

# **BURUNDI: NEITHER WAR NOR PEACE**

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## **BURUNDI: NEITHER WAR NOR PEACE**

### **EXECUTIVE SUMMARY**

On 28 August 2000 nineteen parties to the conflict in Burundi signed a peace agreement in Arusha in the presence of several regional heads of state and U.S. President Bill Clinton. But the accord, which was rushed through under pressure from Nelson Mandela, does not include a cease-fire. The main rebel chiefs, who have become an integral part of President Kabila's staff in the DRC could not be persuaded to participate in the Arusha peace process. In fact, since August 2000, Burundi has been experiencing a dramatic upsurge of violence and the life of its people has not been changed in any way by the signing of the accord. Last September the regional heads of state, wearied by the failure of their talks with the rebels, gave the latter an ultimatum and threatened them with sanctions. Only three months after the Peace Accord was signed, the hope it aroused is dwindling and giving way to a dangerous uncertainty and to a revival of the military option, this time at regional level.

The signing of the accord had one positive result: it closed the Arusha cycle. As it included all political parties but not the main rebel groups, its limits could not be stretched any further. The main outcome of negotiations was that a minimal political agreement was reached, based on a good text, which was detailed and far-reaching and most of which achieved unanimity. Although it certainly is an incomplete document because the main rebel groups were not at the negotiating table, the three completed protocols (I, II, IV) outline a clear and precise action programme which seeks to move Burundi towards reconciliation, democracy and reconstruction.

Nevertheless, the text is weakened by several paradoxes. The Government's signature, which was obtained at great cost and thanks to last-minute concessions by FRODEBU's President, was probably made possible by the fact that no major compromise was reached on the transition and reform of the Army – in other words, on sharing the instruments of power. The novel factor in the Arusha Accord was that it touched upon the question of the Army's role and composition and its relations with the civil authorities. No compromise was made by the existing authorities because no guarantee was given by the rebel chiefs on ending the war.

Despite this reality, it is probably the Arusha Accord which will ultimately legitimise a continuation of the war. In effect, President Buyoya was the winner in the last-minute talks in Arusha, when he obtained significant concessions and he was also the winner at the regional summit in Nairobi where the rebels appeared as 'negative forces'. The man who started off in a losing position, weakened by regional sanctions and forced to negotiate on terms he disapproved of, is now in a position of strength to shape the peace process. Rehabilitated by signing the document and tossing the ball back into the facilitation court, he certainly intends to take advantage of the hazy interim period to negotiate the transition on his own terms and regain a military advantage on the ground.

Since 28 August, no significant move from South Africa seems to have taken up the momentum which was generated in Tanzania in June 1998 nor suggested another professionally structured negotiating framework. Furthermore, Nelson Mandela is already showing signs of exhaustion. He has delegated a large part of his responsibilities to the South African vice-president Jacob Zuma. Given these conditions, the government has a certain number of tools of obstruction at its disposal. The Implementation Monitoring Committee could certainly begin its work and become the new forum for inter-party negotiations, but its extended composition risks turning it into a permanent battlefield, a micro-Arusha without Mandela. Also, negotiations on the reservations and the late entry of the rebels into the peace process will further delay implementation. Therefore, implementation of the accord could turn into never-ending negotiations, raising fears that Burundi will be between war and peace for a long time to come. Burundians must, therefore, seize the opportunity this peace accord gives them to create a momentum of change which is fundamentally needed to stop the war.

## **RECOMMENDATIONS**

### **To the Facilitator Nelson Mandela**

- To appoint a professional Facilitation team with an interim mandate to pursue the negotiations.
- To provide an unambiguous interpretation of those measures which are immediately applicable in the Accord.
- To exclude from the transition institutions any political leader who is guilty of inciting ethnic hate or the organisation of militias.
- To threaten opponents of the implementation of the Accord in both camps with individual sanctions – legal action, travelling restrictions and freezing financial assets.
- To encourage President Buyoya to start implementing the Accord without delay to create a momentum of change, namely:
  - To immediately offer any deserting rebels opportunities for reintegration.
  - To immediately set up a Commission of enquiry on the issue of political prisoners and to free all detainees whose files are cleared as the enquiry proceeds.
  - To take disciplinary measures against any soldier who is guilty of exaction and abusive use of force.
  - To create adequate security conditions to guarantee access by humanitarian agencies to the displaced populations in order to relieve their suffering. To establish humanitarian corridors for regrouped war victims with the help of charities and humanitarian organisations.
  - In accordance with the Arusha Accord, to take all necessary measures to immediately invite the United Nations to deploy a peacekeeping force, so that it will be in place when the transition starts.

- To authorise broadcasting on national radio and television, information and dissemination of programmes in Kirundi on the contents of the peace accord and to give all candidates for the transition an opportunity to speak.
- To launch an information campaign for the armed forces reassuring troops on the meaning of demobilisation.
- To immediately arrest any politician who is guilty of inciting ethnic hatred or forming militias.

#### **To President Museveni, Chairman of the Regional Initiative on Burundi**

- To invite President Robert Mugabe to contribute to the peace process at the coming regional summit on Burundi and ask him to convince the CNDD-FDD rebels to take part in negotiations.
- To ask the Tanzanian government to take all necessary measures to limit the activities of the rebels on its territory, while offering them practical means to lay down their arms with the help of international humanitarian agencies.
- To ask the governments in the region to apply sanctions against the rebels who reject the peace process and to ask the government of Burundi to arrest the Tutsi extremists who organise militias.

#### **To Benjamin Mkapa, President of the United Republic of Tanzania**

- To take all necessary measures to stop the recruitment of rebels in the Kigoma camps and to restrict the movements of rebel troops along its frontier and on lake Tanganyika.
- In co-ordination with the humanitarian agencies, to accept any rebel who is determined to lay down his arms and to register him as a privileged beneficiary of the reform of the security forces.

#### **To Burundi's Financial Donors in View of the Donors' Conference of 11 December.**

- To finance a professional Facilitation team to pursue negotiations.
- To support implementation of all applicable provisions of the agreement.
- To support without exception pressure exerted on the Burundi government by the Facilitation team by only releasing international aid on condition that the above-mentioned measures are complied with.
- To persuade the countries of the region to use all necessary means of pressure to urge the rebels to join the negotiating process.

**Arusha/Nairobi/Brussels, 1 December 2000**

## Main results of the Arusha Accord for Peace and Reconciliation in Burundi (28 August 2000)

### Protocol I: Nature of the Burundian conflict, problems of genocide, exclusion and solutions<sup>1</sup>

- Recognition that, since independence, acts of genocide, war crimes and other crimes against humanity have been perpetrated against the Hutu and Tutsi ethnic communities. (Art. 3)
- Recognition of the need to establish a new political, economic, social, cultural and judicial order based on the general principles of democracy and the rule of law to put an end to the conflict. (Art. 5.1)
- Creation of a national observatory for the prevention and eradication of genocide, war crimes and crimes against humanity and the enactment of legislation to prevent them. (Art. 6.2 and 6.9)
- A commitment to fight all forms of discrimination (ethnic, racial or gender-related) as regards access to education, to the administration of justice, the management of public services, the organisation of competitions, etc. (Art. 6.2, 7.5, 7.8, 7.11, 7.12, 7.14, 7.17)
- The transitional government shall request that the UN Security Council (SC) set up an International Judicial Enquiry Commission (IJEK) on genocide, war crimes and other crimes against humanity. Its brief: to investigate facts covering the period from independence to the date of the signing of the accord; qualify them; establish responsibilities; submit its report to the UNSC. **The Commission will use all reports already in existence on this subject, in particular the Whitaker report of 1985, the NGO's report of 1994, the report by Ambassadors Siméon Aké and Martin Houslid, as well as the report by the United Nations International Enquiry Commission of 1996.** (Art. 6.10-6.11)
- The Burundi government to request the establishment by the UNSC of an International Criminal Tribunal (ICT) to judge those guilty of acts of genocide, war crimes and other crimes against humanity if they have been ascertained by the International Judicial Enquiry Commission.
- Creation of a National Commission on Truth and Reconciliation. Its brief: to investigate, qualify and establish the responsibilities for serious acts of violence which are not related to genocide, war crimes and other crimes against humanity and which were perpetrated during the time from independence to the signature of the Peace Accord; to suggest to the competent institutions measures which are likely to promote reconciliation and forgiveness (restitution of assets, indemnities, awareness-building); **possibly to recommend a framework and conditions for an amnesty to the National Assembly.** Duration of its mandate: at least 2 years, at most 3. Composition: members of civil society, religious denominations, political parties and women's associations. Nominations: by the transitional government in consultation with the Bureau of the National Assembly.

### Protocol II: Democracy and good governance.

#### *The principles to be enshrined in the post-transition Constitution*

- Guarantees of fundamental rights. (Art. 1 and 3);
- Recognition of the multi-party system (Art. 4); legality of monarchist political parties; **approval of political parties shall come under the scope of the Ministry of the Interior.**
- Establishment of an Independent Electoral Commission to organise free and transparent elections (Art. 5)
- Legislative power must be exercised by a National Assembly of at least 100 members and one Senate. The Senate should be composed of two delegates from each province chosen by an electoral college consisting of members of the relevant provincial municipal councils and coming from different ethnic communities and elected by separate ballots (Art. 6)

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<sup>1</sup> The references in bold type indicate amendments to the accord between 17/07/00 and the day of signing.

- The Constitution may only be amended by a majority of 4/5 in the National Assembly and 2/3 in the Senate (Art. 6.5)
- **Organic laws may only be amended by a majority of 2/3 in the National Assembly with the Senate's consent** (Art. 6.6). The organic laws in particular govern the operation of the Supreme Court and that of the Defence and Security Corps.
- The opposition parties in the National Assembly shall be entitled to sit on all the parliamentary committees.
- The functions of the Senate, among others, shall be: to approve amendments to the Constitution and the organic laws; to carry out investigations in administering the distribution of public assets; to check that the constitutional principle of equilibrium and representativeness is complied with in the composition of the Civil Service and of the armed forces; check the implementation of Protocol II; initiate and contribute to legislative work; **to approve nominations for the head of the armed forces, the provincial administration and the judicial administration.** (Art. 6.14-6.17)
- With the exception of the very first presidential election, the President of the Republic shall be elected by majority vote in two rounds for a term of office of five years renewable once only. For the first election, the President shall be elected by the National Assembly and the Senate together, by a two-thirds majority. The President shall be assisted by two Vice-Presidents elected by the National Assembly and the Senate by a simple majority. The Vice-Presidents shall belong to different ethnic groups and political parties. (Art. 7)
- In consultation with the two Vice-Presidents, the President shall appoint the members of the government according to the lists of names put forward by the political parties proportionally to their representation in the National Assembly. When a Minister is dismissed, he must be replaced by a member of the same party. The President shall appoint the senior members of the administrative and judicial functions and those responsible for the security services. (Art. 8)
- The Constitution shall provide for a Supreme Court in Burundi. Its rules of procedure, composition and manner of operation shall be laid down in an organic law. A Higher Magistrature Council shall be set up (HMC). **Its composition shall be ethnically balanced and shall comprise solely legal professionals.** The HMC is the highest disciplinary body in the Magistrature. It is tasked with the grievances of individuals or of the Ombudsman against the magistrates and appeals by magistrates regarding their careers. The HMC shall also propose the name of future magistrates to the President. (Art. 9)
- An independent Ombudsman shall receive individual complaints and carry out enquiries concerning abuses of power by the Public Administration and the Judiciary and shall make public recommendations to the competent authorities. He shall also act as mediator between the administration and the citizens. (Art. 10) He shall be nominated by the National Assembly by a  $\frac{3}{4}$  majority and confirmed by the Senate.
- **During a period to be determined by the Senate**, the National Defence Force shall not have more than 50 per cent of its members belonging to one particular ethnic group. An organic law shall define the organisation and functioning of the defence and security corps. (Art. 11)

#### *The organisation of the transition*

- The transition should start as soon as possible between three and six months after the signing of the Accord. The Implementation Commission shall decide the exact date of the beginning of the same and shall guarantee compliance with the Accord in accordance with the provisions of Protocol V. The election of the new President shall mark the end of the transitional period. The presidential election shall take place after the first democratic election of the members of the National Assembly. Both elections shall take place within thirteen months following the beginning of the transitional period. (Art. 13)
- The transitional National Assembly, within twelve months of its establishment, shall adopt a law on political parties. No political party may take part in the arrangements for the transition unless it respects the undertakings set forth in the Accord and unless it signs the 'official undertaking of participation' annexed to the Accord. **A non-signatory party may become a participant after the date of signature of the Accord if 4/5 of the parties represented within the Implementation Commission so decide. If a non-signatory party is admitted as a**



**participant party in accordance with this Protocol, it shall be granted the same rights of participation in the transitional institutions and in the Implementation Commission as the other participating parties.** (Art. 14)

- A legislative body shall be set up consisting of a National Assembly **and a Senate.** (Art. 15)
- Composition of the transitional National Assembly: the 1993 parliamentarians (or their successors, i.e. 81 seats); three representatives of each political party (except UPRONA, FRODEBU and CNDD which are already represented, 48 seats); **all the members of the civilian society appointed by Pierre Buyoya in 1998 (28 seats).** Minimum total: 157 seats . **The Senate shall be composed of thirty members co-opted from the Transitional National Assembly representing the fifteen provinces of the country on an equal footing for the ethnic communities and also the past Heads of State and three persons from the Twa community. This institution with major powers (cf. attribution set forth in the institutional principles of the future Constitution above) must be established by the President of the Republic and the Bureau of the transitional National Assembly.** (Art. 15.3)
- The National Assembly and the Senate should have 18 months to adopt a new Constitution by a two-thirds majority in conformity with the principles set forth in Protocol II. The new Constitution must be validated by the Constitutional Court and adopted by referendum. If a new Constitution is not adopted within 23 months from the beginning of the implementation of the Accord, the Implementation Commission may call in international experts. Their text, which will take into account non-validated drafts and the rulings of the Constitutional Court, shall be submitted to a referendum. (Art. 15.4)
- During the transition, the National Assembly shall not submit any censure motion nor can it be dissolved. A 2/3 majority is required for the adoption of laws. (Art. 15.9 and 15.10)
- The President and Vice-President of the transitional National Assembly shall originate from two different political families. Their term of office shall end when the first post-transition President is elected. A government for the transition and for national union of 24-26 members shall be nominated by the President and Vice-President of the transition after consultation with the parties. It shall consist of at least half, and at most three fifths of the members of the G7. **The government shall endeavour to take decisions by consensus.** (Art. 15.12-15.16)
- Within 30 days from the start of the transition, the transitional government shall establish a Commission which will be created by a Judge and shall be responsible for urgent enquiries and for making recommendations on the conditions under which prisoners are detained, on the release of detainees on suspicion and on the question of political prisoners. **Pending the establishment of a transitional government, the pre-transition government may also set up such a Commission in agreement with the Implementation Commission.** (Art. 15.20)
- Within 30 days from the start of the transitional period, a Commission shall be established by the transitional National Assembly within which all parties shall be represented in order to follow up the reforms of the Public Administration and of the administration of justice organised by the transitional government (recruitment, appointments, training, review of legislative texts). The nominations in the judicial sector shall be approved by the National Assembly by a 2/3 majority. (Art. 17)
- During the first month of the transition, a Constitutional Court of seven members shall be set up. **Its members shall be nominated by the President and confirmed by the Senate by a 2/3 majority.** (Art. 17.7)
- Municipal and national elections shall be held during the transitional period. They shall be organised by an independent National Electoral Commission, the nomination of whose members shall be approved by the National Assembly by a ¾ majority. Within **12 months**, the National Assembly shall adopt an electoral law by a majority of two thirds. Elections to the National Assembly shall be held after the municipal elections and before the presidential election. The National Assembly shall consist of 100 members elected by direct universal suffrage and 18 to 21 additional members may be co-opted exceptionally if the one single party has won more than 3/5 of the seats. These co-opted members shall be chosen in equal numbers from the rolls of the parties which have obtained at least 2 per cent of the vote. For the legislative elections, the electoral system shall consist of voting on blocked multiethnic rolls by proportional representation. The municipal elections shall be held within the 18 months subsequent to the start of the transitional period. The hills shall be administered by Hill Councils of 5 members elected by direct universal suffrage and by a majority vote for one person only

in one ballot. None of the main ethnic components shall have more than 67 per cent representation among the municipal administrators elected by direct universal suffrage. (Art. 20)

- The transitional arrangements as well as the text of the Accord may not be modified without the assent of 9/10 of the members of the transitional National Assembly. (Art. 21)
- By its signature and within four weeks, the National Assembly shall agree to the following: to adopt Protocol II as a supreme law without any modification; to repeal the provisions of any legislative text which hinders its implementation; to adopt a law granting provisional immunity against prosecution for political crimes committed before the Accord was signed. (Art. 22.2)

***Protocol III: peace and security for all.***

- Enunciation of the principles which are necessary for restoring peace and security (political neutrality, competence, moral integrity, etc., of the defence corps and the armed forces, prohibition of the use of force in politics and of the formation of militias, etc.) (Art. 1)
- Identification of the causes of violence, its origins, its manifestations, and responsibilities. (Art. 2-7)
- Enunciation of the principles relating to the re-organisation of the defence and security corps (submission to the government's authority and Parliament's control; transparency; supervision by a parliamentary Commission). (Art. 10-13)
- Establishment by the transitional government of a technical Committee on the reform of the security forces consisting of representatives of the Burundian armed forces, combatants from the parties and political movements as well as a group of external advisors and military instructors. (Art. 14)
- Exclusion on principle from the new security forces of all persons guilty of acts of genocide, coups d'état, violation of the Constitution and human rights, and war crimes. (Art. 14)
- Determination of the de-mobilisation procedure. (Art. 21)
- Definition and determination of the general principles for the cease-fire (cessation of hostilities, disengagement, disarmament, verification and surveillance by a Cease-fire Commission, etc.) (Art. 25-28)
- Involvement of an international peace-keeping force with the task of monitoring the implementation of the cease-fire agreement and supplying assistance and support to the implementation process according to needs (Art. 28.5)

***Protocol IV: reconstruction and development***

- Establishment of principles governing the return, reinstallation and reinsertion of refugees and other victims (voluntary and protected return; organised reception; reinstatement of rights and recovery of assets; fairness in reinstallation and reinsertion).
- Establishment of a National Commission for the Rehabilitation of Victims (NCRV) with the task of organising and co-ordinating with the international organisations and the asylum countries the repatriation, the return, reinsertion and reinstallation of refugees and other victims. The NCRV shall consist of representatives of the transitional government and the participating parties.
- Creation of a sub-committee of the NCRV to deal with issues relating to land and responsible for ensuring that the following principles are enforced: the right to land is guaranteed for all, men, women and children; fair and just indemnification shall be paid in the event of expropriation or impossibility of recuperating assets/land; the fair settlement of disputes in a spirit of reconciliation. At the same time the land-tenure law shall be revised as well as legislation on succession and the policy for the management and allocation of state-owned land. A register of rural land shall be set up.
- Establishment of a National Victims Fund (NVF), funded out of the state budget and international donations.

- The transitional government shall undertake the material reconstruction of the country with the aid of the international community, as well as the political reconstruction of the nation (a reconciliation campaign, civic education, reform of the judicial system, promotion of the rule of law etc.).
- With the aid of the international community the government shall undertake a long-term economic and social development programme for the purpose of correcting the imbalances which exist in the distribution of resources and of engaging the country on the path to sustainable and fair growth. An inter-ministerial task force for reconstruction and development shall be set up with this objective. It shall draw up an emergency plan for reconstruction within six weeks following signature of the Accord.

***Protocol V: Guarantees as to the implementation of the Accord***

- Creation of an Implementation Monitoring Committee for following-up, controlling, monitoring and co-ordinating the implementation of the Accord (Art. 3)
- The brief of the IMC is to ascertain that the timetable is respected and ensure a correct interpretation of the Accord; to reconcile points of view; to arbitrate and settle any disagreement between the signatories; to guide and co-ordinate the activities of all the Commissions and sub-Commissions established under the different protocols; to aid the transitional government in a diplomatic mobilisation of the necessary financial, material, technical and human resources; **to decide on the admission of any other participating parties; to carry out any other function that will be expressly conferred upon it under the Accord.**
- Composition and structure: **two representatives of the signatory parties; one representative from the government; six Burundians designated on the grounds of their moral integrity;** representatives of the UN, of the OAU and the Regional Peace Initiative for Burundi (RPIB). The IMC shall be chaired by the representative of the UN, who shall work in consultation with the transitional government, the UN and the Regional Peace Initiative for Burundi. The Follow-up Commission's headquarters shall be located in Bujumbura and **it will have an Executive Board to which it may delegate any power as deemed appropriate.** Smooth functioning of the IMC and its Executive Board shall be ensured by a secretariat. The Commission shall start work as soon as its chairman is appointed. Its decisions shall be taken by consensus by the parties or, **failing that, by 4/5 majority.**
- **Immediately after signature of the Accord, the Burundian government shall ask the UN to send an international peacekeeping force.**
- The mediator shall continue his mission as moral guarantor, appeals authority and conciliation agent.



## BURUNDI: NEITHER WAR NOR PEACE

### I. INTRODUCTION

After the signing of the accord on 28 August 2000, an assessment of the Arusha peace process to resolve the Burundian conflict is unimpressive to say the least. The concrete result of this process certainly is the fact that a sound text was signed laying down the guidelines for an urgent political renewal. However the way in which the text was signed (under pressure from the region and with broad reservations) and the importance of the issues which are still pending (the cease-fire and the transition) suggest that Burundi's political class is still not prepared for fundamental political compromises on power-sharing and ultimately is not prepared to lead the country towards peace. In fact, since 28 August 2000, Burundi has experienced a dramatic resurgence of violence, the peace process appears to be paralysed by the refusal of the main rebel groups to take part in it despite the efforts of the South African mediators, and the daily life of Burundians both inside and outside the country has not been improved at all. Were these two and a half years of talks therefore in vain?

The assessment of Arusha is not entirely negative. Whatever reservations are put forward by certain parties and in spite of fears one may have as to the concrete functioning of the proposed institutions, the Accord is based on a high quality text, which is both detailed and far-reaching and which has achieved broad unanimity. The document certainly is incomplete because of the absence of the main rebel groups from the negotiating table, but the three completed protocols (I, II, IV) outline a clear and precise action programme in a bid to lead Burundi towards reconciliation, democracy and reconstruction.

Moreover, the results that could be expected from these negotiations must be looked at realistically. The evaluation of the political scope of the Arusha negotiating cycle can be made from two different angles. On the one hand a normative approach based on the terms of reference of the Arusha process can base its judgement on the establishment of a new sharing of power, the cease-fire, the drawing up of a new constitution, of a democratisation programme, of a programme for repatriating refugees and rebuilding the country According to a realistic and precise timetable, etc.

Because of the length of negotiations (over two years), the volume of resources made available to the Facilitation Bureau by the international community – almost 15 million U.S. dollars in all – and the urgent need for a solution because of the very serious humanitarian consequences of the conflict – more than 200,000 dead, 800,000 persons displaced and regrouped, 360,000 refugees<sup>3</sup> – the Arusha

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<sup>2</sup> ICG interview with a former member of the facilitation team, Nairobi, 9 November 2000.

cycle should have ended with a speedy return of peace to Burundi and a change in the regime and type of governance. From this normative perspective the Arusha Accord is an obvious failure and no agreement should have been signed on 28 August without these two results being guaranteed.

On the other hand a more realistic analysis shows that Arusha is only one stage in the peace process. It started with the Mwanza consultations (Tanzania) in March-June 1996 under the auspices of President Nyerere and it will not necessarily end in Arusha. Arusha probably provides a basis because of the extent of work and means involved. Therefore an evaluation of the process must focus both on measuring the amount of ground covered and on the preparation of the next negotiating stage. Such an evaluation can be made on the basis of the text of the Accord and of the new attitudes displayed by the parties to the conflict.

The methodology which was chosen by the former Facilitator Julius Nyerere, namely negotiations including the political parties (17 in all plus the government and the National Assembly), but without the main rebel groups<sup>4</sup>, in which the Facilitation plays an active role in putting forward proposals, was not really likely to be able to solve the whole equation of the Burundian conflict. Thus even with the support of the 'Mandela effect'<sup>5</sup> the methodology that was adopted in Arusha, which at one point made it possible to help the talks progress was not able to solve the key issues of the peace process<sup>6</sup>.

Therefore if we admit that Arusha was only a stage in the negotiations, any assessment must directly concern the credibility of the strategy adopted by Julius Nyerere's successor, the former President of South Africa Nelson Mandela to actually conclude them. Ending Arusha on 28 August 2000 as decided by Nelson Mandela could only be beneficial if a new framework was on offer which would at last make it possible to open a constructive dialogue with the rebels and achieve a suspension of hostilities. The signing was to represent a strategic point in time in the peace process, not just a milestone for the media with a limited life span.

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<sup>3</sup> Cf. 'Report by Commission IV', *Arusha Accord for Peace and Reconciliation in Burundi*, Annex IV, 19 August 2000, pp. 112-115.

<sup>4</sup> The exclusion of the PALIPEHUTU-FNL and of the CNDD-FDD is due to the fact that these two political and military movements are the result of splits in two parties which are already participating in the peace negotiations, Etienne Karatasi's PALIPEHUTU and Léonard Nyangoma's CNDD. Now, one of the rules of the Arusha cycle was that the secessionist movements of existing parties could not be considered as full participants. This rule did not prevent the splintering of the political parties but the 'internal' factions, the rivals of the FRODEBU, PRP, or of ASABA were never accepted in Arusha as legitimate representatives of their parties. See ICG Africa Report N° 23, *Burundi: The Stakes in the Debate. Political Parties, Freedom of the Press and Political Prisoners*, 12 July 2000.

<sup>5</sup> Cf. ICG Africa Report N° 13, *The Mandela Effect. Assessment and Prospects of the Burundi Peace Process*, 18 April 2000.

<sup>6</sup> As was rightly underlined by Judge Mark Bomani at the end of the last session of Commission V at the beginning of August, the Arusha negotiations had achieved all they could in the current framework and they must come to an end: 'All items have been tackled one way or the other, they [the negotiators] were not able to reach an understanding on certain particular issues, but that is not because they did not have the time to discuss them, but quite simply because they would never reach an understanding on those points (...) Even if you give them a year, two years, they would probably not reach agreement'. Hirondelle Foundation 'the Peace Accord was scheduled for 28 August at Arusha', Arusha 13 August.

Now, since 28 August, no convincing initiative from South Africa has appeared to take up the momentum, which was generated in Tanzania in June 1998. Efforts to make the rebels participate in negotiating a cease-fire are still vain and little by little the hope incited by the signing of a peace agreement in the presence of more than ten heads of State had given rise is now dwindling, making way for dangerous uncertainty and the resurgence of the military option, this time at regional level<sup>7</sup>. Moreover, Nelson Mandela himself is beginning to show signs of impatience with the main rebel groups and is already brandishing the threat of sanctions.

Three months after the signing of the Arusha Accord, ICG intends in this report to evaluate the prospects offered for a Burundian peace process and to suggest concrete measures to facilitate its reactivation. For that purpose the analysis will focus first on results obtained by the conclusion of the Accord and then on the initiatives, which followed the signing on 28 August 2000.

## II. THE ARUSHA ACCORD: A WORTHWHILE EFFORT UNDERMINED BY LAST-MINUTE COMPROMISES

There is no doubt that the text of the peace Accord is the first attempt in the country's history to provide a real solution to the events that have torn it apart since independence. It consists of five protocols, five annexes and two appendices, and is an ambitious document. In particular it provides for the following: (1) an undertaking by the parties to lead Burundians towards reconciliation by determining the truth about the origin and nature of the conflict, (2) a proposed institutional framework for the transition which will bring about conditions for a democratic renewal by fair power-sharing, (3) the end of hostilities and the establishment of security guarantees for all citizens, principally through a reform of the army, (4) a blueprint for the country's economic and social revival and its stabilisation based on the return of refugees who have fled since the beginning of the Seventies and lastly, (5) it formulates international guarantees ensuring that the Arusha resolutions are credible and can be implemented. In addition, as regards the institutions, the approach is permeated by three principles: (1) to include all parties to the conflict without exception, (2) to follow the momentum of the negotiations and learn the benefits of dialogue and compromise, (3) to re-establish the rights of the persons who were elected and the parties that participated in the 1993 election<sup>8</sup>.

Basically this text is the result of two series of negotiations: Firstly, 26 months of indirect debate between 17 political parties, the government and the National Assembly, summed up and analysed by the Facilitation which bore responsibility for proposing compromises. Secondly, a whole night of direct negotiations between the two most important Burundian leaders, namely Pierre Buyoya, President of the Republic, Commander-in-chief of the armed forces, leader of UPRONA and self-proclaimed representative of the Tutsi community<sup>9</sup> and Jean

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<sup>7</sup> ICG, interview with a Burundian journalist, Bujumbura, 6 November 2000. Cf. *Infra*.

<sup>8</sup> Cf. 'Explanatory notes on Protocol II', *Arusha Accord on Peace and Reconciliation in Burundi*, miméo, 28 May 2000.

<sup>9</sup> To the surprise of the regional Heads of State and much to the regret of many of the Hutu leaders of UPRONA, on 20 July 2000 Pierre Buyoya officially presented himself as the only leader representing

Minani, President of FRODEBU and leader of the G7 (the group of seven parties representing mainly the Hutu interests: FRODEBU, CNDD, PP, PL, RPB, PALIPEHUTU and FROLINA), his main political adversary. This last night of talks led to very significant amendments on the eve of 28 August 2000, which were last-minute compromises demanded by Pierre Buyoya in return for his signature the next day.

#### **A. Protocol I: The Compromise on the Question of the Genocide**

The most tangible result of the first protocol is that it obtained the establishment of an International Judicial Enquiry Commission (IJEK) into war crimes, crimes against humanity and acts of genocide committed in the country since independence as well as a National Truth and Reconciliation Commission on the other political crimes. The conflict is also quite rightly identified as 'a political conflict with major ethnic dimensions' and not as a purely ethnic conflict between two communities which are unable to co-exist. Responsibility for de-structuring Burundian society, which caused the conflict, is usually attributed to the Belgian colonisers, their manipulation of the political elites and the fact that they imposed a racist view of society based on morphological considerations and recourse to ethnic identity cards<sup>10</sup>.

The text of Protocol I was broadly accepted by all the parties. It had indeed been possible to achieve a consensus on the establishment of the two Commissions (the International Judicial Enquiry Commission and the Commission of Truth and Reconciliation) and on their functions, the enactment of legislation against genocide and the creation of a National Observatory for the Prevention and Eradication of Genocide. Two major disagreements had persisted as to the genocide statute as such and the question of an armistice<sup>11</sup>.

The first disagreement between the parties originally concerned the issue of a priori recognition of genocide. The G8 (a group of 8 parties mainly defending Tutsi interests, PARENA, PRP, PSD, ABASA, Inkizo, RADDES, AV-Intwari, ANADDE, as well as UPRONA and the government) stood for this position whereas the G7 wanted to wait for the International Judicial Enquiry Commission's conclusions before deciding. The compromise, in the end, was the explicit recognition of the genocide, although with a remit to IJEK to determine individual responsibilities.

The second disagreement was that the G8 demanded that the highly controversial S/1996/682 Report by the UN of 1996 be used as the foundation for the work of the IJEK and that its recommendations be confirmed by the Commission. The G7, for their part, rejected the 1996 Report because of reservations put forward by its authors as to their own working conditions, (this report was never ratified by the

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Tutsi interests during his talks with Nelson Mandela and the representatives of the Regional Initiative on Burundi. He was trying to re-assert his credibility as the candidate for leadership of the transition, as well as his political authority over a deeply divided community. Cf. ICG interview with an East Africa diplomat, Arusha, 20 July 2000.

<sup>10</sup> Louis Michel, first deputy Prime Minister and Minister of Foreign Affairs of the Kingdom of Belgium, protested to the Facilitator about the inclusion of his 'unfounded accusations' when he visited Arusha from 18 to 20 July 2000 and asked for the accusations to be withdrawn from the Protocol of Commission I. This request, fortunately, was not followed up. Cf. press conference of the Deputy Prime Minister and Minister of Foreign Affairs Louis Michel, Arusha, 20 July 2000.

<sup>11</sup> Results obtained at the first meeting of the 'Key players' in October 1999 at Dar-es-Salaam.

Security Council) and requested the inclusion of the 1995 Whitaker Report denouncing the genocide that had been orchestrated against the Hutu elites in 1972. Apart from marking the 1993 events as being indeed more important than those of 1972, the recognition of the report enabled the G8 to have some leaders of its main adversary, FRODEBU, which was in power in 1993-1994, disqualified.

Ultimately, the approved text is a fairly balanced compromise between the positions of the various parties and is a definite improvement. The 1996 Report is explicitly mentioned as a working tool for the International Judicial Enquiry Commission but without actually establishing its value a priori, or without its recommendations being given special mention. This report therefore cannot be shelved but it will be treated like two other international reports with an identical political scope: the Whitaker Report of 1995 and the report by human rights NGOs of 1994 which rejects the idea that a genocide was committed against the Tutsis at the end of 1993.

The amnesty issue, which was raised by Nelson Mandela in January 2000, continued to be contested by both groups, of which one believed it ensured immunity for those responsible for the 1993 massacres, while the other viewed it as benefiting those truly guilty of Melchior Ndadaye's assassination or of the massacres in 1965, 1972 or 1988<sup>12</sup>. Because of that, a major amendment was made to the draft Accord regarding the scope of the Truth and Reconciliation Commission. The latter has lost all judicial or administrative powers and may under no circumstance encroach upon the domain of the transitional institutions, but it may if need be make any necessary recommendations to the transitional National Assembly concerning the vote on legislation for an amnesty for crimes other than acts of genocide, war crimes and crimes against humanity.

Actually, some of the negotiators and their supporters – the perpetrators of the 1972 massacres, the alleged coup plotters, the organisers of “dead town” protests, the rebels and the organisers of the 1993 massacres – have good reason to fear possible legal prosecution by the Truth and Reconciliation Commission and will be the primary beneficiaries of this possible amnesty. The signatories to the agreement have thus protected their interests. But to keep political grassroots support on both sides, no party could dare advocate an immediate and total amnesty and must perforce request the unconditional exclusion from any amnesty of all acts of genocide, war crimes and crimes against humanity. The delicate debate between the need to satisfy demands for impunity of the powerful and preserving the idea of justice demanded by the Hutu and Tutsi victims, was partly resolved in favour of those in power, but conditionally, without bringing into question the need for justice or ratifying the need for impunity.

Finally, the recommendations of the Burundi Women's Peace Conference which took place in Arusha from 17 to 22 July 2000 are broadly covered in Protocol I, since throughout the text specific mention is made of the suffering experienced by the women of Burundi and of the urgent need for policies to promote women's rights, to guarantee access to schooling, to put an end to discrimination against

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<sup>12</sup> For more details cf. ICG Africa Report N° 13, *The Mandela Effect*, op. cit., p. 4.



women in the administration of justice, management of public services and competitions for recruitment<sup>13</sup>.

## B. Protocol II: Buyoya Wins on Points

Defining a new power-sharing system was the most hotly disputed issue in the negotiating battle. For two years the Facilitation team endeavoured to cover both the majorities' aspirations for a political representation and the fears of the minority that it would lose its dominant position in a balanced institutional system. Nevertheless the balance of power proposed by the Facilitation was halted by the last-minute negotiations between Pierre Buyoya and Jean Minani. Indeed and quite unexpectedly Pierre Buyoya won the negotiations principally by including amendments, which provide for a transitional Senate with reinforced powers, the indefinite extension of the 50/50 rule in the armed forces (Hutu-Tutsi parity) and a change in the majority required to vote for the so-called organic laws. These three last changes considerably strengthen the representation and protection of Tutsi interests within the country's future institutions.

The second Protocol is divided into two parts: (1) the organisation of the transition, (2) the principles to be included in the future constitution after transition. During the transition it is intended to develop a new constitution, to carry out the reform of the security services, justice and regional administration and to effect the reinstallation and rehabilitation of refugees, reconstruct the country and to organise free elections as the founding acts of the nation's democratic renewal.

The first draft of Protocol II was redrafted seven times between April 1999 and April 2000 and the latest proposals in July 2000 were based on the seventh draft. It consists of the whole of the agreed text as well as the Facilitation's proposals, as requested by the parties to decide on the 10 per cent of the text which could not be agreed upon<sup>14</sup>. A consensus had been achieved at Arusha on the programme for transition, the fundamental principles of future democracy, the national character of the political parties, but differences of opinion continued to exist particularly as to the composition of leadership of the executive (one or two Vice-Presidents or one Prime Minister) a choice of a Senate rather than a Higher Council of State, and whether or not to resort to direct universal suffrage. The proposal by the Bureau of Commission II attempted to provide political safeguards for each of the parties by granting temporary ethnic overrepresentation of the Tutsi minority while enforcing acceptance of the principle of universal suffrage at the end of the transitional period.

This temporary correction, which in itself was an important concession for the G7 parties, could not however satisfy the G8 group, which as a general rule demanded the extension and maintenance 'over several decades' of all measures seeking to reinforce the strength of the minority within the institutions. The parties in the G8 and the government consider the restoration of direct universal suffrage as setting the seal of approval on the dominant position of the majority

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<sup>13</sup> Cf. All-party Burundi women's' peace conference 'Proposal to amend the draft *Arusha Accord on Peace and Reconciliation in Burundi*.

<sup>14</sup> 'Explanatory notes on Protocol II', the *Arusha Accord on Peace and Reconciliation in Burundi*, mimeo, 28 August 2000, pp. 159-160.

and making it impossible for the Tutsi parties to win the election and therefore to hope for alternating ethnicities in power. Moreover the equal distribution of administrative and political posts is considered by the G10 as the only protection for the minority against progressive and systematic exclusion from the machinery of the State<sup>15</sup>.

The essence of the changes made is in point of fact the result of direct last-minute negotiations between Pierre Buyoya and Jean Minani. The (incomplete) list of amendments made to the text on that occasion is proudly set forth in a report by the Council of Ministers dated 30 August 2000<sup>16</sup>. These amendments are doubtless a victory for the government and a real menace to the operation of the transition institutions, because a number of safeguards guaranteeing their smooth operation have been removed, foreshadowing the possibility of an institutional guerrilla war comparable to that which the country experienced during the 'Convention de government' period as well as a return to *partitocracy*, unless of course leadership of the transition is entrusted to Pierre Buyoya...

### 1. Constitutional Principles After Transition: Tutsi Interests are Overprotected

Pierre Buyoya's most significant victory regarding the post-transition constitutional principles is the increase in the powers of the Senate - 50 per cent of whose members consist of Tutsi representatives - concerning nominations to senior posts in the civil service, in the judicial system and in the army as well as the duration of the institutionalisation of ethnic parity within the national defence forces. Moreover it is in no way compensated by any major concession to the G7.

**The Electoral System.** Although there was a consensus on the principle of elections by universal suffrage among the various parties there was deep disagreement as to how the elections should be organised. The parties dominated by the Hutus wanted direct universal suffrage whereas the parties dominated by the Tutsis wanted an indirect electoral system, some of them even seeking ethnic electoral rolls<sup>17</sup>. The political issue in the debate thus shifted to the question of correcting the demographic balance of power, which otherwise would have secured a crushing victory of the Hutu candidates at every ballot as in 1993 and the certain disappearance of any chance of alternating ethnicities. Most of the parties in the G8 demanded measures, which would guarantee parity between the communities or a correction that would approximate it<sup>18</sup>. This would in effect mean that a Tutsi vote would carry as much weight as less than 6 Hutu votes.

In the end the electoral system suggested by the Facilitation Team in the draft Accord was retained. In the middle term it guarantees about 38 per cent of seats in the National Assembly for the Tutsi community, that is to say their political weight would be equivalent to about three times their actual

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<sup>15</sup> Cf. UPRONA Press Release No. UPRONA 800/155/CAB/2000, 27 July 2000.

<sup>16</sup> Burundi Government 'Council of Ministers' Report of 30 August 2000'.

<sup>17</sup> Cf. ICG Africa Report N° 13, *The Mandela Effect*, op. cit., p.5.

<sup>18</sup> UPRONA proposed for the National Assembly a representation of 55% Hutus, 4'0% Tutsis, 5% Twa as well as 40% women. Cf. 'Rebuilding the nation', op. cit.

demographic weight. This overrepresentation is further strengthened for the first legislature of the post-transition National Assembly thanks to the fact that 18 to 21 additional parliamentarians will be co-opted, thus further increasing representation of the minority parties. Equally, the Facilitation Team granted the G8 parties the election of the first post-transition President by indirect suffrage. Election of the President by universal suffrage would only be required for the next election, that is to say 8 years after the beginning of the transition<sup>19</sup>.

**The Institutions:** Despite the outcry raised by the G8 parties when the draft Accord was tabled in July, the draft was in fact soundly balanced and already included many of their proposals such as:

- setting up a Senate consisting of equal numbers of Hutu and Tutsi representatives with extended powers of control over nominations to senior offices in the State;
- two Vice-Presidents would be chosen, each from a different political and ethnic group;
- a ministerial portfolio would be attributed to any party obtaining five per cent of the votes in the election;
- a very strong qualified majority would be required both in the National Assembly and in the Senate for votes on constitutional amendments;
- full powers would be granted through the Constitutional Court to enforce the Constitution and be its guarantor even if in that capacity the Court has to oppose the legislative and executive arms, etc.<sup>20</sup>.

In addition the last phase of negotiations carried out by Pierre Buyoya made it possible to strengthen this representation in a decisive manner as well as to protect and extend it indefinitely without it being possible to determine its exact term of office, which is a victory for the government and the G8 parties. This is fully demonstrated by a review of these changes:

**Qualified Voting on Organic Laws Changes From A 3/5 to A 2/3 Majority.** This last-minute change is important because organic laws determine how to organise two institutions, which are considered essential for the protection of the Tutsi minority, namely the armed forces and the Supreme Court. The electoral arrangements in the Accord guarantee that 38 per cent of seats in the National Assembly shall go to the minority. This level of representation could sway negotiations on votes on constitutional amendments, with a required 2/3 majority, but was not sufficient to control the procedure for revising organic legislation (voting by a 3/5 majority had been provided for originally). Nevertheless it was only for the first legislature of the National Assembly that co-opting additional members of the minority was envisaged, raising their representation to more than 40 per cent. The

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<sup>19</sup> Amounting to 8 years in the transition for the President of FRODEBU – ICG interview with FRODEBU President.

<sup>20</sup> 'Explanatory notes on Protocol II', art. cit. pp. 163-164.

loss of the right of veto after eight years was naturally considered to be intolerable by the G8 parties and interpreted as an obvious sign of an alliance between the Facilitation Team and the G7 parties<sup>21</sup>. UPRONA's position is that 'the equilibrium mechanisms must last as long as it takes to absorb ethnic divisions, racist reflexes and genocidal temptations. The time required must be assessed in terms of decades if the whole of the political class firmly undertakes to deliver the country from this scourge<sup>22</sup>. The shift from a 3/5 to a 2/3 majority for qualified voting on organic laws at the National Assembly thus secures a power of veto for the G8 against any revision of the organisation of the armed forces or the Supreme Court for a totally indeterminate period of time.

**Extension of the Powers of the Senate:** The introduction of a Senate has always been opposed by the G7 parties as being unnecessary, anti-democratic and an obstacle to the sovereignty of the people<sup>23</sup>. The Senate is indeed an institution, which represents the interests of the ethnic communities and of the regions designated to control the activities of the National Assembly or the President to be elected by universal suffrage. Now the powers entrusted to the Senate in the final Accord certainly make it the new bastion of interests of the minority. In addition to its control over the management of the State and its contribution to law-making, the changes obtained by Pierre Buyoya give the Senate the power to control all nominations to senior civil service positions and to posts in the judicial institutions and the security forces. No judge, no governor, no member of the armed forces can be nominated without their career, their alleged political relations or their competences being assessed and approved by the Senate.

In practice, this strengthening of the Senate's powers means that Pierre Buyoya has given the representatives of the G8 parties and especially UPRONA, the only nation-wide party, the means to guarantee that an unofficial quota of their followers will be maintained within the leadership of the institutions. Thus, although the Head of State conceded that the text of the Accord should not include in black and white the institutionalisation of ethnic quotas for the distribution of posts in the civil service, which was categorically refused by Jean Minani<sup>24</sup>, he in fact guaranteed political mechanisms which will achieve the same purpose at any rate in the senior Civil Service. By the same token, the fact that the Senate will decide the duration of the 50/50 Hutu/Tutsi share in the armed forces, which was originally set for 10 years, is a very strong guarantee that it will be in place forever. Any change to the composition and organisation of the National defence forces is thus subject to a double barrier, namely the Senate's goodwill and the fact that organic laws would be difficult to amend<sup>25</sup>.

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<sup>21</sup> ICG interview with President of PSD, Arusha, 19 July 2000.

<sup>22</sup> UPRONA Press Release, NO. UPRONA/800/155/CAB/2000.

<sup>23</sup> ICG interview with a FRODEBU Representative, Arusha 21 July 2000. Also according to CNDD 'the Senate is designed to satisfy the claims of the Tutsi political and military oligarchy. In addition it is given powers that should belong to the Assembly. The Senate will cause a major blockage in the Assembly'.

<sup>24</sup> ICG interview with a member of the Facilitation Team, Nairobi, 30 October 2000.

<sup>25</sup> Changes in the composition of the High Magistrature Council are due to translation problems and the relevant articles were corrected directly by the President of Commission II himself, so as to leave no room for doubt that parliaments would not be empowered to judge magistrates, even though they

Pierre Buyoya's unquestionable success in his last negotiations with Jean Minani, to strengthen, protect and perpetuate political overrepresentation of the Tutsi minority within the transitional institutions is not in itself a political threat to the peace process. One can assume that Jean Minani accepted these concessions because of guarantees from Nelson Mandela as to the rejection of Pierre Buyoya's candidacy for leadership of the transition and out of fear of the Head of State refusing to sign. By showing a conciliatory spirit and acting in the interest of the peace process Jean Minani's moral reputation was heightened by the negotiations even though politically he was in fact weakened. Probably he secured the signing of the agreement and saved Mandela from international humiliation.

FRODEBU accepted amendments for the sake of obtaining the Head of State's signature. Nevertheless, the amendments also increased the risk that the transition will sink into a 'Convention de gouvernement' type situation in which the Head of State can decide nothing and the government cannot govern because they have fallen hostage to minority political parties under the pretext of respecting the consensus rule. This situation might very quickly revive frustration and discontent in an executive that cannot enjoy its full powers, however limited they may be, and might give rise to a proliferation of conflicts within the institutions thus paralysing the decision-making process.

## 2. Organising the Transition: Obvious Risks of Institutional Blockages Without a Tutsi President

**Duration of the Transition.** Most of the measures provided to organise the transition were already contained in the draft Accord and had obtained a relative consensus among the parties, apart from a thirty-month duration for the transition, which the G8 considered too short, and the G7 too long. Nevertheless, towards the end of August the idea of a fairly short transition of thirty months was admitted, preceded by an interim period of 3-6 months. The referral to the transition of a number of issues still pending, which was suggested by the G7, was also accepted by the G8. This meant postponing the drafting of the law on political parties provided the latter undertook in writing for instance to fight against genocide and ethnic discrimination and to renounce violence.

**The Senate.** Because of insurmountable disagreements between the parties on certain important points of the transition, the Bureau of Commission II had found itself obliged to settle the debate. A bicameral Parliament was therefore not kept in the draft Accord and a National Assembly and a National State Council were decided upon instead. The National State Council would be composed of past Presidents and other wise men and would have a consultative role in the management of the institutions as well as powers of mediation and conciliation in the event of a conflict in the government itself or between the executive and other institutions. In the final Accord the National State Council no longer exists and is replaced by a Senate with powers which are similar if not greater than those described in the post-

transition principles, since the Senate would also approve nominations to the Constitutional Court by a 2/3 majority.

**The National Assembly.** The composition of the transitional National Assembly was intended to satisfy three principles, namely to mirror the political order of 1993, to include all the parties attending the negotiations, and to promote real exchanges during discussions by means of the need to compromise since no group was to have more than 2/3 of the seats<sup>26</sup>. For this purpose, the July draft only sought to include in addition to the 1993 parliamentarians and three representatives for each party, half the members of the civilian society nominated by Pierre Buyoya in September 1998. Nevertheless, because of the protests of this latter group and taking into account the fact that participation by the rebels, which would strengthen the Hutu representation, was as yet an unknown quantity, the Bureau accepted to include all the members nominated in 1998<sup>27</sup>, reaching a total of 157 members apart from the rebels.

**The Referendum.** Finally another disputed item was the principle of adopting the new Constitution by referendum, which finally won the day since Parliament, the majority of whose members would be appointed, would have no legitimacy to do so.

**The Government.** It will consist of 24-26 members nominated by the political parties and chosen by the Head of State in consultation with the Vice-President. The transitional government will decide by consensus. The Facilitation however refused to give G8 an equal representation within the transitional government, which will comprise at least half and at the most 3/5 of the members of G7. This government is in fact a mini-Arusha Commission, but it will not be empowered to resort to any mediation in the event of a conflict, nor to any clear institutional mechanism provided for the solution of the conflict. This mechanism already existed in the initial project. If there was no consensus, decisions within the transitional government could be made by a 2/3 majority. This precautionary measure has disappeared. In fact in the event of a conflict or deep disagreement within the government, the whole decision-making process of the executive is paralysed and has no institutionalised form of recourse to end the crisis other than possibly a mediation by the Chairman of the Implementation Monitoring Committee (IMC) which is always possible. This clearly leads to a disaster scenario comprising renewal of the 'Convention de gouvernement', the government being taken hostage by even the smallest party and a total failure of the transition. This opens the door to all eventualities such as a return of violence and a recourse to military power.

**Late Admission of the Rebels.** Lastly, any provision, which was a major political or technical problem for the large majority of the negotiators, could if necessary be corrected by a 90 per cent vote by the transitional National Assembly. These provisions obviously exist because the door has remained open for the rebels. When it became clear that the rebels would not sign the Accord on 28 August 2000 it was agreed to give them a possibility of joining

<sup>26</sup> 'Explanatory notes on Protocol II' art. cit., p. 175.

<sup>27</sup> ICG interview with a member of the facilitation team, 30 October 2000.

the transition institutions later, subject to agreement by 4/5 of the participating parties.

### **The Commission of Enquiry on the Situation of Prisoners.**

Compared to the amendments obtained by Pierre Buyoya, Jean Minani obtained a relatively minor concession namely the possibility of settling the question of political prisoners quickly. The substance of this concession is important both for the thousands of detainees in custody who are unjustly detained and for the assertion of Jean Minani's political leadership over the Hutu people in general. The concession was granted by Pierre Buyoya without any true safeguard but it is of very slight value compared to the possibility of a dramatic failure of the transition which was intended to re-establish democracy in the country.

By instituting consensus as the decision-making method in the transitional government, Pierre Buyoya has made sure that the leadership of the transition would have to be entrusted to a Tutsi politician who alone would be able to inspire confidence in the G10 parties and allow the government to work in peace.

## **C. Protocol III: An End to the Tutsis' Monopoly of Legitimate Violence?**

Because of the absence of the main rebel groups from the negotiating table, the final text of Protocol III does not include any of the expected major compromises on the issues of Army reform or demobilisation.

In principle, Protocol III was to deal with the reform of the defence and security corps (their size, composition of the army, demobilisation, recruitment and future of the rebels), with the cessation of hostilities and lasting cease-fire. In the absence of the rebels the parties agreed on the principles, which governed the armed forces, namely political neutrality and non-discrimination in recruitment as well as the respective tasks of the army, the police and the secret services. The parties did not reach any agreement on the question of the size of the armed forces nor on that of the organisation of the future National Defence forces, whether integration as advocated by the government or a merger as advocated by the G7. On the issue of composition, the Facilitation pushed through the principle that the National Defence Forces (NDF) be based on the members of the present Defence Force and armed members of the political groups and that the members of the present National Defence Force be recognised as being guilty of acts of genocide, violations of the constitution and human rights as well as war crimes be excluded from the new National Defence Forces.

The 50/50 Hutu/Tutsi rule obtained by Nelson Mandela is a major concession by the G7, which actually wanted a representation proportional to the demographic size of the two ethnic communities. In addition, the reform will have to take into account the Hutu soldiers who are already incorporated and have been operating on the ground for years. These are so many instances of the Tutsi community monopolising legitimate violence. By obtaining at least a 50 per cent representation of Hutus within the new National Defence Forces, FRODEBU has guaranteed basic security for any President coming from its ranks and it has removed the possibility of a coup d'état, the 'sword of Damocles' which has hung

over the heads of all Hutu presidents since 1993 (Ndadaye was assassinated, Ntaryamira was assassinated, Ntibantunganya was overthrown).

On the question of the end of hostilities and of a permanent cease-fire, the demobilisation of the armed forces and recourse to an international peacekeeping force, the Facilitation simply decided to delete the proposals contained in its Chapter III<sup>28</sup>.

#### **D. Protocol IV: A New Redistribution of Wealth.**

Protocol IV contains three headings: the rehabilitation and resettlement of victims and refugees inside the country, reconstruction, and economic and social development. These results had already obtained a general consensus when the July draft Accord was tabled and most of them were submitted in a general report by the Bureau of this Commission, which is an annexe to the Accord and supplements the Protocol itself<sup>29</sup>. Protocol IV in fact deals with a new distribution of the country's riches and notably of international aid for the benefit of the main victims of war and exclusion. This task is huge. In spite of the impressive list of concrete measures outlined to confront it and the detailed work done by the Commission to support those measures, the path to reconstruction is doubtless strewn with pitfalls. But at this stage in the peace process it enjoys a consensus, which should be exploited as soon as possible. However, it should be underlined that a considerable part of these provisions is under the condition that a permanent cease-fire be established.

#### **E. Protocol V: The Intervention of the International Community is still a Bone of Contention.**

The guarantees as to the implementation of the Accord basically rest with two institutions: the IMC and the International Peacekeeping Force, which is provided for in principle in Protocol No. 3.

**The IMC.** The agreement of 28 August represents significant progress as to the way this Commission will operate. It is the result of last-minute work by the Facilitation. Although at the request of the government its competences were considerably curtailed so as not to encroach on the powers of the transitional executive<sup>30</sup>, an eventual extension of its prerogatives is still possible. In addition, it has a limited Executive Council to encourage the pace and momentum of implementation. A decision-making mechanism based on a 4/5 majority will allow the resolution of any obstacles caused by quarrels between the political parties. This Executive Council must include the United Nations, the Organisation of African Unity (OAU), the European Union and one representative from the region. But since the region did not agree to have one single representative, there would have to be representatives of all the regional States. Membership of the Follow-up Commission is still an issue today and has not been finally decided yet. Initially all parties were to be represented within the Commission. The change to its membership effected by Jean Minani and Pierre Buyoya does however indicate

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<sup>28</sup> ICG interview with a member of the Facilitation Team, 30 October 2000.

<sup>29</sup> 'Report by Commission IV', the *Arusha Accord on Peace and Reconciliation in Burundi*, Annex IV, 19 August 2000.

<sup>30</sup> ICG interview with a member of the Facilitation Team, Nairobi, 13 November 2000.



the two leaders' mood. The small parties are replaced by six wise men, and this new formulation will nullify their participation. In actual fact, if there is an agreement on the leadership of the transition neither Pierre Buyoya nor Jean Minani wanted to be embarrassed by 'minor players' when implementing the Accord<sup>31</sup>. But the small parties later protested and regained their respective places.

It remains to be seen how such a Commission consisting of thirty members can effectively enforce implementation of the Accord. This reproduction of the structure of Arusha in a smaller version may carry with it the same problems as the formula for negotiations among nineteen parties. Every stage in the implementation may have to be renegotiated.

**The International Peacekeeping Force.** Much uncertainty however still surrounds the second institution, which the G7 called for loud, and clear, namely the International Peacekeeping Force. The G8 parties had always refused to negotiate this issue. The very idea of resorting to an International Peacekeeping Force was rejected because it was tantamount to surrendering national sovereignty into foreign hands<sup>32</sup>. The G8 will only consent to intervention by an international mission to observe the implementation of the cease-fire 'reflecting that of the OAU which worked in Burundi on the morrow of the crisis'<sup>33</sup>, with no direct role to play between the belligerents. However the principle of involving an international peacekeeping force was maintained by the Facilitation even though its actual mandate still remains to be determined in the course of negotiations for a cease-fire. This is a crucial issue. It had in part justified Pierre Buyoya's coup d'état against Sylvestre Ntibantuganya in 1996. Now, a multinational force can only be sent if the present government so requests. This condition which was presented as a procedural necessity, in effect provides Pierre Buyoya with the ultimate guarantee as to his own personal fate and with considerable room for manoeuvre actually to obtain what he has been demanding for several months – namely management of the transition – despite vehement opposition from the majority of political parties of all backgrounds. It is therefore possible to hope for a negotiated political solution to this issue since it is believed that the Head of State had already promised to accept the principle of an international peacekeeping force if he is given the leadership of the transition<sup>34</sup>.

## F. Assessment

At the end of this scrutiny of the text of the 'Arusha Accord on Peace and Reconciliation in Burundi' several conclusions are clear.

Protocol II carries a heavy political handicap and arouses concern about the operation of the transitional institutions. Its general equilibrium tends rather to protect the Tutsi minority and this may be deplored by some and welcomed by others, but no external evaluation is possible. This is the result of direct negotiations between the parties. So be it. Concern about the peace process can arise principally from the cancellation of institutional methods to solve conflicts

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<sup>31</sup> ICG interview with a member of the Facilitation Team, Nairobi, 13 November 2000.

<sup>32</sup> ICG interview with many G8 representatives, 18-21 July 2000.

<sup>33</sup> Cf. UPRONA 'Rebuilding the Nation'.

<sup>34</sup> ICG interview with a Belgian diplomat, 20 July 2000.

within the transitional institutions. This means that in order to have a chance of operating smoothly, the unequal balance of power within the transitional government, as between the G7 and the G8 representatives, must be offset politically by the choice of the President of the transition. In a word, the political result of the institutional arrangements for transition is that if the President of the transition is not a Tutsi, the transitional executive runs the obvious risk of being blocked as soon as even a minor disagreement arises between the parties and especially within the first three months of implementation of the Accord, during which three months the redistribution of all posts in the senior civil service, in the judicial system and in the armed forces will be decided.

The last-minute amendments obtained by Pierre Buyoya in fact guarantee a partial continuation of the status quo throughout the transitional period. Does this guarantee that the Head of State will keep his office? Nothing is certain because, as illustrated by the declarations and reorganisation of political alliances in the period before the Accord was signed and on the very day of the ceremony, Pierre Buyoya counts almost as many critics within the G8 as within the G7, not to mention the legitimate reluctance of the Facilitator Nelson Mandela.

### III. THE MANDELA EFFECT REVISITED: A SIGNATURE BY DEFAULT AND FORCEFUL PERSUASION

#### A. Mediation or Pressure?

After Julius Nyerere's death, Nelson Mandela's arrival at the head of the Facilitation Team had given a new momentum to the peace process and its rapid conclusion could be hoped for<sup>35</sup>. After 10 months of negotiations facilitated by Mandela, one can spot differences in methodology compared with the methods used by Nyerere, but also similarities.

The greatest difference is Mandela's use of a strategy of publicly exposing obstacles to the process and of constant international pressure to make the Burundian parties accept concessions. Empowered by the Regional Heads of State to bring the rebels into the negotiations, Nelson Mandela stated the terms of the debate right from the start. A change of regime is necessary and the Tutsi minority must accept a loss of power to the Hutu majority. During his two visits to Bujumbura he even exerted constant pressure on Pierre Buyoya himself so as to encourage him to make concessions as to the conditions set by the rebels for their participation in negotiations, namely dismantlement of the regroupment camps and the release of political prisoners<sup>36</sup>. Vis-à-vis the political parties, the former President of South Africa also adopted a firm tone and stressed their urged responsibility to keep the promise they had given him that the process would continue<sup>37</sup>.

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<sup>35</sup> Cf. ICG *The Mandela Effect*, op. cit.

<sup>36</sup> Cf. ICG Africa Report N° 14, *'Burundi; The Issues at Stake: Political Parties, Freedom of the Press and Political Prisoners*, 12 July 2000.

<sup>37</sup> On 27 July 2000 Nelson Mandela reminded the Burundian political parties of their commitments as follows: 'You will recall that on 28 March 2000 I had a confidential discussion with you during which we unreservedly accepted the plan proposed by the facilitation team. The plan was in three phases:

This strategy combining pressure with firmness and conducted at such a fast pace that the Facilitation Team itself had the greatest difficulty in keeping up with it made it possible to advance the peace process by several steps but it did not make for direct participation in the negotiations by the main rebel groups. Neither were any of the major political compromises obtained in the last series of talks in August. One may ask: were the parties ready to sign? Was it absolutely necessary to abide by the date of 28 August when the basic issue of the post-Arusha period, the pursuit of negotiations on the cease-fire and the leadership of the transition, had not been settled?

The methodology used by Mandela has the same flaws as Nyerere's. First of all it remains extremely personalised and has not become professionalised. Mandela has not recruited a team of professional honest brokers, nor has he actually used South African expertise in solving conflicts. The process remained in the hands of the same players, the framework remained the same and the process has not acquired an independent and durable life of its own far from the limelight of the media. Parties to the conflict consequently view it as no more interesting than a stage, which they are forced to pass through in order to keep or conquer power.

Furthermore, the impatience shown by the mediator, who was supported by the international community, shows a certain lack of consideration for the depth of the wounds of the Burundians. The debt in terms of blood money for the Hutus and the Tutsis is enormous and one cannot expect the conflict to be solved in two and a half years of public negotiations. The former South African President's somewhat inflexible attitude and the unwillingness to listen which he has shown since he took charge of the Burundian dossier would seem to indicate a dramatic underestimation of this sad reality. Nelson Mandela has often proved inflexible, stubborn and impervious to any advice or any external influence on his management of the peace process, probably trusting too much his own experience when he managed the South African minority /majority dossier.

This strategy of pressure often hurt the pride of the parties to the conflict. Nevertheless they all wisely decided not to face the Facilitator head on and invested more effort in inventing resistance strategies than participating in the peace process. When, for instance, on the eve of the signature Nelson Mandela three times threatened to resign, all the Burundians understood the risk involved if they did not sign on 28 August. Although they had displayed their resistance to signing an incomplete Accord, thus indicating their dissatisfaction, they all agreed to grant Mandela their signatures and to ride the storm on 28 August. In the end,

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- Firstly, there would be draft compromise proposals on every important issue to be resolved. The draft proposals would then be circulated among the parties for three weeks for their study and recommendations.
  - Secondly, the Parties would then submit their comments and recommendations to the facilitation team for consideration and action. Some of these recommendations might be accepted on merit and others rejected.
  - Thirdly, the final proposals by the Facilitation Team would then be accepted by all parties without further comment.

This was a solemn agreement, which was accepted by each party, both in the confidential meeting with the Facilitator and in the presence of donors, diplomats and other high profile guests at the plenary session", letter from Nelson Mandela to Burundian political party leaders, mimeo, 27 July 2000.

how strong is the force of international pressure in the eyes of parties that have known the horror of 'acts of genocide', the fear of which makes them always think in terms of life and death?

Today the strategy of public pressure is changing its target. It is going to attack the rebels to obtain a cease-fire. But although recourse to pressure is certainly indispensable in any peace process, is it effective in the last resort? Is it not once again going to be a mistake to force a solution without having laid the necessary foundations for the peace process? And what negotiating chips will be placed on the table if this tactic continues to fail repeatedly?

## **B. The Lack of Compromise on the Transition.**

### **1. Failure of the Last Weeks of Consultations**

After submission of the draft Accord on 17 July the parties had three weeks to analyse it and give the Facilitating Team their last comments. The Facilitation Team could then amend the text on all points where there had been a consensus by the parties and propose undebatable compromise solutions on each of the issues which were still pending. Nelson Mandela had also announced to the parties, one week before the draft Accord was tabled, that the date of 28 August had been chosen for the signature in the presence of about fifty Heads of State, both African and from the Western world.

In the days following the distribution of this Draft at Arusha, declarations and counter-declarations by the parties succeeded one another. Some of them welcomed the quality of the Draft, others rejected it outright. The G8 and the government opposed it as soon as it was submitted. They felt that the text reflected the positions of the Hutu group assisted by the Tanzanian Facilitation Team, which had been perceived as being partial, and a participant in the conflict since the very beginning of these talks. But the Facilitator immediately repeated these injunctions: 'the proposals or counter-proposals by delegates concerning the draft Accord will only be accepted at this stage if they have obtained a consensus'<sup>38</sup>. For its part, taking advantage of the mediator's urgent desire to obtain a signature very quickly, the G7 proclaimed that it was satisfied with the contents of this draft Accord, taking into account the fact that the question of the transition should not endanger the achievements of the process so far.

To nip the budding crisis in the bud, negotiations were suggested from 31 July to 5 August by the Facilitation Team to the four main leaders of the political groups (Jean Minani for FRODEBU, Léonard Nyangoma for CNDD, Jean-Baptiste Bagaza for PARENA and Libère Bararunyeretse for the Head of State, the government and UPRONA) the intention being to make the negotiations progress effectively and to solve the quarrels that had unfolded during the week. The small parties protested vehemently against this exclusion and the Facilitation Team agreed to include two additional representatives of the G7 and the G8 in the negotiations. But the government

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<sup>38</sup> Press conference by Nelson Mandela, Arusha, 20 July 2000.

withdrew its participation and the meeting could not take place<sup>39</sup>. In preparation for negotiating the leadership of the transition, the government had decided to toughen its tone and to affirm its leadership over the G8 parties.

Therefore, officially only the last session of Commission V from 7 to 12 August in Arusha remained to settle the existing quarrels on the draft Accord. The agenda of the meeting also made it possible to determine who would lead the transition. The question of the cease-fire was to be settled in the course of parallel negotiations in South Africa between the government and the rebels. Nevertheless neither of the meetings reached any practical results. Since progress on the preconditions to the negotiations was lacking, the CNDD-FDD delegation refused to have a direct meeting with the government and the FNL did not even agree to travel<sup>40</sup>.

The debates at the August session in Arusha boiled down to procedural niceties. In the course of this last meeting, the parties did not even manage to agree on a list of their disagreements, nor to solve the issue of procedures for designating the leader of the transition. In effect, fearing that their candidate would be placed in a minority position, the government and UPRONA continued to refuse to vote on the subject; the other parties that were in fact trying to place Buyoya in a minority position had no reason to accept another solution<sup>41</sup>. At the end of the session the only tangible result was a re-shaping of the parties' positions and the approach of the date, which had been set for signing, promoted the emergence of dual opposition within the parties, along the lines of the Hutu/Tutsi opposition. UPRONA and PARENA thus officially joined the G8 to form the G10. Lastly to try and unfreeze the situation, the representatives of the main party Jean Minani (FRODEBU), Léonard Nyangoma (CNDD), Jean-Baptiste Bagaza (PARENA) and Pierre Buyoya (UPRONA) were invited to go to South Africa. At the same time, two days of plenary sessions were announced for the two days preceding signature<sup>42</sup>.

The official ending in failure of the Commissions' work was nevertheless an important psychological turning point for the parties<sup>43</sup>. Two weeks before the appointed date for the signature, the representatives of the smaller parties realised that the peace process was slipping from their hands and that the curtain had fallen on the media which had offered them an international political existence for two years, without their future been guaranteed. On the contrary, consultations between the 'key belligerents' in South Africa strengthened this fear<sup>44</sup>. The fact that Mr Nyangoma of the CNDD announced that he would support Pierre Buyoya as candidate for leadership of the

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<sup>39</sup> ICG interview with a member of the Facilitation Team, 25 July 2000 and Analysis Dossier N° 71, Burundi Bureau, 25 July 2000.

<sup>40</sup> Briefing No.694, Burundi Bureau, 12 August 2000.

<sup>41</sup> Briefing No.697, Burundi Bureau, 15 August 2000.

<sup>42</sup> Hironde Foundation, 'The mediation deplores failure to achieve a consensus', 12 August 2000.

<sup>43</sup> ICG interview with a member of the Facilitation Team, Nairobi, 30 October 2000.

<sup>44</sup> ICG interview with a member of the Facilitation Team, Nairobi, 20 August 2000.

transition<sup>45</sup>, only strengthened the suspicions of the smaller parties in G10. The head of the State, who represented the Tutsi élite of Bururi, was suspected of having reached a political agreement with the Hutu leaders in Bururi to protect the interest of that region and maintain the status quo. The presence of Léonard Nyangoma in South Africa and confirmation that Jean-Bosco Ndayigenkurukiye and Cossan Kabura were also travelling there, were not likely to increase confidence since all three originated from Bururi. In actual fact, Jean-Baptiste Bagaza, Pierre Buyoya's rival in the race for the leadership in Bururi, left Johannesburg suddenly only three days after the beginning of the consultations and started a rumour in Bujumbura by announcing that the Head of State was selling the Tutsi interests to the Hutus and that the abhorred association between 'the putschist and the perpetrators of the genocide' was taking place<sup>46</sup>. At the same time, fearing that he would be in a minority position thanks to the Nyangoma-Buyoya understanding, the president of FRODEBU also chose to negotiate directly with Pierre Buyoya. Once again the peace process fell victim to the machinations of the Burundian politicians, some of whom actually were threatening that they would inflame Bujumbura.

The development of alliances and of the positioning of the Burundian players during the month of August, throws light on the scenario for the day of the signature, namely 28 August 2000. The Tutsi parties are only seeking their survival and are ultimately ready to maintain violence and chaos if their interests are not satisfied. On the side of the G7, the rivalry between Jean Minani and Léonard Nyangoma concerning the Hutu leadership is so great that the two men preferred not to agree on the leadership for the transition rather than favouring one or the other.

## 2. A Signature Obtained by Forceful Persuasion

The signing ceremony of 28 August 2000 in Arusha took place after two days of intensive consultations, which led to major changes in the content of the Accord. Negotiations ended towards 3 p.m. on Monday 28, more than four hours after the time set for signature, which it was only possible to obtain in the evening. Actually many negotiators did not have the time to read the changes made to the draft before it was submitted to them and all the G10 parties agreed to sign with major reservations despite efforts by the Chairman of Commission II, who finally had to read the last amendments to the parties in the plenary session, since there had not been time to include them in the text itself<sup>47</sup>. Two parties, the PRP and the AV-Intwari, signed on the following day and the PSD did so a few days later at Dar-es-Salam. RADDES, PIT and ANADDE, which had demanded time to allow a careful scrutiny of the text and consultation with their respective supporters while setting the conditions for a cease-fire, signed with the addition of their own reservations in the course of the regional summit of Heads of States in Nairobi on 20 September 2000.

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<sup>45</sup> This announcement generated confusion because it was followed by denials and by an official clarification by Léonard Nyangoma to confirm them. Nevertheless in the eyes of all Burundians, Nyangoma had chosen Buyoya.

<sup>46</sup> ICG interview with a representative of the G10, Bujumbura 22 August 2000.

<sup>47</sup> ICG interview with a member of the Facilitation Team, Nairobi, 13 November 2000.

Pressure to sign had started already on Saturday 26, in the course of preparations for the ceremony. Nelson Mandela had a six-hour meeting with the G10 parties<sup>48</sup>. The presence of the various Heads of State of the region and that of US President Bill Clinton increased the pressure and Nelson Mandela threatened three times to abandon the process if the G10 and the government did not sign. The G10 parties then tried to avoid signing the Accord by submitting a compromise text on Sunday 27, officially in order to avoid a 'humiliation for the mediator'<sup>49</sup>. The G7 opposed this categorically.

In reality it was not so much the content of the Accord but the differences between the mediator and the Burundian president on the issue of transition, and the total lack of trust between UPRONA and the other parties in the G7 that almost ruined the achievements of 26 months of peace negotiations. The leadership of the transition and of the interim period had in fact been placed on the negotiating table by the former president of South Africa as soon as the delegations arrived in Arusha. He proposed that the post-signature period be split into two, suggesting that the interim period could be led by Pierre Buyoya but not the transition under any circumstances<sup>50</sup>. Faced by an intractable Nelson Mandela, convinced that the transition must be led by a personality embodying change and preferably from the G7, Pierre Buyoya had posed three conditions for signing and for his voluntary retirement after the interim period<sup>51</sup>.

- That only a Tutsi successor approved by himself would be authorised to negotiate guarantees for the minority with the rebels and to oversee the envisaged reforms.
- That he would obtain safeguards for his future and that of his entourage.
- That he be assured that his collaborators would be allowed impunity.

Now, this latter condition was unacceptable for FRODEBU. Pierre Buyoya's impunity was negotiable but not that of those responsible for president Ndadaye's assassination. In addition the parties of the G10 once again suspected that the Buyoya-Minani meeting had been held at their expense, without them having any sort of safeguard as to their fate during the transition and they feared signing a text, which would be tantamount to political suicide for them<sup>52</sup>.

Pressure and various efforts by Rwanda, Uganda and South Africa helped to reassure the representatives of the Tutsi minority and to explain to the government and the G10 that if they did not sign the Tutsis would be stigmatised as having been responsible for the failure, which would be followed by a unanimous condemnation by the international community. This situation would play into the hands of the G7 and of Tanzania. The latter country's revanchist intentions might well become a danger after the

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<sup>48</sup> ICG interview with a member of the Facilitation Team, Nairobi, 6 November 2000.

<sup>49</sup> Briefing No 270, Burundi bureau, 28 August 2000.

<sup>50</sup> Briefing No 719, Burundi bureau, 27 August 2000.

<sup>51</sup> ICG interview with an East Africa diplomat, Arusha, 27 August 2000.

<sup>52</sup> ICG interview with an East-African diplomat, Arusha, 27 August 2000.

elections<sup>53</sup>. Conversely, a signature would involve everyone and would deprive the G7 of most of its political credibility while compelling the international community to shoulder its responsibilities towards the country. According to Kigali, there was no reason for the G10 parties not to sign the text. The question of the quality of the Accord would ultimately arise when the time came for implementing it, when everything could if necessary be renegotiated<sup>54</sup>. Signing did not necessarily mean immediate implementation and did not preclude new arrangements. The Tutsis had nothing to lose if they signed. Obtaining the signature became an issue both for Burundi and for its neighbours and international confirmation of the existence of a regional leadership in the area of the Great Lakes could, if the need arose, sort out the chaos in Burundi.

In the end, all the G10 parties accompanied their initials with reservations, which took the Accord back to the same level as in the July draft. They thus challenged the achievements of the Buyoya-Minani talks of 27-28 August. The strategy of reservations carried a clear message, namely that negotiations were not yet over. First of all UPRONA and the government, in spite of the important concessions obtained from Jean Minani, still had no guarantees on the leadership of the transition. It was therefore necessary at any cost to maintain a means of exerting pressure in this matter in future negotiations. As for the other parties in the G10, taking a maximalist position enabled them to remain in control and to negotiate their involvement in the transition from a position of strength, while also having an opportunity to obtain additional guarantees for the Tutsi minority. Secondly, it was absolutely necessary to remove the spotlight from the government and to switch it to the rebels and the facilitator, to force the latter to abide by his undertaking to conclude a cease-fire agreement.

The behaviour of the representatives of the international community, just like that of the parties, was far from exemplary on the eve of signing. The international community felt that the date of 28 August arbitrarily set by Nelson Mandela was inappropriate<sup>55</sup>, since the Burundians were not prepared to accept the compromises required to conclude negotiations. However reasonable this position is, it was a particularly inopportune time to voice it in the corridors of the negotiations, thus giving Pierre Buyoya and the G10 increased room for manoeuvre vis-à-vis Nelson Mandela and the region<sup>56</sup>. In the African camp of the Facilitation Team and their allies any challenge to Nelson Mandela's strategy was interpreted as being favourable to the status quo and suspected of having a neo-colonialist background<sup>57</sup>.

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<sup>53</sup> Special warning to the G10 parties by President Museveni. ICG interview with a representative of the G10 parties, Arusha, 28 August 2000 and a member of the Facilitation Team, Arusha, 19 July 2000.

<sup>54</sup> ICG interview with a Rwandan politician, Kigali, 20 October 2000.

<sup>55</sup> ICG interview with western diplomats, Arusha, 20 July 2000 and 28 August 2000.

<sup>56</sup> The EU's special envoy declared to the press on 24 August: 'I hope the peace process will not stop on Monday', and the White House nullified Nelson Mandela's efforts by stating officially that it felt it 'unlikely that the Peace Accord on Burundi will be signed on 28 August', Cf. AFP, 24 August 2000.

<sup>57</sup> ICG interview with African diplomats, Nairobi, 25 July 2000.



Therefore there could be no 'happy ending' in Arusha on 28 August. Nevertheless all the players in the negotiations were happy to end this cycle of costly negotiations enjoying much media coverage. The Tanzanians in particular were happy to hand over the responsibility and Bill Clinton's visit to their country during the election campaign was a grand unhoped for media event. Nelson Mandela could not have offered them any better final testimony to his endeavours.

### 3. The September Session: Closure?

The last plenary session from 25 to 28 September, intended to be the official ending and closure of the Arusha cycle, came up against several attempts by the Buyoya government and part of the G10 to cancel or avoid it, or at least to postpone it to a later date and to another venue. The government seemed to suggest that it had been organised without the mediator's knowledge and in his absence and that there had been no consultations on the items on the agenda, such as discussion on the executive under the transitional National Assembly, meaning power sharing<sup>58</sup>. Thus, when it came to dealing with the transition and its leadership, the government's concern that Pierre Buyoya might not obtain it or the fear of failing in its many attempts to rally support, encouraged the government to postpone the deadline or block all progress (cf. *infra*).

The government and its allies at the time (RADDES, PIT, INKIZO, PSD and UPRONA) repeatedly tried to sabotage or to cancel the session of 25 September. President Buyoya visited South Africa with a delegation from UPRONA, RADDES and INKINZO officially to thank the South African mediation team but in fact in order to lobby for cancelling the session. The government and the G10 believe that Vice-President Jacob Zuma is favourably disposed towards them and they thought that Pretoria would lend an attentive ear to their grievances<sup>59</sup>.

When they realised that the session was inevitable, the government, with the help of part of the G10, tried to prevent delegates from going to Arusha by setting up obstructions of all kinds at the airport and during the immigration procedures. But in vain. During the opening session in Arusha on Monday 25, Léonard Nyangoma surprised everybody by reading out a declaration, which was signed by six groups in the G7 (minus FRODEBU) announcing amendments and reservations to be re-discussed, while denouncing the negotiations between Pierre Buyoya and Jean Minani of 27/28 August. He added that the Facilitation Team must take these reservations into account on the same footing as those put forward by the government and the G10. This statement exposed the alliance between the government and the CNDD and was aimed at increasing pressure on Minani, since the other parties in the G7, PP, RPB, PL, PALIPEHUTU and FROLINA, banded together at that very moment against the last-minute concessions made to Pierre Buyoya.

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<sup>58</sup> ICG interview with a member of UPRONA, Arusha, 25 September 2000.

<sup>59</sup> ICG interview with a leader of the G10, Nairobi, 11 September 2000.

In the end, the session was closed by the signing ceremony with an undertaking to implement the Accord during which the government, UPRONA, CNDD and PARENA refused to sign because they considered that this stage was premature before negotiating the reservations. Any party refusing to sign this undertaking automatically ruled itself out of future consultations or meetings concerning the implementation of the Accord, but no consultation in fact can take place without the government or UPRONA. Implementation is therefore actually paralysed by this failure to sign and also by the fact that the National Assembly did not adopt the Accord<sup>60</sup>.

In actual fact, the purpose of the manoeuvre was to obtain a postponement of discussion on transition. Indeed Judge Bomani explained in his closing address that there was no budget left for another negotiating session. There was only a budget for three issues, namely Nelson Mandela's visit to the refugee camps, Nelson Mandela's visit to Burundi and a summit of Heads of State from the region to establish a cease-fire. The only forum for negotiating reservations is now the CSAA where four of the most important components refuse to sit. This empty-chair policy in fact shows that there is a revival of tactics to obtain leadership of the transition and it also shows the tactics of all the parties to achieve their purposes.

#### 4. The Farce of the Political Parties

Within the G10 two movements in the Tutsi parties have clashed for two years: those of the interior which come together in the pro-government National Convergence on Peace and Reconciliation (CNPR) against those from outside, PARENA and ABASA which, together with FRODEBU, have established the National Alliance for Change (ANAC), while Mathias Hitimana of the PRP remained aloof and alone. This group of ten has maintained its alliances and stands together to defend the interests of the minority, which is threatened with genocide. A realignment of alliances is underway today, nonetheless. The issue of transition has crystallised positions and culminated in the splintering of this group into three movements: 'G2', which is pro Buyoya (UPRONA, Rukingama wing and PSD), an anti-Buyoya 'G2' (PARENA and ABASA) and the anti-Bururi 'G6' (Inkizo, RADDES, PIT, PRP, ANADDE and AV-Intwari).

**The Pro-Buyoya G2.** UPRONA and PSD are the pillars of President Buyoya's base. It is under the aegis of UPRONA, whether alone or with the aid of the rest of G10, that the initiatives, which have been undertaken, can block or accelerate the momentum of the process. This party's strategy is motivated by the fact that the issue of transition has not been settled yet. Its official candidate is the President now in office, Pierre Buyoya. In the government camp this position is set and not negotiable: 'power does not negotiate its demise'.

The regime has always tried to rally the Tutsi community and its most radical elements. Surveillance of the radical Tutsi anti-Arusha groups had thus been relaxed in the period before the accord was signed. The intention was to win back the support of groups such as PA Amasekanya, Charles Mukasi's

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<sup>60</sup> ICG interview with a Burundian parliamentarian, Nairobi, 6 November 2000.

UPRONA and the nebulous self-styled civil society<sup>61</sup>. In addition to public meetings they were given access to the public media.

**Anti-Buyoya G2.** The only objective of this group consisting of Jean-Baptiste Bagaza's PARENA and Ambassador T rence Nsanze's ABASA is to force Pierre Buyoya to stand down. In this they agree with the G7, and they have set up an alliance for change with FRODEBU; ANAC which is meant to represent a possibility for political co-habitation between the Hutus and the Tutsis. This tactical alliance, nevertheless, did not withstand G7's request for support for its candidate to the leadership of the transition, Domitien Ndayizeye. This G2 is the herald of Tutsi radicalism, but it is not prepared to accept that the Presidency of the Republic should go to a Hutu; it already had trouble explaining to its supporters its alliance with FRODEBU within ANAC<sup>62</sup>. For reasons of prestige and regional rivalries, this group has opposed the advances of the G6 parties to obtain support for their candidate Epitace Bayaganakandi. Of course its two leaders, Jean-Baptiste Bagaza and T rence Nsanze are both standing for leadership for the transition and both come from Bururi<sup>63</sup>.

**The Anti-Bururi G6: The Last Frontline.** The G10 became G6 as a result of a difference of opinion over the candidates for the transition between Bujumbura's regime and the Tutsi parties in the G10. The cause of the clash is a power struggle between the Bururi Tutsis and Tutsis from the other regions in the country particularly the centre and the 'great North'.

The G6 has nominated as its candidate for the transition the former Home Secretary (96-98) Epitace Bayaganakandi<sup>64</sup>. This candidate comes from the centre of the country, Mwaro, which has always competed with Bururi. He received the unanimous support of the leaders of all six parties, Inkizo, RADDES, AV-Itwari, ANADDE, PIT and PRP. They are supporting those candidates who have the vote of the Tutsis wanting to change the Bururi system and of those who want to get rid of, or at list restrict, the hegemonic power of the Hutu majority.

The Tutsi group felt that this alliance would prevent any manoeuvres by the regime to obtain the leadership of the transition. The main grievance against Buyoya's regime was first and foremost his readiness to enter into comprising alliances to remain in power with the Hutu 'perpetrators of the genocide'. Most of these are actually former organisers of disturbances in the city of Bujumbura. So this group of Tutsi parties would like to return to the period of 1994-1996 during which they set up and overthrew regimes. This group considers that Buyoya's regime is a serious obstacle in the war, which they are trying to carry on against the Hutu parties. In the course of its recent explanatory talks at Kigali and Kampala, the G6 delegation illustrated its reasons for rejecting Buyoya's candidacy<sup>65</sup>:

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<sup>61</sup> The so-called 'Framework Accord' group consisting of: UPRONA and the Mukasi-wing of JRP, AC Genocide, PA-Amasekanya, Coalition against dictatorship, UFB, etc.

<sup>62</sup> ICG interview with member of PARENA, Arusha, 26 September 2000.

<sup>63</sup> President Bagaza rejected an attempt by a G6 delegation which had come to Kampala to negotiate for his support. Cf. ICG interview with a member of the G6, Nairobi, 8 November 2000.

<sup>64</sup> G6 communiqué of 28 October 2000.

<sup>65</sup> ICG interview with an East African diplomat, Nairobi, 8 November 2000.

- He does not guarantee Tutsi interests.
- He is prepared for any compromise to preserve power with his system.
- He has not judged the coup plotters and perpetrators of genocide.
- He does not want to put an end to the war, which impedes the strategy for the region's security.

This ideological position does not prevent Epitace Bayaganakandi from dealing with the FRODEBU in order to obtain support for his candidacy. FRODEBU definitely dislikes the idea of Bayaganakandi becoming President of the transition and is offering him, in return, the office of Vice-President. FRODEBU fears an alliance with the alleged criminals that organised the "dead town" protests, who would like to take advantage of this repositioning to secure their impunity in the transitional government<sup>66</sup>. At the same time, the Tutsi extremist groups have negotiated their support for Epitace Bayaganakandi's candidacy even though they are fiercely opposed to the Arusha negotiations and have in fact already declared their rejection of the agreement.

**FRODEBU: Fragmentation.** From the start of the race for the transition, the repositioning which has been observed among the Tutsi political groups, has also been observed in the Hutu parties. The tactical alliance of the Hutu parties in the G7 where FRODEBU was previously the most prominent group, did not survive the debate on power sharing. The leadership of the G7 and its ability to negotiate alone in favour of Hutu interests was publicly brought into question by Léonard Nyangoma at the Arusha meeting on 25 September and Jean Minani no longer seemed to be the unchallenged leader of the Hutu bloc.

The present leadership of FRODEBU has never been so hotly disputed and the prospect of a party congress on 6 December has revived regional divisions. This congress is fraught with danger for the Dar-es-Salaam expatriate, since on that occasion Augustin Nzojibwami and Léonard Nyangoma, the main claimants to the succession, may legitimately challenge his political leadership.

A substantial part of FRODEBU has informally distanced itself from its head because of the concessions he made to Buyoya on 27 and 28 August. These concessions can be explained by three hypotheses: (1) He absolutely needed the signature in order to pose as the hero of the negotiations and strengthen his position in the FRODEBU congress on 6 December vis-à-vis Nyangoma and Nzojibwami, and also vis-à-vis FDD and FNL over which he was trying to obtain influence. (2) Realising that Buyoya might not sign, he decided 'to save Mandela' by agreeing to the concessions required for him to sign. In return he expected Mandela to congratulate him and give him public support. (3) He was ready to grant all these concessions having obtained guarantees that Buyoya would not lead the transition and that would be a success for which he would obtain credit.

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<sup>66</sup> ICG telephone interview with a FRODEBU member (Minani wing), Bujumbura, 6 November 2000.

Even before the signing, several trends had emerged on the issue of transition. The designation of Domitien Ndayizeye as candidate for the transition was contested by most of the G7 parties. Within Jean Minani's FRODEBU party where he was permanent secretary, until quite recently, Domitien Ndayizeye enjoyed the support of those who make up 'the Rwandan school' of FRODEBU. It consists of former Burundian Hutu refugees who fled Burundi for Rwanda after the 1972 massacres. They were the main founders of FRODEBU to which the late President Melchior Ndadaye belonged. This group originating mainly from the centre of the country has serious differences of opinion with the Hutu and Tutsi members of FRODEBU originating from Bururi province.

Among the pro-Bururi elements in FRODEBU, there are those who contest Jean Minani's leadership and who have already regrouped within the dissident wing of FRODEBU led by Augustin Nzojibwami, a Bururi Hutu, the brother of Jean-Bosco Ndayikengurukiye and cousin of Léonard Nyangoma. Another pro-Bururi faction is beginning to emerge within the Minani-FRODEBU. There we find: Fidèle Habonimana and Gaspard Sindayigaya, a Tutsi and a Hutu from the South, who want to snatch the party away from the exiled leaders or from the Rwandan school while making sure that it does not fall back into the Nzojibwami or the Nyangoma circle with the blessing of the existing powers.

To avoid the exodus of middle management from Bururi, Mr Minani has decided to appoint Charles Karikurubu, a Hutu from Bururi, as permanent secretary general in lieu of Domitien Ndayizeye. This nomination enables Jean Minani to win back the Hutu base in Bururi and to block an alliance between Augustin Nzojibwami and Léonard Nyangoma. But faced with such fragmentation and the real risk of losing the transition, the democratic 'pro-Ndadayiste' FRODEBU is also thinking in terms of an armed uprising, which would enable it to restore its somewhat tarnished political reputation. Seven years of successive failures – the forfeiting of democracy, the flouting of the Convention, the betrayal of the Partnership and very soon the stifling of Arusha - are also beginning to change the mind of those in favour of the political struggle by peaceful means<sup>67</sup>.

Another branch of FRODEBU consists of those who fear that they will have to bear the cost of change and who are still tempted to ally themselves with Pierre Buyoya by selling him their support: these are the present premier Vice-President Frédéric Bavumgayumvira, Pierre Barusasiyieko, head of the FRODEBU group in the National Assembly and Léonce Ngendakumana, its president<sup>68</sup>.

**CNDD: The Rome Enticement.** Nyangoma's CNDD has never concealed its determination to fight for the FRODEBU leadership. Léonard Nyangoma, who was the co-founder of the FRODEBU party, had decided to leave for exile in 1994 and to start an armed struggle, refusing to share power with the Tutsi opposition which had been beaten in the June 1993 election while his party had also refused to appoint him successor to Melchior Ndadaye. Since then

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<sup>67</sup> ICG interview with a deputy from the Minani-wing of FRODEBU in the sidelines of the Nairobi summit, 20 September 2000.

<sup>68</sup> ICG interview with a FRODEBU deputy, 6 November 2000.

he has never abandoned the idea of winning back FRODEBU. He is tempted by an alliance with the Buyoya government with which he had already negotiated an agreement in 1997 in Rome and he now wants to take revenge against the present leadership of FRODEBU which was subsequently compromised by the Government Convention, the Partnership and the last-minute concessions made by Jean Minani and President Buyoya on the eve of signature.

The Sant'Egidio approach made a new appearance in May 2000 during secret meetings first in Rome, then in Sicily, between representatives of the government and the Army and the CNDD delegations. The two parties were encountering real problems to impose their leadership within their respective groups, the Tutsi G10 and the Hutu G7. If there was no compromise acceptable to Pierre Buyoya on the question of the leadership of the transition, the Italian option for the peace process might therefore be revived. Moreover, by calling for direct discussions with the Bujumbura authorities, Jean-Bosco Ndayikengurukiye also threw back for discussion the conclusions contained in the Rome Accords themselves in which he too had taken part<sup>69</sup>.

## C. No Cease-fire

### 1. Escalating Violence in the Run-Up to the Signing

As the signing date drew near and following the start of the race for leadership of the transition, the last weeks of August were marked by a sudden increase in tension in the Burundian capital and by a reactivation of serious hostilities between the CNDD-FDD and the Burundian army. The traumatic event, which triggered this rise in tension, was the assassination by the CNDD-FDD rebels of a group of about thirty students from the Higher Training Institute for Military Officers (ISCAM) who were returning from a handball match at Bururi. This slaughter provoked strong reactions among the Tutsi community. The most radical representatives of that community soon showed their anger and their total lack of confidence in Pierre Buyoya's ability to guarantee their security and defend their interests. The Post and Telecommunications Workers Union had already demanded on 11 August that the government resign<sup>70</sup>.

The murder of the ISCAM cadets also gave rise to fears of a wave of blind repression by the Burundian army like the Bugendana operations in July 1996, when in reaction to an attack by the rebels, between 200 and 300 people in that municipality were massacred<sup>71</sup>. At the end of August Colonel Cyrille Ndayirukiye, the Defence Minister acknowledged an increase in violence on all fronts: "The general situation today is marked by actions of terror carried out by the rebel groups and destabilisation groups," he said. "The new factor is the extent of this violence. In Bujumbura Rural, in the provinces of Makamba (South), Ruyigi (East), Rutana (South-East) and Cankuzo (East), we have recorded an upsurge of violence (...) cross-border

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<sup>69</sup> Declaration by CNDD on the eve of the Nairobi summit, 17 September 2000.

<sup>70</sup> Briefing No 695, Burundi bureau, 12 August 2000.

<sup>71</sup> ICG interview, Bujumbura, 22 August 2000.

movements between Tanzania and Burundi have also increased in spite of all our efforts."<sup>72</sup>

As the signing day approached both the rebels and the government wanted thus to maintain their political credibility to the detriment of many civilians, soldiers and even certain officers. The death of Colonel Nzeyimana, Commander of the fourth military region, on 16 August in a rebel attack at Cankuzo sparked the counteroffensive<sup>73</sup>. The army high command with the approval of the Ministry of Defence launched major offensives on the ground in order to destroy the myths that Tenga and Makamba were the bulwarks of the rebellion<sup>74</sup>. This offensive was aimed at rallying the Tutsi population behind the army and driving home the argument that the cease-fire was a precondition to any possible future signing of the Accord<sup>75</sup>.

As the violence increased, the Tutsi extremists also tried to weaken Pierre Buyoya politically and to mobilise the people against the Arusha Process by demonising its participants. Charles Mukasi, leader of the dissident wing of UPRONA, which was against the negotiations, ascribed Colonel Nzeyimana's death to FRODEBU in a communiqué. The Burundi Trade Union Confederation (COSYBU) also called for a general strike against the government on 18 August and the pressure group known as Amasekanya Self-defence Power, led by Diomède Rutamucero, called for demonstrations on the following day trying to make the capital ungovernable by renewing the "dead towns" operation and erecting barricades on the main streets<sup>76</sup>. Shortly afterwards, on 21 August, three grenades were thrown in the Nyakabiga and Bwiza quarters of Bujumbura and a fire ravaged the market at Jabe<sup>77</sup>.

The strategy of the 'anti-Arusha' forces (UPRONA and JRR (Mukasi-wing), PA Amasekanya, AC Genocide, COSYBU, University Corporation) joined by the parties that were marginalised in the consultations in South Africa (Inkinzo, RADDES, PARENA), and supported by a large number of the military, was to show Buyoya's almost general unpopularity as well as their rejection of his probable candidacy for the transition. The ensuing rumours of a coup d'état followed<sup>78</sup> the same logic. At the same time other rumours coming from South Africa suggested that an agreement had been struck between Pierre Buyoya, Jean Minani and Léonard Nyangoma. Pierre Buyoya returned from South Africa sooner than expected in order to attend Colonel Nzeyimana's funeral. He endeavoured to remobilize and reassure his base while reiterating that he would not sign the Accord as it stood and that he was trying to obtain a postponement of the signing day<sup>79</sup>.

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<sup>72</sup> AFP, 24 August 2000.

<sup>73</sup> Cf. Briefing No 702, 'Cankuzo province becomes the theatre of violence', Burundi bureau, 17 August 2000 and 'A senior officer and two soldiers killed in an ambush in Burundi', AFP, 17 August 2000.

<sup>74</sup> 'Important military operations in rural Bujumbura', AFP, 20 August 2000.

<sup>75</sup> ICG interview with a member of the security forces, Bujumbura, 21 August 2000.

<sup>76</sup> Net press, 17/08/00; Briefing No 704, Burundi bureau, 18 August 2000.

<sup>77</sup> AFP, 21 August 2000.

<sup>78</sup> IRIN, 'Burundi: Buyoya warns coup plotters', 22 August 2000.

<sup>79</sup> AFP, 19 August 2000.

Thus, after having the Trade Unionist Pierre-Claver Hajayandi, Diomède Rutamucero, a member of PA Amasekanya, and Venant Bamboneyeho from AC Genocide arrested, and having contained a strike movement, which in the end was rather limited<sup>80</sup>, the authorities undertook explanatory meetings with the population asking for support and promising not to sign the text as it stood in the draft Accord while continuing to demand a cease-fire. They also asked the Tutsi population not to undertake any punitive actions or any revenge against the Hutu so as not to play into the hands of their enemies. In fact promises were even made to distribute weapons if needed<sup>81</sup>.

These reassuring statements and the obvious failure of the Johannesburg consultations reinstated a modicum of solidarity between Pierre Buyoya and the other G10 leaders. The group clarified its position six days before the signature of the Accord in a letter to Nelson Mandela which stated: 'It is understood that the draft Peace Accord which is under consideration today must be considered as a working document which in no way can be signed as it stands on the announced date of 28 August 2000.'<sup>82</sup> Supported by the Chamber of Industry and Commerce of Burundi (CCIB) this formal notice encouraged Jean-Baptiste Bagaza to announce that he would stand for the Presidency of the transition, ten days after the announcement of the candidacy of Domitien Ndayizeye, secretary-general of FRODEBU for the G7 and a few days after that of André Mkundikije of AV-Intwari<sup>83</sup>. PARENA's newspaper 'La Verité' pointed clearly to the implications of this candidacy by calling on the Tutsi minority to take command of their destiny and to 'put their house in order and to expel the traitors from their ranks.'<sup>84</sup>

## 2. The Rebels: From 'Freedom Fighters' to 'Negative Forces'?

After the Accord was signed without the main rebel groups, the cease-fire became the Facilitation Team's number one objective. Mandela thought that the interim period before the transition would be used to negotiate the cease-fire. Nevertheless, since 28 August the talks on the cease-fire were exploited by the parties as a means to obtain what they had not succeeded in getting previously, i.e.: the transition for the government and FRODEBU, and the acceptance by all the rebel groups of their political leadership.

At the regional summit of Nairobi on 20 September, the Kenyan setting and the presence of the regional leaders (Daniel arap Moi, Benjamin Mkapa, Yoweri Museveni and Paul Kagame) effected a threefold function. It provided a new context for negotiations, it maintained a form of pressure on the rebels and the government and it reaffirmed regional leadership over the Burundian process and most specifically on matters of security. But even before this summit divergences had appeared as to its objectives.

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<sup>80</sup> Only two suburbs in Bujumbura appear to have responded to the appeal, Nyakabiga e Musaga, BBC Africa, 20 August 2000.

<sup>81</sup> ICG interview with a representative of the security forces, Bujumbura, 23 August 2000.

<sup>82</sup> Briefing No.713, Burundi bureau, 23 August 2000.

<sup>83</sup> Briefing No 109, Burundi Bureau, 23 August 2000.

<sup>84</sup> Briefing No 747, the newspaper *La vérité* calls for the assassination of 'traitor' Tutsis, Burundi bureau, 21 September 2000.



For the government the Nairobi summit was an opportunity to bury Arusha and the Tanzanian facilitation<sup>85</sup>. In addition, it wanted to take advantage of the failures of consultations with some rebels in this forum to obtain postponement of the timetable for implementing the Accord and also the discussions on the issue of transition, its leadership and power-sharing. For the Facilitation Team this Kenyan forum should have made it possible to obtain the signature of the remaining Tutsi parties (RADDES, PIT, and ANADDE). After that it was necessary to obtain from the rebels a suspension of hostilities and their participation in the last meeting at Arusha scheduled for 25 September, which would mark their entry into the peace process. For the rebels, the Nairobi summit actually consecrated their official entry into the limelight and the important thing therefore was to up the ante.

Two days before the Nairobi summit, on 20 September, successive consultations took place between the Tanzanian Facilitation Team and the three delegations, namely the government and the army, the members of PALIPEHUTU-FNL and representatives of the CNDD-FDD. From the start, the government's delegation led by Cyprien Mbonimpa made a very good impression with a clear speech: 'We are prepared to facilitate any initiative that is likely to create a propitious climate for discussions which must lead to an urgent and unconditional cessation of hostilities. We leave it to the mediation's discretion to adopt an approach or even face-to-face methods with the rebels or indirect discussions<sup>86</sup>. But, faced with pressure from the mediators and the leaders of the region, the rebels both from PALIPEHUTU-FNL and from CNDD-FDD rejected the Arusha Accord from which they had been excluded and demanded the reopening of negotiations.

The delegation from the PALIPEHUTU-FNL, led by Cossan Kabura himself, this time took centre stage for the media and proved very intransigent. Considering that he represented the only legitimate political and military movement originating from PALIPEHUTU, Kabura rejected the validity of Etienne Karatasi's signature, as a member of the G7. Moreover this delegation did not refrain from seriously criticising the way it had been treated by the Tanzanian Facilitation Team and the South African General Masondo who had always considered them as not very credible<sup>87</sup>. In addition, the delegation also demanded another venue for discussions on the political issues of the Burundian conflict, as it could not support the text of the Accord, which resulted from discussions from which it had been excluded. A cease-fire could only be negotiated after a political agreement has been concluded in which the government's representation within the institutions would be equal to its demographic weight, that is to say 14 per cent of posts.

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<sup>85</sup> ICG interview with a member of the Tanzanian Facilitation Team, 30 August 2000.

<sup>86</sup> ICG interview with a member of the international community, Nairobi, 19 September 2000.

<sup>87</sup> ICG interview with a representative of the Facilitation Team, Nairobi, 19 September 2000. The FNL troops are reputed to be associated with the ex-FAR and the Interahamwe and to have assisted Juvénal Habyarimana's troops in Rwanda when they massacred Tutsi populations before the genocide, behaving like highway robbers, indiscriminately killing the Tutsis and despoiling the Hutus. Conversely, the CNDD-FDD is reputed to be a far more structured and better organised military movement with legitimate political objectives. They started fighting after Ndadaye's assassination, because they rejected the Government Convention's compromises, not in order to exterminate the Tutsis. Cf. ICG 'The Mandela Effect', op. cit.

Cossan Kabura refused to meet Pierre Buyoya, arguing there was disagreement about the agenda of the meeting<sup>88</sup>.

The CNDD-FDD delegation arrived with a document, which reiterated all the preconditions to any form of talks with the Bujumbura regime. The document rejected the Accord of 28 August and reiterated the conclusions reached in Rome in 1997<sup>89</sup>. The delegation, which came without its leader Jean-Bosco Ndayigenkurukiye, whom everybody considers to be a weak man, was not even received by the Heads of State, unlike the FNL leader Cossan Kabura, who was received after refusing to attend the signing ceremony of the three Tutsi parties. Generally speaking, the summit did not remove obstacles to a new start for the peace process. The Facilitation Team was not able to obtain any undertaking from the rebels, nor the lifting of the reservations put forward by the government and the G10 before the closing session from 25 to 28 September at Arusha. But it did lead to a very clear swing of regional and international opinion in favour of President Buyoya.

Ever since January 2000 Nelson Mandela had been trying to establish a relationship of trust with the rebels and to persuade Buyoya to listen to their conditions, namely the release of political prisoners and dismantling of the regroupment camps, and to justify the absence of the CNDD-FDD by Buyoya's own intransigence. But this argument did not work at the Nairobi summit. The President obtained the understanding of the regional leaders, in fact he had prepared to counter this criticism by taking with him the lists of prisoners whose cases are now being considered by the government to determine whether there are grounds for their detention<sup>90</sup>. On the question of the camps, the government certainly is not blameless, but the return of the population, supported by the humanitarian agencies in point of fact depends a great deal on the suspension of hostilities. While troops of the PALIPEHUTU-FNL scour the hills and terrorise the people abandoned by the army, it is difficult for the regrouped and displaced persons to go back to their homes even if the latter have not being destroyed<sup>91</sup>.

Wearied by the failure of these consultations, Nelson Mandela and the leaders of the region therefore resorted to threats. The last Nairobi summit, during which it was expected to obtain from the Burundian belligerents a suspension of hostilities as a precondition to negotiations for a permanent cease-fire, thus ended in a declaration threatening the rebels with sanctions unless they joined the peace process within thirty days. Yoweri Museveni, who had had direct talks with Pierre Buyoya in Kampala a few days before the summit, thus gave the rebels an ultimatum to suspend hostilities and go to the negotiating table on pain of sanctions<sup>92</sup>.

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<sup>88</sup> AFP, 20 September 2000.

<sup>89</sup> Declaration by the CNDD-FDD on the Peace Accord, Nairobi, 17 September 2000.

<sup>90</sup> ICG interview with a member of the facilitation team, Nairobi, 30 October 2000.

<sup>91</sup> Cf. Human Rights Watch, *Emptying the Hills: Regroupment in Burundi*, Vol. 12, No. 4, 19 July 2000.

<sup>92</sup> AFP, 17 September 2000, 20 September 2000 and 22 September 2000.

At the end of September, after having reported on the progress of the peace process to the United Nations' Secretary General in New York, Nelson Mandela began to change his tone towards the rebels. A few months earlier he had called them freedom fighters but now they were considered irresponsible and evil: 'They do not attack the army and military installations, but they kill innocent people, men, women, the old and the disabled (...) they only see what you are negotiating with your enemies and not with your friends'<sup>93</sup>. In the end condemnation by the region was strengthened throughout October by the rest of the international community. The Organisation for African Unity asked the 'armed groups' to sign the Peace Accord as soon as possible and to put an end to their attacks against the civilian population<sup>94</sup>. This call was endorsed by the special envoy from the European Union Aldo Ajello who also stated: 'For the international community as a whole the tolerance threshold has been crossed (...) we are not asking the rebels to lay down their arms, we are asking them to give peace a chance. (...) We are looking at our leverage to bring pressure to bear on the rebels because the sympathy the rebels have enjoyed up till now (...) may crumble very soon unless their violence ceases.'<sup>95</sup> This appeal was also confirmed by the UN Security Council at the end of the month<sup>96</sup> when a new series of more discrete consultations was being prepared in South Africa. However, these consultations, just like the previous ones, achieved nothing.

#### IV. PARADOXES AND CHALLENGES OF IMPLEMENTATION

The timetable for the implementation of the political Accord signed at Arusha on 28 August 2000 is already running late. Three months after it was signed by 19 political parties, the National Assembly has not yet ratified it as it is stuck in procedural arguments on the reservations put forward by the signatories. There is as yet no decision as to the membership of the IMC and the Commission itself is not in place, to promote the beginning of the implementation. All these obstacles contributed to sacrificing the spirit of the Accord and gave rise to fears that it may remain a dead letter.

That implementation looks to be difficult is no surprise. For two and a half years the regime has clearly transmitted the message that it was forced to negotiate in Arusha and the rebels, who in principle are fighting for change, do not seem to be very interested in the process. This proves that the players in the war do not believe that the Arusha process will guarantee their future.

Instead of promoting a debate on how to manage the change, both the region and the mediators have allowed negotiations to drift along on the subject of transition increasing the fears of the regime that it might lose everything and the hopes of its adversaries that they might win everything. Nelson Mandela of course is right to raise the issue of Buyoya's departure. How can a Head of State who has only reluctantly accepted the peace process lead the transition which is ultimately intended to re-establish democracy and put an end to exclusion and

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<sup>93</sup> AFP, 29 September 2000.

<sup>94</sup> AFP, 3 October 2000.

<sup>95</sup> AFP, 4 October 2000.

<sup>96</sup> AFP, 25 October 2000.

the oppressive regime that he himself embodies? Even if he now enjoys renewed political credit and is in a position of force to lead the transition, the Burundi Head of State does not necessarily have all the required symbolic qualities. What sort of national credit could be enjoyed by a peace process intended to embody change if it is headed by the symbol of the domination by the Bururi elites, which have enslaved the country since independence?

However the accord and its implementation threaten interests, which have not been seriously negotiated so far. They are the interests of the oligarchic system which is principally from the south (in the Bururi region), which has been in power for more than thirty years, to which no honourable way out has been offered although the stability of the future authorities, which want to carry out their programme at Bujumbura, depends on co-operation with this political military and financial system. Because he ignored it, President Melchior Ndadaye was assassinated three months after he took power and his party which won the first democratic election lost power three years later. This system has been joined by a medley of the October 1993 civil and military 'coup plotters' as well as the criminals who organised the dead town operations and punitive actions and other cleansing operations in the suburbs, and who may now be open to judicial prosecution.

This system now in place must be persuaded that non-implementation of the agreement is truly not envisageable. Paradoxically today it is those who fought Arusha who are now in a position of strength to determine the future of the Accord and who in addition have room for manoeuvre in order to shape its implementation on their own terms. But this cannot last. Pierre Buyoya's regime which is very unpopular cannot survive for long under present conditions. The Burundian army has suffered serious losses even among the Bururi officers, which increases discontent on the part of the social grassroots of the regime. The resumption of international aid is essential in order to relax the extreme social tension, which now exists in the country. President Buyoya knows perfectly well that the advantages from his having signed the accord will not last forever and that in the short term it will be necessary once again to undertake the initiative of the peace process.

#### **A. Implementation of the Agreement: The Risk of Perpetual Negotiations**

In addition to a favourable political position, Pierre Buyoya can also avail himself of half a dozen safeguards, within implementation of the text itself, which enable him to maximise his chances to obtain leadership of the transition on his terms.

##### *The Sequence of Stages in the Implementation is Blocked*

In Arusha, UPRONA, PARENA and the CNDD refused to sign the declaration by the political parties which was intended as an annex and which undertook to support the implementation of the accord on such fundamental issues as the cease-fire and the reform of the armed forces, the issue of the genocide, the electoral system, the transitional institutions and their leadership, the terms of reference of the IMC and the involvement of an international peace-keeping force. The IMC can hardly begin work without the participation of the two key players, namely UPRONA and the CNDD. The sequence of the various stages in the timetable for the Accord is thus the first safeguard available to the government. No cease-fire, no implementation; no negotiations on reservations,

no implementation. If the negotiations do not progress as it wishes, the government can effectively block implementation of even the smallest detail in the Accord as it has been doing since the beginning of September.

#### *Approval by the National Assembly*

Dominated though it is by FRODEBU, the National Assembly has proved that it has become a forum for those who have been excluded from Arusha (CNPR, the dissident wing of FRODEBU, the anti-Arusha wing of UPRONA etc.) who want to make their voices heard today and to show that it would be pointless to think of implementing the accord without taking their grievances into account. On the strength of the reservations and arguing that the accord signed on 28 August was already modified by the parties at the closing session of 25-28 September at Arusha, the parliamentarians of the CNPR allied to Pierre Buyoya have full scope for also modifying the accord, although they are forbidden to do so, and to use the National Assembly as the ideal venue for bogging down the peace process as long as the question of leadership of the transition and the sharing of government offices has not been resolved.

#### *Negotiating the Reservations*

The reservations themselves are a serious problem for the implementation of the accord. Léonard Nyangoma's presentation of 'counter-reservations' in reply to the Buyoya-Minani amendments, which restore some political equilibrium between the groups, certainly is a guarantee for the parties representing the Hutu interests, but in spite of that there is nothing to suggest that the political parties will reach an understanding on the fundamental issues. They proved incapable of so doing in Arusha and no new forum has the operating conditions, which might make for a rapid settlement of this issue.

#### *Rebel Claims on the Political Contents of the Accord*

In addition to the reservations expressed by the political parties it must not be forgotten that the PALIPEHUTU-FNL and CNDD-FDD rebels also intend to renegotiate the Accord and to obtain amendments which will cover their own claims which do not just concern the reform of the armed forces. The PALIPEHUTU-FNL for instance, demands that Hutu representation in the institutions as a whole be identical with the demographic weight of this community, which amounts to 86% of all administrative and political posts.

#### *The IMC Lacks Political Authority to Enforce the Accord*

The IMC could certainly start work and become the new negotiating forum for the parties. As posts are distributed within the transitional institutions, the parties would settle the matter of reservations without basically changing the balance of political forces established in the Accord. But in order to achieve that, heavy political involvement by the Facilitation Team, whose role is only advisory, is needed. Whatever the personal qualifications of the United Nations representatives who will chair the IMC and lead its Executive Committee, the UN does not have any political credibility in the region and has no means of exerting pressure to arrive at decisions on the question of reservations, even with a 4/5 majority. Furthermore, the enlargement of the IMC and the involvement of the regional countries within it, contrary to the initial provisions of the accord, risk turning it into a clumsy and unmanageable institution, a permanent battlefield for parties which have no trust in their adversaries, nor in the region, nor in the UN – a micro-Arusha without Mandela.

In addition, under the present circumstances nobody has any clear idea of what can be implemented from the protocols of the Accord and what cannot. For instance, one can set up commissions of enquiry on massacres but will people speak freely in a country at war and subject to terror? Furthermore, part of Protocol V, on the return of refugees and the return of development aid, cannot be implemented without a cease-fire.

*Recourse to the peacekeeping force stays in the government's hands*

Finally, the only guarantee that a president of FRODEBU might have not to endanger his own safety, like Melchior Ndadaye, by taking the lead in the transitional institutions is now subject to the government's discretion. Even though the Accord explicitly provides for the involvement of an international peace-keeping force and although Pierre Buyoya has promised to accept its deployment if he was given the transition, its mandate, its size, its concrete operating methods still have to be determined with the necessary consent of the government and the Head of State. Moreover, up to now the government used sovereignty as an argument to reject the international force, which means that it did not recognise its interlocutors' legitimate need for security.

## **B. Who Really Wants a Cease-Fire?**

There are many reasons why the cease-fire negotiations failed. They stem equally from the Facilitation Team's lack of means to force the rebels to join the negotiations and from the reluctance of the Burundian players to abandon the logic of war, encouraged by the tacit support of the various regional players.

### **THE FACILITATION**

CNDD-FDD's first participation in the consultations in March 2000 was partly due to Thabo Mbeki's diplomacy and his meetings with presidents Mugabe and Kabila. But since then the Burundian rebellion's management strategies and approach to the problem so far have proved inoperative.

The FDD have become a regional problem: armed and equipped by Kabila and his allies, they are not interested in leaving Kabila's defence system, which in fact promises to help them overthrow Buyoya's regime. On the one hand, Kabila can rely less and less on the operational support of Zimbabwe and on the other hand war has started again in Katanga. Since the Lusaka agreements have not been implemented, the CNDD-FDD also avoids the risk of the 'negative forces' being disarmed and they are holding the Burundian process hostage. The question is to know whether Mandela can persuade them that Arusha offers immediate benefits and to abandon this war, which is not their war. Now Mandela has no influence over Kabila: remember his failed mediation between Kabila and Mobutu during the first war in the Congo. He also has little influence over Mugabe, who considers him his greatest rival.

Nelson Mandela has always been convinced that Jean-Bosco Ndayikengurukiye's CNDD-FDD is the most important Burundian rebel movement in the field compared to the other movements, namely PALIPEHUTU-FNL, FROLINA and Léonard Nyangoma's CNDD. By granting the CNDD-FDD more credibility, Nelson Mandela was hoping to offer them a platform and distance them from Kabila's

influence<sup>97</sup>. This international attention could be both an inducement and pressure and convince them to join the process again. As for the PALIPEHUTU-FNL the mediator felt that they had no other choice than to join the process now underway or to remain on the sidelines and disappear.

Many efforts have been made since the beginning of September but they have all been in vain. For the time being all initiatives have failed and the intensified efforts at mediation right across the board (by the Churches, ACCORD, Jan Van Eck's CCR etc.) gave rise to fears that Nelson Mandela had no real strategy and that he was personally exhausted. In spite of the urgency of the situation, the former Head of State in fact delegated many of his tasks to the South African Vice President Jacob Zuma who, whatever his personal qualities, does not have the international stature of the former inmate of Robben Island. The prospect of Mandela's departure and the arrival of a new player who, rightly or wrongly, is assumed to be more understanding towards the G10, is another trump card in the hand of the Burundian Head of State.

Is the option of sanctions, which was chosen recently, credible? On the one hand it may not inject anything new into the existing situation on the ground. Uganda, Rwanda and Burundi are already fighting Kabila's 'negative force' allies in the field. Few players seem to have any influence over Kabila and Mugabe and no credible solution is in sight to solve the war in the Congo. On the other hand one may well doubt the solidarity of the regional players on this issue. Are Kenya and Tanzania really ready to apply this option?

## THE REGION

**Tanzania.** In addition to the Congo the only country, which is able to exert real pressure on the rebels, is Tanzania. Despite the direct confrontation between the Tanzanian army and the CNDD-FDD troops at the beginning of September, recruitment by the CNDD-FDD continues in the Kigoma refugee camps, in full sight and with the knowledge of the Tanzanian security forces. Apart from arresting some CNDD-FDD leaders at the end of September, Tanzania has shown no sign of carrying out the region's threats to the rebellion<sup>98</sup>.

The pressure on Tanzania only seemed to be effective during the pre-electoral period. When the campaign was in full swing the Tanzanian government had shown signs of firmness and determination to better control activities among the refugee population, by renewing part of its officers in the administration and the army in the Western regions of the country<sup>99</sup>. At the end of August Jean-Bosco Ndayikengurukiye decided to launch a vast offensive on Southern Burundi in the provinces of Makamba and Rutana and led two divisions, which were part of the FAC, namely the Congolese armed forces, to attack Burundian military positions. Nevertheless, being informed of his intentions, the Burundian government routed the rebel troops, which were compelled to withdraw to Tanzania. But at the border the CNDD-FDD refused to lay down their arms as requested by the Tanzanian security forces. This led to a clash, which apparently caused the death of about forty members of the CNDD-FDD and ten Tanzanians. Many were taken

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<sup>97</sup> ICG interview with a member of the Tanzanian Facilitation Team at Arusha on 30 August 2000.

<sup>98</sup> ICG interview with a Burundian politician, Dar-es-Salaam, 14 October 2000.

<sup>99</sup> ICG interview with a Burundian rebel, Dar-es-Salaam, 16 October 2000.

prisoner<sup>100</sup>. On 20 September the atmosphere was not propitious for reconciliation between the Tanzanian government and the rebels. Nevertheless, once he is re-elected, it is hardly likely that President Mkapa will run the risk of weakening his new mandate by setting himself openly against the military power which is favourable to the cause of the Burundian rebels. In addition to personal ties, the Burundian rebels are perceived by the Tanzanian political and security old guard as being similar to that of the African socialist liberation movements of the Seventies and Eighties.

**Uganda.** The idea of signing the Arusha Accord without the CNDD-FDD and to make them join later or neutralise them by a regional coalition subjecting them to the measures set aside for the 'negative forces' in the Lusaka Accord has been defended by Museveni and the late President Nyerere since 1999. Cossan Kabura denounced the role played by Yoweri Museveni in the Burundi conflict and disqualified his presidency of the Burundian regional initiatives by accusing him of one-sidedness.<sup>101</sup> The Ugandan President in point of fact is heavily involved in the Congo war against the alliance led by Laurent Désiré Kabila, therefore against the rebels. In fact, at the end of September he authorised the delivery of Chinese arms for the Burundian government which had been blocked at Kampala for a year and – putting a brave face on ill fortune – would appear to be putting up with the presidency of Pierre Buyoya as shown by the latter's recent visit to the capital of Uganda just before the Nairobi summit.

**Rwanda.** Rwanda has never concealed its pessimism about the outcome of this dialogue where bad faith was rife among the Burundians. 'I have seen Tutsis defending the Tutsis and Hutus defending the Hutus without anybody defending the country'. This was the comment made by the Rwandan President concerning the August signing<sup>102</sup>. Kigali has always followed with much circumspection the development of this process with its obvious consequences on its political situation and security inside and outside its borders. The APR has always deplored that the Burundian armed forces were not able to put an end to the war and to negotiate on its terms. Rwanda fears that in the course of time growing instability in Burundi will be an additional menace along its borders with the Congo and to a certain extent also with Uganda and Tanzania.

The Rwandan government in actual fact supports the implementation of the Arusha Accord which, it says, is not a bad precedent for the Tutsis and is an acceptable political Hutu/Tutsi compromise and which above all excludes the Burundian rebels from the negotiations since they are allied with the Rwandan Hutu rebels in the Congo.

**The Government.** The government has always demanded direct negotiations with the rebels in order to boycott Arusha and the political negotiations. But now that the Accord has been signed without any major concessions being made, it is trying to use the interim period in order to regain a favourable military position in the field. The idea is to show that the rebels are not serious people that the military advantage supported by the region must be won back, that leadership of

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<sup>100</sup> ICG interview with a Burundian rebel, Dar es Salaam, 15 October 2000.

<sup>101</sup> AFP, 21 September 2000.

<sup>102</sup> Press conference, Kigali, 29 August 2000.



the transition must be obtained and then negotiations can start with the rebels on its own terms and conditions.

Pierre Buyoya, paradoxically, is the major beneficiary of the signing of the agreement on 28 August. Even though the signature marks the beginning of a process which ultimately will oust him from power, the international, regional and national balance of power certainly is in his favour. Because he has signed, Pierre Buyoya enjoys credit as a man of peace, even though he signed with reservations. The Western governments, which in fact have never been his worst enemies and the region itself now find it difficult to reproach him for his insistence on the cease-fire. After all what is the point of a peace accord without a truce? Pierre Buyoya can claim that he has played his part to support the peace process and it is now up to the rebels to do the same. The ball is now in the court of the Facilitation Team. Nelson Mandela must fulfil his promises to bring the rebels to the negotiation table.

Thus another paradoxical situation arises, where political legitimacy has been reversed to the detriment of the cause upheld by 85% of the people of Burundi. The rebels little by little have been banned from the negotiations, even if they join them they will be much weakened politically and will come under the ambiguous seal slapped on the ex-FAR and the Interahamwe in the Lusaka accord, which branded them as 'negative forces'.

**FRODEBU.** FRODEBU is afraid of the rebels' entry into the peace process. This would complicate the process for two reasons: FRODEBU is afraid that it will be robbed of its current limelight by those who have the power to stop the war and that the achievements of the last 26 months will be brought into question. Actually, both the military and civilians in the CNDD-FDD want to negotiate their integration according to their own interests and on their own terms. Until it has succeeded in rallying the rebels under its leadership, FRODEBU therefore prefers that there be no negotiations on the cease-fire, especially as Nyangoma's CNDD is also a contender on this issue. The two parties are both trying now to win over to their leadership some units in the two rebel movements, as well as the deserters, since they cannot rally their leaders<sup>103</sup>.

FRODEBU could only emerge as the prime winner of the Arusha negotiations if it could represent the rebels at the negotiating table concerning the reform of the security forces. Now since it can in no way assert its superiority over the other belligerents, FRODEBU is little more than a party like all the others, and it certainly cannot compare with the weight of UPRONA which is evolving in close collaboration with the Tutsi military. The fact that the rebels may join the negotiating table without FRODEBU being in control is certainly a major political defeat for the present leaders of FRODEBU, who may be robbed of the historical heritage of the party, its symbolic placement as the defender of the Hutu cause and finally take second place in the transitional institutions.

**The Rebellion.** The rebels' agenda for has two points in common with that of the government: to remain in the Congo for the time being and to share the cake with as few contenders as possible. On the one hand staying in the Congo enables the government to continue as an essential necessary partner for its

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<sup>103</sup> ICG interview with a Burundian rebel, Dar es Salaam, 15 October 2000.

Rwandan and Ugandan allies, playing one against the other. Furthermore, the government retains an instrument to pressure Kabila in the event of negotiations on the fate of the FDD. Staying on in the Congo is the best way for the rebels to take advantage of Kabila's support to enrich themselves and rearm. On the other hand direct negotiations between the army and the rebels would permit short-circuiting the political parties and avoid facing up to the problem of FRODEBU's legitimacy.

But there are opposing trends among the rebels on the attitude to be adopted towards the 28 August political agreement and the imminence of its implementation. The intransigence of the military leaders makes them run the risk of losing control of some of their troops deployed in the field and tired of fighting. Several thousand deserters have taken up a waiting position in the refugee camps and on the outskirts of Dar-es-Salaam. While seeking a solution to their isolation, they fear they will be the losers in the peace accord and in the reform of the army if the CNDD-FDD or the FNL are in control. In addition divisions are beginning to appear among the leaders of the rebellion. Jean-Bosco Ndayikengurukiye from CNDD-FDD and Cossan Kabura of the Palipehutu-FNL, both of them from Bururi (South), are now facing a mutiny by their officers, Prime Ngowenubusa and Agathon Rwasa, who come respectively from Kiganda (Muramvya) and Ngozi (North)<sup>104</sup>. The two rebel main leaders are under fire for being more interested in enriching themselves than fighting. Even if a truce was signed between the known leaders of the rebellion and the army, it remains to be seen whether or not the officers in the field will feel that it concerns them<sup>105</sup>. Basically in the medium term the possibility of a cease-fire should not be totally set aside. But for the time being neither the regional situation nor the balance of power between the belligerents, nor even the general political fragmentation seem likely to lead to a cease-fire.

### C. Neither Peace nor War.

The present situation in Burundi can be likened to a dangerous paralysis – neither a total renewal of war, nor a reduction of violence with dramatic consequences for the peace process. Faced with the stubborn resistance of Nelson Mandela and Burundian political circles to giving them leadership of the transition, Pierre Buyoya and his men have resolved to follow two tactical approaches simultaneously which will lead ultimately to the same result: the weakening of their main political adversary FRODEBU and the maintenance of the political, military and financial status quo. These two tactics which may appear to be opposed are in fact complementary and the choice of one or the other depends on the outcome of negotiations on the transitional leadership and developments in the regional arena.

#### *Plan A: A Temporary Return to the Military Option with the Region's Blessing.*

With the present growing instability in Kivu and its threat of spreading to the whole region, the temporary exclusion of the rebels while labelling them as 'negative forces' and the reactivation of a regional military option both in the Congo against the CNDD-FDD forces and in Burundi against the PALIPEHUTU-FNL

<sup>104</sup> ICG interview with a Burundian rebel, Dar-es-Salaam, 14 October 2000.

<sup>105</sup> ICG interview with a FRODEBU parliamentarian, 6 November 2000.

forces in Bujumbura Rural is an option that is always open. The Bujumbura regime is already lobbying to this end in the region: 'The solution in Burundi is not political but definitely military.'<sup>106</sup> The war in neighbouring Congo has already twice helped Pierre Buyoya: in 1996 (when a regional alliance was formed in the war against former President Mobutu's regime) and in 1998 (a war seeking to overthrow Laurent Kabila who was newly in power) and this resulted in the easing of economic sanctions. A third time is always possible. For Rwanda, a relatively stable Burundi in the regional security strategy of Pierre Buyoya – even in view of the role of the Burundian army battalions deployed in the Congo – is preferable to a chaotic Burundi in the hands of a President of FRODEBU who is preparing for the arrival of foreign troops to keep an uncertain peace.

This option makes it possible to weaken the military power of the rebels in the field and also to weaken the political power of FRODEBU which may be asked officially to condemn the role of these 'negative forces'. It certainly allows for a resumption of the peace process later under the auspices of a remodelled Accord from which the more dangerous clauses for the regime will have been deleted (the international judicial enquiry, the electoral system, the reform of the armed forces, the involvement of a foreign peacekeeping force, etc). In the end this option actually offers a safe guarantee for maintaining the status quo and the oligarchy in Bururi.

*Plan B: Direct Negotiations and Legitimation of the Interlocutor.*

The other option considered by the government is of course that of holding direct negotiations with the rebel leaders. It is remarkable that both the rebels and the government are speaking the same language regarding the need to give the real belligerents a chance to speak and to resume negotiations according to a format comparable with the Rome process which was started in 1997. The Burundian cake is too small to encompass the political parties. The government could easily sell this option to the rebels and reach an understanding with Jean-Bosco Ndayigenkurukiye and Cossan Kabura on preserving the interests of Bururi from which they themselves come. Ultimately Burundi would be led by a Hutu/Tutsi political and military establishment always coming from Bururi and a line could also be drawn on the people's need for justice. The government has proved to be too subtle a negotiator up till now not to believe that the inexperienced leaders of PALIPEHUTU-FNL and the CNDD-FDD would be an easy prey. FRODEBU would once again be weakened and removed from power and the status quo would be maintained.

The main problem of these two options now entertained by the government is their shortsightedness. They may in fact cause the members of FRODEBU to plump for the armed option supported by Tanzania. The disappointed Hutus/Tutsis of Arusha would thus unite against the Bururi elites. One will find there the Hutus of UPRONA and FRODEBU who want to distance themselves from the radical factions in the groups they belong to, and the Tutsis who refuse to be associated with the coup plotters who are suspected of having remained passive during the 1993 massacre. In other words this would be a skin-deep rejection of the label 'coup plotters and perpetrators of genocide'. Tempted by the model of

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<sup>106</sup> Comment made by the Army High Command after this week's violent clashes with the rebels and recorded by ICG beginning November 2000.

the Ugandan freedom fighters (NRA at the beginning of 1980) or the ones from Rwanda (APR beginning of 1990), signals would be sent to the heads of the rebel units in the Burundian resistance movement for them to abandon their leaders from Bururi. Such a movement seeking an armed struggle might actually aim at rallying the region (Rwanda, Uganda, Tanzania and South Africa) behind it in the name of a new trans-ethnic African leadership that would reject the old guard which had plunged the country into civil war. These two options envisaged by the government in fact each lead to a disaster scenario. They accept the failure of a negotiated peace and run the risk of keeping the country in a state of civil war for many years to come. The government at present does not have the necessary constructive political vision for a return to lasting peace in Burundi. It is only developing short-term tactics in order to resist change. It is imperative for the Burundi peace process that implementation of the agreement, if it is going to be directed by Pierre Buyoya, should not take place according to the terms set by the government and those it represents.

## V. CONCLUSION

The road to peace is, without doubt, impenetrable. The important thing for Burundi, today, is to return to a constructive political logic and to glimpse the light at the end of the tunnel. Because of the regional context and the accelerated fragmentation of the G7 it is not likely that the transition will slip through Buyoya's hands, at least for a while. However, Buyoya must show he deserves this leadership and must demonstrate irrefutable signs of a personal commitment to peace. If he obtains the transition, Pierre Buyoya must also once again become the President of all Burundians and not only the representative of the Tutsis or even of Bururi. Otherwise frustrations within FRODEBU may be so great that the armed option will be revived and will, in effect, become their only hope of finally seeing democracy return to their country. Pierre Buyoya in Arusha in July 2000 had promised that if he was given the transition he would accept the deployment of an international peacekeeping force. He must be taken at his word. If the transition is placed in his hands, it must be accompanied by very strong guarantees for the full implementation of arrangements for the transition and to ensure that he will be deprived of the regal powers that might enable him to remain in power forever or to join up with the Bururi elites for this third term of office. If the man stays, the system must go.

This surprising outcome of the Arusha process need not signify the defeat of FRODEBU. For everybody to be a winner, it is also necessary for FRODEBU and its troops to draw direct advantage from peace and to obtain the guarantees which are necessary for the full implementation of the transition unequivocally and without reservations. To this end, one can only strongly recommend that a constructive approach by Nelson Mandela and the whole region be maintained. Tanzania also has a role to play. Its elimination from the peace process does not mean that it will be excluded from the Burundi equation. Tanzania has a major role to play for the return of peace in Burundi both because of the pressure that it can bring to bear on the rebels that are using its territory, and because of the concrete feasibility of a cease-fire. The FNL cannot lay down their arms and wait for the end of the negotiations. They should be able to be received in Tanzania, be fed, housed and convinced that peace is certainly better than war. Whatever

the outcome of the Congo war, the Congo certainly cannot hold the Burundian peace process hostage.

## **RECOMMENDATIONS**

### **To the Facilitator Nelson Mandela**

- To appoint a professional Facilitation team with an interim mandate to pursue the negotiations.
- To provide an unambiguous interpretation of those measures which are immediately applicable in the Accord.
- To exclude from the transition institutions any political leader who is guilty of inciting ethnic hate or the organisation of militias.
- To threaten opponents of the implementation of the Accord in both camps with individual sanctions – legal action, travelling restrictions and freezing financial assets.
- To encourage President Buyoya to start implementing the Accord without delay to create a momentum of change, namely:
  - To immediately offer any deserting rebels opportunities for re-integration.
  - To immediately to set up a Commission of enquiry on the issue of political prisoners and to free all detainees whose files are cleared as the enquiry proceeds.
  - To take disciplinary measures against any soldier who is guilty of exaction and abusive use of force.
  - To create adequate security conditions to guarantee access by humanitarian agencies to the displaced populations in order to relieve their suffering. To establish humanitarian corridors for re-grouped war victims with the help of charities and humanitarian organisations.
  - In accordance with the Arusha Accord, to take all necessary measures to immediately invite the United Nations to deploy a peacekeeping force, so that it will be in place when the transition starts.
  - To authorise broadcasting on national radio and television, information and dissemination of programmes in Kirundi on the contents of the peace accord and to give all candidates for the transition an opportunity to speak.
  - To launch an information campaign for the armed forces reassuring troops on the meaning of demobilisation.
  - To immediately arrest any politician who is guilty of inciting ethnic hatred or forming militias.

### **To President Museveni, Chairman of the Regional Initiative on Burundi**

- To invite President Robert Mugabe to contribute to the peace process at the coming regional summit on Burundi and ask him to convince the CNDD-FDD rebels to take part in negotiations.
- To ask the Tanzanian government to take all necessary measures to limit the activities of the rebels on its territory, while offering them practical means to lay down their arms with the help of international humanitarian agencies.
- To ask the governments in the region to apply sanctions against the rebels who reject the peace process and to ask the government of Burundi to arrest the Tutsi extremists who organise militias.

### **To Benjamin Mkapa, President of the United Republic of Tanzania**

- To take all necessary measures to stop the recruitment of rebels in the Kigoma camps and to restrict the movements of rebel troops along its frontier and on lake Tanganyika.
- In co-ordination with the humanitarian agencies, to accept any rebel who is determined to lay down his arms and to register him as a privileged beneficiary of the reform of the security forces.

### **To Burundi's Financial Donors in View of the Donors' Conference of 11 December.**

- To finance a professional Facilitation team to pursue negotiations.
- To support implementation of all applicable provisions of the agreement.
- To support without exception pressure exerted on the Burundi government by the Facilitation team by only releasing international aid on condition that the above-mentioned measures are complied with.
- To persuade the countries of the region to use all necessary means of pressure to urge the rebels to join the negotiating process.

**Arusha/Nairobi/Brussels, 1 December 2000**

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