



BURUNDI

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Introduction

1. The settling of accounts for past abuses in Burundi seems entangled while popular consultations unfold slowly. Provisional immunities could jeopardize prospects of accountability in the absence of a comprehensive redress policy for victims and in light of continuing human rights violations.

Background

2. The August 28, 2000, Arusha Peace and Reconciliation Agreement for Burundi and the Kalomoh Report¹ constitute the foundations of transitional justice in Burundi. The Arusha Agreement represents the former belligerents' most advanced attempt to settle the chronic ethnic and political conflict ravaging the country since independence in 1962. Stakeholders—the Burundian government, warring factions, and opposition political parties—recommended judicial and nonjudicial solutions to help resolve the conflict and heal the wounds of Burundians through an international judicial commission of inquiry, a Special Tribunal (ST), and a Truth and Reconciliation Commission (TRC).

3. The Kalomoh Report included recommendations by a 2004 United Nations expert team that assessed the “advisability and feasibility” of the international commission of inquiry mentioned in the Arusha Agreement. The team advised the United Nations Secretary-General to consider the creation of a TRC and a special chamber within Burundi's court system, staffed by national and international members and personnel. Subsequently UN Security Council Resolution 1606 (2005) endorsed the Kalomoh recommendations and urged that an operational framework be negotiated between the UN and the Government of Burundi (GoB) and consultations organized with all Burundian stakeholders. However, negotiation of the operational framework between the UN and the GoB has not yet concluded. In a 2006 memorandum and subsequent amendments, the GoB has expressed its will and desire first to launch the TRC, then to create the ST.

¹ United Nations Security Council, S/2005/158, March 2005.

4. While the GoB's stance on amnesty and the independence of the ST prosecutor remains unclear, the UN and the GoB reached an agreement on the composition and mandate of a tripartite (UN, GoB, and civil society) steering committee to lead national consultations on transitional justice mechanisms.² Since then, however, national consultations have not yet begun, and the UN and the GoB have not resumed negotiations on the operational framework of the TRC and the ST.

5. The transitional justice process in Burundi takes place in a peace-building context in which the pursuit of peace is associated with consolidation of democratic gains as well as socioeconomic recovery. A Strategic Framework for Peacebuilding in Burundi (2007) outlines peace consolidation objectives in which transitional justice mechanisms are important benchmarks.

6. Recent developments aimed at bringing the Palipehutu-Front National pour la Libération (FNL), the last active rebel group in Burundi, into the peace process have demonstrated the international commitment to ensure their political, military, and social integration. But serious concerns remain about the process of establishing accountability for past abuses, since FNL's request for unequivocal immunity is likely to be granted, with no vetting expected to accompany the integration of forces.

Concerns about and Challenges to Settling Accounts in Burundi

7. The ICTJ is concerned about the unjustifiable and unnecessary delays in the implementation of transitional justice mechanisms in Burundi. It is troubling that almost eight years after the Arusha Agreement, the root causes of the politico-ethnic conflict that inflicted immense losses on the Burundian people have not been addressed.

8. Burundian authorities seem to ignore the healing effects of transitional justice mechanisms, notably those pertaining to judicial and nonjudicial accountability in fighting impunity and ensuring non-repetition of past abuses. Official indifference could encourage the periodic eruption of violence and associated atrocities, such as the massacre of Muyinga in 2006³ and FNL attacks on Bujumbura and surrounding areas in April 2008.

9. National, integrated, and sound policies are lacking to provide redress for victims of atrocities and their families in Burundi. Mechanisms to address human rights violations must adequately respond to the widespread sexual violence perpetrated against women and the rampant victimization of children during the conflict. It is clear that many Burundian women continue to endure gross, gender-based human rights violations, which are likely to continue while impunity persists for crimes committed during the conflict.

10. Although it is fair to recognize the sensitivity of the recovery process taking place in Burundi, it is important to urge the parties responsible for the implementation of

² The GoB and the Executive Representative of the Secretary-General signed an operational framework document on national consultations on November 2, 2007, spelling out the composition and the steering committee's mandate.

³ According to the interim report of the independent expert on the situation of human rights in Burundi, Akich Okola, "About 30 people were arrested, disappeared or were summarily executed in Muyinga." A/62/213 of August 8, 2007, 11.

transitional justice mechanisms to expedite negotiations on the operational framework of the TRC and the ST. These negotiations must be preceded by a process orientated at collecting Burundian people's perceptions and expectations of transitional justice.

The Right to the Truth and its Implications

11. Negotiators of the Arusha Agreement raised issues of accountability through judicial and nonjudicial mechanisms. Parties at the Arusha negotiations—the government, insurgents, and opposition political parties—agreed that serious violations of international humanitarian law had been committed during the episodic escalations of violence in Burundi and that root causes must be examined and gross violations punished to avoid repetition.⁴ The Kalomoh Report provided a framework to ensure the right to truth and justice through the TRC and the ST.

12. As spelled out in the Report of the Office of the United Nations High Commissioner for Human Rights, “The right to truth about gross human rights violations and serious violations of humanitarian law is an alienable and autonomous right.”⁵ It is the GoB's obligation, with the assistance and support of the international community, to ensure that the right to the truth is established and guaranteed through the TRC and the ST. In the meantime the GoB and the UN should exercise extensive judicial cooperation and other capacity-development initiatives to signal and maintain the commitment to carry out the spirit and the letter of UN Security Council Resolution 1606.

13. It is imperative to carry out the commitments made in the Arusha Agreement to establish mechanisms to address war crimes such as sexual violence and ensure women's security.

14. Given the time elapsed between the Arusha Agreement and the Kalomoh Report, as well as the lack of activity since the Kalomoh Report, the GoB, civil society organizations, and the UN could consider alternate ways to fulfill and enforce the right to truth. These should stem from Burundian traditions and customs and take into consideration the religious beliefs and customary practices of the population. Civil society organizations could also opt to record or document past human rights violations and make them available for use by the TRC or the ST. These initiatives could send a clear message to victims and their relatives that their plight is being taken seriously. Such measures could serve cathartic purposes and facilitate reconciliation and healing, especially in light of the return home of refugees and the internally displaced. Long-overdue national consultations could be the means to air and present such ideas to Burundians.

National Consultations

15. The November 2007 agreement between the GoB and the UN on the creation, composition, and mandate of a tripartite steering committee for national consultations constituted a milestone in the application of Security Council Resolution 1606. It also represents a significant break in the stalemate that characterized the two rounds of negotiations between the UN and the GoB.

⁴ Arusha Agreement, protocol I, chapters I and II.

⁵ United Nations Economic and Social Council, E/CN.4/2006/91.

16. Given the limited progress in the implementation of transitional justice mechanisms, an assessment of national perceptions of how to deal with past wrongs has the potential to open a debate. The initial phase could ensure national ownership of the mechanisms identified and pave the way for establishment of well-considered and carefully engineered measures, including a framework agreement between the GoB and the UN. Popular consultations in Burundi should therefore be broadly inclusive and transparent.

17. The creation of the tripartite steering committee could provide space for interaction between the GoB and civil society on the one hand and increased dialogue between the GoB and the UN on the other. However, only careful planning, reporting, and follow-up will ensure success. Significantly, the steering committee was required to ensure equal gender representation to encourage more gender-sensitive consultations.

18. The methodology for the consultations as it stands now has little chance of reflecting local realities and securing a broad buy-in of the process by the population. Only the adoption of approaches that clarify the respective roles of the multiple actors involved in the consultation and that take into consideration the prevailing ethnic sensitivities will encourage local ownership and ensure the success of the consultations.

“Provisional Immunities”

19. All recent peace agreements in Burundi grant negotiating belligerents some form of “provisional immunity” from prosecution to allow their return to the country and their participation in the political process. The Arusha Agreement prohibited amnesty for war crimes, crimes against humanity, genocide, and coup d’etat,⁶ but rebel groups that joined the peace process thereafter pressed for and obtained some form of immunity.⁷ Organic Law No. 100/92 of November 7, 2005, applied the Arusha Agreement and subsequent peace agreements to create a commission to identify political prisoners. This led to the release of at least 3,000 political prisoners, including many convicted in a regular judicial proceeding.⁸ As a result civil society organizations lodged a complaint before the Constitutional Court.

20. It was generally assumed that the “provisional immunity” would remain valid only during the transitional period and that the elected parliament would adopt a law to either extend or abrogate the immunity. The parliament elected in 2005 failed to adopt such laws and as a result concern developed that the provisional immunity might be a blanket amnesty in disguise. The resumption in February 2008 of peace talks between the GoB and the FNL, mediated by South Africa, revived these concerns as the FNL had asked for amnesty to be enacted by an act of Parliament before its representatives could join peace monitoring and verification mechanisms.

⁶ Arusha Agreement, protocol III, article 26(1).

⁷ Peace agreements and protocols adopted between October 2003 and September 2006 reflect this trend. See also Presidential Decree 100/357 of December 20, 2006, implementing provisional immunity of the September 7, 2006, cease-fire agreement; and Law 1/132 of November 22, 2006, on provisional immunity of signatory groups of the cease-fire agreement.

⁸ See <http://www.irinnews.org/PrintReport.aspx?ReportId=59485>.

21. The GoB and elected institutions should initiate and adopt new legislation that clarifies the definition of “provisional immunity” and spells out the crimes such immunity covers. Crimes against humanity, war crimes and genocide should be excluded from immunity measures.

Comprehensive Redress for Victims

22. It is important that policies and strategies to deal with past atrocities in Burundi move beyond the creation of a TRC and an ST. Comprehensive reparations programs that fully integrate gender concerns must be established, either independently or linked to the TRC and the ST, to address the rights of the victims and alleviate their continued suffering and destitution.

23. The development of all policies must include consultation about the special concerns of women and children. Burundian women’s organizations fear that without adequate information women’s groups may be excluded from current consultations.

24. To date, no countrywide study has mapped the extent of gender-based violence during the conflict or, more broadly, the gendered implications of the conflict for Burundian women now. Furthermore, advocacy should sensitize the government to the wishes of women regarding transitional justice. To facilitate these activities, collaboration with the media is necessary.

25. A national crime-prevention strategy should be drafted to address patterns and trends of criminality linked to the consequences of war: inadequacies of DDR programs and the problems of street children, armed robbery, delinquency, and sexual and domestic violence. The capacity of the police to assist victims of gender-based violence must be developed.

Recommendations

26. The GoB and the UN should take all possible measures to guarantee the right to the truth and overcome the obstacles delaying agreement on an operational framework for the TRC and the ST by restarting talks between Burundian negotiators and UN expert teams.

27. With the assistance of the UN and other specialized institutions the GoB must ensure that justice for gender-based crimes during the conflict is realized.

28. The GoB, the UN, and civil society organizations represented on the tripartite national consultations steering committee should design the methodology for consultations to include broad participation and gender considerations.

29. The GoB and elected institutions should adopt legislation to clarify the scope and extent of “provisional immunities.” Crimes against humanity, war crimes and genocide should be excluded from immunity measures.

30. The GoB should also consult with its partners and experts to adopt a comprehensive, national crime-prevention strategy.