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**COMMISSION OF INQUIRY ON BURUNDI**

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**HUMAN RIGHTS COUNCIL**

Thirty-fourth session

**Interactive Dialogue on Burundi**

**Oral Briefing**

**by Fatsah Ouguergouz,**

**Chair of the Commission of Inquiry on Burundi**

Geneva, 13 March 2017

## Introduction

*Mr. President, Your Excellencies, Ladies and Gentlemen,*

On behalf of my colleagues present here and in my own name, let me first thank the President of the Human Rights Council for having shown his trust in us by appointing us as members of the Commission of Inquiry on Burundi. Let me reassure you, Mr President and distinguished representatives of Member States of the Council, that we are aware of the heavy responsibilities that have been assigned to us and that we intend to discharge these with professionalism, complete independence and impartiality.

Indeed, Resolution 33/24, adopted by the Council, tasks us with:

1. conducting a thorough investigation into human rights violations and abuses in Burundi since April 2015, including on whether they may constitute international crimes;
2. identifying the alleged perpetrators of these crimes ;
3. formulating recommendations on steps to be taken with a view to guaranteeing that that the perpetrators are held to account; and
4. engaging with the Burundian authorities and all other stakeholders in order to provide the support and expertise for the immediate improvement of the human rights situation and the fight against impunity.

I have the honour to present to you today the first oral briefing of our Commission which summarises our work to date, as well as our initial observations on the human rights situation in Burundi. We will present a second oral briefing to the Council in June and our final report in September 2017.

My colleagues and I were appointed in late November 2016. We held a first telephone conference on 22 December and we met in Geneva from 23 to 27 January 2017. On 20 December 2016, we sent a *note verbale* to the Permanent Mission of Burundi in Geneva requesting a meeting with the Permanent Representative. As we did not receive a reply, we sent him a second *note verbale* on 24 January 2017. In a *note verbale* dated 26 January 2017,

the Permanent Mission of Burundi informed us that since Burundi had rejected the Human Rights Council resolution establishing our Commission, it was not disposed to receive us.

In the absence of a positive response to our requests, on 6 February 2017 we wrote a letter to the Minister of External Relations of Burundi calling on the Burundian government to grant us access to the country in order to engage in a dialogue with the national authorities and conduct our investigations. In our letter, we also invited the Burundian government to send us any information it believed would be useful for an objective assessment of the human rights situation in Burundi. No date, we have not received a reply to this letter.

During our January meeting, my colleagues and I discussed, among other things, the mandate which has been entrusted to us, and in particular our terms of reference, which are now available on the web page of the Commission.<sup>1</sup>

We also held a series of meetings, including with representatives in Geneva of several States, with the President of the Human Rights Council, with the Office of the United Nations High Commissioner for Human Rights and with representatives of United Nations agencies. These meetings enabled us to benefit from the perspectives of these different actors. As Chair of the Commission, I also met a number of ambassadors and made contact with representatives of the African Union in Addis Ababa. Furthermore, a few days ago, I met the President of the National Independent Human Rights Commission of Burundi.

For budgetary and administrative reasons beyond our control, the staff of the secretariat which supports us in our work was only recruited in mid-February. We are therefore still at the preliminary stages of our investigations and activities.

### **Interpretation of our mandate**

*I would now like to provide a few details about our mandate.*

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<sup>1</sup> <http://www.ohchr.org/FR/HRBodies/HRC/CoIBurundi/Pages/CoIBurundi.aspx>

In light of the breadth of our mandate and the relatively short time for its implementation, we have decided to concentrate our investigations first and foremost on the most serious human rights violations and abuses, in particular those which might constitute international crimes.

In this respect, we have taken note of the fact that on 27 October 2016, the Burundian government notified the Secretary General of the United Nations -- the depositary of the Rome Statute -- of its intention to withdraw from this treaty. However, this decision does not affect our mandate, since Burundi's withdrawal from the Rome Statute does not free it of its obligations. Furthermore, the withdrawal only comes into effect one year after notification.

We will examine human rights violations and abuses committed by all parties. We will adopt the same standard of proof in our investigations as most international commissions of inquiry on human rights, that is "reasonable grounds to believe". This means that in order to reach conclusions, we will ensure that we have gathered a body of reliable and consistent information, on the basis of which a reasonable and normally cautious person would have grounds to believe that an incident or systematic behaviour had taken place.

We are fully aware that there have been already been initiatives to observe and investigate human rights violations in Burundi since April 2015, in particular by the mission of Independent Experts established by Human Rights Council resolution 24/1. Of course we will pay particular attention to their report.<sup>2</sup> However, as an independent body, our Commission will carry out its own investigations.

### **Developments in the human rights situation in Burundi**

*Mr. President, Your Excellencies, Ladies and Gentlemen, I would now like to say a few words about developments in the human rights situation in Burundi.*

We are concerned about the scope and gravity of allegations of human rights violations and abuses in Burundi which have been brought to our attention. On the basis of a series of

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<sup>2</sup> A/HRC/33/37.

initial interviews which we have conducted with various sources, it would appear that the patterns observed in 2015 and 2016 are persisting.

The release of several hundred prisoners following a presidential decree of 3 January 2017, including some opposition party members detained since 2014, is a positive measure. However, it represents only a very limited step in the light of allegations of new arrests targeting, among others, members of opposition parties such as the National Liberation Forces (FNL).

Restrictions to some civil liberties have continued. Burundi recently adopted two new restrictive laws, one on Burundian not-for-profit organisations, adopted in January 2017 and awaiting promulgation ; the other on international nongovernmental organisations, promulgated on 23 January 2017. The vast majority of journalists, members of civil society and opposition parties who fled the country in 2015 are still in exile. Most of those who remain in Burundi have to work underground.

According to information which has been brought to our attention, violations of the right to life and the right to physical integrity persist in Burundi, even though they seem to be committed in a less public way than in 2015 or are taking new forms. Allegations of enforced disappearances have increased, as have allegations of the use of unofficial detention centres. A deep sense of fear seems to have taken hold among the Burundian population. This fear may well constitute an additional obstacle to investigating especially sensitive violations, such as sexual violence, of which several cases have been reported since 2015.

In addition, we have received testimonies indicating that the discovery of dead bodies, sometimes mutilated, hanging or with their arms tied, which had been noted in 2015 and early 2016, has resumed in the last few months. In many cases, it has not been possible to identify the victims or the alleged perpetrators.

Previous reports by the United Nations and nongovernmental organisations have highlighted the frequent use of torture. Our initial interviews have revealed, among other things, fresh allegations of torture of suspected government opponents or critics in the premises

of the intelligence services. Allegations of torture of several detainees arrested following an attack on a military camp in Muyinga province on 24 January 2017 are also alarming.

Practices of extortion and ransom also appear to have increased following a weakening of the rule of law. Several sources have noted a form of privatisation of law and order activities, benefiting, in particular, members of the youth league of the ruling party (Imbonerakure).

We are particularly concerned about the near-total impunity which seems to protect the perpetrators of these violations. Even when victims or witnesses are able to identify alleged perpetrators, prosecutions of stage agents or of those appearing to have their support seem to be rare. On the other hand, there are indications that people suspected of participating in armed opposition groups continue to be arrested, often arbitrarily. Some are tried and sentenced to heavy prison terms in summary and unfair trials, according to information brought to our attention, whereas others remain in prison without trial for long periods. Minors have also reportedly been arrested arbitrarily, particularly during police round-ups.

Attacks by unidentified groups or individuals have also contributed to fuelling the spiral of violence. Among recent cases, we have noted the attack against the President's communications advisor on 28 November 2016 and the murder of the Minister of Water, Environment and Planning on 1 January 2017.

According to the Office of the United Nations High Commissioner for Refugees, at least 27,000 Burundians fled their country between 1 January and 9 March 2017, bringing to 391,700 the total number of refugees who have fled Burundi since April 2015, primarily to neighbouring countries. Many Burundians are also leaving their country because of economic difficulties. These difficulties are accentuating the precarious situation of already vulnerable groups, affecting the enjoyment of their rights to health and education, in particular, and increasing the risk of food insecurity.

However, at this stage, I would like to stress that we still have six months to carry out our investigations. We will do so completely impartially and will listen to each and every stakeholder, from victims and witnesses to Burundian government officials and any other

actors who may be useful for our work. The question of the Burundian government's cooperation with our Commission is therefore very important for the conduct of our investigations.

### **Cooperation with the Commission of Inquiry**

*In this respect, Mr. President, Your Excellencies, Ladies and Gentlemen,*

we deeply regret the lack of willingness of the Burundian government to cooperate with us to date, despite the fact that Burundi is a member of this Council. Nevertheless, we will continue to make all necessary efforts to open a dialogue with the Burundian authorities and keep them informed of the progress of our work. We call on them once again to provide us with any information they believe will be useful for our investigations. We have also published a call for information on the Commission's web page to all interested individuals or organisations.

Finally, we call on Member States of this Council, as well as States in the region, the United Nations, the African Union and sub-regional organisations to cooperate with our Commission.

As I indicated earlier, we have already undertaken initiatives in this context and we will be sure to inform the Council of the progress of our work at its next session in June, when we will be better placed to give further details on the substance of our investigations.

*Thank you for your attention.*