Impunity for human rights abuses is one of the most serious threats to the full enjoyment of the rights and freedoms of the individual. The measures of provisional immunity taken by the different governments of Burundi over the last five years have failed to address the need to end the climate of impunity that has prevailed for decades and may have a detrimental impact on the reconciliation process in Burundi. Impunity denies victims and their families the right to have those responsible for the crimes brought to justice in a court, to know the truth and to obtain full reparation.

The "Law of 21 November 2003 relating to the judicial proceedings for provisional immunity of political leaders returning from exile" provided provisional immunity to political leaders allegedly involved in crimes with a "political" element, on the understanding that in the future the truth would be established and the perpetrators would be held to account for their crimes. Amnesty International is concerned at the absence of any progress by the government of Burundi in ending impunity for past crimes under international law and other human rights abuses with regard to any of the three components of the fight against impunity: justice, truth and full reparations.

In particular, the organization is concerned that the granting of provisional immunity has not been accompanied by the necessary steps required to address the issue of impunity.

Most recently, on 3 January 2006, President Pierre Nkurunziza decreed that "political prisoners" would be granted provisional immunity. His statement followed the recommendations made by a special commission, established in November 2005, in charge of identifying "political prisoners". Six days after the Presidential decree, on 9 January 2006, the Minister of Justice officially ordered the release of 673 "political prisoners" detained in Burundi's prisons.

The scope of these steps granting provisional immunity is unclear. For example, according to the law of November 2003, provisional immunity is defined as "the suspension of any legal proceedings for those who have committed political offences". Consequently, this raises the question of whether or not the terms for provisional immunity could then be applied to those who had already been previously convicted and sentenced for offences that would later qualify as political.

Although the Minister of Justice declared on 10 January 2006 that released "political prisoners" would have to appear before a truth and reconciliation commission, it has yet to be established and Amnesty International is not aware of any serious steps that have been taken to do so in the foreseeable future. Such a commission -- if established in accordance with international standards as an independent and impartial body representing all components of civil society and with an effective mandate, powers and resources -- could make a contribution to one aspect of the fight against impunity.

The UN Security Council adopted Resolution 1606 on 20 June 2005, which endorsed the establishment of
a special chamber within the court system of Burundi. So far, the negotiations between the UN and the government have not yet begun. Little progress has been made to set up this special chamber, to draft the necessary amendments to the criminal procedure code or to provide the necessary training for its staff. In addition, no serious step appears to have been taken to enact the necessary legislation defining the crimes, principles of criminal responsibility or defences in a manner consistent with the strictest standards under international law, including the Geneva Conventions and their Protocols, the Rome Statute of the International Criminal Court and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Amnesty International reaffirms its call to bring to justice all perpetrators of serious human rights abuses in a fair trial that strictly complies with international standards and without recourse to the death penalty.

Amnesty International urges the authorities to promptly establish an independent and impartial truth and reconciliation commission. There should be thorough and public investigations into allegations of human rights violations. A full account of the truth should be provided to the victims, their relatives and society. The non-judicial process, however, should not substitute criminal investigations and prosecutions by an independent court and should not obstruct or limit criminal investigations or civil proceedings.

Finally, Burundi legislation does not guarantee the right of victims of crimes under international law and other human rights abuses or their families to full reparation, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition. Similarly, it does not provide for effective judicial remedies to award such reparations. Amnesty International also calls for effective guarantees and judicial procedures to be established to ensure full reparation for all victims of crimes under international law and other human rights abuses in Burundi.

Background
Since the early 1960s, the Burundian authorities have not taken concrete and targeted measures to combat impunity. The willingness of past governments to carry out independent and impartial investigations into gross human rights violations, bring to justice the alleged perpetrators and provide victims of violations with redress has been meagre.

Each of the ethnic groups has accused the other of being responsible for gross human rights violations. Hutus often make reference to the mass killings of their community during 1972 by the government army. Tutsis, on the other hand, highlight the massacres of 1993.

None of the recent steps to provide provisional immunity to persons involved in "political crimes" have brought justice, truth or full reparations.

First, the Arusha agreement for the peace and reconciliation in Burundi (August 2000), signed by most of the parties to the conflict except the CNDD-FDD (Conseil National pour la Démocratie -- Forces de Défense de la Démocratie) and the FNL (Forces Nationales de Libération), provided for the granting of provisional immunity for "political crimes" committed prior to the agreement.

Second, by the end of November 2003, the Burundian national assembly enacted the "Law of 21 November 2003 relating to the judicial proceedings for provisional immunity of political leaders returning from exile". According to this law, provisional immunity would be given to political leaders who had committed political offences from 1 July 1962 onwards. Crimes of genocide, crimes against humanity and war crimes were excluded from this provisional immunity, in accordance with international law prohibiting amnesties and similar measures of impunity for such crimes; however other crimes under international law, such as torture or ill-treatment, were covered by the provisional immunity. (This exclusion, however, did not guarantee that persons suspected of such crimes would be investigated and, if there was sufficient admissible evidence, prosecuted either for such crimes or for ordinary serious crimes, such as murder, assault, rape and kidnapping.)
Third, in March 2004, the CNDD-FDD and the transitional government signed the Pretoria Protocol on Pending issues for power-sharing in Burundi (Sur les questions restées en suspens en vue du partage des pouvoirs politiques, de défense et de sécurité au Burundi) to extend provisional immunity to CNDD-FDD leaders and fighters, as well as government security forces.

All past events should be investigated and prosecuted if the reconciliation process is to be successful and justice is to be done. Such measures have been disregarded by past governments out of the need to create a "healing silence".