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BURUNDI

Protecting human rights : an intrinsic part of the search for peace

I INTRODUCTION

Securing protection for human rights is not just a requirement in itself. It is a key step towards creating an environment for peace. It is essential that effective human rights protection and promotion be at the centre of any peace agreement, without which a just and lasting settlement cannot be achieved. In any country, the search for lasting peace is a long process that continues after an agreement has been signed. It is not only about what appears in the text itself but in its implementation. Human rights safeguards are essential in this context.

The talks aiming to find a solution to the conflict in Burundi have been held at intervals in Arusha since 1998. The progress of negotiations is slow and tangible progress on substantive issues not always apparent. Each round of talks has been an opportunity for armed opposition groups, government forces and those opposed to the concept of negotiation to escalate the violence or political tension, resulting in serious human rights abuses. Armed opposition groups and the armed forces appear to have deliberately carried out human rights abuses timed to coincide with the rounds of negotiations in Tanzania, as shows of force, or attempts to derail the process. Moreover, not all parties or groups are represented at the talks. Some political parties have refused to attend. Many political parties are split by internal divisions which has meant that decisions taken by these parties at the talks have, for some, lacked legitimacy.

Amnesty International is submitting this Memorandum for the consideration of all those involved in the search for peace in Burundi, both nationally and internationally. The Memorandum provides a number of recommendations for human rights protection and promotion which the organization hopes will be considered by all parties to the talks as they return to Arusha, Tanzania for further talks from January 2000.

The recommendations contained in this Memorandum derive from the principles of international humanitarian and human rights law. Effective and long-term protection of the civil, political, social and other human rights of all the people of Burundi, including those who are currently in exile or who are refugees, should be placed at the centre of the agreement.

Amnesty International's mandate and role in relation to peace agreements

Amnesty International's approach to peace agreements and to peace-keeping operations is determined by its mandate. The organization works for the immediate and unconditional release of all prisoners of conscience¹; fair and prompt trials for political prisoners; the abolition of torture and other cruel, inhuman or degrading treatment or punishment of all prisoners; an end to the death penalty, extrajudicial executions and "disappearances", and for the respect of the rights of refugees. Amnesty International also opposes analogous human rights abuses by armed opposition groups. The organization opposes, and campaigns against, the compulsory or voluntary recruitment and the deployment or participation in hostilities of persons below the age of 18 by governments or armed opposition groups.

Over the last 10 years, the organization has studied peace agreements and peace-keeping initiatives in many countries, and on this basis it has developed recommendations regarding ways to maximize the protection and promotion of human rights in post conflict situations.

II THE SEARCH FOR A LASTING PEACE: AMNESTY INTERNATIONAL'S RECOMMENDATIONS

Amnesty International is prevented by its mandate from commenting on some of the issues around the peace process, including the question of involvement of all political parties and armed opposition groups in the talks. It is concerned however that unless the views and fears of those opposed to the negotiations are addressed, further human rights abuses will occur. Amnesty International hopes that accurate information on the process is made more widely available to the Burundian population so as to avoid any manipulation of the process which could generate human rights abuses.

Amnesty International takes no view on the legitimacy of armed conflict. The recommendations contained in this Memorandum should in no way be considered to be an indication of support for or opposition to any of the parties to the conflict. The intention is to focus attention on ways in which human rights may be safeguarded in any agreement, and their protection ensured during its implementation.

For the duration of the armed conflict

Human rights abuses are occurring in Burundi, linked in many cases directly to the conflict. The civilian population is continuing to pay a heavy price. Pending the adoption

¹These are people detained for their political, religious or other conscientiously held beliefs or because of their ethnic origin, sex, colour, language, national or social origin, or economic status who have not used or advocated violence.

and implementation of any peace agreement, all parties to the conflict should take steps to end human rights abuses, in particular killings of unarmed civilians:

- military leaders of the government security forces in Burundi and of all the Burundian armed opposition groups should urgently meet in a neutral environment to discuss ways of protecting the lives of civilians not taking part in the conflict;²
- as a measure of this commitment, military leaders should agree on ways in which abuses may be monitored and provide information on measures taken against members of their forces who fail to adhere to these principles;
- military leaders should ensure that employees of humanitarian and human rights organizations are not threatened, arrested or killed, and can freely carry out their work.

Mandate of any peace-keeping forces

In the event of an international peace-keeping operation being put in place the following recommendations should be taken into consideration by those who draft the agreement:³

- *international peace-keeping forces, however composed, should have the mandate and capacity to protect persons belonging to all ethnic communities and political groups in Burundi from violations of human rights;*
- *the duty to monitor and report on human rights abuses should be explicitly included in the mandate of any peace-keeping force;*

²See also: *Burundi: An appeal to protect civilians* (AFR 16/26/99), October 1999.

³ See also: *Amnesty International's 15-point Program for Implementing Human Rights in International Peace-keeping Operations* (AI Index: IOR 40/01/94).

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- *the agreement should be in line with the United Nations (UN) Department of Peacekeeping Operations guidelines on the minimum age for peacekeepers. They should be at least 18 years old, and should preferably be 21 years old;*
 - all peace-keeping personnel should be fully trained in international human rights and criminal justice standards and their duty to adhere to them at all times;
 - a mechanism should be established with powers to investigate allegations of human rights violations by peace-keeping personnel. States contributing troops to the peace-keeping operation should promptly conduct independent and impartial investigations into reports of violations of human rights and humanitarian law by their nationals and bring to justice those responsible. Those suspected of such violations should be suspended from duty pending the outcome of investigations.

The challenge of impunity

Moving forward towards peace and respect for human rights requires looking back and taking into account the events of the past, particularly the perpetration of human rights abuses, many of which are at the heart of this armed conflict. If human rights abuses or their perpetrators remain hidden and unacknowledged, justice can appear forgotten and deep-seated problems can go unresolved, leading inevitably to future violations. One of the challenges facing Burundians is to find a framework within which the past can be addressed as a way of opening up the future, in which abuses can be acknowledged and those responsible held to account in some way. There are more than three decades of abuse to consider which have been committed by all parties to the armed conflict since Burundi's independence in 1962.

What constitutes justice and how best can accountability and justice be obtained? *In looking at these questions, Burundians need to look at and evaluate the measures taken so far to hold people accountable for human rights abuses and to reach an agreement based on international and national legal principles about an appropriate mechanism of accountability. Key objectives of such a process of looking at past abuses should include enabling public and official acknowledgement of the experiences of victims of abuse, ensuring that the victims are heard, not just political representatives or prominent members of the*

community, and ensuring that the facts made public and the truth of past abuses acknowledged. *Forms of sanction or punishment should be within the framework of international human rights principles.*

There can be no genuine reconciliation, and therefore no lasting peace, if the truth about human rights abuses is not established and those responsible held accountable. Granting a blanket legal amnesty to perpetrators for serious crimes that constitute human rights abuses would undermine the foundation for a lasting and just peace. Amnesties granted by peace agreements to those responsible for killings, mutilation, rape and abduction contradict fundamental human rights standards and provide no deterrent to further violations of international human rights and humanitarian law. *Although an amnesty might achieve a short-term political objective, or remove areas of disagreement of responsibility for abuses, in the longer term this would neither prevent other armed groups or government agents from pursuing their agendas nor help re-establish respect for the rule of law.*

As a first step to challenging impunity, accountability needs to be introduced for any abuses committed during the implementation period, creating a new climate of accountability.

At the same time, the Government of Burundi, as well as political and armed opposition group leaders and members of civil society should address how to tackle impunity for past abuses. In no way should investigation and prosecution at a later date be excluded. Further steps should be taken to strengthen institutions for investigating and prosecuting future abuses.

There are both practical and political challenges in implementing this principled position, but how these issues are dealt with will determine the future of human rights in Burundi.

i) Monitoring and remedying human rights abuses during the implementation process

Amnesty International believes that it is essential that a peace agreement should contain provision for monitoring and remedying human rights abuses which are carried out during the implementation process, and that crucially these provisions should be adequately resourced.

- it is important to establish an independent and impartial commission or similar body to investigate abuses which occur during the period of implementation of the peace agreement; the issue of investigation of past abuses, should be treated separately. It is crucial that this commission be fully independent of political and military forces and sufficiently resourced to carry out its task.

The commission should be empowered, among other things, to investigate all reports of violations of human rights as defined in international law; to seek and receive information from officials and the general public in any party of the country, have unhindered access to witnesses and the right to subpoena them; to recommend measures of redress. It should publish reports on its inquiries and the response of political and security authorities;

- no party should have the right to veto any investigation which might implicate its members or supporters;
- human rights defenders and monitors should have unrestricted access to all areas of the country and should be allowed to carry out their work without fear of being subjected to human rights abuses.

ii) Political prisoners

Nearly 10,000 people are currently in detention, the majority accused of complicity with armed opposition groups or involvement in other political violence, in particular the massacres which followed the death of President Melchior Ndadaye in 1993. Many have been detained without trial, or even without charge, for years; many have been tortured in police or military custody; others have been convicted after unfair trial. Some have been convicted of crimes which are human rights abuses. The majority of those detained in connection with participation in armed opposition groups are Hutu. Members of Tutsi militias have largely remained unpunished, and in some cases have been armed by the government.

Amnesty International suggests that the agreement contain the following provisions in relation to political prisoners:

- prompt, thorough, impartial and independent investigation of cases against people detained on accusations relating to the conflict or other political violence, and unconditional release of those against whom there is no substantive evidence;
- review of convictions on charges relating to the conflict or other political violence to establish whether due process was followed, and that the convictions were safe.

Strengthening institutions

A key element in ensuring that human rights will be better protected, and the rule of law respected, will be the strengthening and reform of institutions such as the judiciary, the police force and the armed forces. The Government of Burundi has already initiated a series of legal reforms, with many more proposed, targeting both civilian and military justice systems. While welcoming these reforms, Amnesty International is concerned that they do not provide adequate guarantees to prevent human rights violations.

Amnesty International has provided detailed recommendations on ways in which the judiciary in Burundi may be strengthened so that it can perform its role with impartiality. These can be found in the following reports, *Burundi: Justice on Trial* (AFR 16/13/98), *Memorandum to the Government of Burundi on Appellate Rights* (TG AFR 16/98.01), *Memorandum to the Government of Burundi and National Assembly on the reform of the Code of Criminal procedure* (AFR 16/06/99), and *Burundi: No respite without Justice* (AFR 16/12/99).

The peace agreement needs to provide for the strengthening of these key institutions.

- i) Key recommendations on the strengthening of the judiciary
 - reforms should be based on the *UN Basic Principles on the Independence of the Judiciary* and the *Procedures for the effective implementation of the Basic Principles on the Judiciary*.
 - urgent measures need to be taken to address in particular the impunity of the military, and to ensure that *the jurisdiction for criminal offences committed against civilians by military personnel on active duty is transferred to ordinary civilian courts*;
 - the Public Prosecutor's Office should be strengthened and better resourced, so that it is able to operate more effectively in initiating inquiries into human rights violations, and the corresponding legal action, and to monitor investigations;
 - legal reform should urgently take place to ensure that the right to a full appeal is guaranteed in all cases⁴;

⁴While Burundian law allows for a full appeal of conviction and sentence from judgments

- further technical assistance and support to the judiciary should be sought from the international community and should include assistance at all levels of the judiciary including judges, magistrates and prosecutors and to the council chamber (see **Recommendations to the international community**).

ii) Key recommendations on the reform of the police service

- the peace agreement should promote the role of the police in law enforcement, and the roles of the police and military clearly separated. Police units responsible for civilian law enforcement should be under civilian control (at present some units are under the control of the Ministry of Defence and President, and have in particular been responsible for serious human rights violations);
- the roles and responsibilities of different police units and arresting authorities should be urgently clarified;
- it is crucial that training is provided to all sectors of the police force in human rights protection and in performing its role independently from political considerations;
- the judicial police force responsible to courts should be strengthened by training, resources and further mechanisms to ensure accountability;
- arrest, investigation and detention procedures by all police units should be closely monitored by independent judicial officials.

iii) Key recommendations on the reform of the armed forces

rendered by courts of first instance, people who qualify for a privileged status by reason of their position, and those accused of crimes which are punishable by life imprisonment or death, are tried at first and last resort by the criminal chambers of the Court of Appeal. In exceptional circumstances, persons who qualify for the highest privileged status are tried at first and last resort by the Supreme Court. Judgments rendered by the criminal chambers of the Court of Appeal, as with all courts which operate as courts of first and last resort, are not subject to appeal. Defendants can only apply for review through the cassation procedure at the Cassation Chamber at the Supreme Court, which allows only for a limited review on questions of law and substantial violations of form. There is therefore no possibility for those judged by the criminal chambers of the Court of Appeal to have the factual basis on which they were convicted and sentenced reviewed. This is also the case for military jurisdictions, where officers of a grade equal to or exceeding that of major are tried at first and last resort by the Military Court of Appeal, and therefore do not benefit from a full appeal.

The issue of the reform of the armed forces to address regional and ethnic imbalance is sensitive and politicized. Other difficult questions to consider are the reintegration into civilian society and disarming of members of armed opposition groups and militias. Amnesty International's priority concern is that measures are taken to address the serious human rights record of the Burundian government and opposition armed forces:

- it is crucial that training is provided to all sectors of the armed forces in human rights protection and in protecting the civilian population in its entirety;
- at present, many functions which should be carried out by the police are effectively carried out by units of the armed forces. The roles of the police and army need to be separated and clarified, supported by sustained training and monitoring;
- in addition to education and training to make the security forces capable and willing to protect all citizens, regardless of their ethnic origin, steps need to be taken to ensure that the security forces, at all levels, are more representative of the ethnic, regional and social composition of Burundi;
- in the event that members of armed opposition groups or militias are integrated into the Burundian security forces, they should be given practical and sustained training, including in human rights protection and humanitarian law needs to be provided, and its application monitored;
- members of the Government of Burundi have repeatedly excused human rights violations committed by members of the government armed forces, as inevitable because of the trauma of the civil war. The peace agreement should include provisions to ensure that the needs of members of the armed forces who have suffered psychological trauma are catered for, including demobilizing those who have been adversely and permanently affected and by providing counselling as well as training;
- measures need to be taken to ensure that child soldiers are demobilized and rehabilitated, and that children are neither recruited or conscripted, including legislating to make this a criminal offence.

Demobilisation and integration

- members of armed opposition groups and militias should be placed under a recognizable chain of command;

- those against whom there is evidence of involvement in specific human rights abuses should be excluded from integration into the armed forces;
- all groups should be treated equally regardless of their political or ethnic affiliation;
- there should be provision for the rehabilitation into civilian society of demobilised combatants, whether they be members of the armed forces, armed opposition groups or militias. Rehabilitation should include trauma counselling and physical rehabilitation for those who have been permanently injured.

De-mining

Scores of civilians have also been killed or maimed because of the use of indiscriminate weapons such as anti-personnel mines or anti-tank mines by all parties to the conflict. Government soldiers and combatants of armed opposition groups have also been killed and injured. Unless there is a comprehensive de-mining program scores more unarmed civilians will continue to be injured and killed.

The peace agreement should also therefore provide for a comprehensive de-mining program. Government forces and armed opposition groups should be required by the agreement to fully cooperate in de-mining operations, by revealing where mines have been laid. As weapons which have indiscriminate effects on civilians and as weapons which are of a nature to cause superfluous injury or unnecessary suffering to those taking an active part in a conflict, the agreement should also provide for their destruction.

Rights of refugees and internally displaced persons

Approximately one million people are reported to have been displaced by the conflict in Burundi. Over 800,000 people are internally displaced in Burundi; many have been forcibly displaced by government forces as a counter-insurgency measure and are held in life-threatening conditions, others have been displaced since 1993. There are nearly 300,000 Burundian refugees in Tanzania at the moment, and tens of thousands elsewhere.

Those involved in negotiating any agreement need to be fully aware of the laws protecting the rights of refugees and the displaced persons and to ensure that the agreement respects them. In particular :

- *refugees have a right to international protection until the human rights situation in Burundi has undergone a*

fundamental and durable improvement; mere cessation of the hostilities is not sufficient. The international community should continue to afford protection to refugees, and continue its efforts to share the responsibility of hosting refugees until such time as they choose to return;

- *all returns of refugees and internally displaced persons should be strictly voluntary. No refugee should be forcibly returned to Burundi, or put under undue pressure to do so. Governments should abide by the 1951 Convention Relating to the Status of Refugees and the 1969 Organisation of African Unity (OAU) Convention Governing Specific Aspects of Refugee Problems in Africa. An similar principle should be used for the return of internally displaced persons;*

- *adequate information should be provided to refugees and internally displaced persons regarding the human rights situation in their area of origin, so that they can make an informed decision regarding return. Information should also be provided regarding other security matters, including the danger of land mines, and the availability of housing and other necessary infrastructure. There should be adequate assistance given to refugees and displaced persons who have had their homes and property damaged. A commission to settle disputes about ownership would be a great help in facilitating the safe return and resettlement of refugees and internally displaced persons;*

- *any program for the return of refugees and internally displaced persons should be based on international human rights standards, including standards of refugee protection and the protection of internally displaced persons.*

In the immediate future:

- members of the armed forces should end the practice of forcibly relocating civilians in regroupment camps, with little or no humanitarian aid, and little or no protection against human rights abuses by government soldiers or members of the armed opposition. Civilians should be allowed to leave the camps if they wish. Camps should be placed under civilian control;
- members of the armed opposition and government armed forces should refrain from attacking camps for the displaced persons;
- the international community, through the United Nations and other relevant organizations and donor countries, must ensure that sufficient financial and logistical support is available to ensure that the United Republic of Tanzania and other states are able to meet the basic needs and protection requirements for the refugee communities they host. Assurances of the availability of support are also vital in the light of the risk of further displacement in the region.

Protecting the rights of children

Children are particularly vulnerable to abuses of their human rights including, economic and social rights particularly in the context of armed conflict and social upheaval. Their protection needs should be central to any peace agreement and its implementation. Burundian children caught in the midst of armed conflict and as child refugees have witnessed and experienced gross human rights abuses. Children participated in the armed conflict in government forces and armed opposition groups, including through abuse as “wives” or as labourers. The peace agreement should address these multiple issues: children are the next generation and the hope for peace.

Amnesty International is therefore recommending that :

- specific reference to the demobilization and rehabilitation of children who have been actively involved in the conflict as child soldiers, should be incorporated into the agreement. This should include appropriate measures to be undertaken by the Burundian authorities, with the assistance of the international community where needed, on specific measures to promote physical and psychological rehabilitation and social reintegration;
- all parties to the conflict should commit themselves to undertake from the start of implementation of any cease-fire agreement, demobilization programmes for children under the age of 18 who have been soldiers or combatants, with the fundamental aim of achieving family reunification and full social rehabilitation, particularly into the formal education system;

- all parties to the conflict should formally commit themselves to the minimum age of 18 years for all military recruitment (compulsory or voluntary) and participation in hostilities;
- the agreement should specifically state that in the monitoring of the agreement, the use of child soldiers under the age of 15 is considered a war crime;
- the agreement should contain a commitment for special action for children who have been victims of sexual abuse and to the rehabilitation of basic educational and medical services for children;
- the agreement should make specific recommendations on ways to protect and respect the rights of refugee children and children who are displaced;
- the agreement should guarantee human rights groups, international monitors and the International Committee of the Red Cross (ICRC) access to all children in detention and to prioritise the judicial investigations against them;
- the agreement should include provisions to prevent children being the victims of anti-personnel land mines, including by public awareness campaigns designed for children.

Supporting the work of humanitarian and human rights organizations

The agreement should make specific provision for the protection of workers of humanitarian and human rights organizations during this period and for support for their activities.

III RECOMMENDATIONS TO THE INTERNATIONAL COMMUNITY

The support of the international community for Burundi is crucial. Many of the recommendations in this Memorandum are dependent on financial or technical support not currently available in Burundi. The expertise of specialist agencies of inter-governmental organizations should also be made available.

Amnesty International is calling on the international community to:

- *use their political influence and financial resources to support programs to promote and protect human rights in Burundi as the ability of the Government of Burundi and intergovernmental agencies to implement these recommendations will be seriously diminished without the support of key donor governments;*
- *impress on the parties to the conflict the need to conform to the provisions of Common Article 3 of the Geneva Conventions and its additional Protocol II, and to hold them accountable for violations of these principles;*
- *use its influence to ensure that these recommendations are fully discussed and incorporated into the peace agreement and its implementation plan;*
- *provide expertise and resources to a comprehensive de-mining program;*
- *encourage and maintain pressure on the Government of Burundi to investigate human rights abuses and prosecute those responsible. To this end, request the Government of Burundi to provide regular and up-to-date information on action taken to prevent human rights violations, including extrajudicial executions, and details of investigations and judicial proceedings against those responsible, to the international community and those monitoring the peace agreement;*
- *continue to assist the judiciary by providing material and human resources, including legal experts at all levels to supplement existing national resources and to help improve the competence, independence and impartiality of the country's judiciary;*
- *provide expertise and resources to assist the Government of Burundi in reforming and training the police force and armed forces of Burundi in human rights protection;*

- *support and strengthen the UN Office of the High Commissioner for Human Rights in Burundi to ensure that it has enough resources and political support to carry out its tasks efficiently and independently.* Resources should be allocated to provide as secure working conditions as possible and to ensure that *frequent and comprehensive reports of the findings* are published. The information published should include information on the way in which competent bodies carry out investigations into allegations of human rights abuses, and the remedies applied;
- *help the government to strengthen the Public Prosecutor's Office, giving financial and political support;*
- look at ways of providing increased support for national human rights groups;
- support and promote national and international non-governmental organizations who work for the protection of the social, economic and human rights of children, and to support work on children who are particularly vulnerable such as refugees, the displaced, and street children;
- assist in providing counselling for psychological trauma, paying particular attention to children;
- assist in the rebuilding of the infrastructure which will support the education, training and health care needs of children;
- abide by the 1951 Convention Relating to the Status of Refugees and the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa. *They should* significantly contribute to sharing the responsibility of states with large numbers of refugees to ensure that the basic needs and protection requirements of the refugee community they are hosting are met;
- if in the future any general assessment is made that it would be possible for most people to return safely, human rights considerations must be paramount among the factors on which such an assessment is based. Such an assessment should be made in an open and transparent manner with the full participation of appropriate

human rights bodies, non-governmental agencies, the UNHCR and in particular the refugees themselves. In such circumstances scrupulous care must be taken to ensure the protection of individuals or groups who might not be able to return. Host countries, with assistance from the UNHCR, should establish appropriate procedures to assess the claims of individuals who are unwilling to return. The expertise and independence of decision-makers is central to the fairness of any such procedures, which also must take into full account all relevant human rights considerations and present and future risks the individuals might face if they were to return. No one should be compelled to return unless they have had a full opportunity to have their claim for protection individually examined in such a procedure. If and when safe return has been assessed as possible, it must also be ensured that Burundians who flee after that date - as well as returnees who decide to flee again - have their individual claims fully considered regardless of that fact;

- ensure that adequate resources for the sustained monitoring of returnees is guaranteed and available before repatriation is encouraged;
- *take action to assist the Government of Tanzania to ensure that, for as long as they remain, Burundi refugee camps in Tanzania retain their civilian and humanitarian nature. This should include appropriate policing and monitoring of the camps, which are reported to have undergone in recent months an increased militarization, with reports of increased recruitment by armed opposition groups, including of children, from the camps;*
- ban the manufacture, buying and selling of indiscriminate weapons such as anti-personnel mines, and prevent supplies of light weapons and other types of military, security or police equipment to the government and armed opposition groups which it is reasonable to believe would be used by parties to the conflict to commit human rights abuses.

Additionally:

- *the OAU established a Mechanism for Conflict Prevention, Management and Resolution in 1993 to facilitate the resolution of conflicts. The OAU should seek to ensure that measures for the protection of human rights are considered during the peace negotiations, and included in the peace agreement. Amnesty International is urging that the OAU consider ways to assist the country to institutionalize protection for human rights as a contribution to preventing any further destabilisation;*

- *regional governments should be more actively involved in promoting and supporting initiatives which seek to prevent human rights abuses in Burundi. This should include pushing for increased emphasis on human rights issues in the peace process;*

- *the United Nations Development Program, the World Bank, donors and others should provide support to improve the government's transparency and accountability and strengthen its capacity to protect and defend human rights. Particular attention should be paid to the development of comprehensive strategies for improving the effectiveness of the criminal justice system, including enhancing the independence of the judiciary, reform of the police and armed forces and comprehensive training schemes.*