

Bujumbura, 22 February 2011

H.E. Mr. Sihasak Phuangketkeow
President of the UN Human Rights Council
UNOG - Palais des Nations, Room E-3067
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Re: Report of the independent expert on the situation of human rights in Burundi
Bujumbura, February 16th, 2010

Mr. President,

We are a group of NGOs working for the promotion and protection of human rights in Burundi. We have closely followed and engaged with the work undertaken by the independent expert on the situation of human rights in Burundi.

We are writing to you to reiterate the deep concerns provoked by the absence of reports by the independent expert to the Human Rights Council and any interactive dialogue between the expert and members and observers of the Council since September 2008.

The previous independent expert, Mr. Akich Okola, ended his mandate in June 2010 without having been able to present any report, nor to interact with the Council. At the close of the Council's 14th session, it was understood that the report would be presented at the 15th session and was to be followed by an interactive dialogue.

A new independent expert, Mr. Fatsah Ouguergouz, was appointed in August 2010. However, he was also unable to present his predecessor's report and no interactive dialogue concerning the human rights situation in Burundi was organized during the 15th session of the Council due to the opposition of the Burundi Government. The arguments presented by the Government of Burundi to oppose the interactive dialogue were twofold: on the one hand, the Government held that the report had not been transmitted to it in time, and on the other hand, the Government considered that the independent expert's report could not be presented before the establishment of the Independent National Human Rights Commission (INHRC), according to its interpretation of resolution 9/19 of 24 September 2008 prolonging the independent expert's mandate on the human rights situation in Burundi.

However, although the resolution does discuss the presentation of the report as following the establishment of the Independent National Human Rights Commission (INHRC), it must be noted that the Burundi Government had also promised the rapid establishment of the said Commission. More than two years later, the INHRC has yet to be established and no interactive dialogue could take place within the Council. This also stands in contradiction to the Council's standard practice of reports being presented on an annual basis.

Indeed, reports and interactive dialogues are fundamental components of the Council's special procedures. The absence of reports and interactive dialogues between the independent expert on the human rights situation in Burundi and the Human Rights Council over the past two years is contrary to the principles governing the interplay between the Council and its special procedures. In addition, this is still a sensitive time for Burundi, during which the international community's attention and focus is fundamental and the interaction between civil society, the Burundi government and the international community is essential. The absence of all opposition within Parliament, allegations of arbitrary arrests and extrajudicial executions of certain opposition activists, harassment of private press, in particular the cases of detained journalists, attacks against civil society organizations and fears of renewed armed conflict deserve increased international attention on the human rights situation in Burundi.

We are also equally conscious of the important step forward taken with the enactment of a law on the INHRC by the President of Burundi on the 5th of January 2011. However, we wish to stress the fears and concerns expressed by Burundi civil society, concerns that were not taken into consideration by the Parliament when adopting this law. Indeed, the law contains no requirement that the Burundi National Assembly consult with civil society in appointing members to the INHRC, failure to do so would be in contravention of the Paris Principles. It appears the National Assembly will itself select the applications and designate the seven members to serve at the Commission.

Mr. Ouguerouz has visited Burundi in November 2010 and has been in contact with various partners in the strained context following the 2010 elections. It is essential that he be able to discuss his conclusions and observations with the Council. Although the independent expert does have to make a final report on his activities at the Council session following the establishment of the INHRC, he must also be able to present a periodic report to the Council and to discuss it publicly in the course of an interactive dialogue with the Council members. Indeed, in doing so, the process of designation of INHRC members may also be accelerated and strengthened.

We have taken note with satisfaction of your response to the Burundi Ambassador's objection in the course of the organizational meeting of the Human Rights Council's 16th session. We hope that you will maintain the arrangement announced on the 28th of September 2010 and reflected in paragraph 760 of the report on the Human Rights Council's 15th session.

Sincerely,

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