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# RWANDA AND BURUNDI

## A call for action by the international community

**The human rights and political situations in Rwanda and Burundi are very different, but both countries have had to suffer the indifference and broken promises of the international community. Both governments have appealed for international inquiries to establish who committed horrendous crimes against humanity in their countries. Both governments have accepted the concept of human rights field officers from other nations being deployed in their territory. Both governments have asked for assistance to help reconstruct the judiciary and police. Both governments have been disappointed with the response to their appeals. A series of delays and prevarications have left people in the region frustrated and sceptical about the real interests of the international community.**

This document supplements three recent reports by Amnesty International: *Rwanda: Crying out for justice* (AI Index: AFR 47/05/95); *Rwanda: Arming the perpetrators of the genocide* (AI Index: AFR 02/14/95); and *Burundi: Struggle for Survival - Immediate action vital to stop killings* (AI Index: AFR 16/07/95). It is based on the findings of an Amnesty International delegation which was in Rwanda and Burundi in May and June 1995. This report examines in particular the role of the United Nations (UN) and the Organization of African Unity (OAU) in helping to restore respect for human rights. It is not a comprehensive assessment of the UN and OAU operations in Rwanda and Burundi, but identifies certain key areas where action should be taken to address the grave human rights situation in these countries. It develops some of the recommendations found in Amnesty International's previous reports, in particular those which relate to the various types of action that need to be taken at the international level.

### I RWANDA

In September 1995, over one year after the current Government of Rwanda took power, the Rwandese people are still living in an atmosphere of tension, insecurity and distrust. The memories of the genocide and other massacres committed by the forces of the previous government and militia

are still fresh and inevitably condition political and human rights developments in the country. Despite repeated declarations by the current government of respect for human rights, human rights violations are continuing in many parts of Rwanda. Even though these are nowhere near on the same scale as those carried out by the former government and armed forces in 1994, they nevertheless affect many sectors of the population and give rise to fears that the cycle of violence and reprisal has not yet been broken.

There is a conspicuous lack of progress in bringing justice to the people of Rwanda. In September 1995, over 50,000 people are estimated to be held without charge or trial, the vast majority on the basis of vague accusations of having participated in the genocide. They are held in severely overcrowded prisons and detention centres with no short-term prospect of being brought to trial. Many are dying - some estimate over 200 every month. Torture of detainees is common in the unofficial detention centres where detainees are held immediately after their arrest before being transferred to the official prisons. There are frequent reports of "disappearances" -- there are no reliable records or prisoner lists.

Reports of extrajudicial executions have continued. The single largest incident occurred in the internally displaced persons' camp in Kibeho on 22 April 1995; up to several thousand people were killed when soldiers of the Rwandese Patriotic Army (RPA) fired into a stampeding crowd. An international commission of inquiry failed to establish the number of victims but independent witnesses gave estimates ranging from 2,000 to 8,000. Armed Rwandese groups allied to the former government and based in Zaire have also been responsible for killing unarmed civilians during cross-border incursions.

In an attempt to silence criticism, the Rwandese authorities are harassing individuals and organizations who speak out about current human rights abuses; journalists, human rights activists, members of the judiciary and local government officials are among those who have been targeted by the government or by the army.

## **1. The Human Rights Field Operation**

The member states of the UN failed to take action to avert the genocide in Rwanda and the Human Rights Field Operation for Rwanda, set up after the bloodshed had largely ended, has been beset by confusion, delays and lack of expert personnel and resources. The operation is now gaining greater credibility within Rwanda, and is playing a useful role in the protection of human rights, but it is still short of vital resources and is not making its findings public.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions -- Bacre Waly Ndiaye -- visited Rwanda in April 1993, a year before the start of the genocide and other crimes

against humanity which occurred between April and July 1994. The dangers were already apparent. In August 1993 he urged the UN to protect civilians from massacres. Several months later in February 1994 he again appealed for action: "Lessons should be drawn from the past", he told the UN Commission on Human Rights, "and the vicious cycle of ethnic violence which has drenched both Burundi and Rwanda in blood must be broken".<sup>1</sup>

His warnings were not heeded. As many as one million Rwandese were deliberately and arbitrarily killed in an orchestrated campaign of genocide from April to July 1994. This human rights catastrophe could perhaps have been averted had the states which sit as members of the UN Commission on Human Rights acted upon the Special Rapporteur's report. Far from intervening in advance to prevent the calamity, the UN member states allowed the situation to deteriorate and then withdrew almost all their forces as Rwandese were massacred.

The UN Assistance Mission in Rwanda (UNAMIR)<sup>2</sup> had not yet reached full deployment when the plane carrying President Juvénal Habyarimana of Rwanda and President Cyprien Ntaryamira of Burundi crashed killing everyone on board on 6 April 1994. Politically instigated violence erupted immediately, primarily directed against civilian members of the minority Tutsi ethnic group and opponents of the Rwandese government from the majority Hutu ethnic group. Following frantic efforts to evacuate foreign nationals from Rwanda and the murder of 10 Belgian members of UNAMIR, the Belgian Government pulled its contingent out of the UN peace-keeping operation. On 20 April 1994 the UN Secretary General presented the Security Council with various options. The first was to add several thousand troops to UNAMIR and change its mandate "so that it would be equipped and authorized to coerce the opposing forces into a cease-fire, and to attempt to restore law and order and put an end to the killings."<sup>3</sup> This was rejected. The Secretary General's second option was to reduce the size of the force. This was accepted. On 21 April 1994 the Security Council reduced the authorized strength of the force from over 2,000 to about 270 (at that stage the actual deployment was 1,515).

The fact that governments, acting through the UN, turned away when Rwandese were in their hour of need shocked the Rwandese people as well as humanitarian organizations in Rwanda and around the world. Governments were not prepared to risk their nationals in a tough and uncertain peace enforcement operation, despite the horrific massacres being perpetrated throughout Rwanda. As the situation deteriorated, a humanitarian operation was launched in the face of a major refugee crisis. On 13 May 1994 the UN Secretary General outlined a new mandate for UNAMIR and recommended an increase in personnel from the 444 then in Rwanda to 5,500. Four days later the UN Security Council authorized the phased expansion of UNAMIR and the new mandate which was

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<sup>1</sup> UN Doc. E/CN.4/1994/7, add 1, paras 64-66 and UN Doc. E/CN.4/1994/7 para. 171.

<sup>2</sup> The Organization of African Unity (OAU) had mandated its Neutral Military Observer Group (NMOG II) to monitor the cease-fire in Rwanda. Elements of this mission were incorporated into UNAMIR (established in October 1993 under Security Council Resolution 872).

<sup>3</sup> UN Doc. S/1994/470 para. 13.

to contribute to the security and protection of refugees and civilians at risk as well as the provision of relief supplies.<sup>4</sup>

Despite the UN Security Council decision, the countries which were to send troops, military observers, equipment and civilian police monitors had failed to deploy them in the agreed numbers by 22 June 1994. Meanwhile as many as one million Rwandese are estimated to have been killed. The French-led "Opération Turquoise", a non-UN peace-keeping operation, was authorized by a reluctant Security Council on 22 June 1994 as a stop-gap measure until the arrival of the rest of UNAMIR. This operation established a "humanitarian protected zone" in southwest Rwanda, and, by August 1994, gradually handed over to UNAMIR, whose functions now revolved around encouraging people to return home. The former government had fallen to the armed forces of the Rwandese Patriotic Front (RPF) on 19 July 1994.

The UN Commission on Human Rights held a special session on 24 and 25 May 1994. Despite appeals by Amnesty International and other non-governmental organizations, the session was limited to Rwanda and did not formally cover Burundi. The Commission passed a resolution appointing a Special Rapporteur for Rwanda, René Dégni-Ségui from Côte d'Ivoire. It also called for the recently appointed High Commissioner for Human Rights, José Ayala Lasso, to organize a team of human rights monitors to assist the Special Rapporteur for Rwanda and to work with the expanded UN peace-keeping operation.<sup>5</sup>

The Special Rapporteur for Rwanda has issued several reports.<sup>6</sup> In particular his report of 28 June 1994 played a significant role because of the reluctance of key UN member states to acknowledge that genocide was being committed in Rwanda. The Special Rapporteur's report recognized the genocide and recommended both a reinforced team of human rights monitors in Rwanda and the creation of an international tribunal to prosecute those who planned and instigated the genocide. Both these recommendations were eventually taken up, with the creation of the Human Rights Field Operation in Rwanda (HRFOR) under the authority of the High Commissioner for Human Rights and the establishment in November 1994 of the International Tribunal for Rwanda (see below). However, both have had severe problems in getting started and their future finances remain precarious.

The Special Rapporteur's most recent report, issued on 28 June 1995, describes some of the serious internal divisions and bureaucratic obstacles which have prevented the HRFOR from functioning smoothly and efficiently. He also complains of a lack of cooperation and communication between the coordination of the HRFOR based in Geneva and the Special Rapporteur himself.

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<sup>4</sup> Security Council Resolution 918

<sup>5</sup> The text of the Commission's resolution is contained in UN Doc. E/CN.4/S-3/L.2, 25 May 1993; the report of the High Commissioner is contained in UN Doc. E/CN.4/S-3/3.

<sup>6</sup> UN Doc. E/CN.4/1995/7, 28 June 1994; UN Doc. E/CN.4/1995/70, 11 November 1994; UN Doc. E/CN.4/1995/71, 17 January 1995; UN Doc. E/CN.4/1996/7, 28 June 1995.

The High Commissioner for Human Rights, who visited Rwanda in May 1994, mid-August 1994 and in March and April 1995, appealed on 2 August 1994 for \$2.1m to fund an extra 20 human rights monitors, in addition to the six already planned. The Special Rapporteur for Rwanda defined the roles of these human rights monitors as persuasion (restoring the confidence of refugees and displaced people); deterrence (against reprisals); prevention (preventing further human rights violations); and defence (investigating human rights violations, including the genocide).

The Special Rapporteur for Rwanda called for a second phase whereby 150 to 200 human rights monitors would be deployed throughout the country to "monitor not only the return [of refugees], but also the reconstruction of Rwanda, and to conduct the necessary inquiries to ascertain the facts regarding the massacres".<sup>7</sup> In his latest report dated 28 June 1995, the Special Rapporteur recommended an increase in the number of human rights monitors to 300.

Despite the efforts of the High Commissioner for Human Rights and the Special Rapporteur for Rwanda, the first 20 of these human rights monitors were in place only by mid-September 1994 and the Human Rights Field Operation only reached its full strength of over 100 by February 1995. This can be blamed partly on the slowness of states to provide the expertise, resources and logistical help needed. Other problems were the lack of capacity and experience in deploying a field operation on the part of the UN Centre for Human Rights compounded by internal bureaucratic wrangling, as well as confusion about the mandate and the respective roles of the High Commissioner, the Special Rapporteur and the Geneva-based UN Centre for Human Rights.

The mandate of the Human Rights Field Operation has in fact been fairly clear and precise from early on. It can be summarized in the following way:<sup>8</sup>

1. "To carry out investigations into violations of human rights and humanitarian law including possible acts of genocide";
2. To implement programs "in the area of the administration of justice";
3. To work with others to re-establish "confidence and thus facilitate the return of refugees and displaced persons and the rebuilding of civic society"; and
4. "To monitor the ongoing human rights situation, and through their presence help redress existing problems and prevent possible human rights violations from occurring".

The implementation of this mandate has been confused in a variety of ways.

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<sup>7</sup> Report of the Special Rapporteur for Rwanda, UN Doc. E/CN.4/1995/12, 12 August 1994, para. para. 43.

<sup>8</sup> All quotes are from the agreement between the High Commissioner for Human Rights and the Government of Rwanda. The mandate is also summarized in HRFOR, *Overview*, Infodoc/Feb95.

## 1.1 Investigation of the genocide

The Human Rights Field Operation was created in response to the genocide and other crimes against humanity committed in Rwanda, but the work of the Human Rights Field Operation in documenting the genocide has been hidden by excessive secrecy. Not even the operation's own field officers, let alone the Rwandese Government and people, have been adequately informed of the investigation work being carried out. There has also been damaging confusion about the operation's contribution to the process of bringing to justice those responsible for genocide, exacerbated by delays and shortfalls in the arrival of expert personnel such as police investigators, experienced prosecutors, lawyers and forensic pathologists.

There has been considerable confusion about which of the many different UN bodies was responsible for investigating the genocide. A Commission of Experts was established by the UN Secretary General in July 1994 to examine information regarding grave violations of international humanitarian law, including acts of genocide in Rwanda. The UN Security Council specifically called for the Human Rights Field Operation and the Special Rapporteur for Rwanda to make their information available to the Commission of Experts.

Because of delays in the recruitment and deployment of Human Rights Field Operation staff, groups of lawyers, prosecutors, police investigators and pathologists were seconded to the UN for a few weeks at a time by the United States of America, the Netherlands, Spain and Norway in late 1994 and early 1995. A Special Investigations Unit (SIU) was created within the Human Rights Field Operation in October 1994 to carry out the investigations into violations of international humanitarian law, including acts of genocide, and to coordinate the work of these seconded experts. They had been requested by the Commission of Experts, but the Commission of Experts had substantially completed its work by the time the seconded teams arrived in the country.

There was also confusion as to what should be produced by these teams and for whom. The recipients could have been the Commission of Experts, the Special Rapporteur for Rwanda, or the International Tribunal for Rwanda (the Tribunal) established by the UN Security Council in November 1994. It could have been the Rwandese Government, which was in the process of arresting thousands of Rwandese on suspicion of genocide, without a judicial system in place to prosecute them. In the absence of clear direction, each seconded team designed its own work programs.

Within the Human Rights Field Operation, the view prevailed that new field officers should be excluded from working on the investigation of the genocide, even though many of the officers were qualified to investigate acts of genocide and thought they were coming to Rwanda to do so.

The distinction between documenting the massacres and criminal investigations was overlooked. There is a qualitative difference between documenting patterns of human rights violations where individual cases are used as representative examples of the pattern and gathering first-hand testimony and physical evidence, admissible in court, to prove that particular individuals committed particular crimes. Documenting the genocide is a massive descriptive exercise that continues to require the efforts of a large proportion of the Human Rights Field Operation staff, working in conjunction with Rwandese local officials and non-governmental organizations. However, criminal investigations should be carried out by expert criminal investigators in the Prosecutor's Office from the Tribunal. The Prosecutor's Office of the Tribunal asked the Special Investigations Unit within the Human Rights Field Operation not to prepare cases for prosecution or to conduct detailed field investigations. The Prosecutor asked for general information, particularly maps of massacre sites, and this was carried out by Human Rights Field Operation staff in early 1995. The Special Investigations Unit, with the teams of seconded personnel, collected numerous affidavits along with photographs, weapons, reports and other evidence which was turned over to the Tribunal in April 1995.

Unfortunately the final report of the Special Investigations Unit remains confidential, even though no witnesses or perpetrators are identified by name in the main part of the report. Nor has the Human Rights Field Operation issued any other report on its investigations into the genocide in Rwanda.

It is clear that the identities of witnesses and suspects must remain confidential until trial, and that evidence must be carefully safeguarded. But somehow these necessary measures came to mean that those who were involved in genocide investigations could not talk to anyone about what they were doing, even in the most general terms.

This secrecy led to a widespread perception that nothing was being done to investigate the genocide. But clearly this is not the case. In a rare public statement on the subject the Chief of the Human Rights Field Operation said:

*"The HRFOR has carried out in depth investigations into the April-July 1994 massacres in a number of locations including Butare Prefecture: Karama, M'Bazi, Nyumba, Nyakibanda; Cyangugu Prefecture: Shangi; Gitarama Prefecture: Ruhango; Kibungo Prefecture: Zaza, Nyarabuye; Kibuye Prefecture: Rwamatamu, Mubuga; Kigali Rurale Prefecture: Ntarama."*<sup>9</sup>

Nevertheless, the perception that the Human Rights Field Operation has not investigated the genocide and is only interested in current abuses has persisted.

It should be made clear publicly that the human rights field officers will continue to gather evidence relating to the genocide and to work closely with the office of the Prosecutor of the

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<sup>9</sup> HRFOR/Info-doc/May95, 22 May 1995.

Tribunal. As of June 1995 a computerized data-base on the massacres was being planned as well as high-level conferences on the question of impunity. Initiatives devised in the field which tackle issues relating to genocide and impunity should be supported by the UN as well as its member states.

Amnesty International recommends that the Human Rights Field Operation publish as soon as possible a report on its investigation into the genocide. This could be published on its own or jointly with the Special Rapporteur for Rwanda as an annex to his next report. The people of Rwanda have the right to know the truth about what happened and the findings of the Human Rights Field Operation can contribute to this. Publication would enhance the credibility of the Human Rights Field Operation and also be valuable to the Rwandese authorities who are currently holding over 50,000 people, the vast majority on genocide related charges. It would also demonstrate to the Rwandese population that investigation of the genocide remains a priority for the international community.

## **1.2 Assisting in the administration of justice**

The Human Rights Field Operation for Rwanda has been hindered in its efforts to assist in the rehabilitation of the judicial system by divisions and bureaucratic wrangling in the UN Centre for Human Rights in Geneva. As a result, it has not been able to carry out training programs or supply desperately needed basic materials to the Rwandese judicial system, undermining the credibility of the operation as a whole.

The High Commissioner for Human Rights, responding to the pressure of events, made a number of commitments and promises. However, the UN Centre for Human Rights was unprepared to change its normal procedures in the face of one of the biggest human rights catastrophes since the founding of the UN. Even nine months later, in June 1995, the lines of reporting and authority had still to be worked out.

The Human Rights Field Operation has a Technical Cooperation Unit within it, but this did not initially involve the Advisory Services and Technical Assistance and Information Branch of the UN Centre for Human Rights. As a result funds were not released by the UN Centre for Human Rights in order to carry out the training, human rights education and judicial rehabilitation programs being proposed by the officers in the field. Such training programs were always recognized to be at the heart of the UN human rights mandate in Rwanda. The needs are obvious.

The Rwandese judicial system was virtually destroyed by killings, looting and vandalism orchestrated by the former government of Rwanda and its supporters before it fled into exile in mid-1994. When the former government fled to Zaire in the face of the advancing Rwandese Patriotic Front they smashed everything they could not transport. Throughout Rwanda all portable equipment including the files, file folders, paper, typewriters, pencils, light bulbs, staplers, and even door locks



were removed from court buildings. The furniture and windows were smashed. In addition, there has been a mass exodus of former workers, officials and lawyers. Others are in custody accused of involvement in the massacres.

When the new Rwandese government came to power it acknowledged that it did not have sufficient judicial experts to carry out investigations and trials. However, in July 1995 the Transitional National Assembly refused to enact a law to allow foreign judicial experts to work in Rwanda. Without the assistance of foreign lawyers with the necessary expertise, background and languages, it is difficult to see how the judicial system could be rebuilt in a reasonable time.

Rebuilding the judicial system to ensure fair trials can be seen as a massive undertaking, needing vast amounts of foreign aid and years of retraining. Yet much of what the Rwandese system requires is very simple: paper, file folders, typewriters, locks and filing cabinets are all urgently needed. The Human Rights Field Operation has a unit to deal with rehabilitation of the judicial system, with personnel assigned to assess needs and render assistance at the prefecture and sub-prefecture level. Human Rights Field Operation staff assessed these needs, and became increasingly frustrated when they were unable to deliver because these programs did not fit neatly within established procedures at the UN Centre for Human Rights in Geneva.

Potential donors have come to doubt that aid can be delivered to Rwanda via the UN human rights programs. This failure to meet even the most basic of needs hinders the work of the field officers in the provinces, and is creating a further obstacle to progress in rebuilding the Rwandese judicial system. Every delay exacerbates the human rights problems in Rwanda, in particular the prolonged detention of over 50,000 people in seriously overcrowded prisons, awaiting charge and trial. Furthermore, it appears that in certain government circles, there may be a lack of political will to begin processing the cases of these tens of thousands of prisoners. The authorities appear to content themselves with turning long-term detention without trial into a substitute for justice. If the necessary foreign aid were promptly delivered, such absence of political will would be exposed and the absence of resources could no longer be presented as an obstacle to the full operation of the Rwandese judicial system.

Amnesty International recommends that the Human Rights Field Operation should be able to receive assistance funds to help re-establish a judicial system which is fair and excludes the death penalty. The money should be spent based on the assessment and recommendation of the Human Rights Field Operation.

The Rwandese authorities should ensure that a law is enacted to allow suitably qualified foreign judicial experts to work in Rwanda as investigators, prosecutors, defence lawyers and judges until the country is able to have a competent, independent and impartial judiciary of its own.

### **1.3 Establishing an international human rights presence**

The widely perceived need to establish a human rights presence in Rwanda led to considerable pressure to get human rights monitors into the country quickly. However, the UN Centre for Human Rights in Geneva lacked the experience and capacity to cope with a crisis of the magnitude being experienced by Rwanda. The process for recruiting human rights monitors fell below acceptable standards. There were also delays in logistical support, especially a lack of vehicles and communications equipment, which impeded the transfer of personnel from Kigali to the provinces.

Some staff were deployed who did not have the appropriate skills and experience. Others were frustrated by being held up in Kigali for weeks after their arrival in Rwanda. All the personnel suffered from inadequate orientation, training and guidelines in the first months of the operation. Many, recruited on short-term contracts, did not stay long in the country. In addition, staff were frequently rotated, often in response to various local crises. Many of these problems have now been addressed. Comprehensive training has been instituted and a Field Coordination Unit is now analyzing developments and coordinating the synthesis of reports from the field.

Amnesty International recommends that only suitably qualified people with the requisite experience, knowledge and languages are recruited and that in future renewable contracts of at least six months should be offered in order to attract suitably qualified candidates and to enhance continuity in the field. Care should be taken when rotating field officers to minimize the disruption of constructive relationships established with the local authorities and population. The budget of the operation should be put on a firm financial footing by the UN, to eliminate the uncertainty which is undermining the effectiveness of the operation.

### **1.4. Monitoring the current human rights situation**

The remaining key component of the Human Rights Operation for Rwanda -- monitoring and correcting human rights problems -- has been left isolated and exposed. The Human Rights Field Operation's failure to report on its work in investigating the genocide and to provide material assistance to the judicial system has led to the perception that the human rights operation only monitors current violations, and that this activity is biased against the current Rwandese Government.

Human rights monitoring can enhance the accountability of the security forces and in many cases saves lives through sustained vigilance over the fate of detainees and returnees. But monitoring alone is insufficient: incidents of human rights violations must be reported publicly if progress is to be made. It is never the "perfect time" to publish human rights reports, especially in a highly polarized

situation such as that which prevails in Rwanda after the genocide. The only principled approach is to publish human rights information consistently. Other UN human rights field operations in countries such as Haiti, El Salvador, Cambodia and Guatemala have enhanced their preventive role by publishing detailed and useful human rights reports. These reports, as well as exceptional reports on specific incidents, were published every few months. They were published either as reports of the operations' Director of Human Rights or of the UN Secretary General and were circulated as UN documents available in all official languages.

Confusion about the public reporting role of the High Commissioner for Human Rights has left the operation with no regular means of reporting publicly. Although recent information sheets have started to explain the work of the field operation,<sup>10</sup> these are no substitute for more thorough UN reports on the investigations and the human rights situation.

Amnesty International believes that to guarantee the effectiveness and credibility of international human rights personnel, they must report their activities and findings frequently: these reports should be disseminated nationally as well as internationally.<sup>11</sup> The information should be made available to the news media, to all parts of the UN system (especially its human rights mechanisms), and to relevant intergovernmental bodies and non-governmental organizations. Particular care should be taken to keep the local population informed.<sup>12</sup>

Amnesty International urges the High Commissioner for Human Rights to publish regular detailed reports on the activities of the operation and the efforts which the Rwandese authorities are making to comply with the operation's recommendations. The High Commissioner for Human Rights was mandated by the UN General Assembly to prevent human rights violations. Public information and an open debate on the human rights situation in Rwanda is an important way to avert further violations.

The Human Rights Field Operation for Rwanda is now fulfilling a real protection role, thanks to the determination and dedication of some of the field officers. These positive achievements have received very little publicity amidst the criticism of the UN's overall failure to avert the human rights tragedy in Rwanda. Yet Amnesty International's delegates in Rwanda in 1995 noted that in prefectures such as Butare, field officers have played a life-saving role in protecting returnees under extremely difficult circumstances. Field officers throughout the country have identified places of detention, negotiated the release of certain detainees and won better treatment for detainees. Their

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<sup>10</sup> See Backgrounder *United Nations Human Rights Activities in Rwanda*, HR/FOR/95/1, 24 March 1995, HRFOR/Infodoc/May 95, 22 May 1995; *Practical Activities to Assist the Rwandese People*, HRFOR/Fact/02/95, 24 March 1995; *Establishing a Human Rights Field Office in a Prefecture in Rwanda*, Field/HRFOR/01, 24 March 1995, *Genocide Investigation* HRFOR/infodoc/Feb95; *Overview*, HRFOR/infodoc/Feb95.

<sup>11</sup> See Amnesty International *Peace-keeping and Human Rights* (AI Index: IOR 40/01/94), in particular point 7 of the 15 Point Program for Implementing Human Rights in International Peace-keeping Operations.

<sup>12</sup> See *Honouring Human Rights and Keeping the Peace: Lessons from El Salvador, Cambodia, and Haiti - Recommendations for the United Nations*, A.H. Henkin (ed.) (1995) p. 23.

assistance to the prosecutor's office and judicial police is vital in making progress to bring people to justice and thus relieving the prison overcrowding.

On 7 June 1995 Amnesty International delegates visited Gitarama prison. They were shocked by the degree of overcrowding: 6,847 prisoners were held in a space intended originally for about 600. About four prisoners were reported to be dying in the prison every day and the overcrowding together with the lack of sanitation is leading to serious health problems such as infected feet and gangrene (more than 10 amputations have been performed).<sup>13</sup> The International Committee of the Red Cross (ICRC) and *Médecins Sans Frontières* (MSF), Doctors Without Borders, have appealed several times to the Rwandese authorities to resolve the severe overcrowding. In some prisons, seven people are held per square metre.<sup>14</sup>

Transferring people to new sites or expanding existing ones to relieve overcrowding is imperative but it is not a long-term solution to the fundamental problem of the absence of justice in Rwanda. As a first step, the process of screening detainees (see below) to release those who have no case to answer should be accelerated. In addition, resources need to be injected into the judicial system to speed up investigations and to ensure that a fair judicial system is established to try those against whom there is sufficient evidence. The system should exclude the death penalty which is the ultimate cruel, inhuman or degrading treatment or punishment. There is no commitment by the Rwandese government to abolition of the death penalty. There is a risk that once the Rwandese judicial system begins functioning, the death penalty could be widely applied to satisfy people's desire for justice or, in some cases, vengeance. Amnesty International would oppose any extraditions to Rwanda of anyone who would risk being sentenced to death or executed if convicted by the Rwandese judiciary. Countries which have abolished the death penalty would also be unlikely to carry out such extraditions which could be requested by the Rwandese authorities. Rwanda needs to remove this obstacle to justice.

## 1.5 Conclusion

Amnesty International's representatives met a number of Human Rights Field Operation teams in several provinces. Notwithstanding the problems cited in this report, it should be emphasized that Amnesty International's delegates encountered a number of highly qualified human rights professionals who were doing outstanding human rights protection work in Rwanda -- exactly the sort of work that UN human rights field operations are intended to carry out.

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<sup>13</sup> Amnesty International, URGENT ACTION, 134/95, AI Index AFR 47/14/95 "Fear of further deaths in custody - thousands held in appalling conditions in Gitarama prison"; Médecins Sans Frontières, "Report on the Medical Conditions at Gitarama Prison" June 1995.

<sup>14</sup> "Le Rwanda: Cri d'alarme du CICR sur la situation dramatique dans les prisons" Communication à la presse No. 95/8. See also "Rwanda: le CICR augmente son personnel pour les visites de prisons" CICR News No. 18, 4 May 1995.

The Human Rights Field Operation for Rwanda is now having a positive effect and its monitoring and reporting role is set to become more important as the size of UNAMIR is reduced in the coming months.<sup>15</sup> The operation should be given greater support by the UN secretariats in Geneva and New York as well as by governments around the world.<sup>16</sup>

## **2. The establishment of the International Criminal Tribunal for Rwanda**

On 8 November 1994 the UN Security Council established the International Criminal Tribunal for Rwanda (the Tribunal) to prosecute those responsible for genocide and other violations of international humanitarian law in 1994. However, states have been extremely slow to take the necessary steps to make this Tribunal effective.

Justice Richard Goldstone is the Prosecutor for both this Tribunal and the International Criminal Tribunal for the former Yugoslavia. In November 1994 he went to Rwanda with a small team of investigators and lawyers on loan from the former Yugoslavia Tribunal to begin preliminary investigations. He also sought to persuade states to cooperate by contributing funds, staff and equipment to the Tribunal and by passing the necessary legislation permitting national authorities to cooperate in the gathering of evidence and the surrender to the Tribunal of suspects who might be in their countries. (See also Section 10, below.)

It took more than five months before the Tribunal's office in Kigali could be set up. Other investigators will be based in Arusha, Tanzania (the seat of the Tribunal), in Western Europe and North America. The delays in recruiting and deploying investigators have led many in Rwanda and elsewhere to doubt the commitment of the states who were involved in and heralded the creation of this Tribunal. A Deputy Prosecutor, Honoré Rakotomanana, to be responsible for prosecutions at the Tribunal, was appointed in January 1995. In September 1995, bringing to justice the perpetrators of massive violations of human rights and acts of genocide in Rwanda appears to remain a distant and uncertain prospect.

Bureaucratic delays surrounding funding and recruitment procedures eventually led the Prosecutor to arrange a special pledging meeting on 19 May 1995 in Kigali. As of 19 May 1995 a total of only

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<sup>15</sup> In Security Council Resolution 997 the mandate of UNAMIR was extended until 8 December 1995 with a reduction to 2,330 troops by 8 September and 1,800 troops by 8 October. The current level of military observers and civilian police is to be maintained.

<sup>16</sup> The three biggest contributors to the operation are the United Kingdom (\$3,606,155), the Netherlands (\$809,079) and the United States (\$750,000 plus \$1m pledged in June 1995); in addition the European Union has contributed 33 human rights field officers (who are part of the UN operation) at a cost of \$6,377,551. Other governments that have contributed payments are: Australia \$219,490; Austria \$46,644; Canada \$66,500; Denmark \$100,000; Finland \$83,267; France \$231,376; Germany \$213,035; Ireland 160,478; Israel \$10,000; Japan \$500,000; Luxembourg \$ 16,791; New Zealand \$29,598; Norway \$105,617; Spain \$9,880 plus \$208,000 for UN Volunteers; Switzerland \$189,394.

about \$3m had been pledged to the Voluntary Trust Fund set up in January 1995<sup>17</sup>. In addition there were 25 seconded investigators, 20 investigators from the Netherlands, three police officers from the United Kingdom and two investigators from the United States of America.

At the Kigali meeting governments pledged an extra \$6m and 32 extra investigators. The Netherlands pledged \$3m and 21 extra investigators; USA \$1.6m and 10 extra investigators; Belgium \$1m; United Kingdom \$250,000; Spain \$150,000; Norway \$100,000; Switzerland \$90,000; Sweden \$70,000; Germany one investigator. Since that meeting the Holy See has pledged \$3,000 and Belgium \$1m.

These resources will enable investigations to make progress, but the Tribunal itself has estimated that over 100 investigators are needed. The Prosecutor promised the first indictments before the end of 1995, but if the work of the Tribunal is to have the necessary impact in Rwanda more resources need to be made available immediately. The creation of the Tribunal raised great expectations within Rwanda that trials would be held in 1995. There is overwhelming disappointment as the prospect of justice appears to recede ever further into the future.

In July 1995 the Fifth Committee of the UN General Assembly decided to appropriate for the Tribunal \$12,914,900 for the period to 31 October 1995. This will enable the Tribunal to hire staff. However, unless the UN General Assembly agrees a proper budget, as opposed to a series of stop-gap measures, the Tribunal will lurch from one financial crisis to another. It is obviously difficult to recruit experienced professional investigators and prosecutors on such a short-term basis.

The UN General Assembly elected six judges to the Tribunal in June 1995.<sup>18</sup> They sat in extraordinary session in June together with the five judges from the appeal chamber, (these are the same five judges that sit in the appeal chamber of the former Yugoslavia Tribunal).<sup>19</sup> They adopted new rules of procedure and evidence and discussed working methods. They decided that one of their members should be in the Hague from October to December 1995 to review indictments, pending the establishment of the Tribunal in Arusha. Leïty Kama of Senegal was unanimously elected President of the International Criminal Tribunal for Rwanda.

This Tribunal currently has no indictments before it nor any suspects in custody, although Judge Goldstone has said that it will issue indictments before the end of 1995. However, it has the power

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<sup>17</sup> Chile \$1,000; Egypt \$1,000; Greece \$20,000; Ireland \$80,000; Israel \$7,500; Lebanon \$3,000; New Zealand \$32,000, the Netherlands \$1m; Norway \$50,000; Switzerland \$76,000; Sweden \$69,000; United Kingdom \$250,000; United States \$1.5m.

<sup>18</sup> The judges elected are: Navanethem Pillay of South Africa, Leïty Kama of Senegal, T.H. Khan of Bangladesh, Lennart Aspergren of Sweden, Yalov A. Ostrovsky of the Russian Federation, and William H. Sekule of Tanzania.

<sup>19</sup> Antonio Cassese of Italy (President of the Tribunal for the former Yugoslavia) Georges Abi-Saab of Egypt, Jules Deschênes of Canada, Haopei Li of China and Sir Ninian Stephen of Australia.

to retry people tried by national courts if those trials were clearly unfair or a sham.<sup>20</sup> The Tribunal therefore has review jurisdiction over the more than 50,000 suspects currently being detained in Rwanda in appalling conditions, the vast majority of whom will be tried by the Rwandese judicial system.

The most pressing need of all is for systematic investigations to determine who was responsible for instigating and carrying out the 1994 massacres in Rwanda. As long as the international community appears largely indifferent to these investigations and trials, there is a risk that the Rwandese people and government will lose hope in international justice.

### **3. The Role of the UN Civilian Police Monitors (CIVPOLs)**

Despite the urgency of training a new police force for Rwanda, UN member states have failed to provide the expert personnel and basic materials necessary.

When the transitional government came to power in July 1994 there was no police force in Rwanda, as virtually all personnel from the old one had left the country. The functions normally carried out by a police force are mostly carried out by the military, the Rwandese Patriotic Army (RPA). However the RPA lacks non-lethal equipment for crowd control and has been trained as a guerilla army and not in law enforcement and security techniques.

The new government asked UNAMIR to assist in training a national police force and the UNAMIR mandate of November 1994 called for UNAMIR to assist "in the establishment and training of a new, integrated, national police force". In June 1995 the UNAMIR mandate was renewed for six months and UN civilian police monitors (CIVPOLs) were mandated to promote confidence through monitoring as well as assisting in the training of a national police force.

Despite the fact that the UN Security Council authorized an increase in the strength of the CIVPOLs from 90 to 120 in February 1995, as of 31 May 1995 the total component was only 64 (Djibouti seven, Germany nine, Ghana 10, Guinea-Bissau five, Jordan three, Mali 10, Nigeria 10, Zambia 10).

Two police forces are being trained: the gendarmerie and the *police communale*, district police. Four hundred gendarmes had been trained in two phases and deployed throughout the country by late

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<sup>20</sup> Article 9(2) of the statute of the International Criminal Tribunal for Rwanda reads: 9(2) A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the international Tribunal for Rwanda only if:

(a) the act for which he or she was tried was characterized as an ordinary crime; or  
 (b) the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

April 1995. The third phase involves training a further 400 between June and October 1995. The fourth phase is to train 100 instructors from among the trained gendarmes who will then continue the training until the entire complement, originally estimated at 6,000, is in place.

The school for the national gendarmerie is in the northwestern town of Ruhengeri and now has a capacity to receive 700 trainees. The district police training school in Gishari is designed to take 1,500, about 10 per commune. According to the UN, the recruits are from different social and ethnic groups. The recruits have been selected but their training has been delayed by lack of basic materials such as paper and typewriters.

Amnesty International recommends that civilian police who have experience in training civilian police forces in accordance with human rights and international criminal justice standards<sup>21</sup> are offered to Rwanda to assist in the creation of the two civilian police forces. Amnesty International's principles regarding training are summarized at the end of this document.

The work of the UN CIVPOLs under the new UNAMIR mandate includes monitoring the local police. As the gendarmerie takes over security, the need to ensure conformity with international criminal justice standards will become paramount.

#### **4. International assistance to the judicial system**

International assistance to the devastated Rwandese judicial system has been marked by a failure to deliver vital resources and expertise. Meanwhile the Rwandese Transitional National Assembly has also failed to pass the legislation necessary to allow foreign legal experts to participate in the Rwandese legal system.

The Rwandese judicial system was devastated as a result of the destruction and looting by the former government and army as they left Rwanda. The judicial system in Rwanda now only has about 25 per cent of the personnel previously employed by the government.

The Technical Assistance Unit, a part of the Human Rights Field Operation for Rwanda, together with the UN Development Programme and the UN Volunteers Programme, designed a program for 50 foreign legal professionals (prosecutors, investigators, judges, defence lawyers and experts in police science) to work in Rwanda for six months. The governments of Belgium, the Netherlands, the United Kingdom and the United States of America have announced they will provide funds to assist the judiciary. A non-governmental organization, Citizens Network, is involved in training

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<sup>21</sup> See those contained in the UN Handbook prepared by the Crime Prevention and Criminal Justice Branch, *United Nations Criminal Justice Standards for Peace-Keeping Police*.



*inspecteurs de police judiciaire*, judicial police inspectors, and supporting the creation of an *Association des avocats*, Lawyers Association.

A number of screening commissions (*commissions de triage*) were set up by the Rwandese Government in March 1995 to screen detainees and release those held unjustifiably on the basis of unsubstantiated allegations. Many detainees have been arrested after being falsely accused by personal enemies of participating in the genocide. The commissions are supposed to examine the dossiers of the prisoners and release those against whom there is insufficient evidence. Amnesty International welcomed this initiative by the authorities, but at the end of May 1995 the commissions had secured the release of only 22 people nationwide. The Rwandese authorities have accepted that more than one in five of those held are innocent, but they do not have the resources to determine which detainees have no case to answer and should be released. Although commissions have been set up across the country to carry out screening at local level, only the one for Kigali is fully functioning due to a shortage of judicial police inspectors. The commissions include representatives from the army, the intelligence services, the Gendarmerie and the Procuracy. Amnesty International is concerned that the inclusion of members of the army in these commissions has prevented the release of detainees --the majority of whom were arrested by the army -- who judicial officers have determined are unlawfully held. The commissions are not a substitute for national courts. Released detainees can be rearrested and prosecuted if evidence against them emerges but detainees should not be held while there is insufficient evidence to justify them being charged and tried.

However, Amnesty International is also concerned that prisoners who are released because of insufficient evidence become obvious targets for reprisal or other attacks as soon as they return to their homes, as certain sectors of the population still perceive them as criminals who have taken part in the genocide. The Rwandese government, in conjunction with local authorities, should therefore take measures to guarantee the safety of such people after their release and explain to the population the basis for such releases.

## **II BURUNDI**

Thousands of people have been the victims of political killings in Burundi in 1995 alone. Most of the victims were members of the majority Hutu ethnic group. Many of their killers were members of the security forces, dominated by the minority Tutsi ethnic group. Those responsible for these killings have never been identified by any formal investigation or brought to justice. Nor has anyone been tried for the massacres of at least 50,000 people in the aftermath of the coup attempt in October 1993. A large number of the victims at the end of 1993 were Tutsi civilians killed by Hutu mobs, and many Hutu were extrajudicially executed by the Tutsi-dominated armed forces and Tutsi gangs. About 100,000 people are estimated to have been killed between October 1993 and August 1995.

Respect for the rule of law has disintegrated as a result of the government's failure to control the armed forces or to prevent Hutu and Tutsi extremists from arming themselves and exploiting tensions between the two communities. The judiciary is not only largely inactive; it is Tutsi-dominated and is viewed by Hutu as partisan in favour of the Tutsi community. Amnesty International has for many years called for a reform of the Burundi judiciary to ensure that it is competent, independent and impartial in accordance with international standards.

Extrajudicial executions by the army are continuing unchecked. Operations ostensibly aimed at disarming the population frequently lead to extrajudicial executions of Hutu civilians by soldiers. Often the army and Tutsi militias or displaced people act in concert to attack Hutu civilians. Tutsi youth gangs have attacked and killed Hutu in the capital, Bujumbura, and elsewhere during "ethnic cleansing" operations. Prominent members of the Hutu community have been murdered.

Armed Hutu groups have stepped up violent attacks in Burundi and have launched armed incursions from Zaire and Tanzania in which civilians have been killed.

In the relatively few cases where people have been arrested in connection with such killings, the detainees -- almost all Hutu -- have been held without charge or trial for long periods and no progress has been made in bringing them to trial. Hundreds of other Hutu have been held without charge following operations to disarm civilians or on suspicion of belonging to Hutu armed groups. Political detainees have been tortured or "disappeared". Amnesty International delegates who visited Burundi in March 1995 interviewed prisoners who bore clear marks of torture. (See *Burundi: Struggle for Survival - Immediate action vital to stop killings*, (AI Index: AFR 16/07/95).)

There is widespread awareness within Burundi of the need to end impunity. Although those responsible for political killings over the past 30 years have not been prosecuted, much of the current debate surrounding impunity centres on how far back prosecutions should go. From 22 to 24 May 1995 Tutsi youths brought Bujumbura to a standstill to force the authorities to release six Tutsi youths who had been arrested for recent criminal acts. As they fired in the air, launched grenades, burned tyres and threatened those wanting to go to work they demanded that the authorities should concentrate instead on those who planned and perpetrated the violence of October 1993.

The six youths had been arrested following action by newly created "mixed commissions",<sup>22</sup> set up by the Ministry of Justice in an attempt to tackle impunity by investigating crimes committed since October 1993. There are nine commissions, one for each of the different zones in Bujumbura. Each has representatives from the judiciary and from the different police forces, a composition designed to ensure some checks and balances as well as to encourage information sharing amongst the various police forces.

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<sup>22</sup> *Commissions de lutte contre la criminalité dans la municipalité de Bujumbura*

At the end of May 1995 fighting broke out in the remaining Hutu zones of Bujumbura: Kamenge and Kinama. Since October 1993 the Hutu and Tutsi communities -- who used to live side by side -- have almost entirely separated into segregated zones. An Amnesty International delegation was present in Bujumbura in May 1995. The army first surrounded Kamenge and then emptied it, forcing civilians to flee for their lives. Thousands of people fled to the hills. Observers later allowed into parts of Kamenge reported finding the bodies of more than 30 elderly people and children who could not flee, apparently shot or bayoneted to death. An information blackout on such events allows the Burundi army, as well as armed Hutu and Tutsi groups, to carry out killings with little prospect of being held accountable. Little or no information was available even to government ministers and the Head of State. The President of Burundi was forced to admit on 2 June on national television that he had no details on what had happened in Kamenge from 31 May to 2 June 1995.

A National Debate on the country's future has been proposed under the terms of a power-sharing agreement reached between government and opposition parties on 10 September 1994, the Convention of Government. A technical commission has been set up to prepare the National Debate and the international community is invited to make material and technical contributions. The technical commission is concentrating on four main themes: the organization of the defence and security forces; the protection of minorities; problems relating to education and employment; and the independence and neutrality of the judiciary.<sup>23</sup> Subsequent political wrangling on the mandate and composition of the technical commission has cast doubts on whether and when the Debate will take place.

Unless the cycle of impunity is broken, the killings in Burundi will continue. In the current highly polarized climate in Burundi, there is an urgent need for international assistance in identifying the perpetrators of human rights abuses and thereby overcoming impunity. International support is also needed to reform the Burundi judiciary to ensure that the perpetrators are brought to justice in accordance with international standards for fair trial and without the imposition of the death penalty.

## **5. An international commission of inquiry**

Despite repeated appeals by the authorities in Burundi for an international commission of inquiry into the October 1993 coup attempt and the massacres that followed, little progress has been made towards setting one up. Such an inquiry is a vital step in breaking the cycle of impunity and violence in Burundi.

The Burundi Government asked in late 1993 for an international commission of inquiry into the October 1993 coup attempt and the massacres that followed. The various fact-finding missions which have been sent to Burundi by the UN have recommended such an inquiry. In March 1994 a UN fact-finding mission recommended either sending an international judicial commission to investigate the

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<sup>23</sup> Décret No 100/020 of 5 November 1994, Art. 3.

crimes committed during and after October 1993 or, in the event that this was too sensitive in Burundi, making available a number of experts who would act as advisers to help the competent authorities in Burundi to carry out the same task.<sup>24</sup>

The Convention of Government of 10 September 1994 reiterated the Burundi Government's call. It requested that an:

*"international judicial fact-finding mission be formed within 30 days; it shall be composed of competent and impartial persons to investigate the coup d'état of 21 October 1993 and what political partners have agreed to call genocide without prejudice to the outcome of the independent national and international investigations, as well as the various political crimes that have been committed since October 1993."*<sup>25</sup>

The UN Security Council sent further fact-finding missions in August 1994 and February 1995. The most recent of these recommended that an international commission of inquiry into the October 1993 coup attempt and the massacres that followed should be established as soon as possible.<sup>26</sup>

The UN Security Council has also stressed the role which could be played by such an inquiry. However, it was only in mid-July 1995, 20 months after the coup attempt, that the UN Secretary General announced that there would be such an international commission of inquiry.<sup>27</sup> The terms and composition of this inquiry are still to be elaborated. On 28 July 1995 the Secretary General submitted a report to the Security Council by his Special Envoy, Pedro Nikken, who visited Burundi to assess the feasibility of establishing a commission of inquiry. He recommended that such a commission be established with a three-part mandate:

- a) To establish the facts relating to the assassination of the President of Burundi on 21 October 1993, the massacres that followed and other serious acts of violence and political crimes committed between that date and the date on which the resolution of the Security Council will be adopted;
- b) To recommend the modalities for the trial and punishment of persons identified by the commission as being responsible for offences investigated by it;
- c) To recommend measures of a legal, political or administrative nature, including measures requiring legislative or constitutional reform, to prevent any repetition of deeds similar to those investigated by the commission and, in general, to eradicate impunity in Burundi.

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<sup>24</sup> UN Doc. (S/1995/157, para. 203 (c).

<sup>25</sup> Article 36, the Convention is reproduced as an annex to UN Docs A/50/94, S/1995/190, 8 March 1995.

<sup>26</sup> UN Doc. S/1995/163, para. 21 and UN Doc. S/1994/1039.

<sup>27</sup> Address of the Secretary General, Bujumbura, 17 July 1995, "I would like to announce the establishment of the International Commission of Inquiry requested by the Convention of Government."

The Special Envoy suggested that full cooperation by the Burundi authorities and their commitment to implement the recommendations of the commission was a necessary condition for the success of its work. The Secretary General endorsed the report but suggested that requiring the Burundi authorities to agree to these conditions in advance would further delay establishment of the commission. On 6 August 1995 Burundi informed the Security Council that it was willing to work with the Council in establishing the commission of inquiry similar to the one proposed by the Special Envoy, and on 28 August the Security Council unanimously adopted Resolution 1012 requesting the Secretary General "as a matter of urgency" to establish an international commission of inquiry with the following mandate:

- a)" To establish the facts relating to the assassination of the President of Burundi on 21 October 1993, the massacres and other related serious acts of violence which followed;
- b) To recommend measures of a legal, political or administrative nature, as appropriate, after consultation with the Government of Burundi, and measures with regard to the bringing to justice of persons responsible for those acts, to prevent any repetition of deeds similar to those investigated by the commission, and in general, to eradicate impunity and promote national reconciliation in Burundi."

*The full text of this resolution is reproduced as an annex to this report.*

Amnesty International recognizes that an international commission of inquiry is extremely sensitive in Burundi but believes that such an inquiry is an essential component of international action to break the cycle of impunity. The essential element of the commission is that it is consistent with the United Nations' own standards for such an inquiry, the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

The delay at the international level in setting up a commission of inquiry has been explained by some members of the UN Security Council as due to fear of provoking a new crisis or even another coup attempt. The work of the commission will undoubtedly heighten anxiety among the perpetrators of human rights abuses and could create tension in Burundi. Nevertheless, the way forward is for the international community, and in particular the UN Security Council, to demonstrate that it is serious about this international commission and the need to end impunity. The UN Security Council must also commit itself to follow through the recommendations of the commission it is responsible for so that the perpetrators of human rights violations are brought to justice.

On 7 April 1995 the Permanent Representative of Burundi to the UN made the following plea in a letter to the UN Secretary General:

*"Instead of engaging in conjecture and envisaging solutions that do not have the support of the political partners in Burundi, the country's friends would do well to propose specific assistance activities in the areas agreed by the United Nations General Assembly".<sup>28</sup>*

Since then the Permanent Representative has berated the failure of the international community to respond to calls for help:

*"What we tried to have is help from the international community; we were looking for a kind of international commission to help a judicial inquiry into the assassination of the President, into the massacres and into the impunity now going on."<sup>29</sup>*

The UN should urgently provide the necessary political and logistical support so that an international commission of inquiry can carry out a prompt, thorough and impartial investigation into the October 1993 coup attempt and its aftermath. Its remit should include investigating extrajudicial executions and other deliberate and arbitrary killings, "disappearances" and torture to reveal to the people of Burundi the truth about what occurred, what were the causes and whether individuals should be prosecuted.

The commission members must be seen to be neutral in the context of Burundi's history and impervious to political pressure to ensure that the commission gains credibility in Burundi. Members of the commission should be independent professionals whose experience as criminal investigators and criminal law judges will command respect and trust in their impartiality. The commission will also require the assistance of experts in fields such as forensics and ballistics.

The commission of inquiry should go beyond "fact-finding". It should conform to the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, particularly Principle 9 which states that the purpose of the investigation should be not only to determine the cause, manner and time of death, but also the person responsible. Amnesty International believes that the work of the commission of inquiry should include collecting the sort of evidence which can enable decisions to be made about whether individuals should be prosecuted. The commission of inquiry should have full powers, in accordance with international human rights law, to oblige witnesses --members of the security forces as well as civilians -- to give evidence and to protect witnesses. It should produce public reports on its findings; make recommendations for bringing to justice those responsible for human rights abuses, excluding the death penalty; and make further recommendations for the prevention of human rights violations.

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<sup>28</sup> UN Docs A/50/158, S/1995/278. 10 April 1995, para. 10. Paragraph 4 of Resolution 49/7 includes a request to Member States and the UN to strengthen the capacity of the country's judicial system in order to break the cycle of impunity and enable the Burundi authorities to bring to justice the perpetrators of the attempted coup attempt of October 1993 and of the subsequent massacres. It also includes a request for the deployment of "human rights observers to back up the local administration."

<sup>29</sup> International Report, 23 June 1995, p. 5.

The commission will have to work in very difficult conditions and will need material support from both UN and OAU personnel operating in Burundi and political support from these intergovernmental organizations.

The inquiry will have little effect unless its findings are pursued. The commission of inquiry must have adequate resources and other support before it begins its work to ensure that it continues to exist and function after it has completed its investigations. The commission should then be charged with reporting on how its findings are being followed up by the Burundi authorities, in particular by the judiciary.

## 6. International assistance to the judicial system

The criminal justice system has failed to bring to justice those responsible for the political killings which have ravaged Burundi. The Tutsi-dominated judiciary is seen by the majority Hutu population as anti-Hutu and unwilling to take action against Tutsi perpetrators of human rights violations and abuses. International assistance could help ensure that the judicial system operates fairly and could therefore build the confidence of Burundi's population in the rule of law.

Many of those currently in detention (around 4,000, mostly Hutu) have little prospect of being tried in the immediate future. Some of the deadlock is explained by the paralysis of the National Assembly over institutional reform of the courts. Much must be blamed on a lack of political will, and limitations on the government's freedom to act after various concessions to the opposition.

Legislative reforms currently before the National Assembly would extend jurisdiction to try cases of murder to 17 *Tribunaux de grande instance*, High Courts. At the moment the High Courts have no jurisdiction over cases carrying life imprisonment or the death penalty.<sup>30</sup> This is reserved for the three *Cours d'appel*, Appeal Courts. Because these Appeal Courts operate both as courts of first instance and as courts of appeal, a new level of jurisdiction needs to be created. To try defendants with no right to appeal to a separate higher court would violate Article 14(5) of the International Covenant on Civil and Political Rights to which Burundi is a party.<sup>31</sup>

Another reason for allowing High Courts to try murder cases is the difficulty faced by witnesses and defendants in travelling across the country to these three existing Appeal Courts in Bujumbura, Ngozi, and Gitega. But even if the jurisdiction of the High Courts is expanded, nothing will happen unless properly investigated cases are put before the judges. Until a national police force is able to ensure arrests and gather evidence, the cycle of impunity will continue.

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<sup>30</sup> Amnesty International opposes the use of the death penalty in all circumstances because it is a violation of the ultimate right to life, as well as a cruel, inhuman or degrading punishment.

<sup>31</sup> Article 14(5) reads: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

All sections of Burundi's population have to have confidence in the fairness and impartiality of the judiciary. The assistance of foreign judges and other judicial experts, working for some time with their Burundi counterparts, could help ensure that the judiciary investigates and prosecutes crimes fairly, in accordance with international standards in trials which exclude the death penalty, and that justice is seen to be done.

## **7. A national civilian police**

The authorities in Burundi require urgent assistance from other governments to help train a national civilian police force to maintain law and order in accordance with international human rights standards.

There is a plethora of different police forces in Burundi. In addition to the members of the mixed commissions -- the *Police judiciaire des parquets* (PJP), Judicial police; the *Brigade spéciale de recherche* (BSR), Special Investigation Brigade, part of the gendarmerie; the *Police de sécurité publique* (PSP), Public Security Police; and the *Documentation nationale* (DN), Documentation Service -- there are also the *Police de l'air, des frontières et des étrangers* (PAFE), border police, and the *Unité pour la sécurité des institutions* (USI), Unit for Institutional Security. The Gendarmerie (currently numbering about 3,500) comes under the Ministry of Defence; the PJP (about 150) under the Ministry of Justice; the PSP (about 1,500) under the Ministry of the Interior; the DN (about 250), USI (about 600) and PAFE (about 400) come directly under the President.

The army, which is by far the largest force at around 20,000, currently carries out day-to-day law and order functions. The second largest force, the Gendarmerie, is composed of personnel drawn from the army. The dominant approach to law and order problems is therefore a military rather than a civilian one.

The Convention of Government calls for an audit of the security services but so far no such audit has been carried out, although there are supposed to be plans to start this work. The Office of the Special Representative of the UN Secretary General and the UN Centre for Human Rights Office in Bujumbura are working on issues relating to reform of the national police. But the transformation of the security forces into a police force which will protect and respect human rights will require a number of police experts working with the forces on the ground, a new project which goes well beyond the current seminars and lectures on international standards.

The division of functions between the army and the national civilian police is a decision to be taken by the Burundi authorities. However, experience in a number of countries shows that the training needed for civilian police to carry out their functions in conformity with international human



rights standards is different from that normally received in the army. Any military personnel carrying out law enforcement functions need similar training.

Amnesty International has identified a number of principles that should be followed in the training of the national civilian police force. These are summarized at the end of this document.

## **8. The OAU Observer Mission**

The OAU mission in Burundi plays a useful role in reducing tensions particularly between soldiers and civilians, but requires greater operational freedom and increased resources, and to include the protection and promotion of human rights in its mandate.

At the end of May 1995 the *Mission internationale d'observation de l'OUA au Burundi* (MIOB), International Observer Mission of the OAU, had an authorized strength of 47 military observers and 18 civilians. The military observers were from Niger, Guinea, Burkina Faso, Mali and Tunisia. The civilians were from Burkina Faso, Egypt, Ethiopia and Congo. The military observers serve as witnesses to the development and execution of military orders in the field, as well as participating in various initiatives aimed at restoring peace. The military component includes five doctors and four engineers. The doctors give medical advice and assistance in the course of MIOB visits to different communes as well as in camps for refugees and displaced persons. The engineers advise and assist the Burundi authorities on issues such as road building.

The civilian component contributes to continuing negotiations between the various political parties in the run-up to the National Debate, as well as appealing for calm in attempts to forestall further violence.

The mandate of MIOB was extended until 17 September 1995 and its military component was increased to 67 officers. The extra 20 military officers have already been recruited and were due to arrive in Burundi in mid-June. This increase was agreed by the Burundi Government and will enable the MIOB to have a presence in all provinces. An increase in the civilian component has also been decided on, to enable legal experts to assist in the National Debate due to take place in 1995.

The MIOB legal experts should assist the National Debate to identify legal measures required to protect and promote human rights. Amnesty International urges the African Commission on Human and Peoples' Rights, and in particular its Special Rapporteur on extrajudicial, summary and arbitrary executions, to assist in this work and submit expert recommendations to the National Debate on the need to establish mechanisms to prevent and investigate extrajudicial executions and other deliberate and arbitrary killings.

An Amnesty International delegation visiting Burundi in May 1995 travelled outside the capital with the OAU military observers. It concluded that although these observers can help build the confidence of the traumatized population, they are not in a position to observe army operations as they happen. Restrictions on MIOB include a requirement to give advance notice of patrols to the Burundi army, which then assigns armed officers from the army to accompany them. OAU officers are nevertheless able to play an important role in mediating between different actors in the field. These actors include UN agencies, non-governmental relief organizations, local authorities and the army. Much tension arises from the delivery of food assistance, and perceptions of discrimination sometimes lead to human rights abuses such as political killings of civilians by armed groups. Looting of food convoys has led to even greater tension in the countryside, leaving humanitarian agencies at the centre of disputes relating to food programs for the internally displaced and refugees. Over the last year foreign and Burundi workers have been attacked, kidnapped and killed. There are threats and grenade attacks almost every month.<sup>32</sup>

MIOB observers can occasionally talk to local people on their own, but even if they are able to gather information independently at the sites of alleged massacres or from witnesses, they do not publish reports on their findings. Amnesty International delegates attended the OAU Council of Ministers and Assembly of Heads of State and Government in Addis Ababa in June 1995 where they spoke to many government representatives. Amnesty International's concerns in Rwanda and Burundi were generally shared by African governments. Following the summit meeting, the OAU tried to bring the different parties to the conflict in Burundi to a conference table and these efforts appear to be continuing.

Amnesty International recommends that the OAU should ensure that the MIOB observer mission has a clearly spelled out human rights mandate, freedom of movement and regularly publishes reports about human rights abuses by the armed forces and armed political groups.

## **9. A human rights field operation for Burundi**

The human rights situation in Burundi is critical. Human rights observers could make a vital difference by providing information and advice about the human rights situation, both to the Burundi authorities and to the international community, investigating and raising individual cases with the authorities and acting as a deterrent in some situations. However, any such operation is complex and must be properly planned and resourced from the outset.

The UN Security Council fact-finding missions of August 1994 and February 1995 recommended that human rights observers should be deployed throughout the country, provided there is an

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<sup>32</sup> UNICEF Burundi emergency update, volume two, number 4, 24 May 1995, *Escalation Of Violence Against Humanitarian Organizations Triggers Wave of Protest: Insecurity Risks to Seriously Limit Assistance to Affected People of Burundi*

improvement in the security situation. Similarly, the UN Secretary General suggested in his report on the situation in Burundi "the deployment of human rights observers, as recommended by the High Commissioner for Human Rights and the many missions which have visited Burundi, in order to facilitate the process of national reconciliation."<sup>33</sup>

On 25 October 1994 the UN General Assembly adopted by consensus a resolution calling on member states, the bodies of the UN system and intergovernmental and non-governmental organizations to help to restore confidence among the various sectors of Burundi society, especially by deploying civilian human rights observers to back up the local administration.<sup>34</sup>

As the situation again worsened during the last session of the UN Commission on Human Rights in 1995, the High Commissioner for Human Rights issued an appeal to the members of the UN Commission for Human Rights in which he expressed the view that:

*"[An] increased human rights presence in Burundi through the deployment of human rights field officers would be in keeping with action of the General Assembly. It would not only allow broadly-based promotional and educational activities throughout Burundi from the office in Bujumbura but also play an especially useful deterrent role with respect to violations of human rights, particularly in the countryside, as reports of violence there continue."*

In March 1995 the UN Commission on Human Rights in Geneva adopted by consensus a resolution calling for the appointment of a Special Rapporteur on Burundi and "express[ed] its conviction concerning the need to further increase preventive action in Burundi without delay, in particular through the presence of human rights experts and observers throughout the country". The new Special Rapporteur, Paulo Sergio Pinheiro from Brazil, left for Burundi at the end of June 1995.

One of the gravest problems in Burundi is the lack of accurate information about day-to-day incidents, which allows the spread of rumours and deliberate scaremongering. Information about killings and other human rights abuses, whether committed by armed groups or by government forces, does not reach the relevant authorities. Human rights observers in the countryside or in the troubled quarters of Bujumbura could provide information about abuses, both to the Burundi authorities and the international community. Whether this is enough to break the cycle of impunity depends on the political will of the authorities to take action on that information. Observers may need protection when operating in dangerous areas.

An official from the UN Centre for Human Rights visited Burundi in June and July to assess how to mount a human rights field operation in Burundi. The official has indicated that a UN human rights field operation could be mounted shortly.

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<sup>33</sup> UN Doc. S/1994/1152, para. 48.

<sup>34</sup> UN GA Res. 49/7, para. 4(b).

A human rights field operation in Burundi must be properly planned and resourced. It should work closely with local human rights groups, not only to benefit from their experience but also to enhance their capacity to protect and promote human rights. It should monitor the actions of the army, the Gendarmerie and armed political groups, as well as investigating and referring cases to the authorities and advising on human rights protection. It should learn from the experience of the OAU's operation, with a view to ensuring that its field officers are able to monitor human rights without restrictions. Lastly, the operation should ensure that all its staff have the necessary experience, expertise and local knowledge of the nature of the conflict in Burundi.

### **III ACTION OUTSIDE RWANDA AND BURUNDI**

#### **10. Fugitives from justice**

The International Criminal Tribunal for Rwanda is investigating allegations against certain leaders of the former Rwandese government and army and other alleged instigators of crimes against humanity, including genocide, who are currently living outside Rwanda. Governments have been extremely slow to pass legislation enabling cooperation with the Tribunal. It is imperative that all states take steps to cooperate with the Tribunal to ensure there are no sanctuaries from justice for the perpetrators of crimes against humanity, including genocide.

All states are required under UN Security Council Resolution 955 of 8 November 1994 to cooperate fully with the Tribunal and to implement the necessary measures in domestic law. In Resolution 978 of 27 February 1995 the UN Security Council urged states to arrest and detain suspects and to inform the Prosecutor of "the identity of the persons detained, the nature of the crimes believed to have been committed, the evidence providing probable cause for the detentions, the date when the persons were detained and the place of detention."

As of 31 July 1995, more than nine months after the Tribunal was established, only two states, Australia and New Zealand, had informed the Tribunal that they had adopted such legislation. Three states, the Republic of Korea, Singapore and Venezuela, have stated that their legal system already allows for defendants in their countries to be surrendered to the Tribunal. At the start of August 1995 the Ugandan Minister of Justice announced that its parliament was about to debate a bill to allow Uganda to cooperate with the Tribunals of Former Yugoslavia and Rwanda. In Austria, draft legislation is due to be debated by the Parliament in the autumn. A number of other states have announced their intention or willingness to adopt the necessary legislation but have not yet done so. Only one state, Belgium, has informed the Tribunal that it has arrested suspects with a view to bringing them to justice in its own courts.

Such legislation is urgent, as the Prosecutor announced on 6 April 1995 that he has a list of 400 suspects, most of whom are living outside Rwanda.<sup>35</sup> In order to ensure that those indicted by the Tribunal do not succeed in evading justice, it is imperative that states adopt the necessary legislation.

Where people suspected of complicity in crimes against humanity and other crimes under international law have taken refuge in another state, Amnesty International calls upon states to fulfil their international obligations to investigate allegations against the suspects found on their territory and where there are reasonable grounds to conclude that they may have been responsible for crimes under international law in Burundi and Rwanda, to exercise their powers to arrest and detain them. Suspects should then be tried or transferred to a jurisdiction --such as the International Criminal Tribunal for Rwanda -- where they would face a fair trial without the death penalty. Amnesty International also calls upon the authorities of all states to ensure that international standards regarding protection of refugees are fully respected. In particular, Amnesty International calls on states not to return any person (even those suspected of participating in the killings in Rwanda and Burundi) to a country where they would face the threat of torture, "disappearance", execution, or detention as a prisoner of conscience.

Amnesty International calls on the authorities in Burundi, Zaire, Tanzania and Kenya and any other country where suspects are resident, immediately to do everything possible, consistent with international standards concerning the right to fair trial, to arrest and detain such people. Some small steps have now been taken in this direction. A few states, including Belgium, France, Switzerland and Canada, have taken action against a handful of suspects. On 31 May 1995 Belgium issued international arrest warrants against a former Rwandese government and military official, Colonel Théoneste Bagosora; Jean Ntungaya, a former commander of the military district of Kigali, and Sylvain Mutabaruka, former bourgmestre (district administrator) of Saké. Two other Rwandese -- Vincent Ntezimana and Alphonse Higaniro -- were arrested in May and two former Rwandese mayors were arrested on 29 June 1995 and are held in prison in Brussels. Canada is processing the extradition of another suspect, Léon Mugesera. In France, a Rwandese priest, Wenceslas Munyeshyaka was arrested on 28 July 1995 on charges of genocide, torture, ill-treatment and degrading and inhuman activities and detained for two weeks. The court then decided to release him on conditional bail on the basis that the accusations against him could not be verified. He is under instructions to remain in the commune of Bourg-Saint-Andéol in France and to report to the gendarmerie every day.

There are currently two Burundi soldiers accused of involvement in the attempted coup of October 1993 in Burundi held in the Zairian capital, Kinshasa. A third was reportedly released in August 1995. Eight more were released without charge or trial from military custody in the Ugandan capital, Kampala, between May and July 1995. A ninth was still being held in Uganda by mid-August.

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<sup>35</sup> S/1995/457, 4 June 1995, para. 30.

As the sense of impunity grows in the countries surrounding Rwanda and Burundi, those members of the former Rwandese army and related militias will become emboldened. Insecurity and human rights abuses in the Great Lakes region could increase. Cross-border incursions by Hutu-dominated armed groups into Rwanda from Burundi and Zaire continue, resulting in politically motivated killings of defenceless civilians. In recent months there has been an escalation of attacks by Hutu armed groups on government forces, and deliberate and arbitrary killings of unarmed Tutsi civilians, particularly in northern Burundi.

## 11. Arms transfers

Amnesty International has already made a number of recommendations concerning immediate action to be taken to prevent the transfer of weapons, ammunition or training to the former armed forces and militia of Rwanda which are likely to contribute to further human rights abuses such as deliberate and arbitrary killings.<sup>36</sup>

The UN Security Council has asked the Secretary General to report on the possibility of deploying UN military observers at airports in eastern Zaire in order to monitor the sale and supply of arms for use within Rwanda.<sup>37</sup> On 25 June 1995 the UN's Special Envoy to the Great Lakes Region visited Goma in eastern Zaire to study the possibility. The UN Secretary General also discussed the proposal with the governments of countries neighbouring Rwanda during his visit to the region in July 1995. So far the reactions have been mixed. The Government of Tanzania has refused to consider the deployment of military observers in its territory. The Government of Uganda has neither welcomed nor rejected the proposal. The Government of Zaire has called for an international commission of inquiry, under UN auspices, to investigate allegations of arms supplies to the former Rwandese armed forces and to verify allegations of destabilizing activities but has rejected the idea of redeploying military observers to Zaire.<sup>38</sup>

On 7 September 1995, the UN Security Council adopted Resolution 1013 requesting the Secretary General to establish an international commission of inquiry to investigate reports of military supplies and training to former Rwandese government forces in the Great Lakes region, to identify parties aiding and abetting the illegal acquisition of arms by former Rwandese government forces and to recommend measures to end the illegal flow of arms to the subregion.

Amnesty International recommends that UN observers should be quickly deployed to monitor the supply of arms which could be used to commit human rights abuses within Rwanda and Burundi, and to report on cross-border incursions which have resulted in human rights abuses such as those

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<sup>36</sup> See *Rwanda: Arming the perpetrators of the genocide*, AI Index AFR 02/14/95.

<sup>37</sup> Security Council Resolution 997

<sup>38</sup> UN Doc. S/1995/683, 11 August 1995.

recently documented by Amnesty International in its report *Rwanda: Arming the perpetrators of the genocide*.<sup>39</sup>

On 16 August 1995, the UN Security Council voted to suspend the arms embargo on the government of Rwanda for an initial period of one year (until 1 September 1996)<sup>40</sup>. Amnesty International takes no position on embargoes as such but believes that all governments have a responsibility to ensure that transfers of military, security and police equipment do not contribute to human rights violations.

In the light of its continuing concern about the present human rights situation in Rwanda, described elsewhere in this document, Amnesty International is appealing to the UN and its member states to establish mechanisms to monitor arms supplies to the government of Rwanda to ensure that they do not contribute to further human rights violations (see Amnesty International News Service: *Rwanda: Arms supplies must not contribute to further human rights violations*, AI Index AFR 47/17/95, 17 August 1995).

#### IV RECOMMENDATIONS

##### **1. Recommendations to the United Nations and its member states to bring perpetrators of gross human rights violations to justice and to restore the rule of law and prevent further human rights violations in Rwanda:**

1.1. The Human Rights Field Operation should publish as soon as possible a comprehensive report on its investigation into the genocide. This could be published on its own or jointly by the High Commissioner for Human Rights and the Special Rapporteur for Rwanda as an annex to the Special Rapporteur's next report.

1.2. The UN Human Rights Field Operation should be able to receive funds to help Rwanda re-establish a judicial system which is fair and excludes the death penalty. The money should be spent based on the assessment and recommendation of the Human Rights Field Operation.

1.3. The Human Rights Field Operation should establish a more effective international human rights presence by recruiting experts and improving logistical support and planning. For example, renewable contracts of at least six months should be offered in order to attract suitably qualified candidates and to enhance continuity in the field. Care should be taken when rotating field officers to minimize the disruption of constructive relations established with the local authorities and population.

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<sup>39</sup> AI Index AFR 02/14/95 pp. 6-7.

<sup>40</sup> UN Doc. S/1995/1011, 16 August 1995

The budget of the operation should be put on a firm financial footing, to eliminate the uncertainty which is undermining the effectiveness of the operation.

1.4. The Human Rights Field Operation should monitor the current human rights situation and report violations within Rwanda and internationally. The High Commissioner for Human Rights should publish regular detailed reports on the activities of the operation and the efforts which the Rwandese authorities are making to comply with the operation's recommendations.

1.5 The international community should adopt the necessary legislation required to cooperate with the International Criminal Tribunal for Rwanda and cooperate in the gathering of evidence, arrest and transfer of suspects and provision of appropriate detention facilities. It should also provide effective long-term support and funding to the International Criminal Tribunal for Rwanda so that it can recruit qualified experts and proceed with its work with due speed.

1.6. UN Civilian Police Monitors (CIVPOLs) who have experience in training civilian police forces in accordance with human rights and international criminal justice standards should be sent to Rwanda to assist in the creation of civilian police forces. Training should follow the guidelines outlined in Section 7 of these recommendations (see below).

1.7 The international community should provide effective assistance to rebuild the Rwandese judicial system to ensure fair trials excluding the death penalty by delivering necessary resources and expertise.

## **2. Recommendations to the Rwandese Government to bring perpetrators of human rights violations to justice, to restore the rule of law and to prevent further human rights violations in Rwanda:**

2.1. The government should publicly instruct the military and security forces that all extrajudicial executions, "disappearances", torture, cruel, inhuman and degrading treatment or punishment, arbitrary arrests and detention and other violations of international human rights law must stop and will not be tolerated.

2.2 The government should pass legislation to allow foreign legal experts to participate in rebuilding the Rwandese legal system at all levels and bringing perpetrators of human rights abuses to justice.

## **3. Recommendations to the United Nations and its member states to bring perpetrators of human rights abuses to justice, to restore the rule of law and to prevent further human rights abuses in Burundi:**



3.1. The UN should provide the necessary political and logistical support so that an international commission of inquiry can carry out a prompt, thorough and impartial investigation into the October 1993 coup attempt and its aftermath. The investigation would be consistent with the UN's own standards, such as the Principles of Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Its remit should include investigating extrajudicial executions and other deliberate and arbitrary killings, "disappearances" and torture, gathering evidence to help decide whether individuals should be prosecuted, publicly reporting its findings, making recommendations on the prevention of human rights abuses, and reporting on the progress of follow-up of these recommendations by the Burundi authorities. The members of the commission should be independent, experienced, and respected professionals, and should be supported by experts in required areas such as forensic anthropology and ballistics.

3.2 The UN should provide resources to train an effective national civilian police. The guidelines outlined in Section 7 of these recommendations (see below) should be followed in this process.

3.3. A human rights field operation in Burundi must be properly planned and resourced. It should work closely with local human rights groups, not only to benefit from their experience but also to enhance their capacity to protect and promote human rights. It should monitor the actions of the army, the gendarmerie and armed political groups, investigating and raising individual cases with the authorities, as well as advising on human rights protection. It should learn from the experience of the OAU's operation, with a view to ensuring that its field officers are able to monitor human rights without restrictions. Lastly, the operation should ensure that all its staff have the necessary experience, expertise and knowledge of the nature of the conflict in Burundi.

3.4. The international community should provide support for foreign judges and other judicial experts to work with their Burundi counterparts to ensure that the judiciary investigates and prosecutes crimes fairly in accordance with international standards.

#### **4. Recommendations to the Burundi authorities in order to bring perpetrators of human rights violations to justice, restore the rule of law and prevent further human rights violations in Burundi:**

4.1. The Burundi authorities should publicly instruct the military and security forces that all extrajudicial executions, "disappearances", torture and cruel, inhuman or degrading treatment or punishment, arbitrary arrests and detention and other violations of international human rights law must stop and will not be tolerated.

4.2. The Burundi authorities should make institutional changes to restore confidence in the impartiality and fairness of the judicial system, including requesting and accepting the assistance of foreign judicial experts.

4.3. The Burundi authorities should train an integrated national police force to be effective in civilian law enforcement in accordance with international human rights and criminal justice standards.

4.4. The Burundi authorities should allow the OAU observer mission freedom of movement in order to observe military operations which are relevant to the protection of human rights.

4.5 Heads of the security forces and those under their command should cooperate with and adhere to instructions from government and judicial officials to prevent human rights abuses.

## **5. Recommendations to the Organization of African Unity:**

5.1. The OAU should ensure that the MIOB observer mission has an express human rights monitoring mandate and freedom of movement and, regularly publishes reports about human rights abuses by the armed forces and armed political groups.

## **6. Recommendations to all states to bring to justice individuals currently living outside Rwanda and Burundi who are suspected of having committed crimes under international law and to prevent further human rights abuses by the former Rwandese army:**

6.1 All states which have not done so should pass any necessary legislation enabling their authorities to cooperate with the International Tribunal for Rwanda to ensure that there are no sanctuaries from justice for perpetrators of crimes under international law.

6.2 All states should arrest and detain people found within their territory when there is sufficient evidence that the suspects may have been responsible for crimes under international law in Rwanda or Burundi. They should be tried or transferred to a jurisdiction -- such as the International Criminal Tribunal for Rwanda -- where they would face a fair trial without risking the death penalty.

6.3 No states should return any person (even those suspected of participating in the killings in Rwanda and Burundi) to a country where they would face threat of torture, "disappearance", execution, or detention as a prisoner of conscience.

6.4 All states should support the deployment of UN observers to monitor the supply of arms which could be used to commit human rights abuses within Rwanda and Burundi, and to report on cross-border incursions which have resulted in human rights abuses (such as those recently documented by Amnesty International in its report *Rwanda: Arming the perpetrators of the genocide*.)

## **7. Guidelines on the creation of a civilian police training program:**

7.1. A detailed assessment should be carried out to create a plan for feasible and appropriate training programs that fit into a broader framework of human rights reform. Non-governmental organizations should be involved in the design and execution of the training programs as they are often well-informed about the daily breaches of international standards and the kind of practical exercises which would focus attention on dealing with violations.

7.2. Training programs should select target groups of trainees, goals for training, and teaching methods very carefully. Trainers should have a connection with the target group. Trainers must be able to demonstrate how to deal with comparable situations, rather than merely extolling the virtues of their own systems.

7.3. Teaching materials should be practical and meet the needs of the audience. Printed materials, including translations of relevant international criminal justice and human rights standards, should be made available from the outset. If the people being trained are illiterate, illustrated explanations of the relevant standards should be provided.

7.4. Follow-up should be built into the training program from the very beginning, and a continuous evaluation of the effectiveness of the program is necessary.

7.5. Training should be only one step towards achieving greater accountability to an independent and impartial judiciary rather than a substitute for it. At the time of training the authorities must undertake to respect human rights in practice, rather than merely ensuring that police officers attend training classes. Training should be built into the career structure of the police force, so that adherence to human rights standards and appreciation of human rights concerns become critical factors in determining promotion and assignments. The training program should be coordinated with other human rights efforts designed to create a culture of human rights in the country.

## V ANNEX:

### TEXT OF SECURITY COUNCIL RESOLUTION 1012 (1995) OF 28 AUGUST 1995

**Adopted by the Security Council at its 3571st meeting, on 28 August 1995**

The Security Council,

Having considered the report of the Preparatory Fact-finding Mission to Burundi dated 20 May 1994 (S/1995/157)

Having further considered the report of the Security Council's mission to Burundi dated 9 March 1995 (S/1995/163)

Recalling the statement by the President of the Council of 29 March 1995 (S/PRST/1995/13), in which the council, inter alia, underlined the role that could be played in Burundi by an international commission of inquiry into the 1993 coup attempt and into the massacres that followed,

Welcoming the letter of the Secretary General to the President of the Council dated 28 July 1995 (S/1995/631) recommending that such a commission of inquiry should be created by resolution of the Council,

Taking into account the initiative of the Government of Burundi in calling for the establishment of an international judicial commission of inquiry as referred to in the Convention of Government (S/1995/190, annex),

Recalling also the letter of the Permanent Representative of Burundi (S/1995/673) dated 8 August 1995 noting with interest the letter of the Secretary-General of 28 July 1995,

Taking note that the parties in Burundi, in the Convention of Government, agreed, without prejudice to the outcome of the independent national and international investigations, to call the massacres which followed the assassination of the President of Burundi on 21 October 1993 genocide,

Deeply concerned that impunity creates contempt for law and leads to violations of international humanitarian law,

Expressing once again its grave concern at reports indicating that systematic, widespread and flagrant violations of international humanitarian law have been committed in Burundi,

Stressing the importance of strengthening, in cooperation with the government of Burundi, the Burundi judicial system,

Reiterating its profound concern over the resumption of radio broadcasts inciting ethnic hatred and violence and recognizing the need for ending such broadcasts,

Recalling that all persons who commit or authorize the commission of serious violations of international humanitarian law are individually responsible for these violations and should be held accountable,

1. Requests the Secretary-General to establish, as a matter of urgency, an international commission of inquiry, with the following mandate:

(a) To establish the facts relating to the assassination of the president of Burundi on 21 October 1993, the massacres and other related serious acts of violence which followed;

(b) To recommend measures of a legal, political or administrative nature, as appropriate, after consultation with the Government of Burundi, and measures with regard to the bringing to justice of persons responsible for those acts, to prevent any repetition of deeds similar to those investigated by the commission and, in general, to eradicate impunity and promote national reconciliation in Burundi;

2. Recommends that the international commission of inquiry be composed of five impartial and internationally respected, experienced jurists who shall be selected by the Secretary-General and shall be furnished with adequate expert staff, and that the Government of Burundi be duly informed;

3. Calls upon States, relevant United Nations bodies and, as appropriate, international humanitarian organizations to collate substantiated information in their possession relating to acts covered in paragraph 1 (a) above, to make such information available as soon as possible and to provide appropriate assistance to the commission of inquiry;

4. Requests the Secretary-General to report to the Council on the establishment of the commission of inquiry, and further requests the Secretary-General, within three months from the establishment of the commission of inquiry, to submit an interim report to the Council on the work of the commission and to submit a final report when the commission completes its work;

5. Calls upon the Burundi authorities and institutions, including all Burundi political parties, to fully cooperate with the international commission of inquiry in the accomplishment of its mandate, including responding positively to requests from the commission for security, assistance and access in pursuing investigations, including:

(a) Adoption by the Government of Burundi of any measures needed for the commission and its personnel to carry out their functions throughout the national territory with full freedom, independence and security;

(b) Provision by the Government of Burundi of all information in its possession which the commission requests or is otherwise needed to carry out its mandate and free access for the commission and its staff to any official archives related to its mandate;

(c) Freedom for the commission to obtain any information the commission considers relevant and to use all sources of information which the commission considers useful and reliable;

(d) Freedom for the commission to interview, in private, any persons the commission judges necessary;

(e) Freedom for the commission to visit any establishment or place at any time;

(f) Guarantee by the Government of Burundi of full respect for the integrity, security and freedom of witnesses, experts and any other persons who help the commission in its work;

6. Calls upon all States to cooperate with the commission in facilitating its investigations;

7. Requests the Secretary-General to provide adequate security for the commission in cooperation with the Government of Burundi;

8. Requests the Secretary-General to establish, as a supplement to financing as an expense of the Organization, a trust fund to receive voluntary contributions to finance the commission of inquiry;

9. Urges States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the commission of inquiry including the offer of expert personnel in support of the implementation of this resolution;

10. Decides to remain actively seized of the matter.

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