INTRODUCTION

Burundi’s security sector has long been managed without transparency. Not only is it difficult to access, but few internal or external oversight mechanisms exist. In recent years, however, new political trends have led to changes in Burundi’s security sector practices. Notably, both the Arusha Agreement for Peace and Reconciliation (August 2000) and the post-transition constitution include provisions for establishing and strengthening democratic oversight and accountability within Burundi’s defence and security institutions. These measures particularly address questions regarding the supervision of security organizations by the executive, parliament and judiciary in addition to provisions for a national security council, an ombudsman and parliamentary commissions to supervise the security sector.

Burundian authorities have strengthened the legal and regulatory frameworks of their defence and security institutions in order to improve internal control mechanisms. Reforms to the Supreme Judicial Council were also recommended in the peace agreement and subsequent documents, primarily to ensure the council’s independence and that of the judicial system. Outside of government, national and international civil society organizations (CSOs) play an increasingly important watchdog role in the security sector.

1 From June 1998 to August 2000, the peace negotiations in Arusha, Tanzania, involved 17 political parties, including armed opposition groups, the Burundian transitional government, the National Assembly and the army. Negotiations concluded with the Arusha Agreement for Peace and Reconciliation.
2 The executive includes the president, the two vice-presidents and the government bureaucracy.
Despite this progress, however, much work remains to be done to improve the democratic oversight of Burundi’s security institutions.

BURUNDI’S CONSTITUTION AND ACCOUNTABILITY IN THE SECURITY SECTOR

Burundi’s constitution includes a chapter largely devoted to its defence and security institutions, reflecting the importance placed during the Arusha peace negotiations on security issues and commitments to institutional reform. One of the constitution’s key provisions, Article 245, concerns the distribution of authority among Burundi’s security organizations and identifies the purview of the new National Defence Forces (FDN), the National Police (PNB) and the National Intelligence Service (SNR) (Constitution of Republic of Burundi, 2005). The FDN are tasked with defending Burundi’s territorial integrity and maintaining the country’s independence and sovereignty, the PNB are responsible for reestablishing and maintaining security and order within the country and the SNR is tasked with collecting, managing and utilizing intelligence data to ensure the security of the state (Constitution, 2005). The constitution also outlines the separation of powers between the executive and parliament regarding security matters. It further stipulates that the president is the commander-in-chief of the defence forces and security services (Article 110) and that he or she alone is authorized to use the armed forces to defend the state, to reestablish order and public security or to meet international obligations and commitments (Article 249).

EXECUTIVE CONTROL

Burundi’s 2005 Constitution stipulated the creation of a National Security Council. The council’s members are appointed by the head of state and play a consultative role.
In particular, the council provides assistance to the executive in matters relating to security policy, defence and security strategy, and law and order in times of crisis. It is further responsible for monitoring the unity and national cohesion of the defence forces and security services. The council reports annually to the president and to the government, the National Assembly and the Senate.

After considerable delays in its implementation, Burundian authorities began to prioritize the creation of the council following discussions with external partners. On August 31, 2008 — three years after taking office and following parliamentary approval — President Pierre Nkurunziza enacted a law creating the council. On November 5th of the same year, the president appointed nine of the council’s 17 members, including two bishops and two women. It was declared that the president, the two vice-presidents, the Ministers of National Defence, Public Security, Interior, Justice and Foreign Affairs, and International Cooperation would also sit on the council as ex-officio members.

The creation of a council responsible for democratic oversight of the security sector presents new challenges to the council itself and Burundians in general. The first challenge is its composition; by assuming the role of chair of the council, the president created considerable confusion regarding the council’s constitutional powers. The council is first and foremost intended to be an advisory body to the head of state and the government, yet today it is mainly composed of the officials it is meant to advise. Secondly, the council’s annual reports are ultimately sent to the head of state, even though — as chair of the council — the president is the last person to endorse the reports’ content. Essentially, the president is reporting to himself.

In addition to these contradictions, the National Security Council still seems to be trying to find its path. After three council meetings, the most recent of which was held on June 22, 2009, neither the public nor the security institutions directly affected by it know much about its powers nor have they seen it make any contribution to the security sector. Contrary to its mandate, moreover, the council has not reported on its activities since its creation — a situation exacerbated by the fact that it does not currently have a
permanent secretariat. And yet, the council has great potential to contribute, for example, to improved coordination of ongoing reforms within the defence and security institutions.

During the few meetings that it has held, the council has focused its discussions on the country’s overall security situation, rather than on developing and implementing an integrated plan that would allow for better coordination of the reform needed for police, army and intelligence service. Given that the 2010 general elections commanded many council members’ attention, moreover, the council remained dormant during the last months of the most recent legislative session.3

Its semi-dormant state notwithstanding, two current members of the National Security Council also play independent oversight roles. In February 2009, the Ministry of Public Security modified its own mandate and organizational structure beyond its traditional role as supervisor of the police (Ministry of Public Security, 2009). The restructuring gives the ministry increased control over the general management of the police with some powers being wholly transferred from the PNB General Directorate to the ministry, notably budgeting and procurement. This loss of independence in the day-to-day functioning of the police has created tensions between the head of the PNB and the minister’s office, especially since the minister’s office had intended to assume the management of other areas as well.4 The dispute is further fuelled by the fact that the ministry — rather than the police — is now the main point of contact for suppliers of food, uniforms and other equipment, meaning that ministry employees, rather than PNB employees, have the potential to personally benefit through the corruption associated with these transactions.

The structure of the Ministry of National Defence gives it considerable and important oversight of the FDN, particularly regarding the disciplinary system, cases of abuse or human rights violations committed by defence personnel (through military justice processes) and supply management. Although corruption is not as serious a problem within the Defence Ministry as within public security, Observatoire de Lutte Contre la Corruption et les Malversations Economiques (OLUCOME), Burundi’s main non-governmental organization fighting against corruption, has severely criticized the Ministry of National Defence on several occasions for irregularities in the awarding of certain contracts.

INTERNAL OVERSIGHT MECHANISMS IN THE PNB AND THE FDN

Both the army and the police include Inspectorates General responsible for internal oversight. Their performance to date as part of Burundi’s security sector oversight system has been lacklustre, however. The functioning of the Inspectorate General of the police was so consistently undermined by a lack of resources that it can be said to have never properly functioned at all. That body was replaced in February 2009 by the current Inspectorate General of Public Security (IGPS). The mission of this new body includes independent oversight, control and investigation of all the activities conducted under the auspices of the Ministry of Public Security as well as the documentation of complaints against the police and denunciations of individual officers from both citizens and police officers themselves. The IGPS remains somewhat ineffective in fulfilling its mandate, however, due to a paucity of human and financial resources as well as the fact that the legal texts governing its mandate, operation and organization are still pending.

The IGPS has, nevertheless, produced an internal report examining logistics. Notably, this study assessed the procedures involved in supplying food to police officers deployed in the field throughout the country. The report highlights the lapses and irregularities in food supply procedures that result in delays and inventory shortages of certain foodstuffs. One of the outcomes of this report was that disciplinary and administrative measures

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3 The electoral cycle started in May 2010 and will conclude in September.
4 In particular, the cercle des officiers, a meeting and relaxation centre for officers of the PNB initiated by the director general of the service, has been a source of contention. Issues around the cercle surfaced following disagreements regarding the competency of the PNB’s senior management, which culminated in the intervention (through arbitration) of the first vice-president, who ultimately supported the head of the PNB (Interviews with high-ranking police officers, Bujumbura, February 2010).
were taken against those responsible within the police service. The IGPS’ scope and freedom to investigate is significantly reduced, however, because it falls under the responsibility of the Ministry of Public Security instead of being independent — a situation that is all the more concerning considering that the Inspectorate General is tasked with promoting human rights within the ministry. Indeed, apart from the report, the IGPS has had a limited impact on the ministry’s respect for human rights.

The Inspectorate General of the Ministry of Defence and Veterans does not have the same functions as its counterpart in the Ministry of Public Security. The Defence and Veterans’ Inspectorate General is responsible only for the technical oversight of education, training and operations; administration, social and budgetary matters; and logistics. It has no authority to oversee the conduct or activities of the FDN; rather, performance and conduct of the FDN fall under the jurisdiction of the military courts, which continue to operate despite being under-resourced. The courts’ mandate is to try the accused and punish members of the FDN who have been found guilty of crimes. Despite a lack of material, financial and qualified human resources, these courts are able to carry out judgments faster than the civilian courts; moreover, military courts are perceived by the public in a more favourable light than their civilian counterparts. These relative advancements can be explained by the quality of the military courts’ leadership, among other factors.\(^5\)

Even more importantly, military courts are not regularly subject to the same political interference on the part of the executive as are the civilian courts, though high-ranking government officials have influenced certain cases involving military officials with close ties to the ruling party (Nindorera, 2007).

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\(^5\) Colonel Donatien Nkurunziza, the auditor general and chief of military justice, is well known for his competence and integrity (Interviews with heads of local and international human rights organizations, Bujumbura, February and March 2010). He was replaced in May 2010, however, after taking an international post; it is too early to comment on his replacement.
public servants and members of the judiciary. Following its investigations, it makes recommendations to the appropriate authorities. The ombudsman also plays a mediating role between the administration and the citizens as well as the administration and government ministries. Finally, it acts as an observer of government and how government carries out its responsibilities (Article 237, 2005).

Despite the ombudsman’s constitutional mandate, the authorities in Burundi tried to prevent its creation, only relenting at the behest of internal and external pressure. During a special session of parliament in September 2009, a draft bill creating the Office of the Ombudsman and identifying its mission and operation was adopted by the National Assembly. The draft bill has not yet been promulgated by the president, though, despite the fact that in excess of US$400,000 has been allocated for the institution in the 2010 budget. As such, it is unlikely that the ombudsman position will be filled before the end of the most recent legislative session.

The creation of a national Independent Human Rights Commission based on the Paris Principles, which would address the function and status of national institutions responsible for promoting and protecting human rights, is hindered by the government’s desire to limit the commission’s independence. The national Office of the High Commissioner for Human Rights submitted a draft bill on the creation of the commission to the government. The draft bill was analyzed during two cabinet meetings in 2008; however, the executive modified the content of the project in terms of its mission, composition, mandate and powers to such an extent that it stripped the commission of any real authority and made it dependant on the executive. At the end of the most recent legislative session, the project had still not been adopted, despite a US$400,000 infusion from the United Nations Peace Building Fund in Burundi.

PARLIAMENTARY OVERSIGHT

The constitution grants Burundi’s parliament oversight authority over the country’s defence forces and security institutions. It provides for the creation of a parliamentary commission to oversee the work of the FDN and the PNB, the only such parliamentary body clearly identified in the constitution. Within the National Assembly, the Defence and Security Commission is meant to execute this role, but in practice it takes no concrete action. Some parliamentarians have tried to encourage the commission to come out of its torpor and exercise the minimum level of its authoritative power, but this effort has yielded few tangible results. The ruling party, aware of the high stakes involved in controlling important commissions such as this one, maintains a firm hold over all influential commissions. For example, the Defence and Security Commission voluntarily refrains from exercising its role while officially claiming a lack of resources. In reality, the commission’s rationale is political: a lack of willingness to interfere with the actions of some security forces accused of abuses of power due to a fear of reprisals.

In 2007, the Conseil national pour la défense de la démocratie et forces de défense de la démocratie (CNDD-FDD), the ruling party, was shaken by internal divisions that have prompted several members of the party to join forces with the parliamentary opposition. Using the space created by this change in the balance of power in the National Assembly, the Defence and Security Commission visited with various defence and security officials to learn about their programs, difficulties, challenges and issues in relation to security. No further action has been taken in response to the meetings, though, and the opening created by the defection of some CNDD-FDD members was closed in June 2008 when a controversial Constitutional Court decision dismissed the protesting parliamentarians from the National Assembly. They were swiftly replaced by members loyal to the ruling party.

6 Apart from the constitution, the only SSR-related document to mention oversight is a memorandum of understanding between Burundi and the Netherlands; even there, it is mentioned only in an annex.

7 Interviews with diplomats and leaders of political parties, Bujumbura, February 2010.


9 Interview with a member of the parliamentary commission, Bujumbura, January 2010.

10 These internal conflicts within the CNDD-FDD were the consequence of the dismissal of Hussein Radjabu as the party leader in February 2007. Since then, Radjabu’s supporters in parliament have taken sides with the opposition.
Further attempts to empower the commission have met with failure. At the end of 2008, following a United Nations Integrated Office (BINUB) training session for selected MPs on oversight of the SNR, some members of the Defence and Security Commission tried to take advantage of the training session to encourage their colleagues to fulfill their mandate, without success. In fact, not only do most members of the commission fail to see why they should play an active oversight role — which could put them in a difficult position with officials from the defence and security institutions who are from their political party — but they also take advantage of the commission’s inactivity to pursue other activities.

A similar commission exists in the senate, though its power is certainly greater. The Permanent Commission on Political, Diplomatic, Defence and Security Issues works in particular on issues of defence and security. Incidentally, its membership includes several former officers of the former Burundian armed forces and former rebel movements. On several occasions the commission has summoned executive officials responsible for security issues, including the first vice-president and the ministers of Defence and Public Security. As one of the senate’s main tasks is to oversee ethnic and gender balance within the security institutions, the commission has produced two reports on the FDN and PNB’s compliance with the ethnic and gender quotas identified in the constitution (Commission of Inquiry, 2009a; 2009b). Findings from the report on the FDN, submitted in July 2008, have resulted in some remedial measures being taken to address imbalances, such as ethnic inequalities in senior command positions, although little has been done to address gender inequities. The report on the police was discussed with the first vice-president during a plenary session of the commission in February 2010 and should lead to similar corrective measures by the PNB.

Overall, the defence and security commissions have been only modestly active in overseeing the activities of the defence forces and security institutions, despite the encouraging senate commission reports that highlight, among other issues, institutional gender imbalances and offer specific recommendations to correct them.

CIVIL SOCIETY MONITORING

For some years, civil society organizations and international non-governmental organizations (NGOs) have closely followed the progress of security sector reform (SSR) in Burundi. These organizations monitor the performance of security sector institutions through periodic research based on opinion surveys designed to analyze civilian perceptions of the security services. At the forefront of this work are International Alert and the Centre d’alerte et de prévention des conflits (CENAP), each producing various studies on the subject (see, for example, Sebudandi, 2009 and Nindorera, 2007 and 2010). CENAP has also organized several meetings among the PNB, the population, local administration and civil society. Beyond International Alert and CENAP, human rights organizations actively document abuses and violent acts committed by defence and security personnel, while local NGO, OLUCOME, investigates cases of corruption and economic embezzlement within the security sector. This work is disseminated by the organizations themselves and through private radio stations, which, of their own initiative, publicly denounce violations of human rights attributable to security sector personnel or institutions.

Media pressure has notably led defence and security institutions to strengthen their public relations procedures in order to improve their image. These same institutions are seeking to develop cooperative relationships with the civil society organizations that monitor their performance. The police force in particular is becoming more open to exchanges and critical discussions of its work with NGOs. Indeed, some of the NGO recommendations for the PNB — including better gender mainstreaming, actions to improve police-citizen

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11 Interviews with members of the Defence and Security Commission, Bujumbura, January 2010.
12 Interview with a member of the Defence and Security Commission, Bujumbura, January 2010.
13 The president and vice-president of the Senate commission are both demobilized military officers; the former is from the CNDD-FDD, and the latter is from the former Burundian armed forces.
14 For more on this, please see previous editions of the Security Sector Reform Monitor: Burundi.
relations and greater police neutrality — are presently being debated within the police service.

**JUDICIAL CONTROL AND INDEPENDENCE**

Regarding oversight of the security services by the judiciary, police officers are subject to trial before civil courts and tribunals, whereas military personnel face a parallel system of military justice, mentioned above. Although a relatively large number of police officers are now incarcerated for various crimes, the most common impulse of their superiors is to protect officers accused of human rights abuses. As such, it is common to see police officers accused of serious crimes carrying out their duties with punishment no harsher than a transfer. Several serious human rights violations committed by members of the police have resulted in prosecution only after pressure from local and international human rights organizations, with the help of the media and civil society.

Despite being enshrined in Article 209 of the Burundian constitution — which mandates an impartial judiciary independent of legislative or executive power — judicial independence is not the norm in Burundi. Although interference by the executive in judicial processes is not a constant problem and mainly concerns political issues or cases that involve significant financial interests, it is nonetheless a reality. The fragility of the magistrate vis-à-vis the hierarchy within the judiciary is intimately linked to independence vis-à-vis the executive, since it follows the same logic. Even without the direct intervention of the executive, a magistrate’s lack of independence sometimes stems from an exaggerated fear of reprisals from his or her supervisor.

On the one hand, recruitment into the judiciary is increasingly fraught with corruption because of the material benefits associated with this profession. Membership in the ruling party is increasingly a precondition of recruitment; moreover, candidates are obliged to pay increasingly higher bribes as competition among a larger pool of candidates pushes the cost up. On the other hand, the fact that these appointments must be approved by the executive and in some cases the senate, does not improve the situation. As the executive holds the power to appoint, replace, transfer or punish the magistrate throughout his or her career, Burundian magistrates often feel indebted to the executive, all the more so if the appointment is to a position of great responsibility (OAG, 2009). More often than not, judges and prosecutors receive orders or requests from the executive and, for the sake of their careers, they are inclined to follow them.

A second form of pressure is the management of magistrates’ careers. Admittedly, judges’ careers are governed by laws and statutes, but the rules are applied and interpreted by the executive. In Burundi, the most frequent method used to punish a judge who acts independently is a transfer to another post, because a transfer is not legally seen as punishment, despite being destabilizing for the magistrate and his or her family and financial situation. The mere prospect of a transfer is often enough to put a damper on a magistrate’s desire to act independently. Independence vis-à-vis the hierarchy within the judiciary is intimately linked to independence vis-à-vis the executive, since it follows the same logic. Even without the direct intervention of the executive, a magistrate’s lack of independence sometimes stems from an exaggerated fear of reprisals from his or her supervisor.

This manipulation of the judicial system is nothing new to Burundi; however, it seems to have grown in recent years, as demonstrated by the number of court cases being brought forward for political reasons. Frequently, a court case is a way to exert pressure on or repress the political

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15 Military justice will be discussed as part of the next *Security Sector Reform Monitor: Burundi* (No. 4).
16 According to data from the penitentiary administration, as of July 10, 2010, 184 police officers were incarcerated.
17 For more information on judicial independence, see the *Security Sector Reform Monitor: Burundi*, No. 1.
18 According to various sources, notably new staff within the judiciary, the commission today for being hired as a magistrate is more than US$1,500.
opposition, or to silence or intimidate dissenting voices within civil society (journalists, human rights activists or trade unionists, for example). The non-governmental mechanisms supporting Burundi’s justice workers are weak, moreover. A lawyers’ professional association exists, but is largely concerned with upholding a lawyer’s code of ethics and defending the rights of lawyers, although it did demonstrate publicly for the first time in 2006 to denounce problems in the public prosecutor’s office. A magistrates’ union also exists but has encountered difficulties in exercising its rights as an organized labour body due to intimidation and repression from the ministry.

FINANCIAL OVERSIGHT OF THE DEFENCE AND SECURITY INSTITUTIONS

The Ministries of Defense and Public Security are subject to the same obligations as other departments in terms of budgetary control. Their budget proposals are submitted to the Ministry of Finance during a week devoted to budget discussions, and the different budget line items are carefully analyzed. Budgets from these ministries are then reviewed by the government and the National Assembly before being announced publicly. The Audit Court, which ensures budgetary compliance with the relevant legislation, also reviews the expenditures of these ministries. The Inspectorate General of the State (IGE) sometimes also conducts reviews of these ministries, focusing on finances, consistency and performance, with varied results.19

Defence and security officials have become far more cautious in how they use their budgets since civil society organizations such as OLUCOME have begun keeping a watchful eye on the consistency of the management of some ministries. The media have also prompted caution as they have begun to investigate cases of embezzlement in the public sector. At its own request, the Ministry of Defense was audited by a team of Belgian military officers. The Ministry of Public Security and the PNB’s management also asked the Belgian federal police to audit a number of areas of the PNB’s work.20 The report on the PNB was finalized and presented to senior officials; the Belgian federal police are currently assisting the PNB to act on its recommendations, which include suggestions on the recruitment of women, better human resource management, the demilitarization of the PNB and improved communications, among others.21 The report on the FDN has not been made public.

Despite these external control mechanisms, corruption and embezzlement are still common practice, as demonstrated by the case of fictitious police officers discovered in March 2009 or the exposing of significant discrepancies in government contracting, issues that were discussed in the previous edition of the Security Sector Reform Monitor: Burundi. On the defence side, troops complain of persistent problems in the timely distribution of supplies, the poor quality of food supplies and rations lacking certain staple products. These issues are partly the source of the current strong sense of dissatisfaction among the forces.

In contrast to the budgetary oversight systems of the police and military — which are legally codified but poorly implemented — the National Intelligence Service’s annual budget is not subject to any oversight measures. Its spending has never been audited, creating ample opportunity for embezzlement or the diversion of funds to illegal activities. Indeed, despite the fact that the SNR and its expenditures fall under the purview of the president and are, therefore, in the public domain, the Audit Court — which is widely recognized for its professionalism — admits that it has never tried to audit the intelligence service’s spending.

19 For more information on the IGE, see the Security Sector Reform Monitor: Burundi, No. 2.
20 Human resource management, organization, operational command lines, logistics, internal and external communications, and financial administration.
21 However, the audit did not get very deep into questions of corruption and politicization.
CONCLUSION

Burundi has recently introduced new mechanisms of internal and external oversight over the activities and performance of security sector institutions. This has helped to reduce impunity among their personnel and pushed their leaders to try to improve the security organizations’ public images; however, several of the new oversight mechanisms are not yet fully active or effective. Indeed, some of them are not operational at all. While the common explanation of this situation may be financial or material constraints, the real issue is often insufficient political will. In addition, support for security sector oversight mechanisms does not seem to be a donor priority for Burundi’s SSR process and, in fact, donor interventions are sometimes tinged with rivalry and underhanded practices. In the absence of truly effective mechanisms, ongoing initiatives to enhance the professionalism of the defence and security institutions may not have the desired impact. Action to strengthen these oversight mechanisms is, therefore, urgently needed to ensure better democratic control of the security sector.

WORKS CITED


22 Within the framework of the Poverty Reduction Strategy Paper, Burundi’s external partners (Germany, Belgium, BINUB, United States, Netherlands, France, etc.), the government of Burundi (first vice-president and the Ministries of Defense, Public Security, Interior and Foreign Affairs, etc.), and local and international NGOs are involved in a sectoral group on security co-chaired by the Minister of Public Security and the Netherlands. This mechanism is practically inactive, however, due to competition between the donors and conflict between its leaders. (Interview with government officials, Bujumbura, February 2010.)
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