

Tabled by Hon. Abdulwah Mmiji
on Thursday 04/2/2016



EAST AFRICAN COMMUNITY

EAST AFRICAN LEGISLATIVE ASSEMBLY

REPORT OF THE EALA COMMITTEE ON REGIONAL AFFAIRS AND
CONFLICT RESOLUTION ON: THE PUBLIC HEARING ON THE
PETITION BY PAN-AFRICAN LAWYERS (PALU) ON THE
DETERIORATING HUMAN RIGHTS AND HUMANITARIAN SITUATION
IN BURUNDI HELD IN ARUSHA

EAC HEADQUARTERS, ARUSHA, TANZANIA
12th - 24th January, 2016

Clerk's Chambers
3rd Floor, EALA Wing
EAC Headquarters
Arusha, TANZANIA

February 2016

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Introduction

1. On 16th November 2015, a petition of the citizens of East African Community on the deteriorating human rights and humanitarian situation in the Republic of Burundi was presented before the Speaker of the East African Legislative Assembly (*Annexure 1*). The Assembly, in turn, forwarded the petition to the Standing Committee on Regional Affairs and Conflict Resolution. The Committee determined that it has a mandate under Article 49(d) to deal with such a petition related to human rights, governance, rule of law and democratization. The committee organized and held public hearings on 14th, 15th and 25th January 2016, in response to the petition led by the Pan-African Lawyers' Union (PALU). The petitioners included six organisations all registered and domiciled in East African Community. They are Atrocities Watch Africa (Kampala, Uganda), Centre for Citizens' Participation on the African Union (CCPAU) (Nairobi, Kenya), East African Law Society (EALS) (Arusha, Tanzania), East African Civil Society Organisations' Forum (EACSOF) (Arusha Tanzania), Kituo cha Katiba – The East Africa Centre for Constitutional Development (Kampala, Uganda) and PALU (Arusha, Tanzania).
2. The Committee also extended invitations to stakeholders to participate in hearings. Several key stakeholders on the Burundi situation appeared before the committee. They include representatives of the government of the Republic of Burundi, a select number of opposition leaders, members of civil society organisations from the Republic of Burundi and a representative of the Burundi Journalist Union. Those who appeared and addressed the Committee include:

Burundi Civil Society, Media, Women Movement and Political Opposition

- i. Ms. Nkuzimana Jereme - Chief Executive Officer
- ii. Mr. Nshiuriuana Vital - FORSC
- iii. Mr. Nditije Charles - UPRONA Party, Burundi
- iv. Ms. Justine Nkurunziza - President, COSOME
- v. Hon. (Dr.) Jean Minani - CNARED, Coordinator, Africa
- vi. Ms. Marie Louise Baricako - Chairperson, Women and Girls Movement in Burundi for Peace and Security
- vii. Mr. Alexandre Niyungeko - Chairperson, Burundi Journalist Union
- viii. Mr. Gateretse JM - Consultant
- ix. Mr. Richard Ninubona - APRODH, Judicial Observer of Prisons

Government of Republic of Burundi Delegation

- i. Hon. Leontine Nzeyimana - Minister for EAC Affairs, Burundi
- ii. Sen. Joseph Ntakirutimana - Senator and Vice Chairperson, CNDD-FDD Party, Burundi
- iii. Hon. Lazare Mvuyekure - MP, National Assembly of Burundi
- iv. Hon. Agustin Nzojibwami - Chairperson du SAGWE-PADER Party, Burundi
- v. Mr. Gilbert-Becaud Njangwa - President of ONELOP-BDI
- vi. Mr. Andre Ndayambaje - Director General of Burundi Police
- vii. Mr. Nestor Kayobera - Director, Ministry of Justice, Burundi

- viii. Mr. Jacques Bigirimana - FNL Party, Burundi
- ix. Mr. Jean de Dien Mutabazi - Chairperson of RADEBU Party, Burundi
- x. Mrs. Concilie Nibigira - Leader of the UPRONA Party
- xi. Mr. Amos Gerson Ndimurwanko - Liaison Officer, Burundi Embassy in Arusha/Dar-es-Salaam
- xii. Mr. Jean Marie Nduwimana - President, Civil Society, Burundi
- xiii. Mr. Francois Xavier Ndaruzaniye - President and Legal Representative, Izere Ntiwihebure Human Rights League, Burundi
- xiv. Mr. Valentin Bantwayegusa - Legal Adviser, CNDD-FDD, Burundi

Procedure for Public Hearing

3. The Committee held three sessions to discuss method of conducting the public hearings and generating a report for the plenary. The committee prioritized several procedural issues in their deliberations. First, the committee established that the Assembly has a mandate to deal with this petition. This is as articulated in Article 49 (d) of the Treaty for the Establishment of the East African Community which mandates the Assembly to "discuss all matters pertaining to the Community and make recommendations to the Council as it may deem necessary for the implementation of the Treaty." Second, members agreed that to conduct the hearing would follow a defined pattern. Petitioners and stakeholders would present their petitions followed by questions and clarifications from members. Petitioners would then be invited to respond to questions and give clarifications. Members agreed to refrain from articulating their positions during the hearings. The committee agreed to withdraw back into a meeting to deliberate on the public hearings and agreed to provide the rapporteur with instructions on the drafting of the report which will be discussed and adopted by the Committee for onwards transmission to the plenary. Finally, the committee agreed to allow members to submit written proposals, observations, and recommendations as part of record for the petition. The committee further mandated the chair to speak to the media on behalf of members regarding the proceedings of the hearing and tasked him to invite any citizen of EAC with additional information, contribution to avail it to the committee.

The Petition: Written and Oral

4. The petition addressed itself to three main issues;
 - i). the human rights violations;
 - ii). humanitarian crisis;
 - iii). the political crisis.

It also provided recommendations/the way forward. The details are contained in the petition submitted to the Speaker and supplemented by oral submissions of the hearing held on 14th January 2016. It is important to note that the oral submissions confirmed but also updated the original submission of 16th November 2015 and this summary captures the updates as reflected in the Hansard Record (*Annexure 2*).

5. The petition notes that the origins of the human rights and humanitarian crisis is in the 'political crisis' resulting from support for and opposition against, by sections of Burundi population, for the candidacy, for a third term, of President Pierre Nkurunziza. The human rights crisis, it notes, resulted from, on the one hand, the action of the police, security officials and members of *Imbonerakure* (the youth wing of the CNDD-FDD), of 'violently cracking down on demonstrators and protestors' and, on the other hand, 'the counter response by a section of the population taking up arms and confronting the police, security officials and members of the said *Imbonerakure*.' This has led to internal displacements within Burundi and to many seeking refuge in neighbouring countries. The petitioners estimate that this has triggered 'one of the largest refugee situations that the East African/Great Lakes region has encountered in the last decade.'
6. The petition outlines the consequences of this crisis including the assassinations, extrajudicial and arbitrary killings. It cites at least 130 people reported killed in Bujumbura and other parts of the country. In his oral submission recorded in the Hansard record, Donald Deya, citing The Citizen, 13th January 2016 noted that 'a total of 267,747 refugees that had fled to just three countries: 17,747 to Uganda; 175,000 to the United Republic of Tanzania; and 75,000 to the Republic of Rwanda.' It notes that though the Government of Burundi ordered investigations into the killing, 'no single case has been concluded...'. Further, while making reference to UNHCR, the petition cites 'growing numbers of arrests, detention and assassination attempts of human rights defenders, journalists, and military officials.' By April 2015, the petition reports that the UNHCR has reported 'over 197,000 Burundians' had fled the country 'after having been harassed, having witnessed enforced disappearances and murders by the *Imbonerakure*, the youth wing of the ruling party, CNND-FDD.
7. The petition takes note of the measures taken to date by various organs and institutions of the EAC in addressing the Burundi crisis but regrets that these have been followed either by non-compliance or scaling down on requirements. These include the hosting of 3 Extraordinary Summits on Burundi (13th May 2015, 31st May 2015 and 6th July 2015), the decisions of the East African Court of Justice, and the missions of EALA. With respect to EALA, the petition says that 'while the EALA participated in the joint East African Community (EAC) Observation Mission to the Burundi Elections, it has **not** otherwise deployed its mandate and powers, under the Treaty for the Establishment of the East African Community, to the deepening political, human rights and humanitarian crisis in Burundi.'
8. The petition further elaborates that the last Summit appointed HE President Yoweri Museveni to mediate in the Burundi crisis but points out that the 'mediation has since then stalled.' In fact, in his oral submission, Don Deya cautioned against the assumption that 'there is something serious going on.' Discussing the question of compliance to EAC requirements, he confirmed that PALU 'had mobilized Burundian human right lawyers' activists at the Extraordinary Summits to ensure that the voice of the people was being heard'

but regrettably noted that a candid analysis even 'from a purely academic standpoint' of the three communiqués that the Summit issued on Burundi shows 'the trajectory is downwards.' He said: 'First Summit – very resolute, laying out the principles, directing that certain pieces of action be taken and on the basis of which there would be a follow up Summit. Where those actions were taken, the follow up Summit was full of hesitation and a decision that begins becoming meek and weak by the Third Summit. Now really, the statement doesn't say much. And we are told that a lot of the instructions around how the negotiations should have taken place were actually not in the communique.'

9. There was, in the view of the petitioners, similar non-compliance with decisions of the EACJ with reference to EACJ Ref. No. 7 of 2013 and EACJ Ref. No. 1 of 2014 (*Annexures 3 and 4*). In fact, the political crisis continues to simmer partly because of acts of omission. It cites three examples in the oral submission and concludes in the oral submission that 'Unless the political crisis is resolved, preferably through all-inclusive mediation, then the human rights and humanitarian crisis will only continue and possibly deteriorate even further.' The three examples include the following: First, 'Attorneys' General of the East African Community (EAC) determined that the candidature, for a 3rd term, of President Pierre Nkurunziza, was unlawful. However, the EAC Summit failed or neglected to act in accordance with this advice, even merely to publicly admonish President Pierre Nkurunziza and the CNDD-FDD political party regarding President Nkurunziza's then impending candidature.' The second refers to 'The Summit of the East African Community (EAC), International Conference of the Great Lakes Region (ICGLR), and the African Union (AU) all called for a postponement of the Presidential Elections to enable negotiations and consensus-building, which was not heeded to.' The third and last is 'The Election Observation Mission from the East African Community (EAC) determined that the elections were not free, fair, participatory or inclusive.'
10. There is some variance between the written and oral petition regarding the prayers the petitioners requests the house and/or the committee to undertake. This is mainly because some of the prayers in the petition had been overtaken by events. But broadly, the following are the requests in the oral submission (*See Annexure 1*).
 - i. Openly condemn the: -
 - a. Assassinations, extrajudicial and arbitrary killings
 - b. Use of inciting and incendiary language
 - c. Inordinate use of force by the Police, security officials, members of the *Imbonerakure* and all other armed Non-State Actors that have taken the path of violence to achieve their objectives
 - ii. The House, or a Committee within it, to undertake an urgent Fact-finding Mission into Burundi.
 - iii. The House to make a strong recommendation to the Summit TO SUSPEND the Republic of Burundi from the EAC.
 - iv. The House to make a strong recommendation to the Summit that the Republic of Burundi cannot and will not assume the rotating

Chairmanship of the Summit of the East African Community (EAC), until resolution of the political, human rights and humanitarian crisis in Burundi.

- v. The House to make a strong recommendation to the Summit that the Republic of Burundi cannot and will not nominate a candidate for the position of Secretary General of the EAC, which will be an agenda item at the next EAC Summit (scheduled for February 2016).
- vi. The House to request the African Union (AU) for robust leadership in intervention and mediation in the political, human rights and humanitarian crisis in Burundi, especially because the AU has a more comprehensive and far-reaching legal and institutional framework for intervention than the EAC currently has, including: -
 - a. The Constitutive Act of the African Union, 2000
 - b. The Protocol relating to the establishment of the Peace and Security Council of the African Union, 2002
 - c. The African Charter on Human and Peoples' Rights, 1981
 - d. The African Charter on Democracy, Elections and Governance, 2007
- vii. In particular, therefore, the House to call upon the Chairperson of the Assembly of Heads of State and Government of the AU to take concrete steps towards preventing Burundi from descending into Genocide or mass atrocities, including: -
 - a) Urgently deploying the Peacekeeping Contingent as directed by the African Union Peace and Security Council (AU-PSC) in the Communiqué of its 565th Meeting, Addis Ababa, on 17th December 2015.
 - b) Suspending Burundi from the AU.
 - c) Activating the sanctions regime of the African Union (AU)
 - d) Enhancing the numbers and capacity of the Human Rights Monitors and Military Monitors deployed to Burundi
- viii. In this regard, the House to consider dispatching a Delegation to interact with the African Union (AU) in Addis Ababa, Ethiopia.

Background Issues

11. Two critical points need to be stated upfront. First, in their submission to the Committee, several members of the Burundian government delegation made reference to the post-colonial history of Burundi. They suggested that it has been a sad and tragic history; one 'where people talk about death, refugee, hatred, etc.' They insinuated that to understand the current crisis one must understand this sad and tragic background. Second, the government delegation as well as the opposition and civil society organization all agreed that a key instrument in the history of Burundi that restored peace and provided a basis for co-existence was the Arusha Peace Accord. The Arusha Peace Accord provided a basis for dealing with many elements that help the people of Burundi.
12. At its sitting on 16th January 2016, the committee deliberated on these two points as they discussed the possible structure of the report and agreed, among other things, on the need for background section in the report. The Committee will therefore preface the detailed discussion of the hearing and its core themes by providing a brief and extremely sketchy background to act as a pointed to

members and enable them frame the issues that were canvassed during the hearing. The key issues that members might wish to pay attention to include four; i). Burundian colonial experience; ii). the post-colonial situation, iii). the Arusha Peace Accord, and iv). the role of EAC Partner states as guarantors. These issues will not be elaborated on but reference on specific documents is encouraged.

13. It is important to remember that Burundi's colonial and post-colonial experience have witnessed violence of mass atrocities proportions. When the government delegation spoke of the history of Burundi being tragic, they implied that that tragedy involved cycles of civil war, genocide and death. War and genocide in Burundi is thought of as being ethnic in origin and character; it always begins with and always pits Tutsi versus Hutu. However, this rendering of the history is inaccurate as the historical record shows and also as government of Burundi delegates and opposition stakeholders who testified indicated to the Committee. To freeze this tragic history in ethnic explanation is to assume there is no 'logic' in war and to assume that 'people simply act out a role prescribed by their ethnic identity.'¹ It also means therefore that both Hutu and Tutsi are homogeneous; there is nothing *among* them that is cross-cutting and nothing *within* them that differentiates them. In fact, such internal differences existed in pre-colonial Burundi.
14. The history of mass atrocities state in Burundi must be located primarily with the onset of the modern colonial state. Indeed, the cycles of violence in Burundi have been the consequence of struggles over the state. This has therefore defined the nature of the conflict the committee is dealing with. The Burundi problem is a political problem; its actual execution finds expression in ethnic terms. Without dealing with the problem, we will be unlikely to effectively deal with the other ways in which the violence is expressed. This is the reason why the Arusha Peace Accord is seen as central to the solution because it focused on the political problem by addressing the ideology of exclusion and marginalization embedded in Burundi politics. The Accord also cited EAC member state, the AU and UN among others as guarantors to the mediation and sustainability of peace in Burundi.

The Hearings

Key Issues in the Petition Elaborated

15. The details of the written and oral petition are presented above. However, a number of Burundian stakeholders including representatives of opposition political parties, civil society, women movement and the media elaborated on the petition. The Committee captures the key issues they articulated in this section.
16. The stakeholders who spoke on 15th January 2016 broadly agreed with the petition, elaborated and illustrated its key prayers. Central to their argument was the assertion that the problem in Burundi is a political problem. They also

¹ Patricia O. Delay, *Gender and Genocide in Burundi: The Search for Spaces of Peace in the Great Lakes Region*, Oxford: James Currey, 2007, p. 43

clarified how this problem has mutated into an ethnic problem, citing parallels with the 1994 genocide in Rwanda. The political problem, for them, found immediate expression in the third term question revolving around President Pierre Nkurunziza's decision to run for elections in 2015. According to them, this decision was against the Arusha Peace and Reconciliation Agreement. This Agreement, to them, is the instrument designed to ensure peace and stability in Burundi. As one presenter summarized, "The main idea contained in the Arusha Peace Accord is the fight against the ideology of exclusion and genocide." The Accord was designed to end exclusion and marginalization in Burundi. Though it is not perfect, the stakeholders repeatedly confirmed that it was the touchstone and baseline. Indeed, they demanded this as the basis of dialogue stating that dialogue goes with Arusha Peace Agreement. They know that the Accord is not perfect but it has been our solution. That solution, added Ms. Baricako, is what we are holding to go for peace. Whoever wants peace must go through Arusha Accord. 'We don't want to review it; whoever wants to lead Burundi must built on the Accord; improve it and expand it. But don't break it.' Arusha Agreement must be the pillar of whatever conclusion is achieved.

17. The challenge though is that following the decision to run for the third term and the failure to pass it through parliamentary process, the political problem has mutated in many ways and has become intractable every day it is not addressed. Not only has it undermined the legitimacy of parliament and judiciary in the eyes of opponents of the government, it has also led to more intractable problems. The main expression of the intractable problems, according to Mr. Vital Nshirimana, is the awful crimes and human rights abuses that have become prevalent in Burundi. They include killings and rape but also the silencing of human rights defenders and democracy watchdogs. They argued that the clampdown on peaceful demonstrations on 26th April 2015 was a major moment in human rights violations. Since then, the 'human rights and humanitarian situation has deteriorated considerably where 1,087 persons have been killed and more than 232,000 Burundians have fled the country to leave [sic] in precarious conditions. Many are flying for a second or a third time due to the Burundian crises.'

18. Most presenters gave a gruesome picture of the nature of the crimes and human rights abuses including details on refugees and internal displacements, arrests and detentions. Pictures of some of the notable instances of murders were shown and submitted for record (*Annexure 5*). For instance, Mr. Nshirimana cited the admission in January 2016 by Mr. Martin Nivyabandi, Minister in charge of Human Rights who recognized that '10,000 cases of sexual assault were committed.' Other than the rapes, there were gruesome killings and cases of mass graves. The most recent are revelations by Amnesty International of suspected mass graves of people killed on 11th December 2015 in different locations that the organization's researchers identified and confirmed using satellite technology.² It was explained that since May, 2015, 'mass graves have been identified in Kamenge, Kinama, Rumonge,

² See <http://www.amnestyusa.org/research/reports/hurundi-suspected-mass-graves-of-victims-of-11-december-violence>

Mugongomanga, Karusi, Bukinanyana, Mpanda, Mutimbuzi, Muramvya and Karusi just to name a few.' Some of these cases were recently confirmed by the UN High Commissioner for Human Rights.

19. Cases of human rights abuse identified at the hearing included restrictions on freedom of expression, association and movement. This has entailed the 'suspension of leading civil society associations widely known for their commitment to speak on behalf of the voiceless.' Further, detentions and disappearances have become common with the danger that the state prison system has limited capacity to hold those arrested and detained under humane conditions. The government delegation (discussed below) also spoke to this but did not provide detailed information on prison capacity. The breakdown of law and order has aggravated the situation with kidnappings, assassinations, murders, torture and extra-judicial killings being committed on a daily basis. Kidnappings and ransom have also increased amidst a complex but fragile situation where perpetrators are rarely apprehended. The rising levels of incitement and hate, at times articulated by state officials and other public figures, have only worsened the situation. The example of statements by the Vice President, Mr. Gaston Sindimwo and Mr. Alain Guillaume Bunyoni, Minister for Public Security, to name but these two, were cited and recorded in the Hansard (*See Annexure 1*). There are other cases of incitement to hate not detailed in this report but recorded in the Hansard.
20. The presenters put responsibility for the increasing collapse of civic order at the doorsteps of government. They found the government to be, on the one hand, intolerant to dissenting political views and, on the other hand, complicit in the fast deteriorating security environment. Politically, intolerance began through labeling of persons, politically or ethnically. The distinction between 'talkative minority' and 'silent majority' was an instance in which people were being labeled and set up for harassment and attack. The presenter cited the statement of Mr. Alain Guillaume Bunyoni who described protestors as a minority. To them, this was an opening salvo in what has become a campaign of targeting those who do not share the government political position. The target has occasionally been ethnically defined. But on other occasions, it has been against human rights defenders and media personalities. Examples of those who have been assassinated or died in questionable circumstances are also presented in the Hansard record. Indeed, the presenters worried that the massaging and packaging of words indicate a gradual shift towards a genocidal trend; a danger, they pleaded, that should not be ignored by the EAC. The use of slogans like 'tuzobamesa' (we will wash you) used in a CNDD-FDD demonstrations of 10th April 2015 or 'Gukora' define this dangerous hateful trend. The critical, pressing and persisting question that was repeatedly raised at the hearing was why convictions against perpetrators of these heinous crimes or hate messages are never arrested and convicted.
21. Part of the answer to this question, the presenters suggested, was the breakdown of law and order and the inability of institutions of governance like the Judiciary to exercise their mandate. This has meant that government is either unable to ensure security or it is complicit in this breakdown. The

presenters explained both scenarios. They identified the party youth, *Imbonerakure*, as largely responsible for the rising insecurity. For them, the confirmation that *Imbonerakure* was in fact a militia group came from a report by the UN High Commissioner for Human Rights who in April 2015 formally stated in writing that *Imbonerakure* was proven to be a militia. In terms of its structure, it was explained that *Imbonerakure* started as a CNDD-FDD Party youth wing, like any party youth across all the partner states, designed to prepare future leaders. Its structure therefore conformed to the structure of the party and it was widely present across the country into the districts and neighbourhoods. However, in Burundi, this youth began to expand and acquire functions that were not strictly of a youth development character. They acquired arms and have become a militia, at times even assuming the functions originally reserved for the disciplined forces. The presenters report that *Imbonerakure* are reported to work closely with the police and defence forces and are known to assist state officers in making arrests.

22. It was the testimony of several presenters that some of *Imbonerakure* youth have been guilty of murder and targeting of opponents of the government. They cited the example of Mr. Geva Nduimana. Having pleaded guilty of murdering four Italian nuns, Mr. Geva Nduimana was later sent to peacekeeping mission though he is not listed in the army. The presenters showed his picture in an AU military uniform.
23. The presenters asserted that Burundi's participation in peacekeeping missions masked a growing peace and security deficits at home. With respect to peace, they averred that the provisions of the Arusha Peace Accord on the ratios to be maintained in the army and police had been broken thereby allowing for exclusion and marginalization to re-emerge. Tutsi members of the army, they claimed, retired and were not replaced. In their place, the CNDD-FDD took advantage to reinforce the role of the militia, *Imbonerakure*. They concluded that the 'militia is now playing the role of the army and the police to the extent that *Imbonerakure* go for peacekeeping missions.' They called on the AU and UN to decide on the repatriation of Burundi peacekeepers alleging that each peacekeeper is required to 'contribute' USD200 per a month to President Pierre Nkurunziza. Furthermore, the supported the idea of an AU peacekeeping force in Burundi.
24. The presenters raised the issue of responsibility to protect, an idea that had also been canvassed by the petitioners. Asking why EAC has not played a major role in the Burundi crisis, they wondered why 'Burundians are screaming, crying and calling for help while people are just watching. We do not know where help will come from and how it will come.' Speaking on behalf of the women of Burundi, Ms. Baricako stated: 'I believe that the East African Community has a responsibility to be there, to help, to protect and to rescue. If you cannot do that, what is the point of being a community?' Similar sentiments around the role of EAC were expressed by Dr. Jean Minani who challenged EALA to act and expressed confidence in Arusha Accord as the unifying factor that brought peace.

25. The requests for protection are predicated on the argument that matters are growing worse and Burundi is fast getting on the brink. It was reiterated that Burundi is one of the poorest countries in the world; corruption is rife and people are being killed randomly. The judiciary and election management body are not independent; things are upside down and appointments go to people who have no higher levels of education. There are too many governance abuses and the 'President wants simply to be president; but no reason why he wants to be president.' In this situation, even the chain of command in the disciplined forces has broken down and *Imbonerakure* are acting as a parallel force. It was argued that the Inspector General of Police, Mr. Andre Ndayambaje, and the Minister for Defence do not have operational command and control. Burundi security forces are no longer able to protect civilians and the levels of mobilization in the country are such that 'Imbonerakure are ready to commit genocide.'

Key Issues in Government Perspective

26. The Government of Republic of Burundi appeared before the committee on 25th January 2016 and was represented by a delegation led by Hon. Leontine Nzeyimana, the Minister Responsible for EAC Affairs in Burundi. The delegation however included a mix of representatives from government, political parties, and civil society. This delegation took a long-term view of the Burundi crisis with one delegate describing the post-colonial history as tragic. On her part, the minister noted: 'As it has been happening in Burundi since the early 1960's, the electioneering period was marked by negative propaganda intended to create in Burundi a political and institutional instability.' Most of the delegates therefore acknowledged that indeed there is a crisis in Burundi and attributed it to what they referred to as the radical opposition.

27. The delegates defined the radical opposition as a group of opposition politicians who, working to collaboration with segments of civil society and the media, have spawned rumour and propaganda against the Government of the Republic of Burundi. This radical opposition, according to the submissions and oral testimony, organized itself in advance of the elections around an alliance of democrats for change known as ADC-*IKIBIRI* (*Annexure 6*).³ As such, the so-called third mandate, which the Minister leading the delegation referred to as 'second universal vote' was a mere 'additional pretext' since 'this issue had been resolved by empowered court such as the High Court Constitutional Court of Burundi and the EAC [sic] Court of Justice...' (*see Annexure 6*)⁴ The real aim of the radical opposition was to sabotage a democratic process; that is, 'disturbing the electoral process and the institutions from this process.' They did this by generating 'negative propaganda intended to create in Burundi a political and institutional instability.' As part of their agenda, they generated 'a noxious rumour campaign ... to particularly instill fear and get Burundians to flee the country for neighbouring countries before the elections take place (*Annexure 7*).'⁵ A core part of their call, it was pointed out, was to make

³ Statement by Jacques Bigirimana dated 22nd January 2016.

⁴ Statement by Jacques Bigirimana dated 22nd January 2016.

⁵ Statement by Hon. Leontine Nzeyimana, Minister to the Office the of the President Responsible for EAC Affairs.

'gratuitous allegation' including repeated references to arbitrary killings, raping of Tutsi women, imprisonment of journalists.

28. According to the government-led delegation, the violence in Burundi at the moment is largely due to the activities of this radical opposition whom they argue support 'the use of force, insurrection and even the putsh [sic].' For them, the radical opposition has been joined by 'some members of civil society and medium [sic] such as African Public Radio of Alexis Sinduhije.' Not only are these actors collectively interested in fanning violence, a member of the delegation also asserted that they were engaged in acts of war incitation and simulation to the genocide which cause many people to flee with objective to prove the impossibility of elections[sic].' But as the delegate cited above notes, and as another one from civil society quoted below complements, there were other opposition parties that 'wish [sic] to attend to the elections as our party FNL...' Distinguishing themselves as the 'democratic opposition', the delegate noted that this radical opposition has since undertaken a campaign of demonization which attacks the 'Burundian national forces for defense and security and the young people affiliated to the political power "Imbonerakure"' for horrible killings.
29. Civil society and the media were also described as accomplices in the campaign against the Republic of Burundi but with the caveat that those who were involved were few and had mostly fled the country. According to the delegates, these had joined the radical opposition to spread a campaign of hatred internationally against President Pierre Nkurunziza. Their aim, according to the delegation, was to provoke international support based on the argument that the country was on the brink of genocide. According to the Minister, the violence was however largely the result of propaganda orchestrated by the same elements and their accomplices. Acknowledging that indeed violence had broken out, she explained that 'the propaganda above rapidly evolved into violent rioting, destruction of property and killing of people. What was preached as peaceful demonstrations and mere civil disobedience became in some neighbourhoods in Bujumbura city a stronghold of armed violence and violent attacks to incapacitate the police and defense and security forces and topple the Government with the help of foreigners and ill intended mass media campaign.'
30. The government delegation defended the forces of law and order as simply engaged in doing their work. They showed a video (placed on record) documenting the good work of the forces of law and order (*see Annexure 8*). However, these forces of law and order had also been the target of attack by the radical opposition. According to several delegates, the nature of violence in Burundi was very minimal and life was back to normal in many parts of the country. In fact, they could only identify four places where violence had been concentrated.
31. The delegation associated the widespread fleeing of refugees to neighbouring countries to rumours. Asked to clarify if refugee movement was due only to rumours and fear, they confirmed this to be the case. However, they

also confirmed that some of the refugees had returned and called on others to return. The Minister expressed her wish 'that the citizens who fled the country for fearing violence erupting from elections, voluntarily return in their respective homes which their fellow neighbours have safeguarded, to work hand in hand with the other fellow Burundians in order to develop the country. They repeatedly invited EALA to make a visit to Burundi to witness for themselves. In response to a question, they described briefly how returning refugees are handled even though they did not identify any special government process by which they came back or were re-integrated in society. Most of these refugees, she said, 'have already safely returned home and settled in their own compounds, they are most welcome in their homeland.' She however was unable to provide the numbers of those who have returned but promised to supply them to the committee. This had not been supplied by the time the report was ready.

32. The delegates submitted that EALA has a role to play in helping Burundi restore order. This included ensuring that no member of the radical opposition is hosted by EAC Partner state. The minister wondered why 'no strong condemnation was heard and some of the perpetrators including military, politicians and civil society activists roam the Region and Western countries blackmailing the Republic of Burundi.' In a statement directed at EALA, a delegate cited 'some supposed representatives of Burundi at EALA level' whom he claimed 'plead rather for the opposition; which is prejudiciably [sic] to the image of Burundi' and argued that 'EALA seems not to be enough [sic] informed about the security and the political situation that occurs in Burundi (*See Annexure 6*).'⁶ The delegation cited the Republic of Rwanda urging the need to 'normalize cohabitation with Rwanda which is hosting and Supporting Burundian rebels who keep attacking our country.' They cited the 'disdainful statements' of the Rwandan President Paul KAGAME' that they thought were 'devoid of a minimum of respect towards his Burundian counterpart...' In a letter addressed to the EAC Summit but which was also put on record at the hearing, Jacques Bigirimana goes further to associate the radical opposition with the EAC secretary General cautioning against 'the dangerous proximity of the radical opposition with the EAC Secretary General Richard Sezibera, who excels in being biased in the process of inter Burundian dialogue and who has largely failed in his mission of diplomacy required by his rank (*See Annexure 6*).'⁷ Thus, according to these delegates, Rwanda is not just instigating tensions in Burundi, it is also actively supporting the radical opposition by setting up training camps for Burundian youth. They cited the Field Report of Refugee International as evidence and referred also to footage in the video they screened (on record) to confirm. They reported also that they had sent a letter to SG that he should never be part of the team facilitating peace talks in Burundi.
33. The delegation did not think that the petition is genuinely owned by PALU as the lead petitioner. Arguing that the petition has no 'factual basis,' a delegate argued that PALU was being 'exploited and manipulated to lend his [sic] label

⁶ Statement by Jacques Bigirimana dated 22nd January 2016.

⁷ Letter to EAC Summit dated 21st January 2016

of "Pan-African organization of lawyers" in order to legitimize classic false and recurring accusations that Burundian civil society fiercely opposed to the Current Burundian Government....'⁸ (*Annexure 9*). In fact, the delegate asserted that the "stop at the third/halte au troisieme mandate" campaign 'does not even represent 1% of the 6,000 civil organizations regularly registered and active in Burundi' and called on EALA to sponsor 'a survey mission which will be deployed in Burundi to listen to representatives of 6000 organizations [of] Burundian civil society as a whole (*See Annexure 9*).'⁹

34. The argument above was meant to delegitimise the petition for being presented with persons without any *locus standi* on the matter. In particular, the delegates with the exception of Mrs. Concilie Nibigira of the UPRONA Party, framed the human rights issue in the petition as either the result of propaganda by the radical opposition or orchestrated acts by the same actors in civil society. They dismissed the idea of peaceful demonstrations and instead argued that the Burundian civil society organisations 'were subject to prosecution due to massive and horrible violations of human rights and serious human abuses that have characterized too [sic] violent demonstrations of April and May 2015, which protests culminated in an attempted *coup d'etat* (*See Annexure 9*).'¹⁰ Indeed, a delegate provide an accurate and sequenced example of one such violation saying he had many more examples he could not share due to time constraints. Asked to elaborate, he promised to provide the committee with more details. These had however not been received by the time this report was ready.

35. Mrs Concilie Nibigira however acknowledged on behalf of UPRONA Party that since the April 2015 hundreds among police and civilians have died or been wounded due to violence. "The UPRONA Party has no doubt that errors have been committed in the management of such violence and innocent lives have been washed away by the repression of the insurrection. Cases of kidnapping and extrajudicial killings, rape, torture cases, bodies thrown into mass graves had sometimes [been] reported.' To avoid exaggeration and any hasty, subjective and biased conclusions, about the scale of these evils and their authors', she asserted, 'the UPRONA Party recommends a special investigation, free, independent and impartial committee to be put on the spot to establish responsibility. In the establishment of this commission, the United Nations, the African Union, the East African Legislative Assembly could bring their contributions and support to reassure each other about the credibility of the procedure.' She however rejected the prayers in the petition around suspension and deployment of peacekeeping contingent asserting that 'it is a shame that Burundians accuse their country [of] all those evils.'

36. The delegation rejected the idea of foreign troops in Burundi terming it as the main reason the radical opposition has been 'demonizing Burundi defense and security forces as well as the police' and 'undertaken a hideous campaign to instill hatred and ethnic division, and claim that there is a risk of genocide in

⁸ Statement by Gilbert-Becaud Njangwa dated 22nd January 2016

⁹ Statement by Gilbert-Becaud Njangwa dated 22nd January 2016

¹⁰ Statement by Gilbert-Becaud Njangwa dated 22nd January 2016

Burundi.' The delegation reaffirmed the good work of the defense forces restating that 'the composition of defense and security forces as well as the police is in the spirit of the Arusha Agreement for Peace and Reconciliation in Burundi. They concluded that, in view of this, 'there will be no genocide or military coup d'état in Burundi anymore.'

37. The delegates challenged the petitioner on the principal of rotation at EAC and affirmed that not only should this principal be safeguarded but it should be implemented as contained in the Treaty. Further, they affirmed their faith in the Arusha Peace Accord and in the Inter Burundian Dialogue. They urged EALA to send a mission to Burundi to confirm the truth on the ground.

Key Outstanding Issues

38. There are numerous outstanding issues that the Committee needs to resolve or at least carefully think through as a basis of providing their recommendations to the House. Among these are the:-
- a) Political Issues
 - b) Human Rights violations
 - c) Youth and Insecurity
 - d) Humanitarian Issues
 - e) Role of EAC partner states: Rwanda
 - f) Role of AU/UN

We discuss each in turn.

39. **Political Problem:** All the presenters at the hearing acknowledge, whether explicitly or implicitly, that Burundi faces a crisis. They also implicitly or explicitly agree that this crisis has major political connotations. In essence, it is a political crisis involving a real or perceived struggle over the modern Burundi state. They also agree that there is a relationship between the political problem, on the one hand, and the human rights and humanitarian consequences on the other hand. They all demonstrated a desire to end the crisis in Burundi. They however disagree on who is responsible for the political problem and how to solve it.
40. The government-led delegation attributes the cause of the political problem to the 'radical opposition' and their allies in a segment of civil society and the media. Their analysis of the situation zeroes down on the argument that having been unable to stop elections, the radical opposition intensified a propaganda campaign in and outside Burundi that has resulted in protests, violence, chaos and killings. Precisely because they name the elections of 2015 as the 'second universal election,' they sidestep the issue in dispute, that is, whether President Nkurunziza was running for a third term or not. They make reference to judicial determinations on this issue to seal their argument.
41. The petitioner and stakeholders who supported the petition define the electoral contest as a 'third term mandate.' They think it was an illegal attempt at renewal of mandate and against the Arusha Agreement which they define as the cornerstone for peace in Burundi. By abrogating the Arusha Agreement,

they argue that the government in the Republic of Burundi has lost credibility and legitimacy not just locally but, by implication, also internationally.

42. The Committee confirms that precisely because the problem is political, it is extremely difficult to envisage a judicial solution that will last and restore peace in Burundi. This is true not just for Burundi but many other countries that have a protracted history of violence, chaos and war. Therefore, by sidestepping the question whether President Nkurunziza was going for a third mandate or not, the Government of Burundi will not solve the problem we understand they wish solved. To solve the problem, we must confront, not the legality, but the legitimacy of President Nkurunziza's new mandate. Those who are contesting his new mandate are raising both legal and legitimacy questions. The problem is that they are also questioning the legitimacy of the institutions that could, or that have, adjudicated and determined the legality of the new mandate. Whether the government of the Republic of Burundi likes them or not, members of the opposition are now active and indispensable players in the dispute in Burundi and cannot easily be wished away.
43. The Committee therefore recommends renewed emphasis on Inter-Burundi Dialogue led by President Yoweri Museveni. It strongly recommends active engagement between the different factions within Burundi. It is not possible that a protagonist in the negotiations can decide who to dialogue with on the other side. Any matters relating to who sits in the negotiation must be determined by the chief negotiator who will review and determine the suitability and credibility of negotiators proposed by each team in the negotiation.
44. **Human Rights Issues:** The political crisis has engendered numerous and unspeakable human rights violations committed by actors on both sides of the dispute. All delegates at the hearings pointed out instances of human rights abuse even if they attributed them to the other side. They included rape, extra-judicial killings, assassinations, detentions, and unexplained disappearances. Evidence of mass graves and gruesome pictures of unspeakable mutilations were put on record. Other violations of human rights including clamping down on freedoms of expression, association and movement were cited.
45. The Committee acknowledges that most of these violations are closely tied up to the breakdown of law and order and the desire by each side to win in the current political dispute in Burundi. In order to reduce and completely solve the violations, the Committee understands that progress in resolving the political problem and restoring law and order is an essential prerequisite to effectively restoring human rights and resolving their effects. However, the Committee also notes that other examples of successful negotiations to solve political crisis in the region have been sequenced. In Kenya, the four agenda items in the Kenya National Dialogue and Reconciliation were sequenced in order of priority starting with i). Immediate action to stop the violence and restore fundamental rights and liberties; ii). Immediate measures to address the humanitarian crisis, and promote healing and reconciliation; iii). How to overcome the political crisis; v). Addressing long-term issues. The Committee

recommends a rethinking of the sequencing of the agenda items in the Inter-Burundi Dialogue that will prioritise addressing urgent human rights violations that are necessary to maintaining or restoring the social fabric of Burundi. Further, freedoms of movement, association and expression that are essential for effective return to peace should be addressed urgently. This will facilitate negotiation since any goodwill demonstrated from any side is useful to advancing the dialogue.

46. **Youth and Insecurity:** There was a wide gulf at the hearings regarding the role of the youth in the unfolding crisis in Burundi. The government-led delegation referred to them simply as party youth while the petitioners and stakeholders variously called them party youth or militia. In fact, while one can count how many times the government-led delegation used the name *Imbonerakure*, the name was used uncountable times by the petitioners and stakeholders. The Committee takes note that there is no homogeneity in *Imbonerakure* and what they do. There obviously are many youth whose interest in the group is genuine and restricted to legal engagements. Indeed, the Committee heard from Jean Minani that in their original intention, *Imbonerakure* was simply a party outfit, designed to mentor youth for purposes of future leadership and for engagement in development. However, this changed at some point and some of the youth acquired new roles and functions.
47. The Committee is aware that though there is no homogeneity among the youth, there is now enough credible evidence from UN and other Human Rights sources that confirm that *Imbonerakure* plays the function of a party militia. Indeed, it has been repeatedly reported that they have been involved in "arbitrary" arrest of members of the opposition "under the guise of national police or SNR officers."¹¹ Their presence is so strong it may have overshadowed the presence of youth groups affiliated to other parties who, as the Committee heard, also exist. Not only have *Imbonerakure* been involved in the gradual breakdown of law and order, this context has allowed more merchants of violence who are not necessarily active disputants or members of the *Imbonerakure* to also partake to a gradually deteriorating political environment.
48. The Committee notes that the visibility of *Imbonerakure* may also be the consequence of Burundi's poor economic performance. Poverty tends to affect women, youth and children disproportionately. In the case of Burundi, as in the case of many West African countries that collapsed into violence and civil war, youth were both *a risk* and also *at risk*. Nothing illustrates this better than the findings of the UN. According to a UN Background paper prepared for the Advisory Group of Experts (AGE) Reviewing the UN Peacebuilding Architecture, 'job creation at levels needed for sustainable peace consolidation [in Burundi] remains distant, and a large youth population (estimates suggest 60+% of the population) remains dangerously under-employed and potentially

¹¹ Information collated from UN sources; see details
<http://www.justice.gov/sites/default/files/coir/legacy/2014/09/04/BDI104343.FE.pdf>

open to remobilization.¹² The Committee recommends that a simultaneous process of addressing the risk *Imbonerakure* poses against opponents needs to be accompanied by an equally vigorous process of empowering the youth towards gainful livelihood and engagements. The framework for this is included in the engagement the UN Peacebuilding Commission and the UN Peacebuilding Fund have with Burundi. But CNDD-FDD must be engaged and encouraged to transform the *Imbonerakure* from a militia into a real party youth wing handling leadership and development issues.

49. **Humanitarian Issues:** The Committee agreed that priority must be placed on stopping the killings. Indeed, in terms of sequencing the dialogue, this should be priority and a commitment should be extracted from negotiators that killings must stop in order to allow for relevant actors to institute immediate measures to address the humanitarian crisis. The key focus must be to address the refugees challenge and internal displacement. It is noted that the government-led delegation was unable to provide any official plans of return and resettlement of refugees. Also, there are no official special plans for resettlement of those internally displaced.
50. The Committee notes that this Assembly is seized of the issue of Burundi refugees. The Assembly sent a Goodwill Mission to Burundi Refugees in Kigoma, Tanzania and East Province, Rwanda from 31st May to 5th June 2015. Its Report was discussed in the Assembly and it was recommended, inter alia, that 'EAC Partner States should support the enactment of a regional legal framework for the management of refugees' and 'harmonize laws on how to handle intra-refugee matters in the region.'¹³ In view of developments since the Goodwill mission, the refugee and IDP challenge has changed and worsened. The Implementation of the recommendations of the Committee will go a long way to ease the situation.
51. **Role of EAC Partner States:** The EAC has been seized of the Burundi matter since the matter acquired international attention. The EAC has been at the forefront of spearheading initiatives to resolve it including initiating and supporting the Inter-Burundi Dialogue. The initiatives have been and continue to be very important. The Committee recommends that the Assembly assure other organs of the EAC full support for those initiatives.
52. However, the Committee noted a general sense among the petitioners and stakeholders that the EAC is not doing enough in its powers to facilitate a quick resolution of the Burundi crisis and to ensure that killings stop, insecurity ends, humanitarian initiatives are implemented and human rights violations are halted. As the petitioners noted, the idea of a community is under threat if EAC does not vigorously exercise its power to support but also, and where necessary, censure and sanction to help restore law and order in Burundi. The

¹² Burundi AGE Case Study Report, March 2015. The Report feed into the Report of the UN Advisory Group of Experts Reviewing the UN Peacebuilding Architecture, 2015.

¹³ Report of the EALA Committee on Regional Affairs and Conflict Resolution on Goodwill Mission to Burundi Refugees in Kigoma, Tanzania and Eastern Province, Rwanda: 31st May to 5th June 2015, Arusha, Tanzania, October 2015.

petitioners noted that the dialogue has proceeded haltingly; that decisions made at various levels often get ignored or are implemented half-heartedly in Burundi; that this has caused other supportive organisations like the AU and UN to tread carefully in view of the principle of subsidiarity which provides for a sequence in intervention. The Committee recommends that the Assembly takes note of these concerns from citizens of EAC. It also recommends that the Assembly shall urge those involved in facilitating the resolution of the Burundi crisis to enhance their engagement with opposing sides towards quick and peaceful resolution and to use all possible means, including censure and sanction to achieve the urgent goals of stopping killings, ending humanitarian crisis and resolving the political crisis. This is partly because the Burundi crisis can easily become the Achilles' heel of the EAC.

53. **Rwanda:** The importance of this crisis to the EAC was brought home by accusations leveled against a Partner State by the Government-led delegation. Except for one Report, the delegation was unable to provide adequate evidence to the Committee to validate the claim that the Republic of Rwanda is hosting and militarily training Burundi refugees. They also claimed that the Secretary General of the EAC was biased but did not provide any evidence for the claim. The delegation stated that the information cannot be divulged at the hearing. The Committee makes three recommendations on this issue. First, that the claim of political and military interference by a Partner State needs a very high threshold of credibility for it to be effectively addressed. Second, that when such claims are noted, there are provisions within the Treaty that guide how they must be channeled and handled. Three, that mechanisms need to be enhanced and processes instituted within the EAC for handling peace and security matters. This will help provide effective protection to and immunize the office of the Secretary General from accusations of bias that might endanger it.

Recommendations

54. **On the Humanitarian Crisis in Burundi;**

The Committee holds the considered view that there exists a dire humanitarian crisis in Burundi including refugees, internal displacement, inadequate provision of social services and so on. That the committee appreciates the efforts undertaken by Partner States in alleviating the suffering of people of Burundi but a lot more needs to be done. The humanitarian crisis has particularly impacted negatively on children (see the UNICEF report on the children in Burundi). The committee believes a lot more needs to be done to address the humanitarian crisis in Burundi;

Recommendations to the Council of Ministers:

On an Appeal for further assistance to address the Humanitarian Crisis in Burundi;

- the committee urges the Assembly to request the Council of Ministers to make formal request for urgent/additional humanitarian resources from

both regional and international partners for Burundi, Partner States and neighboring countries hosting Burundi refugees and/or displaced persons.

On enhancing of the capacity of EAC to deal with the Humanitarian crises in the Community.

- that the Assembly urges the Council of Ministers to ensure the Community urgently and comprehensively review its legislative, policy, institutional arrangements and other measures that will put in place the necessary capacity to deal with humanitarian challenges and/or crises in the Community.

55. On the Human Rights Crisis in Burundi.

That the committee holds that there are serious and sufficient grounds to believe that gross human rights violations that have taken place and continue to take place in the republic of Burundi unabated. The petitioners' and other parties that appeared before the committee, including from the government delegation, all agree on this fact. They only disagree on the magnitude, responsibility and how to end the violations.

Recommendations:

On the duty of care and responsibility to protect:

- The committee holds the view that the Community under the Treaty obligation, the African union under the Constitutive Act, the United Nations and other international players owes a duty of care and responsibility to protection of the people of Burundi.

56. On the deployment of the African Union preventive and protection force:

- the committee appreciates the commitments taken by the African Union on the issue of sending a high level mission to Burundi to discuss the matter of the deployment of an African Union preventive and protection force to secure the wellbeing of the people of Burundi.

Recommendations:

- The Committee urges the Assembly to support the urgent completion of those discussions.
- The committee further, request the Assembly to allow the committee to make substantive recommendations on the matter after the visit of the A.U mission to the Republic of Burundi.

57. On the need to establish a credible mechanism to investigate allegations of gross human rights Violations:

Recommendations:

The committee urges the Assembly to support the establishment of a credible international investigative mechanism to independently investigate all allegations of human rights violations in Burundi.

The Committee urges the Assembly to support the full utilization of all possible measures allowed by the Treaty and Community law to be directed against any person or entity that will undermine the establishment and operationalization of a credible investigative mechanism.

Request to the Council to communicate the Assembly's Prayers to the Summit concerning the human rights crisis in Burundi.

- The Assembly request the Council to communicate to the Summit the following prayers of the Assembly -

The Prayers to the Summit:

That the Assembly requests the Summit to affirm that the Community has a duty of care and responsibility to protect the people of Burundi from violence and guarantee the safety and security of all citizens and persons in Burundi.

That the Summit to consider to facilitate and support the establishment of a credible investigative mechanism to independently investigate all allegations of human rights violations in Burundi.

That the Summit will put in place actions that will fully utilize all possible measures allowed by the Treaty and Community law to be directed against any person or entity that will undermine the establishment and operationalization of a credible investigative mechanism.

58. On the Political Crisis in Burundi;

The Committee holds the view that a political crisis that require urgent intervention exists in the republic of Burundi.

The committee appreciates the efforts of the Summit to resolve the political crisis in the republic of Burundi.

The committee in particular appreciates the appointment of H.E Yoweri Kaguta Museveni the President of the Republic of the Uganda as the Mediator of the peace process for Burundi.

Recommendations to the Assembly;

The committee urges the Assembly to -

- affirm that the political crisis in Burundi require urgent and concerted efforts to halt the humanitarian and human rights crises;
- appreciates the role and efforts by the Summit to bring lasting peace to the republic of Burundi in the past and currently;
- support an all-inclusive, participatory and credible process of dialogue in and outside Burundi to bring lasting peace to Burundi;
- support the work of the office of the mediator H.E Yoweri Kaguta Museveni.

59. Recommendations to the Council of Ministers;

The Committee urges the Assembly urge the Council of Ministers to -

Support the work of the Summit and the Office of the Mediator to bring lasting peace to the republic of Burundi in the shortest time possible.

Support all measures, including the full utilization all possible measures allowed by the Treaty and Community law to be directed against any party, person, group of persons or entity that will undermine the peace process including the work of the mediator.

For the Assembly to request the Council of ministers to communicate the following prayers to the Summit -

The Prayers to the Summit:

To urgently do all that is possible to stop the humanitarian, human rights and political crises in the republic of Burundi.

To fully empower and facilitate the work of the mediator and his office including appointing a team of respected states men and women to aid in his cause and/or office.

To consider to apply all possible measures allowed by the Treaty and Community law to be directed against any party, person, group of persons or entity that will undermine the efforts of the Community including the office of the mediator in its work.

60. On enhancing the Capacity of the Community to Deal with Peace and Security Matters:

The Committee holds the view that the Community urgently require to complete the EAC Peace and Security Architecture including examining and

developing the EAC's capacity, institutional arrangements and or Treaty, legislative and policy regime to allow the Community to address humanitarian, human rights and political interventions.

Recommendations to the Council of Ministers:

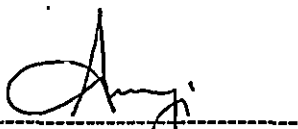








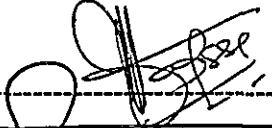
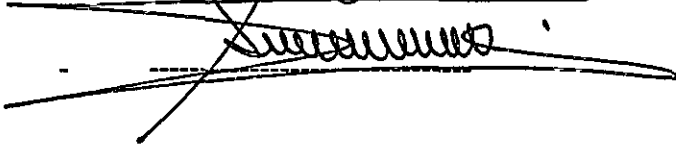

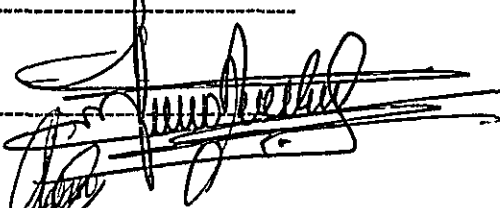


The Committee therefore urges the Assembly to urge the Council of Ministers to –

- hasten the process of completing the Community Peace and Security Architecture including putting in place the necessary institutions and competencies that will ensure the peace and security of the Community.
- ensure the Partner States completes the ratification of the EAC Defense Protocol and the EAC Peace and Security Protocol.
- report back to the Assembly on its next sitting on the progress made to finalize the ratification of Partner States of the two mentioned Protocols in (II).

Appendices

REGIONAL AFFAIRS AND CONFLICT RESOLUTION COMMITTEE MEMBERSHIP

(Report of Public Hearing on the Petition by PALU: 12th – 17th,
25th January 2016)

NAME:	SIGNATURE:
1) Hon. Abdullah Mwinyi	
2) Hon. Abubakar Ogle	
3) Hon. Abubakar Zein	
4) Hon. Adam Kimbisa	
5) Hon. Francois Xavier Kalinda	
6) Hon. Chris Opoka-okumu	
7) Hon. Dora Byamukama	
8) Hon. Dr. Martin Nduwimana	
9) Hon. Emmanuel Nengo	
10) Hon. Hafsa Mossi	
11) Hon. Martin Ngoga	
12) Hon. Mike K. Sebalu	
13) Hon. Pierre-Celestin Rwigema	
14) Hon. Sara T. Bonaya	
15) Hon. Twaha Issa Taslima	

ANNEXTURES

ANNEXTURE	DESCRIPTION OF ANNEXTURE
1	Petition of the Citizens of the EAC on deteriorating Human Rights and Humanitarian Situation in the Republic of Burundi, as presented by the Pan African Lawyers Union (PALU)
2	Uncorrected Transcripts of the Proceedings
3 & 4	EACJ with reference to EACJ Ref. No. 7 of 2013 and EACJ Ref. No. 1 of 2014
5	Pictures of some of the notable instances of murders were shown and submitted for record
6	Statement by Jacques Bigirimana dated 22nd January 2016
7	Statement by Hon. Leontine Nzeyimana, Minister to the Office the of the President Responsible for EAC Affairs
8	a video (placed on record by the government delegation) documenting the good work of the forces of law and order
9	Statement by Gilbert-Becaud Njangwa dated 22 nd January 2016

Annex 1

Clark

10/11/15

Monday 16th November 2015

prepare this for
transmission to Relevant
Committee.

Petition of the Citizens of East African Community on the deteriorating human rights and humanitarian situation in the Republic of Burundi

To: The Right Honourable Daniel Fred Kidega
Speaker of the East African Legislative Assembly
East African Community (EAC) Headquarters
Barabara ya Afrika Mashariki
Arusha, TANZANIA



To: The Right Honourable the Speaker and Members of the East African Legislative Assembly (EALA)

The Pétition of citizens of the East African Community draws the attention of the House to the deteriorating human rights and humanitarian situation in the Republic of Burundi, and seeks of this Honourable House a number of specific actions:

The Background

There has been a political, human rights and humanitarian crisis unfolding in the Republic of Burundi, from as early as February 2015. The political crisis emanates from the support, on the one hand, and opposition on the other hand, by sections of the Burundi population, for the candidacy, for a third term, of President Pierre Nkurunziza. The human rights crisis emanates from the attempt by several Burundian citizens to demonstrate in opposition to the candidacy; the response of the Police, security officials and members of the *Imbonerakure*, the youth wing of the CNDD-FDD political party, by violently cracking down on demonstrators and protestors; and the counter response by a section of the population taking up arms and confronting the Police, security officials and members of the said *Imbonerakure*. The humanitarian catastrophe is occasioned by thousands of Burundi citizens and other residents being internally displaced within Burundi, or seeking refuge in neighbouring countries, thus triggering one of the largest refugee situations that the East African/ Great Lakes region has encountered in the last decade.

The political, human rights and humanitarian crisis

Assassinations, extrajudicial and arbitrary killings: There have been numerous reports of cases of assassinations, extra judicial and arbitrary killings with reports of more than 130 people having been killed in the Capital Bujumbura and in other parts of the Country. Recent reports by the media and by Non-Governmental Organizations (NGOs) indicate that decapitated bodies are regularly picked up off the streets of Bujumbura, with macabre scenes of butchering and ripping out of organs. There is concern that the killing trends are ethnic in origin.

Although the Government of Burundi has ordered investigations into the killings, no single case has been concluded, including the assassination of the Former Head of the Intelligence services, General Adolphe Nshimirimana, which occurred in August 2015. More recently, the arbitrary killing of the son of the eminent and award-winning Human Rights Defender Pierre Claver Mbonimpa, who is himself under recovery after being shot, for which no investigation has been done, despite statements by the Government of Burundi condemning the killings.

In addition, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has expressed alarm at the growing number of arrests, detention and assassination attempts of human rights defenders, journalists and military officials. Media houses have been shut down and there are reports of hate speech and incitement to violence, fuelling speculation of the beginning of a genocide in Burundi. The United Nations High Commissioner for Refugees (UNHCR) reports that over 197,000 Burundians have fled the country since April 2015, after having been harassed, having witnessed enforced disappearances and murders by the *Imbonerakure*, the youth wing of the ruling party, CNDD-FDD.

There is great concern that the situation in Burundi is quickly descending into a situation of mass atrocities and grave violations of human rights. The African Union has repeatedly reinforced the need for African responses to African situations and the urgent need for the prevention of mass atrocities, after the deplorable genocide in Rwanda in 1994.

Measures taken to date by various Organs and Institutions of the East African Community (EAC)

The Summit has convened three (3) Extraordinary Summits on Burundi, on the following dates:

- 13th May 2015
- 31st May 2015
- 6th July 2015

The 6th July 2015 Extraordinary Summit appointed H.E. President Yoweri Museveni to mediate in the Burundi crisis. This mediation has since then stalled.

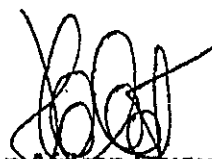
The citizens, including some of the Petitioners herein, filed a case before the East African Court of Justice, in Reference No. 2 of 2015: **East African Civil Society Organizations' Forum (EACSOFF) vs. The Attorney General of Burundi and 2 Others**. The case is limited to requesting the Court to ascertain whether the current President of Burundi, Pierre Nkurunziza can lawfully run for a third term in light of the relevant provisions of the Arusha Peace and Reconciliation Agreement for Burundi (Arusha Accord) of 2000 and the Burundi Constitution of 2005. It does not address the ensuing political, human rights and humanitarian crisis.

While the East African Legislative Assembly (EALA) participated in the joint East African Community (EAC) Observation Mission to the Burundi Elections, it has not otherwise deployed its mandate and powers, under the Treaty for the Establishment of the East African Community, to the deepening political, human rights and humanitarian crisis in Burundi.

Your petitioners therefore request the House to: -

1. Openly condemn the:
 - a. Assassinations, extrajudicial and arbitrary killings
 - b. Use of inciting and incendiary language
 - c. Inordinate use of force by the Police, security officials and members of the *Imbonerakure*
2. The House, or a Committee within it, to hold a public Hearing in Arusha, Tanzania that would welcome Burundian and East African citizens to testify to the occurrences in Burundi, and make proposals for resolution of the crises.
3. The House, or a Committee within it, to undertake an urgent Fact-finding Mission into Burundi.

4. The House to make a strong recommendation to the Summit that the Republic of Burundi cannot and will not assume the rotating Chairmanship of the Summit of the East African Community, until resolution of the political, human rights and humanitarian crisis in Burundi.
5. The House to request the African Union (AU) for robust leadership in intervention and mediation in the political, human rights and humanitarian crisis in Burundi, especially because the AU has a more comprehensive and far-reaching legal and institutional framework for intervention than the EAC currently has, including: -
 - a. The Constitutive Act of the African Union, 2000
 - b. The Protocol relating to the establishment of the Peace and Security Council of the African Union, 2002
 - c. The African Charter on Human and Peoples' Rights, 1981
 - d. The African Charter on Democracy, Elections and Governance, 2007
6. In particular, therefore, the House to call upon the Chairperson of the Assembly of Heads of State and Government of the AU to take concrete steps towards preventing Burundi from descending into Genocide or mass atrocities, including: -
 - a. Activating the sanctions regime of the African Union (AU)
 - b. Enhancing the numbers and capacity of the Human Rights Monitors and Military Monitors deployed to Burundi
7. Should the above measures not bear fruit within the next one (1) month, the House to call for suspension of the Burundi Government from both the EAC and the AU.



Principal Petitioner: **Pan African Lawyers Union (PALU)**
 No. 3, Jandu Road, Corridor Area
 P. O. Box 6065
 Arusha, Tanzania

NO	NAME	ADDRESS
1	Atrocities Watch Africa	4th floor, Acacia Mall 14-18 Cooper Road, Kololo, P.O. Box 7785, Kampala, Uganda
2	Centre for Citizens' Participation on the African Union (CCPAU)	Regent Court, D6 Argwings Kodhek Road P.O. Box 21976 – 00505, Nairobi, Kenya
3	East Africa Law Society (EALS)	No. 6, Corridor Area (Off Jandu Road) P.O. Box 6240, Arusha, Tanzania
4	East African Civil Society Organisations' Forum (EACSOF)	Plot 233, Oloirlen Area, Perfect Printers Street. P. O. Box 12583, Arusha Tanzania
5	Kituo cha Katiba – The Eastern Africa Centre for Constitutional Development	Plot 7 Estate Link Road, Bukoto, Off the Lugogo By-Pass P.O. Box 3277, Kampala, Uganda
6	Pan African Lawyers' Union (PALU)	No. 3, Jandu Road, Corridor Area P. O. Box 6065, Arusha, Tanzania

East African Legislative Assembly
The Rules of Procedure of the Assembly, 2015 Edition



PART XVI – PETITIONS

86. Right of Petition

- 1) Any Citizen of the Partner States, and any natural or legal person residing or having its registered office in a Partner State, shall have the right to address, individually or in association with other citizens or persons, a petition to the Assembly on a matter which comes within the Community's fields of activity and which affects him, her or it directly.
- 2) Petitions to the Assembly shall show the name, occupation, nationality and permanent address of each petitioner.
- 3) Petitions shall be written in the official language of the Community, which is English, and petitions written in any other language shall be considered only where the petitioner has attached a translation or summary drawn up in the official language of the Community.
- 4) Petitions shall be entered in a register in the order in which they are received if they comply with the conditions laid down in sub-rule (2), and those that do not shall not be filed and the petitioner shall be informed of the reasons therefore.
- 5) Petitions entered in the register shall be forwarded by the Speaker to the Committee responsible, which shall first ascertain whether the petitions registered fall within the sphere of activities of the Community.
- 6) Petitions declared inadmissible by the Committee shall not be filed; the petitioner shall be informed of the decision and the reasons thereof, in such cases the Committee may suggest to the petitioner, that he contacts the competent authority of the Partner State concerned or of the Community.
- 7) Unless the person submitting the petition asks for it to be treated in confidence, it shall be entered in a public register.

87. Examination of Petition

- 1) The Committee responsible may decide to draw up a report or otherwise express its opinion on petitions it has declared admissible.
- 2) When considering petitions, the Committee may organize hearings or dispatch Members to establish the facts of the situation.
- 3) The Committee shall where necessary submit motions for resolutions to the Assembly on petitions which it has considered.
- 4) The Speaker shall inform petitioners of the decisions taken and the reasons thereof.

88. Notice of Petitions

- 1) Notice shall be given in the Assembly of the petitions entered in the register referred to in Rule 86(4) and the main decisions on the procedure to be followed in relation to specific petitions.
- 2) The title and a summary of the texts of petitions entered in the register, together with the texts of the opinions and the most important decisions forwarded in connection with the examination of the petitions, shall be made available to the public in a database, provided the petitioner agrees to this, and confidential petitions shall be preserved in the records of the Assembly, where they shall be available for inspection by Members.

PAN AFRICAN LAWYERS UNION



UNION PANAFRICAINÉ DES
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Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
			X					January 1	The United Nations Electoral Observation Mission in Burundi (MENUB) officially started on 1 st January.
X			X					February 5	U.S. concerns about reported extra-judicial killings and detentions in Burundi.
					X			February 12	A letter is sent to President Nkurunziza not to run for a third term by the Civil Society group "Campagne citoyenne, Non à un troisième mandat".
				X				February 18	UNSC Remaining challenges might reverse progress, urges Burundi to ensure inclusive electoral process.
						X		February 19	President Nkurunziza fired his Intelligence Chief, Major General Godefroid Niyombare.
						X		February 25	A spokesperson for the Office of the President confirms that President Nkurunziza would seek a third term if nominated by the CNDD-FDD.
					X			February 27	Burundian CSOs Activists from the campaign "Stop the 3rd Term" held a press conference urging protests against the third term.
		X						February 28	Resolution of the African Commission on Human and Peoples' Rights on 2015 elections in Africa at the 17 th Extraordinary Session in Banjul, Gambia.
			X					March 6	EU calls the Burundian government to respect the Arusha Agreement while deciding about the third term.
		X						March 6	African Union Commissioner for Political Affairs, Her Excellency Dr. Aisha Laraba Abdullahi to undertake Political Mission in the Republic of Burundi.
					X			March 7	The Burundian Catholic Church is against a third term mandate.



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
		X						March 9	The AU Commissioner for Political Affairs says the <u>AU does still not have a position</u> concerning the third term.
	X							March 20	President Kikwete is <u>against the third term</u> of President Nkurunziza. Risk of regional tensions.
		X						March 27	AU Chairperson Dr. Zuma is <u>asking all Burundian stakeholders to respect the Arusha Agreement</u> after a visit to Burundi.
X								April 2	More than <u>500 Burundian refugees</u> crossed the border of Rwanda.
		X						April 6	The AU representative in Burundi, Mr. Boubacar Diarra was <u>discharged and sent out of the country</u> after the Burundian Government asked it.
X	X							April 13	<u>President Kagame meets President Nkurunziza</u> to discuss violence increase and refugee flows in Rwanda.
X								April 14	Burundian <u>refugees numbers up to 4000</u> in Rwanda.
				X				April 15	UN Secretary General Ban Ki-Moon expressed <u>concerns about the situation and met with Burundi's Interior Minister Edouard Nduwimana</u> .
				X				April 17	UN SC condemned the <u>15 March assassination attempt against the wife of opposition leader Agathon Rwasa</u> , and impact of the situation in the region.
		X						April 17	U.S. deeply <u>concerned about rising tensions</u> in Burundi.
								April 17	Burundi <u>police clash with opposition protesters</u> .
						X		April 19	Burundi <u>charges 65 protesters</u> with rebellion.
		X						April 22	<u>Burundi and EU sign an agreement</u> on 2015 election monitoring.



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
						X		April 24	Burundi Government says <u>Arusha peace treaty is partly "invalid"</u> .
						X		April 24	<u>Protests banned in Burundi</u> as political tensions mount.
X								April 24	<u>15,000 Burundian fled</u> into Rwanda and DRC.
						X		April 25	<u>Nkurunziza nominated for a third term</u> by Burundi ruling party.
			X					April 25	U.S. deeply <u>regrets Burundi's disregard</u> for the Arusha Agreement.
X								April 26	<u>Deadly Burundi protests</u> after president seeks third term.
		X						April 26	<u>AU calls for restraint in Burundi</u> after the nomination of President Nkurunziza as the ruling party's candidate.
			X					April 27	<u>EU Spokesperson's statement</u> on the situation in Burundi.
						X		April 27	<u>HRW News; Burundi: crackdown</u> on protesters.
		X						April 28	<u>AU PSC decision: urge</u> all Burundian stakeholders to respect the decision of the Constitutional Court regarding the third term mandate.
X								April 28	<u>Protesters clash with police</u> for third day in Burundi – 6 dead.
					X			April 28	<u>Arrests, radio station shut (RPA):</u> Arrest warrant against Vital Nshimirimana. Arnel Niyongere lawyer of Human Rights, activist Pierre-Claver Mbonimpa.
X								April 28	Rwanda: <u>Government scales up emergency relief operations</u> as more Burundian refugees arrive. Up to 23,000.
				X				April 28	UNOG: Statement attributable to the Spokesperson for the Secretary-General on pre-election violence



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions *	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
									in Burundi.
X				X				April 29	UNOCHA Statement. <u>7 deaths, 21,000 refugees in Rwanda, 4000 in DRC and 100 in TZ.</u>
				X				April 29	UNOCHA <u>Interagency Contingency Plan.</u>
			X					April 29	Canadian Minister Nicholson <u>calls for return to calm.</u>
			X					April 29	<u>U.S. Assistant Secretary Tom Malinowski travels to Burundi.</u>
	X							April 29	AU renews its appeal for <u>dialogue and restraint in Burundi.</u>
						X		April 29	Burundi Court to <u>examine president's third-term bid.</u>
					X			April 30	Burundi opposition <u>leaders threaten to boycott vote.</u>
	X							April 30	AU PSC Press statement: <u>concern about the threat to peace, security and stability for Burundi and the whole region.</u>
						X		May 1	Burundi President <u>warns of "severe sanctions" against protesters. 400 people have been arrested.</u>
				X				May 1	UNSC <u>Russia and China blocked a French-drafted council statement on the situation in Burundi.</u>
				X				May 1	UNHCHR <u>concern about the Human Rights violations</u> and reiterates call for free and fair elections.
X								May 4	Three protesters <u>reported killed in unrest.</u>
			X					May 4	John Kerry <u>warns Burundi president's third term bid is unconstitutional.</u>
X						X		May 4	Vice-President of <u>Burundi's constitutional court flees the country.</u>
X						X		May 5	Burundi Court <u>clears president to run again.</u>



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
	X							May 5	President Kikwete pressed Foreign Ministers from the EAC to investigate the situation in Burundi. Rwanda says it is a regional and international responsibility.
X								May 5	Rwanda alarmed by Burundi unrest as refugees, mostly Tutsis, stream across border. CSOs say 12 people died.
X								May 6	40,000 Refugees flee Burundi.
					X	X		May 6	Burundi rivals meet in bid to end political crisis.
						X		May 6	President Nkurunziza speech to the National and International Community.
		X						May 7	CCTV Africa interview AU Chairperson Dr. Zuma: AU asks to postpone the elections. AUC Dr. Zuma says "...there shouldn't be a third term."
	X							May 7	Special message of the ICGLR Chairman to Burundi, on the security situation.
						X		May 8	President Nkurunziza registers to run for a third term.
X								May 8	More than 50,000 people have fled the country and 18 were killed.
			X					May 8	ICC Chief Prosecutor Fatou Bensouda closely monitor the run-up to elections in Burundi, and would not hesitate to prosecute perpetrators of "mass violence".
		X						May 9	AU dispatched a High-Level Delegation to Burundi.
	X							May 9	President Kenyatta urged the parties to open up for dialogue. Threat for the whole of the East African region.
X				X				May 11	UNSC received details of assassinations of 22 opposition leaders.



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections - In Burundi
			X					May 11	Belgium cut its aid for the elections and the Burundian police.
			X					May 11	U.S. assistant secretary Linda Thomas-Greenfield to attend EAC Meeting on Burundi, in Dar es Salaam.
								May 11-15	PALU organizes an Advocacy Mission with Burundian CSOs representatives in Dar es Salaam on the side of the EAC Extraordinary Summit of Heads of State.
			X					May 12	EU, U.S. call for Burundi election delay, while Belgium, the Netherland and Switzerland have suspended vital funding for the elections.
X	X							May 12	EAC leaders prepare to meet in Dar es Salaam. Protests continue to rage. More than 20 people in total have been killed now.
	X	X						May 13	AU Chairperson of the Commission, Dr. Zuma, attends the EAC Extraordinary Summit on Burundi.
								May 13	Attempted coup d'Etat: Major General Godefroid Niyombare claims he had dismissed President Nkurunziza.
		X						May 13	AU reiterates the AU principles on UCG and strongly condemns the attempt coup in Bujumbura. Supports the efforts of the EAC leaders and steps agreed in Dar es Salaam.
	X							May 13	Statement from EAC Extraordinary Summit condemning coup attempt.
			X					May 13	U.S. calls for calm and restraint in Burundi.
						X		May 14	Nkurunziza is not able to land in Bujumbura. Airport closed to stop him. He has to return to Tanzania.



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
			X			X		May 14	Burundi armed forces <u>announce the coup failed</u> . US recognize Nkurunziza as the legitimate President.
		X						May 14	AU PSC recalls the <u>AU responsibility as a guarantor of the Arusha Agreement</u> . Possible deployment of an extended mission in Burundi if the violence does not de-escalate.
X				X				May 14	UN agencies <u>launch emergency response</u> as political crisis sparks refugee exodus.
X								May 15	Following the coup attempt: three ringleaders arrested, <u>General Niyombare still on the run</u> . More than 105,000 people have fled the country.
						X		May 15	President Nkurunziza back in Burundi after army says coup failed.
				X				May 15	UN SC condemns violence, full support to the UN Special Envoy.
		X						May 15	U.S. <u>warns against violence</u> following the attempted coup.
				X				May 15	Statement by the <u>Burundi Configuration of the UN Peacebuilding Commission</u> .
X				X				May 15	UNOHCR: <u>Political instability and reports of intimidation of civilians could result in an even greater humanitarian crisis in Burundi</u> .
X				X				May 15	UN rights chief <u>warns against reprisals</u> in wake of failed coup.
					X			May 16	18 people appeared in Court <u>accused of helping organizing the coup</u> . Several were beaten, one died at hospital.
		X						May 16	AU reaffirms the <u>imperative and urgency of dialogue and consensus</u> in Burundi, reiterates the calls to postpone of elections.
						X		May 17	President Nkurunziza <u>first appears in public</u> , in Burundi, and warns of Al-Shabab after coup fails.



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
									A spokesman for Al-Shabab denies.
						X		May 18	President Nkurunziza <u>replaces his Defence Minister, Foreign Minister and Trade Minister.</u>
						X		May 18	Burundi Government says <u>fully respect the freedom of press.</u> Journalists are still fleeing the country, radios stations are broken or closed.
		X						May 18	ECOSOCC statement <u>condemning the coup attempt</u> and the respect of the Arusha Agreement.
	X							May 18	ICGLR Press Release: <u>Statement on the crisis in Burundi.</u>
			X					May 18	U.S. funding <u>cuts to Burundi military forces in Somalia.</u>
						X		May 19	<u>Presidential decree</u> on the postponement of communal elections to 5 June.
	X							May 19	Regional <u>leaders from ICGLR</u> urge indefinite postponement of Burundi vote.
								May 19	The Press Group <u>Iwacu re-opens</u> : there is no press anymore in Burundi, we have to work even with the fear.
						X		May 20	Nkurunziza <u>speech to the Nation</u> on the attempted coup d'Etat.
X						X		May 20	- President Nkurunziza announces a <u>postponement of parliamentary elections</u> until early June. - Cholera declared in a refugee camp in Tanzania.
			X			X		May 20	- President Nkurunziza assures that <u>peace and security are everywhere in the country</u> , on 99,9% of the Burundian territory. - Belgium is publicly opposed to the third term mandate.
						X		May 20	President Nkurunziza <u>appeals for ethnic harmony.</u> He said: " <u>The risk of the former Belgian colony</u>



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
									<i>descending once again into genocide or civil war was too great.</i>
			X					May 21	France <u>preoccupied</u> by the violence and degradation of political climate.
X								May 22	Twin grenades hits Bujumbura, <u>killing 3 people</u> , a total of 20 people died since the beginning of the protests, and 31 died from cholera in camps in Tanzania.
			X					May 22	U.S. <u>suspends Burundi peacekeeping training</u> over protests.
X					X			May 24	<u>Zedi Feruzi opposition figure shot dead</u> .
				X				May 24	UN SC condemns the <u>killing of Mr. Zedi Feruzi</u> and the grenade attack.
		X						May 24	The AU <u>condemns the violent attack and murder</u> of the opposition leader Mr. Zedi Feruzi.
	X							May 24	<u>ICGLR Press Release</u> condemning the grenade attacks.
						X		May 25	President Nkurunziza demands a <u>"quick" investigation</u> into killing of opposition leader Zedi Feruzi.
	X							May 25	CEEAC <u>Final Communiqué at the XVI Ordinary Session</u> . Statement on Burundi: appoint former Chadian President Goukouni Weddeye as the ECCAS Special Envoy for the Great Lakes.
			X					May 25	U.S. calls for <u>peaceful resolution</u> to crisis in Burundi.
			X					May 26	France <u>stops security cooperation</u> with Burundi according to a report.
					X			May 27	Burundi opposition says now <u>free and fair elections</u> are impossible.
X				X				May 27	UN <u>supports Burundian refugees</u> with U.S. \$ 8 million.



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
					X			May 28	Burundi's <u>Catholic Church</u> <u>withdraws</u> support for elections.
			X					May 28	EU <u>suspends its election monitoring mission</u> , withholding more than \$2 m. of funding for the elections.
				X				May 28	UN Special Adviser for the Prevention of Genocide, <u>Adama Dieng</u> , <u>arrives in Burundi</u> to meet with Burundian government representatives.
				X				May 29	UN Special Adviser for the Prevention of Genocide, <u>Adama Dieng</u> <u>travels to Tanzania</u> for the Second EAC Extraordinary Summit on Burundi.
							X	May 29 – June 1	PALU organizes a second Advocacy Mission with Burundian CSOs representatives in Dar es Salaam. <u>Burundi CSOs Statements</u> .
			X					May 29	U.S. <u>condemns violence</u> in Burundi.
X							X	May 30	Vice President of Burundi's <u>election commission</u> , <u>Spes Caritas Ndironkeye</u> , and another member <u>Illuminata Ndabahaganye</u> <u>flee the country</u> .
							X	May 30	Burundi's government says <u>elections will go ahead</u> .
							X	May 30	<u>Presidential Decree</u> , made public on June 10, introduced changes to the decision-making process of the CENI.
	X							May 31	EAC holds a Second Extraordinary Summit on Burundi (in Dar es Salaam, Tanzania), and, in its Communiqué, <u>urges Burundi to postpone elections</u> by a period of at least 45 days.
				X				May 31	UN Special Adviser for the Prevention of Genocide, <u>Adama Dieng</u> <u>warns of increased tensions</u> and risk of further violence, need to dialogue.



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
	X							June 2	Secretary General of ICGLR participated to the EAC Extraordinary Summit on Burundi, 31 st May.
			X					June 2	Recommendations by the Free University of Brussels following a conference on the Burundi crisis.
		X						June 3	Appointment of Mr. Ibrahima Fall as the AU special Representative for the Great Lakes Region.
		X						June 4	AU SC meets Special Envoy Saïd Djinnit and Special Adviser for the Prevention of Genocide, Adama Dieng. Follow the EAC Heads of State decisions from the 31 May Meeting in Dar es Salaam.
				X				June 4	UN SG concerned about possible spike in Burundi violence, urges restraint, adherence to Human Rights commitment.
				X				June 4	UNSC met with the Special Envoy of the SG for the Great Lakes Region and the Special Adviser for the Prevention of Genocide.
						X		June 8	CENI decides the new elections calendar: 26 June: communal and legislative 15 July: presidential 24 July: senatorial
						X		June 9	Burundian Presidential decree on elections dates: 29 June: communal and legislative 15 July: presidential
				X				June 9	UN High Commissioner for Human Rights warning increase militia violence could "tip Burundi over the edge."
			X					June 10	International Call for the departure of President Pierre Nkurunziza
					X			June 11	Campaign "Stop Third Term": Urgent appeal from Burundian CSOs to the EAC Heads of State for another EAC Extraordinary Summit on Burundi.



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
		X						June 11	The Special Envoy of the Secretary-General for the Great Lakes Region, <u>Said Djinnit</u> , gives his <u>resignation</u> following complaints from Burundian CSOs and opposition political parties.
		X						June 14	Report of the Chairperson of the AU Commission, <u>PSC 515th Meeting</u> , 25 th AU Summit Johannesburg.
		X						June 14	AU <u>PSC Communiqué 515th Meeting</u> , 25 th AU Summit Johannesburg.
						X		June 16	Burundi <u>Government statement</u> following the 25 th AU Summit recommendations.
			X					June 16	Interview (in FR): ICC Prosecutor <u>Fatou Bensouda</u> <u>threatens</u> to open a preliminary examination on Burundi if violence doesn't stop.
						X		June 16	The two new <u>CENI Commissioners</u> taking the oath.
						X		June 16	HRW highlights <u>police abuses</u> through a video.
						X		June 19	<u>Burundi Government prevents refugees</u> from fleeing as interior minister shuts down border police, a number of exit points at the border with Tanzania, Rwanda and DRC, also closed the office of the Air and Border Police (PAFE).
				X				June 19	<u>UN expert warns</u> blatant rights failure in Burundi make upcoming elections "impossible".
X								June 20	Grenade <u>attacks injure 11 police officers</u> in Bujumbura. Protesters blamed.
				X				June 21	UN names <u>mediator Abdoulaye Bathily</u> , Special Representative and Head of the UN Regional Office for Central Africa, for Burundi crisis talks.



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
									He replaces former mediator, Said Djinnit.
				X				June 21	Ban Ki-moon sends Abdoulaye Bathily to Bujumbura in support of regional effort.
								June 23	CNDD-FDD party <u>Communiqué No 24/2015</u> on elections.
X							X	June 25	The <u>Second Vice-President of Burundi, Gervais Ruffyikiri</u> flees the country.
			X					June 25	Belgium <u>will not recognise the results</u> of June elections.
								June 25	200 Burundian students are removed from the US Embassy where they were camping, protesting against the third term mandate.
								June 25	IRRI Statement: <u>Burundi pushed to the brink</u> in the run up to elections.
					X			June 26	Beginning of the third month of protests, the opposition uses that day to remember the people lost.
			X					June 26	U.S. places <u>electoral assistance</u> to Burundi on hold.
				X				June 26	UN Secretary General Ban Ki Moon <u>appeals to Burundian authorities</u> to consider postponing elections.
				X				June 26	<u>UNSC Presidential Statement</u> on Burundi.
X							X	June 28	<u>National Assembly Speaker Pie Ntavohanyuma</u> fled to Brussels.
X							X	June 29	<u>Communal and legislative elections</u> are taking place with high tensions.
			X					June 29	<u>EU declaration on the withdrawal</u> of their electoral observation mission.
			X					June 29	<u>U.S. Press statement</u> – regrets decision to move ahead with elections.



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
			X					June 29	Belgium: <u>Didier Reynders concerned</u> about the elections in Burundi.
X								June 30	UNHCR estimates at <u>more than 140,000</u> refugees fled Burundi.
							X	July 2	Burundi <u>Government statement</u> on communal elections hold on 29 June.
				X				July 2	UN says <u>Burundi did not hold free and fair elections</u> . Human Rights violated.
			X					July 2	U.S. urges dialogue, <u>announces additional suspension</u> of assistance.
							X	July 6	PALU and EACSOF file a <u>Case at the EAC Court of Justice</u> to stop Burundi poll, Ref. N°2 of 2015, EACSOF v Attorney General & 2 others.
	X							July 6	Communiqué on <u>3rd Emergency Summit</u> of EAC Heads of State on Burundi. President Museveni becomes the mediator for Burundi.
							X	July 7	CNDD-FDD wins <u>parliamentary elections</u> .
				X				July 7	Interview (in. FR): <u>Abdoulave Bathily, UN mediator for Burundi</u> , says: - Free and fair elections in Burundi are infeasible now - UN decided that regional organs have to take their responsibility, as the 3 rd EAC Summit. - He is no longer the mediator. President Museveni took the lead.
		X						July 8	AUC Chairperson <u>reaffirms the imperative for dialogue</u> and consensus for a peaceful resolution of the crisis.
							X	July 9	<u>Presidential communiqué</u> on the 3 rd EAC Heads of State Summit on Burundi, in Dar es Salaam.



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
						X		July 9	CENI present the <u>provisional results</u> of the deputies' elections of 2015.
		X						July 9	<u>AU PSC Communiqué 523rd Meeting</u> , endorsing the decisions of the EAC 3 rd Summit.
				X				July 9	<u>UN Security Council warnings</u> Burundi on "brink of devastating violence", a week from presidential polls.
						X		July 10	<u>Presidential decree on the postponement of presidential elections</u> , from 15 July to 21 July.
					X			July 10	Burundi CSO's statement on the 3 rd EAC Heads of State Summit.
				X				July 10	<u>UN Human Rights Office warns</u> about consequences of country's extremely tense situation.
					X			July 11	Burundi's opposition to <u>boycott Presidential poll</u> despite new delay, from 15 to 21 July.
	X							July 13	<u>EAC deploys Regional medical and public health emergency support teams</u> to refugee camps in Kigoma and Eastern province of Rwanda.
								July 14	EACJ Application N°5 of 2015: Hearing
				X				July 16	<u>UN experts urge Security Council action</u> amid mounting violence. Threat of mass atrocities. More info: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16243&LangID=E
						X		July 17	<u>Nkurunziza presidency confirms controversial elections</u> will be held on 21 July, despite calls for postponement. Official statement in FR: http://www.presidence.gov.bi/spip.php?article5589



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
		X						July 18	AU PSC: reiterates the immediate deployment of Human Rights Observers and Military Experts.
							X	July 19	Burundi talks suspended ahead of polls after Government fails to show.
								July 20	EACJ Application N°5 of 2015: 2 nd Hearing Ruling: disallowing of the Application.
	X							July 20	EAC Elections Observer Mission to the Presidential elections in Burundi.
							X	July 21	Presidential elections are taking place.
		X						July 22	AU PSC: beginning of the deployment in Burundi of the AU Human Rights Observers and Military Experts.
	X							July 23	EAC Election Observation Mission: Preliminary Statement
							X	July 24	Senatorial elections are taking place.
							X	July 24	Pierre Nkurunziza wins third term.
								July 27	Amnesty International Report on Excessive Force in Policing Demonstrations in Burundi.
				X				July 27	UN mission finds overall environment in Burundi "not conducive" to credible election process.
								July 29	EACJ Case: Reasoned Ruling of Application N°5 of 2015
					X			July 30	Opposition leader, Agathon Rwaswa, becomes deputy speaker.
							X	August-1	Pierre Nkurunziza addresses the Nation after validation of the results of the presidential elections.
X								August 2	General Nshimirimana killed after his car was attacked.
		X						August 2	AUC Chairperson horrified by the assassination of General Adolphe Nshimirimana.



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
				X				August 3	Ban Ki-moon concerned over ongoing deterioration of security in post-election Burundi.
					X			August 4	Human Rights activist Pierre Claver Mbonimpa shot and seriously injured.
		X						August 6	AU PSC Press Statement on the elections in Burundi at the 531 st meeting.
				X				August 7	UNHR Statement: UN expert calls for protection of all rights defenders after attempted killing of Mr. Mbonimpa.
		X						August 7	Resolution on the Human Rights situation in Burundi from the African Commission on Human and People's Rights at 18th Extraordinary Session, Nairobi, Kenya.
X								August 14	Burundi Refugee Camps in Tanzania and Rwanda to Benefit From Donations of Medicines and Health Supplies.
				X				August 14	UN Human Rights office warns Burundi crisis spiraling out of control. More info: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16320&LangID=E
						X		August 20	Nkurunziza inaugural speech after elections.
				X				August 21	Ban Ki-moon urges Nkurunziza to "pursue a path of inclusivity and reconciliation".
						X		August 24	Local Council Elections in Burundi.
						X		August 26	Nkurunziza speech after the government formation.
				X				August 28	UN SG Ban urges all parties in Burundi to look beyond political differences, revive spirit of Arusha Agreement.



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
								September 4	<u>Burundi-Rwanda spat stokes fear of revived ethnic tensions.</u>
				X				September 23	<u>Senior UN official alarmed at upsurge in Human Rights abuses in Burundi.</u>
						X		September 23	<u>Presidential decree N°100/34: Creation, Mandate, Composition, Organization, Operation of the Inter-Burundian National Dialogue Commission.</u>
X								September 25	<u>ICGLR Final Communiqué at the 10th Extraordinary Session of the Regional Inter-Ministerial Committee (RIMC) of the ICGLR.</u>
				X				September 25	<u>Readout of the UN SG meeting with H.E. Joseph Butore, Second Vice President of Burundi.</u>
				X				September 28	<u>Senior UN official alarmed at upsurge in Human Rights abuses in Burundi.</u> More info: http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16507&LangID=E
						X		September 30	<u>Nkurunziza speech to the Nation.</u>
						X		October 1	<u>Speech of the Second Vice President of Burundi at the 70th Session of the UN General Assembly.</u> More Info in EN: http://gadebate.un.org/70/burundi http://www.un.org/apps/news/story.asp?NewsID=52106#.VhOKnKKYZsM
			X					October 1	<u>Decision of the Council of the European Union concerning restrictive measures in view of the situation in Burundi.</u>
			X					October 2	<u>Belgium cuts aid to Burundi government as EU sanctions hit.</u>



Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
X								October 5	<u>UNHCR: Burundi refugees</u> estimated at 213'125.
		X						October 6	<u>AUC Chairperson</u> expresses concern about the evolution of the situation and reiterates her call for dialogue.
				X				October 13	<u>UN needs 32 million dollars</u> to handle the humanitarian needs in Burundi.
	X							October 14	<u>ICGLR Statement</u> on the deterioration of the security situation in Burundi.
X				X				October 15	<u>UN SG condemns killing of 11 people</u> in Bujumbura, urges prompt investigation.
		X						October 17	<u>AUPSC: Communiqué of the 551st Meeting</u> , decides on targeted sanctions on the Burundi Government.
	X							October 17	<u>EALA concludes sitting in Nairobi</u> , Concerned about Burundi refugees' camps in Tanzania and Rwanda.
	X							October 20	<u>ICGLR Extraordinary meeting</u> on the Security and Humanitarian situation in different countries including Burundi.
	X							October 22	<u>EALA Speaker meets President of the Burundi Senate</u> in Switzerland.
						X		October 23	<u>Address by Pierre Nkurunziza</u> on the Official Launch of the National Commission on Inter-Burundian Dialogue (CNDI).
X				X				October 24	<u>UN decries violence in Burundi</u> ; HCHR estimates 198 people killed since April 26, including 63 in the last three weeks.
				X				October 28	<u>UNSC Presidential Statement</u> on Burundi.
		X						October 28	<u>U.S. Welcomes UNSC Statement</u> on Burundi.

PAN AFRICAN LAWYERS UNION



UNION PANAFRICAINNE DES AVOCATS
UNIAO PAN AFRICANA DOS ADVOGADOS

Refugees / Killings	Regional Actions	AU Actions	International Community	UN Actions	Burundi Opposition / CSOs	Burundi Gov.	PALU actions	DATE 2015	TIMELINE Presidential Elections In Burundi
						X		October 28	<u>Burundi elected</u> at the UN Human Rights Council.

Annex 2

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Proceedings of the Public Hearing — 14 01 16

Tape No. 1

Mr Mwinyi: Good morning. May I call the meeting to order? May we start with the parliamentary prayer? I will call upon the Clerk to lead us in the parliamentary prayer.

PRAYERS

The Chairman of the Committee on Regional Affairs and Conflict Resolution (Mr Abdullah Ally Hassan Mwinyi): Thank you very much, Mr Kadonya. Once again, I would like to take this opportunity to welcome you all and to wish you a Happy New Year. *(Applause)* It is my singular honour and privilege to have you, the Committee on Regional Affairs and Conflict Resolution to welcome you, petitioners on this wonderful day in Arusha. Before, we can proceed, I would like us to introduce ourselves.

INTRODUCTIONS

Mr Abdullah Ally Hassan Mwinyi: My name is Abdullah Mwinyi; I am the Chair of the Regional Affairs and Conflict Resolution Committee. I would request very briefly, my colleagues to introduce themselves and then we can give the same opportunity to the petitioners to do likewise.

Mr Emmanuel Nengo (Burundi): Good morning every one. My name is Emmanuel Nengo. I am a member of this Committee from Burundi.

Ms Hafsa Mossi (Burundi): Good morning. My name is Hafsa Mossi. I am a member of this Committee and I come from Burundi.

Mr Zein Abubakar (Kenya): Good morning. My name is Abubakar Zein. I am from Kenya.

Mr Ole Nkanae (Kenya): Good morning. My name is Nkanae; a member of this Committee from Kenya.

Francois Xavier Kalinda: Good morning. My name is Xavier Kalinda a member of this Committee from Rwanda.

Mr Celestine Rwigema (Rwanda): good morning everyone. My name is Rwigema Celestine; member of this Committee from Rwanda.

Dr Martin Nduwimana (Burundi): Good morning. My name is Martin Nduwimana, a member of this Committee from Burundi.

Ms Dora Byamukama (Uganda): Good morning. I am Dora Byamukama; an East African.

Mr Chris Opoka (Uganda): Good morning. I am Chris Opoka Okumu, a member of this Committee and I come from the Pearl of Africa, Uganda.

Mr Adam Kimbisa (Tanzania): My name is Kimbisa; a member of this Committee.

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Mr Martin Ngoga (Rwanda): A very good morning. I am Martin Ngoga, a member of this Committee.

Mr Abubakar Ogle (Kenya): I am Abubakar Ogle from Kenya.

Mr Donald Deya: Good morning Mr Chairman and all members of the august Assembly. My name is Donald Deya. I am an East African of Kenyan origin. I head the Secretariat of the Pan African Lawyers Union (PALU), which is based here in Arusha, Tanzania.

Ms Amandina Hussein Minega: Good morning. My name is Amandina Hussein Minega. I am working at the Pan African Lawyers Union.

Mr Hasso Ebu: Good morning everyone. I am Hasson Ebu also working for the Pan African Lawyers Union.

Mr Vitash Uwimana: Good morning. I am Vitash Uwimana. I am from Burundi Civil Society Platform.

Mr Jeremie Unzimana: Good morning everybody. I am Jeremie Unzimana, Civil Society representative from Burundi.

Ms Joseline Elsie: Good morning every one. I am Joseline Elsie and I am the ICT Officer of PALU.

Mr Amos: Good morning. I am Amos from the Burundi Embassy.

Mr Humphrey Mutui: Good morning. My name is Humphrey Mutui, an East African of Tanzanian origin representing the East Africa Law Society.

Mr Godwin Murunga: Good morning everyone. My name is Godwin Murunga. I have been invited to listen carefully and report on the content.

The Clerk to the Committee (Mr Charles Kadonya): Good morning every one. My name is Charles Ngelejjia Kadonya, I work as a Principal Clerk Assistant and I am the Clerk to this Committee.

The Chairman: Thank you very much. After that brief introduction; just as an introduction, on the 16th of November, 2015, a petition of the citizens of the East African Community on the Deteriorating Human Rights and Humanitarian Situation in the Republic of Burundi was presented before the Speaker of the East African Legislative Assembly.

The Assembly, in turn, forwarded the petition to this Stranding Committee on Regional Affairs and Conflict Resolution. It is our mandate within the Treaty to deal with such petitions related to human rights, governance, rule of law and democratisation. With that in mind, we are here this morning to listen to you, petitioners.

We will listen very carefully and after your presentation, we will allow our Committee members to ask some questions and to engage. But at this point in time, it is not a time for debate. It is more about extracting as much information from our petitioners as possible. So, I would request my members to keep that in mind. Questioning should be in a form of gathering more information from the petitioners.

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With that basic introductory remark, I would like to take this opportunity to once again, welcome Mr Donald Odeya on behalf of PALU to come and give us your presentation on the petition. Donald, you are very welcome.

The Head of the Secretariat for Pan African Lawyers Union (Mr Donald Deya): Honourable Chairman of the Committee and honourable members of the Committee, my co-petitioners and members of the public present, just for the record, I will state that my name is Donald Deya and I come from the Pan African Lawyers Union.

Mr Chairman, we have tried to type out a summary of the oral submission that we are going to make and I have tried to avail it to the honourable members of the Committee to save your time and energy.

In starting, we would just like to say that the six petitioners thank the Rt Hon. Speaker, all the Members of the East African Legislative Assembly as well as the Chair and members of this Committee on Regional Affairs and Conflict Resolution for the opportunity of this engagement with you.

To the best of our knowledge, this is probably the first such of engagement where the citizens of the Community have proactively sought to engage the Assembly on a matter of peace and security and especially on a live conflict situation. We are very thankful and grateful that the Committee saw it fit to grant us and all other East Africans a hearing.

Again for the record, the six petitioners are all organisations that are registered within the East African Community Partner States and are domiciled within the East African Community Partner States. They include: Atrocities Watch Africa, which is based in Kampala, Uganda and is a continental wide organisation; The Centre for Citizens Participation on the African Union, which is based in Nairobi, Kenya and is a continental wide organisation; The East Africa Law Society, which is based here in Arusha and is a regional organisation; the East African Civil Society Organisation's Forum, which is also based here in Arusha and is a regional wide organisation; Kituo Cha Katiba- the East African Centre for Constitutional Development, which is based in Kampala, Uganda and is a regional wide organisation and think tank; and of course PALU, which is continent wide but is registered both in Tanzania and Kenya.

And just to state that four of these organisations are membership organisations. In fact all of them are dual membership organisations and so they have individual members and institutional members. So, they have individual members including those from Burundi and they have institutional members including those from Burundi.

The other organisation, Kituo Cha Katiba is a think tank, not so much, a membership organisation but is still constituted by members, scholars and researchers from all the five East African Community Partner States.

Mr Chairman, I will not read word for word of what the petitioners have put in the written statement. I will just highlight a few and then look forward to the engagement. The back and forth between the petitioners and the august Committee of the House.

I would also like to state that appended to our statement is an appendix that lists reports and official documents of various bodies, which is the evidence that we rely on so that for the

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assertions we make, we try to ensure that the assertions are backed by some evidential document and not just a statement of the petitioners. And we have the statements that we have made ourselves, for instance, as PALU or the East African Law Society.

We rely on official statements of the east African Community especially the various communiques by our apex body, the Summit of the East African Community and also reports, including reports of this august House.

We also rely on decisions of the East African Court of Justice; judgements and orders that have been given pursuant to applications that have been filed by the petitioners touching on the subject in issue.

We rely on various decisions; communiques of the African Union's key Organs - the Peace and Security Council and also the Commission on Peace and Human Rights, which is the latest of the AU Organs and Institutions to carry out a fact finding mission to the incessant Partner State, which was carried out in December, 2015.

We rely on statistics provided by the United Nations, especially the United Nations High Commission for Refugees even though we hasten to point out that it does appear that those statistics are not as updated as should be, which is not surprising because this is a fluid situation.

So, I will then make my highlights but based on the fact that all these documents will be provided to your secretariat in both print and electronic form because we have all of them downloaded and sealed and catalogued in a way that is easy for the Committee to deal with.

In the opinion of the petitioners, Mr Chairman, the Partner State of Burundi is suffering a triple crisis - a human rights crisis; a humanitarian crisis; and a political crisis, which actually is the one that has led to the human rights and the humanitarian crises.

In terms of the human rights crisis, we are seeing without a shadow of doubt a clear incidence of series of serious and massive human rights violations as defined by the African Union, at least, in terms of Article 58 of the African Charter on Human and People's Rights. This is what has occasioned action by amongst others, this Legislative Assembly but also the Peace and Security Council of the African Union and also the African Commission on Human and People's Rights.

As you may know, the Peace and Security Council deployed both human rights monitors and also military observers to the Partner State from as far back as six months ago and in its recent decision of December, 2015, which we refer to - the decision of the 565th Meeting of the Peace and Security Council of the African Union held on 17th December, 2015. In our list of documents, that is, Document No.22. It voted, among other things, to increase the number of human rights monitors and military observers.

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To give very briefly, Mr Chairman, a typology of the types of human and people's rights violations that we assert, and others assert that are happening in Burundi, on the first hand, there has been an unlawful and violent response of the security forces, especially the Police to protests and demonstrations by citizens of Burundi right from April, 2015. Citizens were exercising their rights to expression and the freedoms of peaceful assembly and of association.

This has also been coupled with, especially in the last few months, a series of abductions, assassinations, extrajudicial killings, arbitrary executions and also gruesome killings sometimes with decapitation or removal of internal organs. Such that citizens of Burundi and especially of its capital city, Bujumbura are used to waking up to finding dead bodies on the streets. And there has been a lot of documentation on this.

There has been a specific focus on human rights on defenders and on journalists and other political actors. One of the most emblematic is a story of the famous human rights defender Pierre Claver Mbonimpa who was shot and had to leave the country to seek treatment but there after his own son was shot dead plus his own son-in-law who was also shot dead. So, this one family has lost three important members in a very short span of time.

There have been assertions and allegations of arbitrary arrests and records say that there are hundreds of Burundians who have been languishing in prisons, many of them without trial, for the last several months. When trials have taken place, many of them have been seen not to be free, fair or expeditious and this is what, among other things, has led to filing of cases at the East African Court of Justice, including by the petitioners.

There has been intimidation of journalists -- there has been actual bombarding or otherwise burning down independent media such that it is now hard to find an independent media, especially the electronic media that is still operational from within the country. You have only the public broadcaster whose impartiality has also been questioned.

As we have said, there have been attacks to freedoms of assembly and association. In December, we woke up to the news that the relevant minister had decided to suspend a series of, I believe nine, civil society organisations without affording them the due process. So, they were suspended first so that their operations ceased and their bank accounts were frozen and then they said after that they would carry out investigations and hopefully the necessary trial for whatever allegations that the government may have of them.

We have also had amongst our colleagues, human rights lawyers and human rights defenders, who have had to run into exile from April and May of 2015. And some of these colleagues who have then tried to travel around the world have been stopped by visa officials of third States but have said that their government has circulated their passports as stolen when it is quite clear that their passports are not stolen. The individual has a passport and is holding it and if not the kindness of those other visa officials, we would have East Africans now who are languishing in jail in the Far East being accused of stealing their own passports.

We have also had reports of incitement by senior government officials and hate speech by senior government officials and this amongst other things, is what motivated the latest mission to Burundi by the African Commission for Human and People's Rights.

A lot of this, as you can see, we are asserting are being undertaken by the government, violating the rights of the citizens; by the ministers, by the Police; and also by a youth group or in other words a militia associated with the current ruling party in Burundi – the CNDDFDD, which is called the *Imbonerakure*.

But in addition to that, this whole environment has now engendered a mood of revenge attacks or reprisal attacks by armed sections of the populace – non State actors. So, we also have non State actors carrying weapons, attacking the Police or attacking security forces and so on, which then has led to a situation that further endangers law and order; endangers the public and further complicates the prospects for peace.

Mr Chairman, if one would say that we are over exaggerating the level of the crisis, one good example exemplifies that we are not exaggerating. An Organ of our Partner States, the International Conference of the Great Lakes Region, which is owned by 12 of our governments – the entire Secretariat of the International Conference of the Great Lakes Region, which is based in Bujumbura shut down and moved all the staff to temporary relocation in Lusaka. And they made it very clear in the press statement that was issued by the Executive Secretary that the situation was not conducive. They could not guarantee the security or the human rights of their own staff who are international civil servants – staff of African States and they have left. So, that just shows that it is not just the citizens – the NGOs, the civil society or the media. Actually also African governments are running away from the Partner State in question.

So, as I said, I will not bore you with going line by line and rotating but as part of our report to you, we have appended reports on this human rights violations by Burundian organisations – AKAT, Aprodache and others, which among other things state that one of the Burundian organisations Aprodache, which is associated with or headed by the human rights activists I talked about, Pierre-Clave Mbonipa has recently issued a video in which it says “The documented dead” – those they have documented as having died in this crisis between 1st January and 13th December, 2015 had reached 1,087.

In other reports by the media in the region, yesterday by The Citizen, in terms of refugees that have had to leave the Partner State, it has been reported that we have a total of 267,747 refugees that have fled to just three countries: 17,747 to Uganda; 75,000 to the United Republic of Tanzania; and 175,000 to the Republic of Rwanda.

Other reports, other than Burundian organisations that have issued reports based on survey that they have done and listed; Amnesty International, The Ugandan CSO Forum to the International Conference on the Great Lakes Region, Refugees International and SOS Tokyo.

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Mr Chairman, we have also highlighted judgements of the East African Court of Justice that relate to the Partner State in question. And that relate to issues of human and people's rights in that Partner State, which are yet to be implemented and not just by the State in question.

In reference No. 1 of 2014 brought by the East Africa Law Society against the Attorney General of Burundi, in a judgement issued in April, 2015 the Court ordered the Government of Burundi to take a couple of measure to ensure the protection of human and people's rights and the independence of the judiciary. These measures have not been implemented.

In addition, the Court ordered the Secretary General of the East African Community, H.E. Dr Amb. Richard Sezibera to ensure that a fact finding mission of the Community is undertaken to incessant Partner State, Burundi to look at the state of human and people's rights violations and independence of the judiciary and key Organs that would guarantee human and people's rights but that mission has not yet been undertaken to date and we have also not come across any formal reason written by the Secretary General as to why he has not undertaken this mission.

Similarly, in Reference No. 7 of 2013, the case of the Burundian Journalists Union Vs the Attorney General of Burundi, again a series of orders were issued by the East African Court of Justice to the Republic of Burundi to amend its laws relating to the media to ensure at the very least, independence of the media. These have also not been implemented.

As a consequence, Mr Chairman, and it bears repeating, a manifestation of the crisis has been its humanitarian impact, which has led to internal displacement within the country and also refugees within the region whose statistics I have just given. And it bears noting that this august House has itself undertaken a good will mission in the early stages of the crisis to carry out a snapshot survey of the plight of refugees from Burundi in its sister States.

Mr Chairman, as I begin concluding and, therefore, welcoming engagement of the Committee of the august House, we have seen that the cause of this humanitarian crisis and human rights crisis has been the political crisis that has befallen the country. Unless the country, the region and the continent and their friend are able to resolve this political crisis to the satisfaction of the broad section of the citizens of Burundi and also the basic requirements of the law of the East African Community and the law of the African Union, then the human rights crisis and the humanitarian crisis will only prolong and worse still, could deteriorate further into a situation of civil war or where we now lose control of the country.

Without going into great details, I will just rely on a formal document of the East African Community. The First Extraordinary Summit of Heads of State held in Dar es Salaam on Burundi ordered the Attorneys General of the Community, not lawyers in private practice but lawyers directly appointed by the Summit members of the Community, to determine the lawfulness of the candidature of H.E. President Pierre Nkurunziza.

The Attorneys General issued a report, which is among the documents we have attached for you, but this is a document of the East African Community, in which it is stated clearly that the candidacy was unlawful.

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Very regrettably, when the Summit met, at least twice on this problem, they have failed to pronounce themselves in response to the report of the Attorneys General which they themselves sought. At the very least, we would have expected to see a public statement saying, "Your Excellency, based on cogent legal advice by the best legal brains in the region, employed by governments, you should not stand." So, whether or not H. E. decided to stand thereafter, he would have lost the legitimacy and the credibility and the support of his colleagues for what was an unlawful candidature in the first place.

It also bears noting in terms of the political crisis that that same East African Community Summit as well as the Summit on

END of TAPE 1

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TAPE 4

You will find correspondence from the East African Law Society engaging the Secretary General of the East African Community and the Secretary General writing back assuring them that he will place their concerns before the Council of Ministers. You will find similar statements and actions from the East African civil society organisations and so on.

Some of the cases that are highlighted whose judgements were coming out last year, in time to help us solve the crisis, but these are cases that were filed before – in 2013 and 2014 – when the various petitioners jointly or individually were seeing – the Hon. Member who spoke last said that this is taking us in a particular direction and we would like to put a stop to it. So, that is some of what has been done.

With regard to the current phase of the crisis, the petitioners more precisely, the Pan African Lawyers Union from the very beginning organised and ensured there was a very delegation of Burundian human rights lawyers' activists at the Extraordinary Summits to ensure that the voice of the people was being heard side by side with the voice of the late. And if we are to pat our own backs, that is where we believe that, especially with the first Extraordinary Summit, the language of the Heads of State was very strong. "We will stand in solidarity with the people of Burundi; we will keep our doors open; we will order our ministers to have an ongoing discussion engagement with the people of Burundi..."

Really part of the reason we are coming here is because we are disappointed that that has not yet borne results; it hasn't solved the problem. If one was to analyse, even from a purely academic stand point, the three communiques that the Summit has issued on Burundi, the trajectory is downwards. First Summit – very resolute, laying out the principles, directing that certain pieces of action be taken and on the basis of which there would be a follow up Summit. Where those actions were taken, the follow up Summit was full of hesitation and a decision that begins becoming meek and weak by the Third Summit. Now really, the statement doesn't say much. And we are told that a lot of the instructions around how the negotiations should have taken place were actually not in the communique.

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Now, since we do not sit in the Summit, we the people will only rely on the official document coming out of the Summit to know what our leaders have said. With respect, the document was disappointing. That is why we are not surprised that there result has been disappointing.

The honourable Members talk of a mediation as though there is something serious going on. In the case of Kenya, the Chairperson of the AU Summit came himself, engaged, appointed a team, ordered them to fly into the country and the team engaged in mediation on a day-to-day basis unbroken until the problem was solved. In the case of Burundi, there was a meeting in July and then a six months siesta where citizens restrain themselves and then those that do not have patience take guns and begin shooting people. With respect, the East African Community Summit has failed the people of Burundi; it has failed the people of the East African Community. And that is why we, the petitioners decided to take another angle. Let us go to the Legislative Assembly; let us see if the Legislative Assembly with its mandate can energise more action; more talks – legislator to legislator – politician to politician – people to people to get the results.

Even if you say so, after six months slumber, one round was held in Entebbe in the late December and there was agreement that there will be a second round in Arusha last week. Where is that round compared to the Kenyan situation? We are applying the same AU law, the mediation was on a day-to-day basis until resolution.

I think other questions have been asked around subsidiarity. The AU exercises a principle of subsidiarity when its Organs are on the ground actively engaged in a matter. When ECOWAS is actively engaged in a matter, the AU comes to support and observe. In the case of Kenya, with respect, as at the time of the crisis, the EAC again was in a slumber. We were not actively engaged in the matter. Thankfully, that enabled the AU to parachute straight into Nairobi without really bothering, in the first instance, what the EAC was doing and to apply AU law directly without subsidiarity. And that helped solve the problem.

In this, we really wish that is what happened because the EAC says it is engaged in the matter; the AU is applying the principle of subsidiarity. The AU itself is looking and seeing our people not solving the matter. As a consequence, the AU Chairperson appointed President Boni Yayi to be the AU Zone Mediator to assist in the process. Unfortunately, one side of the conflict in Burundi rejected that. But I think, to us that is evidence that even the AU itself is frustrated with what its member is doing but is trying to be polite because this is a language of diplomacy. We the citizens are seeing the body backfiring.

As a result of the attacks on military installations of 11th December, 2015 how many people died? Some people claim up to 100 people died on that day. Those deaths are on us because had we taken the steps that showed the citizens that there is light at the end of the tunnel, however long that would take, we probably would not have got into that situation.

On the lawfulness of the candidature; on the lawfulness of the decision of the Constitutional Court of Burundi of April, the petitioners have actually filed a case on that one question to the

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East African Court of Justice. It is to tell the East African Court of Justice, please look at the requirements of Articles 6 and 7 of the Treaty that require the Partner States to exercise constitutionalism, democracy, good governance and rule of law as set out in the African Charter on Human and People's Rights and other international law standards. That one question we have said is the decision of the Constitutional Court of Burundi in tandem with the Constitution of Burundi, the Arusha Accord and how constitutional law is interpreted everywhere else in the world. Being the second poorest country in the world doesn't make you exceptional to apply a lower standard of justice or of law.

On the recommendations we have made, for instance, around suspension and around sanctions, we have been very careful to use the words "*request you to recommend to the Summit.*" If you look at our language, we have not asked you to suspend but rather we have asked you to recommend to the Summit. That is because we knew that it is in the rules of the Summit. But as I said, we left some issues, which we shall continue to reflect on and then come back.

Again on the Eastern African Brigade, I think Hon. Zein Abubakar has clarified that the EAC doesn't yet have its own joint brigade.

In the context of the EAC and building collaboration and peace and security issues, our armed forces, police and so on have been holding joint exercises, joint training, sporting exercises and so on so that they build that single spirit of unity among themselves but there is no legal instrument that allows them to engage in an issue. To the best of my knowledge, there is no legal instrument that empowers the Summit to order them to do something as the Summit. It will be the individual States doing something even if jointly.

What we have, based in Nairobi, Kenya, is the Eastern Africa Brigade of the Africa Standby Force. So, the Peace and Security Protocol of the AU says, we shall have an African Standby Force and it shall have five brigades in Northern, Southern, Western, Eastern and Central Africa. And the first one to come to be set up and to almost be combat ready is the Eastern African Standby Brigade, which operates out of Nairobi. That is what I think the AU had in mind when it was saying peace keepers should be deployed. But then again, their combat readiness is something that I am not sure of.

So, just to reiterate Hon. Opoka, the feeling of the people of East Africa is that their leadership, especially the Summit is not taking this crisis seriously. The feeling of the people of East Africa is that the Summit is not acting as decisively as its sister Summit of ECOWAS acts. The Burkina Faso problem began in October when we were in six months of our crisis but inside of a week, it was resolved. That is decisive action. A six months break between talks when body bags are piling is not decisive action.

On the questions around the East African Court of Justice, I think the petitioners have been very clear and we were very disappointed because that is all we could be with our political leadership, especially at the level of the Council of Ministers. When the Summit itself in 2004 gave an instruction and said, "Increase the jurisdiction of the Court now." It was quite clear that these were steps that were needed to be put in place. But when now the Council and the Secretariat below it dilly dally with this thing and drag it for six to eight years and then end up with something that does not address the instruction of the Summit on human and people's

rights jurisdiction, so even the early draft protocols that have been done that address human and people's rights have been thrown out and then a mismatch of something that talks about commerce and economics is what we ended up with.

So, that was really a mistake of the Council with the Secretariat. On that particular thing, I think the Summit, as far as I know, has not yet changed its mind and it is our inability to meet what the Summit wants us to do. But I agree with you that had that been done, probably, we wouldn't have been here now.

Again, part of how they ran away from adding this jurisdiction as a Summit was to say that you can go to the African Court on Human and People's Rights. The jurisdictions of these two courts are only similar in a few things. There was a very specific reason why from the Lagos Plan of Action to the Treaty for the Establishment of the African Economic Community, they spoke of creating sub-regional courts even when there were continental measures.

As it is, to address the African Court on Human and People's Rights, you must have first exhausted all local remedies- gone to the highest court but also you must be authorised by your State to access that court. So, whereas all five EAC Partner States are among the 28 African States that have acceded to the jurisdiction of the African Court, not all of them have made the additional declaration that is required that enables their citizens to go directly. The only two States that have done that are the Republic of Rwanda and the United Republic of Tanzania. So, for the people of Uganda, Kenya and Burundi who are in need that is not a court they can access in any case.

Part of the reason why sub-regional courts were created – this of course would allow citizens to directly access and would allow them on specified matters to be able to bypass the requirement of exhaustion of local remedies so as to arrive at an arena that is likely to resolve this particular question clearly. That does not exist at the level of the AU. So, much as there are some elements that are similar and all of them apply amongst other things African Charter on Human and People's Rights, there is a difference between the two.

Just to also answer some of the questions raised by Hon. Zein Abubakar – and we can go back to our records and provide even AU documents on them – each and every African State is bound by the Principle of Responsibility to Protect. It is bound by that principle because all of us were signatories to the 2005 World Summit Outcome Document that created it. But in addition, African States have actually gone a step ahead of most other States in the world by actually encapsulating this in Article 4(H) of the African Union's Constitutive Act in which we said, as Africans based on the lessons we had learnt including and especially the Rwanda Genocide that there would be never again and that the old principle of non-interference that was part of the OAU was completely thrown out and that now there will be non-indifference to the suffering of any African anywhere in the world, not just on the African continent and it gave the AU the power to intervene in situations of mass atrocities, where there is a risk or a threat of mass atrocities. *(Interjections) My Chair that is one of the elements where there is debate and even among academics (Interruption)*

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Mr Zein: Procedure, Chair. It is not my intention to interfere with what Mr Deya is saying in response to what Hon. Ogle said. I would prefer Hon. Ogle to say it through the microphone so that it is part of the record and when you are responding, it indicates that you are responding.

The Chairman: Hon. Ogle, you should only make a comment with my approval.

Mr Ogle: Thank you for that guidance, Mr Chairman. Hon. Zein, I was asking whether that African Quantitative Act was subject to the approval of the UN Security Council because that is the argument of the regime in Burundi now that if we bring an African Force, they will fight them unless they are approved by the Security Council. So, there is a bit of an argument on this thing. I wanted some clarity on it, please.

Ms Byamukama: In the East African Court of Justice we had some cases like that of Katabazi and others which actually deal with human rights. Would you say that lack of specific provision of a protocol on human rights for the EACJ has deterred the EACJ's ability to handle these cases? I thought, maybe, you would say something about this.

Mr Odeya: Thank you very much, Chairperson. If I could answer the second question first and then come to the first. As an active litigant before that Court, we have always had the argument that there is an implicit human rights jurisdiction at the Court. It is not explicit; it is implicit. And previous benches of the Court, which were made of generally very proactive judges, possibly from Natural Law School took that argument. There is no guarantee in the absence of that explicit treaty that future benches will take the same line.

That is the problem that with jurisprudence, you can progressively end up with a conservative bench that will reverse gains. For instance, one of the biggest challenges that we face with that Court now, is that the appellant division of the EACJ is one international court in the world that I know of that has refused to implement the principle of continuing violations. So, they are telling village women in Karamoja that is something happens to you, if you haven't walked to Arusha and filed your case within 60 days, too bad for you, regardless of what goes on. So, that just goes to exemplify to you that we use what we have but where possible, we strengthen it. So, my fear is that in future – and we are seeing nit in a few things that we are ending up with benches that are much more conservative than the benches we started with.

As to the question that Hon. Ogle asked, I think that is a many headed question. International Law scholarship on this point has various schools of thought on whether you need the explicit UN approval or whether you can act. What we have seen with other regional organisations is that sometimes they act with the UN Security Council approval and sometimes they act even without it. A good example of that is NATO.

So, for us, here is a situation whereby if we wanted to act, we would ask ourselves what is the best way of acting quickly. We can engage and come back on that one on the nuisances of International Law School of thought on that. But I will tell the Government of Burundi to be very careful about that. Because Kenya on the other hand when it was being put under pressure by the UN Security Council and the ICC was able to say no, what do my African brothers say?

If Burundi is telling us now that go to hell unless UN has spoken, if the Hon. Fansuda opens a file, will they come to us for protection? Will they come to the AU for protection? So, I think if they are pursuing that school of thought, they must be very careful not to speak from both sides of their mouth because it might come back to haunt them.

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The Chairman: Mr Deya, thank you very much for your very lucid arguments. Hon. Members, any further comments?

Mr Zein: Save to say that if there is something that comes up in the Committee, we should indicate to them that we may be able to get back to them.

The Chairman: Thank you very much. We shall certainly take up your offer on further consultations as and when we proceed. On behalf of my Committee, we would like to thank you, most sincerely for having taken time to petition, coming to see us and to have a very engaging discussion this morning. We will go into our deliberations and during the course of the next three days, we may require your intervention on certain aspects.

Before I call the meeting to a close, I would like to point out that there will be public hearings from tomorrow. You are also very welcome to participate and please, bear with us, if and when we call upon you for further clarifications.

With those few remarks, I thank you very much. There will be some tea and other drinks at the restaurant. So, you are all invited. Thank you very much.

(The meeting rose at)

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COMMITTEE ON REGIONAL AFFAIRS AND CONFLICT RESOLUTION: PUBLIC HEARING ON THE PETITION BY PAN AFRICAN LAWYERS (PALU) ON THE DETERIORATING HUMAN RIGHTS AND HUMANITARIAN SITUATION IN BURUNDI HELD IN ARUSHA, EALA WING, EAC HEADQUARTERS, ARUSHA, TANZANIA FROM 12th TO 17th JANUARY, 2016

MEMBERS PRESENT

Hon. Abdullah Mwinyi	-	Chairperson
Hon. Kimbisa Abdi Omar	-	Member
Hon. (Dr.) Nduwimana Martin	-	Member
Hon. Bonaya Talaso Sarah	-	Member
Ogle Abubakar Abdi	-	Member
Hon. Abubakar Zein Abubakar	-	Member
Hon. Ngoga Martin	-	Member
Hon. Nengo Emmanuel	-	Member
Hon. Opoka-Okumu Chris	-	Member
Hon. Mossi Hafsa	-	Member
Hon. Kalinda Francois Xavier	-	Member
Hon. Byamukama Dora	-	Member

PAN AFRICAN LAWYERS UNION (PALU)

Mr. Donald Deya	-	Chief Executive Officer
Mr. Francois J. Godbout	-	Director of Programmes, Tanzania
Arandine Rushenguziminega	-	Programme Officer, Tanzania
Ms. Janqline Amsi	-	Information and Communication Technology Officer

EAST AFRICAN LAW SOCIETY (EALS)

Mr. Humphrey J. Mtuy	-	Programme Officer, Tanzania
Ms. Taima Lydia Munganyinka	-	Programme Officer, Tanzania
Mrs. Martha J. Makonge	-	Programme coordinator

BURUNDI EMBASSY, TANZANIA

Mr. Amos G. Nihurwanko	-	Liaison Officer
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BURUNDI CIVIL SOCIETY

Ms. Nkurumzimama Jereme	-	Chief Executive Officer
Mr. Nshiuriuana Vital	-	FORSC
Mr. Nditije Charles	-	UPRONA Party, Burundi
Ms. Justine Nkurunzinja	-	President, COSOME
Hon. (Dr.) Jean Minani	-	CNARED, Coordinator, Africa
Ms. Marie Louise Baricako	-	Chairperson, Women and Girls Movement in Burundi for Peace and Security
Mr. Alexander Niyungeko	-	Chairperson, Burundi Journalist Union

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Mr. Gateretse JM - Consultant
Mr. Richard Ninubona - APRODH, Judicial Observer of Prisons

IN ATTENDANCE

Mr. Charles Kadonya - Principal Clerk Assistant
Mr. Godwin Murunga - Rapporteur

(The meeting was called to order at the Chairperson of the Regional Affairs and Conflict Resolution (Mr. Abdulla Mwinyi presiding)

(Introduction)

Thank you very much hon. Members.

The Chairman (Mr. Mwinyi): Hon. Members, distinguished stakeholders, good morning? We are calling the meeting to order.

(Prayers)

Before we proceed, I have a few administrative announcements. Primary amongst them is that translation services are available. Channel one shall be English while channel two will be in French. Those who are more conversant with French, you will have translation available. You have a gadget with you.

Hon. Members, distinguished stakeholders, it is my singular honour and privilege to welcome you here in Arusha this morning for an important activity. You are stakeholders and were asked to come and give your position in relation to the petition of the citizens of the East African Community (EAC) under deteriorating human rights and humanitarian situation in the Republic of Burundi.

I welcome you most sincerely. We hope that our deliberations will be fruitful. Secondly, I would like to ask my colleagues, first and foremost to introduce themselves. You will also introduce yourself and the organization you represent before we proceed with the programme.

Thank you very honourable. Members.

I have an announcement. Unfortunately, the microphones that the last three speakers are using are not being recorded. I will request you to sit on the front row and use the silver microphones so that you are captured. Move so that you use the silver microphone.

Without further ado, we will proceed to listen to the presentations from stakeholders. The format within which we propose is that individual stakeholders will take the podium. We will give a few minutes to make their statements. We know that you have your statements documented in writing. After the few minutes of presentation, I will allow my colleagues to seek clarifications, interrogate and to extract as much information as it is feasible in order to get a complete picture of your side of the story. Once that is done, a second stakeholder will take the podium and proceed with his presentation.

Is that clear? Are there any questions? I request the first stakeholder to come and proceed with his presentation.

Hon. Chairperson, honourable members of the committee, distinguished stakeholders and colleagues, good morning. As a priest, I will also say; peace be with us.

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I am very happy to speak in front of this august committee. On behalf of the citizens movement Halte Au Troisième Mandat my name is Vital Nshirimana. I represent the organization force and at the same time the Deputy President of East African Civil Society Forum. I am very happy because this committee has shown that the EAC is people centered. You are granting us a floor to speak about our issues for the purpose of finding a lasting solution for Burundi crisis. I am here; a civil society leader and one of the victims of President Nkurunziza's regime. -

I was once prevented from travelling to Seoul to go give a speech at a very august assembly of the old movement for democracy with 450 participants. The Government of Burundi gave instructions to many countries to the effect that my passport and many others had been stolen although I had it in my hands. I have it here. It has never been stolen or been given to anyone else.

My document is entitled; "Genocide should not happen again in Burundi."

In this document, I will highlight some points to inform this committee. We have noticed that although the EAC edges towards political federation, a lot of information is not received in good time. The information is not received due to many things including stereotypes. Some people would not even be willing to listen to what is happening in Burundi. They say that if it is about Hutus and Tutsi's they already know.

Taking into account the prevailing security situation, as early as 2015, in their correspondence dated 14 April, 2015, civil society organisations requested that the UN Security Council votes for a resolution demanding that the militia Imbonerakure, be disarmed and its chiefs be identified and arrested; and that any other person who possessed a firearm should be disarmed as well. That is the highlight of the correspondence that made us write to the Security Council. At the same time, civil society organisations requested that the UN Peacekeeping mission be deployed for the purpose of protecting Burundians from crimes against humanity, political cleansing and genocide. Since the beginning of peaceful demonstrations on 26 April, 2015, human rights and humanitarian situation has deteriorated considerably where 1,087 persons have been killed and more than 232,000 Burundians have fled the country to leave in precarious conditions. Many are flying for a second or a third time due to the Burundian crises.

Burundi, which is highly commended for its state of freedom of expression, right of association and peaceful assembly experiences media blackouts and the suspension of leading civil society associations widely known for their commitment to speak on behalf of the voiceless. Those who are still alive should thank the independent media and civil society organisations which spoke on their behalf.

The situation has allowed state agents to commit awful crimes since human rights and democracy watchdogs were silenced. Assassinations, murders, torture and extra judicial killing are committed on a daily basis. Kidnapping and ransom is utilized in several cases. For example, a 70 year old man was kidnapped twice and asked to pay a ransom of about USD10,000.

Mme Claudette Kwizera from Ligue Iteka is still under custody in the national intelligence services and the league in which she is a governing council member reported that a ransom was requested to free her. Since May, 2015, mass graves have been identified in Kamenge, Kinama, Rumonge, Mugongomanga, Karusi, Bukinanyana, Mpanda, Mutimbuzi, Muramvya and Karusi just to name a few. Many are still unknown.

As for January this year, Martin Nivyabandi, Minister in charge of Human Rights recognized that 10,000 cases of sexual assault were committed although he did not recognize this as a war tool. In his national address for 2016, Nkurunziza declared that over 6,000 people had been detained since April last year whereas Burundi jails capacity does not go beyond 2,400. So, the question is; where are these people detained? We think that many of them have been summarily executed.

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Following the 11 December, 2015 attacks on the barracks, 250 civilians were killed and their bodies exposed in the streets before burying them in mass graves. At 4.00 pm on 11 December, the Spokesperson of the Burundi Army, Col. Gaspard Baratuza said that 12 people were killed while five were injured. A day later, 250 people were found dead. So, who killed these people? They argued that they were combatants although many were found dead almost six kilometers from the barracks which were attacked.

Presidential police in partnership with a dozen of police officers and military officers and military officers planned to coordinate the action of the ruling of CNDD-FDD militia Imbonerakure and to attack civilians in their homes. Following its failure to overcome protests against a third term, President Nkurunziza's regime manipulates ethnicity and dozens of hate speech were pronounced and published, targeting; Tutsi, Rwanda and Belgium mainly.

Their slogan; "Tuzobamesa" (we will wash you); was the main one used in the CNDD/FDD demonstrations of 10 April 2015. The President of the Senate Reverien Ndikuriyo, in his meeting with local government on 29 October instructed the "Gukora". "Gukora" is a word which was utilized in Burundi genocide in 1993 and during the Rwanda Genocide in 1994.

He would say, go on the job and that way and he promised that they would inherit parcels in several neighborhoods of Bujumbura. I will quote him. "Guys do not joke over your responsibilities." The time has come for you to work, do not hesitate. In return, parcels and other assets will be available for you. This is the current President of the Senate.

On 27 December, last year, Mr. Gaston Sindimwo, the Vice President under the Nkurunziza regime said, "protesters, you must respect the king or choose between suicide and exile." This claim was published in his *Twitter* account. You can check that and yet he is a vice president.

On 6 November, Alain Guillaume Bunyoni who is the Minister for Public Security declared; "these protesters are a minority." In the case where security forces fail to combat them, we have 9 million people supporting President Nkurunziza. They will do their job in a minute. They were being referred as the "silent majority" because the other side has the talkative minority. While demonstrating against MAPROBU, the peacekeeping mission, that was to come as we expected on 26 December, last year, Imbonerakure increased their numbers because the Tutsis had become arrogant more than ever. (*presenter spoke in his vernacular language*). This was in 2000. A video was recorded and I was not there. The purpose of the recording was to show what they are capable of doing.

The urge to commit genocide gradually evolved. For example, in her twit, Darlene Bunyoni, the daughter of the Minister of Security claimed that--- This is a teenager; many of you are grandfathers, fathers and mothers. When you are a Minister and your daughter keeps on twitting hate speech messages and you think that you are managing the country for future generations that is very disturbing. She said that the genocide in Rwanda in 1994 did not present the most violent genocide in the 21st century. This is the daughter to the Minister for Public Security. "You are saying that MAPROBU should come to protect you, even if they come, they will not be able to because Imbonerakure who are around 15,000 armed boys are there." Romeo Ininanzwe (a singer and musician) most of us know his songs wrote on his *Facebook* wall and his post was illustrated by him holding a machete in his car. He is seated in a car holding a machete. He posted that because he is followed by many people. He said, elections are over. It is now the time for work. This is a singer who was born in Bujumbura. Machetes are supposed to be for people who are cultivating land up country.

In his *Facebook* wall he said; "Elections are over, it is now time for work."

I seem to be taking a lot of time. I am very sorry about that. I want you to listen very carefully, I insist. In the year, the Burundi Peace Agreement was signed here in Arusha. The core issue that was expected to be resolved was exclusion and genocide. In order to deal with the same, Burundi stakeholders and the sponsors including the AU, UN, EU and neighbouring countries agreed that the Burundi security forces should be composed of 50 per cent of Hutus and 50 per cent of Tutsis in order to prevent genocide and exclusion. In the Government, it was said that Hutus should be represented by a maximum of 60 per cent and 40 per cent Tutsis.

Hon. Binani Jean here was leading one of the most important delegations during the peace talks. I am talking under his supervision. The balance in the army and police is already broken. We no longer have the 50:50 ratio because many Tutsi members of the army retired and were not replaced. Meanwhile, this helped the CNDD-FDD to reinforce its militia, Imbonerakure. The militia is now playing the role of the army and the police to the extent that Imbonerakure go for peacekeeping missions. We have a certain---(presenter spoke in his vernacular language) ---- called Geva who killed three Italian nuns. He even admitted it. He was then sent to Somalia in a peacekeeping mission. That is just an example.

So, we are now at the brink of a genocide. Crimes against humanity have been committed since 26 April, 2015. As I am talking right now, the supply of firearms continues and a shipment has been reported to be at the port of Dar es Salaam. I am begging the Tanzanian Members of Parliament to help the region. In this shipment, the container has unknown firearms. We do not know whether they are ordinary bombs, hydrogen bombs or machetes. However, we are informed that there is a shipment. Please, call President Magufuli and tell him that the shipment should be stopped. I am not only talking to the Tanzanian Members of Parliament but asking this august Committee to also deal with the issue. You should not allow a country like Burundi which joined the community with many problems to cause the collapse of the community due to its criminal projects.

I am just about to end my presentation. The Burundian army deployed in peacekeeping missions take part in the exercise but at the same time allow President Nkurunziza to finance the militia Imbonerakure. Each peacekeeper gives out USD200 per month. This goes into the pockets of President Nkurunziza. These are things which are documented. You may want to ask where President Nkurunziza got money to organize the polls in December because he did not get funds from donors. He is getting money from these kinds of missions. It appears as if he is lending out our soldiers; our brothers and sisters and, yet at the same time their families are being killed back home. That is why we are urging the AU and the UN to decide on the repatriation of Burundian peacekeepers. President Nkurunziza, in his Press conference of 30 December in Gitega said; "when the peacekeepers come to Burundi, we will strongly fight them." I think this should be the first head of state to talk that way. That is a threat to the world wide peace and security.

Members of the committee, distinguished stakeholders and colleagues, we want the international community with which you are part of to deal with the responsibility to protect. The Burundi security forces are no longer able to protect civilians. We want this issue to be taken very seriously because to date, Imbonerakure are ready to commit genocide.

Thank you very much. I hope that my dear colleagues will complement what I have said. Later, I will share with you some pictures; some which are very disturbing. Can you imagine a dead body being found without a heart? This means that the killers took time to remove the heart. They took pictures of the dead bodies and even circulated them. You can imagine how many Burundians are traumatized. I remember when Hon. Hafsa Mossi went to Mahama. She cried because she saw how precarious the conditions of Burundians were. Many of them previously had homes and business back home.

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The Chairman (Mr. Mwinyi): Thank you very much. You have been heard. I will request honourable members to make their comments.

Mr. Martin Ngoga: Thank you honourable Chairperson. I want to bring out an issue of procedure if it is agreeable. The presenter said that he was speaking on behalf of others in a team. It would be helpful if all of them presented unless there is somebody in the team with a different approach. When should have a comprehensive interaction and not in pieces. If that is agreeable, we can wait until all the presentations are done then we can ask questions.

Hon. Abubakar Ogle: I would like to comment on the suggestion by my brother, hon. Martin. My understanding is that the presenter was talking on behalf of a human rights group. There will be other stakeholders looking at this issue from a political perspective. While they could be talking about the same subject, the line and perspective could be different. Our engagement will, therefore, be at a different level. I suggest that we proceed with the earlier arrangement so that we interrogate the first presenter and then deal with the others after their presentations.

Hon. Zein Abubakar: Thank you honourable Chairperson. I also heard the presenter saying that he will request those who are part of the civil society-- if they have anything to add they should be free to do it. Before we interact with him and his colleagues, I think it is important for us to allow as he requested, those who are part of the presentation to add anything they may have before we start interacting with them. Once we finish with the civil society, we will then move on to deal with the other categories. However, I agree with him in terms of saying that we should finish with the civil society. I agree with Hon. Ogle that once we finish with the civil society, we can then move to the other groups.

Hon. Hafsa Mossi: Hon. Chairperson, I am in agreement with the proposals from Hon. Zein and Hon. Ngoga.

The Chairman (Hon. Abdullahi Mwinyi): *Mheshimiwa* from the civil society, do you wish to supplement what you said?

Mr. Vital Nshirimana: Yes, I do.

The Chairman (Hon. Abdullahi Mwinyi): Feel very welcome. You could prepare the photographs through the Clerk-at-the-Table so that they are distributed.

(Mr. Nshirimana spoke in French)

The Chairman (Hon. Abdullahi Mwinyi): Is there anyone else who is willing to contribute to this?

(Ms. Marie-Louise Baricako stood up in her place)

Before you proceed, please, introduce yourself.

Ms. Marie-Louise Baricako: Thank you very much. My name is Marie-Louise Baricako. I am the Chairperson of the *Women and Girls Movement for Peace and Security* in Burundi. Thank you for this opportunity you have given me to be here and to talk about what is happening in our country Burundi. It is now almost nine months that killings, brutality and violence is happening in Burundi. As women and girls of Burundi, we are not a registered organisation. We are not a registered association. We are a movement. We decide to take up a stand on what is happening in our country. We cannot just watch, observe what is happening and wait for the next victim to be raped and killed or brutalised. What is happening is horrible and we are deeply concerned. I do not want to go into the details of everything that has happened. However, I would like to say that there should be scrutiny on the issue of ethical leadership. I do not know if any head

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of a family can close the door of his house and start beating everybody when all the neighbours are listening and waiting to see what will happen next.

That is what is happening in Burundi today. Burundians are screaming, crying and calling for help while people are just watching. We do not know where help will come from and how it will come. Honourable members, please, help! There is nobody who does not know what is happening in Burundi. Everybody knows. People who are supposed to be protecting and taking care of the welfare of the population are the same ones killing. Suppose they are not the ones killing but they know that people are dying in the country, what should be their reaction? They should offer protection. Is that not so? Today, there is no protection. People are dying and yet somebody can stand openly and say that there is peace in the country except in an area of one per cent of the country. What does that mean? Is it not time for us to know that life is sacred? I do not want to know whether it is the Imbonerakure or the demonstrators who are being killed causing problems. What I know is that Burundi people are being killed while we are standing, observing and waiting for the next victim. This cannot continue. I believe that the East African Community has a responsibility to be there, to help, to protect and to rescue. If you cannot do that, what is the point of being a community?

The Burundi people are citizens of the East African Community, the same way that Kenya would protect its people. Tanzania, Uganda and Rwanda protect their people. You have a duty to protect us. We are your citizens. We do not need to talk much. Today, we are talking about rape and violence against women. Today, we are talking about injecting chemicals in the bodies of our youth. What does that mean? What should we make of that? Today, the AU is proposing to deploy a mission to protect us. However, do we still need to do lobbying and advocacy so that African leaders can support that decision?

Everybody should understand that when we talk about "African solutions to African problems," this means that those who have the solutions are Africans. Why are we waiting for solutions? Nine months have gone by. People are being killed every day. There is no media talking about it in an accurate manner. However, when somebody dies, everybody gets to know that the person died. There is no different interpretation of death. Death is death. People in Burundi are dying. I hope that everybody knows what death is. We cannot explain it more.

Honourable Chairperson, I do not know what to say. I do not know what to tell you. I think it is time to make the leaders of Burundi understand that life is sacred. They cannot get away with killing their own people. This is a crime. What we should be doing today is to call upon them to be accountable. They have the responsibility to protect. If they are not will and are not able to do it, they should say it. Otherwise, I hope that they will intervene and protect their people. Intervene and protect us because we are your people.

Next is about dialogue. Why do we have to discuss about dialogue? We are human beings and we live together. We need to create space for everybody to feel comfortable wherever we are. Whenever there is a problem, there should be ways of solving the problem. We are talking about peaceful ways of solving problems. Why should we be discussing whether our leaders will come or not and who they have to discuss the issue with? Do you choose the people who are in problems? Once there is a problem, it has to be solved. Whoever is part of the problem must be at the table. Whoever has something to contribute must also be there to give his or her contribution because at the end of the day, we have to live together. I did not choose to be a Burundian neither I did choose to be a woman. I found myself to be a woman, Burundian and of Tutsi origin. Someone else did not choose to be a Hutu. He found himself to be a Hutu. Why do we have to argue about being a Hutu, Tutsi, woman or man?

I want to say again that this is an issue of ethical leadership. Unless you want to be part of the problem, be part of the solution.

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Thank you very much.

The Chairman (Hon. Abdullah Mwinyi): I request all those who have made presentations to submit their presentations in writing to the Clerk-at-the-Table. Is there another member of the civil society willing to present?

(Mr. Alexander Niyungeko stood up in his place)

You are welcome Sir. Please, commence with an introduction of yourself then you proceed.

Mr. Alexander Niungeko: Thank you Mr. Chairman, Sir. My name is Alexander Niungeko. I am the Chairman of the Burundi Journalist Union. Allow me to speak in French so that I express myself properly.

(Mr. Alexander Niyungeko spoke in French)

The Chairman (Hon. Abdullahi Mwinyi): Thank you very much. Is there another member of the civil society? *(Ms. Irene Nkurunziza up at her place)*

Please, welcome, Madam.

(Ms. Irene Nkurunziza spoke in French)

Thank you very much. Have we finalised with the civil society? Honourable members, you have heard. The floor is yours for comments and questions or whatever contribution you deem necessary.

Hon. Abubakar Ogle: Honourable Chairperson, I would like to thank all the presenters. The first speaker who is a representative of the civil society and human rights talked about a possibility of a genocide in this region; something that touched me. The last time there was genocide in this region, it was premised on two particular areas. One was messaging and the way words were packaged. A section of the society was referred to as cockroaches, termites and parasites and it was said that they should be finished.

The second reason that the genocide took place was because of a group of young men who were armed, trained and were focused on a mission. They were calling it haramwess***. I have no doubt, in my mind, that the message in Burundi is the same. When you hear words like; "wash them," "kill them," "finish them" and being told that you have to make a choice of either being exiled or be killed. The message points to one thing.

However, what I want to understand is Imbonerakure. Imbonerakure according to the regime in Burundi now is that these are party stewards and youth wingers of the CNDD-FDD and are just carrying out party activities. My question is; what is the structure of Imbonerakure? Do they essentially belong to one particular section of the society or putting it more blankly, are they Hutus? What is the structure of Imbonerakure? The committee should be given that understanding. Who are these guys and can we possibly relate them to the dangerous Interahamwe who carried out the 1994 Rwanda genocide?

Hon.***:** Thank you honourable Chairperson. Mine is an issue close to what my colleague asked. I want to know about Imbonerakure and not just about the structure. In Burundi, we have the army and the police but all the presenters have been focusing on Imbonerakure. I would like to know the source of funding of the Imbonerakure. How do they get their arms? How do they organize their things if they are a wing of a political party? Do all political parties have youth movements or is it only an attribute of the leading party?

Hon. Martin Ngoga: Thank you honourable Chairperson. I always feel comfortable standing even though I am not obliged to. I would like to thank the presenters. I would like to do a recap of the holistic understanding of what has been presented to us. I will be asking the presenters whether my understanding

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is correct or not correct. For me to do that and for the benefit of the presenters, I have spent most of my career life as a lawyer, prosecuting perpetrators of genocide. I was the prosecutor general of Rwanda for almost eight years. Before then I was attached to the International Tribunal for Rwanda here in Arusha. Therefore, I believe I have a good understanding of this subject. My understanding of the Rwanda situation seems to tally entirely with what you have presented to us. This is in terms of what you have presented.

I now want to take you through a chronology of the Rwanda situation and what I can match with what you have told us. I will then seek your opinion at a later point so that you either vindicate me or prove me wrong. The Rwandan problem started as a political problem in 1993. There were many opposition parties which emerged and they opposed the party that was in power. These parties, at least most of them; were not ethnic. My understanding of your presentation is that the problem in Burundi started as a political problem; opposition to a third term. I will seek your opinion on whether I am wrong or right.

The Rwandan situation---

Hon. Mossi Hafsa: On a point of order, Mr. Chairman. With due respect to my honourable friend, I think we are going out of context. We are supposed to engage with our stakeholders, get clarifications on what they have presented and it is not in order that we start bringing in lectures.

The Chairperson (Hon. Abdullah Mwinyi): I must rule on the point of order. It is agreed. *Mheshimiwa* Martin, restrict yourself.

Hon. Abubakar Zein: Mr. Chairman, Sir, allow us to contribute on that first then you can give a ruling.

The Chairperson (Hon. Abdullah Mwinyi): Is it in relation to that point?

Hon. Abubakar Zein: Yes.

The Chairperson (Hon. Abdullah Mwinyi): Okay, we will begin with *Mheshimiwa* Ogle and then *Mheshimiwa* Zein.

Hon. Abubakar Ogle: Mr. Chairman Sir, this is a matter dealing with Burundi and the Burundi crisis. With a lot of respect to *Mheshimiwa* Hafsa, *Mheshimiwa* Ngoga was very clear. He wanted to give a background or a contextual analysis of this situation. As he said, if I understood him correctly, he was to validate his understanding of the Rwanda genocide. The word mentioned here was "genocide." The only genocide that has happened in this region was the Rwanda genocide. So, it is imperative and important that we make reference to it so that we understand whether the matter being canvassed here is truly a case of genocide in the context of our knowledge and understanding of what happened in the region. In that context, I think he is right.

Hon. Abubakar Zein: Thank you Mr. Chairman. I will limit myself to points. One, I agree that as members we should be as brief as possible. However, it should not be ruled out of order when a members wants to verify their understanding. If a member is seeking to test what they have understood by explaining their understanding to the presenters, then the presenters have a right to say that they were either understood or not. It is not right to ask a member not to test their understanding. It would be absolutely out of order to stop a member from seeking to get better understanding.

Hon. Hafsa Mossi: Mr. Chairman, Sir, if it is in that context, then I concede.

The Chairperson (Hon. Abdullahi Mwinyi): With hon. Hafsa conceding, is there any further comment?

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Hon. Martin Ngoga: The matters in which hon. Hafsa has conceded in which I am grateful, I just want to clarify that I never intended to give lectures. If that is how it was understood, I apologise. This is an issue of how we will approach the issue. I could ask you, honourable Chairperson, to parade them here so that I ask them questions and they respond. I thought that I could present the holistic understanding of their presentations and test it against their own understanding.

I had just talked about how the political situation in Rwanda mutated from being a political problem with the effort of the authority to an ethnic problem. You seem to have told us that this is what is happening in Burundi and we need your opinion on it:

There was an emergence of militia that started as a political party youth wing; notably, Intarahamwe. You have told us that Imbonerakure, which you understand to be a youth wing of a political party, is carrying out activities which match this situation. I seek your opinion.

There is use of coded language that hon. Ogle has alluded to. There is also plenty of international jurisprudence on this subject: What did "cockroaches" mean under the context? What was the meaning of "snakes" under the context? When somebody said; "go to work" in Rwanda that meant go and kill people. When somebody said that they would take away people's plots--- When I was the prosecutor in Rwanda, I had a letter from a citizen who had written to the mayor and said: I am searching for a certain victim and as soon as I find him, you have to promise me that you will give me his land. I want to know whether there is any resemblance of this situation.

Hon. Chris Opoka-Okumu: Thank you Mr. Chairman. I would like to understand from the presenters something regarding the Imbonerakure. They said that the Imbonerakure are also deployed as peacekeepers. The Imbonerakure are deployed as the army, police and so forth. Do they also put on military or police uniform when they carry out their activities? I would like to understand that. The first presenter also talked about the other groups, protesters.

The second female presenter talked about protesters. I do not care whether this is done by protesters or not. My friend alluded to what happened in Rwanda and I think we did not have anything of that nature; the police and Itaharamwe acting. In other words, one side acting on behalf of the other one. I would like to understand clearly the context of what they mean by protesters.

Hon. Dora Byamukama: Thank you Mr. Chairman. I would like to add my voice to those of the people who have come here to share with us and to be witnesses before this committee. I have several questions. Some of them have probably been asked. I captured something that was said in the first presentation. The gentleman talked about something to stop a third term. He said genocide should not happen again in Burundi. I would like to ask just like my colleague whether this issue is being related to the 1994 genocide. I need to get a clarification on that.

The second issue is about prayers. We have had several witnesses. I would like to hear from them a more concrete form of what they would like us to do or what they would like to see done towards a constructive resolution of what is happening and towards achieving sustainable peace in Burundi.

When you look at the Arusha Peace Accord; for instance, the 60:40 power sharing and the 50:50 security forces deals were brilliant ideas. However, the challenge that has come up is that when it comes to the 50:50 security forces aspect, the fact the Government in power has capacity to have paramilitary forces becomes very difficult to contain. I want us to go back to that. Was that realistic? Obviously, these two were referring to what happened in the past, in 1994. That is my understanding. Are you proposing that there be a review, audit or concretisation of how to implement the Arusha Peace Accord better?

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For example, after 1994, should there have been a truth and reconciliation commission? Should there be one right now so that we have some kind of consensus and everybody comes together? I am looking for something constructive. I would like to hear more of this.

Mr. Chairman, I am a bit worried. When allegations are made against partner states, for example, about shipment of arms, that makes me very nervous. Unless we have very concrete information, we need to be very careful. These are neighbours who can support us. We need to understand each other better on this so that we see how best we can come up. We need more information and more concrete evidence. When we use this forum to say such things, even those who are willing to help become jittery. Arms will come through air, ship or any other means.

Finally, I get very worried when I hear somebody talk about the issue of being either a Hutu or Tutsi. It does not make any sense to me, just like being man or woman does not mean anything as Madam Baricako said. I did not choose to be born this way. However, the divide seems to be very deep. This is very frightening. We obviously have tribal divisions but we must live together. I want to hear from my fellow colleagues how we can live together notwithstanding the fact that we are men or women, Hutus or Tutsis or even Twa- let me bring in another category.

This is something we cannot change but it seems to have taken another dimension. I do not see us moving far. In conclusion, EALA has a mandate. We represent East Africans. I heard people asking what we should do: I am glad you people are here because we cannot represent you unless we know what is happening. We liaise with national parliaments, we legislate, approve budgets and make sure that the Treaty is implemented as it should. Basically, we can reach out and talk because it is our work to talk. At the same time, they should mention how the EALA should help and also how other parties can help so that they have peace and peace beyond.

The Chairperson (Hon. Abdullah Mwinyi): Hon. Hafsa, because you contributed, I will give you some time later. Hon. Kimbisa, after you contribute, I will request that we give an opportunity to the other side to respond. Thereafter, we can continue.

Hon. Kimbisa: Thank you Mr. Chairman, Sir. I have heard one word being repeated several times but I am lost. The word is; "Imbonerakure." I would like to get what they call in French *mot a mot* translation or word to word translation. I would also like to hear the political connotation of the word because I am lost. I used to know one word; *Imbonahai***. I do not know whether this is similar to it or not. I need to be helped on that. Otherwise, I thank the presenters for the informative presentation. I also concur with my colleague that you should tell us what exactly you want us to do. You already have the solutions that you could suggest to us so that we make reasonable follow up.

Lastly, I echo what hon. Dora said, that if we start finger pointing the partner states at this stage and start accusing them and yet they are the same ones to save the situation, then we will be complicating the situation. We ought to have very concrete evidence because this is far reaching. If we start saying that this country should not do this or that, we will be putting ourselves in a situation instead of looking for means and ways of solving the problem.

Hon. Abubakar Ogle: On a point of clarification, Mr. Chairman, Sir.

The Chairperson (Hon. Abdullah Mwinyi): A clarification on what, *Mheshimiwa*?

Hon. Abubakar Ogle: The person who was sent to Somalia, if I understood correctly, was a confessed killer of the nuns and not a member of the Imbonerakure. The Imbonerakure as we were told are youth operating. Therefore, there is no deployment of Imbonerakure.

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Hon. Adam Kimbisa: Hon. Chairperson, I did not make any reference to Somalia. I simply said that one of the presenters had said that Imbonerakure are being sent on peacekeeping missions. I asked them to confirm that. My question is; if they are being sent on peacekeeping, then do they have to wear uniform? That is all I asked hon. Ogle.

The Chairperson (Hon. Abdulla Mwinyi): Please, make your submissions through me. You have been understood. Let me allow our colleagues now. I am offering a proposal. After they submit, I do not know how we will proceed thereafter. We had planned for a refreshment break. *Mheshimiwa* Hafsa, you will get a chance.

Hon. Hafsa Mossi: I am sorry. I am suggesting that we exhaust all the questions then we give them time to answer if possible, if it is agreeable.

The Chairperson (Hon. Abdulla Mwinyi): Are you comfortable if we exhaust all our questions and then you deal with them? This is also a question of capturing properly. Who is next?

Hon. Hafsa Mossi: Thank you Mr. Chairman. I want to welcome my fellow Burundians who are here to help us figure out what can be done by the East African Community through the Assembly so as to solve the crisis. I am happy to see them today because most of them are not in the country today. They are living in neighbouring countries and it is important that they share with us their sentiments about what is going on in Burundi.

Mr. Chairman, Sir, there has been very serious allegations on the Government of Burundi in connection to mass graves, all kinds of human rights abuses and more people are talking about cases of rape. As a woman, I am very touched and disturbed. Something has to be done about it. I have a general question to those who have presented whether they have evidence as my colleagues have said. It is important that we have evidence on who has done what so that we establish whether the allegations can be proven.

I do not want to be misunderstood but we have to challenge what they are saying so that we know whether the information is true or false. Hon. Dora talked about shipment of arms. We need to have more clarification. Who does the shipment belong to? As you know, *Mheshimiwa* Chairperson, and hon. Members, there a lot of weapons in Burundi these days. It is good to establish who the shipment belongs to.

With regard to the media aspect, I may be in a good position to understand where they are coming from since I am Burundian. However, I want them to explain, in their thinking and understanding why the media houses in Burundi have been shut down. There was an issue regarding the possibility to pull out the Burundi Peacekeeping mission from other countries. I would like to understand how that would help in bringing peace in Burundi. As a country which has been through a lot of crisis and instability, we have been helped by other countries to restore peace. In pulling out our peacekeeping mission – pardon me for using the word “our” since I am a member of EALA – where they are helping other countries to bring back peace, how would that help Burundi restore peace?

Lastly, I want to emphasise on what others have said regarding concrete recommendations to the Assembly and to the EAC so that we help Burundi come out of the crisis.

Hon. **: Thank you Mr. Chairman, Sir. The first presenter, in his presentation, mentioned a number of facts describing the deteriorating human rights and humanitarian situation in Burundi. He mentioned among others the existence of mass graves, inciting messages and hate speech. I would like to ask whether they have evidence to support this so that we may listen to it or even see it before we give our reactions.

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Hon.**: Thank you Mr. Chairman. Mine is just to seek a clarification on the numbers that were stated in the Arusha Peace Accord between the two tribes in the police and in the army. Someone should tell us whether that ration is being adhered to. The Imbonerakure factor has almost overturned that balance. It seems as if the Imbonerakure are taking everything in their hands. Could somebody confirm whether everything is going by the agreement and the difference so far that has come by?

Hon. Maryam Ussi: Thank you Mr. Chairman for this opportunity. I want to start by thanking the different petitioners and the stakeholders present here for bringing this issue to us because we are their representatives. We have to add our voice to handle these crisis which is within our region. It is our duty and we thank you. African has an international body of lawyers and it has to use its brain to solve its problems. We have more often than not relied on outside forces and plans to solve our problems. I am proud and happy to see the efforts being applied. My issue is; I am worried about the plight of women and the girl child in Burundi under the critical situation. I would like to congratulate the women who have taken up the challenge to stand and voice their concern for this vulnerable group in the society. From the presenter, I did not hear anything about the ongoing negotiations or efforts to bring this situation to an end. I want to understand what efforts are being made at different levels; the UN, AU and by the EAC. Have you observed anything being done and what would you like to see being done?

Hon. Abubakar Zein: On a point of order, Mr. Chairman, Sir. At this point, I would like to request that we first take a health break and then when we come back they can respond. We should first take care of the sugar levels of all the participants.

The Chairperson (Hon. Abdullah Mwinyi): That seems to be a very popular proposal. I request that we take health break. There are some refreshments at the restaurant. I suggest that we take 20 minutes. I am tempted to make it 15 minutes. I beg your indulgence in terms of time keeping. Thank you.

(The Committee adjourned temporarily at----)

(The Committee resumed at ---)

(On resumption, Hon. Abdulla Mwinyi, Chairperson, Regional Affairs and Conflict Resolution presiding)

The Chairperson (Hon. Abdullah Mwinyi): Participants, please, take your seats. Before we allow our participants to respond, we will be shown some video recordings. I must warn that the images and video recordings are extremely graphic. I beg your indulgence on that but this has been brought as part of the narrative. Please, proceed.

(Different pictures to illustrate the situation in Burundi were displayed)

Mr. Vital Nshiuiriwana: Those are just some of the pictures. We have many pictures although some were taken by human rights organisations including APROHEDEHASH but others were shown by unknown citizens for various reasons. At times, they would be taken by the killers for the purpose of traumatizing the families of the victims. You will notice that none of them had a gun or was shooting a grenade as the Government would want to portray.

We have honourable Minani who wants to explain about the Imbonerakure phenomenon. Do you allow?

The Chairperson (Hon. Abdullah Mwinyi): Prior to our refreshment break, honourable members had raised a number of questions as well as comments. We are ready to listen to you in a manner and order in which you decide to do. Whoever is ready to start, you are welcome to proceed.

(Hon. Minani Jean spoke in French)

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Hon. Martin Ogle: On a point of order, Mr. Chairman. It appears as if the huge chunk of the narrative on the Burundi crisis is centred on the Imbonerakure. We need to get further understanding of who these guys, how they are structured and where they come from. Unfortunately, an honourable Member of this Assembly was mentioned in the testimony of one speaker. It is only fair, without ambushing him, to ask Hon. Jeremie Ngebdakumana, as the former President of CNDD-FDD to testify and give us a further understanding of what Imbonerakure mean, their structure and pattern. That is my suggestion.

The Chairperson (Hon. Abdullah Mwinyi): With regard to the proposal on procedure by hon. Ogle, I do not have a problem with the request he has made. It can be made through the Secretariat and we handle it. I hope you do not mean that he should give evidence now, He was not listed among those who were to give evidence today. However, I agree with him, in fairness, that once somebody is mentioned, they should be given an opportunity to speak.

In terms of procedure, that request should be taken as one which has formally been brought to your office. In the normal way that parliamentary practice demands of us, it will be handled but not here and now.

Hon. Martin Ngoga: Hon. Chairman, I find this to be more of a housekeeping issue more than an issue of calling a witness to respond. He was not mentioned in a way that he was being accused. It was in the process of giving the history of an organisation. We could deliberate on that too.

The Chairperson (Hon. Abdullah Mwinyi): Is there any other comment? My office will handle that. I would like to seek your guidance. We have had an extensive ratio of important aspects of these proceedings. Do you want to contribute on that or should we leave it and go to the next page? Please, proceed, to the next responses as you had planned.

Mr. ***: Thank you. A lot has been explained by hon. Minani regarding the phenomenon of Imbonerakure. I would like to add that the qualification of Imbonerakure as being a militia was formally done by Z. Lad Hussein who is the UN Human Rights High Commissioner. This was when he visited Burundi in April last year. He formally stated in writing that Imbonerakure was proven to be a militia. When you talk about a militia, you are talking about organized people with firearms, according to the UN. Another complement of how they are formally structured, they are organized as CNDD-FDD youth wing: That means that they have a chief being Mr. Bikarira. I do not know whether they have replaced him. In each district or neighbourhood, they have representatives and members who know themselves. They have time to meet and get instructions. Regarding the funding, I remember in Gonzi in 2014, they would urge merchants to hire them after firing other people.

They used to ask that other people be fired and the Imbonerakure be hired because they are healthy, strong and can do the job better. In many parts, depending on the administration at the local level, they obligated people to give tax of about Burundian Francs 200 or 1,000 depending on the worth of the community.

With regard to the deployment of Imbonerakure in peacekeeping mission, we have given an example. The man Geva Nduimana was sent to peacekeeping mission although he was not listed in the army. He had no identification to show that he was a military officer. There are civilians who participate in peacekeeping missions. However, they participate as civilians and they do not wear military clothing. With regard as to whether there are similarities between the situation in Rwanda and Burundi, I can say that there is. Some names may not be the same ones being used. The *modus operandi* may also change but the mutation from this being a political issue to a genocide pattern is the same. When this thing started, the Imbonerakure were there. However, some were prepared to give resistance where Nkurunziza would not be elected to serve a third term or even to change the constitution. He tried and failed. With regard to the armourment of the Imbonerakure, this started very far back. It is suspected to have begun a time when a certain man, Luva was

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assassinated in 2009. He was investigating the issue of firearm trafficking between Burundi and the DRC Congo. At that time, because the information he had was very important, they assassinated him in a very extra ordinary manner. The purpose or objective of Nkurunziza to rely on Imbonerakure is to suffocate power and to divert some core political issues. There is a question from hon. Mukama on why genocide should not happen again. The response, controversy or debate of genocide in Burundi is ongoing.

Many believe that in 1972 there was a genocide planned by the Hutus which failed. However, the one which was planned against them succeeded. This was analysed by the Truth and Reconciliation Commission. I do not know whether it will be criticized because it does not meet the UN standards in the matter. In 1993, following the assassination of the first elected President, hundreds and thousands of Tutsi's, I do not have the accurate number--- but there was a high school in Kibimba where Tutsi students were burnt under the coordination of their headmaster. This happened in several locations of Burundi. After that, in 1996, there was a UN Security Council Commission of Inquiry which was set up in Burundi. The commission made a finding that genocide was committed in 1996 against Tutsi from the party of OPRONA and some Hutus from the same party. At that time, the strong parties were from OPRONA. It is not that genocide has not happened in Burundi. It does not matter the number of killings. When 10,000 or 100,000 people are targeted and assassinated for being members of a certain ethnic, religious or national group it is still genocide. I know that there is a debate on the same.

With regard to the implementation of the Arusha Peace and Reconciliation Agreement, this is a very historic peace agreement for Burundi. We do not want to touch on it. There are many political stakeholders who have made reservations. Some of the reservations were very important. For example, the Tutsi's wanted there to be a rotation in the seat of the head of state. However, today, this is not the question. A Tutsi or Hutu can be elected to be President.

The main idea contained in the Arusha Peace and Reconciliation Agreement is the fight against the ideology of exclusion and genocide. This can be prevented when we have a certain balance in the army and in the political institutions where community members are empowered. I want to highlight the word "empowered."

Today, we have the first Vice President, Mr. Gaston Sindimo. He is a Burundian of Congolese origin. He is neither a Tutsi nor a Hutu. He can be assumed to be in a technical position but not in a position where he is expected to stand up and guarantee to sell out Tutsis. Today he is the one inciting people to kill Tutsis and Hutus as well. When I talk about empowerment, I want you to look at the Inspector General of Police Mr. Andre Ndayambaje. If you ask him what he knows about the killing of citizens, he will tell you that he is very sorry and he knows nothing. When you read the duties and responsibilities of his job, you will see that he is expected to coordinate, control and sanction many issues for his members of the group. It is his deputy, who is closely linked to President Nkurunziza and the Minister for Public Security to decide what should happen. The Minister for National Defence and Former Combatants is a Tutsi. He is a civilian, a lawyer just like me. What authority does he have over his colleagues? We have Generals from the Tutsi community who have spent almost 35 years in the army and know almost everything about the army. They allowed someone who would be going to take instructions in the private bar of General Adolf. He was seen there several times. These are facts which are documented. If you meet and ask him what relationship he has with the "private man" and why he went to the private bar to receive instructions, he really will have no answer.

We have spoken about the shipment. This is sensitive information and we are obligated to protect our sources. However, it is very good for us to know what is happening. This shipment could have been brought through Dar es Salaam, Mombasa or through Burungu Zambia. However, the Government of President

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Nkurunziza is operating in armourment. Burundi, being one of the poorest countries in the world is among countries which were supplied with firearms last year. Instead of buying medication, building bridges and collecting waste in the city, Nkurunziza bought firearms. This is a big problem.

Burundi has gifted football players. However, the country has no stadium to host any sports. The issue of being either Hutu or Tutsi is very important to us. Some men are from Hutu community while some are Tutsis. Others are born by a Hutu father and a Tutsi mother or vice versa which is very interesting. These people are expected to be our advisers. Sometimes people have married their partners without knowing whether they are Hutus or Tutsis. This has happened several times but has never caused a problem. The Arusha Peace and Reconciliation Accord addressed the issue of guarantees to exclusion and genocide. What was agreed should be respected.

With regard to negotiations, honourable members of the community should press for our issues. We need our mediation team to speak on these issues. From June up to now, we have noticed that things are moving very slowly. You should help us advise the Government of Nkurunziza as Madam Marie Louise has said. He does not have to choose his partners. He cannot always decide who will be opposing him. He cannot always say that the people in the civil society are the ones who have caused problems and that we are terrorists.

When Nkurunziza ascended into power, there was a judgement against him where he was condemned, convicted and sentenced to death for crimes he committed during the civil war. This judgement still stands although he managed to nullify it in a very controversial manner. President Nkurunziza should not call us criminals. We want civil society organisations to be respected. One may fear us because we were the first ones to raise these issues. Otherwise the crisis in Burundi would have continued.

There is the issue of evidence which is very important. Our associations were suspended but we have about three comprehensive reports on the mass atrocities including that of APRODEHASH and ACAT. The ACAT has been bringing a report weekly. The evidence we have consists of pictures, others details and testimonies. Some of the testimonies are from people who occupied important positions. For example, Mr. Bakundukize Liboir who was the Spokesperson of the National Police for two years was obligated to leave because he said that there was a parallel command of the police. He said that there was a dual membership of the police. Bucumi Moise who was a Minister severally spoke about firearms distribution in many communities of Burundi.

So, yes, we have evidence. That is why in our demands we reiterated what was requested by the petitioners. A commission of enquiry and a fact finding mission should be recommended by the House. At this stage, Burundi should not preside under the EAC. I know that President Nkurunziza cannot even travel. He cannot preside over a summit. Burundi should not be allowed to preside over the Chairmanship of the Summit and the Secretary General as well. Burundi is not in a position to appoint a Secretary General to replace the current one. Another demand is that a decision should be reached regarding the peace talks. The talks should be accelerated. The Secretary General whose duty is to check on the implementation of the Treaty should use his powers to advise correctly and accurately when the summit is held. I do not know when that will be.

Lastly, we want you, as a community, since the entire world is looking at the EAC – since the AU is doing a good job of following up the situation in Burundi – to advise the summit and petition it so that peace talks continue and the citizens of Burundi are protected. For us to achieve the protection of civilians, we need the support of the EAC in the deployment of the peacekeeping mission MAPROBU. As we wait for MAPROBU, we also want our soldiers to be repatriated because they should contribute to the protection of

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their brothers and sisters. We do not want this mission to continue financing an illegal and illegitimate Government. Thank you very much.

The Chairperson (Hon. Abdullah Mwinyi): Are there further responses? Please, madam, go ahead.

Ms. Marie-Louise Baricako: Thank you Mr. Chairman. I will try to stick to one question that has been raised which is; "what do you want us to do?" I will try to answer that question and in the process answer other questions. The first thing is for the East African Legislative Assembly (EALA) to speak for the people of Burundi and ask for the killings to stop. In asking that we stop the killings, we will be doing two things. First of all, we will be saving the future of Burundi. The future of Burundi is being messed up. How will this country develop without future generations? The second issue is securing the people so that we engage in the peace process. There is no way that people can sit and dialogue when killings are going on. This is a prerequisite. Unless the violence and killings stop, there cannot be any dialogue. No effective and fruitful dialogue is possible without stopping the killings.

The second thing is that rebellions are forming. People have decided to organize themselves and form their own protection groups. This is very dangerous not only for Burundi but also for the region. We are begging you to speak for us. Speak to the leaders of the EAC and speak to the leaders of Africa because we need protection.

The AU Peace and Security Council adopted on 18 December, 2015 the 556th Communique calling for the deployment of a peace mission in Burundi which they called MAPROBU. As the movement of women and girls for peace and security in Burundi, wherever we have done advocacy, the response has always been that the EAC must report something. This is what the AU is waiting for. What is the EAC saying? We believe that for Africa to be credible, we should stand up for one Africa one voice. My brother has just requested for the support of the African Union Communique. I also insist on that. Africa should not speak in different languages. If the AU sees the need to protect Burundi, then I do not understand why the EAC should not see it. Once you have seen the need, go out and do something. I know that you understand that Burundi needs protection. So, stopping the killings is the first thing that should be done.

The second one is dialogue. As women, as I said at the beginning, we decided not to remain silent. We came together to agree. It was not easy for us to harmonise our views and understanding of these issues. We are women of all ethnic groups and from all parties but we came together. We harmonized our view and said that we would support the peace and security of Burundi and Burundi irrespective of who she or he is. That is what we are doing. As we bring our contribution, we also saw the mediation team and all the actors in the process including the EAC. We said that we wanted to be part of the process. We wanted to bring our contribution and to ensure that when solutions and decisions are being reached, they take into account the dreams, aspirations and interests of the population. That is what we are defending. We believe in dialogue. Whoever believes that they have a positive contribution, they should be allowed to come forward and say what they have. When you are looking for solutions, you should not exclude people. The Government should not dictate who can give presentations and who should not. The Government should not control the agenda.

The EAC, as our representative, should hold the Government accountable. It should sit with the people, listen to them and forge a solution that will be effective and lasting. The dialogue should go hand in hand with the Arusha Peace and Reconciliation Agreement. I will not say that the Arusha Peace and Reconciliation Agreement is a perfect tool because it is not. However, as it is, in the collective minds of the population of Burundi, the Arusha agreement has been our solution. That solution, imperfect as it may be is what we are holding so as to attain peace, security and development in Burundi. So, whoever wants to make peace in Burundi must go through the Arusha Peace and Reconciliation Agreement. We should not

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question the Accord or try to review it. Whoever wants to lead Burundi or supports the good of Burundi can build on the Arusha Peace and Reconciliation Agreement. This agreement does not set a threshold. However, we cannot go lower than the Arusha Peace and Reconciliation Agreement. You can expand the agreement, you can improve it and go beyond it. However, you cannot break the Arusha Peace and Reconciliation Agreement:

In our agenda of dialogue, the Arusha Peace Agreement should be there as the tool or pillar of the conclusion of our discussions. The third issue is that we want the EAC to speak for us whenever it can. We want Burundi leadership to be held accountable for what is happening. We cannot keep Burundi entangled as if nobody is responsible. Definitely, somebody is responsible. That person who is responsible should answer and tell us what is happening. It is not possible that there is nobody who can explain what is happening when there is somebody in charge. Whether he is in office legitimately or illegitimately, once one is seated in that office, they should be accountable.

The Chairperson (Hon. Abdullah Mwinyi): Any further comment?

Mr. (**): Thank you for the floor. Allow me again to speak in French.

(Mr. ** spoke in French) (tape no.8)

The Chairperson (Hon. Abdullah Mwinyi): Hon. Members, we heard the responses from the civil society. I am proposing that we take a lunch break and we return after lunch to hear their proposals. It is 1.35 pm. We will resume at 2.35 pm.

(The committee adjourned temporarily at 1.35 pm)

(The committee resumed at 2.35 pm)

(The Chairperson, Mr. Mwinyi, presiding)

(Mr. ** spoke in French)

The Chairperson (Hon. Abdullah Mwinyi): Thank you for your contributions.

Mheshimiwa mwenyekiti, it is now ten years since I was here. It is not easy for me to speak in Kiswahili because I am not used to speaking in it.

The Chairperson (Hon. Abdullah Mwinyi): Speak in English.

Mr. **: My English is poor. I will make a lot of mistakes.

(Mr. ** spoke in French) (tape no.9)

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(Disclaimer: This is a raw draft. It can only be used for information purposes. An authenticated copy should be obtained from the Hansard Editor, EALA)

1. The first part of the document discusses the importance of maintaining accurate records of all transactions.

2. It is essential to ensure that all data is entered correctly and consistently.

3. Regular audits should be conducted to verify the accuracy of the information.

4. This section covers the various methods used to collect and analyze data.

5. The following table provides a summary of the key findings from the study.

6. The results indicate that there is a significant correlation between the variables studied.

7. In conclusion, the study has provided valuable insights into the subject matter.

8. Further research is needed to explore the underlying causes of the observed trends.

9. The authors would like to thank the participants and funding agencies for their support.

10. Contact information for the lead researcher is provided at the end of the document.

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PROCEEDINGS 15 JANUARY 2016

Public Hearing: Committee on Regional Affairs and Conflict Resolution

Please note that Tape 9 and part of tape 10 are in French. 11, 12 and 13 also have responses in French.

The Chairman: Thank you very much. We have heard extensively. Honourable members, the floor is yours for questions, comments, if any before we can wrap up for today. I thank you.

Ms Dora Byamukama (Uganda): Mr Chairman, I just have a comment. I just wanted to ask about the documentation because earlier we had asked for some submissions. I would really love to see what the professor had to say on paper and hon. Dr Minani. I think it would be very good.

Of course what you have said has been captured but for me as a member, I would like to look into the causes. I think it is very important that we get more clarity on the causes because not all of us are very conversant with the history of Burundi and even if you read, I think I would like to hear more on the causes.

Maybe the status quo has been alluded to but I think there are problems with facts and figures especially when it comes to refugees. I think that could also be clarified.

I think you have done a very good job on recommendations and I want to thank all the presenters so that one is becoming clear. So if we could have a write up or maybe when they are responding, focus on those, maybe we will be able - Because if we do not know the causes, whatever you may recommend may not even work in the circumstances.

Secondly Mr Chairman, I think we need some more information on what was proposed in the meeting with the mediator because I heard something to do with amnesty. Maybe we could get some more clarification on that.

If I can think ahead, when you talk about amnesty it is like now you are starting on a clean slate because if you are going to bring people to the table and some are labelled, it has its own problem but when you start with a clean slate and say, let us start here, although you may not be able to bury everything, people of course have to be held accountable etc. but I think I need to hear more on that amnesty, what was said, maybe in brief so that we can be able to carry on from there.

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Otherwise, I think it was very informative and I would like to stop here. Thank you.

Mr Twaha Taslima (Tanzania): Thank you, Mr Chairman. I would like to ask just one question. We have been informed that this Imbonerakure is for one party and we have also been told that there are some other parties which have their own.

I would like to know to what magnitude other groups belonging to other political parties have an impact on what is going on. I hope I have been understood, thank you.

Mr Abubakar Ogle (Kenya): I want to thank hon. Dr Minani for that very compelling submission and detailed background about the situation and crisis of Burundi and the genesis and where it is today.

I was particularly concerned about the kind of picture he is painting of a person who is so determined to hold on to power at whatever cost and who wouldn't listen to any advice and who wouldn't even care about the obtaining environment however dangerous it was.

Secondly, the military, police and security apparatus chain have almost collapsed. Here was a corporal who could give orders or who wouldn't even listen to a General.

Thirdly, he painted a clear scenario of a potential civil war.

I wanted to pick his mind on the particular time lines he is talking about when he says that this is a rotten system all the way, right from the top. Does he have any idea about a particular time line when he thinks that this thing could possibly snap? Thank you.

Mr Abubakar Zein (Kenya): Thank you, Mr Chairman. Like others, I would like to thank those who have taken time to make submissions to this committee.

Mr Chairman, I am a law abiding citizen so if I venture into a territory that you consider your own or that I should not be speaking about, please stop me.

One, on my own behalf, I would like to indicate to the last speaker, the honourable former Member of Parliament that I also consider myself a reluctant politician and in my short political career, I have come across very good men and women but I have also come across quite a number of mercenaries within the political fold to the extent that it is to some a refuge for those who are not able to do anything else in life correctly.

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Having said that, like what we said to the others yesterday, I will be interested to see if there are any other materials that they would like to avail to us after this session, either in writing, video or whatever that they should feel free to do that in fairly quick time because we do not have a lot of time as a committee to report back to the House.

Secondly, all our records are recorded verbatim. There is a Hansard record of Parliament that is verbatim, both audio and video so some of us will have taken notes but we will go back to the record and review it as well.

Thirdly, I only speak for me and I am sure I am speaking for majority if not the members of this committee that every submission that has been made will be treated very fairly and that the recommendations of this committee back to the House will not be a secret, it will be a public document and it will be transacted in a public forum.

Last but not least, I would like to indicate that it is not true that this Parliament and other organs of the Community have not done anything about what is going on in Burundi but my humble view is that we have not done enough. My view is that having a public forum like this is a demonstration of our Parliament. Our Speaker has spoken on this matter quite a number of times, this committee was able to visit refugees in Tanzania and in Rwanda and there is a public record of what was transacted in the House.

This is not to defend ourselves but to explain that sometimes two things happen. One, we do not get as much interest like we have gotten now, there is a lot of interest in what has been going on during the past two days but secondly, that the processes and I am sure some of them are former Members of Parliament - The processes of parliamentary procedures take a bit of time so I would like them to understand that but I suppose that the mandate that we were given by the House is that we report as soon as we are able to report back to the House.

So let me finish with a question. This question can be answered today or it can be answered through written memorandum. Does anyone of those who presented today feel that they can speak about the independence of the Judiciary as currently constituted in the Republic of Burundi?

I have heard a lot about the independence of the Police and the army but can somebody else also speak to the independence of the independent electoral commission as currently constituted and any other national institution that was given birth by the Arusha agreement? Thank you, Mr Chairman.

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Ms Sarah Bonaya (Kenya): Thank you, Mr Chairman. From the two presenters, it is adding to what the other presenters have also presented. They have given a very grim picture of the situation in Burundi and the various interventions that have already been attempted but which do not seem to be helping.

I wanted to find out, for emergency, what other urgent measures would be proposed to be able to bring instant remedy if there is any engagement because parliamentary procedures, as hon. Zein stated, will take time but we need to think of an urgent measure by EAC as a region.

In view of the fact that our peace and security Protocol is not yet signed by some of the Partner States, we are also curtailed in some interventions which would have been undertaken. In instances where African Union had even proposed to send a stand by force to be able to contain the situation; peace keepers, they are still waiting for EAC so I see a lacuna there where something should be done but bureaucracy is in the way.

I do not know but there is a question there that there is something urgent to be done but there are hurdles that are being experienced. So maybe from the EAC presentation tomorrow, we need to find out what internal mechanisms ...

... Mr Rwigema, if I may, one presenter has some prepared text. The other was speaking but since everything is recorded, the Hansard will provide you with the documents.

Mr Rwigema: Thank you, Mr Chairman. I am very glad that we have received very elaborate information mainly concerning Imbonera Kure, its structure, funding, training and everything. It shows us that the situation in Burundi is a chaotic one. I wanted to ask more information.

We have heard too much concerning the killings done by Imbonera Kure but we know that in Burundi we have some other armed elements from the Opposition and from the army or police who are not on the side of Nkurunziza. I would like to know if those people do not also kill because I have never heard something related to what they are doing; having arms and other materials for killing people.

There is a need in Burundi for investigations. Recently, I think last year, I think there was a killing related to high officers; a General Adolf Nshimana and Colonel Bikomako - one is a Hutu and another is a Tutsi. It cannot be understood that a general or a colonel can die and you do not get any information about what happened. Who killed them?

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During these presentations, no one has mentioned the name of these two people who were high officers; a general and another, a colonel, one is a Hutu and another, a Tutsi. Is it Nkurunziza who killed them?

I wish I could get some more details on that and then also concerning the internal rebellion and the accusations that can be put on their side concerning the killings perpetrated by them. Thank you.

Mr Martin Ngoga (Rwanda): I wish to withdraw my interest to make a comment. Thank you.

The Chairman: As there are no further comments, I will bring it back to our colleagues to give us a summary of the interventions that are relevant to your presentation. I thank you.

Mr: Response in French

Ms Byamukama: My English is very simple. There is a mediation process which has begun where you met the President in Entebbe. I just wanted to hear from you because I think this is where it was proposed. What is the road map? What next? I think it would help us if we are going to talk to the heads of state, which I hope we will be able to, to appreciate where we are at. That is all I wanted- And also the time frame. Thank you.

Mr: Response in French

Ms Hafsa Mossi: Thank you, Mr Chairman. I want to assure my friend who I have known for a long time and this is why he keeps alluding to my name. He likes my name.

I just wanted to use the momentum on the mediation aspect because you were talking about the mediation. As a seasoned politician, do you have hope? Are you optimistic that the dialogue is going to take off? What are the ingredients or chances and what can be done for it to take off?

I also want to clarify once again that I do not like pouches. If a pouch was going to be done today, I was not going to be happy so Mr President, that is what I wanted to say.

Mr: Response in French

The Chairman: Thank you very much. We had an extensive discussion. I thank all participants and on behalf of my committee, I would like to thank you all again for taking some time out and joining us and providing us with this invaluable

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information. We thank you very much and I call the meeting to a close. I thank you. Some admin issues -

Mr Charles Kadonya: Thank you, our chairperson, honourable members and our distinguished stakeholders. As we exit, as usual we shall go to the restaurant for refreshments. Tomorrow for the honourable members, we will be meeting in the same room 1313 from 9.00 a.m. Thank you very much.

(The meeting arose and adjourned.)

Annex 3 & 4



IN THE EAST AFRICAN COURT OF JUSTICE
FIRST INSTANCE DIVISION



AT ARUSHA

(Coram: Isaac Lenaola, DPJ; Faustin Ntezilyayo J, & Monica Mugenyi, J.)

REFERENCE NO. 1 of 2014

EAST AFRICA LAW SOCIETY.....APPLICANT

VERSUS

**1. THE ATTORNEY GENERAL OF
THE REPUBLIC OF BURUNDI.....1ST RESPONDENT**

**2. THE SECRETARY GENERAL OF
THE EAST AFRICAN COMMUNITY.....2ND RESPONDENT**

15TH MAY 2015

REFERENCE NO.11 OF 2011

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JUDGMENT OF THE COURT

I. INTRODUCTION

1. This is a Reference by the East African Law Society (hereinafter referred to as the "Applicant"), which is registered as a Company Limited by Guarantee in Tanzania, and as a Foreign Company Limited by Guarantee in Kenya, Rwanda and Uganda. Its address for service, for the purpose of this Reference is No.6, Corridor Area, Arusha, Post Office Box Number 6240 Arusha, in the United Republic of Tanzania.
2. The Reference was filed on 17th February 2014 under Articles 6(d),7(2),11,27,29,30,38,67(3)(d),71,143,146 and 147 of the Treaty for the Establishment of the East African Community and Rules 1(2) and 24 of the East African Court of Justice Rules of Procedure (hereinafter referred to as the "Treaty" and the "Rules", respectively).
3. The Respondents are the Attorney General of the Republic of Burundi and the Secretary General of the East African Community who are sued on behalf of the Government of the Republic of Burundi and of the East African Community in their respective capacities as the Principal Legal Adviser of the Republic of Burundi and the Principal Executive Officer of the Community.

II. REPRESENTATION

4. The Applicant was represented by Prof. Fredrick Ssempebwa, Mr. Francis Gimara and Mr. Humphrey Mtuy. Mr. Nestor Kayobera appeared for the 1st Respondent, while Mr. Wilbert Kaahwa and Mr. Stephen Agaba appeared for the 2nd Respondent.

III. BACKGROUND

5. The Applicant is a dual membership organization comprising individual lawyers and 6 Law Societies namely, Burundi Bar Association; Rwanda

Bar Association; Law Society of Kenya; Tanganyika Law Society; Uganda Law Society and Zanzibar Law Society. It has formal Observer Status with the East African Community.

6. At all material times, Mr. Isidore Rufyikiri was the President of the Burundi Bar Association and also the President of the Burundi Centre for Arbitration and Conciliation (CEBAC) and sometime in 2013, charges of corruption were made against him in respect of his association with CEBAC.
7. On 24th July 2013, Mr. Rufyikiri, wrote a letter -Ref.: CAMRI/0427/2013 to the Governor of Bubanza Province in Burundi and the subject of the said letter read as *"Litigation between Masenge Venant and the Government of Burundi: warning."*
8. As a result of what was alleged by the 1st Respondent to be injurious and defamatory declarations contained in the abovementioned letter, the Prosecutor General of the Court of Appeal of Bujumbura, by his letter Ref.: No.552/11/1584/2013 of 07th October 2013, filed a complaint against Mr. Rufyikiri to the Bar Council of the Burundi Bar Association and requested that the Council should take disciplinary measures against Mr. Rufyikiri.
9. On 29th October 2013, Mr. Rufyikiri, then also President of The Burundi Bar Association, organized a Press Conference in which he made declarations allegedly considered by the 1st Respondent to be against the rules, State security and public peace.
10. On 30th October 2013, the Prosecutor General of the Court of Appeal of Bujumbura, by his letter No.552/11/1722/2013 of 30th October 2013, requested the Bar Council of the Court of Appeal of Bujumbura to disbar Mr. Rufyikiri from the Roll of Advocates because of the abovementioned declarations made on 29th October 2013.

11. On 17th December 2013, the Prosecutor General made a complaint against Mr. Rufyikiri to the Court of Appeal of Bujumbura, requesting his disbarment from the Roll of Advocates and the case was registered under RA10.

12. The Court of Appeal of Bujumbura, on 28th January 2014, by its decision in case RA10, disbarred Mr. Rufyikiri from the Roll of Advocates and ordered immediate execution of the judgment

13. On 03rd March 2014, Mr. Rufyikiri, through his Counsel, applied for review of the judgment of the Court of Appeal of Bujumbura by the Review Chamber of the Supreme Court of Burundi in **Case No. RCC25.103**. On 16th June 2014, the Review Chamber ruled against Mr. Rufyikiri and maintained the decision of the Court of Appeal of Bujumbura.

14. On 23rd December 2013, Mr. Rufyikiri sent an email to the Chief Executive Officer of the East African Law Society (EALS) in which he stated that he was forbidden from leaving the Country following a decision taken by the Prosecutor General of the Anti-Corruption Court. He then requested that EALS should sue, on his behalf, the Government of the Republic of Burundi before the East African Court of Justice seeking a declaration that the impugned decision is unlawful and therefore should be repealed.

15. The instant Reference was therefore filed by the East African Law Society, on 17th February 2014.

IV. THE APPLICANT'S CASE

16. The case for the Applicant was set out in the Reference, an affidavit in reply to the supplementary affidavit sworn on 05th November 2014 by Mr. Rufyikiri, the Reply to the 1st Respondent's Response to the Reference filed on 17th June 2014, the Applicant's written submissions

filed on 07th November 2014, the Reply to the 2nd Respondent's Submissions filed on 15th December 2014 and the Applicant's Submissions in reply to the 1st Respondent's Submissions filed on 15th January 2015.

17. Briefly, the Applicant alleged that on 29th October 2013, Mr. Ruyikiri, in his capacity as the President of the Burundi Bar Association, addressed a press conference in which he raised issues concerning the rule of law, democracy and constitutionalism, and that as a result of the said press conference, the Prosecutor General of the Court of Appeal of Bujumbura made a complaint to the Burundi Bar Council requesting it to take disciplinary action against him.

18. He averred that the Bar Council had 60 days expiring on 30th December 2013, within which it had to consider the complaint lodged by the Prosecutor General, but that, on 17th December 2013, the latter, without following the laid down procedures, introduced an action at the Court of Appeal of Bujumbura requesting that Mr. Ruyikiri be disbarred from the Roll of Advocates. He further alleged that on the same date of 17th December 2013, the Prosecutor of the Anti-Corruption Court made an order prohibiting Mr. Ruyikiri from travelling outside Burundi.

19. It was also the Applicant's case that the Court of Appeal, without following the right procedures and due process, disbarred Mr. Ruyikiri from the Roll of Advocates.

20. The Applicant asserted that when members of the Burundi Bar Association convened a meeting on 28th January 2014 in order to consider and analyse the said decision of the Court of Appeal of Bujumbura, Burundi security forces forcefully disrupted the meeting.

21. The Applicant then alleged that the acts of the servants/agents/institutions of the 1st Respondent of prosecuting Mr. Ruffyikiri before the Anti-Corruption Court, disbaring him from the Roll of Advocates and prohibiting him from travelling outside Burundi were unprocedural, and in breach of the rule of law, good governance, the right of free movement, as well as Articles 6(d), 7(2), 11,27,29,30,38,67(3)(d),71,143,146 and 147 of the Treaty.
22. The Applicant further alleged that the 2nd Respondent was in breach of his duty under the Treaty for failure to regularly monitor the observance of Treaty obligations by Partner States so as to advise the Summit and the Council over measures to effect compliance.
23. The Applicant therefore seeks declarations and orders from the Court as follows:
- a) *A declaration that the system of administration of justice and governance in Burundi is not conducive and enabling for the effective operation of the justice as envisaged by Articles 6(d) and 7(2) of the Treaty;*
 - b) *A declaration that by virtue of the legal system currently existent in Burundi, there is no distinctive separation of powers between the Judiciary and the Executive and hence a breach of the relevant provisions in Articles 6(d) and 7(2) of the Treaty;*
 - c) *A declaration that the procedure adopted and employed by both the Prosecutor General and the Court of Appeal of Bujumbura to disbar Mr. Isidore Ruffyikiri was in breach of the international instruments on the right to a fair trial as provided by Articles 6(d) and 7(2) of the Treaty;*
 - d) *A declaration that the decision and order of the Court of Appeal of Burundi [sic] of 28th January 2014; and the travel ban imposed on Mr. Isidore Ruffyikiri by the Prosecutor*

General of the Anti-Corruption Court of the Republic of Burundi infringe upon and are in contravention of Articles 6(d), and 7(1)&(2) of the Treaty;

- e) An order removing into this Court for purposes of quashing and or setting aside the decision and orders of the Court of Appeal of Burundi made on the 28th January 2014 in case No.RA10 between the Public Prosecutor vs. Mr. Isidore Rufyikiri and an order directing the Court of Appeal of Burundi, the bar Council and the Government of Burundi to immediately and forthwith reinstate Mr. Isidore Rufyikiri to the table of Barristers of the Court of Appeal of Bujumbura [sic];*
- f) An order immediately and forthwith quashing, setting aside and or lifting the decision and orders of the Public Prosecutor to the Anti-Corruption Court of the Republic of Burundi prohibiting Mr. Isidore Rufyikiri from travelling beyond the national borders of Burundi;*
- g) An order directing the 2nd Respondent to constitute and commission an evaluation process to establish whether or not the governance and constitutional framework within the Republic of Burundi adheres to the threshold specified in Articles 6(d) and 7(2) of the Treaty and to advise both the Council and the Summit of the East African Community on whether the Republic of Burundi should be suspended or expelled from the East African Community under Articles 29,67,71,143,146 and 147 of the Treaty;*
- h) An order directing the 1st and the 2nd Respondents to appear and file before this Honorable Court a progress report on remedial mechanisms and steps taken towards the implementation of the Order sought by the Applicant in*

prayer vii above, every three months or such other lesser period as the Court shall deem expedient;

- i) An order that the costs of and incidental of this Reference be met by the Respondents;*
- j) That this Honorable Court be pleased to make such further or other orders as may be necessary in the circumstances."*

V. FIRST RESPONDENT'S CASE

24. The 1st Respondent's case is set out in his response to the Reference filed on 08th April 2014, an affidavit sworn on 04th April 2014 by Mr. Sylvestre Nyandwi, Permanent Secretary in the Ministry of Justice of the Republic of Burundi, a supplementary affidavit sworn on 10th October 2014 by the same Mr. Nyandwi and the 1st Respondent's written submissions filed on 16th December 2014.

25. In a nutshell, he denied the Applicant's allegations and counter-alleged:-

- a) That Mr. Rufyikiri as President of the Centre for Arbitration and Conciliation (CEBAC) mismanaged or caused mismanagement of funds belonging to the organization;
- b) As a result, the Prosecutor General of the Anti-Corruption Court decided to prosecute the said Mr. Rufyikiri for corruption and the case was still pending before the said Court;
- c) That because the said Mr. Rufyikiri wanted to flee the country, the Prosecutor General moved the Director General of Immigration to bar him from moving outside of Burundi;
- d) That the said Mr. Rufyikiri breached his oath as an advocate when he addressed a letter to the Governor of Bubanza Province, copied to high ranking officials of the East African Region and the International Community and organized a press conference and

made statements that were injurious to state security and public peace;

- e) That subsequent to the aforesaid letter and press conference, the Prosecutor General of the Court of Appeal of Bujumbura moved the Court to disbar Mr. Rufyikiri, following the Bar Council's refusal to take disciplinary action against him;
 - f) That the Court of Appeal acted in accordance with the Laws of Burundi in disbarring Mr. Rufyikiri, and that the disbarment did not result into any injury or loss. In addition, the application for review of that decision was dismissed by The Supreme Court of Burundi; and
 - g) That nothing done by the servants/agents/institutions of the Government of Burundi contravened the Treaty.
- The 1st Respondent, therefore, prays that the Court should dismiss the Reference with costs.

VI. SECOND RESPONDENT'S CASE

26. The 2nd Respondent's case is set out in his Response to the Reference filed on 07th April 2014, an affidavit sworn by Mr. Charles Njoroge, Deputy Secretary General, filed on the same date, as well as his written submissions filed on 28th November 2014. His case is as follows:-

- a) The 2nd Respondent has denied all responsibility in the matter before the Court as at all material times, and until 27th January, 2014 when he received a letter from Mr. Rufyikiri, he was not aware of the matters complained of by the Applicant; and accordingly and contrary to the Applicant's pleadings, he cannot be blamed of any failure in the discharge of his duties and responsibilities;

b) That as soon as he learnt of the matters complained of, and in accordance with the dictates of his office, he interceded with the Government of Burundi and established a Task Force to collect information on:-

- i) Alleged breaches of the Treaty by the Republic of Burundi; and
- ii) The cause of growing litigation on alleged breaches of the Treaty by the Republic of Burundi; and the effect, if any, of this development on the East African Community.

7. On 24th July 2013, Mr. Rufyikiri pleads that the granting of the Declaratory Order and other Reliefs sought by the Applicant against him does not arise and that the Reference should be dismissed with costs.

VII. SCHEDULING CONFERENCE

27. Pursuant to Rule 53 of the Rules of this Court, a Scheduling Conference was held on 18th September 2014, at which the following were framed as issues for determination by the Court:-

- 1) Whether the Reference discloses a cause of action taking into account the provisions of Article 30(1) of the Treaty;
- 2) Whether the acts of the servants/agents/institutions of the 1st Respondent in prosecuting Mr. Rufyikiri before an Anti-corruption Court, disbarring him from the Roll of Advocates and prohibiting him from travelling outside of Burundi constituted breach of the provisions of Articles 6(d) and 7(2) of the Treaty;
- 3) Whether the 2nd Respondent failed/neglected his responsibilities under the provisions of Articles 29(1) and 71(1)(d) of the Treaty;
- 4) Whether or not the Applicant is entitled to the remedies sought.

VIII. DETERMINATION OF THE ISSUES BY THE COURT

Issue No. 1: Whether the Reference discloses a cause of action taking into account the provisions of Article 30(1) of the Treaty

Submissions

28. While the Applicant argued that the Reference discloses a cause of action against the Respondents, the latter maintained that no cause of action did arise against them.

Applicant's Submissions

29. The Applicant's Counsel submitted that the Reference discloses a cause of action on different grounds:

Firstly, that Article 30(1) of the Treaty authorizes legal and natural persons, resident in a Partner State, to make a reference to this Court for determination whether a decision or action of a Partner State or the Community is an infringement of the Treaty. He argued that what that person needs to do is to plead facts that show there has been an action, decision, or omission by a Partner State or the Community and that the action, decision, or omission contravenes a provision of the Treaty.

30. In that regard, learned Counsel contended that the Applicant has pleaded in the Reference that the 1st Respondent, the Government of Burundi, a Partner State, unlawfully prosecuted Mr. Rūfyikiri before an Anti-Corruption Court without regard to due process which is a component of the Rule of law; disbarred the same Mr. Rūfyikiri from the Roll of Advocates without regard to the law or due process and without valid or lawful reason and without regard to due process, prohibited the same Mr. Rūfyikiri from travelling outside of Burundi.

31. In line with the foregoing, Counsel for the Applicant submitted that the commitments by the Government of the Republic of Burundi are to *inter alia*, adhere to the principles of good governance and rule of law under Article 6(d) and 7(2) of the Treaty.
32. As regards his case against the 2nd Respondent, Counsel submitted that the cause of action arose because he failed in his obligations under Articles 29(1) and 71(1)(d) of the Treaty to regularly monitor the observance of the Treaty obligations by the Government of Burundi as to advise the Council of Ministers and the Summit of Heads of State over measures to effect compliance by the Republic of Burundi with its commitments under the Treaty.
33. Secondly, Counsel stressed that the cause of action in the instant Reference is not a breach of the human or other rights of Mr. Rufyikiri, but the alleged infringements of Treaty obligations. In support of this contention, Counsel relied to the decision of this Court in *Samuel Mukira Mohochi Vs The Attorney General of the Republic of Uganda, EACJ Ref. 5 of 2011*. He hastened to add that although Mr. Rufyikiri's rights are referred to in the Reference, the Court had decided that it would not abdicate from exercising its jurisdiction of interpretation under Article 27(1) of the Treaty merely because the Reference includes allegation of human-rights-violation. [See *James Katabazi and 21 others Vs The Secretary General of the East African Community and other, EACJ Ref: 1 of 2007 (The Katabazi Case)* and *The Attorney General of the Republic of Kenya Vs Independent Medical Unit, EACJ Appeal 1 of 2011 (The IMLU Case)*]
34. Counsel further argued that ***"The Partner States' obligations, to their citizens and residents, in respect of good governance, have 'through those States' voluntary entry into the EAC Treaty, been***

scripted, transformed, and fossilized into the several objectives, principles and obligations to be found in the Treaty, the breach of which gives rise to a cause of action before this Honorable Court.” [See The IMLU Case (supra) and The Attorney General of Rwanda Vs Plaxeda Rugumba, EACJ Appeal 1, of 2012 (The Rugumba Case)].

35. It was Counsel’s final submission on this issue that “*Whether some of the matters were litigated before the Burundi Courts is irrelevant to a cause of action. The Applicant and Respondents were not party to the Burundi litigation. The Burundi courts could not, and did not determine the issue of non-observance of the Treaty. Therefore res sub judice and res judicata are not applicable.*” [See *The Katabazi case (supra)* and *Anthony Calist Komu Vs The Attorney General of the United Republic of Tanzania, EACJ Ref. 7 of 2012*].

1st Respondent’s Submissions

36. In reply to the Applicant’s arguments supporting the existence of a cause of action against the 1st Respondent, the latter’s Counsel asserted that this issue had to be addressed together with Issue No. 2 on the alleged breach of Articles 6(d) and 7(2) of the Treaty and relied on the decision of this Court in *Ndorimana Benoit Vs The Attorney General of the Republic of Burundi, EACJ Ref. No. 2 of 2014 (The Ndorimana case)* in support of his allegation.

37. Based on Article 30(1) of the Treaty which provides that “*Subject to the provisions of Article 27 of this Treaty, any person who is resident in a Partner State may refer for determination by the Court, the legality of any act, regulation, directive, decision or action of a Partner State or an institution of the Community on the grounds that such act, regulation, directive, decision or*

action is unlawful or is an infringement of the provisions of the Treaty", learned Counsel submitted that there was no action which was unlawful or was an infringement of the Treaty and that, therefore, in the absence of such an action, no cause of action against the 1st Respondent could arise.

38. Counsel further pointed out that as elaborated in the 1st Respondent's Response to the Reference and in the Supplementary Affidavit of Mr. Sylvestre Nyandwi, Mr. Rufyikiri, in his capacity as the President of the Burundi Centre for Arbitration and Conciliation (CEBAC), was being prosecuted in the Anti-Corruption Court of Burundi in accordance with Law No.1/12 of 18th April 2006 on measures of preventing and combating corruption and related offences and Law No. 1/10 of 3rd April 2013 on Criminal Procedure Code of Burundi, under Case No.RMPCAC 2066.

39. He then contended that this case is distinguishable from *The Mukira Mohochi Case* (supra) since the whole process of prosecuting Mr. Rufyikiri and the measure prohibiting him from travelling outside Burundi did not violate any articles of the Treaty, including Articles 6(d) and 7(2) as they were being done in accordance with the relevant Laws of Burundi.

40. In the same vein, Counsel argued that since the disbarment of Mr. Rufyikiri was done in accordance with the applicable Burundian laws and by national competent institutions (i.e. Court of Appeal of Bujumbura and Review Chamber of the Supreme Court of Burundi) as set out in detail in the Respondent's case above, there was no ground to support the Applicant's allegations that the 1st Respondent has violated his Treaty obligations embodied in Articles 6(d) and 7(2) of the Treaty. It is on the basis of the foregoing and again relying on the *Ndorimana*

Case that he submitted that a cause of action against the 1st Respondent had not arisen.

2nd Respondent's Submissions

41. On his part, Counsel for the 2nd Respondent opted to address issues No.1 and No.3 jointly while stating that issue No. 2 did not relate to him.
42. Relying on the decision in *Prof. Peter Anyang' Nyong'o and 10 Others Vs The Attorney General of Kenya and 3 Others, EACJ Ref. No. 1 of 2006 (The Anyang' Nyong'o Case)* in which the nature of a statutory cause of action under Article 30(1) was expounded by this Court, he submitted however that no such cause of action as envisaged in the Reference arose against him.
43. He contended that the Applicant's claim against him is mostly based on suppositions that having been well aware of Mr. Rufyikiri's circumstances, he elected to do nothing about the matter, remained silent and failed to undertake, on his own initiative, investigations into the 1st Respondent's conduct in handling Mr. Rufyikiri's issue. Thus, Counsel argued that those suppositions on which the Applicant's claim was premised were not borne by any evidence in the Applicant's pleadings, or at all and that the absence of evidence ought to be noted in the Applicant's disfavour.
44. As regards the 2nd Respondent's responsibilities under the Treaty, Counsel pointed out that the relevant provisions regulating this matter are Articles 29 and 71 of the Treaty and that Articles 143, 146 and 147 read together with Articles 67 and 71 of the Treaty referred to matters that were beyond the 2nd Respondent's competence.
45. Article 29(1) of the Treaty provides that "*Where the Secretary General considers that a Partner State has failed to fulfil an*

obligation under this Treaty or has infringed a provision of this Treaty, the Secretary General shall submit his or her findings to the Partner State concerned for that Partner State to submit its observations on the findings.” Article 71(1)(d) of the Treaty provides that *“1. The Secretary General shall be responsible for: ... (d) the undertaking either on its own initiative or otherwise, of such investigations, collection of information, or verification of matters relating to any matter affecting the Community that appears to it to merit examination.”*

46. Counsel deduced from the foregoing provisions that the 2nd Respondent's responsibilities are, firstly, to submit his findings to a Partner State that has failed to fulfil an obligation under the Treaty with a view of soliciting a response thereto; and secondly, to undertake investigations into matters relating or affecting the Community that appear to him, as head of the Secretariat, to merit examination. He then argued that *“the two responsibilities cannot be exercised contemporaneously (at the same time), but that they can only be exercised consecutively (one after the other). The import of this is that investigations into a matter will first have to be carried out [Article 71(1)(d)] before the 2nd Respondent can make and submit his findings to the concerned Partner State to respond thereto [Article 29(1)]. Therefore, there cannot be a concurrent infringement of provisions that are supposed to be complied with sequentially. It is not tenable to argue, as the Applicant seeks to do, that the 2nd Respondent ‘infringed Article 29(1) and 71(1)(d) of the Treaty’.”*

47. Basing his reasoning on the sequential approach developed above, Counsel argued that an Applicant would be entitled to a finding that the 2nd Respondent infringed Articles 29(1) or 71(1)(d) of the Treaty if it were proved that the latter had not taken the initiative to investigate a

matter relating to or affecting the Community that appears to it to merit examination or upon investigating such a matter, he had failed or refused to submit findings to the concerned Partner State to respond thereto.

48. It was Counsel's submission that judging from the Applicant's pleadings on record, there was nothing to prove that the 2nd Respondent had failed/neglected his responsibilities under Articles 29(1) or 71(1)(d) of the Treaty. On the contrary, he invited this Court to consider his positive stance and actions on the matters pertaining to Mr. Rufyikiri. In this regard, he pointed out, as deponed in Mr. Charles Njoroge's Affidavit that appropriate steps were taken by way of constituting a Task Force to investigate the alleged breach of Treaty provisions by the Republic of Burundi way before the Applicant had even filed the instant Reference. In addition, he averred that the 1st Respondent was informed about the Team and dates were proposed for a possible meeting to discuss, among other issues, the alleged breach of the Treaty, although despite several reminders, the 1st Respondent did not assent to any proposed schedule in order to start investigations.

49. Moreover, it was submitted that this Court's decision in the **Katabazi Case** (supra) cannot be cited to fault the 2nd Respondent because as indicated in his evidence, he, without being prompted but upon his own consideration that the matters allegedly affecting Mr. Rufyikiri merited examination within the meaning of Article 29 of the Treaty, took immediate action.

50. In concluding his submissions, Counsel for the 2nd Respondent contended that ***"the Reference does not disclose a cause of action against the 2nd Respondent because there is no evidence to show that Articles 29(1) and 71(1)(d) of the Treaty were infringed as***

alleged or at all. If anything, the 2nd Respondent has led evidence to show that he complied with Article 71(1)(d) of the Treaty. The Reference obligation under Article 29(1) can only be triggered by the submission of completion of the investigations provided under Article 71(1)(d) of the Treaty. This has not yet happened. Having established that the Reference does not disclose a cause of action against the 2nd Respondent, it cannot also be argued that he failed/neglected his responsibilities under the provisions of Articles 29(1) and 71(1)(d) of the Treaty.”

Applicant's Submissions

Determination of Issue No. 1

29 The Applicant's counsel submitted to

cause of action on different grounds.

51. It can be gleaned from the Applicant's pleadings and submissions that the crux of the Applicant's complaint against the 1st Respondent is the Treaty the allegations that the act of its servants/agents and institutions in State prosecuting Mr. Isidore Ruyikiri before the Anti-Corruption Court, prohibiting him from travelling outside the Republic of Burundi and debarring him from the Roll of Advocates were unprocedural and in breach of the 1st Respondent's Treaty obligations, in particular Articles 6(d) and 7(2) of the Treaty.
52. In this regard, the Applicant's Counsel has submitted that the cause of action against the 1st Respondent is constituted by the aforesaid allegations of infringement of specific Treaty provisions by the Government of Burundi. In support of this stance, learned Counsel has referred us to the authorities indicated above.
53. For the determination of the cause of action against the 1st Respondent, we are of the view that the findings of this Court in Samuel Mukira Mohochi (supra) referred to us by Counsel for the Applicant are conclusive. In the same line, we find that the Treaty provisions alleged to have been violated have, through Burundi's voluntary entry into the Treaty, been crystallized into actionable

obligations, now stipulated in among others, Articles 6(d) and 7(2) of the Treaty, breach of any of which by the Republic of Burundi (1st Respondent) would give rise to infringement of the Treaty. It is that alleged infringement which, through interpretation of the Treaty under Article 27(1) of the Treaty constitutes the cause of action in the instant Reference. Facts and applicable Burundian laws in support of the claim have been presented by the Applicant which led him to the allegation that acts committed by the Respondent infringe Articles 6(d) and 7(2) of the Treaty.

54. We are of the opinion that for the Applicant, it is enough to clearly state a complaint against the 1st Respondent that its actions, to wit, prosecuting Mr. Ruyikiri before the Anti Corruption Court and issuing a travel ban without due process of law and alleged irregularities in initiating a case against Mr. Ruyikiri to disbar him from the Bar Association without awaiting the decision of the Bar Council, all constitute a cause of action against the 1st Respondent.

55. In support of his submissions that the Reference does disclose a cause of action against the 1st Respondent, Counsel referred us to some authorities including *The James Katabazi Case* (supra) and *The Anyang' Nyong'o Case* (supra).

56. We note that in the *Anyang' Nyong'o Case* (supra, p. 18)), this Court defined a cause of action as "***a set of facts or circumstances that in law gives rise to a right to sue or to take out an action in court for redress or remedy.***" The Court further opined that the Treaty provides for a number of actions that may be brought to this Court for adjudication. In this regard, the Court was of the view that Article 30 of the Treaty, among others, virtually creates a special cause of action, which different parties may refer to this Court for adjudication.

57. It was also the Court's opinion that in Article 30 as reproduced elsewhere above, "*the Treaty confers on any person resident in a Partner State the right to refer the specified matter to this Court for adjudication and as we have just said, by the same provision it creates a cause of action.*"

58. Regarding the claim in this Reference, we note that the Applicant is a legal person and as "*the umbrella regional organization of the national bar associations within East Africa*", it was prompted to bring this Reference following what it considered as the unprocedural manner in which Mr. Rufyikiri, then President of the Burundi Bar Association, was prosecuted before the Anti-Corruption Court, banned from leaving the country and disbarred from the Roll of Advocates of the Burundi Bar Association.

59. Given the foregoing, we hold that the Applicant has a cause of action against the 1st Respondent under Article 30 of the Treaty.

60. As for the 2nd Respondent, who is the Secretary General of the Community, the cause of action arises from the fact that the Applicant is faulting him for having allegedly sat idly by, omitting or neglecting to act on violations of the Treaty by a Partner State through the alleged illegal treatment of Mr. Rufyikiri by agents/servants/officials of the Republic of Burundi.

61. On his part, Counsel for the 2nd Respondent categorically refuted the Applicant's argument contending that the 2nd Respondent had discharged his obligation as prescribed in the Treaty; and therefore, there is no cause of action against him.

62. Using the same reasoning as above, we are of the view that a cause of action against the 2nd Respondent has arisen by the fact that the Applicant, a legal person resident of a Partner State, is moving the

Court alleging that the 2nd Respondent failed to take appropriate actions, under Articles 29 and 71 of the Treaty, against a Partner State alleged to have violated its Treaty obligations by the unprocedural way it handled Mr. Rufyikiri's case.

63. On Issue No. 1, therefore, we hold that the instant Reference discloses a cause of action against both the 1st and 2nd Respondents.

Issue No. 2: Whether the acts of the servants/agents of the 1st Respondent in prosecuting Mr. Isidore Rufyikiri before an Anti-Corruption Court, disbarring him from the Table of Barristers and prohibiting him from travelling outside Burundi constituted a breach of the provisions of Article 6(d) and 7(2) of the Treaty.

Applicant's Submissions

64. The Applicant contended that *"the sum total of the treatment so meted out to Mr. Isidore Rufyikiri amounts to a scheme by the Government of Burundi to suppress criticism, and/or democratic advice, to interfere with the rule of law, and a wanton disregard of the human and professional rights of a Burundi citizen and therefore contrary to the principles of the Treaty as provided in Articles 6(d), and 7((2)."*

65. As regards the prosecution of Mr. Rufyikiri and the prohibition from travelling outside the country, Counsel for the Applicant alleged that the scheme of acts that amounts to violation of the Treaty was disclosed by the 1st Respondent's failure to prove that there were any valid grounds for commencing a prosecution against Mr. Rufyikiri in the Anti-Corruption Court.

66. In addition, learned Counsel submitted that given that Mr. Sylvestre Nyandwi's affidavit in support of the 1st Respondent's Response alleged but did not disclose any evidence of mismanagement of CEBAC funds,

the proper inference from that allegation was that no evidence of mismanagement existed. To buttress this contention, Counsel stated that an official audit conducted on the account of CEBAC did not raise any irregularities.

67. Furthermore, it is his stance that there was no nexus between Mr. Rufyikiri as President of CEBAC duly elected by the General Assembly of CEBAC and the Government of Burundi. That therefore, there was no reason for the Government's action when Mr. Rufyikiri was properly accounting to the Assembly of CEBAC, an independent body which never complained over his alleged misconduct.

68. Counsel also contended that the 1st Respondent had alleged, but had not presented any evidence in proof, that Mr. Rufyikiri was about to flee Burundi so as to defeat justice. On that, he maintained that the prohibition to go out of Burundi was a penalty under Burundian law meted out by a Court and not the Prosecutor General who did it in utter disregard of the rule of law.

69. On this matter, he concluded by submitting that since the contents of the Applicant's Reply had not been contradicted in any way, they represented the correct version of the events and were in proof of ***“the scheme against good governance, particularly, the rule of law.”***

74. Regarding the disbarment of Mr. Rufyikiri from the Roll of Advocates, the Applicant's Counsel submitted that it was because of a press conference held by Mr. Rufyikiri, on 29th October 2013, in his capacity as the President of the Burundi Bar Association and in which he raised issues of lack of good governance, democracy and abuse of human rights, that the Government reacted the following day of 30th October 2013 by commencing the disbarring process against Mr. Rufyikiri.

75. It was his submission that the Government of Burundi's actions could not have been triggered by Mr. Rufyikiri's letter to the Governor of Bubanza Province, dated 24th July 2013, two months before the action by the Government. His submission in that case was that the Government's reaction constituted "**another step in the overall scheme**" to punish Mr. Rufyikiri. In support of this submission, he stated that the contents of that letter were clearly alleging violations of rights in Burundi generally, although singling out the particular case of Mr. Venant Masenge.

76. He further argued that since the letter was written in Mr. Rufyikiri's capacity as an advocate pursuing a client's interests, in that capacity, he was entitled to the protection accorded to legal professionals under the Burundian law and International Instruments.

77. Counsel also contended that when reference was made in the said letter to the historical cleavage between ethnic communities of Burundi, it was simply pointing out that all the people of Burundi were entitled to equal protection of their human rights and that peoples' (community) rights were protected by the African Charter on Human and People's Rights, which was in turn, entrenched by Article 6(d) of the Treaty.

78. Learned Counsel further stressed that the 1st Respondent had not presented any evidence that the Governor of Bubanza Province or the Government of Burundi have denied the allegations in Mr. Rufyikiri's letter and that the Government of Burundi's pursuit of that letter in the manner pleaded by the 1st Respondent "**clearly demonstrates Burundi's inclination to suppress criticism and to disregard the rule of law that Mr. Isidore Rufyikiri was attempting to protect.**"

79. Addressing the matter related to the Burundi Courts' approval of the disbarment of Mr. Rufyikiri from the Roll of Advocates, the Applicant's

Counsel submitted that Mr. Sylvestre Nyandwi's supplementary affidavit dated 9th October 2013, in which he indicated that the travel ban against Mr. Rufyikiri had been lifted and that the disbarment of the latter had been approved by the court of last resort in Bujumbura, had no consequence to the Applicant's pleadings and remedies sought.

80. He maintained that the Applicant had stated as a fact also confirmed by Mr. Sylvestre Nyandwi's affidavit dated 4th April 2013, that the Prosecutor General, on 17th December 2013, in total disregard of the proper procedures, had made a complaint to the Court of Appeal of Bujumbura to disbar Mr. Rufyikiri. In addition, Counsel averred that he pointed out before the Prosecutor General made the said complaint to the Court that he had made a complaint against Mr. Rufyikiri to the Burundi Bar Investigation Association dated 30th October 2013.

81. Learned Counsel stated that, by law, the Burundi Bar Council had 60 days from the date of the complaint within which to take action. He then submitted that the 60 days began to run from 30th October 2013, the date of the complaint as indicated above. He further contended that there was no nexus between the complaint of 30th October 2013 to the Burundi Bar Council and that made on 7th October 2013. In this regard, he argued that the two complaints were referring to different alleged violations by Mr. Rufyikiri. For him, the complaint of 7th October 2013 was based on the alleged injurious contents of the letter to the Governor of Bubanza Province, while the complaint of 30th October 2013 was driven by the alleged offensive statements at the press conference. Moreover, he pointed out that the demand for disbarment was made in the letter of 30th October 2013 and not the letter of 7th October 2013.

82. It is therefore Counsel's submission that by approaching the Court on 17th December 2013 with a request to disbar Mr. Rufyikiri, the

Prosecutor General had disregarded proper procedures and the law, particularly, the requirement to allow the Bar Council of the Burundi Bar Association the time prescribed by law within which to act. He further submitted that the entire process leading to disbarment of Mr. Rufyikiri in such an unprocedural manner was part of what he termed **"the total scheme against the principle of good governance, democracy, the rule of law and the respect for human and people's rights."**

83. In support of his stance that **"any wanton disregard of the rule of law as happened in this case should be condemned by this Honourable Court as in breach of the Treaty which is the basic law of the Community"** and supersedes national law on the same issues, learned Counsel referred us to Article 8(4) of the Treaty and the Authorities of *R.V. Secretary of State for Transport, ex-parte factortame Ltd. And Others* [1990] ECR 1-2433; *N.V. Algemene Transporta Expiditie Onderming Van gen En Loos V. Nederlandse Administratie Del Belastingen* [1903] ECA 1 and *Samuel Mukira Mohochi* (supra).

84. Counsel concluded his submission on this matter by contending that accessing a remedy in Burundi was not a bar to the instant Reference and cited in support of his argument *The Anyang' Nyong'o Case* (supra) and *Antony Calist Komu Vs. The Attorney General of the United Republic of Tanzania, EACJ Ref. 7 of 2012*.

85. The submission of the 1st Respondent's Counsel on this issue has been reproduced above together with his submission on Issue No.1.

Determination of Issue No. 2

86. We have carefully considered the rival submissions made by the parties on this matter. As framed, the issue can be divided into three

sub-issues referring to impugned acts allegedly committed by the 1st Respondents, namely, the prosecution of Mr. Rufyikiri before the Anti-Corruption Court, the travel ban imposed to the same Mr. Rufyikiri and his disbarment from the Roll of the Advocates. These acts will be reviewed in light of the relevant Burundian Laws referred to us by both parties. The said laws are Law No.1/12 of 18th April 2006 establishing measures on preventing and combating corruption and related offences; Law No. 1/10 of 03rd April 2013 on the Revised Criminal Procedure Code; Law No. 1/014 of 29th November 2002 on the Reform of the Statute of the legal profession and Law No. 1/05 of 22nd April 2009 on the Revised Penal Code.

87. Regarding the prosecution and the prohibition from travelling, in paragraph 7 of Mr. Sylvestre Nyandwi's affidavit, it is deponed that *"on 2/12/2013, the Public Prosecutor to the Anti-Corruption Court took measure to ban Mr. Isidore Rufyikiri to leave the Country in order to get him whenever required in the prosecution of the penal case No. RMPCAC 2066 KI opened in the anti-corruption Court in accordance with Law No. 1/12 of 18th April 2006 on measures of preventing and combating corruption and related offences as well as Law No.1/10 of 3rd April 2013 on Penal procedure Code of Burundi."*

88. In order to determine whether the two aforementioned acts were done in accordance with the Burundian laws, we found that Articles 1, 3, 5, 6 and 10 of the Anti-Corruption Law No.1/12 (supra); Articles 47, 50 and 65 of the Criminal Procedure Code and Articles 60 and 65 of the Penal Code are relevant in addressing the matter at hand. For clarity's sake, we are respectively reproducing these provisions below.

Law No. 1/12 of 18th April 2006 (Anti-Corruption Law)

Article 1:

This Law aims at preventing and combating corruption and related offences committed by public and private institutions as well as non-governmental organizations.

Article 3:

For the implementation of the national policy on fighting corruption and related offences, it is set up an institutional framework composed of:

- A Special Anti Corruption Brigade***
- An Anti Corruption Court.***

Article 5:

The missions of the Special Anti Corruption Brigade are as follows:

- handle grievances or complaints of suspected corruption or related offences***
- submit to the Public Prosecutor, after the conclusion of its investigation, facts that may constitute offences of corruption or related offences***

(..)

Article 6:

Under the provisions of the Criminal Procedure Code and without prejudice to the powers vested in the judicial police officers, officers of the Anti Corruption Brigade have the powers granted to judicial police officers.

As such, they are competent to investigate offences of corruption and related offences, collect evidence, to find the perpetrators

and, if necessary, proceed to police custody pursuant to the Criminal Procedure Code.

Article 10:

The head of the Special Anti Corruption Brigade may request to the competent authority the prohibition of leaving the territory for any suspect.

Law No.1/10 of 3rd April 2013 on Criminal Procedure Code

Article 47:

The Public prosecutor exercises the public action and requires the application of the law. It directs and controls the activities of the judicial police and all public officials having the quality of judicial police officer

Article 50

The Public Prosecutors may exercise themselves all powers attributed to judicial police officers under this law or under special laws related to Judicial Police

Article 65

The Public Prosecutor conducts or causes to conduct any act necessary to the investigation and prosecution of offences to the penal code.

To that end, he directs and controls the activity of judicial police officers and agents in the Tribunal jurisdiction.

Law No.1/05 of 22nd April 2009 on Penal Code

Article 60

Complementary punishment applicable to physical people are:

(...)

2. Prohibition

Article 65

***In cases determined by law, following prohibitions can be pronounced:
(...)***

6. Prohibition of going outside the country.

89. Having laid down the above provisions applicable to this matter, we now turn to the first bone of contention, that is, the alleged unprocedural manner in which Mr. Rufyikiri was prosecuted before the Anti Corruption Court.
90. From the outset, it is our understanding that our task as regards this matter is not to determine whether or not acts of corruption were committed by Mr. Rufyikiri as the President of the Burundi Centre for Arbitration and Conciliation, but that it is rather to assess whether the act of initiating his prosecution by the Prosecutor General was in conformity with the relevant laws of Burundi. The same test will be carried out later in this judgment when it comes to determine whether the travel ban was issued in accordance with Burundian Laws.
91. In this regard, we find that the pre-cited Law No.1/12 whose aim is to prevent and combat corruption and related offences applies to both public and private institutions (Article 1) and it also creates the Anti-Corruption Court and the Special Anti-Corruption Brigade as the institutional entities competent to handle offences of corruption and related offences (Article. 3). In addition, Articles 5 and 6 of Law No.1/12, and Articles 50 and 65 of Law No.1/10 clearly spell out the power invested in the Public Prosecutor to initiate the criminal prosecution of any person, being public or private, suspected of committing an act of corruption.

92. Based on the foregoing findings, we are of the view that a plain reading of the abovementioned provisions leads to the conclusion that the Public Prosecutor acted within the limits of the power vested in him by the relevant Burundian Laws when he initiated the prosecution of Mr. Ruyikiri for alleged acts of corruption. Consequently, we hold that the 1st Respondent cannot be faulted for violating Articles 6(d) and 7(2) of the Treaty.

93. Turning to the act of banning Mr. Ruyikiri from travelling outside the Burundian territory, the bone of contention appears to revolve around the authority competent to order a travel ban against a suspect. Counsel for the Applicant argued that such a ban should be issued by a court of law while Counsel for the 1st Respondent contended that the competent authority in that matter is the Public Prosecutor.

94. As it transpired from the material placed before the Court and in submissions during the hearing held on 11th February 2015, both parties relied on Article 10 of Law No/1/12 as reproduced above in support of their respective arguments on this issue. When asked by the Court which authority is referred to in this article, Counsel for the 1st Respondent replied that the Prosecutor General is the one competent to issue a travel ban and that no intervention of a court of law is required.

95. This averment was rebutted by Counsel for the Applicant by quoting the provisions of Articles 60 and 65, paragraph 6 of the Penal Code according to which such a competence is the prerogative of a Court of law.

96. We agree with Counsel for the Applicant's reading of the two provisions that according to Burundi Laws, the prohibition from travelling outside the territory of Burundi is imposed by an order of the court. Accordingly, it is our view that procedural irregularities

amounting to lack of procedural due process were committed in the way Mr. Rufyikiri was banned from travelling outside the Burundian territory. Consequently, we hold that due process of law, one of the cornerstones of the rule of law, was not respected by the 1st Respondent and that this constitutes a violation of its Treaty obligations under Articles 6(d) and 7(2) of the Treaty.

Disbarment from the Roll of Advocates of the Burundi Bar Association

97. As the case stands, the bone of contention appears for us to be whether due process of law was followed in filing a disbarment case against Mr. Rufyikiri before the Court of Appeal of Bujumbura while the time required for the Bar Council to decide on the complaint filed by the Prosecutor General to consider disbarring the same Mr. Rufyikiri had not elapsed.

Applicable Law

98. The applicable law as referred to us by the parties is Law No. 1/014 of 29th November 2002 on the Reform of the Statute of the legal profession (*Advocates Act, 2002*) and the relevant provisions applicable to the instant matter are Articles 57, 61, 63, 65, 67 and 71 of the said law. For ease of reference, we are reproducing them hereunder.

Article 57 provides that:

“Any violation of laws and regulations, any breach of professional rules , any breach of probity and honor even relating to extra-professional facts , expose the lawyer (or trainee lawyer) who is the author to the following disciplinary sanctions:

- ***Warning;***
- ***Blame;***

- Suspension for a period of one year at most;
- Disbarment from the Roll of Advocates.

The blame and the suspension may be associated with the ban to be part of the Bar Council for a period not exceeding ten years.

Article 61 provides that:

"The Bar Council is competent to take all disciplinary sanctions against lawyers. The Court of Appeal has jurisdiction to hear appeals against the sanctions imposed by the Bar Council.

The Bar Council shall act on its own motion or at the request of the Prosecutor General to the Court of Appeal.

The Bar Council and the Court of Appeal shall take decide in a reasoned decision after a contradictory hearing."

Article 63 reads as follows:

"Any decision of the Bar Council in disciplinary matters may be referred to the Court of Appeal by the applicant's counsel or the Prosecutor General at the said Court."

Article 65 stipulates that:

"The investigation is conducted by the Bar Council.

After investigation, the Bar Council closes the case if it considers the complaint unfounded or declares the penalty it considers proportionate to the offence committed by the lawyer."

Article 67 provides that:

"The disciplinary matter is referred to the Court of Appeal by the Prosecutor General to the Court of Appeal.

The Council may take the matter without any request from outside.

Article 71 provides that:

The Bar Council must take a decision within sixty (60) days from the day a disciplinary matter was referred to it."

99. From the chronology of events that led to the case before the Court of Appeal of Bujumbura filed on 17th December 2013 by the Prosecutor General, it is clear that two complaints had been filed to the Bar Council by the same Prosecutor General in accordance with Article 67 of the Advocates Act, 2002. The first complaint was filed on 7th October 2013 requesting the Bar Council to take disciplinary measures against Mr. Ruffyikiri for alleged injurious and defamatory declarations contained in his letter of 24th July 2013 to the Governor of the Bubanza Province. The second complaint was filed by the same Prosecutor General on 30th October 2013 requesting the disbarment of Mr. Ruffyikiri for making declarations alleged to be against the rules, State security and public peace, during the 29th October 2013 Press Conference held by Mr. Ruffyikiri.

100. If we consider the provisions of Article 71 of the Advocates Act 2002, we note that the Bar Council had up to 7th December 2013 to take a decision on the complaint filed on 7th October 2013 and up to 30th December 2013 as regards the complaint for disbarment submitted to it.

101. From this simple computation of time, it is apparent that the filing of the disbarment case against Mr. Ruffyikiri before the Court of Appeal of Bujumbura by the Prosecutor General, on 17th December 2013, falls 13 days short of the 60 days allowed to the Bar Council by Article 71 of the Advocates Act for the Council to take a decision on the matter. In doing so, the Bar Council was bypassed and thus, the right of Mr. Ruffyikiri to have his case heard by the very professional body in charge of disciplining advocates was violated.

102. In light of the foregoing findings, we hold that not following the letter of law (i.e. exhausting the period of time allowed to the Bar Council to take a decision on the disciplinary matter) in instituting the disbarment case against Mr. Rufyikiri before the Court of Appeal of Bujumbura, constituted a violation of due process and this contradicts the Respondent's Counsel's contention that Mr. Rufyikiri was disbarred in accordance with the law. Having so found, we see no reason to scrutinize the Court of Appeal process. On the disbarment issue therefore, we hold that the violation of due process by the 1st Respondent offends the rule of law principles enshrined in Articles 6(d) and 7(2) of the Treaty.

- A Special Anti Corruption Brigade

Issue No. 3: Whether the 2nd Respondent failed/neglected his responsibilities under the provisions of Articles 29(1) and 71(1)(d) of the Treaty

Submissions

103. Counsel for the Applicant submitted that the gist of the Applicant's case against the 2nd Respondent was that, having got prior knowledge of the alleged violations of the 1st Respondent's Treaty obligations triggered by the unprocedural way in which Mr. Rufyikiri's case was handled, the 2nd Respondent did not take any action that would have compelled the 1st Respondent to comply with its Treaty's commitments.

104. In order to prove that the 2nd Respondent had prior knowledge about allegations of lack of good governance in Burundi, learned Counsel referred to letter Ref.: CAMRI/0484/2013 of 27th December 2013 written by Mr. Rufyikiri to the Public Prosecutor of Burundi and copied to the EAC Secretary General, among others. In addition, he pointed out the contents of letter Ref. ORG/2/1 of 11th November 2013 written by the EAC Secretary General to the Minister to the Office of the President Responsible for EAC Affairs in Burundi, in which the

Secretary General brought to the attention of the 1st Respondent some matters of alleged violations of its Treaty obligations, including allegations that were mentioned in the letter above from Mr. Rufyikiri.

105. It was also Counsel's submission that rather than waiting to be prompted to act by litigants, the 2nd Respondent ought to have acted on his own and should have exercised pro-activeness in as far as bringing Partner States to account regarding their actions especially those actions that seemingly violate the Treaty's provisions.

106. In response to the Applicant's contentions referred to above, the 2nd Respondent categorically denied any wrongdoing. He rather brought out several actions undertaken as highlighted in his case above, but pointed out that these actions did not bear any positive results, because they have been frustrated by the 1st Respondent's lack of cooperation as regards the operationalization of the Task Force set up to investigate the alleged breach of the Treaty provisions by the Republic of Burundi even before the instant reference was filed on 17th February 2014.

Determination of Issue No. 3

We have carefully reviewed the parties' pleadings and submissions on this matter and we opine as follows:

107. It is on record that by his letter Ref. ORG/2/1 of 11th November 2013 mentioned above, the 2nd Respondent brought to the attention of the 1st Respondent, through the Minister to the Office of the President Responsible for EAC Affairs, two claims about land and property matters while stressing that those claims, if not handled properly, could give rise to failure of due process. In the same letter, the 2nd Respondent expressed his concern at the proliferation of litigation from the Republic of Burundi mainly relating to allegations of failure of due

regard to Article 6 of the Treaty and informed the 1st Respondent of an upcoming mission in the Republic of Burundi to interact with the Ministry of Justice and other relevant Government Departments on these issues.

108. Also on record is the Secretary General's Internal Memo Ref: RG/2/1 of 15th January 2013 entitled: **Situation on the Administration of Law and Justice in the Republic of Burundi.** In

the said Memo, the Secretary General stated that pursuant to the powers entrusted to the Secretariat under Article 7(1)(d) of the Treaty, he was appointing some staff members into a Task Force to investigate:

- "a) alleged breaches of the Treaty by the Republic of Burundi;**
- b) the cause of growing litigation on alleged breaches of the Treaty emanating from the Republic of Burundi; and**
- c) the effect, if any, of this development on the Community."**

109. The Task Force was required to undertake a Mission in the Republic of Burundi and prepare a report by 1st March 2014. We note, however, that it was on the same date that the appointment of the said Task Force was communicated to the 1st Respondent, through the Secretary General's letter to the Permanent Secretary of the Ministry to the President Responsible for EAC Affairs. In the said letter, it was indicated that the Task Force had planned to visit the Republic of Burundi on 19th to 23rd March 2014.

110. We further note that, on 11th March 2014, the 1st Respondent, through the Minister to the Office of the President Responsible of EAC Affairs, informed the Secretary General that the proposed dates for the visit were not convenient for the Republic of Burundi and that the Republic of Burundi would communicate new dates after further internal consultations.

Since then, no further communication on this matter has been made by either side and the 1st Respondent who is the Republic of Burundi is yet to allow this Task Force to go there and undertake investigations.

111. During the hearing of the instant case held on 11th February 2015, in response to the question put to him as why the 2nd Respondent had not undertaken actions prescribed in Article 29 of the Treaty in the event that a Partner State is not being cooperative to allow him carrying out investigations on alleged violations of Treaty provisions, we heard learned Counsel to be intimating that the Secretary General had undertaken a diplomatic visit to the Republic of Burundi in which the issue of the stalled work of the Task Force was raised. He then conceded, however, that now that the matter was before this Court, any order that the Court might take would be further support for the 2nd Respondent to execute investigations to ensure that the Republic of Burundi is brought to compliance with the Treaty obligations.

112. In the matter at hand, we must note at this juncture that although some actions have been undertaken in line with the 2nd Respondent's responsibilities under Article 71(1)(d) of the Treaty, no effective action to overcome the 1st Respondent's lack of cooperation was initiated as such an action would be effected under Article 29 of the Treaty.

113. In this regard, we are of the view that it is the duty of the 2nd Respondent to actively and proactively carry out his Treaty functions for the sake of bringing Partner States in compliance with Treaty obligations. They voluntarily subscribed to in order to ensure the advancement of East African integration. We shall make an order in this regard later in the judgment.

Issue No. 4: Whether or not the Applicant is entitled to the remedies sought

114. We have addressed all the core issues as framed during the Scheduling Conference and we now proceed to determine the prayers sought in the Reference in light of our findings.

115. Starting with the submissions of Counsel for the 1st Respondent, the latter relied on the *Ndorimana case* (supra) and submitted that the Applicant is not entitled to any remedy sought and that the Reference ought to be dismissed with costs to the 1st Respondent.

116. The 2nd Respondent's Counsel, on his part, pointed out that out of the ten declarations and orders the Applicant had sought against the Respondents, it was only two of them that specifically related to the 2nd Respondent, namely the proposed orders under paragraphs (vii) and (viii).

117. As regards the order sought under paragraph (vii), learned Counsel contended that such an order cannot be issued because there was already a Task Force duly constituted and mandated to ascertain whether or not the 1st Respondent breached the fundamental and operational principles of the Community.

118. Concerning the order sought under paragraph (viii), the 2nd Respondent's Counsel submitted that Article 29 of the Treaty which covers the matter at issue did not confer upon the 2nd Respondent any advisory role to merit the grant of the order sought by the Applicant. He maintained that the order sought is not tenable and that the practical thing to do, was to let the ongoing investigation that led up to the procedure laid out in Article 29 of the Treaty play out.

119. In his reply to the 2nd Respondent's submission, Counsel for the Applicant submitted that what was sought was for the 2nd Respondent to establish an effective Commission/investigative mechanism.

120. Our findings in the above regard are therefore as follows:

Prayer (a): A declaration that the system of administration of justice and governance in Burundi is not conducive and enabling for the effective operation of justice as envisaged by Articles 6(d) and 7(2) of the Treaty. The evidence on record pertained to specific acts of Treaty violation, but it is not sufficient to warrant the declaration sought.

Prayer (b): A declaration that by virtue of the legal system currently existent in Burundi, there is no distinctive separation of powers between the Judiciary and the Executive and hence a breach of the relevant provisions in Articles 6(d) and 7(2) of the Treaty. This prayer too cannot be granted for the same reasons as in prayer (a).

Prayer (c): A declaration that the procedure adopted and employed by both the Prosecutor and the Court of Appeal of Bujumbura to disbar Mr. Isidore Rufyikiri was in breach of the international instruments on the right to a fair trial as provided by Articles 6(d) and 7(2) of the Treaty. This prayer is in part premised on Issue No. 2. Regarding the procedure leading to the disbarment of Mr. Rufyikiri, this Court finds that not following the prescribed legal process in instituting the disbarment case against Mr. Rufyikiri before the Court of Appeal of Bujumbura constitutes a violation of due process and this violation, imputable to the 1st Respondent, offends the rule of law principle enshrined in Articles 6(d) and 7(2) of the Treaty.

Prayer (d): A declaration that the decision and order of the Court of Appeal of Bujumbura of 28th January 2014, and the travel ban imposed on Mr. Isidore Rufyikiri by the Prosecutor of the Anti-Corruption Court of the Republic of Burundi infringe upon and are in contravention of Articles 6(d) and 7(1) & (2) of the Treaty. The prayer is allowed in the following terms only: The unprocedural way in which Mr. Rufyikiri was banned from

travelling outside the territory of Burundi is in contravention of the rule of law principle embodied in Articles 6(d) and 7(2) of the Treaty.

Prayer (e): An order removing into this Court for purposes of quashing and or setting aside the decision and orders of the Court of Appeal of Bujumbura made on 28th January 2014 in case No. RA10 between the Public Prosecutor and Mr. Isidore Rufyikiri and an order directing the Court of Appeal of Bujumbura, the Bar Council and the Government of Burundi to immediately and forthwith reinstate Mr. Isidore Rufyikiri to the Roll of Advocates of the Court of Appeal of Bujumbura. The prayer is not allowed because it falls outside the Court's jurisdiction owing to the proviso to Article 27(1) of the Treaty.

Prayer (f): An order immediately and forthwith quashing, setting aside and or lifting the decision and orders of the Public Prosecutor to the Anti-Corruption Court of the Republic of Burundi prohibiting Mr. Isidore Rufyikiri from travelling beyond the national borders of Burundi. The prayer is overtaken by events since the travel ban has been lifted.

Prayer (h): An order directing the 2nd Respondent to constitute and commission an evaluation process to establish whether or not the governance and constitutional framework within the Republic of Burundi adheres to the threshold specified in Articles 6(d) and 7(2) of the Treaty; and to advise both the Council and the Summit of the East African Community on whether the Republic of Burundi should be suspended or expelled from the East African Community under Articles 29, 67, 71, 143, 146 and 147 of the Treaty. This prayer is based on Issue No. 3. In determining this issue, the Court finds that although some actions had been undertaken in line with the 2nd Respondent's responsibilities under Article 71(1)(d) of the Treaty, no effective action to overcome the 1st Respondent's lack of cooperation was initiated as such an action would be effected under Article 29 of the Treaty. The 2nd Respondent should

actively and proactively fulfil his Treaty functions in order to ensure Partner States' compliance with their Treaty obligations. An order in this regard will be made at the end of this judgment.

Prayer (i): An order directing the 1st and the 2nd Respondents to appear, and file before this Honorable Court a progress report on remedial mechanisms and steps taken towards the implementation of the Order sought by the Applicant in prayer (7) above, every three months or such other lesser period as the Court shall deem expedient. An order in this regard will be made at the end of this judgment.

Prayer (j): An order that the costs of and incidental to this Reference be met by the Respondents. The matter in issue falling in the category of public interest litigation, we deem it just that each party bears its costs.

Final Orders

121. For the reasons above, the final orders to be made are as follows:

- I. Prayers (a), (b), (e) and (f) are disallowed and are consequently dismissed.
- II. Prayers (c) is allowed in the following terms only: A declaration is hereby made that the procedure adopted and employed by the Prosecutor General to disbar Mr. Isidore Ruyikiri was in breach of the right to a fair trial and therefore a violation of the rule of law principle enshrined in Articles 6(d) and 7(2) of the Treaty.
- III. Prayers (d) is allowed in the following terms only: A declaration is hereby made that the procedure adopted and the decision taken by the Prosecutor General of the Anti-Corruption Court of Burundi to impose a travel ban on Mr. Isidore Ruyikiri infringed upon and was in contravention of the rule of law principle embodied in Articles 6(d) and 7(2) of the Treaty.

IV. Prayers (g) and (h) are granted in the following terms:

- (a) An order is hereby issued directing the Secretary General of the East African Community to immediately operationalize the Task Force set up on 15th January 2014 to investigate alleged violations of Treaty provisions by the Republic of Burundi.
- (b) The Republic of Burundi is directed to take, without delay, the measures required to implement this judgment, including allowing the Secretary General's Task Force to carry out its investigative mission.

V. Each party shall bear its own costs.

It is so ordered.

Dated, Delivered and Signed at Arusha this 15th day of May, 2015

.....
ISAAC LENAOLA

DEPUTY PRINCIPAL JUDGE

.....
FAUSTIN NTEZILYAYO

JUDGE

.....
MONICA MUGENYI

JUDGE

REFERENCE NO:1 OF 2014



**IN THE EAST AFRICAN COURT OF JUSTICE
FIRST INSTANCE DIVISION
AT ARUSHA**



(Coram: Isaac Lenaola, DPJ; Faustin Ntezilyayo, J; Monica Mugenyi, J)

REFERENCE NO.7 OF 2013

BETWEEN

BURUNDIAN JOURNALISTS UNION.....APPLICANT

VERSUS

**THE ATTORNEY GENERAL OF THE
REPUBLIC OF BURUNDI.....RESPONDENT**

AND

**FORUM POUR LE REINFORCEMENT DE LA SOCIETE CIVILE
THE INTERNATIONAL PRESS INSTITUTE
MAISON POUR DE LA PRESSE DU BURUNDI.....
FORUM LA CONSCIENCE ET LE DEVELOPEMENT.....
PEN KENYA CENTRE
PAN AFRICAN LAWYERS UNION.....
PEN INTERNATIONAL
REPORTERS SANS FRONTIERS
WORLD ASSOCIATION OF NEWSPAPERS AND
NEWS PUBLISHERS.....**

AMICI CURIAE

15TH MAY, 2015

JUDGMENT OF THE COURT

A. INTRODUCTION

1. This Reference was filed on 30th July, 2013 by the above named Applicant and was brought under Articles 6(d),7(2), 27(1), 30(1) of the Treaty for the Establishment of the East African Community ("the Treaty") as well as Rule 24 of the East African Court of Justice Rules of Procedure . Certain orders and declarations are sought in the Reference which we shall reproduce later in this Judgment.
2. The Applicant describes itself as a legal person under Burundian Law registered by an ordinance dated 8th July, 2013 although its Articles of Association were adopted on 3rd October, 2009. Amongst its stated objectives are the encouragement of the media to defend freedom of the press and social justice as well as freedom of expression.
3. The Applicant's address is Boulevard du 28 Novembre, Robert 1, Avenue de Mars, B. P. 6719, Bujumbura, Burundi and at the time of hearing was represented by Mr. Donald Omondi Deya, Advocate of No.3 Jandu Road, Corridor Area, P.O. Box 6065, Arusha, Tanzania.
4. The Respondent is the Attorney General of the Republic of Burundi sued in his capacity as such and also as Minister for Justice and Holder of the Seal and his address is P.O Box 1880 Bujumbura, Burundi. Mr. Neston Kayobera, Director of Judicial Organization in the Respondent's office, at all times during the proceedings, appeared on his behalf.
5. By order of this Court issued on 15th August, 2014 in **EACJ Application No.2 of 2014**, nine non-governmental organizations were joined as *Amici curiae*. They are Forum pour le Renforcement de la Societe Civile, the International Press Institute, Maison Pour de la Presse du Burundi, Forum la conscience et le Developement, PEN Kenya Centre, Pan African Lawyers Union, PEN International

Reporters sans Frontiers, and the World Association of Newspapers and News Publishers.

6. They are all represented by Mr. Vital Neston Nshimirimana, Advocate and his address is 6 Avenue de la mission, BP 1745, Bujumbura, Burundi.
7. The *Amici Curiae's* roles in the proceedings were limited to the filing of submissions only.

B. BACKGROUND

8. It is agreed that the Reference concerns Law No.1/11 of the 4th June, 2013, amending Law No.1/025 of 27th November, 2003 regulating the press in Burundi ("the Press Law"). From the pleadings, the Press Law was adopted by the National Assembly on 3rd April, 2013, passed by the Senate on 19th April, 2013 and signed into effect by the President of the Republic of Burundi on 4th June, 2013.
9. It was the Applicant's contention that the Press Law as enacted, restricts freedom of the press which is a cornerstone of the principles of democracy, rule of law, accountability, transparency, and good governance. Further, that the Press Law violates the right to freedom of expression and all the restrictions contained in it are in contravention of the Republic of Burundi's obligations under Articles 6(d), 7(2) of the Treaty.
10. In particular, the Applicant claims that the following Articles of the Press Law allegedly violate the Treaty:-
 - Articles 5, 6, 7, 8 and 9, which require compulsory accreditation for all journalists in Burundi;
 - Articles 17, 18 and 19 which lay down a broad set of restrictions of what may be published by the media in Burundi;

- Article 20 which requires journalists to disclose confidential sources of information;
- Articles 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 44 and 45 which provide an unduly onerous and restrictive framework for the regulation of the print and web media;
- Article 46 which provides for a prior censorship regime for films proposed to be directed in Burundi;
- Articles 48,49,50,51,52,53 and 54 which provide for a right of reply and correction that is vaguely worded and unduly impedes the media's right to freedom of expression;
- Articles 56, 57, 58, 59, 60, 61, 62, 63, 64, 66, 67,68 and 69 which provide for a regime of fines and penalties that is allegedly unduly restrictive on the right to freedom of expression and fails to comply with generally accepted principles of criminal law and procedure.

11. For the above reasons and other reasons to be set out later, the Applicant beseeches this Court to:-

- i) ***Declare that the Burundi Press Law violates the right to press freedom and thereby constitutes a violation of Burundi's obligation under the Treaty to uphold and protect the Community principles of democracy, rule of law, accountability, transparency and good governance as specified in Articles 6(d) and 7(2) of the Treaty;***
- ii) ***Declare that the Burundi Press Law violates the press' right to freedom of expression and thereby constitutes a violation of Burundi's obligation under the Treaty to uphold and protect human and peoples' rights standards as specified in Articles 6(d), 7(2)of the Treaty;***
- iii) ***Order Government of Burundi to, without delay:***
 - a) ***Repeal the Press Law; or***

b) *Amend it in accordance with Burundi's obligations as specified in Articles 6(d) and 7(2) of the Treaty by striking out or amending Articles 5 to 10, 17 to 20, 26 to 35, 44 to 46, 48 to 54, 56 to 64 and 66 to 69 of the Press Law.*

C. THE APPLICANT'S CASE

12. The Applicant's case is contained in the Reference, the annexures to it, a document titled "Amended Reply" filed on 30th March, 2014, written submissions filed on 3rd November, 2014, and Rejoinder submissions filed on 2nd December, 2014.
13. Mr. Donald Deya at the hearing also handed to Court his talking points to guide his oral highlights of the above submissions.
14. It was the Applicant's contention that the Press Law received wide criticism even before its enactment when the UN Office of the High Commissioner for Human Rights in a press statement urged the Burundi Legislature to review it *"to ensure its conformity with international human rights standards"*.
15. The African Union Special Rapporteur for Freedom of Expression and Access to Information also contended that *"[criminal defamation, insult and false news] are often used by government officials and corporates interests to punish legislative criminal expression."* He added that Burundi had acted with a view to restricting amongst others *"infringements that could affect the credit of the state and national economy" and "information that could affect the stability of currency" and* if passed, would have the potential to reverse the gains that the country had made in the area of media freedom.
16. After the passage of the Law, the Applicant claimed that criticism continued with among others, the United Nations Secretary General, Ban

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Ki Moon regretting that it had a negative impact and urged Burundi to take steps to ensure that its legal framework is aligned with democratic tradition. Other organisations like Human Rights Watch, Transparency International, Reporters without Borders, and Amnesty International posted similar criticism of the Press Law.

17. The Applicant also contended that this Court has the jurisdiction by dint of Articles 23 and 27(1) of the Treaty to enforce the Treaty and determine whether Articles 6(d) and 7(2) thereof have been violated by the Republic of Burundi as alleged and that the adoption of the Press Law materially violates the principles enunciated in these Articles.
18. Further, that no organ of a Partner State has the same primary jurisdiction as this Court to interpret the Treaty and although a Constitutional challenge was made by *Maison de la Presse du Burundi*, an association under Burundian Law, no decision by the Constitutional Court of Burundi had been received by the time this Reference was filed. In any event, that there is no obligation to exhaust local remedies before approaching this Court on any legitimate matter.
19. On the principles enshrined in Articles 6(d) and 7(2) of the Treaty, the Applicant has urged the point that they are more than just aspirational and Partner States have to observe them as a matter of Treaty obligation. That once a Partner State has given force of law to the Treaty, then any laws adopted by it should not conflict with it and the Press Law allegedly fails to meet that expectation.
20. On Freedom of the Press, the Applicant contended that the principles of democracy, rule of law, accountability, transparency and good governance cannot be upheld where there is no free press. That without a free press, there is no free circulation of information and ideas and the electorate does not have the opportunity to properly inform itself of

choices placed before it. Such an electorate, uninformed as it is, cannot, in turn, properly hold its leaders to account and this is a denigration of the core principles of good governance and democracy.

21. The Applicant has specifically complained about Articles 5-9, 10, 17-19, 20, 26-35, 44-45, 46, 48-54, 56-64 and 66-69 of the Press Law and has averred that all their provisions, cumulatively, violate Burundi's obligations under the Treaty. Of importance in that regard is the argument that the role and actions of the National Communications Council (set up by Law No.1/03 on 24th January, 2013 revising Law No.1/18 of 29th September, 2007), violate the principles of fairness and justice as it is akin to a prosecutor, judge and enforcer in matters of the press and yet, it is directly appointed and controlled by the President and the Minister for Information. That although it has been granted wide powers, its function as a censorship body are totally at the behest of the State. Further, that because of its lack of independence, it should not be in a position of imposing potentially major fines on the media and individual journalists.

22. Later on in the judgment, we shall delve into submissions on each of the specifically challenged provisions of the Press Law, but for the above reasons, the Applicant seeks the orders and declarations elsewhere set out above.

D. THE RESPONDENT'S CASE

23. The Respondent's case is contained in the Response to the Reference filed on the 20th December, 2013 and the Supplementary Affidavit of Mr. Sylvester Nyandwi, Permanent Secretary in the Ministry of Justice, sworn on 16th October, 2014. Mr. Kayobera also filed written submissions on 4th December, 2014.

24. It was his case that the Press Law is in uniformity with the Treaty and specifically Articles 6(d) and 7(2). Further, the acknowledged fact that it has been criticised by some organisations and individuals does not imply that the said Law violates the Treaty. In addition, that the Parliament of Burundi passed the Press Law as the representative of the people and its decisions cannot be replaced by the wishes of any other organization or person.

25. In any event, that the Press Law has been challenged in the Constitutional Court of Burundi and since its decision is yet to be delivered, the Reference is premature and misconceived as the latter Court is the only one with jurisdiction to interpret the legality of the Press Law.

26. For the above reasons, the Respondent prays that the Reference be dismissed with costs.

E. SCHEDULING CONFERENCE

27. At the Scheduling Conference held on 18th September, 2014 pursuant to Rule 53 of the Rules, it was agreed that the Press Law came into effect on 4th June 2012 but that the Constitutional Court of Burundi, after the Reference and a response to it had both been filed, had declared parts of it to be unconstitutional.

28. The issues that were therefore, drawn for determination were the following:-

a) Whether the Reference is properly before this Court;

b) Whether the provisions of the Burundi Press Law are inconsistent with and in violation of Articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community; and

c) Whether the Applicant is entitled to the Reliefs sought.

29. We shall now proceed to address each of the above issues.

ISSUE (A): WHETHER THE REFERENCE IS PROPERLY BEFORE THIS COURT:

30. This issue was limited to whether the Reference can stand after a challenge to the Press Law was made before the Constitutional Court of Burundi, which interprets its Constitution, and whose decisions are final and cannot be appealed from.

Applicant's submissions

31. Invoking Articles 23 (1) and 27(1) of the Treaty, the Applicant submitted that this is the only appropriate Court to rule on questions regarding the interpretation and application of Burundi's obligations under the Treaty. In that regard, it placed reliance on past decisions of this Court in **Anyang' Nyongo' & Others vs. the Attorney General of Kenya, EACJ Ref. No. 1 of 2006; Modern Holdings (EA) Ltd vs. Kenya Ports Authority EACJ Reference No.1 of 2008 and Emmanuel Mwakisha Mjawasi & 78 Others vs. the Attorney General of Kenya EACJ Appeal No.4 of 2011.**

32. In addition, it was the Applicant's submission that under Article 33 of the Treaty, decisions of this Court on interpretation and application of the Treaty shall have precedence over decisions of National Courts on a similar matter. In that regard and in any event, the Applicant argued that there is no requirement that a Party must exhaust local remedies before approaching this Court and relied on the decision of **Rugumba vs. Attorney General of Rwanda , EACJ Reference No.1 of 2012** in that regard.

33. The Applicant also made the point that, in the present Reference, whereas the Constitutional Court of Burundi has ruled on the Constitutionality of the Press Law, that fact is not a bar either to the

bringing of the Reference or the jurisdiction of this Court to interrogate that Law from a Treaty perspective and to determine whether a Partner State has breached its obligations under the Treaty.

34. Finally, it was the Applicant's case that the Reference is not misconceived and this Court has the jurisdiction to determine the salient and important issues raised in it.

Respondent's submissions

35. The Respondent on this issue submitted that on 7th January, 2014, the Constitutional Court of Burundi declared that the Press Law was constitutional save for a number of Articles that it struck down.

36. In the event, it was his argument that the said Judgment is final and not subject to the intervention of any other court ,including the EACJ, and that a contrary decision to the effect that the Law violates press freedom and the right to the freedom of expression would mean bringing chaos to Burundi and would also "*mean challenging the decisions of the Constitutional Court ...and would contravene the powers conferred to the EACJ by the Treaty.*"

37. In addition to the above, it was the Respondent's submission that Burundi is preparing itself for General Elections in the first quarter of the year 2015 and to invalidate its lawfully enacted Press Law would jeopardize the fragile peace enjoyed by the people of Burundi taking into accounts its history and future.

Amici curiae's submissions

38. On this issue, the *Amici Curiae* preferred not to make any submissions at all.

Determination on issue (a)

39. The jurisdiction of this Court is set out in Articles 23(1) and 27(1) of the Treaty which in a nutshell clothe it with the exclusive mandate to apply and interpret the Treaty save in the context of the proviso in Article 27(1) of the Treaty. This fact is not denied by either Party but the Respondent argued that once the issue of the legality and constitutionality or otherwise of the Press Law has been determined by the Constitutional Court of Burundi, then, that issue is finalized and no other Court, including the EACJ, can be properly seized of it.

40. With tremendous respect to the Respondent, what is before this Court is not a question whether the Press Law meets the constitutional muster under the Constitution of the Republic of Burundi but whether it meets the expectations of Articles 6(d) and 7(2) of the Treaty. The Applicant has not cited a single provision of the Burundi Constitution which it deems as violated by the Press Law because that would have been a matter well within the jurisdiction of that Court in any event, and in its decision of 7th January, 2014, well after this Reference had been filed, it determined that Articles 61, 62, 67 and 69 of the Press Law were unconstitutional. In Article 225 of the Constitution of Burundi, the Constitutional Court is the best Judge of the constitutionality of the Laws and interprets the Constitution! Act (translated *ad lib* from the original French).

41. The above jurisdiction differs from that conferred by Article 27(1) which provides that this Court shall "*initially have jurisdiction over the interpretation of the Treaty.*" The proviso thereof is irrelevant for purposes of this Reference, but suffice it to say that interpretation of the question whether Articles 6(d) and 7(2) of the Treaty were violated in the enactment of the Press Law is a matter squarely within the ambit of this Court's jurisdiction.

42. In holding as above, we are aware that the issue of jurisdiction has been settled in previous decisions of this Court. In *Anyang' Nyong'o and Others vs. Attorney General of Kenya and Others* [supra] for example, the Court stated that:-

“Under Article 33(2), the Treaty obliquely envisages interpretation of Treaty provisions by National Courts. However, reading the pertinent provision with Article 34 leaves no doubt about the primacy, if not supremacy of this Court's jurisdiction over the interpretation of provisions of the Treaty. For clarity, it is useful to reproduce here, the two Articles in full.

Article 33 provides:-

1. Except where jurisdiction is conferred on the Court by Treaty, disputes in which the Community is a party shall not on that ground alone, be excluded from the jurisdiction of the national courts of the Partner State; and

2. Decisions of the Court on the interpretation and application of this Treaty shall have precedence over decisions of national courts on a similar matter.

Article 34 provides:-

Where a question is raised before any court or tribunal of a Partner State concerning the interpretation or application of the provisions of this Treaty or the validity of the regulations, directives, decisions or actions of the Community, that court or tribunal shall, if it considers that a ruling on the question is necessary to enable it to give judgment, request the Court to give a preliminary ruling on the question.

43. Further, in *Democratic Party vs. the Secretary General and the Attorneys General of the Republics of Uganda, Kenya, Rwanda and Burundi*, EACJ Reference No.2 of 2012, the Court rendered itself as follows:-

"Jurisdiction is quite different from the specific merits of any case....

As it is, it should be noted that one of the issues of agreement as set out by the parties is that there are triable issues based on Articles 6, 7, 27 and 30 of the Treaty. That is correctly so since once a party has invoked certain relevant provisions of the Treaty and alleges infringement thereon, it is incumbent upon the Court to seize the matter and within its jurisdiction under Articles 23, 27 and 30 determine whether the claim has merit or not. But where clearly the Court has no jurisdiction because the issue is not one that it can legitimately make a determination on, then it must down its tools and decline to take one more step- see: Owners of Motor Vessel Lillian 'S' vs Caltex Oil (Kenya) Ltd - [KLR]."

44. We wholly agree with the above exposition of the primacy of this Court's jurisdiction over the interpretation of the Treaty and we therefore reiterate the above findings and in determining Issue (a), we have no doubt that the Reference as framed and argued, is properly before us and that this Court has jurisdiction to determine the substantive issues raised in the Reference.

ISSUE (B) – WHETHER THE PROVISIONS OF THE BURUNDI PRESS LAW ARE INCONSISTENT WITH AND IN VIOLATION OF ARTICLES 6(D) AND 7(2) OF THE TREATY:

45. This is the heart of the Reference and the issue requires that this Court should look at the specific impugned provisions of the Press Law

(cited elsewhere above), consider the purpose thereof and determine whether the enactment of and content of the said law are a violation of the Treaty in terms of Articles 6(d) and 7(2).

Submissions by the Applicant

46. The Applicant submitted that this Court has previously held that Articles 6(d) and 7(2) are justiciable and create an obligation on every Partner State to respect the principle of good governance which includes accountability, transparency and the promotion and protection of democracy. By acceding to the Treaty, then under Article 3 thereof, The Republic of Burundi, like other Partner States, agreed to be bound, in the context of this Reference, by the two Articles. Reliance in that regard was placed on the decision of this Court in **Samuel Mukira Mohochi vs. AG of Uganda, Ref. No.5 of 2011** and **Rugumba vs. AG of Rwanda, [supra]** where a Partner State in each of the two cases was found to have violated the two Articles of the Treaty and in **Mohochi**, Articles 6(d) and 7(2) were held to be binding and not merely aspirational on their part.

47. On the right to information, a free press and freedom of expression, the Applicants submitted that various international and regional Courts, as well as tribunals, have upheld these principles including:-

- i) The African Commission on Human and People's Rights which in **Scanlan & Holderness vs Zimbabwe, Comm.297/05 (2005)** stated that, it is the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole, that ensures public order.
- ii) The Commission in **Law offices of Ghazi Suleiman vs. Sudan, Comm. No.228/099 (2003)** also cited the Inter-American Court of Human Rights' opinion in **Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism,**

Advisory Opinion of -- 5/85 (1985) and found that freedom of expression is a condition *sine qua non* for the development of political parties, scientific and cultural societies and in general, those who wish to influence society. That it is also indispensable for the formation of public opinion.

iii) The same Commission in **Kenneth Good vs. Republic of Botswana Comm.313/05** also stated that free expression constitutes one of the essential foundations of a democratic society and is one of the basic working conditions for its progress and for the development of every man;

iv) The European Court of Human Rights in **Lingers vs. Austria; Appl. No.9715/82 (1986)** stated that freedom of political debate is at the very core of the concept of a democratic society;

v) In South Africa, in **Government of the Republic of South Africa vs. 'Sunday Times Newspaper' & Anor (2) SA 221 (1994)**, it was held that the role of a free press in a democratic society cannot be underestimated and that a free press is in the front line of the battle to maintain democracy.

vi) In the U.S Supreme Court in **New York Times vs. United States 403 U.S 713 (1971) Black J** held that only a free and unrestrained press can effectively expose the deception in Government;

48. In invoking the above decisions, the Applicant argued that the Republic of Burundi has an obligation, under Articles 6(d) and 7(2) of the Treaty, to recognize, promote and protect human and people's rights and abide by universally acceptable standards of human rights which include respect for press freedom. Relying on the decision in **Mandela vs. Falati (I) S.A**

251(W) 1995, it thus submitted that, freedom of the *speech "is the freedom upon which all other freedoms depends."*

49. On specific provisions of the Press Law, the Applicant submitted as hereunder:-

a) That compulsory accreditation under Articles 5-9 of the Press Law is not in conformity with Articles 6(d) and 7(2) because it unnecessarily and unjustifiably restricts those who become journalists. Further, that the National Communications Council enjoys vague discretion to withdraw or refuse accreditation in violation of the rights to freedom of expression.

50. In support of this submission, reliance was placed on the decision in **Compulsory Membership in an Association [supra], Scanlon & Holderness [supra], Kasoma vs. AG of Zambia Case 95/HP/29/95** as well as **Sunday Times vs. United Kingdom Appl.no_ 6538/74 (1979)**, a decision of the European Court on Human Rights.

b) That the broad and vague restrictions on press freedom under Articles 10 and 17-19 of the Press Law are not in conformity with Burundi's obligations under Articles 6(d) and 7(2) of the Treaty. The submission made in that regard was that, the provisions prohibit the publication of certain categories of information in the print media, website as well as broadcasts. That the said restrictions are impermissibly vague and cannot be justified in a democratic society.

51. In support of the above submission, the **UN Human Rights Committee's General comments on the Right to Freedom of Expression** was cited and particularly its comment at paragraph 34 that restrictive measures must conform to the principle of proportionality.

c) That the right to protect confidential sources of information under Article 20 of the Press Law is not in conformity with Articles 6(d) and 7(2) of the Treaty. Further, that the Law requires that where the information concerns offences against State security, public order, all State secrets and national defense, or moral and physical integrity of a person, then the source ought to be disclosed. Such disclosure, it was argued, negates the well-established norm under International Human Rights Law that a confidential source of information ought to be protected and the right should only be restricted when a court has ordered disclosure, and in that regard the decision of the European Court of Human Rights in **Goodwin vs. UK Appl. No.28957/95 (2009)** and **Saroma vs. Netherlands, Appl.38224/03 (2010)** were cited in support;

d) That print media is specifically regulated by Articles 26-35 and 44-45 and such an action cannot be in conformity with Articles 6(d) and 7(2) of the Treaty. The submission made in that regard was that, the Press Law creates a restrictive framework and limits who may be appointed a director of any media outlet and the said framework is unduly erroneous and is open to abuse because of the uncontrolled powers given to the National Communications Council which in itself is lacking in independence and is under the direct control of the Executive. In addition, that the involvement of the Public Prosecutor, various Ministries and Provincial governance in media regulation is worrisome.

52. It was also the Applicant's case that following international norms, only a purely administrative regime for the regulation of print media is permissible and the **African Commission on Human Rights Declaration of Principles on Freedom of Expression in Africa** was cited in support of that proposition.

53. The Applicant also cited the Cases of **Lapsevitch vs. Belarus UN Human Rights Committee Comm. No.780/1997 (2000)** and **Media Rights Agenda & Others vs. Nigeria, ACPHR Comms 105/93,128/94,130/94 and 152/96 (1998)** where it was held that restrictions that give governments the power to prohibit publication of any newspaper or magazine cannot be sustained.

e) That prior censorship of any films directed in Burundi under Article 46 of the Press Law cannot be in conformity with Burundi's obligations under Articles 6(d) and 7(2) of the Treaty.

54. According to the Applicant, the requirement of prior authorization from the National Communications Council before any film can be directed on Burundi's territory amounts to the creation of an illegitimate prior censorship regime. In support of their proposition, reliance was placed on **Bantam Books Inc. vs. Sullivan 372 U.S 58 (1963)** in the U.S Supreme Court and **Observer and Guardian vs. U.K Appl. No.13484/88 (1991)** at the European Court on Human Rights (ECHR). In **Bantam Books**, the Court held that there is a heavy presumption of unconstitutionality with respect to prior restraints of expression while the ECHR stated that prior restraints required the most careful scrutiny.

f) That the rights of reply and correction regime under Articles 48-54 of the Press Law being vaguely worded, unduly impedes the media's right to freedom of expression thus, violating Article 6(d) and 7(2) of the Treaty. That by allowing corrections by public authorities in such circumstances, the Press Law legitimates continuous interference with the work of the media.

55. In addition to the above submission, the Case of **Miami Herald Publishing Co. vs. Tornillo 418 US 241(1994)** was cited where the US Supreme Court ruled that a mandatory right of reply to the print media

was unconstitutional because it represented an unwarranted interference with editorial matters.

56. The Applicant also relied on a statement in the **Report of the Mission to Hungary (29th January 1999)** where the **UN Special Rapporteur on Freedom of Expression** took a skeptical view of the right to reply and stated that it should be allowed, if at all, only as part of the media industry's self-regulation and applied to correction of facts and not opinions.

57. Further, the Applicant pointed this Court to **Resolution No. (74)2b** where the **Council of Europe's Committee of Ministers** suggested the limited exceptions that should be made to the rule that the right to reply should only be applicable to facts and not opinions. The Press Law, it argued, provides on the other hand, an unduly broad set of circumstances and allows a near-continuous interference with the work of the media.

g) That Articles 56-64 and 66-69 of the Press Law create penalties that are unduly severe and restrictive of press freedom and fail to comply with generally accepted standards of criminal law and procedure. That the penalties also depart from the principle of proportionality and it was the Applicant's argument that under International Human Rights' Law, where a sanction is also placed when restricting the right to freedom of expression, such a sanction should not be disproportionately harsh. In that regard, the ECHR decision in **Tolstry Miloslavsky vs. UK, Appl. No.18139/92 (1993)** was cited in support thereof.

58. The Applicants also contended that the National Communications Council is not the appropriate authority to enforce the above Articles of the Press Law because it lacks the necessary independence to do so, as

it is closely tied with the Executive. Its functions were also said to be incompatible with international standards on media regulation and its members work closely with Government ministries and annually submit reports to the Government from whom it also obtains its funds. That all these shortcomings are in conflict with the **Joint Declaration by the UN, OSCE and OAS on Special Mandates**. According to that Declaration, public authorities that regulate the media should be protected from political or economic interference.

59. In conclusion on this issue, it was the Applicant's submission that the Press Law, for the above reasons, is in breach of Burundi's obligations under the Treaty and the declarations and orders sought in the Reference should be granted as prayed.

Submissions by the Respondent

60. The Respondent, on this issue, gave a short and concise response; that since the Constitutional Court of Burundi has interrogated the Press law and found it wanting in a few respects only, then that determination is binding on the Applicant and this Court cannot overturn that decision in any respect as decisions of that Court are not subject to appeal. That to do so would jeopardize the powers conferred on the Constitutional Court of Burundi and *"would bring chaos in that EAC Partner State (Burundi) which was improving her security after many years of civil wars"*(sic)

61. Mr. Kayobera also submitted that the Press Law had passed various stages of scrutiny in Burundi to wit the Cabinet, the National Assembly, the Senate, the Presidency and finally, the Supreme Court, in accordance with the principle of separation of powers (and checks and balances) and this Court cannot now overturn the decisions of these Constitutional Institutions.

62. Further, it was the Respondent's case that the orders sought cannot be granted as Articles 6(d) and 7(2) have not been violated in any way.

63. In making the above submissions, Mr. Kayobera relied on the decision of this Court in *Rugumba vs. AG of Rwanda* [supra] to make the point that although exhaustion of local remedies is not a condition precedent before filing any matter before this Court, the Applicant had exercised its rights under Burundian Law and obtained a decision at the Constitutional Court and had no reason to come to this Court.

64. On the jurisdiction of this Court to grant certain orders, he relied on the case of *Nyamoya Francis vs. AG of Burundi & Anor*, Ref. No.8 of 2011 and *Masenge vs. AG of Burundi*, Ref. No.9 of 2012 to make the point that this Court, under Articles 23 and 23 of the Treaty as read with Article 30 thereof, cannot issue some of the orders sought in the Reference including annulling the Press Law in part or in whole.

65. For the above reasons, Mr. Kayobera prayed that the Reference should be dismissed with costs

Submissions by the Amici Curiae

66. The *Amici Curiae* submitted that looked at against past decisions of International and National Courts, the Press Law is inconsistent with freedom of expression and freedom of the Press and therefore, also contravenes the Fundamental and Operational Principles of the Treaty under Articles 6(d) and 7(2).

67. In his submission and in furtherance of the above position, Mr. Nshimirimana submitted that there is a crucial relationship between freedom of expression, freedom of the press and the Treaty – projected principles of democracy, the rule of law, accountability, transparency, social justice and the promotion and protection of human rights.

68. In that regard, he relied on the following decisions *inter alia*:-

- i) **Print Media South African & Anor vs. Minister of Home Affairs & Anor [2009], ZACC 22** where the Constitutional Court of South Africa described the press as "*the public sentinel*", and that the free press lies at the heart of democracy;
- ii) **R vs. Secretary of State for the Home Department ex-parte Firms [1999] UKHL 33(1999)** where Lord Steyn stated that free expression is a primary right and without it the rule of law is not possible;
- iii) **Roriesh Thappar vs. State of Madras 1950 SCR 594** where the Supreme Court of India held that freedom of speech and of the press lay at the foundation of all democratic organizations.
- iv) The Canadian Supreme Courts' decisions in **Reference RE Alberta Statues [1938] SCR 100, Irwin Troy Ltd vs. Quebec (AG) [1989]1 SCR 927, Canadian Broadcasting Corp; vs. Brunswick (AG) [1996] 3 SCR 480** where freedom of thought and expression, free discussion of public affairs and a free press were upheld as vital to any democracy and its institutions.
- v) In the same Court in the case of **Express Newspapers vs. Union of India 1985 SCR(2) 287** it was held that the purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible Judgments.

69. Following the principles enunciated in all the above decisions, Counsel for the *Amici Curiae* submitted that good governance and human rights require freedom of the press and freedom of expression for them to flourish and that the Press Law negates these principles in specific ways as shall be detailed here below:-

a) Accreditation Regime:

Like the Applicant, the *Amici Curiae* faulted Articles 5-7 of the Press Law and have relied on both the **Compulsory Membership Case** [supra] as well as **Scanlon & Holderness** [supra] to buttress their submissions.

b) Content-Based Restrictions:

Regarding Articles 17 – 19 of the Press Law, it was the *Amici Curiae*'s submission that the restrictions contained therein limit the ability of the media to be critical of the Government or government officials. That such restrictions are detrimental to democracy and human rights and Courts in several jurisdictions have recognized this type of restriction as unacceptable.

The *Amici Curiae*, on the above submissions, relied on the decisions in **Mills vs. Alabama 384 U.S. 214 (1996)**, **New York Times Co. vs. Sullivan 376 U.S. 254 (1964)**, **Case of Herera – Ulva vs. Costa Rica [2004] 1ACCHR 3** and **Lingers vs. Austria [supra]**.

It was their further submission that content-based restrictions that are unreasonable, for example on grounds of "*morality and common decency*" or "*public order and security*" should not be included in any progressive Statute on the Press.

c) Right of Reply and right of correction under Articles 48-54 of the Press Law:

On this point, the *Amici Curiae* submitted that while the right of reply has been recognized in some jurisdictions, others have concluded that it is inconsistent with freedom of expression and freedom of the press.

In support of the latter position, the *Amici Curiae* cited the decision in **Miami Herald Publishing Co. Ltd vs. Turnillo 418 US 241 (1974)** where it was held that editorial content and judgment is the choice of a newspaper and it had not been demonstrated in that case that governmental regulation in that regard is consistent with *inter alia*, the guarantee to a free press.

Further, that the **UN Special Rapporteur on Freedom of Expression and Opinion** stated that if a right of reply should exist, it should ideally be part of the industry's self-regulation and in any case, it should only be feasible when applied to facts and not to opinions. That the same position was taken by the **Europe Committee of Ministers in its Resolution 74(2)) of 2nd July, 1974** while Slovakia amended its law to limit the right of reply regarding comments made about public officials in their individual capacities only.

d) *Disclosure of sources under Article 20 of the Press Law*

The *Amici Curiae* submitted that the requirements that journalists should disclose the identities of their confidential sources that have provided information relating to offences against state security, public order, state defence secrets, moral and physical integrity of one or more persons, is an affront to democracy.

Reliance in buttressing the above submission was placed on the decision in **Goodwin vs. UK (1996) 22 EHRR123** and the Supreme Court of Canada decision in **R. vs. National Post 2010 SCC 16.**

e) *Fines and Penalties in Articles 56-64 and 66-69:*

The submissions on this point were that fine-related Articles in the Press Law are contrary to freedom of expression and freedom of the

Press. That while the Constitutional Court of Burundi appreciated that fact and struck some out of the Articles, a number still remain intact in the Press Law. The cited provisions, it was argued, are vague, broad in content restrictions and lack the clarity required of valid criminal laws.

In this regard, the decision in *Lingers vs. Austria* (supra) was cited and particularly in making the point that criminal sanctions should not be used to hamper the Press in performing its task as a purveyor of information and public watchdog.

70. In a nutshell, the *Amici*, like the Applicant, found fault in both the spirit and content of the Press Law and urged the Court to allow the Reference as framed.

Determination on Issue (b)

71. From the submissions above, it is clear that the Applicant and the *Amici* have taken the view that, looking at the freedom of the press and freedom of expression as vital components of every democracy, the Press Law does not meet that test and more so, in spirit and content, is a violation of Articles 6(d) and 7(2) of the Treaty.

72. The Respondent on the other hand has taken the view that the Press Law was tested by the Constitutional Court of Burundi and was found wanting in only a few Articles. That this Court must similarly and specifically find and hold that Articles 6(d) and 7(2) have not been violated.

73. Articles 6(d) and 7(2) of the Treaty, for avoidance of doubt, provide as follows:-

Article 6(d):

"The fundamentals principles that shall govern the achievements of the objectives of the Community by the Partner States shall include;

Good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights."

Article 7(2):

"The Partner States shall undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights."

74. This Court has in a number of its decisions interpreted the two Articles as being justiciable and not merely aspirational and binds all Partner States to the principles enunciated therein. For example, in **Samuel Mukira Mohochi vs. AG of Uganda** (supra) the Court stated thus:-

"We fully associate ourselves with the above description and we are of the firm belief that herein lays the explanation why the framers of the Treaty went beyond stating the principle and instead negotiated and agreed upon a specific minimum set of requirements that constituted the good governance package that, in their wisdom, suited the EAC integration agenda. The

package, for purposes of the EAC integration, as set out in Article 6(d), includes:

- a) Adherence to the principles of democracy,*
- b) The rule of law, accountability,*
- c) Transparency,*
- d) Social justice,*
- e) Equal opportunities,*
- f) Gender equality, as well as*
- g) The recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights.*

Apart from asserting that the provisions are aspirations and broad policy provisions for the Community, political character and with a futuristic and progressive application, Counsel did not substantiate. They did not explain how and why these fundamental principles are mere aspirations. They failed to show us why we should depart from the position of this Court succinctly stated in the IMLU Case (supra) that these provisions constitute responsibilities of Partner States to citizens which, through those States' voluntary entry into the EAC, have crystallized into actionable obligations, breach of which gives rise to infringement of the Treaty."

75. We reiterate the above holdings and further, in the present Reference, the substantive issue to be addressed is the freedom of the press and freedom of expression in the context of Articles 6(d) and 7(2) as read with the Press Law. In that regard, there is no doubt that freedom of the press and freedom of expression are essential components of democracy. The submissions by the Applicant and the *Amici* on the correlation between the two have not been controverted at all and the

Respondent did not submit on the legal foundation for the twin freedoms, the manner in which they can be restricted nor did he attempt to either distinguish the authorities cited nor submit on any legal authority where a contrary finding was made.

76. For avoidance of doubt, we have perused all the authorities submitted by Counsel for the Applicant and the *Amici Curiae* and we are satisfied that they properly express the Law in various jurisdictions. We are particularly persuaded that the holding in **Print Media South Africa** (supra) is pertinent to this Reference. In that case, Van der Westhuizen J. held that ***“freedom of expression lies at the heart of democracy”*** and went to state as follows:-

“.....It is closely linked to the right to human dignity and helps to realize several other rights and freedoms. Being able to speak out, to educate, to sing and to protest, be it through waving posters or dancing, is an important tool to challenge discrimination, poverty and oppression. This Court has emphasized the importance of freedom of expression as the lifeblood of an open and democratic society”

77. Similarly, in **Ramesh Thappar vs. State of Madras 1950 SCR 594**, the Supreme Court of India stated thus:-

“Freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for proper functioning of the processes of popular government, is possible.”

78. The Supreme Court of Canada in **Edmond Journal** (supra) put the matter beyond debate when it emphatically held that:-

"It is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression. Indeed a democracy cannot exist without that freedom to express new ideas and to put forward opinions about the functioning of public institutions. The concept of free and inhibited speech permeates all truly democratic societies and institutions. The vital importance of the concept cannot be over emphasized."

79. We adopt the above holdings and findings and all the others cited by the Applicant and *Amici* but closer home, in the case of Cord vs. the Republic of Kenya and Others H.C. Petition No.628 of 2014, the High Court of Kenya as a Constitutional bench of 5 Judges stated as follows on the rights to a free media and freedom of expression:-

"It may be asked: why is it necessary to protect freedom of expression, and by extension, freedom of the media? In General Comment No.34 (CCPR/C/GC/34) on the provisions of Article 19 of the ICCPR, the United Nations Human Rights Committee emphasises the close inter-linkage between the right to freedom of expression and the enjoyment of other rights. It observes at Paragraphs 2 and 3 as follows:

2. Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions.

3. Freedom of expression is a necessary condition for the realization of the principles of transparency and

accountability that are, in turn, essential for the promotion and protection of human rights.

80. The Court went further to state that:-

"The importance of the freedom of expression and of the media has been considered in various jurisdictions, and such decisions offer some guidance on why the freedom is considered important in a free and democratic society. In Charles Onyango-Obbo and Anor v. Attorney General (Constitutional Appeal No.2 of 2002..), the Supreme Court of Uganda (per Mulenga SCJ) stated that:-

"Democratic societies uphold and protect fundamental human rights and freedoms, essentially on principles that are in line with J. J. Rousseau's version of the Social Contract theory. In brief, the theory is to the effect that the pre-social humans agreed to surrender their respective individual freedom of action, in order to secure mutual protection, and that consequently, the raison d'être of the State is to provide protection to the individual citizens. In that regard, the State has the duty to facilitate and enhance the individual's self-fulfilment and advancement, recognising the individual's rights and freedoms as inherent in humanity...

Protection of the fundamental human rights therefore, is a primary objective of every democratic constitution, and as such is an essential characteristic of democracy. In particular, protection of the right to freedom of expression is of great significance to democracy. It is the bedrock of democratic governance" (Emphasis added).

81. We agree with the Learned Judges and in applying all the above principles to the present Reference, a number of issues must be pointed out.

82. Firstly, under Articles 6(d) and 7(2), the principles of democracy must of necessity include adherence to press freedom.

83. Secondly, a free press goes hand in hand with the principles of accountability and transparency which are also entrenched in Articles 6(d) and 7(2).

84. Thirdly, by acceding to the Treaty and based on our finding above that Articles 6(d) and 7(2) are justiciable, Partner States including Burundi, are obligated to abide and adhere by each of the fundamental and operational principles contained in Articles 6 and 7 of the Treaty and their National Laws must be enacted with that fact in mind. In stating so, we have previously held that whereas this Court cannot superintend the organs of Partner States in the ways they enact their Laws, it is an obligation on their part not to enact or sustain laws that completely negate the purpose for which the Treaty was itself enacted – See *Mohochi* (supra)

85. Having said so, what is the test to be applied by this Court in determining whether a National Law, such as the Press Law, meets the expectations of the Treaty? The Treaty gives no pointer in answer to this question but by reference to other courts, it has generally been held that the tests of reasonability and rationality as well as proportionality are some of the tests to be used to determine whether a law meets the muster of a higher law. In saying so, it is of course beyond peradventure to state that Partner States by dint of Article 8(2) of the Treaty are obligated to enact National Laws to give effect to the Treaty and to that extent, the Treaty is superior law.

In that regard, in the **CORD Case (supra)**, the Learned Judges stated as follows:-

"We are guided by the test for determining the justiciability of a rights limitation enunciated by the Supreme Court of Canada in the case of R vs. Oakes (1986) ISCR 103 to which CIC has referred to the Court. The first test requires that the limitation be one that is prescribed by law. It must be part of a statute, and must be clear and accessible to citizens so that they are clear on what is prohibited. .

Secondly, the objective of the law must be pressing and substantial, that is it must be important to society: see R. vs. Big Drug Mart (1985) ISCR 295. The third principle is the principle of proportionality. It asks the question whether the State, in seeking to achieve its objectives, has chosen a proportionate way to achieve the objectives that it seeks to achieve. Put another way, whether the legislation meets the test of proportionality relative to the objects or purpose it seeks to achieve: see R. Vs Chaulk (1990) 3, SCR 1303.

If a sufficiently important objective has been established, the means chosen to achieve the objective must pass a proportionality test. They must be rationally connected to the objective sought to be achieved, and must not be arbitrary, unfair or based on irrational considerations. Secondly, they must limit the right or freedom as little as possible, and their effects on the limitation of rights and freedoms are proportional to the objectives."

86. We shall apply the above test as we interrogate each of the five areas of concern raised by the Applicant as regards the Press Law.

87. We deem it appropriate to address each of them as framed and very well-articulated by Learned Counsel for the *Amici Curiae*.

I. Accreditation Regime

88. Articles 5-7 of the Press Law provide for accreditation of journalists but the main complaint made is that whereas accreditation *per se* is not objectionable, it is the manner of implementation of the law that is problematic. It has been argued by the Applicant in that regard that the National Communications Council combines the role of prosecutor, judge and enforcer in one body and exercises wide power over the media and individual journalists.

89. On our part, while we quite understand the complaint, we have no more than bare submissions on the point. We so say because, while accreditation *per se* cannot be a bad thing and where all that is required is details of a journalist's educational background and all other information regarding him, we also heard the Applicant to be saying that in the execution of the law, the National Communications Council has wide powers but that is all that was said. As to how those powers are amenable to abuse, we do not know and in submissions, neither the authorities cited nor the submissions themselves remove the whole issue from the realm of conjecture.

90. In any event, what is undemocratic and where is the violation of freedom of the press when a journalist is for example issued with a "press pass?" (See Article 5 of the Press Law). Article 7 of the Law gives the reason for the press pass as being an entitlement "to access all places where journalists are required to perform their job of obtaining information" and that with the press pass, journalists "have access to areas reserved for the press, to stadiums, airports, Court rooms in Court and Tribunals and generally speaking, are authorised to enter all official or public events."

91. As for accreditation, it is restricted to *"any foreign journalist wishing to cover one or several activities taking place on the territory of Burundi."* One fails to see the basis for the complaint in this regard. Accreditation in our view is a purely technical and administrative registration procedure for foreign journalists – (see Scanlon & Holders). In the circumstances, it cannot amount to a violation of the freedom of the press.

92. Returning to the role of the National Communications Council, in Article 9 of the Press Law, *"it reserves the right to refuse or withdraw accreditation from journalists who abuse the facilities granted to them."* Where is the violation of the freedom of the press when the Council can only act in the event of abuse by the particular journalist? Freedom of the press has never been an absolute right in any democracy and the present limitation is reasonable and justifiable. In the circumstance, we see no violation of Articles 6(d) and 7(2) as claimed with regard to accreditation of foreign-journalists who wish to cover any activity in Burundi.

II. Content-Based Restrictions:

93. Articles 17-19 of the Press Law are in Section 2 of that Law under the sub-title, ***"Duties of Journalists."*** The Applicant's complaint relate to the duties imposed on a journalist:-

- i) to communicate only balanced information, the sources of which have been rigorously checked – Article 17;
- ii) to refrain from publishing or broadcasting information which contravenes national unity, public order and security, morality and common decency, honour and human dignity, national sovereignty, privacy, individuals and presumption of innocence – Article 18;
- iii) not to disseminate information which relate to national defence secrets, the stability of the currency, privacy (including personal and medical

files), confidentiality of a legal investigation at the pre-trial stage, affronts and insults against the Head of State, calls and advertisements that incite revolt, civil disobedience, unauthorised demonstrations, defend crimes, blackmail or fraud, racial ethnic hatred, defamatory, insulting, libellous, offensive articles or reports regarding public or private persons, propaganda against Burundi, information that may harm the credit of the state and national economy, information concerning military operations, national defence, diplomacy, scientific research and reports of commissions of inquiry by the State, identity of rape victims, protection of minors against obscene and/or images and debates held in closed session concerning minors without prior authorisation - Article 19.

94. We must note from the outset that of all aspects of the Press Law, this part caused us great concern. We say so because while some parts of it are obviously reasonable and require no more than the justification outlined in the language used, other provisions are less clear. For example, the restrictions on protection of minors and identity of rape victims can hardly be faulted and so are those that require communication of balanced information the sources of which have been rigorously checked. The latter is what is required of any professional including a journalist and the fact that it has been made into law cannot be an unreasonable provision.

95. Our difficulty is with the provisions that relates to say, stability of the currency, reports of commissions of enquiry etc. What justification and what plausible reason can justify such provisions in any law? In our view, citizens of any democratic State should be entitled to information that informs their choices in matters of governance. The above restrictions appear to unduly deny that right.

96. The Respondent never addressed us on this issue and in such a situation, we are reminded of the words of Iain Currie and Johan de Waall, who in Bill of Rights Handbook stated thus:-

“Freedom of speech is valuable, not just by virtue of the consequences it has, but because it is an essential and ‘constitutive’ feature of a just political society that government treat all its adult members ... as responsible moral agents. That requirement has two dimensions. First, morally responsible people insist on making up their own minds what is good or bad in life or in politics, or what is true and false in matters of justice or faith. Government insults its citizens, and denies their moral responsibility, when it decrees that they cannot be trusted to hold opinions that might persuade them to dangerous or offensive convictions.

We retain our dignity, as individuals, only by insisting that no one – no official and no majority has the right to withhold an opinion from us on the ground that we are not fit to hear and consider it.”

97. We also agree with the submissions by the *Amici Curiae* that where restrictions are placed on the enjoyment of any right, the same must be reasonable and the restriction must also be rational. What is the reason and rationale preferred for some of the restrictions above? We see none and in *S. vs. Mamabolo* [2001] ZACC 17, Kriegler J. stated as follows:-

“Freedom of expression, especially when gauged in conjunction with its accompanying fundamental freedoms, is of the utmost importance in the kind of open and democratic society the Constitution has set as our aspirational norm. Having regard to our recent past of thought control, censorship and enforced

conformity to governmental theories, freedom of expression – the free and open exchange of ideas – is no less important than it is in the United States of America. It could actually be contended with much force that the public interest in the open market-place of ideas is all the more important to us in this country because our democracy is not yet firmly established and must feel its way. Therefore, we should be particularly astute to outlaw any form of thought-control, however, respectably dressed.”

98. What we understand the Learned Judge to have been saying, and we agree, is that a government should not determine what ideas or information should be placed in the market place and information and we dare add, if it restricts that right, the restriction must be proportionate and reasonable. We have grave doubts about some of the aspects of the Press Law in applying that test.

99. In that regard the following restrictions, in our view, cannot face the test of reasonability, rationality or proportionality i.e. the restriction not to disseminate information on the stability of the currency, offensive articles or reports regarding public or private persons, information that may harm the credit of the State and national economy, diplomacy, scientific research and reports of Commissions of Inquiry by the State.

100. Despite a blanket concern therefore by the Applicant about Articles 17, 18 and 19 of the Press Law, noting the circumstances and history of the State of Burundi, and noting that freedom of speech and freedom of the press are not absolute, only the above provisions can properly be said to be unduly restrictive of these rights and we have said why.

101. In the circumstance, while we find good reason to uphold some of the provisions in Articles 17-19 of the Press Law, some of those provisions

cannot pass the test we set out above and are therefore in violation of Articles 6(d) and 7(2) to that extent only.

102. We therefore find and hold that *"the restrictions not to disseminate information on the stability of the currency, offensive articles or reports regarding public or private persons, information that may harm the credit of the State and national economy, diplomacy, scientific research and reports of Commissions of Inquiry by the State"* in Article 19 of the Press Law are in violation of the principles enshrined in Articles 6(d) and 7(2) of the Treaty.

III. Right of Reply and Correction

103. Chapter VI of the Press Law is headed *"The Right of Reply, Correction and Redress."*

104. On this point, we shall spend very little time because looking at the authorities cited by both the Applicant and the *Amici Curiae*, it is our view that in the market place of ideas, if a person is prejudiced in any way by a publication (as is the language of Article 48 of the Press Law), there is good reason to entitle that person to a reply, correction and if need be, a redress.

105. Elsewhere above, we have indicated that we find no fault with any law that requires a journalist to publish any accurate information. In the event that he does not, then Chapter VI of the Press Law protects a party prejudiced by such inaccurate reporting. Such a party should, as a maxim of democracy, be entitled to a right of reply.

106. In any democracy, even victims have rights and we see no violation of Articles 6(d) and 7(2) of the Treaty as alleged on this issue.

IV. Disclosure of Confidential Sources

107. Article 20 of the Press law obligates journalists to "reveal their sources of information before the competent authorities" in situations where the information relates to State security, public order, defence secrets and the moral and physical integrity of one or more persons.

108. On this issue, we are of the same mind as the Court in *Goodwin vs. UK* (supra) where it was stated as follows:-

"Protection of journalistic sources is one of the basic conditions for press freedom Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result, the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected."

109. We have taken the above position because whereas the four issues named are important in any democratic state, the way of dealing with State secrets is by enacting other laws to deal with the issue and not by forcing journalists to disclose their confidential sources.

110. As for the issue of moral and physical integrity of any person, the obligation to disclose a source is unreasonable and privacy laws elsewhere can be used to deal with the matter. There are in any event other less restrictive ways of dealing with these issues.

111. We have no hesitation in holding that Article 20 does not meet the expectations of democracy and is in violation of Articles 6(d) and 7(2) of the Treaty.

V. Fines and Penalties

112. The contested fines and penalties are contained in Chapter VII of the Press Law which is headed, "***Penalties and Punishments for Press Offences.***"

113. It has been agreed that the Constitutional Court in its Judgment of 7th January, 2014 determined that "Articles 61, 62, 67 and 69" of the Press Law were unconstitutional and to that extent, we find that any reference to those Articles is misguided.
114. In submissions however, the Applicant argued that the sentences meted out for breach of any provision of the Press Law are "disproportionately harsh", as did the *Amici*.
115. On our part, we find it very difficult to make a finding over penalties and fines. We say so because a comparative analysis of the offences in Burundian Criminal Law has not been made by the Applicant neither can we. We cannot substitute our subjective thinking based on submissions alone to determine that say BIF2,000,000 is an exorbitant figure if imposed as a fine.
116. While therefore, the principle that an offence must attract a penalty comparable to its gravity is agreeable to us, in the present Reference, the context in the making of such a finding is lacking and in that event, we are unable to determine that there is any violation of Articles 6(d) and 7(2) of the Treaty.
117. In conclusion on Issue (b), we find that only the following Articles of the Press Law do not meet the expectations of Articles 6(d) and 7(2) of the Constitution:-
- ***Article 19(b), (g)(i) and part of (j), which lay down a broad set of restrictions of what may be published by the media in Burundi and we have indicated the extent to which they violate the Treaty;***
 - ***Article 20, which requires journalists to disclose confidential sources of information;***

Whether the Applicant is Entitled to the Reliefs Sought

118. We have addressed all the issues placed before us for determination and turning back to the prayers sought, in prayers (i) and (ii), the Applicant sought orders that this Court should:-

- i) Declare that the Burundi Press Law violates the right to press freedom and thereby constitutes a violation of Burundi's obligation under the Treaty to uphold and protect the Community principles of democracy, rule of law, accountability, transparency and good governance as specified in Articles 6(d) and 7(2) of the Treaty; and*
- ii) Declare that the Burundi Press Law violates the press' right to freedom of expression and thereby constitutes a violation of Burundi's obligation under the protect human and peoples' rights standards as specified in Articles 6(d), 7(2)of the Treaty.*

119. We have found that certain provisions of the Press law offend the principles in Articles 6(d) and 7(2) of the Treaty and we shall make appropriate orders in that regard.

120. In prayer (ii), the Applicant sought orders that this Court should:-

"Order Government of Burundi to, without delay:

- a) Repeal the Press Law; or*
- b) Amend it in accordance with Burundi's obligations as specified in Articles 6(d) and 7(2) of the Treaty by striking out of or amending Articles 5 to 10, 17 to 20, 26 to 35, 44 to 46, 48 to 54, 56 to 66 and 66 to 69 of the Press Law."*

121. We have read the Treaty and particularly Article 27(1) thereof. Having found the Press Law wanting in the above respects, we find and hold that

we have no jurisdiction to give any orders as prayed above but we shall instead direct the Republic of Burundi, within its internal legal processes to implement this Judgment under Article 38(3) of the Treaty.

122. As for costs, none were sought by the Applicant, but the Respondent did so. Our finding is that no party should benefit from costs as the matters in issue were for the benefit of the wider public and falls in the category of public interest litigation.

Final Orders

123. Having found as above, the final orders to be made are as follows:-

i) Prayers (i) and (ii) of the Reference are granted in the following terms only:-

a) It is hereby declared that Article 19(b), (g), (i) and part of (j) of the Burundian Law No.1/11 of 4th June 2013 amending Law No.1/025 of 27th November 2003 which restrict dissemination of information on the stability of the currency, offensive articles or reports regarding public or private persons, information that may harm the credit of the State and national economy, diplomacy, scientific research and reports of Commissions of inquiry by the State are in violation of the principles enshrined in Articles 6(d) and 7(2) of the Treaty.

b) It is hereby declared that Article 20 of the Burundian Law No.1/11 of 4th June 2013 amending Law No.1/025 of 27th November 2003 to the extent that it obligates journalists to reveal their sources of information before the competent authorities in situations where the information relates to offences against State security, public order,

State defence secrets and against the moral and physical integrity of one or more persons is in violation of Articles 6(d) and 7(2) of the Treaty.

c) The Republic of Burundi shall, in accordance with Article 38(3) of the Treaty take measures, without delay, to implement this Judgement within its internal legal mechanisms;

d) Prayer (iii) in the Reference is dismissed; and

e) Each Party shall bear its costs.

124. Orders accordingly.

Delivered, dated and signed this 15th day of May, 2015 at Arusha.

.....
ISAAC LENAOLA
DEPUTY PRINCIPAL JUDGE

.....
FAUSTIN NTEZILYAYO
JUDGE

.....
MONICA MUGENYI
JUDGE

Annex 6

100-100-100-100

REPUBLIQUE DU BURUNDI
FORCES NATIONALES DE LIBERATION



UBUGATU HUBIHAWA

Bujumbura, January 22nd, 2016

PRESIDENT OFFICE

N/ 011/FNL/PRES/2016

To the Honorable Speaker of the Parliament of the
East African Community with our very high consideration

Concern copy to:

- His Excellency the President of the
Republic of Burundi
- His Excellency the President of the
United Republic of Tanzania
- His Excellency the President of the
Republic of Uganda
- His Excellency the President of the
Republic of Kenya
- His Excellency the President of the
Republic of Rwanda
- His Excellency the President of the
Republic

With assurances of our highest consideration.

Honorable the Speaker,

We are honored to transmit you our best greetings and wishes of this New Year 2016, may it become for you, your family and the whole East African community a year of peace and prosperity.

Honorable the Speaker, the party FNL (National Forces of Liberation) would like to let you know about its concerns due to the politico-security situation and profit this opportunity to plead the involvement of EALA to the improvement of the situation which is in Burundi due to the negative forces on ground.

In actual facts, Honorable Speaker, just after the 2010 elections, the members of radical opposition gathered in the alliance of democrats for change known as ADC-IKIBIRI have made decision to be opposed to the communal election results and boycott legislative and presidential elections but recognized by all either national or international community observers.

Having noticed this lack of acceptance of failure, this aggravated their unpopularity, some politicians of radical opposition and their contributors of civil society have undertaken the movement of disturbing the electoral process and the institutions from this process, an attitude that is unfortunately always observed before, during and after elections of 1015.

That is why even before the announcing of the so-called third ruling term of the actual President Peter Nkurunziza, the attempts of destabilization against the institutions democratically elected and sabotage of preparations of 2015 elections had already been observed on the behalf of radical opposition through their support of the rebellion in gestation.

The issue of the third ruling term which caused many sayings is only an additional pretext for the members of radical opposition in the sense that this issue had been resolved by empowered courts such as the High Constitutional Court of Burundi and the EAC Court of justice that none can ignore to the risk to challenge the principal of ruling law.

Honorable the Speaker, the deny of the democratic way appears Cleary through the radical opposition behavior supporting the use of force, insurrection and even the putsh. Moreover, they pronounced themselves since a long time the occurring of elections in Burundi pretexting either that there will be a war and genocide, either the third ruling term issue wasn't resolved before. This is obvious that these two pretexts have become their political slogan.



4
A. J. ...
...

Honorable the Speaker, we deplore not only the incitement of ethnic and politics hatred acts on behalf of the radical opposition supported by the some members of civil society and medium such as African Public Radio of Alexis Sinduhije but also and mainly the acts of war incitation and simulation to the genocide which caused many people to flee with objective to prove the impossibility of elections; what machiavelism!

Honorable the Speaker, the extent of the opinion manipulation and of institutions demonization is such like you would act as CIRGL whose an investigation allowed to refute the allegations about the presence of militia popularly bad known "INTERAHAMWE" in Burundi and its possible alliance with young "Imbonerakure" of the party on power that it is demonized at all costs by the radical opposition.

Honorable the Speaker, knowing that even the United Nations thanks to its investigation mission and the USA confirmed the military trainings that are taking place in Burundi refugees camps in Rwanda; the reason why the EALA silence would be considered if nothing was done, as a neutrality accomplice in the sense that unfortunately, one the EAC member seems as if he for the destabilization of our country without being brought to order by his colleagues.

Honorable the Speaker, many events plead for reaction in order clarify to the members of international community which seems to agree the false allegations due false information whereas they should know the truth about the radical opposition which acts against democracy in Burundi; testimonies for instance the correspondence that the speaker of ADC-IKIBIRI alliance and the FRODEBU speaker have addressed to the United Nations General Secretary in 2013 where they reaffirmed the impossibility to organize the elections in Burundi with imminence of genocide in Burundi.

In the campaign of demonization, the radical opposition doesn't forget the opposition parties that wish to attend to the elections as our party FNL was accused to have verified and denied some grotesque lies on behalf of the radical opposition which the members have dared to dig up the corpses and throw them in the rivers in the sense to simulated the massacres to attribute to the political opponent or the defense or security forces.



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Honorable the Speaker, having not succeeded to destabilize the party on power, the democratic opposition and the force of defense and security, disappointed to the attachment of the huge majority of the population, the members of radical opposition are in search of dupes and partners in crime towards the international community.

The paroxysm of demonization movement orchestrated by the politicians without popularity, supported by their partners in crime who are in and outside of the country is illustrated by the recent video broadcasted on January 13th, 2016 on TV France 3 in which they were showing horrible killings, attributed to the Burundian national forces of defense and security and the young people affiliated to the political power "Imbonerakure" intending as if the scene occurred recently in Karusi, one of the province of our country that is centre whereas it was a scene that happened a long time ago in a location which is very far to Burundi and where the population don't speak Kirundi; something which is unbearable.

Honorable the Speaker, the extent of the horror which appears in video I am talking about is probably about the coming of the mission of UN team that we hope it, will finally discover the true face of the radical opposition to notice the extent of its unpopularity and dissociate with it in the sense the Head of delegation of this mission is always accused of acquaintance with a member of a radical opposition in the person of Alexis Sinduhije, whose his troops are considered as negative forces.

Actually, our concern is based on the fact that some supposed representatives of Burundi at EALA level, plead rather for the opposition; which is prejudicially to the image of Burundi even at the sub region level in the sense that EALA seems not to be enough informed about the security and the political situation that occurs in Burundi.

For all above we have said, Honorable the Speaker, the FNL party would like to invite EALA to get involved and we ask it to:

1. Come in Burundi to see the situation that really prevails and notice the inopportunity of the intervention of foreigner forces claimed by the radical opposition for the reasons unspoken and unspeakable ones.

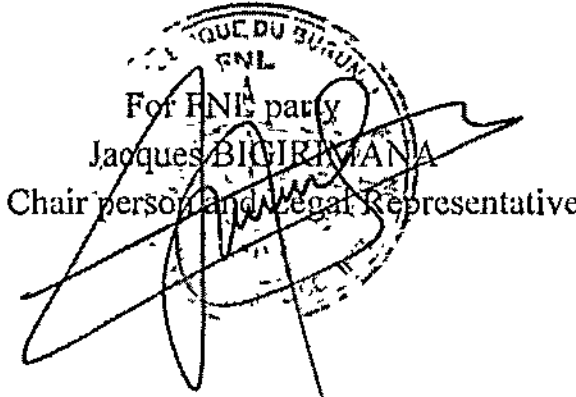


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2. Denounce the acts aiming at tarnishing the image of republican institutions of our country through social networks and the medium manipulated by the radical opposition and the partners in crime.
3. Denounce clearly the attitude of such organizations and personalities mainly those already identified at the level of our sub region whose the negative influence on the situation politico-military is no longer to demonstrate and can influence negatively the success of the current inter-Burundian dialog.

Finally, we profit the occasion to ask to the high authorities who got copy of this to work the best as they can and each one in his sphere of decision to safeguard the sovereignty of Burundi and discourage unscrupulous characters denounced above.

Requesting you and thanking you beforehand for the emergency and the importance that you reserve for the present letter, kindly receive, honorable speaker the expression of our very high consideration.


For FNL party
Jacques BICIRIMANA
Chair person and Legal Representative

Concern copy to:

- Mr. the UN General Secretary
- U.E. delegation
- Ms. The President of the African Commission
- Amb. The EAC General Secretary
- Hon. The Speaker of Burundian National assembly
- Hon. The Speaker of Burundian Senate
- Mr. The CIRGL Executive Secretary

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Annex 7

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**INTRODUCTORY REMARKS BY HONOURABLE LEONTINE
NZEYIMANA, MINISTER TO THE OFFICE OF THE
PRESIDENT RESPONSIBLE FOR EAST AFRICAN
COMMUNITY AFFAIRS, DURING THE PUBLIC HEARING
ON THE SITUATION IN BURUNDI,**

ARUSHA 25 JANUARY 2015

**Honourable Chairperson of the EALA Regional Affairs and
Conflict Resolution Committee;**

**Honourable Members of the EALA Regional Affairs and
Conflict Resolution Committee;**

Distinguished Participants,

Ladies and Gentlemen.

1. Good morning, everyone. I have the honour to address this August House with introductory remarks on the situation in Burundi.
2. Allow me, Honourable Chairperson, to wish you and everyone here present a Happy and Prosperous New Year 2016, a year of success in your endeavours and for the Institution you represent.
3. I wish to also convey the greetings of the Burundian People to you all as dignified representatives and fellow East Africans.
4. Let me, most sincerely, thank the East African Legislative Assembly in general, and its arm, the EALA Regional Affairs and Conflict Resolution Committee, in particular, for

organizing today's public hearing on the situation in Burundi and for the facilitation EALA has provided for.

**Honourable Chairperson, Distinguished Participants,
Ladies and Gentlemen,**

5. For the sake of time, I will focus on the critical issues that have a bearing on the lives and the hearts of the Burundian People as whole. I will not therefore dwell much on the petition which brought about the organization of the present public hearing, and which in many respects ill depicts the situation in Burundi and suggests counterproductive recommendations to revamp peace, security and stability in our country.
6. In the first instance, I would like to highlight that the country has gone through general elections in the year 2015. As it has been happening in Burundi since the early 1960's, the electioneering period was marked by negative propaganda intended to create in Burundi a political and institutional instability.
7. But for 2015, a noxious rumour campaign was made to particularly instill fear and get Burundians to flee the country for neighbouring countries before the elections take place¹.
8. Some people who are hostile to democratic elections and generally referred to as «the opposition», supposedly against President Pierre NKURUNZIZA running for the second universal vote, which they have referred to as «the third mandate», refused to go to the voting stations.

¹ In 2005 and 2010, some Burundians fled the country during the elections period and returned by themselves after the elections.

Surprisingly, these people include civil society activists, who claim that they do not have political interests to die for.

9. The EALA Regional Affairs and Conflict Resolution Committee may wish to record that the elections took place and there was no violence recorded all over the country, as the rumour campaign had prophesized. Political leaders were openly elected from the Supreme Magistrate, the Members of the National Assembly, the Senators, the Governors and Local Councils at the Commune level as well as the leaders of the local hills. Their respective representation in the different institutions is enshrined in the Constitution of the Republic of Burundi².
10. Now that the elections are over, we would wish that the citizens who fled the country for fearing violence erupting from elections, voluntarily return in their respective homes which their fellow neighbours have safeguarded, to work hand in hand with the other fellow Burundians in order to develop the country. As a good number of these refugees have already safely returned home and settled in their own compounds, they are most welcome in their homeland³.
11. The EALA Regional Affairs and Conflict Resolution Committee may also wish to record that there was no violation of the Constitution of the Republic of Burundi in the overall election process. As a matter of fact, the Government implemented a political consensus which was reached by all political actors and all interested stakeholders⁴. The Constitutional Court ruled that President

² Some Constitution analysts argue the Constitution is ambiguous on some issues

³ The Government has made everything possible to keep the property of the refugees safe and a number of them who voluntarily returned home have settled in their own compounds

⁴ The consensus was reached under the auspices of the United Nations Bureau in Burundi (BINUB) in a forum in Kayanza Province more than a year before the 2015 elections (Kayanza, 22-24 May 2013).

NKURUNZIZA was eligible to run; and the East African Court of Justice rendered the same ruling⁵. The Government also did its best to implement decisions of the EAC Summits of Heads of State to postpone elections within the constitutional limits in order to avoid political and institutional vacuum, which would have been catastrophic for the country and served those who did not want to run in the elections⁶.

**Honourable Chairperson, Distinguished Participants,
Ladies and Gentlemen,**

12. The propaganda above rapidly evolved into violent rioting, destruction of property and killing of people. What was preached as peaceful demonstrations and mere civil disobedience became in some neighbourhoods in Bujumbura city a stronghold of armed violence and violent attacks to incapacitate the police and defense and security forces and topple the Government with the help of foreigners and ill intended mass media campaign.

13. The paroxysm of the propaganda is the aborted military coup d'état which was staged in May 2015, so as to kill the democratic choice of leaders by the People⁷. No strong condemnation was heard and some of the perpetrators including military, politicians and civil society activists roam the Region and Western countries blackmailing the Republic of Burundi. We would wish EALA to redress the situation and unequivocally state that there will be no safe heaven in EAC for people who threaten peace

⁵ The rulings of the Burundi Constitutional Court, the only competent organ in Constitutional matters in Burundi and the East African Court of Justice are available

⁶ There is a challenge when political leaders do not want to run (which is their right) but want to impose their view not to hold elections at all.

⁷ The military coup d'état was made in May 2015 before the Burundians elected their leaders. Imagine what, toppling leaders even before they are chosen. This is the same scenario as in 1993 when in July 1993, a coup was staged before President Melchior NDADAYE was sworn in.

and security for a Partner State, conformably to the Treaty for the Establishment of the East African Community.

14. Having failed in their different attempts, including attacks on military barracks, the opposition has now undertaken a hideous campaign to instill hatred and ethnic division, and claim that there is a risk of genocide in Burundi. I wish to put on the record that the composition of defense and security forces as well as the police is in the spirit of the Arusha Agreement for Peace and Reconciliation in Burundi, such that there will be no genocide or military coup d'état in Burundi any more⁸. At this juncture, allow me to single out that a Tutsi was caught red handed calling Hutus to massacre their Tutsi neighbours in Karuzi Province. It sounds incredible, but this is a fact⁹.

15. That is why the opposition is now demonizing Burundi defense and security forces as well as the police, so as to accelerate the sending in of foreign troops in Burundi. In our country, let me say it loud and clear, there is no need of such foreign troops in Burundi, and we would not like to have a MINUAR, as in our neighbouring Rwanda, which we consider as an invasion force.

**Honourable Chairperson, Distinguished Participants,
Ladies and Gentlemen,**

16. Going now to the situation of human rights, I have already indicated that frankly speaking, the defense and security forces perform their duties in unity and cohesion. Some may argue they use excessive force, but for us when

⁸ The composition of the defense and security forces is intended to ensure no genocide or military coup occur in Burundi again.

⁹ A Tutsi from Karuzi Province and political activist from MSD Party of Alexis SINDUHIJE known for recruiting insurgents and fuelling tensions in the country, was caught red handed hanging on the walls and poles a call for Hutus to massacre Tutsis. This is madness and evil.

you have plotters staging a military coup d'état, attacking military barracks or committing terrorist attacks like launching grenades against peaceful civilians enjoying their beer in a pub (as when terrorists killed people in Uganda some time back), you cannot underestimate the enemy, because they are really the enemies of the country and the enemies of the people.

17. To conclude my remarks, before we embark on the details sector by sector, I wish to inform the audience that peace and security reign throughout the country, except some areas of the city of Bujumbura where we occasionally witness some attacks by some terrorist groups against peaceful citizens. Burundian people have realized today that peace and security is a concern for every citizen and their common enemy is poverty.

18. I wish to emphasize once again that Burundi is under a harmful media campaign to manipulate and mislead national, regional and international opinion on the situation in Burundi in general and on the humanitarian situation in particular. For us living in Burundi, the alarming news not to mention forged documentary broadcasts are behind a hidden agenda to maintain a situation of permanent insecurity in Burundi and topple elected institutions. We would not therefore fall in the trap of those serving sectarian people, our vision and mission is to serve the Burundian People and to a larger extent the citizens of East Africa.

19. I would like therefore to once again thank the East African Legislative Assembly for this initiative to listen to Government officials, leaders of political parties and representatives of the Civil Society who undoubtedly each under his portfolio will be hopefully given time to shed light

and share their views, as citizens living in Burundi, in the spirit of balanced information.

20. We would wish we had come to discuss a full report after the EALA Regional Affairs and Conflict Resolution Committee had visited the countryside of Burundi, which we refer to as the grassroots and the genuine custodian of political power. I am informed that some have been forbidden to travel to Burundi, but those who visited the country these last months have seen that people can move around. I therefore invite the EALA Regional Affairs and Conflict Resolution Committee to come to Burundi.
21. As the EALA Regional Affairs and Conflict Resolution Committee has already listened to the persons who initiated the petition that is at the heart of our public hearing today (I am informed you had long deliberations with them some two weeks ago), it would be proper and useful to listen to the Burundian People whom you represent. We have just given the core substance of their thoughts, beliefs and conviction.
22. I am sure, while you may hear about divisive ideology on Burundi, you could see on the spot Burundians all around the country standing together, united, working hard to earn their living and striving hand in hand to raise their standards of living on their local hills and saying in one voice «No to Foreign Troops in Burundi» as the National Parliament did already.
23. I wish to hereby reiterate to the East African Legislative Assembly, the East African Community as a Region and even the International Community, the commitment and determination of the Government of

Burundi to ensure unity, cohesion and peace and security of the People of Burundi as a whole.

24. We would wish to have everybody supporting elected Institutions in Burundi so as to allow and encourage investment for job creation, pluralism including political parties and free professional press which do not heat the opinion to ransack the country and slide into violence but which promote sustainable development of the country and its citizens.

25. To this end, the Government shall relentlessly pursue Inclusive Inter Burundian Dialogue both inside the country (It was launched already in Kirundo Province last week on 19th January 2016) and outside the country. The commission in charge of inter Burundi dialogue has been put in place and has now started its works.

26. Finally, while thanking the regional and international Community for their continued support to the People of Burundi, we do request them to continue their efforts and the assistance needed for the internal inclusive dialogue process so that Burundi could quickly revamp her stability.

27. Hon chair, when Kenya had problems in after its elections of 2007, the East African Community was there and worked hard to support the people of kenya until peace and security was restored. I would urge you to do the same with Burundi. I would like to caution you Mr Chair, there are people who are recommending that Burundi be refused the responsibility of the post of the Secretary General and the Chairmanship of the summit. These people are wrong because Burundi need your support.

28. I believe that what you are doing today, you are doing it for the best of the people of Burundi and the best of the East Africans. The work you are doing should not stop here, please make investigation on East African Country which is recruiting, training and arming you boys from refugee camps to attack Burundi. This has been highlighted by an International Organization called Refugees International and some international medias.

Long live the Republic of Burundi

Long Live EALA

**Long live the EALA Regional Affairs and Conflict
Resolution Committee**

**Thank you for Listening, Asanteni kunisikiriza
Merci beaucoup, Murakoze.**

**REFUGEES
INTERNATIONAL**

FIELD REPORT

A POWERFUL VOICE FOR LIFESAVING ACTION

December 14, 2015



ASYLUM BETRAYED:

RECRUITMENT OF BURUNDIAN REFUGEES IN RWANDA

Authors: Michael Boyce and Francisca Vigaud-Walsh

INTRODUCTION

Refugees International is deeply concerned that the civilian and humanitarian character of asylum in Rwanda is being undermined. Specifically, refugees from Burundi claim they are being recruited into non-state armed groups as part of a systematic campaign involving both Burundian and Rwandan nationals. The activities they describe potentially amount to grave violations of international law, and could destabilize the region. Therefore as a matter of urgency, the parties to the conflict in Burundi, the Rwandan government, and the international community must all strongly reject and comprehensively prevent the recruitment of Burundian refugees.

RECOMMENDATIONS

- ❑ All parties to the conflict in Burundi must respect, and neighboring states must ensure, the civilian and humanitarian character of asylum and protect refugees from recruitment by non-state armed actors.
- ❑ The Rwandan government must ensure that the civilian and humanitarian character of asylum in the country is maintained. To that end, it must:
 - Ensure that all efforts to recruit Burundian refugees into armed groups – whether on or emanating from Rwandan territory, and whether committed by Burundian or Rwandan nationals – cease immediately;
 - Affirm publicly that the recruitment of refugees into non-state armed groups on its territory is a violation of Rwandan and international law;
 - Affirm publicly that refugees on its territory, in accordance with the Organization of African Union Convention Governing the Specific Aspects of Refugee Problems in Africa, are prohibited from attacking any state member of the African Union, or engage in any activity that is likely to cause tension between Burundi and Rwanda; and
 - Cooperate with the UN Refugee Agency (UNHCR) and its humanitarian partners by providing these agencies with unencumbered access to refugees in all sites, and by respecting the confidentiality of communications between humanitarians and refugees.
- ❑ UNHCR and humanitarian partners must:
 - Deploy additional field-based senior protection staff to Rwanda immediately, and on a permanent basis;
 - Initiate a continuous sensitization campaign that stresses the civilian and humanitarian character of refugee sites;
 - Draft and enact a multi-sectoral strategy to ensure the civilian and humanitarian character of refugee sites which addresses, inter alia: refugee site security, protection monitoring in refugee sites during evenings, and the prevention of child recruitment;
 - Establish a confidential complaints mechanism and referral system to address the protection needs of both individuals targeted for recruitment, and family members of the recruited.
- ❑ The UN Children's Fund and the Special Representative of the UN Secretary General for Children Affected by Armed Conflict should work with UNHCR to provide protection for Burundian refugee children who have been recruited or otherwise affected by armed groups, in accordance with their respective mandates.
- ❑ The UN Security Council, the African Union, and international donors must press Burundi and neighboring states to respect the civilian and humanitarian character of asylum, and must impose sanctions against individuals or entities which violate the civilian and humanitarian character of asylum.

Front cover: Burundian refugee children in Mahama camp, Rwanda.

BACKGROUND

In April 2015, Burundi's ruling party, the National Council for the Defense of Democracy - Forces for the Defense of Democracy (CNDD-FDD) nominated the country's incumbent president, Pierre Nkurunziza, as its candidate for the 2015 presidential race. Large-scale protests soon paralyzed the capital, Bujumbura, with opposition members and party defectors flooding the streets to protest his candidacy. Many opposition politicians and international observers deemed Nkurunziza's candidacy unconstitutional and/or a violation of the 2000 Arusha Peace and Reconciliation Agreement for Burundi, which had brought the country's bloodiest chapter in history to a close.¹ Elections nonetheless proceeded in July 2015, with Nkurunziza securing a third term.

Political instability persists in Burundi, with some opposition members refusing to accept the status quo, and a widespread government crackdown on the opposition and anyone perceived not to be sympathetic to the ruling party. Amid a failed coup attempt and extra-judicial killings, and with the previous civil war fresh in their memories, over 220,000 Burundians have fled into neighboring countries. Untold thousands are also displaced internally, too scared to seek assistance or approach Burundi's borders.² Refugees International (RI) traveled to Burundi, Tanzania, and Rwanda in September and October

2015 to assess the protection needs of displaced Burundians in each country. In Rwanda, RI visited Kigali and Mahama refugee camp in Rwanda's Eastern Province (hereinafter referred to as Mahama). Mahama was established in April 2015 and currently hosts more than 46,000 Burundian refugees.

While in Rwanda, RI received numerous allegations that the civilian and humanitarian character of asylum in the country was being violated, and that refugees were being targeted for recruitment into non-state armed groups. Many of the refugees who brought forward these allegations are Burundians who fled their country seeking protection, only to find that protection compromised in Rwanda.

RI constantly strives to interview displaced people during its assessments. However, in this case RI decided against speaking to refugees directly out of concern for their protection. The report that follows is based on interviews, both during RI's visit and subsequently, with multiple representatives of the international community in Rwanda and the Democratic Republic of Congo (DRC) – including those who debriefed the refugees who claimed to have been targeted for recruitment. It also draws on confidential documents containing those refugees' statements, and on open-source information where cited.

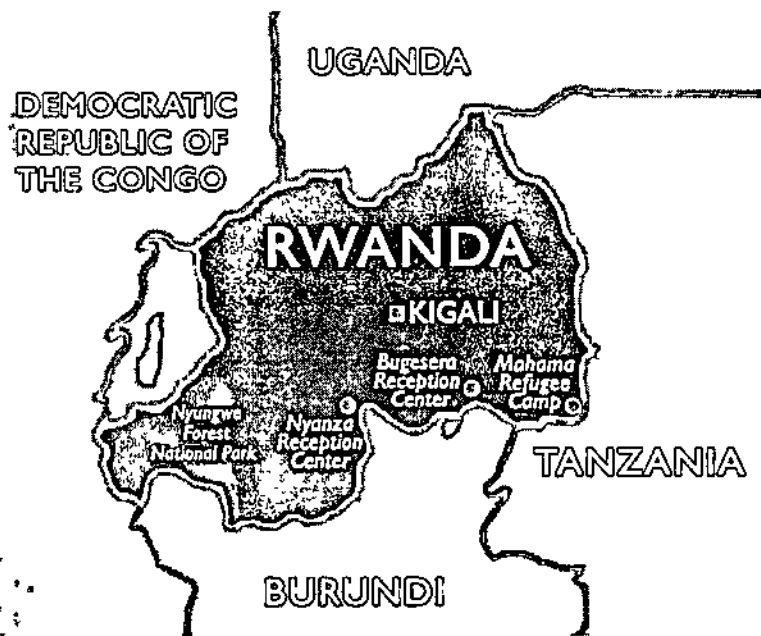
RECRUITMENT

The recruitment of Burundian refugees into non-state armed groups was first noted by members of the international community in Rwanda in late May 2015, when refugees began to complain of recruitment in Mahama. International officials told RI that these refugees continued to allege ongoing recruitment through October,

with one knowledgeable official telling RI that recruitment continued at an "aggressive" level through November as well. While this report only describes recruitment in and around official refugee sites, some refugees in Mahama claimed that their fellow Burundians living in urban areas were also being recruited.

Between May 2015 and early December 2015, at least 14 groups of refugees resident in Mahama – comprising at least 50 individuals – separately and independently raised concerns about recruitment to international and Rwandan officials. At least 30 additional Burundians who had been refugees in Mahama were also apprehended in the DRC and provided information about recruitment to international officials.

In addition to those refugees who experienced recruitment or actively resisted it, international officials told RI that other refugees had volunteered information about recruitment in unrelated contexts. Some of these refugees were using registration cards in Mahama that did not belong to them, and when the officials asked where the cards' owners were, some of these refugees spontaneously responded that the owners had left for military training.



International officials told RI that three senior recruiters, all registered refugees, had been named by multiple refugee sources. During interviews, some refugees claimed that at least one of these recruiters had been seen operating in one of the official refugee reception centers near the border with Burundi. Some refugees said recruiters told them in August 2015 that they wanted to recruit 5,000 individuals, and that all Burundians of military age were potential targets. Some of the refugees interviewed who had prior military experience or possessed special skills (including health workers and drivers) said that they experienced especially intense pressure from recruiters.

Through the time of RI's visit, all known cases of recruitment concerned adult males. However, in late October and November, international officials told RI that they had identified at least six Burundian refugee children who had been recruited into an armed group. The children in question were between the ages of 15 and 17, and lived in Mahama before being transported to a training site.

Some of the refugees interviewed in Rwanda said that once they had been identified as potential recruits, they were asked to attend meetings. Those refugees who attended the meetings said that they occurred in the camp after 5pm, after staff who were not Burundian or Rwandan had departed Mahama.

Some refugees interviewed said that meetings also took place in the nearby village of Munini. In addition to the Burundian recruiters mentioned previously, multiple refugees interviewed said that Rwandan police officers were present during some recruitment meetings. Some of the refugees said they were told that they would fight on behalf of the Movement for Solidarity and Democracy (MSD), a leading Burundian opposition party. Other refugees told interviewers that another Burundian opposition party, the National Forces of Liberation (FNL), began recruiting in the camp in August. It was not possible for RI to confirm these alleged connections with the MSD or the FNL. Some of the refugees interviewed said the nascent armed group was also, at times, referred to as the Imbogoraburundi, which translates to "those who will bring Burundi upright" or "those who will bring Burundi back." The refugees said that they were not promised financial incentives for signing up – either for themselves or their families.

International officials told RI that refugees had shown them pieces of paper used as proofs of enlistment. These papers had a date written on them: reportedly the date when the refugee would be moved from Mahama to a training site. Some of the refugees interviewed said recruiters instructed them to leave behind their official refugee registration cards and mobile phones. These refugees were told that their registration cards would not be needed during training, since the UN Refugee Agency (UNHCR) was aware of the recruitment process and

had agreed to provide rations at the training site – an assertion which is false.

Some of the refugees interviewed said that after they agreed to enlist, they boarded vehicles they were told were bound for a training site. Several of the refugees interviewed separately stated that they saw refugees boarding transport in the presence of Rwandan police officers. Some of the refugees told interviewers that they were transported in Rwandan military vehicles to and from a training site.

Nearly all of the refugees interviewed in Rwanda who chose not to enlist said that they were being intimidated by recruiters. In addition to repeated in-person or phone messages from recruiters, some of the refugees said they were followed around the camp by groups of young men. Others said they were subjected to verbal and written threats, with one told his "medicine is on the stove" – meaning he would be dealt with imminently – and another that he "will disappear into the Akagera river." Some of the refugees told interviewers that recruiters frightened them by pointing out that humanitarians were not present in the camps at night and thus could not protect them. Multiple refugees said they were so afraid that they slept in shelters that were not their own, or slept upright in camp showers or latrines, in order to avoid recruiters. Some younger refugees

One refugee who chose not to enlist was told by recruiters that he "will disappear into the Akagera river."

who were interviewed in Rwanda said they were too scared to attend school because adult classmates pressured them to enlist, and because senior recruiters sometimes idled outside the classrooms.

One refugee said he was so afraid that he did not attend school for about a month. In interviews, two of the refugees said that they were physically assaulted after refusing recruitment. Indeed, for a certain number of refugees, these threats by recruiters became so severe and imminent that the refugees had to be moved from Mahama to other locations.

The refugees concerned have asked international and/or local authorities for protection. However, some of them told interviewers that the Rwandan officials they approached were not cooperative and even threatened them. One refugee who sought protection alleged that a Rwandan police officer said, "If you love your country, you will do what they say. If you come back and talk about this issue again, you will be put in jail." Other refugees told interviewers that officials from the Rwandan Ministry of Disaster Management and Refugee Affairs (MIDIMAR) and the police asked them to avoid speaking with humanitarian staff and journalists, and to report back on any conversations they had.

Some refugees shared with members of the international community that they had struggled mightily to reach Rwanda, and that they did not expect to be recruited after arriving. Various reports have said that the Burundian side of the border is

heavily patrolled by both security forces and pro-government militia, who reportedly turn around, detain, or physically harm civilians trying to flee. The Burundian government has justified these abuses on the basis of national security, saying they are intercepting would-be rebels who could attack Burundi from abroad. Restrictive border measures in Burundi on the one hand, and alleged recruitment in Rwanda on the other, create an impossible situation for Burundians in search of peace and safety.

In addition to the allegations of recruitment activities inside Mahama, international officials told RI they had received first-hand reports regarding the training of Burundian recruits in Rwanda and the movement of those recruits to the DRC. These officials told RI that a training site existed inside Nyungwe Forest National Park in southwest Rwanda, where hundreds of Burundian adult and child recruits (including girls) were reportedly housed. These officials said they had received reports that the recruits – including the children – completed training in the use of weaponry. They also told RI that both-Kirundi- and Kinyarwanda-speaking individuals reportedly conducted this training, and that some of the trainers wore military uniforms bearing Rwandan flag patches. The officials told RI of further reports that the Burundians were transported from the training site aboard military vehicles with Rwandan license plates, and that they subsequently entered the DRC using falsified Congolese electoral cards as identification. The officials said that the Burundians told them their objective was to travel from the DRC to Burundi, and to proceed to Bujumbura's Gare du Nord bus station, where they would

receive further instructions. The Burundians were, however, apprehended in the DRC before they could cross the border.

FORMAL ALLEGATIONS OF RECRUITMENT AND OFFICIAL RESPONSES

The Burundian government has publicly accused Rwanda of helping to plan attacks against Burundi, with Foreign Minister Alain Nyamwite saying in October, "We also have extensive information about recruitments in refugee camps, especially

in Mahama refugee camp, where refugees are taken for military training, and some of the trainers are Rwandans."³ In a press conference on October 22, Rwandan Foreign Minister Louise Mushikiwabo responded by stating, "We are not in the habit of exchanging accusations and denials."⁴

fg I wanted to tell you [refugees] that although these international NGOs operate in confidentiality we have the means to know everything you tell them. 55

-Rwandan Minister for Disaster Management and Refugee Affairs Seraphine Mukantabana

On October 23, the Rwandan Minister for Disaster Management and Refugee Affairs, Seraphine Mukantabana, visited Mahama in the company of members of the diplomatic community and the press, and directly addressed allegations of recruitment. RI obtained and translated a recording of the minister's speech, which was delivered in Kinyarwanda.

Before a crowd of some 4,000 refugees, Mukantabana spoke about Rwanda's obligations as a host country to the refugees, and about the refugees' obligations toward Rwanda with respect to peace and security in the camp. She invoked the numerous "international agreements" Rwanda has signed, and reminded refugees that they must "comply with all laws."



Burundian refugees line up for a distribution in Mahama camp

Mukantabana explicitly stated that refugees are "civilians" and ordered them not to engage in political or military activities; doing so would have implications for their own security, as well as for the state. She stated that refugees must "avoid contact with people who promise you to help you regain your country by force of arms." She also accused refugees of fabricating stories of recruitment and intimidation in order to secure resettlement to a third country, and reminded the population that continuing to do so would put them at risk of expulsion:

"There are those who tell lies. They say that their safety is not assured here at the camp because they refused to be recruited to go fight in Burundi. Therefore they ask the international organizations to save their lives. We want you to tell us if there are any secret agents who come here to recruit soldiers. You must say if there are people who have been threatened because all these journalists that you see here have come for that. They even believed that the Mahama camp would be empty because in Rwanda there are agents responsible for recruiting people to go into combat in Burundi. Even the Burundian government accuses our government to be at the origins of the problems in your country. I wanted to tell those liars that they put our country and other refugees in danger. If this continues and you do not denounce those who lie, this will create problems for you. Rwanda has signed international agreements on the protection of refugees, but we have the right to evict you if you continue your war and keep your conflicts in your country. Furthermore, we may ask to those countries that accuse Rwanda of recruiting soldiers to find you other host countries. We have welcomed you here because we have signed international agreements and because you needed help; but we cannot accept that your presence creates problems to our country. We will never accept that you lie that the government gives military training in the camp. In Rwanda we do nothing in secret."

Mukantabana also reminded the refugee population that they are closely monitored:

"We know that there are people who tell those lies in order to obtain special protection. I wanted to tell you that although these international NGOs operate in confidentiality we have the means to know everything you tell them. For public interest reasons we will convoke those people and ask them about their false statements. That's why I ask all those who have lied to go back to those NGOs and change their statements."

The minister continued:

"In the coming days we will post in the camp the rules governing the employees of these international organizations working here, to explain what they can do and what they cannot do. For example, they are not allowed to wander in to see your families after office hours. If we visit the camp during the evening and we find you in a tent with these officials, we will treat you and them as traitors."

PROTECTING PEOPLE; AVERTING A DISASTER

Many Burundian citizens who have fled to Rwanda, and to other countries in the region, are refugees trying to escape

life-threatening persecution. UNHCR, whose mandate is founded on refugee protection, insists that because the granting of refugee status is, by the terms of the 1951 Refugee Convention, "a peaceful, non-political and humanitarian act...it is of the utmost importance that only civilian populations benefit from the grant of asylum."⁵ Otherwise, refugees and combatants could become intermingled, thereby putting the entire population at risk of attack.

However, the information given to RI by multiple sources indicates that the civilian and humanitarian character of asylum has been and continues to be undermined in Rwanda, in violation of international law. These actions threaten international peace and security. All parties to the conflict in Burundi must therefore respect, and neighboring states must ensure, the civilian and humanitarian character of asylum and protect refugees from recruitment by non-state armed actors.

Host Government Responsibilities

One Rwandan MIDIMAR official whom RI spoke to emphasized Rwanda's strong capacity and desire to assist Burundian refugees. "We as Rwandans have a background of being refugees, so we know what they need and how they should be treated," the official said, adding, "We want to ensure that the refugees who came here seeking security can have a safe area to live." However, the information obtained through refugee interviews and presented to RI raises concerns that at least some Rwandan officials could be neglecting their obligations to prevent the recruitment of refugees in Mahama, and may even be facilitating this recruitment.

The Rwandan government has a clear responsibility under international and regional law to ensure the civilian and humanitarian character of asylum, and of any refugee sites on its territory. Specifically, international humanitarian law requires that any state maintaining neutrality with respect to a conflict must ensure that no warring party can use its territory to conduct hostilities.⁶ Any combatants located in the neutral state must also be separated from the civilian population and interred in a humane fashion. Similarly, regional refugee law requires African states to prohibit refugees in their territory from attacking any other state.⁷ Finally, a host of UN Security Council resolutions since 1998 require host governments and the international community to maintain the civilian character of refugee and displacement sites, since failing to do so can threaten international peace and security.⁸

The Rwandan government must therefore act at once to ensure the civilian and humanitarian character of asylum and protect refugees from recruitment by non-state armed actors. To that end, it must ensure that all efforts to recruit Burundian refugees into armed groups – whether on or emanating from Rwandan territory, and whether committed by Burundian or

Rwandan nationals – cease immediately. Rwanda must also affirm publicly that the recruitment of refugees into non-state armed groups on its territory is a violation of international and Rwandan law.

To ensure that recruitment can be identified and addressed, Rwandan officials should not discourage refugees from speaking to UNHCR or other protection actors. Nor should they threaten to breach the confidentiality of those discussions. Such actions would seriously undermine UNHCR's internationally-mandated protection activities and could effectively silence those refugees who have legitimate, sensitive protection concerns. Instead, Rwandan authorities should cooperate with UNHCR and its humanitarian partners by granting these agencies unencumbered access to refugees in all sites, and by respecting the confidentiality of communications between humanitarians and refugees.⁹

International Response

In their roles as protection actors and service providers, UNHCR and its humanitarian partners must also respond. Established guidelines set out a range of activities that can prevent and curb militant activity in refugee settings.¹⁰ Of these, RI believes the following are most critical in this context:

- Additional field-based, senior protection staff should be deployed to Rwanda on a permanent basis, both by UNHCR and by other agencies or NGOs with protection expertise.
- Humanitarians should initiate an ongoing sensitization campaign that stresses the civilian and humanitarian character of refugee sites. As part of this campaign, humanitarians should explain the relevant rights and obligations of refugees, and also stress that refugees who willingly join armed groups – or recruit others to do so – may lose their refugee status.¹¹
- Humanitarians should draft and enact a multi-sectoral strategy to ensure the civilian and humanitarian character of refugee sites which addresses, inter alia: refugee site security, protection monitoring in refugee sites during evenings, and the prevention of child recruitment. It is critical that all humanitarian actors – from country directors to field assistants – act in accordance with this strategy whether they have a formal protection role or not.
- Humanitarians should establish a complaints mechanism and referral system to address the protection needs of both individuals targeted for recruitment and family members of the recruited. Refugees need to know that concerns about recruitment can be raised safely and confidentially; otherwise they may not come forward.

The possible recruitment of child refugees into armed groups demands a particularly sensitive investigation and response. In this regard, the UN Children's Fund and the Special Representative of the UN Secretary General for Children

Affected by Armed Conflict should work with UNHCR to provide protection for Burundian refugee children who have been recruited or otherwise affected by armed groups, in accordance with their respective mandates.

A final, critical step toward stopping the recruitment of Burundian refugees is for the international community to apply pressure and demand accountability. The UN, the African Union, and international donors must press all parties in Burundi and neighboring states to respect the civilian and humanitarian character of asylum. Both the UN Security Council and the AU Peace and Security Council have expressed their intention to consider sanctions against all Burundians "whose actions and statements contribute to the perpetuation of violence and impede the search for a solution."¹² But that is insufficient: instead, they should impose sanctions against any individuals or entities – Burundian or otherwise – found to be violating the civilian and humanitarian character of asylum.

CONCLUSION

The recruitment of Burundian refugees could have dire consequences for the affected individuals. But it could also have severe negative effects for all Burundians in need of protection. The alleged violation of the civilian and humanitarian character of asylum in Rwanda could have two potentially irreparable consequences for Burundian civilians. First, it could create severe problems for Burundians trying to flee their country because of persecution. Any links between refugees and armed actors lend legitimacy to those Burundian security forces and militia who are harming would-be refugees through refusal to permit exit, arbitrary arrest, and other forms of abuse. Second, if Mahama or other refugee sites are in fact used for military purposes, or used to source military activities, there is a risk that the Burundian government or its allies will view these sites as military targets and respond accordingly.

The information presented in this report is disturbing in its own right, but all the more so because of the history it invokes. Too often in recent decades, states and non-state armed groups in the Great Lakes region have subverted the civilian and humanitarian character of asylum, with terrible results. The recruitment of Burundian refugees must be strongly rejected and comprehensively prevented, for the sake of the region, the Burundian nation, and, most of all, the refugees themselves. There is no alternative but disaster.

Michael Boyce and Francisca Vigaud-Walsh visited Burundi, Tanzania, and Rwanda in September and October 2015 to assess the protection needs of displaced Burundians.

ENDNOTES

1. Nkurunziza had already served two full terms in office: the first after being appointed by the Burundian parliament, and the second after a popular election. The Arusha agreement stipulates that "no one may serve more than two presidential terms." *Arusha Peace and Reconciliation Agreement for Burundi*, August 28, 2000, P. 33. Burundi's constitution is more ambiguous, stating in Article 96 that "The President of the Republic is elected by universal direct suffrage for a mandate of five years renewable one time."

2. For more on the Burundi crisis, see: Michael Boyce and Francisca Vigaud-Walsh, "You Are Either With Us or Against Us": Persecution and Displacement in Burundi," *Refugees International*, November 18, 2015. <http://www.refugeesinternational.org/reports/2015/11/17/burundi>

3. "Burundi's Nyamitwe accuses Rwanda of training rebels." *BBC News*, October 1, 2015. <http://www.bbc.com/news/world-africa-34413855>

4. RwandaGov. "Rwanda Government Spokesperson briefs the media on current issues 22 October 2015." YouTube, October 22, 2015. <https://www.youtube.com/watch?v=TWaPTfaGr4A>

5. "Operational Guidelines On Maintaining the Civilian and Humanitarian Character of Asylum." United Nations High Commissioner for Refugees, September 2006. <http://www.refworld.org/docid/452b9bca2.html>

6. See: *Convention Regarding the Rights and Duties of Neutral Powers and Persons in Case of War on Land*, October 18, 1907. http://avalon.law.yale.edu/20th_century/hague05.asp. As interpreted by the International Committee of the Red Cross (ICRC), this convention has been established as customary law, meaning that all states (including those, such as Rwanda, who have not acceded to it) are bound by it. Though the Convention was

originally intended to address international armed conflicts, the ICRC maintains that it "can also be applied by analogy in situations of non-international conflicts, in which combatants either from the government side or from armed opposition groups have fled into a neutral state." See: International Committee of the Red Cross. "ICRC statement to the UNHCR Global Consultations on International Protection, first meeting, 8-9 March 2001." March 8, 2001. <https://www.icrc.org/eng/resources/documents/misc/57iqwh.htm>

7. Organization of African Union Convention Governing the Specific Aspects of Refugee Problems in Africa. Article III. September 10, 1969.

8. See United Nations Security Council. S/RES/1208. November 19, 1998; S/RES/1265, September 17, 1999; S/RES/1296. April 19, 2000; S/RES/1674. April 28, 2006.

9. Article 35 of the 1951 Refugee Convention requires that host states "cooperate with the UNHCR in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention." *Convention Relating to the Status of Refugees*, Article 35, 1951.

10. "Operational Guidelines On Maintaining the Civilian and Humanitarian Character of Asylum." United Nations High Commissioner for Refugees, September 2006. <http://www.refworld.org/docid/452b9bca2.html>

11. It is generally recognized that combatants are ineligible for refugee protection due to the essentially civilian and humanitarian character of asylum.


12. Peace and Security Council of the African Union. PSC/PR/COMM. (DLI): Communiqué, October 17, 2015. <http://www.peaceau.org/en/article/communiqué-of-the-551st-meeting-of-the-peace-and-security-council/> United Nations Security Council. S/RES/2248. November 12, 2015.


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Annex 9



POINT OF VIEW OF ONELOP-BURUNDI CONCERNING THE PETITION SENT TO
EALA

The ONELOP-BURUNDI thanks highly the organizers of the upcoming hearing workshop that is planned to take place in Arusha this January 25, 2016 in Arusha Tanzania. To this end, as one of major Burundian civil society organizations widely implemented throughout the whole territory of Burundi, ONELOP-BURUNDI seizes this rare opportunity to extend its prior opinion on the petition addressed to the EALA, concerning its object and on its potential initiators.

1. First of all, the ONELOP-BURUNDI deplors the fact that a respectable pan-African organization of lawyers such as PALU could endorse - against an African independent State - severe charges unsupported by field surveys (by being presented as "the main petitioner" of a visibly initiated by only 4 organizations of civil society petition). By doing so, PALU have in fact violated and betrayed the first duty (legal and moral obligation) of any neutral lawyer which is to go on field to check the veracity of the alleged crime through investigations made in the rules of art. The ONELOP-BURUNDI says that by signing this petition, PALU behaved as accuser, [acting only on hearsay without factual basis.

2. ONELOP-BURUNDI justifies with strong indicators that the concerned petition constitutes an own initiative of some civil society organizations as mentioned in the Note dated 14th January 2016 that EALA addressed to the Burundian Minister in charge of East African affairs which we managed to get a copy.

Indeed, in the seventh paragraph of the second page of this document, *it is well written that the civil society representatives urged EALA inter alia to call upon the chair of the assembly of Heads of State and Governments of the African Union to take concrete steps towards preventing Burundi from descending into genocide or mass atrocities (...)* Moreover, it is interesting to note that beyond this seventh paragraph until the end, the word PALU do not reappear in the document, although it was at the outset presented as the "main signatory" of the famous petition".

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In this respect, the ONELOP-BURUNDI deduced (based on the content of previous false statements of the clique of Burundian civil society, openly opposed to the Current Government in Burundi for mere political reasons) that PALU was exploited and manipulated to lend his label of "Pan-African organization of lawyers" in order to legitimize classic false and recurring accusations that Burundian civil society fiercely opposed to the Current Burundian Government is throwing via mediums since April 26, 2015 and even before, but which were struggling to [make themselves legally accepted, much less succeeding to trigger material hostile actions against Burundi from the international community] The obsessive need of triggering hostile actions such as sanctions or even a foreign armed action against Burundi is the ultimately and quite obviously the only leitmotif of this petition, addressed to the EALA as opponents do not have the military power to overthrow the legally elected ins[ur]ants in Burundi.

3. In the right way to the above sayings, the ONELOP-BURUNDI remind ~~the~~ civil society organizations that are mentioned in the document containing the outline of the oral submissions of the petitioners, at the second page under the title of Burundian organization ~~of~~ and the allied associations in the disastrous campaign "stop the third term or Halte au troisième mandat" whose composition is well known have been temporarily suspended by the Decree 530/1597 of 23 November 2015 because they were subject to prosecution due to massive and horrible violations of human rights and serious human life abuses that have characterized too violent demonstrations of April and May 2015 ~~open~~ protests culminated in an attempted coup d'état. These horrible killings and other ~~abuses~~ abuses (people burned alive, police officers killed by so called peaceful protestors with no other forms of trial while the latter had not made any offensive action, all day long burning of tires with serious environmental and public health injuries, destruction of movable and immovable property of peaceful and innocent citizens; taking in hostage entire populations inhabiting the districts known as challengers, prevent schoolchildren studying or doing exams ...) were the result of the campaign Stop the alleged third term.

The logic, especially the public and international laws would impose that such organizations and their leaders should be kept at a good distance and not be heard until judgments verdict in relation to the facts alleged against them are established. These ~~organizations~~ organizations and their leaders with such criminal assets should not constitute valid patent and valid interlocutors, but should rather be subject of judicial investigations in countries where they fled. Unfortunately, it rather looks that they seem to lead "the game" in this particular case of endorsing their false statements to honorable pan African institutions. By cleverly initiating the petition submitted to the EALA after mistake they made only one strategic flight forward by allocating the bulk of their packages to the government side.

Similarly, it should be recalled that these precise Burundian civil society organizations had long sympathy and even open collaboration with the Burundian radical political opposition and ipso facto borrowed the methods of the latter which are: intolerance, abusive use of lies and amalgams. In addition, after the escape of their legal representatives from Burundi, these civil

society organizations in exile have formed a strong political oriented lobbying network within civil society organizations in some EAC countries.

This petition without factual basis addressed to EALA is made by a tissue of lies sewn white and seems to be the result of that intense lobbying which aims to raise EALA taking resolutions to support the deployment of intervention of foreign forces in Burundi, although Heads of member states of the EAC legally supported the electoral process in 2015 and instead prefer the path of dialogue and peaceful actions.

4. In terms of representativeness, principal Burundian civil society organizations allied in the pointless and human devastating "stop at the third/halte au troisième mandat " campaign does not even represent 1% of the 6,000 civil organizations regularly registered and active in Burundi. This statistical and factual argument should be enough alone to relativize the importance given to this politician petition initiated urged on the behalf of the politically biased Burundian civil society (with the with radical political opposition in filigree) to serve the cause of the fatal campaign stop at the third term.

5. Finally, ONELOP-BURUNDI welcomes the fact that petition have mentioned in the document containing the summary of the oral presentation of the petitioners, second page under the heading *other Civil Society organizations* the report of the NGO International Refugees International. However, ONELOP-BURUNDI regrets that any mention have not made of the major contents of this report, namely the fact that Rwanda leads military trainings and grant weapons to Burundian refugees who come back to attack their homeland. The ONELOP-BURUNDI strongly request that this report of Refugees International should be also discussed in the hearing meeting will be held in Arusha on the 25th January 2016. EALA should recommend that an international and neutral investigations to be sent in Rwanda, an EAC state member which violate international laws by training and arming refugees, and while outrageously destabilizing another Member State of the EAC.

6. In the same vein, we ask that EALA do not takes early action based on this petition filled with lies and not accompanied by non-doubtable evidences, but should rather sponsoring a survey mission which will be deployed in Burundi to listen to representatives of 6000 organizations Burundian civil society as a whole. We strongly recommend that no decision in line to condemn Burundi or to send a foreign force in Burundi is taken by EALA emerging from the meeting of 25th January 2016, but that this upcoming workshop serves as a precursor to the work of hearing to the representatives of the 6000 Burundian organizations regularly registered and active here in Burundi. By this way, we will ban partiality and will promote justice, peace, national sovereignty of each state and sustainable development.

7. As far as the hate language is concerned, we recommend a EALA to force Rwanda that hosts the radio as RPA / Humura Burundi, inzamba to control their editorial line because these named mediums are the main vectors of hatred language. We give as eloquent example the call to the murder of President Nkurunziza and mass killings launched by Domitilla Kiramvu

(former journalist of RPA) last month but the incendiary audio continues to circulate on the website of the media. This lady has not at all been disturbed by her terrible words, while any country in the world punishes incitement to murder. The partial fringe of "international community" persists rather to make acrobatic link between the speech pronounced by the President of the Senate and the Kinyarwanda word "gukora" pronounced in 1994 when the official was speaking Kirundi Burundians in 2015.

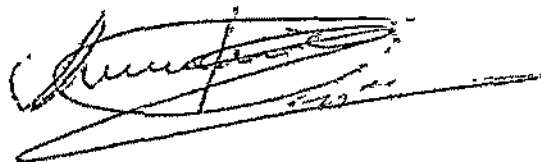
8. Finally, taking account of false and biased nature of the petition, we recommend that the rotating Presidency returning of law in Burundi is allocated.

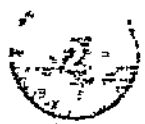
9. We end our observation by making a nod to our African brothers citizens of other EAC countries: in Kirundi we say: INKONI IKUBISE MUKEBA URAYIRENZA URUGO, meaning that everyone need to throw very far from the stick that hit your rival, lest he strike you in your turn. This Kirundi proverb has equivalents in almost all African languages. Given the terrible fury of the old colonial powers against Burundi, EVERYTHING MUST BE DONE TO AVOID TO RUN BLINDLY UNJUST ORDERS WHICH COME FROM SOME NON AFRICAN POWERS EVEN IF THEY USE NATIONAL AVIDE POLITICIANS AGAINST THEIR COUNTRIES AND THE MAJORITY OF THEIR CITIZENS. Meaning that if Burundi is unjustly struck through African institutions following orders from elsewhere and complicity of some African, it will be a too bad precedent; and tomorrow it may be the turn of any other African country to be hit. Therefore, Africa and in particular the EAC which Burundi is a member must however deploy all needed effort to help Burundi regain peace and prosperity not by erecting some Burundians against the remaining majority of Burundians, but through true reconciliation in the strict respect of common sense and the sacred principle of national sovereignty.

Done at Bujumbura, the 22nd January 2016.

Gilbert-Bécaud NJANGWA

Legal representative of the ONELOP-BURUNDI





ONELOP-BURUNDI : MEMORANDUM A L'INTENTION DES CHEFS D'ETAT DE L'AFRIQUE SOUS-REGIONLE (CIRGL - EAC) SUR LA CRISE ACTUELLE AU BURUNDI

3. Bien avant la veille du processus électoral ^{de 2015} ~~actuellement en cours~~, certains leaders de l'opposition tant des partis politiques que des organisations qui se targuent d'être de la « société civile » avaient déjà annoncé le dessein de leur macabre projet : le renversement des institutions républicaines.

Qu'on en juge par ces quelques illustrations :

3.1. Au lendemain des élections de 2010, Monsieur Alexis SINDUHJE, Président du Mouvement pour la Solidarité et la Démocratie (MSD) déclarait déjà dans tous les médias tant nationaux qu'internationaux qu'il n'y aura pas d'élections en 2015.

Le même personnage faisait savoir qu'il allait partir (en exil : NDLR) comme Paul KAGAME, Karl MARX, Charles de GAULE, Yoweri MUSEVENI, .. et qu'il devait revenir pour renverser les institutions et prendre le pouvoir. Ces déclarations sont consignées notamment dans les archives de l'hebdomadaire burundais « IWACU ».

3.2. Dans le même genre sombres desseins, Monsieur Pacifique NININHAZWE, actuellement Président du Forum pour la Conscience et le Développement (FOCODE), n'a pas hésité de déclarer à maintes reprises qu'il invitait la population à des manifestations publiques jusqu'à ce que le président NKURUNZIZA soit chassé du pouvoir à l'instar de Blaise COMPAORE du Burkina Faso.

A l'heure actuelle, cet appel aux manifestations s'est avéré une invitation au soulèvement violent de la population, en particulier dans la capitale Bujumbura.

3.3. Par ailleurs, même certaines autorités ~~des confessions~~ sont - à l'exemple de Monseigneur Simon NTAMWANA, archevêque de Gitega - tombées dans le piège en déclarant notamment à leurs ouïes qu'accepter un nouveau mandat du Président NKURUNZIZA ~~reviendrait à se complaire dans le servage.~~

Tous les anciens présidents (senateurs à vie
 3.4. ~~Enfin, mais ce n'est pas tout,~~ d'éminents hommes politiques, comme ~~l'ancien~~ ~~Président de la République Sylvestre NTIBANTUNYANA,~~ n'hésite pas de soutenir que quant bien même le Président NKURUNZIZA serait constitutionnellement en droit de briguer un nouveau mandat il devrait s'en abstenir pour des motifs politiques.



ONELOP-BURUNDI : MEMORANDUM A L'INTENTION DES CHEFS D'ETAT DE L'AFRIQUE
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BURUNDI

4^o Dit pour droit que l'article 96 veut dire que le nombre de mandats au suffrage universel direct est limité à deux seulement et l'article 302 crée un mandat spécial au suffrage universel indirect et qui n'a rien à voir avec les mandats prévus à l'article 96.

5^o Dit pour droit que le renouvellement une seule et dernière fois de l'actuel président au suffrage universel direct pour cinq ans, n'est pas contraire à la Constitution de la République du Burundi du 18 mars 2005.

L'ONELOP - BURUNDI n'estime pas opportun de commenter outre mesure l'arrêt précité ; il a préféré en prendre acte et s'en remettre au prescrit de l'article 225 de la Constitution qui dispose : « *La Cour Constitutionnelle est la juridiction de l'Etat en matière constitutionnelle. Elle juge de la constitutionnalité des lois et interprète la Constitution* ».

Le cadre légal des manifestations et les entorses aux règles de droit

12. Dans sa partie consacrée aux droits fondamentaux de l'individu et au citoyen, la Constitution du Burundi énonce une série de prérogatives garanties à tout un chacun ; et dont on peut esquisser un survol pour ce qui concerne les manifestations publiques.

La dignité humaine (art. 21), la liberté d'expression (art.31), la liberté de réunion et d'association (art. 32), la liberté de circulation (art. 33), le droit de fonder des syndicats (art. 37).

Mais tous ces droits et libertés sont tempérés par d'autres dispositions également constitutionnelles : la restriction d'un droit fondamental justifié par l'intérêt général ou la protection d'un droit fondamental d'autrui (art. 47), le respect de ses compatriotes (art. 62), les devoirs envers la famille, la société l'Etat et les autres collectivités publiques (art. 63), le devoir de renforcer l'unité nationale (art. 64), le respect des lois et des institutions (art. 65), le respect scrupuleux des biens publics (art. 69), le devoir de contribuer à la sauvegarde de la paix, de la démocratie et de la justice sociale (art. 73).



ONEOP-BURUNDI : MEMORANDUM A L'INTENTION DES CHEFS D'ETAT DE L'AFRIQUE SOUS-REGIONLE (CIRGL - EAC) SUR LA CRISE ACTUELLE AU BURUNDI

13. Comme on peut s'en rendre compte, les devoirs dont doivent s'acquitter constitutionnellement les organisateurs et les participants aux manifestations violentes ne sont pas accomplis.

En effet, lors de ces manifestations violentes on saccage pratiquement tout, on porte atteinte à la dignité humaine, on réduit les droits et libertés de paisibles citoyens non manifestants, on dégrade les biens publics, on met à mal l'unité nationale en montant les citoyens les uns contre les autres, parfois même on tue des innocents.

Certes, des manifestations paisibles sont parfaitement compréhensibles ; mais la gravité de la violence ainsi que l'horreur des dégâts aussi matériels qu'humains, les attaques contre les forces de défense et de sécurité, le non respect des lois et règlements; etc. constitue assurément des éléments de nature insurrectionnel plutôt que d'un mouvement de manifestations ordinaires.

14. Par ailleurs, dans le prolongement des dispositions constitutionnelles précédemment évoquées, nombreuses sont les faits des manifestants qui tombent sous la loi pénale.

A titre illustratif, le code pénal actuellement en vigueur prévoit la répression de certaines infractions dont les manifestants violents sont rendus coupables : les lésions corporelles volontaires et involontaires (art. 219-224, 227-228) ; la destruction, la dégradation, les dommages (art. 315-325) ; la rébellion (372-377) ; les outrages et les violences envers les dépositaires de l'autorité ou de la force publique (art. 378-383) ; les atteintes au bon fonctionnement de l'économie nationale (art. 412-415), etc.

15. Il est jusqu'à présent heureux, comme peut le constater tout observateur bien avisé, que les autorités étatiques font preuve de modération en appliquant pas systématiquement toutes les sanctions pénales en rapport avec les infractions commises dans le cadre des manifestations violentes (actuelles) qui ont eu lieu.