



# **DIVISION AND HUMAN RIGHTS VIOLATIONS IN BURUNDI**

## **Report of the Standing Committee on Foreign Affairs and International Development**

**Hon. Robert D. Nault  
Chair**

### **Subcommittee on International Human Rights**

**Michael Levitt  
Chair**

**FEBRUARY 2017**

**42<sup>nd</sup> PARLIAMENT, 1<sup>st</sup> SESSION**

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# **THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND INTERNATIONAL DEVELOPMENT**

has the honour to present its

## **SIXTH REPORT**

Pursuant to the motion adopted by the Standing Committee on Foreign Affairs and International Development on Thursday, February 4, 2016, and the motion adopted by the Subcommittee on Thursday, June 16, 2016, the Subcommittee has studied the human rights situation in Burundi.

Your Committee has adopted the report, which reads as follows:



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# **LIST OF RECOMMENDATIONS**

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Based on evidence heard by the Subcommittee on International Human Rights of the House of Commons Standing Committee on Foreign Affairs and International Development during the course of its September and October 2016 study on the human rights situation in Burundi, the Subcommittee recommends that the Government of Canada:

## **RECOMMENDATION 1**

**monitor, to the best of its ability, the ethnic aspects of Burundi's human rights situation and respond to any escalation of ethnically charged rhetoric from the Government of Burundi or opposition groups by publicly condemning such actions and by urging the United Nations Security Council to take measures that would prevent the commission of acts of genocide. .... 8**

## **RECOMMENDATION 2**

**continue to provide financial and political support to Burundian civil society organizations, including by advocating for their protection through all available diplomatic channels. .... 14**

## **RECOMMENDATION 3**

**develop an action plan to support the resettlement of Burundian asylum-seekers in Canada, and maintain the existing moratorium on deporting failed refugee claimants to Burundi until a political settlement is determined to be sustainable. .... 15**

## **RECOMMENDATION 4**

**support the UNHCR in its work with host states to ensure the physical security of Burundian refugees, including efforts to maintain the civilian character of camps and to prevent sexual violence. .... 17**

## **RECOMMENDATION 5**

**support the UNHCR in enhancing host states' capacity to ensure the availability of psycho-social support to Burundian refugees, particularly to those who have been the victims of sexual violence. .... 17**

**RECOMMENDATION 6**

**call on the Government of Burundi to restore funding for the Ministry of Education, to allow secondary students to resume their studies, and to work with development partners and the private sector to create employment programs to improve conditions for Burundian youth and establish the conditions for economic growth. .... 18**

**RECOMMENDATION 7**

**call on the international community, including the United Nations and the African Union, to address Burundi’s culture of impunity, which is apparent through the executive’s control of the judiciary, its use of threats towards judges of the Constitutional Court, and its use of the judiciary as a tool of repression. .... 20**

**RECOMMENDATION 8**

**advocate for the legal rights of peaceful members of Burundi’s civil society, including by calling on the Government of Burundi to enhance the capacity of Burundi’s Independent National Commission on Human Rights to conduct its work and to grant access to monitoring and advocacy groups such as the Red Cross and Lawyers Without Borders to monitor trials and prison conditions. ... 20**

**RECOMMENDATION 9**

**urge the Government of Burundi to allow the collection and preservation of evidence by the relevant national, regional and international entities, including Burundis’ Independent National Commission on Human Rights and the United Nations Office of the High Commissioner for Human Rights in Burundi, and to support these entities in the collection and preservation of evidence. .... 20**

**RECOMMENDATION 10**

**advocate for a lasting political settlement in Burundi through engagement with the relevant entities, including the African Union, the Government of Burundi and the governments of neighboring states. .... 22**

**RECOMMENDATION 11**

**strongly urge the Government of Burundi to allow full access to the African Union monitors and the United Nations police mission mandated by UN Security Council Resolution 2303 (2016). ..... 23**

**RECOMMENDATION 12**

**encourage the African Union and the United Nations to coordinate their advocacy for enhanced access and, where possible, take advantage of opportunities to coordinate operations. .... 23**

**RECOMMENDATION 13**

**support initiatives to suspend Burundi’s membership on the Human Rights Council in light of the UN Independent Investigation in Burundi’s finding that gross and systematic violations of human rights are taking place. .... 24**

**RECOMMENDATION 14**

**use the Universal Periodic Review of Burundi to make recommendations calling on Burundi to respect its existing human rights obligations, and to advocate that Burundi accede to, or sign and ratify, the *Optional Protocol to the International Covenant on Civil and Political Rights*, allowing an individual complaints procedure. .... 25**

**RECOMMENDATION 15**

**strongly advocate for the UN Security Council to take action by imposing targeted economic sanctions and travel bans against Burundian officials and others who commit human rights violations or impede a peaceful political settlement, and implement these sanctions under Canadian law. Any sanctions should be carefully developed so as to avoid negative impacts on Burundians. .... 26**

**RECOMMENDATION 16**

**increase its advocacy on behalf of the UN Office of the High Commissioner for Human Rights in Burundi during the course of renegotiation of its host agreement, particularly to ensure that it maintains its ability to document and report on ongoing human rights violations. .... 27**

**RECOMMENDATION 17**

**support the United Nations Commission of Inquiry into Burundi, including by advocating for the cooperation of Burundi's neighbouring states, and, where possible, providing necessary expertise in the areas of forensics, ballistics and responding to sexual violence. .... 28**

**RECOMMENDATION 18**

**strongly urge the Government of Burundi to reverse its decision to withdraw from the International Criminal Court and engage with African partners to enhance the legitimacy of the International Criminal Court. .... 29**

# DIVISION AND HUMAN RIGHTS VIOLATIONS IN BURUNDI

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## Introduction

In September and October of 2016, the Subcommittee on International Human Rights of the House of Commons Standing Committee on Foreign Affairs and International Development (the Subcommittee) undertook a study on the human rights situation in the Republic of Burundi (Burundi).<sup>1</sup> Over 18 months had passed since Burundians took to the streets of the capital, Bujumbura, in April 2015, to protest President Pierre Nkurunziza's announced intention to run for a third term in office, in violation of a constitutional term limit. President Nkurunziza's actions shook the foundations of a hard-won peace, following 40 years of power struggles manifested through cycles of systematic mass violence, genocide and reprisals, and a bloody civil war.<sup>2</sup> The Subcommittee heard testimony indicating that the regime has since systematically targeted voices of dissent in Burundi, committing gross violations of human rights and sowing social division through ethnically charged language. This has prompted an exodus of over 380,000 Burundians,<sup>3</sup> and has caused significant socio-economic hardship for Burundians, which itself is becoming a driver of crisis.

The Government of Canada has a responsibility to keep the human rights situation in Burundi high on the international agenda. Reports of systematic human rights violations committed by the Burundian regime, as well as the rhetoric used by the regime and opposition, threatens the return of civil war,<sup>4</sup> and the revival of genocidal intentions and actions.<sup>5</sup> To date, measures taken by the international community have not deterred the commission of human rights violations.<sup>6</sup> Yet, witnesses informed the Subcommittee that it may still be possible for the international community to alter the course that Burundi has taken.<sup>7</sup> The responsibility to act is heightened as Burundi's neighbours appear to grow complacent towards President Nkurunziza's ambitions, and as the influence of the United Nations (UN) in Burundi wanes. During the course of this study, Burundi announced its withdrawal from the *Rome Statute of the International Criminal Court*,<sup>8</sup> and ended cooperation with the UN Office of the High Commissioner for Human Rights (OHCHR) in

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1 Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development [SDIR], [Minutes of Proceedings](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 June 2016.

2 [Arusha Peace and Reconciliation Agreement for Burundi](#), 28 August 2000, art. 3(3).

3 As of February 2017. See: UNHCR, "[Land needed urgently for camps for Burundian refugee arrivals](#)," News Release, 7 February 2017.

4 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

5 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 October 2016.

6 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

7 Ibid.; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 October 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 October 2016 .

8 "[Burundi notifies UN of ICC pullout](#)," ENCA, 28 October 2016.

Burundi.<sup>9</sup> Witnesses informed the Subcommittee that the international community should be acting in concert,<sup>10</sup> in a manner which addresses the growing urgency of the situation.<sup>11</sup>

Through this report, the Subcommittee provides 18 recommendations to the Government of Canada which aim to address the root causes and multipliers of the crisis, strongly rebuke Burundi's human rights violations, insist on Burundi's reengagement with multilateral institutions and assure that the Burundian regime is held accountable for its actions. In making recommendations, the Subcommittee is cognizant of the importance of taking measures which target the regime but do not negatively impact Burundians.

During its study, the Subcommittee invited the testimony of officials from Global Affairs Canada, a senior researcher at Human Rights Watch, a Burundian law professor, a Burundian human rights defender who has fled to Canada, an Amnesty International official, a rapporteur for the UN Committee Against Torture, a Burundian refugee in Canada whose family has sought refuge outside Burundi since the crisis erupted, and the Representative of the UN High Commissioner for Refugees (UNHCR) in Canada. The Subcommittee benefitted enormously from the contributions of these witnesses, some of whom appeared before the Subcommittee at considerable personal risk. The Subcommittee thanks them for their contributions, and commends them for their work.

This report proceeds in three stages. First, the Report aims to shine a light on disturbing evidence of human rights violations. Second, the Report considers potential multipliers of the crisis: a large scale exodus, an economic crisis which reverses gains made in the past 10 years, and weakened institutions. Finally, the Report aims to examine prospects for a political settlement and accountability in international venues.

## Background

On 25 April 2015, President Nkurunziza formally announced his candidacy for a third term in office at the helm of the ruling party, the Conseil national pour la défense de la démocratie-Forces de la défense de la démocratie (CNDD-FDD).<sup>12</sup> President Nkurunziza's candidacy was widely condemned, particularly by the political opposition, and a broad swath of Burundian civil society.<sup>13</sup> Opponents argue that President Nkurunziza's

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9 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 October 2016.

10 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 October 2016.

11 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 October 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 October 2016.

12 "[Burundi President Pierre Nkurunziza confirms third-term bid](#)," *BBC News*, 25 April 2015. President Nkurunziza's intentions had been well-known before they were formalized. See: Moses Havyarimana, "[Third term: Elders, civil society tell Nkurunziza not to run again](#)," *The East African* [Kenya], 21 February 2015.

13 See, for example: Mouvement Citoyen Halte au troisième mandat, "[Who are we?](#)".

candidacy violates the two-term limit mandated by the 2005 Constitution and the Arusha Peace and Reconciliation Agreement for Burundi (Arusha Accord) which underpins it.<sup>14</sup>

The Arusha Accord is widely acknowledged to be the foundation for peace and stability in Burundi.<sup>15</sup> Opened for signature in 2000, the Arusha Accord ushered in the end of a civil war which began in 1993. The civil war was rooted in a power struggle between Burundi's Hutu ethnic group, which composes 85% of the population, and the Tutsi ethnic group, which was favoured under colonial rule and composes 14% of Burundi's population.<sup>16</sup> The Arusha Accord acknowledged "massive and deliberate killings, widespread violence and exclusion," including acts of genocide, war crimes and other crimes against humanity, suffered both by Hutu and Tutsi communities since Burundi's independence in 1962.<sup>17</sup> Among many institutional reforms, the Arusha Accord established a power-sharing agreement including ethnic quotas which is reflected in the 2005 Constitution.<sup>18</sup> Article 96 of the Constitution establishes a two-term limit for the presidency, stating: "The President of the Republic is elected by universal direct suffrage for a mandate of five years renewable one time."<sup>19</sup>

Support for President Nkurunziza's third term does not follow ethnic lines. Some Tutsis are associated with his regime, while the opposition is composed of a broad range of actors, both Hutu and Tutsi.<sup>20</sup> However, this crisis is a manifestation of a decades-old political power struggle which the Arusha Accord failed to put to rest. For example, President Nkurunziza's candidacy represents the victory of a small circle of former civil war rebel leaders within the CNDD-FDD over the moderate wing of the party, which left as a bloc in April 2015.<sup>21</sup>

Over the course of its study, the Subcommittee received disturbing testimony of a prolonged campaign of systematic and widespread violations of human rights in Burundi, including extrajudicial executions and targeted assassinations, forced disappearances, torture and cruel, inhuman and degrading treatment, arbitrary and unlawful arrests as well as sexual violence, motivated by a desire to quash dissent permanently among members

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14 Burundi's Constitutional Court found President Nkurunziza's candidacy to be constitutionally valid. The Court found that, because President Nkurunziza's first election to the presidency was through a transitional provision, his first five year term did not count towards a two-term limit in Burundi's 2005 Constitution. However, according to findings from the United Nations Independent Investigation in Burundi (UNIIB), the judges of the Constitutional Court had been threatened by the regime, leading the Vice-President of the Court to flee Burundi.

15 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016; African Union, [Report of the Delegation of the African Commission on Human and Peoples' Rights on its Fact-Finding Mission to Burundi](#), 7–13 December 2015, [ACHPR Report], para. 105.

16 The remaining 1% of the population is composed of members of the Twa ethnic group.

17 [Arusha Peace and Reconciliation Agreement for Burundi](#), 28 August 2000, art. 3.

18 [Burundi's Constitution of 2005](#), arts. 129, 143, 164.

19 Ibid., art. 96.

20 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

21 International Crisis Group, [Burundi: A Dangerous Third Term](#), Africa Report No. 235, 20 May 2016, p. 2.

of Burundi's once-vibrant civil society.<sup>22</sup> Journalists, human rights defenders, civil society leaders, politicians and protest leaders are specifically targeted. A handful of neighbourhoods in the capital city of Bujumbura – Buisa, Buterere, Cibitoke, Jabe, Musaga, Mutakura, Ngagara and Nyakabiga – formed the epicentre of protest in April 2015. These dense neighbourhoods are bases of opposition support and are among the poorest parts of Bujumbura with a large number of unemployed youth.<sup>23</sup> They are now the primary targets for crackdowns. The systematic nature of these violations and the targeting of specific groups of civilians lead to the conclusion that they may amount to crimes against humanity.<sup>24</sup>

Ethnically charged rhetoric has been used by high-ranking regime officials, but does not yet appear to have gained traction among Burundians. Though genocide may not be imminent, the spectre of government-led or government-sanctioned inter-ethnic violence remains. It is noteworthy that so-called “opposition neighbourhoods” have a significant concentration of members of the Tutsi ethnic group.<sup>25</sup> According to Ms. Ketty Nivyabandi, a Burundian human rights defender who has fled to Canada, this crisis is based on “the politics of revenge, and that revenge can take ethnic forms.”<sup>26</sup> This is reflected in the views of Tutsi Burundians interviewed by the International Crisis Group, who reported an “ethnic bias and double standard when it comes to cracking down on opponents.”<sup>27</sup>

## RECOMMENDATION 1

**That the Government of Canada monitor, to the best of its ability, the ethnic aspects of Burundi's human rights situation and respond to any escalation of ethnically charged rhetoric from the Government of Burundi or opposition groups by publicly condemning such actions and by urging the United Nations Security Council to take measures that would prevent the commission of acts of genocide.**

### Fanning the flames: From protest movement to crisis

The violent repression of popular protests in Bujumbura in April 2015 was an opening salvo in a series of events which escalated a protest movement to crisis levels. Police used excessive force and shot demonstrators in Bujumbura indiscriminately.<sup>28</sup>

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22 United Nations Human Rights Council, [Report of the United Nations Independent Investigation on Burundi \(UNIIB\) established pursuant to Human Rights Council resolution S-24/1 \(Advance Unedited Version\)](#), UN Doc. A/HRC/33/37, 20 September 2016 [UNIIB Report], para. 86; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 October 2016.

23 [UNIIB Report \(September 2016\)](#), para.68.

24 Ibid., para.123; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 October 2016.

25 [ACHPR Report \(December 2015\)](#), para. 111.

26 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

27 International Crisis Group, [Burundi: A Dangerous Third Term](#), Africa Report No. 235, 20 May 2016, p. 13.

28 Human Rights Watch, [“Burundi Events of 2015,”](#) SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

Ms. Ketty Nivyabandi led one such demonstration in May 2015. The demonstrators, all women, held white handkerchiefs. They were met with tear gas and water cannons. Many were injured. Shortly thereafter, the leaders of the protests were systematically arrested. At least one of Ms. Nivyabandi's counterparts, Ms. Christa Bénigne Irakoze, is reported to have been tortured, raped and then executed.<sup>29</sup> During these protests, the government forced the closure of three radio stations, including the popular Radio Publique Africaine,<sup>30</sup> and temporarily suspended social media as well as messaging services.<sup>31</sup>

Radicalized opposition groups emerged as demonstrations continued. On 13 May 2015, a group of military officers known as the Forces Républicaines du Burundi staged a failed coup d'état. From that date onward, all those perceived to be against the regime – including all those who demonstrated against President Nkurunziza's third term – were labelled insurgents and terrorists.<sup>32</sup> By 24 July 2015, almost all of Burundi's political opposition leaders had fled the country, allowing President Nkurunziza to win a sham election virtually uncontested.<sup>33</sup>

After July 2015, government crackdowns intensified<sup>34</sup> as opposition groups – armed and unarmed alike – coalesced under the banner of the Conseil national pour le respect de l'accord d'Arusha pour la paix et la réconciliation au Burundi, de la constitution et de l'état de droit (CNARED).<sup>35</sup> Among these are vestiges of groups that were demobilized after the civil war,<sup>36</sup> and groups which coalesced and radicalized after the initial protest movement.<sup>37</sup> Several groups are led by former senior army, intelligence and police officials, some of whom were affiliated with the CNDD-FDD before April 2015.<sup>38</sup> At the peak of their activity in December 2015, armed opposition groups attacked four military bases. However, these groups remain disorganized, amorphous and diffuse.<sup>39</sup> Leaders of armed opposition groups are believed to be based in Rwanda and the Democratic Republic of the Congo. It is not clear to what extent these groups work together.<sup>40</sup>

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29 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

30 Human Rights Watch, "[Burundi Events of 2015](#)."

31 UN Human Rights Council, [Rapport du Haut-Commissaire des Nations Unies aux droits de l'homme sur la situation des droits de l'homme au Burundi](#), UN Doc. A/HRC/32/30, 17 June 2016, [OHCHR Report], para. 34.

32 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

33 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016.

34 Ibid. The CNDD-FDD has several "satellite" parties who nominally put forward candidates in the election.

35 CNARED, [Acte constitutif du conseil national pour le respect de l'accord d'Arusha pour la paix et la réconciliation au Burundi, de la constitution et de l'état de droit, « CNARED-GIRITEKA »](#).

36 Jean-Baptiste Nkurunziza and Obi Anyadike, "[Briefing – who's who in Burundi's armed opposition](#)," IRIN, 7 June 2016.

37 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016.

38 Jean-Baptiste Nkurunziza and Obi Anyadike, "[Briefing – who's who in Burundi's armed opposition](#)," IRIN, 7 June 2016.

39 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

40 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016.

According to the International Crisis Group, the armed opposition's disorganization is due to the inability to overcome ethnic cleavages.<sup>41</sup>

A climate of fear now pervades in Burundi.<sup>42</sup> Levels of overt violence have declined since the beginning of 2016. Public protest "hardly occurs anymore."<sup>43</sup> As Ms. Carina Tertsakian, Senior Researcher for Human Rights Watch, reports, "almost all the country's leading political activists, human rights activists, and journalists have fled. The few who remain are working underground."<sup>44</sup> A cult of personality is being built around President Nkurunziza,<sup>45</sup> who now has "total control over the entire state apparatus."<sup>46</sup> Burundi now appears to be evolving towards a one-party state.<sup>47</sup>

The socio-economic impacts of the regime's actions risk fuelling a humanitarian crisis.<sup>48</sup> This political crisis is unfolding against a backdrop of poverty and food insecurity, which it threatens to exacerbate. In 2015, Burundi ranked 184<sup>th</sup> out of 188 countries on the UN Human Development Index.<sup>49</sup> Socio-economic gains which had been made since the end of the civil war – in health, education and food security – have been lost. In October 2016, the Subcommittee learned that over 300,000 Burundians had fled Burundi since 2015, living in precarious conditions in Tanzania, Rwanda, Uganda and the Democratic Republic of the Congo, unsure of their prospects for return.<sup>50</sup> By February 2017, this number of had increased to over 380,000.<sup>51</sup>

### **Creating a climate of fear: systematic human rights violations and their victims**

The Subcommittee encountered the obstacle expressed in the report of the UN Independent Investigation on Burundi (UNIIB): "No one can quantify exactly all the violations that have taken place and that continue to take place in a situation as closed and repressive as Burundi."<sup>52</sup> International monitoring teams such as the UNIIB and a delegation of the African Commission for Human and Peoples' Rights (ACHPR), who have

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41 [Burundi: A Dangerous Third Term](#), Africa Report No. 235, International Crisis Group, 20 May 2016, p. i.

42 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

43 [UNIIB Report \(September 2016\)](#), para. 64.

44 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016.

45 [UNIIB Report \(September 2016\)](#), para. 88.

46 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

47 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 October 2016.

48 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 October 2016.

49 United Nations Development Programme, "[Burundi](#)." The Human Development Index measures life expectancy, education and living standards. For more information, see: United Nations Development Programme, "[Human Development Index \(HDI\)](#)."

50 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 October 2016.

51 UNHCR, "[Land needed urgently for camps for Burundian refugee arrivals](#)," News Release, 7 February 2017

52 [UNIIB Report \(September 2016\)](#), para. 34.

been allowed into Burundi, acknowledge that their estimates are conservative due to the requirement that cases be independently confirmed.<sup>53</sup>

While armed opposition groups have committed human rights violations, forces loyal to the regime are responsible for the vast majority of human rights violations.<sup>54</sup> Though the security sector maintains its official command structure, reflecting politico-ethnic balances required by the Arusha Accord,<sup>55</sup> the regime has groomed certain units to act as a tool of repression,<sup>56</sup> including the Service national de renseignement (SNR), police units including the riot squad and the “institutions support squad,” as well as the army “institutions defence brigade.” These units are assisted by the Imbonerakure, the armed youth wing of the CNDD-FDD. According to Ms. Carina Tertsakian, “you find them in every town, every village. They know everybody, so they identify and denounce people who should be arrested.”<sup>57</sup> Armed and trained by state authorities,<sup>58</sup> not only do the Imbonerakure carry out campaigns of intimidation against those who refuse to join the ruling party, but they also carry out beatings and killings.<sup>59</sup>

According to the UNIIB, arbitrary arrests and detention have been “a cornerstone of the repression, and have opened the way for a wide range of other human rights violations.”<sup>60</sup> Burundian security services and Imbonerakure<sup>61</sup> regularly conduct cordon-and-search operations targeting perceived “opposition neighbourhoods” in Bujumbura.<sup>62</sup> The UNIIB has reported extreme prison overcrowding and prolonged detention without charges,<sup>63</sup> including in informal places of detention in locations connected to the regime’s inner circle.<sup>64</sup> An unconfirmed number of prisoners were released in February 2016 after the visit of the UN Secretary General to Burundi.<sup>65</sup>

Targets for assassination were identified by lists provided by the regime to security forces.<sup>66</sup> In the second half of 2015, Burundians, particularly in Bujumbura, regularly discovered bodies in the streets. Bodies are now buried in mass graves,<sup>67</sup> which have

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53 Ibid., para. 38.

54 Ibid., para. 125.

55 International Crisis Group, [Burundi: A Dangerous Third Term](#), Africa Report No. 235, 20 May 2016, p. 4.

56 Ibid., p. 3.

57 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016.

58 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 October 2016.

59 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

60 [UNIIB Report \(September 2016\)](#), para.65.

61 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 October 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

62 [ACHPR Report \(December 2015\)](#), para. 100.

63 [UNIIB Report \(September 2016\)](#), paras. 69-70.

64 Ibid., para. 72.

65 [OHCHR Report \(June 2016\)](#), para. 58.

66 [UNIIB Report \(September 2016\)](#), para. 46.

67 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

been confirmed through satellite imagery<sup>68</sup> and acknowledged by local authorities.<sup>69</sup> There is now a rising trend of enforced disappearances,<sup>70</sup> conducted by units who report directly to the inner circle of the executive.<sup>71</sup>

The OHCHR Office in Burundi reported that 651 cases of torture occurred between April 2015 and April 2016. The UN Committee Against Torture noted that the practice of torture has escalated since April 2016.<sup>72</sup> Ms. Carina Tertsakian reported the increasing cruelty of the regime's torture practices in recent months. Such practices include beatings using hammers, the smashing of limbs including piercing by sharp metal rods, electric shocks, hanging weights and administering shocks to genitals and making victims sit in acid.<sup>73</sup> The Subcommittee learned that "many victims in fact don't survive, because even when they're released, they're too scared to seek medical treatment."<sup>74</sup>

Women and girls, particularly those with some connection to perceived dissidents, are victims of sexual violence, including gang rape.<sup>75</sup> Mr. Sébastien Touzé, Rapporteur for the UN Committee Against Torture, expressed concern about the numerous and consistent allegations of sexual violence, particularly during demonstrations and cordon-and-search operations of opposition neighbourhoods of Bujumbura. The involvement of the Imbonerakure in sexual violence is "almost systematic."<sup>76</sup> In some cases, rape was used to deter people from fleeing Burundi. Human Rights Watch reports that women have been raped on the Burundian side of country borders by Imbonerakure and police. The attackers ordered the victims to return home, or verbally harassed them for attempting to leave.<sup>77</sup>

Witnesses have testified that Burundian civil society actors, notably human rights defenders and journalists, are the subject of specific forms of repression designed to silence them, force them to flee and to continue to silence them even in exile.<sup>78</sup> In the words of Mr. Albert Nsabyumva, a Burundian refugee living in Canada:

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68 [UNIIB Report \(September 2016\)](#), para. 44; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 October 2016.

69 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 October 2016.

70 Ibid.; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

71 [UNIIB Report \(September 2016\)](#), para. 52.

72 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 October 2016.

73 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

74 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016.

75 Ibid.

76 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 October 2016.

77 "[Burundi: Gang Rapes by Ruling Party Youth](#)," Human Rights Watch, 27 July 2016.

78 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 September 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 October 2016.

What I'm saying here, I could not say in Burundi. I have to admit that the people who are there—journalists and civil society first and foremost—are required to keep their mouths shut. If a person tells the truth, they are immediately marked for execution.<sup>79</sup>

For example, in an immediate response to the 13 May 2015 attempted coup, uniformed men and Imbonerakure attacked three independent radio stations, including the popular Radio Publique Africaine which was closed during the earlier protests.<sup>80</sup> Those journalists and civil society leaders who have remained in Burundi have suffered torture, enforced disappearance or execution. On 2 August 2015, for example, a correspondent for Radio France Internationale and Agence France-Presse was arrested and tortured for an extended period of time.<sup>81</sup> The following day, Mr. Pierre Claver Mbonimpa, a leading human rights activist, was the subject of an assassination attempt. His son and son-in-law were later killed.<sup>82</sup>

On 23 November 2015, the activities of the 10 leading Burundian civil society organizations were temporarily suspended by ministerial decree. Some had their bank accounts and those of their executives frozen, without due process.<sup>83</sup> Attacks on civil society leaders continue even once they are outside of Burundi – UNIIB has confirmed five cases in which international arrest warrants have been issued against exiled civil society leaders.<sup>84</sup> In February and March of 2016, the Government of Burundi lifted international arrest warrants, allowed the reopening of two radio stations, unfroze bank accounts and lifted suspensions on civil society organizations.<sup>85</sup> Though the regime argues that the situation has returned to normal, the UNIIB questioned the staffing, content and independence of media,<sup>86</sup> and multiple witnesses before the Subcommittee have stated that civil society organizations continue to be stifled.<sup>87</sup>

In the 2015-2016 fiscal year, Canada provided \$95,000 to Burundian civil society through the Canada Fund for Local Initiatives. Recipients included organizations whose leadership had been forced to flee and which had their bank accounts frozen. Among these organizations is Radio Publique Africaine.<sup>88</sup>

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79 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 October 2016.

80 [UNIIB Report \(September 2016\)](#), para. 82; Human Rights Watch, "[Burundi Events of 2015](#)."

81 [UNIIB Report \(September 2016\)](#), para. 83.

82 *Ibid.*, para. 49.

83 [UNIIB Report \(September 2016\)](#), para. 79; [ACHPR Report \(December 2015\)](#), para. 97.

84 [UNIIB Report \(September 2016\)](#), para. 80.

85 [OHCHR Report \(June 2016\)](#), para. 57.

86 [UNIIB Report \(September 2016\)](#), para. 85.

87 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

88 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 September 2016.

## RECOMMENDATION 2

**That the Government of Canada continue to provide financial and political support to Burundian civil society organizations, including by advocating for their protection through all available diplomatic channels.**

### Consequences which threaten to become drivers of crisis

#### Mass displacement and threats to the safety of refugees

As of 7 February 2017, 386,493 people had fled Burundi since April 2015, with the UNHCR anticipating that this number would climb to over 500,000 by the end of 2017.<sup>89</sup> In interviews with UNIIB, Burundian refugees reported leaving out of fear of reprisals by the SNR and Imbonerakure for having participated in or having supported demonstrations, and for having defected from or having divergent opinions from the CNDD-FDD. Others fled after family members were arrested, while others cited the general climate of insecurity.<sup>90</sup> October 2016 estimates regarding the number of internally displaced Burundians vary from 60,000<sup>91</sup> to 108,000.<sup>92</sup> Only a small subset of internally displaced persons is located in camps.<sup>93</sup> Most are hosted by family and friends, and many choose not to disclose their status for fear of being associated with a political agenda.<sup>94</sup>

Just under half of those who have fled Burundi are located in Tanzania, while close to a quarter is located in Rwanda. Uganda and the Democratic Republic of the Congo also host a significant number of Burundians.<sup>95</sup> Burundian refugees fleeing to these countries are automatically granted asylum.<sup>96</sup> Camps and settlements are managed by state governments with assistance from the UNHCR. The reception capacities of the host countries are “already severely overstretched,” meaning that “conditions remain dire for many refugees.”<sup>97</sup>

In Tanzania, a strict encampment policy requires refugees to live in one of three camps. A fourth camp was recently established, which the UNHCR has found not to be viable due to a lack of access to water.<sup>98</sup> In the Democratic Republic of the Congo,

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89 UNHCR, [“Land needed urgently for camps for Burundian refugee arrivals,”](#) News Release, 7 February 2017.

90 [UNIIB Report \(September 2016\)](#), para. 98.

91 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 October 2016; International Organization for Migration, [“Burundi.”](#)

92 UN Office for the Coordination of Humanitarian Affairs, [Burundi: Note d’informations humanitaires du 10 Octobre 2016](#), p. 1.

93 *Ibid.*, p. 2.

94 Internal Displacement Monitoring Centre, [“Burundi IDP Figures Analysis.”](#)

95 UN Office for the Coordination of Humanitarian Affairs, [Burundi: Note d’informations humanitaires du 10 Octobre 2016](#), p. 3; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 October 2016.

96 UNHCR, [Burundi Regional Refugee Response Plan \(January-December 2016\)](#), p. 10.

97 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 October 2016.

98 Johannes Van der Klaauw (UNHCR), Written Testimony to SDIR, 28 October 2016, p. 1.

three quarters of approximately 28,000 Burundian refugees live in a single camp, which has surpassed its capacity of 20,000 refugees. Development will soon begin on a second camp.<sup>99</sup> In Rwanda, almost 30,000 Burundian refugees are living in urban areas, while 50,000 live in one camp.<sup>100</sup> Rwanda's capacity is strained by influxes of Congolese and South Sudanese refugees, as is Uganda's.<sup>101</sup> Burundian refugees in Uganda are provided with plots of land in settlements.<sup>102</sup> Sharing the story of a Burundian family who fled to Uganda, Mr. Albert Nsabiyumva told the Subcommittee that it took more than two months to discover the existence of the refugee settlements and associated services.<sup>103</sup> In total, approximately 25% of Burundian refugees live in urban centres, where the UNHCR faces significant challenges with outreach and coordination.<sup>104</sup>

The UNHCR projects that in 2017 over 7,000 extremely vulnerable Burundian refugees will require urgent resettlement. According to the UNHCR, 458 Burundian refugees were resettled to Canada in 2015.<sup>105</sup> Mr. Albert Nsabiyumva expressed great dissatisfaction with processing times for privately sponsored refugees.<sup>106</sup> In December 2015, Canada suspended all orders for the removal of Burundians in Canada who have been denied refugee status, citing instability, violence and food insecurity in their country of origin.<sup>107</sup>

### RECOMMENDATION 3

**That the Government of Canada develop an action plan to support the resettlement of Burundian asylum-seekers in Canada, and maintain the existing moratorium on deporting failed refugee claimants to Burundi until a political settlement is determined to be sustainable.**

Even once refugees arrive in camps, they continue to face threats to their security. Two such threats were highlighted to the Subcommittee: the threat of sexual violence, and the threat posed by armed groups – both Imbonerakure and armed opposition groups – who had infiltrated the camps.<sup>108</sup>

Sexual violence is far too common in the places where Burundians, particularly women, seek refuge. The threat comes both from other refugees and the local population.

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99 Ibid., p. .2.

100 Ibid., p. 1.

101 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 October 2016.

102 Johannes Van der Klaauw (UNHCR), Written Testimony to SDIR, 28 October 2016, p. 1.

103 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 October 2016.

104 Johannes Van der Klaauw (UNHCR), Written Testimony to SDIR, 28 October 2016, p. 1.

105 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 October 2016.

106 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 October 2016.

107 Government of Canada, "[Government of Canada suspends removals to Burundi](#)," News Release, 2 December 2015.

108 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 October 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 October 2016.

Women who leave camps to sell goods, purchase necessities or collect firewood are particularly vulnerable.<sup>109</sup> Focusing on Tanzania, Human Rights Watch stated that “the numbers of rapes are alarmingly high, including of children,” with three or four cases reported per week.<sup>110</sup> Victims theoretically have recourse to the national laws and courts of the territories in which they reside. However, the vulnerability of victims is compounded because they often do not know where to seek help. In those cases which are reported, few investigations are opened and fewer arrests are made.<sup>111</sup> In Tanzania, Human Rights Watch reports that aid groups do not provide adequate psychological services and trauma care.<sup>112</sup> Physically protecting refugees is the duty of host states, which typically receive significant technical support from the UNHCR.<sup>113</sup>

The precarious circumstances of Burundian refugees are further compromised by the infiltration of the Imbonerakure in refugee camps and settlements as well as the presence of armed opposition groups. There are credible allegations that members of the SNR and the Imbonerakure have infiltrated certain camps or refugee settlements<sup>114</sup> in Uganda and Tanzania. Mr. Albert Nsabiyumva confirmed at least one instance in which a Burundian refugee left a refugee settlement in Uganda due to the presence of the Imbonerakure.<sup>115</sup> At least one Tanzanian camp manager has publicly acknowledged their presence. Members of the International Rescue Committee, which manages education in a Tanzanian camp, reported that some Imbonerakure had become aid workers, particularly in education programming, and are “trying to collapse education” in the camps.<sup>116</sup>

Many leaders of armed opposition groups are believed to be located in Rwanda or the Democratic Republic of the Congo – both significant host states for refugees.<sup>117</sup> Ms. Carina Tertsakian acknowledged the plausibility of reports that opposition groups were recruiting Burundians in Rwandan refugee camps, and that this could not have happened without the knowledge and complicity of the Rwandan government,<sup>118</sup> which has very

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109 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016.

110 Human Rights Watch, [Burundi: Gang Rapes by Ruling Party Youth](#), 27 July 2016.

111 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016; [“Burundi: Gang Rapes by Ruling Party Youth,”](#) Human Rights Watch, 27 July 2016.

112 [“Burundi: Gang Rapes by Ruling Party Youth,”](#) Human Rights Watch, 27 July 2016.

113 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 October 2016.

114 [UNIIB Report \(September 2016\)](#), para. 99.

115 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 October 2016.

116 Amanda Sperber, [“Fleeing Burundi Won't Protect You From Its Government,”](#) *Foreign Policy*, 4 November 2016.

117 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016.

118 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016. See also: Michael Boyce and Francisca Vigaud-Walsh, [“Asylum Betrayed: Recruitment of Burundian Refugees in Rwanda,”](#) Refugees International, 14 December 2015, p. 3. A leaked January 2016 [Report](#) prepared by the UN Security Council Committee established Pursuant to Resolution 1533 (2004) Concerning the Democratic Republic of the Congo reported interviews with 18 Burundians located in the Democratic Republic of the Congo, who revealed that they had been recruited at a refugee camp in Rwanda and received military training in May and June 2015, with the participation of Rwandan military instructors and logistical support provided by the Rwandan military (p. 3.)

tense relations with the Burundian regime. These allegations are denied by the Rwandan government.<sup>119</sup>

#### RECOMMENDATION 4

**That the Government of Canada support the UNHCR in its work with host states to ensure the physical security of Burundian refugees, including efforts to maintain the civilian character of camps and to prevent sexual violence.**

#### RECOMMENDATION 5

**That the Government of Canada support the UNHCR in enhancing host states' capacity to ensure the availability of psychosocial support to Burundian refugees, particularly to those who have been the victims of sexual violence.**

#### The socio-economic impact of the crisis

The socio-economic impact of the Government of Burundi's actions threatens to become an additional driver of the crisis.<sup>120</sup> Physical insecurity has left both urban and rural Burundians struggling to earn a living. The crisis has also led to the suspension of approximately 50%<sup>121</sup> of aid received annually from donors such as the European Union.<sup>122</sup> In 2015, Burundi relied on aid for 50% of its state budget.<sup>123</sup> The resulting 2016 "austerity budget"<sup>124</sup> disproportionately impacts social services,<sup>125</sup> leaving Burundians less resilient to shocks, particularly in the area of food insecurity.

Approximately 90% of Burundians earn their livelihoods through agriculture. This crisis has left 4.6 million of 11 million Burundians in a state of food insecurity or severe food insecurity.<sup>126</sup> Restrictions of movement due to physical insecurity have

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- 119 ["Where Did It All Go Wrong for Rwanda and Burundi Relations?," \*The East African Monitor\*](#), 6 September 2016.
- 120 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 October 2016.
- 121 « [Budget 2016 : austérité incontournable, mais ministères sociaux sacrifiés](#) », *Agence Bujumbura News*, 8 January 2016.
- 122 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 October 2016; Council of the European Union, "[Burundi: EU closes consultations under Article 96 of the Cotonou agreement](#)," News release, 14 March 2016. The terms of the relationship between the EU and Burundi are governed by the [Cotonou Agreement](#).
- 123 Daniel Finnan, "[Business as usual in Burundi, until the money runs out](#)," *Radio France International*, 3 November 2015; Kim Mayika, "[Burundi: vers une crise budgétaire](#)," *Afrique Actualité*, 3 January 2016; UNICEF, [UNICEF Burundi Humanitarian Situation Report](#), 30 January 2016, p. 2.
- 124 Office of the President of the Republic of Burundi, [Loi n° 1/22 du 31 décembre 2015 portant fixation du budget général de la République du Burundi pour l'exercice 2016](#), 31 December 2015; Kim Mayika, "[Burundi: vers une crise budgétaire](#)," *Afrique Actualité*, 3 January 2016; UNICEF, [UNICEF Burundi Humanitarian Situation Report](#), 30 January 2016, p. 2. Burundi's 2016 budget was reduced from 2015 levels by 18%-25%.
- 125 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 October 2016.
- 126 UN Office for the Coordination of Humanitarian Affairs, [Burundi: Note d'informations humanitaires du 10 octobre 2016](#), p. 1.

seriously impacted economic activities, limiting access to and availability of food for both urban and rural populations. The price of food has increased, while households' purchasing power continues to decrease.<sup>127</sup> The strategic fund for food insecurity has been virtually wiped out due to decreases in aid,<sup>128</sup> while a shortage of foreign currency prevents businesses from offering imported foods.<sup>129</sup>

In Bujumbura, streets are empty and businesses have closed.<sup>130</sup> Large portions of the business and professional community have fled the country.<sup>131</sup> Unemployment, which was already at 10% in urban areas of Burundi,<sup>132</sup> has increased. The overall budget for the Ministry of Education was cut by 30%.<sup>133</sup> In addition, due to so-called "academic reform", almost 80,000 students, aged 13 to 17, were refused the opportunity to continue their secondary school studies at the beginning of the 2016 school year.<sup>134</sup> In the words of Ms. Carina Tertsakian: "It's easy for anyone who may want to do so to just pay young people to go out and do whatever they want them to do. That is definitely going on." Over the short term, unemployment and a lack of educational prospects may make Burundians more susceptible to the influence of the regime, or recruitment to the ranks of the Imbonerakure or armed opposition groups.<sup>135</sup>

## RECOMMENDATION 6

**That the Government of Canada call on the Government of Burundi to restore funding for the Ministry of Education, to allow secondary students to resume their studies, and to work with development partners and the private sector to create employment programs to improve conditions for Burundian youth and establish the conditions for economic growth.**

## Impunity and prospects for justice through Burundi's institutions

According to Mr. Pacifique Manirakiza, a law professor from Burundi, even before April 2015, the judiciary and other institutions responsible for protecting human rights "abandoned their mission and were exploited by those in power."<sup>136</sup> For example, the

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127 Ibid., p. 2.

128 "[Budget 2016 : austérité incontournable, mais ministères sociaux sacrifiés](#)," *Agence Bujumbura News*, 8 January 2016.

129 Clement Manirabarusha, "[Burundi faces foreign exchange shortage as aid dries up, crisis grinds on](#)," *Reuters*, 22 July 2016.

130 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016.

131 [Country Report: Burundi](#), Economist Intelligence Unit, 14 November 2016, p. 13.

132 United Nations Development Programme, [Burundi – Rapport national final sur les Objectifs du Millénaire pour le développement 2015](#), 1 December 2015, p. 15.

133 UNICEF, [UNICEF Burundi Humanitarian Situation Report](#), 30 January 2016, p. 2.

134 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016; "[80 000 collégiens sans classe du Burundi](#)," *VOA Afrique*, 26 September 2016.

135 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016.

136 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

Truth and Reconciliation Commission, whose mandate is to investigate grave human rights violations committed between 1962 and 2008, was created by the Arusha Accord of 2000, but only began its work in 2014. The crisis has since interrupted its work.<sup>137</sup> Impunity for crimes of the past has set a precedent for impunity expected by security forces and the regime today. In the words of Mr. Pacifique Manirakiza: “Today’s judiciary is like the one of yesterday.”<sup>138</sup> The importance of addressing impunity was underlined by Ms. Carina Tertsakian, who stated:

Impunity lies at the heart of this crisis, and you see it in the way the perpetrators behave. From the low level, the ones who actually do the killing and torturing, right up to the top, there is this feeling that they know they’re going to get away with it.<sup>139</sup>

Among the most glaring examples of the effect of the executive’s control over the judiciary is the 4 May 2015 decision of Burundi’s Constitutional Court finding President Nkurunziza’s candidacy to be constitutionally valid. According to findings from the UNIIB, the judges of the Constitutional Court had been threatened by the regime, leading the Vice-President of the Court to flee Burundi.<sup>140</sup>

Not only do Burundi’s “broken” institutions grant the regime’s enforcers total impunity for their actions, thereby perpetuating the crisis,<sup>141</sup> but the executive has also frequently used the judicial system as a tool of repression. The Government of Burundi has used the pretext of the pursuit of “law and order” to oppress dissidents by equating demonstrators with insurgents or terrorists.<sup>142</sup> Burundi’s Attorney General has opened three commissions of inquiry since April 2015, the conclusions of which all advance this interest. The first commission of inquiry, created on 29 April 2015, found civil society organizations and journalists guilty of “insurrection.” A second commission of inquiry concluded that nine executions in an “opposition neighbourhood” of Bujumbura were carried out by armed opposition groups, which contradicts the OHCHR office in Burundi’s finding that these executions were carried out by an army unit.<sup>143</sup> A third commission of inquiry focused on the December 2015 attacks on military bases, and allegations of the existence of mass graves. That commission of inquiry concluded that no mass graves existed, but that further investigations were required. There has been no further investigation.<sup>144</sup>

These events have cast significant doubts on the impartiality of the Burundian justice system. As a result, the vast majority of human rights violations are not brought

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137 Ibid.; [OHCHR Report \(June 2016\)](#), para. 59.

138 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

139 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016

140 [UNIIB Report \(September 2016\)](#), para. 104; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

141 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

142 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

143 [OHCHR Report \(June 2016\)](#), paras. 54-55.

144 Ibid., para. 56; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 October 2016.

before authorities.<sup>145</sup> Those accusations against security forces or Imbonerakure that are brought to the justice system are either not thoroughly investigated, or not investigated at all.<sup>146</sup>

Burundi's Commission Nationale Indépendante des Droits de l'Homme (CNIDH) has issued only one report since the crisis erupted.<sup>147</sup> The OHCHR office in Burundi has undertaken capacity-building efforts for the CNIDH. With their support, the CNIDH was able to secure the release of over 2,000 people who had been arbitrarily detained. The CNIDH also serves a "documentation" function. It opened a multilingual hotline on 29 April 2016 and received 804 testimonials as of June 2016.<sup>148</sup> However, UNIIB has cast doubts on the credibility of CNIDH's report, which it alleges significantly downplays the scale of human rights violations.<sup>149</sup>

#### **RECOMMENDATION 7**

**That the Government of Canada call on the international community, including the United Nations and the African Union, to address Burundi's culture of impunity, which is apparent through the executive's control of the judiciary, its use of threats towards judges of the Constitutional Court, and its use of the judiciary as a tool of repression.**

#### **RECOMMENDATION 8**

**That the Government of Canada advocate for the legal rights of peaceful members of Burundi's civil society, including by calling on the Government of Burundi to enhance the capacity of Burundi's Independent National Commission on Human Rights to conduct its work and to grant access to monitoring and advocacy groups such as the Red Cross and Lawyers Without Borders to monitor trials and prison conditions.**

#### **RECOMMENDATION 9**

**That the Government of Canada urge the Government of Burundi to allow the collection and preservation of evidence by the relevant national, regional and international entities, including Burundi's Commission Nationale Indépendante des Droits de l'Homme and the United Nations Office of the High Commissioner for Human Rights in Burundi, and to support these entities in the collection and preservation of evidence.**

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145 [OHCHR Report \(June 2016\)](#), para. 51.

146 *Ibid.*, para. 53.

147 Commission Nationale Indépendante des Droits de l'Homme, [Rapport annuel: Édition 2015-2016, mars 2016](#).

148 [OHCHR Report \(June 2016\)](#), paras. 61-63.

149 [UNIIB Report \(September 2016\)](#), para. 109.

## The role of the international community and Burundi's neighbouring states in putting an end to gross human rights violations in Burundi

A lasting end to the current crisis in Burundi requires an approach which coordinates two distinct features. First, a political settlement is required to resolve what is ultimately a power struggle.<sup>150</sup> Diplomatic engagement is therefore needed, including on-the-ground monitoring.<sup>151</sup> Second, accountability is required to interrupt the cycle of impunity which has allowed this crisis to emerge.<sup>152</sup> The international community must act swiftly to hold President Nkurunziza's regime to account in international venues.<sup>153</sup>

The international community faces two significant challenges with respect to both diplomatic engagement and international accountability. First, neither Burundi's neighbours nor the African Union (AU) have put concerted pressure on Burundi. Second, the international community – which relies on state consent to intervene – must face the reality that the UN now has a declining level of influence in Burundi. The Burundian regime has consistently questioned the legitimacy of the UN's engagement with regards to respect for human rights, portraying themselves as victims of breach of sovereignty.<sup>154</sup> In the words of Mr. Sébastien Touzé, the UN depends “to a large extent on the full alignment of the states in the region.” There may be opportunities for increased cooperation between the UN, the AU and its member states in applying pressure on Burundi, which have yet to be taken.<sup>155</sup>

Canada has no diplomatic presence in Burundi. Canada's ambassador to Burundi is based in Nairobi, Kenya, and Canada's closest consular presence is in Kigali, Rwanda. To date, Canada has used diplomatic channels to attempt to mobilize Burundi's neighbouring countries, particularly in favour of the Inter-Burundi Dialogue, described below.<sup>156</sup> Canada's contributions towards a lasting political settlement have depended largely on the UN and the political will of Burundi's neighbours.

### Prospects for a political settlement through regional dialogue

To date, regional states have not applied significant pressure on Burundi to cooperate in mediation, either individually, through the East African Community (EAC), or through the AU. The Inter-Burundi Dialogue, mediation organized by the EAC and led by President Yoweri Museveni of Uganda and facilitated by former President of Tanzania, Benjamin William Mkapa, has stalled.<sup>157</sup> The Government of Burundi initially refused to

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150 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 September 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 October 2016.

151 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 September 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 October 2016.

152 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

153 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

154 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

155 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 October 2016.

156 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 September 2016.

157 Ibid.; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

meet with CNARED, labelling them as a “terrorist organization” with no popular support.<sup>158</sup> Parties within CNARED were subsequently invited individually but some declined to attend, citing the need for CNARED to be represented as an entity.<sup>159</sup> At further talks held in July 2016, a number of opposition parties, but not all, were invited to attend.<sup>160</sup>

With the exception of early but unsustainable interventions by Tanzania and South Africa, few states in the region are willing to criticize President Nkurunziza. This may be due in part to their own extended mandates – Uganda’s President Museveni has been in power for 29 years, having won his fifth mandate after amending Uganda’s presidential term limit in 2005. In the Democratic Republic of the Congo, President Joseph Kabila has been preparing his own attempt to extend his stay in office. Only Rwanda’s President Paul Kagame calls for President Nkurunziza to step down. Though President Kagame has raised alarm regarding the rise of anti-Tutsi hate speech, his interventions are viewed with suspicion, particularly in light of Rwanda’s regional ambitions and allegations that the country is supporting armed opposition groups in Burundi.<sup>161</sup>

The AU is equally unwilling or unable to act. The AU’s credibility was damaged when African leaders refused to endorse the deployment of a 5,000-strong African Prevention and Protection Mission in Burundi, contrary to the December 2015 recommendation of the AU Peace and Security Council.<sup>162</sup> According to one commentator, “the AU lost any authority in Bujumbura and is marginalised in its efforts to resolve the crisis.”<sup>163</sup> Likewise, the AU’s early decision to distance itself from the Inter-Burundi Dialogue after initial involvement has reduced its capacity to intervene.<sup>164</sup>

## RECOMMENDATION 10

**That the Government of Canada advocate for a lasting political settlement in Burundi through engagement with the relevant entities, including the African Union, the Government of Burundi and the governments of neighbouring states.**

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158 James Butty, “[Burundi FM: CNARED Opposition Group Not Acceptable](#),” *VOA News*, 29 December 2015.

159 Henry Archie, “[Burundi: No guns at the table](#),” *The Africa Report*, 31 August 2016.

160 Elsa Buchanan, “[What to expect from the Inter-Burundi Dialogue in Arusha](#),” *International Business Times* [UK], 11 July 2016.

161 *Ibid.*, p. 11.

162 International Crisis Group, [The African Union and the Burundi Crisis: Ambition versus Reality](#), 28 September 2016, p. 1; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 October 2016.

163 International Crisis Group, [The African Union and the Burundi Crisis: Ambition versus Reality](#), 28 September 2016, p. 10.

164 *Ibid.*, p. 6.

## **The deployment of international monitors in Burundi to support a political solution**

After its initial rejection of a 5,000-strong African Prevention and Protection Mission, in February 2016, Burundi accepted the deployment of 100 AU military advisers and 100 human rights monitors. However, to date, fewer than half of the 100 human rights monitors and less than a quarter of the 100 military experts<sup>165</sup> have been deployed. No memorandum of understanding is in place. Reports from these monitors are not public.<sup>166</sup> AU monitors in Burundi are funded in part by the UN Peacebuilding Fund,<sup>167</sup> to which Canada has pledged \$15 million over three years.<sup>168</sup>

There may be further opportunities to coordinate the AU deployment with the initiative mandated by UN Security Council [Resolution 2303 \(2016\)](#), adopted on 29 July 2016, which authorized a contingent of up to 228 unarmed police to be sent to Burundi to monitor the human rights situation and support the work of the OHCHR.<sup>169</sup> Burundi rejected the Resolution shortly thereafter, saying it would allow a maximum of 50 police officers to be sent.<sup>170</sup>

### **RECOMMENDATION 11**

**That the Government of Canada strongly urge the Government of Burundi to allow full access to the African Union monitors and the United Nations police mission mandated by UN Security Council Resolution 2303 (2016).**

### **RECOMMENDATION 12**

**That the Government of Canada encourage the African Union and the United Nations to coordinate their advocacy for enhanced access and, where possible, take advantage of opportunities to coordinate operations.**

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165 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 September 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 October 2016.

166 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016.

167 United Nations Peacebuilding Fund, "[Burundi](#)."

168 Government of Canada, "[Minister Dion announces new support for sustaining UN peace efforts](#)," News Release, 21 September 2016.

169 United Nations Security Council, [Resolution 2303 \(2016\)](#), UN Doc. S/RES/2303 (2016), 29 July 2016.

170 "[Burundi rejects UN police deployment amid violence](#)," *Al Jazeera*, 3 August 2016.

## Exerting diplomatic pressure through the United Nations

For states like Canada, which do not have significant leverage with which to pressure Burundi, the UN has the potential to be an important venue through which to exert diplomatic pressure. However, in light of the overarching principle of the sovereign equality of states in international relations embodied in the UN Charter,<sup>171</sup> the UN's capacity to act in this situation is seriously diminished by Burundi's refusal to cooperate.<sup>172</sup>

Canada has made representations to the UN Human Rights Council on the subject of the human rights situation in Burundi, and has co-sponsored resolutions such as the resolution to establish the UNIIB.<sup>173</sup> Ms. Ketty Nivyabandi questioned the legitimacy of Burundi's continued membership on the Human Rights Council.<sup>174</sup> The UNIIB also recommended that the Human Rights Council should consider whether to suspend Burundi's membership in light of its finding that gross and systematic violations of human rights are taking place.<sup>175</sup>

### RECOMMENDATION 13

**That the Government of Canada support initiatives to suspend Burundi's membership on the Human Rights Council in light of the UN Independent Investigation in Burundi's finding that gross and systematic violations of human rights are taking place.**

Burundi will be subject to the third cycle of the Human Rights Council's Universal Periodic review. The deadline for Burundi's national report is October 2017, with its review to be held in January-February of 2018.<sup>176</sup> The Universal Periodic Review represents an opportunity for Canada to make recommendations to Burundi for the fulfilment of its international human rights obligations. Evidence suggests that Burundi has systematically violated its obligations under the *International Covenant on Civil and Political Rights*, to which Burundi acceded in 1990,<sup>177</sup> including those rights which cannot be suspended in the case of officially proclaimed public emergencies, such as the rights to life, freedom from torture, and freedom of thought, conscience and religion.<sup>178</sup> Unlike Canada, Burundi has not ratified the *Optional Protocol to the International Covenant on Civil and Political Rights* which gives the Human Rights Committee jurisdiction to hear individual complaints

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171 United Nations, [Charter of the United Nations](#), 24 October 1945, 1 UNTS XVI, art. 2(1).

172 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 October 2016.

173 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 September 2016. Note that Canada is not currently a member of the UN Human Rights Council.

174 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

175 [UNIIB Report \(September 2016\)](#), para.164. See: UN General Assembly, [Resolution 60/251 Human Rights Council](#), UN Doc. A/RES/60/251, para. 8.

176 UH OHCHR, "[Human Rights Council Universal Periodic Review \(Third Cycle\)](#)."

177 UN OHCHR, "[Ratification Status for Burundi](#)."

178 UN General Assembly, [International Covenant on Civil and Political Rights](#), Resolution 2200A (XXI), 16 December 1966, art. 4(2).

from Burundians.<sup>179</sup> Evidence strongly suggests that Burundi is in violation of the *Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment*, to which it acceded in 1993. With respect to its educational policies and with respect to the use of youth militia, Burundi may be in violation of the *Convention on the Rights of the Child*, to which it acceded in 1990, as well the *Optional Protocol to the Convention on the Rights of the Child* on the involvement of children in armed conflict in 2008.<sup>180</sup>

#### RECOMMENDATION 14

**That the Government of Canada use the Universal Periodic Review of Burundi to make recommendations calling on Burundi to respect its existing human rights obligations, and to advocate that Burundi accede to, or sign and ratify, the *Optional Protocol to the International Covenant on Civil and Political Rights*, allowing an individual complaints procedure.**

Burundi's delayed and opaque response to the UN Committee Against Torture's request for a special report and the unprecedented walkout of the delegation during consideration of their State report during the Committee's 58<sup>th</sup> Session in August 2016 indicate that, given the opportunity, Burundi will deny serious allegations of human rights abuses and disengage from dialogue.<sup>181</sup> Burundi's bad faith was confirmed when four Burundian lawyers representing the coalition of civil society present at the 58<sup>th</sup> Session were disbarred at the request of Burundi's Attorney General, who was in attendance.<sup>182</sup> Witnesses told the Subcommittee that diplomatic pressure in multilateral fora should be complemented by more serious measures, such as targeted economic sanctions or travel bans.<sup>183</sup>

In April 2015, the UN Security Council adopted the first of three resolutions regarding the crisis in Burundi, [Resolution 2248 \(2015\)](#). The Resolution expressed the "intention to consider additional measures against all Burundian actors" who perpetuate violence or impede a peaceful solution.<sup>184</sup> A similar intention was expressed in [Resolution 2303 \(2016\)](#).<sup>185</sup> UN officials have undertaken several high-level visits to Burundi in 2016, including by two UN Security Council teams, and the UN Secretary-General Ban Ki-Moon,<sup>186</sup> but have not imposed serious additional measures, even in the face of mounting evidence that the

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179 UN General Assembly, [Optional Protocol to the International Covenant on Civil and Political Rights](#), Resolution 2200A (XXI), 16 December 1966.

180 UN OHCHR, "[Ratification Status for Burundi](#)."

181 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 October 2016.

182 Ibid.; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016. See: OHCHR, [CAT-Convention against Torture and Other Cruel Inhumane or Degrading Treatment or Punishment 58 Session \(25 Jul 2016-12 Aug 2016\)](#).

183 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 October 2016.

184 UN Security Council, [Resolution 2248 \(2015\)](#), UN Doc. S/RES/2248 (2015), 12 November 2015, art. 6.

185 UN Security Council, [Resolution 2303 \(2016\)](#), UN Doc. S/RES/2303 (2016), 29 July 2016, art. 5.

186 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 September 2016.

existing approach is not working. The Subcommittee is gravely concerned about the inaction of the UN Security Council to date.

## RECOMMENDATION 15

**That the Government of Canada strongly advocate for the UN Security Council to take action by imposing targeted economic sanctions and travel bans against Burundian officials and others who commit human rights violations or impede a peaceful political settlement, and implement these sanctions under Canadian law. Any sanctions should be carefully developed so as to avoid negative impacts on Burundians.**

### Accountability under international criminal law

Impunity for past human rights violations and international crimes is closely connected to the current crisis.<sup>187</sup> The Burundian regime is responsible for extrajudicial executions, imprisonment, torture, persecution, and enforced disappearances. These crimes may amount to crimes against humanity if they are found to have been committed as part of a widespread or systematic attack directed against any civilian population.<sup>188</sup> The compromised position of Burundi's judicial institutions further enhances the importance of international institutions in holding the Burundian regime to account.

On 18 October 2016, President Nkurunziza signed legislation calling for Burundi's withdrawal from the International Criminal Court (ICC) and formally notified the UN Secretary-General of the withdrawal,<sup>189</sup> as required under the *Rome Statute*.<sup>190</sup> This move came soon after the UN Human Rights Council called for the establishment of a commission of inquiry, a process which is independent of the ICC. Burundi's withdrawal from the ICC does not take immediate effect,<sup>191</sup> and Burundi is not completely absolved of its obligations which arose before their withdrawal.<sup>192</sup> Therefore, the ICC remains a potential venue of accountability. The first challenge in ensuring accountability, however, will be the collection and preservation of evidence.<sup>193</sup>

The ability to document human rights abuses in Burundi will continue to deteriorate as the Government of Burundi refuses to cooperate with international organizations, creating challenges in the collection of evidence and raising concerns about the

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187 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2016.

188 UN General Assembly, [Rome Statute of the International Criminal Court \(last amended 2010\)](#), UNTS No. 38544, 17 July 1998, art. 7.

189 "[Burundi notifies UN of ICC pullout](#)," ENCA, 28 October 2016.

190 Human Rights Watch, "[Burundi: ICC Withdrawal Major Loss to Victims](#)," 27 October 2016. Burundi's formal withdrawal comes after [South Africa](#) announced on 21 October that it had notified the UN secretary-general that it was withdrawing from the ICC. The Gambia announced on 24 October that it also intends to withdraw.

191 UN General Assembly, [Rome Statute of the International Criminal Court \(last amended 2010\)](#), UNTS No. 38544, 17 July 1998, art. 127(1).

192 *Ibid.*, art. 127(2).

193 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 September 2016.

destruction of evidence. Burundi officially suspended its cooperation with the Office of the High Commissioner for Human Rights in Burundi as of October 2016, pending a renegotiation of a host agreement.<sup>194</sup> The suspension followed the release of the UNIIB report, whose conclusions and legitimacy Burundi vociferously denied.<sup>195</sup> According to Global Affairs Canada, the OHCHR Office in Burundi, which replaced the UN Office in Burundi in 2015,<sup>196</sup> “is the best source of objective and expert information and documents on violations of human rights in that country.” On 13 December 2015, the Minister of Foreign Affairs announced that Canada would provide \$640,000 in funding to support the office.<sup>197</sup>

## RECOMMENDATION 16

**That the Government of Canada increase its advocacy on behalf of the UN Office of the High Commissioner for Human Rights in Burundi during the course of renegotiation of its host agreement, particularly to ensure that it maintains its ability to document and report on ongoing human rights violations.**

Expressing its concern regarding the conclusions of the UNIIB Report that certain human rights violations could constitute crimes against humanity, on 30 September 2016, the UN Human Rights Council authorized a one-year commission of inquiry into human rights violations in Burundi. The mandate of the Commission of Inquiry is threefold: to investigate whether human rights violations and abuses in Burundi since April 2015 constitute crimes against humanity or other international crimes; to identify alleged perpetrators; and to recommend steps to be taken to ensure accountability.<sup>198</sup> The Resolution authorizing the Commission of Inquiry urges the Government of Burundi to cooperate fully<sup>199</sup> and requests that the OHCHR be provided with all necessary resources, including specialized ballistic and forensic expertise, and expertise in sexual violence.<sup>200</sup>

As a member of the Human Rights Council, Burundi voted against the Resolution, denying the allegations made within it. Out of 47 member states of the Human Rights Council, 21 states abstained, and 7 states voted against the Resolution. Not a single African state voted in favour of the Commission of Inquiry.<sup>201</sup> Though the Commission of Inquiry would benefit from Burundi’s cooperation, it is not dependent on the state’s consent

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194 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 October 2016.

195 “[Burundi crisis: from disputed polls to 'genocide' fears](#),” *Agence France Presse*, 12 October 2016. Burundi also announced that the three Independent Experts who conducted the UNIIB investigation were “personae non-grata” who would be denied further entry into Burundi.

196 United Nations, “[United Nations Office in Burundi](#).”

197 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 September 2016.

198 UN General Assembly, [Resolution 33/24 Situation of Human Rights in Burundi](#), UN Doc. A/HRC/RES/33/24, 5 October 2016.

199 *Ibid.*, art. 24.

200 *Ibid.*, art. 25.

201 UN OHCHR, “[Human Rights Council adopts four resolutions, creates commission of inquiry on Burundi](#),” News Release, 30 September 2016.

or cooperation. Previous commissions of inquiry have undertaken their work without access to the state in question.<sup>202</sup> In light of the number of Burundians currently outside of Burundi, access and cooperation from Burundi's neighbouring states would enhance the credibility of the resulting report.

## RECOMMENDATION 17

**That the Government of Canada support the United Nations Commission of Inquiry into Burundi, including by advocating for the cooperation of Burundi's neighbouring states, and, where possible, providing necessary expertise in the areas of forensics, ballistics and responding to sexual violence.**

In April 2016, the Prosecutor of the ICC opened a preliminary examination into cases of killing, imprisonment, torture, rape and other forms of sexual violence, as well as cases of enforced disappearances in Burundi since April 2015. A preliminary examination studies whether there is a reasonable basis to proceed with an investigation pursuant to the criteria established by the *Rome Statute*, including both a factual investigation and an assessment of any relevant investigations at the national level.<sup>203</sup> The preliminary examination was ongoing in October 2016, when Burundi submitted notification of its withdrawal to the UN Secretary-General.<sup>204</sup>

Burundi's withdrawal from the ICC does not come into effect until one year after notification,<sup>205</sup> in October 2017. Therefore, Burundi maintains an obligation of cooperation with the ICC regarding "investigations or proceedings" which began before the effective date of withdrawal (October 2017).<sup>206</sup> However, there is no precedent for a state's withdrawal from the ICC while a preliminary examination is pending. There is not yet a definitive interpretation of whether a preliminary examination constitutes an "investigation or proceeding."

The UN has dispatched the Special Adviser to the Secretary-General for Conflict Prevention, Jamal Benomar, to Bujumbura to discuss Burundi's withdrawal from the ICC and lack of cooperation with the OHCHR.<sup>207</sup> Since Burundi's announcement, South Africa and The Gambia have also set in motion steps to withdraw from the ICC,<sup>208</sup> and more may follow. Even so, African allies of the ICC have emerged, particularly at the 27<sup>th</sup> Summit of

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202 For example, the UN Human Rights Council's Commission of Inquiry into the Syrian Arab Republic undertook its work without access to the state, as detailed in the UN Human Rights Council's [Report of the Independent International Commission of Inquiry on the Syrian Arab Republic](#), UN Doc. A/HRC/35/55, 11 August 2016.

203 UN General Assembly, [Rome Statute of the International Criminal Court \(last amended 2010\)](#), UNTS No. 38544, 17 July 1998, art. 127(1).

204 "[Burundi notifies UN of ICC pullout](#)," ENCA, 28 October 2016.

205 UN General Assembly, [Rome Statute of the International Criminal Court \(last amended 2010\)](#), UNTS No. 38544, 17 July 1998, art. 127(1).

206 *Ibid.*, art. 127(2).

207 "[Burundi notifies UN of ICC pullout](#)," ENCA, 28 October 2016.

208 "[The Gambia joins African queue to leave ICC](#)," *BBC News*, 26 October 2016.

the AU in July 2016, when a resolution calling for the immediate mass withdrawal of the ICC was not passed. Five states expressly opposed the resolution, including Botswana, a vocal ICC supporter. The Democratic Republic of the Congo was among four states that entered reservations to the July summit decision.<sup>209</sup>

## **RECOMMENDATION 18**

**That the Government of Canada strongly urge the Government of Burundi to reverse its decision to withdraw from the International Criminal Court and engage with African partners to enhance the legitimacy of the International Criminal Court.**

### **Conclusions: The need for determined engagement**

The crisis unfolding in Burundi combines elements of continuity and change. The characterization of Burundi's civil war in the Arusha Accord still applies today: a crisis which was "fundamentally political, with extremely important ethnic dimensions," which "stems from a struggle by the political class to accede to and/or remain in power."<sup>210</sup> The weakness of Burundi's judiciary and human rights institutions means that for the foreseeable future, impunity will prevail as it has for crimes, including crimes against humanity and acts of genocide, committed since 1962. And yet – in a significant break from the past – Hutu and Tutsi civil society leaders have come together to defend the Arusha Accord. The question remains: how will a regime struggling to hold on to power use the forces of fear, division and radicalization for its purposes? Conversely, can Burundi's civil society leaders and political opposition unite, even in exile? Will these symptoms of crisis become additional drivers of crisis?

Fear permeates the air in Burundi. Over 380,000 have fled, fearing brutal human rights violations and violence tied to their political beliefs. It is not clear when or if it will be safe to return.<sup>211</sup> Physical insecurity has reversed gains in food security, health, and education, and has slowed economic growth. Though acts of genocide do not appear imminent, the use of ethnically charged rhetoric by regime officials should raise alarm among the international community. The Subcommittee is gravely concerned about the inaction of the UN Security Council to date.

The speed with which a response to a protest movement escalated to systematic violation of the human rights of unarmed civilians underlines the importance of the Arusha Accord in breaking cycles of violence and retaliation. A lasting political settlement must be put in place. Burundi's intransigence on the world stage only increases the need for determined engagement and intelligent intervention. This includes working to repair

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209 Human Rights Watch, "[Burundi: ICC Withdrawal Major Loss to Victims](#)," 27 October 2016; Michael Pauron and Vincent Duhem, "[Sommet de l'UA : pas d'entente sur un retrait collectif de la CPI](#)," *Jeune Afrique*, 14 July 2016.

210 [Arusha Peace and Reconciliation Agreement for Burundi](#), 28 August 2000, art. 4.

211 SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 October 2016; SDIR, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 October 2016; UNHCR, "[Land needed urgently for camps for Burundian refugee arrivals](#)," News Release, 7 February 2017

relationships between Burundi and UN institutions, and mobilizing Burundi's neighbours to intervene diplomatically, through bilateral channels, the EAC, or the AU. Enhanced engagement must not come at the expense of accountability on the world stage. The international community must overcome significant challenges in this regard, including the collection and preservation of evidence of systematic human rights violations, and gathering support for cooperation with a UN Commission of Inquiry and the ICC.

The Subcommittee's recommendations reflect the need to adopt a multi-pronged approach: mitigate the effects of the crisis on Burundians inside and outside of Burundi, advocate for the restoration of mediation, and seek the end of widespread impunity, including through international accountability. Canada must first and foremost keep the situation in Burundi at the forefront of the international agenda. The cost of complacency is too high.

## APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<b>Department of Foreign Affairs, Trade and Development</b> Leslie Norton, Acting Assistant Deputy Minister Sub-Saharan Africa Branch Jean-Bernard Parenteau, Director West and Central Africa Division	2016/09/22	20
<b>Human Rights Watch</b> Carina Tertsakian, Senior Researcher Burundi and Rwanda	2016/09/29	22
<b>As an individual</b> Pacifique Manirakiza, Professor Faculty of Law, Common Law Section, University of Ottawa	2016/10/04	23
<b>Amnesty International Canada</b> Jacqueline Hansen, Major Campaigns and Women's Rights Campaigner Ketty Nivyabandi, Human Rights Defender		
<b>As an individual</b> Sébastien Touzé, Law Professor Université Panthéon-Assas (Paris II) Albert Nsabiyumva	2016/10/06	24
<b>Office of the United Nations High Commissioner for Refugees</b> Michael Casasola, Resettlement Officer Johannes Van Der Klaauw, Representative in Canada	2016/10/18	25
	2016/10/20	26



## REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* of the Committee ([Meeting No. 45](#)) is tabled and a copy of the relevant *Minutes of Proceedings* of the Subcommittee on International Human Rights ([Meetings Nos. 20, 22, 23, 24, 25, 26, 36, 37, 41, 42, 43](#)) is tabled.

Respectfully submitted,

Hon. Robert D. Nault  
Chair

