Burundi:
No protection from rape in war and peace

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Glossary

ACAT	Action des Chrétiens pour l'Abolition de la Torture
ADDF	Association de Défense des Droits de la Femme
AFJB	Association des Femmes Juristes du Burundi
APFB	Association pour la Protection de la Femme Burundaise
APRODH	Association pour la Protection des Droits Humains et des Personnes Détenues
BINUB	Bureau Intégré des Nations Unies au Burundi (UN Integrated Office in Burundi)
CAFOB	Collectif des Associations et ONGs Féminines au Burundi
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CNDD-FDD	Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie (National Council for the Defense of Democracy – Forces for the Defense of Democracy)
FIACAT	International Federation of Action by Christians for the Abolition of Torture
FNL	Forces Nationales de Libération (National Liberation Forces)
ICCPR	International Covenant on Civil and Political Rights
Ligue ITEKA	La Ligue Burundaise des Droits de l'Homme ITEKA
MSF	Médecins sans Frontières
SOFEPA	Solidarité des Femmes Parlementaires
UNOB	UN Operation in Burundi

Introduction

The most commonly reported form of sexual violence in Burundi is rape, and is committed by both state and non-state actors, including law enforcement officials and military officers.[1] Rape of women and girls is prevalent in the home and in the community and the problem is widespread throughout Burundi.[2] Between 2004 and 2006 an average of 1,346 women a year reported their cases to Médecins sans Frontières (MSF). Minors are also particularly at risk: in December 2006, 60 per cent of reported rapes were committed against minors.[3] The Burundian authorities are failing to exercise due diligence[4] to prevent, investigate and punish rape and other sexual violence and the perpetrators escape prosecution and punishment by the state. These systemic failures have engendered a climate where rape victims are less willing or able to pursue criminal proceedings. The rate of successful prosecutions for sexual offences is still very low. A clear message must be delivered by the government now: violence against women is a violation of human rights which cannot be tolerated, rape is a crime, perpetrators must be brought to justice and victims must be offered compensation.

It is difficult to determine current levels of sexual violence with any accuracy in the absence of reliable official statistics. The government does not have an independent monitoring system which would allow it to publicly report on the prevalence of rape and other forms of sexual violence and the effectiveness of the responses by the relevant authorities.

Poverty, a patriarchal society, and a culture in which rape and sexual violence are not taken seriously, contribute to a situation where many women are too afraid to report the crimes. Many women victims of rape fail to seek redress and are not supported by the state, the community and their family. Women often do not report rape because they fear reprisal attacks from the perpetrator. Furthermore, women in Burundi are subjected to various forms of gender discrimination, including the social stigma to which rape victims are subjected by their community. Victims frequently spoke to Amnesty International and Action des Chrétiens pour l'Abolition de la Torture (ACAT) about their feelings of shame after being raped. A common misconception is that rape is the victim's fault: a result of the victim's behaviour or the clothes she wears. The victim's family, friends and community often ostracize the victim, leaving her alone and destitute. Certain customary practices which deny women certain rights, including the right to own or inherit property or the land they work on, increases the economic dependency of women on men.[5] Some victims of rape told Amnesty International and ACAT delegates about their reluctance to instigate legal proceedings for fear that they may lose the economic support of their family or spouse. Other economic factors contribute further to the vulnerability of women, including poverty, a lack of education, access to information and health care.

IS, KINAMA

"I was attacked by a group of four men who broke into my house at night. They kidnapped me and forced me to walk to one of their homes. Then they beat me, raped me and threw me out of the house. I then asked one of the neighbours for help. The following morning he saw the men cleaning up my blood. He called on other neighbours, the local administration and some soldiers. The soldiers arrested the men and took them to the police station at Kigobe, Bujumbura Mairie."

– IS,[6] a 49-year-old woman from Bukirasazi, Kinama, who was raped and brutally beaten by four men in December 2003.

The police investigation and interview was conducted over a period of one month and IS and one of the neighbours were required to be present. The judicial police officer then told IS that she did not have to return to the police station because they were sending the men to Mpimba Central Prison. When she returned home she learnt that the men had in fact been released. Following this incident, IS received repeated threats from the suspected perpetrators, who told her they would kill her if she pressed charges again. Because she was scared of reprisal she spoke confidentially to the police. Despite the risks to IS and her request for the police not to take action, the police issued a warning to the men without first informing her. IS explained that this made her lose all confidence in the police.

IS said she felt ashamed because her community now knew her as a rape victim. IS also said she contracted HIV as a result of the rape. The situation made life for her children very difficult. Other children, including the suspected perpetrator's own children, reportedly teased them about the rape of their mother.

The rape of young girls is more likely to be investigated, and the perpetrators prosecuted, than the rape of adult women; however, the law enforcement and judicial system suffers serious systemic weaknesses. The system particularly fails women in rural areas who are often unaware of how to instigate legal proceedings and are frequently cut off from psychosocial and medical assistance provided by some non-governmental organizations (NGOs) operating in Burundi.

Poverty and the lack of economic opportunities often make it extremely difficult for women rape victims to lodge complaints, even in cases where they know the identity of the perpetrators. Women who had been subjected to sexual violence by members of armed groups or government forces during the country's civil conflict[7] very rarely recounted their ordeal out of fear of reprisals. The government must take strong measures to address the problem of violence against women, and in doing so, send a strong message to Burundian society, including the criminal justice system, that sexual and gender-based violence will not be tolerated. The government must meet their obligations to ensure that women's rights are protected and they are not left to suffer in silence. Only then will women victims have confidence that the law enforcement and judicial system will be able to properly address their complaints as well as offer

them support. The Burundian government has a duty to ensure that women are effectively protected when they report a rape or other form of sexual violence. It also must ensure that effective investigations are conducted and perpetrators are brought to justice.

Law enforcement officials and judicial authorities regularly demonstrate an unresponsive and uncaring attitude to victims reporting crimes, resulting in dereliction of professional duty. Amnesty International and ACAT have found evidence that law enforcement officials often fail to ensure that reports of rape are effectively investigated and those responsible are prosecuted. The disproportionate emphasis on the completion of a medical report as a precondition for prosecution is one example of the type of barrier put in the way of rape victims' access to justice. This is matched by lack of diligence in pursuing other aspects of the investigation procedure. This poor practice by the police and courts creates doubt among women that reporting sexual violence to the authorities is an effective remedy and will result in justice being done – a mistrust that is compounded by reported human rights violations, including rape, by law enforcement officials themselves.

Women who report rapes to the relevant authorities are poorly supported by the judicial authorities and their needs and concerns are often disregarded throughout the investigation and hearing of the case. In addition, victims and their families spoke about a traditional and informal dispute resolution system whereby the family of a victim of rape negotiates with the family of the perpetrator. The negotiations are intended to result in a settlement often involving the payment of some form of compensation – cash or other goods – to the family of the victim. The negotiations often take place outside the criminal justice system.

Medical and psychosocial services and counselling for rape victims are currently provided by international and national NGOs; however, overall levels of assistance are very low and not adequate to cope with the number of rape and sexual violence cases in Burundi. Many victims receive no help at all. The state cannot abdicate its role in providing health care, including counselling, to victims of rape.

The Burundian authorities are bound under domestic legislation and international human rights law to take all necessary measures to protect women's rights to physical integrity and security and to prevent, investigate and punish all forms of violence against women. The government must therefore now focus on developing and implementing a structured and effective National Action Plan to prevent violence against women and fulfil rape victims' right to access to justice and health services, in particular by increasing the number of successful prosecutions of rape and sexual violence.

Background

The latest parliamentary elections held in Burundi on 29 July 2005 brought an increased level of visibility for women parliamentarians, who filled 37 out of 118 seats in the National Assembly.8 At the time, women were also appointed to fill important political positions, including President of the National Assembly,9 and the Minister of External Relations and International Cooperation.10 Other senior ministerial roles and other professional positions

within all branches of the civil service were likewise occupied by women. The nominating of women to high-level positions within decision-making bodies of government marked a better integration of women into the governance of the country.

However, this notable increase in the number of women occupying senior parliamentary positions, as well as other posts in government or the civil service, has not in reality improved the overall status of women in Burundi. For such improvement to occur – and for women's human rights to be protected – the Burundian state must act comprehensively to combat gender discrimination in all its manifestations, including all forms of violence against women. Women are habitually subjected to discrimination because the state fails to challenge conservative customary attitudes to gender and women's status in society.

Research methodology

Amnesty International delegates visited Burundi in February and September 2006 where they met delegates from ACAT11 who are permanently based in the country.12 The two organizations jointly carried out a large part of the research in the commune of Kinama and Bujumbura. In addition, a number of interviewees came from other provinces in the country. Amnesty International and ACAT delegates spoke with human rights NGOs and women's organizations,13 personnel within the magistracy, the judicial police14 and the UN.15

Amnesty International and ACAT are concerned that high levels of rape and sexual violence have continued since the end of the civil conflict. Rape was used as a weapon of war during the conflict between 1993 and 2003.[16] The formal cessation of hostilities has not led to the end of rape and other forms of sexual violence.

This report's findings are based on testimonies and accounts by women who were raped both at the time of the conflict and after the formal cessation of hostilities. It illustrates the social, cultural and legal factors that limit rape victims' access to justice. Recommendations focus on the need to reform the attitudes and practices of the police and the judiciary so that they may effectively perform their roles in investigating reports of rape, bringing the perpetrators to justice and providing reparations to the victims.

High levels of reported and unreported rape

Figures from Burundian and international NGOs indicate that reported and unreported rape occurs at alarming levels. It is difficult to determine current levels of sexual violence with any accuracy. Information on rates and patterns of sexual violence, both within the family and the community, is similarly limited. The government does not have an independent monitoring system which would allow it to publicly hold accountable all parts of the state apparatus.[17] There is therefore a lack of comprehensive and reliable statistics on the number of reported cases of rape or other forms of sexual violence. Overall figures on reported cases, prosecutions and final sentences are sparse and unreliable. Other details on gender, age and other key criteria are not available. The state has a responsibility to monitor and record all reported rapes committed in Burundi, and in doing so establish patterns, with the expressed

aim of allocating sufficient resources and devising appropriate laws and policies to prevent rape and respond to such cases.

Statistics and information provided by the media, human rights and health organizations therefore only represent those women who were able to reach medical or counselling centres. The following statistics have been drawn from the records of various NGOs which provide health, counselling and legal services for victims of sexual violence:[18]

- Between 2004 and 2006 the MSF Seruka Centre reported 4,039[19] rape cases – an average of 1,346 victims per year or 26 per week.[20]

- La Ligue Burundaise des Droits de l'Homme ITEKA (Ligue ITEKA)[21] and MSF reported 1,791 incidents of rape or sexual violence in 2005 – an average of 34 victims per week.[22]

- In 2006 Ligue ITEKA and MSF reported 1,930 incidence of rape or sexual violence – an average of 37 victims per week.[23]

- In 2006, the Association pour la Protection des Droits Humains et des Personnes Détenues (APRODH) reported 686 cases victims of rape or sexual violence – an average of around 13 victims a week.[24]

These statistics represent only the tip of the iceberg. Many women in Burundi are reluctant to report the incidents of rape themselves. Such reluctance stems from different factors, including stigma, discriminatory attitudes and fear of reprisals. Women victims' confidence in the authorities to effectively investigate their reports of rape is low – partly the result of the authorities' lack of diligence in recording and effectively dealing with allegations of rape.

In other cases, women do not report the incident because they do not have the funds to cover travel costs to visit medical or counselling centres. NGOs play a key role in recording statements from victims, providing legal advice and psychosocial support. However, a large number of women remain silent, often unaware of these services – especially in isolated rural areas. To improve women's access to justice, it is important to encourage the government to accurately record all violations of women's rights to physical integrity and security and to provide official assessment reports to Burundian and international civil society. Such reports would serve as a basis for further action.

1. Impunity for rape during the conflict

Violence erupted in Burundi during 1993 when the first democratically elected Hutu president, Melchior Ndadaye, was assassinated by Tutsi army officers.[25] Following his death, there were widespread attacks against the Tutsi civilian population by Hutus and subsequent reprisal attacks against the Hutu population by the Tutsi-dominated army. The conflict was protracted and resulted in serious violations of human rights and international humanitarian law by all parties. The Arusha Peace and Reconciliation Agreement was signed in 2000 between the government and all parties except for two armed groups:[26] the National Council for the Defense of Democracy – Forces for the Defense of Democracy (Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie, CNDD-FDD) led by Pierre Nkurunziza, and the National Liberation Forces (Forces Nationales de Libération, FNL). The CNDD-FDD signed a peace agreement with the government in November 2003.[27] The deployment of the UN Operation in Burundi (ONUB) in June 2004, and successful elections between June and September 2005, ended the transition and installed the CNDD-FDD party in power. In September 2006, the last remaining group, the FNL, signed a ceasefire agreement with the Burundian authorities.[28] Negotiations between the government and the FNL on the implementation of the ceasefire are ongoing. ONUB completed its mandate in December 2006 and has withdrawn its troops. It has been replaced by the UN Integrated Office in Burundi (Bureau Intégré des Nations Unies au Burundi, BINUB) and an African Union force. BINUB's mandate is for a 12-month period from 1 January 2007.

An estimated 300,000 people were killed between 1993 and 2003.[29] The conflict created massive internal displacement and refugee movements – mainly to neighbouring Tanzania.[30] The general discrimination against Burundian women in times of peace was amplified during wartime. Women suffered disproportionately during the conflict and were the targets of violence and cruel, inhuman and degrading treatment. The conflict exacerbated poverty levels and weakened the state, including the health and justice sectors, which have suffered years of under-resourcing, mismanagement and corruption. Women and girls' access to health, education and nutrition was equally eroded as living conditions for the population deteriorated.[31]

Crimes of rape and other crimes against women during the conflict

Rape and sexual violence were endemic to the armed conflict in Burundi and were committed by government soldiers, members of armed groups and private individuals. The number of rapes, although endemic during the war, remain unknown and under-reported. The number of perpetrators who were brought to justice is similarly very low. Evidence of the scale of rape committed during the conflict demonstrates how rape was deliberately used by armed groups and government forces as a means of denigrating, humiliating and implanting fear among women, their communities and the civilian population.[32] Rape was carried out by all parties.

NS, KINAMA

NS is a 70-year-old woman from Kinama, Bujumbura. She told Amnesty International and ACAT delegates that she was raped by a soldier in May 2001. She recounted that three soldiers turned up at her house in the evening and one of them marched her off and took her far away. He threatened to shoot her if she did not have sex with him. The soldier raped her and fled when a passer-by intervened. Her neighbours told the local authorities who did not investigate the rape. Her story was reported on the radio, but nothing was done to arrest and prosecute the perpetrators. She contracted HIV and spoke of the pain she had all over her body. She has no support and the state has done nothing for her.

NS did not report the incident to the police. Instead, it was her neighbours who notified the Chef de Quartier[33]. After NS spoke to him he went to the police. The local radio was also notified and broadcast the story. NS thought that this would be enough to start legal proceedings and did not realize that she was still expected by the authorities to lodge a formal complaint.

When NS was asked by Amnesty International and ACAT delegates about why she had not pressed charges, she stated: "Press charges? I told the Chef de Quartier and the local radio – what else could I have done? Besides, what could I have done against a soldier?"

The threat of rape often forced families to sleep away from their homes at night. Certain categories of women, including women living alone, widows, internally displaced women and refugee women, were particularly vulnerable. Other women were targeted as they searched for firewood or water.

AN, KINAMA

AN is a 28-year-old women from Bubanza, Kinama, Bujumbura:

"In 2003, I was raped by two unidentified soldiers who attacked me when I was looking for firewood. I had a child from the rape but it was born dead. I would have liked to have a husband and children, but I have lost all hope now. Each time that a man finds out that I have been raped, he leaves me."

AN told Amnesty International and ACAT delegates that she would have liked to have received medical treatment and pressed charges against the perpetrator. She told the two organizations that she was not aware at the time of what action she could have taken. Her mother spoke to the Chef de Quartier who did nothing to help her or tell her how she could press charges.

Impunity for crimes against humanity

Impunity for rape and sexual violence by government forces and armed groups during the conflict has helped to create a current climate where such crimes go unpunished. The Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation[34] highlights this tendency by acknowledging "that gender-based violence committed during conflict situations is the result of inequalities between women and men, girls and boys, that predated the conflict, and that this violence continues to aggravate the discrimination of women and girls in post-conflict situations." Indeed in Burundi there is evidence that rape and sexual violence is still widespread. Amnesty International and ACAT urge the Burundian authorities to investigate and prosecute serious human rights violations, including crimes against humanity and war crimes, committed during the conflict.

The UN Security Council requested in resolution 1606 of June 2005 that two mechanisms be established: a truth and reconciliation commission and a special chamber to investigate crimes committed in Burundi and bring to justice those responsible. The mechanisms proposed were to be composed of both national and international members. Ongoing discussions between the Burundian government and the UN have not significantly advanced since then, leaving the issue of impunity for crimes under international law committed during the conflict, including rape, still to be addressed.

The mechanisms were originally intended to have been put in place by September 2005. A key obstacle to drawing up a timeframe for both mechanisms has reportedly been the issue of amnesty for genocide, war crimes and crimes against humanity. Another issue has been the relationship between the truth and reconciliation commission and the special tribunal. A letter sent by the UN Legal Counsel to the Burundian government, after a visit in March 2006, underlined the principles of non-impunity for genocide, war crimes and crimes against humanity as well as the neutrality and independence of the two bodies.[35]

A UN technical team was sent to Burundi from 5 to 10 March 2007 to clarify outstanding issues linked to the establishment of the proposed mechanisms. After the meeting, both

sides could still not agree on the issue of amnesty, the linkages between the Truth and Reconciliation Commission and the Special Tribunal and the independence of the prosecution. However, Louise Arbour, the UN High Commissioner for Human Rights, announced during her visit to the Great Lakes region in May 2007 that national consultations between the government, the UN and civil society groups are to take place, scheduled for July 2007, on the establishment of the two mechanisms. The consultations are to be enacted by a small panel, comprised of members of the Burundian government, the UN and civil society. Louise Arbour stated that the government has supported the proposal not to give amnesty for war crimes, genocide, crimes against humanity and other serious violations. The government of Burundi confirmed this in a letter sent to the UN on 16 May 2007.

Risk of reprisal

Women subjected to rape and sexual violence during the civil conflict, said that one of the reasons why they did not report the crimes was because they feared reprisal attacks. These victims of rape or sexual violence are still afraid to speak out despite a cessation of formal hostilities. The research and documentation of these cases remains a major challenge for NGOs. Some victims said that they or their families had received threats from the perpetrators or their families.

TEACHER, GITEGA

A teacher from the town of Gitega recounted her story to Amnesty International and ACAT delegates:

"On 28 December 1997 I was stopped by an officer of the government armed forces and taken to a military base in Mubuga. The soldier raped me and kept me with him all night. I didn't press charges because I was scared. Besides no one would have agreed to testify on my behalf because in those days everyone was scared of reprisal attacks. This wasn't just an isolated case during the crisis, but common practice – people told me that I was lucky because I came out alive. I had a child from the rape and we have lots of difficulties."

Violent threats and reprisal attacks remain a constant threat to women who seek legal redress.

IK, NYAKABIGA

IK, from Nyakabiga, Bujumbura visited the Association des Femmes Juristes du Burundi[36] in June 2005 after her four-year-old daughter had been raped. The suspected perpetrators of the attack had been arrested and

> the trial had started. IK told the Association des Femmes Juristes du Burundi that she was very concerned for the security of her daughter, for herself and the witnesses testifying in the trial because of threats she had received during the trial from the accused's family. They had reportedly told her that something bad might happen to her and her daughter. IK did not report the threats to the authorities for fear that they would not be taken seriously.

Some women stated that they withdrew their complaints prior to or during the trial. The Burundian government must put in place measures to ensure that victims feel empowered to report cases of rape and sexual violence. This includes, among other things, the effective training of law enforcement officials to conscientiously investigate allegations of rape and sexual violence, ensuring that the rights, privacy and security of the victims and witnesses are upheld and protected. Where there is reasonable risk that a victim is subjected to threats or other acts of violence, the state has an obligation to protect her.

2. Continuing rape in the family and the community

High levels of rape and other forms of sexual violence prior to 2006 were regularly attributed to the armed conflict. However, figures from 2006 have indicated that high levels of rape and sexual violence continue within the community and the family.

In Burundi girls aged under 18 and young women aged between 18 and 30 are at most risk of rape and sexual violence. The majority of rape victims are aged between three and 30 years.[37] In December 2006, the UN reported that 60 per cent of reported rapes were committed against minors.[38] Twenty-four per cent of rape victims are aged under 11.[39] In 2006, Ligue ITEKA recorded a total of 532 cases of rape and sexual violence committed against girls under the age of 12.[40]

Rape within the family

Reports from local human rights organizations indicate that rape within the family is prevalent. According to Ligue ITEKA's figures, 63.2 per cent of rapes in Burundi are committed by neighbours and close relatives – in other words people who are related or known to the victim.[41] Evidence gathered in Burundi reflects that women were less likely to report their husband or father if his arrest would mean losing the main sources of income for the household.

KJ, CIBITOKE

KJ is a woman aged 48 from Cibitoke, Bujumbura:

"On 6 August 2006, I discovered that my husband had raped our eight-year-old girl. He admitted that he had done it. He scorned me by saying that because the girl was his daughter, he could do it again if he wanted. I complained to the police, but they insisted that I order a taxi for them to come to arrest him.[42] Because I did not have the money to pay for the taxi, I had to go and see another police officer who gave me a summons for my husband to present himself at the police station. But my husband never turned up."

Rape in the community

Vulnerable groups of women including widows, returned refugees and women living alone are more at risk of being raped.

HB, KABEZI

HB gave the following testimony to Amnesty International and ACAT delegates:

"I was raped when I was collecting firewood near my home in Mubone, Kabezi, Bujumbura Rural on 28 August 2006. I was on my way home when a young man grabbed me, dragged me into his house, locked the door and then raped me. I cried out but no one came to help me. The man kept me in his home for three days. On the third day he told me to leave but I refused because I had nowhere to go after the rape. I was 18 at the time and an orphan. He eventually agreed to let me stay. However, after several days, he wanted to throw me out of his house because I was bleeding as a result of the rape. It was then that the neighbours stepped in and advised me to report the incident to the authorities."

Against a background of pervasive gender discrimination, female rape victims experience heightened levels of discrimination and extreme marginalization. Social attitudes unjustly apportion blame to the victim of rape rather than the perpetrator, additionally deterring victims from lodging a complaint. As the following account illustrates, if a minor is raped Burundian society sometimes holds the mother responsible.

NE, CIBITOKE

NE is a six-year-old girl from Cibitoke, Bujumbura. She was raped by an 18-year-old man at the end of January 2006. NE only told her mother about the incident because of the physical pain she felt afterwards. Her mother reported the matter to the police. However, the girl's father blamed her mother for the rape. The suspected rapist was arrested on 11 February 2006. The police requested that the girl's mother bring food to him in prison. However, when she was unable to do so, they released him. Such incidents characterize a fundamental flaw in the state authorities' attitude to ensuring successful prosecution.

Several women recounted their feelings of shame after being raped. The prevailing attitude in Burundian society is that rape is the fault of the victim, a result perhaps of her behaviour or her way of dressing. Testimony collected by Amnesty International and ACAT shows that a rape victim is generally rejected by the community and loses considerable status with her family, relatives, friends and neighbours. Victims are mocked and humiliated and often find it very difficult to marry or find a partner. A woman rejected by the community is often thrown out of her house and forced to fend for herself. In such cases, women are presented with few viable options for survival and may become destitute as a consequence.

NE, BUJUMBURA

NE, a 42-year-old woman who was raped in August 2005 told Amnesty International and ACAT delegates the following:

"At the time of the rape, I was on my way to Bujumbura to appeal against a court ruling in a case initiated by my brother-in-law. He had obtained a court order to evict me from the land left to me by my late husband. I intended to stay with a friend during the hearing. However, when I went to my friend's house, I found there was no one there. Some male neighbours invited me to stay at their house, and I accepted as I had nowhere to go for the night. That night the men raped me.

I went to Nturengaho – a local Burundian organization that provides support and shelter to women as well as medical care. I did not know what to do as I did not know the identity of the people who had attacked me. I was also afraid that if I reported the crime and the community found out, I would be known as a rape victim. I was also scared that if my brother-in-law found out, he would use the rape against me and try to prejudice the outcome of the trial."

Many rape victims remain silent and do not press charges because the consequences of public disclosure of rape are so severe. The state is failing to put in place measures to combat stigma and discrimination against rape victims and is failing to support individual women victims. In Burundi women are not supported in their local communities and many believe that it is not in their interests to file formal complaints against perpetrators of rape and other sexual offences.

Discriminatory attitudes to women and sexual violence are also often shared by other influential members of the community. Officials of the local administration often ignore the law, are unaware of the prosecutions process or do not have the motivation to either become involved or assist victims. These officials could fulfil a key role by helping to ensure that crimes committed in their area of authority are reported to the relevant authorities and properly followed up. Many women and girls have a poor understanding of the judicial procedures, including the steps that need to be taken to report a crime, ensure that an investigation is launched, and follow the progression of their case file. The authorities in Burundi are failing those women who, when reporting incidents of rape, expect thorough investigations to take place.

Other women fail to report rape because they are not aware that it is a crime which should, as a matter of course, be reported to the police and the perpetrators prosecuted.

NV, KAMENGE

NV is a 27-year-old women from Kamenge, Bujumbura. She and her sister were raped by two unidentified men on 21 February 2006. NV told Amnesty International and ACAT delegates that the two attackers broke into her home:

"They came to my house at one o'clock in the morning. They knocked on the door for about an hour. After a while, they broke in. They beat us and then raped us. They put pieces of cloth in our mouths to stop us screaming."

When NV met Amnesty International and ACAT delegates, she stated that they were unaware of where or how to press charges against their attackers. She did not know about the services offered by MSF. She had therefore not told her story to anyone.

Many women in Burundi are unaware that there should be legal consequences for rape and may not report it because they do not regard the police and judiciary as primarily responsible for such investigations and prosecutions. Some women interviewed were aware that rape was a crime that could be prosecuted, but were sceptical about their chances of obtaining a successful prosecution. Lastly, women often know the perpetrators who continue to live in their communities or families. The threat of physical attacks and intimidation against the victim or her family also contribute to women's

reluctance to report these crimes. The state has an obligation to take concrete, targeted steps to improve the reporting and investigation of rape cases. The failure of government officials to prevent crimes is compounded by the hurdles put before those few victims who do try and report them. They are deterred by pervasive discriminatory attitudes and the unwillingness to create a social environment where rape victims are sufficiently supported and protected.

Practice of "amicable settlements"

Amnesty International and ACAT found evidence that some people in Burundi prefer to use a traditional and informal dispute resolution system, whereby the victim or her family negotiates with the perpetrator or the family of the perpetrator. The negotiation is intended to result in a settlement often involving the payment of some form of compensation – cash or other goods – to the family of the victim. This negotiation takes place outside of the criminal justice system.

In other instances, the victim or her family may agree that she marries the perpetrator as a means of providing her with both social and economic support. However, Amnesty International and ACAT consider that this practice condones rape and other forms of sexual violence and does not represent an appropriate alternative to the right of women victims of rape to obtain reparations. Amnesty International and ACAT delegates were informed that such arrangements are common when the victim is an orphan being looked after by distant relatives and is therefore relatively unsupported by her family, or when the perpetrator is a member of the victim's family. In these cases, the victim has very little social or negotiating power. Her views or feelings do not appear to be taken into account.

KJ, KIBAGO

KJ, a 14-year-old girl, was reportedly raped by a soldier at her home in Murambi Colline, Kibago in June 2004. When the rape happened, her father saw the rapist and chased after him. He ended up following the perpetrator back to his home where they negotiated an "amicable settlement". At the time, the perpetrator agreed to marry KJ and to provide for her.

The failings of the criminal justice system to deal adequately with cases of rape explain in part why victims of sexual violence may be forced to enter into negotiated settlements with the perpetrators. Amnesty International and ACAT learnt how an agreement between the perpetrator and the victim can be reached in a number of ways, including a cash payment, the covering of the victim's schools fees or providing clothes to the victim's family. The victim's family take a leading role in the negotiations, but crucially the victim herself is often marginalized throughout the process. Even the people who help mediate between the perpetrator and the victim's family receive payment:

NR, KAMENGE

NR, from Kamenge, Bujumbura told Amnesty International and ACAT delegates that a shopkeeper from her suburb had raped a girl aged 13. The shopkeeper then paid 50,000 Burundian francs (approximately US$45) to the mother of the victim to make her drop the charges against him. He also gave two crates of beer to the people who helped meditate between him and the mother of the victim.

Under the terms of an "amicable settlement" the victim's family may organize a marriage between the victim and the perpetrator. The minimum age for marriage is 18 years for girls.[43] Even girls below the age of 16 who have been the victims of sexual violence are sometimes forced to marry the perpetrator. This practice is partly driven by a widely held view that girls or women will stand little chance of marrying, finding security and therefore of leaving the family once they have been raped.

Victims of rape stand little chance of finding another partner or spouse if the crime is common knowledge to the local community. Some rape victims consider that if they marry the perpetrator of the attack, they will suffer less social stigma, and gain social acceptance and economic security. Amnesty International and ACAT do not consider that "amicable settlements" provide women victims of rape with an independent choice. In such cases, such as the one illustrated below, poverty and lack of opportunities force women victims of rape to acquiesce to "amicable settlements".

FK, BUYENZI

FK was 17 when she was raped by a neighbour. As she was an orphan, she was living with her grandmother in Buyenzi. Her neighbour was much older than her and was already married. The neighbour promised FK's grandmother that he would marry her. FK went to live with the perpetrator, but soon left him when she discovered that he was married. Her grandmother then threw her out when she returned to her house. The chef de zone intervened and told the rapist that he must find another house for FK and continue to live with her while remaining married to his wife.

Such agreements between the perpetrator and the victim's family fail to consider the victim's wishes not to marry the perpetrator and therefore constitute forced marriage. Even in cases when the victim is seemingly willing to marry the perpetrator, this decision is often made out of necessity rather than choice. In the concluding observations of the Committee against Torture in its initial report on Burundi, submitted in November 2006,[44] the Committee expressed its concern over the "extrajudicial or amicable settlement of rape cases, including by the administrative authorities, when emphasis is placed on practices such as marriage between rapist and victim" and recommended that impunity for rape must be addressed by the state in order to eliminate this practice.

Marriage under such circumstances is a violation of women's rights and exposes them to the continuation of the initial abuse. The fact that an "amicable settlement" between the victim's family and the perpetrator to bring about a marriage between the two is considered an advantageous arrangement illustrates vividly how the state fails victims of gender-based violence, denying them access to justice and leaving them to fend for themselves and negotiate the stigmatized status of being a rape victim.

The Public Prosecutor in Bujumbura did however state to Amnesty International and ACAT delegates that this type of "amicable settlement" cannot be made once formal charges have been lodged with the authorities.[45] However, one high-ranking official from the police confirmed that: "for girls between the ages of 14 and 15, parents often make arrangements (with the perpetrator) and sometimes we have to concede that this is their wish." This statement betrays a tacit acceptance and recognition by the authorities of the "amicable settlements" system.

The Burundian authorities have an obligation to eliminate this practice. "Amicable settlements" do not amount to an effective remedy for human rights violations as required under international human rights law nor do they provide adequate redress to the victims. In cases where the authorities are seen to collude with or acquiesce in "friendly agreements" that result in forced marriage, their actions may in certain instances amount to condoning torture. The Burundian government is obliged to fulfil its responsibility to respect, protect and fulfil the human rights of women rape victims.

3. The response of the state

Judicial police officers fail to thoroughly and effectively investigate rape

The responsibility to investigate offences, including sexual crimes, lies with judicial police officers,[46] who have the power to arrest and detain suspects,[47] initiate investigations[48] and take sworn witness statements.[49] Judicial police officers operate under the management of the Public Prosecutor's office and have an office in each commune.[50] Judicial police officers have however been severely criticized; it is alleged that they routinely fail to ensure that allegations of rape and sexual violence are fully investigated and therefore successfully prosecuted.

On receiving a complaint of rape the judicial police officers are supposed to open a case file, take a statement from the victim and witnesses and collect evidence.[51] The Code of Penal Procedure also grants judicial police officers special powers to carry out investigations into unsolved crimes and offences. Once they have compiled evidence of the crime, they are required to send the case file to the Public Prosecutor.[52]

When a victim of rape decides to press charges, she will often report the crime to the local administration located in each commune.[53] The local administration is comprised of civilian administrative staff and other standard law enforcement officials who should advise the victim to report the incident to judicial police officers. However, they often fail to do so. Women who seek to report the crime, yet are unaware of the legal system in place, never even reach the position where they are able to do so.

Discriminatory attitudes of law enforcement officials

The vast majority of judicial police officers who listen to and record allegations of rape are men who have not been provided with the necessary gender training; in particular in how to deal with complaints of rape or sexual violence. Women stated that this failure by the Burundian authorities contributes to the pervasive reluctance by many women victims to lodge formal complaints with the police. One high-ranking officer in the Burundian police force stated to Amnesty International and ACAT delegates during an interview that officers in

the Burundian police force were influenced by "Burundian culture". This implies that the predominant patriarchal culture in Burundian society serves as a sufficiently strong justification for inaction.

The balance of male and female police officers is also highly uneven.[54] The police are perceived by women as being unresponsive and uncaring. Insensitive attitudes within the police often directly allow the perpetrator to escape prosecution. It was also alleged that some officials at the local administration level were complicit in rape and sexual violence by tolerating it or failing to denounce violence against women within their communities, as well as failing to report perpetrators to the authorities, as the following account illustrates:

UJ, KANYOSHA

UJ is a girl aged 18 from Ruziba, Kanyosha, Bujumbura. She was raped on 25 July 2006 by a man living in her community who she knew well.

He had invited her to his house as he often did because they knew each other. On this occasion, however, when she entered, he closed and locked the door. He started to threaten her and she noticed the presence of two other men in the room. When she realized that it was a trap she called for help. Some neighbours came over, but were unable to gain entry. The Chef de Quartier also arrived but sent the neighbours away, telling them that UJ was the wife of the attacker.

The man who invited her into the house reportedly raped her. UJ was forced to stay there all night. It was a soldier, a friend of her parents, who came to the house to release her and arrest the perpetrator. It is unknown what happened to the perpetrator afterwards.

In this instance, the Chef de Quartier failed in his obligation to prevent violence against women in two ways. By saying that UJ was the wife of her attacker, he was reinforcing the idea that domestic violence should be tolerated by the community and the state and that no one should interfere. He was also failing to provide assistance to support a woman at risk of attack and failed to prevent the attack. Sources told Amnesty International and ACAT that they suspected that the Chef de Quarter did this because he knew the rapists and wanted to protect them.

UJ asked the judicial police officer dealing with the case to arrest the accomplices, but he refused. He also refused to accept her medical certificate from MSF and demanded a second certificate from another doctor. Local human rights defenders from both ACAT and the Association des Femmes Juristes du Burundi visited the judicial police officer in charge of the case to question him about his decision. He stated that it was necessary to visit a specialist doctor in order to obtain the most reliable results. He stated that they were still searching for the accomplices to the rape.

When the Chef de Quartier was questioned by NGOs about his role, he maintained that he was outside the house at the time of the attack but that he knew that the victim was already locked inside by the time he had arrived. He justified his inaction on the grounds that it was dark and it could have been dangerous to intervene.

A culture of indifference among law enforcement officials compounds the problem. Trivial pretexts are offered by the authorities to local NGOs in order to justify their inaction to prosecute those responsible for acts of violence against women. Amnesty International and ACAT have received reports that the police often blame the victim either for her behaviour towards the perpetrator or for the clothes she was wearing at the time of the attack. In such cases, legitimate allegations of rape are not taken seriously and indicate that police officers perceive that either the women has consented or that she has been partly responsible. Adult victims often report an uncaring reaction from the police when they report rape or sexual violence. Law enforcement officials often fail to take action and even discourage victims from taking legal action.

Human rights organizations also stated that police officers regularly cite a variety of reasons to justify the low number of prosecutions. These include a lack of resources and personnel, the practice of "amicable settlements", the low number of formal accusations made by rape victims, a sizeable proportion of cases being dropped by the victims once the case file has been sent to the Public Prosecutor and the lack of witness statements to support the charges.

It should be noted that the police response to investigating allegations of rape and prosecuting those responsible is greatly affected by a lack of resources. One common problem is the lack of police transportation to allow them to carry out their activities, including visiting the scene of the crime and arresting suspected perpetrators. Some victims have even been requested by the police to deliver a summons to the perpetrator of the crime. Such conduct by law enforcement officials is inexcusable – it is the direct responsibility of the state to ensure that perpetrators are arrested and that victims are protected. Other key problems are the lack of facilities in police stations for proper interviews with the victims. The police cite resources as the main obstacle to improving their response. However, whereas financial support from the government is important, it must be accompanied by systematic training and revision of working practice, in order to increase the capacity of the police to investigate crimes of rape and deal appropriately with the victims.

The role of medical reports

Amnesty International and ACAT delegates noted that during interviews with police officers on the admissibility of evidence, a great deal of emphasis was placed on the role of medical reports. This is because these often offer the most important and decisive evidence to support a prosecution when little or no other evidence has been collected. With regard to the investigation of rape, judicial police officers often fail to visit the crime

scene or collect crucial material evidence during the course of their investigations.[55] During interviews, some judicial police officers have defended this practice. One in particular stated that: "nothing can be done if a medical expert has not shown that the rape took place." As a matter of law (rather than practice) however, the Burundian Penal Code does not specify that the judicial finding of rape is dependant on the issuing of a medical certificate.

Medical reports may establish that sexual intercourse has taken place and whether there are signs, such as lesions or wounds, indicating the use of force. However medical reports cannot ever fully establish whether a rape has occurred, particularly where medical examination is carried out days or weeks after the event.

Judicial police officers sometimes demand that victims obtain medical reports from a doctor designated by them, stating that only these reports are accepted by courts as admissible evidence. In addition, consultations with certain doctors designated by judicial police officers sometimes require the victim to pay money for the examination. Some victims stated that they were forced to obtain a second medical report, including another consultation with a doctor, which took time to arrange, by which point the medical evidence to suggest that rape took place was less clear.

Amnesty International and ACAT believe that the successful prosecution of a rape case should not be overly dependant on the existence of a medical certificate. Other forms of evidence, as well as other methods of collecting evidence, should also be actively sought (through investigation) and considered by the judicial police officers. In particular, judicial police officers must comply with the Code of Penal Procedure by acknowledging all items of evidence gathered during an investigation. Such examples could include witness statements and physical evidence of violence such as torn clothes, fingerprints or psychological reports. The government must also provide training to all law enforcement officials on how to document and investigate cases of rape and other forms of sexual violence. Police officers must also be able to accept medical reports from all qualified and experienced medical practitioners.

Reaction of the state to failings of law enforcement officials

The Judicial Police Commissioner for the City of Bujumbura confirmed that the low level of prosecutions is partly as a result of the reluctance of women to come forward:

"As for other crimes, we know that there are a lot of cases of sexual violence which go unpunished. What can we do if the victims do not press charges? Some cases are kept quiet because disputes are settled in the community. Certain cases do not even make it to the police."

An officer belonging to the police in charge of children and the protection of morals stated how, even when a girl has been raped, her family may not pursue the case, leading to the release of the suspected perpetrator:

"For rapes committed against children, complainants come forward but sometimes they do not follow them up."

The current Burundian government has indicated its concern regarding the high level of reported and unreported rape. At the time of writing this report, the authorities had completed the first phase of consultation and planning to set up a specialized section within the police to deal with sexual and gender-based violence with the assistance of BINUB. A workshop with Burundian police officers took place in October 2006 at ONUB in collaboration with the UN. The workshop agreed on the establishment of a specialized section and proposed standard operating procedures for its functioning. The participants strongly recommended the following: the creation of a special unit dealing with sexual and gender-based violence; establishing this special unit in all the 17 provinces of Burundi; recruiting more women police officers; reinforcing the capacity of police officers; launching an awareness-raising campaign on sexual and gender-based violence; and the creation of an inter-ministerial committee.

Discussion between the Burundian national police, the authorities and the UN focused on the organization of the special unit and its standard operating procedures. While the Burundian authorities have now agreed on the establishment of the specialized section, the government has yet to present its funding proposal to BINUB in order to begin the recruitment and training of police officers so that the units can operate. Amnesty International and ACAT welcome such measures and encourage both parties to ensure their successful completion.

Women are likely to remain reluctant to file complaints with the police unless investigations by the police improve and successful prosecutions occur. The mistrust in the police is compounded by reports of human rights violations, including rape and sexual violence, committed by the recently established and restructured Burundian police force. Soldiers or law enforcement officials allegedly committed 5.8 per cent of the rapes reported to APRODH in 2006.[56] The UN reported how eight women were allegedly raped by a number of police agents in the commune of Nyarusange (province of Gitega) between April and May 2006.[57]

Role of the Public Prosecutor

Armed conflict, corruption and political interference have left a weakened law enforcement and justice system in need of reform.[58] The judicial system in Burundi lacks human, financial and material resources, including basic equipment such as paper, furniture and office equipment. Law enforcement and judicial staff are poorly trained. Local human rights NGOs have stated that the Public Prosecutor and judges lack motivation and are apathetic to reports of poorly investigated incidents of rape and sexual violence by judicial police officers. Cases may not be considered properly, and adequate sentences may not be imposed.

The Public Prosecutor oversees the Public Prosecutor's department, which includes the judicial police officers. It is the role of the Public Prosecutor to examine the case file prepared by the judicial police officers, which will include information on the charges and the crime. The Public Prosecutor decides whether to charge the suspects and bring the case to court or

to drop the investigation. The Public Prosecutor can also decide at this point whether or not to put the accused into preventative detention. The court will assess the legality of the decision of the Prosecutor and whether to uphold the decision or not.

Initially, it is the responsibility of the Public Prosecutor's Office to start legal proceedings, known as an "action publique",[59] when it receives a reliable report that a rape has occurred. The Code for the Organization and Management of the Judiciary states that the decision to initiate legal proceedings belongs chiefly to him. Once legal proceedings are undertaken in the court the victim may file a case, in which she may claim damages, by making a declaration to the registrar or the court at any point between the opening of the hearing and the closure of proceedings.[60] The victims receive no information from the Public Prosecutor on the progress of the case file and the current system places a disproportionately heavy burden on victims of rape to chase these case files up. NGOs provide assistance to victims by accompanying them to the Public Prosecutor's office.

The current system is failing to support victims of rape when they report a rape and seek to prosecute. Firstly, the current judicial process fails to support female victims of rape who are apprehensive about testifying in a public trial. The victim is not provided with the option of presenting her testimony in private.[61] Local human rights organizations have reported that the prosecution service lacks the motivation to ensure fair and thorough prosecutions. Other reports indicate that judges are discriminatory towards women victims, which invariably affects the outcome of the legal proceedings.

A key motive for a number of women to report cases of rape to the judicial police is the hope that they will be awarded compensation by the judge ruling on the case. However, many victims fail to file a civil lawsuit because they are unfamiliar with the judicial process. Once a civil law complaint for damages has been made, it is the responsibility of the judge to ensure that damages are awarded and the legal fees for the trial are covered.[62] Local human rights NGOs have reported that judges may fail, especially if the claimant is absent, to award sufficient reparations. Local human rights organizations have reported cases where inadequate reparations were ordered by the presiding judge. In other instances, legal fees incurred for the trial by the victims who file a civil lawsuit are high and often the perpetrator, if convicted, does simply not possess the financial means to cover them and/or provide reparations, even when the court has found him guilty and has ordered that damages be paid to the victim.

The role of non-governmental organizations in providing assistance to victims of rape

The role of NGOs has been crucial in addressing the issue of women's protection from sexual violence and their access to justice. In particular, NGOs are playing a key role in informing and supporting victims of rape and other forms of sexual violence to break the taboos surrounding sexual violence. NGOs have been instrumental in providing essential medical, psychological and legal assistance to victims and are proving to be indispensable in the fight against rape and sexual violence.

Firstly, NGOs provide medical assistance to victims. Staff members of NGOs accompany victims to hospitals and specialist medical centres, notably the MSF Seruka Centre. NGOs provide accommodation for victims of rape and many are equipped with boarding houses where women and girls can recover from their ordeal both physically and psychologically. Furthermore, certain NGOs ensure that all medical bills are paid as well as buying medication for victims. NGOs cover the transport costs for victims who have to travel to the NGO or the police to report the crime.

Secondly, NGOs provide psychological assistance to women. Rape victims are welcomed at centres where their accounts are listened to. NGOs provide psychological counselling to assist victims to recover from their ordeal. NGOs advise women on how to follow the progression of their case files with the Public Prosecutor and accompany them to the Public Prosecutor's office. In addition, NGOs may also assist the victim by attending the trial. NGOs also cover the accommodation and transport costs for the victim to ensure that the legal proceedings go ahead.

The increased number of victims seeking advice and support from local Burundian NGOs demonstrates tangible progress. However, their capacity to provide assistance and support to people living in all areas of the country is severely limited. NGOs are therefore ill-equipped to monitor and provide financial and logistical support to the vast majority of victims. These services must be provided by the government with the support of the international community.

4. International and national legal protection for victims of rape

International legal framework

International human rights law on sexual violence

States have a duty to respect, protect and promote the human rights of women under international human rights law, and those states that fail to do so may be held accountable. States' obligations include both ensuring that their agents do not commit acts of gender-based violence as well as implementing positive and effective measures to prevent, investigate, prohibit, punish and ensure redress for violence against women, whether the perpetrator is a state or non-state actor. [63]

The state therefore has the duty to enact laws, institute policies and implement practices that protect victims of sexual violence, provide them with appropriate remedies, and bring the perpetrators to justice.

Burundi ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 8 January 1992, and signed its Optional Protocol on 13 November 2001. The CEDAW Committee, which monitors the application of the Convention, issued General Recommendation 19 in 1992. This further emphasized the role of the state to prevent

violence against women and prosecute those responsible, in particular to: "take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act; [and to] ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence, give adequate protection to all women, and respect their integrity and dignity."

The standard of "due diligence" determines the requisite level of effort that a state must employ to fulfil its responsibility to protect individuals from abuses of their rights by non-state actors.[64] Again, according to the UN Declaration on the Elimination of Violence against Women, states should: "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private actors". [65]

Effective due diligence requires the state to adopt a whole range of other measures in addition to legislation to address gender-based violence. These include the training of state personnel, the adoption of practical policies and mechanisms to protect women's rights, as well as ensuring that relevant legal mechanisms are accessible to women who have experienced any form of gender-based violence and that such mechanisms best serve the needs of victims themselves.

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, signed by Burundi on 3 December 2003, also states that: "Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited," and requires states to prohibit, prevent and punish "all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public (Article 4)." The Burundian authorities should, according to the law of treaties, not take any action contrary to the objectives and purpose of the Protocol despite not having ratified it. Amnesty International and ACAT strongly urge the Burundian authorities to immediately ratify the Protocol.

The UN Convention on the Rights of the Child, ratified by Burundi on 19 October 1990, also obliges state parties to protect those under the age of 18 from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse." Burundi is also a party to the African Charter on the Rights and Welfare of the Child, which obliges state parties to take measures "to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of a parent, legal guardian or school authority or any other person who has the care of the child." (Article 16 (1))

International humanitarian law on sexual violence

Under international humanitarian law, applicable in times of armed conflict, all parties involved are answerable for any acts which contravene treaty-based or customary law. Rape and other forms of sexual abuse are prohibited under Common Article 3 of the Geneva Conventions which applies to non-international armed conflicts: "To this end the following

acts are and shall remain prohibited at any time and in any place whatsoever (…) (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (…) (c) outrages upon personal dignity, in particular, humiliating and degrading treatment; (…)." Additional Protocol II – to which Burundi is a party – and which applies to non-international armed conflicts prohibits: "violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; collective punishments; taking of hostages; acts of terrorism; outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; slavery and the slave trade in all its forms; pillage; [and] threats to commit any of the foregoing acts" (Article 4).

International criminal law on sexual violence

Some types of violence against women and girls can be classed as genocide, crimes against humanity or war crimes, all of which are acknowledged under international criminal law to be among the most serious crimes.

The Rome Statute of the International Criminal Court (Rome Statute) has sought to ensure that women who are the victims of crimes under international law have access to justice. The Rome Statute has been ratified by the Burundi.

The following offences are among those classified as crimes against humanity under Article 7(1)(g) of the Rome Statute: rape, sexual slavery, enforced prostitution, enforced sterilization, and any other form of sexual violence of comparable gravity. The same Article also expressly recognizes that enslavement includes the trafficking of women. Article 7(1)(h) states that the persecution of any identifiable group or collectivity on gender grounds, when committed in connection with any crime for which the International Criminal Court has jurisdiction, constitutes a crime against humanity.

Furthermore, under international law, rape is considered to amount to torture when it is perpetrated by agents of the state. Burundi is bound under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it ratified on 18 February 1993, to criminalize torture and to investigate and prosecute those responsible for acts of torture and other cruel, inhuman or degrading treatment or punishment. Burundi can also be held accountable for acts of rape perpetrated by private actors if it has failed to exercise due diligence to prevent the crime, punish the perpetrator or provide redress to the victim.

Domestic legal framework

Article 385 of the Burundian Penal Code prohibits rape. Anyone found guilty of rape, either by violent means, threats, deception or by taking advantage of a person who is not in full possession of their faculties either through illness, or any other cause, is liable to a prison sentence of between five and 20 years. If death has resulted, the perpetrator is liable to life

imprisonment or the death sentence. Any indecent act upon a minor aged under 18 is punishable by a prison sentence of between five and 15 years, and on an adult to a sentence of between six months and five years. If an indecent act upon a minor has been accompanied by violence, the penalty increases to a maximum of 20 years. The minimum penalties are doubled in specific circumstances, including if the perpetrator is in a position of authority over the victim, if the crime is committed by more than one person, or if the crime causes serious medical problems.

A revised Penal Code is currently being examined by the Burundian National Assembly. At the time of writing, it is not clear to Amnesty International and ACAT when the new code will be promulgated. The new Penal Code does reportedly propose new provisions for the protection of women from sexual violence. A draft version was sent to civil society in November 2006 and a revised version was sent to the National Assembly in February 2007.

The initial version of the draft Penal Code sent to civil society includes among the crimes against humanity (Article 194) "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity" in line with the provision of the Rome Statute. Article 545 of the draft Penal Code also includes rape as a separate crime and defines it as "any act of sexual penetration, in whatever form and by whatever means, committed on another person through violence, duress, threat or surprise" and punishes it with imprisonment from five to 10 years. Certain types of rape, notably rape by family members, rape of children under the age of 18 and rape by state officials, are punishable by prison sentences ranging from 10 years to life imprisonment, with corresponding fines. The current draft Penal Code provides an improved legal framework for the Burundian police and judiciary to ensure effective and fair prosecutions for rape. Amnesty International and ACAT call on the Burundian authorities to ensure the prompt promulgation of the revised Penal Code.

5. Conclusion

Burundian law enforcement officials and the judiciary regularly fail to exercise due diligence, and perpetrators of rape and sexual violence subsequently escape punishment. The government of Burundi has an obligation under international human rights law to protect, respect and fulfil women's human rights, including by ensuring that alleged perpetrators of rape are brought to justice and that the police and the judiciary are equipped and trained to effectively investigate and prosecute cases of rape. NGOs are currently providing services where the state is failing to do so. The state cannot abdicate its responsibility of due diligence, and in the short term should support the work of NGOs.

Amnesty International and ACAT are concerned about reports that sexual violence is perpetrated by both state and non-state actors. The government now has the task of gaining trust with the civilian population in Burundi and giving victims the confidence that rape will be appropriately and effectively investigated by the authorities and the perpetrator brought to justice. The state's defaulting on this task constitutes a violation of women's human rights and compounds the human rights violations that rape victims have experienced.

Amnesty International and ACAT promote partnership and co-operation between all Burundian human rights organizations working on rape and sexual violence. By working together on one common aim, Burundian NGOs can progress further in the field of promotion and protection of women's rights. A key focus for all organizations working in partnership should be the responsibility of the Burundian authorities to fulfil and respect its human rights obligations under international human rights law. The real challenge for Burundian NGOs now lies in ensuring that the authorities recognize that it is their responsibility to undertake the work that local organizations have already started. Amnesty International's and ACAT's human rights recommendations to the Burundian government, based on women's testimonies collected in this report, are thus intended to contribute to the government's next steps in seeking to decrease levels of rape. It is now time to improve Burundian women's access to justice.

6. Recommendations

Amnesty International and ACAT are making specific recommendations to the Burundian authorities and the international community.

The Burundian government should:

Public condemnation:

- Publicly and unequivocally condemn all violence against women and girls including that occurring in the family, in the community and by all state officials, and publicly commit itself to fulfil its responsibility to act with due diligence to combat violence against women.

Monitoring:

- Develop, distribute and apply standardized procedures on how to accurately record the case details of incidents of rape and other acts of sexual violence.
- Establish an administrative system to systematically monitor and record all reported cases of sexual violence in Burundi, including successful prosecutions and final sentences. The data collected should include detailed figures separated into the categories of gender, age and other key criteria with the overall aim of indicating trends of rape and sexual violence and should be regularly published and widely disseminated.

Investigation and prosecution:

- Give clear and immediate instructions to key high-ranking officials of the Burundian police force, the army and other security forces that all law enforcement officials should treat rape as a crime and should take all necessary measures to effectively investigate allegations of rape and other forms of sexual violence and bring the perpetrators to justice.
- Ensure that all complaints and reports of rape and other forms of sexual violence by law enforcement officials are promptly, impartially and effectively investigated by an independent body and the alleged perpetrators brought to justice. Officials suspected of committing rape or other forms of sexual violence should be suspended from active duty during the investigation.
- Instruct the Public Prosecutor and other influential members of the magistracy to give clear and immediate instructions to the police, and notably the judicial police, to guarantee that all allegations of rape will be fully investigated using the full range of investigative techniques.
- Ensure that those responsible for rape or other forms of sexual violence are brought to justice in a trial that complies with international fair trial standards.
- Increase financial resources to the Burundian Police Force, in conjunction with measures aimed at long-term reform, to enable them to respond more promptly and effectively, including the provision of transport means.
- Create an independent accountability mechanism to ensure prompt, thorough, independent and impartial investigations are carried out into all allegations of police failures to investigate properly rape and other crimes of sexual violence.
- Increase the recruitment and training of female personnel within the Burundian police services and the judiciary.
- Investigate and prosecute crimes of rape and sexual violence committed during the conflict by establishing a Truth and Reconciliation Commission and a Special Chamber as proposed in the UN Security Council resolution 1606 of June 2005.

Training:

- Provide systematic training to the Burundian judicial police force, the judiciary and other state institutions on how to investigate crimes of rape and sexual violence; how to deal with victims of such crimes, including appropriate conduct towards victims; and how to provide practical means for improving their responses.

Support for victims:

- Establish facilities within the judicial process that provide female victims of rape with the option of testifying in private.

- Establish an effective witness and victim support and protection programme to ensure the safety of victims and their families and to protect them from intimidation and retaliation.
- Establish and maintain an official state-managed fund regulated by the Burundian government to provide full reparations to victims of rape.
- Provide to victims of rape and other forms of sexual violence legal aid services and paralegal services throughout the country, including in rural areas.
- Establish further awareness-raising initiatives to increase public support for rape victims in order to change prevailing discriminatory attitudes to victims of rape.
- Seek to strengthen human rights organizations and women's groups through the provision of funding for training, research, advocacy and networking.

The international community (including the UN and key donor countries) should:

- Provide further technical and material support to programmes for immediate and effective assistance to victims of gender-based violence;
- Develop, in co-operation with the government, national and international NGOs, further public awareness campaigns to prevent violence against women and challenge the stigma of victims of rape and other forms of violence against women;
- Insist that the perpetrators of rape and other forms of sexual violence are brought to justice;
- Continue to support the reforming of the justice system in Burundi, including by providing technical assistance to ensure the establishment of competent, independent and impartial national courts;
- Provide systematic training on international human rights and humanitarian law, in particular on women's rights and the prohibition of violence against women, to all members of the armed forces and all law enforcement officials, including the judicial police, judges, prosecutors and other officials involved in the criminal justice system.

Endnotes

1 For further reading about sexual violence in Burundi, see the UN Interim report of the independent expert on the situation of human rights in Burundi, Akich Okola A/HRC/4/5, 26 February 2007, and "Etude sur les Causes et les Conséquences du viol dans la Société Burundaise, Opération des Nations Unies au Burundi, Décembre 2006 ». Both reports provide an overview of sexual violence in Burundi. The APRODH activities report 2006 provides additional information on rape and the perpetrators of rape and sexual violence.

2 For further information, see the UN Interim report of the independent expert on the situation of human rights in Burundi, Akich Okola, A/HRC/4/5, 26 February 2007. It should also be noted that although rape is widespread in Burundi, the western provinces were reportedly more affected during 2006 (for further information, refer to the report of the UN Secretary-General on children and armed conflict in Burundi, S/2006/851/Corr.1, 6 November 2006).

3 Ninth report of the Secretary-General on the UN Operation in Burundi, S/2006/994, 18 December 2006.

4 Due diligence determines the requisite level of effort that a state must employ to fulfil its responsibility to protect individuals from abuses of their rights by non-state actors.

5 Such customary practices are superseded by ordinary statutory laws. They are not recognized by any body of law nor codified in legislation. Such matters, depending on the resources of the woman in question, can be regulated through the national legal system. However, customary practices tend to be understood as the norm as families enforce them at community level.

6 None of the testimonies and accounts featured in this report disclose the full name of the victim in order to maintain both the privacy and security of the witness, source or victim.

7 Violence erupted in Burundi during 1993, when the first democratically elected Hutu president, Melchior Ndadaye, was assassinated by Tutsi army officers. Following his death, there were widespread attacks against the Tutsi civilian population by the Hutu population and subsequent reprisal attacks against the Hutu population by the Tutsi-dominated army. The conflict was protracted and resulted in serious violations of human rights and international humanitarian law by all parties. The Arusha Peace and Reconciliation Agreement was signed in 2000 between the government and all parties except for two armed groups: the CNDD-FDD led by Pierre Nkurunziza, and the FNL. The CNDD-FDD signed a peace agreement with the government in November 2003. The UN deployed ONUB in June 2004, and successful elections between June and September 2005 ended the transition and installed Pierre Nkurunziza's CNDD-FDD party in power. In September 2006, the last armed group, the FNL, signed a ceasefire agreement with the Burundian authorities. Negotiations between the government and the FNL on the implementation of the ceasefire are ongoing. ONUB completed its mandate in December 2006 and has withdrawn its troops. It has been replaced by BINUB and an African Union force. BINUB's mandate is for a twelve month period from 1 January 2007.

8 The elections marked an end to the transitional government set up by the Arusha Agreement (2001). The CNDD-FDD won 58 per cent of the seats in the National Assembly.

9 Immaculée Nahayo Nyandwi became President of the Burundian National Assembly on 16 August 2005. Pie Ntavyohanyuma replaced Immaculée Nahayo Nyandwi on 16 March 2007. Alice Nzomukunda was elected as Vice-President of the Burundian National Assembly on 25 April 2007.

10 At the time of writing, eight out of 20 ministerial posts were filled by women.

11 ACAT Burundi was formed in 2003. This NGO forms part of a larger international structure known as FIACAT. ACAT Burundi reports and lobbies on behalf of people who have been tortured, detained in inhumane conditions or made to disappear, whatever their origins, political opinions or religious beliefs.

12 Amnesty International last worked on the issue of gender-based violence in Burundi in 2004 and published a report, *Burundi - Rape - the hidden human rights abuse* (AI Index: AFR 16/006/2004). The report was supplemented by lobbying activities aimed at the Burundian authorities and the international community.

13 The two organizations worked with a range of human rights and womens' organizations, including MSF, APRODH, Ligue ITEKA, AFJB, ADDF, APFB, Nturengaho and CAFOB. The two organizations met with SOFEPA, a group comprised of women parliamentarians.

14 Amnesty International and ACAT spoke with senior-ranking and middle-ranking judicial police officers within the unit, the Police in Charge of Children and the Protection of Morals, as well as the Commissioner of the Judicial Police for the City of Bujumbura. Amnesty International and ACAT spoke with senior members of the Burundian magistracy including the Public Prosecutor in Bujumbura, the Head of the Prosecution department at the Appeal Court of Bujumbura and other middle-ranking members of the Public Prosecutor's department in Bujumbura Rural.

15 The two organizations held meetings with the Office of the UN High Commissioner for Human Rights in Burundi.

16 For further information, see Amnesty International's report, *Burundi - Rape – the hidden human rights abuse* (AI Index: AFR 16/006/2004). It should also be noted that low-level conflict continued until September 2006 when the last armed group, the FNL, signed a ceasefire agreement with the Burundian authorities.

17 It should be noted that some crime statistics are produced by the Ministry of the Interior. Such statistical information is gathered on a provincial and regional basis. All crimes are divided into seven categories. Rape is one of a series of offences under the "Crimes against the family and public morality" category.

18 It should be noted that the figures are not comprehensive, but do provide a good indication of the number of women that currently report rape to NGOs.

19 The figure is a total for the three years (2004: 1,372 cases; 2005: 1,477 cases; 2006: 1,190 cases). The statistics were recorded directly from staff at MSF.

20 The MSF Seruka Centre, based in Bujumbura, was opened in 2003. The Seruka Centre aims to provide comprehensive medical, legal and social support to victims of rape. Just under three quarters of those victims who attend the centre are from Bujumbura Mairie and Bujumbura Rurale. Just over one quarter are from other provinces. Bujumbura Mairie is the province where the capital is located. Bujumbura Rural is the province which surrounds Bujumbura Mairie. Access to Seruka Centre is more difficult for women from more distant provinces. MSF do however provide medical supervision and training to three provincial medical centres, including those found in Bubanza, Makamba and Karuzi.

21 Ligue ITEKA and APRODH are leading human rights organizations in Burundi. Both organizations cover victims' medical, psychological and legal expenses as well as support their social reintegration. It should be noted that cases reported to both Ligue ITEKA and APRODH could have also been reported to MSF.

22 Ligue ITEKA, Rapport Annuel sur la Situation des Droits de l'Homme, Edition 2005, p 22.

23 Ligue ITEKA, Rapport Annuel sur la Situation des Droits de l'Homme, Edition 2006, p 22.

24 APRODH, Rapport d'Activités, 2006, p 26.

25 It should be noted that Burundi has been affected by mass killings and ethnic violence since its independence from Belgium in 1962.

26 The Arusha Peace and Reconciliation Agreement (August 2000) granted provisional immunity for "political crimes" committed prior to the agreement to all signatories.

27 In March 2004, the CNDD-FDD and the transitional government signed the Pretoria Protocol on "Pending issues for power-sharing, defence and security in Burundi" to extend provisional immunity to CNDD-FDD leaders and fighters, as well as government security forces.

28 The bill to grant provisional immunity to Palipehutu-FNL members was adopted by the National Assembly on 3 November 2006.

29 See Amnesty International's report, *Burundi - Rape – the hidden human rights abuse* (AI Index: AFR 16/006/2004). See also Ploughshares, Armed Conflicts Report, Burundi 2005, http://www.ploughshares.ca/libraries/ACRBriefs/ACRBrief-Burundi.htm.

30 For further information, see Amnesty International's report, *Burundi – Rape – the hidden human rights abuse* (AI Index: AFR 16/006/2004).

31 For further information, see the Interim report on the human rights situation in Burundi submitted by the Special Rapporteur of the Commission on Human Rights, pursuant to Economic and Social Council decision 1998/274 (50-54), 13 October 1998.

32 For further information on the information in this paragraph, see Amnesty International's report, *Burundi – Rape – the hidden human rights abuse* (AI Index: AFR 16/006/2004).

33 Chef de Quartiers, Chefs de Zone, Chefs de Secteur and Chefs de Collines are traditional community leaders of each of the corresponding sub-divisions within each commune. See footnote 40 for further information.

34 The Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation was made during the International Meeting on Women's and Girls' Right to a Remedy and Reparation, held in Nairobi from 19 to 21 March 2007. It was attended by women's rights advocates and activists.

35 Seventh report of the Secretary-General on the UN Operation in Burundi, 21 June 2006, p 8.

36 A women's organization providing victims of rape and sexual violence with support and legal advice.

37 ONUB gender unit, Etude sur les Causes et les Conséquences du Viol dans la Société Burundaise, Décembre 2006.

38 Ninth report of the Secretary-General on the UN Operation in Burundi, S/2006/994, 18 December 2006.

39 ONUB gender unit, Etude sur les Causes et les Conséquences du Viol dans la Société Burundaise, Décembre 2006.

40 Ligue ITEKA, Rapport annuel sur la situation des droits de l'homme, Edition 2006, Sythèse, Bujumubura, Mai 2007, p 24.

41 IRIN NEWS, Armed banditry, sexual violence increasing, 16 May 2007.

42 The Burundian police services are affected by financial difficulties and there are reportedly not sufficient cars available to make arrests. Police officers therefore request that the person pressing charges covers the cost of a taxi ride. The car is then hired by the police services who travel to the location in order to make the arrest.

43 Article 88, Decree-law 1-024 of 28 April 1993 amending the People and Family Code, Article 88: "Men, prior to reaching the age of 21, and women, prior to reaching the age f 18, may not contract marriage. Nevertheless, the provincial governor may grant an age dispensation if there is a serious reason."

44 Consideration of reports submitted by state parties under Article 19 of the Convention, Conclusions and Recommendations of the Committee against Torture, CAT/C/BDI/co/1, 15 February 2007.

45 It should be noted, from the case study above, that in reality this position is not adhered to.

46 Article 9 Law on the creation, organisation, mission, composition and functioning of the National Police specifies that the Burundian national police is comprised of four police branches: 1) the general police in charge of home security ; 2) the judicial police ; 3) the police in charge of air transport, border control and immigration ; 4) the police in charge of prisons.

47 Article 19, Law No 1/015 of 20 July 1999 amending the Code of Criminal Procedure: "If the suspected perpetrator of the offence is not present at the scene, the judicial police officer may search for him within the boundaries of the jurisdiction of the court of first instance and enjoin him to appear before him and, if necessary, force him to do so."

48 Article 16, Law No 1/015 of 20 July 1999 amending the Code of Criminal Procedure: "In the event that someone is, or is said to have been, caught in the act of committing a crime or offence, the nearest available judicial police officer with general jurisdiction shall travel to the scene without delay in order to record the offence and investigate the circumstances in which it was committed."

49 Article 17, Law No 1/015 of 20 July 1999 amending the Code of Criminal Procedure: "He can compel anyone who may be able to provide information as a witness to give evidence under oath under the terms established in Articles 47 and 48. Such an oath may not be imposed on the suspected perpetrators of the offence."

50 Burundi is divided into 17 provinces. These are then sub-divided into 117 communes. A commune is then divided further into smaller units of zone, secteur, colline and sous-colline.

51 Article 3, Law No 1/015 of 20 July 1999 amending the Code of Criminal Procedure.

52 Article 5, Law No 1/015 of 20 July 1999 amending the Code of Criminal Procedure.

53 Many women report the crime to the local administration because they are unaware of the role of judicial officers. The local administration is also regularly assumed by women to be the first point of contact.

54 The Ninth report of the Secretary-General on the UN Operation in Burundi (S/2006/994, 18 December 2006) did however report that ONUB was assisting the Burundian national police with the establishment of a special gender unit within the framework of training modules. Amnesty International welcomes such measures and encourages both parties to ensure their successful completion.

55 Investigative responses by the police to other crimes will not be included in this report which focuses primarily on rape.

56 APRODH, Rapport d'activités, 2006, p 29.

57 UN Interim report of the independent expert on the situation of human rights in Burundi, Akich Okola A/HRD/4/5, 26 February 2007.

58 For further information, see Interim report of the independent expert on the situation of human rights in Burundi, Akich Okola, A/HRC/4/5, 26 February 2007 and the report of the independent expert on the human rights situation in Burundi, Akich Okola, E/CN.4/2006/109, 23 December 2005.

59 "Une action publique » is a prosecution taken up by the Public Prosecutor against a person who has committed a crime which gives rise to an « action civile » in favour of the injured party. Law 1/004 of 14 January 1987 amending the Code on Organization and Jurisdiction of the Judiciary, Article 189: Responsibility for bringing public prosecutions before all courts lies entirely with the Public Prosecutor. The latter may perform the duties of officer of the Public Prosecutor's Office in any court.

60 Article 120, Law No 1/015 of 20 July 1999 amending the Code of Criminal Procedure: Once a public prosecution has been referred to a court that has authority to try the case, the injured party may apply to that court to join the proceedings as a civil party. This can be done at any time from the point at which the case is referred to the court until argument has been closed by means of a statement filed with the clerk of the court or made at the hearing, a copy of which shall be given to him. In the event that a statement is filed with the clerk of the court, the latter shall inform the interested parties. In order to join the proceedings as a civil party, the party who wishes to do so shall pay a deposit to the clerk of the court in person.

61 Video cameras offer the possibility for video interviews to be conducted by judicial police officers.

62 Article 160, Law No 1/015 of 20 July 1999 amending the Code of Criminal Procedure: "Enforcement is undertaken by the Public Prosecutor's Office in the case of criminal convictions, damages awarded as a matter of course and imprisonment for non-payment of debts, at the behest of the civil party in the case of sentences pronounced at the latter's request, and by the clerk of the court in the case of the collection of fines, costs and ad valorem taxes."

63 Article 1 of the UN Declaration on the Elimination of Violence against Women, proclaimed by the UN General Assembly on 20 December 1993, defines violence against women as: "…any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."

64 In addition to CEDAW, the UN Human Rights Committee has commented on the obligations of states to ensure the protection of rights as outlined by the ICCPR: "the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so that as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would give rise to violations by States Parties of those rights, as a result of State Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities", Human Rights Committee, General Comment N°31, Nature of the General Legal Obligation imposed as State Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add. 13, 26 May 2004, para. 8.

65 General Recommendation 19 of the CEDAW Committee again re-emphasizes that violence against women must be prosecuted, despite whether the act was committed by a state or non-state actor: "under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".