

Transition in Burundi: Time to Deliver

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Domitien Ndayizeye, a Hutu of the Democratic Front for Burundi (Front pour la Démocratie au Burundi, Frodebu), will take over the presidency of Burundi from Major Pierre Buyoya, on April 30. The new government must deliver on promises to end a nine-year long war and to deliver justice for the many violations of international humanitarian law committed during the war. The transfer of power, the signing of cease-fires with all but one of the rebel groups, the promised deployment of an African Union peace-keeping force, the passage of laws on justice, and the infusion of foreign aid in recent months have all raised hopes that the new government will succeed better than its predecessor. But other signs are less promising: combat and violence intensified in recent weeks throughout the country and the new laws on justice are encumbered with provisions that will slow their implementation. In addition, international donors have not yet fully funded an African Union peacekeeping force essential for monitoring the cease-fire.

The transfer of power from Buyoya to Ndayizeye, the second stage stipulated in the Arusha Accords of 2000, involves a complex balancing of ethnic and political interests. Ndayizeye, who was vice-president under Buyoya, will have a Tutsi vice-president, Alphonse Kadege of the Union for National Progress (Union pour le Progres National, Uprona). In certain areas, such as security, Kadege's signature will be required to validate Ndayizeye's decisions, leaving the Tutsi Uprona with power to block decisions by the new government. Frodebu did not enjoy similar power under Buyoya.

Combat Continues

Ndayizeye has pledged every effort to obtain a "total and permanent" cease-fire. The government previously signed cease-fires with several rebel groups, the most important of which was the December 3, 2002 agreement with the major branch of 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). The parties to the December 3 cease-fire agreed to stop all incitement to ethnic hatred, an important measure in this war in which political leaders have exploited anger and fear between the majority Hutu and minority Tutsi. They agreed also to halt "all acts of violence against the population," including killings, torture, the use of child soldiers, and sexual violence. But the agreement left many major issues unresolved such as the cantonment of rebel forces, demobilization, integration of the rebel forces into the national army, the timing of deployment and nature of the forces to be provided by the African Union, the role of the CNDD-FDD in the political institutions. Soon after the signing, both sides violated the cease-fire, each blaming the other for the violations.

The government and the CNDD-FDD signed a new pledge renewing the cease-fire on January 27, but it has been equally disregarded by both sides. Another armed group, the National Liberation Forces (Forces Nationales de Liberation, FNL) never agreed to a cease-fire and also continues combat. In the months of March and April, government and rebel forces have fought

in the provinces of Bujumbura city and Bujumbura-rural, Bubanza, Muramvya, Gitega, Ruyigi, Rutana, Makamba, and Kayanza. In the course of this fighting—as in the previous nine years—civilians have been massacred, raped and otherwise injured, and forced to leave their homes, which are often looted and destroyed. High-ranking military officials have warned civilians that any who do not flee rebel forces will themselves be treated as rebels. In a recent trial of officers accused of participating in the deliberate massacre of 173 civilians in Itaba commune, Gitega province, the military prosecutor called civilians present in a community after the passage of rebels “secondary assailants,” thus ignoring the distinction between combatant and non-combatant that is fundamental to international humanitarian law¹. On April 23, in one of the most recent incidents of military attacks on civilians, soldiers reportedly intentionally shot some twenty civilians fleeing combat in Kabezi commune, Bujumbura-rural.

In several of the most serious massacres documented by Human Rights Watch, government soldiers have escaped all meaningful punishment.² The most flagrant recent example of virtual impunity for massive civilian killings was the decision of a military court to sentence two officers to four months of prison in the Itaba massacre mentioned above. The original charges of murder were reduced to “lack of public solidarity” but the officers were finally convicted of having failed to follow orders by not having reported the situation accurately. They were not sanctioned for the killings themselves.³ Because they had spent five months in jail awaiting trial, they were immediately released and resumed their military duties.

Beginning April 17, FDD forces shelled the capital city of Bujumbura and provincial capitals at Gitega and Ruyigi. Most of the shells fell in residential areas or the town center, not on military targets. At least six civilians were killed and forty-three wounded in these attacks which appear to have violated international humanitarian law. A FDD spokesman said that the objective of these attacks was to put pressure on the government to resume negotiations.⁴ Both FDD and FNL forces have summarily executed civilians, some of them local administrative officials and others, unarmed passengers in vehicles that have been ambushed on various roads throughout the country. Rebel forces have also raped and injured civilians and they have destroyed and looted civilian property, all violations of international humanitarian law. In recent months, the FDD has continued to recruit children for military service.

Neither of the rebel forces has announced any form of accountability or discipline for combatants guilty of violating international humanitarian law.

In combat zones, government troops have barred access by humanitarian agencies, leaving displaced persons without adequate food, water, or medical assistance. In the eastern province of Ruyigi where thousands of persons are displaced, military commanders have allowed only occasional and limited aid deliveries since the third week of January. The Geneva Conventions, to which Burundi is a party, specify that a state engaged in a civil war should facilitate deliveries of humanitarian assistance to the civilian population by impartial agencies.⁵

In mid-April Burundian radio stations reported that government troops engaged in skirmishes in Bujumbura with armed groups of young bandits who did not appear to be linked to

¹ Human Rights Watch Briefing Paper, “Burundi: Civilians Pay the Price of Faltering Peace Process,” February 2003. The names are known of 173 victims; there appear to have been others not yet identified.

² Ibid. Human Rights Watch Briefing Paper, “Burundi: Escalating Violence Demands Action,” November 2003.

³ Human Rights Watch, “Burundi: Civilians Pay the Price of Faltering Peace Process.”

⁴ Agence France Presse, “Burundi: Les FDD revendiquent les attaques qui ont fait 3 morts,” April 20, 2003.

⁵ See, e.g., Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of Victims of Non-International Armed Conflicts Protocol II, 8 June 1977, article 18.

any rebel group. A rise in such banditry would increase the suffering of civilians and complicate the problems of restoring order.⁶

Efforts at Justice

With combat continuing, Burundian legislators have nonetheless passed several laws important for delivering justice under the new government. Both the assembly and the senate adopted a long-promised law against genocide, war crimes and crimes against humanity. Passage of the law marks a major step in this country that has seen large-scale ethnic slaughter in the past, but the law is encumbered with a complicated mechanism that may delay dealing with these crimes. It calls for an international judicial commission of inquiry, presumably to be created under the aegis of the United Nations, to examine crimes committed from 1962 until the date of promulgation of the law, a period of more than forty years. It also asks for an international criminal tribunal to be created to try cases of genocide, war crimes, and crimes against humanity if the commission finds that such crimes have been committed. This implies that the commission would be free to disregard the findings of a previous UN commission that reported to the Security Council in 1996 that genocide had been committed in Burundi. The law provides also that national jurisdictions could try such crimes and that they should be “staffed with regard to ethnic balance,” a standard which is both vague and, given the relative lack of Hutu jurists, probably unworkable in the immediate future. The death penalty could be applied to those found guilty, in contravention of prevailing international norms and the practice of existing international tribunals.

The assembly also proposed establishing a Truth and Reconciliation Commission to cover the same period since 1962, resisting efforts to limit its mandate to examining several specified events. It is unclear how this Commission will function, both in relation to the international judicial commission of inquiry and the regular judicial system.

The assembly also authorized ratification of the Rome Statute of the International Criminal Court. In the past, the government indicated its intention of making use of article 124 of the treaty, which permits a state to delay accepting the competence of the court for seven years for certain crimes. It did not raise this issue at the time of assembly approval but might introduce it when the matter is considered by the senate or at some stage later in the process.⁷

The legislature did not adopt proposed measures for decentralizing and increasing the number of both civilian criminal courts and military courts. Such measures could well have had immediate impact in increasing the efficiency and improving the quality of justice delivered.

Freedom of Press

In the last year, Burundian authorities have arrested and otherwise harassed journalists, in violation of national and international guarantees of press freedom. They shut down Net Press, a web based information service for two months in early 2002 accusing it of undermining national unity. Police detained and beat a journalist of Studio Ijambo in March 2002 after he had covered a meeting of a radical Tutsi group. Authorities also detained and interrogated journalists from African Public Radio in Ruyigi in May 2002 after they had reported military abuses and they

⁶ Radio Bonesha and African Public Radio, April 14 and 15, 2003.

⁷ Article 124 of the Rome Statute permits a state to delay for seven years the implementation of the competence of the court for crimes described in article 8 of the treaty. The state may withdraw this reservation at any time.

harassed journalists from this same station in March and April 2003 after further broadcasts about military attacks on civilians. In March 2003 President Buyoya summoned journalists to inform them that they must not allow rebels to speak on the radio. In what may have been an effort to intimidate the outspoken director of African Public Radio, armed men killed the guard at his home in February 2003. A proposed press law was tabled in the last meeting of the assembly and sent back to the council of ministers, thus delaying establishment of stronger guarantees of press freedom.

The African Mission

The Special Representative of the UN Secretary General and regional leaders preside over a number of diplomatic initiatives to end the war, but the actual work of peace-keeping is to be handled by a mission of the African Union, a first for the newly-constituted organization (formerly the Organization of African Unity). Forty-three observers attached to the mission have arrived from Tunisia, Burkina Faso, Gabon and Togo and are deployed in several towns, although they are not traveling to combat zones for security reasons. More than one hundred South African troops arrived in Bujumbura on April 27, part of a larger peacekeeping force of three thousand and five hundred soldiers that will include soldiers from Mozambique and Ethiopia. The mandate of the force is only to monitor the cease-fire, leaving it unlikely that its soldiers will even endeavor to protect civilians. As yet, the force has no unit specially tasked with monitoring the human rights situation.

The European Union recently pledged 1.23 million euros (\$1,100,000) and Belgium promised another million euros (\$900,000) to pay for the African mission. The United States will provide some equipment and training. The amounts pledged until now are far short of what will be needed to deploy a force throughout Burundi. Quick to join in diplomacy to help end the war in Burundi, international donors now need to provide the funds needed to help implement the accords on the ground.

Recommendations

To the Government of Burundi:

- Immediately order all government armed forces to adhere strictly to the provisions of international humanitarian law concerning treatment of civilians and other non-combatants in wartime.
- Facilitate access by humanitarian agencies to all civilians in need and respect the neutrality and impartiality of humanitarian agencies.
- Investigate and bring to justice all those accused of serious violations of international humanitarian law and human rights law, in accordance with international fair trial standards, including access to defense counsel.
- Provide adequate resources to both civilian and military justice systems.

- Complete ratification of the Rome Statute of the International Criminal Court without making use of the article 124 option to delay implementation in the competence of the court.

To the FDD and the FNL:

- Order all combatants under your authority to adhere strictly to the provisions of international humanitarian law concerning treatment of civilians in wartime.
- Hold accountable all your combatants accused of violating international humanitarian law, including the murder of civilians, rape, looting, and the destruction of property in accordance with international standards of justice.
- Cease immediately recruiting children under the age of 18 as stipulated in the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and discharge immediately any children serving with your forces.

To the governments responsible for the African Mission and peacekeeping force:

- Speed the deployment of observers and peacekeeping troops.
- Insist that peacekeeping forces protect civilians and provide the training necessary for them to do so. Create a unit to monitor and report on all human rights abuses by Burundian government, rebel forces, or African Mission troops.

To donors assisting the Burundian government and those in contact with rebel leaders:

- Use your influence to persuade the Burundian government to immediately direct its armed forces to adhere strictly to international humanitarian law concerning the treatment of civilians during armed conflict.
- Use your influence to persuade the rebel forces to order combatants under its authority to adhere strictly to international humanitarian law concerning the treatment of civilians during armed conflict.
- Insist upon the full and rapid implementation of provisions in the Arusha Accord of August 2000, reaffirmed by the December 2002 ceasefire agreement, including those for bringing to justice those accused of violations of international humanitarian law.
- Assist the Burundian government with the resources needed to implement such justice programs.
- Encourage the government to ratify the Rome Treaty establishing the International Criminal Court without making use of the article 124 option to delay implementation in the competence of the court.