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To Permanent Representatives of Member and Observer States of the United Nations (UN) Human Rights Council, Geneva, Switzerland

21 August 2020

Burundi: Vital role of the Commission of Inquiry in prompting meaningful human rights progress

Excellencies,

Ahead of the 45th session of the UN Human Rights Council (hereafter “HRC” or “the Council”), we, the undersigned national, regional and international civil society organisations, write to urge your delegation to support the renewal of the mandate of the Commission of Inquiry (Col) on Burundi. In the context of recent political developments, such a renewal, building off the investments to date in and from the Col, would provide the best opportunity to prompt meaningful human rights progress in Burundi.

As of today, the Col remains the only independent mechanism mandated to document human rights violations and abuses (including on their extent and whether they may constitute crimes under international law), monitor, and publicly report on the situation in Burundi, with sufficient resources and experience to do so. Changing political realities do not amount to systemic human rights change, and the Council has a responsibility to continue supporting victims and survivors of violations and working to improve the situation in Burundi.

In the past, an Independent Expert or other experts mandated to report on the human rights situation in Burundi have not been able to publish information with the same level of detail as the Col, which has extensive contacts in the country and a team of dedicated, experienced investigators. This is even more crucial now because of the Burundian Government’s intransigence, the absence of a UN human rights team in the country, and lack of access to the Burundian territory.

The work conducted by the Col, which is due to present its written report to the Council at its upcoming 45th session (14 September-6 October 2020), continues to provide critical oversight of the human rights situation in Burundi. The country’s crisis was triggered by former President Pierre Nkurunziza’s announcement, in April 2015, that he would run for a third term in office. Throughout the years, the Col and its predecessor, the UN Independent Investigation on Burundi (UNIIB), have documented gross, widespread and systematic human rights violations and abuses, some of which may amount to crimes against humanity.

The Government, state security forces, including the police, the National Intelligence Service (*Service national de renseignement*, or SNR), and members of the youth league of the ruling *Conseil national pour la défense de la démocratie-Forces de défense de la démocratie* (CNDD-FDD) party, the *Imbonerakure*, are responsible for many of the violations and abuses. Over the course of its reporting, the Col has documented violations of civil, political, economic, social and cultural rights in a deteriorating economic and humanitarian context. Violations and abuses include arbitrary arrests and detentions of prisoners of conscience and those perceived to be against the Government, beatings, destruction of property, including of premises of the *Congrès National pour la Liberté* (CNL) party, theft of property belonging to members of opposition parties and human rights defenders (HRDs) in exile, and arbitrary suspension and forced closure of civil society organisations and media outlets. They also include torture and ill-treatment, the use of excessive and lethal force against peaceful demonstrators, enforced disappearances, violations of the rights of women and girls, rape and other forms of sexual and gender-based violence, forced labour, the extortion of contributions for state-led projects, hate speech and incitement to ethnic hatred (which go on with the acquiescence of political, prosecutorial, and judicial authorities), and extrajudicial killings.

Such violations and abuses have continued to take place in a context of near-complete impunity; to date, no high-level officials have been held accountable. Several hundred prisoners who have served their term

or whose release has been ordered continue to be arbitrarily detained. This situation is ongoing despite opinions rendered by the UN Working Group on arbitrary detention (WGAD), which examined some of these prisoners' cases. Victims and survivors of sexual violence have been denied access to a specialised framework for medical and psychological treatment and full rehabilitation. Additionally, in recent months, there has been an increase in ethnic hate speech, including by individuals close to the Government, with a view to de-humanising parts of the population (i.e., the Tutsi).¹

Members and supporters of opposition political parties, in particular the CNL, as well as independent voices, including civil society members, HRDs, members of non-governmental organisations (NGOs), and journalists, have been targeted. Since April 2015, the civic and democratic space has continued to shrink. At the time of writing, despite calls on the new President, Évariste Ndayishimiye, to demonstrate his openness to reconciliation by releasing all detained HRDs,² Germain Rukuki,³ Nestor Nibitanga, and Iwacu reporters Egede Harerimana, Christine Kamikazi, Terence Mpozenzi and Agnès Ndirubusa, remain in detention.

The Burundian Government ceased its cooperation with the Council's mechanisms, including in 2016 by declaring members of the UNHCR *personæ non gratae* and in February 2019 by forcing the Office of the UN High Commissioner for Human Rights (OHCHR) to leave the country. Despite being a member of the Council (2016-2018), Burundi refused to implement Council resolutions, including HRC resolution 36/2, which was adopted at Burundi's request and with the sponsorship of the African Group.⁴ Burundian officials have also repeatedly insulted and threatened members of the Col and carried out reprisals against exiled HRDs, including lawyers and activists who sought to engage with the UN human rights system.⁵ The Government has extended sub-standard cooperation to regional mechanisms. African Union (AU) observers, who have not been fully deployed, continue to face a number of limitations to their work. Unlike the Col, their findings are not made public. Burundi has disregarded resolutions adopted by the African Commission on Human and Peoples' Rights (ACHPR), including Resolution 412 (LXIII) 2018, which urged the Government to "[c]onduct prompt independent, impartial and effective investigations" into human rights violations and "[c]ooperate with all international community stakeholders, including the African Union, the United Nations and the East African Community, in the search for a peaceful and human rights responsive solution to the crisis."⁶

Relying on independent, thorough and professional documentation methodologies, without access to country's territory, the Col has continued to expose violations. In 2019, in accordance with principles of early warning and prevention and using the Framework of Analysis for Atrocity Crimes developed by the UN's Office on Genocide Prevention and the Responsibility to Protect, the Col identified risk factors and indicators of violations.⁷ While some of the factors the Commission identified are related to specific circumstances,

¹ Commission of Inquiry on Burundi, "Oral briefing by the Commission of Inquiry on Burundi," 9 March 2020, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25694&LangID=E>. See also Commission of Inquiry on Burundi, "Oral briefing of the Commission of Inquiry on Burundi," 14 July 2020, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26087&LangID=E> (both accessed on 10 August 2020).

² Protection International *et al.*, "Burundi: a decisive moment for the future of human rights defenders," 17 June 2020, <https://www.protectioninternational.org/en/news/statement-decisive-moment-future-human-rights-defenders-burundi> (accessed on 17 July 2020).

³ On 30 July 2020, it was reported that in a 30 June 2020 ruling, Burundi's Supreme Court rendered invalid the July 2019 Appeal Court decision to uphold Germain Rukuki's conviction and 32-year prison sentence and sent the appeal case back to be heard again by the Ntahangwa Appeal Court, with a newly composed bench (see FIACAT, "Cassation du jugement en appel condamnant Germain Rukuki," 30 July 2020, <http://fiacat.org/presse/communiqués-de-presse/2909-communication-cassation-du-jugement-en-appel-condamnant-germain-rukuki> (accessed on 31 July 2020)).

⁴ Regarding Burundi's violations of its Council membership obligations, see DefendDefenders, "Headlong Rush: Burundi's behaviour as a member of the UN Human Rights Council," 25 July 2018, <https://defenddefenders.org/headlong-rush-burundis-behaviour-as-a-member-of-the-un-human-rights-council/> (accessed on 17 July 2020).

⁵ *Ibid.* See also the UN Secretary-General's reports on "Cooperation with the United Nations, its representatives and mechanisms in the field of human rights" presented to the Council by the Assistant Secretary-General for human rights on a yearly basis: <https://www.ohchr.org/EN/Issues/Reprisals/Pages/Reporting.aspx> (accessed on 17 July 2020).

⁶ African Commission on Human and Peoples' Rights, "Resolution on the Human Rights Situation in the Republic of Burundi - ACHPR/Res. 412 (LXIII) 2018," 13 November 2018, available at: <https://www.achpr.org/sessions/resolutions?id=420> (accessed on 17 July 2020).

⁷ Human Rights Council, "Report of the Commission of Inquiry on Burundi," UN Doc. A/HRC/42/49, 6 August 2019, available at: <https://www.ohchr.org/EN/HRBodies/HRC/CoIBurundi/Pages/CoIBurundiReportHRC42.aspx> (accessed on 17 July 2020).

such as elections, a number of other factors are structural. This means that, beyond the appointment of new officials, systemic changes and meaningful reforms are necessary⁸ to bring about sustainable improvements in the situation and deliver effective guarantees for the rights of Burundian citizens.

Burundi is in a period of potential transition, following the 20 May 2020 presidential, legislative and local elections resulting in the election of a new President, Évariste Ndayishimiye and after the passing of former President Nkurunziza. At this moment and in this context, there are signs of promise as well as of significant concern.

Despite promising remarks by President Ndayishimiye during his inauguration, as well as the authorities' new, more transparent approach to tackling the COVID-19 pandemic, observers also raised concerns, notably over the fact that several newly appointed members of the Ndayishimiye administration are subject to international individual sanctions for their alleged responsibility in human rights violations. Nonetheless, the political transition represents an opportunity to open a new chapter for the Burundian people and for Burundi's relationship with the UN human rights system.

Although the May 2020 elections and their immediate aftermath were not characterised by mass violence, concerns and warning signs remain. Widespread intimidation and patterns of violations against opposition members and supporters, as well as the arrest of hundreds of CNL supporters, have contributed to an ongoing climate of fear. As the Col reported in its 14 July update to the Council,⁹ “[h]uman rights violations continue to date and it would be premature to make any pronouncements on the possible evolution of the situation under the new government.”

In its 14 July address, the Col identified some “priority areas for action against which the new authorities can objectively attest their desire for change and normalisation on the long term [...]”. These areas for action include:

- The **fight against poverty and economic instability** (risk factor no. 1).
- The **fight against the *de facto* impunity enjoyed by the main perpetrators of violations** (risk factor no. 2) and the **reform of the judicial system** (risk factor no. 3). In our view,¹⁰ this would include:
 - The removal of officials who have been credibly implicated in serious human rights violations and possible atrocity crimes while thorough and impartial investigations are conducted. Where there is sufficient admissible evidence, those suspected of criminal responsibility should be prosecuted in fair trials, irrespective of their rank, status, or political affiliation. Victims and survivors and their families should be able to access justice, truth and reparation;
 - Comprehensive reforms of police and security forces, including bringing human rights violations committed by the National Defence Force, law enforcement bodies, the SNR and the *Imbone-rakure* to an end, and ensuring that the ruling party's youth league is disarmed and not used for any official state security or other duties. Military, security and law enforcement forces should undergo a thorough vetting process, with regional or international assistance, to remove individuals who have taken part in human rights violations.
- The **re-opening of the democratic space** (risk factor no. 4). In our view, this would include:
 - Establishment and maintenance of a safe and enabling environment for HRDs, members of civil society, journalists, and opposition members and supporters. A safe and enabling civic space includes releasing all prisoners of conscience, including detained HRDs and journalists; an end to political interference in the judicial system; full protection of freedom of expression, peaceful assembly and association, and the reinstatement of and full respect for the rights of arbitrarily banned civil society organisations and media outlets;

⁸ See examples of indicators below.

⁹ See footnote 1 above.

¹⁰ See also Human Rights Watch, “Letter to President Ndayishimiye: Protecting Human Rights in Burundi,” 13 July 2020, <https://www.hrw.org/news/2020/07/15/letter-president-ndayishimiye-protecting-human-rights-burundi> (accessed on 31 July 2020).

- Measurable progress should also be recorded to allow for the safe, voluntary and dignified return of more than 300,000 refugees, including political refugees who were forced to flee the country to avoid harassment.
- The **cooperation with the Commission of Inquiry**. More generally, we urge:
 - Full cooperation with international and African human rights bodies and mechanisms, including cooperation with the Col (which means granting it access the country), resumed cooperation with OHCHR, and finalisation of a memorandum of understanding with the AU's human rights observer mission. Regional and international NGOs should also be able to access the country and operate without interference. Burundi should promptly re-accede to the Rome Statute of the International Criminal Court (ICC) and cooperate fully with the Court.

We would welcome meaningful and concrete improvements in the human rights situation in Burundi, and we believe that the best chance to achieve such meaningful change is through the renewal of the mandate of the Commission of Inquiry, as well as the Burundian authorities reinitiating dialogue with the Col, OHCHR, and other UN and AU human rights bodies and mechanisms. Through such engagement, the Burundian authorities could help chart a clear and unwavering path from the current context of grave violations and widespread impunity by making measurable progress on key indicators such as those referenced above.

At its 45th session, the Council should avoid sending the Government of Burundi signals that would disincentivise domestic human rights reforms, such as terminating the Col's mandate in the absence of measurable progress. It should avoid a scenario where re-establishing the Col's mandate would be necessary after a premature discontinuation, because of a renewed escalation of human rights violations and abuses. The Council should rather ensure continued investigations, monitoring, public reporting, and public debates on Burundi's human rights situation.

We thank you for your attention to these pressing issues and stand ready to provide your delegation with further information as required.

Sincerely,

1. Action des Chrétiens pour l'Abolition de la Torture – Burundi (ACAT-Burundi)
2. African Centre for Democracy and Human Rights Studies (ACDHRS)
3. African Centre for Justice and Peace Studies (ACJPS)
4. AfricanDefenders (Pan-African Human Rights Defenders Network)
5. Amnesty International
6. ARTICLE 19
7. Association Burundaise pour la Protection des Droits Humains et des Personnes Détenues (APRODH)
8. Association des Journalistes Burundais en Exil (AJBE)
9. The Burundi Human Rights Initiative (BHRI)
10. Cairo Institute for Human Rights Studies (CIHRS)
11. Centre for Civil and Political Rights (CCPR-Centre)
12. CIVICUS
13. Civil Society Coalition for Monitoring the Elections (COSOME)
14. Coalition Burundaise pour la Cour Pénale Internationale (CB-CPI)
15. Collectif des Avocats pour la Défense des Victimes de Crimes de Droit International Commis au Burundi (CAVIB)
16. DefendDefenders (East and Horn of Africa Human Rights Defenders Project)
17. Eritrean Movement for Democracy and Human Rights (EMDHR)
18. European Network for Central Africa (EurAc)
19. Front Line Defenders
20. Geneva for Human Rights / Genève pour les Droits de l'Homme
21. Global Centre for the Responsibility to Protect (GCR2P)
22. Human Rights Watch
23. International Commission of Jurists (ICJ)
24. International Federation for Human Rights (FIDH)
25. International Federation of ACAT (FIACAT)

26. International Movement Against All Forms of Discrimination and Racism (IMADR)
27. International Service for Human Rights (ISHR)
28. Lawyers' Rights Watch Canada
29. Light For All
30. Ligue Iteka
31. Mouvement des Femmes et des Filles pour la Paix et la Sécurité (MFFPS)
32. National Coalition of Human Rights Defenders – Burundi (CBDDH)
33. Central African Network of Human Rights Defenders (REDHAC)
34. Observatoire de la Lutte contre la Corruption et les Malversations Économiques (OLUCOME)
35. Odhikar
36. Organisation pour la Transparence et la Gouvernance (OTRAG)
37. Réseau des Citoyens Probes (RCP)
38. SOS-Torture/Burundi
39. Southern Africa Human Rights Defenders Network (SAHRDN)
40. TRIAL International
41. Union Burundaise des Journalistes (UBJ)
42. West African Human Rights Defenders Network (ROADDH/WAHRDN)
43. World Organisation Against Torture (OMCT)