

## TABLE OF CONTENTS

I	INTRODUCTION .....	1
II	BACKGROUND INFORMATION .....	2
III	NOVEMBER 1998 - MARCH 1999 .....	8
	i) Extrajudicial executions in Rural Bujumbura .....	9
	ii) Killings by armed opposition groups in conflict zones .....	13
	ii.i) Recruitment of child soldiers .....	17
IV	GOVERNMENT RESPONSE .....	18
	ii) Investigating killings by the armed forces .....	19
	3 November 1998, Mutambu commune, Rural Bujumbura .....	20
	19-20 January 1999, Makamba commune, Makamba province .....	21
V	TACKLING ABUSES BY THE ARMED FORCES .....	24
	ii) Justice before military courts .....	26
	ii.i) Lack of independence and impartiality .....	26
	ii.ii) The scope of military jurisdictions .....	27
	ii.iii) Professional competence .....	29
	ii.iv) Disproportionate sentencing .....	30
	ii.v) Fair trial concerns .....	33
VI	RESPONSE OF ARMED OPPOSITION GROUPS .....	35
VII	CONCLUSION .....	36
VIII	RECOMMENDATIONS .....	37
	i) Recommendations to the Government of Burundi .....	37
	ii) Recommendations to the leaders of armed opposition groups and the political parties to which they are allied .....	40
	iii) Recommendations to the international community .....	41

# BURUNDI

## No respite without justice

### I INTRODUCTION

This report covers the human rights situation in Burundi between November 1998 and March 1999. Since November 1998, there has been intense activity by armed opposition groups in Burundi, particularly in the province of Rural Bujumbura, attributed mainly to the *Forces nationales pour la libération* (FNL), National Liberation Forces, and the southern provinces of Makamba and Bururi, attributed mainly to the *Forces pour la Défense de la Démocratie* (FDD), the Forces for the Defence of Democracy. Attacks on military posts, as well as ambushes and some attacks on camps for the displaced have continued on a frequent basis during the first part of 1999. Armed opposition groups have also attacked eastern provinces such as Rutana and Ruyigi, previously untouched by conflict for the last two years. Reprisals by the armed forces have often been brutal and indiscriminate and have resulted in hundreds of extrajudicial executions, mainly of members of the Hutu ethnic group.

In this context, hundreds of unarmed civilians have been killed since November 1998 in Rural Bujumbura and Makamba provinces and scores more are reported to have been killed in Bururi province. This report documents some of these killings and looks at the responses of the government and armed opposition groups.

The responsibility to ensure that such crimes are prosecuted and punished is unconditional and imperative. The Government of Burundi and the leaders and military commanders of armed opposition groups have the obligation under international humanitarian law to ensure that their forces respect fundamental human rights, as enshrined in common Article 3 of the Geneva Conventions and Protocol II to the Geneva Conventions. In addition the government has undertaken obligations under international human rights treaties, including the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights, to respect the rights of all persons in Burundi. Abuses by armed opposition groups do not absolve the Government of Burundi of this responsibility.

This report is the product of an Amnesty International research visit to Burundi in February 1999 and of the ongoing work of the organization on Burundi. The goal of this report is to draw attention to recent abuses, the need to investigate these abuses and to bring to justice the perpetrators of serious crimes committed in the context of armed conflict. It does not reflect all of Amnesty International's concerns, nor is it an exhaustive picture of the extrajudicial executions, deliberate and arbitrary killings and other abuses which have taken place in Burundi since November 1998.

The report makes a number of recommendations to the Government of Burundi and leaders of Burundian armed opposition groups as well as to members of the international

community on how the abuses may be addressed and prevented. The recommendations in this report are particularly focussed on investigations by and trials before military courts<sup>1</sup>.

## **II BACKGROUND INFORMATION**

Since independence in 1962, members of the minority Tutsi ethnic group have dominated virtually all successive governments and the security forces. The judiciary, the educational system, business and news media are also dominated by Tutsi. The decades-long struggle for power between Tutsi and Hutu elites in Burundi has led to the deaths of hundreds of thousands of people, most of them civilians. Repeated Hutu challenges to Tutsi domination have each time been followed by reprisals against Hutu civilians by the security forces. Waves of killings occurred in Burundi in 1965, 1969, 1972, 1988 and 1991.

In the early 1990s under the government of Pierre Buyoya, a process of democratization began and multi-party elections were held in June 1993. The Hutu-dominated *Front pour la démocratie au Burundi* (FRODEBU), Front for Democracy in Burundi, won a landslide victory. President Melchior Ndadaye, Burundi's first and only democratically-elected president, his constitutional successors and other key figures in the administration were killed in a coup attempt three months after their electoral victory. President Ndadaye's proposed reforms of the military to address ethnic and regional imbalance may have in part provoked the coup attempt. After worldwide condemnation of the coup and the suspension of foreign aid, military leaders claimed that only a small group of soldiers had carried out the coup attempt. This claim was difficult to believe when there had been no evidence of any sections of the armed forces taking measures to prevent the coup. Military leaders also announced the return of power to the elected civilian FRODEBU-led government.

As news of the assassination of President Ndadaye spread, thousands of Tutsi civilians as well as Hutu supporters of the *Union pour le progrès national* (UPRONA), Union for National Progress, the former ruling party, were killed in reprisal by Hutu civilians. Within four days of the coup attempt, mass and indiscriminate reprisals for these killings were being carried out by the Tutsi-dominated security forces and Tutsi civilians against the Hutu population. Hundreds of thousands of Hutu, as well as some Tutsi, fled the violence, mainly to Tanzania and Zaire (now the Democratic Republic of Congo) and hundreds of thousands of others, mainly Tutsi, were internally displaced. The majority of refugees and internally displaced have yet to return to their homes.

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<sup>1</sup>More detailed recommendations in relation to civilian jurisdictions can be found in *Burundi: Justice on Trial* (AFR 16/13/98, 30 July 1998), available in French and English from Amnesty International's International Secretariat, 1 Easton Street, London, WC1X 8DJ, United Kingdom.

In the aftermath of the 1993 coup attempt, leaders and allies of UPRONA organized themselves to resist the return of power to FRODEBU control. The Tutsi political opposition, backed by the Tutsi-dominated army, was reluctant to relinquish the power it had enjoyed since independence, and continued to force political concessions from the weakened FRODEBU government which could not consolidate its position. Tutsi youths formed armed groups, with the knowledge and even assistance of Tutsi soldiers. Many government supporters, particularly Hutu, were killed during such action. To counter this violence and what they considered as the inability of the FRODEBU-led government to protect its members and supporters, armed Hutu groups sprang up in and around Bujumbura.

From 1994 onwards, a number of Hutu-dominated armed opposition groups, formally allied to political parties in exile, began an open war against the Tutsi-dominated armed forces and their political allies, killing many unarmed Tutsi civilians. Tutsi militias also operated, often in open collusion with the armed forces, carrying out political assassinations and extrajudicial executions, particularly of prominent Hutu. The violence spread country-wide, and Hutu and Tutsi who had previously lived together effectively separated with urban centres dominated by Tutsi. Outside urban centres many Tutsi, fearing for their safety after the massacres of October 1993 remained in camps for the displaced. By early 1996 at least 11 provinces were experiencing regular fighting and the armed opposition had set up parallel administrations in some provinces. Both armed opposition groups and the armed forces were responsible for large numbers of killings of unarmed civilians. The FRODEBU government continued to weaken, as FRODEBU parliamentarians and officials were assassinated, arrested or fled into exile. The army extended its control with the appointment of military governors in a number of provinces<sup>2</sup>.

However, during 1996 the armed opposition were significantly weakened by national and regional developments. In July 1996, President Pierre Buyoya returned with the support of the armed forces to power in a coup, which he claimed to have carried out to prevent further human rights violations and violence; many observers saw it as the completion of the October 1993 coup attempt. Nationally the government employed a practice of forcibly relocating or “regrouping” the Hutu rural population into camps. While officials claimed that the motivation behind the regroupment, was to protect the population, it became clear that the policy was a counter-insurgency strategy developed to undermine Hutu-dominated armed opposition groups by

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<sup>2</sup>See previous Amnesty International reports, *Burundi: Time for international action to end a cycle of mass murder* (AFR 16/08/94, 17 May 1994), *Burundi: Struggle for Survival - Immediate action vital to stop killings* (AFR 16/07/95, June 1995), *Burundi: Targeting students, teachers and clerics in the fight for supremacy* (AFR 16/14/95, September 1995) and *Burundi: Armed groups kill without mercy* (AFR 16/08/96, 12 June 1996), for further information.

creating military zones and by removing any possible source of support or cover<sup>3</sup>. Whole areas were cleared of civilians and homes and plantations destroyed. Amnesty International and other human rights groups concluded that the policy could not be justified under international law. Furthermore, the war which broke out in the DRC in late 1996 not only led to the expulsion and return to Burundi of tens of thousands of Burundian refugees but also meant that armed opposition groups lost bases in eastern DRC, including support they were deriving directly and indirectly from refugee camps. This, combined with the effectiveness of the regroupment strategy, and fighting between the armed groups, weakened the armed opposition and by 1997 the areas of conflict had been reduced.

During 1997 and 1998, the conflict was concentrated on the western side of the country and is now primarily located in the provinces of Rural Bujumbura, Bururi and Makamba although there have been recent reports of fighting and the presence of armed groups in the south-eastern provinces of Rutana and Ruyigi, bordering Tanzania. Although it is not always possible to identify which armed opposition group is fighting where, PALIPEHUTU-FNL are currently reported to be located mainly around Rural Bujumbura and the FDD in the southern provinces of Makamba and Bururi. FROLINA is also reported to be sporadically operational in the south and east. There are persistent reports of members of the former Rwandese army (ex-FAR) fighting alongside armed opposition groups, particularly the PALIPEHUTU-FNL, in Burundi. There are also reports of alliances between the various Burundian armed opposition groups, although sporadic fighting and rivalry between them has itself generated hundreds of killings since 1994<sup>4</sup>.

Although there is some direct combat, the majority of those killed are unarmed civilians. The armed forces reportedly often retreat rather than engage in direct combat with armed groups but return after an attack or passage of armed groups and indiscriminately attack the population. The population is frequently caught between opposing sides; viewed by the armed forces as hostile and supportive of the armed opposition, and equally, the armed opposition considers members of the population who fail to support them as potential collaborators of the

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<sup>3</sup>See Amnesty International report, *Burundi: Forced relocation: new patterns of human rights abuses* (AFR 16/19/97, 15 July 1997) for further information.

<sup>4</sup>The main Hutu-dominated armed opposition groups are; The *Forces pour la défense de la démocratie* (FDD), Forces for the Defence of Democracy, the armed wing of the *FDD-Conseil National pour la défense de la démocratie* (CNDD), National Council for the Defence of Democracy (formed in exile following the October 1993 assassination of President Ndadaye by former FRODEBU and FRODEBU-allied political parties); the *Forces nationales pour la libération* (PALIPEHUTU-FNL), National Liberation Forces, which split from the Hutu opposition party, the *Parti pour la libération du peuple hutu* (PALIPEHUTU), Party for the Liberation of the Hutu People, formed in 1980; and the *Front pour la libération nationale* (FROLINA), Front for National Liberation, another breakaway faction of PALIPEHUTU.

government. Viewed as a potential insurgent or potential collaborator, much of the population is thus constantly at risk of reprisal killing by different sides. In some areas the population may be taxed by both the armed opposition and the government. Both the armed opposition and government soldiers coerce civilians, including young children, to carry weapons and other equipment for them; children as young as 12 have been arrested for collaboration with armed opposition groups as a result. The government practice of introducing night-time civilian patrols, as a counter-insurgency measure, has led to civilians becoming military targets for the armed opposition groups. Participation in such patrols is compulsory. Refusal to accept may easily result in arrest, and even “disappearance”. Although in most cases it appears that the patrols are not armed, their surveillance role is a potential threat to armed opposition groups.

While the conflict continues, negotiations aimed at finding an end to the political conflict involving members of the main political parties and armed opposition groups are continuing in Tanzania. Delegates are divided between four committees: the nature of the conflict, democracy and good governance, peace and security, and economic reconstruction and development. Both armed opposition groups and the armed forces appear to have deliberately carried out human rights abuses timed to coincide with the holding of rounds of negotiations in Tanzania, as shows of force, or attempts to derail the process. The progress of negotiations is slow and tangible progress not always apparent. Moreover, not all parties or groups are represented at the talks. For example, the CNDD-FDD have not been invited to attend the talks<sup>5</sup>, and the representational issue is further complicated by splits in most of the political parties present at the talks, including FRODEBU and UPRONA. Some government opponents accuse President Buyoya of orchestrating splits in the parties or detaining political opponents to consolidate his own position. In the first year of his return to power several opposition politicians, were detained without charge for brief periods, including the then Secretary General of FRODEBU, Augustin Nzojibwami. In April 1999 Augustin Nzojibwami was expelled from FRODEBU, reportedly accused of acting in his own interests and of cutting a private deal with President Buyoya. Senior members of the *Parti pour le redressement national* (PARENA), National Recovery Party, the party of former president Jean-Baptiste Bagaza, which commands support amongst the Tutsi community, have been detained without trial since March 1997, accused of an attempt to assassinate President Buyoya.

## **II.i) Application of international human rights and humanitarian law to the conflict**

As a bare minimum, the provisions of Article 3 of the Geneva Conventions would be applicable to the conflict in Burundi. Article 3, which is common to the four Geneva Conventions provides for the protection of persons taking no active part in the hostilities, including members of armed

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<sup>5</sup>In 1998, the CNDD split and its executive committee was expelled by a breakaway faction which formed the CNDD-FDD, led by the then military commander of the FDD. Léonard Nyangoma remained, however, as president of the original CNDD and continues to attend the talks.

forces who have laid down their arms or who are *hors de combat*, and requires such persons to be treated humanely. Article 3 also prohibits certain acts against such persons, including violence to life and person, torture, taking of hostages and humiliating and degrading treatment.

In addition, Protocol II to the Geneva Conventions which expands the principles enshrined in common Article 3 and which has been ratified by Burundi is applicable. Protocol II establishes certain fundamental guarantees for persons not taking an active part in the conflict and provides for the protection of civilian populations against the dangers arising from military operations. In addition, the international community has affirmed that individuals could be held criminally responsible under international law for acts which are committed in violation of common Article 3 of the Geneva Conventions and Protocol II through including such violations in the statutes of the International Criminal Court and the International Criminal Tribunal for Rwanda.

Acts committed by either side to an internal conflict in violation of Article 3 or Protocol II may be considered as grave breaches of the Geneva Convention. Therefore, both members of the Burundi security forces and armed groups such as FDD or PALIPEHUTU-FNL who commit human rights abuses may be held accountable for their actions which may be considered crimes under Burundi domestic law, and for violations of common Article 3 of the Geneva Conventions and Protocol II.

The Government of Burundi is also required to abide by its obligations under international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), the Convention on the Rights of the Child and the African Charter on Human and Peoples' Rights (African Charter) in its dealings with its civilian population. Although the Government is entitled to derogate from the rights protected under the ICCPR in certain circumstances, there are certain core rights, including the right to life and prohibition of torture, from which there can be no derogation even during times of war. The African Charter and the Convention against Torture do not allow for any derogations from the rights guaranteed in those treaties. The Burundi Government is also required to implement other human rights standards including the Standard Minimum Rules for the Treatment of Prisoners, Declaration on the Protection of All Persons from Enforced Disappearances and Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

The UN Guiding Principles on Internal Protection<sup>6</sup> (the Guiding Principles), derived from the Geneva Conventions, which apply to “*all authorities, groups and persons irrespective of their legal status*” spell out a number of important principles which apply both to the

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<sup>6</sup>Adopted at the 54<sup>th</sup> session of the UN Commission on Human Rights, UN Doc E/CN.4/1998/53ADD2

Government of Burundi and to armed opposition groups. The Guiding Principles prohibit in all circumstances “Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities” and “Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted”. Attacks against camps for the displaced are also prohibited and Principle 3(1) of the Guiding Principles require the Burundian authorities to protect the internally displaced from attacks by armed opposition groups.

### III NOVEMBER 1998 - MARCH 1999

All the killings described in this section of the report are considered by Amnesty International to be extrajudicial executions. It is calling for full, independent investigations to be carried out into the killings and for those responsible to be brought to justice.

Many of the cases described have taken place in areas where the local civilian and military authorities have ordered the civilian population to leave the area because of counter-insurgency operations. While ostensibly a measure aimed primarily at protecting the civilian population, members of the government and the armed forces have publicly stated that people left in the areas will be considered to be linked to the armed groups, and therefore military targets. This assumption has led to repeated cases of extrajudicial execution of unarmed civilians, including of very young children, despite it being clear in many cases that they represent no threat to the lives of the armed forces and are taking no direct part in the armed conflict. The clearing of such areas appears to have been taken by the security forces as a licence to kill with impunity<sup>7</sup>.

In reality, while there may be members of armed opposition groups in cleared areas, for a variety of reasons cleared areas are rarely empty of all civilians. For example, failure to provide adequate or even minimum food in camps for the newly displaced population has meant that people often return to their homes to seek food. Many are farmers and may take the risk of returning to harvest or tend their crops, or to protect their crops or property from theft. In some cases it appears people simply choose not to move, perhaps because they are tired of repeated evacuations, or underestimate the threat posed by the order to evacuate. Some may be ill and not wish or be able to relocate to overcrowded and unsanitary camps. Many members of the Hutu population see the armed forces as a source of fear not of protection, as a consequence of years of atrocities committed by the armed forces. Amnesty International is not aware of measures taken to ensure that all civilians have received and understood the order to leave, nor of special precautions being taken to ensure that people such as the elderly and the sick are safely evacuated in a timely fashion. The time between a clearing operation and

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<sup>7</sup>Since 1996 Amnesty International has documented hundreds of killings of civilians caught in these areas. There is little evidence that any of these killings have been, or will be, investigated.

subsequent military operation appears to vary, and it is not always clear that a realistic time lapse occurs.

Furthermore, the protection offered to different groups of people displaced by the insecurity appears to vary considerably; some are grouped in well-protected sites or buildings, while others are kept outside although there appear to be empty available buildings nearby. Some are kept in the interior of military posts and thus surrounded by soldiers, and others kept around military posts, thus surrounding the soldiers. This latter situation was the case for example in Bukeye, Kibago commune, Makamba province in January 1999, where some displaced people were grouped for a short time around the military post. Although in that instance, none were killed, Amnesty International is concerned that this could amount to using the population as human shields and put them in great danger. In Makamba province in January 1999, concern was raised by some sources that those in the better protected sites appeared to be predominantly Tutsi, while those in the more exposed sites, predominantly Hutu.

**i) Extrajudicial executions in Rural Bujumbura**

At least 500 civilians are reported to have been killed by government soldiers in Rural Bujumbura alone between November 1998 and March 1999. Scores more are reported to have been killed since. The following cases have been selected by Amnesty International to illustrate the patterns and extent of extrajudicial executions in Burundi. The organization is campaigning in different ways on other extrajudicial executions committed during this period in Rural Bujumbura. Scores of other civilians have been extrajudicially executed during the same period in other parts of the country, including Bururi and Makamba provinces.

On 4 December, around 30 people were killed in Rutonde, Migera sector, Kabezi commune, during a military operation in the area to seek out FNL members. It appears that those killed were the victims of extrajudicial executions by the armed forces, as they fled from the Masama area, after the military post there was attacked by the FNL. Fifteen people were killed in a house in Migera sector when grenades and rockets were fired into it. Another 13 bodies were found in a nearby latrine. They had been shot in the back. All but one of the victims were women or children. Other bodies were reportedly seen in the area immediately after the attack. On 7 December, soldiers reportedly fired on a group of civilians who were burying the victims of this attack, injuring one person. According to some sources, the motive for this second shooting was to prevent the discovery of more bodies. Local civilian and military authorities are reported to have claimed that an inquiry has been opened into these killings. Amnesty International has not been able to establish the progress, if any, of the inquiry.

Four women and seven children were among a group of 19 people from Nyamuzi *colline*<sup>8</sup>, Mubone zone, Kabezi commune who were extrajudicially executed on 13 December. They had returned to look for food in an area officially cleared of civilians.

While there, they were seen by soldiers from Mubone military post, who reportedly robbed them, forced them into a house and killed them. Some survivors claimed that at least 10 other people were killed by soldiers on the same *colline*.

The Commander of the 1st Military Region is reported to have stated that an inquiry had been opened into these killings. However, he is also reported to have stated that the killings were carried out by insurgents. This claim was reportedly contradicted by survivors and local civilian authorities. Amnesty International has not been able to establish that further investigations have been carried out to clarify the circumstances of the killings.

Following a FNL attack on Ruziba military post on 25 December in which two or three soldiers were killed, and the post destroyed, five people, including a boy, **Ntakarutimana**, aged 14, and an elderly man, **Emmanuel Manirakiza**, were killed by soldiers near Mugere bridge, in Ruziba zone on 29 December. They do not appear to have posed any threat to the soldiers and appear to have been killed in an indiscriminate reprisal for the attack on Ruziba post.

**Patrice Ngarama**, aged 47, **Jacques Nderagakura**, aged 17, **Vincent Ndabatamije**, aged 23, **Balthazar Ndiwenumuryango**, aged at least 40, and **Fabien Nyakamwe**, aged 35 were extrajudicially executed with at least 50 other civilians on 4 January 1999 on Kimina *colline*, in Mubone zone, Kabezi commune, during a military operation on Gaza and Kimina *collines*. According to many testimonies, soldiers grouped together the population which they found in the area, separating the men from the women and children. The men were told they must help the soldiers look for members of the armed opposition. They were taken away and were apparently divided into two groups before being killed. One group was taken into a house and killed there; some were bayoneted to death. The bodies are reported to have been burned in the house. A number of other unarmed civilians were reportedly killed by soldiers as they fled. Amnesty International has received reliable information claiming that at least two women, known as **Marguerite** and **Dominique**, and two young girls, **Chantal** aged 8 and a 9-year-old girl identified as Domitien's daughter, were amongst those killed.

Although it is generally acknowledged by government officials that a number of extrajudicial executions may have taken place on 4 January on Kimina *colline*, Mubone commune, no judicial inquiry into these killings appears to have been opened. The Military

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<sup>8</sup>*Colline* (hill) is a local administrative division. Administratively, a *colline* breaks down into a number of smaller units: *sous-colline*, zone, and sector.

Prosecutor told Amnesty International that he was unaware of the killings and stated that perhaps he had been out of the country when they had occurred. The State Public Prosecutor, who has the legal power to order an inquiry had not done so by July 1999.

On the night of 11 January, the local official (*chef*) of Mubone zone **Térence Banciriminse**, nicknamed “Mitterrand”, was extrajudicially executed by soldiers from Mubone military post. He had reportedly publicly accused soldiers from Mubone military post -- in the presence of local civilian and military officials, and representatives of the Human Rights Ministry -- of being responsible for the 4 January killings in Mubone and of the “disappearance” of a catechist, **Dionèse Ntayizeye**, whom he claimed had been shot and buried at Mubone military post. Dionèse Ntayizeye was reportedly arrested by soldiers from Mubone military post on 24 December 1998 shortly after he testified about the involvement of soldiers from the post in an earlier massacre on 13 December. He was taken to Mubone military post and has since “disappeared”. On 31 January 1999, **Barnabé Ndaruzaniye**, the new head of Mubone sector was also reportedly shot and killed by soldiers from Mubone military post, and in the presence of some civilians, as a further intimidation against reporting human rights violations.

The killing of Térence Banciriminse has been acknowledged by the government authorities. No investigations with a view to prosecuting his killers appear to have taken place. It is also unclear whether any investigations have taken place into the “disappearance” of Dionèse Ntayizeye or the killing of Barnabé Ndaruzaniye.

The killings continued throughout February. On 3 February, **Michel Bakamfoebeke**, a judge at Mubimbi district court, *Tribunal de résidence*, was arrested in Muhuta commune by soldiers from Muhuta military post and taken away. He was stabbed to death by the soldiers shortly afterwards at the military post. Some reports allege he was killed with two or three other men who were with him in a bar at the time of his arrest. Michel Bakamfoebeke was arrested without a warrant and the motive for his extrajudicial execution is unclear. However, it appears there was some suspicion his son had links with armed opposition groups in the area and his arrest and subsequent killing may have been linked to these suspicions. Amnesty International has not been able to confirm reports that the killing is being investigated. No arrests of soldiers at Muhuta military post are known to have taken place in connection with his death.

On 8 February, 24 people -- mostly women and children -- were reportedly killed on Mubone *colline*, Kabezi commune after soldiers arrived in the late afternoon, and fired indiscriminately on people outside their houses. The killings followed an armed opposition attack on Ruziba military post a week earlier, when a number of soldiers are reported to have been killed, and three others apparently taken away by the insurgents. The killings appear to have been extrajudicial executions carried out in indiscriminate reprisal against the unarmed civilian population.

On 27 February, soldiers returning from Bujumbura to Burembere post forced 11 people at Kiyensi market to carry their provisions. The soldiers were reportedly also accompanied by soldiers from Mugere post. When the soldiers arrived in Gisovo, Kanyosha, a further seven civilians were forced to follow them. All 18 were reportedly extrajudicially executed at Burembere. Amnesty International has not been able to establish a motive. The soldiers continued to Rukoba where a further 18 people, including eight members of the same family, two of whom were very young children, were reportedly killed.

On 4 March, at least 13 unarmed civilians are reported to have been killed by soldiers from Masama military post in Kabezi commune, during and following an operation by soldiers to look for members of an armed opposition group believed to be in the area. The first killing took place early in the morning when soldiers shot and killed a man on Ceri II *colline*, Kabezi commune. The soldiers then headed towards Mutumba town, rounding up 26 unarmed civilians whom they saw in the area, and forcing them to accompany them. In Mutumba, the group were reportedly identified by the military commander there as being local civilians and not members of the armed opposition. However, all 14 men in the group were separated from the women in the group and taken away by the soldiers. They were told that they had to accompany the soldiers and show them where the armed opposition was. Hours later the soldiers returned without the men, and reportedly told those waiting that they could begin mourning. The bodies of 13 of the group, including **Hicuburundi**, aged approximately 60, **Melchiade**, aged 38, and **Frédéric Nyabenda**, aged 32, were subsequently found and identified near Rubona, Busenge. They had been stabbed to death.

Following the killings, the local population was summoned on 7 March to a meeting in which they were addressed by a military officer and two members of parliament. Members of the local population accused the soldiers of carrying out the killings. The military officer reportedly told the population that in the interests of reconciliation they had to forget the past. Despite this, the commander of Masama military post was taken for questioning by the Military Public Prosecutor's Office following the killings. He was, however, released uncharged shortly afterwards, apparently because the Military Public Prosecutor's Office found there was insufficient evidence to detain him. It is unclear what, if any, investigations were carried out by the Military Prosecutor's Office into the allegations against him.

## **ii) Killings by armed opposition groups in conflict zones**

Armed opposition groups have also been responsible for scores of deliberate and arbitrary killings and for summary executions in the provinces of Rural Bujumbura, Makamba and Bururi.

Many killings by armed opposition groups are reported to be reprisals against people who are denounced for, or suspected of, having collaborated with the local administration or military authorities against the armed opposition groups.

A number of camps for the displaced have been attacked, violating the UN Guiding Principles on Internal Protection. On 14 December 1998, approximately 30 unarmed civilians are reported to have been killed by the *Forces pour la Défense de la Démocratie* (FDD), Forces for the Defence of Democracy, during an attack on Muyange regroupment camp, Burambi, Bururi province. The FDD are also reported to have attacked Buruhukiro camp, Rumonge commune on 7 December, deliberately and arbitrarily killing up to 25 people. The motive is not known.

Between 13 and 22 January 1999 a series of attacks were carried out by members of the armed opposition, believed to be the FDD, in the communes of Kibago, Mabanda, Kayogoro and Makamba in the southern province of Makamba. The FDD reportedly attacked from Tanzania, coming in at least two waves; a first group all in military uniform, and a second group in military uniform accompanied by civilians. Following the passage of the two groups, groups of people in civilian clothes are also reported to have passed through. The latter group was reportedly responsible for looting. It is unclear to Amnesty International whether this last group was actually linked to the FDD or was made up of civilians spontaneously profiting from the insecurity.

During the attacks, over 200 homes are reported to have been burned in the Mabanda and Kibago areas. Many testimonies accuse FDD members of selectively burning homes of either people suspected of collaborating with the government or, in some cases, of Tutsi civilians on the basis of their ethnic origin. According to some testimonies, the FDD were accompanied by a number of local civilians, who were indicating which houses should be destroyed. Amnesty International is concerned that the FDD may have carried out large-scale destruction of houses and crops, possibly as a punishment for lack of support to the FDD or because of the ethnic affiliation of the victims. Other sources however indicate that government forces may also have been responsible for house destruction, in some cases to destroy possible shelter for the armed opposition, or as a punitive measure against a population potentially, in its view, supportive of the armed opposition. At least 20,000 people are reported to have been displaced by the attacks in Mabanda and Kibago communes.

During the attacks at least 36 civilians were killed by the FDD, in Mabanda and Kibago communes on 13 and 14 January. Local officials in Mabanda commune stated that 23 people had been killed in there alone. Local sources believe the figure could be higher; in addition to the list of 23 people established by local authorities, Amnesty International received information on the killings of a further eight people, reportedly by members of the armed opposition groups. At least nine children are reported to have been killed, and a number of older people, including a man aged 75, and another man, **Melchior**, aged 65. In Kibago commune, another man was seriously injured and left for dead after being hit on the back of his head with a machete. He had been returning home after completing the night-time patrol known as the “*ronde*” when he was stopped by members of the FDD, some of whom were dressed in military uniform. He was

asked to contribute financially to the FDD, then forced to carry some weapons, including rocket propelled grenade launchers, for the group. He was subsequently made to lie down and was hit on the back of the head with a machete in an attempt to kill him. Five other civilians are also reported to have been killed by insurgents in Kayogoro commune, Makamba province as the attack moved round the province.

On 19 January 1999, 10 unarmed civilians, including **Frédéric Sabimunva**, are reported to have been killed in an ambush by members of the armed opposition, probably the FDD, as they returned on foot to Busaga, Burambi commune from Kizuka market in Rumonge commune, Bururi Province. The group did not pose any military threat and appear to have been deliberately and arbitrarily killed.

On 22 January, three civilians are reported to have been killed by members of the FNL in Mutimbi, Rural Bujumbura. At the same time, the FNL also reportedly mutilated another civilian, cutting off his ears, with the warning that anyone collaborating with the army would be punished, and the killings may have been in reprisal for suspected collaboration.

On 23 January, three prisoners from Mpimba central prison, who were working in Mpanda graveyard close to Bubanza, Bubanza province, were shot dead when insurgents -- thought to be members of the FNL -- fired into the graveyard. The motive is not known.

Two soldiers of the Burundian armed forces were summarily executed in late January or early February by armed insurgents, reported to be members of the FNL, after the minibus they were travelling in was stopped at Kirasa, Mutambu, Rural Bujumbura. The insurgents inspected passengers' identity cards discovering in the process that two were soldiers in civilian clothes. They were immediately executed. No civilians are reported to have been injured or killed in this attack.

On 18 February 1999, four women and three men, including **Nzigendako**, his wife and his son, **Joseph**, were reportedly killed in broad daylight by a group of insurgents, reportedly members of the FNL, close to Nihangaza camp for the displaced in Bubanza province. According to local sources, a group of FNL members which was then present in the area included many Rwandese, thought to be members of the former Rwandese army (ex-FAR). Although the camp is apparently 100 metres from a military post, soldiers there reportedly did not intervene.

On or around 2 March, a man called **Térence** was summarily executed by members of the FNL in Ruziba, Kabezi commune shortly after he was released from detention. He had been arrested by the local authorities and accused of participation in a series of violent crimes in the area, including rape and murder. The crimes, which were carried out by an armed gang, were initially attributed to the FNL known to be present in the area. Térence was arrested after being recognized. He was released by the local authorities shortly afterwards on payment

of compensation to the family of one of his victims and fines to the local administration. Some days later, members of the FNL are reported to have taken T rence from the house where he was staying and to have summarily executed him, as a punishment for sullyng the name of the FNL. T rence himself is not reported to have been a member of the FNL. The FNL reportedly distributed tracts warning that if another man, also detained in connection with the same crimes, was released he too would be killed. His fate is unknown to Amnesty International.

On 19 November, a civilian, **V n rand Ntirampera**, was reportedly killed by FDD members in Kiguhu zone, Ruhinga sous-*colline*, Ruyigi province. V n rand Ntirampera was reportedly suspected of informing the local military of the presence of insurgents in the area. Another four civilians, all members of the same family, who had recently returned to the *colline* from a displaced camp, were also killed. The reasons for their killings is not known. According to some reports, a number of civilians on the *colline*, were arrested by the local judicial authorities and accused of complicity with the armed opposition, shortly after the attack. Amnesty International has not been able to confirm this report, nor that a member of the armed opposition group was captured and is currently in detention, accused of killing three of those killed in this attack.

#### **ii.i) Recruitment of child soldiers**

In addition to these indiscriminate and arbitrary killings, further evidence has emerged in 1999 on the recruitment of children by the FDD. The information which Amnesty International has obtained relates to recruitment from refugee camps in Tanzania. Over 220 Burundian refugees were arrested in Tanzania in January 1999. At least 70 of them were children under the age of 18, of whom 21 were aged 15 or under. Following their arrest the refugees reportedly admitted that they had been recruited in the camps to fight for the FDD and that they were returning to Burundi, although they subsequently changed their stories. Most of the refugees were from Lukole camp, Ngara. The group were convicted in December 1998 by the District Magistrate's Court in Ngara on two counts of conspiracy to escape from a refugee camp. The adults received prison sentences, while the children in the group were flogged as a punishment. Amnesty International considers flogging to be a form of cruel, inhuman and degrading treatment.

In an internal armed conflict, the obligation under international humanitarian law is clear -- children under the age of 15 shall neither be recruited into the armed forces or armed opposition groups, nor allowed to take part in hostilities. Article 4 (3c) of Protocol II states: "*Children who have not attained the age of 15 years shall neither be recruited in the armed forces nor allowed to take part in hostilities.*" This prohibition applies equally to government forces and armed opposition groups. The statute of the International Criminal Court makes it a war crime for any government or armed opposition group to recruit or use as soldiers children under the age of 15. In a report by the Special Representative of the Secretary General

for Children and Armed Conflict, made to the UN General Assembly in October 1998, the Special Representative strongly supported the movement to “*raise the legal age for recruitment and participation of children in hostilities from 15 to 18 years*” and stated that “*Children simply have no role in warfare*”. In relation to the minimum age, the Special Representative “*strongly advocated the designation of the recruitment of children under 15 and their participation in hostilities as a war crime...*”

Furthermore, by recruiting from the refugee camps and thus deriving indirect support from the camps, the FDD is not respecting the civilian character and humanitarian nature of the refugee camps. In doing so, it is putting the safety of hundreds of genuine refugees in danger. Any real or perceived militarization of the camps will potentially undermine the protection of refugees<sup>9</sup>.

#### **IV GOVERNMENT RESPONSE**

*“States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity.”*<sup>10</sup>

All the killings described in the previous section of this report took place in areas of insurgency. Amnesty International has raised some of these cases, and others which fall into the same patterns, with the Government of Burundi on numerous occasions. Only in a few cases has the government recognized publicly that human rights violations may have occurred and in even fewer cases have the perpetrators been arrested and brought to justice. Moreover, hundreds of human rights violations have been minimized by arguments such that it is a time of war and therefore some killings of unarmed civilians are regrettable but inevitable, or that the killings Amnesty International is concerned about have taken place in areas which have been cleared of civilians, and therefore any civilian in an evacuated area is necessarily linked to the armed opposition. According to the government, such killings do not, as a rule, merit investigation or

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<sup>9</sup>UNHCR Executive Committee (EXCOM) Conclusion No. 48, Excom Conclusion No.77 states that “*the grant of asylum or refuge being a peaceful and humanitarian act, refugee camps and settlements must maintain their exclusively civilian and humanitarian character, and all parties are obliged to abstain from any activity likely to undermine this;...*” This is reiterated in EXCOM Conclusion No. 75 on refugee children and adolescents. Although EXCOM Conclusions are considered “soft law” and not legally binding on States in the same sense as treaties, they have been adopted by consensus by over 40 States and are widely recognized as to represent the view of the international community and carry persuasive authority.

<sup>10</sup>General Comment 6 of the Human Rights Committee relating to Article 6 (the right to life) of the ICCPR.

constitute human rights violations. Such justifications by the government points to its failure to respect its obligations under international human rights and humanitarian law. Under common Article 3 of the Geneva Conventions, the government is obliged to distinguish between combatants and those not taking a direct part in the conflict and to take measures to protect the civilian population from the effects of armed conflict.

In some cases where military or civilian authorities have recognized that unarmed civilians have been killed by members of the armed forces, this recognition is tempered by a degree of excuse or justification, which has the effect, intended or otherwise, of minimizing the violation. In meetings with Amnesty International representatives, government officials have sought to justify killings of unarmed civilians by claiming, for example, that the soldier responsible may have lost many members of his family in the massacres of Tutsi civilians in 1993, or that colleagues had been killed by armed groups with the alleged support of the population, or that there must have been some other provocation on the part of the civilian population. The duty of a national army is to protect all civilians, regardless of their regional, ethnic or political affiliation. If the context has induced such trauma that it is impossible or difficult for a member of the armed forces to carry out his duty, rather than using this as an argument to excuse killings, soldiers should be removed from duty where they are likely to be placed under undue pressure and commit human rights violations.

## **ii) Investigating killings by the armed forces**

Although the Government of Burundi is obliged to initiate inquiries into allegations of large-scale human rights violations as soon as they are brought to its attention, few investigations into violations allegedly perpetrated by government security forces have taken place. Occasionally, investigations have been initiated, but rarely concluded. Although the Military Public Prosecutor's Office is specifically tasked with this function, few of the above killings attributed to the armed forces of Burundi have been the subject of criminal investigations. Other investigations by human rights groups, journalists, the Office of the UN High Commissioner for Human Rights, and an inter-ministerial Commission of Inquiry have been hindered and blocked by members of the armed forces. The findings of investigations by human rights groups and the Office of the UN High Commissioner for Human Rights have largely not been acted upon. There have been cases where witnesses who have been courageous enough to testify to violations by the armed forces have "disappeared" or been extrajudicially executed by the armed forces to prevent further incriminating testimony.

As the previous section of this report on extrajudicial executions by government soldiers in conflict zones has made clear, the response of government and military authorities to the obligation to investigate killings has been inadequate. Amnesty International acknowledges that the Government has limited resources to investigate accusations of gross human rights violations, particularly given the number of accusations and the difficult terrain. However, the organization

believes that any statement of a commitment to investigate is undermined by a lack of political will. Combat is sporadic rather than sustained, most reported extrajudicial executions or other human rights violations attributed to the armed forces in conflict areas are carried out after rather than during conflict, and occur in areas which government troops control. If immediate investigation is not possible, measures such as accurate record keeping of counter-insurgency patrols, can facilitate subsequent investigation. Section V of this report, which looks at the mechanisms and resources of the military justice system, highlights some of the constraints on independent investigations, at the best of times let alone a time of war.

The two examples below examine in more detail the different responses to particular allegations of serious human rights abuses.

### **3 November 1998, Mutambu commune, Rural Bujumbura**

In *Burundi: Insurgency and counter-insurgency perpetuate human rights abuses*, Amnesty International reported that up to 165 unarmed civilians had reportedly been extrajudicially executed on 3 November 1998 by government soldiers on Rutovu and Busenge *collines*, Mutambu commune, Rural Bujumbura. Although government and military sources initially claimed to be unaware of the massacre, after substantial coverage in the national and international media of reports of the massacre, on 10 November the Ministry of Defence issued a public statement in which it acknowledged that around 30 people had been killed by members of the armed forces during a military operation by a mobile patrol unit against the FNL and the FDD reported to be in the vicinity. It stated that an investigation would be launched and that three soldiers had already been arrested. According to Amnesty International's information, Nyandwi, a Cadet Officer, *candidat officier*, the commander of the mobile unit, and another more junior officer of the mobile unit, were arrested immediately after the outcry over the killings. An inter-ministerial government commission of inquiry was also established.

Amnesty International and others have continued to investigate these killings. During their February 1999 visit to Burundi, Amnesty International delegates gained further information on the killings, and on the response of the government and military authorities to this massacre.

According to investigations undertaken by a Burundian human rights group, the Ligue ITEKA<sup>11</sup>, the first killings took place on 2 November when a mobile patrol gave chase to what it claimed was a group of around 20 insurgents in Rutovu sector. According to other sources, the group were unarmed civilians looking for food. Two were caught as they fled and immediately summarily executed. The following day, the mobile patrol went to Maramvya and identified a number of civilians, including six children under the age of 10, who had fled from Gitwe. They were told that they were to be escorted home. A further 12 civilians from Gitwe

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<sup>11</sup>ITEKA Bulletin, m 34, January 1999

were identified en route and taken with the patrol. Twenty-three were killed en route; 12 civilians including four children from Mwinjiro *colline* were killed and their bodies thrown into the Musa river; 11 others, some of whom were apparently made to lie down before being shot, were killed and their bodies put into a house and burned. Shortly after, soldiers killed **André Ndaruvukanye**, aged 52, his five children and a number of other relatives. A number of civilians were reportedly forced to join the military operation, and in particular to set fire to houses.

Many sources stated that the killings took place after soldiers surrounded Gitwe *colline*, Muhuta commune and Rutovu and Rugoge *collines* in Mutambu commune. Scores of people were shot after responding to a call by soldiers to assemble. Soldiers fired in the air causing panic, and then shot people who fled in the confusion. A number of people who tried to hide in houses were killed and the houses burned. According to some survivors, 52 people were burned alive in one house in Rutovu. Four men managed to escape from the house.

There is still no final confirmed figure of how many civilians were killed. However, according to Amnesty International's information, at least 59 children were among those extrajudicially executed and included 13 under the age of 10; among them, **Nadine**, aged two, **Thérèse**, aged four, **Ruzobavako**, aged four, **Antoinette**, aged three, **Rubina**, aged four, **Hakizimana**, aged five, **Minani**, aged two, and **Kabura**, aged four.

The inter-ministerial commission of inquiry, as far as Amnesty International has been able to establish, has made little progress in its investigations. It had twice attempted to visit the massacre area but had been denied access on both occasions by the military "on security grounds". The commission has not made public the findings of any investigations undertaken. Amnesty International is concerned at the failure of the government commission of inquiry to report publicly on its findings so far. It is concerned also that the commission of inquiry may not have been able to carry out full investigations. It hopes that witnesses and survivors will be protected so that they are able to give testimony without fear for their lives.

At the end of May 1999, investigations by military officers into the accusations against Cadet Officer Nyandwi and the other officer, were reportedly continuing. Neither man had been formally charged. Both men are detained in Mpimba Central Prison, Bujumbura.

### **19-20 January 1999, Makamba commune, Makamba province**

Up to 76 unarmed civilians were reportedly killed on 20-21 January, on Muresi and Murango *collines* and Gakwende *sous-colline* in Makamba commune following a week of armed opposition attacks in Makamba province. Local government and military authorities attributed the killings to the armed groups. However, substantial evidence suggests that in fact they may have been, for the most part, extrajudicial executions carried out by government troops.

During its visit to Burundi in February 1999, Amnesty International met and interviewed a number of survivors, independent observers, and members of the local administration and military. Although the official version -- as presented by various authorities -- was consistent in that it attributed responsibility to armed groups and denied that government soldiers had been involved in any human rights violations, there was no consistency in terms of details and accounting for the loss of life. The version given by survivors differed substantially from the version of events presented by the local civilian and military authorities. Although the version given by survivors was largely consistent in attributing the killings to soldiers, and in referring to the presence of the armed opposition, some survivors who had been held at Muresi Pentecostal Church and who had fled in the confusion of the arrival of soldiers, felt unable to say with certainty that they had been attacked by soldiers. While it is possible that some people may have been killed in crossfire, scores of others appear to have been killed in circumstances which suggest they may have been extrajudicially executed in indiscriminate acts of violence and reprisal by government soldiers.

No investigation by the military authorities appears to have taken place to clarify the circumstances of the killings or to determine responsibility.

The facts on which all sources appear to agree are: that up to 76 people were killed on Muresi and Murango *collines*, Makamba commune; that some of these were killed and burned in houses; that the killings followed FDD activity; that the FDD, most of whom were in military uniform, occupied Muresi *colline* for a short time, and were camped in or around Muresi Pentecostal Church which has a vantage point towards Makamba town; that the killings of the civilians started after the intervention of the security forces; that the FDD had been to Muresi *colline* several times previously; that a number of soldiers had been killed in fighting in the days preceding the killings of civilians.

According to the information Amnesty International received from survivors and independent sources on the killings of Muresi and Murango *collines*, the FDD occupied Muresi *colline* and forcibly grouped the local population in front of Muresi Pentecostal church, during which time they tried to persuade the local population to join their ranks. However, a number of people left the *colline* and alerted the civilian and military authorities in Makamba town to the presence of the FDD. The following day soldiers arrived from Makamba, shooting indiscriminately. The FDD fled leaving the population behind. Soldiers proceeded to carry out reprisal killings against the civilian population they found at the *colline* and on neighbouring hills, possibly to avenge the deaths of fellow soldiers. It appears that the local military may have regarded the population as complicit in the attacks which had taken place, partly because the FDD were known to have been to Muresi *colline* before.

Thirty-six people are reported to have been killed on Gakwende *sous-colline*. A number of people were apparently killed or burned in their houses, including 14 people who were

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reportedly shut into one house by soldiers who then set fire to the house. Some people were shot outside the house including **Violette Havyarimana** and her two children, **Ndikuriyu** and **Fidèle Barankanfiti**, five members of the **Buriha** family, all children, and **Samuel Babura**. The majority of survivors reportedly attributed the killings to soldiers. After the killings soldiers looted some houses. They then set up a military post on Muresi *colline* for two weeks. Access to Muresi *colline* was initially denied by the local military to journalists and human rights investigators.

### **Responses from local authorities**

Below are some of the responses Amnesty International received from the local administration and military authorities regarding the killings on 19 and 20 January in Makamba commune.

#### **The Governor of Makamba Province**

According to the Governor of Makamba, armed groups attacked Makamba province on the night of 13 January starting in Mabanda commune. They destroyed houses and stole livestock. The army intervened the following day and pursued the rebels who moved around the province looting and killing. In total, 124 people were killed by the rebels, of whom 23 were killed in Mabanda, 20 in Kibago, 76 in Makamba and five in Kayogoro communes.

In Makamba town, the administrator of the commune advised the population of Muresi and neighbouring *collines* to move to Makamba town for their own protection. The majority of the population moved. According to the Governor, *“Those who didn’t were either held hostage, or probably supported the rebels. In the course of military operations these people were killed.”* Thirty-nine people were killed in cross fire in Gitaba zone. Seven others were killed and burned in a house by the armed groups while on Muresi *colline*. Some civilians who had been taken hostage were killed in and around Muresi Pentecostal Church, again by armed groups.

#### **The military District Commander (*Commandant de District*)**

According to the Commander, as they had been forewarned that an attack by the armed opposition coming from Tanzania was imminent, most civilians had already fled their homes before the first attack on 13 January. In Makamba commune, the rebels took the population hostage at Muresi Pentecostal church. More rebels were inside the church. He asked a zone official to ensure that the area was cleared of the civilian population and arranged for areas where they would be protected for the duration of a counter-insurgency operation. Most people left but those who stayed behind were killed.

#### **Zone official (*Chef de zone*) of Gitaba zone**

Because of the insecurity, the local population was told to evacuate the area. Most people complied with the order. However, some of the population fled and tried to hide elsewhere on the *colline*. The rebels arrived in Gitaba zone on 19 January as they passed through Murango and Muresi *collines*. They settled on Murango *colline* for two days; on the second day the army intervened. When soldiers intervened and started to chase the rebels they fled towards Makamba, passing through Muresi.

Thirty-one people were killed by the armed groups on Gakwende *sous-colline*. A man, **Mitago**, and his wife were burned in their house on Murango *colline*. **Frederic Sinarinzi**, and a woman, **Habonimana**, were also killed. The rebels moved to Muresi *colline* where they took up position at Muresi Pentecostal Church. They fled from the church after being attacked by soldiers. As they fled, they torched houses and killed several people on Muresi *colline*. The dead body of a man who had been taken hostage at the church by the rebels was found the next day.

#### **Zone official (*Chef de zone*) of Muresi zone**

According to the Muresi zone official, rebels arrived in Muresi on 19 January, and started killing and pillaging. More than 50 local civilians were taken hostage at Muresi Pentecostal Church by the rebels on Muresi *colline*. On 20 January, some civilians were able to alert the local administration that the rebels were there and had taken the population hostage. The hostages were subsequently rescued by soldiers and by the zone official. A total of 36 civilians -- mostly women and children -- were killed by the rebels on Muresi *colline* and 39 houses burned.

The different versions show the difficulty in obtaining an accurate record of what happened on Muresi *colline*, but underline the importance of investigation. One official initially attributed all the killings to the rebels but admitted it was difficult to identify the perpetrators with certainty, as both the rebels and armed forces were wearing military uniform. Amnesty International is concerned at the apparent lack of intention of the authorities to investigate the discrepancies in the official versions given by the local authorities, and by differences between these versions and the versions given by survivors. There are clear inconsistencies in these versions to which the authorities have so far appeared indifferent - in particular as to the role the security forces may have played in committing human rights abuses. Further investigations are needed to establish who was responsible for which abuse, and where; exactly how many people were killed; whether action has been or will be taken against those responsible; the effectiveness of measures taken by local authorities to protect the population, so that in the event of further attacks, civilians can be better protected.

## **V TACKLING ABUSES BY THE ARMED FORCES**

### **i) The impunity of the armed forces**

While many of the human rights abuses experienced in Burundi are linked inextricably to the conflict, the continued impunity of the armed forces, and the weakness of the Burundian judicial system are important contributing factors. The failure of successive governments to investigate and bring to justice those responsible for large scale killings and other grave human rights abuses has fundamentally undermined the principle of equality before the law and cost the lives of several hundred thousand Burundian civilians.

Of the over 9,400 people currently in detention in Burundi, approximately 500 are reported to be members of the security forces. Of this number, only a minority are detained in connection with their alleged participation in human rights violations. This figure contrasts starkly with the number of human rights violations which remain uninvestigated. Even just since 1993, members of the Burundian armed forces have been implicated in tens of thousands of extrajudicial executions, and other human rights violations, including “disappearances”, torture, and rape. According to information received by Amnesty International, in 1993 only one soldier was arrested and charged with murder, in 1994, five soldiers were charged with murder, in 1995, none. In 1996, 18 were charged with murder and in 1997, two.

The failure to investigate, hold accountable and bring to justice members of the armed forces who have been 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. For example, no one has been brought to justice for the killing of at least 80,000 Hutu civilians in 1972. Unlike trials before civilian jurisdictions, such as the trials of civilians for their roles in the massacres which followed the 1993 assassination of President Ndadaye, where judicial officials have been zealous in the arrest, trial and conviction of civilians, military jurisdictions have been less rigorous in their pursuit of soldiers accused of perpetrating serious human rights violations. Even in relation to the events of 1993, few members of the security forces who participated in reprisal killings of Hutu civilians following the initial wave of killings of Tutsi civilians, have been arrested or brought to justice. Tens of thousands of unarmed civilians have been killed since; the majority of killings attributed to the armed forces remain uninvestigated.

Nor has the impunity of the military been challenged by civilian courts. In May 1999, the trial by the Supreme Court of those accused of the murder of President Ndadaye and of the attempted coup, ended. Two lieutenants, one *in absentia*, and 28 other low ranking soldiers, were convicted for their roles in the assassination of President Ndadaye. Thirty-eight other defendants including the former head of the armed forces, the former commander of the Muha

barracks where President Ndadaye was killed, were acquitted, five had since died. The court claimed to have not been properly informed in relation to 10 other defendants<sup>12</sup>.

The trial had been marked by an apparent lack of will to elucidate facts and responsibilities. The majority of those accused of participating in the assassination of the head of state and in the attempted coup, were never detained. Questions in court were limited strictly to events on the night of the coup attempt. Of 81 defendants only 13 were in detention in May 1999. During the trial, key defendants were appointed by the government to senior positions within the army, government, business or gained diplomatic postings abroad. The role of senior members of the armed forces was not investigated. Key witnesses were not interviewed in court. Several members of the armed forces rumoured to be able to provide evidence against senior government or military figures died in circumstances suggesting they may have been assassinated. At least three other soldiers, also accused of involvement in the coup attempt, were shot and killed in December 1995 as they, according to official sources, tried to escape from Mpimba Central Prison. The exact circumstances are not clear and they may have been the victims of extrajudicial executions.

The following section of this report looks at some of the challenges in addressing the impunity of the security forces.

## **ii) Justice before military courts**

### **ii.i) Lack of independence and impartiality**

A major factor in the continued impunity of the armed forces is the lack of independence and impartiality of military jurisdictions.

There is no legal guarantee that military personnel appointed as judges are independent of the military hierarchy in the administration of justice. Magistrates and judges of the military courts are appointed, removed or transferred on the recommendation of the Minister of Defence. Under the current legislation regulating the organization of military courts, all judges in the military courts and military court of appeal, as well as all military prosecutors, are deemed to be auxiliary magistrates, meaning that they are not exclusively affected to their judicial functions, and are still subject to the statutes of their principal functions as military personnel<sup>13</sup>.

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<sup>12</sup>Five death sentences were passed, three *in absentia*; six defendants, two *in absentia* were sentenced to 20 years, one person was sentenced to 13 years, two people to two years, and 14 people, none of whom are in detention received a three year sentence, two years of which are suspended.

<sup>13</sup> Articles 117 and 118 of *Loi n° 1/004 du 14 janvier 1987 portant réforme du code de l'organisation et de la compétence judiciaires*, Law N° 1/004 of 14 January 1987 amending the Code of

Auxiliary magistrates are subject to the disciplinary regime of civilian career magistrates only if they hold judicial functions exclusively. In practice, and given that the law specifically allows auxiliary magistrates to take on other functions, military magistrates are rarely subject to the judicial scrutiny or sanction that applies to career magistrates. However, their accountability to the Ministry of Defence is absolute.

The independence of military courts is further undermined by the closeness of the military to the executive branch of government. The African Commission on Human and Peoples' Rights found that a trial by a special tribunal in Nigeria established by the Civil Disturbances (Special Tribunal) Act violated the African Charter because the tribunal consisted of one judge and four members of the armed forces. The Commission noted that "*the tribunal is composed of persons belonging largely to the executive branch of government, the same branch that passed the Civil Disturbances Act*". It concluded that "[r]egardless of the character of the individual members of such tribunals, its composition alone creates the appearance, if not actual lack of impartiality. It thus violates Article 7(1)(d) [of the African Charter]<sup>14</sup>. Amnesty International believes that this comment is applicable to the military courts in Burundi.

## ii.ii) The scope of military jurisdictions

Military courts have exclusive jurisdiction over members of the armed forces, irrespective of the nature of the alleged offence<sup>15</sup>. Under current legislation, cases involving both civilian and military defendants are tried by military courts<sup>16</sup>. Amnesty International is concerned about the ability of the military jurisdictions to ensure that the perpetrators of grave violations of human rights and international humanitarian law are brought to justice in accordance with international standards for fair trial. These concerns refer firstly to the nature of military jurisdictions, which are inherently limited in their ability to impart independent and impartial justice and additionally

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Organization and Judicial Competencies.

<sup>14</sup>*The Constitutional Rights Project (in respect of Zammani Lakwot and six others) v. Nigeria*, (87/93), 8<sup>th</sup> Annual Activity Report of the African Commission on Human and Peoples' Rights, 1994-1995, ACHPR/RPT/8th/Rev.I.

<sup>15</sup>Excluding officers of such high grade who benefit from an attachment of privilege (*privilège de juridiction*), and who are therefore tried by the Supreme Court.

<sup>16</sup>Article 15 of the *Décret-Loi n° 1/5 du 27 février 1980, portant code de l'organisation et de la compétence des juridictions militaires*, Decree N° 1/5 of 27 February 1980 dictating the organization and competence of military jurisdictions. The only exceptions to this would again be if a defendant benefited from an attachment of privilege, and was therefore entitled to be tried by the Supreme Court.

to the very specific limitations of the Burundian military justice system; limitations which have, in some instances led to flawed trials, and in others, have enabled offenders to escape responsibility for their actions.

In a policy document produced by the Burundian Ministry of Justice in early 1999 entitled *Plan de réforme et de modernisation du système judiciaire et pénitentiaire burundais*, Framework for the reform and modernization of the Burundian justice and penitentiary system, the Government of Burundi states its intention to reform, amongst other things, the organization of the judicial system by limiting the jurisdiction of military courts to offences purely of a military nature. According to the timetable included in the policy document, this reform will be enacted by November 2000.

This proposal is consistent with recommendations of various UN bodies and representatives. Article 16 of the UN Declaration on Disappearances states that “*Persons alleged to have committed any of the acts referred to in article 4, paragraph 1, above [enforced disappearance] shall be...tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts.*” The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has expressed concern about “*trials of members of the security forces before military courts where, it is alleged, they evade punishment because of an ill-conceived esprit de corps, which generally results in impunity.*”<sup>17</sup>. The UN Human Rights Committee has also called on Lebanon to transfer competence of military courts in all cases concerning the violation of human rights by members of the military to ordinary courts<sup>18</sup>.

Transferring criminal offences to civilian courts would address some of Amnesty International’s concerns, particularly in relation to the investigation and prosecution of soldiers who have committed human rights violations. However, Amnesty International believes the reform should go further, as the other failings of military courts, including the submission of judges and investigators to military hierarchy, would continue to undermine the administration of justice even on questions of offences deemed to be purely military some of which are

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<sup>17</sup>UN Doc. A/51/457, para. 125, 7 October 1996.

<sup>18</sup>UN Doc CCPR/C/79/Add.78, para. 14: “*The Committee expresses concern about the broad scope of the jurisdiction of military courts in Lebanon, especially its extension beyond disciplinary matters and its application to civilians. It is also concerned about the procedures followed by these military courts, as well as the lack of supervision of the military courts’ procedures and verdicts by the ordinary courts. The State party should review the jurisdiction of the military courts and transfer the competence of military courts, in all trials concerning civilians and in all cases concerning the violation of human rights by members of the military, to the ordinary courts.*”

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punishable by death. The jurisdiction of military courts should be restricted to the trial only of military personnel charged with offences of an exclusively military nature<sup>19</sup>.

The organization also urges the Government of Burundi to demonstrate, in the meantime, its commitment to ensuring that members of the armed forces are held accountable, by instituting prompt, thorough and impartial investigations into human rights abuses allegedly committed by them, and ensuring that those responsible are brought to justice without recourse to the death penalty<sup>20</sup>.

### ii.iii) Professional competence

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. According to many lawyers, the analysis of evidence has often been weak. 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. There is little regular contact between civilian judges and their military counterparts, which is unfortunate, as the latter could benefit from the expertise of the former.

For example, **Immaculée Nindorera**, a civilian who was aged 15 at the time of her arrest, was tried and convicted by Bujumbura military court in 1995. Although Amnesty International has sought clarification from a number of sources during and since its latest visit to Burundi in February 1999, it has been unable to firmly establish the exact circumstances of the trial. However, it appears that Immaculée Nindorera was convicted of theft of a weapon,

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<sup>19</sup>UN Doc. CCPR/C/79/Add. 104-30 March 1999, para. 9: *“The wide jurisdiction of the military courts to deal with all the cases involving prosecution of military personnel and their power to conclude cases that begin in the civilian courts contribute to the impunity which such personnel enjoy against punishment for serious human rights violations. Furthermore, the continuing jurisdiction of Chilean military courts to try civilians does not comply with Article 14 of the Covenant. Therefore: The Committee recommends that the law be amended so as to restrict the jurisdiction of the military courts to trial only of military personnel charged with offences of an exclusively military nature.”*

<sup>20</sup>Amnesty International is unconditionally opposed to the death penalty, as it believes that it constitutes a state-sanctioned violation of the right to life. It is particularly concerned when the death penalty is imposed after unfair trials. Two soldiers sentenced by military courts are currently under sentence of death. Over 265 people have been sentenced to death, and six people executed, in Burundi since 1996 after unfair trials by civilian courts.

an offence triable under a 1971 law by military court, after stealing a weapon from the soldier for whom she worked as a domestic employee<sup>21</sup>.

There are a number of serious irregularities in the trial. After her conviction, Immaculée Nindorera was sentenced to 20 years' imprisonment, although under Burundian law, the maximum sentence for any offence for a minor is 10 years<sup>22</sup>. Immaculée Nindorera did not have a lawyer at her trial and did not appeal against her sentence, apparently through ignorance of the procedures. Under current national legislation Immaculée Nindorera had 10 days to appeal to the Military Court of Appeal against her sentence. This would have constituted a full appeal against conviction and sentence. A further limited appeal to the Cassation Chamber of the Supreme Court is provided for by law but is only available after an appeal to the Military Court of Appeal. Immaculée Nindorera has therefore at the moment no legal opportunity for a review of her conviction and illegal sentence.

Lack of competence or a limited or flawed understanding of the law is clear in other cases. In *Justice on Trial*, in July 1998, Amnesty International raised the case of a group of soldiers who were responsible for the extrajudicial execution of 122 Burundian refugees who had been forcibly returned from Tanzania in January 1997. Of the 12 soldiers tried for the killings, two were acquitted. The remaining 10 soldiers were convicted and received sentences of between five months and 10 years. The court accepted in mitigation the argument of self-defence.

There are conflicting reports of the circumstances of the extrajudicial execution of the refugees. According to the Burundian authorities, members of the security forces, overwhelmed by the large number of refugees, were "understandably nervous" as the refugees were reported to be members of PALIPEHUTU and panicked, fatally shooting 122 refugees. Four escaped. According to other sources, the refugees were executed in small groups accounting for the fact that all those shot were killed, rather than wounded.

Amnesty International is seriously concerned that while it may be understandable for a soldier to be nervous, this does not justify such a disproportionate response. Members of the armed forces should in any case be trained to face and respond to similar situations in accordance with international humanitarian law. Amnesty International is concerned that the doctrine of "self-defence", in this instance was inappropriate; the refugees, who were unarmed, posed no grave danger to the soldiers or to any other persons. While the soldiers may have

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<sup>21</sup>The charge of illegal detention of arms (including theft) is punishable by a prison sentence of between 10 years and the death penalty depending on the circumstances.

<sup>22</sup>Article 16, Penal Code.

feared they were members of an armed opposition group, the group had been taken from a refugee camp by the Tanzanian authorities and were handed over to the soldiers.

In 1997 and 1998 an audit of military jurisdictions was undertaken. It included information on the prevalence of preventive detention, the quality of magistrates, questions of resources and statistics on the types of offences for which soldiers were in detention, as well as information on the quality of training. Since the audit, the Ministry of Defence has been working with the United Nations Office for Human Rights in Bujumbura to provide, for example, one-month-long training sessions for magistrates. One such session took place in July 1998.

#### **ii.iv) Disproportionate sentencing**

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. While hundreds of people, convicted of participation in the massacres of mainly Tutsi civilians which followed the assassination of President Ndadaye have received long prison sentences or the death penalty, the few soldiers who have actually been convicted of similar offences have received substantially lower sentences, often of only a few months. 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 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.

As stated earlier, few soldiers are actually prosecuted for their role in human rights violations. There are therefore unfortunately few examples to study, which is in itself indicative of the continued impunity of the security forces.

On 16 December 1996, at least 54 unarmed civilians were extrajudicially executed by soldiers from Busaga military post in Kizuka sector, Bururi Province. Because of nearby conflict they had been grouped together for their "protection" by the local civilian and military administration at the buildings belonging to the head of the sector. The prosecution claimed that up to 75 people were killed or "disappeared" by soldiers. In February 1997, three soldiers were tried by the Military Court of the 5<sup>th</sup> Military region for the killings and **Lieutenant Vénérand Ndayisenga** was sentenced to a prison sentence of eight years and to pay compensation to the

plaintiff, *partie civile*. One of two co-defendants 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. On 12 May 1998 he was granted a provisional release after the Military Court of Appeal ordered the Chief Military Prosecutor, *Auditeur Général*, to carry out further investigations.

International instruments adopted by the UN General Assembly have adopted a strict standard which does not recognise obedience to superior orders as constituting a defence with respect to torture, extrajudicial executions and “disappearances”. These instruments have emphasized the duty to disobey orders to commit such grave crimes. Principle 3 of the UN Principles on Extra-legal Executions and Article 6(1) of the UN Declaration on Disappearances not only rule out superior orders as a justification for extrajudicial executions and “disappearances” but declare that any person receiving such orders has “a right and duty” to disobey them.

The recently adopted Statute of the International Criminal Court<sup>23</sup> stipulates that “*the fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility...*”. For the defence of superior orders to be accepted by the ICC, three elements would have to be proven: that the soldier was under a legal obligation to obey orders; that he did not know the order was unlawful and that the order was not manifestly unlawful. Any order to kill unarmed civilians not taking any direct part in the hostilities cannot be said to be a lawful order and should be manifestly unlawful to any soldier. In particular, the Statute clarifies that a defence of obedience to superior orders cannot be raised against certain charges including crimes against humanity.

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 to death. 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 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. According to investigations carried out by ITEKA, 20 children under the age of 10 were extrajudicially executed. After finding that murder had been committed, the court then sentenced Lieutenant Ndayisenga to one

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<sup>23</sup>Burundi signed up to the Statute of the International Criminal Court in January 1998.

years' imprisonment - which he had already served, and his two co-defendants to prison terms of 18 months and two years.

In 1997, in a separate case, two soldiers who had been sentenced to life imprisonment for the extrajudicial execution of 26 captured combatants whom they had taken prisoner, in Ruziba, Rural Bujumbura, had their sentences reduced on appeal to 12 years, on the grounds that it was a time of war. The failure to impose an appropriate sentence in this case indicates the failure of the military courts to consider the seriousness of extrajudicial executions which are prohibited by international humanitarian and human rights law and which cannot be justified even in times of war.

Principle 1 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provides that:

*Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions.*

*Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.*

Amnesty International deplores the fact that military jurisdictions continue to justify the excessive use of force. Such practices degrade the rule of law, impede the realization of policies of restraint and encourage further human rights violations.

#### **ii.v) Fair trial concerns**

The lack of judicial training and inadequate resources, mean that legal proceedings before military jurisdictions often fall short of internationally recognized standards for fair trial. These proceedings equally fail to meet the procedural standards set out in Burundian law. Amnesty International views the following issues as particularly problematic:

There is a general failure on the part of military jurisdictions to determine the legality of pre-trial detention. Virtually all soldiers in custody are illegally detained. Military justice officials informed Amnesty International delegates that detainees were not given the opportunity to challenge the legality of their pre-trial detention, because the length of time between the initial arrest and the resulting trial was relatively short, and therefore this sort of review was unnecessary. Amnesty International is concerned about this practice, which contravenes Burundian criminal procedure, and even the most basic standards for fair trial including Article 9(4) of the ICCPR, which guarantees the right of a detainee to challenge in court the legality of his detention.

Although military justice officials told Amnesty International that the time between arrest and trial was relatively short, in a number of cases, defendants whose case is before the military courts have been held in prolonged detention without trial. For example, several senior members of PARENA and other alleged supporters of former president Jean-Baptiste Bagaza, and senior members of the *Solidarité jeunesse pour la défense des droits des minorités* (SOJEDEM), Youth Solidarity for the Defence of Minority Rights, have been held without trial since March 1997. They are charged with involvement in a plot to assassinate the current head of state, Major Pierre Buyoya. All are illegally detained.

Over two years later there is still no decision on which court should try the case. Several members of the Burundian armed forces are among the accused, and the case was submitted to the military court. At the first hearing by Bujumbura Military Court in February 1998, nearly a year after their detention, defence lawyers questioned whether the Military Court had jurisdiction over the case. The argument was upheld, and the case passed to the Military Court of Appeal, which partly upheld the arguments. Since then the argument has moved through the courts, without resolution. The case is currently with the Supreme Court for a second time, awaiting a decision.

Like civilian detainees, military detainees are at risk of ill-treatment or torture in the early stages of detention, particularly if they are held initially in military camps or barracks, where they are often held incommunicado.

Amnesty International is equally concerned about the ability of the Military Public Prosecutor's Office to conduct complete investigations into military offences. The number of investigators who work with the Military Public Prosecutor's Office is very limited, and the territory that investigators are required to cover is very large. The lack of independence of the Military Public Prosecutor's Office must inevitably hamper investigations. Given that many civilians are afraid to come forward with information that could implicate soldiers in criminal activity, especially with regard to the perpetration of large scale human rights violations, Amnesty International is concerned that many crimes go unreported, and that many potential witnesses for either the prosecution or the defence, are not summoned. It is also clear that

potential witnesses may be intimidated from testifying against members of the military. It must be recognized that it has proved dangerous for civilians to accuse soldiers of responsibility for human rights violations or other crimes, and that witnesses in trials too may be easily subjected to intimidation, “disappearance” or extrajudicial execution. Military courts sit in barracks in their respective regions. Amnesty International is concerned that witnesses may easily -- willfully or otherwise -- be subjected to intimidation in this environment.

The right to a full appeal is not guaranteed in all instances. Members of the armed forces who are below the rank of major are tried at first instance by the *conseil de guerre* (Military Court) and have the right of appeal to the *Cour Militaire* (Military Court of Appeal). Those who are of the rank of major or higher are tried at first and last resort by the Military Court of Appeal. The few whose attachment of privilege is even higher are tried at first and last resort by a Chamber of the Supreme Court<sup>24</sup>. The only review from the decisions of the Military Court of Appeal or Supreme Court is to the Cassation Chamber of the Supreme Court, which offers a very limited review of “*contraventions à la loi et des violations des formes substantielles ou prescrites, à peine de nullité*”, errors of law and gross errors of procedure. This limited review denies those found guilty the right to have their conviction and sentence fully reviewed, in accordance with international standards for fair trial to which Burundi is bound, including Article 14(5) of the ICCPR and Article 7.1(a) of the African Charter<sup>25</sup>.

Though defendants are by law entitled to be represented by legal counsel, officials in the military justice system have stated to Amnesty International that many junior soldiers do not have access to counsel. Amnesty International is concerned that these soldiers are not being made aware of their rights and that they are in a particularly vulnerable situation. Amnesty International believes that defence counsel have a particularly important role in military trials - not only does their legal expertise help assure that the basic rights of defendants are respected, but equally, judges who have no formal legal training would benefit greatly from their presence. The failure of the military court to provide accused persons access to counsel not only violates Burundian law but is contrary to the provisions of Article 14(3)(d) of the ICCPR and Article 7.1(e) of the African Charter. The ICCPR also provides that where a defendant cannot afford a lawyer, one should be provided at the expense of the state.

## VI RESPONSE OF ARMED OPPOSITION GROUPS

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<sup>24</sup>Article 58 of the *Loi n° 1/004 du 14 janvier 1987 portant réforme du code de l'organisation et de la compétence judiciaires*, Law N° 1/004 of 14 January 1987 amending the Code of Organization and Judicial Competencies.

<sup>25</sup>See *Amnesty International: Memorandum to the Government of Burundi on Appellate Rights*, AI Index: TG AFR 16/98.69, November 1998.

Members of the FDD, PALIPEHUTU-FNL and FROLINA have been responsible for numerous killings of civilians, and for burning, pillaging, and destruction of property. These actions constitute violations of Common Article 3 of the Geneva Conventions and Protocol II, which is binding not only upon States but also upon non-State entities, such as insurgent groups, armed factions taking part in the hostilities, and the individuals belonging to them. The rules laid down in Common Article 3 and Protocol II correspond to elementary considerations of humanity which are binding on the various parties to the conflict and individually binding on each individual taking part in the hostilities.

Although the obligations on armed opposition groups are clear, it can be extremely difficult to ensure that these obligations are respected and that any breaches are properly sanctioned. Amnesty International regularly calls on the leaders of such opposition groups to ensure that its forces respect humanitarian law and sought the response of both the CNDD-FDD and PALIPEHUTU-FNL to the allegations of abuses committed by their forces (see Section III.ii) prior to the publication of this report. The organization also asked what measures had been taken to address abuses and to ensure accountability underlining their obligations under international humanitarian law.

In May 1999, the organization received a 23-page written response from the CNDD-FDD. The CNDD-FDD expressed commitment to the principles of the Geneva Conventions and stated their conviction that justice was essential for a peaceful settlement. They also claimed to share Amnesty International's opposition to the death penalty. However, the CNDD-FDD did not acknowledge responsibility for any of the human rights abuses which Amnesty International raised with it and expressed concern at the viability of Amnesty International's sources and information concerning abuses committed by their forces. In response to the allegation that 30 unarmed civilians were killed in an attack on Muyange regroupment camp, Bururi Province on 14 December, the CNDD-FDD denied responsibility and accused government forces of carrying out the attack. In response to the allegation that 10 people were reported to have been killed by the FDD on 19 January, in Rumonge commune, Bururi Province, the CNDD-FDD claimed that those responsible were either members of the army or Tutsi from displaced camps. The CNDD-FDD denied any house destruction and emphatically denied recruiting combatants from refugee camps in Tanzania. They furthermore denied that they used child soldiers. However, they stated this would be investigated and any minors found to be in the ranks would be excluded.

By mid-July 1999, Amnesty International had not been able to establish direct contact with PALIPEHUTU-FNL.

## **VII CONCLUSION**

The Government of Burundi has a particular responsibility to investigate killings committed by its own forces, and by armed opposition groups on its territory, whoever the perpetrator may be. Unless crimes by all protagonists are investigated, impunity cannot be ended. Unless the government is perceived to be equally concerned by human rights abuses by all protagonists, human rights will not be guaranteed - nor will any political settlement be durable. Abuses or military activity by armed opposition groups can never be an excuse for condoning abuses by government forces.

Although many of the killings currently occurring in Burundi occur in the context of insurgency, unless the impunity with which they occur is addressed, the killings are likely to continue in any post armed conflict situation. It is essential that individuals who abuse human rights should be made to account for their actions where possible now, and that the relevant institutions are strengthened to ensure that this happens. Of equal importance is the creation and implementation of measures, such as simple, accurate record keeping which ensure that investigations may take place at a later stage. Urgent reform and resources are needed.

Armed opposition groups too have a heavy responsibility. Deliberate killings of unarmed civilians and summary executions by armed opposition groups is perpetuating the climate of violence. Violence is negating or replacing justice. In the search for a durable solution to the conflict, all parties must seek to instill respect for law and order and respect for the right to life.

These issues need to be at the heart of discussions as Burundi moves, hopefully, towards peace and greater respect for human rights. Although peace negotiations are continuing, the ongoing war continues to be characterized by gross human rights abuses. It is essential that the government and armed opposition challenge these abuses by calling their supporters or agents to account. Protecting human rights, and investigating abuses, should be regarded as an intrinsic part of the process towards peace.

## **VIII RECOMMENDATIONS**

### **i) Recommendations to the Government of Burundi**

#### **Investigating human rights abuses**

- S** The impunity of the military cannot be addressed without significant political support from the Government of Burundi at the highest levels. The Public Prosecutor's Office should be strengthened and better resourced, so that it is able to operate more effectively in initiating inquiries into human rights violations, and the corresponding legal action, and to monitor investigations;

- S Special prosecutors appointed by the Public Prosecutor's Office, with powers to compel members of the security forces to testify or to give evidence, should be appointed and should investigate abuses. The Public Prosecutor's Office should receive adequate financial and human resources to enable it to carry out its tasks independently;
- S Investigators should have adequate financial and technical resources and the authority to:
  - S make on site visits to military camps, bases, and sites of alleged abuses;
  - S compel the attendance of witnesses and production of documents, with the power to impose criminal sanctions on those who fail to comply;
- S The security forces should be explicitly ordered to:
  - S identify to public prosecutors and judges officers cited in reports of human rights violations;
  - S keep records, which are accessible for investigation, on identities of officers and soldiers deployed on counter-insurgency patrols;
  - S record the identities of personnel who participated in arrest, detention and interrogation of detainees;
  - S investigate allegations of human rights violations made against officials in the security forces, and bring to justice those found to have committed or condoned human rights violations;

The Government of Burundi should also:

- S continue to strengthen the civilian courts/justice system so that they are able to function independently and to cope with their enormous burden;
- S ensure that the findings of investigations which are carried out by human rights groups or other independent observers, including the United Nations Office for Human Rights, are acted upon;
- S demonstrate public proof of the government's willingness and ability to tackle abuses by the armed forces, through public information on the progress of inquiries into allegations of human rights violations, through fair trials by competent courts;

- S take measures to protect witnesses and investigators from intimidation, arrest or assassination. Any cases where witnesses have been intimidated or killed by soldiers should be investigated and those responsible brought to justice.

### **Legal reforms**

- S In the light of the failure of military courts to adequately investigate and bring to justice military personnel accused of involvement in human rights abuses, the jurisdiction for criminal offences committed by military personnel on active duty should be transferred to ordinary civilian courts;
- S Military courts should therefore have the power to try only military personnel accused of exclusively military offences and should not have the power to impose the death penalty;
- S Civilians should not in any circumstances be tried by military courts;
- S Civilian jurisdictions should have the necessary resources and political support to investigate abuses by members of the armed forces;
- S Steps should be taken to ensure that military courts conform to international standards of fairness, including rights to a full appeal for all ranks, and to ensure that both in law and in fact military investigators and judges are independent from the military hierarchy;
- S Increased training should be given to ensure that trials conform to international standards for fair trial;
- S Appeals against sentence and conviction by military courts should be heard by a civilian court of appeal;
- S Defendants' sentences should be in proportion with the gravity of the crime committed, without recourse to the death penalty. The provision of extenuating circumstances should not be mis-used to minimize grave human rights violations;
- S A moratorium on executions should be implemented immediately pending a full study and discussion on the question of the abolition of the death penalty;

Amnesty International furthermore encourages the Burundian Bar Association to get more actively involved in military justice issues.

### **Human rights education**

- S The government should ensure that all law enforcement officials, including members of the armed forces, receive adequate training on human rights standards and practices, both domestic and international, and the means for the implementation;
- S All law enforcement officials should regularly attend seminars and practical workshops on human rights protection in the exercise of their duty;
- S Human rights education should be included in the curriculum at every stage of the education system as well as in the training of the security forces.

### **Human rights protection**

- S The government should ensure that human rights protection, including a commitment to adhere to basic human rights and humanitarian law, and to promote respect of the rule of law and right to life is at the centre of any peace settlement in Burundi.

### **Protecting the displaced and refugees**

Government forces must:

- S abide by international humanitarian law and under all circumstances refrain from deliberate attacks and killings of civilians including in evacuated areas, who do not take a direct part in hostilities and the authorities must provide and ensure protection for such civilians against attacks from the armed opposition forces;
- S ensure protection for camps for the displaced against attacks from armed opposition forces.

#### **ii) Recommendations to the leaders of armed opposition groups and the political parties to which they are allied**

- S Amnesty International is calling on the leaders of armed opposition groups to fully acknowledge human rights abuses committed by their combatants or supporters and to publicly condemn such abuses;

The leaders of armed opposition groups should also:

- S order all combatants to abide by international humanitarian law, in particular Common Article 3 of the 1949 Geneva Conventions and Protocol II which specifically prohibits all parties to an internal armed conflict from targeting people taking no active part in the hostilities; in particular from carrying out acts of violence, ill-treatment or mutilation, or

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torture, the taking of hostages and the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court;

- end the practice of summary executions of captured soldiers;
- S implement specific measures which conform to the standards of international human rights and humanitarian law to prevent human rights abuses, such as:
  - S ensuring that all forces under their control are trained and ordered to respect and adhere at all times to basic principles of humanitarian law;
  - S 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*;
  - S ensuring that command structures are established, respected and held accountable, and to this end maintain records;
  - S giving clear public instructions not to recruit children, and excluding from their ranks any children who have already been recruited;
  - S respecting the civilian character and humanitarian nature of refugee camps and thus abstaining from recruitment from such camps all together and especially abstain from the recruitment of children;
  - S ceasing attacks on camps for the internally displaced;
- S ensure that human rights protection, including a commitment to adhere to basic human rights and humanitarian law, and to promote respect of the rule of law and right to life is at the centre of any political settlement in Burundi.

**iii) Recommendations to the international community**

Amnesty International is appealing to the international community to:

- S publicly recognise the continued grave human rights situation in Burundi, and ensure that human rights considerations are not overlooked in moves to find a political settlement to the Burundian crisis;
- S publicly denounce abuses by all parties to the conflict;

- S exert whatever influence they can over the Government of Burundi and security forces to respect international human rights standards and humanitarian law, and to implement the recommendations listed above;
- S prevent supplies of light weapons and other types of military, security or police equipment to the government and to armed opposition groups implicated in the war in Burundi, which it is reasonable to believe would be used by parties to the conflict to commit human rights abuses.

### **Investigation**

- S encourage and maintain pressure on the Government of Burundi to investigate human rights violations and prosecute those responsible. To this end, request the Government of Burundi to provide regular and up-to-date information on action taken to prevent human rights violations, including extrajudicial executions, and details of investigations and judicial proceedings against those responsible;
- S support the UN Office of the High Commissioner for Human Rights to ensure that it has enough resources and political support to carry out its tasks efficiently and independently;
- S support Burundian non-governmental human rights organizations in their work for the promotion and protection of human rights.

### **Reinforce the Judiciary**

- S in the light of the extraordinary burden placed on the judiciary in Burundi, continue to assist the judiciary by providing material and human resources, including legal experts at all levels to supplement existing national resources. Foreign governments should facilitate the secondment of trained investigators and magistrates to Burundi to help improve the competence, independence and impartiality of the country's judiciary;
- S help the government to strengthen the Public Prosecutor's Office, giving financial and political support;
- S provide assistance and resources to the prison system in improving conditions of detention and ensuring that detainees have access to medical care at all times;
- S support and facilitate the work of non-governmental human rights organizations providing valuable support to prisoners and detainees.

**Refugees and the displaced**

- S take action to assist the Government of Tanzania to ensure that Burundi refugee camps in Tanzania retain their civilian nature and to ensure that any such action is not to the detriment of the hundreds of thousands of genuine refugees who are at real risk of human rights violations on their return to Burundi;
  
- S significantly contribute to sharing the burden of host states who are hosting large numbers of refugees to ensure that the basic needs and protection requirements of the refugee community they are hosting are met. The international community, through the United Nations and other relevant organizations such as the Organization of African Unity, the Commonwealth and the European Union, must ensure that sufficient financial and logistical support is available.