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BURUNDI

Sectarian security forces violate human rights with impunity

1. Introduction

Amnesty International has for many years been concerned about human rights violations in Burundi and has repeatedly urged the Burundi authorities to take steps to prevent future violations. The most conspicuous of these human rights violations are periodic mass extrajudicial executions which have been perpetrated against members of the majority Hutu ethnic group by members of security forces. The security forces, particularly the army, are dominated by members of the minority Tutsi ethnic group which has ruled Burundi for many years. Mass extrajudicial executions occurred in Burundi in 1965, 1969, 1972, 1988 and more recently at the end of 1991. In 1972 alone 80,000 or more civilians were extrajudicially executed by members of the security forces. Other human rights violations include "disappearances", torture and the long-term detention without charge or trial of political prisoners and unfair trials.

The present government of President Pierre Buyoya took office in September 1987. Less than a year later, following intercommunal riots in northern Burundi in August 1988, at least 5,000 were killed during what the government described as a counter-insurgency operation against armed rebels. Some sources estimate that up to 20,000 were massacred, many as they fled from the advancing security forces.

Since September 1988 President Pierre Buyoya's Government has taken steps to ease intercommunal tensions between the Hutu and the dominant Tutsi. In September 1988 it appointed a commission, comprising 12 members from each group, to study the origins of the conflict and propose remedial measures. The commission reported in May 1989 and was then charged with drafting a *Charte de l'unité nationale*, Charter for National Unity. At the end of December 1990 the draft charter was adopted at an extraordinary congress of the ruling party, the *Union pour le progrès national* (UPRONA), Union for National Progress. It was approved in a national referendum in February 1991. During the same period, the government pledged itself to respect fundamental human rights by ratifying the African Charter on Human and People's Rights and acceding to the International Covenant on Civil and Political Rights (ICCPR).

In March 1991 President Buyoya appointed a commission to draft a new constitution, which reported in September and recommended the introduction of a multi-party system. The draft constitution was adopted by national referendum in March 1992, and introduced a multi-party system for the first time since the 1960s. The new constitution also proclaims fundamental rights not previously recognized in Burundi in law or practice, such as the rights to

life and freedom from torture. However, its provisions fall short of international standards for the protection of human rights in several respects. In July 1992 the government ratified the United Nations (UN) *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

However, the government's moves towards legislative reforms and its commitment to protect human rights have to be seen in the context of continuing human rights violations.

At least 1,000 people, most of them Hutu, were reportedly extrajudicially executed by government soldiers and dozens "disappeared" following a rebel attack in November and December 1991. The victims included children, and in one case an eight-month-old baby. Over 500 people suspected of involvement with the rebels were arrested, bringing to around 1,000 the number of people detained during 1991 for suspected opposition to the government. They include prisoners of conscience. Seven who were arrested in late July and early August 1991 were convicted in June 1992 after an unfair trial. Two other unfair trials concluded in July 1992, resulting in five prisoners being sentenced to death and 66 others to prison terms. About 400 others are apparently awaiting trial. Torture and ill-treatment of political and other detainees were widespread during 1991 and early 1992. Several dozen people, some of whom were unfairly tried, are under sentence of death although there have been no judicial executions since 1982.

Despite a commitment to protect human rights reflected in the new Constitution and the ratification of major human rights treaties¹ the government has given no indication that it intends to investigate fully and impartially the gross human rights violations of which its security forces are accused. The killers and the torturers thus not only escape punishment; they are also encouraged to believe they may act with impunity. Human rights can never flourish in such a climate.

Amnesty International's communications with the government

In June 1989 Amnesty International visited Burundi and met senior government officials, and members of the judiciary and the security forces. Amnesty International urged the government to ratify major international and regional human rights instruments and expressed concern at the government's refusal to investigate reports of the August 1988 massacre.

¹ Between 1989 and 1992 Burundi ratified the *African Charter on Human and Peoples' Rights*, the *Convention on the Rights of the Child*, and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and acceded to the *International Covenant on Civil and political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.

In June 1991 Amnesty International presented proposals to ensure that human rights protection is enshrined in the Constitution and other legal documents, such as the Charter for National Unity, the Code of Penal Procedure and the Penal Code. The proposals were outlined in a 17-page memorandum entitled: *Burundi: Recommandations relatives à la protection constitutionnelle des droits de l'homme*. The memorandum urged the authorities to ensure that the Constitution enshrines the rights of every Burundi citizen to life, freedom of opinion, belief and association, and protection for persons in custody, in accordance with international human rights norms, and that it provides adequate guarantees to protect these rights.

For example Amnesty International proposed in its memorandum an introduction of the right to *habeas corpus*, required by Article 9 (4) of the ICCPR, so that the courts can oblige officials in charge of prisoners to produce a detainee in court to justify the legal basis for the detention and thereby bring an end to incommunicado detention. This and other related recommendations by Amnesty International, such as the right to examine witnesses, appear not to have been taken into account by the Constitutional Commission. Moreover, Burundi has not amended the Penal Code or the Code of Penal Procedure in line with international human rights treaties.

In February 1992 Amnesty International representatives again visited Burundi to collect information about human rights violations which occurred at the end of 1991 and to discuss with the authorities measures to protect human rights. In October an Amnesty International representative visited Burundi to observe the trial of alleged PALIPEHUTU insurgents.

2. Arbitrary killings by insurgents at the end of 1991

The human rights crisis at the end of 1991 followed a series of insurgent attacks, which began on 23 November 1991, on military and civilian targets in Bujumbura and in Bubanza and Cibitoke provinces in the northwest of the country. The insurgents were mainly Hutu.

Although most of the attacks were directed against the security forces, the insurgents also injured and killed several dozen Tutsi civilians, including Rwandese refugees. The insurgents are also reported to have attacked Hutu who did not support them. The authorities and others in Burundi believe that the insurgents were members of the clandestine opposition party known as the *Parti pour la libération du peuple hutu* (PALIPEHUTU), Hutu People's Liberation Party. The PALIPEHUTU leadership in exile has denied responsibility.

Murwi district (*commune*) in Cibitoke province was reportedly most affected by insurgent attacks on civilians. For instance, on 23 November insurgents reportedly attacked and killed 10 Tutsi and several Hutu school teachers and their relatives. Among those killed was **Pascal Ndabadugaritse**, a Hutu who refused to have scars inflicted on him to signify that he had joined

the insurgents. The rebels were reportedly marked with scars as a form of identification and because they believed it bestowed a form of protection. In another incident **Pélagie Rurakengereza**, a Tutsi widow, and her son were reportedly killed in their house at Mikoni village in the Murwi district.

Three entire Tutsi families were reportedly killed by the insurgents in Cibitoke province's Buganda district. In Rugombo district, the insurgents reportedly killed three Tutsi teachers of Rwandese and Burundi origin at Ruyaga primary school. A Tutsi woman of Rwandese origin wounded by the insurgents on 23 November died three days later. Insurgent attacks on Rwandese Tutsi refugees apparently sparked off reprisal attacks by refugees on unarmed Hutu civilians in parts of Cibitoke province. It is unclear whether there were any deaths among victims of these reprisals.

Some insurgents attacked Ngara health centre in Mabayi district and mutilated an elderly Tutsi old woman. The rebels were also reported to have destroyed the homes of Hutu who refused to join them in attacking the Tutsi.

The insurgents carried out further armed attacks in Cibitoke province in April 1992. However, these attacks apparently resulted in fewer acts of violence by rebels or reprisals by government troops.

3. Reports of extrajudicial executions by the security forces in late 1991

In the aftermath of the insurgent attacks members of the security forces carried out reprisals against Hutu and are believed to have executed extrajudicially at least 1,000 people. Several dozen people were reported to have been beaten to death at Muha barracks and the headquarters of the paratroopers battalion, known as *Bataillon-Para*, in Bujumbura. Amnesty International has received reports that some Rwandese nationals were among Hutu who were executed extrajudicially during these reprisal attacks. Dozens more people were reportedly killed at Bubanza Gendarmerie Brigade (the Gendarmerie headquarters and detention centre) in Bubanza province, and in parts of Cibitoke Province. In May 1992 Amnesty International published a report² describing several incidents in which many people were extrajudicially executed by members of the security forces.

² *Burundi: Appeals for an inquiry into army and Gendarmerie killings and other recent human rights violations*, AI Index: AFR 16/04/92, dated 28 May 1992.

The Burundi authorities do not appear to have made any effort to investigate these incidents or to bring those responsible for human rights violations to justice. Although the authorities said only 551 people were killed in the violence, they did not indicate how many of these were insurgents or unarmed civilians. The security forces removed the bodies without allowing the relatives of the dead to identify and bury them. The authorities refused to allow an investigation to identify those responsible for the killings.

3.1 Killings at Kanyosha Minor Seminary

Eleven agricultural workers were killed by government troops on 27 November 1991 at Kanyosha seminary, a Roman Catholic boarding secondary school, on the outskirts of Bujumbura. The killings followed an attack by insurgents on a nearby military camp. The victims were employees of the seminary.

Eye-witnesses say that at about 6am, soldiers pursuing the insurgents arrived at the building where the workers lived. The soldiers ordered the workers out of the building and made some of them kneel on the ground. The soldiers are said to have then deliberately shot the workers, some inside and others outside the building. Ten of the 13 workers were killed on the spot. When soldiers left to pursue the rebels, two injured survivors ran towards the main seminary buildings. The soldiers opened fire on them but missed. Soldiers then searched the seminary for the wounded workers. They found one **Gervais Sindakira** sheltering in the pupils' refectory between two priests. Despite protests from the priests, who identified the wounded man as one of their workers, a soldier bayoneted him to death.

The bodies of the 11 killed were taken away by soldiers and buried or otherwise disposed of in secret. The two survivors were in early 1992 recovering from injuries inflicted on them by the soldiers.

3.2 Killings of prisoners at Bubanza Gendarmerie Brigade

Dozens of prisoners are reported to have been deliberately killed at Bubanza Brigade from the end of November until the end of December 1991. Eye-witnesses have described how prisoners were stabbed to death with bayonets, some through the mouth. Others were reportedly clubbed to death after being gagged. These human rights violations occurred despite orders issued by the armed forces high command that prisoners were to be well treated. Orders were also issued that prisoners were to be referred to the *Brigade spéciale de recherche* (BSR), Special

Investigative Brigade, a Gendarmerie unit and interrogation centre in Bujumbura. Nevertheless, prisoners were held, interrogated, tortured and killed in a number of military barracks and Gendarmerie Brigades.

For example, a teacher called **Byibuza** was reportedly arrested by soldiers and bundled into a vehicle on 10 December 1991 near Karambira, on the road to Bubanza: he and about 15 other prisoners were tightly bound and severely beaten in the vehicle and after they had reached Bubanza Brigade. Byibuza reportedly died after being gagged and hit on the forehead with a piece of piping. Another prisoner by the name of **Nyantimbona** was also said to have been killed in the same way. The gagging was reportedly intended to stop the victims from crying out in pain.

Nine people were reportedly summarily executed by Gendarmes at Bubanza Brigade on 10 December 1992. They were among 15 people arrested in Muzinda who were supposed to be transferred to Bubanza civilian prison. There have been reports that other prisoners buried the bodies of dozens of execution victims in or near the Brigade, although the identities of most of those killed are not known to Amnesty International.

3.3 Reports of extrajudicial executions in Cibitoke province

Outside Bujumbura, most extrajudicial executions appear to have occurred in Cibitoke province. During the counter-offensive which followed an insurgent attack at Mabayi, soldiers reportedly killed 10 rebels and wounded and captured 37 others. All the 37 wounded insurgents reportedly died in as yet unexplained circumstances. Independent sources in Burundi have suggested that virtually all the 37 captured insurgents were executed extrajudicially. The authorities have not investigated the circumstances in which the insurgents reportedly died.

In Butahana zone, about 20 people were reportedly arrested on 24 November 1991 and later executed extrajudicially by government troops on the road to Mabayi. In a related incident one person was shot dead as he descended from a lorry. He was reportedly among a group of people said to have saved a Tutsi veterinary technician from being killed by insurgents. Another person was reportedly forced to lie on the ground and bayoneted to death.

At Gasenyi in Bukinanyana district six peasants, including **Naoni Hacimana** and **Thomas Bunwa**, were reportedly executed extrajudicially on 25 November 1991 by soldiers who had asked them to show them the whereabouts of insurgents. A number of other Hutu were reportedly killed in Bubanza and Cibitoke provinces when they failed to identify the whereabouts of insurgents. Some were reportedly killed solely because they could not produce their identity cards.

More than 20 people were reportedly executed extrajudicially on 26 November 1991 at Kaburantwa bridge in Bukinanyana district. They included **Ezechiel Baricako** and four other workers of an Italian-funded rural development project run by a non-governmental organization in the area. Soldiers reportedly shot and killed any Hutu found on or near the bridge, without any attempt to establish whether those killed were rebels or not. The Burundi authorities have rejected appeals by Amnesty International and other human rights groups, including the Burundi Human Rights League which published a report on the violence in April 1992, to investigate reports of extrajudicial executions said to have been carried out by soldiers.

3.4 The killing of Isidore Ciza's household, including children

Amnesty International first brought the killing of six members of **Isidore Ciza's** family by government soldiers to the attention of the Burundi authorities in early December 1991. To date no steps appear to have been taken to carry out an independent and impartial investigation into the incident, which took place on 26 November 1991, or to identify and bring those responsible to justice.

According to reports, six soldiers travelling in an armoured vehicle went to Isidore Ciza's home at Muzinda, about 15 kilometres north of Bujumbura, and threw a grenade at his minibus in the compound. In the absence of Isidore Ciza himself, they searched his house, apparently looking for weapons, while seven members of his family were made to stay in the compound. No weapons were found. After the search the soldiers ordered members of the household back into the house, then threw a grenade into it, killing Isidore Ciza's first wife, **Maria Mawazo**, a housemaid, a six-year-old girl, two boys aged four and five and an eight-month-old baby. The soldiers are then reported to have entered the house and shot the children at close range to ensure they were dead. Only **Beatrice Tabu**, Isidore Ciza's second wife, survived. Learning of the killings, Isidore Ciza fled to Bujumbura where he was arrested on 9 December 1991 and subjected to severe beatings and torture (see page 21). In this case, as in the Kanyosha Seminary killings, the military authorities have suggested that civilians were killed in the cross-fire. This was evidently not the case.

3.5 Killings by Gendarmes at Gatumba Gendarmerie Brigade

At least 10 people, including **Antoine Muhitira**, a public transport operator, were arrested on 3 December 1991 and reportedly killed at the Gendarmerie's Gatumba Brigade, situated 15 kilometres northwest of Bujumbura. Antoine Muhitira had been transporting Zairians fleeing the violence in Burundi back to their own country. Antoine Muhitira and at least 10 Hutu passengers travelling towards Bujumbura "disappeared" after being taken to Gatumba Brigade. Human rights groups inside and outside Burundi appealed to the authorities to establish their

whereabouts. In February 1992 the authorities disclosed that Antoine Muhitira had been killed and that the Commander of Gatumba Brigade at the time had been arrested in connection with his death. He was not known to have been brought to trial by October 1992. The authorities did not say whether other people had been killed at the Brigade. However, local residents reported that bodies were seen floating at the mouth of the Ruzizi river, near the Brigade. Although the authorities appeared to be carrying out an internal inquiry, it remained unclear whether the body of Antoine Muhitira or others killed at Gatumba Brigade had been found.

3.6 Government response to reports of extrajudicial executions

In response to Amnesty International's May 1992 report about the killings the Burundi Government denied that some 1,000 people had been executed extrajudicially by members of the security forces. A government press release issued at the end of May 1992 repeated earlier official claims that the insurgents killed 551 people in November 1991 and suggested that 61 had been killed in April 1992. The government's figures suggest that no-one was deliberately executed by the security forces. This is clearly an underestimation of the people killed during and after the insurgency at the end of November 1991.

In the same press release the government stated that it had always managed violent crises with what it called "openness" ("*transparence*"). However, this claim is contradicted by the government's refusal to allow an independent public inquiry into killings of unarmed civilians by government troops in either August 1988 or November and December 1991. Instead, the government has tried to cover up security force responsibility for unlawful killings and extrajudicial executions. In both 1988 and 1991 civilians were imprisoned for their alleged roles in killing members of the Tutsi ethnic group, but virtually no soldiers were detained or punished for involvement in unlawful killings. This has led many Hutu in Burundi and other observers to question the motives of the authorities in bringing alleged insurgents and their collaborators to trial without members of the security forces similarly being held to account.

4. Reports of "disappearances"

In the aftermath of the violence in late 1991 hundreds of Hutu were arrested by members of the security forces and civilian vigilantes. Many were arrested on the basis of denunciations by their personal enemies, without evidence that they were involved in the insurgency. There appears to have been very limited official control over arrests and some of those detained have apparently "disappeared" in custody.

At least 35 people arrested by the security forces following the attacks by insurgents are reported to have "disappeared"; unofficial sources reported that they were arrested but the

authorities subsequently denied they were in custody. There are fears that those reported to have "disappeared" may have been killed in custody. By October 1992 it was clear that the Burundi authorities had not carried out any public inquiry to establish the fate of the "disappeared".

Those reported to have "disappeared" in custody include **Renovat Ndikumana**, a journalist and sub-editor at the Burundi Press Agency in Bujumbura. He was resident in Bujumbura's Musaga zone. Independent sources in Bujumbura say that he was arrested by government soldiers at the end of November 1991 while on his way to work. The reason for his arrest is not known. He has not been seen since and does not appear on lists of prisoners still in custody provided by the authorities to Amnesty International.

Soon after the first rebel attacks on 23 November 1991, a young man named **Obedi Bambanze** and an elderly man called **Saïdi Hussein** were shown on Burundi television admitting that they were accomplices of the insurgents. The two men were at that time in custody. In early 1992 the Procuracy and prison authorities informed Amnesty International that the two men were not in custody, neither were they reported to have been released. Amnesty International has received reports from unofficial sources that the two men died in custody. The authorities have failed to account for what has happened to them.

In February 1992 a senior judicial official told Amnesty International representatives that no investigations into "disappearances" had taken place. He said this was because in some cases relatives of those who "disappeared" had not provided information while in others the information provided did not state clearly how the "disappearances" had occurred. However, reports received by Amnesty International indicate that in some cases relatives had provided detailed information about the circumstances of "disappearances". One such case is the "disappearance" of **Denis Mbabarempore**, an employee of the *Office national de telecommunications* (ONATEL), National Telecommunications Office. His wife wrote a letter to the Procuracy demanding an investigation into her husband's "disappearance". In the letter she described, giving names of some of those involved, how on 26 November 1991 at around 9pm their house was searched for weapons by soldiers without any being found. Her husband was taken away and brought back during the night. The next day at around 11am five soldiers took him away and he never returned. His wife apparently never received a reply to her letter and no official investigation is known to have been carried out into Denis Mbabarempore's "disappearance".

5. Political arrests and detention without trial during 1991

About 1,000 Hutu opponents of the government were arrested between July and December 1991, in the first major wave of political arrests since intercommunal disturbances in 1988, as a result of renewed tensions between Hutu and Tutsi. Of these, about 300 Hutu were arrested

before the rebel attack on 23 November on suspicion of supporting the PALIPEHUTU, an illegal and clandestine political party set up in the early 1980s by Hutu exiles to campaign against what they saw as Tutsi domination. When the arrests began at the end of July 1991 the government said PALIPEHUTU intended to instigate intercommunal conflict and killings of Tutsi, but PALIPEHUTU denied that it advocated violent change. Only a few detainees were interrogated by the judicial authorities before early 1992. They were not allowed to consult legal counsel. It is apparently standard practice in Burundi not to permit prisoners to consult legal counsel either while in police or Gendarmerie custody or during the weeks or months while their cases are investigated by the Procuracy or a magistrate during the pre-trial phase of *instruction*. Although most of those arrested before 23 November 1991 were released in subsequent months, more than 70 were kept in custody awaiting trial (see pages 16 to 18).

The arrests of suspected PALIPEHUTU supporters between July and November 1991 caused tensions between the Hutu and the Tutsi. These tensions were exacerbated by the insurgent attacks which started in November 1991 and which the government attributed to PALIPEHUTU, although the party denied responsibility. Hundreds more Hutu were subsequently arrested, about 300 of whom were still held without trial, most of them incommunicado, in October 1992. Virtually all of them appear to have been charged with the blanket offence of "jeopardizing the security of the state" (*atteinte à la sûreté de l'Etat*).

Amnesty International is concerned by reports that examining magistrates ordered suspects arrested in connection with PALIPEHUTU activities to be kept in isolation cells until investigations were complete and without stating any time limit. In most cases, prisoners at Bujumbura's Mpimba prison were held in severely cramped conditions - they were confined in tiny cells measuring about two metres by one-and-a-half metres, four prisoners to each cell - conditions which appear to constitute cruel, inhuman and degrading treatment. The detainees had no access to legal counsel during pre-trial detention, or crucially, during interrogation by the Procuracy. The detainees were not allowed any opportunity to challenge the legal basis for their detention or to seek to oblige the detaining authority to justify their detention in a court of law. The conditions in which the detainees were held contravenes the ICCPR which states: "[A]nyone arrested or detained on a criminal charge shall be brought before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody but release may be subject to guarantees to appear for trial". Amnesty International has urged the Burundi authorities to end the practice of confining untried political prisoners in punishment cells and to ensure that they are brought to trial promptly and fairly or else released.

More than 200 Hutu who are Rwandese nationals were also arrested in early December 1991. Most of them were arrested after they had taken refuge in the compound of the Rwandese embassy in Bujumbura. The Burundi authorities said they were being interrogated

in connection with the November 1991 violence. They were detained at the police college in Bujumbura, where they were reportedly refused toilet facilities for several days. Some were beaten and injured in custody. Some were subsequently deported to Rwanda and others transferred to Mpimba Prison. None are known to have been charged with any offence. All the Rwandese nationals arrested in connection with the rebel attack were released by May 1992.

Most arrests took place between July and December 1991 in provinces as far apart as Cibitoke in the northwest, Muyinga in the northeast and Gitega in central Burundi. Most detainees were transferred to Bujumbura, where they were interrogated by members of the security police, known as the *Sûreté nationale*, and the Gendarmerie's *Brigade spéciale de recherche* (BSR), Special Investigation Brigade. In October 1992 dozens were believed to be still held without trial in Ngozi and Kayanza.

About 60 people were arrested in late September and early October 1991. A government minister said many of them were Burundi citizens who had acquired refugee status in neighbouring Tanzania, from whence they returned clandestinely in 1991, and that others had helped the returnees to obtain false identity cards. Those arrested included **Alfred Ntahimpera**, a nurse from Mabayi district in Cibitoke province, who was reportedly accused of illegally supplying identity cards to returning refugees, and **Abdallah Sibomana**, a former refugee who was arrested in mid-September 1991 in Gitega. Abdallah Sibomana was reportedly tortured by members of the security forces. Both he and Alfred Ntahimpera were believed in October 1992 to be still held without trial at Mpimba prison.

Many of those arrested in September and October 1991 appear to be Hutu suspected of sympathizing with PALIPEHUTU. In some cases there appears to be no substantial evidence that they were involved in violent activities.

Amnesty International has received information which suggests that the Burundi authorities, through their consul in the western Tanzanian town of Kigoma, lured Burundi refugees in Tanzania into returning to Burundi, without reaching an agreement with the United Nations High Commissioner for Refugees (UNHCR) or the Tanzanian Government. The UNHCR and the Tanzanian authorities reportedly refused to be directly involved in the repatriation of refugees because the Burundi authorities had not given guarantees that returnees would be protected from persecution or reprisals for their past opposition to the Burundi Government. However, the Burundi authorities proceeded to encourage the refugees to return, apparently without any legal protection. Some of the refugees are reported to have been arrested after they entered Burundi unofficially to assess whether it was safe to return on a permanent basis. In a new development in April 1992 the Tanzanian authorities reportedly ordered Burundi refugees to accept Tanzanian nationality or return to Burundi, despite the fact that they have been at risk of human rights violations. In June 1992, a Tanzanian government

minister is reported to have ordered the arrest of suspected members of an Burundi opposition group in Tanzania known as the *Front pour la libération nationale* (FROLINA), National Liberation Front, and its leader, Joseph Karumba. It was unclear by October 1992 whether any arrests of Burundi refugees had been carried out in Tanzania.

In March 1989, 15 Burundi refugees including Remy Gahutu, the then leader of PALIPEHUTU, had been detained by the Tanzanian authorities. The authorities accused them of activities detrimental to Tanzanian relations with Burundi. Remy Gahutu died in custody in August 1990 as a result of illness possibly exacerbated by harsh prison conditions and poor medical facilities (see page 16). The 14 others were held without charge or trial until their release in July 1991.

One refugee who was a suspected opponent of Burundi's government was forcibly returned from Tanzania at the end of October 1991. **Samuel Hakizimana**, a veterinary technician from Bukirasazi, in Burundi's Gitega province, fled to Tanzania fearing arrest on suspicion of involvement in PALIPEHUTU activities. He arrived in Tanzania on 5 October 1991, and reported to the immigration service in Kibondo district, Kigoma province. On 31 October he was taken to the Tanzanian border with Burundi and handed over to authorities from Burundi's Ruyigi province.

The forcible return of Samuel Hakizimana appears to have been carried out without any legal proceedings either in Burundi or Tanzania. It is unclear whether he had sought asylum in Tanzania. It seems that the judicial authorities of both countries were neither consulted nor informed of his repatriation. His forcible return is also a violation of fundamental rights as he apparently was denied the right to contest his return and was not informed of its legal basis.

One day after his return to Burundi he was transferred to Gitega military barracks, where he was interrogated for several days. He was then further interrogated by three judicial officials known as *Officiers de police judiciaire* (OPJ) and the commander of the military barracks in Gitega. He was allegedly beaten on most parts of his body, including his back and the soles of his feet, causing swellings. He was also reportedly beaten on his hands. When Amnesty International representatives met him in February 1992 scars consistent with such beatings were visible on his hands. He was apparently ill-treated to compel him to admit that he was a member of PALIPEHUTU and knew of its plan to invade Burundi. He alleged that he was forced to testify against himself and others for fear of being subjected to prolonged beatings.

From 9 to 15 January 1992 Samuel Hakizimana was held at the security police detention centre in Gitega. He and six other detainees, including a woman, were then transferred to Mpimba prison on 16 January. By February 1992 he did not know whether he had been charged with any specific offence. He was still in custody, untried, by October 1992.

6. Detention of prisoners of conscience

In some cases, the Burundi authorities appear to have manipulated the law to detain prisoners of conscience. People have been arrested on serious charges and then kept in custody indefinitely or convicted on lesser charges.

For example, two Hutu, **Emile Ruvyiro** and **Ephrème Ndabwarukanye**, arrested in March 1991 in Rugazi district, Bubanza Province, were brought to trial at the end of 1991 on political charges. They appear to have been imprisoned because in 1990 they had encouraged peasant farmers to claim land taken from them by government and security officials. Ephrème Ndabwarukanye was initially charged with inciting members of the public not to obey lawfully given orders (*rebellion en concertation avec la population*). The charge was later changed to assault, on the basis that he had intervened to separate a group of people including a police official involved in a fist fight. In November 1991 he was found guilty and sentenced to 14 months' imprisonment. He was released around May 1992.

Emile Ruvyiro was reportedly charged in March 1991 with endangering the security of the state and inciting ethnic hatred (*atteinte à la sûreté de l'Etat et incitation à la haine ethnique*). In early 1991, after he had claimed land confiscated by government and security officials, Emile Ruvyiro was assaulted. He fought back against his assailant. A few days later the local Procurator (public prosecutor) sent a summons for his arrest, but Emile Ruvyiro was ill and was not arrested. Later the local police commander and the Procurator sent several dozen soldiers and 10 police officers to arrest him, apparently while he was still ill in bed. When neighbours saw a large group of soldiers they gathered around the house to see what was happening. He was then accused of calling members of the public to prevent his arrest. He was arrested, taken to Bubanza prison and apparently informed that he had been charged with assault.

After the insurgency in November 1991, several detainees were reportedly compelled under torture to say that, while in jail, Emile Ruvyiro was involved in preparing attacks by insurgents. At the end of December 1991 he was taken to Bubanza Gendarmerie Brigade where he was severely beaten with truncheons for most of the day in order to force him to confess that he was involved in organizing the attack. Despite the torture, he apparently refused to confess. During the interrogation he reportedly rejected accusations that he was a member of PALIPEHUTU and a supporter of armed opposition. He reportedly told the Gendarmes that he was a member of the *Front pour la démocratie au Burundi* (FRODEBU), Front for Democracy in Burundi.

Although Emile Ruvyiro had appeared in court five times by the end of 1991, it seemed that the Procurator and the presiding magistrate were refusing to proceed on his case, apparently in

an effort to prolong his imprisonment. In April 1992 he was convicted of inciting the public to disobey lawfully given orders and sentenced to four years' imprisonment. The charge was based on the accusation that he had incited people in his home area to oppose lawfully given orders for his arrest. The conviction appears not to relate to offences he was initially being arrested for, but rather to the conduct of the public at the time of his arrest. He appealed against his conviction and sentence but by October 1992 no date had been set for the appeal hearing.

For several months before the constitutional referendum in March 1992, the government carried out a campaign to mobilise people to vote in favour of the new Constitution, which reintroduced a multi-party political system for the first time since the early 1960s. However, the authorities prevented opposition parties from publicly criticizing the Constitution or proposing amendments. Members of at least two political parties who met to discuss the draft constitution were arrested in February 1992. For example, about 18 members of the then *Parti royaliste parlementaire* (PRP), Royalist Parliamentary Party, were arrested on 7 February 1992 in Kayanza, the capital of Kayanza province, because they met and expressed their opposition to Articles 39 and 179 of the new Constitution. Article 39 declares that Burundi is a republic while Article 179 declares that no amendment can change the republican form of the Constitution. Ten of those arrested were each fined 2,000 Burundi francs before their release on 10 February 1992. After the Constitutional referendum in March 1992 the PRP changed its name to *Parti pour la réconciliation du peuple*, Party for the People's Reconciliation. Several members of FRODEBU were detained for several days in Bubanza, the capital of Bubanza province, because they had expressed disagreement with government restrictions on discussion of the draft Constitution. Those detained were effectively prisoners of conscience imprisoned for peacefully exercising their right to freedom of expression and association.

The arrests in Bubanza and Kayanza apparently took place under the provisions of Decree number 100/187/91, dated 31 December 1991, concerning the regulation of demonstrations and public meetings. The decree requires organizers of a demonstration or public meeting to apply to a local government official for permission at least three days before the event. The application may be rejected if the official deems that the event will stir tribal hatred or provoke violence. Once the application is rejected the applicant may appeal to the provincial governor or the Minister of Interior. If the governor or Minister of Interior confirms the local official's decision the applicant has 30 days in which to appeal to an Administrative Court. However, the authorities required to rule on the application are all appointed and may be removed at will by the government, so it must be questioned whether organizations critical of the government will be successful in obtaining official permission to hold public meetings and demonstrations. Indeed the reason given for imposing fines on members of the PRP in Kayanza was that they had violated the decree, without giving any specific reasons. Yet the decree does not provide for sanctions to be imposed by the authorities. No judicial authority appears to have been involved in ordering the arrest or punishment of those arrested in February 1992.

7. Unfair trials of political prisoners

Amnesty International is concerned that five people have been sentenced to death and more than 70 others to prison terms ranging from a few years to life imprisonment in Burundi after unfair political trials. The organization is urging that all political trials should be conducted in accordance with international standards for fair trial.

The trials, which started in April 1992, have been unfair in many respects. Most defendants were reportedly subjected to beatings and other ill-treatment by members of the security forces at the time of their arrest and during interrogation. However, the courts are not known to have ordered any investigation into reports that the defendants were tortured or ill-treated. Statements extracted from defendants under duress appear to have been used as evidence to convict them. In one trial the court is reported to have expressed the view that "however severe, beatings and torture cannot make a person say things that he knew nothing about" (*attendu cependant que les coups et les tortures durs soient-ils ne peuvent pas faire dire des choses dont on ignore du tout du tout ...*). None of those tried before September 1992 had legal representation or were given an adequate opportunity to defend themselves against the charges as trials of more than eight or more people at a time lasted only about four hours and defendants had no opportunity to cross-examine witnesses.

Eight people, all Hutu, were tried on 9 April 1992 by the *Tribunal de grande instance* (High Court) in Bujumbura. Six of them, with **Ananias Ntampaka**, a Rwandese migrant worker, had been arrested on 31 July 1991 while meeting at the home of **Johnson Hatungimana** in Buganda district, in the northwestern province of Cibitoke. They said that they had met to plan a commemoration of the death in August 1990 of the former PALIPEHUTU leader, Remy Gahutu, while in detention in Tanzania. Before their arrests, members of the security forces had surrounded the house in which they were meeting. **Sylvestre Maniraho**, one of the seven was shot in the thigh. He and the others were taken to the headquarters of the BSR in Bujumbura. He was subsequently moved to a military hospital in Bujumbura for medical treatment. The others were kept at the BSR where for several days they were reportedly subjected to beatings and other forms of ill-treatment by members of the National Gendarmerie.

None of the eight defendants had legal representation and they were apparently denied the opportunity to consult legal counsel before the trial, which lasted only a few hours. They were reportedly not given an adequate opportunity to defend themselves in court. On 5 June 1992, the court found six of the defendants guilty of "disturbing public order (*perturbation de l'ordre public*), subversion and collusion with insurgents (*complicité avec les infiltrés*)" and sentenced them to 20 years' imprisonment. A seventh defendant was convicted of having had knowledge of the offences committed by the six, but failing to report them to the authorities and was sentenced to two years' imprisonment. The eighth defendant was acquitted apparently because he denied membership of PALIPEHUTU and provided information to the Procuracy about the

activities of his co-defendants. It was not made clear during the trial that the acquitted defendant had given evidence against his co-defendants and he was not cross-examined by those he apparently implicated.

Amnesty International is concerned that the trial was summary and unfair. Most of the defendants had reportedly been tortured or ill-treated but the court is not known to have ordered any investigation of these reports, nor of the circumstances in which defendants' statements were made, which had been extracted under duress. The Court of Appeal appears to have taken this view without investigating defendants' claims that they were obliged to sign false statements under torture and other forms of ill-treatment.

The Rwandese migrant worker among the defendants, Ananias Ntampaka, did not appear in court. In response to inquiries by Amnesty International a Burundi government minister stated in mid-1992 that Ananias Ntampaka was still imprisoned as an illegal immigrant and that he was going to be expelled from Burundi. The Minister said that his release and expulsion had been delayed by the slowness in administrative procedures for expelling illegal immigrants. The minister did not explain why Ananias Ntampaka had not been expelled along with other Rwandese nationals arrested several months after him or why he had not been allowed visits by Rwandese diplomats in Bujumbura. His continued detention appears to be punishment without charge or trial for being found in a place where government opponents were arrested.

A second trial of 12 people arrested after 23 November 1991 and charged with offences relating to the insurgent attacks took place on 6 July 1992 before the *Chambre criminelle de la Cour d'appel*, Criminal Chamber of the Court of Appeal, in Bujumbura. This trial took place in similar conditions to the one mentioned above, without any defence counsel for the defendants. Most of the defendants had little or no formal education and were unlikely to be able to follow court proceedings or ensure their own defence. The hearings ended after a few hours, with the court announcing its verdict and sentences the same day. Two of the defendants were sentenced to death, four to life imprisonment and the six others to prison terms ranging from five to 20 years. Those sentenced to death were convicted of organizing meetings to prepare PALIPEHUTU attacks, conspiracy against state institutions (*complot contre les institutions*) and conspiracy to kill members of another ethnic group and those of the same ethnic group opposed to such killings (*complot visant à tuer les gens de l'autre ethnie et ceux de la même ethnie qui s'y opposaient*). A top Procuracy official was reported as saying that the trial took a short time because the defendants were "evidently guilty" (*évidemment coupables*).

A further trial of 64 defendants started on 7 July and concluded on 15 July 1992. Three people were sentenced to death and 55 others being sentenced to prison terms ranging from 10 years to life. One defendant was given a one-year sentence for producing false identity documents and five others were acquitted. A leading defendant strongly challenged his prosecution. **Antoine Ntirabampa**, a public works engineer and Vice-President of

PALIPEHUTU, arrested in September 1991, was accused of urging refugees living abroad to return clandestinely to Burundi and participate in armed attacks. He denied the charges and demanded the right to cross-examine prosecution witnesses, but he was not allowed to do so. He and two others were sentenced to death after being found guilty of attempting to overthrow the government of Burundi and responsibility for killings or looting. He told Amnesty International representatives in February 1992 that during interrogation by Procuracy officials he had not had access to legal counsel or been informed of any charges against him. He had been denied a visit by his wife and their young child between September 1991 and the time of the Amnesty International visit in February 1992.

Alphonse Banderembako, a nurse at Gitega health centre, one of those acquitted at this trial and then freed, was rearrested at his place of work on 5 August 1992 by members of the security police. He was apparently arrested without a warrant or the Procuracy being informed about the decision by the security police to redetain him. In October 1992 he was still held at Mpimba prison. It seems that Alphonse Banderembako may have been accused of trying to arrange transport for insurgents at the end of 1991. It is unclear whether he has been formally charged and, if so, when he will be tried again. Independent sources in Burundi have suggested that Alphonse Banderembako was rearrested at the urging of people close to the security police who did not want to see him at liberty and reinstated in his job.

At the end of July 1992 the court decided that trials of government opponents would only take place once a week on Wednesdays. The earmarking of only one day made it particularly difficult for people from outside Burundi to represent the defendants or even observe the trials on a consistent basis.

A fourth trial of 18 people started at the end of July, the defendants at this latest trial reportedly refused to plead without legal counsel, the first time that defendants in this series of trials had demanded legal representation as a precondition for their trial. The Court of Appeal adjourned the trial to 5 August 1992 when it was again adjourned because the defendants had still not obtained legal counsel. The court did nothing to assist the defendants to obtain legal representation, and the trial was adjourned twice, resuming in mid-September after non-governmental organizations had found a foreign lawyer to represent the defendants. A Burundi lawyer also agreed to act as a defence lawyer for this group of defendants. When the trial finally resumed the presiding judge decided that hearings would only take place in the mornings. The trial was still continuing in early October 1992, and at this pace it looks likely that the trials of about 400 defendants may take many months.

It seems clear that those tried in connection with the insurgency were not given the opportunity or advice to obtain legal counsel and prepare their defence before their trials began. They were only informed that they could have legal counsel on the day of their trial, making it difficult for defendants to decide which lawyer could effectively represent them. The defendants

who are accused of killing Tutsi seem to have limited confidence in representation by members of the Burundi Bar Association because virtually all its members are Tutsi and the defendants believe they are sympathetic to the prosecution.

Those convicted at these trials have a right of appeal but defendants wishing to exercise this right face several obstacles. Those convicted in July 1992 were given eight days in which to appeal. Another constraint is that copies of the judgments were not available within the eight days. Many of the defendants are not sufficiently educated to know how to lodge their appeals and they did not have lawyers to help them lodge the appeals. Those convicted at the first two trials were apparently unable to lodge appeals. Those convicted in the third trial reportedly had appeals lodged on their behalf by a Burundi human rights group. The court authorities apparently asked for payment of 37,000 Burundi Francs (equivalent to about \$US 180) for a copy of the 26-page judgment. Given that most of those convicted come from poor backgrounds and had been in prison for nearly one year, they were unlikely to be able to afford the cost of copies of the judgments. In limiting the time in which those convicted could lodge appeals, the judiciary does not appear to have taken into consideration either the limited capacity of those convicted to lodge appeals, or the availability and cost of copies of court judgments.

8. Reports of torture and other forms of ill-treatment

Torture was used systematically against suspected PALIPEHUTU supporters, more than 60 of whom were already in custody before the insurgent attacks in November 1991. Although Amnesty International received reports about the torture of political prisoners under interrogation throughout the 1980s, the evidence made available to the organization's representatives in February 1992 was shocking and suggested that the torture of prisoners in Gendarmerie custody was systematic and endemic. The evidence for this comes from testimony of both prisoners still in custody and others who had been released, and is backed up by the scars shown by former torture victims, mainly caused by ropes biting into the flesh of their arms and bayonet wounds. It is evident that the bayonet, widely used for killing unarmed civilians and prisoners, is also in general use by Gendarmes as an instrument of torture.

Virtually all political detainees claim they were beaten at the time of their arrest and that others were beaten while being detained or interrogated in detention centres run by the Gendarmerie and the *Police de sécurité publique* (PSP), Public Security Police. Various forms of torture and ill-treatment are reported. A common form of ill-treatment is to tie detainees' arms behind their backs so tightly that their elbows meet and the ropes or cords cut into their arms. As a result to this some prisoners apparently developed gangrene and others suffer paralysis in their arms. Despite the visible evidence of this kind of practice, Amnesty International representatives were told by military officials that soldiers used hand-cuffs and not ropes or cords to restrain prisoners. During interrogation some detainees were reportedly beaten severely

on the soles of their feet, on their backs and hands, and made to kneel for long periods, sometimes on bottle tops and pebbles. According to information given to Amnesty International representatives, members of the security forces used bayonets, piping, truncheons and machetes to inflict injuries on detainees and some died as a result. In spite of the existence of substantial evidence of torture, the authorities are not known to have taken any steps to prevent it, or to have ordered any independent and impartial investigations into allegations of torture. Amnesty International is unaware of any cases of officials being prosecuted for torturing or ill-treating prisoners or of any victims receiving compensation or rehabilitation. The organization is also unaware of a single court case in which court judges have questioned the admissibility of statements made in custody as prosecution evidence, even though defendants have claimed to have made statements under duress and in some cases to have shown signs of injuries consistent with their allegations of torture. Planned reforms of the Code of Penal Procedure reportedly give little or no priority to safeguarding detainees against torture. Burundi's new Constitution which was voted by referendum in March 1992 bans torture but there is need for a public inquiry to establish how torture can be prevented in practice.

8.1 Reports of torture of people arrested in 1991

Torture of detainees has been reported in Bujumbura, Cibitoke, Gitega and Kirundo provinces. In Gitega, **Emmanuel Nkunzimana**, an employee of a brick factory, was said to have been severely beaten after his arrest in September 1991 by members of the security forces and to have had his genitals pierced with a sharp object. After his alleged torture he was shown on television stating that he had returned clandestinely from Tanzania to participate in armed attacks by PALIPEHUTU. Doubts have been expressed whether this statement was given freely.

About 50 taxi drivers arrested in June 1991 after a demonstration in Bujumbura against a new tax were also reported to have been beaten in custody and made to sign self-incriminating statements. Although many are reported to have been released, an unspecified number apparently remain in custody and are expected to be brought to trial.

After government soldiers attacked his home, killing six members of his household (see page 8), **Isidore Ciza** fled to Bujumbura where he was arrested on 9 December. He was detained in a cell in a local detention centre in the capital's Cibitoke zone. At 9pm a soldier opened the door to his cell and pointed a gun at him but did not shoot. At about 10pm soldiers removed him from the cell. One soldier hit his left ankle with a hammer. While he was being held by soldiers, rather strangely, one bit his chin twice. He was then returned to his cell.

On the following day he was taken to Muzinda barracks and interrogated about why he had fled to Bujumbura. He was then taken further north to the provincial capital of Buzanza.

On the way from Muzinda to Bubanza two people in the vehicle died from injuries inflicted by the soldiers. Isidore Ciza lost a tooth.

On arrival at Bubanza Brigade (the provincial Gendarmerie headquarters) he was made to lie on the ground still tied. He was severely beaten and hit with a metal rod on the temples and forehead. The scars from this beating were still visible in February 1992. He said that many people were killed or injured by Gendarmes during his stay at the Brigade. He spent five days at the Brigade without food or drink before being transferred to Bubanza prison. Amnesty International representatives met him at Bubanza prison in late February 1992 and his physical state was consistent with his assertions. He was still held without trial by October 1992.

8.2 Pre-1991 cases of torture: prisoners accused of attacking Mabanda military barracks

Four people arrested after an armed attack on Mabanda military barracks, in the southern province of Makamba, in August 1990 remain in custody without trial. According to the authorities, their cases are being handled by the military justice system, although in June 1992 it still remained unclear when they would be brought to trial. Amnesty International has received information that they were severely tortured after their arrest. **Paul Hakizimana**, who was arrested three days after the attack, is said to have had his legs and arms tied tightly behind his back and then been stabbed with bayonets, before being taken to Mabanda barracks where he was tortured with beatings, having his hair set alight and being subjected to mock execution. **Evariste Sinyirimana**, arrested with Paul Hakizimana, is also reported to have been severely tortured; his genitals were injured when they were pierced with sharp pins. He suffered temporary paralysis as a result of prolonged tying of his arms above the elbow while he was held at Mabanda barracks.

All four detainees are reported to be in poor health as a result of torture or ill-treatment. In September 1990 they were moved to Rumonge Prison in the southwestern province of Bururi where they remained until December 1991, when they were transferred to Mpimba Prison. They are said to have been severely beaten by prison guards on arrival there. They were first interrogated by members of the Procuracy in July 1991, almost a year after being taken into custody. They were apparently not allowed to read through their statements after the interrogation, and they have been denied the opportunity to consult legal counsel.

A fifth person, **Albert Singoye**, was arrested in August 1990 in northeastern Burundi's Nyanza Lac region and accused of being involved in the attack on Mabanda barracks. He was first held at Makamba barracks in Makamba province where he was said to have been severely ill-treated. He was transferred in 1991 to Rumonge prison. The four who came from Tanzania have made statements that Albert Singoye did not take part in the attack on Mabanda barracks.

It is unclear whether he has been charged with any offence. Amnesty International is trying to establish the legal basis for Albert Singoye's detention and investigating whether he could be a prisoner of conscience.

9. The Death Penalty

Amnesty International is concerned about the five death sentences imposed in July 1992 by the Criminal Chamber of the Court of Appeal in Bujumbura. The sentences were imposed in circumstances which could not guarantee fair trial. In its memorandum on constitutional human rights guarantees submitted to the government in June 1991, Amnesty International called on the authorities to ensure that all defendants and particularly people likely to be sentenced to death or long prison terms should always be represented by competent legal counsel. Evidently, this recommendation has not been taken into consideration. A Burundi government official has said that those sentenced to death will have the opportunity to appeal for commutation if their sentences are confirmed. However, he did not rule out the possibility that the sentences might be carried out.

Amnesty International is urging the Burundi authorities to continue the *de facto* suspension of the death penalty pending abolition. More than 200 people were sentenced to death in Burundi between 1980 and July 1992. However, no death sentences are reported to have been carried out in Burundi since 1981. It appears that most death sentences have been commuted to life imprisonment as a result of presidential amnesties, the most recent of which was granted in August 1990.

Amnesty International welcomes the *de facto* abolition or suspension of judicial executions in Burundi since 1981. It also welcomes the commutation of all death sentences. Although Burundi government officials have argued that abolition of the death penalty would encourage serious crime, there is no evidence that Burundi has experienced an upsurge of violent crime directly linked to the suspension of executions since 1981. As on a number of occasions in the past, and most recently in the memorandum submitted to the government in June 1991, Amnesty International is urging the Burundi Government to abolish the death penalty.

10. Recommendations to the Burundi Government

In view of reports of grave human rights violations which have occurred in Burundi, especially at the end of 1991, Amnesty International makes the following recommendations:

10.1 Investigate human rights violations and bring the perpetrators to justice

(a) The government should order a full, impartial inquiry by an independent authority into allegations of extrajudicial executions, "disappearances" and torture. This inquiry should have powers to compel witnesses to attend, including government and security officials allegedly involved.

Such a step would be in accordance with international standards. In respect of extrajudicial executions, the United Nations (UN) *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, adopted by the Economic and Social Council of the UN on 24 May 1989 and endorsed by the General Assembly on 15 December 1989, require such an investigation and -- in Principle 9 -- specify what its scope should be:

"There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances.... The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about the death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide."

Concerning torture, Article 12 of the UN *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ratified by Burundi in July 1992, stipulates that:

"Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."

(b) The government should, while such investigations into abuses are in progress or whenever substantive complaints of abuses are received, take effective measures to protect victims of and potential witnesses to human rights violations from all forms of threats and intimidation.

Article 13 of the UN *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* specifies:

"Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given".

An important way to grant such effective protection in the provinces of Bubanza, Bujumbura and Cibitoke is to transfer units of the National Gendarmerie, the army and other branches of the security forces accused of perpetrating human rights violations there in November and December 1991. The UN *Principles on the Effective Protection and Investigation of Extra-Legal, Arbitrary and Summary Executions* stress the importance of such a measure. Principle 15 states:

"Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations."

(c) Those against whom there is evidence of abuse of power by illegally detaining, torturing and/or killing people in custody or by intimidating witnesses and forcing them to make false statements should be brought to justice. In order to ensure that such prosecutions take place, the government should end the practice dating from the early 1960s of granting blanket immunity to members of the security forces who are accused of human rights violations.

(d) Victims of torture and, in cases of "disappearance" and extrajudicial execution, their relatives, should receive full and adequate compensation.

Article 14 of the UN Convention against Torture lays down that victims of torture have an enforceable right to fair compensation:

"Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation."

In respect of victims of extrajudicial executions, the UN *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* contain a similar provision in Principle 20.

10.2 Prohibit and take steps to prevent torture

(a) The government should publicly condemn torture. Members of the security forces operating in areas affected by rebel attacks -- especially those involved in counter-insurgency operations -- should be instructed that all forms of torture, inhuman or degrading treatment or punishment are prohibited, whatever the circumstances.

Article 2.2 of the UN *Convention against Torture* specifies that:

"No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

Article 10 of that Convention stresses the obligation to include the prohibition of torture in education and training programs of relevant personnel:

1. "Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civic or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment."
2. "Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons."

The UN *Convention against Torture* and the UN *Code of Conduct for Law Enforcement Officials* of December 1979, with its Commentary, would be particularly relevant for training purposes.

(b) No false statements extracted under threats or torture should be admitted in evidence in any legal proceedings.

Article 15 of the UN *Convention against Torture* requires:

"Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any

proceedings, except against a person accused of torture as evidence that the statement was made."

The Burundi security forces should be instructed to observe strictly the standards provided in Article 3 of the Code of Conduct for Law Enforcement Officials and its Commentary:

"Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."

Commentary:

"(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional..."

"(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality... In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved."

"(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender..."

10.3 End the practice of illegal detention

(a) All arrested persons, including those arrested by the army, the National Gendarmerie and other security forces, should be brought promptly before a judge and allowed access to legal counsel.

Burundi's Code of Penal Procedure stipulates that all arrested persons are to be brought before a magistrate within a few days.

The UN *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (adopted by the General Assembly in Resolution 43/173 of 9 December 1988) provides that:

"A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority."

(b) The Burundi authorities should ensure that the security forces respect safeguards for all persons deprived of their liberty. These include: the right to be informed of their rights, prompt notification of their families, prompt access to families, lawyers, independent medical attention and to a court, and a procedure to allow prisoners or their representatives to challenge the legal basis for their imprisonment before a court.

It is a fundamental principle that to be able to exercise one's rights effectively one must know that these rights exist; Principle 13 of the *Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment* provides for prompt notification of detainees' rights:

"Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information and an explanation of his rights and how to avail himself of such rights."

Both the *International Covenant on Civil and Political Rights* and the UN *Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment* require notification of the right to counsel and provide that detainees should have access to legal counsel promptly after arrest and, for example, during any pre-trial judicial inquiry (*instruction*). It appears that such access is not available in Burundi and that judicial authorities do not expect suspects to appear with counsel during the *instruction* process. This appears incompatible with international standards. Article 14 (3) (d) of the *International Covenant on Civil and Political Rights* requires the accused "to be informed, if he does not have legal assistance", of the right "to defend himself in person or through legal assistance of his choosing".

International standards require governments to provide immediate notice of detention to families of untried prisoners and prompt access by such prisoners to their families. Rule 92 of the UN *Standard Minimum Rules for the Treatment of Prisoners* (approved by the Economic and Social Council in July 1957 and May 1977) provides:

"An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution".

The Burundi Government should ensure that officials responsible for detentions and investigation of offences adhere to the ICCPR to which Burundi is a State Party. Article 14(3) of the Covenant provides that everyone charged with a criminal offence is entitled "to adequate time and facilities for the preparation of his defence and to communicate with counsel of his own

choosing". The UN *Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment* states that even in exceptional circumstances an untried detainees's right to adequate time and facilities for defence preparation and to communicate with counsel "shall not be denied for more than a matter of days after arrest". This has not been observed in the past in Burundi.

The authorities should end to the practice of detaining political and other prisoners in Burundi for long periods with little access to doctors and families. Only a few of those arrested in connection with the PALIPEHUTU activities during 1991 received formal visits because they were held far from their homes, and kept indefinitely in isolation cells.

10.4 Provide safeguards against unfair trial

(a) The Burundi authorities should take immediate action to ensure that trials of people accused of politically-motivated offences are conducted in accordance with international standards for fair trial. Amnesty International is concerned, in particular, that judges be selected by a method which ensures that appointments are not made on the basis of "improper motives" (as required by Principle 10 of the UN *Basic Principles on the Independence of the Judiciary*, adopted by the *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders* in 1985 and endorsed by the United Nations General Assembly in the same year), that they have security of tenure and that they are impartial, without being influenced by factors other than the evidence presented in court.

(b) All defendants should be made aware of their right to independent and effective legal counsel and those who cannot afford legal fees should be assisted by the state. Defendants should have adequate time to prepare their defense. Legal counsel should be considered indispensable in cases where defendants could be sentenced to long prison terms or death. Similar action should be taken to ensure the fairness of trials before military courts.

(c) The authorities should order an independent and impartial investigation into reports that those convicted were subjected to torture and ill-treatment during interrogation, and requesting that the judicial authorities review their conviction in order to rule uncorroborated evidence obtained under torture inadmissible. Those convicted solely because they exercised their right to freedom of expression and association without using or advocating violence should be unconditionally released and those charged with recognizably criminal offences should be given a prompt and fair trial.

