

# IMPLEMENTATION OF THE EU GUIDELINES ON HRDS IN BURUNDI



From 2014 onward, Burundian HRDs, journalists and civil society came under ever-greater pressure in a fast-onset crisis that culminated in an almost total absence of HRDs and civil society space at the time of writing in April 2019. Accelerating harassment and arbitrary detention of HRDs and journalists were the canary in the coal mine for this human rights crisis. At the start of the crisis, the EU was well placed as a donor to Burundi and partner of the government. In response, it initiated intense political dialogue, launched consultations under article 96 of the Cotonou Agreement in October 2015,<sup>1</sup> and finally suspended all aid conducted through the government in March 2016.

This response raised serious questions about how the EU and member states deliver on their stated commitment to support and protect HRDs in rapidly evolving crises. Since the activation of article 96, Burundi has become proverbial

for a perceived human rights stalemate, with most diplomats seeing few further options for EU engagement after deploying this “nuclear” option. Today’s situation opens further questions about how the EU and member states can better engage with a country with limited formal channels for discussing human rights. The EU’s leadership on a resolution mandating a Commission of Inquiry on Burundi at the UN HRC is one alternative and suggests other avenues can and should be explored.

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<sup>1</sup> Council of the EU, *Consultation procedure (article 96)*, <https://www.consilium.europa.eu/en/policies/cotonou-agreement/article-96-cotonou-agreement/>.

At the same time, Burundi presents extraordinary challenges. A large proportion of HRDs and civil society has gone into exile in the region and in the EU, where their need for protection and support are likely to persist.

## 1.1 BACKGROUND AND MAIN CHALLENGES FACED BY HRDS

Since Burundi obtained independence in 1962, it has witnessed multiple outbreaks of ethnic violence,<sup>2</sup> marked each time by grave violations of human rights and crimes under international law.

Following the assassination of the democratically elected President Melchior Ndadaye, a Hutu, in 1993, Burundi suffered a protracted conflict between the predominantly Tutsi army and Hutu rebel groups, in which at least 300,000 Burundians are estimated to have been killed. All sides to the conflict were responsible for committing crimes under international law. In 2000, the Arusha Agreement was brokered to provide for power sharing between the two ethnic groups.<sup>3</sup> One of the principal armed Hutu opposition groups, the CNDD-FDD (the National Council for the Defence of Democracy-Forces for the Defence of Democracy), ceased hostilities in 2003 and joined the political process.<sup>4</sup> The CNDD-FDD won the 2005 elections and has remained in power ever since.

Tensions arose again in 2010, when opposition parties rejected the results of communal elections in which the CNDD-FDD won 64% of the vote and boycotted the following rounds of presidential and legislative elections. The security situation deteriorated soon afterwards when largely unidentified armed groups clashed with Burundian security services. Many extrajudicial executions were reported in 2010 and 2011.

The government of Burundi once again began to clamp down on political space in 2014, ahead of the 2015 elections. The rights to freedom of association and peaceful assembly began to be unduly restricted for political opposition groups, the press, the Burundian Bar Association, human rights defenders and civil society organizations (CSOs).<sup>5</sup> HRDs were a key target. Pierre Claver Mbonimpa, founder of the Association for the Protection of Human Rights and Detained Persons (Association pour la Protection des Droits Humains et des Personnes Détenuées, APRODH) and one of Burundi's most respected human rights defenders, was detained from May to September 2014.<sup>6</sup>

The EU issued four statements during his detention. In May 2014, the EU delegation issued a local statement expressing concern about Pierre Claver Mbonimpa's arrest,<sup>7</sup> followed by a spokesperson statement at Brussels level in June 2014.<sup>8</sup> Both statements failed to call for his immediate release, nor did they recognize his arrest as a symptom of a wider closure of civil society space. Rather, the statements focused on calls for judicial procedures and the rights of the accused to be respected as an essential prerequisite for the forthcoming elections. Similarly, when Pierre Claver Mbonimpa was initially transferred to hospital, then released in September 2014, two EU statements responded to these steps as a sign of respect of national and international law, failing to note his status as an HRD, call for his release and link his detention with the wider human rights situation.<sup>9</sup>

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<sup>2</sup> Outbursts of extreme violence occurred in 1965, 1972, 1988, 1991 and 1993. See: Vandeginste S., 'Transitional Justice for Burundi: A Long and Winding Road', in Ambos K., Large J., Wierda M. (eds), *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development*. 2009, Springer, Berlin, Heidelberg.

<sup>3</sup> *Arusha Peace and Reconciliation Agreement for Burundi*, 28 August 2000, [https://peacemaker.un.org/sites/peacemaker.un.org/files/BI\\_000828\\_Arusha%20Peace%20and%20Reconciliation%20Agreement%20for%20Burundi.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/BI_000828_Arusha%20Peace%20and%20Reconciliation%20Agreement%20for%20Burundi.pdf).

<sup>4</sup> *Comprehensive Ceasefire Agreement between the Government of the Republic of Burundi and the National Council for the Defence of Democracy-Forces for the Defence of Democracy*, 16 November 2003, <https://reliefweb.int/report/burundi/global-ceasefire-agreement-between-burundi-and-cndd-fdd-s20031105>.

<sup>5</sup> Amnesty International, *Burundi: Locked Down. A Shrinking of Political Space* (Index: AFR 16/002/2014), 29 July 2014, <https://www.amnesty.org/download/Documents/4000/afr160022014en.pdf>.

<sup>6</sup> See, for example: Amnesty International, "Burundi: Shooting of human rights activist increases climate of fear" (News, 6 August 2015), <https://www.amnesty.org/en/latest/news/2015/08/burundi-shooting-of-human-rights-activist-increases-climate-of-fear/>; Amnesty International, "Burundi: Pierre Claver Mbonimpa has recovered but questions remain on who wanted him dead" (News, 10 August 2018), <https://www.amnesty.org/en/latest/campaigns/2018/08/burundi-pierre-claver-mbonimpa-has-recovered-but-questions-remain-on-who-wanted-him-dead/>.

<sup>7</sup> "Déclaration de la Délégation de l'Union européenne sur le climat politique et l'arrestation du président de l'APRODH", 21 May 2014, [http://eeas.europa.eu/archives/delegations/burundi/documents/press\\_corner/2014052101\\_fr.pdf](http://eeas.europa.eu/archives/delegations/burundi/documents/press_corner/2014052101_fr.pdf).

<sup>8</sup> "Déclaration du porte-parole sur la situation politique au Burundi", 10 June 2014, [http://www.eeas.europa.eu/archives/docs/statements/docs/2014/140610\\_01\\_fr.pdf](http://www.eeas.europa.eu/archives/docs/statements/docs/2014/140610_01_fr.pdf).

<sup>9</sup> "Déclaration locale de l'Union européenne sur la situation du président de l'Association pour la protection des droits humains et des personnes détenues (APRODH), Pierre Claver Mbonimpa, et sur le cas des membres du parti Mouvement pour la Solidarité et la Démocratie", 10 September 2014, [http://eeas.europa.eu/archives/delegations/burundi/documents/press\\_corner/2014/declaration\\_10092014\\_fr.pdf](http://eeas.europa.eu/archives/delegations/burundi/documents/press_corner/2014/declaration_10092014_fr.pdf); "Déclaration locale de l'Union européenne sur la libération provisoire et conditionnelle du président de l'Association pour la protection des droits humains et des personnes détenues (APRODH), Pierre Claver Mbonimpa", 30 September 2014, [http://www.eeas.europa.eu/archives/delegations/burundi/documents/press\\_corner/2014/declaration\\_30092014\\_fr.pdf](http://www.eeas.europa.eu/archives/delegations/burundi/documents/press_corner/2014/declaration_30092014_fr.pdf).

From August 2014 onward, Amnesty International called on the EU and member states as well as the High Representative of the European Union for Foreign Affairs and Security Policy/Vice President of the European Commission (HR/VP) to highlight individual HRD cases and the worsening political and human rights situation in Burundi.<sup>10</sup>

In August 2015, Pierre Claver Mbonimpa was shot and injured in Bujumbura but survived to escape the country. His son-in-law was killed by unknown assailants in October 2015, and his son was killed in November 2015 after being arrested by the police.

Among EU member states, France's Ministry of Foreign Affairs condemned the attempted murder of Pierre Claver Mbonimpa and called for the perpetrators to be brought to justice.<sup>11</sup> Several high-level diplomats visited him in hospital, and diplomatic interventions helped ensure that he was granted permission to leave Burundi for treatment. Members of his immediate family were relocated with support from several EU member states.



 ↑ Pierre Claver Mbonimpa speaks to the press. At a press conference sponsored by the United States Permanent Mission to the United Nations, Burundian human rights activists Pierre Claver Mbonimpa, founder and president of the Association for the Protection of Human Rights and Incarcerated Persons and Agnes Kiromera Muvira, member of the Burundi Women and Girl's Movement for Peace and Security, offered their assessment of the year-long ongoing political and humanitarian crisis in the African nation. ©Albin Lohr-Jones/Pacific Press/LightRocket via Getty Images

In a similarly emblematic case, Bob Rugurika, Director of the independent Radio Publique Africaine (RPA), was detained in January 2015 for reporting on senior intelligence officials' involvement in the killing of civilians.<sup>12</sup> Among EU member states, the Belgian Parliament called for his immediate release, underlining the disproportionate nature of his detention as well as expressing concerns about press freedom.<sup>13</sup>

<sup>10</sup> Amnesty International, "Letter to Baroness Ashton: As political space shrinks in Burundi, the EU must ensure human rights are upheld" (News, 4 August 2014), <https://www.amnesty.eu/news/letter-to-baroness-ashton-as-political-space-shrinks-in-burundi-the-eu-must-ensure-human-rights-a/>; Amnesty International, "As violence escalates, the EU must do more for Burundi's Human Rights Defenders" (News, 17 November 2015), <https://www.amnesty.eu/news/as-violence-escalates-the-eu-must-do-more-for-burundis-human-rights/>.

<sup>11</sup> "Burundi – Attempted murder of Pierre Claver Mbonimpa", 3 August 2015, <https://www.diplomatie.gouv.fr/en/country-files/burundi/events/article/burundi-attempted-murder-of-pierre-claver-mbonimpa-03-08-15>.

<sup>12</sup> Amnesty International, "Burundi: Prominent journalist must be released: Bob Rugurika" (News, 23 January 2015), <https://www.amnesty.org/download/Documents/AFR1600012015ENGLISH.pdf>.

<sup>13</sup> "Communiqué de presse de l'Union Interparlementaire – Section Burundi", 23 January 2015, [http://www.zrihen.be/images/presse/Belgique\\_Parlementaires\\_Free\\_Bob\\_Rugurika.pdf](http://www.zrihen.be/images/presse/Belgique_Parlementaires_Free_Bob_Rugurika.pdf).

Shortly after the European Parliament adopted resolutions on the cases of Pierre Claver Mbonimpa<sup>14</sup> in September 2014 and Bob Rugurika<sup>15</sup> in February 2015 calling for their immediate and unconditional release, both men were freed. Indeed, EU and international pressure<sup>16</sup> is credited with both releases from detention, as EU statements came together with those of other like-minded states and international organizations to contribute to public pressure for the release of those detained.<sup>17</sup>

Against the background of these arrests and the closure of civil society space, protests broke out in April 2015 against President Pierre Nkurunziza's decision to run for a third term, a step which many Burundians saw as a violation of the Arusha Agreement. In response, the government imposed a blanket ban on demonstrations, violating the rights to freedom of expression and peaceful assembly. The police response was marked by further human rights violations against protesters, including the use of excessive and at times lethal force.<sup>18</sup>

Since 2015, Burundi has seen an upsurge of extrajudicial executions, arbitrary arrests and detention, torture and other cruel, inhuman and degrading treatment, often targeting real or perceived opponents of the ruling party. The government has cracked down on any form of dissent or independent oversight. Five NGOs were suspended in November 2015.<sup>19</sup> In October 2016, the Minister of Interior and Patriotic Training, Pascal Barandagiye, ordered their permanent closure for "working to tarnish the image of the country and sow hatred and division among the Burundian population". Burundi's oldest human rights NGO, Ligue Iteka, was shut down in January 2017. The President of Action by Christians for the Abolition of Torture, Armel Niyongere, along with two other lawyers working on human rights – Vital Nshimirimana (President of the Forum for the Strengthening of Civil Society - Le Forum pour le Renforcement de la société civile) and Dieudonné Bashirahishize (Vice-President of the East African Law Society) – were disbarred in January 2017 in reprisal for their cooperation with the UN Committee Against Torture, while another, Lambert Nigarura, was suspended.<sup>20</sup>

In 2017, five more human rights defenders were arrested for their human rights work – Germain Rukuki, Nestor Nibitanga, Emmanuel Nshimirimana, Aimé Constant Gatore and Marius Nizigiyimana. In 2018, all were convicted of threatening state security, and received sentences ranging from five to 32 years in prison. Emmanuel Nshimirimana, Aimé Constant Gatore and Marius Nizigiyimana were acquitted on appeal in December 2018 and eventually released in March 2019. The fate and whereabouts of human rights defender Marie-Claudette Kwizera and journalist Jean Bigirimana, who were forcibly disappeared on 10 December 2015 and 22 July 2016 respectively, remain unknown.<sup>21</sup>

Due to this crackdown, the overwhelming majority of Burundi's HRDs had to flee the country for their safety. Some HRDs interviewed for this report estimated that over 100 Burundian HRDs live in exile and struggle to financially support themselves and their families. One Burundian HRD told Amnesty International: "It is difficult to express ourselves here [in exile] – we are followed, though we have freedom of expression. We have a problem obtaining funding."

This can be particularly challenging for WHRDs: "Women HRDs in exile with their husbands and families have difficulties integrating. The husbands... say: 'Have we lost everything due to your struggle?'"

The crackdown on HRDs in Burundi was matched by the country's disengagement on human rights more broadly. In October 2016, Burundi announced its withdrawal from the International Criminal Court, effective the following year. The government declared the three independent experts of the UN Independent

<sup>14</sup> *European Parliament resolution of 18 September 2014 on Burundi, in particular the case of Pierre Claver Mbonimpa* (2014/2833(RSP)), <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2014-0023&language=EN&ring=B8-2014-0106>.

<sup>15</sup> *European Parliament resolution of 12 February 2015 on Burundi: the case of Bob Rugurika* (2015/2561(RSP)),

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0036&language=EN&ring=P8-RC-2015-0144>.

<sup>16</sup> *Radio France Internationale*, "Barack Obama souhaite la libération du Burundais Pierre-Claver Mbonimpa", 24 September 2014, <http://www.rfi.fr/afrique/20140924-barack-obama-souhaite-liberation-burundais-pierre-claver-mbonimpa>; *UN News*, "Jailing of Burundian journalist raises concerns ahead of elections – UN Rights Office", 6 February 2015, <https://menub.unmissions.org/node/100039241>.

<sup>17</sup> "Social media sites, local radio and Burundian campaigning groups have been highly active in calling for his release. Each Friday has been labelled by Burundian activists as 'Green Friday' ('vendredi vert') and sympathizers wear green – to represent the colour of the country's prison uniforms – in solidarity with Pierre Claver Mbonimpa." Extract from Amnesty International, *Pierre Claver Mbonimpa is a prisoner of conscience* (Index: AFR 16/003/2014), 22 August 2014, <https://www.amnesty.org/download/Documents/4000/afr160032014en.pdf>.

<sup>18</sup> Amnesty International, *Burundi: Braving bullets: Excessive force in policing demonstrations in Burundi* (Index: AFR 16/2100/2015), 28 July 2015, <https://www.amnesty.org/download/Documents/AFR1621002015ENGLISH.PDF>.

<sup>19</sup> The Forum for the Strengthening of Civil Society (Forum pour le Renforcement de la Société Civile, FORSC), Forum for Consciousness and Development (Forum pour la Conscience et le Développement, FOCODE), Christian Action Against Torture (Action Chrétienne pour l'Abolition de la Torture), Association for the Protection of Human Rights and Detained Persons (Association pour la Protection des Droits Humains et des Personnes Détenues, APRDH) and the Network of Honest Citizens (Réseau des Citoyens Probes, RCP).

<sup>20</sup> Amnesty International, *Burundi: Amnesty International's written statement to the 34<sup>th</sup> session of the UN Human Rights Council (27 February – 24 March 2017)*, (Index: AFR 16/5678/2017), 14 January 2017, <https://www.amnesty.org/download/Documents/AFR1656782017ENGLISH.pdf>.

<sup>21</sup> Amnesty International, *Abacu: Keeping a candle burning for victims of violence in Burundi*, 16 May 2018, <https://www.amnesty.org/en/latest/campaigns/2018/05/abacu-keeping-a-candle-burning-for-victims-of-violence-in-burundi/>.

Investigation on Burundi *persona non grata*, and suspended cooperation with the Office of the UN High Commissioner for Human Rights (OHCHR). In 2018, the members of the UN Commission of Inquiry on Burundi were also declared *persona non grata*. OHCHR closed its office in Burundi in February 2019, following a government order in December 2018.

Furthermore, restrictive laws introducing oversight measures and financial controls on national and international NGOs operating in Burundi came into force in 2017.<sup>22</sup>

Today, with the majority of HRDs in exile and civil society space under extreme pressure, the EU and member states are challenged to provide meaningful support and protect HRDs and their work.

## 1.2 ASSESSMENT OF ACTION BY THE EU AND EU MEMBER STATES

Relations between the EU and Burundi are governed by the Cotonou Agreement, which regulates interactions between the EU and African, Caribbean and Pacific (ACP) countries. The Cotonou Agreement sets out provisions for political dialogue (including human rights benchmarks) between the EU and ACP countries, as well as the delivery of EU development aid funding. It contains clauses relating to respect of the rule of law and human rights standards, as well as provisions for the suspension of the relationship in case of non-compliance.

Prior to 2015, the EU's relationship with Burundi was predominantly a donor-aid recipient one, with the EU providing €196 million in direct budget support to the government in 2004-2015.<sup>23</sup> The EU member states present on the ground – Belgium, France, Germany and the Netherlands – were involved in providing financial and capacity building assistance to the government and state structures. Belgium, France and the Netherlands supported the training of Burundian police ahead of the 2010 and 2015 elections.<sup>24</sup>

In late 2015, the EU launched an intensified consultation process with Burundi to address the deteriorating human rights situation, as foreseen by the Cotonou Agreement. The EU and its member states also imposed travel restrictions and an asset freeze on four individuals whose activities were seen to be “undermining democracy or obstructing efforts to achieve a political solution to the crisis”.<sup>25</sup>

At the same time, the EU was receiving hundreds of applications from HRDs requesting emergency relocation grants because they feared for their safety. Civil society representatives interviewed for this report believe that the EU delegation was not prepared to handle such a high number of requests and lacked both the human and the financial resources to meet the demand. In addition, several interviewed felt that the EU delegation's existing network and knowledge of HRDs in Burundi did not allow it to make timely and effective decisions on allocating funding for urgent relocation of individuals at risk.

In the absence of notable progress in the consultations with the government, the Council of the EU concluded consultations under Article 96 of the Cotonou Agreement in March 2016 and suspended direct financial support to the Burundian administration, while maintaining assistance to the population and civil society.<sup>26</sup> EU member states took a similar approach – Belgium and the Netherlands suspended support to the police and army reform programme in 2015 following reports of excessive use of force by these entities.<sup>27</sup>

The government of Burundi responded by shutting down lines of communication with the EU, including dialogue between the EU and relevant line ministries, and by refusing to continue political dialogue, including on human rights. A demonstration was organized in front of the EU delegation in January 2017 to protest against a European Parliament resolution on Burundi.<sup>28</sup> The authorities also accused the EU delegation of

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<sup>22</sup> National NGOs are now required to receive the approval of the Ministry of Interior or the appropriate ministry for all their activities or face sanctions, which could include closure of their offices and suspension of activities. Any foreign funding must be transferred through the Central Bank. National NGOs are required to renew their registration biannually. The law limits the formation of coalitions of NGOs working in the same sector. The activities of international NGOs operating in Burundi must be aligned with the programmes and priorities set by the government. International NGOs are obliged to sign programme implementation agreements with the relevant ministerial departments and/or local partners. See Amnesty International, “Burundi: Suspension of NGOs will throw vital services into disarray” (News, 2 October 2018), <https://www.amnesty.org/en/latest/news/2018/10/burundi-suspension-of-ngos-will-throw-vital-services-into-disarray/>.

<sup>23</sup> Delegation of the EU to Burundi, *Burundi and the EU*, 11 May 2016, [https://eeas.europa.eu/delegations/burundi/996/burundi-and-eu\\_en](https://eeas.europa.eu/delegations/burundi/996/burundi-and-eu_en).

<sup>24</sup> Amnesty International, *Burundi: Braving bullets: Excessive force in policing demonstrations in Burundi*.

<sup>25</sup> Council of the EU, *Burundi: the EU adopts sanctions against 4 individuals*, 1 October 2015, <https://www.consilium.europa.eu/en/press/press-releases/2015/10/01/burundi-sanctions/>; *Burundi: EU renews sanctions until 31 October 2019*, 25 October 2018, <https://www.consilium.europa.eu/en/press/press-releases/2018/10/25/burundi-l-ue-renouvelle-les-sanctions-jusqu-au-31-octobre-2019/>.

<sup>26</sup> Delegation of the EU to Burundi, *Burundi and the EU*.

<sup>27</sup> Government of the Netherlands, “The Netherlands suspends aid to Burundi”, 14 May 2015, <https://www.government.nl/latest/news/2015/05/14/the-netherlands-suspends-aid-to-burundi>.

<sup>28</sup> *European Parliament resolution of 19 January 2017 on the situation in Burundi*, (2017/2508(RSP)), <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0004&language=EN&ring=P8-RC-2017-0075>.

financing individuals working to destabilize the country, referring to the provision of relocation funds to an HRD, Pacifique Nininahazwe.<sup>29</sup>

The activation of article 96 of the Cotonou Agreement and the consequent suspension of aid through the Burundian government represented one of the strongest political tools at the EU's disposal. With the subsequent breakdown of political dialogue and overall relations between the EU and Burundi, EU diplomats interviewed for this report asserted that it had become impossible to apply fully the EU Guidelines on HRDs. Still, they stressed that the EU continued to work in the spirit of the Guidelines, with a focus on individual cases and the rights of women, youth and other groups at risk.

At the same time, the EU has been actively engaging with regional and international mechanisms to keep the human rights situation in Burundi on the international agenda. In 2016, the EU led an initiative to establish the Commission of Inquiry on Burundi at the UN HRC,<sup>30</sup> which continues its work to date. The EU likewise cooperates closely with UN and African Union counterparts in Burundi.<sup>31</sup>

## 1.3 EU EFFORTS TO IMPLEMENT THE HRD GUIDELINES

### CLOSED-DOOR DIPLOMACY

Prior to 2016, EU diplomats reported having useful discussions with the government within a justice sector working group, coordinated by the UN office in Bujumbura, which brought together donors and relevant ministries. However, this ongoing dialogue and the EU's role as key donor and partner to Burundi could no longer be leveraged after the activation of article 96. Its activation impacted on the EU's opportunities to engage the Burundian government on human rights, and the general breakdown in relations narrowed the space for formal human rights dialogue and limited interaction with the Burundian government. However, EU diplomats reported still issuing demarches on human rights issues.

Despite the challenges, HRDs welcomed EU engagement on behalf of detained HRDs even in the absence of tangible outcomes across the board. A Burundian HRD interviewed for this report praised the EU's commitment to the article 96 process, "showing that the EU holds firm to values and the need to improve the situation and that they give value to the advocacy of HRDs".

### PUBLIC ACTION

The EU diplomats asserted that the current state of EU-Burundi relations made it difficult to achieve meaningful outcomes through public action, pointing to this constraint as the reason for the lack of statements at local level and a shift in political dialogue to Brussels as well as to regional and international levels. At the same time, EU diplomats remain locked in debate about how to engage on HRDs and human rights meaningfully and safely – to "do no harm".

Since the activation of article 96, only one local statement was issued by the EU delegation and member state representations in 2017. This statement formally refuted accusations by the Burundian government of EU "destabilization" of Burundi and explicitly affirmed the importance of human rights and HRDs in EU external action:<sup>32</sup>

*The government of Burundi just published a communiqué making allegations of EU implication in a project of destabilization of Burundi. We formally refute these accusations.*

*They are based on an intentionally erroneous interpretation of a program of support to human rights defenders. The external action of the EU is founded on the promotion of human rights worldwide and the protection of human rights defenders.*

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<sup>29</sup> IWACU English News, "Burundi Charges European Union", 16 December 2017, <http://www.iwacu-burundi.org/englishnews/burundi-charges-european-union/>.

<sup>30</sup> UN HRC, "Human Rights Council adopts four resolutions, creates commission of inquiry on Burundi", 30 September 2016, <https://www.ohchr.org/EN/newsEvents/Pages/DisplayNews.aspx?NewsID=20619&LangID=E>.

<sup>31</sup> EU Annual Report on Human Rights and Democracy in the World 2017, Country Updates- Burundi, [https://eeas.europa.eu/sites/eeas/files/compiled\\_country\\_updates\\_annual\\_report\\_on\\_human\\_rights\\_and\\_democracy\\_2017\\_clean\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/compiled_country_updates_annual_report_on_human_rights_and_democracy_2017_clean_0.pdf).

<sup>32</sup> Delegation of the EU to Burundi, "Déclaration locale suite aux accusations de volonté de déstabilisation du Burundi", 7 June 2017, [https://eeas.europa.eu/delegations/burundi/27703/d%C3%A9claration-locale-suite-aux-accusations-de-volont%C3%A9-de-d%C3%A9stabilisation-du-burundi\\_en](https://eeas.europa.eu/delegations/burundi/27703/d%C3%A9claration-locale-suite-aux-accusations-de-volont%C3%A9-de-d%C3%A9stabilisation-du-burundi_en).

*Any durable resolution of the crisis in Burundi must take into account past and present human rights violations, and the protection of people and organisations that work to this end.*

From this point onward, all statements on Burundi were issued from outside the country – at Brussels level, in HR/VP and spokespersons' statements,<sup>33</sup> in Council Conclusions,<sup>34</sup> and statements at multilateral fora such as the UN HRC.

In May 2018, the HR/VP made a declaration on behalf of the EU ahead of the constitutional referendum in Burundi, directly referencing the arbitrary and harsh prison sentence of HRD Germain Rukuki:<sup>35</sup>

*The EU remains deeply concerned by the human rights situation in Burundi, which undermines any initiative for reconciliation, peace and justice. It highlights in particular, the persistence of extrajudicial executions and arbitrary arrests, (including of human rights defenders such as Germain Rukuki, who faces a sentence which is as arbitrary as it is harsh) and the lack of political space and restrictions on freedom of expression and association. In this context, the implementation of the two resolutions adopted at the 36th session of the Human Rights Council in Geneva remains a political priority.*

The chair of the European Parliament's subcommittee on human rights, Pier Antonio Panzeri, went a step further a few days later by calling for Germain Rukuki to be immediately released.<sup>36</sup> In her July 2018 speech to the European Parliament, the HR/VP once again cited the EU's concern about ongoing human rights violations in the country.<sup>37</sup>

Overall, the EU made 21 statements between January 2014 and April 2019 referring to HRDs or human rights organizations, alongside other communications through the HR/VP (such as in the European Parliament's plenary) or Council Conclusions.<sup>38</sup> Of these, 10 used the term "human rights defender" (above all since mid-2017) and seven referred to the names of individual HRDs. Still, only one EU statement directly called for the release of detained individuals. Five statements also raised the cases of organizations with activities suspended or closed down by the authorities. Eight expressed concern about human rights violations suffered by HRDs or members of civil society, including harassment, ill-treatment or lack of due process.

Interestingly, 13 of these 21 EU statements were issued *after* the suspension of aid under article 96, nine of them at the UN HRC, suggesting a shift in EU engagement towards the multilateral level. Three of these referred specifically to concerns about potential reprisals for HRDs' work and/or for their cooperation with international mechanisms. This body of statements confirms that EU public positioning is indeed still possible beyond the activation of article 96 both at bilateral and multilateral levels, allowing for explicit messages to be sent on individuals at risk and on the importance of HRDs for EU foreign policy. From the perspective of the "do no harm" debate, EU statements to date have not had any demonstrable negative fallout on EU-Burundi relations nor on HRDs themselves – the most cogent argument for an even more explicit EU position to call for the release of detained HRDs.

While without significant positive outcomes in individual cases, this relatively consistent communication highlights EU human rights concerns to the government and civil society. However, EU statements on Burundi are often general and descriptive rather than explicitly demanding the release of human rights defenders.<sup>39</sup> Ultimately, while these statements demonstrate an EU willingness to speak out on human rights in Burundi, they also represent a missed opportunity for the EU to more explicitly call for specific action and for the release of those detained.

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<sup>33</sup> EEAS, "Statement by the Spokesperson on the banning of Ligue Iteka in Burundi", 16 January 2017, [https://eeas.europa.eu/delegations/burundi/18316/statement-spokesperson-banning-ligue-iteka-burundi\\_en](https://eeas.europa.eu/delegations/burundi/18316/statement-spokesperson-banning-ligue-iteka-burundi_en).

<sup>34</sup> Council Conclusions on Burundi, 22 June 2015, <https://www.consilium.europa.eu/en/press/press-releases/2015/06/22/fac-burundi/>.  
<sup>35</sup> "Declaration by the HR/VP Federica Mogherini, on behalf of the European Union on the situation in Burundi ahead of the constitutional referendum", 8 May 2018, <https://www.consilium.europa.eu/en/press/press-releases/2018/05/08/declaration-de-la-haute-representante-federica-mogherini-au-nom-de-l-union-europeenne-sur-la-situation-au-burundi-en-amont-du-referendum-constitutionnel/>.

<sup>36</sup> European Parliament, "DROI chair Panzeri calls on authorities to release human rights defender Rukuki", 16 May 2018, <http://www.europarl.europa.eu/committees/en/droi/publications.htm?id=20180516CPU18822>.

<sup>37</sup> FedericaMogherini.net, Debate on Burundi at the European Parliament's plenary, 5 July 2018, <http://www.federicamogherini.net/debate-on-burundi-at-the-european-parliaments-plenary/?lang=en>.

<sup>38</sup> Several Council Conclusions were issued on Burundi in 2015-2016. Of particular interest are the Council Conclusions of 16 March 2015, which make explicit reference to the prosecution of civil society engaged in human rights defence, and express concern that arrests and sentences risk undermining the credibility of the electoral process and justice system. *Conclusions du Conseil des Ministres des Affaires étrangères de l'Union européenne du 16 mars 2015 sur la situation politique au Burundi dans le contexte pré-électoral*, 16 March 2015, [http://eeas.europa.eu/archives/delegations/burundi/documents/press\\_corner/2015/cp\\_conclusions\\_du\\_conseil\\_sur\\_la\\_situation\\_politique\\_a\\_u\\_burundi\\_preelectoral\\_160315\\_fr.pdf](http://eeas.europa.eu/archives/delegations/burundi/documents/press_corner/2015/cp_conclusions_du_conseil_sur_la_situation_politique_a_u_burundi_preelectoral_160315_fr.pdf).

<sup>39</sup> In a similar vein, the EU's 2017 annual report on human rights and democracy on the world noted simply that "there have been significant cases of human rights defenders arrested and detained" in Burundi. *EU Annual Report on Human Rights and Democracy in the World 2017, Country Updates-Burundi*.

In interviews with Amnesty International, HRDs highlighted how EU human rights commitments were not sufficiently reflected in public actions in response to the crisis. Burundian HRDs felt it was crucial for the EU to take a stronger public stance on key issues, such as the arbitrary detention of HRDs. One said:

*... the case of political prisoners requires a very firm intervention of the international community. I don't think the EU should adopt a line of silence... If they are supporting human rights in the long term, they should maintain the main actions, [show that] the EU has principles. Yes, there are actions that cannot be taken without [an HRD's] consent, but they can still cite their case.*

Burundian HRDs also criticized EU statements that decried the overall human rights situation in the country but failed to mention specific cases and the daily challenges HRDs face. They refuted the idea that avoiding communication on individual cases might shield HRDs from reprisals. One said:

*An argument I heard from certain partners is that their involvement risks worsening an HRD's situation or confirming that they are in contact with the international community. If they are already arrested, then this information is already there. The regime is already aware that embassies are following the case closely. Local silence does not imply that the HRD is not in contact with the outside...*

Burundian HRDs welcomed European Parliament resolutions on Burundi citing individual cases of HRDs, most recently in July 2018,<sup>40</sup> pointing to the need for the EU to take an equally vocal stance of support to individual HRDs in the country.

## **TRIAL MONITORING**

Since the onset of the crisis in 2015, HRDs welcomed EU and member state trial observation as they reported feeling supported by this activity and believed it had a positive influence on the judicial authorities.

HRDs interviewed for this report stated that the EU had been very visible in its actions such as trial monitoring before 2015 but pointed to a decline in trial monitoring since the crisis.

HRDs underlined that visible EU action provides an invaluable boost in morale to people who are prosecuted simply for their human rights work, and that trial monitoring by other bodies could not replace EU diplomatic presence at trials. One said:

*The EU said sometimes they are not very visible because of the anti-Western context, but that there is the AU [African Union] and OHCHR. I said that there is not one partner that replaces another, and the EU presence on the ground, accompanying HRDs, is patchy.*

## **ENGAGEMENT WITH HRDS**

Before 2015, the EU delegation organized regular consultations with HRDs based in Bujumbura, at times in the presence of EU member state ambassadors. EU diplomats reported that when the delegation was alerted to HRDs at risk, staff met the individuals to take note of their circumstances and need for protection. EU diplomats likewise recalled visiting HRDs when they were threatened or at risk and organizing prison and hospital visits to defenders.

EU member state missions are reported to have also actively engaged with HRDs, establishing spaces for exchange that were very well received by HRDs. One said:

*They initiated a dinner with several ambassadors to exchange on the case. It was just me and the ambassadors. That comforted us that day.*

Still, many Burundian HRDs reported first learning of the existence of the EU Guidelines on HRDs in 2015 – through word of mouth from international contacts responding to the crisis.

Before and since the 2015 crisis, HRDs reported that their contacts with EU diplomats often happen solely on an ad hoc basis and depend on the personal commitment of individual diplomats. The crisis only weakened EU contacts with the few remaining HRDs in the country. One said:

*Before, there was a sort of discussion space that they established, like meetings where several HRDs were invited on the basis of their work and the opportunities that the EU could consider*

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<sup>40</sup> European Parliament resolution of 5 July 2018 on Burundi (2018/2785(RSP)), <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2018-0305&language=EN&ring=P8-RC-2018-0333>.



*in the development of their actions – we want them to try to restore this... They need a model to engage to the maximum with HRDs who will tell them the best way to give support.*

As a result, for some, the EU delegation was not the first port of call when they felt threatened. One said:

*The local delegation is a bit bureaucratic and it's a bit difficult to master the partnership with them. They should organize meetings to raise awareness of the Guidelines. [Even] if they are on the website, it's not all HRDs who can consult them. If there is a problem, HRDs address themselves to [international NGOs]. It shows that HRDs are not sufficiently informed... EU should have a programme to share these Guidelines with partners and HRDs who are active.*

Today, EU diplomats report meeting with Burundian HRDs in the country whenever the security situation allows it, and the EU's 2017 annual report on human rights and democracy in the world noted that "EU Heads of Missions have continued to follow up on cases of human rights defenders who are allegedly in danger."<sup>41</sup>

Some Bujumbura-based HRDs reported they were able to easily arrange a meeting with the EU delegation in Burundi, while others said they met EU representatives on the margins of UN human rights mechanism sessions. Diplomats reported meeting on occasion with HRDs in exile, although this is not a systematic practice.

In response to Burundi's protracted human rights crisis, EU contact with HRDs is challenged to go beyond the current ad hoc, person-dependent approach, which reaches mainly already well-established HRDs. HRDs reported that their colleagues based in remote locations, with limited or no access to mobile phone or internet connection, were generally unaware of measures the EU could take to protect them if they found themselves at risk.

The almost complete closure of civil society space in Burundi and the burgeoning community of exiled Burundian HRDs challenge the EU to seek meaningful alternatives to reinforce its network with a widened range of HRDs.

## **FINANCING, TRAINING AND CAPACITY BUILDING**

The EU has multiple instruments available to contribute to the protection of HRDs and journalists at risk in Burundi, including the European Instrument for Democracy and Human Rights (EIDHR) emergency fund, supplemented with medium and long-term support for training, capacity building and project funding for CSOs. Globally both the EU delegation and the EU member state missions assist HRDs in building international networks by supporting travel to conferences and international fora. Through the EIDHR, the EU also co-finances international NGOs working in partnership with local CSOs to support HRDs<sup>42</sup>; this is complemented by support from EU member states.

Burundian HRDs forced into exile and operating from outside of the country also continue to receive support. One reported:

*... the EU saw that the HRDs in exile could continue to follow what is happening in country, so we got together as civil society to ask them to continue to support us. They didn't delay much... I can say that the EU helped HRDs in exile... something that we really appreciate.*

Other HRDs reported having difficulty in obtaining EU funding to support their response to restrictive legal changes. One said:

*We don't have a legal expert to help us analyse the new legal texts. We asked for support for a legal expert to better analyse the texts and the Constitution – they said they don't give that support.*

Stepping up consultation and engagement between the EU and HRDs can address gaps in support – particularly crucial in an ongoing crisis.

Ultimately, EU funding will not be sufficient on its own to support or protect Burundian HRDs. That requires sustained EU diplomatic presence and visibility. The risks of providing financial support without full political and public backing are evident in this high-risk situation.

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<sup>41</sup> EU Annual Report on Human Rights and Democracy in the World 2017, Country Updates-Burundi.

<sup>42</sup> EU Annual Report on Human Rights and Democracy in the World 2017, Country Updates-Burundi.

## RELOCATION AND VISA SUPPORT

As the 2015 crisis deepened, the need for funding for urgent relocation peaked with the EU delegation receiving exceedingly high numbers of requests in a short period. EU diplomats reported assisting Burundian HRDs with urgent relocation by providing for their travel costs or accompanying their transport to the airport. EU member state missions also reported helping HRDs by facilitating visas for them and their families. One HRD reported receiving assistance from an EU member state mission to participate in a rest and respite programme.

In retrospect, some EU diplomats viewed the vetting process for individuals requesting relocation as one of the weakest points of the EU's response for HRDs during the 2015 crisis. This was particularly true for HRDs based outside Bujumbura or not in "elite" circles. While the EU delegation enlisted the support of trusted partners such as the UN office and established HRD contacts to help with vetting, several international CSOs told Amnesty International that they felt this process was poorly managed, lacked coordination and delayed timely protection to HRDs.

Overall, HRDs felt the process of obtaining relocation support from the EU was too lengthy and bureaucratic, even if the highest diplomatic levels were involved in a case. Some HRDs also reported feeling they did not have sufficient information about the relocation assistance offered by the EU. One said:

*I saw that [the] EU helped some who were in the country to flee, but we didn't know what mechanism they went through. We remained thirsty to know how it worked, especially for those of us still at risk in the country.*

HRDs also pointed out that the EU lacked a strategy for temporary local protection measures until an HRD could be successfully relocated.

Following relocation, exiled HRDs still faced specific challenges related to their everyday lives and work, including continuing threats and surveillance by both their home and host states – a further challenge for the EU. One reported:

*HRDs in exile require a lot of support and vigilance on the part of the EU. For example, if an HRD is arrested in exile, this requires a rapid intervention on the part of the EU... There were those who were arrested in Tanzania. There are some states that evoke a big concern, principally Tanzania, but I also believe that Uganda and Rwanda, even Kenya, all the states in the region are subjects of concern, given the political evolution and state relations that could have an impact on [exiled] HRDs.*

Civil society interlocutors also raised questions about how to reinforce the depth and frequency of EU interaction with exiled HRDs, especially given the presence of numerous Burundian HRDs in Brussels, in direct proximity to the EEAS and member state permanent representations.

## ENGAGEMENT AT REGIONAL AND INTERNATIONAL FORA

In September 2016, the EU tabled a resolution at the UN HRC to set up a Commission of Inquiry on the human rights situation in Burundi, a mechanism whose one-year mandate has since been renewed twice.<sup>43</sup> In September 2018, the government declared the three members of the UN Commission of Inquiry on Burundi *persona non grata* and in December 2018, the government requested OHCHR to permanently close its office in the country. The work of the Commission of Inquiry continues at the time of writing.

Since the activation of article 96, the interactive dialogue sessions with the Commission of Inquiry at the UN HRC have become a key venue for the EU to voice concern about human rights violations in Burundi. At the HRC, EU statements explicitly refer to the restrictions on civil society and reprisals suffered by HRDs.<sup>44</sup> The EU position in these sessions may also be shared publicly on social media by the EU delegation in Geneva (@EU\_UNGeneva).<sup>45</sup>

At the 40<sup>th</sup> session of the HRC in March 2019, the EU statement lists individual HRDs, expressing concern about "sentences pronounced in violation of the right to a fair trial in the cases of several HRDs, such as Germain Rukuki, Nestor Nibitanga, Emmanuel Nshimirimana, Aimé Constant Gatore and Marius Nizigama,

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<sup>43</sup> UN HRC, *Commission of Inquiry on Burundi*, <https://www.ohchr.org/en/hrbodies/hrc/coiburundi/pages/coiburundi.aspx>.

<sup>44</sup> See, for example, EEAS, "HRC 39 – Dialogue interactif avec le Haut-Commissaire aux Droits de l'Homme sur la situation au Burundi", 11 September 2018, [https://eeas.europa.eu/delegations/burundi/50306/hrc-39-dialogue-interactif-avec-le-haut-commissaire-aux-droits-de-lhomme-sur-la-situation-au\\_en](https://eeas.europa.eu/delegations/burundi/50306/hrc-39-dialogue-interactif-avec-le-haut-commissaire-aux-droits-de-lhomme-sur-la-situation-au_en).

<sup>45</sup> @EU\_UNGeneva, 17 September 2018, Twitter, [https://twitter.com/EU\\_UNGeneva/status/1041616230581514240](https://twitter.com/EU_UNGeneva/status/1041616230581514240).

as well as their ill treatment” and “calls for their immediate release”.<sup>46</sup> While Burundi has refused to engage with the Commission of Inquiry and has actively attempted to undermine its work,<sup>47</sup> the EU-led establishment of the Commission has been instrumental in keeping Burundi’s human rights crisis, including individual cases, on the international agenda – and likewise suggests a way forward for the EU to engage through multilateral fora where in-country human rights action is obstructed.

## **VERTICAL AND HORIZONTAL COORDINATION**

At the time of writing, the EU delegation, EU member state missions, countries such as Switzerland and the USA, and the AU and UN representatives present in Burundi meet monthly to exchange information and coordinate action on individual cases (such as private diplomacy, public statements, trial observation and hospital visits).

Still, some international CSOs express concern that such coordination risks leading to a lowest common denominator – with divergent approaches and/or lack of political will hampering overall efforts to more vocally address the human rights violations taking place in Burundi.

## **1.4 CONCLUSIONS AND RECOMMENDATIONS**

Against the background of an acute human rights crisis, the almost total closure of civil society space and the shutdown of exchange with the authorities, the EU response for HRDs in Burundi points to several good practices. These include:

- statements and actions on detention or attacks on HRDs, in particular Pierre Claver Mbonimpa and Germain Rukuki; and
- boosted engagement in international human rights fora as formal dialogue channels diminish in country.

At the same time, the experience in Burundi highlights the urgent need for the EU to develop a more concrete, strategic approach to supporting HRDs in a spiraling human rights crisis. Based on the experience in Burundi, it will be crucial for the EU to develop tools for assessing and responding to the onset of a human rights crisis and to identify indicators of possible wider upcoming repression, such as the arbitrary detention and prosecution of HRDs. Developing such strategies and tools could be key both to respond in a timely manner to a crisis as it unfolds and to develop alternative courses of action where established channels close down.

Substantive alternatives include:

- intensifying engagement at a multilateral level;
- deeper collaboration with the UN and other like-minded actors; and
- supporting HRDs in country and in exile.

Still, none of these can serve as an alibi for EU inaction elsewhere. The persistent debate on “do no harm” in Burundi must be tested against realities on the ground and by consultation with HRDs themselves, who argue strongly for a more robust and visible EU position in support of HRDs.

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<sup>46</sup> EEAS, “HRC 40 – Intervention de l'UE: Dialogue interactif avec la Commission d'enquête sur le Burundi”, 12 March 2019, [https://eeas.europa.eu/headquarters/headquarters-homepage/59653/hrc-40-intervention-de-lue-dialogue-interactif-avec-la-commission-denu%C3%A0te-sur-le-burundi\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/59653/hrc-40-intervention-de-lue-dialogue-interactif-avec-la-commission-denu%C3%A0te-sur-le-burundi_en).

<sup>47</sup> UN, “UN rights chief denounces Burundi for “belligerent and defamatory” attack on inquiry team”, 25 October 2018, <https://news.un.org/en/story/2018/10/1024162>.



## TO IMPROVE IMPLEMENTATION OF THE EU GUIDELINES ON HRDS IN BURUNDI, THE EU AND MEMBER STATES SHOULD:

- **Pro-actively develop alternative channels to engage and influence the authorities on the human rights situation**, even if formal channels have been closed, as was the case after article 96 was activated.
- **Step up local networks in country to continue sustained monitoring of the human rights situation** in the absence of formal dialogue with the government or when denied access to locations such as places of detention or court hearings. Match this by continuing to engage with the Burundian authorities for EU and EU member state access to legal proceedings. Ensure protection and emergency support for HRDs and other contacts still in country to protect them from reprisals.
- **Invest long term in the protection and capacity of HRDs remaining in country during a human rights crisis**, ensuring that the EU and its member states adopt a strategic and sustained approach in response to the almost complete closure of civil society space and the protracted nature of the human rights crisis. Complement this with long-term exchange with, and support for, HRDs in exile.
- **Provide flexible and urgent funds to HRDs and their family members** in case of need, independently of whether they already receive project funding from the EU.
- **Build measures into the successor of the Cotonou Agreement to consult with civil society** regularly and to consider its input on the human rights situation in preparation for political dialogue.

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