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

## Situation of human rights in Burundi

### Report of the Special Rapporteur on the situation of human rights in Burundi, Fortuné Gaetan Zongo\*

#### *Summary*

The Human Rights Council, in paragraph 20 of its resolution 48/16 on the situation of human rights in Burundi, decided to appoint a special rapporteur mandated to monitor the situation of human rights in Burundi, to make recommendations for its improvement and to collect, examine and assess information from all relevant stakeholders pertaining to human rights in Burundi. In paragraph 21 of the resolution, the Special Rapporteur is requested to present to the Council, at its fiftieth session, an oral update on the situation of human rights in Burundi, and to submit to the Council, at its fifty-first session, and to the General Assembly, at its seventy-seventh session, a comprehensive written report.

\* The present report was submitted after the deadline so as to include the most recent information.



## I. Introduction and context of the mandate

### A. General context

1. Since gaining independence, Burundi has experienced cyclical violence characterized by repeated coups d'état, infighting and civil strife.<sup>1</sup> The most significant episodes occurred in 1965, 1969, 1972, 1988, 1991, 1993 and 2015. The 1993 crisis led to the conclusion, under the leadership of Nelson Mandela, of the Arusha Peace and Reconciliation Agreement for Burundi, signed on 28 August 2000 in Arusha, United Republic of Tanzania. This agreement, which entered into force on 1 November 2001, reflected the consensus reached on the nature and causes of the conflict in Burundi and proposed solutions for addressing them, thus laying the foundations for a State governed by the rule of law, sustainable development and a pluralistic and inclusive model of society, characterized in particular by the establishment of a system of equitable representation of ethnic groups within Burundian institutions.<sup>2</sup>

2. In the Arusha Agreement, the Burundian conflict is described as “fundamentally political, with extremely important ethnic dimensions” and as stemming “from a struggle by the political class to accede to and/or remain in power”.<sup>3</sup>

3. According to the Arusha Agreement, the main causes of violence and insecurity in Burundi include:

Impunity of those committing political crimes and human rights violations ... and corruption;

...

Failure to satisfy the basic needs of the citizens as a result of economic underdevelopment and lack of a sound economic policy ... ;

...

The unbridled struggle for power which ... resulted in recourse to violence and the deliberate manipulation of ethnic sentiments as legitimate methods of access to and retention of power;

Lack of respect by certain political actors for the basic normative rules and principles of good governance, particularly those concerning separation of the legislature, the executive and the judiciary, independence of the magistracy, satisfaction of basic human needs and the maintenance of order and security for all;

Lack of respect for the traditions, norms and cardinal principles of the democratic system, including tolerance and respect for the inalienable rights of the human person, especially the right to life;

Non-acceptance of peaceful coexistence, diversity and pluralism as guiding principles of life and the basis of national cohesion, unity and solidarity.<sup>4</sup>

4. Despite restrictions on civil liberties, some progress was seen in 2013 in the area of human rights, with the conclusion of political and electoral agreements and the return to Burundi of exiled opposition members. The year 2014 saw a resurgence of political tensions and impediments to civil liberties. In 2015, protests over Pierre Nkurunziza's candidacy for a third term as President of the Republic,<sup>5</sup> violence and the polarization of political life marred the municipal, legislative, senatorial and presidential elections of June and July 2015,

<sup>1</sup> World Bank Group, *Mémoire économique de la République du Burundi : sortir du cycle de la fragilité pour saisir les opportunités d'une croissance plus inclusive et durable*, p. 3.

<sup>2</sup> 2018 conference room paper of the Commission of Inquiry on Burundi, para. 70, available on the web page of the Commission (<https://www.ohchr.org/en/hr-bodies/hrc/co-i-burundi/co-i-burundi>).

<sup>3</sup> Arusha Peace and Reconciliation Agreement for Burundi, Protocol I, art. 4.

<sup>4</sup> Ibid., Protocol III, art. 2, paras. 5 and 7–10.

<sup>5</sup> The political opposition and several civil society organizations called the mandate illegal, while the Government and its supporters argued that the incumbent President could run again.

and had a direct impact on the situation of human rights, which gradually deteriorated over the course of 2015.

5. On 30 September 2016, by its resolution 33/24 on the situation of human rights in Burundi, the Human Rights Council decided, based on the conclusions of independent experts, to establish a Commission of Inquiry on Burundi.<sup>6</sup> In its first report to the Council, the Commission of Inquiry determined that gross and systematic human rights violations, some of which may constitute crimes against humanity,<sup>7</sup> had been perpetrated in Burundi since April 2015, primarily by State officials at the highest level.

6. At the end of the mandate of the Commission of Inquiry on Burundi, by its resolution 48/16, the Human Rights Council decided on 13 October 2021 to appoint a Special Rapporteur on the situation of human rights in Burundi. In paragraph 20 of its resolution, the Council mandates the Special Rapporteur to monitor the situation of human rights in Burundi, to make recommendations for its improvement, to collect, examine and assess information from all relevant stakeholders, building upon the work of the Commission of Inquiry, to advise the Government of Burundi in fulfilling its human rights obligations emanating from international treaties and to offer support and advice to civil society and to the National Independent Human Rights Commission in executing its independent mandate of promoting and protecting human rights as well as in raising awareness about human rights issues.

7. Resolution 48/16 on the mandate of the Special Rapporteur was adopted under item 4 of the agenda of the Human Rights Council, “Human rights situations that require the Council’s attention”.

### **Methodological approach**

8. The Special Rapporteur is discharging his mandate in accordance with the Code of Conduct for Special Procedure Mandate Holders of the Human Rights Council. He believes it is necessary to form his own opinion of the situation of human rights in Burundi. It is with this in mind that his mission has been based on a road map reflecting the desire to see the Burundian authorities return to the discussion table and establish a framework for open dialogue and cooperation, in order to better highlight the country’s progress and challenges and to support its efforts.

9. Since taking up his duties, the Special Rapporteur has endeavoured to understand the history, sociopolitical situation, legal framework, economy and context of Burundi in order to assess the human rights situation. From this point of view, it appears to be important to understand the root causes of the current situation. To this end, the Special Rapporteur has undertaken to identify opportunities and challenges in order to study ways and means to overcome obstacles to the full and effective protection of human rights.

<sup>6</sup> Human Rights Council resolution 33/24, para. 23. The Commission of Inquiry was assigned the following tasks, among others:

- (a) Conduct a thorough investigation into human rights violations and abuses in Burundi since April 2015, including on their extent and whether they may constitute international crimes, with a view to contributing to the fight against impunity;
- (b) Identify alleged perpetrators of human rights violations and abuses in Burundi with a view to ensuring full accountability;
- (c) Formulate recommendations on steps to be taken with a view to guaranteeing that the authors of these violations and abuses, regardless of their affiliation, are held accountable for their acts;
- (d) Engage with the Burundian authorities and all other stakeholders, in particular United Nations agencies, civil society, refugees, the field presence of the Office of the High Commissioner in Burundi, authorities of the African Union, and the African Commission on Human and Peoples’ Rights, in order to provide the support and expertise for the immediate improvement of the situation of human rights and the fight against impunity;
- (e) Present an oral briefing to the Human Rights Council at its thirty-fourth and thirty-fifth sessions, and a final report during an interactive dialogue at its thirty-sixth session;
- (f) Present its report to the General Assembly and other relevant international bodies.

<sup>7</sup> 2017 conference room paper of the Commission of Inquiry on Burundi, paras. 709 and 710.

10. Not having visited Burundi to date,<sup>8</sup> the Special Rapporteur has based his analyses on official information, government statements, information received from civil society actors and human rights defenders, reports from the diplomatic community, agencies of the United Nations system and international and regional organizations, reports of the Office of the United Nations High Commissioner for Human Rights (OHCHR), reports of the Commission of Inquiry on Burundi, recommendations accepted in the context of the universal periodic review and recommendations made by the treaty bodies and the special procedures.

11. Although this report covers the period from October 2021 to August 2022, the Special Rapporteur analyses some issues of concern that predate the reporting period and continue to have an impact on the situation of human rights in Burundi.

## **B. Cooperation**

### **1. Cooperation with international human rights mechanisms**

12. The Special Rapporteur notes that Burundi issued a standing invitation to the special procedures on 13 June 2013, thus demonstrating its political will to strengthen the protection and promotion of human rights. The submission of the present report affords the Special Rapporteur an opportunity to encourage Burundi to strengthen the framework for dialogue with international human rights mechanisms.

13. The Human Rights Council, in paragraph 22 of its resolution 48/16, called upon the Government of Burundi to cooperate fully with the Special Rapporteur, to grant the mandate holder unhindered access to the country and to provide the mandate holder with all the information necessary to properly fulfil the mandate, in line with the public commitments made by the current administration to advance human rights and re-engage with the international community.

14. Since his appointment, the Special Rapporteur has sent three notes verbales requesting a meeting and one note verbale requesting a country visit to the Permanent Mission of Burundi in Geneva, as well as a note verbale calling for inputs for the preparation of the present report. He also sent a letter calling for inputs for the report to the National Independent Human Rights Commission. All these requests have gone unanswered.

15. The Special Rapporteur participated in the interactive dialogue on Burundi on 29 June 2022, during the fiftieth session of the Human Rights Council, on the sidelines of which he met with the President of the Council, the Permanent Representative of Côte d'Ivoire to the United Nations in Geneva – who is also the Chair of the Group of African States – and representatives of the Permanent Missions of South Africa and Uganda in Geneva. He also met with the Special Envoy of the Secretary-General for the Great Lakes Region, the Permanent Delegation of the European Union in Geneva, the United Nations Resident Coordinator in Burundi, the Ambassador of the United States of America to Burundi, the early warning group for the protection of human rights,<sup>9</sup> the Commission of Inquiry on Burundi and the National Independent Human Rights Commission of Burundi, as well as several civil society organizations.

16. The Special Rapporteur notes with satisfaction that, in accordance with paragraph 23 of Human Rights Council resolution 48/16, OHCHR has provided the mandate holder with assistance and all the resources necessary to fulfil the mandate.

17. Under article 19 of the 2018 Constitution, the rights and obligations proclaimed and guaranteed by duly ratified international human rights instruments are an integral part of the Constitution. Burundi has ratified or acceded to seven of the core international human rights conventions, namely the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International

<sup>8</sup> A request to visit the country has been sent to the Permanent Mission of Burundi in Geneva; the Special Rapporteur is awaiting an invitation from the Burundian authorities.

<sup>9</sup> Composed of representatives of the African Union, the European Union and its member States represented in Bujumbura (Belgium, France, Germany and the Netherlands), Switzerland, OHCHR and agencies of the United Nations system with technical expertise in human rights.

Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child, as well as the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography; and the Convention on the Rights of Persons with Disabilities. Although Burundi acceded, in October 2013, to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it has not yet established a national preventive mechanism. In 2009, the Government abolished the death penalty but did not ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

18. Given the number of cases pending before the Working Group on Enforced or Involuntary Disappearances and the numerous reports of enforced disappearances, the Special Rapporteur encourages Burundi to ratify the International Convention for the Protection of All Persons from Enforced Disappearance. He also encourages Burundi to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. The Special Rapporteur recalls that several initial or periodic reports have yet to be submitted or are still awaiting consideration by the treaty bodies.

19. Burundi has withdrawn from the Rome Statute of the International Criminal Court; however, this withdrawal does not affect the preliminary examination under way in that body since 27 October 2017. Burundi remains a party to the Convention on the Prevention and Punishment of the Crime of Genocide.

20. The first three cycles of the universal periodic review of Burundi took place in December 2008, January 2013 and January 2018. In the third cycle, Burundi received 242 recommendations, of which 125 were accepted. The Special Rapporteur welcomes the preparations under way for his forthcoming visit and expresses his willingness to support the implementation of the recommendations arising from it.

21. The institutionalization of the Standing Committee responsible for drafting initial and periodic reports is a major step forward, both for mainstreaming human rights issues in government action and for the ownership and transfer of national skills. The provision of adequate human, budgetary and material resources, including capacity-building for its members in terms of coordination, monitoring and evaluation, is conducive to the establishment of sustained collaboration with the various international and regional human rights mechanisms.

## **2. Cooperation with the Office of the United Nations High Commissioner for Human Rights**

22. On 28 February 2019, at the request of the Government, OHCHR closed its office in Burundi, thereby ending more than 23 years of support in various areas of human rights protection and promotion. The Special Rapporteur stresses that current national institutions are not, at present, sufficiently equipped to address concerns about the protection and promotion of human rights. In this regard, he encourages the Government to reconsider its decision and allow the reopening of an OHCHR office in Burundi.

## **II. Notable advances**

23. The Special Rapporteur welcomes the increased participation of Burundi in the meetings of international, regional and subregional bodies, as well as the statements by the President of the Republic, Évariste Ndayishimiye, affirming the intention to reform the judiciary and fight corruption. He also welcomes the authorities' willingness to resume dialogue with regional, subregional and international partners and to improve the country's diplomatic relations with the European Union, Rwanda and the International Organization of la Francophonie.

24. Burundi has launched several investigations and proceedings concerning alleged offences as part of the fight against trafficking in persons. It has convicted traffickers and referred victims for assistance. The country has also institutionalized anti-trafficking training for law enforcement officers.<sup>10</sup> Moreover, the Government adopted Act No. 1/25 of 5 November 2021, regulating migration in Burundi.

25. The implementation of the tripartite agreements on the repatriation of Burundian refugees that Burundi signed with the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Republic of Tanzania, on the one hand, and with UNHCR and Rwanda, on the other, resulting in the gradual return of Burundian refugees, is also to be welcomed, although more support is needed to achieve sustainable reintegration for both returnees and host communities in Burundi, and there have been allegations of ill-treatment that could stir up ethnic tensions.<sup>11</sup>

26. The Special Rapporteur stresses that these advances should be put into practice to improve the living conditions of Burundians.

### III. Human rights concerns

#### A. Civil and political rights

##### 1. Right to life

27. The right to life is enshrined in article 24 of the Constitution of Burundi. The Special Rapporteur notes that reports of the Commission of Inquiry on Burundi and many other sources indicate that numerous violations and infringements of the right to life have been committed since 2015. For example, the 2021 report of the Commission of Inquiry cites findings by Ligue Iteka that corpses have regularly been found in public areas, including near roads and waterways. The local authorities have continued to bury them without seeking to identify the deceased or to investigate the cause of death and possible perpetrators even though most of the bodies present signs of violent death.<sup>12</sup>

28. The State of Burundi has a responsibility to protect all people within its territory. The Commission of Inquiry on Burundi found that arbitrary killings linked to the political crisis had been committed by different components of the defence and security forces, including agents of the National Intelligence Service and the police, in particular specialized units such as the Unit for the Protection of Institutions and the Anti-Riot Brigade, and elements of the army, including the Combat Engineer Battalion (Camp Muzinda), in many cases acting alongside the Imbonerakure,<sup>13</sup> a youth political movement in Burundi affiliated with the National Council for the Defence of Democracy-Forces for the Defence of Democracy (CNDD-FDD), the ruling party. The Commission of Inquiry also determined that executions committed by the Imbonerakure of their own accord were violations of human rights.<sup>14</sup> The Special Rapporteur recommends that the persons concerned be held criminally responsible and that reparation measures be taken.

##### 2. Torture and other cruel, inhuman or degrading treatment or punishment

29. The Special Rapporteur notes that torture is punishable under the Criminal Code, which states that:

Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third

<sup>10</sup> United States, Department of State, *Trafficking in Persons Report*, July 2022, pp. 149–152.

<sup>11</sup> S/2020/1078, annex, para. 28.

<sup>12</sup> A/HRC/48/68, para. 51. See also the 2017–2021 conference room papers of the Commission of Inquiry on Burundi, available on the web page of the Commission ([www.ohchr.org/fr/hr-bodies/hrc/co-i-burundi/co-i-burundi](http://www.ohchr.org/fr/hr-bodies/hrc/co-i-burundi/co-i-burundi)).

<sup>13</sup> 2018 conference room paper of the Commission of Inquiry on Burundi, para. 244.

<sup>14</sup> See conference room papers of the Commission of Inquiry on Burundi, 2017 (para. 284), 2018 (para. 247) and 2021 (paras. 212–213).

person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. ... No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.<sup>15</sup>

30. The Special Rapporteur also notes that a compensation fund for victims of torture is established by articles 289 and 290 of the Code of Criminal Procedure. Literature on the subject regularly mentions physical harm caused by State agents in charge of law enforcement or territorial defence. The Special Rapporteur notes with satisfaction that the legal framework established by Act No. 1/27 of 29 December 2017, amending the Criminal Code, and Act No. 1/09 of 11 May 2018, amending the Code of Criminal Procedure, prohibits such harm. While the legal framework guarantees the implementation of the State's obligations with regard to protection, emphasis must be placed on their rigorous application and on prevention measures. Furthermore, Burundi has acceded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and has therefore agreed to allow the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to visit the country. Despite this obligation, the Subcommittee has not yet visited Burundi.

31. The Special Rapporteur notes that, in the view of the Commission of Inquiry on Burundi, cases of torture or cruel, inhuman or degrading treatment, including sexual violence against both men and women, have primarily taken place at the headquarters of the National Intelligence Service in Bujumbura or in official or non-official detention centres under its supervision.<sup>16</sup> The Special Rapporteur deplores the fact that some victims are still experiencing physical and psychological after-effects. He recalls the recommendation of the Human Rights Committee that the State party should establish an independent mechanism for investigating complaints of torture or ill-treatment at the hands of members of police or security forces or the intelligence services and facilitate the filing of complaints by the victims.<sup>17</sup>

### 3. Arbitrary arrest and detention

32. Arbitrary arrest and detention is the violation most frequently documented by the Commission of Inquiry on Burundi. It has led to many other violations, such as extrajudicial killings, enforced disappearances, cases of torture and cruel, inhuman or degrading treatment, and sexual violence.<sup>18</sup> The Commission of Inquiry has also documented testimonies referring to unofficial places of detention where victims are often subjected to torture or sexual violence.<sup>19</sup> The Special Rapporteur is concerned about the case of the lawyer Tony Germain Nkina, whose five-year prison sentence is reportedly related to his position within the Association burundaise pour la protection des droits humains et des personnes détenues, a civil society organization.<sup>20</sup>

### 4. Enforced disappearances

33. The Special Rapporteur notes that cases of enforced disappearance of political opponents or of Imbonerakure suspected of collaborating with armed opposition groups or

<sup>15</sup> Burundi, Criminal Code, arts. 206 and 210.

<sup>16</sup> 2021 conference room paper of the Commission of Inquiry on Burundi, paras. 114–121, 157 and 170.

<sup>17</sup> [CCPR/C/BDI/CO/2](#), para. 14.

<sup>18</sup> See conference room papers of the Commission of Inquiry on Burundi, 2017 (paras. 356–399), 2018 (paras. 297–335), 2019 (paras. 114–141), 2020 (paras. 169–179) and 2021 (paras. 114–121, 152 and 161).

<sup>19</sup> See conference room papers of the Commission of Inquiry on Burundi, 2017 (paras. 391–394) and 2018 (paras. 257, 274, 335 and 336).

<sup>20</sup> See conference room papers of the Commission of Inquiry on Burundi, 2020 (paras. 169–179) and 2021 (paras. 114–121, 152 and 161).

returnees have been documented by the Commission of Inquiry on Burundi.<sup>21</sup> It has confirmed, for example, that there are reasonable grounds to believe that Marie-Claudette Kwizera, treasurer of Ligue Iteka, and Oscar Ntasano, a businessman, member of CNDD-FDD and former senator and deputy, had indeed been victims of enforced disappearance.<sup>22</sup> The Commission of Inquiry noted that, in many cases, disappeared persons are last seen being taken away by Imbonerakure, following visits during the night by groups of men armed with sticks and sometimes firearms.<sup>23</sup> As of August 2021, the Working Group on Enforced or Involuntary Disappearances had 250 open cases concerning Burundi.<sup>24</sup>

## 5. Dysfunction in the justice system, including the fight against impunity

34. Independence is the cornerstone of the judiciary. In this regard, the Constitution clearly states in article 214 that the President of the Republic, as Head of State, is responsible for ensuring the independence of the judiciary and is supported in this mission by the Judicial Service Commission. The same article also sets out the principle of the independence and impartiality of the judiciary in relation to the legislative and executive branches. Although this principle is set forth, in practice the judiciary is still largely dependent on the executive branch. For example, under article 219 of the Constitution, judges are appointed by the President of the Republic on nomination by the Attorney General, after consultation with the Judicial Service Commission.

35. The remuneration of judges is also controlled and decided by the executive branch. There is a deep and structural dependence of the judiciary that raises doubts about its real independence. The Commission of Inquiry on Burundi noted in 2018 that there were persistent dysfunctions in the justice system and that victims of violations continued to be deprived of effective remedies and subjected to threats and intimidation.<sup>25</sup> Among other things, it noted the absence of a guarantee of security of tenure for judges and the lack of any reference to this principle in the legal framework.<sup>26</sup>

36. The Special Rapporteur notes that some isolated actions were taken to prosecute the perpetrators of human rights violations and abuses, such as the incarceration of Gérard Ndayisenga, an agent of the National Intelligence Service, in the Mpimba prison in December 2021.<sup>27</sup> Nevertheless, he is concerned about selective impunity in the prosecution of alleged perpetrators of serious violations, with priority given to ordinary offences. He emphasizes that the lack of judicial independence has worsened since the political crisis of 2015.<sup>28</sup> According to the Commission of Inquiry on Burundi, the few cases where complaints of serious violations have been filed have rarely led to impartial investigations, and even more rarely to the prosecution and conviction of the perpetrators, which is in itself a violation of the right to an effective remedy.<sup>29</sup> The Commission of Inquiry also stated that there were persistent dysfunctions in the justice system, including corruption, influence peddling, interference by various authorities and members of CNDD-FDD, non-compliance with legal procedures and deadlines, failure to enforce judicial decisions, in particular release orders, and delays in certain proceedings. It also noted that victims of violations continued to be deprived of effective remedies and subjected to threats and intimidation.<sup>30</sup>

37. The Special Rapporteur notes that the Human Rights Committee has recommended that Burundi take all necessary and effective measures to combat impunity by systematically and promptly carrying out impartial, effective investigations in all cases of alleged arbitrary deprivation of the right to life in order to identify and prosecute the suspected perpetrators and, if found guilty, punish them and see to it that the victims' families receive appropriate

<sup>21</sup> 2021 conference room paper of the Commission of Inquiry on Burundi, paras. 162–165.

<sup>22</sup> 2019 conference room paper of the Commission of Inquiry on Burundi, paras. 97–101.

<sup>23</sup> *Ibid.*, para. 108.

<sup>24</sup> [A/HRC/48/68](#), para. 12.

<sup>25</sup> *Ibid.*, para. 54.

<sup>26</sup> 2018 conference room paper of the Commission of Inquiry on Burundi, paras. 471 ff.

<sup>27</sup> Burundi Daily, "Gérard Ndayisenga, un ogre du SNR finit sa course à la prison de Mpimba", 23 December 2021.

<sup>28</sup> 2018 conference room paper of the Commission of Inquiry on Burundi, para. 467.

<sup>29</sup> 2019 conference room paper of the Commission of Inquiry on Burundi, para. 297.

<sup>30</sup> [A/HRC/48/68](#), para. 54.



compensation.<sup>31</sup> In response, Burundi indicated in its third periodic report, received on 8 September 2020, that all allegations of arbitrary deprivation of the right to life known to the administrative, police and judicial authorities were prosecuted, and perpetrators found guilty were sentenced appropriately. However, Burundi acknowledged that some alleged perpetrators of violations of the right to life were able to escape prosecution and conviction because they had not been identified or had fled to other countries or because there had been insufficient evidence.<sup>32</sup> The Special Rapporteur recalls that, during the 2018 universal periodic review, Burundi accepted recommendations aimed at combating impunity and agreed to establish a fully transparent and equitable judicial system, in line with international standards.<sup>33</sup> In this regard, the Special Rapporteur recommends, firstly, the adoption of priority measures to put an end to human rights violations and to provide reparation for the harm caused and, secondly, the implementation of the recommendations of the treaty bodies, the special procedures and the Commission of Inquiry on Burundi.

38. The Special Rapporteur welcomes the tangible results of 11 mobile court hearings held in the Mpimba, Gitega, Ngozi, Rutana, Rumonge and Ruyigi prisons. These hearings, organized to address judicial delays, dealt with criminal and civil cases at the request of the applicants and the courts and prosecutors' offices, with the support of the Government, the Subregional Centre for Human Rights and Democracy in Central Africa and the National Independent Human Rights Commission.<sup>34</sup>

## 6. Transitional justice

39. The Special Rapporteur recalls that, during the third cycle of the universal periodic review, Burundi agreed to ensure that the Truth and Reconciliation Commission properly fulfilled its mandate.<sup>35</sup> He notes the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, on his visit to Burundi,<sup>36</sup> and takes this opportunity to express his agreement with Mr. Salvioli's analysis, which was shared following the official visits to Burundi by his predecessor, Pablo de Greiff, from 8 to 16 December 2014 and in March 2016. The Special Rapporteur stresses the need for Burundi to implement the recommendations made.

40. Mr. Salvioli's report notes that in November 2018, the Government revised the mandate of the Truth and Reconciliation Commission to cover the period from 26 February 1885 to 4 December 2008. The Commission exhumed human remains from mass graves in Kamenge dating back to the 1993–1996 crisis, as well as the remains of 6,032 victims, mainly people killed during the 1972 massacres in Ruvubu, Karuzi province. In mid-July 2020, the Chairman of the Commission announced that the remains of over 10,000 people had been exhumed.<sup>37</sup>

41. Mr. Salvioli's report also points out that the Truth and Reconciliation Commission has been criticized for focusing primarily on the excavation of sites dating back to the 1972 massacres, the main victims of which are known to have been members of the Hutu ethnic group, and for including few victims of Tutsi ethnicity in its investigations. While acknowledging the progress made by the Commission in identifying and exhuming the remains of thousands of people, Mr. Salvioli recalled the need to ensure ethnic balance in the investigations. He noted with concern the reported political affiliation of Commission members with CNDD-FDD.<sup>38</sup>

42. The Special Rapporteur recalls that truth commissions must not only be independent but also be seen as such by the stakeholders in the consolidation of peace and reconciliation. He regrets the failure to make headway on other aspects of the transitional justice agenda,

<sup>31</sup> CCPR/C/BDI/CO/2, para. 13.

<sup>32</sup> CCPR/C/BDI/3, para. 54.

<sup>33</sup> A/HRC/38/10/Add.1, para. 7; and A/HRC/38/10, para. 137.146.

<sup>34</sup> National Independent Human Rights Commission, *Rapport annuel d'activités : exercice 2021*, February 2022, pp. 30–31.

<sup>35</sup> A/HRC/38/10/Add.1, para. 7; and A/HRC/38/10, para. 137.143.

<sup>36</sup> A/HRC/48/60/Add.2, annex, paras. 4–12.

<sup>37</sup> Ibid., para. 9.

<sup>38</sup> Ibid.

particularly accountability, reparations, land restitution and security and justice sector reform.

## 7. Rights to freedom of expression and association and to peaceful assembly

43. The Commission of Inquiry on Burundi and the Human Rights Committee were able to identify obstacles to the exercise of the freedoms of expression, association and peaceful assembly. With regard to the infringement of the right to freedom of expression, for example, the Commission of Inquiry noted that the Government had taken measures to loosen restrictions on the press, but that these measures, which were more symbolic than structural, could not effectively or durably guarantee freedom of information and expression.<sup>39</sup>

44. With regard to freedom of peaceful assembly, the Commission of Inquiry on Burundi found that opposition political parties and even trade unions had difficulty holding meetings. In fact, they were either refused permission or the meetings, when they could be held, were disrupted.<sup>40</sup> Numerous restrictions were imposed on meetings and rallies of the opposition party *Congrès national pour la liberté*, its offices were ransacked and its militants were harassed by members of the *Imbonerakure*.<sup>41</sup> The Special Rapporteur is concerned about the numerous abuses committed by the *Imbonerakure* during the political crisis that has affected Burundi since 2015 and recommends that the perpetrators be systematically brought to justice.

45. According to the Commission of Inquiry on Burundi, opposition political parties often have to meet secretly for fear of persecution by law enforcement and the *Imbonerakure*. It also received testimonies from people who were forced to participate in meetings organized at the local level by CNDD-FDD or members of the *Imbonerakure*, particularly meetings to raise awareness about the revision of the Constitution.<sup>42</sup>

46. The Special Rapporteur encourages the Government to ensure that all violations against political parties and trade unions are thoroughly and impartially investigated.

## B. Economic and social rights

47. The political crises in Burundi have long had a direct impact on the population's enjoyment of economic and social rights. The Arusha Agreement identified the failure to satisfy the basic needs of the citizens as one of the causes of violence in Burundi.<sup>43</sup> The World Bank has noted that since gaining independence in 1962, Burundi has been caught in a fragility trap. According to the Bank, a combination of political, institutional, economic, demographic and environmental factors has held back the country's growth and created fragility. Weak governance and public institutional capacity have limited the appropriate allocation of resources. The Bank adds that economic fragility is endemic in a country where employment remains centred on subsistence farming and the public sector.<sup>44</sup>

48. The World Bank also notes that between 2006 and 2014 Burundi experienced a period of positive growth, which was interrupted by the 2015 crisis.<sup>45</sup> After the Arusha Agreement was signed in August 2000, leading to the stabilization of the country and the holding of elections in 2005, economic growth in Burundi accelerated to an average of 4.3 per cent per year from 2007 to 2014. The budget deficit decreased to an average of 3.4 per cent of gross domestic product, and inflation was brought under control. The World Bank memorandum points out that the 2015 political crisis interrupted a decade of growth and development. According to estimates from the Institute of Statistics and Economic Studies cited in the

<sup>39</sup> A/HRC/48/68, para. 25.

<sup>40</sup> 2018 conference room paper of the Commission of Inquiry on Burundi, para. 449.

<sup>41</sup> A/HRC/48/68, paras. 35 and 36.

<sup>42</sup> 2018 conference room paper of the Commission of Inquiry on Burundi, para. 450.

<sup>43</sup> Arusha Peace and Reconciliation Agreement for Burundi, Protocol III, art. 2.

<sup>44</sup> World Bank Group, *Mémoire économique de la République du Burundi : sortir du cycle de la fragilité pour saisir les opportunités d'une croissance plus inclusive et durable*, executive summary, p. i.

<sup>45</sup> *Ibid.*, p. ii.

memorandum, real gross domestic product fell by 0.4 per cent in 2015 before beginning to recover.<sup>46</sup>

49. The 2015 crisis had a particularly significant impact on the allocation of sufficient resources for the implementation of certain rights. Table 1 shows the proportion of the State budget allocated to social sectors for the period 2020–2023.

Table 1  
**Percentage of the State budget allocated to social sectors**

	2020/21	2021/22	2022/23
Health	13.6	13.4	9.6
Education	19.6	20.6	14.8
Water, hygiene and sanitation	0.9	2.1	1.5
Social protection	12.1	12.2	9.0
Child protection	2.3	2.3	1.7

*Source:* United Nations Children’s Fund (UNICEF), “Analyse des allocations budgétaires des secteurs sociaux 2022/2023 – UNICEF Burundi, Politique sociale et plaidoyer”, July 2022, p. 3.

## 1. Right to education

50. Education is a fundamental right, as provided for in article 13 of the International Covenant on Economic, Social and Cultural Rights. In Burundi, significant efforts have been made by the authorities, with support from their technical and financial partners, to ensure free primary education<sup>47</sup> and to increase the number of schools.

51. The Special Rapporteur notes that during the third cycle of the universal periodic review Burundi agreed to pursue its efforts to eliminate discrimination in education against girls, children with special needs, internally displaced persons, refugees, children of the Batwa minority and children with albinism.<sup>48</sup>

52. The Commission of Inquiry on Burundi noted that the total resources allocated to the Ministry of Education, Higher Education and Research had fallen by 18.2 per cent in the budget laws adopted between 2015 and 2018. It attributes this decline to the significant decrease in external aid (-95.7 per cent), which was not offset by the increase in internal resources (+16.7 per cent) over the same period.

53. After 2015, school enrolment at all levels of the education system fell for the first time in a decade, from 70.13 per cent in 2014/15 to 65.59 per cent in 2015/16. Meanwhile, the primary school dropout rate increased from 7.86 per cent in 2014/15 to 9.70 per cent in 2015/16.<sup>49</sup>

54. Between September 2015 and April 2016, the National Federation of Associations Engaged in Child Protection recorded 115,193 cases of children who dropped out of school throughout Burundi. This number reportedly increased to 218,345 cases during the period 2016/17.<sup>50</sup> With the support of external funding, school meals programmes have been implemented in an attempt to address the high dropout rates across the country, which in most cases are due to poverty and the need to earn a living.

55. The dropout rate is particularly high among girls. Girls’ access to education has been further hindered by discriminatory measures recently introduced by the Government, such as the refusal to allow girls whose hair is not short enough to sit examinations, and measures that are not conducive to the education of adolescent mothers.

<sup>46</sup> Ibid., p. 1.

<sup>47</sup> Article 13 (para. 2 (a)) of the International Covenant on Economic, Social and Cultural Rights provides for primary education that is “compulsory and available free to all”.

<sup>48</sup> [A/HRC/38/10/Add.1](#), para. 7; and [A/HRC/38/10](#), para. 137.206.

<sup>49</sup> 2018 conference room paper of the Commission of Inquiry on Burundi, para. 701.

<sup>50</sup> Ibid.

## 2. Right to health

56. The right to health is provided for in article 55 of the Constitution of Burundi. Act No. 1/012 of 30 May 2018 on the Code for the Provision of Health Care and Services in Burundi describes, in chapter 2, the guiding principles of the national health policy. It provides for all measures aimed at enabling Burundians to achieve the highest attainable standard of health. Health-care expenditure accounts for 13.6 per cent of the total State budget for the period 2021/22; this is still below the 15 per cent target set in the Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases. It is clear that the State budget is heavily dependent on external resources and donors, with 89.1 per cent of the budget consisting of funds from these sources.

57. In 2015, the Committee on Economic, Social and Cultural Rights made several recommendations in this regard to the State in its concluding observations on the initial report of Burundi,<sup>51</sup> including the allocation of sufficient resources to the health sector and the continuation of efforts to guarantee the accessibility, availability and quality of health services, in particular in remote rural areas. It further recommended that the State upgrade its primary health-care infrastructure and ensure that hospitals have the necessary medical personnel and essential supplies and drugs. The suspension of external aid has seriously affected access to health care. Outbreaks of cholera and malaria continue to occur, with weak infrastructure and institutional capacity.

58. The Special Rapporteur welcomes the initiatives carried out by the Government, the United Nations system and various technical and financial partners in the fight against the coronavirus disease (COVID-19) pandemic in Burundi.

## 3. Right to food

59. The Special Rapporteur welcomes the efforts made by the Burundian authorities to curb the spread of Rift Valley fever virus, which has affected livestock since April 2022.

60. However, Burundi faces a number of serious challenges in ensuring access to healthy food, including factors related to weather conditions, access to water and land, trade with neighbouring countries, migration flows (both economic and climate-related), the workforce and the impact of climate change on soil fertility.

61. The ongoing crisis in Ukraine is having a considerable impact on growth in Burundi and is increasing speculation and inflationary pressures, especially for basic foodstuffs. Global food prices have increased since 2021, owing primarily to the effects of the COVID-19 pandemic. In the context of a situation that was already gradually deteriorating, the impact of the ongoing conflict in Ukraine is likely to result in a further increase in food prices in Burundi. The price of natural gas has risen since the beginning of the conflict, directly inflating the cost of producing fertilizer; this increase, in turn, is passed on to consumers through higher retail prices for fertilizer and, ultimately, for food. Fuel shortages in recent weeks have also inflated the market prices of basic commodities.

62. The Special Rapporteur encourages the Government to invest more in local food systems to make them more resilient to external and internal shocks through the transformation of key value chains (corn, beans, palm oil, wheat, nuts, etc.).

## 4. Right to work

63. The Special Rapporteur notes that the rights recognized in article 6 of the International Covenant on Economic, Social and Cultural Rights have been incorporated into the domestic legal system of Burundi. One of the most recent texts to this effect is Act No. 1/11 of 24 November 2020, amending Decree-Law No. 1/037 of 7 July 1993 amending the Labour Code.

64. The Special Rapporteur commends the Government of Burundi on this advancement, as the Act incorporates several conventions of the International Labour Organization (ILO).

<sup>51</sup> E/C.12/BDI/CO/1, paras. 52, 54 and 56.

However, he stresses the need for its effective implementation in order to eliminate discrimination in access to employment.

65. The Special Rapporteur stresses that the fight against youth unemployment must be intensified in order to address their exploitation by political actors. The Commission of Inquiry on Burundi has also noted, since 2015, a series of obstacles to the right to work, including the persistent politicization of recruitment and employment, as well as obstacles to trade union rights, which are guaranteed *inter alia* by article 8 of the International Covenant on Economic, Social and Cultural Rights. That article sets forth the right of everyone to form trade unions and join the trade union of his or her choice, while specifying that the exercise of this right may be subject only to such restrictions as are prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.

66. Article 150 of the Constitution of Burundi states that “no official of the public administration or of the State judiciary may receive preferential treatment or be subjected to biased treatment solely on the basis of his or her sex, ethnic and regional origin or political affiliation”. However, as early as 2008, a study conducted by the Ministry of Good Governance, Privatization, General Inspection of the State and Local Administration showed that, in the public sector, appointments were not made on the basis of objective criteria. In the education system, for example, 84 per cent of sector officials said that managerial appointments were made on the basis of political criteria.<sup>52</sup> Another 2008 study conducted by the Government and the World Bank noted that “politicizing the civil service weakens the effectiveness of the public administration and is a barrier to the recruitment of highly qualified personnel”.<sup>53</sup>

## C. Specific rights

### 1. Women’s rights

67. The Special Rapporteur welcomes the measure to apply a quota under which women must account for at least 30 per cent of the members of Burundian political institutions in order to guarantee their participation in political life. However, he highlights the need to better equip them in order to ensure their effective participation in public administration.

68. Regrettably, cases of sexual violence have reportedly been perpetrated by Imbonerakure in rural areas.<sup>54</sup> The Special Rapporteur is also concerned about the situation of women in places of deprivation of liberty. Many of them are incarcerated for crimes related to abortion, an act most often linked to pressure from the sociocultural context, which tends to discriminate against and stigmatize single mothers.<sup>55</sup> Since induced abortion is banned under Burundian legislation,<sup>56</sup> the Special Rapporteur recommends that the authorities improve access to information and amend legislation to permit medically assisted abortion and bring national legislation into line with international and regional commitments to eliminate all discriminatory charges that violate the rights of women.

69. The Special Rapporteur stresses that land disputes are another ground on which women have been imprisoned.<sup>57</sup> While the Constitution of Burundi recognizes the right of

<sup>52</sup> Burundi, Ministry for Good Governance, Privatization, General Inspection of the State and Local Administration, *Étude diagnostique sur la gouvernance et la corruption au Burundi : rapport d’enquête*, May 2008, p. 10.

<sup>53</sup> World Bank and Government of Burundi, *Republic of Burundi: Public Expenditure Management and Financial Accountability Review (PEMFAR)*, report No. 42160-BI, June 2008, p. viii.

<sup>54</sup> 2021 conference room paper of the Commission of Inquiry on Burundi, paras. 157 and 201.

<sup>55</sup> OHCHR, “Pour la dignité de la femme en prison – Burundi: Note de plaidoyer sur la situation de la femme en milieu carcéral” (For the dignity of women in prison – Burundi: advocacy report on the situation of women in prison), November 2016.

<sup>56</sup> Burundi, Criminal Code, arts. 528–534.

<sup>57</sup> OHCHR, “Pour la dignité de la femme en prison – Burundi: Note de plaidoyer sur la situation de la femme en milieu carcéral” (For the dignity of women in prison – Burundi: advocacy report on the situation of women in prison), November 2016.

everyone to own property, customary law does not grant women the right to land ownership, thus increasing their vulnerability.

70. Moreover, the vast majority of women in prison do not have a lawyer and are thus at a disadvantage during legal proceedings. As a result, many defendants have not had their cases reviewed by a judge. Unfortunately, in most cases, this is due to a lack of resources.

71. In 2008, the Committee on the Elimination of Discrimination against Women recommended that Burundi take the necessary measures to ensure that women in detention are systematically separated from men and supervised by gender-sensitive prison staff.<sup>58</sup> The Special Rapporteur reiterates this recommendation.

72. The Special Rapporteur encourages the implementation of actions and policies for the empowerment of women, particularly women and girls with disabilities or albinism, in order to curb the harmful sociocultural practices, prejudices and multiple forms of discrimination to which they are subjected.

## 2. Rights of the child

73. Children account for over half of the population of Burundi. There are several challenges with respect to their protection.<sup>59</sup> In this regard, the Special Rapporteur is concerned about the round-ups organized in Bujumbura, Kayanza, Kirundo and Ngozi and their impact on children's rights.<sup>60</sup> He highlights the need to establish protection mechanisms at the level of *communes* and *collines* (subdivisions of rural *communes*), particularly in planning and budgeting.

74. The Special Rapporteur notes that the climate change-related disasters in Kirundo and the flooding in the provinces of Bubanza, Bujumbura Rural, Cibitoke, Makamba and Rumonge damaged 56 classrooms and 534 hectares of food crops and led to the displacement of 180 households.<sup>61</sup> Alongside the humanitarian agencies of the United Nations system, including the United Nations Children's Fund (UNICEF), he advocates the mobilization of resources to support victims and, in particular, to promote the rights of women and children.<sup>62</sup>

75. The Special Rapporteur stresses the need for disaggregated official data on the situation of children. He also encourages increased protection for girls (access to education, inheritance), children with disabilities, children with albinism, Batwa children, children in prison with their mothers, unaccompanied children and internally displaced or refugee children.

## 3. Humanitarian situation and rights of refugees

76. The Special Rapporteur calls on humanitarian partners to support humanitarian needs in Burundi. Torrential rain, severe flooding and the consequences of the COVID-19 pandemic have led to the displacement of thousands of people. This has had a serious impact on agricultural activities, which have already been affected by the fragile socioeconomic situation, and has exacerbated the decline in economic activity. Moreover, political tensions between the Democratic Republic of the Congo and Rwanda have led to an increase in the number of Congolese refugees and asylum-seekers in a context where natural resources are in a precarious situation.

77. The Special Rapporteur points out that, although Protocol IV of the Arusha Agreement listed the principles and mechanisms to be applied to land issues, there are no mechanisms in Burundian legislation to provide refugees with access to land. Under customary arrangements, they are only given revocable rights, usually to the least desirable

<sup>58</sup> CEDAW/C/BDI/CO/4, para. 26.

<sup>59</sup> See UNICEF Burundi, child protection budget brief 2020–2021, February 2021.

<sup>60</sup> See RFI, "Burundi: 300 personnes, dont 90 enfants de la rue, arrêtés lors de rafles de la police" (Burundi: 300 people, including 90 street children, arrested in police round-ups), 8 July 2022.

<sup>61</sup> UNICEF, Burundi Humanitarian Situation Report No. 1, August 2022.

<sup>62</sup> Fatma Bendhaou, "Burundi: l'UNICEF a besoin de 22 millions USD pour maintenir l'appui aux femmes et aux enfants" (Burundi: UNICEF needs US\$ 22 million to maintain support for women and children), Agence Anadolu, 2 August 2022.



areas of the host territory. If there is pressure in the community, they lose their rights to these already less desirable lands and are thus exposed to violence and to problems in exercising their right to food, as their production is affected. The Special Rapporteur is also concerned about the protection of women's land assets once they return to their original land.

## IV. Other stakeholders

78. Other stakeholders include the National Independent Human Rights Commission and civil society organizations. Human Rights Council resolution 48/16, paragraph 20, recommends that the Special Rapporteur offer support and advice to civil society and to the National Independent Human Rights Commission.

### A. National Independent Human Rights Commission

79. The Special Rapporteur welcomes the fact that the National Independent Human Rights Commission of Burundi, which has a broad mandate encompassing several missions,<sup>63</sup> was reaccredited with A status by the Global Alliance of National Human Rights Institutions. While noting that the Commission enjoys public legitimacy due to its demonstrated ability to defend the rights of vulnerable groups and address the root or structural causes impeding the development of a genuine culture of human rights in Burundi, the Special Rapporteur nonetheless stresses the need to conduct systematic, credible investigations, particularly in the context of enforced disappearances, and to guarantee the Commission's formal and material independence in the fulfilment of its mandate.

80. The Special Rapporteur encourages the Commission to continue to advocate the creation of a national mechanism for the prevention of torture and a reliable complaints mechanism, with a view to the adoption of a law on human rights defenders. He also encourages the establishment of thematic working groups within the Commission in order to boost the coherence and transparency of its interventions on the ground.

### B. Civil society organizations

81. The Special Rapporteur is concerned to note that, among Burundian refugees, distinctions are being made between exiled politicians and civil society activists who were reportedly involved in the 2015 demonstrations and others who left the country as a result of the crisis. The Special Rapporteur believes that this distinction is likely to restrict democratic space.<sup>64</sup>

82. Article 49 of the Constitution of Burundi states that no citizen can be forced into exile. The Special Rapporteur regrets the fact that many human rights defenders are forced to live in exile, with some of them, including women, living in precarious situations.<sup>65</sup> He highlights the polarization that exists among civil society organizations, between pro-Government organizations and organizations opposed to the third term of former President Nkurunziza.

83. The Special Rapporteur notes that human rights organizations operate in a climate of fear of reprisals. Despite the invitation for all Burundians in exile to return home, none of these organizations has yet made a request to this effect due to the lack of measures to ensure their safe return. The human rights organization Ligue Iteka, officially banned since 2017, and other organizations that are not officially recognized have continued to monitor the human rights situation from abroad. The Special Rapporteur recalls that, on 2 February 2021, the Supreme Court made public a verdict dated 23 June 2020 that had found 12 journalists and human rights defenders guilty of undermining the authority of the State, murder and

<sup>63</sup> Burundi, Act No. 1/04 of 5 January 2011 on the establishment of the National Independent Human Rights Commission, art. 4.

<sup>64</sup> [S/2020/1078](#), annex, para. 29.

<sup>65</sup> See DefendDefenders and Coalition burundaise des défenseurs des droits de l'homme, *Between Despair and Resilience: Burundian human rights defenders in protracted exile in Rwanda and Uganda*, September 2018.

destruction of property in the context of the attempted coup d'état of 13 May 2015 and sentenced them to life imprisonment and the payment of more than 5 billion Burundi francs in damages.<sup>66</sup>

84. The Special Rapporteur and the Committee against Torture<sup>67</sup> regret the failure of the Burundian Government to provide information on the investigations carried out since the 2015 crisis. With regard to the attempted murder of human rights defender Pierre-Claver Mbonimpa in August 2015 and the murder of his son Welly Nzitonda in November 2015, the Committee noted that, according to the State party, “the lack of collaboration by the civil party’s representatives is impeding the prompt conclusion of the procedure”; however, these are crimes that can be prosecuted ex officio. The same is true of the murder of journalist Jean-Baptiste Bireha, the murder of journalist Christophe Nkezabahizi and members of his family, and the arrest of Jean Bigiri on 22 July 2016.

85. The Special Rapporteur also regrets the fact that laws on foreign non-governmental organizations and laws on the press limit democratic space and strengthen government control.<sup>68</sup> He also notes with regret the amendments that have been made to laws on the press and organizations, which raise concerns about the independence of these organizations.

86. The Special Rapporteur encourages the Government to ensure that all violations against human rights defenders and journalists are thoroughly and impartially investigated.

## V. Conclusion and recommendations

87. **The Special Rapporteur reiterates his readiness to cooperate fully with Burundi in order to consolidate its efforts to protect human rights. He reiterates his request to visit Burundi and to interact with the relevant authorities and institutions. Such cooperation will allow him to better understand the realities of the country and will demonstrate that Burundi is truly committed to fulfilling its human rights obligations.**

88. **In the light of the foregoing, the Special Rapporteur recommends that Burundi:**

(a) **Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and implement the recommendations made by treaty bodies, special procedures and international human rights bodies, including the Commission of Inquiry on Burundi;**

(b) **Strengthen cooperation in a spirit of constructive dialogue with international human rights mechanisms and, particularly, the special procedures;**

(c) **Allow the reopening of the OHCHR office in Burundi;**

(d) **Hold the State agents involved criminally accountable and adopt reparation measures, including thorough and impartial investigations of violence and abuse by law enforcement officials and members of the Imbonerakure;**

(e) **Strengthen the rule of law and the administration of justice by conducting an assessment of access to justice in Burundi, instituting legal aid programmes and providing capacity-building to judges;**

(f) **Guarantee the independence of the Truth and Reconciliation Commission while ensuring the progress of other pillars of transitional justice, in particular accountability, reparations, institutional reforms through land restitution, and security and justice sector reform;**

<sup>66</sup> See Supreme Court of Burundi, Judgment RPS 100, 23 June 2020.

<sup>67</sup> CAT/C/BDI/CO/2/Add.1, para. 24.

<sup>68</sup> By way of illustration, see Burundi, Act No. 1/01 of 23 January 2017 amending Act No. 1/011 of 23 June 1999 amending Decree-Law No. 1/033 of 22 August 1990 on the general framework for cooperation between the Republic of Burundi and foreign non-governmental organizations, arts. 13, 14 and 18; and Burundi, Act No. 1/19 of 14 September 2018 amending Act No. 1/15 of 9 May 2015 governing the press in Burundi, art. 5 (which provides that no person enjoying immunity may be executive head of a print, broadcast or electronic media company).



(g) Establish a national mechanism for the prevention of torture, respond favourably to visit requests by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and put the compensation fund for victims of torture into operation;

(h) Demonstrate real political will to effectively fight impunity for violations and abuses committed since 2015 while strengthening national mechanisms for the prevention of human rights violations and abuses;

(i) Develop a statute for the judiciary that ensures not only formal independence, but also real independence;

(j) Strengthen the Judicial Service Commission and its powers in the areas of career management and disciplinary matters concerning judges;

(k) Implement the principle of security of judicial tenure;

(l) Put in place safeguards ensuring a fair trial for all those arrested and detained in connection with the 2015 political crisis, and initiate systematic, thorough and independent proceedings in respect of crimes that constitute serious violations of human rights;

(m) Systematically mainstream gender equality as a visible priority in legislation and in policies, programmes and projects at all levels;

(n) Strengthen measures to promote the return and sustainable reintegration of refugees;

(o) Increase investment in local food systems to make them more resilient to external and internal shocks through the transformation of key value chains;

(p) Provide the necessary financial and technical support to civil society, including the media, and to national and international institutions for the protection of human rights in Burundi;

(q) Conduct independent and effective investigations into documented cases of violations and abuses in order to end them and build a climate of trust, tolerance and inclusion;

(r) Guarantee the freedoms of movement, expression, assembly and association and the freedom and integrity of human rights defenders, and end the intimidation and unwarranted prosecution of journalists and members of civil society who are carrying out legitimate work in support of human rights and fundamental freedoms.

89. Finally, the Special Rapporteur recommends that continued efforts be made to guarantee the formal and material independence of the National Independent Human Rights Commission in discharging its mandate and that it be provided with sufficient material, human and financial resources and a reliable complaints mechanism.