

To Permanent Representatives of Member and Observer States of the United Nations (UN) Human Rights Council, Geneva, Switzerland

18 August 2021

Burundi: The Human Rights Council should continue its scrutiny and pursue its work towards justice and accountability

Excellencies,

At the 45th session of the UN Human Rights Council (the Council) in October 2020, the Council renewed the mandate of the Commission of Inquiry (CoI) on Burundi for a further year. This allowed the only independent mechanism mandated to document human rights violations and abuses, monitor, and publicly report on the situation in Burundi to continue its work. By adopting resolution 45/19, the Council recognised that changing political circumstances do not equate to human rights change, and maintained its responsibility to support victims and survivors of violations and continue working to improve the situation in the country.

Ahead of the Council's 48th session (13 September-8 October 2021), we are writing to urge your delegation to support efforts to ensure that the Council continues its scrutiny and pursues its work towards justice and accountability in Burundi. In the absence of structural improvements, and in view of the recent increase in human rights violations against persons perceived as government opponents, we consider that there is no basis, nor measurable progress, that would warrant a departure from the current approach or a failure to renew the mandate of the CoI. At the upcoming session, at minimum, the Council should adopt a resolution that reflects realities on the ground, including the following elements.

First, the resolution should acknowledge that despite some improvements over the past year, the human rights situation in Burundi has not changed in a substantial or sustainable way. All the structural issues the CoI and other human rights actors have identified since 2015 remain in place. In recent months, there has been an increase in arbitrary arrests of political opponents or those perceived as such, as well as cases of torture, enforced disappearances and targeted killings, apparently reversing initial progress after the 2020 elections. Serious violations, some of which may amount to crimes against humanity, continue. Impunity remains widespread, particularly relating to the grave crimes committed in 2015 and 2016.¹ Even if some human rights defenders have been released, national and international human rights organisations are still unable to operate in the country.

The resolution should acknowledge that any substantive change to the Council's consideration of Burundi's situation is dependent on demonstrable and sustainable progress on key human rights issues of concern. The Council's approach should rely on benchmarks designed to measure tangible progress and based on key indicators identified by the CoI.² The Burundian Government should acknowledge existing human rights challenges explicitly and grant access to and cooperate with independent human rights mechanisms. It should also design a clear implementation plan and timeframe.

¹ In its latest oral briefing to the Council, assessing the human rights situation against specific action points identified in their September 2020 report, the CoI concluded that "the current situation in Burundi is too complex and uncertain to be referred to as genuine improvement" (Oral briefing of the Commission of Inquiry on Burundi, Human Rights Council 46th session, 11 March 2021, available at: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26879&LangID=E>).

² See the 2020 civil society letter, available at: DefendDefenders *et al.*, "Burundi: Vital role of the Commission of Inquiry in prompting meaningful human rights progress," 20 August 2020, <https://defenddefenders.org/burundi-vital-role-of-the-commission-of-inquiry-in-prompting-meaningful-human-rights-progress/> (accessed on 22 July 2021). The latest CoI report is available at: <https://www.ohchr.org/EN/HRBodies/HRC/ColBurundi/Pages/ColBurundiReportHRC45.aspx>.

Second, the Council's approach should focus on the following core functions:

(i) Continued independent documentation of violations and abuses, monitoring of, and public reporting on, the human rights situation in Burundi, with adequate resources.

These functions remain essential, especially in the absence of a strong human rights movement and independent institutions in Burundi. This work should be conducted by the CoI, or a similarly independent mechanism or team of experts, who are solely focused on Burundi and use professional methodologies to collect detailed information. The mechanism or team should be mandated to establish responsibilities and identify all those suspected of criminal responsibility. To follow up on the CoI's previous work, including on links between human rights violations and economic networks and corruption, it should engage in thorough analysis of political, social, and economic dynamics in Burundi. To do so, it requires an adequate level of expertise, resources, and staffing.

(ii) Follow up to the work and recommendations of the CoI, in particular on justice and accountability.

The reports and recommendations of the CoI since 2017 form a road map for reform, particularly in the area of justice and accountability. The Burundian Government has not taken meaningful steps to resume cooperation with the Office of the UN High Commissioner for Human Rights (OHCHR) or to cooperate with regional human rights mechanisms.³ The national human rights institution, the *Commission Nationale Indépendante des Droits de l'Homme du Burundi* (CNIDH), lacks independence, demonstrated by its failure to investigate and report on politically motivated human rights violations, and therefore cannot be a substitute for the CoI, despite its renewed A status. Therefore, an independent mechanism or team that is also mandated to conduct substantive work on justice and accountability remains essential. In addition to documenting violations and identifying all those suspected of criminal responsibility, its work should also include recommendations on ending impunity.

The CoI, which is due to present a written report to the Council at its upcoming 48th session, continues to provide critical oversight of the human rights situation in Burundi. Like its predecessor, the UN Independent Investigation on Burundi (UNIIB), it has documented gross, widespread and systematic human rights violations and abuses. The thoroughness and visibility of its work has put those suspected of criminal responsibility on notice that their conduct is being monitored and documented.

Concrete and long-term improvements in the human rights situation in Burundi will not come as a result of the Council relaxing its scrutiny. Rather, continued international scrutiny and substantive work towards justice and accountability constitutes the best chance to achieve meaningful change in the country.

At its 48th session, the Council should avoid sending the Burundian Government signals that would disincentivise domestic human rights reforms. The Council should ensure continued documentation, monitoring, public reporting, and public debates on Burundi's human rights situation, with a focus on justice and accountability. It should urge the Burundian authorities to make concrete commitments to implement human rights reforms within a clear time-frame, which should be measured against specific benchmarks.

We thank you for your attention to these pressing issues and stand ready to provide your delegation with further information as required.

Sincerely,

1. Action des Chrétiens pour l'Abolition de la Torture – Burundi (ACAT-Burundi)
2. African Centre for Justice and Peace Studies (ACJPS)

³ The African Union (AU) human rights observers were never fully deployed and faced a number of serious limitations to their work. Their mission ended on 31 May 2021. Burundi never cooperated with the African Commission on Human and Peoples' Rights (ACHPR) to implement its resolutions.

3. AfricanDefenders (Pan-African Human Rights Defenders Network)
4. Amnesty International
5. Article 20 Network
6. Asian Forum for Human Rights and Development (FORUM-ASIA)
7. Association Burundaise pour la Protection des Droits Humains et des Personnes Détenues (APRODH)
8. Association des Journalistes Burundais en Exil (AJBE)
9. The Burundi Human Rights Initiative (BHRI)
10. Cairo Institute for Human Rights Studies (CIHRS)
11. Center for Constitutional Governance (CCG)
12. Centre for Civil and Political Rights (CCPR-Centre)
13. CIVICUS
14. Civil Society Coalition for Monitoring the Elections (COSOME)
15. Coalition Burundaise pour la Cour Pénale Internationale (CB-CPI)
16. Collectif des Avocats pour la Défense des Victimes de Crimes de Droit International Commis au Burundi (CAVIB)
17. DefendDefenders (East and Horn of Africa Human Rights Defenders Project)
18. Eritrean Movement for Democracy and Human Rights (EMDHR)
19. Ethiopian Human Rights Defenders Center
20. European Network for Central Africa (EurAc)
21. Forum pour la Conscience et le Développement (FOCODE)
22. Geneva for Human Rights / Genève pour les Droits de l'Homme
23. Global Centre for the Responsibility to Protect (GCR2P)
24. Human Rights Watch
25. INAMAHORO Movement, Women and Girls for Peace and Security
26. International Commission of Jurists (ICJ)
27. International Federation for Human Rights (FIDH)
28. International Federation of ACAT (FIACAT)
29. International Movement Against All Forms of Discrimination and Racism (IMADR)
30. Lawyers' Rights Watch Canada
31. Light For All
32. Ligue Iteka
33. National Coalition of Human Rights Defenders – Burundi (CBDDH)
34. Observatoire de la Lutte contre la Corruption et les Malversations Économiques (OLUCOME)
35. Odhikar
36. Organisation pour la Transparence et la Gouvernance (OTRAG)
37. Protection International Africa
38. Reporters Without Borders
39. Réseau des Citoyens Probes (RCP)
40. SOS-Torture/Burundi
41. Tournons La Page
42. TRIAL International
43. World Organisation Against Torture (OMCT)