



COMMENTS OF THE REPUBLIC OF BURUNDI
ON THE REPORT OF THE UNITED NATIONS INDEPENDENT
INVESTIGATION ON BURUNDI (UNIIB) ESTABLISHED PURSUANT
TO RESOLUTION S-24/1 OF THE HUMAN RIGHTS COUNCIL

I. INTRODUCTION

1. On 9 September 2016, a report by the UN Independent Investigation on Burundi (UNIIB) was communicated to the Republic of Burundi through its Permanent Mission in Geneva.
2. This UNIIB Report was established by three experts pursuant to resolution S-24/1 of the Human Rights Council. In paragraph 17, the Council of Human Rights requested the United Nations High Commissioner for Human Rights “*to urgently organize and dispatch on the most expeditious basis possible a mission by independent existing experts*”.
3. Experts were tasked with “*undertaking swiftly an investigation into violations and abuses of human rights with a view to preventing further deterioration of the human rights situation*” and make recommendations on measures to be taken. The report covers the period from 15 April 2015 to 30 June 2016.
4. Burundi welcomes the efforts made by the United Nations for the protection of human rights in Burundi by sending experts to find out firsthand the reality on the ground.
5. Burundi regrets, however, that the allegations contained in the report of the experts do not reflect the reality on the ground and by this opportunity would like to react by shedding light on some lies conveyed by the report.
6. Burundi expresses concern about the fact that it has become a tradition that reports on it are submitted late without allowing the Government sufficient time to formulate its observations. By the same token, Burundi regrets that the periodicity of the reports is no longer taken into account and considers that it is being harassed by these publications, a tactic that opponents of the Government of Burundi have found to influence decisions by the treaty bodies in their favor. Burundi is convinced that this is a ploy that critics of the democratically elected institutions have found to move the battle on another front, having failed inside the country.

II.

III. GENERAL COMMENTS ON THE REPORT

7. The report itself is unbalanced in terms of sampling of respondents who are mostly opponents to the Government or Burundian refugees in Rwanda, subjects of manipulation by this hostile country to Burundi and having a responsibility in the violence in Burundi.
8. Burundi notes that this report contains serious allegations against its Government, its officials and security services as well as the youth wing of the ruling party, the Imbonerakure. It is clear that this is a biased report in many respects. Those who established this report claim they have interviewed state officials, but it is difficult or even impossible to detect, in this document, the place that was reserved to the information provided by these state officials.
9. The findings presented by this UN investigation, whose impartiality remains to be proven (as its recommendations are almost similar to those of radical opponents) are based mainly on testimony that the experts themselves can hardly assume. What they call "reasonable grounds to believe" does not constitute genuine "evidence" and makes all claims refutable. Moreover, it is surprising that the various armed groups whose names, actions, and violations of human rights and whose leaders are known to all are not included in this report supposed to address the human rights situation in Burundi.
10. What is even more serious and intolerable, is that these experts downplay beyond measure, the role of Rwanda in the crisis that Burundi has just gone through, making a deliberate choice to disregard various reports on the subject, including that of the Group of UN experts on the DRC¹. Drawing such serious conclusions based on interviews is a dangerous and quite revealing shortcut. UNIIB experts argue that Burundi is not a democracy, as they argue for "creating the conditions for a democratic state and the rule of law" and think that "it is not necessary that the situation stabilizes, but it should be reversed." One would therefore wonder what reversal of the situation they are longing for. Indeed, most of the statements in the report are facts from other unspecified reports without motivating the selection criteria for exclusion of other reports, whereas the

¹ See the Letter dated 15 January 2016, Reference S/AC.43/2016/GE/OC.2 – signed by Gaston Gramajo, Coordinator, Group of Experts on the RDC – Resolution of the United Nations Council n°2198 (2015).

mentioned experts have carried out field visits and had the discretion to check all the facts brought to their attention.

11. When any of the thousands of schools of the country is closed and when people are free to go about their daily activities, when international sports events are organized and when open sky concerts are held there until morning, when UN agencies are organizing festivals of Peace and when months go by without weapons crackling, these are not the hallmarks of a country in crisis. These are "reasonable grounds to believe" that the worst is behind us. Some areas of Burundi have certainly known security crisis in 2015, but we must have the honesty to acknowledge changes made although Burundi still faces major socio-economic challenges, which are yet common to many other countries.

12. However, this testifies a serious oversimplification to think that the crisis began in 2015. The origins of this crisis dates after the 2010 elections when the same opponents contested the results of the polls and called for dialogue with the victorious party, the CNDD-FDD. A final report of the Electoral Observation Mission of the European Union² goes that: *"It [the CNDD-FDD] distances itself with all other parties of which the most deserving, the FNL scores just 14.15%. Then follow the UPRONA (6.25%), the FRODEBU (5.43%), the MSD (3.75%), the UPD (2.21%), Frodebu Nyakuri (1.36%) and the CNDD (1.26%). [...]"*

13. The 2010 electoral process was nevertheless welcomed by all national and international observers, describing it as regular, democratic, and even praised by the UN Secretary General, Ban Ki-Moon, in visit to Burundi³. This failure was thus not supported by these losers who thereafter preferred to pull out and begun a broad campaign of intimidation throughout the national territory in order to sabotage the rest of the electoral process. Several local headquarters of the CNDD-FDD were set ablaze in several areas of the country; grenades were exploded in public and private places causing deaths and injuries. Between the local elections in May, the June presidential elections and the parliamentary elections of July in 2010, some observers counted 128 grenade attacks that left 11 dead and 69 injured⁴.

² http://www.eueom.eu/files/pressreleases/other/final-report-burundi-2010_fr.pdf

³ <http://bi.chineseembassy.org/fra/sgxw/t739096.htm>

⁴ <https://www.hrw.org/fr/world-report/2011/country-chapters/259441>

14. After the elections, the violence continued in the province of Bujumbura commonly called Rural and claimed close to a hundred lives. It took President Pierre Nkurunziza to personally make it to this province. He delivered a historic speech and gave the defense and security forces and the justice a two-month ultimatum for this spiral of violence perpetrated by armed gangs to be contained.

15. A United Nations expert report on the Great Lakes Region⁵, published on 29 November 2011, pointed to some Burundian politicians as being behind this destabilization and involved in *"recruitment, arming and supervising these armed gangs"*. Alexis Sinduhije, chairman of the MSD⁶ is among those named individuals and the same individual is among the sponsors of crimes committed during the uprising of 2015. Something this UNIIB report willfully disregards.

16. On the eve of the publication of the United Nations expert report on the DRC, Iwacu newspaper had, in its issue of 28 November 2011, published an exclusive interview with Mr. Alexis Sinduhije. The latter clearly announced that he and his peers would do everything to derail the electoral process of 2015: *"2015 may not be in the scheme of political prospects in Burundi. [...] Unless there is a miracle, we have embarked on a revolutionary process of at least three years and, consequently there is no room for elections"*. He even emphasized that this revolution was to be conducted *"with seriousness and responsibility"* because according Sinduhije, *"preserving the lives of innocent civilians"* should be a necessity⁷.

17. Several attempts to disrupt public order were conducted and rebel factions formed as **FRONABU⁸ - Tabara** (*whose rear base was in South Kivu in the DRC and that would aim, curiously, at a "revolution" in Burundi according to a report by the French channel France 24⁹ at the beginning of December 2011*) and the **FRD¹⁰ - ABANYAGIHUGU** (*led by someone named Kabirigi Pierre-Claver, who launched his first and last attack in November 2011¹¹*).

⁵ <http://ddata.over-blog.com/3/15/38/72//CONSEIL-DE-SECURITE.pdf>

⁶ Mouvement pour la Solidarité et le Développement

⁷ <http://www.iwacu-burundi.org/blogs/rolandrugero/files/2015/01/From-2011-28-11-170712.jpg>

⁸ Front National pour la Révolution au Burundi

⁹ <http://www.france24.com/fr/20111202-burundi-ombre-guerre-groupes-armes-rebellion-tutsi-hutu-president-nkurunziza-reporter>

¹⁰ Forces pour la Restauration de la Démocratie

¹¹ <http://www.rfi.fr/afrique/20111126-une-nouvelle-rebellion-burundi>

18. In this chapter of disturbance of public order, we should recall the uprising of March 8, 2014 organized by the same individual, Alexis Sinduhije, during which police officers were sequestered for several hours and disarmed by young people including children under the influence of drugs. Some activists of civil society and executives of the CNIDH¹² had to intervene to recover these weapons and hand them over to the police¹³. Mr. Sinduhije went at large again and remains under international arrest warrant, while tens of MSD members were arrested and tried according to the law.

19. On 31 December 2014, a few months before the election campaign in 2015, Burundi suffered an armed attack from Rwanda via the eastern DRC¹⁴, in the province of Cibitoke. Indeed, all investigations by the judicial authorities of Burundi pointed to Rwanda. This was confirmed by some young people arrested and others who surrendered later, who claimed to have been trained in Rwanda before being infiltrated into the eastern Democratic Republic of the Congo in order to attack Burundi. This attack lasted five days and was aimed to sabotage the electoral process that would begin in May 2015. The attempts to sabotage the electoral process culminated into a coup against the democratically elected institutions.

20. As we have seen on the list of fighters (seized documents), some attackers were minors:

1) Gérard Minani, **15** at the time of the attack, from the Commune of Marangara, Ngozi Province, son of Zoulou Nzokirantevye and Léocadie Barushimana;

2) Ibrahim Nsabimana, **16** at the time of the attack, from Mparambo hill, Commune of Rugombo, Cibitoke Province, son of Emmanuel Ntahorukura and Anastasie Ndirakiza;

3) Richard Nitunga, **16** at the time of the attack, from Ruziba hill, Commune of Kanyosha, Bujumbura Province, son of Marcien Baragomwa and Marie Ntunzwenimana;

¹² Commission Nationale Indépendante des Droits de l'Homme

¹³ https://www.youtube.com/watch?v=k-sd3qzkiqU&list=UU3uSN_ifXSf8dB_HYZrS0jQ&index=76

¹⁴ Democratic Republic of the Congo

4) Jean de Dieu Ndizeye, 17 at the time of the attack, from Nyarunazi hill, Commune of Buhinyuza, Muyinga Province, son of Salvator Sahinguvu and Prisca Nibigira;

5) Diomède Ntakirutimana, 17 at the time of the attack, from Rubimba Hill, Commune of Kibago, Makamba Province, son of Bucenjegeri and Ndayishimiye.

21. That said, it is clear that the investigation work of UNIIB was not complete because experts have not emptied all tracks to better understand all the contours of the crisis that Burundi has gone through in 2015, preferring the easy way out as Methodology (*paragraph 11*), which presents problems with the targeting of people to interview. On what basis and under what conditions? In a country where cases of rumors are often proved it is allowed to question some content or testimonies from people who, mostly, are of particular interest to peddle lies. At these dubious testimonies adds up the reference to different texts or reports produced on Burundi which, for most, the content has been denounced by the Government of Burundi.

22. One might even wonder what criteria the UNIIB has considered to choose "*national organizations*" to interview, inasmuch as there is an excessive politicization of civil society organizations in Burundi.

23. The lack of comprehensive information about Burundi is even more apparent, that in paragraph 20, the Experts display their ignorance or misunderstanding of the Burundian dynamic when they claim that "*a ten-year civil war ended with the signing of the peace reconciliation agreement of Arusha (Arusha Accord) of 2000*". If they had scrutinized the history of Burundi, they would understand that it was not in 2000 that the fratricidal war ended but indeed in 2003 by the signing of the Comprehensive Ceasefire Agreement between the Government of the Republic of Burundi and the CNDD-FDD, then rebel movement. As indeed confirmed by the former President of the Republic of Burundi, Major Pierre Buyoya, "*The Arusha Agreement of August 28, 2000 did not actually restore peace*"¹⁵.

24. Attempts to sabotage the electoral process and the denial of democracy therefore do not date back to 2015 contrary to what claims the UNIIB. Long

¹⁵ P. Buyoya : *Interburundian Negotiations*, Paris, L'Harmattan, 2011, p.101.

ago, Burundi has been confronted with individuals or groups of individuals who have disregarded the will of the people and wanted to rule them without being elected. This is what explains the beheading of democracy in 1993 by the assassination of President Melchior Ndadaye and his collaborators as well as the bloody upheavals of 2010 and 2015. As for the democratic debate in 2015 on the eligibility of the current President of the Republic, unless one wants to stand against the sovereignty of Burundi, no one can question the decision of the Constitutional Court, which declared the candidacy of Pierre Nkurunziza consistent with the Constitution. The instigators of the subsequent insurrection and armed rebellions are the real dangers of democracy and the rule of law.

25. **On Paragraph 5**, the UNIIB claims not to have paid its *"last scheduled visit ... due to security considerations."* It should be noted that the cancellation of this visit is, in any case bound to any hindrance from the Burundian authorities. However, unless the UNIIB does have specific information, September is so far with no major incidents that would endanger the Burundian or foreign citizens on Burundian soil. It is therefore difficult to understand the meaning that UNIIB gives to these "security considerations."
26. The report mentions, **in paragraph 6**, the HCHD created a secretariat to support the UNIIB, *"which consisted of five experts in human rights and based in Bujumbura during the period of April 2015 to September 2016 "*. The identity of the five experts should be made public for obvious reasons of transparency over an "independent" commission since it is certain that their role was decisive for the publication of these findings.
27. **On Paragraph 21**, the experts mention that in 2014 *"a dispute emerged on the question of whether President Pierre Nkurunziza was entitled, under the Arusha Agreement and the Constitution, to seek re-election "*. Asserting further that it is a "third term" trampling the very essence of the democratic debate that prevailed at that time between the supporters of the thesis of the third term (illegal) and those who were adamant it was a second term in accordance with Article 96 of the Constitution, the UNIIB concludes that *"a bill to amend the Constitution was rejected by the National Assembly in March 22, 2014"* as if this change was designed to give the incumbent President the opportunity to run for another term. This argument which is

wrong was supported by some politicians and activists of civil society of the opposition. The latter furthermore accused the Government to have also wanted to remove from the constitution, the reference to the Arusha Accord.

28. It should be noted that in this draft Constitution the issue of terms was not raised and that the reference to the Arusha Accord remained there, having just been removed from Visas on behalf of legislative drafting as the Constitution has precedence over any other law. This reference was consequently pasted to the preamble. The desire to revise the Constitution was guided by three reasons that have nothing to do with the mandate of the Head of State:

- a. The integration of some provisions in line with the willingness of the political class and civil society in various workshops organized jointly by the Government of Burundi and the United Nations Office in Burundi;
- b. The harmonization of some provisions of the Constitution of Burundi with the East African Community (EAC) integration Treaty;
- c. The integration of reforms recommended by the National Symposium of Justice, held at Gitega from 4 to 9 August 2013.

29. The words "*widespread local resistance*", in **Paragraph 21**, is a clumsy and unprovable exaggeration on the part of the UNIIB. The portion of Burundian territory which was affected by the insurrection was very insignificant because among over 3,000 hills of Burundi, less than a dozen have been affected.

30. **Paragraph 23** is nothing less than a falsehood. From the call to protest, young people under the influence of drugs took to the streets, barricading roads, burning tires, demolishing public and private infrastructure and cruelly killing peaceful citizens including security forces. The latter, whose prime mission is to ensure compliance with the law and public order, have experienced heavy losses.

31. In addition, the work of Burundian Justice should not be subject to any polemical questioning as reflected in **paragraph 24** in which the UNIIB is surprised that some activists of civil society are associated with military coup leaders. Evidence exists. It is the duty of justice to establish the

responsibilities of individuals and the levels of involvement in the attempted coup in May 2015 in this case. Participating in one way or another in a coup should not be without consequence before the law. It is not honest to qualify the work of Justice as "retaliation" unless one wants to establish a lawless State and promote impunity. In addition, to believe and get people believe that members of the Youth Wing of the CNDD-FDD are incorporated into the security apparatus of the country is condemning thousands of young people to the lynching. It became dangerous and risky to be an Imbonerakure today in Burundi because they have been constant victims of baseless and serious statements of the kind sort, accused without evidence of all evils and without any physical grounds just because of a demonization campaign unwittingly relayed. The youth wing of the CNDD-FDD has never been involved into the actions alleged against them. Stigma is an evil to be eradicated.

32. The "*cordon and search operations in so-called opposition neighborhoods*" mentioned by UNIIB in **Paragraph 25** were within the framework of the disarmament that neither the EU nor the AU wanted to support. In fine, it is the Government's responsibility to protect civilian populations. These operations produced the expected results because thousands of firearms and ammunition of all calibers were removed from these areas and security has been restored.
33. On **Paragraph 26**, it is not appropriate to talk about "*violence*" when military retaliated following armed attacks against their barracks. Some even talked about disproportionate force on the part of the national army. How can you estimate the firepower of groups simultaneously attacking four military installations? It is difficult to imagine the reaction of some Western governments, should military barracks in their countries be attacked by armed commandos!
34. "*Non-state actors*" in **Paragraph 27** is a rather vague term. Is it the impossibility to obtain information on the subject or the desire to minimize the role of the small armed groups that terrorized the population each night? The UNIIB's evasive approach over this terrorism gives the impression that they were only trying to produce a report to charge the Government, despite the existence of the truth. These non-state actors are indeed the real

responsible for violations of human rights. The Forebu and Red Tabara and the coup leaders have claimed with pride the many attacks that have devastated the army, the police, families¹⁶ etc. These armed men led by Alexis Sinduhije and the coup leader Niyombare published without embarrassment photos of victims. What interest would the Government have in shooting or publishing such images? The UNIIB sins by omission by not even mentioning that while the authors claim their attacks.

35. Furthermore, some of these *"non-state actors"* mentioned in this report surrendered and decided to tell the truth about their identity, the sponsors of blind or targeted assassinations, when and where they were recruited and above all what was the real political motive that was targeted through these despicable daily criminal acts. They recognized before the national and international press that they were behind the kidnapping and murder and that it is them who threw the bodies in different streets of the capital before taking pictures they spread on social media in order to seek the attention of the international community. They said, with specific details, they were even behind the murder of the three Italian Catholic nuns in Kamenge, a murder all the more shocking as these innocent victims were very old¹⁷. The testimonies of young people who had been turned into killing machines do not appear anywhere in this UNIIB report.
36. Even more shocking for a team that should, above all, defend the rights of children, the UNIIB report overlooks the recruitment of children into armed groups while the Office of the High Commissioner for Human Rights, recognized in its report of June 2016, the presence of 53 child soldiers captured with arms in hand in the attacks of Kayanza and Cibitoke in July, 2015¹⁸.
37. Regarding the Interburundian dialogue, it has not *"stalled"* as UNIIB tries to get the opinion believe in **paragraph 28** of its report. This dialogue, held under the auspices of the National Commission for Interburundian Dialogue (CNDI) in all 18 provinces of Burundi is underway this time in the communes of Burundi. The CNDI has done a commendable job and already

¹⁶ <http://www.rfi.fr/afrique/20150706-burundi-interview-putschiste-attaques-grenades>

¹⁷ <https://www.youtube.com/watch?v=G-xsRlxETUw>

¹⁸ Report by the UN High Commissioner for Human Rights on the Situation of Human Rights in Burundi, A/HRC/32/30, 17 June 2016, p.21.

organized sessions have helped ease minds and hearts, especially after the 2015 election fever. As far as the process under the facilitation of the East African Community (EAC) is concerned, no one can say that it is at a standstill. The Facilitator and former President of the United Republic of Tanzania, Benjamin William Mkapa, submitted its report to the Heads of State of the EAC Summit of Heads of State held in Dar es Salaam on September 8, 2016. The Facilitator has nowhere said that his work has "*stalled*". The UNIIB should refrain from denigrating the EAC process.

38. **Paragraph 33** contains a rather simplistic observation by UNIIB. After the accusations of the Government of Burundi and an ICGLR investigative mission denied by Rwanda after the damning reports of some NGOs (e.g. Refugees International¹⁹) and the UN report on DRC, it was the turn of the US to confirm Rwanda's involvement in the destabilization of Burundi. Alexis Sinduhije cited for his involvement in the destabilization of the sub region has taken up residence in Rwanda before the coup leader Niyombare joins him there without mentioning other characters harmful to peace in Burundi and in the region that are under the protection of the Rwandan authorities.

¹⁹ <http://www.refugeesinternational.org/reports/2015/12/14/rwanda>

IV. OBSERVATIONS OF THE GOVERNMENT ON ALLEGED VIOLATIONS OF HUMAN RIGHTS IN THE REPORT

A. Arbitrary deprivation of life

Killings by the security forces and those working with them

39. The report states that, on August 30, 2016, OHCHR has verified 564 cases of executions since 26 April 2015. To illustrate these cases of executions, it mentions the case of Jean Népo and a witness who would have told investigators about his participation in the execution of twenty people including two *Imbonerakure*. Finally, the report says that the number of 87 people officially recognized to be killed during the attacks of four military installations on 11 December 2015 would be far lower than the reality.
40. Burundi acknowledges that lives were lost during that period of time and regrets it. However, if there had been an investigation as the report leads us to believe, it would have been better that the identity of 564 persons mentioned in the report is specified as well as the circumstances in which they were killed. For example, saying simply that a person was killed without complete identification does not make it possible to check and address this allegation. Moreover, how can the UNIIB experts say without fear of error that "*a police commissioner ordered one of his officers to kill Jean Népo who had remained at the scene while the crowd had dispersed*" at the time and, at the same time, quote the exact wording of what the young man had allegedly said, if this is not a pure and simple imagination?
41. The same applies to the alleged testimony given by a so-called former member of the *Imbonerakure*. As one of the perpetrators of these killings, and confessing this personally, that person should be revealed to Justice to ensure that legal action is taken against all those who have participated in these shameful acts. The report does not mention the findings of any verification made among the Youth Wing '*Imbonerakure*' to know whether the person interviewed had actually belonged to the Youth Wing and that the alleged acts were committed on behalf of this the Youth Wing. As such, the investigation should reveal evidence proving that the so-called former *Imbonerakure* acted following a decision by this league inviting all *Imbonerakure* to do so. In the absence of all these elements, the Council should note that this witness is personally responsible for these allegations under Article 18 of the Burundian penal code.

Allegations of mass graves

42. The report of the United Nations Independent Investigation on Burundi mentions allegations of mass burial of those widely executed. It continued that satellite imagery suggests that bodies may have been buried in mass graves during this period including, in Bujumbura (in Kanyosha and Mpanda) and Bubanza. According to the same report, proper forensic examination to establish the existence of mass graves calls for specialized expertise. These investigators experts indicate that in the meantime, the sites concerned must be left undisturbed. According to the report, the UNIIB would have offered to arrange for the alleged sites to be properly recorded, so that it can be investigated in full at a later stage but, "until the completion date of this report", the Government would not have responded to the offer.
43. The Council should note that Burundi has already carried out an investigation on these allegations. A report has already been made but Burundi continues to work on these cases and remains ready to make use of any new information likely to help in establishing the truth. Considering investigations already done, people who died during the fighting of December 11, 2015 were either buried by administrative officers in official cemeteries (those that have not been identified by their families) or by their relatives when they recognized them.

Targeted assassinations

44. The investigative experts report that a former senior officer of the National Defence Forces has confirmed to UNIIB the existence of several lists of people, including civilians and military, to be eliminated by the security forces. Still according to the same report, armed elements opposed to the government have also been involved in several murders, notably targeted assassinations. As an illustration, the UNIIB documented a case where a member of the Imbonerakure would have been burned alive. They go on to say that it seems likely that some senior army officers were killed by their own colleagues, because of rivalries and reprisals between members of the FDN, within former members of the Burundian armed forces (ex-FAB) which are suspected of opposing the Government, or among the former rebels grouped within the "Armed Political Parties and Movements" (ex-PMPA). As far as human rights activists are concerned, UNIIB cites the cases occurred in the family of Pierre Claver MBONIMPA, Chairman of APRODH.

45. Investigators would certainly have heard or interrogated some people such as a former senior officer of the National Defence Forces. However, the report mentions the lists of targeted individuals but does not specify them so that the authors may be checked and that they can be held accountable for them. Burundi categorically denies the existence of such lists and considers that those who want to sow division and panic within the defence and security forces are themselves responsible for those lists. It is deplorable that the experts have believed such free and divisive statements at the moment when the people of Burundi live in harmony.

46. The UNIIB claims inaccurately that the man burnt alive in Nyakabiga was Imbonerakure and was killed by armed men opposed to the Government. In reality, MISAGO Léonidas (wearing a red T-shirt in the photo), an employee of Smart mobile Telephone Network, was brutally killed by insurgents that some do not hesitate to call peaceful protesters as you can see in the pictures taken at that time.



47. After the failed coup that was the culmination of their insurgency, the insurgents began to sow terror in the country firing grenades in public and private places such as markets, places of entertainment, pubs, public transport buses and residential houses. The attacks were claimed publicly and it is surprising that UNIIB is not informed of facts which nevertheless



were widely reported by the international media, such as this interview of the former General Léonard Ngendakumana on a Kenyan Channel KTN in July 2015.

48. It is the same armed insurgents who ambushed some targeted persons from all categories of the population whether politicians, military, police or others. All these abuses were committed in order to show the national and international opinion that armed resistance was rife and that security was precarious in the country.
49. For cases involving the family of Pierre Claver MBONIMPA, just like any other reprehensible behaviour or action committed on Burundian soil, his assassination attempt is being investigated under the file RMP 153248/BI and RMP 152407/NK.C for the case of his son-in-law.
50. As for his son, he perished on the battlefield as confirmed by one of his comrades, Mr. Epitace NINGABIRE, who surrendered and who said that he was shot dead while they were going to fire a grenade to police officers in Mutakura. It should be noted for all purposes that even a criminal file was opened against Epitace NINGABIRE and others under number RMPG 718Bis/N.TH.

B. Forced disappearances

51. Experts report that many people have disappeared since the beginning of the crisis, often following arbitrary arrests by security forces including the police and the SNR. They claim that the victims are members of civil society and protesters. They also met relatives of people arrested by the security forces who were never seen again. Marie-Claudette KWIZERA, treasurer of the NGO Ligue ITEKA who was allegedly arrested on 10 December 2015 by the SNR and has not been seen ever since, the case of Jean BIGIRIMANA, journalist of Iwacu newspaper was also allegedly arrested by the SNR and has gone missing since then.
52. Still according to the report, UNIIB would have received information from witnesses, including names, concerning the existence of a twelve well-known group of SNR agents, police and army personnel who have allegedly been responsible for many cases of forced disappearances, and who report directly to the inner circle of the Executive.

53. Burundi does not deny that there are people who went missing during the reporting period. However, the question that arises over these disappearances is the responsibility that the report wants to put to shoulders of the police officers. Indeed, when a police officer arrests a person, he has to refer them to a judicial police officer who files a record. If this is not the case, any person may bring to the attention of the Public Prosecutor about any case of disappearance or the latter, acting on its own initiative, addresses the facts and investigate them. It is in this perspective that the Public Prosecutor opened a case on the alleged forced disappearances under the number **RMP 154051/NTT/HL in connection with disappearances** or kidnappings in accordance with the Burundian penal code. This case is still under investigation.
54. At the current stage of the investigation, the Public Prosecutor has already interrogated some members of those who were active in committing barbaric acts in the capital city Bujumbura. These armed insurgents claim indeed that, on the one hand they killed some of their members and, on the other hand those who were against them including people supposedly from neighbourhoods that did not participate in the insurrection that started on 26 April 2015.
55. In addition, when they joined the armed insurgent groups, they in no way informed their parents or relatives about their destination. For their comrades, they were finishing off those who were seriously injured during their clashes with the Defence and Security forces. Failing to throw their bodies in the streets of Bujumbura or elsewhere, they buried them either in mass graves or in remote makeshift graves depending on the rank of the deceased one.
56. In some cases, Experts are inspired by the report of the Office of the High Commissioner for Human Rights in Burundi in 2016. If one examines the examples that this report gives to illustrate the cases of forced disappearances, it is confirmed that among those reportedly missing there are those who are in prison. The most telling case is that of Elvis ARAKAZA who is presumed missing as of 14 December 2015. However, he is still alive and prosecuted through the case recorded as RMP 153950/NAC. He is currently detained at the central prison of Gitega.
57. Beyond these evidence already collected in the investigation of this case, it should be noted that no next of kin of the persons who were listed as alleged missing as of 31 December 2015, has lodged a complaint in court so far to

support what is written on the list with a view to help identify, if applicable, the perpetrators. Despite various appeals by the Public Prosecutor calling any person, victim and/or other law abiding citizen having knowledge of the preparation, conduct or commission of such offenses to denounce or testify in court.

58. As for the case of Marie Claudette KWIZERA, it should be stressed that a case was opened under the number RMP 154370/EB. The case is under investigation and her husband collaborates with justice. The person who requested ransom from her next of kin acting as an agent of the National Intelligence Service has been identified; he is in the hands of justice, and his record is already scheduled before the competent court for trial.
59. As for the journalist Jean BIGIRIMANA, contrary to the information contained in the report of the UNIIB, he was kidnapped by persons unknown so far. An investigation was opened under the record number D15 N°28/ML/NO at the Prosecution of the Republic in MURAMVYA, the region where Mr. Jean BIGIRIMANA was kidnapped.
60. The investigation concludes this point by stating that investigators have information on an alleged group of twelve people whom they neither cite the names and nor show how they operate so that this information can move forward the case relating to these disappearances. The disappearances may have been committed by people who act as agents of the defense and security forces because, among the armed insurgents, there were some who were wearing uniforms similar to those of the defense and security forces, which is evidenced by many weapons, outfits and other military and police equipments which were seized.
61. Despite the proceedings already started by Burundi on the matter, investigators did not take inspiration from them to be able to balance the findings of their investigation. To illustrate this, we can cite the cases of Mr. Jean Baptiste BIREHA initially declared missing but who, after investigation, was confirmed alive and living in Rwanda. It is the same case for Mr. Elvis ARAKAZA and Mr. Faustin NDABITEZIMANA. To avoid spreading confusion, investigators should have requested information on ongoing proceedings in connection with the alleged disappearances.
62. Finally, the contents of this report have by no means been the subject of any verification by the lead investigator. The Council should note that Burundian law is very clear with regard to the treatment of cases of presumption of

absence. Under Burundian law, the absence of a person is confirmed at the end of legal proceedings initiated by any interested person under Burundian Code of Persons and Family.

C. Torture and cruel, inhuman or degrading treatment

63. Experts say that the use of torture or cruel, inhuman or degrading treatment or punishment against opponents to the third term and targeted opposition members or their relatives, to extract information or as punishment, has been a common feature of the crisis. Agents of the SNR, the PNB, and the Imbonerakure and, to a lesser extent, the FDN, are identified as the perpetrators, and some individuals, including senior figures of the security apparatus, have been repeatedly cited.
64. The report talks about torture and claims to have identified the perpetrators of torture and inhuman and degrading treatment. However, the report does not disclose the identity of victims of torture so that the matter can be referred to justice. Similarly, was it not necessary that the investigation determines who did what, how, when and where these facts were committed and against whom these acts of torture were made.
65. The report gives an account of senior officials of the security apparatus who would be guilty of acts of torture. This assertion is unfounded and confusing and leads to a climate of suspicion and mistrust between the population and the defense and security forces. The inquiry does not determine the role played by each of the targeted officials. Burundi continues its investigations and is open to any information that could lead to the triumph of the truth.

D. Sexual and Gender-Based Violence

66. UNIIB reports that the incidents recorded from Burundian refugee women and girls reveal various forms of sexual and gender-based violence experienced in Burundi and during their fleeing of the country. UNIIB specifies it obtained credible information indicating that many Burundian women and girls related to males who opposed the third term, or were perceived as political dissidents, became the targets of physical and sexual violence by security forces.
67. Burundi has already noticed that there are false and fabricated evidence made from manipulated images and spread on social media and relayed by the organizers of the uprising such as Pacific NINHAZWE and talking of

ethnic-based rape in the said protesting neighbourhoods. Members of the insurgents who have renounced these crimes claim they took part in the acts of manipulation with the purpose of using them to discredit the defence and security bodies.

68. Burundi wishes to inform the Council that rape cases that are presented in the report as a repressive means towards the opponents have nothing to do with the rape cases that are pending before the courts. The Government of Burundi, aware that such acts must be fought, has taken legislative and regulatory measures including the revision of the penal code and the law on gender-based violence for effective law enforcement over such acts.
69. Burundi continues to take concrete action to curb the scourge. Thus, specialized chambers within the courts have been established to ensure effective management of rape-related cases, a unit within the Ministry of Justice responsible for the planning and monitoring of activities related to the fight against sexual and gender-based violence has also been created.
70. Burundi, in collaboration with United Nations agencies such as UNDP, UN WOMEN, OHCHR, World Bank, UNICEF regularly organizes campaigns aimed at raising awareness, and special sessions for quick processing of legal cases related to SGBV. So far, these partner organizations have not reported cases of rape used as a means of repression of political opponents or members of their families. Moreover, Centre Humura and Centre SERUKA which supports the treatment of victims of such violence have not reported these cases either.
71. The experts insist on the fact that in a number of cases documented by the UNIIB, victims were sexually mutilated and they give an example of a woman who, in August 2015, was sexually mutilated in Cibitoke, Bujumbura Mayorship, until her uterus came out of the vagina. *“They put their hands inside my vagina until the uterus came out. I was left alone bleeding, screaming. The neighbours came out and they tried to put my uterus back in place.”* This statement is scientifically unlikely, what the experts have knowingly ignored for unspoken reasons!

The excessive use of force

72. The information collected by UNIIB indicates that the Police used excessive force against protesters who had been chanting slogans against the President,

with some of them throwing stones, and blocking intersections. None of this merited law enforcement officers using firearms, including against fleeing demonstrators. The experts also said that even after having gained control over the demonstrators, the police generally arrested and beat up demonstrators, notably young men, in flagrant violation of the international standards on the use of force. The experts also said that the protest in the form of public demonstrations (except if organised by the authorities) hardly occurs any more – by all accounts not because there is less reason to protest, but because of fear of the consequences.

73. In a State under the rule of law, compliance with laws and regulations is an inalienable principle. Thus, in terms of public demonstrations and under Article 3 litera f of Law No. 1/28 of 5 December 2013 regulating demonstrations on public venues and public meetings, the demonstration is a "collective action, a rally in a public place or a parade on the streets, aiming to show to the public dissatisfaction or claim of a group, a party, an association of one or many trade unions, etc. ".
74. It becomes public if the procession, parade, gathering of people to defend ideas and interests take place on a public venue or on a road.
75. The public road is defined as *"any road belonging to a public person and assigned to public traffic, even in the absence of an explicit or implicit decision of assignment or classification"*. The question that may arise is whether the rallies and marches that occurred in some streets in some neighborhoods of Bujumbura Mayorship followed the legal procedure provided for in this respect.
76. In fact and legally, in order to conduct a demonstration, the organizer of the demonstration must first hand in a written statement. This declaration is made by the person (registrant) to the competent administrative authority notifying the holding of a meeting or a public demonstration. This statement must provide information concerning the full identity of the members of the organizing committee, the day and time of the demonstration, its purpose, its expected participation as well as the planned route for the procession or parade.
77. The prior written statement must reach the competent authority at least four business days prior to the meeting or demonstration. The competent authority shall have a period of forty-eight (48) working hours, to formulate

and possibly send back their observations and recommendations to the declarant with written acknowledgment of receipt.

78. The competent administrative authority may decide to postpone or prohibit the meeting if the keeping of public order absolutely requires it. Duly substantiated reasons must be given for this decision.
79. This decision is likely to be challenged by administrative appeal and before the Administrative Court which decides on it under urgent procedure. Nevertheless, the organizers of these events have not followed the procedure! This did not prevent them from flooding some streets of Bujumbura, despite the illegality. Armed with guns, grenades, mobs, swords, Molotov cocktail ... protesters vandalized public and private infrastructure, they burned public and private vehicles, killed people from the night of the 25 to 26 April 2015. Given this situation, the Burundian police acted professionally, despite the threats they faced.
80. As to the use of firearms, the Government of Burundi would like to point out that Burundi police were faced with armed insurgents, evidenced by the civilian victims, police, military and the weapons seized during raids and searches (1,110 guns, 12,626 bullets, 4 boxes of PK machine gun, 178 chargers, 1140 grenades, 175 bombs, 5 rockets, 5 landmines, 48 projectiles and other military and police equipments). However, the Government of Burundi has taken the responsibility to proceed with investigations to identify the perpetrators, victims and the circumstances in which each victim perished. Note, for all purposes that a partial report has been produced to this end, since some responsibilities have been established.
81. From the above, it appears that these events have not respected the rules prescribed by Law No. 1/28 of 5 December 2013 regulating demonstrations on public venues and public meetings.
82. Having shown the illegality, it is now time to stress further that the insurgency was extremely violent, and has led to a lot of damage both material and human. The images below speak volumes:
 - People who were nearly killed by insurgents in Kiriri had it not been the intervention of security forces



The man burnt alive in Nyakabiga on May 7, 2015



- Violence against police officers (particularly women) without defence



This police woman suffered abuse of rare violence from insurgents, including sexual violence until thrusting a knife into her genitals. She was hospitalized for three months. This reflects the seriousness of the abuse she suffered.

Police officers retreating to escape insurgents



83. The police and military were bullied by the insurgents so much that if they had excessively used the force at their disposal, the number of police officers killed due to the insurrection would not have gone up to seventy seven (77).

84. Moreover, the misbehaving police have been subject to judicial proceedings and available statistics indicate that 150 police have been charged including 59 police officers in prison and 38 already laid off.

85. In conclusion, we need to mention that the statement according to which only demonstrations organized by Governmental authorities are possible is wrong as the investigators do not indicate any request for public demonstration authorization which has been introduced and not dealt with.

E. Arbitrary and illegal arrests and detentions, including mass arrests

86. In Burundi, according to the investigating experts, the arbitrary arrests and detentions have been the backbone of the reprisal and have opened a gate to a large number of other human rights violations. They state that the number of arbitrary arrests and detentions have increased after 26 April 2015, targeting anti-3rd term protesters. The same experts continue saying

that the SNR (National Intelligence Service), the PNB (Burundi National Police), the Imbonerakure and the FDN (National Defense Force) would have hunted the opponents, notably in series of cordon, searches and raids operations, in the so called protesters' neighborhoods of Bujumbura. Those experts state that, according to some testimonies received, the people arrested were taken by the security forces to provisional detention centers, before sorting them according to their alleged collaboration with opposition armed groups or involvement in the anti 3rd term movement.

87. The people arrested by the security forces were often subjected, not only to physical violence, but also to extortion, obliged to pay « ransoms » ranging between 4 and 5 million of Burundian francs to brokers to attempt to obtain their release. Security forces undertake quasi-daily raids in the so called protesters' neighborhoods of Bujumbura, do the experts assert, and young people aged between 18 and 35 years are particularly targeted. They also declare that the prisons' overcrowdedness is alarming with an occupation rate of 300 percent in some prisons. They also gave the example of Mpimba Prison which was constructed for 800 prisoners but hosting up to 3,800 at the time of their visit.
88. The UNIIB concludes confirming that the abuse of provisional detention and extended detention without any appearing before the judge by recalling that during their visit at Mpimba Prison in Bujumbura, the experts met with several detainees, so many young people who had been arrested during the demonstrations in the first semester of 2015, but who had never been judged for any offense.
89. In Burundi, as in any Rule of Law, the arrest procedure is well known. It is therefore surprising that the investigators emphasize on massive arrests without indicating, at least, some of the examples illustrating those arrests. The investigators only rely on the overcrowdedness of prisons to justify their assertions. Nevertheless, it is worth mentioning that this prison overcrowdedness is not at all related to the crisis Burundi has just overcome. This issue dates from long ago and the Government is sensitive to that issue. Several measures intended to discongest the prisons have been taken. These are notably a presidential pardon, a conditional release as well as diverse detention monitoring missions undertaken via inspections which are not only organized by the Minister of Justice but also by the Public Prosecution.

90. Concerning the ransoms required to obtain release of arrested people, as soon as those cases of alleged ransoms are reported to the institutions in charge of proceedings, the authors of those ransoms are immediately prosecuted and penalized according to the Law.
91. The investigators report quasi-daily raids in the so called protesters' neighborhoods of Bujumbura. The investigators confused the arrests undertaken in the framework of the civilian population disarmament policy with arbitrary arrests. After the expiry of the grace period of voluntary hand over of military and police equipments illegally held, this is reasonable for a Government having the duty of protecting the population against all illegal holders of firearms. Besides, Burundi does not accept the use of the notion of "protesters' neighborhoods" which intends to put together criminals and peaceful citizens living in those neighborhoods.
92. Thus, after the failure of the military coup which crowned the insurrectional movement launched on 26 April 2015, the detractors of the Government of Burundi therefore attempted to organize an urban guerilla with terrorist acts whose responsibility have been claimed by the putschist Léonard NGENDAKUMANA and Pacifique NININHAZWE who constantly state it.
93. The investigation did not reveal the results of those searches which have been undertaken in the so called 'protesters' neighborhoods' which had thus become strongholds of the insurgents. In fact, several weapons, uniforms and other military and police equipments were seized and this contributed to the significant reduction of an increasing criminality caused by this proliferation of weapons within the civilian population.
94. The investigators seem to willingly ignore the fact that an illegal detention of firearms constitutes an offense with regards to the Burundian Criminal Code and the law N° 1/14 of 28 August 2009 governing Small and Light Weapons. In this respect, the persons apprehended in illegal detention of arms and any other military or police equipments were brought before the courts according to the law.

Unknown detention sites

95. The report of UNIIB states that there are reasonable motivations to believe that the security forces and imbonerakure have established unknown detention sites. It indicates some sites which host those areas notably in Bujumbura and Ngozi.
96. Burundi informs the Council that as the Attorney General of the Republic has confirmed to the investigators, all detention sites are officially established.
97. The investigators resorted to a shortcut by simply putting that they had got «*reasonable motivations to believe* » which is not any ultimate and tangible «*evidence*» against the Government of Burundi for such critical facts till stating that people are arrested and detained in houses and bars belonging to individuals. Nevertheless, they did not give any indication of, at least, a person who has been arrested and detained in those areas they mention about. This is an indication that they only relied on statements by detractors of the Government without fairly conducting the least verification but preferring to only confine their work on what they called «*reasonable motivations to believe*». The Government of Burundi would like to bring to the attention of the Council the danger of a United Nations report based on hearsay to draw as much critical conclusions as the ones contained in this report.

F. Ethnic statements

98. To support their statements, the UNIIB investigators refer to the press release of the CNDD-FDD party of 24 August 2016. Concerning the analysis of UNIIB, according to which some political or government leaders use ethnic oriented rhetoric, the Government would wish to indicate that this falls in the framework of the national unity policy for which it engages to promote both in its speeches and actions.
99. Concerning the statement by the Office of the Special Adviser on the Prevention of Genocide issued on 24 August 2016, the Government considers this statement as a wrong interpretation of the speeches by the CNDD-FDD party leaders as the latter have clarified it enough in their subsequent remarks.
100. The Government commits to prohibit and press for prosecution any person proven guilty of hate speeches or speeches related to ethnic violence according to the legal provisions of the Burundian criminal code.

101. The case mentioned by the UN investigators under paragraphe 77 looks unreliable. It seems that the analysis made here simply intends to revive interethnic hatred.
102. The Government commits to take strong action in case information provided under this paragraphe would be proven correct.

G. Freedom of expression and association

103. The UNIIB reports that Civil Society activists, notably the human rights defenders and journalists, have been the main target of reprisals by the authorities. It underlines that the activities of 10 main civil society organizations have been temporarily suspended by a ministerial ordinance and accounts of some of them as well as those of their leaders have been frozen.
104. It adds that international arrest warrants have been issued against leaders of civil society organizations and provides their list. Moreover, independent journalists have been victims of harassment, death threats, arrests, torture, and closure of their offices and destruction of their equipments. To illustrate their statements, they mention RPA, BONESHA FM, Isanganiro, Renaissance as well as the REMA FM radio to a lesser extent.
105. The investigators also report that an RFI and AFP reporter was arrested on 02 August 2015 on the site of the assassination of General Adolphe NSHIMIRIMANA before being escorted to SNR custodies. It also adds that another reporter was apparently killed by agents of the Institutions' Protection Police Squad. His spouse and two children were constrained to kneel down for two hours near the dead body to wait a decision on their fate before being killed later, as well. Before concluding, they confirm that the victims are not only external to the government, but also in the circle of the Government and members of the ruling party. Finally, the investigators report the cases of students who scribbled on photos of the President of the Republic.
106. The report only indicated, without a minimum verification either on the legal or event oriented aspects, that the activities of the ten main civil society organizations have been suspended by a Ministerial ordinance. Besides, the organizations and individuals are likely to engage their

criminal and/or civil responsibilities. No law grants to the civil society organizations or their leaders immunities to escape from criminal and/or civil proceedings for blameworthy offenses committed by them. Thus, the organizations cited in the report are subject to judicial proceedings for having been involved in the organization and execution of the insurrectional movement launched on 26 April 2015. They also have collaborated with the organizers of the failed coup on 13 May 2015 and other facts like the assassinations and vandalizing of both public and private infrastructures. As a matter of illustration, one may consider the statement of Pacifique NININHAZWE, one of the main organizers of the insurrection and the putsch, when an employee of a telephone network company was burnt alive while he was on his daily duty. Thus, did he put after the crime: *«It is just a beginning. In the coming days, the situation will get even more serious and violent»*.

107. What a defender of human rights would be proud of such an ignoble act? By encouraging the crime, he became guilty of promoting crime. The United Nations experts would rather have emphasized a bit more on the strategies, speeches and acts of the organizers of this movement in order to establish their responsibilities in different attempts to life and other violations of fundamental rights observed.
108. Burundi notes that the UNIIB investigators did not try to know the charges brought against those organizations as well as their leaders. It appears that they rather presented those criminals as victims to allow them escape from criminal proceedings already engaged against them.
109. Worst of all, they only list the people subject to international arrest warrants but they did not interview people allegedly wanted while they are in the country. Notably, we can mention the case of John Vianney GATOGATO of the Burundi Catholic Legal Association (AJCB).
110. This association normally undertakes its activities and Mr GATOGATO is not subject to any judiciary proceeding and he is in the country. Concerning radio stations, the investigators relied on noting without seeking to know how the events unfolded. They have accused, without any evidence, security forces and Imbonerakure before the justice makes its ruling on the case which still under investigation.
111. For the case of reporter Esdras NDIKUMANA, RFI and AFP correspondent, the case RM PG 11158/NDR is under investigation. In fact,

he has launched a complaint to the Attorney's office but it still lacks some pieces of information to kick it started.

112. For the case of Cameraman Christophe NKEZABAHIZI, contrary to the report of UNIIB, Burundi has conducted an investigation under case N° RMP 152961/NTT and the investigators did not seek to know the content of the case in order to notice the circumstances in which the events occurred. The alleged authors of the crime are the armed insurgents and three of them are before justice. Their case has already been referred before the trial judge for a ruling.

113. The report mentions victims of human rights' violations even among members of the Government and the ruling party. Burundi deplores this allegation since the investigators do not give, at least, one member of the Government who has stated that he is not enjoying his freedom of expression when the government itself is not composed of members from the same political family. This denotes another lie in the charges alleged by those investigators.

114. For the cases of students who have scrawled the photos of the President of the Republic, the Government would wish to inform the Council that this issue has been concluded.

H. Economic and social rights

115. The Government would wish to inform that the preliminary report on the implementation of the PIDESC was submitted to the committee in charge of economic, social and cultural rights and the latter has issued its recommendations towards the Government. Initiatives are underway in order to pave the way for the implementation of those recommendations in accordance with the available resources.

116. Nevertheless, the suspension measures unilaterally and abruptly taken by some technical and financial partners have been detrimental to the efforts of the Government in order to ensure effective enjoyment of economic and social rights. The Government invites this Council to rather encourage the revival of cooperation for those who have suspended it.

I. Burundian refugees and internally displaced people

117. The Government would wish to mention that most of the people who have fled the country were urged to do so by rumours or political manipulation. The Government ensured respect and preservation of assets left behind by those refugees. Considering the significant improvement in terms of security, the government encourages them to return to their home country and contribute for the development of their country together with their compatriots. The figures presented in this report are clearly aberrant as they do not take into consideration the monitoring of returnees' movement and contradict sharply the statistics at the disposal of the Ministry of Interior. The Government remains aware of the issue of refugees and internal displaced people and different ministerial departments in charge of the issue are constantly working to handle it in partnership with other stakeholders.

V. FAILURE OF DOMESTIC ACCOUNTABILITY MECHANISMS

118. The EINUB said that the Government of Burundi is blatantly failing to meet its obligations to promptly, thoroughly, and impartially investigate and prosecute violations; to bring the alleged perpetrators to justice and sentence those who are found guilty to punishment commensurate with the seriousness of their actions, including those occupying positions of authority; to provide victims with effective remedies and to ensure adequate reparation; and to take steps to prevent recurrence.

119. The Government is very much surprised by the approach of the UNIIB experts intended to sweep away all the institutions of the country based on only two light visits undertaken in Bujumbura. It is clear that the critical conclusions drawn concerning the national institutions' accountability fall from nowhere and are nothing but surreal.

120. It is very reasonable that the United Nations experts request the Government of Burundi to conduct impartial surveys and undertake all necessary measures to prevent any threat, or act of violence to which the Burundian citizens could be exposed. But that those experts allow themselves to also hastily conclude that the Government of Burundi is blatantly failing to meet its obligations to promptly, thoroughly, and impartially investigate and prosecute those violations, this denotes a bad and sly character of those experts who, seemingly want to further tarnish the image of the Government of Burundi. It clearly appears that those experts do not recognize the efforts made by Burundi to fight against impunity.

A. The lack of an independent Judiciary

121. The experts state that the current crisis has further entrenched the pre-existing systemic and institutional dominance of the executive branch over the judiciary. The UNIIB explains that the institutional dominance of the executive branch over the judiciary is now compounded by an executive branch whose members have used violent methods against its (perceived) opponents. Furthermore, it explains that this new situation has resulted in victims not filing complaints against the perpetrators of

violations of human rights, and no longer using the justice system as a vehicle to settle differences.

122. Burundi considers those comments as merely political. The Courts and Jurisdictions function normally and several cases submitted by members of the population, including victims of human rights violation, are regularly dealt with. Presumed victims or their representatives who do not report their cases to justice adopt such an attitude for political ends, seeking to dissimulate the proceedings engaged against them for crimes they have committed or simply because they do not have elements to produce before justice. The Attorney General of the Republic has already officially invited all those who have complaints on violations of their rights to submit them for investigation.
123. According to UNIIB, *“A well known illustrative case of the pressures faced by the judiciary, the Vice-President of the Constitutional Court, Sylvere Nimpagaritse, went into exile and made public the threats received by the Court’s Judges to change their ruling on the legality of the third term bid of President Nkurunziza”*. The UNIIB continues saying that it received credible reports about the intense pressure placed on members of the Court to rule in favour of the President. Some of the former justices of the Court who supported the third term were reportedly offered *“lucrative positions as a reward”*.
124. Another emblematic case, does the same UNIIB continue, is the trial in relation to the failed coup of 13 May 2015, which was a benchmark to assess the credibility and independence of the judicial system. It resulted in a series of systematic denials of judicial guarantees.
125. The Government of Burundi regrets that the statements of UNIIB are totally not evidenced, and obviously reveal its irresponsible intention to demonize the Burundian judiciary system, an intention which is likely to revolt the people of Burundi so far peaceful and reliant in its judiciary system.
126. It is surprising that the UNIIB confirms that it has received credible reports on the intensive pressure experienced by members of the Constitutional Court based on statements made by only one member of the Court, who made an individual and rather odd decision to disclose the deliberations of a Court to the public. The Government considers this as an improper behaviour for a top lawyer, a politically motivated decision

on allegations of pressures experienced but which have not been established.

127. The UNIIB implies that some of the former justices of the Court who supported the third term were reportedly offered lucrative positions as a reward. This is a scandalous statement from a United Nations investigation.

128. The Government confirms that the management of decision-making positions and promotion to such positions is based on the merit in the strict respect of constitutional balances. The Government of Burundi stands against any external interference in the appointment process over decision-making positions whose filling process is clearly defined in the Constitution.

129. The Government of Burundi notes that UNIIB exaggerates when it states that another emblematic case is the trial in relation to the failed coup of 13 May 2015 which, according to UNIIB, was a benchmark to assess the credibility and independence of the judicial system. It continues alleging that the case resulted in a series of systematic denials of judicial guarantees. Talking of a series of systematic denials of judicial guarantees without clearly providing them is an attitude likely to disrupt the judiciary authority.

130. The Government of Burundi reminds that this case, which is still underway, was processed in the strict observance of the law. The case is currently before the Court of Cassation. Any related concerns can be submitted to the court, including any allegation in relation with the respect of judicial guarantees.

B. The Truth and Reconciliation Commission

131. Given the ongoing political crisis, UNIIB is concerned by the difficulties faced by the Truth and Reconciliation Commission to implement its important mandate: to uncover the truth about the events that the country experienced between 1962 and 2008, and to start a process of transitional justice and collective forgiveness. Thus, through its report, the UNIIB reiterates the concerns already raised with respect to the Commission by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, namely:

- a. The de-prioritisation of the "truth seeking" function in favour of the pardon process;
- b. Insufficient resources to carry out its mandate; and
- c. Concerns over the protection of victims and witnesses.

132.The UNIIB continues saying that the concerns identified by the Special Rapporteur are exacerbated by the challenges posed by the current crisis.

133.At a moment when public liberties are suspended and expressing disagreement with the Government has become a ground for persecution, and while many key witnesses and other actors are currently exiled, and gross human rights violations are taking place once again, it is difficult to see how the Truth and Reconciliation Commission will be capable to discharge its mandate in a meaningful manner.

134.In general, the Government of Burundi realizes that the experts should not be too much concerned as the concerns they are raising are part and parcel of the concerns of the Government of Burundi and some of them, if not all, have already been addressed. The Government of Burundi does not understand how the experts can evoke today the issue of protecting victims and witnesses while they fully know that the law on protection of victims, witnesses and other people in situation of risk has already been adopted and enacted.

135.Most of all, the Government of Burundi is surprised by the fact that UNIIB can report that public liberties are suspended in Burundi, that expressing disagreement with the Government has become a ground for persecution, that many key witnesses and other actors are currently exiled, and that gross human rights violations are taking place once again.

136.Burundi notes the above described situation does not denote a general trend as Burundians openly enjoy their public liberties; they go about their daily routines without any problem. Expressing disagreement with the Government has never been a ground for persecution against whomsoever, contrary to what those experts say. It is deplorable that those experts confirm that many key witnesses and other actors are currently in exile without having conducted any further investigation or providing statistical data on those witnesses they call key witnesses. On what basis do they dare say that these are key witnesses? How can they articulate that critical violations of human rights are still being committed

while the Burundian population is peaceful? How can they already predict that it is difficult to see how the Truth and Reconciliation Commission will be capable to discharge its mandate in a meaningful manner? Why this pessimism when the Burundian Government has already made lots of efforts as to create conducive conditions for the TRC activities? The Government of Burundi notes that those non reasonable allegations are in the framework of a misleading procedure with the intention of denying the efforts undertaken by the Government of Burundi with the support of the United Nations and other partners.

C. The National Human Rights Commission

137. The UNIIB states that the Burundian Independent National Commission on Human Rights (CNIDH) has issued one report since the crisis erupted.²⁰ The report downplays gross human rights violations by indicating minimal numbers. As an illustration, for the whole of 2015, the report refers to 27 cases of torture and ill-treatment in contrast to 250 cases of torture and ill-treatment documented by OHCHR between April 2015 and April 2016.
138. The UNIIB also states that the Commission which is currently still accredited with the A status will be reviewed by the Global Alliance of NHRIs (GANHRI).
139. It is surprising that none of the reports so far produced by Burundi has ever been satisfactory in the eyes of UNIIB. The experts compare the CNIDH report for the year 2015 with the HCHR report covering the period running from April 2015 through April 2016. The two reports are not comparable as they are not covering the same period. The Government has always rejected the excessively big numbers presented by the HCHR whose Burundi Office is only composed of a small unit based at Bujumbura with a minimum presence in the regions. It is clear that the reports produced by this office are based on second hand information, hence their exaggeration notably on cases of torture.
140. The experts misled by false information from some biased and non accredited sources, denigrate the CNIDH report which is rather based on field-based reality and observations with no intention to exaggerate. It is surprising that among the about ten public statements produced by the

²⁰ http://www.cnidh.bi/sites/default/files/CNIDH_Rapport%20annuel%202015%20.pdf

CNIDH during the period covered by the experts' report, the latter only refer to the statement concerning the arrest of students who scabbed the photo of the Head of State. It is hard to understand the intention of this reference.

141. Concerning the fact that the rating sub-committee of the Global Alliance of National Human Rights Institutions (GANHRI) will review the Commission in November 2016 in view of the allegations levelled against it by some organisations, it would be appropriate for the United Nations Investigation not to participate or seek to influence the rating process. The Government reminds that the United Nations, notably the HCHR, have an office with a mandate to accompany the CNIDH and the country.

D. The National Commissions of Enquiry

142. The experts negatively criticize the work of the Attorney General of the Republic on the grounds of human rights abuses. Critics are notably aimed at the establishment of the commissions of inquiry. The critics contradict even the conclusion of the investigation by the experts who, by the end, equally recommend a commission of enquiry.
143. The commissions of enquiry established by the Attorney General of the Republic are motivated by the concern of a fair instruction process of cases but also ensure their expeditiousness. It is not at all with the intention of covering the perpetrators of crimes, whether from government's agents or any other individuals. The Government recommends the UNIIB experts to present to the Burundian justice the findings of their investigations to which they are alluding.

E. Lack of meaningful cooperation with the international human rights system.

144. The experts suggest that the Government shows an apparent increasing reluctance to engage with the international human rights system, which is not right. The Government has always responded present to all sessions of the Council of Human rights and has always presented explanations and clarifications requested by the members of the Council and other stakeholders.

145. The Government has given a permanent invitation to the Special Procedures of the Council for Human rights and in fact, several Special Rapporteurs have visited the country, the last months. The reports to different treaty bodies are submitted and an inter-ministerial report drafting committee was established in 2015 to catch up and prevent delays in the submission of reports. The United Nations and African Union Observers who are present on the field perform normally their assignments.

146. Concerning the allegation according to which the the Burundian government would have refused to participate in the second session of dialogue with the UN Committee against Torture; the Government would wish to clarify that this reading of the situation does not reflect the reality. Burundi was not present in the second session of dialogue on the ground that the time granted to the Government of Burundi by the Committee against Torture to respond to questions, raised on the spot and which were falling outside the initially intended scope of the dialogue, was not sufficient.

147. Now, the misunderstanding has been addressed. The committee granted an additional time to the Government; the dialogue between the Government and the Committee against Torture continues normally. The Government has never adopted the approach of denying the allegations of human rights violations. On the contrary, the approach of the Government is to bring about a response to any verified violation of human rights.

F. International crimes

148. The experts refer to the definitions of international crimes contained in the Rome Statute that Burundi has ratified and that it has thereby committed to respect.

149. Based on anonymous and non verified testimonies, forged evidence, political manipulations, the experts jump to the conclusion that they “cannot exclude that some of the above analysed incidents amount to crimes against humanity.” This conclusion seems to us rather misleading and with no evidence. Burundi has on several occasions denounced the attempts of the HCHR and the Committee against Torture to abuse the process of analyzing the situation of human rights in Burundi to validate, out of malice, misleading reports from people hostile to the Government

in order to alert institutions such as the United Nations Security Council and the International Criminal Court.

150. This perception of the situation of human rights in Burundi by UNIIB wrongly contradicts the assessment by the EAC bodies notably the EAC summit of Heads of States held early September 2016.

151. Not any element in the analysis by the experts, as in any other objective analysis of the Governmental policy, can lead to doubt about the will of the Government of Burundi or its agents to give a wide berth to committing crimes.

152. The Government would wish to mention that no action by Governmental agents can be considered as an attack against civilians or, even less, as a generalized or systematic attack. Concerning the acts individually committed by whomever, the Government commissions the Burundian justice to conduct necessary investigations and initiate proceedings according to the law in force.

153. The Government would wish to inform the Council that all international crimes provided in the Rome Statute have been domesticated in the Burundian legislation thus empowering the national legislation to rule over this type of crimes.

154. The experts express the fear on the fact that, according to them, “the danger of the crime of genocide also looms large”. The leaders of the country, starting from the Head of State, incarnating the national unity, have expressed themselves several times on the will of the Government to take all possible measures to prevent genocide in the country. The experts should provide the Government with all elements of analysis on which they base, notably the targeted groups, the planners, the means intended to be used, to help the Government to curb any wishful thinking to commit genocide.

VI. COMMENTS ON THE CONCLUSIONS AND RECOMMENDATIONS

155. Finally, the Government notes that the conclusions and recommendations of UNIIB are mostly both misleading and its analyses are not evidence-based. Given the comments and observations issued on the allegations contained in the report, the Government of Burundi definitely refutes the conclusions of this investigation and requests the Council not to adopt it.
156. The Government commits to continue fighting against impunity and undertake any action intended to improve the situation of human rights in Burundi.
157. The UNIIB pretends to have “*found abundant evidence of gross human rights violations as well as human rights abuses*” while the whole report is built on anonymous testimonies based on non verified facts.
158. The UNIIB recognizes that “*the high levels of open violence witnessed by Burundi at the end of 2015 no longer prevail*” but speculatively deducts that “*however, this does not mean that the situation is moving in the right direction*”. The fact of predicting the worst without presenting reliable indicators is not in the sense of building peace.
159. Besides, the experts did not provide reliable indicators to justify the existence of secrete reprisals in Burundi, as it is obvious that their report is politically motivated and oriented.
160. Stating without evidence that “*Civil society and the social fabric have been weakened*” or taking as reference the quote of a certain interlocutor results from an utmost amateurism. As a matter of fact, Burundi counts more than 6,000 civil society organizations, about fifty political parties as well as a diversified media space. It is true; about ten organizations have been concerned by measures of the regulation authority for their alleged involvement in the insurrection and the coup attempt of 2015. Under which authority do the experts limit the whole civil society organization space to only those few organizations?
161. The dark scenario by the experts notably under **Paragraph 129** of their report is not observable in the country.

162. *“UNIIB’s investigations suggest widespread and systemic patterns of violations, and of the sort that calls for, among other things, judgments of State and individual responsibility for perpetrators and of effective remedies for victims by an international process.”* The Government has already demonstrated that the analysis of experts is based on misleading allegations and that the capacity of national institutions to deal with any eventual violation is established.

163. Burundi does not consider itself under attack by the international community, less than that, in conflict with the United Nations and its agencies, but it however deplores the acts of aggression and interference from some member States with a complicit silence of the United Nations. Burundi is a full member State of the organization and continues, not only to fully cooperate with the different mechanisms of the United Nations, but also expects from the Organization full support on all issues falling under its competence, in the strict respect of its sovereignty. Burundi requests a fair treatment based on the reality.

164. Burundi notices that most of the recommendations formulated by the UNIIB experts are misarticulated in comparison with their analyses. Nevertheless, the Government reserves the right to consider only the recommendations it will find in line with the improvement of the enjoyment of human rights by all Burundians and inhabitants of the country.