

Open letter to Ambassadors and Permanent Representatives of Member States of the United Nations in Geneva and New York

Re: Suspension of Burundi from Human Rights Council

26 October 2016

Your Excellency,

The undersigned civil society organisations, coming from all regions, urge your delegation to take urgent action towards suspending Burundi from the Human Rights Council given the combination of its flagrant refusal to cooperate with the Council and the gross and systematic violations of human rights occurring in the country.

Such action could include leading or supporting a resolution or joint statement at the Human Rights Council or the Third Committee of the General Assembly recommending suspension if Burundi fails to fully cooperate with the recently mandated Commission of Inquiry on the country, with a resolution at the 71st session of the General Assembly resulting in suspension if such full cooperation is not promptly provided.

Clear and objective grounds for suspension

OP8 of General Assembly Resolution 60/251 relevantly provides that ‘the General Assembly, by a two-thirds majority of the members present and voting, may suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights’. OP8 should be read in conjunction with OP9, which provides that ‘members elected to the Council shall uphold the highest standards in the promotion and protection of human rights [and] shall fully cooperate with the Council’.

Relevantly to OP8, the recent report of United Nations Independent Investigation on Burundi (UNIIB), established pursuant to Human Rights Council Resolution S-24/1, found ‘abundant evidence’ of ‘continuing and systematic, gross human rights violations which may amount to crimes against humanity’. It further found that ‘responsibility for the vast majority of these violations should be laid at the door of the Government’. Reflecting these expert findings, Human Rights Council Resolution 33/24 expressed alarm at evidence and conclusions ‘that gross violations are systematic and patterned and that impunity is pervasive’.

Relevantly to OP9, the UNIIB experts expressed ‘serious concern’ as to the lack of meaningful cooperation with the international human rights system. This concern was again reflected in HRC Res 33/24 establishing a Commission of Inquiry on Burundi which reaffirms ‘the expectations of cooperation by States Members of the Human Rights Council’. In its operative paragraphs, HRC Res 33/24 ‘recalls that all States Members of the Human Rights Council should uphold the highest standards in the promotion and protection of human rights, reiterates its urgent call to the Government of Burundi to be mindful of these standards; and notes the importance of cooperation with international human rights mechanisms as part of those efforts’. The resolution also ‘deplores the unprecedented non-cooperation of the Government of Burundi with the Committee against

Torture during the review of the State on 29 July 2016, and the retaliatory threat to disbar Burundian lawyers participating in the review’.

This unprecedented non-cooperation has now extended to Burundi’s engagement with the Office of the High Commissioner for Human Rights and Human Rights Council mandated experts, with a government communiqué of 11 October 2016 stating that Burundi has ‘decided to suspend all cooperation and collaboration’ with OHCHR in Burundi and declaring each of the UNIIB experts to be *persona non grata* in the country. Burundi has also foreshadowed non-cooperation with the Council mandated Commission of Inquiry and the Human Rights Council itself, with the Government declaring HRC Res 33/24 to be ‘inapplicable’ in or to Burundi.

Imperative for urgent and concrete action towards suspension

In light of their findings of gross and systematic violations of human rights, and serious concerns as to non-cooperation with international human rights mechanisms, the UNIIB experts made the unprecedented recommendation that ‘the Human Rights Council should consider whether Burundi can remain a member of the Council in terms of paragraph 8 of General Assembly Resolution 60/251’.

The time has come for Member States to take concrete steps to implement this recommendation for four key reasons.

First, the Council-mandated Commission of Inquiry on Burundi will shortly be appointed and commence its work. The Government of Burundi’s recent declarations and actions give every indication that it will refuse to cooperate with this Commission. It is imperative that the international community send a clear message to Burundi as to its expectation of full cooperation and that non-cooperation will result in concrete consequences, namely suspension. Waiting until Burundi actually fails to cooperate with the Commission of Inquiry before taking joint and concrete action towards suspension would ignore the actual context and amount to a failure to act preventatively or to establish incentives and increase pressure for cooperation at a critical time.

Second, the combination of expert findings of gross and systematic violations and formal government declarations of non-cooperation makes Burundi a particular case in which the criteria for suspension envisaged by OP8 and OP9 of General Assembly Resolution 60/251 are clearly and objectively met. A failure by UN Member States to take action in these circumstances risks delegitimising the Human Rights Council and would fundamentally call into question the important and carefully negotiated provisions of General Assembly Resolution 60/251.

Third, as a subsidiary organ of the General Assembly, the Human Rights Council has a responsibility to act consistently with and uphold Resolution 60/251. Where a Member State of the Human Rights Council manifestly and objectively fails to comply with the membership requirements set out in Resolution 60/251, the Human Rights Council and its members have a responsibility to act.

Fourth, Burundi’s actions to date are wholly inconsistent with provisions of the Charter of the United Nations. Read together, Articles 55(c), 56 and 2(2) of the UN Charter impose a legal obligation on UN Member States to cooperate in good faith and not to obstruct the United Nations (including the Human Rights Council and its mechanisms) in order to promote respect for, and observance of, human rights and fundamental freedoms. Preventative action should be taken by the General Assembly, the Human Rights Council and Member States to ensure that Burundi acts in a manner consistent with the UN Charter.

Conclusions and recommended actions

Excellency, in light of the above we urge your delegation to take one or more of the following actions:

1. Initiate or support a resolution or joint statement at the Human Rights Council or other appropriate forum in Geneva calling on Burundi to address gross and systematic violations of human rights and to cooperate fully and in good faith with the international human rights system (including the Commission of Inquiry) and recommending that, in the absence of such action and cooperation, the General Assembly adopt a resolution to suspend Burundi.
2. Initiate or support a resolution or joint statement at the Third Committee of the General Assembly in New York in similar terms to the above.
3. Formally pledge support for a resolution to be adopted by the plenary of the General Assembly suspending Burundi's membership of the Human Rights Council in the event that gross and systematic human rights violations continue and that Burundi does not cooperate fully and in good faith with the Council and its mechanisms.

Please accept the assurances of our highest consideration.

Yours sincerely

1. International Service for Human Rights (ISHR)
2. International Commission of Jurists
3. African Centre for Democracy and Human Rights Studies (ACDHRS)
4. ARTICLE 19
5. Asian Forum for Human Rights and Development (FORUM-ASIA)
6. Commonwealth Human Rights Initiative
7. DefendDefenders (East and Horn of Africa Human Rights Defender Project)
8. Global Initiative for Economic, Social and Cultural Rights
9. Human Rights House Foundation
10. Human Rights Watch
11. International Federation for Human Rights (FIDH)
12. West African Human Rights Defenders Network (WAHRDN / ROADDH)
13. World Organisation Against Torture (OMCT)