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BURUNDI

Poverty, isolation and ill-treatment Juvenile justice in Burundi

I INTRODUCTION

Children have been particularly affected by the armed conflict and related human rights and humanitarian crises in Burundi. Their most basic civil, political, economic, social and cultural rights have been routinely and massively violated by government security forces, as well as by armed political groups.

One of the areas where children are clearly at risk is in the hands of the law. The current inadequacies of the Burundian justice and penitentiary systems leave children vulnerable to abuses of their rights, including their right to physical integrity. Children in detention are spared none of the abuses inflicted on adult detainees. Child detainees have been arrested in violation of domestic arrest and detention procedures, some have been tortured and some detained for years without charge or trial, often in conditions amounting to cruel, inhuman and degrading treatment. Few have benefited from the assistance of a lawyer or adequate medical attention. In addition, their youth and relative isolation in the prison system leave them exposed to a range of other abuses; some child detainees complain of sexual abuse within prison, many are malnourished and have lost contact with their families. Educational and recreational activities appropriate to their age and special needs are, by and large, not provided. These serious abuses are persisting despite an apparent openness of government officials to recognize and address some of the serious failings endemic at present, either through institutional weaknesses, lack of resources or poor practice.

In March 2002, Amnesty International delegates visited six of Burundi's 11 prisons, as part of its research into the plight of child detainees in the country. This report includes the findings of that visit. The cases included in this report are illustrative of many others and of the generic problems faced by children following their arrest and detention. Amnesty International acknowledges the considerable assistance it received from many people it received including former and current detainees, national and international human rights groups, including the *Association burundaise pour la Défense des Droits des Prisonniers* (ABDP), Burundian Association for Prisoners' Rights, the *Association burundaise pour la protection des droits humains et des personnes détenues* (APRODH), Burundian Association for the protection of human rights and detainees, the *Ligue ITEKA*, Burundian Human Rights Ligue, the Office of the United Nations High Commissioner for Human Rights, *Avocats sans frontières*, Lawyers without Borders, and others working on behalf of child detainees, as well as members of the judiciary, penitentiary services and government officials.

Amnesty International is concerned at the level of serious human rights abuses suffered by millions of children in the context of on-going armed conflict, and Section II, (The situation of children in Burundi), highlights some of these concerns. However, Amnesty International has chosen in this report to focus on juvenile justice in the light of the strategic openings for institutional reform provided by the transitional process.

Implementation of the August 2000 Agreement for Peace and Reconciliation in Burundi (Peace Agreement) provides an opportunity and the obligation for the Transitional Government of Burundi, inaugurated in November 2001, to enact important legal reforms. Many of the reforms set out in the Peace Agreement concern the judiciary, recognizing the need to render it more impartial and independent. Amnesty International believes that the current transitional period also provides an opportunity to look in depth at the specific question of juvenile justice, and to come up with practical, forward thinking solutions which are both in the interests of the child and of society as a whole.

Section VIII of the report sets out a number of suggestions and recommendations to the Transitional Government, armed political groups and the international community which could prevent further violations, as well as creating a framework which acknowledges the special place of the child in society, and combines the need to address offences committed by children with the best interests of the child.

II THE SITUATION OF CHILDREN IN BURUNDI

Signature of the Peace Agreement and the subsequent inauguration of a Transitional Government of Burundi in November 2001, without the involvement or support of the two main active armed political groups, led to a further escalation in armed conflict, with a corresponding increase in human rights abuses.¹ Children have been spared none of these abuses and are witnesses to daily violence. They have been extrajudicially executed or deliberately and unlawfully killed, tortured, arbitrarily detained and used as child soldiers. Many children are victims of sexual violence. They continue to suffer the consequences of insecurity and population displacement. The right to education and healthcare for many children is an illusion, with access to already limited facilities aggravated by extreme poverty and insecurity. Large numbers of children have been left as heads of households by the violence. An increasing number of children are living on

¹Neither the *Forces Nationales de libération* (PALIPEHUTU-FNL), National Liberation Forces, nor the *Conseil National pour la Défense de la Démocratie - Forces pour la Défense de la Démocratie* (CNDD-FDD), National Council for the Defence of Democracy - Forces for the Defence of Democracy, took part in negotiations and are not party to the Peace Agreement.

the streets.² National and international human rights and humanitarian organizations are working to protect children in this context.

Killings of children

Tens of thousands of unarmed civilians have been extrajudicially executed by members of the armed forces in Burundi since 1993. Amnesty International has gathered information on hundreds of cases where children, and even babies, have been shot, bayoneted or beaten to death by members of the armed forces with virtual total impunity. Over 15 children were extrajudicially executed in Rural Bujumbura and Bubanza provinces between January and April 2002.³ New extrajudicial executions have taken place since. At least 20 people, including several children, who had fled from Maramyva, Mutimbuzi commune, Bubanza on 31 July during a military operation in the Mpanda area. Some of the victims were reportedly killed as the army shelled the areas; others were bayoneted or shot as they fled. Some sources have put the number of dead as high as 48. Nineteen unarmed civilians were extrajudicially executed by members of the armed forces in Migera sector, Kanyosha commune, Rural Bujumbura on 4 August 2002. Six women, including **Madame Ntirundetse** and **Madame Bibiane Bunori**, and five children were amongst the dead. The bodies of fourteen of the victims, including those of the children, were found in a house. Five others were nearby. All houses in the area had also been destroyed by soldiers.

Both PALIPEHUTU-FNL and the CNDD-FDD have also been responsible for the killings of children caught in ambushes. Scores of children have also been killed in other unlawful attacks targeted at civilians. **Ali Hamissi Bizimana**, a journalist working at the independent radio station, *Radio Bonesha*, was shot and killed with his five-year-old son on 5 August 2002 during an attack by PALIPEHUTU-FNL in the Mutanga Nord district of Bujumbura. In *Burundi: Punishing the population - reprisal killings escalate*, Amnesty International cited the deliberate and arbitrary killing in

²In May 2002, the Watch List on Children in Armed Conflict reported that war, disease and HIV/AIDS had orphaned approximately 620,000 children in Burundi, that according to UNAIDS almost 230,000 of those children are HIV/AIDS orphans and that approximately 10,500 children are identified as having physical and mental handicaps, including speech impediments, physical trauma related to the war, mental illnesses, blindness and deafness.

For further information on the general human rights situation in Burundi please see Amnesty International reports, *Burundi: Between fear and hope* (AFR 16/007/2001, March 2001) and *Burundi: Punishing the population: Reprisal killings escalate* (AFR 16/006/2002, June 2002).

³ *Burundi: Punishing the population - reprisal killings escalate* (AFR 16/006/2002, March 2002). Other Amnesty International reports such as *Burundi: No respite without justice* (AFR 16/12/99, August 1999) and *Burundi: Between hope and fear* (AFR 16/007/2001, 22 March 2001) include the killings of scores of children by government and armed political forces.

Munini, Bururi province, of 18 civilians, including eight children under the age of 10 and a new born baby, in November 2001. In a response to the report published on the CNDD-FDD official website, senior CNDD-FDD officials denied deliberately killing unarmed civilians. They claimed that civilians in the area had been given arms, adding that members of government militias should not be confused with unarmed civilians. No explanation was given or comment made on the deaths of the nine children.

Displaced and refugee children

Within Burundi, over 450,000 people are displaced as a result of violence and armed conflict. The displaced fall mainly into the categories known in Burundi as *déplacés*, “displaced people”, predominantly members of the Tutsi ethnic group who have fled since 1993 to camps protected by the military; and *dispersés*, “dispersed people”, predominantly members of the Hutu ethnic group, who have fled their homes but sought shelter away from camps and the military whom they perceive to be a threat rather than a source of protection. Approximately 200,000 children live in camps for the displaced. In some conflict areas, particularly in the south, some displaced Hutu populations are prevented by local government authorities or army commanders from returning freely to their land in what appears to be a continuation of the notorious regroupment policy.⁴

Conditions in camps for the displaced vary, but are generally harsh, and in some cases appalling, with some of the displaced reportedly still not having access to clean drinking water and sanitation facilities even after many years. Conditions for the dispersed or those who are displaced with conflict areas, are also difficult, compounded by lack of access for humanitarian organizations, insufficient international funding and insecurity. Many dispersed sleep in the open and the level of respiratory diseases, particularly among children, is high.

⁴In 1996, approximately 500,000 Hutu living in areas experiencing armed conflicts were forced into camps by the government administration and armed forces. Hundreds of people were killed in the process.

Although the regroupment was ostensibly for the protection of the civilian population, it was soon clear that the policy was part of a counter-insurgency strategy designed to deny protection and potential support, whether freely given or coerced, to Hutu-dominated armed political groups.

In September 1999, following repeated attacks on Bujumbura by the armed political groups, the Burundian government again resorted to mass regroupment and forcibly relocated more than 290,000 mainly Hutu civilians from their homes in Rural Bujumbura province, forcing them into various “regroupment” camps within the province. The camps were officially closed in mid-2000 following international pressure, although some are still reported to operate in conflict zones. There is no accurate record of the numbers of dead but hundreds of lives, including many children, were lost in the camps from the combined effect of disease and the squalid living conditions.

In January 2002, as government troops pursued intensive military operations aimed at eliminating PALIPEHUTU-FNL combatants, following the fall of their Tenga stronghold in Rural Bujumbura, over 15,000 people were forced out of Nyambuye zone, Kanyosha commune. Over 85% were estimated by UNICEF to be women and children, including over 5,700 children. Many fled to a residential area in Bujumbura referred to as Mount Zion after a church in the area. Initially, some of the displaced sheltered in the church itself. Despite being told by the local administration and parliamentarians that could return home, they were prevented from doing so by soldiers who fired on them and many are now squatting in partly-built houses in and around Mount Zion. Many of these people have been repeatedly displaced. One man told Amnesty International that he had been forced into a regroupment camp from 26 September 1999 to 10 June 2000. One month after returning home, insecurity forced him out of his home as a “*dispersé*”. He returned home in October 2001, before again being ordered out by soldiers in January 2002.

The humanitarian consequences of mass and prolonged population displacement are worsened by the systematic looting of crops and destruction of property, which is carried out by armed political groups and government forces. Persistent allegations from the rural displaced claim organized population displacement by government troops at times of harvest. When they are allowed to return to their homes, their crops are gone. Malnutrition remains significantly high. Humanitarian organizations in Burundi estimate that approximately 50% of Burundi’s children are severely malnourished.

A further 346,000 Burundians, of whom over 180,000 are children, are refugees living in the border refugee camps in Tanzania and another 200,000 people who fled to Tanzania 30 years ago following the massacres of 1972 live in settlements further inland.

They suffer from poor diet, lack of access to education and healthcare, and are vulnerable to recruitment by armed political groups.

Child soldiers

*The Transitional Government is further violating children's rights by failing to take adequate measures to end the use of child soldiers. Thousands of child soldiers have been recruited by all parties to the conflict.⁵ Some children act as fully fledged soldiers, others are used as look-outs and informants, or for menial duties. In a report, *Enfant soldat : Un défi à lever pour le Burundi, Child soldiers: A challenge for Burundi*, produced by the Burundian human rights ministry in September 2001, the government acknowledged that some children were used to collect information and to perform domestic services for the security forces, and that some members of an unpaid government militia, the *Gardiens de la paix, Peace Guards*, to which scores of human rights violations and criminal acts are attributed, were formerly opposition child soldiers.⁶ Human rights groups have reported that these children are also used as lookouts, scouts and porters on military operations, as well as in looting sprees. Many are at least partially dressed in military fatigues.*

Some senior government officials have argued that there is no deliberate policy of recruiting young children, and that many children lie about their age (the official minimum age for recruitment into the armed forces in Burundi is 16) so that they can be

⁵*The exact extent of the problem of child soldiers is not known and it is difficult to obtain reliable information.* Estimates of the numbers of child soldiers vary enormously.

⁶Amnesty International recognizes the need of victims and society for justice and accountability, and in some cases, child soldiers must be held accountable for their actions, but any criminal action against them must respect international fair trial standards as well as additional safeguards in the interest of the child. However, Amnesty International considers that the focus and priority should be on prosecuting those who have committed crimes against children, including the crime of recruiting children who are under the age of 18. For further information please see Amnesty International's report, *Child soldiers: Criminals or victims?* (IOR 50/02/00, December 2000).

recruited. While this may be true, some children are clearly well below the age requirement. One human rights activist described to Amnesty International how, in 2001 at a government-organized function, she had seen four young children with soldiers. The activist persuaded the children, all orphans aged between six and 11, that they would be better off leaving the army and that associations would be able to take care of them. However, shortly afterwards the children changed their minds, afraid of the consequences of leaving the soldiers. They said they had lived with the soldiers for around two years, and while they mostly did cooking and cleaning, they had occasionally taken part in military operations.

The number of child soldiers used by PALIPEHUTU-FNL and the CNDD-FDD is not known. Hundreds, perhaps even thousands of children have been recruited from the large refugee camps in Tanzania, sometimes with the encouragement of their parents or foster-parents, sometimes under the illusion they will receive money. In other cases the recruitment is clearly forced.

In March 2002, Amnesty International delegates interviewed three former child soldiers, the youngest of whom was aged 12, who had spent up to one-and-a-half years with an armed political group. They were unable or afraid to specify which. The children had marks cut into their arms, which they said had been ordered by their commanders, so that they were identifiable as combatants. All had been used as porters, to fetch water and firewood, as well as taking part in military operations. They had taken drugs while with the armed group. Other children interviewed in detention by Amnesty International admitted that they were indeed combatants. One stated that he had joined up in 1995 when he was aged 13, after teachers at his school encouraged them to do so.

Some children choose to join either the armed forces or armed political groups. Others become combatants because of their desperate conditions and those of their parents. It is however the responsibility of the authorities, and commanders and leaders of armed political groups, to prevent recruitment of children.

Sexual violence

Both government forces and armed political groups are repeatedly accused of sexual violence against women and young girls. Since the start of the conflict, scores if not hundreds of women and young girls have been raped or coerced into sex by members of the armed forces and opposition combatants. Women in camps for the displaced or regroupment camps have been particularly vulnerable. Armed conflict has also caused disintegration of some social norms and the incidence of reported cases of rape, including of very young girls, has increased.

The case of **Fabienne**, (not her real name) is probably typical. Following an attack on her *colline*⁷ in Gitega province in 2001, Fabienne, then aged 13, was forced to accompany a group of around 30 combatants, whom she believes on the basis of the songs they were singing, were members of PALIPEHUTU-FNL. She and several others were forced to walk to the Kibira forest with the combatants, acting as porters. She lost count how many times she was raped by different men.

“They took us as wives straightaway. We had to cook for them. If a cow was killed, we had to cook it...When they came back, they would eat and drink, then they would call for you. They were so many. It was so painful...If they went to

⁷*Colline* (hill) is a local administrative division of a commune. Administratively, a commune breaks down into a number of smaller units: zone, sector, *colline* and *sous-colline*.

attack somewhere or to loot, there was always someone who stayed behind. Then he'd call you. If you refused, they used sticks to whip you...We mostly stayed in the forest but sometimes we had to go with them and carry what they looted...They all had sex with me. I don't know how many people had sex with me. A man would come, then another and another. I wasn't even the youngest. Some girls were even younger than me. Even the commanders called for you. You couldn't refuse...They said they'd kill you if you ran away. Some people fled and didn't come back. We didn't know if they'd got away or had been killed."

A ravaged education system

Access to education is particularly difficult in conflict areas, not only because of the general insecurity but also because armed political groups have repeatedly attacked, looted and destroyed schools in the areas in which they operate or through which they pass. In early 2002, in Rutana province, schools in many areas had been closed due to insecurity. In Giharo zone, Giharo commune, although the education infrastructure was intact, teachers were missing and 1,200 children who had enrolled for year one of primary school were unable to be taught. Teachers themselves have been the target of intimidation or killing by armed political groups. In 2001, the director of Musenyi primary school was decapitated by members of an armed political group, and his head left outside the school. In some cases attacks on schools appear to be designed to further demoralise the local population, possibly to encourage them to flee to Tanzania; in other cases, the object is recruitment of combatants.

III RIGHTS OF CHILDREN IN DETENTION - LEGAL FRAMEWORK

The International legal framework

Many human rights standards, including the UN Convention on the Rights of the Child (Children's Convention), African Charter on the Rights and Welfare of the Child (African Children's Charter) and the non-child specific instruments such as International Covenant on Civil and Political Rights (the Covenant) and African Charter on Human and Peoples' Rights (African Charter) set out the fundamental principles which should guide the treatment of all children, including

those who come in conflict with the law. Burundi has signed and ratified all the instruments mentioned above except the African Children's Charter. Specifically, these treaties guarantee to children all the fair trial rights which apply to adult, and to some additional special protection. For example, the Human Rights Committee established pursuant to the Covenant has stated that juveniles are to enjoy at least the same guarantees and protection as are accorded to adults under Article 14 of that Covenant.⁸ Article 14 incorporates international standards of fair trial and includes the right to be presumed innocent until proven guilty according to law.

According to the UN Rules for the Protection of Juveniles Deprived of their Liberty, a child is every person under the age of 18. Thus, anyone under that age is entitled to special protection in relation to trials. However, the Children's Convention also prescribes the age of 18 unless majority is attained earlier under national law. While the age of majority is determined by states, and may vary from country to country, it must not deviate greatly from international norms. In addition to imposing duty on the state to secure the best interests of each child who comes in conflict with the law, international human rights law also obligates the state to ensure that measures affecting them are proportionate to the gravity of the offence and to take into account the personal circumstances of children, including their physical and mental maturity.

Thus, the Children's Convention reiterates and expands on the

⁸ See Human Rights Committee General Comment 13 para 16.

rights of children who come in conflict with justice systems set out in such instruments as the Covenant. It prohibits unlawful or arbitrary arrest and detention, torture and cruel, inhuman or degrading treatment or punishment; and sentencing people convicted of crimes committed when they were under 18 to death or to life imprisonment without the possibility of release. The Children's Convention also provides that every child accused of having infringed the penal law must be presumed innocent until proven guilty according to law; be informed promptly and directly of the charges against him or her, or through his or her parents or legal guardians where appropriate; and be granted legal or other assistance in the preparation and presentation of his or her defence. The Children's Convention also recognizes that children in unlawful detention are entitled to the right to challenge the lawfulness of this deprivation and have their matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law. Article 40(2)(b)(iii) of the Children's Convention recognizes that all cases relating to children accused of infringing the law, whether or not they are held in detention, must be handled expeditiously.

Nevertheless, the best interests of the child must be a primary consideration in all actions concerning children, including those undertaken by courts of law, administrative or legislative bodies. The idea that children are entitled to additional protections and standards is founded on the principle that, in most cases, their best interests are protected by not separating them from their parents. The Children's Convention stresses that the child should be treated in a manner

consistent with the promotion of his or her sense of dignity and worth which reinforces respect for the child's human rights and fundamental freedoms and takes into account the child's age and special needs. In this context, the Children's Convention makes it clear that children are to benefit from any provisions of national or international law which may be more conducive to the realization of their rights.

Similarly, the United Nations Committee on the Rights of the Child (CRC), which is responsible for monitoring the performance of state parties to the Children Convention has identified four fundamental principles which underpin the Children's Convention: the best interests of the child must be a primary consideration in all actions concerning children; children have a fundamental right to life which includes promoting their survival and development to the maximum extent possible; children's rights must be recognized without discrimination of any kind; and children have the right to have their views respected in all matters affecting them. Amnesty International believes that these principles are of particular relevance in the area of juvenile justice, including the arrest and pre-trial detention of children.

However, international standards discourage the pre-trial detention of children. Thus, detention of children, including on arrest and prior to trial should be avoided whenever possible and is a measure of last resort. When children are detained their cases should be given the highest priority and handled as fast as possible to ensure the shortest possible period of pre-trial detention. Similarly, the CRC has stated that deprivation of liberty, in particular pre-trial detention, should never be unlawful or arbitrary and should only be used once all other alternative solutions would have proved

to be inadequate.⁹ Accordingly, governments are obligated to promote laws, procedures, institutions and policies such as using alternatives to judicial proceedings and institutional care where appropriate to ensure the child's well-being.

In addition, the CRC has said that families should be encouraged to have closer and more frequent contacts with children placed in institutions and to have a say in children's treatment.¹⁰ Also, the Human Rights Committee in its General Comment 28 has stated that pregnant women who are deprived of their liberty should receive humane treatment and respect for their inherent dignity at all times surrounding the birth and while caring for their newly-born children. Thus, the Human Rights Committee has frequently requested states parties to the Covenant to report on facilities to ensure this and on medical and health care for such mothers and babies.

The Children's Convention also prohibits the use of child soldiers, and insists on the need to protect children affected by armed conflict. Furthermore, all parties to the civil war in Burundi, including government and armed political forces, are bound by the provisions of Common Article 3 to the Geneva Conventions of 1949 and by Additional Protocol II to the Geneva Conventions governing the conduct of non-international armed conflicts. Common Article 3 provides for the protection of persons taking no active part in the hostilities, including members of armed forces who have laid down their arms or who are otherwise *hors de combat*, and requires such persons to be treated

⁹ See UN Document CRC/C/46

¹⁰ See *id.*

humanely. Common Article 3 explicitly prohibits mutilation or any form of corporal punishment, rape, any form of indecent assault, or pillage.

Additional Protocol II adds provisions regarding the protection of civilians from the dangers arising from military operations and, particularly, the protection of children during armed conflict. It prohibits the recruitment of children under the age of 15, as well as the attacking, destruction, and removal of “objects indispensable to the survival of the civilian population, such as foodstuffs, agriculture areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.” The Rome Statute of the International Criminal Court, which Burundi is yet to ratify, recognizes that it is a war crime for any government or armed political group to recruit or use as soldiers children under the age of 15.

In order to ensure the effective realization of children's rights including right to liberty of children in Burundi, Amnesty International believes that the government must not only respect the implementation of the above highlighted human rights standards but should also promote the full compliance of its national legislation and practice with these standards.

The domestic legal framework

The Transitional Constitution of Burundi recognizes the right of all Burundians, including children, to life, not to be arbitrarily and unlawfully arrested and detained, to be protected from torture, the right to be promptly and fairly tried. Article 32 of the Transitional Constitution further recognizes that children have the right to special protection from their families as well as the State.

The definition of a child under Burundian law varies. Under Civil law, a child reaches the age of majority at 21; a child under the age of 16 may not be employed; however

the age of marriage is 21 for men and 18 for women. The age of electoral majority is 18. The age of criminal majority is lower and the Penal Code states that the age of majority is reached at 13, although in recognition of the diminished responsibility of a child, providing reduced penalties for convicted defendants aged between 13 and 18 at the time of the offence.¹¹ A 1963 ministerial ruling *states that, where possible, male detainees under the age of 18 should be detained separately from adult prisoners, and a 1989 decision relating to the administration of prisons states that women should be kept separately from men, and children from adults, and pre-trial detainees from convicted prisoners. These rulings are largely not implemented.*

IV THE SITUATION OF CHILDREN IN DETENTION IN BURUNDI

In line with the principle that the best interests of the child should be at the heart of juvenile justice, it is clearly set down in international human rights treaties that the imprisonment of a child should only be used as a measure of last resort, in conformity with the law and for the shortest appropriate time. Standards relating to the detention of children are founded on the principle that the best interests of a child are protected by not separating them from their parents and/or responsible adults. Even more than with adults, the principle that detention should be the exception and not the rule applies.

Little could be further from reality in Burundi. Of the child detainees interviewed by Amnesty International, some had been arrested in violation of arrest and detention procedures, some had been tortured, some detained for years without trial. Few had benefitted from the assistance of a lawyer. Some spoke of sexual abuse within prison by other prisoners (children are largely detained with adults). Boy detainees appear to be particularly vulnerable to sexual abuse as girls attain a degree of protection where they are held in women's wings. In addition to these abuses, children are also being stifled by lack of activities and education, are malnourished and often entirely without the contact and support of their families.

¹¹Initial report of the application of the UN Convention on the Rights of the Child, December 1997

Burundi's prison population is predominantly male and adult and, relatively speaking, the number of children in detention in Burundi is quite small. Out of a prison population of around 9,000 approximately 160 are under the age of 18, of which a minority are girls. Addressing the many problems affecting children in detention relies also, to a great extent, on addressing Burundi's under-resourced and over-burdened judicial system. The challenges faced by the judiciary cannot be over estimated. At the time of writing, of the approximately 9,000 strong prison population, nearly 6,000 people are yet to be tried. Some detainees have been held without trial since 1994.¹² Some detainees spend longer in pre-trial detention than the maximum sentence they could receive if convicted. Furthermore, trials are often lengthy and may last years, as a consequence of multiple postponements. Even when trials conclude, it can take years for the verdict to be announced. The right to a full appeal is not guaranteed in trials before the criminal chambers of the Appeal Courts.¹³ The death penalty continues to be applied and over 450 people are currently under sentence of death. No judicial executions have taken place since October 2000 when two soldiers were executed shortly after being sentenced to death by a military court, and in flagrant violation of their right to appeal.

A report, *Analyse de la situation des enfants en prison au Burundi* (Analysis of the situation of children detained in Burundi) published by the Ministry of Human Rights, Institutional Reforms and Relations with the National Assembly in October 1998, identified many problem areas and recommended the principles which should govern the arrest and detention of children as set out in international standards. The investigation concluded that 70

¹²Following an investigation into prison conditions, long-term detention without trial, and political prisoners by an independent commission set up as part of the Peace Agreement, a government commission started visiting Burundi's prisons in mid-2002. It is expected to make recommendations on, at a minimum, the release of long-term detainees.

¹³While Burundian law allows for a full appeal against conviction and sentence handed down by the *Tribunaux de Grande Instance (TGI)*, High Courts, persons who qualify for a *privilège de juridiction* (privileged status) by reason of their position (magistrates, communal administrators or senior civil servants), as well as those who are 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.

per cent of children lived solely on the prison diet, which provided only 1,990 calories instead of the necessary 3,000; not only did children sleep in the same rooms as adults, the rooms were extremely overcrowded; hygiene was poor and access to medical care limited; access to education depended on the willingness and ability of other prisoners to teach; there was a problem of sexual abuse but it was difficult to establish the extent of the problem partly because people were unwilling to speak about it. The report also identified the persistence of torture, problems of detention without trial and lack of access to medical care.

In virtually all countries, the poor and the marginalized are particularly vulnerable to violations of their rights. Burundi is no exception. The vast majority of children interviewed in prison by Amnesty International in March 2002 came from poor families and were uneducated. They are particularly vulnerable not only because of their age, status and poverty but also because many are isolated from their families and have no one to defend them. Many had been arrested for minor, non-violent offences such as theft, often of food, or those which related to basic survival. Many child detainees are from poor rural backgrounds whose families are for a variety of reasons not able to take care of them or to provide for them. A number of children had been child labourers at the time of their arrest. Some had left their families to look for work in urban centres, often as low paid domestic employees, and were arrested after their employees accused them of theft or other crimes, after they asked for their pay. There are few opportunities to challenge such accusations before a judicial official.¹⁴ A minority of the children were detained on serious charges, including rape of very young girls, armed robbery, murder and belonging to armed political groups. Infanticide is a fairly frequent charge against girl detainees.

These serious abuses against children are persisting despite an apparent openness of government and penitentiary officials to recognize and address some of the serious failings which are endemic within the Burundian system of justice at present, either through institutional weaknesses, lack of resources or poor practice.

¹⁴Child labour is part of a vicious cycle, resulting from and causing poverty. Most children work because their families are poor and their labour is necessary for their own or their family's survival. Many working children do not have the opportunity to attend school and often grown up to be unskilled adults trapped in poverty and who will look to their own children to supplement the family's income. Child labour makes children particularly vulnerable to abuse as they are often working far from their homes and have little contact with their families. It is, however, beyond the scope of this report to address child labour *per se*.

Under Burundian law, no child under the age of 13 may be detained. Despite increasing sensitivity towards respecting this principle, children aged 13 and younger are still being detained, particularly by the police and gendarmerie. On 1 January 2002, at least three children, two of whom were *Gardiens de la Paix*, were arrested by other *Gardiens de la Paix* in Mpanda, Bubanza province, and accused of murder after a man died following a grenade explosion. One of the four, **Gilbert Ndabarushimana** was aged only 11. He was detained, with the others, at the gendarmerie brigade until 17 January when they were transferred to Bubanza prison, and then to Mpimba central prison, Bujumbura on 5 February. It was only three weeks later, on 20 February, following the intervention of human rights groups that Gilbert Ndabarushimana, aged 11, was released, on the grounds that under Burundian legislation he was too young to be detained. **Shabani Miburo**, aged 17, **Fidèle Nsabumuremyi**, aged 15, and **Jean-Claude Havyarimana**, (age not known) remain in detention in Mpimba while the accusation of murder is investigated. In many cases, children's births are not registered and thus they find it difficult to "prove" their age. Some children allege that police and gendarmes have deliberately falsified their ages so that they may be detained. Likewise, members of the security forces, penitentiary services and judiciary accuse children of claiming to be younger than they are. If there is genuine doubt as to the age of the child, the state has the obligation to resolve the situation in a manner which is compatible with its international obligations and own domestic legislation.

In addition to child detainees, approximately 50 babies and infants live with their mothers in prison. Some leave the prison once they have been weaned, if the woman detainee has relatives or friends who are able to take care of the child. Other women who are either abandoned by their families, or without a family network, may keep the child for much longer and may be forced to hand the child over to a charitable organization or orphanage.

The following sections look in more detail at some of violations faced by children in detention. The cases used are illustrative of many others. The work of national and international human rights and humanitarian organizations in this context is crucial.

i) Arbitrary arrests and unlawful detentions

Arrests are frequently made on the basis of denunciation without further investigation to establish the validity of the complaint. Ethnic discrimination, economic interests, perceived personal slights, jealousy or rivalry are all factors in such arrests. Although the introduction in January 2000 of a revised Code of Criminal Procedure has gone some way to addressing the problem of unlawful detentions and should help address the core problem of torture, neither practice has been eradicated partly because of poor adherence to the Code, and human rights groups frequently called on to intervene.

There is a well-established pattern of arrest of poorly paid children when they ask their employers for the money that is owing to them. **Athanase Mugaboniyalanga**, a domestic employee working in Musaga district, Bujumbura, was aged approximately 14 when he was arrested in March 2001 in Bujumbura and accused of stealing his employer's gun. The accusation was made against him apparently after he requested the pay that was owing to him. Athanase Mugaboniyalanga, who originates from Muramba commune, Bubanza province, had been in Bujumbura for around four months. Like many of the young domestic employees in Bujumbura he is particularly vulnerable as his relatives live far away. He is still awaiting trial.

Another boy, **Appolinaire Ndikumasabo**, from Rutovu commune, Bururi province was arrested on 23 August 2001 when he was aged 14, and accused of raping his employer's six-year-old daughter. The accusation was made apparently one week after he asked for the three months' pay that was owing to him. Appolinaire Ndikumasabo, an orphan, is apparently the head of a family comprising his siblings. He was held for questioning at the *Police de Sécurité publique* (PSP), Public Security Police, in Rumonge, where he was reportedly beaten on his hands until he signed a confession. He has received no visits since his arrest and it is unclear who, in his absence is taking care of his family.

In March 2002, **Innocent Niyokindi**, who was aged 16 at the time of his arrest in August 2001, was still awaiting trial on charges of theft. According to his testimony, his employer accused him of theft after he asked for time off to attend his sister's wedding, and he was arrested by the head of Bwiza zone, Bujumbura. He was detained from 3 August until 16 August at Bwiza zone, then at the PSP Kigobe for another month before being transferred to Mpimba central prison on 18 September. He was not ill-treated in detention, although he was reportedly whipped by his employer at the time of his arrest with a piece of electric flex.

The Code of Criminal Procedure provides a clear legal framework, which applies for both adults and children, regulating arrest and detention procedures. It sets out a maximum time frame for initial detention and investigation before the suspect should be

brought before a judge and remanded to prison.¹⁵ The limited protection it should provide is reduced as, in reality, its safeguards are routinely ignored and the initial detention in police, gendarmerie or military custody can last for many weeks if not months.

Many children interviewed by Amnesty International had been held in excess of the *garde à vue* period and the 15 days allowed under a provisional arrest warrant. **Léopold Ntamahukiro**, who was arrested, aged 15, on 19 September 2000, was detained at the PSP Karuzi for six months after being caught stealing three goats before being transferred to Gitega prison where he is now serving a 10-year sentence. **Celestin Manirambona**, aged 14 at the time of his arrest, and **Gerard Ndayikeza**, aged 15, and **Darius Niyongabo**, another minor, were held for approximately six months in 1999 at the PSP Kigobe, Bujumbura, before being transferred to Mpimba central prison. **Salvator Nsengiyumva** was held in Taba commune cell for five weeks, then at the Gendarmerie brigade in Mwanzari for six weeks before being transferred to Gitega prison. **François Miburo**, aged 17, was arrested in Bujumbura on 22 February 2002 on suspicion of aiding and abetting aggravated theft. He was transferred the same day to Mpimba central prison. In August 2002, his detention had not been confirmed and he was still detained on the basis of the arrest warrant.

ii) Incommunicado detention

The use of incommunicado detention, including of children, by Burundian security forces is widespread. Without access to a lawyer or medical assistance, or to visits by family members, detainees are especially vulnerable to torture or ill-treatment, or even “disappearance” and extrajudicial execution. Incommunicado detention has been used even by government commissions of inquiry, including during investigations into a December 2000 attack on a Belgian passenger aircraft, into two attempted coups d’état in April and July 2001, as well as the November 2001 murder of a World Health Organization representative in Burundi. In all four cases, some suspects were tortured.

Salvator Ndagijimana, who was aged 14-years-old at the time, was arrested with two others, **Celestin Hakizimana** and **Olivier Sabukunikiza**, both in their mid-20s, by soldiers in Bujumbura on 15 June 2001. They were accused of involvement in the murder of a local government official and of collaboration with an armed political group.

¹⁵Under the Code the period of initial investigation (*garde à vue*) is seven days which may be extended for another seven days by the public prosecutor’s office, after which a provisional arrest warrant may be issued. Communication by the suspect with people outside his or her place of detention is discretionary. The detainee must appear before a judge within a period of 15 days from the issuance of the provisional arrest warrant.

Following their arrest, they were held incommunicado in military custody in various parts of Bujumbura, including the Muha barracks and Ruziba military position where they were tortured. Salvator Ndagijimana, was stabbed on his arm and ankle and beaten; Celestin Hakizimana was beaten on his head with a rifle barrel and a piece of electric flex, while Olivier Sabukunikiza was beaten on his wrist and elbows, stabbed on his arms and thigh, and whipped with a piece of electric flex. One of his fingernails was also pulled out. They were transferred to Mpimba central prison on 6 July 2001. None received medical attention and all were still in custody by late July 2002.

iii) Torture and ill-treatment

Torture and ill-treatment remains widespread in Burundi. Age is no protection and Amnesty International has documented scores of cases of the torture and ill-treatment of children.

According to the children interviewed by Amnesty International in March 2002 -- the majority of whom showed scars which appeared to be consistent with their testimonies -- they had variously been subjected to severe and sustained beatings using electric flex, sticks, and other improvised weapons, beatings on the joints, the soles of the feet; some had been cut or stabbed with bayonets or knives; tied in excruciating positions for long periods of time; some had been threatened and intimidated, or subjected to death threats or other psychological abuse. Few had received any sort of medical care. Several children, including **Evariste Manirakiza**, aged 16, were badly beaten by neighbours at the time of their arrest. Evariste Manirakiza was beaten by neighbours in the Swahili district of Gitega town following his arrest in January 2002 on suspicion of raping a young girl.

It is extremely rare that the authorities take any action against members of the security forces or civilians responsible for torture and ill-treatment. Members of the security forces convicted of torturing detainees to death have, for instance, been allowed to continue in their functions.¹⁶

¹⁶In *Burundi: A new opportunity to confront torture and impunity, Cases for appeal* (December 2001, AFR 16/044/2001), Amnesty International reported on the case of **Déogratias Bakundukize**, a PSP officer, who was convicted on two separate occasions of killing detainees in his custody, yet who had spent only six months in prison and continued to work as a police officer. There are other similar cases.

Celestin Manirambona and **Gerard Ndayikeza**, aged 14 and 15 respectively at the time of their arrest, were apprehended during a police control in the Jabe district of Bujumbura on 27 June 1999 aimed at identifying people not in possession of identity cards. They and seven others were unable to produce identity papers and were taken to Kigobe PSP, Bujumbura. Celestin Manirambona, Gerard Ndayikeza and **Darius Niyongabo**, all under the age of 18 at the time of their arrest, and two adults¹⁷ were told they were suspected of being members of an armed political group, apparently solely on the basis of their lack of papers. All five are from Kayanza province, northern Burundi. Celestin Manirambona and Gerard Ndayikeza had left their homes in Cigereze *colline*, Muhanga commune, Kayanza province to come to look for work in Bujumbura. Gerard Ndayikeza had been in Bujumbura for approximately two years at the time of his arrest; Celestin Manirambona slightly less. Both eked out a living selling peanuts on the street.

Both Celestin Manirambona and Gerard Ndayikeza claim to have been beaten while at the PSP in an attempt to force them to confess to being combatants. Celestin Manirambona claims that he was hit repeatedly with a truncheon and that the officer questioning him told him that he would stop beating him only if he confessed. The five were held for approximately six months at the PSP before being transferred to Mpimba central prison. In March 2002, the case was yet to go to court.

Salvator Nsengiyumva, then aged approximately 15, was arrested in March 2000 by his neighbours on Kagoma *colline*, Taba commune, Gitega province, who accused him of setting fire to their houses during an attack by an armed political group in the area. Angry at the destruction of their property, they apparently held hot embers from their houses against his wrists and calves. He was handed over to the authorities and detained. Following his detention, he was reportedly ill-treated both in Taba commune cell and again at Mwanzari gendarmerie brigade where he was beaten on his joints in an attempt to extract a confession of belonging to an armed political group. He was convicted of arson, which he admitted in court, in November 2001 and sentenced to 10 years' imprisonment. The charges of belonging to an armed political group were not substantiated in court.

Children are also at risk of sexual abuse in prison. While the question of sexual abuse remains shrouded in secrecy, and the extent of the problem is not known, it is clear that the practice of detaining children with adults is exposing them to the risk of abuse. While those in detention remain reluctant to admit to having been sexually assaulted, former prisoners have been more open, confirming both male sexual abuse, including rape, and prostitution. From the testimonies received by Amnesty International it appears boy children are more vulnerable than girls. Several boys said they had been approached

¹⁷**Edouard Nduwimana** and **Kalikumawa Kapongo**.

by other prisoners who said that they would pay to have sex with them. Others complained of, and said they were frightened by, sexual activity by adults in their room.

iv) Prolonged detention without trial

Some children are held for long periods of time, sometimes years, without charge or trial after they have been transferred to prisons.

Some children have been detained since 1999 without being tried. They include **Mossi Rukundo**, who was arrested in November 1999 at the age of 14 in Bubanza province, on suspicion of links with an armed political group. Following his arrest by the PSP, he was transferred the same day to Bubanza prison where he was held for three months before being transferred to Mpimba central prison in March 2000. His case is yet to go to trial, although his case file was registered with the Court of Appeal in January 2000.¹⁸ **Manirakiza** and **Pasteur Manirambona**, who are now aged 18, have been detained without trial since November 1999. They are both accused of rape and murder.

On 16 May 2000, **Joseph Masabire**, then aged 15, was arrested by soldiers from Mabanda military position, Makamba province, on suspicion of belonging to an armed political group after failing to produce any identification. Originally from Kinama *colline*, Gisuru, Ruyigi province, Joseph Masabire was apparently abducted, along with several others (age not specified) in October 1999 during an attack on his *colline* and forced to go with members of the CNDD-FDD as a porter. Following his arrest, he was held for several hours at the position then transferred to Makamba brigade where he was reportedly beaten on his legs and the back of his head and neck, and stabbed on his right arm. In August 2000 he was formally charged with belonging to an armed political group, and transferred to Mpimba central prison in February 2001. In March 2002, he was still awaiting trial. He has received no visits since his arrest.

Many others have been awaiting trial for 12 months or longer. One boy, **Manirakiza**, met by Amnesty International delegates in Ngozi prison, was aged 13 at the time of his arrest in January 2001, after he was allegedly caught stealing some crates of beer. He was subsequently charged with aggravated theft and is still awaiting trial. **Pie Habimana**, who was aged approximately 15 at the time of his arrest, was arrested on 1 March 2001 in Buganda, Cibitoke province, and accused of stealing corn. He is awaiting trial one year later in Mpimba central prison.

¹⁸Five others, all reportedly adults, are also detained in Mpimba central prison with Mossi Rukondo. They are, **Maurice Ntakimazi**, **Joseph Mugumya**, **Glavis Niragira**, **Laurent Nyandwi** and **Amissi Rukondo**.

In some cases, delays in investigation or in bringing the case to court are in part a result of severe resource constraints. This is particularly true for detainees who are alleged to have committed crimes in communes or provinces some distance away from the court or investigating authority. State Prosecutors may have no car or money to pay for fuel. Travel is further hampered by insecurity or lack of personnel.

v) Other fair trial concerns

While the majority of children, charged with lesser offences, are tried by the High Courts, children charged with more serious offences, who are tried by the Courts of Appeal, are being denied the right to appeal to a higher jurisdiction, in violation of *Article 14 of the International Covenant on Civil and Political Rights* and *Article 7 of the African Charter on Human and Peoples' Rights* to which Burundi is party.

While Burundian law allows for a full appeal of conviction and sentence from judgments rendered by lower courts, those who are 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. Additionally, people who qualify for a privileged status by reason of their position (magistrates, communal administrators or high functionaries), are tried at first and last resort by the Supreme Court.

Defendants tried by the criminal chambers of the Court of Appeal can only apply for review through the cassation procedure at the cassation chamber of the Supreme Court, which allows only for a limited review on questions of law and substantial violations of form. There is therefore no ability for those tried by the criminal chambers of the Court of Appeal to have the factual basis on which they were convicted and sentenced reviewed.

Jean de Dieu Ezechiel Bukuru, aged 15 at the time of his arrest, was one of 25 people tried by Bujumbura Court of Appeal in connection with an alleged plot to overthrow the government in late 1998. The trial centred on the accusation that an armed group, the *Front national pour la libération du Burundi* (FNLB), National Front for the Liberation of Burundi, had been formed with the intention of overthrowing President Pierre Buyoya. The defendants included a number of prominent members of the business community and known opponents of the government, linked to the Tutsi-dominated *Parti pour le redressement national* (PARENA), National Recovery Party and *Solidarité jeunesse pour la défense des droits des minorités* (SOJEDEM), Youth Solidarity for the Defence of Minority Rights, who were accused of being the political wing and financiers

of the FNLB. The origins of the FNLB do not appear to have been fully clarified, and the allegation of support from political opponents may have been created to remove potential threats to power. Some of the defendants, including Jean de Dieu Ezechiel Bukuru, were reportedly tortured apparently to extract incriminating statements. The verdict was announced in January 2000, and the majority of defendants received prison sentences of 10 or 15 years. Jean de Dieu Ezechiel Bukuru was sentenced to 10 years' imprisonment.

Under Burundian law, a convicted prisoner is eligible for conditional release after serving one quarter of his or her sentence. However, several of those sentenced to 15 years' imprisonment in this trial have already benefitted from conditional release. They are all wealthy well connected members of the Bujumbura elite. The younger, less educated, less powerful, defendants, remain in detention. Jean de Dieu Ezechiel Bukuru escaped from Mpimba central prison in early 2002.

Burundian law recognizes the diminished responsibility of a child, providing reduced penalties for convicted defendants aged between 13 and 18 at the time of the offence.¹⁹ In a few cases, however, children receive heavier sentences than those allowed by Burundian law. As the majority of children are tried without the assistance of a lawyer, their ability to appeal against such irregularities is diminished.

Salvator Hatungimana, who was aged 16 at the time of his arrest in November 1998, was convicted of rape and sentenced to 15 years' imprisonment by the Bujumbura *Tribunal de Grande instance* (TGI), High Court, in February 1999. Rape, by an adult, is punishable by a prison sentence of between five and fifteen years, which increase to life imprisonment or the death penalty if the victim has died as a result of the rape. The sentence was reduced on appeal to seven years in May 2001.

Other children are serving long sentences because courts are not taking into consideration their age and circumstances. Many children are, for example, receiving heavy prison sentences after being convicted of aggravated theft, which carries a maximum penalty of 20 years (reduced to 10 years for children). The definition of aggravated theft in the 1981 revised Penal Code is very broad and includes certain offences such as theft by a domestic employee from the house where they are working (*vols domestiques*), theft of unharvested crops (*vols de récoltes sur pied*) and theft of livestock (*vols de bétails*).

¹⁹Article 16 of the Penal Code states that if the penalty prescribed in law is the death penalty or life imprisonment, a child will be sentenced to between five and 10 years' imprisonment. If the defendant receives a lesser prison sentence, and a fine, the maximum penalty can be no more than half the maximum s/he would have received had s/he been 18 (ie had s/he achieved the age of criminal majority). The maximum penalty a child may be subjected to is therefore 10 years' imprisonment. Children under the age of 13 may not be detained.

Léopold Ntamahukiro was arrested on 19 September 2000 by the head of Gisenyi *colline*, Buhiga commune, Karuzi province, when he and two adults, **Claver Miburo** and **Claver Ndayisenga**, were caught stealing three goats. He was then aged 15. They were subsequently tried and convicted by the High Court in Karuzi in mid-2001 was sentenced to 10 years' in prison. **Tharcisse Majambere** was convicted of aggravated theft by Ngozi High Court in August 1999, three months after his arrest on suspicion of stealing a pig and some bananas. He was sentenced to 10 years' imprisonment. Aged 15 at the time of his arrest, if he serves his full sentence, he will be 25 years' old when released. None had received legal assistance.

Amnesty International understands the need for all societies to combat crime. However, many children are tried without the assistance of a lawyer and in view of their age and lack of education are likely to find it particularly difficult to defend themselves in court. Furthermore, these sentences seem out of proportion compared to the sentences received, for example, by people convicted of mass human rights violations, where on the few occasions where members of the armed forces have been convicted of extrajudicial executions they have received very light sentences. One soldier who was convicted in September 2001 of the killing of a member of parliament, **Gabriel Gisabwamana**, was sentenced to 18 months' imprisonment and a fine of 1000 Burundian francs (about 1US\$). Another member of the Burundian armed forces, convicted of the extrajudicial execution in 1996 of at least 54 unarmed civilians, including 20 children under the age of 10, was sentenced to eight years' imprisonment, reduced to one year on appeal in September 1998, although the Military Court of Appeal ruled that there was material evidence of the killings including of the bayoneting of young children.²⁰ A court of law is also a court of justice and must interpret the law in the light of Burundi's international obligations, taking into consideration the best interests of the child.

vi) Conditions of detention

There are 11 prisons in Burundi, built to hold around 3,500 inmates. However, since the mid-1990s the prison population has consistently numbered around 9,000.

Conditions in the majority of the prisons have improved substantially in the last two years, as a result of collaborative efforts by the government, by international humanitarian organizations such as the International Committee of the Red Cross (ICRC), the Office of the United Nations High Commissioner for Human Rights and by the national ABDP and ITEKA human rights groups. This has led to better accommodation,

²⁰Gabriel Gisabwamana was a member of the Hutu-dominated *Front pour la Démocratie au Burundi*, Front for Democracy in Burundi. Please see *Burundi: A new opportunity to confront torture and impunity, Cases for Appeal* (December 2001, AFR 16/004/200i) for further information on both cases.

hygiene, provision of medical care and a dramatic reduction in the death rate in the prisons. In 1998 for example, 375 prisoners died in Ngozi men's prison out of a prison population averaging 2,400; in Gitega prison in the same year, 188 prisoners died out of a prison population of approximately 2,400. Both prisons have a capacity of 400. According to ITEKA's 2001 annual report, 144 deaths in total in all of Burundi's prisons were reported in 1999, 85 in 2000 and 79 in 2001. However, despite significant improvements, conditions in Burundi's prisons and detention centres are for the main harsh, often severely overcrowded and dangerously unsanitary, and in some cases amount to cruel, inhuman and degrading treatment.

The state of Burundi's prisons and detention centres in part reflects the lack of adequate financial resources available to the authorities, in part their priorities. Greater international financial aid and technical assistance would undoubtedly do much to improve conditions. However, more immediate practical measures requiring no major financial outlay could be taken by the authorities to improve conditions for detainees. Releasing those pre-trial detainees against whom there is no substantive evidence and those entitled to conditional release, in particular, could ease overcrowding in Burundi's prisons. Several human rights groups are working to reduce long-term detention without trial, including by assisting in the travel of magistrates, lawyers and judges. While these programs do not specifically target child detainees, they do not exclude them, and should lead to an improvement in their conditions of detention.

In most prisons and detention centres children are held with adults, regardless of their age. Pre-trial and convicted prisoners are also in most cases held together. Both practices increase the vulnerability of children to physical and sexual abuse at the hands of other inmates. In some cases such as Mpimba central prison in Bujumbura they have a separate area to sleep in. In Ngozi, since December 2001, children have been detained in a specialized prison, which holds women detainees and has a separate area for male children. Ngozi prisons cover the provinces of Ngozi, Kirundo, Kayanza and Muyinga. In virtually all other cases, children to a greater or lesser extent are held with adult detainees.

In March 2002, conditions in Bururi prison in southern Burundi were some of the worst in Burundi. Cells severely overcrowded to the extent that in some of the cells there was not enough space for all prisoners to lie down at the same time, even with prisoners sharing mattresses, and prisoners slept effectively on shelves. The cells were also poorly ventilated, there was no room in the prison for exercise and the tiny prison courtyard was smoke filled from the charcoal used for cooking. The roofs of some of the cells had holes in them. The few prisoners under sentence of death detained in Bururi prison were kept in perhaps the harshest conditions, sleeping in what had previously been the punishment cell - a tiny, cold room with no window. Children are also detained in extremely harsh

conditions in the prison. **Désiré Manirakiza**, aged approximately 13, arrested in February 2002, was sleeping on the floor without a blanket despite the cold conditions in Bururi. He was also unable to benefit from family support as his family lives in Gitega province, central Burundi. He had moved to Bururi some four months prior to his arrest seeking employment and had become a domestic employee. According to his testimony, he was arrested after beating a cow he was looking after and provoking a miscarriage. He said a neighbour, who had a dispute with his employer, had paid him 500 Burundian francs (approximately half a US dollar) to beat the cow. By July 2002, his case had been heard by the *Tribunal de Résidence*, Burundi's lowest jurisdiction, although the verdict had not been announced.

The food ration allowed to all detainees is 350g of uncooked beans and 350g of manioc flour per day, with occasionally some oil and salt. This is already a substantial improvement from the ration previously provided. However, even from a calorific value it fails to provide adequate nourishment for a growing child. All prison inmates in Burundi depend either on money or their families to bring food to supplement the prison ration. Many children depend on the chance of cleaning or other small jobs within the prison to earn a little money, or receive extra rations, from prison staff or other prisoners. Children who receive no visits, and have no activities, have difficulty in supplementing their diet.

Human rights standards also emphasize the importance of rehabilitation, particularly with regard to young offenders. Rule 13(5) of the Beijing Rules states:

“while in custody, juveniles shall receive care, protection, and all necessary individual assistance - social, educational, vocational, psychological, medical and physical - that they may require in view of their age, sex and personality”.

The majority of children, particularly those who are awaiting trial, in detention in Burundi have no activities to enhance their mental, physical or psychological growth and facilitate their rehabilitation. Any access to education largely depends on the willingness and abilities of other prisoners to provide schooling; vocational activities such as carpentry, or sewing are often limited and places taken by adult prisoners; only convicted prisoners may leave the prison to work in the fields, and access to physical exercise or sports depends largely on the will of the prison director. Some human rights groups such as the ABDP are trying to address this issue. In June 2002, construction began in Ngozi specialized prison to create a building where child detainees will learn carpentry and other skills to help their rehabilitation. Children currently detained in the prison are involved, at their request, in the construction work.²¹

²¹The project was designed by the ABDP and financed by the Belgium Ministry of Cooperation and the Government of the Balearic Islands through a non-governmental organization, *Voisins sans*

Family visits are particularly problematic for children who are detained in provinces other than their province of origin, either because they had moved away from their families, or because they are transferred to a different province where the court that will ultimately try them is situated - even though the trial may in fact take place years later. The majority of children simply receive no family visits.

V MILITARY JURISDICTIONS

Amnesty International has for many years expressed concern at the ability of military jurisdictions to conduct impartial investigations and trials which conform to international standards for fair trial. These concerns refer firstly to the nature of military jurisdictions, which are inherently limited in their ability to impart independent and impartial justice and additionally to the very specific limitations of the Burundian military justice system. The limitations have in some instances, led to flawed trials, and in others, have enabled offenders to escape responsibility for their actions. Military jurisdictions have in particular proved themselves to be unwilling and incapable of investigating and bringing to justice members of the armed forces suspected of committing human rights violations, including the extrajudicial execution and torture of children.

frontières (VSF), based in Majorca, which is developing various human rights programs in Burundi and which also works with Burundian refugees in camps in Tanzania.

In the light of these concerns, Amnesty International has consistently recommended that military courts should have the power to try only military personnel accused of exclusively military discipline offences, should not have the power to impose the death penalty and that civilians should not in any circumstances be tried by military courts.²²

²²For further information on human rights concerns and Burundi's military courts please see Amnesty International reports, *Burundi: No respite without justice*; *Burundi: Between hope and fear* and *An opportunity to confront torture and impunity (Memorandum to the Transitional Government of Burundi and international community)*.

While many defendants before military courts (*conseils de guerre*) now have access to legal representation, and while the majority of defendants before military courts have the right to a full appeal at the Military Court of Appeal (*Cour militaire*), as well as the right to submit a cassation plea to the Cassation Chamber of the Supreme Court, Amnesty International believes that trials before military jurisdictions constitute an environment which is likely to be intimidating for children and which is unlikely to cater for and protect their special needs.²³ Under current legislation, children who are charged with committing offences with members of the armed forces; charged with fire arm or ammunition offences; or who are child soldiers may be tried by a military court.²⁴

Samuel Nsengiyumva was aged 14 when he was arrested in Bujumbura in July 2001. At the time of his arrest, Samuel Nsengiyumva was living with his family in the Kikungu district of Gihosha zone, Bujumbura, and earning a small amount of money in the day selling plastic bags in Bujumbura. He had until three months earlier been living on the streets in Bujumbura. Some days before his arrest, he was asked by a soldier in Bujumbura central market to help carry his bags. According to Samuel Nsengiyumva's testimony, they became separated in the crowd and Samuel was left with the bags. He ate the food and sold the clothes in the bags. The soldier reported the theft, claiming that the bags also contained a gun, and a radio announcement asking Samuel to report was made. Samuel gave himself up to a gendarmerie station in the market known as SOGEMAC, admitting he had taken the food and clothes, but denying stealing a weapon.²⁵

He told Amnesty International delegates that gendarmes at SOGEMAC brandished a kalashnikov at him and threatened to kill him. At one point they put a tire around his neck which they threatened to set alight. From SOGEMAC, he was transferred to a military and paramilitary barracks camp known as SOCARTI, in the Kamenge district of Bujumbura, where he was reportedly beaten. Under torture, Samuel Nsengiyumva "admitted" stealing the gun, although he denies this is in fact true. His

²³Members of the armed forces who are of the rank of major or higher are tried at first and last resort by the Military Court of Appeal. The few whose attachment of privilege is even higher are tried at first and last resort by the Supreme Court.

²⁴*Décret-loi no. 1/5 du 27 février 1980 portant code de l'Organisation et de la Compétence des Juridictions Militaires.*

²⁵SOGEMAC is the acronym of the *Société de gestion du marché centrale*, the company which manages the central market.

older brother, **Alex Nimubona**, now aged 22, who went with Samuel as he reported to SOGEMAC is also detained in connection with the theft, although the basis for his detention is not clear.

Amnesty International delegates raised the case with the Military Prosecutor (*Auditeur militaire*) in Bujumbura in March 2002, and sought clarification on recent developments in writing from both the Military Prosecutor and the Minister of Defence in July 2002. No response has been received (at the time of writing).

Aged 17, **Emmanuel Kahwenubusa**, a member of the Burundian armed forces, was arrested on the orders of the Commander of the Second Company, 56th Infantry Battalion on suspicion of having sold his gun. Although his case file states that he was arrested on 17 July 2001, the day before his transfer to Bururi prison, he maintains he was arrested on 10 February 2001. According to his testimony, he was held for two days in Bururi barracks, where he was accused of being a traitor, tied, beaten and kicked. After two days, he was taken to Bururi brigade where he was held until July 2001. He was also reportedly beaten at the brigade. In March 2002 he was yet to be questioned by the Military Prosecutor's Office (*Auditorat militaire*).

In addition to concerns about his long detention without charge or trial, the inaccurate date of arrest and accusations of ill-treatment, Amnesty International has also raised with the Minister of Defence, also without getting a response, the fact that Emmanuel Kahwenubusa, then aged 15, was apparently recruited by the army in December 1999, along with approximately 40 other pupils from his primary school in Minyare, Cankuzo province.

Pascal Nyandwi, aged 16, who is currently detained in Ngozi prison, also faces trial by a military tribunal. He is accused of having taken part in a night-time robbery with an adult soldier, **Ndowayo**, who is also in detention. Arrested in October 2001, Pascal Nyandwi is still awaiting trial on the charge of aggravated theft.

VI DETAINED MOTHERS: THE IMPACT ON CHILDREN

In addition to the 160 children detained in connection with alleged criminal offences, there are currently around 50 babies and infants in prison who have not committed any offence but who are detained with their mothers. Other women leave young children with relatives or friends, sometimes in the care of their siblings. There is no easy solution to protecting the rights of children whose mothers are in detention, either those who are incarcerated with their mothers, or those left outside. They are in danger of entering a spiral of social disenfranchisement, which may lead to criminal activity and their own imprisonment. Young children in detention are deprived the social stimulation and participation necessary for their development. Whatever efforts their mothers, other

detainees, prison guards may make to care for them and play with them, they are still in an environment ultimately hostile to a child's development. Amnesty International delegates watched infants laughing as they played with guards. The guards though were carrying kalashnikovs. In others prisons, they carry bayonets.

This situation is made dramatically worse by a pattern of arbitrary arrest and prolonged detention without charge or trial of detainees, which in some cases results in children being held in prison with their mothers, who have been arbitrarily arrested and/or detained for long periods without trial.

Rosmine Nzomukunda was five on 4 May 2002. She has spent every day of her life in Ngozi prison. Her mother, **Marie Ndurututse**, was arrested in February 1996 on suspicion of taking part in the 1993 massacres of mainly Tutsi civilians which followed the assassination of Burundi's first democratically elected president, Melchior Ndadaye, a Hutu, and an attempted coup d'état. Six years later she is still awaiting trial in Ngozi prison. Marie Ndurututse is from Kirundo province and became pregnant following her transfer to Ngozi specialized prison in a neighbouring province. She has received no visits "for years" and thinks that her family may have fled to Tanzania. In the absence of a family outside to take care of her, Rosmine Nzomukunda, will reportedly soon start primary school in Ngozi, returning at night to the prison, and will probably soon be given to an association who will bring her up.

The conditions in which women and their children are detained, in prison at least, are generally better, less crowded and cleaner than those of their male co-detainees. They are however well below internationally recognized minimum standards of detention and create an environment damaging to a child's development. Social assistants are provided by the penitentiary department and work with mothers and their infants primarily with a view to ensuring better rehabilitation. Some social assistants follow cases which can result in investigations being completed without the long delays experienced most detainees.

There is one women's prison, in Ngozi, which now also houses child detainees in a separate block. There are also plans to transfer, to a separate wing, elderly male prisoners from Ngozi men's prison to alleviate overcrowding. In Gitega, although there is no separate prison for women detainees, their area is completely separate from the male detainees, and guarded by women guards. Their conditions are substantially better than those of male detainees who are for the most part held in conditions amounting to cruel, inhuman and degrading treatment. Likewise in Rumonge, the women's area is separate, with a relatively large plot for growing vegetables. Conditions in other prisons such as Bururi are more difficult. Women are detained in their own, damp, communal cell but there is no real separation from male detainees.

Even in cases where children are not detained with their mothers, they are also suffering because of the unlawful detention of their mothers. In some cases they may be deprived of their sole parent and forced to fend for themselves. In March 2002, **Sabine Ndayishimiye** had been detained for over three years without trial on charges of collaboration with an armed political group. Although her case had been forwarded to Bururi High Court in January 2000 the trial was yet to start. She is one of several women who have been detained for years in Rumonge and Bururi prisons on charges of collaboration with armed political groups because they are suspected of providing food to their husbands or sons who are alleged to have joined such groups. Sabine Ndayishimiye has three children, aged now 15, 12 and nine, outside the prison, living effectively as orphans. According to her, no one is looking after her children or their land.

VII CONCLUSION

In practice, the process of criminal justice in Burundi from arrest to trial, and onwards to rehabilitation is hostile to children in conflict with the law. As a result of poor practice, children are being arbitrarily detained, tortured and ill-treated, and detained unnecessarily, sometimes for years, in harsh prison conditions. Although civil society and the international community have a vital role to play, it is the government authorities who have primary responsibility to keep the justice system functioning and effective, and to protect children's special needs.

If violations of children's rights including at the hands of the law are to end, it is essential that the Transitional Government implement and promote international standards relevant to juvenile justice such as the Children's Convention which Burundi has ratified. Ratification of the statutes of the International Criminal Court and other relevant international and regional treaties such as the African Charter on the Rights and Welfare of the Child would further demonstrate the Transitional Government's intention to protect children and safeguard the future.

Amnesty International is appealing to the Transitional Government to make maximum use of the opportunities for institutional reform provided by the current transitional period, to strengthen and render more impartial and effective its domestic legal system, and in particular to look in depth at the question of juvenile justice, and to come up with practical, forward thinking solutions which are both in the interests of the child and of society as a whole.

VIII RECOMMENDATIONS

Amnesty International is urging the Transitional Government of Burundi and armed political groups in Burundi to implement the following measures to protect children. It is calling on the

international community as a whole to support these efforts including through assistance with human and material resources.

i) Recommendations to the Transitional Government of Burundi

- ensure that all persons involved in the administration of juvenile justice receive training on international human rights standards including the Convention on the Rights of the Child (Children's Convention), children's rights and the principles of child development;
- actively promote within these services understanding of and respect for the core concepts of protection, non-discrimination, child participation and the child's "best interests" which underlie international protection for children's rights;
- ensure that non-governmental organizations (NGOs) and other civil society organizations with direct experience of children's issues and human rights are involved in the development of policies, legislation and other measures to protect the rights of children;

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- to undertake the necessary reforms and investment to *improve the competence, independence and impartiality of the judiciary.*

Protect children from torture

- end the practice of incommunicado detention of children;
- inform children of their rights and allow children regular access to their families at all stages of their detention;
- *issue clear and public instructions to all security force and law enforcement officers that torture or ill-treatment of detainees is not permitted in any circumstances;*
- *immediately suspend from duty officers against whom there are accusations of torture or ill-treatment, pending investigation and trial;*
- investigate all reports of torture or ill-treatment by these forces and, in cases where the allegations are well-founded, bring the suspected perpetrators promptly to justice, in accordance with international standards for fair trials and without recourse to the death penalty.

Reduce child detention

With a view to ensuring that children are detained only as a last resort and for the shortest possible time:

- prioritise monitoring of juvenile arrests to ensure that children are remanded in custody for questioning in a minimum of cases, and to ensure that when children are remanded in custody, arrest and detention procedures are followed and that they are given immediate access to relatives, legal counsel and medical assistance;
- ensure that a written register is held at all detention centres containing at a minimum personal details of detainees, date of arrest and of transfer to and from other places of detention, and the charges against them. Such a register should be

available for inspection by family members, lawyers and human rights and humanitarian organizations. Failure to keep such records or to make them available for inspection should be treated as disciplinary offences;

- prioritise examination of the case files of children, particularly those detained for excessively long periods without charge or trial, and provisionally release those against whom there is little substantiating evidence, or who are detained for minor offences;
- courts must interpret the law in line with Burundi's international obligations and ensure that sentencing is proportionate to the crime and takes into consideration the age and best interests of the child;
- develop non-custodial measures aimed at rehabilitating juvenile offenders;
- *reduce the numbers of mothers detained with babies and young children, including by ensuring that mothers who have been arbitrarily arrested and held without trial are either released or charged with a recognisably criminal offence and brought swiftly to trial;*
- review the cases of children detained with their mothers on a case by case basis to ensure that any actions taken are consistent with the best interests of the child.

Improve prison conditions

- ensure that child detainees are not detained with adults;
- develop and implement a process for constructing specialised detention facilities for children;
- increase medical care in places of detention and improve the diet of child detainees as well as their access to education, rehabilitation and skills development activities and sport.

Fair trials for children

- ensure that children who are detained are made aware of their rights, including the right to legal assistance and their right to lodge a complaint if their rights are violated and to have their complaints investigated;

- ensure that all judges insist on legal representation for all children; provide further opportunities for convictions and sentences to be reviewed especially where children have been tried for serious offences without the assistance of a lawyer;
- enact legislation which will ensure that all defendants, including children, have the option of having their conviction and sentence reviewed by an impartial higher tribunal.
- enact appropriate legal reform to ensure that civilians, including children, should not in any circumstances be tried by military courts.

General recommendations on the protection of children

- the National Human Rights Commission and the Human Rights Committee of the National Assembly should increase their role in investigating and reporting publicly on violations of children's rights. In particular, Amnesty International encourages both bodies to undertake unannounced visits to places of detention with the aim of making recommendations on measures to prevent torture and other cruel, inhuman or degrading treatment or punishment.
- prohibit the compulsory or voluntary recruitment of anyone under the age of 18 into government security forces, ban children under the age of 18 from participating in armed hostilities and introduce legislation to make recruitment of underage children a criminal offence;
- undertake demobilization programmes, and assist NGOs working in this field, for children under the age of 18 who have been soldiers or combatants, with the aim of achieving family reunification and full social rehabilitation, including into the formal education system.
- protect the rights of refugee and internally displaced children, including against recruitment and sexual exploitation. Facilitate the return or resettlement of displaced people in safety and dignity.
- ensure that all those suspected to be responsible for human rights violations against children, including those who deny juvenile detainees their rights, are promptly brought to justice, in accordance with international standards of fair trial and without recourse to the death penalty;

- provide adequate compensation and redress to child victims of human rights violations, aimed at their rehabilitation and reintegration into society.

ii) Recommendations to armed political groups

Leaders of all armed political groups should:

- take immediate steps to end human rights abuses by their members, in particular killings of unarmed civilians including children. As a measure of this commitment, military leaders should provide information on measures taken against members of their forces who fail to adhere to these principles;
- cease the destruction of or other attacks on schools;
- stop recruiting anyone under the age of 18, and ensure that anyone under the age of 18 is not involved in the transportation of equipment;
- take immediate action to prevent rape, including the forcing of women and young girls to accompany combatants as “wives”;
- ensure that employees of humanitarian and human rights organizations are not threatened, arrested or killed, and can freely carry out their work;
- respect fully the humanitarian and civilian character of refugee camps and refrain from activities which threaten the protection of hundreds of thousands of refugees in Tanzania.

iii) Recommendations to the International Community

Governments should undertake every possible effort and use whatever influence they have in Burundi and the region to bring an end to the widespread human rights abuses against children in Burundi.

Amnesty International is calling for governments to:

- use their political influence, as well as human and material resources, to support programs to promote and protect human rights in Burundi as the ability of the Transitional Government and intergovernmental agencies to implement these recommendations will be seriously diminished without the support of key donor governments;

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- to assist the Transitional Government to implement and resource these and other measures which would provide better protection for children in detention, and children generally;
 - *maintain pressure on the Transitional Government to investigate human rights violations against children and to bring to justice those suspected to be responsible. To this end, it should request the Transitional Government to provide regular and up-to-date information on action taken to prevent human rights violations against children, including extrajudicial executions and other unlawful killings, and details of investigations and judicial proceedings against those responsible;*
 - *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. In this regard, to look specifically at the area of juvenile justice with the Transitional Government;*
 - provide expertise and resources to assist the Transitional Government in reforming and training the police force and armed forces of Burundi in human rights protection;
 - support and promote national and international NGOs who work for the protection of the civil, political, economic, social, and cultural rights of children, and to support work on children, including refugee, 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 healthcare needs of children;

- assist in addressing human rights abuses committed by child soldiers, and their rehabilitation in society. In cases where it is in the interests of justice to prosecute child soldiers, the international community should assist the Burundian government in bringing children to justice in accordance with international standards for the treatment of children, while recognizing their special needs;
- 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 its findings are published. The findings published should include information on the way in which competent bodies carry out investigations into allegations of human rights abuses, and the remedies applied.

Additionally, governments should:

- 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. Anyone who violates the principles set out in these treaties should be held accountable;
- provide assistance and advice on demobilisation and rehabilitation programmes for child soldiers, including by supporting NGOs working in this field;
- abide scrupulously by the principle of *non-refoulement* as set out in 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;
- ensure, through the United Nations and other relevant organizations and donor countries, that sufficient financial and logistical support is available to ensure that

Tanzania and other states are able to meet the basic needs and protection requirements for the refugee communities they host. International organizations responsible for providing refugee protection and assistance should be able to operate without political interference and with secure funding.