

Burundi: BURUNDI: Delays in justice mechanisms "fuel impunity"

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BUJUMBURA, 3 December 2010 (IRIN) - Ten years after the signing of an accord designed to move Burundi from civil war to democratic stability, the country has yet to establish transitional justice mechanisms aimed at enhancing reconciliation and bringing to book those responsible for crimes committed during the country's turbulent years.

Human rights activists and political observers say the lack of these mechanisms - a truth and reconciliation commission and some form of criminal tribunal - had perpetuated a culture of impunity, allowing human rights violations to proliferate, especially by state organs such as the police and judiciary.

Despite numerous meetings and consultations - including a law being passed in parliament in December 2004 on the setting up of a truth and reconciliation commission and a *UN resolution in 2005* on establishing the structures - the authorities in power during the transitional phase and after democratic elections in 2005 have yet to comply.

Fatsah Ouguerouz, the UN Human Rights Council's Independent Expert on Burundi, who recently made a nine-day visit to the country, urged the authorities to set up the bodies, saying they were "essential for the reconciliation of Burundi people".

According to the Arusha accord, signed in 2000 in Tanzania, the two justice mechanisms were to have been in place during Burundi's first transition period, which ended in April 2003.

Jean Marie Gasana, an independent consultant on Africa's Great Lakes region, told IRIN: "Ten years after the signing of the Arusha accord, Burundians are not reconciled and the country is not fully reconstructed. People are still waiting for justice."

Gasana said by disregarding the "spirit" of the Arusha accord, the ruling party, CNDD-FDD, was risking compromising the progress the country had made in the past 10 years.

"The attitude of the ruling party and the prevailing political situation in the country provide all the ingredients necessary for anyone who can be tempted to use violent means to press for change to do so," he said. "We have already witnessed skirmishes in the past three months between government forces and unknown groups in various parts of the country."

Arbitrary arrests

To highlight how impunity was being entrenched, human rights organizations have documented hundreds of cases of arbitrary arrests and illegal detention of persons perceived to be opposed to or critical of the government.

A recent report by Human Rights Watch (HRW) documents cases of torture, arbitrary arrests and harassment of civil society groups.

The HRW report, based on more than 100 interviews with journalists, civil society activists, opposition party members, government officials, diplomats and election monitors, documents the Burundian authorities' increasing efforts to silence dissenting voices before, during and since the elections.

At a press conference in Bujumbura on 17 November, Ouguerouz said he had asked Burundi authorities to shed light on the allegations of nine cases of extrajudicial executions between August and October in the provinces of Cibitoke, Bubanza and Bujumbura-Rural, which had been blamed on the police and the national army.

He said he had demanded guarantees that those responsible would be indicted for the crimes.

On 26 October, Burundi's state prosecutor set up a six-member commission to investigate the allegations of summary executions. Ouguerouz said the commission's members should be independent and impartial.

Implementation issues

Philippe Nzobonariba, the government spokesman, told IRIN the establishment of the transitional justice mechanisms had

been delayed because of "difficulties in the implementation of the provisions of the Arusha accord".

He said negotiations with the UN over implementing the accord were required to achieve appropriate mechanisms for Burundi. "Negotiations are essential for a better implementation of the accord; some were saying a penal tribunal for Burundi, others proposed a special chamber."

However, Pierre Claver Mbonimpa, president of the Association for the Protection of Human Rights and the Rights of Detainees, told IRIN the time was not yet ripe for Burundi to have the two justice mechanisms.

He said the issue of impunity and the lack of an independent judiciary were more pressing than establishing justice mechanisms.

"Crimes committed during the country's civil war can wait for the justice mechanisms but there are other crimes that were committed after the signing of the Arusha accord, such as extrajudicial killings, targeted assassinations etc; all these crimes have been committed by the authorities or agents of government institutions, that is why the judiciary cannot tackle them... it was believed that after the signing of the Arusha Accord, Burundi will recover total peace and good governance but we note that, instead, violence is worse today than before. Key problems on reconciliation remain; the same people who were previously agitating for good governance are the same ones who are now at the origin of insecurity in the country."

Timing issues

Mbonimpa said if the two justice mechanisms were set up today, the leadership would be in trouble. "You cannot set up a TRC which will work against you."

According to Pacifique Ninahazwe, president and legal representative of the Forum pour le Renforcement de la Société Civile (FORSC), the delay in establishing a national independent human rights commission was another challenge for human rights protection in the country.

"This commission was supposed to have been in place in 2009 as the first draft law on this commission was tabled in parliament earlier in the year," he said. "The truth and justice process for Burundi started with the Arusha accord and we had hoped that by 2005 we would have in place the truth and reconciliation commission as well as the special tribunal but, so far, the political leaders have been dragging their feet over their establishment."

A human rights activist, who requested anonymity, said violations of human rights by agents of the country's security forces would continue as long as senior officials heading these institutions remained in office.

The activist called for the investigation of those responsible for these violations, "even if it means imposing sanctions on the government".

Responding to claims that the police were involved in human rights violations, police spokesman Pierre Channel Ntarabaganyi said such cases had, in fact, declined since June.

"There are some cases where the police have been accused of violations, like the recent case of a motorcyclist who was shot in Bubanza [province], I would like to state that police often only shoot back; in this case the people who were being pursued started shooting at the police and the police responded," he said. "Article 9 of the Human Rights Declaration allows for use of force by the police when they are in danger."

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