

BURUNDI

- **BDI-COLL-01** : 8 parliamentarians
- **BDI-42** : Pasteur Mpawenayo



Inter-Parliamentary Union

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Burundi

BDI01 - Sylvestre Mfayokurera
BDI02 - Norbert Ndiwokubwayo
BDI05 - Innocent Ndikumana
BDI06 - Gérard Gahungu
BDI07 - Liliane Ntamutumba
BDI29 - Paul Sirahenda
BDI35 - Gabriel Gisabwamana
BDI60 - Jean Bosco Rutagengwa

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24-27 January 2015)

The Committee,

Referring to its examination of the cases of the above-mentioned Burundian parliamentarians and to the resolution it adopted at its 194th session (October 2014),

Referring to the letter from the Speaker of the National Assembly of 7 January 2015 and to the information provided by the complainants,

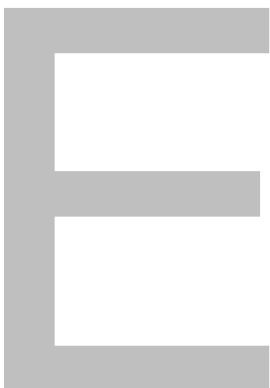
Recalling that the cases, which the Committee has been examining for many years, concern the assassinations of seven members of the National Assembly between 1994 and 2002, namely Mr. Sylvestre Mfayokurera (September 1994), Mr. Innocent Ndikumana (January 1996), Ms. Liliane Ntamutumba and Mr. Gérard Gahungu (July 1996), Mr. Paul Sirahenda (September 1997), Mr. Gabriel Gisabwamana (January 2000) and Mr. Jean Bosco Rutagengwa (2002), and two assassination attempts on Mr. Norbert Ndiwokubwayo (September 1994 and December 1995), all of which remain unpunished to date,

Recalling that the Arusha peace and reconciliation agreements signed in 2000 provided for the establishment of three transitional justice mechanisms in Burundi, namely an international commission of judicial inquiry, a national truth and reconciliation commission (TRC) and an international criminal tribunal,

Recalling that the Burundian authorities have been saying for many years that they consider that the cases of the assassinated parliamentarians should be dealt with by the Truth and Reconciliation Committee (TRC), given their complexity and political nature,

Considering that a law establishing the TRC was finally adopted by the Burundi Parliament and promulgated on 15 May 2014, and that the 11 TRC commissioners were appointed in early December 2014 following a selection process undertaken by the National Assembly,

Considering that the TRC will have jurisdiction to investigate and establish the truth about the serious human rights violations committed during the period from Burundi's independence in 1962 to 4 December 2008, and that field investigations and the gathering of evidence from victims will only start once legislation has been enacted on victim and witness protection,



Considering that the Speaker of the National Assembly stated that the law adopted had been the outcome of a process, all stages of which had been participative, inclusive and transparent; that the commissioners appointed to the TRC benefited without exception from indisputable legitimacy and the Commission would be assisted in its functions by an international advisory board; that all the concerns raised by the people had been taken into account; that the crises experienced by Burundi were essentially political in nature and that any solution therefore also had to be essentially political rather than judicial; that, pursuant to the law adopted, the final TRC report would be submitted "for all intents and purposes" to the Government, the National Assembly, the Senate and the United Nations at the end of its term, which implied that judicial proceedings could be instigated on that basis in accordance with modalities that remained to be defined; that the law on the TRC empowered the Commission to draw up its own rules of procedure, which would in all likelihood comprise provisions on the protection of witnesses and victims,

Considering also that, according to information provided by various sources of information, there are outstanding concerns over the protection of victims and witnesses; that the United Nations and civil society regretted that the process to draft and adopt the law had not been wholly transparent and inclusive and that certain provisions of the law did not conform to applicable international standards; that the political opposition boycotted the adoption of the law and the election of the commissioners on the grounds that the TRC, as it was configured in the law as adopted, would be the product of the party in power alone and would therefore not promote effective reconciliation; that, as a result, there is still fear that the TRC may be used for political ends and would not act independently, and would therefore not be legitimate and credible in the eyes of the people of Burundi, in particular given the political and security tensions with the approach of the 2015 elections; and that, 14 years after the Arusha agreements, no action has been taken by the Burundi courts to punish the perpetrators of war crimes and no judicial mechanism has been put in place for that purpose,

1. *Thanks* the Speaker of the National Assembly for the information provided;
2. *Welcomes* the adoption of the law and the appointment of the TRC commissioners, and *notes with particular satisfaction* the positive contribution to this process by the National Assembly;
3. *Is aware* of the importance and complexity of the task before the TRC given its mandate under the law, and *hopes* that it can include a focus in its work on the political violence during the 1990s and 2000s, including against the many parliamentarians murdered during that period;
4. *Calls on* the National Assembly to formally refer the cases of the assassinated parliamentarians to the TRC through an official referral and *requests* it to keep it informed of the latter's response and progress made in its work, especially regarding the cases of the assassinated parliamentarians; *also wishes* to receive information from the National Assembly on the timetable for the adoption of a law on the protection of victims and witnesses, given that the TRC field investigations cannot start before its adoption;
5. *Strongly believes* that the search for and establishment of the truth are prerequisites for enabling all segments of the Burundian population without distinction to move towards reconciliation; *considers* that the success of the TRC's work will depend largely on the ability of the latter to convince the general public of its independence and impartiality; *also believes* that, beyond the establishment of the truth, justice is an essential step towards reconciliation; and *continues to hope* that a judicial mechanism will be put in place in the future to punish the perpetrators of the serious violations of human rights committed in the past, and thus enable victims who so wish to seek justice;
6. *Requests* the Secretary General to forward this decision to the parliamentary authorities, the complainants and any third party who is likely to be in a position to provide relevant information;
7. *Decides* to continue examination of these cases.



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Burundi

BDI/42 - Pasteur Mpawenayo

BDI/44 - Hussein Radjabu

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 152nd session (Geneva, 23 January to 3 February 2017)

The Committee,

Referring to the cases of Mr. Hussein Radjabu and Mr. Pasteur Mpawenayo, both former Burundian members of parliament, to the resolution adopted by the Governing Council at its 194th session (March 2014) and to the decision adopted by the Committee at its 146th session (January 2015),

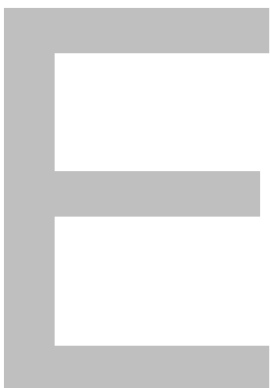
Referring to the letter from the Speaker of the National Assembly of 7 January 2015 and to the information provided by the complainants,

Referring also to the reports of the two missions undertaken by the Committee to Burundi from 25 to 28 September 2011 (CL/190/12(b)-R1) and from 17 to 20 June 2013 (CL/193/11(b)-R.1),

Recalling that this case, which has been before the Committee for many years, originally concerned the revocation of the parliamentary mandate of 22 members of parliament elected in July 2005 on the list of the majority party National Council for the Defence of Democracy – Forces for the Defence of Democracy (CNDD-FDD) and the criminal proceedings brought against some of the members in 2007-2008 following dissension within the party; that these proceedings have been marred by serious flaws and excessive delays; and that the case now only concerns Mr. Hussein Radjabu and Mr. Pasteur Mpawenayo, as the other cases have already been closed,

Recalling the following information provided in the file:

- **Regarding Mr. Radjabu**
- Mr. Radjabu led the CNDD-FDD party until he was ousted in February 2007; the party then split into two, one wing supporting the new party president and the other backing Mr. Radjabu;
- Proceedings were initiated against him in this context; Mr. Radjabu's parliamentary immunity was lifted on 27 April 2007 and he was sentenced on 3 April 2008 to 13 years' imprisonment and stripped of his civil and political rights for endangering State security; the Court found him guilty of likening the Head of State to an empty bottle and, with seven other persons – including Mr. Mpawenayo – of conspiring against State security by inciting citizens to rebel against the authority of the State at a meeting held on 31 March 2007;
- Mr. Radjabu's conviction became final after being upheld in appeal in 2009; he has also exhausted all domestic remedies available to him; his appeal was dismissed, along with his various successive applications for a judicial review, conditional release and presidential pardon;



- According to the findings of the observer's report commissioned by the Committee (whose findings were rejected by the authorities), Mr. Radjabu's trial was marred by serious flaws such as the use of torture during the interrogation of his co-defendants (whose confessions were used by the Court to convict Mr. Radjabu), the lack of independence of the court judges and the State prosecution service (who were all members of the ruling party) and the absence of any evidence to support the charges; the Committee's mission to Burundi in September 2011 confirmed that no investigation had been conducted into the use of torture;
- The relevant authorities refused to re-open Mr. Radjabu's case, despite Mr. Mpawenayo's acquittal in 2012; both men had been prosecuted on the same charges, facts and testimonies,
- **Regarding Mr. Mpawenayo**
 - Mr. Mpawenayo was arrested in July 2008 and charged with being Mr. Radjabu's accomplice and having co-chaired a meeting during which the acts of which he and Mr. Radjabu stand accused were reportedly committed; Mr. Mpawenayo was acquitted at first instance in May 2012 and released after four years on remand in custody;
 - The Supreme Court's findings in Mr. Mpawenayo's acquittal, a copy of which was forwarded by the complainants, confirmed that Mr. Mpawenayo had been acquitted of the same charges as those for which Mr. Radjabu had been convicted; the Supreme Court found that the State prosecution service had failed to provide evidence of the charges against Mr. Mpawenayo; the Court held that the witnesses were not credible and that there was no proof of the meeting held on 31 March 2007 at Mr. Radjabu's home, given the absence of any record of the demobilized officers allegedly present at this meeting, and of the audio recordings of the meeting cited by the prosecution; the Court also noted that no evidence of the alleged weapons' seizures had been provided by the prosecution and found that "all the offences of which Mr. Mpawenayo is accused remain(ed) hypothetical";
 - The State prosecution service lodged an appeal against the acquittal decision; in his letter of 7 January 2015, the Speaker of the National Assembly noted that the appeals procedure was under way but could not move forward because Mr. Mpawenayo was refusing to appear before the Supreme Court;
 - The complainants indicated that Mr. Mpawenayo had not been informed or officially summoned by the judicial authorities; they also stated a number of times that Mr. Mpawenayo had suffered threats and intimidation since his release and that he feared for his life,

Considering that the following new information has been provided by the complainants:

 - On 2 March 2015, Mr. Radjabu escaped from Bujumbura prison and reportedly took refuge abroad; Mr. Mpawenayo's security situation has deteriorated further because of the political and security crisis prevalent in Burundi since 2015; the complainant considers that, against this background, it is impossible for the Burundian judiciary to issue an independent ruling on his case,

Considering also that the complainants in Mr. Radjabu's case have not provided any information on the case since the latter's escape in 2015,

Bearing in mind that Burundi has ratified the 2013 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; that the United Nations Human Rights Committee expressed the following concerns, inter alia, in its concluding observations on the second periodic report of Burundi of 21 November 2014 (CCPR/C/BDI/CO/2): (i) the high number of cases of torture by the Burundian police and security forces, the fact that the courts admitted as evidence confessions that had been obtained by torture and the impunity enjoyed by the persons responsible; (ii) the disproportionate use of pretrial detention and the frequent failure to respect detainees' basic legal guarantees; (iii) the numerous failures and shortcomings of the Burundian judicial system,

Taking into account that the Human Rights Council, in its resolution A/HRC/33/L.31 adopted on 27 September 2016, expressed deep concern at the continuous and accelerating deterioration of the human rights situation in Burundi; strongly condemned all violations of human rights, including mass arbitrary arrests and detentions, cases of torture and other cruel, inhuman and/or degrading treatment or punishment, extrajudicial killings, enforced disappearances, persecutions of and threats against members of the opposition and restrictions on the freedoms of expression, peaceful assembly and association; and stressed that all this had created a climate of intimidation and fear that paralysed the whole of society,

1. *Regrets* that no reply has been received from the National Assembly;
2. *Again deplores* the numerous and serious flaws in the proceedings that led to Mr. Radjabu's conviction and the systematic rejection by the competent authorities of all the appeals lodged to rectify them; *concludes* that, in this case, Burundi has failed to fulfil its international obligations in respect of ensuring a fair trial and the independence of the judiciary and combating torture;
3. *Notes* Mr. Radjabu's escape and the fact that the complainant has not provided any further information on the former's situation since that date; *considers* that it cannot continue examining his case or find a satisfactory solution under these circumstances, and *decides* to close Mr. Radjabu's case in accordance with article 25(i) and (ii) of its Procedure for the examination and treatment of complaints;
4. *Reiterates* its previous concerns about Mr. Mpawenayo's situation and *decides* to continue examination of his case in due course;
5. *Requests* the Secretary General to convey this decision to the parliamentary authorities, to the complainants and to any third party likely to be in a position to supply relevant information.