

**Security Council**

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Letter dated 14 September 2017 from the Permanent Representative of Burundi to the United Nations addressed to the President of the Security Council

Upon instructions from my Government, I have the honour to transmit herewith the comments of the Government of the Republic of Burundi on the allegations contained in the recent report of the Commission of Inquiry on Burundi ([A/HRC/36/54](#)) (see annex). The Commission was created in 2016 pursuant to Human Rights Council resolution 33/24.

I would be grateful if the present letter and its annex could be circulated as a document of the Security Council.

(Signed) Albert **Shingiro**
Ambassador
Permanent Representative of Burundi to the United Nations



Annex to the letter dated 14 September 2017 from the Permanent Representative of Burundi to the United Nations addressed to the President of the Security Council

Comments from the Republic of Burundi on the report of the Commission of Inquiry on Burundi

Executive summary

The Commission of Inquiry on Burundi set up pursuant the Human Rights Council Resolution 33/24 has just released its report.

This report has the merit of finally removing ambiguities about the ultimate objective pursued by the European Union and its traditional partners, which, thanks to the manipulation of the Human Rights Council, now have a long enough hand to achieve many changes of regime, through an International Criminal Court that has already discredited itself and whose bias has always been decried by the Government of Burundi.

The Commission of Inquiry, which was voted by only 19 countries out of the 47 member countries of the Human Rights Council, presented a report whose content was foreseeable, which is not burdened with factual elements, all based on the sole desire to overwhelm Burundian leaders with great reinforcements of anonymous testimonies, speculative conclusions and approximations that dishonor such a great institution as the Human Rights Council.

It is no longer a secret, after the failure of the insurrection, the coup d'état, the military invasion plan and many politico-diplomatic and even media-related maneuvers, the European Union and its traditional partners are preparing for their last battle to achieve their regime change plan in Burundi.

This stubbornness on Burundi is therefore an ultimate will of the European Union and its traditional partners to destabilize and destroy sovereign countries after having accused them of all the evils through such reports as such has been the case for Libya, Iraq, Syria, ...

By means of a vote, Burundi expressed its disapproval of the decision to set up this commission, and hence the country reiterates that none of the conclusions reached by this Commission of Inquiry can be invoked against it.

I. Introduction

1. The Commission of Inquiry on Burundi published its report on 11/08/2017 but did not officially communicate it to the Republic of Burundi until 28/08/2017.
2. The Commission of Inquiry is composed of three Commissioners appointed on 22 November 2016: Fatsah Ougergouz (Algeria) who is the Chair, Reine Alapini Gansou (Benin) and Françoise Hampson (United Kingdom). They were assisted by a secretariat appointed by the Office of the United Nations High Commissioner for Human Rights.
3. The Commission of Inquiry was established for a period of one year by Human Rights Council resolution 33/24 of 30 September 2016 and was mandated to conduct an in-depth investigation into human rights violations committed in Burundi since April 2015, in particular to assess their scale and determine whether they are crimes under international law, to identify the alleged perpetrators of such

violations and to make recommendations for the perpetrators to be held accountable, regardless of their affiliation.

4. As a reminder, the Commission has already made two oral presentations at the thirty-fourth and thirty-fifth sessions of the Human Rights Council in March and June 2017 respectively.

5. This report is unfortunately the same as that of the Independent Investigation of the United Nations on Burundi (EINUB) produced by three experts pursuant to Human Rights Council resolution S-24/1, which covered the period from April 15, 2015 to June 30, 2016.

6. The Commission of Inquiry established by the Human Rights Council resolution 33/24 recognized in its report that, following the practice of other commissions of inquiry denied access to the territory covered by their mandate; they visited the neighboring countries of Burundi (Uganda, DRC, Rwanda and Tanzania) and other countries hosting Burundian refugees.

II. General comments

7. This report has the merit of finally removing ambiguities about the ultimate objective pursued by the European Union and its traditional partners, which, thanks to the manipulation of the Human Rights Council, now have a long enough hand to achieve many changes of regime, through an International Criminal Court that has already discredited itself and whose bias has always been decried by the Government of Burundi.

8. It is no longer a secret, after the failure of the insurrection, the coup d'état, the military invasion plan and many politico-diplomatic and even media-related maneuvers, the European Union and its traditional partners are preparing for their last battle to achieve their regime change plan in Burundi.

9. Thus, after attempting to demonstrate the lack of competence of the domestic courts, the Commission of Inquiry mandated by the European Union and its partners believes that its only recommendation was to incriminate Burundi before the ICC. Something the opinion probably ignores is that the commission's report is based on unfounded and erroneous allegations, cleverly called "**reasonable grounds to believe**", in the absence of evidence.

10. The Commission of Inquiry which was voted by only 19 countries out of the 47 member countries of the Human Rights Council, presented a report whose content was foreseeable, which is not burdened with factual elements, all based on the sole desire to overwhelm Burundian leaders with great reinforcements of anonymous testimonies, speculative conclusions and approximations that dishonor such a great institution as the Human Rights Council.

11. Without claiming that the human rights situation in Burundi has no room for improvements, Burundi will spare no effort to challenge and denounce the relentlessness it has been victim over a number of years.

Its non-cooperation with the commission must be understood as a decision of a sovereign country and a measure of protest against the groundless accusations conveyed by EINUB, of which this commission was born and to which Burundi had offered its full cooperation before realizing that the search for truth was the least of their concerns.

12. The EINUB experts who had full cooperation with the institutions of the Republic of Burundi produced only a politically motivated report without any

factual or technical basis, refusing to incorporate the considerations of Burundian leaders and to account for them.

13. Indeed, how can we understand the deafening silence of the so-called-investigators on the human rights violations committed and claimed by the armed wings of the Burundian radical opposition? They have deliberately ignored the only verifiable facts, wishing to justify terrorist acts that they were the first to condemn.

14. In this same attempt to justify, in paragraph 13, the investigators still dare to speak of “demonstrations” that would have taken place in 2015, when it is the most violent insurrection that Burundi has known. Insurgents who killed police officers, soldiers and civilians, who tortured and ransomed families in the neighborhoods they besieged in order to paralyze any activity in the capital Bujumbura, the same insurgents who attempted to foment an urban guerrilla, without success.

15. Against all logic, it is the Imbonerakure, the Youth wing of the ruling party; which is unjustly accused of human rights violations when there is not a single physical evidence of the violations of which it was guilty.

16. Burundi is outraged by the selective sensitivity of the European Union’s investigators and its partners, who display a shameful complacency with terrorists.

In paragraph 28, they discredit themselves when they claim to have been unable to document the violations committed by terrorist groups, while the international media were able to easily track, film and publicize some of their operations. This reflects the amateurishness, if not the bad faith, of this commission.

17. Most human rights violations are attributable to these terrorist groups and the Burundian Justice intends to continue its work, even if the Commission of Inquiry seems to ask for one thing, and it’s contrary.

Indeed, the Commission mandated by the European Union and its partners disapprove the functional capacity of the Burundian judicial system, whereas it is the same European Union which financed the exfiltration and asylum of the persons prosecuted by the Justice, which is a hindrance to the judicial system, which is only one example among so many contradictions.

18. While the Burundian Head of State is also President of the Supreme Judicial Council, this is not an argument against the independence of the judiciary, since Burundi is one of the many countries in the world where the practice is in force without being subject to speculation.

19. Burundi is outraged by the ease with which the investigators approach the subject of targeted attacks that claimed the lives of Burundian officials, civilians, policemen and soldiers, pointing to the guilty without bothering to provide were it not only one piece of evidence. Can we confirm the military identity of an individual by the mere fact of wearing the uniform?

20. Still in the approximation approach, the Commission of Inquiry talks, in paragraph 37, about the rançonneurs “presenting themselves” as agents of the National Intelligence Service. Despite the uncertainty of the information, they jump to definitive conclusions. These methods barely hide their will; that of destroying Burundi.

21. The Commission also maintains that the visits and numerous contacts from a distance have enabled it to conduct more than 500 interviews with victims, witnesses and other sources, without, however, specifying sampling method such as objective targeting criteria or levels of representativeness.

22. The Commission did not at all worry too much when it claimed that it had adopted the same level of evidence as the majority of the commissions of inquiry on human rights, “**reasonable grounds to believe**”.

23. It also indicates that it has ensured that reliable and consistent information is obtained on the basis of which a reasonable and normally prudent person would have reason to believe that a systematic incident or behavior had occurred.

24. The Commission of Inquiry points out that, in addition to the lack of cooperation by the Government and its refusal to allow it access to the country, it faced the difficulty of investigating Burundi today, victims and witnesses fearing to express themselves.

25. The Commission of Inquiry also indicates that, due to the short time allowed, it has not been able to further investigate certain cases and cover all violations.

26. **How then can such conclusions lead to the recommendation to UN bodies of a probable hearing of Burundian leaders to the ICC? The adage that goes “Give a dog a bad name and hang him” (Uwugutuka ntagutorera) came to pass in the above context.**

27. Moreover, it is illogical, indeed contradictory, that such a report has been released informally and made available to the media who commented on it several days ago, before it is officially transmitted to its addressee, Burundi. This shows that there is something in the wind.

28. Burundi is aware of the concern of the United Nations with regard to the protection of human rights throughout the world in general and in Burundi in particular.

29. Burundi nevertheless condemns the deception contained in this report in the light of the facts and allegations which are devoid of any foundation and would like to respond by shedding light on certain lies conveyed there.

30. Burundi notes with regret that the Human Rights Council has deliberately refrained from expressing its views on the Government’s several comments to the previous reports of the same kind submitted to it; which are supported by evidence and concrete and illustrative examples that explain the facts and shed more light on the overall human rights situation in Burundi.

31. **This attitude of the Human Rights Council is indicative of the deliberate omission and spread of allegations fueled by the rumor. Burundi does not consider itself in conflict with the United Nations but deplores the acts of interference of certain member countries and advocates of “neo-colonialism”.**

32. The Commission of Inquiry on Burundi affirms that the political crisis in Burundi since 2015 has been accompanied by a serious crisis in human rights. The same Commission goes on to argue that it has documented violations, often of extreme cruelty, in particular extrajudicial executions, arbitrary arrests and detentions, enforced disappearances, torture and other cruel, inhuman or degrading treatment, and sexual violence.

33. For once, the Commission of Inquiry acknowledged that most of the statements contained in its report are facts drawn from other reports without specifying criteria for choosing to omit others. Nevertheless, this commission of inquiry contradicts itself because it claims to have visited the land in neighboring countries of Burundi. It should have checked the facts brought to its attention.

34. The Commission of Inquiry on Burundi is very well aware that Burundi has always denounced these tendentious reports which have often been made to support the group of enemies of peace in Burundi. Moreover, the Commission of Inquiry,

like its predecessors, has used vague concepts as “reasonable grounds to believe” or “reliable and consistent information”, and unfortunately did not hesitate to unjustly condemn Burundi, centring its deep conviction on such concepts.

35. Burundi finds that the facts reported by the Commission of Inquiry are merely groundless assertions. It showed that the insurrections that started in May 2015 and the attacks on military installations in Bujumbura and its surroundings on December 11th, 2015 were pretexts to implement the plan that they had worked out to destabilize the country, a plan which fortunately finished by collapsing like a house of cards.

36. As for the assertions on the hate speeches made by Burundian authorities and members of the CNDD-FDD party, Burundi considers this statement as an erroneous interpretation of the speeches of its authorities and political leaders from the CNDD-FDD party. Did they not say recently, before the same UN bodies, that the genocide was under way in Burundi?

37. On the other hand, Burundi finds that the analysis made by the Commission to this end simply aims at reviving inter-ethnic hatred.

38. According to the Commission, the victims, mostly young men (with the exception of victims of sexual violence), have as a common point the fact that they are opponents of the Government or perceived as such.

39. Burundi has always regretted that Commissions of this kind are established for the sake of the cause. They are there to support those who destabilize the country and, curiously, they do not even hesitate to call them simple opponents or demonstrators. Here is a strategy that opponents of the Government of Burundi have found to influence decisions made by the Treaty Bodies in their favour.

As for the phenomenon of regimentation of the population in the CNDD-FDD and its youth wing, the Imbonerakure, Burundi is disappointed to see itself unfairly labelled with such a burden which is likely to discredit and further damage its image. But otherwise, membership in the CNDD-FDD party is free and open to anyone who wants to.

40. The Commission exaggerates when it reports that its interviews revealed a deep and widespread climate of fear. The Commission itself stated that it has never stepped onto the soil of Burundi, but had many discussions with the refugee population outside the country. What could the people approached be afraid of?

Burundi recalls that remaining outside the country for some members of the civil society and journalists is not because they are necessarily in exile or under international arrest warrants; this is rather because some of them have chosen to. Burundi cannot, in any case, restrict the freedom of movement of individuals. Another very small category of people that has run away from the Burundian justice is still sought after.

Burundi considers that, in any event, no one can deprive it of its right to exercise its judicial function, one of the various legal forms of action in which the sovereignty of its State is reflected.

41. As for the flow of refugees, the situation of Burundian refugees had never been the object of such inhuman political manipulation by UNHCR. We must have the courage to say that, beyond the financial opportunities that refugee management represent for UNHCR, which is recognized as an envied professional channel, it is above all necessary to denounce the political manipulation by its authority facing conflicts of influence and dealings with its networks of political friendships or personal proximities.

42. The Government of Burundi cannot ignore the complicity, if not the complacency, of the military recruitment of refugee children in Rwanda, which has been decried by other UN bodies and NGOs, the manipulation of inaccurate figures to demonstrate “a worsening of the humanitarian situation” and thus influence decision-making and request for more funding.

In 2016 and 2017, while Burundian provinces were recording massive returns of Burundian refugees, UNHCR was increasing its figures to better convey its message that “the crisis is worsening in Burundi”. Meanwhile, thousands of Burundian refugees, taken hostage by the UNHCR in Tanzania against their will, continue to demonstrate in the streets to demand their repatriation. In addition, at the time of writing this counter-report, the Burundian Interior Ministry is welcoming many refugees on the Burundi-Tanzanian border who have registered for voluntary repatriation.

43. With regard to the private media and human rights organizations, Burundi wants to inform anyone that its Penal Code is very clear because it indicates that individuals and organisations are liable to criminal and/or civil liability. This is to say that there is no law granting immunities to civil society organizations or their leaders to allow them to escape criminal and/or civil prosecution for the wrongful acts that they have committed. Burundi has always emphasized this fact and repeats it; it has never restricted individual fundamental freedoms.

44. In international law, says the Commission, including human rights, the State is responsible for the conduct of its organs irrespective of their legislative, executive, judicial or other functions — their position in the organization of the state or their nature — whether they belong to the central government or to a territorial entity.

45. The Commission takes great pleasure to enunciate and interpret principles of international law in its favour. It argues that the State is responsible for the conduct of its organs, but it expressly omits to add some nuances to it.

46. Burundi does not deny that there are elements of the security forces that went beyond the framework of their competence and, at the same time, were guilty of some mistakes, and they have already been brought to justice that, in this kind of case, establishes individual responsibilities which cannot be imputed to an entire organ and to a lesser extent, the State.

47. On the other hand, Burundi has the right to ask why the Commission of Inquiry failed to report that elements of the security forces were illegally confined, threatened, abused, injured, kidnapped and killed, while they were displaying extraordinary professionalism in view of the violence they were confronted with. But this did not prevent the Commission from putting the entire onus on the security forces, especially the crimes committed by its “mentees”.

48. The Commission wrongly argues that it has also documented instances where local administrative authorities have committed or ordered the violations of human rights, in particular arbitrary arrests.

49. Burundi would like to point out that, as in any other country under the rule of law, the arrest procedure is known. It is therefore illogical and surprising that the Commission has highlighted instances of arbitrary arrests by the administrative authorities without indicating at least some examples illustrating not only these arrests but also the local administrative authorities which are responsible for them. They are, therefore, nothing but meaningless and malicious fabrications.

50. Burundi expressed its disapproval of the decision to set up this commission, and hence the country reiterates that none of the conclusions reached by this Commission of Inquiry can be invoked against it.

51. Burundi regrets that the Commission has not conducted any analysis of the laws governing radio stations and media professionals. The reading of this report suggests that journalists are not governed by any law in Burundi, and that they are above the law and therefore no prosecution can be brought against them.

52. It should be emphasized that Radio BONESHA, Radio Publique Africaine (RPA) and Radio-Télévision Renaissance have been involved in a number of actions which are considered as offenses under Burundian criminal law. For example, these radio and television stations have reported live the criminal acts of the insurgents with a view to getting the maximum number of their listeners/viewers on board. It was in this sense that Radio-Télévision Renaissance, alone, managed to report on the ignoble circumstances of the murder of MISAGO Léonidas, burnt alive in NYAKABIGA.

53. Nevertheless, the leaders of this radio-television station refused to hand over to the law the raw element of the images taken at the time of the occurrence in order to exploit them and to identify these criminals, since this murder was covered in full by this radio-television channel. This is contrary to the criminal provisions which oblige anyone who knows the perpetrators of a crime or of an offense such as murder to denounce them before the courts.

Journalists, the press or communication bodies are not exempt from this obligation. Failure to comply with this obligation exposes them, like any other citizen, to criminal proceedings as specified in article 57 of Law N° 1/15 of 9th May, 2015 governing the press in Burundi.

54. Similarly, other evidence shows that these media outlets were actively involved not only in the insurrectional movement but also in the Coup d'état.

55. The Commission seems to reduce the situation of freedom of expression to the situation of these three media outlets only, despite Burundi having more than twenty radio stations. It should be recalled that two of the five media outlets which had been suspended for the same reasons were acquitted and that other media outlets were open in the Burundian media space, demonstrating the existence of freedom of expression and a good environment for the profession of journalism.

56. Concerning the freedoms of association and assembly, Burundi finds that the report simply said, without any checks on the law or the facts, that the activities of a dozen associations of the Civil Society were suspended by decision of the Minister. It fails to point out that individuals and organisations are liable to criminal and/or civil liability. There are no laws granting immunity to Civil society organizations or their leaders in order to escape from criminal and/or civil prosecution for sinful and criminal actions they have committed.

57. Therefore, the associations cited in the report are being prosecuted for having been involved in the organization and execution of the insurrectional movement which began on 26 April 2015.

They have also worked closely with the organizers of the failed coup d'état of May 13th, 2015 and of other events including killings and the destruction of both public and private infrastructure. Reacting to the killing of a young man, accused of being an Imbonerakure, who was burned alive as he went about his daily work, a member of the-so-called civil society and organizer of the insurrection and putsch was rejoicing live on radios saying: *“No compassion, this is only the beginning, in the next days the situation will be worse and more violent.”*

58. By encouraging crime, he made himself guilty of seeking to justify the crime. The authors of this report should have focused on the strategies, speeches and deeds

of the organizers of this movement in order to establish their responsibilities in the various assaults on life and other fundamental rights.

59. Moreover, it is surprising that the report speaks of a restriction on the freedom of associations, whereas since the period under consideration, other associations have been approved by the supervisory authority.

60. Burundi notes that the Commission of Inquiry did not want to inquire into the charges against these associations and their leaders. It turns out that it has presented these criminals as victims to allow them to escape the criminal prosecution brought against them.

61. Furthermore, the Commission of Inquiry would like to create confusion between the freedom of movement and the routine police checks that occur naturally in all countries. Indeed, no restriction of the right to move was ever enacted by the Government, and no measures limiting the movement of persons have ever existed.

However, in its tendency to reverse the roles, the report would like to legitimize the criminal acts that have been posed by the insurgents and the coup plotters and their acolytes by castigating any initiative undertaken by the State via its institutions for the maintenance of peace and security on its territory.

62. In Burundi, like elsewhere, it should be recalled that any person who engages in functions which do not fall within his competence without being qualified and entitled for them exposes themselves to criminal prosecution in accordance with the laws and regulations in force.

III. Crime under international law

- **Crimes against Humanity**

Constituent elements of the crime

63. The report reminds us the provisions of the Rome Statute which defines crimes against humanity as crimes “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. On this aspect, it is necessary to understand the meaning of certain key words such as “*attack*”, “*widespread and systematic*” and “*civilian population*”.

64. In the ordinary sense, the term attack means “action of attacking, starting the fight” as stated in the dictionary, *Le Robert, V. Attack (French)*.

65. The report concludes that, on the basis of the information gathered, the Commission has “reasonable grounds to believe” that an attack has been launched against the civilian population since April 2015 in Burundi. Burundi would like to inform here that no attacks have been carried out against these alleged opponents.

66. It is incomprehensible to speak of a widespread or systematic attack insofar as the strongholds of these insurgents were confined limited to only four of the 99 neighbourhoods of the capital city Bujumbura and in three areas in 3 communes of the interior of the country, taking civilian populations hostage and using them as human shields.

67. The report is also vague on the notion of “civilian population” targeted as a victim of “these attacks”. Indeed, the civilian population within the meaning of International Humanitarian Law, which the authors of this report seem to ignore, is “all persons who are not members of the armed forces”.

Thus, before concluding to the perpetration of crimes against humanity, shouldn't the commission specify that the insurgents had turned themselves into terrorist

groups? How indiscriminate grenade attacks in public and leisure places would be characterized?

68. Given the definition of crimes against humanity from the Rome Statute, there have never been “widespread and systematic attacks against a population” in Burundi since April 2015. The crimes that have been documented in Burundi during this period, essentially committed by the insurgents, fall under Burundian law and have been punished by the competent jurisdictions.

69. It is therefore inconceivable that the Commission of Inquiry should appeal to the ICC to investigate crimes that are outside its jurisdiction.

70. This stubbornness on Burundi is therefore an ultimate will of the European Union and its traditional partners to destabilize and destroy sovereign countries after having accused them of all the evils through such reports as such has been the case for Libya, Iraq, Syria, ...

71. Burundi rejects the Commission’s conclusions, which are unjustified. Burundi has repeatedly denounced attempts by some of the mechanisms of the Office of the High Commissioner for Human Rights to abuse the examination processes for purely political ends.

72. In actual facts, this perception of the human rights situation in Burundi is contrary to the other evaluation reports made by EAC bodies, in particular the EAC Heads of State Summit held in early September 2016.

73. **Finally, Burundi does not see the opportunity to refer the matter to the International Criminal Court on the basis of the report submitted by the Commission of Inquiry.**
