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Founded in 2002, OENZ monitors the situation in Burundi, DR Congo and Rwanda, publishes information on current developments and is lobbying for peace and human rights in the Great Lakes region.

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Burundi has adopted the Universal Declaration of Human Rights of 1948 and is member state of the UN since 1962. It has acceded to the International Covenant on Civil and Political Rights as well as to the International Covenant on Economic, Social and Cultural Rights.

Yet, national and international observers state a deteriorating situation in particular in terms of various types of political violence. The establishment of an Independent National Human Rights Commission was an important step forward but serious human rights violations are still prevalent in Burundi.

Based on the recommendations of the Periodic Universal Review during the 9th session of the Human Rights Council (2009), this report assesses the progress made and the current human rights situation in Burundi. It covers the following topics:

1. Political violence, arbitrary arrests, extrajudicial executions and torture
2. Establishment of the National Independent Human Rights Commission
3. Insufficient respect of the rule of law and the independence of the judicial system
4. Slow progress regarding Transitional Justice mechanisms
5. Limited freedom of expression, opinion, assembly and association
6. Discriminatory laws

1. Political violence, arbitrary arrests, extrajudicial executions and torture

The Penal Code, adopted by the Burundian National Assembly in November 2008 and signed by the President in 2009, reflects some of the recommendations made in the 9th session of the Human Rights Council. Death penalty, for instance, is abolished and acts of torture, genocide, crimes against humanity and war crimes are punishable as are the attempt or complicity to those criminal acts.

Despite this legislation and the Burundian statement of intent, Burundi still has not ratified related UN documents like the International Convention for the Protection of All Persons from Enforced Disappearance (New York, 20 December 2006), the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (New York, 15 December 1989), or the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New York, 18 December 2002).

On the ground, arbitrary arrests, extrajudicial killings and torture are still occurring in Burundi. Especially members of the opposition, journalists, representatives of non-governmental organizations (NGOs) and human rights defenders are victims of detentions, intimidation and assaults. Several human rights defenders accuse the national police, the National Intelligence Agency SNR and the CNDD-FDD youth wing Imbonerakure to intimidate or even assault representatives of the opposition, especially the FNL and the Social Movement for Democracy MSD. In most cases of political violence, impunity was granted for the perpetrators.

MSD-leader Alexis Sinduhije has been arrested by Tanzanian police on request of the Burundian government. He is said to be released again and is in exile since.

FNL leader Agathon Rwasa has fled the country and is said to be organizing a new armed movement in the border area to Eastern DR Congo. Probably, he does not have enough means to finance a strong rebel militia. Yet, in 2011 a series of attacks on police stations or other governmental representations have occurred in north-western Burundi, which seem to be linked to Rwasa.

The former FNL Commander Audace Vianney Habonarugira survived a shooting in March 2011 and received several death threats afterwards. On 15 July 2011 he was killed in an attack. Witnesses claim that the perpetrator was member of the National Secret Service.

Two other FNL members were killed in 2011: Dédithe Niyirera from Kanyanza province was shot in August, Médard Ndayishimiye was killed in Rutana in October after receiving several death threats.

Since 2010 the number of victims of political violence is estimated to be more than 300. The UN has counted 57 illegal killings by members of the national security forces. At least 40 killings seem to have a political implication, but investigations have not

been successful so far. In most cases, the victims were members of the FNL or other oppositional parties. Yet, the killings are often reciprocal.

The worst attack happened on 18 September 2011 in Gatumba, close to the Congolese border, where 39 people were shot in an armed raid on a bar. Even though most victims were not member of any political party, the bar has been known as a stronghold of CNDD-FDD. The government immediately imposed a ban on the national media to prevent a public debate about the massacre and installed an investigation commission. Twenty-one FNL members have been accused of participating in the attack. While the trial was delayed in the beginning, the sentence was pronounced at short notice and unexpected even by the defense in January 2012. It was widely criticized that high-ranking police officers who were allegedly involved were not subpoenaed during the trial.

FNL members seem to have conducted several revenge killings on CNDD-FDD, especially in Bujumbura and the Bujumbura rural province. Also a number of police officers and soldiers were targeted in 2011. The CNDD-FDD members Pascal Ngenyakomana and Albert Ntiranyibagira were shot on 6 April 2011. Witnesses claim that the FNL was responsible for this attack.

In return, the national Security Service (SNR) and the youth wing of the CNDD-FDD have been accused to be responsible for several attacks and killings, as was the national police.

Impunity prevails in almost all cases of political violence that were obviously committed by national security forces since 2010.

One member of the MSD, Mr. Léandre Bukuru, has been arrested by police in his house in Bujumbura on 13 November 2011 and was found beheaded the next day. The judicial inquiries so far did not produce any results; important evidence has been ignored by the police.

The Government of Burundi should insist that human rights abuses are neither tolerated in the security sector nor elsewhere. The state agents should be trained and monitored accordingly.

The Burundian government should ensure that in all cases of human rights violations impartial legal action is taken in due manner, regardless of the rank or the political affiliation of the perpetrators.

2. Establishment of the National Independent Human Rights Commission

On 5 January 2011, the law No. 1/04 was adopted which provided for the establishment of the National Independent Human Rights Commission (CNIDH). Its establishment had already been agreed on in the Arusha Peace and Reconciliation Agreement for Burundi of 2000 and was part of the recommendations of the last Universal Periodic Review. In May 2011, the National Assembly appointed the CNIDH's members, so that in June 2011 it finally began its work. The seven members of the steering committee represent different ethnic, religious and regional groups of the Burundian society and find recognition in their respective communities. Its President Frère Emmanuel Ntakarutimana is a renowned human rights activist and leader of the well-known NGO Centre Ubuntu. This is applauded by most civil society organisation, in particular given that, for instance, the choice and appointment of the Ombudsman had provoked large criticism.

The CNIDH has the mandate to lead investigations in all cases of current human rights violations, to receive and examine victims' allegations and to take initiative on its own. So far it is not clear, how it can demand, support or even replace police investigations, especially in cases when national security forces are suspect of being involved in crimes. Yet, its mandate adheres to the basic requirements stated in the last Universal Periodic Review.

Unfortunately, so far the government has failed to allocate the necessary funds to equip the CNIDH sufficiently. Thus, it was difficult for the commission to follow up recent cases of political violence in the country. Despite its lack of indispensable resources, CNIDH already took up some investigations and published first findings, for instance in the case of the extrajudicial execution of Joël Ndereyimana, who was killed on 22 June 2011.

When the CNIDH became active, the UN High Commissioner for Human Rights (OHCHR) ended the mandate of the UN independent expert on the situation of human rights in Burundi. Like many other African governments, the Burundian government had lobbied the OHCHR already for a long time to get rid of this unwelcome international observer and had explained that it was able to organize its own human rights observation body. Since the CNIDH has not the financial and material capacity to investigate extensively, this leaves a gap in the independent monitoring of the Burundian human rights situation.

The Government of Burundi should seek to fund and equip the CNIDH adequately so that it can fulfill its mission properly.

3. Insufficient respect of the rule of law and the independence of the judicial system

The justice system is badly equipped and is widely seen as being influenced by political interests. The population has little confidence in its verdicts.

The judicial system is instrumentalized to intimidate and imprison persons critical to the ruling government such as journalists or even lawyers defending them.

Lawyer and MSD activist François Nyamoya is in prison since July 2011 on charges of “negatively influencing a trial”. He had acted as a spokesman for the MSD and received several threats to silence him before his arrest.

As mentioned above, almost all cases of political violence against members of the opposition have never been investigated by the national security forces, or legal procedures failed to produce credible results. Impunity prevails and leaves large parts of the population without the possibility to come up against cases of corruption, criminality or human rights violations.

Burundian civil society organizations repeatedly criticize that national Ad Hoc Commissions do not uncover the truth. They doubt, for instance, that the commission set up by the prosecutor general in June 2012 will seriously probe allegations by human rights organizations of extrajudicial killings and torture. In their opinion, too many commissions failed in the past.

Due to international attention and diplomatic pressure, two national investigation commissions for extralegal killings and attacks related to the 2010 elections have been installed. So far, they have not produced any reports or initiated judicial investigations. They also failed to shed light on the twelve cases of torture that were reported to have occurred under the responsibility of the National Intelligence Agency SNR in June 2010, or the twenty cases of extrajudicial killings of FNL members that were reported to BNUB between 2010 and 2011.

Even though Burundi abolished the death penalty in 2009, several cases of torture and secret killings of members of the opposition without prior trials were reported.

The living conditions in Burundian prisons remain very poor. Basic hygienic and nutritional needs are still not guaranteed to the prisoners. More than 50% of the detained are kept without a trial or judgement. Given that prisons are largely overcrowded, President Nkurunziza has pardoned certain categories of prisoners on the occasion of Burundi’s 50th anniversary of independence. However, this step is insufficient to improve the inmates’ living conditions substantially.

Burundi should ensure that the judicial system can work independently and effectively in order to end impunity and promote confidence in legal procedures. It should en-

sure that ad hoc commissions are pursuing their investigations efficiently and that they publish their findings in the due limits.

4. Slow progress regarding Transitional Justice mechanisms

Obviously, there is a great demand for transitional justice mechanisms to help the society overcome its violent past, individual and collective traumata. Thus, the Arusha Peace and Reconciliation Agreement for Burundi postulated in 2000 already the creation of a national Truth and Reconciliation Commission and a Special Tribunal in Burundi. The last Universal Periodic Review included corresponding recommendations and the Burundian government repeatedly stated its will to install the necessary mechanisms. To date, neither the national Truth and Reconciliation Commission nor the Special Tribunal are in place. Even after years of preparation, government and parliament were not yet able to install these important institutions to deal with the worst human rights violations and war crimes committed in the country since its independence in 1962.

In 2009/2010 a national consultation was conducted to identify the population's needs and views in regard to transitional justice mechanisms. Against this backdrop, the government ordered a commission of experts to develop an activity plan and structural design for the Truth and Reconciliation Commission (TRC) and the Special Tribunal (ST). This document, the so called Kavakure-report, was finished in 2011. NGOs criticize the report in regard to various aspects, in particular, that despite the population's wish the proposed composition of the TRC does not consider civil society and religious representatives and that it is planned as being uniquely nationally composed.

The Kavakure report proposes that the TRC should, in its maximum 30 month existence, send delegations to all districts to collect information about severe human rights violations, war crimes, circumstances of crimes and the location of mass graves (mapping of crime scenes and history of human rights violations); establish a list of victims and a list of perpetrators; hold public auditions to collect information and listen to the needs of the population; develop a method for communal forms of reconciliation and pardon; offer recommendations for institutional reforms to prevent further human rights violations; debate the need and possibility of symbolic or concrete reparations to single or groups of victims.

All these tasks are highly sensitive and conflictive. As there has never been a complete change of regime, as stakeholders are still in the country, and since the circle of violence and counter violence has never been ended, all parts of the Burundian society are intertwined with victims as well as perpetrators. This accounts also for the government and for members of the opposition parties. They are afraid of the publi-

cation of such a commission's findings. This explains the reluctance of all political leaders to speed up the process of the installation of the TRC.

The government shows even more resistance to implement the Special Tribunal (ST) for Burundi. Obviously, several members of parliament, government and opposition are afraid of the investigations in crimes against humanity that might be conducted by national and international prosecutors.

Given the significance of starting a transitional justice process and the wish of the Burundian population expressed in the national consultations, the Government of Burundi should adhere to its statement that the TRC is a priority for the Burundian government and will be established in 2012.

The ST is an essential part of the transitional justice mechanisms and cannot be omitted. The Government of Burundi should prepare its creation and equip it with a clear mandate. The spheres of competence concerning the TRC and the ST should be clearly defined.

5. Limited freedom of expression, opinion, assembly and association

Since the 2010 elections and its boycott by the oppositional parties FNL, FRODEBU and MSD, the political space for oppositional parties in Burundi has been significantly reduced. Before 2010 internal pressure and the interests of external donors motivated President Nkurunziza to overcome the differences with the strongest opposition leader Agathon Rwaso of the National Liberation Forces FNL. But the pull-out of the opposition parties due to alleged election fraud allowed the ruling party CNDD-FDD a landslide victory in the legislative and presidential elections. Now the government uses its influence to further expand its dominant position.

So far, the government has failed to improve its relationship with the Burundian civil society. It is still marked by open mistrust. Human rights defenders, media and lawyers repeatedly faced repressions and attempts to silence them since the 2010 elections. In August 2011 President Nkurunziza declared openly that he was not willing to accept further criticism and negative reports by the media and civil society organizations, that their actions were like "poison" and that the population and state institutions should take measures against them.

The government stated during the last Universal Periodic Review and at other occasions that it adheres to the guarantees to freedoms of association, expression, opinion and peaceful assembly. While it is true that Burundi enjoys a relatively lively civil society there are restrictions to their activities. In the context of the elections in 2010, for instance, meetings by political opposition parties were restricted and remained

difficult thereafter. A peaceful march in commemoration of the second anniversary of Ernest Manirumva's murder was dissolved. After the massacre in Gatumba in September 2011, the government prohibited any public coverage on this incident. Clearly the government is only at ease with NGOs who offer services in line with governmental development programs, but can hardly accept civil society organizations with a watchdog – function.

On 16 February 2012 Léonard Hakizimana, leader of the Ligue Iteka human rights office in Matongo was killed at his home. Already in 2009 Ernest Manirumva, vice-president of the anti-corruption organization OLUCOME was killed, and his case has been delayed. The verdict in May 2012 was nationally and internationally criticized because it neglected potential evidence and calls to investigate possible involvements of high-ranking national security agents and the police.

Journalists repeatedly received threats and intimidations, when they published critical articles or broadcasts on issues like corruption or the lack of democratic space. The journalist Jean Claude Kavumbagu has been repeatedly arrested for his critical work and was released on 13 May 2011 after 10 months detention.

Bob Rugurika, editor of African Public Radio (RPA) and Patrick Mitabaro, editor of Radio Isanganiro were summoned by the police several times and accused of “inciting the population” and “causing civil disobedience”.

Even lawyers have become victims of intimidations and arrests. For example Suzanne Bukuru, Isidor Rufyikira or Francois Nyamoya have been arrested for their support to journalists and political parties.

Most pressure lies on the members of NGOs that investigate in corruption cases. As the political parties and business elites are notoriously corrupt, civil society organizations like APRODH or OLUCOME, who want to shed light on these networks, are under suspicion and face severe repression. APRODH's Director Pierre – Claver Mbonimpa and Gabriel Rufiyiri, president of OLUCOME, both were called to report at the public prosecutor's office several times after having published reports on corruption in the national administration.

Faustin Ndikumana, the director of the anti-corruption NGO PARCEM was imprisoned on 7 February 2012, after he had reported on some cases of corruption in the national judicial system. He was released only two weeks later against a fine of approx. 600 Euro.

The Government of Burundi should ensure that human rights activists, journalists and other civil society members can monitor, investigate and report on human rights abuses and other critical issues without hindrance and without having to fear consequences.

6. Discriminatory laws

In the Penal Code from 2009 the definition and sentence for rape have been sharpened (up to 30 years or even for life). Yet, the same Penal Code provides for marital rape a punishment of only 8 days imprisonment and a fine of 10.000 to 50.000 Fbu. Burundi still has not ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (New York, 6 October 1999).

Though rejected in Senate before its passing, the Penal Code from 2009 defines homosexuality as a criminal act which is punishable with up to 2 years of prison and a fine of max. 100.000Fbu.

The distinction between rape and marital rape should be repealed immediately as should the criminalization of homosexuality.