

PUBLIC

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23 April 2004

Further Information on UA 81/04 (AFR 16/009/2004, 24 February 2004) Fear of execution
New Concern: Unfair trial

BURUNDI	Simon MUNYAKAZI (m)]	
	Apollinaire MWISENEZA (m)]	Rwandese nationals
	James GAKURU (m)]	
	Francis MAHESHI (m)]	

The case of the four Rwandese men named above is currently before the Bujumbura Court of Appeals. They were arrested on 31 January, following a bank robbery in the Burundian capital, Bujumbura two days earlier. They were found guilty of stealing a considerable amount of money, shooting and killing a driver transporting money for the bank, wounding a soldier by shooting him in the leg and the theft of a getaway vehicle. All however, have denied the charges against them.

The prosecution has asked for the death penalty for all four men, whilst the defence has asked for each man's case to be considered separately. Since the original Urgent Action was issued, the men have received legal representation for their appeal, which is being provided by *Avocats Sans Frontières*, Lawyers without Borders. The men have reportedly been held in isolation and handcuffed day and night since their initial arrest, in addition to being ill-treated during their detention and the judicial investigation. They are currently being held in total darkness, in individual cells without electricity.

Several days after their initial sentencing by the *Tribunal de Grande Instance* (TGI) the High Court, in early March, the four men were reportedly taken out of their cells at 5 am by a number of soldiers and feared they would be executed. Instead, they were taken to the *Brigade spéciale de recherche* (BSR), Gendarmerie Special Investigations Unit in Bujumbura for several days, before being returned to Mpimba prison in Bujumbura.

The appeals phase of the trial was delayed three times. In one instance, the trial was delayed for three days to permit the defendants to have a chance to examine their case files. In another case, two of the defendants were ill and could not appear before the court, while a third refused to appear in protest against being continually handcuffed. The hearing was finally held on 14 April 2004, in spite of the fact that one of the defendants was ill and could not appear before the court. The defendants retracted their confessions, saying they had been extracted under duress, and claimed that they had been tortured during their initial detention and judicial enquiry, including by being bound in uncomfortable positions for prolonged periods.

The verdict in the case may be pronounced as early as this week.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in French or your own language:

- acknowledging that the authorities have the right to try those accused of violent crimes but stating that trials should be in accordance with international standards for fair trial;
- stating your opposition to the death penalty which is a violation of the right to life and has been shown to have no deterrent effect;
- expressing concern that the hearing was held despite the absence of one of the four defendants which falls short of international standards of fair trials;

- expressing concern at reports that Simon MUNYAKAZI, Apollinaire MWISENEZA, James GAKURU and Francis MAHESHI were tortured while detained at the *Brigade spéciale de recherche* (BSR), Gendarmerie Special Investigations Unit and that torture contravenes international human rights treaties including the International Covenant on Civil and Political Rights and the Convention on Torture and Other Cruel, Inhuman and Degrading treatment to which Burundi is a state party;
- expressing concern that in the past, several people have been executed in flagrant denial of their rights and of the procedures set down in the Burundian legal system;
- expressing concern that while devolving capital cases to the lower courts should be a step towards fair trials, in practice, it appears that defendants' rights are still blatantly violated;
- calling on the president to grant clemency if death sentences are passed and upheld, and reminding him that *Front pour la Démocratie au Burundi* (FRODEBU) Front for Democracy in Burundi has committed itself to abolishing the death penalty which is a cruel, inhuman and degrading punishment;
- calling on the president to commute any death sentences which come before him.

APPEALS TO:

President of the Republic

Son Excellence

Monsieur Domitien NDAYIZEYE

Président de la République

La Présidence, Bujumbura, Burundi

Telegrams: President NDAYIZEYE, La Présidence, Bujumbura, Burundi

Faxes: + 257 21 26 70

Salutation: Monsieur le Président de la République / Your Excellency

Minister of Justice

Monsieur Didace KIGANAHE

Ministre de la Justice et Garde des Sceaux

Ministère de la Justice

Bujumbura, Burundi

Telegrams: Ministre Justice, Bujumbura, Burundi

Fax: + 257 21 86 10

Salutation: Monsieur le Ministre / Dear Minister

State Public Prosecutor

Monsieur Gerard NGENDABANKA

Procureur Général de la République

Parquet Général

Bujumbura, Burundi

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Salutation : Monsieur le Procureur Général / Dear Sir

COPIES TO:

Burundian Minister of Human Rights

Monsieur Déogratias RUSENGWAMIHIGO, Ministre des Droits de la Personne humaine, des Réformes institutionnelles et des Relations avec l'Assemblée nationale, Ministère des Droits de la Personne humaine, Bujumbura, Burundi.

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and to diplomatic representatives of Burundi accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 4 June 2004.