

**INDIVIDUAL COMMUNICATION  
TO THE UNITED NATIONS**

**COMMITTEE AGAINST TORTURE**

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**Author:** International Service for Human Rights

**Complainants:** Dieudonné Bashirahishize, Arnel Niyongere, Vital Nshimirimana and Lambert Nigarura

**State party:** Republic of Burundi

**Date of submission:** 19 March 2020

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**Claim:** The Republic of Burundi has violated its human rights obligations under the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

**Application:** To the United Nations Committee Against Torture under Article 22(1) of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

**Citizenship:** Dieudonné Bashirahishize, Arnel Niyongere, Vital Nshimirimana and Lambert Nigarura are all citizens of the Republic of Burundi

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## I. GLOSSARY OF DEFINED TERMS

<b><i>Bar</i></b>	Bujumbura Bar
<b><i>Burundi</i></b>	Republic of Burundi
<b><i>CAT</i></b>	United Nations Committee Against Torture
<b><i>CAT Session</i></b>	58 <sup>th</sup> session of the CAT that took place from 25 July to 12 August 2016
<b><i>Claim</i></b>	The present individual communication dated 19 March 2020
<b><i>Constitution</i></b>	Constitution of the Republic of Burundi
<b><i>Convention</i></b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984
<b><i>Appeal Court Decision</i></b>	Decision of the Court of Appeals of 16 January 2017
<b><i>Court of Appeals</i></b>	Court of Appeals of Bujumbura
<b><i>First Hearing</i></b>	Hearing before the Court of Appeals of 19 December 2016
<b><i>Government</i></b>	The Government of Burundi
<b><i>ISHR</i></b>	International Service for Human Rights
<b><i>NGO</i></b>	Non-Governmental Organisation
<b><i>Prosecutor</i></b>	Prosecutor of the Court of Appeals of Bujumbura
<b><i>Second Hearing</i></b>	Hearing before the Court of Appeals of 22 December 2016
<b><i>Special Review of Burundi</i></b>	Special review of Burundi by the CAT that took place from 28 <sup>th</sup> July to 29 <sup>th</sup> July 2016
<b><i>Special Burundi Report</i></b>	A report dated July 2016 entitled “ <i>Rapport alternatif de la société civile à l’attention du Comité Contre la Torture sur la situation au Burundi</i> ” produced by a civil society delegation including the Victims detailing, amongst other things, the various actions taken by the state of Burundi against political dissidents <sup>1</sup>
<b><i>UN</i></b>	United Nations
<b><i>OHCHR</i></b>	Office of the United Nations High Commissioner for Human Rights

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<sup>1</sup> **Exhibit 1:** Report to the CAT on Burundi [Rapport alternatif de la société civile à l’attention du Comité Contre la Torture sur la situation au Burundi], dated July 2016 available at [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/BDI/INT\\_CAT\\_CSS\\_BDI\\_24616\\_F.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/BDI/INT_CAT_CSS_BDI_24616_F.pdf).

*Victims*

Dieudonné Bashirahishize, Armel Niyongere, Vital Nshimirimana  
and Lambert Nigarura

*San Jose  
Guidelines*

San José Guidelines against Intimidation or Reprisals dated 30 July  
2015

## **II. DETAILS OF THE AUTHOR AND VICTIMS**

### **A. THE AUTHOR**

1. This Claim has been prepared by ISHR on behalf of the Victims identified in Section II.B below.
2. The Victims have authorized ISHR to submit the present Claim to the CAT.

### **B. THE VICTIMS**

3. The Victims are:
  - Mr. Dieudonné Bashirahishize;
  - Mr. Arnel Niyongere;
  - Mr. Vital Nshimirimana; and
  - Mr. Lambert Nigarura.
4. Mr. Bashirahishize's personal information and contact details are as follows:
  - Nationality: Burundian
  - Date and place of birth: *[redacted]*, Burundi
  - Email address: *[redacted]*
5. Mr. Niyongere's personal information and contact details are as follows:
  - Nationality: Burundian
  - Date and place of birth: *[redacted]*, Burundi
  - Email address: *[redacted]*
6. Mr. Nshimirimana's personal information and contact details are as follows:
  - Nationality: Burundian
  - Date and place of birth: *[redacted]*, Burundi
  - Email address: *[redacted]*
7. Mr. Nigarura's personal information and contact details are as follows:
  - Nationality: Burundian
  - Date and place of birth: *[redacted]*, Burundi
  - Email address: *[redacted]*

8. The Victims' individual claims have been consolidated into this Claim on the basis that the events giving rise to the individual claims, the harm suffered, and the remedies sought are identical for Messrs. Bashirahishize, Niyongere and Nshimirimana and similar for Mr. Nigarura.

### **III. DETAILS OF THE STATE**

9. The Claim is directed against Burundi, which is a State Party to the Convention, having ratified it on 18 February 1993.<sup>2</sup> In addition, Burundi made a declaration under Article 22 of the Convention accepting the jurisdiction of the CAT to hear individual communications on 10 June 2003.<sup>3</sup> This Claim therefore falls within the jurisdiction of the CAT.

### **IV. SUMMARY OF THE CLAIM**

#### **A. CORE OF THE CASE**

10. The Victims, Messrs. Bashirahishize, Niyongere, Nshimirimana and Nigarura, are Burundian citizens and lawyers who were sanctioned by the Burundian courts, without a fair trial and on the basis of unsubstantiated accusations, after they raised public concerns and provided information to the CAT regarding human rights violations perpetrated in Burundi by the Government. Messrs. Bashirahishize, Niyongere and Nshimirimana were summarily disbarred by the Court of Appeals and have not been able to practice law in Burundi since, and Mr. Nigarura was suspended from practice for one year and banned from sitting on the Executive Committee of the Bar for five years. He is still unable to practice in Burundi. Burundi's actions are contrary to Article 13 of the Convention, which prohibits this type of retaliation.

#### **B. SUMMARY OF THE FACTS**

11. As further detailed in Section V below, the Victims are citizens of Burundi. Messrs. Bashirahishize, Niyongere and Nshimirimana are former lawyers who were disbarred for their active protest against and denunciation of human rights violations in and by Burundi. Mr. Nigarura, also a lawyer, was suspended for one year from practicing law in Burundi.
12. On 25 April 2015, President Pierre Nkurunziza announced his intention to run for a third term in office which was contrary to the Burundian Constitution at that time.<sup>4</sup> Many Burundian citizens participated in peaceful, public demonstrations against this violation of the Constitution, including the Victims.
13. Government forces responded violently to the peaceful demonstrations by opening fire and killing some of the protestors. The Government also detained and attacked political dissidents and reportedly set up mass grave sites to conceal the number of extra-judicial killings.<sup>5</sup> The Victims spoke out publicly and condemned this use of violence by the

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<sup>2</sup> **Exhibit 2:** United Nations Human Rights Office of the High Commissioner, Status of Treaties Ratification, Reservations and Declarations Dashboard, Burundi Country Profile, available at <http://indicators.ohchr.org/>.

<sup>3</sup> See Id.

<sup>4</sup> See Section V.B. **Exhibit 3:** Constitution of the Republic of Burundi 2005, dated 18 March 2005, Article 96.

<sup>5</sup> **Exhibit 4:** CAT Burundi Follow up Report, dated 31 October 2016.

Government. Fearing for their safety, the Victims were forced to leave Burundi and went into exile by June 2015.<sup>6</sup>

14. The Victims provided information to the CAT on the situation in Burundi. In addition, Messrs. Bashirahishize, Niyongere and Nigarura attended the CAT Session in July 2016 in Geneva where they presented the Special Burundi Report which detailed the Burundian Government's abusive treatment of political dissidents.<sup>7</sup> Indeed, Mr. Nshimirimana was a key contributor to the civil society alternative report on human rights violations presented at the CAT Session. During the CAT Session, the Government was invited to respond to the allegations raised. However, the Government boycotted the second day of the Special Review of Burundi.<sup>8</sup> Instead, on the penultimate day of the CAT Session, 29 July 2016, the Prosecutor filed a complaint with the Bar calling for the disbarment of the Victims.<sup>9</sup>
15. After investigating the Prosecutor's complaint, the Bar dismissed the Prosecutor's request for disbarment.<sup>10</sup> On 24 November 2016, the Victims were summoned to appear before the Court of Appeals to hear the Prosecutor's appeal against the Bar's decision.<sup>11</sup> The Victims were not able to attend the hearing in person. They were tried *in absentia* because, firstly, the Burundian authorities rejected the visa applications of their chosen legal representatives and, secondly, the Court of Appeals decided that a further legal representative was not allowed to represent them. On 16 January 2017, the Court of Appeals found in favour of the Prosecutor and ordered the disbarment of Messrs. Bashirahishize, Niyongere and Nshimirimana and gave Mr. Nigarura a one-year suspension and a five-year ban from sitting on the Executive Committee of the Bar Association.<sup>12</sup>
16. After the Prosecutor initiated the disbarment proceedings against the Victims, the CAT wrote to the Government stating that they considered the administrative sanctions against the Victims an act of reprisal.<sup>13</sup> The Government responded to the CAT disputing the allegations.<sup>14</sup> The CAT sent two further letters to the Government to which they did not respond.<sup>15</sup>
17. In the spring of 2019, a further retaliation took place when the President of the Burundi Supreme Court ordered the seizure of the Victims' personal and real property.<sup>16</sup>

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<sup>6</sup> See Section V.A.

<sup>7</sup> See Section V.C.2.

<sup>8</sup> See Section V.C.2.

<sup>9</sup> See Section V.D; **Exhibit 5**: Letter from Prosecutor to Bar President, 552/11/1093/2016, dated 29 July 2016.

<sup>10</sup> See Section V.D.2; **Exhibit 6**: Bar Decision, RDA No. 001/COAB/2016, attaching a letter from the Bar to the Prosecutor, 197/COAB/K.S/2016, dated 27 September 2016.

<sup>11</sup> See Section V.D.3; **Exhibit 7**: Assignation à Domicile Inconnu, Affaire RA. No. 11, Le Renouveau du Burundi, dated 9 November 2016.

<sup>12</sup> *Id.*, p. 10.

<sup>13</sup> See Section V.E; **Exhibit 8**: Letter from United Nations Human Rights Office of the High Commissioner to Burundi's Ambassador to Geneva, dated 5 August 2016.

<sup>14</sup> **Exhibit 9**: Burundi's Ambassador to Geneva's response to the United Nations, dated 11 August 2016.

<sup>15</sup> **Exhibit 10**: Letter from the CAT of the High Commissioner to Burundi's Ambassador to Geneva, dated 12 August 2016; **Exhibit 11**: Letter from the CAT to Burundi's Ambassador to Geneva, dated 21 February 2017.

<sup>16</sup> **Exhibit 12**: Declaration on the execution of the RPA 859 Judgment and the seizure of property in case RMPG 697 bis/MA/BV/NTH, dated 15 May 2019.

### **C. SUMMARY OF VIOLATIONS OF THE CONVENTION**

18. As further detailed in Section VII below, Burundi has violated Article 13 of the Convention, which guarantees the right of victims and/or witnesses of acts of torture to be protected from reprisals for bringing a complaint and/or for providing evidence of such acts of torture.<sup>17</sup>
19. In this case, Messrs. Bashirahishize, Niyongere and Nshimirimana were disbarred, and Mr. Nigarura was suspended as a direct consequence of their denunciation to the UN of human rights violations in and by the Government. The disbarment proceedings were commenced shortly after the Victims provided the CAT with information detailing human rights violations committed by Burundi and after Messrs. Bashirahishize, Niyongere and Nigarura testified to such violations before the CAT Special Review of Burundi.
20. The actions of the Prosecutor to initiate the disbarment proceedings together with the Appeal Court Decision ordering the disbarment and suspension of the Victims amount to acts of ill-treatment and reprisal within the meaning of Article 13 of the Convention.

### **D. SUMMARY OF ADMISSIBILITY**

21. The Claim is within the jurisdiction of, and can be considered by, the CAT for the reasons set out in Section VI below.

## **V. FACTS OF THE CLAIM**

### **A. BACKGROUND OF THE VICTIMS**

22. The Victims are human rights lawyers, human rights defenders and activists. Further details regarding their individual credentials and experience are provided below.

#### **1. Mr. Bashirahishize**

23. Mr. Dieudonné Bashirahishize was born in Burundi on [redacted]. He is married and has three children. He lived in the Kinindo neighbourhood of the commune of Muha in Bujumbura, Bujumbura-Mairie Province until May 2015, when he was forced into exile. As of the date of this submission, he remains in exile.
24. Mr. Bashirahishize studied law at the University of Burundi and was admitted to the Burundi Bar Association on 9 January 2009.
25. Mr. Bashirahishize is a prominent and well-respected figure within Burundian civil society and his local community. In 2004, he was elected the leader of the Rumuri Student Association, a University of Burundi student organization. Between 2005 and 2007, he was the chairman and legal representative of the Great Lakes Youth and Inter-University Forum for Peace. This organization, comprising Burundian, Rwandan and Congolese students, advocated for peace and respect for human rights in the Great Lakes region and worked for the development of responsible leadership in the region.<sup>18</sup>

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<sup>17</sup> See Section VII.A.2.

<sup>18</sup> **Exhibit 13:** Student Politics in Africa Representation and Activism, dated May 2016, available at [www.researchgate.net/publication/302279193\\_Student\\_Politics\\_in\\_Africa\\_Representation\\_and\\_Activism](http://www.researchgate.net/publication/302279193_Student_Politics_in_Africa_Representation_and_Activism).

26. Throughout his professional career, Mr. Bashirahishize has acted in politically sensitive cases. He has previously received death threats, which resulted in him spending several days in exile in April 2014 until the Independent National Commission for Human Rights intervened to prevent the threats.<sup>19</sup>
27. Between 2014 and 2016, Mr. Bashirahishize was the Vice-President of the East African Law Society, an organization that facilitates collaboration between the bar associations in East Africa.<sup>20</sup> During that same time, he acted as the chairman of the coalition of lawyers of victims of international crimes (CAVIB).<sup>21</sup>
28. After being exiled in May 2015, Mr. Bashirahishize was admitted to the Rwandan Bar Association on 12 January 2017. He subsequently joined M. Abayo Law Firm.<sup>22</sup> This allowed him to continue to practice, including before regional courts (including the East African Court of Justice), and thereby continue to represent victims of arbitrary abuses of power by Burundian authorities.<sup>23</sup>

## 2. Mr. Niyongere

29. Mr. Arnel Niyongere, born in Burundi on [redacted], studied at the Faculty of Law at the University of Lake Tanganyika in Burundi. He then obtained a Master's degree in International and European human rights law from the University of Nantes in France. Mr. Niyongere first practiced as a lawyer of the Burundi Bar Association. He was later admitted to the French and German speaking Bar Association of Belgium, the Belgian Bar Association and the Rwandan Bar Association.
30. Mr. Niyongere is a prominent and well-respected figure within both Burundian civil society and within his local community. Before being forced to leave his country, he focused on defending the rights of his fellow citizens. Among others:
  - a) he worked on the high-profile case of Pierre-Claver Mbonimpa (a leading human-rights advocate and the president of the Burundian Association for the Protection of Human Rights and Detained Persons);
  - b) he worked on a case concerning a press law which media professionals considered unconstitutional and an unnecessary restriction on freedom; and
  - c) he acted for the militants of the Movement for Solidarity and Democracy Party, who were arrested on 8 March 2014.
31. From 2009, he has been the president of the *Federation of Action of Christians against Torture* (ACAT) bureau in Burundi, whilst simultaneously remaining actively involved in Burundian civil society. For example, between 2010 and 2014, he was the president

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<sup>19</sup> **Exhibit 14:** Me Dieudonne Bashirahishize on the run fearing for his safety, dated 18 April 2014, available at <http://fr.igihe.com/droits-humains/justice/me-dieudonne-bashirahishize-fuit-son-pays>.

<sup>20</sup> **Exhibit 15:** Burundian Vice President of the East African Law Society, dated 12 February 2014, available at <https://www.iwacu-burundi.org/englishnews/burundian-vice-president-of-the-east-african-law-society/>.

<sup>21</sup> **Exhibit 16:** United Nations Committee Against Torture Special Examination of Burundi, Article from Trial International, dated 12 August 2016, available at <https://trialinternational.org/latest-post/cat-calls-on-burundi-to-protect-civil-society-and-minorities/>.

<sup>22</sup> **Exhibit 17:** M. Abayo Law Firm, Professional Biography of Dieudonné Bashirahishize.

<sup>23</sup> **Exhibit 18:** Grands Lacs Suppliers S.a.r.l and Ors v A.G. of Burundi (Reference No.06/2016) [2018] EACJ71 dated 19 June 2018, available at <https://africanlii.org/ea/judgment/east-african-court-justice/2018/71>.

of the *Observatory for the Integrity of Burundian Civil Society for the Effective Implementation and Enforcement of the Civil Society Code of Conduct*. Following the 2015 Burundian crisis and the crimes committed against citizens during that period, he co-founded a lawyers' collective called *Justice for Burundi*. *Justice for Burundi* represents victims and their families in cases before the International Criminal Court and other African, regional and international human rights entities.

32. Mr. Niyongere is also the founder and president of the organization *SOS Torture/Burundi*, an affiliate of the SOS-Torture network operated by the World Organization against Torture. SOS Torture/Burundi catalogues and publishes information on serious human rights violations in Burundi. In 2012, he co-founded the *Association for Research on the Environment, Democracy and Human Rights*. Since 2013, he has been a member of the *Executive Committee of the Forum for the Reinforcement of Civil Society* (FORSC), a collective of Burundian Civil Society organizations. He acts as its Representative in charge of Provincial Branches.
33. In November 2014, Mr. Niyongere, through ACAT Burundi, organized a public screening to raise public awareness of the regular CAT review of Burundi.

### 3. Mr. Nshimirimana

34. Mr. Vital Nshimirimana, born on [redacted], lived in Burundi prior to his exile in 2015. He is married and has four children.
35. Mr. Nshimirimana studied law at the University of Burundi and joined the judiciary in 2004.<sup>24</sup> In 2009, he became the chair of the Syndicate of Magistrates of Burundi (SYMABU). In 2013, Mr. Nshimirimana registered with the Burundian Bar Association. Prior to that, he worked as the executive secretary of the Bar.
36. As a Burundian civil society activist and human rights defender, Mr. Nshimirimana is the General Delegate of the Forum for the Strengthening of Civil Society in Burundi, a forum made up of 146 national NGOs. In his role as General Delegate, Mr. Nshimirimana, alongside members of other organizations, requested that the International Criminal Court investigate alleged crimes committed by the Government.
37. Mr. Nshimirimana was also the Chairman of the campaign called *Halte au troisième mandat*, that tried to prevent President Nkurunziza standing for a third term.<sup>25</sup> After he joined and assumed leadership of the movement contesting the President's third term, he and his family became the subject of an investigation by Burundian intelligence agencies, which forced them to leave the country in May 2015.

### 4. Mr. Nigarura

38. Mr. Lambert Nigarura, born in Burundi [redacted], was called to the Bar in Bujumbura on 4 May 2012. Mr. Nigarura is married and has two children. He and his family lived in Mutanga-Nord, in the commune of Ntahangwa, Bujumbura, before their exile on 3 June 2015.

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<sup>24</sup> **Exhibit 19:** The Story of Vital, Article from Social Shorthand, dated 30 November 2016.

<sup>25</sup> **Exhibit 20:** Decision of the Bujumbura Court of Appeals, RA Case No. 11, dated 16 January 2017, p. 2.

39. Mr. Nigarura studied law at the University of Lake Tanganyika. He also did a training in human rights at the Catholic University of Central Africa in Yaoundé, Cameroon. He is currently taking a Masters in international law and human rights at St Louis University, Brussels, Belgium.
40. Mr. Nigarura is the President of the Burundian Coalition for the International Criminal Court (CB-CPI), a platform of civil society organizations who campaign for the promotion of an independent, effective and impartial international criminal justice system. In this context, CB-CPI collects information on crimes committed in Burundi which fall within the jurisdiction of the International Criminal Court. Mr. Nigarura has worked on several sensitive and high-profile cases that were broadly publicized in Burundi, notably he defended the journalist and Director of African Public Radio (RPA) Bob Rugarika, who had been imprisoned for denouncing the murder of three Italian nuns in September 2014. He also acted in the matter of the MSDP militants and in the torture case involving Burundi police chief, Jean Bosco Cishahayo.<sup>26</sup>
41. Mr. Nigarura has also been the assistant coordinator of *SOS Torture/Burundi*. He is a founding member and the president of the NGO *AREDDHO-Burundi*, and in that capacity has worked on a project related to minors in conflict with the law in 2015.
42. Currently, Mr. Nigarura is in charge of a department in *Justice for Burundi* that represents 1600 families of victims before the International Criminal Court. Mr. Nigarura filed a complaint against the head of the intelligence services, General Ntakarutimana, and the then Minister of Security, General Gabriel Nizigama, for acts of torture and inhuman and degrading treatment inflicted on General Cyrille Ndayirukiye, who was second-in-command of the junta, and who attempted to overthrow the regime on May 13, 2015, when he was incarcerated in the intelligence service's cells. The first threats against him began thereafter.

## **B. POLITICAL UNREST IN BURUNDI**

43. On 25 April 2015, the ruling political party in Burundi, the National Council for the Defense of Democracy – Forces for the Defense of Democracy (CNDD-FDD), announced that President Pierre Nkurunziza would run for a third term in office. At that time, the Burundian Constitution provided that the President could only be re-elected once and serve a maximum of two, five year terms in office.<sup>27</sup>
44. The day after CNDD-FDD's announcement, thousands of Burundian citizens took to the streets in Bujumbura to protest against President Nkurunziza's decision to run for a third term. Police and government forces tried to suppress the protests with violence, opening fire on the protestors. In the first week of protests, the Burundi Red Cross reported that at least six people were killed<sup>28</sup> and the OHCHR stated that over 400 protesters were detained, and some were beaten in prison.<sup>29</sup>
45. After a failed military coup on 13 May 2015, the protests continued and the Government sought to violently suppress the protestor's activities. At the time, Amnesty

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<sup>26</sup> **Exhibit 21:** Article: *Espoir de la défense de la victime de torture dans l'affaire Kabanda d'obtenir justice* (Defence hope of the torture victim in the Kabanda case to obtain justice), dated 9 September 2014.

<sup>27</sup> **Exhibit 3:** Constitution of the Republic of Burundi 2005, dated 18 March 2005, Article 96.

<sup>28</sup> **Exhibit 22:** WSJ Article - Burundi Red Cross 6 Killed in Protests Against President, dated 27 April 2015.

<sup>29</sup> **Exhibit 23:** VOA news, UN Warns Burundi Could Descend into Chaos, dated 1 May 2015.

International described the situation as one where “*Burundian police used excessive lethal force, including against women and children, to silence those opposed to President Pierre Nkurunziza’s bid for a third term.*”<sup>30</sup> Arbitrary arrests of purported opponents of the political regime were widely reported and the protests forced a great number of Burundian citizens into exile, including the Victims, as elaborated below.<sup>31</sup> In late May, the OHCHR reported that close to 100,000 people had fled the country, primarily to neighbouring Rwanda, the Democratic Republic of Congo and Tanzania.<sup>32</sup> It was also reported that mass grave-sites were set up in Burundi which, according to Amnesty International, suggests a deliberate attempt by Burundi to conceal the number of people killed by the Government.<sup>33</sup>

46. Despite the ongoing protests and significant violence, President Nkurunziza was re-elected on 21 July 2015. Violence against the protestors continued after the election. In August 2015, there was an attempted assassination of well-known political activist, Pierre Claver Mbonimpa and other human rights advocates.<sup>34</sup>
47. The extrajudicial killings and politically motivated murders that were committed by Burundi between April 2015 and April 2016 amongst other things, have been repeatedly denounced by the CAT.<sup>35</sup>

## C. DENOUNCING HUMAN RIGHTS VIOLATIONS AND COOPERATING WITH THE UN

### 1. The Role of the Victims in the Political Protests

48. The Victims openly spoke out against the actions that the Government took against the protestors from the end of April 2015, noting that these actions constituted human rights violations.<sup>36</sup> As stated above, Mr. Nshimirimana led a protest campaign against the President standing for a third term in office and Messrs. Bashirahishize, Niyongere and Nigarura also publicly opposed the re-election of President Nkurunziza. They participated in the protests in their capacity as Burundian citizens and their involvement was not linked to their professional occupation.
49. Fearing for their safety given the violent targeting of protestors by the Government, the Victims fled Burundi in May and June 2015. They were admitted to neighbouring

<sup>30</sup> **Exhibit 24:** Amnesty International Article, Burundi: Excessive lethal force used to crush demonstrations dated 23 July 2015, available at <https://www.amnesty.org/en/latest/news/2015/07/burundi-excessive-lethal-force-used-to-crush-demonstrations/>.

<sup>31</sup> **Exhibit 4:** CAT Burundi Follow up Report, dated 31 October 2016, p. 2.

<sup>32</sup> **Exhibit 25:** OHCHR Regional Update 4; Burundi Situation, dated 26 May to 1 June 2015, available at <https://www.refworld.org/country,,OHCHR,,BDI,,558273894,0.html>.

<sup>33</sup> **Exhibit 26:** Amnesty International Article, Burundi: Satellite evidence supports witness accounts of mass graves, dated 28 January 2016, available at <https://www.amnesty.org/en/latest/news/2016/01/burundi-satellite-evidence-supports-witness-accounts-of-mass-graves/>.

<sup>34</sup> **Exhibit 27:** Concluding observations of the CAT on the special report of Burundi requested under Article 19(1) *in fine* of the Convention, dated 9 September 2016, p.8.

<sup>35</sup> Id.

<sup>36</sup> Since the start of the crisis, several statements have been made and continue to be made through the respective organizations led by the four victims. These statements are generally available on the websites of the following organizations: <https://www.avocatsdesvictimes.org/> / [www.sostortureburundi.org/](http://www.sostortureburundi.org/) / [www.cb-cpi.org](http://www.cb-cpi.org/) / [https://forscburundi.org](https://forscburundi.org/).

African states as political refugees and later sought refuge in Europe.<sup>37</sup> To date, the Victims have not returned to Burundi out of fear that if they do they will suffer additional retaliatory actions.

## **2. The Role of the Victims at the 58<sup>th</sup> CAT Session**

50. From 25 July to 12 August 2016, the 58<sup>th</sup> CAT Session took place in Geneva, Switzerland. In connection with that session, the Victims provided information to the CAT on the ongoing crisis in Burundi. Messrs. Bashirahishize, Niyongere, and Nigarura also attended the CAT Session and, together with other individuals, presented and discussed the Special Burundi Report with the CAT on 27 July 2016.
51. Messrs. Bashirahishize, Niyongere, and Nigarura's involvement in the CAT Session was separate to their professional legal engagements.
52. The objective of the Special Review of Burundi was to highlight the reported human rights violations and to give the Government the opportunity to respond to the allegations raised. The Government delegation boycotted the second half of the interactive dialogue with the CAT.

## **D. DISBARMENT PROCEEDINGS IN BURUNDI**

53. On 29 July 2016, on the penultimate day of the CAT Session, the Prosecutor filed a complaint with the Bar requesting the disbarment of the Victims.<sup>38</sup> In his complaint, the Prosecutor claimed that the Victims had:
  - a) participated in a revolutionary/insurrectional movement;
  - b) attempted a coup d'état; and
  - c) trafficked images of a fabricated genocide in Karuzi (a city located in Eastern Burundi) and broadcasted them in France.<sup>39</sup>
54. In the Prosecutor's complaint, each of these activities was associated with a number for a criminal file.<sup>40</sup> The Victims had, and to this day continue to have, no knowledge of these criminal files. Despite repeated requests, the Victims have never seen them and are not aware of any criminal proceedings having been initiated in relation to these charges.

## **1. The Victims' Response**

55. On 22 August 2016, after being informed of the Prosecutor's complaint,<sup>41</sup> the Victims responded in a joint letter and denied all of the Prosecutor's allegations of criminal activities.<sup>42</sup> Amongst other things, the Victims stated that the Prosecutor's allegations

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<sup>37</sup> **Exhibit 28:** Additional Conclusions, Case RA No.11, dated 21 December 2016, p. 1.

<sup>38</sup> **Exhibit 5:** Letter from Prosecutor to Bar President, 552/11/1093/2016, dated 29 July 2016.

<sup>39</sup> Id.

<sup>40</sup> **Exhibit 5:** Letter from Prosecutor to Bar President, 552/11/1093/2016, dated 29 July 2016.

<sup>41</sup> **Exhibit 58:** Letter from the Bar President to the Victims, dated 4 August 2016.

<sup>42</sup> **Exhibit 29:** Clarification note from the Victims to the Bar, dated 22 August 2016.

were unfounded and that their participation in peaceful and democratic protests against President Nkurunziza's violation of the Constitution did not qualify as an insurrection.<sup>43</sup>

56. The Victims further argued that if they were to be disbarred on the basis of these allegations, such action would be contrary to the principle of the presumption of innocence which is enshrined in Article 40 of the Constitution.<sup>44</sup>
57. Furthermore, the Victims claimed that the Prosecutor's request for disbarment was an act of reprisal for their denunciation of human rights violations to the CAT and, for the attendance of Messrs. Bashirahishize, Niyongere, and Nigarura at the CAT Special Review of Burundi.<sup>45</sup> Indeed, the Prosecutor's complaint was filed at the Bar on 29 July 2016, the same day that the CAT requested the Burundi delegation to respond to the allegations detailed in the Special Burundi Report in Geneva.<sup>46</sup>

## **2. The Bar's Dismissal of the Prosecutor's Complaint**

58. On 27 September 2016, the Bar dismissed the Prosecutor's disbarment request.<sup>47</sup> The Bar held that it would be contrary to the presumption of innocence to disbar the Victims on the basis of criminal allegations that had not been communicated to them, not been considered by the relevant authorities and had not been decided upon.<sup>48</sup>
59. A copy of the decision was sent to the Victims.

## **3. Courts Summons and Hearings**

60. The Prosecutor appealed the Bar's decision before the Court of Appeals. The Victims were thus summoned to appear for the First Hearing before the Court of Appeals, due to take place on 24 November 2016.<sup>49</sup>
61. The summons was published in the legal gazette entitled "*Le Renouveau du Burundi*" Issue No. 9480.<sup>50</sup> As the Victims were living in exile abroad at the time, none received personal letters summoning them to appear before the Court of Appeals.
62. Having learned about the hearing from the Gazette, the Victims each wrote to the Court of Appeals explaining that, due to their refugee status, they would not be able to attend the First Hearing in Bujumbura and asking for a postponement.<sup>51</sup> Although the First Hearing was scheduled for 24 November 2016, it in fact took place on 19 December

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<sup>43</sup> Id., p. 6.

<sup>44</sup> **Exhibit 3:** Constitution of the Republic of Burundi 2005, dated 18 March 2005, Article 40.

<sup>45</sup> **Exhibit 29:** Clarification note from the Victims to the Bar, dated 22 August 2016.

<sup>46</sup> Id., p. 9.

<sup>47</sup> **Exhibit 6:** Bar Decision, RDA No. 001/COAB/2016, dated 27 September 2016 attaching a letter from the Bar to the Prosecutor, 197/COAB/K.S/2016, dated 27 September 2016.

<sup>48</sup> **Exhibit 6:** Bar Decision, RDA No. 001/COAB/2016, attaching a letter from the Bar to the Prosecutor, 197/COAB/K.S/2016, dated 27 September 2016, p. 4 paragraph 27.

<sup>49</sup> **Exhibit 7:** Assignation à Domicile Inconnu, Affaire RA. No. 11, Le Renouveau du Burundi, dated 9 November 2016.

<sup>50</sup> Id.

<sup>51</sup> See **Exhibit 30:** Letter from Mr. Bashirahishize to the President of the Court of Appeals, dated 11 November 2016; **Exhibit 31:** Letter from Mr. Niyongere to the President of the Court of Appeals, dated 12 November 2016; and **Exhibit 32:** Letter from Mr. Nigarura to the President of the Court of Appeals, dated 16 November 2016.

2016. In spite of the postponement, the Victims were unable to attend *in propria persona*.

63. The Victims arranged for European lawyers from *Union Internationale des Avocats (UIA or International Association of Lawyers)* to represent them at the First Hearing:<sup>52</sup>
- a) Mr. Niyongere granted a power of attorney to Mr. Phillippe Currat of the Geneva Bar;<sup>53</sup>
  - b) Mr. Nshimirimana granted a power of attorney to Mr. Martin Pradel of the Paris Bar;<sup>54</sup>
  - c) Mr. Bashirahioshize granted a power of attorney to Ms. Bernadette Picq of the Harlem Bar;<sup>55</sup> and
  - d) Mr. Nigarura granted a power of attorney to Mr. Jean-Pierre Jacques of the Liège Bar.<sup>56</sup>
64. However, the lawyers from *UIA* were unable to attend the First Hearing to represent the Victims because the Burundian immigration authorities rejected their visa applications.<sup>57</sup> As the Victims could no longer be represented by lawyers from *UIA*, Mr. Kazadi, former President of the Democratic Republic of Congo Bar Association, stepped in. However, the Prosecutor argued that, based on Burundian legislation, Mr. Kazadi could not represent the Victims at the First Hearing.<sup>58</sup> A Second Hearing was scheduled for 22 December 2016 to determine whether Mr. Kazadi could be the Victims' representative.<sup>59</sup>
65. In advance of the Second Hearing, Mr. Kazadi submitted two legal briefs to the Court of Appeals presenting the facts and arguments of the case and arguing that the Victims had the right to legal representation.<sup>60</sup>
66. The Second Hearing took place on 22 December 2016, as scheduled, and Mr. Kazadi's request to represent the Victims was rejected by the Court of Appeals.<sup>61</sup> The Court of Appeals ruled that Mr. Kazadi did not have capacity to represent the Victims without offering a further explanation.<sup>62</sup> The Victims were then tried *in absentia*.
67. On 16 January 2017, the Court of Appeals found in favour of the Prosecutor ruling that the presumption of innocence does not prevent the imposition of sanctions for a lawyer who has acted unlawfully.<sup>63</sup> The Court of Appeals also found that the demonstrations

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<sup>52</sup> **Exhibit 33:** Conclusions, Case RA No.11, dated 21 December 2016, p.1.

<sup>53</sup> **Exhibit 59:** Special Judicial Mandate, re Mr. Niyongere, dated 21 November 2016.

<sup>54</sup> **Exhibit 34:** Special Judicial Mandate, re Mr. Nshimirimana, dated 20 November 2016.

<sup>55</sup> **Exhibit 60:** Special Judicial Mandate, re Mr. Bashirahioshize, dated 20 November 2016.

<sup>56</sup> **Exhibit 35:** Special Judicial Mandate, re Mr. Nigarura, dated 20 November 2016.

<sup>57</sup> **Exhibit 36:** Notes of Audience, dated 19 December 2019, p. 1.

<sup>58</sup> Id, p.1.

<sup>59</sup> Id, p.1.

<sup>60</sup> **Exhibit 33:** Conclusions, Case RA No. 11, dated 21 December 2016, p. 2.

<sup>61</sup> **Exhibit 20:** Decision of the Bujumbura Court of Appeals, RA Case No. 11, dated 16 January 2017, p. 4.

<sup>62</sup> Id.

<sup>63</sup> Id., p. 9.

that the Victims participated in were illegal and ordered the disbarment of Messrs. Bashirahishize, Niyongere, and Nshimirimana. The Court of Appeals suspended Mr. Nigarura from practicing law for one year and banned him from sitting on the Executive Committee of the Bar for five years.<sup>64</sup>

68. The Victims have never received any formal notification of the Court of Appeal Decision, which as explained below, has inhibited their ability to appeal before the East African Court of Justice.

#### **E. CORRESPONDENCE BETWEEN THE UN AND BURUNDI**

69. On 5 August 2016, a week after the Prosecutor complained to the Bar, the CAT Chair and the CAT Rapporteur on reprisals wrote to the Ambassador of Burundi in Geneva stating their concern that the Prosecutor's disbarment request was a form of reprisal against the Victims for their participation in the CAT Special Review of Burundi that had taken place only a few days earlier from 28 to 29 July 2016.<sup>65</sup>
70. On 10 August 2016, the Government responded to the OHCHR denying the allegation that the disbarment proceedings were a reprisal for the Victims' participation in the CAT Session.<sup>66</sup> The Government claimed that the request for disbarment had strictly been made within the framework of serious criminal investigations.<sup>67</sup> This is the only time that Burundi has responded to the UN in connection with this matter.
71. The CAT Chair and the CAT Rapporteur on reprisals responded to the Government on 12 August 2016, maintaining that the disbarment proceedings were a form of reprisal.<sup>68</sup> The OHCHR noted that Burundi had used this form of reprisal previously. In a letter dated 25 November 2014, the CAT wrote to the Government in relation to the treatment of Mr. Nininahazwe – Director of *Forum pour la Conscience et le Développement* (FO.CO.DE) who had complained of threats to his physical integrity as a form of reprisal.<sup>69</sup> Furthermore, the CAT argued that to disbar the Victims based solely on the Prosecutor's assertions of criminal activity, prior to the Victims having been proven guilty and sentenced in criminal proceedings, would be contrary to the presumption of innocence recognized in the Constitution.<sup>70</sup>
72. The CAT Chair and the CAT Rapporteur on reprisals wrote a further letter to the Ambassador of Burundi on 21 February 2017, just over a month after the Appeal Court Decision, asking for the Government to explain the reasoning for the disbarment of Messrs. Bashirahishize, Niyongere, and Nshimirimana and the suspension of Mr. Nigarura.<sup>71</sup>
73. Burundi did not respond to the letters dated 12 August 2016 or 21 February 2017.

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<sup>64</sup> Id., p.6 & 10.

<sup>65</sup> **Exhibit 8:** Letter from United Nations Human Rights Office of the High Commissioner to Burundi's Ambassador to Geneva, dated 5 August 2016.

<sup>66</sup> **Exhibit 9:** Burundi's Ambassador to Geneva's response to the United Nations, dated 11 August 2016.

<sup>67</sup> Id., p. 3.

<sup>68</sup> **Exhibit 10:** Letter from the CAT to Burundi's Ambassador to Geneva, dated 12 August 2016.

<sup>69</sup> **Exhibit 37:** Letter from the CAT to Burundi's Ambassador to Geneva, dated 25 November 2014, p. 1.

<sup>70</sup> **Exhibit 10:** Letter from the CAT to Burundi's Ambassador to Geneva, dated 12 August 2016, p. 1.

<sup>71</sup> **Exhibit 11:** Letter from the CAT to Burundi's Ambassador to Geneva, dated 21 February 2017.

## VI. ADMISSIBILITY

### A. JURISDICTION

74. Burundi ratified the Convention on 18 February 1993 and made a declaration under Article 22 of the Convention on 10 June 2003.<sup>72</sup>
75. As discussed in Section V above, the violations that are the subject of this Claim commenced in early 2015, that is, long after Burundi became a party to the Convention and Article 22 thereof.
76. Pursuant to Article 22(1) of the Convention, the Claim therefore falls within the jurisdiction of the CAT.

### B. NO OTHER INTERNATIONAL COMPLAINT

77. No complaint has been submitted to any other procedure of international investigation or settlement in relation to the violations that are the subject of this Claim.
78. Therefore, the Claim satisfies the admissibility requirement of Article 22(5)(a) of the Convention.

### C. EXHAUSTION OF DOMESTIC REMEDIES

79. Pursuant to Article 22(5)(b) of the Convention the Committee should not consider any claims unless:
- “The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.”*<sup>73</sup>
80. The Human Rights Committee<sup>74</sup> has further clarified that the exhaustion of domestic remedies refers “*primarily to judicial remedies*”,<sup>75</sup> which must “*offer...a reasonable prospect of redress*”.<sup>76</sup>
81. Here, the Victims have exhausted all available local remedies. As discussed in Section V above, the Court of Appeals effected the disbarment or suspension of the

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<sup>72</sup> See, for example, **Exhibit 2**: United Nations Human Rights Office of the High Commissioner, Status of Treaties Ratification, Reservations and Declarations Dashboard, Burundi Country Profile, available at <http://indicators.ohchr.org/>.

<sup>73</sup> **Exhibit 48**: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (Article 22(5)(b)).

<sup>74</sup> The Human Rights Committee oversees implementation of the International Covenant on Civil and Political Rights, and has the same requirement for the exhaustion of domestic remedies as set out by Article 22(5)(b). Decisions by the Human Rights Committee is therefore relevant to the CAT, as confirmed in a report by the International Justice Resource Center. See **Exhibit 61** International Justice Resource Center Report on Exhaustion of Domestic Remedies in the United Nations System, dated August 2017, p. 3.

<sup>75</sup> **Exhibit 44**: *R.T. v France*, UNHRC, Views of 30 March 1989, CCPR/C/35/D/262/1987, p. 5, para.7.4; **Exhibit 45**: *Mariam Sankara et al. v. Burkina Faso*, UNHRC, Views of 28 March 2006, CCPR/C/60/D/1159/2003, p. 11, para. 6.4.

<sup>76</sup> **Exhibit 46**: *Patiño v. Panama*, UNHRC, Views of 21 October 1994, CCPR/C/52/D/437/1990, p. 3, para.5.2; **Exhibit 47**: *Yuzepchuk v. Belarus*, UNHRC, Views of 17 November 2014, CCPR/C/112/D/1906/2009, p. 8, para.7.4.

Victims by its decision dated 16 January 2017.<sup>77</sup> This decision was issued over three years ago, but to date, the Court of Appeals has failed to formally notify the Victims of its decision.<sup>78</sup> Absent this formal notification, the Victims are unable to pursue further judicial remedies in Burundi.

82. In any event, any further attempts at seeking redress in Burundi would be in vain.
83. First, CAT jurisprudence provides that the rule to exhaust domestic remedies does not apply where such remedies are unreasonably prolonged. Remedies are unreasonably prolonged where the adjudication takes several years. In *Saadia Ali v Tunisia* (291/2006), for example, the CAT considered a delay of over three years for the adjudication of the case at first instance to be “*unreasonably prolonged*”.<sup>79</sup> Similarly, in *Damien Ndarisigaranye v Burundi* (493/2012), the CAT held that the domestic proceedings “*had been unreasonably lengthy*” due to the inaction for eight years of the relevant domestic authority.<sup>80</sup>
84. It has now been more than three years since the Court of Appeal rendered its decision and the Victims have not yet been notified, which prevents them from pursuing any further domestic remedy. This delay is in no way attributable to the Victims or explained by the complexity of the case. This constitutes an unreasonably prolonged delay within the meaning of Art. 22(5)(b) of the Convention.
85. Second, and moreover, the CAT has also found that the rule of exhaustion of domestic remedies does not apply where pursuing such remedies would be “*unlikely to bring effective relief*” to the victim.<sup>81</sup> For example, in *Rached Jaidane v Tunisia* (654/2015), a torture victim filed a criminal complaint against several government officials with the competent court, but it took three years and nine months for that court to issue a decision. In its decision, that court declared that the acts of the government officials were “*statute-barred and not liable to prosecution*”. Moreover, although the decision had been appealed, it had not yet been heard by the local court of appeal.<sup>82</sup> The CAT admitted the torture victim’s complaint finding that “*the insurmountable procedural constraint imposed on the complainant by the inaction of the competent authorities has rendered the opening of proceedings conducive to a useful remedy highly unlikely*”.<sup>83</sup> The Human Rights Committee adopted a similar approach in *Pratt and Morgan v Jamaica* (1989). In that case, it took four years for the appeal court of Jamaica to reject the appeal of an alleged murderer sentenced to death and issue a reasoned judgment. The Human Rights Committee found that there was no further effective local remedy

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<sup>77</sup> See Section V.D.3 above.

<sup>78</sup> The Victims only became aware of the decision, because a colleague who was carrying out some research for a university course, found it at the Court Registry Office. Burundian procedural law is silent with regard to the deadlines for notification of the decision to the parties. In practice, the most diligent party (often the winner) does everything to go and be served and to ask that the other party be served, as its interest lies in the time for appeal to start running. In any case, the prosecution would have been notified of the decision when it was pronounced at the public hearing as they were present/represented.

<sup>79</sup> **Exhibit 66:** *Saadia Ali v Tunisia*, Communication No. 291/2006, U.N. Doc. CAT/C/41/D/291/2006 (2008), paragraph 7.2.

<sup>80</sup> **Exhibit 67:** *Damien Ndarisigaranye v Burundi*, Communication No. 493/2012, U.N. Doc. CAT/C/62/D/493/2012 (2017) Paragraph 5.3.

<sup>81</sup> **Exhibit 48:** Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (Article 22(5)(b)).

<sup>82</sup> **Exhibit 63:** *Rached Jaidane v Tunisia*, Communication No. 654/2015 (CAT/C/D/654/2015).

<sup>83</sup> **Exhibit 63:** *Rached Jaidane v Tunisia*, Communication No. 654/2015 (CAT/C/D/654/2015), para. 6.3, p. 12.

for the victim since, based upon past court rulings, a constitutional appeal (which was the last potential domestic remedy the author could have pursued) would be “*bound to fail*”.<sup>84</sup> In this context, the Human Rights Committee once again confirmed that “*the local remedies rule does not require resort to appeals that objectively have no prospect of success.*”<sup>85</sup>

86. The CAT specifically considered the exhaustion of local remedies in Burundi in 2017 and 2018. In both cases, the CAT found that the inaction of the competent authorities made any effective remedy unlikely.<sup>86</sup> In the 2017 decision, the CAT found the claim to be admissible, despite the Government’s objection that a criminal case had been opened and that domestic criminal proceedings were ongoing. The CAT held it was “*unlikely that any remedy that might provide effective relief [could] be initiated*”, given that the case had “*remained on the docket of the public prosecution service for more than 11 years*” and that the Government “*provided no...information or evidence... to ascertain what progress ha[d] been made or to judge how effective the [domestic criminal] proceedings might be*”.<sup>87</sup> Similarly, in its 2018 decision, the CAT held the claim to be admissible, noting that although there were ongoing domestic proceedings in Burundi, these had started more than nine years before and again, the Government provided no information or evidence “*to determine what progress ha[d] been made or the potential effectiveness of the proceedings.*”<sup>88</sup> Notably, the victim in this case brought to the CAT’s attention the “*general climate of impunity in Burundi*” and the “*ineffectiveness of the judicial system*”.<sup>89</sup> Indeed, more recent complaints to the Burundian Supreme Court demonstrate that ineffective domestic remedies and the inaction of competent authorities are in fact pervasive in Burundi.<sup>90</sup> In particular, in an open letter and memorandum to the President of the Burundi Supreme Court, a group of journalists, political opponents and human rights defenders denounce, amongst other things, the impunity of the Burundi authorities responsible for human rights breaches, the partiality of the Burundi judicial system and the fundamental breaches to the victims’ rights of representation.<sup>91</sup>

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<sup>84</sup> **Exhibit 62:** *Earl Pratt and Ivan Morgan v Jamaica*, Communication No. 210/1986 & 225/1987; U.N. Doc. CCPR/C/35/D/225/1987 (1989), para. 12.5, p. 6.

<sup>85</sup> **Exhibit 62:** *Earl Pratt and Ivan Morgan v Jamaica*, Communication No. 210/1986 & 225/1987; U.N. Doc. CCPR/C/35/D/225/1987 (1989), para. 12.3, p. 6.

<sup>86</sup> In *Damien Ndarisigaranye v Burundi* (493/2012), the CAT concluded that the “*inaction on the part of the competent authorities*” made it unlikely that any remedy could provide “*effective relief*” (**Exhibit 64:** *Damien Ndarisigaranye v Burundi*, Communication No. 493/2012 (CAT/C/62/D/493/2012), para. 6.3, p. 8). Similarly, in the 2018 decision of *Jean Ndagijimana v Burundi* (No. 496/2012),<sup>86</sup> the CAT considered that the “*inaction of the competent authorities*” made any effective remedy “*unlikely*” (**Exhibit 65:** *Jean Ndagijimana v Burundi*, Communication No. 496/2012, CAT/C/62/D/496/2012, (2017) para. 6.2, p. 8).

<sup>87</sup> **Exhibit 64:** *Damien Ndarisigaranye v Burundi*, Communication No. 493/2012 (CAT/C/62/D/493/2012), para. 6.3, p. 8.

<sup>88</sup> **Exhibit 65:** *Jean Ndagijimana v Burundi*, Communication No. 496/2012, CAT/C/62/D/496/2012, (2017) para 6.2, p. 8.

<sup>89</sup> **Exhibit 65:** *Jean Ndagijimana v Burundi*, Communication No. 496/2012, CAT/C/62/D/496/2012, (2017) para 2.12, p. 4.

<sup>90</sup> **Exhibit 67:** Letter from members of the African branch of SOS Torture to the President of the Supreme Court of Burundi, dated 4 February 2020; **Exhibit 68:** Open letter from the HRD and journalists (in exile) to the President of the Supreme Court of Burundi, dated 2 February 2020; and **Exhibit 69:** Memorandum on the use of the Burundian Justice System and the repression of Human Rights defenders, dated 2 February 2020.

<sup>91</sup> **Exhibit 68:** Open letter from the HRD and journalists (in exile) to the President of the Supreme Court of Burundi, dated 2 February 2020; and **Exhibit 69:** Memorandum on the use of the Burundian Justice System and the repression of Human Rights defenders, dated 2 February 2020.

87. Similar circumstances are at issue here. The Court of Appeal’s failure to notify the Victims of its decision for more than three years has deprived the Victims of the ability to pursue further domestic judicial remedies.<sup>92</sup>
88. Further, even if the Victims were able to challenge the decision of the Court of Appeals, they would be unable to plead their case in an effective manner given that the criminal allegations which form the basis of the Court of Appeals’ decision were never communicated to them.<sup>93</sup> The decision of the Court of Appeals referred to purported criminal investigations against the Victims and even referenced file numbers (for example, RPMG/696/MA related to the Victims’ alleged participation in a revolutionary movement and RMPG/697/MA related to the Victims’ alleged participation in an attempted coup).<sup>94</sup> However, these alleged criminal investigations were not supported by any evidence.<sup>95</sup> In fact, the Victims understand that no formal criminal proceedings were ever commenced. What is more, these matters were never communicated to the Victims, such that they are unaware of the very allegations that form the primary basis of the Court of Appeals’ decision against them.
89. It is clear that the Victims cannot mount an effective defence in any further judicial proceedings in Burundi and that, were the Victims able to pursue further domestic remedies (which they are not), any such proceedings would be highly unlikely to bring effective relief.

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90. For the reasons set out above, the Victims’ claims are admissible in accordance with Article 22 of the Convention.

## **VII. VIOLATIONS OF THE CONVENTION**

### **A. ARTICLE 13 OF THE CONVENTION PROVIDES VICTIMS OF TORTURE A RIGHT TO COMPLAIN WITHOUT FEAR OF REPRISALS**

91. Article 13 of the Convention provides that:

*“Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against ill-treatment or intimidation as a consequence of his complaint or any evidence given.”*<sup>96</sup>

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<sup>92</sup> See paragraph 81 and footnote 78 on page 17 above.

<sup>93</sup> See paragraph 81 and footnote 78 on page 17 above.

<sup>94</sup> **Exhibit 12:** Declaration on the execution of the RPA 859 Judgment and the seizure of property in case RMPG 697 bis/MA/BV/NTH.

<sup>95</sup> See, for example, **Exhibit 29:** Clarification note from the Victims to the Bar President, dated 22 August 2016, p. 7, last paragraph, and p. 8, penultimate paragraph; see also **Exhibit 10:** Letter from the CAT to Burundi’s Ambassador to Geneva, dated 12 August 2016, p. 1, second paragraph.

<sup>96</sup> **Exhibit 48:** Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (Article 13).

92. As elaborated below, Article 13 both guarantees the right to complain and protects against reprisals.

### **1. Article 13 Guarantees the Right to Complain**

93. States Parties are obliged to ensure that any individual who claims to have been subjected to torture, or treated or punished in a cruel, inhuman, or degrading way (as defined under Article 16.1 of the Convention) has the right to lodge a complaint without any barrier or discrimination.<sup>97</sup> The individual's right under Article 13 is two-fold: a State Party guarantees that victims of torture have a right firstly to complain to the authorities, and secondly, to have their complaint investigated by the authorities promptly and impartially.<sup>98</sup>
94. With respect to lodging a complaint, the CAT held in *Blanco Abad v Spain* (Communication No.59/1996), that for the facts to require a prompt and impartial investigation, “*it is enough for the victim simply to bring the facts to the attention of an authority of the State*” rather than a formal complaint.<sup>99</sup>
95. With respect to the kind of guarantees that State Parties must provide, Article 13 was considered in *Faisal Barakat v Tunisia* (Communication No. 60/1996 CAT/C/23/D/60/1996). The CAT found that Articles 12 and 13 had been breached, stating “*that the magistrate, by failing to investigate more thoroughly, committed a breach of the duty of impartiality imposed on him by his obligation to give equal weight to both accusation and defence during his investigation, as did the Public Prosecutor when he failed to appeal against the decision to dismiss the case.*”<sup>100</sup>
96. Article 13 thus provides a remedy for torture victims and also requires States Parties to ensure that victims of torture have an effective right to complain to a competent body. In the current case, the Victims' complaints were not investigated promptly and impartially, in contravention of the CAT.

### **2. Article 13 also Acts as a Protection against Reprisals**

97. Article 13 of the Convention has been interpreted as affording protection against reprisals, intimidation or retaliation.
98. In accordance with the provisions of the Guidelines on the Receipt and Handling of Allegations of Reprisals against Individuals, reprisals constitute a form of cruel treatment or punishment under Article 16 of the Convention and may amount to torture in certain circumstances.<sup>101</sup>

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<sup>97</sup> **Exhibit 48:** Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (Article 16).

<sup>98</sup> **Exhibit 49:** A Handbook on State Obligations under the UN Convention against Torture, dated May 2002, p. 52.

<sup>99</sup> **Exhibit 50:** *Blanco Abad v Spain*, Communication No. 59/1996, CAT/C/20/D/59/1996 (1998), p. 11, para. 8.6.

<sup>100</sup> **Exhibit 51:** *Faisal Barakat and family v Tunisia*, Communication No.60/1996, CAT/C/23/D/60/1996 (1999), p. 17, para. 11.10.

<sup>101</sup> **Exhibit 54:** Guidelines on the Receipt and Handling of Allegations of Reprisals against Individuals or Organizations Cooperating with the CAT under Article 13, 19, 20 and 22 of the Convention against Torture, dated 4 September 2015.

99. The Statement of the CAT on reprisals dated 16 December 2013 says that State Parties shall refrain from reprisals against individuals that seek to cooperate with or otherwise assist the CAT, whether by providing it with information or by communicating about the findings or actions of the CAT.<sup>102</sup>
100. This sentiment is reflected in Resolution 68/268 of the General Assembly, which strongly condemns all acts of intimidation and reprisals against individuals and groups for their contribution to the work of the human rights treaty bodies.<sup>103</sup> The General Assembly also urges States to take all appropriate action, consistent with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and all other relevant human rights instruments, to prevent and eliminate such human rights violations.<sup>104</sup>
101. Also, as stated in the San José Guidelines,<sup>105</sup> UN human rights treaty bodies strongly condemn acts of intimidation or reprisals against those seeking to cooperate or cooperating with treaty bodies. The San José Guidelines highlight the responsibility of States to prevent, investigate, and take action against acts of reprisals to protect individuals. In particular, the San José Guidelines set out several key principles,<sup>106</sup> including:
- a) “The right for everyone to have unhindered access to and to communicate with the treaty bodies and their members for the effective implementation of the treaty body mandates;
  - b) The freedom for everyone from any form of intimidation or reprisals, or fear of intimidation or reprisals, when seeking to cooperate or cooperating with the treaty bodies; and
  - c) The responsibility of States to avoid acts constituting intimidation or reprisals and to prevent, protect against, investigate and ensure accountability and to provide effective remedies to victims of such acts or omissions”.
102. States have a duty to protect individuals and exercise due diligence in doing so. Article 13 thus provides protection from any act of intimidation, retaliation or reprisals, including in particular against those seeking to cooperate or cooperating with treaty bodies. In the current case, the act of retaliation against the Victims is attributable to the Government as the latter disbarred the Victims in reprisal for their cooperation with the CAT.

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<sup>102</sup> **Exhibit 55:** Statement of the CAT on Reprisals, dated 16 December 2013.

<sup>103</sup> **Exhibit 52:** General Assembly resolution 68/268, A/RES/68/268, dated 9 April 2014, para 8.

<sup>104</sup> Id.

<sup>105</sup> **Exhibit 56:** Guidelines against Intimidation or Reprisals “San José Guidelines”, dated 30 July 2015.

<sup>106</sup> **Exhibit 56:** Guidelines against Intimidation or Reprisals “San José Guidelines”, dated 30 July 2015, part II, para. 5.

## **B. BURUNDI VIOLATED ARTICLE 13 OF THE CONVENTION**

### **1. The Victims were Disbarred or Suspended in Reprisal for their Denunciation to the CAT of Human Rights Violations in Burundi**

103. As explained above, the Victims engaged with the CAT as members of civil society (not as lawyers), by giving information on the human rights situation in Burundi (such as serious violations, impunity and corruption). Messrs. Niyongere, Nigarura and Bashirahishize, also attended the 58<sup>th</sup> CAT Session from 26 to 30 July 2016 where they presented the Special Burundi Report.<sup>107</sup>
104. On 29 July 2016, while the CAT Session was ongoing, the Prosecutor filed a complaint with the Bar requesting the disbarment of the Victims.<sup>108</sup> This request for the disbarment of the lawyers is linked to their cooperation with the CAT and therefore, amounts to a measure of retaliation.
105. In the case of Mr. Pacifique Nininahazwe, the disbarment measure may also have been influenced by his previous engagement with the CAT during the consideration of Burundi's second periodic report to the CAT in November 2014.<sup>109</sup> Indeed, as explained in a letter dated 25 November 2014 from the Chairperson and Rapporteur on Reprisals of the CAT to the Government, Mr. Nininahazwe, the head of a non-governmental organization in the field of human rights, participated in the CAT's 53<sup>rd</sup> session, during which Burundi's second periodic report was examined.<sup>110</sup> As a result of that participation, he received threats to his physical integrity which extended to his family members.

### **2. The Court Proceedings and the Appeal Court Decision are in Violation of Article 13 of the Convention**

106. For all the reasons stated above, the treatment inflicted (*i.e.*, the disbarment proceedings and the decision of the Court of Appeals) by Burundi on the Victims amounts to reprisals prohibited under Article 13 of the Convention.
107. Burundi is therefore responsible for the violation of Article 13 of the Convention.

## **VIII. REMEDIES SOUGHT**

108. In light of the facts and submissions above, and in accordance with Article 14 of the Convention and General Comment No. 3 on Article 14 adopted by the CAT in December 2012,<sup>111</sup> the Author hereby requests that the CAT:
- a) Declare that the State Party, Burundi, has breached Article 13 of the Convention;
  - b) Request that the State Party, Burundi, quash the disbarment decision rendered by the Bar against Messrs. Niyongere, Nshimirimana and Bashirahishize in

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<sup>107</sup> See Section V.C.2 above.

<sup>108</sup> **Exhibit 5:** Letter from Prosecutor to Bar President, 552/11/1093/2016, dated 29 July 2016.

<sup>109</sup> **Exhibit 37:** Letter from the CAT to Burundi's Ambassador to Geneva, dated 25 November 2014.

<sup>110</sup> *Id.*

<sup>111</sup> **Exhibit 57:** CAT Committee, General Comment No. 3, Implementation of Article 14 by States Parties, (2012) UN Doc. CAT/C/GC/3, dated 13 December 2012.

violation of Article 13 of the Convention following a trial and appeal process that served as a reprisal against their denunciations of the human rights violations in Burundi, lacked basic safeguards and fell short of international fair trial standards, and where Messrs. Niyongere, Nshimirimana and Bashirahishize were effectively deprived of their right to be represented and to file an appeal;

- c) Request that the State Party, Burundi, quash the decision rendered by the Bar against Mr. Nigarura that unduly suspended his license to practice law and continues to ban him from sitting on the Executive Committee of the Bar Association in violation of Article 13 of the Convention, following a trial and appeal process that served as a reprisal against his denunciations of the human rights violations in Burundi, lacked basic safeguards and fell short of international fair trial standards, and where Mr. Nigarura was effectively deprived of his right to be represented and to file an appeal;
- d) Request that the State Party, Burundi, provide the Victims with financial redress and reparation, of a fair and adequate amount, which must also compensate for any immaterial damage;
- e) Request that the State Party, Burundi, acknowledge the arbitrary nature of the disbarment proceedings and decision, publish the decision of the CAT in this case, and issue a public apology to the Victims for the violations of their rights;
- f) Call on the State Party, Burundi, to comply with its obligation to refrain from reprisals or intimidation against individuals that cooperate or seek to cooperate with international human rights bodies and mechanisms, including the CAT, including by providing information or by communicating the findings or actions of the CAT and other bodies and mechanisms; and
- g) Recommend that the State Party, Burundi, adopt all necessary measures to:
  - i) introduce safeguards to prevent future acts of reprisal and intimidation against individuals and groups cooperating or seeking to cooperate with international human rights bodies and mechanisms, including the creation of an independent mechanism entrusted to investigate any such acts of reprisals or intimidation; such an independent body should have the power to initiate prosecution of those found to be the material and intellectual authors of any act of intimidation or reprisal; and
  - ii) provide appropriate training for judges and prosecutors, lawyers and law enforcement officers on the right of everyone to unhindered access to and communication with international human rights bodies and mechanisms, the freedom for everyone from any form of intimidation or reprisals, or fear of intimidation or reprisals, when seeking to cooperate or cooperating with international human rights bodies and mechanisms, and the responsibility of States to avoid acts constituting intimidation or reprisals and to protect against, prevent, investigate and ensure accountability and to provide effective remedies to victims of such acts or omissions.

**IX. LIST OF SUPPORTING DOCUMENTS**

109. Please refer to the exhibit index set out in Appendix 1 to this Claim.

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## Appendix I: Index of Exhibits

EXHIBIT NO.	DESCRIPTION	DATE
1.	Report to the CAT in Burundi [Rapport alternatif de la société civile à l'attention du Comité Contre la Torture sur la situation au Burundi]	July 2016
2.	United Nations Human Rights Office of the High Commissioner Website, Status of Treaties Ratification, Reservations and Declarations Dashboard, Burundi Country Profile	-
3.	Constitution of the Republic of Burundi 2005 [Articles 40 and 96]	18 March 2005
4.	CAT Burundi Follow-Up Report	31 October 2016
5.	Letter from Prosecutor to Bar President, 552/11/1093/2016	29 July 2016
6.	Bar Decision, RDA No. 001/COAB/2016, attaching a letter from the Bar to the Prosecutor, 197/COAB/K.S/2016, dated 27 September 2016	27 September 2016
7.	Assignment à Domicile Inconnu, Affaire RA. No. 11, Le Renouveau du Burundi (Assignment at Home Unknown, Case RA. No. 11, The Renewal of Burundi)	9 November 2016
8.	Letter from United Nations Human Rights Office of the High Commissioner to Burundi's Ambassador to Geneva	5 August 2016
9.	Burundi's Ambassador to Geneva's response to the United Nations	11 August 2016
10.	Letter from the CAT to Burundi's Ambassador to Geneva	12 August 2016
11.	Letter from the CAT to Burundi's Ambassador to Geneva	21 February 2017
12.	Declaration on the execution of the RPA 859 Judgment and the seizure of property in case RMPG 697 bis/MA/BV/NTH [Déclaration sur l'exécution de l'arrêt RPA 859 et saisie des biens meubles et immeubles dans le dossier RMPG 697 bis/MA/BV/NTH]	15 May 2019
13.	Student Politics in Africa Representation and Activism	May 2016
14.	Me Dieudonne Bashirahishize on the run fearing for his safety	18 April 2014

EXHIBIT NO.	DESCRIPTION	DATE
15.	Burundian Vice President of the East African Law Society	12 February 2014
16.	United Nations Committee Against Torture Special Examination of Burundi, Article from Trial International	12 August 2016
17.	M. Abayo Law Firm, Professional Biography of Dieudonné Bashirahishize	
18.	Grands Lacs Suppliers S.a.r.l and Ors v A.G. of Burundi (Reference No.06/2016) [2018] EACJ71	19 June 2018
19.	The Story of Vital, Article from Social Shorthand	30 November 2016
20.	Decision of the Bujumbura Court of Appeals, RA Case No. 11	16 January 2017
21.	Article: <i>Espoir de la défense de la victime de torture dans l'affaire Kabanda d'obtenir justice</i> (Defence hope of the torture victim in the Kabanda case to obtain justice)	9 September 2014
22.	WSJ Article - Burundi Red Cross 6 Killed in Protests Against President	27 April 2015
23.	VOA news, UN Warns Burundi Could Descend Into Chaos	1 May 2015
24.	Amnesty International Article, Burundi: Excessive lethal force used to crush demonstrations	23 July 2015
25.	OHCHR Burundi Situation, Regional Update 4	26 May – 1 June 2015
26.	Amnesty International Article: Burundi: Satellite evidence supports witness accounts of mass graves available at <a href="https://www.amnesty.org/en/latest/news/2016/01/burundi-satellite-evidence-supports-witness-accounts-of-mass-graves/">https://www.amnesty.org/en/latest/news/2016/01/burundi-satellite-evidence-supports-witness-accounts-of-mass-graves/</a>	28 January 2016
27.	Concluding Observations of the Committee on the Special Report of Burundi requested under Article 19(1) <i>in fine</i> of the Convention	9 September 2016
28.	Additional Conclusions, Case RA No.11	21 December 2016
29.	Clarification note from the Victims to the Bar President	22 August 2016
30.	Letter from Mr. Bashirahishize to the President of the Court of Appeals	11 November 2016

<b>EXHIBIT NO.</b>	<b>DESCRIPTION</b>	<b>DATE</b>
31.	Letter from Mr. Niyongere to the President of the Court of Appeals	12 November 2016
32.	Letter from Mr. Nigarura to the President of the Court of Appeals	16 November 2016
33.	Conclusions, Case RA No.11	21 December 2016
34.	Special Judicial Mandate, re Mr. Nshimirimana	20 November 2016
35.	Special Judicial Mandate of Mr Nigarura to Mr Jacques	20 November 2016
36.	Notes of Audience	19 December 2016
37.	Letter from the CAT of the High Commissioner to Burundi's Ambassador to Geneva	25 November 2014
38.	UNHRC Annual Report (1984)	24 August 1984
39.	<i>AE v Switzerland</i> , CAT, Decision adopted on 2 May 1995, CAT/C/14/D/24/1995	2 May 1995
40.	<i>RSM v Canada</i> , CAT, Decision adopted on 24 May 2013, CAT/C/50/D/392/2009	24 May 2013
41.	<i>Evloev v Kazakhstan</i> , CAT, Decision adopted on 5 November 2013, CAT/C/51/D/441/2010	5 November 2013
42.	<i>Yousfi v Morocco</i> , CAT, Decision adopted on 16 May 2014, CAT/C/52/D/525/2012	16 May 2014
43.	<i>Y v Canada</i> , CAT, Decision adopted on 28 July 2015, CAT/C/55/D/512/2012	28 July 2015
44.	<i>R.T. v France</i> , UNHRC, Views of 30 March 1989, CCPR/C/35/D/262/1987	30 March 1989
45.	<i>Mariam Sankara et al. v. Burkina Faso</i> , UNHRC, Views of 28 March 2006, CCPR/C/60/D/1159/2003	28 March 2006
46.	<i>Patiño v. Panama</i> , UNHRC, Views of 21 October 1994, CCPR/C/52/D/437/1990	21 October 1994
47.	<i>Yuzepchuk v. Belarus</i> , UNHRC, Views of 17 November 2014, CCPR/C/112/D/1906/2009	17 November 2014
48.	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984	1984

EXHIBIT NO.	DESCRIPTION	DATE
49.	A Handbook on State Obligations under the UN Convention against Torture	May 2002
50.	<i>Blanco Abad v Spain</i> , Communication No. 59/1996, CAT/C/20/D/59/1996 (1998)	19 June 1998
51.	<i>Faisal Barakat and family v Tunisia</i> , Communication No.60/1996, CAT/C/23/D/60/1996 (1999)	6 November 1996
52.	General Assembly Resolution 68/268, A/RES/68/268	9 April 2014
53.	UNHRC resolution A/HRC/RES/36/21	29 September 2017
54.	Guidelines on the Receipt and Handling of Allegations of Reprisals against Individuals or Organizations Cooperating with the CAT under Article 13, 19, 20 and 22 of the Convention against Torture	4 September 2015
55.	Statement of the CAT on Reprisals	16 December 2013
56.	Guidelines against Intimidation or Reprisals, “ <i>San José Guidelines</i> ”	30 July 2015
57.	CAT Committee, General Comment No. 3, Implementation of Article 14 by States Parties, (2012) UN Doc. CAT/C/GC/3	13 December 2012
58.	Letter from the Bar President to the Victims	4 August 2016
59.	Special Judicial Mandate, re Mr. Niyongere	21 November 2016
60.	Special Judicial Mandate, re Mr. Bashirahioshize	20 November 2016
61.	International Justice Resource Center Report on Exhaustion of Domestic Remedies in the United Nations System	August 2017,
62.	<i>Earl Pratt and Ivan Morgan v Jamaica</i> , Communication No. 210/1986 & 225/1987; U.N. Doc. CCPR/C/35/D/225/1987 (1989)	6 April 1989
63.	<i>Rached Jaidane v Tunisia</i> , Communication No. 654/2015 (CAT/C/D/654/2015)	3 October 2017
64.	<i>Damien Ndarisigaranye v Burundi</i> , Communication No. 493/2012 (CAT/C/62/D/493/2012)	10 November 2017
65.	<i>Jean Ndagijimana v Burundi</i> , Communication No. 496/2012, CAT/C/62/D/496/2012	18 January 2018

EXHIBIT NO.	DESCRIPTION	DATE
66.	<i>Saadia Ali v Tunisia</i> , Communication No. 291/2006, U.N. Doc. CAT/C/41/D/291/2006 (2008),	21 November 2008
67.	Letter from members of the African branch of SOS Torture to the President of the Supreme Court of Burundi	4 February 2020
68.	Open letter from the HRD and journalists (in exile) to the President of the Supreme Court of Burundi	2 February 2020
69.	Memorandum on the use of the Burundian Justice System and the repression of Human Rights defenders.	2 February 2020