



AFRICA POLICY BRIEF

Missing the Target: The African Union's Mediating Efforts in Burundi

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In December 2015, following violent confrontations between the Burundian army and rebel groups, the African Union issued a communiqué to deploy a 5,000-strong peacekeeping mission. However, African heads of state tabled the plan, calling for the approval of the Burundian government. The Peace and Security Council's decision to deploy the mission followed by the body's inability to follow through illustrates the ups and downs of African Union's recent involvement in Burundi. While the organisation has attempted to mediate the crisis, its failure to implement key decisions has also exposed important vulnerabilities that may have implications for future security challenges on the continent.

INTRODUCTION

In 2015, the African Union (AU) Peace and Security Council (PSC), one of the key organs in charge of conflict prevention, management and resolution, has tackled a number of crises and conflicts on the continent, including the Burundi electoral crisis. Protests and violence erupted in April 2015 following the ruling party's announcement that the incumbent, President

Nkurunziza, would seek a third term. The AU has since taken an active role in attempting to de-escalate violence and promote dialogue among relevant stakeholders. In the face of increasing violence, the AU deployed a variety of tools to create the necessary conditions for a political settlement of the crisis.

However, despite the AU's heavy involvement in Burundi, a year later, there is little to indicate that a peaceful resolution is in sight. Indeed, government security forces continue to engage in violence against the population and the emergence of armed groups is contributing to pervasive insecurity.¹ Dialogue efforts between the government and the opposition in exile have yielded no tangible solutions, and attempts to send an AU military intervention or United Nations (UN) police force have been rejected. While the violence remains at low intensity, the lack of significant headway raises important questions about the effectiveness of the preventative diplomacy and peace and security arsenal of the AU. This policy brief argues that the AU's involvement in Burundi has failed to yield the necessary impact to end the crisis because of the lack of effective coordination between the AU and the East African Community (EAC) and AU challenges in balancing principles of non-interference and non-indifference. The brief highlights the

vulnerabilities that may have consequences for future AU involvements on the continent.

BURUNDI CRISIS

On 25 April 2015, following months of speculation about who would be the ruling party's presidential candidate, the National Council for the Defence of Democracy–Forces for the Defence of Democracy (CNDD-FDD) announced that President Nkurunziza would again be the party's nominee. The announcement triggered waves of protests in the capital and in the periphery. Within days, AU Commission Chairperson Dr. Nkosazana Dlamini-Zuma had called for restraint² and challenged the legitimacy of Nkurunziza's third term bid,³ while the PSC, of which Burundi was a member at the time, urged Burundians to calmly await the constitutional court decision on the matter.

Protestors argued that President Nkurunziza was ineligible to run for an additional term because both Article 96 of the constitution and the Arusha Agreement impose a two-term limit. The ruling party, on the other hand, claimed that Article 302, which provides that the first post-transition president should be elected by indirect vote in parliament, enabled President Nkurunziza to run for another mandate since Article 96 stipulates that a president is to be elected by universal suffrage. On 5 May, amid much controversy, the Constitutional Court sided with the president in a highly criticised decision.⁴

While the demonstrations were quickly suppressed in rural areas, they persisted in the capital, and what started as peaceful protests turned into violent confrontations. However, it was the failed coup attempt of 13 May that became a major turning point in the crisis and the interventions of regional actors. The coup attempt was quickly suppressed and gave an opportunity to loyalists to hermetically close the political space by shutting down or destroying

private media outlets that had been critical of the regime, leaving the interior of the country cut off from independent news from the capital.⁵ A massive exodus of political dissidents, journalists and members of civil society organisations followed.

While the AU had responded tentatively to Nkurunziza's third term bid and the ensuing protests, based on precedents of unequivocal rejection of military coups outlined in Article 25 of the African Charter on Democracy, Elections and Governance, it quickly condemned the coup attempt.⁶ On the other hand, the coup attempt led the AU to sweep under the rug genuine discussions about how little the charter and its supporting institutions had done to curtail regimes' ability to engage in constitutional coups.

Despite the continued insecurity characterised by targeted assassinations and the rise of armed groups, the ruling party forced its way through the elections. Mediation efforts led by the EAC, which was appointed to lead negotiations based on the principle of subsidiarity between the AU and Regional Economic Communities (RECs), were insufficient to convince President Nkurunziza to delay the controversial elections. The coup emboldened the regime to capture as much political power as possible. Moreover, the paralysis of the EAC resulting from divergent domestic and foreign policy imperatives of its member states enabled the Burundian government to easily ignore initiatives for a political solution. Indeed, tensions between Rwanda and Tanzania over previous security issues in the DRC made cooperation between the two countries difficult. As such, the Burundian government capitalised on competition among members of the EAC to maintain the status quo. While in recent months relations between the two counties have improved, whether this will lead to more collaboration on Burundi remains to be seen.

By the time President Nkurunziza was sworn in for his third term, AU priorities had effectively and permanently shifted from the arguably illegal third mandate and moved to fully focus on civilian protection. In addition to the death of important political and military figures,⁷ observers documented pervasive human rights abuses and parallel structures in the security sectors that some negative elements of the ruling party's youth group, the Imbonerakure, had infiltrated.⁸ Moreover, reported divisions in the army raised concerns about the possibility of an intensification of violence. A year since the beginning of the crisis, approximately 500 have died and 280,000 have fled to neighbouring countries.

AU INVOLVEMENT

The AU's engagement in Burundi can be divided into three types of interventions: mediation efforts, human rights monitoring and attempts to deploy security forces to maintain the peace in the country. However, in each sector, the AU faced important obstacles that hindered its ability to have a meaningful impact on the crisis.

Mediation

The AU mediation efforts were frustrated by two key factors. First, the AU relied too heavily on the EAC, which for the first year of the crisis did not gain any traction in getting the government and opposition in exile around the negotiation table. Indeed, within days of the political unrest in Burundi, the AU delegated the management of the crisis to the EAC. Following the principle of subsidiarity or comparative advantage that often guides relations and cooperation between the AU and RECs on issues of peace and security, RECs often take the lead on issues of conflict management or resolution, with varying degrees of success.

Having delegated the mediation to the EAC, the AU has had to follow the pace of the appointed negotiator, Ugandan President Yoweri

Museveni, who was received with a great deal of scepticism by the opposition and many observers. Museveni is no hallmark for democracy and was himself seeking another term as president of Uganda after 30 years in power. Moreover, with his own electoral campaign under way, Museveni delegated the mediation to his defence minister, Crispus Kiyonga, who lacked the necessary gravitas to compel actors to the table. In March 2016, former Tanzanian president Benjamin Mkapa replaced Museveni. There has since been limited movement with the convening of consultation sessions between the government and selected members of the opposition in May. However, nothing substantial was accomplished.

Moreover, the EAC remains divided about the way forward in Burundi. The Rwandan government has often publically criticised President Nkurunziza's management of Burundi and has been accused by the UN of supporting Burundian armed groups, while Uganda and Tanzania seem more favourable to maintaining the status quo.⁹ These differences have contributed to the EAC's paralysis on Burundi. Yet, despite the EAC's inability to make headway, the AU has remained committed to playing a supporting role in EAC-led talks.

Secondly, the AU has failed to put forward a consistent figure to represent the organisation through the crisis. Instead, the AU has combined the use of high-level missions, special representatives and AU Chairpersons, at times on an ad hoc basis. This started with the AU's inability to quickly fill the vacant Special Representative to the Great Lakes position. A few weeks before the crisis erupted, the AU discreetly recalled its special representative, Ambassador Boubacar Gaoussou Diarra, at the request of the Burundi government.¹⁰ His frequent criticism of the authoritarian drift of the CNDD-FDD put him in the crosshairs of the government. In addition to disrupting the AU's representation in the region and its

leverage, the removal of the AU special representative fed into the government's pattern of expulsion of diplomats.¹¹ The AU tried to mitigate this challenge by nominating a new special representative, Ibrahima Fall of Senegal. However, it did so three weeks after the coup attempt, by which time Fall's more timid approach was no match for the government's determination to crush the opposition and forge ahead with elections.¹²

While the AU has maintained its line of communication with the Burundian government, its inability or unwillingness to provide a consistent interlocutor amid the mists of already tentative dialogue efforts has further limited the AU's ability to leverage its resources for significant impact on the mediation.

Monitoring

The AU could have had more influence in preventing the escalation of violence if it had been able early on to establish a fully functioning monitoring mechanism for the situation in Burundi. Indeed, analysts and policymakers alike have struggled to access reliable information on the full extent of the violence in Burundi. With limited information about the dynamics of violence outside of Bujumbura, it remains difficult to truly assess the risk of full-blown conflict in Burundi. The lack of systematic monitoring enabled the government to continue engaging in political violence and facilitated the unhindered emergence of non-state armed groups.

The challenges faced by the AU in effectively monitoring the situation in Burundi are the direct consequence of the Burundian government's stalling tactics. In June 2015, the PSC adopted a communiqué to dispatch a small number of human rights observers and military advisors to report on possible rights violation in the country and to verify the disarmament of militias and armed groups.¹³ While the Burundian government accepted the

deployment, these observers and advisors faced many hurdles in the performance of their duty because the AU was not able to secure a Memorandum of Understanding (MoU) from the government. Without the MoU, the observers have been very limited in the work they can accomplish. Nevertheless, while their visibility in the country was minimal, they did accompany observers from the UN High Commission for Human Rights around Bujumbura. The AU monitors cannot, however, do the same outside the capital, thereby creating a significant knowledge gap about the human rights situation in Burundi. In October 2015 and in February 2016, the PSC attempted to increase the number of human rights observers and military advisors to 100 each, but government delays have continued to challenge the implementation of these measures.

Another critical monitoring instrument was the deployment of an African Commission on Human and Peoples' Rights (ACHPR) fact-finding mission from 7 to 13 December 2015. The mission was mandated to investigate human rights violations and other abuses in Burundi. Coincidentally, the group was in Bujumbura the weekend armed groups attacked four military camps around Bujumbura. There were expectations that the report would be ready by the January AU Summit to inform the AU actors weighing in on the African Prevention and Protection Mission in Burundi (MAPROBU) and the situation on the ground. While the ACHPR briefed the AU Commission chairperson during the summit, the report was not published until May 2016, thereby limiting the visibility and the impact of the damning report, which while acknowledging the negative impact of armed groups in the country, lay the responsibility of most of the violence at the feet of the government.¹⁴

It would be unfair to say that AU monitoring efforts have been not been useful. Despite their small numbers, the handful of monitors has

often briefed the PSC and Dr. Dlamini-Zuma. In fact, some of the PSC's decisions and communiqués can be linked to internal briefings. However, the lack of transparency and systematic public reporting do very little for public diplomacy and the ability to exercise leverage on violent actors. The Burundian government recently announced its intention to sign the MoU. It will likely take months before the agreement is signed and the full contingent of observers and advisors is deployed. Such delays have effectively allowed the crisis to rage for over a year without sustained and comprehensive human rights monitoring.

Security

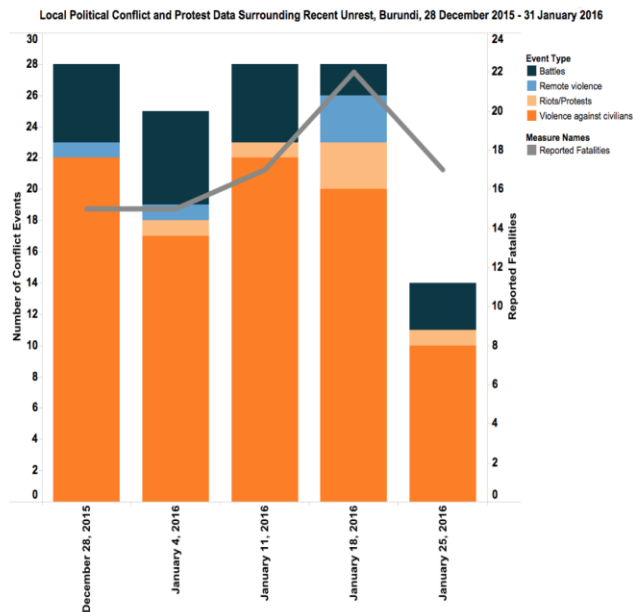
Finally, the AU attempted to stabilise the Burundi crisis and to provide protection to civilians through the deployment of the MAPROBU peacekeeping mission. However, like its attempts to mediate and monitor the crisis, the deployment of peacekeeping troops was rejected by the government.

On 17 December 2015, the PSC issued a communiqué requesting that the Burundian government accept the deployment of a 5,000-strong AU peacekeeping force, or to face the risk referral of the case for forceful intervention based on Article 4(h) of the Constitutive Act.¹⁵ Deployment of forces without Burundi's acquiescence would have been a first in AU history and would have required a two-thirds majority of the heads of states – a tall order, considering the reluctance of African presidents to deviate from their principle of non-interference.

Following the Burundian government's rejection of MAPROBU, the heads of state declined to support MAPROBU without Burundi's consent. This decision came on the heels of months of reports of human rights violations and suspected mass graves, and the violent confrontations of 11 December, which left 100 people dead.

One of the ways to read the Assembly decision is to conclude that the heads of state opted against deploying troops without the approval of Burundi because of their concerns about setting a precedent that could come back to haunt them. While this reasoning may have influenced members of the Assembly, some analysts have suggested that the PSC failed to show two key elements required to implement Article 4(h) of the Constitutive Act.¹⁶ The PSC needed to provide evidence of actual occurrence or credible fear of imminent occurrence of grave violations and to demonstrate that the Burundian government was failing to address those circumstances. However, a number of key developments took place between the time when the MAPROBU communiqué was issued in December and the AU Summit at the end of January. First, a few days after the PSC communiqué, the Burundian government accepted calls by the Ugandan government to convene a dialogue for the first time since the July 2015 presidential election. The December talks were only ceremonial, however, they gave the impression that the government was indeed addressing the insecurity by engaging in an inclusive and genuine dialogue, which in turn challenged the argument that a force was needed to promote dialogue.

Second, by the time the heads of states discussed MAPROBU, there was no evidence of imminent mass violence. The beginning of 2016 saw a drastic reduction of violence in Burundi compared to December.¹⁷ Moreover, with the failure of the ACHPR mission to complete its report before the AU Summit, the heads of state saw little reason to approve the mission.



Source: ACLED

Update - Burundi Local Data on Recent Unrest (26 April 2015 – 31 January 2016)

The Assembly's decision was a blow to the PSC's credibility. In what can be interpreted as an attempt to save face following the decision, both PSC Commissioner Smail Chergui¹⁸ and AU Special Representative to the Great Lakes Ibrahima Fall¹⁹ argued there was never any intention to send troops to Burundi without the approval of the government. This is in stark contrast to Section 13 of the 17 December communiqué, which unequivocally put forward the possibility of sending troops 'in the event of non-acceptance of the deployment of MAPROBU.' The PSC clearly opened the door for a possible forcible deployment, but in the end the evidence presented did not move the Assembly to action.

ASSESSING THE AU

The MAPROBU episode was the culmination of the challenges faced by the AU in its attempts to implement peace and stability measures in Burundi. Whether the defeat of the PSC decision to deploy forces is understood as a natural consequence of the evolution of the dynamics of violence on the ground or as a

missed opportunity entrenching the ability of the heads of state to use the cloak of sovereignty to protect their own interests, the fact that the AU PSC failed to get its way brings to light some of the vulnerabilities of the African Peace and Security Architecture. Indeed, compared to the level of violence observed in South Sudan or Central African Republic in recent years, the Burundi crisis could be qualified as low-grade conflict. And yet, despite the arguably disproportionate amount of time and diplomatic capital expended for this low-grade crisis, the AU has not been able to fully capitalise on the variety of tools it deployed.

This can be partially understood as one of the unintended consequences of putting so much stock in the EAC and its mediation process. Competing political priorities between EAC members have paralysed the organisation. Thus, the Burundian government capitalised on internal divisions by consistently prioritising EAC decisions and leadership, or lack thereof, over the AU recommendations. This reflects Burundi's opportunistic understanding of the dynamics of the balance of power among member states.²⁰

Another concern that arose from the AU involvement in Burundi has been its continued ambivalence about what constitutes unconstitutional seizure of power beyond military coups. While the organisation reacts promptly in clear cases of military coups, such as in Burkina Faso or Guinea, the Burundian case was more complex. For all intents and purposes, Nkurunziza's third term was in blatant violation of a peace treaty. But there remain important debates about whether Nkurunziza's third term was in fact constitutional. The regime's attempt to change the constitution in March 2014 suggests that it believed it needed to amend it to legitimise Nkurunziza's candidacy. When the measure failed, the CNDD-FDD forged ahead and was rescued by a controversial constitutional court ruling, complicating the

ability to call Nkurunziza's third term a constitutional coup. While the AU forcefully condemned General Godefroid Niyombare's coup attempt, which according to his co-conspirators was in response to the president's violation of the Arusha agreement and the constitution, the AU seems to have set aside the general spirit of key principles of its Charter for Democracy, Elections and Governance.

Lastly, it is important to note that we often view the AU as a unitary actor, when in fact it is composed of multiple layers of actors and power dynamics that may impact its response to any given crisis. In its simplest form, the AU is composed of a dozen organs with various responsibilities, roles and leaderships. During the Burundi crisis, three organs have been at the forefront of decision making, sometimes complementing, and, at other times, opposing each other. The AU Commission under the leadership of Chairperson Dlamini-Zuma was instrumental in keeping pressure on the Burundian government by virtue of her numerous comments and statements on the crisis. She was very vocal about her views that the CNDD-FDD was not only violating Arusha but also the constitution. She further announced last year that the AU would not be sending electoral observers for the Burundi poll, as a clear rejection of the electoral process. Nevertheless, the Commission continued to engage the Burundian government as the Commissioner for Peace and Security, Ambassador Smail Chergui, took part in numerous meetings with Burundian officials.

In contrast, the PSC's response was initially more muted. With Burundi on the Council, the government had the opportunity to push back on some initiatives. However, as the violence escalated, the PSC became more forceful. Nevertheless, in the end, it was the heads of state that rejected the PSC recommendation to send troops to Burundi without the government's consent. Unlike those of the UN

Security Council, the PSC's decisions for the use of force are not binding. As such, the interplay between the various organs and the people in them has to be recognised as an important factor in influencing how decisions are made and whether they are implemented.

Despite all its challenges, the AU's continued involvement, pressure and work with international partners have had a positive impact on the crisis. At critical moments, AU PSC communiqués have been followed by sharp decreases in violence and positive movements, albeit short-lived, on the part of the regime. Moreover, backdoor diplomacy between the AU and the Burundian government has maintained communication channels between these actors. Finally, international partners have followed the AU's lead in maintaining attention on the crisis, which could have easily been minimised and ignored. However, the question is whether this momentum can be maintained after a year of low intensity conflict, when other crises on the continent require urgent attention.

CONCLUSION

The AU has kept a busy agenda on Burundi since the beginning of the crisis. From its attempts to maintain the Arusha agreements as the foundation of the process, to pushing for the deployment of peacekeepers to maintain security in Burundi, many efforts have been made to create the necessary environment for dialogue between key Burundi stakeholders involved in the current crisis. Violence has decreased in recent months, although – at least for the moment – there has been no progress in attempts to negotiate a settlement between the government and the extra-parliamentary opposition.

The new rounds of consultations led by Mkapa have offered a breath of optimism for some. However, the Burundian government continues to dictate its conditions without offering the necessary space for constructive dialogue

towards a political resolution. As such, stakeholders – including the AU – will need to be firmer in their expectations of the Burundian government. More importantly, future engagement requires better coordination between regional, continental and international actors to ensure the maximum impact of each intervention. Indeed, the often ad hoc and decentralised nature of engagement with Burundi has allowed the Burundian government to weigh its options and continue on its intransigent path.

The security situation is likely to remain volatile in the months to come. However, the government will soon start to feel the effect of the recent EU suspension of bilateral assistance and may be compelled to engage in genuine negotiations. This will be highly dependent on donors' ability to remain united and consistent in their interaction with Burundi.

The AU limited ability to have greater influence on the Burundi crisis, despite its heavy involvement, has highlighted the vulnerabilities in the AU Peace and Security Architecture, which is likely to have consequences for future AU involvements on the continent. Since the beginning of the Burundi crisis, and under its cover, other countries have changed their constitutions, some more strategically (Rwanda),

and others in clear violation of Charter for Democracy (Congo-Brazzaville) with no consequence from the AU. In the Democratic Republic of Congo, the AU appears to be hesitant in using a more forceful approach as the country is slowly but surely entering a constitutional crisis that could easily turn violent. The AU will have to face the reality that the heads of state are now increasingly leveraging democratic institutions to remain in power and strengthen their hold on government.²¹ The AU will also need to examine how it balances its doctrines of non-indifference and non-interference in cases where clear violations of the Charter for Democracy do not necessarily translate into high-intensity conflicts.

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Endnotes

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