



BURUNDI

Human Rights Recommendations for Geneva Conference

October 2012

The conference in Geneva on October 29-30, 2012, bringing together the Burundian government, foreign governments, development partners, civil society organizations and other interlocutors, is an opportunity for the Burundian government and donors alike to prioritize human rights reforms and make concrete commitments to the protection of human rights.

Discussions scheduled to take place at the conference on a range of themes, including peace-building and good governance, should lead to the consolidation of human rights reforms in Burundi, as well as agreement on measures to address ongoing concerns. The conference should secure the commitment of participants to put in place lasting measures to safeguard the gains made to date and prevent a deterioration of the human rights situation, especially in the period leading up to elections in 2015.

Human Rights Commitments in the Poverty Reduction Strategy Paper

Burundi's second Poverty Reduction Strategy Paper (PRSP II), covering the period 2012-2016, forms the framework for the conference and contains clear commitments by the Burundian government to strengthen human rights protection. The first pillar of the PRSP consists of strengthening the rule of law, consolidating good governance, and promoting gender equality. This includes rehabilitating the justice system – with a commitment to increasing the independence of judges and ensuring justice for all – and implementation of a transitional justice system through the creation of a Special Criminal Court and a Truth and Reconciliation Commission.

Under the heading “Promoting human rights”, the PRSP states that “human rights violations such as torture, assassinations and rape must stop immediately”. It also highlights the need to strengthen security and pursue reforms to train and professionalize

the army and make the police force an instrument of protection for both people and property.

In the context of “consolidating good governance and institutional performance”, the PRSP highlights the strengthening of the democratic process and the importance of ensuring that the next elections are conducted smoothly and freely. In the document, the government makes a commitment to uphold political parties’ freedom to operate and ensure that all citizens may freely participate in the electoral process.

These and other commitments in the PRSP provide a solid framework for the protection of human rights in Burundi over the coming four years. The Geneva conference should enable the Burundian government and its partners to not only confirm these commitments but to begin implementing them.

Human Rights Achievements Offset by Continuing Abuses and Absence of Justice

Burundian government officials – including President Pierre Nkurunziza – have frequently and publicly stated their commitment to improving human rights protection in Burundi. A number of positive steps have been taken over the last few years – some of which are outlined below – but further concerted action is needed to address continuing concerns, notably impunity for human rights abuses.

One of the positive developments has been the creation of the National Independent Human Rights Commission (CNIDH) in 2011. The long-awaited establishment of this commission, the appointment of members from a variety of backgrounds, including civil society, and the fact that the commission has been able to operate independently, including by investigating politically sensitive cases, are all encouraging steps.

Another positive development is an initiative by the Ministry of Justice to address overcrowding and irregular detentions in Burundi's prisons by reviewing prisoner casefiles and provisionally releasing certain prisoners, including those who have served at least a quarter of their sentence. In addition, a presidential decree in June announced that several categories of prisoners, including those sentenced to five years' imprisonment or less (except for those convicted of rape, armed robbery, illegal possession of weapons and endangering state security), pregnant women, prisoners suffering from incurable diseases, prisoners over the age of 60 and those under the age of 18 would benefit from presidential grace; other prisoners' sentences would be halved. Several thousand prisoners could be released thanks to these two initiatives, which have already started to be implemented.

Burundian civil society organizations and the media are generally able to express themselves openly and to investigate and denounce human rights abuses when they occur. But at the same time, these basic freedoms are under threat. Burundian activists and journalists face persistent intimidation, harassment, and threats by government and intelligence officials. Several draft laws before the National Assembly in 2012, including a revised press law and a law on public gatherings, contain severe restrictions to freedom of expression and assembly. If adopted without modifications, these new laws would drastically curtail free speech in Burundi and would represent a significant step backward for civil and political rights. More broadly, these kinds of measures could undermine Burundi's democratic gains of the last few years.

In 2012, Human Rights Watch has noted both positive and negative developments with regard to political violence in Burundi. Following a particularly dark period from the end of 2010 to the end of 2011, marked by a spike in politically motivated killings by state agents and members of the youth league of the ruling party, on the one hand, and armed opposition groups on the other, there has been a relative calm in 2012. Several new cases have been reported, but overall, political killings have decreased. However, the decrease should not obscure the fact that the vast majority of perpetrators of political killings in 2010 and 2011 have still not been brought to justice. Furthermore, the fundamental problems that gave rise to the political violence have not been resolved – in particular, the political impasse between the government and opposition parties and the reluctance by both sides to accept the legitimacy of political competition in a democratic society.

The Burundian government should take prompt and firm measures to address these issues and put an end to the impunity protecting the perpetrators of political killings. Not only does the government have a responsibility to deliver justice to the families of victims of killings, but it should take preventive measures to avoid the risk of a resumption of violence in the period leading up to elections in 2015.

A commission set up by the prosecutor general in June 2012 to investigate cases of extrajudicial executions and torture, including those documented by Burundian and international human rights organizations, could have marked an important step forward in this respect. However, its report published in August failed to acknowledge the extent and gravity of these abuses and sought to minimize state responsibility. The report attempted to discredit the work of human rights organizations, including the Burundian human rights group Association for the Protection of Human Rights and Detained Persons (APRODH), the United Nations Office in Burundi (BNUB) and Human Rights Watch. The report acknowledged that killings had occurred, but disputed that they constituted extrajudicial executions. It claimed that casefiles had been opened on a number of cases and that

investigations were underway. However, research by Human Rights Watch on several of these cases indicates that even where a casefile exists, judicial authorities have made little effort to carry out thorough investigations, and have not even questioned witnesses or relatives of the victims. Because of the tense climate surrounding these cases, many victims' families are still too afraid to come forward and demand justice. Some have been personally threatened for speaking out about the deaths of their relatives.

A positive outcome of the commission's work was the arrest of around eight people, including several policemen and local government officials, allegedly involved in killings or torture. This is a welcome measure, even if it only targets only a small number of suspects. But efforts to identify and prosecute individuals responsible for killings and torture should not end there. The commission of inquiry may have finished its work, but the Burundian law enforcement and justice system has a responsibility to investigate other cases, and bring to justice those responsible.

Transitional Justice

After long delays, progress was made in 2011 in preparing the ground for the creation of a Truth and Reconciliation Commission. After a technical committee completed its report, a draft law on the establishment of a Truth and Reconciliation Commission to cover crimes committed since 1962 was made public in December. This represented an important step forward. However, the law does not provide for the appointment of international commissioners to strengthen independence and impartiality. Nor does it provide for the establishment of a special tribunal to prosecute individuals accused of committing the most serious offenses, including war crimes, crimes against humanity, and genocide – despite the explicit commitment to set up such a tribunal in the PRSP. Although President Nkurunziza has promised that the Truth and Reconciliation Commission would be set up by the end of 2012, progress appeared to have stalled during the year.

Recommendations

Human Rights Watch encourages participants in the Geneva conference to prioritize human rights issues, to engage in a frank and constructive debate that acknowledges existing human rights concerns, to discuss remedial measures and safeguards for human rights protection in the future, and to make concrete commitments in line with the PRSP, including the specific points proposed below.

Recommendations to the Burundian Government

- End the impunity that continues to protect perpetrators of extrajudicial executions, torture and other abuses. Building on the work of the 2012 commission of inquiry, and initial arrests, order prompt and thorough investigations into other cases of abuse and ensure that law enforcement agencies identify and arrest suspects. Where sufficient evidence exists, these individuals should be charged and tried, in accordance with the law, within a reasonable time frame.
- Refrain from intimidating, threatening or obstructing civil society organizations and journalists and allow them to report publicly on incidents of human rights abuse without hindrance.
- Amend the new draft laws on the press and on public gatherings to remove unjustified restrictions on freedom of expression and freedom of peaceful assembly. The laws should avoid vague terminology that could lead to abusive prosecutions – such as those relating to activities posing an undefined threat to state security or public order – or requirements that go against freedom of the press, such as requiring journalists to reveal their sources.
- Proceed with preparations for transitional justice mechanisms and make an explicit commitment to the establishment of a Special Tribunal in addition to a Truth and Reconciliation Commission.

Recommendations to foreign governments, intergovernmental organizations, and other donors to Burundi

- Engage the Burundian government in a comprehensive and transparent discussion on human rights issues, in particular on ending impunity for extrajudicial executions and other cases of political killings. Urge the government to make a concrete commitment to ensuring the perpetrators of these killings are identified and prosecuted. Cases should include, but not be limited to, those documented by BNUB and non-governmental human rights organizations.
- Advise the government and the parliament to revise the laws on the press and public gatherings to guard against abusive prosecutions and to ensure that these laws are not used to restrict freedom of expression and peaceful assembly.

- Respond promptly and publicly to incidents of threats or intimidation of civil society activists and journalists and demand that the Burundian authorities take measures to protect them.
- Monitor the implementation of these commitments at regular intervals after the Geneva conference, particularly in the period leading up to elections in 2015.
- Express concern both publicly and privately should these commitments not be realized within a reasonable time.

Donors providing support to institutions with a responsibility for ensuring the rule of law and protecting human rights, such as the justice sector and the security forces, should pay particular attention to these institutions' human rights record.

Donors should incorporate in these assistance programs specific measures to improve and monitor the human rights record of these institutions. In addition to technical assistance or training, donors should require these institutions to demonstrate respect for human rights in practice and to take measures against individuals responsible for abuses, in accordance with the law.

Donors should consider reviewing programs of assistance to institutions whose members persistently violate human rights and whose senior hierarchy either orders these violations or fails to take effective measures to stop and prevent them.