



BURUNDI

AMNESTY INTERNATIONAL SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW 15TH SESSION OF THE UPR WORKING GROUP, JANUARY - FEBRUARY 2013

FOLLOW UP TO THE PREVIOUS REVIEW

At the time of its first UPR in 2008, Burundi accepted a number of recommendations made by other states, including to take urgent steps to implement the recommendations¹ of the Committee against Torture,² to align detention conditions with international standards,³ to establish and reform the institutions for law enforcement and an independent, effective and impartial justice system,⁴ and to establish transitional justice mechanisms to ensure reconciliation and address the most serious past crimes.⁵

Following concerns raised by several states in 2008, Burundi stated that torture was prohibited in the rules and regulations of the police and the armed forces and that acts of torture, including those committed by state agents, were sanctioned.⁶ Burundi also noted that acts of torture would be criminalized in its new Penal Code.⁷ However, despite these legislative changes, cases of torture by state agents continue and conditions of detention fail to meet international standards. According to information available to Amnesty International, allegations of torture made during the reporting period have not resulted in the prosecution of those allegedly responsible.

Burundi has not fulfilled its stated objective of setting up a Truth and Reconciliation Commission (TRC). Progress towards its establishment has been slow and the current draft law on the TRC does not comply with international standards. To date, victims of human rights violations which occurred during the decades of violence and conflict in Burundi continue to be denied truth, justice and reparations.

In 2008, Burundi agreed to consider the ratification of human rights treaties.⁸ However, to date, Burundi has only signed, but not ratified, the Convention on the Rights of Persons with Disabilities and its Optional Protocol,⁹ the International Convention for the Protection of All Persons from Enforced Disappearance¹⁰ and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.¹¹ Burundi has not signed the Optional Protocol to the Convention against Torture.¹² This would require the establishment of a national preventive mechanism against torture and other ill-treatment and facilitate stronger international monitoring of torture and ill-treatment in the country.

In 2008, Burundi committed to establish an independent national human rights commission with a strong mandate in accordance with the Paris Principles.¹³ Amnesty International is pleased to note that the National Independent Human Rights Commission (CNIDH) was established in 2011 and has demonstrated a degree of independence.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

The Penal Code

In April 2009, a new Penal Code was promulgated by the President which included important human rights provisions. It criminalizes genocide, war crimes, crimes against humanity, torture and other cruel, inhuman and degrading treatment and abolishes the death penalty. It stipulates severe penalties for rape and other forms of sexual violence. Amnesty International is concerned to note, however, that the law criminalizes same-sex relations, although to date no prosecutions have taken place under this provision.

The National Independent Human Rights Commission

The law creating the National Independent Human Rights Commission (CNIDH)¹⁴ was promulgated by the President in January 2011. The law provided guarantees of the independence of the Commission, including a broad mandate and strong investigatory powers. The government has provided the CNIDH with some of the requested budget for 2012. Further financing is required to cover operation costs, including transport and communication, as well as the establishment of regional offices outside Bujumbura.

Impunity for past human rights violations

Amnesty International is concerned that the process of establishing a Truth and Reconciliation Commission (TRC) to investigate and establish the truth behind grave violations of human rights committed from 1962 until 2008 has lacked transparency and direction. In June 2011, a Technical Committee was tasked with drafting a TRC law and a draft bill was included in its final report, submitted to the President in October 2011 and made public in December 2011.

The draft law will require significant revisions if it is to meet international standards, such as not granting amnesty or other measures with similar effect to those accused of genocide, crimes against humanity, war crimes, torture, enforced disappearances and extrajudicial executions. The draft also does not specify that the Special Tribunal, the judicial mechanism that will follow the TRC, should have an independent prosecutor who can investigate and prosecute both cases referred by the TRC as well as new cases. It also does not include the appointment of international commissioners in addition to national commissioners, to ensure the TRC's impartiality and independence.

In light of the situation of generalized insecurity, especially in rural areas, Amnesty International is concerned that the lack of witness protection provided by the state may prevent victims and witnesses from testifying freely, especially on sensitive issues. The continuing impunity for politically-motivated killings, often linked to the National Intelligence Service (SNR) and the Burundian National Police (PNB), continues to make people reluctant to speak out. The law does propose a Witness and Victim Protection Unit; however, this will require extensive support from international experts and significant funding.

A TRC should not be considered as a substitute for judicial process to establish criminal responsibility. The new law should determine that a Special Tribunal will have powers to determine individual criminal responsibility for crimes under international law committed between 1962 and 2008.

THE HUMAN RIGHTS SITUATION ON THE GROUND

Extrajudicial executions by the security forces

Amnesty International is gravely concerned that the authorities have failed to investigate and prosecute many cases of extra-judicial executions implicating state agents.

UN human rights monitors recorded 40 extra-judicial executions in 2010 and 61 in 2011, in which the SNR, the PNB and the National Defence Forces (FDN) appear to be implicated. An additional 42 killings in 2011 are believed to be politically motivated. The victims include both members of extra-parliamentary opposition political parties, such as the National Liberation Forces (FNL), the Movement for Solidarity and Democracy (MSD), and members of the ruling party, the National Council for Defence of Democracy-Forces for Defence of Democracy (CNDD-FDD). Thirteen extra-judicial executions were reported by the UN between January and April 2012; however, these do not appear to be politically motivated, unlike many of those recorded in the two previous years.

Audace Vianney Habonarugira, a demobilized FNL colonel, was found dead on 15 July 2011. He had escaped an earlier attempted assassination in March 2011 in Kamenge, a northern neighbourhood of Bujumbura, by an individual identified as an intelligence agent. In the months before his murder, he had refused to become an intelligence informant and was persistently followed. A commission of inquiry into the failed assassination attempt did not lead to prosecutions. There has been no progress on the investigation into his actual killing.

National commissions of inquiry started their work in 2011. One of these was tasked with investigating extra-judicial killings in 2010 and the other with investigating abuses before, during and after the 2010 elections. Both national and

international human rights organizations have requested that the reports of the two commissions be made public. However, the government has yet to communicate the findings of the investigations or to state when they would disclose them.

A further commission of inquiry was announced in June 2012 to investigate cases reported by Burundian and international human rights organizations.

Torture and other ill-treatment

Amnesty International continues to receive allegations of torture and ill-treatment by the PNB and the SNR. In 2011, 36 cases of torture and 37 cases of cruel, inhuman or degrading treatment were reported by UN monitors. A further 11 torture cases were reported by UN monitors between January and June 2012. These cases have not been investigated and the perpetrators remain at large.

From 23 June to 5 July 2010, Amnesty International and other human rights observers documented allegations of torture of 12 individuals, committed by the SNR. Those tortured were members of opposition parties arrested on allegations of threatening state security in relation to a series of grenade attacks. The SNR, in collaboration with the PNB, used physical and psychological torture to try to extract information and force confessions.¹⁵

Arbitrary arrest and pre-trial detention

Arbitrary arrest and prolonged pre-trial detention have been used by the authorities as a means of silencing the legitimate freedom of expression of individuals who denounced alleged state corruption or human rights violations.

In September 2010, François Nyamoya, a lawyer and spokesperson for the Movement for Solidarity and Development (MSD), was arrested on defamation charges after the SNR's General Administrator, Adolphe Nshimirimana, lodged a complaint against him. François Nyamoya had publicly criticized human rights violations by the SNR and the police and had called for the dismissal of Adolphe Nshimirimana and the Deputy Director of the Police. He was detained in Mpimba prison, but conditionally released in October 2010. François Nyamoya was arrested again on 28 July 2011 and charged with influencing witnesses in a trial concluded several years earlier. He was granted provisional release from detention on 17 February 2012.

Jean-Claude Kavumbagu, editor of the online news agency Net Press, was arrested on 17 July 2010. He had written an article on 12 July 2010, the day after suicide bombings in Kampala, Uganda, in which he criticized the capacity of Burundian security forces to protect the country from a terrorist attack. He was charged with treason, defamation and violating the 2003 press law. On 13 May 2011, the Higher Instance Court of Bujumbura sentenced Jean-Claude Kavumbagu to eight months in prison and a fine of 100,000 Burundian francs under Article 50 of the press law. He was released from Mpimba prison on 16 May 2011 having already served his sentence.

Harassment of human rights activists and journalists

Government officials demonstrate an increasingly hostile attitude to the media and to international and national NGOs reporting on human rights, justice and state corruption issues. Human rights defenders and journalists are regularly subjected to judicial summons in relation to their work.

Pierre Claver Mbonimpa, President of the Association for the Protection of Human Rights and Detained Persons (APRODH), and Gabriel Rufyiri, President of the Anti-corruption and Economic Malpractice Observatory (OLUCOME), were subject to repeated judicial summons in 2011. Between July and November 2011, Bob Rugurika, the editor-in-chief of African Public Radio (RPA), was repeatedly summoned by the public prosecutor for questioning in relation to RPA's broadcasts.

Individuals working on sensitive human rights and corruption cases also report being under close surveillance from the security forces and regularly receive anonymous and threatening text messages and phone calls. Pierre Claver Mbonimpa and Gabriel Rufyiri received a tip from a reliable source in March 2010 that state agents were preparing to assassinate one of them by orchestrating a car accident. In July 2011, Claver Irambona and Prudence Bararunyeretse,

also OLUCOME staff members, reported being visited in the middle of the night by unidentified men and an attempted break-in, respectively.

Lack of judicial independence

Amnesty International is concerned that the judiciary lacks independence and is influenced by the executive. There are also reports of corruption within the judiciary and the authorities have failed to effectively investigate politically sensitive cases.

The verdict on 22 May 2012 in the trial of those accused of killing Ernest Manirumva, Vice President of OLUCOME and Vice President of an official body that regulates public procurement, failed to deliver justice. Ernest Manirumva, who was murdered on 9 April 2009, had been investigating several sensitive cases, including allegations of large-scale police corruption and illegal weapons purchases. During the trial, the prosecution failed to consider important leads and recommendations by a commission of inquiry established by the Burundian authorities and by the United States Federal Bureau of Investigation (FBI), which had called for additional investigations into senior figures within the security services and national police, and for collection of DNA samples.

Amnesty International has also received reports that a number of judges who made independent decisions contrary to political pressure were moved to remote provinces, as punishment and to deter other judges.

Furthermore, there is concern that the recruitment of judges through the Ministry of Justice is not conducted in a public and transparent way, leaving the process open to accusations of corruption and political bias. According to Law No1/001 of 29 February 2000 on the reform of the regulations governing magistrates,¹⁶ the Minister of Justice must organize a competitive examination with the Superior Council of the Magistracy to decide on candidates. This process was further confirmed in Decree No 100/78 of 8 December 2003 on the creation of the Centre of Professional Training of Justice,¹⁷ which states that admission to the Centre is through a competitive examination comprised of written tests by an ad hoc commission appointed by the Minister of Justice.¹⁸ To date, the Minister of Justice has yet to organize such a process despite these renewed commitments in the *Ministry of Justice Sectorial Policy 2011-2015*.¹⁹

Conditions of detention

As of 5 April 2012, 10,567 persons were held in 11 prisons with a combined capacity of only 4,050. Inmates are kept in extremely unsanitary conditions and nearly half of the prison population is held in pre-trial detention. In an emergency measure to reduce prison overcrowding, the President passed a decree on 25 June 2012 granting pardon to certain categories of prisoners; however, this has yet to be implemented. More substantial changes to the organization, coordination, staffing and resourcing of the judicial system are needed to enable detainees' case files to be processed faster. The PNB, the SNR and the Public Prosecutor routinely flout the timeframe for legal custody under the Criminal Procedure Code and many individuals, including minors, are held in prolonged pre-trial detention.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Burundi to:

National Independent Human Rights Commission:

- Continue to strengthen and support the independence and work of the CNIDH, by providing adequate resources for transport, communication and the establishment of regional offices.

Impunity for past human rights violations:

- Revise and enact at the earliest opportunity a TRC law that complies with international human rights law and standards and stipulates that there can be no amnesty for crimes under international law; clearly proposes a Special Tribunal with an independent prosecutor after the TRC has completed its work; and includes the appointment of international commissioners;
- Take all necessary steps to establish a Special Tribunal with the powers to determine individual criminal responsibility for crimes committed between 1962 and 2008 in trials which meet international fair trial

standards.

Extra-judicial executions by security forces

- Request judicial authorities to conduct prompt and full investigations into all extra-judicial executions committed by security services and, where there is sufficient admissible evidence, to prosecute those responsible;
- Publish the findings of the national commissions of inquiry established to investigate extra-judicial executions;
- Immediately establish and fund a national witness and victim support programme to allow witnesses of political killings to testify about such crimes, including those involving state agents.

Torture and other ill-treatment

- Suspend from duty members of the PNB and SNR suspected of being involved in torture and ill-treatment, as well as the officials who order or condone such crimes regardless of their rank, pending an impartial and independent criminal investigation;
- Initiate independent and impartial criminal investigations into all alleged cases of torture and ill-treatment, to make the outcome of such investigations public, and to prosecute all SNR, PNB and other state agents involved in such crimes;
- Sign and ratify the Optional Protocol to the Convention against Torture.

Arbitrary arrest and pre-trial detention

- Refrain from using arbitrary arrest to silence critics.

Harassment of human rights activists and journalists

- Refrain from intimidating human rights defenders and journalists, including through the arbitrary use of judicial summons and threats in the media, on account of their legitimate human rights work.

Lack of judicial independence

- Request the judicial authorities to investigate and, where sufficient evidence exists, prosecute all those implicated in Ernest Manirumva's killing, including any high-ranking security officials;
- Adhere to the laws regarding the recruitment of magistrates and to ensure that the Minister of Justice organizes competitive examinations to recruit magistrates in a fair, open and transparent way, as specified in the *Ministry of Justice Sectorial Policy 2011-2015*.

Conditions of detention

- Ensure that the police, the intelligence services and the judicial authorities respect procedures for arrest and legal custody as set out in the Criminal Procedure Code;
- Provide funding to increase administrative staff in Burundi's 11 prisons to review detainees' case files, in order to reduce the backlog of cases and shorten pre-trial detention.

¹ A/HRC/10/71, paragraph 80.12 (Portugal, Ireland).

² Consideration of reports submitted by states parties under article 19 of the Convention; Conclusions and recommendations of the Committee against Torture, 15 February 2007, CAT/C/BDI/CO/1.

³ Paragraph 80.13 (Italy).

⁴ Paragraph 80.19 (Egypt).

⁵ Paragraphs 80.22 (United Kingdom); 80.23 (Ireland); 80.25 (Austria); 80.26 (Italy); 80.27 (Canada).

⁶ Paragraph comments 83.3.

⁷ HRC 10th session report, paragraph 307 (recommendation can be accessed in WG report, paragraph 81.6).

⁸ Paragraphs 80.1, 80.2, and 80.3 (Argentina, Brazil, Czech Republic, Djibouti, Mexico)

⁹ Paragraph 80.1 (Mexico).

¹⁰ Paragraph 80.2 (Mexico, Argentina).

¹¹ Paragraph 80.3 (Brazil).

¹² Paragraph 80.3 (Brazil, Djibouti, Czech Republic, Mexico).

¹³ Paragraph 80.4 (South Africa, Malaysia, Portugal, Australia, United Kingdom, Egypt, Republic of Korea).

¹⁴ Loi No 1/04 du 5 Janvier 2011 portant création de la Commission Nationale Indépendante des Droits de l'Homme au Burundi.

¹⁵ Amnesty International, *Burundi: "A Step Backwards" – Torture and other Ill-Treatment by Burundi's National Intelligence Service*, AFR 16/002/2010, 23 August 2010.

¹⁶ Loi No 1/001 du 29 février 2000 portant réforme du statut des magistrats stipule: « *Le Ministre de la Justice, pour départager les candidats, organise en collaboration avec le Conseil Supérieur de la Magistrature, un concours dont il fixe les modalités* ».

¹⁷ Décret No 100/78 du 8 décembre 2003 portant création du centre de formation professionnelle de la justice (CFPJ).

¹⁸ See pages 5, 23- 24 Politique sectorielle du Ministère de la Justice: <http://www.justice.gov.bi/spip.php?rubrique6>.

¹⁹ Ibid.