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## Burundi

BDI/42 - Pasteur Mpawenayo  
BDI/44 - Hussein Radjabu  
BDI/57 - Gérard Nkurunziza  
BDI/59 - Deo Nshimirimana

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

The Committee,

*Referring* to its examination of the cases of the four above-mentioned former Burundian parliamentarians and to the resolution adopted by the Governing Council at its 194<sup>th</sup> session (March 2014),

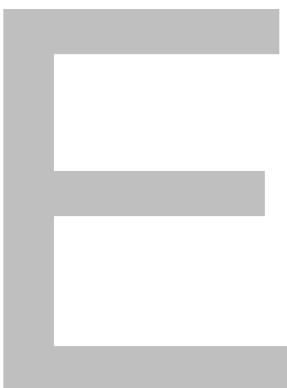
*Referring* to the letter from the Speaker of the National Assembly of 7 January 2015 and to the information provided by the complainants,

*Considering* the report (CL/193/11(b)-R.1) on the visit conducted by its President to Burundi from 17 to 20 June 2013,

*Recalling* that the cases, which have been before the Committee for many years, concern criminal proceedings brought against Mr. Hussein Radjabu, Mr. Pasteur Mpawenayo, Mr. Gérard Nkurunziza and Mr. Deo Nshimirimana since 2007-2008, all of which have been characterized by excessive delays and marred by serious flaws,

*Recalling also* that the status of the judicial proceedings is currently as follows:

- Regarding Mr. Radjabu
  - Mr. Radjabu was sentenced at final instance to 13 years in prison and stripped of his civil and political rights for endangering State security;
  - In August 2013, the Minister of Justice rejected Mr. Radjabu's application for a retrial;
  - Having served nearly half of his sentence, Mr. Radjabu is eligible under the law for release on parole, but the competent authorities have not responded to his requests; Mr. Radjabu continues to serve his sentence in Bujumbura prison,
- Regarding Mr. Mpawenayo
  - Mr. Mpawenayo was arrested in July 2008 and charged with being Mr. Radjabu's accomplice and with having co-chaired a meeting at which the acts of which he and Mr. Radjabu stand accused were reportedly committed; Mr. Mpawenayo was acquitted at first instance in May 2012 and released after four years in remand custody; in the acquittal judgment, the Supreme Court held that the State prosecution service had failed to prove the charges against him;
  - The State prosecution service has appealed,



- Regarding Mr. Nshimirimana

- Mr. Nshimirimana was arrested in October 2010 by State intelligence agents and charged with plotting against the State and incitement to disobedience; he was acquitted by the Supreme Court on 26 November 2012 and released after having spent almost as much time in prison as he would have had he been convicted;
- According to the parliamentary authorities and the complainant, the State prosecution service had appealed the acquittal, but Mr. Nshimirimana was currently at liberty,

- Regarding Mr. Nkurunziza

- Mr. Nkurunziza was arrested in July 2008 and charged with having distributed weapons in his home province of Kirundo in order to foment rebellion against the State; the proceedings against him suffered numerous delays and the lawfulness of his detention was never examined by a judge in over five years of proceedings; Mr. Nkurunziza was finally acquitted by the Supreme Court on 31 January 2014 and released on 3 February 2014,

*Considering* the new information provided by the parliamentary authorities and the complainants, to wit:

- In early January 2015, the National Assembly Bureau organized a meeting with Mr. Mpawenayo, Mr. Nshimirimana and Mr. Nkurunziza to discuss their respective situations;
- According to the complainant, Mr. Mpawenayo had received no information on the appeal proceedings against him since 2013 when suddenly, in November 2014, he received a phone call from the Supreme Court summoning him to appear; having received no official written summons and no explanation of the purpose of the summons, Mr. Mpawenayo did not appear; the complainant fears that the proceedings have suddenly been accelerated in order to prevent Mr. Mpawenayo from standing in the May 2015 legislative elections; according to the Speaker of the National Assembly, the appeal proceedings against Mr. Mpawenayo cannot go forward until he appears before the Supreme Court, and he is therefore responsible for any delays they suffer;
- The complainants have indicated on several occasions that they have received no information on the appeal proceedings against Mr. Nshimirimana and Mr. Nkurunziza; according to the Speaker of the National Assembly, after verification by the National Assembly, the State prosecution service did not appeal the acquittals, which were therefore final, irrevocable and unimpeachable; he added that it was up to Mr. Nshimirimana and Mr. Nkurunziza to ask the Supreme Court head clerk for a certificate of non-appeal and considered that they had been negligent in failing to do so and in not informing the Committee that the judicial proceedings were closed;
- According to the complainants, the three former members of parliament had been the target of threats and intimidation since their release and feared for their safety; apparently they had received countless anonymous and threatening telephone calls, were kept under surveillance and prevented from moving freely about the country, and were afraid they would be attacked by the *Imbonerakure* militia,

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

1. *Thanks* the Speaker of the National Assembly for his cooperation;
2. *Notes with satisfaction* that the judicial proceedings against Mr. Nshimirimana and Mr. Nkurunziza have drawn to a close, the prosecution having failed to appeal their

acquittal; *decides*, therefore, to close their cases, but *deplores* the excessive length of their pretrial detention, a situation that could have been avoided if the courts had ruled on the lawfulness thereof within the legal deadlines;

3. *Notes* that the appeal proceedings against Mr. Mpawenayo cannot go forward until Mr. Mpawenayo responds to the Supreme Court summons; *urges* Mr. Mpawenayo to obey the summons as soon as possible, the purpose thereof having been clarified, so that the judicial proceedings can be completed; *wishes* to be kept informed in that respect;
4. *Is concerned* about the threats and intimidation targeting Mr. Mpawenayo, Mr. Nshimirimana and Mr. Nkurunziza and *urges* the competent authorities to take the measures required to ensure their safety; *considers*, nonetheless, that it is not competent to pursue its examination of the case on those grounds alone, given that the three men are no longer members of parliament;
5. *Repeats* its long-standing concerns about the judicial process that resulted in Mr. Radjabu's conviction and *urges* the competent authorities and Mr. Radjabu to pursue all possible judicial and political remedies, including release on parole – the conditions for which it believes are met – and a presidential pardon, and to keep it informed of any progress made to that end;
6. *Requests* the Secretary General to convey this resolution to the parliamentary authorities, to the complainants and to any third party likely to be in a position to supply relevant information;
7. *Decides* to continue examining the cases of Mr. Radjabu and Mr. Mpawenayo.