Burundi (95)

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Human Rights Watch December 2003, Vol. 15, No. 20 (A)

4/5-04

Everyday Victims
Civilians in the Burundian War

I. Summary

The government of Burundi and the rebel group, the Forces for the Defence of Democracy (FDD) signed the Pretoria Protocols on October 8 and November 2, 2003, agreeing yet again to end a civil war that has continued for ten years. Combatants of the two forces generally observed a ceasefire throughout October and in some places even shared beer or food as proof of their new camraderie. But, as of early November, peace remained a hope rather than a reality, in part because some important questions, such as the composition of the rank and file of the new national army, remained unresolved.

In addition, a second rebel group, the Forces for National Liberation (FNL), vehemently rejectednegotiations with the government and, since early September, clashed also with the FDD. From Bujumbura Rural and neighbouring parts of the provinces of Bubanza and Muramvya, the two rebel forces have fought in some districts of the capital of Bujumbura, each hunting down those who supposedly supported the rival movement.

Once the FDD joins the government, as provided by the Pretoria Protocols, the government will include the largely Tutsi Uprona party and two predominantly Hutu parties, the Frodebu and the FDD. Despite the multiethnic nature of the government, the Hutu FNL persists in defining the war in ethnic terms, treating the Tutsi as its real enemy and the Hutu members of government as mere pawns of the Tutsi.

During recent fighting, government soldiers and rebels have been responsible for deliberate attacks on civilians in violation of international humanitarian law, including killings, rape and other violence to persons, looting, and causing forced flight. As one victim remarked, "We are victims every day. We are truly the forgotten ones."

According to the November 2 Pretoria Protocol, justice for many of these victims may well be forgotten too. At the least, justice will be delayed because the protocol provides provisional immunity, an otherwise undefined protection from prosecution, to both FDD combatants and government soldiers.

This report documents a military operation at Kabezi in April where FNL combatants and Burundian army soldiers fired at each other without regard for a crowd of civilians attempting to flee the combat zone. Burundian army soldiers subsequently deliberately killed civilians in the area, apparently in reprisal for the ambush on their troops by rebels.

In other cases at Ruziba and Muyira in September, Burundian army soldiers massacred civilians, apparently in reprisal for killings of government soldiers by FNL combatants in the vicinity.

Since the end of April FDD combatants have deliberately killed administrative officials and other civilians. They also abducted some civilians, including four members of parliament and representatives of humanitarian agencies and forcibly recruited others to serve as combatants.

Rebel combatants and Burundian army soldiers raped women in many parts of the country, including in the provinces of Ruyigi, Bubanza, Kayanza, and Bujumbura rural.

Throughout the country, rebels and Burundian army soldiers looted the property of civilians, sometimes driving them from their homes for this purpose. Rebel and government forces alike forced civilians to work for them without pay, often as porters or guides, sometimes in areas where they were exposed to injury by their passage.

Humanitarian agencies had trouble gaining access to areas where civilians badly needed their services. In some cases combat made the areas insecure, but in other cases military officials prohibited them from entering a region that seemed to have been safe. In several cases armed groups ambushed and sometimes abducted humanitarian workers.

The African Mission in Burundi (AMIB), the first peacekeeping force mounted by the African Union, deployed some 2,800 troops by mid-October but these soldiers were meant to oversee implementation of the peace accords and did not protect civilians.

The government detained opposition political leaders on three separate occasions during the last five months. All were eventually released without trial. The minister of communication ordered journalists not to broadcast or paraphrase statements by rebel leaders and in September suspended the operation of two private radios for having made such broadcasts.

In the crucial field of justice, the government pursued a zigzag course. The Transitional National Assembly passed a resolution approving ratification of the Rome Treaty of the International Criminal Court, but the president failed to promulgate the law, leaving its fate unclear. In April a law to punish genocide was adopted and promulgated, as demanded by Tutsi parties, but in August the Transitional National Assembly passed a provisional immunity law meant to protect a limited number of Hutu leaders from immediate prosecution. A reciprocal deal for political ends, the arrangement appeared intended to satisfy conflicting demands of Tutsi and Hutu parties rather than to facilitate delivery of justice. The November 2 protocol extended the immunity to all members of the armed forces and FDD combatants and set no time limit to this protection. The ministry of justice worked on ambitious reforms for the judicial system, but made little progress in disposing of pending cases, in part because a strike by judges closed the courts for nearly two months. In one welcome development, judicial authorities arrested some high-ranking officials in a long-pending case involving corruption and the murder of the head of the World Health Organization in Burundi.

Military prosecutors failed to investigate and bring to trial soldiers involved in the crimes described in this and previous Human Rights Watch reports.

Parties to the first peace treaty in this war, the Arusha Accords of 2000, asked the United Nations Security Council to establish an international commission to investigate genocide and other crimes against humanity committed in Burundi, but, despite a subsequent request from the Burundian government, the UN has yet to dispatch even a

preliminary assessment mission to examine the feasibility of such an investigatory commission.

The international community has given Burundi only intermittent attention, reacting most strongly when rebel advances threatened the capital. Anxious to move towards settlement, various international actors supported initiatives that seemed to signal progress, like the cantonment of rebel forces, even when the groundwork had not been done to make these efforts succeed. Committed in the abstract to African peacekeeping efforts, donor nations failed to provide the funding needed to ensure effective operation of AMIB throughout its mandate.

This report covers the period from April through mid-November 2003 and results from investigations carried out in Burundi in June, August, September and October, 2003. Human Rights Watch wishes to thank Burundian colleagues and witnesses who contributed to this report and whose names are not published for their own security.

II. Recommendations

To the Government of Burundi:

- Implement the existing ceasefire.
- Take all necessary steps to ensure that all members of the Burundian armed forces and of the government-sponsored paramilitary force, the Guardians of the Peace respect international humanitarian law, including facilitating access of humanitarian agencies to needy populations.
- Investigate all persons accused of serious violations of international humanitarian law and bring them to trial as soon as provisional immunity measures are ended.
- Speed reforms of the civilian and military justice systems and assure those systems adequate means to carry out their mandated activities.
- Ratify the Rome Statute of the International Criminal Court without making a declaration under article 124 that would permit postponing competence of the court for war crimes.
- Adopt legislation prohibiting the recruitment of children under the age of eighteen years old for military service and recruit no children under that age; continue collaborating with UNICEF and other child protection agencies in demobilizing children now in the armed forces or in the Guardians of the Peace.

To the FDD:

- Implement the existing ceasefire.

- Order all combatants under your authority to observe international humanitarian law, including facilitating access of humanitarian agencies to needy populations.
- Hold accountable all combatants under your authority accused of violations of international humanitarian law.
- Cease recruiting children under the age of eighteen years old and demobilize immediately any children under that age into the care of UNICEF and other child protection agencies. .

To the FNL:

- Order all combatants under your authority to observe international humanitarian law, including facilitating access of humanitarian agencies to needy populations.
- Hold accountable all combatants under your authority accused of violations of international humanitarian law.
- Cease recruiting children under the age of eighteen years old and demobilize immediately any children under that age into the care of UNICEF and other child protection agencies.

To the African Union and the States Providing Troops to the African Mission in Burundi :

- Ensure that troops are provided with the necessary training and equipment to protect civilians in a robust manner.
- Create a human rights unit in the force to document and report on violations of human rights whether committed by Burundian government troops, rebel combatants, or members of the African mission force.

To Regional Leaders and the Mediator:

- Use all your influence to persuade the Burundian government and the FDD to strictly abide by their agreements with one another; urge them to narrow as far as possible the immunity from prosecution granted by the Pretoria Protocol, both by restricting its duration and by insisting that it not apply to violations of international humanitarian and human rights law.
- Use all your influence to persuade the Burundian government, the FDD, and the FNL to order soldiers or combatants under their authority to observe international humanitarian law.

To the Government of Tanzania:

- Continue to protect and assist Burundian refugees displaced by conflict with the aid and cooperation of the international community.
- Ensure that no refugee from Burundi is forced to return in violation of the fundamental norm of nonrefoulement.

To Donor Governments:

- Use all your influence to persuade the Burundian government and the FDD to strictly abide by their agreements with one another; urge them to narrow as far as possible the immunity from prosecution granted by the Pretoria Protocol, both by restricting its duration and by insisting that it not apply to violations of international humanitarian and human rights law.
- Use all your influence to persuade the Burundian government, the FDD, and the FNL to order soldiers or combatants under their authority to observe international humanitarian law.
- Provide financial and technical support to the African Mission in Burundi.
- Insist that the Burundian government speed reforms in military and civilian justice and provide resources, human and financial, to enable it to make such reforms.

To the United Nations Security Council:

- Establish promptly an international commission of inquiry to investigate allegations of genocide, war crimes, and crimes against humanity committed in Burundi since 1962 as requested by the Burundian government and stipulated under the Arusha Accords.

To the United Nations High Commissioner for Human Rights and the Special Rapporteur for Burundi:

- Urge the government of Burundi and the FDD to narrow as far as possible the immunity from prosecution granted by the Pretoria Protocol, both by restricting its duration and by insisting that it not apply to violations of international humanitarian and human rights law.
- Assist the African Mission in Burundi with training and other resources needed to establish a unit for monitoring human rights violations in Burundi.

To the United Nations High Commissioner for Refugees:

- Provide all possible protection and assistance to returning Burundian refugees within the constraints of policy and resources.

III. Background to the War

The war in Burundi began following the October 1993 assassination of President Melchoir Ndadaye by a group of Tutsi army officers. Freely and fairly elected some months before, Ndadaye was the first Hutu to serve as head of state in Burundi. Earlier attempts by the majority Hutu to win a share in power had been put down by the Tutsi, a minority of some 15 percent of the population who have dominated political, economic, and social structures since the colonial period. After Ndadaye's assassination, Hutu armed groups, sometimes under the orders of local administrative or political leaders, slaughtered thousands of Tutsi; the Tutsi-dominated army massacred thousands of Hutu.[1]

Some of Ndadaye's followers and others took up arms in three rebel movements. By 2002, two of those movements remained active: the FDD, usually estimated to have some 10,000 combatants, and the FNL, with fewer than 3,000 fighters. In late 2001 the FDD split, with the larger number following Pierre Nkurunziza and a significantly smaller number remaining loyal to previous commander Jean-Bosco Ndayikengurukiye. The FNL also divided in August 2002, with dissident Alain Mugabarabona claiming leadership from commander Agathon Rwasa, whom he accused of blocking efforts at negotiations. Mugabarabona, however, failed to win the support of most of the FNL, which continued to follow Rwasa.

The war involved neighboring states as well, with FDD combatants based in Tanzania launching incursions into Burundi despite apparent efforts by the Tanzanian government to discourage such activity. Both FDD and FNL combatants had bases on the territory of the Democratic Republic of Congo (DRC) and benefited from support from the government in Kinshasa. In addition, they incorporated into their ranks some Rwandans now fighting against the current government of Rwanda; some of these combatants were part of the army of the previous government (Forces Armées Rwandaises, FAR) or, in smaller numbers, were members of militia (Interahamwe) and may have participated in the 1994 genocide against Tutsi in Rwanda.

On the other side, Burundian army troops have been supported by several thousand soldiers of the current Rwandan army, the Rwandan Defense Force, who assisted them particularly in northern and central Burundi.

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[1] See Human Rights Watch, Fédération Internationale des Droits de l'Homme, Ligue des Droits de la Personne dans la Réglon des Grands Lacs, Organisation Mondiale contre la Torture, Centre National our la Coopération au Développement, Nationaal Centrum voor Ontwikkelingssamenwerking, NOVIB, "Commission d'Enquête sur les violations des droits de l'homme au Burundi depuis le 21 octobre 1993, Rapport Final," July, 1994.

IV. The Peace Process

In August 2000 the government and seventeen political parties signed the Arusha Accords after long negotiations. But the FDD and the FNL did not participate in the negotiations or sign the accords and the war continued. A transitional government, agreed to in the accords, was installed in November 2001. It included seventeen political parties and a careful balance of Hutu and Tutsi. The two most important parties were President Buyoya's Union pour le Progrès National (Union for National Progress, Uprona), which was predominantly Tutsi, and Vice-President Ndayizeye's Front pour la démocratie au Burundi (Front for Democracy in Burundi, Frodebu), which was largely Hutu. Buyoya was to serve as president for eighteen months, then cede the presidency to Ndayizeye.

In October 2002 the two offshoots of the main rebel movements, the FDD under Ndayikengurukiye and the FNL under Mugabarabona, signed accords with the government. But it was only on December 3, 2002 that the larger part of the FDD, led by Nkurunziza, agreed to a ceasefire and to consigning its forces to cantonment zones. Even then, the agreement left many major political and military issues unresolved. The December ceasefire agreement, reaffirmed by both the government and the FDD on January 27, 2003, was frequently violated, with each side accusing the other of responsibility for these violations. The FNL under Rwasa made no agreement with the government.

In early July the FNL launched a heavy attack on Bujumbúra during which more than 300 persons were killed. The attack sent hopes for peace plummeting and provoked new diplomatic pressures that led to finally to the Pretoria Protocols of October and November 2003. Meant to end combat between the government and the FDD, the agreements were bought at the cost of delaying—or perhaps even avoiding—accountability for serious violations of international humanitarian law[2] and once again failed to engage the FNL.

Many Actors, Little Leadership

There were many actors in the peace process, some of them with overlapping roles. Their very number—as well as rivalries among them—created confusion, leaving the terrain open to those most determined to shape the process, the belligerents themselves.

In addition to the government and rebel movements, the main actors included:

- South African Vice-President Zuma, who took over the role of mediator and facilitator of the peace process from Nelson Mandela

[2] See the section below on justice for a discussion of the provisional immunity guaranteed by the protocols.

- The regional initiative for Burundi, including the heads of state of Uganda, Rwanda, DRC, Kenya, Tanzania, and South Africa under the chairmanship of President Museveni of Uganda, which was also supposed to facilitate agreement between the government and the rebel movements
- Implementation Monitoring Commission (IMC),[3] a group established by Article 3 of the Arusha Accords to help implement the Accords. It included two representatives of the signatory political parties, one representative of the Burundian government, "six Burundians of high moral integrity," and representatives of the United Nations, the African Union and the Regional Initiative. It is headed by Ambassador Bernahu Dinka, the Special Representative of the UN Secretary-General.
- Joint Ceasefire Commission (JCC)[4]established to help implement the ceasefires signed after the Arusha Accords and headed by General El Hadji Alioune Samba, named by the U.N. Secretary-General
- African Mission in Burundi (AMIB), headed by Ambassador Mamadou Bah, the African Union representative in Burundi
- The AMIB military force commanded by General Sipho Binda, a South African. Until September 2003, South Africa was the only state to have provided a significant number of troops for peacekeeping duties.

The Joint Ceasefire Commission (JCC)

This commission, established on January 27, 2003, was widely seen as meant to lead in implementing the peace process, but in fact it barely functioned. It included, among others, representatives of the Burundian government, the two smaller branches of FDD and FNL, the United Nations, the African Union, and the regional initiative. As signatory to the ceasefire and the January 27 agreement, Nkurunziza's FDD also belonged to the commission but as of November 1 it had not participated in its work. In the wake of the Pretoria Protocol of November 2, the FDD was scheduled to take its place on the commission within a week.

The JCC was charged with a host of specific tasks: determining the location of belligerents at the time of the ceasefire, facilitating contacts necessary for a ceasefire, inquiring into any violations of the ceasefire, verifying disengagement of opposing forces, monitoring stocks of arms, ammunition, and equipment, monitoring the cantonment of soldiers and police, disarming civilians who are illegally armed, and to removing land mines throughout the country.[5] The JCC was to reach decisions by consensus, a necessarily cumbersome process given its large and diverse membership.

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[3] Known in French as the Comité de Suivi de l'application des Accords (CSA).

[4] Known in French as the Commission Mixte de cessez-le-feu (CMC).

[5] Arusha Accords, Protocol III, Article 27.

In addition to this extensive list of tasks, the JCC was responsible for directing the planning for two major operations essential to the peace process, the demobilization of soldiers and combatants and the reorganization of the national armed forces.

A draft demobilization plan was prepared with the assistance of the Multi-country Demobilization and Reintegration Program, which forms the larger framework of demobilization efforts in the Great Lakes region. There was also a draft national plan for reorganizing the Burundian armed forces. But these critically important documents had not been put in final form as of November 1 and, most important of all, the FDD had not accepted them.[6]

The JCC mandate overlaps that of AMIB in several areas (especially facilitating contact between the parties and monitoring the ceasefire) and the two were supposed to "work in close collaboration."[7] In general the JCC was considered to be the group to make decisions that would then be implemented by AMIB. But because the JCC was not yet fully operational, AMIB took the initiative on several matters, leaving the JCC apparently scrambling to catch up with the process that it was supposed to help direct.

The African Mission in Burundi

The African Union sent a peacekeeping force to Burundi after the United Nations, originally designated for this role in the Arusha Accords, decided that the necessary conditions for such an operation had not been met. The first peacekeeping force mounted by the African Union, it elicited much international enthusiasm as a possible model for the leaving the resolution of African conflicts primarily in African hands. At a July 9 meeting in Brussels, for example, the European Parliament reiterated its support for AMIB on the occasion of a visit by President Ndayizeye.[8] The enthusiasm notwithstanding, real support for the force has been limited and slow in coming.

Ambassador Mamadou Bah, the representative of the African Union in Burundi, also heads AMIB. The core of the force are the 700 South African soldiers sent to Burundi in late 2001 to protect political leaders during the transition period. Forty-three observers from Burkina Faso, Gabon, Mali, Togo, and Tunisia arrived in late February 2003 and more South African soldiers came in April and July, followed by some 900 Ethiopians and several hundred Mozambicans for a total force of some 2,800 troops. The South African General Sipho Binda commands the entire force with the Ethiopian Brigadier General Geberat Ayele as his deputy.

The AMIB mandate is to supervise the ceasefire, facilitate contact between the belligerents, secure the cantonment zones and escort parties to those zones, assist in the process of disarmament, demobilization, and reintegration, and facilitate the work of the

[6] Human Rights Watch interview, Brussels, July 15, 2003.

[7] Arusha Accords, Protocol III, Article 26 1.e. .

[8] Human Rights Watch observation notes, meeting at the European Parliament, Brussels, July 9, 2003.

commissions established to restructure the army and police forces. In addition, AMIB continues to be responsible for protecting political leaders during the transition period.[9]

According to its mandate, the force has no responsibility for protecting civilians or for monitoring or reporting on human rights abuses, and is asked only to "facilitate the delivery of humanitarian aid,"[10] including to refugees and displaced persons. But senior officers responsible for implementing the mandate have drawn up rules of engagement that specifically direct troops to provide protection to civilians in imminent danger of serious injury or death. After extensive debate the officers decided that particularly in the case of massive killings on an ethnic basis or in case of genocide, their soldiers would intervene to protect civilians. Troops would go into action, however, only after the top military and civilian officers of the African Mission decided that their intervention was necessary. Until November 2003 AMIB observers posted outside Bujumbura were effectively restricted to urban centers because of security concerns.

In their movements AMIB troops have been occasionally escorted by Burundian army soldiers, leading to the perception that AMIB was collaborating closely with the Burundian army. The FDD went so far as to accuse AMIB of complicity with the Burundian army and, in at least one case, described below, AMIB soldiers were fired upon.[11] An AMIB representative told a Human Rights Watch researcher that the force maintained strict neutrality and was deployed in accord with the December 3 ceasefire,[12] but some Burundians distrusted it and some even saw the AMIB presence as part of an international plot against them.[13] After the July attack on Bujumbura, for example, a rumor circulated accusing AMIB of providing the helicopters used by the Burundian forces in driving the rebels from the city. In all likelihood false, the rumor nonetheless shows that some Burundians distrust the force that is supposedly there to foster peace.[14] In an October 30 declaration, the FNL denounced AMIB as "an army of occupation," and asserted that South Africa, provider of many AMIB troops, had clear economic and strategic designs on Burundi.[15]

Cantonment

Under the Arusha Accords and subsequent ceasefire agreements, government troops were to be restricted to barracks (in later agreements to "zones to be determined" and "zones determined by mutual agreement") and rebel combatants were to be gathered in

[9] Mandat de la Mission Africaine du 2 avril 2002, article iii.

[10] Ibid.

[11] Agence France Presse, "Les rebelles FDD menacent de s'ataquer à la Force africaine," June 26, 2003.

[12] Human Rights Watch interview, Bujumbura, June 11, 2003.

[13] Human Rights Watch interview, Bujumbura, May 28, 2003.

[14] Human Rights Watch interview, Brussels, July 14, 2003.

[15] Augustin Ntawogeza, Secrétaire National aux Relations Extérieures, Palipehutu-FNL, "Avis de mise en garde a l'opinion nationale et internationale," Benelux, October 30, 2003.

cantonment sites.[16] These measures were meant to be the first steps towards implementing demobilization and reorganization of the government security forces. Under pressure to show progress towards peace, the government decided to designate five cantonment sites[17] and to open one of them even though it had not finished plans for demobilization or restructuring the army—far less obtained the agreement of the rebel movements to these proposals. Leaving aside the JCC, supposedly the director of the whole process, the government secured the cooperation of AMIB in pushing forward the cantonment operation in June 2003.

With a number of issues still unresolved in its negotiations with the government, FDD troops did not participate when cantonment began, thus depriving the process of its central actor. Even with the smaller rebel forces, cantonment proved a major disappointment. Ndayikengurukiye's FDD and Mugabarabona's FNL presented just over two hundred combatants to be quartered in the site that was opened at Muyange, Bubanza province, far fewer than the more than 5,000 troops that they claimed to have ready for cantonment in their combined forces.[18] The cantonment zone was located in an area claimed by the FDD and its establishment spurred further combat in the area, bringing more fear than hope to the surrounding population.

In the haste to move forward on cantonment, Burundian and AMIB officials left several important questions unanswered, such as how to define a combatant (did a person have to be armed to be considered a combatant? If so, with what kind of weapon?), how to verify the identity of the combatants, how to provide for children who were combatants, and how to deal with families of combatants.[19]

It is in the interest of each movement to claim the largest possible number of members, both to maximize the amount of money delivered to their real or supposed troops—of which they may intend to take a share—and to increase their weight in coming political skirmishes over posts and power. Given the confusion and lack of clear plans for demobilization, combatants also have formed unrealistic expectations and hope to profit substantially from the money that is said to be coming to combatants.

Both of the small movements scheduled for cantonment have reportedly tried to swell their ranks with recent recruits. According to a young student from Ruziba, men from Ndayikengurukiye's group tried to persuade him to join their movement and to present himself at the cantonment site.[20] On July 10 some sixty men under the leadership of

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[16] Arusha Accord, protocol III, Article 27.2. f; Annex to the October 2002 Accord, Articles 1.1.7, 1.1.8, and 1.1.9; Annex to the December 3, 2002 Accord, Articles 1.1.6 and 1.1.7; Pretoria Protocol, October 8, 2003.

[17] Muyange in Bubanza province; Bugarama in Muramvya province; Buhinda between Ruyigi and Gitega provinces; Bweru between Ruyigi and Cankuzo provinces; and Buhinyuza in Muyinga province.

[18] Human Rights Watch interviews, Bujumbura, June 5 and 18, 2003 IRIN, "Burundi: More rebels report at cantonment site," July 7, 2003.

[19] Human Rights Watch interviews, Bujumbura, June 11 and 18, 2003.

[20] Radio Isanganiro, news broadcast, June 28, 2003.

Eugène Bitaryumunyu[21] and said to be members of Mugabarabona's branch of the FNL gathered at Rugunga, Bubanza province, waiting to be taken to the Muyange cantonment site. But when they found that the monetary allowance to be provided them was less than what Mugabarabona's representative had promised, they left on July 12 and returned to the bush in Cibitoke province.[22] In that region Bitaryumunyu is said to be the head of a group of bandits who have preyed upon the civilian population living in Cibitoke, in the border area between Burundi and the DRC, and even in the DRC itself, as described below. His supposed crimes in the past may have been motivated by simple desire for material gain rather than by political motives, raising the possibility that at least one band of common criminals has sought to masquerade as rebel combatants.

The confusion surrounding cantonment is highlighted by the case of some thirty young men forcibly recruited by Nkurunziza's FDD who escaped from the Kibira base of their abductors and reported to military and administrative authorities in Bubanza, not far from Muyange. Authorities made no move to send them to the camp but kept them, unfed, at a prison until Iteka, the Burundian human rights league, provided them with food and arranged the laissez-passers necessary for them to return home.[23]

The Muyange site was located not far from the Kibira forest, a well-established base of the FDD and the FDD protested against the installation of a camp for rival rebel groups so near their base. Even before the site was opened South African soldiers were fired upon and had to be evacuated by helicopter on the night of June 2 to 3. Confirming a report of the incident, an AMIB official told a Human Rights Watch researcher, "All we know for sure is that we weren't the ones who fired on ourselves."[24] On the same days, tracts attributed to the FDD were distributed to administrative officials in charge of zones near the camp, warning the population to have nothing to do with men who were to be cantoned in the camp.[25] On June 26, the camp opened when twenty-two combatants of Mugarabarabona's FNL presented themselves at the site, ten of them armed, with their commander and vice-president of their wing of the FNL. The next day Nkurunziza's wing of the FDD urged AMIB to move men of the rival groups elsewhere, claiming that the Muyange site was meant for their combatants.[26] Early in the morning of June 30 the site was attacked and South African troops fired back; skirmishes continued for some hours in the immediate vicinity of the camp. The FDD denied that

[21] Bitaryumunyu means "eats everything without salt," perhaps a reference to excessive appetite or greed. The group was supposedly once associated with Rwasa's branch of the FNL and was trying to transfer their link to Mugabarabona's group, perhaps to benefit from the payment promised to combatants who entered cantonment sites.

[22] Agence Burundais de Presse (ABP), "Soixante rebelles en attente de cantonnement regagnent la brousse," July 15, 2003.

[23] Human Rights Watch interviews, Bujumbura, June 25 and 26, 2003.

[24] Human Rights Watch interview, Bujumbura, June 18, 2003.

[25] Human Rights Watch interview, Kizina, Bubanza province, June 11, 2003.

[26] United Nations, Integrated Regional Information Network (IRIN), "Burundi: Rebel group objects to cantonment site," June 27, 2003.

its troops had attacked the site.[27]

Witness to renewed combat in their area, already heavily damaged by military activities by both sides, and fearful of their unwelcome neighbors, people near Muyange have no sense of security in their own homes. "We are afraid," said one man. "Most of us have decided to no longer sleep at home," meaning they preferred to spend the night in the bush where they believed risk of harm to be less.[28]

The failure of cantonment at Muyange underlines the importance of careful planning and of resolving basic issues of demobilization and disarmament before proceeding further: cantonment is meant to implement the larger plans of demobilization and disarmament, not to precede them.

With the signing of the Pretoria Protocol, the government and the FDD apparently foresaw creating some cantonment sites in Bujumbura Rural, a province that the FNL has dominated in the past. In a declaration issued during the Pretoria negotiations, the FNL warned that it would bitterly resist any attempt to install FDD cantonment sites in Bujumbura Rural and would renew its attacks on the city of Bujumbura if such sites were established.[29]

Demobilization and Recruitment

In their December 2002 accord, the government and the FDD agreed to the general outlines of a ceasefire, cantonment, disarmament, demobilization, and the creation of a new national army incorporating elements of governmental and rebel forces. But the parties left the details of implementation for later. The October protocol assured the FDD forty percent of the fifty percent of the command posts that, according to the Arusha Accords, are to be allocated to Hutu but the agreement stated merely that the composition of the rank and file of the armed forces would be determined by the general staff after the FDD officers had joined that group. The composition is to be based on the number of troops of each force and on the "agreed balance," meaning the fifty-fifty ethnic division.[30] Tutsi form between ten and fifteen percent of the population of Burundi, with Hutu constituting all but one percent of the rest. The one percent are Twa but they are not specifically provided for in the balance set for the armed forces.

Although the parties were supposed to provide the JCC with the numbers of their forces at the time of the December 2002 agreement, neither had done so by early November 2003. So long as the question of the relative composition of the rank and file remains

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[27] Agence France Presse, "Les FDD démentent avoir attaqué le site de cantonnement de Muyange," June 30, 2003.

[28] Human Rights Watch interview, Kizina, Bubanza, June 11, 2003.

[29] Augustin Ntawogeza, Secrétaire National aux Relations Extérieures, Palipehutu-FNL, "Avis de mise en garde a l'opinion nationale et internationale," Benelux, October 30, 2003.

[30] Pretoria Protocol, October 8, 2003, point 1.3.2.

open, it is in the interest of both parties to increase their numbers. In September, even when he was engaged in negotiating the October 8 protocol, President Ndayizeye said that more funds would be made available to the army and that it should recruit more Hutu.[31] The more Hutu enrolled in the new army as part of the government forces, the fewer places available to Hutu from the rebel groups.

The recent agreements make no provision for the future of a government-sponsored paramilitary force called the Guardians of Peace.[32] Nominally under the supervision of local civilian administrators, the Guardians are trained and armed by soldiers and usually operate under their orders. Many were under the age of eighteen when recruited and some were considerably younger. They receive no salary and live at home, supposedly at the charge of their own families. In at least two places, Rumonge and Kayanza, government soldiers have sought new recruits among Guardians of the Peace.

According to Guardians from several zones, including Gatete and the town of Rumonge, Rumonge commune, the commander of the Rumonge brigade urged them to join the army after a "secret meeting" on September 22. According to one Guardian, "He told us that this was an order from the president, that we could sign up immediately, and that we would be assigned to a company immediately, without having to do any military training."[33] Several of the Guardians did sign up. As one explained, "If I stay a Guardian of the Peace, I run the same risks as I would as a soldier and I am not paid. If I die in combat [as a Guardian], my family gets nothing. I also thought that I could get something when demobilization happens."[34] Others were suspicious and refused. "The meeting was secret," said one young man. "Usually they recruit by announcements on the radio. They didn't give us time to think about it."[35] Another who had reflected on the question asked, "Once in the army will we be seen as Hutu or Tutsi? And if we are Hutu, are we the Hutu of Nkurunziza or of the government?"[36]

Leonard Nyangoma, a Frodebu political leader who was a founder of the CNDD-FDD, operated within the political arena and without an armed force until June 2003 when he reportedly began recruiting combatants in the northern province of Muyinga. By the end of October he claimed to have some 6,000 combatants ready to demobilize. He also asserted that his force would resort to combat if his party—whether a splinter of the CNDD-FDD or a new organization is unclear--were not recognized.[37]

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[31] Human Rights Watch interview, September 24, 2003.

[32] The Arusha Accords specify that "militia" are to be disbanded and the Guardians of the Peace could arguably be called a militia. See Human Rights Watch, *To Protect the People: The Government-sponsored "self-defense" program in Burundi*, A Human Rights Watch Short Report, December 2001.

[33] Human Rights Watch interview, Rumonge, September 25, 2003.

[34] Human Rights Watch interview, Rumonge, September 25, 2003.

[35] Human Rights Watch interview, Rumonge, September 25, 2003.

[36] Human Rights Watch interview, Rumonge, September 25, 2003.

[37] Agence Burundaise de Presse, :Le CNDD de Nyangoma recrute en province de Muyinga," September 27, 2003; IRIN, Burundi: "Government Officials, Rebels Say Security Has Improved, October 31. 2003.

Just as the fluidity of the situation spurs enlargement of the forces, so does the hope of compensation. As the Guardian of the Peace indicated, one of his reasons for signing up was to qualify for demobilization and its expected benefits. The same motive may have influenced combatants who joined Nyangoma's recently formed force. Information that the international community will fund demobilization has sparked hopes and, in some cases, unrealistic expectations of the benefits to be received. The World Bank is prepared to pay eighteen months of salary to demobilized soldiers, but only when they actually leave the force.[38] The current plans call for all combatants and soldiers to be combined into one large force that will be progressively reduced in size over a period of five years. There is no international provision for paying their salaries and upkeep in the interim which raises the question of how the government of Burundi will find the necessary funds. While authorities are sorting out the details and putting the plans into operation, tens of thousands of combatants, most of whom know how to use firearms, will be waiting, presumably with growing impatience. A certain number are already dissatisfied, afraid about their future and anxious about the lack of reliable information about what is planned for them. Continued recruitment of soldiers and combatants in such a context heightens the risk of future violence and of exactions on and abuses of the civilian population.

Ethnicity and Changing Political Configurations

Since the Frodebu leader Ndayizeye assumed the presidency on April 30 as agreed in the Arusha Accords, his predominantly Hutu party has operated increasingly closely with its former Tutsi-dominated rival Uprona. In the meantime Frodebu faced a growing challenge from the also largely Hutu CNDD-FDD which steadily won favor with former Frodebu supporters. The growth of CNDD-FDD as a political force transformed the political scene from one dominated by the former two leading parties, Frodebu and Uprona, into one where three leading contenders struggle for predominance, two of them predominantly Hutu, one of them largely Tutsi. Ndayizeye said several times that Frodebu was determined to move to elections as quickly as possible, apparently hoping to do so before the CNDD-FDD further increases its base of power.[39]

As Frodebu intensified its cooperation with Uprona the FDD then narrowed its opposition to the government to focus particularly on Frodebu. In June, the FDD moved to violence and abducted four Frodebu members of parliament, charging that Frodebu wanted to discredit their movement with the population in order "to keep itself in power."[40] Several days later Hussein Radjabu, secretary-general of CNDD-FDD, accused Frodebu also of trying to discredit his group with the international community by saying that the FDD opposed peace.[41] Soon after FDD released one member of

[38] IRIN, "Government Officials, Rebels Say Security Improved," October 31, 2003.

[39] Human Rights Watch observation notes, meeting at the European Parliament, June 9, 2003.

[40] Agence France Presse, "Députés enlevés: FDD exigent que le Frodebu cesse de les 'discréditer,'" June 29, 2003.

[41] IRIN, "Burundi: Rebels free MP, four other hostages," July 3, 2003.

parliament and three other persons because "they have nothing to do with the conflict between our movement and the Frodebu party," a statement that showed their focus on the struggle between political parties, both of which are predominantly Hutu.[42] At the end of August Frodebu expelled five of its parlementarians from the party for having contacts with the CNDD-FDD.[43]

After Frodebu joined Uprona in a multi-ethnic government, the FNL repeatedly stressed the ethnic nature of the war. [44] They called for the dissolution of the government and for negotiations, as their spokesman Pasteur Habimana put it, with "our Tutsi brothers in the army who hold the real power in the government."[45] Just after the start of the July attack on Bujumbura, Habimana reiterated, "It is time the Tutsi army and the Tutsi community came to discuss with us the real problems of Burundi."[46] As the government and the FDD were putting the final touches on the November 2 protocol, the FNL National Secretary for Foreign Relations, Augustin Ntawogeza, denounced President Ndayizeye and other Hutu participants in government as pawns of the Tutsi, bought by money, gifts, and privileges. He accused the Uprona party of planning the genocide of Hutu and vowed to continue the war and to take it again into the heart of Bujumbura.[47]

Many FNL combatants are animated by religious fervor in their struggle against the Tutsi. One young FNL combatant captured during the July attack in Bujumbura told reporters that "Our leaders said that God had revealed to them that we could not fail in this attack and that we would not turn back."[48] During attacks, FNL members regularly sing religious songs.

Government Repression of Dissent and of the Media

With Ndayizeye as president, the Burundian government repressed dissent and censored the press, much as it did under his predecessor Buyoya. The new president began on a positive note ending the banning of the Parena party, suspended some six months before. In his final weeks, Buyoya had foreshadowed this move by releasing former president Jean-Baptiste Bagaza, head of Parena, who had been under house arrest since November 2002. Reportedly suspected of plotting to kill Buyoya, Bagaza was never formally charged or brought to trial. Another Parena member Christophe Hicintuka, was

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[42] Ibid.

[43] Radio Bonesha, News, August 25 and 26, 2003.

[44] IRIN, "Burundi: Rebel faction now holds talks with government officials," June 3, 2003.

[45] IRIN, "Burundi: Rebel faction now holds talks with government officials," June 3, 2003.

[46] IRIN, "Civilians, rebels killed in morning attack," July 7, 2003.

[47] Augustin Ntawogeza, Secrétaire National aux Relations Extérieures, Palipehutu-FNL, "Avis de mise en garde a l'opinion nationale et internationale," Benelux, October 30, 2003.

[48] Agence France Presse, "Bujumbura: plus de 200 morts, entre bilan officiel et témoignages," July 12, 2003.

released in late June after eight months of detention.[49]

As Uprona collaborated more closely with Frodebu, it was increasingly challenged by several smaller but more radical parties that were largely Tutsi. In May Burundian authorities took action against a group of Tutsi opposition parties united in a coalition known as l'Accord-cadre pour la Restauration d'un Etat de Droit au Burundi (Cadres for Restoring a State of Law in Burundi). They detained Diomède Rutamucero, head of the Tutsi group Puissance Auto-défense Amasekanya (PA-Amasekanya) and a member of the Accord-cadre, after he created a mock people's court that tried leading Frodebu members of government and condemned them to death. Charged with an attack on state security, he was not tried and was released a month later. Authorities also detained three other leaders of the Accord-cadre who had written them asking that Rutamucero be freed.[50]

While Bujumbura was being shelled by the FNL on July 9, a branch of the police known as the Special Research Brigade (Brigade Special de Recherches, BSR) arrested Alphonse Rugambarara, head of the small Tutsi party Inkizo, on the charge of treason after he told the press that the FNL was not killing people in their attack and that its combatants were only defending themselves from an army offensive. He also stated that the government was responsible for the hardening of positions and the increase in fighting that made it difficult for him to carry out a proposed dialogue with the FNL. He was released a week later without having been brought to trial.

On October 17 Charles Mukasi, president of a dissident wing of Uprona, was arrested for the third time this year. He was accused of subverting the state but was released after a week. He has not been brought to trial.[51]

Like the previous government, that of Ndayizeye sought to keep close control of the press. On July 9 Minister of Communication Albert Mbonerane forbade the public and private media to interview or even to indirectly quote representatives of the rebel movements. Authorities told representatives of radio stations that they would jam their broadcasts or take other unspecified measures if the stations continued such broadcasts. At the same time, he prohibited them from publishing the number of persons killed or wounded during the recent attack on Bujumbura.[52] On July 15 he and the minister of defense prohibited the press from publishing any information on the extent of army losses.[53] In early July agents of the Documentation Nationale, a police intelligence service at the command of the president, detained Jean-Claude Kavumbagu, the director of Net Press, an independent Tutsi-run internet press service for six days. He was said to have failed to obey an order from Mbonerane to immediately cut the link between his

[49] U.N. OCHA Situation Report, 16 June-22 June, 2003. IRIN, Burundi: "Government Lifts Ban on Parena."

[50] U.N. OCHA Situation Report, 19 May-01 June and 16 June-22 June, 2003.

[51] IRIN, Burundi, "Opposition leader Charles Mukasi released," October 27, 2003.

[52] Agence Burundais de Presse, "Le gouvernement exige des medias de privilèger une communication responsible, July 9, 2003.

[53] Human Rights Watch interview, by telephone to Bujumbura, July 17, 2003; Iteka, "Le ministre de la communication met en garde les medias burundais en cette periode d'insécurité," July 16, 2003.

website and that of another site that provided information critical of the government. Kavumbagu said he had complied with the order.[54]

The authorities soon took more serious action. On September 13 Minister Mborane suspended broadcasts by Radio Isanganiro, a private radio, for a week after it had broadcast statements by Pasteur Habimana, spokesman for the Agathon-led branch of the FNL. According to the ministerial order, the radio had broadcast "observations denigrating the authority of the state and so tended to harm national unity and the honor of the highest authorities of the Republic."[55] On September 16, authorities suspended Radio Publique Africaine for an indefinite period as sanction for having broadcast an interview with Habimana.[56] These measures, coming on the eve of a summit meeting of regional heads of state, elicited considerable national and international criticism. The National Communication Council on September 18 shortened the suspension of Radio Isanganiro to a period of five days. In announcing its decision, the council recommended that the government henceforth "make its decisions in a more formal way to avoid uncertainties and pretexts."[57]On September 20 Minister Mborane ended the suspension of Radio Publique Africaine without further comment.[58]

By arresting opposition politicians and holding them without charge and without presentation before a judge, Burundian authorities violated both Burundian law and provisions of the International Covenant on Civil and Political Rights (ICCPR) to which Burundi is a party.59 By subjecting journalists to censorship and other forms of frequent pressure, authorities contravened guarantees of freedom of press and expression also found in Burundian law and the ICCPR.

V. Killing of Civilians

During the nearly ten years of civil war in Burundi, soldiers of the Burundian armed forces and combatants of the FNL and FDD rebel movements have often been responsible for the deaths of civilians in violation of international humanitarian law

[54] IRIN, "Burundi: Net Press Director Released," July 14, 2003.

[55] Ordonnance n°580/412/2003 du 13 septembre 2003 du Ministre de la Communication. Two weeks earlier, authorities had taken no action after Radio Isanganiro had broadcast another declaration by Habimana. Human Rights Watch interviews, Bujumbura , October 7 and November 3, 2003)

[56]Ordonnance ministérielle n°580/02/2003 du 16 septembre 2003 du Ministre de la Communication ; Human Rights Watch interview, Bujumbura, September 4, 2003.

[57] Décision 100/CNC/01/2003 du 18 septembre 2003 du Conseil National de la Communication (CNC) et communiqué de presse du CNC de même date.

[58] Ordonnance n°560/421/2003 du 19 septembre 2003 du Ministre de la Communication

[59] International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52 U.N. Doc A/6316 (1966) entered into force Mar. 23, 1976. Burundi ratified the ICCPR in May 1990.

(known as the laws of war).[60]

Under the 1949 Geneva Conventions, the civil war in Burundi is a non-international (internal) armed conflict. Internal armed conflicts are those arising within the territory of a state party to the Geneva Conventions. They are covered under Article 3 common to the 1949 Geneva Conventions and the Second Additional Protocol of 1977 to the Geneva Conventions (Protocol II), as well as much customary law applicable to international conflicts. Burundi ratified the 1949 Geneva Conventions in 1971 and Protocol II in 1993.

Common Article 3 to the Geneva Conventions expressly binds all parties to an internal armed conflict, including Burundian armed forces and non-state armed groups such as the FNL and FDD. Common Article 3 requires the humane treatment of civilians and captured combatants, and prohibits violence to life and person, particularly murder, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity; and the passing of sentences and the carrying out of executions without previous judgment pronounced by a regular constituted court.[61]

Protocol II is applicable when opposing forces in an internal conflict are under a responsible command, exercise enough control over territory to mount sustained and coordinated military operations, and are able to implement Protocol II, conditions which are satisfied in the case of Burundi. Protocol II supplements Common Article 3 and provides a more encompassing list of protections for civilians in internal armed conflicts, including prohibitions on pillage of civilian property, and mandating access for impartial humanitarian assistance.[62]

Under customary international humanitarian law, only military objectives may be the direct object of attack. To constitute a legitimate military objective, the target must contribute effectively to the enemy's military capability or activity, and its destruction or neutralization must offer a definite military advantage in the circumstances.[63] The civilian population and individual civilians generally are to be protected against attack. Civilians or civilian objects may not be the object of deliberate attack. An attack is indiscriminate and in violation of international law if it is not directed at a specific

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[60] Despite the signing of a ceasefire agreement, international humanitarian law still applies. For example, according to the International Criminal Tribunal for the former Yugoslavia in *Tadic*, Appeal on Jurisdiction, Case IT-94-1-AR72 (Oct. 2, 1995): "[A]rmed conflict exists wherever there is a resort to armed force between states or protracted armed violence between such groups within a State. International humanitarian law applies from the initiation of such conflicts and extends beyond the cessation of hostilities until a general conclusion is reached; or, in the case of internal armed conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply ... in the case of internal conflicts, in the whole territory under the control of a party, whether or not actual combat takes place there." For accounts of violations by all sides prior to the ceasefire, see the Human Rights Watch Briefing Paper, "Burundi: Escalating Violence Demands Attention," November 2002 (available at http://hrw.org/backgrounder/africa/burundi/burundi1128.pdf).

[61] 1949 Geneva Conventions, article 3.

[62] 1949 Geneva Conventions, Protocol Additional relating to the Protection of Victims of Non-International Armed Conflicts, 1977, (Protocol II, articles 13 to 18).

[63] See article 52(2) of Protocol I of 1977 to the Geneva Conventions. Many provisions of Protocol I are considered customary international law in internal armed conflicts.

military objective, or uses a method or means of combat that cannot be directed at a specific military objective, and as a result strikes military objectives and civilians without distinction.[64] Attacks on legitimate military targets are limited by the principle of proportionality, which places a duty on combatants to choose means of attack that avoid or minimize damage to civilians. In particular, the attacker should refrain from launching an attack if the expected civilian casualties would outweigh the importance of the military target to the attacker.[65] Violations involving direct or indiscriminate attacks on civilians during an internal armed conflict are increasingly recognized internationally as war crimes.

Killings at Kabezi

In the early morning of April 23, FNL combatants attacked the national police brigade at Kabezi.[66] Other FNL combatants ambushed soldiers en route to reinforce the brigade, occasioning an exchange of fire in which several civilians were killed. Soldiers then deliberately killed civilians in and near the ambush site. These killings illustrate the disregard of civilian lives by both government soldiers and FNL combatants as well as the deliberate killings of civilians by government soldiers.

Kabezi, a commune in the province of Bujumbura Rural just south of Bujumbura, abuts Lake Tanganyika. Its residents include both fishermen who live from small-scale fishing on the lake and farmers who till food crops and cotton on hills overlooking the lake. It has frequently been the scene of combat between the army and the rebel combatants. A major paved highway, Route 3, runs alongside the lake north to south, joining Bujumbura to the important town of Rumonge to the south.

The killings took place after several days of military activity in and around Bujumbura. From April 17 to 19, rebels of the FDD shelled the city, an unusual event because combatants of that force had not recently operated near the capital. Authorities prohibited fishing in the lake because they believed that some of the shells had been launched from boats. On April 20, four fishermen were arrested on suspicion of having aided the rebels and the press reported the "disappearance" of fifteen others the same day.[67] According to a witness biking along Route 3 towards Bujumbura early on April 21, he had to weave in and out among several bodies lying along the road, but that he dared not stop given "the unhealthy atmosphere."[68]Another witness also told the Human Rights Watch researcher that soldiers had deliberately killed at least two fishermen

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[64] Protocol I, article 51 (4).

[65] Protocol I, article 51 (5).

[66] The Burundian national police or *gendarmerie* are part of the armed forces and are trained for and sometimes participate in combat.

[67] Agence Azania, April 22, 2003.

[68] Human Rights Watch interview, Bujumbura, May 26, 2003.

before "the events of April 23." [69]

The FNL combatants attacked the national police brigade at Kabezi from the adjacent hills of Masama, Bikonda, and Nyarusengi.[70] They began shelling with heavy artillery at about 6 a.m. causing considerable damage to the post and to communal buildings and the destruction of an armored vehicle. According to one source, only six of thirty police survived the attack unharmed.[71]

One witness reported that some local people knew that FNL combatants were in the area around midnight the night before because they heard the sound of their boots passing.[72] Some others were apparently warned by FNL combatants that there would be an attack shortly before it began and presumably left their homes quickly.[73] But others were caught unawares. One local resident said, "I've never heard shooting like that before. The first shell was so terrible that it made everyone panic."[74] People fled their homes immediately, many of them heading north on Route 3 towards Bujumbura, a usual escape route for civilians when combat began in the area. Witnesses said that on the morning of April 23, they met up with soldiers heading south along the highway to reinforce the Kabezi brigade and coming from the place called the "Chinese camp," located several miles north of Kabezi towards Bujumbura.[75] This, too, was a frequent occurrence at the time of attacks. But this time a witness noticed that the soldiers looked "very angry," perhaps because they knew of the severity of the Kabezi attack.[76]
Many civilians fled along the highway. According to one witness, "There was a sea of humanity on the road, especially women and children."[77] Another witness added that he had heard a soldier expressing surprise at how many women and children there were and wondering where the men were.[78] Witnesses described the civilians hurrying along the side of the road nearer the hills, keeping to the side to allow the soldiers to pass on the other side, that nearer the lake. The soldiers were divided into several different groups.

It was apparently the first group of soldiers from the "Chinese camp" who were caught in the ambush as they moved along route 3. The firing began between 6:30 and 7 a.m. and continued for fifteen to twenty minutes. When the shooting began, one woman was warned by a soldier to get down out of the line of fire.[79] Similarly two children who arrived at a place of refuge later that day, one carrying a rooster and another balancing a

[69] Human Rights Watch interviews, Bujumbura, May 26, 2003.

[70] Human Rights Watch interview, Bujumbura, June 7, 2003.

[71] Human Rights Watch interview, Mutumba, June 4, 2003.

[72] Human Rights Watch interview, Mutumba , June 4, 2003.

[73] Human Rights Watch interview, June 2, 2003.

[74] Human Rights Watch interview, Bujumbura, June 7, 2003.

[75] Human Rights Watch interviews, Mutumba, June 4 and Bujumbura, June 7, 2003.

[76] Human Rights Watch interview, Bujumbura, June 7, 2003.

[77] Human Rights Watch interview, Bujumbura, June 7, 2003.

[78] Human Rights Watch interview, Bujumbura, June 9, 2003.

[79] Human Rights Watch interview, Bujumbura, June 9, 2003.

cooking pot on his head, said FNL combatants had warned them to take cover as they passed them firing from a hill down on the soldiers on the road.[80] But most soldiers and FNL combatants fired without regard for the mass of civilians caught on the road between them or fleeing over the hills nearby. A military ship also arrived in the nearby waters some time after the attack began and started shelling the hills.[81]

At some point during the exchange of fire between government soldiers and FNL combatants or shortly thereafter, the soldiers reportedly turned their guns directly on the civilians who were streaming down the road towards them. The people panicked, dropped the few treasured possessions they had brought from home and scattered in all directions, some running for the hills and others down towards the lake.[82] Others, too afraid or too weak to run, threw themselves on the ground. "There was a lot of shooting and people didn't know what to do," said one witness.[83] "I jumped off the side of the road and hid myself in the bushes between the road and the hills," said another. "I stayed hidden there until the afternoon. The soldiers shot the people in the back who ran down towards the lake."[84]

Just before the soldiers started shooting at the civilians on the road below Nyamugari, in the zone of Ramba, several witnesses heard them discussing opening fire on the crowd. The witnesses said that one soldier ordered, "Begin here," meaning open fire here. Another soldier supposedly refused, saying "Wait, let's begin [firing] further on."[85] A young girl who was wounded said:

When I close my eyes, I keep seeing soldiers shooting at us. There were a lot of bodies and there was blood on the road. Much later a soldier discovered me when I could no longer move and he came and searched my clothes and my headscarf to see if I had any money hidden there, but then he went on and left me there. Two other soldiers also came but their fellows told them to come along to the battle scene and to leave me there [alive] because I wasn't a boy.[86]

A soldier later ordered a passer-by to transport the wounded girl to receive medical attention, but soldiers left three other wounded persons lying along the road, one of whom called repeatedly for help. Persons passing several hours after the attack stopped and got out of their car to help the wounded person, but intimidated by groups of soldiers who ran towards them out of the bushes, they left immediately. Passing by the next day, they saw the bodies of the three, now dead, lying on the road.[87]

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[80] Human Rights Watch interview, Bujumbura, June 7, 2003.

[81] Human Rights Watch interviews, Bujumbura, June 7 and 9, 2003.

[82] Human Rights Watch interviews, Bujumbura, May 28 and May 31, 2003.

[83] Human Rights Watch interview, Bujumbura, June 7, 2003.

[84] Human Rights Watch interview, Mutumba, June 4, 2003.

[85] Human Rights Watch interviews. Mutumba, June 4, and Bujumbura, June 7 and June 9, 2003.

[86] Human Rights Watch interview, Bujumbura, June 13, 2003.

[87] Human Rights Watch interviews, Bujumbura June 2 and June 5, 2003.

Witnesses say they saw the bodies of three soldiers killed in this skirmish, but the local administrator of Kabezi said that four soldiers were killed on the road.[88] According to the governor of Bujumbura-rural province, one of the dead was an officer in training.[89] In all likelihood, all of them were killed by fire from the FNL. But a less likely account of the deaths of two of them has circulated among survivors of the attack and other people of the region, based upon the conversation recounted above. It relates that one soldier ordered others to open fire on civilians; a second soldier refused saying they should not shoot the people they were supposed to protect. The one giving the order then shot and killed the protestor and was himself in turn shot by other soldiers.[90]

Among the civilians killed on the road were Claudine, aged seventeen, Odile and two children, her own on her back and that of a neighbor; and Marguerite and her child. There were four unidentified bodies, presumed by the authorities to be those of FNL combatants because they were not known to people of the community.[91]

A second incident of deliberate killing took place at Nyamugari where government soldiers from the "Chinese camp" passed over the hills en route to Kabezi. They killed at least thirteen civilians and perhaps more, some of them by bayonet or knife. In such cases of killing at close range, the perpetrators must certainly have known that their victims were civilians. The victims included Capitoline Bigirimana, aged twenty; Evariste; Mpanuka; Capitoline Nzeyimana; Odile Banirwaninzigo; the daughters of Francois; the son of Mbunya; the daughter of Déo Ntizizakumwe; Claudine Ntamakuriro; Eric Manirakiza; Jean-Marie Nyandwi and Nestor Nyandwi.

According to several witnesses, soldiers also killed Juvenal Miburo, a 52-year-old employee of an international agency. Miburo, who was well known in the region, fled from Kabezi the morning of the attack, taking with him eight young girls, daughters of friends. When they got to Ramba and heard the shooting from the ambush, they hid in the brush for some time. When all seemed quiet, Miburo and the girls left their hiding place and headed back towards Kabezi. About half way there, they crossed paths with a group of soldiers. All of the girls were permitted to continue on their way except one twelve-year old girl and Miburo. According to the other children, the soldiers said they were going to use him to help transport their goods, that is, the property they had looted. Later that day another group that had fled from Kabezi found the bodies of Miburo, who had been killed by bayonet, and the girl, who had been shot.[92]

A passer-by, requisitioned by soldiers on April 23 to gather up the bodies, counted twenty-two on the road and in the grass between the road and the lake.[93] Another

[88] Human Rights Watch interview with the administrator of Kabezi, Félicien Ntayokambaye, by telephone, June 19, 2003.

[89] Human Rights Watch interview with the governor of Bujumbura-rural province, Ignace Ntawembarira, Bujumbura, June 9, 2003.

[90] Human Rights Watch interviews, Bujumbura, June 5 and 9, 2003.

[91] Human Rights Watch interviews, Mutumba, June 4; Bujumbura, June 9 and 19, 2003.

[92] Human Rights Watch interviews, Bujumbura, May 31 and June 2, 2003.

[93] Human Rights Watch interview, Mutumba, June 4, 2003.

person requisitioned for similar work the next day by the administrator of Kabezi and the commander of the brigade said, "On the road I saw that the bodies of the three soldiers had been removed and I counted twenty-five bodies, twenty that I had already seen the day of the event and another five new ones."[94]

Authorities said at one time that seventeen people had been killed on April 23, thirteen civilians and four unidentified persons, said to be rebels. But on May 12 at a meeting attended by Marie-Thérèse Keita-Bocoum, the Commission on Human Rights special rapporteur on the situation of human rights in Burundi, the representative of the ministry of defense said that about ten people had died at Kabezi while a representative from the ministry of interior said the number was twenty, including fourteen civilians and six rebels.[95]

In addition to the fatalities, another fifteen people were wounded.[96]

Official Reactions to the Killings at Kabezi

National authorities made no comment on the Kabezi killings, which had taken place just before the changeover in the presidency. In June, Governor Ntawembarira of Bujumbura-rural told a Human Rights Watch researcher that there had been three incidents on April 23, all of which had been provoked by the FNL. They had begun with the attack on the brigade and then had carried out the ambush on the road which had resulted in three deaths, a woman and two young girls. They had subsequently attacked a group of soldiers from the "Chinese camp" who were crossing the hills and this resulted in ten persons being killed near a group of houses in Nyamugari. He said there had been four unidentified bodies found on the road, who were dead rebels. In his view the whole incident had been much exaggerated and he said he was willing to have anyone interested go with him to the site.[97] But when a delegation of parliamentarians tried soon thereafter to inquire into the events, they were forbidden access to the area on security grounds.[98] A number of eyewitnesses to the events have been summoned by soldiers and have fled the area, making establishing the truth more difficult.[99]

The secretary of the commune and the commander of the Kabezi brigade also discussed the killings with a Human Rights Watch researcher. They both stressed that it was difficult to carry out military operations in the region because of the extent to which the rebels had integrated themselves into the population. The secretary suggested that if

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[94] Human Rights Watch interview, Mutumba, June 4, 2003.

[95] Human Rights Watch interview, Bujumbura, June 2, 2003.

[96] Human Rights Watch interview, Bujumbura, May 31, 2003.

[97] Human Rights Watch interview with Governor Ntawembarira, Bujumbura, June 9, 2003.

[98] Human Rights Watch interview with the Honorable Léonidas Ntibayazi, President of the Human Rights Commission of the parliament, Bujumbura, June 4, 2003.

[99] Human Rights Watch interview, Bujumbura, May 27, 2003.

civilians had been killed by soldiers on April 23 it was because they were really "rebels disguised as civilians."[100] The local official was echoing ideas expressed since last year by high-ranking officials, including the spokesman of the army, who said that civilians who do not flee the rebels should be treated as rebels themselves and a military prosecutor who referred to civilians as "secondary assailants"—assailants being a frequent term for rebels—at a court martial for officers accused of leading an operation that killed 173 civilians.[101] Labelling civilians (who may or may not support a rebel group) as rebels, and hence combatants, ignores the distinction between combatant and non-combatant that is basic to international humanitarian law. Military operations by the FNL and the government army have been frequent in Kabezi since the late April incident. Although no further killings of the scale of April 23 have been reported, a woman and her child were reportedly injured by shells fired by government soldiers at the hill of Masama[102] and the frequent military activity has caused the displacement of an estimated 20,000 people.[103]

Military operations by the Burundian army and by FDD and FNL combatants often involved the disproportionate or indiscriminate use of force with attendant risks of injury or death to civilians. The FNL and FDD have bombarded civilian neighborhoods of urban areas in Bujumbura, Ruyigi, Gitega, and Cankuzo and government troops have bombarded heavily populated regions in both city and countryside, such as when they launched thirty shells—nine from helicopter gunships—at the hill Ruce in Bubanza.[104]

Apparent Reprisal Killings by Government Soldiers

As the government and the FDD moved towards renewed negotiations at the start of September, the FNL increased attacks on government soldiers, particularly those they found alone or in pairs. In at least four cases, the government soldiers responded immediately with attacks on the civilian population in the vicinity.

Near the end of September, FNL combatants killed a government soldier in the Kinama zone of Bujumbura. Soon after three persons from one family, one of them a child, were killed in the area. According to neighbors, the killers were government soldiers who had come to collect the body of their comrade.[105] Official sources said that the civilians were killed in a settling of accounts between rebel groups.[106]

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[100] Human Rights Watch interviews, Kabezi, June 18, 2003.

[101] Human Rights Watch, "Burundi: Civilians Pay the Price of Faltering Peace Process," February 2003.

[102] Human Rights Watch interview, Bujumbura, June 9, 2003.

[103] IRIN,"Burundi: Humanitarians confirm 4,000 families on the run in Kabezi Commune," May 30, 2003; for displacement and pillage, see below.

[104] Human Rights Watch interview, Musenyi, June 11, 2003.

[105] Human Rights Watch interview, Bujumbura, September 26, 2003.

[106] Iteka, "Quatre Personnes tuées en zone Kinama," September 25, 2003.

In another case in Kinama, on October 14, a young man in civilian clothing shot and killed a policeman who was riding on a bicycle-taxi as well as the rider of the bicycle. Local people identified the killer as an FNL combatant. An elderly man said that the FNL had met in the neighborhood the previous Saturday and that a new commander had taken over and given the order that any passing soldier should be killed and his weapon taken. As soon as the policeman was shot, the witness went home quickly, took his wife, and fled because "the soldiers had started shooting everywhere and coming into the neighborhoods."[107] A woman who lived in the neighborhood said that she also fled as soon as she heard the shots that killed the policeman "because we're used to soldiers arriving and shooting everywhere. You have to run from the shooting."[108] She said that the soldiers had looted much property from their houses.

According to witnesses, the soldiers killed three persons: Gervais Ntubingoye, killed by a bayonet and blows to the head, another man killed by bayonet and a woman found in the banana plantation of Makaryo. In addition another woman who had just given birth died of a heart attack while fleeing. All were from the Bukirasazi quartier.

The next day the military commander of Socarti camp and the zone head held a meeting with local residents at their request. According to one witness who attended the meeting, the commander said that if there were another policeman or administrative official killed, "It was the population of Kinama that would pay. I will erase Kinama."[109] The witness continued:

> We are worried because we are faced with two contradictory orders, those from the FNL and those from the soldiers. And we the people will be the victims. I would rather pay more to the FNL so that they can buy their own weapons rather than have them kill soldiers to steal their weapons. I no longer spend the night in my own house. I take my wife and children to the forest for the night.[110]

Another witness had also heard from others that authorities threatened that people of the neighborhood would pay if there were another soldier or administrative official killed. She said:

Life is difficult. Children no longer go to school because we are afraid to lose them if shooting suddenly begins and we have to flee immediately. We have been especially afraid since the military chief said that we would pay. The government should know that we civilians are not equipped to confront armed men. There are too many armed men and too much insecurity. And we, we have no choice but to cooperate with

[107] Human Rights Watch interview, Kinama, October 16, 2003.

[108] Human Rights Watch interview, Kinama, October 16, 2003.

[109] Human Rights Watch interview, Kinama, October 16, 2003.

[110] Human Rights Watch interview, Kinama, October 16, 2003.

them because we have nowhere else to go.[111]

Killings at Ruziba

In another case on September 6, 2003 FNL combatants killed two soldiers who were having a beer at a small bar called "Chez Raphael" at Ruziba, in Kanyosha commune, just outside the capital. Residents of the area, long known as a FNL stronghold, fled immediately. They feared reprisals by soldiers from the 43rd batallion based at Kirundo who were stationed at the nearby Ruziba military post. Some of these troops were said to have served in some of the worst combat zones in Burundi and in neighboring DRC and people in the area regarded them as ruthless.

Soon after the killing, military patrols came and looted goods from houses left vacant by those who fled.

When many people were at church the next morning, September 7, the Kanyosha zone chief and an officer named Major Habarugira summoned residents to the terrace of the Ruziba primary school. But they held no meeting at that time. According to one person present, the officer finally said that "there had been enough meetings that didn't prevent incidents from happening." According to witnesses, the zone chief then told the crowd, "You, people of Ruziba, I wash my hands of whatever may happen to you."[112]

At about 2 p.m. there was gunfire from Bihara and the Mugere River, up in the hills. Many people began to flee, most of them scrambling down the road known as the "Amsar Road," which joins the main paved road. According to witnesses, soldiers of the 43rd batallion gathered up residents from Mugere and Kuwingare, firing in the air, hitting people, threatening and yelling at others to go to the Ruziba marketplace "where there was going to be a meeting."[113]

One old man commented, as did other witnesses, that it was unusual to have a meeting at that hour and announced in that way. He said, "The soldiers came to get me in my house. They said that there was going to be a meeting at the market. I was among the first to arrive, but many others came after me."[114]

Residents who fled away from the market and Bujumbura towards Gakungwe, said that soldiers posted at the place called "Livingstone's Stone" shot at them, forcing them to return towards Ruziba.[115]

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[111] Human Rights Watch interview, Kinama, October 16, 2003.

[112] Human Rights Watch interview, Bujumbura, September 26, 2003.

[113] Human Rights Watch interviews, Bujumbura, September 18, 26, and 27, 2003.

[114] Human Rights Watch interview, Bujumbura, September 18, 2003.

[115] Human Rights Watch interview, Bujumbura, September 18, 2003.

Meanwhile soldiers forced shopkeepers near the market to close their shops and to joined others those arriving from near and far at the marketplace. One witness said:

> It was as if we were surrounded. The soldiers pushed people or hit them with sticks and made them cross the road to gather on the marketplace. They stayed there in groups of three or four with their guns aimed at the crowd. The commander of the military post was present. The soldiers said, "Stay where you are. Don't come near us, stay there for the meeting." People were nervous.[116]

According to witnesses, a soldier standing a short distance away, near the junction of the "Amsar Road" and the paved road, was the first to open fire. "It was panic and chaos immediately," said one man. "Everyone fled, dropping whatever they were carrying. Then the soldiers at the market also began firing."[117] Another man concluded, "There would really have been a lot of victims if the soldiers at the market had been the first to fire."[118]

The crowd scattered. Some people fled downhill towards Lake Tanganyika and the city or into the Kigwati quartier next to the market. Several witnesses said that a soldier posted at Second Avenue in Kigwati fired on the fleeing people. "He had a machine gun balanced on a garbage heap and he did a lot of damage with that," said one man who had run towards Kigwati and had thrown himself on the ground to avoid the gunfire.[119]

Witnesses all said they saw a number of people shot and on the ground, either dead or wounded. But when they returned the next morning, they saw "many pools of blood on the ground, but with no bodies [next to them]," as one man said. [120] Those ordered to bury the dead by the zone chief reported burying only six bodies, two women, Christine of Kibembe quartier and another whose name they did not know; two children; and two old men, Bazumworo and Bashirahishize, who were both killed in their home. Another woman died later from her wounds at Roi Khaled Hospital.[121]

Killings at Muyira

Soldiers deliberately killed civilians in a remarkably similar case that began early Sunday afternoon, September 21, when FNL combatants killed two soldiers eating a meal at a restaurant in Bangatele, in Muyira zone, Kanyosha commune. Here, too, local residents

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[116] Human Rights Watch interview, Bujumbura, September 26, 2003.

[117] Human Rights Watch interview, Bujumbura, September 18, 2003.

[118] Human Rights Watch interview, Bujumbura, September 18, 2003.

[119] Human Rights Watch interview, Bujumbura, September 27, 2003.

[120] Human Rights Watch interview, Bujumbura, September 27, 2003.

[121] Human Rights Watch interview, Bujumbura, September 27, 2003.

fled immediately and soldiers from posts at Cinkona, Sororezo, Muhanambogo and Kiriri campus arrived promptly on the spot. They looted the homes and shops of those who had fled Bangatele and then fanned out over the neighboring hills of Pera, Kavumu, Muha, Bigoma, Ruyaga, and Muzige where they killed civilians and looted more property.

A woman hugged close a child she had thought killed during the attack and said:

> The soldiers came immediately and they shot everywhere, everywhere. I fled with a neighbor. A man took one of my two little children in his arms, to help me flee. We were stopped by soldiers from Cinkona. A soldier shot the man who fell down dead. I ran immediately because there were too many bullets. I think that my child was killed also.[122]

An old man summed up, shaking his head, recalled the events of the day. "There was a huge military attack with lots of blood."[123] Another man added that when he and other neighbors took advantage of a momentary lull in the firing around 6 p.m. to try to transport a woman wounded in the leg, soldiers from the Cinkona post fired at them.[124] More than twenty civilians were killed, including the following from Muyira II zone: Jimmy, the man who tried to help the woman by carrying her child; Muswi, an old man who lived at Bangatele and whose body was found at Pera; another man named Muswi from Coga; Aloys Nsanzemgeze; Siméo Hicuburundi; Michel Mvuyekure; Georgie Ntahonkiriye; Fraziya Rurimurishiga. Elissa Nsabimana and Jeanette Miburo were from Muyira I; Georgie Nsabirabandi from Bigoma; Jean Harindavyi from Mirama; Donatien Nduwayezu from Mbare; and a man named Murevyi, a resident of Bangatele and father of eight children, whose decapitated body was found at Muha. Witnesses said that six other bodies had been found but that they did not know the names of these victims. Three others reportedly died of their wounds at the hospital.[125]

Residents did not dare return home for several days. When they did, they found their property looted and three houses burned at Bangatele. "There was nothing left, no clothes, no pots, no pails to fetch water, no mattress," said one woman.[126]

Official Reaction to the Killings at Ruziba and Muyira

Brigadier General Germain Niyoyankana, army chief of staff, recognized that government soldiers were killed both at Ruziba and Muyira before the killings of

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[122] Human Rights Watch interview, Bujumbura, October 7, 2003.

[123] Human Rights Watch interview, Bujumbura, September 23, 2003.

[124] Human Rights Watch interview, Bujumbura, October 7, 2003.

[125] Human Rights Watch interviews, October 7 and 8, 2003.

[126] Human Rights Watch interview, Bujumbura, October 7, 2003.

civilians described above, but he rejected the allegation that government soldiers killed civilians in reprisal for FNL killings of fellow soldiers. In the case of Ruziba, General Niyoyankana said that the soldiers killed "had not been careful enough." He said that FNL combatants had then tried to prevent a security meeting involving soldiers, administrators, and the local population and had attacked the crowd in an effort to "get the head of the commander of the military post."[127] According to the Kanyosha zone head, the official number of civilians killed was six, including the woman who died later of her injuries, and nine persons wounded.[128]

Concerning the killings at Muyira, General Niyoyankana said that after the FNL combatants had killed the two soldiers in the restaurant, FNL combatants had opened fire on other soldiers. He held that the FNL should have known civilians would be killed if they opened fire in such circumstances. He denied that soldiers had deliberately killed civilians and said that the victims would have been far more numerous, had that been the case. He added that soldiers had evacuated some of the wounded, which, for him, proved that they would not have shot at them. He gave the figures of seven civilians killed and two wounded and said that they had been shot at the Muyira market. He was unaware, he said, of victims killed elsewhere. He concluded, "I see no fault on the part of the soldiers. It was not a case of reprisals. There are FNL attacks every day. Not a night passes without the FNL and the FDD killing someone."[129]

The governor of rural Bujumbura, Ignace Ntawenbarira, stated that ten civilians had been killed in the Muyira case, but that they died in "cross-fire" between the soldiers and the FNL. He confirmed that the soldiers had looted a considerable amount of property. He stressed that the "situation is complex," and said the principal reason for the recent problems was the new FNL strategy of targeting soldiers in public places. "The FNL must know that there are civilians around and that this will result in losses."[130]

Local Reactions

At Ruziba, Colonel Gacubwenge tried to defuse tensions with local residents in early September by making soldiers return looted property. But by late September residents were again so afraid of soldiers that they panicked and fled their homes in large numbers when a military patrol arrived on September 29.[131]

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[127] Human Rights Watch interview with General Niyoyankana, Bujumbura, October 3, 2003.

[128] Human Rights Watch interview with Jacques Bigirimana, Kanyosha zone chief, Bujumbura, October 10, 2003.

[129] Human Rights Watch interview, Bujumbura, October 3, 2003.

[130] Human Rights Watch interview with Ignace Ntawembarira, Governor of Rural Bujumbura, Bujumbura, October 3, 2003.

[131] African Public Radio, News, September 30, 2003.

Residents at Muyira reject the explanation that their neighbors were killed in crossfire between soldiers and FNL combatants. "The FNL did not attack the military posts but rather retreated towards Coga and there was no cross-fire. The next day the soldiers went to Coga but the FNL had already left for Isare," explained one man.[132]

Another man from Muyira regretted the killings and the ensuing bad relations between local people and the government soldiers. He said:

> Before there was good collaboration between the people and the soldiers. We had to cut wood, fetch water, and transport food to the post for them but there were committees on the hills to organize workers for these duties. Even when the FNL attacked Gatoke in July and killed soldiers at the Muhanambogo post as they left, the soldiers themselves killed seven civilians in reprisal, but it was still okay. Now I don't understand how this happened. Really there is a large problem between them and us. The people are all very afraid.[133]

VI. Other Killings and Abuses by Government Soldiers

Members of the Burundian armed forces stationed in relatively small posts around the country lived in close proximity to civilians and often appropriated their property or extorted services from them. Some deliberately killed or otherwise injured civilians in the course of robberies or as punishment for noncompliance with their orders. If such crimes were reported to the commanding officers of the accused, military authorities rarely investigated and, more rarely still, prosecuted such crimes. At most, they transferred the accused to another post. As one civilian commented:

> In any case, the presence of the soldiers causes us insecurity. They ought to be spending their days at the battlefront, not going around where we live disturbing us. Besides having them always around makes the rebels think we are collaborating with them and then the rebels target us too.[134]

Soldiers frequently required services from civilians who lived near their posts, such as providing firewood, fetching water, or transporting materials. Sometimes they obliged civilians to transport military supplies, like ammunition, into combat areas, at considerable risk to themselves.[135] In Bubanza province, taxi-bicyclists who ply their

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[132] Human Rights Watch interview, Bujumbura, October 7, 2003.

[133] Human Rights Watch interview, Bujumbura, October 8, 2003.

[134] Human Rights Watch interview, Bujumbura, June 18, 2003.

[135] Human Rights Watch interview, Bujumbura, June 18, 2003.

trade along the Muzinda road complained about the demands of soldiers.[136] "We're forced to provide services to the soldiers," said one man, "unless we want to be arrested or beaten."[137]

The consequences of refusing to do what the soldiers wanted were sometimes more serious. In the Musaga neighborhood of Bujumbura, a soldier from the Gitoko post deliberately killed a resident of Second Avenue because he had refused to carry water for him.[138] In a similar case in Kamenge, also a neighborhood in Bujumbura, a soldier killed a taxi-bicyclist for having refused to give him a ride back to his post. The soldier fired into the crowd that attempted to intervene in the dispute and was himself beaten by the crowd after he killed the man.[139]

Local people complain about exactions by soldiers at the military post of Muhanambogo in the hills above Bujumbura. One man said:

> We come home already tired from work or from having done errands in the city. They stop us and force us to work for them. They tell us, "When you try to kill us, then you are not tired."[140]

According to local people, soldiers killed seven civilians at the hill Mubeye, Bubanza province, in what was apparently a robbery. One witness said, "They've been here for two months and we've ended up being able to recognize them."[141] In early April, soldiers from the Gatumba camp killed seven civilians at Nyamabere, between Buringa and Maramvya, on the border between Bubanza and Bujumbura rural provinces, and stole the bicycles that the men had been using to transport loads of charcoal for sale in Bujumbura.[142] In another case four people were killed at Musagara hill, Bubanza, and soon after local people saw a military truck rolling by carrying off sacks of rice and other food.[143] On June 11 people in the same area captured soldiers of the 15th battalion of Muzinda who were trying to steal bicycles and took them to their commanding officer.

According to one elderly man, the officer "nearly shot us," and did nothing about the attempted theft.[144]

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[136] Radio Publique Africaine, news broadcast, May 29, 2003.

[137] Human Rights Watch interview, Bujumbura, June 18, 2003.

[138] Iteka, « Un militaire tue une personne à Bujumbura , " May 21, 2003.

[139] Human Rights Watch interview, Brussels, June 19, 2003; Iteka, "Un militaire tue une personne à Kamenge," May 12, 2003.

[140] Human Rights Watch interview, Bujumbura, October 8, 2003.

[141] Human Rights Watch interview, Bujumbura, June 18, 2003.

[142] Human Rights Watch interview, Bujumbura, June 3, 2003.

[143] Human Rights Watch interview, Bujumbura, June 18, 2003.

[144] Human Rights Watch interview, Bujumbura, June 18, 2003.

In some cases of killings by soldiers, there was no clear reason for their behavior. During the night of July 15, soldiers in Kinama, a zone in the northern part of Bujumbura, killed three young Guardians of the Peace. It seems that they had at first taken them for rebel combatants, but they killed them even after they had checked their identity papers. They killed one by bayonet. [145]

Killings and Abductions by the FDD and FNL

While engaged in their war against government soldiers, combatants of both rebel movements sometimes have deliberately targeted civilians, often because they knew them to have or believed them to have links to the authorities. In other cases, they have killed civilians to demonstrate that government officials could not or would not protect the people of a given area.

In June in Mwaro province, FDD combatants killed two civilians and wounded one when they attacked Nyabihanga commune and in a later incident they killed three civilians and burned local government buildings and those of a cooperative when they attacked Rusaka commune. They killed four civilians during an attack at Nyankara hill, Makamba province on May 28 and killed two others in an attack on a camp for Tutsi displaced persons in Ngozi province on June 20.[146]

In the past, both rebel movements have targeted local administrative officials. The head of Twinyoni quarter in Bujumbura was killed on May 31, for example, reportedly by FNL combatants.[147] But it was the FDD that especially increased such attacks in during the first nine months of 2003. The Minister of Interior and Public Security Salvator Ntihabose condemned the FDD practice, saying that the FDD "avoid any contact with the government army, they plunder social infrastructure and kill or kidnap local administrative officials."[148]

On June 2, FDD combatants abducted the administrator of Cendajuru commune, Cankuzo province, after he complained at a security meeting about the departure of some sixty persons from his commune to join the FDD.[149] At the same meeting, which was chaired by the governor, the adminstrator accused the FDD of attacking his commune from bases in Tanzania. On June 16 FDD combatants attacked the commune of Gatara, Kayanza province; they kidnapped the local administrator and looted his house. Not long before he had arrested a suspected member of the FDD and had sent him to the brigade in Kayanza.[150] The administrator of Rusaka commune, Mwaro

[145] Iteka, 16 juillet : « Des militaire tuent par erreur trois gardiens de la paix à Kinama »

[146] OCHA Situation Report, 16-22 June, 2003; Agence France Presse, "Burundi: deux civils et un soldat tués dans une attaque rebelled," June 21. 2003.

[147] OCHA Situation Report, 19 May-1 June, 2003.

[148] IRIN, "Burundi: Rebel group steps up attacks," June 17, 2003.

[149] Iteka, "L'administrateur de la commune Cendajuru enlevé par les rebelles des FDD," June 4, 2003.

[150] Iteka, "Intensification d'attaques rebelles au nord et center du pays," June 17, 2003.

province, was kidnapped, apparently by FDD combatants, but was freed after paying an undisclosed amount in ransom. The administrator of Mutimbuzi commune, Bujumbura-rural, was the target of an assassination attempt, apparently by FDD combatants; he survived but his bodyguard was killed.[151] In late June, FDD combatants abducted the head of the zone Muzinda and the head of zone Muyebe, commune Musigati near the Muyange cantonment site in the troubled province of Bubanza. The official from Muzinda was later found dead.[152] On July 17, FDD combatants kidnapped a local official of Gisuru commune, Ruyigi province, and the next day they briefly detained the administrator of Kayogoro commune, Makamba.[153]

On June 14 an armed group attacked a bar in Makamba and killed Gerard Buryo, an Uprona member of parliament, and a soldier. At the same time they abducted two persons who were later released in return for a ransom. Authorities said that the assailants were FDD combatants.[154]

On June 29 four members of parliament, their driver, and seven other civilians were taken hostage as they were driving towards Gisuru in Ruyigi. One of the members of parliament and five other persons have since been released. The FDD took responsibility for the kidnapping, saying it was a warning to the government to end its propaganda campaign against their movement.[155]

Armed men kidnapped three Burundian employees of international humanitarian agencies in two separate incidents the same day in Makamba province and demanded a large ransom for their safe return. The three were later released unharmed. Authorities charged the FDD with this abduction but presented no proof of the claim.[156]

Both movements abducted civilians also for short or long-term service. In early April the FDD forcibly recruited forty young men for military service; the unwilling recruits escaped some two weeks later in Murwi commune, Cibitoke province.[157] Similarly the FDD forcibly enrolled some thirty young men who later escaped from their base in Kibira forest on June 18, in an incident mentioned above.[158]

Soon after, the FDD abducted fifteen persons, two of them still children. One of them, a fifteen-year-old told a Human Rights Watch researcher about how he had been

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[151] IRIN, "Burundi: Rebel group steps up attacks," June 17, 2003.

[152] Iteka, "La Sécurité de plus en plus perturbée dans beaucoup de coins du pays," June 21, 2003.

[153] IRIN, "Burundi: Kidnappers demand ransom for humanitarian workers," July 18, 2003; Radio Publique Africaine, news broadcast, July 18, 2003.

[154] Iteka, "Un parlementaire tué dans une attaque à Makamba," June 16, 2003.

[155] Agence France Presse, "Députés enlevés: FDD exigent que le Frodebu cesse de les 'discréditer,'" June 29, 2003; IRIN, "Burundi: Rebels free MP, four other hostages," July 3, 2003.

[156] IRIN, "Burundi: Kidnappers demand ransom for humanitarian workers, July 18, 2003; Iteka, "Des rançons sont toujours exigées pour la liberation du personnel humanitaire enlevé," July 16, 2003.

[157] Radio Publique Africaine, news broadcast, April 23, 2003.

[158] See the section on cantonment.

mistreated by FDD combatants. He was captured one evening with six others, as he was returning home. He and one other were school pupils. He was ordered to carry a bag of ammunition but found it was too heavy for him to carry. Instead he was told to look after cattle that the group had taken. He and the group walked five nights before reaching the Kibira forest. "There we had to cut bamboo," said the youngster. "We had to work very, very hard to build shelters. I was very hungry and was given only a little cooked manioc to eat. I ran away. I had to; if not, I would have died."[159] Another civilian, abducted by the FDD the evening before his marriage, showed the Human Rights Watch researcher large wounds on his left shoulder and lower back. After he had tried to escape, his captors beat him so badly that he could no longer walk. The combatants had then thrown him in a hole for two weeks. "There," he said, "I was not allowed to stand up. I had to stay lying down or crouched over."[160]

In a mid-May attack on Gihanga commune, Bubanza province, the FNL forced five civilians to accompany them to carry the goods they had just looted.[161] Other FNL combatants successfully attacked the military post at Mubone, Bujumbura Rural, on June 3 and forced local residents to transport the ammunitions and other goods that they seized there.[162]

After looting goods on Kigamba, Musenga, Muyange and Sorero hills in Butezi, Ruyigi, in mid-May, FDD combatants abducted an eighteen-year-old young man to serve as their guide. [163]On June 16, FDD combatants reportedly abducted two high school girls from Nyakayi in Butezi commune, Ruyigi province for an unknown purpose.[164]

FNL combatants including both men and women attacked Gihanga commune on May 18. While the children in their ranks prayed and sang, the combatants looted bicycles and goats and burned one vehicle.[165] In another incident FNL combatants wounded one person, burned twenty houses, and looted cattle and goats at Murwi commune, Cibitoke province, on May 20.[166]

Civilian Casualties of Violence between FDD and FNL

In early September FDD and FNL combatants began fighting each other, first in parts of Bujumbura rural, Bubanza, and Muramvya provinces and soon after in the streets of Bujumbura. The forces sometimes engaged in skirmishes, especially at the start in the rural areas, but more recently they have targeted specific persons presumed to be linked

[159] Human Rights Watch interview, Bujumbura, August 29, 2003.

[160] Human Rights Watch interview, Bujumbura, August 29, 2003.

[161] Human Rights Watch interview, Bujumbura, June 3, 2003.

[162] Human Rights Watch interview, Bujumbura, June 9, 2003.

[163] Human Rights Watch interview, Butezi, June 17, 2003.

[164] Human Rights Watch interview, Ruyigi, June 17, 2003.

[165] Human Rights Watch interview, Bujumbura, June 2, 2003.

[166] OCHA Situation Report 19 May-1 June, 2003.

to the rival movement. In many cases, the combatants deliberately killed family members or others found in the company of their supposed target.

An old woman in dirty, damp clothes related how a skirmish between FDD and FNL had forced her to flee her home in Mubimbi commune, Bujumbura rural, three weeks previously. She said:

> The two groups are after each other. Even now. I left on a Monday evening. There was a lot of shooting and men in uniform came saying, "You are the ones who work for the enemy." They killed eleven people that day.[167]

A twelve-year-old girl in the zone Kayange, commune Rugazi, hesitantly described how FDD "soldiers" came to chase away the FNL.

> There was a lot of shooting. It was early on a Saturday morning. "We've come to get the FNL," they said. They stayed there. There were a lot of them. I fled with my mother and some others. No one was killed on our hill but about twenty people were killed on the adjacent hill, Bugume, that same day. We fled without having the time to take anything with us. When it calmed down, we went back. They had burned our house and many others, including that of my sister.[168]

By early October the combatants moved their struggle into the crowded and poorer neighborhoods of Kamenge and Kinama in Bujumbura. In the Gitega quartier of Kinama, FNL combatants killed a suspected member of the FDD in broad daylight. The FDD then killed two persons supposedly linked to the FNL and burned down a house.[169] One October 22 FDD combatants killed two persons in Taba quartier of the Kamenge zone, one of them a fifteen-year old youth who reportedly had no connection with any rebel movement. They also broke down the doors of some houses, burned down others, and looted possessions.[170] During the night of November 3 combatants, said by local residents to be FDD, attacked several houses and abducted four persons whom they executed a short distance away.[171]

By the end of the month, authorities estimated that at least twenty persons had been killed in clashes between FDD and FNL in the city and its suburbs. The actual number was almost certainly higher to judge from scattered reports collected by a Human Rights

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[167] Human Rights Watch interview, Kinama, Mubimbi, Bujumbura rural, October 7, 2003.

[168] Human Rights Watch interview, Muzinda, October 24, 2003.

[169] Human Rights Watch interview, Bujumbura, October 16, 2003.

[170] Human Rights Watch interview, Bujumbura, October 24, 2003.

[171] Radio Isanganiro, News, November 3, 2003.

Watch researcher. An undetermined number of those slain were persons who were not combatants and some of them had no link whatsoever with either political group.[172]

Both FDD and FNL combatants burned the houses of those thought to be associated with the other group and looted property from the homes of people who had fled the violence.

Witnesses can sometimes identify the attackers in these incidents, but often they cannot or will not do so, usually from fear of reprisals.

Far from the site of diplomatic negotiations, fear and flight are part of the daily routine of most people living in Kamenge and Kinama districts. They speak of lists drawn up by the FDD naming those to be targeted next.[173] One young man said:

> We would like to be able to spend the night at home. But if this continues we'll end up by leaving our home permanently. Just last night, there was gunfire from 7 pm to 10 pm and we didn't even know who was shooting. But we fled and there was really a lot of shooting.[174]

In several cases witnesses reported that soldiers responded to calls for help and intervened to protect them, but more often victims say that the military or police do little or nothing to stop violence by the combatants. Authorities imposed a curfew on the parts of the city most troubled by violence and in early October arrested thirty-six persons in a sweep to identify supposed rebels living in the city.

While these measures may have brought some temporary improvement, by late October there was at least one part of Bujumbura where the FDD combatants rather than city officials controlled the movement of citizens. They put up barriers and determined who could move between the Gituro quartier of Kamenge, where they are in large numbers, and neighboring Taba quartier which is said to house many FNL adherents. They interrogated passers-by, including children, before deciding whether or not they would be allowed to pass the barrier.[175] One witness who observed this conduct said:

> How can armed people be allowed to just install themselves like that for a month in our neighborhood without anyone bothering them? One of the FDD even said to the soldiers, "You don't have the right to stop me." The real FNL collaborators are long since gone. If they want to

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[172] IRIN, Burundi, "Government Officials, Rebels Say Security Improved," October 31, 2003; Iteka, "Le conflit entre le Palipehutu-Fnl et le Cndd-Fdd inquiète la population de la zone Kamenge, October 24, 2003.

[173] Human Rights Watch interview, Bujumbura, November 4, 2003.

[174] Human Rights Watch interview, October 16, 2003.

[175] Human Rights Watch interview, Kamenge, October 24, 2003; IRIN, Burundi: "Tension abates in northern Bujumbura suburb."

fight, let them it out between themselves, at their military positions, and not here among the people.[176]

Killings and Abuses by the FDD and FNL in the Democratic Republic of Congo

Combatants of both the FDD and the FNL have set up bases in areas of the Democratic Republic of Congo adjacent to Burundi, particularly along the shores of Lake Tanganyika, south of the city of Uvira in the region of Fizi, and north of Uvira in the Ruzizi plain, which is separated from Cibitoke province of Burundi by the Ruzizi River. Here they prepare for raids into Burundi but they sometimes also attack Congolese civilians, usually to steal their property. In some cases they killed civilians and in others, they raped women.

In one such attack on October 6, combatants identified by local people as FDD killed some fifteen people who had been working in their fields at Ndunda, a village just north of Uvira and on the Burundi border. Most of the victims were women and included: Ruzabeti, Charlote, Majaribu, Mama Guylain, Lukogo, Pendege, Nyihasha, Nyirabonore, Lena, Kyubwa, Kiponda, Kaseti, and Michel.[177]

On October 9 rebels abducted nine people from Kiliba, an operation also attributed to the FDD.[178]

FDD officials denied involvement in these crimes and blamed them instead on the FNL.[179]

One man from this area, thin, tired, and haggard, sadly recounted these abuses to a Human Rights Watch researcher. He and his neighbors no longer count the number of ambushes, abductions, rapes, and cases of looting. North of Uvira the villages near the Burundi border are empty: Namijembo, Kimuka, Mwaba, Ruziha, and Kajori. The man left his own home village after his wife was raped by four FNL combatants. "It's easy to know who they are," he said. "We have lived together with them along the border; they speak Kirundi." He described commander Bitarumunyu, discussed above, as an FNL leader based in the DRC but operating also in Cibitoke province in Burundi. Talking of how people have all fled their homes because of these attacks, the witness said:

> We flee with nothing. We take nothing with us because we have nothing. Look at me. I am not yet forty years old and see how I am like an old man.This is because of all this misery.[180]

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[176] Human Rights Watch interview, Bujumbura, October 24, 2003.

[177] Human Rights Watch interview, Bujumbura, October 13, 2003.

[178] Human Rights Watch interview, Bujumbura, October 13, 2003.

[179] Irin, "DRC: MONUC probing massacre of 16 in Ndunda, South Kivu Province," October 13, 2003; Communiqué no. 75 CNDD-FDD, "Le Mouvement CNDD-FDD ne se bat pas dans la forêt de la Rukoko et n'est pas associe au Palipehutu-FNL," October 15, 2003.

A young Congolese woman said that she did not know the difference between FDD and FNL combatants but that she knew that those who attacked her area were from Burundi. "They come in a group," she said. "They are guerrillas. They come to take girls to make them their wives. Today we no longer go to work in our fields along the road to Burundi. It is too dangerous." [181]

Both the FDD and the FNL used Burundian children for military service in their forces in the DRC. Dozens of these children, transported from Burundi, have been forced to fend for themselves in the DRC after having been abandoned by the rebel troops or after having fled the rebels following ill-treatment.[182]

VII. Rape

Women in combat zones in Burundi have suffered increasingly from rape, a growing problem already in early 2003.[183] In the province of Bubanza, where the population suffered the consequences of repeated military operations and thousands were displaced, one witness from the hill Rugazi said that rape had become so frequent that women did not dare step outside their houses.[184] The governor of Kayanza province complained in late June of rapes committed in Kabarore and Muruta communes and Governor Isaac Bujaba of Ruyigi said that rape had become a new weapon used against the civilian population.[185]

The 1949 Geneva Conventions and their two Protocols implicitly and explicitly condemn rape and other forms of sexual violence as serious violations of humanitarian law in both international and internal conflicts. Through its prohibition of "outrages upon personal dignity, in particular humiliating and degrading treatment," Common Article 3 implicitly condemns sexual violence.

Article 4 of Protocol II expressly forbids "violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment, such as torture, mutilation or any form of corporal punishment" and "outrages upon personal dignity, in particular humiliating and degrading treatment, rape and enforced prostitution and any form of indecent assault." According to the official ICRC Commentary, this provision

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[180] Human Rights Watch interview, Bujumbura, October 2, 2003.

[181] Human Rights Watch interview, Bujumbura, October 2, 2003.

[182] Human Rights Watch interview, Uvira, November 5, 2003. See below for testimony from two such child soldiers.

[183] Human Rights Watch, "Burundi: Civilians Pay the Price of Faltering Peace Process," A Human Rights Watch Briefing Paper, February 2003

[184] Human Rights Watch interview, Musenyi, Bubanza, June 11, 2003.

[185] OCHA Situation Report, 16-22 June 2003; IRIN, "Burundi: Civilians Losing the War," May 14, 2003.

"reaffirms and supplements Common Article 3 ... [because] it became clear that it was necessary to strengthen ... the protection of women ... who may also be the victims of rape, enforced prostitution or indecent assault."[186]

One young mother, half-hiding behind her cloth, as if she felt the need for protection, told a Human Rights Watch researcher how extensive rape had become on her hill of Muyange, in the Ruyigi province. In a subdued voice she said she knew one pregnant woman and an eighteen-year-old girl who had both been raped recently. "They also raped a woman who was carrying her little baby on her back," she added. The witness told of an acquaintance whom rebels caught and raped in her own home and in front of her husband who was himself beaten. Then the rebels looted all their belongings. "I know that older women have been raped too," she said, "although I don't know any such women myself."[187]

An old woman said:

> This phenomenon of rape has become very serious. It affects all women without distinction, even the very young and pregnant women. If armed men go through the area, any woman becomes a target. We have to go sleep in the forest, which means we have less strength to cultivate our fields. It has been two years since we have been able to cultivate the way we are used to doing.

She concluded with despair, "There is no more authority in Burundi."[188]

In many cases victims and witnesses cannot or will not identify the perpetrators. In a typical description a witness will say that the perpetrators were "men in uniform, with a weapon, and military boots."[189]

But in Butezi, a commune some twenty miles from the provincial capital of Ruyigi town, victims and witnesses were able to identify the rapists who attacked women on May 18 as FDD combatants. One of the rapists was recognized by people who knew him to be a member of the FDD. The rapists struck on several hills including Kigamba, Musenga,

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[186] Yves Sandoz, Christophe Swinarski, Bruno Zimmerman (eds.), ICRC Commentary on the Additional Protocols of June 1977 to the Geneva Conventions of 12 August 1949 (Geneva: Martinus Nijhoff, 1987), p. 1375, para. 4539. As the above language highlights, crimes of sexual violence under international humanitarian law have been mischaracterized as attacks against the honor of women or as an outrage on personal dignity, as opposed to attacks on physical integrity. This mischaracterization diminishes the serious nature of the crime and contributes to the widespread misperception of rape as an attack on honor that is an "incidental" or "lesser" crime relative to crimes such as torture or enslavement. While it is true that rape is an assault on human dignity, rape should primarily be viewed as a violent assault on bodily integrity as well as one that dishonors the perpetrator and not the victim.

[187] Human Rights Watch interview, Butezi, Ruyigi province, June 17, 2003.

[188] Human Rights Watch interview, Butezi, June 17, 2003.

[189] Human Rights Watch interviews, Ruyigi, June 16 and 17 and Butezi, June 17, 2003.

Muyange and Sorero, all in Butezi. Based in the region known as Moso, this FDD group forced their way into houses, raped women and stole clothing, cattle and goats.

At least ten women raped that night came to Ruyigi for medical care in the days after the attack. One of them had been raped by several men with such brutality that she needed a long period of hospitalization and follow-up care. These women said they knew many others who had also been raped but who would not talk about it for fear of being rejected by their husbands. Several women from the hill Muyange had come to Ruyigi for medical help after having been raped; when they returned home, they were rejected by their husbands.[190]

In another attack in Ruyigi in mid-May, FDD combatants raped eight women. Several were gang raped, one by three men, another by ten. The youngest victim in this group was thirteen years old. One of the victims said,

> They robbed us on the Wednesday and then on Friday they came again, robbed some people and then they threatened to rape me. I tried to put them off by telling them I was HIV positive, but they said that didn't matter and they brought people whom they said were also HIV positive.[191]

A woman said that after rebels passed through the area known as Nyakabanka hill, many of the girls who were secondary school students became pregnant.[192]

When military operations are taking place in a region, women do not dare sleep in their own homes. If they do not seek refuge in the bush or in the woods, they spend the nights in public buildings. A Human Rights Watch researcher saw about twenty women, many with small children, come into the Ruyigi primary school at about 7 p.m. and prepare to spend the night on the concrete floor. As the cold night fell, one woman said, "In March armed men in uniform went through our area and looted everything on my hill. They raped women. Since then no woman dares to spend the night in her own home."[193] The others in the group confirmed what she had said.

Government soldiers also committed rapes in Ruyigi. One woman from the hill of Buhinda said that soldiers had come into the area in October 2002 chasing rebels and had stayed to rape women.[194] Several witnesses from the hills Muyange, Ciyando and Rugoti all spontaneously said that they were sure government soldiers from the Mubira military post had raped many women. The number of rapes in the proximity of the post

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[190] Human Rights Watch interview, Ruyigi, June 16, 2003.

[191] IRIN, "Burundi: Civilians losing the war," May 14, 2003.

[192] Human Rights Watch interview, Ruyigi, June 16, 2003.

[193] Human Rights Watch interview, Ruyigi, June 16, 2003.

[194] Human Rights Watch interview, Ruyigi, June 16, 2003.

increased so dramatically that military authorities transferred the soldiers to the nearby town of Butezi.[195] Women in Bubanza province also complained of rapes by soldiers. In some cases women who were ordered to go gather firewood for soldiers were raped while gathering the wood.[196]

Rape has also increased as a result of the conflict between the FNL and the FDD. In the commune of Mubimbi, Bujumbura rural, FDD combatants reportedly raped several women and at least two girls as they went to their fields to gather food to eat. One was about to be married and may now face rejection by her husband-to-be. Both were so brutally raped that they had to seek treatment at a hospital in Bujumbura. Other women were raped on the hill Nyankuba. "And there have been others," said one woman bitterly. "No one dares go home. And if we go to our fields, they catch us."[197]

In early November FNL combatants raped four women at Vyimuka, Kayange, Rugazi commune. The women, displaced from their homes by the fighting, were caught as they were searching for bananas to feed their hungry children.[198]

Government soldiers have been posted at the hill Gisagara since the start of skirmishes between the two rebel groups. In September the soldiers reportedly raped five women on two successive days. They also destroyed seven houses and took the roofing to cover their own shelter. According to local people, government soldiers took no action against the FDD even before the signing of the Pretoria Protocols.[199]

Reactions to Accusations of Rape

Brigadier General Niyoyankana, army chief of staff, told a Human Rights Watch researcher that he did not believe that government soldiers committed rapes. He said that had there been such cases, women would not have reported them because of a cultural reticence against discussing such matters. He suggested instead that women who accused soldiers of rape had probably engaged voluntarily in sex with them with the expectation of receiving some form of payment to alleviate their dire poverty. When the payment was not forthcoming, the women accused the soldiers of rape. He did state, however, that the first soldier to be named as having committed such a crime would be immediately prosecuted, and punished if found guilty.[200] In September the head of the military justice system said that he had no cases of rape among his current files.[201] In at least one case, a woman notified the lieutenant in charge of the military post at Musenyi,

[195] Human Rights Watch interview, Butezi, June 17, 2003.

[196] Human Rights Watch interview, Musenyi, Bubanza, June 11, 2003.

[197] Human Rights Watch interview, Kinama, Mubimba, Bujumbura Rural, October 7, 2003.

[198] Human Rights Watch interview, Bujumbura, November 6, 2003.

[199] Human Rights Watch interview, Kinama, Bujumbura Rural October 7, 2003.

[200] Human Rights Watch interview with Brigadier General Niyoyankana, Bujumbura, October 3, 2003.

[201] Human Rights Watch interview with the auditeur militaire, Bujumbura, September 5, 2003.

Bubanza that one of his soldiers had raped her. The lieutenant refused to believe her and did not investigate the case. The affair became generally known and the woman was so shamed by public discussion of it that she moved to another community.[202]

In general Human Rights Watch researchers have received few reports of disciplinary measures taken by the rebel movements to deal with cases of rape by their combatants. But in mid-October when the FDD was negotiating for a place in governmental institutions, there was one case of a FDD commander in Rugazi commune urging local people at a public meeting to bring him reports of rapes committed by his combatants. He told local people that some of the men who had recently joined FDD ranks behaved badly and lacked discipline. According to one resident of Rugazi, a young FDD combatant—probably under the age of eighteen years—raped a girl from the hill of Bugume shortly before this meeting. The girl was so badly injured that she needed medical attention. The witness said that the young man who was accused of the rape was seen at the FDD post at Kyange being punished by having his arms tied behind his back and not being allowed to eat for a week.[203] At about the same time a FDD leader in Mubimbi commune told residents that his movement dealt with cases of rape in its own way and that they should not forward information about such cases to authorities or others. He also told them that raped women should not seek medical attention in Bujumbura, an order that could result in raped women not receiving necessary care for their injuries.[204]

According to a child soldier who spent some months in the ranks of the FNL, this movement punished combatants who committed infractions of their rules, including those who committed rapes. The FNL reportedly prohibits even consensual sexual relations for its combatants, believing this is God's decree.[205]

VIII. Child Soldiers

Both boys and girls took part in the FNL attack on Gatoke in Bujumbura city on July 12.[206] Local residents heard their voices, singing religious songs as the bands of combatants passed through the streets. FNL combatants frequently sing religious songs during attacks to assure themselves of divine protection. The next day residents found the bodies of between ten and twenty children, aged about ten to fourteen years old, lying among the dead on the ground.[207] The number of children killed was unusually

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[202] Human Rights Watch interview, Bujumbura, June 18, 2003.

[203] Human Rights Watch interview, Bujumbura, October 30, 2003.

[204] Human Rights Watch interview, Bujumbura, October 23, 2003.

[205] Human Rights Watch interview, Uvira, November 5, 2003.

[206] In keeping with the International Convention on the Rights of the Child, Human Rights Watch defines anyone under age 18 as a child.

[207] Human Rights Watch interviews by telephone to Bujumbura, July 14 and 16, 2003; Iteka, "Des enfants soldats utilisés par la rebellion du Palipehutu-FNL," July 14, 2003.

high, but it is not unusual for children to participate with adults in FNL military operations.

In the days after the attack, Burundian military and civilian authorities criticized the FNL use of child soldiers. But the Burundian army, like that also of the FDD, have also been guilty of using child soldiers.

The Burundian government, the FNL, and the FDD are all mentioned in a report of the Secretary General to the Security Council of November 2002 as forces and armed groups that recruit or use children in violation of their international obligations.[208]

Burundi signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on November 13, 2001, but has yet to ratify it.[209] Parties to the protocol agree to take all possible measures to prevent children under eighteen years of age from taking part in combat. In early 1999, the Burundian government promised Olara Otunnu, the special representative of the secretary-general of the U.N. for children and armed conflict, to stop recruiting children younger than eighteen years of age, but it has never implemented that promise through appropriate legislation. Thus sixteen years old remains officially the youngest age at which a child may be recruited for military service.[210] The Burundian army has recognized that hundreds of children, called *doriya*, are used for various services, including to gather information. Some, including children twelve years old, serve as porters and guides.[211]

In many parts of Burundi and particularly in Bururi, Cibitoke, and Kayanza, boys and young men, many younger than the age of eighteen, were recruited for the government-run paramilitary force called the Guardians of the Peace. They were armed and received no salary; many of them lived by looting the population they were supposed to protect.[212]

Because Guardians of the Peace were not considered part of the regular armed forces and because plans for reorganization of the army were not yet clear, many Guardians of the Peace have no idea what the future might hold for them. Some went to join the FNL or the FDD, as did some young people from Rumonge commune. Others joined the army, sometimes at the urging of administrative officials. In at least one case, the local administrator offered Guardians of the Peace sheets of roofing material as an incentive for joining the regular forces. Roofing materials are an important resource in Burundi

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[208] The report of the secretary-general in November 2002 was the follow-up to Security Council resolution 1379 of 2001 on children in armed conflicts. It lists twenty-three parties to conflict that recruit or use children in armed conflicts in violation of their international obligations.

[209] As a signatory to the Optional Protocol, Burundi has an obligation not to take actions that defeat the treaty's object and purpose (see Vienna Convention on the Law of Treaties, article 18).

[210] International Coalition against the Use of Child Soldiers, *Global Report on Child Soldiers*, 2001.

[211] Government of Burundi, Ministry of Human Rights, "Enfant soldats, un défi à relever pour le Burundi," September 2001; Human Rights Watch, *Emptying the Hills, Regroupment in Burundi*, A Human Rights Watch Short Report, July 2000.

[212] Human Rights Watch, *To Protect the People: The Government-sponsored "self-defense" program in Burundi*, A Human Rights Watch Short Report, December 2001.

where houses are destroyed so regularly. According to one account of a recent incident, some Guardians of the Peace were forced into military trucks and taken away to participate in military operations.[213]

All the rebel forces have used extensive propaganda to try to enlist children from schools and sometimes they have recruited them by force. Even after the December 2002 ceasefire, the FDD tried to swell its ranks as the cantonment and distribution of food to its forces was being discussed.[214] In mid-July in the Muyanga province the police discovered FDD instructors teaching a group of young women and men how to shoot and throw grenades at a training site on the border with Tanzania.[215] The establishment of the first cantonment site at Muyange spurred both Ndayikengurukiye and Mugabarabona's FNL to greater recruitment efforts, sometimes by promises of money, sometimes by various deceptions.[216]

Not only did cantonment encourage recruitment of more young people to become child soldiers, the process made no specific provision for dealing with current or former child soldiers. In mid-July there were twelve children, one only twelve years old, at the Muyange site, but there was apparently no program set up to deal with them.[217]

Some children once part of a rebel force fled the military life and now see no place to go. One such child, an orphan, left home in 1998 at the age of twelve, encouraged by a neighbor to trade his unhappy life with poor relatives for the promise of clothes, money, and a better way of life in fighting with the FDD. He was taken with a group of twenty children, some younger than himself, for a night-long march to a training camp at a place called Muhanda. There their hair was cut and their clothes and shoes were taken from them and they were given tattered clothes, better suited, they were told, to the life of a soldier in the bush. Integrated into the ranks of Ndayikengurukiye's FDD along with other children, including some girls, this young witness was put through rigorous physical training. The children were beaten regularly and made to run long distances over the hills. They ate only once a day and slept outside at night with no covers. The child soldier said, "Some children died because it was very hard." He also received ideological training and was taught that they "were fighting for democracy."

After three months of training, the child had become what he called a "real front-line combatant." He fought in various parts of Burundi, including at Rukambasi, Makamba, Nyanza lac, Kabonga, Mutungu, and Vuzigo. While in combat zones, he fought together with both adults and other children. They were given pills to take to reduce their hunger and when they needed food, they got it from the local population or simply took it from the fields.

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[213] Human Rights Watch interview, Bujumbura, June 12, 2003.

[214] Human Rights Watch, "Burundi: Civilians Pay the Price of the Faltering Peace," February 2003.

[215] Iteka, "Recrutement des combatants du CNDD-FDD de Pierre Nkurunziza en province de Muyinga," July 14, 2003.

[216] Human Rights Watch interview, Bujumbura, June 9, 2003; and see above in cantonment section.

[217] Human Rights Watch interview, Brussels, July 15, 2003.

The child soldier was then sent to the Democratic Republic of Congo in a group of 250 combatants, including children who were, according to him, "just too little." Deployed "to help Kabila's army," he fought in the area around Uvira, an important town in South Kivu province. He tried to flee once because, he said, "I felt very tired and because they had lied, saying that when we got to power, we would have everything." He was captured by Mai-Mai, a Congolese armed group, who forced him to join them. Finally he was able to flee and returned to Burundi after three years in the DRC.

Sixteen years old and with no future plans, he knew nothing of the cantonment program for rebel combatants for which he might not have been eligible in any case since he was no longer an active part of the force. He said despairingly, "I left the FDD because we had nothing, but now I still have nothing." Recognizing that if he returned to the FDD ranks he would probably be punished, he added, "I could even decide to go back to them. My heart isn't in it, but I could try it anyway."[218]

Another sixteen-year old who served with the FDD in the DRC said that about half the combatants in his unit were children. He said,

> They told us that children were the best fighters. For example, if there was an attack, they would send us to stop the enemy advance. We were not afraid because we were all together and because they gave us special forms of protection. They weren't for everyone—diviners gave them only to those who were going to battle.[219]

This child, who also believed himself 'a good soldier now," had no idea what he and other FDD soldiers were supposed to be fighting for. He knew only that life was difficult, that the food was bad, that he was dressed in uniforms that were torn or in rags, that he was beaten, and that he slept outside. He said he was angry at 'the important leaders who are responsible for everything ; it is their war. I have friends my age who are dead."[220]

At the initiative of the Minister of Human Rights, the Burundian government in 2002 created the National Bureau for Demobilization and Reintegration of Child Soldiers to assist child combatants from the government armed forces, from the Guardians of the Peace, and from Ndayikengurukiye's FDD and Mugabarabona's FNL, the two rebel groups that had signed ceasefires with the government at the time the office was established. The National Bureau, charged also with helping prevent future recruitment of children for military service, has representatives at all major military camps in the

[218] Human Rights Watch interview, Bujumbura, June 13, 2003.

[219] Human Rights Watch interview, Uvira, November 5, 2003.

[220] Ibid.

country. Representatives from Ndayikengurukiye's FDD and Mugabarabona's FNL are based in its Bujumbura headquarters.

Although the two smaller rebel movements had joined the government and were supposedly participating in the work of the National Bureau, their leaders refused for months to allow twenty-seven children of their movements cantonned at the Muyange siteto return to their homes and civilian life. In mid-November Ndayikengurukiye finally gave permission for the children to leave the site, but Mugabarabona had not yet agreed to do so, despite pressure from the National Bureau and from UNICEF.[221]

IX. Displacement, Pillage, and Interference with Humanitarian Assistance

The war created misery for civilians as well as insecurity for the humanitarian workers who tried to help them. Even as the peace process was supposedly moving forward, ordinary Burundians were subject daily to violations of their rights and to conditions of the worst misery. As one despairing man said, "You know, it's every day that we are victims. Every day we are looted by soldiers and by rebels."[222]

Even as the cantonment site was receiving the first combatants, the FDD and government soldiers were fighting in the adjacent Kayanza province, forcing between 35,000 and 50,000 civilians to flee their homes. A week later, some 32,500 of these persons remained displaced, some of them hiding in marshes.[223]

Those who fled were generally too rushed or too frightened to take much with them. Many had no food or, if they had food, they had no utensils in which to cook it. They often had no clothes but what they were wearing and no blankets to cover themselves at night. With thousands spending cold nights outside without shelter or covers, cases of pneumonia and other respiratory diseases have increased.[224]

The people of Bubanza, province where the Muyange cantonment site is located, suffered greatly from the increased insecurity of the last few months. One man from Ruce, near the Kibira forest, said that he had not slept in his home since the month of April. "I used to go back during the day," he said, "but since the month of May, I don't dare do that either. I know eight people who went back to Ruce to harvest their fields, but seven of them were killed." Pointing to his tattered clothes, he explained that they were all that he had, having abandoned everything else that he owned in his flight. He warned that there would be a serious lack of food in his region in the coming months.

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[221] Human Rights Watch interviews, Bujumbura, September, 2003.

[222] Human Rights Watch interview, Bujumbura, June 7, 2003.

[223] Agence France Presse, "De 35,000 à 50,000 déplacés par les combats dans le nord du Burundi," June 23, 2003 and "Trois morts et 32,000 déplacés dans le nord du Burundi en une semaine," June 27, 2003.

[224] IRIN, "Burundi: WPP food relief for displaced civilians in Kayanza," June 26, 2003.

"Either we can't get to our fields to harvest them because of the insecurity or we find the crops destroyed by bombs and shells."[225]

The displaced people in this area, like those elsewhere in the country, denounced "daily and systematic pillaging by people in uniform." "Not a night passes that we don't hear gunfire," said one man bitterly.[226] Another commented, "What they didn't take the first time, they stole the second time they struck."[227]

Government troops sometimes warned civilians of impending military operations by firing in the air, but in some cases, they fired their arms when there was no enemy in the area. One man said:

> The soldiers often come with the pretext that there will be a rebel attack and shoot in the air to scare the people who then flee. The soldiers then loot everything in our houses. As for the rebels, they force us to give them contributions. Every day we are victims. We are the people forgotten by the capital of Bujumbura.[228]

Fighting between the FNL and the FDD forced nearly 50,000 persons to flee their homes in September 2003.[229] Families from the nearby zone of Mageyo and from the hills of Kirama, Gatebe, Kavia in Muramvya province spent the night at Kinama center in Bujumbura rural. Others hid in the banana plantations with no shelter from the downpours of the rainy season. There was nothing for them to do but wait the end of their misery, dependent on humanitarian aid for every meal. One described how the soldiers came to see what was happening on the hills but then did nothing about it. One woman said:

> We are in a situation where we don't know what to do. They are fighting right in the middle of us. We have to flee. It is the season to cultivate our fields and we are not cultivating. They have robbed us even to the point of taking our seeds. I see no future.[230]

Humanitarian workers are often unable to deliver food and services to the displaced and other needy people because of military activity in an area. Under article 18 of Protocol II, parties to an internal conflict must allow impartial humanitarian agencies to deliver food, medical supplies and other relief to civilian populations suffering undue hardship. At the time of the attack on Bujumbura, the World Food Program (WFP) was unable to

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[225] Human Rights Watch interview, Musenyi, province Bubanza, June 11, 2003.

[226] Human Rights Watch interview, Musenyi, province Bubanza, June 11, 2003.

[227] IRIN, "Civilians losing the war," May 14, 2003.

[228] Human Rights Watch interview, Bujumbura, June 7, 2003.

[229] IRIN, "Burundi: Rebel fighting displaces 47,500 civilians," September 25, 2003.

[230] Human Rights Watch interview, Kinama, Bujumbura rural, October 7, 2003.

dispatch food to Rutana, Ruyigi, Gitega, and parts of Bujumbura rural provinces where some 250,000 people depend on such aid to survive. [231] In a recent report, the WFP noted that in some cases "lack of government clearance" limited the humanitarian assistance that they could deliver.[232] In Ruyigi, where Human Rights Watch documented apparently unnecessary restrictions on humanitarian aid in January and February 2003, authorities still permitted only limited services in parts of the Moso region six months later. The WPF could not deliver food to some 21,165 persons in Nyabitsinda in May 2003. In some cases where military authorities opposed the delivery of assistance, humanitarian workers went into the areas at their own risk and found no evidence of military activity.[233]

X. Banditry

The nearly ten years of war, the deterioration of the economy, and the erosion of governmental authority have provided ideal conditions for the growth in banditry, now general throughout the country. All of these crimes—murders, rapes, ambushes on the road, looting of property, robberies, or kidnapping for ransom— have increased and contributed to the misery of the population.

In some cases, bandits operate in organized bands, like that of Eugène Bitaryumunyu mentioned above. These groups sometimes are associated with one rebel movement or another, combining common criminality with political objectives. As one victim commented about the rebel groups, "They have a lot of bad elements among them."[234] In some cases, the criminals who presented themselves as combatants were not in fact acting for the rebel movements. A group of bandits captured on the night of June 15 in Makamba, for example, admitted that they were only passing for FDD combatants.[235] In the case of the parliamentary member assassinated in Makamba, mentioned above, the FDD said the killers were not members of their movement but just criminals.[236]

Armed individuals sometimes strike alone or with one or two others. Some are or were members of the government armed forces or of the Guardians of the Peace; others were once rebel combatants. The common element is that they almost always had easy access to firearms and knew how to use them for their own profit. Firearms are easily available and relatively cheap, with an AK-47 assault rifle costing under $20.[237]

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[231] IRIN, "Burundi: UN agency steps up efforts to feed thousands of displaced civilians," July 18, 2003.

[232] Human Rights Watch, "Burundi: Civilians losing the war," May 14, 2003.

[233] Human Rights Watch interviews, Ruyigi, June 16 and 17, 2003.

[234] Human Rights Watch interview, Ruyigi, June 16, 2003.

[235] Iteka, "Un parlementaire tué dans une attaque à Makamba," June 16, 2003.

[236] CNDD-FDD, "Un depute de l'Uprona et un soldat tué à Makamba," June 23, 2003, consulted at their website www.Burundi-info.com.

[237] Human Rights Watch observation notes, meeting at the European parliament, July 9, 2003.

Victims often cannot or do not dare identify the perpetrators of these crimes. An elderly grandmother, met at a hospital where she was caring for her seven-year-old granddaughter, deplored the insecurity in which she and her neighbors lived. The father of the child had been accosted by an armed group as he was returning home one night. When he called for help, his family came out of the house. His wife, with a baby on her back, was killed by a spear to her neck. The seven-year-old was struck with a machete in the head and had been hospitalized with the wound for some three weeks. The grandmother did not dare give any details that might help identify the assailants but, like many victims elsewhere, she concluded that authorities did nothing to protect the people and nothing to investigate crimes.[238]

In some communities people have resorted to mob justice to avenge themselves on criminals. In one recent case in Butihinda commune, Muyinga province, a crowd caught two armed bandits who had just shot two people and beat them so badly that one of them died.[239]

XI. The Return of Refugees from Tanzania

The number of Burundian refugees returning from camps in western Tanzania increased markedly in May and June. Close to 5,000 from camps in Kibondo, Tanzania went back to Ruyigi and Makamba in the month of May alone, despite the continuing insecurity in those provinces.[240] Another 22,000 Burundian refugees returned from Tanzania in 2003 to northern Burundi, a region thought to be relatively safe until the past few months. At the same time, in the last year some 6,770 Burundian refugees have fled the continued conflict in Burundi to Tanzania, some 200 of them during May 2003.[241] Altogether some 100,000 refugees returned as part of a "voluntary repatriation" program from March 2002 to November 2003, but another 500,000 reportedly remained in Tanzania.[242]

Although Burundian politicians hailed the returns as proof of the success of the transition to a Hutu presidency, returning refugees interviewed along the road all told a Human Rights Watch researcher that they left because conditions of life had gotten worse in Tanzania. They said that Tanzanian authorities had forbidden them to leave the camps, a measure that cut the supplementary income that many had earned by cultivating fields for local farmers or by trading in local markets. The United Nations High Commissioner for Refugees (UNHCR) confirmed that these restrictions were put in place by the Tanzanian authorities, ending opportunities for refugees to cultivate

[238] Human Rights Watch interview, Ruyigi, June 16, 2003.

[239] Iteka, "Deux personnes tuées par les bandits armées en province de Muyinga," July 17, 2003.

[240] Human Rights Watch interview, Ruyigi, June 16, 2003.

[241] See UNHCR, Kibondo, "Returns to Burundi Rise Amid Fears of Pressure in Tanzanian Camps," June 2, 2003.

[242] "Malgré plusieurs mises en garde, le HCR considère que le moment est venu pour un rapatriement massif de réfugiés burundais," Arib News, November 8, 2003.

crops or engage in other activities to supplement their income within a four-mile radius of the camp.[243] According to one refugee interviewed by a Human Rights Watch researcher, "Those of us who dared to go out anyway were killed by Tanzanian soldiers and women were raped."[244] The food ration was reduced by 50 percent in January 2003, although in May it was restored to about 72 percent of what it had been.[245] This reduction may have resulted from real problems of food supply rather than from a political decision, but it nonetheless pushed more Burundians to think of going home.

In addition Tanzanian authorities reportedly held meetings in the camps to persuade people to leave. One father who had just walked a hundred miles in three days showed the swollen and injured feet of the young children who had accompanied him and said, "We were told that if we stayed, we would die."[246]

When refugees return under such conditions of coercion, the returns are involuntary and constitute a violation of fundamental norms of international customary law. As UNHCR has stated, "[t]he principle of voluntariness is the cornerstone of international protection with respect to the return of refugees…it follows directly from the principle of non-refoulement[247]: the involuntary return of refugees would in practice amount to refoulement."[248] UNHCR has gone on to note that

> Refugee repatriation is **not** voluntary when host country authorities deprive refugees of any real freedom of choice through outright

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[243] UNHCR, "Burundi: UNHCR Concerned over Voluntariness of Returns from Tanzania," Briefing Notes, June 3, 2003.

[244] Human Rights Watch interviews, on the road between Nyabitare and Gisuru, at Gisuru, and at Nyabitare, June 16, 2003.

[245] OCHA Mission Brief, Visit to Burundian cmps in Tanzania, June 6, 2003.

[246] Human Rights Watch interview, on the road between Nyabitare and Gisuru, June 16, 2003.

[247] Non-refoulement is the obligations of states not to return refugees to the frontiers of territories where their lives or freedom are under threat. International customary law is defined as the general and consistent practice of states followed by them out of a sense of legal obligation. That *nonrefoulement* is a norm of international customary law is well-established. See, e.g. Executive Committee (ExCom) Conclusion No. 17, Problems of Extradition Affecting Refugees, 1980; No. 25, General Conclusion on International Protection, 1982; *Encyclopedia of Public International Law*, Vol. 8, p. 456. UNHCR's ExCom stated that *nonrefoulement* was acquiring the character of a peremptory norm of international law, that is, a legal standard from which states are not permitted to derogate and which can only be modified by a subsequent norm of general international law having the same character. See ExCom Conclusion No. 25, General Conclusion on International Protection, 1982.

[248] UNHCR, Handbook on Voluntary Repatriation, 1996, p. 10. The Handbook states that voluntary returns require that "the positive pull-factors in the country of origin are an overriding element in the refugees' decision to return rather than possible push-factors in the host country or negative pull-factors, such as threats to property, in the home country." Also, returns should "take place in conditions of safety, dignity and security." This standard necessitates return "which takes place under conditions of legal safety…physical security…and material security. . . .[Returnees should be] treated with respect and full acceptance by their national authorities, including the full restoration of their rights." Although the Handbook is not binding international law, it provides a set of guidelines derived from international law by which the behavior of UNHCR and governments during repatriation may be judged. It is also based on several ExCom Conclusions, such as ExCom Conclusion No. 18 (1980), ExCom Conclusion No. 40 (1985), ExCom Conclusion No. 74 (1994), which reflect international human rights norms as well as interpretations of the Refugee Convention.

> coercion or measures such as, for example, reducing essential services...[249]

At a meeting in Geneva in late June, where a Human Rights Watch representative was present, a Tanzanian government official admitted that Tanzania had violated its nonrefoulement obligations by forcing the Burundians to return in May and early June, 2003, but said that "corrective measures have been taken."[250]

Despite the miserable condition of many of the returnees to Burundi, UNHCR provided them only with minimum humanitarian assistance, not with the full package of assistance that would help them through the first three months. Conditions in Ruyigi and other southern provinces were too insecure, they said, to justify an assisted repatriation, with the more extensive assistance that would trigger. They described the current wave of returns as "spontaneous repatriation," an accurate description in that the returns were not part of an "organized repatriation" by UNHCR.[251] But in the eyes of the returnees, they are coming back because they have no choice. UNHCR fears that providing a full package assistance would attract further returnees to areas currently too unstable to assure satisfactory reintegration, which is an understandable concern. At the same time, UNHCR itself has noted that its

> Responsibilities for refugee protection and assistance in voluntary repatriation are engaged regardless of whether refugees are returning in an "organized" manner under UNHCR auspices or "spontaneously" on their own.[252]

The National Commission for Rehabilitation of Victims of War (Commission Nationale de Réhabilitation des Sinistrés, CNRS), provided for in the Arusha Accords, is supposed to take charge of reintegrating returnees. Originally conceived of as an autonomous agency with decision-making powers, it was later subordinate to the Ministry of Reintegration, a measure that is likely to hinder its efficient functioning.[253]

The Pretoria Protocols of October and November 2003 may spur new, large-scale returns of refugees. Those who come, like those who have already returned, will find a country sunk in poverty and troubled by continuing insecurity. Most exhaust their meager food rations even before arriving back in communities that may be too fragile to absorb them. And the ultimate political and military problems that drove them to flee remain unresolved.

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[249] UNHCR, Handbook on Voluntary Repatriation, p. 42 (emphasis in original).

[250] Statement of the Government of Tanzania, UNHCR Standing Committee, Geneva, Switzerland, June 25, 2003 (notes on file with Human Rights Watch).

[251] UNHCR Handbook on Voluntary Repatriation distinguishes between organized and spontaneous repatriation at p. 23.

[252] UNHCR Repatriation Handbook, 1996, p. 23.

[253] Protocol IV, Article 4 of the Arusha Accords ; Agence Burundaise de Presse, "Clarification des limites de la Commission nationale de rehabilitation des sinistrés," June 26, 2003.

In a change in position apparently spurred by the signing of the Pretoria Protocols, the head of the UNHCR, Rudd Lubbers, called on November 7 for such a "massive repatriation" of Burundian refugees from Tanzania. The Burundian minister in charge of repatriation expressed the hope that UNHCR would now provide greater aid to facilitate this return.[254] Should sufficient aid not be forthcoming, a large-scale return risks destabilizing the communities that will be receiving the returnees.

XII. Justice

As victims of crimes frequently complained to Human Rights Watch researchers, police and judicial authorities have done little to bring perpetrators of crimes to justice. This is true for military authorities as for those in the civilian justice system. Soldiers accused of crimes have sometimes been transferred to other posts, as mentioned in cases above, but the accusations against them have not been investigated and sent to the appropriate judicial authorities.

In some cases angry victims, like those discussed above, believed there was no justice to be had but at their own hands and attacked those whom they believed responsible for crimes, whether military, rebel, or other civilians. A soldier recently killed a couple whom he held responsible for the death of a relative. The couple had been arrested and released because, so the soldier believed, they had bribed the authorities.[255] Although the number of such cases is not large, the slippage from public to private justice is significant because it symbolizes a potentially widespread loss of faith in the judicial system. If the provisional immunity described below serves to protect perpetrators of massacre, rape, and other abuses of the civilian population, Burundians can be expected to have even less respect for their system of justice.

Provisional Immunity

Driven by political pressure to ignore past crimes yet apparently anxious to demonstrate a commitment to a rule of law, the Burundian government pursues a zigzag course in the domain of justice, well illustrated by the provisional immunity article of the November 2 Pretoria Protocol.

This second measure was seen as necessary to enable these leaders to return to Burundi and participate in the transitional government specified in the accord. The law against genocide, war crimes, and crimes against humanity was passed in April 2003. By that time the leaders who were supposed to benefit from provisional immunity had already

[254] "Malgré plusieurs mises en garde, le HCR considère que le moment est venu pour un rapatriement massif de réfugiés burundais," Arib News, November 8, 2003.

[255] Iteka, "Un militaire se fait justice en tuant un couple à Ngozi", July 17, 2003.

returned home and enjoyed de facto protection from prosecution. The Transitional National Assembly nonetheless adopted a provisional immunity resolution in August 2003, apparently to honour a political deal between Hutu and Tutsi parties. The resolution guaranteed provisional immunity for alleged political crimes for a period of two years but specifically excluded any immunity for war crimes, crimes against humanity and genocide. As of early November, the senate had not yet acted on this resolution.

In the protocol signed November 2, the government of Burundi and the FDD agreed to grant provisional immunity to all leaders and combatants of CNDD-FDD and to all members of the government security services (meaning army, national police, and so on); to create a mixed commission to examine the cases of civilians currently in prison in order to determine that (not *if*) they will have the right to provisional immunity; and to support those parts of the Arusha Accord that promoted peace and reconciliation, that is, the articles concerning the creation of an international tribunal and a national commission of truth and reconciliation.[256]

These immunity measures were far broader than those adopted by the assembly in August: they specified no time limit for the immunity and they excluded no crime. In addition, with the November agreement there was no pretext of the action being necessary to facilitate the return of persons outside the country: members of the security services were necessarily resident in Burundi, those in prison were certainly in the country, and even the great majority of FDD leaders and combatants were inside the borders. And unlike the August measure that applied only to a limited number of leaders, the November guarantee covers all members of the FDD and the security services.

In 2001 the government established a mixed commission of international and national experts to examine the status of political prisoners, as called for in the Arusha Accord. Among other measures, the commission recommended the release of prisoners accused of political crimes, such as membership in armed groups. But many political prisoners remained in jail in November 2003 and the new commission agreed to in the Pretoria Protocol was meant to free them, as is shown by the language of the provision.[257]

According to one diplomatic source, the initiative for the immunity provision came from the FDD. The rebel movement reportedly insisted that protection from prosecution was a prerequisite to any settlement and must be extended to government forces as well in order to mask the origin of the initiative. Should this information be accurate, government officials accepted rather than demanded the immunity.[258]

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[256] Articles 2.1 through 2.4, Pretoria Protocol of November 2, 2003.

[257] Article 2.3 of the protocol says the commission is to study the cases of civilians currently in prison "in order to determine that they have the right to provisional immunity" (*afin de déterminer qu'ils auront droit à l'immunité proviso ire.*"

[258] Human Rights Watch interviews by telephone to Washington, D.C., November 5; Kigali, November 17, 2003..

The vague and open-ended language of the protocol may well serve to prevent prosecution of persons responsible for serious violations of international humanitarian and human rights law and hence in effect grant them amnesty for these crimes. Amnesties for certain political offences, such as taking up arms against the state or treason, are consistent with international law. Provision of amnesty for serious crimes under international law (including international humanitarian law),[259] crimes against humanity,[260] and genocide,[261] however, are in violation of a state's international legal obligations. At the very least, the guarantee of provisional immunity will delay—perhaps for many years—any delivery of justice for these crimes and will hinder the reconciliation that depends upon justice being done.

The Arusha Accords prohibit the national army from incorporating any members of the government forces or the rebel movements found guilty of genocide, coup d'états, violations of the constitution and violations of human rights and war crimes. This provision cannot be implemented so long as persons possibly guilty of these crimes are immune from prosecution.[262]

In the protocol, the Burundian government and the FDD gave a nod towards justice by professing support for an international tribunal, but it is extremely unlikely that such a tribunal would ever be established, as these political leaders must certainly know. While they support a truth and reconciliation commission, such a body would not serve the same purpose as criminal trials.

Responsible leaders inside and outside Burundi must seek to narrow as far as possible the effective immunity from prosecution granted by the protocol, both by restricting its duration and by insisting that it must not apply to serious violations of international humanitarian and human rights law. Should there be no effective action to limit this grant of immunity, combatants engaged in the ongoing war, whether government soldiers or rebels, will be encouraged to disregard international law whenever they find it useful to do so. Not only will the crimes detailed in this report go unpunished, but more such crimes will surely be committed.

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[259] Serious violations of article 3 common to the 1949 Geneva Conventions and Protocol II are crimes under international law and thus carry the obligation to extradite or to prosecute (*aut dedere aut judicare*). An amnesty that effectiuvely prohibits a state from fulfilling this obligation is contrary to international law.

[260] Protocol I to the Geneva Conventions states that in order to "avoid any doubt concerning the prosecution and trial of persons accused of war crimes or crimes against humanity" these persons should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law." Protocol I, art. 75.

[261] The Genocide Convention, article IV states: "Persons committing genocide or any of the acts enumerated in Article III shall be punished." Article V calls on the state to "provide effective penalties" for those found guilty of genocide. Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, entered into force Jan. 12, 1951.

[262] Arusha Accords, Protocol III, Article 14.1.e.

The Law Against Genocide, War Crimes and Crimes Against Humanity

In April 2003 Burundian legislators adopted a long-promised law against genocide, war crimes and crimes against humanity. Passage of the law marks a major step in this country that has seen large-scale ethnic slaughter in the past, but, like the provisions for immunity, the law may delay rather than speed justice. It is encumbered with a complicated mechanism that requires waiting for an international judicial commission of inquiry to examine crimes committed from 1962 until the date of promulgation of the law to determine if they constitute genocide, war crimes and crimes against humanity and, if it so determines, to refer these cases to an international tribunal. The law which was promulgated on May 8 provides also that national jurisdictions should try any crimes of this nature that may be committed in the future and specifies that these jurisdictions should be "staffed with regard to ethnic balance," a standard which is both vague and, given the relative lack of Hutu jurists, probably unworkable in the immediate future. The death penalty could be applied to those found guilty, in contravention of prevailing international norms and the practice of existing international tribunals.

The Rome Treaty

Continuing its attention to justice, the national assembly in April adopted a law for ratification of the Rome Treaty establishing the International Criminal Court (ICC). During the debate assembly deputies did not discuss whether the government intended to make use of Article 124 of the statute which permits states adhering to the treaty to prevent consideration by the ICC of any war crimes committed by their armed forces for a period of seven years. The senate scheduled consideration of the Rome Treaty in June but postponed the discussion several times before taking it up on June 18 and 19. The senators hotly debated Article 124 after the minister of foreign relations insisted that it would be applied in case of ratification. In the end the government simply withdrew the question of the Rome Treaty from consideration.[263]

Because the senate failed to take a decision on the proposal to ratify the Rome Treaty within the time period specified by law, the measure was considered approved by both houses of the legislature. To ensure that he was acting within the law, the president of the assembly asked the Constitutional Court if he was authorized to send the law on to the president of the republic for signature and promulgation and was told that he could.

[263] Human Rights Watch interviews, Bujumbura, June 18, 19, 20 June, 2003; Iteka, "Les sénateurs s'opposent unanimement à la ratification du statut de Rome assorti d'une declaration du gouvernement se rapportant à l'article 124," June 20, 2003.

Although forwarded to the president in August, the law had not been promulgated as of early November. Nor has either legislative chamber reconsidered the question of the use of Article 124. Having moved initially in the direction of international justice, the government finally backed away from accepting accountability for its citizens and military officers, reinforcing the message delivered by the Pretoria Protocol that it was ready to leave the gravest kinds of crimes unpunished.[264]

Judicial Reform

Since 1999 the Ministry of Justice has been engaged in an effort to reform the legal, judicial, and prison system. One of the most important measures, a law passed on September 22, increased nearly six-fold the number of courts able to judge crimes punishable by the death penalty or life imprisonment. The law granted competence in such cases to the seventeen Tribunaux de Grande Instance; previously only the criminal chambers of the three appeals courts could judge them. Promulgated in October and effective immediately, this law specifies—as does the law on genocide—that the benches of judges must be ethnically balanced but adds also the requirement of balance by gender. It specifies that cases now before the three criminal chambers be immediately transferred "in their current state" to the new jurisdictions. The increased number of jurisdictions should certainly speed up the pace of trials and help to reduce the backlog of detainees awaiting trial. The reform also creates the appellate jurisdiction previously missing because the appeals courts were also judging criminal cases. These important advances may be temporarily counterbalanced by the difficulties of recruiting and training magistrates and re-assigning cases currently in trial.[265]

Other reforms are still being debated, including a law on judicial competence that would shift cases of members of the armed forces accused of common law crimes from military to civilian jurisdiction and another increasing the number of offices of the military justice system and decentralizing its work.[266]

Military Justice

Military courts have done little to render justice for military crimes against civilians. In February 2003 the war council (military court) of Kayanza, sitting at Ngozi, found two officers accused of leading the massacre of 173 civilians at Itaba in September 2002 guilty only of failure to follow orders. They were sentenced to just four months of prison and since they had already been detained for five months, they were released and

[264] Human Rights Watch interviews, June 18, 19, 20 and September 3, 2003.

[265] Loi 1/015, September 9, 2003 attributing competence to the Tribunaux de Grande Instance in criminal matters, article 3.

[266] Human Rights Watch interview with the military prosecutor, Lieutenant-Colonel Kiziba, Bujumbura, June 5, 2003.

restored to their ranks. After considerable international criticism for this leniency, the Chief prosecutor of the Republic Gerard Ngendabanka took over the case and ordered new inquiries. Apparently no victims were questioned in the course of the summary investigation done by military authorities.[267] Faced with the prospect of having to re-examine the case, military justice authorities sought procedural pretexts for not doing so.[268]

Military authorities have made little progress investigating the massacre documented by Human Rights Watch of at least thirty-two and probably many more civilians by government soldiers at Mwegereza, Gisuru commune, Ruyigi on January 19, 2003.[269] The commander of Ruyigi district showed a Human Rights Watch researcher accounts of several interrogations he had done about the event but he had not transmitted those documents to the military prosecutor, taking the position that there had been no massacre.[270]

Breakthrough in an Important Case of Murder and Corruption

In late October 2003 judicial authorities arrested four high-ranking officials for the November 2001 murder of Dr. Kassi Manlan, head of the World Health Organization (WHO) in Burundi. The four included a commander of the national police, a commander of the traffic police, a deputy administrator of the immigration police, and an official in the government intelligence service. Several persons were arrested soon after the crime was committed and have been brought totrial, but it had long been rumored that important authorities were implicated in this complex case that apparently involved very lucrative contracts for the importation of medicines.[271] At his trial in May and June one of the earlier accused, Jean Pol Bukeyemeza, wanted to present information about the organizers of the crime. The court refused to allow him to make a statement publicly but did allow him to place a written version in the case file.[272] The recent decision of the prosecutor to arrest police commanders and other officials of high standing marks a welcome development in the case.

The Judges' Strike

During September and October, Burundian judges went on strike for fifty days, attempting to secure better pay and working conditions and to assure their independence

[267] Human Rights Watch interview with the Chief Prosecutor of the Republic Gerard Ngendabanka June 5, 2003

[268] Human Rights Watch interview with a military prosecutor, Bujumbura, September 5, 2003.

[269] Human Rights Watch, "Burundi: Civilians Pay the Prince of Faltering Peace," February 2003.

[270] Human Rights Watch interview with the Commandant of Ruyigi district, Ruyigi, June 17, 2003.

[271] Agence France Press, "Assassinat du répresentant de l'OMS au Burundi: procès rapporté au 22 septembre," July 22, 2003.

[272] Human Rights Watch interview with Dêo Suzuguye, General Director of Prisons, Bujumbura, June 19, 2003.

from the executive. The judges complained that they were not fully consulted about reforms affecting their work and that some judges were reassigned to other posts as punishment rather than for clear and convincing reasons. Their strike stopped trials, led to seriously overcrowded lockups, and obliged police to send detainees to prison without the magistrate's warrant required by Burundian law.[273]

In addition to the institutional reforms described above, the judges—most of whom are Tutsi and male-- are facing the changes required to make their ranks more ethnically balanced, as required by the Arusha Accord, and for at least some chambers, more balanced by gender as well.

XIII. The International Community

International actors have long been impatient for an end to war in Burundi. Their general preference for stability is heightened in this case by the ever-present shadow of the genocide in Rwanda—demographically a near match to Burundi, though with a very different history—and by the awareness of past large-scale killings on an ethnic basis in Burundi itself.[274] Yet they hope to arrive at peace with minimal investment of resources and most balked even at paying for the troops provided by African countries. Quick to condemn violations of international law, donor governments and international organizations nonetheless accepted without protest a virtual amnesty for such crimes in exchange for an agreement that may last no longer than previous ones.

The United Nations

The Security Council

When the Arusha Accords were signed, the United Nations was expected to play a leading role in the peace process, both by providing a peacekeeping force and by helping to deliver justice through an international commission of inquiry and probably an international tribunal. Unwilling to provide troops for what looked to be a risky, costly and probably lengthy operation, the UN handed over responsibility for peacekeeping to the African Union, at least for the immediate future. Virtually certain not to establish an international tribunal, the Security Council dithered even over creating the international commission of inquiry meant to establish whether the crimes committed in Burundi after 1962 constituted genocide, war crimes, and crimes against humanity. The council in effect ignored a formal request for such a commission from the Burundian government in July 2002 and was prodded into action only by the insistence of all the Burundian parties who met a Security Council delegation visiting the country in June 2003. But by early November 2003, the Security Council members had not yet agreed on the terms of

[273] IRIN, Burundi: "Judges strike for greater authority, better work conditions," September 1, 2003; IRIN, Burundi: "Judges resume work after fifty-day strike," October 22, 2003.

[274] Human Rights Watch interview, Brussels, March 6, 2003.

reference for a preliminary assessment mission that would evaluate the feasibility of a commission of inquiry, far less decided on a deadline for submission of its report.[275] The establishment of the commission of investigation, the execution of its delicate task of gathering and analysing evidence will necessarily take many months. By agreeing to provisional immunity, the signatories to the Pretoria Protocol showed that they could not be relied on to deliver justice for all the horrendous crimes committed in recent years. The burden on the international community to ensure justice and to do so promptly is all the greater. Unless the Security Council gives priority to the investigatory commission and any ensuing forms of judicial action that it recommends, Burundians will be left with only their grief and their anger, fertile ground for spawning new conflict.

The U.N. High Commissioner for Human Rights

The U.N. High Commissioner for Human Rights, the late Sergio Viera de Mello, went to Burundi in March and underlined the importance of ending impunity for serious violations of international humanitarian law. He said, "All who commit particularly grave human rights violations should remember that justice will be done, even if that takes time."[276] The special rapporteur for Burundi, who often denounced violations in the past, visited Burundi in May and made her own inquiries into the killings at Kabezi.

The field office of the High Commissioner, long present in Burundi, did not regularly publish reports of its work. It recently began publishing reports of its activities as part of a general quarterly report issued by the High Commissioner. This new practice may help draw more attention to critical human rights problems.

The Implementation Monitoring Commission

Initially relatively inactive, the IMC began to play a more visible role in October 2003. It strongly criticized the Burundian government for "lack of political will" in failing to implement the recommendations of the international expert commission report of 2002, including the release of political prisoners, the provisional release of persons detained longer than six years, the paroling of persons who had served more than one-quarter of their sentences, and the release of those detained in irregular circumstances, the elderly and those seriously ill. The IMC also urged all parties to the conflict to protect civilians in accord with international law. It insisted that the parties also meet their obligations to provide the JCC with figures on the size of their forces so that planning for demobilization could proceed.[277]

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[275] Human Rights Watch interviews with several members of the Security Council, Bujumbura, June 12 and 13, 2003; interviews by telephone to New York and Washington, October 30, 2003.

[276] Radio Isangiro, news broadcast, March 3, 2003; IRIN, "UN Rights Commissioner urges implementation of peace agreement," March 4, 2003.

[277] IRIN, "IMC slams detention of political prisoners, poor prison conditions," October 7, 2003.

The African Union and the Regional Actors

Under the leadership of South Africa, the African Union transformed the already existing South African force in Burundi for the protection of politicians into a larger peacekeeping force. The United States and the United Kingdom provided more than $6 million each to assist in the deployment of Ethiopian and Mozambican troops for the AMIB force and the European Commission has pledged to deliver some $25 million if other donors can be found to give enough to make the force operational. At the beginning of November 2003 no other donors had come forward, leaving the AMIB force with at most $37 million at its disposal out of a total budget of $120 million. [278]

South Africa also took the lead in carrying forward negotiations that resulted in the Pretoria Protocols. Deputy President Jacob Zuma, the primary facilitator, expressed satisfaction with the results of the negotiation, saying "This is an agreement you can defend, own, and implement."[279] He made no mention of the provisional immunity granted to forces for crimes committed during the war. South Africa had been facing major expenses for its troops in Burundi and, with no expectation of outside assistance, foresaw a continuing drain on its resources until a peace deal was struck. With the official end to combat between the government and the FDD, the South African foreign minister promptly contacted UN Security Council members to ask them to take over peace-keeping responsibilities in Burundi.[280]

Multilateral Donors

In their eagerness for peace, donors accepted the façade of the peace process without openly dealing with the many signs of continuing combat. The result was that the Burundian government reaped some of the rewards of peace even as it fought the war. The World Bank provided U.S. $650,000 for cantonment in anticipation of the multi-country demobilization program and without any effective national plan for demobilization being ready. Stating that Burundi had been moving towards political normalcy since the conclusion of the Arusha Agreement, the International Monetary Fund in May provided US $13 million as the second part of its "post-conflict" assistance--even though the war continued.[281]

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[278] Human Rights Watch interview, Bujumbura, September 4, 2003.

[279] Xinhuanet, "Burundi peace agreement signed in S. Africa, November 2, 2003.

[280] Reuters, "Burundi says signs final peace deal with rebels," November 3, 2003; News24SA, "SA troops in Burundi 'costly,'" November 2, 2003.

[281] International Monetary Fund, Press Release, "IMF Approves US$13 Million in Post-Conflict Emergency Assistance to Burundi," May 5, 2003; Human Rights Watch interview with representative of the World Bank, Bujumbura, June 19, 2003.

The European Union

The EU funded several initiatives meant to further the peace process but that produced little real progress. In December 2002 it supplied funds to pay for the distribution of food to FDD combatants as a way of supporting the apparent progress made with the early December ceasefire agreement. The distribution program was disrupted by resumed combat and finally was criticized even by the Burundian military who had originally favored it. The EU also paid for the forty-six observers of the AMIB who arrived in February 2002, but the mandate of the observers was not clear—human rights, in any case, were not included—and the observers remained confined to urban centers because of security problems.

A European Parliament delegation in June 2003 remarked that cantonment seemed not to be working advised that funds from the Fonds Européen de Développement be used to pay part of the cost of the AMIB, and suggested that closer control of the arms traffic was needed, as was greater pressure on the rebel groups to disarm.

Quick to deplore civilian casualties from combat, the EU at the time of the attack on Bujumbura exhorted all belligerents to "ensure the security of the population that has already suffered too much."[282] It also firmly denounced the Itaba massacre of September 2002 although its later criticism of the sham trial of officers accused of leading this massacre was neither prompt nor strong.[283] As of mid-November, the EU had made no comment on the provisional immunity guaranteed by the Pretoria Protocols.

The United States

The United States provided relatively little monetary aid to Burundi in recent years, but did contribute some $6 million to equipping the Ethiopian soldiers in AMIB. The U.S. ambassador in Bujumbura was active in promoting negotiations between the belligerent parties and one State Department official said the U.S. was extremely satisfied with the Pretoria Protocol. The U.S. made no public comment on its provision of temporary immunity from prosecution for war crimes. According to the State Department official, this provision was seen as "necessary for the greater good" of ending combat between the FDD and the Burundian government.[284]

This readiness to accept provisional immunity without comment contrasts with the promptness of U.S. criticism of the sadly inadequate trial of the military officers accused in the Itaba case. In February 2003 the US embassy in Bujumbura issued a statement expressing "great disappointment" at the "failure" of the Transitional Government to punish those responsible for this massacre.[285]

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[282] European Union, Declaration of the Presidency, July 10, 2003.

[283] European Union, Declaration of the Presidency, September 25, 2002 and March 6, 2003.

[284] Human Rights Watch interview by telephone to Washington, D.C., November 5, 2003.

[285] Embassy of the United States in Bujumbura, Press release, February 26, 2003.

XIV. Conclusion

The Pretoria Protocol may end combat between the FDD and the Burundian government, but the FNL has affirmed its determination to continue fighting a government that it defines as Tutsi. Opposition to the protocol comes also from radical Tutsi: the militia Puissance Auto-défense Amasekanya denounced the agreement as "a diabolical plan for exterminating the Tutsi."[286] As combat continues between the Hutu FNL and the government at the expense of the "everyday victims, ", all parties will have in mind the provisional immunity guaranteed by the Pretoria Protocol. All will know that even if not already protected by existing immunity, they can insist on obtaining it in any future negotiations. None will have to fear punishment for crimes committed except in the distant future—and probably not even then.

Acknowledgements

This report was written by Caroline Sculier, researcher in the Africa division; and edited by Alison Des Forges, senior adviser in the Africa division; and Iain Levine, program director. It was reviewed also by James Ross, legal counsel. Jeff Scott and Floriane Begasse, associates in the Africa division; Andrea Holley, manager for outreach and public education; Veronica Matushaj, photo editor and associate director in creative services; and Christine Lillie provided coordination and production assistance.

Human Rights Watch recognizes with appreciation funding for work on Burundi from ACT Netherlands, a joint project of Kerkinactie and ICCO, and Misereor.

[286] Agence France Presse, "Une organization radicale tutsi dit non à l'accord de Pretoria," November 4, 2003.