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Burundi: Detention measures abused

Amnesty International today expressed its concern about continuing arbitrary arrests and detention of civilians and members of civil society by the Burundian authorities. For more than nine months Amnesty International, together with other human rights organizations, has condemned the arbitrary arrests and detention to which the population of Bujumbura-mairie and the provinces of Bujumbura rural, Bubanza and Cibitoke have been consistently subjected.

“Under the guise of security, the government has used and continues to use arbitrary detention to intimidate and harass the population of Bujumbura-mairie and surrounding provinces. Today, the same strategy is being employed by the authorities to intimidate human rights defenders and journalists and to stifle criticism of the government,” Amnesty International said today.

In order to justify the large number of arrests and detention of those living in Bujumbura-mairie and surrounding provinces, the authorities have consistently cited their alleged involvement with the Forces nationales de libération (FLN), National Liberation Forces, the only remaining armed opposition group in Burundi. According to human rights defenders working in Bujumbura, the number of those detained between September 2005 and April 2006 during these operations was reported to have reached well over 1,000. According to information recently received by Amnesty International, by 30 April 2006 the police had officially referred 579 of these cases to the public prosecutors in Bujumbura-mairie and Bujumbura rural and 34 people had been prosecuted by the state prosecution service.

Amnesty International deplores the fact that a large number of these people have been arbitrarily arrested, illegally detained and denied their right to a fair trial. Article 72 of the Burundian Code of Criminal Procedure provides in particular that:

“[the accused] must be brought before a court within a maximum of 15 days of a provisional arrest warrant being issued”.

Amnesty International is also concerned that the detention of these people reflects a government strategy aimed at forcing those living in the provinces of Bujumbura rural, Bubanza and Cibitoke to provide information about possible FNL activities. As a former judge told Amnesty International:

“We did not have the power to recommend the release of those against whom no evidence of guilt had been found. And they were in the majority. Each time we had to place them under provisional arrest warrants without being allowed to assess their guilt as we would normally have done in other cases.”

While Amnesty International acknowledges that the Burundian authorities are entitled and under an obligation to bring to justice alleged perpetrators of criminal offences, on the other hand the organization condemns the repeated violation of Articles 25 and 39 of the Burundian Constitution, Articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR) and Articles

6 and 7 of the African Charter on Human and Peoples' Rights which specifically enshrine the right of everyone to liberty, security of person and to be granted a fair trial.

The ICCPR specifies in particular in Article 9 that:

"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law [...]"

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement."

Amnesty International is also expressing its fears arising from the recent arbitrary arrests and detention of members of civil society who have expressed views critical of the state authorities. In this respect, Amnesty International condemns the arbitrary arrests of T rence Nahimana and Aloys Kabura.

T rence Nahimana, director of the non-governmental organization (NGO) Cercle d'initiative pour une vision commune (CIVIC), has been detained since 10 May 2006 at the prison in Mpimba (Bujumbura) for having aired the theory – in a letter addressed to the President of the Republic and subsequently during a press conference – that the Burundian government was deliberately delaying negotiations with the FLN, which according to some reports was operating in the east of the Democratic Republic of the Congo (DRC), in order to justify sending its troops into the DRC. The state prosecution service considered that such remarks amounted to "an attack on national security" and risked exposing Burundi to "hostility from foreign power", in this instance the DRC. On 12 June 2006, the Bujumbura Court of Appeal confirmed the lawfulness of T rence Nahimana's arrest. Amnesty International is concerned that the Burundian authorities are using laws relating to security to suppress peaceful exercise of the right to freedom of expression.

Aloys Kabura, a journalist with the *Association burundaise de presse* (ABP), the Burundian Press Association, has been illegally detained at the prison in Ngozi since 1 June 2006 for having criticized the behaviour of the police force after three journalists were beaten up on 17 April 2006. Aloys Kabura was initially held on the basis of Article 273 of the Penal Code. This article provides a sentence of a maximum of two months' imprisonment and/or a fine of 5,000 Fr-Burundi for:

"anyone who publicly commits any act or makes any gesture, or makes any remarks likely to display or to provoke contempt for the established powers, agents of state authority...".

According to the Code of Criminal Procedure, however, preventive detention is permitted only for offences punishable by law with a sentence of at least one year's imprisonment. After having realized that Aloys Kabura's detention was illegal, the public prosecutor of Kayanza issued a new retrospective arrest warrant consisting of other offences in order to justify *a posteriori* the preventive detention of Aloys Kabura. According to this new document, Aloys Kabura is now detained on the basis of Article 178 of the Penal Code which provides a sentence of from eight days' to one year's imprisonment for:

"anyone who has wilfully and publicly imputed a specific fact likely to undermine the honour or the reputation of that person or to expose him to public contempt".

Amnesty International believes that Aloys Kabura has been detained solely for having peacefully expressed his opinions.

Amnesty International is concerned about the abusive use by the state prosecution service of preventive detention measures in order to suppress the exercise of freedom of expression, a right internationally recognized by Article 19 of the ICCPR. The organization points out that in fact, according to Article 71 of the Code of Criminal Procedure, preventive detention constitutes an exceptional measure which must meet specific conditions such as preservation of evidence, maintenance of public order, protection of the accused, bringing an end to the offence or preventing its recurrence and, lastly, ensuring that the accused remains at the disposition of the law.

Recommendations

- Amnesty International urges the Burundian authorities to charge all detainees with a recognizably criminal offence and to bring them promptly to trial according to international fair trial standards. Otherwise, the detainees must be released.
- Amnesty International believes that T rence Nahimana and Aloys Kabura are prisoners of conscience, detained for having peacefully exercised their right to freedom of expression. Amnesty International calls on the Burundian authorities to release them immediately and unconditionally.
- Amnesty International calls on the Burundian authorities to guarantee full reparations to all those subjected to arbitrary arrest and illegal detention, in accordance with the Burundian Constitution and the International Covenant on Civil and Political Rights.

Background information

Since assuming power in August 2005, the new Burundian authorities have embarked on a policy of securing the provinces around the capital Bujumbura, believing that FNL elements could be militarily weakened. This policy has had a detrimental effect on the human rights situation in these provinces and has not stopped abuses by the FNL. In May 2006, the monthly report of the human rights section of the United Nations Operation in Burundi (ONUB) still documented summary executions carried out by elements of the army or the FNL. On 18 June 2006, in Dar es Salaam (Tanzania), an agreement of principles *towards lasting peace, security and stability in Burundi* was signed by the government and the FNL. Negotiations are, however, currently stalled because of an inability to reach a common understanding on certain sensitive issues such as those relating to the army. According to various sources, these negotiations were to resume shortly.

In recent weeks, Amnesty International has received reports of the intimidation of members of civil society by agents of the state. On 17 April 2006 around 30 journalists were detained for several hours and some were severely beaten by police officers after attending a press conference organized in Bujumbura by member of parliament Mathias Basabose. On 21 May 2006 three members of the organization AC G nocide were arbitrarily arrested and detained when they held their monthly meeting at Gitega. One of them was released on medical grounds while the other two were accused of "threats to national security". They were released after meeting bail conditions of 20,000 Fr-Burundi.