



BURUNDI

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 29TH SESSION OF THE UPR WORKING GROUP, JANUARY-FEBRUARY 2018

INTRODUCTION

Since Burundi's last Universal Periodic Review in 2013, the human rights situation has severely deteriorated. Before the 2015 elections, Amnesty International and other NGOs warned of an increase in violations of the rights to freedom of expression, association and peaceful assembly. President Nkurunziza's nomination in April 2015 for a third term sparked street protests, followed by a failed coup d'état in May 2015. With deepening repression, the crisis is becoming entrenched.

FOLLOW-UP TO THE PREVIOUS REVIEW

During the 2013 review, Burundi received a total of 174 recommendations and rejected 39 of these on issues such as decriminalisation of same-sex relations, freedom of expression, association and peaceful association, and extrajudicial executions.¹

Burundi asserted that it "stands among the leaders in the Continent who fully ensure its citizens' free association and full enjoyment of freedom of expression".² According to the delegation, the 2013 Press Law constituted "a significant and innovative advance in that it decriminalised press offences" and that regulations on the media – including the requirement on journalists to reveal their sources on issues such as public order and state security – were the price to be paid for Burundi's peace and security.³ While the Press Law was later revised to guarantee the protection of sources, Amnesty International is concerned that urgent action is needed by the authorities to re-establish respect for freedom of expression following the clampdown before, during and after the 2015 elections.

Burundi also asserted that none of the crimes documented by a national commission of inquiry qualified as extrajudicial executions, and that suspected perpetrators are prosecuted "on an individual basis and [...] convicted without consideration of their professional status".⁴ However, the authorities have failed to investigate and prosecute many extrajudicial executions committed before and during the period under review.

¹ Burundi did not specify precisely which recommendations it was accepting and rejecting by their reference numbers, but instead responded to the themes covered by the recommendations. According to the matrix produced by OHCHR, Burundi is therefore understood to have rejected recommendations 126.20-26, 126.32-33, 126.46, 126.53-54, 126.56-58, 126.82-83, 126.85, 126.106-112, 126.124, 126.132, 126.137-138, 126.140-149. For details, see République du Burundi, Discours de Son Excellence Maitre Clotilde Niragira, Ministre de la Solidarité nationale, des droits de la personne humaine et du genre, Adoption du Rapport final de l'EPU-Burundi, Geneva, 6 June 2013

² République du Burundi, Discours de Son Excellence Maitre Clotilde Niragira, Ministre de la Solidarité nationale, des droits de la personne humaine et du genre, Adoption du Rapport final de l'EPU-Burundi, Geneva, 6 June 2013

³ Ibid

⁴ This is taken to mean that whether or not an individual was acting a state agent is not taken into account.

Burundi has ratified some international human rights instruments as recommended,⁵ including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, although it has yet to establish a national preventive mechanism. It has not ratified other key treaties as agreed, including the International Convention for the Protection of All Persons from Enforced Disappearance.⁶ Having accepted to “conclude the alignment of its domestic legislation with the Rome Statute provisions,”⁷ Burundi has since withdrawn from the Statute.

Burundi agreed to continue cooperating with the Human Rights Council and its mechanisms, and with the Office of the High Commissioner for Human Rights (OHCHR).⁸ However, in October 2016, the government declared the three members of the Council -mandated Independent Investigation on Burundi⁹ *persona non grata*, and suspended cooperation with OHCHR. Burundi has also refused to cooperate with the Commission of Inquiry on Burundi¹⁰, mandated by the Council in September 2016.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Penal Code and Criminal Procedure Code

Although relatively recently adopted, both the 2009 Penal Code and 2013 Criminal Procedure Code are in the process of being revised at the time of writing, with draft laws tabled at the National Assembly. The proposed revisions to the Penal Code include measures against human trafficking, but also the criminalisation of vagrancy and begging. Proposed revisions to the Criminal Procedure Code to allow night-time searches and searches without a warrant for “certain grave infractions” to be specified by law, as well as allowing searches of online or digital material, are very troubling. The government has justified introducing “new rules that derogate from the ordinary law of criminal procedure” due to “an evolution of criminality in Burundi”. There is no indication that the derogations will be temporary.¹¹

National Independent Human Rights Commission

Having previously been widely respected for its independence, in November 2016, Burundi’s Independent National Human Rights Commission (CNIDH) was reviewed by the Global Alliance of National Human Rights Institutions, which recommended that it be downgraded to ‘B’ status due to a demonstrated lack of independence since 2015.¹² The CNIDH was given one year to provide evidence of its compliance with the Paris Principles in order to retain its current ‘A’ status.

Impunity for past human rights violations

The Truth and Reconciliation Commission (TRC), mandated to investigate and establish the truth about serious violations of human rights and international humanitarian law committed between 1 July 1962 and 4 December 2008, began collecting testimonies in September 2016. While the 2000 Arusha Agreement provided for an international judicial commission of inquiry, the 2014 law establishing the TRC following years of negotiations does not provide for any judicial mechanism to bring to justice those responsible for crimes under international law and other serious violations of

⁵ Paras 126.1-17, 126.71, Report of the Working Group on the Universal Periodic Review – Burundi, A/HRC/23/9

⁶ Paras 126.8, 126.9, 126.16, Report of the Working Group on the Universal Periodic Review – Burundi, A/HRC/23/9

⁷ Para 126.19, Report of the Working Group on the Universal Periodic Review – Burundi, A/HRC/23/9

⁸ Paras 126.72-126.80, Report of the Working Group on the Universal Periodic Review – Burundi, A/HRC/23/9; République du Burundi, Discours de Son Excellence Maitre Clotilde Niragira, Ministre de la Solidarité nationale, des droits de la personne humaine et du genre, Adoption du Rapport final de l’EPU-Burundi, Geneva, 6 June 2013.

⁹ Human Rights Council, Resolution A/HRC/S-24, 17 December 2015.

¹⁰ Human Rights Council, Resolution 33/24, 30 September 2016.

¹¹ Government of Burundi, COMMUNIQUE DE PRESSE DE LA REUNION DU CONSEIL DES MINISTRES DU MERCREDI 10 ET VENDREDI 12 MAI 2017, 12 May 2017, <http://www.burundi.gov.bi/spip.php?article2251>

¹² ‘B’ status is accorded to National Human Rights Institutions that are not fully in compliance with the Paris Principles.

international human rights law.¹³

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Extrajudicial executions and unlawful killings

Amnesty International is gravely concerned that the authorities have failed to properly investigate and prosecute many cases of extra-judicial executions implicating state agents. Hundreds of people have been killed both by state and non-state actors since the start of the crisis sparked in April 2015 by President Nkurunziza's nomination to stand for a third term.

Amnesty International has documented the police's use of unlawful, excessive and lethal force in response to protests that began on 26 April 2015 and continued until mid-June, including by firing live bullets during demonstrations. Police units were also reported to be responsible for the murder of several political opponents or perceived opponents in the same period.¹⁴ High-level assassinations and assassination attempts targeting government officials, military officers, human rights defenders and politicians have also continued throughout the crisis.

Following attacks on military installations in and around the capital, Bujumbura, on 11 December 2015, security forces carried out cordon-and-search operations in so-called opposition neighbourhoods systematically killing dozens of people. Analysis of satellite images and video footage from a site in Buringa near Bujumbura supports witness accounts that people killed by the security forces were later buried in mass graves. These events followed months of brutal killings in Bujumbura. In several instances, the police carried out deadly and indiscriminate operations in targeted neighbourhoods in apparent retaliation for attacks on security forces.¹⁵

In March 2016, the Prosecutor General announced the results of a national Commission of Inquiry into alleged extrajudicial executions on 11 December 2015 and the suspected mass graves. The Commission concluded that all those found dead in the so-called opposition neighbourhoods were "combatants", apart from one person described as "mentally insane" said to be caught in crossfire.¹⁶ An exchange of fire did take place, but many people were shot in the head in the search operations that followed. At least one body was found tied up. While the Commission refers to Amnesty International's evidence of a suspected mass grave in Buringa, it does not clarify whether any site visits were conducted.¹⁷

While the overall level of violence appeared to have reduced in 2016, unlawful killings and the discovery of dead bodies have regularly been reported in early 2017.

¹³ The Arusha Peace and Reconciliation Agreement for Burundi, 28 August 2000, Protocol II, Article 18. It was signed by the government, the National Assembly and 17 political parties, but did not include the predominantly Hutu rebel groups CNDD-FDD and Palipehutu-FNL. While the civil war did not end with its signing, it was later followed by the Global Ceasefire Agreement in 2003 and the Comprehensive Ceasefire Agreement in 2006 and laid the foundations for the 2005 Constitution. Initially foreseen by the Arusha Agreement as an international judicial commission of inquiry, the idea of a special chamber within the Burundian justice system emerged in 2005 and was later replaced with the concept of a Special Tribunal. None of these proposed judicial mechanisms were included in the 2014 law. See Impunity Watch, 'Policy Brief: Burundi's Draft Law on the Proposed TRC', January 2013, http://www.impunitywatch.org/docs/Policy_Brief_Burundi_TRC1.pdf

¹⁴ See Amnesty International, *Braving Bullets: Excessive Force in Policing Demonstrations in Burundi*, 28 July 2015, <https://www.amnesty.org/en/documents/afr16/2100/2015/en/>

¹⁵ See Amnesty International, "My Children are Scared": *Burundi's Deepening Human Rights Crisis*, 22 December 2015, <https://www.amnesty.org/en/documents/afr16/3116/2015/en/>; Amnesty International, *Burundi: Suspected Mass Graves of Victims of 11 December Violence*, 29 January 2016, <https://www.amnesty.org/en/documents/afr16/3337/2016/en/>

¹⁶ République du Burundi, Ministère de la Justice, Parquet General de la République, Commission chargée de faire la lumière sur les allégations « d'exécutions extrajudiciaires » lors de combats qui ont suivi l'attaque contre quatre camps militaires le 11 décembre 2015, RAPPORT, March 2016.

¹⁷ Ibid

Enforced disappearances

There has been a significant increase in enforced disappearances since 2015, with OHCHR receiving more than 210 such allegations between October 2016 and January 2017 alone. In late 2015, family members and civil society actors told Amnesty International that many people were afraid to report their relatives missing in case they were suspected – rightly or wrongly – of having left to join “the armed rebellion”, so the available numbers are likely to be incomplete.

Even in cases where family members and colleagues have actively sought information on a missing person’s whereabouts, they have often been unsuccessful. Jean Bigirimana, a journalist with *Iwacu*, was last seen on 22 July 2016. His colleague received a phone call saying he had been taken by people believed to be members of the National Intelligence Service (SNR). Investigations carried out by his colleagues, after initial searches by the SNR and the CNIDH were unsuccessful, led to the discovery of two bodies in a river, which were retrieved by the authorities in an advanced state of decomposition. Jean Bigirimana’s wife viewed the bodies, but neither was her husband. His fate and whereabouts remain unknown.

Marie Claudette Kwizera, a human rights defender, has been missing since 10 December 2015, when she was abducted by individuals believed to be from the SNR. Two days after her abduction, a SNR agent informed her family that she was detained at the SNR office. The family paid the ransom requested, but were not told of her whereabouts. They family later filed a complaint and the SNR agent was arrested, but later released, according to her organization, Ligue Iteka. When one of Marie Claudette Kwizera’s relatives went to the SNR office on 13 January 2016 they were told she was not there.

Torture and other ill-treatment

Since the crisis began, there has been a marked increase in the perpetration of torture and other ill-treatment. Amnesty International interviewed demonstrators, opposition supporters, a human rights defender and a journalist, who all reported having been subjected to torture and other ill-treatment in detention between late April and early August 2015 due to their real or perceived opposition to the President’s third term. Some were arrested for doing their work or simply exercising their right to freedom of expression, association and peaceful assembly; others were accused of participating in a rebellion or distributing arms.

Both the SNR and the PNB have been responsible for torture and other ill-treatment, including beating with branches, iron bars, and police batons; stomping on victims, threatening them with death, denying medical care, verbal abuse, hanging heavy weights from their testicles, and forcing prisoners to sit in acid.

While the Burundian Constitution and Code of Criminal Procedure provide safeguards against torture, these are not applied in practice. In a number of cases documented by Amnesty International, detainees were denied access to a lawyer or their families during their detention.

People who refused to join the *Imbonerakure*, the increasingly militarised youth wing of the ruling party, have also reported being beaten during arrest and in detention, apparently as a punishment. Others were beaten at or near the border as they tried to flee the country.

Arbitrary arrests

Thousands of people were arrested in relation to the 2015 protests. While in detention, many were denied access to their families or lawyers.

In January 2017, President Nkurunziza signed a decree pardoning certain categories of prisoners, expected to benefit roughly 2,500 prisoners and freeing up space in the overcrowded prison system. Members of the Movement for Solidarity and Democracy (MSD) opposition party, imprisoned in 2014, were among those released. The pardon did not apply to offences such as undermining state security and only applied to those who had been convicted, not those in pre-trial detention.

Human rights defenders

Civil society opposition to President Nkurunziza's third term swiftly led to increased harassment and intimidation against human rights defenders. Many have since fled the country. Several were named in an official report on the "insurrectional movement"; even before the protests in April and the failed coup d'état in May, the authorities labelled demonstrations as insurrection and accused civil society leaders of inciting insurrection.¹⁸ Arrest warrants issued by the judicial authorities against a number of human rights defenders have limited their ability to travel, including to attend a briefing session of the Burundi Dialogue led by the East African Community in May 2017.

Human rights defenders have also been physically attacked. On 3 August 2015, leading human rights defender Pierre Claver Mbonimpa survived an attempted murder by unidentified armed men as he returned home from work. In separate attacks, his son-in-law and his son were killed in October and November 2015, respectively.

Two laws introducing new controls on national and international NGOs came into force in late January 2017. National NGOs are now required to obtain the approval of the Ministry of Interior or the appropriate line ministry for all their activities, or face sanctions.

Six leading human rights NGOs were banned in 2016 and four others temporarily suspended.

While human rights organizations have been able to organise from exile to continue their documentation and reporting work, victims of human rights violations often do not know where to turn for legal and other practical assistance in their absence.

Freedom of expression

Burundian and international journalists have been targeted and received threats from the authorities. Many have fled and sought refuge in neighbouring countries.

Restrictions on the media prior to the crisis, including the 2013 Press Law discussed above, were an early warning of the challenges to come. On 20 January 2015, Bob Rugarika, director of *Radio Publique Africaine* (RPA), was arrested after RPA had reported the murder of three Italian nuns in September 2014. He was detained until 19 February 2015, then released on bail.

On 13-14 May 2015, the security forces partially or completely destroyed the premises of RPA, *Radio Television Renaissance*, *Radio Isanganiro* and *Radio Bonesha*. The government accused them of supporting the attempted coup. *Radio Television Rema*, a pro-government media outlet, was partially destroyed by unidentified armed individuals. Three of the radio stations remain closed at the time of writing.

Hundreds of secondary school students were suspended in May and June 2016 for doodling on a photo of President Nkurunziza in their textbooks, and dozens of students were arrested and accused of insulting the President. Two were charged with participating in an insurrectional movement and mobilizing other students to demonstrate.

University students in Bujumbura went on strike in March 2017 in protest at a new system of student loans and grants. Several students were arrested over the course of the strike in March and April. Six student leaders were accused of rebellion under Article 372 of the Penal Code.

¹⁸ République du Burundi, Ministère de la Justice, Commission d'enquête chargée de faire la lumière sur le mouvement insurrectionnel déclenché le 26 avril 2015, Rapport, Bujumbura, August 2015; Amnesty International, *Braving Bullets: Excessive Force in Policing Demonstrations in Burundi*, 28 July 2015, <https://www.amnesty.org/en/documents/afr16/2100/2015/en/>

Freedom of association and peaceful assembly

The 2013 Law on Public Gatherings places impermissible restrictions on the right to freedom of peaceful assembly. Organizers of public gatherings must write to the administrative authority who may decide to postpone or prevent the meeting to maintain public order. Spontaneous public gatherings are not permitted.¹⁹

In June 2017, *Amizero y'Abarundi*, the parliamentary opposition coalition, was denied permission to hold a press conference in Bujumbura, on the grounds that they were not officially registered.

In August 2014, a police directive was issued on the "negotiated management of public space" with guidelines for the policing of demonstrations. In the lead-up to the 2015 protests, the authorities imposed severe restrictions on the right to freedom of peaceful assembly. On 25 March 2015, the Mayor of Bujumbura stated that during the "pre-electoral period, no demonstration other than the one in the context of peace can be authorised." In practice, this meant only demonstrations organized by the ruling party were permitted. On 24 April 2015, the Minister of Interior announced a nationwide ban on all demonstrations.

Responding to the 2015 demonstrations, the police used unlawful and excessive force, including lethal force, against protesters, at times shooting unarmed protesters running away from them. Even where children were present, police still failed to exercise restraint and used tear gas and live ammunition. Treating largely peaceful demonstrators and entire neighbourhoods as part of an insurrection escalated tensions. Though the majority of protesters remained peaceful, some responded with violence, throwing stones and damaging property, physically assaulting a policewoman and killing a member of the *Imbonerakure*.²⁰

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the Government of Burundi to:

Human rights framework

- Refrain from amending the Penal Code and Criminal Procedure Code to remove protections, such as warrant requirements for searches;
- Allow the National Independent Human Rights Commission to operate free from any political influence;
- Establish a judicial mechanism to follow the work of the Truth and Reconciliation Commission.

Extrajudicial executions

- Allow independent international and regional human rights investigators full and free access to investigate allegations of extrajudicial executions and mass grave sites;
- Immediately undertake independent, effective and impartial investigations into allegations of extrajudicial executions and unlawful and excessive use of force by security forces, and where there is sufficient admissible evidence of criminal responsibility, prosecute those responsible;
- Ensure that all suspected mass grave sites are protected and subject to independent forensic investigations;
- Ensure that bodies identified are returned to the victims' families for a proper burial.

Enforced disappearances

- Ensure prompt, independent and effective investigations of all allegations of enforced disappearances and share all relevant findings with the families;

¹⁹ For further analysis of the legislation and several examples of planned activities by civil society and political opposition parties obstructed in 2014, see Amnesty International, *Locked Down: A Shrinking of Political Space*, 29 July 2014, <https://www.amnesty.org/en/documents/AFR16/002/2014/en/>

²⁰ See Amnesty International, *Braving Bullets: Excessive Force in Policing Demonstrations in Burundi*, 28 July 2015, <https://www.amnesty.org/en/documents/afr16/2100/2015/en/>

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and recognize the competence of the Committee on Enforced Disappearances to receive and consider communications.

Torture and other ill-treatment

- Allow OHCHR, African Union and other independent monitors full, unimpeded and unannounced access to all places of detention;
- Suspend from duty members of security forces suspected of torture or other ill-treatment, and any officials who ordered or condoned such crimes, pending prompt, impartial and independent investigations, and where there is sufficient evidence prosecute those suspected of criminal responsibility in fair trials.

Arbitrary arrests

- Stop arbitrary arrests and ensure that all detainees have access to lawyers and family.

Human rights defenders/Freedom of expression

- Lift the legal and financial measures targeting human rights defenders and journalists, and prevent acts of harassment and violence against them.

Freedom of association and peaceful assembly

- Amend the Law on Public Gatherings to remove impermissible restrictions on assemblies;
- Allow political parties and civil society to organise meetings without unnecessary interference.