

COMMISSION OF INQUIRY ON BURUNDI

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GENERAL ASSEMBLY
72th Session
Third Committee

**Oral statement by Fatsah Ouguergouz,
Chair of the Commission of Inquiry on Burundi**

New York, 26 October 2017

Mr. President, Your Excellencies, Ladies and Gentlemen,

The Commission of Inquiry I chair very much appreciates the opportunity to present the conclusions and recommendations of its report to this United Nations body, which is both a principal and an universal organ, and would like to thank you for that.

Our Commission was created by the Human Rights Council a year ago to conduct a thorough investigation into human rights violations and abuses committed in Burundi since April 2015 and, in particular, to assess their extent, determine whether they constitute international crimes, identify the alleged perpetrators and formulate recommendations to hold them to account.

After seven months of investigation, our Commission concluded that serious human rights violations and abuses have been committed in Burundi since April 2015 and that some of them may constitute crimes under international law. The Commission presented its final report to the Human Rights Council during its last session, and the latter responded with energy to the seriousness of the human rights situation in Burundi. Indeed, the Council expressed its concern about the conclusions of our commission and decided to extend its mandate for one year.

Since the beginning of our mandate in November 2016, we have repeatedly invited the Government of Burundi to cooperate with our Commission, which it has always refused to do. As recently as on 11 October, we asked to meet with the Permanent Representative of Burundi to the United Nations in New York, who again refused our request. We deeply regret the absence of dialogue and cooperation on the part of Burundi and deplore the public statements, sometimes virulent, of its representatives aimed at discrediting our work, especially on the occasion of the presentation of our report to the Human Rights Council last September.

In the implementation of our mandate, we will remain guided by a spirit of dialogue and collaboration with the Burundian authorities, including the Burundian parliamentary commission which was recently set up to examine the content of our report. Thus, we once

again invite the Government of Burundi to demonstrate that, as it claims, the human rights violations documented by our Commission have not taken place or, where appropriate, that the perpetrators of the alleged violations have been prosecuted and tried for their actions.

Mr. President, Your Excellencies, Ladies and Gentlemen,

The human rights crisis, which Burundi is experiencing, has been going on for two and a half years. On 26 April 2015, the first protests against the candidacy of President Pierre Nkurunziza to the presidential election began in Bujumbura, which led to serious violations of human rights in a climate of widespread impunity. The human rights situation worsened rapidly after the May 2015 coup attempt and attacks on military installations in and around Bujumbura in December 2015. Many alleged opponents were arbitrarily arrested, detained and tortured, others were murdered, and others disappeared. As of 19 October 2017, according to figures released by the United Nations High Commissioner for Refugees, the Burundian refugee population following this crisis is estimated at 410,413 people¹, or about four percent of the total population of the country.

Our investigations have shown that, contrary to the assertions of the Government of Burundi, the human rights situation has not improved since then. Serious violations and abuses of human rights have continued until 2017 in an equally brutal manner, though sometimes more secretly. They have been fueled by disturbing hate speeches by Burundian officials, in some cases occupying high-level positions.

Our Commission was unable to visit Burundi because of the Government's refusal to give it access to its territory. However, it was able to carry out several missions in Burundi neighbouring countries and in other countries where Burundian refugees reside. It also conducted many interviews at a distance with people still in Burundi. The Commission has collected more than 500 testimonies, which have been thoroughly analyzed and corroborated. The investigations were difficult because of the insecurity and fear felt by Burundians inside the country and even in some cases in exile.

¹ UN High Commissioner for Refugees, 19 October 2017(<https://data2.unhcr.org/en/situations/burundi>).

Despite these difficulties, the Commission was able to document a significant number of acts falling within its mandate. In carrying out its mandate, the Commission did not set itself up as judge or prosecutor; in order to provide a sound basis for its conclusions, it gathered a body of reliable and consistent information on the basis of which a reasonable and ordinarily prudent person would have reasonable grounds to believe that an incident or pattern of conduct had occurred. The Commission carried out its mission in a rigorous and impartial manner. It released a 20-page report on its investigative work, which was presented to the Human Rights Council, as well as a detailed report of more than 200 pages, which we invite you to consult on the website of our Commission².

Mr. President, Your Excellencies, Ladies and Gentlemen,

Based on the information it gathered, the Commission is able to conclude that serious human rights violations and abuses have been committed in Burundi since April 2015. These violations and abuses consisted mainly of arbitrary arrests and detentions, extrajudicial executions, torture and cruel, inhuman or degrading treatment, rape and other sexual violence and enforced disappearances.

The democratic space has also shrunk considerably since April 2015 due to severe restrictions on certain civil liberties. Leaders of the main opposition parties as well as many journalists and other members of civil society remain at present in exile and, for some, under international arrest warrants issued by the Burundian authorities. Those still in Burundi have to work underground. The Government has suspended or revoked the licences of the principal independent media and human rights organizations, including the Ligue Iteka, the country's oldest human rights organization, revoked in January 2017. Most recently, the National Communications Council decided to suspend the broadcasts of the Burundi Chamber of Commerce and Industry for a period of three months following the publication of an editorial criticizing the lack of reaction by the Government of Burundi after the massacre of Burundian refugees in the Democratic Republic of the Congo on 15 September 2017.

² <http://www.ohchr.org/EN/HRBodies/HRC/CoIBurundi/Pages/CoIBurundiReportHRC36.aspx>

Most of the human rights violations and abuses documented by the Commission targeted opponents of the Government of Burundi or individuals perceived as such, namely, protesters against Pierre Nkurunziza's candidacy for the 2015 presidential election, members of opposition political parties and their relatives, members of civil society, journalists, members of the former Burundian Armed Forces (ex-FAB), people suspected of supporting or participating in the May 2015 failed coup d'État or in armed opposition groups, or people heading into exile and suspected of going to join these armed groups.

The main perpetrators of these violations are members of the National Intelligence Service, police, army and the youth league of the ruling party, commonly known as the “Imbonerakure”; as we have shown in our report, the perpetrators of these violations have often acted with extreme cruelty.

Armed opposition groups have also committed human rights abuses, but they proved to be more difficult to document, despite the efforts made by the Commission. Many witnesses are still in Burundi and, due to the lack of access to the country, the Commission has not been able to corroborate sufficiently the information gathered about these abuses. Furthermore, the Government did not provide any information on these abuses to the Commission despite several requests.

Mr. President, Your Excellencies, Ladies and Gentlemen,

Our Commission has reasonable grounds to believe that some of the human rights violations and abuses it documented constitute crimes against humanity, as defined by the Rome Statute of the International Criminal Court. The scope of the violations, their occurrence in several provinces, the number and profile of the victims and of the alleged perpetrators tend to demonstrate, in our view, that these violations took place in the context of a widespread and even systematic attack because of the repetition of similar criminal behaviour against a predominantly civilian population. The Commission considers that this was conducted as part of the implementation of a state policy which was not of an official nature but whose existence can be deduced from the political context, hate speeches by officials from the highest levels of the State down to grassroots members of the CNDD-FDD

and its youth league, and the general mobilisation of the defence and security forces in order to repress all opposition or dissenting voices.

The Commission has reasonable grounds to believe that the crimes against humanity described in its report are attributable in particular to officials at the highest level of the State, senior officers and agents of the Burundian National Intelligence Service, police and army, and to members of the Imbonerakure. The Commission has been able to establish close links between members of the National Intelligence Service, the police and the Presidency, including senior officials, with the Imbonerakure, the latter being instructed or acting with the consent of the former to commit serious violations such as extrajudicial executions or acts of torture. In accordance with its mandate, the Commission has drawn up a non-exhaustive list of alleged perpetrators of these crimes against humanity, together with information on certain acts that they allegedly committed or ordered. With a one-year extension of its mandate, our Commission will conduct further investigations into alleged perpetrators on this list, as well as perpetrators of other crimes brought to its attention, such as serious human rights abuses by armed opposition groups.

Mr. President, Your Excellencies, Ladies and Gentlemen,

The persistent impunity in Burundi for many years is undoubtedly a factor that has aggravated the current crisis in the country. The Commission has found that the Burundian judicial authorities have not conducted credible investigations in the majority of cases of human rights violations and abuses committed by agents of the State or Imbonerakure it had documented. This results from a lack of both willingness and capacity of the authorities to investigate effectively or prosecute alleged perpetrators of human rights violations and abuses, some of which may constitute crimes under international law.

I would like to recall that Burundi has been a party to the Rome Statute since 2004 and that its withdrawal from this treaty takes effect today at midnight. The International Criminal Court is therefore competent to deal with any crime under international law allegedly committed in Burundi between April 2015 and today. On this basis, the Commission recommended that the International Criminal Court open an investigation into possible crimes under international law committed during this period in Burundi. The Commission is

of course aware that the International Criminal Court will only be able to deal with a limited number of cases. The Government of Burundi must therefore take immediate measures to combat the impunity enjoyed by State agents and the Imbonerakure in particular, and to that end to undertake a thorough reform of its judicial system.

Mr. President, Your Excellencies, Ladies and Gentlemen,

Two and a half years after the beginning of the current crisis, it is regrettable that the situation in Burundi seems to be attracting less and less attention at the international level. The situation little by little is considered to be an "acceptable" normality, overshadowed by other crises, without any way out of the crisis which continues to create so much suffering.

In the face of the acts of violence perpetrated in the country, in the face of all these lost or ruined lives, we cannot remain indifferent or inactive. In its report, our Commission made recommendations to various stakeholders, including United Nations Member States and the Security Council. In particular, we called on UN Member States to "support the Burundian authorities in any judicial and security sector reform endeavours that they might wish to undertake in order to improve the human rights situation". We also asked the Security Council to "take due account of the Commission's conclusions, as well as the persistence of gross violations of human rights, in any discussion on Burundi". We therefore invite today the Member States of this august assembly to remain firmly committed to an effective and lasting resolution of the political crisis that continues in Burundi and to make all necessary efforts to fully protect all human rights in the country; to that end, we urge you to bring our report to the attention of any other competent United Nations body, in particular the Security Council.

Thank you for your attention.