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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL
concerning the opening of consultations with Burundi under Article 96 of the Cotonou
Partnership Agreement

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The Commission proposes that the EU should open consultations with Burundi as provided for by Article 96 of the ACP-EU Partnership Agreement signed in Cotonou on 23 June 2000 (the Cotonou Agreement), to which Burundi is a contracting party.¹ This proposal follows a period of intensified political dialogue², building on the political dialogue already conducted under Article 8 of the Cotonou Agreement. This intensified dialogue, which took place between October 2014 and May 2015, focused on the political climate in Burundi, in particular as the situation escalated in the run-up to legislative and presidential elections in summer 2015. The issues covered included: human rights abuses; the lack of an independent justice system; political violence perpetrated by the *Imbonerakure*, the youth wing of the ruling party, National Council for the Defence of Democracy–Forces for the Defence of Democracy (CNDD-FDD); restrictions on civil liberties and limitations to the freedom of expression and assembly; and the issuing of threats against dissidents, including those within the ruling party.

Despite the regularity and the substantive character of the intensified Article 8 discussions, Burundi's reaction in the talks demonstrated a systematic minimisation of the challenges identified and of the political risks associated with them. The possibility of a political crisis remained a major threat.

Political violence escalated following the announcement on 25 April 2015 that President Pierre Nkurunziza would seek a third mandate. To date, the crisis has resulted in over 120 deaths and thousands of casualties and has forced over 190 000 people to seek refuge in Tanzania, Uganda, Rwanda and the Democratic Republic of Congo, exacerbating the risk of a spillover of the violence into the surrounding region. Demonstrations by the opposition have been harshly put down, numerous media outlets have been closed and there has been a generalised increase, across the political spectrum, in the use of violence for political ends. This included a failed coup and ongoing attacks by armed groups of various persuasions, most recently the assassination of General Adolphe Nshimirimana, the attempted murder of Pierre Claver Mbonimpa, a prominent human rights defender, and the murder on 15 August 2015 of Colonel Jean Bikomagu, a former Army Chief.

The current crisis is evidence of both an escalation of the violence and an entrenchment of political positions, in a country which was already fragile and divided, and which has systematically failed to ensure respect for the rule of law and the application of democratic principles.

Negative developments in Burundi crystallised in the run-up to the legislative and presidential elections in June and July. The authorities failed to deliver on their commitment to implement the Roadmap for Elections agreed in 2013, and the electoral commission (CENI) did not demonstrate independence from the government. More broadly, the political climate, especially in terms of fundamental freedoms, did not allow for an open and competitive electoral context. The decision to go ahead with elections was made unilaterally

¹ Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ L 317, 15.12.2000, p. 3).

² Annex VII article 2 of the Cotonou Agreement.

despite the right conditions clearly not being in place. This contributed to a loss of confidence in the electoral environment among Burundi's partners and to the widespread boycotting of elections by opposition parties. In response to these developments, the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the Commission (HRVP) decided on 28 May 2015, after consultation with the EU Chief Observer and Member of the European Parliament David Martin, to suspend the European Union's Electoral Observation Mission to Burundi. The Observation Mission was subsequently definitively withdrawn on 29 June 2015. The reasoning behind this decision was that the election process continued to be seriously undermined by restrictions on independent media, excessive use of force against demonstrators, intimidation of opposition parties and civil society and a lack of confidence in the election authorities.

Following the degradation of the political situation, initiatives were taken by both the East African Community (EAC) and the African Union firstly to facilitate a dialogue between Burundians which could lead to political consensus on a way forward, and secondly to make a number of recommendations which if implemented would have opened the way to holding credible and inclusive elections. Unfortunately the decisions and recommendations of the African Union and the East African Community were not implemented by the Burundian authorities.

The African Union (AU) decided on 28 June to take the exceptional step of not observing the elections (a decision consistent with the African Union Political and Security Committee communiqué of 13 June 2015), noting that the necessary conditions for the organisation of free, fair, transparent and credible elections, in compliance with the relevant provisions of the African Charter on Democracy, Elections and Governance, were not in place.

The EAC Observation Mission observed the presidential election and concluded in its preliminary statement of 23 July that 'the electoral process fell short of the principles and standards for holding free, fair, peaceful, transparent and credible elections as stipulated in various international, continental as well as EAC Principles of Election Observation and Evaluation'.³

The United Nations Electoral Observation Mission in Burundi (MENUB) also observed the electoral process from January 2015, pursuant to Security Council Resolution 2137 of 2014, and came to similar conclusions: in its preliminary statement of 21 July, MENUB stated that 'freedoms of expression, assembly and association, essential conditions for the effective exercise of the right to vote, remained severely impaired [...] media freedom remained severely restricted [...] the overall environment was not conducive to an inclusive, free and credible electoral process'.

The HRVP issued a statement on behalf of the EU on 23 July 2015 declaring that the EU would set in motion procedures in preparation for opening Article 96 consultations, the aim of which would be to ensure that the Burundian authorities took the steps needed to resolve the crisis. The EU had already given advance warning of this step in the conclusions of the EU Foreign Affairs Council of 22 June, in which it was stated that 'The EU recalls the obligations under the Cotonou Agreement in terms of respect for human rights, democratic values and the rule of law, and the possibility of instituting the consultation procedures provided for in the Agreement, including Article 96. Depending on the reaction of the Burundian Government to the decisions taken by the Peace and Security Council of the AU and on future developments,

³ Preliminary report of the EAC election observation mission for the legislative elections in the republic of Burundi
<http://www.eac.int/dmdocuments/EAC%20Election%20Observer%20Mission%20to%20Burundi%20Presidential%20Election%202015%20-%20Preliminary%20Statement.pdf>.

the EU is prepared to institute those procedures, including in the area of cooperation, in order to ensure that Burundi respects those commitments.’

Article 9 of the Cotonou Agreement, sets out the essential elements on which the partnership is based, including respect for democratic principles and the rule of law. These same elements also underpin internal and international policies. On the basis of this clause, the European Commission considers that a dialogue with Burundi’s new authorities is necessary. The current situation gives grounds for opening consultations in accordance with Articles 9 and 96 of the Cotonou Agreement, focusing on:

1. Democratic principles (the political environment and the process for holding elections, the judicial system, addressing specific issues relating to the rule of law including intimidation and harassment, arbitrary arrest and imprisonment). This aspect would include follow-up, in support of the decisions and facilitation of the AU and the EAC, of a framework for consensus on the democratic future of the country, bearing in mind the activities already underway such as the deployment of the African Union human rights and military observers, supported by the EU funds.
2. Human rights (e.g. fundamental freedoms, avoiding the use of disproportionate force against demonstrators and ceasing torture).

The overall objective of the dialogue on these issues would be to encourage Burundi to commit to take action within a specified time-frame in the critical areas of democracy, human rights and the rule of law, on the basis of the principles set out in the Arusha Agreements.

This dialogue would give the Burundian authorities an opportunity to state their case on the points raised by the EU. The Commission could then decide whether, on that basis, it could support the country’s efforts to improve compliance with Article 9 of the Cotonou Partnership Agreement.

The Commission therefore proposes that the Council invite Burundi to consultations under Articles 9 and 96 of the Cotonou Agreement. A draft letter to this effect is attached to this Proposal.

The Commission proposes that cooperation activities financed by the European Development Fund or by other instruments under the EU’s general budget that are currently ongoing should continue during the consultation period, on the condition that the special conditions set out in the financing agreements are observed.