

## **Poverty, isolation and ill-treatment: Juvenile justice in Burundi**

### **APPEAL CASE 1**

#### **JOSEPH MASABIRE: TORTURED IN DETENTION**

On 16 May 2000 15-year-old Joseph Masabire was stopped for an identity control at a government military position at Mabanda in Makamba province. He had no papers and was arrested on suspicion of collaborating with an armed political group. At the military position, soldiers tied him up with a rope, beat him severely and stabbed him in his right arm. A few hours later he was transferred to gendarmerie detention in Makamba town, where he was repeatedly kicked with heavy boots.

Joseph is currently awaiting trial in Mpimba prison, Bujumbura, on charges of belonging to an armed political group, an accusation he denies. He still suffers severe headaches, which he describes as “tremblements de tête”, from the beatings he received in gendarmerie and military detention.

After his arrest, Joseph spent three months in gendarmerie custody in Makamba, where he was questioned by gendarmes and by the local magistrate. This was in contravention of Burundi's Code of Criminal Procedure, which states that suspects may only be held in investigative detention for a maximum of 14 days followed by 15 days on a provisional arrest warrant. In August 2000 he was formally charged and sent first to Rutana prison before being transferred to Mpimba prison in February 2001.

Torture and ill-treatment in security force custody is widespread in Burundi, especially in the early stages of detention. Detainees are regularly beaten, kicked, whipped, burned, made to kneel on bottle tops, suspended in excruciating positions from doors or ceilings, often for hours at a time, stabbed, electrocuted, or made to undergo mock executions. Many have died under torture; others have been maimed or permanently scarred. Those accused of collaboration with armed political groups are particularly vulnerable to torture and ill-treatment.

Age is no protection from this cruelty. Amnesty International has documented numerous reports of children tortured in police, gendarmerie and military detention. The problem of torture and ill-treatment is often exacerbated by the use of incommunicado detention, depriving detainees of any contact with their families, human rights organizations or legal representatives.

The incidence of torture, and the impunity with which it is carried out, has not diminished since the introduction of a revised Code of Criminal Procedure in January 2000, some of the provisions of which aimed to improve arrest procedures and provide greater protection from torture. As in Joseph's case, its safeguards are routinely ignored and initial period of detention can last for many weeks or months. Courts almost uniformly fail to investigate torture allegations and continue to accept confessions obtained under torture into evidence, further encouraging the practice.

Children are often abducted by combatants and forced to work as porters. Some may remain, against their will, with the armed political group. Children who have been forced to accompany and work for these groups have later been arrested and accused of collaboration with armed political groups.

#### **WHAT YOU CAN DO**

Please write, preferably in French, to:

President: Son Excellence Pierre BUYOYA, Président de la République, Présidence de la République, BP 1870 Bujumbura, Burundi. Fax: 257 22 81 50.

Minister of Justice: Monsieur Fulgence DWIMA BAKANA, Ministre de la Justice et Garde des Sceaux, Ministère de la Justice, Bujumbura, Burundi. Fax: +257 21 86 10.

Minister of Defence: Général-Major Vincent NIYUNGEKO, Ministre de la Défense Nationale, Ministère de la Défense Nationale, Bujumbura, Burundi. Fax: + 257 21 61 09.

Minister of Interior: Monsieur Salvator NTIHABOSE, Ministre de l'Intérieur et de la Sécurité publique, Ministère de l'Intérieur et de la Sécurité publique, Bujumbura, Burundi. Fax: 257 21 78 18

Minister of Human Rights: Monsieur Alphonse BARANCIRA, Ministre des Droits de la Personne humaine, des Réformes institutionnelles et des Relations avec l'Assemblée nationale, Ministère des Droits de la Personne humaine, Bujumbura, Burundi. Fax: 257 21 75 49

### **Points to raise:**

Express concern that Joseph Masabire, a minor who is held in Mpimba prison, was reportedly tortured in detention and continues to suffer medical problems as a result. Express concern, too, at the length of his pre-trial detention since his arrest in May 2000.

Give details of Joseph Masabire's case and call on the authorities to:

- Investigate the allegation that Joseph Masabire was tortured in both military and gendarmerie custody, and for those accused of the abuse to be brought to justice;
- Provide Joseph Masabire with immediate and appropriate medical treatment for health problems he continues to suffer as a result of his alleged torture;
- Provide Joseph Masabire with legal assistance;
- Review Joseph Masabire's case to determine whether his continued detention is lawful and appropriate, bearing in mind the allegations of torture in his case and that, under international human rights standards, children are to be detained only as a last resort and for the shortest possible time;
- If he is to remain in detention, ensure that Joseph Masabire is tried without delay by a competent, independent and impartial judicial body in a fair hearing according to law, that takes into account his age and best interests.

Urge the authorities to take more robust steps to end the widespread use of torture and ill-treatment in security force custody. Ask them as a matter of urgency to:

- End the use of incommunicado detention, as it is a practice which facilitates torture, "disappearance" and extrajudicial executions by security force personnel;
- Investigate promptly all reports of torture and ill-treatment in custody and if the allegations appear founded, bring the perpetrators to justice in proceedings which meet international standards of fair trial and without recourse to the death penalty;
- Pending investigation and possible trial, suspend from their post any law enforcement officer accused of torture or ill-treatment;
- Issue strict instructions to all law enforcement agents that in no circumstances are they to ill-treat, torture or order the ill-treatment or torture of detainees, and that the provisions of the revised Code of Criminal Procedure, particularly regarding maximum permitted length of detention, must be fully respected;
- Ensure that evidence extracted under torture is not accepted by the courts;
- Provide compensation and redress to victims of torture or ill-treatment.

**Poverty, isolation and ill-treatment: Juvenile justice in Burundi****APPEAL CASE 2****MOSSI RUKONDO: PROLONGED DETENTION WITHOUT TRIAL**

*"I have never seen a magistrate. I don't know why I'm here".*

Some children are held for long periods of time, sometimes years, without charge or trial after they have been transferred to prisons.

Mossi Rukondo was 14-years-old when he was arrested at his home in Kinama, Bujumbura, in November 1999. He was accused of links with an armed political group. Nearly three years later, his case has still to go to trial. He is held in Mpimba prison in Bujumbura.

According to his testimony, officers from the *Police de Sécurité publique* (PSP), Public Security Police, who arrested him, asked if he knew certain people. He said he did not, but "they put me in the car anyway. They had no arrest warrant. They did not explain anything to my parents who were standing there watching them." He was transferred to a police station in the neighbouring province of Bubanza, where he alleged he was tortured with hot iron rods, before being transferred to Bubanza prison and then to Mpimba in March 2000.

Long-term detention without trial is one of the biggest problems facing the Burundian judicial and penal systems. Of the approximately 9,000-strong prison population, around 6,000 have yet to be tried. The majority of pre-trial detainees are accused of participation in massacres of Tutsi civilians in 1993 or some form of collaboration with armed political groups. A large number have spent more than seven years in prison awaiting trial. The result is severe overcrowding in Burundi's central prisons, which is in itself a major factor in life-threatening prison conditions.

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Vice-President: Monsieur Domitien NDAYIZEYE, Vice-Président, Présidence de la République, BP 2800 Bujumbura, Burundi. Fax: 257 22 64 24

Minister of Justice: Monsieur Fulgence DWIMA BAKANA, Ministre de la Justice et Garde des Sceaux, Ministère de la Justice, Bujumbura, Burundi. Fax: +257 21 86 10.

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**Points to raise:**

Raise the case of Mossi Rukondo, now in Mpimba prison, who has been detained without trial since November 1999 on accusations of links with an armed political group, and who was allegedly tortured in PSP custody in Bubanza.

Express concern that Mossi Rukondo, and numbers of other children are held in prolonged pre-trial detention, in violation of international human rights standards. Recall that the UN Convention on the Rights of the Child, Article 37(b), states that “The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”.

Ask the authorities to:

- Immediately review Mossi Rukondo’s case to ensure that the evidence against him is substantial enough to justify his continued detention, bearing in mind that, under international human rights standards, children are to be detained only as a last resort and for the shortest possible time (UN Convention on the Rights of the Child, Article 37(b));
- Ensure that Mossi Rukondo has immediate legal assistance;
- If he is to remain in detention, ensure that Mossi Rukondo is given the means and opportunity to challenge the lawfulness of his detention before a court;
- Ensure that, if the case against him is to proceed, this takes place without further delay before a competent, independent and impartial judicial body in a fair hearing according to law, that takes into account his age and best interests.
- Investigate allegations that Mossi Rukondo was tortured by PSP officers during his detention at Bubanza, and if the allegation is founded, bring the perpetrators to justice in proceedings which meet international standards of fair trial and without recourse to the death penalty;

Please also ask the authorities to:

- Examine the case files of all detained juveniles, giving priority to those detained for excessively long periods without charge or trial, and provisionally release those against whom there is little or no substantiating evidence, or who are detained for minor offences;
- Ensure that these juveniles are informed of their rights, including the right to legal assistance, and that they are given the means and opportunity to challenge the legality of their detention promptly before a court;
- In cases where trial is to proceed, to ensure that children are tried without delay by a competent, independent and impartial judicial body in a fair hearing according to law.

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### APPEAL CASE 3

#### BEATRICE MUKANYONGA: IN NEED OF MEDICAL AND LEGAL ASSISTANCE

Béatrice Mukanyonga, aged 17, from Kiwezi colline, Kiremba commune, Ngozi province is awaiting trial in Ngozi specialized prison on a charge of “infanticide” – in fact abortion, which is illegal in Burundi. As a minor, Béatrice Mukanyonga will face a maximum 10 years’ imprisonment if found guilty (the maximum adult tariff for this offence is a prison term of 20 years). Many women are held in pre-trial detention or are serving prison sentences for this offence.

When interviewed by Amnesty International delegates in September 2002, Béatrice Mukanyonga was clearly in pain and considerable emotional distress. Béatrice has been in Ngozi prison since February 2002. She cannot recall the date of her arrest or how long she was held in police custody because she was seriously ill at the time, following an operation, which she described as a “caesarian”, that went wrong. She denies the accusation against her and claims she was raped.

Béatrice is receiving some medical care, thanks in part to the efforts of a Burundian human rights NGO, the *Association burundaise pour la défense des droits des prisonniers* (ABDP), Burundian Association for the Defence of Prisoners’ Rights, which runs a project for basic medical care in Ngozi’s two prisons, in cooperation with the prison authorities. Nevertheless, Amnesty International believes that this medical care is insufficient given what appears to be Béatrice’s true psychological and medical state.

Béatrice Mukanyonga has already appeared twice before the court in Ngozi, although was unaware of the progress of the case against her. At these court hearings she was not represented by a lawyer. “I didn’t know I had that right,” she explained. “I was always on my own”.

Amnesty International believes that Béatrice Mukanyonga should not be in prison, despite her alleged offence, because her continued detention is prolonging and exacerbating her mental and physical suffering. In detaining Béatrice Mukanyonga, Amnesty International believes that the Burundian authorities have failed to take account of their obligations under international standards, which state that juveniles should only be detained as a last resort and for the shortest appropriate time.

Moreover, the authorities are failing to provide the “care, protection, and all necessary individual assistance – social, educational, vocational, psychological, medical and physical” that Béatrice requires while in custody (UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), Rule 13(5)).

These standards apply to all juveniles held in Burundi’s prisons. They are of signal importance in cases such as that of Béatrice Mukanyonga and other children who are in acute medical and psychological distress.

Violations of human rights in Burundi’s justice system are widespread in Burundi. Trials continue to fall far short of international standards for fair trial. Both adults and children are routinely tried without the assistance of a lawyer. In view of their age and lack of education, children find it particularly difficult to defend themselves in court. Few are informed of their rights, including the right to legal assistance at all stages of their detention and their right to challenge the lawfulness of their detention promptly before a court.

Medical care in Burundi's prisons is basic at best. Many children have been ill-treated or tortured, often severely, before they arrive in prison, either at the hands of security forces, local administration officials or of local communities. In many cases, these children do not receive medical care in prison appropriate to the injuries they have suffered.

## **WHAT YOU CAN DO**

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Vice-President: Monsieur Domitien NDAYIZEYE, Vice-Président, Présidence de la République, BP 2800 Bujumbura, Burundi. Fax: 257 22 64 24

Minister of Justice: Monsieur Fulgence DWIMA BAKANA, Ministre de la Justice et Garde des Sceaux, Ministère de la Justice, Bujumbura, Burundi. Fax: +257 21 86 10.

Minister of Human Rights: Monsieur Alphonse BARANCIRA, Ministre des Droits de la Personne humaine, des Réformes institutionnelles et des Relations avec l'Assemblée nationale, Ministère des Droits de la Personne humaine, Bujumbura, Burundi. Fax: 257 21 75 49

### **Points to raise:**

Raise the case of Béatrice Mukanyonga, detained on charges of infanticide in Ngozi specialized prison. Express concern at her acutely poor medical and emotional state and at the fact that she has not been provided with legal assistance despite having already appeared before the Ngozi court.

Ask that Béatrice Mukanyonga be given immediate medical and psychological care appropriate to her distressed state. Recall that UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") require that Béatrice Mukanyonga and other juveniles in custody shall receive "care, protection, and all necessary individual assistance – social, educational, vocational, psychological, medical and physical – that they may require in view of their age, sex and personality".

Ask that her case be urgently reviewed to determine whether continued detention is appropriate bearing in mind that, under international human rights standards, minors are to be detained only as a last resort and for the shortest possible time, and that the child's best interests and well-being should be a primary consideration in all aspects of the administration of justice;

Ask, again as a matter of urgency, that Béatrice Mukanyonga receives legal assistance to assure that her human and legal rights are properly represented and respected.

Urge the authorities to take measures to improve the administration of juvenile justice in Burundi, and in particular to:

- Ensure that all detained minors are informed promptly of their rights, including the right to legal assistance and to challenge the legality of their detention before a court;
- Ensure that judges insist on legal representation for all children;
- Review convictions and sentences in cases where children have been tried for serious offences without the assistance of a lawyer;

- Enact legislation which will ensure that all defendants, including children, have the option of having their conviction and sentence reviewed by an impartial higher tribunal.

**Poverty, isolation and ill-treatment: Juvenile justice in Burundi****APPEAL CASE 4****ALEXANDRE NZEYIMANA: UNLAWFUL ARREST AND DETENTION**

The age of criminality responsibility under Burundian law is 13. Nevertheless, children aged under 13 continue to be unlawfully detained by the police, gendarmerie and military.

Alexandre Nzeyimana was arrested on 7 April 2002 in Gatora sector, Bubanza province, apparently on suspicion of murder. He was transferred to Mpimba central prison on 26 August 2002, where he remains at the time of writing. He was reportedly born in 1990 and should never have been detained.

Burundian law enforcement officers have increasingly respected the age of criminal responsibility, but in some cases take few or no steps to establish the true age of a child. In many cases, children's births are not registered and thus they find it difficult to "prove" their age. Some children allege that police and gendarmes have deliberately falsified their ages so that they may be detained. Likewise, members of the security forces, penitentiary services and judiciary often accuse children of claiming to be younger than they really are.

If there is genuine doubt as to the age of the child, the state has the obligation to resolve the situation in a manner compatible with its international obligations and own domestic legislation. Unfortunately, in many cases, it is left to human rights groups to intervene to try to secure the release of children illegally detained.

Gilbert Ndabarushimana, aged 11, was arrested on 1 January 2002 and detained in gendarmerie custody and then in prison. He was released on 20 February 2002 after the intervention Burundian human rights groups. Three others arrested with Gilbert on suspicion of murder remain in pre-trial detention. They are Shabani Miburo, aged 17, Fidèle Nsabumuremyi, aged 15, and Jean-Claude Havyarimana (age not known).

**WHAT YOU CAN DO**

Please write, preferably in French, to:

President: Son Excellence Pierre BUYOYA, Président de la République, Présidence de la République, Bujumbura, Burundi. Fax: 257 22 81 50

Minister of Interior and Public Security: Monsieur Salvator NTIHABOSE, Ministre de l'Intérieur et de la Sécurité publique, Ministère de l'Intérieur et de la Sécurité publique, Bujumbura, Burundi. Fax: 257 21 78 18

Minister of Justice: Monsieur Fulgence DWIMA BAKANA, Ministre de la Justice et Garde des Sceaux, Ministère de la Justice, Bujumbura, Burundi. Fax: +257 21 86 10

Minister of Defence: Général-Major Vincent NIYUNGEKO, Ministre de la Défense Nationale, Ministère de la Défense Nationale, Bujumbura, Burundi. Fax: + 257 21 61 09

Minister of Human Rights: Monsieur Alphonse BARANCIRA, Ministre des Droits de la Personne humaine, des Réformes institutionnelles et des Relations avec l'Assemblée nationale, Ministère des Droits de la Personne humaine, Bujumbura, Burundi. Fax: 257 21 75 49

**Points to raise:**

Express concern at the continuing detentions of children under the age of criminal responsibility, including Alexandre Nzeyimana, arrested in April 2002 and transferred to Mpimba prison in August 2002, who is apparently aged under 13 and as such should not be detained. Draw attention to recent similar cases, such as that of 11-year-old Gilbert Ndabarushimana, detained for several weeks in early 2002. Urge the authorities to take immediate steps to end detention of children aged under 13. Ask them to:

- Immediately verify the age of Alexandre Nzeyimana and release him from custody if he is aged less than 13;
- Issue clear instructions to all security force and law enforcement officers that detention of children below the age of criminal responsibility is not permitted and that every effort must be made to verify the age of child suspects before detaining them;
- Monitor juvenile arrests to ensure that children are remanded in custody for questioning in a minimum of cases, and to ensure that when children are remanded in custody, arrest and detention procedures are scrupulously followed;
- Ensure that children who are detained are given access to their families, and are informed of their rights, including the right to immediate legal assistance and to challenge the legality of their detention;
- Provide compensation and redress to child victims of human rights violations.

**Poverty, isolation and ill-treatment: Juvenile justice in Burundi****APPEAL CASE 5****LEOPOLD NTAMAHUKIRO: 10 YEARS' IMPRISONMENT FOR THEFT OF GOATS**

A number of children in Burundi are serving or, if convicted, face prison sentences that are disproportionately heavy in comparison to the gravity of the offence, their age and circumstances.

Léopold Ntamahukiro, from Buhiga commune in Karuzi province, was sentenced to 10 years' imprisonment by Karuzi court in mid-2001 for his part in the theft of three goats. He was aged 15 at the time he committed the offence. He was not represented by a lawyer at his trial. Two other adults who had taken part in the theft also received prison sentences of 10 years.

Léopold Ntamahukiro was arrested on 19 September 2000 and detained for six months by the *Police de Sécurité Publique* (PSP), Public Security Police, in Karuzi before being transferred to Gitega prison. This is in breach of the Burundian Penal Code, which states that children may only be held in investigative detention for a maximum of 14 days followed by 15 days on a provisional arrest warrant.

Léopold Ntamahukiro told Amnesty International delegates who met him in Gitega prison in March 2002 that he had last received a family visit in November 2000, when his mother came to see him in pre-trial detention in Karuzi. His mother has since died and his father is too old to travel to Gitega. He therefore receives no food from family, often a way of supplementing the meagre prison diet. Cleaning duties in the prison toilet allow him to earn an extra 100 grams of food.

Burundian law recognizes the diminished responsibility of a child and provides reduced sentences for convicted defendants aged between 13 and 18 at the time of the offence. The maximum penalty to which a child may be subject is 10 years' imprisonment, even if the penalty prescribed in law for adults is the death penalty or life imprisonment.

Yet many children like Léopold Ntamahukiro are serving long prison sentences because courts have not taken proper account of their age and circumstances and because the prison tariff set for certain crimes is exceptionally punitive. Children have, for example, received heavy sentences after being convicted of aggravated theft, which carries a maximum penalty of 20 years' imprisonment, reduced to 10 years for children. The definition of aggravated theft in Burundian law is very broad and includes offences such as theft by a domestic employee (*vol domestique*), theft of unharvested crops (*vol de récoltes sur pied*) and theft of livestock (*vol de bétail*). In many cases, hunger and extreme poverty is a factor driving children to commit such crimes. In others, they are coerced by adults into carrying out the crime.

The situation is made worse because most children are tried without the assistance of a lawyer, and find it particularly to defend themselves in court or to represent their often special set of circumstances. Many child detainees interviewed by Amnesty International had received little or no education.

Amnesty International understands the need for all societies to combat crime. But international standards require that any penalty imposed by the courts must be "in proportion not only to the circumstances and gravity of the offence, but also to the circumstances and needs of the juvenile as well as to the needs of society" (UN Standard Minimum Rules for the Administration of Juvenile Justice, "The Beijing Rules", Article

17.1). International standards also state that imprisonment of a juvenile must be a measure of last resort in exceptional cases.

In September 2002, the Burundian Minister of Justice indicated to Amnesty International plans to revise the Penal Code, which should mean that children (and adults) no longer receive heavy sentences for relatively minor offences, primarily through changes to the definition of aggravated theft). Amnesty International welcomes this commitment and urges its prompt implementation.

## **WHAT YOU CAN DO**

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### **Points to raise:**

Raise the case of Léopold Ntamahukiro, serving a 10-year sentence in Gitega prison for the theft of goats in September 2000, when he was 15 years old. Express concern that Léopold Ntamahukiro and other juvenile offenders have received or risk prison sentences that are disproportionately heavy given the nature of the offence and the age and circumstances of the children involved.

Welcome government plans to revise the Penal Code with a view to ensuring that heavy sentences are no longer imposed for relatively minor offences. Urge that this reform be implemented as quickly as possible.

Ask that, pending this reform, the courts be instructed to give special consideration to cases of children which fall under the planned reform, and that sentencing in these cases should be in line with Burundi's obligations under international standards. These standards require that penalties for juveniles must be proportional to the gravity of the offence and take into account the circumstances of the child as well as the objective of promoting rehabilitation. Imprisoning a juvenile should only be a measure of last resort in exceptional circumstances, and for the shortest possible term.

Ask that the convictions and sentences of juveniles serving long prison sentences are reviewed to ensure that the proceedings against them were fair according to international standards for fair trial and that the sentences handed down were proportional to the offence committed and took account of the well-being and best interests of the child concerned.

Ask the government to develop and implement more non-custodial measures aimed at rehabilitating juvenile offenders.

Ask that training be provided to Burundi's judiciary, law enforcement and penal officials on UN Standard Minimum Rules for the Administration of Juvenile Justice and other children's and human rights standards.

**Poverty, isolation and ill-treatment: Juvenile justice in Burundi****APPEAL CASE 6****SAMUEL NSENGIYUMVA: FACING TRIAL BY MILITARY COURT**

Samuel Nsengiyumva was 14 years old when he was arrested in Bujumbura on 7 July 2001, accused of stealing a soldier's weapon. He alleges that he was tortured in detention. He is now in Mpimba prison in Bujumbura and faces trial by military court – a process that Amnesty International believes is fundamentally unfair. He has so far not benefited from legal assistance, and since his arrest there has been little apparent progress on his case.

Samuel Nsengiyumva made his living selling plastic bags in Bujumbura. Some days before his arrest Samuel was approached by a soldier in the central market who asked him to carry his bags. According to Samuel, they became separated in the crowd and Samuel was left with the bags. He later ate the food and sold the clothes contained in the bag. The soldier reported the theft, claiming the bags also contained a gun, and a public announcement was made asking Samuel to report to the authorities. Samuel gave himself up to a gendarmerie station in the market, known as SOGEMAC. He admitted he had taken the food and clothes, but denied that there was a weapon in the bags.

Samuel was reportedly tortured at SOGEMAC, including by being beaten and threatened with a Kalashnikov rifle. At one point he claims a tyre was put around his neck and he was threatened with being burned alive. From SOGEMAC he was transferred to a military camp known as SOCARTI, where he was again reportedly beaten with an iron bar. Under torture, Samuel admitted stealing the gun, a "confession" he has since denied.

His older brother, Alex Nimubona, now aged 22, who went with Samuel as he reported to SOGEMAC is also detained in connection with the theft, although the basis for his detention is not clear.

Samuel Nsengiyumva has had no legal assistance, although he has appeared a number of times before the Military Prosecutor's Office. A date for his trial before military court has not been set.

Amnesty International delegates raised the case with the Military Prosecutor (*Auditeur militaire*) in Bujumbura in March 2002, and sought a response in writing on concerns in his case from both the Military Prosecutor and the Minister of Defence in July 2002. So far, no reply has been received.

Under current legislation, children who are charged with committing offences with members of the armed forces, charged with firearm or ammunition offences or who are child soldiers may be tried by a military court.

Amnesty International has for many years expressed concern that military jurisdictions in Burundi are failing to conduct impartial investigations and trials in line with international standards for fair trial. On the one hand, military jurisdictions have been unwilling to bring to justice members of the armed forces suspected of committing human rights violations. At the other extreme, civilians and soldiers accused of other crimes have seen their rights to fair trial drastically curtailed. Soldiers have, for example, been denied their right to appeal and executed after summary and unfair trials. Amnesty International also believes that military courts constitute an environment which is likely to be especially intimidating for children and which is unlikely to take account of their special needs.

In September 2002 the Minister of Justice disclosed government plans to end trials of civilians by military courts. Amnesty International has repeatedly recommended that civilians should not in any circumstances be tried by military courts and has urged other reforms of military jurisdictions.

## WHAT YOU CAN DO

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### Points to raise:

Raise the case of Samuel Nsengiyumva, a child held in pre-trial detention at Mpimba prison accused of theft of a military weapon. Express concern that Samuel Nsengiyumva was reportedly tortured in custody, that he has been held in prolonged pre-trial detention, that he has not received legal assistance and that he faces trial by a military court.

Ask the authorities to:

- Investigate allegations that Samuel Nsengiyumva was tortured during his detention at SOGEMAC gendarmerie detention centre and SOCARTI military detention centre in July 2001, and bring the perpetrators to justice;
- Immediately provide Samuel Nsengiyumva with legal assistance to ensure that his human and legal rights are protected, bearing in mind his age and vulnerability;
- Review Samuel Nsengiyumva's case to determine whether his continued detention is lawful and appropriate, bearing in mind that the evidence against him was allegedly extracted under torture and that, under international human rights standards, children are to be detained only as a last resort and for the shortest possible time;
- If he is to remain in detention, ensure that Samuel Nsengiyumva is tried without delay by a competent, independent and impartial judicial body in a fair hearing according to law, that takes into account his age and best interests.

Reiterate Amnesty International's concern that Burundian military courts are failing to meet international standards for fair trial. Welcome government plans to end the trial of civilians by military courts and ask that this important reform be quickly implemented. In the meantime, if Samuel Nsengiyumva is still to face trial, ask that his case be transferred to a civilian jurisdiction

In addition to ending military trials of civilians, urge further reform of military jurisdictions. Ask that military courts should have the power to try only military personnel accused of exclusively military discipline offences, and should not have the power to impose the death penalty. The jurisdiction for criminal offences committed by

military personnel on active duty should be transferred to ordinary civilian courts. If military courts continue to hear cases beyond the scope of military discipline offences, appeals against sentence and conviction by military courts should be heard by a civilian court of appeal.

## Poverty, isolation and ill-treatment: Juvenile justice in Burundi

### APPEAL CASE 7

#### ROSMINE NZOMUKUNDA: MOTHERS DETAINED WITH INFANT CHILDREN

Rosmine Nzomukunda had spent every day of her four-year-old life in Ngozi prison at the time Amnesty International delegates met her in March 2002. Rosmine was soon to have her fifth birthday and to start primary school. Her mother, Marie Ndurutse, told Amnesty International that Rosmine would shortly be handed into the care of an orphanage.

Marie Ndurutse was arrested in February 1996 on suspicion of taking part in the 1993 massacres of mainly Tutsi civilians which followed the assassination of Burundi's first democratically elected president, Melchior Ndadaye, a Hutu. Six years later she is still awaiting trial in Ngozi prison. Marie and Rosmine had received no family visits "for years" and Marie believed that her family may have fled to Tanzania.

There are currently around 50 babies and infant children, who have not committed any offence, detained with their mothers in Burundi's prisons. This situation is made dramatically worse by a pattern of arbitrary arrest and prolonged detention without charge or trial of detainees, which in some cases results in children being held in prison with their mothers, who have been arbitrarily arrested and/or detained for long periods without trial.

The infants are held with their mothers in separate women's compounds and so do not suffer the appalling overcrowding and dangerous conditions evident in men's sections of the prisons. Their life in prison is generally as caring as the mothers, co-detainees and prison authorities are able to make it. Social assistants are provided by the penitentiary department to work with mothers and their infants primarily with a view to ensuring better rehabilitation. Even so, the conditions in which the infants and women are held are below internationally recognized minimum standards of detention, and the infants are still in an environment that is ultimately damaging to their development, in which they are deprived of the wider social stimulation and participation necessary to their growth.

There are no or few opportunities for the infant children to experience life beyond the prison walls. In Ngozi, infants can play outside the prison, supervised by prison guards, who are armed, or prison staff, "but they don't go far" according to the prison's women director. As in Rosmine and Marie's case, many of the mothers and infants have little or no contact with their families. When children are old enough, they attend primary school but return to the prison at night. Otherwise they remain inside the prison compound with their mothers until old enough, usually around the age of five, to be fostered out to relatives or to charitable organizations if no family is available.

Children who are separated from their detained mothers and left outside prison are also suffering. In some cases the children may be deprived of their sole parent and forced to fend for themselves. In many cases, the mother's detention is unlawful. In March 2002, Sabine Ndayishimiye had been detained for over three years without trial on charges of collaboration with an armed political group. She is one of several women detained for years in Rumonge and Bururi prisons on charges of collaboration with armed political groups because they are suspected of providing food to their husbands or sons who are alleged to have joined such groups. Sabine Ndayishimiye has three children, aged 15, 12 and nine, outside the prison, living effectively as orphans. According to her, no one is looking after her children or their land. Although her case had been forwarded to Bururi High Court in January 2000 her trial had yet to start. AI is currently seeking confirmation that Sabine Ndayishimiye has been provisionally released.

There is no easy solution to protecting the rights of children whose mothers are in detention, either those who are incarcerated with their mothers, or those separated from their mothers and left outside. However, the best interests of the child must always be a state's primary consideration in all actions concerning children, including those undertaken by the courts and by administrative and legislative bodies. International standards also require that children should only be detained as a last resort, in exceptional cases and for the shortest possible period of time.

Amnesty International believes that the problem of children held with, or separated from, their detained mothers would be considerably eased if the Burundian authorities were urgently to address the prolonged detention without trial of many of these mothers, were to release mothers who have been arbitrarily arrested, and were to make greater use of non-custodial sentences for convicted mothers.

## **WHAT YOU CAN DO**

Please write, preferably in French, to:

President: Son Excellence Pierre BUYOYA, Président de la République, Présidence de la République, BP 1870 Bujumbura, Burundi. Fax: 257 22 81 50.

Minister of Justice: Monsieur Fulgence DWIMA BAKANA, Ministre de la Justice et Garde des Sceaux, Ministère de la Justice, Bujumbura, Burundi. Fax: +257 21 86 10.

Minister of Welfare and Women's promotion: Madame Marie-Goretti NDUWIMANA, Ministre de l'Action sociale et de la Promotion de la Femme, Ministère de l'Action sociale et de la Promotion de la Femme, Bujumbura, Burundi. Fax: 257 22 53 25

Minister of Human Rights: Monsieur Alphonse BARANCIRA, Ministre des Droits de la Personne humaine, des Réformes institutionnelles et des Relations avec l'Assemblée nationale, Ministère des Droits de la Personne humaine, Bujumbura, Burundi. Fax: 257 21 75 49

### **Points to raise:**

Express concern at the detention of infant children and babies with their mothers in Burundi's prisons, in an environment which is ultimately damaging to their development and well-being. Recognize that there is no easy solution to this issue, and that the best interests of the child are not necessarily served by separating the child from its mother. However, please state your view that the problem could be considerably eased if the Burundian authorities took immediate action to end the arbitrary arrests of some mothers and end the excessively long periods of time for which mothers are detained before their cases come to trial, and were to make greater use of non-custodial sentences for pregnant women and young mothers.

Specifically raise the case of Marie Ndurutse, asking for her to be released, at least provisionally, pending trial, if she is not to be promptly tried.

Call on the authorities to:

- Review as a matter of priority all cases of infant children held in prison with their detained mothers, examining the mothers' case-files promptly and systematically to ascertain whether the women are lawfully detained on recognizably criminal charges for which there is substantiating evidence.

- Release immediately mothers found to have been arbitrarily arrested or unlawfully detained, such as in the case of Sabine Ndayishimiye and several other women who have been detained for years in Rumonge and Bururi prisons on charges of collaboration with armed political groups because they are suspected of providing food to their husbands or sons who are alleged to have joined such groups. Amnesty International considers their arrests to have been arbitrary and their continued detention unlawful.
- In remaining cases, give consideration to provisionally releasing those mothers who have been held for excessively long periods of time without trial, against whom there is little substantiating evidence or who are detained for minor offences.
- In other cases, ensure that mothers' cases are brought promptly to trial and, if the women are convicted, that the courts give primary consideration to the best interests of the children in their sentencing and wherever possible make use of non-custodial measures.
- Ensure that all detained mothers are informed of their and their children's rights, and are made aware in particular of their right to legal assistance and to challenge the legality of their detention promptly before a court of law.
- Take further measures to improve prison conditions, including the provision of improved diet, medical care, hygiene and educational and developmental activities, in the interests of all prisoners but especially those of detained children and infants detained with their mothers.

Urge the authorities to cooperate with non-governmental and other civil society organizations with direct experience of children's issues and human rights in developing policies, legislation and other measures to protect the rights of children

## Poverty, isolation and ill-treatment: Juvenile justice in Burundi

### APPEAL CASE 8

#### HARMFUL PRISON CONDITIONS

Désiré Manirakiza, aged around 13, was sleeping on the floor without a blanket despite the cold conditions when Amnesty International delegates visited Bururi prison in southern Burundi in March 2002. Désiré Manirakiza, arrested in February 2002, is awaiting sentencing after being convicted of beating a cow, causing it to miscarry.

In Ngozi specialized prison in northern Burundi in September 2002, Bumba, aged around 14, told visiting Amnesty International delegates that younger children do not always benefit from a privilege system, organized by the older prisoners. As a result they are sometimes deprived of food supplements, such as salt, and other essential items such as plates, cooking pans and mattresses. Bumba is serving a two-year sentence for theft of livestock.

“...while in custody, juveniles shall receive care, protection, and all necessary individual assistance – social, educational, vocational, psychological, medical and physical – that they may require in view of their age, sex and personality” – UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) Rule 13(5)

Conditions in Burundi’s prisons and detention centres are harsh, severely overcrowded and dangerously unsanitary. Important improvements in prison conditions have been made over the last two years thanks to collaboration between the government, international humanitarian organizations and national human rights groups. As a result high death rates in the prisons have been significantly reduced. Even so, in some prisons conditions remain life-threatening and are in violation of international human rights standards prohibiting cruel, inhuman or degrading treatment.

Under international standards juveniles should be held separately from adult prisoners, but in most of Burundi’s 11 central prisons, children are still accommodated with adults. (The exceptions are the Ngozi specialized prison for women and children and Mpimba prison, where children have a separate area to sleep in. A children’s wing has also been constructed in Bururi prison, but has yet to come into use.) In most prisons, pre-trial and convicted prisoners are held together. Both practices increase the exposure of child detainees to sexual and physical abuse by older inmates.

Other conditions also harm the physical and moral well-being of children. A typical food ration for detainees is 350g of uncooked beans and 350g of manioc flour per day, with occasionally some oil and salt. This is a substantial improvement from the ration previously provided, but even from a calorific value it fails to provide adequate nourishment for a growing child. Many children depend on the chance of cleaning or other small jobs within the prison to earn a little money, or receive extra rations, from prison staff or other prisoners.

All prison inmates in Burundi depend either on money or their families to bring food to supplement the prison ration, but many child prisoners receive only infrequent family visits or none at all. Often this is because their family home is at a long distance from the prison, or because relatives are unable to devote the time or expense to making visits. Désiré Manirakiza receives no family visits as his family lives in Gitega province, central Burundi. Bumba receives visits from his grandmother only twice a year. Children who receive no visits or have no work-duties with which to earn extra rations find it difficult to supplement their diet.

Few child prisoners benefit from educational, vocational or recreational activities which would promote their development and rehabilitation. In some prisons, local and international NGOs are working with the authorities to provide activities. For example, the Burundian human rights organization, the *Association burundaise pour la défense des droits des prisonniers* (ABDP), Burundian Association for the Defence of Prisoners' Rights, with international funding and support, is currently organizing the building of a carpentry workshop just outside Ngozi specialized prison, which will give child prisoners vocational training. Child prisoners and detainees are helping in its construction. The prison, the International Committee of the Red Cross and the ABDP are also cooperating in introducing literacy classes in the prison. These initiatives remain exceptional, although they provide a model for further future collaboration.

Medical care is also poor or unavailable in a number of prisons, although Burundian human rights NGOs, the ABDP and the *Association Burundaise de Protection des Droits Humains et Personnes Détenues* (APRODH), Burundian Association for the Protection of Human Rights and Detained Persons, run projects providing basic medical treatment in a number of prisons.

The state of Burundi's prisons and detention centres in part reflects the lack of financial resources available to the authorities, in part their priorities. Amnesty International believes that immediate measures could be taken at a minimal financial cost to improve conditions. Amnesty International also lobbies donor governments to provide Burundi with the technical and financial resources to improve prison conditions.

## WHAT YOU CAN DO

Please write, preferably in French, to:

President: Son Excellence Pierre BUYOYA, Président de la République, Présidence de la République, BP 1870 Bujumbura, Burundi. Fax: 257 22 81 50.

Vice-President: Monsieur Domitien NDAYIZEYE, Vice-Président, Présidence de la République, BP 2800 Bujumbura, Burundi. Fax: 257 22 64 24

Minister of Justice: Monsieur Fulgence DWIMA BAKANA, Ministre de la Justice et Garde des Sceaux, Ministère de la Justice, Bujumbura, Burundi. Fax: +257 21 86 10.

Minister of Human Rights: Monsieur Alphonse BARANCIRA, Ministre des Droits de la Personne humaine, des Réformes institutionnelles et des Relations avec l'Assemblée nationale, Ministère des Droits de la Personne humaine, Bujumbura, Burundi. Fax: 257 21 75 49

### Points to raise:

Welcome recent improvements in prison conditions in Burundi. Ask that cooperation and consultation with national human rights and international humanitarian organizations, which helped bring about these improvements, be continued and expanded with a view to substantially improving conditions in all Burundi's prisons and detention centres.

Urge the authorities take these immediate steps to improve conditions in Burundi's prisons and detention centres:

- ensure that child detainees are not detained with adults;
- increase medical care in places of detention and improve the diet of child detainees;

- ensure that all child detainees have the basic materials necessary for their physical health and well-being, including mattresses, blankets, adequate clothing and cooking utensils;
- increase access for child detainees to education, rehabilitation and skills development and sporting activities;
- encourage greater contact between the child prisoner and their family, and wherever possible locate child prisoners in prisons closest to their family homes.

In line with international standards, which state that children should only be detained as a matter of last resort and for the shortest possible time, urge the authorities to develop non-custodial sentences aimed at rehabilitating juvenile offenders.

Urge the authorities to develop and implement a process for constructing specialized detention facilities for all child detainees. Please mention that Amnesty International is approaching the international community and relevant international agencies to support such an initiative.