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## **Burundi: Missteps at a Crucial Moment**

### **A Human Rights Watch Report November 4, 2005**

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## **Summary**

After years of brutal civil war, Burundi installed its first democratically elected government in twelve years in August 2005. Upon taking office the new president, Pierre Nkurunziza, who also heads the former rebel movement the National Council for the Defense of Democracy—Forces for the Defense of Democracy (CNDD-FDD), promised to protect human rights and to establish the rule of law. In the past few months the last remaining rebel group, the National Liberation Forces (FNL), led by Agathon Rwasa, appeared ready to negotiate an end to war.

Just at this moment of fresh beginnings and new hope, Burundian soldiers and intelligence agents have summarily executed and tortured civilians and suspected rebels, calling into question the assurances of human rights protection given by the new government. While government soldiers and officials seemed readier to abide by the law in areas where the CNDD-FDD had strong support, they persisted in abuse of persons in the area of FNL strength in and around the capital, Bujumbura, as they have done for the past decade.

FNL forces also assassinated local government officials and those associated with the CNDD-FDD, as they had in the past. They also continued to force civilians to contribute food, money, and other goods.

Generally pleased with the smooth transition to the newly-elected government, many representatives of embassies and international agencies have focused on hopes that the new authorities will protect human rights, and have said nothing publicly about the new wave of abuses. Others, including representatives of the human rights division of the United Nations Operation in Burundi (ONUB, the U.N. peacekeeping mission), have documented these abuses and reacted promptly, asking for meetings with government officials and members of the diplomatic community.

Should the escalation of FNL attacks on civilians and summary executions, torture and other abuses by government soldiers and officials continue, the early hopes for improved protection of human rights under the new government will soon be extinguished.

## **Context**

## **The 2005 elections**

Elections in 2005 were the final chapter in the transitional process established by the Arusha Accords of 2000. In the intervening period a government including the Hutu-dominated Front for Democracy in Burundi (Frodebu), the Tutsi-dominated National Unity and Progress Party (Uprona), and a number of smaller parties ruled the country. In late 2003 this government signed the Pretoria Protocol making peace with the CNDD-FDD and starting the process of integrating the former rebels into the army and the administration.

The FNL rejected the peace agreement and continued to fight government forces, which after early 2005 included former FDD combatants and became known as the Forces of National Defense (FDN).<sup>1</sup> Fighting was mostly located in the provinces around Bujumbura, where civilians suffered abuses by all parties to the conflict.<sup>2</sup>

In March 2005, after many delays, a new constitution passed by referendum, with over 90 percent of the population in favor. The constitution assures 60 percent of seats in the National Assembly (the lower house of parliament) to Hutu, the majority ethnic group in Burundi, and 40 percent to Tutsi, who constitute about 15 percent of the population, and also reserves 30 percent of seats for women and three seats for the Twa ethnic group (which forms less than one percent of the population).<sup>3</sup> The seats in the upper house of parliament, the Senate, are divided equally between the Hutu and Tutsi, on the basis of indirect election. The President is elected indirectly, by the two chambers of parliament.

In appointing the government cabinet positions, the President allocates posts also according to a formula of 60 percent Hutu and 40 percent Tutsi. Additionally, any party that wins at least five percent of the vote in the National Assembly elections must be granted cabinet positions in proportion to the percentage of National Assembly seats it won.<sup>4</sup> Military posts are divided equally between the two ethnicities.

The FNL signed a ceasefire with the government on May 15, 2005, just before the scheduled beginning of local administration elections (the first in a series of electoral

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<sup>1</sup> The FDD is the military arm of the CNDD-FDD.

<sup>2</sup> See "Everyday Victims: Civilians in the Burundian War," *A Human Rights Watch Report*, December 2003, Vol. 15, No. 20 (A).

<sup>3</sup> In the direct National Assembly elections held on July 4, competition was for 100 seats. In order to ensure the 60-40 percent ethnic split, the 30 percent quota for women, and the Twa representation, a further 18 members were co-opted after the elections.

<sup>4</sup> Constitution of Burundi, 2005, article 129.

processes held between June and September), raising hopes for peace. But both rebel and government forces quickly violated the ceasefire and they skirmished intermittently during the election period. In some areas, FNL supporters were said to have made temporary political alliances with Frodebu members.

The CNDD-FDD won the 2005 National Assembly and local administrative elections, and Nkurunziza ran unopposed in the indirect election for the presidency. The CNDD-FDD failed, however, to obtain a sufficiently large parliamentary bloc to be able to force amendments to the constitution. Frodebu won about 25 percent and Uprona about 13 percent of the National Assembly seats. Once the new government was announced, both Frodebu and Uprona complained that they had received too few positions, but no changes were made.<sup>5</sup>

In the face of continuing armed hostilities with the FNL, President Nkurunziza threatened the rebels with “serious consequences” if they did not begin peace talks by the end of October.<sup>6</sup>

### ***Power struggle inside the FNL***

The FNL has always rejected rule by a government dominated by Tutsi, but there was hope that with Nkurunziza, a Hutu, as president and the CNDD-FDD—largely Hutu in membership—in control, the FNL would be more open to peace talks. Repeated FNL promises to negotiate with the government, however, have come to nothing.<sup>7</sup>

In mid-September 2005 ninety-three people claiming to be members of the FNL denounced their leader Agathon Rwasa for not really wanting peace. In a letter to the Special Representative of the U.N. Secretary-General for Burundi, Carolyn McAskie, they wrote:

When Rwasa tells Burundians and the international community that he will start negotiations, we who are in meetings led by the secretary general of the FNL, Jonas Nshimirimana, are told that the negotiations

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<sup>5</sup> Agence Burundaise de Presse, “Deux partis dénoncent leur sous-représentation dans le gouvernement,” September 1, 2005.

<sup>6</sup> IRIN, “Rwasa expelled as FNL leader,” October 12, 2005.

<sup>7</sup> BBC Monitoring Africa, “Burundi rebel spokesman says group ready to negotiate,” September 18, 2005; and IRIN, “Rebels Willing to Negotiate Peace, But Only with Ethnic Leaders,” September 15, 2005.

will serve nothing, that we must continue combat and take the country by force.<sup>8</sup>

Signatories to the letter said that they were ready to begin negotiations. Soon afterwards, seven members of the group were reported to have been killed, apparently on the orders of Rwaswa or others of his group.<sup>9</sup> In early October the surviving signatories, joined by some one hundred others, supposedly met in Muyira, Kanyosha commune, and suspended Rwaswa and his immediate circle. They chose former FNL Vice-President Jean-Bosco Sindayigaya to be president of a new FNL council to decide the future of the movement and consider peace negotiations with the government.<sup>10</sup>

### **Abuses by the FNL since the Establishment of the New Government**

The Muyira meeting notwithstanding, continuing skirmishes during October seem to indicate that an important part of the FNL, if not the majority, continues to follow Rwaswa's command and control.<sup>11</sup> FNL combatants have even sought to move the hostilities southward from provinces near the capital (Bujumbura-rurale, Cibitoke, Bubanza and Kayanza) to Makamba province and to Rumonge commune, Bururi province.<sup>12</sup>

As in the past, FNL combatants targeted officials and others they believed to be linked to the government. According to local witnesses, the FNL are known to decapitate victims and/or sever limbs and leave corpses in public places. This is thought to be a warning to those in the community that they should not cooperate with the government forces.<sup>13</sup> Local witnesses and military officials also state that the FNL occasionally leave

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<sup>8</sup> Letter to SRSRG Carolyn McAskie, ONUB, and Ambassador Mamadou Bah, African Union, by Abanamarimwe et l'arme du FNL, September 25, 2005. Original in Kirundi, on file with Human Rights Watch.

<sup>9</sup> Human Rights Watch interview, Bujumbura, October 11, 2005; and Umuco, "Au FNL-Palipehutu, Rwaswa retourne le fusil contre ses opposants," October 3, 2005.

<sup>10</sup> Human Rights Watch interview, Bujumbura, October 11, 2005; and "Procès verbale de l'assemblée générale constituante des membres et fondateurs de Palipehutu-FNL qui s'est déroulée à Muyira," Bujumbura, October 8, 2005, [online]

<sup>11</sup> Human Rights Watch interviews, Bujumbura, October 11, 2005, and Kanyosha commune, Bujumbura-rurale province, October 14, 2005.

<sup>12</sup> Agence Burundaise de Presse, "Assassinat du chef de secteur de Muhuzu en commune Rumonge," November 2, 2005, and Agence Burundaise de Presse, "La sécurité reste une préoccupation permanente des autorités," October 11, 2005.

<sup>13</sup> Human Rights Watch interview, Bujumbura-rurale province, October 28, 2005.

written messages nearby corpses, which state that those who help or support the government will be treated similarly.<sup>14</sup>

In Musugi hill, Kanyosha commune, Bujumbura-rurale province, local witnesses report that the FNL killed two civilians who lived near a military position and had worked collecting food and water for the soldiers. Both were found decapitated on October 26.<sup>15</sup> According to government officials, Laurent Ntibarushatse, an elected hill-level leader from Gitenga, Kabezi commune in the same province, was killed by the FNL on October 28.<sup>16</sup> Arthémon Ntahondereye, a local official in Kanyosha commune, was found dead on Buhina hill on October 7, with one of his arms severed. Local witnesses believe that the FNL combatants assassinated him.<sup>17</sup> Military officials report that six people in the same family were killed by the FNL in Mutambu commune, Bujumbura Rural Province on the night of October 30.<sup>18</sup> In other killings attributed to the FNL, a candidate running for councilor in hill-level elections was killed with two members of his family on September 22 in Mugina commune, Cibitoke province, and five civilians—several of them demobilized FDD combatants—were killed in Bubanza province in late September.<sup>19</sup> Human Rights Watch could not independently verify that the FNL were responsible for all of these killings.

FNL combatants also reportedly burned homes in four different communities in Kayanza province and stole cows, goats, and household goods in early October. They are also accused of injuring six people in an ambush and stealing their property. According to press accounts, witnesses said that most of the perpetrators were under 18 years old.<sup>20</sup>

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<sup>14</sup> Human Rights Watch interview, Kanyosha Commune, Bujumbura-rurale province, October 28, and Bujumbura, October 31, 2005.

<sup>15</sup> Human Rights Watch interviews, Kanyosha commune, Bujumbura-rurale province, October 28, and Bujumbura, October 29, 2005.

<sup>16</sup> Human Rights Watch interview, Bujumbura-rurale province, October 31, 2005.

<sup>17</sup> Human Rights Watch interview, Kanyosha commune, Bujumbura-rurale province, October 14, 2005.

<sup>18</sup> Human Rights Watch interview, Bujumbura, October 31, 2005.

<sup>19</sup> Agence Burundaise de Presse, "Les Burundais ont voté sans passion pour les conseils de collines," September 24, 2005; and BBC Monitoring Africa, "Burundi: Rebels said targeting demobilized, forcing contributions," September 29, 2005. According to Ligue Iteka, the Burundian human rights association, FNL combatants have killed some twenty civilians since early September.

<sup>20</sup> Agence Burundaise de Presse, "Six personnes blessées dans une embuscade sur la route Bukeye-Matongo," October 3, 2005.

## **Abuses by Government Forces Under the New Government**

Since the installation of the new government, the conduct of military and police forces towards civilians has improved in those areas of the country where the CNDD-FDD has won political control, but not in regions where the FNL is active or where Frodebu continues to show political strength.

In Ruyigi province, where the CNDD-FDD won by a large margin, local residents told Human Rights Watch researchers that killings of civilians have declined, but that soldiers and police still commit such abuses as rape and armed robbery.<sup>21</sup> They remark, however, that military officials have taken such abuses more seriously than before. In one case they quickly located and arrested two of three armed men who in September robbed the office of a government microfinance project in Nyabitsinda commune; the two, who were FDN soldiers, are currently awaiting trial in Gitega prison.<sup>22</sup>

In another case in October, a father who found a police officer raping his four-year-old daughter was helped by the Office of the Judicial Police to get medical attention for his child. The perpetrator was jailed, although he managed to escape shortly after, allegedly with assistance from a guard.<sup>23</sup> Police then imprisoned that guard. The Brigade Commander, angry at the escape, told Human Rights Watch researchers that he was seeking the assistance of officials throughout the region to apprehend the man.<sup>24</sup>

In Bubanza province and other regions where some residents support the FNL, authorities are less quick to respond to complaints of abuses by soldiers and police. In Gihanga commune, a woman was dragged from her house during the night of September 13 and raped by a uniformed police officer, who had forced her husband to the ground at gun point.<sup>25</sup> With the belt he left behind as evidence and knowing his name and service number, she complained to the local judicial police, but the perpetrator has not been arrested and is still seen in the neighborhood. Officials told her husband that he should “make peace and reconcile.”<sup>26</sup>

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<sup>21</sup> Human Rights Watch interview, Ruyigi province, October 6, 2005.

<sup>22</sup> Human Rights Watch interviews, Ruyigi province, October 6, 2005, and Gitega prison, Gitega province, October 8, 2005.

<sup>23</sup> Human Rights Watch interview, Ruyigi province, October 8, 2005.

<sup>24</sup> Human Rights Watch interview with the Commander of the Brigade in Ruyigi, Ruyigi province, October 8, 2005.

<sup>25</sup> Human Rights Watch interview, Bubanza province, October 3, 2005.

<sup>26</sup> Human Rights Watch interview, Bubanza province, October 3, 2005.

In Nyabiraba commune, Bujumbura-rurale, drunken soldiers shot and killed two civilians for no apparent reason on October 7. A witness who saw the two soldiers walking uphill returning to their post from a bar told a Human Rights Watch researcher:

I heard a lot of shooting suddenly. The rebels never come here because it is too close to the military position. But when I saw the soldiers, I realized that they were drunk. The bullets were only coming in one direction. They must have just been shooting into the air as they walked up the hill.<sup>27</sup>

Families of the two victims have written letters of complaint to judicial authorities but with no result to date. A local administrative official commented on the case:

Human rights are not respected here. Some of the problems with the war have ended and the situation was better for a while, but now it's getting worse again. There have been a lot of deaths recently. . . People complain about the soldiers a lot but the soldiers don't understand that they cannot mistreat the population. People complain to the judicial authorities, but the case drags on and nothing happens. I don't think that they have ever investigated a case brought against the soldiers here.<sup>28</sup>

### ***Abuses by government soldiers against suspected FNL collaborators***

In parts of Bujumbura and Bujumbura-rurale, the FNL frequently coerce local people to supply them with food, money, and other goods.<sup>29</sup> Government soldiers generally regard all who provide such support as being FNL collaborators, regardless of whether the contribution was voluntary or coerced. They often assume that those who have given support also hide FNL combatants or assist them in other ways.

On October 1, FDN forces on patrol from several posts in Kanyosha commune, including Kanyosha, Nyamaboko and Kibazo, caught a man they suspected of being an FNL combatant. Apparently relying on information he provided, soldiers forcibly

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<sup>27</sup> Human Rights Watch interview, Bubanza province, October 18, 2005.

<sup>28</sup> Human Rights Watch interview, Nyabiraba commune, Bujumbura-rurale province, October 18, 2005.

<sup>29</sup> Human Rights Watch interview, Kanyosha commune, Bujumbura-rurale province, October 17, 2005. See also "Everyday Victims, Civilians in the Burundian War," *A Human Rights Watch Report*, December 2003, Vol. 15, No. 20 (A), and "Emptying the Hills: Regroupment in Burundi," *A Human Rights Watch Report*, July 2000, Vol. 12, No. 4 (A), page 27.

entered one household. Some took away the father of the family, who was detained at Kanyosha brigade overnight, and was severely beaten.<sup>30</sup> Other soldiers took twenty-three-year-old Celestin Nimuboma, who worked as a messenger at the prosecutor's office, outside the house. Inside the home, soldiers tore down a wall, saying they were looking for hidden combatants or arms. Finding nothing, one of the soldiers grabbed an elderly woman, threw her to the ground, and shouted at her, "Where are the FNL? You are old, so you should know better than to lie to us!"<sup>31</sup> He then threatened her with a bayonet at her throat.<sup>32</sup> After robbing the family of all the money in the house, the soldiers left to continue their patrol. Family members then discovered the dead body of Nimuboma outside the house. According to a witness:

He was very beaten and bloody. I think that his arms and legs were broken, and he had been shot so that the back of his head was gone.<sup>33</sup>

That same day FDN soldiers surrounded the home of Venant Sindiwenumwe, a mason and father of seven children. According to people in the vicinity, soldiers beat Sindiwenumwe and his fifteen-year-old son Yves Havyarimana, who had just begun a new year at school, and forced them to go down to the edge of a nearby river. There they shot the father and son in the back of the head.<sup>34</sup> They also executed Stanislas Butoyi, a thirty-year-old fisherman who happened to be visiting in the neighborhood.

As part of normal military operations, soldiers from the groups apparently involved in these killings were transferred to other posts within three weeks of the crimes, making it more difficult for complaints to be pursued against them.<sup>35</sup>

In another incident on October 4, FDN soldiers stopped a young student, Jean-Marie-Vianney Nkezuobagira, in Kanyosha, while he was returning from Bujumbura where he had bought supplies for the new school year.<sup>36</sup> Nkezuobagira had recently returned to Burundi after years in the refugee camps of Tanzania where he had attended school in Kasuru. When soldiers realized that he was not a native of Kanyosha, they accused him of being a member of the FNL.<sup>37</sup> They took him to a nearby military position where

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<sup>30</sup> Human Rights Watch interview, Kanyosha commune, Bujumbura-rurale province, October 17, 2005.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Human Rights Watch interviews, Kanyosha commune, Bujumbura-rurale province, October 14 and 17, 2005.

<sup>35</sup> Human Rights Watch interview, Bujumbura, October 31, 2005.

<sup>36</sup> Human Rights Watch interviews, Kanyosha commune, Bujumbura-rurale province, October 14 and 18, 2005.

<sup>37</sup> Human Rights Watch interview, Kanyosha commune, Bujumbura-rurale province, October 14, 2005.

they made him put on part of an old military uniform, apparently to make it look like he was an FLN combatant. After passing by the house where he was lodging to search the premises, they marched him to the river and shot him twice in the head. One witness told Human Rights Watch:

I met the student when he came here looking for a place to go to school after having only been back in Burundi a few days. I saw his papers from his previous school in Tanzania and he had good marks. When I heard that he had been killed, I went down and helped to bury his body. He has been shot twice in the front of his head and had been very severely beaten. I had a hard time even recognizing him. That is how bad he looked.<sup>38</sup>

FND soldiers posted at Gitaza also tortured persons accused of collaborating with the FNL. Soldiers apprehended one young resident of Muhuta commune, Bujumbura-rurale, after an informant said he was a FNL supporter. The young man told Human Rights Watch researchers:

The FNL combatant didn't even know my name and I had never seen him before. But the soldiers took me to their position at Gitaza and began to beat me very hard with their hands and sticks. They put a piece of wood in my mouth so that I could not cry or scream. I was beaten by about twenty men until I lost consciousness. When I woke up, they put me in a ditch in the ground for a while. Later they took me out and one held one arm out and another held my other arm out. They began burning me with a hot metal bar all over my arms and back.<sup>39</sup>

(A Human Rights Watch researcher examined and photographed the burn marks on his body.)

During this torture, soldiers attempted to extract information from the young man about where FNL combatants were hiding, but he had no information to offer. Soldiers took him to another military position, known as the Chinese camp, and were about to start another round of abuse when a colonel intervened, saying, "There are no places left on

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<sup>38</sup> Human Rights Watch interview, Kanyosha commune, Bujumbura-rurale, October 18, 2005.

<sup>39</sup> Human Rights Watch interview, Bujumbura, October 18, 2005.

your body to beat you.”<sup>40</sup> He was eventually released when his family members paid bribes to the military.

### ***Abuses by Agents of the Documentation Nationale***

Agents of the state intelligence agency, known as the *Documentation Nationale* (D.N.), detained more than fifty persons from the Kinama section of Bujumbura, held them without charge for weeks, and tortured some of them in the months of September and October of this year.<sup>41</sup> On October 12 a Burundian human rights activist visited the head of one intelligence detention center and saw instruments of torture, such as electrodes, a metal rod, and sticks on his desk.<sup>42</sup>

No official reason was given for detaining these persons, who included three zone leaders and a fourth person married to another official, all Frodebu candidates elected in local polls at the end of September.<sup>43</sup> Kinama, a section of Bujumbura where Frodebu won two-thirds of the votes in communal elections held earlier in the year, has also been the scene of attacks on the police, reportedly by FNL combatants, as recently as August,<sup>44</sup> and is said to be an area where Frodebu supporters occasionally cooperate with the FNL.

Under Burundian criminal procedure law, a person may be detained for a maximum of one week, extended to two weeks in cases of “necessary delay” (*sauf prorogation indispensable*) by the judicial police, but then must be charged or released.<sup>45</sup> Many of those arrested in late September or early October by D.N. agents were held in D.N. facilities and then transferred on October 14 to the premises of the Interior Security Police (*Police de Sécurité Intérieur* or PSI) located in Kigobe, Bujumbura. As of this writing, it is unclear who has custody over the detainees.

One Kinama resident and Frodebu supporter, who had been arrested four times since the beginning of the election period in June, was detained on October 13 and released the next day. He told a Human Rights Watch researcher that those who come to arrest

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<sup>40</sup> Human Rights Watch interview, Bujumbura, October 18, 2005.

<sup>41</sup> Human Rights Watch interview, Bujumbura, October 20, 2005; and Iteka, “La torture est une triste réalité dans les cachots de la documentation nationale,” October 18, 2005.

<sup>42</sup> Human Rights Watch interview, Bujumbura, October 20, 2005.

<sup>43</sup> Human Rights Watch interviews, Bujumbura, October 19 and 20, 2005.

<sup>44</sup> Agence Burundaise de Presse, “Fouille systématique des habitations dans la zone Kinama de la mairie de Bujumbura,” August 3, 2005.

<sup>45</sup> Loi No 1/015 du 20 Juillet 1999 portant réforme du code de procédure pénale, Article 60.

him never have a warrant for his arrest, that he is not formally interrogated while in custody, and that when he is released, he is given no proof of release. He recounted severe beatings while in the hands of intelligence agents. He said:

They told me to get on the ground and they started to beat me and whip me with a thick electrical cable on my back and legs. I think that they also broke my wrist but I cannot afford an X-ray to know for sure.<sup>46</sup>

He showed a Human Rights Watch researcher large bruises and cuts extending from his middle back to his thighs. On October 21, a day after speaking to Human Rights Watch, he was detained for the fifth time, apparently for having talked to the press about his prior detentions. As of this writing, he remains in the custody of the D.N.

The D.N., under the direct command of the president, is currently directed by General Adolphe Nshimirimana, a former CNDD-FDD combatant. According to Kinama residents, the D.N. uses CNDD-FDD party members and former FDD combatants to identify and locate persons to be detained.<sup>47</sup> Some residents of Kinama and neighboring areas believe that some of the arrests and abuse are meant to punish persons who support Frodebu.<sup>48</sup> They say that demobilized FDD combatants have been seen in the neighborhood, carrying pistols that they use to intimidate other people and with telephones that they use to report to the intelligence service.<sup>49</sup> Witnesses report that General Nshimirimana has come to Kinama to make arrests, accompanied by agents of the D.N. wearing civilian clothes. In one instance family members tried to prevent a person from being taken away, and armed men with General Nshimirimana fired in the air to scatter them.<sup>50</sup>

Several young men have fled Kinama to find lodging elsewhere after having heard that their names are on the intelligence agency list. One young man told Human Rights Watch that after he had left Kinama, family members told him that General Nshimirimana came to his house with two bodyguards. He said:

Even before the elections, the relationship between those who supported the CNDD-FDD and those who supported Frodebu was not

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<sup>46</sup> Human Rights Watch interview, Bujumbura, October 20, 2005.

<sup>47</sup> Human Rights Watch interviews, Bujumbura, October 18-20, 2005.

<sup>48</sup> Human Rights Watch interviews, Bujumbura, October 18 and 19, 2005.

<sup>49</sup> Human Rights Watch interviews, Bujumbura, October 18-20, 2005.

<sup>50</sup> Human Rights Watch interviews, Bujumbura, October 18-20, 2005.

good, but now with the former CNDD-FDD combatants having phones and guns, everything is different.<sup>51</sup>

Another man who had fled Kinama commented:

The *Documentation Nationale* should change their methods and only use the national police to make arrests and not the ex-FDD combatants. That creates problems of personal vengeance.<sup>52</sup>

### Reactions of Government Authorities

In response to accounts of illegal detentions and torture, ONUB human rights officers repeatedly requested access to the detainees from the Municipal Police Commissioner and from various other authorities, but have been refused.<sup>53</sup> Burundian government magistrates attempted to see those held in the PSI center on October 20. They were allowed to visit some parts of the facility but were denied access to the detainees in question.<sup>54</sup> Representatives of Human Rights Watch and of Burundian human rights organizations also asked officials for permission to see the detainees, to no avail.<sup>55</sup>

In response to public questions, Army spokesman Major Adolphe Manirakiza denied that FDN soldiers were committing human rights violations and called allegations of the killing of civilians and torture by the military “groundless.”<sup>56</sup> He stated that “arrested persons who are suspected of collaborating with the FNL are normally sent to police stations for investigations, after which files are sent to judicial institutions.”<sup>57</sup>

The Minister of Defense, General Germain Niyoyankana, was more forthcoming in an interview with Human Rights Watch. Although insisting that those formerly affiliated with the FNL had an obligation to report themselves to the authorities and formally renounce their affiliation, he also stated that torture and summary execution were clearly unacceptable and that those responsible should be punished. He noted details of the

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<sup>51</sup> Human Rights Watch interview, Bujumbura, October 19, 2005.

<sup>52</sup> Human Rights Watch interview, Bujumbura, October 19, 2005.

<sup>53</sup> Human Rights Watch interview with an ONUB human rights officer, Bujumbura, October 21, 2005.

<sup>54</sup> Human Rights Watch interview, Bujumbura, October 25, 2005.

<sup>55</sup> Human Rights Watch interview, Bujumbura, October 18, 2005.

<sup>56</sup> IRIN, “Burundi: Iteka Denounces Rights Violations,” October 21, 2005.

<sup>57</sup> Ibid.

cases, and in respect of one case he immediately called a military officer for information. Due to technical difficulties with the telephone network, he was unable to complete the conversation, but he promised to follow up on this case and others.<sup>58</sup>

On October 29, President Nkurunziza commented on the arrests of suspected FNL collaborators at a rally in Mubimbi commune, Bujumbura Rural Province, stating that those who are innocent will be released and that if there has been torture, victims should seek justice.<sup>59</sup>

## **International and Burundian National Law**

During the civil war in Burundi, soldiers of the Burundian armed forces and combatants of the FNL and other rebel movements have often been responsible for numerous violations of international humanitarian law (also known as the laws of war).<sup>60</sup>

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. 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

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<sup>58</sup> Human Rights Watch interview, Bujumbura, October 24, 2005.

<sup>59</sup> La Radiodiffusion et Television Nationale de Burundi, radio transmission, October 29, 2005.

<sup>60</sup> The signing of a ceasefire agreement does not end the applicability of international humanitarian law. 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."

passing of sentences and the carrying out of executions without previous judgment pronounced by a regular constituted court.<sup>61</sup>

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.<sup>62</sup>

Burundi is also bound by international human rights law, which applies during armed conflict as well as during peacetime. Burundi is a party to the International Covenant on Civil Rights (ICCPR)<sup>63</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture),<sup>64</sup> both of which prohibit torture and other mistreatment at all times and under all circumstances. Burundi is also a party to the 1981 African Charter on Human and Peoples' Rights, which prohibits torture.<sup>65</sup>

The Convention against Torture specifically provides for the competent authorities to undertake a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed.<sup>66</sup> Both the ICCPR and the Convention against Torture require that persons whose rights have been violated have an effective remedy; that such a remedy be determined by a competent judicial or other authority; and that the authorities shall enforce remedies when granted.<sup>67</sup>

Burundian national law also prohibits the abuses described in this report. Homicide committed with the intent to kill is considered murder and punishable by imprisonment

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<sup>61</sup> 1949 Geneva Conventions, article 3.

<sup>62</sup> Protocol Additional relating to the Protection of Victims of Non-International Armed Conflicts, 1977 (Protocol II, articles 13 to 18).

<sup>63</sup> International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), entered into force March 23, 1976.

<sup>64</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.

<sup>65</sup> African Charter on Human and Peoples' Rights, article 5.

<sup>66</sup> Convention against Torture, article 12.

<sup>67</sup> ICCPR, article 2; Convention against Torture, articles 13 & 14.

or the death penalty.<sup>68</sup> While torture is not expressly defined, Burundian criminal law stipulates that “anyone who voluntarily wounds or who beats another” can be imprisoned and fined. If those wounds are incapacitating to the victim, or involve mutilating the body of the victim, the maximum sentence is twenty years in prison.<sup>69</sup> Members of the armed forces can be prosecuted under these provisions of the ordinary penal code by the military justice system.<sup>70</sup>

## **Role of the International Community**

Officers of ONUB and other U.N. agencies working in Burundi, leaders from South Africa, Tanzania and Uganda and other regional states, and diplomats of donor countries from the United States, Belgium, and France all cooperated in helping to move Burundi through a complex transition process to the much desired achievement of installing a democratically elected government. Peacekeeping troops under the aegis of the African Union also served an important role in the early stages of the transition before the ONUB was established. Donor governments and multilateral organizations have promised and begun delivering much needed assistance.

Not surprisingly, international actors, like Burundians themselves, want to focus on positive expectations for the new government. Officers of the ONUB human rights division, however, have rightly recognized the importance of reacting promptly to recent information about abuses by soldiers and other agents of the new government, and have sought to remind authorities of their newly acknowledged responsibilities to protect human rights.

## **Recommendations**

### ***To the Government of Burundi***

- Promptly investigate and prosecute all cases of serious violations of international human rights and humanitarian law by government officials, including police and agents of the intelligence service and military personnel, regardless of their rank.

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<sup>68</sup> Decret-loi no. 1/6 du Avril 1981 portant réforme du Code Pénal, articles 141-142. Human Rights Watch opposes the death penalty in all circumstances as being irreversible and inherently cruel.

<sup>69</sup> Decret-loi no. 1/6 du Avril 1981 portant réforme du Code Pénal, articles 146-150.

<sup>70</sup> Decret-loi No. 1/8 du Mars 1980 portant code pénal militaire, article 116 (on complementarity between military and civilian penal codes).

- Take all necessary measures—such as through public statements, training programs and disciplinary action—to ensure that government officials and military personnel act in accordance with international human rights and humanitarian law.
- Allow ONUB human rights officers and representatives of human rights organizations access to all prisons and detention facilities under the jurisdiction of the State Intelligence Agency, the Minister of the Interior and Public Security, and the Minister of Defense.

### ***To the National Liberation Forces (FNL)***

- Take all appropriate measures to ensure that combatants under your command abide by international humanitarian law, and hold accountable combatants found responsible for committing abuses.

### ***To the United Nations Operation in Burundi (ONUB)***

- Give high priority to renegotiating and signing a written agreement with the Burundian government ensuring your complete access to all prisons and detention facilities throughout the country.
- Place more monitors in the war-afflicted provinces of Bujumbura-rurale, Bubanza, Kayanza, and Cibitoke to continue to effectively monitor human rights violations related to the ongoing conflict.

### ***To Donor Governments***

- Urge the Burundian government to ensure its compliance with international human rights and humanitarian law, particularly in regards to treatment of persons in detention and the prohibitions of torture.
- Urge the Burundian government to provide unhindered access to prisons and other detention facilities for ONUB human rights officers and other human rights groups.
- Provide adequate financial support for ONUB so that its human rights unit can continue to operate fully and efficiently.