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BURUNDI

Memorandum to the African Commission on Human and Peoples' Rights



20 April 1999
AI Index: AFR 16/07/99

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On the occasion of the 25th ordinary session of the African Commission on Human and Peoples' Rights (the African Commission), to be held from 26 April to 5 May 1999 in Burundi, Amnesty International wishes to bring to the African Commission's attention some of its current human rights concerns in Burundi. The organization appeals to the African Commission to consider ways in which it could act to stop ongoing violations, including killings and torture.

Extrajudicial executions

Throughout 1998 and into 1999, the armed forces of Burundi have continued to be responsible for hundreds of extrajudicial executions, mainly in the provinces of Makamba, Bururi and Rural Bujumbura where there is continued insurgency. Many of the killings are indiscriminate reprisals against the unarmed civilian population following activity by armed opposition groups. The Government has failed to adequately investigate these killings, or bring those responsible to justice and measures taken to protect the population have failed to prevent hundreds of unarmed civilians being killed by its own forces.

As an example, Amnesty International would like to bring to the African Commission's attention the extrajudicial execution of at least 55 civilians on 4 January 1999 on Kimina colline, Mubone commune, Bujumbura rural, apparently in reprisal for an attack by the *Forces nationales pour la libération* (FNL), National Liberation Forces, the armed wing of the *Parti pour la libération du peuple hutu* (PALIPEHUTU), on Ruziba military post a week earlier. The area had in theory been cleared of civilians for a military operation. During the operation, soldiers grouped the civilian population which they found in the area together, separating the men from the women and children. The men were then killed and their bodies burnt. Some testimonies claim that the men were burnt alive in a house. At least two women, **Marguerite** and **Dominique**, and two young girls, **Chantal** aged 8 and a young girl identified as Domitien's daughter aged 9, were reportedly among those killed. A number of other civilians were reportedly killed by soldiers as they fled.

Deliberate and arbitrary killings by armed opposition groups

The FNL and the *Forces pour la Défense de la Démocratie* (FDD), Forces for the Defence of Democracy, the armed wing of the *Conseil National pour la Défense de la Démocratie*, (CNDD), National Council for the Defence of Democracy, are also responsible for serious human rights abuses, including deliberately and arbitrarily killing scores of unarmed civilians. The FNL have also been responsible for the summary

execution of members of the armed forces who are *hors de combat*, in contravention of international humanitarian law.

Twenty-three civilians, including a number of children, were reportedly deliberately and arbitrarily killed on 23 November 1998, in Gihungwe displaced camp, Bubanza Province.

The killings are reported to have been carried out by members of the FNL.

On 14 December, approximately 30 civilians are reported to have been killed by the FDD during an attack on Muyange regroupment camp, Burambi, Bururi province. Amnesty International has received information indicating that the killings were a punishment for the defection of a number of FDD members. The FDD are also reported to have attacked Buruhukiro camp, Rumonge commune, on 7 December, deliberately and arbitrarily killing 25 civilians.

Torture and ill-treatment

The torture and ill-treatment of detainees continues to be widespread, primarily in police or military custody. People who have been accused of collaboration with armed opposition groups are particularly at risk of torture or of “disappearance”. Torture methods most frequently reported include severe and sustained beatings using electric cables, sticks, and other heavy implements, beatings on the joints, the soles of the feet and the genitals, kneeling on bottle tops, stabbing, electric shocks, tying in excruciating positions, humiliation, intimidation and threats including death threats or other psychological abuse. Other techniques documented by Amnesty International include burning by boiling water, breaking of bones and simulated executions.

Jean de Dieu Ezechiel Bukuru, aged 15, and **Abdul Nduwimana**, aged 17, were both tortured during interrogation in police custody at the Brigade de Kayanza shortly after their arrest in late November. They are part of a group of 22 people, the majority of whom are former soldiers, accused of threatening state security and of belonging to an armed opposition group. Jean de Dieu Bukuru reportedly made an incriminating statement under torture, which he subsequently retracted. Statements extracted under torture are routinely submitted, and accepted, as evidence in court. The case was submitted for trial at Bujumbura Court of Appeal on 15 April.

Prison Conditions

Over 9,400 people are in detention in Burundi, and most prisons are severely overcrowded, housing several times their capacity. Conditions in Ngozi prison, northern Burundi, amount to cruel, inhuman or degrading treatment. Over 200 people died in detention in Ngozi prison between January and April 1998, averaging around 50 detainees per month. The prison, which has a capacity of 400, holds over 2,400. In 1997 over 400 inmates died in detention in the same prison. Gitega prison which has a capacity of 400, holds over 1,700.

The majority of deaths are as a result of the combined effects of malnutrition, poor conditions, and the spread of infectious diseases such as tuberculosis, malaria, dysentery and typhoid.

Prisoners under sentence of death are held in particularly harsh conditions in Mpimba Central Prison, where they are kept apart from other detainees in three special cells. The cells are also used as punishment cells for other prison inmates.

Only one prison, Ngozi prison, has a separate prison for women. Children are held with adult prisoners and are particularly vulnerable to abuses in detention.

Unfair trials and the death penalty

Over 260 people are currently under sentence of death in Burundi. The majority were found guilty, after grossly unfair trials, of participation in the massacre of Tutsi civilians which followed the assassination of President Melchior Ndadaye in October 1993. Many were sentenced to death in the absence of a lawyer, some in the absence of defence witnesses. Six people were executed in July 1997 after grossly unfair trials.¹

One of the fundamental guarantees for a fair trial is the right to appeal against the conviction and sentence to a higher court. The requirement of international law is that national laws must guarantee a procedure in which both the factual and legal aspects of a case may be reviewed by a higher court. Under Burundian law, offences incurring a penalty of over 20 years, including the death penalty, are tried by the criminal chambers of the Appeal Courts and the right to appeal is limited to the cassation procedure, and thus only on questions of law. In contrast, lesser offences are tried by the High Courts which guarantees a full appeal hearing at the Appeal Court, then a review of the case through the cassation procedure at the Supreme Court.

At least 73 people under sentence of death have now exhausted the limited appeals procedure which is available to them in Burundi. Some, including, **Bernard Rwajekere**, did not appeal against their sentence as they could not afford the piece of paper on which to write the submission. Their only recourse is presidential clemency.

The displaced population

There are over 300,000 thousand Burundian refugees, at least 260,000 of whom are in Tanzania. In addition, at least 500,000 people are reported to be internally displaced in Burundi.

¹Amnesty International documented its concerns about fair trials last year in a report entitled *Burundi: Justice on trial* (AI Index: 16/13/98, 30 July 1998). For example, in court, defendants have been denied access to lawyers, and lawyers have been given insufficient time or access to documents to prepare the defence. Defence witnesses have been intimidated and even arrested. In many cases trials have proceeded without defence witnesses being heard. Trials are often summary; some lasting only 15 minutes.

Many people who fled their homes following the massacres of Tutsi civilians after the assassination of President Ndadaye in October 1993 have yet to return home and are in camps near military posts for protection. Despite their proximity to military posts, camps have been attacked by armed opposition groups who have deliberately and arbitrarily killed inhabitants.

From early 1996, as part of its counter-insurgency strategy, the government forcibly relocated the rural population in areas of conflict. The policy affected virtually exclusively Hutu civilians. Although the Government claimed that the measure was to protect the population, it was clear that it was a move designed to clear areas for combat and to remove potential sources for support - coerced or freely given - to the armed opposition. Anyone caught in the area was therefore considered to be a military target. This assumption has led to repeated cases of extrajudicial execution of civilians.

Conditions in camps are appalling and life threatening; and movement severely restricted.

Failure to provide adequate or even minimum food in camps has meant that people may return to their homes to seek food. Many are farmers and may take the risk of returning to harvest or tend their crops, or to protect their crops or property from theft. In some cases it appears people simply choose not to move, perhaps tired of repeated evacuations, or underestimating the threat posed by the order to evacuate. Some may be ill and not wish to relocate to overcrowded and unsanitary camps.

While some camps have now been closed, and in some cases, people allowed to return to their homes, scores of camps remain.

Recommendations to the African Commission

At the recent Ministerial Conference of the Organization of African Unity (OAU) held in Mauritius from 12 to 16 April 1999, governments adopted the Grand Bay Declaration and Plan of Action, which recognizes the need for human rights considerations to be integrated into all activities and programmes of the OAU (paragraph 22). In this regard, Amnesty International encourages the African Commission to ensure that its reports to the OAU include concrete recommendations with regard to the situation of human rights in Burundi and in particular, that these recommendations be integrated into the work of the Mechanism for Conflict Prevention, Management and Resolution.

One possibility for establishing co-operation between the African Commission and the OAU Secretariat, as envisaged in the African Commission's Mauritius Plan of Action (section IV(b)), would be a joint mission to Burundi by the OAU and the African Commission's special rapporteurs on extrajudicial, summary or arbitrary executions and on prison conditions. With regard to prison conditions, Amnesty International believes that the issue of children held in detention would be of particular importance.

The Grand Bay Declaration and Plan of Action also contains some important commitments, including in relation to implementation of regional and international human rights instruments (paragraph 14). The Grand Bay Declaration and Plan of Action “...recognizes that the reporting obligation of states parties under the African Charter on Human and Peoples' Rights provides an important mechanism and an opportunity for African governments to engage in a process of continuous dialogue with the African Commission. Accordingly the Conference recommends that states parties take appropriate measures to meet their reporting obligations under the Charter” (paragraph 16).

In this regard, Amnesty International notes that the Government of Burundi has failed to submit periodic reports on implementation of the African Charter on Human and Peoples' Rights due in 1991, 1993, 1995 and 1997. Amnesty International calls on the African Commission to request the Government of Burundi to submit its overdue reports as a matter of urgency so that its initial report may be considered at the 26th session of the African Commission to be held later this year. In particular, the African Commission should ask the Government of Burundi to include a full report on measures taken to stop killings and torture.

Amnesty International welcomes the commitment made recently by the Government of Burundi to the UN Secretary General's Special Representative for Children and Armed Conflict to raise the age of recruitment into armed forces from 16 to 18 years, and to include children's rights issues in the Arusha Peace Process. However, serious violations of children's rights continue, as noted in this Memorandum. In accordance with the Grand Bay Declaration and Plan of Action (paragraph 8), Amnesty International calls on the Government of Burundi to ratify and implement the African Charter on the Rights and Welfare of the Child. The organization urges the African Commission to promote this important regional treaty in Burundi and to encourage the government to ratify it by 16 June 1999, the Day of the African Child.