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Jan Peter Balkenende
Prime Minister & Minister of General Affairs
Binnenhof 20
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THE NETHERLAND

Bristol, 16 April 2009

Dear Prime Minister,

It has come to our knowledge from the Burundian Community living in Norway, Sweden, Netherlands and the United Kingdom that since the signature of “the Memorandum of Understanding of the operational co-operation against illegal migration” between your Government and the Government of Burundi, the Burundian community is living under extreme and deep fear mixed with anxiety of being forcibly removed to Burundi, at a time when the Burundian Government has a compelling record of gross violation of human rights, encouraging impunity and killing civilians, mainly those from the Tutsi ethnic minority group and any civilian who is suspected of being a member of the FNL-PALIPEHUTU.

At a special forum held in Belgium on 10-12 April 2009 with the Burundian Diaspora’s delegations coming from Norway, Sweden, Denmark, the Netherlands, the United Kingdom, France, Italy and Belgium, it was decided that an urgent correspondence be addressed to the respective Head of Governments to highlight their deep concern of the high risk these forced removals are posing to their person’s integrity given the damning report on Human rights made by local NGO’s in Burundi, Human rights organizations, UNHCR and the Federation of Human rights organizations together with the current deep fear the participants have reported from their relatives and friends living in Burundi.

1. The different local NGO’s in Burundi and international Human rights organizations are depicting a grim and extremely worrying picture:

With regard to the respect for the integrity of the person, including freedom from arbitrary or unlawful deprivation of life, the UNHCR Country reports on Human rights practices published on 25 February

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2009 states that The Government's human rights record remained poor. Members of the army (FDN), the police, and the National Intelligence Service (SNR) were responsible for killings, torture, and beatings of civilians and detainees (including suspected FNL supporters), although there were fewer such reports than in the previous year"¹

The reports states, "The UN reported that security forces killed 57 civilians, compared with 20 in the previous year. The human rights organizations LIGUE ITEKA reported widespread killings of civilians by security forces after rebel attacks or for suspected collaboration with rebel forces. LIGUE ITEKA further claimed that authorities failed to investigate these incidents or identify the killers. There were reports of killings, usually perpetrated by unknown persons, of individuals accused of sorcery... Despite a 2006 announcement by the President that local authorities would be held accountable for such killings, the perpetrators were rarely identified or prosecuted"²

On the disappearance account, the Association for the Protection of Human Rights and Detained Persons (APRODH) reported that " 64 detainees were missing from detention facilities during the year and that the 10 detainees missing from detention facilities in 2006 had all been killed. At year's end the authorities had not investigated these killings."³

The latest report was the callous murder, on 09 April 2009, of the Anti-Corruption Activity and Vice-President of the Burundian Civil Society Group Anti-corruption and Economic Malpractice Observatory (OLUCOME), Ernest Manirumva who was stabbed to death in the early hours of 9 April 2009. Since January, Mr. E. Manirumva, a highly respected economist, had also been vice president of an official body that regulates public procurement.

Manirumva's death sent shockwaves through Burundian civil society to the extent that, on 14 April 2009, 30 prominent local civil society organizations addressed an open letter to the President of the Republic to express their deep concern in connection with the current security situation featured with individual threats, intimidations and targeted assassinations against civil society activists.

The same open letter reminds "the President of the Republic of the following recent high profile cases, which have not yet been investigated:

- The death of Mr. Ernest Manirumva, vice-president of OLUCOME, during the night of 8 and 9th April 2009;
- The assassination of two chiefs of wards in the borough of Kamenge;
- The assassination of Mr. Frederic Misigaro, ex senior manager in the National Intelligence Service (SNR);
- The assassination of the Lycee of Rushubi's Head teacher;
- The grievous bodily harm inflicted to Mrs. Joselyne Ndayishimiye, Nurse at CESAR Hospital during the night of 8th and 9th April 2009"⁴.

The letter states that "experience had proven that those investigations initiated by the Police had never lead to the prosecution of any suspect. The national and international opinion is reminded that investigations on the following cases have never come to a conclusion. It is, among others, the case of

¹ <http://www.Unhcr.org>: 2008 Country Reports on Human Rights Practices-Burundi; p.1

² <http://www.Unhcr.org>: 2008 Country Reports on Human rights Practices-Burundi; p.2

³ Ibidem; p.2

⁴ <http://www.burundinews.org>; Lettre ouverte a son Excellence Monsieur le Président de la République.

- Doctor Kassy Manlan, WHO Representative in Burundi;
- Luis Zuniga, UNICEF Representative in Burundi;
- Samuel Nimubona, Former Legal Representative of the Association “Revival Ministries in Africa”;
- Michael Courtney, the Apostolic Nuncio in Burundi;
- Agnes Bury from Action Against Hunger;
- The victims of Muyinga and Gatumba and many others forgotten in silence.”⁵

2 The international community and the UN General Secretary have failed to exert pressure for the implementation of the Truth and Reconciliation Commission and a special tribunal in Burundi.

It is well documented that on 21 October 1993 after the attempt coup in which the first elected Hutu President Ndadaye was killed, genocide masterminded by the FRODEBU party followed. More than 150,000 Tutsi were massacred. The final Report of the International Commission of Inquiry for Burundi presented in 2002 to the United Nations Security Council (S/1996/682) came to the conclusion that the mass slaughter of the Tutsi in October 1993 by the Hutu amounted to an act of genocide. In fact, paragraph 496 of the Report reads as follow: “ Having concluded that acts of genocide against the Tutsi minority were committed in Burundi in October 1993, the Commission believes that international jurisdiction should be asserted with respect to these acts.”⁶

Since it was agreed under the Arusha Agreement that an Independent International Court should be asserted to investigate, prosecute and judge all the perpetrators of the genocides, which took place in Burundi since the independence, the international community and the UN have failed the victims of the 1993 genocide and all the crimes that have followed up to now.

The rationale for establishing the Independent International Court was that it would assist the peace process by punishing at least some of those guilty of atrocities, Hutu and Tutsi. The argument is that by so doing, feelings of hatred and resentment can be satisfied to an extent which may make them less likely to erupt in the future. As Cassesse said in his first report to the UN General Assembly in 1994: “How could one hope to restore the rule of law and the development of stable, constructive and healthy relations among ethnic groups, within or between independent states, if culprits are allowed to go unpunished? Those who have suffered, directly or indirectly, from their crimes are unlikely to forgive or set aside their deep resentment.”⁷

In December 2003, the Human Right Watch report stated at page 55 as follow: “Responsible leaders inside and outside Burundi must seek to narrow as far as possible the effective immunity from prosecution granted by the protocol, both by restricting its duration and by insisting that it must not apply to serious violation of international humanitarian and human right. Should there be no effective action to limit this grant of immunity, combatants engaged in the ongoing war, whether government soldiers or rebels, will be encouraged to disregard international law whenever they find it useful to do so. Not only will the crimes detailed in this report go unpunished, but more such crimes will be committed.”⁸

⁵ Ibidem;

⁶ http://www.usip.org/library/tc/doc/reports/burundi_coi/burundi_coi1996toc.html: “The Final Report of the International Commission of Inquiry for Burundi presented in 2002 to the United Nations Security Council”

⁷ Cassesse, Antonio in Geoffrey Robertson: “Crime against Humanity, the struggle for global justice”, p.337

⁸ <http://www.hrw.org>: Human right watch report on Burundi-2003; p.55

As in international law, individual responsibility is intrinsic to the crime of genocide. Such an emphasis is especially important for Burundi, as it undermines the belief that all Tutsi act in the same way and can be held responsible for each other's actions, a belief central to the ideology of genocide. Equally, an emphasis on individual responsibility will prevent any suggestion that each and every Hutu is responsible for the genocide and all the crimes that followed.

In the meantime, the Human Right Watch report states at the end of 2008 that "A Committee including representatives of government, the United Nations, and civil society was formed in November 2007 to guide popular consultations on the establishment of a truth and reconciliation commission and a special tribunal. Although the UN Peace building Fund, established by the UN Peace building Commission, contributed US \$ 1 million, the Committee did not organise consultations, now scheduled for 2009. President Nkurunziza wrested control of the process from the first Vice President, contravening an agreement with the UN, and was rebuked by the UN Secretary General. The Government continues to urge amnesty for war crimes, crimes against humanity, and genocide, despite UN opposition."⁹

3. As a result of the above grounds, the Government of Burundi lacks the moral grounds to sign any treaty, convention or memorandum of understanding with regard to any human rights aspects and should not be trusted upon;

- Given the current security situation in Burundi and the level of crime committed in Burundi, which have never been investigated due to the fact that most of these crimes were committed by the Security services and the Intelligence National Service (SNR);

- Given the fact that President Nkurunziza signed a Decree to release the so-called "Political prisoners" who were more than 3000 criminals who had been convicted of homicide and related offences by a panel made of three judges and six jurors;

- Given the fact that the so-called "Political prisoners" were released on the basis of a provisional amnesty, which they knew would only apply for a short time, are more likely to hunt the Tutsi IDP's survivals of the 1993 genocide and any other witness for "killing the evidence";

- Given the untenable position held by the Government of Burundi with regard to the issue of crime against humanity and genocide, where it urges amnesty for those hideous crimes, when the whole world has taken the line that those crimes against humanity are so black they do not warrant human forgiveness. Those crimes in this class are no more Burundi's business: they were committed against humanity in general because the very fact that a person can order them diminishes the human race.

- Given the fact that the Burundian Government is still dragging its feet over the issue of transitional justice and that the President of the Republic has contravened an agreement made with the UN Secretary General over the control of the whole process by the Vice President;

⁹ <http://www.hrw.org>: Human right watch report on Burundi (2008); p.23

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- Given the fact that the CNDD-FDD leading Party has already started, in the same footsteps of the MRND Rwandan party before the 1994 Rwandan Genocide, the training and the organization of an armed militia in the Provinces of Muyinga and Kirundo in the north of Burundi;

I would recommend that your Government reconsider the legal validity of the Memorandum of Understanding already signed with the Burundian Government. If it has not yet signed such agreement I would seriously recommend that your Government restrain from removing by force failed asylum seekers and all illegal immigrants to Burundi because they would be under serious threat to be killed or persecuted. The threat to remove those Burundian citizens against their will to Burundi would amount to a fundamental breach and a violation of their human rights, *inter alia*, of article 13(2) of the Universal Declaration of Human Rights and article 12 of the 1966 International Covenant on Civil and Political Rights.

Yours sincerely,

Pacelli Ndikumana,
President.

C.C.

- The UN Secretary General
- The President of European Union
- The President of the European Court of Human Rights
- The High Commissioner for UNHCR
- The President of the Republic of Uganda, President of the Regional Initiative on Burundi;
- The President of the Republic of Rwanda;
- The President of the United Republic of Tanzania;
- The President of the Republic of Kenya;