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Burundi: A critical moment for justice

Burundi's parliament should amend a draft law establishing a Truth and Reconciliation Commission (TRC) to ensure victims of crimes under international law and their relatives obtain justice and truth, Amnesty International said today.

Hundreds of thousands of people were killed during the years of conflict and violence and all sides were responsible for serious violations of international humanitarian and human rights law.

Having reviewed the draft law Amnesty International calls on Burundi's parliament to ensure that the following key principles and accompanying recommendations are reflected in the law before adopting it. Amnesty International also urges the Government of Burundi to make the process of establishing the TRC open and transparent and offer civil society organizations in Burundi the opportunity to comment on the draft law.

Criminal investigations and prosecutions

The TRC should not substitute judicial processes to establish individual criminal responsibility. Amnesty International urges that those responsible for crimes under international law are brought to justice in fair trials before a Special Tribunal.

Under the draft law, the TRC would be able to recommend criminal prosecutions against those suspected for serious human rights violations but the law should specify that the Special Tribunal will have an independent prosecutor who can investigate and prosecute cases other than those referred by the TRC or set aside those cases recommended by the TRC.

The law does not explain how the TRC's recommendations will be implemented by a follow-up mechanism. The accompanying methodology (section 2.2.5) suggests that such a mechanism could be best led at ministerial or presidential level. Such a body may lack the political will to establish a Special Tribunal. Political decisions regarding criminal prosecutions of serious human rights violations cannot be made by individuals who may themselves be potentially implicated in investigations and prosecutions.

The follow-up mechanism should be comprised of individuals independent of political affiliations and themselves not implicated in human rights violations.

Possible amnesty for war crimes, crimes against humanity and genocide

Parliament should omit any language suggesting possible amnesty for war crimes, crimes against humanity and genocide. Burundi is obliged under international law not to grant amnesty or any similar measure to those allegedly responsible for genocide, crimes against humanity, war crimes, torture, enforced disappearances and extrajudicial executions.

Article 6 (3, hyphens 4) states that the commission would "*publish a list of victims who have granted pardon as well as one of perpetrators who have benefitted from a pardon.*" Article 65 also states that the TRC would be able to create a procedure for victims to pardon perpetrators: "*With a view to bringing about a rapprochement and reconciliation between the victims and the alleged perpetrators, the Commission shall draw up a procedure by which the victims will be able to grant*

pardon to perpetrators who have requested one and expressed their regrets. The Commission shall propose to the Government a programme of actions likely to promote reconciliation. Such actions shall draw inspiration from cultural values and target citizenship training.”

The current draft law does not define pardon. The methodological section of the report notes that certain crimes under international law cannot be amnestied, but this does not appear in the draft law itself. The law should explicitly recognize Burundi’s obligation not to amnesty serious crimes under international law. Article 6 (3, hyphens 4) and article 65 could be omitted from the text to ensure that this principle is reflected in the law.

Composition

Article 12 states that: *“the Commission shall comprise 11 members with Burundian nationality who shall hold the title of “Commissioner”.* Article 14 confirms that: *“All members of the Commission must have Burundian nationality.”* These articles exclude the appointment of international commissioners.

Amnesty International recommended to the Technical Committee that the appointment of international, as well as national, commissioners, would help ensure the TRC’s impartiality and independence. The proposed law recommends the creation of an International Consultative Council (articles 23 to 27), but the law and accompanying budget, which does not provide for translation, indicates the International Consultative Council would have a cursory role.

Commissioners should be selected for their proven independence and competence in human rights. They should not be closely associated – or perceived to be associated – with any individual, government, political party or other organization potentially implicated in the human rights violations under investigation or with organizations associated with victims. Article 11 states that the TRC is an independent institution. To ensure this status, the law should also specify that members of the TRC will include representatives from religious groups, civil society organizations and different professional backgrounds.

Witness and victims protection

The success of the TRC will be underpinned by its capacity to protect individuals and allow them to feel sufficiently safe to speak freely and openly.

Amnesty International welcomes that articles 36 and 48 to 50 recommend creating a Witness and Victim Protection Unit, including special measures to assist victims and witnesses, especially those who are traumatized, children, elderly or victims of sexual violence, in presenting views and concerns, registering their case, participating and giving testimony. The draft law also specifies that victims and witnesses should have psychological and legal support throughout the process. Amnesty International recommends that the Unit is comprised of both men and women to more effectively handle cases involving sexual and gender-based violence against women and girls.

Amnesty International considers that international experts on the issue of protection will help to strengthen the TRC’s capacity. Articles 48 to 50 should be revised to incorporate this.

Victims and witnesses should also have the opportunity to express concern with the TRC if they feel unsafe because of its work. The law should clearly reflect the obligation of the TRC to take measures to address individuals’ concerns.

Background:

In June 2011, a Technical Committee was tasked with amending the 2004 law establishing a TRC. Its final report submitted to President Nkurunziza on 18 October 2011 included a draft bill. The report has recently been made public and is to be considered by parliament soon.

On 7 September, Amnesty International published *Recommendations to the Technical Committee regarding the Creation of a Truth and Reconciliation Commission* which is publicly available at: <http://www.amnesty.org/en/library/info/AFR16/007/2011/en>.

The mission of the Commission is to investigate and establish the truth behind grave violations of human rights committed from Burundi's independence on 1 July 1962 until 4 December 2008, when the last remaining rebel group, Palipehutu-FNL (*Parti pour la libération du peuple Hutu-Forces nationales de libération*), signed a peace agreement with the Government of Burundi.

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