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BURUNDI

SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE

**SPECIAL REPORT, 25 JULY – 12
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Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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INTRODUCTION

Amnesty International submits this briefing in advance of the United Nations (UN) Committee against Torture's (the Committee) review of a special report from Burundi at its 58th session in July and August 2016.

The Committee reviewed Burundi's second periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) at its 53rd session in November 2014. Since then, the human rights situation in Burundi has deteriorated dramatically, following President Pierre Nkurunziza's decision in April 2015 to stand for a third term in office. This move was seen by many as a violation of the Burundian Constitution and the Arusha Agreement that ended a decade of civil war in Burundi. Protests against this decision were held in the streets of Bujumbura and in some other parts of the country, and were met with violent repression by Burundian security forces. The following months were marked by recurrent extrajudicial killings, arbitrary arrests, and torture and other ill-treatment, among other serious human rights violations.

In December 2015, the Committee requested a special report in light of information received about the deteriorating situation in Burundi, including on investigations and judicial proceedings into reports of summary executions (including political assassinations), arbitrary arrests, torture and ill-treatment of members of the opposition, journalists, human rights defenders and their families and others perceived to support the opposition in 2015.¹

The submission covers key issues of Amnesty International's concerns and recommendations, in particular, with regard to articles 1, 2, 4, 12, 13, 14 and 16 of the Convention and should be read together with Amnesty International's reports:

- *"Just tell me what to confess to": Torture and other ill-treatment by Burundi's police and intelligence service since April 2015;*²
- *"My children are scared": Burundi's deepening human rights crisis;*³
- *Burundi: Suspected mass graves of victims of 11 December violence.*⁴

¹ Letter from the Secretary of the Committee against Torture requesting a special report from Burundi, 9 December 2015, <http://www.ohchr.org/Documents/HRBodies/CAT/SpecialReportBurundi.pdf>

² Amnesty International, *"Just tell me what to confess to": Torture and other ill-treatment by Burundi's police and intelligence service since April 2015*, 24 August 2015, Index: AFR 16/2298/2015, <https://www.amnesty.org/en/documents/afr16/2298/2015/en/>

³ Amnesty International, *"My children are scared": Burundi's deepening human rights crisis*, 22 December 2015, Index: AFR 16/3116/2015, <https://www.amnesty.org/en/documents/afr16/3116/2015/en/>

⁴ Amnesty International, *Burundi: Suspected mass graves of victims of 11 December violence*, 29 January 2016, Index: AFR 16/3337/2016, <https://www.amnesty.org/en/documents/afr16/3337/2016/en/>

Burundi acceded to the Optional Protocol to the Convention (OPCAT) in October 2013, but to date, a National Preventative Mechanism (NPM) has yet to be established despite the expiration of the one-year timeline set by the OPCAT to do so.

ARTICLES 1 AND 16: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Burundi ratified the Convention in February 1993 and acceded to its Optional Protocol (OPCAT) in October 2013. Under Burundi's Constitution, "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."⁵

There has been a marked increase in the use of torture and other cruel, inhuman or degrading treatment and punishment (other ill-treatment) since the beginning of the current crisis in April 2015. Between April 2015 and the end of April 2016, the UN Office of the High Commissioner for Human Rights (OHCHR) in Burundi recorded 651 cases of torture.⁶ Research conducted by Amnesty International in Bujumbura in May and July 2015 also found a spike in the use of torture since April 2015.⁷ While the information in this submission is drawn primarily from Amnesty International's research in mid-2015, the organization has continued to receive reports of torture and other ill-treatment into 2016, including reports of abuse perpetrated as recently as May 2016.

Amnesty International interviewed 11 men who reported being subjected to torture and other ill-treatment in detention between late April and early August 2015. Some of the demonstrators, opposition supporters, a human rights activist and a journalist, whose cases were documented, were arrested while doing their work or solely for exercising their right to freedom of expression, association, and peaceful assembly. Others were accused of participating in a rebellion or distributing weaponry. This correlation between torture and real or perceived political opposition is reflected by OHCHR's finding that the periods with the highest number of cases of torture correspond with the periods of intensified repression against opponents of the government and

⁵ Constitution of the Republic of Burundi of 18 March 2005, Article 25, http://justice.gov.bi/IMG/pdf/Constitution_de_la_Republique_du_Burundi.pdf (accessed 12 August 2015).

⁶ Report of the High Commissioner for Human Rights on the situation of human rights in Burundi, UN Doc. A/HRC/32/30, 17 June 2016.

⁷ Amnesty International, "Just tell me what to confess to", 24 August 2015 (op cit.).

people suspected of belonging to armed opposition movements.

Amnesty International's research concluded that both the National Intelligence Services (SNR) and the Burundian National Police (PNB) are responsible for torture and other ill-treatment, using methods that include beating with branches, iron bars, and police batons, stomping on victims, threatening them with death, denying medical care, and verbal abuse. One man had a five-litre container full of sand hung from his testicles, causing enormous pain and swelling. He was then forced to sit in a shallow layer of what he believed was battery acid, burning his skin severely. Amnesty International saw his injuries which appeared extremely serious.⁸

The cases of torture and other ill-treatment under SNR detention documented by Amnesty International in 2015 all took place at the SNR compound near Bujumbura's cathedral.⁹ Amnesty International also interviewed two former detainees who had witnessed torture and other ill-treatment and who had talked with detainees held at this compound, all of whom also mentioned the use of torture and other ill-treatment.

While UN and AU human rights monitors continue to have access to SNR offices, detainees' lawyers have told Amnesty International they are not allowed access to the SNR's compound to assist their clients.

During the same period, Amnesty International also received several testimonies of torture and other ill-treatment at a place known as Chez Ndadaye in Bujumbura, which is reported to be an operational command centre for the police.¹⁰ The police, in some cases the police in charge of Protection of Institutions (Appui pour la Protection des Institutions - API), arrested and brought demonstrators or suspected demonstrators to Chez Ndadaye. All four victims Amnesty International talked to described how, upon arrival at Chez Ndadaye, policemen wearing the blue uniforms of the regular police made them lie face down with their arms outstretched on both sides of their faces. The policemen then beat them all over, especially on their feet and their backs, with branches and/or truncheons. Two of the victims also said policemen walked over them. A policeman and one victim also explained that policemen at Chez Ndadaye used electric cables or wires to whip people.

Victims Amnesty International interviewed were not interrogated while at Chez Ndadaye, except in one case. It seems that the main purpose of beatings at Chez Ndadaye was to punish demonstrators for their actions.

While the Burundian Constitution and Code of Criminal Procedure provide safeguards against torture, these are not strictly applied in practice. In the cases documented by Amnesty International, detainees did not have access to a lawyer or their families during their detention. Most spent between three and 10 days in detention.

⁸ Amnesty International, *"Just tell me what to confess to"*, p. 2, p. 7.

⁹ Amnesty International, *"Just tell me what to confess to"*, pp. 3-5.

¹⁰ Amnesty International, *"Just tell me what to confess to"*, pp. 8-11.

Lawyers representing individuals who allege to have been tortured by the SNR as well as a victim told Amnesty International that when their clients requested medical care in court, this was refused by the magistrates. In at least one case, a detainee was not brought before a prosecutor within seven days, the timeframe stipulated by the Burundian Code of Criminal Procedure for the police to complete investigations and charge or release suspects. This timeframe can be extended for an additional seven days by a prosecutor. As noted above, in cases documented at the SNR, detainees did not have access to a lawyer or their families during their detention.¹¹

ARTICLES 4, 12, 13 AND 14: INEFFECTIVE CRIMINAL PROSECUTION, IMPUNITY AND REPARATION

Burundi's Code of Criminal Procedure provides that in cases of torture by state officials, and if a civil case is brought forward, the State should provide full reparations and can also prosecute the state official responsible.¹²

Esdras Ndikumana, a well-respected Burundian journalist and correspondent for Radio France Internationale (RFI) and Agence France Presse (AFP), was tortured at the SNR headquarters in Bujumbura, after he was arrested on 2 August 2015 while taking pictures at the scene where General Adolphe Nshimirimana, former head of the SNR and close ally of President Nkurunziza, was killed in an armed attack. In a press release published on 13 August, Burundian authorities promised to investigate the incident and hold those responsible for such acts against Esdras Ndikumana accountable for their crime.¹³ Despite the formal engagement from the President's office, the process has lacked transparency and to date no reports have been made public by the Burundian authorities on the progress of the investigations. Having seen no progress in the case and having written to the Prosecutor giving details of what happened and those responsible (without citing the names), on 19 October, Esdras Ndikumana decided to introduce a formal complaint against X. However, the Prosecutor has asked Esdras to provide names of those who beat him so he can start the investigation.

¹¹ Amnesty International, *Just tell me what to confess to*, p. 4, p. 12.

¹² Law No. 1/10 of 3 April 2013 on the Reform of the Criminal Procedure Code (Criminal Procedure Code), Articles 289 and 290, http://www.assemblee.bi/IMG/pdf/n°1_10_2013.pdf (accessed 11 August 2015).

¹³ Burundi Presidency, Press release in response to correspondence from RFI and AFP, 13 August 2015, <http://presidence.gov.bi/spip.php?article5598>

A lack of effective criminal investigations and prosecutions has allowed impunity to flourish. The case of the police officer Désiré Uwamahoro is an emblematic example. He was convicted of torture in 2010 and sentenced to five years in prison and a fine of 10 million Burundian francs, but the sentence was never carried out and he remained a member of the police force. In October 2015 he was appointed to head a new police unit, the Anti-Riot Brigade (*Brigade anti-emeute*, BAE). Both the Brigade and Désiré Uwamahoro himself have been cited as responsible for many human rights violations, including during the operations on 11 December 2015.¹⁴

Investigations into other serious human rights violations committed during the current crisis have also been unsatisfactory. In late 2015, Amnesty International documented an intensification of politically motivated killings, including extrajudicial executions, as well as arbitrary arrests, enforced disappearances, and extortion by security forces and the Imbonerakure (youth wing of the ruling party).¹⁵ 11 December 2015 saw the worst violence of the crisis to date, with many killed in operations that followed a pre-dawn attack by armed groups on military installations. The government's method of disposing of bodies of those killed during the attacks, the climate of fear amongst much of the population and the challenging security conditions with clashes continuing for much of the day, hindered a precise calculation of the death toll. Satellite imagery, video footage and witness testimony analysed by Amnesty International pinpointed the location where some of those killed may have been buried, in Buringa, on the outskirts of the capital.¹⁶

In mid-December 2015, the Prosecutor General of the Republic announced a Commission of Inquiry into the alleged extrajudicial executions on 11 December. In early January, its mandate was extended to cover the questions of suspected mass graves. In a press briefing on 10 March, the Prosecutor General stated that the Commission had found no mass graves in the locations cited in NGO reports, including those reported by Amnesty International and Ligue Iteka. He also repeated the figures shared by the army spokesperson on 12 December, that 79 insurgents, four police and four military had been killed in the attacks.¹⁷ To date, Amnesty International has not been able to obtain a copy of the Commission's report.

¹⁴ See, for example, Amnesty International, "My children are scared" (op cit.), p. 2, p. 7; Amnesty International, *Braving Bullets: Excessive force in policing demonstrations in Burundi*, 28 July 2015, AFR 16/2100/2015, <https://www.amnesty.org/en/documents/afr16/2100/2015/en/>, pp. 24, 25, 34.

¹⁵ Amnesty International is including information on these issues in this submission in light of the information requested by the Committee from Burundi in its letter of 9 December 2015 requesting a special report.

¹⁶ Amnesty International, Burundi: Suspected mass graves, 29 January 2016 (op. cit.).

¹⁷ Valentin Bagorikunda, Procureur General de la République, Résultats d'une Commission ad hoc sur les allégations d'exécution extrajudiciaire, 10 March 2016, <https://www.youtube.com/watch?v=o48rl7covgw>

RECOMMENDATIONS

- Publicly condemn all torture and other cruel, inhuman or degrading treatment or punishment, commit to ending them and make clear that such acts will not be tolerated;
- Remove from active duty anyone suspected of having committed torture and other acts of ill-treatment, as well as other crimes under international law, until the allegations against them have been independently and impartially investigated and pending the completion of any criminal proceedings;
- Ensure that no person is subjected to arbitrary and incommunicado detention, and that the rights of detainees are respected in all cases in accordance with the Convention and other international law and standards;
- Ensure that victims of torture and other human rights violations and their families can obtain full reparation, in the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
- Take immediate measures to prevent and stop torture and other ill-treatment of detainees and prisoners – including maintaining an official register of detainees, providing access to independent legal assistance and independent medical care without delay, contact with and visits by relatives, and provide prompt access to an independent court where detainees can challenge the legality of their detention or treatment;
- Establish an independent, effective and well-resourced National Preventive Mechanism in accordance with the OPCAT and the guidelines established by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Invite the African Commission on Human and Peoples' Rights (ACHPR) and UN Special Rapporteurs on Torture to investigate allegations of torture and other ill-treatment by the SNR and Burundian Police;
- Allow independent international, regional and national human rights monitors and investigators full access to the suspected mass grave sites. The suspected grave sites should be opened up, and any bodies found in them exhumed and subject to forensic examination to assess the causes of death and to establish the victims' identities, and identified bodies should be returned to the victims' families for burial.

