

Burundi : Restarting Political Dialogue

I. OVERVIEW

Despite progress in implementing a peace agreement with the Party for the Liberation of the Hutu People – National Forces of Liberation (Palipehutu-FNL), the last active rebel movement, Burundi is going through a dangerous political crisis which could compromise the holding of free and fair elections in 2010 and the country's future stability. The return of rebel leader Agathon Rwasa to Bujumbura and the 11 June 2008 signing of the Magaliesburg agreement are important steps forward in the Burundian peace process. However, FNL disarmament has barely started and the issue of the integration of former rebels into state institutions and security forces remains unresolved. In this context, the absence of dialogue between the government and the main opposition parties is harmful to the country's governance. Local political actors and international partners of Burundi urgently need to assess these risks and revive the national political dialogue.

The current political deadlock stems from the crisis within the leadership of the National Council for the Defence of Democracy-Forces for the Defence of Democracy (CNDD-FDD) in early 2007 and from President Nkurunziza's refusal to conclude a power-sharing agreement with the leaders of the Front for Democracy in Burundi (Frodebu) and Union for National Progress (Uprona). Following Hussein Rujabur's removal from the head of the CNDD-FDD, the party split and the faction loyal to President Nkurunziza lost its majority in the National Assembly.

The November 2007 cabinet reshuffle that brought members of Frodebu and Uprona into the government failed to provide a lasting solution to the crisis. In the National Assembly, tensions between political parties have heightened amid mounting insecurity in the capital, grenade attacks against opposition members of parliament (MPs) and continuing recruitment by the Palipehutu-FNL.

In early June 2008, the CNDD-FDD pressured the Constitutional Court to authorise the replacement of 22 dissident MPs with loyal supporters of the party's leadership. The Court ruled favourably on this request on 5 June and the CNDD-FDD and its allies regained

a two-thirds majority in the National Assembly. However, this move will not resolve the crisis in the long term. On the contrary, it illustrates a clear desire to limit all checks on its power, including the media as well as human rights and anti-corruption non-governmental organisations. This authoritarian ambition could lead to a radicalisation of opposition parties which could be tempted to look for alliances with the Palipehutu-FNL.

Participation of the Palipehutu-FNL in future elections could lead to a re-introduction of ethnic dimensions to the political discourse while unity within defence and security bodies remains fragile and the authority of the fundamental law and Constitutional Court is damaged. In this context, lack of an internal political dialogue runs the risk of a premature loss of credibility and legitimacy for these polls, leading to violent clashes during the electoral campaign. All parties must promote, in a consensual way, constitutional reforms necessary to the peace process and to set up an adequate framework for the organisation of free, credible and democratic elections in 2010.

For that purpose, it is essential that Burundi's regional partners and donors pressure all political parties to:

- Resume a constructive internal political dialogue oriented towards compromise. CNDD-FDD, Frodebu and Uprona must reach a political agreement on: 1) the resolution of conflicts of competence between ministers and vice-ministers; 2) the representation of Frodebu and Uprona within the administration and in senior civil service and semi-public positions; and 3) a minimal program of economic, fiscal and legislative reforms to be launched urgently so as to finally bring peace dividends to the population. Pressures, intimidation attempts and judiciary harassment against media and civil society must stop and individual and public freedoms must be guaranteed.
- Create a national reflection committee on institutional reforms. The committee's membership should reflect all political sensitivities and ethno-regional realities. It should consider the view of all stakeholders as well as national and international experts to prepare a set of proposals in advance of a possible review of the fundamental law.

- Open political consultations to reach a national consensus on the make-up of the Independent National Electoral Commission (CENI), the review of the electoral code and the drafting of a code of good conduct between political parties and security forces.
- Create the office of the Ombudsman, as envisioned in the Arusha Agreement and the Constitution. The Ombudsman should be led by a Burundian person chosen by consensus and with irreproachable moral authority. The office should gather citizens' complaints against government agents and could see its mandate expanded to arbitration and securing compromises in the case of a political crisis within the institutions.
- Open a consultation with Burundi's international partners and the United Nations on the possibilities of international support for organisation of elections and the presence of international police units, alongside local security forces, as well as for the acceleration of the national intelligence services reform supported by the United Nations Integrated Office in Burundi (BINUB). Moreover, Burundi's financial partners and guarantors for the peace process could set up a contact group in order to better coordinate international action vis-à-vis the government.

II. MUSCLING THROUGH AN END TO THE CRISIS

The origin of the political deadlock in Burundi stems from the crisis in the president's party, the CNDD-FDD, in early 2007, after the removal of Hussein Rujugira from the presidency of the party and the inability of the political parties represented in the government (particularly the CNDD-FDD, Frodebu, and Uprona) to work together in the administration of public affairs. After the CNDD-FDD MPs loyal to Rujugira moved into opposition, the president lost his two-thirds majority in the National Assembly and was forced to negotiate with the opposition to form a coalition government.¹ With the parties finding it impossible to reach an agreement, the assembly was para-

¹Article 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". In 2005, Uprona and Frodebu obtained one and three ministerial posts respectively. Frodebu left the government in March 2006 in protest at the removal of its members from their posts as local administrators, human rights violations and several corruption scandals.

lysed, while acts of political violence increased and the institutional deadlock became a real national crisis.

A. THE CRISIS IN THE CNDD-FDD

The removal of Hussein Rujugira from leadership of the CNDD-FDD caused an upheaval in the party. Thanks to his exclusive network of external contacts² and his control of the inner workings of the party,³ Rujugira had been de facto leader of the movement for five years.⁴ After the victory in 2005, he became the most powerful politician in Burundi.⁵ His sudden fall from favour is explained by internal⁶ and external

²An agricultural extension worker by training, Rujugira joined Palipehutu-FNL before joining Léonard Nyangoma's CNDD in 1994. After the war began in the Democratic Republic of Congo (DRC), Rujugira became one of the linchpins of cooperation between the CNDD-FDD and Joseph Kabila, president of the DRC. Kigali, Kampala and Pretoria also turned to him when seeking contact with the CNDD-FDD. After 2002, Rujugira often visited South Africa where he formed close links with leaders of the African National Congress (ANC), particularly with the South African mediator Jacob Zuma. Crisis Group interview, a former member of the CNDD-FDD leadership, Bujumbura, April 2008.

³Rujugira played a key role in the internal purges of the movement, in 1998, when President Léonard Nyangoma was removed and in 2001, when his successor, Jean-Bosco Ndayikengurukiye was removed. Crisis Group interviews, former FDD leaders, Bujumbura, February 2007.

⁴After the removal of Jean-Bosco Ndayikengurukiye in October 2001, Hussein Rujugira became general secretary of the CNDD-FDD and installed Pierre Nkurunziza as president of the movement. He thought he would be able to control Nkurunziza after helping him rise through the ranks of the party. In 2002-2003, Nkurunziza represented the CNDD-FDD in negotiations for a ceasefire and the technical forces agreement, but Rujugira took the decisions. Moreover, during the 2005 campaign, it was Rujugira and not Nkurunziza who determined the CNDD-FDD's strategy and led the party to victory. Crisis Group interview, former member of the CNDD-FDD leadership, Bujumbura, February 2008.

⁵At the beginning of the five-year term, and against the opinion of Nkurunziza who wanted to keep this position, Rujugira took over as CNDD-FDD president. Crisis Group interview, CNDD-FDD members and diplomats, Bujumbura, July 2007.

⁶In April 2006, Mathias Basabose MP, the commissioner responsible for monitoring and evaluation on the CNDD-FDD's executive committee, publicly denounced the corruption within the party. He was immediately expelled from the movement. In September 2006, the second vice-president, Alice Nzomukunda resigned in protest at Rujugira's drift towards authoritarianism. See Africa Report N°120, *Burundi: Democracy and Peace at Risk*, 30 November 2006.

rejection of his secretive and authoritarian methods⁷ and by the leadership of the former military wing of the CNDD-FDD's loss of confidence in him. At the end of 2006, the latter, unhappy at seeing Radjabu keep the sinecures of state for himself and his supporters,⁸ precipitated his downfall.

After associating political leaders of the party⁹ and parliamentarians in the manoeuvre,¹⁰ the instigators of this operation arranged for the police to put some of Radjabu's declared supporters under surveillance and intimidate them. On 22 January 2007, the director general of the police withdrew part of the guard responsible for keeping watch on Radjabu's home, which led the latter to flee to the South African embassy.¹¹ This incident had a major effect on the myth of Radjabu's omnipotence in the eyes of party activists and public opinion. On the eve of an extraordinary congress of the CNDD-FDD, President Nkurunziza, who until then had remained silent, officially spoke out in favour of holding this meeting.¹² The congress began on 7 February 2007 in Ngozi, in the absence of Radjabu and his supporters.¹³ While refraining from putting the former leadership on trial,¹⁴ delegates decided by acclamation to remove Radjabu and replace him with Jérémié Ngendakumana, a former FDD officer close to Nkurunziza.¹⁵

⁷As the months passed, human rights violations, repeated attacks on public freedoms and the uncovering of several corruption scandals led to criticism of Radjabu. Ibid.

⁸Crisis Group interview, former CNDD-FDD combatants, Bujumbura, June 2008.

⁹Crisis Group interview, Burundian politicians, Bujumbura, June 2008.

¹⁰Several CNDD-FDD generals personally visited parliamentarians to encourage them to sign a petition requesting the convening of an extraordinary congress. Crisis Group interview, CNDD-FDD MP, Bujumbura, March 2008.

¹¹He only stayed 24 hours and left after receiving guarantees for his personal security. Crisis Group interview, diplomats, Bujumbura, June 2007.

¹²This step overcame the remaining internal resistance. There had been a feeling among party members that the legality of convening this extraordinary congress was doubtful. Crisis Group interviews, CNDD-FDD members, Bujumbura, June 2007.

¹³The ambassadors of France, Belgium, the U.S., South Africa and Tanzania attended the congress in Ngozi, indicating approval of Radjabu's removal. Crisis Group interviews, CNDD-FDD leaders, February-March 2008.

¹⁴The congress paid tribute to Radjabu for his role in the armed struggle and election victory. It proposed that he should sit on the CNDD-FDD's council of elders. Crisis Group interviews, CNDD-FDD leaders, February-March 2008.

¹⁵Jérémié Ngendakumana had been Burundian ambassador to Kenya since 2006. "Qui est le nouveau président du parti

Faced with the refusal of Radjabu and his followers to recognise his removal, Nkurunziza and Ngendakumana increased the level of intimidation and sanctions.¹⁶ In April 2007, the public prosecutor, Jean Bosco Ndikumana, charged Radjabu with threatening national security¹⁷ and insulting the head of state. The National Assembly removed Radjabu's parliamentary immunity on 27 April 2007, and he was arrested the same day and taken to Mpimba central prison, in Bujumbura. However, despite this pressure, the revolt grew.

Twenty or so Radjabu parliamentarians, under the banner of the "group of parliamentarians dedicated to respect for the law", increased their appeals for the release of their leader and began consultations with the opposition. Personal friendships¹⁸ and Radjabu's role in promoting the careers of a number of these parliamentarians¹⁹ partly explains their loyalty when it was put to the test in this way.²⁰ The fact that several of these supporters benefited from the system of rewards put in place by Radjabu²¹ also probably had something to do with their behaviour.

Whatever their motivation, the refusal of Radjabu's supporters to abandon their leader paved the way for a larger political crisis. Their defection meant that the

CNDD-FDD: Jérémié Ngendakumana", www.burundi-quotidien.com (RTNB), 8 February 2007.

¹⁶The second vice-president, Marina Barampama, the president of the National Assembly, Immaculée Nahayo, the first vice-president of the Senate, Yolande Nzikoruriho and the ministers Karenga Ramadhani and Jean Bigirimana, all reputedly close to Radjabu, were all relieved of their positions. Crisis Group interviews, political leaders and diplomats, Bujumbura, July 2007.

¹⁷Radjabu was more specifically accused of recruiting demobilised soldiers with a view to overthrowing public institutions. "Hussein Radjabu arrêté", BBC Africa, 27 April 2007, available at www.bbc.co.uk/french/news/story/2007/04/070427_burundi_radjabou.shtml.

¹⁸Among the Radjabu parliamentarians were Hussein Radjabu's brother and sister, Senator Yacine Radjabu and Zaituni Radjabu, an MP until the 5 June ruling of the Constitutional Court.

¹⁹In 2005, Radjabu was the final arbiter when compiling the list of those not allowed to stand for election and deciding on the order of candidates appearing on the lists. He used this to create a network of supporters among parliamentarians. Crisis Group interview, CNDD-FDD leaders, Bujumbura, July 2007.

²⁰Crisis Group interviews, CNDD-FDD leaders, Bujumbura, July 2007-February 2008.

²¹In 2006, Radjabu ignored public tendering procedures and awarded a contract to purchase 200 vehicles for parliamentarians to one of his close supporters. In the same year, he awarded the monopoly of sugar sales to a small group of supporters, including several parliamentarians. Crisis Group interviews, politicians and diplomats, Bujumbura, July 2007.

CNDD-FDD group lost approximately one third of its members and deprived President Nkurunziza of his majority in the National Assembly.²² To continue controlling the lower house, the president had to make an alliance with the opposition parties. Discussions went badly because the president systematically rejected anything that would weaken his control of the state apparatus.

B. PARLIAMENT PARALYSED

At first, the neutralisation of Hussein Radjabu reduced the level of political tension. In response to Jérémie Ngendakumana's commitment to put a stop to the regime's authoritarian drift, Frodebu and Uprona expressed their willingness to discuss entering the government.²³ On 16 March 2007, the two parties supported the CNDD-FDD leadership's removal of Immaculée Nahayo, a close associate of Radjabu, from the presidency of the National Assembly and her replacement by Pie Ntavyohanyuma. This cooperation only lasted a few weeks as the understanding between the parties quickly dissolved.

Agreement was reached to make the CNDD-FDD's Alice Nzomukunda first vice-president of the National Assembly.²⁴ However, the government made no statement about the number of ministries and administration posts it was prepared to give to the opposition.²⁵ In exchange for their votes, President Nkurunziza said he was ready to use his discretion to confer some supplementary portfolios on members of Frodebu and Uprona, but refused to clearly identify the posts to be allocated to individuals chosen by the leaderships of the two movements.²⁶

In response, Frodebu and Uprona increased their pressure. At the opening of the parliamentary session in June 2007, they voted with the Radjabu group to block the passing of laws and refused to attend plenaries in order to deprive the Assembly of the quorum necessary

for considering legislation. Several members of these two parties also made it clear they might vote for a motion to remove President Nkurunziza.²⁷ However, this strategy of confrontation and undermining of institutions proved counter-productive. CNDD-FDD leaders interpreted the pressure and threats as unfair and illegitimate acts of aggression. The opposition parties' conduct reinforced their view that Frodebu and Uprona were violently hostile and had aligned themselves with the Radjabu group of dissidents to overthrow the president, and were even less disposed to negotiate with them.

On 13 July 2007, after the appointment of a new government, President Nkurunziza announced the adjournment of discussions with Frodebu and Uprona claiming that these two parties would be henceforth represented in the cabinet in proportion to their strength. This was immediately contested by the two parties.²⁸ Criticised by all sides, this announcement increased the tension by a few degrees. On 16 July, a majority of MPs boycotted the swearing-in ceremony of the new government. On 18 July, 60 MPs²⁹ informed the president of the Assembly that they would systematically vote against the government's law proposals. Each side chose confrontation rather than compromise.

In August, while on a tour round the country, President Nkurunziza accused opposition MPs of wanting to sabotage the government and threatened them with financial reprisals.³⁰ Finally, on 18 August, the Frodebu vice-president and three MPs who signed a letter asking President Nkurunziza to resume a dialogue with the opposition³¹ were victims of grenade attacks.³²

²² See table in appendix B.

²³ Frodebu said it was ready to return to the government, while Uprona, which had never left it but considered itself to be under-represented, proposed a review of its participation. Crisis Group interviews, Frodebu and Uprona leaders, Bujumbura, July 2007.

²⁴ After the removal of Nahayo from the speaker's chair, there were no women in the office, which was against parliament's internal rules, which stated that both genders must be represented.

²⁵ Crisis Group interviews, Frodebu and Uprona leaders, Bujumbura, February 2008.

²⁶ Crisis Group interviews, CNDD-FDD leaders, Bujumbura, July 2007.

²⁷ The chances of carrying out this threat were limited. Article 116 of the constitution provides that a motion to remove the president can be brought forward if the president has committed a serious fault, serious abuse or corruption. For a motion to be adopted, it requires the votes of two thirds of the members of the National Assembly and Senate meeting together.

²⁸ Neither the leadership of Uprona or Frodebu were consulted prior to the appointment of their members to the government. Crisis Group interviews, Frodebu and Uprona leaders, Bujumbura, July 2007.

²⁹ 23 Frodebu, nineteen Radjabu group, fifteen Uprona and three CNDD MPs loyal to Léonard Nyangoma.

³⁰ Several provincial governors then launched a campaign criticising opposition MPs. On 10 August 2008, the CNDD-FDD weekly newspaper *Intumwa* accused the MPs who did not vote for the previous bill of being mercenaries. It published their photos, the names of their relations and place of birth, in what seemed to be an attempt to expose them to public condemnation.

³¹ The letter signed by 67 parliamentarians was sent to the president on 16 August 2007.

While continuing to refuse to conduct itself in the spirit of the Arusha Agreement and pressing its claims to electoral legitimacy, the CNDD-FDD rejected compromise as a method of government and acted in an authoritarian manner. It showed it intended to make the most of its electoral victory and that it would not make concessions other than for the purposes of co-opting individuals. It did not seem willing to genuinely share any of its authority or share decision-making. Meanwhile, the opposition acted in bad faith with regard to the government, played the worst kind of political games and tried to teach the majority party a lesson by inflicting defeats on it in Parliament. The two sides therefore continued their trial of strength at the expense of the country.

C. UNCONSTITUTIONAL WAY OUT OF THE INSTITUTIONAL CRISIS

Faced with the risk of escalating violence, civil society and the international community, which had maintained a low profile until then, took the initiative. Already concerned about the breakdown in talks with the Palipehutu-FNL,³³ Burundi's main partners³⁴ put pressure on President Nkurunziza and the opposition to resume the internal political dialogue with a view to forming a more inclusive government.

Thanks to this international mobilisation, dialogue resumed between the CNDD-FDD and the opposition. On 27 September, President Nkurunziza announced he had reached agreement with Frodebu.³⁵ However, Frodebu refused to end its alliance with Uprona and denied this information, claiming that "a small group

of politicians and military have taken President Nkurunziza hostage and are trying to divide the Palipehutu-FNL and Uprona".³⁶ The latter was in fact involved in difficult discussions with the presidency because it made talks conditional on the removal of Martin Nduwimana, first vice-president, from his post.³⁷ At the beginning of November, President Nkurunziza resolved the situation by agreeing to sacrifice his friend Nduwimana, who was replaced by an Uprona MP, Yves Sahinguvu. On 14 November, a new government was named, in which Frodebu and Uprona were represented in accordance with the provisions of article 129 of the constitution.³⁸

Although the appointment of this inclusive government was unanimously welcomed, it provided only a brief respite. Conflicts over jurisdiction occurred between Frodebu and Uprona ministers and CNDD-FDD ministers, especially where ministers shared responsibilities with deputy ministers from other parties. In the absence of decrees setting out the jurisdictions of these ministerial posts, the deputy ministers loyal to President Nkurunziza bypassed opposition ministers in the administration of their ministries. Moreover, as the discussions on appointments of Frodebu and Uprona³⁹ representatives to senior positions in the civil service were regularly postponed, these two parties concluded they had been fooled and tensions resurfaced in the assembly in December.

³²Pasteur Mpawenayo, Jean-Marie Nduwabike and Nephtali Ndikumana.

³³On 23 July 2007, the Palipehutu-FNL delegation at the Joint Verification and Monitoring Mechanism (JVMM) suddenly left the capital to return to the bush. See Crisis Group Africa Report N°131, *Burundi: Finalising Peace with the FNL*, 28 August 2007.

³⁴The ambassadors of Belgium, Germany and France and the European Union (EU) representative met the protagonists of the crisis jointly. The ambassadors of Tanzania, South Africa and representatives of the AU and the UN took similar steps. In August 2007, the EU and Netherlands special envoy for the Great Lakes Region also visited Burundi to encourage a resumption of dialogue and resolve the crisis. Crisis Group interviews, diplomats, Bujumbura, September 2007.

³⁵The agreement covered strengthening the freedom of political parties to meet, the fight against corruption, the reinstatement of commune administrators who had been relieved of their positions for being members of Frodebu and Frodebu's claims for senior civil service posts. Crisis Group interview, Frodebu president, Bujumbura, November 2007.

³⁶Proposal put forward during a press conference in Bujumbura, 19 October 2007.

³⁷Following the cabinet reshuffle of 13 July 2007, Martin Nduwimana (Uprona), considered to be too close to the CNDD-FDD, was expelled from the party. However, President Nkurunziza waited a long time to dismiss him from the government because Nduwimana had become a friend of his and influential CNDD-FDD generals had a high regard for him. Crisis Group interviews, politicians, Bujumbura, February 2008.

³⁸Uprona obtained the Ministry of Public Health and AIDS, (Dr Emmanuel Gikoro), the Ministry of Transport, Post and Telecommunications (Philippe Njoni) and the position of vice-minister responsible for AIDS, (Spès Baransaka). Frodebu recovered the portfolios of Agriculture, (Ferdinand Nderagakura), Trade, Industry and Tourism, (Euphrasie Bigirimana), Environment, Planning and Public Works, (Anatole Kanyenkiko), Regional Integration and East African Community Affairs, (Vénérand Bakevyumusaya) and the vice-minister posts for Basic and Secondary Education (Ernest Mberamiheto) and Human Rights and Gender (Rose Nduwayo). "Le nouveau gouvernement du Burundi comprend 19 ministres et 7 vice-ministres", <http://www.burundi-quotidien.com/du>, 15 November 2007 (RTNB).

³⁹The CNDD-FDD asked that these questions be dealt with after the formation of the new government. Crisis Group interview, Frodebu president, Bujumbura, November 2007.

The first point of discord concerned appointments to senior positions in the civil service, for which a two-thirds majority of votes in the Senate was necessary.⁴⁰ In the absence of prior agreement with the presidency, Frodebu and Uprona voted against several candidates proposed by Nkurunziza.⁴¹ The second point of disagreement concerned the handling of negotiations with the Palipehutu-FNL. Frodebu, Uprona, the CNDD and the Radjabu group accused the presidency and the South African facilitators of not doing enough to re-launch discussions with the movement's leader, Agathon Rwasa. With the support of some members of CNDD-FDD and the first vice-president of the assembly, Alice Nzomukunda, who was exceptionally occupying the speaker's chair at the end of 2007, they called for the creation of an ad hoc parliamentary commission on the issue and asked to interview several ministers.

Anxious at seeing parliament act independently of the executive, the presidency and the CNDD-FDD reacted vigorously by seeking to remove Alice Nzomukunda from the National Assembly office.⁴² On 26 January, she was expelled from the CNDD-FDD at the extraordinary congress held in Muyinga. The CNDD-FDD then put pressure on the other groups to accept this decision and ratify the removal of Nzomukunda from the National Assembly office. The opposition saw this as a manifestation of the CNDD-FDD's authoritarian tendencies, and Frodebu, Uprona and the Radjabu group refused to comply.⁴³

⁴⁰ See article 187 of the constitution.

⁴¹ Among the failed candidates were the former director of the president's civil cabinet, Martin Mbazumutima, implicated in the so-called Falcon 50 case. According to the auditor's report on this case, the presidential aircraft, a Falcon 50, had been sold at less than half its value in June 2006 to a company based in Dubai after an irregular and contentious procedure. The loss to the Burundi state was estimated at \$3.7 million. Project P078627, audit of a contract for the transfer of assets between the government and a private party, preliminary report, 2 January 2007. Report available on the home page at www.burundirealite.org.

⁴² The remit of the office is "to preside over the deliberations of the National Assembly and organise and manage all services in accordance with current rules" (article 25 line 1 of the National Assembly's internal rule book) and determine "the organisation and operation of Assembly services" (article 26 of the same rules).

⁴³ Frodebu and Uprona refused to accept that a political party's internal measures could be imposed on the Assembly as a whole, given that Nzomukunda had been nominated after negotiations between the political parties and after a vote by MPs in plenary session. By trying to force through the removal of Nzomukunda while there was no quorum in the office, the CNDD-FDD made the opposition even more dis-

A new parliamentary crisis began and Frodebu and Uprona decided to boycott plenary sessions until the Nzomukunda issue was put on the agenda. The two opposition parties were not so much concerned with defending Nzomukunda as with pressuring the president to involve them more in decision-making in the cabinet and give them more positions in the higher echelons of the civil service, as promised five months earlier.⁴⁴

However, the time was not right for such negotiations. Local media reported that Palipehutu-FNL dissidents would be used to physically eliminate MPs and civil society and media representatives thought to favour resumption of negotiations with the rebel movement. Even though they were not confirmed, these reports were taken very seriously because some local opposition leaders had been killed earlier in 2008 and several of these dissidents had absolutely no recent connection with the rebellion.⁴⁵

On 22 February, 46 MPs and senators wrote to the UN Secretary-General accusing the authorities of wanting to organise their assassination and asking him to provide them with protection.⁴⁶ The CNDD-FDD reacted by trying to divide the opposition. At the National Assembly plenary session on 5 March, nine Frodebu MPs led by Jean Minani⁴⁷ withdrew from the party's

trustful. Crisis Group interviews, parliamentarians, Bujumbura, June 2008.

⁴⁴ Frodebu was especially interested in having representatives among the group of MPs sitting in the regional parliament of the East African Community (EAC), an organisation joined by Burundi in 2007. Frodebu also counted on displacing Didace Kiganahe from his post as second vice-president at the National Assembly office because it thought he was too close to the CNDD-FDD. Crisis Group interview, Frodebu leaders, Bujumbura, June 2008.

⁴⁵ A large majority of these dissidents were peasants and unemployed, even primary and secondary school pupils attracted by the \$600 offered as a demobilisation grant. Crisis Group interviews, Bujumbura, February 2008.

⁴⁶ The parliamentarians claimed the government had a black list of 350 people to eliminate, including opposition MPs and leaders of political parties and civil society organisations. See the letter from the 46 MPs to the Secretary General of the UN at <http://burundi.news.free.fr/news> pages, 29 February 2008.

⁴⁷ Jean Minani had been minister of public health in the government of President Ndadaye formed after the 1993 elections. In October 1994, he left the government, became president of Frodebu in 1995 then went into exile after the July 1996 coup. President of Frodebu until 2005, he led his party's negotiating team at Arusha and became president of the National Assembly in November 2001. After leading Frodebu's campaign in 2005, he was held responsible for its defeat. He adopted a lower profile in the movement and took

parliamentary group, depriving it of the minimum number of seats required to form a group and be represented in the National Assembly office.⁴⁸ On 8 March, tension increased further when grenade attacks took place against the homes of several opposition MPs.⁴⁹

Thanks to international mediation and support from the Inter-Parliamentary Union,⁵⁰ calm was gradually restored and Frodebu, Uprona and the CNDD-FDD resumed negotiations. At the end of April, the parties reached agreement on the composition of the National Assembly office.⁵¹ However, the president of the assembly postponed convening the plenary session to ratify the agreement several times and the parliamentary session ended without the crisis being officially resolved. In fact, the CNDD-FDD was trying to gain time to find an alternative solution that would free it from the need to negotiate with Frodebu and Uprona.

Feeling optimistic after changes in the Constitutional Court in his favour,⁵² the CNDD-FDD president wrote

a more conciliatory line than the Frodebu leadership towards the CNDD-FDD. In June 2008, after leaving Frodebu, Minani founded his own party, Frodebu Nyakuri (the real Frodebu). Crisis Group interviews, Jean Minani, Bujumbura, June 2008.⁴⁸ According to National Assembly internal rules, 24 MPs are necessary to form a group and gain representation in the office. After the defection of Minani and his supporters, Frodebu's parliamentary group numbered no more than sixteen. Crisis Group interview, MPs, Bujumbura, June 2008.⁴⁹ Alice Nzomukunda; Mathias Basabose, former director of the CNDD-FDD campaign; Pastor Mpawenayo, former CNDD-FDD secretary general; and senator Zaituni Radjabu. "Burundi: investigate attacks on opposition", Human Rights Watch, 12 March 2008, at http://hrw.org/french/docs/2008/03/12/burund18273_txt.htm.

⁵⁰Founded in 1989, the Inter-Parliamentary Union is the international organisation of parliaments of sovereign states. It "fosters contacts, coordination and the exchange of experiences among Parliaments and parliamentarians of all countries". See www.ipu.org/french/home.htm.

⁵¹Didace Kiganahe was expelled from Frodebu on 24 March 2008, a decision made public on 26 March. Frodebu demanded he be removed from his post as second vice-president of the National Assembly. Some CNDD-FDD MPs observed that Frodebu no longer constituted a parliamentary group and therefore had no right to be represented in the office. The president of the National Assembly was opposed to the removal of Kiganahe because CNDD-FDD leaders were very appreciative of him. Moreover, if he were ousted, the CNDD-FDD would be the only party represented in the office, which is contrary to the provisions of internal rules. Crisis Group interview with MPs and other politicians, Bujumbura, June 2008.

⁵²As set out in article 226 of the Constitution, the three judges appointed before the Constitution came into force were replaced in April 2008 by individuals close to the CNDD-

to the president of the National Assembly to ask him to refer the matter to the court. On 30 May, the court was asked to rule on the constitutionality of the presence in the assembly of MPs expelled from the CNDD-FDD. In record time, the Court came to a decision on 5 June and authorised the CNDD-FDD to replace its 22 dissident MPs by others loyal to its leadership.⁵³ With the support of two MPs from the Movement for the Rehabilitation of Citizens (Mouvement pour la réhabilitation du citoyen, MRC) and the nine MPs loyal to Minani, the CNDD-FDD regained its two-thirds majority in the Assembly and immediately broke off discussions with Frodebu and Uprona.

For the CNDD-FDD, this last dramatic turn of events was the desired ending to a political crisis that had lasted too long. However, despite its undeniable victory in its trial of strength with the Palipehutu-FNL, the situation remained precarious and the methods used to resolve the crisis risked complicating the preparations for free and democratic elections in 2010.

D. AMBIGUOUS POLITICAL VICTORY OVER THE PALIPEHUTU-FNL

The Palipehutu-FNL delegation's exit from Bujumbura at the end of July 2007 illustrated the difficulty of making progress with talks on the implementation of a ceasefire in a context of political crisis. Observing the political instability, the rebel movement preferred to withdraw, in the hope of gaining time, benefiting from the crisis in parliament and making an impact in the electoral campaign for the 2010 elections. However, this strategy led to another confrontation that the rebellion would finally lose.

After September 2007, a trend of desertion from the ranks of the FNL became noticeable, provoking

FDD. Crisis Group interviews with MPs and politicians, Bujumbura, June 2008.

⁵³For a detailed analysis of the ruling, see "Pouvoir et droit au Burundi: un commentaire [principalement] juridique sur l'arrêt du 5 juin 2008 de la Cour Constitutionnelle dans l'affaire RCCB 21" by the Belgian researcher Stef Vandeginste, at www.tutsi.org/stef.pdf and www.burundirealite.org/news_view.cfm?ID=2514&LANG=F. In the initial draft of the constitution presented in September 2004, article 149 provided that "MPs and senators automatically lose their seat and are replaced by their deputy if they change political party during the legislative period. The vote of MPs and senators is personal." During subsequent discussions, article 149 was amended at the request of the CNDD-FDD in order to allow MPs to retain their seat if they change their political party. Crisis Group interviews, MPs and former leaders, Bujumbura, June 2008.

internal clashes within the movement. These clashes became more frequent as troops loyal to the rebel chief, Agathon Rwasa, tried to prevent desertion and persuaded members from taking such a step.⁵⁴ The rebel movement accused the head of the National Intelligence Service, General Adolphe Nshimirimana, deputy chief of staff of the National Defence Forces, General Godefroy Niyombare, and the Minister of the Interior and Public Security, General Evariste Ndayishimiye,⁵⁵ of being responsible for this internal dissension, which it said was aimed at making the rebel movement implode while talks with the government remained suspended. The Palipehutu-FNL conditioned resumption of talks with the government on replacement of the facilitator, the South African minister Charles Nqakula.

During October, the movement of presumed FNL dissidents towards the assembly sites accelerated.⁵⁶ Although it was clear that the combatants, essentially recent recruits, left the ranks of the FNL to make their way to the assembly points managed by the presumed dissidents, most of them were poor peasants, people at a loose end, the unemployed and school students who went to the assembly points in the hope of receiving the demobilisation grant.⁵⁷ In response, Rwasa increased the pressure against deserters. During October, three dissident leaders were killed and a fourth wounded during an ambush in the middle of town after they had left a meeting in Bujumbura.⁵⁸

⁵⁴ At the beginning of September 2007, FNL combatants attacked a group of dissidents that had installed themselves, with the permission of the authorities, in a neighbourhood on the outskirts of Bujumbura, killing about 20 dissidents. During the night of 25-26 September, the FNL bombarded the main dissident assembly site at Rugazi, in the province of Bubanza, with 60mm mortars, officially killing two and wounding ten dissidents. In October, the FNL attacked an encampment of presumed dissidents at Gakungwe in Bujumbura rural province. The official death toll of this attack was eleven, including nine dissidents and two FNL combatants, but independent sources estimate that many more alleged dissidents were killed. Crisis Group interviews, diplomats, Bujumbura, June 2008.

⁵⁵ These three generals were all from the CNDD-FDD, which supports the hypothesis that the operation was mounted by the governing party. Crisis Group interviews, diplomats, Bujumbura, February and June 2008.

⁵⁶ During October, the number of rebel dissidents was over 1500, according to the government.

⁵⁷ Crisis Group interview, diplomats, Bujumbura, February and June 2008.

⁵⁸ This operation, which most observers attributed to the FNL, seemed to target the battalion commander, Nestor Banzubaze, known as Banes, who was wounded. This former FDD officer had persuaded the National Defence Forces

In the field, clashes also increased between government forces and the FNL. The number of arrests of presumed activists and sympathisers of the rebel movement increased while the movement kidnapped provincial administrators. The government also mobilised the subregion. At a meeting of the African Union (AU) in Addis Ababa on 5 December 2007, attended by heads of state and also by the U.S. Secretary of State Condoleezza Rice, the mechanism for regional cooperation facilitated by the United States and called "Tripartite Plus" decided to impose sanctions⁵⁹ on the rebellion if it did not rejoin the JVMM by 31 December.

However, this forceful move did not receive national support. A short while after the meeting in Addis Ababa, during a session of questions to the first vice-president in the National Assembly, opposition MPs warned the government against implementing these sanctions, denounced the attempts to destabilise the rebellion and requested that the facilitator be replaced, accusing him of being biased and of having lied to the UN Security Council about the presumed dissidents.⁶⁰ Politicians (with the notable exception of the CNDD-FDD), civil society and much of public opinion wanted to see a resumption and conclusion of negotiations with the Palipehutu-FNL.

(FDN) to integrate the rebel movement in the national forces, then deserted to rejoin the FNL during 2005. He had just left the ranks of the rebellion with several dozen combatants and had spoken several times on local radio stations to explain that he intended to implement the 7 September 2006 ceasefire agreement. Different sources maintain that Banes was leading negotiations with certain other leaders of the presumed dissidents in order to take the leadership of the movement and serve as an interlocutor for the government for implementation of the ceasefire.

⁵⁹ No right to remain or circulate in Tripartite Plus member states (Burundi, DRC, Rwanda and Uganda); implementation of all possible means to halt the supply of arms, ammunition and financial resources; denial of refuge; accounts and assets of the leadership frozen; refusal of visas and ban on access to the media; inclusion of leaders of the movement on the list of most wanted, followed by their arrest and extradition. "Addis Abeba: conclusions de la conference de commission mixte Tripartite plus un", at www.burundi.gov.bi/spip.php?article489.

⁶⁰ From the day after this session, the president of the CNDD-FDD parliamentary group refused to accept that the National Assembly had rejected the facilitation because several MPs of his own party had been very critical towards him. The CNDD-FDD henceforth opposed all parliamentary initiatives to support the peace process with the rebel movement. Crisis Group interviews with MPs, Bujumbura, February 2008.

Further pressures relaunched the process, however. On 4-5 February 2008 in Dar Es Salaam, the facilitators finally met a Palipehutu-FNL delegation led by its president, Agathon Rwaswa. This meeting resulted in some progress being made. The rebel movement no longer refused to cooperate with the South Africans and promised to return to the JVMM. It also resulted in recommendations on the creation of a political board to support the facilitators and the principle of granting immunity to Palipehutu-FNL combatants and militants. It also discussed specific measures to ensure the security of the rebel movement delegation.

On 22-23 February, in Cape Town, the facilitators met the special envoys and representatives of the main countries and multilateral organisations involved in the Burundi peace process. This meeting decided on the composition and remit of the political board that was to support implementation of the accords.⁶¹

During March, talks took place between the Palipehutu-FNL, the facilitation team and the political board in Dar Es Salaam. These talks focused on the rebel movement's return to the JVMM and Rwaswa's move to Bujumbura. The Palipehutu-FNL accepted the principle of his return to Bujumbura by the end of April but asked that parliament should first vote through a law granting movement members provisional immunity for crimes committed during the war and mentioning the Palipehutu-FNL by name.

A compromise was quickly reached on the question of the security of the rebel delegation in Bujumbura, but the rebel movement did not get a favourable response regarding the granting of provisional immunity to its members. A law had already been passed at the end of 2006, but it did not mention the Palipehutu-FNL by name, referring only to "the movement signing the

ceasefire agreement of 7 September".⁶² The government justified its refusal by arguing that the president had already signed such a law. It also said that the name of the rebel movement was contrary to the constitution and to the law on political parties.

In a context in which militants of the rebel movement were still continuously subjected to arrest and physical abuse by the security forces, the Palipehutu-FNL's concerns were not unfounded. However, its real motive, as the government had understood, was to impose de facto recognition of the movement's name as its political party name. The rebel movement considered political and legal acceptance of its current name as an important issue because of its symbolic nature for much of the Hutu majority, its potential electorate. During March and the beginning of April, while agreeing in principle to return to the JVMM, the rebel movement constantly raised the issue of provisional immunity by implicitly making this a condition for its return.⁶³

Meanwhile, the rebel movement tried to strengthen its political position through military action. Starting on 15 April, significant FNL deployments were detected around the capital while government forces strengthened their positions. In the night of 16-17 April, the FNL launched a large-scale attack on several areas of the capital and other locations in the interior of the country. Above and beyond the issue of provisional immunity, the resumption of hostilities was aimed at no more and no less than imposing a new agenda on talks⁶⁴ and therefore of forcing the government, the facilitators and the political board to agree to genuine negotiations on power sharing.⁶⁵

⁶¹ Composed of one representative of the facilitator, the representative of the AU in Burundi, the special representative of the Secretary-General of the UN in Burundi, an EU representative a government representative and a Palipehutu-FNL representative and the Ugandan, Tanzanian and South African ambassadors to Burundi, the board's remit was to support the facilitation but not to act as a forum for negotiations, especially in relation to the rebel movement's new demands. The meeting also decided not to accept Palipehutu-FNL proposals that questioned the provisions of the Burundian constitution, laws and democratic principles, while calling on the rebel movement to join the institutions. The meeting recommended that the question of the FNL dissidents be dealt with by the government. The international community committed itself to providing financial support for disarmament, demobilisation and reintegration of those recognised to be former combatants. Crisis Group interviews, diplomats, June 2008.

⁶² However, after this law, the president of the Republic signed two different decrees, one on the provisional immunity of the movement that signed the 7 September agreement and another mentioning the Palipehutu-FNL by name. However, the latter was never ratified by parliament.

⁶³ Radio interviews with the Palipehutu-FNL spokesperson on radios Isanganiro, RPA and Bonesha FM+ in March and April 2008.

⁶⁴ On this issue, see the Palipehutu-FNL press release dated 21 April 2008 – the 2nd Palipehutu-FNL communiqué at <http://burundi.news.free.fr/news> page dated 25 April 2008.

⁶⁵ In an interview in May 2008, Agathon Rwaswa affirmed: "we have two agreements with the government, which remain inapplicable until they are fleshed out and detailed to make them realistic and practical. The first concern therefore is to use these agreements to reach a political agreement and a technical agreement on the armed forces. It is also important to amend the constitution and other laws that discriminate against moral or physical persons in order to avoid biased laws from causing new crises in the future. With regard to the institutions, I think we have a right to our share

Nevertheless, the rebel movement suffered serious military setbacks and, almost on the verge of defeat, signed a new declaration on the cessation of hostilities on 26 May. The region, especially Tanzania, forced Rwasa to return to the country to resume discussions with the government. On 30 May, he returned to Bujumbura and was welcomed by thousands of supporters. On 11 June, the Magaliesburg agreement was signed in South Africa. The Palipehutu-FNL and the government committed themselves to resolving their differences through dialogue and reached an understanding on recognition of the rebel movement as a political party and on the integration of its combatants into government forces.

The different points of view on basic issues, such as political and military power sharing and the implementation of the ceasefire agreement continued, but the government had won its trial of strength with the rebel movement. After much equivocation, the FNL began the process of assembling its combatants on 21 July. However, the small number of weapons handed over by rebels left room to doubt the movement's willingness to disarm without receiving concrete agreements to its main demands and also contributed to endangering the country's political stability in the run-up to the 2010 elections.

On 18 August, for the first time since his return to Bujumbura, Agathon Rwasa met President Nkurunziza. They agreed to meet twice a week to discuss misunderstandings and to create two teams to work on any problems that arose, but they did not deal with the fundamental questions.⁶⁶ The Palipehutu-FNL raised the stakes and, at a press conference on 15 August, demanded power sharing and equality in all aspects of national life. It demanded one of the two vice-presidencies, thirteen of the 26 ministries, head of the defence and security forces and nine of the seventeen posts of provincial governor.

Whether dealing with the parliamentary crisis or the FNL, the CNDD-FDD's methods pose problems and involve serious risks for the country's future. The use of force, threats and pressures rather than seeking genuine compromises encourages the development of a spirit of revenge between armed and unarmed opponents. Such a climate of defiance in the still fragile

so that we can seriously prepare for the forthcoming elections, because the current situation requires a transition". Interview with Rwasa, head of Palipehutu-FNL, <http://burundi.news.free.fr/>, news pages, 30 April 2008.

⁶⁶ Interview with the PALIPEHUTU-FNL spokesperson on radio Isanganiro on the evening news program, 18 August 2008.

context of Burundi is dangerous for the next two years and represents a threat to the elections, which will no longer benefit from the presence of a peace-keeping force or from general goodwill to help the country out of the conflict. Restoration of political dialogue as the most favoured method to manage the country is essential if the CNDD-FDD wants to consolidate peace.

III. RESTORE POLITICAL DIALOGUE AND PREPARE THE ELECTIONS

The violation of the constitution, validated by the Constitutional Court, ended the paralysis of parliament, at least provisionally, but it created a dangerous precedent capable of affecting the stability of the country in the medium term. In fact, the dialogue between the political parties ended at that point and the authority of the fundamental law was henceforth undermined, even though the risks of radicalisation of both the government and the opposition exist, and the Palipehutu-FNL is still not integrated into the country's political life and the unity of the defence and security forces remains fragile. With general elections only two years away, the risk of violent excesses that compromise the organisation and honesty of the election cannot be excluded.

A. THE GOVERNMENT'S ATTEMPTS TO AVOID SHARING POWER

After the expulsion of the 22 dissidents from the Assembly and with the support of the nine Frodebu MPs close to Jean Minani, the presidential coalition once more had the two-thirds majority required to pass laws. While recognising it had taken liberties with the fundamental law and cheated Frodebu and Uprona, the CNDD-FDD believed it had chosen, on the advice of an expert from the Inter-Parliamentary Union, the least damaging solution and definitively resolved the internal political crisis.⁶⁷ However, it is difficult to agree with such optimism without confusing the CNDD-FDD's interests with those of Burundi. The CNDD-FDD's electoral campaign strategy seems to be based on avoiding power sharing in all government institutions and eliminating any form of organised opposition.

⁶⁷ Crisis Group interview, CNDD-FDD spokesperson Onésime Nduwimana, Bujumbura, June 2008.

1. Pressure on the opposition

The CNDD-FDD is only going to be able to recover a sustainable majority if the Constitutional Court's ruling is not considered to have set a precedent but is only an opportunity to confirm the subordination of the court to the presidency. In fact, the ruling of 5 June should logically have led to the expulsion from the National Assembly of the nine MPs close to Minani and expelled by Frodebu, and those MPs who had rejoined the CNDD-FDD at the beginning of the legislative session. This would have deprived the CNDD-FDD of its two-thirds majority.⁶⁸ The Frodebu leadership asked the president of the Assembly to refer the matter to the court. To justify not proceeding with this request, the CNDD-FDD argued that the ruling of 5 June only applied to the Radjabu group because they deserved to be "punished"⁶⁹ for having defied and insulted the government.

The CNDD-FDD argued that the ruling could not be applied to Minani and his supporters, because they had displayed exemplary conduct by calling on the leadership of their party to stop boycotting the Assembly's plenary sessions.⁷⁰ In the absence of legally sound arguments, the CNDD-FDD added that if Frodebu persisted in trying to obtain the removal of Minani and his supporters from the Assembly, it might ask the Court to note that almost all Frodebu and Uprona MPs should be relieved of their mandate on the grounds that they had too many unjustified absences from plenary sessions.⁷¹

In fact, all of this showed the governing party's growing willingness to avoid sharing power and even their lack of concern for trying to preserve the appearances of the rule of law. Domination of the Constitutional Court was not an isolated event but was part of a strategy that targeted all opposition. Several trade union leaders were also relieved of their positions or affected by disciplinary sanctions and the security forces were used to end strikes. The political parties saw their freedom of assembly challenged, while their activists were intimidated, particularly in the interior of the country.⁷²

Some recently formed opposition parties struggled to obtain registration for reasons that were often doubtful⁷³ and were subjected to close police surveillance.⁷⁴ Although the media had, for the moment, generally preserved its freedom, the government seems to be targeting non-governmental organisations working to protect human rights or expose corruption. The president of the Observatory against Corruption and Economic Embezzlements (OLUCOME) was pursued in the courts by the president for having denounced the excessive amounts allocated to various budget headings for the discretionary use of the presidency. Two members of the Human Rights League Iteka were also subjected to illegal pressures in an affair involving the fabrication of evidence (false witnesses) involving a radio station close to the government.⁷⁵

The Radio publique africaine (RPA), one of the most popular private radio stations in Burundi, had for several months also been in the sights of the National

⁶⁸The Frodebu president, Léonce Ngendakumana, communicated a request to the president of the National Assembly on 9 June. Crisis Group interview, Frodebu president, Bujumbura, June 2008.

⁶⁹After the ruling by the Constitutional Court on 5 June, the 22 MPs excluded from the Assembly had their cars and diplomatic passports confiscated. The government also asked the banks to freeze their accounts but the banks refused. Crisis Group interviews, MPs, Bujumbura, June 2008.

⁷⁰The CNDD-FDD spokesperson thought that the ultimate provocation was the appearance of the Radjabu MPs wearing prison clothes at the inauguration of the new session of parliament in June 2008. These MPs wanted to denounce the sentencing of Hussein Radjabu to thirteen years' imprisonment on 3 April 2008. Crisis Group interview, CNDD-FDD spokesperson Onésime Nduwimana, Bujumbura, June 2008.

⁷¹According to the CNDD-FDD, the idea of resorting to such a measure had already been discussed before the expulsion of the 22 MPs. As there was a risk of excluding almost all Frodebu and Uprona MPs, the CNDD-FDD strategists had drawn back from such a step for fear of being accused of wanting to liquidate the opposition and establish a single party regime. Crisis Group interview, Onésime Nduwimana, CNDD-FDD spokesperson, Bujumbura, June 2008.

⁷²The local media regularly reported threats and pressures against Frodebu and Uprona leaders and militants in the field. On 4 July 2008, Pasteur Mpawenayo, president of Radjabu's group of parliamentarians, a great believer in justice, was arrested and imprisoned. On 14 July, Gérard Nkurunziza, a former CNDD-FDD MP, was also arrested: www.ligue-iteka.africa-web.org/article.php?id_article=2883.

⁷³Although its request for registration complied with the law, the party of journalist Alexis Sinduhije, the Movement for Security and Democracy (Movement pour la sécurité et la démocratie, MSD) has still not been registered. The minister of the interior asked the journalist to change the party's name on the grounds that "security" is a prerogative of the state and cannot be included in the name of any political party. Crisis Group interviews, political leaders and diplomats, Bujumbura, August 2008.

⁷⁴On 15 June 2008, a detachment of the national police occupied the plot of land where the constituent assembly of the Democratic Alliance for Renewal (Alliance démocratique pour le renouveau, ADR), the new party of Alice Nzomukunda, had been held. Crisis Group interview, Alice Nzomukunda, ADR president, Bujumbura, June 2008.

⁷⁵See the press release from the Iteka League, 14 August 2008, at www.burundirealite.org/PDFs/24.pdf.

Communication Council, the agency responsible for regulating the media and an institution under the influence of the CNDD-FDD.⁷⁶ The government created new radio stations to counter the independent radios. Given the degree of subordination of the Minister of Justice⁷⁷ and the Constitutional Court to the CNDD-FDD, fears mounted about the capacity of civil society to preserve its independence. As ethnic divisions are still very evident in the country and as a great many weapons remain in circulation,⁷⁸ there are also concerns about the security consequences of the government's authoritarian tendencies, which also could undermine the validity of the historical commitments made in Arusha.

2. The risk of aggravating ethnic tensions

The electoral weight and attitude of Palipehutu-FNL in the next elections are two great unknowns. Many scenarios are possible. However, one might think that if this movement definitively renounces the armed struggle and becomes involved in political life, it could disturb the balance of political forces and the climate of the campaign, not to say the outcome of the polls. The Palipehutu-FNL should be able to mobilise its support network in the west of the country,⁷⁹ and also attract votes from some of the rural youth disappointed by the CNDD-FDD.⁸⁰

However, the participation of Palipehutu-FNL in the next elections will not be enough to guarantee a peaceful campaign. In order to attract electoral support, Pali-

pehutu-FNL will probably want to show the population that its men rather than the CNDD-FDD, the police and the army are in control of the hills and in a position to ensure their security. In this context, there are fears that direct clashes might occur between troops and militants and also between security forces and the recently demobilised militia. In addition, as the Palipehutu-FNL remains opposed to the ethnic quota system, especially in the army,⁸¹ and continues to call for a new social contract,⁸² its entry on the political scene creates a real risk of a new wave of ethnic conflict in national political life, which the undermining of the Arusha Agreement by the CNDD-FDD would amplify further.⁸³

The negative consequences of such debates for the unity of the defence and security forces should not be underestimated. Certainly, the integration of CNDD-FDD forces into a new National Defence Force (FDN)⁸⁴ and a national police force is one of the major successes of recent years in Burundi. However, the intelligent co-operation between Hutu and Tutsi military and police remains a fragile achievement, linked to respect for the Arusha Agreement.⁸⁵ Already, at the beginning of 2008, President Nkurunziza's request to the minister of defence to demobilise 3,387 soldiers, including 3,217 Tutsis and 140 Hutus, has given rise to much criticism from Tutsis in the army. More than 650 soldiers, mainly Tutsis, refused to be demobilised and denounced the government's pro-Hutu policy.⁸⁶

Meanwhile, the minister of defence has said that the number of Tutsis in the army had been overestimated and that a new census was required before implementing the next phases of the demobilisation program requested by the World Bank and the main donors. Finally, at the beginning of April, hundreds of Tutsi and Hutu soldiers refused to obey the orders of their officers and occupied an area of land near to a mili-

⁷⁶The majority of the members of the National Communication Council are close to the governing party. The president and vice-president of this council are CNDD-FDD members. Crisis Group interviews, local media, Bujumbura, June 2008.

⁷⁷In June 2008, a letter from the current minister of justice, dated 23 November 2005, was made public. It shows how the minister, then a simple magistrate, swore allegiance to the CNDD-FDD. Information broadcast by several local private radios in June 2008.

⁷⁸According to the last report by the Iteka League, only 5,000 weapons had been collected and 100,000 were still circulating in the country. "Inertie des institutions étatiques sur fond de calculs politiques", annual report on the human rights situation, 2007, the Iteka League, June 2008.

⁷⁹Citiboke, Bubanza and Bujumbura rural.

⁸⁰According to an opinion poll carried out for a study on governance and corruption in Burundi, conducted on the government's initiative with the technical and financial assistance of the World Bank in May 2008, with a sample of 1,810 people, the main areas of concern expressed by Burundian households were the growing shortage of land, increasing unemployment, extreme poverty and the lack of prospects. Diagnostic study of governance and corruption in Burundi, survey report, Bujumbura, May 2008, p. 9.

⁸¹Crisis Group interviews, Agathon Rwasa, president of Palipehutu-FNL, Bujumbura, August 2008.

⁸²On this point, see the Crisis Group Report, *Burundi: Finalising Peace with the FNL*, op. cit.

⁸³If they realise that the issue is of great electoral importance it cannot be excluded that the CNDD-FDD and Frodebu will raise the stakes on this point.

⁸⁴Crisis Group interviews, local and international actors concerned with reform of the security sector, Bujumbura, February-June 2008.

⁸⁵Crisis Group interviews, military and police leaders, Bujumbura, June and August 2008.

⁸⁶On 31 March 2008, the organisation PA-Amasekanya, which claims to speak on behalf of the Tutsis, published a communiqué affirming that the demobilisation of Tutsis from the army is part of a plan to commit genocide currently being prepared against them.

tary camp.⁸⁷ If the electoral campaign takes place in a climate of violence and if the question of the relative weight of the Tutsis in the army becomes a major issue, ill feeling could grow, affect the political neutrality of the army and the police and also its capacity to contain any violence that might occur.

If they feel marginalised, Tutsi soldiers could refuse to interfere in the dispute between the CNDD-FDD and Palipehutu-FNL, two parties of Hutu origin. Laurent Nkunda, who is already recruiting Burundi Tutsi combatants,⁸⁸ could try to exploit the fears of the minority and gain greater support from Burundian Tutsis. In the long term, a return to clashes between Hutus and Tutsis, in a regional context that remains very volatile, cannot be excluded. The authorities, local political actors, Burundi's partners, particularly the main donors, and the UN must urgently assess these risks and act to prevent any such development while there is still time.

B. CREATE THE CONDITIONS FOR CREDIBLE AND PEACEFUL ELECTIONS

The recent progress in implementing the ceasefire agreement with the Palipehutu-FNL and the apparent end to the paralysis of parliament must not lead to a demobilisation of the international community. On the contrary, it must increase the pressure on President Nkurunziza to restore internal political dialogue, prepare the essential constitutional changes in a consensual manner and organise free and democratic elections.

1. Restore political dialogue

The reestablishment of internal political dialogue is a priority. The presidency should implement the agreement concluded at the end of April 2008 on the composition of the National Assembly office,⁸⁹ resolve the conflicts of jurisdiction between ministers and deputy ministers and invite Frodebu and Uprona to participate in long-deferred legislative reforms on agriculture, taxation, customs and investment. The country has already suffered three years of continuous institu-

tional political crisis and seems to be getting ready for the next elections prematurely. In order to avoid wasting an entire legislative period, the government should urgently accelerate the economic and fiscal reforms necessary to deliver dividends to the population. Each of the political parties represented in the government and in parliament must make this its priority.

In order for an internal political dialogue to resume and produce a productive compromise that is positive for Burundi, it is also essential for Frodebu and Uprona, who negotiated⁹⁰ the principles of Arusha,⁹¹ incorporated in the current Constitution, to defend them in a more constructive way. Since 2007, these two parties have often behaved like parties of notables,⁹² convinced of their intellectual and social superiority and underestimating the "members of the maquis" of the CNDD-FDD. Instead of trying to obtain government posts and paralyse parliament in order to back up its accusations that the CNDD-FDD has done nothing positive, they should show their determination to make this legislative session productive, strive to consolidate the rule of law and formulate a political platform in order to offer a genuine political alternative to Burundians.

They should also reach agreement with the CNDD-FDD on the creation of an ombudsman's office, as envisaged by the Arusha Agreement and the constitution. The office could see its mandate expanded to include arbitration and securing compromises in the event of institutional deadlock. Led by someone chosen by consensus and having undisputed moral authority, the ombudsman's office could also make a useful contribution to the proper operation of state institutions and help to prevent any further paralysis of government action.

The CNDD-FDD's attitude must also change. Its historic opposition to the Arusha Agreement⁹³ and its electoral

⁸⁷ Crisis Group interviews, military and police, Bujumbura, June 2008.

⁸⁸ Crisis Group interviews, leaders, Bujumbura, June and August 2008.

⁸⁹ In order to conform to the Assembly's internal rules, which require more than one party to be represented in the office, an agreement reached at the end of April lowered the number of MPs required to form a group and therefore have the right to representatives in the office. Crisis Group interviews, Frodebu president, Bujumbura, June 2008.

⁹⁰ Although it was signed on 28 August 2000 by seventeen political parties, the Arusha Agreement was mainly the work of Uprona and Frodebu, which then implemented the transition.

⁹¹ The main provisions concerned ethnic quotas in the army, the administration and parliament and the rule that a two-thirds majority of the National Assembly is required to pass laws.

⁹² Tired by the years spent in government, these two parties were also divided by many personal quarrels. Uprona also tends to behave as a union for protecting the interests of the Tutsis in the country's institutions and political life.

⁹³ The CNDD-FDD never took part in the peace talks that began in Arusha in June 1998. Excluded from the talks by the facilitator Julius Nyerere, it refused to participate in the process until, in 2001, the facilitator Nelson Mandela suggested it participates. Under strong international pressure, the CNDD-FDD finally recognised the Arusha Agreement when it signed a ceasefire in November 2003. During the

victory in 2005 cannot justify all the obstacles it has placed in the way of a genuine political agreement with Frodebu and Uprona on the model of the “great coalitions” practised in many democracies throughout the world since 2007. By seeking to resolve the political crisis by violating the constitution, the president runs the risk of an authoritarian drift that could not only undermine the fragile foundations of democracy and the rule of law, but also compromise the peaceful holding of the forthcoming elections. As head of state and guarantor of the country’s constitution,⁹⁴ President Nkurunziza should clearly show his opposition to any return to a single party system and calm spirits before launching the electoral campaign.⁹⁵

2. Revise the constitution in a consensual manner

Once the internal political dialogue has been re-established, the question of constitutional reform must be faced. During the last two years, President Nkurunziza has several times denounced⁹⁶ the excessive constraints on his government imposed by the current Constitution. Although certain constitutional provisions, starting with article 175,⁹⁷ have undoubtedly imposed very strict constraints on the governing party,

discussions on the post-transition constitution, the CNDD-FDD opposed the incorporation of the Arusha Agreement principles in the fundamental law but it had to concede defeat once again and, in the end, called for adoption of the project.

⁹⁴ According to article 95 of the constitution, “The President of the Republic, Head of State, embodies national unity, ensures respect for the Constitution and ensures continuity of the state and the normal operation of its institutions”.

⁹⁵ In this context, President Nkurunziza could also envisage using his right of reprieve to benefit Hussein Radjabu and his friends who were convicted after a political trial. Although Radjabu had committed human rights violations and organised political trials himself, his removal should have been the occasion to break with such practices.

⁹⁶ In an interview on 8 May 2008, Nkurunziza said that “the problem we face today is linked to the Constitution of the Republic of Burundi”, because it gives a political minority the right of veto. Indignant at not being able to legislate with a simple majority, he extended his criticism to the quota system itself, which he claimed was why some of the country’s institutions were not functioning properly. “Nkurunziza livre sa vision de la situation actuelle au Burundi”, *Gabonews*, <http://fr.allafrica.com/stories/200805080541.html?page=2>.

⁹⁷ Article 175 states that the “National Assembly cannot legitimately deliberate unless two-thirds of MPs are present. Laws are voted by a two-thirds majority of MPs present or represented. Organic laws are voted by a two-thirds majority of MPs present or represented, but this majority cannot be lower than the absolute majority of members in the National Assembly. A two-thirds majority of MPs who are present or represented is also required to vote on important resolutions, decisions and recommendations”.

they have also strengthened the peaceful coexistence between communities and limited the risk of increasing authoritarianism, characteristic of many countries experiencing a post-conflict situation. It therefore seems premature and dangerous to envisage a revision of the ethnic quotas in the defence and security forces and political institutions.

As the principles of Arusha have so far failed to create a new political culture, their revision should not be excluded a priori. With a view to beginning discussion and of creating the maximum support possible for this project,⁹⁸ President Nkurunziza could create a national reflection committee on the constitution. Composed of men and women of all political tendencies, representatives of civil society and local and international experts in constitutional law, this committee would be given responsibility for consulting the maximum possible number of political parties and local and international experts with a view to formulating proposals for revising the fundamental law. The consultation should take place in a transparent manner and within the framework of a political dialogue put in place by the Peacebuilding Commission.

If a consensus can be obtained in favour of the adoption of laws on the basis of a simple majority of the Assembly and that calls into question the right of all groups obtaining 5 per cent of votes to participate in government, the committee should ensure the preservation of the rights of the opposition. It can do so by introducing an official statute to the benefit of the leader of the opposition, by lowering the number of MPs necessary to form a parliamentary group and refer issues to the Constitutional Court,⁹⁹ and by sharing membership of parliamentary committees on a proportional basis between parliamentary groups. The presidency of the Senate, the institution which by nature should regulate any excesses by the presidential majority in the Assembly, could be constitutionally reserved to a leader of the opposition from an ethnic group different to that of the president.¹⁰⁰

⁹⁸ Article 300 of the constitution states that a bill to amend the constitution cannot be adopted without a four-fifths majority of both the National Assembly and Senate.

⁹⁹ According to article 230 of the constitution, the court can only consider matters referred to it by the president, the president of the National Assembly, the president of the Senate, a quarter of MPs or senators or by the ombudsman. Given the balance of forces in the assembly and Senate, only the CNDD-FDD can refer matters to the court.

¹⁰⁰ Crisis Group interview, Burundian politicians, Bujumbura, August 2008.

3. Begin consultation on the organisation of the forthcoming elections

Given the risk of violence at the next elections, it is important to put in place, with the support of the UN, AU and EU, the framework for consultation on the organisation of free, peaceful and credible elections in 2010. In light of the unfortunate experiences observed in other countries of the region, it is essential that the Independent National Electoral Commission (CENI) is composed of independent personalities able to provide genuine authority to this institution and guarantee an honest election.

President Nkurunziza, who issued a decree creating CENI on 16 June 2008, should immediately begin consultations with the other political groups on this issue. By virtue of article 90 of the Constitution, the members of CENI cannot be appointed by decree until they have been separately approved by the National Assembly and the Senate by a three-quarters majority. These arrangements should also allow revision of the electoral code in a consensual manner. Given the risk of clashes in the field, it seems indispensable to begin drafting a code of conduct for political parties and the security forces, including mechanisms for punishing violation of agreements.

In parallel, the government should begin discussions, as quickly as possible, with external partners and the UN with a view to building capacities, ensuring independence of the CENI and the material organisation of the elections. In order to avoid local security forces being overwhelmed and their political neutrality questioned, the presence in the field of international police forces, under the command of the UN, at the side of the Burundian police seems to be a necessity. With the extension of the efforts undertaken by the United Nations Mission (BINUB) in this field, reform of the intelligence services should also continue with a view to avoiding their interference in the country's political life and in the 2010 election campaign.

Finally, in order to improve coordination and plan their action and especially their message to Burundian

political actors on the need for political dialogue before the elections and the absolute need to stop pressure by the security services on civil society and the media, Burundi's financial partners and the countries acting as guarantors for the Arusha Agreement could also establish a contact group that would meet monthly to ensure the unfailing continuity of international support in the search for stability in Burundi.

IV. CONCLUSION

Burundi has recently made significant progress in resolving the conflict with the Palipehutu-FNL. However, only two years away from the polls that will elect the president by universal suffrage, the political situation remains confused and dangerous. To resolve the political crisis, the CNDD-FDD has chosen to violate the constitution and weaken any opposition to its authority. As the question of the integration of Palipehutu-FNL into political life has still not been resolved and the unity of the defence and security forces remains fragile, Burundian political parties urgently need to resume a constructive dialogue aimed at seeking compromise towards preparing the next general elections in a consensual manner. The pressure on civil society and the media must cease and the spaces for freedom and liberty must be maintained.

The international community, which has mobilised strongly to restore peace in this country and to encourage talks with the Palipehutu-FNL, must also assess the risks that surround the preparation of the 2010 elections and exercise the necessary pressures. The resumption of dialogue would allow the organisation of the transparent debate on the institutional future of the country that many are calling for. Such dialogue would also facilitate the creation, with the active support and participation of Burundi's external partners and the UN, of the framework for holding peaceful, free and democratic elections in 2010.

Nairobi/Brussels, 19 August 2008

APPENDIX A

MAP OF BURUNDI



APPENDIX B

POLITICAL COMPOSITION OF THE NATIONAL ASSEMBLY

Political composition of the National Assembly after the elections of August 2005	
CNDD-FDD	64 MPs
FRODEBU	30 MPs
UPRONA	15 MPs
CNDD	4 MPs
MRC	2 MPs
Batwa	3 MPs
TOTAL	118 MPs

Political composition of the National Assembly in August 2008¹⁰⁴	
CNDD-FDD	67 MPs
FRODEBU	17 MPs
FRODEBU Nyakuri	9 MPs
UPRONA	15 MPs
CNDD	4 MPs
MRC	2 MPs
Batwa	3 MPs
TOTAL	117 MPs

Political composition of the National Assembly before the expulsion of the 22 MPs by the Constitutional Court (May 2008)¹⁰¹	
CNDD-FDD ¹⁰²	47 MPs
FRODEBU	26 MPs
Radjabu group	15 MPs
UPRONA	15 MPs
CNDD	4 MPs
Independents	3 MPs
MRC	2 MPs
Batwa	3 MPs
TOTAL	117 MPs¹⁰³

¹⁰¹ Source: interior instruction N°130/PAN/ 003 of 17 March 2008 on the appointment of members of permanent committees.

¹⁰² However, the MPs Nyabenda Déo, Niyonzima Marie Goreth, Sindarusiba Marie and Nkurunziza Gérard, all Radjabu supporters, are on the list of the 47 MPs. In fact, they had not resigned from the governing party and neither had they been removed. They were nevertheless included in the 22 MPs expelled from the National Assembly.

¹⁰³ Hussein Radjabu is not included.

¹⁰⁴ Source : interior instruction N°130/PAN/ 008 of 11 June 2008 on the appointment of members of permanent committees.

APPENDIX C

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 135 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by the former European Commissioner for External Relations Christopher Patten and former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

Crisis Group's international headquarters are in Brussels, with advocacy offices in Washington DC (where it is based as a legal entity), New York, London and Moscow. The organisation currently operates eleven regional offices (in Bishkek, Bogotá, Cairo, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina, Seoul and Tbilisi) and has local field representation in sixteen additional locations (Abuja, Baku, Bangkok, Beirut, Belgrade, Colombo, Damascus, Dili, Dushanbe, Jerusalem, Kabul, Kathmandu, Kinshasa, Port-au-Prince, Pretoria and Tehran). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea,

Kenya, Liberia, Rwanda, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Bangladesh, Indonesia, Kashmir, Kazakhstan, Kyrgyzstan, Myanmar/Burma, Nepal, North Korea, Pakistan, Philippines, Sri Lanka, Tajikistan, Thailand, Timor-Leste, Turkmenistan and Uzbekistan; in Europe, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo, Serbia and Turkey; in the Middle East, the whole region from North Africa to Iran; and in Latin America, Colombia, the rest of the Andean region and Haiti.

Crisis Group raises funds from governments, charitable foundations, companies and individual donors. The following governmental departments and agencies currently provide funding: Australian Agency for International Development, Australian Department of Foreign Affairs and Trade, Austrian Development Agency, Belgian Ministry of Foreign Affairs, Canadian International Development Agency, Canadian International Development and Research Centre, Foreign Affairs and International Trade Canada, Czech Ministry of Foreign Affairs, Royal Danish Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, Finnish Ministry of Foreign Affairs, French Ministry of Foreign Affairs, German Federal Foreign Office, Irish Aid, Principality of Liechtenstein, Luxembourg Ministry of Foreign Affairs, New Zealand Agency for International Development, Royal Norwegian Ministry of Foreign Affairs, Qatar, Swedish Ministry for Foreign Affairs, Swiss Federal Department of Foreign Affairs, Turkish Ministry of Foreign Affairs, United Arab Emirates Ministry of Foreign Affairs, United Kingdom Department for International Development, United Kingdom Economic and Social Research Council, U.S. Agency for International Development.

Foundation and private sector donors, providing annual support and/or contributing to Crisis Group's *Securing the Future* Fund, include Carnegie Corporation of New York, Fundación DARA Internacional, Iara Lee and George Gund III Foundation, William & Flora Hewlett Foundation, Hunt Alternatives Fund, Kimsey Foundation, Korea Foundation, John D. & Catherine T. MacArthur Foundation, Charles Stewart Mott Foundation, Open Society Institute, Pierre and Pamela Omidyar Fund, Victor Pinchuk Foundation, Ploughshares Fund, ProVictimis Foundation, Radcliffe Foundation, Sigrid Rausing Trust and VIVA Trust.

August 2008



International Headquarters

149 Avenue Louise, 1050 Brussels, Belgium · Tel: +32 2 502 90 38 · Fax: +32 2 502 50 38
E-mail: brussels@crisisgroup.org

New York Office

420 Lexington Avenue, Suite 2640, New York 10170 · Tel: +1 212 813 0820 · Fax: +1 212 813 0825
E-mail: newyork@crisisgroup.org

Washington Office

1629 K Street, Suite 450, Washington DC 20006 · Tel: +1 202 785 1601 · Fax: +1 202 785 1630
E-mail: washington@crisisgroup.org

London Office

48 Gray's Inn Road, London WC1X 8LT · Tel: +44 20 7831 1436 · Fax: +44 20 7242 8135
E-mail: london@crisisgroup.org

Moscow Office

Belomorskaya st., 14-1 – Moscow 125195 Russia · Tel/Fax: +7-495-455-9798
E-mail: moscow@crisisgroup.org

Regional Offices and Field Representation

Crisis Group also operates from some 27 different locations in Africa, Asia, Europe, the Middle East and Latin America.
See www.crisisgroup.org for details.
