



Flygtningenævnets baggrundsmateriale

Bilagsnr.:	60
Land:	Burundi
Kilde:	Human Rights Watch
Titel:	"Warning Signs: Continuing Abuses in Burundi"
Udgivet:	Februar 2006
Optaget på baggrundsmaterialet:	7. april 2006

February 2006



Volume No. (3)

Warning Signs: Continuing Abuses in Burundi

A Human Rights Watch Report February 27, 2006

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Overview

Burundi's new government, led by President Pierre Nkurunziza and the former rebel National Council for the Defense of Democracy–Forces for the Defense of Democracy (CNDD-FDD) party, has been in power for six months.

While much of the country is now at peace, armed conflict continues sporadically between Burundi's armed forces (*Forces de la Defense Nationale*, FDN) and the last remaining rebel group, the National Liberation Forces (*Forces Nationales pour la Libération*, FNL) in the provinces of Bujumbura-rural, Cibitoke and Bubanza.¹ Throughout this armed conflict, FNL combatants and government soldiers and police have willfully killed civilians and committed other atrocities with little or no sanction for their misconduct.

Representatives of donor nations gathering to meet with the Burundian government on February 28 to discuss financial assistance to Burundi need to go beyond merely pledging funds if they hope to see real improvements in the country. They must also set clear goals for the government's conduct to meet its human rights obligations. And they must impress upon both the government and the FNL that human rights abuses and violations of international humanitarian law must cease, and that both parties will be held accountable for current and past crimes in violation of international law. To make the current political settlement viable in the long term, Burundi must deal with the many serious violations of international humanitarian law that were committed by all parties during the armed conflict.

The fighting in Burundi between government and rebel forces is considered a non-international armed conflict under international humanitarian law, and is governed by article 3 common to the four Geneva Conventions of 1949 and the Second Additional Protocol of 1977 to the Geneva Conventions (Protocol II).² International law prohibits state forces and rebel groups from committing willful killing, torture and other ill-treatment of civilians and captured combatants, among other abuses. The government of Burundi is also bound by international human rights law, which prohibits arbitrary arrest

¹ On February 15, 2006, for example, fighting between the army and the FNL at Rweza (Kanyosha Commune, Bujumbura-rural province) caused 3,500 families to flee their homes. Radio Publique Africaine, Radio Transmission, February 16, 2006, and Agence Burundaise de Presse, "La FDN débusque des FNL près de Bujumbura," February 16, 2006.

² Burundi ratified the 1949 Geneva Conventions in 1971 and Protocol II in 1993.

and detention, torture and other mistreatment, and prosecutions that do not meet international fair trial standards.³

War Crimes and Other Abuses

Killings by the FNL

The FNL have continued to use violence to punish civilians who refuse to support them, showing special harshness towards those who had helped them in the past and then decided to stop giving assistance. In the most lethal recent attack, FNL combatants on December 4, 2005, killed nine civilians and one government soldier near the Mugendo market and the Kinama military position (Kigina zone, Nyabiraba commune, Bujumbura-rural province).⁴ According to local authorities, the FNL summarily executed the civilians because they had decided shortly before to stop all aid, both food and money, to the FNL. The soldier was killed in an exchange of fire with the rebels.⁵

In another case, some twenty FNL combatants abducted Eluminé Havyarimana and her teenaged daughter from their home at Buzige hill (Ruyaga zone, Kanyosha commune, Bujumbura-rural province) on the night of February 3, 2006.⁶ According to a member of the community, Eluminé had provided food to the FNL until about a year ago, when soldiers had installed a military post near her home and ordered her to stop the assistance.⁷ The daughter managed to untie herself and escape from the rebels. Residents found Eluminé's badly mutilated body at Gikangara hill the next day.⁸

Summary executions by government forces

Government security forces continue to commit extrajudicial executions of suspected FNL combatants and supporters with impunity. Human rights monitors of the United Nations peacekeeping force (United Nations Operation in Burundi, ONUB) reported that FDN soldiers were suspected of having summarily executed ten alleged FNL

³ Among the human rights treaties to which Burundi is bound is the International Covenant on Civil and Political Rights, which Burundi ratified in 1990.

⁴ United Nations Operation in Burundi (ONUB) Human Rights Monthly report, December 2005.

⁵ Human Rights Watch interview, Bujumbura-rural province, February 8, 2006.

⁶ Ibid.

⁷ Human Rights Watch interview, Bujumbura, February 13, 2006.

⁸ Ibid.

members outside of military confrontations in December 2005.⁹ There have been no investigations or prosecutions in these cases.

Sixteen-year-old Ramazani Nahimana, a resident of the Buhiyuza neighborhood of Kinama, Bujumbura, was detained by agents of the state intelligence agency, known as the Documentation Nationale (D.N.),¹⁰ in November 2005 and was held for several days. Local witnesses reported that Nahimana had been denounced as a member of the youth wing of the FNL, the *Jeunesse Patriotique Hutu* (JPH),¹¹ by a former FNL-turned-FDD combatant who has been demobilized.¹² During the time of his detention in the D.N., according to one witness, Nahimana was severely beaten.¹³ On the evening of November 22 he was seen back in his neighborhood under escort by either D.N. agents or police. Neighbors reported hearing a disturbance and gunfire during the night. On the morning of November 23 local residents found Nahimana's body propped up against the outer wall of a house with several bullet wounds to the face and chest and at least four bullet holes in the wall of the house behind his body.¹⁴ Official explanations that he had been shot while trying to flee or that he had been caught in the crossfire of a skirmish between government agents and the FNL did not fit the evidence at the scene.¹⁵ As yet there have been no investigations and no one has been arrested for this killing.

Eyewitnesses accused a soldier from the Cinkona position of having shot and killed Pierre-Claver Minani at Kavumu hill (Kanyosha commune, Bujumbura-rural province) after a brief altercation on the evening of January 28, 2006.¹⁶ Witnesses said that the

⁹ ONUB Human Rights Monthly report, December 2005.

¹⁰ The Documentation Nationale, directed by Gen. Adolphe Nshimirimana, is under the direct command of President Nkurunziza. The D.N. has a central office with a detention facility in the Rohero 1 neighborhood of Bujumbura. There is also a small jail run by the D.N. located next to the building of the general prosecutor, also in Bujumbura. Officers of the Judicial Police carry out interrogations and investigations at the Documentation Nationale. General Nshimirimana also has a security escort which was implicated in summary executions and torture in the first months of the new government. See Human Rights Watch, "Missteps at a Crucial Moment," *A Human Rights Watch Report*, November 4, 2005, [online] <http://hrw.org/backgrounder/africa/burundi1105/>.

¹¹ Members of the JPH provide logistical assistance and perform other tasks for the FNL. Human Rights Watch has previously documented that membership in the JPH has been frequently forced on young people. See Human Rights Watch, "Suffering in Silence: Civilians in Continuing Combat in Bujumbura Rural," *A Human Rights Watch Briefing Paper*, June 2004, [online] <http://hrw.org/backgrounder/africa/burundi/2004/burundi0604.pdf>.

¹² Human Rights Watch interviews, Bujumbura, December 1 and 9, 2005.

¹³ Human Rights Watch interview, Bujumbura, December 16, 2005.

¹⁴ Human Rights Watch interview, Bujumbura, December 9, 2005.

¹⁵ Human Rights Watch interviews, Bujumbura, December 21 and 22, 2005.

¹⁶ Human Rights Watch interviews, Bujumbura-rural province, February 3 and 8, 2006.

soldier accused Minani of being part of the FNL and then shot him in the chest.¹⁷ They added that soldiers came back later that evening to remove money and a camera from Minani's pockets.¹⁸ The Cinkona post commander came the following morning to investigate, but he rejected the testimony of witnesses and told local people that Minani was an FNL combatant who had been carrying a grenade in his pocket. When witnesses persisted in saying that Minani was not an FNL combatant, several of them were taken to the post and beaten.¹⁹ According to one local resident, soldiers from the post now harass residents and "everyone is afraid to talk about what they saw that day."²⁰

Torture by the Documentation Nationale and the police

Human Rights Watch has previously documented the pervasive problem of torture, and specifically political torture, in Burundi.²¹ We have learned of at least seven new cases of alleged torture by the D.N. in the last three months.²² Two of the victims were elected officials from the Front for Democracy in Burundi (Frodebu), a party that rivals the ruling CNDD-FDD in areas of Bujumbura and the surrounding provinces. Some of the victims told Human Rights Watch that they were tortured in a small windowless room called "the morgue" located in a small building run by the D.N. near the offices of the general prosecutor and the courts. One man showed Human Rights Watch researchers large open cuts across his back and buttocks extending down to the back of his legs. He said that agents who accompany General Nshirimimana as a security escort put him in the "morgue" and beat him until he lost consciousness. "I don't know how many times they hit me with the cable," he said.²³

Several individuals recently interrogated at the D.N. told Human Rights Watch that Judicial Police officers working at the D.N. beat persons during questioning. One man stated that he was forced to lie on the ground and was then hit with a billy club several times while being interrogated in late January 2006 about his alleged support for the FNL. According to the victim, he begged the officer to stop but "he got angrier and said he would hit me thirty more times."²⁴

¹⁷ Human Rights Watch interview, Bujumbura, February 16, 2006.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ See Human Rights Watch, "Missteps at a crucial moment."

²² Human Rights Watch interviews, Bujumbura and Bujumbura-rural province, December 13 and 16, 2005, January 27 and February 17, 2006.

²³ Human Rights Watch interview, Bujumbura, December 13, 2005.

²⁴ Human Rights Watch interview, Bujumbura-rural province, January 27, 2006.

ONUB human rights monitors, who had been allowed to visit the detention facilities of the D.N. in Bujumbura in late 2005, have not been permitted to do so since the beginning of 2006.²⁵ Lt. Col. Léonidas Kiziba, Deputy Director of the D.N., conceded that there had been “isolated cases” of torture and mistreatment in the D.N. and said those guilty of such misconduct would be administratively sanctioned, but offered no further information on the sanctions or whether any had been meted out.²⁶

The D.N. arrested two persons in separate incidents in Muyira zone, in mid-February. Both were taken to the headquarters of the CNDD-FDD in the Kiriri neighborhood of Bujumbura, where they were interrogated about the whereabouts of the FNL and beaten with wooden clubs.²⁷ Released later the same day, one of those beaten expressed the dilemma common to many who live in areas that are or are thought to be FNL strongholds. He said that he had received death threats from the FNL for refusing to support them and was now beaten for what he had not done. Harassed by both sides, he said he had nowhere to go, did not dare go home, and yet could not live elsewhere for fear of losing his job.²⁸

In early January 2006, police officers at the Butara position (Cibitoke province) beat four FNL combatants who had been sent to them after turning themselves in to the army post at Ndora (Cibitoke). Two of the four were under eighteen years old. Two others under eighteen suspected of FNL involvement were also in custody at Butara and were beaten at the same time.²⁹ Three police officers beat the six around the feet and ankles with metal bars and hammers and threatened to kill them.³⁰ One of the young men said, “The commander arrived and others came and went and each person who came in took a turn beating us.”³¹ The six, barely able to walk, were sent to the Cibitoke Interior Security Police (PSI). They received no medical attention for their wounds until researchers from the Burundian human rights organization *Association Burundaise pour la Protection des Droits Humains et des Personnes Détenues* (APRODH) and Human Rights Watch visited them and APRODH arranged for their treatment. The police released the two

²⁵ ONUB human rights monitors' visits were canceled by the authorities of the Documentation Nationale or those authorities failed to be present to admit researchers on January 18, 20 and 23, 2006. Attempted joint visits by Human Rights Watch and ONUB human rights monitors also failed for similar reasons on February 2 and 14, 2006.

²⁶ Human Rights Watch interview with Lt. Col. Léonidas Kiziba, Bujumbura, January 27, 2006.

²⁷ Human Rights Watch interview, Bujumbura, February 17, 2006.

²⁸ Ibid.

²⁹ Human Rights Watch interview, Cibitoke province, January 26, 2006.

³⁰ Ibid.

³¹ Ibid.

suspected of FNL connections, convinced finally of their innocence, but the four FNL deserters were still held at the time of this writing.³²

Cibitoke province Police Commissioner Paul Mirerekano said police officers guilty of torture would be arrested and prosecuted. He told Human Rights Watch that one police officer involved in the above incident had lost his post at the PSI and was being detained.³³ A Human Rights Watch researcher was permitted to interview this accused officer, who denied torturing the six prisoners and said that he had only slapped them to force them into the jail at Butara when they resisted.³⁴ Despite the official assertion that the officer was detained, other prisoners in the same facility said that the policeman left as he pleased and never spent the night in the jail.³⁵ Two other policemen supposedly implicated in the torture had not yet been brought in for interrogation at the time of writing.³⁶

Arbitrary arrests and collective punishment

In December 2005 and January and February 2006 police, agents of the D.N. and army soldiers again resorted to large-scale arbitrary arrests and detentions of persons denounced as FNL collaborators by former FNL combatants. This is a practice that has been ongoing since the new government took office in August 2005.³⁷ According to several reports, officials arrested these persons without warrants and held them for more than two weeks without bringing them before a magistrate, both being violations of Burundian law.³⁸ Previously largely confined to the capital city, the practice of large-scale, arbitrary detentions has been extended to Bujumbura-rural province. These detentions are not only a violation of human rights law,³⁹ but also the right under international humanitarian law not to be subjected to collective punishment.⁴⁰

³² Ibid.

³³ Human Rights Watch interview with Police Commissioner Paul Mirerekano, Cibitoke province, January 26, and February 14, 2006.

³⁴ Human Rights Watch interview, Cibitoke province, February 14, 2006.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Human Rights Watch, "Missteps at a crucial moment."

³⁸ Loi No 1/015 du 20 juillet 1999 portant réforme du code de procédure pénale, article 60 and Chapitre IX. According to Burundian criminal procedure, a person may be detained for a maximum of one week, extended to two weeks in cases of "necessary delay" (*sauf prorogation indispensable*) by the judicial police, but then must be charged or released.

³⁹ International Covenant on Civil and Political Rights article 9 (prohibition against arbitrary arrest and detention).

⁴⁰ Second Additional Protocol of 1977 to the Geneva Conventions (Protocol II), article 4(2)(b).

On January 25 government forces awakened residents of Muyira zone in Kanyosha commune (Bujumbura-rural) just before dawn and ordered them to assemble at a nearby field. There, twelve captured FNL combatants picked out fifty-two persons as FNL collaborators and they were detained.⁴¹ The next day authorities detained others, including women and children. The group, finally totaling 103 people, spent three nights in a single room at an administrative office and then was sent to the detention facility of the Interior Security Police (PSI) in Kigobe, Bujumbura.⁴² In a similar incident police and the army detained residents in a dawn operation at Busoro hill, Kanyosha (Bujumbura), including some who had allegedly aided the FNL last in 2003.⁴³ While some people involved in these incidents have been released at this time, those still in detention at the PSI are waiting to be brought in front of a magistrate judge. Some have been transferred to the central prison in Bujumbura and magistrates should be carrying out further investigations to determine if the person will be released or a trial date will be set.

Treatment and Status of FNL Deserters

Scores of FNL combatants who deserted the rebel movement turned themselves in to Burundian army or police posts, some anticipating arrest in any case, others seeking to protect themselves from future problems with the FDN or reprisals by other FNL combatants who try to hunt down and kill deserters.⁴⁴ Many of these deserters report being tired of the war and the difficult conditions and being no longer committed to the objectives of the FNL.⁴⁵ According to officials, about eighty deserters were held in February at three camps, fifty-three at the Interior Security Police in Bubanza province,⁴⁶ eighteen at the Camp “Defense Contre Avion” in Kamenge, Bujumbura,⁴⁷ and four at the Interior Security Police in Cibitoke province, but the total for all camps and detention facilities in all provinces is certainly far higher.⁴⁸

⁴¹ Human Rights Watch interview, Bujumbura-rural province, February 3, 2006.

⁴² Ibid.

⁴³ There are two places called Kanyosha. This is a zone in the city of Bujumbura, not the commune in the Bujumbura-rural province. Human Rights Watch interview, Bujumbura, February 3, 2006.

⁴⁴ Human Rights Watch interviews, Bujumbura, September 14 and 16, 2005.

⁴⁵ Human Rights Watch interviews, Bujumbura, December 21, 2005, and Cibitoke province, January 26, 2006.

⁴⁶ Human Rights Watch telephone interview with ONUB Human Rights Section, February 17, 2006.

⁴⁷ Human Rights Watch interview, Bujumbura, February 9, 2006.

⁴⁸ Human Rights Watch interview, Bujumbura, February 15, 2006.

The legal status of the FNL deserters is unclear.⁴⁹ In one statement in mid-December 2005, Minister of Defense Gen. Germain Niyoyankana emphasized that FNL deserters had voluntarily sought refuge at military posts and camps, which is true for some.⁵⁰ Others are detained against their will, without being charged with an offense. For example, four young men who first sought assistance from the local human rights group APRODH later agreed to surrender to the military with the understanding they would be well treated. Two months later they were still detained at a camp, sick with untreated malaria, poorly fed and confined indoors twenty-four hours a day.⁵¹ They had not been charged with any crime and they stated that they did not fear reprisals if they returned home.⁵² Police and soldiers sometimes use deserters to provide information about the FNL and to identify FNL supporters in the community, as described above, and so have an interest in retaining them in their posts. In another case, a deserter was abducted by former FDD combatants, apparently working for the military. He was held for two weeks, beaten, and interrogated until friends used pressure and bribes to free him.⁵³

According to Defense Minister Niyoyankana, deserters were to be transferred from military posts and camps to police custody and were to be housed in two sites, one in Gakungwe, Kabezi commune, Bujumbura-rural and the other at Buramata in Bubanza province.⁵⁴ In meetings with Human Rights Watch, General Niyoyankana said that this procedure was followed for all but FNL combatants captured during combat, who would be charged with participation in an armed group and detained in the central prison.⁵⁵ But as of mid-February, the sites had not opened nor were provisions assured for their operation.⁵⁶ On the question of the length of time deserters would be held in the camps, General Niyoyankana said that deserters would be provided political training to persuade them not to rejoin the rebellion and then released, but he noted that those who wanted to stay at the camps for their own protection could do so.⁵⁷ Human Rights Watch is not

⁴⁹ Captured combatants (including deserters) in a non-international armed conflict may be charged with criminal offenses, such as rebellion, weapons possession or other crimes, and prosecuted in accordance with international fair trial rules. They must at all times be treated humanely. Protocol II, articles 5 & 6; see generally, International Committee of the Red Cross, *Customary International Humanitarian Law* (Cambridge 2005), chapter 37 ("Persons Deprived of the Liberty").

⁵⁰ "Le ministre de la Défense juge positive la campagne offensive contre le Palipehutu-FNL," *Agence Burundaise de Presse*, December 15, 2005.

⁵¹ Human Rights Watch interviews, Bujumbura, December 21, 2005 and February 8, 2006; Radio Isanganiro, Morning News Broadcast, December 22, 2005.

⁵² Human Rights Watch interview, Bujumbura, February 8, 2006.

⁵³ Human Rights Watch interview, Bujumbura, September 16, 2005.

⁵⁴ "Le ministre de la Défense juge positive la campagne offensive contre le Palipehutu-FNL," *Agence Burundaise de Presse*, December 15, 2005.

⁵⁵ Human Rights Watch interview with General Germain Niyoyankana, Bujumbura, February 13, 2006.

⁵⁶ Human Rights Watch interview, Bujumbura, February 14, 2006.

⁵⁷ Human Rights Watch interview, Bujumbura, February 13, 2006.

aware of the extent to which detained FNL deserters have been charged with criminal offenses.

Transitional Justice

The Arusha peace accord signed in 2000 provided for the creation of a truth and reconciliation commission and an international judicial commission of inquiry under U.N. auspices,⁵⁸ but the U.N. Security Council rejected this plan and proposed instead a truth commission and a special chamber within the Burundian judicial system.⁵⁹

Initially, the government of Burundi appeared ready to cooperate with the U.N. in creating these institutions.⁶⁰ On October 26, 2005, First Vice-President Martin Nduwimana named a commission to prepare for a truth and reconciliation commission, but did not mandate it expressly to deal with establishing a judicial chamber.⁶¹ At the time, the U.N. signaled that it was waiting to assist in creating both mechanisms for accountability,⁶² but as of February 15, 2005, the commission had not yet consulted the relevant United Nations representatives.⁶³ Nor had they consulted with Burundians outside the commission, suggesting that those most concerned, such as the victims of the long-term civil war, might be excluded from the deliberations on the mechanisms to be established.⁶⁴

⁵⁸ The 2003 Burundian law against genocide, war crimes, and crimes against humanity specifies that an international judicial commission of inquiry must determine whether any of these crimes have been committed. The Security Council decision not to establish such a commission apparently renders null and void this arrangement, which is fundamental to prosecutions under the 2003 law. Burundi must therefore adopt a new law immediately in order to make prosecution of these crimes possible in Burundian courts. See Loi no. 1/004 du 8 mai 2003 portant répression du crime de génocide, des crimes contre l'humanité et des crimes de guerre.

⁵⁹ Letter dated March 11, 2005 from the Secretary-General addressed to the President of the Security Council; U.N. Security Council resolution 1606, June 20, 2005.

⁶⁰ "Government pleased with UN resolution on truth commission," U.N. Integrated Regional Information Networks (IRIN), Burundi, June 22, 2005.

⁶¹ Arrêté du 1^{er} Vice-Président (n° 120/VP1/01/05) du 26 octobre 2005 qui nomme la "Délégation gouvernementale chargée de négocier avec l'ONUB la mise en place de la CNVR." This commission is charged with defining the terms of reference, calendar and other operational details of the truth and reconciliation commission.

⁶² "UN And Burundi Will Start Preparatory Talks On Post-Conflict Truth Commission," U.N. News Service, October 14, 2005.

⁶³ Confirmed by Patrick Gavigan, head of Rule of Law, ONUB, by e-mail communication to Human Rights Watch, February 15, 2006.

⁶⁴ Human Rights Watch interviews with Chef de Cabinet Beatrice Ntahe, Bujumbura, December 2, 2005, and February 17, 2006.

Recommendations

To the government of Burundi

- Take necessary steps to ensure that all state security forces—the armed forces, police, and intelligence services—comply with international human rights and humanitarian law, including regarding arrests, treatment of persons in detention and the prohibition of torture. Prosecute persons implicated in criminal offenses in accordance with international fair trial rights.
- Provide unhindered access to all prisons and other detention facilities, including that of the Documentation Nationale, for the U.N. mission to Burundi (ONUB) and human rights organizations. Ensure that civilians are not detained in military camps.
- Collaborate with the United Nations to establish a judicial mechanism to bring perpetrators of war crimes and crimes against humanity to justice. Ensure that there are strong witness protection mechanisms and extradition agreements in place.

To the FNL

- Take all appropriate measures to ensure that combatants under your control abide by international humanitarian law, and hold accountable combatants found responsible for committing abuses.

To the United Nations

- Continue pressing the Burundian government to take measures necessary to ensure full accountability for serious violations of international humanitarian law, including creating a special chamber in the Burundian judicial system to prosecute these crimes.

To donor governments

- Urge the Burundian government to comply with international human rights and humanitarian law, particularly regarding the treatment of persons in detention and the prohibition on torture.
- Use all means of influence at your disposal to press the Burundian government to ensure full accountability for serious violations of international humanitarian law, including creating a special chamber in the Burundian judicial system to prosecute these crimes.