

BURUNDI

NEGLECTING JUSTICE IN MAKING PEACE

I. OVERVIEW.....	2
II. RECENT INSURGENT ATTACKS ON CIVILIANS AND HUMANITARIAN AGENCIES.....	2
Around Bujumbura.....	3
In the East.....	4
In the Interior.....	4
Attacks by Burundian Armed Forces on Civilians	5
Violations of International Humanitarian Law	5
III. RECRUITMENT AND STRUCTURE OF THE FNL.....	6
IV. RWANDANS IN THE FNL.....	7
V. SPLITS IN THE FNL.....	8
VI. THREATS OF GREATER VIOLENCE	10
VII. THE NEED FOR JUSTICE.....	10
VIII. RECOMMENDATIONS	12
To the Government of Burundi:	12
To Leaders of the FNL and FDD:	12
To All Participants in the Peace Process and Leaders of Insurgent Groups:	12
To the Security Council of the United Nations:	12
To the International Community:	12

I. OVERVIEW

Continuing abuses of civilians by all parties, the growing regionalization of the Central African conflict, and the threat of increased violence from extremist organizations underscore the urgency of ending the war in Burundi. But a peace without accountability for past crimes offers little hope for future stability within Burundi or the larger region.

More than one hundred thousand civilians have been slain in Burundi, both by Hutu and by Tutsi. Many of these killings are crimes against humanity and some have been described as genocide by a U.N. commission of inquiry. They must be prosecuted promptly and effectively by an international tribunal as well as by Burundian courts. Some Burundians and foreign observers now propose yet another international investigation as well as a Burundian Truth and Reconciliation commission. Such commissions may add greater detail to what is already known of this tragic past, but they serve a different purpose from that of prosecutions and must not become a pretext for delaying them.

The two major insurgent groups—both predominantly Hutu—the National Liberation Forces (Forces Nationales de Libération, FNL) and 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, or in shortened form, the FDD), continue to make war on civilians, both Hutu and Tutsi, and on humanitarian agencies which try to help them.

Members of the predominantly Tutsi Burundian armed forces continue to slaughter and otherwise abuse civilians, particularly those Hutu whom they accuse of supporting the insurgents. The authorities also hold hundreds of thousands of civilians in miserable conditions in regroupment camps, to which they were forcibly relocated in September 1999.¹ Despite promises made two months ago to close the camps, only four have been disbanded.

The regional aspects of the war are increasingly clear as Burundian insurgents raid across the border from Tanzania on one side and participate in combat in the Democratic Republic of the Congo (DRC) on the other. Soldiers of the Burundian armed forces also engage in combat in the DRC, supposedly in an effort to eliminate the FDD. The FNL and the FDD have recruited Rwandan Hutu in Rwanda, in the DRC, and in Burundi to help them make war against the Burundian government. The DRC reportedly has provided arms to the FDD and arms traders have been caught shipping weapons apparently originally from Zimbabwe through Zambia to Burundian insurgents. Rwandan combatants played an important role in the FNL until late January and early February, when Burundian insurgents turned against them and slaughtered more than one hundred of them.

Burundian Tutsi opposed to compromise with the insurgents are reportedly seeking to recruit demobilized Rwandan Patriotic Army (RPA) soldiers inside Rwanda for a militia to oppose President Buyoya, the Burundian head of state. The possibility that such a new group might forcibly resist a peace settlement raises the specter of increased violence in this already disastrous conflict.

II. RECENT INSURGENT ATTACKS ON CIVILIANS AND HUMANITARIAN AGENCIES

Neither the FNL nor the FDD have participated in the official peace negotiations, in part because of objections by the two opposition groups from which they originated. The Palipehutu, of which the FNL was originally a part, has been represented at Arusha, as has the CNDD, the group which gave rise to the CNDD-FDD. Both insisted on excluding the offshoot military groups which they saw as rivals. The original mediator, former Tanzanian President Julius Nyerere, had agreed to exclude the FNL and the FDD, but Mandela has insisted that they be included. Now the most powerful armed opposition groups in Burundi, they increased their military activity in late 1999 and in early 2000 to demonstrate their importance and to assure themselves a role in the peace talks.

Around Bujumbura

¹ Human Rights Watch will shortly publish a report on the regroupment camps.

The struggle for power in Burundi is not simply that of Hutu against Tutsi; there are also conflicts among parties of the same ethnic group. The largely Hutu FNL ousted its rival the FDD, also largely Hutu, from northeastern Burundi in combat in late 1997 and early 1998 and now poses the chief threat to authorities in the capital of Bujumbura and its immediate area. In September 1999, Burundian authorities abruptly ordered some 350,000 residents of the province of Bujumbura-rurale to move into regroupment sites, purportedly to reduce Hutu support for the FNL and slow its advance on the capital. They acted also to quiet growing restiveness among extremist Tutsi who were accusing Buyoya's government of inaction before the insurgent threat. The FNL have continued to attack soldiers in the posts scattered around the outskirts of the city as well as civilians in Bujumbura and the surrounding area.

On January 4, FNL combatants ambushed a minibus near Nyamugari and killed all the passengers. Others ambushed a vehicle transporting three workers of an international humanitarian agency, who were returning from work in the south of Bujumbura-rurale on January 19. The insurgents blocked the road with a tree about halfway between Magara and Kabezi communes, some twelve miles from Bujumbura. When the vehicle slowed before the obstacle, a man dressed in military clothes waved his hand for the driver to stop. The man then raised an automatic weapon and fired directly at them. Almost instantaneously, a group of about twenty insurgents appeared out of the bush, formed a semi-circle around the vehicle and opened fire from all sides. Crouching low in his seat, the driver put the vehicle into reverse and sped to safety.²

On February 18, some one hundred rebels moved into the densely populated regroupment camp at Kabezi shortly after 1 p.m. They were identified as FNL fighters by a blue and yellow insignia which they wore on their left shoulders. From their position within the camp they began firing on the soldiers posted at the communal office a short distance away, on a hill lower than the camp. Other insurgents who had advanced closer to the office and who were hiding in banana groves also opened fire on the soldiers. This group sang the "Alleluia Song," which is reportedly frequently sung by FNL insurgents during their attacks.

Representatives of two humanitarian aid organizations were at Kabezi during the attack, their presence signaled by their clearly identified vehicles. One took shelter in the communal office with the soldiers. The other tried to leave the camp during a break in the fire. He was stopped by FNL fighters who demanded his identity papers. Insurgents often criticize humanitarian agencies for having a disproportionate number of Tutsi among their employees. Satisfied that the driver was a Tanzanian national, they allowed him to depart unharmed.

The soldiers returned the hostile fire, including that coming from the camp. Civilians, most of them Hutu, took shelter as soon as the shooting began, but two were killed, one probably by fire from the FNL, the other by the soldiers. Another civilian and one soldier were killed by FNL fire at the communal office and seven other soldiers were wounded.³

At the end of February, FNL insurgents attacked military posts at Sororezo and Mugoboka on the northern outskirts of Bujumbura. They made a brief foray into the Matanga section of the city itself, where they robbed some civilians and injured one.

²Human Rights Watch interview, Bujumbura, January 21, 2000.

³Human Rights Watch interviews, Kabezi, February 19, 2000; Bujumbura, February 21, 2000; Human Rights Watch, *Human Rights in Burundi*, March 2000, Vol. 12, No. 2.

In the East

In the eastern part of Burundi, the FDD, the dominant rebel group, began stepping up attacks on civilians at the end of last year, seeking to discourage Burundians who had previously fled to Tanzania from coming home. Many local residents who had only recently returned from exile were driven away once more. Others who had not fled before were also forced across the border into Tanzania. Small groups of FDD insurgents operated mostly in the eastern communes of Ruyigi province, an area of plains adjacent to the Tanzanian border which is populated almost exclusively by Hutu. They stole money, crops and other property from the population and burned homes and public property. When they encountered resistance from civilians, they sometimes killed them. They rarely engaged the military and they apparently intended to destabilize the region rather than to occupy it. In December and early January, FDD insurgents killed four civilians and burned at least 600 houses as well as two primary schools and one health center in Kinyinya commune. They burned other houses and looted one school and a health center in Nyabitsinda commune. In Gisuru commune, just before the New Year, they killed ten civilians and one soldier and burned fifty houses. They also kidnaped five civilians but later released them.⁴

During the weekend of January 8-9, 2000, insurgents, most likely of the FDD, attacked the commune of Butaganzwa which is located to the west of the chain of hills that divides Ruyigi province. They burned at least six houses and one primary school and attempted to burn the communal office. On the same weekend, the FDD struck once more in Gisuru commune, killing at least three civilians and burning thirty homes in Nyabitare. Unidentified assailants, apparently insurgents, attacked an employee of an international aid organization on Tuesday January 11 while he was driving his vehicle at noon in the commune of Kinyinya. He was shot in the abdomen but survived.⁵

Between January 8 and January 25, FDD insurgents attacked civilians in several locations in and around the parish of Muriza, province of Ruyigi. According to witnesses, they raped women and girls on at least one occasion. They burned houses and a school and stole a total of some fifty cattle in different places as well as many goats.⁶

At the end of January, FDD insurgents once again attacked civilians in Gisuru commune. They beat local residents who could not or would not give them money and food. They stole cattle and burned several houses. They forced five people to leave with them but later permitted them to return. On January 28, insurgents robbed the convent of religious sisters at Gisuru parish after having awakened the sisters on the pretext of someone needing medical assistance. They forced three sisters, two of them Burundian and one Italian, to accompany them on foot towards the border, along with two watchmen from the parish. After a number of hours, they permitted the sisters and one watchman to go home. They later released the other watchman after having beaten him because he had no money to give them.

The scare tactics have worked. According to spokesmen for the United Nations High Commissioner for Refugees, some 50,000 Burundians fled to Tanzania from October 1999 to early January 2000 and 24,000 more during January.

In the Interior

⁴Human Rights Watch interview, Bujumbura, January 11, 2000.

⁵Human Rights Watch interview, Bujumbura, January 13, 2000.

⁶Human Rights Watch interview, Bujumbura, February 14, 2000.

Insurgents also raided sporadically in provinces in the interior of Burundi. Both the FNL and the FDD have operated in this area and sometimes it is unclear which group was responsible for any given attack. On Thursday, January 13 at about 5 p.m., armed combatants said to have been FNL killed at least thirteen people in an ambush of a pickup truck in Muramvya province on the road between Bugarama and Muramvya town. Approximately ten minutes later, the same or another group of assailants killed all except three of the passengers of a minibus carrying passengers to Muramvya town. The victims included the administrator of Cendajuru commune, Cankuzo province, his wife and several off-duty soldiers. Survivors and witnesses estimate that approximately thirty rebels who had been in the area since early that afternoon orchestrated the attack.⁷ All were surprised by the ambush since National Route 2, on which the attack occurred, had previously been considered safe; the attack illustrates the vulnerability of Burundians going about the ordinary activities of daily life.

During the weekend of January 15 and 16, insurgents, probably of the FDD, attacked several times in the commune of Makebuko, Gitega province, located in the center of the country. On the evening of Saturday January 15, a group entered the town and raided and attempted to burn the administrative office. They killed two of the watchmen. Later that evening insurgents broke into a local health clinic and stole medicines and supplies from the dispensary. On Sunday evening rebels returned to the area to pillage and burn another health center in the town of Maramvya, a few kilometers north of Makebuko town. During this raid, they killed two persons, one a cattle herder who resisted the theft of his cattle.⁸

Attacks by Burundian Armed Forces on Civilians

In the area of the capital, Burundian army soldiers massacred some forty persons on the road between Kabezi commune and Bujumbura on December 31, 1999. A military officer had apparently ordered the road closed after a rebel ambush had killed two soldiers in the vicinity three days before. The civilians knew nothing of the order and were simply heading towards Bujumbura when they were cut down by military fire.

On one occasion in early February, FNL insurgents launched a pre-dawn attack on a military post near the regroupment camp of Kavumu which is largely populated by Hutu and located just outside the Bujumbura city limits. Soldiers at the post returned their fire and reportedly continued firing after the FNL insurgents had retreated over the hills. The camp lay off to the side, removed from the path of the insurgents' advance and retreat. Yet shots were fired into the camp and killed four persons in a single house. Camp residents told Human Rights Watch researchers that soldiers fired those bullets and that they did so after the insurgents had retreated in the opposite direction. On another occasion, during an exchange of fire between soldiers of the post and insurgents, an eight year old child was killed and a thirteen year old was wounded. Camp residents said that soldiers firing from their post had shot the children.⁹

In the east, on the morning of January 25, Burundian soldiers killed civilians in the area of Muriza parish where FDD insurgents had been looting and burning in the preceding days. After chasing the insurgents away, they killed at least twenty-three and possibly as many as sixty-three persons at Rusumu. The oldest victim was a seventy-one-year old man and the youngest was a baby of eight months. That same afternoon, soldiers killed at least twenty-six and perhaps as many as fifty-three people at Rubano, including elderly people, children, and eight small babies.¹⁰ Two days later, soldiers shot and killed a woman and her child, supposedly in an exchange of fire with insurgents at Nyabigozi. The next day, soldiers shot and killed another woman in Kinyinya commune, again purportedly as they went in pursuit of insurgents. On January 29, a local official from the commune of Bweru called in troops following the FDD attacks in the area. He held a mock trial of local residents who were supposed to be supporters of the FDD. The soldiers then slaughtered thirty-three civilians and wounded two others, who were later hospitalized at Bweru. They also burned twenty-three houses of persons accused of having lodged the insurgents.¹¹

⁷Human Rights Watch interviews, Bujumbura, January 14 and 17, 2000.

⁸Human Rights Watch interviews, Bujumbura, January 17 and 20, 2000.

⁹Human Rights Watch interviews, Kavumu, February 14, 2000.

¹⁰Human Rights Watch interview, Bujumbura, March 14, 2000.

¹¹Human Rights Watch interview, Bujumbura, March 14, 2000.

Violations of International Humanitarian Law

Attacks by the Burundian armed forces and by the FNL and FDD on the lives and property of civilians clearly violate international humanitarian law. In addition, the FNL use of the civilian population of the Kabezi camp as a shield in their attack on the neighboring military post also violates this law. The soldiers' firing into Kabezi camp might also constitute a violation of international humanitarian law. Military authorities should investigate whether or not the soldiers took all feasible precautions to protect civilian life when returning hostile fire from the camp.

Burundian military officers, FNL and FDD leaders, and representatives of international humanitarian organizations met recently in Geneva to discuss attacks on the civilian population and on humanitarian agencies. Representatives of the International Committee of the Red Cross reviewed relevant texts of international humanitarian law, reminding all parties of their responsibilities to protect non-combatants. Participants in the meeting concluded that protecting civilians was a priority but they signed no commitment to implement this understanding and insurgents have since continued their attacks on civilians. As a party to the Geneva Conventions and to Protocol II Additional to the Geneva Conventions, Burundi has an obligation to observe these provisions of international humanitarian law.

In one exceptional case of restraint, soldiers at Kabezi took no reprisals on the camp population after insurgents had used the camp as a point of attack on their post on February 18, and the FNL commander during that same attack reportedly ordered his men not to fire on a civilian pickup truck on the road below.¹²

III. RECRUITMENT AND STRUCTURE OF THE FNL

Little has been publicly known about the organization of the two major insurgent movements. In a series of interviews with Rwandans and Burundians who recently deserted from the FNL or who were captured by the Burundian army, Human Rights Watch was able to learn something about how this movement operated in the region of the capital.

The former FNL fighters described three main centers of action around Bujumbura in recent months: one in Rukoko, northwest of the capital, where commanders are based and where the sick and injured go to recuperate; one in the area of Isale, Mubimbi and Mageyo, east of Bujumbura; and another south of the city in Mutambu and Kabezi. The leader of the movement, Cosan Kabatura, operates from outside the country. The local chief of operations is Agaton Rwsa. Albert Sibomana commands the Eagle (formerly Leopard) battalion which is divided into two companies, red and black, and which has operated most recently in the Isale region. Jean-Marie Hakizimana leads a second battalion deployed in the Mutambu-Kabezi area. The fighters cluster throughout the area in small groups, mostly quartered in the homes of local residents who have been forced by the government to move to regroupment camps. The insurgents live mostly from plundering crops from local fields.

According to some witnesses, the FNL forces in the vicinity of the capital numbered somewhat over 1,000, while another source close to the insurgents put the numbers above 2,000. One witness reported that the FNL suffered serious losses over the last year as they stepped up their attacks on the capital of Bujumbura. He estimated that insurgents in Kabezi had declined in number from 300 to 150 as a result of Burundian military action, illnesses, and desertions. He reported that the FNL was currently recruiting men and boys in the city and in regroupment camps to try to rebuild its strength. He stated that the insurgents recruited boys as young as fourteen to serve in their ranks.

In contrast to these descriptions of a dwindling force, another witness still close to the FNL gave a more favorable assessment of its strength. He related that the insurgents had brought reinforcements into the region of Kibuye during December and asserted that they at times were able to control parts of the twelve kilometers of road that leads from Kibuye to Rushubi, the administrative center of the commune and the province. He added that increased numbers of

¹²Human Rights Watch interviews, Kabezi, February 19, 2000; Bujumbura, February 21, 2000.

Burundian soldiers had also been brought to the region but that they had been unable to dislodge the insurgents from their posts at Kibuye and Rutegama. According to the witness, the FNL move freely in and around the local regroupment sites and enjoy considerable support from the population. The insurgents reportedly have told local residents that they do not intend to steal from them but rather to protect their homes from soldiers who intend to destroy them. While perhaps accurate in evaluating FNL strength several weeks before, this assessment seemed not to take into account the negative effects of the FNL slaughter of its Rwandan fighters, as described below.

IV. RWANDANS IN THE FNL

For some time, Rwandan Hutu have been reported in the ranks of Burundian insurgent movements. Often they are assumed to be exiles who had participated in the 1994 genocide of Tutsi in Rwanda, either as members of the Interahamwe militia or as soldiers of the former Rwandan Armed Forces (Forces Armées Rwandaises). According to the FNL deserters, Rwandans did play an important role in that force until recently and were generally ex-FAR, not Interahamwe.¹³

According to these sources, Rwandans represented as many as half of the combatants in some of the units in the region surrounding Bujumbura. They reportedly held about half the positions of command, at least in the Eagle battalion. Rwandans and Burundians often succeeded one another in any given post and Rwandans seem often to have had Burundians as direct superiors and subordinates. This structure may have represented a conscious effort to assure smooth integration of the two national groups. In fact, until recent months, Rwandans and Burundians appear to have cooperated well together in their combat against the Burundian government.¹⁴

The largest group of Rwandans to join the FNL were the some 140 men who had been operating in the Nyungwe forest of southwestern Rwanda as rebels against the Rwandan government. They moved south to Burundi after the Rwandan Patriotic Army (RPA) attacked the Congo (then Zaire) in November 1996 and destroyed the rear base on which they depended. When the fighters arrived in the northwestern province of Cibitoke, they arranged to join the FNL as a unit. Their number, their arms, and their experience made them an important addition to the FNL. This may explain why their commander, Lieut. j.g. Silas Rugira, was named second in command to Sylvestre Nibayubahe, who was then FNL chief of operations. Burundian government military spokesman Colonel Minani provided Human Rights Watch with copies of documents dated May 21, 1997 and November 20 and 21, 1997 which appeared to be agreements formalizing this cooperation. One of the documents states that the Rwandan and Burundian insurgents share a common mission to liberate the "Bahutu" people. FNL fighters recruited two other groups, one of twenty-five and one of four, in the Nyungwe forest inside Rwanda. They recruited other ex-FAR in the DRC and in Burundi. While the group that signed the accords with the FNL in early 1997 may have shared a common ideological commitment, later Rwandan recruits joined the force as drifters, unarmed but ready to resume a military life because they had no other prospects. One, for example, had wandered the region since 1994, walking as far as Zambia. He was heading back towards Rwanda when he was recruited in Burundi.¹⁵

Of six Rwandans interviewed in depth by Human Rights Watch, four were former soldiers of the Rwandan Armed Forces (Forces Armées Rwandaises, FAR) and none was an Interahamwe. Two of the former FAR soldiers served in posts where they are likely to have been involved in the 1994 genocide of Rwandan Tutsi, while the other two were posted in places where such involvement would have been unlikely. One of the Rwandans had been a civilian refugee in the DRC until he was recruited by the FNL. He asserts that he was not an Interahamwe, a claim that seems not inconsistent with his place of origin and political party affiliation, but which does not rule out the possibility that he participated in the genocide nonetheless. The sixth Rwandan was a child who had fled Rwanda at the age of nine and survived as a household worker in Burundi until he was forced to accompany the FNL as a bearer after they pillaged the house in which he worked. Then aged fifteen, he had been forced to stay with the insurgents and had served as a cook

¹³Human Rights Watch interviews, Bujumbura, February 15, 16, 17, and 18, 2000

¹⁴Idem.

¹⁵Idem.

for the combatants. These data, though limited, suggest that former soldiers of the FAR are more numerous than Interahamwe among insurgents in Burundi and that only some of these soldiers were involved in the genocide.¹⁶

Several witnesses mentioned that Rwandans are also serving with the FDD forces.

V. SPLITS IN THE FNL

In the first days of February, Hutu FNL combatants under the command of Agathon Rwasa, chief of operations, systematically killed Rwandan Hutu, who had been fighting with them against the Burundian army. Burundian authorities estimated that two hundred to three hundred combatants were killed, but the witnesses provide accounts of the deaths of about one hundred.¹⁷

According to survivors of the killings, a number of Rwandan and Burundian insurgents had quit the FNL in previous months, some of them discouraged by losses to the Burundian army or by increasing privations, others attracted by radio broadcasts in which authorities offered good treatment to those who came over to their side. As early as September 1999, FNL leaders suspected Rwandans of wanting to leave the movement, purportedly because they had been contacted by letter or in person by recently arrived compatriots who sought to persuade them to go home.¹⁸

FNL leaders accused one Rwandan officer of planning to quit and relieved him of his command and his weapon in late October. In December FNL commanders disarmed a large number of Rwandan insurgents and confined them to camp at Gitenga, in Kabezi commune, saying that they were temporarily on reserve duty. Between January 1 and 3, they suspended nine Rwandan officers and they arrested another at Gitenga on January 28. During this same period the local FNL commander had five Burundians arrested and killed because he suspected them of disloyalty. According to one witness, FNL leaders decided to kill the Rwandans on January 29 and began by executing Rwandan officers whom they had gathered in a house.¹⁹

Two days later, battalion commander Albert Sibomana directed the execution of Rwandans at several other posts near Kibuye in the commune of Isale. In one location, FNL fighters summoned a group of some twenty Rwandans and Burundians at 3 a.m., supposedly because Burundian army soldiers were approaching. They separated the Rwandans from the Burundians and ordered the Rwandans to hand over their weapons and to remove their military clothing. They put the Rwandans in a house and showered them with bullets. They left, believing all the victims to be dead, but several survived to recount the events. At another post, a Burundian who was under detention for supposedly wanting to desert witnessed nine Rwandans being brought into the house where he was being kept. He was then freed and managed to flee and thus did not see the execution of the Rwandans which apparently took place. At another post, Segatare, the commander of the reserve battalion, arrived during the night of February 1 or 2, accompanied by forty FNL insurgents. He ordered the twenty-three sleeping fighters awakened and tied up, both Rwandans and Burundians. Segatare and his men took the captives to a place called Kagorogoro on the border between Isale and Mugangomanga communes and there shot the eight Rwandans. They freed the Burundians, except for one who was suspected of too close ties with the Rwandans. He later escaped when the FNL fled at the arrival of Burundian soldiers.²⁰

On February 5 and 6, fishermen on Lake Tanganyika reported bodies floating down the Rusizi River into the lake. Several of the cadavers had their arms bound behind their backs. Human Rights Watch researchers who canoed along the lake shore on February 13 saw four bodies caught in the reeds. One was that of a young man who had had a leg amputated at the knee some time before. The cause of death was not apparent, but another young man had been slain by the blow of a machete across the back of the neck, presumably while he was lying face down. A third cadaver had been decapitated. All showed signs of decomposition suggesting that they had been in the water for at least a week. These bodies were among sixteen that fishermen reported having seen in the days immediately preceding. They appear to be linked to the conflict to Rwandans and Burundians within the FNL but it is not clear whether they were more Rwandans killed by the FNL or FNL combatants killed by Rwandans to avenge their slaughtered compatriots.

¹⁷Idem.

¹⁸Idem.

¹⁹Idem.

Although the many Rwandan insurgents apparently were killed or fled, others continue to be active in the FNL. One, Boniface Karinganire, a lieutenant j.g. in the former Rwandan army, has been a senior FNL officer since May 1997. As of mid-February, he reportedly continued to serve as part of the FNL general staff. The leader who directed the above-mentioned attack at Kabezi on February 18 gave orders to his men in Kinyarwanda, indicating that either he or the combatants or both were Rwandan.²¹

One person purportedly in touch with the FNL leadership told Human Rights Watch that the insurgents had in fact killed Rwandans among their ranks. But he asserted that the killings were pre-emptive, meant to abort a plan by Rwandans, Burundian army soldiers, and fighters of the rival FDD to eliminate the leadership of the FNL. Following battles for territory between the FNL and FDD in late 1997 and early 1998, most of the FDD left the area, some going over to the Burundian army and others moving further west to continue their combat against the government. The two insurgent forces have continued their hostility and have sometimes attacked and killed civilians who supported their rivals. With extensive political maneuvering under way in connection with the peace negotiations, the FDD is rumored to have moved closer to the government position. In this context, a joint undertaking to weaken the FNL is not impossible, but the plot as described by this informant seems not to fit other facts in the case.

Another source close to the FNL also acknowledged the killings and explained them as pre-emptive, but in this version, the Rwandans had been solicited to kill the FNL leadership by Burundian military authorities who offered them payment and a promise of either integration into the Burundian army or a return to Rwanda.²²

Whether or not the Burundian authorities made some arrangement with the Rwandans, they have treated well those who surrendered to them or who were captured by them. The military spokesman told Human Rights Watch that the Rwandans were to be called "survivors" of the FNL massacre rather than prisoners, although they were kept under guard. The wounded were receiving good treatment at the military hospital in Bujumbura. Authorities indicated that they had no plans to extradite any of the "survivors" to Rwanda and one even suggested that the Burundian government had an otherwise unexplained obligation "to protect" them.²³

²¹Human Rights Watch interview, Bujumbura, February 21, 2000.

²²Human Rights Watch interview, Bujumbura, February 18, 2000.

²³Human Rights Watch interview, February 15, 2000. 10

VI. THREATS OF GREATER VIOLENCE

Most Burundians know little about the terms being proposed in the peace negotiations. Politicians eager to maintain their popularity do not reveal the kinds of concessions which they have been considering. At the same time, the government-controlled media generally depict the armed opposition movements as genocidal terrorists. When an accord is signed, Tutsi extremists may seek to mobilize followers against the compromises which have been made with the thus demonized parties. In mid-February, some Tutsi took to the streets in Bujumbura to protest after mediator Nelson Mandela spoke frankly about the need for Tutsi to share power with Hutu. They were few in number and on this occasion were quickly disbanded by the government security forces. But in the past relatively small numbers of Tutsi militia have succeeded in shutting down the cities. In February, at least one recruiter was supposedly seeking out demobilized Tutsi RPA soldiers in Rwanda to join a militia to resist any agreement that makes significant concessions to Hutu. Given the wide scale possession of firearms by ordinary people, there is the risk of numerous deaths and injuries if extremists—whether Tutsi or Hutu—undertake attacks either on civilians of the other ethnic group or on members of the government forces.

VII. THE NEED FOR JUSTICE

Following the October 1993 assassination of Melchior Ndadaye, the first Hutu to be freely elected president of Burundi, Hutu massacred thousands of Tutsi, often at the direction of local political or administrative leaders. Burundian soldiers and national police, sometimes aided by Tutsi civilians, killed thousands of Hutu, including in areas where few or no Tutsi had been killed.

Both Burundian and international actors recognized the gravity of these crimes and the need to punish them. In the Convention of Government of 1994, signatories representing all major Burundian parties agreed to describe the 1993 massacres as genocide and called for an international judicial commission of inquiry. In the Transitional Political Program adopted at the formation of the current government, the parties agreed to ask for an international tribunal to prosecute these crimes.

A U.N. Security Council delegation to Burundi in 1994 insisted on the necessity of justice for the 1993 killings and raised the possibility of an international tribunal to deal with them. In its 1995 resolution establishing a commission to inquire into these crimes, the Security Council recalled that “impunity creates contempt for law and leads to violations of international humanitarian law.” In a report submitted a year later, the commission concluded that genocide had been committed against the Tutsi in 1993 and that international jurisdiction should be asserted with respect to these acts. The commission described the slaughter of Hutu civilians only as “indiscriminate killing,” although ample evidence existed to characterize some of them as crimes against humanity.

Burundian courts have not yet delivered satisfactory justice for most of the 1993 crimes. The judges who tried persons accused of having assassinated Ndadaye found guilty a number of lower ranking military officers but acquitted others of senior rank or greater political importance. Other courts tried only about 20 percent of the 9,500 persons jailed for supposedly having participated in the 1993 crimes. Most of the accused are Hutu and virtually all of the judges are Tutsi, leading many to question the credibility of verdicts in these cases.

Nor has the Security Council acted to provide justice for Burundi, despite the recommendation of its own commission and the expressed wish of the current Burundian government.

With the failure of the justice system to establish the guilt of individuals, politicians have assigned responsibility for past crimes to the totality of the opposing ethnic group, thus reinforcing hatred and fear among Hutu and Tutsi alike. Without credible judgments by the courts, politicians seek to establish guilt by appealing to their own version of history. At one of his first sessions as mediator, Mandela entreated participants in the talks to leave the past behind. No sooner

had he finished, than a Burundian speaker took the floor to begin once more reciting the litany of crimes committed by the other side. In what is probably a unique case in the annals of diplomatic negotiations, the Arusha participants have decided that arriving at a mutually acceptable interpretation of the past is important to ending the civil war. One of the four commissions originally established to organize the negotiations is devoted to producing such a description of the nature and history of the conflict.

Mandela has raised the possibility of amnesty for some of the crimes of the past, but he has excluded genocide, crimes against humanity, and the coup against Ndadaye from any such consideration. Distinguishing political from ethnic crimes, as Mandela has suggested, may prove impossible in Burundi where politicians have used ethnic slaughter as a way to get or hold on to power. But he is right in insisting on the need to punish genocide, crimes against humanity, and the assassination of Ndadaye. Leaving crimes of such gravity unpunished would tempt extremists to dare similar horrors again. It would make a mockery of all pronouncements about establishing a state of law in Burundi and would call into question the delivery of justice for lesser crimes.

What is true inside Burundi is equally so in the larger region. Given the interlinked nature of the Central African conflicts, given the past ethnic slaughter in the DRC and the current fear and hatred between those identified with Tutsi and those identified with Hutu in the Kivu provinces of the DRC, and given the possibility of future threats against even the apparently stable government of Rwanda, the international community must show that genocide and crimes against humanity will be punished no matter where or by whom they are committed. To leave allegations of such crimes unaddressed in any part of this region will undermine the potential deterrent effect of judgments by the International Criminal Tribunal for Rwanda (ICTR).

Conversely, creating an international jurisdiction to try cases from Burundi would reinforce the impact of judgments from the ICTR. Given the present work load as well as the troubled administrative history of the ICTR, it would be best to establish a separate but coordinating division, with its own administration, prosecution, and trial chamber. It should be structured in such a way as to benefit from the existing jurisprudence created by the ICTR and with recourse to the same appeals chamber. Like the International Criminal Tribunal for Ex-Yugoslavia, the Burundi tribunal should have no fixed date for the end of its mandate. By creating a jurisdiction able to prosecute crimes not yet committed as well as those of the past, the international community would deliver a clear warning to extremists of all kinds who might otherwise be tempted to organize ethnic violence in order to disrupt any peace accords.

The majority of cases now pending would be judged in Burundian courts. Given the current limitations in number and resources of these courts, the international community should begin preparing the assistance that will be needed for them to function effectively and according to due process. To remedy the shortage of judicial personnel, the international community should stand ready to assist in the intensive training of new staff. Such training should also be seen as an opportunity to integrate greater numbers of Hutu into the judicial system, a move which would help make judicial decisions more credible in the eyes of Hutu. The international community should also press Burundian authorities to accept the help of foreign jurists who could serve as judges, assessors, and prosecutors in these trials, just as they are now serving as lawyers for the defense. In a world where judicial authorities increasingly take responsibility for judging cases of genocide and crimes against humanity beyond their own borders, Burundians may be persuaded to see the benefits of accepting foreign jurists to assist in resolving—and in resolving with greater transparency—the enormous number of cases that burden their judicial system.²⁴

²⁴In April 1999, a Swiss military court found the Rwandan burgomaster Fulgence Niyonteze guilty of violations of international humanitarian law in connection with the Rwandan genocide and sentenced him to life imprisonment. A Belgian court found 12 Rwandans on charges of genocide. *Human Rights Watch* March 2000, Vol. 12, No. 2

Burundian negotiators have reportedly decided on the need for another international commission to inquire into genocide and crimes against humanity in Burundi. Its scope has not yet been determined, but if it were to deal only with the events of 1993, it would be the third such investigation of the killings. Before the U.N. commission did its inquiry, a group of international nongovernmental organizations carried out an investigation of the Ndadaye assassination and the ensuing massacres.²⁵ The negotiators also favor creating a national truth and reconciliation commission. Such additional inquiries may be helpful in developing a fuller history of the tragic events but their establishment must not impede immediate investigation and prosecution of responsible individuals. These initiatives serve different purposes and one cannot substitute for the other.

In addition to providing for adequate justice, the Burundian peace accords should guarantee the freedom of local and international human rights monitors to work unhindered throughout the country. The office of the U.N. High Commissioner for Human Rights should prepare to expand its operations in Burundi and international donors should stand ready to provide the resources necessary to make this possible.

VIII. RECOMMENDATIONS

To the Government of Burundi:

- Direct all members of the Burundian armed forces to cease attacks on civilians and to observe fully the provisions of international humanitarian law. Investigate cases of violations of such law and bring to justice the perpetrators of these crimes.
- Press the U.N. Security Council to act upon the request contained in the Transitional Political Program for an international tribunal to try cases of alleged genocide and crimes against humanity committed in Burundi.
- Take all measures necessary to make it possible for foreign jurists to assist in the prosecution and judgment of cases of alleged genocide and crimes against humanity presented before Burundian courts.

To Leaders of the FNL and FDD:

- Direct combatants in your forces to cease all attacks on civilians and to observe fully the provisions of international humanitarian law. Investigate cases of violations of such law and insist upon accountability for the perpetrators of these crimes.

To All Participants in the Peace Process and Leaders of Insurgent Groups:

- Join the Government of Burundi in requesting the establishment of an international tribunal to try cases of alleged genocide and crimes against humanity committed in Burundi.

To the Security Council of the United Nations:

- Implement the recommendation of the U.N. Commission of Inquiry to establish an international tribunal to try cases of alleged genocide and crimes against humanity committed in Burundi.

To the International Community:

- Prepare programs to assist in providing needed human and material resources, including the services of foreign jurists, to the Burundian judicial system.

²⁵Human Rights Watch, International Federation of Human Rights, Ligue des Droits de la Personne dans la Region des Grands Lacs, Organisation Mondiale Contre la Torture, Centre National pour la Cooperation au Développement, Nationaal Centrum Voor Ontwikkelingssamenwerking. Novib. *Rapport Final de la Commission Internationale d'Enquête sur les Violations des Droits de l'Homme au Burundi depuis le 21 octobre 1993*, July 5, 1994. March 2000, Vol. 12, No. 2

Human Rights Watch
Africa Division

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Michele Alexander, development director; Reed Brody, advocacy director; Carroll Bogert, communications director; Barbara Guglielmo, finance and administration director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Patrick Mingos, publications director; Susan Osnos, associate director; Maria Pignataro Nielsen, human resources director; Jemera Rone, counsel; Malcolm Smart, program director; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Jonathan Fanton is the chair of the board. Robert L. Bernstein is the founding chair.

Its Africa division was established in 1988 to monitor and promote the observance of internationally recognized human rights in sub-Saharan Africa. Peter Takirambudde is the executive director; Janet Fleischman is the Washington director; Suliman Ali Baldo is the senior researcher; Alex Vines is the research associate; Bronwen Manby and Binaifer Nowrojee are counsels; Zachary Freeman and Tamar Satnet are associates; Alison DesForges is a consultant; and Peter Bouckaert is the Orville Schell Fellow. William Carmichael is the chair of the advisory committee.

Web Site Address: <http://www.hrw.org>

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).