

Truth-Telling mechanisms in the aftermath of conflicts:

The case of Truth Commissions in Burundi.

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A handwritten signature in blue ink, appearing to read 'Shaline', with a long horizontal line extending to the right.

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Foreword

“To all the lost souls.

All the ones whose time on earth ran out abruptly.

All the ones whose light forces us to look beyond the surrounding darkness.

All the ones whose loved one ache for.

All the ones whose love keeps growing throughout the years in the seeds they sow in the lives
of others.

May the pain that was left when you were taken away, be the fuel to look beyond the status
quo.

May it be the reminder of the cost that was paid, over and over again, for a generation to grow
out of the shackles of fear.

May we finally take that leap of faith in a shared future filled with accomplished dreams.

May our common past give us the key to our common future.

May we seize relentlessly any opportunity that could lead us to harmony.

May our lives through our actions enrich History with one of its most beautiful lessons.”

Charline Muco (January 2020)

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Acronyms

ABASA	Alliance Burundo-Africaine pour le Salut
ACCORD	African Center for the Constructive Resolution of Disputes
AMIB	African Union Mission in Burundi
ANADDE	Alliance Nationale pour le Droit et le Développement
APRA	Arusha Peace and Reconciliation Agreement for Burundi
AV-INTWARI	Alliance des Vaillants
BINUB	Bureau Intégré des Nations Unies au Burundi
CNDD-FDD	Conseil National pour la Défense de la Démocratie – Forces de Défense de la Démocratie
DPKO	Department of Peacekeeping Operations
EU	European Union
FOREBU	Forces Républicaines du Burundi
FPB	Forces Populaires du Burundi
FRODEBU	Front Pour la Démocratie au Burundi
FROLINA	Front pour la Libération Nationale
GFP	Global Focal Point on Police, Justice and Corrections Areas in the Rule of Law in Post-Conflict and other crisis Situations
ICC	International Criminal Court
ICTJ	International Center for Transitional Justice
INKINZO	Parti Socialiste et Panafricaniste
JRR	Jeunesse Révolutionnaire Rwagasore
MALIBU-FPS	Mouvements Alliés pour la Libération du Burundi
MCNS	Military Council for National Salvation
MRP-ABARUNDI	Mouvement de la Résistance Populaire
NCRPU	National Commission on the Research of Peace and Unity
NTRC	National Truth and Reconciliation Commission
OAG	Observatoire de l'Action Gouvernementale
OAU	Organization of African Unity
OHCHR	Office of the High Commissioner for Human Rights
ONUB	Opération des Nations-Unies pour le Burundi

PALIPHEUTU-FNL	Parti Pour la Libération du Peuple Hutu – Forces Nationales de Libération
PARENA	Parti pour le Redressement National
PARMEHUTU	Parti du Mouvement de l'Émancipation Hutu
PDC	Parti Démocrate Chrétien
PIT	Parti Indépendant des Travailleurs
PL	Parti Libéral
PP	Parti du Peuple
PRP	Parti pour la Réconciliation du Peuple
PSD	Parti Social-Démocrate
RADDES	Ralliement pour la Démocratie et le Développement Économique et Social
RPB	Rassemblement du Peuple Burundais
RED-TABARA	Résistance pour un État de Droit
SAPSD	South African Protection Support Detachment
STB	Special Tribunal for Burundi
TRC	Truth and Reconciliation Commission
UNDP	United Nations Development Program
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
UPRONA	Union pour le Progrès National
UPR	Union des Patriotes pour la Révolution

I.Introduction - Aim of the thesis

1.Context, research question and scientific relevance

Burundi's history unlike some of the other African countries didn't start with colonization¹. The kingdom is traced back to the Middle Ages with a centralized power laying in the hands of the *mwami*². The power structure was based on clans pledging allegiance to the royal leader for the administration of the territories³. Accordingly, the territory fought many battles, but none were based on ethnicity. It was only when the Burundians had to defend their territory against Germany's attempt at colonization (at the end of the 19th century) that the importance of ethnicity arose, as a power strategy of divide and conquer⁴, only to be exacerbated during Belgian rule from 1919 until the country's independences⁵. Since its independence, the country's political elites have carried on the legacy of using ethnicity as a political and military tool which led to the death, disappearances and exile of thousands⁶. However, due to internal and international pressure, Burundi's government started, in the late eighties, the journey of transitional justice in order to organize the country in a renewed manner.

This work intends to analyze the evolution between the two major Truth Commissions (TRC) which have been set up in Burundi by the ruling regimes. Research on Burundi has been prolific on the importance of transitional justice instruments used by the Burundian governments since the assassination of the first democratically elected President, Melchior Ndadaye. Yet, very few have investigated Burundi's past initiatives, or the potential patterns repeated in the Commissions' genesis.

¹ (C.) BARANYANKA, *Le Burundi face à la croix et à la bannière*, Bruxelles, 2009, 541 p.

² King in Kirundi.

³ (L.) NDORICIMPA, (C.) GUILLET, *L'arbre-mémoire: Traditions orales du Burundi*, Bujumbura: C.C.B., 1984, p.9.

⁴ (G. P.) MPANGALA, *Origins of political conflicts and peace building in the Great Lakes region*, Dar Es Salaam: Institute of Development Studies University of Dar Es Salaam, (contribution to) the Symposium "Ramifications of Instability in the Great Lakes Zone", 2004, p.6.

⁵ (P.) BUYOYA, *Mission Possible*, Paris: L'Harmattan, 1998, p.54-56.

⁶ (S.) VANDEGINSTE, "Negotiating and sharing-power: Burundi's bumpy road to reconciliation without truth", in (V.) ROSOUX, (M.) ANSTEY (under the direction of), *Negotiating reconciliation in peacemaking: quandaries of relationship building*, Berlin: Springer, 2017, p.191.

Transitional justice studies will be used as the main instrument in order to grasp the specificity of each Commission, particularly with regard to the importance of context and agency in their various facets (actors, representations of the past, etc.). The first Commission being essentially endogenous⁷ in nature, and the State at the time being authoritarian, we won't be able to discuss many of the key elements of this instrument's mandate given the opacity in which it was generated. However, the second Commission which was established following an internationally led agreement, has gone through many developments before its concrete materialization which will be of great interest for this research⁸.

From a scientific perspective, this work intends to contribute to the understanding of transitional justice processes in Burundi since their "early" beginnings with a focus on "Truth Commission" as an instrument. In doing so, we will particularly question contextual and personal factors⁹.

2.Hypothesis, spatial/temporal framework

On the basis of the corpus of scientific work mobilized, a hypothesis will be used to guide us through our analysis: "Officially sanctioned truth-telling processes have been instrumentalized to protect the government's interests". Like the research carried out by Sidney Leclercq, particular attention will be directed at observing the self-protecting moves of Burundi's governments in their journey to reconciliation¹⁰.

In order to evaluate the validity of our hypothesis, consideration will be centered on truth-telling instruments which illustrate specificities of the two generations described by Lutz with regard to the Latin American experience. The first generation will be represented by the "Commission on the Research of Peace and Unity" which was set up in 1988, following the massacres of Ntega and Marangara, by President Pierre Buyoya. The scholar underlined its importance with regard to factors such as: the type of transition during which it takes place or the kind of violence and regimes it was intended to evaluate¹¹. As presidencies started, since

⁷ (M. M.) KAMINSKY, (M.) NALEPA, (B.) O'NEILL, "Normative and Strategic Aspects of Transitional Justice", *The Journal of Conflict Resolution*, June 2006, vol. 50, n°3, p.295.

⁸ *Ibidem*.

⁹ Or what is often referred to as the "structure – agent" relationship.

¹⁰ (S.) LECLERCQ, *Resilience of Fragility: International Statebuilding Subversion at the Intersection of Politics & Technicality*, Thèse de doctorat en Sciences Politiques et Sociales, Bruxelles: Université Libre de Bruxelles, October 2017, 274 p.

¹¹ (E.) LUTZ, "Transitional justice: Lessons learned and the road ahead", in (N.) ROHT-ARRIAZA, (J.) MARIEZCURRENA (under the direction of), *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, Cambridge: Cambridge University Press, 2006, p.326.

the independence, with a Coup, the context of this initiative brings insights about the mindset of the ruling elites, then, and its practices. The second generation will be represented by the “Truth and Reconciliation Commission for Burundi”, set up in 2015 and renewed in 2018. It will shed light on the advancement made on the “truth or justice” issue, often understood as the dilemma of justice or peace and, in particular, their interdependence”¹². As will be covered in the second case study, the awareness of the need to include both a judiciary instrument and a non-judiciary truth-telling instrument will be a central evolution subsequent to the civil war.

3.Limits of the dissertation, sources and methodology

This work has limits which can be analyzed from either a subjective or an objective perspective. Indeed, as suggested through a recent study’s title by Devon E. A. Curtis: “What is our Research For? Responsibility, Humility and the Production of Knowledge about Burundi”, we should wonder: what is our research for? In order to undertake a study on the country, in particular with the current political state, the researcher should be aware of the influence of its “positionality”¹³. Indeed, as a Belgian born woman of Burundian origin, there have been many subjectivity hurdles on my journey to writing this research. However, as an aspiring social scientist, it was important to establish a clear framework with my supervisor in order to overcome them.

In terms of concrete limits, this work was carried out in the framework of a Master in Political Sciences, which did not allow me to elaborate on all sides of the issue. Another relevant element that restricted the scope of this paper was the impossibility of conducting field research on the subject, leading to most of the sources being only secondary. Indeed, the sources used to analyze the subject are a medley of scientific articles, news articles, monographs or collective works, working papers and some official documents (laws, official statements...).

Under these circumstances, the qualitative research has been conducted first in an inductive manner. Indeed, our previous research on the country’s past from a legal perspective had equipped us with a global understanding of the Burundian case which has guided the choice of our research question. Afterwards, once the analysis grid was clarified, the research process has shifted towards a more deductive approach that determined the way to apprehend the vastness of the data and literature over Burundi’s transformation since its independence.

¹² (E.) LUTZ, *op.cit.*, p.327.

¹³ (D. E. A.) CURTIS, “What is our Research For? Responsibility, Humility and the Production of Knowledge about Burundi”, *Africa Spectrum*, 2019, vol. 54, n°1, p.7-8.

II. Theoretical framework

1. Genealogy of Transitional Justice

Some scholars like the French researcher Pierre Hazan date transitional justice's birth period to the end of the second world war and the resulting Nuremberg trials which changed the dynamics of dealing with past atrocities¹⁴. However, the field of Transitional Justice as such only emerged in the 1980s with the "third wave" transitions to democracy which started in Latin America and Eastern Europe¹⁵. From the mid-1990's onwards, the various goals of transitional justice have evolved to be considered as "mutually reinforcing and complimentary instead of trade-offs"¹⁶. As Hazan rightly observed: "The paradigm of transitional justice imposes itself in the interpretation of the new international reality in order to account for the multiple and heterogeneous processes which make, almost simultaneously, States as different as Mauritania, Mongolia and Salvador experience political liberalization processes"¹⁷.

It is interesting to note that other scholars saw this process as much more subjective than the way it was just suggested. For example, Sandrine Lefranc described the concept of transitional justice as: "created in order to legitimize its conversion in a model by groups of activists and professionals concerned to make their adhesion to the legal defense of human rights and the promotion of a system that reinforces, more 'pragmatically', the difficulties of such a defense in a post-conflict situation, compatible"¹⁸. Others confronted this idea, of an objective evolution of the field, by questioning the assumption of inherent good¹⁹.

When it comes to the definition of the field, there hasn't been a universally accepted one. Depending on the content covered by scholars, it may take various shapes, whether it be the context in which it operates, the importance of justice or its endogenous character.

¹⁴ (P.) HAZAN, *Juger la guerre, juger l'histoire: Du bon usage des Commissions Vérité et de la justice internationale*, Paris: PUF, 2016, 251 p.

¹⁵ (P.) HAZAN, *op.cit.*, p.44.

¹⁶ (B. A.) LEEBAW, "The irreconcilable Goals of Transitional Justice", *Human Rights Quarterly*, February 2008, vol.30, n°1, p.102-103.

¹⁷ (P.) HAZAN, *op.cit.*, p.46; (B. A.) LEEBAW, *op.cit.*, p.99.

¹⁸ Our Translation. (S.) LEFRANC, « La justice transitionnelle n'est pas un concept », *Mouvements*, 2008, vol.1, n°53, p.69.

¹⁹ (D. N.) SHARP, "Emancipating Transitional Justice from the Bonds of the Paradigmatic Transition", *International Journal of Transitional Justice*, 2015, vol. 9, n°1, p.156; (E.) LUTZ, *op.cit.*, p.339.

It can therefore be formulated as follows: “a form of peacebuilding”²⁰, “the conception of justice in periods of political transition”²¹, “justice-focused processes that societies undertake in the aftermath of large-scale human rights violations, normally in the relatively recent past”²². Some researchers, however, emphasize the fact that its specificity lies in two of its most prominent features: “the violations it responds to are massive and systematic, and the context in which it occurs is one of transition, including but not only through change of government”²³. As described in a report issued for the African Union, the process has a twofold objective, “to strengthen stability and diminish opportunities for impunity”²⁴. It can then be divided into four direct objectives: to confront impunity; to reinstate the dignity of victims; to restore citizens’ trust in state institutions; and to prevent future serious human rights violations²⁵.

Thanks to a global understanding of this field, we will now take a look at the specific area of truth-telling which is only a part of Transitional Justice; as this essay will be exploring one of its main instruments, Truth Commissions.

2. Truth-Telling and the instrument of Truth Commission

Truth Commissions were first set up in order to allow a cautious transition from conflict to democracy and peace²⁶. The first one to be acknowledged as such in the literature is the one set up in Argentina in 1983; however, as the field was only emerging, its theorization only happened about 10 years later²⁷. Since then, the understanding of truth-telling mechanisms has evolved tremendously. Moreover, there was one pivotal model, the one set up in South Africa, which is understood for scholars like Hazan to be, “the new social engineering of transitional justice”²⁸. Truth Commissions being an instrument originally based on practice rather than

²⁰ (D. N.) SHARP, *op.cit.*, p.158.

²¹ (B. A.) LEEBAW, *op.cit.*, p.98.

²² (P.) SEILS, *The place of reconciliation in transitional justice: Conceptions and misconceptions*, New York: ICTJ, “Briefing”, June 2017, p.2.

²³ (R.) DUTHIE, *Justice Mosaics: How context shapes transitional justice in fractured societies*, New York: ICTJ, “Research Report”, 2017, p.6.

²⁴ AU Panel of the Wise, *Peace, Justice, and Reconciliation in Africa: Opportunities and Challenges in the Fight Against Impunity*, New York: IPI, “The African Union Series”, February 2013, p.13.

²⁵ (P.) SEILS, *op.cit.*, p.2.

²⁶ (S.) LEFRANC, *op.cit.*, p.63.

²⁷ (P. B.) HAYNER, *Unspeakable truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd edition, New York and London: Routledge, 2016, p.10.; (M.) FREEMAN, (P. B.) HAYNER, “Truth-Telling” in, (D.) BLOOMFIELD, (T.) BARNES, (L.) HUYSE (under the direction of), *Reconciliation after violent conflict: A Handbook*, Stockholm: IDEA, Handbook Series, 2003, p.125.

²⁸ (P.) HAZAN, *op.cit.*, p.49.

theory, the various experiences since then have shown that the particular circumstances of their birth were ones where the main perpetrators of violence could challenge their indictment²⁹. Therefore, a change of paradigm was to be made, as from now on, the transition to reconciliation was understood as requiring truth since the military repression had taken place in a state of opacity³⁰.

This ‘right to truth’ was legally recognized for the first time in the Velasquez Rodriguez case of 1988 by the Inter-American Court of Human Rights³¹. Additionally, 10 years later, as part of a wider understanding of truth, the Statute of Rome forbade amnesty for crimes against humanity³². Since then, the United Nations, have been showing a great interest³³ in this right, for example, by forbidding their mediators to allow general amnesties in case of crimes against humanity³⁴. However, as rightfully noted by Hayner, “it is more difficult, (...), to stipulate how this right, and the resulting state obligation, must be implemented”³⁵.

When it comes to definitions, Truth Commissions have had many throughout the literature dedicated to truth-telling. Based on the context in which they operate, some highlight, in broad terms, the need to investigate the roots of conflict in order to fight against impunity³⁶. Others make an *a contrario* definition by underlining the fact that they shouldn’t be confused with judicial bodies³⁷. Others, like Priscilla Hayner, who wrote profusely about them in her book “Unspeakable truths: Transitional Justice and the challenge of Truth Commissions” and is a founding member of the International Center for Transitional Justice (ICTJ), define the Commissions in a more detailed and descriptive manner³⁸. However, for the analysis of the Truth Commissions established in Burundi, we decided to focus on the way the instrument was described in “Reconciliation after violent conflict: a Handbook” as it seemed to be enriched by the three perspectives. Therefore, they should be understood as: “temporary bodies, 1 to 2 years”; “officially authorized or empowered”; “non-judicial but with some “*de jure* independence”; “created during a period of political transition” (either from war to peace or authoritarianism to democracy); “focused on the past”; which “investigate patterns of abuses”;

²⁹ (S.) LEFRANC, *op.cit.*, p.64.

³⁰ (P.) HAZAN, *op.cit.*, p.49 & 58.

³¹ (P. B.) HAYNER, *op.cit.*, p.23.

³² (M. M.) KAMINSKY, (M.) NALEPA, (B.) O’NEILL, *op.cit.*, p.296.

³³ (P. B.) HAYNER, *op.cit.*, p.24.

³⁴ AU Panel of the Wise, *op.cit.*, p.11.

³⁵ (P. B.) HAYNER, *op.cit.*, p.24.

³⁶ AU Panel of the Wise, *op.cit.*, p.21.

³⁷ (M.) FREEMAN, (P. B.) HAYNER, *op.cit.*, p.124.

³⁸ (P. B.) HAYNER, *op.cit.*, p.11.

which completes their work with a “final report”; and are “focused on violations of human rights”³⁹.

The mandates are the guidelines of the Commissions’ work which direct them on how to fulfill the expectations that have been prioritized by the authorities. In order to understand their instrumental nature, in the next chapters we will pay close attention to the mandates on the basis of eight criteria detailed in “Reconciliation after violent conflict: a handbook”⁴⁰. Firstly, the “objective” set to guide the commission’s work. Secondly, the “period of operation” chosen which can be flexible. But also, the “period of time under consideration” which often refers to the periods of turmoil (e.g. civil war, ...). Followed by the “types of violation under investigation”, as they have an impact on the support given by the “international community”⁴¹. Fifthly, the “functions” of the commission, which means how it intends to reach its objectives. However, it is not to be confused with the next criterion of “powers” which are the means available. “Sanctions” will also be taken into consideration as they are the other side of the previous element; indeed, they have a greater impact if their violations lead to tangible consequences. Lastly, “final reports” will be reviewed as the output produced by the Commissioners based on their understanding of their mandates. Scholars have noted a substantial shift in the evolution of the mandates, as they used to be limited in many aspects and have lately been more oriented towards following the complexity of the reality under scrutiny⁴².

Before covering the last part on the importance of context, it’s useful to get acquainted with some of the findings made in the analysis of impact of Truth Commissions. Although it is understood to be one of the areas which might be lacking the most in terms of data, authors and practitioners have provided some notable insights. Indeed, in Hayner’s book on TRCs, references were made to two studies of 2010 which provided mixed results. On the one hand, Tricia Olsen, Leigh Payne and Andrew Reiter found that “truth commissions that are employed alone, with no other transitional justice initiatives, have a negative impact on human rights and on democracy”⁴³. On the other, Eric Wiebelhaus-Brahm found out that “statistical analysis

³⁹ (M.) FREEMAN, (P. B.) HAYNER, *op.cit.*, p.124.

⁴⁰ *Idem*, p.131-132.

⁴¹ The notion of “international community” has been questioned and investigated since the nineties upon its existence, foundations or moral significance. (P.M.) DEFARGES, « Existe-t-il une communauté internationale? », *Commentaire SA*, 1997, vol.2, n°78, pp. 343-352 ; (D.) ROTHE, (C.W.) MULLINS, “ ‘International Community’: Legitimizing a Moral Consciousness”, *Humanity and Society*, 2006, vol. 30, n°3, pp.254-276; (C.W.) JONES, « Exploring the Microfoundations of International Community: Toward a Theory of Enlightened Nationalism », *International Studies Quarterly*, 2014, n°58, pp.682-705.

⁴² (P.) SEILS, *op.cit.*, p.2.

⁴³ (P. B.) HAYNER, *op.cit.*, p.26.

suggests that truth commissions have an overall negative impact on human rights practices and have no significant impact on democracy. (...) In grappling with this contradiction, he (Mr. Brahm) suggests that the impact of these processes often follows a winding route, is affected by many contextual factors, and may take some years before it can be seen”⁴⁴. These findings emphasize the instrumental side of these Commissions which are not necessarily established to uncover the entire truth. Other examples of this facet are provided in the speeches made by authorities setting up the instruments or NGOs intervening in the processes. As in 1994, in Guatemala, when the minister of Defence said: “We are fully in support of a TRC. (...) Just like in Chile: truth but no trials”⁴⁵. Or the Vice-Director of Human Rights Watch, Reed Brody’s statement that these commissions are “the soft option for governments which violate human rights and want to avoid justice”⁴⁶.

With all these elements in mind, we are now ready to engage with the literature dedicated to the influence of context on Truth Commissions.

3.Importance of the context

National context

For the purpose of framing this next section, the first aspect that should be noted when talking about domestic context and its influence, is actors. Indeed, it is of interest to look at their “ability to control transition policy choices”⁴⁷, whether they be the political elite, the intellectual elite, or civil society. One cannot study the impact of context without questioning the complementary influence of agency. If we keep in mind a continuum between structure and agents, the concept of structure refers to the “social forces” which act upon individuals, while the notion of agency accentuates the “freedom, choice or self of individuals”⁴⁸. On one hand, the handbook of contextual political analysis describes structures as “the accretion of past practices” which evolved under “intentional or unintentional influence of agents” who benefitted from them⁴⁹. In this sense, structuralist scholars consider that “history is not made

⁴⁴ *Ibidem*.

⁴⁵ (P. B.) HAYNER, *op.cit.*, p.91.

⁴⁶ (P.) HAZAN, « Les dilemmes de la justice transitionnelle », *Mouvements*, 2008, vol.1, n°53, p.44.

⁴⁷ (P. B.) HAYNER, *op.cit.*, p.17.

⁴⁸ (J.) FLEETWOOD, “Narrative habitus: Thinking through structure/agency in the narratives of offenders”, *Crime Media Culture*, 2016, vol.12, n°2, p.176.

⁴⁹ (R. E.) GOODIN, (C.) TILLY, “It Depends”, in (R. E.) GOODIN, (C.) (under the direction of), *The Oxford Handbook of Contextual Political Analysis*, New York: Oxford University Press, 2006, p.22.

by individuals but is a consequence of structural requirements”⁵⁰. On the other hand, agency is understood as “the property or capacity of actors to make things happen”⁵¹. Moreover, agents are seen as essential in the crafting of “discourse communities” by creating narratives which ultimately open the door to “creative alterations”⁵². Each extreme of the continuum having its shortcomings, many scholars have been arguing for a global understanding of the dynamics between structure and agents⁵³. Therefore, attention will be paid to human agency and its influence on the pre-existing structures.

At the core of the understanding of the national elements that constituted the particular context in which the Commissions were set up, lie the types of regimes and the violence that took place. Indeed, as described in a Research Report from the ICTJ, there is a major difference in the way you address horizontal or vertical violence and the context from which they emerged⁵⁴. Vertical violence is described as the one committed by the state against its citizens; therefore, it usually results from repression under authoritarian regimes⁵⁵. In that case, it is relevant to bear in mind that the offenders may “see the context as a source of motives”⁵⁶. As then, the legality of their actions wasn’t questioned, and a culture of impunity may have blossomed⁵⁷. But also, that in case of violence perpetrated by non-state actors, they may see their actions as “politically-motivated violence” and an “unavoidable response to state violence”⁵⁸. This leads to a need to clearly distinguish political motives from other types of motives in truth telling as much as in prosecution⁵⁹. Before analyzing the second type of violence, it should be noted that the international framework, by being state centric, is not really adjusted to non-state actors yet⁶⁰. Horizontal violence on the other hand, is understood as the one involving citizen as much as non-state actors and the state⁶¹. That’s why it often takes place

⁵⁰ (D.) COOLE, “Agency”, *Britannica Online Encyclopedia*, <https://www.britannica.com/print/article/2103379>, 19/07/2020.

⁵¹ However, critics insist on the need to distinguish “capacities for agency and opportunities for exercising it”. *Ibidem*.

⁵² (D. E.) APTER, “Duchamp’s Urinal: Who Says What’s Rational When Things Get Tough?”, in (R. E.) GOODIN, (C.) TILLY (under the direction of), *The Oxford Handbook of Contextual Political Analysis*, New York: Oxford University Press, 2006, p.790.

⁵³ (J.) FLEETWOOD, *op.cit.*, p.179; (R.) JACKSON, “Constructivism and Conflict Resolution”, in (J.) BERCOVITCH, (V.) KREMENYUK, (W.) ZARTMAN (under the direction of), *The SAGE Handbook of Conflict Resolution*, London: SAGE Publications Ltd, 2009, p.175.

⁵⁴ (R.) DUTHIE, *op.cit.*, p.7.

⁵⁵ *Idem*, p.16.

⁵⁶ (L.) HUYSE, “Offenders” in, (D.) BLOOMFIELD, (T.) BARNES, (L.) HUYSE (under the direction of), *Reconciliation after violent conflict: A Handbook*, Stockholm: IDEA, Handbook Series, 2003, p.70.

⁵⁷ *Idem*, p.71.

⁵⁸ *Idem*, p.72.

⁵⁹ *Ibidem*.

⁶⁰ (R.) DUTHIE, *op.cit.*, p.14.

⁶¹ *Idem*, p.7.

in the context of intra-state or civil wars with “fragile” democracy⁶². In that case, we found two elements that should be central to our comprehension of that context. First, that the violations are often more widespread and therefore committed by all the parties involved leading to an overlap of the “victim-perpetrator categories”⁶³. Second, the question of non-state actors using violence as a political tool as for the vertical type leads to critical questions when it comes to amnesties⁶⁴.

The impact of representations of a country’s past may shed another type of light on the understanding of the violence that took place. Before singling out the characteristics of this factor, scholars like Rosoux warned researchers about the dynamic nature of the “transformation of the representations that parties have of the past”; as it often takes place over a lengthy time span⁶⁵. The legacy of a country’s past can be comprehended following two perspectives: the one based on *history*, or “what happened”, having the potential to be substantially different from the one based on *mythology* which is related to “people’s perception of what happened”⁶⁶. When it comes to the latter, Nau’s work on the theories of International Relations and, in particular, the perspective rooted in identity offer useful insights. Indeed, contrary to the liberal or realist perspectives which focus on systems or power, this perspective considers identities and the incompatibility of narratives associated to them, to be the main source of conflict⁶⁷. Moreover, Nau’s definition of social constructivism “as an identity perspective in which states and other actors acquire their identities from intersubjective discourses in which they know who they are only by reference to others”; enriches our understanding of the adverse developments which derived from colonialism⁶⁸.

Finally, the type of transition taking place may have different types of influence on the resulting political settlement. As described in “Reconciliation after violent conflict: a handbook”, there exist three types of balance of power which can have very different types of outcomes⁶⁹. Either “a formerly oppressive regime has been violently and completely

⁶² *Idem*, p.14.

⁶³ *Idem*, p.15.

⁶⁴ *Idem*, p.20.

⁶⁵ (V.) ROSOUX, “Time and Reconciliation: Dealing with Festering Wounds”, *op.cit.*, p.82.

⁶⁶ (D.) BLOOMFIELD, “The context of reconciliation” in, (D.) BLOOMFIELD, (T.) BARNES, (L.) HUYSE (under the direction of), *Reconciliation after violent conflict: A Handbook*, Stockholm: IDEA, Handbook Series, 2003, p.40.

⁶⁷ (V.) ROSOUX, “Negotiating on Behalf of Previous Generations: Justice in Post-Conflict Contexts”, *International Negotiation*, 2020, n°25, p.96.

⁶⁸ (H.R.) NAU, *Perspectives on International Relations: Power, Institutions, and Ideas*, 6th edition, Los Angeles: CQ Press, 2019, p.134.

⁶⁹ (D.) BLOOMFIELD, *op.cit.*, p.43.

overthrown, or where a civil war has ended through a decisive military victory for one side”⁷⁰. Or “transition arrives at the initiative of reformers within the previous regime and those in power take the initiative and play the decisive role in ending the regime”⁷¹. Or “transition may result from joint action, including the negotiation of a settlement, between the former government and opposition groups. The forces of the previous regime have not lost all power; nor have the former insurgents gained absolute control. Instead every aspect of life must be negotiated between them”⁷². Each type of transition creates new possibilities. The first one may revolve around retributive justice⁷³. The next one may be more influenced by self-protecting moves with regard to amnesty⁷⁴. The last one may bring more attention to the possibility of having negotiation between equals⁷⁵.

Before moving on to the next section which will bring insights about the influence of the international context, let us be reminded that practitioners and scholars have given great advice on the way to engage with national contexts. Vasuki Nesiah, in one article, warned the users of truth commissions on the importance of operating in the field with a political understanding, which would pay attention to contextual imperatives, rather than acting in a technical manner⁷⁶. Pablo de Greiff, the UN Special Rapporteur for truth, justice, reparation, and guarantees of non-recurrence, has highlighted the importance of “developmental preconditions for transitional processes to be feasible and effective” warning us about one of the main challenges being the “implementation gap” between what was planned and what has been properly done⁷⁷.

⁷⁰ *Ibidem*; (E.) GONZÁLEZ, (E.) NAUGHTON, (F.) REÁTEGUI, *Challenging the conventional: Can Truth Commissions Strengthen Peace Processes?*, New York: ICTJ, “Report”, June 2014, p.2.

⁷¹ (D.) BLOOMFIELD, *op.cit.*, p.43.

⁷² *Ibidem*; (E.) GONZÁLEZ, (E.) NAUGHTON, (F.) REÁTEGUI, *op.cit.*, p.2.

⁷³ (L.) HUYSE, “Justice” in, (D.) BLOOMFIELD, (T.) BARNES, (L.) HUYSE (under the direction of), *Reconciliation after violent conflict: A Handbook*, Stockholm: IDEA, Handbook Series, 2003, p.98-107.

⁷⁴ (D.) BLOOMFIELD, *op.cit.*, p.43.

⁷⁵ *Ibidem*; (E.) GONZÁLEZ, (E.) NAUGHTON, (F.) REÁTEGUI, *op.cit.*, p.2.

⁷⁶ (R.) DUTHIE, *op.cit.*, p.8.

⁷⁷ *Idem*, p.9.

International Context

The world being more and more interconnected, it becomes less and less sufficient to base an analysis of context in a country solely on the domestic factors⁷⁸. The Great Lakes Region in Africa having particularly close ties in terms of influence, one should not underestimate how the countries affected each other's violent episodes. The international context in this essay will be understood as the region of the world, on one hand, and the international community on the other; with a particular attention to power dynamics⁷⁹.

The region may have dual influences. It can be a source of insecurity and spread violence at some point, but later become a source of change and support unity⁸⁰. Recently, scholars have recognized regional organizations as noteworthy in the field of transitional justice, especially since the UN has been increasingly relying on them and their local expertise⁸¹. An example of this evolution can be drawn from the development of the African Union's Transitional Justice Policy Framework⁸².

The international community has also the dual influence of either triggering the rise of division and violence or becoming active in the development of international norms to support human rights⁸³. This dynamic can be explained through the processual systemic lens, which as defined by Nau, focuses on the interactions between states⁸⁴. Moreover, Huyse warns foreign actors on their role having to be "of support and facilitation of domestic policies"⁸⁵.

When it comes to the involvement of the International Community, two major institutions are often cited. On the one hand, the UN, being made up of 193 Member States, is often the organization implied by the generic name of International Community. For this reason, the result of the research conducted by scholars on the relationship between the UN and Transitional Justice is what we will now briefly examine. Four key moments have been pointed out in its evolution. Firstly, 2004 appears to be the inaugural time when transitional justice was

⁷⁸ (N.) ROHT-ARRIAZA, "The role of International Actors in National Accountability Processes", in (A.) BARAHONA DE BRITO, (C.) GONZÁLEZ-ENRÍQUEZ, (P.) AGUILAR (under the direction of), *The politics of Memory: Transitional Justice in Democratizing Societies*, Oxford: Oxford University Press, 2001, p.40.

⁷⁹ (D.) BLOOMFIELD, *op.cit.*, p.45.

⁸⁰ *Ibidem*.

⁸¹ (A.) DAVIDIAN, (E.) KENNEY, "The United Nations and transitional justice", in (C.) LAWOTHER, (L.) MOFFETT, (D.) JACOBS (under the direction of), *Research Handbook on Transitional Justice*, Cheltenham and Northampton: Edward Elgar Publishing, 2017, p.192 & 194.

⁸² (A.) DAVIDIAN, (E.) KENNEY, *op.cit.*, p.193.

⁸³ (D.) BLOOMFIELD, *op.cit.*, p.45.

⁸⁴ (H.R.) NAU, *op.cit.*, p.152.

⁸⁵ (L.) HUYSE, "The International Community", in (D.) BLOOMFIELD, (T.) BARNES, (L.) HUYSE (under the direction of), *Reconciliation after violent conflict: A Handbook*, Stockholm: IDEA, Handbook Series, 2003, p.163.

first addressed by the UN institution, thanks to the Secretary-General's report which launched its appropriation by the Security Council⁸⁶. Secondly, in 2010 thanks to the previous initiative, the Secretary General issued a "Guidance Note on the UN's approach to Transitional Justice"⁸⁷. 2011 was a cornerstone with the first appointment of a Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence⁸⁸. Before taking a look at the last element, it is of interest to note that the OHCHR has been designated as coordinator of the initiatives related to Transitional Justice⁸⁹. Finally, in 2012, the Secretary-General designated the DPKO and the UNDP as responsible for implementing the Global Focal Point on Police, Justice and Corrections Areas in the Rule of Law in Post Conflict and other Crisis Situations (GFP) intended to provide "a united front for overall UN assistance in GFP identified countries"⁹⁰. On the other hand, as observed by Huyse, "justice is the domain where the International Community is directly involved in processes that have a reconciliation potential"⁹¹. Therefore, one cannot forget to mention the evolution of the international normative framework as it has been closely intertwined with the various domestic experiences⁹². The Balkan War and the Rwandan genocide have marked a shift in the field of human rights. What once played a secondary role became a focus, and tangible developments took place as such. Indeed, according to Chapter VII in the UN Charter, the Security Council established the first International Jurisdictions since the Nuremberg Trials, one for former Yugoslavia and the other for Rwanda⁹³. However, their impact due to various factors was limited and the international order opted for a more comprehensive and permanent choice. This can be observed with the adoption of the International Criminal Court in 1998 by 120 States⁹⁴. As explained by Lutz, these evolutions led to variations in "the political calculus for governments and powerful perpetrators of atrocities"⁹⁵. Which is why, after evaluating the legacy of transitional justice in Latin America, she drew researchers and practitioners' attention to the potential for accountability to be instrumentalized⁹⁶.

⁸⁶ (A.) DAVIDIAN, (E.) KENNEY, *op.cit.*, p.186.

⁸⁷ *Idem*, p.187.

⁸⁸ "Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence", OHCHR, <https://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/Index.aspx>, 22 June 2020.

⁸⁹ (A.) DAVIDIAN, (E.) KENNEY, *op.cit.*, p.190.

⁹⁰ *Idem*, p.191.

⁹¹ (L.) HUYSE, *op.cit.*, p.164.

⁹² (A.) DAVIDIAN, (E.) KENNEY, *op.cit.*, p.189.

⁹³ (N.) ROHT-ARRIAZA, *op.cit.*, p.56.

⁹⁴ (N.) ROHT-ARRIAZA, *op.cit.*, p.60.

⁹⁵ (E.) LUTZ, *op.cit.*, p.332.

⁹⁶ *Ibidem*.

III. First Case study: Commission on the Research of Peace and Unity in Burundi

“A burundian proverb tells us that: ‘So akwanse akuraga ivyamunaniye’. As such one should not pass on to the posterity the sole heritage of missed opportunities.” – Jean-Marie Sindayigaya

After setting the theoretical framework, we will now be analyzing the Truth Commission that was set up in 1988 in Burundi. Being one of the first ones to be set up before much theorizing had been done by scholars, this deeply affected the elements set out in the official mandate. Under these circumstances, the context of its emergence will be of great help in evaluating the choices made by the ruling elite in their quest for truth, unity and ultimately reconciliation.

1. National Context

Before analyzing the essential elements constituting the national context that influenced the set-up of the National Commission on the Research of Peace and Unity (NCRPU) in Burundi, the preceding humanitarian crisis from which it resulted will be shortly addressed. Indeed, Burundi's history has been plagued with repeated cycle of violence which have nourished the perceptions of fear and danger in both the so-called “Hutus” and “Tutsis”. Words used to describe these, allegedly historically opposed, social groups will be written between inverted commas as they have been scientifically proven to be a construct rather than a given⁹⁷. In August 1988, one year after the Coup of Major Pierre Buyoya against the regime of Jean-Baptiste Bagaza, which established the 3rd Republic, the country and in particular Ntega and Marangara municipalities in Northern Burundi, were at the center of international attention. After a short hiatus since the last major bloodshed of 1972, an ethnically oriented crisis was

⁹⁷ (P.) NTAHOMBAYE, “Ethnicité et citoyenneté au Burundi”, *L'Anthropologue Africain*, 2005, vol.12, n°1, pp. 46-64. The word “ubwoko” has been misleadingly translated as ethnicity, as noted by the author. (P.) NTAHOMBAYE, (G.) NDUWAYO, “Identity and Cultural Diversity in Conflict Resolution and Democratization for the African Renaissance: The Case of Burundi”, *African Journal on Conflict Resolution*, 2007, pp. 161-192. The article gives an in-depth deconstruction of the ethnic myth.

rising once again leading to a death toll of around 5,000 victims (officially)⁹⁸. Two months later, President Buyoya launched the work of the Commission.

Actors

Various actors have influenced the policy choices that led to the adoption of the Commission. The literature that covered the crisis has been mostly oriented towards specific ones that we chose to present in this work. First, President Pierre Buyoya as the Head of State. Second, the military which have had a great influence on the governing process, due to their role, since the First Republic, in political changes. The intellectual elites of both ethnical sides took also a public stand. On the one hand, “Hutus” are known for the input of both “The open letter of Hutu intellectuals” and the political leader, Melchior Ndadaye. On the other hand, the “Tutsis” perspective could be assimilated to the one expressed in a common document by Professors from the University of Burundi⁹⁹. Fifth, young people affiliated with the ruling party through the *Commission Estudiantine de la Jeunesse Révolutionnaire Rwagasore* also expressed their understanding of the crisis at hand. Sixth, the rebel group of PALIPEHUTU, who were the main suspects, defended their positions. Finally, the emerging civil society expressed concerns through representatives of the Roman Catholic Church and national media.

Firstly, Pierre Buyoya was the third ruler since the establishment of the Burundian Republic. As a member of the military under President Bagaza, he came to power through a Coup in 1987. It was announced this would bring a wind of change to the repressive State as described in his first book *Mission Possible*. Indeed, when the crisis started in the summer of 1988, Buyoya was visiting Congo-Brazzaville and quickly returned back home¹⁰⁰. As he described, years later, in an interview to the Burundian independent journal *Iwacu*, he felt like the violence that took place was part of a larger strategy which intended to sabotage his grasp on the newly obtained power to govern the country¹⁰¹. The management of the fallouts launched Buyoya and the entire country on a journey to unity, forcing all the influential parties to acknowledge the elephant in the room: the issue of the relationship between “Hutus” and “Tutsis”. This brings him to the category of resolvers as he became involved in the

⁹⁸ (A. G.) BUKEYENEZA, « Ntega-Marangara : 25 ans après... », *Iwacu*, Septembre – Octobre 2013, n°19, p.6.

⁹⁹ As the composition of the signatories was mostly Tutsi.

¹⁰⁰ (S.) NTIBANTUNGANYA, *Burundi : Démocratie Piégée*, Bruxelles : Iwacu Europe, 2018, p.71.

¹⁰¹ (A. G.) BUKEYENEZA, *op.cit.*, p.27.

transformation of conflict¹⁰². It was indeed reflected in his choice of establishing the NCRPU in early October 1988 while nominating a Joint government¹⁰³. Therefore, while sitting on a pressure cooker, the President's commitment to change was directly tested.

Secondly, most African governments have been a result of military Coups during the sixties, seventies and eighties, leading them to become often characterized as dictatorial regimes¹⁰⁴. Furthermore, as described in a study on the origins of conflicts in the great lakes region, this development of authoritarian and dictatorial regimes was seen as a direct correlation of the political power interests of the leaders¹⁰⁵. Burundi was no exception to this common pattern. So much that it created a deep entanglement between the military and politics, or as described by Jean-Marie Sindayigaya: "One couldn't tell if it was the political party that got militarized or if it were the military themselves who were becoming militants or supporters. Beyond appearances things weren't as simple. Many officers had joined the army because it was the way to become president of the Republic. And that's even the reason why its entry was tightly controlled"¹⁰⁶. After the Coup by Buyoya, the Military Council for National Salvation (MCNS) considered, for the first time, the issue of National Unity¹⁰⁷. Following the crisis of Ntega-Marangara, in September 1988, the President held a special meeting of the MCNS to address clearly that issue¹⁰⁸. Many of the officers weren't spontaneously in favor of unity, because of what it entailed: mainly a truthful reflection on the relationship between the State and the army since 1965 (and therefore all the asymmetrical bloodsheds that had taken place ever since)¹⁰⁹. One should not forget that the way to deal with the military "as one of the major contestants for political power" was considered by many to be one of the "key challenges" in Africa¹¹⁰. However, a few weeks after their meeting on unity, the MCNS decided to issue the decree that set the foundations for the "Commission on the Research of Peace and Unity in

¹⁰² (V.) ROSOUX, "Time and Reconciliation: Dealing with Festering Wounds", in (V.) ROSOUX, (M.) ANSTEY (under the direction of), *Negotiating Reconciliation in Peacemaking: Quandaries of Relationship Building*, Cham: Springer, 2017, p.70.

¹⁰³ (A. G.) BUKEYENEZA, *op.cit.*, p.5.

¹⁰⁴ (J. – M.) SINDAYIGAYA, *Burundi : Six décennies de suffrage universel. Quel bilan?*, without place : without editor, 2018, p.61.

¹⁰⁵ (G. P.) MPANGALA, *op.cit.*, p.13.

¹⁰⁶ Our own translation. (J. – M.) SINDAYIGAYA, *op.cit.*, p.64.

¹⁰⁷ BUYOYA Pierre, *Speech by the President of the Republic on the occasion of the presentation of the report of the Commission charged with studying the question of national unity*, 13 May 1989, Bujumbura.

¹⁰⁸ (S.) NTIBANTUNGANYA, *op.cit.*, p.87.

¹⁰⁹ *Idem*, p.88.

¹¹⁰ (S. J.) KPUNDEH, *Democratization in Africa: African Views, African Voices*, Washington, DC: The National Academies Press, "Project Report", 1992, p.18.

Burundi”¹¹¹. And by the 6th of October 1988, the official ceremony launching its work was underway¹¹².

The third group of actors are related to the question of the national elite since the First Republic, which has evolved around two asymmetrical and antagonist sides who have used ethnicity as their rallying symbol. This is one of the main reasons why there always seemed to be a continuum of narratives for the same events. After considering the ones that were relieved, following the killings in Ntega and Marangara, some voices have been singled out as representative of the thinking of their peers. The first ones to take a stand were the 27 signatories of the “open letter” that was sent to the President and diplomatic corps, on the 22nd of August 1988¹¹³. It was written by Deo Hakizimana, a journalist at *Renouveau* (a local media). When asked about the reason for this letter, the author emphasized the ghost of the killings of 1972 and how this time “Hutus” were not to be killed in anonymity¹¹⁴. The letter not only criticized the Government’s repression but also suggested ways to address the issue at hand with the creation of a special Commission and a reflection on a better integration of the “Hutu” ethnical community in the Burundian society¹¹⁵. The initiative was later described by diplomats as “very brave”, due to the risks taken by the signatories¹¹⁶. Indeed, many of them, afterwards, were arrested, tortured and imprisoned and as noted by former President Ntibantunganya, not a single case was brought before a court of law¹¹⁷. Their importance not only resonated in the way their letter was relayed profusely (nationally and internationally) but also in the way the ending of their detention could be used strategically as a proof of good faith by the government. During a meeting at the UN’s Human Rights Commission in February 1989, the representative of Burundi, Mr. Muyovu Grégoire, went to reassure the international community regarding their fears for the mishandling of human rights since the crisis of Ntega¹¹⁸. Regarding the open letter, he responded: “And not too long ago, on the 25th of January of this year, the President of the Republic has forgiven all the signatories of the open letter that was given to him on the 22nd of

¹¹¹ (S.) NTIBANTUNGANYA, *op.cit.*, p.88.

¹¹² (M.-L.) SIBAZURI (former Burundian Ambassador to the International Organization of the Francophonie), interview, realized by the author, Brussels, 21 May 2019.

¹¹³ Annex 2; (S.) NTIBANTUNGANYA, *op.cit.*, p.78.

¹¹⁴ (A. G.) BUKEYENEZA, *op.cit.*, p.12; This ghost was also underlined by the Church. (J.) PERLEZ, “Army May Have Added to Revenge in Burundi”, *The New York Times*, 29 August 1988, <https://www.nytimes.com/1988/08/29/world/army-may-have-added-to-revenge-in-burundi.html>, 7 June 2019.

¹¹⁵ (A. G.) BUKEYENEZA, *op.cit.*, p.12.

¹¹⁶ (J.) PERLEZ, *op.cit.*

¹¹⁷ (S.) NTIBANTUNGANYA, *op.cit.*, p.81.

¹¹⁸ (G.) MUYOVU, *Statement by Mr. Muyovu Gregoire, Minister of External Affairs (Permanent mission of Burundi to the UN Office in Geneva), before the 45th session of the Commission on Human Rights*, February 1989, Geneva, p.1.

August 1988. Therefore, all the people who were imprisoned following their signing of the letter have been freed right away”¹¹⁹. This case is illustrative of the asymmetry that was residing in Burundi’s society, when it came to ethnic tensions. There is one other major intellectual leader, who followed the same fate as the 27 signatories. Melchior Ndadaye, who was to become the first democratically elected President a few years later, as one of the initiators of the firstly clandestine party FRODEBU, he also took a stand after meeting with his inner circle¹²⁰. During one of the meetings organized by the government in its “pacification campaign”, in Gitega, on the 21st of October 1988, he addressed the issue of political leaders diluting individual responsibility into the larger collective one and how it was “nurturing unhealthy solidarities based on factors such as ethnicity, region or clan”¹²¹. The following day, he was arrested by agents of National Security at his home in Gitega and only released in January with the other “Hutu” intellectuals¹²².

Burundi having been transformed considerably since its colonization, its mutations culminated in the eighties to a State where institutions were composed almost exclusively of the “Tutsi” ethnical community. However, they avoided claiming to be the representatives of only their ethnic community and often referred to their narrative as being the population’s one. On the 15th of September 1988, seven professors of the University of Burundi took a position through what they called a “critical reflection” on the crisis that had just taken place¹²³. Addressing the causes which led to the escalation of violence they explored two arguments that they found out to be misconceptions: the “socio-economical oppression of the Hutu majority by the Tutsi minority” and “the absence of democracy”¹²⁴. Their argument was that tribal ideology was the only motive of all the crises that had been taken place over the previous 20 years¹²⁵. This had led the “Hutus” to try to convince popular opinion of their “eternal oppressed state” and of the “Tutsis” “eternal oppressor state”¹²⁶. Therefore, after defining ethnical ideology as being a form of racism, they called it out for the violence it led to and gave the advice of “carefully detecting and combatting it, no matter the category of victim”¹²⁷.

¹¹⁹ (G.) MUYOVU, *op.cit.*, p.7.

¹²⁰ (A. G.) BUKEYENEZA, *op.cit.*, p.21.

¹²¹ (S.) NTIBANTUNGANYA, *op.cit.*, p.81.

¹²² (A. G.) BUKEYENEZA, *op.cit.*, p.21.

¹²³ They were all « Tutsis ».

¹²⁴ (L.) KAGABO *et alii*, *A propos des récents événements de Ntega et de Marangara : A critical reflection*, Bujumbura, 15 September 1988, p.7.

¹²⁵ *Idem*, p.12.

¹²⁶ *Idem*, p.13.

¹²⁷ *Idem*, p.18.

The fifth actor which can be considered as an active voice following the 1980's violence, is the *Jeunesse Révolutionnaire Rwagasore (J.R.R.)* a movement which was associated with the ruling (and until then only) party, *UPRONA*. They were known for taking a stance against the open letter of the 27 and calling it a “negativist attitude”¹²⁸. In September 1988, in Belgium, a Burundian embassy's press release illustrated the state perception of their group. After reassuring the public on the reinstated peace in Northern Burundi, as many houses had been burnt by “terrorists on drugs”, the ambassador denied the accusations made on a Belgian television that *J.R.R.* had proceeded to arbitrary killings of students¹²⁹. This type of relationship between the authorities and the youth affiliated to the ruling party, based on mutual cover, has been a recurrent factor to this day.

The following actor was the most suspected for initiating the killings in the two provinces. Etienne Karatasi, a former President of the movement, said: “PALIPEHUTU wasn't created as a ‘pastime’ party, in an office, but in a refugee camp, like an answer to a real political situation which led the founding members to exile, to fleeing a homeland that had become an open-air prison to them”¹³⁰. It was one of the “resistance movement”, which emerged under the Second Republic and chose to put aside the issue of ethnicity and its consequences¹³¹. On April the 18th 1980, in the refugee camp of Mishamo in Tanzania, PALIPEHUTU was founded by Rémi Gahutu¹³². Eight years later, Ntega and Marangara were torn by violence and Buyoya clearly pointed out the movement. Karatasi shared another story¹³³. Allegedly, National Security had been spreading rumors of the imminent threat of a civil war and an upcoming invasion through the North, to shift the blame on them¹³⁴. The movement perceived that the policy chosen by the government was one of disqualification of their work in order to bring a halt to a possible “Hutu” mobilization¹³⁵. However, when the invasion didn't come, National Security had to infiltrate their organization in order to execute a strategy of: “provocation – reaction – oppression”¹³⁶. Moreover, one of the alleged reasons why the government was behind it all, was to be found in their fear of the “liberation philosophy” for the “Hutu” population,

¹²⁸ (S.) NTIBANTUNGANYA, *op.cit.*, p.180.

¹²⁹ *Press Release from the Government of Burundi*, September 1988, https://www.uantwerpen.be/images/uantwerpen/container2143/files/DPP%20Burundi/Justice%20Transitionnelle/événements%201988%20Ntega%20Marangara/GOB_Comm_0988.pdf, 7 June 2019.

¹³⁰ (A. G.) BUKEYENEZA, *op.cit.*, p.19.

¹³¹ *Idem*, p.15.

¹³² (P.) NKURUNZIZA, *La crise de Ntega-Marangara et ses conséquences*, Mémoire de Licence en Histoire, Bujumbura : Université du Burundi, June 2016, p.22.

¹³³ (A. G.) BUKEYENEZA, *op.cit.*, p.27.

¹³⁴ *Idem*, p.18.

¹³⁵ *Idem*, p.19.

¹³⁶ *Ibidem*.

which seemed to have been assimilated to the one taught by Catholic missionaries under the Second Republic¹³⁷.

Finally, civil society's voice wasn't yet to be considered as a counter balancing power but rather as a new born phenomenon¹³⁸. The Catholic Church was at that time made up of a majority of "Hutu", and the government had been trying to improve their relationship through Buyoya's efforts since the beginning of his leadership¹³⁹. After the crisis, they met up in a conclave and reached a consensus on the need for everything to be done without bloodshed¹⁴⁰. Not long after, they were associated with the search for unity as two of their members joined the ranks of the Commissioners: Stanislas Kaburungu and Evariste Ngoyagoye¹⁴¹. The media is another actor which played a role that affected the context, although much less nationally than internationally. As investigated by Barnabé, under the Second Republic the regime made it culpable for the media to share any dissenting opinion¹⁴². As the Ntega crisis was taking place in 1988, Burundi's society was still heavily influenced by the previous regime.

To conclude, all the actors and the interests they voiced played a role in the assessment made by the new regime of addressing the ethnic divide. Some expressed their support for an opening of public space, such as the individuals behind the Letter of the 27, the Catholic Church, the non-state actors and somewhat the President himself. Others expressed more fears and reluctance; this was the case for the military, the Jeunesse Révolutionnaire Rwagasore and the public media.

Type of regime and violence

For the period of '88, the events that took place seem to fall under the category of vertical violence. Moreover, in order to qualify it as such we have analyzed the following contextual criteria: a context of repression under an authoritarian regime, the importance of the offenders' motives and the importance of non-state actors' motives.

¹³⁷ *Idem*, p.20. The liberation philosophy was initially spread by the colonial power through its missionaries following the contemporary racial narratives.

¹³⁸ *Idem*, p.35 ; OAG, *Les consultations nationales au Burundi : Expériences acquises, défis et stratégies pour la mise en place des mécanismes de Justice Transitionnelle*, Bujumbura, Février 2009, p.43.

¹³⁹ (A. G.) BUKEYENEZA, *op.cit.*, p.22 ; (M.) BATTIATA, Burundi's majority Hutu get equal cabinet role, *The Washington Post*, 21 October 1988, https://www.washingtonpost.com/archive/politics/1988/10/21/buru...6-4eea-ae67-6f835eb76f76/?noredirect=on&utm_term=.0022dad00898, 7 June 2019. The Church had been persecuted by the previous regime; (A. G.) BUKEYENEZA, *op.cit.*, p.24.

¹⁴⁰ *Idem*, p.22.

¹⁴¹ *Ibidem*.

¹⁴² (J.-F.) BARNABE, « Les médias assassins au Burundi », in (R.) DE LA BROSSE (under the direction of), *Les médias de la haine*, Paris : La Découverte, 1995, p.56.

When it comes to the first factor, a project on the concept of democratization was conducted and gathered insights from Africans invited to various panels; they observed that the Great Lakes Region had fallen under “authoritarian one-party governments” and “dictatorial military regimes” during the 1960’s¹⁴³. Burundi itself has been characterized as authoritarian and applying an ostrich policy when it came to ethnicity under the regime led by President Bagaza¹⁴⁴. Under these circumstances, the context can rightfully be qualified as authoritarian.

The second factor is to be evaluated in the light of the people who were in power, in other words, the military. President Buyoya, who was also the President of the MCNS, defended the army’s actions in an interview, stating: “When people are killing, burning houses, sacking, raping, we can only intervene with the means, with force. This intervention leads inevitably to losses. Then there are dead and wounded people. These rebels when arriving further hide themselves as innocent people or say that they are innocent, that they did not do anything. It is extremely difficult to demonstrate the contrary. I think that in those circumstances one can understand that there are wounded people, and even bullet wounds”¹⁴⁵. This excerpt shows the vision adopted by the army in how to deal with the crisis. Indeed, as observed in a later research in 1991, the army as well as some members of the civil service didn’t believe in moderation in case of civil unrest; 1972 being the prime example of their understanding of dealing with a crisis¹⁴⁶. These elements reflect the logic of offenders who see context as a source of motives; especially since the legality of their action had never been questioned (e.g. killings of ‘72).

The third factor is explained by Mr. Karatasi, “At each step of this genocide against Hutus, Burundian authorities were sharing, by all means (radio, press, embassies...) that the enemies of the country had failed in their attempt to overthrow the State’s institutions thanks to the army who saved the endangered homeland. This language was perceived as being used to justify and cover the ongoing extermination of Hutus, or what Buyoya’s regime somewhat cynically called the pacification. August 1988 was the dreamed-of opportunity to destabilize and destroy the PALIPEHUTU whose determination to deliver the Hutu population had already been feared by the military regime of colonel Bagaza, and later on by that of Major Pierre Buyoya”¹⁴⁷. This illustrates the argument shared by some African observers on the state of Democracy in Africa, “where authoritarian governments had suppressed the evolution of an

¹⁴³ (G. P.) MPANGALA, *op.cit.*, p.13.

¹⁴⁴ (A. G.) BUKEYENEZA, *op.cit.*, p.4 & 22.

¹⁴⁵ « Après les événements de Ntega et Marangara : Le Chef de l’Etat rencontre la Presse Nationale et Internationale », *Le Renouveau du Burundi*, Bujumbura, 27 August 1988.

¹⁴⁶ (D.) RESS, *The Burundi Ethnic Massacres 1988*, San Francisco: Mellen Research University Press, 1991, p.98.

¹⁴⁷ (A. G.) BUKEYENEZA, *op.cit.*, p.19.

enabling environment, the transition process must start from below – by the people”¹⁴⁸. Confirming the hypothesis given in the theoretical framework, that Non-State Actors often see their actions as “politically-motivated violence” and “an unavoidable response to state violence”.

The depth of these opposite ideas expressed on the one hand by the military and on the other hand by the PALIPEHUTU will be explained in the section on “the weight of the representation of the country’s past” which will explain how these narratives emerged and were nurtured by each group.

Type of transition

The Commission of 1989 was set up during a transition initiated by reformers within the previous regime; as such, it is important to note that while not ending the regime it still managed to transform it in order to meet other expectations and needs. It was the case with President Buyoya, who after having been a member of the military for years, made a coup against the Second Republic’s leader and promised to bring change. The violence that took place over the summer of 1988 was the trigger to the developments that followed. On the one hand, Buyoya always stood by the statement that he intended to drive these changes from the beginning of his leadership. However, evidence shows that there were many factors that put pressure on the 3rd Republic’s Regime, both internal and external to the country, and which probably contributed greatly to the drastic changes.

Weight of the representation of the national past

The influence of ethnicity can be traced back to colonization. Indeed, since then, history has been told through two opposite perspectives developed by the ethnic communities. The emergence of the concept of ethnicity having been a cornerstone in Burundi’s evolution, we will now look at how it has influenced its history (what happened) and its mythology (people’s perception of what happened). Four periods have been chosen as a focus to evaluate the influence of the social categorizations. The first was the pre-colonial era as Burundi’s society without external classification handled different social constructs. The second was colonization under the Germans (1856-1916) and later on, Belgium’s mandate under the League of Nations

¹⁴⁸ (S. J.) KPUNDEH, *op.cit.*, p.15.

(1916-1961). The third period will be the turning point of independence and how the assassination of the country's leader Prince Louis Rwagasore gave rise to the ethnic divide. The last one will describe the evolution under the military governments and how ethnicity was often instrumentalized to obtain political power.

From the historical perspective, the pre-colonial era can be described as a unified monarchy under the *mwami* (king). As Lemarchand explained: "the crown acted as the single most important stabilizing element in the political system"¹⁴⁹. The social structures could be analyzed through various lenses from the clans to "*ubwoko*". The latter which has been called ethnicity by foreigners is the divide between *abahutu* (the "Hutus"), *abatutsi* (the "Tutsis") and *abatwa* (The "Twas") who could be found mixed together in the same clans¹⁵⁰. Chrétien explains that the relationship between "Hutus" and "Tutsis" was never constitutive of a so-called "social question", as most of the population lived under similar circumstances¹⁵¹. Baranyanka, in his book over the monarchy in Burundi, emphasized the fact that there was a certain level of porosity between the lineages of *Bahutu*, *Batutsi* and *Batwa*¹⁵². One being able to be moved from one lineage to another through official ceremonies conducted by the *Mwami*¹⁵³. Finally, as previously stated, and enshrined in the chapter on "Nature and Historical Causes of the Conflict" of the Arusha Agreement for Burundi, there were no known ethnic conflicts during that time period¹⁵⁴.

From the mythological perspective, the pre-colonial era was used in the construction of the "Hamite Myth" by colonial anthropology¹⁵⁵. Allegedly, "Tutsis" were defined as "Hamites" who came from Ethiopia or Egypt to impose feudalism on the "Hutus", who were defined as "Bantu negroes" from Congo, and who were considered naturally inferior¹⁵⁶. This theory was supported by arbitrary time periods given by the colonists regarding the colonization dates of the country by each ethnicity¹⁵⁷. This led to the transformation of the legacy of the pre-colonial

¹⁴⁹ (R.) LEMARCHAND, *Rwanda and Burundi*, London: Pall Mall Press, 1970, p.301.

¹⁵⁰ (C.) BARANYANKA, *op.cit.*, p.21.

¹⁵¹ (J. P.) CHRETIEN, *Hutu et Tutsi : un ethnisme sans ethnies*, « Regards Croisés », n°1, Goma : Pole Institute, December 1998, p.2.

¹⁵² (C.) BARANYANKA, *op.cit.*, p.21.

¹⁵³ *Idem*, p.22.

¹⁵⁴ APRA, Protocol I, Chapter 1, Article 1 (2).

¹⁵⁵ (P.) BUYOYA, *op. cit.*, p.54.

¹⁵⁶ (J. P.) CHRETIEN, *op.cit.*, p.2.

¹⁵⁷ (J.) MUGIRANEZA, *Les origines du problème ethnique au Burundi*, Bujumbura, November 1988, p.1; As such, colonial authorities' agency can be qualified as « conflict entrepreneurs » who « in an organized and concerted effort to construct the necessary conditions for conflict, (elites) attempt to deconstruct existing social norms of tolerance, non-violence and peaceful co-existence, put in place new norms of 'other' – directed violence reconstruct group identities into clearly defined dichotomies (...) ». (R.) JACKSON, *op.cit.*, p.180; As indicated in the Arusha Agreement "In the context of a strategy of «divide and rule», the colonial administration injected and imposed a caricatured, racist vision of Burundian society, accompanied by prejudices and clichés

era into “a social gap marked by a real racial obsession”¹⁵⁸. It is interesting to note that, one century after the beginning of colonization, this theory was still used to analyze social phenomenon taking place in Burundi. For example, elements of the Ntega crisis were described by foreign news outlet in this manner, “The minority Tutsi, a tall, North African people who migrated to Burundi more than 400 years ago, (...)”¹⁵⁹.

The colonial era lasted from 1856 until 1961 and led to massive changes in Burundi’s social dynamics. It can be presented in two major parts, the one under Germany’s occupation and the other under the Belgian one.

From the historical standpoint, explorers, such as Livingstone, had found the shores of Burundi in the early 19th century but the Germans started invading it in 1856, when the kingdom was ruled by King Mwezi Gisabo. The colonizing power was surprised by the degree of organization of what was then known as the “land of the moon’s mount”, which was allegedly inhabited by savage warriors. This racial vision was enough to justify European conquest¹⁶⁰. Germany created the German East Africa, which constituted of Tanzania Mainland, Burundi and Rwanda¹⁶¹. Their strategy to conquer the country was first to get rid of the ruler thanks to the help of members of his inner circle. However, as this proved to be non-conclusive, they chose to negotiate with the King. This is how the Burundian monarchy surrendered in 1903 with the Treaty of Kiganda, over 40 years after the beginning of Germany’s occupation¹⁶². Part of their colonial legacy in Burundi was their categorization of the Burundian people along the “ubwoko” (or “ethnic”) divide through arbitrary measuring factors such as physical traits or the number of cows one owned¹⁶³.

From the mythological standpoint, the story of the King’s son in-law’s betrayal, *Maconco*, is illustrative of the perceptions of the population then¹⁶⁴. In the Burundian cultural heritage exists the following summon: “*waramenje nka Maconco*” which resonates in popular knowledge as you’re among the worst traitors like *Maconco*¹⁶⁵. The man is known in Burundi’s stories as the one who betrayed his father in-law (the King) in support of the Germans with

relating to morphological considerations designed to set the different components of Burundi’s population against one another on the basis of physical characteristics and character traits”. APRA, Protocol I, Chapter 1, Article 2 (2).

¹⁵⁸ (J. P.) CHRETIEN, *op.cit.*, p.2.

¹⁵⁹ (M.) BATTIATA, *op.cit.*

¹⁶⁰ (J. P.) CHRETIEN, *op.cit.*, p.3.

¹⁶¹ (G. P.) MPANGALA, *op.cit.*, p.3.

¹⁶² (J. – M.) SINDAYIGAYA, *op.cit.*, p.14.

¹⁶³ (C.) BARANYANKA, *op.cit.*, p.20. ; APRA, Protocol I, Chapter 1, Article 2 (2).

¹⁶⁴ (S.) NTIBANTUNGANYA, *op.cit.*, p.54.

¹⁶⁵ (M.-L.) SIBAZURI, interview, *op.cit.*

whom he had made an alliance. This shows the perception of the Burundian people of the Germans, who were seen as the ultimate enemy, with ethnicity having no influence yet.

Belgium's entanglement with the history of the Great Lakes Region started earlier, after the Berlin Conference, in which King Leopold obtained personal ownership of the Congo. Therefore, when World War I ended, and the League of Nations confiscated Germany's colonies, it was decided to give Belgium a mandate over the kingdoms of Rwanda and Burundi, which formed one territory. The Second World War changed the status under which it had to be administrated, as being under a UN trusteeship¹⁶⁶. From 1918 until 1962, the colonial power used various tools to continue the strategy of divide and conquer: administrative reforms to give more privilege to the *Baganwas* (extended royal family), particularly from 1925 until 1933, which resulted in an effective cleansing by 1945 as there were no more "Hutu" chiefs and only few Tutsi ones¹⁶⁷; the creation of the Administrative School of Astrida to prepare future leaders as executors, which was based on discriminatory factors deepening social inequalities while privileging the minority of the royal family as well as Tutsi chiefs¹⁶⁸; the suppression of traditional religious roles often reserved to "Hutus"¹⁶⁹; etc. The wind of independence, which started blowing on the African continent in the fifties, changed the alliances as the Burundian elite started reclaiming their autonomy, leading the colonial authorities to search for leaders willing to compromise¹⁷⁰.

From the mythological standpoint, the story of *Inamujandi* shows a clear image of the resistance against colonial dominion¹⁷¹. She was known as a charismatic "Hutu" priestess, from the Ndora region, who organized a riot against the establishment (colonial power, missionaries, *Ganwas*...) in 1934¹⁷². Her cause was joined by over 3.000 people as the administrative reforms were erasing so much of the traditional spiritual life, next to the rearrangement of the political elites¹⁷³. Revolts and violence outbursts during that time period were still not influenced by the factor of "ethnicity" but rather by an external threat.

The third period is the one which surrounded the independence from colonial authority. Shortly after World War II, the Burundian elite was no longer reflecting on how to

¹⁶⁶ APRA, Protocol I, Chapter 1, Article 2 (1).

¹⁶⁷ (P.) BUYOYA, p.55; As Mamdani explains: the very category 'native' was legally dismantled as different groups of natives were set apart on the basis of ethnicity. (M.) MAMDANI, *When victims become killers: Colonialism, nativism, and the genocide in Rwanda*, New Jersey: Princeton University Press, 2002, p.24; APRA, Protocol I, Chapter 1, Article 2 (3).

¹⁶⁸ (P.) BUYOYA, *op. cit.*, p.55.

¹⁶⁹ *Ibidem* ; (J.) MUGIRANEZA, *op.cit.*, p.1 ; APRA, Protocol I, Chapter 1, Article 2 (5).

¹⁷⁰ (P.) BUYOYA, *op. cit.*, p.56; (G. P.) MPANGALA, *op.cit.*, p.3.

¹⁷¹ (S.) NTIBANTUNGANYA, *op.cit.*, p.54.

¹⁷² (J. – M.) SINDAYIGAYA, *op.cit.*, p.16.

¹⁷³ *Idem*, p.17.

accommodate with the colonial power but rather who was going to replace it¹⁷⁴. Sindayigaya, in his book “Burundi: six décennies de suffrage universel. Quel bilan?”, conducted an analysis of the political events that took place and how it affected society; from the “mushrooming”¹⁷⁵ phenomenon of political parties, to the right to vote for women obtained by Prince Louis Rwagasore (UPRONA’s leader) for the legislative elections of 1961, including the influence of the political game on the population¹⁷⁶.

From a historical perspective, the significance of the initial UPRONA is two-fold: on the one hand, its leaders foresaw and warned about the implication of the ethnic card on nation-building and on the other hand, they chose to fight for an immediate independence¹⁷⁷. The latter led to an exacerbation of the tensions with the colonial authority. It gave its full support to the PDC party of Louis Rwagasore’s cousin, Pierre Baranyanka, who advocated for a “prepared” independence¹⁷⁸. Notwithstanding these hurdles, on September 18th, 1961, Burundians chose to support the project of Prince Rwagasore whose agency convinced them to stand for unity. However, it was to be short lived as, less than a month later, he was murdered after what has been considered a conspiracy of the colonial authorities and leaders of the PDC party¹⁷⁹. From then on, the lack of ethical management and the choice of the political elites to put forward their own interests, led to the beginning of what can be characterized as an ethnicization of politics¹⁸⁰. It culminated on January 15th, 1965 with the assassination of the appointed “Hutu” Prime Minister Pierre Ngendadumwe¹⁸¹. Notably, institutional instability was the norm during that 4-year period under which five governments followed one another, and assassinations were arbitrarily handled by the Burundian authorities¹⁸². The ruling party, UPRONA, had been the stage of internecine wars since the assassination of its leader Rwagasore¹⁸³ and the monarchy’s power was becoming less and less effective due to delegations of powers towards the military¹⁸⁴; this led to the beginning of the era of military States.

From a mythological perspective, this 3rd period can be characterized by the decline of society’s belief in unity among Burundians. After many external attempts to break what had

¹⁷⁴ *Idem*, p.18.

¹⁷⁵ Which was translated as: “a sudden rise in creation of political parties”. *Idem*, p.20.

¹⁷⁶ *Idem*, p.28.

¹⁷⁷ (S.) NTIBANTUNGANYA, *op.cit.*, p.55; (P.) BUYOYA, *op.cit.*, p.57.

¹⁷⁸ (S.) NTIBANTUNGANYA, *op.cit.*, p.55.

¹⁷⁹ (J. – M.) SINDAYIGAYA, *op.cit.*, p.37.

¹⁸⁰ (G. P.) MPANGALA, *op.cit.*, p.10.

¹⁸¹ (J. – M.) SINDAYIGAYA, *op.cit.*, p.46.

¹⁸² *Idem*, p.40; (L.) BARARUNYERETSE, *Rapport de la Commission nationale chargée d’étudier la question de l’unité nationale*, Bujumbura, Avril 1989, p.77.

¹⁸³ (P.) BUYOYA, *op. cit.*, p.58.

¹⁸⁴ (J. – M.) SINDAYIGAYA, *op.cit.*, p.49.

been uniting Burundians for centuries, the first crack came about when the PDC party became a synonym of *abamenja*, or “the tridimensional ‘betrayal-rebellion-vile assassination’”¹⁸⁵. The assassination of the royal leader of UPRONA was associated with the same type of betrayal as the one that came about with *Maconco* decades earlier. Furthermore, it marked the last chapter of a ruling monarchy in the country. Another key point that deeply affected people’s perceptions took place after the assassination of Ngendadumwe, when a group of intellectuals identified as “Hutu” attempted a Coup in October 1965¹⁸⁶. The major consequence of that event was probably the beginning of a divided history between the “Hutu and Tutsi” communities. Some felt like Mugiraneza, who explains how that failed Coup led to a hardening of “Tutsis” as they saw “Hutu” extremists as considering power only in an exclusive manner¹⁸⁷. However, as observed in the report of the Commission of 1988, the ethnic fear was already present following the emergence of a Republic led by the radical party PARMEHUTU in Rwanda, in 1961, and all the ethnic killings that resulted from it. Therefore, “the temptation for some and the fear for others were crystallized in 1965, the true turning-point in Burundi’s recent history”¹⁸⁸. “For the first time in the country’s history, Burundians die(d) from the simple fact of belonging to one ethnic group”¹⁸⁹.

Historically, the fourth and last period is the one of Military Regimes which started with the establishment of the First Republic by Michel Micombero in 1966. Former President Ntibantunganya qualified that period as one of “a true military-civil oligarchy”, branded by an ideology and practices which could be associated with genocide, in Burundian politics¹⁹⁰. The Second Republic came after the Coup of Jean-Baptiste Bagaza in 1976 and ended with the Coup of Pierre Buyoya in 1987. After the traumatic events of 1972, President Bagaza chose to lead a developmentalist policy based on economic development and focused on being Burundian before anything else¹⁹¹. The journey was filled with many hurdles which included a major clash with the influential Catholic Church¹⁹². The 3rd Republic ended up dealing with the question of unity due to many factors which included: the resurgence of multipartism in Africa, the crisis of Ntega-Marangara the following summer and the unaddressed issue of ethnicity.

¹⁸⁵ *Idem*, p.37.

¹⁸⁶ (J.) MUGIRANEZA, *op.cit.*, p.2.

¹⁸⁷ *Ibidem*.

¹⁸⁸ (L.) BARARUNYERETSE, *op.cit.*, p.83.

¹⁸⁹ *Idem*, p.93.

¹⁹⁰ (S.) NTIBANTUNGANYA, *op.cit.*, p.56.

¹⁹¹ Interestingly, it is also the path President Paul Kagame of Rwanda chose after the genocide of 1994.

¹⁹² (S.) NTIBANTUNGANYA, *op.cit.*, p.57.

Mythologically, the era of Republics is filled with events that have deepened the ethnic divide in the collective memory. One of the reasons for the downfall of the First Republic's institutions resulted from the handling of attempted Coups when the perpetrators were "Hutus" or "Tutsis". As described by the Commission of 1988, "Hutu" suspects were convicted and shortly after executed following the trial of 1969; while "Tutsi suspects" were convicted following the trial of 1971 but benefited from the Presidential pardon¹⁹³. Nevertheless, the cornerstone of separate ethnical perceptions of history came after the horrors of 1972. Various narratives have been presented on the events that took place that spring, and unfortunately, there is still no official report that does not shy away from the truth with regard to the responsibilities on all sides. The Commission of 1988 presented the events as two-fold. First, killers who seemed to have been trained to kill "Tutsis" as enemies of the "Hutus" brought desolation in various regions: Rumonge, Nyanza-Lac, West Bujumbura, Central Gitega and Eastern Cankuzo. Second, in retaliation, the army and some civilians conducted a severe repression on the "Hutu" elite, notwithstanding the army's responsibility to protect every citizen¹⁹⁴. As warned about in the Panel on Issues in Democratization of 1992, "There are difficulties in affecting democratic transitions in Africa when there are people who can and are playing the ethnic game of winner take all with guns"¹⁹⁵. Most of the population did not take part in the killings but every family was affected by it. Afterward, the "Hutu" mythology was built on ideas such as "the army was looking for opportunities to launch new massacres"¹⁹⁶. Meanwhile, the "Tutsi" mythology was nourished by explanations as follows: "(...) after each genocide attempt on the "Tutsis", they had self-defence reactions. Which have led them to influence more and more the State apparatus and party"¹⁹⁷. Buyoya's observation of the contemporary tensions captures the intensity of the ethnic divide: "Fear is a normal phenomenon for individuals as for societies. It's the expression of the fundamental need for security. Insecurity is always experienced as the symbol of death. And security is perceived as the symbol of Life. However, if this fear exceeds a certain dose, it becomes pathological and the most dangerous enemy of a society's balance. Indeed, a society that is prey to fear will disintegrate"¹⁹⁸. To summarize, the creation of antagonist identities was one of the most harmful remnants of the colonial legacy¹⁹⁹.

¹⁹³ (L.) BARARUNYERETSE, *op.cit.*, p.96.

¹⁹⁴ *Idem*, p.97.

¹⁹⁵ (S. J.) KPUNDEH, *op.cit.*, p.18.

¹⁹⁶ (A. G.) BUKEYENEZA, *op.cit.*, p.4.

¹⁹⁷ (J.) MUGIRANEZA, *op.cit.*, p.3.

¹⁹⁸ (P.) BUYOYA, *op. cit.*, p.64.

¹⁹⁹ Our translation. (L.) BARARUNYERETSE, *op.cit.*, p.100.

Burundi's "official" past is still being nourished by present initiatives to find out the truth about the events that took place. Mechanisms such as a Truth Commission are dependent on the contexts in which they are set; understanding where the country came from allows us to better understand the choices of the rulers in the Commission's formula.

2. International Context

We will now take a look at factors that came from the regional environment as well as the "international community" and influenced the events of 1988.

Region

In the case of Burundi, its region is what is commonly called the "Great Lakes Region". It has been a versatile concept that links countries on basis of their connections to Lakes Victoria and Tanganyika. Depending on interests, it has included more or fewer countries. The current perspective considers this territory as being made up of Burundi, Kenya, Rwanda, the Democratic Republic of Congo (DRC), Tanzania and Uganda²⁰⁰. The neighboring countries of Burundi being Rwanda, the DRC and Tanzania, these will be our main focus as there seems to be a phenomenon of communicating vessels among them. One factor common to the three countries was the importance of refugee flows after crises as documented by international instances²⁰¹. With regard to the crisis of 1988, DRC and Rwanda are of particular interest when it came to their involvement. Burundi always shared geopolitical and geostrategic interests with the Democratic Republic of Congo, particularly from the period of independence onwards, with the death of charismatic leaders that left great political voids partially filled by military regimes²⁰². Shortly after the beginning of the clashes of 1988, Mobutu was the first to convene an urgent meeting through the regional organization for the Great Lakes Region. It brought him together with the leaders of Burundi and Rwanda, in order to find a solution²⁰³. Rwanda's relationship with Burundi wasn't as collaborative. Often mistaken as fake twins, the perceptions on each country's development has kept on influencing the other, in spite of their substantially

²⁰⁰ It is the result of historical developments. (G. P.) MPANGALA, *op.cit.*, p.2.

²⁰¹ Annex 4.

²⁰² (P.) NKURUNZIZA, *op.cit.*, p.12.

²⁰³ *Idem*, p.75.

different pasts²⁰⁴. One interesting element, in the relationship between the countries, is the development of a “Hutu” dominant power in Rwanda under Kayibanda and a “Tutsi” dominant power in Burundi under Micombero²⁰⁵. This is one of the main reasons why the Burundian government was suspicious of Habyarimana’s Rwanda when it came to its support to the “Hutu” killers of Ntega in ‘88²⁰⁶. Lastly, Rwanda’s news outlets also added fuel to the fire with their media coverage of the event taking place at the Rwandan-Burundian frontier, which was seen by the Burundian government as “extrapolation”²⁰⁷. All things considered, the region can be seen as a source of both instability and unity when it comes to the actions taken by the states following the incidents of 1988.

International Community

Belgium’s colonial past heavily influenced the perceptions of ethnicity that were strongly defended by radicals in one or the other community, therefore feeding the development of violence. Nonetheless, during the episode of 1988, it played a role in the support of human rights as its Minister of Foreign Affairs, Leo Tindermans, suggested setting up an international commission of inquiry to investigate the alleged human rights violations²⁰⁸. Consequently, as the Burundian government unequivocally refuted that narrative, the former colonists were perceived as sympathizers of radical “Hutu” lobbies instead²⁰⁹. In contrast, the Burundian Embassy in Belgium issued a press release that gave another standpoint: “Calm reigns in the North of Burundi. (...) Many houses have been burnt by drugged terrorists”²¹⁰.

Other positions were expressed through a European Parliamentary motion and an American Congressional Resolution which contained similar messages to the Burundian government: condemning “an iniquitous system of ethnic domination” and asking for an impartial investigation as well as substantial change with regard to discrimination against “Hutus”²¹¹. When it came to NGOs, Amnesty International published a report identifying the

²⁰⁴ *Idem*, p.11; Interestingly, an experience was conducted by the NGO RCN Justice and Democracy: “Memory, Diaspora and Youth” where young people from various background shared their experiences on dealing with their country of origin’s violent past. Perceptions of the historical developments were very different when it came to youth of Burundians or Rwandans descent.

²⁰⁵ *Idem*, p.14.

²⁰⁶ (A. G.) BUKEYENEZA, *op.cit.*, p.27.

²⁰⁷ (P.) NKURUNZIZA, *op.cit.*, p.76.

²⁰⁸ (A. G.) BUKEYENEZA, *op.cit.*, p.28.

²⁰⁹ *Ibidem*.

²¹⁰ *Press Release from the Government of Burundi*, September 1988, *op.cit.*

²¹¹ (P.) NKURUNZIZA, *op.cit.*, p.77 & 78.

orders given to the military as “not only to bring an end to disorder, but also to carry out massive executions of members of the “Hutu” community”²¹². For this reason, the Burundian ambassador to the UN’s Commission on Human Rights, Grégoire Muyovu, shared a statement on behalf of his country to the organization repeating the categoric refusal of his government to accept the appointment of a special rapporteur mandated to investigate the alleged Human Rights violations²¹³. With this in mind, the Burundian government made a reference to this aborted attempt to have an international mechanism investigate its past. In his speech at the closing ceremony of the work of the Commission of 1988, President Buyoya said: “The work you have accomplished is of high range. The objective analysis, constructive proposals, thoughtful recommendations that are included in your report, testify, if there was any need, of our intrinsic abilities to apprehend our problems ourselves, to recommend appropriate solutions, without any supervision”²¹⁴. This issue of proving the ability, of the Burundian state, to conduct its own investigations after human rights violations will become a recurring factor.

Scholars found out that the growing relationship of dependency of Africa on foreign aid was a factor that could lead aid agencies to influence policy making more heavily²¹⁵. This appeared to be particularly accurate with the crisis of 1988 and the choices made by the World Bank. As Burundi seemed close-minded when it came to an investigation of the violence that took place, they decided to send a “mission for listening and dialogue”. It was their first attempt to align programs of structural adjustments to the new preoccupations of “good governance”²¹⁶. The leader of the mission was Mr. Jean-Louis Sarbib. In a later interview, he recalled that after the field work, a report was released: “For us to recommend the continuation of the program of the Bank, the test would be a quick and massive return of the refugees. And that’s why, we advised him to make a certain number of symbolic gestures that proved a firm commitment to reconciliation (...)”²¹⁷.

Lastly, international press agencies also played a prominent role as they gave visibility to the killings which were not new to Burundi, but which this time were not to go unnoticed. As analyzed by one of the French researchers who came right after the killings to conduct field research, Burundi attracted international attention particularly due to “a context of momentary

²¹² Our translation. (S.) NTIBANTUNGANYA, *op.cit.*, p.72.

²¹³ (G.) MUYOVU, *op.cit.*, p.8.

²¹⁴ (P.) BUYOYA, *Speech by the President of the Republic on the occasion of the presentation of the report of the Commission charged with studying the question of national unity*, 13 May 1989, Bujumbura.

²¹⁵ (S. J.) KPUNDEH, *op.cit.*, p.31.

²¹⁶ (A. G.) BUKEYENEZA, *op.cit.*, p.26.

²¹⁷ *Idem*, p.31.

availability of the profession in that month of August”²¹⁸. Nonetheless, they contributed like the Rwandan media to an exacerbation of the ongoing narratives. As correspondents investigating the subject would share one or the other side depending on where they began their journey, Bujumbura or Kigali²¹⁹.

Given these points, we can see the influence of the international community as being mostly supportive of the respect of human rights in Burundi²²⁰. In conclusion, we agree with the following statement that sums up the context that led to the establishment of the Commission of 1988: “the impact of internal events within some African countries, coupled with external pressures from donors, had direct and indirect effects on the democratization process”²²¹.

3.Mandate

²¹⁸ (P.) NKURUNZIZA, *op.cit.*, p.76.

²¹⁹ (A. G.) BUKEYENEZA, *op.cit.*, p.26.

²²⁰ (P.) NKURUNZIZA, *op.cit.*, p.89.

²²¹ (S. J.) KPUNDEH, *op.cit.*, p.6.

Table 1. Analysis of the Mandate.

Mandate	Commission on the Research of Peace and Unity in Burundi
Objective	“To undertake in-depth investigations on the question of national unity in Burundi in its historical and socio-cultural foundations, to identify its evolution, the reasons and expressions of the divisions that counteract it in order to suggest efficient solutions to reinforce it” ²²² .
Period of operation	No time frame given <i>ex ante</i> . It operated between the 4 th of October 1988 and late 1991 on the mission given by the President; with the report presentation in April 1989.
Period of time under investigation	From Burundi’s historical foundations to the contemporary period of the Commission ²²³ .
Types of violation under investigation	Those that can be identified as destabilizing factors to national unity ²²⁴ .
Functions	In camera research and debates of the Commissioners 3 days a week, followed by weekly reports ²²⁵ . Investigate the unity of Burundi through the use of pragmatism and contemporary socio-political data’s ²²⁶ .
Power	No data.
Sanctions	No data.

²²² (S.) NTIBANTUNGANYA, *op.cit.*, p.89.

²²³ (L.) BARARUNYERETSE, *op.cit.*, p.14.

²²⁴ *Ibidem*.

²²⁵ (M.-L.) SIBAZURI, interview, *op.cit.*

²²⁶ (L.) BARARUNYERETSE, *op.cit.*, p.14.

Final Report	No data were formally given with regard to its components and the way it should be issued. However, it should be noted, that the official report of April 1989, although appreciated by the ruling authority, received many critiques including from former Commissioners themselves. In his recent book, former Commissioner Mr. Ntibantunganya noted a particular element with regard to the Commission's work as "the majority of the members' worry seemed only to be finding a way to avoid that the party UPRONA would be accused of having responsibilities in the tragedy that Burundi had been enduring until then"²²⁷. Moreover, in a recent interview, former Commissioner Mrs. Sibazuri shared another perspective on the Commission's work. After hard voluntary work each week, they had managed to put together about a thousand-page long report that they managed to synthesize in around 300 pages²²⁸. Regardless, the Commission's President has produced, in their name, "an empty report" which none of the Commissioners agreed to sign afterwards²²⁹. Which Mrs. Sibazuri describes as: "They have made us believe that we were a technical commission, while in reality we were a political instrument, an instrument of the authorities"²³⁰.
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NB: In the late eighties, the Burundian State was working with a lack of transparency and therefore did not disclose the typical description and rules, that would apply to a Truth Commission, in the constituting decree issued by the President of the Republic on October 4th, 1988²³¹. Instead, as explained by a former Commissioner, Mrs. Sibazuri, the President shared an inauguration speech on basis of which the Commissioners got the 'in depth' understanding of what was expected from them. This research being made in Belgium, with limited resources, it was decided to draw the elements normally constitutive of a mandate from the speech excerpts that were found in either articles or the Commission's report introduction.

²²⁷ (S.) NTIBANTUNGANYA, *op.cit.*, p.90.

²²⁸ (M.-L.) SIBAZURI, interview, *op.cit.*

²²⁹ *Ibidem.*

²³⁰ *Ibidem.*

²³¹ Annex 3.

IV. Second Case Study: The Truth and Reconciliation Commission for Burundi

“How can we deal with a process if both parties pursue different objectives under the label of reconciliation?” – Valérie Rosoux²³²

While the first official attempt at unveiling the truth about Burundi's troubled past came through the Commission of 1988, in this chapter, we will now look at the second undertaking which was initially produced in a regional context through a peace process. This change of contextual factors affected the balance of power. Additionally, the rising use of truth commissions and their international recognition as a substantial part of peace processes affected the formality that was present in the Commissions' mandates.

1. National context

The national context will be studied through its influence on the three major legal sources which moulded the TRC. First, the context of civil war, consequential to the assassination of the first democratically elected President, led to the second major historical impulse to seek an understanding of the collective past, in the Arusha Agreement. Next, the second mandate of Nkurunziza, and the developments that surrounded it, will shed a light on the mandate given in the law of 2014. Third, the escalation of violence that took place after the political crisis surrounding the President's third mandate, will bring the final insights to investigate the influence of context on the mandate that was renewed in the law of 2018.

Actors

'Arusha'

The first pool of actors to be singled out are the ones related to the quest for peace, following President Ndadaye's assassination, and the civil war that resulted. Moreover, this

²³² (V.) ROSOUX, *International Negotiation*, Résumé du cours, Louvain-La-Neuve : UCLouvain, 2019, 100 p.

context of violence saw the emergence of new actors and the power dynamic was substantially affected as will be demonstrated.

Officially, the national actors who contributed to the reflection on peace and reconciliation and signed the APRA, were 19: the Burundian Government, the Burundian National Assembly, ABASA party, ANADDE party, AV-INTWARI party, CNDD party, FRODEBU party, FROLINA party, INKINZO party, PALIPEHUTU party, PARENA party, PIT party, PL party, PP party, PRP party, PSD party, RADDES party, RPB party, UPRONA party²³³. As mentioned by observers, among this plethora of entities, however, the debate was based on two opposing line of arguments: the ones arguing for the “respect of the democratic opening”, more reassuring to the “Hutus” and the others arguing for a “measured opening” that would keep enough guarantees to protect the “Tutsis”²³⁴. By the same token, Gatavu described the dynamic as one of 2-star performers; namely the political parties of UPRONA and FRODEBU, combined with satellites who represented more extreme versions of the main protagonists’ narratives²³⁵.

Let’s now take a closer look at the position taken by the two major political actors. As explained in the first chapter, UPRONA is the political party which Burundi inherited from the national hero of the Independence. Initially set up to represent the interests of Burundians as a whole; it has substantially derailed from its initial values under the “one-party” military regimes which has led it to be more focused on the “Tutsi” Community’s protection. Yet it remained the most influential political actor until the nineties elections. Following the multiparty wind of change, after the fall of the Berlin wall, as well as internal pressures; former President Buyoya organized the first democratic elections in 1993. FRODEBU, which had started clandestinely, became legalized as a political party in 1992 and made its grand debut during the elections of ‘93. It won the legislative ones with 80.24% and its leader Melchior Ndadaye defeated Pierre Buyoya with 64.79%²³⁶. As portrayed in Burundian literature, these elections were seen by many as opposing representatives of the establishment on one side and of progress on the other²³⁷. In like manner, Burundi’s population showed its readiness for progress. Later, during

²³³ APRA, Signatory parties, p.6-11.

²³⁴ OAG, *op.cit.*, p.44; (S.) VANDEGINSTE, “Burundi’s Truth and Reconciliation Commission: How to Shed Light on the Past while Standing in the Dark Shadow of Politics?”, *The International Journal of Transitional Justice*, 2012, p.3.

²³⁵ (A.) GATAVU, « Le processus de paix inclusif, un défi pour une paix durable au Burundi », October 2017, <https://www.researchgate.net/publication/320353526>, 5 March 2018, p.13.

²³⁶ (W.) NINDORERA, *Le CNDD-FDD au Burundi : Le cheminement de la lutte armée au combat politique*, Berlin : Berghof Fondation, « Berghof Transition Series », 2012, p.12; (J. – M.) SINDAYIGAYA, *op.cit.*, p.80 & 84.

²³⁷ (M. – L.) SIBAZURI, *Les seins nus*, Bruxelles, Juin 2013, p.60.

the institutional crisis that took place, from the beheading of the nation's leadership in '93 until the signing of the APRA in 2000, FRODEBU's influence started to decrease²³⁸. This last element orients us towards an analysis of some of the most influential protagonists of the civil war.

Indeed, after Ndadaye's assassination, several armed groups emerged to face the army's repression as documented by the International Crisis Group²³⁹. It demonstrates one of the claims made with regard to structures' influence on the agents; that "structural conditions provide the human raw material for initiating and sustaining organized violence"²⁴⁰. The most prominent ones were: FROLINA, under the leadership of Joseph Karumba, which had about 1000 combatants and was mostly based in the refugee camps of Tanzania since the eighties. One FNL branch was under the leadership of Etienne Karatasi and had about 450 combatants, who collaborated with the Mai-Mai in Eastern DRC. The other FNL branch which was under the leadership of Cossan Kabura, and had about 1000 combatants, came mainly from the North of Burundi and included many who had been refugees in Rwanda. Last, the FDDs had about 16 000 combatants in its two formations under Leonard Nyangoma and Jean-Bosco Ndayikengurukiye. Initially, they were politico-military entities, however, internal issues lead some of them to separate. For this reason, FNL and FDD were divided respectively in 1992 and 1998. The constitution of these groups played a major role in the balance of power that resulted during the civil war. An example of this recognition can be found in former President Ntibantunganya's epilogue of his latest book. He dedicated a paragraph to honouring the memory of those who joined the armed forces, after the Coup of the 21st of October 1993, as "anonymous heroes"²⁴¹. Last, the issue of division among the CNDD and PALIPEHUTU is of great importance as it led to the isolation of the dissenting branches who held the largest influence on the fighting ground²⁴². Indeed, the APRA mentions as signatories only the branch of CNDD under Nyangoma's leadership as well as the branch of PALIPEHUTU under Karatasi' leadership²⁴³. This has had major consequences for the future of the APRA, in particular since the dissenting branches have been the leading actors of the implementation

²³⁸ Annex 5.

²³⁹ *L'effet Mandela : Évaluation et perspectives du processus de paix burundais*, Bujumbura/Nairobi: International Crisis Group Central Africa, « Report », n°13, 18 April 2000, p.27.

²⁴⁰ (R.) JACKSON, *op.cit.*, p.179.

²⁴¹ (S.) NTIBANTUNGANYA, *op.cit.*, p.622.

²⁴² (H.) WOLPE, *Making peace after genocide: Anatomy of the Burundi process*, Washington, DC: United States Institute of Peace, "Report", n°70, March 2011, p.69.

²⁴³ APRA, Signatory parties, p.9-10.

phase. This confirms Rosoux' observation that: "Some actors, in the future, may not agree with the efforts consented by their predecessors"²⁴⁴.

In view of the developments that have taken place during the civil war and onward, we choose now to cover a few elements of the CNDD-FDDs genesis thanks to the research of Willy Nindorera. Firstly, the guerrillas' origin can be traced to shortly after the beheading of the Burundian government in 1993, when some dissident FRODEBU members decided to organize themselves for protection²⁴⁵. However, its official creation only took place about a year later. When former cabinet member (from the FRODEBU party), Leonard Nyangoma, came back from his pathfinder mission in Europe and FRODEBU's request for a UN intervention was declined²⁴⁶. At the same time, the conclusion of the Convention of Government of 1994 (between various political parties) that weakened FRODEBU's power, was another motivating element that drove some of its members into the ranks of CNDD. Secondly, the movement had initially two main objectives: the restoration of respect for the institutional legality that resulted from the '93 elections and the transformation of the army's mission from the protection of the "Tutsi" Community to the protection of the Burundian nation as a whole²⁴⁷. Thirdly, leadership problems were at the root of the internal division of the rebellion. As Nyangoma was heavily criticized for being too detached from the reality of the battle, Jean-Bosco Ndayikengurukiye, thanks to the support of the influential Hussein Radjabu, took over power in 1998²⁴⁸. From then, the Arusha peace talk under President Nyerere's lead continued only with the branch of Nyangoma while the other branch changed its name to CNDD-FDD²⁴⁹. However, due to another lack of understanding of the management style needed for the rebellion, Pierre Nkurunziza, with the backing of Radjabu, overthrew Ndayikengurukiye in 2001²⁵⁰. Lastly, it should be noted that CNDD's branches owed their efficiency to the material and moral support they received from the rural population (mostly "Hutu")²⁵¹.

In summary, the different actors who influenced the context that led to the Arusha Agreement tried to influence the substance that was being given to the concept of reconciliation in order to protect their interests from perceived and experienced threats.

²⁴⁴ Our translation; (V.) ROSOUX, "Transférer le conflit d'un niveau militaire à un niveau politique. Expériences de négociations et de médiations internationales », *Négociations*, 2004, vol.2, n°2, p.128.

²⁴⁵ (W.) NINDORERA, *op.cit.*, p.13; (S.) VANDEGINSTE, "Negotiating and sharing-power: Burundi's bumpy road to reconciliation without truth", *op.cit.*, p.189.

²⁴⁶ (W.) NINDORERA, *op.cit.*, p.15.

²⁴⁷ (W.) NINDORERA, *op.cit.*, p.15.

²⁴⁸ *Idem*, p.16.

²⁴⁹ *Idem*, p.17.

²⁵⁰ *Ibidem*.

²⁵¹ *Idem*, p.18.

The 14 years that took place after the signing of the APRA led to a renewed understanding of an appropriate Truth Commission, with varying essential components. The variations under the different leadership teams gave way to distinct preferences in the national contexts. Firstly, from 2000 to 2005, during the transitional phase which ended with August's elections of 2005. Secondly, from 2005 to 2010, the period during which the former rebel movement CNDD-FDD, under the leadership of Pierre Nkurunziza, won its first mandate in the Burundian institutions. And lastly, the period of the 2nd mandate of President Nkurunziza. It's important to bear in mind that the domestic context was heavily influenced by the international one, in particular the various interactions between the Burundian government and the UN.

2000 – 2005

When it comes to the first period, as agreed upon within the peace accords, a transitional government was set up to prepare the country for its new path to elections and democracy²⁵². During the first phase, under Buyoya's leadership, the launch of the talk on transitional justice mechanisms was set up through his letter to the UN Secretary General, on July 24th of 2002²⁵³. It encompassed a request for the establishment of an International Judicial Commission of Inquiry for Burundi. Domestically, the road to peace-making was still ongoing and his government managed, the same year, to sign a ceasefire agreement with two rebellions: the CNDD-FDD of Jean-Bosco Ndayikengurukiye and the FNL of Alain Mugabarabona²⁵⁴. As negotiated under the mediation of Mandela, Buyoya's lead on the Transitional Government was transferred in 2003 to Domitien Ndayizeye (from FRODEBU) for the remaining part of the mandate²⁵⁵. Shortly after, the authorities managed to sign the Pretoria Protocol on

²⁵² (K. A.) BENTLEY, (R.) SOUTHALL, *An African peace process: Mandela, South Africa and Burundi*, Cape Town: Human Sciences Research Council Press, "Report", 2005, p.91.

²⁵³ (K.) ANNAN, *Letter dated 11 March 2005 from the Secretary-General addressed to the President of the Security Council*, New York: United Nations Security Council, "Kalomoh Report", S/2005/158, 11 March 2005, p.3.

²⁵⁴ (K. A.) BENTLEY, (R.) SOUTHALL, *op.cit.*, p.93; (A.) GATAVU, *op.cit.*, p.3.

²⁵⁵ (K. A.) BENTLEY, (R.) SOUTHALL, *op.cit.*, p.95.

November 2nd, 2003 with CNDD-FDD represented by Pierre Nkurunziza²⁵⁶. In the meantime, on December 27th of 2004, a law was enacted to establish a National Truth and Reconciliation Commission; however, it never got implemented. It was later justified by Clotilde Niragira (then Minister of National Solidarity, People's rights and gender) that, shortly after, the UN published the Kalomoh Report which got validated in the UNSC's Resolution 1606²⁵⁷. The following year, the legislative and presidential elections turned the tables in favor of CNDD-FDD²⁵⁸. After a legal accreditation by the minister of the Interior in January that same year, the party won the elections with Pierre Nkurunziza as President; this, as observed by Vandeginste, marked "a return to quasi single party rule"²⁵⁹. Some saw in that new start the potential of a shaky system which did not differ much from previous mono-party regimes²⁶⁰. And others, even warned about the potential for "rebel mentality" to keep harming politics onwards, because of the fostering of "a winner takes all approach to elections"²⁶¹.

2005 – 2010

Although this period was one of ongoing conflict with the FNL rebellion, which was often used as a justification for the delays in the implementation of the mechanisms, some political parties took a position on the subject and some parliamentary developments led to the reinforcement of the ruling party's grip on the legislative process²⁶². With regard to the FNL, an agreement on the cessation of hostilities was signed and it became registered as a political party on April 22nd of 2009²⁶³. Some political parties published their memorandum during the first mandate of President Nkurunziza, the CNDD and the CNDD-FDD. The former, under the leadership of Léonard Nyangoma, insisted on the government's determination to maintain a

²⁵⁶ "The Pretoria Protocol on outstanding political, defense and security power sharing issues in Burundi", 2 November 2003, Pretoria.

²⁵⁷ Which advised for a different formula of transitional justice mechanisms. (C.) NIRAGIRA, *Réponses aux questions adressées à la ministre de la Solidarité Nationale, des Droits de la Personne Humaine et du Genre sur le Projet de loi portant « création, mandat, composition, organisation et fonctionnement de la Commission Vérité et Réconciliation »*, Bujumbura : Commission of Justice and of Human Rights of the National Assembly, « Report », 17 October 2013, p.1.

²⁵⁸ *Élections au Burundi : Reconfiguration radicale du paysage politique*, Nairobi/Bruxelles : International Crisis Group, « Briefing », n°31, 25 August 2005, p.15 ; (J. – M.) SINDAYIGAYA, *op.cit.*, p.136 – 143.

²⁵⁹ (W.) NINDORERA, *op.cit.*, p.29; (S.) VANDEGINSTE, "Burundi's Truth and Reconciliation Commission: How to Shed Light on the Past while Standing in the Dark Shadow of Politics?", *op.cit.*, p.4.

²⁶⁰ (A.) GUICHAOUA, (E.) NTAKARUTIMANA, (S.) STRAUS, « Aspirations Démocratiques et « Démocraties Autoritaires » en Afrique Centrale », *Revue Tiers Monde*, 2016, vol. 4, n°228, p.13.

²⁶¹ (A.) BOUTELLIS, "No More Talking of Rebels in Burundi", *International Peace Institute*, 11 January 2013, <https://theglobalobservatory.org/2013/01/no-more-talking-of-rebels-in-burundi/>, 20 June 2018.

²⁶² (S.) NTIBANTUNGANYA, *op.cit.*, p.564.

²⁶³ (J. – M.) SINDAYIGAYA, *op.cit.*, p.158.

state of confusion between the roles attributed to the International Criminal Tribunal and the TRC, therefore recommending a clear separation of the matters that would fall under each mechanism's scope²⁶⁴. The latter, under the leadership of Jérémie Ngendakumana, showed the ruling party's interest in an understanding of the concept of reconciliation in the same fashion as the one applied in the South-Africa Truth and Reconciliation Commission. As, from their perspective, it pinpointed amnesty as an essential element of national reconciliation²⁶⁵.

Last, a unique political phenomenon appeared during that mandate, that affected the balance of power between the political parties and accordingly the legislative process of the Transitional Justice's mechanisms: the *Nyakurization*²⁶⁶. On April 27th of 2007, Hussein Radjabu was imprisoned in Mpimba after having been banned from the ruling party; subsequently, 22 deputies resigned to show their loyalty²⁶⁷. This led to a threat to the CNDD-FDD's parliamentary majority and the start of a new political strategy. It planted its seed with the creation of a new political party *FRODEBU Nyakuri Iragi rya Ndadaye* under the leadership of Jean Minani in June 2008²⁶⁸. *Ukuri* in Kirundi means "truth" ²⁶⁹. *Nyakurization* can be understood as: "to divide political parties by creating inside of each of them a secessionist wing which claimed to be the one and only "true" representative of that party. It happened to all the main political parties. The *nyakurized*²⁷⁰ wing is often the only one recognized by the ruling party while at the same time becoming its sounding board" ²⁷¹. This meddling into the internal affairs of political parties by the ruling party affected the opposition by both reducing the expression space of the leaders and creating confusion within the electorate on the "truth" lying behind each party's name²⁷². As underlined by Courtois, "this process takes place in Kirundi

²⁶⁴ (L.) NYANGOMA, *Memorandum du CNDD : Au sujet de la Commission Nationale pour la vérité et la réconciliation et de la Chambre Spéciale chargée de juger les violations du droit international au Burundi*, Bujumbura : CNDD, « Memorandum », 3 April 2006, p.11-12.

²⁶⁵ (J.) NGENDAKUMANA, *Memorandum du parti CNDD-FDD sur la Commission Vérité et Réconciliation et le Tribunal Spécial pour le Burundi*, Bujumbura : CNDD-FDD, « Memorandum », 5 May 2007, p.6. It was also echoed in a statement of the Council of Ministers in February 2006; *Communiqué du Gouvernement sur le Conseil des Ministres du 02 Février 2006*, Bujumbura : Council of Ministers of Burundi, « Press Release », 2 February 2006, p.1.

²⁶⁶ Our translation; (S.) VANDEGINSTE, "Burundi's Truth and Reconciliation Commission: How to Shed Light on the Past while Standing in the Dark Shadow of Politics?", *op.cit.*, p.6; (R.) NIYONZIGIYE, "#YagaDécodeur: #Nyakuri, le pirate », *Yaga Burundi*, 19 October 2016, <https://www.yaga-burundi.com/2016/yagadecodeur-nyakuri-pirate/>, 11 April 2020.

²⁶⁷ (J. – M.) SINDAYIGAYA, *op.cit.*, p.149 – 150.

²⁶⁸ *Idem*, p.156; (R.) NIYONZIGIYE, *op.cit.*

²⁶⁹ (R.) NIYONZIGIYE, *op.cit.*

²⁷⁰ Our translation.

²⁷¹ (A. – C.) COURTOIS, « Rupture et continuité d'un *ethos* politique autoritaire : les noms de partis au Burundi », *Mots. Les langages du politique*, 2019, vol.2, n°120, p.110.

²⁷² (J.) HIRSCHY, (C.) LAFONT, « Esprit d'Arusha, es-tu là ? La démocratie burundaise au risque des élections de 2015 », *Politique Africaine*, 2015, vol.1, n°137, p.180 ; (F.) MANIRAKIZA, "La "Nyakurisation", son

and not in French, clearly targeting the electorate for which the confusion, if not total, will at least bring a lack of interest to semantical quarrels or the need to vote for parties who seem to be confused about their identities²⁷³.

With the boycott of the legislative and presidential elections of 2010 by some political parties, CNDD-FDD stiffened its grip on Burundi's institutions (81 seats) , while having to work, during that second mandate, with UPRONA (17 seats) and Sahwanya FRODEBU Nyakuri Iragi rya Ndadaye (5 seats) whose political strength didn't yield them much place in the decision-making process²⁷⁴.

2010 – 2014

The period before the adoption of the law on the NTRC, was one marked by an investment of the political space, in all its dimensions (civil society, political party, ...) by the ruling party and *de facto* the sole party governing the institutions²⁷⁵. Although, CNDD-FDD appeared to be the sole driver of the set-up of Transitional Justice's mechanisms, some entities still gave their input with regard to the future of the reconciliation process in Burundi.

Firstly, the strategy of divide and conquer which had been initiated with political parties during Nkurunziza's first mandate was upheld during his second mandate; as laws were passed to weaken their importance. One of the major legislative acts was the Law of September 10th, 2011, which affected the conditions needed to be accredited as a political party; e.g. requiring in its article 31, for the founding members of a political party to come from all provinces of the country with at least 10 of them being permanent residents²⁷⁶. As argued by Leclercq, "While it may seem a coherent policy to ensure that political parties be representative of the entire territory, it was nonetheless evident that the CNDD-FDD would likely be the only political formation able to reach this level of coverage, clearly consolidating its position"²⁷⁷. The creation of a "nyakurized" civil society (with close ties to the regime) was also exposed by

œuvre ? », *Iwacu*, 28 November 2016, <https://www.iwacu-burundi.org/la-nyakurisation-son-oeuvre/>, 9 April 2020.

²⁷³ (A. – C.) COURTOIS, *op.cit.*, p.120.

²⁷⁴ (S.) NTIBANTUNGANYA, *L'Accord d'Arusha pour la Paix et la Réconciliation au Burundi : Survivra-t-il dans un paysage politique burundais désormais dominé par les anciens mouvements politiques armés ?*, Bujumbura : FO.CO.DE., « Contribution », 06 February 2014, p.18; (S.) LECLERCQ, *op.cit.*, p.137.

²⁷⁵ (S.) LECLERCQ, *op.cit.*, p.144 & 146.

²⁷⁶ "Loi n°1/16 du 10 Septembre 2011 portant révision de la loi n°1/006 du 26 Juin 2003 portant organisation et fonctionnement des partis politiques», 10 September 2011, Bujumbura.

²⁷⁷ (S.) LECLERCQ, *op.cit.*, p.148.

scholars and the media as the Minister of Interior, Mr. Nduwimana, got accused of trying to apply the same nyakurization process which had been applied to the political parties²⁷⁸.

Secondly, on the 13th of June of 2011, a presidential decree was issued to form the Technical Committee mandated to prepare the establishment of the transitional justice mechanisms under the direction of former Ambassador, Laurent Kavakure. Four months later, a report was issued (also called the Kavakure report) setting a framework for the future of the TRC²⁷⁹. It considered the last exchange of the 3rd of May 2011, with the High Commissioner for Human Rights in Geneva, to be the reference as regards the launch of a Special Tribunal for Burundi (STB) only after the TRC report²⁸⁰.

Thirdly, more actors spoke up about factors needed to be taken into consideration in the establishment of the Truth Commission. On one hand, the Catholic Church issued a message through the Conference of the Catholic Bishops of Burundi, showing their awareness of the debates on the notion of justice and choosing purposely not to get involved. However, at the same time, they reminded the authorities of the need for forgiveness to meet the requirement of legality and intention²⁸¹. On the other hand, UPRONA shared its memorandum, insisting on clarifications about the mandates given to the TRC and STB respectively. It also suggested adapting the investigation period from the creation of political parties in 1958 until beyond the 4th of December of 2008 as violence didn't seem to have stop then²⁸².

Finally, on the 15th of May 2014, the law on the creation of the Truth Commission was passed. Yet, one should keep in mind that the voting process happened unilaterally as UPRONA and *Sahwanya FRODEBU Nyakuri Iragi rya Ndadaye's* deputies boycotted it²⁸³.

To conclude, the process of implementation of the transitional justice mechanisms agreed upon in the APRA was full of hurdles to overcome, which often gave way to tactics from most of the actors to use it as a means to access or maintain power²⁸⁴. As a subjective

²⁷⁸ *Idem*, p.150; (F.) MANIRAKIZA, *op.cit.*; For an in-depth analysis of Burundi's civil society's dynamics post-conflict: (G.) NDAYIKENGURUTSE, *Le travail de la société civile du Burundi durant la période post-conflituelle: Actions, Contraintes et Contradictions*, Thèse de doctorat en Sciences Politiques et Sociales, Namur: Université de Namur, Mars 2020, 464 p.

²⁷⁹ (P.) DE GREIFF, *Letter from the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, Geneva: Office of the United Nations High Commissioner for Human Rights, "Letter", UA Truth (2011) BDI 2/2013, 22 March 2013, p.1.

²⁸⁰ (L.) KAVAKURE, *Rapport du Comité Technique chargé de la préparation de la mise en place des mécanismes de Justice Transitionnelle*, Bujumbura, Octobre 2011, p.17.

²⁸¹ *Message de la Conférence des Évêques Catholiques du Burundi concernant la Commission Vérité et Réconciliation*, Ngozi : Conférence des Évêques Catholiques du Burundi, « Message », 4 September 2014, p.1 & 4.

²⁸² *Memorandum du parti UPRONA sur la problématique de la mise en place des mécanismes de justice transitionnelle*, Bujumbura : UPRONA, « Memorandum », January 2012.

²⁸³ (S.) NTIBANTUNGANYA, *Burundi : Démocratie Piégée*, *op.cit.*, p.574.

²⁸⁴ (S.) LECLERCQ, *op.cit.*, p.143.

product, the Truth Commission appears to be the reflection of a power game between the various domestic actors and their interests.

'Law of 2018'

In his work, Mendeloff, argued that truth-seeking was most likely to succeed “if states have a minimum level of democracy to sustain public debate”²⁸⁵. This sentence sums up the context in which Burundi adopted the law which modified the previous one on the Truth Commission²⁸⁶. Indeed as noted by some, a dictatorial atmosphere has been reigning in Burundi as the opposition as well as civil society’s leaders are in exile (e.g. Pierre-Claver Mbonimpa²⁸⁷); international NGOs are under national surveillance (e.g. legislations which forced NGOs to register their accounts in national banks²⁸⁸); independent media are shutdown²⁸⁹; and numerous people have been killed, tortured, or have been forced to choose the journey of exile (E.g. *Ndondeza* launched by Pacifique Nininahazwe to document the forced disappearances ²⁹⁰)²⁹¹.

The source of this domestic context can be traced back to the 2015 political crisis which will be explored in the section dedicated to the impact of the representation of the national past. However, it is relevant to keep in mind that the human rights violations committed since the crisis have led to greater internal debate with regard to the period of time under consideration for the TRC. On one hand, following the human rights violations documented by various actors, Parliament members reacted during the 25th of October 2018 parliamentary session, asking for an extension of the mandate to crimes committed after 2008. Simon Bizimungu and Fabien Banciryanino spoke up on the ongoing violence still being perpetrated; to which the Justice Minister, Aimée-Laurentine Kanyana, backed by the National Assembly’s President, Pascal

²⁸⁵ (D.) MENDELOFF, *op.cit.*, p.376.

²⁸⁶ *Communiqué de presse de la réunion du Conseil des Ministres du Mercredi 17 Octobre 2018*, Bujumbura : Council of Ministers of Burundi, « Press Release », 17 October 2018, <http://burundi.gov.bi/spip.php?article4008>, 3 March 2019.

²⁸⁷ *Pierre Claver Mbonimpa, Doctor Honoris Causa VUB-ULB*, Bruxelles : VUB, 3 May 2018, <https://www.youtube.com/watch?v=MpMyIdzaqAQ>, 14 April 2020.

²⁸⁸ (J.) BAKUNZI, “Foreign currency transfer: Regional banks benefit”, *Iwacu*, 16 June 2017, <https://www.iwacu-burundi.org/englishnews/foreign-currency-transfer-regional-banks-benefit/>, 14 May 2020.

²⁸⁹ (M. – S.) FRERE, (A.) FIEDLER, « Les médias dans la crise burundaise : ‘Tu tues le coq, mais tu ne tues pas ce qu’il a chanté’ », in (F.) REYNTJENS et alii (under the direction of), *L’Afrique des grands lacs: annuaire 2015-2016*, Antwerp: UPA, 2016, pp. 119-141.

²⁹⁰ « Les Disparitions Forcées Archives », *Ndondeza*, <https://ndondeza.org/category/rapports-ndondeza/>, 14 May 2020 ; (A.) GUICHAOUA, (E.) NTAKARUTIMANA, (S.) STRAUS, *op.cit.*, p.18.

²⁹¹ (T.) VIRCOULON, “Burundi: How to Deconstruct Peace”, *International Peace Institute*, 14 November 2015, <https://theglobalobservatory.org/2015/11/burundi-nkurunziza-peacebuilding-united-nations-rwanda-genocide/>, 20 June 2018.

Nyabenda, answered that the current “democratically elected institutions” were to be trusted²⁹². On the other hand, clear choices were made by the legislator with regard to extending the period under scrutiny, in the Commission’s mandate, to the 26th of February 1885²⁹³. This change has been heavily criticized and often seen as another strategy to “divert attention from the crimes committed more recently”²⁹⁴. Notwithstanding, Justice Minister, Aimée-Laurentine Kanyana’s explained to the senate that “It is clear that the cycles of violence of a political nature that have scarred Burundi have their origins in colonial times”²⁹⁵.

Types of regimes and violence

‘Arusha’

In the case of the Arusha Agreement, the type of violence can be categorized as a horizontal one. In contrary to the one described in the first part of this work, the violence was “the one involving citizen as much as non-state actors and the state”. Indeed, following Ndadaye’s assassination, a civil war slowly set the country ablaze. Nevertheless, 2 conditions need to be met for such qualifications: “the spread of violence” that often lead to an overlap of victim-perpetrators categories and the “controversy around the scope of amnesties”, in the post-conflict phase, when it comes to non-state actors.

The first condition is fulfilled by the confusion nourished by the protagonists of the civil war, as responsibilities were neither investigated nor recognized by all parties²⁹⁶. Indeed, as described in various human rights report from international NGOs like Human Rights Watch or Amnesty International, killings were perpetrated by both sides for various alleged reasons. On the one hand, “Hutus” were known for the violence carried out against “Tutsi” population right after the Coup of 1993, thanks to help from some local administrators, and also, for the rebels’ deliberate attacks on civilians²⁹⁷. On the other hand, “Tutsis” were known for the

²⁹² (E.) RUGIRIRIZA, “Burundi: A Truth Commission as Political Diversion”, *JusticeInfo.Net*, 01 November 2018, <https://www.justiceinfo.net/en/truth-commissions/39395-burundi-a-truth-commission-as-political-diversion.html>, 5 March 2019.

²⁹³ « Loi n°1/022 du 6 Novembre 2018 portant modification de la loi du n°1/18 du 15 mai 2014 portant création, mandat, composition, organisation et fonctionnement de la Commission Vérité et Réconciliation », 06 November 2018, Bujumbura, Article 6 (1).

²⁹⁴ (E.) RUGIRIRIZA, *op.cit.*

²⁹⁵ *Ibidem*.

²⁹⁶ (S.) VANDEGINSTE, “Le processus de justice transitionnelle au Burundi. L’épreuve de son contexte politique », *Droit et société*, 2009, vol.73, n°3, p.596.

²⁹⁷ *Ibidem*.

massacres committed by the army (which was still mainly made up of people from the “Tutsi-community”) and local youth gangs such as “Sans-Échecs” and “Sans-Défaites” who led ethnic cleansing mostly in the country’s capital²⁹⁸. This overlap of victims and perpetrators led to an escalation of violence which fuelled a vicious circle of enmity.

The second condition was partly addressed in the APRA as it constituted one of the most controversial issues²⁹⁹. Three elements can be drawn from the dispositions. The first protocol provided that the transitional National Assembly in its endeavour to promote reconciliation was allowed to “pass a law or laws providing a framework for granting an amnesty consistent with international law for such political crimes as it or the National Truth and Reconciliation Commission may find appropriate”³⁰⁰. Secondly, the third protocol ruled that “amnesty shall be granted to all combatants of the political parties and movements for crimes committed as a result of their involvement in the conflict, but not for acts of genocide, crimes against humanity or war crimes, or for their participation in *coups d’état*”³⁰¹. Therefore, making sure the legal provisions would be respectful of the international framework which prohibits amnesty for these crimes³⁰². Last, the fifth protocol set the temporal scope, of the aforementioned amnesty, as going “into effect on the date of signature of the Agreement”.³⁰³

Vandeginste in his comprehensive analysis of Burundi’s political history observed that the combination of the political elite’s interests with the power balance, that took place during the civil war, led them to foster a “coalition of forgetfulness”³⁰⁴. President Ntibantunganya in an exclusive interview shared more specific details about the interactions between the various parties who were affected by the amnesty issue. For instance, he underlined the originality that was associated with the creation of the concept of “temporary immunities” instead of a general amnesty in the Burundian case³⁰⁵. Adding that prosecutions were to be suspended during the transitional period and would only be re-opened with the conclusion of the three transitional

²⁹⁸ (W.) NINDORERA, *op.cit.*, p.14.

²⁹⁹ (S.) VANDEGINSTE, “Negotiating and sharing-power: Burundi’s bumpy road to reconciliation without truth”, *op.cit.*, p.200.

³⁰⁰ APRA, Protocol I, Article 8, 1(b).

³⁰¹ APRA, Protocol III, Chapter III, Article 26, 1(l).

³⁰² *Navigating Amnesty and Reconciliation in Nepal’s Truth and Reconciliation Commission Bill*, New York: ICTJ, “Briefing”, November 2011, p.2; (S.) VANDEGINSTE, “Le processus de justice transitionnelle au Burundi. L’épreuve de son contexte politique”, *op.cit.*, p.598.

³⁰³ APRA, Protocol V, Article 5, 7(i).

³⁰⁴ (S.) VANDEGINSTE, “Le processus de justice transitionnelle au Burundi. L’épreuve de son contexte politique”, *op.cit.*, p.594.

³⁰⁵ (S.) NTIBANTUNGANYA (former Burundian President), interview, realized by the author, Brussels, 5 April 2016.

mechanisms' work³⁰⁶ : namely the Truth Commission³⁰⁷, the International Judicial Commission of Inquiry³⁰⁸, and an International Criminal Tribunal³⁰⁹.

'Law of 2014'

Following the APRA's signing, the most influential actors on the ground, the armed movements, refused to join the terms negotiated by the political elite. Therefore, violence continued to be perpetuated in a horizontal manner. This can be verified through the two key components of such violence: the overlap between victims and perpetrators and the issue of amnesty.

When it comes to the first condition, the overlap can be drawn from the consequences of the civil war and the abuses committed by the various actors. On the one hand, the fact that in 2003 the CNDD-FDD joined the institutions and in 2010 the FNL joined them as well implied that the ones who once were considered as the armed rebels were now integrated with the ones they were contesting against. On the other hand, beyond the fact that between 2000 and 2014 all parties got their seat at the table (in varying degrees of power), NGOs have been reporting that abuses were still being committed by state officials but also by these armed movements before their ceasefire³¹⁰. The massacre of the Congolese Banyamulenge³¹¹ in the refugee camp of Gatumba, in Burundi near the border with the DRC, and the developments that followed for FNL's leader is a concrete example of a misuse of this overlap between the categories of victims and perpetrators³¹². The killings took place after these refugees sought refuge from the violence spreading during the second war of Congo. The FNL was portrayed as having quickly claimed responsibility for it through its spokesperson, Pasteur Habimana. However, a few years later they reconsidered their position and Habimana denied the statement³¹³. The horror of the killings led to many international reactions but also a domestic one as the national army, even

³⁰⁶ *Ibidem*.

³⁰⁷ APRA, Protocol II, Chapter 2, Article 18 (2).

³⁰⁸ APRA, Protocol II, Chapter 2, Article 18 (1).

³⁰⁹ APRA, Protocol I, Chapter 2, Article 6 (10-11) ; (S.) LECLERCQ, *op.cit.*, p.115.

³¹⁰ *"We'll Tie You Up and Shoot You": Lack of accountability for Political Violence in Burundi*, New York: HRW, "Report", May 2010, p.4.

³¹¹ Often categorized as "Tutsis".

³¹² (K. A.) BENTLEY, (R.) SOUTHALL, *op.cit.*, p.199.

³¹³ "Burundi: 15 Years On, No Justice for Gatumba Massacre", *Human Rights Watch*, 13 August 2019, <https://www.hrw.org/news/2019/08/13/burundi-15-years-no-justice-gatumba-massacre>, 6 May 2020; (S.) VANDEGINSTE, "Negotiating and sharing-power: Burundi's bumpy road to reconciliation without truth", *op.cit.*, p.202.

though situated closely to the refugee camp, did not intervene³¹⁴. Burundi's government issued warrants against the FNL leadership but as observed by Leclercq, the "threat of prosecution" was later cautiously transformed into the "negation of prosecution" in case of a ceasefire³¹⁵. Moreover, Vandeginste points out the strategy of political intimidation linked to the meddling of the government into the judicial branch³¹⁶. Two concurring interpretations can be given to such behaviour: one legal and one political. From the legal perspective, "the case can be made that this massacre – insofar as it constitutes a crime against humanity – is needed not covered by the temporary immunity that protects Burundi's rebel leaders against criminal prosecution and that the prosecutor is rightly indicting Rwasa in light of the indications (including a public claim by his spokesperson) that FNL was responsible for the massacre"³¹⁷. From the political perspective, the scholar described the "Damocles' sword" constituted by such strategy: "In other words, much more than a mere issue of truth, accountability and victim's rights, judicial action for past FNL atrocities has become a strategic tool in the political negotiations between the government and FNL"³¹⁸. This second explanations seems to be validated by other actors such as the director for Central Africa at Human Rights Watch, who declared, "Burundian authorities should take the necessary steps to ensure that those responsible for the Gatumba massacre are tried credibly and impartially,"³¹⁹.

When it comes to the condition of amnesty, it can be best illustrated by the 'temporary immunities' which were originally enshrined in the Arusha Agreement to cover: "crimes deemed political, with the exception of crimes of genocide, crimes against humanity or war crimes", "to be valid for a period of two years" and "for leaders in exile"³²⁰. Notwithstanding this clear framework, temporary immunities were granted in later global ceasefire agreements with armed movements. The transitional constituents also adopted laws providing a domestic scope through the Law 1/022 of the 21st of November of 2003 as well as the one of the 8th of May of 2003³²¹. As revealed by the League of Human Rights of the Great Lakes Region, the domestic framework constituted by these legal provisions which depend on the creation and

³¹⁴ "Burundi: 15 Years On, No Justice for Gatumba Massacre", *Human Rights Watch*, 13 August 2019, <https://www.hrw.org/news/2019/08/13/burundi-15-years-no-justice-gatumba-massacre>, 6 May 2020.

³¹⁵ (S.) LECLERCQ, *op.cit.*, p.120.

³¹⁶ (S.) VANDEGINSTE, "Negotiating and sharing-power: Burundi's bumpy road to reconciliation without truth", *op.cit.*, p.202.

³¹⁷ *Ibidem*.

³¹⁸ *Idem*, p.203.

³¹⁹ "Burundi: 15 Years On, No Justice for Gatumba Massacre", *Human Rights Watch*, 13 August 2019, <https://www.hrw.org/news/2019/08/13/burundi-15-years-no-justice-gatumba-massacre>, 6 May 2020.

³²⁰ *Burundi : Quarante ans d'impunité*, Kigali: Ligue des droits de la personne dans la région des Grands Lacs (LDGL), « Report », June 2005, p.49.

³²¹ *Ibidem*.

work of the International Commission of Inquiry, leads to a temporary vacancy when it comes to institutions legally qualifying and investigating severe crimes³²². This might be considered to result in a type of *de facto* amnesty³²³ or, following Leclercq's arguments, "a subversion of the transitional justice objectives"³²⁴.

'Law of 2018'

Following the 2015 crisis, the country has seen a resurgence of vertical violence which is characterized as perpetrated by the State against its citizens. But in order to rightfully qualify the type of violence, specific conditions need to be fulfilled: a context of repression under an authoritarian regime, the importance of the offenders' motives and the importance of non-state actors' motives.

The context of repression is no longer questionable after all the reports submitted by various actors from NGOs to International Organizations such as the UN or the ICC³²⁵. As investigated in the BBC Documentary "Kamwe Kamwe: Inside Burundi's Killing Machine", since the 2015 elections, which resulted in severe repression of protesters; the Burundian regimes has opted for targeted abuses or a "one by one" strategy³²⁶.

The factor related to offender's motives can be understood from an analysis of the regimes' discourses. Indeed, as argued by Courtois, "the potential for violent action becomes a unifying value" and is often orchestrated through public and private speeches "recalling the memory of the party" but also through public meetings displaying "parades with military steps"³²⁷. Indeed, as explained in the section based on the type of transition, the ruling party, especially since 2010, appears to have been using political tools to pursue its initial military objectives, never really diverting from the path associated with violence.

Lastly, the condition related to non-state actors' motives brings back memories of all the rebellions Burundian regimes have given birth to in times of repression throughout its

³²² *Ibidem*.

³²³ *Idem*, p.50; For more information on the question of amnesty: (S.) VANDEGINSTE, « Bypassing the prohibition of Amnesty for Human Rights Crimes under International Law: Lessons learned from the Burundi peace process », *Netherlands Quarterly of Human Rights*, 2011, vol.29, n°2, pp. 189-211.

³²⁴ (S.) LECLERCQ, *op.cit.*, p.120.

³²⁵ "Burundi: 15 Years On, No Justice for Gatumba Massacre", *Human Rights Watch*, 13 August 2019, <https://www.hrw.org/news/2019/08/13/burundi-15-years-no-justice-gatumba-massacre>, 6 May 2020; Annex 6.

³²⁶ (C.) ATTWOOD, (M.) JULLIEN, *Kamwe Kamwe – Inside Burundi's Killing Machine: full documentary*, BBC, "BBC Africa Eye", 4 December 2018, <https://www.youtube.com/watch?v=WZPkRLkUiYo&t=3s>, 12 April 2020.

³²⁷ (A. – C.) COURTOIS, *op.cit.*, p.117; "We'll Tie You Up and Shoot You": *Lack of accountability for Political Violence in Burundi*, New York: HRW, "Report", May 2010, p.16.

history. As listed on the University of Antwerp's website, the aftermath of the 2015 crisis seems to have led to the creation of six new armed movements: FOREBU which later transformed into FPB, RED-TABARA³²⁸, UPR, MRP-Abarundi, MALIBU-FPS³²⁹. Again, Courtois' analysis of the political language shines a light on the rationale behind this evolution. She explained that the choice of words associated with "front or forces" can be understood as a deliberate strategy to touch upon Burundians' perceptions associated with former rebellions³³⁰.

Types of transition

'Arusha'

In the Arusha case, the type of transition that took place can be identified as one of a negotiated settlement, between the former government and opposition groups³³¹. As described by Vandeginste, the country's transition was based on the merging of different kinds of political settlements: "a largely consociational power-sharing between ethnopolitico groups and an elite bargain between politico military leaders"³³². Such a framework was needed to appease the fears of the various protagonists who hadn't been able to share common rules. This recognition ensured some protection of the interests of the various "ethnic groups" and "elites" in their power struggle.

'Law of 2014'

The context building up to the law of 2014 is more complex than the cases analyzed in the previous parts of the work as it spans over more than a decade in which the primary actors drastically changed when comparing the beginning and the end. Be that as it may, one scholar's observation presented us with a valuable reflection. While discussing the issue of an inclusive peace in Burundi, Audace Gatavu observed that while in neighboring countries such as Uganda or Rwanda where the stage of a military victory gave their leader access to the driving seat, the

³²⁸ *Gutabara* means save someone from danger in Kirundi.

³²⁹ « Groupes armés », *University of Antwerp*, <https://www.uantwerpen.be/en/projects/centre-des-grands-lacs-afrique/droit-pouvoir-paix-burundi/conflit-2015-17/groupes-arm-s/>, 10 May 2020.

³³⁰ (A. – C.) COURTOIS, *op.cit.*, p.122.

³³¹ (S.) VANDEGINSTE, "Le processus de justice transitionnelle au Burundi. L'épreuve de son contexte politique", *op.cit.*, p.594.

³³² (S.) VANDEGINSTE, "Burundi's Truth and Reconciliation Commission: How to Shed Light on the Past while Standing in the Dark Shadow of Politics?", *op.cit.*, p.5.

CNDD-FDD, which has been the majority party since the first election post-conflict, has opted for the use of political tools to reach the same goal³³³. On basis of that and the behavior of the CNDD-FDD when it came to the elimination of political opponents, the type of transition can be qualified as one “where a civil war has ended through a decisive military victory for one side”. Last, the way the judicial branch has been instrumentalized, to follow the ruling party’s objectives and deeds, is aligned on a “retributive justice” type of logic (E.g. Gatumba Case).

‘Law of 2018’

The transition which took place preceding the adoption of the 2018 law on the Truth Commission, was one which confirmed the consolidation of power dynamic from the ruling party which could be observed during the previous context³³⁴. As described in the section related to actors, there reigns a dictatorial atmosphere in Burundi which can be associated with the type of transition which results from a military victory for one side.

Weight of the representation of the national past

‘Arusha’

From the historical perspective, as mentioned earlier, the first democratic elections which took place in 1993, were a turning point. They showed an abrupt change in the country’s evolution towards what Buyoya’s regime claimed it would achieve: “unity and reconciliation”³³⁵. However, a few months after the election of the first “Hutu” President, members of the army orchestrated a Coup against his newly formed government. By assassinating each person who was constitutionally appointed as a temporary replacement in that scenario, they purposely left the country in political chaos which only got temporarily solved months later with the “Government Convention”³³⁶. This coalition was seen as a way to water down the influence of FRODEBU, which had won the elections with a large majority, as it brought back into the executive other less influential political parties³³⁷. Shortly after, Buyoya

³³³ (A.) GATAVU, *op.cit.*, p.29.

³³⁴ (J. – M.) SINDAYIGAYA, *op.cit.*, p.228.

³³⁵ (S.) VANDEGINSTE, “Negotiating and sharing-power: Burundi’s bumpy road to reconciliation without truth”, *op.cit.*, p.188.

³³⁶ (S.) NTIBANTUNGANYA, Interview, *op.cit.*

³³⁷ (W.) NINDORERA, *op.cit.*, p.12.

came back to power through another Coup in 1996. It led to the involvement of the region, backed by the international community, which initiated peace negotiations as well as an embargo to compel Buyoya to give back the leadership of the country to a civilian government³³⁸.

From the mythological perspective, the nineties in Burundi were a period during which the ethnic fears reached a turning point in the country's history. Two major events influenced each side's heightened perception³³⁹. On the one hand, for the "Hutu" community, their mistrust was legitimized by the way they had been treated institutionally since the country's independence. In particular because of the assassination of the first democratically elected "Hutu" leader, they felt that "Tutsis, through the intermediary of the army, wanted to keep themselves in power through firepower"³⁴⁰. On the other hand, for the "Tutsi" community, their mistrust was legitimized by the potentiality of Burundi following the same scenario as the one that played out with the genocide in Rwanda³⁴¹. The unleash of these powerful fears led to the civil war, and the various hurdles that had to be faced in the mediation journey when it came to the protection of the two sides' interests.

'Law of 2014'

From the historical perspective, the political instrumentalization of former military interests by the ruling party marked a new dynamic in the political history of Burundi. As developed in the section related to the actors of the law of 2014, the process of Nyakurization had many effects, in particular the riddance of any kind of opposition whatsoever.

This practice also heavily influenced the mythological perspective of many, in particular the youth, which includes many ex-combatants. Indeed, Courtois studied the impact of the choice of words made by the CNDD-FDD and how it has influenced Burundi's society. "The name of the party, accompanied by a partisan speech constantly playing on the reminders of a sacred and mythical fighting memory, is used to create the structure of reality, by imposing a new model, that of the militant *Abagumyabanga*, or even more, of the *Imbonerakure*"³⁴². Such

³³⁸ *Le Conseil de sécurité examine la situation au Burundi à la lumière de la rupture de l'ordre constitutionnel du 25 Juillet dernier*, New York : United Nations Security Council, « Press Release », CS/725, 28 August 1996.

³³⁹ (P.) DUPONT, "La crise politique au Burundi et les efforts de médiation de la communauté internationale, in (F.) REYNTJENS & (S.) MARYSSE (under the direction of), *L'Afrique des grands lacs: annuaire 1997-1998*, Paris : L'Harmattan, 1998, p.42.

³⁴⁰ (W.) NINDORERA, *op.cit.*, p.13.

³⁴¹ (P.) DUPONT, *op.cit.*, p.43.

³⁴² *Abagumyabanga* meaning « those who keep the secret » and *Imbonerakure* meaning « those who see from afar ». (A. – C.) COURTOIS, *op.cit.*, p.117.

approach is understood as blurring the line between activism and party members as people become “monitored in the private and public spheres”³⁴³. Examples of this kind of blueprint will reach an all-time high after the 2015 political crisis. After a hopeful beginning of a new chapter in Burundi’s history, through the signing of the APRA, the unaddressed ghosts of the past resurfaced through renewed strategies of protection rooted in the common traumatic past and the political misuse of ethnicity³⁴⁴.

‘Law of 2018’

About the historical perspective, Jeune Afrique’s article “one year of crisis” gives us key dates which influenced the questionable re-election of the President in 2015; starting with the 26th of April 2015, which was the beginning of large scale urban demonstrations³⁴⁵ and followed by Nkurunziza’s controversial candidacy’s validation by the Constitutional Court on the 5th of May³⁴⁶. We should not forget the attempted coup led by former Chief of Military Staff, Godefroid Niyombare, between the 13th and the 15th of May, while Nkurunziza was attending a Summit in Tanzania³⁴⁷ and finally, after the exile of political leaders, the re-election on the 24th of July 2015 of Nkurunziza with 69, 40%.³⁴⁸

The mythological perspective, on the other hand, was marked by a significant advancement in Burundian dynamics; for the first time, they avoided the trap of ethnicity³⁴⁹. Indeed, the protests organised against the Burundian president’s candidacy saw the participation of all ethnicities rallying against bad governance³⁵⁰. Although the ruling party tries to revive the ethnic narrative, Burundi’s population seem to have moved to other factors of grievances³⁵¹.

2. International Context

³⁴³ *Ibidem*.

³⁴⁴ OAG, *op.cit.*, p.78 ; This exemplifies the way political elites use the injustice created by the structural conditions “to manipulate identities and perceptions of threat and victimhood”. (R.) JACKSON, *op.cit.*, p.179.

³⁴⁵ (C.) RAINFROY, « Un an de crise au Burundi », *Jeune Afrique*,

<https://statics.jeuneafrique.com/infographies/2016/timeline-burundi-un-an-de-crise/>, 10 May 2020.

³⁴⁶ (J. – M.) SINDAYIGAYA, *op.cit.*, p.220.

³⁴⁷ (C.) RAINFROY, *op.cit.*

³⁴⁸ *Ibidem* ; (J. – M.) SINDAYIGAYA, *op.cit.*, p.226.

³⁴⁹ (A. – C.) COURTOIS, *op.cit.*, p.122.

³⁵⁰ (A.) GATAVU, *op.cit.*, p.10.

³⁵¹ (A. – C.) COURTOIS, *op.cit.*, p.121.

In the case of Burundi, from Arusha to the Law of 2018 on the TRC, the influences have varied from one context to another, reshuffling the cards of power and interests among the parties involved.

Region

'Arusha'

The pre-Arusha context at the regional level was one that fostered steep levels of violence as well as peace promotion. Indeed, following the appalling genocide of 1994 in Rwanda, OAU's chairman, Meles Zanawi (Prime Minister of Ethiopia) together with Salim Salim (Foreign Minister of Tanzania) sought the former Tanzanian President's involvement in the mediation of Burundian parties³⁵². With some help from the Carter Center and former President Carter, Nyerere accepted the mandate at the Tunis Summit in March 1996³⁵³, thereby launching the sub-regional's initiative for Burundi³⁵⁴. From then, the region started playing an active role in Burundi's journey to conflict resolution, following a strategy of "African solutions for African problems"³⁵⁵. From a standpoint of stability, three actors can be singled out: the regional initiative (made up of Rwanda, Uganda, the Democratic Republic of Congo, Kenya, Ethiopia and after Buyoya's Coup in October '96, Zambia³⁵⁶); Tanzania through the mediation under Nyerere's lead; and South-Africa through the facilitation under Mandela's lead.

First, the regional initiative played a rather proactive role especially after the Coup of 1996, through the embargo imposed on the Burundian government, which marked a shift in inter-African nations dynamics³⁵⁷. In this case, it was the first time, in modern history, that leaders of the region declared "they would not accept a *Coup d'État* as a legitimate way for an individual to come to power"; this exemplified the power of agency³⁵⁸.

Second, Tanzania's transition from a passive role of welcoming refugees since the '70s, to an active one of welcoming the Burundian parties for official talks in the '90s, marked a

³⁵² (H.) WOLPE, *op.cit.*, p.11.

³⁵³ (S. R.) WEISSMAN, *Preventing Genocide in Burundi: Lessons from International Diplomacy*, Washington, DC: United States Institute of Peace, "Peaceworks", n°22, 1 July 1998, p.17.

³⁵⁴ (G. M.) KHADIAGALA, *Mediation efforts in Africa's Great Lakes Region*, Geneva: Center for Humanitarian Dialogue, "Paper", 1 April 2007, p.54.

³⁵⁵ *L'effet Mandela : Évaluation et perspectives du processus de paix burundais*, *op.cit.*, p.15.

³⁵⁶ *Unpacking the Mystery of Mediation in African Peace Processes*, Zurich/Bern: Center for Security Studies/ Swisspeace, "Report", 2008, p.23.

³⁵⁷ *Idem*, p.21; (P.) DUPONT, *op.cit.*, p.46.

³⁵⁸ *Unpacking the Mystery of Mediation in African Peace Processes*, *op.cit.*, p.23.

change in the two countries' relationship. For instance, for Burundian parties, Nyerere was seen as the figure of an authoritative elder statesman who helped resolve their differences³⁵⁹. Yet, he was also seen as intransigent when it came to the question of inclusion of dissident branches such as CNDD-FDD, due to his deterrence strategy for parties' division³⁶⁰. As evidence of tensions, incidents, which occurred with US Representative Howard Wolpe for example, nourished Nyerere's perception that the West wanted only to lift the economic sanctions without guarantees of Buyoya's coming back into the negotiations³⁶¹. Ultimately, his death on October 14th, 1999 marked a cornerstone in the mediation journey as it led to an "irreversible course of the multilateral mediation frame"³⁶².

Third, Nyerere's passing led to a vacancy which was filled by Mandela's nomination as facilitator on December 1st, 1999 at the 8th Summit of the Great Lakes Region on Burundi³⁶³. South-Africa's government whose foreign policy, after apartheid, revolved around an "African Renaissance" pushed for Mandela to accept that role³⁶⁴. His leadership style was known for the use of his prestige and charisma, but also for his opening towards inclusiveness as he managed to get some rebel branches to the table³⁶⁵. His agency was widely known, as his role in the fight against apartheid led him to embody the ability to change one's personal experiences into a powerful cathartic story for a nation³⁶⁶. The signing of the Arusha Agreement took place under his lead and in collaboration with the Tanzanian mediation team³⁶⁷.

From a standpoint of disruption, the region was also influential through various actors, among which we focus on, namely: the regional initiative, the Democratic Republic of Congo and Rwanda.

Firstly, the second war of Congo (also called the Great African war) led to a reshuffling of the nations' interests and to some new alliances playing a destabilizing role in Burundi's Peace Process³⁶⁸.

³⁵⁹ (G. M.) KHADIAGALA, *op.cit.*, p.56.

³⁶⁰ *L'effet Mandela : Évaluation et perspectives du processus de paix burundais*, *op.cit.*, p.14-15.

³⁶¹ (G. M.) KHADIAGALA, *op.cit.*, p.56.

³⁶² *Ibidem.*; *L'effet Mandela : Évaluation et perspectives du processus de paix burundais*, *op.cit.*, p.16.

³⁶³ *L'effet Mandela : Évaluation et perspectives du processus de paix burundais*, *op.cit.*, p.16.

³⁶⁴ *Idem*, p.19.

³⁶⁵ (G. M.) KHADIAGALA, *op.cit.*, p.57; *L'effet Mandela: Évaluation et perspectives du processus de paix burundais*, *op.cit.*, p.25; (L.) MICHEL (former Belgian Minister of Foreign Affairs), interview, realized by the author, Brussels, 12 April 2016 ; (W.) NINDORERA, *op.cit.*, p.24.

³⁶⁶ (D. E.) APTER, *op.cit.*, p.792.

³⁶⁷ (G. M.) KHADIAGALA, *op.cit.*, p.57.

³⁶⁸ (A.) GUICHAOUA, (E.) NTAKARUTIMANA, (S.) STRAUS, *op.cit.*, p.11.

Secondly, the DRC played an essential role as it became the rear base of the most numerous Burundian rebels, the CNDD³⁶⁹. Moreover, under Mobutu's regime, the founding members of CNDD found solace on the Congolese territory in 1994; they made alliances with residual members of the Rwandan army who had been defeated after the Rwandan genocide as well as with members of the Rwandan militia of Interahamwe³⁷⁰. With the first war of Congo which resulted in the exile of Mobutu and his replacement by Laurent-Désiré Kabila, many rebel military bases were destroyed in Eastern Congo and the movement spread over³⁷¹. After the split of the CNDD, the branch under the leadership of Ndayikengurukiye was allowed to install itself again in DRC, under the sponsorship of Kabila, but only as long as they supported him militarily during the second war of Congo³⁷². That crisis is known to have led to the strengthening of tactical alliances between the various rebel movements from Rwanda and Burundi as well as guerrillas such as the Mai-Mai in Kivu³⁷³. Congo's influence on Burundi's peace journey was also considerable with the Lusaka agreement which talked about "negative forces" which were supposed to be disarmed. Therefore, CNDD's involvement in the war in Congo could lead to serious repercussions on their national interests³⁷⁴.

Thirdly, following the second war of Congo which brought a shift in their loyalty towards Uganda, Rwanda got closer to the Burundian regime as a result, but strictly on basis of their national interest³⁷⁵.

As a conclusion, the region was a source of instability as much as stability whether considered collectively or nationally. Although they executed extraordinary actions in their monitoring of the Burundian peace process, for example when they all rejected the option of leadership change through military coup, when their national interests were exposed they made choices that put Burundi's process in jeopardy.

'Law of 2014'

The second millennium's eve saw the emergence of new regimes, inherited from the civil wars which had set the region ablaze. As pointed out by Guichaoua, Ntakirutimana and Strauss, these new institutions: "were based on partisan fighting solidarities, generally

³⁶⁹ (W.) NINDORERA, *op.cit.*, p.20.

³⁷⁰ *Idem*, p.16; *L'effet Mandela : Évaluation et perspectives du processus de paix burundais*, *op.cit.*, p.30.

³⁷¹ *L'effet Mandela : Évaluation et perspectives du processus de paix burundais*, *op.cit.*, p.30.

³⁷² (W.) NINDORERA, *op.cit.*, p.17 & 22.

³⁷³ *L'effet Mandela : Évaluation et perspectives du processus de paix burundais*, *op.cit.*, p.32.

³⁷⁴ *Idem*, p.15.

³⁷⁵ *Idem*, p.33.

redoubled by regional and / or ethnic affinities”³⁷⁶. Those were inherited from the cross-interests they found through the various wars that divided their countries. This is how new governments were set up: in Rwanda, with President Kagame and his rebels which after stopping the genocide became the ruling party; in Uganda, with President Museveni who had obtained power in the mid-80’s following a rebellion against dictator Idi Amin Dada; and in the Democratic Republic of Congo, with President Joseph Kabila who, after his father’s “sudden” death in 2001, got his hands on ruling over the country.

At the country level, South-Africa had some of the most notable influence with its involvement following the APRA signing. As Mandela’s health was deteriorating, he asked Jacob Zuma to take the lead on the remainder of the quest to peace for Burundi³⁷⁷, which he did. Shortly after, he invited Omar Bongo the President of Gabon to join the mediation team, and as observed by Boshoff et al., “it sent a strong signal to the rest of the world that the Anglophone/Francophone divide was a thing of the past and that Africa looked at African problems from the perspective of one united continent”³⁷⁸. Indeed, as South Africa’s foreign policy was then centered around an “African Renaissance policy” conceptualized by Thabo Mbeki³⁷⁹. The country’s vision materialized with the inauguration of their first embassy in Burundi in 2004; until then, the nearest embassy had only been set up, following the Rwandan genocide, in Kigali³⁸⁰. Last, an example of the country’s support to Burundi’s transitional justice journey can be found in the national dialogue organized by the South African embassy jointly with the African Center for the Constructive Resolution of Disputes (ACCORD) in May 2006; “to introduce civil society to the different mechanisms of Transitional Justice in order to contribute to the success of the reconciliation process in Burundi”³⁸¹.

At the regional level, South Africa also contributed greatly through the deployment of the South African Protection Support Detachment in November 2001³⁸². Their mandate had an initial limited scope which only covered the protection of leaders of the rebel movements who

³⁷⁶ (A.) GUICHAOUA, (E.) NTAKARUTIMANA, (S.) STRAUS, *op.cit.*, p.13.

³⁷⁷ (H.) BOSHOF, (W.) VREY, (G.) RAUTENBACH, *The Burundi Peace Process: From Civil War to conditional peace*, Pretoria: Institute for Security Studies, “Monograph”, June 2010, p.20.

³⁷⁸ *Idem*, p.21.

³⁷⁹ *Idem*, p.12 & 35.

³⁸⁰ *Idem*, p.14.

³⁸¹ *National Dialogue on the mechanisms of Transitional Justice: Special Case of Burundi*, South African Embassy in Burundi and the African Centre for the Constructive Resolution of Disputes, “Report”, May 2006, p.4; Another example can be found here, as RCN Justice and Democracy is another NGO which exposed Burundi’s society to the instruments of transitional justice. (A.-A.) POHU, (E.) KLIMIS (under the direction of), *Justices transitionnelles: oser un modèle burundais. Comment vivre ensemble après un conflit violent ?*, Bruxelles : Presses de l’Université Saint-Louis, 2013, 216 p.

³⁸² (K. A.) BENTLEY, (R.) SOUTHALL, *op.cit.*, p.86.

were coming back to Burundi³⁸³. Yet, it later evolved to a wider peace keeping mandate when other African countries (Ethiopia and Mozambique) sent troops to reinforce the South African ones, making it an AU's African Mission (AMIB)³⁸⁴. Later on, in 2004, the AMIB was replaced by ONUB a "UN peace protection mission"³⁸⁵.

In conclusion, the period which followed the Arusha Agreement was marked by a more state-centered dynamic for Burundi's direct neighboring countries while others like South-Africa seized opportunities to contribute to the stabilization of the country.

'Law of 2018'

After a promising start, as a collective of states aiming for a better future for African countries, the region's standpoint when it came to the radicalization of the Burundian regime was only as large as the crippled shadow of these hopeful hours³⁸⁶. Countries such as Rwanda, Uganda or the DRC were all facing similar challenges when it came to the respect of the principle of alternating governance³⁸⁷. Yesterday's leader in the African Renaissance policy for the continent seemed to have become "disinterested"³⁸⁸. Lastly, as pinned down in Jeune Afrique's chronology of the most notable moments of the 2015 crisis, the African union's vote in favor of a deployment of African troops on the 18th of December 2015 (following the bloodbath which took place 6 days before) sent a signal to Bujumbura³⁸⁹. Nevertheless, the initiative never saw the light of day³⁹⁰.

In conclusion, the region did not directly interfere with the Burundian regime's violations of human rights and authoritarian practices due to their own "national interests", leading it to become passively a source of insecurity.

International Community

³⁸³ *Idem*, p.88.

³⁸⁴ *Ibidem*; (H.) BOSHOFF, (W.) VREY, (G.) RAUTENBACH, *op.cit.*, p.52.

³⁸⁵ (W.) NINDORERA, *op.cit.*, p.25.

³⁸⁶ (A.) GUICHAOUA, (E.) NTAKARUTIMANA, (S.) STRAUS, *op.cit.*, p.20.

³⁸⁷ (N.) WILÉN, (P. D.) WILLIAMS, "The African Union and coercive diplomacy: the case of Burundi", *Journal of Modern African Studies*, 2018, vol.56, n°4, p.689.

³⁸⁸ (T.) VIRCOULON, *op.cit.*

³⁸⁹ (C.) RAINFROY, *op.cit.*

³⁹⁰ For more information on the African Union's initiative following the crisis: (N.) WILÉN, (P. D.) WILLIAMS, *op.cit.*

The International Community's lead on Burundi's Peace Process occurred shortly after the crisis of October 1993. Indeed, the following month, both the UN (through the Special Representative of the Secretary-General, Ahmedou Ould-Abdallah) and the OAU (through its representative, Papa Louis Fall) were collaborating in the monitoring and stabilization of the country³⁹¹. But, as observed by Patrick Dupont, international observers were taken aback by the Coup as they had been "blinded by the transition between June and October 1993".³⁹² With regard to mediation, a shift to a regional lead was progressively implemented from 1995 onward with the resignation of the UN Special Representative of the Secretary-General³⁹³. Indeed, with the appointment of former Tanzanian President Nyerere as mediator in 1996, the international community remained more in a funding role towards Burundi's Peace Process, with a "risk averse strategy"³⁹⁴. Additionally, scholars presented us a valuable insight when they stated that since the end of 1996, the West had more interest in stability than in a democratic system respectful of human rights³⁹⁵.

Last, the contribution of international NGOs has provided alternatives to the parties involved in the mediation process initiated by the region, as it gave way to the creation of less competition-oriented spaces. The first which offered its assistance to the peace process was the Carter Center which sponsored talks between Heads of States from Uganda, DRC, Burundi, Rwanda and Tanzania under the chairmanship of Jimmy Carter and Julius Nyerere between 1995 and 1996³⁹⁶. The second was the Community of Sant'Egidio which took the lead when the mediation under Nyerere reached a standstill³⁹⁷. Their work led to "secret talks" in Rome between representatives of the Burundian regime and the CNDD; which ultimately gave birth to an outline agreement in March 1997³⁹⁸. Given these points, the international context surrounding the Arusha Agreement can be qualified as one that supported the regionally owned initiative to bring back stability in Burundi, yet with some tensions with regard to the choices made by the mediation team.

³⁹¹ (G. M.) KHADIAGALA, *op.cit.*, p.53; (H.) WOLPE, *op.cit.*, p.10.

³⁹² (P.) DUPONT, *op.cit.*, p.44.

³⁹³ (G. M.) KHADIAGALA, *op.cit.*, p.54.

³⁹⁴ *L'effet Mandela : Évaluation et perspectives du processus de paix burundais*, *op.cit.*, p.16; (H.) WOLPE, *op.cit.*, p.10.

³⁹⁵ (P.) DUPONT, *op.cit.*, p.55; *Unpacking the Mystery of Mediation in African Peace Processes*, *op.cit.*, p.24.

³⁹⁶ "Waging Peace: Burundi", Carter Center, <https://www.cartercenter.org/countries/burundi.html>, 14 May 2020; *Unpacking the Mystery of Mediation in African Peace Processes*, *op.cit.*, p.24.

³⁹⁷ (G. M.) KHADIAGALA, *op.cit.*, p.55.

³⁹⁸ *Unpacking the Mystery of Mediation in African Peace Processes*, *op.cit.*, p.24; (P.) DUPONT, *op.cit.*, p.47; For more information: (H.) WOLPE, *op.cit.*, p.26 – 35.

The UN's leadership was only brought back to the forefront in 2004, when AMIB was replaced by ONUB³⁹⁹. Still, their active role was the result of a gradual process. Following the signing of the APRA, the UN was formally consulted in July 2002, in a letter from Buyoya in which he requested the International Judicial Commission of Inquiry for Burundi⁴⁰⁰. Yet, there were no notable interactions between the Transitional Burundian Government and the UN following that episode, before 2004. Only then did the UN Secretary General (UNSG) send an assessment mission between the 16th and the 24th of May 2004, under the lead of the Assistant Secretary General for Political Affairs, Tuliameni Kalomoh⁴⁰¹. As explained in the report, their objective was to assess the "nature and added value" of the Commission on the basis of previous results, which led them to various observations and recommendations. Firstly, the concept of genocide was to be understood as "not only a legal characterization, but a political statement" in the case of Burundi⁴⁰². Secondly, the link between the TRC and the ICJI was blurry and needed clarification⁴⁰³. Thirdly, the influence of "provisional immunity" was also unclear as there seemed to be discrepancies between the different legal sources⁴⁰⁴. Therefore, after careful consideration of the previous Commissions of Inquiry for Burundi (four during the past decade) and their lack of results, they suggested the creation of a Special Chamber within the Burundian Court system⁴⁰⁵. This recommendation was made based also on the necessary resources, which were found to be "too costly" in the case of International Tribunals and better fitted, in the case of an instrument resembling the War Crimes Chamber of Bosnia-Herzegovina⁴⁰⁶.

Two other important events shaped Burundi's evolution that same year. As previously cited, on the 21st of May 2004, the UN Security Council unanimously adopted Resolution 1545 which created ONUB and gave it a more flexible mandate than AMIB when it came to "peacekeeping activities" ⁴⁰⁷. On the other hand, the Statute of Rome which is the founding

³⁹⁹ (H.) BOSHOF, (W.) VREY, (G.) RAUTENBACH, *op.cit.*, p.78.

⁴⁰⁰ (K.) ANNAN, *op.cit.*, p.3.

⁴⁰¹ *Idem*, p.4.

⁴⁰² *Idem*, p.9.

⁴⁰³ *Idem*, p.11.

⁴⁰⁴ *Idem*, p.12.

⁴⁰⁵ *Idem*, p.2.

⁴⁰⁶ *Idem*, p.20.

⁴⁰⁷ (H.) BOSHOF, (W.) VREY, (G.) RAUTENBACH, *op.cit.*, p.75.

Treaty of the International Criminal Court only came into force in the Burundian legal system on December 1st of 2004, although having been ratified on the 30th of August 2003.⁴⁰⁸

The following year, the UNSG, Koffi Annan, sent a letter to the President of UNSC suggesting that he should follow the mission's proposal to launch a "twin mechanism": with on one hand a non-judicial accountability mechanism (the TRC) and on the other, a judicial accountability mechanism (the Special Chamber within Burundi's Court system) of mixed composition⁴⁰⁹. As a follow up, on the 18th of July, the Transitional Government appointed a Commission to negotiate with the UN. However, with the elections that same summer, a new negotiating team was to be appointed⁴¹⁰. Between March 2006 and April 2007, there were series of negotiations between delegations from Burundi and the UN. In May 2006, comments were made by the UN Delegation regarding the "difficulty to cover investigations on events perpetrated 40 years ago"⁴¹¹. The beginning of January 2007 saw the official creation of the BINUB (through Resolution 1791), a UN mission intended to replace ONUB⁴¹². In February, a draft was prepared for an agreement between the negotiating delegations which however didn't get the approval of each party⁴¹³. Nonetheless, following the mutual agreement of Burundi's Government and the UN with regard to national consultations, a presidential decree was issued for the creation of a steering committee tasked to organize the popular consultation on August 10th of 2007⁴¹⁴.

As underlined by scholars, the 2010 elections outcome coupled with the downsizing of the international community's involvement brought a sizeable advantage to the government in the negotiation process, giving them access to the comfort of "the driver's seat"⁴¹⁵. Following the Kavakure report and the draft of the law on the creation of the Burundian TRC, the UN Special Rapporteur for the promotion of peace, justice, reparation and guarantees of non-

⁴⁰⁸ (S.) LECLERCQ, *op.cit.*, p.120.

⁴⁰⁹ (K.) ANNAN, *op.cit.*, p.1.

⁴¹⁰ (K.) ANNAN, *Letter dated 11 October 2005 from the Secretary-General to the President of the Security Council*, New York: United Nations Security Council, "Letter", S/2005/644, 11 October 2005, p.1.

⁴¹¹ *Verbal Note*, Bujumbura: United Nations Operation in Burundi, "Letter", BDI/OSRSG/2006-057, 25 May 2006, p.9.

⁴¹² (H.) BOSHOF, (W.) VREY, (G.) RAUTENBACH, *op.cit.*, p.117.

⁴¹³ *Accord-cadre général entre l'Organisation des Nations-Unies et la République du Burundi relatif à la création d'une Commission Vérité et Réconciliation et d'un Tribunal spécial au Burundi*, « Draft », 20 February 2007.

⁴¹⁴ Of mixed composition: UN, the Government and the Civil Society. « Décret n°100/234 du 10 Août 2007 portant création et nomination des membres du comité de pilotage chargé d'organiser et de superviser les consultations populaires en vue de la mise en place de la Commission Vérité et Réconciliation », 10 August 2007, Bujumbura; *Communiqué conjoint des délégations Burundaise et des Nations Unies*, Bujumbura, « Press Release », 9 March 2007.

⁴¹⁵ (S.) LECLERCQ, *op.cit.*, p.123; (S.) VANDEGINSTE, "Burundi's Truth and Reconciliation Commission: How to Shed Light on the Past while Standing in the Dark Shadow of Politics?", *op.cit.*, p.7.

recurrence, Pablo de Greiff, sent a letter to the Burundian government with some suggestions. In particular with regard to the judicial mechanism, he regretted: the removal of references to the instrument which might lead the transitional justice instruments to be understood as alternatives (which was not to be the case); the removal of the Truth Commission's competence of making of recommendations related to criminal proceedings ; and finally the removal of the direct reference to the end of temporary immunity being correlated to the submission of the report of the TRC⁴¹⁶. The negotiation process with the UN and the elements previously cited in this section led to the adoption of the law on Burundi's Truth Commission, in May 2014. However, it should be noted that, as argued by Vandeginste, the Burundian Government came to realize that “*de facto* impunity” (rather than “*de jure* through an amnesty”) coupled with a “non-existent prosecutor” allowed them to refrain from engaging in an arm wrestling with the UN and their policies⁴¹⁷.

In conclusion, we agree with Leclercq's argument that “International practices overlook the very core political stakes of state building in a post-conflict environment and (attempts to) transform(s) it into a technical, problem solving matrix issue” ⁴¹⁸.

‘Law of 2018’

The International Community's influence can be measured on basis of multiple factors. Nonetheless, three elements particularly caught our attention: the developments in the relationship between the UN and Burundi, the complicated link with Belgium and the EU and the country's withdrawal from the ICC⁴¹⁹. The context surrounding the extension of the TRC's mandate was one that antagonized both protagonists of the negotiations as the rise of human rights violation brought concerns to the UN; in particular, its Human Rights Council which decided to closely monitor the situation⁴²⁰. In its latest report, the Commission of Inquiry set up for Burundi blamed the Burundian government for its promotion of a “climate conducive to

⁴¹⁶ (P.) DE GREIFF, *op.cit.*, p.4, 7-8.

⁴¹⁷ (S.) VANDEGINSTE, “Negotiating and sharing-power: Burundi's bumpy road to reconciliation without truth”, *op.cit.*, p.204.

⁴¹⁸ (S.) LECLERCQ, *op.cit.*, p.155.

⁴¹⁹ « Loi n°1/14 du 18 Octobre 2016 portant retrait de la République du Burundi du Statut de Rome de la Cour Pénale Internationale adopté à Rome le 17 Juillet 1998 », 18 October 2016, Bujumbura.

⁴²⁰ « La chef des droits de l'homme Michelle Bachelet juge regrettable les attaques de l'ambassadeur du Burundi », *ONU Info*, <https://news.un.org/fr/story/2018/10/1027552>, 5 March 2020.

ongoing human rights abuses”⁴²¹. In response, the Burundian authorities requested the shutdown of the UN’s office in Burundi, whose activities had been adjourned since 2016⁴²².

The second factor resulted from Burundi’s perception of Belgium as “mobilizing the International Community, starting with the EU, against it” as they suspended their aid ⁴²³. As argued by Guichaoua et alii, diasporas can affect authoritarian regimes by providing “spaces of freedom of expression and information which maintain democratic aspirations” ⁴²⁴. An illustration of this fear for a mobilizing force in Belgium can be found in the “Days of Burundi” which welcomed Burundi’s civil society (local or in exile) for an in-depth brainstorming on the foundation for a peaceful and inclusive society, while negotiations with Burundi’s government have been stalling⁴²⁵.

Last, Burundi’s decision to leave the ICC on the 12th of October 2016 was viewed by the President of the Assembly of States Parties to the Statute, H.E. Mr. Sidiki Kaba, as “a setback in the fight against impunity”⁴²⁶. Leclercq’s observation on the strategies of subversion gives a plausible explanation to the rationale behind that choice made by the government. He refers to “the wave of discontent among African leaders towards the ICC” and the opportunity it then constituted for the Burundian government to reject the institution⁴²⁷. Another element which could enrich our understanding of the sudden move made by the regime, is related to the domestic issues. As human rights violations escalated, the risk of prosecution by the institution was correlatively growing⁴²⁸. The ICC, by deciding to launch a preliminary examination, was perceived by the Burundian government as part of a “conspiracy” towards it⁴²⁹.

⁴²¹ (E.) RUGIRIRIZA, *op.cit.*; *Report of the Commission of Inquiry on Burundi*, Geneva: United Nations’ Human Rights Council “Report”, A/HRC/36/54, 11 August 2017.

⁴²² (R.) GRAS, « Burundi : l’ONU ferme définitivement son bureau des droits de l’homme à Bujumbura », *Jeune Afrique*, 4 March 2019, <https://www.jeuneafrique.com/744621/politique/burundi-lonu-ferme-definitivement-son-bureau-des-droits-de-lhomme-a-bujumbura/>, 5 March 2019.

⁴²³ (E.) RUGIRIRIZA, *op.cit.*; (C.) RAINFROY, *op.cit.*

⁴²⁴ (A.) GUICHAOUA, (E.) NTAKARUTIMANA, (S.) STRAUS, *op.cit.*, p.19.

⁴²⁵ *Communiqué de presse du Parlement Francophone Bruxellois sur les Journées du Burundi*, Brussels : Brussels’ French-Speaking Parliament, « Press Release », 28 November 2018, <https://www.parlementfrancophone.brussels/activites/evenements/a...re-2014-2019/2018-2019/28-novembre-2018-les-journees-du-burundi>, 10 May 2020.

⁴²⁶ “Statement of the President of the Assembly of States Parties on the process of withdrawal from the Rome Statute by Burundi”, *International Criminal Court*, 18 October 2016, <https://www.icc-cpi.int/Pages/item.aspx?name=pr1244>, 15 May 2020.

⁴²⁷ (S.) LECLERCQ, *op.cit.*, p.125.

⁴²⁸ (A.) GUICHAOUA, (E.) NTAKARUTIMANA, (S.) STRAUS, *op.cit.*, p.20.

⁴²⁹ (S.) VANDEGINSTE, *The ICC Burexit: Free at last? Burundi on its way out of the Rome Statute.*, Antwerp: Institute of Development Policy and Management, “Analysis and Policy Brief”, n°20, October 2016, p.2. The ICC has decided to pursue its investigation; “The situation in the Republic of Burundi: ICC-01/17”, *International Criminal Court*, <https://www.icc-cpi.int/burundi?ln=fr>, 10 May 2020.

3.Mandates of the Commissions

Table 2. Analysis of the Mandates

Mandate	Arusha Agreement	Law of 2014	Law of 2018
Objective	“To investigate human rights abuses, promote reconciliation and deal with claims arising out of past practices relating to the conflict in Burundi” ⁴³⁰ .	“The establishment of the truth, national reconciliation and the restoration of the victims’ dignity» ⁴³¹ .	“The establishment of the truth, national reconciliation and the restoration of the victims’ dignity » ⁴³² .
Period of operation	“A two-year period. At the end of two years, the appropriate transitional institutions shall assess the work done, and may decide on an extension for one year” ⁴³³ .	“4 years from the oath taking of the Commissioners. This mandate may be extended only once for a period of one year at the request of the Commission» ⁴³⁴ .	“4 renewable years and takes effect from the swearing in of the Commissioners onwards. The term of the Commission may be extended for a period of time to be determined by the Parliament» ⁴³⁵ .
Period of time under investigation	“From independence (1 July 1962) to the date of signature of the Agreement” ⁴³⁶ .	“From the date of independence on July 1, 1962 to December 4, 2008, the date of the end of the belligerence” ⁴³⁷ .	“From February 26, 1885 until December 4, 2008, the date of the end of the belligerency» ⁴³⁸ .

⁴³⁰ APRA, Protocol II, Chapter 2, Article 18 (2).

⁴³¹ « Loi n°1/18 du 15 mai 2014 portant création, mandat, composition, organisation et fonctionnement de la Commission Vérité et Réconciliation », 15 May 2014, Bujumbura, Article 5.

⁴³² « Loi n°1/022 du 6 Novembre 2018 portant modification de la loi du n°1/18 du 15 mai 2014 portant création, mandat, composition, organisation et fonctionnement de la Commission Vérité et Réconciliation », 06 November 2018, Bujumbura, Article 5.

⁴³³ APRA, Protocol I, Chapter 2, Article 8 (4).

⁴³⁴ *Idem*, Article 4.

⁴³⁵ *Idem*, Article 4.

⁴³⁶ *Idem*, Article 8 (1) (a).

⁴³⁷ *Idem*, Article 6 (1).

⁴³⁸ *Idem*, Article 6 (1).

Types of violation under investigation	“The serious acts of violence committed during the cyclical conflicts. However, the Commission shall not be competent to classify acts of genocide, crimes against humanity and war crimes;”⁴³⁹. NB: The following crimes were to be processed by a different mechanism. “In accordance with Protocol I to the Agreement, the transitional Government shall request the establishment of an <u>International Judicial Commission of Inquiry</u> which <u>will investigate acts of genocide, war crimes and other crimes against humanity</u> and report thereon to the Security Council of the United Nations”⁴⁴⁰.	“The serious violations of human rights and international humanitarian law”⁴⁴¹.	“The serious violations of human rights and international humanitarian law»⁴⁴².
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⁴³⁹ *Ibidem*.

⁴⁴⁰ APRA, Protocol II, Chapter 2, Article 18 (1).

⁴⁴¹ *Idem*, Article 6 (1).

⁴⁴² *Ibidem*.

Functions	“(a) Investigation: The Commission shall bring to light and establish the truth regarding the serious acts of violence, (...), as well as the identity of the perpetrators and the victims.; (b) Arbitration and reconciliation: propose to the competent institutions or adopt measures likely to promote reconciliation and forgiveness, order indemnification or restoration of disputed property, or propose any political, social or other measures it deems appropriate. In this context, the transitional National Assembly may pass a law or laws providing a framework for granting an amnesty consistent with international law for such political crimes as it or the National Truth and Reconciliation Commission may find appropriate; (c) Clarification of history”⁴⁴³.	“1. Investigate and establish the truth about serious violations of human rights and international humanitarian law; 2. Qualify all the violations; 3. Publish: a) the list of missing and murdered people, and those of the victims and witnesses who waived anonymity; b) the list of people, both Burundian and foreign, who have distinguished themselves in the protection of human lives during the various crises. c) the list of the victims who granted their pardon as well as that of the perpetrators, who benefited from the pardon; 4. To suggest: (a) A reparations program; b) an action program; c) a date for the National Day of Remembrance for the Victims of Human Rights Violations; d) the erection of monuments of reconciliation and memory; e) the design and production of	“1. Investigate and establish the truth about the serious violations of human rights and international humanitarian law; 3. Qualify all the violations; 4. Publish: a) the list of missing and murdered people, and those of the victims and witnesses who waived anonymity; b) the list of people, both Burundian and foreign, who have distinguished themselves in the protection of human lives during the various crises. c) the list of the victims who granted their pardon as well as that of the perpetrators, who benefited from the pardon; 5. To suggest: (a) A reparations program; b) an action program; c) a date for the National Day of Remembrance for the Victims of Human Rights Violations; d) the erection of monuments of reconciliation and memory; e) the design and production of other
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⁴⁴³ APRA, Protocol I, Chapter 2, Article 8 (1) (a-c).

		other publications and symbolic works; f) institutional reforms; g) rewriting a history» ⁴⁴⁴ .	publications and symbolic works; f) institutional reforms; g) rewriting a history» ⁴⁴⁵ . It is interesting to note that in the same article, special mentions are made to the former colonial powers: As a new particular aim of the investigations has been added which is, “to determine the role of the colonizer in the cyclical violence which bereaved Burundi”. And in the rewriting of history, the research should be “using, where appropriate, the archives of Burundi held by the former colonial powers”.
Power	“Autonomy in managing the material and financial resources to be allocated to it. (...) Propose additional reconciliation mechanisms and shall	“No judicial power » ⁴⁴⁷ . “The prerogatives of: a) Summoning and listening to any person and using any testimony; b) accessing archives, documents, reports and other information;	“No judicial power » ⁴⁴⁹ . « The prerogatives of: a) Summoning and listening to any person and using any testimony; b) accessing archives, documents, reports and other

⁴⁴⁴ *Idem*, Article 6.

⁴⁴⁵ *Idem*, Article 6.

⁴⁴⁷ *Idem*, Article 2, al.2.

⁴⁴⁹ *Idem*, Article 2, al 2.

	be free to set up sub-commissions as appropriate” ⁴⁴⁶ .	c) requiring the intervention of the public authorities, the Public Prosecutor's Office and the police; (d) administering oaths to witnesses and experts who make statements during inquiries and hearings» ⁴⁴⁸ .	information; c) requiring the intervention of the public authorities, the Public Prosecutor's Office and the police; (d) administering oaths to witnesses and experts who make statements during inquiries and hearings» ⁴⁵⁰ .
Sanctions	No data.	“An agent of the state who destroys or refuses to communicate the requested documents is liable to the criminal and administrative sanctions provided for by law. In accordance with articles 248, 249 and 250 of the Criminal Code, professional secrecy and the secrecy of correspondence cannot be invoked against the Commission; Any false testimony or any false oath is punished in accordance with the provisions of the	“An agent of the state who destroys or refuses to communicate the requested documents is liable to the criminal and administrative sanctions provided for by law. In accordance with articles 261, 262 and 263 of the Criminal Code, professional secrecy and the secrecy of correspondence cannot be invoked against the Commission; Any false testimony or any false oath is punished in accordance with the provisions of the Criminal Code in its articles 414 and 415 »⁴⁵³.

⁴⁴⁶ *Idem*, Article 8 (3).

⁴⁴⁸ *Idem*, Article 7.

⁴⁵⁰ *Idem*, Article 7.

⁴⁵³ *Ibidem*.

		Criminal Code in its articles 399 and 400 »⁴⁵¹. « At the end of a fair and transparent procedure during which the people concerned have shared their arguments before the Commission, the latter may disseminate by any means necessary, the list of people who obstruct its work »⁴⁵².	« At the end of a fair and transparent procedure during which the people concerned have shared their arguments before the Commission, the latter may disseminate by any means necessary, the list of people who obstruct its work»⁴⁵⁴.
Final Report	Mentioned only for the International Judicial Commission of Inquiry on genocide, war crimes and other crimes against humanity. But not for the Truth Commission itself.	« At the end of its mandate, the Commission presents a final report to the Government, the National Assembly, the Senate and the United Nations for all useful purposes »⁴⁵⁵. « The report presents the results of the investigations carried out and of all the hearing sessions. It contains the conclusions of the analyses of these results and indicates the contexts in which the events occurred, their causes and their	« At the end of its mandate, the Commission presents a final report to Parliament, which meets in congress. The same report is transmitted to the President of the Republic, the Vice-president and the Head of Government. Without prejudice of the provisions of the preceding paragraph, the Truth and Reconciliation Commission presents an annual progress report to the Parliament meeting in congress »⁴⁵⁸.

⁴⁵¹ *Idem*, Article 7.

⁴⁵² *Idem*, Article 8.

⁴⁵⁴ *Idem*, Article 8.

⁴⁵⁵ *Idem*, Article 72.

⁴⁵⁸ *Idem*, Article 69.

		consequences »⁴⁵⁶. The in-depth list of included elements in the report are documented in article 74 and 75. « The Commission's final report is finalized and submitted simultaneously in Kirundi and in French»⁴⁵⁷.	« The report presents the results of the investigations carried out and of all the hearing sessions»⁴⁵⁹. The in-depth list of included elements in the report are documented in article 71 and 72. « The Commission's final report is finalized and submitted simultaneously in Kirundi and in French»⁴⁶⁰.
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⁴⁵⁶ *Idem*, Article 73.

⁴⁵⁷ *Idem*, Article 76.

⁴⁵⁹ *Idem*, Article 70.

⁴⁶⁰ *Idem*, Article 73.

V. Conclusion

Thanks to an understanding of truth-telling, through two of its constitutive elements, this work has been articulated around the political and legal aspects surrounding Truth Commissions.

From the political perspective, we have seen how context in its national and international facets influenced the governments' truth-telling choices.

From the domestic standpoint, actors' positioning, in the political arena, has often reflected their will to protect their interests from perceived and/or experienced threats. Secondly, the types of transition have shown the specificity of dynamics and opportunities which resulted from various scenarios (a negotiated settlement; a change initiated by reformers within the previous regime; or a decisive military victory). Thirdly, the types of regimes and violence have presented us an evolution from an authoritarian regime exerting vertical violence, to an emerging democracy which saw the rise of horizontal violence. Yet, following internal developments, the country has gone back to a vertical kind of violence in a mutated "authoritarian democracy". Last, the weight of the representations of the past has been a key element in understanding the changes in the Burundian collective psyche: from the creation of antagonist national identities during the colonial era to their materialization under the military regimes, without forgetting the resurgence of a national unity during the political crisis of 2015 while the government attempted to revive ethnic narratives.

From the external standpoint, the region has been as much a stabilizing factor (e.g. the embargo following Buyoya's Coup in 1996, etc.) as it has been a destabilizing one (e.g. the Rwandan genocide, etc.). On the other hand, the international community was complicit with the colonial authorities' disruption of the Burundian kingdom which planted the seed of enmity between its "ethnic" communities. However, in the pursuit of Transitional Justice, the UN has played a passive assisting role until the beginning of the second millennium. Despite the institution becoming more dynamic regarding the support of initiatives, the Burundian case brings into light the danger of a technical approach to the field and in particular the potential creation of a *de facto* impunity.

The legal perspective offers us a view of the crystallization of the political interests. This includes the potential for the government to interfere with the final report of a Truth Commission as pointed out by Commissioner Sibazuri, and what Lutz observed with Latin American cases, that "the most important indicator of the success of Transitional Justice

measures is not how they achieve the *above* goals, but whether they do so”⁴⁶¹. Indeed, following negotiations with the UN, the Burundian government has agreed on the option of establishing a Special Chamber for the most heinous crimes committed since the independence. However, as presented in the domestic evolutions preceding the law renewing the TRC’s mandate, references to that instrument seem to have slowly been erased. Therefore, the willingness of the Burundian government will be tested on their ability, ultimately, to achieve their goals.

Finally, the cases analyzed offer the richness of a lengthy period of experimentation of truth-telling practices, which reflect and enrich the understanding of the field. This work has brought up many questions during the writing journey. Most of them interrogate two main tensions, namely the internal–external influence and the structure–agency continuum. Both seem to have been intertwined in the way they affected the truth-telling process.

Internally, many changes have been initiated locally in order to cultivate a peaceful cohabitation. Therefore, paying attention to the weight of agency can be of great interest in order to better understand evolution in the representations of the past as well as the structure. “Memory entrepreneurs” like Marie-Louise Sibazuri are agents whose work too often goes unnoticed in studies carried out by researchers in the field of transitional justice in Burundi⁴⁶². Indeed, the majority of works (this one included) focus on the structural analysis of politics and less on the agency’s potentiality that lies in narratives. Mrs. Sibazuri is an example of leading with compassion and always seeking truth. Her work, on the power of narratives, started early on when she began writing plays which questioned the ethnical relationships among Burundians (many even got censored). In a recent interview, she reflected on the impact those plays may have had in her appointment in the Commission of 1988⁴⁶³. Following the outburst of violence, consecutive to the civil war, she continued exploring the cathartic potential of oral cultures. The powerful radio show “Umubanyi Niwe Muryango” (Our neighbors are our family) is one of the most compelling examples⁴⁶⁴. Thanks to its plot being focused around everyday life for “typical” Burundian families, she managed to explore their realities through hundreds of episodes. It created conditions, for the listeners, to confront the gap between stereotypes and reality, by abstaining to ascribe to the characters a pre-defined ethnicity. At the end of this work,

⁴⁶¹ (E.) LUTZ, *op.cit.*, p.327.

⁴⁶² A memory entrepreneur is defined as a “person who asks the whole population to undergo a transformation that he-she has undergone him/her-self”. (V.) ROSOUX, “The role of memory in the desecuritization of inter-societal conflicts”, in (M. J.) BUTLER (under the direction of), *Securitization Revisited: Contemporary Applications and Insights*, p.204.

⁴⁶³ (M.-L.) SIBAZURI, interview, *op.cit.*

⁴⁶⁴ (C.) DE MARCILLY, “Marie-Louise Sibazuri : « L’écrivain est la voix du peuple », *La Libre*, 20 July 2011, <http://www.lalibre.be/culture/livres-bd/marie-louise-sibazuri-l-ecrivain-est-la-voix-du-peuple-51b8d6a5e4b0de6db9c24276>, 15 October 2018.

it might be useful to consider whether this kind of individual contribution to the national reconciliation journey is as relevant (if not more) as the official/institutional one. It might therefore be fruitful to conduct additional fieldwork to identify the scope and limits of this kind of initiative.

If we consider external influence, it is difficult to deny that the creation and/or reinforcement of conflictual identities during colonization has played a critical role in the following bloodshed. Therefore, the exploration of the Belgian Minister of Colonies' archives could certainly enlighten the mechanisms put in place to foster enmity. A better understanding of the genesis of the violence that has devastated Burundi may favor a new journey based on more creative patterns towards fellowship rather than rivalry. Such an approach could not only be insightful for Belgium or Burundi, but also more broadly for all nations that encouraged the International Decade for People of African-Descent, and an authentic search for accurate historical facts related to colonialism⁴⁶⁵.

⁴⁶⁵ "Recognition", *United Nations*, <https://www.un.org/en/observances/decade-people-african-descent/recognition>, 27 July 2020.

VI. Annexes

Annex 1 – Map of Burundi



Annex 2 – Letter of the 27 intellectuals

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Lettre ouverte des 27 intellectuels hutus au Président Buyoya

Bujumbura, le 22 août 1988

Excellence Monsieur le Président, Nous venons porter à votre connaissance la prise de position des hutu sur les événements qui sont en train de se dérouler au Burundi depuis le début du mois d'août. Nous nous attarderons ici à relever les contradictions que masque l'information officielle, légitimant ce que nous croyons être un nouveau « plan Simbananiye » (génocide de 1972). Certains d'entre nous avaient bien voulu l'exprimer samedi au cours des réunions du parti ; mais puisque les interventions étaient manifestement programmées à l'avance dans l'intention de consacrer l'attitude extrémiste tutsi dirigée en faveur d'un plan d'extermination qui transparaissait si clairement dans les idées et surtout dans la note finale dans toutes les localités de la capitale, nous nous trouvons dans l'obligation de résumer notre réaction à travers cette lettre ouverte, et nous osons espérer que vous y réserverez une bonne suite. Nous savons d'avance que ceci peut susciter des conséquences, puisque votre entourage risque d'y voir une justification des répressions que nous sentons venir : la radio vient de l'annoncer par des termes révélateurs, comme ceux entendus depuis dimanche, trahissant le principe même de transparence que le régime évoque, et que le gouvernement vient de réaffirmer, alors que des hutu sont déjà massacrés sans procès. Avant d'entrer dans le vif de la question, nous demandons déjà à la communauté internationale, en particulier les missions diplomatiques accréditées à Bujumbura, de suivre de près la situation. Nous tendons la main aux pays voisins, à l'OUA, aux organismes du système des Nations Unies, à la communauté internationale ainsi qu'aux différents organismes humanitaires...de suivre l'évolution des événements et d'intervenir si besoin pour éviter un massacre qui n'est plus caché.

Excellence Monsieur le Président,

Point n'est besoin de détailler le caractère préoccupant de la situation socio-économique difficile qui produit ce triste résultat. Les inégalités et les injustices sociales sont une réalité qui semble être cautionnée par le pouvoir en place dans le pays, en dépit des contestations incessantes des esprits progressistes et des promesses du discours politique. Il apparaît bien que des positions acquises depuis plus de vingt ans par la classe dirigeante doivent être sauvegardées, et tous les moyens sont devenus bons à cette fin. Le pouvoir reste régional, clanique et surtout tribal. Or malheureusement, le Burundi, petit et pauvre, rend difficile le partage du gâteau qui s'amenuise de jour en jour. Cela n'est même plus possible à l'intérieur du groupe des dirigeants au pouvoir fussent-ils d'une même ethnie ou d'une même région. Lorsque cette contradiction, aujourd'hui matérialisée par l'enlèvement des dossiers des dignitaires du régime Bagaza coupables de crimes de haute trahison ou de détournements, entraîne une guerre froide entre les membres de l'ethnie dirigeante, il se trouve toujours un moyen de chercher les raisons ailleurs et de désigner des cibles. Comme en 1972, après le procès surprise des hommes de Muranyya, la communauté hutu devient « l'ennemi de la Nation » ; il faut la décapiter pour rétablir le dialogue tutsi menacé d'éclatement.

Le discours officiel se trouve, cependant contredit par les faits.

- ❖ *Dans les événements de Marangara et de Ntega, on parle de réfugiés hutu qui auraient entraîné d'autres à l'intérieur du pays à prendre des machettes et des lances pour massacrer les tutsi. Mais cela fait maintenant plus d'une semaine qu'on connaît les coupables, mais on n'a pas encore dit qui ils sont, comment ils s'appellent, d'où ils sont venus, le nom de ceux qui les aident, etc. Alors qu'on annonce l'ouverture prochaine des procès dans la transparence, on apprend en même temps l'exécution sommaire des intellectuels hutus et on couvre la nouvelle de beaucoup de secrets alors que le mensonge surgit à la face du monde. Qui sera, par exemple capable de montrer devant les barres Come Bibonimana, ancien député et depuis longtemps poursuivi pour avoir dénoncé les statistiques tribales du ministère de l'Education et qui vient d'être exécuté avec beaucoup d'autres.*
- ❖ *On a vite conclu à une rébellion paysanne inspirée par des intellectuels hutu. Or d'après des informations convergentes, les événements qui ont commencé à Marangara au milieu de la première semaine du mois ont une grande explication qu'on n'a jamais dite à travers l'information diffusée par le pouvoir. On signale en effet la présence des militaires du 4ème Bataillon de Ngozi en manœuvres dans la localité sans avoir prévenu la population, erreur qui a été notée par les paysans lors d'une « campagne de pacification » et qui a été reconnue par un chef militaire qui a parlé d'un ordre venu « du haut ». Cela se passait plus de dix jours avant le début des massacres. L'histoire dira comment les événements ont dégénéré en conflits sanglants, se déplaçant de Marangara à Ntega pour finalement gagner les communes environnantes. L'information officielle le cache, mais il est sûr que l'avenir le démontrera.*
- ❖ *Officiellement, on apprend depuis mercredi que le calme est revenu et que la situation est maîtrisée, mais le gouvernement instaure en même temps un couvre-feu sur tout le territoire national en priant la population de ne plus croire qu'à l'information de la radio nationale. Et quand la presse internationale dément, on reconnaît qu'il a encore quelques affrontements ! Oui, l'armée a provoqué des tensions, oui la même armée a amené la répression dans les campagnes. Des camions ont évacué les familles tutsi de la région vers Ngozi pour les sécuriser, pendant que des blindés, appuyés par des hélicoptères s'attaquaient aux hutu. Les survivants sont parvenus à fuir vers le Rwanda, et il est curieux d'entendre que les hutu exterminent les tutsi et se comptent en même temps en grand nombre parmi les réfugiés !*
- ❖ *Comment expliquer que les militaires aient refusé d'intervenir au début desdits massacres alors que leur premier devoir est d'arrêter rapidement tout danger en empêchant toute progression ? Il a fallu attendre quelques jours pour faire croire à la paix alors que les engins militaires se mettaient à l'action. Cette abstention nous semble être une légitimation de l'agression pour rééditer la répression de 1972. Un montage donc ? Encore une fois l'histoire le dira.*

Excellence Monsieur le Président,

Dans cette situation, il est normal que la population soit maintenant sur le qui-vive et reste traumatisée par l'imminence d'un nouveau génocide. La presse nationale sait de quoi il s'agit quand elle dit que les « coupables directement ou indirectement liés » aux événements seront « sévèrement punis ». Celui qui est ne hutu, l'intellectuel en l'occurrence, ne se fait plus aucune illusion. Il semble que l'armée tutsi veuille réussir ce que le ministère de l'Education voulait réaliser dans les écoles

secondaires et à l'Université. C'est la scène qu'on a vue tout au long de la dernière année scolaire. Et c'est une bonne similitude de situation. En effet, on n'a pas encore oublié que les élèves et les étudiants tutsi ont participé à une campagne d'intimidation au niveau national. Les coupables sont connus. Les dossiers sont là. Mais paradoxalement, ce sont les hutu, forcés de quitter les écoles, sous la menace des couteaux comme ce fut le cas à l'Ecole Technique Secondaire d'art de Kamenge et des fusils à l'université. De la même façon, le hutu va faire les frais des massacres actuels. Pourtant quelques éléments tutsi progressistes et modérés ont souligné dans les réunions du Parti que le problème fondamental du Burundi actuel était essentiellement d'ordre politique et fondé sur les inégalités sociales, ils ont attiré l'attention du public que la classe dirigeante pourrait être plus responsable que d'autres dans cette affaire.

Excellence Monsieur le Président,

Nous aimons la paix. Contrairement à ce que l'aile extrémiste tutsi pourrait vous faire croire, seul moyen de maintenir sa place dans l'arène du pouvoir, en perpétuant un génocide, nul hutu sensé ne rêve exterminer les tutsi. Bien au contraire ! D'autant qu'il existe d'ailleurs des tutsi prêts à construire le pays avec les hutu, l'obstacle étant l'absence de dialogue. Maintenant, la situation dépasse la limite du tolérable. C'est pourquoi Excellence Monsieur le Président, si vous visez l'objectif d'une paix durable au Burundi, nous vous proposons les quelques solutions :

- 0. Suspendre les massacres et les arrestations arbitraires des hutu.*
- 1. Designner avant la fin de cette semaine une Commission nationale multiethnique et représentative chargée d'analyser sans complaisance les mesures structurelles qui s'imposent pour éviter le pire. Nous recommandons qu'on y adjoigne des observateurs extérieurs pour garantir la neutralité de la commission.*
- 2. Voir dans quelle mesure les hutu peuvent être associés à la Défense et à la Direction politique de leur patrie.*

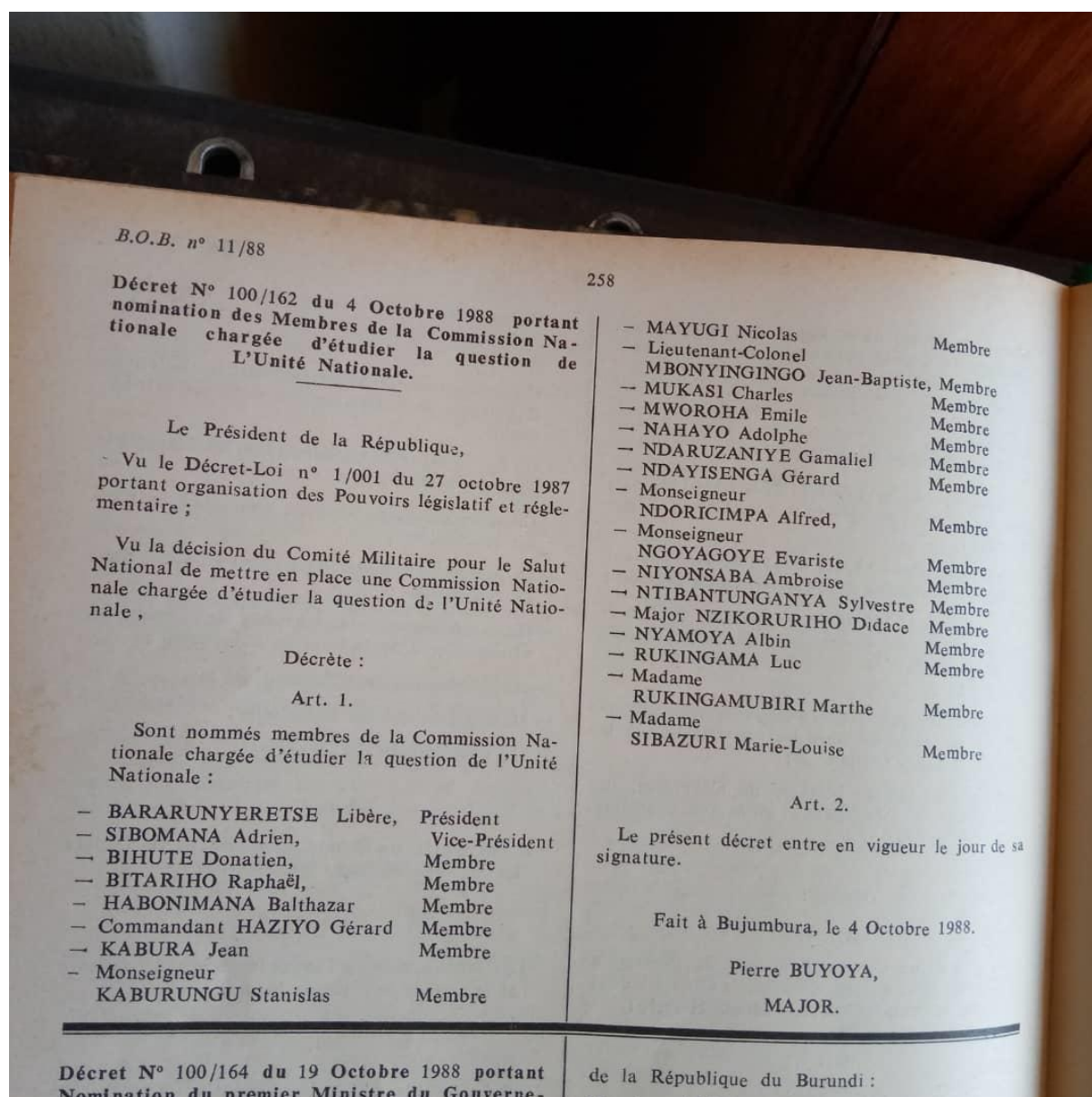
Veuillez agréer, Excellence Monsieur le Président, l'assurance de notre considération très distinguée.

LISTE DES SIGNATAIRES DE LA LETTRE OUVERTE

1. Bahati Constantin, étudiant
2. Bampigira Lin, fonctionnaire au ministère des Finances en 1988
3. Birabisha Didace, fonctionnaire au ministère des travaux publics en 1988
4. Busabusa Radegonde, fonctionnaire à l'Union des Travailleurs Burundais (UTB)
5. Habonimana Aloys de Gonzague, Assistant d'Agronomie à l'Université du Burundi à l'époque

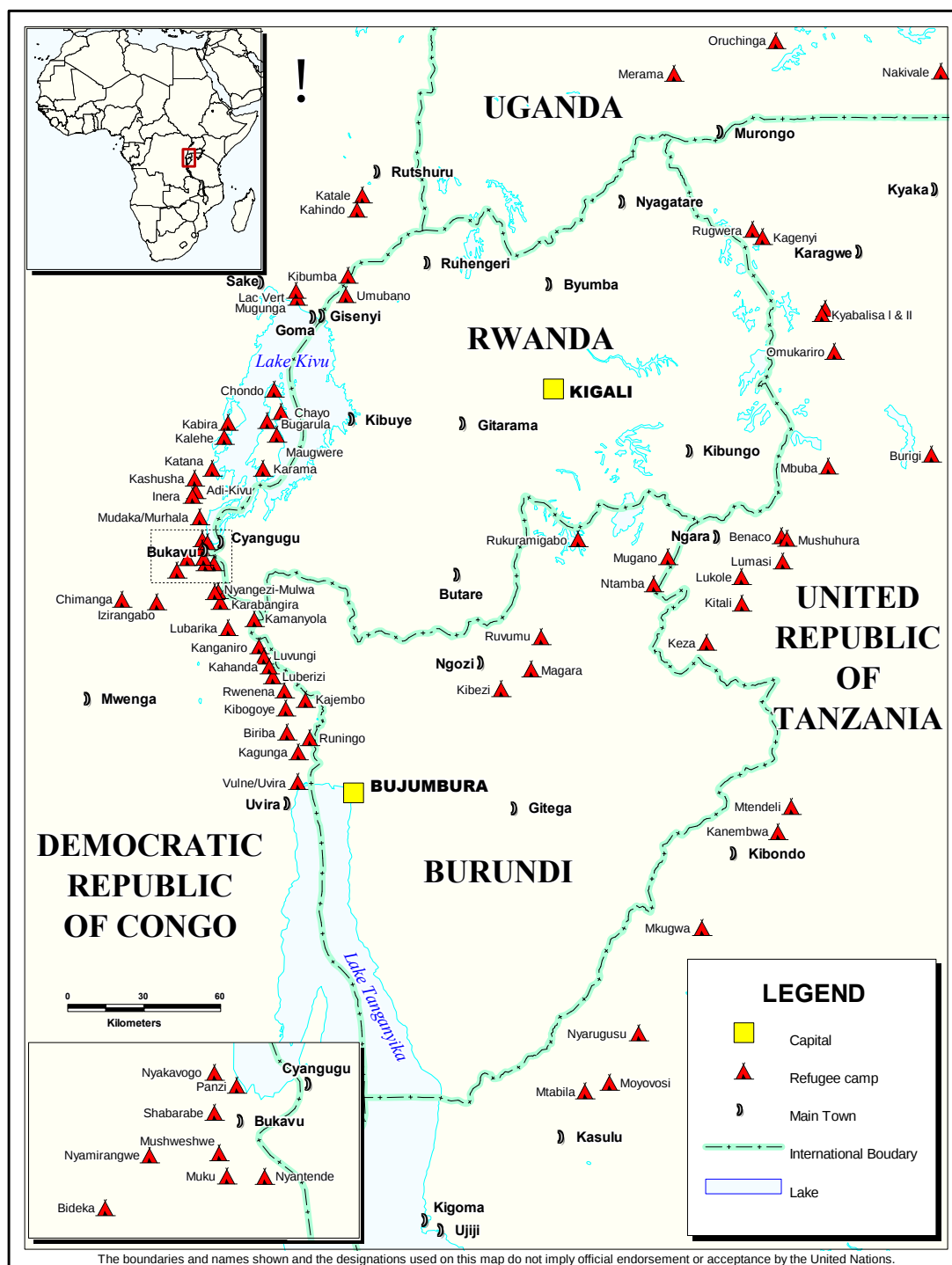
6. Hakizimana Déo, journaliste au Renouveau, correspondant à Gitega quand la crise éclate
7. Katiyunguruza Gervais, étudiant
8. Masabo Joseph-Martin, étudiant
9. Mbonabuca Térance, directeur de la Jeunesse au ministère de la Jeunesse, des Sports et de la Culture et membre du comité central de la Jeunesse Révolutionnaire Rwagasore en 1988
10. Ndaruhutse Jérôme, étudiant
11. Ndayakire Térance, employé de l'hydrocarbure quand il appose sa signature
12. Ndikumana Léonce, enseignant en Agronomie à l'UB en 1988
13. Ngendakumana Patrice, étudiant
14. Nibirantije Abel, étudiant
15. Nibogora Oscar, fonctionnaire aux Archives nationales quand la crise éclate
16. Niyonzima Alexandre, étudiant
17. Nsabimana Audace, économiste au C.U.R.D.E.S en 1988
18. Nsanze Augustin, enseignant d'histoire à l'U.B en 1988
19. Nshimirimana Pasteur, étudiant
20. Ntabona Venant, bibliothécaire à l'U.B quand la crise éclate
21. Ntarataze Daphrose, 2eme Secrétaire Nationale de l'UFB quand elle rejoint ses 26 camarades
22. Ntimpirantije Abel, étudiant
23. Nyandwi Emmanuel, il est enseignant au Bureau d'Education Rurale en 1988
24. Nyawenda Louis, étudiant
25. Nziya Zacharie, étudiant
26. Sunzu Salvator, toujours à la RTNB
- 27. Vyungimana Frédéric, étudiant**

Annex 3 – Decree establishing the Commission on the Research of Peace and Unity in Burundi on October 4th 1988



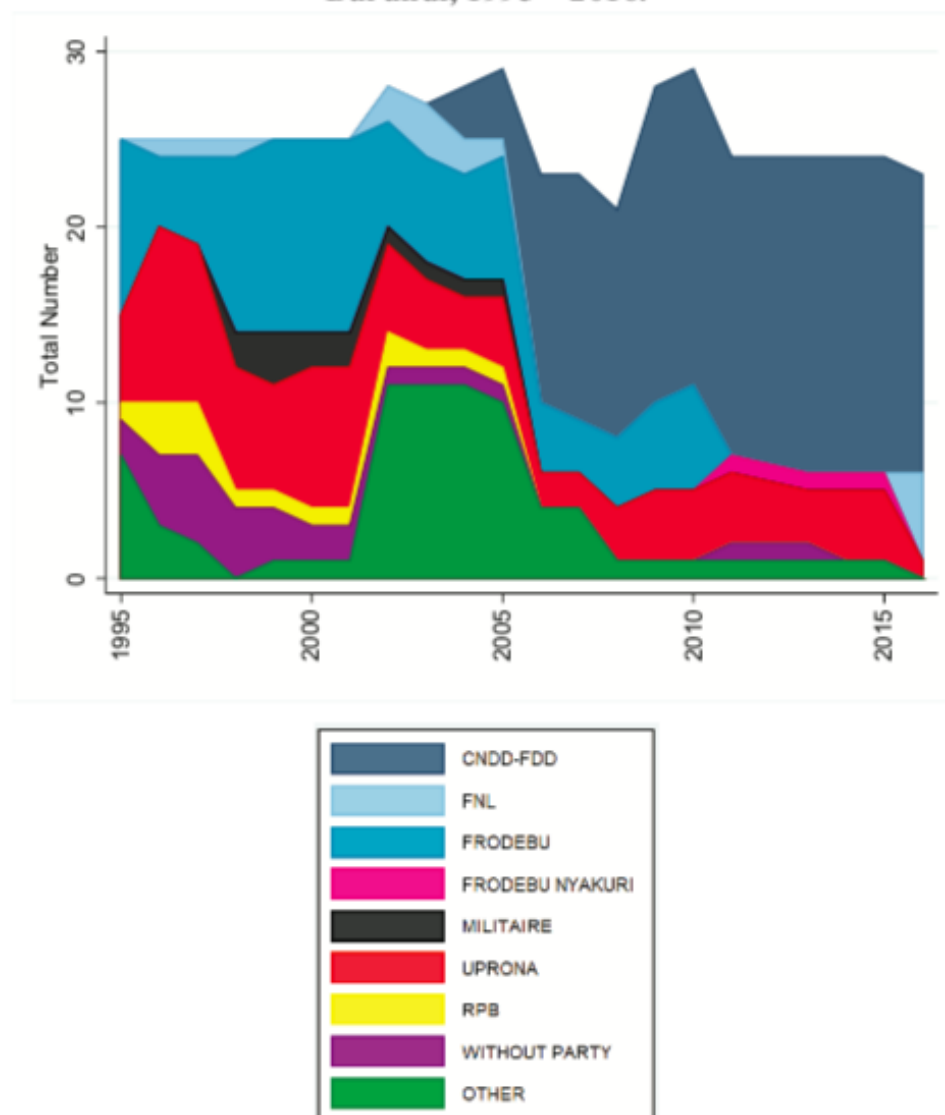
Annex 4 – Refugee Camps in the Great Lakes Region in 1995

REFUGEE CAMPS IN THE GREAT LAKES REGION (As of 1995)



Annex 5 – Executive positions in Burundian governments by political party between 1995 and 2016

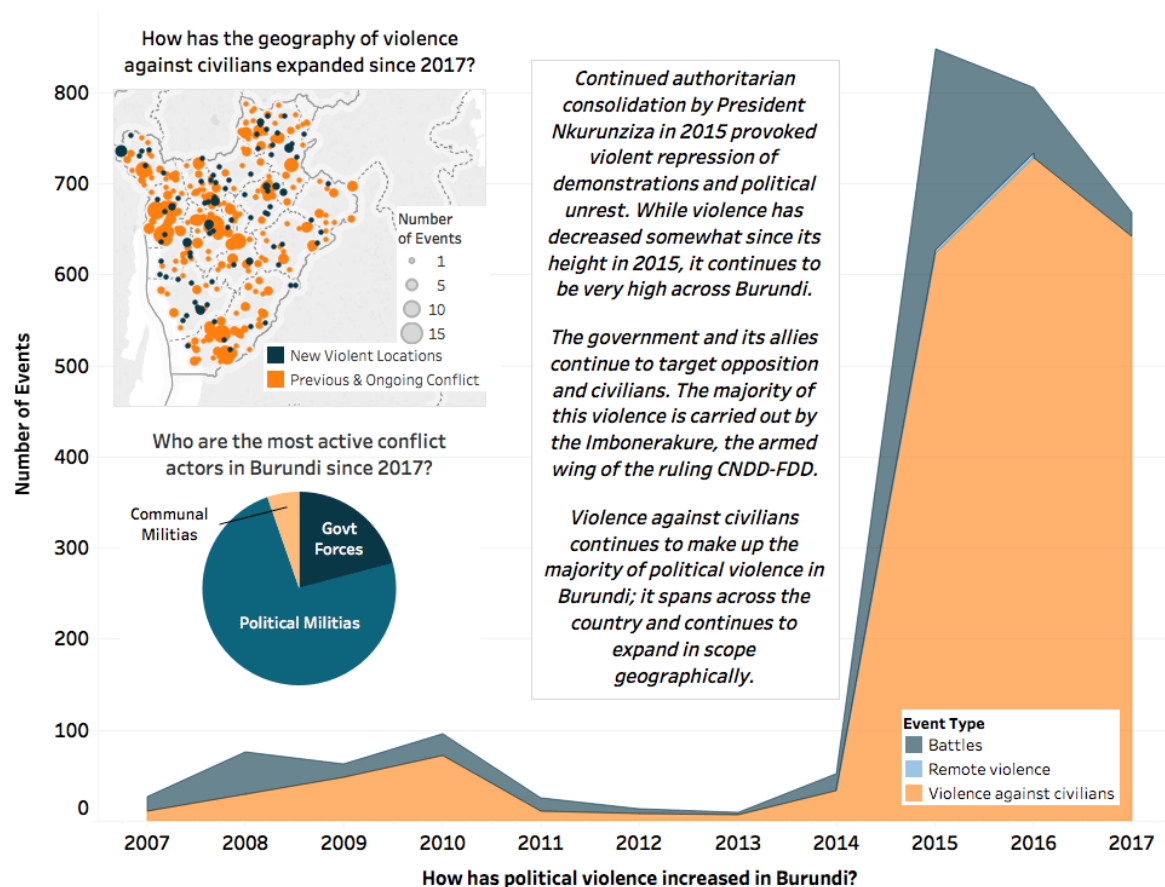
Figure 2a. Distribution of executive positions by political party in Burundi, 1995 – 2016.



Notes. Executives are President, Vice-Presidents and Ministers. Cabinet Directors (until 2002), Vice-Ministers (2008) and General Secretaries are omitted from the analysis. FNL includes FNL, FNL Rwasu, FNL-ICANZO & PALIPEHUTU. The category "Other" includes, among many others, ABASA, ANADDE, FAB, FROLINA, PRP, PSD, RADDES and VERT-INTWARI. They are taken together given their low incidence. The y-axis represents the total number of positions in a given year. The analysis does not take into account the prestige of executive position.

Annex 6 – Rise of Repression against Civilians in Burundi between 2007 and 2017

Burundi: Continued Repression & Targeting of Civilians



Annex 7 – Biography Marie-Louise Sibazuri

Author and play writer, with a passion for poetry, tales, dance and traditional songs. Committed to the safeguard of peace and the defense of Women and Children's rights. Preoccupied by the safeguard and the passing on of memory. Nominated in 2014 as delegate ambassador for the Francophonie in Burundi.

BELGO-BURUNDIAN
ARTIST
PLAY WRITER
TRAINER IN POSITIVE
MANAGEMENT OF
CONFLICT

- ❖ **1999-2004:** Training in positive management of conflict through Non-Violent Communication (Marshall Rosenberg Process) + 110 days of field placements in Belgium, Burundi, France and Switzerland (International Certificate).
- ❖ **1995-1996:** Training in peaceful conflict resolution + field placements in Rwanda, Kenya, Zimbabwe, Ethiopia and South Africa; with support from UNIFEM, International Alert & Search for Common Ground.
- ❖ **1996-1998:** Member of the National Council of Bashingantahe.
- ❖ **July 1994 – September 1996:** Facilitator in Kigali (through the project « Culture, to live better together » with 32 feminine and Rwandan NGOs « Pro-Femmes, Twese Hamwe »).
- ❖ **1988-1991:** Member of the National Commission on the Research of Peace and Unity in Burundi (elaboration of the Charter on National Unity).
- ❖ **1976-1984:** Wrote 82 plays (10 received awards and 5 were adapted on Burundian television).
- ❖ **1996-2014:** Wrote 1242 episodes of radio shows.

□

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Depuis la période coloniale, le Burundi a été meurtri par de nombreuses périodes de violences acerbies. Afin de pouvoir confronter ce passé sanglant, des Commissions Vérité Réconciliation ont été instituées à deux reprises par les différents pouvoirs en place. Cependant, la recherche de vérité n'est pas un long fleuve tranquille et bien souvent cette noble quête est mise en péril par les intérêts individuels des « représentants » du peuple.

Transitional Justice; Truth Commissions; Burundi; Memory; Context.