



Policy Brief

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BURUNDI

Elections without competition and no peace without participation: where might it go from here?

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INTRODUCTION

The words of Rona Peligal, Africa director at Human Rights Watch, could not be more true: 'Burundi is at a dangerous crossroads and clearly ill-intentioned people on both sides of the political divide are seeking to exploit recent tensions. The government should end unnecessary restrictions on basic freedoms, and those fomenting violence should stop.'¹

With four out of five polls already done, so much seems to have gone wrong with the much talked-about elections in Burundi. The process started on a high note with more than 3.5 million Burundians eligible to vote at the 7 000 polling stations made available across the country. Voting was originally scheduled to start on 21 May 2010, but was delayed until 24 May due to a shortage of ballot papers. Election participation began well with a 91.7 per cent turnout, but this positive outcome was short-lived. When election results became public the opposition parties cried foul, eventually resulting in a complete withdrawal of opposition candidates from the presidential elections. This left the process at an impasse with three rounds of elections still to be completed: the National Assembly elections on 23 July 2010; the Senate elections on 28 July 2010; and the Hill polls on 7 September 2010.

The withdrawal of the opposition from the presidential elections resulted in a decline in voter turnout. Of the 76.9 per cent of the population who voted, 90 per cent voted for President Pierre Nkurunziza, thereby electing him to another five-year term. The obvious point is that the current ruling party will obtain a two-thirds majority in parliament

after these elections, which will transform the state from a multiparty system to essentially one-party dominance, which ultimately could have a highly detrimental effect on peace and democracy in Burundi. That is what is playing out: the electoral commission announced on 27 July 2010 that the ruling National Council for the Defence of Democracy - Forces for the Defence of Democracy (CNDD-FDD) had won 81 of the 106 seats in the National Assembly available in the 23 July 2010 legislative election. In the subsequent Senate elections the CNDD-FDD won 32 of the 34 seats.

This policy brief aims to discuss the current situation in Burundi. Topics under consideration in this brief include: reactions to the communal elections; how did we get here; possible future scenarios, including a return to rebellion, maintenance of the status quo, the gradual deterioration of the political arena and renewed eruptions of (large-scale) violence; and, lastly, considering what should be done in terms of short-term engagement and long-term engagement.

THE CURRENT SITUATION IN BURUNDI

The reaction to communal elections

European Union (EU) election observers gave positive feedback on the communal elections: 'The electoral process was generally conducted in line with international norms for democratic elections.'² However, following the announcement of the results eight opposition parties labelled the elections a fraud and called for a rerun of the communal elections on June 28 in conjunction with the presidential election.³

Shortly after the allegations were made, the presidential candidates from the FNL, Frodebu, MSD and two breakaway factions of the ruling party announced they would boycott the presidential elections.⁴ The remaining opposition candidates soon replicated the move.

Despite the withdrawal of the opposition parties, the presidential elections were not postponed. The situation resulted in an increase of tensions in the country, which subsequently led to a series of grenade attacks that have yet to cease. The majority of the attacks occurred close to government personnel and buildings.

HOW DID WE GET HERE?

The boycotting of the elections came as a surprise to most observers, diplomats and news agencies – especially considering the positive EU observer mission assessment, which stated that the elections had met international standards. Nevertheless, a more thorough analysis of the relationship between the political parties during the period following 2005, up to 2010, might suggest that a rupture of favourable relations between them occurred well before the 2010 elections. A more in-depth analysis might have indicated the likelihood of the events that occurred following the first round of elections. The three major stages on the way to the 2010 elections that frame the current situation between the political parties will be briefly outlined.

The first major upset between political parties occurred directly after the 2005 elections. Constitutional amendments were undertaken by the CNDD-FDD with the objective of altering the number of portfolios awarded to each political party in the cabinet. According to Articles 92 and 129 of the Burundian constitution, the number of portfolios allocated to a party is proportional to the number of seats it has in parliament (as long as it has overcome a five per cent threshold in the National Assembly elections). According to these provisions, the CNDD-FDD should have received 10 portfolios, Frodebu 5 and Uprona 2. Contrary to this provision, the CNDD-FDD took 12 portfolios, gave Frodebu only 2, Uprona only 1 and invited – with one portfolio each – parties that have not achieved five or more per cent in the parliamentary elections: MSP-Inkinzo, MRC and Parena. In addition, two ministers were included in the cabinet who had no formal party affiliation – an arrangement that is not provided for in the constitution.⁵

At the time these adjustments were accepted by international observers as well as the disadvantaged parties (with minor indignation) within a generally constitutionally correct electoral process. Regardless of the fact that the situation was

deemed largely acceptable at the time, the reluctance of the CNDD-FDD to respect the electoral outcomes and the constitutional provisions favouring opposition parties should have acted as a red light. At the same time it gradually reveals a misperception among many external actors who see the division as occurring along ethnic lines – where all provisions were totally fulfilled during the 2005 elections – and not between more diverse interest groups or organisations.⁶

Secondly, starting in early 2007, Burundi experienced a protracted political crisis, which eventually resulted in the antagonistic positions Burundi now faces.

The crisis started with internal disputes around Hussein Radjabu, the former party leader, within the CNDD-FDD itself. The specifics of these disputes will not be explained here, but ultimately the dispute led to Radjabu's expulsion from the CNDD-FDD and parliament and, eventually, to his arrest. Following Radjabu's removal, 22 parliamentarians in the National Assembly defected from the CNDD-FDD and created a new faction in the parliament. The CNDD-FDD defections resulted in a loss of one third of the party's support in parliament, which deprived Nkurunziza of his majority hold in the National Assembly.⁷ At first the removal of Radjabu and some affiliated politicians improved relations between the CNDD-FDD, Frodebu and Uprona. The improved relations were, however, short-lived, and disintegrated over issues regarding compliance on an informal agreement between the parties over the appointment of the first vice president of the National Assembly in exchange for supplementary portfolios. Frodebu and Uprona started to increase pressure on the CNDD-FDD through cooperation with the defected Radjabu group in the National Assembly by blocking the passing of laws and refusing to attend plenaries.⁸ The potential for the CNDD-FDD viewed this as hostile and unfair acts against it and felt highly threatened by opposition cooperation with the Radjabu faction. Finally, on 18 August the Frodebu vice-president and three MPs who signed a letter asking Nkurunziza to resume a dialogue with the opposition were victims of grenade attacks.⁹

An escalation of the crisis was averted through the intervention of civil society and the international community. Burundi's main partners¹⁰ engaged in talks with Nkurunziza as well as the opposition and delivered both of them to a compromise: an inclusive government with representation accorded in line with Article 129 of the constitution.

Thirdly, the situation deteriorated over conflicts regarding the jurisdiction of ministers from Frodebu and Uprona and those of CNDD-FDD. Further disagreement arose during discussions on the appointments of Frodebu and Uprona representatives to senior positions in the civil service, which were constantly postponed.¹¹ In December 2007 high levels of tension resurfaced. During negotiations with the Palipehutu-FNL another dispute broke out. Cooperating opposition parties, together with individuals from the CNDD-FDD and the first vice president of the National Assembly, decided to create an ad hoc parliamentary commission on this issue.¹² The presidency and the CNDD-FDD were afraid of an independently acting parliament and made efforts to change the composition of the National Assembly office, most importantly by removing the first vice president, Alice Nzomukunda. CNDD-FDD's success in this matter drove Frodebu, Uprona and the Radjabu factions to boycott the plenary sessions, with all three factions increasingly discontent with the governing CNDD-FDD's authoritarian tendencies.¹³

Tensions decreased when international mediation and the support of the Inter-Parliamentary Union enabled the parties to resume negotiations and achieve some form of compromise on the composition of the National Assembly office.¹⁴ Despite these efforts the agreement was never formally ratified. In April 2008 a unique opportunity presented itself to the CNDD-FDD. Individuals affiliated with the ruling party replaced the judges of the constitutional court. Following the favourable composition of the constitutional court, Nkurunziza arranged that the dispute regarding the composition of the National Assembly be referred to the Constitutional Court. 'On 30 May, the court was asked to rule on the constitutionality of the presence in the assembly of MPs expelled from the CNDD-FDD. In record time, the Court came to a decision on 5 June and authorised the CNDD-FDD to replace its 22 dissident MPs by others loyal to its leadership.'¹⁵ In the draft version of the constitution of September 2004, Article 149 explicitly states that deputies and senators who defect from their parties have to give up their seats. But at the request of the CNDD-FDD in the subsequent discussions on the draft, Article 149 was amended to allow members of parliament to keep their seats after changing their allegiance.¹⁶ Therefore the ruling of the court was unconstitutional. Nevertheless, the decision provided the precondition for Nkurunziza and the CNDD-FDD to regain the majority in parliament. With the replacement of the 22 parliamentarians and by co-opting two representatives from the MRC and a defected group of nine parliamentarians from Frodebu¹⁷, the president regained the

two-thirds majority in the parliament and subsequently broke off discussions with Frodebu and Uprona.¹⁸

The reluctance of Nkurunziza and the CNDD-FDD to govern the country in the spirit of its power-sharing constitution – choosing to revert to unconstitutional means, threats and intimidation to secure the independent decision-making of their party – drove the political climate towards a hostile environment where trust between the parties and in the constitution dissolved. On the other side, the reactions of the opposition parties – most notably Frodebu and Uprona – were to block every initiative of the majority party. The situation resulted in rigidity of the respective party positions of mistrust and disregard of each other's legitimacy to take part in the shaping of a more prosperous future for Burundi. The opposition parties regarded the 2010 elections as an opportunity for re-entry into the political arena and a chance for eventual participation in the decision-making processes from which they had been excluded for two years. When the results of the communal elections did not reflect the results the opposition had hoped for they decided to delegitimize the whole electoral process. It is against this background that the opposition parties boycott the elections. In contrast to the suggestion made by external observers that the opposition parties should re-enter the electoral process to take part in Burundi's future, opposition parties perceive their participation in the elections under the current conditions as a move that will keep them excluded from decision-making processes in the future.

POSSIBLE SCENARIOS

Return to a rebellion

The situation was further aggravated by political violence, which escalated during the run-up to the presidential campaign on 12 June 2010. During the period of violence there were more than 100 grenade attacks, arson attacks on at least 35 local offices of the ruling party, and two ruling party activists and an opposition activist were killed. While the ruling party has been the target of the grenade and arson attacks, the opposition has suffered arrests and restrictions on their movement. Burundi is at risk of civil disobedience, which could result in serious social unrest stemming from the degree of voter frustration caused during the local elections. The worst-case scenario would be a rebellion on state institutions caused by opposition parties. The rebellion

scenario is most likely in opposition strongholds such as Bujumbura and Bururi. 'Burundi is at a dangerous crossroads and clearly ill-intentioned people on both sides of the political divide are seeking to exploit recent tensions,' said Rona Peligal, Africa director at Human Rights Watch¹⁹. 'The government should end unnecessary restrictions on basic freedoms, and those fomenting violence should stop.'

National Forces of Liberation (FNL) spokesperson Jean Bosco Havyarimana reaffirmed on 9 June that his movement would not be the one to initiate fresh hostilities: '[The] FNL will not respond to the ruling party provocation ... When the FNL laid down weapons we did not get much, but for the sake of peace we accepted this, preferring to await the elections, just to give the country a chance for peace.'²⁰

While the possibility of an organised rebellion is remote, acts of violence from uncontrolled supporters unhappy with the peace dividends are not impossible.

STATUS QUO

The possibility that the government will continue to complete the election calendar without the participation of the major political parties is most probable, considering that only one election is outstanding. The indications are that this scenario is going to play out. Only Uprona and Sahwanya-Frodebu Nyakuri have decided to come back and join the National Assembly and Senate elections. Following the elections for the presidency, the ethnic-Tutsi dominated party Uprona re-engaged in time for the parliamentary election, and succeeded in winning 17 seats as well as another two seats in the Senate. A smaller party, Sahwanya-Frodebu Nyakuri, won five seats in the National Assembly. If this scenario should continue it will have a serious effect on the democratic process in the country. This scenario could see more human rights abuses and further restrictions on the media and NGOs. It also raises concerns about the prospects for meaningful parliamentary scrutiny and reform progress in the coming term because the opposition parties are all outside the process. This scenario raises the question of whether CNDD-FDD dominance will ensure longer-term political stability. During the election there was an image of party unity, but internal support for Nkurunziza is and was not always unanimous. In the planning stage of the election he was only the third-choice candidate among the party hierarchy. The lack of opposition pressure may ultimately

mean that there are fewer constraints on intra-party machinations, leading to potentially destabilising or disabling factional conflict.

GRADUAL DETERIORATION OF THE POLITICAL ARENA AND RENEWED ERUPTIONS OF (LARGE-SCALE) VIOLENCE

It is unlikely that large-scale violence will occur in the immediate aftermath of the elections, but as previously mentioned, the political climate in Burundi has devolved into a hostile situation within which there is no trust or cooperation between the parties and little confidence in the constitution. A reversal of this trend is not yet in sight. One possible middle- to long-term scenario (5 to 10 years; the elections in 2015 will be a critical point and possible triggering event) is the further deterioration of political relationships and entrenchment of elite behaviour. The antagonistic and exclusionary attitude of the ruling party towards the opposition will provoke a response. Considering the reactions of the opposition thus far it is improbable that they will seek dialogue. Elements or factions (potential hardliners) of current parties will be receptive to the idea of taking up arms again if they do not see any real improvement. The fact that Agathon Rwasa is currently in the eastern Democratic Republic of Congo (DRC) might be an indication that potential alliances with like-minded organisations within the Great Lakes region are being considered. The opposition is likely to seek support for an organisation or a coalition that has the capacity to challenge the Burundian government. Up to 2009 Rwasa and the former Palipehutu-FNL were isolated from the other parties in Burundi and due to a lack of resources and manpower were not able to destabilise Burundi as a whole, which led to a negotiated settlement. Should other opposition parties or factions perceive political (non-violent) competition to be meaningless there would be a larger constituency receptive to initiatives coming from outside the political system. What we might observe then is a reformation and realignment in new interest groups or rebel movements that could return Burundi to a country characterised by widespread violence. If the huge numbers of the population now disenchanted with the level of democracy would be willing to follow parties on a non-democratic path, this could eventually be the difference between a few random attacks and the full-scale mobilisation of a disgruntled population.

WHAT TO DO?

Short-term engagement

It is clear that the international community's short-term objective should be to resolve the impasse in the electoral process and bring everybody back to adherence to the election calendar. The need to act is extremely urgent and it is suggested that efforts on all levels – by the UN, the AU and regional bodies such as the East African Community (EAC), as well as individual countries such as South Africa and Tanzania – are required. At this stage it does not look as though South Africa wants to intervene in a bi-lateral manner and it seems only interested in multi-lateral intervention. The most obvious option is the EAC, of which Burundi is a member. The EAC has already visited Burundi and warned the political parties on the implications of withdrawing from the process.

It is suggested that a more comprehensive international effort is launched to get the process back on track, involving all role players: the UN, AU, EAC, Great Lakes Initiative and the Partnership for Peace in Burundi (created in April 2009 with the purpose of bringing the peace process to a successful closure).²¹

It is important that under the leadership of one of the aforementioned organisations – probably the EAC – should address the following issues as a matter of urgency:

- The concerns of the opposition regarding the electoral process
- Government's use of state instruments to intimidate opposition parties
- Arrest of political leaders
- Freedom of speech
- Actions against NGOs
- The militarised youth
- Armed militias
- Use of the police during the electoral process

It is imperative that a decision be made on the path forward: should the entire electoral process be repeated or should the process continue with the assurance that all parties will participate in the Hill polls on 7 September 2010? This could still ensure that the credibility of the process is at least partly rescued.

Long-term engagement with the political parties

So far the behaviour and interaction of the political parties in Burundi seem to be a continuation of the logic that stems from their time as rebel movements engaged in a civil war. Parties treat each other with mistrust, trying to achieve absolute victory or at least sabotaging the opponent considerably. Rules and laws are seen as instruments that can be used to confront one another, and voluntary when one can circumvent them unpunished. This is not unusual in a post-war and post-settlement environment. The hardest part during and after successful mediation and agreement is the transformation of the parties themselves. They need to adapt to the rules of a game that were never theirs and with which they have little experience. Therefore parties often fear that their opponents may outplay them. Without trust that other parties will respect the rules of the game and with no confidence in the equality the constitution should afford them, parties are likely to return to the behaviour they know and feel confident with. This is what is going on right now in Burundi. Therefore a major concern and a point of engagement with Burundian actors must be the further transformation of the parties into political and democratic movements that see non-violent competition as an opportunity rather than a constraint.

SUGGESTIONS FOR EXTERNAL ACTORS

- Governments, international and regional organisations, development agencies and international NGOs should engage the parties with an exchange of experiences on how one can successfully and constructively take part in non-violent/democratic competition. They could assist with capacity building and seminars to improve the parties' own capabilities. South Africa exited a period of armed struggle not too long ago and as such has much to offer in terms of advice on democratic competition between parties. European states or the EU could also engage in this kind of cooperation with the Burundian parties.
- Governments, international and regional organisations, development agencies and international NGOs can play an important part in building trust between the various

Burundian parties and the government. In part 3 it was mentioned that on two previous occasions external actors were able to calm the political climate. A more facilitative and longer-term approach could make an important difference to the communication between the parties.

SUGGESTIONS TO BURUNDIAN PARTIES AND ORGANISATIONS

- For the longer term an institution or mechanism to mitigate inter-party and inter-institutional disputes is required. A neutral, Burundian-owned body with the relevant capacities will help to restore trust in the political system. Articles 237 and 239 of the constitution provide for the establishment of an ombudsman. He is supposed to negotiate between citizens and the administration in cases of accusations of malpractice, and has to report those incidents to the National Assembly and the Senate (Article 237). Additionally he is expected to help resolve disputes between the administration and the ministers (Article 237).

The International Crisis Group²² recommends that the constitutional competences of the ombudsman be extended, in order to give him the authority to mediate in political crises between institutions and parties. It would increase the legitimacy of the ombudsman if the office cooperated closely with relevant Burundian civil society organisations.

Notes

¹ Human Rights Watch. 1 July 2010. Burundi, Rights Violations Mar Elections,

<http://www.hrw.org/en/news/2010/07/01/burundi-violence-rights-violations-mar-elections> (Accessed 14 July 2010).

² Mail & Guardian, 27 May 2010, EU observers praise conduct of Burundi poll, www.mg.co.za/article/2010-05-27-eu-observers-praise-conduct-of-burundi-poll (Accessed 7 July 2010).

³ Reuters AlertNet, 27 May 2010, BURUNDI: Trading accusations over poll results, www.alertnet.org/thenews/newsdesk/IRIN/f9b38f5f3f9af201d52d5b181976ae84.htm (Accessed 7 July 2010).

⁴ Independent Online (IOL), 1 June 2010, Five challengers leave Burundi election race, http://www.iol.co.za/index.php?art_id=nw20100601222343421C136050&page_number=1 (Accessed 7 July 2010).

⁵ Filip Reyntjens, Briefing: Burundi: A Peaceful Transition After A Decade Of War? *African Affairs* 105, 418 (2005), 130.

⁶ Miriam B Jooma, 'We can't eat the constitution' – Transformation and the socioeconomic reconstruction of Burundi, ISS Paper 106 (2005)

⁷ International Crisis Group, Burundi: Restarting Political Dialogue, *Africa Briefing* 53 (2008), 4.

⁸ ICG (2008), 4.

⁹ ICG (2008), 4.

¹⁰ The ambassadors of Belgium, Germany and France and the European Union (EU) representative met the protagonists of the crisis jointly. The ambassadors of Tanzania, South Africa and representatives of the AU and the UN took similar steps. In August 2007, the EU and Netherlands special envoy for the Great Lakes Region also visited Burundi to encourage a resumption of dialogue and resolve the crisis. From ICG (2008), 5.

¹¹ ICG (2008), 5.

¹² ICG (2008), 6.

¹³ ICG (2008), 6.

¹⁴ ICG (2008), 7.

¹⁵ ICG (2008), 7.

¹⁶ *Projet de la nouvelle constitution post-transition de la république du Burundi*, September 2004, Article 149; *Constitution de la république du Burundi*, March 2005, Article 149; also see ICG (2008), 7, footnote 53.

¹⁷ The faction was led by Jean Minani and is now a separate party (Frodebu-Nyakuri) with closer relations to the CNDD-FDD.

¹⁸ ICG (2008), 7.

¹⁹ Human Rights Watch. 1 July 2010. Burundi, Rights Violations Mar Elections,

<http://www.hrw.org/en/news/2010/07/01/burundi-violence-rights-violations-mar-elections> (Accessed 14 July 2010).

²⁰ IRIN. 11 June 2010 Burundi's election wobbles,

<http://www.alertnet.org/thenews/newsdesk/IRIN/35a6eac0015d1ca978099c7f9812b7f5.htm> (accessed 12 June 2010).

²¹ Henri Boshoff, Waldemar Very and George Rautenbach, *The Burundi Peace Process, from civil war to conditional peace*, ISS Monograph 171, Pretoria. 2010

²² ICG (2008), 2, 13.