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## Burundi: Universal Periodic Review Submission July 2012 <sup>[1]</sup>

July 10, 2012

### Summary

This submission provides an overview of the human rights situation in Burundi <sup>[2]</sup> with particular emphasis on violations of the right to life and freedom of expression in the period following the 2010 elections. It also includes a section on lesbian, gay, bisexual and transgender rights. The submission outlines positive developments as well as continuing concerns. This document is not intended as a comprehensive overview of the human rights situation in Burundi.

Burundi has only recently emerged from more than 15 years of protracted armed conflict. Progress has been made in instituting democratic and judicial reforms, and helping overcome the deep ethnic divisions which led to massacres and other grave abuses since 1993. After long delays, a National Independent Human Rights Commission started functioning in 2011, and steps have been taken towards establishing a Truth and Reconciliation Commission. However, these achievements have been undermined by fraught elections and a closing of democratic space in 2010, leading to a political stalemate between the ruling party and the opposition; a sharp increase in political violence in late 2010 and 2011 and scores of political killings; quasi-total impunity protecting those responsible for these killings; and a pattern of intimidation and harassment of civil society activists and journalists. These problems have been compounded by a weak judicial system suffering from insufficient resources and a lack of independence. The government has frequently stated its commitment to protecting human rights, but to date, many of its promises remain unfulfilled.

### The 2010 elections

The ruling party, the National Council for the Defense of Democracy-Forces for the Defense of Democracy (CNDD-FDD, won an overwhelming victory in the 2010 national and local elections. Following the first round of elections in May 2010, most opposition parties boycotted the process, alleging fraud, which left the incumbent Pierre Nkurunziza as the sole presidential candidate. The CNDD-FDD, as well as some opposition parties, used intimidation and violence against their opponents during the electoral period. Opposition party members were arrested and detained, and some were tortured by the intelligence services. The government effectively co-opted a wing of the main opposition party and former rebel group, the National Liberation Forces (FNL), by recognizing an "extraordinary congress" of the party which ousted its president Agathon Rwasa. Several leading opposition figures fled the country in fear for their safety, and some FNL members took up arms again and began launching attacks inside Burundi and from neighbouring Democratic Republic of Congo. Therefore, more efforts would have been required for the Burundian government to implement recommendation 80.28 to "ensure that political parties are safeguarded in the elections of 2010".

### Political violence in the aftermath of the 2010 elections

Since the 2008 UPR of Burundi, political violence has increased, in particular from late 2010 as the country's political situation failed to stabilize. Not only has the state failed to take reasonable steps to ensure security and provide protection

for its citizens, it has also not fulfilled its duty to take all reasonable measures to prevent and prosecute these types of crimes.

A number of hitherto unknown armed groups emerged in 2011. Killings peaked in 2011, with reciprocal attacks by CNDD-FDD members and the police and intelligence services, as well as by armed groups believed to be linked to the FNL.

Scores of people were killed. CNDD-FDD members increased attacks on FNL members and former members, notably through its *imbonerakure* youth wing and the intelligence services. A typical example was the killing of demobilized FNL commander Audace Vianney Habonarugira in July 2011. He had first been shot and seriously injured by a policeman in March 2011, and he was repeatedly threatened and followed by state security agents in the months before his death. Other victims include Dédith Niyirera, FNL representative in Kayanza province, killed in August 2011, and Médard Ndayishimiye, a local FNL leader in Mwaro province, abducted in Gitega town and found dead in Rutana province in October 2011. Demobilized FNL combatants were pressured to join the SNR and the *imbonerakure* or face death.

Armed groups also increased attacks on CNDD-FDD members and local officials. Among the victims were Pascal Ngendakumana and Albert Ntiranyibagira, two low-ranking CNDD-FDD members, killed on April 6, 2011 by individuals believed to be associated with the FNL. Désiré Hakizimana, a CNDD-FDD member, was killed in his home in December 2010.

In the single largest incident, on September 18, 2011, unidentified gunmen killed at least 37 people in a crowded bar in Gatumba, near the Congolese border. The majority of victims were not known to be affiliated with a particular political party. At the time of writing, and despite a flawed trial (see below), the identity of the perpetrators has still not been conclusively established.

### Impunity

The government of Burundi has not taken sufficient measures to implement recommendations included in paragraph 80.26 to “take all appropriate measures to address the issue of impunity” and 26.a to adopt measures to “to fight impunity of persons responsible for torture and extrajudicial killings and prompt, thorough, independent and impartial investigations into all allegations of these crimes.” Impunity for political killings remains pervasive. In the vast majority of cases, no one was arrested or prosecuted, even when information on the circumstances of incidents was readily available. The absence of justice was particularly noticeable when the perpetrators were suspected to be CNDD-FDD supporters or members of the security forces. In some cases, the police or the prosecutor opened investigations, but these rarely resulted in credible investigations or arrests. When the alleged crimes were considered to have been perpetrated by opposition groups, the typical response was to arbitrarily arrest FNL or ex-FNL members, even when there was no credible evidence that the individuals arrested were responsible for these crimes.

In one of the rare cases where suspects were prosecuted – the September 2011 Gatumba attack – the trial of 21 individuals was deeply flawed, leaving the defendants as well as some victims’ families with a profound sense of injustice. Several defendants stated in court that they had been tortured in order to force them to incriminate themselves or each other and to support the government’s claims that the FNL was responsible for the attack. The judges rejected a request by the defence to call senior members of the police and intelligence services for questioning. The trial only lasted a few days. Seven defendants were sentenced to life imprisonment; nine were sentenced to three to five years’ imprisonment, and five

were acquitted. One of those acquitted was re-arrested on a different charge on the day of his expected release and remains in prison awaiting trial on charges of endangering state security

The government has set up several commissions of inquiry to investigate killings and other abuses before, during and since the 2010 elections, as well as a commission to inquire into the Gatumba attack. At the time of writing, none of these commissions have published their findings. In June 2012, the prosecutor general announced yet another commission of inquiry to investigate extrajudicial killings and torture, including cases documented by Burundian and international human rights organizations.

### **Harassment of non-governmental organizations and media**

Burundi has a vibrant civil society and independent media, with human rights activists and journalists regularly investigating and reporting on human rights abuses. But civil society activists and journalists have faced numerous pressures and challenges since the 2008 UPR. This demonstrates that efforts to guarantee freedom of expression, opinion and peaceful assembly should be reinforced by the Government of Burundi, in line with the many recommendations made in this regard during the previous UPR.

#### Intimidation of Burundian civil society activists and journalists

The government has often responded negatively to the work of human rights activists and journalists, labelling them mouthpieces of the opposition. Leading activists, including Pierre-Claver Mbonimpa, president of the human rights organization *Association pour la protection des droits humains et des personnes détenues* (APRODH), and Gabriel Rufyiri, president of the anti-corruption organization *Observatoire de lutte contre la corruption et les malversations économiques* (OLUCOME), as well as journalists such as Bob Rugurika, editor-in-chief of the radio station *Radio publique africaine* (RPA), have been summoned on numerous occasions by judicial officials following reports or broadcasts implicating state agents in alleged human rights abuses. Several journalists and activists have received personal death threats. Intimidation of journalists increased following the Gatumba attack in 2011, when the authorities imposed a media blackout on this case and other incidents under investigation. Government authorities have written warning letters to human rights activists and journalists, threatening to suspend their official registration or to initiate legal action against them.

In April 2009, Ernest Manirumva, vice-president of OLUCOME, was assassinated in Bujumbura. After lengthy procedural delays, the trial of his alleged assassins was completed in just three days in April 2012. Fourteen people accused of involvement in his murder received prison sentences ranging from ten years to life. National and international trial observers strongly criticized the proceedings as incomplete and biased. In particular, the prosecutor did not consider important leads and recommendations from a report by the US Federal Bureau of Investigation (FBI), which had assisted in investigations, and a Burundian commission of inquiry. The role of several senior members of the security forces mentioned in the FBI report was never investigated.

Journalist Jean-Claude Kavumbagu, editor of the online Net Press, was arrested in July 2010 and charged with treason for questioning the Burundian army's ability to respond to a possible attack by the Somali Islamist rebel group al-Shabaab. He was released in May 2011 after being found not guilty of treason, but was found guilty of publishing an article "likely to discredit the state or the economy".

In June 2012, journalist Hassan Ruvakuki, correspondent for Radio Bonesha and Radio France Internationale, was sentenced to life imprisonment for participation in terrorist acts after interviewing members of a new rebel group in Cankuzo, eastern Burundi; 13 other people were also found guilty. Lawyers and other observers described the trial as unfair, citing procedural flaws and bias against the defendants on the part of the judges.

On the positive side, the government announced in June 2012 that Burundi's press law would be revised with a view to decriminalizing press offences. It remains to be seen when and how the law will be adopted with the promised positive changes and without affecting existing guarantees of press freedom.

#### Tensions with international organizations

The government has criticized international human rights organizations and, at times, obstructed their work. Pro-government media have also been used to try to tarnish and discredit perceived critics of the government. In 2010, Human Rights Watch's Burundi researcher was expelled from the country and her work permit revoked following the publication of a Human Rights Watch report on political violence. The organization was able to resume its work in the country in 2011 and re-establish a positive relationship with the government. However, in May 2012, the Minister of Interior forced Human Rights Watch to cancel a press conference it planned to hold in Bujumbura to launch a new report on political violence, and tried to prevent Human Rights Watch representatives from distributing copies of the report in Burundi. In a written statement, the government spokesperson described the Human Rights Watch's report as a "declaration of war against the people of Burundi". This contrasted with a positive reception to Human Rights Watch representatives by other senior government officials.

In December 2009, the government compelled Youssef Mahmoud, the head of the UN mission in Burundi, to leave the country, accusing him of siding with the opposition. It had previously compelled two of his predecessors to leave in 2006.

#### **National Independent Human Rights Commission and end of Independent Expert's mandate**

A recent positive development has been the creation of a long-awaited National Independent Human Rights Commission (CNIDH). In doing so, the Government of Burundi implemented its pledge and recommendation 80.4 to "establish a national human rights institution in compliance with the Paris Principles". The members of the CNIDH were sworn in in June 2011 and have begun investigating cases of human rights abuses and issuing public statements. They have shown significant independence and have taken on sensitive topics, including alleged extrajudicial executions. For several months in 2011-2012, they sheltered five former FNL members who claimed their lives were at risk following threats from the intelligence services.

Following pressure from the Burundian government and other African governments, the United Nations Human Rights Council hastened the termination of the mandate of the UN Independent Expert on the situation of human rights in Burundi in September 2011, on the basis that a national human rights commission had been created. The Burundian government opposed the continuation of the Independent Expert's mandate and had repeatedly postponed the Independent Expert's reports to the Council. The Independent Expert was unable to report between September 2008 and June 2011.

#### **Transitional justice**

The Government of Burundi has not demonstrated sufficient commitment to implement the various recommendations accepted during the 2008 UPR to establish adequate transitional justice mechanisms, reflected in recommendations 80.22 to 80.27.

Measures have been put in place to prepare the establishment of a Truth and Reconciliation Commission (TRC) to cover grave crimes committed in Burundi since 1962. In July 2011, the government appointed a technical committee to create a framework for a TRC, and three months later, the committee submitted its report to the president. However, since then, progress has stalled. President Nkurunziza has publicly reiterated that the TRC would be created by the end of 2012, but no concrete actions were taken in the first half of 2012. Furthermore, the government has not made a commitment to establishing a special tribunal to investigate past war crimes, in spite of the recommendation made during the 2008 UPR to establish “a dual machinery, including a special tribunal and a truth and reconciliation commission, and grant both bodies great independence”.

### **Lesbian, gay, bisexual and transgender (LGBT) rights**

In April 2009, Burundi criminalized consensual same-sex conduct for the first time, despite opposition from the Senate and recommendations during the 2008 UPR that Burundi “reconsider the inclusion in the draft criminal code of the provision criminalizing same-sex sexual relations”. Article 567 of the new penal code, which penalizes consensual same-sex sexual relations by adults with up to two years in prison, violates the rights to privacy and freedom from discrimination. These rights are protected by Burundi's Constitution and enshrined in its international treaty commitments. Further, the 2001 UN Declaration of Commitment on HIV/AIDS recognizes that discrimination against vulnerable groups undermines public health responses to HIV/AIDS. According to the United Nations Working Group on Arbitrary Detention, arrests on the basis of sexual orientation are, by definition, human rights violations.

Arrests of persons suspected of homosexual conduct have been infrequent, and in the few cases documented by Human Rights Watch, those arrested have been released without charge. However, LGBT Burundians have reported that the existence of the law increases stigma and makes them less likely to seek assistance from the police when they are victims of crimes, and more vulnerable to extortion.

An education policy adopted in June 2011 further entrenches discrimination on the basis of sexual orientation. According to the policy, students can be expelled for a year and denied admission into any school, on the basis of “homosexuality.”

### **Recommendations**

On accountability for extrajudicial killings:

Give clear and public instructions to the security forces and intelligence services that extrajudicial killings will not be tolerated and that any individual suspected of carrying out, ordering, or in any way participating in assassinations will be brought to justice.

Investigate the role of individuals in the security forces and intelligence services alleged to have participated in or ordered political killings and suspend them from active duty until investigations have been completed. If there is sufficient and credible evidence, ensure that these individuals, as well as other individuals involved in such killings, are charged and tried, according to due process and in conformity with Burundian law.

Publish the findings of successive commissions of inquiry into extrajudicial executions and other abuses.

Invite the UN Special Rapporteur on extrajudicial, summary or arbitrary executions to visit Burundi.

On protecting civil society:

Stop intimidating and harassing civil society activists and journalists and ensure that they, as well as international human rights organizations, are able to carry out their work without obstruction.

On the independence of the judiciary and transitional justice:

Pursue reforms of Burundi's justice system, in particular measures to strengthen the independence of the judiciary, reinforce witness protection, and guard against political interference.

Strengthen support for the National Independent Human Rights Commission.

Pursue measures to create a Truth and Reconciliation Commission, as well as a special tribunal to try past crimes.

On LGBT rights:

Decriminalize consensual same-sex relations by revoking relevant articles of the Penal Code. Remove discrimination on grounds of sexual orientation or gender identity from other laws and state policies, including Burundi's educational policy.

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