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**HUMAN RIGHTS COUNCIL**

Thirty-sixth session session

**Interactive Dialogue on Burundi**

**Oral Briefing**

**By Fatsah Ouguergouz,**

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

Geneva, 19 September 2017

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

As we reach the end of seven months of investigations, our Commission is able to present to you its conclusions on all aspects of the mandate entrusted to us by the Human Rights Council. The report we are presenting today is based on more than 500 interviews with Burundians who have sought refuge abroad and others who have remained in Burundi, as well as information from other sources. The Commission did not take at face value each of these interviews and other sources of information. It took the trouble to corroborate them with other independent sources. The details of our investigations are contained in a conference room paper of more than 200 pages, available on the Human Rights Council website.

On the basis of the information we collected, which we duly verified and corroborated, our Commission has reasonable grounds to believe that serious human rights violations and abuses have been committed in Burundi since April 2015 and that some are continuing to this day. These violations and abuses consist primarily of arbitrary arrests and detention, acts of torture and cruel, inhuman or degrading treatment, extrajudicial executions, enforced disappearances, rape and other acts of sexual violence. In addition, there have been violations of several civil liberties.

With the exception of victims of sexual violence, most of the victims of the violations and abuses we documented are young men. Most have one thing in common: they are opponents, or perceived opponents, of the Burundian government. They include demonstrators against Pierre Nkurunziza's candidacy in the 2015 presidential election, members of opposition parties and their families, 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.

Our investigations revealed that victims were not targeted on the basis of their ethnicity. As a former Imbonerakure explained to us, "whether you are Hutu or Tutsi, you can be executed. The criterion for choosing our targets is not ethnicity, but opposition to the head of state." However, victims indicated to the Commission that members of the security forces

and Imbonerakure hurled ethnic insults at some Tutsis, particularly during acts of torture and sexual violence.

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

The Commission was struck by the scope and the brutality of violations committed mostly by members of the National Intelligence Service (SNR), the police and the army. In many cases, these defence and security forces were assisted by Imbonerakure, who were sometimes armed and wearing police uniforms.

With your permission, I would like to give you two telling examples of these violations.

A witness of extrajudicial executions by military officials told the Commission: “We found many people who had been tied up. [The soldiers] told us: “Lie down and look up at the sky” [...] There were around 60 of us, all lined up next to each other [...] Then they started to shoot at us one by one. A bullet hit the first person in the head [...] They were shooting systematically at the people who were lined up [...] They shot them one by one, at point blank range [...] They put the gun against the head of each person [...] When they shot someone, the blood splashed onto the person next to him [...] A soldier was shooting and [an officer] was giving the orders [and] supervising.”

A man who was tortured, first in a police detention centre, then in a container, described the torture sessions to which he was subjected: “There were steel rings welded to the roof of the container. They tied us to these rings with two metal chains [...] They brought 1.5 litre bottles filled with water and tied them to our testicles [...] We underwent this kind of torture for four days running, and they didn’t untie us during the day [...] [After the torture] I was unable to walk. I asked for permission to go to hospital. They replied that the torture sessions awaiting me would be even more painful than the previous ones.”

We would like to stress that serious violations have persisted in 2017. For example, as recently as last week, a member of an opposition party was abducted in Bujumbura by unidentified people, including an armed man in police uniform. His family and friends have had no news of him since. We are also continuing to receive information on torture cases. For

example, a person was arrested, beaten and threatened with death by intelligence agents and Imbonerakure this summer. Another example is that of a member of civil society, arrested in July 2017 and initially detained at the SNR, who is currently in prison, accused of endangering state security. On 25 August, four special procedure mandate holders called for his release.

The Commission would like to emphasise that armed opposition groups have also committed human rights abuses, but these have proved more difficult to document, despite repeated attempts on our part, including numerous approaches to a range of contacts. This is due in large part to the fact that many witnesses of these abuses are in Burundi and that the Government chose not to share any information on these abuses with the Commission, despite several specific requests.

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The 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 Commission considers that the scope of the violations, their occurrence in several provinces, the number and profile of the victims as well as the number of alleged perpetrators demonstrate that these violations took place in the context of a widespread and even systematic attack as a result of the repetition of similar criminal behaviour against a predominantly civilian population. The Commission considers that this attack took place as part of the implementation of a state policy which was not of an official nature but can be deduced from the political context, hate speech 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 drawn up a non-exhaustive list of alleged perpetrators of these crimes against humanity, together with information on certain acts they allegedly committed or ordered. It has decided not to publish this list, in view of the need to respect the

presumption of innocence and to ensure the protection of victims and witnesses. Instead, it will entrust it to the High Commissioner for Human Rights who will be able to share it with any competent organ or jurisdiction likely to conduct credible investigations. The Commission has taken care to make a distinction between direct individual responsibility and the responsibility of military commanders and superiors in the hierarchy.

Regarding links in the hierarchy, while the official organisation of public services and defence and security forces is known, the Commission received several testimonies indicating that in reality, the State operates largely through a parallel chain of command whose decisions have often led to serious violations. The Commission was able to establish the existence of close links between officials of the SNR, the police and the President's office, including at a high level, and Imbonerakure, with Imbonerakure receiving instructions or acting with the acquiescence of these officials to commit serious human rights violations such as extrajudicial executions and acts of torture.

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The information collected by the Commission shows that alleged perpetrators of human rights violations and abuses – state agents or Imbonerakure – are rarely prosecuted. In this respect, the Human Rights Council specifically asked us to “formulate recommendations on steps to be taken with a view to guaranteeing that the authors of these violations and abuses, regardless of their affiliation, are held accountable for their acts”. In addition to the structural and operational lack of independence of the justice system, the Burundian State appears to have neither the will nor the capacity to conduct effective investigations or prosecutions of alleged perpetrators of international crimes. The Commission therefore recommends that the International Criminal Court open an investigation into the existence of possible crimes against humanity committed in Burundi since April 2015. I would like to point out that this recommendation does not exclude other means of fighting impunity, for example the exercise of universal jurisdiction in States whose domestic law enables the prosecution of alleged perpetrators of international crimes.

The Commission is aware that even if the International Criminal Court opens an investigation, it will only be able to deal with a limited number of cases. It is therefore the

responsibility of the Government of Burundi to take immediate measures to fight the impunity protecting, in particular, state agents and Imbonerakure, and, to this end, to undertake extensive reforms of the justice system.

The Commission also calls on armed opposition groups to put an immediate stop to human rights abuses by their members and to refrain from any incitement to violence.

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

The members of our Commission carried out their mission conscientiously, with rigour and autonomy, respectful of the principle of constructive dialogue and cooperation that guide this Council's activities. As demonstrated in the annexes to our report, from the very beginning of our mandate we asked to meet the Burundian authorities to seek their point of view as well as any information that might be helpful to us in the implementation of our mandate. We did not receive any response to our letters, nor to the requests for information we sent to the National Independent Human Rights Commission.

Once again, we regret the lack of cooperation on the part of a State that is a member of this Council. We also regret the sometimes virulent public statements of its representatives aiming to discredit our work, in particular by insisting on the fact that the Commission did not go to Burundi to carry out its investigations. I would like to remind you that the Government of Burundi refused to grant us access to the country; it therefore cannot criticise us today for a situation it created itself. In this respect, I would like to stress that the lack of access to Burundi did not prevent us from doing our work. As I indicated, we gathered more than 500 testimonies, including from many people inside Burundi.

We have taken note of the creation of a Burundian parliamentary commission tasked with studying the contents of our report. We remain available to talk to this commission, as well as to the Government of Burundi, until the end of our mandate. We have also taken note of the Government's written comments on our report, even though it did not send them to us directly.

In conclusion, the Commission would like to highlight the often difficult conditions in which it gathered the several hundred testimonies collected. The widespread climate of fear in Burundi is felt even in refugee camps where victims and witnesses have been threatened. These fears add to the gravity of the human rights situation in Burundi which requires this Council to remain seized of the matter.

*Thank you for your attention.*