or deed likely to provoke any kind of division or dissent, to incite killings, as it appeared during the recent uprisings”[[1080]](#footnote-1080). In the same month, the commission of inquiry, “tasked with shedding light on the insurrectional movement launched on 26 April 2015” and created by the Attoreny General on 29 April 2016 published its report in which 24 civil society organizations[[1081]](#footnote-1081) and their representatives[[1082]](#footnote-1082) were identified as being “part of the organization of the insurrections”[[1083]](#footnote-1083).

575. On 19 October 2015, the Attorney General, based on those findings, requested banks present in Burundi to freeze the assets of nine organizations identified in the investigative report as well as the accounts of three of their directors for reasons of investigation[[1084]](#footnote-1084). These nine organizations, including one that was added later, then saw their activities suspended by an ordinance from the Interior Ministry on 23 November 2015[[1085]](#footnote-1085). On 7 December 2015, the Attorney General gave the order to freeze the accounts of three other organizations as well as those of a private radio station[[1086]](#footnote-1086).

576. The lifting of the suspension of activities for *Parole et action pour le réveil des consciences et l’évolution des mentalités* (PARCEM) and *Association des juristes catholiques du Burundi* (AJCB) as well as the unfreezing their accounts on 25 March 2016 could have signalled an improvement of the situation. However, on 19 October of the same year, the Minister of the Interior issued ordinance n°530/1922, which permanently revokes the accreditation of FORSC, FOCODE, ACAT-Burundi, the *Association burundaise pour la protection des droits humains et des personnes détenues* (APRODH) and the *Réseau des citoyens probes* (RCP). On 24 October 2016, the Minister of Interior decided, through a written ordinance, the temporary suspension of five additional organisations, namely SOS Torture/Burundi, *Ligue Iteka*, the *Coalition de la société civile pour le monitoring électoral* (COSOME), the *Coalition burundaise pour la Cour Pénale Internationale* (CB-CPI) and the *Union burundaise des journalistes* (UBJ)[[1087]](#footnote-1087).

577. On 3 January 2017, the Minister of Interior announced the permanent exclusion of the *Ligue Iteka*, the oldest organization working on the protection of human rights in Burundi, accusing it of being “a repeat offender in tarnishing the image of the country and sowing hatred and division amongst the Burundian people.”[[1088]](#footnote-1088) The Minister took this measure following the publication by the *Ligue* of a report in November 2016, in partnership with the International Federation for Human Rights (FIDH), on the deterioration of the human rights situation in Burundi since April 2015[[1089]](#footnote-1089).

578. The beginning of 2017 was also characterized by the adoption of two laws, previously mentioned, which provide the Burundian Government with increased control over the activities of national civil society organizations and international NGOs.

Prosecution, threats and other violations against human rights defenders

579. Members of civil society organizations and human rights defenders have been specifically targeted since April 2015. Several among them, especially those engaged in the “*Halte au troisième mandat*” campaign, have been compared to political opponents or even “insurgents” by Burundian authorities. The report of the commission of inquiry, “tasked with shedding light on the insurrectional movement launched on 26 April 2015” identified civil society representatives as being responsible for the “insurrection”. Without making any distinction between them or providing any evidence, the commission of inquiry concluded that all these individuals were “liable, both in terms of criminal and civil liability, for the following infractions: illegal possession of firearms, participation in an insurrectional movement, intentional grievous assault and battery, intentional destruction, murder and breach of national security. They are now required to pay for the damage caused by these infractions”[[1090]](#footnote-1090).

580. Based on this report, the Attorney General issued around forty international arrest warrants in October 2015 against individuals who expressed their opposition to the new mandate of President Nkurunziza. Among the individuals targeted, there are four directors of civil society organizations namely: Justine Nkurunziza (*Coalition de la société civile pour le monitoring électoral* (COSOME)), Pacifique Nininahazwe (FOCODE), Vital Nshimirimana (FORSC) and Amel Niyongere (ACAT-Burundi).

581. Human rights defenders have also been arrested, attacked, killed or have disappeared[[1091]](#footnote-1091). One of the most serious cases concerned Pierre Claver Mbonimpa, the President of APRODH. In 2014, the authorities arrested Pierre Claver Mbonimpa for releasing information on Imbonerakure training in the DRC. After falling seriously sick in prison, he was released in September 2014. On 3 August 2015, he was the victim of an assassination attempt in which he was severely injured by a bullet. He had to be urgently evacuated for medical care. He is now living in exile. Unidentified individuals killed his son-in-law, Pascal Nshimirimana, on 9 October 2015; and his own son, Welly Nzitonda, was killed on 6 November 2015 by a police officer in Bujumbura according to information collected by the Commission[[1092]](#footnote-1092).

582. Another noteworthy case is that of Marie Claudette Kwizera, the treasurer of *Ligue Iteka*[[1093]](#footnote-1093). She disappeared on 10 December 2015 after she had been seen escorted by SNR agents. More recently, on 13 July 2017, SNR agents arrested Germain Rukuki, a former member of AJCB and President of the association *Njabutsa Tujane*. He was accused of breaching national security and participating in a rebellion because he secretly represented ACAT in Burundi and participated in a workshop organised by ACAT in Rwanda. On 17 August 2017, the Regional Court (*Tribunal de Grande Instance*) of Ntahangwa ordered his continued detention in the prison of Ngozi where he was transferred after being initially detained at SNR headquarters in Bujumbura[[1094]](#footnote-1094). On 25 August 2017, the Special Rapporteurs on the situation of human rights defenders, on the promotion and protection of the right to freedom of opinion and expression, on the right to peaceful reunion and freedom of association as well as the Chairperson-Rapporteur of the Working Group on arbitrary detention, have all asked for the release of Germain Rukiki[[1095]](#footnote-1095). A month earlier, on 13 June 2017, three members of PARCEM were arrested in the province of Muramvya where they were supposed to organize an exchange workshop with judiciary and administrative authorities on illegal and arbitrary arrests. The local head of SNR ordered their transfer to the intelligence services headquarters in Bujumbura. Since then, they have been detained in the prison of Mpimba, for breaching national security[[1096]](#footnote-1096).

583. Furthermore, members of civil society organizations and human rights defenders have received threats, especially during the first months of the crisis. This situation forced many of them to flee the country[[1097]](#footnote-1097). For instance, Anschaire Nikoyagize, President of Ligue Iteka, publicly stated that he received threats directed at him and his family members through anonymous phone calls after the attempted *coup* in May 2015. He was later informed that his immediate family, who had moved for security reasons, was targeted by SNR agents and Imbonerakure in the place where they had relocated. These threats were confirmed when he started feeling unsafe himself in Bujumbura, particularly when police officers positioned themselves close to where he was living. He finally decided to flee Burundi in November 2015[[1098]](#footnote-1098).

584. The above examples are not isolated cases. Several other human rights defenders have been forced to leave the country after repeatedly receiving written or verbal threats directed at them or people close to them and/or following a feeling of insecurity often due to surveillance by police or SNR[[1099]](#footnote-1099).

585. These threats and violations have contributed to creating an atmosphere of permanent insecurity, which has made the work of human rights defenders still present in Burundi even more difficult and dangerous. These defenders have to work undercover and take many precautions in order not to expose themselves and their sources to risks of reprisal from the authorities. The latter target individuals who share information with national or international civil society organizations as well as the United Nations.

Violation of the freedom to not associate

586. The Commission has noted that since April 2015 the population in general, specifically individuals affiliated with an opposition party, experience threats and pressure, often involving abuse or attempted violation of human rights, to force them to join the CNDD-FDD. The authors of such actions are generally Imbonerakure and/or local authorities from the ruling party. Most of the victims are members of opposition parties, mainly MSD and FNL[[1100]](#footnote-1100). One of the most iconic case concerns Zedi Feruzi, the President of *Union Paix et Développement* (UPD-Zigamibanga) who was killed on 23 May 2015 in Bujumbura[[1101]](#footnote-1101). The testimonies collected by the Commission confirm that before his assassination, members of the CNDD-FDD, including high-ranking officials, had approached him to create an alliance between them and UPD for the 2015 presidential election, which he refused[[1102]](#footnote-1102).

587. The Commission has also collected several testimonies from individuals with no political affiliation and/or who did not want to adhere to any particular party who were pressured into joining CNDD-FDD or who have been victims of human rights violations because they persisted in their refusal[[1103]](#footnote-1103). Apart from the political reasons that explain the efforts of CNDD-FDD to increase the number of supporters, this search is also driven by financial reasons: obtaining more contributions from members[[1104]](#footnote-1104).

588. The violations and attacks experienced by those who refused to join CNDD-FDD or Imbonerakure vary in nature, from death threats against them or their families[[1105]](#footnote-1105) to torture or cruel, inhumane or degrading treatment[[1106]](#footnote-1106), disappearances[[1107]](#footnote-1107), actual or attempted assassination[[1108]](#footnote-1108). The Commission has collected testimonies of victims, who had their assets – house, land or businesses –confiscated or destroyed by members of CNDD-FDD and/or Imbonerakure[[1109]](#footnote-1109). A member of an opposition party indicated that red crosses had been painted on his house and those of known opponents in his neighbourhood after the demonstrations against Pierre Nkurunziza’s bid for the presidential elections[[1110]](#footnote-1110).

589. Spouses and other relatives close to those that CNDD-FDD tried to recruit into their party were also victims of human rights violation and abuse, particularly death threats[[1111]](#footnote-1111), torture or cruel, inhumane or degrading treatments[[1112]](#footnote-1112), assassinations and disappearances[[1113]](#footnote-1113).

(b) Freedom of assembly

 (i) Applicable international and regional law

590. Article 20 of the Universal Declaration of Human Rights and Article 21 of the International Covenant on Civil and Political Rights guarantee the freedom of peaceful assembly. The latter article states “no restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.” Along the same lines, article 11 of the African Charter on Human and Peoples’ Rights states “Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics, rights and freedoms of others.”

 (ii) Domestic law: a broad concept of public order

591. Freedom of assembly is guaranteed under Article 32 of the Burundian Constitution and governed by law n°1/28 of 5 December 2013 “on regulation of public demonstrations and assemblies”. This text stipulates that a prior declaration of intent is necessary. The deadline for the submission of the declaration to the authorities is 4 working days[[1114]](#footnote-1114). The authorities then have 48 hours to make their decision.

592. Assemblies such as public demonstration can be prohibited or postponed for reasons of public order. Concerning public demonstrations, “administrative authorities can, at any time, notwithstanding the declaration of intent, postpone or terminate any assembly, procession, parade, gathering on public streets and places if it is required for maintaining public order.”[[1115]](#footnote-1115) However, the law gives a broad definition of public order exceeding the criteria of the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples’ Rights. In fact, Article 3 (h) of the law defines public order as “all the mandatory rules required for the organization of the nation, economy, morality, health, public peace, essential rights and freedoms of each individual”. The notions of “organization of the nation”, “economy” and “public peace”, in addition to being vague and therefore likely be interpreted in a broad manner, they also go beyond the notions of security, safety, health and ethics that are listed in international and African law.

 (iii) Facts

593. Until early 2015, demonstrations of political parties and civil society organizations were organized despite clashes with the authorities and the security forces. The protests from April until June 2015 against the new mandate of President Nkurunziza were a turning point[[1116]](#footnote-1116). As far as the Commission knows, no public demonstration from opposition parties or groups against the Government’s policies have taken place since. On the other hand, as of the finalization of the present report, CNDD-FDD has regularly organized marches, parades and other demonstrations with large crowds during which hateful speeches have been pronounced. [[1117]](#footnote-1117)Although the provisions of law n°1/28 from 5 December 2013 (previously mentioned) clearly state that any public demonstration or assembly that could stir hatred based on identity, causes disturbances or provoke violence is considered as a disturbance to public order.”[[1118]](#footnote-1118)

594. Opposition parties or groups to the Government find challenges in organizing public assemblies and their members in the countryside are afraid of meeting, even in private or small groups[[1119]](#footnote-1119). In addition, members of opposition parties have been arrested or almost arrested after being accused of holding clandestine meetings[[1120]](#footnote-1120). A representative of an opposition party stated the following:

* *As soon as three people are together, if they are not members of the CNDD-FDD, they are accused of holding a clandestine meeting with the aim to destabilize*”*[[1121]](#footnote-1121)*.

595. In 2015 for instance, in the province of Rumonge, a member of an opposition party was beaten up by Imbonerakure who accused him of organizing a clandestine meeting while he was talking with three friends in the street. The Imbonerakure also hit his friends:

“*They accused us of holding a clandestine meeting and not responding to the call from the ruling party. They accused us of being amongst the opponents who do not want peace*”*[[1122]](#footnote-1122)*.

8. Freedom of movement

(a) Applicable law

596. Freedom of movement is the right for each individual to move freely within a country, to leave the country and to return. It is guaranteed under Article 13 of the Universal Declaration of Human Rights and Article 12 of the International Covenant on Civil and Political Rights.

597. According to General Comment n°27 of the Human Rights Committee[[1123]](#footnote-1123), “liberty of movement is an indispensable condition for the free development of a person” and “it interacts with several other rights enshrined in the Covenant.” According to the Committee, “the right to move freely relates to the whole territory of a State” and “the freedom to leave the territory of a State may not be made dependent on any specific purpose or on the period of time the individual chooses to stay outside the country. Furthermore, since international travel usually requires appropriate documents, the right to leave a country must include the right to obtain the necessary travel documents.”

598. Freedom of movement is also guaranteed under Article 12 of the African Charter on Human and Peoples’ Rights, which in its paragraph 3, provides that “Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions.”

599. Freedom of movement shall not be subject to restrictions unless the general requirements regarding legitimate restrictions of fundamental rights are met. According to Article 12 of the International Covenant on Civil and Political Rights, “the above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Covenant.”

600. Article 33 of the Burundian Constitution provides that “all Burundian citizens have the right to move and settle freely anywhere on the national territory as well as to leave the country and to return to the country.”

(b) Facts

601. The Commission has documented numerous cases of restriction to freedom of movement in Burundi since April 2015, particularly affecting people who had been victims or feared becoming victims of human rights violations. These restrictions also affected close relatives.

602. The Commission has collected several testimonies documenting roadblocks erected by the police and/or Imbonerakure close to borders, especially with Rwanda and Tanzania[[1124]](#footnote-1124). These roadblocks impede the movement of Burundian citizens within the country and towards neighbouring countries. Furthermore, these roadblocks force individuals under threat or any person wishing to go into exile, to flee the country clandestinely, thus increasing risks to which they are exposed.

603. The Commission of Inquiry has documented human rights violations that took place on those roadblocks. Several people who attempted to flee the country because they feared for their lives were stopped arbitrarily at those locations. For instance, one individual, during an interview with the Commission, testified to the following:

“*In 2015, I decided to flee […] by taking the road […] at a roadblock [close to the border] the police told us we could no longer continue […] after five minutes, a four-door double-cabin vehicle arrived with individuals wearing civilian clothes and a police officer on board […] a man came out of the car. We were told he was the provincial head of SNR. They lead us to an unknown location […]. Around seven, we saw the SNR chief again with some police officers. They handcuffed us and took us to SNR headquarters in Bujumbura. There, they brought in a man […] he hit me with his hands and with a club. He said, ‘We are going to kill you. You. Tutsi. Things have changed. Today you no longer have the power’.*”*[[1125]](#footnote-1125)*

604. Some people were victims of ill-treatment and torture at roadblocks at the time of their arrest and during their subsequent detention[[1126]](#footnote-1126). In 2016, some individuals were arrested and beaten by border police (PAFE) and Imbonerakure while they were trying to cross the border to reach a neighbouring country. The persons in this group were subsequently detained at SNR headquarters in Bujumbura and one of them was tortured[[1127]](#footnote-1127).

605. The Commission collected testimonies from women who were victims of rape during their attempts to leave the country[[1128]](#footnote-1128). For instance, in 2016, a woman was gang raped by police officers at one of the four roadblocks she had to go through in order to reach the border with Rwanda[[1129]](#footnote-1129). A similar rape case was reported close to the border with Tanzania[[1130]](#footnote-1130).

606. At these roadblocks or border posts, several people who tried to leave the country were forced to pay a certain amount of money (sometimes a large amount) to police officers or Imbonerakure or were stripped of their belongings[[1131]](#footnote-1131). Others barely escaped being arrested or other abuses by running and crossing the border while being followed by Imbonerakure or SNR agents[[1132]](#footnote-1132).

607. The Commission has collected testimonies from individuals who were threatened, arrested or tortured for helping others who tried to flee the country[[1133]](#footnote-1133). An individual who escaped in 2017 told the Commission the following:

“*The circumstances of my escape were difficult […] Very early in the morning, [X} arranged for transport to the Rwandan border. There, we encountered some Imbonerakure […] they did not catch up with us but shouted to the Rwandans to kick us out […] The Imbonerakure caught [X] who stayed in the vehicle. They took him to an SNR cell before transferring him two days later to the judicial police cell where he was detained for three weeks […] They asked him many questions […]. They wanted to catch me*.”[[1134]](#footnote-1134)

608. In several cases, family members of those who managed to escape were seriously threatened. Some were victims of arrests or arbitrary detention or seem to have disappeared[[1135]](#footnote-1135). In this context, the Commission received the testimony of a person who escaped from Burundi in 2016 and whose family members were arrested at home a few weeks after the escape. To date, several are still missing whereas the body of one of them was found a few days after their arrest[[1136]](#footnote-1136).

609. People who spent time in neighbouring countries, particularly Rwanda and then returned to Burundi were arbitrarily arrested or were victims of other human rights violations, such as torture, once back in the country. The Burundian authorities suspected them of collaborating with armed groups allegedly based in those countries[[1137]](#footnote-1137). The Commission collected the testimony of an individual who, sometime after his return to Burundi from a neighbouring country where his family is in exile, was arrested in 2016 by unidentified individuals, one of whom was wearing a police uniform. This person was detained in an unidentified location and was a victim of sexual abuse and other torture[[1138]](#footnote-1138).

610. Burundian authorities have adopted other measures to impede the freedom of movement, for instance, the obligation to keep household notebooks whose rationale is to better control peoples’ movements. In accordance with this obligation, every household must have a notebook in which the head of the household registers every person he/she is responsible for as well as visitors. The local administrative authorities must validate any modification in the notebook. The police regularly inspects these notebooks, the regularity of these controls vary from one neighbourhood to another[[1139]](#footnote-1139). A person interrogated by the Commission explained how these inspection operations took place in their neighbourhood:

“*The PNB regularly conducts search and seizures in certain neighbourhoods. When conducting such operations, they enter households and ask to see documents, namely ID cards and the household notebook. While the police is conducting these checks, the army blocks all access to the neighbourhood for several hours while the police enter the homes. During this operation, no exit or access is possible*”*[[1140]](#footnote-1140)*.

611. Another person described this operation as “a money generating scheme”[[1141]](#footnote-1141). Indeed, during their operations, police officers request money in the absence of the household notebook or if it appears to contain mistakes. A head of household told the Commission that:

“*[The police] tried to detain a visitor who came to see me, even though he was registered in the notebook. They claimed that the neighbourhood chief had not signed the notebook. Although this was the case, I had to give them money, after which they left*.”*[[1142]](#footnote-1142)*

612. Even when there are delays in the distribution of household notebooks, the police continue to request them. One person reported the following arrests to the Commission in 2017:

“*The police force blocked four streets in the area […]. I saw that police had arrested ten people. They were new in the neighbourhood. They had all paid for the household notebooks. They all had their receipts. However, due to a shortage, they did not have the [actual] notebooks. The police still wanted to see them. They were taken to the police station […] they were released after they paid between 2,000 and 10,000 Burundian Francs (equivalent to between 1 and 5 US Dollars)*”[[1143]](#footnote-1143).

613. All these obstacles to freedom of movement had several consequences. People who in the past were used to visiting neighbouring countries or of moving within the country for private or professional reasons, particularly to visit family members, have limited their travels for fear of being arrested arbitrarily or becoming victims of other human rights violations or subject relatives to reprisals. Travel within the country and to neighbouring countries has significantly reduced and resulted in a significant decrease of commercial activities and a deterioration of the social and family fabric.

[…]

III. Crimes under International Law

669. Paragraph 23 a) of the resolution 33/24 of the Human Rights Council mandates the Commission “to conduct a thorough investigation into human rights violations and abuses in Burundi since April 2015, including on their extent and whether they may constitute international crimes, with a view to contributing to the fight against impunity”. In this regard, the Commission has examined the documented violations and abuses to establish if they present the prescribed level of gravity and the required elements to be qualified as international crimes.

670. By “international crimes”, the Commission means the “most serious crimes of concern to the international community as a whole” as defined by the Rome Statute of the International Criminal Court (ICC), namely: crimes against humanity, war crimes and genocide, and the crime of aggression[[1144]](#footnote-1144). Not having considered that the prevailing situation in Burundi since April 2015 is an armed conflict[[1145]](#footnote-1145), the Commission did not examine if war crimes or crimes of aggression took place and focused instead on the existence of crimes against humanity. It also examined if the crime of genocide was committed basing its legal analysis on the Rome Statute as well as the Convention on the Prevention and Punishment of the Crime of Genocide which Burundi is party to.

A. Crimes against humanity

 1. Elements of crime

671. Article 7 (1) of the Rome Statute defines crimes against humanity as any of the following acts “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

a) Murder;

b) Extermination;

c) Enslavement;

d) Deportation or forcible transfer of population;

e) Imprisonment or other forms of severe deprivation of physical liberty in violation of fundamental rules of international law;

f) Torture;

g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

i) Enforced disappearance;

j) Apartheid;

h) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”.

 Attack directed against a civilian population

672. Article 7 (2) (a) provides that “attack directed against a civilian population is understood to mean a course of conduct involving the multiple commission of acts enumerated in Article 7, paragraph 1, against any civilian population [...]”. In the *Elements of crime* adopted by the State Parties of the Rome Statute of the ICC, it is clarified that the attacks “need not constitute a military attack”[[1146]](#footnote-1146). It is understood that “policy to commit such an attack “requires that the State or the organisation actively promote or encourage such an attack against a civilian population”[[1147]](#footnote-1147).

673. Considering information collected, the Commission has reasonable grounds to believe that an attack was conducted against one part of the civilian population since April 2015 in Burundi. This attack consisted of multiple acts targeted by the Rome Statute[[1148]](#footnote-1148) against a mostly civilian population composed namely of Government opposition members or people perceived as such. The presence of elements of defence and security forces, namely ex-FAB, amongst the victims changes nothing to this qualification[[1149]](#footnote-1149).

674. Article 7 (1) of the Rome Statute, while specifying further that the acts within its scope must be committed “as part of a widespread or systematic attack directed against a civilian population”, requires that a link between these individual acts and the attack in general be demonstrated[[1150]](#footnote-1150). This requirement excludes isolated acts from the qualification of crimes against humanity. In the case of Burundi, the Commission documented a large number of violations, which by virtue of their nature and common modus operandi, objectives and consequences[[1151]](#footnote-1151) – namely, to silence all forms of opposition– fall within the context of an attack conducted against part of the civilian population in Burundi since April 2015.

 Existence of a State or Organisation policy

675. Article 7 (2) (a) of the Rome Statute requires the existence of a “State or organisation policy” with the intent of conducting such an attack. Nonetheless, the jurisprudence of ICC and other international criminal courts does not consider that this policy must be “formally stated”[[1152]](#footnote-1152) or that the intent of conducting the attack must be “explicitly stated, nor clearly and precisely articulated”[[1153]](#footnote-1153). The intent can be deduced from the “occurrence of a set of facts namely: [...] in the global political framework which the criminal acts are part of, [...] of the general content of a political programme, as it emerges from the writing of its authors or their speeches, [...] from the mobilisation of the armed forces, [...] from the scale of the exactions perpetrated [...]”[[1154]](#footnote-1154).

676. In the case of Burundi, the violations and abuses documented by the Commission are within the framework of a political crisis, which started in April 2015 with the demonstrations against Pierre Nkurunziza’s announcement to seek a new presidential term. The crisis was aggravated after the failed *coup d’état* in May 2015 and the use of violence by armed groups and unidentified individuals against state agents, in particular against military facilities on 11 December 2015. These acts led to the mobilisation of the security forces in particular SNR, PNB and FDNB, to suppress any form of opposition – real or presumed - to the Government, which led to serious human rights violations on a large scale. The hate speeches against the opposition by Government authorities and representatives of CNDD-FDD at all levels attest to a general political will of the Burundian Government, supported by the ruling party, to repress any dissenting voice.

677. Furthermore, the ICC considers that in exceptional circumstances, the policy of the State “would be implemented by State or organizational action. Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack”[[1155]](#footnote-1155). The fact that, generally and to the knowledge of the Commission, few presumed perpetrators of violations in Burundi have been prosecuted or that pressure has been exerted to prevent prosecution can be interpreted as a deliberate abstention by the Burundian State to act and therefore, an encouragement by the State of Burundi.

678. The Commission also examined the existence of an “organisation’s policy” – namely CNDD-FDD. As explained above[[1156]](#footnote-1156), the Commission noted a certain alignment of CNDD-FDD with the policy of the Burundian State, often manifested by identical views and objectives between these two entities. The President of the Republic presides over the Counsel of the Elders, one of the key executive bodies and, de facto, contributes to the strategic choices of CNDD-FDD. The national secretary of CNDD-FDD responsible for the management of leagues affiliated to the party, Sylvestre Ndayizeye, was director at the Interior Department and then an advisor at SNR before assuming his functions within CNDD-FDD in 2016. In addition, CNDD-FDD, through its representatives, its official communiqués and its demonstrations in support of the Government regularly organised since April 2015, demonstrated unwavering support to the Government, namely in its fight against any form of opposition, real or presumed. In fact, the Commission, having noted a certain alignment of CNDD-FDD, considers that it is not necessary to demonstrate the existence of its own policy, given that its members; in particular those of the youth league; act in most cases within the policy framework determined by the Burundian State.

 Widespread or systematic character of the attack

679. The Rome Statute stipulate that the attack against the civilian population must be “widespread or systematic”; these two criteria do not have to be cumulative[[1157]](#footnote-1157). To be widespread, the attack must be carried out on a large scale and affect a plurality of victims[[1158]](#footnote-1158). There is however no minimum threshold to define this scale. In the case of Burundi, the number of violations, their occurrence in several provinces, the plurality of victims, the perpetrators and institutions implicated are evidence to conclude the widespread character of the attack.

680. The systematic nature of the attack denotes “the organized nature of the acts of violence and the improbability of their random occurrence”[[1159]](#footnote-1159) . This character stems from “patterns of crime, in the sense of the non-accidental repetition of similar criminal conduct on a regular basis”[[1160]](#footnote-1160). In the case of Burundi, the Commission also has reasonable grounds to believe that the attack against the civilian population has a systematic character due to the occurrence of similar acts of violence and often with the same modus operandi, as well as the targeting of the victims that rule out the randomness of these acts.

 Knowledge of the attack

681. The Rome Statute requires that the attack be conducted with full knowledge[[1161]](#footnote-1161). To this end, it is not necessary to prove that the perpetrator knew the details of the attack as the latter could be deduced from the “indirect evidence” such as the circumstances of the attack[[1162]](#footnote-1162). Therefore, the Commission considers that, considering the available information, the presumed perpetrators that it was able to identify; mainly members of SNR, PNB, FDNB and Imbonerakure; must have had full knowledge of the context in which their acts took place, given their functions in the security apparel of the State or their indoctrination within CNDD-FDD.

 2. Typology of crimes

682. Given that the elements of crime against humanity were met, the Commission then examined the types of crimes committed in Burundi since April 2015. To do so, the Commission looked at the *elements of crime*, adopted by State Parties to the Statute of Rome of the ICC, which provide the required criteria to establish the existence of crimes under international law[[1163]](#footnote-1163).

 Murders

683. The Commission has reasonable grounds to believe that violations and abuses to the right to life committed by State agents, namely the extrajudicial executions and deaths following the excessive use of force by law enforcement agencies and Imbonerakure, are likely to constitute “murders” under the Rome Statute[[1164]](#footnote-1164).

 Imprisonment or other forms of severe deprivation of physical liberty

684. The Commission considers that several cases of arbitrary detention in SNR, PNB cells and other unofficial detention centres constitute “imprisonment or other forms of severe deprivation of physical liberty [...] in violation of the fundamental rules on international law” under the Rome Statute[[1165]](#footnote-1165). In addition, the violations often committed during detention, including the inhumane conditions in the detention centres, add to the seriousness of these acts.

 Torture

685. The Commission has reasonable grounds to believe that the acts of members of the security forces, sometimes seconded by Imbonerakure, characterised by the Commission as acts of torture and inhumane, cruel or degrading treatment, amount to “torture” under the Rome Statute[[1166]](#footnote-1166) in that they systematically aimed to inflict “to one or several persons pain or acute physical or mental suffering” while these persons were “under the custody or the control of the perpetrator”[[1167]](#footnote-1167).

 Rape and any other form of sexual violence of comparable gravity

686. Cases of rape by police agents and/or Imbonerakure in the context of arrests of presumed opponents or retaliation against their female family members amount to “rape” under the Rome Statute[[1168]](#footnote-1168). Under the Rome Statute, other cases of sexual violence documented by the Commission, namely detention, might potentially fall under “any other form of sexual violence of comparable gravity”, “torture” or “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”[[1169]](#footnote-1169).

 Political and gender-related persecution

687. Different violations committed by State agents or Imbonerakure against members of opposition parties or their relatives potentially amount to crimes of “persecution” under article 7 (1) (h) of the Rome Statute. These crimes were politically motivated and the victims targeted due to their membership, actual or presumed, to opposition parties or groups[[1170]](#footnote-1170). Furthermore, in some cases of sexual violence, the fact that women related to the political opponents were targeted may amount to gender-based persecution in addition to political persecution.

 Enforced disappearances

688. Article 7 (2) (i) of the Rome Statute defines enforced disappearance as “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time”.

689. In the case of Burundi, the Commission was able to establish, under international human rights law, some cases of enforced disappearance since April 2015 for which witnesses confirmed the arrest or the detention of victims, followed by the denial or dissimulation of these disappearances by Burundian authorities[[1171]](#footnote-1171). However, as the investigations currently stand, the Commission is unable to reach the same conclusion under the international criminal law, which further requires that either the perpetrator is aware that such arrest, detention or abduction would be followed in the ordinary course of events by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons[[1172]](#footnote-1172). However, the Commission does not exclude that this element may be deduced from the general context of the occurrence of enforced disappearance.

690. In some cases of disappearance, however, the Commission was not able to obtain testimonies reporting the arrest or the detention of victims. Nevertheless, amongst these cases, the Commission has reasonable grounds to fear that the disappearance could be qualified as “enforced” under international human rights law[[1173]](#footnote-1173). The Commission’s concerns are based on indirect evidence, such as the context of arrest and arbitrary detention or a climate of general persecution, and the existence of specific elements such threats before or after the disappearance or the fact that the victims or the family members were political opponents or perceived as such. These cases could, if confirmed, contribute to establishing the existence of a general context of occurrence of forced disappearance required to demonstrate, as explained in the previous paragraph, that the perpetrator was aware that the enforced disappearance would be followed by a refusal to acknowledge that deprivation of freedom or to give information on the victim’s fate or whereabouts.

691. However, in the absence of information proving that these victims were arrested or detained, the Commission cannot qualify this category of disappearance of crimes against humanity. A criminal jurisdiction, national or international, may have access to information allowing to establish the arrest or detention of the victim, which the Commission was unable to obtain due to lack of time and access[[1174]](#footnote-1174).

B. Genocide

692. Although, within the context of certain human rights violations such as arrests, torture and sexual violence, the Commission was able to show that Tutsis were targeted by insults of an ethnic nature, it is not in a position to establish the existence of a political will to destroy that ethnic group since April 2015 in Burundi.

1. Elements of crime

693. Article 6 of the Rome Statute provides that “genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

a) Killing members of the group;

b) Causing serious bodily or mental harm to members of the group;

c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

d) Imposing measures intended to prevent births within the group;

e) Forcibly transferring children of the group to another group”[[1175]](#footnote-1175).

694. The Commission examined the elements of the crime of genocide to establish reasonable grounds to believe that they exist in Burundi. The most important element is the element of intent (*mens rea*). In the case *Kayishema and Ruzindana*, ICTR noted: “Although the existence of a precise plan to annihilate the group would not; in and of itself; amount to an element of genocide, it seems virtually impossible to commit the crime of genocide in the absence of such a plan or an organisation [...]”[[1176]](#footnote-1176). At the time of the publication of this report, the Commission has not received any credible testimony leading to conclude on the existence of a plan or the implementation of an organisation aiming to kill the Tutsis in Burundi.

695. Furthermore, the Rome Statute stipulates that the intent to destroy must target “all or part” of a group. If by that expression the Statute means that the annihilation of the entire group is not required, the intent to destroy must however target a significant number or at least a substantial part of the group[[1177]](#footnote-1177). However, since April 2015, no elements in Burundi attest to the annihilation of a substantial part of Tutsis living in the country.

696. The Rome Statute and the Convention for the Prevention and the Repression of the Crime of Genocide provide that the intent must be to destroy “in whole or in part, a national, ethnical, racial or religious group, *as such*”. Through these terms, the international criminal law insists on the fact that the victims of the act are chosen not for their individual identity but because they belong to the group[[1178]](#footnote-1178). In that regard, the Commission was not able to establish that the Tutsis who suffered human rights violations and abuses in Burundi since April 2015 did so primarily because of their ethnicity. If in some cases, this ethnicity may have been an aggravating motive or the subject of insults, adding to the suffering of the victims, the latter were targeted because they were opposed to the Government or perceived as such. As explained a former Imbonerakure, now in exile:

“*Whether Hutu or Tutsi, you can be executed. The criteria for choosing our targets is not ethinicity but opposition to the Head of State. In addition, I have given orders to Tutsis to kill other Tutsis. They trained us to kill, pillage, rape and exterminate all those in opposition to the power in place*”[[1179]](#footnote-1179).

 1. Incitement to commit the crime of genocide

(a). Applicable Law

697. Article 25-3 e) of the Rome Statute provides that “a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if: [...] in respect of the crime of genocide, that person directly and publicly incites others to commit genocide”. The Statute hereby quotes article III c) of the Convention for the prevention and the repression of the crime of genocide which, similarly, stipulates that “direct and public incitement to commit genocide”[[1180]](#footnote-1180) shall be punished.

698. Burundian law has integrated this notion of incitement to genocide. Article 302 of the Penal Code provides that “whoever orders or publicly incites to the commission of the crime of genocide [...] risks life imprisonment”.

**(b). Facts**

699. The Commission did not record any “direct and public incitement to commit genocide” in Burundi. However, in some speeches by Burundian authorities, the use of some worrying terms that are reminiscent of expressions heard before and during the Rwandan genocide in 1994. For example, in a speech, on 29 October 2015, in front of locally elected officials in Bujumbura[[1181]](#footnote-1181),the President of the Senate, Révérien Ndikuriyo, said: “*If you hear the signal with an instruction that it must be finished, there will be no room for emotions and tears! [...] You must pulverise, you must exterminate these people [...] Wait for the day when we will tell you ‘work!’, you will see the difference!*”[[1182]](#footnote-1182). The term “*gukora*” (work) was used during the Rwandan genocide to incite the Hutu population to kill Tutsis. Several Burundian and international actors including the Special Advisor of the UN Secretary-General on the Prevention of Genocide, Adama Dieng, condemned the statements of the President of the Senate[[1183]](#footnote-1183). Despite these condemnations, the Commission received information indicating that, on 26 February 2017, the National Secretary of the CNDD-FDD affiliated leagues, Sylvestre Ndayizeye, used the same term “work” and incited Imbonerakure to repeat it, during a RTNB programme in Ngozi[[1184]](#footnote-1184). Furthermore, the Commission documented hate speech targeting Tutsis, specifically in speeches by high-ranking officials and songs sung by CNDD-FDD members[[1185]](#footnote-1185).

700. The Commission also noted the development of a rhetoric by the Government and CNDD-FDD officials aimed at manipulating the sense of ethnic identity, namely by referencing several times the massacres of Hutus in Burundi in 1972[[1186]](#footnote-1186). Some of these speeches seem to want to stir up a feeling of vengeance amongst the families of the 1972 victims. In addition, frequent statements by the Government and the ruling party have tried to present the international community criticisms on the situation in Burundi as a conspiracy against Hutus. For example, on 23 December 2015, a CNDD-FDD communiqué declared: “*It is them [Belgium and the former Tutsi power] that committed genocide against the Hutus in 1972 pushing the survivors into exile, it is them who ruled by terror, exclusion and discrimination for 40 years, it is them who assassinated Ndadaye [first Hutu President; democratically elected and assassinated in 1993] and caused the country to relapse into civil war. And now that there is a Government that came from the Hutu rebellion, it is them who are doing all kinds of manoeuvres to bring back and reinstate the Tutsis to power through a calculated ethnic rotation*”[[1187]](#footnote-1187).

701. The Commission considers this rhetoric particularly dangerous as it revives ethnic tensions and terrorises a part of the Burundian population in an already tensed political climate. By not prosecuting and punishing the authors of such declarations, the Burundian Government may be held liable under Article 20 of the ICCPR, which condemns “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

702. To date, these inflammatory messages do not seem to have stricken a significant chord with the Burundian population. Burundian of various ethnic groups, social and professional background told the Commission that, for the most part, the population is suspicious of this kind of rhetoric, as it perceives the risk of the country relapsing into similar violence as per the past. Several Burundians interviewed by the Commission also insisted that, despite attempts “to ethnicize” the crisis, the latter remains, in their opinion, political[[1188]](#footnote-1188). However, if the authorities do not adopt urgent measures to put an end to such speeches, the situation; already characterised by persistent tensions and increasing economic difficulties; could become even more fragile.

C. Individual responsibilities

 1. Commission mandate

703. Paragraph 23 (b) of the Human Rights Council Resolution 33/24 mandates the Commission “to identify alleged perpetrators of human rights violations and abuses in Burundi with a view to ensuring full accountability”. A literal and restrictive interpretation of this paragraph may suggest that the Commission received a mandate only to identify the alleged perpetrators under the human rights law and not under international criminal law. However, as indicated above, in international human rights law, only the State is held liable for acts committed by its agents or individuals or group of individuals acting under its orders or its control[[1189]](#footnote-1189). In mentioning the “presumed authors of the violations”, the resolution refers to individual responsibilities, which are provided by the international criminal law.

704. This is deduced from a joint reading of paragraphs 23 (a), (b) and (c) of the resolution 33/24. In fact, paragraph (a) requests the Commission to “conduct a thorough investigation into human rights violations and abuses in Burundi since April 2015, including on their extent and whether they may constitute international crimes, with a view to contributing to the fight against impunity”. This paragraph clearly shows that the Commission is mandated to document both the human rights violations and the crimes under international criminal law to contribute to the fight against impunity. The Commission believes that to achieve this objective, it cannot be limited to establishing the responsibilities of crimes solely under human rights law by omitting the perpetrators of crimes under international law. The assurance of “full accountability” referred to in paragraph 23 (b) of the resolution would not be achieved if the Commission adopted this restrictive interpretation, just as in sub-paragraph (c) which requests the Commission to “formulate recommendations on steps to be taken with a view to guaranteeing that the authors of these violations and abuses, regardless of their affiliation, are held accountable for their acts”.

 2. Responsibilities

705. The Commission has reasonable grounds to believe that high-ranking state officials, officials and agents of SNR, PNB and FDNB and Imbonerakure are liable for the crimes against humanity described in this report. The Commission has drawn up a non-exhaustive list of presumed perpetrators of crimes against humanity, together with information on some crimes they committed or ordered. The Commission decided not to publish the list to ensure the presumption of innocence and the protection of victims and witnesses[[1190]](#footnote-1190). The Commission took great care in making a distinction between direct individual responsibility and command responsibility[[1191]](#footnote-1191) and superior responsibility[[1192]](#footnote-1192), as established by the Rome Statute.

706. Concerning reporting relationships and chains of command within the entities which the alleged perpetrators of the crimes against humanity belong to, it is important to recall that SNR falls under the authority of the President of the Republic, while its day-to-day management is under a general administrator who supervises five departments. Amongst these departments is the Internal Intelligence Department, mandated to “prevent destabilising activities of a political or social nature”, which oversees 18 provincial officers who in turn supervise area chiefs[[1193]](#footnote-1193).

707. The President of the Republic is the “supreme commandant” of PNB, which is supervised by an Inspector General assisted by a Deputy Inspector General, both under the direct authority of the Minister of Public Security. The PNB is organised in general precinct headquarters at the central level and in regional, provincial and communal precincts at the local level. The police commissioners at the helm of general and regional headquarters report to the PNB Inspector General while his deputy oversees the lower echelons. API reports to the general headquarters of the internal security while BAE is directly under the authority of the General Inspection[[1194]](#footnote-1194).

708. FDNB is under the supreme authority of the President of the Republic and under the direct command of the leader of FDNB, himself at the helm of the General Staff. The Organisation Act adopted in 2017[[1195]](#footnote-1195) no longer refers to the responsible minister suggesting that the Head of FDNB directly reports to the President. The Organisation Act also reinforced the centralisation of the hierarchical power at the General Staff level by removing subordinate staffs and military regions. The Head of FDNB commands the army, the navy and the air force, as well as specialised units, including the BSPI. BGC (Camp Muzinda), cited above, is under Army command[[1196]](#footnote-1196).

709. However, several testimonies indicated that; in reality the State is largely run by a parallel structure based on personal relationships that date back to the time when some CNDD-FDD authorities were fighting in the bush and were later reinforced to deal with the internal opposition within the party to President Nkurunziza’s new term which started in 2014. Major decisions, including those that led to serious human rights violations, are allegedly not made by the Government, but by the President of the Republic surrounded by a restricted circle of “generals”. That circle includes the Minister of Public Security, the General Administrator of SNR, the Chief of Staff in the President’s office in charge of the Police, the civilian Chief of Staff as well as the Secretary General of CNDD-FDD[[1197]](#footnote-1197). This circle allegedly relays its decisions through a parallel chain of command configured differently from one entity to another and from one province to another, and sometimes subordinates have more power than their supervisors do. Thus, the Commission was informed that the Deputy Inspector General of PNB has more power than the Inspector General[[1198]](#footnote-1198).

710. The organisation of Imbonerakure seems to mirror that of CNDD-FDD following a pyramid hierarchical structure encompassing levels from the national leadership level to local authorities. From August 2016, Imbonerakure are officially under the authority of “a CNDD-FDD national Secretary responsible for the management of party affiliated leagues”[[1199]](#footnote-1199). However, the Commission received information reporting a group of Imbonerakure particularly active in committing illegal acts some of which may constitute crimes against humanity[[1200]](#footnote-1200). This group, often referred to as the “group of the demobilised”, was led by General Adolphe Nshimirimana, former head of SNR, in order to attack CNDD-FDD opponents and was under his direct control until his assassination in 2015. A witness heard by the Commission said:

“*The demobilised are a sub-group of Imbonerakure [...] [They] are Imbonerakure who distinguish themselves by their activities. They are called upon for operations involving abductions, killings, etc., because they have received military training. The demobilised train the rest of the youth. They are in all the provinces. At the time of the demobilisation[[1201]](#footnote-1201), there were about 15,000 demobilised [soldiers], but they are not all involved in these activities today*”[[1202]](#footnote-1202).

711. While the Commission cannot establish their actual number, it collected testimonials reporting the military training of members of that group, namely in the Democratic Republic of the Congo, the distribution of arms and the payment of considerable amounts of money that they receive from State agents after carrying out their missions[[1203]](#footnote-1203). In addition, several testimonials mentioned close ties between members of this group and other Imbonerakure, and some members – including high-ranking officials - of SNR, PNB, FDNB and the office of the President[[1204]](#footnote-1204). These ties are instrumental in short-circuiting the official chain of command.

D. Accountability mechanisms

712. The global Summit of Heads of State and Government in 2005 that took place on the sixtieth anniversary of the United Nations reaffirmed the special responsibility of the State to protect their population against genocide, war crimes and crimes against humanity[[1205]](#footnote-1205). The preamble and Article 1 of the Rome Statute emphasize that the ICC “is complementary to national criminal jurisdictions”. Considering the principle of “complementarity”, ICC always examines the admissibility of cases it receives by determining, on a case-by-case basis, if the competent State opened an investigation and started the prosecution of alleged perpetrators of the crimes brought to its attention, and “if there is unwillingness by the State” in question to genuinely carry out these proceedings, while respecting the guarantees of a fair process[[1206]](#footnote-1206). To that end, the Court examines if “ a) proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person [...] concerned from criminal responsibility for crimes within the jurisdiction of the Court [...]; b) there has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice; c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice”[[1207]](#footnote-1207).

713. Given the lack of independence of the Burundian justice system and the impunity for serious violations by State agents or members of the ruling party, including Imbonerakure[[1208]](#footnote-1208)*,* the Commission has reasonable grounds to believe that the Burundian state has neither the willingness nor the capacity to genuinely carry out investigations or credible proceedings on these violations which may constitute crimes against humanity. It is therefore up to the ICC to investigate these acts and establish criminal responsibilities in this regard.

714. The Commission hopes that such an investigation would be authorised by the ICC Preliminary Chamber before 27 October 2017, date on which the withdrawal of Burundi from the Rome Statute becomes effective[[1209]](#footnote-1209). If that is the case, Burundi has the duty to cooperate fully with the ICC for the ongoing investigation, even after October 2017[[1210]](#footnote-1210). In view of the above, the withdrawal of a state from the Rome Statute “shall not prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective”[[1211]](#footnote-1211). Even if the ICC Prosecutor does not request the opening of an investigation on Burundi before 27 October 2017, the preliminary investigation procedure commenced on 25 April 2016 shall continue.

715. Whether an investigation is opened or not, ICC will no longer have jurisdiction *ratione temporis* (temporal jurisdiction) to carry out investigations on potential acts under its jurisdiction which may be committed in Burundi after 27 October 2017. If such acts were nonetheless committed, the UN Security Council could, under Article VII of the Charter of the United Nations, refer the situation in Burundi to the ICC Prosecutor and the Court will *de facto* be seized without a prior decision by the preliminary chambers to open an investigation[[1212]](#footnote-1212).

716. The Commission would like to point out that, should the ICC open an investigation into the situation in Burundi, the State Parties to the Rome Statute have the duty to cooperate “fully with the Court”[[1213]](#footnote-1213).

In addition, the Commission encourages United Nations Member States to prosecute, under the rubric of universal jurisdiction, anyone suspected of crimes against humanity in Burundi present on their territory, if that jurisdiction is allowed in their national law, and in the spirit of the Rome Statute which, in its preamble, recalls that “it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”.

[…]

1. \* Original in French available at https://www.ohchr.org/FR/HRBodies/HRC/CoIBurundi/Pages/CoIBurundiReportHRC36.aspx [↑](#footnote-ref-1)
2. See:  <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20910&LangID=E>. [↑](#footnote-ref-2)
3. Paragraph 23 (a) of resolution 33/24. [↑](#footnote-ref-3)
4. Article 5 (1) of the Rome Statute. [↑](#footnote-ref-4)
5. See Part II. B. of this report. [↑](#footnote-ref-5)
6. See Part III.C. of this report. [↑](#footnote-ref-6)
7. Article 28 of the Rome Statute. [↑](#footnote-ref-7)
8. Paragraph 5 of resolution 33/24. [↑](#footnote-ref-8)
9. Armed groups which resolution 33/24 refers to in its paragraph 7. [↑](#footnote-ref-9)
10. A/HRC/36/54. [↑](#footnote-ref-10)
11. A/HRC/32/30. [↑](#footnote-ref-11)
12. A/HRC/33/37. [↑](#footnote-ref-12)
13. Paragraph 23 (d) of resolution 33/24. [↑](#footnote-ref-13)
14. Among them: the murder of General Adolphe Nshimirimana, former Administrator General of the National Intelligence Service, on 2 August 2015; the attack on General-Major Prime Niyongabo, Chief of Staff, on 11 September 2015; the assassination of Lieutenant-Colonel Darius Ikurakure on 22 March 2016; the attack on the Minister iin charge of Human Rights, Social Affairs and Gender, Martin Nivyabandi on 24 April 2016; the attack on the Communication Advisor of the President of the Republic, Willy Nyamitwe on 28 November 2016; the murder of Emmanuel Niyonkuru, Minister for Water, Environment, Land-use and Urban Planning, on 1 January 2017, as well as several attacks on CNDD-FDD members and police officers. [↑](#footnote-ref-14)
15. All these correspondences are reproduced in the appendix of this report. [↑](#footnote-ref-15)
16. Statement by the Ambassador/Permanent Representative of the Republic of Burundi in Geneva, dated 13 March 2017 during the interactive dialogue on the situation of human rights in Burundi to the Human Rights Council. [↑](#footnote-ref-16)
17. Statement by the Ambassador/Permanent Representative of the Republic of Burundi in Geneva, dated 15 June 2017 during the interactive dialogue on the situation of human rights in Burundi to the Human Rights Council. [↑](#footnote-ref-17)
18. See: <https://www.youtube.com/watch?v=atxhafk07gQ&feature=youtu.be>. Regarding attacks by armed opposition groups, see parts II.B.3 and II.C.1 of this report. [↑](#footnote-ref-18)
19. Comments of the Republic of Burundi on the report of the Commission of Inquiry on Burundi. [↑](#footnote-ref-19)
20. See Appendix C of this report. [↑](#footnote-ref-20)
21. In February 2017, the Commission invited all interested persons or organizations to submit information, reports or documents on human rights violations and abuses committed in Burundi since April 2015. See: <http://www.ohchr.org/FR/HRBodies/HRC/CoIBurundi/Pages/CoIBurundi.aspx>. [↑](#footnote-ref-21)
22. A code has been assigned to each interview. This is the code that is found in the footnote. The testimonies referred to in this report’s footnotes are only a non-exhaustive representative sample. [↑](#footnote-ref-22)
23. Office of the United Nations High Commissioner for Human Rights, “Guidance and Practices for Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law”, 2015 , pp. 69-70 ([http://www.ohchr.org/Documents/Publications/CoI\_Guidance\_and\_Practice\_EN.pdf](https://www.ohchr.org/Documents/Publications/CoI_Guidance_and_Practice.pdf)). [↑](#footnote-ref-23)
24. See: “Standards of Proof in International Humanitarian and Human Rights Fact-Finding and Inquiry Missions”, Académie de droit international humanitaire et de droits humains à Genève (<https://www.geneva-academy.ch/joomlatools-files/docman-files/Standards%20of%20Proof%20in%20Fact-Finding.pdf>). [↑](#footnote-ref-24)
25. Article 58 (1) of the Rome Statute. [↑](#footnote-ref-25)
26. For instance, when the person interviewed reports acts of torture, the investigator’s assessment of the source’s reliability as well as the visualization and observation of scars and wounds match the testimony, may be sufficient for corroboration. [↑](#footnote-ref-26)
27. Office of the United Nations High Commissioner for Human Rights, “Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law”, 2015, p. 66-67. [↑](#footnote-ref-27)
28. In particular, the Office of the United Nations High Commissioner for Human Rights, “Guidance and Practices for Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law”, pp. 83-92. [↑](#footnote-ref-28)
29. In all circumstances and at all times, commissions of inquiry have an obligation not to jeopardize the life, safety, freedom and well-being of victims, witnesses, and other cooperating persons. [↑](#footnote-ref-29)
30. Commissions of Inquiry shall consider, whenever possible, the knowledge and views of cooperating persons and by involving them in the risk and threat assessment and the choice of measures to be taken to ensure their safety. [↑](#footnote-ref-30)
31. Common Article 2 to the Geneva Conventions specifies that international humanitarian law applies “in case of declared war or any other armed conflict arising between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them”. According to this provision, International armed conflicts are those which oppose “High Contracting Parties”, meaning States. [↑](#footnote-ref-31)
32. It should also be noted that the International Committee of the Red Cross has not made a public statement that would suggest that the situation in Burundi has evolved into a non-international armed conflict. [↑](#footnote-ref-32)
33. Law n°01/10 of 18 March 2005 promulgating the Constitution of the Republic of Burundi. [↑](#footnote-ref-33)
34. Ratified on 9 May 1990. [↑](#footnote-ref-34)
35. Idem. [↑](#footnote-ref-35)
36. Ratified on 27 October 1977. [↑](#footnote-ref-36)
37. The CAT was ratified on 18 February 1993 and its optional protocol on 18 October 2013. [↑](#footnote-ref-37)
38. Ratified on 08 January 1992. [↑](#footnote-ref-38)
39. The CRC was ratified on 19 October 1990, its Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on 6 November 2007, and its Optional Protocol on the Involvement of Children in armed conflicts on 24 June 2008. [↑](#footnote-ref-39)
40. The CRPD and its optional protocol were ratified on 22 May 2014. [↑](#footnote-ref-40)
41. CRC/C/BDI/CO/2, CCPR/C/BDI/CO/2 et E/C.12/BDI/CO/1. [↑](#footnote-ref-41)
42. CAT/C/BDI/CO/2. [↑](#footnote-ref-42)
43. Procedure under Article 19 (1) of the CAT which stipulates that State Parties shall submit “such other reports as the Committee may request”. This procedure was only used twice before the Committee reviewed the case of Burundi. [↑](#footnote-ref-43)
44. Note verbale n° 204.02.17/0828/RE/2016/N.M.A. [↑](#footnote-ref-44)
45. CAT/C/BDI/CO/2/Add.1. [↑](#footnote-ref-45)
46. Armel Niyongere, Lambert Nigarura, Dieudonné Bashirahishize et Vital Nshimirimana. See also: “Burundi torture review: UN experts concerned at reported reprisals”: [http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20350&LangID=E](http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=20350&LangID=E). [↑](#footnote-ref-46)
47. Voir: [http://tbinternet.ohchr.org/\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fBDI%2fCO%2f2%2fAdd.2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/BDI/CO/2/Add.2&Lang=en) . [↑](#footnote-ref-47)
48. CEDAW/C/BDI/CO/5-6. [↑](#footnote-ref-48)
49. Burundi has periodic reports due to the Committee on the Elimination of Racial Discrimination (since 26 November 1998) and the Committee for Child Rights (since 1st October 2015 for the Convention, since 24 July 2010 for the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, and since 6 December 2009 for the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography). [↑](#footnote-ref-49)
50. A/HRC/RES/30/27. [↑](#footnote-ref-50)
51. A/HRC/32/30. [↑](#footnote-ref-51)
52. A/HRC/RES/S-24/1. [↑](#footnote-ref-52)
53. These experts were Christof Heyns, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Maya Sahli-Fadel, Special Rapporteur of the African Commission on Human and Peoples' Rights on refugees, asylum seekers, internally displaced persons and migrants in Africa, and Pablo de Greiff, UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. [↑](#footnote-ref-53)
54. A/HRC/33/37. [↑](#footnote-ref-54)
55. A/HRC/31/55/Add.2. [↑](#footnote-ref-55)
56. A/HRC/30/42/Add.1. [↑](#footnote-ref-56)
57. Since April 2015, special procedures mandate holders have publicly spoken ten times about the deteriorating situation in Burundi. See: “ UN experts call for release of Burundi human rights defender Germain Rukuki”, 25 August 2017; "Burundi: UN experts raise alarm at growing repression of NGOs and human rights defender”, 6 February 2017 ; “Act to protect civilians, UN experts urge Burundi Government”, 29 November 2016 ; Statement by Michael K. Addo, Chairperson of the Coordination Committee of Special Procedures at the Twenty-fourth Special Session of the Human Rights Council on preventing further deterioration of the human rights situation in Burundi, 17 December 2015 ; “ UN experts welcome the Security Council call on Burundi and urge concrete actions ”, 13 November 2015 ; “Burundi and Sri Lanka, two test cases for the prevention of recurring mass violations – UN expert” ; 15 September 2015 ; Burundi : UN expert calls for protection of all rights defenders after attempted killing of top activist, 7 August 2015; Burundi: UN experts call for determined Security Council action to prevent mass violence in the Great Lakes region, 16 July 2015 ; “Tradition of impunity’ threatens Burundi’s future, renders free elections impossible – UN expert warns”, 19 June 2015 ; “ Pre-election violence endangers Burundi’s young democracy, UN rights experts warn ”, 30 April 2015. [↑](#footnote-ref-57)
58. Ratified on 28 July 1989. [↑](#footnote-ref-58)
59. Ratified on 2nd April 2003. [↑](#footnote-ref-59)
60. Ratified on 28 June 2004 [↑](#footnote-ref-60)
61. Ratified on 31st October 1975. [↑](#footnote-ref-61)
62. Signed on 20 June 2007. [↑](#footnote-ref-62)
63. Signed on 3 December 2003. [↑](#footnote-ref-63)
64. The Court sits temporarily in Arusha, Tanzania. Referrals to the EACJ may be submitted by legal and natural persons residing in all EAC Member States, by Member States themselves, and by the Secretary General of the EAC. [↑](#footnote-ref-64)
65. For instance, on 15 May 2015, the EACJ, on a referral by the Association of Burundian Journalists, issued a ruling according to which law n ° 1/11 of 4 June 2013 amending law n°1/25 of 27 November 2003 governing the media in Burundi was partially violating the principles of good governance as defined in Articles 6 and 7 of the EAC Treaty (see [www.eacj.org](http://www.eacj.org)). [↑](#footnote-ref-65)
66. “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on opening a Preliminary Examination into the situation in Burundi”, 25 April 2016 (see: [www.icc-cpi.int](http://www.icc-cpi.int)). A preliminary examination is not an investigation but a process by which the information available is examined in order to determine, on a fully informed basis whether there is reasonable ground for initiating an investigation in compliance with the criteria set by the Rome Statute. After receiving sufficient information, the ICC Prosecutor decides, duly motivated in fact and in law, recommending that an investigation be opened subject to the authorization of the judges, or not to open one if there is no reasonable basis to proceed. [↑](#footnote-ref-66)
67. There are two requirements for a customary rule: the “constant practice” by States (objective element) and their conviction that this practice is legally binding as prescribed by the law (opinio juris or subjective element). [↑](#footnote-ref-67)
68. This definition mirrors the one from Article II of the Convention on the Prevention and Punishment of the Crime of Genocide. [↑](#footnote-ref-68)
69. Para. 91 of the judgment rendered on 21 May 1999. [↑](#footnote-ref-69)
70. In Kayishema and Ruzindana, the ICTR noted the following: “Although a specific plan to destroy does not constitute an element of genocide, it would appear that it is not easy to carry out a genocide without such a plan, or organisation”. [↑](#footnote-ref-70)
71. In paragraph 64 of the judgment of 7 June 2001 in the Bagilishema case, the ICTR states: “Although the destruction sought need not be directed at every member of the targeted group, the Chamber considers that the intention to destroy must target at least a substantial part of the group”. [↑](#footnote-ref-71)
72. International criminal jurisprudence has interpreted the notion of “national, ethnical, racial or religious group” as belonging to a stable and permanent group. In the Akayesu case, the ICTR noted: “On reading through the travaux préparatoires of the Genocide Convention 96, it appears that the crime of genocide was allegedly perceived as targeting only ‘stable’ groups, constituted in a permanent fashion and membership of which is determined by birth, with the exclusion of the more ‘mobile’ groups which one joins through individual voluntary commitment, such as political and economic groups.” [↑](#footnote-ref-72)
73. See, in particular, the following ICTR cases, The Prosecutor v. Niyitegeka, Rutaganda, and The Prosecutor v. Nahimana, Barayagwiza and Ngeze. [↑](#footnote-ref-73)
74. Article I of the convention on the Prevention and Punishment of the Crime of Genocide. This obligation does not fall under criminal law, but under civil law. [↑](#footnote-ref-74)
75. These acts are defined in Article 7 (2) of the Rome Statute and in the Elements of Crimes. [↑](#footnote-ref-75)
76. ICTR Trial Chamber, Kayishema and Ruzindana, judgment of 21 May 1999: “The attack is the event in which the enumerated crimes must form part. Indeed, within a single attack, there may exist a combination of the enumerated crimes, for example murder, rape and deportation”. [↑](#footnote-ref-76)
77. See in particular ICTR, Akayesu, Rutaganda, Musema, Ntakirutimana and Ntakirutimana cases, Kayishema and Ruzindana. [↑](#footnote-ref-77)
78. See in particular ICTR, Akayesu, Kayishema and Ruzindana cases, and Semanza. [↑](#footnote-ref-78)
79. Paragraph 128 of the judgment rendered on 21 May 21, 1999. See also ICTR, Akayesu, Rutaganda, Musema, Semanza and Bagilishema cases. [↑](#footnote-ref-79)
80. Ibid., para. 133-134. See also ICTR, Ruggiu and Bagilishema cases. [↑](#footnote-ref-80)
81. For more details, see Part III.C.1 of this report. [↑](#footnote-ref-81)
82. Article 1 of the Draft Articles of the International Law Commission (2001). [↑](#footnote-ref-82)
83. Article 2. [↑](#footnote-ref-83)
84. The United Nations General Assembly took note of this in its resolution 56/83 of 12 December 2001. [↑](#footnote-ref-84)
85. Article 4 (1) of the Draft articles on Responsibility of States for Internationally Wrongful Acts. [↑](#footnote-ref-85)
86. Ibid., article 5. In its commentaries to the Draft articles on Responsibility of States for Internationally Wrongful Acts, the ILC notes: “The justification for attributing to the State under international law the conduct of “parastatal” entities lies in the fact that the internal law of the State has conferred on the entity in question the exercise of certain elements of the governmental authority. If it is to be regarded as an act of the State for purposes of international responsibility, the conduct of an entity must accordingly concern govern-mental activity and not other private or commercial activity in which the entity may engage”,Yearbook of the International Law Commission, 2001, vol. II (2)). [↑](#footnote-ref-86)
87. Ibid., article 8. In this regard, the ICJ notes: “The attribution to the State of conduct in fact authorized by it is widely accepted in international jurisprudence. In such cases it does not matter that the person or persons involved are private individuals nor whether their conduct involves governmental activity". “Most commonly, cases of this kind will arise where State organs supplement their own action by recruiting or instigating private persons or groups who act as “auxiliaries” while remaining outside the official structure of the State”, (Yearbook of the International Law Commission, 2001, vol. II (2)). See also Zafiro cases, (United Nations, Reports of International Arbitral Awards, vol. VI (1925), Stephens, Ibid., Vol. IV (1927)), Lehigh Valley Railroad Company, and others (USA) v. Germany (Sabotage Cases): incidents of “Black Tom” and “Kingsland” (United Nations, Reports of International Arbitral Awards, vol. VIII (1930) and vol. VIII (1939)). [↑](#footnote-ref-87)
88. Article 11 of the Draft articles on Responsibility of States for Internationally Wrongful Acts. [↑](#footnote-ref-88)
89. Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgement, ICJ Reports 1986, p. 14 [↑](#footnote-ref-89)
90. ICTY, International Criminal Tribunal for the former Yugoslavia, Prosecutor v. Duško Tadić (aka “Dule”), judgement of 7 May 1997. [↑](#footnote-ref-90)
91. Nevertheless, in 2007, in the case Application of the Convention on the Prevention and Punishment of the Crime of Genocide, the ICJ rejected the notion of “overall control” adopted by the ICTY Court of Appeal, preferring the concept of “effective control” it had introduced in the case concerning Military and Paramilitary Activities in and against Nicaragua. [↑](#footnote-ref-91)
92. The jurisprudence of the African Commission on Human and Peoples’ Rights has recalled this dual obligation. In its communication 393/10 Institute for Human Rights and Development in Africa et al. Democratic Republic of the Congo in 2016, the Commission considered, for example: “not only has [the Democratic Republic of the Congo] not fulfilled its obligation to respect rights [...] but it has not complied with its obligation of rights guaranteed by the Charter. Not only did the government not investigate and punish the involvement of Anvil mining company, but also, no compensation was provided to the victims from the company for the role it played in perpetrating the violations. As a result, the State has failed to fulfil its obligations under Article 1 of the African Charter” (para. 102). See also Communication 155/96, Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, 2001. [↑](#footnote-ref-92)
93. Supra., section (b). [↑](#footnote-ref-93)
94. See: <http://www.achpr.org/files/instruments/general-comments-right-to-life/general_comment_no_3_french.pdf>. [↑](#footnote-ref-94)
95. Article 30 (2) of the Rome Statute. [↑](#footnote-ref-95)
96. Ibid., article 30 (3). [↑](#footnote-ref-96)
97. The Rome Statute recognizes several exceptions to individual criminal responsibility, including minority, error of fact or law, as well as dementia, intoxication, self-defence, and coercion. [↑](#footnote-ref-97)
98. Ibid., article 33 (1). Article 33 (2) of the Rome Statute states that: “Orders to commit genocide or crimes against humanity are manifestly unlawful”. [↑](#footnote-ref-98)
99. See ICC, The Prosecutor v. Jean-Pierre Bemba Gombo, Judgement of 15 June 2009. [↑](#footnote-ref-99)
100. Burundi, which was an independent kingdom from the late sixteenth century, came under German rule in 1903, then under Belgian administration pursuant to a mandate of the League of Nations in 1923 and the United Nations in 1945. Burundi, like neighbouring Rwanda, is composed of three main ethnic groups: Hutus (around 85% of the population), Tutsis (around 14%) and Twas (around 1%). Belgium administered Burundi, as well as Rwanda, indirectly, relying on the Tutsi aristocracy to the detriment of the Hutu populations. Article 2 of the Arusha Peace Agreement, signed in 2000, mentions the strategy of the colonial administration which aimed to “divide and conquer [...] injected and imposed a caricatured, racist vision of Burundian society, accompanied by prejudices and clichés [...] [The colonial administration] also introduced an identity card which indicated ethnic origin, thus reinforcing ethnic awareness to the detriment of national awareness.” [↑](#footnote-ref-100)
101. Article 3 of the Arusha Agreement notes the following: “Since independence, and throughout the different regimes, there have been a number of constant phenomena which have given rise to the conflict that has persisted up to the present time: massive and deliberate killings, widespread violence and exclusion [...] The Parties recognize that acts of genocide, war crimes and other crimes against humanity have been perpetrated since independence against the Hutu and Tutsi ethnic communities in Burundi ". [↑](#footnote-ref-101)
102. See the report by Benjamin Whitaker to the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1985/6-2 July 1985, para. 24. See also: Rene Lemarchand, Selective Genocide in Burundi (London, Minority Rights Group, 1974) and Leo Kuper, The pity of All (London, Duckworth, 1977). [↑](#footnote-ref-102)
103. S/1996/682. [↑](#footnote-ref-103)
104. Cyprien Ntaryamira, a Hutu and founding member of Burundi's Front for Democracy (FRODEBU), was elected President two months earlier, on 5 February 1994. [↑](#footnote-ref-104)
105. See: <https://en.wikisource.org/wiki/Arusha_Peace_and_Reconciliation_Agreement_for_Burundi>. [↑](#footnote-ref-105)
106. Article 4 of the Rome Statute. [↑](#footnote-ref-106)
107. See: <https://www.mdnac.bi/sites/default/files/Accord_global_de_cessez-le-feu_16.11.11.pdf> et [https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Paix/Accords%20de%20paix/GOB\_Palipehutu-FNL\_fr\_Accord\_Global\_070906.pdf](https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi%20/%20Peace%20/%20Peace%20Agreements%20/%20GOB_Palipehutu-FNL_en_Accord_Global_070906.pdf). [↑](#footnote-ref-107)
108. See: <https://www.uantwerpen.be/en/rg/iob/centre-great-lakes/dpp-burundi/partis-politiques/palipehutu-fnl/>. [↑](#footnote-ref-108)
109. See Part I.G.5 of this report. [↑](#footnote-ref-109)
110. In accordance with Article 302 of the Constitution, which stipulates that "exceptionally, the first President of the Republic of the post-transition period shall be elected by the National Assembly and the Senate in a joint session, by a majority of two thirds of the members ". [↑](#footnote-ref-110)
111. The expression is in brackets because it is not up to the Commission to form an opinion on an issue regarding the interpretation of the Burundian Constitution. [↑](#footnote-ref-111)
112. The amendment sought to delete Article 302 of the Constitution. Some considered this as a way to distract from the fact that Pierre Nkurunziza was elected a first time through indirect universal suffrage in accordance with this transitional provision. [↑](#footnote-ref-112)
113. See: [https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Partis%20poltiques/CNDD-FDD/Lettre%20Hatungimana%20et%20al\_200315.pdf](https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi%20/%20Political%20parties%20/%20CNDD-FDD%20/%20Letter%20Hatungimana%20et%20al_200315.pdf). [↑](#footnote-ref-113)
114. See parts II.C.1 and 3 of this report. [↑](#footnote-ref-114)
115. The Press House hosted the Synergie des médias platform, which allowed five radio stations (RPA, Bonesha, Isanganiro, Renaissance and CCIB FM +) to broadcast. [↑](#footnote-ref-115)
116. See Part II.C.6 of this report. [↑](#footnote-ref-116)
117. In particular, the Court held that: “The imprecision contained in Article 302 opened the option of a third term for the President, that his first term was a special one. In 2010, Pierre Nkurunziza is elected for the first time by universal suffrage.” [↑](#footnote-ref-117)
118. See Part II.C.6 of this report. [↑](#footnote-ref-118)
119. MENUB Preliminary Statement on the Presidential Election in Burundi, 27 July 2015. [↑](#footnote-ref-119)
120. See Part I.G.5 of this report. [↑](#footnote-ref-120)
121. For more details, see Part II.C.1 of this report. [↑](#footnote-ref-121)
122. Before the creation of the Burundian National Defense Forces in 2004, following the Arusha Agreement. [↑](#footnote-ref-122)
123. Report of the commission of inquiry “tasked with shedding light on the insurrectional movement launched on 26 April 2015”", Bujumbura, August 2015. See Part II.C.9 of this report for more details. [↑](#footnote-ref-123)
124. See Part II.C.7 of this report. [↑](#footnote-ref-124)
125. See Part II.C.1 of this report. [↑](#footnote-ref-125)
126. Report of the Commission tasked with shedding light on the allegations of "extrajudicial executions" during the clashes that followed the attack on four military camps on 11 December 2015, March 2016. [↑](#footnote-ref-126)
127. See: <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=16953&LangID=F>. For more details, see part II.C.1 of this. [↑](#footnote-ref-127)
128. Although RED-Tabara officially appeared in January 2016, the group indicated it had been active since 2010. For more details, see Part I.G.6 of this report. [↑](#footnote-ref-128)
129. For more details, see Part II.C.1 of this report. [↑](#footnote-ref-129)
130. See: <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=19835&LangID=F#sthash.5GAy7FcS.dpuf>,[http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=20215&LangID=F#sthash.07UFlDSX.dpuf](http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=20215&LangID=F" \l "sthash.07UFlDSX.dpuf). See parts II.C.2 and 3 of this report. [↑](#footnote-ref-130)
131. See Part II.C.7 of this report. [↑](#footnote-ref-131)
132. See Part II.C.7 of this report. [↑](#footnote-ref-132)
133. See: <http://www.jeuneafrique.com/429485/politique/burundi-gouvernement-suspend-parti-dopposition-msd-six-mois->loblige-a-fermer-permanences/. [↑](#footnote-ref-133)
134. Order n ° 530/1043 of 12 July 2017 suspending the association Radio Publique Africaine. [↑](#footnote-ref-134)
135. See Part II.C.3 of this report. [↑](#footnote-ref-135)
136. Conversions in this report are calculated based on the official rate. However, the black market rate is higher than the official rate. [↑](#footnote-ref-136)
137. See: <http://www.rfi.fr/afrique/20170809-nkurunziza-demande-burundais-financer-elections-2020>, <http://www.iwacu-burundi.org/elections-2020-contributions-polemiques/>. [↑](#footnote-ref-137)
138. BNUB was established in 2010 by Security Council Resolution 1959 (2010) to replace the United Nations Integrated Office in Burundi (ONUB) whose mandate, dating from 2004, was to assist Burundi in the implementation of the Arusha agreement. [↑](#footnote-ref-138)
139. Security Council Press Statement on the situation in Burundi, 13 March 2017

 (https://www.un.org/press/en/2017/sc12750.doc.htm). [↑](#footnote-ref-139)
140. Opening remarks by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein at the press conference on his mission to Burundi, 15 April 2015. [↑](#footnote-ref-140)
141. Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein on Burundi via video link to the Security Council, 9 November 2015.

(<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16728&LangID=E#sthash.ykxlSe8o.dpuf>). [↑](#footnote-ref-141)
142. Statement Adama Dieng, Under Secretary-General and the Special Adviser on the Prevention of Genocide, 9 November 2015 (<https://www.un.org/en/genocideprevention/documents/our-work/Doc.3_9%20November%202015%20Burundi.pdf>). [↑](#footnote-ref-142)
143. S/RES/2248 (2015). [↑](#footnote-ref-143)
144. Particularly 12 November 2015, 19 December 2015, 29 January 2016, and 1 April 2016

(<https://www.un.org/press/en>). [↑](#footnote-ref-144)
145. [A/HRC/33/37](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session33/Documents/A_HRC_33_37_E_AUV_.docx). [↑](#footnote-ref-145)
146. See: <https://www.un.org/press/en/2017/sc12750.doc.htm> [↑](#footnote-ref-146)
147. See: <https://www.un.org/press/en/2017/sga1729.doc.htm> [↑](#footnote-ref-147)
148. See: <https://www.un.org/press/en/2017/sc12929.doc.htm> [↑](#footnote-ref-148)
149. See: <https://www.un.org/press/en/2017/sc12937.doc.htm> [↑](#footnote-ref-149)
150. Report of the delegation of the African Commission on Human People’s Rights on the fact-finding mission to Burundi (7-13 December 2015). [↑](#footnote-ref-150)
151. See : <http://www.rfi.fr/afrique/20151230-burundi-le-president-met-garde-ua-tout-deploiement-militaire>. [↑](#footnote-ref-151)
152. According to the Special Adviser of the Secretary-General of the United Nations (S / 2014/165). [↑](#footnote-ref-152)
153. The 15 members of CNDI were appointed in October 2015. During the inauguration ceremony, President Nkurunziza noted that, whilst inclusion was desirable, it should not be an obstacle to the investigation of persons accused of participating in the “insurrectional movement”. [↑](#footnote-ref-153)
154. Press release signed by CNDI President, Monsignor Justin Nzoyisaba, 12 May 2017. [↑](#footnote-ref-154)
155. Decree No. 100/041 of 15 March 2017 on the establishment, mandate, composition, organization and functioning of the National Commission responsible for proposing the draft amendment of the Constitution of the Republic of Burundi. Decree No. 100/089 of 12 May 2017 appointing the members of the National Commission to propose the draft amendment of the Constitution of the Republic of Burundi. [↑](#footnote-ref-155)
156. On 1 October 2015, the EU announced that it had applied sanctions against Godefroid Bizimana, the Deputy Director General of the National Police suspected of making operational decisions that led to a disproportionate use of force and violent repression; Gervais Ndirakobuca, aka “Ndakugarika”, the chief of staff in the office of the President in charge of the National Police, who is allegedly responsible for violence committed between 26 and 28 April 2015, in Nyakabiga and Musaga neighbourhoods in Bujumbura; Mathias-Joseph Niyonzima, aka “Kazungu”, an intelligence officer accused of leading Imbonerakure; and Léonard Ngendakumana, allegedly involved in the coup d'état of 2015, who had claimed grenade attacks on polling stations and promised to step up actions until Pierre Nkurunziza is ousted. On 22 November 2015, the United States took similar sanctions against Godefroid Bizimana, but also against Alain Guillaume Bunyoni, Minister of Public Security, as well as Cyrille Ndayirukiye and General Godefroid Niyombare, both involved in the coup attempt of May 2015. On 18 December 2015, the United States took new individual sanctions, this time against Gervais Ndirakobuca, Mathias-Joseph Niyonzima, Leonard Ngendakumana, and Alexis Sinduhije, the leader of the opposition party MSD. [↑](#footnote-ref-156)
157. See: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/14/burundi-eu-closes-consultations-cotonou-agreement/>. [↑](#footnote-ref-157)
158. Article 92 of the Constitution. [↑](#footnote-ref-158)
159. On the issue of constitutionality raised by the re-election of President Nkurunziza in 2015, see part I.F.2 of this report. [↑](#footnote-ref-159)
160. Article 107 of the Constitution. [↑](#footnote-ref-160)
161. Ibid. [↑](#footnote-ref-161)
162. Ibid. [↑](#footnote-ref-162)
163. Article 111 of the Constitution. [↑](#footnote-ref-163)
164. Article 5 of Law No. 1/08 of 28 April 2011 on the general organization of public administration. [↑](#footnote-ref-164)
165. He replaced General Evariste Ndayishimiye who became the head of CNDD-FDD at the end of August 2016. [↑](#footnote-ref-165)
166. Under sanction of the European Union since October 2015. [↑](#footnote-ref-166)
167. Appointed in August 2015 to replace Prosper Bazombanza. [↑](#footnote-ref-167)
168. Appointed in August 2015 to replace Gervais Rufiyikiri who had to flee Burundi in June 2015 after opposing the candidacy of Pierre Nkurunziza in the presidential election. [↑](#footnote-ref-168)
169. Article 123 of the Constitution. [↑](#footnote-ref-169)
170. Article 131 of the Constitution. [↑](#footnote-ref-170)
171. Article 129 of the Constitution. [↑](#footnote-ref-171)
172. Appointed in August 2015 to replace Pascal Barandagiye, who was appointed Minister of Interior. Aimee Laurentine Kanyana was formerly a judge in the Constitutional Court, particularly when, in May 2015, it ruled that the candidacy of Pierre Nkurunziza in the presidential election was in accordance with the Constitution. [↑](#footnote-ref-172)
173. Appointed in August 2015 to replace General Gabriel Nizigama, who was appointed to the civilian cabinet of the Office of the President of the Republic, Alain Guillaume Bunyoni had already occupied the position of Minister of Public Security in 2010-2011. [↑](#footnote-ref-173)
174. Appointed in August 2015 to replace Édouard Nduwimana, elected as Second Vice-President of the National Assembly. Edouard Nduwimana will later become Ombudsman (infra.). [↑](#footnote-ref-174)
175. Appointed in May 2015 to replace Pontien Gaciyubwenge who fled the country after the attempted coup. [↑](#footnote-ref-175)
176. Article 34 of the Constitution. [↑](#footnote-ref-176)
177. Article 142 of the Constitution. [↑](#footnote-ref-177)
178. Article 143 of the Constitution: “The practices observed in terms of employment are based on objective and fair fitness criterion as well as the necessity to correct imbalances and ensure broad ethnic, regional and gender representation. Ethnic representation in public companies is 60% maximum for the Hutus and 40% maximum for the Tutsis”. [↑](#footnote-ref-178)
179. Law No. 1/10 of 26 March 2015 creating the Rumonge Province and delimitation of the Bujumbura, Bururi et Rumonge Provinces. [↑](#footnote-ref-179)
180. Bubanza, Bujumbura Mairie, Bujumbura, Bururi, Cankuzo, Cibitoke, Gitega, Karuzi, Kayanza, Kirundo, Makamba, Muramvya, Muyinga, Mwaro, Ngozi, Rumonge, Rutana and Ruyigi. [↑](#footnote-ref-180)
181. Article 3 of law No. 1/016 of 20th April 2005 on the organization of the communal administration: “The rural commune is subdivided into zones and collines. The urban commune is subdivided into zones and neighbourhoods.” [↑](#footnote-ref-181)
182. Articles 138 and 139 of the Constitution. [↑](#footnote-ref-182)
183. Articles 3, 264 and 265 of the Constitution. [↑](#footnote-ref-183)
184. Articles 25 and 26 of Law No. 1/016 of 20 April 2005. [↑](#footnote-ref-184)
185. Ibid., Article 26. [↑](#footnote-ref-185)
186. Ibid., Article 26 and 27 and Article 16 of law N°1/16 of 25 May 2015 on the modalities for the transfer of responsibilities from the State to the communes. [↑](#footnote-ref-186)
187. Article 38 of law No. 1/016 of 20th April 2005. [↑](#footnote-ref-187)
188. Article 168 of the Constitution. [↑](#footnote-ref-188)
189. Article 180 of the Constitution. [↑](#footnote-ref-189)
190. Articles 164 and 180 of the Constitution. [↑](#footnote-ref-190)
191. President of CNDD-FDD from 2012 to 2015. [↑](#footnote-ref-191)
192. Article 159 of the Constitution. [↑](#footnote-ref-192)
193. This chapter is but a description of the main actors in the justice system. Regarding its functioning, see Part II.C.9 of this report. [↑](#footnote-ref-193)
194. Article 221 of the Constitution. [↑](#footnote-ref-194)
195. Article 222 of the Constitution. The same procedure applies for the appointment of the presidents of the Court of Appeal, the Administrative Court, the Courts of First Instance, the Court of Commerce and the Labour Court (Articles 187 (9) and 215 of the Constitution) . [↑](#footnote-ref-195)
196. Chapter II, Section III of law No. 1/08 of 17 March 2005 on the Code of organization and judicial [↑](#footnote-ref-196)
197. Ibid, Section II. [↑](#footnote-ref-197)
198. Ibid, Section I. [↑](#footnote-ref-198)
199. Chapter III, Section III of law No. 1/08 of 17 March 2005. [↑](#footnote-ref-199)
200. Law No. 1/36 of 13 December 2006 creating the anti-corruption court. [↑](#footnote-ref-200)
201. Decree-law No. 1/5 on the Code of organization and judicial competence of Military Courts. [↑](#footnote-ref-201)
202. There is a military penal code in Burundi (decree-law No. 1/8 of 17 March 1980) which, “without prejudice to facts which constitute common law offenses” (Article 1 of the Code) covers military offenses, such as desertion, treason, military conspiracy, looting, illegal wearing and appropriation of uniform, decoration, distinctive signs and emblems, flag desecration and defamation of army, insubordination and mutiny, abuse of authority, non-compliance with instructions and breach of military secrecy. [↑](#footnote-ref-202)
203. Article 226 of the Constitution. [↑](#footnote-ref-203)
204. Article 228 of the Constitution. [↑](#footnote-ref-204)
205. Pursuant to article 205 of the Constitution, “the role and responsibilities of the Public Ministry are executed by the prosecutors. However, the judges of the courts of residence and police officers can fulfil the obligations of the Public Ministry with the courts under the supervision of the Public Prosecutor.” [↑](#footnote-ref-205)
206. Decree-law No. 1/5 on the Code of organization and judicial competence of military courts. [↑](#footnote-ref-206)
207. Law No. 1/023 of 31 December 2004 on the establishment, organization, missions, composition and functioning of the National Police. [↑](#footnote-ref-207)
208. For more details on the SNR, see part I.G.4 of this report. [↑](#footnote-ref-208)
209. Law No. 01/14 of 29 November 2002 governing the legal profession. The Bar Association’s rules and regulations, from 22 April 2004, supplemented the provisions of the law. [↑](#footnote-ref-209)
210. Articles 8, 30, 31 of law No. 01/14. The only two exceptions allowed concern the assistance and representation of a party to a trial by itself or by a specially designated representative consistent with procedural rules. [↑](#footnote-ref-210)
211. Article 2 of law No. 1/026 of 22 September 2003 on the prison system. [↑](#footnote-ref-211)
212. Ibid., articles 12 and 13. [↑](#footnote-ref-212)
213. For more details on the PNB, see part I.F.4 of this report. [↑](#footnote-ref-213)
214. Article 8 of the law N°1/026 of 22 September 2003 concerning the penitentiary system. These titles include the provisional arrest warrant, the warrant of arrest, the summons, the order of preventive detention or the extension of the preventive detention, summons for imprisonment, the suspension of provisional release, and the written record of the re-incarceration of an escaped convict (section 8 of the Act). [↑](#footnote-ref-214)
215. Ibid., article 8. [↑](#footnote-ref-215)
216. Article 3 of law No 1/026 of 22 September 2003 on the prison system. [↑](#footnote-ref-216)
217. Decree No 120/VP1/002/2000. [↑](#footnote-ref-217)
218. Law No 1/04 of 5 January 2011. [↑](#footnote-ref-218)
219. See : <http://cnidh.bi/>. [↑](#footnote-ref-219)
220. CCPR/C/BDI/CO/2, para.7, et CAT/C/BDI/CO/2, para. 20. [↑](#footnote-ref-220)
221. E/C.12/BDI/CO/1, para. 9. [↑](#footnote-ref-221)
222. A/HRC/31/55/Add. 2, para. 62-64. [↑](#footnote-ref-222)
223. CNIDH Statement on the Human Rights Situation of 28 July 2017 [↑](#footnote-ref-223)
224. Ibid. [↑](#footnote-ref-224)
225. <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20November%202017%20-%20ENG.pdf> [↑](#footnote-ref-225)
226. This report was not published on the CNIDH website at the time of writing of this report. [↑](#footnote-ref-226)
227. The press conference of the President of the CNIDH can be viewed at: <https://www.youtube.com/watch?v=93MKdrqF6aA&t=5s>. [↑](#footnote-ref-227)
228. Article 238 of the Constitution. [↑](#footnote-ref-228)
229. See : <http://www.rfi.fr/afrique/20161123-burundi-edouard-nduwimana-le-nouveau-mediateur-suscite-polemique>. [↑](#footnote-ref-229)
230. See : <http://www.iwacu-burundi.org/au-sommaire-de-ledition-de-ce-mercredi-6-septembre-2017-du-journal-amakuru-yiwacu/>. [↑](#footnote-ref-230)
231. Article 277 of the Constitution. [↑](#footnote-ref-231)
232. Article 5 of decree No 1/23 of 31August 2008 on the missions, composition, organisation and functioning of the National Security Council. [↑](#footnote-ref-232)
233. See : <http://www.un.org/en/peacekeeping/resources/statistics/contributors.shtml>. [↑](#footnote-ref-233)
234. See : <http://amisom-au.org/burundi/>. [↑](#footnote-ref-234)
235. Article 87 of organic law No 1/04 of 20 February 2017. The organization of the FDNB is governed by organic law No 1/04 of 20 February 2017 “on the missions, organization, composition, training, conditions of service and functioning of the Burundi National Defence Force” which replaced law No. 1/019 of 31December 2004. [↑](#footnote-ref-235)
236. Ibid., article 92. [↑](#footnote-ref-236)
237. Ibid., article 88. Parliament must be informed of the reasons for using the armed force. [↑](#footnote-ref-237)
238. Ibid., article 15. [↑](#footnote-ref-238)
239. Ibid., Article 99. [↑](#footnote-ref-239)
240. Replacing Major General Fabien Nzisabira from 2015. [↑](#footnote-ref-240)
241. Articles 19 and 93 of organic law No. 1/04 of 20 February 2017. [↑](#footnote-ref-241)
242. Article 18 of law No. 1/019 of 31December 2004. [↑](#footnote-ref-242)
243. Ibid., Article 20, 21 et 22. [↑](#footnote-ref-243)
244. Led by Colonel Emmanuel Nibizi. [↑](#footnote-ref-244)
245. Led by Colonel Ignace Sibomana. [↑](#footnote-ref-245)
246. Led by Brigadier General Audace Nduwumunsi, alias “Goliath”. [↑](#footnote-ref-246)
247. Led by Lieutenant-Colonel Darius Ikurakure until his assassination in March 2016, then by Major Frédéric Ndayishemeza. [↑](#footnote-ref-247)
248. See: <https://www.mdnac.bi/fr/specialized-units>. [↑](#footnote-ref-248)
249. Ibid., article 115. [↑](#footnote-ref-249)
250. “During a period of time to be determined by the Senate, the FDNB has a maximum of 50% of members belonging to a given ethnic group in view of the need to ensure ethnic balance and to prevent acts of genocide and coups d’état.” [↑](#footnote-ref-250)
251. This new law replaced law No 1/023 of 31 December 2004 which created the PNB by integrating the former Gendarmerie into the police force. [↑](#footnote-ref-251)
252. Articles 18 and 19 of organic law No 1/03 of 20 February 2017 [↑](#footnote-ref-252)
253. Ibid., Article 23. [↑](#footnote-ref-253)
254. Ibid., Article 24. [↑](#footnote-ref-254)
255. Ibid., Article 3. The duties of Chief of Staff in charge of police matters at the Office of the President are carried out by Gervais Ndirakobuca, who is under sanctions by the European Union and the United States since 2015. [↑](#footnote-ref-255)
256. Godefroid Bizimana is under sanctions by the European Union and the United States since 2015. [↑](#footnote-ref-256)
257. Chief Police Commissioner Bunyoni already occupied this function in 2010 and 2011. He has been under US sanctions since 2015. [↑](#footnote-ref-257)
258. Article 292 of organic law No 1/03 of 20 February 2017. [↑](#footnote-ref-258)
259. Article 41 of organic law No 1/03 of 20 February 2017 [↑](#footnote-ref-259)
260. Led by Christophe Manirambona, assisted by Louis-Marie Mwunvaneza (Decree No. 100/61 of 3April 2017 appointing the Commissioner Generals and Deputy Commissioner-Generals to the Inspectorate General of the Burundi National Police). [↑](#footnote-ref-260)
261. Until the adoption of the organic law, the specialized units of the PNB were all placed under the command of Christophe Manirambona. [↑](#footnote-ref-261)
262. The commander of GMIR is Alexis Murunga (Decree No100/37 of 18 February 2015 appointing several officials of the Ministry of Public Security). [↑](#footnote-ref-262)
263. Led by Emile Manisha, assisted by James Jonas Kanse (Decree No 100/61 of 3 April 2017). See article 98 of Organic law No 1/03 of 20 February 2017 for its organisation. [↑](#footnote-ref-263)
264. Led by Jimmy Hatungimana, assisted by Romuald Bahomvya (Decree No 100/61 of 3 April 2017). [↑](#footnote-ref-264)
265. Led by Tharcisse Yamuremye since April 2017, assisted by Bertin Gahungu (Decree No 100/61 of 3rd April 2017). [↑](#footnote-ref-265)
266. Ordinance No 215/1182 of 7 September 2015. Emmanuel Manariyo replaced Colonel Désiré Uwamahoro in November 2016 as the commander of the BAE, after he had been arrested for attempted fraud. Désiré Uwamahoro was sentenced to three months imprisonment in January 2017 by the Bujumbura Court of Appeal (<http://www.rfi.fr/afrique/20170105-burundi-peine-clemente-piliers-repression-le-major-uwamahoro>). He has since been released. Désiré Uwamahoro had been sentenced for torture, without ever serving his sentence. [↑](#footnote-ref-266)
267. Before the adoption of the organic law, there were five regional police headquarters, 18 provincial police headquarters and stations, replaced by 138 communal police stations. (<http://www.securitepublique.gov.bi>). [↑](#footnote-ref-267)
268. Article 250 of organic law No 1/03 of 20 February 2017. [↑](#footnote-ref-268)
269. Ibid. articles 265 and 279. [↑](#footnote-ref-269)
270. Article 11 of law No 1/04 of 2 March 2006. [↑](#footnote-ref-270)
271. Ibid., Article 7. [↑](#footnote-ref-271)
272. Ibid., Article 11. [↑](#footnote-ref-272)
273. Led by Bertin Gahungu from April to December 2015. Previously, Bertin Gahungu was regional police commissioner of the PNB for the western region. He is now the police commissioner in charge of training at the PNB. According to testimony received by the Commission, he was replaced by Alexis Ndayikengurukiye, aka “Nkoroka”, chief of the SNR's Department of Internal Intelligence. [↑](#footnote-ref-273)
274. Ibid., Article 15. [↑](#footnote-ref-274)
275. Articles 5, 14 and 13 of law No. 1/05 of 2 March 2006 on the SNR staff regulations. [↑](#footnote-ref-275)
276. Articles 75 and 80 of the Constitution. [↑](#footnote-ref-276)
277. Articles 22 et 35 of law No. 1/16 of 10 September 2011. [↑](#footnote-ref-277)
278. Ibid., Articles 62 and 65. [↑](#footnote-ref-278)
279. “Those who never sleep.” [↑](#footnote-ref-279)
280. Later, Léonard Nyangoma became the head of a new party, the CNDD, as opposed to the CNDD-FDD. [↑](#footnote-ref-280)
281. This critique resurfaced in recent CNDD-FDD statements, particularly the party’s Communiqué No. 011/2016 of 30 June 2016. [↑](#footnote-ref-281)
282. In March 2015, Hussein Radjabu escaped from prison with the police officers in charge of guarding him and joined the opposition in exile. [↑](#footnote-ref-282)
283. See also part I.G.5 of this report. [↑](#footnote-ref-283)
284. The Commission was unable to obtain a copy of the amended statutes. The description of the structure of the CNDD-FDD contained in this report is based on the 2004 statutes. [↑](#footnote-ref-284)
285. Articles 18 and 37 of the Statutes of CNDD-FDD. [↑](#footnote-ref-285)
286. Ibid., Article 20. [↑](#footnote-ref-286)
287. Ibid., Article 39. [↑](#footnote-ref-287)
288. Article 42 of the Statutes of CNDD-FDD. [↑](#footnote-ref-288)
289. Évariste Ndayishimiye served as Minister of Interior and Minister of Public Security from 2006 to 2007, and as a military chief of staff at the Office of the President from 2007 to 2014 before heading the civil cabinet until 2016. His predecessor as the head of CNDD-FDD was Pascal Nyabenda (2012-2016) who became President of the National Assembly in 2015. [↑](#footnote-ref-289)
290. Sylvestre Ndayizeye is the former head of the SNR's Department of Domestic Intelligence and former Governor of the Karuzi province. [↑](#footnote-ref-290)
291. When human rights defender Pierre Claver Mbonimpa made those allegations in 2014, he was arrested and imprisoned. [↑](#footnote-ref-291)
292. Internal memo dated 3 April 2014, entitled: “Reports of alleged weapons distribution to Imbonerakure .” [↑](#footnote-ref-292)
293. Communiqué of the Government of Burundi following the confidential report addressed to the Secretary-General of the United Nations by Mr. Onanga-Anyanga, 16 April 2014 (<http://presidence.bi/spip.php?article4616>). [↑](#footnote-ref-293)
294. Law No. 1/25 of 14 November 2012 “ on the status of political opposition in Burundi .” [↑](#footnote-ref-294)
295. Article 8 of law No.1/25 of 14 November 2012. [↑](#footnote-ref-295)
296. Ibid., Article 22. [↑](#footnote-ref-296)
297. Ibid., Article 11. [↑](#footnote-ref-297)
298. See for example: Justine Hirschy and Camille Lafont, Esprit d’Arusha, es-tu là ? La démocratie burundaise au risque des élections de 2015 ([www.carin.info/revue-politique-africaine-2015-1-page-htm](http://www.carin.info/revue-politique-africaine-2015-1-page-htm)). [↑](#footnote-ref-298)
299. The oldest political party in Burundi founded in 1958 by Prince Louis Rwagasore, UPRONA was the sole party recognized by the Constitution from 1974 to 1992. Former Presidents of the Republic Michel Micombero (1966-1973), Jean-Baptiste Bagaza (1976-1987), Pierre Buyoya (1987-1993 and 1996-2003), and Sylvie Kinigi (1993-1994) came from this party. [↑](#footnote-ref-299)
300. A historic Hutu movement, recognized as a political party in 1992, FRODEBU produced four Presidents of the Republic in Burundi: Melchior Ndadaye (July-October 1993), Cyprien Ntaryamira (February-April 1994), Sylvestre Ntibantunganya (1994-1995) and Domitien Ndayizeye (2003-2005). [↑](#footnote-ref-300)
301. FRODEBU Nyakuri was in turn “nyakurised” into two factions: the Jean Minani wing (opposition) and the Kefa Nibizi wing (pro-CNDD-FDD). [↑](#footnote-ref-301)
302. Born from the split with the CNDD-FDD after the dismissal of Leonard Nyangoma in 1998. [↑](#footnote-ref-302)
303. Founded by Alexis Sinduhije, journalist and founder of the African Public Radio (RPA), the MSD was approved in 2009. It was suspended in 2014, then again for six months in April 2017 by decision of the Minister of the Interior. [↑](#footnote-ref-303)
304. Founded by Hussein Radjabu, former leader then dissident of the CNDD-FDD. The President of UPD, Zedi Feruzi, and the party spokesperson, Patrice Gahungu, were assassinated respectively on 23 May and 7 September 2015. See part II.C.1 of this report. [↑](#footnote-ref-304)
305. First as the armed wing of PALIPEHUTU created in 1980 in Tanzania, one faction of the FNL, under the leadership of Agathon Rwasa, was recognized as a political party in 2009. Other factions decided to continue the armed struggle. Since then, the FNL, as a political party, has experienced other divisions. Currently, there is a wing under the leadership of Agathon Rwasa and another under Jacques Bigirimana. The Agathon Rwasa wing remains an opposition party, even if Rwasa occupies the position of vice-president of the National Assembly since 2015. The Jacques Bigirimana wing is close to CNDD-FDD and often defends the positions of the Government. In January 2010, the Government recognized a third wing, FNL-Iragi rya Gahutu, under the leadership of Jacques Kenese. [↑](#footnote-ref-305)
306. CNDD, CNDD-FDD Abaryumyeko, CNDD-FDD épris de paix, IImbono Charisma, MSD, Sahwanya - FRODEBU, Sahwanya – FRODEBU Nyakuri Iragi rya Ndadaye, UPD Zigamibanga, and UPRONA. [↑](#footnote-ref-306)
307. Sylvestre Ntibantunganya, Domitien Ndayizeye, Pie Ntavyohanyuma and Gervais Rufyikiri. [↑](#footnote-ref-307)
308. See: <http://cnared.info/wordpress/>. [↑](#footnote-ref-308)
309. Civil society: The “Halte au 3ème mandate” campaign leaves the CNARED (communiqué), 27 December 2015. [↑](#footnote-ref-309)
310. See: [http://www.rfi.fr/afrique/20160703-burundi-nouveau-parti-plateforme-opposition-upd-cnares.](http://www.rfi.fr/afrique/20160703-burundi-nouveau-parti-plateforme-opposition-upd-cnares.%20%28ce)  [↑](#footnote-ref-310)
311. See: <http://cnared.info/wordpress/declaration/>. [↑](#footnote-ref-311)
312. The Kayanza attack was claimed by General Leonard Ndengakumana, spokesperson for the Committee for the Restoration of National Concord (<http://www.rfi.fr/afrique/20150710-burundi-affrontements-combats-capitale-soldats-groupes-arm%C3%A9s>). [↑](#footnote-ref-312)
313. See: <http://www.jeuneafrique.com/289202/politique/burundi-rebellion-annonce-creation-chasser-nkurunziza-pouvoir/> [↑](#footnote-ref-313)
314. See: <https://twitter.com/forebu_emg?lang=fr>. [↑](#footnote-ref-314)
315. « Le FOREBU dévoile la composition de son leadership », 21 January 2016 (<https://agencebujanews.wordpress.com/>). [↑](#footnote-ref-315)
316. See Part II.C.1 of this report. [↑](#footnote-ref-316)
317. See:<http://www.rfi.fr/afrique/20170828-burundi-rebelles-forebu-changent-noms-organigramme>, <https://bujumburanewsblog.wordpress.com/2017/08/28/declaration-du-general-jeremie-ntiranyibagira-chef-des-fpb/>. [↑](#footnote-ref-317)
318. “Les #Forebu N'ont Pas Changé Mais C'est Plutôt L'aile #Nshimirimana Qui S'est Doté D'un Nouveau Nom Selon Les Proches Du Général #Niyombare “

(<https://twitter.com/MandelaErnesto/status/902164559175098368>). [↑](#footnote-ref-318)
319. See: [http://www.jeuneafrique.com/304829/politique/burundi-melchiade-biremba-on-ne-defendre democratie-belles-paroles/](http://www.jeuneafrique.com/304829/politique/burundi-melchiade-biremba-on-ne-defendre%20democratie-belles-paroles/). [↑](#footnote-ref-319)
320. See : <https://www.rtbf.be/info/dossier/l-actualite-du-burundi/detail_burundi-un-groupe-d-opposition-appelle-a-la-resistance-armee?id=9201802>. [↑](#footnote-ref-320)
321. Ibid. [↑](#footnote-ref-321)
322. US Department of Treasury, “Treasury sanctions four Burundian individuals”, 18 December 2015. The United States justified their decision by describing Alexis Sinduhije as a particularly active member of the armed rebellion in Burundi who recruited and trained opposition forces. [↑](#footnote-ref-322)
323. Interview given to Deutsche Welle and AfricaPlus TV on January 18, 2016: “I categorically reject these accusations of being the leader of a movement in a country other than mine”. [↑](#footnote-ref-323)
324. TI-002, TI-004, TI-052, QI-099, XI-051. [↑](#footnote-ref-324)
325. See: <http://www.rfi.fr/afrique/20170828-burundi-rebelles-forebu-changent-noms-organigramme>. [↑](#footnote-ref-325)
326. The MRP appeared in December 2015 in a press release signed by Didier Nyambariza, a former police officer. [↑](#footnote-ref-326)
327. UPR was created in February 2016 in the province of Karuzi. In a statement issued on 11 February 2016 and signed by Victor Ndayaharanire, “Commissioner General for communication and new technologies”, the UPR announced that it was composed of civilian and military officers determined to establish a democratic regime in Burundi. The UPR is headed by Antoine Sinzumunsi, a former assistant public prosecutor with the Court of Appeal of Bujumbura. [↑](#footnote-ref-327)
328. The FLDB announced its creation on social networks in May 2016. Its military leader is Celestin Manirakiza, former member of the FDD who later worked in the PNB, including within the Mobile Rapid Response Group. [↑](#footnote-ref-328)
329. The MPC announced its creation in May 2016. It is led by Jean-Paul Ndendakumana. [↑](#footnote-ref-329)
330. The Malibu-FPS announced its creation via social media claiming the attack on the Mukoni military camp in Muyinga, 23 and 24 January 2017. It has a website and a Twitter account. (<http://fpsmalibu.blogs.lalibre.be/index-1.html> ; <https://twitter.com/FpsMalibu7>). [↑](#footnote-ref-330)
331. Notably by the Human Rights Committee (CCPR/C/BDI/CO 2), the Committee against Torture (CAT/C/BDI/CO/2), the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (A/HRC/30/42/Add.1) and the Special Rapporteur on the situation of human rights defenders (A/HRC/31/55/Add.2). [↑](#footnote-ref-331)
332. A/HRC/32/30. [↑](#footnote-ref-332)
333. A/HRC/33/37. [↑](#footnote-ref-333)
334. Report of the ACHPR delegation on its fact-finding mission to Burundi (7-13 December 2015). [↑](#footnote-ref-334)
335. See Part II.C.6 of this report. [↑](#footnote-ref-335)
336. The term “ex-FAB” refers to members of the former Burundian armed forces, mostly Tutsi. The Burundian army found itself deeply divided after the May 2015 coup attempt, which resulted in the marginalization of ex-FABs as well as acts of violence and human rights violations against them. [↑](#footnote-ref-336)
337. Despite law No 1/04 of 27 June 2016 on the Protection of victims, witnesses and other persons at risk, Article 1 of which deals with the protection of individuals “involved in criminal procedures or in commissions of inquiries”. [↑](#footnote-ref-337)
338. KI-001, PI-015, PI-012, PI-028, MI-092, MI-043, TI-034. [↑](#footnote-ref-338)
339. PI-028, PI-024, PI-025. [↑](#footnote-ref-339)
340. United Nations High Commissioner for Refugees, 4 September 2017

(<https://data2.unhcr.org/en/situations/burundi>). [↑](#footnote-ref-340)
341. Furthermore, the mandate of the Commission is to investigate human rights violations and abuses which, due to their extent, could constitute crimes under international law (Resolution A/HRC/RES/33/24, para. 23 (a)). The violations and abuses referred to are above all violations and abuses pertaining to civil and political rights, as detailed in this report. Further investigations on this issue could focus on economic and social rights and the direct links between the violations of these two categories of rights in Burundi [↑](#footnote-ref-341)
342. See Part I.E.1 of this report. [↑](#footnote-ref-342)
343. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), judgement, ICJ, reports 2007. [↑](#footnote-ref-343)
344. Article 8 of the Draft Articles on State Responsibility for an Internationally Wrongful Act. ICJ, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986, and Bosnia and Herzegovina v. Serbia and Montenegro, 2007. [↑](#footnote-ref-344)
345. Ibid., Article 11. In its general comment No. 3 on the right to life, the ACHPR considered that “a State can be held responsible for killings by non-State actors if it approves, supports or acquiesces in those acts.” [↑](#footnote-ref-345)
346. See, for example, the Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in Burundi dated 31 August 2009 (A/HRC/12/43). [↑](#footnote-ref-346)
347. CAT/C/BDI/CO/2/Add.1, para. 14. [↑](#footnote-ref-347)
348. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), judgement, ICJ, reports 2007. [↑](#footnote-ref-348)
349. Ibid. [↑](#footnote-ref-349)
350. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986 and Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda), judgment, ICJ, Reports 2006. [↑](#footnote-ref-350)
351. QI-065, TI-017, MI-058, QI-063, TI-008, QI-144, PI-028. [↑](#footnote-ref-351)
352. PI-018,QI-063, TI-017, MI-058, MI-075, PI-028. [↑](#footnote-ref-352)
353. QI-065, TI-008, PI-025, PI-027, TI-010. [↑](#footnote-ref-353)
354. See: <https://cndd-fdd.org/category/espace-presse/communiques-et-declarations/>. [↑](#footnote-ref-354)
355. On the actual functioning of the State of Burundi, see Part III.C.2 of this report. The fact that the President of the Republic chairs the Council of Elders, one of the executive organs of the CNDD-FDD, also contributes to the confusion between the Government’s policy and that of the ruling party. [↑](#footnote-ref-355)
356. The ICJ requires systematic alignment to demonstrate “complete dependency” (ICJ, Bosnia-Herzegovina c. Serbia-and-Montenegro). [↑](#footnote-ref-356)
357. Similarly, other Burundian parties have their own youth leagues. [↑](#footnote-ref-357)
358. PI-018, PI-027. For more information on this group, see part III.C of this report. [↑](#footnote-ref-358)
359. TI-008, QI-144. Following the assassination of General Nshimirimana on 2 August 2015, it would seem that, based on testimony collected by the Commission, the SNR retained control over this group, but other leaders, including individuals in high positions, at the Office of the President, in the government, PNB and the FDNB, have commissioned operations executed by this group (see Part II.B. of this report). [↑](#footnote-ref-359)
360. These draft articles have become customary international law. [↑](#footnote-ref-360)
361. TI-010, QI-144, PI-020, MI-058, QI-144, TI-017, PI-015. [↑](#footnote-ref-361)
362. KI-008, MI-058, PI-012, PI-015, QI-067, QI-068, QI-144, TI-008, TI-021. [↑](#footnote-ref-362)
363. TI-010, TI-017, PI-004, PI-027, MI-058. [↑](#footnote-ref-363)
364. PI-018, MI-056, PI-020, TI-022, TI-064. [↑](#footnote-ref-364)
365. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986. [↑](#footnote-ref-365)
366. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), judgement, ICJ, reports 2007. [↑](#footnote-ref-366)
367. It should be noted, however, that in cases decided by the International Court of Justice, the issue of State control over a non-State group was raised while the group was operating outside the territory of the State in question, for example the contras in the case Nicaragua v. United States of America or the Republika Srpska in the Bosnia-Herzegovina v. Serbia-Montenegro. In the case of Burundi, Imbonerakure operate on Burundian soil. [↑](#footnote-ref-367)
368. QI-095, QI-116, QI-130, QI-134, MI-043, PI-028. [↑](#footnote-ref-368)
369. QI-002, QI-028, QI-047, QI-050, QI-073, QI-074, QI-081, QI-088, QI-109, QI-125, QI-154, MI-063, MI-026, MI-005, MI-011, MI-034, PI-021, PI-015, PI-012, PI-013, PI-022, QI-067, TI-031, TI-047, TI-033, TI-032, TI-022, TI-040, TI-021, TI-026. [↑](#footnote-ref-369)
370. MI-047, MI-045, MI-072, PI-020, TI-026. [↑](#footnote-ref-370)
371. These “joint human security committees” are mentioned in the 2013 National Security Strategy and were created in 2014 by a joint ordinance of the Ministry of Interior and the Ministry of Public Security No. 530/215/137 / 2014 on the terms of reference for the joint human security committees. [↑](#footnote-ref-371)
372. See: <https://www.hrw.org/news/2017/01/19/burundi-attacks-ruling-party-youth-league-members> . [↑](#footnote-ref-372)
373. CAT/C/BDI/CO/2/Add.1, para. 14. [↑](#footnote-ref-373)
374. Communiqué of the National Security Council, 21st June 2017

([http://www.oag.bi/index.php/component/k2/item/173-communique-du-conseil-national-de-securite-du-21 juin-2017](http://www.oag.bi/index.php/component/k2/item/173-communique-du-conseil-national-de-securite-du-21%20juin-2017)) [↑](#footnote-ref-374)
375. QI-068, QI-095, QI-109. [↑](#footnote-ref-375)
376. See Part II.C.1 of this report. [↑](#footnote-ref-376)
377. Ibid. [↑](#footnote-ref-377)
378. TI-052, QI-099, XI-051, PI-021, TI-004. [↑](#footnote-ref-378)
379. The Commission was unable to obtain the NIHRC report covering the year 2016, although it requested a copy from the President of the CNIDH on several occasions. [↑](#footnote-ref-379)
380. NIHRC, Annual Report 2015, Bujumbura, March 2016, pp. 44 to 46. [↑](#footnote-ref-380)
381. A/HRC/32/30 et A/HRC/33/37. [↑](#footnote-ref-381)
382. CAT/C/BDI/CO/2/Add. 1. [↑](#footnote-ref-382)
383. Article 4 (2) of ICCPR. [↑](#footnote-ref-383)
384. Recommended by the social and economic council in its resolution 1989/65 dated 24 May 1989. [↑](#footnote-ref-384)
385. Principles 9 and 18 of principles relative to the effective prevention of extra judicial, arbitrary and summary executions and to the effective means of investigating these executions. [↑](#footnote-ref-385)
386. Article 2 (3) of ICCPR and the Human Rights Committee, General Comment No. 31, para. 15. [↑](#footnote-ref-386)
387. Communication n° 888/99, Telitsin c. Russian Federation, para. 7.6. It is also the position of the Special Rapporteur on the extra judicial, summary or arbitrary executions (A/HRC/26/36, para. 79) which endorses the jurisprudence of the European Court of Human Rights, namely in the cases Kaya c. Turquie (1998) and Mc Cann et al, c. Royaume-Uni (1995). [↑](#footnote-ref-387)
388. Adopted by the United Nations General Assembly on 17 December 1979 (resolution 34/169). [↑](#footnote-ref-388)
389. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which took place in Havana from 27 August to 7 September 1990. [↑](#footnote-ref-389)
390. Article 1 of the Code of conduct of law enforcement officers. The Special Rapporteur on extra judicial, summary and arbitrary executions considers that these non-binding texts reflect the binding international standards (A/HRC/14/24, para.35). [↑](#footnote-ref-390)
391. Article 3 of the Code of Conduct for law enforcement officers and Basic Principle 9 on the use of force and firearms by law enforcement officers. [↑](#footnote-ref-391)
392. Principle 9 of the Principles on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions; Communications n° 84/1981, 146, 148-154/1983, 1225/2003 of the Human Rights Committee; HRC Report 61/311 of the Special Rapporteur on Extra-legal, Summary and Arbitrary Executions. [↑](#footnote-ref-392)
393. See for example the Human Rights Committee, Communication No.1225/2003, Eshonov c. Ouzbékistan, para. 9.2, et communication n° 148-154/1983, Baboeram Adhin et consorts c. Suriname, para. 14.2, Communication n° 1756/2008, Zhumbaeva c. Kyrgyzstan, para. 8.8. [↑](#footnote-ref-393)
394. Ibid.; Principle 9 of the Principles on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions; Principle 34 of all the principles for the protection of all persons under any form of detention or imprisonment: Report HRC/61/311 of the Special Rapporteur on extra judicial, summary or arbitrary executions. See also the general observation project n° 36 on article 6 of the International Covenant on Civil and Political Rights relative to the right to life, para. 33. [↑](#footnote-ref-394)
395. Reports HRC/14/24 and E./CN.4/2005/7 of the Special Rapporteur on extra judicial, summary and arbitrary executions; Communication n° 1020/2001 of the Human Rights Committee. Regarding the armed groups acting outside of the control of the state or state agents, the Human Rights Committee, in its general observations project no. 36 on article 6 of the Covenant on Right to life, notes: “Member States should also dismantle illegal armed groups such as private armies or militias which are responsible for violations of the right to life and stop the proliferation of arms potentially lethal in the hands of individuals who are not authorised to have them”. [↑](#footnote-ref-395)
396. Articles 201 and 225. [↑](#footnote-ref-396)
397. Articles 211, 213, 234 and 235. [↑](#footnote-ref-397)
398. CCPR/C/BDI/CO/2, para. 13. [↑](#footnote-ref-398)
399. TI-003, QI-144, PI-032. [↑](#footnote-ref-399)
400. QI-111, QI-133, QI-002, TI-040. [↑](#footnote-ref-400)
401. The surname of these two victims sometimes appears as ‘Ramadhan’. Ramazani is the translation of Ramadhan in Kirundi. [↑](#footnote-ref-401)
402. QI-002, QI-009. [↑](#footnote-ref-402)
403. See infra. and namely QI-022, QI-076, PI-003, QI-069, QI-021. [↑](#footnote-ref-403)
404. XI-022, KI-066, QI-033, QI-047, QI-128, TI-047. [↑](#footnote-ref-404)
405. See infra. and namely MI-008, MI-019, MI-020, PI-013, QI-073, MI-006, QI-171, QI-012. [↑](#footnote-ref-405)
406. KI-066, QI-115, QI-144. [↑](#footnote-ref-406)
407. QI-012, QI-084, QI-087, QI-121. [↑](#footnote-ref-407)
408. P-013, TI-002, PI-28, PI-05, TI-035, QI-081. [↑](#footnote-ref-408)
409. A/HRC/32/30. [↑](#footnote-ref-409)
410. See 2015 CNIDH Annual Report, p. 54 (<http://www.cnidh.bi/sites/default/files/CNIDH_Rapport%20annuel%202015%20.pdf>). [↑](#footnote-ref-410)
411. PI-005. [↑](#footnote-ref-411)
412. Report of the commission of inquiry “in charge of shedding light on the insurrectional movement launched on 26 April 2015” August 2015, pp. 2015 to 14. For general information on the commissions of inquiry established by the Prosecutor General of the Republic, See part II.C.9 of the present report. [↑](#footnote-ref-412)
413. For the distinction between violations and abuses, see part I.A.1 of the present report. [↑](#footnote-ref-413)
414. TI-035. [↑](#footnote-ref-414)
415. PI-022. [↑](#footnote-ref-415)
416. MI-004, MI-010, PI-016. [↑](#footnote-ref-416)
417. QI-073, MI-006, QI-171, QI-012, QI-158. [↑](#footnote-ref-417)
418. QI-073. [↑](#footnote-ref-418)
419. See the report of the commission “mandated to investigate the different reprehensible acts condemned by the penal code of 13 October 2015 in Ngagara zone, Ntahangwa commune”, December 2015. [↑](#footnote-ref-419)
420. MI-008, MI-019, MI-020, PI-013. [↑](#footnote-ref-420)
421. MI-019. [↑](#footnote-ref-421)
422. See the Commission report “mandated to investigate the different reprehensible acts condemned by the penal code of 13 October 2015 in Ngagara zone, Ntahangwa commune”, December 2015, pp 16-17. It should be noted that case file n°152961/NT.T was opened by the office of the prosecutor general in Bujumbura. [↑](#footnote-ref-422)
423. MI-20. [↑](#footnote-ref-423)
424. MI-020, MI-019. [↑](#footnote-ref-424)
425. See the Commission report “mandated to investigate the different reprehensible acts condemned by the penal code of 13 October 2015 in Ngagara zone, Ntahangwa commune”, December 2015, p.12. [↑](#footnote-ref-425)
426. MI-011, MI-012, QI-073. [↑](#footnote-ref-426)
427. MI-011, MI-012. [↑](#footnote-ref-427)
428. See: https://www.facebook.com/sosmediasburundi/posts/998636693531703. [↑](#footnote-ref-428)
429. QI-002, QI-172, QI-173. [↑](#footnote-ref-429)
430. See Iwacu, 9 December 2015 : « Mutakura : un carnage à la 15ème avenue » (<http://www.iwacu->burundi.org/mutakura-un-carnage-a-la-15eme-avenue/). [↑](#footnote-ref-430)
431. See the report of the commission “mandated to shed light on the allegations of ‘extra judicial executions’ during the fighting that ensued the attacks against the four military camps on 11 December 2015”, p. 26. [↑](#footnote-ref-431)
432. A/HRC/32/30 et A/HRC/33/37. [↑](#footnote-ref-432)
433. For example, FIDH and the Ligue Iteka reported at least 154 civilian victims.

 See: “Burundi: The international community must stop the mechanic of international crimes and open conflict”, communiqué dated 16 December 2015. [↑](#footnote-ref-433)
434. QI-007, QI-010, QI-078, QI-073, PI-012. [↑](#footnote-ref-434)
435. See for example: Info Grands Lacs of 5 January 2016 (<http://www.infosgrandslacs.info/productions/ouverture-denquete-sur-laffaire-des-fosses-communes-apres-lattaque-des-camps-militaires>). See also part II.C.9 of this Report. [↑](#footnote-ref-435)
436. QI-007. [↑](#footnote-ref-436)
437. PI-012. [↑](#footnote-ref-437)
438. QI-010. [↑](#footnote-ref-438)
439. PI-010. [↑](#footnote-ref-439)
440. TI-027, QI-072, XI-002, XI-004. [↑](#footnote-ref-440)
441. See: http://www.cnidh.bi/sites/default/files/CNIDH\_Rapport%20annuel%202015%20.pdf. [↑](#footnote-ref-441)
442. QI-016, QI-024, QI-025, TI-002. [↑](#footnote-ref-442)
443. Case registered under number RMP713/BJB. See the report of the commission “mandated to shed light on the allegations of ‘extra judicial executions’ during the fighting that ensued the attacks against the four military camps on 11 December 2015”, Mars 2016, p. 26., and part II.C.9 of the present report. [↑](#footnote-ref-443)
444. See parts II.C.3, 2, 4 and 5 of this Report. [↑](#footnote-ref-444)
445. MI-001, MI-002, MI-003, QI-081. [↑](#footnote-ref-445)
446. See: http://www.presidence.gov.bi/archives/spip.php?rubrique5&debut\_articles\_recents=80. [↑](#footnote-ref-446)
447. Comments of the Republic of Burundi on EINUB report, para. 49. [↑](#footnote-ref-447)
448. TI-003. See also Pierre-Claver Mbonimpa*, Rester debout : Entretiens avec Antoine Kaburahe*, éd. Iwacu, 2017, pp. 110-112. [↑](#footnote-ref-448)
449. On 30 July 2012, Patrice Gahungu had lodged a complaint against the state of Burundi with the committee against torture based on acts of torture inflicted to him in July 2010 at SNR in Bujumbura. The Committee against Torture ruled in his favour on 10 August 2015, ordering the Government to initiate an investigation into the matter, to compensate the complainant, and to take measures to prevent retaliation against him (CAT/C/55/D/522/2012). [↑](#footnote-ref-449)
450. QI-160, QI-161. [↑](#footnote-ref-450)
451. Supra., section (b) (1). [↑](#footnote-ref-451)
452. See RFI, 8 September 2015, « *Burundi : le porte-parole d’un parti d’opposition tué à Bujumbura* » (http://www.rfi.fr/afrique/20150908-burundi-porte-parole-parti-opposition-tue-bujumbura-upd-patrice-gahungu-zedi-feruzi). [↑](#footnote-ref-452)
453. MI-078, TI-003. [↑](#footnote-ref-453)
454. Comments of the Republic of Burundi on UNIIB report, para. 50. [↑](#footnote-ref-454)
455. QI-022, QI-076, PI-003, QI-069, QI-002. [↑](#footnote-ref-455)
456. QI-068, QI-033, TI-026, TI-034, QI-016, QI-024, QI-003, PI-021. [↑](#footnote-ref-456)
457. See Part II.C.4 of this Report. [↑](#footnote-ref-457)
458. QI-033. [↑](#footnote-ref-458)
459. PI-021. [↑](#footnote-ref-459)
460. QI-097, QI-020, TI-014, TI-041. [↑](#footnote-ref-460)
461. See: <https://www.youtube.com/watch?v=PkgOg4TvDic>. [↑](#footnote-ref-461)
462. QI-020. [↑](#footnote-ref-462)
463. QI-005, QI-068. [↑](#footnote-ref-463)
464. QI-068. [↑](#footnote-ref-464)
465. QI-033, QI-133. [↑](#footnote-ref-465)
466. QI-033. [↑](#footnote-ref-466)
467. General Comment no. 31 of the Committee on Human Rights, para 11. [↑](#footnote-ref-467)
468. See the report of the commission “mandated to shed light on the allegations of ‘extra judicial executions’ during the fighting that ensued the attacks against the four military camps on 11 December 2015”, March 2016, p.26 [↑](#footnote-ref-468)
469. QI-004. [↑](#footnote-ref-469)
470. TI-033. On this subject, see also part II.C.9 of this Report. [↑](#footnote-ref-470)
471. MI-022, MI-027, QI-092. [↑](#footnote-ref-471)
472. QI-124, QI-033, QI-145, QI-090, QI-107, XI-049, MI-032, MI-027, QI-092. [↑](#footnote-ref-472)
473. See “Alarming new patterns of violations emerging in Burundi – Zeid”, 15 January 2016 (<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16953&LangID=E)>. [↑](#footnote-ref-473)
474. A/HRC/33/37, para. 44 and 45. [↑](#footnote-ref-474)
475. Namely see Amnesty International: “Burundi: suspected mass graves of victims of 11 December violence”. (https://www.amnesty.org/en/documents/afr16/3337/2016/en/) and Human Rights Watch, “Burundi: Abductions, Killings, Spread Fear” ([https://www.hrw.org/news/2016/02/25/burundi-abductions-killings-spread-fear)](https://www.hrw.org/fr/news/2016/02/25/burundi-les-enlevements-et-les-meurtres-repandent-la-peur%29). [↑](#footnote-ref-475)
476. See <http://www.rfi.fr/afrique/20160229-burundi-decouverte-une-fosse-commune-quartier-bujumbura> et <http://www.lemonde.fr/afrique/article/2016/03/01/burundi-des-cadavres-decouverts-dans-une-fosse-commune-d-un-quartier-contestataire_4874192_3212.html>. [↑](#footnote-ref-476)
477. See the report of the commission “mandated to shed light on the allegations of ‘extra judicial executions’ during the fighting that ensued the attacks against four military camps on 11 December 2015”, pp. 22-24. More generally, the conclusions of this commission of inquiry see part II.C.9 of the present report. [↑](#footnote-ref-477)
478. PI-012, TI-030, QI-065, MI-088, KI-008, QI-128. [↑](#footnote-ref-478)
479. MI-012. [↑](#footnote-ref-479)
480. United Nations Institute for Training and Research. [↑](#footnote-ref-480)
481. For the distinction between violations and abuses, see part I.A.1 of the present report. [↑](#footnote-ref-481)
482. KI-010, KI-066, QI-048, QI-051, QI-054, QI-110, QI-111, QI-121, QI-130, QI-144. [↑](#footnote-ref-482)
483. QI-121. [↑](#footnote-ref-483)
484. QI-051. [↑](#footnote-ref-484)
485. QI-118, QI-051, QI-117. [↑](#footnote-ref-485)
486. QI-117. [↑](#footnote-ref-486)
487. See parts I.B.1. and the annexes of the present report. [↑](#footnote-ref-487)
488. See Part II.C.6 of this Report. [↑](#footnote-ref-488)
489. Communiqué n° 002/24/01/2017 du MALIBU-FPS, 24 January 2017. [↑](#footnote-ref-489)
490. QI-023, QI-099. [↑](#footnote-ref-490)
491. QI-023. [↑](#footnote-ref-491)
492. See: <http://www.rfi.fr/afrique/20150706-burundi-interview-putschiste-attaques-grenades>. [↑](#footnote-ref-492)
493. Supra., section (b) (ii). [↑](#footnote-ref-493)
494. See 2015 Annual Report, APRODH, para. 62. [↑](#footnote-ref-494)
495. Dossier n° RMP 152407/NK.C. See Burundian Government Response to the EINUB report, para. 49. [↑](#footnote-ref-495)
496. KI-009, QI-047, TI-025, MI-063, QI-105, QI-106, QI-115, QI-121, QI-128, QI-153. [↑](#footnote-ref-496)
497. TI-003, TI-006, TI-066. [↑](#footnote-ref-497)
498. See : Iwacu, 24 August 2016, « *Nyakabiga :* *le ministre burundais des droits de l’Homme visé par un attentat, un mort et six blessés dont sa femme* » (http://www.iwacu-burundi.org/nyakabiga-le-ministre-burundais-des-droits-de-lhomme-vise-par-un-attentat-un-mort-et-six-blesses-dont-sa-femme/). [↑](#footnote-ref-498)
499. See RTNB, 13 July 2016, (http://www.rtnb.bi/fr/art.php?idapi=0/2/227). [↑](#footnote-ref-499)
500. File n° LMP243/HG. See communiqué of the Government of Burundi on 13 July 2016 (<http://www.burundi.gov.bi/spip.php?article1213>, seen on 21 July 2017), <http://www.rfi.fr/afrique/20160713-burundi-hafsa-mossi-pierre-nkurunziza-assassinat>, et http://www.rtnb.bi/fr/art.php?idapi=0/2/227. [↑](#footnote-ref-500)
501. See: <http://www.rfi.fr/afrique/20161129-burundi-tentative-assassinat-willy-nyamitwe-conseiller-presidence>, http://www.rfi.fr/afrique/20161203-tentative-assassinat-willy-nyamitwe-burundi-arrestations-armee and <https://www.bonesha.bi/Armee-trois-officiers-arretes-dans.html> [↑](#footnote-ref-501)
502. See: <http://www.ikiriho.org/2017/01/01/assassinat-ministre-senateur-niyonkuru-burundi-nkurunziza-mbonimpa->cnddfdd-security/ and http://www.rtnb.bi/fr/art.php?idapi=1/0/29. [↑](#footnote-ref-502)
503. See supra, section (b) (i). [↑](#footnote-ref-503)
504. KI-006, TI-014. [↑](#footnote-ref-504)
505. Jean Bikomagu was Chief of Staff of the Burundian Armed Forces (FAB) from 1993 to 2005 during one of the bloodiest periods of the war in Burundi. [↑](#footnote-ref-505)
506. See: https://twitter.com/willynyamitwe/status/632504595311407104. [↑](#footnote-ref-506)
507. Many Imbonerakure considered General Adolphe Nshimirimana as their leader and protector. The neighbourhood of Kamenge in Bujumbura is perceived as the homeland of CNDD-FDD. [↑](#footnote-ref-507)
508. PI-03, QI-004, MI-091, MI-016, MI-094. [↑](#footnote-ref-508)
509. See: <http://www.rfi.fr/afrique/20150911-burundi-chef-etat-major-echappe-attentat-militaires-prime->niyongabo. [↑](#footnote-ref-509)
510. See report n° 68 de SOS-Torture/Burundi published on 1 April 2017 (<http://sostortureburundi.over->blog.com/2017/04/rapport-n-68-de-sos-torture/burundi-publie-le-1er-avril-2017.html). [↑](#footnote-ref-510)
511. QI-001. [↑](#footnote-ref-511)
512. QI-083. [↑](#footnote-ref-512)
513. QI-084, QI-085, QI-086. [↑](#footnote-ref-513)
514. QI-085. [↑](#footnote-ref-514)
515. See: <http://www.rtnb.bi/fr/art.php?idapi=0/1/133>, <http://www.bonesha.bi/Kamenge-Un-officier-medecin-tue-a.html>. [↑](#footnote-ref-515)
516. QI-003, QI-077. [↑](#footnote-ref-516)
517. QI-065. [↑](#footnote-ref-517)
518. See for example: <http://www.bbc.com/afrique/region/2016/04/160421_burundi_army_murder>, and <http://www.rfi.fr/afrique/20160421-burundi-emmanuel-buzubona-officier-critique-envers-le-regime-assassine-bujumbura-nk>. [↑](#footnote-ref-518)
519. QI-012, TI-008. [↑](#footnote-ref-519)
520. QI-014, MI-059. [↑](#footnote-ref-520)
521. A/HRC/32/30, para. A/HRC/33/37, para. 50 to 52. [↑](#footnote-ref-521)
522. HRC/RES/33/24, para. 2. [↑](#footnote-ref-522)
523. A/HRC/33/37, para. 50. [↑](#footnote-ref-523)
524. CAT/C/BDI/CO/2/Add. 1, para. 10. [↑](#footnote-ref-524)
525. A/HRC/110/1 et A/HRC/111/1. [↑](#footnote-ref-525)
526. Article 18 of the Vienna Convention on Treaty Rights. Burundi is not party to this convention, but the provisions of this convention can be considered as customary law. [↑](#footnote-ref-526)
527. Resolution 47/133 of 18 December 1992. [↑](#footnote-ref-527)
528. 148 Human Rights Committee, Communications No. 440/1995, 449/1995, 458/1995, and 1422/1995. [↑](#footnote-ref-528)
529. 149 Human Rights Committee, Communications No. 7/1995, 950/1995, 1327/1995, and 1776/1995. [↑](#footnote-ref-529)
530. 150 Human Rights Committee, Communication No. 1422/2005, Yildirim c. Austria. In his draft general comment no. 36 on article 6 of the PIDCP on the right to life, the Human Rights Committee highlighted that all the “cases of disappearance” must be thoroughly investigated by independent and impartial bodies (para. 8). [↑](#footnote-ref-530)
531. Articles 4, 5, 6, 7, 12 (1) and 18 (1) of the ACHPR. [↑](#footnote-ref-531)
532. Burundi is not party to the Protocol to ACHPR on the rights of women. The provisions contained in this treaty can however be considered as customary law. [↑](#footnote-ref-532)
533. Articles 196 and 197 of the Penal Code. [↑](#footnote-ref-533)
534. Criminal Code, Second Book, Title I, Chapter II. Infra. [↑](#footnote-ref-534)
535. CNIDH, Annual report 2015, pp. 57-60 and bi-annual report January - June 2017, pp. 34-35. [↑](#footnote-ref-535)
536. Namely those of FOCODE, SOS Torture, Ligue Iteka and APRODH. [↑](#footnote-ref-536)
537. The Commission documented such cases. QI-159, XI-004, PI-029. [↑](#footnote-ref-537)
538. Déclaration du ministre de la Justice et Garde des sceaux, sur Radio Rema et RTNB, le 29 juin 2017. [↑](#footnote-ref-538)
539. See: <http://www.ohchr.org/Documents/Issues/Disappearances/GeneralCommentsDisappearances_en.pdf>. [↑](#footnote-ref-539)
540. See Part II.C.3 of this Report. En décembre 2016, le Groupe de travail sur les disparitions forcées ou involontaires a lui-même noté : « Le Groupe de travail demeure préoccupé par la violence et l’instabilité régnant au Burundi, qui risquent de créer des conditions propices aux disparitions forcées » (A/HRC/WGEID/110/1, para. 24). [↑](#footnote-ref-540)
541. MI-078, TI-054, TI-064, QI-027, QI-166, QI-169. [↑](#footnote-ref-541)
542. See Part II.C.3 of this Report. [↑](#footnote-ref-542)
543. QI-031. [↑](#footnote-ref-543)
544. See parts II.C.3, 2, 4 and 4 of this Report. [↑](#footnote-ref-544)
545. QI-062. [↑](#footnote-ref-545)
546. Article 2 of the Covenant See above, section (a). [↑](#footnote-ref-546)
547. See CNIDH 2015 annual report, pp.57-60 (<http://www.cnidh.bi/sites/default/files/CNIDH_Rapport%20annuel%202015%20.pdf>). [↑](#footnote-ref-547)
548. Infra, section (b) (ii). [↑](#footnote-ref-548)
549. See CNIDH semi-annual, January - june 2017, pp. 34-35 and infra. section (b) (ii). [↑](#footnote-ref-549)
550. QI-002, QI-157, XI-030, QI-008, QI-010, QI-116, QI-169, QI-170. [↑](#footnote-ref-550)
551. QI-002, QI-009, QI-172, QI-173. [↑](#footnote-ref-551)
552. See for example: <https://www.focode.org/declaration-du-focode-n0072016-du-12-mai-2016-2/>. [↑](#footnote-ref-552)
553. QI-073, QI-166. [↑](#footnote-ref-553)
554. QI-169, QI-170. [↑](#footnote-ref-554)
555. See also SOS TORTURE/ BURUNDI n° 4, report on serious human rights violations observed in Burundi (11 December 2015 – 11 March 2016). [↑](#footnote-ref-555)
556. A/HRC/WGEID/110/1, p. 6. [↑](#footnote-ref-556)
557. QI-156, QI-157, PI-034, PI-004, TI-006, TI-035, TI-067. [↑](#footnote-ref-557)
558. See: <http://www.iwacu-burundi.org/a-la-recherche-de-jean-des-corps-inhumes-sans-identification-formelle/>. [↑](#footnote-ref-558)
559. See: <http://www.iwacu-burundi.org/news/jean-bigirimana/>. [↑](#footnote-ref-559)
560. See: <http://www.iwacu-burundi.org/a-la-recherche-de-jean-des-corps-inhumes-sans-identification-formelle/>. [↑](#footnote-ref-560)
561. See: http://www.iwacu-burundi.org/wp-content/uploads/2017/06/Tract-chez-Jean-Bigirimana.jpeg. [↑](#footnote-ref-561)
562. A/HRC/WGEID/110/1, p. 6. [↑](#footnote-ref-562)
563. QI-162, QI-164. [↑](#footnote-ref-563)
564. Rapport semestriel de la CNIDH, janvier - juin 2017, p.35 et FOCODE, « Disparition forcée de Pacifique Birikumana, chauffeur du Diocèse Catholique de Ngozi » (<http://ndondeza.org/pacifique-birikumana/>). [↑](#footnote-ref-564)
565. QI-013, QI-165. [↑](#footnote-ref-565)
566. TI-016, XI-001. [↑](#footnote-ref-566)
567. The picture was accompanied by the following text in Kirundi "Alerte : KIRUNDO : large diffusion *uwo mubona kwi foto yaraye afatiwe mu KIRUNDO, bamudendereje ngo yarikumwe nabariko bararasa. Uwomumenya atabarize abiwabo. Akaramuka yishwe, azobazwe commissire provincial wa polisi, hamwe n’umukuru w’imbonerakure, nibo bariko baramukubita* ". English translation: “Alert. Kirundo: wide distribution. The person on the photo was arrested in Kirundo, wrongly accused of being amongst those that have just carried out an attack. Any person who recognises him is requested to alert his family. Should he be killed, the provincial police commissioner and the head of Imbonerakure would bear all the responsibility as they are beating him”. The Commission was not able to corroborate this document through testimonies, which is why it concluded that there was reasonable ground to fear, not to believe, that Albert Dushime was victim of enforced disappearance. [↑](#footnote-ref-567)
568. See: FOCODE Declaration 005/2016 of 28 April 2016 (<http://ndondeza.org/disparition-de-monsieur-albert-dushime/>). See also: TI-016 However, the Commission was not able to find a copy of the declaration of the police spokesperson. [↑](#footnote-ref-568)
569. QI-065, QI-078, TI-029. [↑](#footnote-ref-569)
570. TI-029. See also « Répression aux dynamiques génocidaires », report of FIDH and the Ligue Iteka, November 2016, p.96. [↑](#footnote-ref-570)
571. Annual report of CNIDH 2015, pp. 59-60. [↑](#footnote-ref-571)
572. Comments of the Republic of Burundi on the EINUB report, p. 17, para. 58. [↑](#footnote-ref-572)
573. A/HRC/WGEID/108/1, pp. 4-5. [↑](#footnote-ref-573)
574. See: “Burundi: UN experts raise alarm at growing repression of NGOs and human rights defenders”, 6 February 2017 (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21145&LangID=E>). [↑](#footnote-ref-574)
575. QI-008, QI-065, QI-012, QI-020, TI-008, TI-029. [↑](#footnote-ref-575)
576. A/HRC/WGEID/111/1, p. 5. [↑](#footnote-ref-576)
577. PI-025, PI-011, QI-087, QI-143, QI-168, PI-030, TI-037. [↑](#footnote-ref-577)
578. See: <https://twitter.com/PierreNkurikiye/status/856801851878121473>. [↑](#footnote-ref-578)
579. See: <http://sostortureburundi.over-blog.com/2017/04/rapport-n-72-de-sos-torture/burundi-publie-le-29-avril-2017.html>. [↑](#footnote-ref-579)
580. XI-030, QI-094, QI-112, QI-146, XI-027 [↑](#footnote-ref-580)
581. QI-116. [↑](#footnote-ref-581)
582. QI-146. [↑](#footnote-ref-582)
583. XI-023. [↑](#footnote-ref-583)
584. QI-010, TI-009. [↑](#footnote-ref-584)
585. QI-047. [↑](#footnote-ref-585)
586. See Part II.C.1 of this Report. [↑](#footnote-ref-586)
587. QI-002, QI-047, QI-157, PI-012. [↑](#footnote-ref-587)
588. See above, section (a). [↑](#footnote-ref-588)
589. PI-012. [↑](#footnote-ref-589)
590. QI-167. [↑](#footnote-ref-590)
591. QI-010. [↑](#footnote-ref-591)
592. HRC/RES/30/27, HRC/RES/S-24/1 and HRC/RES/33/24. [↑](#footnote-ref-592)
593. HRC/RES/33/24, para. 4. [↑](#footnote-ref-593)
594. A/HRC/32/30 and A/HRC/33/37. [↑](#footnote-ref-594)
595. CAT/C/BDI/CO/2/Add.1, para. 22 and 23, CEDAW/C/BDI/CO/5-6, para. 48 and 49. [↑](#footnote-ref-595)
596. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its Resolution 43/173 of 9 December 1988. [↑](#footnote-ref-596)
597. Human Rights Committee, Communications No. 623/1995, 624/1995, 626/1995, and 627/1995. [↑](#footnote-ref-597)
598. See also: Principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and Human Rights Committee communications N. 248/187 and 90/1981. [↑](#footnote-ref-598)
599. Human Rights Committee, Communications No. 16/1977, *Mbenge v. Zaire*. [↑](#footnote-ref-599)
600. Human Rights Committee, Communications No. 770/1997, *Gridin v. Russian Federation*. [↑](#footnote-ref-600)
601. Human Rights Committee, Communications No. 2024/2011, *Israil v. Kazakhstan*. [↑](#footnote-ref-601)
602. Human Rights Committee, Communications No. 305/1988, *Hugo van Alphen v. Netherlands, No.* 1134/2002, *Gorji-Dinka v. Cameroon*. [↑](#footnote-ref-602)
603. Human Rights Committee, Communication No. 1629/2007, *Fardon c. Australia.* [↑](#footnote-ref-603)
604. Human Rights Committee, General Comment No. 8, para. 3. [↑](#footnote-ref-604)
605. Human Rights Committee, CCPR/C/79/Add. 74. [↑](#footnote-ref-605)
606. Human Rights Committee, Communication No. 1051/2002, *Ahani c. Canada*. [↑](#footnote-ref-606)
607. Human Rights Committee, General Comment No. 21, para. 3. [↑](#footnote-ref-607)
608. United Nations General Assembly, UN Doc. A/RES/60/148, para. 11 [↑](#footnote-ref-608)
609. A/RES/68/156, para. 27. [↑](#footnote-ref-609)
610. Human Rights Committee, General Comment No. 20 on Article 7 of the ICCPR, para. 11, and General Comment No. 35 on Article 9 of ICCPR, para. 58. [↑](#footnote-ref-610)
611. Article 40 further provides the safeguards that State Parties to the Convention on the Rights of the Child shall abide by in the case of children "alleged as, accused of, or recognized as having infringed the penal law". [↑](#footnote-ref-611)
612. Article 15 of the Code of Criminal Procedure. [↑](#footnote-ref-612)
613. Ibid. Articles 3 and 10. [↑](#footnote-ref-613)
614. Ibid. Article 21. [↑](#footnote-ref-614)
615. Article 30 of the Code of Criminal Procedure. [↑](#footnote-ref-615)
616. Article 22 of the Code of Criminal Procedure. [↑](#footnote-ref-616)
617. Article 52 of the Code of Criminal Procedure. [↑](#footnote-ref-617)
618. The Penal Code dates from 2009. The Code of Criminal Procedure has already been revised in 2013. [↑](#footnote-ref-618)
619. General Secretariat of the Government, Press Release of the Meeting of the Council of Ministers of Wednesday, May 10 and Friday, May 12, 2017, Bujumbura, May 12, 2017 (<http://www.presidence.gov.bi/wp-content/uploads/2017/05/conseil-des-ministres-du-10-et-12-mai-2017.pdf>). [↑](#footnote-ref-619)
620. See: <https://www.assemblee.bi/Session-ordinaire-de-Juin-2017>. [↑](#footnote-ref-620)
621. See Article 126 of the draft revision of the Code of Criminal Procedure, which provides for exceptions to the restrictions of on-site visits and searches at night, in cases of “serious threat to the physical integrity of persons, terrorism, manufacturing, trafficking and illegal possession of firearms [sic], drug trafficking and usage, as well as sexual offenses”. [↑](#footnote-ref-621)
622. Article 52 of the draft revision of the Code of Criminal Procedure. [↑](#footnote-ref-622)
623. See parts II.C.1, 2, 4 and 5 of this Report. [↑](#footnote-ref-623)
624. The CNIDH report notes, in particular, “cases of people in police custody or pre-trial detention without prior hearing or exceeding legal deadlines, the non-effective separation of minors from adults, poor record keeping, notably the lack of daily update of the list of persons in police custody, the detention of children who have not yet reached the legal age of 15 years, [...] detention on the orders of authorities who do not have the relevant competence in this area, namely the administrative authorities [...]”, (CNIDH, Mid-term review (in French) January 2017 to June 2017, page 8). [↑](#footnote-ref-624)
625. KI-003, KI-005, KI-006, KI-018, MI-044, MI-045, MI-046, MI-047, MI-052, MI-082, PI-009, PI-013, TI-023, PI-029, TI-016, TI-028, TI-031, TI-032, TI-042, TI-043, QI-002, QI-006, QI-018, QI-024, QI-027, QI-032. [↑](#footnote-ref-625)
626. KI-015, MI-088, MI-090, PI-001, PI-023, PI-032. [↑](#footnote-ref-626)
627. PI-015, QI-015, QI-019, TI-033, TI-045, TI-047, TI-049. [↑](#footnote-ref-627)
628. XI-016, XI-028. [↑](#footnote-ref-628)
629. KI-004, MI-045, MI-046, MI-082, PI-001, PI-012, PI-021, PI-023, QI-038. [↑](#footnote-ref-629)
630. MI-045, MI-082, PI-012, PI-021. [↑](#footnote-ref-630)
631. MI-082. [↑](#footnote-ref-631)
632. KI-003, KI-005, KI-006, MI-047, MI-078, MI-082, MI-090, PI-013, PI-015, PI-016, PI-023, PI-029, PI-032, QI-006, TI-019, TI-023, TI-028, TI-032, TI-043, XI-017, XI-032. [↑](#footnote-ref-632)
633. PI-001, TI-019, MI-040. [↑](#footnote-ref-633)
634. QI-006, QI-031, QI-062, TI-031, KI-005. [↑](#footnote-ref-634)
635. KI-015, PI-015, PI-032, MI-082. [↑](#footnote-ref-635)
636. KI-004, KI-005, KI-018, MI-047, PI-009, PI-016, PI-021, PI-023, PI-032, QI-006, TI-023, TI-049, XI-039. [↑](#footnote-ref-636)
637. MI-078, PI-012, PI-013, PI-016, PI-032, QI-006, XI-017, XI-039. [↑](#footnote-ref-637)
638. MI-047, PI-013, PI-015, PI-023, XI-017, XI-048. [↑](#footnote-ref-638)
639. MI-045, MI-081, PI-015, TI-032, XI-017, XI-022, XI-028, XI-039, XI-040, XI-048. [↑](#footnote-ref-639)
640. MI-047, XI-013, XI-039. [↑](#footnote-ref-640)
641. PI-013. [↑](#footnote-ref-641)
642. XI-016, QI-095, QI-152. [↑](#footnote-ref-642)
643. XI-016. [↑](#footnote-ref-643)
644. KI-004, MI-047, MI-078, MI-090, PI-009, PI-013, PI-029, QI-018, TI-031. [↑](#footnote-ref-644)
645. TI-049. [↑](#footnote-ref-645)
646. According to Article 341 of the Code of Criminal Procedure, “the release order” is a legal document signed by the investigating magistrate when the judicial investigation against an indictee who is detained or out on bail is closed without further action”. This document is “also used when the accused is acquitted”. [↑](#footnote-ref-646)
647. PI-012. [↑](#footnote-ref-647)
648. KI-004, MI-040, MI-045, MI-046, MI-052, TI-019, PI-001, PI-012, PI-015, PI-023, TI-023, TI-032, TI-043. See also Part II.C.4 of this Report. [↑](#footnote-ref-648)
649. XI-048. [↑](#footnote-ref-649)
650. TI-043. [↑](#footnote-ref-650)
651. MI-040, MI-045, MI-047, PI-001, PI-016, TI-023. [↑](#footnote-ref-651)
652. MI-044, PI-009, PI-023, PI-032. [↑](#footnote-ref-652)
653. MI-044, PI-009, PI-023. [↑](#footnote-ref-653)
654. MI-046. [↑](#footnote-ref-654)
655. MI-045, PI-001, PI-016, PI-032. [↑](#footnote-ref-655)
656. MI-044, MI-047, MI-090, PI-023, PI-029, TI-042. [↑](#footnote-ref-656)
657. MI-078, MI-082, PI-023, QI-032, QI-045, TI-031. [↑](#footnote-ref-657)
658. Infra, section (v). [↑](#footnote-ref-658)
659. MI-081. [↑](#footnote-ref-659)
660. QI-028, QI-066, QI-104, TI-021. [↑](#footnote-ref-660)
661. QI-066. [↑](#footnote-ref-661)
662. QI-031, QI-062, TI-016. [↑](#footnote-ref-662)
663. See part II.C.2 of this Report. [↑](#footnote-ref-663)
664. MI-081, QI-005, TI-023, TI-047, TI-049, TI-051, XI-048. [↑](#footnote-ref-664)
665. PI-023. [↑](#footnote-ref-665)
666. Adopted by the first United Nations Congress on Crime Prevention and Criminal Justice, which took place in Geneva in 1955 and approved by the Economic and Social Council in its Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 and updated by Resolution 70/175 adopted on 8 January 2016 by the United Nations General Assembly (Nelson Mandela Rules). [↑](#footnote-ref-666)
667. Ibid., para. 92. [↑](#footnote-ref-667)
668. Article 36 of the Code of Criminal Procedure requires that the judicial police officer in charge inform the family of the person in police custody or any other relevant person of the measure and the location of the place of detention. [↑](#footnote-ref-668)
669. KI-004, MI-040, MI-046, PI-012, PI-020, PI-021, PI-023, TI-031, TI-028, TI-016, XI-027. [↑](#footnote-ref-669)
670. PI-029, QI-159, XI-004. [↑](#footnote-ref-670)
671. QI-038. [↑](#footnote-ref-671)
672. Except in cases of flagrante delicto, as indicated above. See above, section (a). [↑](#footnote-ref-672)
673. According to the United Nations Special Rapporteur on Torture, the length of detention of persons awaiting a judicial warrant of pre-trail detention should not exceed 48 hours. See his report presented at the 59th Session of the Commission of Human Rights (E/CN.4/2003/68, para. 26 (g)). [↑](#footnote-ref-673)
674. QI-027. QI-024, TI-023, TI-031, TI-042, QI-159. [↑](#footnote-ref-674)
675. MI-044, MI-047, PI-036, TI-042. [↑](#footnote-ref-675)
676. KI-004. [↑](#footnote-ref-676)
677. TI-023. [↑](#footnote-ref-677)
678. PI-023, PI-032, TI-031. [↑](#footnote-ref-678)
679. Infra., section (v). [↑](#footnote-ref-679)
680. MI-040, PI-015, PI-036. Article 110 of the Code of Criminal Procedure stipulates the following: “Since liberty is the rule and detention the exception, the accused may not be placed in pre-trial detention unless there is sufficient proof of guilt and the acts of which the individual is accused appear to constitute an offence punishable by law with at least one year’s imprisonment. In addition, pre-trial detention can only be ordered or maintained if it is the only way to satisfy one of the following three conditions: (1) to preserve material evidence and clues or prevent either pressure on the witnesses or the victims or fraudulent consultation between the accused, co-perpetrators or accomplices; (2) to preserve public order from the actual disorder caused by the offense; (3) to bring an end to the offense or prevent its reoccurrence; (4) to guarantee that the accused will appear before a court. The decision to continue pre-trial detention shall be duly substantiated.” [↑](#footnote-ref-680)
681. Articles 113 and 115 of the Code of Criminal Procedure. [↑](#footnote-ref-681)
682. MI-044. [↑](#footnote-ref-682)
683. PI-012, PI-015, PI-029, QI-006, PI-036.See also part II.C.9 of this Report. [↑](#footnote-ref-683)
684. QI-006 [↑](#footnote-ref-684)
685. PI-029. In January 2017, the President of the Republic announced measures consisting of a presidential pardon and a reduction of sentences with the aim of reducing prison congestions. Following these measures, a few hundred prisoners were released. See Presidential decree No. 100/01 of the 3rd of January 2017 on presidential pardon measures. [↑](#footnote-ref-685)
686. See part II.C.4 of this Report. [↑](#footnote-ref-686)
687. See part II.C.5 of this Report. [↑](#footnote-ref-687)
688. MI-046, XI-040 [↑](#footnote-ref-688)
689. MI-046. [↑](#footnote-ref-689)
690. See also part II.C.4 of this Report. [↑](#footnote-ref-690)
691. KI-004, QI-031, PI-029. [↑](#footnote-ref-691)
692. XI-012. [↑](#footnote-ref-692)
693. QI-031. [↑](#footnote-ref-693)
694. QI-015, QI-065. [↑](#footnote-ref-694)
695. PI-009, PI-029, QI-159. [↑](#footnote-ref-695)
696. QI-032, TI-019, TI-028, TI-032, XI-032. [↑](#footnote-ref-696)
697. QI-045, PI-023. [↑](#footnote-ref-697)
698. KI-005, KI-006, KI-015, MI-078, MI-082, QI-045, XI-022. [↑](#footnote-ref-698)
699. QI-011. [↑](#footnote-ref-699)
700. TI-031. [↑](#footnote-ref-700)
701. QI-124, QI-139, TI-028, TI-031. [↑](#footnote-ref-701)
702. TI-028. [↑](#footnote-ref-702)
703. See Part II.C.4 of this Report. [↑](#footnote-ref-703)
704. PI-012, PI-023, TI-030. [↑](#footnote-ref-704)
705. QI-033. [↑](#footnote-ref-705)
706. KI-003, KI-018, KI-052, MI-044, MI-078, PI-013, PI-016, PI-029, QI-024, QI-030, QI-031, QI-041, QI-062, TI-043, XI-012, XI-048. [↑](#footnote-ref-706)
707. QI-033. [↑](#footnote-ref-707)
708. MI-078. [↑](#footnote-ref-708)
709. MI-078, MI-044, PI-016, PI-029, QI-062, TI-043. See also part II.C.9 of this Report. [↑](#footnote-ref-709)
710. See also Part II.C.2 of this Report. [↑](#footnote-ref-710)
711. MI-045, PI-032, QI-139. [↑](#footnote-ref-711)
712. A/HRC/32/30 and A/HRC/33/37. [↑](#footnote-ref-712)
713. HRC/33/24, para. 2. [↑](#footnote-ref-713)
714. A/HRC/33/37, para. 53. [↑](#footnote-ref-714)
715. A/HRC/32/30, para. 28. [↑](#footnote-ref-715)
716. CAT/C/BDI/CO/2/Add.1, para.12. [↑](#footnote-ref-716)
717. Article 4 (2) of ICCPR, Article 2 (2) and (3) of the CAT, Committee against Torture, General Comment No. 2, para. 1 and 5. [↑](#footnote-ref-717)
718. See: <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=21848&LangID=E>. [↑](#footnote-ref-718)
719. https://goo.gl/TxJCBx, para. 18. [↑](#footnote-ref-719)
720. Ibid. para. 10. [↑](#footnote-ref-720)
721. See the Report of the Special Rapporteur on torture, A / HRC / 12/39 / Add.5, para. 187. [↑](#footnote-ref-721)
722. Human Rights Committee, Communication No. 859/1999, *Jiménez Vaca c. Colombia.* [↑](#footnote-ref-722)
723. Human Rights Committee, Communication No. 916/2000,*Jayawardena c. Sri Lanka.* [↑](#footnote-ref-723)
724. Human Rights Committee, Communication No. 6/2005, *Yildirim c. Austria*. [↑](#footnote-ref-724)
725. Guidelines C.9, C.10 and C.11. [↑](#footnote-ref-725)
726. Chapter III of the Criminal Code [↑](#footnote-ref-726)
727. Ibid. [↑](#footnote-ref-727)
728. Article 220 of the Criminal Code. [↑](#footnote-ref-728)
729. CCPR/C/BDI/CO/2, para. 14. [↑](#footnote-ref-729)
730. In 2016, the Committee against Torture also expressed “concern over the 651 cases of torture recorded between April 2015 and April 2016 by the Office of the High Commissioner for Human Rights in Burundi” (see A / HRC / 32/30, para 27). It also expressed concern about reports of a recent increase in torture cases related to the political crisis, as reported by the Secretary-General (see S / 2016/352, para. Independent Experts mandated by the Human Rights Council during its second visit to the State Party (CAT/C/BDI/CO/2/Add.1, para. 12). [↑](#footnote-ref-730)
731. In a recent report to the United Nations General Assembly (A / 72/178), the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, recalled that “the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is not confined to acts carried out against persons deprived of their liberty, but also covers excessive police violence, such as during arrest and the policing of assemblies”, sexual violence, “ female genital mutilation, domestic violence and trafficking in human beings”. The excessive use of violence by police, arbitrary arrests and sexual violence are dealt with in parts II.C.1, 3 and 5 of this Report. [↑](#footnote-ref-731)
732. TI-047, PI-021, PI-015, MI-070, QI-006, MI-044, MI-045, QI-037, PI-032, TI-045. [↑](#footnote-ref-732)
733. MI-071, PI-001. [↑](#footnote-ref-733)
734. TI-047, PI-015, TI-049, PI-016, QI-027, QI-031, TI-031. [↑](#footnote-ref-734)
735. QI-006, PI-020, PI-001, MI-045, PI-012, PI-032. [↑](#footnote-ref-735)
736. MI-047, MI-045, PI-021, PI-020, MI-041, QI-067. [↑](#footnote-ref-736)
737. PI-012, PI-021, QI-035, XI-039. [↑](#footnote-ref-737)
738. See Part II.C.3 of this report. [↑](#footnote-ref-738)
739. PI-012, PI-021, PI-020, QI-067, MI-047, TI-032, QI-038. [↑](#footnote-ref-739)
740. PI-012. [↑](#footnote-ref-740)
741. TI-047, MI-082, MI-044, PI-012. [↑](#footnote-ref-741)
742. QI-029, QI-024, PI-001. [↑](#footnote-ref-742)
743. QI-029, QI-030, PI-032, QI-052, MI-046, PI-001, MI-071, XI-013, TI-034. [↑](#footnote-ref-743)
744. QI-052, QI-132, QI-031, TI-019, PI-009, PI-032, TI-043, TI-034. [↑](#footnote-ref-744)
745. MI-044, MI-046, PI-001, QI-067. [↑](#footnote-ref-745)
746. QI-132, XI-040, XI-039, MI-046, MI-078. [↑](#footnote-ref-746)
747. QI-24, QI-030, TI-047, MI-040, PI-015, PI-001, QI-019, XI-013. [↑](#footnote-ref-747)
748. MI-042, MI-044. [↑](#footnote-ref-748)
749. KI-01, TI-047, QI-027, TI-019, PI-020, PI-029. [↑](#footnote-ref-749)
750. TI-043, PI-012, MI-070. [↑](#footnote-ref-750)
751. MI-070, QI-067, MI-071. [↑](#footnote-ref-751)
752. MI-070, MI-047, MI-078, QI-019, PI-012. [↑](#footnote-ref-752)
753. MI-070, KI-04, QI-019. [↑](#footnote-ref-753)
754. XI-032, MI-040, QI-038. [↑](#footnote-ref-754)
755. MI-071, KI-06, MI-045, PI-021. [↑](#footnote-ref-755)
756. MI-078, PI-016, PI-021. [↑](#footnote-ref-756)
757. XI-020, PI-021, TI-033. [↑](#footnote-ref-757)
758. XI-013, XI-033. [↑](#footnote-ref-758)
759. MI-070, QI-006, QI-034. [↑](#footnote-ref-759)
760. XI-017, QI-045, MI-046. [↑](#footnote-ref-760)
761. PI-021, KI-006, TI-023, QI-006. [↑](#footnote-ref-761)
762. MI-047. [↑](#footnote-ref-762)
763. MI-047. [↑](#footnote-ref-763)
764. MI-082. [↑](#footnote-ref-764)
765. TI-034, QI-038. [↑](#footnote-ref-765)
766. TI-045, TI-047, TI-049, TI-051. [↑](#footnote-ref-766)
767. PI-009, KI-015, TI-032, TI-028, PI-032. [↑](#footnote-ref-767)
768. PI-032. [↑](#footnote-ref-768)
769. PI-009. [↑](#footnote-ref-769)
770. KI-03, MI-046. [↑](#footnote-ref-770)
771. MI-046. [↑](#footnote-ref-771)
772. PI-015. [↑](#footnote-ref-772)
773. QI-033, TI-047, QI-028. [↑](#footnote-ref-773)
774. QI-033. [↑](#footnote-ref-774)
775. KI-003. [↑](#footnote-ref-775)
776. MI-046. [↑](#footnote-ref-776)
777. PI-001. [↑](#footnote-ref-777)
778. KI-001, PI-021. [↑](#footnote-ref-778)
779. PI-012, MI-042 [↑](#footnote-ref-779)
780. MI-086, KI-01. [↑](#footnote-ref-780)
781. MI-045. [↑](#footnote-ref-781)
782. MI-011, TI-023, TI-055, PI-012, MI-048, MI-044, QI-031, PI-001, PI-009. [↑](#footnote-ref-782)
783. PI-029, QI-031, MI-042, QI-065, PI-012, MI-011. [↑](#footnote-ref-783)
784. TI-066. [↑](#footnote-ref-784)
785. XI-012. [↑](#footnote-ref-785)
786. MI-042. [↑](#footnote-ref-786)
787. QI-062, KI-015, KI-006, PI-006, KI-005. [↑](#footnote-ref-787)
788. PI-006. [↑](#footnote-ref-788)
789. QI-031. [↑](#footnote-ref-789)
790. MI-088, MI-084, QI-132. [↑](#footnote-ref-790)
791. MI-070, TI-026. [↑](#footnote-ref-791)
792. QI-005, QI-019, QI-034. [↑](#footnote-ref-792)
793. MI-093, QI-065. [↑](#footnote-ref-793)
794. PI-014, MI-092. [↑](#footnote-ref-794)
795. TI-033, TI-045, TI-047, TI-049, TI-051. [↑](#footnote-ref-795)
796. MI-052, PI-020. [↑](#footnote-ref-796)
797. See part II.C.3 of this report [↑](#footnote-ref-797)
798. MI-082, MI-078, QI-045, KI-015, PI-013. [↑](#footnote-ref-798)
799. TI-032, TI-028, PI-006. [↑](#footnote-ref-799)
800. XI-032, TI-028, MI-083, PI-001. [↑](#footnote-ref-800)
801. XI-020, QI-030. [↑](#footnote-ref-801)
802. QI-037, KI-001. [↑](#footnote-ref-802)
803. TI-047, XI-014, KI-06, PI-015. [↑](#footnote-ref-803)
804. For example, in its report covering the first half of 2017 (8 %), the INHRC noted “the cramped cells [...] the lack of bedding, the deplorable sanitary conditions of the holding cells, the lack of food supplies and access to any medical care for detainees [...] two detainees died from their illnesses in the holding cells in the Prosecutor’s Office in Makamba on the 17 April 2017 and in the judicial police in Muramvya on the 11 May 2017”. [↑](#footnote-ref-804)
805. TI-042, QI-019, QI-031. [↑](#footnote-ref-805)
806. XI-012, PI-029. [↑](#footnote-ref-806)
807. PI-012, TI-028, XI-39. [↑](#footnote-ref-807)
808. QI-019, PI-015, KI-018, TI-023, TI-028. [↑](#footnote-ref-808)
809. MI-046, PI-029, PI-020, PI-016, PI-012, MI-082, KI-004, MI-041, QI-005. [↑](#footnote-ref-809)
810. MI-082. [↑](#footnote-ref-810)
811. KI-004. [↑](#footnote-ref-811)
812. PI-012, TI-043, MI-078, MI-070, MI-047, MI-046, PI-029, QI-038, QI-005, TI-031, TI-028, KI-006. [↑](#footnote-ref-812)
813. MI-078. [↑](#footnote-ref-813)
814. XI-040, PI-029, PI-020, MI-041, QI-038, TI-031. [↑](#footnote-ref-814)
815. PI-020. [↑](#footnote-ref-815)
816. QI-038. [↑](#footnote-ref-816)
817. PI-020, PI-016, MI-082, MI-046, PI-021, QI-037, MI-041. [↑](#footnote-ref-817)
818. XI-040. [↑](#footnote-ref-818)
819. PI-021. [↑](#footnote-ref-819)
820. MI-046. [↑](#footnote-ref-820)
821. PI-32, MI-041, QI-065. See also part II.C.3 of this report. [↑](#footnote-ref-821)
822. KI-04. [↑](#footnote-ref-822)
823. MI-047, MI-042. [↑](#footnote-ref-823)
824. MI-042. [↑](#footnote-ref-824)
825. TI-031, PI-015, MI-048, QI-031, XI-040, MI-093, PI-012, QI-005, MI-092. [↑](#footnote-ref-825)
826. MI-046, QI-037, TI-047. See also part II.C.5 of this report. [↑](#footnote-ref-826)
827. KI-004. [↑](#footnote-ref-827)
828. TI-030. [↑](#footnote-ref-828)
829. PI-012. [↑](#footnote-ref-829)
830. QI-062, TI-034, MI-081, PI-015. See also part II.C.1 of this report. [↑](#footnote-ref-830)
831. TI-034. [↑](#footnote-ref-831)
832. PI-015. [↑](#footnote-ref-832)
833. TI-058, MI-081. [↑](#footnote-ref-833)
834. PI-012. [↑](#footnote-ref-834)
835. PI-001, PI-006, MI-046. [↑](#footnote-ref-835)
836. A/HRC/32/30 and A/HRC/33/37. [↑](#footnote-ref-836)
837. A/HRC/RES/33/37, para. 2. [↑](#footnote-ref-837)
838. CEDAW/C//BDI/CO/5-6, para. 26. [↑](#footnote-ref-838)
839. Ibid. [↑](#footnote-ref-839)
840. CAT/C/BDI/CO/2/Add.1, para. 16. [↑](#footnote-ref-840)
841. Articles 9 and 7 of the ICPDP and Article 12 of the ICESCR. [↑](#footnote-ref-841)
842. Article 4 (c), (d) and (o) of the United Nations Declaration on the Elimination of Violence against Women, Article 2 of the ICCPR, Human Rights Committee, General Comments No. 31 para. 15 and 18, Committee on the Elimination of Discrimination against Women, General Recommendations No. 28, para. 17, and No. 35, para. 24-25. [↑](#footnote-ref-842)
843. Article 1 of the Declaration. [↑](#footnote-ref-843)
844. See: <http://www.icglr.org/index.php/fr/le-pacte>. [↑](#footnote-ref-844)
845. Article 196 and 197 of the Penal Code. [↑](#footnote-ref-845)
846. Articles 554 through 562 of the Penal Code. [↑](#footnote-ref-846)
847. Article 555 of the Penal Code. [↑](#footnote-ref-847)
848. Articles 556, 557 and 558 of the Penal Code. [↑](#footnote-ref-848)
849. Articles 560 and 561 of the Penal Code. [↑](#footnote-ref-849)
850. The law defines gender-based violence as “any act of violence directed against a person by reason of his or her sex and causing or likely to cause physical, sexual, economic, psychological or emotional harm or suffering, including the threat of such acts, coercion or arbitrary deprivation of liberty, whether in public or private life”. [↑](#footnote-ref-850)
851. CEDAW/C//BDI/CO/5-6, para. 24. [↑](#footnote-ref-851)
852. Articles 24 to 60 of law n° 1/13 of 22 September 2016 on the protection of victims as well as prevention and repression of sexual violence. [↑](#footnote-ref-852)
853. Articles 5, 11, 19 and 28 of law n° 1/13 of 22 September 2016. [↑](#footnote-ref-853)
854. The Commission has mainly documented gender-based violence constituting sexual violence. [↑](#footnote-ref-854)
855. KI-066, MI-037, MI-085, KI-035, MI-046, MI-037, MI-085, KI-020. [↑](#footnote-ref-855)
856. MI-033, KI-005, KI-070, TI-031, XI-027 [↑](#footnote-ref-856)
857. MI-087, MI-026, XI-027, MI-044, TI-028, KI-005, KI-001, KI-070, MI-022, KI-009, MI-027, KI-020, QI-037. [↑](#footnote-ref-857)
858. MI-033. [↑](#footnote-ref-858)
859. KI-070. [↑](#footnote-ref-859)
860. KI-067. [↑](#footnote-ref-860)
861. TI-013, MI-030. [↑](#footnote-ref-861)
862. MI-030. [↑](#footnote-ref-862)
863. MI-022, KI-009, KI-020, MI-026. [↑](#footnote-ref-863)
864. MI-039, KI-068. [↑](#footnote-ref-864)
865. KI-01, MI-036, MI-082, KI-068, MI-082, MI-046, KI-068, MI-087, MI-044, KI-005. [↑](#footnote-ref-865)
866. KI-067, KI-066, QI-144, MI-039. [↑](#footnote-ref-866)
867. MI-029. [↑](#footnote-ref-867)
868. KI-067. [↑](#footnote-ref-868)
869. KI-069, KI-063, KI-011, MI-026. [↑](#footnote-ref-869)
870. KI-011. [↑](#footnote-ref-870)
871. KI-069. [↑](#footnote-ref-871)
872. See part II.C.4 of this Report. [↑](#footnote-ref-872)
873. KI-070, KI-05. [↑](#footnote-ref-873)
874. MI-044. [↑](#footnote-ref-874)
875. TI-013, MI-087, MI-034, MI-082, TI-028, TI-031, MI-036, KI-001, QI-037, MI-030, KI-004, MI-022, QI-074, MI-044, KI-018, MI-046, TI-047, QI-037. [↑](#footnote-ref-875)
876. QI-037, KI-070, MI-026. [↑](#footnote-ref-876)
877. Regarding the control of the Imbonerakure by State agents, see part II.B of this Report. [↑](#footnote-ref-877)
878. KI-070. [↑](#footnote-ref-878)
879. MI-026. [↑](#footnote-ref-879)
880. MI-030. [↑](#footnote-ref-880)
881. MI-035, KI-067, KI-035, MI-031, MI-037, MI-085, KI-066, MI-039, KI-009, KI-068, MI-027. [↑](#footnote-ref-881)
882. See part II.B.2 of this report. [↑](#footnote-ref-882)
883. KI-035. [↑](#footnote-ref-883)
884. KI-066, QI-144. [↑](#footnote-ref-884)
885. KI-009. [↑](#footnote-ref-885)
886. KI-009. [↑](#footnote-ref-886)
887. KI-070, KI-005 [↑](#footnote-ref-887)
888. KI-005. [↑](#footnote-ref-888)
889. KI-035, MI-031, MI-037, KI-068. [↑](#footnote-ref-889)
890. MI-027, KI-009. [↑](#footnote-ref-890)
891. MI-044, KI-001, TI-047, MI-022, MI-082, TI-028, MI-030, MI-036, QI-074, QI-037, MI-044, XI-027, KI-018, MI-046, KI-004, KI-005, KI-070, MI-070, MI-046, MI-082, TI-031. [↑](#footnote-ref-891)
892. See above section (a) and part 3 of III.A.2 of the present report. [↑](#footnote-ref-892)
893. MI-034, TI-013, MI-087, KI-066, MI-039, KI-009. [↑](#footnote-ref-893)
894. MI-030 [↑](#footnote-ref-894)
895. KI-066. [↑](#footnote-ref-895)
896. MI-027, KI-009. [↑](#footnote-ref-896)
897. MI-027. [↑](#footnote-ref-897)
898. MI-022, MI-082, TI-028. [↑](#footnote-ref-898)
899. MI-030, MI-087. [↑](#footnote-ref-899)
900. KI-070. [↑](#footnote-ref-900)
901. KI-004, KI-005, QI-074, QI-037, KI-018, KI-070. [↑](#footnote-ref-901)
902. KI-004. [↑](#footnote-ref-902)
903. MI-082, MI-044, TI-031, MI-046, TI-047. [↑](#footnote-ref-903)
904. TI-031. [↑](#footnote-ref-904)
905. MI-046 [↑](#footnote-ref-905)
906. TI-028. [↑](#footnote-ref-906)
907. KI-087. [↑](#footnote-ref-907)
908. KI-067, KI-05, QI-144, KI-066. [↑](#footnote-ref-908)
909. KI-013, MI-039, MI-031, MI-037, MI-085. [↑](#footnote-ref-909)
910. MI-022, QI-074, QI-037, XI-027, KI-18, KI-04, MI-046, MI-044, TI-028, KI-005, KI-001, TI-031, MI-082, TI-047. [↑](#footnote-ref-910)
911. MI-026, MI-087, TI-013, KI-066. [↑](#footnote-ref-911)
912. MI-034, MI-031. [↑](#footnote-ref-912)
913. MI-030, MI-036. [↑](#footnote-ref-913)
914. QI-074, KI-018, KI-004, MI-046, MI-044, KI-005, MI-030. [↑](#footnote-ref-914)
915. MI-036. [↑](#footnote-ref-915)
916. MI-082. [↑](#footnote-ref-916)
917. KI-001, TI-028 [↑](#footnote-ref-917)
918. TI-047 [↑](#footnote-ref-918)
919. KI-001. [↑](#footnote-ref-919)
920. MI-087. [↑](#footnote-ref-920)
921. MI-034, MI-031. [↑](#footnote-ref-921)
922. MI-034. [↑](#footnote-ref-922)
923. KI-009, MI-036, KI-068, MI-087. [↑](#footnote-ref-923)
924. MI-036. [↑](#footnote-ref-924)
925. 41 MI-087 [↑](#footnote-ref-925)
926. MI-087. [↑](#footnote-ref-926)
927. TI-013. [↑](#footnote-ref-927)
928. MI-026, MI-030. [↑](#footnote-ref-928)
929. MI-026. [↑](#footnote-ref-929)
930. See part II.C.6 of the present report. [↑](#footnote-ref-930)
931. KI-070, KI-004, MI-082, KI-005. See part II.C.4 of the present report. [↑](#footnote-ref-931)
932. KI-001. [↑](#footnote-ref-932)
933. MI-082. [↑](#footnote-ref-933)
934. KI-070. [↑](#footnote-ref-934)
935. MI-038, KI-059, MI-028, KI-069, KI-063, KI-047, KI-020, KI-014, KI-012, KI-011. [↑](#footnote-ref-935)
936. KI-059, MI-028, KI-069, KI-047, KI-020, KI-012, MI-035. [↑](#footnote-ref-936)
937. KI-047, KI-014, KI-063, KI-011, KI-020. [↑](#footnote-ref-937)
938. KI-020. [↑](#footnote-ref-938)
939. MI-028. [↑](#footnote-ref-939)
940. KI-059. [↑](#footnote-ref-940)
941. KI-012. [↑](#footnote-ref-941)
942. KI-066, KI-009, MI-087. [↑](#footnote-ref-942)
943. KI-009. [↑](#footnote-ref-943)
944. TI-013, MI-027, KI-035. [↑](#footnote-ref-944)
945. KI-011, KI-012, KI-047. [↑](#footnote-ref-945)
946. KI-011, KI-012, KI-047. [↑](#footnote-ref-946)
947. KI-070, KI-005, KI-018. [↑](#footnote-ref-947)
948. KI-070. [↑](#footnote-ref-948)
949. KI-04, KI-05, KI-070, TI-047, KI-018, QI-037, QI-074. [↑](#footnote-ref-949)
950. QI-037. [↑](#footnote-ref-950)
951. KI-04, KI-05, KI-070, TI-047, KI-18, QI-037, QI-074. [↑](#footnote-ref-951)
952. KI-014 and KI-011. The male victims interrogated by the Commission have not mentioned contracting HIV. [↑](#footnote-ref-952)
953. KI-09, KI-066, MI-087. [↑](#footnote-ref-953)
954. MI-028, MI-035. [↑](#footnote-ref-954)
955. KI-066, KI-067. [↑](#footnote-ref-955)
956. MI-036. [↑](#footnote-ref-956)
957. MI-087. [↑](#footnote-ref-957)
958. MI-030. [↑](#footnote-ref-958)
959. General Comment n. 34 of the Committee on Human Rights para 11. [↑](#footnote-ref-959)
960. The Committee further stipulates the following: “For the purposes of paragraph 3, a norm, to be characterized as a “law”, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. (CCPR/C/GC/34, para.25).”  [↑](#footnote-ref-960)
961. Article 6 of the Treaty. [↑](#footnote-ref-961)
962. Article 31 of the Constitution provides that “freedom of expression is guaranteed. The State respects freedom of religion, of thought, of conscience and opinion”. [↑](#footnote-ref-962)
963. Or five US Dollars. [↑](#footnote-ref-963)
964. Article 411 of the Penal Code as amended in 2009. [↑](#footnote-ref-964)
965. Law n° 1/15 of 9 May 2015 regulating the press in Burundi. [↑](#footnote-ref-965)
966. On the 28 May 2015, the East African Court of Justice declared that certain provisions of law n°1/11 of June 2013 violated fundamental principles of democracy and rule of law, in which freedom of expression is an essential component. [↑](#footnote-ref-966)
967. A/HRC/31/55/Add.2, para. 20 to 23. [↑](#footnote-ref-967)
968. CCPR/C/BDI/CO/2. [↑](#footnote-ref-968)
969. Articles 10 and 16 of law n°1/15 of 9 May regulating the press in Burundi. [↑](#footnote-ref-969)
970. Ibid, articles 5 to 9 and 53 to 57. [↑](#footnote-ref-970)
971. Articles 30 to 32 of the Electoral Code. [↑](#footnote-ref-971)
972. A/HRC/31/55/Add.2, para. 51. [↑](#footnote-ref-972)
973. See: <http://www.maisondelapresse-burundi.org/opb/576/>, <https://freedomhouse.org/report/freedom-press/2015/burundi> and <https://rsf.org/fr/actualites/lesjournalistes-independants-dans-le-collimateur-des-autorites> . [↑](#footnote-ref-973)
974. The *Renouveau*, controlled by the Government, is the only daily newspaper available in the country. Amongst other weekly newspapers, we have the following: *Ndongozi*, created by the Catholic Church, *Arc-en-ciel*, a private newspaper in French, *Ubumwe*, a newspaper owned by the Government and the Burundian Press Agency (ABP). Several other media only publish articles online or via Twitter accounts such as *Ikiriho*, which is close to the Government. [↑](#footnote-ref-974)
975. See the details on the case of Jean Bigirimana in part V II.C.2 of the present report. [↑](#footnote-ref-975)
976. TI-012. [↑](#footnote-ref-976)
977. The five radios broadcasted news bulletins three times a day in Kirundi, Swahili and French. [↑](#footnote-ref-977)
978. Reference n° 552.10/395/BV/2015. [↑](#footnote-ref-978)
979. See: <http://www.ppbdi.com/index.php/extras/politique-cooperation-actualite-internationales/3787-cncsignature-d-un-acte-d-engagement-entre-la-radio-privee-isanganiro-et-la-radio-television-privee-rema> [↑](#footnote-ref-979)
980. XI-003. [↑](#footnote-ref-980)
981. Ministerial ordinance n° 530/1960 of 24 October 2016 ordering the provisional suspension of some non-profit organisations. [↑](#footnote-ref-981)
982. See: <http://ppbdi.com/index.php/ubum/imibano/9-actualite/7383-cnc-communique-de-presse-dumercredi-21-juin-2017> [↑](#footnote-ref-982)
983. Press release of CNC n° 003 of 3 July 2017. [↑](#footnote-ref-983)
984. Infra, section (b) (ii). [↑](#footnote-ref-984)
985. Ordinance n°530/1043 of 12 July 2017 suspending the RPA Association. [↑](#footnote-ref-985)
986. MI-021. [↑](#footnote-ref-986)
987. TI-020. [↑](#footnote-ref-987)
988. TI-012. [↑](#footnote-ref-988)
989. MI-020. [↑](#footnote-ref-989)
990. See: <http://www.iwacu-burundi.org/innocent-muhozi-rentre-libre-apres-une-audition-de-5-heures/> [↑](#footnote-ref-990)
991. PI-035. [↑](#footnote-ref-991)
992. PI-035. [↑](#footnote-ref-992)
993. See: <http://www.france24.com/fr/20150813-burundi-presidence-condamnation-nkurunziza-agressioncorrespondant-AFP-RFI-esdras-ndikumana>. [↑](#footnote-ref-993)
994. For more detail on this case, see part II.C.1 of the present report. [↑](#footnote-ref-994)
995. MI-007, MI-008, MI-009, MI-19, MI-020. [↑](#footnote-ref-995)
996. MI-008, MI-019. [↑](#footnote-ref-996)
997. PI-001. [↑](#footnote-ref-997)
998. See: <http://www.iwacu-burundi.org/comparution-dantoine-kaburahe/>. [↑](#footnote-ref-998)
999. PI-034. [↑](#footnote-ref-999)
1000. TI-031. [↑](#footnote-ref-1000)
1001. See: <http://ppbdi.com/index.php/ubum/imibano/9-actualite/4262-ministere-de-la-securite-publique>. [↑](#footnote-ref-1001)
1002. PI-005, PI-008. [↑](#footnote-ref-1002)
1003. TI-012. [↑](#footnote-ref-1003)
1004. For more details see part II.C.2 of the present report [↑](#footnote-ref-1004)
1005. See: <https://www.fidh.org/fr/regions/afrique/burundi/>. [↑](#footnote-ref-1005)
1006. See: <https://rsf.org/fr/burundi>. [↑](#footnote-ref-1006)
1007. See: <https://www.hrw.org/fr/afrique/burundi>. [↑](#footnote-ref-1007)
1008. See: <https://www.amnesty.org/fr/countries/africa/burundi/>. [↑](#footnote-ref-1008)
1009. Previously: “East and Horn of Africa Human Rights Defenders Project”: <https://www.defenddefenders.org/>. [↑](#footnote-ref-1009)
1010. See: <https://www.ligue-iteka.bi/>. [↑](#footnote-ref-1010)
1011. See: <http://www.iwacu-burundi.org/au-sommaire-de-ledition-de-ce-mercredi-3-mai-2017-du-journalamakuru-yiwacu/>. [↑](#footnote-ref-1011)
1012. See: <http://inzamba.org/> and <http://www.rpa.bi/index.php/nos-journaux-parles/kirundi> [↑](#footnote-ref-1012)
1013. See: <https://www.facebook.com/sosmediasburundi> [↑](#footnote-ref-1013)
1014. PI-034. [↑](#footnote-ref-1014)
1015. Letter n°531.018/778/CAB/2017 of the mayor of Bujumbura sent to members of the Coalition of which the Commission has a copy. See: <http://www.iwacu-burundi.org/des-elus-dupeuple-empeches-de-sadresser-a-la-presse/> [↑](#footnote-ref-1015)
1016. MI-075, PI-018, PI-030, QI-071, TI-010. [↑](#footnote-ref-1016)
1017. MI-075. [↑](#footnote-ref-1017)
1018. PI-018. [↑](#footnote-ref-1018)
1019. See part II.C.7 of the present report. [↑](#footnote-ref-1019)
1020. MI-080. [↑](#footnote-ref-1020)
1021. TI-034 [↑](#footnote-ref-1021)
1022. XI-007. [↑](#footnote-ref-1022)
1023. U.N. Doc. HRI\GEN\1\Rev.1 (1994). [↑](#footnote-ref-1023)
1024. General Comment n° 11, para. 2. [↑](#footnote-ref-1024)
1025. Ibid. [↑](#footnote-ref-1025)
1026. Article 4 of the Covenant [↑](#footnote-ref-1026)
1027. Article 4 (c). [↑](#footnote-ref-1027)
1028. Article 22 of the law [↑](#footnote-ref-1028)
1029. Ibid., article 30. [↑](#footnote-ref-1029)
1030. See: <https://twitter.com/forebu_emg?lang=fr> [↑](#footnote-ref-1030)
1031. See: <http://www.jeuneafrique.com/289202/politique/burundi-rebellion-annonce-creation-chassernkurunzizapouvoir/?utm_content=bufferd2dd7&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer> [↑](#footnote-ref-1031)
1032. See: <http://www.jeuneafrique.com/mag/435829/politique/avons-decide-de-passer-a-laction-godefroidniyombare-livre-version-coup-detat-de-2015-burundi/> [↑](#footnote-ref-1032)
1033. See: <https://twitter.com/red_tabara?lang=fr> [↑](#footnote-ref-1033)
1034. See <http://mporeburundi.org/red-tabara-communique-de-presse-relatif-a-lechec-du-sommet-de-lunionafricaine/> [↑](#footnote-ref-1034)
1035. See: <http://www.jeuneafrique.com/304829/politique/burundi-melchiade-biremba-on-ne-defendredemocratie-belles-paroles/> [↑](#footnote-ref-1035)
1036. Interview with Deutsche Welle and AfricaPlus Television on 14 January 2016. [↑](#footnote-ref-1036)
1037. Interview with Deutsche Welle and AfricaPlus Television on 18 January 2016: “I categorically refuse the accusation of being at the head of a movement in a country that is not mine”. [↑](#footnote-ref-1037)
1038. See: <https://www.info-afrique.com/5223-communique-de-la-rebellion-fnl-du-president-du-partiisidore-nibizi/> [↑](#footnote-ref-1038)
1039. See: <http://www.rfi.fr/afrique/20151105-burundi-declarations-gouvernement-peur-quartierscontestataires> [↑](#footnote-ref-1039)
1040. Brother of the Minister of Public Security, General Rodrigue Bunyoni died in Uganda on the 25 November 2015 (officially) due to illness. His name appeared in the list of people wanted by Burundian courts in relation to the case of the attempted coup in May 2015. [↑](#footnote-ref-1040)
1041. PI-033. [↑](#footnote-ref-1041)
1042. PI-033. [↑](#footnote-ref-1042)
1043. PI-033. [↑](#footnote-ref-1043)
1044. The term used refers to the idea of suffocating a baby and stop him from being born. [↑](#footnote-ref-1044)
1045. PI-033. [↑](#footnote-ref-1045)
1046. PI-033. [↑](#footnote-ref-1046)
1047. See: <https://www.youtube.com/watch?v=sTqB1E1hqsU> [↑](#footnote-ref-1047)
1048. See: <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=21506&LangID=F> [↑](#footnote-ref-1048)
1049. Press release n° 0002-17-SNIC, from 5 April 2017. [↑](#footnote-ref-1049)
1050. The Vice President declared: “*It is not the first time that Burundians sing when doing sports, it is not the first time that Burundians sing on their way to the fields. Who has been raped following these chants? A few days ago, you saw the people arrested by the police, they are the ones trying to destabilise the country, who want to commit horrible acts of rape and then blame the government for this crime. We are aware of this. We know their tactics*”. (<https://soundcloud.com/rbi-avril-2017>). [↑](#footnote-ref-1050)
1051. Confidential document received by the Commission. [↑](#footnote-ref-1051)
1052. See: [https://iconnect.ohchr.org/2017/05/26/ombudsman-edouard-nduwimana-je-naurais-pasnyakurise-jusqua-nyakuriser-mon-parti-cndd-fdd/,DanaInfo=www.ikiriho.org](https://iconnect.ohchr.org/2017/05/26/ombudsman-edouard-nduwimana-je-naurais-pasnyakurise-jusqua-nyakuriser-mon-parti-cndd-fdd/%2CDanaInfo%3Dwww.ikiriho.org) [↑](#footnote-ref-1052)
1053. The Commission has a video that attest to this. [↑](#footnote-ref-1053)
1054. PI-033. [↑](#footnote-ref-1054)
1055. See: <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=21505&LangID=F> [↑](#footnote-ref-1055)
1056. PI-033 [↑](#footnote-ref-1056)
1057. PI-033. [↑](#footnote-ref-1057)
1058. See: <https://twitter.com/minanijeremie/status/869573771916607488> [↑](#footnote-ref-1058)
1059. Translation verified by the Commission. [↑](#footnote-ref-1059)
1060. PI-033. [↑](#footnote-ref-1060)
1061. PI-033. [↑](#footnote-ref-1061)
1062. PI-033 [↑](#footnote-ref-1062)
1063. PI-033. [↑](#footnote-ref-1063)
1064. The African Court on Human and Peoples’ Rights, *Tanganyika Law Society, the Legal and Human Rights Centre and Reverend Christopher R. Mtikila c. Republic of Tanzania*, 14 June 2013. [↑](#footnote-ref-1064)
1065. The African Commission on Human and Peoples’ Rights, communication n° 355/07, *Hossam Ezzat and Rania Enayet c. Egypt.* [↑](#footnote-ref-1065)
1066. Para. 113 of the judgement in the case *Tanganyika Law Society, the Legal and Human Rights Centre and Reverend Christopher R. Mtikila c. Republic of Tanzania.* [↑](#footnote-ref-1066)
1067. A/HRC/31/55/Add.2, para. 30. [↑](#footnote-ref-1067)
1068. Ibid., para. 33. [↑](#footnote-ref-1068)
1069. Article 83 of law n°1/02, 27th January 2017. [↑](#footnote-ref-1069)
1070. A/HRC/31/55/Add.2, para. 34. [↑](#footnote-ref-1070)
1071. Ibid. [↑](#footnote-ref-1071)
1072. Article 74 of law n°1/02, 27th January 2017. [↑](#footnote-ref-1072)
1073. Article 9 of law n°1/01, 23 January 2017. [↑](#footnote-ref-1073)
1074. Ibid. Articles 5 and 15 [↑](#footnote-ref-1074)
1075. Ibid. Article 16. [↑](#footnote-ref-1075)
1076. CCPR/C/BDI/CO/2, para. 20. [↑](#footnote-ref-1076)
1077. In 2014, the Human Rights Committee noted the following: “The Committee is also concerned about reports of threats, including physical threats, and acts of harassment and intimidation being directed by the police and security forces at journalists and human rights defenders. (CCPR/C/BDI/CO/2, para. 20). [↑](#footnote-ref-1077)
1078. A/HRC/31/55/Add.2, para. 89 [↑](#footnote-ref-1078)
1079. See: <http://htmburundi.org/index.php/fr/qui-nous-sommes/> [↑](#footnote-ref-1079)
1080. See: <http://burundi-agnews.org/politique/burundi-le-discours-esoterique-dinvestiture-de-s-e-pierrenkurunziza/> [↑](#footnote-ref-1080)
1081. FORSC, Fontaine ISOKO, Ligue Iteka, SPPDF, APRODH, ACAT Burundi, FOCODE, PARCEM, AREDDHO, RCP, Syndicat STEB, OAG, AJMA, RUHUKA BANA, MM, AJCB, CHOUIFE, AMINA, AREVIE, BIRATURABA, AAN, ACOPEC, ATU, et CB.CPI. [↑](#footnote-ref-1081)
1082. Vital Nshimirimana, Christian Ngendahimana, Gertrude Kazoviyo, Bernardine Sindakira, Pierre Claver Mbonimpa, Armel Niyongere, Gordien Niyungeko, Richard Ntawe, Denis Ndayishemeze, Gervais Nibigira, Eulalie Nibizi, Godefroid Manirambona, Jean Nduwimana, Selemani Niyonkuru, Adélaïde Ndayisenga, Jean Marie Vianney Gatogato, Joseph Mujiji, Charles Katihabwa, Nixon Habonimana, Edouard Niyonzima, Mamer Sabushimike, Marc Ndayisenga, Caritas Kanyange and Lambert Nigarura, as well as Christian Ngendahimana and Marguerite Barankitse. [↑](#footnote-ref-1082)
1083. Report of the commission of inquiry “in charge of shedding light on the insurrectional movement launched on 26 April 2015” August 2015, pp. 24 to 27. [↑](#footnote-ref-1083)
1084. ACAT-Burundi, APRODH, AMINA, FOCODE, FORSC, Fontaine-Isoko, PARCEM, RCP and SPPDF, as well as Pacifique Nininahazwe, president of FOCODE, of Vital Nshimirimana, general delegate of FORSC, and Armel Niyongere, president of ACAT-Burundi. [↑](#footnote-ref-1084)
1085. Decree n°530/1597 of the Minister of the Interior. The targeted organisations are the following: ACAT-Burundi, APRODH, AMINA, FOCODE, FORSC, Fontaine Isoko, Association Maison Shalom, PARCEM, RCP and SPPDF. [↑](#footnote-ref-1085)
1086. The Ligue Iteka, the Association pour la recherche sur l’environnement, la démocratie et les droits de l’Homme au Burundi (AREDDHO) and the Syndicat des travailleurs de l’enseignement du Burundi (STEB) and Radio Publique Africaine (RPA). [↑](#footnote-ref-1086)
1087. Ordinance n°530/1960. [↑](#footnote-ref-1087)
1088. See: <https://www.fidh.org/fr/themes/defenseurs-des-droits-humains/dissolution-de-la-ligue-iteka-unnouveau-coup-porte-a-la-societe> [↑](#footnote-ref-1088)
1089. See: <https://www.fidh.org/fr/regions/afrique/burundi/burundi-une-repression-aux-dynamiquesgenocidaires> [↑](#footnote-ref-1089)
1090. The report of the commission of inquiry “in charge shedding light on the insurrectional movement launched on 26 April 2015” August 2015, pp. 24 to 27. [↑](#footnote-ref-1090)
1091. These cases are dealt with in more detail in parts II.C.1, 2, 4 and 6 of the present report. [↑](#footnote-ref-1091)
1092. See part II.C.1 of the present report. [↑](#footnote-ref-1092)
1093. See part II.C.2 of the present report. [↑](#footnote-ref-1093)
1094. TI-068 and documents handed to the Commission on 17 August 2017. [↑](#footnote-ref-1094)
1095. See: <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=21997&LangID=F> [↑](#footnote-ref-1095)
1096. MI-090. [↑](#footnote-ref-1096)
1097. PI-014, PI-028. [↑](#footnote-ref-1097)
1098. TI-029. See also the testimony transcribed in the report of FIDH: “Repression and genocidal dynamics in Burundi” published in November 2016. [↑](#footnote-ref-1098)
1099. MI-079, MI-077, PI-028, TI-038. [↑](#footnote-ref-1099)
1100. KI-049, KI-021, XI-036, KI-061, KI-060, KI-051, KI-050, MI-069, MI-053, MI-029, XI-014, KI-053, KI-052, KI-022, QI-051. [↑](#footnote-ref-1100)
1101. For more details on this case, see part II.C.1. of the present report. [↑](#footnote-ref-1101)
1102. MI-001, MI-002, MI-003. [↑](#footnote-ref-1102)
1103. X-025, K-068, K-065, KI-045, MI-060, MI034, QI-050. [↑](#footnote-ref-1103)
1104. QI-050. [↑](#footnote-ref-1104)
1105. KI-049, MI-043. [↑](#footnote-ref-1105)
1106. X-014, QI-053, QI-136. [↑](#footnote-ref-1106)
1107. KI-061, KI-060, KI-045. [↑](#footnote-ref-1107)
1108. KI-052, KI-026. [↑](#footnote-ref-1108)
1109. KI-049, MI-056, XI-036, KI-053, KI-052. [↑](#footnote-ref-1109)
1110. MI-029. [↑](#footnote-ref-1110)
1111. KI-055, KI-056 [↑](#footnote-ref-1111)
1112. KI0-22, MI-069, QI-053. [↑](#footnote-ref-1112)
1113. MI-056, QI-051, KI-041. [↑](#footnote-ref-1113)
1114. Articles 4 to 9 of law n°1/28, 5th December 2013. [↑](#footnote-ref-1114)
1115. Ibid. Article 10. [↑](#footnote-ref-1115)
1116. Regarding the protests between April and June 2015, see parts I.F.2 and II.C.1 of the present report. [↑](#footnote-ref-1116)
1117. See parts II.C.6.d. and III.B.2. of the present report. [↑](#footnote-ref-1117)
1118. Article 3 (h) of the law. [↑](#footnote-ref-1118)
1119. TI-052. [↑](#footnote-ref-1119)
1120. TI-005, QI-136, XI-022, TI-007. [↑](#footnote-ref-1120)
1121. QI-124. [↑](#footnote-ref-1121)
1122. QI-136. [↑](#footnote-ref-1122)
1123. CCPR/C/21/Rev.1/Add.9, 2 November 1999. [↑](#footnote-ref-1123)
1124. KI-002, MI-034, MI-031, TI-031, PI-023, PI-01. [↑](#footnote-ref-1124)
1125. PI-023. [↑](#footnote-ref-1125)
1126. PI-023, PI-015. Also, see the annual report 2015 of the CNIDH which noted that “more than 80 people were released thanks to their intervention and that of the Office of the Prosecutor, after being detained for almost a month following their arrest at the border crossing with Tanzania where they were traveling to for work or personal reasons.” (p. 64). [↑](#footnote-ref-1126)
1127. PI-015, MI-092. [↑](#footnote-ref-1127)
1128. See part II.C.5 of the present report. [↑](#footnote-ref-1128)
1129. MI-034. [↑](#footnote-ref-1129)
1130. MI-031. [↑](#footnote-ref-1130)
1131. MI-034, MI-035, MI-031, PI-020. [↑](#footnote-ref-1131)
1132. PI-036, KI-002. [↑](#footnote-ref-1132)
1133. KI-002, PI-020, MI-092, PI-015. [↑](#footnote-ref-1133)
1134. KI-002. [↑](#footnote-ref-1134)
1135. PI-018, TI-034, TI-016 [↑](#footnote-ref-1135)
1136. TI-034. [↑](#footnote-ref-1136)
1137. KI-001, PI-018, TI-015, TI-016, MI-042, MI-043. [↑](#footnote-ref-1137)
1138. KI-001. [↑](#footnote-ref-1138)
1139. TI-061, TI-062, TI-063, TI-030. [↑](#footnote-ref-1139)
1140. TI-061. [↑](#footnote-ref-1140)
1141. TI-001. [↑](#footnote-ref-1141)
1142. TI-062 [↑](#footnote-ref-1142)
1143. TI-061. [↑](#footnote-ref-1143)
1144. Article 5 (1) of the Rome Statute. [↑](#footnote-ref-1144)
1145. See part I.D of this report. [↑](#footnote-ref-1145)
1146. The text of the Elements of crimes is taken from the Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002. The Elements of Crimes adopted during the 2010 Review Conference are drawn from the official records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May - 11 June 2010. [↑](#footnote-ref-1146)
1147. ICC, Elements of crimes, p. 5. [↑](#footnote-ref-1147)
1148. Namely extra judiciary executions, arbitrary detention, enforced disappearance, acts of torture and other cruel, inhuman or degrading treatment, rape and other forms of sexual violence described in the chapter on the situation of human rights. For their qualification in crimes against humanity, see part III.A.2 of this report. [↑](#footnote-ref-1148)
1149. In the case *Kayishema and Ruzindana,* the International Criminal Tribunal for Rwanda (ICTR) stated that the presence of non-civilian subjects amongst the targeted population does not change its civilian character. [↑](#footnote-ref-1149)
1150. On this topic, see also: Elements of crime, articles 7 (1 (a), element 2; (7) (1) (d), element 4; (7) (1) (g), element 3; (7) (1) (g), element 2; (7) (1) (g), element 4; (7) (1) (k), element 4. [↑](#footnote-ref-1150)
1151. On the need to demonstrate that the acts by virtue of their nature, objective and consequences are part of an attack against a civilian population, see: ICTR, *The Prosecutor vs. Jajelijeli*, 2003, and *The Prosecutor vs. Semanza*, 2003. [↑](#footnote-ref-1151)
1152. ICC pre-trial chamber I: *Germain Katanga and Mathieu Ngudjolo Chui*; and pre-trial chamber II: *Jean-Pierre Bemba Gombo*. [↑](#footnote-ref-1152)
1153. ICTY, T*he Prosecutor vs. Blaškić*, 2000. [↑](#footnote-ref-1153)
1154. Ibid, para. 204. [↑](#footnote-ref-1154)
1155. ICC, Elements of crimes, p. 5, note 6, and ICTY, *Kupreskic*, 2000. [↑](#footnote-ref-1155)
1156. See part II. B of this report. [↑](#footnote-ref-1156)
1157. ICTY, T*he Prosecutor vs. Kunarac and al*, 2001. [↑](#footnote-ref-1157)
1158. See in particular: ICTR, *Akayesu, Rutaganda, Musema, Ntakirutimana and Ntakirutimana case, Kayishema and Ruzindana* *case*. [↑](#footnote-ref-1158)
1159. ICTY, *the Prosecutor vs. Tadić*, 1997, *the Prosecutor vs. Kordić and Cerkez*, 2004, and *the Prosecutor vs. Blaškić*, 2004. [↑](#footnote-ref-1159)
1160. ICC, Katanga, 2008; also: ICTY, *the Prosecutor vs. Kordić and Cerkez*, 2004, and *the Prosecutor vs. Blagojević and Jokić*, 2005. [↑](#footnote-ref-1160)
1161. Article 7(1) of the Rome Statute covers « acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack». [↑](#footnote-ref-1161)
1162. ICTY, *the Prosecutor vs. Tadić*, 1997, *the Prosecutor vs. Blaškić*, 2000, and *the Prosecutor vs. Kunarac and al*, 2001; ICTR, *Kayishema*, 1999; ICC, *Katanga*, 2008, and *Bemba*, 2009. See also A/CN.4/680. [↑](#footnote-ref-1162)
1163. Official records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May - 11 June 2010. [↑](#footnote-ref-1163)
1164. Article 7 (1) (a). [↑](#footnote-ref-1164)
1165. Article 7 (1) (e). [↑](#footnote-ref-1165)
1166. Article 7 (1) (f). [↑](#footnote-ref-1166)
1167. ICC, Elements of crime, p. 7. [↑](#footnote-ref-1167)
1168. Article 7 (1) (g). [↑](#footnote-ref-1168)
1169. Articles 7 (1) (g), (f) and (k). [↑](#footnote-ref-1169)
1170. ICC, Elements of crime, p. 11. [↑](#footnote-ref-1170)
1171. See part II. C. 2 of this report. [↑](#footnote-ref-1171)
1172. ICC, Elements of crime, article 7 (1) (i), element 3. [↑](#footnote-ref-1172)
1173. See part II. C. 2 of this report. [↑](#footnote-ref-1173)
1174. In this case, the detentions can constitute crimes of “imprisonment or other forms of severe deprivation of physical liberty”. [↑](#footnote-ref-1174)
1175. This definition is derived from that of article II of the Convention for the prevention and repression of the crime of genocide. [↑](#footnote-ref-1175)
1176. Para. 94 and 276 of the judgement. [↑](#footnote-ref-1176)
1177. This was recalled by the ICTR in the cases *Kayishema* and *Ruzindana* and *Bagilishema*. In addition, in the case Bagilishema (2001), ICTR stipulated “as with the International Law Commission, the intent must be to destroy the group ‘as such’, i.e. as a separate and distinct identity, and not only some individuals on account of their group identity [...] While the intended destruction does not necessarily target each member of the targeted group, the Chamber considers that the intent to destroy must at least target a substantial part of the group”. [↑](#footnote-ref-1177)
1178. See in particular: ICTR, *The Prosecutor vs. Niyitegeka, Rutaganda*, and *The Prosecutor vs. Nahimana, Barayagwiza and Ngeze*. [↑](#footnote-ref-1178)
1179. QI-144. [↑](#footnote-ref-1179)
1180. In the *Akayesu* case, ICTR defined the direct and public incitement to commit genocide “as the fact of directly inciting the perpetrator(s) to commit genocide, through speeches, shouting or threats uttered in public places or at public gatherings, or through the sale or dissemination, offer for sale or display of written material or printed matter in public places or at public gatherings or through the public display of placards or posters, or through any other audiovisual communication means”. In the same case, the judge stated that the incitement “is direct if it ultimately targets the commission of a specific violation”, namely the crime of genocide. He also noted that an “incitement can be direct and implicit nonetheless”. [↑](#footnote-ref-1180)
1181. See: <http://www.senat.bi/?p=1390>. [↑](#footnote-ref-1181)
1182. The Commission’s translation. [↑](#footnote-ref-1182)
1183. See: [https://www.un.org/press/en/2015/sc12112.dovs. htm](https://www.un.org/press/en/2015/sc12112.doc.htm) [↑](#footnote-ref-1183)
1184. Sylvestre Ndayizeye allegedly declared: “*One day, a high authority used the word ‘work’ and the story spread around the world. I repeat it: if necessary, we will work. Members of the youth league Imbonerakure, if necessary? – (Imbonerakure in unison) we will work! – (Sylvestre Ndayizeye) if the accomplices become numerous? – (Imbonerakure in unison) we will work!*”, (Report of the Burundian Journalists' Union, February 2016). [↑](#footnote-ref-1184)
1185. See part II.C.6 of this report. [↑](#footnote-ref-1185)
1186. See also part II. C. 6, section (c) of this report. [↑](#footnote-ref-1186)
1187. Communiqué n°045 /2015 of CNDD-FDD (http://cndd-fdd.org). [↑](#footnote-ref-1187)
1188. QI-144, PI-034. [↑](#footnote-ref-1188)
1189. See parts I. D. 1, II. B. 1 and 2 of this report. [↑](#footnote-ref-1189)
1190. See part I. E. 1 of this report, on the storage and archiving of information in the chapter on the methodology. [↑](#footnote-ref-1190)
1191. Article 28 (1) of the Statute provides that “a military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where : i) that military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and ii) that military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution”. [↑](#footnote-ref-1191)
1192. Article 28 (2) of the Statute provides that “a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where: i) the superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes; ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution”. [↑](#footnote-ref-1192)
1193. For more information, see part I. G. 4 of this report. [↑](#footnote-ref-1193)
1194. Ibid. [↑](#footnote-ref-1194)
1195. Organisation Act n°1/04 of 20 February 2017. [↑](#footnote-ref-1195)
1196. See part I. G. 4 of this report. [↑](#footnote-ref-1196)
1197. PI-025, PI-003, PI-030, TI-053, PI-018. [↑](#footnote-ref-1197)
1198. PI-004, PI-018, PI-022. [↑](#footnote-ref-1198)
1199. Extraordinary congress of CNDD-FDD in Gitega, on 20 August 2016 (<http://cndd-fdd.org/2016/08/22/ommunique-sanctionnant-le-congres-extraordinaire-tenu-a-gitega/>). See also part I. G. 5 of this report. [↑](#footnote-ref-1199)
1200. See part II. B. 2 of this report. [↑](#footnote-ref-1200)
1201. The “Burundian National Programme of demobilisation, reinsertion and reintegration” was launched in December 2004 in order to demobilise and reintegrate the “peacekeepers, government militia estimated at 20,000 men and almost 10,000 militia combatants, militia from the political parties and the armed groups”. The programme was concluded at the end of 2008. [↑](#footnote-ref-1201)
1202. PI-018. [↑](#footnote-ref-1202)
1203. MI-075, PI-018, PI-027, TI-008. [↑](#footnote-ref-1203)
1204. See part II. B of this report. [↑](#footnote-ref-1204)
1205. Resolution 60/1 of the United Nations General Assembly. [↑](#footnote-ref-1205)
1206. Article 17 (1) of the Rome Statute. [↑](#footnote-ref-1206)
1207. Ibid, article 17 (2). [↑](#footnote-ref-1207)
1208. See part II. C. 9 of this report. [↑](#footnote-ref-1208)
1209. See part I. D. 3 of this report. [↑](#footnote-ref-1209)
1210. Article 127 (2) of the Rome Statute states that the withdrawal of a State from the Statute “shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the withdrawing State had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective”. [↑](#footnote-ref-1210)
1211. Ibid. [↑](#footnote-ref-1211)
1212. Article 13 (b) of the Rome Statute. Under this provision, the Security Council referred to the Prosecutor of the ICC the situation in Libya in 2011 (resolution 1970), in Ivory Coast in the same year (resolution 2000), and in Sudan in 2005 (resolution 1593). [↑](#footnote-ref-1212)
1213. Article 86 of the Rome Statute. [↑](#footnote-ref-1213)