

# AMNESTY INTERNATIONAL

## Public Statement

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## **Burundi: Towards what reconciliation?**

Amnesty International today welcomes the start of negotiations between the Burundian government and the United Nations in Bujumbura on the modalities of setting up two accountability mechanisms to investigate crimes committed in Burundi and bring to justice those responsible. These mechanisms include a truth and reconciliation commission (TRC) and a special tribunal or chamber, to determine responsibility for crimes under international law and to prosecute the perpetrators. The two mechanisms would be composed of national and international members.

“By seeking to establish the truth, and providing justice and reparations to victims of human rights violations, the Burundian authorities can finally start to tackle impunity effectively, engage in a successful reconciliation process and build the foundations for lasting peace,” Amnesty International said today.

The report of the May 2004 UN assessment mission, which proposed these mechanisms and the memorandum of the Burundian delegation in charge of negotiating the setting up of these mechanisms with the United Nations are an important first step in combating impunity in Burundi. However, Amnesty International suggests a number of recommendations to increase the effectiveness of this effort.

In particular, Amnesty International is concerned at some proposals contained in the government’s memorandum which could, if accepted, contradict the recent pledges of the current Burundian government to achieve reconciliation.

Firstly, Amnesty International recommends that the terms of the TRC and the Special Tribunal include provisions to guarantee the effective independence, impartiality and competence of its members. In this regard, Amnesty International is concerned that, according to the government memorandum, members of both mechanisms would be nominated by the President of Burundi. Apart from referring to the consultation with the UN Secretary General, the memorandum is silent on the issue of the procedure of selection of the members. The memorandum furthermore suggests that the Burundian government could remove international members on the grounds of ‘objective neutrality’ at any point throughout the proceedings of the TRC. Such a proposal, if accepted, may directly or indirectly compromise the independence and impartiality of the TRC.

Amnesty International urges the government and the United Nations to establish a public and consultative procedure for the selection of nominees to both the TRC and the Special Tribunal, guaranteeing the full and active participation of victims and civil society.

The TRC and the Special Tribunal should include members with proven expertise in and commitment to the promotion and protection of human rights and include members experienced in dealings with serious crimes. The TRC, in particular, should include representatives of non-governmental organisations involved in the protection of human rights, including victims’ groups and women’s groups. The organisation also

urges the government and the United Nations to ensure that members of both mechanisms are independent from the executive power.

Secondly, Amnesty International is concerned about the limitation to the temporal jurisdictions of the TRC and the Special Tribunal as neither the Burundian government nor the United Nations have proposed to include crimes committed before the date of independence. Violations committed during the period in which Belgium administered the United Nations Trusteeship must be addressed if comprehensive reconciliation of the Burundian population is to be achieved. Barring the investigation and prosecution of crimes committed before Burundi's independence would be contrary to the prohibition of statutes of limitation for crimes under international law.

Amnesty International urges the government and the United Nations to ensure that there is no limitation to the temporal jurisdictions of these mechanisms.

Thirdly, the organization is concerned about the role the government envisaged for the TRC in determining which cases could benefit from the application of an amnesty law.

Amnesties for crimes under international law that prevent the judicial determinations of guilt or innocence and do not provide for full reparations for victims are prohibited by international law. Amnesty International urges the government and the UN to exclude any amnesties, pardons or similar measures of impunity that prevent the emergence of truth about gross human rights violations, a final determination of guilt or innocence and full reparations for the victims and their families.

Fourthly, Amnesty International is concerned that the "procedure of reconciliation" before the TRC, as proposed by the government, could result in barring or limiting investigation and criminal prosecution of those suspected of having committed crimes under international law. According to article 43 of the government's memorandum, the TCR will only refer cases which do not successfully go through the procedure of reconciliation to the special tribunal.

Amnesty International strongly supports the establishment of a mechanism to clarify the truth objectively, impartially and with credibility. A truth and reconciliation commission could make an important contribution to reconciliation by helping Burundians to understand their history and the reasons underpinning acts of past violence. The Truth and Reconciliation Commission process should not exclude victims of human rights violations from seeking redress through the civil and criminal courts.

The organization stresses the importance of full and effective consultation with NGOs and civil society on the establishment of these mechanisms. In this regard, Amnesty International welcomes the intention, expressed by the UN Secretary-General, "to initiate an all-inclusive process of negotiation with the Government of Burundi in consultation with a range of national actors and civil society, to ensure that, in the establishment of judicial and non-judicial accountability mechanisms for Burundi, the views and wishes of the people of Burundi are taken into account."

Amnesty International believes that the proposed TRC and special tribunal should constitute part of a comprehensive, long-term strategy to reform the justice system and re-establish the rule of law in Burundi. Amnesty International believes that the UN, and other actors of the international community, should assist the government of Burundi to develop and implement a comprehensive long-term national action plan to reform the justice system, in line with the principles and recommendations contained in the UN Secretary-General report on the rule of law of August 2004. Given the number of crimes and persons suspected of such crimes, the proposal for a special tribunal, although a useful first step, is wholly inadequate. A long-term plan must provide sufficient resources to rebuild the entire judicial system so that courts throughout the country will be able to investigate all the crimes and, whenever there is sufficient admissible evidence, to prosecute the suspected perpetrators.

In addition Burundi must conduct a comprehensive reform of its penal code and code of criminal procedure, including implementation of the Rome Statute of the International Criminal Court, and enact legislation guaranteeing victims the right to reparation for crimes under international law.

## **Background**

In July 2002, the former president of Burundi, Pierre Buyoya, addressed a letter to the Secretary-General which supported the recommendations of the Arusha Peace and Reconciliation Agreement (August 2000) and requested the establishment of an international judicial commission of inquiry in Burundi. During May 2004, a United Nations Assessment Mission visited Burundi and officially published the findings in March 2005. The report recommended the setting up of a national and truth commission with a mixed composition of both national and international components and a special chamber within the court system of Burundi. This special chamber, also selected of international and national elements, was to form part of the Burundian legal system. The UN Security Council adopted Resolution 1606 on 20 June 2005, which endorsed the recommendations contained in the UN assessment mission report. However, progress on the establishment of these mechanisms has been very slow.

In February 2006, the new government of Burundi produced a memorandum in order to negotiate the proposals of the UN mission with the United Nations.