**COMMISSION OF INQUIRY ON BURUNDI**

**QUESTIONS & ANSWERS**

4 September 2017

1. **What is the role of the Commission of Inquiry on Burundi?**

The Commission of Inquiry on Burundi was created through resolution 33/24 of the United Nations Human Rights Council, adopted on 30 September 2016. Its main tasks are to:

a) Conduct a thorough investigation into human rights violations and abuses in Burundi since April 2015, including on whether they may constitute international crimes;

b) Identify the alleged perpetrators of these acts;

c) Formulate recommendations on steps that would guarantee that the perpetrators are held accountable, regardless of their affiliation;

d) Engage with the Burundian authorities and all other stakeholders in order to contribute to the immediate improvement of the human rights situation in Burundi and the fight against impunity.

Given the breadth of its mandate and the relatively short time it was given to implement it, the Commission decided to concentrate as a priority on the most serious human rights violations and abuses, in particular those that are likely to constitute international crimes.

1. **Who are the members of the Commission?**

The Commission has three members:

**Fatsah Ouguergouz (Algeria) was judge and vice-president of the African Court of Human and Peoples' Rights from 2006 to 2016. He was the Independent Expert on the Human Rights Situation in Burundi from** 2010 to 2011. He is a member of the International Commission of Jurists.

**Reine Alapini Gansou (Benin)** is a lawyer and lecturer in criminal law in Benin, and a member and former president of the **African Commission on Human and Peoples' Rights**. She is currently Special Rapporteur on Human Rights Defenders in Africa.

**Françoise Hampson (United Kingdom) is professor of international law of armed conflicts and human rights at the University of Essex,** in the United Kingdom. She was a member of the United Nations Sub-Commission on the Promotion and Protection of Human Rights from 1998 to 2007. She has litigated several cases at the European Court of Human Rights.

1. **What are the Commission's main conclusions?**

The Commission has concluded that serious human rights violations have been committed and are still being committed in Burundi since April 2015. In view of the gravity, the nature and the scale of these acts, as well as the direct involvement of State bodies and individuals under their control, the Commission believes that many of these violations are likely to constitute crimes against humanity.

The Commission collected credible and consistent information about extrajudicial executions, arbitrary arrests and detention, enforced disappearances, torture and other cruel, inhuman or degrading treatment, and sexual violence. These violations were often extremely cruel and have caused serious physical and psychological consequences for many victims.

These violations are taking place in a climate of widespread impunity. They are sustained by hate speech by Burundian government representatives, members of the ruling party, the CNDD-FDD (National Council for the Defence of Democracy-Forces for the Defence of Democracy), and members of the CNDD-FDD youth league known as the *Imbonerakure*.

1. **What are the Commission's main recommendations?**

The Commission is calling on all relevant parties in Burundi – the State and opposition groups – to do all they can to put an immediate end to human rights violations and abuses.

The Commission of Inquiry is asking the International Criminal Court to open an investigation into crimes committed in Burundi as soon as possible. It is also asking UN Member States to prosecute alleged perpetrators of these crimes who are on their territory under the principle of universal jurisdiction.

The Commission recommends that no alleged perpetrator of human rights violations or international crimes is recruited into peacekeeping missions of the United Nations or the African Union.

The Commission also recommends that all Burundians seeking asylum abroad be granted refugee status, that they be protected and not sent back to their country (principle of non-*refoulement*).

The Commission encourages all States involved in the search for a sustainable solution grounded in human rights to intensify their efforts.

Finally, the Commission recommends that the Human Rights Council extend its mandate by one year, to enable it to deepen and pursue its investigations in light of the persistence of serious human rights violations and abuses in Burundi.

1. **Who are the main victims of human rights violations?**

Most of the victims are real or suspected government opponents. Some participated in the spring 2015 demonstrations against an additional presidential term for Pierre Nkurunziza or are members of opposition parties. Others were targeted for refusing to join the ruling party or because of the suspected political affiliation of their relatives. Others say they never took part in any demonstrations or political activities. They just happened to find themselves in the wrong place at the wrong time.

Most of the victims are young men; some are teenagers. The exceptions are the victims of sexual violence, most of whom are women, including minors. Some men have also been victims of sexual violence.

1. **Who are the main perpetrators?**

Most of the serious human rights violations documented by the Commission of Inquiry were committed by Burundian State agents or individuals under their control: members, including high level officials, of the National Intelligence Service (SNR), which reports directly to the President, and the Burundian national police force, military and *Imbonerakure*. Armed opposition groups have also committed human rights abuses.

1. **Have the Burundian authorities taken steps to stop these violations or to bring the perpetrators to justice?**

The Burundian justice system lacks independence, especially since April 2015; this has reinforced widespread impunity in the country. In practice, there have been very few prosecutions, and even fewer successful prosecutions, against State agents or members of the ruling party, including *Imbonerakure*, responsible for serious human rights violations since April 2015. In these circumstances, the Commission believes that the Burundian State is neither willing nor able to carry out effective investigations or prosecutions to put an end to these violations.

1. **Why does your report not say anything about abuses by armed opposition groups?**

The Commission gathered information on attacks by armed opposition groups against military or police positions, as well as larger-scale attacks. It also received information about attacks against members of the government, of the CNDD-FDD and administrative officials. However, it was difficult to document these attacks, partly because of the Burundian authorities' refusal to share information on these cases with the Commission or to allow it access to Burundi where most of the victims of these abuses remain.

1. **Did the Burundian government cooperate with the Commission?**

The Burundian government refused to engage in any dialogue or to cooperate with the Commission throughout its mandate, despite the Commission's repeated approaches and requests. The Burundian authorities did not respond to the Commission's request to go to Burundi, to meet the authorities or to receive "any information that would be useful to understanding the human rights situation."

On 26 January 2017, the Permanent Mission of Burundi in Geneva reiterated to the Commission Burundi's rejection of the resolution that had created the Commission and stated that there was therefore no basis for meeting the members of the Commission. The Commission regrets this decision, particularly as Burundi is a member of the UN Human Rights Council and is therefore obliged to cooperate with mechanisms created by the Council, such as the Commission of Inquiry.

1. **How did the Commission carry out its investigations if it was unable to go to Burundi?**

The Commission collected more than 500 testimonies. Some of these came from Burundians who have had to seek refuge abroad, in neighbouring countries or beyond. Many others came from people who remain in Burundi.

The information was provided by victims of human rights violations, their relatives, witnesses of human rights violations and abuses, as well as alleged perpetrators. The Commission also referred to other reliable and credible sources and documents, such as medical certificates or legal documents (laws, regulations, directives, etc). Finally, it studied reports published by various institutions, including UN bodies, States and Burundian and international human rights organisations.

1. **How do you respond to the Burundian Government when it questions the work of a Commission that has not been to Burundi?**

The Commission tried repeatedly to go Burundi, to engage the Burundian authorities in a dialogue and to seek their cooperation. The authorities did not respond to any of these approaches.

The Burundian government cannot denounce the Commission's work on the basis of its own refusal to grant it access to the country or to provide it with information. Lack of access to the country certainly made the Commission's work more complex, but it did not prevent it from gathering first-hand information, including from sources in Burundi.

1. **Burundi's history has been marked by serious ethnic violence. Do you believe that a genocide is in preparation?**

Burundi's current human rights crisis is directly linked to the political crisis triggered by President Pierre Nkurunziza's decision to stand for another term in 2015. The violations that the Commission has documented took place in the context of repression against those who protested against this new presidential term, regardless of their ethnicity. The repression intensified sharply after the attempted coup d’état in May 2015.

The Commission is not in a position to establish the intent to destroy "in whole or in part" the Tutsi ethnic group in Burundi, which is the legal definition of genocide according to the Rome Statute. However, testimonies gathered by the Commission mentioned ethnic insults against Tutsis during arrests, torture or sexual violence. This is extremely worrying. The Commission is also concerned about speeches by State authorities or ruling party officials which contribute to creating a dangerous climate of hatred and could revive ethnic tension.

1. **The Burundian government claims that the situation has considerably improved and that there is security in Burundi.**

The Commission of Inquiry has not received any information that would lead it to believe that the situation has improved significantly. On the contrary, right until the finalisation of its report, it has continued to receive information about human rights violations of a similar nature and gravity to those documented over the previous months.

1. **You are particularly appealing to African States. What are you expecting from them?**

African States have a key role to play, particularly in the context of initiatives to find a lasting solution to the crisis in Burundi, based on respect for human rights and rejection of impunity. In addition, the African Union agreed to send human rights observers and military experts to Burundi and should ensure that its decisions are fully implemented. Under Article 4 (h) of its Constitutive Act, the African Union also has the possibility of intervening in a Member State in case of crimes against humanity.

However, the Commission is not calling only on African States to act. It is asking all UN States to strive to put an end to human rights violations and abuses in Burundi.

**What is the Commission's position on the suspension of aid and individual sanctions imposed by some states?**

The Commission is recommending that in the absence of any improvement in the human rights situation in Burundi, UN Member States maintain individual sanctions and the suspension of direct support to the Burundian government. The Commission is also asking the UN Security Council to adopt individual sanctions against the main alleged perpetrators of serious human rights violations and international crimes in Burundi.

1. **The Commission is calling on the International Criminal Court to act. Yet Burundi decided to withdraw from this jurisdiction. Isn't there a contradiction?**

On 25 April 2016, the prosecutor of the International Criminal Court (ICC) opened a preliminary examination to determine whether crimes under its jurisdiction had been committed in Burundi. The members of the Commission hope that their report will contribute to persuading the ICC to open an investigation as soon as possible.

Burundi will officially withdraw from the ICC on 27 October 2017. Until then, it is bound to cooperate with the ICC. Even after that date, the ICC still has jurisdiction to investigate and try perpetrators of international crimes committed in Burundi until October 2017.

1. **What will happen in relation to crimes that might be committed after 27 October 2017?**

The Commission of Inquiry on Burundi is completely independent from the International Criminal Court and any other body or jurisdiction. If the Human Rights Council accepts it recommendation to extend its mandate by one year, the Commission will continue gathering information on human rights violations and abuses, and crimes committed after October 2017 will still be documented. These crimes could be prosecuted by the Burundian justice system, as soon as the authorities are willing and able to do so, or by other jurisdictions, for example on the basis of universal jurisdiction.

Burundi also remains bound by the international conventions that it has ratified (such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment), as well as its national legislation. For example, the Burundian Penal Code sanctions crimes against humanity.

1. **What is a crime against humanity?**

A crime against humanity is an act committed as part of a widespread or systematic attack directed against a civilian population, pursuant to or in furtherance of a State or organisational policy. The Commission was able to document numerous human rights violations committed against Burundians, most of them civilians, since April 2015 to this day. These violations are recurrent and have taken place in different provinces. They have been committed by State agents or individuals under its control. All these elements correspond to the definition of a crime against humanity under Article 7 (1) of the Rome Statute.

1. **What kinds of penalties will perpetrators of crimes against humanity incur?**

One of the specificities of crimes against humanity is that they are imprescriptible, which means that the perpetrators of these crimes can be tried without any time limitation. These crimes can be tried by national jurisdictions, so long as they provide the necessary guarantees of independence, impartiality and fairness, or by international criminal tribunals like the ICC. Under universal jurisdiction, States can also prosecute alleged perpetrators of these crimes and their accomplices who are on their territory.

1. **Can victims really hope to see justice one day?**

In a country where impunity is the rule, where victims of serious human rights violations have little chance of a hearing and where those responsible for these acts are unlikely to have to answer before a court, the Commission of Inquiry is often the only hope of seeing justice one day.

By documenting crimes committed in Burundi, the Commission is effectively laying the groundwork for national or international judicial institutions that will be responsible for trying the alleged perpetrators of these crimes. This will not happen overnight. It is long term work.

However, the Commission's work does not exonerate the Burundian authorities from their responsibility to put an end to human rights violations, to lead the fight against impunity with efficiency and determination, and to ensure that victims receive fair compensation.

**For further information:**

[http://www.ohchr.org/EN/HRBodies/HRC/CoIBurundi/Pages/TheReportHRC36.aspx](https://www.ohchr.org/EN/HRBodies/HRC/CoIBurundi/Pages/TheReportHRC36.aspx)

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