

<i>AFRICAN UNION</i>		<i>UNION AFRICAINE</i>
الاتحاد الأفريقي African Commission on Human & Peoples' Rights		<i>UNIÃO AFRICANA</i> Commission Africaine des Droits de l'Homme & des Peuples
<i>No. 31 Bijilo Annex Lay-out, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel: (220) 441 05 05 / 441 05 06, Fax: (220) 441 05 04 E-mail: achpr@achpr.org; Web www.achpr.org</i>		

**REPORT OF THE
DELEGATION OF THE AFRICAN COMMISSION ON
HUMAN AND PEOPLES' RIGHTS ON ITS FACT-
FINDING MISSION TO BURUNDI
7 - 13 December 2015**

LIST OF ABBREVIATIONS & ACRONYMS

ABAS	Burundian-African Salvation Alliance
ANADDE	National Alliance for Law and Development
AU	African Union
AV-INTWARI	Alliance of the Brave
CNARED	National Council for Compliance with the Arusha Agreement and Restoration of the Rule of Law in Burundi
CNDD	National Council for the Defence of Democracy
CNDD-FDD	National Council for the Defence of Democracy – Forces for the Defence of Democracy
EAC	East African Community
EU	European Union
FNL	National Liberation Front
FRODEBU	Front for Democracy in Burundi
FROLINA	Front for National Liberation
ICRC	International Committee of the Red Cross
INKINZO	Socialist and Pan-Africanist Party
MAPROBU	African Prevention and Protection Mission in Burundi
MSD	Movement for Solidarity and Development
MSF	Doctors without Borders
NCID	National Commission on Inter-Burundian Dialogue
NHRC	National Human Rights Commission
OHCHR-B	Office of the UN High Commissioner for Human Rights in Burundi
PACONA	Party for National Concord
PALIPEHUTU	Party for the Liberation of the Hutu People
PARENA	Party for National Recovery
PASIDE	Party for Science, Development and Environment
PBN	Burundi National Police
PIT	Workers' Independent Party
PL	Liberal Party
PP	People's Party
PPDRR	Party for Peace, Democracy, Reconciliation and Reconstruction
PRP	People's Reconciliation Party
PSC	Peace and Security Council
PSD	Social Democratic Party
RADDES	Movement for Democracy and Economic and Social Development
RPA	African Public Radio

RPB	Burundi People's Movement
RTNB	Burundi National Radio and Television
SNR	National Intelligence Service
TJRC	Truth, Justice and Reconciliation Commission
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UPD	Union for Peace and Democracy
UPRONA	Union for National Progress

PART I INTRODUCTION

1. This report presents the analysis and findings of the Delegation of the African Commission on Human and People's Rights on the human rights situation in the Republic of Burundi since the current crisis began in April 2015. The mission was undertaken and this report is presented pursuant to the decision of the 551st meeting of the Peace and Security Council (PSC) of the African Union (AU), in *Communiqué IV, PSC/PR/COMM.(DLI)*, which requested the African Commission on Human and Peoples' Rights (the Commission) to urgently undertake an in-depth investigation into the violation of human rights and other abuses against civilian populations in Burundi.
2. Acting on this request and conscious of its mandate to promote and protect human and peoples' rights in Africa under **Articles 45** and **58** of the African Charter on Human and Peoples' Rights and its Rules of Procedure, the Commission decided to undertake a fact-finding mission in the Republic of Burundi from **7 to 13 December 2015**.

1.1 Overall objectives

3. The overall objectives of the Delegation were to:
 - i. Investigate, document and prepare a report on violations and other abuses in Burundi;
 - ii. Present a report with recommendations to the Peace and Security Council.

1.2 Specific objectives

4. The specific objectives were as follows:
 - Investigate all forms of human rights violations and other abuses committed in Burundi since the beginning of the crisis in April 2015;
 - Establish the causes, facts and circumstances of the violations on the basis of the African Charter on Human and Peoples' Rights and the relevant international human rights instruments and international humanitarian law;
 - Specify and classify human rights violations and other abuses committed since the beginning of the current crisis;

- Present facts and information in a report and submit its findings to the Peace and Security Council;
- Prepare and propose to the Peace and Security Council recommendations following its investigation, including on:
 - ✓ The urgent measures to be taken to put an end to the ongoing human rights violations and abuses as an important stage in preventing the escalation of the crisis;
 - ✓ The measures to be taken by the various stakeholders to ensure that government security forces and all other armed groups and militias refrain from committing human rights violations and other abuses;
 - ✓ The manner in which human rights related issues should and can be adequately reflected and taken into account in regional and AU mediation efforts;
 - ✓ The problem of impunity for the alleged perpetrators of human rights violations and other abuses and accountability;
 - ✓ National truth, justice and reconciliation mechanisms and the necessary institutional reforms, in particular reforms in the security sector, criminal justice administration, and legislative and administrative reform in the area of freedom of association and expression.

1.3 Composition of the Delegation

5. The delegation was composed of the following:

- Honourable Commissioner **Pansy Tlakula**, Chairperson of the African Commission and Special Rapporteur on Freedom of Expression and Access to Information in Africa; and Commissioner in charge for human rights in Burundi (Head of Delegation)
- Honourable Commissioner **Reine Alapini-Gansou**, Special Rapporteur on Human Rights Defenders in Africa;
- Honourable Commissioner **Jamesina Essie L. King**, Chairperson of the Working Group on Economic, Social and Cultural Rights in Africa;
- Honourable Commissioner **Dr Solomon Ayele Dersso**, Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa and Focal Point for Transitional Justice.

6. Another member Honourable Commissioner **Maya Sahli-Fadel**, Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons

and Migrants in Africa, was unable to get to Burundi as a result of major incident of fighting that occurred on 11 December 2015 and the resultant suspension of flights to Burundi.

7. The members of the Delegation were accompanied by the following members of staff of the Secretariat of the Commission:
 - Ms Estelle Nkounkou Ngongo, Legal Officer;
 - Mr Bruno Menzan, Legal Officer;
 - Mr Valentine Tazi, Interpreter-Translator; and
 - Mr Frederick Tamakloe, Finance Officer.

1.4 List of stakeholders consulted during the Delegations mission

8. During the mission, the Delegation held meetings with the various stakeholders in Burundi. The Chairperson of the Commission and Head of Delegation, Honourable Commissioner Pansy Tlakula and Honourable Commissioner Reine Alapini-Gansou held a meeting with the First Vice-President of the Republic of Burundi. The Delegation met with state actors including, Ministers, Members of the National Assembly, the Mayor and the Administrators of Bujumbura, the Director General of Police, the National Human Rights Commission (NHRC), the Truth, Justice and Reconciliation Commission (TJRC), the National Commission on Inter-Burundian Dialogue (NCID). The Delegation also equally with international stakeholders, including the Office of the UN High Commissioner for Human Rights in Burundi (OHCHR-B), members of the diplomatic corps, African Union military experts and human rights observers, and the International Committee of the Red Cross (ICRC). The Delegation held meetings with non-state actors such as journalists, civil society organisations and women's associations. The Delegation also visited a hospital and the Mpimba prison.
9. Due to time constraints, the Delegation was unable to visit the Bujumbura military hospital and to meet with some stakeholders such as representatives of religious groups and some representatives of political parties.

1.5 Methodology

10. The gathering of data and information from relevant actors both in government and outside through questions and answers in closed sessions

was the primary approach that the mission used. Additionally, the analysis of the data and information on the crisis relied heavily on various secondary sources including reports and other policy research works on the human rights dimension of the crisis in Burundi. During the visit to Bujumbura, the Mission consulted a wide range of Burundian stakeholders and received testimonies and information on the violence in the country and incidents of violations of human rights and other abuses.

11. The situation in Burundi has been attracting much attention. Various human rights organizations have thus been reporting on the human rights violations witnessed in the country in the course of the crisis. The African Commission's Delegation is the first major mission undertaken to look into the human rights violations and other abuses surrounding the on-going crisis in Burundi. The report of the Mission thus represents the first authoritative statement on the situation of human rights in Burundi. While it partly draws on and complements other reports, the analysis in this report attempted to mirror the views and perspectives of various sectors of the Burundian society that the Delegation interacted with. Apart from documenting and establishing acts of violations of human rights and other abuses, this report also offers analysis of the circumstances surrounding the violations and the nature of the violations.
12. For purposes of making findings on violations, this report applies legal method of analysis. In so doing, it not only subjects the information on violations and abuses to scrutiny drawing on diverse sources for verification and reliability. But the report also evaluates the relevant materials against the relevant human and peoples' rights standards. The report also uses the evidentiary standard of 'balance of probabilities' in making findings on the existence of violations of the African Charter, the nature of the violations and the victims and perpetrators of the violations.

1.6 Challenges encountered

13. The activities of the Delegation and the scope of its work have however been subject to various limitations. While lack of time restricted the extent of the Mission's engagement in Burundi, the Mission also faced other challenges such as lack of access to incident sites and witnesses. At the time of the investigation mission, the prevailing security condition meant that the Mission could not visit neighbourhoods and sites where significant violations were reported. Although the Mission was scheduled to

undertake a visit outside of Bujumbura, the eruption of major fighting on 11 December led to the cancellation of the plan. The security situation also constrained the diversity of stakeholders from whom the Delegation was able to freely receive their views and experiences of violations. Apart from limiting the depth and scale of information and data on violations of human rights, the major consequence of these limitations is that the Delegation could not establish the exact identity of the perpetrators of the human rights violations. While the Delegation received some accounts of incidents of human rights violations, it has not received specific names of perpetrators.

14. Although the PSC communiqué of 17 October called for 'an in-depth investigation', the limited time and resources at the disposal of the Delegation as well as the issues of access indicated above mean that this report does not offer an exhaustive and full account of all acts of human rights violations and other abuses that took place in Burundi since the outbreak of the crisis. The Delegation and its report are thus limited to identifying and highlighting instances of violations of human rights that exemplify and illustrate the nature and patterns of human rights violations and other abuses that emerged in the course of the on-going crisis.

1.7 Structure of the report

15. This report contains 4 parts. Part I, which is this section, is the introduction and consists of the legal framework and the origin of the Fact-finding Mission, the mandate of the Mission and the methodology used in conducting the Mission and preparing the report.
16. Part 2, which sets out the background and context for the human rights violations and other abuses, presents the causes and triggers of the human rights violations. This part includes analysis of not only the historical and political factors shaping the political development of the country but also the remote and proximate causes and triggers of the crisis.
17. Part 3 is dedicated to presenting and describing the events and acts that occasioned or produced the violations of human rights and other abuses. It documented the incidents and circumstances relating to human rights violations and other abuses reported during the three stages of the crisis.

18. Lastly, Part 4 offers the analysis and findings of the African Commission. This part outlines the analysis and findings of violations of the human and peoples' rights contained in the African Charter. Additionally, it seeks to identify the profile of the victims and perpetrators of the violations. It is also in this section that the African Commission proposes recommendations covering various areas of policy intervention for ending continuation of violations and effectively redressing them.

PART II CAUSES AND TRIGGERS OF THE CRISIS IN BURUNDI

2.1 *History of ethnic rivalry and the politics of minority insecurity and majority exclusion*

19. Like many countries, Burundi's past weighs heavily on much of its recent and current political developments. The ethnicization of politics, which started under Belgian colonial rule and became institutionalized and entrenched following independence, is one dimension of Burundi's past at the root of the challenges that have bedevilled the recent politics of the country. Burundi is composed of three ethnic groups: The two dominant and rival ethnic groups, namely the Hutu (making up 85 per cent of the population) and the Tutsi (making up about 14 per cent) and the socially and politically peripheral small community of the Twa. At the time of its conquest by Germany in 1883, Burundi was an independent kingdom under a royal elite, the Baganwa, which ruled over both the Hutu and the Tutsi, who were engaged in agriculture and animal rearing respectively. With both communities were allowed to exercise influence under the king and other Baganwa, 'there is no record of ethnic massacres from the pre-colonial period'.¹
20. The path that pitted the Hutus against the Tutsis since the early years of independence started during the colonial period. 'Colonial administration generally favoured the Tutsis at the expense of the Hutus, accentuating the social and economic differences between them.'² While Burundi achieved independence in 1962 as a constitutional monarchy under the ruling party the National Unity and Progress Party ("Union pour le progrès national"), UPRONA, made up of both Hutu and Tutsi members, the years following independence witnessed Tutsi domination of UPRONA. Prime Minister André Muhirwa, a member of the Tutsi faction of UPRONA, headed the first independent Government of Burundi.
21. After the 1965 elections when the King, under pressure from the Tutsi, appointed a member of the royal elite as a prime minister instead of a member of the electorally victorious Hutu, who won 23 out of the total of 33 seats, the rivalry descended into violence. Hutu's attempted a coup against the King and sporadic attacks against the Tutsis provoked a violent response marking the beginning of the deadly Hutu-Tutsi rivalry.

¹ International Commission of Investigation for Burundi Final Report.

² Ibid.

In 1966, the Army, under the command of Captain Michel Micombero, a Tutsi officer, after overthrowing the Monarchy and taking power, promoted the winner-takes-all zero sum politics. This involved monopolizing power in the hands of the Tutsi. Among others, Micombero 'filled the officer corps and the ranks of the Army with Tutsis'.³ In the course of time, this also facilitated and entrenched the unfair distribution of resources and unbalanced role in the control of and participation in the economic life of the society.

22. While the ethnicization of political power resulted in the near absolute political and military dominance of the Tutsi, it produced the parallel political exclusion of the majority Hutu. A politics of insecurity and exclusion has since become a feature of Burundi's post-independence political trajectory. This has become prominent feature of Burundi's politics of minority insecurity and majority exclusion that dominated its post-independence history.

2.2 *Genocidal violence and massive violations of human rights*

23. The political history of Burundi is littered with major incidents of human rights violations. Perhaps the major outcome of the ethnic rivalry that this politics of minority insecurity and majority exclusion has produced has been repeated periods of conflict and ethnic violence. One such major violence broke out in 1972. Triggered by violent insurrection against the Tutsi dominated government, the 1972 violence unleashed the country's first large scale massacre in which over 100,000 people of the Hutu community lost their lives.⁴ Like previous periods of similar violent confrontation, the 1972 violence was followed by active cleansing of Hutus from structures of power. As the International Commission observed, '[i]n the aftermath of the repression in Burundi, Hutus were deprived of all effective political power, down to the local level'.⁵ In another cycle of violence that broke out in 1988 tens of thousands of people similarly lost their lives.

24. The assassination of the first democratically elected Hutu head of state Melchior Ndadaye in 1993 triggered another round of violence, which precipitated a civil war that lasted for over 12 years. Once again some

³ Ibid.

⁴ International Commission of Investigation for Burundi Final Report, para. 85.

⁵ Ibid, para. 86.

200,000 people are estimated to have been killed in the course of the war. The International Commission of Investigation for Burundi, established under Security Council Resolution, enquired into those events.

2.3 Impunity - 'A country of human rights violations'

25. Despite the large-scale violence and the major atrocities the country experienced repeatedly, no mechanism was instituted to investigate into gross human rights violations, establish the truth and put an end to the recurrence of such violations. This lacuna has left human rights violations and atrocity crimes unaccounted for and not redressed. As a result, a culture of impunity has become entrenched in the politics of the country. Indeed, the International Commission of Investigation for Burundi that investigated the violations of 1993 held that impunity was 'one of the causes' and 'an important contributing factor in the aggravation of the ... crisis'.⁶
26. As a member of the recently established Truth and Reconciliation Commission of Burundi put it Burundi is a 'country of human rights violations since the 1960s and the events of today could not be separated from what happened previously'.⁷ The Commissioner further noted that 'it is possible that those who perpetuated violations of the past are today victims of violations and there are multiple violations'. Reiterating how impunity shapes violations in the current crisis, the newly established members of the Commission for Inter-Burundian dialogue also told the Delegation that 'impunity is a major factor in the perpetration of current violations since there has been no accountability for previous violations'.⁸

2.4 Arusha and the years following 2010 elections

27. Series of peace talks since the mid-1990s, in which Tanzania's former President Julius Nyerere and South Africa's former President Nelson Mandela played the lead role, culminated in the Arusha Peace and Reconciliation Agreement of 2000. As a framework that has made peaceful coexistence among the rival communities possible after a bloody civil war that claimed the lives of hundreds of thousands, the Arusha agreement is widely considered to be the foundation for peace in Burundi. Burundians

⁶ Ibid, para. 490.

⁷ Bujumbura, 9 December 2015.

⁸ Bujumbura, 10 December 2015.

that the Delegation interacted with view the Arusha agreement as the cornerstone of the country's stability and peace. Apart from establishing intricately formulated democratic power-sharing scheme, it guaranteed representation of the rival communities in all elected offices, at all levels and structures of government and in the security institutions. Incorporated into the Constitution, the Arusha Accord also provided for the establishment of a transitional justice process involving a Truth and Reconciliation Commission (TRC) and a Criminal Tribunal to deal with the most serious crimes. However, this last major component of the Arusha agreement has not been implemented. When the government initiated on its own the process for implementing the transitional justice process in 2014, it opted for establishing only the Truth and Reconciliation Commission leaving out the criminal tribunal.

28. Despite the success of the Arusha accord, the most recent history of the politics of the country has witnessed not only the narrowing down of the political space and rising polarization but also escalating violence. In the context of the 2010 elections and during the following years, Burundi experienced violence and instability, numerous cases of disappearances, extrajudicial killings and violations of the right to liberty.⁹ The violence forced opposition leaders such as Agathon Rwasa (FNL), Alexis Sinduhije (MSD) and Pancras Cimpaye (FRODEBU) into exile. It is important to note that in the post-election violence,¹⁰ government's crackdown affected not only opposition parties but also civil society organizations such as Nininahazwe, Mbonimpa, and others and the media (such as RPA and Radio Bonesha).
29. The serious human rights violations in the current crisis both feed into and draw on the culture of impunity that successive governments have perpetuated. In significant ways, the current crisis and the violations accompanying it are the sequel of the fallout and the instability that started during the 2010 elections. As a member of the recently established Truth and Reconciliation Commission of Burundi put it, this 'is a country of

⁹ Seventh Report of Report of the Secretary General on the United Nations Integrated Office in Burundi (30 November 2010) <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/burundi%20s-2010-608.pdf> ; Report of the Secretary General on the United Nations Office in Burundi (30 November 2011) <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Burundi%20S%202011%20751.pdf>;

¹⁰ Bujumbura, meeting with members of the newly established Commission for Inter-Burundian Dialogue.

human rights violations since the 1960s and the events of today could not be separated from what happened previously'.¹¹ The Commissioner further noted that 'it is possible that those who perpetuated violations of the past are today victims of violations and there are multiple violations'. Reiterating how impunity shapes violations in the current crisis, the newly established members of the Commission for Inter-Burundian Dialogue also told the Delegation that 'impunity is a major factor in the perpetration of current violations since there has been no accountability for previous violations'.¹²

2.5. *The debate over the third term*

30. The most immediate context and background for human rights violations in Burundi was the polarization and political confrontation that the debate over the third term of the president produced in Burundi since 2013. While the Arusha Accord of 2000 was clear that no one may serve more than two presidential terms, it also envisaged that the first post transitional president would be elected by the national assembly. It was under this framework that Pierre Nkurunziza of the CNDD-FDD was for the first time elected Burundi's president in 2005. In 2010, President Nkurunziza received a second term on the basis of election by universal suffrage. Disputes over the electoral process not only resulted in opposition parties boycotting the national elections but also set the stage for the crackdown that the government undertook in the two years after the 2010 elections.
31. A major development that attracted major resistance from opposition parties and civil society organizations was the constitutional amendments that the ruling CNDD-FDD initiated in 2013. Apart from the proposed changes in the 2/3rd voting majority in the national assembly to simple majority and in the structure of the executive (from two presidents to a strong prime minister who can be from the same party as the President), one of the most controversial amendments that was proposed involved revoking **Article 302** stipulating that that the first post-transition president is to be elected by the national assembly.
32. The proposed constitutional amendments alarmed many as threatening the delicate power-sharing arrangement established under the Arusha Accord and the Constitution. Thus, the opposition and members of civil society

¹¹ Bujumbura, 9 December 2015.

¹² Bujumbura, 10 December 2015.

saw this proposal as a move by the ruling party to use **Article 96** of the Constitution, stipulating that the president is elected by universal suffrage renewable once, for opening the way for the president to run for a third term. When tabled for vote, the bill amending the constitution was defeated by one vote with opposition members of UPRONA and FRODEBU joining hands to successfully mobilize enough votes against the bill.

33. The defeat of the bill in parliament did not however bring to an end the dispute over the third term of President Nkurunziza. On 25 April 2015, the CNDD-FDD announced its decision of having President Nkurunziza as its presidential candidate. The controversy over the President's bid for third term, while supported by many in the ruling CNDD-FDD, created polarization between those supporting the bid and those opposing it including some senior members of the CNDD-FDD. The ruling party also expelled members opposed to the third term removing them from party leadership ("wisemen council"); this included the second VP and the national assembly chairman due to their opposition to the candidacy of the President.
34. Opposition parties, media, members of civil society organizations and representatives of the Catholic Church expressed their opposition to the President's bid for a third term,¹³ and pointed out that the President's candidacy for a third term was a clear violation of the terms of the Arusha Accord, which under **Article 7** states that the President cannot run for more than two terms. Yet, it was the announcement of the candidacy of the President that marked a critical turning point in the more than a yearlong controversy over the third term. On 26 April, heeding the call of the opposition and civil society organizations street protests erupted in parts of the capital Bujumbura, marking the beginning of the current crisis.
35. With the President and many in the CNDD-FDD determined to secure the President's candidacy, the question of whether the two-term limit under the Constitution was limited to the election of the President by universal suffrage and hence does not apply to election by national assembly was submitted to the Constitutional Court. The 5 May 2015 decision of the

¹³ On 12 February civil society groups sent letter to the President urging him not to run for another term; on 7 March The Catholic Church announced that the incumbent was not allowed for another term <http://www.reuters.com/article/us-burundi-politics-idUSKBN0M30JN20150307>;

Court¹⁴ favoured the position that the incumbent was constitutionally entitled to run for another term. This triggered further protests from the opposition. In an address to the nation on 6 May, President Nkurunziza announced that if he should be elected President on 26 June, it would be his final term as per the decision of the Court.

36. Many of those that the Delegation consulted with stated that what triggered the crisis was the announcement of the candidacy of the President. Protestors came out to the streets in response to the ruling party's announcement of the President's candidacy for another term. As the confrontation between the police and protestors started to take a violent course, the situation erupted into a crisis. As a Commissioner of the recently established Truth and Reconciliation Commission put it, the current crisis is a result of a power struggle between those pushing for the candidacy of the President and those opposing it.¹⁵

37. While there is consensus that the protests and the current crisis erupted with the announcement of the candidacy of the President, the Delegation received statements from some members of the diplomatic corps that the background for the eruption of the crisis was set earlier than April 2015. A member of the diplomatic corps stated that much earlier than the protests that started on 26 April 'there were people who said that if the President runs, Burundi will have no peace and there were people determined to create havoc.'¹⁶

38. Members of the government blame the current crisis on the opposition. During the interaction with the Delegation, they insisted that the third term debate and allegations of violations of Arusha Accord were being used as excuse or pretext. For these government officials the underlying factor for the crisis has been the desire of the opposition to seize power from the government through violent insurrection. They pointed out that opposition politicians started calling for a transitional government in the years following the 2010 national elections. They view the 13 May 2015

¹⁴ During the consultation with members of diplomatic representatives, the Delegation was informed that the Constitutional Court's decision was made under huge political pressure from government leading to the deputy of the Constitutional Court to flee the country. See this also on <http://reliefweb.int/report/burundi/burundi-police-open-fire-protestors-truce-ends>

¹⁵ Bujumbura, 9 December 2015.

¹⁶ Bujumbura, 10 December 2015.

attempted coup as a manifestation of the opposition's desire to seize power by force.

39. The Delegation also obtained other views that attribute the proximate causes of the current crisis to various factors. One such factor relates to concerns over government measures undermining the various components of the Arusha Accord. Another factor underlying the current crisis involves major governance problems including corruption and poor delivery of social services. Others point to the poor performance of the economy and the resultant socio-economic challenges importantly high-level youth unemployment.

PART III HUMAN RIGHTS VIOLATIONS AND OTHER ABUSES

40. Although incidents of human rights violations started before the eruption of the current crisis in April 2015,¹⁷ such incidents not only escalated significantly but also have increasingly become a prominent feature of the present crisis since its eruption at the end of April 2015. According to a member of the Truth and Reconciliation Commission, multiple violations of human rights have taken place in the course of the crisis.¹⁸
41. Much of the violent incidents at the initial stage took the form of protests and riots followed by heavy-handed response of security forces. These incidents particularly affected districts of the capital Bujumbura including Buterere, Buyenzi, Bwiza, Cibitoke, Jabe, Kanyosha, Kinama, Kinindo, Musaga, Mutakura, Nyakabiga and Ngagara. Many of these districts would also in subsequent months become the epicenter or flashpoints of the daily violence and incidents of human rights violations that have become the most prominent features of the on-going crisis. Limited protests also took place outside of Bujumbura namely, in Bujumbura Rural, Gitega, in the northern province of Kayanza and southern provinces of Bururi and Makamba.
42. This part of the report is organized into three sections. In so doing, it places the various human rights violations and other abuses in their specific political and security context. Such an approach allows the analysis to make qualitative distinction between the same kind of violations that took place in qualitatively different political and security contexts. The first section covers the period between 26 April and 13 May 2015. The various acts of violence making up the human rights violations and other abuses reported during this period manifest the stage of the crisis characterised by confrontation and street clashes.
43. The second section covers the period between the attempted coup of 13 May 2015 to the election period. This involves the radicalization phase of the crisis that manifested increased levels of violence and human rights violations. While much of the incidents of violence and human rights violations remain associated with protests and riots, in the context of and

¹⁷ In its 18 February 2015 Presidential Statement, the UNSC expressed concern over human rights violations including extra-judicial killings, torture and ill-treatment, reports of other incidents of violations including intimidation, harassment, political violence, arbitrary arrest and detention infringing on the rights of freedom of peaceful assembly and expression.

¹⁸ Bujumbura 9 December 2010.

since the military coup of 13 May, the character of the political violence had started to show battle like incidents involving exchange of gunfire and grenade attacks. Reprisal attacks in the aftermath of the attempted coup led to increased incidents of human rights violations.

44. The third section covers the period from the time of the national elections until the conclusion of the Fact-finding Mission on 13 December 2015. This is the phase of the crisis characterised by militarization and escalation of violence. This is the phase of the crisis that manifested increasingly organized military attacks on police posts and military installations in and around Bujumbura and retaliatory campaign by police and security forces against neighbourhoods suspected of harbouring armed elements.

3.1 Human rights violations and other abuses during the first phase of the crisis from 26 April to 13 May 2015 - confrontation and street clashes

45. Initially the crisis involved demonstrations in various parts of Bujumbura and few places outside the capital. The demonstrations involved not only the majority of the youth in the areas most affected by the protests but also a wide range of groups including members of opposition parties, civil society leaders and former members of government and security forces.
46. The situation started to take a violent course soon after the eruption of street protests resulting in recurring incidents of deaths of protestors. The protests erupted two days after the minister of public security issued a statement banning demonstrations in the country. After erupting on 26 April, Bujumbura experienced six consecutive days of demonstrations. The government deployed the police as well as members of the intelligence and security services.
47. Although initially police mostly used tear gas and water cannons, incidents of killings were reported from the first day of protests on 26 April. Apart from tear gas and water cannons, there were also reports of the police using live ammunitions against protestors, despite government claims to the contrary.¹⁹ Although the Minister of Public Security informed the Delegation that protestors started to use weapons and shoot at police

¹⁹ Ibid.

starting from the afternoon of 26 April,²⁰ the Delegation did not find any evidence to confirm this. All indications were that at this stage of the crisis, acts of protestors were largely peaceful with incidents of stone throwing at police and blocking roads.²¹ Three people were reported killed on the first day of protest.²² Illustrating the arbitrary and excessive use of force by law enforcement forces in Burundi, one of these cases involve a 15 year old boy named Jean Nepomusene, whom the police allegedly shot and killed near Hope University in Ngagara 2 after he fell down while running away for hiding.²³

48. In the following days with protests and riots continuing, confrontation between the police and protestors deepened with the clashes mostly affecting districts of Mutakura, Cibitoke, Kanyosha, Bwiza and Musaga. Within a week, the number of people killed from gunshot from police and security climbed up to at least seven, with more than 66 reported injured.²⁴
49. After two days of pause declared on 1 May 2015, protests resumed again into the second week. On 6 May the number of people killed in the clashes between protestors and police reached 16 according to the Red Cross.²⁵ Earlier police reported that three members of the police were among the dead.
50. Some in government admitted that there were instances of police using live ammunitions and unlawfully killing protestors. When asked about excessive use of force, the President's main communications adviser, Willy Nyamitwe, reportedly responded: 'There are perhaps policemen who used too much force and others who were misguided. You need to recognize also that demonstrators are committing human rights abuses and they aren't being reported.'²⁶ Refuting initial denial from government sources, the Red Cross also reported that the people it assisted suffered their

²⁰ Bujumbura, 11 December 2015.

²¹ Meeting with a UN Representative, Bujumbura, 13 December 2015.

²² BBC reported the death of at least three people on the first day of protests. <http://www.bbc.com/news/world-africa-32479368>

²³ Amnesty International, Braving bullets: Excessive force in policing demonstrations in Burundi, 27 July 2015 available on <https://www.amnesty.org/en/documents/afr16/2100/2015/en/>

²⁴ <http://reliefweb.int/report/burundi/seven-dead-66-hurt-week-burundi-protests-officials>

²⁵ <http://worldaffairsjournal.org/content/almost-40000-flee-burundi-amid-political-crisis>

²⁶ HRW report.

wounds from gunshots.²⁷ These were shots that government security forces allegedly fired.

51. The media, the press and other communication outlets have been target of violence and heavy restrictions including suspension. On 28 April the government temporarily shut down one of the most prominent radio stations Radio Publique Africaine (RPA) alleging that broadcast of the radio were stocking insurrection and riots. Police forcibly entered into the compound of RPA climbing over the fence and told journalists to stop broadcasting. Government also shut down Mansion de la Presse and banned live transmission on the protests by two privately owned stations, Radio Isanganiro and Radio Bonesha FM. Additionally, the government imposed temporary restrictions on communications blocking various social media outlets including Twitter, Facebook, Viber and WhatsApp.
52. Police and intelligence services arrested hundreds of people for participating in the protests that the government deemed illegal. On 2 May it was reported that Police spokesman Pierre Nkurikiye told AFP that 577 arrests have been made, with nearly 250 cases sent for prosecution, 150 undergoing questioning and the remaining others set free. Apart from protestors, there were arbitrary arrests of human rights activists and journalists. On 27 April prominent human rights activist Pierre-Claver Mbonimpa was arrested.
53. Protestors have also been engaged in various violent acts. While the protests and the opposition against government were mostly peaceful, they also started to show violent postures from the very beginning.²⁸ In the neighbourhoods that mobilized the most protests, protestors displayed high level of military type organization erecting roadblocks, blocking police, burning tyres and establishing neighbourhood watch groups thereby blocking the normal operation of law and order. Starting from 26 April, demonstrators were also involved in throwing stones, grenade attacks and Molotov cocktails at the police, and using slingshots with stones, marbles, and other projectiles.
54. The protests also quickly escalated to include abuses such as the targeted lynching of those suspected of being part of the feared Imbonerakure, the youth wing of the ruling National Council for the Defense of Democracy –

²⁷ <http://reliefweb.int/report/burundi/soldier-killed-burundi-hit-more-violent-protests>

²⁸ Interaction with a UN representative, Bujumbura 13 December 2015.

Forces for the Defense of Democracy (CNDD-FDD).²⁹ In one incident, protestors set on fire a man in the Nyakabiga district of Bujumbura. According to an eye-witness 'They put tyres around his neck and then burned him'.³⁰ Similarly, on 12 May during protests in the district of Buterere, protestors attacked a policewoman who survived after the army intervened. Another person named Jean Claude Niyonzima, a suspected member of the Imbonerakure, was saved by the army after a mob of protestors attacked him.³¹ According to a report of Human Rights Watch, demonstrators have burned vehicles, attacked and ransacked buildings, and injured police by throwing stones.³²

55. The crisis in Burundi remains to be principally political pitting groups supportive of the President's third term against those opposing it. However, it was not completely free from ethnic undertones. One manifestation of this was the attempt on both sides to give the political crisis an ethnic dimension. Of particular interest in this regard was attempts at drawing parallels with the ethnic violence that led to the outbreak of civil war in 1993/4 and reference to parts of Bujumbura that witnessed the most protest as historically Tutsi neighbourhoods. This came out in a press release that the government issued on 8 May 2015,

This drift towards selective criminality should call the organisers of the insurrection to reflect on the consequences of these acts that evoke among Burundians what they experienced in 1994, in practically the same areas, with the same actors and curiously with the same methods, the only difference being that at present they do not hesitate to attack the police when they resist their barbarism.³³

56. The crisis also caused major disruptions on social services and involved incidents of destruction of property. Schools were forced to close and people were not able to go to work. The situation also crippled economic activities particularly in the areas most affected by the crisis. Businesses including banks and shops were also forced to shut.

²⁹ <http://www.crisis.acleddata.com/changing-patterns-of-violence-in-burundis-political-crisis-a-comparison-to-burkina-faso-and-democratic-republic-of-congo/>

³⁰ <http://www.iol.co.za/news/africa/man-burned-alive-in-burundi-protest-1.1855430>

³¹ <http://www.nbcnews.com/news/world/mob-attacks-suspected-militia-member-burundi-n355171>

³² HRW Report,

³³ République du Burundi, Communiqué du Gouvernement, 8 mai 2015. Available at: <http://www.burundi-gov.bi/spip.php?article3942>

57. From mid-April, people have been fleeing their homes and running into neighbouring Rwanda as the tension in the country reached a tipping point. It is alleged that at this stage people were fleeing at around 200–300 per day. This figure surged substantially after the crisis erupted on 26 April to 3, 000 per day, with 20,400 refugees received in Rwanda by 28 April. Apart from the eruption of the crisis, Imbonerakure’s harassment and intimidation also account for much of the flight of many people.³⁴ With no end to the crisis, in the second week after it erupted, the number of refugees jumped to 40,000. This time around the flow of refugees affected not only Rwanda but also other neighbouring countries particularly Tanzania and Democratic Republic of Congo (DRC).

58. While there are no sites of internally displaced persons, the Delegation was informed of the existence of a non-conventional phenomenon of internal displacement.³⁵ This involved people who run from their houses in crisis affected areas to stay with their relatives or friends in more secure parts of Bujumbura or elsewhere in the country. According to the information that the Delegation received, the internal displacement also includes people who went on hiding for fear of attacks by Imbonerakure or security forces. Other reports have also confirmed the existence of internal displacement.³⁶

3.2 Human rights violations and other abuses after the failed coup of 13 May 2015 – the radicalization phase

59. A first turning point that escalated the crisis took place on 13 May 2015. While the President was away for a regional meeting in Arusha, elements of the Burundian security forces launched a military coup. A group of senior military and police officers led by Major General Godefroid Niyombare, former Director of SNR, announced on private radio stations that they no longer recognized President Nkurunziza as the Head of State and that the government was dismissed. The AU, the EAC, the International Conference on the Great Lakes Region (ICGLR) and the UN condemned the attempted coup.

³⁴ Interaction with a representative of an international humanitarian body, Bujumbura 12 December 2015.

³⁵ Ibid.

³⁶ Refugees International, You are with us or against us: Persecution and displacement in Burundi, 18 Nov. 2015 <http://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/564bf6e9e4b0b8eacea88098/1447819007352/Persecution+and+Displacement+in+Burundi>

60. The coup aggravated an already difficult security and human rights situation. It triggered two days of fighting between the coup plotters and soldiers loyal to the President. Amid the breakdown of law and order that the coup occasioned, various incidents of violence and violations were also reported in the course of the coup. As a result of the two days of fighting, Burundian authorities reported that 12 coup leaders were killed, 35 were injured, while 40 surrendered and 9 were arrested, including a general and two police commissioners. It was reported that at least two individuals demonstrating in support of the coup also lost their lives.³⁷ Various establishments including police stations, a prison, media houses and a hospital were attacked.
61. Some acts of violence followed political lines. The media were among those most affected in the violations. Burundi National Radio and Television (Radio-Télévision nationale burundaise, RTNB) was one of the major sites of the struggle between the putchists and loyalist forces and suffered damages. Radio Rema FM, a station close to the ruling party, was attacked. The offices of the African Public Radio (Radio publique africaine, RPA), Radio Bonesha, Radio Isanganiro and Renaissance Radio and Television (Radio-Télévision Renaissance) were also ransacked. While they said that putchists forced them to air the announcement of the coup, government on its part accused them of collaborating with them.³⁸
62. The human rights situation deteriorated further after the coup was foiled. Reprisals against those suspected of participating in the coup were reported. Brutal killings and kidnappings of wounded pro-coup soldiers in Bumerec hospital have been reported. On 15 May the hospital was for a short period of time a site of exchange of gun-fire between forces supporting the coup and loyalist forces.³⁹ On 22 May a grenade attack in Bujumbura's central market left two dead and many others injured.
63. On 23 May 2015 an opposition political leader, Zedi Feruzi of the *Union pour la paix et le développement* (UPD)-Zigamibanga, was assassinated with his bodyguard. This became indicative of a troubling pattern of politically

³⁷ (BBC 13 May 2015)

³⁸ Meeting with government representatives and Skype conversation with the head of the RPA.

³⁹ According to one report while a loyalist policeman was badly hit and died on the Emergencies porch, one putschist soldier was shot on the head and died and three wounded putschists were taken away. <http://www.ibtimes.co.uk/burundi-government-kills-kidnaps-fighters-hospital-where-they-were-treated-claims-doctor-1501707>

motivated assassinations and attacks that emerged to be a new dimension of the conflict particularly in the aftermath of the government's electoral victory in the July 2015 national elections.

64. The government declared a blanket ban on demonstrations and security forces threatened to shoot at protestors. Although protests resumed on 18 May in Bujumbura's Cibitoke, Musaga, Nyakabiga, and Bwiza districts defying government, the escalating radicalization and resultant violent confrontation not only reduced incidents of protests but also forced many people to flee from the protest affected areas. On Monday morning (8 June) police opened fire using live bullets in the Mutakura district, according to local sources. In other areas such as Ngagara and Cibitoke, however, no demonstrations were reported.
65. After government had declared a ban on protests, security forces were engaged in sweeping arrests of people suspected of participating and supporting protests and opposing to the third term. On 1 June some 100 person were reported arrested in the central Gitega province and two persons were severely wounded from gunshots.⁴⁰ Security forces undertook similar campaign of arrests especially in the major sites of protests in Bujumbura's neighbourhoods such as Musaga and Buterere. The Delegation was informed that some 470 people were in detention in relation to the protests and riots of April and May 2015.⁴¹
66. Arrest was not the only threat that protestors faced. Following their arrest, they were also subjected to intimidation and violence. As a UN report noted, most of those arrested have been subjected to torture and cruel, inhumane and degrading treatment by security officers (mainly police and intelligence agents).⁴² The Burundi National Human Rights Commission informed the Delegation that some of the alleged cases of torture and ill treatment were investigated and confirmed.⁴³
67. The media and journalists as well as civil society members witnessed increasing levels of restrictions including total ban and reprisal attacks

⁴⁰ <http://www.ibtimes.co.uk/burundi-hundreds-dissidents-arrested-nkurunziza-carrys-out-relentless-crackdown-1504516>

⁴¹ Meeting with the National Human Rights Commission of Burundi, 12 December 2015.

⁴² The Report of the Secretary General on Burundi, (July 2015) <http://reliefweb.int/sites/reliefweb.int/files/resources/N1520456.pdf>

⁴³ Meeting with the National Human Rights Commission of Burundi, 12 December 2015.

from all sides.⁴⁴ All media houses that broadcasted the announcement of the coup Bonasha, RPA, Renaissance, Rema and Radio Isanganiro remained off air. ⁴⁵ According to the Burundi National Human Rights Commission, five radio stations including the state run station were ransacked and seriously damaged.⁴⁶ A UN report also noted that, on the night of 13 May, armed soldiers responding to the ongoing coup d'état attacked with grenades and mortars the four independent radio and television stations, including RPA, Radio Isanganiro, Radio Benesha FM and Radio Renaissance.⁴⁷

68. In the wake of the foiled coup, journalists from these media houses were forced to flee the country for fear of reprisals,⁴⁸ many of them to neighbouring Rwanda and others to Belgium. The Delegation was informed that over 100 media professionals are in exile and others are in hiding in the country for fear of their lives.⁴⁹ The attacks on the media and the reported crackdown against journalists have seriously affected the media landscape of the country.⁵⁰

69. Apart from the foiled coup and the general insecurity that the crisis created, fears of ethnic violence and rumours of risks of genocidal plans became major factors pushing people to flee into neighbouring countries as refugees. While memories of past violence and civil war that pitted the Tutsis against the Hutus continue to shape citizens perception of the crisis, much of the prevailing insecurity and fear of return to ethnic conflict is accountable to rumours spreading in the country.⁵¹ According to the United Nations High Commissioner for Refugees (UNHCR), the number of people fleeing the country surged with 58,000 new Burundian refugees poured into Tanzania in June. Of these 62 % were children.

⁴⁴ Meeting with National Human Rights Commission of Burundi, 12 December 2015. The Head of the Commission emphasized the need to avoid clamping down on the media and the importance of reopening those media houses closed down in the aftermath of the coup.

⁴⁵ On these and for a testimony of the personal experience of a Burundian journalist see Benrard Bankikura, trials and tribulations of reporting the Burundian conflict, available on <http://www.afrikareporter.com/trials-and-tribulations-of-reporting-the-burundian-conflict/>

⁴⁶ 12 December 2015, Bujumbura.

⁴⁷ Bujumbura, meeting with CSO representatives and Skype meeting with a journalist, head of RPA, who fled the country for fear of personal safety.

⁴⁸ Meeting with National Human Rights Commission of Burundi, 12 December 2015.

⁴⁹ Bujumbura, meeting with CSO representatives and Skype meeting with a journalist, head of RPA, who fled the country for fear of personal safety.

⁵⁰ Ibid.

⁵¹ On at least two occasions, the Delegation received information on how Bujumbura is awash with rumors and how Burundians tend to exaggerate. Meeting with the Mayor and heads of the various districts of Bujumbura, Bujumbura.

3.3 Human rights violations and other abuses from the time of the elections until the conclusion of the Delegation's visit to Burundi – militarization and escalation phase

70. Despite calls from regional and international bodies for extension of the election timeline, the electoral timeline was set only with minor adjustments. While the electoral calendar was adjusted a number of times, after the 31 May communiqué of the EAC summit requesting a postponement of the elections, the new dates for the various elections were 29 June for the communal and legislative elections; 15 July for the presidential elections which was later pushed to 21 July; and 24 July for the senatorial elections.
71. The electoral process particularly the campaign and the voting created its own dynamics that aggravated and gave new dimensions or manifestations to the on-going crisis and the incidents of human rights violations. Both the electoral campaign and the voting process were seriously hampered by various acts of violence. Opposition leaders and candidates as well as their supporters were subjected to intimidation and harassment including notably through arbitrary arrests by government security forces. From 25 April to 8 May, OHCHR reported that 16 members of MSD and Agathon Rwaso FNL supporters were arrested and detained for 'insurrection'.⁵² On 23 May, 10 Abibenga Mizero y'Abarundi members, including candidates, were arrested in Ngozi Province. As the election date approached, 17 opposition parties, including FRODEBU, declared on 26 June their plan to boycott the elections on account of acts of intimidation and lack of an even playing field.
72. While protests and riots had declined, in one incident on 5 June in Musaga district of Bujumbura one person was shot and killed when police opened fire on people attempting to stage a protest. At the time police started to use live ammunitions, those protestors involved in acts of violence such as throwing stones did not pose the kind of immediate danger to life warranting resort to use of fire arms.
73. One notable development of this stage of the crisis was that grenade attacks became more frequent. Three people were injured on 18 June in a

⁵²The Report of the Secretary General on Burundi, (July 2015) <http://reliefweb.int/sites/reliefweb.int/files/resources/N1520456.pdf>

grenade attack in down town Bujumbura. On 20 June a series of grenade attacks on police stations on the outskirts of Bujumbura wounded 11 police officers. On the same day a similar attack on a school injured a 15-year old boy. In the deadliest such attack on 22 June grenade attack on a bar in the northern town of Ngozi, the President's hometown, four people were killed and about 27 others sustained injuries. In a similar attack on 25 June in Bubanza Province, five people were injured. On 27 June, unidentified people torched ballot boxes and voting booths in the northeast Ntega district. In the Jade and Kanyosha neighbourhoods of Bujumbura, two separate attacks led to the death of two civilians and one police officer.

74. UNICEF stated that children were among the civilians who became victims of gunshots. The UN agency reported in early July that eight children including a four year old were killed since the beginning of the protests at the end of April 2015. Manifesting the arbitrary use of force in the on-going crisis in Burundi, most of them were shot dead or died from bullet wounds.
75. This escalation of violence hugely affected the ability of Burundians to exercise many of their rights relating to the general elections. Most notably, many Burundians were unable to use their citizenship rights of participating in the management of the affairs of the country through running as candidates or importantly by casting their votes for candidates of their choice. This can be gathered from the low voter turnout in Bujumbura.
76. Similarly, rising insecurity meant that people could not go about their daily lives peacefully and free from fear. Thus, with grenade attacks by unidentified groups and reprisal attacks by security forces stoking fears of further violence during the elections, the number of people fleeing the country also significantly surged. UNHCR reported that the number of refugees reached 127, 000 on 26 June. Manifesting further spike in flow of refugees, this number rose on 30 June to 144, 000 with the result of all of them not being able to participate in the elections and hence exercise their voting rights on an equal basis with others.
77. Although the parliamentary elections took place in conditions of relative stability, the security situation continued to deteriorate during the month of July. Indeed, militarization and escalation of violence had become the

mark of the period from July to December 2015. On 1 July 2015, after grenades were thrown at soldiers patrolling in Bujumbura's Cibitoke neighbourhood, soldiers fired shots in the direction of the grenade attack and killed five people. While one soldier died from the grenade attack, among the five killed from the shooting by soldiers were a father and his two teenage sons.

78. Arrest and torture of suspected members of the opposition or persons suspected of being part of the groups attacking security forces also witnessed a surge proportional to the spike in the violence. On 7 July, the UN Secretary General's report on the electoral observation mission in Burundi stated that 'some 307 people have been arrested, including 14 minors. Most of those arrested have been subjected to torture and cruel, inhumane and degrading treatment by security officers (mainly police and intelligence agents'.⁵³ Additionally, those detained were not notified of the charges brought against them, nor were they informed of their rights and speedily brought before a court of law. The Delegation confirmed that many remained in detention for three or more months without charges. According to the Burundi National Human Rights Commission two factors account for the prolonged detention of those arrested during the protests.⁵⁴ The first was the suspension by donors notably Belgium of technical support to the justice sector. The other, perhaps important, factor was the complexity of processing investigations on account of the difficulty of determining who did what in a situation of mass protests and riots.

79. Despite complains of various incidents of violations, the government failed to ensure investigation and prosecution or its response proved slow or inadequate. Senior government officials informed the Delegation that investigations were underway, although others questioned the commitment and capacity for effective prosecution. Indeed, the investigations have as yet to produce prosecution of perpetrators of violations.

80. The Delegation was informed that the most feared security institution the SNR, also commonly known as the 'Documentation', not only keeps its own legally questionable detention centre but it is also blamed for a large

⁵³ Report of the Secretary-General on the United Nations Electoral Observation Mission in Burundi, 7 July 2015,

⁵⁴ Bujumbura, 12 December 2015.

number of cases of violent acts against detainees in its detention centre. It is in that place and in the detention centres of the Judicial Police that most incidents of beatings and other acts of violence against detainees were reported.⁵⁵ The incidence of violent acts includes regular beatings, forcing fingers of detainees into electric currents, and burning the body with acid water. Similar incidents of torture and ill-treatment were reported in the operational command centre of the police known as Chez Ndadaye in Bujumbura.

81. The widespread arrests that government law enforcement agencies undertook in the course of the crisis targeting opposition neighbourhoods also created conditions that undermined the conditions of detention and the operation of the criminal justice system.⁵⁶ While a number of those in detention most notably children have been released, those who remained in detention were not provided with the opportunity to defend themselves and to have their case heard in a court of law without undue delay.⁵⁷
82. A more worrying development was witnessed when armed groups organized from soldiers who defected after the 13 May coup attempt started to engage in major fighting with the Burundian army. In the first such incident on 10 July 2015, gunmen reported to be in large numbers attacked an army post and clashed with Burundian army in Kayanza Province near the border with Rwanda. The following day, similar clashes took place in the Cibitoke province. It was reported that several were killed and more than 100 were arrested during the fighting. According to UNICEF 51 children were among those arrested and charged with 'involvement in armed groups' following fighting in the northern province of Kayanza.
83. During the night of 20 to 21 July 2015, the day the presidential elections were held, gunshots and blasts were reported in Bujumbura. In one incident of violence in the Nyakabiga neighborhood of Bujumbura, a policeman and an MSD activist were killed. On 22 July, individuals believed to be members of the Imbonerakure threw grenade and killed

⁵⁵ According to the Head of the Burundi National Human Rights Commission, 'no similar allegations were received in the ordinary jails'. Bujumbura, 12 December 2015.

⁵⁶ Ibid.

⁵⁷ Delegation was told that Courts have been very slow in dealing with cases of people detained in the course of the crisis. Bujumbura, 12 December 2015 meeting with the National Human Rights Commission of Burundi.

Emmanuel Ndereyimana, a member of the opposition FNL who was organizing protests against the President's bid for a third term.

84. At the end of July the elections were concluded with the ruling party winning 77 of the 100 seats in parliament and the President winning the presidential race with 69 % of the votes. The end of the election period did not however usher in a period of stability and an end to the violence and human rights violations. A major development vividly reflecting the escalation and militarization of the crisis was a cycle of assassinations and assassination attempts on all sides of the political divide that became prominent from the beginning of August 2015.

85. In a daring attack on the core of the government's security establishment, on 2 August, General Adolphe Nshimirimana, who headed President Nkurunziza's personal security, was killed together with three bodyguards in a rocket attack in his home neighborhood of Kamenge in Bujumbura. The delegation was informed that this assassination targeting a senior Hutu commander was a strategy to create division in the security institutions along ethnic lines and push the situation into a cycle of ethnic violence.⁵⁸ A Burundian journalist was among those arrested at the scene of the incident and members of the National Intelligence Services beat him for two hours before releasing him. The following day a leading human rights activist Pierre-Claver Mbonimpa, president of the Association for the Protection of Human Rights and Detained Persons, narrowly escaped an apparent assassination attempt. In another assassination incident on 15 August, Jean Bikomagu, chief-of-staff of Burundi's armed forces from 1993 to 1996, was assassinated in a motorcycle drive-by shooting on his way back from church. His daughter was shot and seriously wounded but survived. On 18 August, four supporters of the ruling party were shot and killed in a bar in the volatile neighbourhood of Musaga. On 22 August opposition politician Pontien Barutwanayo was killed. On 11 September, Army chief-of-staff Prime Niyongabo narrowly escaped an ambush. Seven of his bodyguards were killed.

86. In the meantime, eruption of gunfire and explosions became a regular occurrence, and incidents of violence also were concentrated in districts of Bujumbura where much of the protest and riot events were common. In three separate attacks on 2 August 2015 in Cibitoke, Bubanza and Buringa three police and two civilians were reportedly killed. On 6 August two

⁵⁸ Bujumbura, 11 December 2015.

bodies with apparent signs of torture were found in a gutter in Buterere. Police shot and killed two people and injured one in Cibitoke. Indicating a new trend of clashes between security forces and armed elements in Bujumbura's so-called contested neighbourhoods that has become common in the following months, heavy fighting was reported in Jabe and Cibitoke on 9 August with at least one police officer reported injured.

87. With the evolving trends of clashes between security forces and unidentified individuals throwing grenades deepening, attacks and arbitrary arrests of the opposition as well as unlawful killings and abuses continued during September. On 7 September, member of the opposition Union for Peace and Development (UPD) spokesperson Patrice Gahungu was attacked and killed in Bujumbura. On 15 and 16 September, some 100 young men were arrested.
88. Apart from the wave of gun, rocket and grenade attacks that came to affect Bujumbura almost on a daily basis, a number of attacks on police and military posts indicating an emerging armed rebellion were reported throughout September. One such incident was the attack on a military post on 8 September in Kiyenzi. Heavy weapons were reportedly used in the attack. On 27 September mortars were fired on the Presidential Palace.
89. In the so-called contested neighbourhoods of Bujumbura, where much of the violent incidents have become concentrated, clashes during the night and discovery of dead bodies on the streets had become regular occurrences during the following months as well. It was reported that dead bodies found in the morning were either dumped in into ditches or on the roadside. On 3 October, after series of gun fighting and explosions erupted in various neighbourhoods of Bujumbura some eight people were found dead. Rémy Barampama, the head of Ntahangwa district in which Mutakura and Cibitoke told reporters that 'eight people have been killed; six in Cibitoke and two others in Mutakura neighbourhoods. Police officers were also wounded.'⁵⁹ Indicating a recurring pattern of cases of summary executions, in many instances the dead were shot in a short range and often while their hands were tied as was the case with those killed in Mutakura and Cibitoke. In some of the killings, body parts of the victim were butchered. This revealed a level of cruelty on the part of perpetrators and showed complete disregard for sanctity of human life.

⁵⁹http://www.reuters.com/article/us-burundi-politics-idUSKCN0RY0PL20151004?ct=t%28RtoP_Weekly_1_5_June_20156_1_2015%29

90. Incidents of violations of human rights accompanying the violence included arbitrary detention and attacks on civilians. The OHCHR reported 134 killings, more than 90 cases of torture and hundreds of cases of arbitrary arrest and detention since the beginning of the crisis, including 704 arrests in the month of September alone. In addition, nearly 55 cases of summary execution were reported during the month of October 2015.
91. On 14 October, a reprisal attack after grenades were thrown on police led to the death of several people. After the attack on security forces, the police in charge of the protection of institutions - known as the API - stormed into Ngagara neighbourhood and started shooting indiscriminately.⁶⁰ In the process, they shot and killed a camera journalist of the national broadcaster Radio Télévision Nationale du Burundi (RTNB) named Christophe Nkezabahizi and his entire family of three after forcing them out of their house. Regarding the circumstances surrounding the mass murder of the journalist and his family, one account backed by many others reported that the police officers 'ordered the 58-year-old cameraman out into the street and shot him execution-style in front of his wife, two children, and nephew.'⁶¹ The officers also killed the wife along with the two children and the nephew, 'a bullet each to the back of their heads.'⁶² Including the journalist and his family, ten people were killed in the incident. The National Human Rights Commission informed the Delegation that the police perpetrated the extrajudicial killings in retaliation for the attacks on their colleagues and on suspicion that the alleged attack on the police took place in the house of the journalist.⁶³
92. After disappearing on 16 October 2015 in highly suspicious circumstances, Charlotte Umugwaneza, an activist for the opposition Mouvement pour la solidarité et le développement (MSD) party for Cibitoke was found dead in the Gikoma river, the spokesperson for the security forces confirmed on 18 October. In a clash that ensued following attacks by gunmen on security forces in Bujumbura with rocket-propelled grenades and machine

⁶⁰ In a broadcast on the national broadcaster RTNB, deputy police spokesman Pierre Nkurikiye said two officers were kidnapped by "criminals" around 3pm and handcuffed; one of them was killed and the other seriously injured.

⁶¹ http://foreignpolicy.com/2016/01/15/the-last-paper-in-burundi-press-freedom-iwacu/?utm_content=buffer9bbf3&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer

⁶² Ibid.

⁶³ Bujumbura, 12 December meeting of the Delegation with staff of the Commission.

guns, one civilian was killed, while seven policemen, two soldiers and three civilians were also wounded.

93. During the following months, a trend of bodies being discovered in areas other than where they were killed emerged. On December 1, residents discovered three bodies in Mutakura, but did not see any fresh blood nearby. Residents believe the victims were killed during gunfights and explosions in neighbouring Kinama the night before, and then dragged to Mutakura. On December 2, four beheaded bodies were found in the Ntahangwa area of Cibitoke, and it is believed that the execution was carried out in another area of Bujumbura.
94. In a continuing cycle of criminal violent attacks on police by unidentified people and even more criminal retaliatory killings by police, on 5 December police shot and killed J sus Nkurunziza, a 9-year-old boy who lived in the Cibitoke neighbourhood when police started shooting indiscriminately after someone threw a grenade. In a similar incident, on 9 December police killed five people in the same neighbourhood.
95. In this incident, which took place at the 15th Avenue of Cibitoke, a police patrol broke into a house and shot the five men at close range, after forcing them out of the house, and left their bodies on the street. According to one media report, Burundi deputy police spokesman Pierre Nkurikiye told the AFP: 'The five people killed Wednesday were part of a group of insurgents who threw, early in the morning, two grenades towards policemen in the district of Cibitoke, injuring two - one critically.'⁶⁴
96. In apparent increase in the level of brutality by both sides to the conflict, the Delegation was also informed of the brutal killing of a member of the ruling party's youth wing the Imbonerakure named Jacqueline Hakizimana on 3 December 2015. According to the reports that the Delegation received she was raped and murdered – her tongue cut off, her eyes gouged out – while she was leaving a bar in Musaga.
97. One of the reports that the Delegation investigated related to government actions targeting members of civil society and civil society organizations. Most notable of these relate to the decision of the government closing

⁶⁴<http://www.ibtimes.co.uk/burundi-witnesses-say-police-shot-prisoners-point-blank-cibitoke-district-1532549>

down 10 major civil society organizations en mass. The move against these organizations started when the prosecutor general ordered the bank account of these organizations to be frozen. This was followed by the decision of the Minister of Interior closing down all the ten organizations. The grounds, as stated in the decision notifying the closure of the CSOs and communicated to the Delegation by the Minister of Interior, include receipt of funds from western sources to use against the government, leading and organizing protests and riots and collaborating with the plotters of 13 May attempted coup.⁶⁵

98. In the views of the National Human Rights Commission, which advised government to avoid blanket and collective closure of the major civil society organizations, these institutions were being punished for the actions of their individual members.⁶⁶ Given that many Burundians rely on these institutions for seeking justice and redress, their closure resulted in a major vacuum.⁶⁷
99. The most sustained and coordinated armed attack of 11 December and the campaign of mass killings it provoked, which took place while the Delegation was in Bujumbura, marked a high point in Burundi's spiralling violence and escalating human rights violations. From the very early hours of 11 December, heavy fighting involving gun-fire exchanges and big explosions erupted. Unlike previous incidents of fighting, the clashes of 11 December run well into late in the afternoon. In the meeting with Ministers of Interior, Defence and Justice later in the day, the Delegation was informed that the fighting resulted from the armed assault that armed groups launched on three military posts in Bujumbura. Other reports confirmed that heavily armed men attacked four military posts namely, the ISCAM military institute, the military camp in Ngagara, 'Camp de base' in Musaka and the military camp of Kamuha. Although the Minister of Public Security informed the Delegation at close of day on 11 December that 12 insurgents were killed and 21 others were captured, it emerged on the following day that the number of people killed was actually much higher. The following day the spokesperson of the Burundian army reported that the 'final toll of the attacks yesterday is 79 enemies killed, 45 captured and 97 weapons seized'.

⁶⁵ Meeting with Minister of Interior, 13 December 2015. Also see list of suspended organizations and the suspension order in annex.

⁶⁶ Bujumbura, 12 December 2012.

⁶⁷ Meeting with CSO representatives and women representatives.

100. Much of the killings took place after the actual fighting with the armed men was concluded and mostly affected the so-called contested districts, Nyakabiga, Musaga, Mutakura, Cibitoke, Jabe, and Ngagara, some of which were away from where the fighting took place. While the government claimed that the killings took place while security forces were pursuing attackers in 'mopping operations' involving cordon, searches and arrests,⁶⁸ various testimonies and reports established that much of the killings that targeted young men were a result of a campaign for eliminating those suspected of being members or supporters of the armed opposition.⁶⁹ Most were shot dead at close range after having been pulled out from their houses during the door-to-door searches. With access to these districts completely blocked for humanitarian actors including the Red Cross,⁷⁰ on 12 December corpses of the dead were found on the streets and in ditches as well as Ruzizi river. Additionally, the Delegation also received unconfirmed reports of mass graves in a catholic cemetery of Kanyosha, in Bujumbura Mairie and in a cemetery in Mpanda.⁷¹

101. A victim who was receiving medical treatment, whom the Delegation spoke with on 12 December, stated that he was on his way to visit a hospital before going to work when two police officers and two civilians stopped him in Mutakura early in the morning of 11 December. The victim, who said works as a driver, informed the Delegation that the security people asked him for money and when he told them that he did not have enough money in his pocket, they shot him and another man who was also stopped. This, the victim said, happened when the two of them started running to escape from the two police men and the security officers in civilian clothing. According to the victim, the other man died from his injuries, while he sustained injuries on his leg.

102. Although the Delegation was not able to establish the full scope and nature of the violations that took place in the context of the events of 11 December, it learned from subsequent reports that apart from their scale new patterns of violations were also witnessed. According to the UN High Commissioner for Human Rights, in addition to a sharp increase in incidents of enforced disappearances and torture, it documented 13 cases of sexual violence in the course of the search and arrest or so-called

⁶⁸ Bujumbura, 11 December 2015.

⁶⁹ Bujumbura, 12 December 2015.

⁷⁰ Observations of the Delegation and accounts from humanitarian organizations and CSO representatives.

⁷¹ Bujumbura, 12 December 2015.

'mopping' operations. As the Commissioner put it, 'security forces allegedly entered the victims' houses, separated the women from their families, and raped – in some cases gang-raped – them'.⁷²

103. Starting from the 11 of December the attention of the Delegation was also drawn to a number of reports about bodies of those summarily executed in the course of the 'mopping' operations dumped in mass graves. Indicating the large scale and gravity of the mass killings, the Delegation learned from a number of reports the existence of at least nine mass graves in Bujumbura and surrounding areas.⁷³

⁷²<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16953&LangID=E>

⁷³ Ibid; Amnesty International Report, *Burundi: Suspected mass graves of victims of 11 December violence* (16 January 2016); BBC Report, *Burundi attacks: 'Mass graves' found after clampdown* (8 January 2016).

PART IV ANALYSIS AND FINDINGS OF THE AFRICAN COMMISSION

104. The crisis in Burundi started on 26 April 2015 when people in Bujumbura launched protests against the President's candidacy for a third term which they deemed to be contrary to the 2005 Constitution of the Country and the Arusha Accord of 2000, which is the cornerstone of Burundi's one decade of relative peace. From the information gathered during the fact-finding mission and various sources consulted, the African Commission finds that the announcement by the ruling party of the candidacy of the President to run for another term in the presidential elections amid the lack of political consensus on the constitutionality of his candidacy was the trigger of the current crisis.
105. In terms of the causes of the crisis, the Commission is of the opinion that the announcement of the president's candidacy was simply the spark that transformed widely held grievances particularly among the urban youth into the fire that the current crisis has become. Apart from history of violence and impunity, major factors of the crisis include youth unemployment, the real or perceived domination of state institutions by the ruling party and the resultant sentiment of marginalization of other political actors, rising corruption and lack of or poor social services.
106. Given that the Arusha Accord is the foundation for the stability and peace that prevailed in Burundi for the past decade, it is also the view of the African Commission that concerns over full respect of the Arusha Accord is central to the current crisis. Indeed, any act contrary to the Arusha Accord, if done without transparency and national consensus as well as in the absence of inclusive consultative processes, can indeed derail the peace of the country.
107. Unlike previous cases of violence and conflict in the country, the battle lines of the current crisis are not drawn along ethnic lines. Instead, this crisis pits supporters of the President's third term in office against those opposing it. As a Commissioner of the Truth and Reconciliation Commission put it, this crisis is a product of a power struggle between the two camps.⁷⁴ The two camps draw their support base from both the Hutu and Tutsi communities. Both targets and perpetrators of violence from the different camps in the crisis are from both Hutu and Tutsi ethnic groups.

⁷⁴ Meeting with members of the Truth and Reconciliation Commission, Bujumbura.

Despite the escalation of the crisis and the attempts from various sides to push the crisis into taking principally ethnic lines, at the time of the conclusion of the Delegation's mission the crisis remained mainly political.

108. While this crisis is a result of a power struggle between those supporting the president's bid for third term and those rejecting it as unconstitutional, human rights violations has become the most prominent feature of the crisis. As documented and discussed in the foregoing sections, the on-going crisis in Burundi involved multiple violations of human rights and other abuses. Although some incidents of violence were reported to have ethnic motivations, the human rights violations and other abuses have mostly been perpetrated along political lines as well.
109. The African Commission established that both sides of the conflict have been responsible for various human rights violations and abuses. The consultations with the Commission for Inter-Burundian Dialogue, the Truth and Reconciliation Commission, the National Human Rights Commission and the civil society representatives have all pointed out that all sides have been engaged in human rights violations and abuses, although not on the same scale. However, government security forces bear responsibility for much of the violations and abuses.
110. Government security personnel and affiliated groups perpetrated wide range of violations. Not only that these violations were perpetrated repeatedly but also they overtime have become part and parcel of the response of security forces to the violent expressions of opposition to the government. The violations have thus been pervasive and systematic. The manner in which the violations were committed and the range of rights involved have all the marks of series of serious and massive violations referred to under **Article 58 of the African Charter**. At the time the Delegation concluded its visits the scale of casualties was reported to be a minimum of 400 stretching over a period of 9 months. Although this may not be deemed large scale in the wider national level, the form of the violations (dead bodies on the streets and mass killings on 11 December) and their concentration in the so-called opposition stronghold districts of Bujumbura make them serious and massive. The consequences of these violations affected a much larger portion of the society not only in Bujumbura, the epicentre of much of the violence, but also in other parts of the country, resulting in displacement and refugee flows to neighbouring countries.

111. Despite the fact that incidents of violence were reported elsewhere in Bujumbura and other parts of Burundi, various stakeholders told the Delegation that large percentage of the violence have taken place in about 10 per cent of the territory of Burundi. The African Commission established that much of the violence and the human rights violations and abuses were geographically concentrated in about half a dozen or more districts of Bujumbura. According to various sources including information received from the Mayor of Bujumbura and heads of various districts of Bujumbura,⁷⁵ these districts include Buisa, Buterere, Cibitoke, Jabe, Musaga, Mutakura, Ngagara and Nyakabiga. These are districts with significant concentration of members of the Tutsi ethnic group.
112. There are a number of factors that apparently explain why these districts became the main battleground in the current crisis. One such factor is that these districts are among the poorest parts of Bujumbura with large number of unemployed youth.⁷⁶ These are also places where the opposition parties have strong support.⁷⁷

4.1 Analysis and findings on human rights violations and other abuses

▪ The right to non-discrimination and the right to equality

113. Article 2 of the African Charter prohibits discrimination on the basis of, among others, ethnicity and political or any other opinion. Various acts of violence documented in the previous section include arrests, beatings and infliction of physical pain while in detention and killings and assassinations as well as the destruction or closure of media houses were perpetrated against the victims either on account of their political opinion opposing the President's third term or being suspected of belonging to groups holding such view. Since Article 2 prohibits deprivation of rights guaranteed under the African Charter on grounds of holding a political opinion, the African Commission finds acts of violence perpetrated against persons on the basis of their political opinion to be contrary to Article 2 of the African Charter. Similarly, where statements that the government issued or public officials made have the aim or effect of inciting violence or discriminating against individuals on account of their

⁷⁵ Meeting, Bujumbura 10 December 2015.

⁷⁶ Meeting with National Human Rights Commission, 12 December 2015.

⁷⁷ Meeting, Bujumbura 10 December 2015.

ethnic membership, they can be found to be in violation of Article 2 of the African Charter. The African Commission thus finds that statements drawing parallels to the ethnic violence of the 1990s or having the effect of either blaming the crisis or the opposition to the President's third term on members of particular ethnic groups or inciting against members of the Tutsi were contrary to Article 2 of the Charter.

114. Article 3 of the African Charter guarantees the right of equality before the law and the equal protection of the law. This right is incorporated in Article 22 of the 2005 Constitution of Burundi. The right entails that the state applies the same laws to every one under its jurisdiction in the same way and on an equal basis. In this respect, the Delegation noted that while cases involving the opposition were investigated and brought to trial, those implicating state security forces were not followed up with similar diligence. Despite proclamations that investigations were underway to bring to justice security forces implicated in violations, no major prosecution has been launched. The Commission thus finds that such an apparent display of bias in the functioning of the criminal justice system is contrary to Article 3 of the African Charter. Similarly, the Delegation was informed that the ban on demonstrations was applied unevenly. Accordingly, while supporters of the ruling party were allowed to demonstrate at any moment under the protection of state security forces, opposition demonstrations were completely barred and when they happened, they were forced to disperse by security forces including through the use of excessive force. The Commission finds this to be contrary to the right to equality before the law and the equal protection of the law guaranteed under Article 3 of the African Charter.

- *The right to life*

115. While the right to life is enunciated under Article 4 of the African Charter, it is guaranteed under Article 24 of Burundi's Constitution of 2005. Similarly, the Constitutive Act of the AU under Article 3 affirms the sanctity of human life. This right imposes not only the obligation to abstain from acts that deprive the life of a person but also the obligation to investigate and prosecute such acts when they occur. This notwithstanding, various acts of violence documented in the previous section not only displayed utter disregard to the sanctity of human life but also reveal that the right to life is one of the rights that have been grossly and systematically violated.

116. Although law enforcement forces may use force as part of their duty of enforcing the law and order, and protecting the public from violence, such use of force, where it results in death, can be considered as a justifiable limitation on the right to life only if it complies with the requirements of proportionality, necessity and distinction. These requirements prohibit excessive and indiscriminate use of force. Similarly, it is only where there is imminent danger to life of another person or a law enforcement officer and such danger could not have been avoided other than through using firearms that such use of force can be justified. As such, where death results from excessive and indiscriminate use of force or in circumstances where there was no such immediate threat from the victim/s on anyone's life, such use of firearms constitutes violation of the right to life.
117. In the course of the crisis in Burundi, the various instances of violence involving death took place under conditions that were contrary to the right to life. Many of the victims of the reported deaths that took place during the first phase of the crisis were protestors. In these cases, protestors were killed from shots fired by security forces. Given that security forces were using firearms in situations where there was no evidence of protestors or rioters posing threat to anyone's life, the resultant deaths were a result of excessive and indiscriminate use of force and hence contrary to Article 4 of the African Charter.
118. During the second and radicalization phase of the crisis, various incidents of violence resulting in the death of individuals also took place under conditions that make the reported deaths contrary to the right to life. Such is the case for example with respect to the killing in Bumerec Hospital of wounded pro-coup soldiers on their hospital beds for treatment. That security forces were using excessive and arbitrary use of force can also be gathered from the fact that several children including a four year old were among those killed from shots that security forces fired.
119. Unlike the initial phase of the crisis, during which incidents of serious violations of human rights mostly took place in reaction to and in the context of attempting at containing protests and riots, during the militarization phase of the crisis such serious human rights violations as extrajudicial killings have increasingly become systematic and deliberate.
120. More serious cases of violations of the right to life took place during the third phase of the crisis involving militarization and escalation of

violence. During this period, one of the manifestations of the scale of violence was the daily discovery of dead bodies on the streets following overnight security operations by security forces in response to grenades thrown at police. In the various cases documented in the previous section, people were killed not during exchange of fire but in the course of the retaliatory operations that the security forces undertook. In many of these cases, contrary to Article 4 of the African Charter people were held and executed on mere suspicion of being involved in attacks against police or being supporters of the opposition. The case of the summary execution of camera journalist Christophe Nkezabahizi and three of his family members on 14 October is a good example of such cases. In various other cases exhibiting instances of summary execution, the dead were shot at close range and often while their hands were tied.

121. The incidents of 11 December 2015 marked a high point in the escalating violence and the rise to prominence of an atmosphere of illegality in which Burundian security forces perpetrate serious and systematic violations of human rights with no sense of accountability. While the government claimed that the killings took place while security forces were pursuing attackers in 'mopping operations' involving cordon, searches and arrests,⁷⁸ various testimonies and reports established that much of the killings that targeted young men were a result of a campaign for eliminating of those suspected of being members or supporters of the armed opposition.⁷⁹ Most were shot dead in a close range after having been pulled out from their houses during the door-to-door searches. The various incidents of summary executions and the reported discovery of mass graves suggest that security forces were engaged more in a reprisal campaign of mass killings than in legitimate acts of repelling armed attacks.

122. Contrary to the right to life, incidents of assassinations and killings targeting the opposition and human rights activists and public officials and members of the ruling party were documented. From 5 August to 22 September, there were three cases of assassinations against senior members of the government. These include General Adolphe Nshimirimana (2 August), August of Jean Bikomagu (15 August) and Patrice Gahungu (7 September). Similarly there were several assassinations of opposition party members and activists. These include

⁷⁸ Bujumbura, 11 December 2015.

⁷⁹ Bujumbura, 12 December 2015.

the assassinations on 23 May of Zedi Feruzi of UPD and Potien Barutiwanayo of the FNL. There were also attempted assassinations against human rights activist Pierre-Claver Mbonimpa and Army chief-of-staff Prime Niyongabo.

123. While the assassinations and other cases of killings themselves are contrary to the right to life, the failure of the government to undertake proper investigation and prosecute those responsible also constitutes breach of the obligations under Article 4 of the African Charter. Indeed, the emergence of an atmosphere of illegality that the absence of investigation and prosecution created is to blame for the security forces repeated recourse to summary executions and extra-judicial killings with impunity.

- *The right to protection against torture and cruel, inhuman and degrading treatment*

124. Both Article 5 of the African Charter and Article 25 of Burundi's Constitution provide for the right to protection against torture and cruel, inhuman and degrading treatment. Despite the fact that the prohibition of torture is absolute and hence not subject to any limitation, there have been various cases of torture and ill-treatment to which people in various detentions centres were subjected. Over hundred such cases have been reported.

125. The acts of violence to which those in detention or under the custody of security forces endured include regular beatings, forcing fingers of detainees into electric currents, and burning the body with acid water and tying heavy objects on male genitalia. Detainees have also been held in heavily crowded places. These acts that inflict severe physical and mental pain constitute acts of torture and ill-treatment. As such, they constitute violations of Article 5 of the African Charter.

126. These acts of torture and ill-treatment occurred in several places where various security institutions have held people in custody. These include National Intelligence Service (SNR), also known as the 'Documentation', detention centres of the judicial police and the operational command centre of the police.

▪ *The right to liberty and the security of the person*

127. This right, guaranteed under Article 6 of the African Charter and Article 25 of the Constitution of Burundi, seeks to protect individuals from acts that unlawfully restrict personal liberty and cause bodily injury. This right thus bans arbitrary arrest or detention and violence against the physical integrity of persons. In the different phases of the crisis, security forces undertook a campaign of arrests or detention. During the first phase of the crisis, the arrests targeted all persons suspected of participating in the protests. Similarly, in the aftermath of the foiled coup of 13 May, various individuals were arrested on suspicion of engaging in acts supporting the attempted coup.⁸⁰

128. Contrary to Article 6 of the African Charter, many of the arrests notably those made from homes were effected without arrest warrants. Given the scale and methods that were used in arresting and detaining people, as well as justifications thereof (mere suspicion), the African Commission finds on the balance of probability that large number of the arrests were arbitrary and hence contrary to Article 6 of the Charter. On the arbitrariness of the arrest, one witness reported that '[i]t just takes for someone to suspect you are against the third mandate, even if you don't participate in the protests, for you to be arrested.'⁸¹ A further evidence of the arbitrariness of the arrests was the fact that it involved significant number of minors as well. At the time of the visit of the Delegation, the National Human Rights Commission confirmed that more than 58 children were arrested from Cibitoke.⁸² While 7 of these were released, the remaining were in detention charged and convicted for participating in armed insurrection, although they were subsequently transferred to their families following pressure from UNICEF and human rights groups.⁸³

129. The physical injuries that hundreds of individuals sustained from gunshots arbitrarily fired by security forces also constitute violation of the right to security of the person. Similarly, the physical injuries that individuals sustained as a result of being subjected to torture or ill treatment also constitutes violation of Article 6 of the African Charter.

⁸⁰ Meeting with the National Human Rights Commission, Bujumbura, 12 December 2015.

⁸¹ <http://www.ibtimes.co.uk/burundi-hundreds-dissidents-arrested-nkurunziza-carrys-out-relentless-crackdown-1504516>

⁸² Meeting with the National Human Rights Commission, Bujumbura, 12 December 2015.

⁸³ Ibid.

- *The right to fair trial*

130. Article 7 of the African Charter and Articles 38, 39 and 40 of the Constitution of Burundi guarantee the right to fair trial. The various guarantees that the right to fair trial entail were not availed to many of the people put under the custody of state security forces during the course of the crisis. Contrary to Article 7, many individuals were kept in detention for months without being charged or brought before a court of law. The African Commission also finds that the lack of diligence on the part of the criminal justice system including the courts in the timely processing of cases resulted in undue delay contrary to the right to be tried within reasonable period of time. Lack of legal assistance to those without means to defend themselves also deprived them of the right to effective defence.

131. Issues of perceived or real partiality affecting the criminal justice system including the courts have the effect of undermining fair trial rights. Reports of bias in the criminal justice system documented in the previous section have created problems of confidence in the judicial system. Most notably, such perception of bias is prejudicial to the right of the accused to be tried before an independent judicial body. During a consultation with members of women group in Bujumbura, a women representative said that 'there is breakdown of rule of law, the justice system is not working and there is no one to complain to' for abuses.⁸⁴

- *The right to freedom of expression and access to information*

132. Both Article 9 of the African Charter and Article 32 of Burundi's constitution guarantee freedom of expression. In the course of the crisis in Burundi, this is perhaps one of a number of freedoms subjected to various acts of violations. A number of media houses have been forced to close down or suspend their operation or avoid the coverage of certain issues. Contrary to Article 9 of the African Charter, there have been acts of intimidation and interference against various radio stations to force them to censor their broadcasting, limit their special coverage and/or their audience. Many of these independent media houses were targeted for full coverage of the protests or for being suspected of siding with the opposition.

⁸⁴ Bujumbura, 10 December 2015.

133. Similarly, the attacks against and destruction of the offices of various radio stations including Bonesha, RPA, Renaissance, Rema and Radio Isanganiro are also contrary to Article 9 of the African Charter. The continued closure of these radio stations amounts to continued violation of the right to freedom of expression, which also protects freedom of the press.

134. The crackdown against journalists either on account of their position vis-à-vis the third term or for doing their job by reporting on the crisis is also contrary to Article 9 of the African Charter. This has left over hundred journalists either to flee the country or remain in hiding for fear of their lives. Consequently, contrary to Article 9 of the African Charter Burundians' access to diverse sources of information and their ability to disseminate information freely on matters of national importance have become unduly restricted.

- *The right to freedom of association and assembly*

135. While articles 10 and 11 of the African Charter provide for the right to freedom of association and assembly respectively, these freedoms are guaranteed under Article 32 of the Constitution of Burundi. As documented in the previous section, freedom of association was one of the rights most affected by the crisis. A case that exemplifies this was the arbitrary closure of 10 civil society organizations.

136. Various factors establish the arbitrariness of the closure of these organizations and hence the violation of freedom of association guaranteed under Article 10 of the African Charter. First, the grounds specified in the decision notifying the closure of the CSOs such as receipt of funds from western sources are unjustifiable and lack legal basis. Second, the arbitrariness does not only arise from the blanket character of the decision but also from the fact that this was done without due process of the law and on grounds that failed to distinguish the acts of individual members of the organization from that of the organization.

137. Laying down conditions for the exercise of freedom of assembly is not prohibited under Article 11 of the African Charter as long as it is legitimate and justifiable in a democratic system. It was noted that the government imposed sweeping ban on demonstrations. This ban was not however applied even-handedly. Given that it particularly targeted those

opposing the President's third term and that it was not applied on an equal basis, both the ban and its application was contrary to Article 11 of the African Charter.

- *The right to participation in the governance of one's country*

138. Article 13 of the African Charter guarantees the right of citizens to participate in the government of their country. Among others, this entails the right to participate in national elections that are conducted in conditions free from violence. Burundi held general elections during the crisis. As noted in the previous section, contrary to Article 13 of the African Charter, both the electoral campaign and the voting process were hampered by various acts of violence.

139. Both the prevailing environment of insecurity and violence and the boycotting of the elections by the opposition impeded Burundians from exercising their rights. Most notably, many Burundians were unable to use their rights to participate in the management of the affairs of the country under Article 13 of the African Charter including by running as candidates or importantly by casting their votes for candidates of their choice.

- *Other violations and abuses*

140. Other human rights that the crisis affected, among others, include the right to education, the right to health and the right to property. The attacks that affected schools and the closure of schools in parts of Burundi most affected by the violence severely undermined the right to education. Some incidents of violations witnessed in the Bumerec hospital not only constitute violations of multiple human rights including the right to health under Article 15 of the African Charter but also amount to violation of the inviolability of establishments such as hospitals and churches even in times of armed conflict.

141. The violence perpetrated since the beginning of the crisis, the intimidation and harassment by the Imbonerakure and government security forces as well as grenade attacks in civilian areas such as market places and bars have caused insecurity to and destabilized the civilian population. These together with the emergence of an atmosphere of fear

described in the following paragraphs fundamentally negate the right to peace and security guaranteed under Article 23 of the African Charter.

142. While most parts of the country outside of Bujumbura did not witness regular clashes (people in the diplomatic community that the Mission interacted with informed the Delegation that only about 10-15 per cent of the country mostly Bujumbura have been affected by the crisis), not all of the relatively stable parts of the country escaped the insecurity that the crisis created. Thus, people fled into neighbouring countries as refugees not only from areas most affected by the crisis (Bujumbura and surrounding areas) but also these other parts of the country having relative stability.

143. Apart from harassments and threats by Imbonerakure, this is in significant part attributable to the atmosphere of fear and insecurity that rumours have created. As one report pointed out since the start of the crisis Bujumbura has been awash with rumours creating a state of fear and panic.⁸⁵ It further observed that 'even at times of relative 'peace' rumours are a defining characteristic of Burundian culture, especially in Bujumbura.' A number of Burundians that the Delegation interacted with also affirmed this when they described Burundi as a country of rumours and exaggeration.⁸⁶ Some statements referring to the patterns of the ethnic violence that triggered the civil war of 1994 did not help the situation either.

▪ *Sexual violence*

144. While this crisis involved a wide range of violations, sexual violence was not a prominent feature of the acts of violence documented in this report. However, the crisis has not also been free from incidents of sexual violence targeting women. One such case illustrating acts of sexual violence is the rape and brutal murder of Jacqueline Hakizimana on 3 December for her membership in Imbonerakure. Representatives of women group informed the Delegation that security forces undertaking

⁸⁵ Impunity Watch, Briefing note Burundi (May 2015) [http://www.impunitywatch.org/docs/IW_Briefing_Note_Burundi_\(12-05-2015\)_EN.pdf](http://www.impunitywatch.org/docs/IW_Briefing_Note_Burundi_(12-05-2015)_EN.pdf)

⁸⁶ Meeting with members of the Bujumbura city administration and members of the newly established Truth and Reconciliation Commission.

disarmament operations have been engaged in abuses against women including rape and mutilation of their bodies.⁸⁷

145. The most notable incidents of sexual violence were reported in the context of the 11 December incidents. These involve cases in which some security forces conducting search and arrest operations forcefully had sexual intercourse with women. The UN reported 13 such incidents of sexual violence including gang rape.

4.2 Victims and Perpetrators

4.2.1 Victims of human rights violations

146. It has already been established that despite the fact that much of the violence has been concentrated in parts of Bujumbura other parts of Burundi did not escape the crisis and the associated insecurity. However, some sections of the people of Burundi bore much of the brunt of the massive human rights violations and abuses perpetrated since the beginning of the crisis at the end of April 2015. These include protestors and young men living in the so-called contested neighbourhoods of Bujumbura, children, human rights activists and members of civil society, journalists, members of opposition groups, other civilians and members of the security forces as well as the ruling party.

147. According to one report in the vast majority of cases (85%) of fatalities the political affiliations of the victims are unknown,⁸⁸ indicating that most victims were civilians. However, as the report suggests, in the limited cases where the victim's affiliation is known, supporters of the ruling party, including the Imbonerakure youth militia and off-duty military and police personnel, are disproportionately represented.

⁸⁷ Meeting with representatives of Burundian Women for Peace and Security, 10 December 2015, Bujumbura.

⁸⁸ <http://www.crisis.acleddata.com/burundi-october-2015-update/>

- *Demonstrators (real or perceived) against the third term turned opponents of the government in power*

148. Information gathered during the fact finding mission and various other sources reveal that the human rights violations that took place during the first and second phases of the crisis mostly targeted people who participated in or suspected of participating in the protests. According to testimonies that the Delegation received, young men constitute the majority of victims.

149. Violations of the right to life from unlawful use of firearms by security forces affected protestors and those caught in the fire while police and other security forces used live ammunition to suppress demonstrations and riots. Similarly, protestors and young men who are actual or perceived supporters of the opposition constitute the main victims of acts of torture, other arbitrary arrests and detentions.

150. The fact that protestors and young men who are actual or perceived supporters of the opposition were among the main victims of human rights violations is not a total surprise. This is because this is the section of the population at the forefront of the protests against the President's bid for a third term.

- *Activists, opposition party members and journalists*

151. Women, politicians, media organs, activists or members of civil society organizations were also targeted. Members of women groups informed the Delegation that they were living in a climate of perpetual fear apart from being targeted either for their political affiliation or their professional work as journalists or human rights activists.

152. The Delegation was informed of several emblematic cases that illustrate acts of violence against persons opposed to the third term or supposed to be. These include Zedi Feruzi, chairperson of the Union for Peace and Democracy (UPD); an eminent human rights defender Pierre-Claver Mbonimpa, who was a victim of an assassination attempt on 3 August 2015; Patrice Gahungu, spokesperson of the UPD opposition party shot on Monday 7 September by unidentified individuals when he was returning home in the Gihosha neighbourhood(north of Bujumbura); WelliNzitonda, son of Pierre-Claver Mbonimpa, who was said to have

been found dead on 6 November 2015, a few hours after having been arrested by the police.

- *Third-term activists and supporters as well as senior officials and members of the Imbonerakure*

153. Various acts of violence directed at activists and supporters of the third-term, senior officials and members of the youth wing of the ruling party Imbonerakure were reported to the Commission's delegation. Although the identity of the perpetrators of these targeted violations remains unknown, they are blamed on the opposition.

154. Indeed, the Delegation was informed of the rape and very brutal assassination of a certain Jacqueline Hakizimana, for belonging to the youth wing of the ruling party. The Delegation also received information on targeted attacks against politicians and important personalities of the system supporting the authorities in power. This is the case of the assassinations of General Adolphe Nshimirimana, Colonel Jean Bikomaguon and General Prime Niyongabo.

155. According to information shared with the Delegation, there were about 39 police officers killed, and 318 wounded, including 9 permanently disabled, as a result of their wounds.

▪ *Civilians*

156. The violence and acts of human rights violations also affected the civilian population who were not engaged in the activities of either side of the conflict. This is due in part to the fact that many incidents of violence took place in civilian populated areas. In part, it also manifests the occurrence of indiscriminate use of force both by security forces and unidentified armed opposition members.

157. These cases were observed during grenade attacks in public places such as Bujumbura market or bars, where simple passers-by were wounded or killed.

4.2.2 *Perpetrators of Violations*

- *State actors: government security forces*

158. All persons contacted by the Delegation blamed much of the violations on government security forces. The sections of the government security forces suspected of perpetrating violations including extrajudicial killings, arbitrary arrest and torture include the SNR, Burundi National Police Force (PNB), and, to a lesser extent, the army. The SNR, on its part, is mentioned in cases of torture and cruel, inhuman and degrading treatment as well as cases of arbitrary detentions and abductions.

159. The role of the army in perpetrating violations was very limited. It was largely confined to the time of the coup.

160. According to interviews, the PNB was in the frontline in the violent repression of demonstrations, and continues to commit violations of human rights, such as infringements on physical integrity, arbitrary arrests, summary executions, abductions and infringement on property rights, etc. Two units of the PNB, namely the Police charged with Protection of Institutions and the Judicial Police were identified as being most active in the commission of violations.

- *Non-state actors - Imbonerakure*

161. The African Commission received information that attributes various acts of abuses and violence to the youth wing of the ruling party, Imbonerakure. They are also blamed for some of the killings against opposition figures or assassinations against activists as well as for intimidations against the civilian population despite government claim to the contrary.

162. The Imbonerakure were also reported to have been playing key part in many of the security operations during which security forces perpetrated various human rights violations and other abuses. Members of the Imbonerakure operated as part of government security forces wearing police uniforms. Reports indicate that they were involved in arrests or searches in conjunction with the regular police, under the cover of police-population collaboration.

- *Non-State actors - Demonstrators and members of the opposition in contested neighbourhoods*

163. The African Commission finds that protestors and members of the opposition in the contested neighbourhoods have been engaged in some of the acts of violence amounting to human rights abuses. There is evidence that young men supporting the opposition are responsible for installing roadblocks in many of the districts that witnessed the most violence.

164. By violently opposing the security forces and causing damage to public and private property, the demonstrators went beyond their right to demonstrate and committed violations that constitute an offence.

165. By operating as vigilante and blocking the ordinary operation of law and order, those running roadblocks started to apply their own laws, including acts infringing on the fundamental rights of the population, like freedom of movement, the right to security of the person, property rights and others. Members of women group that the Delegation met reported that these groups have also been engaged in extortion, intimidation and other abuses in the neighbourhoods under their control.

- **Non-state actors - unidentified armed groups**

166. The changes in the nature of violence witnessed during the second and third phases of the crisis reveal the emergence of unidentified armed groups. These groups, referred to by the Burundian regime as “insurgents”, “terrorists” or “criminals” have carried out some of the most violent attacks in the course of the crisis. It was the attack that they launched against three military bases that led to the most deadly violence witnessed on 11 December 2015. Grenade attacks witnessed at various times and places including in some public places have also been blamed on these identified groups.

167. It is these groups that subsequently declared the establishment of an armed rebellion against the government.

4.3 Recommendations

168. Against the background of the Commission’s findings and analysis on human rights violations and other abuses and following the terms of

reference of the Fact-finding Mission, this sub-section outlines policy recommendations covering various areas of intervention.

169. With respect to bringing an end to the human rights violations and other abuses as well as the violence, the African Commission

- a) Underscores the need for securing cessation of all acts of violence to stop the continuing bloodshed and acts of human rights violations and other abuses;
- b) Urges the government of Burundi to publicly demand law enforcement forces to completely desist from the use of violence as the instrument of choice against people who oppose or are suspected of opposing the government and from retaliatory acts of violence;
- c) Emphasizing that the current crisis cannot be solved through the use of violence, urges opposition groups to renounce violence as a means of securing political objectives or expressing opposition;
- d) Calls on all regional and international actors with influence on the opposition to put pressure on the armed opposition to end attacks;
- e) Demands all Burundian actors particularly political leaders to completely avoid the use of rhetoric and political discourse that stocks hatred, incites violence and further exacerbates the crisis;
- f) Demands Burundian authorities to take all necessary measures to create conditions of trust that promote dialogue among the protagonists of the crisis.
- g) Urges the government of Burundi to ensure that the National Human Rights Commission of Burundi, the African Union human rights monitors and military observers, civil society organizations and the media are able to regularly investigate, document and report on all acts of violence, human rights violations and other abuses irrespective of its source without impediment; and
- h) Deems it necessary that, apart from strengthening AU human rights monitors and military observers, an international police

mission is deployed for, among others, supporting the maintenance of public order and ensuring protection of people in those areas most affected by violence and which continue to witness it.

170. With respect to additional measures for ensuring protection of human and peoples' rights in Burundi, the African Commission

- a) Urges the Government of Burundi to reverse the collective closure of the 10 civil society organizations that play key role in the promotion and protection of human rights in Burundi;
- b) Calls for the reopening of the various independent radios stations that were arbitrarily closed down; and
- c) Expresses the need for its relevant special mechanisms continue to monitor and investigate various human rights issues including extrajudicial killings, arbitrary arrests, acts of torture and the arbitrary ban or restriction of freedom of expression and freedom of association.

171. With respect to the peace process, the African Commission

- a) Calls on the Chief Mediator, the East African Community (EAC) and the AU together with other members of the international community to demand and secure from both the government and the opposition that they halt violence, human rights violations and abuses without any condition;
- b) Urges the Mediator and the EAC to finalize the consultations on the agenda for the talks and the modalities of the conduct of the peace talks and convene substantive peace negotiations;
- c) Requests the parties to the current crisis in Burundi to participate in the peace process in good faith and cooperate with the initiative for peaceful resolution of the crisis unconditionally;
- d) Emphasizes that respect for and full implementation of the Arusha Accord with the participation of all Burundian stakeholders are guaranteed as part of the peace process. It is this important that both the government and the opposition reaffirm commitment for upholding the Arusha Accord until such time that all Burundian

stakeholders agree to an all-inclusive and transparent process for constitutional reform transcending the Arusha Accord;

- e) Underscores the necessity of including the issue of addressing human rights violations as key agenda of the peace process; and
- f) Urges civil society to support through sensitization, advocacy and other appropriate means the efforts of mediation and dialogue processes aimed at restoring final and lasting peace in Burundi.

172. With respect to accountability for violations and national reconciliation, the African Commission

- a) Recommends the establishment of a joint international and regional *ad hoc* mechanism for full investigation/review into all acts of violence perpetrated since April 2015 including the acts of Burundian security forces and other institutions for initiating and implementing accountability processes and required reforms;
- b) Recommends the review of the temporal and substantive mandate of the Truth and Reconciliation Commission to cover the recent events and that the composition of the Commission is revamped to include of independent African personalities;
- c) Recommends the establishment of an independent internationally supported special tribunal in Burundi whose mandates include holding perpetrators of human rights violations and other abuses criminally accountable during the current crisis;
- d) Underscores the need for an independent and joint international investigation into the events of 11 December 2015 and various reports of mass graves found to be in Bujumbura;
- e) Demands to civil society to contribute to the establishment of facts and the determination of responsibilities regarding violations of human rights and others abuses through investigations and an impartial documentation of cases of violation;
- f) Calls on Burundi to fully collaborate with international partners such as the AU, the UN, the EU, humanitarian organizations and

others that provide solutions in support to crisis resolution and cessation of violations of human rights; and

- g) Calls on Burundian authorities to ensure free and uninhibited access to workers of humanitarian organizations operating in Burundi.

173. With respect to institutional reforms and support for social services, the African Commission

- a) Proposes the review of the laws regulating the conduct of state security forces to ensure that state security forces operate in accordance with the rule of law and in full compliance with human rights standards;
- b) Emphasizes the need for independent vetting of members of the SNR and the various components of the PNB in order to remove those who were engaged in acts of human rights violations;
- c) Underscores that all members of the Burundi security forces should receive trainings on human rights and democratic professionalism and such courses should form part of the regular curricula of police and other law enforcement training centres and on-the-job training package of security forces;
- d) Calls on Burundi to put in place a transparent and independent oversight mechanism that reviews daily operations and patrols of its law enforcement personnel, reports on the same and takes actions to ensure that human rights and other standards relating to arrest and use of force are effectively complied with; and
- e) Urges the international community to support the provision of basic services and help the people of Burundi in the effort to prevent socio-economic collapse.