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Burundi

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Most of Burundi enjoyed relative peace for the first time in a decade during 2004, but the province of Rural Bujumbura just outside the national capital remains a battleground between the rebel National Liberation Forces (FNL) on one side and the combined Burundian Armed Forces and the Forces for the Defense of Democracy (FDD) on the other. The FDD is a former rebel movement that joined the government at the end of 2003. The FNL, drawn largely from the majority Hutu population, remains outside the peace process that has brought together other Hutu-dominated groups, including the FDD, with parties of the Tutsi minority who have dominated political and military life for generations. All forces in the country-wide civil war and those involved in the more recent limited combat outside the capital committed grave violations of international humanitarian and human rights law, killing and raping civilians and pillaging their property.

The Arusha Accords of 2000, the first of several power-sharing arrangements between belligerents, provided for a three year period of transition to be ended with national elections by November 1, 2004. By July 2004, the major parties had failed to agree even on a constitution under which such elections could be held. With strong backing from regional heads of state, Hutu-dominated parties pushed through a constitution in September that was rejected by the leading Tutsi-dominated parties on the grounds that it failed to provide adequate safeguards for their rights and security. But just before the new constitution was to take effect, most of the Tutsi-led parties changed their position and agreed to work within the new constitution, at least until a national referendum could be held, now scheduled for the end of 2004, with elections to take place in early 2005.

In June 2004, a South African-led peace-keeping force, operating under the auspices of the African Union, was replaced by a United Nations peacekeeping force known as the United Nations Operation in Burundi (ONUB). Reaching its full complement only towards the end of the year, ONUB deployed increasing numbers of troops and observers to Rural Bujumbura but without markedly reducing the number of abuses against civilians.

Civilians Targeted by Combatants

Government soldiers in collaboration with the FDD fought to extirpate the FNL from the hills surrounding Bujumbura, areas that had formed the FNL base for years. In some cases they engaged FNL combatants but often they also attacked civilian populations thought to support the FNL by paying them party dues or by giving them food and shelter. They also attacked civilians in reprisal for FNL ambushes against government soldiers or FDD combatants. They deliberately killed civilians, raped women and girls, burned houses, and stole property. FNL forces assassinated those known or thought to be working with the government and stole or extorted property from civilians. Combat and abuse by combatants frequently caused civilians to flee and tens of thousands spent more than six months of the year living in camps, temporary lodgings, or in the bush. By late 2004, government and FDD forces were regularly looting civilians immediately after they had received humanitarian assistance like food, blankets, or other household items. The practice had become so widespread that humanitarian agencies were obliged to suspend deliveries of aid in order to avoid further attacks on people who were living in abject misery. The FDD, in the past occasionally allied with the FNL, saw the other movement as a potential rival for votes if a functional electoral system is established and apparently were the force most responsible for abuses against civilians thought to support the FNL.

On August 13, 2004, FNL rebels, apparently together with combatants from other groups, massacred more than 150 Congolese refugees at Gatumba camp, near the Congolese border. More than one hundred Burundian army soldiers and dozens of Burundian national police in nearby barracks failed to respond to repeated calls for help from the civilians, most of them women and children, who were killed by intense gunfire or were burned to death in their tents. As of early November, Burundian military authorities had taken no public action against the officers responsible for this failure to protect civilians under their charge.

Justice

Despite frequent calls for justice, both national and international actors appear driven more by expediency than real concern for accountability. The late 2003 agreement between the government and the FDD, generally supported by the international community, granted "provisional immunity" to all combatants and leaders of both forces, meaning that justice for their crimes would be at least postponed and probably never delivered. Prosecutors in the military justice system now claim that they cannot prosecute accused soldiers because of this "provisional immunity."

Hundreds of FDD combatants detained in Burundian jails, including some accused of crimes resulting in deaths, were released in mid-2004 under this provision. In July 2004 prisoners at most Burundian jails went on strike for several weeks, demanding that they too be released either under the terms of this agreement or under another broader arrangement that provided for the release of "political prisoners." Authorities restored order in the prisons and promised to set up a committee to examine prisoners' demands, thus postponing a decision on the complicated question.

Under the Arusha Accords, the parties asked the United Nations to provide an international commission to investigate serious crimes committed in Burundi since 1962. The Security Council did not act on this request until April 2004 and then sent a team only to assess the feasibility of such a commission. The conclusions of the assessment team had not been published by late November, at which time the council seemed more inclined to dispense with further commissions and move directly to supporting prosecution. During these years of delay, Burundian authorities insisted that they wanted an international mechanism to deliver justice but showed no real commitment to delivering justice for these crimes in the national court system.

In 2004, authorities began slowly to implement reforms to the judicial system adopted in 2003 but they have not yet indicted any suspects under a law passed that year against genocide, war crimes and crimes against humanity.

After a spokesman acknowledged FNL responsibility for the Gatumba massacre, the government issued arrest warrants for two FNL leaders but neither has been caught. Faced with the difficulty of prosecuting a complicated as well as a horrendous crime, some Burundians raised the issue of joining the International Criminal Court, a process that had been begun but then stalled in August 2003. Under both domestic and international pressure, the government completed the ratification procedure for membership in the ICC, raising the hope that some such crimes could eventually be punished.

Land and the Return of Refugees

Nearly eighty thousand largely Hutu refugees returned to Burundi from Tanzania by August 2004, but the flow slowed and even temporarily reversed with uncertainty about instability that might result from the failure to hold elections. Hundreds of Tutsi residents also fled from Burundi to Rwanda in September and October, also fearing violence.

The government faces the problem of finding ways to reconcile the property rights of returnees with the rights of those who currently occupy the land. In similar circumstances ten years ago, the return of an

earlier generation of refugees and ensuing contests over the control of land sparked the tensions that led to the beginning of the civil war.

Key International Actors

International actors are committed to avoiding a genocide like that which occurred in Rwanda, the neighbor and demographic twin of Burundi, but have been reluctant to commit the necessary resources to promote real peace: the U.N. agreed to a peace-keeping force only in 2004 and still has not agreed to establish a commission to help deliver justice for past serious violations of international law.

South Africa bore most of the cost of the initial African Union peace-keeping force and has also invested substantial political resources in trying to facilitate agreements in Burundi. Its leadership has sometimes meshed poorly with that of other heads of state in the region, but all came together to provide forceful backing for the most recent advance towards a constitution.

Various international actors, particularly the U.N., tried to move the FNL towards negotiations in June and July, but after the Gatumba massacre, they suspended all such efforts. Towards the end of the year, the U.N. and others discretely signaled a willingness to resume talks with the FNL, leaving unclear how they could do so without sacrificing justice for the Gatumba massacre.

The U.N. Human Rights Commission did not renew the mandate of a special rapporteur for Burundi, but human rights personnel attached to the U.N. peacekeeping force became increasingly effective in monitoring abuses.

In late November 2004, Burundi joined international efforts to protect children and ratified two optional protocols to the Convention on the Rights of the Child (formally adopted May 25, 2000), that on the involvement of children in armed conflict and that on the sale of children, child prostitution and child pornography.

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