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COMMITTEE ON THE HUMAN RIGHTS OF PARLIAMENTARIANS

REPORT OF THE COMMITTEE DELEGATION ON ITS FOLLOW-UP VISIT TO BURUNDI
(17-20 JUNE 2013)

CASE No. BDI/01 - SYLVESTRE MFAYOKURERA
CASE No. BDI/05 - INNOCENT NDIKUMANA
CASE No. BDI/06 - GERARD GAHUNGU
CASE No. BDI/07 - LILIANE NTAMUTUMBA

CASE No. BDI/29 - PAUL SIRAHENDA
CASE No. BDI/35 - GABRIEL GISABWAMANA
CASE No. BDI/60 - JEAN BOSCO RUTAGENGWA
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/43 - JEAN MARIE NDUWABIKE
CASE No. BDI/45 - ALICE NZOMUKUNDA
CASE No. BDI/46 - ZAITUNI RADJABU

CASE No. BDI/42 - PASTEUR MPAWENAYO
CASE No. BDI/44 - HUSSEIN RADJABU
CASE No. BDI/57 - GÉRARD NKURUNZIZA
CASE No. BDI/59 - DEO NSHIRIMANA

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A. ORIGIN AND ORGANIZATION OF THE FOLLOW-UP VISIT

1. Decision to carry out an on-site follow-up visit

1. The cases covered by the follow-up visit were submitted to the Committee on the Human Rights of Parliamentarians (hereafter "the Committee") between 1994 and 2008, except those of Mr. Jean Bosco Rutagengwa and Mr. Déo Nshirimana, which were submitted in 2011. They concern three different situations, namely the assassination of FRODEBU¹ parliamentarians between 1994 and 1999, the grenade attacks perpetrated in August 2007 and March 2008 against eight parliamentarians belonging to a dissident wing of the CNDD-FDD,² and the judicial proceedings instituted against and arrest and detention of four parliamentarians belonging to the same group. The Committee conducted a mission to Burundi in September 2011 to collect additional information on the cases.

2. At its 140th session (January 2013), the Committee considered that, in view of the unresolved questions and concerns in the cases before it, it would be useful for its President, Mr. Kassoum Tapo, who had participated in the 2011 mission, to return to Burundi and talk with the parliamentary, executive and judicial authorities, the sources and other persons liable to shed light on the cases. The National Assembly agreed that the President's visit should take place from 17 to 20 June 2013. The President was accompanied by Ms. Gaëlle Laroque, the Committee's human rights programme officer at the IPU Secretariat.

2. Persons met

- Parliamentary authorities
 - Mr. Pie Ntavyohanyuma, Speaker of the National Assembly
 - Mr. François Kabura, second Deputy Speaker of the National Assembly
 - The members of the National Assembly ad hoc parliamentary working group on the human rights of parliamentarians (hereafter "the parliamentary working group")
 - The members of the Justice and Human Rights Committee (hereafter "the Justice Committee"), a standing parliamentary committee currently examining the draft legislation on the Truth and Reconciliation Commission
 - The leaders of the following National Assembly parliamentary groups:
 - Mr. Félicien Nduwuburundi, leader of the CNDD-FDD group
 - Mr. Juvénal Gahungu, leader of the SAHWANYA-FRODEBU-NYAKURI group
 - Mr. Bonaventure Gasutwa, leader of the UPRONA³ group
- Government authorities
 - Mr. Pascal Barandagiye, Minister of Justice
 - Ms. Clotilde Niragira, Minister of National Solidarity, Human Rights and Gender
- Judicial and administrative authorities
 - Mr. Emmanuel Jenje, President of the Supreme Court
 - The Deputy Public Prosecutor
 - The director of Mpimba prison
- Others
 - Ms. Sonia Ndikumasabo, Vice-President of the National Independent Human Rights Commission (CNIDH)
 - Political party presidents:
 - Mr. Pascal Nyabenda, president of the CNDD-FDD
 - Dr. Jean Minani, president of SAHWANYA-FRODEBU-NYAKURI
 - Mr. Charles Nditije, president of UPRONA
 - Mr. Isidore Rufikiri, the President (*Bâtonnier*) of the Bujumbura Bar Association

¹ Front for Democracy in Burundi

² National Council for the Defence of Democracy - Forces for the Defence of Democracy

³ Union for National Progress

- The former parliamentarians concerned and their lawyers
 - Mr. Radjabu and Mr. Nkurunziza at Mpimba prison
 - Mr. Mpawenayo and Mr. Nshirimana
 - Mr. Prosper Niyoyankana
 - Mr. Basabose and Ms. Nzomukunda
- Representatives of the international community
 - Mr. Jean-Luc Marx, Chief, Human Rights and Justice Section, United Nations Office in Burundi, and Mr. Pollock
 - Mr. Marc Gedopt, Belgian ambassador to Burundi
 - Mr. Stéphane de Loecker, European Union ambassador to Burundi
- Representatives of non-governmental organizations
 - Mr. Joseph Ndayizeye, President of Ifeka, the Burundian Human Rights League
 - Mr. Louis Marie Nindorera, Director, Global Rights in Burundi

3. Organization of the visit

3. First and foremost, the Committee President sincerely thanks the authorities for their cooperation, in particular the Speaker of the National Assembly, the second Deputy Speaker and the members of the parliamentary working group, who ensured that his visit went smoothly.

4. The Committee President met with all the authorities and individuals he wished to see in the requisite conditions, including the two former parliamentarians who are still in prison. The only exception was the Prosecutor General, who was abroad at the time of the visit. The Committee President regrets that the Deputy Public Prosecutor was unable to provide information on the cases. The Prosecutor General's absence made it difficult to obtain the judicial documents requested in several cases. The Committee President deeply deplores the fact that, despite its repeated requests and two on-site missions, the Committee continues to be refused access to the files and decisions in the cases.

3.1 Interviews

5. The Committee President met twice with the Speaker of the National Assembly during the visit, and was thus able to inform him of his preliminary conclusions in person before leaving Bujumbura. He sincerely thanks the Speaker for his availability. The Speaker said that the parliamentary working group had worked hard to follow up the cases and that progress had been made thanks to the current calm in the legislature. He also said that the parliamentary working group now benefitted from good cooperation with the Prosecutor General and the Minister of Justice.

6. The Speaker of the National Assembly asked the Committee and the IPU Governing Council to suspend their examination of the cases, given that the National Assembly was doing all in its power to resolve them, inter alia through the parliamentary working group. The Committee President said that he would mention that request in his report and underscore the positive steps taken by the National Assembly. He nevertheless reminded the Speaker that, under the applicable procedure, the Committee and the Governing Council were mandated to pursue their examination of the cases until they had been satisfactorily resolved.

7. The Committee President had a working meeting with the members of the parliamentary working group during which they discussed the group's progress and the difficulties it had encountered in following up the cases. He expressed appreciation for the group's dynamism and for the active participation of its president, during the visit, in meetings with the authorities. He nevertheless noted during those meetings that not everyone appeared to be properly informed about the parliamentary working group's existence or its work on the cases being examined.

8. The Committee President was pleased to have the opportunity to meet with the CNIDH during his visit to Bujumbura and took that opportunity to establish a first contact between the CNIDH and the parliamentary working group. Since its establishment in June 2011, the CNIDH has helped strengthen the human rights culture in Burundi. It submitted its first activity report to the National Assembly in March 2012. During the meeting, the Committee President informed the CNIDH of the cases being examined and the follow-up work being done by the parliamentary

working group. He had an instructive discussion with the CNIDH and sincerely hopes that the Committee and the parliamentary working group will benefit from its support in the follow-up to the cases. He took note that the CNIDH's competence in cases predating its establishment in 2011 continued to be a matter of debate, and that the CNIDH could not examine cases pending before the courts unless it observed that the courts could not or would not act on them.

3.2 Visit to detainees

9. The IPU delegation met with Mr. Radjabu and Mr. Nkurunziza in Mpimba prison. It spoke with both detainees, alone and unrestricted, for almost an hour in the office of the prison director, which had been made available for that purpose.

10. The prison director said that the two detainees were in good health and that their conduct in prison was good. He described them as "calm and peaceful" detainees. He also said that the conditions of detention had improved slightly since the presidential pardons and releases on parole granted in 2012 to ease the overcrowding in places of detention in Burundi.

11. The two former parliamentarians confirmed that they had no security concerns in prison at the present time and no problems relating to the conditions of detention.

B. SUMMARY OF THE CASES AND OF THE COMMITTEE'S CONCERNS

1. The case of parliamentarians assassinated or the target of assassination attempts between 1994 and 2002

12. This case concerns the assassinations 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), Ms. Liliane Ntamutumba (July 1996) and Senator Jean Bosco Rutagengwa (2002), and two attempts (September 1994 and December 1995) to assassinate Mr. Norbert Ndiwokubwayo (who continues to sit in parliament and is a member of the parliamentary working group). The judicial proceedings instituted in a few of the cases were closed several years ago, even though the witnesses and victims' next-of-kin were reportedly never heard and suspects had been arrested. Some of the judicial files even disappeared. In the case of Mr. Gisabwamana's assassination, for which a soldier was sentenced to 18 months in prison and a fine, a punishment that is hardly commensurate with the crime, the Committee had emphasized that his family should be compensated, but no such compensation has been forthcoming to date. Except in Mr. Gisabwamana's case, the assassinations remain unpunished.

13. Having examined these cases for many years, the Committee has collected information which, in its view, would have enabled the authorities to identify the culprits and bring them to justice, in particular in the cases of Mr. Mfayokurera and Mr. Sirahenda. It has therefore long reminded the authorities of their duty to obtain justice for the victims by identifying the culprits and bringing them to justice.

14. Since April 2008 it has been the authorities' position that, given that the parliamentarians in question were assassinated in the context of a civil war, only the establishment of the mechanisms of transitional justice provided for in the Arusha Peace and Reconciliation Agreement for Burundi (August 2000) would allow light to be shed on the grave human rights violations committed during that period. The authorities believe that the Truth and Reconciliation Commission will help shed light on the assassinations.

15. The Committee continues to follow the process for establishing the transitional justice mechanisms, in particular the Truth and Reconciliation Commission, with a view to resolving these cases. Given the delays in the process, the Committee reaffirmed, at its 140th session (January 2013), that while it understood that the Commission's establishment was a complex matter, it was nevertheless concerned at the continued delay in setting it up and trusted that the National Assembly would very soon be in a position to discuss and, hopefully soon thereafter, adopt the framework and legal provisions needed for the Commission to discharge its mandate effectively.

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

16. All but three of the parliamentarians who were the victims of grenade attacks (and those being prosecuted – see point 3 below) had been elected on the list of the party in power, the CNDD-FDD, in July 2005. It gradually became apparent that the party was riven with internal dissent, a situation that deteriorated after the Ngozi Congress of 7 February 2007, during which Mr. Radjabu was removed from the party leadership. The CNDD-FDD then split in two, one wing supporting the new party president, the other supporting Mr. Radjabu. The parliamentarians concerned belong to the latter group. The situation sparked an institutional crisis during which two series of grenade attacks were perpetrated against eight parliamentarians, on 19 August 2007 and 6 March 2008, and which saw judicial proceedings instituted and many acts of intimidation carried out against Mr. Radjabu's partisans. The two attacks caused material damages but no loss of life or injury. On 7 March 2008, the National Assembly condemned the attacks and demanded that an inquiry be conducted to elucidate them. On 5 June 2008, the members who had just suffered a grenade attack and other members who had joined the dissident wing of the CNDD-FDD, a total of 22 members, were removed from office pursuant to a Constitutional Court ruling of 5 June 2008 (see case of the 22 members removed from office in 2008 in Section C, point 5 below).

17. None of the inquiries into the two series of grenade attacks has produced any conclusive results to date. Except in the cases of Ms. Nzomukunda and Mr. Basabose, the inquiries were closed. In those cases, the suspects who had been arrested, including one who was caught red-handed by the public on the scene, were released. The prosecutor had nevertheless indicated that he had appealed those decisions.

18. The Committee has consistently expressed its deep concern about the clear and persistent failure of the inquiries to produce results and considered that there was cause for serious doubt about the authorities' genuine willingness to see justice done. In the decision it adopted at its 140th session (January 2013), the Committee reaffirmed its belief that, with regard to the cases in respect of which suspects had been arrested and evidence was available, it should be possible for the authorities to make at least some progress in the investigation. It also noted with interest the intention of the parliamentary working group to help re-activate the file, and asked to be kept informed of the results of its efforts.

3. Case of Mr. Hussein Radjabu, Mr. Pasteur Mpawenayo, Mr. Gérard Nkurunziza and Mr. Déo Nshirimana

3.1 Mr. Hussein Radjabu

19. Mr. Radjabu was arrested after his parliamentary immunity was lifted on 27 April 2007. He was charged with having insulted the Head of State by having compared him to an empty bottle, with having conspired, together with seven other people, against State security by inciting the population to rise up against the authority of the State at a meeting held on 31 March 2007, and with endangering territorial integrity. He was sentenced on 3 April 2008 to 13 years in prison and stripped of his civil and political rights for having jeopardized State security. The conviction was confirmed on appeal and Mr. Radjabu's appeal in cassation denied. The sources affirmed that the charges against Mr. Radjabu were pure fabrications and claimed that the proceedings had been marred by countless flaws, notably the torture inflicted on Mr. Radjabu's main co-defendant, Mr. Evariste Kagabo, and the absence of valid evidence to back up the charges. The authorities confirmed that the judgement did not take account of the allegations of torture. Mr. Radjabu has now served more than one quarter of his sentence and is therefore entitled to request release on parole.

3.2 Mr. Pasteur Mpawenayo

20. Initially, Mr. Mpawenayo was prosecuted together with Mr. Radjabu in the same case. He was accused of conspiring with Mr. Radjabu because he had co-chaired the meeting at which he (and Mr. Radjabu) were alleged to have committed the acts with which they were charged. In his case, however, the proceedings were suspended because of his parliamentary immunity. Fresh proceedings were instituted after he was removed from office along with 21 other dissident CNDD-

FDD members in June 2008 (see Section C, point 5 below), and he was arrested on 4 July 2008. Instead of re-opening the previous case, the prosecution opened a new case against him, a move sharply criticized by the sources. According to the sources, the proceedings met none of the legal deadlines and Mr. Mpawenayo's trial, like that of Mr. Radjabu, was political in nature, the aim being to exert pressure on him to testify against Mr. Radjabu, which he had refused to do. The case was finally heard on the merits in 2010 and 2011 and Mr. Mpawenayo was acquitted by the Supreme Court judicial chamber on 31 May 2012 and released.

3.3 Mr. Gérard Nkurunziza

21. Mr. Nkurunziza was arrested on 15 July 2008. According to the sources, several CNDD-FDD officials from Kirundo province accused him in the press and in internal reports of having distributed weapons after joining the dissident wing of the CNDD-FDD in 2007. Mr. Nkurunziza was arrested shortly after being stripped of his seat in parliament along with 21 other dissident members of the CNDD-FDD in June 2008 (see Section C, point 5 below). According to his lawyers, the judicial investigation was based solely on hearsay and no weapons were seized in support of the charges. The sources affirmed that Mr. Nkurunziza was the victim of infighting in the party in power, which they claim fabricated the charges together with the National Intelligence Service. According to the November 2009 ruling of the court in Kirundo, Mr. Nkurunziza was charged with "having, in Kirundo province, at various places and on different dates and months in 2007 and 2008, jeopardized State security and public order by inciting the population against the established public authorities (at unlawful nighttime meetings) and by deliberately spreading false rumours of a nature to alarm the public" and for having "in the same circumstances of time and place, insulted His Excellency the Head of State by deliberately and publicly declaring to the people that he did not recognize the authority of the Office of the President, that the Head of State was worthless and that he therefore did not embody that Office".

22. Neither Mr. Nkurunziza's detention nor the charges against him have been investigated by the Burundian justice system in five years of judicial proceedings. The authorities invoked a conflict of jurisdiction between two courts to explain the delays in the proceedings. According to them, the conflict arose because the judicial authorities had not realized that Mr. Nkurunziza was still a member of parliament at the time of the alleged events, which therefore fell under the jurisdiction of the Supreme Court. Mr. Nkurunziza's lawyer had nevertheless informed all the competent authorities of this fact in August 2008 (documents in the file). Thus, when the court in Kirundo finally declared that it did not have jurisdiction, in November 2009, Mr. Nkurunziza's case was referred back to the Supreme Court.

23. Over two years later, when the Committee visited Bujumbura in September 2011, Mr. Nkurunziza had still not been heard by the Supreme Court and continued to be held without trial. Neither the Kirundo High Court nor the Supreme Court had examined the lawfulness of his detention in three years of custody and proceedings. According to the information provided by the authorities in 2012 and early 2013, the Supreme Court finally started hearings in the case in 2012 and had reserved its judgment.

3.4 Mr. Déo Nshirimana

24. During its mission of September 2011, the Committee learned from the sources that Mr. Nshirimana had been arrested on 5 October 2010 by agents of the National Intelligence Service and held for six days without being questioned or brought before a judge. At the time, Mr. Nshirimana was the party leader in Mulinga constituency and sat in parliament. He was charged with having held a meeting in Munyunga in 2008. According to the sources, during his questioning by the prosecutor Mr. Nshirimana argued that he was entitled, as a member of parliament, to meet the people and organize meetings but that he had not organized the meeting in question. According to the Prosecutor General, Mr. Nshirimana had said that he did not recognize the President of the Republic and had tried to rouse the population against the government. According to the defence, those accusations were based on hearsay, namely statements by persons who said that Mr. Nshirimana did not take part in community work and had not welcomed the provincial authorities on several occasions. Mr. Nshirimana was apparently also faulted for twice having barred the region's football team from playing against the President's

team, which was deemed to be incitement to disobedience. The maximum sentence that could have been handed down in Mr. Nshirimana's case was three years in prison. The prosecution sought a sentence of three months to three years. Mr. Nshirimana had served almost the entire sentence while in pre-trial custody.

3.5 The Committee's position

25. Generally speaking, the Committee has long expressed deep concern at the fact that none of its serious and long-standing concerns relating to the administration of justice in the cases of these former parliamentarians being held on remand had been addressed, which only adds credence to the hypothesis that the proceedings are politically motivated. The Committee and the IPU Governing Council have repeatedly asked for a copy of the charge sheets and the rulings confirming pre-trial detention and for access to the judicial files in the cases of Mr. Mpawenayo, Mr. Nkurunziza and Mr. Nshirimana, in vain. The Governing Council has time and again repeated its concerns relating to respect for the international human rights standards to which Burundi has adhered, in particular the length of pre-trial detention and the right to a fair trial.

26. In the case of Mr. Radjabu, the Governing Council has consistently observed that, under the international human rights treaties ratified by Burundi, evidence obtained under torture is inadmissible and that the admission of such evidence constitutes a fundamental flaw in the proceedings. It has stated that, until such time as the question of torture in the case is fully elucidated, the suspicion remains that Mr. Radjabu, and hence Mr. Mpawenayo, were prosecuted for political reasons, in order to prevent them from campaigning and standing in the forthcoming elections. The Governing Council has expressed deep concern at the fact that the proceedings instituted against Mr. Mpawenayo, Mr. Nkurunziza and Mr. Nshirimana have remained at a standstill for several years, and has re-asserted the fundamental principle that justice delayed is justice denied and called on the authorities to try them forthwith or to release them immediately, as they are obliged to do.

27. At its 140th session (January 2013), the Committee noted Mr. Mpawenayo's acquittal with interest but nonetheless observed with deep concern that he had spent more than four years in prison, a situation that could have been avoided had the authorities decided to accelerate the legal proceedings or to grant him release on bail. The Committee was keen to know whether the acquittal had prompted the authorities to re-assess the evidence on which Mr. Radjabu's conviction was based and said that it looked forward to receiving the authorities' observations on that point, along with a copy of the ruling acquitting Mr. Mpawenayo. It expressed alarm that, in the absence of any indication to the contrary, Mr. Nkurunziza remained in pre-trial custody, four and a half years after his arrest; it, too, reiterated the fundamental principle that justice delayed is justice denied and again called on the authorities to release him forthwith and to either accelerate or dismiss the proceedings against him. It expressed the hope that the authorities would take similar action in the case of Mr. Nshirimana and asked to receive official information on those points, along with a copy of the official charges against Mr. Nkurunziza and Mr. Nshirimana.

C. INFORMATION COLLECTED

1. General information

1.1 Political context at the time of the visit

28. The authorities seen generally referred to a period of political calm, a lull in which the country's institutions were able to function better. They said that Burundi continued to consolidate peace and stability, despite the situation in the eastern Democratic Republic of the Congo and its repercussions on the country. They considered that the current lull was conducive to the establishment of a new legal framework on a number of difficult issues, such as reconciliation and the election system, with a view to the 2015 elections. The Speaker of the National Assembly referred in this respect to the importance of dialogue between the main political parties in order to enable institutions to move ahead on those issues. He noted that parliament was able to function well in the current climate and was taking advantage of the lull to engage in active law-making.

29. However, the sources and the international community and civil society representatives met expressed great concern about the political situation in the run-up to the 2015 elections. They said that the political space had significantly narrowed and that a degree of mistrust had emerged since the boycott of the 2010 general elections by the opposition, that opposition party meetings were frequently banned or interrupted and that new, restrictive laws were being adopted. They also referred to the radicalization of political forces across the political spectrum and the growing number of confrontations undermining the political consensus put in place since the Arusha Agreement. The Committee President observes that the concerns expressed echo those raised by the UN Secretary-General in his report of 18 January 2013 to the Security Council on the United Nations Office in Burundi and points out that the Secretary-General enjoined all the parties to redouble their efforts to re-engage in dialogue, normalize relations and establish the conditions required for a peaceful and active election period.⁴

30. With regard to legislation, the Committee President observed during the visit that the reform measures relating to political activity and freedom of expression were harshly criticized. The new media law (adopted on 3 April 2013 and promulgated on 4 June), the law on political parties and the law on the status of the political opposition (adopted in October and November 2012 respectively), and the draft legislation being prepared on associations and demonstrations were all mentioned as major sources of concern with regard to respect for freedom of expression, association and political action. The authorities, for their part, considered the criticism to be excessive, saying that legislation was needed on those subjects and that the provisions adopted had introduced improvements.

1.2 Reform of the Burundian justice system

31. The Committee President observed that progress had been made in several areas since the Committee's 2011 mission. The Ministry of Justice had adopted a sector strategy and validated the principle of national consultations on justice system reform. In addition, in 2012, pursuant to directives issued by the Prosecutor General and the President of the Supreme Court, presidential pardons and releases on parole had been used to ease overcrowding in the prisons, and this had resulted in some improvement in prison conditions. According to the UN Secretary-General's Report, however, those ad hoc measures had not served to remedy the underlying causes of the overcrowding, such as excessive recourse to detention and the poor functioning of the courts.

32. The recently adopted new Code of Criminal Procedure⁵ nevertheless provides a legal framework that may, if it is strictly applied, help remedy those problems. Articles 52 and 110 of the new Code stipulate that liberty is the rule and that pre-trial detention is justified only in exceptional cases.⁶ The new Code also contains numerous provisions strengthening the rights of the defence at the various stages of the judicial proceedings. It unequivocally provides that "confessions are not admissible as evidence if they were obtained under duress, by violence or threat, in exchange for the promise of any benefit whatsoever or by any other means impinging on the free will of the person confessing" (Art. 180(2)) and provides for a procedure of compensation for torture victims (Art. 289).

⁴ *Report of the Secretary-General on the United Nations Office in Burundi* (hereafter UN Secretary-General's Report), United Nations Security Council, 18 January 2013, S/2013/36.

⁵ Law No. 1/10 of 3 April 2013 on the amendment of the Code of Criminal Procedure.

⁶ Article 52: "Liberty being the rule and custody the exception, prosecution officials shall ensure strict compliance with the laws authorizing restriction of individual liberty, in particular those relating to detention.

If they observe that an individual has been arbitrarily or unlawfully detained, they shall take all appropriate action to bring such detention to an immediate end. In addition, if the facts give reason to believe that a criminal or disciplinary offence has been committed, or both, they shall institute appropriate proceedings, and, as necessary, place those facts before the competent judicial authorities.

If it is observed or proven that a confession of guilt or any other information was obtained by torture, under duress or by any other wrongful means, it and the ensuing evidence shall be considered invalid."

Article 110: "Liberty being the rule and detention the exception, the accused may be remanded in custody only if there is sufficient evidence of guilt and the charges against them appear to constitute an offence punishable under the law by at least one year of penal servitude.

Furthermore, no one shall be remanded and held in custody unless that is the only means of meeting at least one of the following requirements:

1. conserving proof or material evidence or preventing pressure from being exerted on witnesses or victims or fraudulent consultation between defendants, co-perpetrators or accomplices;

2. maintaining law and order in the face of the trouble currently caused by the offence;

3. stopping the offence or preventing it from recurring;

4. ensuring that the accused remain available to the courts.

The decision to keep the accused in custody must be duly reasoned."

33. The Committee President was also informed about a number of concerns, however, which in the main echo the conclusions and recommendations adopted at the end of March 2013 in the context of Burundi's Universal Periodic Review.⁷ The representatives of the international community he met and most of the sources deplored the judicial authorities' lack of independence and the fact that Burundi's justice system continued to be used as a means of settling scores. They considered that several of the cases before the Committee were typical of the dysfunctions in Burundi's judicial system and its use for political ends. They pointed to the fact that no investigation ever worked its way back to the masterminds, in particular if the party in power appeared to be involved. They also pointed to the absence of judicial follow-up in most cases of serious human rights violations and an unprecedented rise in the level of corruption. They repeated that the process for recruiting, evaluating and disciplining judicial personnel (including the appointment and promotion of judges) remained in the hands of the executive branch. Thus, although there had been some advances in 2012, they considered that progress remained incremental and that respect for international fair-trial standards continued to be a problem.

34. The representatives of the international community seen underscored the urgent need for national consultations on justice and for sweeping reform of the Burundian justice system. They nevertheless also stated that there was no point in holding such consultations if they were not totally free and transparent, discussed truly substantive issues, and resulted in a road map on the reform measures needed. During his meeting with the Committee President, the Minister of Justice confirmed that national consultations would be held soon while affirming that the Burundian justice system was totally independent and had proved its worth, and that the problems it had encountered, in particular a degree of slowness in dealing with cases, were due above all to the large number of cases pending before the courts and the insufficient means (inter alia too few court rooms).

2. Cases of parliamentarians assassinated or targeted by assassination attempts between 1994 and 2002

2.1 Authority competent to investigate the cases

35. To start, every single person with whom the Committee President met during his visit to Bujumbura said that only the Truth and Reconciliation Commission had any hope at present of resolving the cases of the parliamentarians assassinated during the war. The people concerned, from the Minister of Justice to civil society organizations, considered that the Burundian justice system was not currently in a position to investigate the cases or identify the culprits, as the cases formed part of the successive waves of grave human rights violations committed between 1993 and 2000. The general feeling was that those cases could not be elucidated without a broader investigation into the context during that period of widespread crisis as a whole.

36. Nevertheless, given the delays and difficulties encountered in setting up the Truth and Reconciliation Commission, the parliamentary working group proposed to travel to the provinces to collect information on the circumstances in which the assassinations had taken place from the victims' families and friends, who have apparently never been heard. The aim is to move the investigations forward, lay the groundwork for the Truth and Reconciliation Commission, and inform the families about what the parliamentary working group and the Committee are doing to shed light on the cases.

2.2 Process for establishing the Truth and Reconciliation Commission

37. The Speaker of the National Assembly confirmed that draft legislation on the Truth and Reconciliation Commission had been tabled in the National Assembly and that the Commission's terms of reference would be to shed light on the crimes committed during the civil war, including the cases of the assassinated parliamentarians, with a view to ascertaining the truth and identifying the culprits. The National Assembly was considering the draft legislation, which was one of the priorities on the current session's (June-September 2013) legislative agenda. It had encountered difficulties, however, because several outstanding points required further dialogue on the

⁷ *Report of the Working Group on the Universal Periodic Review – Burundi*, United Nations General Assembly, Human Rights Council, 23rd session, 25 March 2013, A/HRC23/9, especially conclusions and recommendations 126.18, 126.56, 126.87 and 126.99 to 126.12, on the justice sector in particular.

legislation's general orientation. The Speaker was aware of the many delays in the Commission's establishment, and asked the Committee for its understanding in that regard and the IPU for support to help the Burundian authorities move ahead on this sensitive issue. He also asked the Committee to suspend its examination of the cases before it pending the establishment of the Truth and Reconciliation Commission.

38. The Committee President met with members of the National Assembly Justice Committee, which was considering the draft legislation. They said the Committee had started by enhancing its expertise on truth commissions and the international standards applicable to them, conducting a mission to South Africa from 6 to 10 April 2013 during which its members had learned about the truth commissions of South Africa, Togo, Liberia and Sierra Leone. The Justice Committee was to present its mission report in plenary on 21 June 2013. In response to the Committee President's request, the members promised to send the Committee a copy after the presentation in plenary. Since the mission, the Justice Committee had received opinions, comments and proposed amendments from civil society organizations and the United Nations Office in Burundi.

2.3 Content of the draft legislation

39. The members of the Justice Committee feel that the emphasis should be on reconciliation, not punishment, but they have yet to reach a final decision on that fundamental point. Under the draft legislation, the Truth and Reconciliation Commission will be competent in respect of acts committed since Burundi's independence (1962) to 4 December 2008. It should therefore have competence in respect of the cases of the assassinated parliamentarians. The current draft makes no reference to witness protection, but the Justice Committee said that it had been decided to include that point.

40. The Justice Committee members were not in a position, at the current stage in their consideration of the draft legislation, to answer the Committee President's questions about the Truth and Reconciliation Commission's independence, in particular the procedure for appointing its members and the body doing so (neither of which is specified in the draft legislation). They said that they continued to deliberate the possibility of a procedure similar to that used to appoint the members of the CNIDH, i.e. setting up a parliamentary committee to select the candidates, who would be officially appointed by the President of the Republic.

41. The Truth and Reconciliation Commission's authority to propose amnesties or judicial proceedings was one of the points that had yet to be considered and discussed in depth. A decision was also pending on whether the Commission would be able to investigate and recommend the prosecution of suspects who had benefited from a provisional amnesty granted as part of the peace and reconciliation process (regardless of the evidence on file at the time).⁸

2.4 Concerns expressed about the draft legislation

42. The United Nations Office in Burundi and the civil society organizations met expressed regret that the government had set aside the recommendations resulting from the tripartite consultations and had gone through the process again on its own, without sharing the outcome, then tabled draft legislation that they considered problematic from several points of view and that fell short of the population's expectations. They wanted the National Assembly to organize broad consultations on the draft legislation and to take into account the proposed amendments submitted to it and the results of the tripartite consultation process. The main substantive points of disagreement underscored by the representatives of the international community and civil society met by the Committee President are described below.

- **Procedure for appointing commissioners and composition of the Commission:** According to the persons met, the government is trying to control the appointment process, which is why the draft legislation provides that only citizens of Burundi can be appointed commissioners. Following the tripartite consultations, a consensus had been reached that the Commission should be made up of three foreign members and seven Burundians.

⁸ By virtue of Law No. 1/022 of 21 November 2003 providing temporary immunity for leaders returning from exile and Law No. 1/32 of 22 November 2006 providing temporary immunity for members of the movement signatory to the cease-fire agreement of 7 September 2006.

That consensus was based on the observation that a climate of mistrust had persisted between Hutus and Tutsis since the war; the international members were to have played the role of arbiter and moderator between the two ethnic groups and uphold respect for international standards. The government's draft legislation pre-empted non-Burundians from playing any role other than that of external adviser. The United Nations was also to have participated in the procedure for selecting and appointing commissioners, so as to guarantee their independence. It had also been agreed that the Commission chairman should be drawn from civil society, a religious denomination or a profession, and that the government and political players should have limited representation. The current draft did not reflect those conclusions and contained no provisions on or clear criteria for the appointment of commissioners. It was strongly feared that the authorities would decide to include political representatives on the Commission. For the persons met, this would be a serious mistake that would call into question the Commission's legitimacy and undermine the victims' trust in it, stopping them from stepping forward to testify.

- **The absence of any judicial mechanism of transitional justice:** The Arusha Agreement had provided for two mechanisms of transitional justice, of which the Truth and Reconciliation Commission is but one. The second mechanism, which was initially to take the form of a special tribunal but was redefined as a hybrid specialized chamber with an independent prosecutor, was dropped by the Burundian authorities. By emphasizing reconciliation, the Burundian authorities excluded the possibility of prosecuting the perpetrators of grave human rights violations committed during the war. In addition, the two laws on temporary amnesties and immunities adopted during the peace process also call into question the capacity of a judicial mechanism, even the Truth and Reconciliation Commission, to investigate many perpetrators of the crimes committed.
- **The absence of a clear link between the Commission's terms of reference and possible judicial proceedings:** The tripartite consultations had brought to light the importance of a clear link between the Commission and the judicial mechanism, and the need for the judicial mechanism to have an independent prosecutor able to examine any case submitted by the Commission or another body. The draft legislation contains no provisions on this point. In addition, the provisions relating to victim forgiveness at the perpetrators' request do not specify the effects and consequences of such forgiveness, stoking fear that forgiveness may be an impediment to judicial proceedings.
- **The failure to prohibit amnesties for international crimes** was also criticized, as was the absence of a provision stipulating whether the Truth and Reconciliation Commission had the authority to recommend amnesties.
- **Victim and witness protection:** Given the involvement of the army and the police in, and the justice system's inability or disinclination to act on, the grave human rights violations committed during the period to be examined by the Truth and Reconciliation Commission, it had become clear that witness protection could not be entrusted to those State institutions alone. Were that to be the case, it is unlikely that the victims would agree to testify, as their security would not be guaranteed. The tripartite consultations had therefore proposed a mixed national and international witness and victim protection unit. The proposal was rejected by the government and the draft law does not consider the question of victim and witness protection.

43. In addition to their concern at the past and present delays in the process of establishing the Truth and Reconciliation Commission, the representatives of the international community and civil society met by the Committee President all underscored their strong fear that the legislative process was being politically manipulated and that the text ultimately adopted by the National Assembly would not see the establishment of an independent, legitimate and credible truth and reconciliation commission.

3. The grenade attacks of August 2007 and March 2008

44. The parliamentary authorities informed the Committee President of the problems they had encountered in following up these cases, because the victims of the grenade attacks refused to cooperate with them and made any progress impossible. The parliamentary working group had

tried to meet with several of the victims of the grenade attacks, but they had refused. It emerged from the meetings between the parliamentary working group and the Ministry of Justice and the prosecution on the cases that the judicial authorities had also found it difficult to locate and contact the victims, most of whom had moved, and had concluded that the victims did not wish to pursue the cases. Given that the attacks had caused no human or material damages, the judicial authorities had decided, by virtue of the principle of discretionary prosecution, that there was no reason to continue the proceedings in the circumstances.

45. The Minister of Justice told the Committee President that the prosecuting authorities had done their job. Given that the judges had released suspects and that the prosecution had appealed that decision, it was to be hoped that the court would reconsider the prosecution's request on appeal. The number of cases before the Bujumbura High Court had led to delays in many instances but he would make sure that rapid action was taken in this case.

46. Given how difficult the parliamentary working group found it to cooperate with the victims, the Committee President said that he would try to meet with them during his visit to Bujumbura to see what the situation was and to encourage them to cooperate with the group. He accordingly met with two of the former parliamentarians who had been attacked with grenades and in whose cases suspects had been arrested and genuine judicial proceedings instituted, namely Mr. Mathias Basabose and Ms. Alice Nzomukunda. He emphasizes that he was able to meet them without difficulty and that the two former parliamentarians said that they wished to cooperate with the parliamentary working group on the follow-up to their cases. They said that they were unaware that a parliamentary working group had been set up to follow up their cases and that they had not been officially contacted about a meeting. Mr. Basabose and Ms. Nzomukunda also told the Committee President that they had been discouraged by the court's release of the suspects and the prosecution's failure to act on their files. They had never been told why the suspects had been released and had eventually stopped following their judicial proceedings because it seemed pointless to do so in the absence of any investigation of their complaints.

4. The cases of Mr. Gérard Nkurunziza, Mr. Pasteur Mpawenayo, Mr. Déo Nshirimana and Mr. Hussein Radjabu

4.1 Mr. Gérard Nkurunziza

47. The Speaker of the National Assembly confirmed that Mr. Nkurunziza remained in custody at the time of the Committee President's visit and that the Supreme Court had adjourned its deliberations for over a year. He informed the Committee President that the judicial authorities had told him that Mr. Nkurunziza's case would be dealt with in the near future, at the latest in the coming two months. This was confirmed by the President of the Supreme Court, who said that the Court intended to hand down a final ruling in the coming two months, given the especially long delays experienced in the case.

48. However, the President of the Supreme Court also told the Committee President that the Court had just decided to re-open the proceedings and that new hearings would be scheduled. He explained that some of the judges in the case had been transferred and that a hearing was needed to complete the bench. The Minister of Justice also confirmed that the proceedings would be re-opened, but on matters of form, not on the merits. He said that the Court had to first address the issue of custody before considering the merits. According to Mr. Nkurunziza's lawyer, the prosecutor had given him to understand that the proceedings were being re-opened because the prosecution had not presented its case properly during the hearings of May 2012.

49. Mr. Nkurunziza's lawyer told the Committee President that his client's case had finally been examined on the merits in early 2012, at the same time as Mr. Déo Nshirimana's (see below). During the final hearing, in May 2012, the prosecution had not asked for a specific penalty but had contented itself with asking the bench to assess the punishment. The Court had then adjourned the deliberations without first reaching a decision on the request for release on bail and Mr. Nkurunziza and his lawyer had been waiting since May 2012 for a final judgement. The sources said that they had hoped a verdict would be handed down and Mr. Nkurunziza released before

the Committee President's arrival in Bujumbura, based on information they had received through unofficial channels. Mr. Nkurunziza had therefore been surprised to receive notification, just before the Committee President's arrival in Bujumbura, that the proceedings in his case were to be re-opened. The IPU delegation was given a copy of the notification, dated 14 June, and noted that it referred to a Supreme Court decision "taken in the presence of both parties on 16 January 2013", the decision line of which is worded as follows: "Re-open the proceedings so as to allow the parties to discuss the question of detention".

50. Most of the people spoken to acknowledged that the justice system was dealing very slowly with this case and agreed that there was no justification for keeping someone in custody for five years without a judgement or without examining the lawfulness of his pre-trial detention (the maximum legal deadline is 15 days after arrest) and for more than one year after the court had adjourned to deliberate (the maximum legal deadline is 60 days); the whole situation was an embarrassment to the Burundian justice system. The authorities nevertheless maintained that the delays could be explained by the many difficulties facing the Burundian justice system (large number of cases before the courts, numerous procedural objections raised during hearings, absence of computerized services, insufficient number of rooms for hearings, etc.) and denied that there was anything in the least political about the case.

51. With the exception of the authorities, most of the people spoken to considered that only political interference in the case could explain that it had yet to be resolved, especially in view of the context in which it was first opened and the details of five years of proceedings. Mr. Nkurunziza's lawyer reminded the Committee President that he considered that the proceedings had shown blatant disregard for international and national fair-trial standards for years. According to several sources, the judges on the bench in Mr. Nkurunziza's case were those who had examined the cases of and acquitted Mr. Mpawenayo and Mr. Nshirimana (see below) and had been transferred after Mr. Nshirimana's acquittal, just as, according to the sources, they were getting ready to acquit Mr. Nkurunziza. Those sources believe that the transfers are tantamount to demotion and were ordered by the Office of the President of the Republic. On the other hand, still according to the sources, the official in charge of mounting the prosecution's case had recently been given an exceptional promotion.

52. Following the visit of the Committee President, the CNIDH informed him on 17 July 2013 that it had decided to start its own investigation and would examine the case in accordance with its procedure.

4.2 Mr. Pasteur Mpawenayo and Mr. Déo Nshirimana

53. The Committee President obtained confirmation that Mr. Mpawenayo and Mr. Nshirimana had been acquitted and released. The parliamentary working group was unable to provide any information on the reasons for the acquittals, as it had not asked for a copy of the court decisions and had met with neither Mr. Mpawenayo nor Mr. Nshirimana since their release. The Committee President organized a meeting with the two men during his visit.

54. Mr. Mpawenayo said that he was acquitted on 30 May 2012 and Mr. Nshirimana on 26 November 2012. Both were released the day after their acquittal. Mr. Nshirimana also confirmed that he had never been authorized to consult his judicial file during the proceedings and that only his lawyer had been given access to it.

55. Mr. Mpawenayo and Mr. Nshirimana told the Committee President that they were worried because, since their release, they had been followed by the National Intelligence Service (SNR), threatened and intimidated and told to restrict their movements. Mr. Mpawenayo said that he had been followed since his release and had received telephone calls threatening him or hinting that he should not travel. His lawyer said that Mr. Mpawenayo had been arrested by SNR agents in early June 2013 while he was in the provinces and staying with a family. He was accused of holding a clandestine meeting in the middle of the night on the grounds that he was staying with a family far from the centre of town instead of at a hotel, which the SNR agents claimed was cause for suspicion and arrest. He was arrested at 10 p.m. while he was eating with the family and despite the fact that, under the law, arrests must be carried out at the latest by 6 p.m. Mr. Nshirimana also said that he

had been followed since his release and had received threatening phone calls and hints that he should not go to certain places. He gave the example of a recent trip to his provincial home of Munyunga, where he arrived around 10 p.m. He was summoned by the governor the following morning and faulted for not having informed the governor beforehand of his arrival. Both former parliamentarians expressed fear that the acts of intimidation would continue and prevent them from going about their business and leading normal lives.

56. In addition, the Committee President was informed by the President of the Supreme Court and the parliamentary working group that the prosecution had just appealed both acquittals. The President of the Supreme Court added that, in accordance with Burundian law, the two former parliamentarians would remain at liberty during the appeal proceedings. During his meeting with the Committee President, the first President of the Supreme Court promised to give him a copy of the acquittal decisions. He subsequently changed his position, on the grounds that he was not authorized to furnish copies of decisions to the Committee while an appeal was pending. In addition, contrary to the statement of the President of the Supreme Court, Mr. Mpawenayo, Mr. Nshirimana and their lawyer affirmed that they had not been notified of the court decisions. The Committee President was therefore unable to obtain copies of the court decisions during his visit.

4.3 Mr. Hussein Radjabu

57. During his visit, the Committee President tried to find out whether Mr. Mpawenayo's acquittal had prompted the authorities to re-examine the evidence on which Mr. Radjabu had been convicted. The authorities he met considered that Mr. Radjabu and Mr. Mpawenayo had been arrested at different periods and that the cases were different. According to the President of the Supreme Court, the similarity between the cases was relative and since criminal responsibility was in any event a personal matter, the cases could not influence each other.

58. Mr. Radjabu, Mr. Mpawenayo and their lawyer, for their part, confirmed to the Committee President that one single judicial file had been opened against Mr. Radjabu and Mr. Mpawenayo at the outset (file RPG 515, then RPS 66, 66 bis and 68 before the Supreme Court), that they had been prosecuted on the same charges (a copy of which had previously been given to the Committee), for the same acts (having co-chaired a meeting on 31 March) and on the basis of the same testimony. They considered that it therefore beggared belief for Mr. Mpawenayo to be acquitted and that acquittal to have no impact at all for Mr. Radjabu.

59. Mr. Radjabu told the Committee President that he was in favour of a judicial review of his conviction on that basis. He had not yet, however, instructed his lawyer to request such a review. The authorities met confirmed that Burundian law allowed for a judicial review procedure, which could be opened at the request of the convicted person. The Minister of Justice said that, under Burundian law, he was the authority with competence to authorize such a review if the conditions therefor were met. He nevertheless added that the deadline for requesting a judicial review was 60 days after the contested decision had been handed down and that the deadline had expired in Mr. Radjabu's case. He also said that judicial review was an extraordinary appeal procedure that had had a successful outcome in very few instances in Burundi. The Committee President was unable to obtain the legal provisions on the review procedure in Burundi.

60. Mr. Radjabu told the Committee President that he was not against continuing to attempt to obtain release on parole. There is no denying that he has already served over one quarter of his sentence and that his behaviour in prison has been good, as attested by the prison director. His lawyer said that he had already filed several requests for release on parole with the Ministry of Justice, to no effect. Mr. Radjabu would nevertheless prefer the judicial review procedure, as it is the only legal procedure that would allow him to demonstrate that he was the victim of a political plot. His release on parole would not void his conviction and he would continue to be deprived of his civil and political rights even if he were released.

61. The Minister of Justice told the Committee President that he had received no request from Mr. Radjabu or his lawyer since their initial request had been rejected by the parole board in 2012. While it was not impossible for Mr. Radjabu to file a new request, the Minister said that it was "debatable" whether Mr. Radjabu could ask for release on parole given the requirements of the

Criminal Code, which were more than simply having served one quarter of the sentence. He said that this was why the parole board had not put Mr. Radjabu on the list of prisoners eligible for parole in 2012. Mr. Radjabu and his lawyer, for their part, said that the judges on the parole board had met with Mr. Radjabu and confirmed that he met all the legal conditions but that the decision at the higher level would probably be political. Mr. Radjabu subsequently learned that he had not been granted parole because parole did not apply in respect of people convicted of having compromised State security. His lawyer said that the Minister of Justice had considered that a final decision on Mr. Radjabu's case fell to the President of the Republic. Mr. Radjabu told the Committee President that he had been given informal conditions for release on parole and that he would probably have been granted parole if he had agree to cease all political activity on his release.

62. The Minister of National Solidarity, Human Rights and Gender suggested an alternative, namely that Mr. Radjabu could consider asking for a presidential pardon. She said that, according to the procedure, the request had to come from Mr. Radjabu in person, not from his lawyer. She considered that the current political situation could act in his favour. The Committee President raised this possibility with Mr. Radjabu, who said he was willing to meet with the Minister and discuss it with her. Mr. Radjabu and his lawyer said they were willing to consider the possibility if the Minister agreed to meet with Mr. Radjabu to talk about it. However, they reminded the Committee President that Mr. Radjabu had not been granted a presidential pardon in 2012 and feared that the procedure was a way of forcing Mr. Radjabu to ask the President of the Republic for a pardon and to acknowledge the groundless accusations against him so that the pardon could be refused and he could be humiliated anew.

63. Mr. Radjabu said that he remained open at all events to political negotiation, to dialogue with the authorities and party officials about his situation. He planned to keep a low profile in the hope that the dialogue would, when the time came, convince the Head of State to resolve his situation favourably. Mr. Radjabu thanked the Committee President and the IPU for following his case for many years and affirmed that it was thanks to that follow-up that a certain balance had been struck, a door left open for dialogue, and that the uncompromising position of certain members of the Burundian government towards him had been softened. He and his lawyer said that they might file an appeal with the East African Court of Justice if none of the remedies outlined above led anywhere.

64. During his interviews with the sources and with representatives of the international community and civil society, the Committee President observed that there was no doubt in any of their minds that the cases of Mr. Radjabu and the people who had become dissidents along with him were eminently political and that their resolution depended, not on the Burundian courts, but on the Head of State. As their lawyer pointed out, a representative of the Office of the President was present at every hearing. Several people also stated that no one dared take action anymore in Mr. Radjabu's case or in any of the others that were apparently linked to his, because the political space had become so narrow that the mere fact of mentioning Mr. Radjabu's name or plight was considered tantamount to a demonstration of support for him and could lead to reprisals and intimidation on the part of the National Intelligence Service. The Committee President noted that, according to the analysis of the representatives of the international community and civil society, it did not seem likely that Mr. Radjabu would be released before the 2015 elections, as that would be perceived as likely to divide and undermine the party in power and the President of the Republic unless an agreement could be reached between them. The Committee President notes that the authorities and the CNDD-FDD representatives he met systematically denied that there was any political dimension to the cases.

5. Case of 22 members of parliament removed from office in June 2008

65. The Committee President was contacted by several sources before and during his visit to Bujumbura in connection with the case of the 22 members of parliament removed from office in June 2008. The sources spoke of their frustration at the fact that the case had not been resolved; they could not understand why the Committee and the IPU Governing Council had failed to take any action in the cases since 2009 and were discouraged as a result. They said that their removal from office continued to cause them harm and had far more serious consequences for them than the grenade attacks. Continued action on the cases for that violation of their rights alone therefore made little sense to them in the current context. They said that they planned to ask the Committee to re-open the case (their request was subsequently sent to the Committee on 8 July 2013).

66. Following a brief exchange on the issue, the parliamentary authorities reminded the Committee President that the case had been closed, that it was the result of an exceptional situation and political context that had completely paralysed parliament for months and that they could not conceive that the case could be re-opened.

67. The 22 parliamentarians in question had been removed from office pursuant to the Constitutional Court decision of 5 June 2008. The Constitutional Court had determined, at the request of the Speaker of the National Assembly, that the parliamentarians in question were holding their seats unconstitutionally because they had left their political party, the CNDD-FDD.

68. The case had been brought before the Committee in 2008 and the Committee had examined it at several sessions and then made it public by placing it before the Governing Council. In the resolution it adopted unanimously at its 184th session, held during the 120th IPU Assembly (Addis Ababa, April 2009), the Governing Council reached a final decision condemning the Burundian authorities for removing the 22 parliamentarians from office. It believed that "the 22 parliamentarians were removed from office for practical political reasons lacking any genuine legal basis". It observed that "the application of a double standard to dissident parliamentarians from the majority party and FRODEBU parliamentarians is hardly likely to strengthen the rule of law" and emphasized that "the IPU has always warned against the adoption of provisions allowing parliamentarians to be removed from office because they have lost their affiliation to a political party, since such a measure is detrimental to freedom of expression". The Governing Council considered that "effective progress towards reconciliation in Burundi at the national and political level can only be made if all political parties and factions participate in the political dialogue and can express themselves without fear or hindrance" and was in no doubt that the ongoing efforts for dialogue would bear fruit and thus help "provide a lasting solution to the problems that have arisen and contribute to the stabilization and democracy-building called for by the Burundi parliamentary authorities". At its 185th session, held during the 121st IPU Assembly (Geneva, October 2009), the Governing Council also regretted that the new Election Law provided that parliamentarians who lost their affiliation to their political party also lost their parliamentary mandate, a provision the IPU firmly believed to be detrimental to the freedom of expression members of parliament need in order to exercise their parliamentary mandate.

69. Under the Committee's procedure, condemning an IPU Member Parliament is a measure of last resort in unresolved cases, when dialogue with the authorities has failed. It is final in nature, and therefore explains why the Governing Council and the Committee did not pursue the case after 2009. The condemnation of the removal of office of the 22 parliamentarians as arbitrary in nature therefore remains applicable.

D. CONCLUSIONS AND RECOMMENDATIONS

1. Follow-up of the cases by the parliamentary authorities

70. The Committee President thanks the Speaker of the National Assembly and expresses appreciation for the work accomplished by the parliamentary working group. He is pleased at the support provided by the Speaker and the second Deputy Speaker to the parliamentary working group, which has served to considerably enhance the group's effectiveness. He invites the Speaker to continue supporting the group's work, by meeting personally with the highest State authorities about the cases under consideration with a view to promoting their positive resolution as soon as possible.

71. The Committee President observes that the parliamentary working group operates efficiently and encourages it to carry on with its work, in particular by meeting regularly with the competent judicial and executive authorities, the CNIDH, the ombudsman and the victims in the cases under consideration, and to follow the ongoing judicial proceedings. The parliamentary working group might wish to make its work better known within the National Assembly by, for example, presenting its reports to the presidents of parliamentary groups or to the plenary Assembly at each session. He trusts that, in the future, the parliamentary working group will automatically send him its periodic activity reports so that the Committee can be fully and regularly informed of the work accomplished.

2. General conclusions and recommendations

72. The Committee President noted with interest that the authorities with whom he met generally spoke of a period of calm, a political lull in which the country's institutions were able to function better. He nevertheless notes with concern the preoccupations expressed by the sources and the representatives of international organizations and civil society with regard to the political situation in the run-up to the 2015 elections. He shares in particular the concerns expressed at the narrowing political space, the emergence of a mistrustful attitude towards the opposition since the boycott of the general elections, the frequent interruptions and prohibitions of meetings organized by opposition parties, the adoption of new laws restricting freedom of expression, association and political action and of the law on the status of the political opposition, and the draft legislation being drawn up on associations and demonstrations.

73. The Committee President noted progress in several areas regarding reform of the Burundian justice system since the Committee's mission in 2011 and notes with satisfaction the willingness of the Minister of Justice to hold national consultations on the subject as soon as possible. He is convinced that the Burundian justice system requires continued in-depth reform and that national consultations could make a positive contribution to the preparation of a road map of priority reform measures on condition that the way in which they are organized encourages free and transparent discussion on truly substantive issues.

3. Case of parliamentarians assassinated or targeted by assassination attempts between 1994 and 2002

74. The Committee President is pleased that, after much delay, draft legislation on the Truth and Reconciliation Commission was tabled in the National Assembly early in 2013. He trusts that the draft legislation will be amended as required so that an independent, legitimate and credible Truth and Reconciliation Commission can finally be established and shed light on the circumstances of the crimes committed during the war, thereby initiating a process of reconciliation among the people of Burundi.

75. The Committee President noted with concern that, according to the United Nations Office in Burundi and civil society organizations, the government has set aside the recommendations that emerged from the tripartite consultations and introduced draft legislation that does not, according to them, meet the population's expectations. He considers that it would be pointless to adopt draft legislation that does not take account of the people's expectations after a broad process of consultation lasting more than ten years and aimed at ensuring that the mechanisms of transitional justice put in place have the population's trust and can therefore discharge their mandates effectively.

76. The Committee President is particularly concerned about the provisions in the draft legislation relating to the composition of the Truth and Reconciliation Commission and the procedure for appointing commissioners, which are crucial to guaranteeing its independence and impartiality. He also notes the weakness of the provisions relating to victim and witness protection, the absence of a clear link between the Commission's terms of reference and the possibility for judicial proceedings, and the failure to prohibit amnesties for international crimes. Lastly, he can but deeply regret the absence of any progress towards the establishment of a judicial mechanism of transitional justice in addition to the non-judicial terms of reference of the Truth and Reconciliation Commission. Consequently, he advises the National Assembly to take full account of the conclusions of the tripartite consultations in its consideration of the draft legislation and to respect the relevant international standards. He suggests that the IPU, in the framework of its technical assistance programme, and the parliamentary authorities study the possibility of having the latter benefit from the former's experience in that regard.

77. In the meantime, the Committee President encourages the parliamentary working group to go outside the walls of parliament and collect information on the circumstances of the assassinations and meet with the victims' families.

4. Cases of grenade attacks in 2007 and 2008

78. The Committee President noted the absence of progress in the cases at the judicial level. He finds it hard to understand how the suspects could have been released and the cases apparently closed when the suspects were arrested *in flagrante delicto* by the population after having thrown the grenade and the prosecutor had recommended prosecution and stated that the suspects identified had acted under the command of other people who were to have been identified during the investigations. The Committee President was not able, during his visit, to ascertain the current status of the judicial files concerning Mr. Basabose and Ms. Nzomukunda, and therefore wishes to know whether those cases have also been closed or are being pursued. He would also like to be informed why the suspects were released (the plaintiffs were never informed of the reasons) and of the outcome of the prosecution's appeal.

79. Following his meeting with Mr. Basabose and Ms. Nzomukunda, who said they were willing to meet with the parliamentary working group, the Committee President invites the group to organize such a meeting without delay in order to exchange views with them on the follow-up to their case. He also invites the parliamentary working group to again try to contact each of the other victims of the attacks and to inform them officially of its terms of reference and formally invite them to a meeting. He asks the parliamentary working group to keep him informed of the results of those steps.

80. The Committee President, while understanding why Mr. Basabose and Ms. Nzomukunda are discouraged, encourages them to meet with the parliamentary working group and to reactivate their judicial files in an endeavour to give renewed impetus to the judicial proceedings.

5. Case of Mr. Gérard Nkurunziza

81. The Committee President was alarmed to learn that the Supreme Court had decided to re-open the proceedings in Mr. Nkurunziza's case, given that the Court had adjourned to deliberate over a year ago and was expected to hand down its decision at any time. He points out that the authorities and the sources provided contradictory information on the reasons the proceedings were being re-opened and the purpose of doing so. He is also surprised that the decision to re-open the proceedings is dated January 2013 but the Committee was informed by the Burundian parliamentary authorities in March 2013 that the Court was still being deliberating and that a decision would be handed down shortly.

82. The Committee President does not understand how the case can be re-opened. Justice delayed is justice denied, and he considers that these further delays are inexcusable. He again deplores the fact that, in this case, the judicial authorities continue blatantly to flout international and national fair-trial standards. He is concerned at the allegations that the judges in the case were transferred just as they were preparing to acquit Mr. Nkurunziza. He points out that the provisions of the new Code of Criminal Procedure provide that the accused is to be released immediately in such cases and therefore once again calls on the authorities to release Mr. Nkurunziza. He sincerely hopes that the case will be finally resolved at the latest within two months, as promised by the competent authorities, i.e. before September 2013.

83. The Committee President is pleased that the CNIDH has taken up the case and asks it to keep the Committee informed of the action it takes in accordance with its procedure.

6. Cases of Mr. Pasteur Mpawenayo and Mr. Déo Nshirimana

84. The Committee President is pleased that Mr. Mpawenayo and Mr. Nshirimana were released following their acquittal in May and November 2012 respectively. He considers that the acquittals are a credit to the Burundian justice system and trusts that the current appeal proceedings will confirm them without delay and that the Committee may then consider these cases as resolved and close them.

85. The Committee President is nevertheless astonished that the persons concerned and their lawyer have yet to be notified of the court decisions, more than one year after the first acquittal. He fails to understand why the appeal proceedings should prevent a copy of the decision from

being sent to the Committee. He therefore once again asks the competent authorities to send copies of the acquittal decisions without delay, in keeping with the principle that judicial decisions are public.

86. The Committee President points out that Mr. Mpawenayo was held in custody for over four years before being acquitted, Mr. Nshirimana for over two years, i.e. two thirds of the maximum penalty sought by the prosecution, in clear violation of international standards. He advises the competent authorities to ensure that, with the adoption of the new Code of Criminal Procedure, an effective stop is put to systematic and abusive recourse to pre-trial detention so that such situations do not arise again in the future.

87. In addition, the Committee President is concerned about the threats and acts of intimidation Mr. Mpawenayo and Mr. Nshirimana say have been directed against them since their release, asks the sources and the authorities to provide further information in that respect, and recommends that the parliamentary working group continue to follow both cases from the points of view of both the appeal proceedings and the security situation. He considers that it would be useful for the group to meet with Mr. Mpawenayo, Mr. Nshirimana and their lawyer and for it to observe the appeal hearings when the time comes.

7. Case of Mr. Hussein Radjabu

88. Following his visit, the Committee President believes that, insofar as the Committee is not able to perform its own analysis of the decision in Mr. Mpawenayo's case, given that the authorities refuse to provide it with a copy, it cannot exclude the possibility that his acquittal should have prompted the authorities to reconsider the evidence on which Mr. Radjabu was convicted.

89. The Committee President notes the contradictions between the statements of Mr. Radjabu's lawyer, who says that he has filed several requests for release on parole, and those of the Minister of Justice, who claims not to have received any such request. He also notes the Minister of Justice's statement that the possibility for Mr. Radjabu to request release on parole is "debatable", given the requirements of the Criminal Code. The Committee President nevertheless emphasizes that, under Articles 127 and 128 of the Criminal Code, convicted persons who have served one quarter of their sentence may be released on parole once they have repaired the harm caused by the offence. He also recalls that the prison director has attested to Mr. Radjabu's good behaviour in prison. He therefore sees no legal obstacle to Mr. Radjabu's release on parole.

90. The Committee President therefore encourages Mr. Radjabu and the competent authorities to look into the various remedies discussed during his visit, namely release on parole, a judicial review and a presidential pardon, and asks to be kept informed of the progress they make. In particular, he invites the Minister of National Solidarity, Human Rights and Gender to meet with Mr. Radjabu in prison and discuss the various remedies with him.

91. The Committee President considers that a positive resolution of Mr. Radjabu's situation would send a strong signal from the authorities that the situation in Burundi has genuinely quietened down and demonstrate that an effort is being made to engage in political dialogue with a view to the next elections.