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Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Informe del Relator Especial sobre la situación de los defensores de los derechos humanos relativo a su misión a Burundi

Nota de la Secretaría

La Secretaría tiene el honor de transmitir al Consejo de Derechos Humanos el informe del Relator Especial sobre la situación de los defensores de los derechos humanos relativo a su misión a Burundi del 14 al 25 de noviembre de 2014. Durante esa visita, el Relator Especial se reunió con altos responsables del Estado y con defensores de los derechos humanos.

En su informe, el Relator Especial describe el marco jurídico e institucional para la promoción y protección de los derechos humanos en Burundi, para pasar posteriormente a detallar la situación a la que se enfrentan actualmente los defensores de los derechos humanos en el ejercicio de sus actividades legítimas.

A continuación, el Relator Especial analiza las principales dificultades a que se enfrentan los defensores de los derechos humanos, como la impunidad de que gozan quienes vulneran sus derechos y la falta de protección contra tales vulneraciones, las restricciones ilegítimas al ejercicio de derechos fundamentales, la criminalización, la estigmatización y la capacidad insuficiente de los actores de la sociedad civil y la falta de coordinación entre ellos. El informe concluye con la formulación de recomendaciones.

El Relator Especial ha actualizado parcialmente el informe a la luz de los recientes acontecimientos políticos y la violencia que se desató a partir de abril de 2015. Sin embargo, es plenamente consciente de que el informe está desfasado dada la evolución de la situación en Burundi, a saber la escalada de violencia que ha sumido al país en el caos y la falta de una respuesta adecuada de la comunidad internacional en el momento de redactarse el informe.

* Publicado nuevamente por razones técnicas el 27 de enero de 2016.



Report of the Special Rapporteur on the situation of human rights defenders on his mission to Burundi*

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* Circulated in the language of submission and English only.

I. Introduction

1. Pursuant to Human Rights Council resolutions 7/8, 16/5 and 25/18, the Special Rapporteur on the situation of human rights defenders conducted an official visit to Burundi from 14 to 25 November 2014, at the invitation of the Government.

2. The purpose of the visit was to assess the situation of human rights defenders in Burundi in the light of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the General Assembly in its resolution 53/144 (hereinafter “the Declaration on Human Rights Defenders”). An examination of the legal framework in the country, institutional policies and mechanisms for the promotion and protection of human rights was of particular importance to this assessment.

3. During his visit, the Special Rapporteur met with the Minister of the Interior, the Minister of Foreign Affairs and International Cooperation, the Minister for National Solidarity, Human Rights and Gender, and the Ombudsman.

4. In addition to visiting Bujumbura, the Special Rapporteur travelled to Ngozi and Rumonge, where he had meetings with the local authorities and a wide range of civil society representatives and journalists. He also met the United Nations country team, including the Resident Coordinator, and members of the diplomatic corps. He would like to thank everyone who took the time to meet with him and share their valuable and important experiences.

5. The Special Rapporteur thanks the Government of Burundi for its invitation and cooperation throughout the visit. He would also like to express his appreciation to the United Nations Office in Burundi for its valuable assistance. Lastly, he would like to acknowledge the hospitality, kindness and generosity of the people of Burundi.

6. The Special Rapporteur’s visit took place during the run-up to the general elections. On 21 March 2014, the National Assembly rejected a constitutional amendment bill that sought to remove any obstacles to the President, Pierre Nkurunziza, standing for a third term of office. The President, however, contended that he had served only one term, from 2010 to 2015. In his view, his first term of office (2005 to 2010) should not be counted, since he had been elected by Parliament pursuant to the Arusha Peace and Reconciliation Agreement, not by direct universal suffrage.

7. The decision by the President to seek a third term of office led to demonstrations breaking out on 26 April 2015 in a climate of violence. The wave of violence, which left hundreds dead, was followed by mass arrests of political opponents and a ban on broadcasting by some radio stations; it also caused more than 100,000 people to flee the country. The presidential elections, initially scheduled for 15 July 2015, were postponed to 21 July 2015 because of the political instability and international criticism. Pierre Nkurunziza was re-elected Head of State on 24 July 2015.

II. Legal framework for the promotion and protection of human rights

A. International level

8. Burundi has ratified 7 of the 10 international human rights treaties and conventions and 4 optional protocols, namely the International Covenant on Civil and

Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the Convention on the Rights of Persons with Disabilities; the Optional Protocol to the Convention against Torture; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

9. Burundi is a signatory to the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. However, Burundi is yet to sign the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Optional Protocol to the International Covenant on Civil and Political Rights; the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

10. Burundi was examined under the universal periodic review in January 2013. During the review 174 recommendations were made, 146 of which were accepted by the Government. The remaining recommendations were rejected by the Government, including 14 relating to freedom of expression and association.

B. Regional level

11. The African Charter on Human and Peoples' Rights, which entered into force on 21 October 1986, was ratified by the Government of Burundi on 28 July 1989. Article 19 of the Constitution of Burundi of 18 March 2005 reflects this human rights undertaking by incorporating the Charter into national legislation.

C. National level

12. In this section, the Special Rapporteur provides observations on national legislation deemed to have an impact on the situation of human rights defenders in Burundi.

1. Constitution

13. The current Constitution was officially adopted on 18 March 2005; it replaced the Post-Transition Interim Constitution, which had been adopted on 20 October 2004. The Constitution imposes a responsibility on the Government to respect and protect human rights and the fundamental freedoms of individuals. It provides that the Government must be so structured as to ensure that it represents all citizens and that it fosters a stable and peaceful environment.

14. The Constitution is based on six fundamental values: the equality of citizens; the right and duty of citizens to live in peace and harmony; the accountability of the Government to its citizens; the equal representation of citizens in the Government and their access to public services; the duty of the Government to encourage reconciliation, to improve the quality of life and to guarantee freedom from fear,

discrimination, disease and hunger; and the separation of powers, the rule of law and the principles of good governance and transparency.

15. According to article 292 of the Constitution, treaties take effect only after they have been duly ratified and subject to their application by the other party in the case of bilateral treaties or, in the case of multilateral treaties, subject to the fulfilment of the conditions laid down therein.

16. The President may propose an amendment to the Constitution, after consultation with the Government. The National Assembly and the Senate may propose an amendment, after a decision of an absolute majority of their respective members. The President may also submit to referendum a proposal to amend to the Constitution that has been accepted by a four-fifths majority in the National Assembly and a two-thirds majority in the Senate. No amendment will be accepted if it undermines national unity, the cohesion of the people of Burundi, the secular character of the State, reconciliation, democracy or the integrity of the territory of the Republic.¹

Constitutional protection of fundamental freedoms

17. The Constitution provides that the rights and duties set out in the Universal Declaration of Human Rights, the international covenants and treaties to which Burundi is party and the African Charter on Human and Peoples' Rights form an integral part of the Constitution. These fundamental rights may not be the subject of any restriction or derogation, except in certain circumstances justified by the general interest or the protection of a fundamental right.

18. The Constitution guarantees fundamental freedoms, including, but not limited to: equality before the law and non-discrimination (arts. 13 and 22); prohibition of arbitrary treatment (art. 23); personal freedom, physical integrity and freedom of movement, and prohibition of torture (art. 25); freedom of expression, religion and opinion (art. 31); freedom of assembly and association (art. 32); the status of fundamental rights (art. 48); and economic, social and cultural rights (art. 52).

19. The Constitution also establishes 13 duties and responsibilities of citizens, including the following: to respect other citizens; to preserve and maintain national unity in accordance with the Charter of the United Nations, as well as peace, democracy and social justice; to protect the State; and to maintain the morals and culture of Burundi.

2. Freedom of opinion and expression

20. According to Article 31 of the Constitution, freedom of expression must be guaranteed and the State must respect freedom of religion, belief, conscience and opinion.

21. However, the Press Act of 4 June 2013 curtails freedom of expression and contains several provisions contrary to the International Covenant on Civil and Political Rights and other international instruments. The Act provides for a broad exception to the right of journalists not to reveal their sources in cases involving national security, public order, defence secrets and the physical or mental integrity of one or more persons. The Act imposes further restrictions on the subjects that journalists may cover. It provides for criminal prosecution in the event of a violation of articles 17, 18 and 19 and the imposition of fines of up to \$US 5,000 on the media for press offences.

¹ Title XIV, articles 297 to 300. Original version available at the following address: www.refworld.org/docid/4c2df0942.html; English translation available at the following address: www.constituteproject.org/constitution/Burundi_2005.pdf.

22. These provisions are contrary to the obligations of Burundi to respect and ensure respect for the right to freedom of expression and access to information under article 19 of the International Covenant on Civil and Political Rights and article 9 of the African Charter, which guarantees the right of every individual to receive information and also to express and disseminate his or her opinions. The above-mentioned provisions restrict the effective enjoyment of these rights.

23. The East African Court of Justice is currently hearing a claim lodged by the Union of Burundian Journalists concerning the Press Act. Although its main provisions have yet to be implemented, the challenge that the Act poses to freedom of the press is one of the factors restricting freedom of expression mentioned in several testimonies received by the Special Rapporteur.

3. Freedom of assembly and demonstration

24. According to article 32 of the Constitution, freedom of association and assembly must be guaranteed, as must the right to form associations and organizations in conformity with the law.

25. Act No. 1/28 of 5 December 2013 regulating demonstrations on the public thoroughfare and public gatherings² contains general wording, notably the term “public order”.

Freedom of assembly

26. According to article 4 of Act No. 1/28, all public meetings are subject to a prior declaration. The declaration must state the full identity of the members of the organizing committee, the date and time of the assembly, its purpose, the number of participants expected and the route planned for the procession or march. The prior declaration must be submitted in writing to the competent administrative authority, which should provide an acknowledgement of receipt. The authority may then decide to postpone or prohibit the meeting if this is “strictly necessary for the maintenance of public order”. The grounds of the decision must be given.

27. According to article 5, the declaration must reach the competent authority at least four working days prior to the scheduled assembly. The competent authority has 48 working hours to formulate and submit any comments and recommendations in writing to the declarant, with acknowledgement of receipt. According to article 6, if in the 48 working hours preceding the start of the assembly the administrative authority has not expressly notified its refusal, the assembly is deemed permitted.

Freedom of demonstration on the public thoroughfare

28. According to article 7 of Act No. 1/28, all processions, marches, public gatherings and, in general, all demonstrations on the public thoroughfare and in public places are subject to a prior declaration. The declaration must state the full identity of the members of the organizing committee, the date and time of the demonstration, its purpose, the number of participants expected and the route planned for the procession or march. According to article 8, the declaration must reach the competent authority at least four working days prior to the date of the gathering. The authority receiving the declaration, which is to be acknowledged upon receipt, should communicate any comments in writing to the organizing committee at least 48 hours before the date of the gathering. It may, if necessary for the maintenance of public order, postpone or prohibit the demonstration.

² Available at the following address: www.justice.gov.bi/IMG/pdf/LOI.pdf.

29. According to article 9, any public gathering or demonstration that fails to meet the requirements of the Act is illegal and punishable.

4. Freedom of association

30. Freedom of association is guaranteed by article 32 of the Constitution. Associations are governed by Decree-Act No. 1/11 of 18 April 1992 on the organization of non-profit-making associations. The Decree-Act contains a number of provisions that are detrimental to the development of associations. These are primarily a lack of clarity concerning the registration process, which at times leads to abuse, since the registration of an association remains at the discretion of the administrative authorities. No remedy is provided for in the event that registration is denied. The text indicates that the competent authorities may deny registration for non-compliance with the conditions stipulated in articles 4 and 5 or when the object of the association is contrary to the law, public order or morality (art. 6). As a result, some associations working on sensitive topics, such as gender identity, may be denied registration for no official reason. Furthermore, there is no fixed deadline for registration by the administrative authorities.

31. Since 2009, consideration has been given to the possibility of amending the Decree-Act with a view, in particular, to making the registration of associations mandatory and modifying the registration process. A bill on the organization of non-profit-making associations is currently before the National Assembly. The bill contains provisions that, if adopted, would hamper the establishment and development of associations and would jeopardize the very principle of freedom of association.

32. The question of the registration or annual renewal of registration thus poses a threat to the survival of certain associations.

33. Article 18 of the bill provides for a very complex registration process. Publication of the order approving registration will be at the association's expense. A certificate of registration, signed by the minister with responsibility for the registration of non-profit-making associations and countersigned by the minister with responsibility for the sector in which the association plans to operate, will be issued as of right prior to the actual establishment of the registered association, at the latter's expense. The certificate will be renewable annually; the terms of renewal will be as specified by order of the minister with responsibility for the registration of non-profit-making associations.

34. Article 30 of the bill also provides for restrictions on the formation of coalitions of organizations. The bill states that non-profit-making associations that are simply declared or registered will be free to form networks, forums, groups or other interactive groups or to form coalitions of similar organizations, permanent or otherwise. Only non-profit-making associations that are subject to the current law will be able to form part of such groups, coalitions or similar bodies. If the bill were passed, these restrictions would violate the freedom of associations to choose their causes and the way in which they operate; they would also disrupt the development of inter-organizational links, which are so beneficial to the vitality of human rights defenders.

35. Article 59 leaves the Ministry of the Interior with considerable discretion to suspend the activities of an association. Without prejudice to other administrative measures, in the event of a breach of public order or State security by an act of a non-profit-making association, an administrative court may, at the request of the public prosecutor's office, in accordance with article 60, order the closure of the association's premises and the suspension of its activities. The ministry with responsibility for the registration of non-profit-making associations may first, of its own motion or on the

request of any interested person, decide to suspend the activities of the association for a period of no more than two months.

5. The Anti-Terrorism Act

36. The fight against terrorism is regulated by Act No. 1/02 on combating money laundering and the financing of terrorism, which was adopted on 4 February 2008. During its consideration of the second periodic report of Burundi on 9 October 2014, the Human Rights Committee raised concerns about the use of anti-terrorism legislation against those who criticize the Government, including human rights defenders and journalists, and restrictions on freedom of assembly. Human rights defenders and journalists have been sentenced to long prison terms as a result of false allegations of “involvement in terrorist acts”.

6. Bill on human rights defenders

37. A law on the protection of human rights defenders was drafted in March 2014 and was due to be presented to national stakeholders later that year. The United Nations Office in Burundi held a series of meetings with human rights defenders about the draft law. It provided support and encouraged human rights defenders and the Independent National Human Rights Commission to give priority to the law and to continue to argue for it. However, it would appear that not much progress has been made because of political pressure and a lack of human resources. Furthermore, the draft law seems to lack certain elements of crucial importance, including in the area of witness protection. The Special Rapporteur considers that the draft law could be improved and that it could offer greater protection. Laws that have been adopted by other countries could serve as a model for Burundi.

38. The Special Rapporteur considers that the lack of a specific legal framework for the protection of human rights defenders could contribute to their vulnerable situation. He believes that the adoption of a national law on their protection could improve their situation, give legitimacy to their work and contribute to an improved and strengthened framework for national dialogue with civil society. The adoption of such a law should be a priority.

III. Institutional framework for the promotion and protection of human rights

A. Independent National Human Rights Commission of Burundi

39. The Independent National Human Rights Commission was established pursuant to Act No. 1/04 of 5 January 2011. It is composed of seven commissioners elected by the National Assembly; it formally commenced operations on 7 June 2011.

40. The Commission is an important tool for consolidating democracy and peace. It is an expression of the will of the people of Burundi themselves and it should be reinforced and strengthened in order to provide it with the means to meet as closely as possible the needs of human rights defenders in Bujumbura and the regions.

41. The Commission should be able to meet the expectations of both the national and international communities in the area of human rights promotion and protection. At the time the mission was conducted, the Commission met the criteria required of a properly functioning national human rights institution, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). It has a broad mandate, which is clearly set forth in the text that specifies its functions, powers, composition and organization,

the duration of the term of office of its commissioners, responsibility sharing, operating resources, etc.

42. Article 4 of Act No. 1/04 sets forth a non-exhaustive list of the functions of the Commission under its mandate of protecting and defending human rights. Among other things, it is responsible for investigating human rights violations, undertaking regular, announced or unannounced visits to all places of detention, preventing torture and other cruel, inhuman or degrading treatment or punishment, combating gender-based violence, referring cases of human rights violations to the public prosecutor's office and providing or facilitating the provision of legal assistance to victims of human rights violations, in particular women, children and other vulnerable persons.³

B. Ombudsman

43. The Ombudsman acts as a mediator and as an observer of the functioning of the public administration. The Ombudsman serves a six-year, non-renewable term of office. He or she is appointed by the National Assembly by a three-quarters majority. The appointment is subject to confirmation by a two-thirds majority in the Senate.

44. The Office of the Ombudsperson hears complaints and conducts inquiries relating to mismanagement and infringements of citizens' rights committed by members of the public administration and the judiciary, and makes recommendations thereon to the appropriate authorities.

C. Truth and Reconciliation Commission

45. On 17 April 2014, the National Assembly adopted Act No. 1/18 establishing the Truth and Reconciliation Commission. The Commission will cover the period from independence in 1962 until 2008, when the last armed group joined the peace process. The Commission has been criticized both nationally and internationally for its lack of independence and the absence of any reference to a judicial mechanism. The Office of the High Commissioner has advised the Government that the Act contains provisions that are not in line with international standards and has noted the lack of inclusiveness of the process that led to the adoption of the law. The Commission will not have prosecutorial powers but will be able to suggest that minor offences be pardoned.

46. Civil society organizations have expressed regret that the recommendations resulting from the 2009 national consultations are not included in the Act. On 23 June 2014, they urged the Speaker of the National Assembly to ensure the inclusiveness of the transitional justice process and the transparent selection of commissioners. They expressed concern that the Act makes no provision for a witness protection unit.

D. United Nations Office in Burundi

47. In 2010, pursuant to its resolution 1959 (2010), the Security Council tasked the United Nations Office in Burundi with supporting the Government of Burundi in, among other things, strengthening the independence, capacities and legal frameworks of key national institutions, in line with international standards and principles. The Office is also responsible for promoting and facilitating dialogue between national actors; supporting mechanisms for broad-based participation in political life; supporting efforts to fight impunity, particularly through the establishment of

³ http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/BDI/INT_CAT_IFN_BDI_18692_F.pdf.

transitional justice mechanisms to strengthen national unity, promote justice and promote reconciliation within Burundian society, and providing operational support to the functioning of these bodies. The Office is further charged with promoting and protecting human rights and ensuring that all strategies and policies have a focus on peacebuilding and equitable growth.

48. The Office completed its Security Council mandate on 31 December 2014.

IV. General situation of human rights defenders

A. General situation of human rights defenders and journalists

49. At his meeting with the Deputy Minister of Foreign Affairs and International Cooperation, the Special Rapporteur was heartened to learn that civil society organizations are very dynamic and that they are partners who provide the Government with great assistance in the area of human rights. Many human rights defenders are supported by the general public and the international community and do good work. The Deputy Minister is satisfied with civil society's efforts to defend human rights. However, in his meetings with defenders, the Special Rapporteur was informed that, since 2010, they have been regarded as political opponents and viewed negatively. During his visit, the Special Rapporteur was struck by defamation campaigns conducted by certain media outlets. Defenders working on sensitive issues, such as corruption and killings, are in particular denounced as being part of the opposition. They are accused of using the title of "defender" in order to undertake other activities, such as fighting for a political cause. For example, Pacifique Nininahazwe, the President of the Forum pour la conscience et le développement (FOCODE), was accused in the newspaper *Ijambo* on 14 November 2014 — while he was in Geneva to testify at the fifty-third session of the United Nations Committee against Torture — of responsibility for war crimes committed in 1995.

50. The defenders that the Special Rapporteur met pointed out that they serve the people, not the opposition or Westerners, and that they are not enemies of the Government. In all his meetings with defenders, the Special Rapporteur was aware of the climate of fear linked to the presidential elections.

51. In the course of his visit, the Special Rapporteur met defenders engaged in promoting and defending civil, political, economic, social and cultural rights. He observed that, because of their legitimate work undertaken for the promotion and protection of human rights, certain categories of defenders are particularly vulnerable, including journalists, lawyers, defenders working on political and economic issues, as well as women defenders and defenders working on the rights of lesbian, gay, bisexual, transgender and intersex persons.

52. The Special Rapporteur noted many cases in which human rights defenders and journalists had been killed, assaulted, forced into exile, arbitrarily arrested, detained, threatened, harassed, stigmatized or defamed in the media. These violations are often attributed to the law enforcement authorities and private actors, in particular criminal gangs and youth militias. The Special Rapporteur was told on several occasions that impunity for these violations was a chronic problem.

53. In some cases, as a result of the work of defenders, members of their families and neighbours are threatened. Consequently, some defenders and journalists working on sensitive issues do not live with their families in order to protect them from possible attacks and reprisals linked to their work. Furthermore, the Special Rapporteur noted that certain women defenders were forced to close down their organizations because of threats made against them and their children. Many women

were also deterred from taking an active part in civil society activities because of the fear of gender-based violence and the impunity associated with attacks against defenders.

54. In Ngozi and Rumonge, the Special Rapporteur was told by defenders that their situation is difficult and that no one dares demonstrate. According to testimony received, the police and the intelligence service monitor their movements. They are subjected to intimidation by police officers and the Imbonerakure (a youth league). They are branded as “enemies of the country”, whose voices must be “silenced”.

55. The Special Rapporteur noted with regret a lack of cooperation among defenders, especially in Bujumbura, and the political motivation of some actors. He also regretted the lack of networks for the protection of defenders of victims of human rights violations and a lack of knowledge of United Nations mechanisms. The defenders that he met agreed that the country’s National Human Rights Commission could help them to work strategically together and that it was important to strengthen national institutions.

56. The Special Rapporteur was disappointed to be informed that defenders working on the rights of lesbian, gay, bisexual, transgender and intersex persons face double discrimination on account of their status and a lack of recognition by civil society. He was told about the verbal and telephone threats, cases of extortion and other types of incidents that they face. Often no action is taken when defenders report these violations to the police, since they are systematically required to state their sexual identity. Furthermore, the defenders of lesbian, gay, bisexual, transgender and intersex persons continue to be stigmatized by their pairs and to be excluded from civil society. This also applies to the Independent National Human Rights Commission, whose human rights defenders claim that it is not open to all members of civil society.

57. The political crisis and the violent disturbances that have occurred since April 2015, following the decision by the President to seek a third term of office, have led to a noticeable worsening of the human rights situation. Although these developments took place after the Special Rapporteur’s visit, it seems important to note here those developments that relate to the situation of human rights defenders in particular, so that the report better reflects the current situation.

58. The Ministry of Justice has established a commission of inquiry tasked with “shedding light on the insurrectional movement that started on 26 April 2015”. While this initiative is to be welcomed, it is regrettable that the Commission has investigated only acts of violence committed by the political opposition and not acts of violence committed by the police against demonstrators. Furthermore, the phrase “insurrectional movement of 26 April” used to characterize the demonstrations and the word “insurgents” applied indiscriminately to all the demonstrators do not appear to capture adequately the events that took place or the peaceful attitude of many of the demonstrators, despite the violence of some and the gradual deterioration of the situation.

59. Moreover, the Commission of Inquiry has resulted in criminal files being opened against many human rights defenders, as the Commission explains in a report published in August 2015. The defenders include Pacifique Nininahazwe, the President of Forum pour la conscience et le développement, Vital Nshimirima, the President of Forum pour le renforcement de la société civile au Burundi, and Armel Niyongere, the President of Action chrétienne pour l’abolition de la torture. As the Commission notes in its report, several arrests have already taken place.

60. According to the non-governmental organization TRIAL (Track Impunity Always), since April 2015, many human rights defenders have been forced to go into hiding following threats made against them. An armed attack on 3 August 2015 that

targeted Pierre Claver Mbonimpa, the President of the Association burundaise pour la protection des droits humains, and left him seriously injured illustrates the very hostile climate for human rights defenders and the increasing threats that they face. Since then, cyberattacks (hacking of websites, e-mail accounts and social networks), physical assaults, telephone threats, arbitrary arrests and the detention and torture of human rights defenders have increased, according to the non-governmental organization East and Horn of Africa Human Rights Defenders Project (EHAHRDP). As at 14 August 2015, at least 118 human rights defenders and journalists were reported by EHAHRDP to have fled the country and to be living in exile.

61. Furthermore, it would appear that the National Intelligence Service and the Burundian National Police might be responsible for acts of torture and ill-treatment committed against a human rights defender and a journalist.⁴ In one instance, a human rights defender, who remained anonymous, was reportedly beaten by police officers at an unofficial police detention centre called “Chez Ndadaye”. The Special Rapporteur wishes to express his deep concern about the many human rights violations reportedly committed against human rights defenders and the prevailing climate of violence.

B. Independent National Human Rights Commission of Burundi

Election of five new commissioners

62. The Special Rapporteur is concerned about reports that, in 2014, two members of the Independent National Human Rights Commission were appointed by a majority of the representatives of the governing party and in the absence of representatives of opposition parties, as this type of procedure does not contribute to the Commission’s effective independence. The two commissioners in question should have been appointed by human rights organizations and women’s organizations. However, the Special Rapporteur expressed his confidence that the President of the Commission would support the new commissioners and provide them with the training that they need to fully discharge their functions.

63. On 23 April 2015, the National Assembly elected five new commissioners to the Commission to replace those who were reaching the end of their four-year term of office. Jean-Baptiste Baribonekeza was elected President of the Commission. In accordance with the Act governing the Independent National Human Rights Commission, the new team put in place by the National Assembly will officially take up their functions after they have sworn their oath of office before the President of the Republic and Parliament.

64. The Special Rapporteur is also concerned about successive reductions in the Commission’s budget. The Act establishes guarantees with regard to the independence of the Commission, including a broad mandate and strong investigative powers. The Government has provided the Commission with a portion of the budget requested. However, additional funding is required to cover operating costs, including transport and communication, and the establishment of regional offices outside Bujumbura.

C. Burundi Bar Association

65. The Special Rapporteur noted with regret that the Bar Association faces restrictions that hamper its work. The Bujumbura Bar Association was banned from holding its General Assembly on 4 February 2014 and a training workshop that it had

⁴ Amnesty International, “Burundi: Torture used to extract confessions and crush dissent”, available at <https://www.amnesty.org/en/latest/news/2015/08/burundi-torture-used-to-extract-confessions-and-crush-dissent>.

organized with the National Council of Bar Associations of France for 18 February 2014, contrary to the provisions of the Act on Public Gatherings.

66. On 4 February 2014, the police prevented the Burundi Bar Association from holding its General Assembly at the White Stone Building in Bujumbura, acting under the orders of the Mayor of Bujumbura. The police reportedly verbally informed the participants that the Mayor required them to provide proof of authorization that the meeting could go ahead, even though such authorization was not necessary because the meeting was neither public nor a demonstration.

67. On 13 February 2014, the Burundi Bar Association informed the Mayor of Bujumbura in writing of a training workshop planned for 18 February and notified him that members of the National Council of Bar Associations of France would be participating in a session on “Deontology and the Procedure for International Transport”. On the day the session was due to take place, 18 February 2014, the police prevented the participants from entering the room and beginning the workshop.

68. The Special Rapporteur was informed that the Bar Association had notified the authorities out of courtesy. According to the Act on Public Gatherings, individuals are not legally required to apply for official approval for private meetings. The only time the organizers of a private meeting need to inform the local authorities is for the holding of a congress by a political party or a general assembly by a non-profit-making organization. As the Bar Association is neither a political party nor a non-governmental organization but a professional association with legal personality, this provision of the Act should not have been invoked.

69. In March 2010, the Government established a bar association at Gitega, consisting of lawyers living in Bujumbura. The Special Rapporteur was informed that this new Bar Association had been established to undermine the Bujumbura Bar Association and that former lawyers who had been removed from the Bar for serious misconduct had joined the Gitega Bar Association. Furthermore, European and other clients have reportedly been advised to retain lawyers who are members of the Gitega Bar.

70. The Special Rapporteur is also gravely concerned about the unfair disbarment of Isidore Ruffykiri, the former head of the Bar Association. Following comments Mr. Ruffykiri allegedly made in a press conference in October 2013, some of which related to the proposed amendments to the Constitution, the Prosecutor-General of the Appeals Court demanded his dismissal.

V. Shrinking space for human rights defenders

A. Violations of freedom of expression and freedom of the press

71. The Special Rapporteur notes with regret that the public authorities attempt to curtail freedom of expression and freedom of the media by accusing the latter of serving the interests of the opposition when they report on events and accounts that call State institutions into question. The Government should instead welcome the presence of a free press and use the information provided in press reports and radio broadcasts to address shortcomings identified in the functioning of the public administration and the actions of politicians called into question.

72. The Special Rapporteur is also concerned about reports of threats and acts of harassment and intimidation against journalists and human rights defenders by the police and the Imbonerakure. The Special Rapporteur deplores the assaults, including at times arrests, and repeated threats made against certain journalists and radio stations covering politically sensitive subjects, such as allegations of arms distribution and

controversial methods of issuing identity cards. The Special Rapporteur was, for example, informed that journalists working in Bubanza had been intimidated and assaulted and that it is impossible for them to live with their families. A journalist who has covered the activities of armed groups was attacked in a bar by youths with clubs. His house was then stoned day and night for two months. Another journalist has taken refuge abroad after grenades were thrown at his house. The Special Rapporteur urges the Government to bring the perpetrators of these acts swiftly to justice so as to ensure that the media can work in an enabling environment. The Government must make every effort possible to protect media professionals from violations as they carry out their crucial work.

73. The Special Rapporteur was told that journalists are now the people's only hope because only journalists dare denounce human rights violations. However, the Press Act, which was drafted without consulting the press, poses a threat to journalists: having to reveal their sources, as required by the Act, would end their careers.

74. The Special Rapporteur wishes to underline that the protection of freedom of expression and freedom of thought is the cornerstone of any free and democratic society. Investigative journalists and a critical press are key actors in preserving the democratic space. Without the freedom to investigate and criticize the authorities, without the freedom to promote public debate, the role of journalists and the media is seriously undermined.

75. A free, independent and sometimes impertinent press, able to expose abuses of power and corruption, is essential to preserve civil liberties and to promote transparency and broad participation in public life.

76. The Special Rapporteur notes a number of serious incidents related to restrictions on freedom of expression in Burundi. A typical case in this respect is that of Pierre Claver Mbonimpa, the President of the Association burundaise pour la protection des droits humains. Prior to the above-mentioned attack of 3 August 2015, he had been arrested on 15 May 2014 following comments he had made on the radio on 6 May 2014 concerning the fact that young men were receiving arms and uniforms and travelling to the Democratic Republic of the Congo for military training. Mr. Mbonimpa was reportedly charged with "endangering the internal security of the State" and "endangering the external security of the State" under articles 579 and 602 respectively of the Criminal Code in connection with the remarks he had made on the radio. He was released on bail on health grounds on 29 September 2014. He was, however, banned from leaving the capital.

77. Another typical case is that of Faustin Ndikumana, the President of Parole et action pour le réveil des consciences et l'évolution des mentalités. He was detained for two weeks in February 2012, following comments he had made to the press after writing to the Minister of Justice asking him to investigate and put an end to corruption in the recruitment of judges. The Anti-Corruption Court found him guilty of making false statements and sentenced him to 5 years' imprisonment and a fine of 500,000 Burundi francs. He was conditionally released on 21 February 2012, but is not allowed to leave the capital.

78. It would appear that freedom of the press has also been adversely affected by the political crisis that broke out in April 2015. Several independent media, including radio stations such as Radio publique africaine, Radio Bonesha and Radio Insanganiro, have been banned from broadcasting for covering the demonstrations, while broadcasts were reportedly jammed in some areas outside Bujumbura soon after the protests began, as indicated, moreover, in the report by the Commission of Inquiry established by the Ministry of Justice. According to the East and Horn of Africa Human Rights Defenders Project (EHAHRDP), many independent radio stations are

no longer currently operating. EHAHRDP further reports that the journalist Jean-Baptiste Bireha was attacked by armed assailants on 23 May 2015, while he was interviewing the leader of the opposition party Union pour la paix et la démocratie, Zedi Feruzi, who was killed in the attack.

B. Violations relating to freedom of assembly and demonstration

79. During his visit, the Special Rapporteur was told that the administrative authority responsible for authorizing peaceful gatherings and demonstrations can ban them on the grounds of maintaining “public order”. Furthermore, the organizers of demonstrations are responsible for the demonstration and the behaviour of all participants; this can act as a disincentive.

80. In the course of his meetings with defenders, the Special Rapporteur heard reports of several cases involving the banning of public gatherings, including demonstrations for the rights of persons with albinism and for International Women’s Day. Furthermore, he was told that the authorities had contacted hotel managers with a view to dissuading them from allowing meetings to take place on their premises.

81. The Special Rapporteur takes note with concern of reports that political parties and other groups have been prohibited from demonstrating in Burundi and that demonstrators have been intimidated and harassed. The Special Rapporteur further notes with concern that, on the basis of the principle of maintaining public order, the authorities, in particular the mayor of Bujumbura, have arbitrarily banned all public demonstrations organized by certain civil society organizations that have been regularly denouncing human rights violations since 2009. By adopting an abusive interpretation of the concept of public order, the authorities in effect curtail freedom of assembly and demonstration in public spaces. The Special Rapporteur recalls that, in administrative law, public order is characterized by good order, security, health and public peace and that the aim of the administrative police should therefore simply be to prevent disturbances of public order, not to seek to stifle any attempt to demonstrate.

82. In some instances when the administrative authorities refuse to grant permission, the organizers go ahead with the demonstration in defiance of the ban. The police then violently crack down on the demonstration using disproportionate force, including tear gas and beatings.

83. A typical case involving restrictions on freedom of assembly and demonstration concerns the Anti-Corruption and Economic Malpractice Observatory (Observatoire de lutte contre la corruption et les malversations économiques). On 2 April 2014, the Observatory sent a letter to the authorities informing them that they were intending to hold a peaceful march on 9 April 2014 to commemorate the fifth anniversary of the killing of the anti-corruption activist Ernest Manirumva. Mr. Manirumva, who was the Vice-President of the Observatory, was killed on 9 April 2009 after investigating several sensitive cases, including allegations of large-scale police corruption and illegal weapons purchases. On 4 April 2014, the mayor of Bujumbura denied the Observatory authorization to march on the grounds that the Prosecutor-General had that day, in a press conference, denounced the attitude of certain civil society organizations that sought to “disorientate justice”. On 8 April 2014, a Burundian civil society group wrote to the Minister of the Interior and questioned the legal basis for the prohibition of the march, including the Mayor’s legal capacity to ban demonstrations. The “Justice for Ernest Manirumva” campaign has repeatedly called for thorough judicial investigations into allegations that senior officials within the security services were implicated in the killing of Mr. Manirumva. Civil society

members working for the “Justice for Ernest Manirumva” campaign have been questioned and intimidated and received anonymous telephone threats.

84. Furthermore, since 2004, Gabriel Rufyiri, the President of the Observatory, has been summoned by the police 33 times and imprisoned 6 times, each time for a period of between 1 week and 5 months. After all his requests to hold demonstrations in Bujumbura were refused, Mr. Rufyiri organized a one-person protest on 26 October 2014, which was stopped by the police.

85. Another typical case is that of the Union of Burundian Journalists, which, in a letter to the Mayor of Bujumbura dated 25 April 2014, informed the authorities of its intention to organize a demonstration on 29 April 2014 to mark World Press Freedom Day on 3 May. The Union had also planned a series of activities that had been organized with the Ministry of Telecommunications, Information, Communication and Relations with Parliament. As required by law, the letter provided details of the march, including the proposed schedule and route. The Union also requested the Mayor to make all necessary arrangements for the police to ensure the security of the demonstration. The journalists planned to assemble in Independence Square before marching to the Maison de la Presse, where they were to launch the official activities to celebrate press freedom. However, on the orders of the Mayor of Bujumbura, a large group of police officers prevented the march from leaving the Square. Subsequently, the Mayor reportedly said in a letter that he had prevented the march from going ahead because it did not comply with the law on public gatherings, without specifying why.

86. More recently, the authorities imposed a blanket ban on demonstrations, even though arrangements had been made to manage public assemblies during the electoral period, according to Amnesty International.⁵ Moreover, the appropriateness of describing the demonstrations of 26 April 2015 as an insurrection and managing them as such — even before the demonstrations had begun, according to Amnesty International⁶ — is questionable, as the Commission of Inquiry established by the Ministry of Justice highlighted in its report. Furthermore, these demonstrations led to a disproportionate and excessive use of force by the authorities, including the shooting of unarmed demonstrators, who themselves were not using force and were, moreover, running away. The police reportedly continued to use live ammunition and tear gas, even when children were present among the crowd. The Special Rapporteur is particularly concerned about these developments.

87. Freedom of assembly and demonstration is a fundamental element in the exercise of democracy and is for this reason guaranteed by the Constitution, in particular through the Universal Declaration of Human Rights and the international human rights covenants, which form part of the Constitution of the Republic of Burundi.

88. The Special Rapporteur recalls that no government should fear peaceful demonstrations and gatherings because there is no better indicator of public opinion. It is always in the interest of the State to authorize peaceful demonstrations and gatherings as a “safety valve” to avoid the use of other undesirable forms of resistance and disagreement.

⁵ Amnesty International, “Human Rights Council should help prevent a human rights crisis in Burundi”. Available at the following address: <https://www.amnesty.org/en/documents/afr16/2439/2015/en/>.

⁶ Ibid.

C. Violations relating to freedom of association

89. A considerable challenge for civil society is its polarization and politicization. It is of concern to the Special Rapporteur that some associations appear to be favoured by the Government because of their political alignment. This has led to certain grievances within the traditionally independent civil society.

90. Another issue of concern in terms of freedom of association is the rights of associations working on the rights of lesbian, gay, bisexual, transgender and intersex persons. No authorized associations are known to be working specifically in this area.

91. The Special Rapporteur is concerned about the possible adoption of the bill on non-profit-making associations, inasmuch as it would allow the Ministry of the Interior to control the registration process for non-profit-making associations and have authority over the appointment of the legal representatives of these organizations. The bill would also restrict the ability of organizations that are already registered under other laws, such as religious groups and trade unions, to form part of any coalition or collective established by a non-profit-making organization.

92. In this regard, the Special Rapporteur wishes to stress that the procedures for registering associations should be simple and free and that freedom of association should extend to unregistered organizations because it should be a matter for each association freely to decide whether or not to register.

93. The Special Rapporteur puts his trust in the Government to ensure that associations will be consulted and listened to on this bill.

VI. Role of the international community in the protection of human rights defenders

94. The Special Rapporteur met with members of the international community and the United Nations country team, including the Resident Coordinator. He commends the role played by these different actors in supporting civil society organizations, in particular those organizations working with human rights defenders.

95. The Special Rapporteur encourages all stakeholders in Burundi to make use of the Declaration on Human Rights Defenders, the European Union Guidelines on Human Rights Defenders and the manual thereon. These instruments are particularly useful tools for the promotion of the role of defenders and their protection.

96. The Special Rapporteur regrets that permanent representations fail to take a sufficiently clear position on certain specific situations experienced by defenders. In his opinion, a common position would carry some weight in the dialogue with the Government and would put no representation at risk.

VII. Conclusions

97. The Special Rapporteur considers that, overall, human rights defenders in Burundi are able to operate freely but in an environment that is not always sufficiently enabling. However, some defenders are subjected to physical assaults, threats and defamation and are forced to live in a difficult environment; this situation has reportedly worsened since April 2015. Significant challenges arise in connection with, in particular, the existing legal framework governing the exercise of basic freedoms, such as the rights to freedoms of opinion and expression, peaceful assembly and association.

98. The Special Rapporteur would like to warn against the use of legislation to regulate, undermine or obstruct the work of defenders. He would like to refer to article 2, paragraph 2, of the Declaration on Human Rights Defenders that calls upon States to adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the Declaration are effectively guaranteed.

99. The Special Rapporteur welcomes the efforts of the authorities to mainstream human rights into the legal and administrative framework. However, he believes that more can be done to raise awareness about the Declaration on Human Rights Defenders and to implement recommendations made by special procedures.

100. The Special Rapporteur appreciates the important role played by the Independent National Human Rights Commission at the time of his mission. However, he is concerned that certain groups of defenders have lost confidence in the Commission. He urges the newly appointed members of the Commission to do their utmost to regain the confidence of human rights defenders and ensure that the Commission is a strong, independent institution capable of credible and impartial scrutiny of the State's human rights obligations.

101. The Special Rapporteur notes that defenders operate in a rather polarized environment and believes that more effort is required on the part of the authorities to engage in a genuine and constructive dialogue.

102. In this connection, the Special Rapporteur wishes to make the following recommendations in a spirit of engaging in a constructive dialogue with the authorities and other stakeholders involved.

VIII. Recommendations

103. The Special Rapporteur recommends that the Government of Burundi should:

- **Raise awareness of and disseminate the Declaration on Human Rights Defenders at the domestic level and publicly acknowledge the important role of defenders, thereby fostering a spirit of dialogue and constructive criticism;**
- **Raise awareness of the role of human rights defenders and the importance of their work and establish a policy whereby the State clearly recognizes that their work is essential;**
- **Foster and conduct a constructive dialogue between the authorities and civil society in order to create an enabling environment for human rights defenders and build public confidence;**
- **Ensure that any stigmatization of human rights defenders, whether by public or private entities, such as the media, is discouraged and punished;**
- **Avoid the criminalization of human rights defenders by conducting a thorough review of those laws and regulations affecting the exercise of the rights to freedoms of opinion and expression and of association and peaceful assembly, with a view to bringing these laws into compliance with international standards;**
- **Carefully consider allegations and reports of violence, intimidation, harassment and surveillance on human rights defenders, conduct prompt and impartial investigations accordingly and hold perpetrators accountable,**

including for acts committed during the pre- and post-election periods in 2015;

- Increase knowledge of the human rights standards and practice for law enforcement developed by the Office of the United Nations High Commissioner for Human Rights and improve their application by the police and security forces, including with regard to the proportionate use of force and the role of defenders in the context of demonstrations;
- Promptly investigate all allegations of human rights violations and hold the perpetrators accountable, including in connection with the protests that began on 26 April 2015;
- Take the necessary measures to ensure that independent radio stations in Burundi are able to resume operation and broadcast freely;
- Ensure that judges, prosecutors, lawyers and other relevant officials are systematically trained on human rights standards, including on the recourse of habeas corpus in order to improve its effective use;
- Ensure that the Independent National Human Rights Commission is fully independent and effective, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including by amending the existing provisions to allow public participation in the process to nominate and appoint commissioners. In addition, the Commission must be consulted in processes undertaken to establish human rights protection mechanisms, in particular in the implementation of a programme to protect human rights defenders;
- Ensure that the functioning of the office of the Independent National Human Rights Commission is reviewed in order to strengthen the institution, including by increasing its capacity to process cases and to monitor independently compliance with the recommendations of international and regional human rights mechanisms;
- Provide adequate resources to the Independent National Human Rights Commission. The State party should take the necessary measures to ensure the genuine, full independence of the Commission and to provide it with sufficient resources to enable it fully to carry out its mandate in accordance with the Paris Principles.

104. The Special Rapporteur recommends that human rights defenders should:

- Ensure the dissemination of information about the Declaration on Human Rights Defenders and the role of defenders at the domestic level. In this regard, they should develop a comprehensive strategy on the adoption of national laws on the protection of human rights defenders;
- Strengthen their efforts to lobby the Government to implement recommendations from international human rights mechanisms;
- Strengthen their efforts to maintain a dialogue with the authorities and private actors to facilitate conflict resolution;
- Ensure that the demonstrations that they organize are carried out in a peaceful manner and are properly monitored, and that violations are documented and reported;
- Develop and enhance platforms and networks aimed at promoting and protecting defenders, thereby facilitating local dialogue and coordination among them.

105. Regarding the international community, the Special Rapporteur recommends that:

- The United Nations and the international community should support dialogue and encourage collaboration between the Government and civil society;
- The situation of human rights defenders, in particular the most targeted and vulnerable defenders, should be constantly monitored, and support for their work should be provided in order to allow civil society to operate safely;
- Attacks against human rights defenders should be condemned publically;
- The situation of human rights defenders should be a priority in the dialogue with the Burundian authorities.

106. The Special Rapporteur recommends that diplomatic missions should be familiar with the Declaration on Human Rights Defenders and that European missions should pay due attention to the European Guidelines on Human Rights Defenders and provide support for defenders who may be in need of resettlement.
