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BURUNDI

An opportunity to confront torture and impunity: Memorandum to the Transitional Government of Burundi and the international community



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TABLE OF CONTENTS

I	INTRODUCTION	1
II	MONITORING AND REMEDYING HUMAN RIGHTS ABUSES DURING THE TRANSITION	3
III	GUARANTEEING FREEDOM OF EXPRESSION	4
IV	ENDING TORTURE	4
V	CONFRONTING IMPUNITY	6
	i) Strengthening and reforming the judiciary	6
	ii) Greater legal protection - the right to appeal	7
	iii) Reform of military jurisdictions	8
	iv) Political prisoners	9
	v) The Office of Ombudsman	10
VI	ABOLITION OF THE DEATH PENALTY	10
VII	RECOMMENDATIONS TO THE INTERNATIONAL COMMUNITY .	11

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Memorandum to the Transitional Government of Burundi and to the international community

I INTRODUCTION

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 is addressing this 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

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 human rights situation remains very grave and the human rights of ordinary Burundians, of all ethnic groups, are routinely and blatantly violated. Since signature of the Peace Agreement in August 2000, hundreds of civilians have been killed; some have been victims of the numerous ambushes carried out by both the main armed opposition groups, others have been extrajudicially executed by members of the government armed forces, or deliberately and unlawfully killed by members of armed opposition groups, who have killed

¹Under the terms of the Peace Agreement, for the duration of the three year transitional period, legislative power will be exercised by the transitional National Assembly and the Senate, a new body with important constitutional powers. Executive power will be exercised by the President of the Republic assisted by a Vice-President. President Pierre Buyoya, a Tutsi, and Vice-President Domitien Ndayizeye, a Hutu, and Secretary General of the main Hutu-dominated political party, the *Front pour la démocratie au Burundi* (FRODEBU), Front for Democracy in Burundi, will hold office for the first 18 months of the transitional period. They will be replaced in the second half of the transition (also 18 months) by a Hutu President and Tutsi Vice-President. Ministerial portfolios have been divided amongst most political parties or armed opposition groups which are party to the Peace Agreement. For further information on the Peace Agreement, please see *Burundi: Between hope and fear* (AFR 16/007/2001, March 2001).

scores of people suspected of collaborating with the government administration or armed forces. Human rights defenders and humanitarian workers have been abducted, attacked and killed by members of the armed opposition, and threatened and their work obstructed by members of the government armed forces or administration. Numerous cases of torture and ill-treatment have been reported, particularly in military and para-military custody, and there have been a number of deaths in detention as a result of torture. Freedom of expression has also come under threat, including through the ill-treatment and brief detention of journalists. Human rights violations including illegal and arbitrary detentions, torture and extrajudicial executions have also been attributed to the armed but unpaid government militia, the *Gardiens de la Paix*, Peace guards. Hundreds of thousands of people are displaced within the country, while new refugees have continued to arrive in neighbouring Tanzania, which hosts already over 400,000 Burundian refugees.

Two armed opposition groups, the *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, and the *Forces nationales pour la libération* (FNL), National Liberation Forces are continuing to fight government forces. Despite the new openness to be involved in negotiations demonstrated by both movements, the prospect of a cease-fire seems distant.

Amnesty International is appealing to all parties to the conflict to issue strict instructions to their forces not to carry out human rights abuses and in particular to remind them of the protection afforded to the civilian population and combatants who are *hors de combat*.

The coming months must be used to find ways of providing better protection for human rights, including through addressing the impunity enjoyed by the security forces which has contributed to the loss of hundreds of thousands of lives, and in instituting safeguards which ensure that the abuses of the past are not repeated.

This Memorandum addresses some key human rights issues on which Amnesty International, Burundian and other international human rights organizations have campaigned for many years. 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.²

²For further information on the range and scale of human rights violations in Burundi, and Amnesty International's recommendations, please see previous Amnesty International reports on Burundi, including *Justice on Trial* (AFR 16/13/98), *No Respite without Justice* (AFR 16/12/99), *Protecting Human Rights - An intrinsic part of the search for peace* (AFR 16/01/2000), *Memorandum to the Government of*

Five cases for appeal which illustrate the themes of this Memorandum have also been produced.³ The case of **Salvator Ndagijimana**, who was tortured while held incommunicado in military custody, shows the need for urgent steps to be taken to prevent torture. The cases of **Gabriel Gisabwamana**, who was extrajudicially executed in December 1999 by members of the security forces, and of the 54 victims of the “**Kizuka massacre**”, highlight the inability of the military justice system to successfully investigate human rights violations and to bring those responsible to justice, and the necessity of reforming military jurisdictions. The impunity of the security forces is further demonstrated by the case of **Déogratias Bakundukize**, who continued to work as a police officer despite his alleged involvement in the death in custody of two detainees. Finally, the case of **Gaëtan Bwampamyé** highlights the need for legal reform to allow the right to have conviction and sentence reviewed by a higher impartial tribunal.

Amnesty International takes this opportunity:

- to urge the National Assembly to take up human rights issues and to use its legislative powers to force debate and accountability;
- to call on all members of the new government and institutions, and other political or community leaders, to ensure that human rights issues are at the heart of institutional reform and reconciliation;
- to appeal to the Transitional Government of Burundi to seize this opportunity to enact legal reforms, such as the right to a full appeal against sentence and conviction, which will increase human rights protection and the right to fair trial.

II MONITORING AND REMEDYING HUMAN RIGHTS ABUSES DURING THE TRANSITION

It is essential that human rights abuses which are carried out during the transitional period are investigated, the perpetrators brought to justice and victims provided with redress. Unless this happens, and real change takes place, there is a real danger that the previous climate of impunity will corrupt, undermine and potentially collapse new institutions. In this context, the importance of the work of human rights organizations must be recognized:

Burundi on Appellate Rights (TG AFR 16/98.69) and *Between hope and fear* (AFR 16/007/2001). All these documents and others on Burundi and the Great Lakes region are available from Amnesty International, International Secretariat, 1 Easton Street, London, WC1X 8DW or from cateam@amnesty.org

³*Burundi: Confronting torture and impunity, Cases for Appeal* (AFR 16/042/2001, November 2001) and are available from Amnesty International, International Secretariat, 1 Easton Street, London, WC1X 8DW or from cateam@amnesty.org

- the government must ensure that human rights defenders and investigators have unrestricted access to all areas of the country and are allowed to carry out their work without fear of being subjected to human rights abuses or interference;
- the government should remind administration officials or members of the security forces that human rights defenders and organizations are entitled to go about their lawful business and that any forms of intimidation and obstruction could constitute criminal offences. The government must investigate reports of intimidation or obstruction of the work of national and international human rights investigators and prosecute any officials suspected to be condoning or responsible for human rights violations;
- all measures possible are taken to protect the independence of the National Human Rights Commission and to ensure that the population has easy access to it.⁴

III GUARANTEEING FREEDOM OF EXPRESSION

While ending impunity for perpetrators of human rights violations is key to ending the cycle of violence and human rights abuse, creating greater awareness within the population of their rights and ways of redress is also essential. Work is already being done in this field including by national human rights groups and the National Human Rights Commission. However, unless freedom of expression -- excluding incitement or advocacy of violence and other human rights abuses -- is strengthened and human rights groups are protected from interference and threats, the ability of such groups and others within civil society to enable people to understand and stand up for their rights will be jeopardized.

Amnesty International is appealing to the Transitional Government of Burundi to ensure that:

- human rights groups are not hindered or prevented from carrying out their work;
- human rights groups have full access to all forms of news media;
- the media is not harassed or subjected to intimidation for reporting on human rights abuses and is able to carry out other independent reporting free of interference.

IV ENDING TORTURE

A constant feature of Amnesty International's work on Burundi has been campaigning against the routine use of torture and other forms of ill-treatment by the security forces. The

⁴National Human Rights Commissions, *Amnesty International's recommendations for effective protection and promotion of human rights* (AI Index: IOR 40/007/2001, October 2001) contains detailed recommendations on measures which can be taken to improve the record of National Human Rights Commissions.

incidence of torture -- and the impunity with which it is carried out -- has unfortunately not 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.

Amnesty International is calling on the new authorities to ensure that:

- all law enforcement agents receive strict instructions that in no circumstances, including when they are under orders from more senior officers, are they allowed to ill-treat, torture or order the ill-treatment or torture of detainees, and that human rights training is provided to assist all law enforcement agents in this change in practice;
- that those accused of torture and other forms of ill-treatment, or suspected of having ordered or condoned such acts, are removed from their posts, pending investigation, and if the accusations appear well-founded, that they are brought to justice promptly but without recourse to the death penalty;
- funding is provided to increase medical care in places of detention;
- the victims of torture or ill-treatment, including rape, are made aware of their rights to institute proceedings against government or security officials suspected of such abuses and are given clear guidance on how to obtain legal redress;
- 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 end torture;
- human rights groups, UN human rights monitors and humanitarian organizations are given instant, independent and unrestricted access to all places of detention including military barracks;
- in accordance with international standards, confessions obtained under torture are not admitted as evidence in court;
- the right to legal assistance at all stages of detention must be guaranteed.

In practice, because the procedures governing arrest and detention are not adhered to by many members of the police, gendarmerie and armed forces, many arrests and detentions are not authorized and take place outside the protection of the legal framework. Unless urgent action is taken by the authorities to ensure that law enforcement agents adhere to arrest and detention procedures, such protection can be meaningless.

Amnesty International recommends that:

- the government should end in practice and in law incommunicado detention -- used even by government Commissions of Inquiry (including during investigations into the December 2000 attack on a SABENA aircraft, and the April and July 2001 attempted coups d'état -- as it is a practice which facilitates torture, "disappearances" and extrajudicial executions;
- the National Human Rights Commission and the Human Rights Committee of the National Assembly should increase their role in investigating and reporting publicly on the use of torture. Amnesty International encourages both bodies to undertake unannounced visits to places of detention with the aim of making recommendations on measures to prevent torture and other cruel, inhuman or degrading treatment or punishment.

V CONFRONTING IMPUNITY

i) Strengthening and reforming the judiciary

Amnesty International has long argued for the need to reform and strengthen the Burundian judiciary to ensure greater independence, impartiality and competence.⁵ Only if this is done will the judiciary be able to fulfil 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

Amnesty International believes that the international community could play an important role in this area, and encourages the Transitional Government of Burundi to solicit full practical, political and financial support for strengthening the judiciary.

Key recommendations to the Transitional Government of Burundi are:

- measures to promote ethnic balance in the judiciary, as proposed in the Peace Agreement, should be accompanied by adequate training of new officials -- including judges, magistrates and prosecutors -- to ensure that weaknesses and

⁵The strengths, weaknesses and challenges of the Burundian legal system are explored in more detail in *Burundi: Justice on Trial* (AI Index: AFR 16/13/98, 30 July 1998) and *Burundi: No respite without justice* (AFR 16/12/99, 17 August 1999). Both reports contain detailed recommendations for reform.

⁶Comments on some of the human rights issues raised in the Peace Agreement are included in *Burundi: Between hope and fear* (AFR 16/007/2001, 22 March 2001).

current abuses within the judiciary are not perpetuated. Such training should include instruction in international and regional human rights instruments including, *inter alia*, the African Charter on Human and Peoples' Rights, to which Burundi is party;

- the assistance of foreign lawyers should be expanded to include assistance from abroad to all levels of the judiciary, including judges, magistrates and prosecutors;
- arrest, investigation and detention procedures by branches of the security forces, including the police and gendarmerie, must accord with international standards of fair trial and should be closely monitored by independent judicial officials;
- measures should be taken to ensure that arresting and investigating officers understand and respect the principle of the presumption of innocence;
- the possibility of introducing the equivalent of trained para-legals, who would represent detainees following their arrest and ensure that defendants have the chance to challenge the lawfulness basis of their detention, should be actively considered;
- people found to have been detained unlawfully should be compensated. Not only is this the right of the detainee under international law but this will ensure that greater attention is paid to preventing further illegal detentions;
- the roles and responsibilities of different police units and arresting authorities should be urgently clarified.

ii) Greater legal protection - the right to appeal .

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 have a conviction and sentence reviewed by a higher tribunal. Amnesty International believes that strengthening the right to appeal will positively impact on human rights protection in Burundi, and will contribute to the creation of a strong and credible justice system.

The transitional period of institutional reform is an opportunity to ensure that the right to a full appeal is guaranteed in all circumstances.

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.

Amnesty International welcomes the fact that the new draft law on genocide recognizes the obligation, under international human treaties to which Burundi is party, to guarantee the right to appeal to a higher jurisdiction, and the need for legal reform if this right is to be guaranteed.

Amnesty International encourages the Government of Burundi, National Assembly and Senate to enact legislation which will ensure that all defendants have the option of having their conviction and sentence reviewed by an impartial higher tribunal.

iii) Reform of military jurisdictions

Military jurisdictions have proved themselves to be unwilling and incapable of investigating and bringing to justice members of the armed forces suspecting of having committed human rights violations. In the rare prosecutions which have taken place, military defendants have received disproportionately lower sentences compared to those imposed on civilians for similar offences, have been acquitted in procedures that amount to blatant miscarriages of justice, or have been convicted but have continued to exercise their functions. In other extremes, soldiers have been denied their right to appeal and executed after summary and unfair trials, apparently as a means of score-settling within military ranks.

Amnesty International appeals to the transitional 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 and punished, 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.

iv) Political prisoners

Amnesty International welcomed the fact that the August 2000 Peace Agreement did not provide a blanket amnesty for human rights abuses and that it explicitly acknowledged the need to investigate past abuses.

The organization welcomes any measure which will assist the Burundian judiciary in addressing the serious problem of long-term detention without trial, particularly of detainees against whom there is no substantive evidence to support the accusation. Amnesty International hopes that a Commission, which the Peace Agreement specifies should be created to look into questions related to "political prisoners" and prison conditions, and will receive full political support for this important work and will be able to carry it out unhindered and independently.

Under the terms of the Peace Agreement, the Commission will have the mandate to inquire urgently into prison conditions and to make recommendations on the treatment of prisoners; the training and conditions of employment of prison guards; the release of remand prisoners whose cases have taken an excessive amount of time to be processed; and the release of "political prisoners".

The term "political prisoners" is not, however, defined in the text of the Peace Agreement, and may refer to those who have committed human rights abuses, including killings and torture, for political reasons.

Amnesty International firmly opposes pre-trial amnesties and calls for those political prisoners against whom there is substantive evidence of having committed serious human rights abuses to be brought to justice promptly in accordance with fair trial standards and without recourse to the death penalty.

Amnesty International does not call for the unconditional release of political prisoners but for their prompt and fair trial, in accordance with internationally recognized norms and without recourse to the death penalty. As such there is a distinction between the

organization's definition of a political prisoner and a prisoner of conscience, who is defined as someone imprisoned for their beliefs, their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status, who has not used or advocated violence. Amnesty International calls for the unconditional release of prisoners of conscience.

v) The Office of Ombudsman

The Peace Agreement provides for the creation of an Office of Ombudsman which should, *inter alia*, investigate complaints submitted to it by citizens of violations of their rights by agents of the state. It will also have the authority to make recommendations to the relevant authorities. An annual report submitted by the Ombudsman to the National Assembly should be made public in the Official Gazette.

Amnesty International calls on the Government of Burundi and its National Assembly to ensure that the Ombudsman is allowed to work free from government or security force interference, and is empowered to:

- act on his/her own initiative as well as on the basis of complaints by alleged victims;
- publicise findings on individual cases;
- make recommendations for legislative and administrative reform, where weaknesses are uncovered by the investigations;
- publicise its role and means of action and the ways people can have recourse to it;
- investigate human rights violations which the government authorities have failed to investigate and prosecute, impartially, promptly and thoroughly;
- compel witnesses to testify;
- have full and effective access to mechanisms to ensure that witnesses, complainants, or others providing evidence are given appropriate protection. Mechanisms should be in place, which can be triggered by the Ombudsman (and National Human Rights Commission), that can lead to the suspension or transfer of officials allegedly involved -- without prejudice pending completion of investigations -- to other duties where they would have no power over witnesses or complainants.

VI ABOLITION OF THE DEATH PENALTY

Amnesty International is unconditionally opposed to the death penalty. This position is based on its firm conviction that the punishment is a state-sanctioned violation of the right to life and the most extreme form of cruel, inhuman and degrading punishment. The death

penalty is discriminatory and is often used disproportionately against the poor and members of racial, ethnic and religious communities. It is often imposed and carried out arbitrarily.

The death penalty legitimizes an irreversible act of violence by the state and will inevitably claim innocent victims. As long as human justice remains fallible, the risk of executing the innocent can never be eliminated. Amnesty International continues to demand unconditionally the worldwide abolition of the death penalty.

Rather than being a deterrent, violent punishment can further entrench violence in society. Amnesty International firmly believes that the use of the death penalty can only perpetuate the cycle of bitterness and revenge, instead of bringing reconciliation and respect for human rights to Burundi.

The Government of Burundi should take this opportunity to demonstrate their commitment to respecting human rights and putting an end to political violence in Burundi by abolishing capital punishment. As a first step, a moratorium on executions should be exercised while debate on abolition is initiated.

VII RECOMMENDATIONS TO THE INTERNATIONAL COMMUNITY

The international community including inter-governmental organizations and national government aid donors, should encourage the Government of Burundi to increase protection for human rights and provide financial and other support for human rights initiatives, including those suggested above. In addition, the international community should:

- urgently assist in the reconstruction of an effective criminal justice system;
- support the growth of the independent media including by providing material support and training opportunities for journalists, and publicly denouncing attacks on journalists;
- promote and provide human rights training within the security forces in the context of other training to ensure greater professionalism and respect for human rights;
- support UN initiatives such as the program of judicial assistance and human rights monitoring to ensure greater effectiveness and increased political support;
- support independent human rights organizations including by providing financial and other material resources;
- work with the government and independent human rights organizations to identify and implement concrete ways of contributing to the fight against torture;
- carefully monitor the human rights situation in Burundi and human rights record of the Transitional Government of Burundi;

- ensure that transfers to Burundi of military, security or police equipment, technology, training or personnel are not authorized if they are likely or known to contribute to human rights violations;
- ensure that the duty to monitor and report on human rights abuses is explicitly included in the mandate of any international peace-keeping or protection force;
- all peace-keeping personnel should be fully trained in international human rights and criminal justice standards and their duty to adhere to them at all times.

KEYWORDS: GOVERNMENT CHANGE1 / PEACE KEEPING / IMPUNITY / FREEDOM OF EXPRESSION / TORTURE/ILL-TREATMENT / INDEPENDENCE OF JUDICIARY / MILITARY TRIBUNALS / POLITICAL PRISONERS / DEATH PENALTY