

BURUNDI: FINALISING PEACE WITH THE FNL

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BURUNDI: FINALISING PEACE WITH THE FNL

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Burundi has made relatively rapid, substantial progress in democracy and easing of inter-ethnic tensions, due to its citizens' desire to embrace national unity and compromise, as well as the international community's heavy involvement in the Arusha peace process. Integration of former government security forces and CNDD-FDD rebels in a new national defence force contributed significantly to consolidating peace. However, the peace process remains fragile. To move beyond the long civil war, strengthen democratic institutions and ensure respect for the rule of law, a genuine peace agreement is needed with the PALIPEHUTU-FNL, the last active rebel group, which is not strong enough to fight a new war but remains a power in most western provinces. This requires a new commitment by the government to a negotiated solution, not a military one, and a revived facilitation effort especially by regional states.

The country needs a genuine peace agreement to put the conflict behind it, as evidenced by the fact that the rebel delegation's hasty departure from Bujumbura in July 2007 precipitated widespread fear fighting would resume. The security forces use the presence of the rebels' armed wing (the FNL) in the countryside to excuse abuses and human rights violations. Moreover, the FNL problem is becoming a factor in the political crisis, which emerged in March due to tensions between the presidency and parliament. In the short term, government hardliners could use the absence of a peace agreement to justify suspending civil liberties, thus weakening the foundations of the nascent democracy. If not addressed before the end of this year, the lack of peace could become a destabilising factor in preparations for the 2010 elections and serve as a pretext for limitations on political freedoms during the campaign.

International efforts over two years on behalf of an implementable peace agreement between the government and the PALIPEHUTU-FNL have not succeeded. This is partly due to the difficulties of dealing with an insurgency that retains its ethnic reading of the conflict, has been thrown off balance by the electoral victory of its rival Hutu-dominated movement – the CNDD-FDD – and is convinced the eventual return of 350,000 refugees from Tanzania among whom it has important support, means

time is on its side. It is also linked to the inflexibility of the CNDD-FDD government, which feels both empowered by its electoral victory and weakened by internal divisions and the crisis with the political opposition, so is tempted to refuse concessions and give priority to a military solution.

The international community should mobilise immediately to prevent further deterioration. To begin with, it should acknowledge that negotiations with the FNL are at an impasse and must be re-launched with more emphasis on the political process. The United Nations (UN) Peacebuilding Commission, which has included completion of the ceasefire agreement with the PALIPEHUTU-FNL among the priorities of the Burundi strategic framework, should consider how to facilitate, in cooperation with the government, the implementation of that agreement. Several steps could help revive the process and increase pressure on the parties: including reconfiguration of the negotiating delegations; and dispatch of a new facilitation team led by a prominent diplomat dedicated exclusively to the negotiations, who would work closely with the local diplomatic community, countries from the Regional Peace Initiative on Burundi (Regional Initiative), the African Union (AU) and the UN.

The facilitation should push the PALIPEHUTU-FNL to give precision to demands that so far have been used in a general way only, to justify refusal to implement the 7 September 2006 ceasefire agreement. While respecting the constitution, the government and the facilitation should show flexibility in finding ways to address the rebels' repeated demands for guarantees regarding integration into the security forces and political institutions. Once an agreement has been signed, the PALIPEHUTU-FNL must be pressed to respect its commitments and begin disarmament, and the regional states and wider international community must be prepared to impose serious sanctions if it does not.

RECOMMENDATIONS

To the Government of Burundi:

1. Give priority to diplomatic rather than military options with respect to the PALIPEHUTU-FNL,

cease arresting presumed combatants and sympathisers and give clear instructions to defence and security forces not to escalate the conflict in case of local violations of the ceasefire.

2. Establish favourable conditions for conclusion and implementation of a peace agreement with the PALIPEHUTU-FNL before the end of 2007 and to this purpose:
 - (a) recognise the need to renew, on a political, not purely technical level, negotiations in order to make the 7 September 2006 ceasefire effective;
 - (b) appoint to lead the government delegation a presidential representative who gives full attention to the process and has previous experience with such negotiations;
 - (c) approve the nomination of a senior diplomat as head of the facilitation who can focus exclusively on the negotiation process and work closely with the ambassadors to Burundi of Regional Initiative countries, the African Union and the UN;
 - (d) work with the head of the facilitation to negotiate a supplement to the ceasefire clarifying the definitions of political prisoners and prisoners of war and the terms of provisional immunity, and granting PALIPEHUTU-FNL at least a minimum number of posts in the army hierarchy and in the government and its institutions.

To the Leaders of the PALIPEHUTU-FNL:

3. Abandon all military action; take all necessary provisional measures to avoid conflict with the army and eliminate the risk of escalation; and end recruitment, forced monetary contributions and other abuses against the civilian population.
4. Agree to prompt resumption of negotiations chaired by the new head of the facilitation and appoint a delegation led by Agathon Rwasa and other prominent members of the movement.
5. Express demands relating to the conclusion of the Technical Forces Agreement and the agreement for integration within political institutions in clear terms; negotiate a supplement to the ceasefire clarifying the definitions of political prisoners and prisoners of war and the terms of provisional immunity; and commit to respect the political parties law, which forbids ethnic exclusivity, in exchange for registration as a political party.

To Opposition Party Leaders:

6. Support resumption of negotiations between the government and the PALIPEHUTU-FNL in order to achieve swift implementation of the 7 September 2006 ceasefire agreement and encourage the rebels to approach those negotiations in a spirit of national reconciliation and to conclude disarmament and demobilisation operations by the end of 2007.

To the Countries of the Regional Peace Initiative on Burundi:

7. Acknowledge that the impasse in implementation of the 7 September 2006 ceasefire agreement is due to its unbalanced nature and the internal crisis which the government and political opposition must resolve through negotiation.
8. Pressure the government to resolve the political crisis through dialogue and insist that it accept as head of the facilitation a prominent diplomat capable of pursuing swift negotiations between the government and the PALIPEHUTU-FNL and addressing current obstacles to implementation of the ceasefire agreement.
9. Instruct their ambassadors in Bujumbura to work closely with the facilitation leader and to exert influence on the government and the PALIPEHUTU-FNL in order to achieve implementation of the ceasefire agreement before the end of 2007.

To the UN Peacebuilding Commission:

10. Support the efforts of the Burundi government and the UN office (BINUB) for rapid implementation of the ceasefire agreement with the PALIPEHUTU-FNL, including by expressing readiness to facilitate efforts to consolidate peace and, as the peace process proceeds, by advocating within the international community sustained support for identified peacebuilding priorities.

To the African Union and United Nations:

11. Maintain the AU special task force in order to protect the PALIPEHUTU-FNL delegation when it returns to talks and to facilitate implementation of the 7 September 2006 ceasefire, following conclusion of a supplemental agreement between the government and rebels.
12. Consider imposing sanctions on the PALIPEHUTU-FNL if, after conclusion of the supplemental agreement, it continues to refuse to implement the 7 September 2006 ceasefire.

**To the European Union and Multilateral and
Bilateral Partners:**

13. Clearly signal to all stakeholders that promised aid is conditioned on good-faith efforts to consolidate peace and resolve the internal crisis through dialogue.
14. Facilitate FNL integration into security and defence forces and implementation of security sector reforms by pursuing training programs and ongoing efforts to audit the security and defence structures so as to produce a better understanding of numbers and composition.

Nairobi/Brussels, 28 August 2007

BURUNDI: FINALISING PEACE WITH THE FNL

I. INTRODUCTION

It will soon be two years since Burundi broke free from the spiral of violence in which it had been trapped for several decades. The 2005 elections and the successful integration into the defence and security forces of the mainly Tutsi members of the former government army and the mainly Hutu combatants of the National Council for the Defence of Democracy-Forces for the Defence of Democracy (CNDD-FDD) rebel movement were major steps forward on the road to national peace and reconciliation. Reconstruction, development and transitional justice seem to have become higher priorities than political and security problems in the country.

However, the situation is far from being as satisfactory as it might appear. The implementation of a peace agreement with the remaining rebel movement, the Party for the Liberation of the Hutu People-National Liberation Forces (PALIPEHUTU-FNL) has been continually postponed. In June 2006, after almost one year of government military operations aimed at obtaining the rebel movement's unconditional surrender, what turned out to be particularly arduous negotiations began. Under strong international pressure, they resulted in a ceasefire agreement that ended the fighting. Although the weakening of the rebel movement's military capability diminishes any immediate risk of renewed clashes, the assembly and disarmament of the FNL has not taken place.

However, this impasse in the implementation of the agreement condemns several provinces in the west of the country, where the FNL enjoys solid support among the population and remains a severe irritant to the government, to enduring a precarious security situation and exclusion from reconstruction and development initiatives. As the country has been experiencing a serious political and institutional crisis in recent months, this lack of progress in the implementation of the peace agreement could serve as a pretext for President Pierre Nkurunziza and the CNDD-FDD to introduce emergency measures and further weaken the foundations of Burundi's nascent democracy.

Several factors are responsible for the difficulty in achieving a definitive integration of PALIPEHUTU-FNL into the peace process. The history of this rebel movement, created in the aftermath of the 1972 genocide, its ethnic reading of political events, and its lack of

political experience make it particularly reticent to agree to negotiations. Meanwhile, empowered by its electoral victory but weakened by internal divisions, the CNDD-FDD has been very reluctant to make political concessions, and prefers to seek the rebel movement's surrender rather than a peace agreement. In a political context marked by the repeated violation of human rights and civil liberties in 2006 and the start of a political and institutional crisis in February 2007, the conditions have rarely been favourable to the negotiation of an acceptable compromise that could be easily implemented. Finally, the international community, which worked hard for the success of the Arusha process, has been much less active since then on the FNL issue.

The surprise departure of the PALIPEHUTU-FNL delegation from Bujumbura on 21-23 July 2007 once again showed the fragile nature of the process. Rumours immediately swept round the country that renewed fighting was imminent. In an already particularly tense political context, affected by an increasingly bitter conflict between the presidency and parliamentary opposition groups, renewed heavy fighting between the FNL and the government army could pave the way for another escalation of the conflict. In addition to calling into question the process of negotiation and threatening a return to a purely military approach to the problem, such clashes could be used by government hardliners to justify suspending civil liberties, to make new attacks on the rule of law and to prevent the creation of favourable conditions for the 2010 elections.

This Crisis Group report provides an update on the difficult negotiations of the last two years between the government of President Nkurunziza and Agathon Rwasa's PALIPEHUTU-FNL. It profiles and analyses the motives of the actors involved in these discussions. It also makes a series of recommendations aimed at avoiding a permanent collapse of the process and enabling Burundi to end this period of armed rebellion.

II. THE NEGOTIATIONS

The negotiations between the democratically elected government of Burundi and the PALIPEHUTU-FNL were particularly difficult to arrange. Discussions between then President Domitien Ndayizeye's government and the movement made some progress during the final months of the transition period, but they were abruptly halted after the CNDD-FDD won the elections and Nkurunziza became president.

Despite calling for talks, the CNDD-FDD-dominated government opted for a military solution and sought the unconditional surrender of the rebel movement. Following strong pressure from the subregional and international community, the government and the militarily weak PALIPEHUTU-FNL finally signed a ceasefire agreement on 7 September 2006. However, this purely technical agreement seemed more like a surrender than a genuine peace agreement. The ceasefire has been respected by all parties but it has proved practically impossible to arrange the assembly and demobilisation of FNL combatants. Almost one year after the ceasefire agreement was signed, peace between the government and the PALIPEHUTU-FNL is still nowhere in sight.

A. THE CNDD-FDD'S QUEST FOR AN UNCONDITIONAL SURRENDER

As soon as the CNDD-FDD came to power in the August 2005 elections, the chances of the government and the rebel group quickly concluding a negotiated peace appeared rather slim. Historically, the CNDD-FDD and the PALIPEHUTU-FNL are two rival armed rebel movements, offering competing solutions to the conflict in Burundi and both drawing support from the Hutu community. They clashed in the field on several occasions¹ and were de facto political adversaries during the 2005 general elections. Moreover, during the final months of the transition, the PALIPEHUTU-FNL concluded a rapprochement with President Ndayizeye's Front for Democracy in Burundi (FRODEBU) and agreed to sign a ceasefire with him.² Although it did not participate in the elections, the movement called on the population of the provinces it controlled to vote for FRODEBU and against CNDD-FDD candidates.³ Although the FNL did not disrupt voting at the

communal and legislative elections on 3 June and 4 July 2005,⁴ it did not recognise the results. From August 2005, it intensified attacks in its Bujumbura Rural and Bubanza strongholds.

In his opening speech to parliament after his election on 19 August 2005, President Nkurunziza, who had come up through the ranks of the CNDD-FDD, said that "the top priority is to open negotiations with the FNL and conclude a ceasefire agreement with that movement".⁵ At his investiture on 26 August, Nkurunziza reaffirmed his willingness to negotiate with the FNL, and called on it "to stop the war and agree to begin negotiations with the government so that the whole country can be at peace again". In reality, however, it was an illusion to imagine that an agreement could be reached quickly.

In response to the new government's statements, Agathon Rwasa, the FNL leader, dithered and Pastor Habimana, its spokesperson, made provocative statements claiming to want peace talks but disputing the new government's legitimacy.⁶ Consequently, on 5 October, the president issued an ultimatum. He gave the FNL three weeks to either lay down its arms voluntarily or be forced to do so. In addition, while announcing the creation of a technical commission to prepare the negotiations,⁷ Nkurunziza instructed the National Intelligence Service (SNR)⁸ and the national police to arrest individuals allegedly close to the FNL in an attempt to deepen the internal divisions within the rebel movement.⁹ At a meeting of the Tripartite Plus Commission¹⁰ in Kampala on 21 October, the

⁴ See Crisis Group Africa Briefing N°31, *Elections in Burundi: A Radical Shake-up of the Political Landscape*, 25 August 2005.

⁵ "Les députés burundais élisent un nouveau président", *bbcafric.com*, 19 August 2005.

⁶ "Les FNL rejettent toute négociation avec le nouveau régime", *Arib News*, 13 September 2005.

⁷ This commission was chaired by the then Minister of the Interior, Salvator Ntacobamaze. The then CNDD-FDD president, Hussein Radjabu, was also a member.

⁸ The SNR reports directly to the presidency of the Republic.

⁹ The extensive coverage given by the press to the decision by a minority faction of the PALIPEHUTU-FNL to replace the movement's leader, Agathon Rwasa, with the former Vice President of the movement, Jean-Bosco Sindayigaya, was probably part of this strategy to divide the movement. See "Agathon Rwasa, suspendu de la présidence des FNL", *Agence France-Presse*, 10 October 2005.

¹⁰ The Tripartite Plus Commission was created in 2004 on the initiative of the United States. It comprises representatives from Uganda, Rwanda and the Democratic Republic of Congo (DRC) and aims to strengthen regional cooperation with a view to reestablishing stability in the Great Lakes region. Burundi joined the commission at the Kigali Summit held on 24-25 August 2005.

¹ The two movements clashed in 1997 and 1998 in Cibitoke province and again in September 2003. Starting in 2004, the FDD and the government forces (FAB) conducted several joint military operations against the FNL in Bujumbura Rural province.

² A ceasefire was signed in Dar es Salaam, 15 May 2005.

³ See Crisis Group Africa Report N°120, *Burundi: Democracy and Peace at Risk*, 30 November 2006.

government's partners agreed to place the FNL on the list of armed groups subject to international sanctions.

On 30 October, with the expiry of the government's deadline and no response to its ultimatum, Nkurunziza instructed the defence and security forces to render the FNL harmless in under two months.¹¹ The army launched several wide-ranging offensives in Bujumbura Rural, Cibitoke and Bubanza provinces.¹² Many FNL combatants and officers were killed or chose to desert while several thousand civilians, suspected of sympathising with the rebel movement, were arrested and imprisoned in various detention centres and military camps.¹³

Meanwhile, the government pursued its diplomatic offensive to have the FNL treated as a "negative force" that should be disarmed unconditionally. It partly achieved this goal on 27 January 2006, when UN Security Council Resolution 1653 on the situation in the Great Lakes region put the FNL in the same category as the Democratic Forces for the Liberation of Rwanda (FDLR) and the Lord's Resistance Army (LRA).¹⁴ However, the government has failed to win the international community's full support.

At the beginning of 2006, Tanzania made a determined attempt to find a negotiated solution to the conflict.¹⁵ Its new president, Jakaya Mrisho Kikwete, was minister for foreign affairs in 2005, when the Regional Initiative¹⁶

gave him responsibility for maintaining contact with the FNL. On 19 January 2006, forcing the FNL to end its silence, the Tanzanian ambassador to Burundi, General Francis Mndolwa, announced that the rebel movement was ready to negotiate without preconditions. In March President Kikwete began a series of visits to the capitals of the countries involved in the Regional Initiative to try and obtain their support for peace talks. With no reaction from the government, which continued its military strategy,¹⁷ Tanzania pressured Rwaswa into organising a press conference in Dar es Salaam on 11 March at which he publicly confirmed his readiness to negotiate without preconditions.¹⁸ This was broadcast by several popular radio stations in Burundi.¹⁹

These signs of an opening were received favourably by the UN Security Council²⁰ and the African Union (AU) Peace and Security Council.²¹ In contrast, the government treated them with scepticism and sought to delay the opening of negotiations.²² At the Tripartite Commission meeting on 20-21 April 2006, it again requested and obtained partners' support for international sanctions against PALIPEHUTU-FNL.²³ In particular, it set two conditions for the opening of talks: participation of a dissident faction of the rebel movement,²⁴ and the

¹¹ "Le président burundais promet de régler la question des FNL en deux mois", Agence France-Presse, 30 October 2005.

¹² "Le pouvoir veut en finir avec la rébellion au Burundi", PANA, 30 October 2005.

¹³ However, most of them were released. Some suffered physical abuse. According to the Minister of National Defence and Veterans' Affairs, Germain Niyoyankana, speaking at a press conference on 21 December 2005, 120 FNL combatants were killed and 650 captured between October and December 2005.

¹⁴ "Strongly condemns the activities of militias and armed groups operating in the Great Lakes region such as the Forces Démocratiques de Libération du Rwanda (FDLR), the Palipehutu-Forces Nationales de Libération (FNL) and the Lord's Resistance Army (LRA), which continue to attack civilians and United Nations and humanitarian personnel and commit human rights abuses against local populations and threaten the stability of individual States and the region as a whole and reiterates its demand that all such armed groups lay down their arms and engage voluntarily and without any delay or preconditions in their disarmament and in their repatriation and resettlement", UNSC S/RES/ 1653, 27 January 2006.

¹⁵ Crisis Group interview, General Francis Mndolwa, Tanzanian ambassador to Burundi, Bujumbura, February 2007.

¹⁶ The Regional Initiative was created in 1995 by the President of Uganda, Yoweri Museveni and the President of Tanzania, Julius Nyerere. It includes Uganda, Tanzania, South Africa, Rwanda, the DRC, Ethiopia and Zambia. It has played a major role in accompanying the Arusha process by mandating Julius Nyerere, Nelson Mandela and then the South African Vice President, Jacob Zuma as facilitator of the peace negotiations.

Its most active members now are South Africa, Tanzania and, to a lesser extent, Uganda.

¹⁷ "Rébellion du FNL : Nkurunziza veut passer à la vitesse supérieure", *La Libre Belgique*, 3 February 2006.

¹⁸ "Offre du PALIPEHUTU-FNL pour des négociations avec le gouvernement : des réactions diversifiées", *Burundiexpress.org*, 15 March 2006.

¹⁹ Radio Isanganiro, RFI, Bonesha-FM.

²⁰ "The Security Council welcomes the statements recently made by the FNL leader, Agathon Rwaswa, in Dar es Salaam, expressing his readiness to negotiate with a view to put a final end to violence. The Council urges both parties to seize this opportunity for negotiations with a view to bringing peace to the whole country", UNSC S/PRST /2006/12, 23 March 2006.

²¹ "L'UA pour une paix des braves au Burundi", *Arib News*, 4 April 2006 ; David Ndayiragije, "Le gouvernement du Burundi cherche toujours à éviter les négociations directes avec le FNL", *Burundi Réalités*, 5 May 2006.

²² The search and destroy operations against FNL combatants and their presumed sympathisers reached its high point in March 2006. Seventh Report of the General Secretary on the United Nations Operation in Burundi (ONUB), S/2006/429, 21 June 2006.

²³ An open letter on the government's position won its author, Terence Nahimana, a period in prison. He set out various hypotheses to explain the government's refusal to open negotiations, including the need to maintain an active rebellion on the territory of the Democratic Republic of Congo, in order to be able to justify Burundi's participation in a regional project to invade the Congo: "La lettre qui a envoyé Térence Nahimana en prison", *Arib News*, 26 May 2006.

²⁴ Jean Bosco Sindayigaya's PALIPEHUTU-FNL, which has practically no combatants in the field.

appointment of South Africa as chief facilitator²⁵ in preference to Tanzania, which the government judged to be too close to the rebel movement.

After intense consultations, the Regional Initiative countries agreed to the government's demand on the last point. On 7 May 2006, President Mbeki appointed Charles Nqakula, former commander of the armed wing of the African National Congress (ANC) and, since 2002, minister of safety and security, as facilitator. He also asked his special envoy to the Great Lakes, Kingsley Mamabolo, to support the mediation efforts. On 29 May, a Burundi government delegation, led by the minister of the interior and public security, Major-General Evariste Ndayishimiye,²⁶ had a first meeting in Dar es Salaam with the PALIPEHUTU-FNL, led by Agathon Rwaswa, under the auspices of the facilitator.

Rwaswa solemnly recognised the legitimacy of the Burundian government and General Ndayishimiye confirmed the government's intention to conclude a peace agreement.²⁷ Two commissions were created. First, a military commission with responsibility for the disarmament, demobilisation and reintegration (DDR) of the FNL and its integration into the security forces; and second, a political commission for organising provisional immunity for PALIPEHUTU-FNL leaders, the return of refugees and the rebel movement's participation in the country's political life. Two agreements were signed in less than four months.

B. THE AGREEMENTS

It quickly became clear that the integration of the FNL into the defence and security services was the major issue in the negotiations and the main obstacle to a successful outcome. The movement called for a complete overhaul of the defence and security services, which was naturally refused by the Tutsi community,²⁸ the government and

the Regional Initiative. Integration of the FNL into the security services could only take place if it preserved the structure of the services, took account of the political composition negotiated at previous peace agreements and recognised the ethnic balance set out in the constitution.²⁹

1. The agreement in principle of 18 June 2006

In order to avoid an impasse or renewed violence in the field compromising the process,³⁰ the facilitator refocused the discussions on other issues. In the presence of Presidents Mbeki and Kikwete in Dar es Salaam on 18 June 2006, President Nkurunziza and Agathon Rwaswa signed an agreement in principle "with a view to achieving lasting peace, security and stability in Burundi". This agreement was important because it removed certain psychological obstacles to the continuation of the discussions. It satisfied several of the PALIPEHUTU-FNL's demands and created a minimal climate of trust for subsequent negotiations.

The agreement in principle provided for:

- creation of a commission of experts to rewrite the history of Burundi;
- inclusion of the term "forgiveness", as well as those of truth and reconciliation, in the official name of the commission responsible for establishing the facts and responsibilities for the crimes committed since Burundi gained independence;
- provisional immunity for members of the PALIPEHUTU-FNL;
- the option for PALIPEHUTU-FNL to register as a political party in accordance with the legislation in force;
- an end to discrimination against repatriated populations; and
- participation of PALIPEHUTU-FNL human resources at each stage of the transformation,

²⁵ "Le gouvernement du Burundi cherche toujours à éviter les négociations directes avec le FNL", *Burundi Réalités*, 5 May 2006.

²⁶ A Hutu from Gitega, Major-General Evariste Ndayishimiye is an important and influential CNDD-FDD leader. During negotiations on the ceasefire with the transitional government, he chaired the CNDD-FDD Political Commission. He later led the CNDD-FDD delegation to the mixed ceasefire commission. He was then appointed Chief of General Staff and given responsibility for logistics. In March 2006, he was appointed Minister of the Interior and Public Security, replacing Salvator Ntacobamaze.

²⁷ "Espoir d'un règlement du conflit au Burundi", *Arib news*, 30 May 2006.

²⁸ At the beginning of June 2006, several political parties with a Tutsi majority mobilised in Bujumbura to denounce the "Hutu monologue" in Dar es Salaam and demand to be included in the negotiations. See "Pour des négociations inclusives entre les

segments en conflit au Burundi", press release, *Survit-Banguka* Geneva, 1 June 2006; "lettre à l'attention du facilitateur Charles Nqakula", P02-065/PLPHT-FNL/06, Dar es Salaam, 13 June 2006.

²⁹ Article 257 of the constitution promulgated on 18 March 2005 states that: "The defence and security forces are open to all Burundi citizens who wish to join them, without discrimination. Their organisation is based on voluntary service and professionalism. During a period to be determined by the Senate, and given the need to ensure ethnic balance and prevent acts of genocide and coups, no more than 50% of the defence and security forces shall belong to one ethnic group". All translations of the constitution in this report are Crisis Group's own.

³⁰ "Burundi: FNL intensifies attacks as peace talks go on", *Irin news*, 2 June 2006.

reform and modernisation of the defence and security forces.

At first, the agreement in principle included a declaration of the cessation of hostilities in article 6. However, at the last moment, it was replaced by a simple declaration of intent to conclude a comprehensive ceasefire agreement by 1 July 2006. A further three months of negotiations would be necessary to reach such an agreement.

At the end of June, a new crisis of confidence affected the parties. The government accused the rebel movement of using the money paid by the facilitator to buy arms³¹ and continue its offensives in the field.³² In turn, after the discovery in July of several bodies presumed to be its fighters floating in the River Rubuvu in Muyinga and a wave of arrests of political opponents in August,³³ the PALIPEHUTU-FNL denounced government attempts to make the talks fail.

The negotiations also became more complicated because, under the influence of several members of the opposition who had come to Dar es Salaam to advise the movement,³⁴ the PALIPEHUTU-FNL tried to add points to the agenda. In particular, it asked for guarantees about the integration of its members into the general staff of the defence and security forces and political institutions. The government found this demand unacceptable. Meanwhile, the facilitator explained to the PALIPEHUTU-FNL that some of its demands were inadmissible because they were unconstitutional and others would be met later, after the implementation of a ceasefire.³⁵ Finally, on 7 September, after putting very strong pressure on the rebel movement,³⁶ the heads of state of the Regional Initiative³⁷ managed a comprehensive ceasefire agreement.

³¹ Crisis Group interviews, Dar es Salaam, July 2006.

³² "Burundi, rebel attacks civilians as ceasefire talks continue", *Irin news*, 19 July 2006.

³³ "We flee when we see them: abuses with impunity at the National Intelligence Service in Burundi", Human Rights Watch, October 2006.

³⁴ Crisis Group interviews, Dar es Salaam and Bujumbura, September-October 2006.

³⁵ Crisis Group interviews, diplomats, Bujumbura, July 2007.

³⁶ Tanzania and South Africa apparently threatened to expel the PALIPEHUTU-FNL if it did not sign. Crisis Group interviews, diplomats, Bujumbura, July 2007.

³⁷ Among those present at the signing ceremony, as guarantors of the agreement, were the president of the Regional Initiative, Yoweri Museveni, the vice president of the initiative, Jakaya Kikwete and the representative of the facilitation, Thabo Mbeki. The African Union was represented by P. Mazimhaka, vice president of the AU Commission. The UN was represented by M. Nureldin Satti, special representative of the UN secretary general in Burundi.

2. The ceasefire agreement of 7 September 2006

The 7 September agreement³⁸ is a purely technical document, which set a date for the cessation of hostilities³⁹ on 10 September, created a Joint Verification and Monitoring Mechanism (JVMM)⁴⁰ and created an AU Special Task Force to protect FNL leaders and move FNL combatants to assembly areas.⁴¹ The timetable for the operations was extremely tight:

- By the end of the first week after the start of the ceasefire, the JVMM and the Joint Liaison Teams (JLTs) were to be in place and the PALIPEHUTU-FNL was to have handed over a list of its combatants and equipment.
- By the end of the following week (phase 1), the FNL was to have moved to the assembly areas, the government to have released political prisoners and prisoners of war and the JLTs to have identified and disarmed combatants and transported them to the demobilisation centres.
- During week three (phase 2), combatants were to be moved to the demobilisation centres for orientation, sensitisation and demobilisation.
- Finally, by 10 October, all personnel selected for integration into the defence and security forces were to be moved to training and harmonisation centres, with all the others being demobilised.

Although this agreement was a step in the right direction, it had several clear weaknesses. While thirteen months had been necessary to integrate the FDD into the armed forces, this agreement allowed only one month to demobilise the FNL. The JVMM was authorised to adjust the timetable (annex II, 5.9), although such a provision would only lead to arguments and reciprocal accusations of violating the agreement. Moreover, the agreement did not define the mistaken notion of "prisoners of war and political prisoners"⁴² mentioned in point 3 of annex II and does not spell out how provisional immunity in annex I, 2.5 will be attributed.

³⁸ "Comprehensive Ceasefire Agreement between the Government of the Republic of Burundi and the Palipehutu-FNL", Dar es Salaam, 7 September 2006, www.operationspaix.net/IMG/pdf/Burundi_cessez-le-feu_global_2006-09-07_.pdf.

³⁹ *Ibid*, Articles 1 and 2.

⁴⁰ *Ibid*, Article 3.1.

⁴¹ *Ibid*, Article 3.4.

⁴² According to the Burundian human rights non-governmental organisation, APRODH, there are now no more than 350 PALIPEHUTU-FNL prisoners in the country's civilian prisons and probably no more than 50 in military prisons. Some of the latter were probably killed by the security forces after their capture or transfer. Crisis Group interview, Bujumbura, July 2007.

In particular, the agreement deals with the question of integrating the FNL into the defence and security forces in a purely technical way. In annex III, it only recalls the general principles set out in the 18 June agreement and reduces this problem to rank harmonisation, post allocation and career paths, for which it makes the JVMM responsible for finding solutions. At no time does the agreement make reference to a minimum number of posts in the general staff to which the FNL might present candidates. Finally, it is silent on the question of the integration of the movement into the political institutions.

In many ways, this agreement very much seems to be more an act of surrender than a peace agreement. The PALIPEHUTU-FNL says it signed the agreement to gain time and avoid giving the government a pretext for blocking the negotiations and arresting more of its members.⁴³ It also seems that the facilitation made a vague promise to Rwaswa that its more political demands would be taken into account later by the government.⁴⁴

Finally, the agreement was unworkable because the rebel movement, though now weaker, is not ready to surrender without some of its demands being met. It still has a significant number of combatants⁴⁵ (between 2,000 and 3,000) including many new recruits. It also enjoys some support from the population, especially in the western provinces and in refugee camps in Tanzania, where more than half of residents are refugees from 1972, who are to a large extent favourable to it. It believes that time is on its side as return of these refugees should offer it an opportunity to increase its numbers. Meanwhile, the opposition parties encourage it not to take things too quickly, so they can organise together to take control of the country as it moves toward elections in 2010. With the government also not in favour, implementation of the agreement in its current state is difficult. Almost one year after its signature, little progress has been made.

C. THE PROCESS OF IMPLEMENTATION BREAKS DOWN

As envisaged by the agreement, the ceasefire entered into force on 10 September and there have been no major violations since then. Groups of combatants began to assemble in Bubanza and Bujumbura Rural provinces.⁴⁶

⁴³ Crisis Group interviews, FNL leaders, Dar es Salaam, September 2006.

⁴⁴ Crisis Group interviews, diplomats, Bujumbura, July 2007.

⁴⁵ Crisis Group interview, Bujumbura, July 2007.

⁴⁶ However, it seems that most of these combatants belonged to the dissident wing of the PALIPEHUTU-FNL led by Jean Bosco Sindayigaya and had long since renounced the armed struggle. Crisis Group interview, Bujumbura, October 2006.

In the hope of consolidating this progress, the facilitation opened an office in Bujumbura on 27 September, then organised the visit of the first PALIPEHUTU-FNL delegation to identify the assembly areas and study how to make the sites secure.

However, on 11 October, the day set for the launch of the JVMM's activities, the PALIPEHUTU-FNL created a problem. It provided a list of its representatives to the JVMM⁴⁷ but included a member who was in prison and demanded his release before participating in the mechanism's work. Dialogue stalled for around two months. Rwaswa regularly denounced government violations of the agreement's clauses on provisional immunity and the release of political prisoners and prisoners of war.⁴⁸ Meanwhile, the government accused the FNL of continuing to recruit personnel and extorting the population. The facilitation unsuccessfully tried to intervene and convince the PALIPEHUTU-FNL that the JVMM was the appropriate framework within which to discuss all its demands. On 22 November it obtained from President Nkurunziza the promulgation of a law granting provisional immunity to the rebel movement's combatants.

This concession did not resolve anything because the PALIPEHUTU-FNL wanted to secure the immediate release of its combatants, to be able to reinforce its troops and make a stronger showing at the assembly sites. It also hoped to pressure the government, which was acting in an increasingly authoritarian and repressive way during the second half of 2006,⁴⁹ into stopping the almost systematic execution of FNL personnel arrested by the army and the intelligence services.⁵⁰

The beginning of 2007 revived hopes for progress in the implementation of the ceasefire. After the release of several opposition leaders and the ousting of Hussein Radjabu as head of the CNDD-FDD on 7 February, the domestic political climate calmed down. On 18 February, it agreed to

⁴⁷ The JVMM has 24 members including seven government representatives, seven FNL representatives, five Regional Initiative representatives (three South Africans, one Tanzanian and one Ugandan), a representative of the National Commission for Demobilisation, Reinsertion and Reintegration, two African Union representatives and two representatives from the United Nations Integrated Office in Burundi.

⁴⁸ In November, the PALIPEHUTU-FNL wrote to the United Nations Special Representative, M. Satti, accusing the government of conducting hostile military manoeuvres in the zones where its combatants were stationed and criticising the South African mediators for systematically siding with the government.

⁴⁹ See Crisis Group Report, *Burundi: Democracy and Peace at Risk*, op. cit.

⁵⁰ Crisis Group interviews, human rights organisations, Bujumbura, July 2007.

participate for the first time in the work of the JVMM in the hope of improving its position and obtaining the release of political prisoners and prisoners of war.⁵¹

However, new problems quickly emerged. The rebel movement's demands regarding prisoners were not met; it requested international assistance for combatants in the hills,⁵² which was refused; and it demanded to discuss political issues within the JVMM framework, which was refused by the government and the facilitation. On 26 March, after more procrastination, the PALIPEHUTU-FNL definitively suspended its participation in the JVMM and made its return to the negotiating table conditional on: 1) the release of all political prisoners that are members of the movement; 2) the cantonment of the defence and security forces in all provinces where the FNL operates; 3) the opening of negotiations on a technical forces agreement;⁵³ and 4) agreement on integration of the movement into political institutions.

Noting that "the positions of both sides were irreconcilable" and "the PALIPEHUTU-FNL has raised questions that involve renegotiating the terms and provisions of the comprehensive ceasefire agreement of 7 September"⁵⁴, the facilitation decided to suspend the JVMM's work and request the intervention of the lead facilitator. In the hope of definitively putting the ceasefire agreement back on track, the Regional Initiative then organised a face-to-face meeting between President Nkurunziza and Rwaswa on 17 June 2007. The discussions took place in a tense atmosphere⁵⁵ but the two parties agreed⁵⁶ to renew their determination to implement the 7 September 2006 agreement and discuss all of the problems that remained to be resolved within the JVMM. President Nkurunziza promised to release FNL prisoners on receipt of a list from the rebel movement. Nkurunziza and Rwaswa also committed themselves to directly contacting each other should any problem implementing the agreement arise.

However, in the absence of a written agreement, ambiguity remained about the real commitments made by the two

parties, especially with regard to the JVMM's capacity to discuss unresolved political issues and the possibility of integrating the PALIPEHUTU-FNL into the defence and security forces and political institutions. Despite everything, the JVMM began work again at the beginning of July and technical problems were resolved. The FNL delegation approved the terms of reference of the JLTs responsible for dealing with political prisoners and assembly areas. The JVMM sub-commission responsible for determining the level of FNL integration into the defence and security forces got as far as meeting in the presence of FNL representatives. However, the rebel movement continually refused to present a list of either prisoners or its personnel to the JVMM.

In mid-July, the PALIPEHUTU-FNL delegation again showed signs of adopting a more rigid position and began preparations for leaving the capital, probably in response to the 13 July appointment of a new government that did not include opposition groups and seemed to indicate a worsening of the political crisis and a hardening of the regime. The government and the AU Task Force Team responsible for protecting the delegation observed PALIPEHUTU-FNL preparations with concern.

On 21 July, in the hope of dissuading the delegation from leaving, the Task Force decided to confine it to its hotel, using the disappearance of four to six weapons from the gun-room at the South African base as pretext. This tactless decision exacerbated the crisis of confidence between the FNL and the Task Force. As the latter was composed of only South African soldiers, and the representative of the facilitation was also South African, but absent on that day, the head of the FNL delegation, Jean Berchmans Ndayishimiye, asked for immediate access to the South African ambassador's residence to lodge an official complaint. As the escort drove through the outer suburbs of the town, it was surrounded by armed members of the FNL and Ndayishimiye disappeared with them into the surrounding hills.⁵⁷ During the next two days, almost all members of the delegation⁵⁸ succeeded in giving their Task Force escorts the slip.

Rumours that renewed fighting between the army and the FNL was imminent soon spread through the capital. In statements to the press, the deputy army chief, Major

⁵¹ Crisis Group interviews, diplomats, Bujumbura, July 2007.

⁵² The PALIPEHUTU-FNL also asked the international community to reimburse 350 million Burundi francs (\$350,000) that it claimed to have spent on feeding and looking after its combatants since the signature of the ceasefire agreement on 7 September 2006.

⁵³ A technical forces agreement would determine the level of representation of the rebel movement in the defence and security forces general staff, on the same model as the agreement between the CNDD-FDD and the transitional government on 2 November 2003.

⁵⁴ "Positions 'irréconciliables' entre le pouvoir et les FNL", Burundi réalités, *Arib news*, 27 March 2007.

⁵⁵ Crisis Group interviews, diplomats, Bujumbura, July 2007.

⁵⁶ Crisis Group interviews, Bujumbura, July 2007.

⁵⁷ Crisis Group interviews, diplomats and representatives of the African Union Task Force, Bujumbura, July 2007.

⁵⁸ There are now only three members of the PALIPEHUTU-FNL delegation in Bujumbura. General Marumo of the African Union has told them they are free to leave Bujumbura if they wish. They have said they prefer to remain in Bujumbura and asked for protection by the African Union forces. Crisis Group interview, General Stephen Masuro, head of the facilitation office, Bujumbura, July 2007.

General Godefroid Niyombare, publicly spoke of this risk⁵⁹ while senior security chiefs held emergency meetings in Kayanza on 24 July and decided to take precautionary measures against such an eventuality.

Meanwhile in Dar es Salaam, the group's spokesperson, Pastor Habimana, said that the PALIPEHUTU-FNL did not want a return to war and the delegation had simply left Bujumbura for consultation. However, he added that the departure was also in protest against the attitude of the Task Force and, generally, the South African facilitation, which he accused of systematically taking the government's side. He said that the delegation would not consider returning to Bujumbura until the government ended army repression of FNL personnel in the field, agreed to negotiate a technical forces agreement and guarantee the integration of the rebel movement into political institutions.⁶⁰ For the moment, there has been no major violation of the ceasefire but the situation in the field remains unstable. Further clashes cannot be discounted and they could lead to a serious escalation of the conflict.

III. MAIN ACTORS AND INTERESTS

Several factors severely handicap the conclusion and implementation of a quick peace agreement between the CNDD-FDD-dominated government and the PALIPEHUTU-FNL. First, the two parties have very different perceptions of each other's legitimacy, the nature of the conflict, and what is required to achieve a definitive peace. Second, the negotiations have been severely affected by the internal political crises of the last two years and the calculations and formation of alliances taking place in preparation for the 2010 elections. Finally, even though the countries of the Regional Initiative have played a key role in maintaining the dialogue and stopping the fighting, the two parties have exploited differences between South African and Tanzanian approaches to avoid making concessions necessary for peace agreement implementation.

A. THE PALIPEHUTU-FNL

The PALIPEHUTU-FNL movement was born in the aftermath of the 1972 genocide and, therefore, is extremely sensitive about the legitimacy of its struggle. It has an ethnic and military interpretation of the country's history. It is a peasant guerrilla movement, strongly rooted in the hills of the country's western provinces, excessively secret and influenced by elements of mysticism. As it lacks members with negotiating experience, it is extremely distrustful in its conduct of negotiations. Militarily weakened, it seems to have given up the idea of restarting the war.

On the other hand, it is not ready to implement the 7 September 2006 agreement, which would be tantamount to surrender. A number of CNDD-FDD members took their first steps in opposition and made their debut as armed rebels in PALIPEHUTU. The FNL believes itself to be the senior Burundian rebel movement and that its actions have made change possible. It considers itself the legitimate guardian of armed combat and bearer of primogeniture rights over the CNDD-FDD. It does not recognise the legitimacy of the latter's electoral victory nor does it accept the agreement with the army, which it still considers to be Tutsi and an enemy. As the internal political context remains uncertain, it probably wants to make the negotiations last as long as possible and continue to recruit so it can negotiate from a position of strength before disarming in the year before the 2010 elections.

1. The legacy of the 1972 genocide

The PALIPEHUTU is the oldest Hutu rebel movement. Unlike the CNDD-FDD, which was formed after the assassination of President Melchior Ndadaye in 1993, its creation was a direct result of the 1972 genocide against

⁵⁹ "We are very concerned by the FNL's attitude because the implementation of the ceasefire agreement is not making progress and we have information according to which the FNL are recruiting and rearming with a view to renewing the war", General Niyombare, in "Burundi: un chef rebelle reprend le maquis", Agence France-Presse, 23 July 2007.

⁶⁰ Crisis Group telephone interviews, Pastor Habimana, 23 and 25 July 2007.

the Hutu elite. The party was founded on 18 April 1980 by an agronomist, Rémy Gahutu,⁶¹ in the Hutu refugee camps in Tanzania. Heavily influenced by Marxism and the 1959 Rwandan social revolution, it was the first mass movement to defend the Hutu cause in Burundi. While silence reigned about the genocide perpetrated by General Micombero's military regime in 1972, the movement sought to raise Hutu awareness of this tragedy, overthrow the Tutsi-dominated government, reveal the truth about the country's history and obtain justice for the victims.⁶²

The group interpreted the assassination of the Hutu President Melchior Ndadaye, on 21 October 1993, the putsch of Major Buyoya in 1996 and the two wars in the Congo between 1996 and 1998, as elements of a wide-ranging Tutsi conspiracy orchestrated from Kampala, Kigali and Bujumbura,⁶³ reinforcing its vision of the radical antagonism between Hutus and Tutsis and the overriding need to remove the latter from military power in Bujumbura. The FNL included a few hundred Rwandan Hutu rebels in its ranks, some of whom participated in the 1994 genocide, and kept close links with the Rwandan FDLR, which was active in South Kivu and sometimes used Burundian territory to infiltrate and destabilise Rwanda during the two Congo wars (1996-2003).⁶⁴

Classed as "negative forces" by the Lusaka Accord of August 1998 and marginalised from negotiations on Burundi by mediator Julius Nyerere, the PALIPEHUTU-FNL was only invited to the negotiating table at the beginning of 2000 when Nelson Mandela took over as head facilitator. However, the rebel movement disputes the principles and logic of the Arusha Agreement, which gave

pride of place to the political parties, favoured a non-ethnic interpretation of Burundian political problems and considered a political power-sharing agreement between Hutus and Tutsis. The PALIPEHUTU-FNL demands redistribution of power based on the size of ethnic groups.

Between 2000 and 2003, all attempts to bring the rebel movement to the negotiating table were unsuccessful. Every time, the PALIPEHUTU-FNL asked to negotiate with a government delegation composed exclusively of Tutsis and demanded, as a precondition, the dismantling of the Burundi Armed Forces (FAB).⁶⁵ Those within the movement who were suspected of wanting to engage in talks on a different basis were marginalised or eliminated by the leadership.⁶⁶ Finally, the rebel movement continued to prefer military action and never really convinced anyone of its commitment to negotiations.

At the end of 2003, the movement was forced to soften its position. The other Hutu rebel movement, the CNDD-FDD, had just signed a peace agreement,⁶⁷ and the PALIPEHUTU-FNL leader, Agathon Rwasa, realised that he ran the risk of being marginalised by remaining outside the process. Moreover, despite his bombardment of Bujumbura, 7-13 July 2003, he failed to change the balance of forces and suffered massive reprisals by the FAB for several months. In December 2003, he agreed to participate in an informal meeting with a delegation of Tutsis in Nairobi, organised for his benefit by the UN. Then at an extraordinary congress in Kigoma, Tanzania in April 2004, he announced, for the first time, an immediate cessation of hostilities⁶⁸ and his willingness to negotiate on condition that a mutual forgiveness ceremony between representatives of the Hutu and Tutsi communities was organised. However, internal tensions within the movement prevented it from really engaging in such a process.

The gradual opening of the rebel movement was brutally cut short on the night of 13-14 August by the massacre of 160 Congolese Banyamulenge refugees in the Gatumba refugee camp.⁶⁹ On the same day, the PALIPEHUTU-FNL claimed

⁶¹ Rémy Gahutu was an agronomist from the central province of Muramvya. He was educated in Belgium, where he went into exile after the 1972 genocide. He later went to Rwanda where he became the general secretary of a small Marxist group, TABARA UBURUNDI, which was particularly active in denouncing the military regime of President Bagaza. In 1979, after denouncing the Bagaza government's repression of the Hutu community in Burundi, right in the middle of a France-Africa summit meeting, he was expelled from Rwanda and moved to the Burundian refugee camps in Tanzania, where he organised PALIPEHUTU. During the 1980s, Gahutu often travelled to Europe to mobilise the diaspora in support of PALIPEHUTU. In 1990, he died in a Tanzanian prison in unclear circumstances without having raised the profile of his movement or organised genuine guerrilla action. According to the FNL, he was assassinated by the Burundi secret services, aided by Tanzania and abetted by some PALIPEHUTU leaders. See "Entretien exclusif avec Monsieur Agathon Rwasa, Président de PALIPEHUTU-FNL", abarundi.org, 27 April 2005.

⁶² See Crisis Group Africa Report N°46, *Burundi After Six Months of Transition: Continuing the War or Winning Peace?*, 24 May 2002.

⁶³ Crisis Group interview, Pastor Habimana, Dar es Salaam, 17 March 2006.

⁶⁴ "Burundi", Human Rights Watch, World Report, 2000.

⁶⁵ See Crisis Group Africa Report N°25, *Burundi: Neither War nor Peace*, 1 December 2000.

⁶⁶ In 2001, the head of military operations, Agathon Rwasa, removed Kabura from the leadership. In 2002, the movement's spokesperson, Anicet Ntawuhiganayo, and two of its most influential members, the brothers Alexandre Niyonzima and Hyacinthe Nibigira, reputedly in favour of opening negotiations with the government, disappeared and were probably executed.

⁶⁷ The peace agreement between the government and Pierre Nkurunziza's CNDD-FDD was signed on 16 November 2003.

⁶⁸ This cessation of hostilities never took place in the field, with each side blaming each other for renewed clashes.

⁶⁹ Crisis Group interviews, FNL leaders, Dar es Salaam, 17-18 March 2006; "Burundi: the Gatumba massacre", Human Rights Watch, September 2004.

responsibility for the massacre, explaining that the camp had become a recruitment and training base for the army and, therefore, a legitimate military target. Negotiations were immediately suspended. At a meeting in Dar es Salaam on 18 August, the heads of state of the Regional Initiative countries decided to class the PALIPEHUTU-FNL as a terrorist organisation and asked the AU and the UN to impose sanctions in accordance with international conventions.⁷⁰ On 5 October 2004, the UN published a report on the Gatumba massacre recommending that the Security Council immediately open national and international judicial proceedings. Meanwhile, the Burundian Minister of Justice issued warrants for the arrest of Rwasa and the movement's spokesperson, Pastor Habimana.

It was only in April 2005 that contact between the PALIPEHUTU-FNL and the region's countries was finally restored in anticipation of the June elections.⁷¹ The regional and international community were primarily concerned to ensure that the FNL did not prejudice the organisation of the election. President Ndayizeye was still convinced that his party, FRODEBU, would defeat the CNDD-FDD in the elections. He was also concerned to ensure that the FNL would not disrupt the campaign in the provinces where it operated and that PALIPEHUTU sympathisers would vote for FRODEBU, as they had done in 1993.

Finally, the rebel movement felt it was important to put an end to its status as a regional pariah and find a way back into the process, having doubtless understood that the Gatumba massacre was a monumental political error. On 15 May 2005, Rwasa and President Ndayizeye met in Dar es Salaam and signed an agreement to cease hostilities, while leaving detailed discussions about disarmament and the integration of rebel forces into the army until a later date. The meetings scheduled for June and July in Dar es Salaam to consolidate the agreement never took place; FRODEBU and President Ndayizeye had lost the June elections and their position as the government of the country.

⁷⁰ Communiqué of the 22nd Great Lakes summit, 18 August 2004.

⁷¹ At the beginning of April 2005, a PALIPEHUTU-FNL delegation, led by Ibrahim Ntakirutimana, met Tanzanian authorities. At the end of these talks, which lasted several days, the rebels announced a ceasefire and their willingness to negotiate with the government. At a meeting of the Regional Initiative in Kampala on the Burundi elections on April 22, the subregion's heads of state mandated Tanzanian president, Benjamin Mkapa, to meet Agathon Rwasa. On 25 April, at this meeting with the Tanzanian president, Rwasa officially reiterated the movement's desire for an end to the fighting. "Burundi: stop fighting us, rebel leader tells government", *Irin news*, 27 April 2005.

2. The improbable surrender

The electoral victory of the CNDD-FDD was a shock for the PALIPEHUTU-FNL. Relations with the rebel movement, which had always been difficult,⁷² became frankly hostile after the launch of the first FDD-FAB joint operations against FNL positions at the end of 2003.⁷³ But the arrival in power of a Hutu rebel movement like the CNDD-FDD and the successful integration of the FDD into the National Defence Forces (FDN) deprived the PALIPEHUTU-FNL of much of its platform; that is, the liberation of the Hutu people and the dismantling of the Tutsi-dominated army.

The leadership's failure to react to the newly-elected President Nkurunziza's call for negotiations probably indicated how confused the movement now found itself. Several combatants and militants privately expressed their doubts about the scope for continuing the armed struggle.⁷⁴ Meanwhile, in September 2005, Rwasa visited several operations zones to consult his supporters. Rwasa⁷⁵ says he tried to obtain the support of combatants for opening negotiations. However, several combatants say that Rwasa warned them of the risks of engaging in a process of political negotiation and made a point of saying that, sooner or later, Nkurunziza was doomed to meet the same fate as Melchior Ndadaye.⁷⁶

After the launch of repressive operations against its forces at the beginning of November 2005, the movement appeared to be deeply unstable. It retreated into silence and was unable to formulate clearly its demands, other than to denounce the fact that the ethnic quotas provided by the constitution were not being respected, working to the advantage of the Tutsis.⁷⁷ In Dar es Salaam, several opposition political leaders and members of civil society advised the

⁷² The first clashes between the two movements took place in 1997 and 1998 when the FNL accused the FDD of stealing their victory after clashes with the government army in the provinces of Bujumbura Rural, Cibitoke, Bubanza and Ruyigi. However, after both being excluded from the Arusha process, the two movements tried unsuccessfully to create a common political platform in 2002.

⁷³ Accusing the FDD of treason, the FNL assassinated several of their political commissars. The CNDD-FDD did not directly take part in the negotiations between President Ndayizeye and the FNL in May 2005. It only halfheartedly approved the principle of negotiations, and, in particular, insisted on the need to maintain previous agreements on the composition of the defence and security forces. Crisis Group interview, Bujumbura, July 2007.

⁷⁴ Crisis Group interviews, PALIPEHUTU-FNL militants, Bujumbura, June 2006.

⁷⁵ Crisis Group interview, Agathon Rwasa, Dar es Salaam, March 2006.

⁷⁶ Crisis Group interview, FNL combatants, Bujumbura, March 2006.

⁷⁷ Crisis Group interview, Agathon Rwasa, Dar es Salaam, March 2006.

movement's leadership to adopt a more political discourse and seek a more favourable ceasefire agreement but the movement was unable to follow this advice in the time available.⁷⁸ In June and September 2006, Rwsa signed a vague but clearly unfavourable agreement, before immediately questioning the details of implementation, at the risk of making the FNL seem to be a totally incoherent movement in the eyes of the international community.⁷⁹

Some observers predict that the movement will soon break up as many combatants will decide to benefit from the disarmament programs after losing patience with political leaders who seem to be too comfortably installed in Dar es Salaam. The leadership is said to be increasingly divided between those in favour of the negotiations and those against. In this context, some are arguing that in order to bring an end to the movement, it would be enough to "behead" its leadership by issuing international arrest warrants against Agathon Rwsa and Pasteur Habimana for their alleged responsibility in the Gatumba massacre.

However, this scenario did not look the most likely. The rebel movement still has a significant number of combatants and supporters and there is not any evidence to show it was on the point of implosion or that surrender is its only option. Nor is it certain that initiating judicial procedures against its leaders would really weaken the movement. In the Burundian context, characterised by several decades of civil war, it was more likely that supporters would see them as martyrs. Therefore, it is preferable to deal with the atrocities committed in the Burundian conflict by waiting for the creation of a truth and reconciliation commission and a special court to try war crimes, crimes against humanity and genocide, as provided for in UN Security Council Resolution 1606 of 20 June 2005.⁸⁰

During the last year, the PALIPEHUTU-FNL seems to have taken advantage of the ceasefire to obtain fresh supplies of arms and ammunition and recruit new soldiers.⁸¹ Enlistment in the movement continues to be an attractive option to many unemployed young people in the hills, because this may be a way to join the defence and security forces, as CNDD-FDD combatants recently did, or to gain access to the benefits of demobilisation programs and use the money as start-up capital for a professional activity. It seems that even some young Tutsis have been attracted by this opportunity and enlisted in the movement during 2007.⁸²

Finally, the movement's stand against the historic injustices suffered by the Hutu community in Burundi and the over-representation of Tutsis in the army, along with a discourse that mixes animist, biblical and millenarian beliefs, receives a positive response in rural areas.⁸³ Its support in the Burundian refugee camps that are still present in Tanzania should also be taken into account. These refugees are due to return to Burundi at the end of 2007.

The truth is that PALIPEHUTU-FNL is, for the moment, not really interested in implementing the 7 September 2006 agreement. On the contrary, by focusing on the issue of political prisoners and prisoners of war, who number no more than 400,⁸⁴ it is probably hoping to gain time for further recruitment and for the 350,000 refugees in Tanzania to return to the country, where they will face the problem of land shortages and swell the ranks of its supporters.⁸⁵

It is probably also tempted to see how the internal political crisis evolves and consolidate its links with the opposition parties with a view to obtaining guarantees from the government about the integration of its forces into the general staffs of the defence and security forces and political institutions. It could then present itself for demobilisation, only one year before the 2010 elections, with its ranks swollen by the return of the refugees, and hoping to copy the CNDD-FDD's success in 2005. The major lesson of the 2005 elections, for both opposition parties and the PALIPEHUTU-FNL, was that victory belongs to whoever has enough recently demobilised combatants in the field who are still sufficiently intimidating to encourage the population in the hills to vote for it. Last time, this was the CNDD-FDD.

Naturally, many obstacles remain in the path of the PALIPEHUTU-FNL. Such a strategy seems risky, given that the CNDD-FDD had a much greater military capability in 2005⁸⁶ and a significantly higher level of political mobilisation. Moreover, the CNDD-FDD is unlikely to ignore the movement's attempt to repeat its own performance at the last election. Nevertheless, the CNDD-FDD seems to have become weaker and it cannot be ruled out that, as in the past, its lack of pragmatism will hand its enemies unexpected opportunities to destabilise it.

⁷⁸ Crisis Group interview, Bujumbura, July 2007.

⁷⁹ Crisis Group interview, diplomat, Bujumbura, July 2007.

⁸⁰ The question of the transitional justice system will be the subject of another Crisis Group report.

⁸¹ Crisis Group interviews, Bujumbura, July 2007. Also see "Burundi: un chef rebelle reprend le maquis", Agence France-Presse, 23 July 2007.

⁸² Crisis Group interviews, Bujumbura, May, July 2007.

⁸³ During the attack on the neighbourhood of Musaga, in Bujumbura city, in July 2003, young FNL soldiers threw themselves on armoured cars while singing psalms.

⁸⁴ Crisis Group interviews, human rights NGOs Bujumbura, July 2007.

⁸⁵ See Crisis Group Africa Report N°70, *Refugees and Displaced Persons in Burundi: Defusing the Land Time-bomb*, 7 October 2003.

⁸⁶ About 16,000 combatants against the FNL's less than 3,000.

B. A FRAGILE PRESIDENCY

After missing the opportunity to reach a balanced agreement with the PALIPEHUTU-FNL when he was in a position of strength, President Nkurunziza now finds himself confronted with more difficult choices to make in order to get rid of the movement. The CNDD-FDD has not yet completed its metamorphosis from a rebel movement into a democratic political party of government and the movement's leaders have retained authoritarian reflexes from their time in the bush. This does not facilitate progress in the negotiations. The internal crisis suffered by the CNDD-FDD since the expulsion of Hussein Rujabur as head of the party, which led to a serious institutional crisis, further complicates the peace process. Increasingly sustained by its constitutional legitimacy and the support of the military, it is categorically opposed to the idea of offering the PALIPEHUTU-FNL any guarantees prior to demobilisation.

Even though most of the movement's generals have maintained this position, the government's decision in 2005 to seek the unconditional surrender of the rebel movement owes a lot to the influence of Hussein Rujabur, CNDD-FDD president until losing his position as head of the party on 7 February 2007. As during the rebellion, of which he was the true political leader, Rujabur – not President Nkurunziza – was the real head of government during 2005 and 2006. He imposed his views on many issues, decided on appointments and the allocation of public contracts, used press conferences to communicate orders to the government, undertook diplomatic initiatives in Burundi and even went so far as to chair, in the presence of Nkurunziza, a preparatory harmonisation meeting of CNDD-FDD ministers before each full meeting of the council of ministers.⁸⁷

Having joined the Arusha process late in the day, Rujabur did not believe that the CNDD-FDD government was obliged to do everything in its power to promote successful negotiations with the remaining rebel movement or even to maintain an internal political consensus. On the contrary, he affirmed that the 2005 elections conferred indisputable legitimacy on the new government. He refused to acknowledge either the pretensions of the opposition parties to have an influence on the political agenda or the PALIPEHUTU-FNL's demands for integration into the defence and security forces and the political institutions.

The removal of Rujabur from his position as CNDD-FDD leader at the Ngozi Congress on 7 February 2007, however, does not mean that the government has changed its position. In fact, his removal created a power vacuum and made the political situation much more confused. This, in turn, has

encouraged the government to harden its positions even more and to refuse any new concession, from fear that any such move may benefit its political enemies.

Rujabur's eclipse has highlighted President Nkurunziza's lack of leadership.⁸⁸ The President mainly turns to the rebellion's senior military chiefs,⁸⁹ whose support was key when Rujabur was removed. Although these military chiefs are interested in the country's stability and in maintaining good relations with the international community, most of them view political problems from a security and military standpoint, which does not help solve them.⁹⁰ No civilian adviser seems to have the president's ear or to be able to encourage him to approach discussions with either the opposition parties or the PALIPEHUTU-FNL in a spirit of trust, and with a view to identifying areas of common ground.

Hussein Rujabur's successor, colonel Jérémie Ngendakumana,⁹¹ for whom most observers had great hopes, has not played such a role. Unable to control the CNDD-FDD in the same way as Rujabur did, some accuse him of having become the spokesperson for hardline generals in the negotiations with the PALIPEHUTU-FNL.⁹² Ngendakumana rules out the possibility that President Nkurunziza might make new concessions to Rwaswa. He thinks that the group's demands for written guarantees regarding political posts and integration into the defence and security forces are unacceptable. He views them as demands of members of the opposition, not of the PALIPEHUTU-FNL, and will not even engage in political negotiations with it.

For Ngendakumana, in the military sphere, the level of integration should depend on the structure of the FNL itself, which is why it is so urgent for it to supply a list of its combatants. He believes that the president alone has

⁸⁸ A great football enthusiast and fervent Christian, President Nkurunziza, is regularly out on the streets and very close to the people. He is described by many in Burundi as a head of state without either vision or decision-making capacity. Crisis Group interviews, Bujumbura, July 2007.

⁸⁹ Adolph Nshimirimana (director of the National Intelligence Service), Evariste Ndayishimiye (Minister of the Interior and Public Security), Silas Ntigurirwa (Executive Secretary for DDR), Godefroid Niyombare (deputy army chief) and Guillaume Bunyoni (general director of the national police). Crisis Group interviews, Bujumbura, July 2007

⁹⁰ Crisis Group interviews, political leaders and diplomats, Bujumbura, July 2007.

⁹¹ Jérémie Ngendakumana is a former CNDD-FDD colonel. After having been assistant spokesperson for the armed movement from 2003 to 2005, he was appointed President Nkurunziza's head of protocol. He was Burundi's ambassador to Kenya from March 2006 to February 2007.

⁹² Crisis Group interviews, political leaders, Bujumbura, July 2007.

⁸⁷ Crisis Group interviews, political leaders, Bujumbura, July 2007.

discretion to award officer posts to members of the movement for political reasons. He thinks procedures for integration of the movement into the political institutions are not to be negotiated but must be decided case by case by the president.⁹³

The same state of mind, characterised by a lack of pragmatism and a manifestly excessive fear of being cheated by opponents, explains the presidency's clumsy handling of the crisis in parliament. After Radjabu's removal from his position at the head of the CNDD-FDD, Nkurunziza and Ngendakumana systematically marginalised individuals loyal to the former party president.⁹⁴ However, this provoked a deep crisis within the party. On 7 March 2007, 19 deputies loyal to Hussein Radjabu⁹⁵ left the CNDD-FDD parliamentary group and henceforth voted with the opposition in the national assembly.⁹⁶ Although it can still achieve a majority in the assembly and the senate by forming alliances, in practice, it is unable to get legislation through congress. Specific constitutional mechanisms adopted after the Arusha Agreement to prevent the marginalisation of

ethnic or political minorities mean that the assembly and the senate cannot deliberate unless at least two thirds of their members are present. Moreover, laws must be voted by a two-thirds majority of deputies or senators present or represented.⁹⁷

FRODEBU, the Union for National Progress (UPRONA), Léonard Nyangoma's CNDD and the Radjabu wing of CNDD-FDD are therefore able to block the adoption of laws and appointments to the highest offices of the state.⁹⁸ The provisions of article 129 of the constitution also give FRODEBU, UPRONA and the Radjabu CNDD-FDD the right to make their presence in the assembly conditional on their members being included in the government and the public administration.⁹⁹ In such circumstances, the prospect of a peace agreement with PALIPEHUTU-FNL naturally remains distant. The government does not have a sufficiently solid political base to make the necessary compromises.

The CNDD-FDD should ask the opposition to reduce its demands and consider the political situation created by the 2005 elections, while avoiding an escalation of political conflict that might delay implementation of reconstruction programmes. However, it should also recognise that, in a parliamentary democracy, it is the strongest party, namely the CNDD-FDD-Nkurunziza – which has the largest parliamentary group and currently controls the presidency, the public and para-public administration, the territorial administration, diplomacy and most of the leadership posts in the security apparatus – that needs to make the biggest concessions.

So far, the president and the wing of the CNDD-FDD that remains loyal to him seem to prefer other solutions. The

⁹³ Crisis Group interview, Jérémie Ngendakumana, Bujumbura, July 2007.

⁹⁴ On 8 February 2007, President Nkurunziza relieved Mme Marina Barampama of her post as second vice president of the republic. Mme Barampama had refused to participate in the Ngozi Congress. Close to Radjabu, she had been elected to her post after the resignation of Mme Alice Nzomukunda. On 12 February, Nkurunziza carried out a cabinet reshuffle in which he removed ministers reputedly close to Radjabu, such as the Minister of Planning, Jean Bigirimana and the Minister of Information, Karenga Ramadhani. On 27 February, the vice president of the senate, Yolande Nzikoruriho, also close to Radjabu, was replaced by Anatole Manirakiza. On 16 March, deputies passed a vote of no confidence in the pro-Radjabu president of the national assembly, Immaculée Nahayo, who had to give way to Pie Ntavyohanyuma. On 27 April, the office of the assembly withdrew Radjabu's parliamentary immunity and he was placed in detention, where he remains. See "Hussein Radjabu ou l'arroseur arrosé", *SurvivT-Banguka*, 27 April 2007. Hussein Radjabu received particular criticism for maintaining a militia, distributing arms to the population and wanting to organise a violent coup against the government.

⁹⁵ Several CNDD-FDD members owe their entire career and some of their financial wealth to Hussein Radjabu. Most of the party's assets are in his name or in the name of those loyal to him. Despite their criticisms of the party's authoritarian drift under Radjabu, many CNDD-FDD members miss his strong leadership and have continued to express their loyalty to him. Crisis Group interviews, CNDD-FDD leaders, Bujumbura, July 2007.

⁹⁶ The parliamentary opposition was originally restricted to Léonard Nyangoma's CNDD (four deputies in the National Assembly). FRODEBU joined the opposition on 25 March 2006 in protest against alleged abuses against its members sustained in the battle against the PALIPEHUTU-FNL. The FRODEBU ministers refused to leave the government and were expelled from the party. The Union for National Progress (UPRONA) also officially joined the opposition in July 2007.

⁹⁷ Article 175 for the national assembly and 186 for the senate.

⁹⁸ Article 187 of the constitution states that appointments of chiefs of the defence and security forces, provincial governors, ambassadors, ombudspersons, members of the high council for the judiciary, members of the Supreme Court, members of the Constitutional Court, the director of public prosecutions, judges of the state prosecution service, the president of the Appeal Court and the president of the Administrative Court, the general prosecutor of the Appeal Court, the presidents of higher courts, the court dealing with trade disputes and the employment court, state prosecutors and members of the national independent electoral commission must be approved by the senate. On 10 June 2007, appointments proposed by Presidents Nkurunziza to the posts of director of public prosecutions, the president of the Constitutional Court and provincial governors were only just approved, after a wait of three days because of the lack of quorum in the senate.

⁹⁹ Article 129 of the constitution: government members are drawn from political parties receiving more than five per cent of the vote and who want to form part of the government. These parties have the right to a proportion of the total number of ministerial posts, based on the number of seats they occupy in the national assembly.

most influential military leaders in the party are hoping for reconciliation with the CNDD-FDD members that remain loyal to Radjabu, hence the decision to appoint Immaculée Nahayo and Karenga Ramadhani, two figures close to Radjabu, to the government on 13 July 2007. However, this strategy seems difficult to implement. Radjabu remains in prison awaiting his trial, which is regularly postponed. Several parliamentarians close to him have publicly said they will not rejoin CNDD-FDD-Nkurunziza. In a context marked by several corruption scandals, they seem more intent on appearing as an alternative to the government and are increasing their contacts with members of FRODEBU, UPRONA¹⁰⁰ and CNDD-Nyangoma.¹⁰¹

Radjabu reportedly wants to create his own party and make the Nkurunziza branch of the CNDD-FDD pay for the humiliation he has suffered since the beginning of the year. More seriously, it seems that some pro-Radjabu deputies are ready to join the opposition in a manoeuvre aimed at placing a president opposed to the president of the republic at the head of the office of the national assembly before going on to initiate procedures to remove the president for high treason.¹⁰²

In the light of this situation, some of the president's advisers are toying with the idea of a much more radical solution. Their idea is to aggravate the security situation in order to justify recourse to emergency measures. They propose provoking a total paralysis of parliament and allowing the number of incidents with the FNL to increase so as to justify recourse to the provisions of article 115 of the constitution, which allows the president to legislate by decree.¹⁰³ Recourse to article 115 of the constitution would be particularly dangerous in the present context, in which

the opposition and guarantees for the rule of law remain especially weak. Even though it stipulates that parliament cannot be dissolved and that the constitutional court must be informed of decisions taken during the relevant period, the constitution does not provide for any serious measures to control the president's decisions. Finally, the president is free to make use of his emergency powers for an indefinite period, and no other body has the power to force him to end such a period of exception.

In the interests of the success of peacebuilding in Burundi, the facilitators and Burundi's main partners should play an advisory role and encourage the president to improve his handling of the negotiations with PALIPEHUTU-FNL and his attempts to solve the political crisis.

C. THE REGIONAL INITIATIVE AND THE INTERNATIONAL COMMUNITY

Without the involvement of the international community and the countries of the Regional Initiative, Burundi would probably not have been able to achieve so much progress so quickly. Since the 2005 elections, the international community has continued to assist in concluding a definitive agreement with the FNL and building peace. However, monitoring has become less attentive and political involvement is more measured, at the risk of having only a limited impact while the situation on the ground drifts.

Although these actions have so far allowed Burundi to avoid the worst and kept the key question of the FNL on the post-conflict agenda, excessive prudence and the persistence of diverging regional interests have limited the impact of intervention. At the regional level, the two parties in Burundi have taken advantage of the covert rivalry between South Africa and Tanzania to delay the conclusion of a definitive peace agreement. Meanwhile, the UN and the main donors prefer to keep a low profile on the issue of political dialogue and almost exclusively rely on the incentives provided by cooperation programs to consolidate the country's post-conflict situation.

1. Tanzania

Tanzania played a decisive role throughout the Arusha process, including the mediation efforts of both Julius Nyerere and the current President Kikwete (who was then minister of foreign affairs). From 2005 onwards, Tanzania was the most active country in the search for a peace agreement with PALIPEHUTU-FNL. After welcoming hundreds of thousands of Burundian refugees onto its territory during the last 35 years, Tanzania has a clear interest in helping Burundi to definitively put the civil war behind it. The Burundian conflict will then stop having an

¹⁰⁰ Union for National Progress.

¹⁰¹ National Centre for the Defence of Democracy-Léonard Nyangoma.

¹⁰² This idea was put forward by several deputies at the beginning of June 2007. Charging the president with high treason is, however, impossible for the moment as it requires a majority of at least two thirds of the national assembly and the senate, meeting together in congress (article 163 of the constitution).

¹⁰³ Article 115 of the constitution provides that "when the institutions of the Republic, the independence of the nation, the integrity of its territory or compliance with its international commitments are threatened in a serious and immediate manner and the regular operation of public powers is interrupted, the President of the Republic can issue a decree law proclaiming a state of emergency and take all measures required by the circumstances, after officially consulting the government, the Offices of the National Assembly and Senate, the National Security Council and the Constitutional Court. It shall inform the nation of such measures by making a public announcement. These measures should be inspired by a desire to ensure, with the least possible delay, that the publicly constituted powers are able to fulfil their mission. The Constitutional Court should be consulted. Parliament cannot be dissolved while emergency powers are in force".

influence on its domestic politics and the refugees will be able to return home.

However, its persistent search for a solution to the conflict with PALIPEHUTU-FNL makes it suspect in the eyes of the CNDD-FDD. Although it has long had difficult relations with Agathon Rwasa's movement,¹⁰⁴ it has hosted all peace talks with the FNL since 2005 and authorised its delegation to stay in Dar es Salaam. The Burundian government sees it as excessively close to rebels, so much so that it conditioned the opening of negotiations in April-May 2006 on Tanzania handing over leadership of the facilitation to South Africa.

The Bujumbura government is annoyed by Tanzania's approach to Burundi's problems. Dar es Salaam's position is that the elections have not solved all the country's problems, as shown by the presence of around 350,000 refugees on its territory.¹⁰⁵ While appreciating the limits to the ethnic approach taken by PALIPEHUTU-FNL, Tanzania regards it as necessary to take account of the particular regional context in which this vision has developed to help it change. It thinks the government must therefore seek dialogue in the spirit of the Arusha Agreement and be more flexible in order to consolidate what remains a fragile peace.

President Kikwete has an important source of pressure he can use to encourage the government to act accordingly: he can send all the refugees still living in the Tanzanian camps back to Burundi. Such a move could destabilise the Burundian economy and have political and security consequences, given that a number of these refugees are known to be sympathetic to the PALIPEHUTU-FNL. During his visit to Bujumbura on 19-21 July 2007, President Kikwete confirmed his wish to repatriate all the refugees that have arrived since 1993 before the end of the year.¹⁰⁶ He also asked the government to accept the creation of a regular consultation and monitoring mechanism, composed of the ambassadors of the Regional Initiative countries accredited to Bujumbura, the AU and the UN to help

strengthen the political component of the facilitation and promote dialogue between the government and the group's delegation.

It was, moreover, in this spirit, that a joint press conference of the ambassadors of Tanzania, the AU and the UN was organised on 31 July 2007.¹⁰⁷ For the moment, however, the government of Burundi does not hide its preference for maintaining South African leadership of the facilitation.

2. South Africa

South Africa approaches the problem of the PALIPEHUTU-FNL and, more generally, the post-conflict situation in Burundi, from a different perspective. It has also been involved in peacebuilding since the beginning of 2000.¹⁰⁸ Pretoria wants Burundi to quickly put the civil war behind it and focus on development. However, it does not think that the way to do so is to seek a final political dialogue with a rebel movement whose platform has been out of date since the promulgation of the new constitution and the integration of the FDD into the defence and security forces. It views that the priority is to accelerate the demobilisation of combatants and then see how to integrate certain leaders into senior political and military positions.

South Africa believes that the agreement has not been implemented because the PALIPEHUTU-FNL continuously seeks to raise political questions that cannot be resolved within the framework of the JVMM and that have, in any case, already been dealt with by the new constitution. It thinks that Rwasa's movement is only trying to gain time, delay demobilisation and benefit from the attention of the international community. It is convinced that the time for negotiation is over and implementation is required.¹⁰⁹

This position does make a certain amount of sense. It is important to avoid treating a legitimate government and a rebel movement in the same way. However, such an approach quickly generates an impasse because of the psychological and ethnic identity dimensions of this conflict, the specific characteristics of the actors and the internal political context that forms the backdrop for this process. Moreover, neither can we ignore that this approach to negotiations between the government and the PALIPEHUTU-FNL is part of a wider regional strategy

¹⁰⁴ The FNL suspects Tanzania of playing a key role in the disappearance of the founder of the movement, Rémy Gahutu, in 1990. Later, the mediator, Nyerere, sidelined PALIPEHUTU-FNL from the Arusha negotiations. Finally in 2005, following the example of the region's other countries, Tanzania worked hard to include the main rebel movement, the CNDD-FDD, in the peace process and paid less attention to PALIPEHUTU-FNL's demands.

¹⁰⁵ According to the Office of the High Commission for Refugees in Burundi, on 30 June 2007, there were 351,365 Burundian refugees in Tanzania. About 200,000 have been there since 1972. United Nations Office of the High Commission for Refugees, Bujumbura, June 2007.

¹⁰⁶ In June 2007, President Kikwete decided to expel all Burundian refugees that have arrived in Tanzania since 1993 by the end of the year.

¹⁰⁷ "L'UA et l'ONU appellent les Burundais à la reprise du dialogue", *Arib info*, 31 July 2007.

¹⁰⁸ South Africa has provided support through the successful mediation of Nelson Mandela and Vice President Jacob Zuma. It provided an important contingent of the African Union Mission for Burundi (MIAB) deployed in 2003, and then the United Nations Operation in Burundi (ONUB). Since the beginning of 2007, it has provided personnel for the AU Special Task Force.

¹⁰⁹ Crisis Group interview, representative of the facilitation at the JVMM, Bujumbura, July 2007.

to provide direct support to governments in Burundi and neighbouring Rwanda.

Since 2004, the South African government has promoted the development of very close links between the party in power in Pretoria, the ANC, and the CNDD-FDD. Hussein Radjabu played a key role here and South Africa seems to have supported him until the beginning of 2007, despite the authoritarian drift he had encouraged in the country. As soon as he became head of the CNDD-FDD, Jérémie Ngendakumana visited South Africa and had several meetings with the ANC to ensure continued close links between the two parties. South African reservations about holding a political dialogue with the PALIPEHUTU-FNL are also related to its very close links with Rwanda. Kigali is suspicious about the integration into the Burundian defence and security forces and political institutions of a rebel movement whose ideology it considers is relatively close to that of the Rwandan Interhamwe, and whose members have had close links with the FDLR.¹¹⁰

Thanks to the backing of South Africa, relations with the CNDD-FDD are rather good,¹¹¹ but Kigali has no interest in a political agreement being concluded with such a movement as the PALIPEHUTU-FNL. In the event of continuing deadlock and deterioration in the security situation in Congo,¹¹² Rwanda would probably call for military action against the group, within the framework of Tripartite Plus. This also remains an option for the Burundian government.¹¹³

3. The African Union, the United Nations and the main donors

The other members of the international community are less directly involved in supporting negotiations with the PALIPEHUTU-FNL. The AU follows the negotiations closely, encourages the two parties to dialogue and advises the Special Task Force but the scope for intervention of its

representative, Ambassador Mamadou Bah, remains limited. In the same way, the United Nations Integrated Office in Burundi (BINUB), which took over from the United Nations Operation in Burundi (ONUB) on 1 January 2007, is only an observer. Like the AU, it attends JVMM meetings but is not consulted by the facilitation. In view of past conflicts between the government and UN representatives Carolyn McAskie and Nureldin Satti,¹¹⁴ BINUB, represented by Ambassador Youssef Mahmoud, has so far preferred to keep a low profile, both with regard to the discussions between the government and the FNL and the handling of the institutional crisis.

The main donors also remain prudent. They generally deplore the government's excessive rigidity and lack of pragmatism in its approach to political problems. They fear that the lack of progress in the discussions with the FNL and the opposition will lead to an unstable period and compromise implementation of aid programmes. However, they do not seem disposed to pressure openly the legitimate authorities of a sovereign country. Even though cooperation between the partners has functioned rather well since Radjabu was removed at the beginning of 2007 – a development they actively encouraged – they preferred to act discreetly and unsystematically rather than give the impression of wanting to interfere directly in Burundi's problems.

However, many diplomats would like to increase coordination of their action in order to help build peace and begin reconstruction and development programmes more quickly. Most of them explain that they are waiting for the Peacebuilding Commission¹¹⁵ to exercise this role (Burundi is one of the commission's first jobs). Although they recognize the positive contribution that the commission plays in maintaining Burundi on the donors' agenda, many regret that the commission has not been more assertive in promoting political dialogue with the government in the field.¹¹⁶

In fact, the Peacebuilding Commission, created in December 2005 concurrently by the United Nations Security Council and General Assembly, does not have a clear vocation for such a role. Its primary mission consists of strengthening coordination between the various parties involved in the post-conflict situation.¹¹⁷ Starting in

¹¹⁰ Until 2001, the FNL cooperated with and then absorbed the ex-FAR. Meanwhile, the Rwandan army has intervened several times to support the Burundian army against the FNL. In 2003, Rwanda and Uganda proposed to deal with the FNL problem by sending troops to Bujumbura Rural province. Crisis Group interview, Bujumbura, June 2006.

¹¹¹ On 30 November 2006, Hussein Radjabu visited Kigali and gave his support to President Kagame, in the middle of a diplomatic crisis between Rwanda and France.

¹¹² The PALIPEHUTU-FNL is not very active now on DRC territory. However, in July 2007, several of its combatants were arrested by the Congolese army, after incidents in the locality of Ndunda, 30 km to the north of Uvira, in South Kivu. On 26 July, the United Nations Mission to Congo (MONUC) handed over two FNL combatants to Burundian police.

¹¹³ Crisis Group interview, Antoinette Batumubwira, Minister of Foreign Affairs and Cooperation, Bujumbura, July 2007.

¹¹⁴ Mme McAskie, in March 2004, and M. Satti, at the end of 2006, had to leave Burundi before the end of their mandate, the first after pressure from the government and the second at the explicit request of the latter.

¹¹⁵ The Peacebuilding Commission held its first meeting specifically on Burundi on 13 October 2006.

¹¹⁶ Crisis Group interviews, diplomats, Bujumbura, July 2007.

¹¹⁷ "The following shall be the main purposes of the Commission: a) to bring together all relevant actors to marshal resources and to advise on and propose integrated strategies for post-conflict peace

February 2007, it focused on the selection of priority peacebuilding projects in close cooperation with the government, civil society actors, UN agencies and relevant donors.¹¹⁸ It has also worked on drafting a strategic framework identifying the risks to peace, which it presented to the Security Council on 21 June.

Although this strategic framework includes implementation of the ceasefire agreement with PALIPEHUTU-FNL¹¹⁹ among its six priority objectives and notes the government's commitment to create favourable conditions for the implementation of the ceasefire agreement with the FNL,¹²⁰ the commission does not for the moment envisage having any direct involvement in this issue even after the creation of the national tracking and monitoring mechanism anticipated for October 2007.¹²¹ If there is progress in implementing the agreement, it could, however, accompany the process by identifying new projects to support the effective implementation of the ceasefire, sharing the

building and recovery; b) to focus attention on the reconstruction and institution-building efforts necessary for recovery from conflict and to support the development of integrated strategies in order to lay the foundation for sustainable development; c) to provide recommendations and information to improve the coordination of all relevant actors within and outside the United Nations, to develop best practices, to help to ensure predictable financing for early recovery activities and to extend the period of attention given by the international community to post-conflict recovery". UNSC S/RES/1645, 20 December 2005.

¹¹⁸ The committee responsible for managing peacebuilding funds in Burundi has so far approved nine projects worth a total of \$15,483,000. These projects are on human rights (support for the creation of an independent national human rights commission, strengthening the capacities of the judiciary and reducing violence, construction and equipping of court buildings), democratic governance (support for strengthening anti-corruption mechanisms, rehabilitation of women's role in the process of community reconciliation, support for the creation of dialogue and co-operation frameworks between national partners), the security sector (disarmament and the fight against the proliferation of small arms and light weapons, barracks for the national defence forces) and land disputes (support for the peaceful resolution of disputes). In January 2007, the secretary general decided to allocate \$35 million for peacebuilding in Burundi.

¹¹⁹ Strategic Framework for Peacebuilding in Burundi, Peacebuilding Commission, PBC/1/BDI/4, 22 June 2007, p. 7.

¹²⁰ In particular, the government committed itself to continue to "resolve any crises in internal governance peacefully, fully observing the Constitution, the rule of law and human rights...and to work with PALIPEHUTU-FNL, the facilitator, the subregional initiative and actors of Burundian society immediately and jointly to create conditions conducive to the effective implementation of the September 2006 ceasefire agreement", Strategic Framework for Peacebuilding in Burundi, Peacebuilding Commission, PBC/1/BDI/4, 22 June 2007, p. 13.

¹²¹ Provisional report on the activities of the Peacebuilding Commission, PBC/2/OC/L.1, p. 8.

experiences of other post-conflict theatres and ensuring that Burundi's partners continue to pay attention to this question.

The international community has become more active since the end of July. After the AU-BINUB-Tanzania press conference on 31 July, the ambassadors of the European Union countries¹²² jointly took the initiative to meet the main political actors to help calm the political situation. The Netherlands sent their ambassador for the Great Lakes region, Ian Graanen. On 8 August 2007, the AU Commission dispatched its peace and security commissioner, Saïd Djinnit, and on 18 August, the European Union sent its special envoy for the Great Lakes, Roland van de Geer, both of whom called for dialogue.

Therefore, lack of progress in discussions with the PALIPEHUTU-FNL is part of the broader context of strong political divisions in post-conflict Burundi. All energies now seem to be directed towards the 2010 elections. The pro-Nkurunziza CNDD-FDD seems to be afraid of losing these elections if it makes too many concessions to the opposition and PALIPEHUTU-FNL. Meanwhile, both the opposition and the PALIPEHUTU-FNL seem to be tempted to follow a strategy of delay, so as to position themselves as a genuine political alternative at the next elections.

This situation harms the whole country. It risks compromising the implementation of practical reconstruction programs, creating new forms of tension and violence and having an extremely negative impact on the conduct of future elections and the consolidation of the rule of law. It is urgent to find a way out of this impasse and a mutually acceptable compromise able to solve the political crisis. If this does not happen, it is to think that negotiations with the PALIPEHUTU-FNL can either progress or be reconfigured in a way that could finally lead to a durable peace with this movement.

¹²² The ambassadors of Belgium, France, Germany and the head of the European Union delegation.

IV. THE NEXT STEPS

Finalising peace with the PALIPEHUTU-FNL is a necessity and not an idealistic objective. The rebel movement is certainly militarily weaker but its elimination by military means is an unrealistic option and would have serious humanitarian consequences for the civilian population in the provinces where the movement is present. Without going into a certain number of limiting factors, notably those set out in the constitution, it is of capital importance that an agreement is reached that will lead to a definitive peace in these provinces and allow the people who live there to benefit from the development and reconstruction programmes.

It is also important to quickly change the minds of those within the FNL who want to see the situation deteriorate and military clashes erupt in the hope that this will benefit their supporters or certain members of the opposition in the 2010 elections. Peace and Burundi's nascent democracy depend on it. With this in mind, it is urgent to make progress in two directions: first, resolve the political crisis, which creates a particularly favourable context for all those who want attempts to reach an agreement fail; and second, expand the agenda of the discussions between the government and the PALIPEHUTU-FNL to find a more balanced agreement, coupled with a more effective monitoring mechanism able to prevent and punish any new delaying tactics.

A. RESOLVE THE POLITICAL CRISIS

Burundi's political crisis is rooted in the authoritarian drift by the CNDD-FDD followed by its internal split at the beginning of 2007. The opposition political parties are also partly responsible for the failure of the talks held with the government from March to June. Aware of the governing party's inability to compromise and President Nkurunziza's lack of leadership, they have exploited in a polemical way the corruption scandals that have emerged in recent months in the higher reaches of the government, and sought maximum advantage for themselves from the situation.¹²³ They are, moreover, a long way from being united internally, which sometimes makes it difficult to conclude agreements with their leadership. However, their behaviour is not surprising in a democracy, especially given that they are negotiating with a government that has lost its majority and that must make concessions in order to be able to get its legislation through parliament.

¹²³ Particularly the affair of the illegal sale of the presidential aircraft, a Falcon 50, and the INTERPETROL scandal. See: "Burundi: la corruption au sein du gouvernement Nkurunziza s'étend à la Banque centrale", *Burundi Réalités*, 4 August 2007.

To avoid any manipulation of the FNL issue to justify authoritarian measures, and to allow the new Burundian democracy to make the most of the international support that continues to be offered, the president must urgently – in the national interest and a spirit of peacebuilding – resume the dialogue with opposition groups and include those who wish to return to government in accordance with article 129 of the constitution. The international community, especially the Regional Initiative, the AU, BINUB and the Peacebuilding Commission should encourage all parties to participate in the dialogue by inviting all opposition groups to make their demands known in a spirit of compromise. The government should indicate its willingness to encourage greater dialogue by accepting some of their demands.

The government should especially try to compromise with FRODEBU, while the latter should negotiate with the aim of building peace rather than seeking revenge for its defeat in 2005. The government and the most influential CNDD-FDD generals should accept that opposition parties like FRODEBU, UPRONA and Léonard Nyangoma's CNDD are completely within their rights when they refuse to vote in favour of certain laws, which is normal for an opposition group in parliament, and when they seek to have their nominees included in the government.

The president's proposal to hold a referendum to eliminate the constitutional requirement for a two-thirds majority to pass legislation seems extremely dangerous in the Burundian context.¹²⁴ The president's serious accusations against opposition deputies and the threats and attacks made against several politicians for having called for the formation of a government of national unity are extremely worrying.¹²⁵

¹²⁴ These provisions, part of the Arusha Agreement, were inspired by a desire to avoid a minority, especially an ethnic minority, being oppressed by the majority. In reality, it is not certain that the president can use the powers conferred on him by article 298 to submit a proposal for such a constitutional change to a referendum. In fact, article 299 states that no change can be made if it undermines national unity, the cohesion of the Burundian people or democracy itself.

¹²⁵ On 3 August, in a public speech, the president reviled the behaviour of opposition deputies who, he claimed, benefit from princely wages and advantages. He also threatened to take financial sanctions against them. Several provincial governors have followed his initiative and launched a campaign denigrating these parliamentarians. On 10 August, the CNDD-FDD party newspaper, *Intumwa*, described the opposition deputies as "mercenaries" and published their photos, the names of their relations and place of birth. On 17 August, in a context of increasing tension, 67 parliamentarians wrote a letter to the President of the Republic asking him to resume dialogue with the opposition with a view to creating a government of national unity and resuming negotiations with the PALIPEHUTU-FNL, without further procrastination. This initiative united members of different political formations represented in parliament, including some

The international community, which has promised more than \$600 million, has the means to exercise appropriate pressures to facilitate renewed dialogue and encourage compromise. It must, however, act quickly before the situation deteriorates further and becomes totally unmanageable.

Such action to promote a rapid settlement of the political crisis would be a first contribution to putting the dialogue with PALIPEHUTU-FNL back on track. However, the Regional Initiative, the AU and the UN should not wait for the institutional crisis to be definitely resolved before intensifying cooperation with a view to preparing an extended agenda for a final round of negotiations aimed at finally obtaining implementation of the 7 September 2006 ceasefire agreement by the PALIPEHUTU-FNL.

B. STRENGTHEN THE FACILITATION

Without calling into question the 7 September 2006 agreement or the facilitation's role in the leadership of the JVMM, the Regional Initiative and the international community should encourage the parties to embark on a new round of negotiations. The teams responsible for the discussions should be reorganised in a way that makes them much more active in the conduct of the negotiations and able to make commitments on behalf of their delegation without having to constantly refer up the hierarchy.¹²⁶ The Minister of the Interior and the Deputy Army Chief have many other tasks and should be replaced at the head of the government delegation by a representative of the president, practised in the art of political and diplomatic negotiations.

The PALIPEHUTU-FNL delegation should be chaired by Agathon Rwaswa himself in order to limit the present procrastination. Considering the crisis of confidence that has arisen between the facilitation and the rebel movement, and the need for it to work full time in these discussions, it would be preferable to entrust it to a senior figure nominated by the UN or the AU and resident in Dar es Salaam and Bujumbura rather than to a peripatetic special envoy or a minister absorbed in the work of his own ministry of internal security in South Africa. Such a senior figure could work closely with the ambassadors of the

members of the CNDD-FDD who support President Nkurunziza, for example, the instigator of the appeal, the deputy Jean-Marie Ngendahayo. On the evening of 19 August, grenades were thrown at the homes of three of the signatories of the appeal and at the home of FRODEBU's vice-president.

¹²⁶ Especially in the case of the FNL delegation whose negotiating mandate at the MCVS has always been extremely limited. Consultations with Agathon Rwaswa have always been difficult to organise, causing many sessions to be interrupted. Crisis Group interview, diplomats, Bujumbura, July 2007.

Regional Initiative, the AU and the UN. The facilitator's first task would be to quickly find common ground on the two real questions that have blocked implementation of the ceasefire agreement: the technical forces agreement and integration into the political institutions.

The formulas already successfully tried and tested during the transition period can easily be used again. They should be pursued, while recognising that the government draws its legitimacy from the ballot box and that the constitution, particularly with its provisions to ensure peaceful coexistence among the country's ethnic groups, now restricts the government's scope for meeting some of the rebel movement's demands.

C. RELAUNCH THE NEGOTIATIONS

Considering that its troops probably number no more than 3,000, that most of them have had no serious military training and that its most recent recruits will probably choose demobilisation to benefit from a reintegration grant, it must be possible to reach agreement on the number of posts to allocate to the PALIPEHUTU-FNL in the general staffs of the defence and security forces. In 2003, prior to the creation of the ceasefire and cantonment commission, the government and the CNDD-FDD negotiated a Technical Forces Agreement (ATF), signed in Pretoria on 2 November 2003 by which they agreed to use precise percentages to calculate their share of posts in the general staffs of the defence and security forces.¹²⁷

This agreement, which has functioned well and contributed significantly to the success of the peace process and the 2005 elections, must not be called into question.¹²⁸ The ATF places no obstacle in the path of personnel from armed movements joining the general staffs of the defence and security forces at a later date. However, some ATF provisions included in the constitution¹²⁹ restrict the government's margin of manoeuvre in the negotiations. In fact, most FNL combatants are Hutus, although a technical forces agreement would probably involve the CNDD-FDD reducing the number of its members in the defence and security forces.

However, in the absence of a complete audit of the defence and security forces, the numbers are inexact and

¹²⁷ National army (60 per cent of officers from the government army and 40 per cent from the CNDD-FDD); national police (65 per cent of officers from the government police and 35 per cent from the CNDD-FDD); intelligence services (65 per cent of officers from the government service and 35 per cent from the CNDD-FDD).

¹²⁸ These quotas have no legal or constitutional value. However, they are still respected in practice.

¹²⁹ [See note FN 29, pg. 4]

several military experts believe that the CNDD-FDD has never had enough combatants to fill its quota, and that ethnic parity among senior and commanding officers has never been totally respected. Nevertheless, in a context in which the international community is encouraging the government¹³⁰ to reduce defence and security force numbers – in addition to the decision taken two years ago not to replace those who retire – there is a risk that discussions will take a long time.

To avoid further deadlock, the facilitation should not ask the movement to indicate how many troops it has, because it will not want to divulge this information prior to negotiations. Instead, it should try to obtain the PALIPEHUTU-FNL's precise demands; that is, the number of officer posts it wants in the general staff and the number of troops in the ranks. The facilitation could then engage in a dialogue with the government and Burundi's main partners that are working on reform of the security sector (the World Bank and the Peacebuilding Commission) to explore the potential for a compromise that would take current troop levels into account¹³¹ and maintain ethnic parity, while allowing the integration of some FNL combatants.

The constitution imposes a series of limitations on the integration of the movement into the political institutions. Despite PALIPEHUTU-FNL claims to the contrary, it cannot enter parliament because senators and deputies have to be elected.¹³² On the other hand, an agreement could be reached for the integration of a certain number of its members into the national and territorial administration, and even into the government.

For that to happen, it would be useful, once again, if the rebel movement would make its demands explicit to the facilitation. In the administration, the same problem faced by the army could appear because article 143 states that representation of Hutus in the administration cannot be higher than 60 per cent. The government does not, however, seem to consider that this provision is much of a constraint. Rather, President Nkurunziza is hostile to the rebel movement's entry into the government. He argues that only parties obtaining at least five per cent of the vote at the last elections can nominate a minister. He also points to remarks made by the senate in March 2007, which reminded the president of the republic that only parties obtaining five per

cent of votes are authorised to have members in the government.

However, this position rests on an interpretation of article 129 that President Nkurunziza has himself not respected in the past. Parties like the MRC, PARENA and INKIZO, which did not obtain 5 per cent of the vote, have had representatives in the government. Consequently, it is probably possible, here again, to find a solution in a spirit of harmony and national reconciliation and to remove definitively any pretext that the PALIPEHUTU-FNL may offer to further delay the conclusion of a peace agreement.

If President Nkurunziza accepts advice from the Regional Initiative and the international community and agrees to negotiate on these two points, the rebel group must take responsibility and clearly express its wish to contribute to peace and national reconciliation. It should therefore agree to respect the law on political parties and change its name to enable it to be registered as a political party. In particular, it should immediately implement the current provisions of the 7 September 2007 ceasefire agreement. As soon as the PALIPEHUTU-FNL provides the government with a list of political prisoners and prisoners of war and those whose membership of the movement it is possible to determine are released, the FNL should accept cantonment, disarmament and transport to the orientation centres prior to demobilisation or integration into the defence and security forces. If the movement again refuses to implement the agreement in good faith, severe sanctions should be imposed against it.

¹³⁰ The defence and security forces number 28,517 army personnel and 19,400 police. The World Bank would like to see the army reduce its numbers to around 25,000 and the police to around 15,000. Crisis Group interviews, Bujumbura, February and July 2007.

¹³¹ Belgium carried out a preliminary audit of the structures but not the number of combatants in the first half of 2007. Crisis Group interview, Bujumbura, April 2007.

¹³² Article 164 of the constitution.

V. CONCLUSION

The lack of progress in implementing the ceasefire agreement with the PALIPEHUTU-FNL, signed almost one year ago, is a problem that has been neglected for too long. In light of the progress achieved by Burundi since the signature of the Arusha Agreement in August 2000, it is inconceivable to allow such a stalemate in part of the country to continue. This situation is very prejudicial for the people who live in the provinces where the FNL have a strong presence. With the serious institutional crisis of recent months, the government may also use this situation as a pretext for a range of emergency measures, undermining the foundations of Burundi's new democracy.

The departure of the PALIPEHUTU-FNL delegation at the end of July 2007 highlighted the difficulty of making progress in negotiations on ceasefire implementation. It does not, a priori, indicate a desire to resume the war by the group, which has lost some of its strength. In the unstable political context provoked by the loss of its parliamentary majority by the part of the CNDD-FDD that remains loyal to President Nkurunziza and the government's unwillingness to open negotiations, it seems the rebel movement has preferred to withdraw in the hope either of extending the negotiation agenda or gaining time to prepare for intervention in the 2010 elections.

The international community must mobilise to help Burundi overcome the current political crisis and continue with negotiations. It should increase its diplomatic pressure with a view to making rapid progress towards the comprehensive implementation of the ceasefire agreement before the end of 2007.

Nairobi/Brussels, 28 August 2007

APPENDIX B

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Diego Arria
Paddy Ashdown
Zainab Bangura
Christoph Bertram
Jorge Castañeda
Alain Destexhe
Marika Fahlen

Stanley Fischer
Malcolm Fraser
Bronislaw Geremek
I.K. Gujral
Max Jakobson
Todung Mulya Lubis
Allan J. MacEachen
Barbara McDougall
Matthew McHugh

George J. Mitchell
(Chairman Emeritus)
Surin Pitsuwan
Cyril Ramaphosa
George Robertson
Michel Rocard
Volker Ruehe
Mohamed Sahnoun
Salim A. Salim

William Taylor
Leo Tindemans
Ed van Thijn
Shirley Williams
Grigory Yavlinski
Uta Zapf