

# Interactions between peacemaking and constitution- making processes in Burundi

**A stabilising or a crisis factor?**

Willy Peter Nindorera

Case Study

## IMPRINT

Nindorera, Willy Peter 2019. Interactions between peacemaking and constitution-making processes in Burundi. A stabilising or a crisis factor? Berlin: Berghof Foundation.  
(Translated from the original study in French 'Les interactions entre le processus de paix et l'élaboration constitutionnelle au Burundi. Facteur de stabilité ou de crise?')

## PUBLISHED BY

© Berghof Foundation Operations gGmbH  
Lindenstraße 34  
10969 Berlin, Germany  
[www.berghof-foundation.org](http://www.berghof-foundation.org)  
[order@berghof-foundation.org](mailto:order@berghof-foundation.org)  
[twitter.com/berghoffnd](https://twitter.com/berghoffnd)  
[facebook.com/berghoffoundation](https://facebook.com/berghoffoundation)

2019  
All rights reserved

**Language editing:** Hillary Crowe  
**Design and layout:** AMBERPRESS, Katja Koeberlin, Gosia Warrink

### Disclaimer

The views expressed in this publication are those of the author and do not necessarily reflect the views and opinions of the Berghof Foundation or its partners.

### Acknowledgement

The project and its publications were made possible by funding from the German Federal Foreign Office.



Auswärtiges Amt

# Interactions between peacemaking and constitution-making processes in Burundi

**A stabilising or a crisis factor?**

## About this publication

This publication is part of the project *Towards Sustainable Peace: The Nexus of Peacemaking and Constitution Building*, implemented by the Berghof Foundation, in collaboration with the United Nations Mediation Support Unit – Department of Political and Peacebuilding Affairs. It was generously supported by the German Federal Foreign Office.

The project explored how peacemaking – particularly mediated peace negotiations – interfaces with constitution building in practice, a so far understudied area. It identified the challenges and opportunities at this ‘nexus’, the lessons learned, and policy options and their implications on sustaining peace.

To this end, a number of thematic and field studies were commissioned, desk studies were conducted, and expert roundtables, interviews and peer exchange were organised involving scholars and practitioners from the fields of mediation and constitution building. The following publications capture the insights from the project on crucial processual and substantive issues at the nexus, which are expected to be valuable for practitioners.

### Key output

- ≡ Key considerations for practitioners working at the nexus of constitutions and peace processes

### Case studies

- ≡ Burundi [French and English]
- ≡ Guatemala [Spanish and English]
- ≡ Republic of (North) Macedonia

### Thematic studies

- ≡ From armed intra-state conflict to a functioning constitutional order: reconciling principles of third-party support – a reflection
- ≡ Constitution making in contexts of conflict: paying attention to process
- ≡ Critical substantive issues at the nexus of peacemaking and constitution building
- ≡ The imperative of constitutionalizing peace agreements

The publications are available online at [www.berghof-foundation.org/pmcb](http://www.berghof-foundation.org/pmcb).

## About the author

**Willy Peter Nindorera** is an independent researcher and consultant from Burundi. Over the last fifteen years, he has conducted research on security sector reform, media, governance and the Burundi peace process. He has authored numerous studies and been associated in particular with the International Crisis Group (for which he was lead author of six reports on Burundi); the Conflict Alert and Prevention Centre (CENAP), the main local organisation for conflict prevention in Burundi; the North-South Institute; the Clingendael Institute; the Nordic Africa Institute; the Berghof Foundation; the Great Lakes of Africa Centre, University of Antwerp; the Institute for Security Studies; the Budapest Centre for Mass Atrocities Prevention; and various embassies.



# Contents

<b>Abbreviations</b>	<b>8</b>
<b>1. Introduction</b>	<b>9</b>
1.1 Background to the conflict in Burundi	10
1.2 Purpose of this study	12
1.3 Key concepts	12
1.4 Methodology	13
<b>2. The Arusha peace process and its impact on Burundi's constitutional architecture</b>	<b>14</b>
2.1 The framework and actors of the Arusha peace process	14
2.2 Nyerere struggled with stakeholders	16
2.3 Mandela's method upset political actors	18
2.4 Burundi's constitutional model at the heart of the negotiations	20
2.5 Continued fighting and a forced peace agreement create an uncertain future	26
<b>3. Arusha materialised in a lengthy post-transitional constitution-drafting process</b>	<b>28</b>
3.1 Elaborating the transitional constitution	28
3.2 Framework and actors in the process of elaborating the post-transition constitution	30
3.3 The difficult birth of the post-transition constitution	31
<b>4. A battered constitution for poorly implemented reforms</b>	<b>35</b>
4.1 The CNDD-FDD seizes power through the ballot box	35
4.2 Arusha becomes challenged upfront	35
4.3 Delays and manipulation in establishing the Arusha institutions	37
4.4 The monopolisation of power	38
4.5 The Arusha Agreement suspended	38
<b>5. Renewed crisis around the Arusha Agreement</b>	<b>41</b>
5.1 The failure of the new regional mediation team and international initiatives	41
5.2 The new constitution marks the death of the Arusha Agreement	42
<b>6. Conclusion</b>	<b>44</b>
6.1 Key findings	44
6.2 Lessons learned	45
6.3 Open questions and areas for further research	46
6.4 Recommendations	47
<b>Bibliography</b>	<b>48</b>
<b>Annex 1: List of interviews</b>	<b>49</b>
<b>Annex 2: A brief chronology of key events in the peacemaking and constitutional processes</b>	<b>50</b>
<b>Annex 3: Key texts and agreements</b>	<b>51</b>

## Abbreviations

<b>ABASA</b>	Burundo-African Alliance for Salvation (Alliance Burundo-Africaine pour le Salut National)
<b>ANADDE</b>	National Alliance for Law and Economic Development (Alliance Nationale pour le Droit et le Développement Économique)
<b>AV-INTWARI</b>	Alliance of the Brave (Alliance des vaillants)
<b>CENAP</b>	Conflict Alert and Prevention Centre (Centre d'Alerte et de Prévention des Conflits)
<b>CENI</b>	Independent National Electoral Commission (Commission Électorale Nationale Indépendante)
<b>CNDD</b>	National Council for the Defence of Democracy (Conseil National pour la Défense de la Démocratie)
<b>CNDD-FDD</b>	National Council for the Defence of Democracy – Forces for the Defence of Democracy (Conseil National pour la Défense de la Démocratie – Forces de Défense de la Démocratie)
<b>EAC</b>	East African Community
<b>EU</b>	European Union
<b>FRODEBU</b>	Front for Democracy in Burundi (Front pour la Démocratie au Burundi)
<b>FROLINA</b>	National Liberation Front (Front pour la Liberation Nationale)
<b>IMC</b>	Implementation Monitoring Commission
<b>OUA</b>	Organisation of African Unity
<b>PALIPHEUTU</b>	Party for the Liberation of the Hutu People (Parti pour la Libération du Peuple Hutu)
<b>PALIPHEUTU-FNL</b>	Party for the Liberation of the Hutu People – National Forces of Liberation (Parti pour la Libération du Peuple Hutu – Forces de Liberation Nationale)
<b>PARENA</b>	Party for National Recovery (Parti pour le Redressement National)
<b>PIT</b>	Independent Labor Party (Parti Indépendant des Travailleurs)
<b>PL</b>	Liberal Party (Parti Libéral)
<b>PRP</b>	People's Reconciliation Party (Parti pour la Réconciliation du Peuple)
<b>RPB</b>	Rally for the People of Burundi (Rassemblement du Peuple Burundais)
<b>TRC</b>	National Truth and Reconciliation Commission
<b>UPRONA</b>	Union for National Progress (Union pour le Progrès National)



# 1 Introduction

This study of the interactions between the Burundian peace process and the process for drafting its related constitutions is part of a larger project using similar case studies in which conflicts over political identity have been resolved through internationally mediated peace negotiations leading to constitutional reforms and/or changes. During the Arusha peace talks, actors in the Burundian conflict highlighted its ethno-political dimension. The armed conflict was particularly motivated by demands for major institutional reforms and has resulted in dual yet interdependent dynamics. Peace negotiations under African mediation began an important reflection process on a constitutional model, which was integrated into the Arusha peace accord.

A transitional constitution was drafted as a first step, followed by a more complex and contentious process of drafting a post-transition constitution, with input from international actors. The resulting constitution was largely inspired by the Arusha Agreement. After being widely approved in a referendum, the post-transition constitution was implemented – albeit with difficulty. This constitutional model – grounded in various compromises by the conflict parties – is currently being undermined, as Burundi's ongoing crisis is partly rooted in challenges arising during the peacemaking and constitution-drafting processes. It is helpful, therefore, to examine these two processes and their mediation.

## 1.1 Background to the conflict in Burundi

A small, overpopulated and landlocked country in the African Great Lakes region at the convergence of East and Central Africa, Burundi has limited resources and three ethnic groups: the majority Hutu, who had gradually been excluded from the country's administration during the Belgian Mandate; the minority Tutsi, whose role was progressively enhanced during that period; and the habitually marginalised Twa.<sup>1</sup> Burundi's modern history has been marked by politically and ethnically motivated violence. In 1961, legislative elections brought the Union for National Progress (UPRONA) party to power.<sup>2</sup> In October 1961, the assassination of its leader, Prime Minister Rwagasore, son of King Mwambutsa IV, began years of turbulence. Mounting political tensions and ethnic antagonisms destabilised the constitutional monarchy in the period 1962-1966. In 1965, angered by the belief that they had been robbed of victory in the legislative elections, some Hutus in the armed forces attempted a coup d'état, which was followed by ethnic killings of Tutsis in the centre of the country. The trial of these Hutus, charged with staging the coup, led to around 60 executions (Ngayimpenda, 1998). In that poisoned atmosphere, the army, under the command of southern Tutsi captain Michel Micombero, abolished the monarchy and established the republic. A military one-party regime was set up, which Tutsis from southern Burundi gradually came to dominate, excluding the Hutu majority. In 1969, rumours of an impending coup led to scores of prominent figures being executed.

The year 1972 marked a turning point for violence in Burundi's first republic. In late April, a Hutu rebel group attacked the south of the country, targeting the entire Tutsi population. The army

quickly neutralised this genocidal insurrection. It was followed by a systematic elimination of the majority's elite, with killings extending to schools. This "selective genocide" of an ethnically defined elite group (Chrétien and Dupaquier, 2007), which is euphemistically termed "the events of 1972", had a profound impact on the dynamics of the conflict in Burundi (Nindorera, 2012, 13-14) and on the way the conflict is remembered (Laroque, 2013).

After Colonel Jean-Baptiste Bagaza, another Tutsi from the south, overthrew Burundi's first republic in 1976, there was a period of comparative peace and socioeconomic development. However, the ethnic question was ignored. The regime slowly became an autocracy, characterised by increased regionalism and Hutu exclusion amidst church-state conflict. Already a minority in many secondary schools due to a Hutu exodus in the wake of the 1972 school killings, the Hutu majority population was also victimised by a devious discriminatory educational policy.<sup>3</sup> The repressive system had stifled any protest, and the Second Republic was overthrown in 1987 without having been tarnished by violence. The new president, Major Pierre Buyoya, yet another Tutsi from the south, continued his predecessors' policies regarding ethnic integration but also introduced political, social and economic measures aimed at decreasing tensions.

In August 1988, Hutus rose up in northern Burundi, which was accompanied by killings of Tutsis. These killings were followed by brutal repression of Hutus. Was this the result of frustrations built up under previous regimes or the new government's refusal to take action on the question – or both? In any case, international pressure to tackle the ethnic issue and Buyoya's realisation that he had to deal with it pushed the president to open political institutions to Hutus and initiate various reforms. In 1991–1992, Burundi experienced a democratic opening. Convinced he would win because of his

1 The figures that supposedly indicate the demographics of the different groups always refer to an ethnic census conducted during the colonial era that state the percentages as 85% Hutu, 14% Tutsi, and 1% Twa.

2 At this time, UPRONA was a national party that appealed to all Burundians because it was the party that had fought for independence. However, during the first three decades of the republic (1961-2001), UPRONA became a predominantly Tutsi party.

3 See [www.iwacu-burundi.org/systeme-i-et-u-je-demande-pardon-toute-personne-qui-croit-quelle-en-a-t-vicime](http://www.iwacu-burundi.org/systeme-i-et-u-je-demande-pardon-toute-personne-qui-croit-quelle-en-a-t-vicime).

successful socioeconomic reforms and well-received policy of national unity, Buyoya called the first democratic general elections since the dark episode of the 1965 elections. He ran under the banner of UPRONA, the former single party that had held power for nearly thirty years. However, parts of the minority were fearful, and many Tutsis in the military and senior civil service felt their interests were threatened. The presidential election victory of Ndadaye, the candidate for the Front for Democracy in Burundi (FRODEBU), a predominantly Hutu party that advocated deeper changes, including the end of Tutsi rule, was taken very badly by supporters of the former one-party regime that had been in place for almost thirty years. Moreover, FRODEBU increased its gains in the legislative elections. Scarcely three months after the peaceful transfer of power and the formation of a broad-based government, the military assassinated the new president and many top leaders in a coup d'état for which, however, no one ever claimed responsibility. These events provoked mass killings of Tutsis, followed by a violent crackdown that triggered the deadliest armed conflict in Burundi's history. Although international condemnation of the forceful overthrow of a young democracy saw FRODEBU restored to power, the party was forced to share power with UPRONA and small Tutsi parties. This confiscation of its victory and its leaders' assassinations prompted FRODEBU to create a clandestine armed movement (Nindorera, 2012, 14-15). In parallel, the clandestine Party for the Liberation of the Hutu People (PALIPEHUTU), the oldest Hutu rebel group, which was negotiating with FRODEBU on the conditions for its return to civilian life, chose to engage in armed struggle. Burundi's armed conflict thus pitted its regular army, largely dominated by Tutsis, against two Hutu rebel movements, the National Council for the Defence of Democracy (CNDD) created at FRODEBU's initiative and coordinated by Léonard Nyangoma, a former Ndadaye minister, and PALIPEHUTU. These rebel groups aimed to restore the constitutional order of 1993 and dismantle the security forces, whom they regarded as the real power centre.

In 1994, the deadly attack on the plane carrying the president of Rwanda and his Burundian counterpart triggered the Tutsi genocide in Rwanda. The international community, already concerned about violence in Burundi, was very alarmed at the thought of a second genocide in the Great Lakes sub-region and redoubled its efforts to stem the violence and resolve the conflict. Indeed, although originally supposed to ease tensions, the two-headed executive instead led to a guerrilla war where the two parties were engaged in a proxy battle on two fronts. One took place on the institutional field, where both parties tried to neutralise each other. The other took place on the battlefield, where the FRODEBU president secretly tried to support the guerrillas and chip away at the army while the UPRONA prime minister sought to strengthen the defence forces, turning a blind eye to the repression and assassinations of Hutu cadres, in which they were complicit, if not actually guilty.

Several international figures intervened in an attempt to deescalate the situation. The Organisation of African Unity (OAU) organised two summits of the heads of state of the sub-region, in which Burundi topped the agenda. One summit, held in Cairo in November 1995 under the auspices of former US President Jimmy Carter, was co-chaired by the former president of Mali, Amadou Toumani Touré, and his Tanzanian counterpart Julius Nyerere, together with Archbishop Desmond Tutu of South Africa. At the other summit in Tunis in March 1996, Nyerere was appointed principal mediator for Burundi. Nyerere subsequently brought the conflicting parties together in Mwanza, Tanzania, but was unable to establish the bases for negotiations (interview with Sylvestre Ntibantunganya, former Burundi president, 2018). Soon afterwards, on 25 June 1996, Nyerere organised a summit devoted to Burundi in Arusha, Tanzania, with sub-regional heads of state. There, the Burundi government succeeded in getting foreign troops from East African countries sent to Burundi. This initiative and the CNDD's massacre of nearly 400 Tutsi civilians in the heart of the country on 20 July 1996 triggered a coup d'état five days later.

Buyoya was returned to power and a good number of FRODEBU leaders and their allied parties fled the country. On 31 July, Nyerere convened a second summit of the heads of state of the Regional Initiative for Peace in Burundi, now headed by the Ugandan President Museveni, which imposed an embargo on Burundi that could only be lifted in return for opening negotiations with the rebel groups. The summit participants included the presidents of Tanzania, Kenya, Uganda and Rwanda and the prime ministers of Ethiopia and Zaïre.

## 1.2 Purpose of this study

This study examines the interactions between the regionally mediated peace process and the processes of drafting related constitutions. As a first step, it will clarify the context of the Arusha peace talks, the stakeholders, the process itself and the mediators who led it, their various perceptions and the results of these efforts to restore peace, in the light of the subsequent constitutional reforms. Secondly, it will examine the processes of drafting the various constitutions that emerged directly from the Arusha Peace and Reconciliation Agreement (Arusha Agreement), highlighting its link with the content of these texts. The study will conclude with some of the lessons learned from these processes, open questions for further research, and key recommendations.

## 1.3 Key concepts

To dispel possible misunderstandings of terms and concepts used throughout the text, it should be noted that the concept of peacemaking follows the Berghof Foundation's Glossary.<sup>4</sup> *Mediation* is defined according to the United Nations' Guidance for Effective Mediation,<sup>5</sup> and *constitution building* is defined with reference to International IDEA's Guide to Constitution Building.<sup>6</sup> Finally, this study uses the term *ethnic group* to designate the three components of the Burundi population, even if these different groups do not satisfy the definition of this concept because, for example, they speak the same language and share the same culture. The different disciplines concerned by the question have yet to agree on the terminology and, by default, generally use the term "ethnic group".

4 "Peacemaking usually refers to diplomatic efforts to end violence between conflict parties and to achieve a peace agreement. International or national peace agreements may contain demobilisation commitments or regulations on the future status of conflict parties. As stated in the United Nations Charter, peacemaking strategies range from negotiation, mediation and conciliation, to arbitration and judicial settlement. ... Civil society organisations involved in peacemaking mostly rely on non-violent strategies such as negotiation and mediation." (Berghof Foundation, 2018, 60).

5 "Mediation is a process whereby a third party assists two or more consenting parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements. The premise of mediation is that in the right environment, conflict parties can improve their relationships and move towards cooperation. Mediation outcomes can be limited in scope, dealing with a specific issue in order to contain or manage a conflict, or can tackle a broad range of issues in a comprehensive peace agreement." (United Nations, 2012, 4)

6 "Constitution building is defined expansively as a long-term and historical process. It is not an event and is not equated with the constitution making – the period when a constitution is drafted ... [It] entails several steps: (a) agreeing on the need for constitutional change and its scope, which in practice often is one part of broader processes of historical change in a country; (b) under the relevant principles, establishing institutions, procedures and rules for inclusive and participatory constitution making or drafting, which may entail the use of interim measures; (c) giving legal effect to the constitution or ratification; and (d) the implementation stage, which is critical, particularly in the early years subsequent to ratification." (Böckenförde et al., 2011, 2)

## 1.4 Methodology

The data used for this study partly relies on interviews with national stakeholders: the leaders of the conflict parties at the Arusha negotiations, as well as the parties that boycotted them and subsequently signed separate agreements with the Burundi government. Persons involved in the mediation were also interviewed, including actors who have been involved in the mediation of the ongoing Burundian crisis. It is worth mentioning that some of the actors involved in the Arusha peace process also participated in the constitution-making processes that resulted from the agreement. Individuals who directly contributed to the drafting of these documents, whether at the level of technical or governmental commissions, were also interviewed, as were experts who have reflected on these questions or written related articles and studies. The methodology was also based on a literature review of primary and secondary sources. Peace agreements and documents relating to the peace process were consulted, as were legislative texts and, in particular, the resulting constitutions. Finally, articles, studies and other documents directly or indirectly related to the research topic, including opinion polls exploring public perceptions of the two processes, were also examined.

## 2 The Arusha peace process and its impact on Burundi's constitutional architecture

Despite one part of his camp opposing any negotiation with “genocidal terrorists” (as state propaganda designated the rebel groups), in June 1998, President Buyoya, with his back against the wall due to the embargo's disastrous effects on people's living conditions and military pressure from the rebel groups, was finally forced to negotiate with all the parties. Buyoya had held off many times, and waited until he had reinforced his domestic base by signing a governing partnership with the opposition that would legitimise his power and improve his negotiating position. In addition, secret negotiations with the CNDD had begun in Rome under the aegis of the Community of Sant'Egidio, although in 1997 news of these talks provoked an uproar that forced the government to deny them.<sup>7</sup>

### 2.1 The framework and actors of the Arusha peace process

#### International mediation

Former Tanzanian President Nyerere's stature and moral authority on the African continent enabled him to remove his colleagues Jimmy Carter and Toumani Touré from the Burundi case and get himself appointed as facilitator of the peace negotiations. Arusha was immediately established as the location of the talks (interview with Ntibantunganya, 2018). However, the Burundian government contested both Nyerere's appointment and the venue, mainly because it accused Tanzania of sheltering some of the rebels and Nyerere of lacking impartiality (International Crisis Group, 1998, 44-49). The region was designated to supervise the peace process with the approval of the international community because of the new principle of “African solutions for African problems”, advocated by many African leaders, including Nyerere.<sup>8</sup> At first, the regional initiative was limited to East African countries (Rwanda, Uganda, Kenya and Tanzania). Then Ethiopia and Zaïre were added. Later, Zambia, Zimbabwe, Eritrea and South Africa were invited to join. If the last four countries were meant to play integral roles in the peace process, they in fact participated very little—aside from South Africa, whose role grew over time. The regional initiative mainly sought to pressure the negotiating

<sup>7</sup> One of the parties to the talks noted that substantial progress had already been made and the discussions facilitated Commission III's work on peace and security (interview with Léonard Nyangoma, CNDD President, 2018).

<sup>8</sup> Africa should promote solutions to problems and promote good governance and reforms to stimulate economic growth. Available at: [www.un.org/press/fr/1998/19980416.CS915.html](http://www.un.org/press/fr/1998/19980416.CS915.html) (accessed 23 September 2018).



parties, endorsed decisions, and when necessary, imposed them on the parties. To this end, these countries' leaders met some 20 times between 1996 and 2005. At first, Nyerere was assisted by his associates and foundation staff, who were mostly Tanzanian. In addition to the delegations from countries in the regional initiative, the negotiating process included a multitude of diplomats and special envoys as observers: mostly from the United Nations, OAU, European Union, United States, Belgium, and various organisations and foundations (the Carter Foundation, the Community of Sant'Egidio, etc.). The international community was thus strongly represented in the process that it was financing.<sup>9</sup>

### Internal dialogues

Aiming to get Burundians to understand the need for negotiations and ensure they did not feel disconnected from the Arusha peace process, Buyoya called for internal debates to prepare Burundians for the negotiations and invited the public to discuss issues of national concern (interview with Ambroise Niyonsaba, former Peace Process Minister, 2018). Some segments of the Tutsi population, especially in the capital city Bujumbura, were outraged at the prospect of negotiating with “genocidal terrorists” and stepped up their efforts to prevent this from happening. In a society divided by a painful history and conflictual memories, with some more wounded than others, and in the context of victim competition, civil war and its violence rekindled fears and passions, even breeding radicalism(s). Tutsis in Bujumbura were hostile to any prospect of negotiations, and various segments of the population (students, civil servants, etc.) supported this sentiment. However, it is difficult to judge the proportion of rejecters because people with other points of view were intimidated and there were no available evaluation tools such as opinion polls. Furthermore, it was difficult to determine the views of the rural population

(i.e. most Burundians) or those of most Hutus, who were reluctant to express themselves in a system they perceived as oppressive and Tutsi-dominated.

The internal debates consisted of dialogue sessions with groups representing the makeup of Burundi society. They experienced initial difficulties, partly due to a boycott by FRODEBU, which was not yet party to the process, and by the Hutu population more generally (interview with Eugène Nindorera, former Minister of Human Rights, Institutional Reform and Relations with the National Assembly, 2018). The internal dialogues were especially helpful for taking stock of people's concerns and getting them added to the political agenda (interview with Niyonsaba, 2018). These dialogues began a year before the Arusha talks and continued during the peace process, with a governmental structure created to evaluate the progress of the discussions (interview with Nindorera, 2018). Arusha had low media coverage in the state-owned press and was even censored, with the views of rebel groups being banned. Only after the birth of an independent press disseminating news of the negotiations were government media gradually convinced to present less biased coverage (Palmans, 2005). When the peace agreement was signed in August 2000, its contents were so widely reported by both state-owned and private media that eventually the population had a relatively good knowledge of it (Nimubona & Mboneko, 2003).

### The Arusha negotiations: Format and stakeholders

The first session of the Arusha negotiations was held from 15 to 21 June 1998 and involved the main political parties (UPRONA and FRODEBU) and armed groups (PALIPEHUTU and the CNDD). At that time, few people understood that the recent dissent within the CNDD would have a long-term impact on the process. Other parties were shaken by tensions and internally divided over the new

<sup>9</sup> The Arusha negotiations cost nearly USD 15 million (International Crisis Group, 2000b).

partnership (e.g. FRODEBU's external wing was against any type of collaboration with the "putschist" government) and/or over participation in peace talks (such as UPRONA).

**The following 19 parties were involved in the Arusha negotiations:**

- ≡ The government and the National Assembly;
- ≡ FRODEBU and UPRONA: the two parties represented in state institutions;
- ≡ The CNDD, PALIPEHUTU, and the National Liberation Front (FROLINA): three armed movements, the third of which was of little significance;
- ≡ Former President Bagaza's Party for National Recovery (PARENA); the National Alliance for Law and Economic Development (ANADDE); the Alliance des Vaillants (AV-INTWARI); the Social Democratic Party (PSD); the Socialist and Pan-African Party (INKINZO); the Burundo-African Alliance for Salvation (ABASA); the People's Reconciliation Party (PRP); the Independent Labor Party (PIT); and the Rally for Democracy and Economic and Social Development (RADDES): Tutsi parties, which, except for PARENA, had no supporters.
- ≡ The Liberal Party (PL); the Party of the People (PP); and the Rally for the People of Burundi (RPB): small Hutu parties.

Women's organisations representing various civil society associations later lobbied the mediators to be allowed to participate in the negotiations. Although they were only granted observer status, they managed to influence some decisions in their favour. During the first session under Nyerere's mediation, it was decided to set up five commissions: "The Nature of the Conflict", "Democracy and Good Governance", "Peace and Security for All", "Reconstruction and Economic Development", and "Guarantees for Implementing the Peace Agreement". The first round ended with all parties signing a ceasefire declaration that dissident factions immediately denounced (International Crisis Group, 2000a, 14–15). The second round of negotiations led to the adoption of rules of procedure.

## 2.2 Nyerere struggled with stakeholders

### The evolution of the mediation team

The mediation soon faced multiple criticisms – from the negotiating parties, observers and funders alike (International Crisis Group, 2000a, 11). The government suspected that the mediators were colluding with FRODEBU (interview with Niyonsaba, 2018). It was also concerned that the ceasefire declaration had not been followed up on the ground, and questioned the real balance of power between the rebel movements at Arusha and their dissidents. The mediation team was criticised for its inexperience, lack of know-how and various organisational difficulties (International Crisis Group, 1999, 9-10), and for knowing little about the Burundi case, "sometimes giving the impression they were learning about the Burundi problem rather than resolving it" (International Crisis Group, 2000a, 11). It also encountered language problems. The hefty criticism was a blessing for the government, which began to advocate for the inclusion of experts from other countries to professionalise the mediation, and to limit Nyerere's role and impact by overwhelming him with other facilitators (interview with Niyonsaba, 2018). In fact, the third session of Arusha talks was used to determine the types of experts needed to head the various commissions. This led to the Commission on the Nature of the Conflict being chaired by Armando Guebuza, a Mozambican chosen for the experience he had gained in his own country's peace process. The Democracy and Good Governance Commission was entrusted to Nicholas Haysom, a South African expert on constitutional and electoral reforms and peace processes, with his country of origin playing a role in his appointment. His assistant was Julian Hottinger, a Swiss political scientist specialising in international conflict mediation. Matteo Zuppi from the Sant'Egidio Community, who had facilitated the secret negotiations between the government and the CNDD in Rome in 1996-1997, was appointed to chair the Peace and Security Commission, assisted by the South African General Masondo.



Finally, the Canadian Caryl McAskie headed the “Reconstruction and Economic Development” Commission. Other experts on conflict mediation regularly attended Arusha sessions, where they played informal roles.<sup>10</sup>

At first, mediation had been scheduled for six months. This was extended by six months, then another six months, during which time Nyerere became seriously ill. He died some weeks later, in October 1999. Discussions about a successor led to the appointment of Nelson Mandela, whose calibre and charisma seemed to provide new impetus for the process. At first, Mandela gave himself three months to conclude the negotiations (interview with Julian Hottinger, Vice President of the Commission on Democracy and Good Governance, 2018). Unsurprisingly, that deadline was not met. Mandela then announced that the process would end by June. Finally, with the signatory parties’ agreement in principle, he imposed 28 August 2000 as the date for signing the peace agreement, so nine months after he had become the mediator. Although that deadline was respected, it created various problems that will be addressed in more detail below.

### Mixed reviews for Nyerere’s mediation

The main objective of the mediation was to find a solution to the conflict in Burundi and to prevent further escalation. It aimed to re-establish a form of democracy acceptable to everyone but had no clear strategy about how to do that (interview with Hottinger, 2018). Despite his prestige and strong support from the international community, Nyerere struggled to leave his mark in the conduct of the negotiations. The first round started in a confused manner, with the conflict parties struggling to clarify their diverging positions and interests (interview with Léonard Nyangoma, CNDD President, 2018). Nonetheless, it would be unfair to blame solely the mediation team for the initially slow pace and disorganisation: it had to deal with

the interests and hidden agendas of 19 parties. The political parties were supposed to represent and defend all the positions of their interest groups. However, of the 17 political entities represented at Arusha, only five (FRODEBU, UPRONA, CNDD, PALIPEHUTU and PARENA) had real popular bases; the others were mostly vindictive politicians and opportunists who had entered politics to benefit from the positions and other dividends they might get from the future participacy. On the other hand, the most representative parties had interests that sometimes contradicted those of their supporters (especially regarding impunity) and therefore played both sides, taking public positions that concealed less admirable backstage discourses. Some important issues such as justice were exploited to politically discredit the adversary (Sculier, 2008). Moreover, the rivalries and devious calculations in pursuit of vested interests certainly did nothing to help ease the various positions. Added to this complicated situation, the government and the National Assembly, whose interests clearly clashed, were partnered in government. Put simply, it would have been very difficult for any mediator to immediately grasp the Burundian problem in the midst of all these actors, some of whom were known to be saying the opposite of what they thought, and others driven by hidden ambitions and calculated interests.

Relations between Nyerere and the government remained tense. Beyond accusations of partiality, the government refused to have the conditions and terms of the negotiations imposed upon them. Aware of the delays to the work, and in light of the sharp differences of opinion that came to light in the commissions, in January 1999 the mediators proposed setting up negotiating groups within each commission. Prioritising commission work over plenary sessions made progress possible, but the mediation came up against a fundamental issue, namely, the inclusivity of the process. The government insisted on having the active rebel groups present, especially because continued hostilities on the ground substantiated the claim

<sup>10</sup> They included Jan Van Eck, a former ANC MP from South Africa, who played a special role in the parallel mediation between the government and PALIPEHUTU-FNL.

that the configuration of forces was unfavourable to Nyangoma (interview with Niyonsaba, 2018). Nyerere, who was hostile to the presence of dissident wings, imposed conditions on their presence before eventually removing these groups (International Crisis Group, 2000a, 14-15). Dissidents from the National Council for the Defence of Democracy–Forces for the Defence of Democracy (CNDD-FDD) – a rebel group that had been purged of many of its trained cadres but kept fighting – were not ready to negotiate, less because of hostility to the process itself than for fear of having nothing to propose (interview with Jean Marie Ngendahayo, former CNDD-FDD negotiator, 2018).<sup>11</sup> The question of inclusiveness of the process continued to hinder orderly conduct and led to violent exchanges between Nyerere and the minister in charge of the peace process during the last session of the mediator’s lifetime (International Crisis Group, 2000a, 12), with the mediator insisting that rebel groups from the negotiating factions be excluded.

In July 1999, illness forced Nyerere to stop running the negotiations. He left, frustrated by his inability to get the process on the right track – although some progress had undeniably been made in the commissions. The negotiating parties had mixed views about Nyerere, and he was not able to improve the attitudes of the Tutsi parties and the government towards him. In addition to Nyerere himself, the Tutsi parties heavily criticised his team members for being biased and inexperienced. Some of these parties, along with the government, also blamed Nyerere for having facilitated the formation of the G7, the group gathering all Hutu parties, by allowing them to form their own working group in the Tanzanian city of Moshi, even helping with logistics (interview with Alphonse Rugambarara, former President of the INKINZO party, 2018). These Tutsi groups viewed the new political configuration as

the origin of the ethnicisation of the debates, and thus of the polarisation of parties on the basis of their ethnicity (interview with Rugambarara, 2018). Some observers tend to share this point of view (Sculier, 2008).

The majority of Hutu parties generally thought well of Nyerere, with one of them even regretting that he had not continued until the end (interview with Nyangoma, 2018). Within the two conflict parties, views differed about whether or not the mediation team was especially close to the exiled FRODEBU leader, Jean Minani, who had managed to get permission from Tanzanian authorities to occupy the Burundi embassy in Dar es Salaam (International Crisis Group, 1998, 46-47).

### 2.3 Mandela’s method upset political actors

#### The Mandela method

When Mandela was appointed to take over the mediation in late 1999, he left the existing team intact – both the Tanzanian staff and the various experts. Mandela’s aim of quickly ending the negotiations he thought had lasted too long affected his way of working: he wanted rapid results and was not ready to listen to parties indefinitely. To reach his goals, he introduced a number of innovations. His main strategy was to continuously apply maximum pressure to all the parties (International Crisis Group, 2000a, 23). Logically, Mandela most pressured the regime he regarded as the expression of a minority that had usurped power and was holding the Burundi people hostage. He used several approaches to do so:

<sup>11</sup> From this point of view, it was not clear that including the CNDD-FDD in the Arusha peace talks could have led to a peace agreement, and under what conditions. It seems that an agreement would have been possible but would have involved much more difficult – and longer – negotiations, given the rivalry between FRODEBU and the rebel movement (not to mention the CNDD, from which it originated) about the right leadership to defend and promote the Hutu cause, and the CNDD-FDD’s urge to seize as many positions and as much power as possible, to the detriment of other Hutu (ethnic majority) groups.

- ≡ Making the most of his charisma and contacts, Mandela sought greater international visibility for the Burundian problem. He mobilised world leaders (including the US president), and increased pressure on the Burundian parties by holding them accountable, publicly exposing blockages and those who caused them.
- ≡ In the same spirit, with his ability to influence global decision-makers, Mandela played carrot and stick with the parties, variously trying to persuade them or threatening them with sanctions – including prosecution and/or dismissal (in the case of Buyoya).
- ≡ Finally, Mandela used harsh and sometimes brutal words and methods, raising his voice, and sometimes even making insults in public.<sup>12</sup>

The former president of the National Assembly described Mandela's carrot and stick approach in these words:

*Mandela knew how to get you to accept what you did not want. First by using force and intimidation, threatening you with various sanctions and activating his networks in front of you (by making various phone calls) to show you that he would really carry out his threats – then speaking sweetly and complimenting you after he'd twisted your neck*

(interview with Léonce Ngendakumana, former President of the National Assembly, 2018)

On the ground, the civil war had intensified. On one hand, the CNDD-FDD, partly based in the RDC, had become stronger during the second Congo War and enjoyed logistical and material support from the RDC and some of its allies (Burihabwa, 2017). On the other hand, the rebel movement wanted to show that the region had picked the wrong interlocutor and to force the government and the mediation team to negotiate on its terms. In the face of continued fighting and his growing understanding that the peace process had to be inclusive, Mandela multiplied his efforts to bring the rebel factions into the negotiations. However, his initiative was thwarted by the CNDD-FDD's lack of preparation and internal dissent: part of its leadership developed a different vision of the

Burundian conflict that contradicted the rebel group's emphasis on ethnicity in the Arusha negotiations (interview with Ngendahayo, 2018).

Mandela often found himself accused of lacking time for the peace process (International Crisis Group, 2000a, 15). In fact, he often delegated tasks to commission chairs or Tanzanian facilitators in Arusha. To finish as quickly as possible, he halted work in the commissions in order to start writing an agreement draft to be commented on by the parties. The draft was submitted to them on 27 March 2000 during a meeting of delegation heads (International Crisis Group, 2000a, 21).

### Praise ... and criticism

Mandela's way of working was variously assessed. While everyone agreed that a lot of negotiating time had been lost in sometimes unproductive procedures and meetings, some were not fully convinced of his methods prioritising fast results at the expense of content, which risked jeopardising previous achievements. Mandela was criticised, among other things, for not listening properly and sometimes having a simplistic reading of the conflict in Burundi. The government, which had pushed for his appointment, wondered if it had not been caught in its own trap because Mandela sometimes seemed to confuse the conflict in Burundi with that of apartheid South Africa (interview with Niyonsaba, 2018). That being said, partly through his very direct manner, Mandela got the negotiating parties to quickly accept compromises on key issues such as the security forces and the electoral system. His unrelenting pressure and international standing did in fact help the parties gradually make concessions. Finally, despite criticising some of his methods, interviewees involved in the Arusha negotiations had generally positive views of how Mandela had helped the process to progress. They all expressed their satisfaction with the quality of the international experts, noting their competence, dedication, listening skills and patience. All agreed that the experts made an essential contribution.

<sup>12</sup> Comments confirmed by many of the interviewees.

## 2.4 Burundi's constitutional model at the heart of the negotiations

### Clashing viewpoints

While there were many differences of opinion and rifts during the peace talks, which also divided politico-ethnic families and even party factions, the Tutsi parties reacted to the G7 by uniting on different bases. Sometimes UPRONA acted alone or teamed up with PARENA. Indeed, to continue making progress after Nyerere had died, the facilitation team began to consult with what it perceived as the key players – the CNDD, FRODEBU, PARENA, UPRONA, the government and the National Assembly. This strategy, kept up by Mandela, helped clarify the issues and eased relations between some of the parties. However, it also frustrated the rest of the political parties, who felt slighted and occasionally marginalised by key players within their own political families. The interpretation of the conflict and its possible solutions mainly divided Tutsi and Hutu parties, within which positions were extremely variable, some more maximalist than others. Both sides exploited the painful past, with each claiming to have been more victimised than the other. At stake was how to describe the atrocities they had suffered and discredit the perpetrators. The trauma of 1972 remained etched in the Hutus' collective memory and fed deep resentments that Hutu rebel groups used to mobilise supporters and members, with orphans of the selective genocide making up a good number of the CNDD-FDD cadres.<sup>13</sup> The numerically inferior Tutsis now perceived their existence as a group as threatened and regarded the army as their ultimate protectors after the massacres following Ndadaye's assassination. They hence sought to ensure their collective survival by monopolising the army and the institutions that controlled it. Tutsi parties exploited these fears and their issue of survival to justify remaining in power, or at least being strongly represented in the government.

To disqualify UPRONA, Hutu parties talked about how the power they had gained through the ballot box had been denied them by a coup and violence, exclusionary policies and marginalisation. They also invoked respect for the popular will and the electoral process, and demanded the return to a majoritarian democracy. These were the two virtually irreconcilable positions that the mediation team had to arbitrate.

### The consociational model as an alternative to the parties' demands

Unsurprisingly, the main blocking points and strains concerned power-sharing, notably within the electoral system, the institutional balance of power (particularly in the defence and security forces), the justice system and some institutions still to be established (like the Senate). All these issues were entrusted to Commission II, in charge of Protocol II on Democracy and Good Governance, or were discussed within this Commission. Protocol II concerned values and principles, institutions, the electoral system and political parties. Because it addressed the key issue of power-sharing, it fuelled the greatest tension, and thus was at the centre of negotiations. Commission II first relied on the Burundi constitution of 1992, which had been challenged by the coups in 1993 and 1996. However, this constitution remained one of the main demands of rebel movements and Hutu parties in Arusha. The Commission's Bureau had to examine the provisions that might still be relevant and those that needed to be changed or simply discarded.<sup>14</sup>

<sup>13</sup> Burundi's current head of state and many of its top cadres were orphaned in 1972.

<sup>14</sup> The Arusha Peace and Reconciliation Agreement for Burundi. Appendix I, Explanatory Commentary on Protocol II.

### Box 1: Similarities and differences in the constitution of 1992 and the Arusha Agreement

The Arusha Agreement incorporates many provisions of the 1992 constitution regarding general principles, a detailed description of citizens' rights, and the political party and electoral systems. The text prohibits members of the security forces and the judiciary from belonging to political parties and requires the political parties to be established, organised and operated "in a spirit of national unity reflecting the various parts of the Burundian population". The procedures for the election of the president (universal suffrage) and the legislature (proportional lists) were also inspired by the 1992 constitution. Most of the provisions of the agreement concerning the presidency of the republic (the number and length of terms, eligibility requirements, prerogatives, circumstances for removal from office, etc.) and the National Assembly come straight out of the 1992 constitution. The same applies to the provisions on the Constitutional Court, whose powers had been expanded in the constitution, and the High Court and some national councils. However, the Arusha Agreement differed from the 1992 Constitution through its various innovations on the consociational model (explained later), the composition of the executive institutions (two vice-presidents instead of one prime minister as in the 1992 Constitution) and some of its prerogatives, its relations with the legislative body, the set-up of new institutions such as the Senate, the Ombudsman and some national councils. Arusha contains many provisions on the defence and security forces and mechanisms for transitional justice and fighting impunity that were not mentioned in the 1992 constitution. In addition, whereas the 1992 constitution established a semi-presidential system, the Arusha Agreement provides for a presidential system. Generally, Tutsi parties spearheaded many of these changes, while the Hutu political parties remained committed to the constitution of 1992.

The Bureau of the Democracy and Good Governance Commission was challenged by the fact that most stakeholders' frames of reference – the French and Belgian constitutions – did not offer solutions to Burundi's problems.<sup>15</sup> Similarly, the South African model, suggested by the new South African mediation team, among others, was equally restrictive and the inspiration from the post-apartheid regime rather limited. Progress was only made when the parties started exploring a wider range of constitutional systems, particularly from war-torn societies that had adopted consociationalism, with the help of international experts (interview with Hottinger, 2018). With the terms clearly laid out by the mediation team – security for the minority and democracy for

the majority – the Commission was tasked to devise a constitutional system to satisfy these two imperatives. Mechanisms were needed to ensure that the Tutsi minority would be protected from violence and institutionally represented and would be able to defend and promote its interests – along with an electoral system that would satisfy the Hutu majority's wish for democracy. To do so, the Commission opted for direct universal suffrage in a system of proportional representation, with multiethnic party lists that alternated ethnic groups and prevented any ethnic group from having three names in a row. This guaranteed a minimum Tutsi representation of around 38 percent in the National Assembly, which could be increased by the system of co-optation planned

<sup>15</sup> Many commission participants had either completed their higher education at foreign universities or had lived in Belgium, Burundi's former administrative authority, or France, an active partner with significant cultural and political influence in the country.



during the first election, should one party win more than 60 percent of the vote. In such a case, to ensure greater representation of minority parties, the number of deputies in the National Assembly (100) would be increased by 20 seats, divided equally between parties. To prevent any political group from dominating the National Assembly by granting veto power to minorities and promoting permanent dialogue and consensus, a majority of 2/3 of deputies present within the Assembly was required to pass a law. While there was unanimity regarding the principle of universal suffrage, several parties challenged the system of multiethnic lists. In addition, a second parliamentary chamber, the Senate, was created with enhanced prerogatives to pass legislation and approve nominations to key institutional positions (justice, security, defence, diplomacy, etc.). Two representatives of different ethnic groups were indirectly elected from each province, with candidates chosen by elected officials in local councils. The Senate thus had ethnic parity and Tutsis could oppose potentially sensitive nominations to strategic positions. The creation, prerogatives and composition of the Senate split the Tutsi and Hutu parties, with Hutus particularly disgruntled.

In addition, to guarantee the Tutsi minority's physical security as well as respect for the functioning and authority of elected institutions without running the risk that their power would again be usurped, the defence and security forces were required to have ethnic parity. Certain G7 parties who demanded proportional representation that reflected Burundian society initially fought this measure. Oddly enough, some Tutsi parties also had difficulty accepting this arrangement, which they considered a bad compromise. As for the executive branch, the head of state was to be elected by direct universal suffrage, but in the first election, the president was elected by Parliament with a large majority in order to reassure the Tutsis. One of the two vice presidents had to be from a different ethnic

group than the head of state. Lastly, to help create a government of national unity, all political parties receiving more than five percent of the vote were eligible to enter government.<sup>16</sup> The Arusha Agreement did not propose gender quotas, but to ensure women's minimum representation in the National Assembly it required that one in five candidates on legislative electoral lists be a woman. At the request of women's groups, the Arusha Agreement also included provisions for better integrating Burundian women and ending all forms of gender discrimination. A consociational model of democracy was finally adopted, albeit with some resistance, primarily from the G7 parties. This model offered guarantees to the majority that it would access power through universal suffrage (if, as stakeholders assumed, voting preferences were expressed along ethnic lines), while using pillars of consociation, such as proportional voting, minority veto rights and political coalitions.

The Explanatory Commentary on Protocol II in the Appendix of the final version of the Arusha Agreement mentions the confusion over Commission II's mandate, perceived as a "new Constitution for the Republic of Burundi", whereas its mandate was limited to defining "*principles [...] necessary to the reestablishing of a democratic system in their country*", which would be subject to approval by Burundians. If the protocol itself was never viewed as a ready-to-be-adopted constitution, some parts of it were written from the perspective of serving as a constitutional draft. In this respect, the fact that the presidents of most parties had joined this Commission reveals that they had perceived the high stakes of its work. Members of Commission II's Bureau interviewed for this study agreed that it was supposed to serve as a reference for the constitutions to govern the transitional and post-transition periods. The fact that the members chose Haysom and Hottinger, both with backgrounds in constitutions and elections, to head Commission II, reflects those intentions.

---

16 Arusha Peace and Reconciliation Agreement for Burundi. Appendix I – Explanatory Commentary on Protocol II.

## Unanswered questions

Commission II also examined transitional arrangements for halting the hostilities, restoring peace, and implementing laws and/or institutional reforms, especially for the judiciary, administration, defence and security forces, political parties, elections, and local authorities, and regarding civil liberties. The Constitutional Court, whose functions had been suspended in the 1996 coup but which was then reinstated by the Constitutional Act of Transition of 6 June 1998, was among the institutions planned for the transitional period. The transitional national unity government was supposed to be broadly representative, composed only of representatives of the parties that had signed the Agreement, with more than half and less than three-fifths of the portfolios divided between the G7 parties. The executive branch had one president and one vice president – each from different ethnic groups and political families.

Commission II elaborated many provisions on all these questions before starting to work on the transitional and post-transition constitution projects. While other constitutional issues were examined in other protocols, mainly Protocol III and to a lesser extent Protocol I, all the relevant principles were discussed and incorporated into Protocol II. All subjects were debated but they did not all obtain the consensus required for decision-making in accordance with the rules of procedure. In this regard, and in view of the difficulty of reaching compromise, the parties agreed to let the Bureau decide on contentious matters, which represented only 10 percent of the issues raised in the discussions. The Bureau thus formulated consensus proposals. Protocol II is the synthesis of the consensual text between all parties and these proposals, which were elaborated on the basis of the parties' suggestions. Although all these questions were discussed, the procedure for appointing the transitional leadership and members of government was left to be resolved during the final negotiations among Burundian parties.

## A forced peace agreement

The draft protocol prepared by the Bureau of Commission II was discussed and altered so much that it generated seven different documents based on the group discussions.<sup>17</sup> The last draft of the protocol was used as a basis for the penultimate draft peace agreement presented to stakeholders on 17 July 2000. The draft agreement had been mainly challenged by the Tutsi parties and government, and the mediation team tried to reach a final compromise in view of the signing scheduled for 28 August, but ran into resistance to the conditions for these final negotiations. On the eve of the signing, final negotiations were held in a marathon session with FRODEBU and the government (and thus indirectly with UPRONA) – but without the other parties – during which changes were made to the agreement (interview with Niyonsaba, 2018). In the middle of the signing ceremony, in the presence of many heads of state (including US President Bill Clinton) and top authorities, after several hours' delay, the text of the Arusha Agreement was finalised and submitted to the 19 negotiating parties, many of whom had no time to become acquainted with it before signing. The small Tutsi parties protested and only agreed to sign with numerous reservations (interview with Rugambarara, 2018) – thus calling the accord into question. Indeed, during the final negotiations between FRODEBU and the government on 27 and 28 August, quite a few provisions in Protocol II had been revised. They concerned the international commission of inquiry to investigate human rights abuses, the parliamentary majorities required to approve organic laws, and the Senate's increased prerogatives. The time period for quotas in defence forces, which lapsed after ten years in the initial text, was now subject to an assessment by the Senate without a time limit. Paradoxically, the government – despite having co-authored the peace agreement – entered its own reservations after signing.

---

<sup>17</sup> Ibid.

## BOX 2: RESERVATIONS EXPRESSED AT THE SIGNING OF THE ARUSHA AGREEMENT

Reservations expressed by ABASA, AV-Intwari, INKINZO, PARENA and UPRONA as “parties integral to the accord and which must be further negotiated”

Government reservations

- 1) The title of the document signed on 28 August
- 2) Article 1 (2) (b) of the document
- 3) Article 4 on the date the Agreement takes effect

- 1) The title of the document signed on 28 August
- 2) Article 1 (2) (b) of the document
- 3) Article 4 on the date the Agreement takes effect

### PROTOCOL I

- 1) Amnesty
- 2) The scope of investigation of the Truth and Reconciliation Commission and its arbitration powers
- 3) The International Criminal Court

### PROTOCOL I

- 1) Amnesty

### PROTOCOL II

- 1) The level of representation of ethnic communities in all constitutional institutions, as well as the appropriate electoral method
- 2) The procedure for electing the head of state
- 3) The majority of decisions in the institutions
- 4) Proposals for ensuring physical security and protection from exclusion for citizens of all ethnic communities
- 5) Provisions to ensure the sustainability of all the mechanisms in the peace agreement
- 6) The political party system
- 7) The judicial system: recourse to foreign magistrates
- 8) The interim period
- 9) The duration and composition of transitional institutions
- 10) The mechanism for putting into place the transitional leadership

### PROTOCOL II

- 1) The level of representation of ethnic communities in the National Assembly and the government
- 2) The procedure for electing the President of the Republic
- 3) The majority of decisions in the institutions
- 4) The judicial system: recourse to foreign magistrates
- 5) The interim period (Article 22)
  - ≡ The duration and composition of transitional institutions
  - ≡ The mechanisms for putting into place the transitional leadership
  - ≡ The mechanisms that hinder the functioning of the State



**Reservations expressed by ABASA, AV-Intwari, INKINZO, PARENA and UPRONA as “parties integral to the accord and which must be further negotiated”**

**Government reservations**

**PROTOCOL III**

- 1) The duration of ethnic parity in the defence and security forces
- 2) The cessation of hostilities and the ceasefire

**PROTOCOL III**

- 1) The cessation of hostilities and the ceasefire

**PROTOCOL IV**

- 1) The international reconstruction commission
- 2) Land issues

**PROTOCOL V**

- 1) The commission to monitor respect for the accord: its mandate, composition, structure, operation and powers
- 2) The sectorial commissions (Article 5)
- 3) The international peacekeeping force (Article 8)

**PROTOCOL V**

- 1) The international peacekeeping force (Article 8)

**APPENDIXES**

- 1) Timetable for the Implementation of the Agreement
- 2) Appendix 1: Explanatory Comments on Protocol II

**APPENDIXES**

- 1) Timetable for the Implementation of the Agreement
- 2) Appendix 1: Explanatory Comments on Protocol II

**OTHERS**

All other questions that could not be answered in light of the late submission of the Agreement.

Pending the final adoption of compromises on these reservations, the relevant clauses in the document are not applicable. The signatories to these reservations condition their commitment to continuing negotiations in an appropriate context that is dependent on the final commitment by the heads of state in attendance.

## 2.5 Continued fighting and a forced peace agreement create an uncertain future

### Mechanisms to guarantee the Agreement's implementation

Although it had been suggested during the first session in June 1998, Nyerere suspended the creation of a guarantees commission on the pretext that a ceasefire had to be agreed first. Then, in February 2000, Mandela decided to create a commission on the monitoring and verification mechanisms to be included in the agreement, the implementation timetable, security guarantees for politicians returning from exile, sanctions that could be levied in the event of non-application, etc. Discussions were particularly difficult regarding an international peacekeeping force that the G7 wanted and the government did not. The G7 got their way. Beyond that, the main mechanisms guaranteeing the Agreement's implementation included an Implementation Monitoring Commission (IMC),<sup>18</sup> the new post of Ombudsman, and support for the Agreement and its guarantee by regional heads of state. The IMC, whose mandate was to end once the elected institutions were established, was composed of two representatives of the signatory parties, one from the government, six persons appointed for their moral integrity, and one representative each from the OAU, the regional initiative for peace in Burundi, and the United Nations. The IMC was chaired by the UN representative and was supposed to work with the government, the OAU, and the regional representative. Nonetheless, the Commission had a very limited role and impact.

### Issues not resolved by the Arusha Agreement

Although the signing of the Agreement was generally received with relief in Burundi, rather than by a wave of demonstrations in Bujumbura as the government party had feared (interview with Niyonsaba, 2018), the Agreement was jeopardised by various factors. The peace agreement had been signed although the main rebel factions had not taken part in the negotiations and refused to participate. Added to that, the ongoing civil war made it difficult to conclude a peace agreement that offered no compensation for ending the violence and suffering. Not only did the war create difficulties for the government, which part of the Tutsi public accused of treason, but it also impeded the implementation of some of the reforms and laws planned under the Agreement. Quite a few issues remained unresolved, namely the Tutsi parties' numerous reservations and the delicate question of mechanisms for designating the transitional leadership. The reservations were not just about precise questions or details, but applied to entire topic areas and even whole chapters (see the box above). These challenges were felt during the year before the transition and the interim period. As we will see in the next section, the matter of the transitional leadership was only resolved after Mandela ended the bitter debates and paved the way for the transition. The Arusha peace process—and especially Protocol II—was ultimately an exercise in conceiving the constitution best suited to respond to Burundians' current challenges and concerns. However, it did not address all the subjects usually included in the constitutions of modern states. Certain issues remained unresolved, and some parts were so imprecise that they could be interpreted in many different ways.

<sup>18</sup> Among its various tasks, the IMC was mandated to monitor the effective application and proper interpretation of all the provisions of the Agreement; to ensure compliance with the implementation schedule; reconcile different points of view and mediate disagreements, etc. Its subcommissions include one on the ceasefire's implementation, one for reintegration, and a national one for rehabilitating the *sinistrés*, defined in the Agreement as "all displaced, regrouped, and dispersed persons and returnees". The IMC "has the authority and the necessary decision-making powers to fulfil its mandate impartially, neutrally and efficiently" (Arusha Peace and Reconciliation Agreement for Burundi, Article 3, Protocol 5).

Some signatories<sup>19</sup> expressed so many reservations that new negotiations were inevitable, while the CNDD-FDD and PALIPEHUTU-FNL (the PALIPEHUTU dissidents) rebel movements continued to fight the government and wanted to revamp the peace agreement.

### Negotiations over the transitional executive

Signing the Arusha peace agreement did not end the peace process. At best, it was the central stage of the negotiations. The regional powers and signatories understood that new talks were indispensable, but they were deeply divided over the issues to be discussed. A new Arusha session was convened for September 2000, mainly to discuss the transitional executive. There, the Arusha Agreement was again weakened by the demands expressed by Nyangoma's CNDD to take into consideration their reservations and proposed amendments (International Crisis Group, 2000b, 21). Thus, the Agreement was severely tested before it had even been implemented. Mandela was supposed to authorise the IMC to implement the accord, but the mediation team, presided over by South Africa and Tanzania, still had to facilitate the resolution of numerous issues, such as reaching out to the CNDD-FDD to end the hostilities. Presidents Joseph Kabila of the Democratic Republic of the Congo and Omar Bongo of Gabon launched their own parallel initiative. As host of part of the CNDD-FDD, Kabila was able to facilitate the rebel group's contacts with Bongo, who brought Burundi's government and the CNDD-FDD together for several face-to-face talks on critical issues. According to one of the parties, this competing negotiating process could have succeeded if only the Burundian authorities had not left the right of final approval to Arusha protagonists under Mandela. That ended the discussions in Libreville, which had actually gone quite far (interview with Ngendahayo, 2018).

The post-agreement period was thus marred by the question of the transitional leadership and involved a game of alliances and unclear positioning. Most party leaders had weak political convictions that encouraged them to promote their own self-interests, upending alliances and creating conflicts of interest between allies and one-off reconciliations between adversaries. After several months and the National Assembly's approval, the Arusha Agreement was promulgated in December 2000. Among other things, the text stated that reservations and amendments would continue to be discussed, implying that the Agreement would be renegotiated. At the IMC's first meeting in January 2001, the Tutsi parties were already expressing their reservations. The first half of 2001 was dominated by fights over transitional leadership, which Buyoya won with support from the army's high command<sup>20</sup> after he had convinced Mandela that his departure could set the country on fire and restart the war (interview with Ngendakumana, 2018). During the 15<sup>th</sup> regional summit on Burundi, Buyoya was officially named President of the Republic for the first segment of the transition, which was supposed to last 18 months; the second half was entrusted to Vice President Ndayizeye of FRODEBU. This session on 23 July 2001 resulted in the signing of an agreement on the transitional leadership.

<sup>19</sup> ABASA, INKINZO, PARENA, PRP, AV INTWARI, and paradoxically, UPRONA.

<sup>20</sup> The Buyoya regime encountered some setbacks; for instance, it was faced by an attempted coup in April 2001 and a mutiny by hundreds of soldiers in July that year.

## 3 Arusha materialised in a lengthy post-transitional constitution-drafting process

### 3.1 Elaborating the transitional constitution

The process leading to the promulgation of the transitional constitution of 2001 stands out for its lack of transparency and poor inclusivity and participation of media, civil society, and especially the general population. The process had effectively been hijacked by the executive and the ruling parties, UPRONA and FRODEBU. The stakes were deemed lower than for the process of designing the post-transition constitution. On the one hand, the transitional constitution was only intended to last for a brief period of time, during which the institutions had little room for manoeuvre because they lacked legitimacy and the ongoing war deprived them of international aid for development and reconstruction. The situation was also not conducive to deep institutional reforms. On the other hand, Burundi's numerous challenges, especially an unprecedented socioeconomic crisis and the complicated handling of the transition, could work against its administrators in the general elections scheduled for the end of the transitional period. Drafting the transitional constitution was thus left to the Burundian executive and the political party signatories, on whom UPRONA and FRODEBU imposed their views. Legal experts from both sides, supervised by the Minister for Institutional Reforms, Eugène Nindorera, worked to integrate provisions of the Arusha Agreement that were relevant to the transitional constitution and

insert various amendments and new provisions (see Figure 1 below). The text had to include the provisions from the 23 July agreement on the transitional leadership that withdrew the reservations on the transition. The transitional constitution also determined that the transition would last three years, with a leadership rotation after 18 months. The first draft of the transitional constitution was sent to the signatories for their comments, and minor changes were made. Two eminent persons – the Minister for Institutional Reforms and the Justice Minister, Thérence Sinunguruza, both trained jurists – then reworked the text. With respect to ethnic balance and power-sharing, they modified and/or adapted some provisions of the Arusha Agreement, which envisaged ethnic quotas solely for the defence and security forces and the Senate. Mechanisms were planned to ensure strong minority representation within the government and the National Assembly, but without quotas. Government composition was determined by political families with portfolios ranging between more than half to less than three-fifths for the G7, and between less than half to more than two-fifths for the G10 (group of the 10 Tutsi parties in Arusha). This provision made it possible to slightly vary the percentages of representation. Clever calculations by former members of the National Assembly during the FRODEBU-UPRONA partnership (1998–2001) and new members<sup>21</sup> ensured that no political family or ethnic group would have more than two-thirds of the seats in the transitional National Assembly. Ethnic parity was envisaged for the Senate.

<sup>21</sup> These included members of the National Assembly of 1993, at least three members of parties that signed the Arusha Agreement but were not represented in the 1993 National Assembly, 28 members of civil society, and appointed deputies that were part of the functioning Assembly during the signing of the Arusha Agreement.

With regard to the government, the transitional constitution mentioned neither quotas nor a spectrum of representation: it was supposed to be generally representative of the different political parties in a spirit of national unity and cohesion, taking into account the country's ethnic and political composition, in accordance with the Arusha Agreement. As for the National Assembly, the transitional constitution adopted the composition provided for in the Arusha Agreement except that signatories (besides UPRONA and FRODEBU) were entitled to four members each. Political families were represented with 60 percent for the G7 and 40 percent for the G10 in both the government and the National Assembly. The Senate had both ethnic and political parity.

The fact that the transitional constitution was developed in just three months says a lot about the simplicity of the process. Regional and international actors were not involved; they were only involved in the constitution's implementation, in which they were supposed to play important roles, mainly through the IMC. Later, however, the IMC's authority was severely dented.

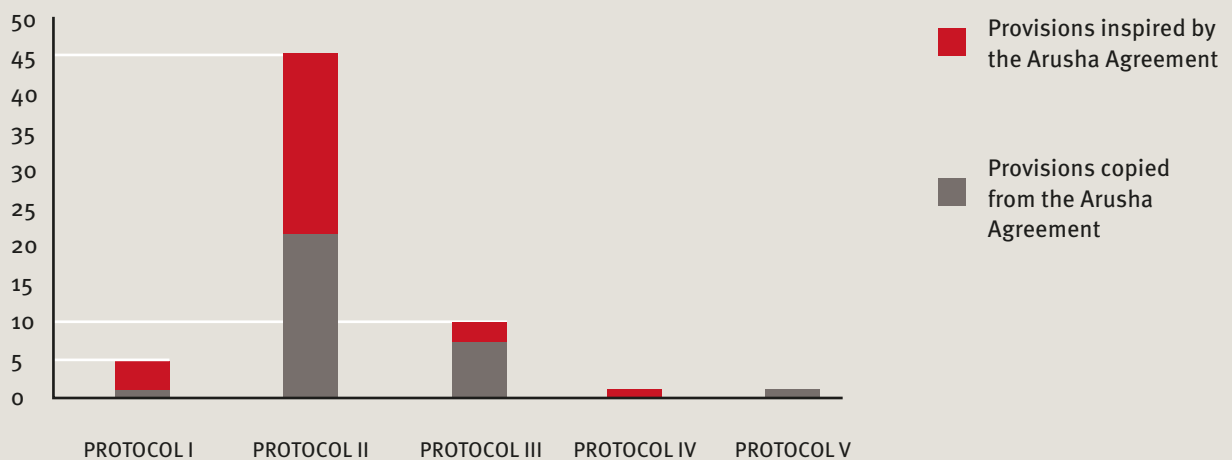


Figure 1: Articles from the Arusha Agreement included in the transitional constitution

### 3.2 Framework and actors in the process of elaborating the post-transition constitution

While the process of drafting the transitional constitution was extremely simple, the process of elaborating the post-transition constitution was not. First of all, it included newly approved political parties, including former rebel groups and especially the CNDD-FDD, which had just joined institutions and politics. In 2003, the CNDD-FDD had signed a ceasefire agreement and a power-sharing agreement with the transitional government on very favourable terms<sup>22</sup> – and agreed to join Arusha. The new situation reversed the balance of power, disadvantaging UPRONA and benefiting the CNDD-FDD. The process of elaborating the post-transition constitution involved a number of local political actors but was no longer exclusive: the media, civil society and various NGOs had supporting roles. The executive branch, however, which had set the terms and conditions, was still in control. In 2003, the government set up a technical commission largely composed of jurists – but no constitutional experts<sup>23</sup> – to draft important laws, including the post-transition constitution that was to serve as the basis for discussions during the various stages of talks and negotiations. The other major innovation was the strong involvement of regional powers and the international community in the negotiations over the Tutsi parties' reservations, especially about power-sharing – again with South African mediation. The international community was

also involved in implementing the post-transition constitution, but with mixed results, especially due to the growing hostility towards it on the part of Burundi's government, dominated by the CNDD-FDD. The region and the international community had no role in the process of drafting the post-transition constitution, which took much longer than the drafting of the transitional constitution. Nevertheless, it was somewhat participatory, transparent and inclusive.

The content of the Arusha Agreement was belatedly addressed in an awareness-raising and media campaign. Unlike the state-owned media, the private media devoted extensive programmes to contradictory debates on the challenges of implementing the peace agreement and on issues that divided the political class, such as remaining unresolved questions. They also provided an opportunity for members of the public to express their views. Finally, some civil society organisations also developed projects to disseminate information on the Arusha Agreement's content and implications.<sup>24</sup> The media, which reported on the different stages of drafting the post-transition constitution, were the main source of information for Burundians who, according to the main opinion survey on the subject (Nimubona & Mboneko 2003), were quite knowledgeable about the Agreement.<sup>25</sup> The majority of the population understood the inclusive dimension of peace and security, and took note of the ethnic characterisation of the conflict. However, the public expressed pessimism about the Agreement's ability to bring peace given the political actors' weak commitment.<sup>26</sup>

<sup>22</sup> The CNDD-FDD won four ministerial posts, 15 seats in the National Assembly, three provincial governorships and 20% of positions in public companies. As for the defence and security forces, the CNDD-FDD was granted 40% of the National Army Command and 35% of the National Police and the National Intelligence Service.

<sup>23</sup> The commission was chaired by Gervais Gatunange, Professor of Law at the University of Burundi, specialising in family law, assisted by Elysée Ndaye, Attorney General of the Republic. It also included Stanislas Makoroka, Professor of Law at the University of Burundi and commercial law specialist, the lawyer Clotilde Niragira, and Emmanuel Jenje, Director General for Institutional Reforms and Relations with Parliament. The latter handled the administration.

<sup>24</sup> With external funding, the ITEKA human rights league regularly organised "press cafés" where the Arusha Agreement was debated by politicians before the public in public conference rooms.

<sup>25</sup> 48.9% of those surveyed said they knew what was in the Agreement (Nimubona & Mboneko, 2003).

<sup>26</sup> 40% of the population did not trust the Agreement to bring peace, security and reconciliation; only 9% believed in the commitment of the authorities and signatories as the main way to bring peace (Nimubona & Mboneko, 2003).



International development agencies had suspended their cooperation following the 1996 coup, and refocused their programmes on humanitarian aid and peace and reconciliation projects. Private media and civil society, which were among the major beneficiaries, devoted part of their programming to the ongoing peace process.

### 3.3 The difficult birth of the post-transition constitution

#### Power plays over quotas

Most of the difficulties in elaborating the post-transition constitution concerned specific provisions of the Arusha Agreement since legislators were obliged to use its text, particularly Protocols II and III, as their reference. The other problematic issues, including the transitional leadership, had gradually been resolved. Moreover, the war with the CNDD-FDD had ended with the rebel movement agreeing to a ceasefire with the transitional government, leading to changes on the ground. Although PALIPEHUTU-FNL had not been disarmed, the movement was essentially confined to Bujumbura Rural Province, the area around the capital city. Burundians finally saw peace restored to a large part of the country. Only the reservations and disputes not resolved in the Arusha Agreement remained, particularly because the Tutsi political parties, as well as UPRONA, had their own interpretations. Unsurprisingly, the dispute concerned power-sharing and the electoral system. These parties demanded that seats reserved for the minority in institutions should only be given to Tutsis from parties defending minority interests that requested an ethnic rotation of power. They were against the Hutu parties, including the CNDD-FDD, which was itself hostile to ethnic quotas and rotation in the belief that the Arusha Agreement made far too many concessions to Tutsis, who were over-represented in the institutions. They thus had a hard time accepting the obstruction of the democratic rules by these Tutsi parties, which sought to distort political parties' electoral

weight. The issue was submitted to the IMC, which was, however, hindered by organisational difficulties and excessive rules on consensus building, and faced internal divisions and some members' outrageous financial demands. The IMC was originally only supposed to include two representatives of the signatory political parties but was swamped with controversies from all political parties that invited themselves. They thus simply shifted their differences to the IMC. Moreover, the IMC's authority was challenged by the executive. These factors made it very hard for the IMC to operate effectively.

The period of drafting the post-transition constitution was thus tense and even punctuated by crises within the leadership, tearing up the FRODEBU-UPRONA partnership, with FRODEBU taking charge of the transition. The technical commission, which worked on a draft post-transition constitution was mandated to reflect the content of the Arusha Agreement as much as possible, and indeed many parts were directly copied from it (interview with Emmanuel Jenje, former member of the technical commission that drafted the post-transition constitution, 2018). A team of ministers and presidential advisers slightly modified the technical commission's draft, particularly the provisions on presidential terms (*ibid.*). This text was then submitted to the political parties at a forum in Bujumbura in March and April 2004, where it was criticised by the CNDD-FDD. Styling itself as a national movement that transcended ethnic groups, the CNDD-FDD opposed the institution of the Senate, ethnic representation on electoral lists, the electoral college and ethnic quotas. The CNDD-FDD rebelled against the Arusha Agreement and its consociational model – making it impossible for the parties and armed political movements at the forum to reach consensus.

## A post-transition constitution broadly in line with the Arusha Agreement

The issue was then forwarded to the South African mediation team, where Mandela had handed authority to the South African Deputy President, Jacob Zuma. The political actors met periodically between June and August 2004, but still had differences of opinion about the basis (ethnic or politico-ethnic) for sharing power. In the end, the mediators decided in favour of the majority parties, and during a session in Pretoria, imposed a power-sharing agreement signed by most participating parties but boycotted by the main Tutsi parties. Since the mediation team mainly wanted to prevent the Arusha Agreement from being renegotiated, it chose to preserve its spirit and character despite some innovations being introduced into the text. Much to the dismay of Tutsi parties, power-sharing on the basis of politico-ethnic families and ethnic rotation at the executive level were rejected. While the transitional constitution had made the G7 and G10 politico-ethnic families the main basis for sharing power, power-sharing was now based on ethnic groups as recommended in the Arusha Agreement for the post-transition period. In addition, the Pretoria Agreement introduced quotas of 60 percent Hutu and 40 percent Tutsi for the government and the National Assembly. However, the Arusha Agreement barely mentioned the government. In the National Assembly, proportional voting based on single multi-ethnic lists was meant to guarantee a representation quorum of about 38 percent to the minority, but no clear quotas were introduced. The Pretoria Agreement thus endorsed power-sharing along ethnic lines, as planned in the Arusha Agreement, while bringing about various innovations (see Box 3 page 32).

The power-sharing agreement, signed in Pretoria on 6 August 2004, was ratified at the 22<sup>nd</sup> regional summit later that month. A government team under the Minister of Justice then reworked the draft constitution to incorporate the various innovations. It should be noted that no international expertise was used during the process of drafting the post-transition constitution, unlike that of the transitional constitution. Thus, the conflict, far from disappearing, shifted to the executive level, where the Council of Ministers was to validate decisions made by the mediation team and the region. To stall the rulings, the G10 ministers prevented the formation of a quorum by boycotting the meeting (United Nations 2004). The issue was debated nevertheless (interview with Didace Kiganahe, former Minister of Justice, 2018) and the draft submitted to Parliament in September where, after heated debate, it was adopted. The post-transition constitution was promulgated on 20 October 2004 but was followed by four motions to the Constitutional Court by political parties and Tutsi MPs (notably the President of the Transitional Senate, a member of UPRONA), who sought to prevent its implementation. The motions concerned the constitutionality of the procedure and the text: the unconstitutionality of the post-transition constitution; its non-compliance with the Arusha Agreement; the unconstitutionality of the procedure for adopting the draft post-transition constitution and relevant procedures and subsequent decisions; and the interpretation of various articles of the transitional constitution. The Constitutional Court ruled on all these claims in a single judgment delivered on 27 October 2004 that declared its lack of jurisdiction to rule on the various motions.<sup>27</sup>

<sup>27</sup> The President of the Republic had himself appealed to the Constitutional Court for a ruling about whether the post-transition constitution was in conformity with the Arusha Agreement, then withdrew his application, which led the court to strike the case from the record.



While matters referred to the Constitutional Court are usually brought by the highest institutions,<sup>28</sup> due to some of its prerogatives during the transition period (such as the right to review the constitutionality of organic laws before their promulgation, and rules of procedure in the National Assembly and the transitional Senate before their implementation), ordinary citizens and political parties also referred matters to the Court. These motions challenged the constitutionality of certain articles of law or entire laws – partly motivated by power struggles. To avoid having to judge a motion's merits, the Court sometimes declared itself as lacking jurisdiction. Other applications were dismissed for being non-admissible, unfounded or containing irregularities.

The draft constitution was then submitted to a referendum. Most Tutsi parties campaigned for the constitution to be rejected, while Hutu parties, including the CNDD-FDD, pleaded for its approval. Notwithstanding its rejection by the few communities with Tutsi majorities, the post-transition constitution was widely acclaimed (International Crisis Group, 2005: 5). Although Tutsi parties had mobilised their electorate, given the country's ethnic configuration and the ethnicisation of the issue, they could not compete on the basis of the popular vote (which is why they argued in favour of rotating power). Burundians had hoped to settle the matter themselves, without external mediation or help from the region. However, they were unable to do so, and weary of their inability to overcome identity politics due to interested and partisan calculations, had to accept outside arbitration. Indeed, overbidding by G10 parties could hardly conceal their eagerness to secure careers and government benefits. That was obvious when some of their party leaders joined CNDD-FDD satellite parties or took on important positions in the post-transition institutions that gradually began to abuse minority interests. The former rebel group, which had continued to support the Arusha Agreement for opportunistic reasons, had to become its promoter. This pretence was abandoned as the party rose in power.

---

**28** During the transitional period, the Constitutional Court handled just over one hundred cases, most of which were referred by the President of the Republic and the Presidents of the National Assembly and the Senate. Available at: [www.uantwerpen.be/en/projects/centre-des-grands-lacs-afrique/droit-pouvoir-paix-burundi/constitution/cour-constitutionnelle/arr-ts-cc-const-2001](http://www.uantwerpen.be/en/projects/centre-des-grands-lacs-afrique/droit-pouvoir-paix-burundi/constitution/cour-constitutionnelle/arr-ts-cc-const-2001) (accessed 2 December 2018).

### Box 3: Comparison between the transitional and post-transition constitutions

As its name suggests, the transitional constitution and institutions were intended for a limited time. They covered a period of 36 months, with two 18-month periods for the executive. The president governed during the first period, before being replaced by the vice president. The post-transition constitution planned a term of five years, renewable once, for the head of state. In the transitional period, the head of state was appointed in accordance with the provisions of the Arusha Agreement, unlike in the post-transition period, when the president was elected by universal suffrage. In the transitional constitution of 2001, the executive branch was composed of a president and a vice president, whereas in the constitution of 2005, the president had two vice presidents. It mentioned the need for participation of different political parties with broad representation within the government, in a spirit of unity and cohesion for the Burundian people. There was no mention of quotas in the post-transition period, although these were among the conditions for post-transition government structures – both in terms of ethnicity (60% Hutu, 40% Tutsi) and gender (at least 30% women). The results of legislative elections were the other main criterion for constituting the post-transition government. Unlike in the transitional constitution, according to the 2005 constitution, members of the defence and security forces could not serve as provincial governors. In the post-transition period, ethnic quotas were also provided for in public companies. In the transitional period, the National Assembly, made up of representatives elected in 1993 and others who were co-opted, had mechanisms to guarantee 38% minority representation (without explicit ethnic quotas), while the post-transition constitution recommended quotas for ethnic groups and women. A law in the 2005 constitution clarified the difference between technical and political positions in the senior civil service; the 2001 constitution did not. The post-transition Basic Law goes into more detail about the defence and security forces than the transitional constitution. However, the transitional constitution provided detailed descriptions of the various commissions in the Arusha Agreement, such as the International Judicial Commission on Inquiry, the National Truth and Reconciliation Commission, and the National Commission for the Rehabilitation of Victims (Sinistrés), which are not mentioned in the constitution of 2005. The same goes for the Implementation Monitoring Commission in the Arusha Agreement. Finally, on social issues, the post-transition constitution also states that marriage between two persons of the same sex is prohibited, which is not mentioned in the transitional constitution.

## 4 A battered constitution for poorly implemented reforms

### 4.1 The CNDD-FDD seizes power through the ballot box

The promulgation of the post-transition constitution paved the way for general elections, the eagerly anticipated final stage of the transition that was supposed to help Burundians return to democracy. Elections were held amidst great tension that was principally caused by the two main competing political groups, FRODEBU and the CNDD-FDD. The former rebel group advocated for change through a neighbourhood publicity campaign that alternated between seduction and intimidation, notably threatening to take up arms again or exact reprisals on the population if it lost (International Crisis Group, 2005, 11). In particular, the CNDD-FDD knew how to attract Hutu support by mobilising around defence and security forces reform. It also asserted its capacity to defend democracy should there be another effort to usurp the process – which its rival FRODEBU, which had not been part of the army or the police, lacked.

Despite some violence, the elections were praised for going smoothly (United Nations 2005). The CNDD-FDD won nearly 60 percent of the votes, a huge score given its recent integration into political life and the institutions. However, the high score did not allow the CNDD-FDD to govern alone: it had to work with other parties and negotiate. Already ill at ease with the new constitution that tied it to provisions of the Arusha Agreement, the CNDD-FDD saw its hegemonic ambitions constrained. From the outset, it was frustrated by needing majorities to pass legislation: its first actions in the difficult

cohabitation with the political parties in the institutions stemmed from its desire to get rid of that rule.

The elections legitimised the Arusha peace process and the process of elaborating the post-transition constitution. The referendum in favour of adopting the constitution inherited from the Arusha Agreement conferred such strong approval of the two processes that their legitimacy could no longer be challenged. The elections also allowed for the establishment of institutions that were legitimised to execute the institutional reforms envisaged in the Arusha Agreement and the post-transition constitution.

### 4.2 Arusha becomes challenged upfront

The government was established according to constitutional provisions that had partly been set out in the Arusha Agreement. While ethnicity and gender quotas were respected,<sup>29</sup> that was not the case in terms of political balance. FRODEBU and UPRONA, the only parties that could claim positions beside the CNDD-FDD, were awarded fewer portfolios than they were due. This first incident presaged future crises, indicating the CNDD-FDD's appetite and urge to control public affairs, which grew stronger over time. The CNDD-FDD's craving for power was also expressed at the local level where it regularly removed FRODEBU members through anti-constitutional procedures (International Crisis Group, 2006, 8). In the executive branch, the CNDD-FDD monopolised

<sup>29</sup> The power-sharing agreement in Burundi that was signed in Pretoria on 6 August 2004 included a 30% quota for women in Parliament; the post-transition constitution applied the same quota to government positions.

power by imposing its policies and limiting other parties' room for manoeuvre. Even the prerogatives of UPRONA's first vice president were restricted.

Although key government officials did not usually publicly express their hostility towards Arusha, they did not always hold back. During a plenary session at the National Assembly, the president of the ruling party, Hussein Radjabu, allegedly said that the CNDD-FDD was not very committed to the Arusha Agreement or the constitution (interview with Ngendakumana, 2018). Nevertheless, authorities sought to ensure that institutions respected the ethnic and gender balances laid down in the constitution. The CNDD-FDD, which had been largely made up of Hutus during its years in the bush, had by then integrated many Tutsis and women, including former critics, and was annoyed at having to constantly deal with other political parties in Parliament to get its projects approved. The party was the outgrowth of a rebel movement that had always used force, intimidation and coercion to manage and settle disputes (Rufyikiri, 2016). Its culture of underground resistance survived its unfinished transformation into a political party. It thus had difficulty acclimatising to the spirit of dialogue and compromise that characterised the Arusha Agreement. In 2007, after CNDD-FDD President Radjabu was deposed by the party's military wing because of the way he wielded power and his extravagant spending, his supporters in the National Assembly rebelled, causing the CNDD-FDD to lose its majority. The party leadership resorted to force and manoeuvres to try to intimidate or recapture defectors and switch the allegiance of other parties' deputies. It also used diverse forms of pressure to get the Constitutional Court to enforce the illegal dismissal of 22 rebel deputies and their replacement by people loyal to the new leadership in June 2008 (International Crisis Group, 2008, 5-8). Upon assuming power,

the new regime replaced the members of the Constitutional Court<sup>30</sup> and appointed new judges committed to their interests, whose decisions prioritised political allegiance over fairness and justice. The hardships experienced during this institutional crisis generated a greater hostility on the part of the party towards Arusha, now openly slandered (International Crisis Group, 2008, 13). This gradually pushed the CNDD-FDD towards an authoritarian and solitary mode of governance: manipulation of the courts, politicisation of defence and security forces, interference in the activities of political parties, growing harassment of the press and civil society, abuses of the rule of law, etc. Lastly, the minority's veto rights were jeopardised. On the one hand, the splits within certain opposition parties assured the ruling party a comfortable majority in the National Assembly. On the other hand, the Tutsis from the CNDD-FDD, who made up the majority of the ethnic minority within the institutions, showed support for their party, many at the expense of their own personal convictions, so they would not be suspected of disloyalty. These dynamics fostered the developments described below.

<sup>30</sup> For the record, the President of the Constitutional Court during the transitional period and at the time the new head of state Nkurunziza was inaugurated had sentenced Nkurunziza to death in absentia for war crimes in 1998. Then fighting with the rebels, Nkurunziza reportedly led a terror campaign in the capital in 1997, during which anti-tank mines laid in potholes in the streets of Bujumbura exploded, causing death and injury. Thanks to the provisional immunity granted to all combatants, he was not prosecuted and was granted access to the presidency. On appeal, the Supreme Court then discreetly cleared him of war crimes in July 2011. In 2005, Nkurunziza thus took the oath before the same person who had sentenced him to death!

### 4.3 Delays and manipulation in establishing the Arusha institutions

Besides constantly trampling on the spirit of the Arusha Agreement and circumventing various articles of the constitution, the regime was also reluctant to implement laws and establish institutions envisaged in the Agreement, although they were all enshrined in the post-transition constitution, mainly in Protocols I and II. They generally related to areas of justice, reconciliation, governance and the rule of law, and concerned checks and balances, namely regulation, control and accountability mechanisms. For example, constitutional provisions requiring senior civil servants, including the head of state, to provide written declarations of their assets and property were not respected,<sup>31</sup> and provisions distinguishing between technical and political functions were not applied, although a law to this effect had been promulgated in 2005. The National Council for Unity and Reconciliation and the National Observatory for the Prevention and Eradication of Genocide, War Crimes and Crimes against Humanity that were provided for in the Arusha Agreement and the constitution were also not established. Nor was the High Court of Justice, which was authorised to judge the president of the republic for high treason, and the presidents of the National Assembly and the Senate, as well as the two vice presidents, for crimes and misdemeanours. The post of the Ombudsman was not established during the first mandate of the CNDD-FDD, and neither was the National Truth and Reconciliation Commission (TRC), which was mentioned in the Agreement but not included in the post-transition constitution. The TRC suffered from the lack of political interest in its establishment. For the ruling party, whose time in the bush was characterised, among other things, by civilian massacres, for which it claimed responsibility in some instances, the TRC was a liability.

Although it could not openly express its opposition to truth and reconciliation, it delayed matters, waiting for the moment when it could totally control the process. The TRC law was not promulgated until May 2014.

Beyond the government's reluctance and blockages to implementation of the Arusha Agreement and the post-transition constitution, the conflict resolution mechanisms in the constitution were ineffective, established late, or manipulated. The IMC ended its work when the CNDD-FDD came to power, as per the Arusha Agreement. That being said, it suffered from organisational difficulties, dysfunction and lack of authority. The TRC was only established at the end of the CNDD-FDD's second term because the party fought off what it considered an imposed mechanism. The TRC's mandate was diluted, against the wishes of the Burundian people expressed in public consultations, while its independence was compromised as it was composed largely of people close to the government. Furthermore, the climate of repression and violence – hundreds of thousands of Burundians were exiled or displaced, while others were living in fear in the country's interior – was not propitious for dispassionately examining the painful past or working towards reconciliation. The institution of the Ombudsman created at the end of 2010 was abused, and the highly contested National Commission for Land and Other Properties was subordinated to the government. The Commission, charged with settling land conflicts between repatriates and residents, had begun to seek compromise by promoting dialogue between the conflicting parties. It was then taken over by the government, which, after the Commission's first director died, turned it into an institution that was better at fuelling inter-community tensions than calming them. Ultimately, these various mechanisms, when not used to exact revenge, were useful mainly to serve political agendas.

31 Articles 94, 146 and 154 of the post-transition constitution.

#### 4.4 The monopolisation of power

This deliberate strategy was a means for the CNDD-FDD to cut loose from the institutional arrangements and structures that had been created to prevent any political party from becoming omnipotent and destroying the Arusha Agreement's consociationalism. At the end of its first term in office, the CNDD-FDD stepped up its repression of the opposition, media and civil society. For this, the party had a youth wing, the *Imbonerakure* (commonly translated as "those who see far"), which was particularly zealous in blocking its political opponents. The 2010 elections were expected to be close because the National Forces of Liberation (FNL), the former PALIPEHUTU rebel group, which was regarded as the CNDD-FDD's main rival, was in the running. The mounting tension was a portent of violence. Although voting was less violent than had been feared, the elections were tainted by the boycott called by the opposition in the wake of massive voter fraud in earlier municipal elections won by the ruling party. Feeling threatened, many members of the opposition fled the country, which allowed the CNDD-FDD to consolidate its position in the institutions and occupy the entire political space. Its total control of the tools of power and stranglehold on the judiciary and the security and defence forces – reinforced by the militia-like *Imbonerakure* – helped the CNDD-FDD increase arbitrary arrests, abuse and legal violations that were often political. The all-powerful party fulfilled its wish to bury the Arusha Agreement by undermining its foundations through repressive laws and other controversial measures. Then, in early 2014, it also attempted to amend the post-transition constitution by targeting the term limits set out in Articles 302 and 303 and the Preamble, which states that the Arusha Agreement serves as the reference for the constitution. The two-thirds majority of deputies in attendance required to pass ordinary acts was changed to a simple majority, with a three-fifths majority for organic laws.

#### 4.5 The Arusha Agreement suspended

##### A constitution largely inspired by the Arusha Agreement

The Arusha Agreement had been immediately challenged by many of its signatories. At the same time, it was also rejected by many other actors, especially rebel groups, and denounced by members of the public. For its part, the government had mixed views of the Agreement, whose implementation was hindered from the start. Its survival was thus threatened from the day it was signed, and its future has long been uncertain. However, the Arusha Agreement has survived many tests and some modifications – without having any major changes made to its content. The post-transition constitution of 2005 is an offshoot of the Arusha Agreement, reflected in more than 100 of its articles (see Figure 2 below). Most provisions were copied word for word, while others were strongly inspired by the Arusha Agreement or included elements of it. The drafters of the constitution mainly drew on the Arusha Agreement Protocols II ("Democracy and Good Governance") and III ("Peace and Security for All"). Besides stating the principles, values, rights and obligations of individuals, the protocols mainly contributed to constitution provisions concerning the political parties and electoral systems, especially on provincial and public administrations, judicial power, and the defence and security forces. They also contributed to the chapters on the president, vice presidents, government and Parliament, which were, however, significantly expanded and modified. The chapters in the constitution are much more detailed and better organised than Protocol II, and the post-signing negotiations over these questions and their conclusions created complementary provisions in the post-transition constitution. These negotiations did not change the basic principles agreed upon in Arusha, particularly sharing-power by ethnic groups rather than politico-ethnic families, as the Tutsi parties would have wanted. Although the Arusha Agreement was partly integrated into the transitional constitution and largely



integrated into the post-transition constitution, we should ask if it could have survived without Nelson Mandela's stature and determination, and pressure from the region.

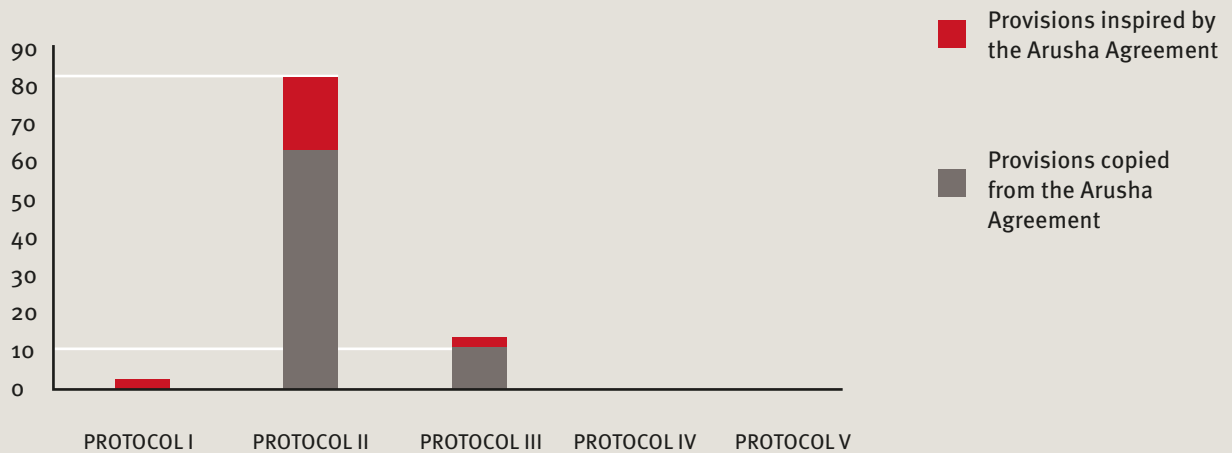


Figure 2: Articles in the Arusha Agreement that were integrated into the post-transition constitution

### Precarious stability: Arusha's disappointing legacy

During the Arusha negotiations, the mediation team had two main objectives: ending violence through a peace agreement, and establishing a democracy acceptable to the various parties. The parties did not view the resulting agreement as establishing an immutable system. They recognised that “*in the longer term [...] Burundi is required to develop a political party system founded on the aggregation of political rather than group interests*”.<sup>32</sup> The Arusha Agreement was firstly undermined by ongoing armed conflict, which postponed institutional reforms. Additional peace agreements and the adoption by referendum of a post-transition constitution began a new age that has been getting mixed reviews in terms

of peace and stability. Some facts, however, are uncontested: the post-transition period – at least its first ten years – contrasted radically with the preceding decade in terms of levels of violence. Burundi moved from an extremely violent armed conflict to a period of peace in which most Burundians felt secure (CENAP, 2014). The country's pacification at the end of the two processes examined in this study is undisputed. The post-transition period also allowed constitutional institutions to be established and a raft of laws to be passed. These have functioned consistently. Elections were also held periodically during this period. Finally, the return to peace and resumption of international aid during the post-transition decade allowed the Burundian economy to emerge from negative growth and benefit from development projects. These observations might

32 Arusha Peace and Reconciliation Agreement for Burundi. Appendix I, Explanatory Comments on Protocol II.

suggest that the Arusha Agreement ushered in an era of peace, stability, democracy and development. However, the situation is more complicated than this, with several observers ascribing some of the responsibilities for the impending crisis to the Agreement itself, and claiming that the roots of the crisis emerged within the first months of the post-transition period. Although it is unanimously agreed that Arusha helped pacify Burundi, reduced inter-ethnic tensions and contributed to transforming the conflict, the Agreement nonetheless had some limitations, which weakened the institutions and democracy and corrupted political life. Paradoxically, some of the solutions recommended in the Arusha Agreement created problems. For example, political actors acknowledge that exploiting ethnicity enflamed the conflict, and yet to end it, they institutionalised and promoted ethnicity. Ethnicity and its promoters won, and the institutionalisation of political ethnicity favoured militant partisanship in the management of public affairs (interview with Julien Nimubona, political scientist, 2018). The Arusha Agreement is also said to have criminalised the state by rewarding and legitimising violence and its perpetrators, resulting in the delegitimisation of the institutions (interview with Nimubona, 2018). Finally, some observers question elections – each less credible than the next – whose winners are the first to challenge the foundations of democracy and stability, undermining the Arusha Agreement and the structures it created.<sup>33</sup> They also wonder how a not yet completely demilitarised ruling party that is responsible for carrying out reforms can be seen as compatible with the values and principles for stabilising and democratising the country, which underpin the credibility and strengthening of its institutions (interviews with Yolande Bouka and Evariste Ngayimpenda, Burundi expert and president of a wing of UPRONA, 2018). This well-founded point of view holds that any democratic institutional system would have been abused because of the very nature of the political party in charge of its implementation. Although the relevance of ethnic quotas could well be

questioned in light of the controversial role the Tutsi minority – mainly composed of members of the ruling party – plays in the institutions, it would be presumptuous to consider alternative institutional mechanisms at this late stage. It would have been difficult, if not impossible, to get around quotas in the defence and security forces, because the peace agreement to end a civil war that was largely about ethnicity required quantifiable sharing or reconfiguring of these forces. In addition, all actors interviewed believe that mechanisms were needed to give assurances to the Tutsi minority. However, this minority had formulated its own demands through its representatives.<sup>34</sup> What is more, the mechanisms for control, checks and balances, reconciliation, and managing and resolving conflicts have all proved to be ineffective because they were corrupt, manipulated and/or circumvented. Under these conditions, one should not expect too much from such alternative institutional mechanisms in a poisoned political environment where all the actors – and especially the new power-holders – do not respect the rules of the game.

Near the end of the CNDD-FDD's second term, the constitutional order had not been reformed, less still challenged, unlike in previous decades that were marked by periodic reversals of the established order. Nevertheless, the constitutional order was eroded by the weakness, instrumentalisation and corruption of the institutions guaranteeing its vitality, by the spoiling role of the new ruling party, and by the progressive weakening, harassment and repression of the various institutions providing checks and balances. The head of state, surrounded by a quartet of high-ranking officers, controlled almost all the authorities, including the courts and Parliament. He also had the defence and security forces and the mechanisms for guaranteeing and controlling the rule of law and the constitutional order in a stranglehold. The crisis of 2015 was therefore partly caused by their dysfunction, corrosion and incapacity to respond to the values, missions and functions they were meant to fill.

<sup>33</sup> Various interviews.

<sup>34</sup> Some of their demands were neither considered nor retained, including power-sharing on the basis of politico-ethnic families.



## 5 Renewed crisis around the Arusha Agreement

### 5.1 The failure of the new regional mediation team and international initiatives

At the end of 2014, it was obvious that President Nkurunziza wanted to run for a third term. The opposition and Burundian civil society emphatically denounced his plan, and the international community tried to discourage him by arguing that he was respecting neither the Arusha Agreement nor the constitution, and could destabilise the country. Nkurunziza also encountered strong opposition in the CNDD-FDD. Ignoring that pressure, he relied on the constitution's ambiguity regarding presidential terms and exploited the security services to impose his programme. At the first signs of crisis, the East African Community (EAC) sent a team to Bujumbura in an attempt to deescalate the situation. It then convened a summit of the heads of state with the same aim in mid-May 2015, during which a failed coup in Burundi further radicalised the government. During a second summit, the EAC considered scenarios for ending the crisis, including urging Nkurunziza to step down or face sanctions.<sup>35</sup> At yet another summit, the EAC decided to start a dialogue between the conflicting parties, with Ugandan President Museveni mediating. The Burundian President, for his part, continued to force through his plan.

Indeed, the strong will initially expressed by the region, which was increasingly divided – particularly for geopolitical reasons – had withered away. Meanwhile, at the height of forcibly suppressed street demonstrations in Bujumbura, a Constitutional Court was under orders to validate the mandate for a third term. In an effort to make the candidature of the Head of State legal and thus put an end to or at least mitigate regional and international pressure, the government, via the Senate, had referred the matter to the Constitutional Court to decide on the validity of the President's candidature. Unsurprisingly, the Court rendered a judgment in his favour, but the conditions of its ruling were called into question by the resignation and surprise escape of its vice president, who subsequently denounced the pressures and threats surrounding the decision.<sup>36</sup>

The opposition and international observers boycotted the general elections, which were held in a climate of terror and violence. The year 2015 was characterised by grave human rights violations, particularly of an ethnic nature,<sup>37</sup> and a sharp decline in democracy. That led to hundreds of deaths and disappearances, thousands of arrests, and tens of thousands of people being driven into exile, including many opponents, journalists and civil society activists.

<sup>35</sup> Communiqué: emergency summit of the EAC head of states regarding the situation in Burundi. 31 May 2015, Dar es Salaam, Tanzania. Available at: [www.ambaburundi.be/index.php/330-communication-emergency-summit-of-heads-of-state-of-the-east-african-community-on-the-situation-in-burundi](http://www.ambaburundi.be/index.php/330-communication-emergency-summit-of-heads-of-state-of-the-east-african-community-on-the-situation-in-burundi).

<sup>36</sup> Available at: [www.iwacu-burundi.org/journal-dun-juge-constitutionnel](http://www.iwacu-burundi.org/journal-dun-juge-constitutionnel) (accessed 23 January 2019).

<sup>37</sup> By the end of the CNDD-FDD's second term, the first signs of its ethnic radicalisation were already discreetly appearing – before it took on a new dimension in early 2015 when some speeches stigmatised the minority with reductive images (“the former elites,” “those hiding behind civil society,” etc.). This situation shows that the CNDD-FDD's ethnic dimension survived the long period of resistance when the rebel movement was famous for its radical discourse on ethnicity and massacres of civilian Tutsis.

In March 2016, the EAC appointed former Tanzanian President Mkapa as facilitator to help Museveni start a dialogue between the parties. Meanwhile, the Burundian government had organised its own domestic dialogue. It accepted invitations from the sub-region to engage in the external dialogue that the international community was advocating, but refused to talk at the same table with the opposition it characterised as “putschist.” The facilitation team, which had already been criticised for knowing little about the Burundi case, also suffered from methodological problems, lack of expertise and inconsistencies. It struggled to define the discussion agenda and had little or no support from regional heads of state, who had their own ambiguous agendas regarding Burundi. The crisis became increasingly entrenched. The government was encouraged by developments in countries in the sub-region that served its defence and propaganda.<sup>38</sup> It especially benefited from international actors’ impotence, abdication and resignation, and the passivity of EAC heads of state. It was thus able to gradually relieve itself of pressure as Burundi changed from a state with a battered rule of law to a lawless state.

## 5.2 The new constitution marks the death of the Arusha Agreement

In the end, this is all it took for the President to feel unrestrained and destroy the Arusha Agreement. He designed a domestic dialogue in response to pressure from the international community. Officially, the process was to bring Burundian society together to discuss all the basic issues it found important, but controlled as it was from beginning to end by appointed participants in debates monitored by the repressive state apparatus, the conclusions were tailor-made for the executive. One of those conclusions concerned presidential term limits, with the national dialogue suggesting the organisation of a constitutional referendum. The rapid implementation of these conclusions contrasts with the deadlocks in the external dialogue, where the parties split during a fourth round in December 2017 over an acknowledgement of the failure of the process. In May 2017, a national commission responsible for the project to revise the constitution was appointed, consisting largely of representatives close to the ruling party and its satellite parties.<sup>39</sup> The draft constitution was subsequently adopted by the Council of Ministers in October 2017. In early 2018, despite tentative protests from regional and international organisations, the government sped up preparations for the referendum, which was held in a climate of intimidation and repression.

<sup>38</sup> Rwanda and Uganda, in particular, had implemented constitutional reforms to allow their heads of state to remain in power beyond the constitutional limit.

<sup>39</sup> The sole concession to UPRONA (the government wing) was that the government would be formed after consulting with the vice president of the republic (interview with Joseph Sinabwiteye, member of the commission charged with drafting the constitutional amendment, 2018).

The Independent National Electoral Commission (CENI) proclaimed that the revision had been approved, with 73.26 percent of votes in favour. Yet a significant number of Burundians had voted for the revised constitution without knowing its content, partly because no large-scale campaign had explained it to the public. CENI only made the text public ten days before the voting date.<sup>40</sup> Official propaganda focused on sovereignty, stability and the government's achievements, and did not attempt to educate voters. It sometimes sought to mobilise the "yes" voters while threatening potential "no" voters with terrible brutality. The real results would be much more unflattering for the presidency, which suffered setbacks in many provinces and public institutions such as the army.<sup>41</sup> Nkurunziza promulgated the new constitution without seeking parliamentary approval because he feared being snubbed. The revision has resulted in a reinforcement of executive power, a weakening of checks and balances, and a questioning of the achievements of Arusha. The new constitution allows the head of state to run in 2020 for another seven-year term that can be renewed once, limits the vice president's prerogatives and allows the prime minister to belong to any political party or ethnicity. In addition, a simple majority is enough to pass legislation. Nkurunziza' unexpected announcement of his intention to leave office at the end of his term<sup>42</sup> did not end the crisis or alter the risk of conflict returning to Burundi.

The government boycotted the fifth and final round of Arusha talks in October 2018 that ended the EAC-organised dialogue with the acknowledgement that they had failed and even suggested that the situation had worsened – making the chances of a negotiated settlement of the Burundian crisis retreat even further.

---

<sup>40</sup> A non-official version was circulated.

<sup>41</sup> Various conversations.

<sup>42</sup> This reversal was mainly due to heavy internal pressure in his own camp, especially from top officials.

## 6 Conclusion

Eighteen years into the Arusha Peace and Reconciliation Agreement for Burundi, it is reasonable to aspire to be free from its provisions – the way a young person seeks greater freedom by leaving the family home upon coming of age. Unfortunately, Burundians have not had a chance to express their views on this issue freely and calmly. On the contrary, they are the main victims of a new crisis that was partly caused by the gradual dismantling of Arusha and its constitutional architecture. At the same time, the peace process and the resulting constitution-making processes could be questioned in light of some of the key features that have characterised them.

### 6.1 Key findings

The international community's major investment in seeking a peaceful settlement for the Burundian conflict was notably expressed through the creation of an African mediation team supervised by the sub-region, which managed to get a peace agreement signed by 19 parties after two years of talks. However, because the peace process did not end the war, the agreement was always weak. For its part, the mediation team suffered from a number of shortcomings, partly due to its inexperience and lack of expertise. Under Nyerere, the mediation was hampered by the mistrust of one party to the conflict who alleged that Nyerere was close to their adversary, and claimed that the mediation process had been imposed on them. Mandela's pressure and international standing made it possible to get rapid results, which, however, the various parties did not all sincerely support. In addition, the absence and non-participation of some of the main stakeholders in the Burundian crisis, namely the Hutu majority, negatively affected the peace process.

- ≡ The mediation leadership and its team were decisive for making progress in the Arusha peace process.
- ≡ The Arusha peace process's lack of inclusiveness was its main weakness and undermined its legitimacy to some extent.

The Arusha peace process was a complex exercise, with a substantial focus on drafting a constitution to serve as a reference for the Basic Laws for the transitional period and post-transition Burundi. The two resulting constitutions were inspired to a large extent by the Arusha Agreement but did not address all issues. Furthermore, inaccuracies and loopholes made it possible for legislators to interpret them as they pleased – and even take certain liberties with respect to the peace agreement.

- ≡ The peace process was closely linked with elaborating the constitution(s). Around one hundred provisions in the post-transition constitution were copied from the peace agreement, but discrepancies between the two texts served partisan interests and political purposes. For example, various commissions or mechanisms provided for by the Agreement were not mentioned in the constitution, such as the TRC (established late but completely distorted), the International Judicial Commission of Inquiry on genocide, war crimes and other crimes against humanity, or the vetting of security and defence forces.

The Arusha Agreement provided mechanisms to guarantee, monitor and implement the Agreement and the two constitutions. It also designed mechanisms for conflict management and resolution, promoting and strengthening governance, and checks and balances.

Some mechanisms were dysfunctional because of poor design, while others were not sufficiently defined or strong. In order to protect its hegemony, the executive manipulated or circumvented most of these safeguards. In addition, the region progressively disengaged from the peace process and only got involved again when the looming crisis could no longer be ignored (the Imbonerakure's militarisation, numerous extrajudicial killings, the gradual closing of the political space, etc.). The international community has long glorified the Burundian peace process, presenting it as a "success story" because the various armed groups were said to have been successfully integrated into the defence and security forces, and Burundian media and civil society have been so dynamic.

- ≡ The mechanisms intended to establish, consolidate and/or support the Arusha Agreement and the constitutions have either been ineffective or undermined. The regional and international communities did not play their part and were too slow to (re)act.

Implementing the Arusha Agreement through the post-transition constitution was primarily the responsibility of an actor that was not a stakeholder in the peace agreement and considered the constitution to be an imposition. While the CNDD-FDD stuck to the Agreement for opportunistic reasons, it never believed in it and began to undermine it in order to establish its hegemony. The CNDD-FDD set aside important parts of the provisions on justice and reconciliation, abused Protocol III with its politicised security forces, and strongly compromised, if not sacrificed, Protocol II (on democracy and good governance). Because the CNDD-FDD emerged from a rebel group and never became a real political party, it experienced a succession of internal crises, partly due to its own inconsistencies and contradictions. The last major crisis eliminated the moderate elements that had been able to deal with Arusha (Rufyikiri, 2016) and strengthened its military wing: the peace agreement and the post-transition constitution were victims of the purge.

- ≡ The task of implementing the laws and reforms envisaged in the Arusha Agreement and the post-transition constitution was entrusted to a player who was hostile to their principles and underlying spirit and who set out to gradually undermine the peace agreement.
- ≡ The Arusha Agreement ushered in a period of peace, stable institutions and a certain degree of development, but it has a problematic record regarding democratic governance and achievements that are now threatened.

## 6.2 Lessons learned

Some of these findings show how deficiencies and weaknesses in one process affected the stability and/or viability of the other, and vice versa. The lack of inclusiveness in the main round of the peace process had a knock-on effect in terms of the implementation of laws and reforms envisaged by the Arusha Agreement and the post-transition constitution. Conversely, weaknesses in, and/or the total lack of, independent mechanisms to guarantee and implement the constitution and/or manage and resolve conflicts made it possible for the achievements of the Arusha peace process to be challenged or negated. In view of the development of the two processes and their flaws and discrepancies, we can learn a lot about how they could have been carried out in order to better support each other. Regional actors (and to a lesser extent, international ones) entrusted the mediation to leading public figures, as if they thought that prestige and fame were all it takes to conclude a peace agreement. In fact, mediation requires soft skills and knowledge as well as professional expertise. Both Nyerere and Mandela lacked these basic requirements, although sometimes their prestige and methods were able to induce progress. In this regard, it is surprising that regional actors repeated the same mistake during the current crisis by appointing a mediator with little capacity and willingness to play a facilitating role. A more perceptive mediator would no doubt have anticipated or immediately corrected the Arusha peace process's critical lack

of inclusiveness, given its negative implications for the constitutional processes. Furthermore, although the mediation team was very engaged in the peace process, the mechanism put in place to verify it (the IMC) quickly showed its limits. The IMC was also forced to withdraw prematurely, probably because of an overly positive outlook.

- ≡ The quality, impartiality and legitimacy of the mediation and its team are crucial for ensuring the credibility of a peace process and the construction of a constitutional architecture. By underestimating their importance, the Arusha peace process lost time (under Nyerere) and still risks being discredited through its continued lack of coherent direction (under Mkapa).
- ≡ The mediation team's engagement in the peace process should be extended through mechanisms to guarantee, monitor and implement constitution building that are less susceptible to political manipulation. Independence and neutrality could have been better ensured if hybrid mechanisms (both local and international) had been designed. By default, the procedures for nomination to these mechanisms should have been clearly set out to shield them from the influence of one political force (in this case, the CNDD-FDD).
- ≡ Some of these mechanisms should have been more open to the participation of civil society actors and independent figures in order to protect them from politicking and all forms of political exploitation and co-optation.
- ≡ The hierarchy between the peace agreement and the subsequent constitutions should have been clearly established in order to prevent the conflicts over these issues that continue to contaminate the political debate.

- ≡ Mechanisms should have been developed to better coordinate both processes and avoid or prevent discrepancies. International expertise, particularly in constitutional law to confirm that the principles of the Arusha Agreement are in conformity with the constitution, would have prevented the discrepancies in the interpretation of certain provisions.

- ≡ Regional and international actors should have the courage to consider other types of mediation besides the sub-region, in light of the EAC's limited capacities and weaknesses (partly linked to geopolitical developments).

### 6.3 Open questions and areas for further research

**Open questions that this paper was not able to address include the following:**

- ≡ Can regional and international peace and security organisations, in their current set-up, still influence the crisis in Burundi?
- ≡ Are mediations trapped when they are led by regional organisations with dubious records of democratic governance, whose member countries are struggling to cope with crises like those they are supposed to help resolve?
- ≡ Are the deep sources of the Burundian crisis or "trouble" actually located elsewhere – and not in conflicting interpretations and approaches to peace agreements and fundamental texts?
- ≡ Would informal mediation have been more appropriate for the Burundian crisis?



**Such questions could be addressed through further research on the following topics:**

- ≡ A comparative analysis, through case studies, of recent mediations by African regional organisations;
- ≡ Review/assessment of regional/international responses to constitutional crises in Africa;
- ≡ Better prevention of constitutional conflicts/ crises through institution building. Burundi has experienced nearly four years of the international community's failure to respond effectively to its crisis, partly because of blockages, internal divisions and dysfunctions in these organisations. As the country succumbs to another crisis, it is less and less equipped to confront the many challenges and risks. Slowly but surely, Burundi is breaking down. Its looming catastrophe is due to increased demographic pressure on ever smaller, unproductive plots of land; an explosion of poverty and underemployment/ unemployment, especially among young people; the risk of economic collapse; environmental threats; uncontrolled urbanisation; the destruction of democratic gains and freedoms; the decline of moral values; and a disturbing drop in the quality of education and health services.

- ≡ Promote every way possible to deconstruct clichés, stereotypes and fears of conflict actors and their supporters, in particular by using mediation and conflict resolution NGOs' tools and programmes.
- ≡ Start considering mechanisms for building institutions to prevent more constitutional reforms of a conflictual nature like abolishing term limits and reducing checks and balances.

**For all international actors involved in the current crisis in Burundi:**

- ≡ Find out how to better synchronise mediation efforts to prevent duplication, discrepancies and contradictions.
- ≡ Consider imposing effective sanctions on the parties responsible for blockages and improving their coordination. Anticipate how sanctions might affect the missions of organisations seeking alternative solutions.
- ≡ Design an international mediation structure in which complementary, diversified expertise (such as mediation and conflict resolution, constitutional law and human rights specialists) would support a new type of mediation that has no guardianship issues or limitations.
- ≡ Open an office or develop reliable sources of information in Burundi in order to keep abreast of internal developments.

## 6.4 Recommendations

**For international or independent mediation efforts:**

- ≡ Talk with a broader range of actors (associations, women, churches, academics, etc.) to diversify perspectives beyond conflict actors' views of the crisis.
- ≡ Promote all types of bridging and dialogue between the parties, and where appropriate, start discussions about less sensitive issues, such as public management principles, public services and basic needs.



# Bibliography

**Berghof Foundation (ed.) 2018.**

Berghof Glossary on Conflict Transformation: 20 notions for theory and practice. Berlin: Berghof Foundation.

**Böckenförde, Markus, Nora Hedling & Winluck Wahiu 2011.**

A Practical Guide to Constitution Building. Stockholm: International IDEA.

**Burihabwa, Ntagahoraho Z. 2017.**

Continuity and Contingency: the CNDD-FDD and its transformation from rebel movement to governing political party in Burundi. Antwerp: UA.

**CENAP 2014.**

Étude sur les perceptions des besoins de sécurité au Burundi. Bujumbura, juin 2014.

**Chrétien, Jean-Pierre & Jean-François Dupaquier 2007.**

Burundi 1972: Au bord des génocides. Paris: Karthala.

**International Crisis Group 1998.**

Burundi: lever les sanctions, relancer la transition. Rapport Burundi No 1. Nairobi: ICG.

**International Crisis Group 1999.**

Burundi: Internal and Regional Implications of the Suspension of Sanctions. Rapport Burundi No. 3. Nairobi: ICG.

**International Crisis Group 2000a.**

L'effet Mandela: évaluation et perspectives du processus de paix burundais. Rapport Afrique Centrale No. 13. Nairobi: ICG.

**International Crisis Group 2000b.**

Burundi: ni guerre ni paix. Rapport Afrique No. 25. Nairobi: ICG.

**International Crisis Group 2005.**

Élections au Burundi: reconfiguration radicale du paysage politique. Africa Briefing No. 31, Nairobi: ICG.

**International Crisis Group 2006.**

Burundi: la paix et la démocratie en danger. Rapport Afrique No. 120, Nairobi/Brussels: ICG.

**International Crisis Group 2008.**

Burundi: renouer le dialogue politique. Rapport Afrique No. 53 (Briefing), Nairobi/Brussels: ICG.

**Laroque, Aude 2013.**

Historiographie et enjeux de mémoires au Burundi. Paris: Université Panthéon-Sorbonne.

**Ngayimpinda, Evariste 1998.**

Histoire du conflit politico-ethnique burundais: les premières marches du calvaire (1960-1973). Bujumbura: les éditions de la renaissance.

**Nimubona, Julien & Benoît Mboneko 2003.**

Lectures citoyennes de l'Accord d'Arusha et de sa mise en application: entre espoirs et défis, enjeux et désillusions. Bujumbura: Observatory of Government Action.

**Nindorera, Willy 2012.**

Le CNDD-FDD au Burundi: le cheminement de la lutte armée au combat politique. Berlin: Berghof Foundation.

**Palmans, Eva 2005.**

Les médias face au traumatisme électoral au Burundi, in: Politique Africaine N°97, Paris, Karthala, mars 2005, 66-82.

**Rufyikiri, Gervais 2016.**

Échec de la transformation du CNDD-FDD du mouvement rebelle en parti politique au Burundi: une question d'équilibre entre le changement et la continuité. Antwerp, Institute of Development Policy and Management, Antwerp: AU.

**Sculier, Caroline 2008.**

Négociations de paix au Burundi: une justice encombrante mais incontournable. Lausanne: Centre for Humanitarian Dialogue.

**United Nations 2004.**

Second report of the Secretary-General on the United Nations Operation in Burundi, S/2004/902, 15 November 2004.

**United Nations 2005.**

Special report of the Secretary-General on the United Nations Operation in Burundi, S/2005/586, 14 September 2005.

**United Nations 2012.**

Guidance for Effective Mediation. (Annex to the report of the Secretary-General on Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution), A/66/811, 25 June 2012.

# Annex 1: List of interviews

1. **Yolande Bouka** (political scientist and Burundi expert), personal interview, Bujumbura, 23 August 2018.
2. **Julian Hottinger** (Vice President of the Commission on Democracy and Good Governance), personal interview via WhatsApp, Bujumbura, 9 August 2018.
3. **Emmanuel Jenje** (former member of the technical commission responsible for editing the post-transition constitution), personal interview, Bujumbura, 28 August 2018.
4. **Boubakar Kane** (member of the UN team in Burundi since the 2000s), personal interview, Bujumbura, 25 August 2018.
5. **Didace Kiganahe** (former Justice Minister), personal interview via WhatsApp, Kigali, 10 August 2018.
6. **Stanislas Makoroka** (Doctor of Law), personal interview, Bujumbura, 27 August 2018.
7. **Léonidas Ndayisaba** (political scientist), personal interview, Bujumbura, 18 August 2018.
8. **Charles Ndayiziga** (Director, Conflict Alert and Prevention Centre – CENAP), personal interview via WhatsApp, Bujumbura, 14 August 2018.
9. **Evariste Ngayimpanda** (Doctor of History, interim President of a wing of UPRONA), personal interview, Bujumbura, 22 August 2018.
10. **Léonce Ngendakumana** (former President of the National Assembly, 1998-2002), personal interview, Bujumbura, 17 August 2018.
11. **Jean Marie Ngendahayo** (former negotiator for the CNDD-FDD), personal interview, Bujumbura, 24 August 2018.
12. **Julien Nimubona** (political scientist), personal interview, Bujumbura, 23 August 2018.
13. **Eugène Nindorera** (former Minister of Human Rights, Institutional Reform and Relations with the National Assembly), personal interview, Bujumbura, 18 August 2018.
14. **Ambroise Niyonsaba** (Burundi Peace Process Minister, 1997-2001), personal interview, Bujumbura, 8 August 2018.
15. **Sylvestre Ntibantunganya** (former Head of State, 1994-1996), personal interview, Bujumbura, 6 August 2018.
16. **Léonard Nyangoma** (President of the CNDD), personal interview via WhatsApp, Bujumbura, 14 August 2018.
17. **Alphonse Rugambarara** (former President of the INKINZO party), personal interview, Kigali, 10 August 2018.
18. **Joseph Sinabwiteye** (member of the commission responsible for proposing the constitutional amendment), personal interview, Bujumbura, 25 August 2018.
19. **Stef Vandeginste** (Doctor of Law, lecturer on governance, conflicts and development at the Institute of Development Policy and Management, Antwerp University, expert on the Burundian constitution and consociationalism); personal interview via WhatsApp, Bujumbura, 23 August 2018.

## Annex 2: A brief chronology of key events in the peacemaking and constitutional processes

March 1996:	Former Tanzanian President Julius Nyerere appointed to mediate the conflict in Burundi during an OAU summit of regional heads of state in Tunis
25 June 1996:	First summit by the Regional Initiative for Peace in Burundi
1996/1997:	Secret negotiations between the CNDD and the Burundian government in Rome run by the Community of Sant'Egidio
June 1998:	First session of the Arusha peace talks, with 19 participating parties
October 1999:	Nyerere dies
1 December 1999:	Mandela officially named mediator of the Arusha peace negotiations
28 August 2000:	Signing of the Arusha Peace and Reconciliation Agreement
23 July 2001:	Commitment to transitional leadership at regional summit
July-October 2001:	Transitional constitution drafted
28 October 2001:	Transitional constitution approved
2003:	Technical commission appointed to draft constitution
16 November 2003:	Global ceasefire agreement between CNDD-FDD and transitional government
March-April 2004:	Political parties and armed political movements discuss constitution
June-August 2004:	Negotiations under South African mediation on power-sharing in the draft constitution, agreement signed on 4 August 2004.
Sept.-Oct. 2004:	Parliament adopts post-transition constitution, text issued by decree
28 February 2005:	Post-transition constitution passed in referendum with wide margin
May-July 2005:	CNDD-FDD wins first post-conflict general elections
April 2015:	Crisis triggered by President Nkurunziza's wish to run for third term, in violation of the Arusha Agreement and the post-transition constitution
July 2015:	EAC appoints President Museveni to mediate the Burundian crisis
March 2016:	EAC names former President Mkapa facilitator (with Museveni's support)
17 May 2018:	Constitutional referendum held in repressive atmosphere, Arusha Agreement challenged
7 June 2018:	The new constitution is promulgated

# Annex 3: Key texts and agreements

**Constitution of 1992:**

[https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Constitution/Aper%C3%A7u/Constitution\\_du\\_13\\_mars\\_1992.pdf](https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Constitution/Aper%C3%A7u/Constitution_du_13_mars_1992.pdf)

**Transitional Constitutional Act of 6 June 1998:**

[https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Constitution/Aper%C3%A7u/Acte\\_constitutionnel\\_de\\_transition\\_du\\_6\\_juin\\_1998.pdf](https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Constitution/Aper%C3%A7u/Acte_constitutionnel_de_transition_du_6_juin_1998.pdf)

**Arusha Peace and Reconciliation Agreement for Burundi:**

[https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Paix/Accords%20de%20paix/Arusha\\_Accord\\_Pour\\_la\\_Paix\\_et\\_la\\_R%C3%A9conciliation\\_du\\_28\\_a%C3%BBt\\_2000\\_int%C3%A9gral.pdf](https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Paix/Accords%20de%20paix/Arusha_Accord_Pour_la_Paix_et_la_R%C3%A9conciliation_du_28_a%C3%BBt_2000_int%C3%A9gral.pdf)

**Global agreement of the ceasefire between the CNDD-FDD and the transitional government:**

[https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Paix/Accords%20de%20paix/GOB\\_CNDD-FDD\\_fr\\_GCA\\_161103.pdf](https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Paix/Accords%20de%20paix/GOB_CNDD-FDD_fr_GCA_161103.pdf)

**Power-sharing agreement between the CNDD-FDD and the transitional government:**

[https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Paix/Accords%20de%20paix/GOB\\_CNDD-FDD-fr-Protocole\\_Pr%C3%A9torie\\_partage\\_pouvoir\\_8\\_octobre\\_2003.pdf](https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Paix/Accords%20de%20paix/GOB_CNDD-FDD-fr-Protocole_Pr%C3%A9torie_partage_pouvoir_8_octobre_2003.pdf)

**Transitional constitution of 28 October 2001:**

[https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Constitution/Aper%C3%A7u/Constitution\\_de\\_transition\\_du\\_28\\_octobre\\_2001.pdf](https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Constitution/Aper%C3%A7u/Constitution_de_transition_du_28_octobre_2001.pdf)

**Post-transition constitution of 18 February 2005:**

[https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Constitution/Aper%C3%A7u/Constitution\\_du\\_18\\_mars\\_2005.pdf](https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Constitution/Aper%C3%A7u/Constitution_du_18_mars_2005.pdf)

**Constitution of 7 June 2018:**

<https://www.uantwerpen.be/images/uantwerpen/container49546/files/Burundi/Constitution/Constitution%20070618.pdf>



**Berghof Foundation**

**Operations gGmbH**

Lindenstraße 34

10969 Berlin

Germany

[www.berghof-foundation.org](http://www.berghof-foundation.org)

[info@berghof-foundation.org](mailto:info@berghof-foundation.org)

[Twitter@BerghofFnd](https://twitter.com/BerghofFnd)

[Facebook/BerghofFoundation](https://www.facebook.com/BerghofFoundation)