

HEADLONG RUSH

Burundi's behaviour as a member of
the UN Human Rights Council



DEFENDDEFENDERS

East and Horn of Africa Human Rights Defenders Project

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Acronyms

ACAT	<i>Action des chrétiens pour l'abolition de la torture</i> (Action by Christians for the Abolition of Torture)
ACHPR	African Commission on Human and Peoples' Rights
AU	African Union
CAT	UN Committee against Torture
CEDAW	UN Committee for the Elimination of Discrimination against Women
CNDD-FDD	<i>Conseil national pour la défense de la démocratie-Forces de défense de la démocratie</i> (National Council for the Defence of Democracy-Forces for the Defence of Democracy)
CoI	International Commission of Inquiry on Burundi
CNIDH	Commission nationale indépendante des droits de l'Homme (Independent National Commission for Human Rights)
CSO	Civil Society Organisation
EU	European Union
FIDH	International Federation for Human Rights
HRC	UN Human Rights Council
HRC30 (etc.)	30th session of the UN Human Rights Council (HRC30, HRC31, etc.)
HRD	Human Rights Defender
HRW	Human Rights Watch
ICC	International Criminal Court
ISHR	International Service for Human Rights
LGBT+	Lesbian, Gay, Bisexual, Trans and other sexual minorities
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
OHCHR	Office of the UN High Commissioner for Human Rights
SNR	<i>Service national de renseignement</i> (National Intelligence Service)
SOGI	Sexual Orientation and Gender Identity
UN	United Nations
UNGA	UN General Assembly
UNIIB	UN Independent Inquiry on Burundi
UPR	Universal Periodic Review
URG	Universal Rights Group
WGEID	UN Working Group on Enforced or Involuntary Disappearances



Foreword

No one likes “naming and shaming”—neither the governments that come under the spotlight nor civil society organisations like DefendDefenders. We name and shame when we reach the conclusion that it is our responsibility to do so, in the absence of any other option. We prefer, whenever positive change happens, to report on it and engage in a meaningful dialogue with governments.

In many respects, Burundi is a textbook case of a disaster foretold. Early 2015, we published a report, “Burundi at a Turning Point,” that made it clear that a political crisis threatened to engulf the country. One man—Pierre Nkurunziza—decided that clinging to power was worth taking his country back to political violence. The list of human rights violations for which the Burundian government is responsible is lengthy, but here is not the place to detail them. The present report deals with another issue. For the UN Human Rights Council, having Burundi as one of its members raises inconvenient questions regarding respect for membership standards, as does the presence on its front seats of some of the worst human rights abusers, e.g., Saudi Arabia, China, and Egypt.

In October 2015, when Burundi ran for Council election, it was already being addressed as a situation of concern by the UN’s top human rights body. Yet, Burundi was elected with 162 votes. In other words: Many states that supported Council action on Burundi in Geneva chose to vote for it in New York. How can one explain this policy incoherence? The answer rests with one, now infamous, expression: “clean slates.” Every year, most UN regional groups present the same number of candidates as there are seats available on the Council. This renders elections uncontested, therefore meaningless.

By any standard, Burundi was unfit to serve on the Council. Unfortunately, everything we, civil society, warned against, happened—and even worse. Throughout the last two and a half years, Burundi set new lows for a Council member through its domestic behaviour, its refusal to cooperate, and its direct attacks against the UN human rights system.

Although less than six months are left for Burundi on the Council, we reiterate our principled call for its suspension. But in order to preserve the credibility of the UN’s top human rights body, we also call on states to refrain, in the future, from voting for candidates that are unfit. Upholding the letter and spirit of the Council’s founding resolution, UNGA resolution 60/251, requires competition on the basis of human rights emulation and substantial pledges and commitments—and getting rid of “clean slates.”

The next election for the Council will take place in October at the UN General Assembly. It should not be another missed opportunity to strengthen respect for membership standards. Principled states should say “No” to clean slates and vote only for candidates that are fit to serve as members of the Council. Which means they should leave the ballot blank for unfit candidates.



Hassan Shire

- **Executive Director of DefendDefenders**
- **Chairperson of the Pan-African Human Rights Defenders Network**



About DefendDefenders

Established in 2005, DefendDefenders (the East and Horn of Africa Human Rights Defenders Project) seeks to strengthen the work of HRDs throughout the sub-region by reducing their vulnerability to the risk of persecution by enhancing their capacity to effectively defend human rights. DefendDefenders focuses its work on Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia (together with Somaliland), South Sudan, Sudan, Tanzania, and Uganda.

DefendDefenders serves as the secretariat of the East and Horn of Africa Human Rights Defenders Network, which represents more than 78 members (both individual HRDs and their human rights organisations) and envisions a sub-region in which the human rights of every citizen as stipulated in the Universal Declaration of Human Rights are respected and upheld.

DefendDefenders also serves as the secretariat of the Pan-African Human Rights Defenders Network (PAHRDN). The network was formed as a result of deliberations at the All African Human Rights Defenders Conference (Johannesburg +10) hosted in April 2009 in Kampala, Uganda. The five sub-regional networks forming the PAHRDN are: the North Africa Human Rights Defenders Network (hosted by the Cairo Institute for Human Rights Studies in Tunis), the West African Human Rights Defenders Network (Lomé, Togo), the Southern Africa Human Rights Defenders Network (hosted by the International Commission of Jurists in Johannesburg, South Africa), the Central Africa Human Rights Defenders Network (Douala, Cameroon), and the East and Horn of Africa Human Rights Defenders Network (hosted by DefendDefenders in Kampala, Uganda). PAHRDN aims to coordinate activities in the areas of protection, capacity building, and advocacy across the African continent.



Executive Summary

On 25 April 2015, a major crisis broke out in Burundi after President Pierre Nkurunziza announced his intention to run for a third term, beyond the constitutionally-mandated two-term limit. The country quickly descended into violence. The human rights violations and abuses that have been committed with near-total impunity include arbitrary arrests and detention, enforced disappearances, targeted assassinations, torture, incitement to ethnic violence, and sexual and gender-based violence.

In November 2015, a coalition of NGOs called on the UN Human Rights Council to hold a special (i.e., urgent) session to address the country's situation. Their call was heeded a month later. After a group of experts presented a damning report, the Council established a Commission of Inquiry (CoI). In 2017, the latter stated that it had "reasonable grounds to believe that crimes against humanity have been committed in Burundi since April 2015." To date, the human rights situation has not stabilised and remains grave.

However, as the Council was taking action on the country, Burundi was elected one of its members for a three-year term. It benefited from a "clean slate," i.e. the fact that its regional group, Africa, presented exactly the same number of candidates as there were seats available. Observers and advocates spoke out against Burundi's election, and calls for the suspension of its membership multiplied even before the government took its seat, on 1 January 2016.

Concerns over Burundi's behaviour as a Council member stemmed from its domestic human rights situation and from its statements in multilateral fora, which pointed to its unwillingness to cooperate with the UN human rights system. With regard to country-specific resolutions, Burundi's voting record has been even worse than originally anticipated. The government opposed almost all country-specific resolutions on which a vote was requested. Regarding thematic initiatives, since it became a Council member, Burundi has supported initiatives aiming to weaken human rights standards, dilute state obligations, and annihilate protective mechanisms. It has also supported a very large number of amendments aiming to undermine key resolutions on, *inter alia*, human rights defenders, peaceful protests, and civil society space.

The Burundian government has also refused to cooperate with UN human rights bodies and mechanisms. This pattern has been obvious at the Council but also during treaty body reviews and in the government's relationships to UN officials and independent experts and investigators. Burundi has regularly attacked the independence, competence, professionalism, integrity and legitimacy of the UN High Commissioner for Human Rights and his Office, and it has threatened, insulted, and exercised reprisals against, human rights defenders and civil society organisations.

The fact that Burundi made a mockery of its membership obligations also translated into its push for members of the African Group to table a resolution competing with the resolution extending the mandate of the Commission of Inquiry (CoI), in September 2016—a negative precedent that rested on a procedural ploy. However, Burundi has withdrawn visas from the team of experts set up by that resolution, despite the fact that it was adopted with Burundi's support. This Kafkaesque move set a new low for a Council member, and amounted to open disrespect for Burundi's own regional group.



From the start, Burundi was unfit to serve as a Council member owing to its poor human rights record and disregard for the UN human rights system. It has not added any value to the Council's work, and has instead attempted to weaken it. In all good conscience, no UN member state should have voted to elect Burundi to the UN's top human rights body. However, 162 states did so.

While, as a candidate, Burundi failed to fulfil the first part of paragraph 9 of UNGA resolution 60/251 ("uphold the highest standards in the promotion and protection of human rights"), as a member of the Council, it constantly violated the second part of the paragraph, i.e., members' obligation to "fully cooperate with the Council."

Burundi may however have been subjected to additional spotlight because of its status as a Council member. This might push unfit candidates to think twice before putting their candidacy forward. Nevertheless, the best case scenario remains a situation in which unfit candidates do not run and are not elected to the Council. Electing states have a paramount responsibility in this regard.

Introduction: the Burundi Crisis

Burundi's crisis and the international community's responses

On 25 April 2015, a major political, human rights and humanitarian crisis broke out in Burundi when President Pierre Nkurunziza announced his intention to run for a third term in office, beyond the constitutionally-mandated two-term limit and against the spirit and letter of the Arusha Agreement,¹ which brought Burundi out of its 1993-2005 civil war. The next day, demonstrators took to the streets to oppose Nkurunziza's bid. They were met with harsh repression meted out by the police and members of the *Imbonerakure* militia (the ruling CNDD-FDD party's youth branch). Dozens were killed, arbitrarily arrested and detained, subjected to torture and other cruel, inhuman or degrading treatment or punishment, and to other human rights violations and abuses. As opposition parties and civil society organisations (CSOs) called for Burundian citizens' peaceful mobilization, the government, which used the excuse of an attempted *coup d'État* that had been carried out in May, intensified its crackdown on independent media and non-governmental organisations (NGOs). Several human rights defenders (HRDs) were killed, arrested, ill-treated, or disappeared, and many were forced into exile.²

In November 2015, as a large group of NGOs called on the UN Human Rights Council (hereafter "the Human Rights Council," "the Council," or "the HRC") to hold a special session to address the country's situation,³ most human rights organisations still present in the country were banned and had their bank accounts frozen. The presidential election, which had been held in July 2015, resulted in Nkurunziza's re-election. He was inaugurated on 20 August. The violence continued to increase and the list of human rights violations grew. They include arbitrary arrests and detention, *incommunicado* detention, enforced disappearances, targeted assassinations, torture and other forms of ill-treatment, incitement to ethnic violence, and sexual and gender-based violence, committed with almost complete impunity. Unidentified armed groups also carried out grenade and other attacks against state officials and civilians. To date, more than 400,000 Burundians have fled to neighbouring countries.

International responses to Burundi's crisis

Throughout 2015 and 2016, the United Nations (UN) and civil society organisations warned about the continued deterioration of the situation and the risk of perpetration of atrocity crimes. As was reported by the International Federation for Human Rights (FIDH) and the UN High Commissioner for Human Rights, Zeid Ra'ad Al-Husseini (hereafter "the High Commissioner" or "Zeid"), videos released in April and May 2017 showed dozens of ruling party supporters singing songs encouraging the rape of women of the opposition. According to FIDH, this "[wa]s not an isolated case but an example, among others, of the [*Imbonerakure*] militia's ideological radicalization. This ideological conditioning [was] coupled with increased training, militarization and structuring."⁴

1 The text of the agreement is available at: peaceaccords.nd.edu/accord/arusha-peace-and-reconciliation-agreement-burundi (accessed 13 July 2018).

2 DefendDefenders, "2015: Burundi at a Turning Point," January 2015, www.defenddefenders.org/wp-content/uploads/2017/05/burundi-2015-en.pdf.

3 See FIDH *et al.*, "Burundi: NGOs Call for a Special Session of the Human Rights Council," 9 November 2015, www.fidh.org/en/international-advocacy/united-nations/human-rights-council/burundi-ngos-call-for-a-special-session-of-the-human-rights-council (accessed 13 July 2018).

4 FIDH, "Burundi on the brink, looking back on two years of terror," 4 July 2017, www.fidh.org/en/region/Africa/burundi/burundi-on-the-brink-looking-back-on-two-years-of-terror (accessed 13 July 2018). Also read ACAT's summary of the crisis in Burundi (ACAT, "Un Ancien Membre de l'ACAT-Burundi en Prison," 31 August 2017, www.acatfrance.fr/actualite/un-ancien-membre-de-lacat-burundi-en-prison (accessed 2 July 2018)) and Human Rights Watch's Burundi country chapter in its last *World Report*:



Updates on the situation on the ground were regularly provided to the Human Rights Council by the High Commissioner and his Office, the UN Independent Investigation on Burundi (UNIIB), which submitted its final report in September 2016, and the Commission of Inquiry on Burundi (CoI),⁵ which started its work after HRC resolution 33/24 was adopted (September 2016). In 2017, the CoI stated that it had “reasonable grounds to believe that crimes against humanity have been committed (and continue to be committed) in Burundi since April 2015.” Additionally, in October 2017, the International Criminal Court (ICC) authorized an investigation into crimes committed in Burundi since April 2015. A preliminary examination of the situation had been opened in April 2016.⁶ ICC action was not stopped by Burundi’s withdrawal from the Rome Statute of the ICC.⁷ In 2017, President Nkurunziza also announced his intention to seek a constitutional amendment allowing him to stand for two new seven-year terms. On 17 May 2018, the referendum took place in an atmosphere of intimidation and violence, which was by no means conducive to a free and fair process. The amendment was adopted. It could allow Nkurunziza to remain in power until 2034, although on 7 June 2018 Nkurunziza announced that he would not run for another term in the 2020 election.

By any standard, the human rights situation in Burundi remains grave. In March 2018, during the update of the CoI to the Human Rights Council, the Commission’s Chairperson, Doudou Diène, said that the situation in the country continued to deserve the Council’s “utmost attention.” According to observers, Burundi “isn’t at war, but it has all the humanitarian hallmarks of a country that is.”⁸

The Human Rights Council’s role in addressing the crisis

The Council’s response to the Burundian crisis took place as the HRC was about to celebrate its tenth anniversary. For some time, discussions at and around the UN’s top human rights body focused on its mandate (in particular, its “prevention mandate”), its responsiveness to human rights situations that deserve attention, and respect for membership standards.

In June 2016, at the session that marked the Council’s tenth anniversary (32nd session, or HRC32), a cross-regional group of states delivered a statement⁹ that set out objective criteria (the “Irish Principles”), which should guide states when considering situations requiring attention. One year later, at the 35th session (HRC35), another joint statement¹⁰ pledged to apply “objective and human rights-based criteria” in determining whether and how to respond to situations of concern. At the following session, HRC36 (September 2017), 69 states co-signed a statement¹¹ on the operationalization of the Council’s “prevention mandate.” Finally, at the Council’s 37th session, in March 2018, a group of incoming members pledged,¹² *inter alia*, to “address human rights concerns on their merits, applying

www.hrw.org/world-report/2018/country-chapters/burundi (accessed 13 July 2018).

5 See www.ohchr.org/EN/HRBodies/HRC/UNIIB/Pages/UNIIB.aspx and www.ohchr.org/EN/HRBodies/HRC/CoIBurundi/Pages/CoIBurundi.aspx (both accessed 2 June 2018).

6 www.icc-cpi.int/burundi; ICC, “ICC judges authorise opening of an investigation regarding Burundi situation,” 9 November 2017, www.icc-cpi.int/Pages/item.aspx?name=pr1342 (accessed 13 July 2018).

7 FIDH, “Burundi withdraws from the ICC: an attempt to shield perpetrators from prosecution,” 27 October 2017, www.fidh.org/en/region/Africa/burundi/burundi-withdraws-from-the-icc-an-attempt-to-shield-perpetrators-from (accessed 13 July 2018).

8 IRIN News, “In Burundi, a disputed referendum threatens to deepen a neglected humanitarian crisis,” 3 May 2018, www.irinnews.org/analysis/2018/05/03/burundi-disputed-referendum-threatens-deepen-neglected-humanitarian-crisis?utm_source=twitter&utm_medium=irinocial&utm_campaign=irinupdates (accessed 13 July 2018).

9 www.dfa.ie/our-role/policies/international-priorities/human-rights/ireland-and-the-human-rights-council/irelands-statements-hrc-32nd-session/preventingrespondingtoandaddressinghumanrightsviolations-jointconcludingstatement/ (accessed 13 July 2018).

10 www.universal-rights.org/wp-content/uploads/2017/06/Dutch-CRS-HRC35.pdf (accessed 13 July 2018).

11 www.norway.no/en/missions/wto-un/norway-/latest-news/joint-statement-on-councils-prevention-mandate/ (accessed 13 July 2018).

12 Read the “incoming members’ pledge” at: dfat.gov.au/international-relations/international-organisations/un/hrhc-2018-2020/statements/Documents/joint-statement-to-interactive-dialogue-with-hc-for-hr-incoming-members-pledge-8-march-2018.pdf (accessed 13 July 2018).

objective and human rights-based criteria in determining whether and how the Council should respond to a situation of concern, and take leadership and responsibility in initiating action when such criteria are met.”¹³

These initiatives are based on the Council’s founding resolution, UN General Assembly (UNGA) resolution 60/251, in particular its operative paragraphs 3 and 5(f), which read:

3. Decides also that the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote the effective coordination and the mainstreaming of human rights within the United Nations system;

*5. Decides that the Council shall, inter alia: [...] (f) Contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies;*¹⁴

An election and a special session

In December 2015, members of the HRC heeded civil society’s call¹⁵ for a special session on Burundi. The latter was held on 17 December 2015. Although the special session was convened with some delay, it was welcomed by a large number of observers and human rights advocates.

However, as the Council finally took more robust action on the country, the situation seemed incongruous. Indeed, between the September regular session (HRC30) and the December special session, Burundi had been elected to the Human Rights Council. As the authors of an article¹⁶ put it, “[t]he juxtaposition of the Special Session on, and the upcoming Council membership of, Burundi, raise[d] a number of extremely difficult and sensitive questions.” Indeed, on 28 October, Burundi had been elected for a three-year term (1 January 2016 to 31 December 2018) on the UN’s top human rights body.¹⁷ It benefited from a “clean slate,” i.e. the fact that its regional group, Africa, presented exactly the same number of candidates as there were vacancies to be filled (namely, five that year). A few weeks earlier, the “yourHRC” platform had published a “clean slate alert” in this regard.¹⁸

Calls for Burundi’s suspension

Observers and advocates spoke out against Burundi’s election, and calls for the suspension of its membership multiplied even before Burundi took its seat at the Council, on 1 January 2016. A number of state and NGO statements referred to membership standards.

13 In 2016, a large coalition of NGOs also called on principled states to come together to address situations that meet a certain threshold, or are referred to the Council by independent actors. They outlined “triggers,” including the High Commissioner for Human Rights suggesting Council action, special procedures suggesting Council action, relevant regional mechanisms flagging a situation as requiring the Council’s attention, the UNGA or UN Security Council flagging a situation as requiring attention, or a group comprising a state’s A-status NHRI, together with ECOSOC-accredited NGOs, suggesting Council action (ISHR *et al.*, “Human Rights Council at 10: Civil society outlines plan for HRC to become more protective, effective and accessible,” 28 April 2016, www.ishr.ch/HRCat10, accessed 13 July 2018). On these objective criteria triggering Council action, see: Nicolas Agostini, “NGO advocacy and the Council’s prevention mandate,” 4 April 2018, www.universal-rights.org/blog/ngo-advocacy-councils-prevention-mandate/ (accessed 13 July 2018).

14 UNGA resolution 60/251 is available at: www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf

15 NGOs had actually called for HRC action since the crisis broke out. In particular, they advocated for a resolution to be adopted in September (CIVICUS *et al.*, “Addressing the deteriorating human rights situation in Burundi,” 2 September 2015, civicus.org/images/HRC30.Burundi.Letter.pdf, accessed 13 July 2018). In September 2015, the HRC adopted a resolution extending technical assistance to Burundi: ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/30/27

16 Marc Limon and Nicolas Agostini, “Burundi: today a Special Session; tomorrow a Council Member,” 17 December 2015, www.universal-rights.org/blog/burundi-today-special-session-tomorrow-council-member/ (accessed 13 July 2018).

17 Election results are available at: www.un.org/en/ga/70/meetings/elections/hrc.shtml

18 yourhrc.org/2015-elections/



In a joint letter¹⁹ calling for a special session, a group of NGOs wrote:

The Human Rights Council must stand ready to take additional measures according to the evolution of the situation in Burundi, including recommending that the General Assembly, in view of gross and systematic violations of human rights by the Burundian authorities, consider the application of the measures foreseen in paragraph 8 of General Assembly resolution 60/251.

In HRC resolutions, references to the possible suspension of Burundi were less direct. HRC resolution 30/27 simply called upon the government to “cooperate fully with the Office of the High Commissioner in the implementation of the present resolution.”²⁰ HRC resolution S-24/1 put an emphasis on prevention and reaffirmed that “all States Members of the Human Rights Council should uphold the highest standards in the promotion and protection of human rights, and [urged] the Government of Burundi to be mindful of these standards.”²¹ HRC resolution 33/24, which created the CoI on Burundi, reaffirmed “the expectations of cooperation by States Members of the Human Rights Council with international human rights mechanisms, [...] giving due consideration to the recommendation regarding Burundi by the group of independent experts established by the Council in its resolution S-24/1.” In its final report, the UNIIB recommended that the Human Rights Council “consider whether Burundi can remain a member of the Council in terms of paragraph 8 of General Assembly Resolution 60/251.”²²

There is one precedent of suspension of a Council member. In 2011, in view of the gross and systematic violations of human rights committed in Libya, the UN General Assembly suspended the country's membership rights in the Human Rights Council.²³

Concerns over Burundi's behaviour as a member of the Council stemmed from its domestic human rights situation (UN officials, independent experts and NGOs repeatedly warned about the risk of atrocity crimes being committed) and from its statements and behaviour in multilateral fora, including human rights bodies and mechanisms. Burundi's situation with regard to the Council raised textbook questions:

- Can a country that is targeted by an HRC resolution under its agenda item 4 (“Human rights situations that require the Council's attention” – i.e., the most serious situations) be a member of the HRC?
- Can a Council member remain in its seat after the HRC has created a dedicated investigative mechanism (in Burundi's case, a Commission of Inquiry) into that member's situation?
- How does one articulate paragraph 3 of UNGA resolution 60/251 (which gives the Council a mandate to “address situations of violations of human rights, including gross and systematic violations”) with its paragraph 9 (which provides for membership criteria, including the fact that members “shall uphold the highest standards in the promotion and protection of human rights [and] fully cooperate with the Council”) in practice?

19 DefendDefenders *et al.*, “Call for a special session of the Human Rights Council to contribute to UN and regional efforts to prevent atrocities in Burundi,” 9 November 2015, www.defenddefenders.org/2015/11/call-for-a-special-session-of-the-human-rights-council-to-contribute-to-un-and-regional-efforts-to-prevent-atrocities-in-burundi/ (accessed 13 July 2018).

20 A/HRC/RES/30/27 (para. 16), ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/30/27 (accessed 23 July 2018).

21 A/HRC/S-24/2 (last preambular paragraph), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/S-24/2 (accessed 23 July 2018).

22 United Nations Independent Investigation on Burundi, “Report of the United Nations Independent Investigation on Burundi (UNIIB) established pursuant to Human Rights Council resolution S-24/1,” Document A/HRC/33/37, 20 September 2016, para. 164.

23 See United Nations, “General Assembly Suspends Libya from Human Rights Council,” 1 March 2011, www.un.org/press/en/2011/ga11050.doc.htm (accessed 13 July 2018).

As is shown in this report, these concerns were validated by the facts. During the second year of Burundi's membership in the Council (2017), the HRC renewed the mandate of the CoI, as recommended by civil society.²⁴ This was evidence of the ongoing grave situation in the country. But as a Council member, Burundi's record has also been disastrous, as documented below (see analysis and findings).

This report will examine Burundi's behaviour as a member of the Human Rights Council. It will look at the Burundian government's voting record with regard to country-specific resolutions, thematic resolutions, and amendments thereto. This report will also review Burundi's lack of cooperation with UN human rights bodies and mechanisms, including the Council and its mechanisms, treaty bodies, and special procedures. It will show that Burundi has not contented itself with failing to cooperate; it has also deliberately attacked, insulted, defamed and threatened HRDs, civil society organisations (CSOs), the High Commissioner and his Office, UN officials, and independent experts and investigators.

While this report sets out a fact-based analysis of Burundi's record as a Council member, it does not claim to be exhaustive. It focuses on Burundi's behaviour with regard to initiatives (resolutions and amendments, as well as procedural motions) on which a vote was requested; on the government's statements at and outside the UN; and on its relationships with the Human Rights Council, the mechanisms set up by the latter, UN human rights bodies and mechanisms, as well as civil society actors. An annex sums up Burundi's voting record as a member of the Council to date.

24 DefendDefenders *et al.*, "HRC36: Renewing the mandate of the Commission of Inquiry on Burundi and ensuring accountability for serious crimes," 19 September 2017, www.defenddefenders.org/press_release/hrc36-renewing-the-mandate-of-the-commission-of-inquiry-on-burundi-and-ensuring-accountability-for-serious-crimes/ (accessed 13 July 2018).



Findings and Analysis

HRC elections: how Burundi became a Council member, and what is wrong with it

In 2015, when the Burundian government announced that it was running for membership in the UN Human Rights Council, it did not submit²⁵ any voluntary pledges or commitments in support of its candidacy. The government did not explain how Burundi fulfilled Council membership criteria. Nor did it attempt to justify Burundi's bid based on the merits of its human rights record.

Voluntary pledges and commitments: an increasingly common practice

In accordance with UNGA resolution 60/251, "when electing members of the Council, Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto." However, there is no legal obligation for candidates to formulate such pledges and commitments. As noted by the Office of the UN High Commissioner for Human Rights (OHCHR), "the General Assembly provided no further guidance and established no particular framework for the form and content of electoral pledges, commitments and statements." Nonetheless, from a political standpoint, states are "encouraged to share information on their voluntary pledges and commitments both with the public in their respective countries and with all other Member States," and making such pledges and commitments has become common practice.

In 2015 (ahead of the election to the Council for the period 2016-2018), 12 out of 21 candidates (or 57%) formulated voluntary pledges and commitments.²⁶ In 2016 (for 2017-2019), 14 out of 16 candidates (87%) did so.²⁷ In 2017 (for 2018-2020), the rate was 82% (14 out of 17 candidates).²⁸ As set out by OHCHR in its "Suggested Elements for Voluntary Pledges and Commitments by Candidates for Election to the Human Rights Council," pledges and commitments may include, *inter alia*, indications of intent to ratify further instruments and to withdraw reservations; accepting special procedures' requests for visits; extending standing invitations to special procedure mandate-holders; implementation of treaty body concluding observations; cooperation with OHCHR and support for its activities; commitment to the meaningful engagement of NGOs with the Human Rights Council; description of national human rights policy; indication of steps to be taken to meet human rights challenges; indication of approach to the contribution of civil society; and commitment to protect against and prevent discrimination in all its forms, in both law and practice.²⁹

The value of competitive elections

The sheer number of documents detailing voluntary pledges and commitments is neither an indication of the quality of their contents nor evidence that the elected states will live up to their commitments. However, for a candidate country, it is increasingly uncommon to fail to submit such a document.

²⁵ States usually do so in the form of a *note verbale* or letter addressed to the President of the General Assembly.

²⁶ UN General Assembly, "Elections and Appointments-70th meeting," www.un.org/en/ga/70/meetings/elections/hrc.shtml (accessed 23 July 2018).

²⁷ UN General Assembly, "Elections and Appointments-71st meeting," www.un.org/en/ga/71/meetings/elections/hrc.shtml (accessed 23 July 2018).

²⁸ UN General Assembly, "Elections and Appointments-72nd meeting," www.un.org/en/ga/72/meetings/elections/hrc.shtml (accessed 23 July 2018).

²⁹ Quotes in this, and the previous, paragraph are from an OHCHR document, "Suggested Elements for Voluntary Pledges and Commitments by Candidates for Election to the Human Rights Council," which is available at: www.ohchr.org/Documents/HRBodies/HRCouncil/Pledges.pdf (accessed 13 July 2018).

Such failure is certainly worrying in a context in which more and more candidates do formulate solid voluntary pledges and commitments in support of their candidacy.

Competitive elections provide states with additional incentives to express such pledges and commitments publicly. On the contrary, clean slates provide states with disincentives to formulate such pledges and commitments as candidates do not have to run a proper campaign based on human rights emulation to be elected. In 2016, Amnesty International called on all candidates to “make their case by submitting concrete, credible and measurable pledges and commitments to promote and protect human rights at the national and international levels.”³⁰

The Burundian government failed to even formulate minimal pledges and commitments to promote and protect human rights. This raises the question whether Burundi would have done the same, had there been the prospect of a contested election within the African regional group.

Clean slates and their discontent

Clean slates have long been criticised for their tendency to lead to automatic, bloc votes: most electing states tick the name of all candidates that are running on the ballot. Experience shows that whenever a regional group presents a clean slate, all of its candidates are elected to the Human Rights Council. In 2012, FORUM-Asia denounced the fact that “[t]he clean-slate practice has become the rule rather than the exception.” The regional NGO added: “We reiterate time and again that it is contrary to the spirit of competitive elections and undermines any genuine opportunity for the UN General Assembly to select Council members based on their demonstrated commitment to uphold the highest standards in the promotion and protection of human rights.”³¹ The following year, think tank Universal Rights Group (URG) summed up the issue: “The greater the number of candidates standing, the more work any one of them has to do to secure a seat.”³²

Since then, the situation has not improved, although the Latin American and Caribbean Group (GRULAC) has proved to be slightly better than other regional groups at ensuring competitive elections.³³ The last HRC election (2017) was no exception, which pushed a prominent observer to comment: “[T]he presentation of clean slates [...] by four of the five UN regional groups makes a mockery of this ‘election’.”³⁴

Strengthening respect for HRC membership criteria

Over the years, civil society organisations have taken initiatives to try and strengthen HRC elections by making them more competitive and meaningful. Amnesty International and the International Service for Human Rights (ISHR) launched their “HRC pledging” events in New York and Geneva. ISHR also started publishing “scorecards” based on objective criteria for each state standing for election to the Council.³⁵ Since 2015, yourHRC has also provided electing states and observers with objective,

30 Richard Bennett, “A vote of confidence: Enhancing UN Human Rights Council elections,” 2 June 2016, www.ishr.ch/news/vote-confidence-enhancing-un-human-rights-council-elections (accessed 13 July 2018).

31 FORUM-Asia, “UN HRC Membership Elections: Clean Slates Permitted Empty Pledges by Asian State,” 13 November 2012, www.forum-asia.org/?p=15587 (accessed 13 July 2018).

32 Toby Lamarque, “‘Clean slate’ elections threaten the future of the Human Rights Council,” 25 November 2013, www.universal-rights.org/blog/clean-slate-elections-threaten-the-future-of-the-human-rights-council/ (accessed 13 July 2018).

33 See the “elections” pages of yourhrc.org/

34 Peter Splinter, “Elections without choice: ‘clean slates’ in the Human Rights Council,” 12 October 2017, www.openglobalrights.org/election-without-choice-clean%20slates-in-the-human-rights-council/ (accessed 13 July 2018).

35 ISHR, “HRC elections: How do the candidates for 2018 rate?,” 30 August 2017, www.ishr.ch/news/hrc-elections-how-do-candidates-2018-rate (accessed 13 July 2018). ISHR highlighted that “competitive slates and the willingness of States to vote with a mind to the human rights records of the candidates, are both crucial to upholding membership standards in the Human Rights Council. The results of the vote for the Eastern European slate give an indication of what is possible” (ISHR, “Human Rights



detailed information on candidates³⁶ and published “clean slate alerts” to try and improve the quality, competitiveness and objectivity of HRC elections. The surprise defeat of a powerful state, the Russian Federation, during the 2016 HRC election³⁷ provided concrete evidence of the value of contested elections.

While universal participation (i.e., the fact that all states get a chance to sit on the Council) and diversity are, over time, a commendable objective, civil society has consistently highlighted that UN member states have *no obligation* to vote for all the candidates of a regional group if there is no competition within that group. The fact that there are as many candidates as there are vacant seats should not lead states to automatically vote for those candidates. As was put elsewhere, “where a clean slate has been presented, States can, and should, *leave the ballot paper blank* if a suitable candidate has not been presented.”³⁸ The vote is individual and secret. It should be based solely on human rights considerations, in line with the criteria set out in UNGA resolution 60/251.

Burundi’s election to the HRC

Nevertheless, when Burundi was elected to the Council, in October 2015, it obtained 162 votes. This amounts to more than 80% of the members of the General Assembly.³⁹ Although Burundi received the lowest number of votes in its regional group, it obtained more votes than states in other regional groups, e.g., GRULAC—precisely because the latter held a competitive election. Burundi also got a larger number of votes than several states in the Asia-Pacific Group.

This result means that Burundi, which was under Council scrutiny since its September 2015 session (HRC30), when a resolution condemning a range of human rights violations and abuses committed in the country was adopted,⁴⁰ received votes from some of the states that pushed for robust HRC action to address the country’s human rights crisis. In other words: while, based on the gravity of the situation in Burundi, the HRC decided to scrutinize and publicly discuss the country’s situation at all three of its regular sessions in 2016, states at the UNGA decided to overwhelmingly elect its government to the UN’s top human rights body.

A lack of policy coherence

This means that a number of states that publicly denounced the gross and systematic violations for which the Burundian government was responsible voted to make the latter a member of the very Council that was attempting to respond to the country’s crisis. There is no excuse for this lack of policy coherence and for the terribly wrong signal it has sent both to the victims of violations and abuses committed in the country and to those who have sought to make the Council’s membership criteria better respected over the years.

Because of its failure to articulate pledges and commitments and of public statements its officials made, pointing to the fact that the Burundian government would not fully cooperate with UN mechanisms, observers feared that as a Council member, Burundi would push back against both

Council elections: Competition and principled voting are key,” 31 October 2016, www.ishr.ch/news/human-rights-council-elections-competition-and-principled-voting-are-key (accessed 13 July 2018)).

36 See for instance yourhrc.org/2017-elections/ for the 2017 election.

37 In the Eastern European States Group (two seats up for election), Hungary and Croatia were elected with 144 and 114 votes respectively, while Russia only obtained 112 votes: United Nations, “General Assembly, by Secret Ballot, Elects 14 Member States to Serve Three-year Terms on Human Rights Council,” 28 October 2016, www.un.org/press/en/2016/ga11848.doc.htm (accessed 13 July 2018).

38 Richard Bennett, *op. cit.* (emphasis added).

39 yourHRC.org “2015 elections to the UN Human Rights Council,” yourhrc.org/2015-elections/ (accessed 13 July 2018).

40 HRC resolution 30/27 (para. 2), ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/30/27 (accessed 23 July 2018).

resolutions addressing country-specific human rights crises and human rights standards. They were also concerned about the Council's loss of credibility as a result of Burundi's membership.⁴¹ These observers were right.

Burundi's record as a member of the Council, 2016-2018

With regard to country-specific resolutions, with one exception,⁴² Burundi's voting record was even more negative than what observers and NGOs originally anticipated. Since it became a member of the Council, Burundi opposed nearly all country-specific resolutions on which a vote was requested.

Burundi's voting record on country-specific initiatives

At the first session it attended as a member (HRC31, March 2016), Burundi voted against the resolution on Syria that was adopted by 27 votes to 6, with 14 abstentions (hereafter "27Y, 6N, 14A" for "27 Yea, 6 Nay, 14 Abstentions"). Within the African Group (13 members), voting was as follows: 5Y, 1N, 7A—Burundi was the only state to oppose the resolution. Regarding Iran, Burundi abstained on the motion to adjourn the consideration of the draft resolution (a "no-action motion" presented by Venezuela, which was rejected) and voted against the resolution itself. The latter was adopted by 20Y, 15N, 11A, with eight out of 13 African states abstaining.

At the following session (HRC32, June 2016), Burundi abstained on the resolution addressing the situation in Syria but voted against resolutions on Belarus (two African states (including Burundi) did so, and 11 abstained) and Ukraine (Burundi was the only African state to do so, and therefore the only African state to oppose both of these texts).

At HRC33 (September 2016), Burundi went back to a "No" vote on Syria. There were only two African states (including Burundi) that opposed the Syria-specific resolution during that session. More understandably, Burundi also opposed the resolution that was adopted on its own human rights situation (HRC resolution 33/24, which created a Commission of Inquiry on Burundi). Only two African states (including Burundi) opposed resolution 33/24. One voted in favour, and nine chose to abstain, which demonstrated a deep unease within the regional group (see analysis of Burundi resolutions below).

At HRC34 (March 2017), Burundi again opposed key resolutions addressing the human rights situations in Syria (adopted by 27Y, 7N, 13A; the African Group voted 5Y, 1N, 7A); Iran (adopted by 22Y, 12N, 13A; with the African Group voting 2Y, 3N, 8A); and Georgia. The latter was adopted by 18 votes to 5, with 24 abstentions. Burundi was the only African state to reject the text, which was tabled under the Council's agenda item 10 (on "Technical cooperation and capacity-building").

At HRC35 (June 2017), Burundi again voted against *each and every* country-specific resolution, namely on Syria, Belarus and Ukraine, despite the latter being tabled under item 10. It was the only African state to oppose the texts on Syria and Ukraine; and there were only two African states voting against the Belarus resolution. Therefore, during that session, Burundi alone accounted for 75% of negative African votes on country-specific resolutions.

⁴¹ Read a recent report by Human Rights Watch, Amnesty International and ISHR, "Strengthening the UN Human Rights Council from the Ground Up," 23 April 2018, www.hrw.org/news/2018/04/23/un-human-rights-council-should-strengthen-impact-ground, accessed 13 July 2018 (in particular its first part).

⁴² Namely the Council's agenda item 7, see below.



At the September 2017 session (HRC36), while Burundi voted in favour of the African Group-led text requesting OHCHR to dispatch a mission to its own territory, it voted against the European Union-led text that extended the mandate of the CoI on Burundi. The regional group's voting record on the latter text was mixed, with 2Y, 5N and 6A. (Read analysis of these "competing" resolutions below, in the present section's last paragraph.) At the same session, the Burundian government gave yet another proof of support to the Syrian regime by voting against the resolution on Syria, which was adopted by 27Y, 7N, 13A. At that session, like throughout 2017, Burundi was the only African state to oppose Syria resolutions. It is also noteworthy that Burundi voted against the resolution that was adopted (24Y, 7N, 16A) at the end of the HRC special session on Aleppo (21 October 2016).⁴³

At the March 2018 session of the Council (HRC37), Burundi was the only member of the African Group that voted against country-specific resolutions under item 4 (Syria, Situation in Eastern Ghouta, Iran, Myanmar) and 10 (Georgia). No other African state opposed action on these country situations. Burundi proved particularly overzealous in its opposition to Council action by supporting all the amendments tabled by the Russian Federation, regarding the two Syria-related texts.

Lastly, at HRC38 (June-July 2018), Burundi continued to oppose Council action on Belarus and Syria – the only resolutions presented under agenda item 4 on which a vote was requested (the resolution on Eritrea was adopted by consensus). It voted against the resolution on Belarus together with just five other states, namely China, Cuba, Egypt, the United Arab Emirates, and Venezuela (the resolution was adopted with 19Y, 6N, 21A)). On Syria, Burundi joined a number of states that supported four Russian amendments and voted against the resolution itself (adopted with 26Y, 5N, 15A). Another four states (but no member of the African Group) made the same choice.

9 out of 10

The number of times Burundi voted against Syria resolutions at the Human Rights Council
(from March 2016-July 2018).
Burundi abstained once.

Item 4 and item 10 resolutions

As its three-year term comes to an end, conclusions can be drawn as to Burundi's voting record. Burundi has shown resolve in voting against country-specific resolutions and joining forces with states that opposed greater human rights scrutiny, stronger mechanisms, and enhanced protection for victims of rights violations, HRDs and those at risk.

This holds true for texts that were tabled under the Council's agenda item 4 ("Human rights situations that require the Council's attention") but also for some of the texts that were presented under item 10, on "Technical assistance and capacity-building." On Iran and Belarus, Burundi has consistently voted against the draft resolutions presented for adoption, whereas members of its regional group generally abstain.⁴⁴ On Syria, after an early opposition, Burundi switched (for only one session, HRC32) to an abstention; however, it quickly went back to, and never left, a "No" vote afterwards. It has been the only African state to do so, and it consistently voted "No" throughout 2017 and 2018.⁴⁵

⁴³ OHCHR, www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Session25/Pages/25thSpecialSession.aspx (accessed 23 July 2018).

⁴⁴ Between eight and 11 out of 13 African members do so, depending on the year.

⁴⁵ It kept the same position during the urgent debate that was held on the situation in Eastern Ghouta in March 2018, which

Regarding item 10, which traditionally enjoys consensus, Burundi has been the only African state to vote against some of the texts that were adopted, namely on Ukraine and Georgia. This can only be explained by Burundi's alignment with the political agenda of other states (see below). Last, regarding Myanmar, whereas the other 12 African states that were members of the Council in March 2018 either supported (six) or abstained (six) on the resolution, Burundi found itself isolated in the camp of states that opposed Council action (together with China, Cuba, the Philippines, and Venezuela). At the Council's special session on the human rights situation of the minority Rohingya Muslim population and other minorities in the Rakhine State of Myanmar, which took place on 5 December 2017,⁴⁶ Burundi had already opposed the resolution that was adopted (33Y, 3N, 9A) by the Council. Only itself, China and the Philippines did so.

An exception: item 7

The only exceptions to Burundi's opposition to country-specific resolutions were texts adopted under the Council's agenda item 7, "Human rights situation in Palestine and other occupied Arab territories." Burundi, like the vast majority of African states⁴⁷ and members of the non-aligned movement, supported all resolutions that were tabled under item 7.⁴⁸ All of these resolutions were adopted with a broad margin, some of them with zero vote against them. Burundi also supported the holding of a special session on the deteriorating human rights situation in the Occupied Palestinian Territory following the mass killings of Palestinian protesters by the Israeli army in Gaza (May 2018). On this issue, Burundi has been on the same page as the African Group and a large majority of the international community.

Determinants of Burundi's voting record

What are the determinants of Burundi's position, i.e. its quasi-systematic "No" vote? First of all, Burundi sought to evade scrutiny of its domestic human rights situation. In 2016, it voted (together with six states) against the resolution establishing an investigative mechanism, the Commission of Inquiry on Burundi, which followed a substantial report by an HRC-mandated group of experts, a special session, and public debates on the country at each and every regular session in 2016. In 2017, it voted against the extension of the mandate of the CoI, whereas HRC resolution 36/19 (under item 4) was adopted with a larger number of votes than HRC resolution 36/2 (under item 2) (22Y vs. 19Y). (See below for more analysis on these two resolutions.)

Second, Burundi seems to have been wary of precedents. These precedents include condemnatory language (which appears in item 4 texts but may also be included in item 2 or item 10 resolutions) but also, and more importantly, investigative, monitoring, and public reporting mechanisms. The Burundian government consistently voted against resolutions extending country-specific special procedures on Iran and Belarus. In March 2018, it was one of the five states (and the only African state) that opposed the extension of the mandates of the independent fact-finding mission and of the

resulted in a resolution being adopted with an even more comfortable margin than usual, omnibus Syria resolutions.

46 OHCHR, www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Session27/Pages/27thSpecialSession.aspx (accessed 23 July 2018).

47 All members of the African Group voted in favour of all resolutions tabled under item 7, with the exception of Togo (abstaining on four occasions in 2016), Botswana and Ghana (each abstaining on three occasions in 2016), Congo, Côte d'Ivoire, Ethiopia (each abstaining on one occasion in 2016); Togo (voting against on five occasions in 2017), Botswana, Congo and Ethiopia (each abstaining on one occasion in 2017), Kenya (abstaining on three occasions in 2017), and Rwanda (abstaining on two occasions in 2017); Togo (voting against on four occasions in 2018), the DRC (abstaining on four occasions in 2018), Ethiopia and Kenya (each abstaining on one occasion in 2018), and Rwanda (abstaining on four occasions in 2018).

48 Namely, the five annual resolutions on "Human rights in the occupied Syrian Golan," "Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem," "Right of the Palestinian people to self-determination," "Human rights situation in the Occupied Palestinian Territory, including East Jerusalem," and "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan."



Special Rapporteur on Myanmar. When it did so, it clearly had its own situation in mind.

Third, as it found itself relatively isolated from the start, Burundi's behaviour as a Council member seems to have been influenced by its search for allies. Building alliances with like-minded states, engaging in a form of tit-for-tat, or even giving what can be described as "pledges of loyalty" to more powerful states may explain Burundi's votes on item 10 resolutions that were not consensual (Ukraine, Georgia). Throughout 2016 and 2017, Burundi was one of the five or six states (and the only African state) that voted against these texts. (Others were: Bolivia, China, Cuba, the Philippines, Russia, and Venezuela.) Similarly, in 2016 and 2017, Burundi was one of the only two African states that opposed resolutions on Belarus (the others being Nigeria, then Egypt), while 11 and 10 chose to abstain, respectively. On Syria, as was mentioned earlier, Burundi proved to be an unfailing supporter of Russian amendments,⁴⁹ which it has consistently supported. Since March 2017 (HRC34), Burundi has been the only African state voting against Syria resolutions at the Council.

3 out of 4

Out of the last four urgent debates

(including special sessions and urgent debates held during regular sessions),⁵⁰

Burundi voted "No" to draft resolutions on three occasions (the resolution on South Sudan was adopted without a vote).

The behaviour of the Burundian government seems to come down to praising (i.e., hiding behind) the veil of state sovereignty and rejecting country-specific mechanisms that do not enjoy the consent of the government concerned (i.e., the very heart of the Council's mandate, item 4, which corresponds to paragraph 3 of UNGA resolution 60/251). Burundi has taken up the near-entirety of the "absolute sovereignty" approach and discourse, including the denunciation of "politicization," "interference in domestic affairs," "selectivity," and "double standards."

Its voting behaviour is based on a flawed approach, which fails to uphold the spirit and purpose of UNGA resolution 60/251, which gives the Human Rights Council a mandate to "address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon." As was highlighted elsewhere, scrutiny is at the core of the mandate of the HRC.⁵¹

If Burundi's voting record on country-specific resolutions was negative, its behaviour was by no means better on thematic initiatives.

⁴⁹ See below for an analysis of Burundi's support to amendments to thematic resolutions.

⁵⁰ Urgent debate on the deteriorating situation of human rights in Eastern Ghouta, in the Syrian Arab Republic held during the 37th session of the Council; 27th special session on the human rights situation of the minority Rohingya Muslim population and other minorities in the Rakhine State of Myanmar; 26th special session on the human rights situation in South Sudan; and 25th special session on the deteriorating situation of human rights in the Syrian Arab Republic, and the recent situation in Aleppo.

⁵¹ Nicolas Agostini, *op. cit.*

95%

The rate of opposition of Burundi to
item 4 resolutions on which a vote took place.

These include Syria, Iran, Belarus, Myanmar, and Burundi.⁵² Burundi voted “No” on 19 out of 20 occasions (two out of two at HRC31; one out of two at HRC32; two out of two at HRC33; two out of two at HRC34; two out of two at HRC35; two out of two at HRC36; four out of four at HRC37; two out of two at HRC38; and two out two at special sessions).

Burundi's behaviour with regard to thematic initiatives

Since the beginning of its term as a Council member, the government of Burundi has supported initiatives aiming to weaken human rights standards, dilute state obligations, and annihilate protective mechanisms and safeguards. It has also supported a very large number of hostile amendments (i.e., amendments that ran counter to the spirit and purpose of proposed texts) to key thematic resolutions.

Burundi's first two sessions as a Council member, HRC31 (March 2016) and HRC32 (June 2016), were also among the most divisive the Council has known in terms of thematic resolutions. Votes took place on key texts on human rights defenders (HRDs), peaceful protests, sexual orientation and gender identity (SOGI), discrimination against women, violence against women, human rights on the Internet, and civil society space, as well as on dozens of amendments to, and procedural motions on, these resolutions.⁵³

Human rights defenders and peaceful protests

At its first session as a member, Burundi supported all 30 amendments⁵⁴ to the draft resolution on protecting human rights defenders that would have removed essential language. These amendments were tabled by the Russian Federation, China, Cuba, Egypt and Pakistan. They were all rejected. The number of member states that supported them ranged from 11 to 17, and the number of votes against them ranged from 20 to 23. Members of the African Group voted either 2Y, 3N, 8A or 2Y, 4N, 7A (with the exception of amendment L.71, on which African states voted 4Y, 3N, 6A). Burundi and Nigeria were the only two African states that voted in favour of all of these amendments. Many of these amendments were direct attempts to undermine and weaken the resolution, which recognized the contribution of HRDs to the realisation of economic, social and cultural rights and to the right to development. The resolution was co-sponsored by a broad group of states from all regions of the world.

The adverse amendments included proposals that had the purpose or would have had the effect of: (i) removing any reference to the term “human rights defenders;” (ii) denying the legitimacy of the work of HRDs; (iii) weakening protection against, and accountability for, intimidation and reprisals against HRDs and others who cooperate with the UN; (iv) failing to acknowledge the specific risks and violations faced by women, indigenous, land and environment HRDs, their families and communities; (v) diluting and regressing from consensus language and terminology from past HRDs resolutions; and (vi) seeking to justify limitations on human rights that are impermissible under international

⁵² Includes special sessions. Burundi never voted “yes” to any resolution tabled under item 4.

⁵³ See annex for voting results and Burundi's voting record on these initiatives.

⁵⁴ L.41, L.42, L.43, L.44, L.45, L.46, L.47, L.48, L.49, L.50, L.51, L.53, L.54, L.55, L.56, L.57, L.58, L.59, L.60, L.61, L.62, L.63, L.64, L.65, L.66, L.67, L.68, L.69, L.70, and L.71.



human rights law.⁵⁵

For instance, amendments L.41, L.43, L.46 and L.58 aimed to remove “human rights defenders” from the title of the resolution and key paragraphs. Amendment L.44 aimed to delete a paragraph mentioning assassinations and death threats against HRDs. L.49 aimed to remove a reference to access to information on violations and abuses committed against HRDs. L.50 aimed to do the same with regard to the risks faced by HRDs’ family members, associates and legal representatives. L.54 sought to add qualifiers to the exercise of rights recognized in the UN Declaration on Human Rights Defenders. One of the most outrageous amendments, L.57, aimed to delete a reference to reprisals and violence, as well as to combatting impunity. L.60 and L.66 sought to delete any reference to “women human rights defenders.” Burundi voted against the resolution as a whole (adopted by 33Y, 6N, 8A), together with China, Cuba, Nigeria, Russia, and Venezuela.

At the same session (HRC31), Burundi voted in favour of all the proposed hostile amendments to the resolution on peaceful protests.⁵⁶ These amendments, which ran directly counter to the spirit and purpose of the resolution,⁵⁷ were rejected by the Council. Some of these amendments aimed to omit a request to develop clear and concrete parameters for states to facilitate and protect peaceful protests, to add language regarding the possible threat of protests to the stability of the state (which is inconsistent with existing international human rights law and open to subjective interpretation, therefore undermining the protection of protesters’ human rights), or to propose additional language on the “responsibilities” of protesters, which was worded to deflect from the responsibility of states to protect individuals from human rights violations.

Only a few (between one and four, depending on the amendment) African states voted in favour of these amendments, and Burundi was the only one to vote for L.79, which aimed to delete a reference to the Special Rapporteur on extrajudicial, summary or arbitrary executions and to the word “peaceful” assemblies. After these hostile amendments were rejected, Burundi voted against the resolution as a whole, together with China, Cuba, Russia, and Venezuela. The resolution was ultimately adopted with 31Y, 5N, 10A.

At HRC38 (June-July 2018), Burundi again voted in favour of an amendment, which was rejected, seeking to insert language on the “duties and responsibilities” of organisers and leaders of protests.

Civil society space, SOGI, and other thematic resolutions

At the Council’s 32nd session (June 2016), 15 amendments were tabled against a draft resolution on “civil society space” presented by a cross-regional group of states comprising of Chile, Ireland, Japan, Sierra Leone and Tunisia (12 amendments were ultimately considered, as three were withdrawn). These amendments, which were drafted by Russia, sought to remove essential elements for states to create a safe and enabling environment for civil society from the draft resolution and to insert language that sought to justify illegitimate restrictions on civil society. Many of the amendments challenged previously-agreed HRC or UNGA language.⁵⁸ Burundi voted in favour of eight of these amendments,

55 See joint civil society letter: ISHR *et al.*, “Human Rights Council: Adopt resolution on human rights defenders and reject hostile amendments,” 22 March 2016, www.ishr.ch/news/human-rights-council-adopt-resolution-human-rights-defenders-and-reject-hostile-amendments (accessed 13 July 2018).

56 “The Promotion and Protection of Human Rights in the Context of Peaceful Protests: Implementation of Human Rights Council Resolution 25/38,” freeassembly.net/peacefulprotests/ (accessed 13 July 2018).

57 See joint civil society letter: CIVICUS *et al.*, “Open letter to member States of the UN Human Rights Council,” 27 March 2014, www.civicus.org/index.php/media-resources/news/united-nations/geneva/1622-open-letter-to-member-states-of-the-un-human-rights-council (accessed 13 July 2018).

58 Read civil society’s letter: CIVICUS *et al.*, “Over 200 NGOs call on the UN HRC to support resolution on civic society space,”

and abstained on another four. It then abstained on the resolution as a whole, which was adopted by 31Y, 7N, 9A. It also voted in favour of hostile amendments to the draft resolutions on human rights on the Internet,⁵⁹ and on violence against women. It abstained on amendments to the resolution on discrimination against women. At the Council's 38th session (June-July 2018), Burundi supported all three amendments (which were tabled by Russia and China, and rejected) to a follow-up draft resolution on civil society space. These amendments aimed to insert language on the transparency of NGOs activities and utilisation of resources, as well as on their obligation to "respect the sovereignty and territorial integrity of States," and to delete references to the report of the High Commissioner on practical recommendations for the creation and maintenance of a safe and enabling environment for civil society. Burundi abstained on the resolution as a whole, which was adopted by 35Y, 0N, 11A.

The voting record of Burundi's government unequivocally demonstrates its opposition to the activities of HRDs and citizens' exercise of their rights to peaceful protest and to participate in independent civil society activities free from threats, intimidation, violence and reprisals. The government's persistence in opposing cross-regional initiatives speaks for itself. Few other states have demonstrated such steadfast commitment to opposing Council action on thematic issues.

Regarding the resolution on sexual orientation and gender identity (SOGI) that was adopted at the Council's 32nd session, fewer conclusions can be drawn from Burundi's voting record, simply because the resolution, while advancing the protection of LGBT+ persons against discrimination and violence, was opposed by a larger number of states than other thematic resolutions. By and large, Burundi voted like its regional group. It supported all amendments to the text, including to delete references to the expression "SOGI" and the creation of an Independent Expert mandate; voted in favour of a no-action motion, which was rejected, and either abstained on or voted against the title and key paragraphs of the resolution. It ultimately voted against the resolution as modified by the amendments that were adopted.⁶⁰

At HRC33 (September 2016), HRC34 (March 2017) and HRC35 (June 2017), Burundi was consistent in its opposition to thematic resolutions and in its support to hostile amendments on which a vote took place. These include preventable maternal mortality and morbidity,⁶¹ the protection of human rights while countering terrorism,⁶² equal participation in political and public affairs,⁶³ the mandate of the Special Rapporteur on the situation of human rights defenders,⁶⁴ violence against women, and

27 June 2016, www.civicus.org/index.php/media-resources/news/united-nations/geneva/1533-protecting-civic-space-open-letter-to-member-states-of-the-un-human-rights-council (accessed 13 July 2018).

59 ARTICLE 19, "UNHRC: Strong resolution must be adopted on human rights on the Internet," 24 June 2016, www.article19.org/resources/unhrc-strong-resolution-must-be-adopted-on-human-rights-on-the-internet/ (accessed 7 July 2018).

60 For an overview of the voting process, see analyses by ILGA and ARC International: Allied Rainbow Communities International and International Lesbian, Gay, Bisexual, Trans and Intersex Association, "Compilation of the Adoption of the 2016 SOGI Resolution," 30 June 2016, www.ilga.org/downloads/SOGI_Resolution_Vote_compilation.pdf and ARC International, "Understanding the SOGI Resolution 2016," arc-international.net/global-advocacy/human-rights-council/32nd-session-of-the-human-rights-council/appointing-an-independent-expert-on-sexual-orientation-and-gender-identity-an-analysis-of-process-results-and-implications/iii-understanding-the-sogi-resolution-2016/ (both accessed 10 May 2018).

61 Burundi supported all amendments tabled against the resolution, including those aiming to delete references to the Committee on Economic, Social and Cultural Rights' General Comment No. 22, "sexual rights," and women's control over their "bodies."

62 Burundi voted, among others, in favour of oral amendments that aimed to remove a reference to counter-terrorism measures that have had the effect of targeting "specific groups" and to add a mention of "legitimately constituted governments" (and abstained on the resolution itself).

63 Amendment L.34, which was rejected, proposed to remove a reference to "action-oriented guidelines."

64 Read the joint NGO letter: HRW *et al.*, "Support consensus renewal of the mandate of Special Rapporteur on human rights defenders," 7 March 2017, www.hrw.org/news/2017/03/07/support-consensus-renewal-mandate-special-rapporteur-human-rights-defenders, accessed 13 July 2018. Some of the amendments aimed to remove any reference to "human rights defenders" and references to previous HRDs resolutions adopted by the Human Rights Council.



discrimination against women and girls.⁶⁵ At HRC38, Burundi also supported amendments to the draft resolutions on violence against women, and discrimination against women and girls, tabled by Russia, Egypt and Saudi Arabia, which sought to delete the expressions “intimate partner violence,” “comprehensive sexuality education” and “gender.”

At HRC36 (September 2017), Burundi supported amendments to resolutions on enforced or involuntary disappearances—an acute human rights issue in the country—and the death penalty. Amendments to the first text aimed to add out-of-place references to the “sovereign right of all countries to develop their own legal systems” and the need for special procedure mandate holders to “always seek to establish the facts, based on objective, reliable information emanating from relevant credible sources [...]”⁶⁶ Amendments to the death penalty initiative sought to weaken language on human rights violations that are associated with the use of the death penalty, such as torture, or to reaffirm the “sovereign right” of states to develop their own legal systems, including criminal penalties. Burundi also supported all 18 amendments⁶⁷ tabled by a group of states in order to undermine the text of an important resolution on reprisals (“Cooperation with the United Nations, its representatives and mechanisms in the field of human rights”) put forward by a cross-regional core group made up of the Fiji, Ghana, Hungary, Ireland, and Uruguay. Burundi abstained on the resolution, which was adopted by 28Y, 0N, 19A.

50 out of 54

Burundi voted in favour of 50 out of 54 hostile amendments to civic space-related resolutions from HRC31 to HRC34

(Resolutions on protecting human rights defenders, peaceful protests, civil society space, equal participation in political and public affairs, and the mandate of the Special Rapporteur on the situation of human rights defenders).

Additionally, Burundi opposed an amendment to the “protection of the family” resolution, which simply sought to recognise that various forms of families exist, and supported an amendment to the draft resolution on human rights, democracy and the rule of law seeking to add a restrictive qualifier to the participation of NGOs in the second session of the Forum on Human Rights, Democracy and the Rule of Law.⁶⁸

Other thematic initiatives

However, Burundi joined majorities of the Council and of developing/non-aligned movement states on issues pertaining to international solidarity, foreign debt, the right to peace, the use of mercenaries, or unilateral coercive measures. Burundi played a positive role when it joined states supporting

⁶⁵ The amendments to the draft resolution on “Accelerating efforts to eliminate violence against women: engaging men and boys in preventing and responding to violence against all women and girls” adopted at HRC35 (June 2017) sought to delete references to “women HRDs” and “comprehensive sexuality education,” respectively. The amendments to the draft text on “Elimination of discrimination against women and girls” adopted at the same session sought to delete references to “women HRDs” and “comprehensive sexuality education” and to replace “gender” with “sex.”

⁶⁶ This was an attempt to impose new language aiming to delegitimize HRDs and NGOs who cooperate with special procedures. Indeed, special procedure mandate holders must already abide by a code of conduct and established practices regarding the establishment of facts and verification of the information they receive.

⁶⁷ ISHR *et al.*, “Support resolution on cooperation with the United Nations, its representatives and mechanisms in the field of human rights,” 26 September 2017, www.ishr.ch/sites/default/files/documents/letter_to_member_states_on_reprisals_resolution_hrc_36_with_signatories_final_version_5.pdf (accessed 13 July 2018).

⁶⁸ The amendment aimed to add the phrase “and that respect the sovereignty and territorial integrity of Member States” to the paragraph opening participation in the Forum to “other non-governmental organisations whose aims and purposes are in conformity with the spirit, purposes and principles of the Charter of the United Nations.”

resolutions on economic, social and political rights and pushing the Council to explore the under-addressed human rights aspects of international issues like foreign debt or mercenaries. It also joined quasi-consensus on renewing the mandate of the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action.

Other than that, Burundi's voting record has been disastrously at odds with what is expected of a Council member as per the criteria set out in resolution 60/251. The Burundian government behaved as an enemy of HRDs, CSOs, independent voices, and women and girls. Its behaviour at the Council mirrored its behaviour at home, where dissenting and independent voices have been targeted for repression, with many forced into exile. This can be explained by several factors.

Categories of amendments supported by Burundi

The amendments Burundi supported since it became a member of the Council roughly fall into four categories. First, a category of amendments sought to weaken international standards, deny protections and rights, or impose undue restrictions on their enjoyment that are impermissible under international human rights law. For example, amendments aiming to impose illegitimate restrictions on CSOs, protesters or HRDs under the pretence of "responsibilities" fall into this category, such as amendments that aimed to deny the legitimacy of the work of HRDs. Proposals that ran directly counter to the spirit and purpose of draft resolutions by seeking to delete key terms ("human rights defenders," "women human rights defenders," "protests," "SOGI," "sexuality education") and amendments that sought to remove references to the needs and risks faced by specific groups and minorities also belong in this category.

Second, some of the amendments which Burundi supported attempted to dilute the obligations of duty-bearers, i.e. states. Some of the amendments did so by proposing to remove references to previous UN resolutions or even regressing from consensus language. Others attempted to dilute resolutions' language by removing references to states' commitments to cooperate and to take specific measures (for instance, to prevent the occurrence of intimidation and reprisals) or by mentioning the "responsibilities" of rights-holders (protesters, NGOs, those who provide information to the UN, etc.). These proposals were worded to deflect from states' responsibility to protect persons.

A third category of amendments aimed to restrict the role of international mechanisms, including OHCHR and expert bodies such as special procedures and treaty bodies. These amendments sought to eviscerate the operative paragraphs of resolutions that established or extended mechanisms (special procedure mandates, guidelines or guidance by OHCHR, public debates) or references to authoritative interpretations by expert bodies such as treaty bodies.

The last category of amendments Burundi supported sought to provide states with the opportunity to evade their international obligations and/or multilateral responsibilities by hiding behind the veil of state sovereignty. This category includes amendments stressing states' "sovereign rights," "national security" or related legislation, or attempting to justify overbroad limitations on rights that are impermissible under international human rights law. This category also includes amendments that sought to weaken the universality of human rights by referring to regional, national, or cultural "particularities."



Determinants of Burundi's voting record

As with country-specific resolutions, Burundi's position on thematic resolutions and amendments seems to have been partly motivated by its search for allies. This is obvious regarding votes on resolutions that focused on countries with which Burundi hardly has any political links, such as Belarus or Georgia. However, it may also be relevant to factor in a "follow-the-leader" attitude ("*suivisme*") when analysing the enthusiasm with which Burundi supported amendments to thematic resolutions pertaining to civic space (human rights defenders, peaceful protests, civil society space, participation in political and public affairs, mandate of the Special Rapporteur on the situation of HRDs, etc.) tabled by Russia, China, Egypt or Venezuela.

Initiatives taken as a member

As a Council member, Burundi took no initiative beyond endorsing an African Group-led resolution establishing an OHCHR mission to its territory, which was designed to counter, or even to render impossible, the extension of the mandate of the CoI—see below. This record would be acceptable⁶⁹ if Burundi's voting record and engagement had been in line with that of an average member. However, as was shown, its voting record was particularly regressive, abusive and irresponsible.

Lack of cooperation with, and hostility to, the UN human rights system

Burundi's review by the UN Committee against Torture (2016)

On 29 July 2016, in an unprecedented move, the Burundian delegation refused to attend the second part of its review by the UN Committee against Torture (UN CAT or CAT). Burundi was due to provide answers to the questions raised by CAT members during the first part of its review.⁷⁰ Although states have previously declined to take part in reviews, this was the first time in the history of the Committee that a delegation walked out halfway through the proceedings. The Burundian delegation alleged⁷¹ that CAT members' questions went beyond the five issues on which information was requested in a special report and included, *inter alia*, issues raised in an alternative civil society report that had not been communicated to the government. The delegation claimed that it did not have enough time to address these issues.

In a letter,⁷² the Chairperson of the Committee expressed regret about this decision but reminded the Burundian delegation that submissions by civil society are commonplace and publicly available ahead of the reviews. Following the CAT's practice, he granted the Ambassador an additional 48 hours to provide responses to the questions raised by Committee members. Again, the delegation failed to do so. Ahead of the session, the Burundian government had already failed to produce a special report responding to various allegations of gross human rights violations.⁷³

⁶⁹ New Council members show a commendable attitude when they do not seek to advance initiatives for the sake of advancing initiatives. Indeed, when they refrain from doing so, they contribute to preventing the overloading the Council's program of work.

⁷⁰ OHCHR, "CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment 58 Session (25 July 2016 - 12 August 2016)," tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1084&Lang=en (accessed 23 July 2018).

⁷¹ See its letter: Gouvernement du Burundi, "La Position du Gouvernement du Burundi sur la Procédure d'Examen de son Rapport Spécial par le Comité contre la Torture du 28 au 29 Juillet 2016," tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/BDI/INT_CAT_AIS_BDI_24743_F.pdf (accessed 13 July 2018).

⁷² OHCHR, tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/BDI/INT_CAT_FUL_BDI_24715_F.pdf (accessed 23 July 2018).

⁷³ See analysis by DefendDefenders: DefendDefenders, "Burundi: Government threatens reprisals and walks out during special review by UN Committee against Torture," 12 August 2016, www.defenddefenders.org/press_release/burundi-government-threatens-reprisals-walks-special-review-un-committee-torture/ (accessed 13 July 2018).

Despite the Burundian delegation's *de facto* boycott of its review, the Committee published its concluding observations on 12 August, based on the information available. However, not content with its failure to cooperate with a UN human rights body just a few months after having been elected to the HRC, the government also engaged in reprisals against four HRDs who participated in the elaboration of a joint civil society report submitted to the CAT.⁷⁴

On 29 July, the Prosecutor General at the Court of Appeal of Bujumbura sent a letter to the President of the Burundi Bar Association, asking to disbar human rights lawyers Armel Niyongere, Lambert Nigarura, Dieudonné Bashirahishize and Vital Nshimirimana for their alleged involvement in an “insurrectionist movement” and “attempted coup.” As the CAT noted in a letter⁷⁵ to the Burundian delegation on this subject, the Prosecutor General requested sanctions, rather than an inquiry to establish the facts, “which raise[d] concern with respect to presumption of innocence.” The Committee went on: “This concern is all the stronger given that the [prosecutor’s] request came on the same day that the Burundian delegation, presided over by the Minister of Justice, indicated they would not be participating in the second session of dialogue with the Committee, citing the alternative report by Burundian civil society in particular as the reason.”

The four lawyers and the organisations they represent contributed to an alternative report, which was submitted to the CAT by 17 civil society organisations ahead of its 58th session. The report described the alarming situation in Burundi and highlighted the worsening situation in light of the 2015 political crisis. It documented numerous violations of the Convention against Torture, including in relation to an increase of arbitrary arrests and detentions, extrajudicial executions and enforced disappearances. Three of the lawyers attended the 58th session of the UN CAT in Geneva, during which Burundi was reviewed.

The Burundian government eventually responded, in an addendum (CAT/C/BDI/CO/2/Add.2), to the Committee’s concluding observations. It rejected most findings. The government accused Committee members of believing “ill-intentioned informants” (i.e., NGOs that submitted an alternative report) (para. 35) and taking part in a political escalation or “overbid” (“*surenchère*”) because of the Committee’s use of the word “impunity” to refer to the climate in the country (para. 37). The government declared that it considered the process followed by the Committee, which issued concluding observations after Burundi walked out of its review, “unfair” (para. 51). It also accused OHCHR of fabricating cases of human rights violations (para. 104). Burundi’s government even went as far as to say that they were “sincerely distressed” by the attitude of the CAT in coming to conclusions that tarnish the country’s image as hastily as possible (para. 135). Last, concerning the four lawyers whose situation CAT raised, Burundi simply replied that the government was astounded that the Committee got back to that issue instead of agreeing that they should be prosecuted “for the crimes they have committed” (para. 198).

Burundi’s next report to the Committee against Torture is due by 28 November 2018. Given the situation in the country and the concerns raised by a range of UN officials and experts, including CAT members, submitting it by the deadline should be a priority for the government.

74 Read OMCT’s blog: OMCT, “Le Burundi se défile lors de l’examen spécial du Comité contre la torture : Quelles conséquences pour la société civile?,” 18 August 2016, blog.omct.org/le-burundi-se-defile-lors-de-lexamen-special-du-comite-contre-la-torture-queelles-consequences-pour-la-societe-civile/ (accessed 13 July 2018).

75 OHCHR, “Burundi torture review: UN experts concerned at reported reprisals,” 8 August 2016, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20350&LangID=E (accessed 13 July 2018).



The Burundian government's refusal to cooperate with a UN human rights body, and the reprisals meted out against HRDs who cooperated with the latter, were widely condemned.⁷⁶ However, Burundi's behaviour with regard to its anti-torture review was not an isolated incident: rather, it was part of a pattern, as the following paragraphs show.

Lack of cooperation with the Human Rights Council and its mechanisms

Since June 2015, when it was first subjected to multilateral attention at the Human Rights Council, Burundi has openly attacked the UN human rights system and its investigating and reporting work. Attacks against the independence, competence, professionalism, integrity and legitimacy of the High Commissioner and his Office followed almost every statement, press release and briefing note they published on Burundi. While the present report is not exhaustive, the following instances must be highlighted.

On 29 June 2016, at the Human Rights Council, Burundi accused the High Commissioner of "turning a blind eye" to the terrorist acts committed by non-state actors and foreign powers, and of lacking credibility. According to Minister for Human Rights Martin Nivyabandi, the analysis presented to the Council was based on confidential information, which paved the way for "manipulation."

UN Independent Investigation on Burundi

In September 2016, after the UN Independent Investigation on Burundi (UNIIB) presented its final report to the Human Rights Council, highlighting "ample evidence of large-scale and systematic violations of a range of human rights," the vast majority of which were attributed to the state and its apparatus, Burundi condemned the "lack of professionalism of the report," which according to the government was "based on anonymous testimonials." The government noted that the "conclusions of the investigation were erroneous as they were not based on facts."⁷⁷ The Minister went on to deplore "the attitude against its people and State institutions." In national, pro-government media, officials attacked the UN-appointed experts, claiming in essence that UNIIB was a racist endeavour, saying: "They are all whites."⁷⁸

After they submitted their final report, Burundi declared the three independent experts *personae non gratae* and suspended its cooperation with OHCHR, a decision which HRC President Choi Kyonglim "firmly asked the Government to reconsider."⁷⁹

The Commission of Inquiry on Burundi

After the newly-appointed CoI called on the government to cooperate,⁸⁰ its chairperson told the HRC that the Commission had been informed that it would not be able to travel to Burundi as the government rejected HRC resolution 33/24, which established the Commission.⁸¹

⁷⁶ See for instance Pamela Capizzi, "Burundi's Missed Opportunity Risks Closing off Dialogue," 8 August 2016, trialinternational.org/latest-post/burundis-missed-opportunity-risks-closing-off-dialogue/ (accessed 13 July 2018).

⁷⁷ OHCHR, "Human Rights Council holds enhanced interactive dialogue on the situation of human rights in Burundi," 27 September 2016, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20602&LangID=E, accessed 13 July 2018.

⁷⁸ Burundi AG News, "Pourquoi le Burundi ne veut pas d'Enquête Indépendante des DH ?," 10 June 2017, burundi-agnews.org/diplomatie/pourquoi-le-burundi-ne-veut-pas-d-enquete-independante-dh/ (accessed 13 July 2018).

⁷⁹ United Nations Office at Geneva (UNOG), "Readout of Meeting between the President of the Human Rights Council and H.E. Rénovat Tabu, Permanent Representative of Burundi to the United Nations Office at Geneva," 14 October 2016, [www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/A8A63B57069B44C8C125804C0057AD7B?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/A8A63B57069B44C8C125804C0057AD7B?OpenDocument) (accessed 13 July 2018).

⁸⁰ OHCHR, "Burundi: Commission of Inquiry calls for the cooperation of Government and all stakeholders," 27 January 2017, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21127&LangID=E (accessed 13 July 2018).

⁸¹ OHCHR, "Dialogue interactif sur le Burundi -Présentation orale de M. Fatsah Ouguerouz, Président de la Commission d'enquête sur le Burundi," 13 March 2017, www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=21372&LangID=F,

The CoI expressed its deep regret over Burundi's unwillingness to cooperate, despite it being a member of the Council.

In June 2017, CoI Chairperson Fatsah Ouguergouz again expressed regret over "the absence of response and cooperation from Burundi, especially as it was a member of the Council" and explained that the CoI had intended to meet the Permanent Representative of Burundi in Geneva to establish a dialogue but that "there had not been any response to these approaches." Burundi's government responded that "[p]rinciples of cooperation [have] been violated at the outset. It [is] a cut and paste exercise." Its representative went on to say that the partial tendentious nature of the report of the CoI did not need to be proved, "it was like burning a man alive and in broad daylight."⁸²

In September 2017, after its mandate was extended by the Council, the CoI reiterated its call on the government of Burundi to cooperate.⁸³ The government stated that the CoI's report had "no added value" and that "it was clear that the Commission had adopted a politicized attitude." It accused the CoI of having "sympathy for the insurgents who [...] committed violent crimes" and deplored the "hidden agenda of the Human Rights Council."⁸⁴ Burundi also threatened to "bring to justice" the authors of the report on charges of "defamation" and "attempted destabilization of Burundian institutions." The High Commissioner informed the Burundian government that he found it unacceptable for the members of a commission mandated by the Human Rights Council to be threatened with prosecution for having performed the task set for them by the Council. He stated that the threat constituted a clear violation of article VI of the Convention on the Privileges and Immunities of the United Nations, which applied to experts performing missions for the UN.⁸⁵

On 13 March 2018, during Burundi's third year as a Council member, the new Chairperson of the Commission, Doudou Diène, called on the government to "review its position and to engage in a constructive dialogue with the Commission," highlighting that "[t]he direct collection by the Commission of fact-based information, analysis and points of view from different stakeholders, including relevant authorities, provide[d] the best guarantee that they will be included in [the CoI's] final report."⁸⁶ He then described a political, security, economic, social and human rights situation that had not improved since September 2016, stressing that "[t]he Burundian authorities seem to have adopted a position of non-cooperation with its international partners." Indeed, "[f]ollowing the announcement of the opening of an investigation by the Office of the Prosecutor of the ICC last November, the Government of Burundi announced that the country had no intention to collaborate with the Court."

Mr. Diène made the same plea in June 2018, during the Council's 38th session – to no avail. Burundi's representative referred to the work of the Commission as "politically motivated." Burundi made it clear it intended to continue refusing to cooperate.

(accessed 13 July 2018).

82 OHCHR, "Oral Briefing by Fatsah Ouguergouz, Chair of the Commission of Inquiry on Burundi," 14 June 2017, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21760&LangID=E (accessed 13 July 2018).

83 OHCHR, "Commission calls on Burundian government to put an end to serious human rights violations," 29 September 2017, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22184&LangID=E, accessed 13 July 2018.

84 UNOG, "Human Rights Council Holds Interactive Dialogue with the Commission of Inquiry on Burundi," 19 September 2017, [www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/A3DB618342C5582EC12581A0004CB112?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/A3DB618342C5582EC12581A0004CB112?OpenDocument) (accessed 13 July 2018.)

85 Compilation of UN information for the second UPR of Burundi, A/HRC/WG.6/29/BDI/2, available at documents-dds-ny.un.org/doc/UNDOC/GEN/G17/339/27/PDF/G1733927.pdf?OpenElement, para. 3.

86 OHCHR, "Oral presentation of the Commission of Inquiry on Burundi at the 37th session of the Human Rights Council," 13 March 2018, www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=22814&LangID=F (accessed 13 July 2018).



Attacks against UN officials and experts

In March 2018, UN Deputy High Commissioner for Human Rights Kate Gilmore informed the Council that “since October 2016, the Government of Burundi has suspended cooperation with OHCHR asking first to renegotiate our joint Memorandum of Understanding. We hope to reach an agreement with the Government that would allow us to implement our full mandate, including monitoring and capacity building. To date, I regret to report that discussions on the matter have not led to any concrete result.”⁸⁷

In his statement, the Burundian representative began by extending his “congratulations” to the former CoI President, Fatsah Ouguerouz, for having “courageously resigned.” He stated that “[t] here [was] no point in calling for any kind of change in position [regarding the CoI members, who have been declared *personae non gratae*].” He rejected “false allegations” about Burundi, and called the CoI’s report “false in essence.” He added that there was “no possibility of having a credible report.” Furthermore, he denounced the “excessive enthusiasm shown by the new President of the Commission,” reiterating Burundi’s wish to “bring up substantive questions about the legitimacy of the Commission.”

He also attacked High Commissioner Zeid, denouncing the “aggressive and denigrating language used” to give Burundi “an image that is different from reality.” HRC Vice-President Marta Maurás (the Ambassador of Chile), who was chairing the meeting, reminded the speaker that “expressing views on reports and work of mandate holders [...] must be done within the accepted framework to guarantee respect for dialogue. There should not be any personal attacks against the mandate holders or the High Commissioner.”

The High Commissioner, OHCHR officials, and independent experts, including UNIIB and successive CoI members, suffered attacks that descended at a personal level throughout their work in relation to Burundi. Official government statements regularly accused them of lacking independence, professionalism, rationality, and integrity. At times, they were accused of supporting armed rebels or of working in cahoots with foreign powers, namely Rwanda and Western countries. Fatsah Ouguerouz, who first chaired the CoI, has been accused of supporting armed rebel groups (including the *Sindumuja*) and of having a “Burundian girlfriend,” who was allegedly close to former President Buyoya.⁸⁸

High Commissioner Zeid was particularly targeted since he started advocating for greater international attention to Burundi’s human rights crisis, including through an informal briefing to the Human Rights Council, which was held on 26 May 2015. He has been accused of using “forged” documents (“*montages*”), working to “destabilize” and “divide” the country, defaming its officials and institutions, abusing his position, and even inciting ethnic hatred—precisely something he denounced on several occasions.⁸⁹

⁸⁷ OHCHR, “Introduction to country reports/briefings/updates of the Secretary-General and the High Commissioner under item 2,” 21-22 March 2018, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22875&LangID=E (accessed 13 July 2018).

⁸⁸ For an example of a slanderous article, published in the Intumwa newspaper, see: Intumwa, “Les mensonges de la commission de Zeid Ra’ad Al Hussein ont été démasqués,” 29 december 2017 (translation into French), www.burundi-forum.link/wp/la-une/actualites/les-mensonges-de-la-commission-de-zeid-raad-al-hussein-ont-ete-demasques/ (accessed 13 July 2018).

⁸⁹ See UNOG, “High Commissioner Zeid Briefs Council on Burundi, Tunisia, Migration Crises in Europe and South-East Asia, and South Sudan,” 26 May 2015, [www.unog.ch/unog/website/news_media_archive.nsf/\(httpNewsByYear_en\)/C1257F1D00309595C1257E5100541AC8?OpenDocument](http://www.unog.ch/unog/website/news_media_archive.nsf/(httpNewsByYear_en)/C1257F1D00309595C1257E5100541AC8?OpenDocument) (accessed 13 July 2018).

For examples of official Burundian responses to his analyses, see Burundi AG News, “Burundi : M. Zeid Ra’ad al Hussein OHCHR manque de rationalité selon l’Etat,” 29 April 2016, burundi-agnews.org/globalisation-mondialisation/burundi-m-zeid-raad-al-hussein-manque-de-rationalite-selon-letat/; Gouvernement du Burundi, “Communiqué du Gouvernement du Burundi suite aux

At the Council's 38th session (June 2018), the representative of the Burundian government rejected the update of the CoI as politically motivated. He slammed Chairperson Doudou Diène, advised him to resign "like his predecessor," and openly threatened members of the CoI with legal proceedings for "defamation" against Burundi—a new low for a sitting HRC member. The Council's Vice-President, Filipino Ambassador Mr. Evan Garcia, who was chairing the meeting, condemned "derogatory and inflammatory" language. Burundi's statement was unacceptable by any standard, and marked a continued escalation of attacks against the Commission of Inquiry.

Attacks against human rights defenders

HRDs, both inside and (increasingly, as they were forced into exile) outside the country, also suffered threats, intimidation, slander, legal and extra-legal harassment, and physical attacks. On 3 August 2015, Pierre Claver Mbonimpa, founder and President of the *Association burundaise pour la protection des droits humains et des personnes détenues* (APRODH) and one of Burundi's most prominent HRDs, was shot in the face and neck and severely wounded by unknown assailants in Bujumbura.⁹⁰ Prior to the attempt on his life, Mbonimpa was previously the victim of judicial persecution, arbitrary arrests and detention because of his human rights work in Burundi. On 9 October 2015, unidentified armed persons with rifles and grenades killed his son-in-law, Pascal Nshimirimana. On 6 November 2015, Mbonimpa's son, Welly Fleury Nzitonda, was arrested, and later found dead. Mbonimpa had previously expressed his concerns over his personal safety.⁹¹ He now lives in exile in Belgium.

On 10 December 2015, Marie-Claudette Kwizera, a HRD and Treasurer of human rights NGO *Ligue ITEKA*, was abducted near the central polyclinic of Bujumbura. She was forced into a vehicle of Burundian National Intelligence Service (NIS, or in French SNR). Two days after she was abducted, an official from the SNR informed her family that she was being held at the SNR offices and requested a ransom to secure her release.⁹² The family paid the ransom but did not receive details of her whereabouts. Despite the launch of a campaign to obtain her release, her fate or whereabouts remain unknown.⁹³

In April 2018, human rights defender Germain Rukuki, who collaborated with ACAT-Burundi, was sentenced to an unprecedented term of 32 years in prison on national security charges. His conviction occurred at the end of a trial marred by irregularities and violations of his right to a fair trial.⁹⁴ Many

dernières allégations de Monsieur Zeid Ra'ad al Hussein, Haut Commissaire des Nations Unies aux Droits de l'Homme," 21 April 2016, www.burundi.gov.bi/spip.php?article961; Présidence de la République du Burundi, "The Government of Burundi is not Surprised by the Fabricated Claims from Mr. Zeid Ra'ad Al Hussein, UN High Commissioner for Human Rights," 21 April 2016, www.presidence.gov.bi/archives/spip.php?article5843; or RTNB, "Le Burundi réagit rejette en bloc les accusations de Zeid Ra ad Al Hussein du CNUDH," 22 April 2016, www.rtnb.bi/fr/art.php?idapi=0/1/190 (all accessed 13 July 2018).

90 African Commission on Human and Peoples' Rights (ACHPR), "Press Release on the assassination attempt on Mr. Pierre-Claver Mbonimpa," 5 August 2015, www.achpr.org/press/2015/08/d273/; United Nations, "Following Assassination Attempt on Human Rights Defender in Burundi, Secretary-General Says Growing Pattern of Violence Must Be Broken," 3 August 2018, www.un.org/press/en/2015/sgsm16988.doc.htm; UN News, "Assassination attempt prompts UN call for protection of human rights defenders in Burundi," 7 August 2015, news.un.org/en/story/2015/08/505892-assassination-attempt-prompts-un-call-protection-human-rights-defenders-burundi (all accessed 13 July 2018).

91 Front Line Defenders, "Case History: Pierre Claver Mbonimpa," www.frontlinedefenders.org/en/case/case-history-pierre-claver-mbonimpa; RFI, "Burundi: un fils de Pierre-Claver Mbonimpa retrouvé mort à Bujumbura," 6 November 2015, www.rfi.fr/afrique/20151106-burundi-assassinat-fils-pierre-claver-mbonimpa; FIDH, "Burundi: Assassination of Mr. Welly Nzitonda, son of Mr. Pierre Claver Mbonimpa," 6 November 2015, www.fidh.org/en/issues/human-rights-defenders/burundi-assassination-of-mr-welly-nzitonda-son-of-mr-pierre-claver (all accessed 13 July 2018).

92 AWID, "Burundi : Détention arbitraire de Mme Marie Claudette Kwizera, trésorière de la Ligue ITEKA," 16 December 2015, www.awid.org/fr/se-impliquer/burundi-detention-arbitraire-de-mme-marie-claudette-kwizera-tresoriere-de-la-ligue (accessed 13 July 2018).

93 FIDH, "Burundi : No news from Marie-Claudette Kwizera since her kidnapping, the Observatory refers the case to the UN," 22 January 2016, www.fidh.org/en/region/Africa/burundi/burundi-no-news-from-marie-claudette-kwizera-since-her-kidnapping-the (accessed 13 July 2018).

94 FIDH, "Condamné à 32 ans de prison, Germain Rukuki victime d'un simulacre de justice," 27 April 2018, www.fidh.org/fr/themes/defenseurs-des-droits-humains/condamne-a-32-ans-de-prison-germain-rukuki-victime-d-un-simulacre-de (accessed 13 July 2018).



lawyers, including Armel Niyongere and Vital Nshimirimana (see above), have been forced into exile and disbarred. The government issued international arrest warrants for HRDs, including Justine Nkurunziza, Pacifique Nininahazwe, Vital Nshimirimana and Armel Niyongere. These are just a few examples of Burundi's treatment of HRDs.

At the Human Rights Council, those who took the floor were systematically defamed, insulted and attacked, including on social media by a senior presidential adviser, Willy Nyamitwe. Some of the latter's statements came close to incitement to violence against these HRDs. This behaviour epitomizes Burundi's disregard for its human rights obligations and for the integrity of UN human rights bodies and mechanisms, which provide for the participation of civil society free from intimidation and reprisals.

Burundi's national human rights institution loses its status

In January 2018, at the end of a long process, Burundi's national human rights institution (NHRI), the Independent National Commission for Human Rights (CNIDH), lost its A-status and was downgraded to B-status. The decision was made in consideration of CNIDH's lack of independence.⁹⁵ Indeed, its statements, including those delivered at the Human Rights Council, were closely aligned with those of the government. CNIDH near-systematically denied allegations of serious crimes, including those made by UN mechanisms, and propagated a narrative of "stabilization" despite all indicators showing that the violations, including extrajudicial killings and enforced disappearances, continue unabated.⁹⁶

CNIDH President blamed the process that led to his institution losing its A-status on CSOs and HRDs, in particular FIDH and ACAT, alleging that those with a "political agenda" were responsible for the downgrading.⁹⁷

Burundi's last Universal Periodic Review (2018)

In January 2018, during the 29th session of the Working Group on the Universal Periodic Review (UPR), Burundi was reviewed for the third time in the UPR framework.⁹⁸ The government received numerous recommendations calling on it to ratify international instruments and reconsider its decision to withdraw from the Rome Statute of the ICC, as well as on cooperation with the UN human rights system.

These include: (i) accepting pending visit requests by special procedures mandate-holders and implementing recommendations of treaty bodies;⁹⁹ (ii) finalizing the Memorandum of Understanding, and resuming cooperation, with OHCHR;¹⁰⁰ (iii) fulfilling its obligation as a member of the HRC and

95 See the chart of the status of national institutions compiled by the Global Alliance of National Human Rights Institutions (GANHRI): [nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20\(21%20February%202018\).pdf](http://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20(21%20February%202018).pdf) For more background: www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx

96 See for example: "Déclaration de la CNIDH du 11 septembre 2017 suite au rapport de la Commission d'enquête sur le Burundi": www.cnidh.bi/d%C3%A9claration%2Cde%2Ccla%2Ccnidh%2Cdu%2C11%2Cseptembre%2C2017%2Csuite%2Cau%2Crappor%2Cde%2Ccla%2Ccommission%2Cd%E2%80%99enqu%C3%Aate%2Csur%2Cle (accessed 13 July 2018).

In September 2016, the CNIDH stated that it was "not convinced" by the evidence offered by the UNIIB and was concerned by the "manipulation of a number of victims": OHCHR, "Human Rights Council holds enhanced interactive dialogue on the situation of human rights in Burundi," 27 September 2016, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20602&LangID=E (accessed 13 July 2018).

97 RFI, "Burundi: l'ONU rétrograde le statut de la CNIDH," 6 March 2018, www.rfi.fr/afrique/20180306-burundi-onu-retrograde-statut-cnidh-independance (accessed 11 July 2018).

98 Unedited version of the outcome document for the review: A/HRC/WG.6/29/L.7

99 Recommendations 6.22., 6.24., 6.25., 6.26., 6.32., and 6.58.

100 Recommendations 6.27., 6.28., 6.29., 6.30., 6.31., 6.32., 6.33., 6.34., 6.35., 6.36., 6.37., 6.38., 6.39., 6.40., 6.43., 6.44., 6.45., 6.46., 6.57., 6.59., 6.66., 6.67., and 6.132.

fully cooperating with its mechanisms and procedures, including the CoI;¹⁰¹ (iv) cooperating with the ICC;¹⁰² and (v) refraining from any acts of reprisals or intimidation against those who cooperate with UN human rights mechanisms.¹⁰³ A number of additional general recommendations pertain to cooperation with “the UN human rights system,” “UN human rights mechanisms,” “the United Nations,” or “African Union mechanisms.”

The mere number of recommendations (more than 50) pertaining to cooperation and references to Burundi’s membership in the HRC showed the interest of the international community in witnessing a Burundi that lives up to its obligations and cooperates with the UN human rights system, as per HRC membership criteria. When such a critical mass of recommendations on the same topic are addressed to a state under review, whether these recommendations are accepted or not, it certainly sends its government a powerful message, even more so when states from *all* regional groups address similar recommendations to that government.

Ahead of Burundi’s UPR review, Burundian HRDs participated in the “UPR pre-sessions” organised by Geneva-based NGO UPR Info. All those who participated in the pre-session on Burundi were in exile, except for one. Although this was not directly related to the UPR process but due to threats that he and his family received because of his work with the CoI, one HRD sought asylum in Switzerland.

During the 29th UPR session, Burundi provided no replies to the recommendations formulated by its peers. In June 2018, however, on the occasion of the adoption of the report of the Working Group (during the 38th session of the HRC), Burundi provided its responses. The government dedicated a mere two short paragraphs to the 34 recommendations on cooperation with OHCHR and the CoI that it received. The government rejected recommendations pertaining to the fight against impunity, in particular of the ruling CNDD-FDD youth branch, the *Imbonerakure*, and to freedoms of expression, peaceful assembly, and association. Its refusal to accept recommendations that were based on its international obligations, like one, offered by Ghana,¹⁰⁴ was telling. During the meeting that saw the adoption of its report, Burundi used part of its speaking time to further attack UN experts, including those appointed pursuant to HRC resolution 36/2 and members of the CoI.

Moreover, during the review of “friendly” states (i.e., those with which Burundi attempted to build alliances at the Council), Burundi systematically offered praises and vague recommendations, some of which failed to mention human rights issues in the concerned countries in any meaningful way. The Burundian government mostly used its speaking time to praise its allies’ record, ignoring compilations of information compiled by OHCHR, assessments of independent experts, and civil society contributions. For instance, during the 26th session of the UPR Working Group, Burundi welcomed the “efforts” of the Syrian government to “improve the human rights situation despite the difficult situation prevailing in the country owing to terrorism” and “appreciated the efforts made by the government to re-establish peace and security throughout the country.” During the same session, it recommended that Venezuela “continue efforts to hold a national dialogue to strengthen constitutional democracy.” During the 30th session of the UPR (May 2018), Burundi offered no recommendation to Russia; it simply commended its achievements. During Cuba’s review, Burundi

101 Recommendations 6.19., 6.32., 6.37., 6.38., 6.40., 6.41., 6.42., 6.44., 6.46., 6.47., 6.48., 6.49., 6.50., 6.51., 6.57., 6.58., 6.59., 6.60., 6.61., 6.65., 6.66., 6.67., 6.116., 6.131., and 6.132.

102 Recommendations 6.36., 6.42., 6.48., 6.52., 6.53., 6.54., 6.55., 6.56., 6.65., 6.66., 6.67., 6.131., 6.132., and 6.134.

103 Recommendations 6.31., 6.61., 6.162., 6.163., 6.164., 6.165., 6.166., 6.168., and 6.169.

104 “Investigate all alleged reports of violence against, and intimidation, harassment and surveillance of, human rights defenders, and conduct prompt and impartial investigations with a view to holding the perpetrators accountable” (Recommendation 137.169).



stated that it “highly appreciate[d] efforts made by the Cuban government since its last review” and offered no concrete recommendation. Such statements and recommendations defeat the purpose of the UPR, which is to objectively review the human rights situation in the concerned countries in order to help, or push, them to improve their record through precise, action-oriented, relevant, measurable, and time-bound recommendations.

Treaty body reviews

Burundi’s 2016 CAT review, which was highlighted above, remains one of the most shocking instances of non-cooperation with a UN treaty monitoring body ever recorded. However, it was not the only time Burundi failed to live up to standards of cooperation and engagement with treaty bodies.

Burundi’s second periodic report to the Human Rights Committee was submitted 17 years after its due date. After publishing its concluding observations (CCPR/C/BDI/CO/2), on 21 November 2014, the Committee sent the Burundian government two reminders (in November 2015 and April 2016) with regard to additional information it had requested at the end of its last review, to no avail.¹⁰⁵ At the time of writing (July 2018), no response had been received by the Committee.

In a rather unusual move, in October 2016, when the Committee on the Elimination of Discrimination against Women (CEDAW Committee) reviewed Burundi, it expressed regret over the country’s “intention to withdraw from the Rome Statute of the International Criminal Court, its rejection of the independent investigation on Burundi carried out pursuant to Human Rights Council resolution S-24/1, and the consequent declaration of the experts as *personae non gratae* in the State party, its rejection of cooperation with the commission of inquiry established by the Council (see resolution 33/24) and its ongoing reassessment of its cooperation with and the presence of OHCHR” in the country.¹⁰⁶ The Committee recommended that the government cooperate with the Prosecutor of the ICC. It also regretted that “women human rights defenders have had to leave the State party to seek protection for their life and personal safety.”¹⁰⁷

With regard to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Burundi was last reviewed by the UN CERD Committee in 1997. In its concluding observations,¹⁰⁸ the Committee asked that Burundi’s next periodic report be a comprehensive report and that it address all the points raised in its observations. It has been overdue since 26 November 1998, almost 20 years. Burundi does not seem to have prioritized the report’s delivery since it assumed HRC membership.

Special procedures

Regarding cooperation with special procedures of the Human Rights Council, Burundi’s record includes three pending visit requests, namely those of the Special Rapporteur on the independence of judges and lawyers, the Working Group on enforced or involuntary disappearances (WGEID), and the Independent Expert (now Special Rapporteur) on minority issues.

¹⁰⁵ OHCHR, tinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BDI/INT_CCPR_FUL_BDI_23652_E.pdf (accessed 23 July 2018).

¹⁰⁶ CEDAW/C/BDI/CO/5-6, para. 8.

¹⁰⁷ *Ibid.*, para. 20.

¹⁰⁸ CERD/C/304/Add.42

The WGEID sent a request for a visit in 2009 as well as four reminders in 2010, 2011, 2013, and 2014. It is noteworthy that Burundi signed the Convention for the Protection of All Persons from Enforced Disappearance (CPED) in 2007 but never ratified it.

As was mentioned above, the government attacked and defamed independent UN investigators, including in particular two members of UNIIB, who at the time were special procedure mandateholders.¹⁰⁹ In addition, the Burundian government lashed out against Michel Forst, Special Rapporteur on the situation of human rights defenders, after he published a report following his visit to the country (A/HRC/31/55/Add.2), which he partially updated in the light of the political developments and violence that erupted in April 2015.¹¹⁰ In his report, Forst stated, *inter alia*, that during his visit he was “struck by defamation campaigns conducted by certain media outlets. Defenders working on sensitive issues, such as corruption and killings, are in particular denounced as being part of the opposition.” He also noted that criminal files had been opened “against many human rights defenders.”¹¹¹

At the HRC’s 28th session (March 2015), the Burundian government responded to his analysis of the situation of HRDs in the country, stating that “[i]t was regrettable that those who were labelled as human rights defenders were considered as the only ones who spoke the truth.”¹¹²

Other instances of non-cooperation and aggressive behaviour

With regard to other fora, Burundi rejected resolutions of the UN Security Council (UNSC), including UNSC resolution 2303 (2016), which authorized the deployment of a small police force on its territory,¹¹³ threatened US Special Envoy to the Great Lakes Region of Africa Tom Perriello with prosecution for accusing President Nkurunziza of violating key elements of the Arusha Agreement, and threatened international NGOs, including Human Rights Watch and FIDH, as well as their top management, with lawsuits for “defamation.” Figures close to President Nkurunziza also alluded to the possibility for Burundi to “sue” the United States and the European Union (EU) before the International Court of Justice (ICJ).¹¹⁴

Two resolutions on the same country

At the Council’s 36th session (September 2017), the then Chairperson of the CoI on Burundi, Fatsah Ouguergouz, informed the Council that there were “reasonable grounds to believe that serious human rights violations and abuses have been committed in Burundi since 2015” and that these violations and abuses may constitute “crimes against humanity.” Given the prevailing impunity in the country, the CoI recommended that the ICC open an investigation. On the basis of these findings, the sponsor of HRC resolution 33/24, which established the CoI, namely the EU, sought an extension of the mandate of the Commission. This was materialised in HRC resolution 36/19.

109 Namely Christof Heyns, Special Rapporteur on extrajudicial, summary or arbitrary executions and Pablo de Greiff, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, who were among the “independent existing experts” appointed by the High Commissioner: see www.ohchr.org/EN/HRBodies/HRC/UNIIB/Pages/UNIIB.aspx

110 The report is available at: ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/55/Add.2

111 Para. 49.

112 UNOG, “Council Holds Dialogue with Special Adviser on the Prevention of Genocide and Special Rapporteur on Human Rights Defenders,” 3 March 2016, [www.unog.ch/unog/website/news_media_archive.nsf/\(httpNewsByYear_en\)/C1257F1D00309595C1257F6B00649DFF?OpenDocument](http://www.unog.ch/unog/website/news_media_archive.nsf/(httpNewsByYear_en)/C1257F1D00309595C1257F6B00649DFF?OpenDocument) (accessed 13 July 2018).

113 Ambassade du Burundi à Bruxelles, “Communiqué du Gouvernement suite à l’Adoption par le Conseil de Sécurité de la Résolution 2303 du 28 Juillet 2016,” www.ambaburundi.be/index.php/381-communique-du-gouvernement-suite-a-l-adoption-par-le-conseil-de-securite-de-la-resolution-2303-du-28-juillet-2016 (accessed 13 July 2018).

114 Burundi AG News, “Le Burundi compte poursuivre les USA et l’UE à la CIJ,” 2 October 2016, burundi-agnews.org/justice/le-burundi-compte-poursuivre-les-usa-et-lue-a-la-cij/ (accessed 13 July 2018).



A divided African Group

Despite the fact that no informal consultation had taken place at the time, and just before the tabling deadline, the African Group (minus Botswana and Rwanda) tabled its own resolution on Burundi which was adopted as HRC resolution 36/2 and that competed with the resolution extending the CoI's mandate. "The end result was a situation in which the Council was obliged to take action on two different draft resolutions on, ostensibly, the same subject—with significant negative implications for the credibility of the body."¹¹⁵

Because of the Council's procedural rules, action was first taken on the resolution tabled under item 2, namely the "African Group" text requesting OHCHR to appoint a team of three experts. The resolution was adopted by 23 votes to 14, with nine abstentions (Rwanda did not take part in the vote). The Council then adopted the EU-drafted resolution with a broader margin (22Y, 11N, 14A). According to the URG, "[t]hat the Council ended by adopting two different resolutions on the situation in Burundi seriously undermines the credibility of the body, as does the manner in which the 'African Group' (minus Botswana and Rwanda) text was put forward (supposedly by a UN regional group, but with two of its members in open opposition; and with minimal consultations 1-2 days before voting). [...] It is also worth noting that the adoption of duplicate resolutions, each catalysing different follow-up actions, also exacerbates the Council's already over-heavy agenda. For example, because of the two resolutions adopted at HRC36 on the situation in Burundi, there will now be a total of six debates on that situation in 2018."¹¹⁶

Consequences on the integrity and credibility of the Council

Although the Council is sovereign in making decisions stemming from its mandate, this certainly set a negative precedent, which was condemned as such by international and regional NGOs and triggered renewed calls for Burundi's suspension.¹¹⁷ The procedural ploy used at HRC36 will impose a heavy burden on the Council's agenda. However, if the Burundian government aimed to get rid of the investigative mechanism that is the CoI, the ploy failed. The resolution extending the mandate of the Commission was even adopted with a broader margin (eleven and nine votes, respectively) and with the support of two African states (Botswana and Rwanda).

Burundi's human rights situation is due to be publicly discussed on at least six occasions in 2018 (twice at each regular session), which is unprecedented at the Council. In March 2018, no member of the African Group (except Algeria) took the floor during the interactive dialogue with the CoI on Burundi. This rather rare occurrence further highlighted the African Group's unease *vis-à-vis* HRC developments at its previous session.

115 Read URG's report on the 36th session: URG, "Report on the 36th Session of the Human Rights Council," 2 October 2017, www.universal-rights.org/urg-human-rights-council-reports/report-36th-session-human-rights-council/ (accessed 29 May 2018).

116 *Ibid.*

117 See for instance DefendDefenders, "Reflections on the 36th session of the UN Human Rights Council," 12 October 2017, www.defenddefenders.org/2017/10/reflections-on-the-36th-session-of-the-un-human-rights-council/; ISHR, "Burundi: Commission of inquiry renewed, but human rights scrutiny on a razor's edge," 29 September 2017, www.ishr.ch/news/burundi-commission-inquiry-renewed-human-rights-scrutiny-razors-edge; EurActiv, "African 'solidarity vote' throws UN Burundi abuse probe into question," 29 September 2017, www.euractiv.com/section/africa/news/african-solidarity-vote-throws-un-burundi-abuse-probe-into-question/ (all accessed 13 July 2018).

DefendDefenders wrote: "Despite being a Member State of the UN HRC, Burundi's government has been unwilling to engage with mechanisms of the OHCHR, and continues to deny the grave situation on the ground. Because of this stance, it is unlikely that the creation of a mandate for an expert to provide technical assistance to the government at the behest of Burundi and supported by the African Group will translate into tangible results. [...] we did welcome the Council's decision to adopt a second resolution on Burundi, renewing the mandate of the COI for one year. However, in light of the damning findings of the COI's report, it is now essential that the Council acts to maintain its credibility and take steps to suspend Burundi as a Member State."

During the meeting, only Algeria, which called for technical assistance to be extended to the Burundian government, China, Iran, Myanmar, Russia, Syria and Venezuela delivered statements that were uncritical of Burundi's human rights record.

At the time of writing (July 2018), the Burundian authorities had withdrawn visas from the team of experts set up by HRC resolution 36/2, in spite of the fact that this resolution was adopted at Burundi's own initiative and with its support. (Members of the CoI continue to be denied access to the Burundian territory.) While this Kafkaesque development may indicate disagreement and lack of coordination within Burundi's government, it also sends a catastrophic signal to the Council as a whole. Members of the African Group indicated to DefendDefenders¹¹⁸ that Burundi's denial of visas was also disrespectful of its regional group, as a number of the latter's members supported HRC resolution 36/2.

118 Interviews conducted during the 38th session of the Human Rights Council (June 2018).





Conclusion

A regressive, abusive, and irresponsible voting record

As a member of the Human Rights Council, Burundi's voting record on country-specific as well as on thematic initiatives has been appalling. From the beginning of its term, in January 2016, to date, the Burundian government has acted as a regressive, abusive, and irresponsible force. It has quasi-systematically rejected Council action on country-specific situations, including under item 10. This behaviour is unprecedented for a member of the African Group, and at odds with the spirit of the Council's founding resolution and with its mandate. It should be exposed so that observers, human rights advocates, and Burundian citizens know that the Burundian government has made a mockery of its membership rights in the Council.

Burundi's double standards

Burundi's government, which is usually quick to denounce "double standards" and "selectivity," voted against resolutions tabled under item 10 although it officially praises the provision of technical assistance, in line with a number of states that consider that they are best served by a Council acting as a service-provider. Burundi's position on resolutions extending technical assistance and capacity-building to Ukraine and Georgia can only be explained by its desperate search for allies—hence its alignment with the political agenda of other, more influential states, including Russia.

With regard to item 4, no other African state has demonstrated such opposition to Council action.¹¹⁹ In the last few regular sessions, Burundi *systematically* opposed country-specific resolutions stemming from the Council's investigative, monitoring and accountability mandate. The Council's 37th session was particularly striking in this regard. The Burundian government has failed not only its own population but also victims of human rights violations and abuses in other countries, from Syria to Iran, and Myanmar.

Burundi's systematic opposition to Council action on grave human rights situations

Throughout its term, Burundi has often been in minority situations, whenever a vote was requested. It sometimes found itself in *very small* minorities (for example on Eastern Ghouta, Syria or Myanmar). With regard to item 4 resolutions, Burundi was almost always either the only, or one of the only two African states voting "no." The Burundian delegation abstained on a few occasions, including on procedural motions. It remains unclear whether this was the result of clear government instructions.

A red thread in Burundi's voting record has been its support to initiatives seeking to weaken human rights standards and mechanisms, the Council's institutional integrity, responsive multilateral action, and the universality of human rights. Burundi has been a strong supporter of relativism and "particularities," in violation of the Vienna Declaration and Programme of Action, the International Bill of Human Rights, and the Council's mandate to address situations of human rights violations.

¹¹⁹ Perhaps also in part because African states that are members of the Arab League vote in favour of resolutions on the human rights situation in the Islamic Republic of Iran.



From the start, Burundi was unfit to serve as a Council member. It has not added any value to the Council's work, and has instead attempted to weaken it. In all good conscience, no UN member state should have voted to elect Burundi to the UN's top human rights body. Nevertheless, 162 did so.

Conclusions as regards Burundi's election to the HRC

This fact-based analysis of Burundi's record as a Council member highlights two additional points. First, at the time, as well as in retrospect, Burundi's election was a disgraceful moment for the Council and for member states of the General Assembly, which were responsible for its election. Its domestic human rights record made it unfit for a seat, and its election was a slap on the face of victims and those who want to enhance respect for Council membership criteria. Burundi's behaviour as a member proved that these assertions were by no means exaggerations.

Second, clean slates should end. Non-competitive elections have had a deleterious effect on respect for membership standards. In this regard, the 2017 HRC election was a step backward. While the 2016 election showed the value of contested elections,¹²⁰ in 2017, four out of five regional groups ran clean slates, annihilating the competition process foreseen in the Council's founding resolution.¹²¹ Political will to improve HRC elections, i.e., political will on the part of electing states as well as on the part of states considering a candidacy within their regional group, is needed to ensure that HRC elections are meaningful and that respect for HRC membership criteria is enhanced.¹²²

States that voted for Burundi while seeking to advance human rights protection and the institutional integrity and credibility of the Council literally shot a bullet in their own foot. By failing to clearly call for the suspension of Burundi's membership rights in the Council and to take initiatives in this regard, they left the wound untreated. Throughout 2016, 2017 and 2018, the multiple statements the Burundian government made to announce its unwillingness to cooperate with UN mechanisms did not trigger HRC or UNGA action with regard to its membership rights.

In a nutshell, while, as a candidate, Burundi failed to fulfil the first part of paragraph 9 of UNGA resolution 60/251 ("uphold the highest standards in the promotion and protection of human rights"), as a member of the HRC, it routinely violated the second part of the paragraph, i.e., members' obligation to "fully cooperate with the Council."

It is high time to ask electing states: Is this what you really want for the Human Rights Council?

Has the Council exercised its prevention mandate with regard to Burundi?

While Burundi was a member of the Council, its domestic human rights crisis did not stop. The situation has not stabilized. Observers point to the fact that violations are more hidden or "underground" than in 2015-2016. Hence a question: Has the Council been ineffective in addressing Burundi's situation? On the one hand, the HRC has not been the only international body to dedicate attention to Burundi. The UN Security Council and African Union bodies and mechanisms have made the country's situation a priority. On the other hand, another question also ought to be raised: What would have happened if the Council (and the international community as a whole) had not taken any action on the country?

120 yourHRC.org, "2015 elections to the UN Human Rights Council," yourhrc.org/2015-elections/ (accessed 23 July 2018).
121 twitter.com/findingjanice/status/919932928817278976
122 twitter.com/Your_HRC/status/910118945486721024

In many respects, Burundi has been a case of the Council exercising its prevention mandate,¹²³ although NGOs pushed for Council action earlier than the latter actually adopted a robust response. Without this, and other international bodies', action, the crisis in Burundi could have resulted in an even larger number of victims, with even graver regional consequences.

A Pyrrhic victory... which should not be repeated

Another important lesson is that Burundi has probably been subjected to additional spotlight *because of its status as a Human Rights Council member*.¹²⁴ This could be a deterrent for governments seeking HRC election in a bid to escape scrutiny and to shield themselves against international criticism. In a sense, Burundi's election to the Council was a Pyrrhic victory. The country's situation was subjected to a great deal of public attention, including through High Commissioner and OHCHR statements, special procedure press releases, treaty body reviews, and in state, NHRI and NGO statements.

In the future, this might push unfit candidates to think twice before putting their candidacy to the Council forward. Nevertheless, the best case scenario remains a situation in which unfit candidates do not run and are not elected to the Council.

123 Nicolas Agostini, *op. cit.*

124 Other Council members with a questionable human rights record (e.g., Saudi Arabia, Venezuela, the Philippines) were also subjected to increased attention in the recent period.





Recommendations

To member states of the UN Human Rights Council

- Recommend that, in view of the gross and systematic human rights violations committed in the country, the UNGA suspend Burundi's membership rights in the HRC. Although Burundi is now in its final year as a Council member, it is not too late to do so. Such a move would go a long way towards enhancing the Council's credibility;
- Recommend suspension whenever a member state of the HRC violates the membership criteria set out in UNGA resolution 60/251; and
- Any state that, while being a member of the HRC, is the focus of a country-specific resolution, irrespective of the agenda item under which the resolution is tabled, should consider recusing itself and refraining from taking part in the vote, unless the resolution is adopted by consensus.

To candidates for membership in the Human Rights Council

- Ensure that, within their respective regional groups, for each election, the number of candidates to the Human Rights Council is larger than the number of vacant seats, so that the process foreseen in UNGA resolution 60/251 actually takes place (in other words, avoid "clean slates"); and
- Develop in a transparent and consultative process and make public, at an early stage (i.e., at least six months before the relevant HRC election), solid and substantial voluntary pledges and commitments, as recommended by paragraph 8 of UNGA resolution 60/251. Such pledges and commitments should include elements indicating a satisfactory record of cooperation with UN human rights bodies and mechanisms and engagement with the international human rights system, as per the criteria set out below.

To member states of the UN General Assembly

- In view of the gross and systematic human rights violations committed in the country, suspend Burundi's membership rights in the HRC;
- Ensure that, within their respective regional groups, the number of candidates to the Human Rights Council is larger than the number of vacant seats for each election, so that the process foreseen in UNGA resolution 60/251 actually takes place (in other words, avoid "clean slates"); and
- Encourage states in other regional groups to put forward candidacies, so that no regional group runs a "clean slate."



When electing states to the HRC, UN member states should:

- Prioritize voting for candidates that have made substantial voluntary pledges and commitments public. Refrain from voting for candidates that have failed to publish such pledges and commitments, or that have formulated sub-standard pledges or presented pledges that do not stem from a genuine, transparent and consultative process;
- Vote for candidates that have a satisfactory record of cooperation with UN human rights bodies and mechanisms and engagement with the international human rights system, including the following elements:
 - Ratification of the main human rights instruments and their optional protocols, or meaningful steps taken toward their ratification,
 - Absence of, or meaningful steps taken toward lifting, reservations to these instruments,
 - Timely, regular submission of periodic reports to treaty monitoring bodies, and absence of significantly overdue (i.e., more than three years) reports,
 - Standing invitation extended to HRC special procedure mandate-holders, and prompt, positive responses given to visit requests by the latter,
 - High (i.e., higher than 75%) rate of reply to communications and letters of allegation received from special procedures,
 - Commitment to condemn acts of intimidation, threats and reprisals committed against human rights defenders and any individual seeking to cooperate with the UN and its bodies and mechanisms, and demand accountability for these acts,
 - Commitment to oppose, while serving on the Council, procedural ploys such as “no-action motions” on country-specific and thematic resolutions,
 - Commitment, while serving on the Council, to “address human rights concerns on their merits, applying objective and human rights-based criteria in determining whether and how the Council should respond to a situation of concern, and take leadership and responsibility in initiating action when such criteria are met,” in line with the incoming members’ pledge read out at the Council’s 37th session;
- In line with the recommendation set out in the joint civil society paper developed for the Council’s tenth anniversary,¹²⁵ UN member states should develop and adhere to an “electing members pledge,” which would commit them, inter alia, to not trade votes for elections to human rights bodies;
- Draw “red lines”: Exclude voting for candidates that have failed to fully cooperate with UN human rights bodies and mechanism, including the HRC and its mechanisms, or have attacked, defamed or otherwise challenged the independence or professionalism of OHCHR, UN officials and independent experts or investigators. Publicly exclude voting for candidates that have announced their intention not to cooperate fully with such bodies and mechanisms or have engaged in acts of intimidation, threats and reprisals against HRDs or any individual seeking to cooperate with the UN and its bodies and mechanisms; and
- Refrain from voting for states that do not meet the membership criteria set out in UNGA resolution 60/251, i.e., uphold the highest standards in the promotion and protection of human rights and fully cooperate with the Council and its mechanisms.

125 ISHR *et al.*, “Human Rights Council at 10,” *op. cit.*

Annex: Burundi's voting record

List of resolutions, amendments and motions on which a vote was requested; not exhaustive. Resolutions appear with a grey background.

Resolutions, motions and amendments	Voting result	Burundi's vote
Thematic		
HRC31: Effects of terrorism on the enjoyment of all human rights	28Y, 14N, 5A	Y
HRC31: Amendments L.41, L.43, L.46 and L.58 to the draft resolution on Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights	14Y, 22N, 10A	Y
HRC31: Amendment L.42 to the draft resolution on Protecting human rights defenders	14Y, 20N, 12A	Y
HRC31: Amendment L.44 to the draft resolution on Protecting human rights defenders	14Y, 21N, 11A	Y
HRC31: Amendment L.45 to the draft resolution on Protecting human rights defenders	13Y, 20N, 13A	Y
HRC31: Amendment L.47 to the draft resolution on Protecting human rights defenders	15Y, 21N, 10A	Y
HRC31: Amendment L.48 to the draft resolution on Protecting human rights defenders	12Y, 23N, 11A	Y
HRC31: Amendment L.49 to the draft resolution on Protecting human rights defenders	13Y, 22N, 11A	Y
HRC31: Amendment L.50 to the draft resolution on Protecting human rights defenders	13Y, 22N, 11A	Y
HRC31: Amendment L.51 to the draft resolution on Protecting human rights defenders	12Y, 21N, 13A	Y



HRC31: Amendment L.53 to the draft resolution on Protecting human rights defenders	14Y, 22N, 10A	Y
HRC31: Amendment L.54 to the draft resolution on Protecting human rights defenders	13Y, 20N, 13A	Y
HRC31: Amendment L.55 to the draft resolution on Protecting human rights defenders	15Y, 20N, 11A	Y
HRC31: Amendment L.56 to the draft resolution on Protecting human rights defenders	13Y, 21N, 12A	Y
HRC31: Amendment L.57 to the draft resolution on Protecting human rights defenders	13Y, 22N, 11A	Y
HRC31: Amendment L.59 to the draft resolution on Protecting human rights defenders	13Y, 21N, 12A	Y
HRC31: Amendment L.60 to the draft resolution on Protecting human rights defenders	11Y, 21N, 14A	Y
HRC31: Amendment L.61 to the draft resolution on Protecting human rights defenders	15Y, 21N, 10A	Y
HRC31: Amendment L.62 to the draft resolution on Protecting human rights defenders	13Y, 22N, 11A	Y
HRC31: Amendment L.63 to the draft resolution on Protecting human rights defenders	13Y, 21N, 12A	Y
HRC31: Amendment L.64 to the draft resolution on Protecting human rights defenders	12Y, 20N, 14A	Y
HRC31: Amendment L.65 to the draft resolution on Protecting human rights defenders	12Y, 20N, 13A	Y
HRC31: Amendment L.66 to the draft resolution on Protecting human rights defenders	13Y, 21N, 12A	Y
HRC31: Amendment L.67 to the draft resolution on Protecting human rights defenders	13Y, 22N, 11A	Y

HRC31: Amendment L.68 to the draft resolution on Protecting human rights defenders	13Y, 21N, 12A	Y
HRC31: Amendment L.69 to the draft resolution on Protecting human rights defenders	12Y, 22N, 12A	Y
HRC31: Amendment L.70 to the draft resolution on Protecting human rights defenders	17Y, 20N, 9A	Y
HRC31: Amendment L.71 to the draft resolution on Protecting human rights defenders	14Y, 20N, 12A	Y
HRC31: Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights	33Y, 6N, 8A	N
HRC31: Amendment L.72 to the draft resolution on The promotion and protection of human rights in the context of peaceful protests	12Y, 23N, 11A	Y
HRC31: Amendment L.74 to the draft resolution on peaceful protests	12Y, 23N, 10A	Y
HRC31: Amendment L.75 to the draft resolution on peaceful protests	17Y, 23N, 6A	Y
HRC31: Amendment L.76 to the draft resolution on peaceful protests	13Y, 24N, 9A	Y
HRC31: Amendment L.78 to the draft resolution on peaceful protests	13Y, 23N, 10A	Y
HRC31: Amendment L.79 to the draft resolution on peaceful protests	13Y, 22N, 11A	Y
HRC31: The promotion and protection of human rights in the context of peaceful protests	31Y, 5N, 10A	N
HRC32: Motion to adjourn the consideration of the draft resolution on Protection against violence and discrimination based on sexual orientation and gender identity ("No-action motion")	15Y, 22N, 9A	Y
HRC32: Amendment L.71 to the draft resolution on Protection against violence and discrimination based on sexual orientation and gender identity (SOGI)	17Y, 18N, 9A	Y
HRC32: Amendment L.72 to the draft resolution on SOGI	17Y, 18N, 9A	Y



HRC32: Amendment L.73 to the draft resolution on SOGI	24Y, 17N, 4A	Y
HRC32: Amendment L.74 to the draft resolution on SOGI	23Y, 17N, 5A	Y
HRC32: Amendment L.75 to the draft resolution on SOGI	20Y, 18N, 6A	Y
HRC32: Amendment L.76 to the draft resolution on SOGI	21Y, 17N, 7A	Y
HRC32: Amendment L.77 to the draft resolution on SOGI	23Y, 18N, 4A	Y
HRC32: Amendment L.78 to the draft resolution on SOGI	18Y, 17N, 9A	Y
HRC32: Amendment L.79 to the draft resolution on SOGI	22Y, 17N, 5A	Y
HRC32: Amendment L.80 to the draft resolution on SOGI	16Y, 20N, 8A	Y
HRC32: Amendment L.81 to the draft resolution on SOGI	17Y, 19N, 8A	Y
HRC32: Vote on retaining the title of the draft resolution on SOGI	22Y, 15N, 8A	N
HRC32: Vote on retaining the preambular paragraph 4 of the draft resolution on SOGI	21Y, 14N, 9A	A
HRC32: Vote on retaining the operative paragraph 2 of the draft resolution on SOGI	23Y, 14N, 8A	A
HRC32: Vote on retaining the operative paragraphs 3 to 7 of the draft resolution on SOGI	21Y, 17N, 7A	N
HRC32: Protection against violence and discrimination based on sexual orientation and gender identity	23Y, 18N, 6A	N
HRC32: Amendment L.67 to the draft resolution on Elimination of discrimination against women (DAW)	16Y, 20N, 11A	A
HRC32: Amendment L.69 to the draft resolution on DAW	16Y, 21N, 9A	A
HRC32: Amendment L.70 to the draft resolution on DAW	14Y, 23N, 9A	A

HRC32: Amendment L.86 to the draft resolution on The promotion, protection and enjoyment of human rights on the Internet	15Y, 23N, 9A	Y
HRC32: Amendment L.87 to the draft resolution on The promotion, protection and enjoyment of human rights on the Internet	17Y, 25N, 5A	Y
HRC32: Amendment L.88 to the draft resolution on The promotion, protection and enjoyment of human rights on the Internet	18Y, 24N, 5A	Y
HRC32: Amendment L.36 to the draft resolution on Accelerating efforts to eliminate violence against women (VAW)	12Y, 22N, 13A	A
HRC32: Amendment L.37 to the draft resolution on VAW	15Y, 22N, 9A	Y
HRC32: Amendment L.42 to the draft resolution on VAW	14Y, 23N, 10A	A
HRC32: Amendment L.43 to the draft resolution on VAW	10Y, 24N, 12A	Y
HRC32: Amendment L.52 to the draft resolution on Civil society space	12Y, 22N, 12A	Y
HRC32: Amendment L.53 to the draft resolution on Civil society space	12Y, 23N, 12A	A
HRC32: Amendment L.54 to the draft resolution on Civil society space	13Y, 23N, 11A	Y
HRC32: Amendment L.55 to the draft resolution on Civil society space	17Y, 21N, 9A	Y
HRC32: Amendment L.56 to the draft resolution on Civil society space	16Y, 22N, 9A	Y
HRC32: Amendment L.59 to the draft resolution on Civil society space	9Y, 22N, 15A	Y
HRC32: Amendment L.60 to the draft resolution on Civil society space	13Y, 22N, 12A	A
HRC32: Amendment L.61 to the draft resolution on Civil society space	15Y, 22N, 10A	Y
HRC32: Amendment L.62 to the draft resolution on Civil society space	15Y, 22N, 10A	Y
HRC32: Amendment L.63 to the draft resolution on Civil society space	13Y, 22N, 12A	A
HRC32: Amendment L.64 to the draft resolution on Civil society space	11Y, 23N, 13A	A



HRC32: Amendment L.65 to the draft resolution on Civil society space	9Y, 22N, 15A	Y
HRC32: Civil society space	31Y, 7N, 9A	A
HRC33: Amendment L.38 to the draft resolution on Preventable maternal mortality and morbidity and human rights	20Y, 18N, 7A	Y
HRC33: Amendment L.42 to the draft resolution on Preventable maternal mortality	23Y, 13N, 10A	Y
HRC33: Amendment L.46 to the draft resolution on Preventable maternal mortality	22Y, 17N, 5A	Y
HRC33: Amendment L.49 to the draft resolution on Preventable maternal mortality	22Y, 16N, 6A	Y
HRC33: Amendment L.51 to the draft resolution on Preventable maternal mortality	24Y, 15N, 5A	Y
HRC33: Oral amendment 1 to the draft resolution on Protection of human rights and fundamental freedoms while countering terrorism	15Y, 20N, 10A	Y
HRC33: Oral amendments 2, 3, 4 and 5 to the draft resolution on Protection of human rights and fundamental freedoms while countering terrorism	8Y, 25N, 11A	Y
HRC33: Oral amendment 6 to the draft resolution on Protection of human rights and fundamental freedoms while countering terrorism	15Y, 22N, 9A	Y
HRC33: Oral amendment 7 to the draft resolution on Protection of human rights and fundamental freedoms while countering terrorism	19Y, 17N, 10A	Y
HRC33: Oral amendment 8 to the draft resolution on Protection of human rights and fundamental freedoms while countering terrorism	16Y, 21N, 8A	Y
HRC33: Oral amendment 9 to the draft resolution on Protection of human rights and fundamental freedoms while countering terrorism	11Y, 21N, 13A	Y
HRC33: Protection of human rights and fundamental freedoms while countering terrorism	38Y, 0N, 9A	A

HRC33: Amendment L.34 to the draft resolution on Equal participation in political and public affairs	17Y, 25N, 5A	Y
HRC34: Amendment L.42 to the draft resolution on the Mandate of the Special Rapporteur on the situation of human rights defenders	15Y, 28N, 4A	Y
HRC34: Amendment L.43 to the draft resolution on the Mandate of the Special Rapporteur on the situation of human rights defenders	12Y, 29N, 6A	Y
HRC34: Amendment L.44 to the draft resolution on the Mandate of the Special Rapporteur on the situation of human rights defenders	11Y, 29N, 6A	Y
HRC34: Amendment L.45 to the draft resolution on the Mandate of the Special Rapporteur on the situation of human rights defenders	11Y, 29N, 6A	Y
HRC34: Amendment L.51 to the draft resolution on the Mandate of the Special Rapporteur on the situation of human rights defenders	16Y, 27N, 4A	Y
HRC34: Effects of terrorism on the enjoyment of all human rights	28Y, 15N, 4A	Y
HRC34: Amendment L.52 to the draft resolution on Human rights, democracy and the rule of law	18Y, 23N, 6A	Y
HRC34: Mandate of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action	46Y, 1N, 0A	Y
HRC35: Human rights and international solidarity	32Y, 15N, 0A	Y
HRC35: Promotion of the right to peace	32Y, 11N, 4A	Y
HRC35: Amendment L.39 to the draft resolution on Accelerating efforts to eliminate violence against women: engaging men and boys in preventing and responding to violence against all women and girls (VAW)	13Y, 25N, 8A	Y
HRC35: Amendment L.40 to the draft resolution on Accelerating efforts to eliminate VAW	16Y, 25N, 4A	Y
HRC35: Amendment L.45 to the draft resolution on Protection of the family: role of the family in supporting the protection and promotion of human rights of older persons	19Y, 22N, 5A	N



HRC35: Amendments L.47 and L.48 to the draft resolution on Protection of the family: role of the family in supporting the protection and promotion of human rights of older persons	17Y, 23N, 6A	N
HRC35: Protection of the family: role of the family in supporting the protection and promotion of human rights of older persons	30Y, 12N, 5A	Y
HRC35: Amendment L.41 to the draft resolution on Elimination of discrimination against women and girls (DAW)	14Y, 26N, 6A	Y
HRC35: Amendment L.42 to the draft resolution on DAW	17Y, 25N, 3A	Y
HRC35: Oral amendment to the draft resolution on DAW	10Y, 24N, 11A	Y
HRC35: Amendment L.43 to the draft resolution on Protection of human rights and fundamental freedoms while countering terrorism	13Y, 26N, 8A	Y
HRC35: Amendment L.44 to the draft resolution on Protection of human rights and fundamental freedoms while countering terrorism	9Y, 26N, 11A	Y
HRC35: Amendment L.46 to the draft resolution on Protection of human rights and fundamental freedoms while countering terrorism	14Y, 23N, 10A	Y
HRC36: The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination	32Y, 15N, 0A	Y
HRC36: Mandate of the Independent Expert on the promotion of a democratic and equitable international order	32Y, 15N, 0A	Y
HRC36: Amendment L.63 to the draft resolution on Enforced or involuntary disappearances	17Y, 24N, 6A	Y
HRC36: Amendment L.64 to the draft resolution on Enforced or involuntary disappearances	17Y, 24N, 6A	Y
HRC36: The right to development	31Y, 11N, 4A	Y
HRC36: Human rights and unilateral coercive measures	30Y, 15N, 1A	Y
HRC36: Amendment L.37 to the draft resolution on The question of the death penalty	15Y, 22N, 7A	Y

HRC36: Amendment L.38 to the draft resolution on The question of the death penalty	16Y, 22N, 7A	Y
HRC36: Amendment L.39 to the draft resolution on The question of the death penalty	10Y, 22N, 15A	Y
HRC36: Amendment L.40 to the draft resolution on The question of the death penalty	10Y, 21N, 16A	Y
HRC36: Amendment L.41 to the draft resolution on The question of the death penalty	18Y, 19N, 9A	Y
HRC36: Amendment L.42 to the draft resolution on The question of the death penalty	11Y, 21N, 13A	Y
HRC36: Amendment L.62 to the draft resolution on The question of the death penalty	17Y, 22N, 7A	Y
HRC36: The question of the death penalty	27Y, 13N, 7A	N
HRC36: Amendment L.43 to the draft resolution on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights ("Reprisals" resolution)	10Y, 22N, 14A	Y
HRC36: Amendment L.45 to the draft resolution on Reprisals	14Y, 22N, 10A	Y
HRC36: Amendment L.46 to the draft resolution on Reprisals	24Y, 18N, 5A	Y
HRC36: Amendment L.47 to the draft resolution on Reprisals	13Y, 23N, 11A	Y
HRC36: Amendment L.48 to the draft resolution on Reprisals	17Y, 20N, 10A	Y
HRC36: Amendment L.49 to the draft resolution on Reprisals	19Y, 22N, 6A	Y
HRC36: Amendment L.50 to the draft resolution on Reprisals	16Y, 23N, 7A	Y
HRC36: Amendment L.51 to the draft resolution on Reprisals	19Y, 21N, 7A	Y
HRC36: Amendment L.52 to the draft resolution on Reprisals	16Y, 26N, 5A	Y
HRC36: Amendment L.53 to the draft resolution on Reprisals	15Y, 22N, 10A	Y



HRC36: Amendment L.54 to the draft resolution on Reprisals	18Y, 21N, 8A	Y
HRC36: Amendment L.55 to the draft resolution on Reprisals	16Y, 21N, 10A	Y
HRC36: Amendment L.56 to the draft resolution on Reprisals	21Y, 20N, 6A	Y
HRC36: Amendment L.57 to the draft resolution on Reprisals	16Y, 22N, 9A	Y
HRC36: Amendment L.58 to the draft resolution on Reprisals	18Y, 21N, 8A	Y
HRC36: Amendment L.59 to the draft resolution on Reprisals	14Y, 23N, 10A	Y
HRC36: Amendment L.60 to the draft resolution on Reprisals	23Y, 19N, 5A	Y
HRC36: Amendment L.61 to the draft resolution on Reprisals	18Y, 23N, 6A	Y
HRC36: Cooperation with the United Nations, its representatives and mechanisms in the field of human rights ("Reprisals" resolution)	28Y, 0N, 19A	A
HRC37: Human rights and unilateral coercive measures	28Y, 15N, 3A	Y
HRC38: Amendment L.24 to the draft resolution on Elimination of all forms of discrimination against women and girls (DAW)	12Y, 24N, 7A	Y
HRC38: Amendment L.35 to the draft resolution on DAW	11Y, 24N, 7A	Y
HRC38: Amendment L.32 to the draft resolution on Accelerating efforts to eliminate violence against women and girls: Preventing and responding to violence against women and girls in digital contexts	13Y, 25N, 6A	Y
HRC38: Amendment L.26 to the draft resolution on The promotion and protection of human rights in the context of peaceful protests	14Y, 23N, 8A	Y
HRC38: Amendment L.37 to the draft resolution on Civil society space	14Y, 22N, 10A	Y
HRC38: Amendment L.38 to the draft resolution on Civil society space	15Y, 21N, 10A	Y
HRC38: Amendment L.39 to the draft resolution on Civil society space	12Y, 24N, 10A	Y
HRC38: Civil society space	35Y, 0N, 11A	A

Country-specific		
HRC31: The human rights situation in the Syrian Arab Republic	27Y, 6N, 14A	N
HRC31: Motion to adjourn the consideration of the draft resolution on the Situation of human rights in the Islamic Republic of Iran ("No-action motion")	14Y, 23N, 9A	A
HRC31: Situation of human rights in the Islamic Republic of Iran	20Y, 15N, 11A	N
HRC31: Human rights in the occupied Syrian Golan	31Y, 0N, 16A	Y
HRC31: Human rights situation in the Occupied Palestinian Territory, including East Jerusalem	42Y, 0N, 5A	Y
HRC31: Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem	32Y, 0N, 15A	Y
HRC31: Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan	32Y, 0N, 15A	Y
HRC32: The human rights situation in the Syrian Arab Republic	27Y, 6N, 14A	A
HRC32: Situation of human rights in Belarus	15Y, 9N, 23A	N
HRC32: Cooperation with and assistance to Ukraine in the field of human rights	22Y, 6N, 19A	N
HRC33: The human rights situation in the Syrian Arab Republic	26Y, 7N, 14A	N
HRC33: Situation of human rights in Burundi	19Y, 7N, 21A	N
25 th special session: The deteriorating situation of human rights in the Syrian Arab Republic, and the recent situation in Aleppo	24Y, 7N, 16A	N
HRC34: Situation of human rights in the Islamic Republic of Iran	22Y, 12N, 13A	N
HRC34: The human rights situation in the Syrian Arab Republic	27Y, 7N, 13A	N
HRC34: Human rights in the occupied Syrian Golan	26Y, 3N, 18A	Y



HRC34: Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem	30Y, 2N, 15A	Y
HRC34: Right of the Palestinian people to self-determination	43Y, 2N, 2A	Y
HRC34: Human rights situation in the Occupied Palestinian Territory, including East Jerusalem	41Y, 2N, 2A	Y
HRC34: Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan	36Y, 2N, 9A	Y
HRC34: Cooperation with Georgia	18Y, 5N, 24A	N
HRC35: The human rights situation in the Syrian Arab Republic	27Y, 8N, 12A	N
HRC35: The situation of human rights in Belarus	18Y, 8N, 21A	N
HRC35: Cooperation with and assistance to Ukraine in the field of human rights	22Y, 6N, 19A	N
HRC36: Mission by the Office of the United Nations High Commissioner for Human Rights to improve the human rights situation and accountability in Burundi (36/2 (item 2))	23Y, 14N, 9A	Y
HRC36: Renewal of the mandate of the Commission of Inquiry on Burundi (36/19 (item 4))	22Y, 11N, 14A	N
HRC36: The human rights situation in the Syrian Arab Republic	27Y, 7N, 13A	N
HRC36: Technical assistance and capacity-building in the field of human rights in the Democratic Republic of the Congo	45Y, 1N, 1A	Y
HRC36: Oral amendment to the draft resolution on Advisory services and technical assistance for Cambodia	12Y, 20N, 15A	N
27 th special session: The Human rights situation of the minority Rohingya Muslim population and other minorities in the Rakhine State of Myanmar	33Y, 3N, 9A	N

HRC37: Vote on a proposal to hold an Urgent debate on the situation of Eastern Ghouta in the Syrian Arab Republic	25Y, 4N, 8A	Did not take part in the vote
HRC37: Amendment L.2 to the draft resolution on The situation in Eastern Ghouta in the Syrian Arab Republic	10Y, 19N, 17A	Y
HRC37: Amendment L.3 to the draft resolution on The situation in Eastern Ghouta in the Syrian Arab Republic	9Y, 19N, 18A	Y
HRC37: Amendment L.4 to the draft resolution on The situation in Eastern Ghouta in the Syrian Arab Republic	9Y, 20N, 17A	Y
HRC37: Amendment L.5 to the draft resolution on The situation in Eastern Ghouta in the Syrian Arab Republic	4Y, 23N, 19A	Y
HRC37: (Following an urgent debate) The situation in Eastern Ghouta in the Syrian Arab Republic	29Y, 4N, 14A	N
HRC37: Human rights in the occupied Syrian Golan	25Y, 14N, 7A	Y
HRC37: Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem	27Y, 4N, 15A	Y
HRC37: Right of the Palestinian people to self-determination	43Y, 2N, 1A	Y
HRC37: Human rights situation in the Occupied Palestinian Territory, including East Jerusalem	41Y, 3N, 2A	Y
HRC37: Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan	34Y, 4N, 8A	Y
HRC37: Cooperation with Georgia	19Y, 5N, 23A	N
HRC37: Amendment L.60 to the draft resolution on The human rights situation in the Syrian Arab Republic	8Y, 25N, 14A	Y
HRC37: The human rights situation in the Syrian Arab Republic	27Y, 4N, 16A	N
HRC37: Situation of human rights in the Islamic Republic of Iran	21Y, 7N, 19A	N
HRC37: Situation of human rights in Myanmar	32Y, 5N, 10A	N



HRC38: The human rights situation in the Syrian Arab Republic	26Y, 5N, 15A	N
HRC38: The situation of human rights in Belarus	19Y, 6N, 21A	N

Voting results are available in HRC session reports (www.ohchr.org/EN/HRBodies/HRC/Pages/Sessions.aspx) and on the HRC extranet.

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