



BURUNDI UNDER REVIEW BY UNITED NATIONS UNIVERSAL PERIODIC REVIEW: RECOMMENDATIONS REGARDING ACCESS TO JUSTICE

Introduction to this document

The purpose of this document is to explain the United Nations Universal Periodic Review process, and set out the **recommendations** made to Burundi regarding **access to justice**. By “access to justice”, we mean recommendations regarding the judiciary, police, prison service, access to legal services and the criminal justice system as a whole. This includes accountability for acts such as torture, disappearances and extrajudicial executions. We have also included recommendations regarding freedom of assembly, expression and the media, as these recommendations often relate to justice matters. The document refers **only** to recommendations regarding these areas and does not refer to recommendations on other human rights areas.

CHRI hopes that this document will assist in advocacy regarding access to justice matters in Burundi. Organisations can lobby the government to implement the recommendations.

The United Nations Universal Periodic Review (“UPR”) is a process in which each member nation of the UN has its human rights record examined by other UN member states to assess compliance with human rights obligations and commitments. Each country is reviewed every four and a half years.

The UPR is a new mechanism that began in 2008. Burundi was reviewed for the first time in **December 2008**.

There are three stages in the UPR process: before, during, and after the review.

1. Before the review

Reports are provided to the UN Human Rights Council before the actual review, explaining the status of human rights in the country. Three reports are provided: one from the government; one prepared by the UN Office of the High Commissioner for Human Rights (OHCHR) summarising submissions from civil society organisations; and one which is a compilation of UN information, observations and recommendations on the country.¹

What role can civil society play in this stage of the process?

Governments are encouraged to hold broad consultations with all stakeholders including civil society when preparing their report. Civil society can lobby the government to hold consultations involving all stakeholders. Civil society can also hold its own consultation and choose to invite the government – for the entire consultation or parts of it. It’s often better to work in consultation with other civil society groups at this stage and involve the National Human Rights Institution.

¹ Reports are available at <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/KESession8.aspx>



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The government of the country appears at the United Nations to discuss its own human rights situation and its adherence with international human rights obligations. During this process, other UN member states can raise concerns about human rights matters within the country – and make recommendations for improvement.

With each recommendation made by another country, the government of the country can either:

- **Accept** the recommendation: this means that the government agrees to implement or address the recommendation.
- **Reject** the recommendation: this means that the government rejects the recommendation, and will not implement it.
- **Make general responses** on the recommendation: this is often used by states as a way to neither accept nor reject recommendations. In such cases a government may for example say that a recommendation is irrelevant or that it has already been implemented.

At the time of the review, the government can take some time to **consider** whether they will adopt or reject recommendations. The government is expected to report back on whether they have decided to adopt or reject the recommendation at or before the next sitting of the UN Human Rights Council after its UPR review, where it is adopted. This is recorded in an addendum.

What role can civil society play in this stage of the process?

Civil society does not have a formal role to play during the actual review. Civil society groups can observe the review but cannot take the floor or make statements at the Council. However it is important for civil society to engage with diplomatic missions of other countries either in Bujumbura or in Geneva and encourage them to ask questions about key human rights matters. Civil society can make statements at the Human Right Council after the final recommendations are adopted.

3. After the Review

The government has an obligation to implement recommendations accepted before they appear before the UPR again. When the country does get reviewed again, the government is expected to report back on the progress made on implementing the recommendations. Countries are also encouraged to make voluntary midterm updates on the progress of implementation.



What role can civil society play in this stage of the process?

Civil society can:

- ✓ Lobby the government to implement the recommendations – this could include advocating for an Action Plan to outline how the recommendations will be implemented
- ✓ Work with other civil society organisations, journalists, parliamentarians, NHRIs and in some cases even the judiciary to advocate for implementation of recommendations
- ✓ Partner with the government to implement recommendations
- ✓ Monitor and report on the implementation of the recommendations – this can include reporting to donor governments who fund government projects related to UPR recommendations
- ✓ Lobby the government to hold consultations to report on the implementation of recommendations
- ✓ Give an update on the implementation of recommendations at Human Rights Council sessions in Geneva
- ✓ Prepare and submit a submission before the next review of Burundi at the UPR

Recommendations accepted by Burundi

The following recommendations regarding access to justice were adopted by Burundi and must be implemented by the government²:

Police and the security sector

- Continue its efforts towards reforming the security sector institutions, with the support of OHCHR and the international community (Egypt)
- Continue, with international support, its efforts to spread a culture of human rights in the society, establish and reform the institutions for law enforcement and an independent, effective and impartial justice system (Egypt)

See UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review; Burundi*, A/HRC/10/71, 8 January 2009, under “Outcome of the Review” at <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/BIsession3.aspx>



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Human rights training for state officers

- Ensure that training programmes focusing on human rights are mandatory for all judges, lawyers and police officers (Netherlands)
- With international support, undertake further programmes for human rights training and capacity-building to train relevant institutions of law enforcement and justice in the area of human rights, and introduce human rights in the education system at all levels (Egypt)

Prisons

- Take appropriate measures to align the conditions of detainees with international standards (Italy)
- Take further appropriate measures to improve the situation of children, in particular children victims of war, children living and/or working in the streets, minors in prison and AIDS orphans (Malaysia)

Criminal justice and judiciary

- Speedily implement the new Criminal Code, declaring sexual violence a crime, while guaranteeing the impartiality of investigation and questioning (Holy See)
- Create, strengthen and render operational human rights monitoring bodies (Cameroon)
- Continue efforts in the sector of the judicial system with the support of the international community (Algeria); intensify efforts to uphold the respect for the rule of law by ensuring an independent and well functioning judicial system (Sweden), reform it (Nigeria), and increase the financial and human resources available to it (Czech Republic)

Torture and the death penalty

- Consider ratifying the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Brazil)
- Consider ratifying the Optional Protocol to the Convention against Torture (Brazil, Djibouti, Czech Republic, Mexico) and establish an effective national preventative mechanism in compliance with it (Czech Republic)
- Take urgent steps towards the full and prompt implementation of the recommendations of the Committee against Torture (Portugal), fully comply with those recommendations and do its utmost to ensure that the security forces operate within the framework of the rule of law (Ireland)

Human Rights Commission and general human rights

- Establish an independent national human rights commission (South Africa, Malaysia) in compliance with the Paris Principles (Portugal, Australia, United Kingdom, Egypt, Republic of



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Korea) with a strong mandate (Portugal), and finalize the submission of the required bill to the Parliament for adoption (Egypt)

- Continue its efforts for the promotion and protection of human rights with the support of the international community, at the bilateral and multilateral levels (Rwanda)

Reconciliation and transitional justice

- Consolidate reconciliation (Azerbaijan, Cameroon) and peace through scrupulous respect for projects developed in cooperation with the United Nations (Cameroon)
- That the Government and armed groups that are signatories to the ceasefire concluded pursuant to the agreement of 7 September 2006 continue efforts to implement it (Algeria); and continue its efforts to integrate, without delay, the Palipehutu-FNL into the defence and security forces, as well as in the various executive, administrative and diplomatic areas (Switzerland)
- Prioritize national consultations to establish transitional justice mechanisms to ensure that reconciliation and justice address allegations of the most serious crimes, including war crimes, crimes against humanity and genocide (United Kingdom)
- Use consultations to ensure that a truth and reconciliation commission and a special tribunal be established as soon as possible (Ireland)
- Ensure that transitional justice mechanisms and reparations programmes fully integrate gender concerns and that justice for gender-based crimes during the conflict is realized (Norway)
- Establish transitional justice mechanisms as a key element to the administration of justice and re-establishment of the rule of law (Austria)
- Take all appropriate measures to address the issue of impunity and to implement adequate mechanisms of transitional justice (Italy)
- Support the efforts made to establish the procedures for transitional justice under the 2000 Arusha agreements, in particular setting up methods for national consultations, as called for by the Security Council in its resolution 1606 (2005) (Canada)

Recommendations being considered by Burundi

Burundi was meant to confirm if they will adopt or reject the following recommendations at the tenth session of the Human Rights Council in March 2009.³ However, to date, they still have not reported back on whether they will accept or reject the recommendations below:

³ "Report of the Working Group on the Universal Periodic Review; Burundi", UN Human Rights Council, A/HRC/10/71, 8 January 2009, Accessed under "Outcome of the Review" <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/BIsession3.aspx>



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Detention, torture and death penalty

- Take all necessary measures to ban secret places of detention, particularly by envisaging the signature and ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (France)
- Establish a moratorium with a view to the abolition of the death penalty (Mexico), and consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (Djibouti, Mexico)
- Speed up the approval of the bill for the reform of the Criminal Code and Code of Criminal Procedure, with a view to criminalizing acts of torture and conferring on victims compulsory State assistance, which should allow proper redress, including adequate compensation for victims of torture, or other cruel, inhuman or degrading treatment or punishment (Mexico)

Training of law enforcement officials

- Better train its law enforcement officials to ensure that perpetrators of sexual violence are prosecuted in a more severe and consequent manner, and follow the recommendations of the Committee on the Elimination of Discrimination against Women to guarantee appropriate measures for victims of sexual violence (Luxembourg)

Freedom of assembly

- Revoke the new Ministerial Order No.530 of 6 October 2008 restricting political assembly (Canada)

Recommendations rejected by Burundi

Special procedures

- Issue and implement a standing invitation to special procedures (Czech Republic)
- Consider extending a standing invitation to all special procedures (Latvia; Brazil)
- Recommendation to consider issuing an invitation to the Special Rapporteur on violence against women (Norway)

With regard to recommendations concerning special procedures, Burundi stated:

“it will establish a national human rights institution in conformity with the Paris Principles and considers that the mandate of the independent expert on the situation of human rights in Burundi is no longer necessary.”⁴

Torture and death penalty

- Establish a moratorium with a view to the abolition of the death penalty and to consider ratifying the Second Optional to the Convention against Torture (Mexico)

⁴ “Report of the Working Group on the Universal Periodic Review; Burundi”, UN Human Rights Council, A/HRC/10/71, 8 January 2009, Accessed under “Outcome of the Review” <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/BISession3.aspx>



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- Speed up their approval with a view to criminalizing acts of torture and conferring on adequate victims compulsory State assistance; such assistance should provide proper redress, including adequate compensation for victims of torture, or other cruel, inhuman or degrading treatment or punishment (Mexico)

Criminal investigation – rape cases

- Establish independent machinery which can document, investigate and process cases of rape, and facilitate the end of impunity (Chile)
- Rape be addressed as a crime and noted that traditional practices of compensation between the family of the perpetrators and the victims are inconsistent with human rights standards (Chile)

In relation to the above recommendations about rape, Burundi stated that they rejected the recommendations *“because the proposed independent body would duplicate the judiciary Institutions”*.

Recommendations that only received general responses from Burundi (did not accept, consider or reject)

Burundi made general responses to some recommendations, neither accepting nor rejecting them outright. However the general responses indicate that Burundi rejects the recommendations on the basis that the action indicated in the recommendation has already been addressed.

Freedom of association, expression and assembly

- Respect freedoms of expression, association and assembly, pursuant to international instruments, use mediation procedures to calm conflicts, and end the use of imprisonment for speech critical of the Government (Burundi)
- Take all measures to guarantee freedoms of expression and association (Italy)
- Guarantee freedom of expression to journalists and allow political parties to carry out political activities, in particular the right of assembly, without unfounded restrictions, and allow the registration of political parties without abusive constraints and in keeping with the Constitution (Switzerland)
- Comply with the recommendations of the independent expert on allowing all political parties to carry out their political activities without undue restrictions (Ireland)
- End all restrictions on political activities and meetings and allow the registration of political parties, as recognized under the Constitution (Canada)

In relation to the above recommendations concerning guarantees to freedoms of association, expression, opinion and peaceful assembly, Burundi said that *“the enjoyment of these freedoms is*



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characterized by the existence of 39 political parties and more than 3,000 non-profit organizations, including human rights organizations and manifold press organizations, trade unions and media”.

Torture

- The adoption of further measures to fight impunity of persons responsible for acts of torture and prompt, thorough, independent and impartial investigations into all allegations of these crimes (Czech Republic)
- That the practice of torture and other ill-treatment by law enforcement officials be condemned and brought to an end, that immediate independent and impartial investigations into all allegations of such acts be undertaken, and that alleged perpetrators be brought to justice (Denmark)
- Implement, as speedily as possible, the legal, political and ministerial initiatives to eradicate the practice of torture and other forms of ill-treatment by State officials. These initiatives include an explicit denunciation of such acts by State authorities; the establishment of a national authority with the powers necessary to investigate cases of torture independently and to bring them before the courts; and strict regulation of police and security forces (Chile)
- Include the content of the Convention against Torture in its legislation (Chile)
- Establish a machinery to compensate victims of torture (Chile)

Regarding the above recommendations about torture, the UPR outcome report noted the following:

“Burundi indicated that acts of torture are sanctioned, including those committed by State agents. It also indicated that rules and regulation of the police and the armed forces prohibit torture and that many members of these institutions have been charged with severe assault and injuries, which is similar to torture in Burundian law. Finally, Burundi informed the Council that a new criminal code would soon be promulgated, which will severely sanction acts of torture and other cruel, inhuman, or degrading treatment or punishment.”⁵

Criminal investigation – rape and violence against women

- That the Government give clear and immediate instructions to key high-ranking officials of the police force, the army and other security forces that all law enforcement officials should treat rape as a crime and take all measures to effectively investigate allegations of rape and other forms of sexual violence, and that it bring perpetrators to justice (Germany)
- Cases of rape and other forms of sexual violence be adequately investigated and perpetrators brought to justice (Denmark; Austria) in accordance with international standards concerning the administration of justice (Austria)

⁵ Ibid



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- All cases of rape and other forms of sexual violence be investigated in an expeditious, effective and impartial manner by an independent body and that all accused be prosecuted (Mexico)
- Ensure that the courts effectively apply penalties to those responsible for rape with a focus on police and State officials (Chile)
- Amendment be made to the legal system so that crimes of sexual violence and sexual abuse are made punishable, and those responsible for such crimes do not enjoy impunity (Argentina); enact legislation on domestic and all forms of gender-based violence (Malaysia)
- That the Government take further steps to address discrimination and attacks against women (UK); develop a strategy for preventing and combating all forms of violence against women (Argentina; Malaysia); adopt the necessary additional measures to effectively prevent and combat sexual violence against women, particularly minors (Switzerland)
- Improve the functioning and accessibility of the machinery available to victims of rape to ensure that those guilty are brought to justice and punished (Ireland)
- To fight with resolve sexual violence and impunity and increase the level of representation of women in society (Azerbaijan); take further measures to fight against sexual violence against women and children (Japan).

In relation to the above recommendations on investigating and prosecuting violence against women *“Burundi clarified that these acts are already criminalized and reported cases are sanctioned. Programmes related to awareness-raising and education on human rights in general and on women’s and children’s rights in particular, including rape and violence against women and children, are ongoing”.*

Next steps

The government of Burundi has a duty to implement the recommendations it accepted before it is reviewed again, in **January/February 2013**.

Civil society should work to make sure the recommendations that were accepted by Burundi are implemented, and should consider the actions suggested in the text box on page 3.

Need more information?

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