

# BRIEFING PAPER

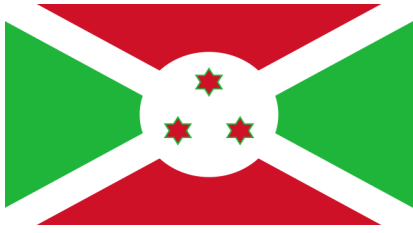
## Universal Periodic Review

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# THE SITUATION OF HUMAN RIGHTS DEFENDERS IN THE REPUBLIC OF BURUNDI

### **Contacts**

Clement Nyaletsossi VOULE  
International Service for Human Rights  
<mailto:c.voule@ishr.ch>



In its last Universal Periodic Review (UPR) in 2013, Burundi noted all but one of the 6 recommendations received relating to human rights defenders (HRDs). While it did accept a recommendation to issue a standing invitation to the Special Rapporteur on the situation of HRDs, since the election in 2015 no Special Rapporteur has been allowed entry. Disappointingly, 10 recommendations relating more broadly to restrictions on rights to freedom of expression, the press, association, and assembly were rejected. Since the coup attempt in 2015, journalists and HRDs face heightened risks of threats, intimidation, and violent attacks including death by the Government or by the ruling party's youth league, *Imbonerakure*.<sup>1</sup>

## A. RISKS FACING HUMAN RIGHTS DEFENDERS

- In 2015, Amnesty International called on the Burundian Government to put an end to the climate of fear and violence in the country after the attempted assassination of Pierre Claver Mbonimpa.<sup>2</sup> Mr Mbonimpa a well-known HRD and founder of the Association for the Protection of Human Rights and Incarcerated Persons was shot in the face by an unknown assailant on a motorcycle.<sup>3</sup> This attempted assassination was condemned by the Special Rapporteur of Human Rights Defenders of the African Commission on Human and People's Rights, Mrs Reine Alapini-Gansou.<sup>4</sup>
- Journalists working for or who have worked for private media outlets are also at risk. Freedom House reported that Burundi has dropped significantly in its press freedom rating over the past 4 years. While it has been considered 'not free,' for nearly two decades, its recent further decline has brought it among nations like Bahrain and Turkey.<sup>5</sup>
- According to Freedom House, dozens of journalists have fled into exile, private radio outlets have been shut down, and those remaining face physical attacks and death threats from police and the *Imbonerakure*.<sup>6</sup>
- While the government denies any claims that there are political prisoners in Burundi, Mbonimpa<sup>7</sup> claims in speaking to France 24 that there have been over 4,000 political detainees since the start of the crisis in the country. This is compounded by the fact that prisoners face high risk of being tortured while incarcerated.<sup>8</sup>
- member organization, the ITEKA League, was banned from operating for 'tarnishing the image of the country,'<sup>10</sup>
- In 2013, Law number 1/11 of 14 June 2013 was passed eliminating the right for journalists to withhold the identities of their sources.<sup>11</sup> The law also forbids journalists from publishing stories about national defence, public safety, national security, and the local currency. Fines of well over the average annual salary of journalists in the country are imposed for violating this law.<sup>12</sup>
- Lawyers and other HRDs fear reprisals if they take on cases of abuses, including by *Imbonerakure* members. They fear the government will remain complacent in their actions and may have even perpetrated a number of attacks – some of which were against known supporters of opposition parties.<sup>13</sup>
- After the failed coup attempt, the Government ordered demonstrators in the country to stop, and if not they would be considered supporters of the coup.<sup>14</sup> This order is not only in violation of international law, but also its own constitution.<sup>15</sup>
- The government has proposed banning HRDs from acting in any way that could destabilise their country of origin. Such a statement directly equates to a negative reaction for engaging with international human rights mechanisms by arguing a broad point that there may be negative consequences for the state.<sup>16</sup>
- Freedom of association is also under attack with a new law cracking down on foreign funding for NGOs. On 28 December 2016 the Burundian Parliament voted to evaluate all civil society organisations in the country. In addition, all funding from foreign sources must initially be deposited into the Burundi Central Bank and the funding source must communicate its activities

## B. RESTRICTIONS ON THE SPACE FOR HUMAN RIGHTS DEFENDERS

- In 2013, the Minister of Interior suspended the activities of 10 civil society organisations, claiming their involvement in 'disturbing security in the country'.<sup>9</sup> Of these organisations, FIDH

with the government.<sup>17</sup> NGOs operating in the country must also provide updates on its activities every 6 months or face sanctions.<sup>18</sup>

- According to the United Nations Independent Investigation in Burundi from September 2016, Burundian civil society actors, and particularly HRDs and journalists, have been the primary targets of systematic oppression by authorities.<sup>19</sup> Some of these HRDs were forced into exile because of their work in human rights.

#### C. HUMAN RIGHTS DEFENDERS FACING PARTICULAR RISKS

- According to the 2009 Burundi Penal Code, conducting same-sex intimate relations is illegal, and may carry with it 3 months to 2 years' jail time.<sup>20</sup> While NGOs need to register with the government to operate legally, many LGBT organisations fear using their real names or registering because of prosecution.<sup>21</sup>
- Journalists also face particular risks. On 22 July 2016, the journalist Jean Bigirimana was stopped by men in official uniforms and has not been seen since, according to SOS-Torture/Burundi. The police and intelligence agency continue deny his arrest.<sup>22</sup>

#### D. REPRISALS AGAINST HUMAN RIGHTS DEFENDERS ACCESSING INTERNATIONAL HUMAN RIGHTS MECHANISMS

- Four lawyers - Armel Niyongere, Lambert Nigarura, Dieudonné Bashirahishize and Vital Nshimirimana – contributed to a joint shadow report submitted to the Committee against Torture for the consideration of the special report on Burundi, and three attended the interactive dialogue between Burundi and the

Committee against Torture on behalf of the Burundian civil society organisations they represented. Following this, accused of 'involvement in the attempted coup', in January 2017 three of the lawyers were disbarred and one was suspended for a period of one year and denied participation in the *Conseil de l'Ordre des Avocats* for five years. There was no investigation or trial in this case, which undermined any presumption of innocence.<sup>23</sup> Further, the Committee considers the court's verdict as an act of reprisal for the lawyers' engagement with the Committee. Communications were sent by the Committee President and Rapporteur on reprisals in February 2017 to the Representative of the Permanent Mission of Burundi in Geneva but, to date, no reply has been received.

#### E. THE RESPONSE FROM THE STATE REGARDING THE PROTECTION OF HUMAN RIGHTS DEFENDERS

- In a statement to the 35<sup>th</sup> session of the Human Rights Council the Burundian Government undermined the role of HRDs by arguing that HRDs, journalists, and others are in fact terrorists who are working to destabilise the country. They further claimed that *Imbonerakure* members are in danger of violent attacks by groups claiming to be HRDs.<sup>24</sup>
- Despite its obligation to allow UN investigators to enter the country, the Burundian Government has barred the Commission of Inquiry (COI) from entering its borders.<sup>25</sup> The COI was established to investigate human rights violations and abuses in Burundi since April 2015. The President of the COI is Fatsah Ouguergouz, who has a one-year mandate ending on 30 September 2017.<sup>26</sup>

## RECOMMENDATIONS TO THE GOVERNMENT OF THE REPUBLIC OF BURUNDI:

- Refrain from criminalising the legitimate activities of HRDs and repeal all laws and policies which restrict their activities and rights, including mandatory use of the Burundi Central Bank for foreign funding and 6-month updates on NGO activities to the government (a modification to decree No. 100/130 of 27 April 2015<sup>27</sup>), and the criminalisation of withholding source identities (according to Law No. 1/11 of 4 June 2013).
- Combat impunity, including of *Imbonerakure* forces, by ensuring the prompt, thorough and impartial investigation of all violations against HRDs, such as forced disappearance, arbitrary and incompetent detention of journalists and other HRDs, and threats of violence and attacks against private media outlets. *Note: This has been more broadly recommended in the former cycle of the Universal Periodic Review.*
- Demonstrate support for HRDs by refraining from stigmatising them as terrorists and destabilisers, and allowing civil society organisations to conduct their legitimate activities.
- Decriminalise same-sex relations and ensure that LGBT organisations can operate in the country without fear of government prosecution or persecution. Investigate any crimes against LGBT individuals or organisations that have taken place in the country.
- Ensure that protection of HRDs includes defenders' participation in the policy design process and use their input to maintain standards in line with international law. Ensure that protection policies respond to the particular protection needs of women HRDs.
- Commit to granting entry for UN Special Rapporteur on the situation of HRDs and the UN Commission of Inquiry and allowing them unrestricted access to all spaces in the country. Further allow civil society organisations and individual HRDs access to interact with the SR without fear of reprisal.
- Refrain from stigmatising HRDs operating inside and outside the country, guarantee the right to safe and unhindered access to human rights mechanisms and condemn and punish acts of intimidation and reprisals against HRDs who engage with the UN.

### ABOUT THIS BRIEFING PAPER

ISHR and Action des Chrétiens pour l'Abolition de la Torture (ACAT) encourage States to consult UPR submissions by local activists and make recommendations to the Republic of Burundi regarding the protection of HRDs. This paper is a result of compiling public information and direct contact and experience of ACAT in the protection of HRDs. Readers should consult sources cited for additional information.

<sup>1</sup> <http://www.jeuneafrique.com/depeches/426528/politique/burundi-imbonerakure-outil-de-repression-regime/>.

<sup>2</sup> <https://www.amnesty.org/en/latest/news/2015/08/burundi-shooting-of-human-rights-activist-increases-climate-of-fear/>.

<sup>3</sup> <https://www.theguardian.com/world/2015/aug/04/assassination-attempt-burundi-human-rights-activists-pierre-claver-mbonimpa>.

<sup>4</sup> <http://www.achpr.org/press/2015/08/d273/>.

<sup>5</sup> <https://freedomhouse.org/report/freedom-world/freedom-world-2017>.

<sup>6</sup> <https://freedomhouse.org/report/freedom-press/2016/burundi>.

<sup>7</sup> See first bullet point.

<sup>8</sup> <http://www.france24.com/en/20170124-burundi-release-one-quarter-prison-population-nkurunziza-jails>.

<sup>9</sup> <http://www.reuters.com/article/us-burundi-unrest-idUSKBN0TD0DD20151124>.

<sup>10</sup> <https://www.fidh.org/en/region/Africa/burundi/ban-of-the-iteka-league-another-blow-to-burundian-civil-society>.

<sup>11</sup> <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94571/111010/F-1763105778/BDI-94571.pdf>.

<sup>12</sup> <https://cpi.org/2014/02/attacks-on-the-press-in-2013-burundi.php>.

<sup>13</sup> <https://www.hrw.org/news/2017/01/19/burundi-attacks-ruling-party-youth-league-members>.

<sup>14</sup> <https://www.hrw.org/news/2015/05/29/burundi-deadly-police-response-protests>.

<sup>15</sup> Art. 20 of the Universal Declaration of Human Rights, Art. 21 of the International Convention on Civil and Political Rights, and Art. 32 of the Burundian 2005 Constitution.

<sup>16</sup> <http://webtv.un.org/meetings-events/human-rights-council/watch/id-commission-of-inquiry-on-burundi-22nd-meeting-35th-regular-session-human-rights-council-/5472081327001>.

<sup>17</sup> <http://burundi-agnews.org/parlement/burundi-adoption-a-lunanimate-de-la-nouvelle-loi-sur-les-asbl/>.

<sup>18</sup> <http://www.nation.co.ke/news/africa/Burundi-passes-law-cracking-down-on-foreign-NGOs/1066-3497164-j2l62kz/index.html>.

<sup>19</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20534&LangID=E>.

<sup>20</sup> <http://www.wipo.int/edocs/lexdocs/laws/fr/bi/bi009fr.pdf>. Art. 567 of the 2009 Burundi Penal Code.

<sup>21</sup> <http://www.humanrightsfirst.org/sites/default/files/HRF-HRC-Africa-Report.pdf>.

<sup>22</sup> <http://sostortureburundi.over-blog.com/2017/03/rapport-annuel-de-sos-torture-burundi.html>.

<sup>23</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20350&LangID=E>.

<sup>24</sup> <http://webtv.un.org/meetings-events/human-rights-council/watch/id-commission-of-inquiry-on-burundi-22nd-meeting-35th-regular-session-human-rights-council-/5472081327001>.

<sup>25</sup> <http://www.un.org/apps/news/story.asp?NewsID=56915#.WUJnKR97BI>.

<sup>26</sup> <http://www.ohchr.org/EN/HRBodies/HRC/ColBurundi/Pages/ColBurundi.aspx>.

<sup>27</sup> <http://www.burundi.gov.bi/spip.php?article1195>.