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Burundi

Rape-the hidden human rights abuse

I INTRODUCTION

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	<i>“Is rape increasing? I was raped in 1993, and again in 1995. I haven’t been raped this year. How do I know if it is increasing”</i> (rape victim speaking to Amnesty International representatives in Ngozi, September 2003)	

Like all human rights abuses in Burundi, rape has become an entrenched feature of the crisis because the perpetrators – whether government soldiers, members of armed political groups, or private individuals - have largely not been brought to justice. Not one of the women whose cases are detailed in this report has been able to successfully pursue a criminal prosecution for rape. Rape has, however, also been exacerbated by widespread discrimination against women and its consequences have been aggravated by poverty, internal displacement and a failing health system.

In 2003, national and international non-governmental human rights¹ and humanitarian organizations, international agencies, and government authorities reported an alarming

¹ Burundian human rights or non-governmental organizations working for the victims of rape and sexual abuse include the *Association pour la protection des personnes détenues et des droits humains* (APRODH), Association for the Protection of Detainees and Human Rights, the *Ligue ITEKA*, *Nturengaho*, *HALT*, *LIBEJEUNE*, and the *Association burundaise pour la Défense des Droits des Prisonniers* (ABDP), Burundian Association for the Defence of Prisoners’ Rights.

increase in the number of cases of rape in the context of Burundi's armed conflict. A concomitant increase in HIV/AIDS and other sexually transmitted diseases has affected victims of such violations.² Accurate statistical comparisons are in fact impossible as it is only recently that information on rape began to be recorded, despite its endemic nature. Even now, when the scale of the violence has forced the issue into the open, many cases go unreported due to the stigma and fear attached to reporting rape officially, lack of access to medical care and the lack of systematic recording of cases. Testimonial evidence supports the view that sexual violence has in fact been a significantly underreported element of Burundi's 10-year human rights crisis.

The perpetrators are largely members of the Burundian armed forces and armed political groups, as well as armed criminal gangs who not only rob but also rape. Fear of being raped at home at night is causing whole families to sleep outside and away from their homes and even rendering them still more vulnerable to malaria and other diseases. Even from the limited evidence available, the scale of rape indicates a deliberate strategy in some parts of the country by belligerents to use rape and other forms of sexual violence against women as a weapon of war to instil terror among the civilian population and to degrade and humiliate it.

Rape more generally appears to be on the increase in Burundi and rape of young girls, sometimes in the mistaken belief that it will provide protection from or cure of HIV/AIDS, is also common. A number of cases of male rape – previously limited to prisons – have also been reported. Rape is not confined to the areas most affected by the conflict.

This report focuses on rape in the context of armed conflict and does not address rape or gender based violence within the home or family. It is based in part on research conducted by Amnesty International delegates during a visit to Burundi in September 2003.³ Despite recent political progress towards political settlement of the armed conflict and in particular the entry of the main active armed political group into the government, rape and sexual violence is continuing, and urgent action is required. The proliferation of small arms has increased the risk of violence, including violence against women, within communities which is likely to continue after any future end of armed conflict.

² Not all HIV and other sexually transmitted diseases are contracted through rape. However, for many of the women infected, medical tests after rape or other sexual violence, may be the first time they learn of their HIV status.

³ Please refer to *Burundi: A Critical time. Human rights briefing on Burundi* (AFR 16/002/2004) published by Amnesty International in January 2004 for further information on the current human rights situation in Burundi. All recent Amnesty International reports on Burundi and the Great Lakes Region of Africa can be found on www.amnesty.org or can be requested from cateam@amnesty.org

II CONTEXT

Discrimination against women

*“The traditional society is a patriarchal and patrilinear one, in which the woman is constantly under the protection of a father, brother, uncle, husband or family council. Women have more duties than rights and must subordinate themselves to the customs and practices governing the relations between men”.*⁴

In its initial report to the Committee on the Elimination of Discrimination against Women (CEDAW), in July 2000, the Government of Burundi acknowledged very real discrimination against women in Burundi. However, the report also noted a number of significant legal changes, including the reform of the Code of the Person and Family (CPF) and Labour Code, which had been adopted in an attempt to redress the situation of women including by guaranteeing joint management of property to the wife if the husband is absent although “matrimonial arrangements, succession, and legacies and gifts are still governed by customary law”. The report stressed further acknowledged that implementation of the new law was problematic and that many matters were still governed by custom, as well as the government’s determination to ensure the notion of equality became a reality.

Discrimination against women in Burundi remains widespread. The husband is the head of the household and women often have little influence in decisions affecting their lives. A large proportion of women in Burundi are believed to be the victims of violence within the home and family. Women customarily do not own property or the land they work, placing them in positions of dependency, nor do they customarily inherit their husband’s property or land making them dependent on his relatives. The level of education of women is generally much lower than that of men.

If a woman’s status is low, that of a widow or a rape victim is even worse. The negative attitude to rape victims is not exclusive to men. Several women told Amnesty International how they had been mocked, humiliated and rejected by women relatives, classmates, friends or neighbours and their confidences betrayed, adding to their trauma.

Discrimination against women in Burundi extends to sexual health and family planning choices. Women’s ability to choose and control these areas of their lives is additionally hampered by poverty, lack of access to healthcare as well as their subservient status. Factors including lack of information and education about contraception; lack of access to health care and contraception, and fundamentally lack of choice for women result in unwanted pregnancies. An unknown number of cases of rape inevitably end in pregnancy. Abortion remains illegal in Burundi and for many contravenes religious beliefs. Women and girls must therefore either carry an unwanted pregnancy to term or attempt to end the

⁴Initial report by Burundi to the Committee on the Elimination of Discrimination against Women, CEDAW/C/BDI/1, 3 July 2000.

pregnancy illegally, usually unsafely and possibly with fatal consequences.⁵ Other women or girls are driven to infanticide.

The use of sexual violence as a strategic and tactical weapon of war places women and girls at increased threat of contracting sexually transmitted infections and HIV/AIDS. This is heightened by systematic gender-based discrimination, which reduces their potential to protect themselves from such infections. The high rate of infection and death increases women's workload in maintaining their households and communities and providing care to orphaned children.⁶

Armed conflict and human rights abuses

In general terms discrimination against women may function as a violation *per se*; as a cause of violations in conflict; as a factor which compounds violations and as an obstacle to adequate remedies for abuses. In *Women and War: Special Brochure*, 1995, the International Committee of the Red Cross (ICRC) asked "Why are women more vulnerable than men?" The response it offered was that "*Even in peacetime, women are often handicapped in that education, health and nutrition are not readily accessible to them. Moreover, they are often victims of violence within their own families and communities or at the hands of the state. When war breaks out, tension mounts, living conditions deteriorate and women become particularly vulnerable, especially if they are pregnant or have small children*". Thus, there is a direct link between general discrimination against women and abuses against women in war time. The treatment of women in Burundi as second class citizens is closely related to the phenomenon of violence against women and inadequate state reaction to the violence.

Over ten years, an estimated 250,000 to 300,000 people, mostly civilians, are reported to have been killed in Burundi by government armed forces as well as armed political groups. Over 280,000 people are currently living in camps for the internally displaced, with up to 100,000 others fleeing their homes temporarily on a regular basis due to insecurity. An unknown number of others, possibly tens of thousands, are classified as "dispersed" and

⁵ Amnesty International takes no position on whether or not women have a right to terminate pregnancies. The official bodies that interpret human rights treaties are increasingly indicating support for the position that, where it is legal, abortion should be safe and accessible and further that it should be permitted in cases where pregnancy results from rape: CEDAW has asked state parties to review legislation making abortion illegal; in several concluding observations the UN Human Rights Committee has criticized legislation that criminalizes or severely restricts access to abortion, as well as issuing specific recommendations to several state parties advising that they review or amend legislation criminalizing abortion. The African Union (AU) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted in July 2003 but yet to come into force, is the first international treaty to guarantee the right to abortion in case, *inter alia*, of sexual assault and rape. In the light of these developments, Amnesty International is undergoing an internal consultation process with its membership to determine the circumstances under which, if ever, Amnesty International might support a women's right to terminate a pregnancy.

⁶ S/2002/1154

generally without specific humanitarian assistance. A further 500,000 Burundians are refugees in neighbouring Tanzania. Some 8,000 people are in detention, often in extremely harsh conditions. Approximately 5,000 are awaiting trial - many have been in detention without charge or trial for years. After 10 years of war, corruption is now endemic, state structures largely weak, inefficient and not trusted by the population. Crucial institutions such as the health and justice sector are chronically under-resourced. Women have suffered disproportionately during the conflict and have been targets of violence and degrading treatment as a result of their gender. Sexual violence is a significant and under reported element of the human rights tragedy. Widows or women living alone have been particularly vulnerable to raids and sexual violence during the protracted conflict. Internally displaced and refugee women are particularly vulnerable to rape and other forms of sexual violence. Numerous women have been raped as they search for water and firewood.

At the start of 2004, significant political progress towards resolution of the 10-year armed conflict appears to be continuing, bringing with it the hope that underlying human rights issues may finally be addressed.⁷ However, less positively, the year 2003 was marked by a dramatic increase in reported cases of rape, armed robbery and general insecurity, as well as ongoing mass human rights abuses. It is too soon to say whether recent political developments will indeed end conflict and other political violence as well as bringing greater respect for human rights. Other important political developments, including the signature of the August 2000 Peace Agreement, did not produce relief from the unrelenting cycles of violence, poverty and humiliation suffered by much of the Burundian population. Critical sustained international attention is required if opportunities presented by political progress are not to be wasted.

While not minimizing the significance of steps taken in 2003 and so far in 2004, important obstacles to resolution of the crisis and substantially improved respect for human rights clearly remain, and need to be explicitly acknowledged and seriously addressed. These include blatant and massive human rights abuses, including violence against women, by all parties to the conflict. Political leaders have given grand discourses on justice and tackling impunity yet secured temporary immunity for themselves or their supporters, and shown little real commitment to issues of justice and redress.

International legal framework

Abuses of the human rights of women in situations of armed conflict are contrary to the fundamental principles of international human rights and humanitarian law.

⁷ In October 2003, a power-sharing agreement was signed between the then main active armed political group, the *Conseil national pour la Défense de la Démocratie – Forces pour la Défense de la Démocratie*, National Council for the Defence of Democracy – Forces for the Defence of Democracy (CNDD-FDD), led by Pierre Nkurunziza (referred to hereafter as the CNDD-FDD (Nkurunziza)) and the Transitional Government of Burundi. The CNDD-FDD (Nkurunziza) entered into government in November 2003 and implementation of the agreement continues. At the start of 2004, negotiations between the government of Burundi and PALIPEHUTU-FNL (Rwasa), the one remaining active armed political group, appear to have begun raising hopes again that peace may be within reach.

Rape and other forms of sexual violence by combatants in the conduct of both international and non-international armed conflicts are now recognized as war crimes, most recently in the Rome Statute of the International Criminal Court (Rome Statute) which Burundi has yet to ratify. In addition it is now considered as a war crime when committed in an internal armed conflict under Common Article 3 of the Geneva Conventions. As recognized in the Rome Statute, when rape and other crimes of sexual violence are as part of a widespread or systematic attack directed against any civilian population, it is a crime against humanity. The Rome Statute includes in its definition of rape forcible penetration by other instruments.⁸ Under international law, any state may exercise universal jurisdiction over the rapes and other crimes of sexual violence committed in Burundi. Rape is also a crime under Burundian national legislation.

Burundi ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and has signed its Optional Protocol. The CEDAW committee, which monitors application of the Convention, issued in 1992 General Recommendation 19. Recommendation 19 sets out that gender-based violence is a form of discrimination which gravely affects women's enjoyment of their human rights on a basis of equality with men. The Committee includes as examples of violence, denial of reproductive health services, battering, rape and other forms of sexual assault, and in certain circumstances "the abrogation of...family responsibilities by men". States must not perpetrate violence against women through their agents. States must not fail to act with "due diligence to prevent violations or to punish acts of violence" committed against women by "any person, organization or enterprise". This extends to violence against women in the context of armed conflict. Furthermore, in reference to the impact of violence against women on the requirements of Article 6 of the Convention, the Committee states that "Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which requires specific protective and punitive measures". Article 12 of CEDAW calls on states to provide "equal access to health care services...including family planning". In General Recommendation 24, the Committee affirms that access to health care, including reproductive health is a basic right under the Convention. Furthermore, it requires states to eliminate discrimination against women in their access to healthcare services throughout the life cycle, particularly in the areas of family planning, pregnancy, confinement and during the post-natal period.

The African Union (AU) Protocol on the Rights of Women in Africa requires governments to eliminate violence against women as well as gender discrimination⁹. The Protocol is far reaching and innovative in its definitions and recommendations. Its provisions include equal access to justice and equal protection before the law; the right to adequate food and drinking water; the right to equal access to education and other economic, social and cultural rights. Article 14 concerns women's reproductive rights and health. It includes the right to contraception and the right to be protected from "sexually transmitted infections" including HIV/AIDS. For the first time in international law, the Protocol guarantees the right

⁸ Finalized Draft Elements of Crimes (UN Document PCNICC/2000/1/Add.2) 2 November 2000

⁹ The Protocol is yet to enter into force. Burundi signed the Protocol in December 2003.

to abortion in case, *inter alia*, of sexual assault, rape and when the pregnancy endangers the mental or physical health of the mother. The Protocol also guarantees the rights of widows, including the right to be free from inhuman, humiliating or degrading treatment, to automatically become the guardian of her children after the death of her husband, and to have an equitable share in the inheritance. States are directed to reduce their military expenditures “significantly” and to use the funds instead for social development, especially with regards to women.

Under the International Covenant on Civil and Political Rights (ICCPR)¹⁰ states are required to refrain from human rights violations against women and to protect women from abuses by other actors, whether in peace time or war. The Human Rights Committee has specifically mentioned the risk posed to women in times of conflict and informed states that they must report to the Committee all the measures taken to protect women from rape, abduction and other gender-based forms of violence¹¹. Children are additionally protected by provisions of the UN Convention on the Rights of the Child which obliges states to protect children from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse” as well as guaranteeing the right to enjoyment of the highest attainable standard of health, including rehabilitation. The International Covenant on Economic, Social and Cultural Rights (ICESCR) also guarantees enjoyment of its substantive rights without discrimination of any kind. Women are therefore granted the right to the highest possible standard of health and to education. The contemporary understanding of rape or other sexual abuse by or with the consent or acquiescence of the state or by organized armed groups is that such abuse constitutes a form of torture or ill-treatment.

Domestic legal framework

Article 385 of the Burundian Penal Code prohibits rape. Anyone found guilty of rape, either by violent means, threats, deception or by taking advantage of a person who is not in full possession of their faculties either through illness, or any other cause, is liable to a prison sentence of between five and 20 years. If death has resulted, the perpetrator is liable to life imprisonment or the death sentence. Any indecent act upon a minor aged under 18 is punishable from between five and 15 years, and on an adult from between six months and five years. If an indecent act upon a minor has been accompanied by violence, the penalty increases to a maximum of 20 years. The minimum penalties are doubled in specific circumstances including if the perpetrator is in a position of authority over the victim, if the crime is committed by more than one person, or if the crime causes serious medical problems.¹²

¹⁰ Burundi is party to the International Covenant on Civil and Political Rights, the UN Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights.

¹¹ General comment No. 28, para.5.

¹² Articles 382 - 387 of the Burundian penal code

III RAPE – THE HIDDEN HUMAN RIGHTS ABUSE

Impunity and rape

Amélie¹³, widow, aged 30: “I was going with three children to get water when a soldier stopped us on the road. The children managed to escape, but I fell and he caught me. He took me to a church, which they had turned into some kind of bar with food and alcohol everywhere. The soldier raped me in the church, and he told me I would be blessed because it was a holy place...Another one refused to rape me. The first soldier forced a bottle of beer inside of me. I started bleeding and shouting. The soldiers covered me with a military coat and left me outside the church to die.”

Most victims of rape in Burundi currently face insurmountable obstacles in trying to bring suspected perpetrators to justice. Many women who have been victims of rape or other forms of sexual abuse are too intimidated by certain cultural attitudes and state inaction to seek redress. To do so can often lead to hostility from the family, the community and the police, with little hope of success. Those who do seek justice are confronted by a system that ignores, denies and even condones violence against women and protects perpetrators, whether they are state officials or private individuals. In a situation of armed conflict, the likelihood of cases being brought, and successfully prosecuted, further diminishes. In addition to the general weaknesses of the judicial system, there is a lack of any systematic, coordinated approach to gathering, storing, receiving and using essential medical evidence.

In Ruyigi province, between May and August 2003, 60 cases of rape were treated at the hospital. The victims were aged between 9 and 77. Doctors fear that this is merely a fraction of the cases which occur. In September 2003, only one person, a government soldier, was in detention in Ruyigi prison on charges of rape. APRODH documented 38 cases of rape in Bubanza province in 2003, of which four were under the age of 10. Of the 38 cases, 15 were attributed to members of the armed forces none of whom were reportedly detained, although several of the victims had the courage to report the cases officially. Several legal complaints were made against private individuals. However, their progress is currently unclear.

In addition Amnesty International has been told that police and magistrates have ridiculed and humiliated women who have come forward, in one case a magistrate actually instructing a woman to deliver the summons to her alleged rapist. Although the woman complied with this instruction, the suspect did not present himself. Amnesty International is not aware of any further action being taken against the alleged perpetrator.

A few women, even a child, have had the courage to press charges. They are rarely successful – particularly if the alleged perpetrator is a member of the armed forces.

¹³ The identities of all the women and girls whose cases are included in this document are known to Amnesty International. Some names have been changed at the wish of the person concerned to protect their privacy.

Domitille's story

Domitille Bukuru was 13 when she was raped by a soldier from Nyamaboko position, Kanyosha, Bujumbura.

She was carrying water when the soldier told her to drop it and bring food to the position. She was scared but followed him. He began to ask her questions, including her age and where she lived. At the end of the road, they met a man who asked where she was going. The soldier made the man kneel down and threatened to kill him. She and the soldier left together to the Kizingwe river. She asked where they were going, as the other soldiers had taken a different route. He said they were taking a shortcut and would catch up with them later. He told her she couldn't run as fast as a bullet and she should lie down and do as he said. She started to protest. He threatened to kill her and told her to get undressed. She started to cry. Her mother had followed her, and she could hear her mother calling for her. The soldier told Domitille to be quiet or be killed. Then he raped her. Others who had noticed her leaving also followed her and the soldier started to shoot at them.

Although the soldier had a gun, people, including her brother, surrounded, overpowered and beat him. They then took him to Kanyosha gendarmerie station (*brigade*). Three of the group, including one of Domitille's brothers, were then detained at the station and seriously beaten. They were held for several days before being released on payment of a fine. The soldier was released without charge.

Domitille received no assistance. The Commander of the gendarmerie station said nothing was wrong with her and that she should go home, even though she was bleeding and barely able to walk. A day later, she got treatment, including one month's medication. Eight months later she had an HIV test, which was negative. However, she remains deeply traumatized. The children at school and in her community make fun of her.

She and her family pressed charges. However, the soldier was transferred to another part of the country and twice did not turn up in court. To her knowledge the case has not progressed.

A substantial obstacle to successful investigation and prosecution of cases of rape committed by members of the armed forces is the inherent weakness of the military justice system and its fundamental unwillingness to try members of the security forces accused of human rights violations. The experience of military trials in Burundi has repeatedly demonstrated that military jurisdictions are simply not capable of bringing to justice those accused of human rights violations. The failure to investigate, hold accountable and bring to justice members of the armed forces suspected of being responsible for gross human rights

violations is almost absolute and has been extensively documented by Amnesty International.¹⁴

Furthermore, insufficient training and resources undermine the quality of justice administered in military courts in Burundi. Few judges have received adequate legal training, and their knowledge of applicable legal procedures is often flawed. Some lawyers who have represented defendants in military courts have complained that the courts do not understand the arguments put forward and that therefore decisions have failed to take into account basic elements of Burundian criminal procedure. The inadequacy of training is compounded by the fact that in practice, when military judges misapply the law, corrective measures are rarely taken, as there is less judicial scrutiny than with civilian courts.¹⁵

Amnesty International has received testimonial evidence from former CNDD-FDD combatants that rape under their code of conduct is an offence punishable by death, and that combatants are summarily executed if found guilty of rape. Amnesty International opposes the death penalty and summary executions such as these in all circumstances. Furthermore, Amnesty International is convinced that steps to hold CNDD-FDD fighters accountable for their actions by their commanders have been the exception rather than the rule. The CNDD-FDD (Nkurunziza) leadership has never publicly admitted rape by its troops, nor condemned it. However, hundreds of women were reportedly raped by CNDD-FDD combatants during 2003 often in looting operations. Numerous women and girls have been abducted and held hostage in return for relatively large ransoms. Amnesty International fears that many may have been raped during their abductions.

Many sources in Rural Bujumbura informed Amnesty International representatives in late 2003 that FNL fighters at present are not responsible for rape or other violence against women, and punished severely civilians in the area reported to have committed such offences. A limited number of cases by FNL combatants are however reported. For example, one woman was reportedly abducted and raped by a FNL fighter on 16 May 2003 in Bubanza province, and mother and her eight year old daughter reportedly raped by FNL fighters in Mpanda, Bubanza province in July 2003.

There is no doubt that the impunity which the security forces have enjoyed for rape and other human rights violations, and the lack of accountability of armed political groups, has been a key factor in allowing rape and other forms of sexual violence to reach the current alarming proportions. It is imperative that the impunity of the security forces be ended by a new era of accountability and that substantial resources and political support be given to the justice system to urgently strengthen and reform it so that it is able to effectively address the

¹⁴ For further information on military jurisdictions in Burundi please see Amnesty International reports, *Burundi: No respite without justice* (AFR 16/12/99, 17 August 1999) and *Burundi: An opportunity to confront torture and impunity: Memorandum to the Transitional Government of Burundi and the international community* (AFR 16/943/2001, December 2001) and *Cases for Appeal* (AFR 16/044/2001, December 2001) and *Burundi: A critical time* (AFR 16/002/2004, January 2004).

¹⁵ Members of the armed forces are tried in the first resort by a Military Court (*conseil de guerre*), and then may appeal to the Military Court of Appeal (*Cour militaire*), and then to the Cassation Chamber of the Supreme Court. Senior officers are tried in the first instance by the Military Court of Appeal.

many challenges it faces. At present, it seems likely that without substantial pressure, members of the armed forces and armed political groups who are accused of committing human rights abuses may escape investigation and being brought to justice. A key part of the November 2003 agreement was the provision of temporary immunity to CNDD-FDD (Nkurunziza) members and members of the government armed forces. There is no specified time limit to the immunity and that may mean that, despite other commitments undertaken by the Government of Burundi, perpetrators of serious human rights abuses escape justice.¹⁶

Rape as a reprisal

While many cases of rape and sexual violence appear to be indiscriminate and due to lack of discipline and accountability among troops, in some instances it appears that rape is used more systematically to ill-treat, humiliate and degrade the population as well as to promote the dominance of the perpetrating group, be it government or opposition. Both national and international organizations in particular expressed concern that during 2003 and government armed forces and the CNDD-FDD (Nkurunziza) committed scores of rapes in Ruyigi province, as well as other human rights abuses and looting, in a pattern of reprisal and counter-reprisal. Scores of rape of Tutsi women were for example committed by the CNDD-FDD (Nkurunziza) in Ruhwago, Ruyigi province in February and March 2003, in reprisal for rape or other abuses committed by government forces in Hutu areas of the province. Many women are also raped in front of their families including their children, adding to the trauma.

Rose N, aged 13, told Amnesty International delegates how she woke up on the night of 3 March 2003 and saw lots of people at the foot of the bed she shared with her brothers and sisters at Ruhwago, Ruyigi province. She thought they were robbers. She could see a man raping her mother who was crying “Forgive me, forgive me” in the next room. Someone came

¹⁶ The approach to impunity within the framework of the negotiation and implementation of the Agreement for Peace and Reconciliation in Burundi agreement (Peace Agreement) has been contradictory. Although throughout the negotiations verbal commitment to ending impunity and investigating past (and future) abuses has been maintained, the lack of real action has been all too evident, and party leaders have sought to protect their own power base. Limited international interest in addressing impunity in Burundi plays into the hands of those who have no interest in seeing justice and the truth emerge. Although it is unclear that an international commission of inquiry, as requested by the Government of Burundi in July 2002, could, or indeed would be allowed to function independently in Burundi at present, the UN Security Council has failed to respond to the request and is only now considering terms of reference for an assessment mission. Although the National Assembly adopted the Rome Statute of the International Criminal Court, it did so without debate. The bill was withdrawn by the government from the Senate after it became apparent that the Senate would not support the government’s suddenly introduced proposal to make an Article 124 declaration which would prevent the court from exercising its jurisdiction over war crimes for seven years to come. Although the National Assembly successfully issued a legal challenge which enabled the bill to be forwarded to the President for promulgation this has not happened. The Peace Agreement specifically prohibits perpetrators of human rights violations from being incorporated into the ranks of the new security forces. How this is to happen in a context of indefinite immunity is unclear.

into the room, undressed her, took her outside and threatened to shoot her. Then he put her on the ground and raped her. Afterwards a second man raped her. They left her and she walked back to the house and took her five-year-old brother from her mother's bed and fled with him. They and three other siblings hid outside until daylight, hearing shouting from the houses of neighbours. They were very afraid and cold. Now Rose is afraid to sleep at home at night and has many nightmares. Her mother, **Désirée**, was also reportedly raped by two men.

Désirée's husband is in prison, and in fact many of the women met by Amnesty International were from women-headed houses, largely because their husbands were dead, in exile or in prison. They appear to have been particularly vulnerable to such sexual violence.

A context of widespread human rights abuse

Marguerite Hatungimana, a widow from Rural Bujumbura whose husband was killed by soldiers in 1999 was reportedly raped in March 2002 while she was in an IDP camp, after being forced from her *colline*.¹⁷

"I went to get water. One tap was busy so I went to the other one, near the military position. I got the water and went back to the road. Then I saw four soldiers...and they told me to put the water down. I thought it was my turn to be killed. They took me by the hand into the house where there were bodies and stolen goods. Two of the soldiers raped me and two refused because I am from a different ethnic group. When they finished I took my water and left."

For many women, rape is just another tragedy on top of years of human rights abuse.

On 15 May 2002, **Fabiola** and her sister **Germaine** left the displaced camp at Kavumu, Rural Bujumbura, where she was living and went to their fields on *Muyire colline* to look for food. When they arrived, they saw soldiers there. Fabiola told Amnesty International how her sister panicked and tried to run away and how she saw a soldier shoot and kill her as she ran. Then one of the group reportedly raped Fabiola. Bleeding heavily she was unable to move afterwards and was found later in the day by some people who helped her back to the camp. She did not take an AIDS test and is worried she might be infected.

Fabiola, a widow whose husband was killed in cross fire, is now looking after her sister's two young children as well as her own four.

Many others have been ill-treated or wounded as they attempt to protect their wives, sisters, daughters and friends from being raped. **Claude N**, aged 19, was shot in his left shoulder damaging the bone, when he jumped in to stop a soldier from raping his sister in *Muyire, Kanyosha* in August 2002. In October 2003 he was without work, his shoulder injury still leaving him unable to lift heavy objects.

¹⁷ A *colline* (hill) is a local administrative division of a commune. Administratively a province breaks down into communes, and a commune breaks down into a number of smaller units: zone, sector, *colline* and *sous-colline*.

Both the Burundian armed forces and armed political groups such as CNDD-FDD (Nkurunziza) have forced women and girls countrywide to assist in carrying their bags, looted goods, water and firewood for them. Many have been raped afterwards. In some areas, boys and old women carry water because of the vulnerability of younger women and girls, although elderly women too have been raped.

Amnesty International representatives met several women who told how they walked for kilometres carrying water for soldiers knowing they would probably be raped once they got to the military position, but powerless to prevent it.

One woman, **Bernadette**, was ordered to take water to Kirombwe military position, Rural Bujumbura, by a soldier. When they got there, he told her he wanted something. He then raped her before telling her to go with the words "I don't want your water". A widow with five young children, she said her neighbours found out she had been raped by a soldier and made fun of her saying she must have AIDS. One young girl, **Francine**, aged approximately 16 at the time of her rape, was forced to walk for around two hours with a container of water to Cinhona position before being raped. The soldier kept her water container.

Many rapes are reported to have taken place during looting by government soldiers, armed political groups or criminal gangs, often pretending to be members of armed political groups. Women appear to be particularly vulnerable either because they are caught while looking after children or because they are often the first to return home. One woman, **Adèle N**, from Gihehe *colline*, Giheta commune spent three months in hospital after being repeatedly raped in April 2003:

"When they arrived, I was eating with the children. They [members of the armed group] asked for money. I said I didn't have any. They began to beat me on my face and back with a gun. They said I was lying, that they knew I'd sold things at the market. They asked me if I paid my dues. I was saying yes and no. I didn't know what I was saying. Nine of them had come into the house and they started to rape me. The children fled to a neighbour's to get help but by the time they returned, they'd finished. All nine of them raped me. I know other women were raped but they won't admit it."

Social exclusion

The women who do admit to being raped risk abandonment or social exclusion including by their own families. **Odette**, aged 42, was raped at gun point by a government soldier in 2002 as she left her camp for the displaced in Rural Bujumbura. She was afraid to tell her husband but told a friend. Her friend told her husband. Marie told Amnesty International delegates:

"I don't know where my husband is. He left me and our children when he heard I'd been raped. I'm still in the camp - I have no where to go now. My house was destroyed by soldiers and anyway I think my husband wouldn't allow me to live there. I have no money. The children can't go to school."

Eugenie S, aged 15, and **Lucie N**, aged 16, were raped in separate incidents by soldiers in Bisinde, Ruyigi zone in September 2003. Adele was walking back from the market when a soldier stopped her and forced her into the bushes, and raped her. He told her to say that she had been raped by the FDD (CNDD-FDD (Nkurunziza)). Lucie was also raped by a soldier who threatened her with a gun. She was returning home alone from a wedding when she came across a group of soldiers on patrol. She had been raped three months earlier by one of a group of eight CNDD-FDD (Nkurunziza) fighters who broke into her family house demanding money. She and her family were also beaten. Both children say they are shunned by their neighbours who say that they are HIV+ (at the time in fact both were waiting for test results). Both fear they will never be able to get married.

Many women are either afraid to identify the rapist for fear of reprisals, or simply unable to recognize him. In many areas the situation is sufficiently confused for people to not even be able to say with certainty that the person is from the armed forces or an armed political group. This reticence is sometimes fear-induced.

Responding to the crisis

While the picture is certainly bleak there are recent positive developments. Individuals within religious communities and civil society have attacked the stigma of rape, helping women—in the case of a Roman Catholic priest from Rural Bujumbura—to be reintegrated into the families that rejected them by counselling their husbands on how to respond to rape, or in the case of the *Maison Shalom*,¹⁸ by providing refuge, medical care and education for hundreds of abandoned children. Many of those whom the *Maison Shalom* assists are thought to be children, many of them HIV+, conceived after their mothers were raped, as well as women and girls who have been raped. National and international human rights and humanitarian organizations are working together to develop programs designed to provide medical care, counselling and support for legal action against the perpetrators. Burundian human rights groups including APRODH and the Ligue ITEKA have been active in encouraging and supporting women to press charges, as well as providing advice and facilitating access to medical care. However, particularly in areas of conflict or far from Bujumbura the support provided to victims of rape or other forms of sexual violence is substantially less.

The UN Special Rapporteur on Burundi has also spoken out strongly condemning increased sexual violence and calling for a coherent response to the crisis. The government, too, has raised awareness on the scale of the problem, through seminars and through a number of local initiatives to inform women of the care that is available to them. The central and local administration has done some training and awareness-raising to encourage women to go for immediate medical care and AIDS tests.

¹⁸ The *Maison Shalom* is a safe-haven for orphans, abandoned children and victims of rape. Its founder, Maggy Barankitse, a winner of the World's Children's Prize for the Rights of the Child, has since 1993 received children from across the country to her centres, where she and her staff care for them and eventually reintegrate them into their extended families or help the children set up in their own households.

Access to health care

Beyond the brutality and the trauma of the rape itself, which often causes life-long psychological damage to the victim, it can result in serious physical injury, unwanted pregnancy, disease and even death. Some women have been sexually abused by having objects inserted into their genitals.

The rape crisis is putting a further strain on the health care system in Burundi, which is already weak and under-resourced as a consequence of years of under investment.

Interventions by humanitarian organizations have enabled women in some areas to receive this medical care, including free post-exposure prophylactic drugs to prevent HIV infection, in the immediate aftermath of the rape. However, in practice, these services are not available in many provinces, particularly to women who live far from health centres or in areas of conflict. Sometimes the medicines are just not available. Many people still do not know that such care or drugs exist. Additionally, the continuing stigma attached to sexual violence and fear of coming forward prevents some victims of sexual violence from accessing these services.

The past ten years of insecurity have taken their toll on the health of the population in a number of ways: physical wounds caused by war-related injuries; degraded health due to diminished access to fields and markets, due to insecurity and pillaging of food stocks; vulnerability to disease aggravated by sleeping outdoors, often in the cold or rain, repeated displacements, fatigue, malnutrition and, for refugees and IDPs, poor sanitation; destruction of health centres and inaccessibility to healthcare due to insecurity; looting of pharmaceuticals; widespread sexual violence and the attendant transmission of HIV/AIDS and other diseases.

At the same time, incomes in Burundi have fallen, leaving a destitute population unable to afford medical treatment or even examination. Only one to two state doctors serve each province, and are responsible not only for treating patients but also for providing administrative oversight. The population has reportedly increasingly resorted to traditional healers, for several reasons: these healers may be cheaper, the population's faith in the health services has diminished, and health centres may be located in areas of insecurity.

Burundi, like many countries dependent on foreign aid, is under pressure from international institutions such as the International Monetary Fund and the World Bank to limit provision of free medical care. During a period when the Burundian population has been most in need of adequate and affordable healthcare, in 2002 the government of Burundi, instituted policies of cost-recovery in the health centres. As a result, very few Burundians are now able to afford services provided by state health centres. If it were not for the assistance provided by humanitarian organizations, many Burundians would have no access to healthcare whatsoever. Women about to give birth are often required to pay a deposit before they are admitted in the event they may need a caesarean section, and may be effectively imprisoned in the health centre until they pay their bills—sometimes by resorting to selling their family land plots. The available evidence concerning the impact of cost-recovery policies on access to health care

for impoverished sections of the population raises questions concerning whether or not the government has acted in accordance with its obligations under the ICESCR to which it is a state party. State parties to the covenant must “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. The covenant makes clear that “the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In its General Comment 14, the Committee on Economic, Social and Cultural Rights, notes the provision of the Covenant for progressive realisation and the resource constraints faced by States Parties but clearly states "health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households." General Comment 14 also states clearly the international obligations of state parties to “recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to health. In this regard, State parties are referred to the Alma-Ata Declaration which proclaims that the existing gross inequality in the health status of the people, particularly between developed and developing countries, as well as within countries, is politically, socially and economically unacceptable and is, therefore, of common concern to all countries...Similarly, State parties have an obligation to ensure that their actions as members of international organizations take due account of the right to health. Accordingly, States parties which are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should pay greater attention to the protection of the right to health in influencing the lending policies, credit agreements and international measures of these institutions”.

IV CONCLUSION

“Violence against women is an obstacle to the achievement of equality, development and peace...” (Preamble to 1993 UN General Assembly Declaration on the Elimination of Violence against Women)

Whether conflict continues or peace is established, urgent cohesive action is required by a multitude of actors to end the violence against women in Burundi, to address its legacy and prevent a recurrence. Not only must the accountability and human rights records of government and opposition forces be addressed as a matter of priority but avenues for redress strengthened and discrimination ended.

The international and domestic legal framework clearly exists in which both violence against women and discrimination may be prosecuted and redress obtained. While real

resource constraints exist, it is thus essentially a question of political will and substantial public education.

It is imperative that the impunity of the security forces be ended by a new era of accountability and that substantial resources and political support be given to the justice system to enable it to respond to the challenges it faces. Urgent attention must be paid to reinforcing the judiciary not only to increase respect for the rule of law but also to ensure that it is capable of investigating properly cases of sexual violence. The opportunity provided by the entry of the CNDD-FDD (Nkurunziza) into the transitional institutions of Burundi, and the reform of the Burundian security forces should not be wasted. Former combatants who have ordered, committed or condoned rape, as well as other serious human rights abuses, should be excluded from the new National Defence Force, *Force de défense nationale*.

Since it is true that the peace is neither complete nor stable, without strong international support, even pressure, to see through political settlements and to finance programs essential to quelling the armed conflict, Burundi may slide back into further violence and human rights tragedy. The sporadic support provided by many countries in the recent past will not be sufficient to see Burundi out of the current humanitarian and human rights crisis. Furthermore, the continued fighting by the FNL (Rwasa) should not provide a pretext for the international community to disengage or only partially engage with addressing human rights in Burundi.¹⁹

V RECOMMENDATIONS

Amnesty International believes support in four areas would begin to curb the rise in violence against women and open opportunities for redress. These areas are developing and expanding community-based activities designed to reduce stigma and ignorance around violence against women; strengthening the judiciary and law enforcement structures so they are able to investigate and prosecute the crime of rape; increasing access to health care for women who have been victims of rape or other gender-based violence and addressing underlying discrimination against women.

The government authorities and international community must work together as a matter of urgency to protect women and girls from rape.²⁰

¹⁹ Amnesty International takes no position on the legitimacy of armed conflicts, and thus none on the legitimacy of the FNL (Rwasa)'s continued military activity. It calls for all parties to respect the rules of international humanitarian law which protect the lives and rights of civilians and non-combatants in times of war.

²⁰ Please see an appeal, *Burundi: Commitment to human rights is essential* (AI Index: AFR 16/001/2004, January 2004), for further information on recommendations on areas which Amnesty International believes are in vital need of assistance and support as part of international efforts to rebuild Burundi's infrastructure. The recommendations are based on Amnesty International's long-term work and analysis of the situation in Burundi.

V.i TO THE TRANSITIONAL GOVERNMENT OF BURUNDI

Immediate prevention

The government authorities must give immediate clear instructions to the armed forces that human rights violations, including rape and other crimes of sexual violence, are criminal offences and those responsible will be investigated and brought to justice.

It must invest in long-term and in-depth training of the members of the Burundian Armed Forces in all ranks including those in positions of authority over others to ensure that they do not commit, condone or acquiesce in rape and other crimes of sexual violence.

It must build national capacities for weapon collection and destruction, the efficient management of legal weapons stockpiles, the control of illicit flows of weapons and restoring public confidence through the visible destruction of collected arms

Legal redress

The government must build the capacity and integrity of the security forces and judiciary to ensure that allegations of rape and other crimes of sexual violence by the security forces are promptly investigated and where founded, the alleged perpetrators are brought to justice. Measures should include:

- the issuing of clear guidelines to law enforcement agencies stating that deterring women from reporting acts of violence will not be tolerated and insisting on the duties of law enforcement officials to investigate acts of violence against women, whoever the perpetrator;
- the provision of specific training to all law enforcement officials and the judiciary in relevant areas of international human rights law to enhance the understanding of violence against women from a human rights perspective, and to ensure its effectiveness in the prosecution of acts of violence against women;
- the provision of training on handling cases of sexual violence; the use of medical and forensic evidence; and international human rights standards; the recruitment and training of women police officers and women members of the judiciary in sufficient numbers to counter a culture of discrimination and to allow specialization on cases of violence against women;
- publicly committing itself to investigating past and future allegations of rape by its own forces, and ensure cooperation with investigations and comply with all investigations whether by national or international courts or commissions into allegations of human rights violations by members of its security forces and militia;
- transferring the jurisdiction for human rights violations committed by military personnel on active duty, particularly against civilians, to ordinary civilian courts;

- ratifying the Rome Statute immediately without an Article 124 declaration and enact effective implementing legislation, as spelled out in Amnesty International's *Checklist for Effective Implementation* (AI Index: IOR 40/11/2000, 1 August 2000);
- ratifying and fully implementing the African Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the African Convention on Preventing and Combating Corruption, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women.

Communication and cooperation between civil society organizations and law enforcement agencies should be established at the local level in the interests of protecting victims of violence and increasing women's trust in the criminal justice system.

Health care

The Government should, with the help of UN agencies and other experts as appropriate, evaluate how it can better assist medically victims of sexual violence. In particular, it should ensure that women and girls in all areas have free access to testing for sexually transmitted diseases including HIV/AIDS, as well as emergency contraception and post-exposure prophylactic drugs to prevent infection. It should also seek to develop other training programs to ensure more counselling is available and is an integral part of the health care system.

The government must ensure that all decisions and policies concerning the provision of health care are consistent with its obligations under the International Covenant on Economic, Social and Cultural Rights, to which it is a state party. In the light of these obligations it should review its cost recovery policy in the health care sector on the grounds that in its current form it appears to discriminate against considerable numbers of a destitute, war-weakened population. It should seek international assistance as necessary so as to be able to provide health care without discrimination of any kind.

Ending general discrimination against women

The Government of Burundi must give greater priority and resources to developing, supporting and promoting education programs targeting the public and community leaders on the importance of not stigmatizing women victims of violence and allowing them to speak out and seek help. Such programs should be carried out in consultation with international organizations, national non-governmental organizations, religious communities and independent radio. It must ensure that the response is cohesive and coordinated.

It must take a strong public stance on gender-based violence sending a clear message that it is neither inevitable nor acceptable and that those responsible will be brought to justice. To this end it should compile statistics and conduct research on violence against women.

It must ensure that material is available informing people of their rights, what health care is available and how to proceed if they or members of their families are victims of sexual violence.

The Government of Burundi must also compile statistics and conduct research on violence against women and:

- promote the participation of women in all decision making structures, identifying and addressing barriers to such participation, as well as promoting participation in institutions and representative government to push an agenda mindful of the needs of women and girls;
- pay particular attention to ensuring that an increased proportion of women and girls receive education, and are educated about their rights; and
- review inheritance, land and marriage legislation and practice to promote the equitable access of women to economic and social rights.

V.ii TO THE LEADERS OF ARMED POLITICAL GROUPS

The leaders of armed political groups, including the leaders of former armed political groups the fighters of which are yet to be demobilised or integrated into government security forces, should issue immediate public instructions to their combatants to end human rights abuses, including rape. Amnesty International is calling on the leaders of armed political groups to also:

- make real their professed commitment to human rights by publicly acknowledging and condemning human rights abuses committed by their combatants;
- order all combatants to abide by international humanitarian law, in particular Common Article 3 to the four Geneva Conventions of 1949 and Additional Protocol II, and other international law, including the prohibitions of genocide, crimes against humanity and torture;
- implement specific measures to assist in conforming to the standards of international human rights and humanitarian law to prevent human rights abuses, such as:
 - ensuring that all forces under their control are trained and ordered to respect and adhere at all times to basic principles of humanitarian law;
 - investigating allegations of abuses to determine responsibility for any such abuses and ensuring that those responsible are removed from any position in which they may commit human rights abuses against civilians and those who are *hors de combat*. Steps taken to prevent further human rights abuses by its combatants should not include summary executions or cruel, inhuman or degrading treatment or punishment.
 - ensuring that command structures are established, respected and held accountable, and to this end maintain records.
- Provide full cooperation with all investigations whether by national or international courts or commissions into allegations of human rights abuses by their fighters and members.

V.iii TO THE INTERNATIONAL COMMUNITY

The international community must take immediate steps to ensure women and girls are protected from human rights abuses by the Burundian security forces and members of armed political groups, and criminal gangs.

The cease-fire monitoring force – whether AU or UN-led – should have a specific mandate to protect women and girls from such abuses by armed groups, accompanied by training on issues of women's rights.

Demobilisation and reintegration programs must incorporate measures to address sexual violence.

Amnesty International urges the international community to infuse the necessary resources to revive the health sector and ensure that access to health care is in line with Burundi's international obligations under the International Covenant on Economic, Social and Cultural Rights, including by reviewing relevant aspects of the health care policy of international financial institutions notably the International Monetary Fund and World Bank.

Legal redress

The international community must act with urgency to assist the Government of Burundi to investigate alleged abuses and to detain and prosecute alleged perpetrators according to international human rights standards.

The international community must provide resources and other material and expert assistance to train members of the security forces, judiciary and state institutions on gender issues, including appropriate behaviour towards victims, and provide practical modalities for improving their responses.

To strongly encourage and support the Government in moves to strengthen the civilian justice system and to limit the scope of military jurisdiction, specifically ensuring that members of the armed forces accused of human rights violations are tried by civilian courts.

To use its influence to ensure that no immunity from prosecution for human rights abuses is granted. As an essential step to end impunity, the international community should press Burundi to ratify the Rome Statute immediately, without a declaration under Article 124, and to implement it in national legislation as soon as possible.

Awareness

The international community must assist the government of Burundi in establishing a systematic and comprehensive program of care for survivors of sexual violence, which should build on and extend “best practice” initiatives and techniques such as *centres d'écoute* (counselling centres), that have been developed at local levels, into a coordinated national response. This should be done in full consultation with Burundian and international non-

governmental organizations already providing medical care, including psychological assistance, for the care and rehabilitation of these groups.

The international community, through UN agencies or by supporting national non-governmental organizations, must devise support and promote education programs targeting the public and community leaders on the importance of not stigmatizing women victims of violence and allowing them to speak out and seek help.

It must support independent media, in particular radio, as a vehicle for human rights awareness.

