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COMMITTEE ON THE HUMAN RIGHTS OF PARLIAMENTARIANS

Report of the Committee's delegation on its mission to Burundi
(25 - 28 September 2011)

- ▶ CASE No. BDI/01 - S. MFAYOKURERA
- CASE No. BDI/05 - I. NDIKUMANA
- CASE No. BDI/06 - G. GAHUNGU
- CASE No. BDI/02 - NORBERT NDIHOKUBWAYO
- CASE No. BDI/26 - NEPHTALI NDIKUMANA
- CASE No. BDI/36 - MATHIAS BASABOSE
- CASE No. BDI/37 - LÉONARD NYANGOMA
- CASE No. BDI/40 - FRÉDÉRIQUE GAHIGI
- CASE No. BDI/42 - PASTEUR MPAWENAYO
- CASE No. BDI/44 - HUSSEIN RADJABU
- CASE No. BDI/53 - THÉOPHILE MINYURANO
- CASE No. BDI/57 - GÉRARD NKURUNZIZA
- CASE No. BDI/58 - DEO NSHIRIMANA
- CASE No. BDI/60 - JEAN BOSCO RUTAGENGWA
- CASE No. BDI/07 - L. NTAMUTUMBA
- CASE No. BDI/29 - P. SIRAHENDA
- CASE No. BDI/35 - G. GISABWAMANA
- CASE No. BDI/42 - PASTEUR MPAWENAYO
- CASE No. BDI/43 - JEAN MARIE NDUWABIKE
- CASE No. BDI/45 - ALICE NZOMUKUNDA
- CASE No. BDI/46 - ZAITUNI RADJABU

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A. ORIGIN AND CONDUCT OF THE MISSION

1. Decision to carry out an on-site mission

The cases that were the subject of the mission were submitted to the Committee on the Human Rights of Parliamentarians in the years 1994 to 2008. They concern three different situations, namely the assassination of parliamentarians belonging to the Front for Democracy in Burundi (FRODEBU) between 1994 and 1999, grenade attacks perpetrated in August 2007 and March 2008 on eight parliamentarians belonging to a dissident wing of the CNDD-FDD,¹ and the judicial proceedings brought against four parliamentarians belonging to the same group, and their arrest and detention. The Committee decided on various occasions to submit all these cases to the IPU Governing Council.

Given the complexity of these cases and the inadequacy of the information supplied by the competent authorities, the Governing Council considered, at its 187th session in October 2010, that an on-site mission would enable the Committee to gather the necessary information first-hand and would help to expedite a satisfactory settlement. In view of the declared willingness of the Burundian authorities to protect human rights, the Council had expressed the hope that the mission would be welcomed by the authorities.

After the President of the Committee on the Human Rights of Parliamentarians and the IPU Secretary General had clarified some matters raised by the Burundian authorities regarding the organization and conduct of the mission, the National Assembly signified its agreement for the mission to take place from 25 to 28 September 2011. The Committee requested its President, the Belgian Senator Philippe Mahoux, and its titular member for Africa, Mr. Kassoum Tapo, Attorney at Law, member of the National Assembly of Mali, to carry out the mission. Mr. Mahoux and Mr. Tapo were accompanied by the Secretary of the Committee, Ms. Ingeborg Schwarz.

2. Persons met

2.1 Parliamentary authorities

- Mr. Pie Ntavyohanyuma, Speaker of the National Assembly, in the presence of the Deputy Speakers of the Assembly
- The members of the National Assembly's own Committee on the Human Rights of Parliamentarians

2.2 Governmental authorities

- The First and Second Vice-Presidents of the Republic
- The Minister of Justice
- The Minister of the Interior
- The Minister of Public Security
- The Minister of National Solidarity, Human Rights and Gender

2.3 Judicial and administrative authorities

- The President of the Supreme Court
- The Attorney General of the Republic
- The Director General of the Police
- The Director-General of Penitentiary Affairs
- The Director of Mpimba Prison
- The Chairperson of the Technical Committee responsible for establishing the Truth and Reconciliation Commission

¹ National Council for the Defence of Democracy-Forces for the Defence of Democracy.

2.4 Other personalities

- Mr. Sylvestre Ntibantunganya, former President of the Republic, former Speaker of the National Assembly
- Mr. Jozef Smets, Ambassador of Belgium

2.5 The former parliamentarians concerned and their lawyers

- Mr. Norbert Ndiwokubwayo
- Mr. Radjabu, Mr. Mpawenayo, Mr. Nkurunziza and Mr. Nshirimana at Mpimba Prison
- Mr. Théophile Minyurano
- Ms. Zaituni Radjabu and eight other former parliamentarians having lost their parliamentary mandate in June 2008
- Mr. Prosper Niyoyankana, Attorney at Law
- Mr. Sebastien Ntahoturi, Attorney at Law

2.6 Representatives of non-governmental organizations and family members of the parliamentarians

- Mr. Joseph Ndayizeye, Secretary General of Iteka
- Mrs. Jacqueline Karibwami, widow of Mr. Pontien Karibwami, former Speaker of the National Assembly assassinated in October 1993
- Mrs. Génèreuse Bimazubute, widow of Mr. Gilles Bimazubute, former Deputy Speaker of the National Assembly assassinated in October 1993

3. **Conduct of the mission**

3.1 Contacts

The mission wishes first of all to thank the authorities for their cooperation. In particular, it thanks the Speaker of the National Assembly for everything he did to ensure that the mission could take place and fulfil its assignment. It also thanks the Chairperson and Deputy Chairperson of the Assembly's Committee on the Human Rights of Parliamentarians for the time they devoted to it, accompanying it to nearly all the contacts with the authorities. The mission wishes in particular to state that it was able to meet the former parliamentarians in detention without any difficulty and in the requisite conditions.

The commission had the pleasure of conversing with persons not initially provided for in the programme, in particular Mr. Sylvestre Ntibantunganya, former Head of State and Speaker of the National Assembly, the President of the Supreme Court, and the widows of the Speaker and Deputy Speaker of the National Assembly assassinated in 1993.

The mission unfortunately did not have the honour to meet the President of the Republic, who was abroad at the time of the mission. It regrets that the Head of the National Intelligence Service (SNR) was not available for an interview, which thus denied the mission the opportunity to raise with him the Committee's concerns regarding the Service he heads.

The mission appreciated the invitation of the Attorney General to acquaint itself with the case files of the former parliamentarians in detention who have not yet been tried, namely Mr. Mpawenayo, Mr. Nkurunziza and Mr. Nshirimana, to thus be informed of the indictments concerning them and to check the specific statements made on either side. A meeting for the purpose was agreed on during the contact with the President of the Supreme Court, who expressed the wish to be present at that consultation. When the time came, however, he was absent on mission in the country. The Clerk of the Court unfortunately refused to provide the files in question and the mission was thus unable to peruse them, which it greatly regrets.

3.2 Two new cases brought to the notice of the mission

During its stay, the mission learnt of the arrest and detention of Mr. Deo Nshirimana and met him at Mpimba Prison. The preliminary report of the Committee on the Human Rights of Parliamentarians

of the National Assembly of Burundi mentions the assassination, in 2002, of Deputy Jean Bosco Rutagengwa (Kirundo). This is also a case not as yet referred to the IPU Committee on the Human Rights of Parliamentarians.

3.3 Political context at the time of the mission

The mission took place after a massacre perpetrated on 19 September 2011 in a bar belonging to a member of the CNDD-FDD situated in Gatumba, a locality near Bujumbura. The massacre cost the lives of 39 persons, mainly players and supporters of a local football team who were having a drink after a match. All the people spoken with mentioned that massacre, which has left a lasting impression and shown up the fragility of the present situation. The authorities stated that an investigative commission had been put in place, but at the time of the mission those behind the crime had not yet been identified. On 29 September, however, the Head of State announced the arrest of suspects. Many people we met spoke of their conviction that the National Liberation Front (FNL) of Agathon Rwasa was responsible for the crime.

B. OUTLINE OF THE CASES AND CONCERNS OF THE COMMITTEE

1. The case of the parliamentarians assassinated or having been targets of attempted assassination during the period between 1994 and 2000

1.1 This case concerns, on the one hand, the murders of Mr. Sylvestre Mfayokurera (September 1994), Mr. Innocent Ndikumana (January 1996), Mr. Gérard Gahungu (July 1996), Mr. Paul Sirahenda (September 1997), Mr. Gabriel Gisabwamana (January 2000) and Ms. Liliane Ntamutumba (July 1996), and, on the other, two assassination attempts (September 1994 and December 1995) targeting Mr. Norbert Ndiwokubwayo. Those parliamentarians all belonged to FRODEBU (Ndiwokubwayo is at present a member of the National Assembly). Having examined these cases for long years, the Committee was able to gather information which, in its view, could have enabled the authorities to identify the culprits and bring them to justice. This is true in particular of the cases of Mr. Mfayokurera and Mr. Sirahenda. In the first case, the attackers were apprehended but released by the magistrate; and in the second there are witnesses not only of the arrest, by some members of the military, of Mr. Sirahenda at the market in Mutobo but also of his assassination in the Mabanda military camp. The Committee has constantly recalled the duty incumbent on the authorities to dispense justice by identifying and arraigning the culprits. In the case of the assassination of Mr. Gisabwamana, for which a member of the military was sentenced to 18 months' imprisonment and a fine, a punishment scarcely matching the gravity of the crime, the Committee has insisted on the need for compensation for his family, which has so far not materialized.

1.2 The Committee welcomed the establishment for the first time, in April 2003, of a working group within the Burundian Parliament to study, in cooperation with the competent authorities, the possibility of reactivating the cases in question. That group has continued to exist formally but without being able for various reasons, including the authorities' lack of willingness to cooperate, to fulfil its mandate.

1.3 During a conversation with the Committee in April 2009, the Speaker of the Senate said that the cases of the assassinated parliamentarians could not be dissociated from the many other murders committed at the time and could only be examined by the Truth and Reconciliation Commission under preparation. While taking the view that the working group could have helped gather or preserve items of information necessary for the work of the Truth and Reconciliation Commission, the Governing Council decided, in April 2009, to suspend its examination of the case until the Commission had been established. It asked the Committee to keep abreast of progress in that respect.

2. Case of the grenade attacks (August 2007 and March 2008)

2.1 This case concerns parliamentarians elected in July 2005. Following the judgment of the Constitutional Court declaring them to be occupying their seats unconstitutionally, they lost their parliamentary mandates. (See also 3.1 below.)

2.2 On 19 August 2007 grenades were thrown against the homes of Mr. Nephtali Ndikumana, Mr. Pasteur Mpawenayo, Mr. Jean-Marie Nduwabike and Ms. Frédérique Gahigi. Those parliamentarians, belonging to a dissident wing of the CNDD-FDD, were part of a group of persons who had signed a letter addressed to the Head of State to propose solutions aimed at settling the crisis and restoring the rule of law. Their photographs had been published in the CNDD-FDD journal on 10 August 2007, which was denounced by the deputies concerned as an incitement to hatred. On 6 March 2008, Mr. Mpawenayo was once more targeted in a grenade attack along with Mr. Mathias Basabose, Mr. Léonard Nyangoma, Ms. Zaituni Radjabu and Ms. Alice Nzomukunda. The latter was driving her car when the grenade landed in front of it. Those two attacks caused material damage but did not injure anyone. On 7 March 2008, the National Assembly condemned those attacks and requested that an investigation be conducted to elucidate them.

2.3 Different and sometimes contradictory information has been provided by the authorities about the investigation. According to the information supplied by the Speaker of the National Assembly in December 2010, the most recent before the mission's arrival, the motorcyclist initially arrested for having thrown the grenade against Ms. Nzomukunda's car had been released. Furthermore, the investigation into the other attacks had been unavailing. According to the authorities, the reason was the wrong initial orientation of the investigation, which was built on the assumption that the victims themselves had organized those attacks. The Committee has constantly expressed its deep concern at the manifest and persistent lack of results of the investigation and has taken the view, given in particular the mistaken initial angle and the release of the motorcyclist arrested in flagrante delicto, that serious doubts remained about the resolve of the authorities to see justice dispensed in this case. It reminded the Burundian authorities of their duty to launch a thoroughgoing inquiry.

3. Case of Mr. Hussein Radjabu, Mr. Pasteur Mpawenayo, Mr. Gérard Nkurunziza and Mr. Théophile Minyurano

3.1 The persons in question were elected on the CNDD-FDD list in July 2005. Dissensions within the party became exacerbated after the Ngozi Congress of 7 February 2007 on the occasion of which Mr. Radjabu was ousted from the party leadership. The party then found itself split in two, one wing supporting the new party president, Mr. Jérémie Ngendakumana, and the other backing Mr. Radjabu. The parliamentarians concerned belong to the latter group. Following the 5 June judgment of the Constitutional Court declaring them to be occupying their seats unconstitutionally, they lost their parliamentary mandates.

3.2 Mr. Hussein Radjabu

Mr. Radjabu was arrested after the lifting of his parliamentary immunity on 27 April 2007. He was accused of insulting the Head of State by comparing him to an empty bottle and, with seven other persons, of having conspired against State security by inciting citizens to rebel against the authority of the State, at a meeting held on 31 March 2007 in a straw hut belonging to him (file RPS 66). Mr. Radjabu was sentenced on 3 April 2008 to 13 years' imprisonment. That judgment was upheld on appeal. The sources affirmed that the charges against Mr. Radjabu had been entirely fabricated and they pointed to numerous irregularities, including the torture inflicted on Mr. Radjabu's main co-accused, Mr. Evariste Kagabo and the lack of valid evidence to back the charges. The Committee expressed the profound concern caused it by the recourse to torture, recalling that any testimony obtained under torture is not admissible as evidence and must be ruled out. It should be noted in this respect that, according to the information supplied by the Speaker of the Senate in April 2009, this matter has apparently been the subject of a separate investigation.

3.3 Mr. Pasteur Mpawenayo

The proceedings against Mr. Mpawenayo initially took place in connection with case file RPS 66. He was accused of having been Mr. Radjabu's accomplice and of having co-presided over a meeting where the acts of which he (along with Mr. Radjabu) was accused were reportedly committed. However, the proceedings against him were suspended on account of his parliamentary immunity. He was finally arrested on 4 July 2008 after he had been stripped of his mandate. Instead of a resumption of the initial investigation, a new case was opened, which step was sharply criticized by the sources. According to them, practically none of the rules concerning

the prescribed time limits for the stages of the proceedings were respected in his case. Also according to them, the trial of Mr. Mpawenayo, in common with that of Mr. Radjabu, is of a political nature. The Court apparently wanted Mr. Mpawenayo to testify against Mr. Radjabu, which he refused to do. His trial is reportedly linked to the fact that he held the post of CNDD-FDD Executive Secretary up to the time of the Ngozi Congress (February 2007). The Committee deplored in particular the slowness of the proceedings in this case and recalled the fundamental principle that justice delayed is justice denied. It wished to receive a copy of the indictment.

3.4 Mr. Gérard Nkurunziza

Mr. Nkurunziza was arrested on 15 July. He is accused of having, in his province of Kirundo, distributed weapons for a rebellion against the authority of the State. In his case, the procedural time limits were not respected either, so that in July 2011, at the time of the Committee's last session before the mission, he had not yet been brought before the competent court, namely the Supreme Court, whereas back in 2009 the court of Kirundo had declared itself incompetent to try the case dating from the time when Mr. Nkurunziza was still a parliamentarian. According to the sources, at that time the Kirundo authorities were accusing him in the media of distributing weapons. Mr. Nkurunziza had informed the Speaker of the National Assembly of those accusations and he had also raised the matter in the plenary Assembly. He then lodged a defamation complaint against the Kirundo authorities. The sources affirm that Mr. Nkurunziza is a victim of conflicts within the ruling party, responsible for having fabricated the whole matter from A to Z in collaboration with the Intelligence Service. The Committee reiterated its grave concerns at the slowness of the proceedings and wished to receive a copy of the indictment.

3.5 Mr. Théophile Minyurano

The sources have provided the Committee with the following information: Mr. Minyurano had a magistrate as tenant of his house in Gitega. When, on 30 September 2008, the latter was moving out Mr. Minyurano asked him to settle the unpaid rents and hand him over the keys. The magistrate only did so when the neighbours interceded. The next day, two policemen appeared at Mr. Minyurano's door with an arrest warrant. The public prosecution magistrate, a colleague of the tenant, ordered his transfer to the judicial police depot. On 2 October 2008, Mr. Minyurano was taken to Gitega Prison. He was then conditionally released. According to the authorities, it is a case awaiting trial of insulting behaviour towards the magistrate. There too, the Committee expressed its grave concern at the slowness of the proceedings and wished to receive a copy of the indictment.

3.6 Conditions of detention

The Committee declared itself concerned at the conditions of detention of the persons in question, with particular reference to their access to medical care and their right to receive visits. It asked the Director of the IPU Democracy Division, Mr. Martin Chungong, to visit the persons concerned on the occasion of a mission he was carrying out under the IPU's technical cooperation with the Burundian Parliament. That visit took place in November 2008. Mr. Mpawenayo was detained at the time in very difficult conditions, and Mr. Radjabu and Mr. Nkurunziza were held at Mpimba Prison (Bujumbura). Mr. Nkurunziza was then transferred to Ngozi Prison. Mr. Minyurano was free at the time.

C. INFORMATION GATHERED

I. GENERAL INFORMATION

1. A history marked by violence, but progress on the path to peace

1.1 All the people with whom the mission spoke highlighted the political violence marking the history of Burundi since its independence and more particularly since the assassination, in 1993, of the first democratically elected President of the Republic, Mr. Melchior Ndadaye. As the Second Vice-President said, this violence has left sequels such as the proliferation of weapons, criminality, armed robbery and revenge killings. The mission learnt that there were 16 violent deaths in the country every week in addition to cases of forced disappearance. The Second Vice-President observed that while

most of the National Liberation Front (FNL) had severed ties with Augustin Rwasa and, more generally, the population was totally opposed to a return to war, there were still adepts of violence, such as former combatants who had not managed to find their place in civilian life, undisciplined military (deserters or expelled military) and bandits who took advantage of the situation to stock up with weapons and munitions. However, there are reportedly no armed groups pursuing a political purpose and the existing groups of bandits apparently lack the capacity to attack the security forces. The Speaker of the National Assembly also mentioned the violence that followed the last local elections. He observed that nobody had claimed responsibility for it and he also expressed the view that what were often involved were instances of retaliation or property conflicts. Some people spoken with observed that the violence that had marked the country's history explained why there was not as yet any democratic practice firmly rooted either in the population or among the parliamentarians themselves, or in the other institutions and components of the State.

1.2 The large majority possessed by the ruling party in the National Assembly was mentioned by some as a potential source of problems. The Speaker of the National Assembly said in this respect that, to reassure the other political parties, external consultations were organized, for example for the "Vision Burundi 2000-2025" programme and for many other documents of national importance. The other political parties readily took part in those consultations. Likewise, with respect to the parliamentary work, still according to the Speaker of the National Assembly, the responsibilities are shared and, when it comes to setting up the parliamentary committees, the various balances are also taken into account.

1.3 The authorities emphasized the considerable steps towards democracy and respect for human rights accomplished in recent years, notably the 2005 and 2010 elections, even if, according to the Second Vice-President of the Republic, old reflexes took over and the opposition parties withdrew from the electoral process and resorted to violence after losing the local elections. Human rights institutions, such as the National Human Rights Commission and the Ombudsman, have been established and are working well, and cooperation with United Nations entities in human rights has been put in place. The Minister of National Solidarity, Human Rights and Gender mentioned her country's desire to receive assistance in strengthening the rule of law and democracy. As to freedom of expression, the authorities voiced their conviction that it was not fully respected. The First Vice-President of the Republic even spoke of a "libertinage" of expression, given the ill use of it often made by many media operating in Burundi. In any case, parliamentarians had no cause to complain of any lack of freedom of expression.

2. An ailing economy

Several persons met, including the Second Vice-President, emphasized the economic problems at present facing Burundi, particularly the higher prices of essentials and the problems of energy supplies. To debate these difficulties and find solutions, the Second Vice-President instituted, in April 2011, regular meetings with civil society and confessional bodies. According to him, these meetings give everyone the opportunity to voice their views on matters of national importance.

3. Reforms to guarantee an independent justice system

Some persons met stressed the importance of the independence of justice and the need for reforms to guarantee it. Mr. Sylvestre Ntibantunganya suggested in this respect the organization of workshops for parliamentarians in order to inform them of their rightful role in ensuring the independence and impartiality of justice. The Speaker of the National Assembly mentioned in this context that the Assembly's Justice Committee should be so equipped as to be able to work better.

4. The establishment of the National Assembly's Committee on the Human Rights of Parliamentarians

4.1 The mission received a copy of the preliminary report of the Committee on the Human Rights of Parliamentarians of the National Assembly, from which the following emerges:

(a) After the recommendations of the IPU Committee on the Human Rights of Parliamentarians, an ad hoc committee was set up within the National Assembly of Burundi in 2006 to examine the cases of the parliamentarians who had applied direct to the IPU to assert their

rights. But the committee was unable to advance in its work on account of several factors, including the internal instability of the National Assembly at the time. However, since the Parliament felt the need to follow those cases closely, the Speaker of the National Assembly, by decision No. 007 of 25 February 2011, appointed a new committee to defend and monitor cases of violations of the rights of parliamentarians. It consists of five members belonging to the parties sitting in the Assembly.

(b) The Committee's task is to watch over respect for the rights of Burundian deputies and to ensure the supervision of cases pending before Burundian courts concerning parliamentarians. It must also take advantage of this period of a return to peace to shed full light on the cases in question, examine the case files and make proposals to the Speaker of the National Assembly, take up or be seized of the cases of deputies whose rights are flouted, forestall conflicts that may lead to violations of the deputies' rights, and report regularly to the Speaker of the National Assembly on the results of the work done. The methods used by the Committee include inventorying and categorizing all the cases, examining them, including identification of missing items, holding meetings with the authorities and conducting on-site inspections.

4.2 During the conversation with the mission, the members of the Committee stated that they were going to draw up an exhaustive inventory of human rights violations and seek to reactivate all the cases, including those for which the files had disappeared. They emphasized the smooth cooperation of the Committee with the judicial authorities. Once that stage is completed, the Committee will determine the best manner in which to continue its work. Its credibility depends on it.

II. THE CASE OF THE SEVEN PARLIAMENTARIANS ASSASSINATED OR HAVING BEEN TARGETS OF ATTEMPTED ASSASSINATION DURING THE PERIOD BETWEEN 1994 AND 1999

1. Files never investigated

1.1 All the people with whom the mission spoke stressed that the crimes in question had been committed in a period of war, of negative solidarity as the Speaker of the National Assembly put it, and of absence of normal functioning of the State institutions, including the justice system. The mission's attention was drawn to the fact that the parliamentarians whose case was submitted to the IPU were not the only ones to have been assassinated since other victims had been the Speaker and Deputy Speaker of the National Assembly, both assassinated on the same day as President Ndadaye, namely 21 October 1993. Nobody voiced any doubt about the political nature of those assassinations and attacks; some emphasized the complexity of those crimes not investigated, either for want of evidence or by the will of the judges, or more generally because of the system in place at the time. The Minister of Public Security noted that in some instances there were not even any files. As to the trial for the assassination of Mr. Ndadaye and of the Speaker and Deputy Speaker of the National Assembly, it emerges from the preliminary report of the National Assembly's Committee on the Human Rights of Parliamentarians that the originators of the insurrectional movement of which those persons were victims were tried on 14 May 1999, that several members of the military were involved and that an appeal was filed on 21 June 1999. Mr. Nibantunganya observed that the trial and its outcome had never been accepted by anyone. The Speaker of the National Assembly along with the Second Deputy Speaker observed that the assassin of Mr. Ndadaye had confessed to the crime and was at liberty.

1.2 It emerges from the preliminary report of the Assembly's Committee on the Human Rights of Parliamentarians that the file of Mr. Mfayokurera was shelved despite the fact that a suspect in the person of Mr. Parfait Havyarimana had been identified. With regard to Ms. Ntamutumba, the case, filed in the public prosecution service of the Bujumbura Court of Appeal, was brought before the Criminal Chamber on 25 June 1997. The investigation remains open. As to the assassinations of Mr. Gérard Gahungu, Mr. Innocent Ndikumana, Mr. Paul Sirahenda and Mr. Gabriel Gisabwamana, no further action has been taken on these files. However, in the case of Mr. Ndikumana, two suspects have been identified and, in the case of Mr. Gisabwamana, a commission identified a member of the military as the culprit. It should be noted that the inventory of assassinations drawn up by the National Assembly's Committee on the Human Rights of Parliamentarians also includes the cases of the Assembly's Speaker

and Deputy Speaker assassinated on 21 October 1993, and that of Mr. Jean-Bosco Rutagengwa, assassinated in 2002 on the road to Bujumbura. The latter case has not been acted upon according to that Committee's report. As to Mr. Ndiwokubwayo, the report says that the persons who attacked him in 1994 were arrested and placed in detention but released by the investigating magistrate in April 1997. Another suspect, named Parfait Havyarimana, was identified and, still according to the report, no further action has been taken on the case.

2. Cases to be taken up by the Truth and Reconciliation Commission

All the persons with whom the mission spoke either affirmed that these cases would be handled by the Truth and Reconciliation Commission or expressed the hope that they would.

3. The establishment of the Truth and Reconciliation Commission (TRC)

3.1 The mission was informed in detail of the developments regarding transitional justice following the Arusha Accords (August 2000), which provided for the establishment of transitional justice mechanisms six months after the conclusion of the Accord. Since, however, the latter had been negotiated without the participation of the rebellion, it was necessary to wait for it to join the peace camp. Consultations of the population were then carried out and the report on them was submitted to the Head of State in December 2010. The shortage of financial resources then explained the delay in establishing the transition institutions.

3.2 In June 2011, by presidential decree, a technical commission was set up. Its task is to draw up the legal framework of the transitional justice institutions, beginning with the TRC and a special tribunal (or joint commission) which, according to the President of the Technical Commission, will be examining crimes not open to amnesty and not time-barred. The tribunal will start its work once that of the TRC has been completed. However, it was the mission's understanding that debate on the subject is not entirely over and that voices have been heard in favour of having the two institutions function simultaneously.

3.3 While initially set at three months, the mandate of the Technical Commission was extended until October 2011. The President of the Commission said that its report was to be submitted to the Head of State on 12 October at the latest. As to the TRC, it is scheduled to be put in place for January 2012 and to last two years, with a possible one-year extension to complete its work. The President of the Technical Commission noted in this respect the need to avoid any overlapping with the elections. He observed that the purpose of the transitional justice mechanisms would be the quest for truth, recognition of the victims entitled to truth, justice and reparation, and the elaboration of programmes of reconciliation and guarantees of non-repetition. The Second Vice-President of the Republic said that transitional justice should help people to understand what happened, to become reconciled and to forgive, and that it should strengthen social cohesion. In no case did it seek to stir the embers of the past. There were clear signals, he added, that Burundian society was ready to forgive. Some NGOs had taken initiatives to let particular population sectors speak of the past and that had gone very well.

3.4 Differing views were expressed regarding the period covered by the TRC. According to the President of the Technical Commission, the period runs from 1 July 1962 (the date of the country's independence) to 4 September 2008 (the date of the signing of the ceasefire with the last rebel group, the Palipehutu). According to the Minister of Human Rights, the period runs to the present day and would also include the grenade attacks on parliamentarians committed in 2007 and 2008 (see section III below). The Minister of Justice, for her part, said that the issue, in common with others, was still the subject of exchanges with the population.

3.5 Concerning the composition of the TRC, some of the people met stated that the consultation of the population had clearly revealed its desire to see civil society, religious trends and economic circles represented within the TRC, and to see government representation reduced to a strict minimum. On this subject, concerns were voiced about the composition of the Technical Commission since it comprises only representatives of political parties, namely four representative of the CNDD-FDD, three of UPRONA, and one of FRODEBU. That would apparently raise fears of a will to politicize the TRC. Furthermore, a degree of distrust is said to exist between the Government

and civil society, at a time when they should be “making their way forward together”. A good many people met, however, including the members of the National Assembly’s Committee on the Human Rights of Parliamentarians, insisted that the composition of the TRC should be as extensive as possible, open and representative, and that its members should be credible, failing which instead of making a success of reconciliation the country might lapse into violence.

3.6 Several persons spoken with noted the essential part that the National Assembly will have to play in establishing the TRC: it will need to debate and adopt the draft legislation at present being drafted. The National Assembly’s Committee on the Human Rights of Parliamentarians stated in this respect that Parliament would follow the procedure adopted for the establishment of that Committee. In this instance, a public appeal has been put out to encourage candidatures from civil society.

3.7 One of the questions raised concerns witnesses. The First Vice-President of the Republic voiced the hope that “some who were unwilling to speak will do so now”. Other persons, however, expressed doubts about the willingness of any witnesses to speak, what with the lack of measures to guarantee their safety.

III. THE GRENADE ATTACKS OF AUGUST 2007 AND MARCH 2008

1. A context of tension

The Speaker of the National Assembly observed that the attacks of March 2008 had taken place in a context of political tension which had brought Parliament to a standstill. The Second Vice-President of the Republic added that it was not just a standstill of Parliament but that some people had retained the reflexes of destabilizing the country. He further noted that with the passage of time the trails were fading and there was no evidence enabling the investigation to be pursued.

2. The investigation is closed but files remain open

2.1 With respect to the investigation, the authorities were unanimous in emphasizing that there had been no injuries or fatalities, just material damage. The Attorney General said that two files had been opened. In one case, four suspects had been identified and brought to justice. Those persons had been acquitted at first instance but the prosecution had appealed against that judgment. The authorities undertook to supply a copy of the judgment and of the appeal. It should be noted in this respect that the Burundian delegation to the 125th IPU Assembly provided some documents concerning the attacks of March 2008 which reveal the following: three persons were arrested and then provisionally released by the Bujumbura High Court on 30 July 2008. On 24 September the prosecution lodged an appeal against that decision. On 26 September 2008, the Bujumbura Court of Appeal declared inadmissible the prosecution appeal, thereby upholding the provisional release of the accused. On 12 January 2009, the Bujumbura High Court order the provisional release of a fourth accused. On 28 September 2009, the prosecution/examining magistrate issued a “Notice of opening and note of end of investigation with proposed proceedings before the Bujumbura High Court” against the four accused. In his observations, the examining magistrate said that the accused had indeed tried to commit the crime of assassination against the deputies, but that “their living standards and their occupation show that these accused were under the command of other people as yet unknown. That prompts us to ask the court to sentence them to eight years of penal servitude (S.P.P.)”. The court’s decision, for its part, has not been notified.

2.2 The Minister of Public Security confirmed that the investigation concerning the attacks of August 2007 and that regarding the attacks of March 2008 were closed. In one of the cases (that of March 2008), some suspects had been identified. The Minister observed that the grenades had been thrown in the direction of the houses of the parliamentarians and that some items of evidence initially persuaded the investigators that the parliamentarians themselves had staged sham attacks “to stir up public opinion”, as one of the Minister’s assistants put it. According to him, the parliamentarians targeted “so arranged things as to know that there would be attacks”, so as not to be at home when they took place; furthermore, the pins of the grenades had been found

on the premises of their homes. The Speaker of the National Assembly noted in this respect that the parliamentarians in question had guards who knew how to throw grenades. The mission raised this hypothesis of a sham attack with the Director General of the Police, who, instead of replying, asked the mission who had come up with that possibility, and he emphasized that the investigation had been conducted in cooperation with the prosecuting authorities. It should be noted that several authorities, including the National Assembly's Committee on the Human Rights of Parliamentarians, stated that the lack of results was due to "a pre-judicial investigation not well done". Furthermore, it is unclear whether that hypothesis, quite plainly rejected afterwards, concerned the attacks of 2007 and 2008, or one or the other only.

Asked whether the files had been handled collectively, the Minister of Public Security replied in the negative: the files had been dealt with individually since the circumstances had not been the same in all the cases. He said that the police were responsible for the preliminary investigation, conducted under the guidance of the Attorney General. Once the preliminary investigation is over, each file is transmitted to the prosecutor, which was done in this case. The Attorney General is the one responsible for what happens next. An assistant of the Minister of Public Security further stated that there were categories of persons whom the police could not question. In the case concerned, they had not questioned the parliamentarians targeted in the attacks. Asked whether an investigation could be closed without the victims having been questioned, the Minister replied that only the investigation of the case had been closed, not the case itself. Furthermore, the victim should lodge a complaint and not wait "to be sought out". On this subject, the mission was also informed that the time limit for transmitting an official interrogation report to the Attorney General was seven days. As the mission understood it, in the event of the questioning of a parliamentarian, the judicial police officer had to refer the matter to the Attorney General and it fell to the latter to request the lifting of his or her immunity. It is unclear whether the questioning of the parliamentarians concerned would have required the lifting of their parliamentary immunity.

2.3 It should be noted that, according to two of the parliamentarians concerned whom the mission met and their lawyer, a collective complaint regarding the attacks of March 2008 was submitted to the Attorney General of the Republic, but the complaint had not been acted upon. In any case, neither the former parliamentarians concerned nor their lawyer had received the slightest information on the subject. Furthermore, Mr. Sylvestre Niibantunganya regretted that the police had not been very active in their inquiries and that those attacks had therefore never been elucidated. Finally, as mentioned above, the Minister of Human Rights considers that those crimes will be a matter for the TRC.

IV. THE CASE OF MR. HUSSEIN RADJABU, MR. PASTEUR MPAWENAYO, MR. GERARD NKURUNZIZA, MR. THÉOPHILE MINYURANO AND MR. DEO NSHIRIMIMANA

The situation of the former parliamentarians in question

1. Mr. Hussein Radjabu

1.1 The authorities were unanimous in stating from the outset that Mr. Hussein Radjabu had been found guilty on appeal of undermining the internal security of the State and insulting the Head of State, and sentenced to 13 years' imprisonment, and that the judgment had become *res judicata*. The lawyers of Mr. Radjabu stated that the sanction came with a deprivation of civil and political rights and that, under the Electoral Code, he would be unable to exercise his civil and political rights until 10 years had elapsed after the completion of his sentence.

1.2 Several persons the mission met stated that his trial originated in the Ngozi Congress, which was to remove him from the party presidency. In May 2007 Mr. Radjabu filed a plea of nullity against the holding of that congress and its outcome. According to Mr. Radjabu and his lawyers, the plea is still pending before the Chamber of Administration of the Supreme Court. Furthermore, the lawyers observed that Mr. Radjabu had originally been accused of inciting his supporters not to take part in community work, not to attend party meetings and not to fly the party flag. The lawyers noted that those acts were defensive acts against his dismissal at the Ngozi Congress. According to them, his trial was simply a national-scale transposition of an internal party

matter. It may be noted in this respect that, according to some persons met, the authorities reportedly offered Mr. Radjabu acquittal in exchange for his exile.

1.3 With respect to the trial and the evidence against Mr. Radjabu, the lawyers affirmed that the accusation was a montage by the authorities, notably by some elements of the Directorate General of the Police and of the National Intelligence Service (SNR), and that there was no conclusive evidence against Mr. Radjabu. He was accused of having armed people; at the trial, however, the only exhibit had been a rusty Kalashnikov (a piece of rusty scrap iron). The weapon dated back to 1999, when the rebels were deploying southward. They then buried their weapons, knowing that they would have fresh weapons in the south. The commander of one of the rebel groups, Mr. Jean-Bosco Ngendanganya, later became SNR Head of Cabinet and was also responsible for the party archives. According to the lawyers, he knew where the weapons had been hidden and he had them unearthed; when the defence requested that Mr. Jean-Bosco be called to testify, he was transferred to the Burundian Embassy in South Africa, where he occupies the post of Secretary. The recording of the meeting that Mr. Radjabu allegedly held in his straw hut was fabricated by SNR agents who pieced together speeches made by Mr. Radjabu on several occasions; thus the likening of the President of the Republic to an "empty bottle" reportedly came from a speech of his during the 2005 election campaign. The recording had been given to African Public Radio (RPA) for broadcasting to prepare the population for the impending verdict against Mr. Radjabu and it was practically inaudible. Furthermore, SNR agents (Mr. Jean Nkundabagenzi and Mr. Pascal Ntakarutimana) were used as prosecution witnesses.

1.4 With regard to torture, Mr. Radjabu and his lawyers affirmed that no investigation had been launched to examine the torture complaints filed by, among others, the principal co-accused, Mr. Evariste Kagabo.² The Attorney General confirmed that no investigation had taken place and further stated that confessions obtained under torture were null and void and that the court could not base its opinion on such confessions. The Speaker of the National Assembly said in this respect that the former Minister of Justice had assured him that the testimony of Mr. Kagabo had not been taken into account by the judges. When questioned on the subject, the present Minister of Justice (President of the Supreme Court at the time) replied that he had no information on the matter.

1.5 The lawyers said that, in 2007, they had only partial access to the file and that they had never been able to consult minutes of hearings. Furthermore, the full bench decisions had never been delivered to them. Mr. Niyoyankana said that his application to take cognizance of the entire file had never been acted upon. The lawyers also raised the fact that one of Mr. Radjabu's lawyers, Mr. Guy Maeselle, of Belgium, recognized by the Burundian Bar, had been prevented from presenting his oral arguments at the close of the trial, which was serious because the lawyers had shared out the tasks among themselves, and when the Court decided to reopen the trial to correct that irregularity, Mr. Guy Maeselle had been unable to travel to Burundi. The lawyers further stated the application to challenge the judges filed during the appeal process had not been handled in keeping with the law. According to Article 114 of the Code of Judicial Organization and Competence, when the judge refuses to disclaim competence and an appeal is filed in the Constitutional Court, the proceedings must be suspended, which did not happen. However, according to the Attorney General, the judge must rule on the application to challenge and may refuse to disclaim competence. His decision has no suspensive effect.

1.6 Regarding the prospects of early release of a person under sentence, the mission was informed of the existence of conditional release (Article 127 of the Burundian Penal Code). To qualify for this, the person concerned must have served a quarter of his or her sentence, have shown good behaviour and have lodged an application to the Minister of Justice. Before reaching a decision, the latter must consult the Director General of Prisons (or the director of the prison where the person in question is detained) and the Attorney General. According to the lawyers, having served over a quarter of his sentence, Mr. Radjabu was eligible for conditional release. It should be noted that several persons met, including the First Deputy Speaker, emphasized that Mr. Radjabu

² The lawyers stated that Mr. Kagabo had been tortured by National Intelligence Service (SNR) agents to say that he had taken part in the 31 March meeting. Mr. Kagabo told the Court that he had gone to Mr. Radjabu's home that day but that no meeting had taken place, and that it was normal for him, as responsible for party mobilization and propaganda, to go to the home of the party leader.

was known to have behaved well in prison, to be calm and not to cause any disturbance. The other means of release mentioned were: (a) a reduced sentence, which poses a problem since there are no sentence enforcement judges; (b) an application for a retrial before the Council of the Magistrature presided over by the Head of State, and the Vice-President of which is the Minister of Justice; and (c) a presidential pardon. Mr. Radjabu observed that in a recent speech (probably after his re-election) the Head of State ordered the release of all prisoners who had served a quarter of their sentences, except for those convicted of endangering State security. The lawyers noted that a conditional release made no difference regarding the ban on exercising his civil and political rights (see 1.1 above).

2. Mr. Pasteur Mpawenayo

2.1 The Speaker of the National Assembly said that the proceedings in this case were dragging on because of the many procedural flaws raised by Mr. Mpawenayo. The same opinion was voiced by the Attorney General and the Minister of Justice. The latter explained in this regard that the procedural issues had to be disposed of first before the substance was broached, a principle on the respect of which the lawyers themselves insisted. That procedure could take a great deal of time, given that the judge had to rule on each procedural flaw raised, which sometimes required a public hearing with the calling of witnesses, and that the appeal proceedings could go as far as cassation. By systematically raising procedural flaws, as of the first hearing, Mr. Mpawenayo had himself caused the proceedings to drag on.

2.2 With respect to the substance of the case, the lawyers noted that Mr. Mpawenayo, executive secretary of the party before the removal of Mr. Radjabu, was originally prosecuted at the same time as Mr. Radjabu. Since Parliament refused at the time to lift his parliamentary immunity, the proceedings against him were suspended. However, at the time of his arrest in July 2008 following the loss of his parliamentary mandate, rather than resumption of the initial case, a new case (RPS 68) concerning the same acts was opened, which according to them was unlawful. The lawyers said that they had had access to the file. According to them, the sentence sought by the prosecution for Mr. Mpawenayo is 15 years' imprisonment.

2.3 The mission was informed that a hearing before the Supreme Court was scheduled for 29 September 2011. The President of the Supreme Court stated in this connection that, should all the witnesses be present, a single hearing could suffice for the Court to reach a decision. The mission understood that the case was fixed before the Court as to both the form and the substance. Mr. Tapo, who was still in Bujumbura that day, went to the hearing but it was postponed.

3. Mr. Gérard Nkurunziza

3.1 According to his lawyers, Mr. Nkurunziza is accused of inciting the population sectors (of his constituency) against the government and distributing weapons for the purpose of arming a rebellion against the authority of the State. They affirmed that the investigation conducted by two magistrates of the State prosecution department was based solely on hearsay and further that no weapon had been seized. Life imprisonment was reportedly sought by the prosecution. At the time of the mission, Mr. Nkurunziza had not yet been heard by a judge.

3.2 Regarding the undue length of the proceedings, the authorities confirmed the information in the IPU Committee's file about the jurisdictional conflict. According to the parliamentary authorities, the overlapping of jurisdictions is specifically what explains the slowness of the proceedings. The Minister of Justice said in this respect that, following a police investigation, the prosecution department issues an arrest warrant and the judge closest to the residence of the suspect rules on pretrial detention and brings the case before the competent court. When it turns out that the court is not competent, the Attorney General refers the matter to the competent court, which must then determine the question of detention. Other persons met also mentioned repeated changes of investigating magistrate as a possible cause of the slow proceedings. Several authorities emphasized that the slowness of the proceedings could not be blamed on bad faith; the judicial authorities simply saw that Mr. Nkurunziza was no longer a parliamentarian and only later did it emerge that the acts held against him were reportedly committed when he was still a parliamentarian.

3.3 The case of Mr. Nkurunziza is at present before the Supreme Court and the mission was told that a hearing had been fixed before the Court for 19 October 2011. The Attorney General said that the case was fixed as to both the form—the Supreme Court has yet to rule on its jurisdiction—and the substance.

3.4 According to Mr. Nkurunziza, the defamation complaint he had filed in connection with the accusations in question has been shelved.

4. Mr. Théophile Minyurano

4.1 According to the Speaker of the National Assembly, it is an ordinary law case. Mr. Minyurano had had a dispute with the owner of his house and had failed to appear in court. Furthermore, he was at liberty. According to him, the case should not be in the IPU Committee's file. The Attorney General said that Mr. Minyurano was charged with contempt of court and that he refused to appear. The Minister of Justice, for her part, observed that more than seven hearings had been scheduled and that Mr. Minyurano had appeared only twice. The most recent hearing had not been able to take place owing to a magistrates' strike but, at the hearing which was to have taken place a month earlier, neither Mr. Minyurano nor his lawyer had appeared. According to her, the notifications to attend those hearings were conveyed to Mr. Minyurano in the presence of witnesses.

4.2 Mr. Minyurano confirmed that on 20 September 2011, when a hearing was due, the magistrates were on strike. He said that in all he had been summonsed four times by the Criminal Court and that the complainant had failed to appear; he added that he had spent three weeks in prison before being released on 20 October 2008. During the 20 weeks following his release he had been required to report to the Court every Monday. The indictment was apparently not notified to him until 23 December 2010. Mr. Minyurano's lawyer said that his client had been released by the Council Chamber and that the prosecution had lodged no appeal; Mr. Minyurano had always informed him of the summonses and had not received any (recently).

5. Mr. Deo Nshirimana

5.1 The mission learnt that Mr. Nshirimana had been arrested on 5 October 2010 by agents of the National Intelligence Service (SNR). He was reportedly detained for six days on the premises of the intelligence services without being interrogated. He is accused of holding a meeting in Munyunga in 2008. According to the Attorney General, he said that he did not recognize the President of the Republic and tried to rouse the population to rebel against the government. His lawyer noted that Mr. Nshirimana was accused of plotting against the State. That accusation was furthermore based on hearsay such as statements by persons having said "I've heard that he doesn't take part in community work, that he doesn't welcome the provincial authorities, and so on". According to the lawyer, he is also blamed for not having allowed two players from the football team of his region to play against the President's team, which was qualified as incitement to disobedience. The sanction sought against him is, according to the lawyer, three years' imprisonment.

5.2 The mission was told that, at the time, Mr. Nshirimana was president of the party in his constituency, namely Mulinga. Mr. Nshirimana said that in July 2008 he learnt that an arrest warrant had been issued for him and that he was accused of being "recalcitrant". He had sat in Parliament until June 2008 and campaigned for the 2010 elections. He says that he had never been detained. On 5 October 2010, when he was invited to a luncheon, some SNR agents approached him saying that they had long been looking for him. When questioned by the prosecutor, he argued that as a deputy he was entitled to meet the people but said that he had never organized a meeting. According to him, the prosecutor then telephoned his superior to say that there was nothing against Mr. Nshirimana, but that he had nevertheless been instructed to issue an arrest warrant for him. Since the duty policeman had no transport at his disposal, Mr. Nshirimana himself reportedly took his own vehicle to report to the competent authorities. The Council Chamber is said to have upheld his pretrial detention. His appeal to the Supreme Court

has apparently not yet been heard on account of a magistrates' strike at the time when it should have been heard. He is reportedly debarred from consulting his file.

6. Some information on procedural matters

6.1 Arrest and preventive detention

6.1.1 The Attorney General of the Republic emphasized that nobody could be arrested without an arrest warrant issued by a magistrate. The Commissioner General of Police said in this respect that, unlike the police, the National Intelligence Service (SNR) was empowered to issue arrest warrants. SNR agents with the status of judicial police officers (JPOs) are authorized, in common with the police JPOs, to carry out arrests. The Commissioner General of Police further said that the SNR had the authority not only to arrest people but also to question them, but that it had to respect the law, including the rules governing police custody. The SNR was also competent to conduct an investigation without police intervention. Like the police, however, the SNR had to conduct the investigation under the supervision of the Office of the Attorney General. With regard to police custody, the mission gathered from what the Minister of Public Security said that its duration was seven days, renewable once by order of the Attorney General's Office.

6.1.2 The procedure, once the arrest made, was described by the authorities as follows: the person arrested must be brought before the investigating magistrate, who has to rule on pretrial detention. In the event of an appeal, the Council Chamber comes to a decision. Meanwhile, the person remains in detention and no investigative measure can be taken. The Attorney General said that the Council Chamber ruled every 30 days on the maintenance of detention. The lawyers noted that a release application could be lodged not only with the investigating magistrate but also with the trial court. As to the deadline for examination of an application for provisional release, the Minister of Public Security said that the applications were handled in chronological order. Consequently, if an application is in the 100th position its turn has to be awaited. There was a shortage of magistrates but certainly not of bad faith. He noted that the justice reform had been broached but had yet to reach its cruising speed.

6.2 Relations between the National Intelligence Service (SNR), the police and the prosecuting authorities

6.2.1 With regard more generally to relations between the National Police, the National Intelligence Service (SNR) and the prosecuting authorities, the Commissioner General of Police said that the SNR, the police and the National defence forces formed one single corpus when it came to ensuring defence and security in the country. Synergy existed between those institutions on security matters. While the SNR depended directly on the Presidency, the police came under the Ministry of Public Security, and the National Defence Forces under the Ministry of Defence. According to the Commissioner, meetings took place between those institutions to discuss defence and security problems. As to relations between the prosecuting authorities and the police, the Commissioner stated that all the criminal files were submitted to the prosecuting authorities and that direct cooperation existed in that respect. The police acted under the supervision of the prosecuting authorities. As to the Minister of Public Security, he said that the SNR, as an investigative body directed by judicial police officers, was also placed under the supervision of the prosecuting authorities. The rules were the same for the police and the SNR. For example, in each case of arrest, the judicial police officer must be in possession of the necessary documents. The Minister noted that the police and the SNR worked smoothly together to prevent abuse. According to the particular case, it was either the police or the SNR that took the initiative. It was then for the prosecuting authorities to decide whether the police and the SNR conducted the case in synergy or whether they should be removed from the case and an investigative commission set up.

6.3 The case files

6.3.1 It should be noted that, according to their lawyers, the files of Mr. Mpawenayo, Mr. Nkurunziza and Mr. Nshirimana are fairly slim, at about 25 pages for the first and around 10 and 4 or 5 for the latter two. On the occasion of its brief visit to the Supreme Court, the mission was able to observe that the files brought out by the President of the Court, apparently those of

Mr. Mpawenayo and Mr. Nkurunziza, were indeed not very bulky. Unfortunately, as mentioned above (A.3.1), it was unable to consult them.

6.3.2 The authorities acknowledged that the proceedings in the cases of Mr. Mpawenayo and Mr. Nkurunziza were too long and some, such as the First Vice-President of the Republic, stated that they had to be speeded up; the latter said that he had lodged a request in that respect with the Minister of Justice.

7. Conditions of detention

7.1 General information on the penal system and the problems facing it

(a) The Director General of Prisons raised the serious problem of overcrowding, which impaired the conditions of imprisonment. Dating as they did from colonial times, the existing prisons are ill-adapted. The Director said that the population of Burundi had increased to its present figure of more than 8 million, which went hand in hand with a rise in the number of offenders. He told the mission that there were 11,190 prisoners in all, including 7,007 untried and 4,597 convicted prisoners. While there were today 17 provinces, only eight of them had a prison. According to him, a budgetary outlay was needed to give each province its own prison. In the Director's view, it was meanwhile necessary to oppose the excessive length of pretrial detention, to grant conditional releases and to organize the administration of justice better. All of that would help to decongest the prisons. He provided several examples of what could be improved and mentioned in that connection a Belgian cooperation project to fund the transport of witnesses.

(b) The Director said that prison overcrowding made it difficult to organize visits. There was not enough space, no visiting room and nowhere for people to talk. Furthermore, there was a shortage of qualified personnel, particularly with respect to legal counsel. Consequently, his detainees were not informed of their rights and of what they should do. If the present situation lasted, the Director observed, the prison administration would be obliged to reduce the food rations for each prisoner.

(c) The Director finally informed the mission that prison overcrowding prevented adequate treatment of the various categories of prisoners. Separation was at present in place only for minors (as of 15 years, previously 13), who totalled 387. The prison administration was in the process of reforming the system. Furthermore, despite the difficulties of every kind, the administration organized production activities and tried to teach prisoners a trade in order to facilitate their rehabilitation.

7.2 The conditions of detention of the former parliamentarians concerned

(a) Mr. Radjabu, Mr. Mpawenayo, Mr. Nkurunziza and Mr. Nshirimana are at present detained in Mpimba Prison, Bujumbura. It is a prison dating from the colonial period with room for 800 persons but which, at 15 September 2011, housed 3,750 prisoners. Mr. Mpawenayo was initially held in Mpimba but was transferred to Rutana Prison in October 2008. He told the mission that he had been retransferred to Mpimba Prison sometime after the visit to Rutana Prison that the Director of the IPU Democracy Division, Mr. Chungong, paid in November 2008. Mr. Nkurunziza, for his part, was also initially held in Mpimba Prison but later transferred to Ngozi Prison, then retransferred to Bujumbura on 23 August 2011.

(b) The mission met the former parliamentarians concerned alone in a place in the open air at present serving as an office for the prison administration, the original offices having been burnt. At the time of the visit, some prisoners were engaged in rebuilding them.

(c) The five former parliamentarians share a cell in a house accommodating 20 prisoners. The mission was unable to go to the premises, the prison Director having received no instruction or information concerning such access for it.

(d) Mr. Radjabu mentioned some assassination and poisoning attempts at the beginning of his detention, for which reason all five of them avoided contacts with other prisoners. They have no

complaints about the conditions of detention, including with respect to medical care, and said that the prison management respected the rules. On the matter of visits, they said that people were afraid of visiting them since they laid themselves open to reprisals, such as dismissal. Their families were regularly searched and were unable to find work. In short, they and their families had become "enemies of the powers that be".

8. Meeting with the parliamentarians who lost their mandates in June 2008

8.1 The former parliamentarians present at that meeting all told the mission of a feeling of insecurity and permanent surveillance by the authorities. Some were threatened with death if they did not rejoin the party. Others said that they were often questioned by the authorities, particularly when they returned to their place of residence after travelling to Bujumbura. All confirmed that they had great difficulty finding work and accommodation, and neighbours often caused problems. The mission was told that two of the former parliamentarians expelled in June 2008 had rejoined the ruling party, another had joined the UPD, four had gone into exile, one former parliamentarian had founded his own party, and another was working for the office of the Ombudsman.

8.2 The mission was told that the official vehicles for which they had paid credit instalments for 27 months had been seized without any reimbursement of the sums already paid. The Speaker of the National Assembly said that those vehicles were the joint property of the parliamentarians and the National Assembly, and that in the event of expulsion of a parliamentarian for serious misconduct the vehicles reverted to the National Assembly. He further observed that the persons concerned had not applied to the national courts.

9. The meeting between the widows of the Speaker and the Deputy Speaker of the National Assembly assassinated in 1993

Mrs. Jacqueline Karibwami and Mrs. G n reuse Bimazubute, mothers of two and five children respectively, spoke of the difficult situation into which the assassination of their husbands had put them. Although the army of the time was responsible for those assassinations, no support had been received from the authorities and notably the National Assembly. Their children had therefore grown up in very difficult conditions. They--the mothers--had asked the Assembly to put in place a statute for this kind of case, but for the time being the file remained on the shelf. In 2002 they had set up the "Association of Widows and Orphans for the Defence of Their Rights". Its aim was to "break the silence surrounding the political assassinations perpetrated since the start of the independence era" and "to insist that justice is done, that the truth is uncovered, and that material and moral reparation is made". The Speaker of the National Assembly observed that the cases of Mrs. Karibwami and Mrs. Bimazubute could not be settled individually, that a general law was needed, and that that was going to materialize with the Truth and Reconciliation Commission.

D. CONCLUSION

1. Transitional justice-paving the way for a serene and pacified climate

1.1 The mission is fully aware of the strong legacy of political violence confronting Burundian society and the institutions of the Burundian State. It is convinced that only steadfast political resolve in favour of democracy and human rights will be able, in the long term, to efface the sequels of this history and lay the foundations of a democratic society and of peace.

1.2 The mission therefore considers that the cases in question must not be seen only in the historical context referred to above, but also in the light of the efforts made by the authorities to usher in peace, democracy and human rights. Democracy requires dialogue and respect for the other and the other's opinion. It implies respect for the political opposition.

1.3 The establishment of the Truth and Reconciliation Commission, scheduled for January 2012, is a decisive step in that direction. The authorities and Parliament in particular have the immense responsibility of putting in place the framework and legal provisions needed by the Commission to discharge its mandate, failing which--as observed by the members of the National

Assembly's Committee on the Human Rights of Parliamentarians-instead of achieving reconciliation and hence peace, the country could relapse into violence.

1.4 Creating this framework also means creating a serene and pacified climate and, consequently, reducing or even eliminating the political tensions generated by the dissension within the ruling party which is behind the cases under consideration. The mission is convinced that it is also and above all in this perspective that the authorities should treat the cases of the former deputies of the presidential party being prosecuted. It can but invite the authorities to act in this direction and to use all existing means for the purpose under domestic legislation.

1.5 The mission observes that the authorities, in general, made it clear that the cases of the parliamentarians assassinated in the period 1994-2000 would be examined by the Truth and Reconciliation Commission. It notes that sufficient evidence exists in a good many of these cases to elucidate these crimes. It invites the IPU Committee on the Human Rights of Parliamentarians to make available to the Truth and Reconciliation Commission and to the National Assembly's Committee on the Human Rights of Parliamentarians all the information and all the documents that it has gathered during the examination of these cases. It considers that the latter has a special responsibility to ensure that justice is finally done in these cases.

2. Doing justice-ensuring respect for the rules guaranteed by the international human rights instruments and embodied in the Burundian Constitution to ensure fair trials

The mission observes that all the cases in question stem from dissension within the ruling party and that they concern the legal domain.

2.1 The grenade attacks

(a) The mission cannot agree with the opinion voiced by most of the authorities suggesting that the IPU Committee on the Human Rights of Parliamentarians should close these cases on account of the difficulty of elucidating those crimes. The mission notes, in the light of the documents conveyed to it after its return, that, at least in the case of the attacks of March 2008, the investigation had progressed well but seems to have been closed following the decision of the Bujumbura Court of Appeal to grant the four suspects bail. It wishes to emphasize that, in his proposal to pursue proceedings before the court of major jurisdiction, the investigating magistrate speaks of various items of evidence and expresses his reasoned view that the four suspects acted "under the command of other people".

(b) The mission therefore fails to understand why there have been no court proceedings, for the granting of bail to the four suspects in no way signifies the abandonment of such proceedings. It observes that the investigating magistrate was resolved to shed light on those crimes, but that he was unable, for a reason the mission cannot determine, to carry on his work. It considers that this question calls for clarification and it invites the authorities to inform the IPU Committee urgently on this point. It takes the view therefore that this case should not be closed for the time being.

(c) With respect to the investigation into the attack of August 2007, the mission finds it hard to understand why the authorities, in particular the Minister of Public Security and the Speaker of the National Assembly, saw the need to repeat the hypothesis of a sham attack when that theory had been discarded. Does that mean that doubts persist? The mission further notes that the former parliamentarians concerned, particularly Mr. Nduwabike, had spoken of a possible line of inquiry which was nevertheless not taken into consideration.

(d) The mission is therefore obliged to consider that neither the investigation into the grenade attack of August 2007 nor that concerning the March 2008 attacks was pursued with the requisite resolve, which raises fears that the executive may have interfered in the judicial domain and, at least, reveals a lack of will to elucidate the crimes.

(e) The mission invites the authorities to inform the IPU Committee whether these cases will or will not be included in the mandate of the Truth and Reconciliation Commission.

2.2 The cases of Mr. Hussein Radjabu, Mr. Pasteur Mpawenayo, Mr. Gérard Nkurunziza, Mr. Deo Nshirimana and Mr. Théophile Minyurano

(a) Before going into these cases in detail, the mission wishes to recall the concerns and recommendations that the Independent Expert on the situation of human rights in Burundi set forth in his latest report to the Human Rights Council of the United Nations³ (May 2011) regarding the independence of the judiciary and the recourse, termed improper, to pretrial detention.

(b) The mission notes that the cases below raise concerns similar to those spoken of by the Independent Expert, covering in particular recourse to pretrial detention, the slowness of proceedings, and human rights violations, notably torture attributed to the National Intelligence Service (SNR), and that, in the great majority of cases, the information gathered by the mission was unable to dispel the concerns voiced by the IPU Committee. In this respect, the mission considers that it would be appropriate to take account of the possibilities of conditional release.

(c) Furthermore, the mission observes that, the case of Mr. Théophile Minyurano apart, the former parliamentarians are accused of similar crimes (plotting against the State), resting, for the cases of Mr. Nkurunziza and Mr. Nshirimana, on virtually identical acts. It therefore has difficulty in understanding why the sanctions sought against them are so dissimilar, ranging as they do from life imprisonment to three years in prison.

2.2.1 *Mr. Hussein Radjabu and Mr. Pasteur Mpawenayo*

(a) The mission notes that no investigation has taken place into the use of torture on the principal co-accused, Mr. Evariste Kagabo. The mission is aware of the fact that the judgment against Mr. Radjabu, a French translation of which was made available to the Committee, has become *res judicata*, but it nevertheless wishes to emphasize the following: in the judgment it handed down in this case (RPS 66) on 3 April 2008, the Supreme Court accepted the testimony of Mr. Evariste Kagabo and that of two co-accused, Mr. Jean-Marie Haragakiza and Mr. Nestor Birori, both having stated before the Court that they had been threatened with the same torture as that inflicted on Mr. Kagabo, for which reason they said what they had been told to say. The Court did not go into the question of torture and yet its judgment is largely based on those testimonies.

The mission can but recall in this connection what the Attorney General told it, namely that "confessions obtained under torture are null and void and the court cannot base its opinion thereon".

The mission also wishes to highlight the fact that, in his report to the Human Rights Council of 31 May 2011,⁴ the Independent Expert on the situation of human rights in Burundi made a point of recalling that "the judicial authorities are under an obligation to launch investigations into allegations of torture, even in the absence of a complaint lodged by the victim. The judicial system must inspire confidence in the victims [...]. If no proceedings are instituted against the alleged perpetrators of acts of torture, this can but foster the advent of a climate of impunity, which in turn is bound to encourage the commission of such acts".

(b) The mission reiterates the deep concern it expressed to the authorities about the pretrial detention of Mr. Mpawenayo and the slowness of the proceedings under way against him. The judiciary cannot shift responsibility for that slowness by blaming it on the suspect, who is merely exercising his right. The postponement of the hearing of 29 September can but heighten the existing concerns in this respect. The mission further wishes to specify that the observations made on case RPS 66 apply also to the case in question.

(c) The mission particularly regrets that, despite what had been agreed with the President of the Supreme Court, it was unable to have access to the case file of Mr. Mpawenayo. It cannot, in these circumstances, dismiss the concerns expressed by the IPU Committee in its previous decisions regarding this case.

³ A/HRC/17/50.

⁴ Ibid.

2.2.2 *Mr. Gérard Nkurunziza*

(a) The observations concerning pretrial detention and the slowness of the proceedings in the case of Mr. Mpawenayo apply also to the case of Mr. Nkurunziza. The mission fails to understand why the latter was not provisionally released pending a settlement of the jurisdictional conflict in his case. It also states its deep concern at the charges laid against him since they are apparently based solely on hearsay. It greatly regrets not having had access to the case file, particularly the indictment, and invites the authorities to provide the Committee with a copy of it.

(b) The mission was unable to clarify why the defamation complaint lodged by Mr. Nkurunziza against the local authorities had been shelved. The fact that, shortly after he had aired the matter in parliament and lodged a complaint, judicial proceedings were instituted against him raises fears that the accusation may be baseless. The mission invites the authorities to provide the IPU Committee with a copy of the decision to shelve his complaint.

2.2.3 *Mr. Deo Nshirimana*

(a) The mission notes with concern that Mr. Nshirimana is prosecuted for acts he allegedly committed in 2008 (June or July) and finds it hard to understand why he was suddenly called to account in October 2010 when he had been in the country and campaigned for the 2010 elections. The indictment, too, raises misgivings since, as in the case of Mr. Nkurunziza, it is allegedly based on hearsay evidence, which the mission, for the reasons stated above, was unfortunately unable to verify. It invites the authorities to provide the Committee with a copy of that document.

(b) The question of the slowness of the proceedings and that of provisional release also arise in the case of Mr. Nshirimana. In addition, the mission is deeply concerned at the allegation that he has not so far had access to his case file.

2.2.4 *Mr. Theophile Minyurano*

(a) The mission was unfortunately unable to clarify a substantial contradiction emerging in this case: while the magistrate behind the judicial proceedings brought against Mr. Minyurano was, according to Mr. Minyurano, a tenant in his house, the situation was the reverse according to the Speaker of the National Assembly. Likewise, the mission was unable to clarify the question of the summonses that Mr. Minyurano allegedly ignored, but it notes that, according to Mr. Minyurano, the complainant himself apparently failed to attend the hearings.

(b) While it shares the opinion of the authorities that the case is a minor one, the mission nevertheless recalls that Mr. Minyurano, in common with the complainant, is entitled to a prompt settlement of the matter.

Geneva, 2 December 2011

E. OBSERVATIONS SUPPLIED BY THE AUTHORITIES

- **Observations supplied by Mr. Pie Ntavyohanyuma, Speaker of the National Assembly (13 January 2012)**

[...]

I. Introduction

1. By correspondence dated 2 December 2011, the Secretary General of the Inter-Parliamentary Union conveyed to the Speaker of the National Assembly of Burundi the report drawn up by the mission dispatched to Burundi, and invited him to forward a copy of same to the authorities with whom the mission had met and to send him observations and comments on the report.

2. From the very outset, we would like to thank the IPU as well as the Committee on the Human Rights of Parliamentarians, for the mission conducted to Burundi and organized jointly with the National Assembly of Burundi with a view to advancing the Burundian cases submitted to the IPU Human Rights Committee.

We wish to single out the President as well as the other members of the mission, for their mission and attentiveness in trying to understand the different cases.

3. Regarding the mission report, certain observations have captured the attention of the Burundian authorities which the IPU mission met. They should be taken into account in the final mission report.

II. General observations on the content of the report

4. As far as the report is concerned, the mission, in its bid to gather information and analyse judicial questions, tends to seek a sometimes contradictory rapprochement between the statements made on the one hand by the Speaker of the National Assembly and the First or Second Vice-President of the Republic and statements made on the other hand by the Attorney General and the President of the Supreme Court, or by the defence attorneys.

We wish to draw your attention to the fact that the first set of authorities do not represent the judicial authorities. It simply shared with the IPU mission information it had received regarding the various court cases.

However, the second set of actors - the judicial authorities - had to consult the cases and therefore falls under the category of case law.

The third category of actors is composed of defence attorneys and their clients. They also have an in-depth knowledge of the cases.

5. In any case, the only valid approach is to take as true what is indicated in each case file and compare it, where necessary, at the level of court case files, with information provided by those who have authority in the matter.

6. Therefore, any conclusion in this report that is not based on a physically consulted court case file could leave room for doubt, be considered hypothetical or a baseless statement, or partial or incomplete.

7. It is incumbent therefore on the mission, on the persons for whom it is intended and for its readers to be cautious and to not pay heed to supposed contradictions mentioned in the report in order to base itself on physically verifiable data, this on the basis of giving preference to written information contained in the files on information obtained orally instead of relying on what the defence attorneys said, particularly in the case files which, often can or do have a political tint.

III. Specific observations

1. Observations on page 4

[...]

2. Observations on page 4

9. Under 1.2, the report speaks of the authorities' lack of willingness to cooperate with the IPU Committee. That is not true. The mission should consider that the very fact that a working group was set up in the National Assembly is in itself a good thing, but that the complexity of its mission remained given the difficulties linked to the context of conflict from which Burundi is slowly emerging. Which is not to say that this is necessarily linked to the unwillingness of the authorities, which is not spelt out in the report.

10. [...]

11. Under 2.3 on page 5, it is stated that serious doubts remained about the resolve of the authorities to see justice dispensed in the grenade case. This also needs to be qualified.

The failure to quickly produce results when a judicial inquiry starts does not necessarily reflect a lack of willingness by the authorities to serve justice. This seems to us to be an exaggeration.

The Attorney General's Office lodged an appeal with the Bujumbura Court of Appeal, which acquitted the accused. In this case, it must be recognized at the very least that serious court proceedings have been initiated in this matter.

3. Observations on pages 5 and 6

12. Under 3.2 and 3.3, the report bases itself on sources without naming them and states unreservedly that "the charges against Mr. Radjabu had been entirely fabricated and they pointed to numerous irregularities ... ". It states furthermore that "the trial of Mr. Mpawenayo, in common with that of Mr. Radjabu, is of a political nature".

In fact, the court files are not accessible to everyone. Even for the defence lawyer, access to the file is only allowed after the State Prosecutor gives his consent. The real source remains therefore access to the file, if not, the sources to which the mission refers and which are not even named can only have a status of "hearsay". For these cases, no credible report could truly base its conclusions on anonymous, non-verifiable sources. In this case, anonymity can lead to a lot of untruths.

This report therefore deserves to be revisited as far as statements by sources whose information is difficult to verify and which, moreover, are perhaps not neutral vis-à-vis the different cases.

13. [...]

4. Observations on page 6

14. Under 3.4, the statement that Mr. Nkurunziza had informed the Speaker of the National Assembly of the accusations brought against him and that he had also raised this matter in the plenary of the Assembly is not entirely accurate. The Speaker of the National Assembly was informed by the person in question of the accusations brought against him, in his office, because the honourable Gérard held a hearing on that matter, but no plenary session ever debated the question. This statement should also be qualified.

5. Observations on page 9

15. [...]

7. Observations on page 11

16. Under 2.2, the report states that “the Speaker of the National Assembly noted in this respect that the parliamentarians in question had guards who knew how to throw grenades.” We feel that this sentence, phrased as it is in this report, is not very accurate. In fact, what the Speaker of the National Assembly was underscoring was merely the hypothesis of a sham attack, which had been raised at the start of the enquiry. The Speaker of the National Assembly does not agree with this sentence, therefore, which lends itself to speculation.

7. Observations on pages 12 to 15: The case of Mr. Hussein Radjabu, Mr. Pasteur Mpawenayo, Mr. Gerard Nkurunziza, Mr. Théophile Minzurano and Mr. Deo Nshirimimana

17. On pages 13 through 17, the statements made by the attorneys of the accused or sentenced persons were reproduced and considered as truths although they are merely an expression of the accused persons. These could have been further and calmly verified by actually physically consulting the case files, in particular the charge sheet, if the mission had had sufficient time to do so. If not, such statements have to be qualified.

18. Regarding the case of Mr. Hussein Radjabu, in particular the decision to sentence him, - a sentence which he is currently serving - is a decision that has been handed down. As such, the ruling is comparable to a law. It enjoys, therefore, in legal parlance, the “presumption of irrevocability”, which means that the law forbids anyone from going back on it. Moreover, it is a ruling that respected international standards for preliminary enquiries and sentencing, the rights of the defence having been scrupulously upheld and all channels to which he was entitled by law exhausted. What purpose does it serve, therefore, to make recommendations based on a court ruling that has already been handed down and executed?

19. Under 1.2 and 1.3 on page 12, regarding the charges brought against Hussein Radjabu, contrary to what his attorneys told the mission, their client was prosecuted for the following three offences: plotting against the national security of the State pursuant to Article 413 of the Criminal Code of 1981 (Volume II); attack on the territorial integrity of the country in accordance with Article 414 of the Criminal Code of 1981 (Volume II); and insulting the Head of State as per Article 278 of the Criminal Code (Volume II) of 1981. The mission perhaps should have, if time had permitted, actually verified the procedural file so as not to retain only what the defence lawyers and their clients said.

20. Under 1.4 on page 13, in order to confirm or deny what the Speaker of the National Assembly or the President of the Supreme Court said, the court documents should have been reviewed. If not, there is a contradiction since it is a question of information which, if need be, could have been obtained from the files

21. Under 1.5 on page 13, the report regrets that “Mr. Guy Maeselle ... had been prevented from presenting his oral arguments at the close of the trial, ... and when the Court decided to reopen the trial to correct that irregularity”... the attorney “had been unable to travel to Burundi”. On this matter, it should be considered as a good thing that the Burundian justice system decided to reopen the trial to correct a possible irregularity. The report should not regret that Mr. Guy Maeselle was unable to travel to Burundi because he could have submitted his written conclusions given that the criminal proceedings are both written and oral.

9. Observations on page 17

22. Regarding the conditions of detention [see 7.2 (a)] of Mssrs. Hussein Radjabu, Pasteur Mpawenayo, Nkurunziza and Nshirimimana, the Government of the Republic of Burundi is aware that the living conditions and conditions of detention of all prisoners in Burundi are not generally very good and that undermines the minimum standards of detention. That is why, with a view to

improving the prisoners' living and detention conditions, the question of renovating existing prisons and constructing new ones in provinces where there are none is a priority and is part of the Sector-wide Policy 2011-2015 of the Ministry of Justice.

23. Regarding assassination and poisoning attempts on Mr. Radjabu (see 7.2 (d)), this information is impossible to verify for anyone, including the mission. The report should either not mention this point or qualify the statement.

24. Everything that is said on page 19 under 7.2 (d) on visits is based on information that is difficult to verify and therefore should not be included in an official report.

[...]

IV. Conclusion

In short and according to the report, the mission seems in some instances to have opted for relying on and favouring what certain persons they met with said instead of verifying the information they obtained along the way; information that could have been further supplemented by actually consulting the criminal case file of the persons in question, at the very least regarding the instruction to open and close the investigation.

That is why the mission, which all in all did a good job in Burundi, should qualify some of the statements in its report.

[...]