

amnesty international

7/3'02

BURUNDI

**A new opportunity to confront
torture and impunity
Cases for appeal**



December 2001
AI Index: AFR 16/044/2001
Distr: SC/CC/CO

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BURUNDI

Confronting torture and impunity

Cases for Appeal

Following the inauguration on 1 November 2001 of a new Transitional Government of Burundi, 15 months after signature of an Agreement for Peace and Reconciliation in Burundi (Peace Agreement), Amnesty International addressed a Memorandum to members of the Transitional Government, National Assembly and Senate of Burundi, senior members of the Burundian judiciary, intergovernmental organizations, donor governments and those involved in the on-going search for peace.¹

The Memorandum addresses some key human rights issues on which Amnesty International, Burundian and other international human rights organizations have campaigned for many years including torture. It provides recommendations, based on international human rights principles, which should be incorporated into the reform of institutions, and which would in particular prevent further torture and address institutionalized impunity. Such principles are the basis of institutional protection and guarantees.

As the three-year transitional period begins in a context of on-going armed conflict, it is essential that human rights issues are at the forefront of reform of institutions and government policy. The difficulties of restoring full respect for human rights in a context of bitterness, mistrust and lack of accountability cannot be underestimated, let alone in the context of on-going armed conflict. Yet failure to do so will not only jeopardize the peace process and transitional institutions but also the future of the human rights of the Burundian people.

The purpose of this document, which has been issued in connection with the Memorandum, is to highlight some individual cases of people who have been victims of human rights violations in Burundi. The cases are representative of many others. They have been chosen to illustrate the incidence and extreme nature of torture in Burundi, the need to address the impunity of the security forces, the failure of military jurisdictions to bring to justice members of the armed forces suspected of having committed human rights violations, and finally the unfairness of a justice system which does not guarantee the right to appeal.

¹ *Memorandum to the Transitional Government of Burundi and international community: An opportunity to confront torture and impunity* (AI Index: AFR 16/043/2001, December 2001).

Amnesty International members and others should use these cases to lobby their own governments and the Transitional Government of Burundi to reform the security forces and judiciary with a view to preventing human rights violations and ending impunity.

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Confronting torture and impunity

The case of Salvator Ndagijimana

Salvator Ndagijimana was arrested with two others, Celestin Hakizimana and Olivier Sabukunikiza, by soldiers in Bujumbura on 15 June 2001. They were accused of involvement in the murder of a local government official and of collaboration with an armed opposition group.

Following their arrest, they were held incommunicado in military custody in various parts of Bujumbura, including the Muha barracks where they were tortured. Salvator Ndagijimana, who is 15 years old, was stabbed on his arm and ankle; Celestin Hakizimana was beaten on his head with a rifle barrel and a piece of electrical cable, and Olivier Sabukunikiza was beaten on his wrist and elbows, stabbed on his arms and thigh, and whipped with a piece of electrical cable. One of his fingernails was also pulled out. None received medical attention and all remain in detention.

All three are currently held in Mpimba central prison, Bujumbura, awaiting trial on charges of collaborating with an armed opposition group. No investigations are known to have been carried out into their torture.

Torturing with impunity

A constant of Amnesty International's work on Burundi, has been to campaign against the routine use of torture and other forms of ill-treatment. The incidence of torture -- and the impunity with which it is carried out -- has in no way diminished since the introduction of a revised Code of Criminal Procedure in January 2000, some of the provisions of which aimed to improve arrest procedures and provide greater protection from torture.

The torture and ill-treatment of detainees, primarily in police custody and in many cases to force "confessions", is routine and widespread. The failure of courts to investigate torture allegations and their willingness to accept confessions obtained under torture have encouraged the use of torture.

Torture methods most frequently reported include severe and sustained beatings using electric cables, sticks, and other heavy implements, beatings on the joints, the soles of the feet and the genitals, kneeling on bottle tops, stabbings, electric shocks, tying in excruciating positions, humiliation and intimidation, including death threats or other psychological abuse. Other techniques documented by Amnesty International include burning by boiling water, breaking of bones and simulated executions. These torture methods have been documented by Amnesty International for many years. Some detainees have been so severely tied or beaten that their limbs have subsequently been amputated.

The failure to investigate, hold accountable and bring to justice members of the security forces suspected of being responsible for gross human rights violations -- such as torture -- is almost absolute.

WHAT YOU CAN DO

Please publicise the cases of **Salvator Ndagijimana**, **Celestin Hakizimana** and **Olivier Sabukunikiza** and distribute this document amongst human rights groups, lawyers and other organizations asking them to help in the campaign against torture in Burundi, including by lobbying the Transitional Government of Burundi.

Please write, preferably in French, to:

* Son Excellence Pierre BUYOYA, Président de la République, La Présidence, Bujumbura, République du Burundi
Fax : + 257 22 81 50

* Monsieur Fulgence Dwima BAKANA, Ministre de la Justice et Garde des Sceaux
Ministère de la Justice, Bujumbura, République du Burundi
Fax : + 257 21 86 10

* Général-Major Cyrille NDAYIRUKIYE, Ministre de la défense, Ministère de la défense
Bujumbura, République du Burundi
Fax : + 257 24 26 36

* Monsieur Alphonse BARANCIRA, Ministre des Réformes institutionnelles, des droits de la personne humaine et des relations avec l'Assemblée nationale, Ministère des Réformes institutionnelles, Bujumbura, République du Burundi
Fax : + 257 21 38 47

* Monsieur Jean MINANI, Président de l'Assemblée nationale, Palais de Kigobe, Bujumbura, République du Burundi
Fax : + 257 23 36 63

Points to raise

- call for an investigation into the torture while detained incommunicado in military custody of **Salvator Ndagijimana**, **Celestin Hakizimana** and **Olivier Sabukunikiza**, and for those accused of the abuse to be brought to justice without recourse to the death penalty;

Ask the Government of Burundi to ensure as a matter of urgency that:

- all law enforcement agents receive strict instructions that in no circumstances, including when they are under orders from more senior officers, are they to ill-treat, torture or order the ill-treatment or torture of detainees, and that training is provided to assist all law enforcement agents in this change in practice;
- that those accused of having condoned, ordered or committed acts of torture and ill-treatment are removed from their posts, pending investigation, and if the accusations appear founded, they are arrested and brought to justice in proceedings which meet international standards of fair trial and without recourse to the death penalty;
- to make public the right to, and ways for, detainees and prisoners who have been the victims of torture or ill-treatment, to institute proceedings against the law enforcement officers suspected to be responsible;
- compensation is provided to victims. Compensation can be an element of redress for the victim and, when paid by the perpetrator, can act as a deterrent. When paid by the state it can act as an incentive for the state to take positive steps to reduce the incidence of torture;
- the Code of Criminal Procedure is amended to guarantee the right to legal assistance at all times, including during the *garde à vue* period;
- the government should end the practice of incommunicado detention - used even by Government Commissions of Inquiries - as it is a practice which facilitates torture, "disappearances" and extrajudicial executions;
- in accordance with international standards, confessions obtained under torture are not used in court.

Please ask your government to help reform and strengthen the Burundian justice system, so that it can prevent such abuses in future and put an end to impunity.

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Confronting torture and impunity

The case of Gabriel Gisabwamana

Gabriel Gisabwamana was shot dead at point blank range in Bujumbura on 20 December 1999. He was aged 34. At the time of his death, he was a member of parliament of the Hutu-dominated opposition party, the *Front pour la Démocratie au Burundi* (FRODEBU), Front for Democracy in Burundi.

Gabriel Gisabwamana was killed shortly after leaving a bar "Chez Stany" in the Gasenyi district of northern Bujumbura, in the company of a friend. Two other men, who had also been drinking in the bar, were close behind. Both groups were stopped shortly after leaving the bar by soldiers who asked them to come with them to a nearby military post. As they moved towards the post, Gabriel Gisabwamana questioned the soldiers on the reasons for their arrest and apparently refused to continue, showing his identity card and explaining that he was a member of parliament. The soldiers took him to one side. Some minutes later, shots were heard. An autopsy confirmed that one bullet had entered his body from above, and found that he had probably been kneeling at the time.

The following day, soldiers from the military post, suspected of carrying out the killing, were transferred to another post.

His death was investigated, and a soldier -- one of those who had stopped Gabriel Gisabwamana and his companions in the street -- was identified as the main suspect. After considerable pressure and campaigning from human rights groups and others, the soldier was arrested, charged with the murder of Gabriel Gisabwamana and detained in Mpimba central prison.

In September 2001, the soldier was convicted by a military court in Bujumbura of the lesser offence of having accidentally caused the death of Gabriel Gisabwamana by grievous bodily harm. He was sentenced to 18 months' imprisonment, and as he had already spent 18 months in prison, he was released. The soldier was also fined 1,000 Burundian Francs (about 1 US dollar).

Military jurisdictions - no threat to impunity

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. Justice has been applied selectively, and with political and ethnic bias, and the armed forces have as a consequence largely been able to escape justice, both in civilian and military courts.

To date, in the few cases where soldiers have been tried for serious human rights violations, including the extrajudicial execution of unarmed civilians and summary execution of captured combatants, those convicted have received disproportionately lower sentences than those imposed by civilian courts for similar offences. In some cases, sentences have been so light as to reinforce the sense that the armed forces are above the law. Amnesty International believes that the sentence should reflect the gravity of the offence, without recourse to the death penalty.

The disproportionate nature of sentencing between civilian and military courts for similar crimes fundamentally undermines, and is perceived to undermine, the important principle of equality before the law. The disparity in sentencing creates the impression that killings of unarmed civilians by members of the armed forces are treated differently, and in fact, not as seriously, as killings by civilians, and thus adds to the impression that members of the armed forces are above the law. Soldiers who have been convicted of, for example, the murder of other soldiers have received long prison sentences, even the death penalty.

The quality of justice administered in military courts in Burundi is undermined by insufficient training and resources. Few judges have received adequate legal training and 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.

Proposals announced in 1999 by the Ministry of Justice to limit military jurisdictions have yet to materialize.

WHAT YOU CAN DO

Please publicise the case of **Gabriel Gisabwamana** and distribute this document amongst human rights groups, lawyers and other organizations asking them to help in the campaign against impunity and extrajudicial executions in Burundi, including by lobbying the Transitional Government of Burundi.

Please write, preferably in French, to:

* Son Excellence Pierre BUYOYA, Président de la République, La Présidence, Bujumbura, République du Burundi
Fax : + 257 22 81 50

* Monsieur Fulgence Dwima BAKANA, Ministre de la Justice et Garde des Sceaux
Ministère de la Justice, Bujumbura, République du Burundi
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* Général-Major Cyrille NDAYIRUKIYE, Ministre de la Défense, Ministère de la Défense
Bujumbura, République du Burundi
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* Monsieur Alphonse BARANCIRA, Ministre des Réformes institutionnelles, des droits de la personne humaine et des relations avec l'Assemblée nationale, Ministère des Réformes institutionnelles, Bujumbura, République du Burundi
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Points to raise

- express concern that, military jurisdictions have consistently proved to be unwilling and incapable of investigating and bringing to justice members of the armed forces suspected of having committed human rights violations;
- express concern that, in the few cases where soldiers have been tried for serious human rights violations, including the killing of unarmed civilians like **Gabriel Gisabwamana**, those convicted have received disproportionately lower sentences than those imposed by civilian courts for similar offences. Amnesty International believes that the sentence should reflect the gravity of the offence, without recourse to the death penalty.

In the light of this failure, appeal to the new Burundian authorities to debate and enact legislation based on the following recommendations:

- Military courts should have the power to try only military personnel accused of exclusively military discipline offences, without recourse to the death penalty. The

jurisdiction for criminal offences committed by military personnel on active duty, should be transferred to ordinary civilian courts;

- Torture, ill-treatment and unlawful killings committed by military personnel on duty should be categorized, according to the law, as criminal offences;
- Civilian jurisdictions should have the necessary resources and political support to investigate abuses by members of the armed forces;
- Civilians should not in any circumstances be tried by military courts.

If military courts continue to hear cases beyond the scope of military discipline offences:

- Steps should be taken to ensure that both in law and in fact military investigators and judges are independent from the military hierarchy;
- Appeals against sentence and conviction by military courts should be heard by a civilian court of appeal.

Please also call for an independent judicial review by a civilian court of the investigations into the killing of Gabriel Gisabwamana and of subsequent proceedings before the military court.

Please ask your government to help reform and strengthen the Burundian justice system, so that it can prevent such abuses in future and put an end to impunity.

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Confronting torture and impunity

The Kizuka massacre

In December 1996, because of nearby armed conflict, the local civil and military administration, grouped the civilian population of Kizuka sector, Bururi province for their "protection" at the buildings belonging to the head of the sector and protected by the armed forces. Fighting was taking place some 20 kilometres away. On 16 December 1996, at least 54 of these civilians -- the majority of whom were women and children -- were extrajudicially executed by soldiers from Busaga military post in Kizuka sector, Bururi Province. According to investigations carried out by a Burundian human rights group, ITEKA, 20 children under the age of 10 were extrajudicially executed. In a subsequent court case, the prosecution claimed that up to 75 people were killed or "disappeared" by soldiers.

At great risk to himself, the head of the sector, brought a legal case against the soldiers suspected of taking part in the killings and, in February 1997, three soldiers were tried by the Military Court of the 5th Military region for the killings. Lieutenant Vénérand Ndayisenga was sentenced to eight years' imprisonment and ordered to pay compensation to the plaintiff, *partie civile*. Of his two co-defendants, one was acquitted and the other received a suspended sentence. Lieutenant Ndayisenga appealed against the verdict, reportedly arguing that he had followed orders and that in previous cases this had been sufficient to prevent conviction. One of his co-defendants was also acquitted on the grounds that he had been following orders. On 12 May 1998 Lieutenant Ndayisenga was granted a provisional release after the Military Court of Appeal ordered the Chief Military Prosecutor, *Auditeur Général*, to carry out further investigations.

The case returned to the Military Court of Appeal in September 1998 and after further hearings in December and February, a verdict was reached. The court found that a number of those killed were, in its view, "insurgents" but that unarmed civilians had also been stabbed or bayoneted to death. The court found there were "extenuating circumstances" for the killings of those it deemed to be "insurgents" but that there were no "extenuating circumstances" for the killing of young children. The "extenuating circumstances" for the extrajudicial execution of the alleged "insurgents" appear to have been that Kizuka was in a conflict zone. The court ruled that the defendants had admitted carrying out the killings, that there was material evidence of the killings and that the argument of legitimate defence, raised by the defence, was not valid as those killed included very young children, some of whom were only a few months old, who had been stabbed or bayoneted to death.

The court then sentenced Lieutenant Ndayisenga to one years' imprisonment -- which he had already served -- and his two co-defendants to prison terms of 18 months and two years.

Killings of this kind, whether they were of unarmed civilians, or of suspected combatants, are explicitly prohibited by international human rights standards and international humanitarian law. Article 6 of the International Covenant on Civil and Political Rights, to which Burundi is a state party, states, "*No-one shall be arbitrarily deprived of his life*". Article 4 of the ICCPR states that no derogation from Article 6 can be made. Article 4 of the African Charter on Human and Peoples' Rights (African Charter) provides similar guarantees. The African Charter does not allow states to derogate from their treaty obligations even during states of emergency. The Government of Burundi is also bound by Common Article 3 of the Geneva Conventions. Protocol II to the Geneva Conventions governing the protection of victims of non-international armed conflicts prohibits murder against "*All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted*". Common Article 3 states clearly that "*violence to life and person, in particular murder of all kinds*" is prohibited "*at any time and in any place whatsoever*" with respect to "*persons taking no active part in hostilities, including members of armed forces who have laid down their arms, and those placed hors de combat by sickness, wounds, detention, or any other cause*".

Military jurisdictions - no threat to impunity

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. Justice has been applied selectively, and with political and ethnic bias, and the armed forces have as a consequence largely been able to escape justice, both in civilian and military courts.

To date, in the few cases where soldiers have been tried for serious human rights violations, including the extrajudicial execution of unarmed civilians and captured combatants, those convicted have received disproportionately lower sentences than those imposed by civilian courts for similar offences. In some cases, such as the Kizuka massacre, sentences have been so light as to reinforce the sense that the armed forces are above the law. Amnesty International believes that the sentence should reflect the gravity of the offence, without recourse to the death penalty.

The unequal nature of sentencing between civilian and military courts for similar crimes fundamentally undermines the important principle of equality before the law. The disparity in sentencing shows that killings of unarmed civilians by members of the armed forces are treated differently and not as seriously as killings by civilians. By contrast,

soldiers who have been convicted of, for example, the murder of other soldiers have received long prison sentences, even the death penalty.

The quality of justice administered in military courts in Burundi is undermined by insufficient training and resources. Few judges have received adequate legal training and 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.

Proposals announced in 1999 by the Ministry of Justice to limit military jurisdictions have yet to materialize.

WHAT YOU CAN DO

Please publicise and distribute this document amongst human rights groups, lawyers and other organizations asking them to help in the campaign against impunity and extrajudicial executions in Burundi, including by lobbying the Transitional Government of Burundi.

Please write, preferably in French, to:

* Son Excellence Pierre BUYOYA, Président de la République, La Présidence, Bujumbura, République du Burundi
Fax : + 257 22 81 50

* Monsieur Fulgence Dwima BAKANA, Ministre de la Justice et Garde des Sceaux
Ministère de la Justice, Bujumbura, République du Burundi
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* Général-Major Cyrille NDAYIRUKIYE, Ministre de la défense, Ministère de la défense
Bujumbura, République du Burundi
Fax : + 257 24 26 36

* Monsieur Alphonse BARANCIRA, Ministre des Réformes institutionnelles, des droits de la personne humaine et des relations avec l'Assemblée nationale, Ministère des Réformes institutionnelles, Bujumbura, République du Burundi
Fax : + 257 21 38 47

* Monsieur Jean MINANI, Président de l'Assemblée nationale, Palais de Kigobe,
Bujumbura, République du Burundi
Fax : + 257 23 36 63

Points to raise

- express concern that, military jurisdictions have consistently proved to be unwilling and incapable of investigating and bringing to justice members of the armed forces suspected of committing human rights violations;

In the light of this failure, appeal to the new Burundian authorities to debate and enact legislation based on the following recommendations:

- 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. The jurisdiction for criminal offences committed by military personnel on active duty, should be transferred to ordinary civilian courts;
- Torture, ill-treatment and unlawful killings committed by military personnel on duty should be categorized, according to the law, as criminal offences;
- Civilian jurisdictions should have the necessary resources and political support to investigate abuses by members of the armed forces;
- Civilians should not in any circumstances be tried by military courts.

If military courts continue to hear cases beyond the scope of military discipline offences:

- Steps should be taken to ensure that both in law and in fact military investigators and judges are independent from the military hierarchy;
- Appeals against sentence and conviction by military courts should be heard by a civilian court of appeal.

Please ask your government to help reform and strengthen the Burundian justice system, so that it can prevent such abuses in future and put an end to impunity.

BURUNDI

Confronting torture and impunity

The case of Déogratias Bakundukize

Déogratias Bakundukize, a police officer with the *Police de Sécurité publique* (PSP), Public Security Police, a police force which is responsible to the Ministry of Interior, was suspected and subsequently convicted of the killing of detainees in his custody on two separate occasions, yet he has spent only six months in prison and continued to work as a police officer.

In January 1996, Boniface Nizigiyimana, who had been arrested on suspicion of theft, died in detention at the PSP, Ngozi, following severe ill-treatment. According to witnesses, Boniface Nizigiyimana was taken from his cell by Déogratias Bakundukize. Boniface Nizigiyimana was returned to his cell by Déogratias Bakundukize several hours later. He had been severely beaten and died shortly afterwards, apparently as a result of the injuries he had sustained. Déogratias Bakundukize continued to work at Ngozi PSP.

Less than a year later, in December 1996, three men including Emmanuel Karenzo were accused by a shopkeeper of involvement in the robbery of his shop which had taken place during the night of 23 December. The shopkeeper who reportedly recognized the three men, apprehended them the next day, tied them up and brought them to the local administration offices in Ngozi, where he handed them over to Déogratias Bakundukize as an officer of the PSP. Déogratias Bakundukize took the three men to the PSP camp in Ngozi, where the three detainees were tortured before being returned several hours later to the local administration offices and taken into custody. One of the group, Emmanuel Karenzo, died the same day as a result of his injuries.

Déogratias Bakundukize was arrested on 21 January 1997, and was accused of having "tied, beaten and burnt Emmanuel Karenzo with a knife causing his death" along with the shopkeeper who was accused of complicity in the killing. Both were detained for six months before being provisionally released. On his release, Déogratias Bakundukize was transferred to work with the PSP in Gitega, some 50 kilometres away.

In September 1998, Déogratias Bakundukize was convicted by the Ngozi *Tribunal de grande instance*, High Court of charges relating to the death of Boniface Nizigiyimana and received a five year sentence (with one year suspended). He did not attend the trial, and the court reported that he "had escaped" when in fact he had been transferred to work in a similar position in Gitega PSP. In May 1999, he was convicted by Ngozi Court of Appeal, of the murder of Emmanuel Karenzo, for which he was sentenced to life imprisonment. The shopkeeper was acquitted. Déogratias Bakundukize did not attend this trial either and no attempts appear to have been made to locate him by the authorities in

Gitega and Ngozi following his conviction. There are unconfirmed reports that he may have since left the country.

In October 2001, the State Public Prosecutor is reported to have written to the Ngozi and Gitega Public Prosecutors asking them to “ensure that the court decisions are implemented” and that “all necessary measures are taken” to arrest Déogratias Bakundukize.

While Déogratias Bakundukize’s absence from the court hearings raises questions about the fairness of proceedings against him, the case is a striking example of the failure of the Burundian judiciary to seriously tackle the impunity of the security forces.

Torturing with impunity

The failure to investigate, hold accountable and bring to justice members of the security forces suspected of responsibility for gross human rights violations is almost absolute. Justice has been applied selectively, and with political and ethnic bias, and the armed forces have as a consequence largely been able to escape justice, both in civilian and military courts. In the few cases where members of the armed forces, such as Déogratias Bakundukize, are brought to trial for human rights violations, it appears the sentences are either disproportionately light or not applied. In many cases, offending officers are simply transferred to other stations.

The torture and ill-treatment of detainees, primarily in police custody and in many cases to force “confessions”, is routine and widespread. The failure of courts to investigate torture allegations and their willingness to accept confessions obtained under torture has done nothing to discourage torture. The perpetrators of human rights violations must be brought to justice in trials that meet international standards for fair trial.

Torture methods most frequently reported include severe and sustained beatings using electric cables, sticks, and other heavy implements, beatings on the joints, the soles of the feet and the genitals, kneeling on bottle tops, stabbings, electric shocks, tying in excruciating positions, humiliation, intimidation, including death threats or other psychological abuse. Other techniques documented by Amnesty International include burning by boiling water, breaking of bones and simulated executions. These torture methods have been documented by Amnesty International for many years. Some detainees have been so severely tied or beaten that their limbs have subsequently been amputated.

WHAT YOU CAN DO

Please publicise the case of **Déogratias Bakundukize** and distribute this document amongst human rights groups, lawyers and other organizations asking them to help in the campaign against torture and impunity in Burundi, including by lobbying the Transitional Government of Burundi.

Please write, preferably in French, to:

* Son Excellence Pierre BUYOYA, Président de la République, La Présidence, Bujumbura, République du Burundi
Fax : + 257 22 81 50

* Monsieur Fulgence Dwima BAKANA, Ministre de la Justice et Garde des Sceaux
Ministère de la Justice, Bujumbura, République du Burundi
Fax : + 257 22 59 34

* Monsieur Salvator NTIHABOSE, Ministre de l'Intérieur et de la Sécurité publique,
Ministère de l'Intérieur et de la Sécurité publique, Bujumbura, République du Burundi
Fax : + 257 21 78 18

* Monsieur Alphonse BARANCIRA, Ministre des Réformes institutionnelles, des droits de la personne humaine et des relations avec l'Assemblée nationale, Ministère des Réformes institutionnelles, Bujumbura, République du Burundi
Fax : + 257 38 47

* Monsieur Jean MINANI, Président de l'Assemblée nationale, Palais de Kigobe, Bujumbura, République du Burundi
Fax : + 257 23 36 63

Points to raise

- express concern that following the death in custody from torture of Boniface Nizigiyimana no suspects were suspended from their positions where they could carry out similar human rights violations, pending a thorough, independent investigation;
- express concern that despite being charged with and subsequently convicted of the death in detention of detainees in his custody, Déogratias Bakundukize, was allowed to continue working as a member of the PSP;
- express concern that following his conviction, failure to implement the sentence against Déogratias Bakundukize has reinforced the message that members of the

security forces are above the law. Allowing Déogratias Bakundukize to continue in his job appears to have directly led to the torture and death of Emmanuel Karenzo;

- urge the authorities to carry out an independent investigation into the failure to suspend suspected perpetrators of human rights violations from positions where they could commit human rights violations, and to implement the sentence against Déogratias Bakundukize. The investigation should identify any changes - whether in legislation or policing or judicial procedures - that would provide safeguards against such failures. The government should ensure that such changes are implemented.

Ask the Government of Burundi to ensure as a matter of urgency that:

- all law enforcement agents receive strict instructions that in no circumstances, including when they are under orders from more senior officers, are they to ill-treat, torture or order the ill-treatment or torture of detainees, and that training is provided to assist all law enforcement agents in this change in practice;
- that those accused of torture and ill-treatment are removed from their posts, pending investigation, and if the accusations appear founded, they are arrested and prosecuted;
- to ensure that officials, whether government, military, judicial or otherwise, who have ordered or condoned torture should be removed from their positions of authority and brought to justice;
- to publicise the right to, and ways for, detainees and prisoners who have been the victims of torture or ill-treatment, to institute proceedings against the law enforcement officers responsible;
- compensation is provided to victims. Compensation can be an element of redress for the victim and, when paid by the perpetrator, can act as a deterrent. When paid by the state it can act as an incentive for the state to take positive steps to reduce the incidence of torture;
- the Code of Criminal Procedure is amended to guarantee the right to legal assistance at all times, including during the garde à vue period.

Please ask your government to help reform and strengthen the Burundian justice system, so that it can prevent such abuses in future and put an end to impunity.

BURUNDI

Confronting torture and impunity

The case of Gaëtan Bwampamye

Gaëtan Bwampamye, 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. In common with hundreds of other people who have been sentenced to death since 1996, he was denied the right to appeal.

He was arrested in August 1994 and accused of involvement in the massacres of Tutsi civilians in Ruhororo commune, Ngozi province in October 1993. After his arrest, a statement was drawn up which he was forced to sign without reading. Contrary to international standards of fair trial, he was not informed of the specific charges against him. During his trial, which started in March 1996, his family was harassed and his house burned down. The local police reportedly prevented neighbours from putting out the fire. His defence witnesses were arrested and beaten after giving evidence in court in December 1996. Despite this many defence witnesses were able to testify in his favour. At a hearing in August 1997, the defence lawyer was told to summarise his case as "there was not enough time" to hear all the arguments. The lawyer refused and the hearing was deferred until September 1997. On 27 September 1997, an adjournment was requested as the defence lawyer was unable to attend. The request was denied. Gaëtan Bwampamye was convicted and sentenced to death.

In October 1997, he submitted a plea for his case to be reviewed by the cassation chamber of the Supreme Court, which allows only for a limited review on questions of law and substantial violations of procedure. The submission, as with virtually all appeals to the cassation chamber, was rejected and his sentence was confirmed in October 1998. The cassation chamber rejected the argument that Gaëtan Bwampamye's right to be assisted by a lawyer had been violated.

Gaëtan Bwampamye's lawyer pursued the case, lodging a complaint with the African Commission on Human and Peoples' Rights (African Commission), based primarily on the denial of legal representation. In December 2000, the African Commission upheld the complaint 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 Bwampamye remains in prison. He is currently held in Bururi prison.

Amnesty International first published and campaigned on this case in 1998. Please see *Burundi: Justice on Trial, Cases for appeal* (AI Index: AFR 16/16/98, August 1998) and *Burundi: Justice on Trial* (AI Index: AFR 16/13/98, July 1998) for further information on the Burundian judicial system.

The right to appeal - strengthening the system of justice

A crucial part of fighting impunity is to ensure that the justice that is rendered is fair. An essential safeguard in this regard, for both plaintiff and the accused, is the right to appeal against a sentence and conviction.

Amnesty International believes that strengthening appellate rights will positively impact on human rights protection in Burundi, and will contribute to the creation of a strong and credible justice system - both of which are necessary for ending impunity.

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.

This violates the provisions of Article 14 of the International Covenant on Civil and Political Rights and Article 7 of the African Charter on Human and Peoples' Rights to which Burundi is party.

WHAT YOU CAN DO

Please publicise the case of Gaëtan Bwampamye and distribute this document amongst human rights groups, lawyers and other organizations asking them to help in the campaign against impunity and for the right to appeal in Burundi, including by lobbying the Transitional Government of Burundi.

Please write, preferably in French, to:

* Son Excellence Pierre BUYOYA, Président de la République, La Présidence, Bujumbura,
République du Burundi
Fax : + 257 22 81 50

* Monsieur Fulgence Dwima BAKANA, Ministre de la Justice et Garde des Sceaux
Ministère de la Justice, Bujumbura, République du Burundi
Fax : + 257 21 86 10

* Monsieur Gerard NGENDABANKA, Procureur général de la République, Bujumbura,
République du Burundi
Fax : + 257 24 15 03

* Monsieur Alphonse BARANCIRA, Ministre des Réformes institutionnelles, des droits
de la personne humaine et des relations avec l'Assemblée nationale, Ministère des Réformes
institutionnelles, Bujumbura, République du Burundi
Fax : + 257 21 38 47

* Monsieur Jean MINANI, Président de l'Assemblée nationale, Palais de Kigobe,
Bujumbura, République du Burundi
Fax : + 257 23 36 63

Points to raise

- in the light of the African Commission's important ruling of December 2000, call on the Burundian authorities to re-open Gaëtan Bwampamye's case;
- express concern that over 440 people who are under sentence of death, have been denied their right to appeal;
- remind the Government of Burundi that under international and regional treaties such as the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, that every person convicted of a crime, regardless of their status or the nature of the crime, be afforded the right to have their conviction and sentence fully reviewed by a higher impartial and independent jurisdiction;
- urge the Government to undertake immediate legislative, administrative or other reform to ensure that the right to a full appeal by a higher court is guaranteed in all cases;
- additionally, urge the Government to impose a moratorium on executions while debate on the abolition of the death penalty is carried out.

Please ask your government to help reform and strengthen the Burundian justice system, so that it can prevent such abuses in future and put an end to impunity.

