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Burundi: Summary of human rights concerns

1. Extrajudicial executions and unlawful killings of civilians by government forces

Despite the Peace Accord and the inauguration of the first phase of the transitional government, civilians continue to pay a heavy price in the conflict.

Between January and April 2002, Amnesty International documented the killing of over 100 unarmed civilians, including children, in a pattern of systematic reprisal killings by government troops during or following counter-insurgency operations.

New extrajudicial executions have taken place since, including those of at least 19 unarmed civilians, - - among whom were six women and five children - - in Kanyosha commune on 4 August 2002. At least 14 civilians were also killed in Gihosha rural by members of the armed forces on 25 August 2002 apparently in reprisal for an attack earlier in the day by PALIPEHUTU-FNL on a military position in the vicinity in which four soldiers were killed.

Recommendation: The government must take immediate steps to halt extrajudicial executions and to ensure efforts are made to distinguish civilians from combatants. In particular, they must issue clear public statements that extrajudicial executions will not be tolerated and ensure that individuals suspected of responsibility for ordering or carrying out extrajudicial executions are immediately suspended from their duties and brought to justice.

2. Abuses by armed political groups

Both the *Forces nationales de libération* (PALIPEHUTU-FNL), National Liberation Forces, and the - *Forces Conseil National pour la Défense de la Démocratie* - *Forces pour la Défense de la Démocratie* (CNDD-FDD), National Council for the Defence of Democracy - Forces for the Defence of Democracy,

continue to carry out serious human rights abuses. These abuses include unlawful killings of civilians, torture, including rape, ill-treatment and the use of child soldiers. Amnesty International has consistently reported on and condemned these abuses and repeatedly raised its concerns with representatives of Burundi's armed political groups. Amnesty International is also concerned at the failure of the leaders of armed political groups to acknowledge or condemn human rights abuses by their combatants.

Case: Jean-Bosco Rutagengwa, a Twa member of the Senate, was one of at least eight civilians, including three women, who were killed in an ambush on a public transport minibus at Mageyo, Rural Bujumbura, on 22 May 2002. A further eight civilians were also reportedly wounded. PALIPEHUTU-FNL fighters are reported to have opened fire on the minibus. According to some reports, the motive for the attack was the failure of the bus driver or owner to provide money to PALIPEHUTU-FNL.

On 18 May 2002, the Bishop of Ruyigi, **Monseigneur Joseph Nduhirubusa**, was abducted by members of the CNDD-FDD. He was released several days later. He was not ill-treated. CNDD-FDD representatives claimed he had been taken for his own protection.

Recommendation: Amnesty International is calling on the political and military leaders of PALIPEHUTU-FNL and the CNDD-FDD to:

issue immediate public instructions to their combatants to end killings of civilians, and the summary executions of captured soldiers; and

end torture, including rape, and ill-treatment by their forces

3. Torture and Ill-treatment and “Disappearances”

Torture and ill-treatment of detainees in custody is routine and widespread. “Disappearances” from security custody also continue to be reported

The failure of the courts to investigate torture allegations and their willingness to accept confessions obtained under torture encourages abuse. It is also facilitated by the practice of incommunicado detention.

Case: On 18 July 2002, Sergeant Paterne Mpfukamensabe was tortured to death in Ngagara barracks (2e bataillon d'intervention), Bujumbura, after being arrested on 15 July after an argument between him and another soldier. His family was informed of the death and went to the barracks for confirmation. The commander of the barracks told them that Sergeant Mpfukamensabe had died from a severe stomach upset. However, the wounds on his body showed clearly that a stomach upset was not the cause of death. With injuries visible all over his body, he appears to have been

beaten to death. At the insistence of the family, a judicial investigation has been opened and several soldiers arrested.

Recommendation: Law enforcement officers accused of acts of torture, ill-treatment or "disappearance", or of having ordered or condoned such acts, should be suspended from their posts and the allegations against them thoroughly, impartially and promptly investigated. If the accusations appear well-founded, the officers should be promptly brought to justice. Additionally, the practice of incommunicado detention should be ended and human rights groups, UN human rights monitors and humanitarian organizations provided with independent and unrestricted access to places of detention.

4. Impunity

Decades of impunity have institutionalised recourse to violence against the civilian population by the security forces and armed opposition groups. The government has failed to bring to justice members of the security forces suspected of serious human rights violations. There can be no durable resolution to the conflict unless impunity is addressed. Military courts have shown themselves unwilling and incapable of investigating human rights violations by members of the armed forces accused of human rights violations.

Recommendation: It is imperative that serious human abuses be investigated and perpetrators brought to justice and victims provided with redress. The jurisdiction of military courts should be restricted. Military courts should have the power to try only military personnel accused of exclusively military discipline offences, and should not have the power to impose the death penalty.

5. Administration of Justice.

Amnesty International has long argued for the need to reform and strengthen the Burundian judiciary to ensure greater independence, impartiality and competence. Only if this is done will the judiciary be able to fulfill its essential and demanding role, in both continuing to investigate current abuses and in contributing to the investigation and prosecution of past abuses. Initiatives such as an International Commission of Inquiry or the inauguration of a Truth and Reconciliation Commission, both of which are provided for in the Peace Agreement, should not detract from the strengthening of this key institution.

6. Fair trial - the right to appeal

While Burundian law allows for a full appeal of conviction and sentence from judgments rendered by lower courts, those who are accused of crimes which

are punishable by life imprisonment or death are tried at first and last resort by the criminal chambers of the Court of Appeal. Additionally, people who qualify for a privileged status by reason of their position (magistrates, communal administrators or high functionaries), are tried at first and last resort by the Supreme Court. Defendants tried by the criminal chambers of the Court of Appeal can only apply for review through the *cassation* procedure at the cassation chamber of the Supreme Court, which allows only for a limited review on questions of law and substantial violations of form. There is, therefore, no ability for those tried by the criminal chambers of the Court of Appeal to have the factual basis on which they were convicted and sentenced reviewed.

Case: Gaëtan Bwampamyé, a former head of a medical school in Ngozi province, northern Burundi, was sentenced to death by Ngozi Appeal Court in August 1997 after an unfair trial. As with hundreds of other people who have been sentenced to death since 1996, he was denied the right to appeal. However, his lawyer lodged a complaint with the African Commission on Human and Peoples' Rights (African Commission) and in December 2000, the African Commission ruled in favour of Gaëtan Bwampamyé. The African Commission upheld the complaint, primarily on the grounds that he was denied legal representation, and called on the Government of Burundi to take appropriate measures to reopen the case, and to conform to its international legal obligations, in particular under the African Charter on Human and Peoples' Rights. The case has not been reopened and Gaëtan Bwampamyé remains in prison.

Recommendation: *The Transitional Government should enact legislation which will ensure that all defendants have the option of having their conviction and sentence reviewed by an impartial higher tribunal.*

7. Long-term detention without charge or trial

One of Amnesty International's longstanding concerns with regard to the administration of justice has been the problem of long-term detention without charge or trial of thousands of detainees, some of whom have been detained for over six years.

Furthermore, trials are often lengthy and may last years as a consequence of multiple postponements. In practice, even when a detainee might get to be heard in court the time lapse between the initial accusation and the court hearing may make it difficult to trace witnesses, and there is no guarantee that the hearing will take place. The problem of the attendance of witnesses -- both prosecution and defence -- is acknowledged by the government, judiciary and human rights groups. It remains a serious obstacle to the proper functioning of the courts. Even when a case has been heard, there

may a lapse of over 12 months before the verdict is announced.

Case: *Marie Ndurututse*, who was arrested in February 1996, is still awaiting trial in Ngozi prison on suspicion of taking part in the 1993 massacres of mainly Tutsi civilians which followed the assassination of Burundi's first democratically elected president, Melchior Ndadaye, and an attempted coup d'état.

Recommendation: *The Transitional Government should provisionally release detainees who have been held for long periods without trial, against whom there is insufficient evidence pending further investigations or the withdrawal of charges.*

8. The Death Penalty

The death penalty continues to be widely used. By July 2002, over 250 people were under sentence of death, many following unfair trials. Under the Burundian legal those sentenced to death by civilian courts do not have the right to a full appeal. Not all those under sentence of death have benefited from legal counsel.

Case: *In January 2002, Zamda Bagurikunda (f) and a member of the Burundian armed forces, Dieudonné Niyonsaba, who was badly beaten with an iron bar after his arrest, were sentenced to death by the conseil de guerre of the 5th Military Region after being convicted of the theft of ammunition from the Burundian military, which they allegedly intended to pass to the CNDD-FDD. Neither had a lawyer. Four other defendants received lesser sentences. Zamda Bagurikunda has lodged an appeal with the Military Court of Appeal.*

Recommendation: *The Government should impose a moratorium on the death penalty immediately pending action on its abolition. It should also commute death sentences passed so far.*

9. Conditions of detention

Despite significant improvements, conditions in Burundi's prisons and detention centres are harsh, often severely overcrowded and dangerously unsanitary and, in some cases, amounting to cruel, inhuman and degrading treatment.

Recommendation: *Amnesty International urges the Government to continue to improve prison conditions, notably by easing overcrowding.*

10. Children in Detention

Many of the some 160 children in detention in Burundi were arrested in violation of arrest and detention procedures. Some children were tortured

after their arrest. Some detained for up to three years without trial. Few of those who have been tried have benefited from legal counsel. Children are also vulnerable to sexual abuse and exploitation in prison.

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

Recommendation: *The Government should expedite the examination of the case files of children, especially those detained for long periods without trial, and provisionally release those against whom there is little substantiating evidence, or who are detained for minor offences. It should protect children from torture. Children should be detained separately from adults.*

11. Child Soldiers

The full extent of the involvement of child soldiers in Burundi's armed conflict is not known and reliable information is difficult to obtain. Thousands of child soldiers have been recruited by all parties to the conflict, as well as the *Gardiens de la Paix* militia. Some children act as fully fledged combatants, others are used as look-outs and informants, or for menial duties.

It is the responsibility of the authorities and commanders and leaders of armed political groups, to prevent recruitment of children as combatants. Recruitment of children under the age of 15 is defined as a war crime under the Rome Statutes of the International Criminal Court.

Recommendation: *Government authorities should prohibit the compulsory or voluntary recruitment of anyone under the age of 18 into security forces. They should also implement demobilization programmes, and assist NGOs working in this field.*

12. Refugees and Internally Displaced Persons

Hundreds of thousands of refugees and internally displaced persons continue to suffer human rights abuses, not only at the hands of belligerents in the conflict but in their places of refuge. Armed political groups have attacked camps, often located close to military positions, and civilians within the camps have been deliberately and arbitrarily killed.

The general protection of refugees has also been undermined by the use of the camps by armed opposition groups as sources of recruitment and as resting places. This violates the civilian and humanitarian nature of the refugees camps and endangers the safety of genuine refugees. A number of refugees have been “refoulé” (turned back) from Burundi.

Case: *On 23 January 2002, 28 Congolese Banyamulenge -- some of whom could clearly qualify as refugees -- were illegally arrested during the night in Bujumbura and taken to the Groupement d'intervention (Gatoke) where they were beaten. Thirteen of the group, none of whom had refugee status, and all of whom were former members of Congolese armed forces, were deported within hours to the DRC, where all but one reportedly remain in military custody. The remaining 15 people were released after several hours.*

Recommendation: *The governments of Burundi and of countries hosting refugees as well as NGOs should not encourage or seek to incite involuntary repatriation. They should not promote programmes for voluntary repatriation until such a time when lasting conditions exist for the safe and dignified repatriation of refugees. Allegations of human rights abuses in camps for the displaced should be investigated.*

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For more information please call Amnesty International's press office in London, UK, on +44 20 7413 5566

Amnesty International, 1 Easton St., London WC1X 0DW. web: <http://www.amnesty.org>

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