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Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff

Addendum

Mission to Burundi (8–16 December 2014)*

Summary

Since the signing of the Arusha Agreement, and in particular the adoption of the 2005 Constitution, which institutionalizes the power-sharing arrangement, Burundi had made significant strides to end and overcome conflict up to April 2015. Massive demobilization and reintegration efforts, combined with agreed ethnic representation in all official institutions, including the security sector, had further enabled the country to ensure a degree of stability since 2009. If Burundi had maintained its commitment to the path it had followed since the signing of the Arusha Agreement up to the end of April 2015, the challenge ahead would be not only one of staying the course, but of accelerating the pace of transition to a rule of law-based society. Serious efforts to redress past massive violations are required to demonstrate the authorities' commitment to break with the tradition of impunity, which, in turn, would enable domestic institutions and mechanisms to effectively protect human rights in the present. Transitional justice initiatives need to be intentionally grounded in and foster human rights. They must not be used as instruments of "turn-taking" that benefit only one side.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission and French only.

The independence of the recently established Truth and Reconciliation Commission will be central to its gaining credibility and the trust of the population and victims. The risk of the Commission turning into a "pardon commission" should be taken seriously. Individual pardon agreements do not constitute an effective and comprehensive response to violations of the fundamental principle of the rule of law that have resulted from massive individual violations. As important as a well-functioning truth commission is, the other pillars of transitional justice must not be relegated to the back burner, as has happened in Burundi over the past 10 years.

It is of grave concern that discussions regarding criminal justice for massive violations have come to a halt; they must not be further postponed. The significantly expanded "temporary" immunities regime has become an obstacle to all justice initiatives.

Reparation initiatives have focused mainly on the restitution of land. The independent and impartial functioning of the National Commission on Land and Other Assets and the newly established Special Court are central pillars in ensuring that land issues are settled without consideration for political, ethnic or other affiliation. Broader land reform initiatives, including efforts to ensure women's access to land, need to be undertaken. Comprehensive and feasible reparation schemes need systematic treatment, with special attention to the needs of the most vulnerable and based on a consultative process.

Commendable achievements in the area of demobilization, disarmament and reintegration had been made as at the end of April 2015. However, continuing reform efforts in the security sector must be linked with justice considerations to ensure an institutional set-up that contributes to preventing future violations. While there is broad acknowledgement that reforms are required to establish an independent judiciary, the executive branch and the governing political party continue to tightly control the justice sector.

Burundian society still suffers the effects of the intergenerational transmission of violence. Historical narratives that replicate old divisions and reproduce fear are transferred at the family and community levels. The absence of efforts to teach the country's recent history with a view to fostering dialogue, coupled with the scarcity of officially supported (not controlled) memorial and remembrance processes, as well as a disregard for mass burial places, contribute to the replication of divisive stories.

Annex

[English and French only]

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, on his mission to Burundi (8–16 December 2014)

Contents

I. Introduction

1. Pursuant to Human Rights Council resolution 27/3, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, visited Burundi from 8 to 16 December 2014, at the invitation of the Government.

2. The purpose of the visit was to objectively and impartially assess the work undertaken by the Government in the areas of truth, justice, reparation and guarantees of non-recurrence, and to advise the authorities and Burundian society in their efforts to adequately address past violations in the process of transitioning to an order based on the rule of law.

3. During his visit, the Special Rapporteur met with the First Vice-President of the Republic and the Ministers of Foreign Affairs; National Solidarity, Human Rights and Gender; Justice; Finance; the Interior; and National Defence and War Veterans. He also met with the National Permanent Commission on the fight against the proliferation of smalls arms and light weapons and the Commission for Justice and Human Rights of the National Assembly. He held meetings with the Chief Justice of the Supreme Court, the Special Court on Land and Other Assets, the President of the National Commission on Land and Other Assets, the Chair of the independent National Human Rights Commission and the Chair of the former tripartite committee in charge of national consultations. The Special Rapporteur also met with the newly appointed Chair of the Truth and Reconciliation Commission. In Bujumbura, he met with religious leaders, representatives of political parties, the Special Representative of the Secretary-General and Head of the United Nations Office in Burundi, representatives of United Nations agencies and members of the diplomatic corps. During his visit, the Special Rapporteur met with representatives of civil society and travelled to meet with victims of the massive violations that occurred in Bugendana, Gatumba, Itaba, Kibimba, Kimina and Nyambeho. He thanks all those who shared their valuable and important experiences and insights.

4. The Special Rapporteur thanks the Government of Burundi for its invitation and cooperation, and expresses his appreciation to the Human Rights and Justice Section of the United Nations Office in Burundi for its support.

II. Context of the visit

A. Political context

5. Since gaining independence in 1962, Burundi has experienced cycles of violence, often ethnically motivated, on a massive scale, leading to gross human rights violations and serious violations of international humanitarian law. Those violations remained largely unaddressed and unleashed the intergenerational transmission of violence over decades. Watershed moments include events in 1965, 1972, 1988, 1991 and 1993, and the subsequent civil war. The 2000 Arusha Peace and Reconciliation Agreement for Burundi (Arusha Agreement), together with subsequent agreements with the two main rebel movements, the National Council for the Defence of Democracy–Forces for the Defence of Democracy, in 2003, and the Party for the Liberation of the Hutu People–National Forces for Liberation, in 2006, and the 2005 Constitution established the framework for a higher degree of peace and stability than that known in the country since independence and for a significant transformation in intercommunity relationships.

6. Burundi arguably has the most complex consociational arrangement in the world. As with all such arrangements, it seeks to reconcile majority claims with minority rights, in

this case, through a finely tuned set of arrangements that combine proportionality with minority overrepresentation. The President of the Republic must be assisted by two Vice-Presidents, one Hutu and one Tutsi. All government positions must be split 60/40 between Hutus and Tutsis, with the same proportion for representation in the National Assembly, if necessary by means of a cooptation mechanism. The Senate, like the armed forces, is split 50/50 between Hutus and Tutsis, and regional balances are also mandated. The arrangement is not simply a power-sharing agreement, but also stipulates that political parties must be ethnically and regionally integrated, and supermajority requirements (a two-thirds quorum for legislative action; a minimum of two thirds of votes for a law to be adopted) further protect minority rights and create incentives for de-ethnicizing politics.[1]

7. The Arusha Agreement proposed measures to combat impunity, including the establishment of the National Truth and Reconciliation Commission and the International Judicial Commission of Inquiry. Furthermore, it provided for the Government to request the Security Council to establish an international criminal tribunal should the findings of the Commission of Inquiry report point to the existence of acts of genocide, war crimes and other crimes against humanity.

8. National consultations on transitional justice were undertaken in 2009, with the objective of eliciting views on how to come to terms with the legacy of massive violations and end impunity with the ultimate aim of promoting national reconciliation.[2]

9. The Truth and Reconciliation Commission was established, and its members appointed in December 2014, that is, 14 years after the signing of the Arusha Agreement. Simultaneously, the United Nations Office in Burundi completed its Security Council mandate and transferred its responsibilities to the United Nations country team.

10. At the time of the Special Rapporteur's visit, political campaign activities for the 2015 elections had already started. During various meetings, concern was expressed about different aspects of the upcoming political process, including whether the incumbent President would run again and the constitutionality of that option; the guarantees to parties that they could run their campaigns freely and without restrictions; the effectiveness and impartiality of the electoral process; and, most seriously, the threat posed by the youth militias, in particular the *Imbonerakure*, which openly supported the current Government.

11. By the end of April 2015, national and international observers had expressed alarm at the situation in Burundi. The decision of the ruling party to have the incumbent President, Pierre Nkurunziza, run for a third term unleashed protests that were met with a wave of killings, arbitrary arrests and intimidation by the police.[3] Rising hate speech, together with severe limitations to the freedoms of expression and peaceful assembly were deeply concerning.

[1] The arrangement is made more complex by integrating members of government and rebel movements. See René Lemarchand, "Consociationalism and power sharing in Africa: Rwanda, Burundi and the Democratic Republic of the Congo", *African Affairs*, vol. 106, No. 422 (January 2007); Stef Vandeginste, *Stones Left Unturned: Law and Transitional Justice in Burundi* (Antwerp, Belgium, Intersentia, 2010).

[2] Office of the United Nations High Commissioner for Human Rights (OHCHR), Rapport des consultations nationales sur la mise en place des mécanismes de justice de transition au Burundi (Bujumbura, April 2010), p. 11. Available from www.ohchr.org/Documents/Countries/BI/RapportConsultationsBurundi.pdf.

[3] See OHCHR, "Pre-election violence endangers Burundi's young democracy, UN rights experts warn" press release (30 April 2015). Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15909&LangID=E.

B. General considerations

12. The Special Rapporteur has three overall considerations in mind. First, the Arusha Agreement took a broad approach to past violations and made reference to truth and justice mechanisms and institutional reforms. However, discussions at the domestic level, as well as with international actors over the past decade, have focused mainly on the establishment of a truth commission, relegating other transitional justice measures to the background. However, the four elements — truth, justice, reparation and guarantees of non-recurrence — should be viewed as components of a comprehensive policy, not as a menu from which Governments can pick and choose or trade off one measure against another.[4] The Special Rapporteur recalls that, legally, there are well-established rights to truth,[5] justice[6] and reparation,[7] and to reforms that enable the realization of those rights; practically, ample international experience grounds the claim that those measures work best when they support one another and no single measure alone can stand for the whole; and morally, there is an obligation to provide redress, in the most comprehensive way, to victims who have endured untold suffering and to ensure that such suffering is never again repeated.

13. Second, a wide array of stakeholders expressed profound concern that transitional justice measures might be implemented selectively to benefit political allies and sympathizers and to disfavour others. Past experience in other countries has shown that the socially integrative potential of transitional justice measures stems from the same basic fact: transitional justice measures are both grounded in and meant to foster human rights. Hence, they must never be used as instruments of "turn-taking". Transitional justice measures must be centred on rights, not interests or considerations of expediency. The necessary and sufficient criterion for accessing those measures should be the violation of rights; factors such as ethnic identity, political affiliation or other considerations have no determining relevance.

14. Third, redressing past massive violations and guaranteeing the rights of citizens in the present are connected issues; a tradition of impunity is both a manifestation and a cause of institutional weaknesses. It is only when institutions show themselves capable of resolving conflicts that they gain the trust of citizens, who then collaborate more with those institutions, which, in turn, enables them to solve problems more effectively. It is impossible to build legitimate, trustworthy institutions, which dislodge abusive practices, without accountability. Some of the challenges that Burundi faces today would be significantly easier to tackle had the country made more progress in addressing a history of impunity that is as long as its history of violations. The Special Rapporteur has already argued that redressing past massive violations does not stem from a retrospective interest per se. The aim, rather, is to provide recognition to victims as rights holders; to promote trust, especially in institutions; to strengthen the rule of law; and to foster reconciliation or social integration. The present report is written in that spirit.

[4] See A/HRC/21/46, paras. 22–27 and 62.
[5] See A/HRC/24/42, paras. 18–20.
[6] See A/HRC/27/56, paras. 27–32.
[7] See A/69/518, paras. 14–18.

III. Truth and Reconciliation Commission

A. Context

15. The 2000 Arusha Agreement provided for the establishment of a national truth and reconciliation commission. In its 2005 report, the assessment mission on the establishment of an international judicial commission of inquiry for Burundi recommended a twin mechanism consisting of a truth commission (composed of national and international commissioners) and a special chamber within the court system (see S/2005/158, para. 53). In 2011, a technical committee, chaired by the Minister of Foreign Affairs, advised the Government on the set-up of such a commission and prepared a draft law. The final Law No. 1/18 on the establishment of a truth and reconciliation commission — which departs significantly from earlier drafts — was adopted in May 2014.

B. Mandate, composition and structure

16. The Commission has a four-year mandate to investigate and establish the truth about the gross violations of human rights and international humanitarian law committed between 1 July 1962 and 4 December 2008. Among other competences, the Commission is empowered to propose a reparations programme; a programme to promote pardon and reconciliation; the creation of memorials; institutional reforms to ensure the non-recurrence of past violations; and the rewriting of history.

17. The Commission is an independent institution composed of 11 members, of whom at least 4 must be women and 1 must be a member of the Batwa community. The Commissioners work full time and may not exercise, simultaneously, any other public or private function.

18. The Commission has a Plenary Assembly, a Bureau and subcommissions and will benefit from the assistance of an international Advisory Council made up of five high-ranking persons with great moral authority. The Council will provide ethical support, advice and recommendations, and facilitate the Commission's relationships with national and international actors.

C. Potential challenges in the functioning of the Commission

1. Focus on pardon procedure, sidelining the truth function

19. With the ostensible objective of reconciliation, the Commission is empowered to develop a procedure by which victims can "pardon" perpetrators who so request and express remorse. Based on views gathered during his visit, the Special Rapporteur highlights a serious concern that the Commission's truth-seeking function might be sidelined by overemphasis on the pardon procedure, which, moreover, is being conflated with the objective of reconciliation itself. There are five main issues in that regard.

20. First, reconciliation should not be conceived of as an alternative to justice or an aim that can be achieved independently of the implementation of the comprehensive approach comprising the four measures of truth, justice, reparations and guarantees of non-recurrence.[8] The approach taken in Law No. 1/18 seems to reduce the multifaceted and multistage process of reconciliation to a simple change of attitude which can be brought

[8] See A/HRC/21/46, para. 37.

about in face-to-face encounters. However, contributing to reconciliation efforts is ultimately a question of (re)establishing and enhancing trust in State institutions and among individuals. That trust is not simply bestowed, it needs to be earned. That trust results from the commitment to shared norms, manifested through action, namely, an effort to disclose the truth, to sanction those responsible and to mitigate the consequences of great harms, accompanied by initiatives to prevent the recurrence of the violations. Sustainable national reconciliation cannot be achieved in the absence of such actions.

21. Second, while interpersonal "rapprochement" — particularly at the local level — is important, massive violations are not only a violation of the rights of individuals, but also a fundamental violation of the principle of the rule of law. Individual "pardon" agreements are not an effective and comprehensive response to such systemic and structural violations.

22. Third, Law No. 1/18 does not make a clear determination of the legal consequences of a pardon. Although the Commission is not a judicial mechanism, pardon, in practice, could have legal implications. The pardon procedure could amount to a de facto amnesty, one to be granted by the same individual whose rights were violated. In cases of genocide, war crimes, crimes against humanity, crimes involving sexual violence or other gross human rights violations or serious violations of international humanitarian law, amnesty would be particularly objectionable.

23. Fourth, given the recurring cycles of violence in Burundi, some dating back decades, and the high number of victims and perpetrators, bringing together the appropriate parties in the pardon procedure would be immensely complicated and could lead to denials of fair and equal treatment. One major concern would be the overwhelming institutional burden of achieving the correct victim-perpetrator pairings, which could absorb the majority of the Commission's available resources and capacities.

24. Finally, and perhaps most importantly, the pardon mechanism places an undue burden on victims. Endorsed in the name of reconciliation, yet in a situation in which safety risks have not been neutralized, such a mechanism puts victims in a position whereby refusal to pardon perpetrators, who, in many cases may (still or again) occupy powerful posts, is nearly impossible and may be driven primarily by fear of reprisal. Such pressure is inappropriate and would, at the limit, constitute coercion. Publishing a list of victims who have granted pardons would only increase the pressure on and/or the risks to the victims. Indeed, victims who have suffered violence or trauma should benefit from special consideration and care to avoid retraumatization. For those reasons, the Special Rapporteur is concerned that the pardon procedure places an unnecessary burden on victims and, in the absence of comprehensive transitional justice measures, fails to contribute to reconciliation.

25. The Special Rapporteur stresses that the Commission's success is contingent on placing appropriate emphasis on its truth-seeking and victims-tracing functions. Given the large universe of victims and the multiplicity of the periods of violence, the Commission already has an enormous task ahead to fulfil those functions only.

2. Independence of the Commission

26. Truth commissions, in large part, derive their power from the moral authority and competence of the commissioners.[9] Law No. 1/18 establishes probity, integrity, technical competence and ability to bridge all kinds of divisions as selection criteria. The Commissioners must be impartial, have high moral standards, support reconciliation and not have committed gross human rights violations.

[9] See A/HRC/24/42, para. 53.

27. From a short list of 33 candidates (out of over 700 applications), 11 Commissioners, representing either political parties or members of religious groups, were appointed in December 2014.[10]

28. Many and various interlocutors expressed reservations about the dearth of representation from non-governmental organizations among the Commissioners. During the transitional justice consultations in 2009, many Burundians stated that they were in favour of civil society representation in the future truth commission. The ultimate outcome has generated doubts about the transparency and integrity of the selection process, with allegations that there was a pre-agreed selection.

29. The Special Rapporteur expresses regret at the decision not to include a significant part of civil society — persons with competence and expertise in human rights and transitional justice — in the Commission's membership, as, more importantly, it deprives the Commission, ab initio, of a measure of confidence and credibility that is so needed in the process of truth-telling, which will now have to be built.

30. Truth commissions in all contexts have relied on efforts made beforehand by victims and other organizations to collect and preserve evidence, and to organize, encourage and support witnesses. The newly established Commission cannot afford to work without those and other forms of assistance, which are all dependent on the confidence of victims and on other civil society organizations.

31. The Special Rapporteur points out that the experts of the international Advisory Council (who are not parties to local disputes) can make significant contributions. To be useful, the experts must be called upon to provide substantive advice and the Advisory Council must not be viewed merely as a networking and fundraising resource. Furthermore, the Advisory Council, by design, cannot make up for any deficiencies regarding the independence and capacity of the Commissioners.

3. Protection framework

32. The Special Rapporteur commends the importance that Law No. 1/18 attributes to the protection of victims and witness and the provision that a witness protection law must be promulgated before field investigations can commence. Mindful that protection from various actors, including persons in high-power official and other positions, demobilized former rebels, amongst others, might be necessary, speedy adoption and implementation of the law is paramount.

33. Law No. 1/18 also provides for the establishment of a victim and witness protection and assistance unit, composed of permanent Commission staff with specialized competencies, and who stand out for their impartiality and independence from political, economic or other interests. Victims and witnesses, regardless of background, must feel safe to approach the Commission and to testify freely without fear of stigmatization or reprisal.

34. Protection measures should be broad in scope and include medical and psychosocial support and counselling and access to lawyers. The Special Rapporteur welcomes the envisaged special measures to assist traumatized victims, children, older persons and victims of sexual violence.

[10] Burundi, Decree No. 100/286 (8 December 2014).

4. Gender perspective

35. Law No. 1/18 provides for the appointment of at least four women commissioners. The participation of women increases the likelihood that the Commission will tackle gender issues; however, it neither guarantees that the Commission will adopt a gender perspective, nor that the set-up of a subcommission on gender, victims and witness protection will.[11] The Commission faces a huge task in enabling the discovery of violations against women and girls, including sexual and gender-based violence. Thus, capacity on gender issues among Commissioners and Commission staff is crucial, as are the efforts of the subcommission to mainstream a gender perspective into the Commission's work.[12]

5. Resources

36. Compared with other expenditures, truth commissions are relatively inexpensive; nonetheless, they still require significant resources, secured, ideally, in advance.[13] Law No. 1/18 states that the Commission will be funded through the budget law and by national and international partners. The Commission has been allocated an annual budget of approximately $941,300 for 2015. However, there seems to be doubts about whether sufficient resources will be allocated for the entire duration of the Commission's mandate. Scarcity of resources and unstable flows could severely hamper the work of the Commission.

IV. Delay in justice initiatives

37. The Arusha Agreement set out a comprehensive approach to and the normative boundaries of the post-conflict transitional justice mechanisms in Burundi, including principles and measures to ensure justice for past atrocities.[14] The Agreement is an example of a positive trend in international law that, to secure peace, justice cannot be sacrificed. That notion recognizes that a culture of impunity is at the heart of many cycles of violence. Criminal justice has long been considered an effective way to help break that cycle, in particular through its norm-affirming function and the clear message that no one is above the law.[15]

38. The Arusha Agreement also reaffirms pre-existing obligations under international law[16] to investigate and prosecute those responsible for genocide, war crimes and crimes against humanity, and precludes amnesties for those crimes.[17] The 2009 national consultations followed the same approach as the Agreement,[18] however, despite well-defined legal commitments, the prohibition against amnesties has, in practice, been largely circumvented, and 15 years after the signing of the Arusha Agreement, the implementation of its justice pillar remains an empty promise.

[11] See Burundi, Internal regulations of Law No. 1/18, art. 56.
[12] See A/HRC/24/42, para. 36.
[13] Ibid., paras. 65–67.
[14] Arusha Agreement, Protocol I, chap. II.
[15] See A/HRC/27/56, para. 23.
[16] Ibid., paras. 27–32.
[17] Arusha Agreement, Protocol III, chap. III, art. 26, para. 1 (l).
[18] OHCHR, Rapport des consultations nationales (see footnote 2), pp. 82 and 120.

A. Stalemate in the creation of a specialized justice mechanism

39. The establishment of a specialized justice mechanism for the prosecution of crimes such as genocide, crimes against humanity or war crimes, as provided for in the Arusha Agreement, has been continuously delayed, including by protracted negotiations with the international community. No specific proposals are currently on the table. Furthermore, the existing legal domestic framework only permits the prosecution of such crimes that occurred after 2003.[19] The stalemate in the creation of a specialized justice mechanism has effectively blocked any form of prosecution for crimes occurring before 2003, including during the period with the highest reported level of violence.

B. "Temporary" immunities

40. In accordance with the peace accords, temporary immunity legislation barred the prosecution for past massive violations as ordinary crimes before domestic courts, even if they were not termed acts of genocide, crimes against humanity or war crimes.[20] Initially, the granting of temporary immunities was limited to political leaders of insurgent movements living in exile to enable them to return to the country. In that respect, the immunities regime was an essential component for the successful implementation of the power-sharing provisions in the peace accords.[21] Acts of genocide, crimes against humanity and war crimes were explicitly excluded.[22]

41. The use and interpretation of the temporary immunities gradually expanded in scope. Initially limited to the period of the transition, which came to its constitutionally mandated end in 2005, the current legislation extends the immunities until the establishment of the Truth and Reconciliation Commission and the Special Tribunal.[23] Given the current deadlock regarding the establishment of a specialized judicial mechanism, the benefits of temporary immunity may be extended for many years.

42. Similarly, the range of beneficiaries of temporary immunity has gradually expanded. In addition to political leaders of insurgent movements living in exile, immunity may also be granted to the leadership of the National Council for the Defence of Democracy–Forces for the Defence of Democracy, ordinary combatants and former members of the government security forces. Immunities were also extended to political prisoners, without reference to a specific definition, and convicted detainees. A series of ministerial orders led to the release of over 3,000 prisoners, which has been a source of controversy in Burundian society; a case presented by local human rights groups before the Constitutional Court challenging the ministerial orders was declared inadmissible. The undisciplined expansion of both the subjects and temporal scope of the immunities suggest that, de facto, they have become a permanent amnesty scheme; the benefits are hardly temporary and are contrary to the initial legislation's exclusion of atrocity crimes. Against this background, the Government must initiate serious discussions with all relevant stakeholders, including civil society, on how to reassert, at minimum, the original boundaries of the immunities regime or more generally, on whether they still serve their legitimate purpose. In any case,

[19] Burundi, Law No. 1/004 (8 May 2008), art. 33, para. 1; Law No. 1/05 (22 April 2009).

[20] Burundi, Law No. 1/022 (21 November 2003); Law No. 1/32 (22 November 2006).

[21] See also Stef Vandeginste, "Bypassing the prohibition of amnesty for human rights crimes under international law: lessons learned from the Burundi peace process", *Netherlands Quarterly of Human Rights*, vol. 29, No. 2 (2011).

[22] Burundi, Law No. 1/022, art. 2; Law No. 1/32, art. 2, para. 2.

[23] Law No. 1/32, art. 2, para. 2; Law of 18 September 2009 on revising the Electoral Code (Law No. 1/015 of 20 April 2005), art. 8.

amnesties covering genocide, crimes against humanity, war crimes, gross human rights violations or serious violations of international humanitarian law, either de jure or de facto, are inadmissible under international law.

C. Is the Truth and Reconciliation Commission further delaying justice?

43. In contrast to earlier drafts, the enacted version of Law No. 1/18 does not include reference to a judicial mechanism. Moreover, the Government has stated that the Truth and Reconciliation Commission must conclude its work before the Government decides how to proceed with judicial investigations. Article 61 of Law No. 1/18 seems to suspend all criminal proceedings until the Commission issues its conclusions. That is a disturbing departure from the commitments made at Arusha.

44. It took almost 14 years after the signing of the Arusha Agreement to establish the Truth and Reconciliation Commission, and it may take another 5 years before the Commission concludes its work. Burundi cannot afford to put off justice considerations any longer. Making concrete the promise made in Arusha to implement the justice mechanism would demonstrate that the pardon procedure provided for in Law No. 1/18 can be compatible with justice and that reconciliation is not sought through yet another inequitable transfer of burden to victims – that is, the sacrifice of their right to justice.

45. Furthermore, the passage of time increases obstacles to judicial procedures, including the death of victims and witnesses. Judicial investigations and prosecutions always rest upon important but time-consuming and time-sensitive preparatory work, of which gathering and preserving relevant evidence and documentation is foremost.

46. The preparatory work also requires the development of a prosecutorial strategy, which accounts for the magnitude of the task and existing constraints.[24] To safeguard the impartiality of prosecutors is paramount in order to prevent criminal justice from becoming an instrument of the powerful.

V. Broader reparation efforts required

47. Reparation initiatives in Burundi have focused mainly on land restitution and largely omitted other aspects of reparation.[25]

A. Land restitution

48. Against the background of strong demographic growth, increasing scarcity of arable land and the return of some 800,000 refugees over the last decade, the issue of land is crucially important in the country's post-conflict development. The problem is aggravated by the reliance of more than 90 per cent of the population on agriculture for their livelihood. The majority of land disputes relate to claims raised by returnees (mostly Hutus) of the 1972 massive violations against those (frequently Tutsis) who subsequently acquired the assets.

49. Until 2011, the Land Code retained the principle of "acquisitive prescription" after 30 years, irrespective of the buyer's "good faith". Between 2002 and 2011, that resulted in the unconditional acquisition of land occupied three decades earlier, that is, between 1972

[24] See A/HRC/27/56, paras. 105–108.
[25] See A/69/518.

and 1981. The issue was complicated by the 1972 decision of the War Council[26] to sentence rebels to death and confiscate their land and other assets.

50. The Arusha Agreement guarantees the right to property and the basic principle of the restitution of land to all refugees and *sinistrés*,[27] referring to fair compensation when the recovery of the property proves impossible. [28] The Agreement provides for the establishment of a national commission to coordinate the return of refugees and *sinistrés*, which, shortly after the 2005 elections, was replaced by the National Commission on Land and Other Assets.[29]

51. Initially under the guardianship of the First Vice-President, the National Commission was regarded as fairly independent of the Government and the political majority, and the public perceived it as contributing to the reconciliatory objective. To consider an individual case, the respective Commission was composed of two public servants, one judge, a representative of civil society and a member of a religious confession. Such composition reportedly contributed to its success at settling cases amiably. In the absence of agreement, the Commission typically decided that the parties should split the land.

52. A 2009 legislative amendment altered the composition, inter alia, of the Commission (removing the presence of a judge and a religious figure) and strengthened the Commission's power vis-à-vis the courts. The latter development led to both a growing rivalry between the Commission and the justice sector and increasing legal uncertainty. The 2013 legal revision placed the Commission under the guardianship of the President of the Republic.

53. The Special Rapporteur was informed that the Commission had decided about 40,000 of the total of 50,000 land claims. Various interlocutors reported that some of the Commission's decisions were increasingly seen, a priori, as favouring the restitution of land to the *sinistrés* over the good faith buyer — whose land had been expropriated, frequently without compensation. Some suggest that cases were decided based on affiliation. That generated serious concern about the resurrection of ethnically based tensions, contrary to the Commission's mandate to contribute to the respect of human rights, reconciliation and social peace.[30]

54. In the face of increasing contention over the Commission's work, the high number of property cases dealt with by the ordinary justice system, rivalry with the courts and the ensuing legal uncertainty, the Special Court on Land and Other Assets was established in 2014. The two-tiered Court is composed of magistrates and jurists appointed by the executive. It has a seven-year mandate and is competent to hear appeals of either party against decisions of the National Commission (even those taken prior to the creation of the Court).

55. The Special Rapporteur highlights the importance of both the National Commission and the Special Court functioning independently and impartially, free from considerations related to ethnic or political motivations or objectives. He also underlines that the Constitution of Burundi and the Arusha Agreement provide for just and fair compensation in cases of expropriation.

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[26] See Burundi War Council, decision RMP.48.229/OC of 6 May 1972.

[27] The Arusha Agreement, Protocol IV, art. 1, para. 2, defines "*sinistrés*" as "all displaced, regrouped and dispersed persons and returnees"; the 2013 Law on the National Commission on Land and Other Assets provides an even broader definition.

[28] Arusha Agreement, Protocol IV, art. 8 (c).

[29] Burundi, Decree No. 100/205 (22 July 2006); Law No. 1/18 (4 May 2006).

[30] Burundi, Law No. 1/31 (31 December 2013), art. 11.

B. Need for broader land reform and land access for women

56. Even the supporters of the National Commission on Land and Other Assets and the Special Court recognize that those bodies cannot resolve the delicate issue of land. Rather, broader initiatives for the rational use of land are required. Efforts at restitution, at best, lead back to the status quo ante, which, while important for the neutralization of unfair dispossession, does not guarantee either just overall distribution or sustainable development.[31]

57. Succession rights in Burundi are regulated by customary law,[32] which does not guarantee the right of women and girls to inherit land.[33] A significant number of households headed by single mothers are at risk because of a reported erosion of a customary usufruct that unmarried women or widows used to obtain to satisfy their alimentary needs when the land was inherited by the male heir. Furthermore, women seem to remain disadvantaged with regard to the purchase of land as the emergent market reflects dominant gender hierarchies.

C. Comprehensive reparation programme

58. Law No. 1/18 empowers the Truth and Reconciliation Commission to make recommendations regarding a reparations programme and to issue immediate reparation orders if "the circumstances and the means allow it". The law stipulates that reparations should take into account the harm suffered by the victims and "the available resources and the realities of the country".

59. Many ambiguities concerning reparations in the law need to be clarified, including the aforementioned conditionalities relating to resources. Burundi faces significant resource constraints,[34] as manifested by its high poverty rate, its heavy reliance on donors to cover parts of its budget and the low levels of foreign direct investment. Nonetheless, space for action exists within those constraints.

60. There is no obvious direct correlation between the degree of socioeconomic development of a country and the magnitude of its reparation programmes. Some countries with relatively wealthy economies have established programmes that are not particularly munificent; while other countries with comparatively smaller economies have established programmes that distribute relatively large benefits.[35]

61. Overall, the record shows that political factors, rather than economic constraints, determine the existence and shape of reparation programmes. The Special Rapporteur reminds the Government of Burundi that economic constraints do not displace legal obligations.

62. Similarly, he underscores that there should be no confusion or trade-off between reparation programmes and development initiatives. Given the circumstances in Burundi, both are necessary; each is independently justified; and the synergies between them can be maximized. However, reparations involve explicit recognition of responsibility for rights violations.

[31] See also E/C.12/BDI/1, paras. 255–257.
[32] Ibid., para. 67.
[33] See CEDAW/C/BDI/CO/4, paras. 13 and 14; CCPR/C/BDI/CO/2, para. 11.
[34] See also United Nations Development Programme, Human Development Index (2013), Burundi (rank 180 out of 187).
[35] See A/69/518, paras. 51–61.

63. Given its mandate, the Truth and Reconciliation Commission should initiate discussions about the design of a reparations programme and involve civil society and victims from the outset. That would help ensure that the final programme not only truly addresses the harm suffered, but also enables the victims, particularly women and girls, to overcome pre-existing patterns of discrimination and inequalities.[36]

64. To that end, any future reparations programme should include support for education, which can be an important tool for the reintegration of victims by providing opportunities to develop their capabilities and increasing their ability to ensure a sustainable income and thereby overcome patterns of discrimination. Education programmes also contribute to the transformation of mindsets about conflict and human rights violations. However, such initiatives that target direct and/or indirect victims must not be confused with the State's duty to ensure access to education for the entire population or with development programmes.[37]

65. The Truth and Reconciliation Commission must ensure that rights are at the centre of its recommendations on reparations. The violation of rights, and not other considerations, including ethnicity or political affiliation, is the sufficient condition for accessing benefits. The Special Rapporteur emphasizes that transitional justice measures, reparations included, must never be used as instruments of "turn-taking".

D. Immediate assistance programmes for victims

66. Because the needs of some victims — including elderly or infirm widows, orphans and internally displaced persons — are particularly pressing and cannot wait until the Commission has concluded its work to be addressed, immediate assistance programmes for such persons, among other vulnerable groups, should be established. Such programmes, like humanitarian assistance programmes, are meant to help victims meet their most urgent needs, including with regard to health care, education and shelter.

VI. Institutional reforms crucial to guaranteeing non-recurrence

67. While the peace agreements, the 2005 Constitution and the massive demobilization and reintegration processes have created a solid basis to prevent the recurrence of violence in Burundi, there are several areas that merit immediately more concentrated efforts.

A. Security sector reform

68. In accordance with the parameters of the various peace agreements, by the end of April 2015, Burundi had undertaken commendable, wide-ranging security sector reform efforts, involving the demobilization of ex-combatants and the integration of large numbers into the military and police forces.

69. The integration process was a highly prominent feature of the post-war transition. Following decades of a close to mono-ethnic security sector, the guarantee of ethnic parity in the national defence force, the national police and the intelligence services was a key demand in Arusha, with subsequent successful implementation. According to observers, inter-ethnic tensions in the security sector, especially in the military, no longer seemed to

[36] Ibid., paras. 68–73.
[37] Ibid., paras. 38–42.

be an issue. The quota-based integration policies had contributed to stability and to minimizing the potential for future inter-ethnic violence.

70. Strong support from partners had contributed to those advances. The Strategic Framework for Growth and Poverty Reduction — phases I and II — considered demobilization, disarmament and reintegration and security sector reform as key components and the Government had adopted a national security strategy in 2013. The Special Rapporteur welcomed those commitments and underlined the importance of tackling the remaining issues, which are essential to the prevention of future violations.

71. Burundi's approach to military, police and intelligence reform has omitted the link between security and justice, which risks undermining the security sector reform process and failing to ensure the non-recurrence of violence. More recent incidents, such as acts of violence committed by youth militias affiliated with political parties, underline the need for sustained and comprehensive reform (see para. 10 above), as they constitute a risk well beyond the election period[38] and a concern for sustaining democratic control over the security sector. To that end, more efforts in the following three areas are crucial.

1. Professionalization

72. Popular perceptions of the security sector, in particular the armed forces, had improved over the past years. Prior to the events that took place in April 2015, resulting from the announcement by the incumbent President that he intended to run for a third term, attitudes towards the police had also started to change.[39] Programmes such as proximity/community policing, military ethics and open days had contributed to that. However, the events since 25 April 2015 demonstrated that the police functions as an extended arm of the governing party, supressing peaceful protests with violence. The national intelligence service still ranks the lowest in terms of public perception, with particular concerns about it fulfilling its constitutionally-mandated role in an apolitical and non-partisan manner.[40]

73. In a security sector previously involved in massive violations, traditional professionalization efforts are important but insufficient to restore trust, particularly with regard to victims and other marginalized groups. An institution that is being re-established or reformed must come to terms with its abusive past and demarcate a new beginning to distance it from its legacy. To that end, educating both new recruits and long-standing members on that abusive past is central to forging a new institutional identity.

74. The composition of the police continues to pose legitimacy, management and discipline challenges, particularly as no screening has occurred since its creation in 2004. The police's understanding of its role with respect to the population, civil society and the media needs significant enhancement.

2. Civilian oversight

75. In recent years, Burundi has developed multiple accountability (oversight) mechanisms in the security sector, most directly derived from the Constitution, such as parliamentary oversight committees, the Office of the Ombudsman and the independent National Human Rights Commission. Those oversight bodies remain weak and should be

[38] See S/2014/36, paras. 8 and 69; S/2014/550, para. 12.

[39] See, for example, Centre d'alerte et de prévention des conflits/ Centre de recherche, d'études et de documentation en sciences sociales, *Etude sur les besoins de sécurité au Burundi* (May 2012).

[40] See *Evaluation de la réforme de la sécurité et de la justice au Burundi*, Rapport final (February 2014), chap. 4.4. Available from http://issat.dcaf.ch/content/download/58219/950503/file/Evaluation%20Burundi%20-%20Rapport%20Final%20-%2011-02-2014.pdf.

strengthened, particularly through more systematic resourcing, adequate legislation regulating and distinguishing their role and competencies, and political signals encouraging cooperation with those bodies.[41] Enormous deficiencies in civilian oversight of the national intelligence service still exist, leading to a complete lack of accountability.

76. Coordination between oversight mechanisms should also be strengthened. For example, in a recent audit report,[42] the Inspector General for Public Security, responsible for internal police oversight, noted that coordination with other oversight institutions, such as the Ombudsman, the National Human Rights Commission and civil society, was non-existent. In the present report, the Special Rapporteur makes recommendations aimed at remedying those deficiencies and suggests measures to strengthen the autonomy and independence of the Inspector General for Public Security. Furthermore, overlapping roles and responsibilities between the Ministry of Public Security and the Directorate General of the Police have contributed to a lack of effective oversight. It is hoped that the revision of the organic law on the National Police will be an important step towards addressing that shortcoming.

77. Civil society groups such as the media, human rights organizations and other non-governmental organizations should provide informal accountability. The Special Rapporteur welcomes policy documents in the area of the security sector that recognize the importance of including civil society.[43]

3. Vetting

78. The Arusha Agreement provides that all persons found guilty of acts of genocide, coups d'état, violation of the Constitution and human rights and war crimes shall be excluded from both the national police and the armed forces.[44] Following the Arusha negotiations, the notion of vetting was enshrined in, inter alia, the 2004 organic laws on the National Defence Forces and the National Police, while the Electoral Code stipulated that elected officials would automatically lose their mandates if responsibility for such serious crimes was established by the Special Tribunal or the national Truth and Reconciliation Commission.

79. Despite those legal requirements, no process has yet been established to vet and exclude officials who were involved in serious violations in the past. Recent policy documents, such as the National Security Strategy and the Strategic Framework for Growth and Poverty Reduction, fail to address the issue and no discussions appear to be under way on vetting.

80. While acknowledging the significant challenges in establishing a comprehensive vetting programme, the Special Rapporteur recommends some targeted first steps, which could include conducting a census and registration programme to determine the pool of personnel to screen for past human rights violations. Those processes must be transparent and adhere to due process standards.

81. As provided for in the 2004 organic law on the National Police, vetting programmes could be linked to recruitment policies and promotion schemes; however, the mandated policy appears not to have been implemented.

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[41] Ibid, chap. 4.5.

[42] See *Audit de l'inspection générale de la sécurité publique du Burundi*, Rapport final (May 2014). Available from http://issat.dcaf.ch/content/download/60044/984488/file/Audit%20IGSP%20Burundi%20-%20Rapport%20final%20après%20restitution%20-%2013.05.2014.pdf.

[43] See S/2014/550, para. 18.

[44] Arusha Agreement, Protocol III, chap. II, art. 14, paras. 1 (e) and 2 (d).

B. Justice system reform

82. The Arusha Agreement identified lack of respect for the principle of the separation of powers and the independence of the judiciary as being among the main causes of violence and insecurity in Burundi, in the post-colonial period.[45] Under the Sectoral Policy of the Ministry of Justice 2011-2015, some improvements included an increase in the number of judges and jurisdictions and better working conditions for judges. The 2009 Criminal Code abolished the death penalty and criminalized genocide, war crimes, crimes against humanity, torture and sexual violence, while the 2013 Criminal Procedure Code established reparation for cases of torture.[46] In 2014, advances in the recruitment of judges included, for the first time, a competitive process and initial professional training and the number of women judges has reportedly increased recently.

83. However, crucial legal and practical barriers to the functioning of the judiciary remain, starting with the appointment and career development of judges.[47] Life tenure of judges is limited by a provision allowing for their discretionary transfer to another jurisdiction. The direct supervisor initiates disciplinary measures for lesser degree infractions, while the executive controls the suspension of ordinary judges. Although the dismissal of judges and the suspension of the Presidents of the Supreme and Constitutional Courts as well of the General Prosecutor require the prior opinion of the Superior Judicial Council, it is the executive that controls the Council (see para. 85 below).

84. Financial autonomy and adequate resourcing are prerequisites for the independent and effective functioning of the judiciary. Information received indicates that only about 2 per cent of the national annual budget is allocated to the justice system, an insufficient amount to enable it to adequately discharge its functions. In some jurisdictions, the most basic resources and equipment are not available. Although the Supreme Court, the Constitutional Court and the Superior Judicial Council each have their own budget, they are included in the global, annual allocation of the Ministry of Justice which administers all budgets in the sector.

85. Many of the structural barriers to judicial independence have been the focus of much discussion in the past, but follow-through is lacking. For example, the discussions during the Estates General on Justice in 2013 have not yet been fully published. A main issue discussed was the composition of the Superior Judicial Council. The 17-member Council is chaired by the President of the Republic, assisted by the Minister of Justice: the executive designates 5 members and appoints 3 private-sector lawyers, and 7 judges are elected by their peers. Hence the majority of the Council members are either part of or appointed by the executive. A constitutional reform project aimed at, inter alia, altering the composition of the Council in order to reduce executive interference in the administration of justice was not adopted by Parliament in 2014.

C. Access to justice and legal empowerment

86. In recent years, the publication of legislation, bylaws and a guide on the use of judicial services, in addition to the establishment of information desks in the different jurisdictions, have improved access to justice to some extent. However, the lack of systematic translation of legal texts into Kirundi hampers the rights claims of approximately 90 per cent of the population, who do not speak French.

[45] Arusha Agreement, Protocol III, art. 2, para. 8.
[46] See CAT/C/BDI/CO/2, paras. 5 (a) and (b).
[47] See CCPR/C/BDI/CO/2, para. 19.

87. Access to justice remains a concern given the cost implications and the high poverty rate. While the authorities have reportedly developed a legal aid strategy and designated a separate line in the 2015 budget, no legal framework to administer a corresponding fund has been created. Provinces lack lawyers, which deprives most of the rural population of legal assistance.

88. The Bar and non-governmental organizations have developed pilot projects to provide legal aid for the most vulnerable groups. The Special Rapporteur welcomes those efforts to enhance legal empowerment of the population and encourages their expansion.

D. Education, memorialization and archives

89. The Special Rapporteur emphasizes the importance of initiatives in three areas that lie at the intersection of institutional, cultural and individual spheres, all contributing to the effort to prevent similar violations in the future.

1. Education

90. The Arusha Agreement referred to the diverging interpretations of the past as one of the root causes of the conflict.[48] Despite some initial efforts,[49] a shared post-independence historical narrative is missing. Formal teaching of the recent history of Burundi is currently limited to a timeline that lists key events, but provides neither context nor analysis.[50] Consequently, at the family and community levels, informal narratives, which replicate old divisions of identity and reproduce fear and injustice, are transmitted[51] and further aggravated by a lack of institutional memorialization processes.

91. Law No. 1/18 provides for the Truth and Reconciliation Commission to play a key role in proposing measures and contributing to the rewriting of Burundian history in order to arrive at a commonly shared historical narrative. Welcoming this, the Special Rapporteur emphasizes that truth commissions on their own are not the most suitable instruments for a "final" rewriting of history. However, through independent and impartial investigations and meticulous attachment to respectable methodology, they can establish a factual basis for shared histories. Truth commissions can also catalyze important curricular reforms and lay the foundation for teaching materials and appropriate pedagogical methods. In that connection, the Special Rapporteur welcomes the fact that the Commission has been tasked with providing a simplified and pedagogical version of its report for the general public and schools.

2. Memorialization

92. The limited number of official memorials and remembrance processes stands in sharp contrast to the very large number of violent acts in Burundi's recent history. No official policy on memorialization exists; therefore, most initiatives are citizen-led. A framework for memorialization would, importantly, signal the Government's support for those initiatives. The Special Rapporteur visited a few memorial sites, including in Kibimba and Gatumba, and noted the importance that the population, particularly victims, attached

[48] Arusha Agreement, Protocol I, chap. I, art. 3.

[49] For example, by the Comité scientifique de réécriture de l'histoire du Burundi and the project "Ecrire l'histoire du Burundi", with the support of the United Nations Educational, Scientific and Cultural Organization.

[50] United Nations Children's Fund, "The role of education in peacebuilding in Burundi", Policy brief, p. 3.

[51] Ibid.

to them. In that connection, he expresses concern at the Government's reported interference in memorialization initiatives.

93. The Arusha Agreement and the 2009 national consultations highlighted the importance of memorialization.[52] The Special Rapporteur welcomes the fact that the mandate of the Truth and Reconciliation Commission includes proposing memorialization efforts; he encourages the Commission to give new impetus to Government activities.

94. The Special Rapporteur is highly concerned about reports regarding the uncovering and subsequent and continuing destruction of human remains in a number of places, including in Kivyuka (Bubanza Province) and Zega (Gitega Province). That is indicative of serious structural problems in the preservation of mass graves and other burial sites. A framework, including relevant legal protocols or procedures, for the proper management of such sites is needed urgently.

95. The Special Rapporteur welcomes the fact that the mandate of the Truth and Reconciliation Commission explicitly includes identifying and mapping mass graves and other burial sites. However, the Commission, as a temporary body, faces constraints and cannot carry the entire burden of the identification, preservation and protection of mass graves. It is the authorities who bear the main responsibility. As an immediate first step, the mapping of mass burial sites throughout the country, incorporating earlier efforts of international actors to preserve and secure those sites, must be undertaken. Such mapping must draw on the knowledge of civil society organizations.

3. Archives

96. Establishing archives of past violations has been low on the official agenda. According to the information available, there are no systematic efforts or standardized procedures to collect and archive relevant records. Combined with a lack of awareness and expertise, important information is not being adequately preserved and may be lost or destroyed. Law No. 1/18 addresses only the issue of the Commission's archives. While that is important, the Government also must adopt a general policy on national archives in line with international standards, the development of which should benefit from international expertise. The independent National Human Rights Commission could play an important role in that regard, and the creation of a documentation centre in the long term should be considered.

VII. Observations and recommendations

A. Observations

97. **Since the signing of the Arusha Agreement, and in particular the adoption of the 2005 Constitution, which institutionalizes the power-sharing arrangement, Burundi had made significant strides to end and overcome conflict up to April 2015. Burundi has established one of the world's most ambitious consociational arrangements, which arguably contributed significantly to the transformation of relations between different groups. Massive demobilization and reintegration efforts, combined with agreed ethnic representation in all official institutions, including the security sector, had further enabled the country to ensure a degree of stability since 2009.**

[52] Arusha Agreement, Protocol I, chap. II, art. 6, paras.7 and 8.

98. **By the end of April 2015, concerns about the 2015 electoral process had deepened, including remaining doubts about the constitutionality of a third presidential term, the effectiveness and impartiality of electoral mechanisms and the serious threats to the process posed by acts of harassment, intimidation and violence by youth militias, including one which was openly supporting the Government. An electoral process that lacked credibility — especially one that triggered outright violence — would be a huge setback for Burundi and would harm the progress that had been achieved with much effort.**

99. **If Burundi had maintained its commitment to the path it had followed since the signing of the Arusha Agreement up to the end of April 2015, the challenge ahead would be not only one of staying the course, but of accelerating the pace of transition to a rule of law-based society. Against that background, it would be a mistake to think that redressing past massive violations and protecting and promoting rights in the present and the future are mutually exclusive.**

100. **Serious efforts to redress past massive violations would signal to the population that the authorities are sincere in breaking with the tradition of impunity. That, in turn, would contribute to the protection of fundamental rights in the present. Transitional justice initiatives must be grounded in and intended to foster human rights. They must not be instruments of "turn-taking" that only benefit one side.**

101. **The Special Rapporteur commends Burundi for establishing the Truth and Reconciliation Commission and underscores the centrality of the Commission's independence in order for it to gain credibility and the trust of the population, in particular victims. He also warns against turning the Commission into a mere pardon mechanism which would derail its major truth-seeking function. Individual pardon agreements cannot constitute an effective and comprehensive response to violations of the fundamental principle of the rule of law that resulted from the massive individual violations.**

102. **Not even a functional truth commission can exhaust the agenda of transitional justice. In the past decade, the focus on establishing a truth commission has taken precedence over other main areas of transitional justice, which deserve closer attention and action.**

103. **The Special Rapporteur is gravely concerned that discussions in the area of criminal justice for massive violations have come to a halt. Delaying discussion on the setting up of judicial mechanisms until the conclusion of the Truth and Reconciliation Commission's work means that justice will be foregone in a great number of cases. Furthermore, the "temporary" immunities regime, which has been significantly expanded in scope, is effectively blocking prosecution efforts.**

104. **Reparation initiatives, thus far, have focused mainly on the restitution of land, while other forms of reparation, particularly rehabilitation of victims, have been excluded. In recent years, land disputes have become an area for the potential resurrection of tension with ethnic connotations. The independent and impartial functioning of the Commission on Land and Other Assets and the newly established Special Court are crucial in ensuring that those disputes are settled without consideration of ethnic, political or other affiliation.**

105. **While commendable achievements in the area of demobilization, disarmament and reintegration were made, the necessary link between security sector reform and justice efforts is missing. Establishing that link will be decisive in helping to prevent future violations.**

106. **The need for reform to establish an independent judiciary is broadly acknowledged. However, the executive branch and the governing political party continue to control the justice sector at all levels.**

107. **Burundian society has suffered from decades of unaddressed intergenerational transmission of violence. Four ways to counter the transfer of historical narratives that replicate old divisions of identity and reproduce fear and injustice are: (a) to develop curricula and teaching methodologies that foster objectivity, analysis and dialogue; (b) to support, not control or impede, memorialization activities consistent with respect for the facts and the memories of others; (c) to map and recover burial sites; and (d) to strengthen archival resources, including documentation, on past violations.**

B. Recommendations

108. **The Special Rapporteur urges the Burundian authorities to refrain from using transitional justice initiatives as instruments of "turn-taking", but instead, together with the whole Burundian society, develop and implement measures that genuinely redress past massive violations, and devise effective strategies to prevent the recurrence of such violations.**

109. **Recalling the importance of the Arusha Agreement and the 2005 Constitution with regard to truth-seeking, the Special Rapporteur calls on:**

(a) **The Truth and Reconciliation Commission:**

(i) **To prioritize the establishment of facts and to refrain from using the pardon procedure in ways that would impede the clarification of facts or criminal prosecutions;**

(ii) **To recruit civil society representatives specialized in human rights to its staff and to involve civil society and victims in its work, highlighting the importance for the Commission;**

(iii) **To utilize the expertise of the international Advisory Council in substantive matters and to allow the Council to exercise its functions unhindered;**

(iv) **To conduct targeted training on gender issues for Commissioners and staff and to ensure that a gender perspective is adequately mainstreamed into its work;**

(b) **The Commissioners, against the complicated background of the selection process, to work with independence and impartiality for the benefit of the whole of Burundian society;**

(c) **The relevant State bodies to expedite the adoption of a victim and witness protection framework, attentive to the protective needs arising from the activities of State and non-State actors;**

(d) **The Government to allocate sufficient resources throughout the mandate of the Commission to enable it to work independently and efficiently;**

(e) **Funding agencies to support the Commission in a sustainable way.**

110. **Regarding justice initiatives, the Special Rapporteur urges the Government:**

(a) **To immediately resume discussions, without waiting for the Truth and Reconciliation Commission to complete its work and with the participation of civil**

society, including victims, on proposed concrete models for a judicial mechanism to prosecute genocide, crimes against humanity, war crimes or other gross human rights violations or serious violations of international humanitarian law;

(b) **To revisit the current interpretation and application of the regime of "temporary" immunities in order to remove legal and practical obstacles to the prosecution for past massive violations, in accordance with the framework agreements;**

(c) **To immediately undertake preparatory work for judicial investigations and prosecutions of past massive violations in the framework of a prosecutorial strategy that pays special attention to sexual and gender-based violence and safeguards the independence and impartiality of the prosecutors;**

(d) **To allocate adequate resources for documentation and the provision of specific training for investigators on forensic investigation and sexual and gender-based violence.**

111. **In the area of reparations, the Special Rapporteur:**

(a) **Reiterates the need for both the National Commission on Land and Other Assets and the Special Court to function in an independent and impartial manner, free from all discriminatory ethnic or political motivations or objectives;**

(b) **Calls for broader land reform to overcome pre-existing patterns of discrimination and, in that respect, increase access to land by women, through a comprehensive revision of existing legislative provisions on inheritance rights, registration and titling;**

(c) **Calls on the Truth and Reconciliation Commission to initiate discussions, with the involvement of civil society, including victims, on a feasible comprehensive reparation programme, with specific attention to health and education;**

(d) **Calls for the set-up of immediately available victims assistance programmes, dedicated to the most vulnerable groups.**

112. **With regard to guarantees of non-recurrence, the Special Rapporteur recommends that the authorities in the area of:**

(a) **The security sector:**

(i) **Ensure that reform is linked to justice, taking into account the legacies of past violations by security institutions;**

(ii) **Enhance the capacity of the security sector, in particular the police and the national intelligence service, to fully understand their roles with respect to the population and the roles of civil society and the media;**

(iii) **Strengthen constitutional civilian oversight bodies, such as the Ombudsman and the independent National Human Rights Commission, and address, as a matter of priority, the enormous deficiencies in civilian oversight, in accordance with the Constitution, of the national intelligence service;**

(iv) **Strengthen coordination and interaction of internal oversight bodies, including the Inspector General of Public Security, with formal and informal civilian oversight mechanisms, including civil society organizations;**

(v) **Address overlaps in the structure of national police roles and responsibilities, especially between the Ministry of Public Security and the Directorate General of the Police;**

(vi) **Ensure adequate space for informal accountability mechanisms provided by civil society, the media, human rights and non-governmental organizations;**

(vii) **Continue efforts to professionalize the security sector through structured and coordinated training programmes in human rights for the security forces, particularly the police force and the national intelligence service, with an emphasis on recognition of the legacies of past violations by security institutions;**

(viii) **Pending comprehensive reform, take targeted first steps in the area of vetting, including a census and registration programme for screening past human rights records, and consider linking such programme with recruitment and promotion procedures, in accordance with due process standards;**

(b) **Judicial reform:**

(i) **Publish in full the results and deliberations of the Estates General on Justice and implement the planned follow-up mechanisms;**

(ii) **Revisit constitutional and legislative provisions to embody respect for the principle of the separation of powers among the three branches of power, thereby strengthening the independence of the judiciary and guaranteeing judicial self-regulation, in law and in practice;**

(iii) **Review the composition of the Superior Judicial Council to shield it from control by the executive over the judicial branch, through appointments, promotions and disciplining procedures, and vest the Superior Judicial Council with enhanced competencies over all procedures that govern the career of magistrates;**

(iv) **Increase the annual budget for the judiciary and review relevant legislation to ensure judicial financial autonomy;**

(c) **Legal empowerment: redouble efforts to ensure access to justice for all; and civil society is encouraged to expand initiatives to strengthen legal empowerment of the population, including through legal aid projects for the most vulnerable;**

(d) **History, memorialization and archives:**

(i) **Review the history curricula in order to foster dialogue and social cohesion; review and incorporate past initiatives on rewriting the contemporary history of Burundi;**

(ii) **Promote citizen-led initiatives in the area of memorialization, by guaranteeing even-handed support for such initiatives;**

(iii) **Put in place immediate measures to locate and preserve mass graves and other burial sites, and establish relevant legal protocols or procedures;**

(iv) **Start mapping mass burial sites throughout the country, drawing on the knowledge of civil society;**

(v) **Establish a policy on national archives, in accordance with the right to know the truth about past violations, and seek international expertise to assist in the development of such a policy.**