



NATIONAL DIALOGUE ON THE MECHANISMS OF TRANSITIONAL JUSTICE: SPECIAL CASE OF BURUNDI

Burundi, 2 – 11 May 2006

NARRATIVE REPORT

Prepared by:



South African Embassy in Burundi

AND





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EXECUTIVE SUMMARY

In order to build sustainable peace in Burundi, mechanisms of transitional justice must be put into place. Currently the Burundian Government and the United Nations are negotiating mechanisms such as a Truth and Reconciliation Commission (TRC) and a Special Chamber within the national judicial system to adjudicate crimes of genocide, war crimes, and crimes against humanity.

In February 2006 the Government of Burundi produced a Memorandum that formed the basis of the Government's 26 – 31 March negotiations with a UN delegation. The result of these negotiations was a joint communiqué on the framework for establishing both mechanisms recommended by the UN report. Specific details agreed upon, however, have not been made public. Without broad-based social support for and local ownership of mechanisms designed to promote justice, truth, and reconciliation, their impact could be minimal. For its complete success, the Transitional Justice Process has to be as inclusive as possible. However, at this stage in the process, grassroots engagement has yet to be tackled. Since both the South African Embassy in Burundi and the African Centre for the Constructive Resolution of Disputes (ACCORD), a conflict management non-governmental organisation (NGO), are interested in the Burundian peace process, and have the will to accompany the whole process of reconciliation, they intended to introduce civil society to the different mechanisms of transitional justice in order to contribute to the success of the reconciliation process in Burundi through conducting a National Dialogue regarding transitional justice mechanisms with a special focus on the case of Burundi. This National Dialogue was conducted from 2 – 11 May 2006.

The objective of the National Dialogue was to give an opportunity for the population of Burundi to express themselves on the Transitional Justice Process currently taking place in Burundi as well as to create awareness of the different mechanisms of transitional justice at the grassroots level. Experts from Rwanda, Sierra Leone and South Africa shared their experiences and testimonies regarding the Transitional Justice Processes in their respective countries with the participants in order to show that such a process is essential, as well as unique, to each country.

The National Dialogue took the form of four (4) seminars. These seminars were held in four (4) different regions of Burundi namely the central, northern, southern and western regions; accordingly the dialogue was respectively held in Bururi (from 2 – 3 May) where delegates gathered from the provinces of Bururi, Makamba, and Rutana; in Gitega (from 4 – 5 May) with delegates from the provinces of Cankuzo, Gitega, Karusi, Mwaro and Ruyigi; in Ngozi (from 8 – 9 May) with delegates from the provinces of Kayanza, Kirundo, Muyinga and Ngozi; and in the city of Bujumbura (from 10 – 11 May) with delegates from the provinces of Bujumbura in the urban area and in the rural area, Bubanza, Cibitoke and Muramvya. The four (4) seminars, conducted for a day and a half each, as mentioned above consisted of sessions of presentations prepared by international experts invited by the South African Embassy in Burundi and ACCORD. The different presentations were followed by a debate session which consisted mostly of questions from the delegates and answers from the experts. The debate sessions were in turn followed by participants being divided into groups and being presented with a specific set of questions regarding potential transitional justice mechanism in Burundi. After internal discussions each group presented the facilitator with a set of answers. In total almost two hundred (200) delegates, fifty (50) per seminar, from local independent organizations and civil society organisations participated in the relevant dialogues.

This National Dialogue should be viewed as part of the greater reconciliation process taking place in Burundi. It is hoped that the outcome of this National Dialogue will benefit other actors such as the Government Ad Hoc Committee in Burundi, when planning further activities relating to the Transitional Justice Process in Burundi; especially when planning further consultations with civil society. It is clear that Burundi has a valuable civil society that is able to think critical as well as provide constructive opinions. The Burundi displayed eagerness and a hunger to participate in the Transitional Justice Process in Burundi. This Process should belong to the people of Burundi to ensure broad-based social support and local ownership that will result in confidence being vested in the transitional justice mechanisms by the population for whose reconciliation they are created.

1. BACKGROUND

Since the signing of the Arusha Peace and Reconciliation Agreement of 2000, Burundi has made significant progress towards ending armed conflict within its borders and instituting democratic structures of governance. In order to build sustainable peace, mechanisms of transitional justice must be put into place. Mechanisms currently being negotiated by the Burundian government and the United Nations are a Truth and Reconciliation Commission (TRC) and a Special Chamber within the national judicial system to adjudicate crimes of genocide, war crimes, and crimes against humanity.

The 2000 Arusha Peace and Reconciliation Agreement (hereafter referred to as the 'Arusha Agreement') provided for the formation of both a National Truth and Reconciliation Commission and a United Nations International Commission of Inquiry. The latter was envisaged as a means to investigate genocide, crimes against humanity and war crimes, while the former was to handle other crimes related to conflicts since Burundi's independence in 1962. The agreement included a provision for an International Criminal Tribunal in the case that evidence of genocide, crimes against humanity or war crimes were found by the International Commission of Inquiry.

According to the Arusha Agreement, both institutions were to be established within six (6) months after the inauguration of a Transitional Government. The Transitional Government led by President Pierre Buyoya took office in November 2001, and in July 2002, President Buyoya formally requested the establishment of the United Nations International Commission of Inquiry. However, a United Nations (UN) response was not forthcoming until May 2004, when a UN mission visited Burundi to assess the advisability and feasibility of a Truth and Reconciliation Commission (TRC) and an International Commission of Inquiry.

Almost a year later, the UN produced the March 2005 "Kalomah Report" based on its assessment mission. The report recommended that rather than establishing a TRC and an International Commission of Inquiry, Burundi should establish a single Truth Commission equipped to investigate genocide, war crimes, and crimes against humanity, alongside a Special Chamber within the judicial system to prosecute these crimes. The principal basis for this recommendation was that three (3) previous UN

Commissions of Inquiry in Burundi had no tangible results, failing to stem impunity; thus, a mechanism for prosecution was seen as essential to ensure accountability.¹ Further, the UN noted substantial overlap between the two (2) commissions called for by the Arusha Agreement. The Security Council, in Resolution 1606 (2005), called upon the UN Secretary-General to “initiate negotiations with the [Burundian] Government and consultations with all Burundian parties concerned on how to implement [the reports'] recommendations.”

In the meantime, the window had passed for establishing mechanisms of transitional justice under the oversight of the Transitional Government, as originally envisaged by the Arusha Agreement. A law establishing a National Truth and Reconciliation Commission was passed in December 2004, but in August 2005, the newly elected CNDD-FDD government abandoned this law and, in November 2005, established an Ad-hoc Commission responsible for negotiations with the UN to put in place a Truth and Reconciliation Commission and a Special Chamber (hereafter referred to as the ‘Ad-hoc Commission’). The International Centre for Transitional Justice (ICTJ) took on a consultative role, sending a first delegation to Burundi in August 2005, which met with members of the previous and current governments, human rights and humanitarian organizations, church groups, judges, prosecutors, and UN officials, and receiving Minister of Justice, Clotilde Niragira, for further consultations in its New York office in November 2005. In December 2005, a second ICTJ mission to Burundi sent experts familiar with Peru, Sierra Leone, South Africa, and Timor-Leste to meet with government officials, civil society representatives, and the UN mission in Burundi, with the aim of informing discussion on the complex relationship between truth commissions and prosecutions.

A Memorandum produced by the Government of Burundi in February 2006 formed the basis of the Government’s 26 – 31 March negotiations with a UN delegation. The negotiations resulted in a joint communiqué on the framework for establishing both mechanisms recommended by the UN report. Specific details agreed upon, however, have not been made public. The process thus far has been marred by the lack of consultations with civil society. Without broad-based social support for and local ownership of mechanisms designed to promote justice, truth, and reconciliation, their impact could be minimal. For its complete success, the Transitional Justice Process

¹ Previous UN commissions of inquiry in Burundi include the 1985 Whitaker Report, the 1994-95 Aké-Huslid report, and the 1996 report of the international commission of inquiry. A fourth inquiry undertaken by non-governmental organizations resulted in an additional, non-UN 1994 report.

has to be as inclusive as possible. Indeed, it has been proved that the efficiency of TRCs wherever they have been established depends essentially on the confidence vested in them by the population for whose reconciliation they are created. Their involvement is therefore very crucial and their views on the most suitable mechanisms for reconciliation must be taken into account. However, at this stage in the process, grassroots engagement has yet to be tackled. Since both the South African Embassy in Burundi and the African Centre for the Constructive Resolution of Disputes (ACCORD)², a conflict management NGO, are interested in the Burundian peace process, and have the will to accompany the whole process of reconciliation they intended to introduce civil society to the different mechanisms of transitional justice in order to contribute to the success of the reconciliation process in Burundi.

² Please see Annexure E for Quotes from Project Workers (South African Embassy in Burundi and ACCORD BURUNDI)

2. OBJECTIVES

The objectives of the National Dialogue were:

- To create awareness of the different mechanisms of transitional justice at the grassroots level;
- To share experiences from countries that have gone through transitional justice processes; and
- To give the local communities the opportunity to express their views on the reconciliation process in general and more particularly on the establishment of the most suitable transitional justice mechanisms for Burundi.

In summary the main objective of this dialogue was to give an opportunity for the population of Burundi to express themselves on the Transitional Justice Process currently taking place in Burundi. Experts from Rwanda, Sierra Leone and South Africa shared their experiences and testimonies regarding the transitional justice processes in their respective countries with the participants in order to show that such a process is essential, as well as unique, to each country.

3. PLANNING

The planning of the National Dialogue can be divided into three focus areas: 1) Venues for the dialogues; 2) Methods of the dialogues and 3) Participants and Experts. Two (2) local consultants were contracted in order to ensure an approach will be used that will be understood and relevant to the population of Burundi.

3.1 Venues

After taking time and resources into consideration, it was decided that the National Dialogue will take the form of four (4) seminars. These seminars were held in four (4) different regions of Burundi namely the central, northern, southern and western regions; accordingly the dialogue was respectively held in Bururi (from 2 – 3 May) where delegates gathered from the provinces of Bururi, Makamba, and Rutana; in Gitega (from 4 – 5 May) with delegates from the provinces of Cankuzo, Gitega, Karusi, Mwaro and Ruyigi; in Ngozi (from 8 – 9 May) with delegates from the provinces of Kayanza, Kirundo, Muyinga and Ngozi; and in the city of Bujumbura (from 10 – 11 May) with delegates from the provinces of Bujumbura in the urban area and in the rural area, Bubanza, Cibitoke and Muramvya.

3.2 Method

The four (4) seminars, conducted for a day and a half each, were chaired by Mr. Jerome Sachane, Deputy-Director of ACCORD in South Africa, while the official openings of the seminars were performed by the Governor, or an Advisor from the



From left to right: Mr. Pascal Barandagiye; Ambassador Procis Bigirimana; Mr. Frank Kobukyeye; Mrs. Jabu Lembede; Ambassador Mdu Lembede; Mrs. Mary Burton; Professor John Kamara; Mr. Jerome Sachane

Governor's office, in each province where the seminar was held. His Excellency, Ambassador Mdu Lembede, the Ambassador of the Republic of South Africa to Burundi, also officially attended the Bururi and Bujumbura sessions. Each seminar consisted of sessions of presentations prepared by international experts invited by the South African Embassy in Burundi and ACCORD. The different presentations were followed by a debate session which consisted mostly of questions from the delegates and answers from the experts. The debate sessions were in turn followed by participants being divided into groups and being presented with a specific set of questions regarding potential transitional justice mechanisms in Burundi. After internal discussions each group presented the facilitator with a set of answers. Very importantly in order to ensure effective communication between the local participants and international experts as well as project workers two (2) local translators were contracted to translate from English to Kirundi and vice versa. All four (4) seminars were also recorded to ensure accurate documentation of the dialogue. As a result the views aired by participants on the whole process were systematically recorded and are portrayed in this report which will be diffused through many channels including the Government and Civil Society.

3.3 Experts and Participants

Participants

Taking into consideration the objectives of the National Dialogue, as well as available resources and timeframes, it was decided that delegates should be composed of the leaders and/or personnel of local associations and/or civil society organizations representing the seventeen (17) provinces in Burundi. Fifty (50) invitations were extended for each seminar. Consequently almost two hundred (200) delegates from independent organizations and civil society organizations participated in the relevant dialogue.

In order to determine the fifty (50) invitees per seminar a list of local associations/organizations and civil society organizations per province was obtained through the local consultants contracted. This list was thereafter reviewed per region by the consultants and project workers. After various consultation sessions a list of invitees were developed that ensured various groups of civil society would be represented. These groups can be divided as follow: 1) Gender; 2) Youth; 3) Religious; 4) Development; 5) HIV; 6) Human Rights; 7) Other. It is important to note that the focus was on local organisations and not international organisations or

government structures. The South African Embassy in Burundi and ACCORD recognizes that these organizations do represent a broad spectrum of civil society in Burundi, but that the conclusions drawn in this report do not necessarily reflect the views of civil society as a whole.

Experts

In order to show that Transitional Justice Processes have taken place in other countries and that such a process is essential, as well as unique, to each country, experts were invited from Rwanda, Sierra Leone and South Africa to share their experiences and testimonies with the people of Burundi. An expert from Burundi, who is a member of the Ad hoc Committee established by the Government of Burundi to focus on transitional justice in Burundi, also presented participants with a basic understanding of the projected Transitional Justice Process in Burundi. The international experts were preferred to be members or former members of the TRC, Amnesty Commissions, or active members of the Civil Society directly involved in the reconciliation process in their respective countries of origin. Each expert was requested to prepare a paper for presentation describing:

- a) The type of conflict that was in his/her country;
- b) The peace settlement;
- c) The transitional justice mechanism(s) his/her country opted for and why; and
- d) Any relevant and pertinent comments about the Transitional Justice Process in his/her country, whether it is approval or if there are some criticisms, or elements of the process to beware of.³

³ Please find the papers presented by each expert attached as Annexure B. Note however that Mr. Richard Kananga joined the project on late notice and consequently did not develop a paper.

4. PRESENTATIONS

As mentioned above, four (4) presentations were given at each seminar, notably:

- 1) The Transitional Justice Process in Burundi, by Ambassador Procis Bigirimana;
- 2) The Transitional Justice Process in Sierra Leone, by Professor John Kamara;
- 3) The Transitional Justice Process in South Africa, by Mrs Mary Burton and Dr Fanie Du Toit;
- 4) The Transitional Justice Process in Rwanda, by Mr Franck Kobukeye and Mr Richard Kananga.

The presentations given by the international experts can be summarized as follows:

Sierra Leone



Prof John Kamara

Professor John A. Kamara, former member of the Sierra Leone Truth and Reconciliation Commission, **“The Application of Transitional Justice Mechanisms: The Sierra Leone Experience”** (presented in all regions).

Professor Kamara began by recognizing that a truth commission’s mandate must reflect the unique circumstances of the country and conflict in question. For example, he noted, two (2) of the elements Dr. Du Toit discussed in the context of South Africa were also present in Sierra Leone—a criminal state and a state of criminals—but the third element, that of ethnic divisions, was lacking. Because ethnic conflict was a central part of the Burundian crisis, Burundi’s truth commission, unlike Sierra Leone’s, must explore the complex issue of ethnicity as well as the political failures that contributed to the crisis. Prof Kamara provided background to the Sierra Leone conflict and outlined the steps taken to resolve it. Since neither side was capable of achieving military victory, political compromise was required to end the conflict. From that compromise emerged provisions for a general amnesty and a Truth and Reconciliation Commission, with no initial provision for a Special Court. The TRC explored areas including historical antecedents of the conflict; failures of governance; the military and political history of the conflict; mineral resources; external actors; women and armed conflict; and children and armed conflict. The Commission formulated a vision for a post-conflict society and made recommendations to the government aimed at remedying failures uncovered in the aforementioned areas. Prof Kamara lauded the government’s efforts in making reforms, although he highlighted reparations as an area in which the government has

fallen short. He characterized the Special Court as an institution imposed by the United Nations, unwelcome among the Sierra Leonean people, who wanted to forgive and move on. Prof Kamara further recommended that in the future, TRCs and Special Courts should not be implemented concurrently in order to avoid conflicts of interest.

South Africa



Dr. Fanie du Toit

Dr. Fanie du Toit, Programme Manager for Reconciliation, Institute of Justice and Reconciliation, Cape Town: **“Truth after Ethnic War: a Burundian-South African Dialogue”** (presented at the seminars in Bujumbura, Gitega and Ngozi).

Dr. Du Toit presented five (5) objectives of a truth commission: to understand the causes of violence; to overcome suspicion, fear, and hatred; to honor victims; to bring perpetrators to justice; and to educate the next generation in order to prevent atrocities from happening again. He described the era of *Apartheid* in South Africa as marked by three (3) types of conflict: 1) legally enshrined, state-sponsored oppression; 2) death squads targeting political opponents with gross human rights violations; and 3) society-wide ethno-racial mobilization and stereotyping, portrayed as a system of “masks” by which people judged one another. The second type of conflict was most thoroughly addressed in South Africa’s transitional justice process, which grew out of negotiations between the African National Congress (ANC) and the National Party (NP). Negotiations resulted in a new Constitution, democratic elections bringing the ANC to power, and the formation of the Truth and Reconciliation Commission. The TRC, composed of a Human Rights Violations Committee, an Amnesty Committee, and a Rehabilitation and Reparations Committee, reflected both idealism and political realism; amnesty was a condition required by the military, but unconditional amnesty was not acceptable to the ANC. Amnesty was granted for those who told the complete truth to the Commission, had acted out of political motivations, and whose crimes were proportional to the political goal being pursued. One key failing Dr. Du Toit acknowledged was the still-incomplete provision of reparations for victims. On the other hand, the greatest benefits he saw in the TRC included its success in eliciting truth, allowing victims a dignified space to narrate their suffering, and forcing South Africa as a nation to acknowledge the crimes of *Apartheid*. While Dr. Du Toit emphasized that leaders during a transition must be “hard on principle but soft on people,” following the

example set by Nelson Mandela. Dr. du Toit also recognized that reconciliation does not necessarily require forgiveness; rather, it can simply mean letting go of vengeance.



Mrs. Mary Burton

Mrs. Mary Burton, former member of the South African Truth and Reconciliation Commission, Cape Town: **“Reconciliation: A Different Kind of Justice”** (presented at the seminar in Bururi).

Mrs. Burton described the establishment of the Truth and Reconciliation in South Africa as one of many strategies the Post-Apartheid Government put in place to address injustices of the past. In evaluating the Commission’s twin goals of “truth” and “reconciliation,” Mrs. Burton observed that the TRC was highly successful in bringing truth to light, in part due to hearings held throughout the country and to an exceptional level of media coverage. To draw out the truth, the Commission’s early work involved developing a mechanism for recording accounts of gross human rights violations, training statement-takers, providing corroboration of the statements through investigation, identifying historical events requiring clarification, and holding the first public hearings for victims. The TRC strove to provide a positive experience for the victims who made statements – over 20,000 altogether. The sheer quantity of evidence collected was overwhelming, but constitutes a wealth of material for the historical record. On the negative side, painful truths brought forward had unanticipated psychological impacts on witnesses, Commissioners, staff and journalists. In terms of reconciliation, perceptions by various sectors of the society that the TRC either went too far (seen as a “witch-hunt” targeting Afrikaners) or did not go far enough (it let perpetrators off the hook) have diminished its reconciliatory potential. Further more, Mrs. Burton argued, true reconciliation in a stratified society is not possible without economic justice. While the Reparations and Rehabilitation Committee made recommendations to the government concerning reparations for victims, the government did not fully comply. A third barrier to reconciliation was the failure of many political leaders to testify or to tell the whole truth. Nevertheless, on balance, Mrs. Burton expressed optimism concerning the TRC’s contribution to a common understanding of the past and its role in creating a culture of dialogue.

Rwanda



Mr. Richard Kananga

Mr. Richard Kananga, FACT: **The Transitional Justice Process in Rwanda** (presented at the seminars in Bujumbura and Ngozi).

Mr. Kananga presented the myriad challenges faced by the National Unity Government that took power in Rwanda following the 1994 genocide: the aftermath of one million deaths, another million refugees outside the country, the destruction of infrastructure, and a dysfunctional justice system. He discussed two (2) principal means through which the Government responded to these challenges, namely, the creation of the National Unity and Reconciliation Commission (NURC) and the establishment of the Gacaca courts. NURC, composed of twelve (12) Commissioners appointed by the President, oversees various activities including ingando solidarity camps; an annual National Reconciliation Summit involving the Rwandan Diaspora and allowing participants to raise questions or criticisms to the government; cultural and athletic exchanges; support to community-level unity and reconciliation associations; and organization of high school- and university-based reconciliation clubs. The second transitional justice strategy, Gacaca, was developed to address the massive quantity of genocide perpetrators. Everyone is responsible for attending Gacaca proceedings in their communities and contributing to the emergence of truth. In both Gacaca courts and the national courts which try those with greater levels of responsibility in the genocide, confessing one's crimes allows for a shortened sentence. Mr. Kananga closed by suggesting these mechanisms might be useful in Burundi's own Transitional Justice Process.



Mr. Frank Kobukyeye

Mr. Frank Kobukyeye, National Unity and Reconciliation Commission (NURC), Kigali: **The National Commission Process for Unity and Reconciliation in Rwanda** (presented at the seminars in Bururi and Gitega).

Mr. Kobukyeye provided a brief history of the Rwandan conflict, an identity-based conflict that involved the politicization of ethnicity and the distortion of history. He observed that there is no single authoritative model on how to "reorganize one's house" following a conflict, which often leaves great confusion in its wake. In the Rwandan case, after much consideration and debate,

the government created a National Unity and Reconciliation Commission (NURC) in 1999. The Commission's mandate involves coordinating national programs and educating and mobilizing the population around unity and reconciliation. Its projects include ingando solidarity camps in which people discuss issues affecting the country and make recommendations to the government; an annual National Reconciliation Summit; and the training of and collaboration with community-based "reconciliation volunteers" known as *abakangurambaga*. Mr. Kobukyeye went on to discuss Gacaca, which he described as a system of restorative justice, important to Rwanda because of its element of community participation, its economic viability, and the fact that Gacaca demonstrates Rwanda's ability to solve its own problems. He suggested that its open structure allows more truth to emerge from Gacaca than from court rooms. Mr. Kobukyeye invoked Martin Luther King's statement that "An eye for an eye makes the whole world blind," hailing Nelson Mandela as a model for forgiveness; in Rwanda, he argued, while forgiveness might be difficult, Gacaca creates the space for healing and for letting go. Finally, Mr. Kobukyeye extolled the Rwandan Government's commitment to reconciliation and suggested that if Rwanda could successfully emerge from conflict, Burundi can do so as well⁴.

⁴ It is important to note that the experts did adjust their presentations throughout the national dialogue following discussions with civil society since this provided them with a sense of what is appropriate and required; accordingly the summaries provided above is a combination of the paper presented by each expert, as well as the actual presentations made by the experts. These were accessed through the tapes that were recorded throughout the dialogue.

5. RESPONSE TO PRESENTATIONS⁵

5.1 Regional patterns, similarities and differences

Rwanda

Participants in different regions had similar reactions to the Rwanda presentation. This included doubts about the possibility of finding a “common truth,” concerns about NURC’s lack of independence from the government, and scepticism about the extent of true reconciliation in Rwanda, particularly given the presence of “Gacaca refugees” and others in Burundi. The northern region (Ngozi seminar) was unique in raising questions about the role of the Batwa in the genocide and in reconciliation; where as the central region (Bujumbura seminar) was unique in questioning how Rwanda specifically deals with rape victims.

Sierra Leone

Participants across regions raised similar concerns, the most common shared concern being to what extent the Special Court was imposed by the United Nations and how that impacted its effectiveness. The northern region (Ngozi seminar) demonstrated a particular interest in logistical questions, raising issues such as pace, temporal jurisdiction, judges’ salaries, etc; whereas in the central region (Bujumbura seminar) participants were curious about whether there was political opposition in Sierra Leone and whether it played a role in the TRC. Participants in the southern region (Bururi seminar) expressed interest in traditional conflict resolution mechanisms.

South Africa

Numerous issues were raised across regions following the South African presentation. These included questions about the role of prosecutions, particularly for the intellectual authors of *Apartheid’s* crimes, and curiosity about the racial dimension of the conflict (specifically, whether Blacks had also committed or were tried for crimes, both against other Blacks and against Whites). Participants of both the southern region (Bururi seminar) and northern region (Ngozi seminar) questioned the permanence of reconciliation in South Africa, while the central region participants (Bujumbura seminar) raised a question concerning whether exhumations contributed to reconciliation. Finally, in the western region (Gitega seminar) and the northern

⁵ Please see Annexure D for a table that summarizes the questions from participants in response to the presentations made, as well as responses received from participants to a set of questions presented to them.

region (Ngozi seminar) questions were raised about Desmond Tutu's "exceptionalism" and whether this prevents the South African model from being successfully translated to Burundi.

In both the Rwandan and South African presentations, participants from the central region (Bujumbura seminar) raised questions related to the protection of witnesses and Truth Commissioners respectively, demonstrating a higher level of concern for security than in other regions – undoubtedly related to the ongoing security risks in Bujumbura Rurale and Bubanza at the time. In the northern region (Ngozi seminar) participants also expressed some security concerns relating to public hearings.

Participants in the southern region (Bururi seminar) seemed particularly interested in the role of both Christian religions and traditional culture in transitional justice, raising questions about *Bashingantahe* versus Gacaca in the Rwanda presentation, traditional conflict resolution mechanisms in the Sierra Leone presentation, and the different Catholic and Protestant approaches to confession in the South Africa presentation.

5.2 Comparison of Government Recommendations from Memorandum⁶ with Civil Society views from National Dialogue

Analysis of the recommendations made by the Government of Burundi and the United Nations, as well as the views provided by civil society allows for certain similarities and differences that should be noted. These can be summarized under the following themes:

- **Civil Society's Involvement:**

Compared to the Memorandum, civil society groups in all regions envisioned a larger role for civil society or the public as a whole in the selection of Truth Commissioners, with some regions recommending public debate followed by a popular vote to select Commissioners. Only in the central region (Bujumbura session) was it suggested that the President might appoint the Commissioners, with approval from the National Assembly, but without public consultation. Unlike most civil society proposals, the Memorandum suggests that the President alone should appoint Commissioners after consultation with the Secretary General of the United Nations⁷. Participants in the

⁶ The Memorandum referred to is a memorandum put forward on 26 March 2006 by the Ad-hoc Commission responsible for negotiations with the United Nations to put in place a TRC and Special Chamber in Burundi.

⁷ Chapter 3:30, Memorandum of the Ad-hoc Commission, 26 March 2006.

northern region (Ngozi seminar) and central region (Bujumbura seminar) also wanted civil society to have an advisory or consultative role in the TRC's implementation, which is not envisaged in the Memorandum.

- **Nationality of Commissioners:**

Civil society in all regions demonstrates a strong preference for majority (or exclusively) Burundian truth commissioners; the government, too, proposes four (4) Burundians and three (3) foreigners⁸. Most civil society proposals however involved a greater total number of Commissioners than the Memorandum suggests.

- **Time Frame:**

The Memorandum envisage a two-year mandate for the TRC⁹, close to civil society recommendations which ranged from “twelve (12) to eighteen (18) months” to “three (3) to five (5) years.”

- **Diversity:**

Civil society in all four (4) regions emphasized the importance of representation of Commissioners along gender, ethnic and regional lines. Representation issues are not addressed substantially in the memorandum, with the only reference to gender, ethnicity, or region being that “Each provincial office [of the TRC] will be composed of a Collegial Directive of three (3) persons i.e. one (1) International person and two (2) Burundians of different ethnic groups”¹⁰.

- **Security:**

The Memorandum indicated the Special Court will take measures for victim and witness protection, but provides no details¹¹. Security is a concern for civil society, not only for those involved with the Special Court but also for those involved with the TRC.

- **Reconciliation and Reparations:**

Some regions envisaged a broad role for the TRC which included establishing local level reconciliation committees (western region, Gitega seminar) and providing reparations (northern region, Ngozi seminar). The Memorandum leaves much leeway

⁸ Chapter 3:29, Memorandum of the Ad-hoc Commission, 26 March 2006.

⁹ Chapter 2:28, Memorandum of the Ad-hoc Commission, 26 March 2006.

¹⁰ Chapter 4:47, Memorandum of the Ad-hoc Commission, 26 March 2006.

¹¹ Chapter 8:108 & Chapter 10:124, Memorandum of the Ad-hoc Commission, 26 March 2006.

for the TRC to take steps to promote reconciliation as it sees necessary, and mentions a role for reparations in the reconciliation process¹², so these civil society recommendations could perhaps be accommodated.

- **Amnesty and Forgiveness:**

Civil society sees asking for forgiveness as an essential part of the TRC process. Most regions supported some form of amnesty for those who acknowledged their crimes and asked for forgiveness. It is not clear whether participants felt this should also apply to those responsible for war crimes, crimes against humanity or genocide. The Memorandum lacks specificity on the issue of amnesty, only indicating that in some cases the TRC may decide this is appropriate¹³. The government generally coincides with civil society in suggesting that those who will not confess their crimes or will not participate in acts of reconciliation should be brought before the Tribunal¹⁴.

- **Separation of Functions:**

The central region (Bujumbura session) made the interesting recommendation that the TRC and Special Court should work completely independently from one another, each reporting only to the government, while other regions saw a closer role between the two (2). The Memorandum's view¹⁵ more closely coincides with that expressed in the southern region (Bururi session), western region (Gitega session), and northern region (Ngozi session), namely, that the TRC should refer cases to the Special Court.

- **Search for Root Causes:**

Groups consistently emphasized that the TRC's investigative mechanisms should look into not only the events but their root causes, demonstrating a desire for a broader understanding of Burundi's history. This coincides with the Memorandum, which sees a role for the TRC in historical inquiry¹⁶.

¹² Chapter 2:27h & Chapter 5:65-70, Memorandum of the Ad-hoc Commission, 26 March 2006.

¹³ Chapter 2:27, Memorandum of the Ad-hoc Commission, 26 March 2006.

¹⁴ Chapter 5:71, Memorandum of the Ad-hoc Commission, 26 March 2006.

¹⁵ Chapter 2:27f, Chapter 5:71 & Chapter 9:114, Memorandum of the Ad-hoc Commission, 26 March 2006.

¹⁶ Chapter 2:27e, Memorandum of the Ad-hoc Commission, 26 March 2006.

6. CLOSING REMARKS

In general this National Dialogue should be viewed as part of the greater process taking place in Burundi and can be considered to be a pilot project that will benefit other actors, such as the Government Ad hoc Committee in Burundi, when planning further activities relating to this process; especially when planning further consultations with civil society. This dialogue will assist the relevant actors to prepare since it provides a general view on the current thinking of civil society regarding the Transitional Justice Process in Burundi.

When taking the questions asked by participants, as well as the answers received from participants in response to the set of questions presented to them into consideration, it is clear that Burundi has a valuable civil society that is able to think critical as well as provide constructive opinions regarding the Transitional Justice Process in Burundi. The Burundi displayed eagerness and a hunger to participate in the Transitional Justice Process. Civil society in Burundi should be seen as a valuable resource of information that should be tapped throughout the whole Transitional Justice Process in Burundi. Not only will this ensure that the process is transparent, but the process will surely benefit from such critical input.

The project also brought to light certain general recommendations regarding the implementation of transitional justice mechanisms in Burundi. The first recommendation concerns language; it is of the utmost importance that translators be properly trained and prepared to assist throughout the process. They should not only be trained in translating from Kirundi into French/English and vice versa, but where as terminology used when discussing transitional justice mechanism tend to be born from western languages, it is important that words be found and/or created to express the relevant terminology in the local language, Kirundi. This will make the process accessible to the local population. It is however also of great importance that there is general agreement regarding the terminology used. General agreement between the Government of Burundi, the UN and other civil society actors that will assist or partake in this process will benefit the process and the participants tremendously. Apart from translation and interpretation, secondly, it is essential that proper training is provided for all people that will serve on the various committees or are employed by either mechanism one way or another. Depending on the position held, training should cover the following focus areas: 1) Methods of statement taking; 2) Investigation and Historical enquiring; 3) Archiving; 4) Facilitation skills, 5) etc.

Thirdly, the current negotiations between the Government of Burundi and the FNL need to be considered when deciding on a timeframe for implementation of the relevant transitional justice mechanisms. If these negotiations can be completed before the implementation it is suspected that it will strengthen the people of Burundi, especially in a security sense. People might be more prone to feel free to participate in the mechanisms. This is essential since it was shown that there are still some security concerns. Fourthly, the issues of ethnicity and gender need to be taken into consideration throughout the whole process but especially when selecting, for example, Commissioners and Judges. These positions should be representative of the different ethnic and gender groups in the Burundi society to ensure the process is inclusive and to avoid further division especially along ethnic lines. Fifthly, the examples provided by the International Experts showed that it is important to avoid empty promises to victims. It is therefore advisable to establish small, achievable goals that are realistic to implement. Sixthly, the examples provided also showed the importance of including the media in the process. This will once again assist with ensuring the process belongs to the people of Burundi through sensitizing them and keeping them informed throughout the whole process.

In conclusion, as mentioned above, the Transitional Justice Process should belong to the people of Burundi to ensure broad-based social support and local ownership without which its impact could be limited. This can only be done if civil society is consulted before the implementation of the relevant mechanisms. Throughout the dialogue participants expressed the need for further consultations, especially within each province, in an even broader sense than this project. This is recommended since it is expected further consultations will assist with ensuring confidence is vested in these mechanisms by the population for whose reconciliation they are created.

Annexure A:
National Dialogue on the Mechanisms of Transitional Justice:
Special Case of Burundi

LIST OF PARTICIPANTS

Conference Venue: Bururi

Province Represented	Association
Bururi	1. Turereruburundi
	2. Club Umuhanga
	3. Fashanya
	4. Nduwamahoro-Le Non-Violent Actif
	5. Conseil des Bashingantahe
	6. Commission Diocésaine Justice et Paix
	7. Nabacu
	8. Association des Amis de la Culture (ASACU)
	9. Equipes Enseignantes
	10. Communauté Islamique de Rumonge
	11. CNEB
	12. Association Umuhuza
	13. RENAJES-Simbimanga
	14. RBP+
	15. Help Chanel Burundi
	16. Association des Nations Unies (ANU)
	17. Eglise Pentecôtiste de Kiremba
Makamba	1. Femmes pour la Paix et la Démocratie (FPD)
	2. Association des Jeunes pour la Non-Violence Active
	3. Synergie des Ex-Combattants
	4. Association des Rapatriés et des Sinistrés pour la Cohabitation Pacifique
	5. Association pour la Promotion de la Femme de la Commune Makamba
	6. Ressortissants et Amis de Makamba (RAMA)
	7. Conseil des Bashingantahe
	8. Nduwamahoro-Le Non-Violent Actif
	9. Association de Secours aux Sinistrés du Sida et de la Guerre
	10. Espoir
	11. Tubiri Tuvurana Ubupfu (TUTU)
	12. Twungubumwe
	13. Twiyunguruze
	14. Ihuriro
	15. Kazozakacu
	16. Ejonaho
Rutana	1.Dushirehamwe
	2. Conseil des Bashingantahe
	3. APROTAME
	4. Turemeshanye
	5. Turereruburundi
	6. Tugwizumwimbu
	7. Remakibondo
	8. Girahubawubahwe
	9. Twiyunge
	10. Sangirumutima
	11. Alerte Précoce
	12. Association « Dukutsikivi »
	13. Shigikirubumwe
	14. Genderibanga

Conference Venue: Gitega

Province Represented	Association
Gitega	1. Nduwamahoro-Le Non-Violent Actif
	2. Ministère pour la Paix et la Réconciliation sous la Croix (MIPAREC)
	3. Vie Nouvelle pour la Réconciliation (VNR)
	4. Tubiyage
	5. CODIMAC
	6. GANYABU
	7. Solidarité Femmes Musulmanes
	8. Association Nationale des Jeunes Réintégrés (ANJR)
	9. Action Batwa
	10. UCEDD
	11. NINDE
Karusi	1. Association Réconciliation, Paix et Développement
	2. ADI-Twiyunge
	3. Dushirehamwe
	4. Association Habamahoro
	5. Association des Jeunes Chrétiens pour la Paix et la Réconciliation (AJCPR)
	6. Association Shirahamwe
	7. Chiro Karusi
	8. Nduwamahoro-Le Non-Violent Actif
	9. Association pour la Défense des Droits de la Femme
	10. Secours Juridique du Monde Rural
Cankuzo	1. Association des Veuves de Cankuzo (AVCA)
	2. Conseil des Bashingantahe
	3. Dushirehamwe
	4. Haraniramahoro
	5. Initiative Civique Rundi (ICRU)
	6. Remeshamahoro
	7. Action Culturelle pour la Promotion Sociale (ACPS)
Mwaro	1. Association Genderibanga
	2. Association Menyagatekakawe
	3. Association Sportive de Mwaro
	4. Association de Femmes Para-juristes
	5. Commission Paroissiale Justice et Paix
	6. Dufatanemunda
	7. Twungubumwe
	8. Teramiramahoro
	9. Dutegurekazozza
	10. Umwana s'uwumwe
Ruyigi	1. ASSOFAFAMOS- Izere
	2. GARUKIRAHU
	3. GARUKIRAKARANGA
	4. Genderubuntu
	5. Couloir de Développement Communautaire (CDC)
	6. Turemeshanye
	7. Dufashanye
	8. Twikebuke

Conference Venue: Ngozi

Province Represented	Association
Ngozi	1. Cercle des Jeunes Partisans de la Paix (CEJEPA)
	2. Conseil des Bashingantahe
	3. Association Rama
	4. Carrefour des Jeunes Artistes du Burundi (CAJABU)
	5. Tubiyage
	6. AFMAVO
	7. Association Tuzamurubutunzi
	8. Association Abanamarimwe
	9. Dufashimpfuvyi
	10. Turemeshamahoro
	11. Association Burundaise pour l'Encadrement des Orphelins et l'Education à la Paix
	12. Dufatanemunda
	13. Observatoire Local pour le Développement Intégral (OLDI)
Muyinga	1. Turwanire Amahoro mu Bikorwa (TAB)
	2. Association Fraternité des Techniciens (AFRATEC)
	3. Twizerane
	4. Tubiyage
	5. Commission Diocésaine Justice et Paix
	6. Conseil des Bashingantahe
	7. Association des Femmes Leaders « Imboneza »
	8. Association pour la Promotion des Droits Humains
	9. Remeshamahoro
	10. Girumwete
	11. Dukutsikivi
	12. Association des Handicapés du Burundi
	13. Association Rema
Kayanza	1. Association des Scouts du Burundi
	2. Nduwamahoro-Le Non-Violent Actif
	3. SOFASIKA
	4. Mère INAMAHORO
	5. Commission Paroissiale Justice et Paix
	6. Collectif pour la Promotion des Associations de Jeunes
	7. AFEPARE
	8. Garukirimpfuvyi
	9. Kiremeshamiryango
	10. Danse « Impetso »
Kirundo	1. Tubiyage
	2. Conseil des Bashingantahe
	3. Il Est Vivant (ILEV)
	4. Association des Jeunes pour la Paix et la Lutte contre le Sida
	5. CEPBU (Eglise pentecôtiste de Kirundo)
	6. APDH
	7. Association Koriciza
	8. Commission Justice et Paix

Conference Venue : Bujumbura

Province Represented	Association
Bujumbura Mairie	1. Ronderamahoro
	2. Komezubumwe
	3. Association Abakunzibagihaha
	4. Turwanyubukene
	5. ADACOPROVICI
	6. Remeshamahoro
	7. A.J.E.V.S-Abagwizakivi
	8. Abazimyamuriro
	9. Girimpuhwe
	10. ONKIDI
Muramvya	1. Association Rukundo
	2. Turemeshanye-Turamiranire
	3. SAOKI
	4. Tugiramagarameza
	5. Tuzamurane
	6. Garukirubutunzi
	7. Twizere
	8. Dushigikirane
	9. Dushirehamwe
	10. Rema
Cibitoke	1. Conseil des Bashingantahe
	2. Dushirehamwe
	3. Hungikiza Sida
	4. Abahumuza
	5. Nduwamahoro-Le Non-Violent Actif
	6. Commission Paroissiale Justice et Paix
	7. Dusubizehamwe
	8. Abakutsakivi
	9. Twiyungunganye
	10. Dufashanye
Bubanza	1. Mahoro
	2. Garukirabakenyezi
	3. Twitehabana
	4. Inkingiyamahoro
	5. Dusubizehamwe
	6. ACEPE-Twiyungunganye
	7. Shirukubute
	8. Tujinama
	9. Garukirakaranga
	10. Jijurabakenyezi
Bujumbura Rural	1. Conseil des Bashingantahe
	2. Nduwamahoro-Le Non-Violent Actif
	3. Dushirehamwe
	4. Remeshimpfuvyi
	5. Turwanyurwangara
	6. RBP+
	7. Ronderamahoro
	8. Shigikirindero
	9. Commission Paroissiale Justice et Paix

Annexure B.1:

THE APPLICATION OF TRANSITIONAL JUSTICE MECHANISMS

THE SIERRA LEONE EXPERIENCE

By: John A. Kamara

Introduction

The twentieth century, especially its three final decades, saw the emergence of an initiative that rapidly developed a momentum for dealing with impunity associated with atrocities whether caused by states, state agents, war lords in cases of conflicts or ordinary individuals and groups that aid and abet parties in a conflict. The atrocities referred to include extreme physical violence, torture, ethnic cleansing, human rights abuses and violations of International Humanitarian law.

Dealing with impunity however poses a problem when dealing, as is often the case, not only with the provision of justice to the victim, but also to effect reconciliation of the victim with the perpetrator to ensure the peace and harmony that should normally exist between individuals and communities as well as a prerequisite for the development of communities and nations. But **justice** and **reconciliation** are neither necessarily compatible nor are they in harmony with each other under all circumstances. They need a third component, **truth**, as Kevin Avruch and Beatriz Vejarano observed, to link “the problematic demands of justice and the hopes of reconciliation.”

To the hard core legal mind the proper response to the perpetrators of human rights abuses, violence of all forms, torture and mass murder, must be criminal proceedings by some sort of tribunal, a court of law (local or international) duly authorized to form legal opinion and take action: to establish impartial facts of the matter, to render verdicts and if called for, to punish.

It is obvious that while such a mechanism (a tribunal or court of law) that is based on retributive justice may succeed in adequately dealing with impunity it may not succeed in reuniting the parties (victims and perpetrators), in a community or state where the atrocities and human rights abuses have exacerbated the shattered relationships that brought about those abuses, to produce peace and harmonious existence. For this a less rigorous instrument that relies not on a criminal verdict and punishment, but in

mending broken fences while providing **restorative justice**, such as a Truth and Reconciliation Commission, is preferable.

In practice the two instruments (Tribunal and Truth Commission) have been adopted as transitional justice mechanisms with varying opinions on when and how they should be applied. It need however to be mentioned that until 2002, when the end of the conflict in Sierra Leone was declared and it became necessary to institute the transitional mechanisms, the two mechanisms had always been applied either alone or when combined they were applied consecutively with the Truth Commission preceding the Tribunal.

In Sierra Leone however it was decided to experiment on a new approach. The Special Court established to try those “that bear the greatest responsibility for the human rights abuses” was made to function concurrently with the Truth and Reconciliation Commission with predictable consequences for both institutions.

Transitional justice is all about accountability and reform. It is to account for crimes and human rights abuses committed during a period of bad governance by a dictatorial and repressive regime or following a horrendous conflict. Because of this the justice mechanisms generally follow the overthrow of a regime, its defeat at an election or in conflict or as a result of negotiated peace settlement. This last scenario implies the adoption of compromises as was the case in the Lome’ Peace Agreement of July 1999 that formed the basis for ending the conflict in Sierra Leone.

The conflict in Sierra Leone

It is necessary to state clearly at the beginning that the conflict in Sierra Leone was not motivated by tribal, ethnic, religious or any form of factional sentiment. And contrary to popular international media and academic speculations diamonds were not a major factor in initiating the war even if, as will be stated, they played a significant role in fuelling and sustaining it.

Bad governance was the true primary motivation for the planning and subsequent execution of the war. The objective of Foday Sankoh and his cohorts was to replace the All Peoples Congress (APC) Party government initially headed by President Siaka

Probyn Stevens and succeeded by President Joseph Saidu Momoh during a period of twenty four years, from 1968 to 1992. This at least was what Sankoh himself declared to the people he first encountered in Kailahun and Pujehun District. But it would appear that because of the unfolding events during the course of the conflict that revealed the self interest of the RUF as well as that of their sponsors (which must be regarded as secondary) the earlier observers and commentators picked on this most obvious factor as a primary motivation. To accept this will not only be a falsification of the national history but it will shift the focus away from the kernel of the problem that led to the conflict to prevent taking appropriate measures against its repetition.

The Commission's findings record that "The causes of the Sierra Leone conflict were many and diverse," but they certainly did not include those that have just been excluded. Rather in the opinion of the Commission, the conflict was mainly caused by "bad governance" which is a kind of **Pandora's Box** from which the APC government generated, under the cover of a false democracy that held periodic elections, such repressive, undemocratic and corrupt practices that succeeded in bringing the once proud and promising nation from its position of hope to occupying the last place in the UNDP's Human Development Index.

More comprehensively, and responding to the Commission's mandate enjoining it for purposes of formulating preventive measures to examine the antecedents of the conflict, the Commission discovered remote contributory causal factors that were attributable to regimes prior to the arrival of the APC government on the political landscape. Accordingly the Commission recorded in its findings the following:

"The Commission holds the political elite of successive regimes in the post-independence (post-colonial) period responsible for creating the conditions for the conflict in Sierra Leone."

Such a conclusion has little or no appeal, it seems, to academics and intellectuals and more especially to the international media with its stereotype concept of the nature and behaviour of the African as well as appetite for sensationalism. To them the conflict was about control of the diamond mines, about greed, tribal or ethnic differences and a demonstration of the immaturity of the African in dealing with socio-political situations. All

this is false as was demonstrated by the dynamics of the combatant relationships and the nature of the war.

The adversarial dynamics

The Commission discovered a strange phenomenon in the way the parties in the conflict related and interacted as circumstances altered during the course of the conflict. This phenomenon gave rise to the Commission designating the conflict as “chameleonic war” that is, at some stage the structure (combatants of recognized persuasion) and character of the conflict changed so frequently that it was almost impossible for an observer to decide which warring faction was doing or was responsible for what. This obviously was problematic not only for the potential victims who must have found it nightmarish to decide on who and how to avoid danger, but also for the Commission and other parties interested in unraveling the roles of each faction in the conflict.

At Bomaru on the 23rd of March 1991, the conflict was a simple confrontation between the invading Revolutionary United Front (RUF) rebels {a mixture of Sierra Leoneans and Liberians from Charles Taylor’s National Patriotic Front of Liberia (NPFL)} and the Sierra Leone Army (SLA) representing and fighting for the APC government of Sierra Leone. The civilian casualties on that day have to be assumed to be unintended victims. This is borne out in a statement to the Commission by one of the witnesses:

“The explanation has been made to us so many times by the leader himself that the old dictatorial regime of the APC is the only tyrant. Our targets would not be against civilians nor against armed men who surrender. It was just rather unfortunate that the war started with a certain group of people who were not exposed to that type of ideology. Had it been a warfare started by people trained with that understanding it would not have badly affected civilians in that initial phase.”

This simple adversarial relationship (RUF versus SLA) in the conflict continued until the Sierra Leone Government received assistance from the Economic Community of West African States (ECOWAS) by providing its military unit ECOMOG. The Government also decided to involve local hunters as militia who were subsequently designated as Civil Defence Forces (CDF) and a mercenary group the Executive Outcome (EO).

About this time as the war progressed to the fifth and sixth years with no end in sight, and weariness and depletion of resources became manifest reports of defections from the army, (SLA) began to float around. Initially these renegade soldiers did not defect directly to the RUF but rather they established their ambush groups causing mayhem on villages and vehicles on the highway.

All this time the Army was in control. The APC had been overthrown in a coup in 1992 and the military junta, National Provisional Ruling Council (NPRC) was running the government and the war. However when after four years, in 1996 they showed no sign of holding an election to hand over to a civilian government extreme pressure was put on them to do so. They reluctantly yielded, but not without protest in the form of atrocities against civilians whom they (the NPRC soldiers / SLA) and the rebels accused of acting against them by voting for a change of government. The penalty was amputation of thumbs or arms at the wrist followed by giving the amputee a letter to take to the elected President.

With this type of response by the military it was not too surprising that within a year of the election of the civilian government it was removed by a military coup in 1997. And as if to confirm to the entire world that there had been some commonality between them the coup makers invited the RUF to join them to form the junta, Armed Forces Revolutionary Council (AFRC) and calling the combined armies (RUF and SLA) the People's Army.

With the emergence of the AFRC and the departure of the elected Sierra Leone Government into exile in the Republic of Guinea, the responsibility of fighting to remove the AFRC (People's Army) and restore the legitimate government rested squarely on ECOMOG supported by the few loyal SLA and the CDF that had then been established throughout the country. The Executive Outcome were restricted to protecting specific vital areas.

ECOMOG troops and the mercenaries (Executive Outcome) fighting on the side of the Sierra Leone Government continued up to the time of the Lome peace talks. Article XVIII of the Peace Agreement demanded the withdrawal of all mercenaries from the territory and so Executive Outcome had to terminate their contract. That left ECOMOG and the CDF, acting on behalf of the Government, together with representatives of the RUF and

the United Nation's Observer team in the monitoring of the Disarmament and Demobilization exercise.

As the need for peace keeping increased and Article XVII of the Peace Agreement demanded the restructuring and training of the Sierra Leone army the United Nations deployed the largest peace keeping mission (UNAMSIL) yet in any country of about seventeen thousand troops to Sierra Leone. These together with the Sierra Leone army being restructured took over the security and monitoring of Disarmament from ECOMOG and the CDF.

Nature of the conflict

A number of factors and events helped to determine the character of the Sierra Leone conflict to mark it as one of the most horrendous if not the most horrendous civil conflict in Africa. There were two distinct groups of factors, causal and operational, and a number of events. The causal factors such as those that constituted the primary causes of the conflict, injustices, bad governance and corruption influenced the targeting of government functionaries / agents in the administration, judiciary and the police. The operational factors included the necessity of involving NPFL fighters in the initial stages of the conflict. Because of their greater fighting experience these NPFL fighters formed a significant part of the rebels that invaded Bomaru on the 23rd of March 1991.

These vanguard rebels, according to the testimonies of members of the RUF and victims that came before the Commission, introduced atrocities that included killings and cannibalism. Their behaviour turned out not only to be sinister for civilians but also for the top hierarchy of the RUF. It was discovered that the Liberians had plans for the systematic elimination of all Sierra Leoneans in the top administration and top commander cadres of the RUF. They code named the operations Top 20 and Top 40. The operation Top 20 was for the elimination of the senior Administrative cadre of the RUF and Top 40 was for the systematic elimination of the top commanders. The seriousness of these operations led the rank and file of the RUF to mount a special counter operation code named Top Final, directed at all the NPFL fighters in the RUF. The operation became so effective that the NPFL rebels felt threatened enough to flee back to Liberia.

The first internal event that significantly affected the character of the conflict was the coup of 1992 that removed the government of President Joseph Saidu Momoh and ushered in the National Provisional Revolutionary Council (NPRC). The highest ranking officer of this junta was a Captain. This meant that the command structure of the army was immediately put on its head, with the senior military officers up to the rank of General having to subordinate themselves and receive orders from their junior officers below the rank of Captain.

In the four years, between 1992 and 1996, before the junta was pressured to yield to the popular demand for election, the young coup makers savoured the sweets of leadership sufficiently to develop ambitions that even led to internal power struggles and a palace coup that replaced the head of the junta, and most senior officer among them, Captain Valentine Strasser with his second in command Julius Maada Bio.

As already mentioned it was during this period that renegade soldiers intent on property acquisition through raids on towns and villages as well as ambushes of vehicles on the highways appeared. It was not long however before the masquerade used in this criminal action became blown to give the SLA behaving in this way the label of **sobel**s, meaning that they were soldiers camouflage in rebel garb.

Further more the crime of amputation of fingers, especially the thumb which was the organ marked for voting identification, or the entire hand from the wrist was introduced by the SLA during this period to demonstrate their disapproval of the democratic process that removed them from office.

The next event was the coup of 1997 just a year after the election of a civilian government. This event worsened the already chaotic command structure in the execution of the war. The AFRC junta's invitation to the RUF to participate in the running of the government was, on the face of it and as claimed by the leader, a move in the right direction for ending the conflict. But the junta entirely missed the crucial points. The RUF was not fighting to share governance with another military group besides, the national and international opinion did not approve of a military government of any description. The call was for a democratically elected civilian government.

The RUF got the fiat from their leader to team up with the coup makers to form the AFRC junta and the People's Army. It was a political marriage of convenience. Meanwhile there was a swift and spontaneous response from both the Sierra Leone civil society and the international community. The former started a spontaneous civil disobedience, the first in the history of the nation, while the latter including ECOWAS, the Organisation of African Unity (OAU, now AU) and the United Nations initiated actions that included the military, sanctions and diplomatic options, for the removal of the junta and the reinstatement of the "legitimate Government of President Ahmed Tejan Kabbah".

The AFRC matched the response of the civil society and the international community by instituting draconian measures and committing atrocities on the civilians on a grand scale. These atrocities included killing, raping and detention and torture especially of media practitioners with a view to force the population to submission and support the regime. The introduction of Radio Democracy operating on FM 98.1 with the help of the British Government exacerbated the anger of the AFRC who were then not only determined to destroy the radio if they could locate it, but intensified their efforts to defeat ECOMOG and the CDF with the result that the lives of many young people they conscripted to fight for them were lost. In the city people caught or even just suspected of listening to the Radio Democracy were shot at sight.

This period also saw the intensification of recruitment and support for the Civil Defence Forces. This became very necessary as the larger portion of the national army now constitute the People's Army with the RUF fighters and were therefore adversaries of ECOMOG and the few loyal SLA that were fighting for the restoration of the government. The CDF were particularly needed for their knowledge of the terrain, their understanding of the culture and the fact that they were more trustworthy than the "loyal soldiers" as was proved on many occasions.

But the CDF were location specific and operated initially only within the chiefdom they were recruited. They also lacked military training for them to be useful outside their chiefdoms. There was therefore a need to have them trained, organized and coordinated for service at the national level. But with the constraint in logistics, military hardware and especially supplies to meet the demands of the growing numbers of the CDF this plan

was not fully achieved. And the CDF for the most part had to rely on meeting their needs on location. This opened the way for all types of crimes against the people including extortion, forced labour, seizure / looting of property and other violations of people's human rights. The Commission's data base contains a categorized list of the numerous violations committed by all the factions during the conflict.

In 1998 the Government forces, ECOMOG, loyal SLA and the CDF succeeded in dislodging the AFRC junta from Freetown to locations in the Provinces far enough from the Western Area to give confidence of safety and security to make the return of the legitimate Government from exile possible. Unfortunately this apparent success was taken as a total defeat of the AFRC by the Government from exile in spite of the glaring evidence to the contrary; that about three quarters of the country was occupied by the AFRC and out of reach by Government functionaries.

Confident of sustaining the apparent victory the Government commenced to exert the victor's prize on the vanquished. A number of people, alleged direct participants in the junta and supporters or sympathizers, were identified and rounded up for detention and subsequent trial for various crimes including treason. Others who were not so fortunate were treated to mob justice with the result that a number of them were either maimed or killed summarily.

Among those detained were 34 military men and women who went through a Court Martial that found them guilty and were accordingly executed by firing squad.

But this was not the end of the conflict. Indeed the forceful removal of the junta and the actions taken by the Government against their partners and supporters created a desperation in them for revenge. The two groups, SLA and RUF became determined not only to pay back the Government forces for humiliating them but to punish the Government for all the actions being taken against them and their perceived supporters like those military men and women tried and executed by firing squad. They planned to wreck havoc on Freetown and the people of the Western Area whom they perceived as traitors that have betrayed them.

The January 6 1999 invasion of Freetown

Of all the factors and events that influenced the nature of the eleven year conflict in Sierra Leone, the 1998 ECOMOG intervention that dislodged the AFRC from the seat of government in Freetown and its aftermath following the return of the legitimate Government from exile was the most significant in terms of the horror its backlash produced. The term **apocalypse** first appeared in the vocabulary describing the effect of the conflict in 1999 following the invasion of Freetown by a combined SLA / RUF onslaught.

The invasion was led by the SLA part of the AFRC under the command of SAJ Musa who was Vice-Chairman to Johnny Paul Koroma, Chairman of the AFRC. Musa however did not get to Freetown he was killed in an accident at Benguima Barracks near Waterloo.

The motivation for the invasion, at least part of it, was communicated to the Commission by one of the prisoners released from Pandemba Road prison:

“When the invaders came to Pademba Road prison their message was that they had come purposely to free us because we were there on account of having worked for them. It was planned by S. A. J. Musa, that they should not allow the Government to execute us. It was planned for that very reason by S. A. Musa.”

The story of the horror unleashed on Freetown and its inhabitants, the destruction of property including arson, the mutilation of people including the hacking of limbs and other body appendages, rape, looting and many other crimes and human rights violations, is fairly well documented by the Commission and other commentators.

The Lome Peace Agreement

The invaders were driven out by the Government forces once more. But this time it was accepted that in spite of the efforts of the international Community especially the OAU through the sub-regional organization ECOWAS, the RUF together with their partners of convenience the treacherous SLA, had not been defeated and as such if peace was to be established the diplomatic option was the only one left. In the circumstances the country had to embark on a negotiated ceasefire and demobilization.

The implications were obvious. The parties, the Government of Sierra Leone and the Revolutionary United Front, had to resort to bargaining until a compromise was reached. And the product of that compromise was the Lome Peace Agreement which contains among other provisions, an article granting pardon and total amnesty to all combatants:

ARTICLE IX

PARDON AND AMNESTY

1. In order to bring lasting peace to Sierra Leone, the Government of Sierra Leone shall take appropriate legal steps to grant Corporal Foday Sankoh absolute and free pardon.

2. After the signing of the present Agreement, the Government of Sierra Leone shall also grant absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement.

3. To consolidate the peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL, ex-AFRC, ex-SLA or CDF in respect of anything done by them in pursuit of their objectives as members of those organisations, since March 1991, up to the time of the signing of the present Agreement. In addition, legislative and other measures necessary to guarantee immunity to former combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict shall be adopted ensuring the full exercise of their civil and political rights, with a view to their reintegration within a framework of full legality.

And to counterbalance the amnesty clause, the agreement made provision for the establishment of a Truth and Reconciliation Commission with responsibility as provided for in the article reproduced below:

ARTICLE XXVI

HUMAN RIGHTS VIOLATIONS

1. A Truth and Reconciliation Commission shall be established to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation.

2. In the spirit of national reconciliation, the Commission shall deal with the question of human rights violations since the beginning of the Sierra Leonean conflict in 1991.

This Commission shall, among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations.

3. Membership of the Commission shall be drawn from a cross-section of Sierra Leonean society with the participation and some technical support of the International Community. This Commission shall be established within 90 days after the signing of the present Agreement and shall, not later than 12 months after the commencement of its work, submit its report to the Government for immediate implementation of its recommendations.

It has to be pointed out that there was no mention of a judicial action against any participant in the conflict for anything committed or omitted during the course of the conflict either in a local or international court. It is not difficult, even now, to see that any such suggestion of criminal action against all or any of the fighting factions during the negotiations would have stood in the way of reaching the compromise needed for signing an agreement.

It is however true that the U N representative at the talks went round almost immediately after the Agreement was signed to communicate the U N's disclaimer about the **blanket amnesty**. This action augmented by subsequent events between 2000 and 2002 are taken as justification for setting aside part f the Peace Agreement and the establishment of the Special Court. The implication of establishing the Special Court in Sierra Leone to

try “those who bear the greatest responsibility for the worst human rights violations” will be dealt with under the section dealing with the Special Court.

Transition Mechanisms

With the signing of the Peace Agreement the process of transition from the turbulent period of the preceding eleven years, 1991 to 2002, commenced with the observance of the cease fire by the warring parties. This turned out not to be smooth but it was pursued with determination. And to ensure compliance and the detection of breeches the United Nation fielded in the largest ever Peace Keeping force of about seventeen thousand strong to Sierra Leone.

Simultaneously with the effort of ensuring the cease fire and in fulfillment of the provisions of the Peace Agreement, mechanisms were put in place for a Disarmament, Demobilisation and Rehabilitation (DDR) programme. The disarmament and demobilization were supervised by the UN Peace Keepers while the rehabilitation was relegated to a special Ministry, the Rehabilitation, Repatriation and Reintegration (RRR) or triple R Ministry. As all these activities were proceeding and with the creation of the transitional and inclusive Government of national unity, it was time to initiate processes that will establish justice, accountability as well as help bring about reconciliation in a country that had been deeply divided at all levels. The two processes were the establishment of a Truth and Reconciliation Commission in accordance with Article XXVI of the Lome Peace Agreement and a Special Court to try those who bear the greatest responsibility for crimes committed during the conflict. But as Peter Penfold, a British High Commissioner in Sierra Leone at a critical period of the conflict observed in 2002, “So far there has been little enthusiasm for the Court. The Sierra Leonean people have shown themselves to be amazingly forgiving, (even if) they are also fatalistic”, most Sierra Leoneans would have preferred to deal only with the Truth and Reconciliation Commission.

The Truth and Reconciliation Commission

Circumstances in the country necessitated that the Commission received considerable financial and logistical support from the international community through the Office of the High Commission for Human Rights (OHCHR). In the event, although the Commission

as provided in the enabling Act of 2000 was autonomous and free to determine its activities and plan its operations as well as take independent decisions, it had to yield to external regulation of its pace through resource controls.

At the request of OHCHR the Commission reviewed the initial budget the High Commission had prepared for it and scaled it down to about 50 per cent the original estimate. In spite of this either pledges were not honoured at all or they were not timely honoured with the result that the Commission's work suffered. Plans had to be frequently adjusted and schedules altered. In spite of this the Commission was able to fulfill its mandate and was accordingly grateful to both the international community and the Sierra Leone Government for their support.

Two provisions in the Act establishing the Commission need highlighting; they refer to a) the selection of the Commissioners and b) the mandate of the Commission.

The selection of Commissioners

The exercise for the selection of Commissioners is crucial for the integrity, quality and acceptability of any Commission including its report. The selection process must not only be transparent but it must seem to be transparent. The provision in the Sierra Leone TRC Act 2000 made sure that the members of the Commission were selected transparently, were representative of the regions, were identified by the people and not through personal application or recommendation, included independent non-nationals with no local interest, and were selected by a panel with all interests (Sierra Leone Government, the Revolutionary United Front and moral guarantors at Lome) represented.

The value of this process, especially the inclusion of non-Sierra Leoneans, was revealed to the Commission when it was dealing with the numerous written submissions by individuals, groups and institutions. The Commission discovered a multiplicity of rendering of the same events in the nation's history that needed very careful, dispassionate and objective analysis to reach the correct conclusion. In these circumstances the presence of independent Commissioners with no local affiliations, sentiments and biases was a handy balancing asset.

The Mandate of the Commission

The Sierra Leone Parliament that enacted the Truth and Reconciliation Act, 2000 demonstrated, in the mandate of the Commission, a total understanding and appreciation of the spirit of the Lome Peace Agreement as well as the people's need to express and acknowledge suffering, to relate their stories and experiences, identify who was behind the atrocities, to understand, explain and contextualize decisions and actions taken during the conflict, to elicit accountability as a means of inhibiting impunity and, most important of all, Parliament recognized the people's craving for reconciliation with former enemies in order to move towards personal and community healing for sustainable peace and harmonious existence. This awareness was reflected in the broadened mandate of the Commission that appeared in the Act as against the provision in the Peace Agreement.

The operations of the Commission

The interest of the Office of the High Commission for Human Rights (OHCHR) in not only ensuring the setting up but also the success of the Truth and Reconciliation Commission in Sierra Leone made it to set up an interim secretariat for the Commission at least two months before the appointment of the Commission. This allowed the Commission to be functional immediately it was inaugurated. Furthermore the Commission benefited from the interim secretariat's work in organizing a TRC Working Group as well as sponsoring activities related to the Commission's work such as, investigations and research into traditional methods of reconciliation, mapping of mass graves and sensitization of the public on the work of the Commission.

The Commission organized its work into five phases: **Preparatory, Barray, Statement Taking, Public Hearing and Report Writing.**

The preparatory phase was devoted to setting up the Commission, including budget preparation, establishing a permanent office, procuring with the help of sponsors office equipment, transport and other logistics, recruiting staff both national and international and preparation for taking the Commission to the people in the rest of the country.

The barray (sensitization) phase: Although some general information about the Commission had gone out through the activities of the TRC Working Group, the Commissioners themselves had to meet the people. The object was to introduce themselves to the people and, crucially for the success of the Commission, to convince them that the Commission was necessary, that it was in their interest and that they should have no fear of victimization from ex-combatants or indictment by the Special Court for making statements to the Commission. The Commission had to undo the negative propaganda about the Commission being an instrument of the Special Court.

The statement taking phase: The effectiveness of the barray phase was judged by the success of this phase. That the Commission was able to break through the initial fear and reluctance to give evidence during the barray phase was evidenced by the 7000 (seven thousand) statements the field staff received from witnesses in a period of about three months.

The public hearing phase: The Commission held public and closed hearings in all the twelve District Headquarters and the Capital, Freetown. The open hearing and particularly the live broad cast on the radio and television greatly impressed the public and attracted many to the proceedings. And contrary to the initial apprehension some witnesses opted to testify openly even when offered closed hearings.

The report writing / printing: The Commission was expected to complete its work within eighteen months including an extension of six months as provided by the Act of 2000. But because of a number of administrative and logistical problems this time was exceeded by about six months by the time the interim presentation of the soft cover report was made to His Excellency the President in 2004, and several months more before the final presentation of the hard cover report was made in 2005.

The report is in four volumes with chapters based on the themes identified by the Commission as representative of the total issues demanded by the mandate to be addressed. These themes are:

- Historical antecedents to the conflict
- Governance
- Military and political history of the conflict

- Nature of the conflict
- Mineral resources in the conflict
- External actors in the conflict
- Women and the armed conflict
- Children and the armed conflict
- Youths and the armed conflict
- The TRC and the Special Court for Sierra Leone
- National vision for Sierra Leone

The report contains conclusions and recommendations presented in three categories, namely “**Imperative**”, “**Work Towards**” and “**Seriously Consider**”.

The “**Imperative**” recommendations are those considered to be essential and fall within the peremptory obligations of Government as stated in the Act. The government is required to implement these recommendations “faithfully and timeously”.

The “**Work Towards**” are important but require careful planning for implementation. The Government is therefore required to put in place the building blocks to make the ultimate fulfillment of the recommendations possible.

The “**Seriously Consider**” are those recommendations that are not obligatory and, therefore, while the Government is expected to evaluate the recommendations it is under no obligation to implement them except under very favourable circumstances.

This approach was considered necessary in order to impart a practical dimension to the recommendations considering the nation’s immediate post-conflict circumstances.

The recommendations in the report covered the following issues:

- The protection of human dignity
- Establishing the rule of law
- The security services
- Promoting good governance
- Fighting corruption
- Youth
- Women

- External actors
- Mineral resources
- TRC and the Special Court for Sierra Leone
- Reparations
- Reconciliation
- National vision for Sierra Leone
- Archiving of the Commission's Documents
- Dissemination of the Commission's report
- The follow-up committee

The special court

Most truth commissions have operated as an alternative to criminal prosecution. Given the pardon and amnesty provision of the Lome Peace Agreement the Sierra TRC was proposed as a substitute for criminal justice in order to establish accountability for the atrocities that had been committed during the conflict.

The Special Court in Sierra Leone was created by abandoning certain amnesty provisions reached at Lome on the basis that there had been a breach of the Lome Peace Agreement by almost all combatants, especially the RUF. In the Commission's view however, by establishing the Court, the international community has sent a signal to combatants in future conflicts that peace agreements containing amnesty clauses ought not to be trusted and, in so doing, has undermined the trustworthiness of such negotiation strategy.

Although the relationship between the Commission and the Special Court was mostly outwardly cordial, tensions existed. One such tension was connected with the refusal of the Special Court to permit the Commission to hold public hearings with the detainees held in its custody. The Commission deplored this decision of the Court and held the view that this was an indication of either a lack of appreciation or a rejection by the Special Court of the special role and contribution of truth commissions in establishing accountability leading to reconciliation and sustainable peace.

The other internal tensions between the Commission and the Court were mostly as a result of the two institutions operating concurrently. Reference has been made to the

initial scare and apprehension among not only perpetrators who feared indictment by the court but the victims as well who were scared that they will be victimized by the perpetrators if they were seen cooperating with the Commission. In my opinion therefore, if the two mechanisms must be employed in dealing with transitional justice, they should be made to operate consecutively always with the Truth Commission preceding the Court. But if they are to operate concurrently then they should take the form adopted in South Africa by trading prosecution or retributive justice for the truth and accountability.

April 26, 2006.

Annexure B.2:
Truth after Ethnic War
A Burundian- South African dialogue

by Fanie du Toit¹

Three types of conflict dominated transitions to democracy in the 1980's and 1990's: criminal regimes where an entire state system was criminalised (predominantly in Eastern Europe), regimes of criminals where a small gang or junta ruled through fear, violence and extra-legal measures (predominantly in Latin America) and ethnic wars where significant sections of the population were mobilised against one another on grounds of race, ethnicity or religion (predominantly in Africa and South-East Asia).

The conflict in South Africa was a deeply complex situation with features of all three types mentioned above:

1. a pervasive system of legally enshrined, state-sponsored oppression that ran across government departments and all walks of life;
2. death squads that targeted political opponents with illegal and gross physical violence²;
3. Society-wide ethno-racial mobilisation and stereotyping.

One can identify several stages in the South African transition from apartheid to a negotiated settlement and eventually democracy.

Stage 1: 1985-1989: LIBERALISATION AND POPULAR UPRISING

During this period, the ruling party began to show signs of softening petty laws that built racism into the detail of everyday life. Softliners (verligtes) within the National Party began to press the government for concessions and liberalisations. Pass laws, the separate amenities act, the group areas act and racial references in the Constitution were all scrapped during this time. However as small freedoms

¹ Dr Du Toit is Programme Manager: Reconciliation at the Institute for Justice and Reconciliation in Cape Town, South Africa.

² The TRC made a strategic choice to focus mainly on crimes in category 2. It is clear that apartheid was also both a comprehensive state run system of oppression that dehumanised and belittled African people on a daily basis as well as a racist ideology of group beliefs that ran far deeper than law, but as an Institution with clear limitations, the TRC had to develop some focus and limits to its mandate.

increased popular resistance snow-balled. Riots, protest marches and boycotts rendered parts of the South Africa ungovernable. As violent confrontation increased, and civil war became a real possibility, moderates on both sides realised the unlikelihood of an outright military victory. The result was a series of clandestine, secret 'talks about talks'. Throughout South African civil society, in the form of faith communities and NGO's played a crucial role in organising resistance, but also stimulating dialogue. Further factors during this time included:

- Sharp economic decline as a result of sanctions, military wars and instability.
- The fall of Communism.
- Increasing social isolation of those associated with the regime.

Stage 2: 1989-1993: NEGOTIATIONS

In a 'creeping coup' the Softliners eventually took over the ruling party. FW De Klerk unbanned the ANC and released Nelson Mandela on February 2, 1992. Talks commence, but at the same time, spoilers in the military security and police began a campaign of destabilisation and ethnic instigation – focussing on Kwazulu-Natal where political violence during this period reached endemic levels. At the time, it was explained as 'black-on-black' violence, but the TRC revealed the extent to which the Zulu-dominated IFP was used by the military security to attack ANC strongholds, provoking bloody reprisals across the country. As a result of ongoing bloodshed (that the ANC blamed on their negotiating partners) formal Constitutional negotiations broke off twice, but finally entered the home strait after the signing of the Record of Understanding at the end of September 1992 – the result of a long process informal brokering (after formal talks had been suspended) between two chief negotiators. The ANC agreed to a two-phased process with an interim constitution providing the basis for a first election. The NP dropped their demand for minority rights and accepted the principle of equal rights for all. The process also survived the assassination of the popular communist and youth leader, Chris Hani and an invasion of the negotiating chambers by a group of neo-nazi extremists. In November 1993 the Interim Constitution was ratified. As a direct outcome of demands by the military, its post-amble made provision for amnesty. Further compromises included a Government of National Unity as well as a sunset clause guaranteeing white civil servant jobs for a period beyond the first elections. Finally, shrewd political manoeuvring by Mandela convinced the Afrikaner Rightwing and the Zulu-dominated IFP to enter as political parties at the last minute.

Stage 3: 1994-1995: DEMOCRATIC CONSOLIDATION

President Mandela's new government faced daunting challenges as it took office. As the newly elected constitutional assembly was debating and drafting a final constitution, government, at the same time, had to begin to address the social backlog that made South Africa the most unequal society in the world. At the same time, the trust of local and international business leaders had to be won.

The final Constitution was adopted in 1996 after a process in which millions participated. Just prior in 1995, Parliament passed the National Unity and Reconciliation bill to give effect to the provision of the Interim Constitution's post-amble included to deal with the past. South Africa's democracy was therefore stabilised and relatively consolidated when society turned to its past. In doing so, South Africa opted for neither Nuremberg-style prosecutions, nor for Spanish-style blanket amnesty. Lessons from the past had to be articulated, faced and learnt – without resorting to victor's justice.

Stage 4: 1996-2003: DEALING WITH PAST

While prominent proponents of the white press dubbed the commission a witch-hunt at the outset, some victim families were equally unhappy and tested the Amnesty clause in the Act in our highest court. In a famous ruling, Chief Justice Mohammed upheld the Act, but called it 'an agonising balancing act'. In another legal challenge, the Commission was forced to change its operations to provide sufficient advance notice to those who were to be accused in public of committing abuses. These and other legal challenges slowed the work, but also ensured that the TRC would be seen to operate legally. It was crucial that in its operation, the TRC would show respect for the rule of law.

Finally four TRC offices were opened with 18 Commissioners and three committees implementing the threefold mandate contained in the 1995 act:

- The Human Rights Violations Committee had to collect as much truth about gross human rights violations as possible and present this in a report to the nation.
- The Amnesty committee had to provide amnesty to perpetrators who came forward, who came clean and who convinced the Commission that they acted as a result of political motivation.
- The Rehabilitation and Reparations Committee had to recommend to government suitable reparations for victims of gross human rights violations in return for relinquishing their right to civil litigation.

The Commission's first hearings took place in April 1996. The highest profile work was that of public victim hearings, unique in its scope thus far. Of the 21,000 victims of gross human rights violations that testified to the Commission, two thousand were selected to tell their stories in public, on national TV and Radio, a process that lasted 18 months and that made a lasting impression on the South African psyche – even those who deliberately sought to evade the Commission. The atmosphere in the victim hearings, with the Archbishop Tutu presiding, was thick with religious and cultural overtones. Tears flowed freely and testimonies were often interrupted with singing, counselling and praying.

The concurrent amnesty process resembled much more a court process, with judges, lawyers and fierce cross-examinations holding sway. If the aim was to present the 'human side' of the perpetrators, this did not succeed. Instead, perpetrators came across as defensive 'some crying crocodile tears, seldom meaning it' as Advocate Bizos put it. Over 7,100 persons applied for amnesty, only 1,167 received it.

Several key processes would work simultaneously to enable the Commission to do its work. One of the first tasks was to develop a statement form and recruit and train statement-takers from a range of backgrounds (who between them spoke all eleven official languages in South Africa) to record the testimonies at TRC offices or central points in outlying areas. Commissioners and staff members also embarked on an extensive process of public information, relying on organs of civil society to draw together meetings for TRC staff to brief. Commissioner Mary Burton recalls:

The deponent could speak in his or her own language, but the statement form had to be filled in English, so that it could then be uniformly captured onto the database. The statement-takers therefore needed to be accurate and detailed, but at the same time they were required to bring to the interview the qualities of respect and empathy with which the TRC constantly strove to address victims of violations. For thousands of people those interviews would be the only face-to-face encounter with the Commission, and the goal was to ensure that they were a positive experience."

In order to turn the granting of amnesty into a tool to discover the truth about the past, the Commission would subpoena witnesses and exercise broad search and seizure powers. It also had a fairly sophisticated witness protection plan. Another major challenge was translation. Efforts to simultaneously translate the highly

emotional victims' hearings and the highly technical amnesty hearings into eleven different languages – many of which lacked terminology in these areas – was daunting – not to mention the trauma of the translators themselves who experienced the whole process first hand. An abiding image of the TRC is that of the face of one such translator, tears streaming down her cheeks, as she translates.

A Research Department identified priority cases and the Investigation Unit provided corroboration of the statements made by deponents. Again Mary Burton explains:

Questions were sometimes asked about the veracity of the statements, and it was a great reassurance to the committee that the majority of them were subjected to investigation by the Investigation Unit. This Unit was made up of people drawn from the South African Police Services as well as from the ranks of supporters of the liberation movements, and strengthened by skilled personnel seconded from other countries as part of the international support for the Commission. It must be acknowledged that such corroboration was not possible in every case, and in such instances the Commission was obliged to state that it was “unable to make a finding”. All too often, the necessary documentation to prove incidents had taken place had been destroyed. In some cases, it was possible to corroborate statements by what was referred to as “low level corroboration” – statements from people who witnessed the effects of the incident on the victim; or the existence of a number of similar statements about a particular place, or a particular perpetrator.

The work of the third committee, the Reparations and Rehabilitation Committee committee was to draw up a set of proposals or recommendations to government regarding individual and communal reparations to victims. These were handed to the President in October 1998. More immediately, government agreed to small amounts for ‘urgent interim reparations’ to be paid to victims in dire need. Besides handling this, the R&R Committee explored possibilities for care and counselling to victims of trauma and violations. It provided ‘briefers’ to accompany victims through the process of public testimony.

As information was gathered, the Research Department drafted, debated and finalised the final report. Five volumes were handed to President Mandela when the official life of the Commission came to an end in October 1998, with another two volumes (containing outstanding amnesty decisions and a complete list of victims) handed to President Mbeki in 2003.

To make all this work, its budget was several times bigger than any Truth commission before it.

Stage 5: 2003: UNFINISHED BUSINESS AND ECONOMIC GROWTH

Today South Africa's main challenge is to give concrete material expression to hard fought political freedom, but prosperity is often the enemy of truth. As the South African economy finally kicked into gear during the last three years, with growth pushing 6 percent, and a new vibrant black middle class emerging, pressure is large to turn to the future and let bygones be bygones. And move on we must. This much South Africa owes its youth. Reconciliation means to create fresh opportunities and to break through cycles of revenge and retribution. Revisiting the past carries the risk opening such old wounds and re-mobilising along traditional fault lines. South Africa has a chance to break through age-old racial divisions.

At the same time, the TRC process is, ten years on, not complete. Many, not least victims – feel that it is crucial to the process's long term credibility and impact, to finish it properly. So what still has to be done? At the same time, what has the TRC achieved and what could it have done better?

TRUTH: The Human Rights-focussed truth that emerged from the TRC process impacted the SA transition in at least three ways:

- Victims rated truth recovery as the most important contribution of the Commission. Over and over victims said: 'Process cannot bring back my loved ones, but knowing finding out what happened, helped me to gain closure. Bringing back the bones of my loved ones gave me a grave at which to cry'.
- The TRC provided an object lesson to the media that, for the first time since apartheid, were part and parcel of the process. They revelled in their role. The exercise did a lot for establishing the media as social watchdogs and commentators after the constraints of apartheid. The media's full scale participation, in turn, ensured that no South African can claim today not to know that terrible things happened during the apartheid.
- The TRC probably helped to build political tolerance. The flood of public truth about atrocities of the past made painfully and powerfully clear, the dire consequences of violent politics.

What we could have done better:

- Not enough truth has been uncovered. Thousands of victims still do not know what happened because many perpetrators did not come forward. TRC archives are also still largely unprocessed. For the general public, the TRC Report is too expensive and perhaps too expansive to acquire and read. Popular versions have been planned but not produced. To date, little TRC material exist in the form of teacher support materials for use in the National Curriculum.
- The type of truth produced – about gross human rights violations – has perhaps not been sufficiently complemented with other types of truth – about how institutions and ideologies operated to enable gross human rights violations. Institutional hearings did take place, but were very much an afterthought to the main thrust of the process.

ACKNOWLEDGMENT: The Commission illustrated the importance of public acknowledgment of the suffering of victims first by perpetrators, secondly by the general public and thirdly by the government of the day.

- Merely by participating, perpetrators acknowledged to some extent, the impact of their actions on victims. The sincerity varied, but the process was structured in a way that acknowledged and honoured the victims – with their torturers and victimisers in attendance.
- Secondly, no South African can claim today not to know that terrible things happened during the apartheid. This provides important validation to victims.
- Thirdly, government for all its shortcomings it did officially take receipt of the report, and has paid individual reparations, as well as building a number of monuments. These are all vital to the restoration of the dignity of victims.

What we could have done better:

- Despite formal acknowledgement, perpetrators often showed no personal acknowledgement of the suffering they caused. Nyameka Goniwe, a victim, said: 'I was looking for a signal of humanity in them, to be able to see them as humans so that I could forgive them. I could not find this signal.'

- Since the Commission, the amount of registered victims on the books of organised victims support groups has grown to 48,000 – a politically significant constituency. Yet, as a result of governments lacklustre approach to reparations, they feel marginalised and disregarded. A fall-out after the submission of the final report between government and the Commission has seen political will to consult victims, decline further.

JUSTICE: The innovation of conditional amnesty worked. Amnesty was a political necessity, but in order for it not to become cheap and abuse victims a second time, it was tied to full disclosure. This strategy not only made moral sense, it also produced vast amounts of historical truth that would otherwise have remained obscured. Perpetrators were forced to show some accountability for past wrongs.

What we could have done better:

Previous political leadership shunned the process, with only one former cabinet minister applying for amnesty. For these people, the stick was not thick enough, chiefly because so much evidence had been destroyed and because of the country's limited legal capacities. South Africans were unclear about grades of accountability. On the one hand, it was important not to put all white people on trial. On the other hand, whites were not assisted to take responsibility for their privilege as a result of racial oppression. A lot will depend on how prosecutions will be dealt with. TRC's are never an alternative to prosecutions, but complementary to them. As such, it is important that those perpetrators, who fail to receive amnesty, should be prosecuted. The National Prosecuting Authority has adopted a set of principles that were heavily criticized as a 'second bite at the amnesty cherry this time behind closed doors' because they allow for plea-bargaining in exchange for truth without the rigorous transparency that marked the TRC (essentially pro-longing the TRC amnesty regime without its public checks and balances).

REPARATIONS and RECONCILIATION: The TRC made extensive recommendations about ways to balance the more general developmental agenda for the whole of society, with that of privileged reparations to the 21,000 victims acknowledged on the TRC books. It included recommendations for educational bursaries, human security, medical care and memorials.

What we could have done better:

Just about everything! Without a substantial reparations budget located at the TRC, the process depended on speedy and effective government response. Government however responded unenthusiastically to TRC recommendations, offering victims a mere third of the total individual payment recommended by the TRC, and this only after 5 years. A policy on community reparations is, ten years on, still to emerge. A TRC unit recently set up in the Department of Justice is still under-staffed and under-resourced. Largely out of dissatisfaction with government reparations, victims are currently suing 23 multinationals in a NY district court for damages as a result of their business activities with the apartheid government that, claimants says, enabled gross human rights violations. Perhaps more profoundly, Mahmood Mamdani's critique has been that the TRC process let beneficiaries off the reparations hook, thereby allowing power relations between ordinary white and black South Africans largely unaltered. The TRC operated, Mamdani says, only with a relatively small political elite (those involved in the worst human rights violations) thereby squandering an opportunity to create a society free from colonial power vestiges.

A final word

Transitions call for political judgement: of how far power relations in a given society can be stretched, of how much justice is possible for victims, how much truth can be attained and what route would produce stability and reconciliation. In this respect there are those who say:

- Reconciliation, and as much justice as possible.
- Truth and as much justice as possible.
- Justice and as much truth or reconciliation that this would allow.

No single transitional mechanism is a panacea. TRC'S cannot reconcile nations. They can merely set in motion, processes that may, if taken seriously by all role-players, will produce reconciliation. The South African Commission had further dramatic shortcomings: a limited focus on individual human rights, a negligible reparations budget and a severely limited lifespan with a bad hand-over to government and civil society.

Yet, in retrospect it played a pivotal role in South African transition by prioritising the victims and their truth, and therefore, at least symbolically, restoring some sense of dignity and worth to those who had paid the highest price for the new dispensation.

At the same time it gave concrete expression to the ideal of political reconciliation by creating an avenue for perpetrators to rejoin community.

The main responses to the TRC can be categorised in three clusters:

- Those in the international human rights movement and at home who felt that the perpetrators got away with too much and that restoration of the rule of law was hampered by amnesty: In my view these critics do not understand the political constraints in the South African context sufficiently to appreciate that amnesty was a powerful tool to convince previous regime to negotiate themselves out of power.
- Those who glorified the TRC as an example of real reconciliation between victims and perpetrators, of forgiveness and the reparation – these critics often overlook the serious shortcomings of the institution favouring a few classic examples of personal reconciliation and overlooking the fact that in most cases, reconciliation meant something a lot more modest than forgiveness – perhaps a decision to learn to live together and accept one another's citizenship – and above all, to respect the law of the land.
- Those who criticised the ideological leanings of the TRC report with its double message: on the one hand a legitimate freedom struggle fought an evil regime (to which some in the National Party objected), but on the other human rights violations occurred on all sides and remains an atrocity for which accountability is necessary no matter who committed it for what cause (to which some in the ANC objected).

The South African TRC was an important intervention that achieved important gains for the nation – some truth, some accountability, some acknowledgement, some reconciliation but little reparation. Whether it will help us in the long run to see and treat each other as human beings across traditional divides remains to be seen. The verdict is still out, but the first step has been taken.

Annexure B.3:**Presentation on the following issues:**

A: The type of conflict that was prevailing in Rwanda;

B: The Peace Settlement (s);

C: The Transitional justice Mechanisms the country opted for and why;

D : Any relevant or pertinent comments about our process whether it is approval or there are some criticisms, elements of the process to be aware of.

1. Background to the Rwandan Conflict

Rwanda for several decades has experienced bad governance based on division and discrimination of Rwandan people by ruling elite. As a result of this prolonged period of corrupt and repressive regimes saw the entrenchment of divide and rule as the principle of governing. Inevitably, this dictatorial and repressive tendency lead to a culture of impunity resulting in gross human rights violations and later on culminating into 1994 genocide in which about one million Tutsis and moderate Hutus perished.

However, during the 1990 – 1994 civil war in Rwanda, there were many tried but failed peace negotiations. The most important among them is Arusha Peace Agreement of Aug.04th 1993 which had identified national unity and reconciliation processes as fundamental to stability and long lasting peace, stability and development in Rwanda. This peace settlement provided for power-sharing frameworks, rule of law and accountability measures as sin qua non in post conflict stability in the country.

Unfortunately, the agreement which had provided for peaceful exit from the protracted war, was not respected by the Habyalimana government and instead of seeing light at the end of tunnel, the country descended into total genocide whose time span majority among the international community call April – July 1994 or (100 days human slaughter).

The government that took over power in July 1994 was kind of arrested in the horns of dilemma over what could be done in a situation that seemed either confused or confusing. It was in such circumstances that a transitional government was formed in late July 1994.

The first thing among many priorities that queued for solutions were return and resettlement of old and new case refugees, guaranteeing security of the population and “resurrecting” the civil service sector that seemed to have totally collapsed. National unity was not convenient at the immediate post-genocide period because people had to have

some time to cool down the anger and rage they contained. In such circumstances, the government carried out high level internal and external consultations of what could be done to normalize the country that had fallen into an abyss.

2. The Rwandan Conflict: A deep-rooted and identity-based conflict

The conflict which has been devastating Rwanda for several decades is an identity-based conflict. There is an identity-based conflict when a human group is convinced, rightly or wrongly, that it is threatened by another group "enemy" (or perceived as such) of disappearing or of being reduced physically or politically. That type of conflict generally breaks out between communities which have been living together for a long time and the frontlines are set up along identity distinctions, whether material or not. The identity-based conflict is therefore a conflict in which collective narcissisms confront each other. They crystallize on the basis of the sense of belonging to an ethnic group, a territory, a language, a religion and a culture. It could also be based on history, ideological constructions and political affiliations. The latter elements are specifically typical to the Hutu-Tutsi conflict in Rwanda and in Burundi.

Conflicts in Africa of the Great Lakes, in particular the conflict of Rwanda, are a good illustration of that phenomenon. At first, there is a perfect entity, the sedentary Bantu "Hutuness" (it matters little if "Twaness" was anterior to it), then arises a disturbing element, the Nilo-Hamitic invading "Tutsiness", and in the third phase, in order to restore the primitive state, which is to be perfect by definition, it is up to the Hutuness in jeopardy to mobilize the whole group in order to destroy the threat of that "deadly" otherness, in such a case, the "Tutsiness" and finally to get free from it. All the conflict situations in Rwanda from the 1959 revolution to the 1994 genocide, places emphasis on that three-phase dynamics. It is not rational but that does not prevent it from being functional in society.

Identity crises are the result of long-lasting phenomena. Three elements should be combined for the sense of identity to take form: the socio-economic crisis, the state crisis and the internal or proximity heterogeneity. The socio-economic crisis dooms such or such other group to exclusion and toughens collective identifying perceptions of groups around ontological needs. The state crisis results in its incapability of properly assuming its duties and the state places itself in the service of a minority of the privileged by giving its backing to injustices and frustrations against other groups. Those two aspects have characterized Rwanda under the first two Republics, without sparing the neighboring countries, including DRC. The heterogeneity factor has also played a significant role. In

the case of Rwanda and Burundi, the sense of distinction has been the result of ideological constructions and has relied on parameters which are a little rational but functional: height, big or small nostrils, the shape of the face, etc... Ethno-cultural heterogeneity has also characterized the conflicts in DRC and Uganda with the specificity of the latter that it was superposed to religious heterogeneity.

However, contrarily to Rwanda and Burundi, at linguistic and cultural level, the distinction lines are not clearly established in the two other countries. One should mention that the conflict that has prevailed in Rwanda has been largely due to bad governance, lack of rule of law and distorted history.

3. The Transitional Justice Mechanisms opted for and why.

The transitional mechanisms of justice opted for Rwanda after the genocide are varied and various. There are both legal and political. Genocide and war did not only destroy human beings, it also destroyed the entire economy and general infrastructure. Particularly hard hit was the justice sector. No judicial personnel in place, they were either killed or fled the country. There was no genocide law. Some judges and or prosecutors and criminal investigators had participated in genocide. The ministry of justice like any other had been vandalized without any computer, books or any office equipment.

In 1994 however, UN Security Council Resolution 955 of 08th Nov. 1994 established ICTR for prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed on the territory of Rwanda between 01st Jan. – 31 Dec. 1994.

Secondly, on 30th Aug. 1996, an organic law prosecuting and punishing genocide perpetrators come into force. There were almost 130.000 suspected held in various prisons across the country awaiting trial. This law categorizes perpetrators according to degrees of criminal responsibility.

Category 1 includes planners, organizers, those who incited, instigated and supervised genocide and other crimes against humanity. Offenders in this category are tried in the ordinary courts and in ICTR in Arusha.

Category 2 include those who aided and abated or are complicit to genocide other crimes against humanity, these are also tried in ordinary courts and Gacaca courts.

Category 3. Those who committed offences against assets such as robbery and destruction of houses. These are tried by Gacaca courts alone.

4. Gacaca Courts

Gacaca is a Kinyarwanda word which signifies a patch of grass usually under a tree where people meet to discuss and settle community disputes. One might ask why gacaca courts? below are some of the answers.

- The notion captures a sense of community participation in sentencing and healing process. Community members act as prosecution or defense witnesses;
- Ability of Rwandan Community to solve their problems;
- Bring out truth about what happened and how it happened;
- Speed up trials given that the number of courts are many 12013 and closer to the people compared to the former 12 Courts of 1st instance that were at provincial headquarters and very far away from scene of crime;
- Gacaca courts are less technical and procedurally easy;
- Economically viable, judges (Inyangamugayo) are facilitated but not paid;
- Fight the culture of impunity. Though Gacaca courts' punishment are less severe, in other words reconciliatory in nature, they do expose a perpetrator and sentence him or her to a term imprisonment.

5. Who are Judges and How are they Elected?

Judges are adults of majority age (18 years and above) of impeachable character and high moral integrity elected by members in a particular Cell or locality. They take an oath which binds them to serve the nation with integrity and dedication. The rest of the community members act as the general assembly.

6. Other measures

National Unity and Reconciliation Commission.

Following the provisions of Arusha Peace Agreement as already indicate, Article 24 under power sharing framework, National unity and Reconciliation Commission (NURC) had been provided. In 1999, NURC come into force created by a n Act of Parliament, and

even the 2003, Constitution of the republic of Rwanda recognizes and provides functions for NURC.

According to the Constitution of the Republic of Rwanda, Art. 178, NURC has functions:

1. Preparing and coordinating the national programs for the promotion of national unity and reconciliation;
2. Putting in place and Developing ways & means to restore & consolidate unity & reconciliation;
3. Educating and Mobilizing the population on matters relating to unity & reconciliation;
4. Carrying out research, organizing debates, disseminating ideas & making publications related to Peace & national unity Reconciliation;
5. Making proposals on measures that can eradicate divisions among Rwandans and to reinforce unity & reconciliation;
6. Denouncing and fighting against acts, writings & and utterances which are intended to promote any kind of discrimination, & intolerance ;
7. Making an annual report and any other report that may be necessary on the situation of national unity and reconciliation.

Programs within the Commission

Before commencing its activities, NURC carried out grassroots consultations countrywide, seeking opinions of the people on what they think about the process of national reconciliation and how the Commission should be run. From this exercise, emerged the following programs.

CIVIC EDUCATION

NURC took the lead in mobilizing and training communities on unity and reconciliation and related topics. Four tools are used: Ingandos, reconciliation summits; leadership academy, inter-community exchanges and consultations.

Ingando

One of the tools used by NURC in sensitizing people is Ingando. Ingando is taken from the Rwandese verb Kuganda that refers to halting normal activities to reflect on, and find solutions to national challenges. In ancient Rwanda, Ingandos were first developed by the military. Whenever Rwanda faced disasters (wars, natural calamities etc), the Mwami (King) mobilized and prepared the population through Ingandos. By the advent of

colonialism, it was a well – entrenched practice. As Rwanda sank deeper into postcolonial conflict the institution of Ingando lost its relevance and was no longer practiced. Moreover, the royal institutions, which had held Rwanda together for centuries were abolished.

When the NURC was established, it formally developed Ingando as a tool to build coexistence within communities. The first beneficiaries were ex – combatants from the DRC. The programme later expanded to include school going youth and students at secondary and tertiary levels. By 2002, the training was extended to informal traders, and other social groups including survivors, prisoners, community leaders, women and youth.

Today, *Ingandos* are carried out countrywide and most are co-facilitated with communities. The provincial and local administrations provide assistance with logistics. The NURC and its partners provide accommodation and meals and transportation is usually covered by the participants. Ingandos entail residential camps, bringing together between close 400 – 500 people per programme ranging between 3 weeks to 2 months depending on time available and focus of the sessions. The numbers also vary, although at each prison release, 1000 prisoners undergo Ingando. Topics are covered under five central themes: analysis of Rwanda's problems; history of Rwanda; political and socioeconomic issues in Rwanda and Africa, rights, obligations and duties and leadership.

National Reconciliation Summit

National unity and reconciliation summit is the flagship programme of the NURC. It is chaired by the President of the republic and attended by a cross section of Rwandans and dignitaries from the international community. It has become a prominent and more or less permanent national event that draws considerable international focus on Rwanda. The first summit was held in October 2000, which was followed by another summit in October 2002. In April 2004, there was a children's' summit, whose views were discussed at the April 2004 reconciliation summit. It is a kind of an evaluation process of how far have we gone in reconciliation process, any lessons learned and the way forward.

Inter – Community Exchanges

NURC coordinates regular exchange programmes between communities from different regions. The programmes entailed exhaustive analysis and joint solving of problems, and popular activities including sports, cultural celebrations and competitions. They were designed to eradicate the mistrust created by the policies of regional favoritism entrenched by previous administrations.

PEACE-BUILDING AND CONFLICT MANAGEMENT

Without equipping & transferring skills to people so as to manage / solve their problems, NURC would always face the challenge of answering a bulk of societal complaints. Resources went into developing and transferring conflict management skills to communities. NURC staff benefited from training programmes in South Africa, Kenya, and Ghana among other countries. The following tools were used:

Abunzi

Section 4 Article 159 of the constitution establishes a mediation committee in each sector. The mediation committee members or “*Abunzi*” are responsible for mediating between parties to certain disputes involving matters determined by law prior to the filing of a case with the court of first instance. The *Abunzi* comprise twelve residents of the Sector who are persons of integrity and acknowledged for their mediating skills. They are elected from among persons who are not members of decentralized local government or judicial organs for a term of two years that may be extended.

The NURC regularly trained the *Abunzi*, and supported them in their sensitization activities. The NURC also supported the National Service for the Gacaca Courts in training the *Inyangamugayo* (persons of integrity), who preside over Gacaca trials. It is worth noting that 80 percent of the conflicts at local level are handled by the *Abunzi*, thereby freeing up the legal system, and building leadership values at grassroots level.

Abakangurambaga

Abakangurambaga are community mobilisers. The creation of the Abakangurambaga was an innovative strategy of the NURC. They are “peace volunteers” who intercede in disputes and mobilize communities to address problems. There are 720 countrywide so far trained by NURC. The Abakangurambaga work voluntarily for the NURC, which provides them with training manuals, reference material and bicycles through the support of the

Carrying out research and making publications on peace, conflict and reconciliation matters. These publications are used as tools for advocacy purposes.

- **Conflict Management Training**

Conflict management training is used as a tool to equip the *Abunzi* and *Abakangurambaga*. Conflict management training is generally thought of as the dissemination of knowledge and the imparting of skills. It is felt that the NURC should, however, see it more as a strategic tool to promote the development of peace building

capacities within communities. The conflict management training approach of the NURC has two aims: raising awareness about conflict dynamics and the need for reconciliation and, imparting skills for dealing with conflict everyday conflicts, or sustaining peace. Training programmes in this case provides participants with an understanding of how conflict operates, the general patterns it follows and useful concepts for dealing with it in constructive and creative ways.

Having seen the important role played by *Abakangurambaga*, NURC has elected to strengthen their capacity to intervene proactively in conflict situations and to monitor and document conflicts. The Commission pays attention to the technical quality of the courses trained in or addressed through institutional partnerships with organizations such as the Centre for Conflict Management at the National University of Rwanda and others.

Support to communities

The idea of supporting communities is to mobilize ordinary people to fight poverty. The thinking was that if people created initiatives together, they would be inclined to nurture those initiatives and to defend them, irrespective of their differences. The growth of several community based reconciliation associations involving survivors, perpetrators, and people with family members in prison is an indicator that reconciliation is taking place at the community level.

Three main tools were used: providing grants to selected associations, the creation of NURC Clubs and promoting culture as a resource for reconciliation. One might mention some of those Associations: UKURI KUGANZE, loosely translated, it means (The Truth Prevails) in Kigali City and ABIYUNZE (The Reconciled) in Rukara Sector of Kayanza District.

Providing grants to community based reconciliation associations

More than 60 community-based associations have received grants from the NURC since 2001. Most of them comprise perpetrators and survivors including members from their families and their activities range from promoting reconciliation in communities to income generating activities. The NURC however, takes care not to create dependency in communities. It is intended to be a vehicle for ownership and empowerment.

Equally important is for the grassroots to see themselves as people's structures – a resource in themselves and not an arm of the government or the NURC.

Creation of Reconciliation Clubs

One of the outcomes of the Ingando was an idea of forming NURC Clubs in schools and institutions of higher learning was. Initially, the NURC took the lead in creating them. In

time, however, students formed reconciliation clubs on their own. The clubs provide a space where students from different backgrounds get together promote reconciliation in places of learning. In this way, their teaching does not just end at the Ingando, but is carried forward constructively.

Culture as a resource for reconciliation

The NURC has contributed tremendously towards promoting culture as a tool for reconciliation. The incorporation of cultural concepts such as **Ingando**, **Abakangurambaga**, **Inyangamugayo**, **Ubudehe**, **Ubusabane**, and others in its activities are cases in point. Since 1999, the Commission has organized several cultural activities, including plays, songs, poems and dance. As a standard practice, every Ingando entails cultural activities and celebrations. The same applies for meetings, seminars, consultations and the annual summits.

Besides the above, NURC carries out research and makes publication on matters related to national unity. In this respect, we published a book on the origin, development of Rwandan conflict and its exit strategies. There was another on the role of women in reconciliation process.

The Commission also monitors different institutions both private and public to see whether what is being done conforms to the policy of reconciliation. In case inconsistent policies are detected, reports are made and forwarded to concerned authorities for an early action to be taken so as to contain or prevent such conflict from escalation into violence.

Some challenges faced.

Despite the achievements made in the reconciliation process, there are still hurdles we must overcome. There is the issue of reparation which has not yet been addressed, not enough facilities for survivors accommodation, a number of child headed families, lack of medical care for the vulnerable groups, some survivors' children do not attend school due to inability to pay for scholarstic materials. Gacaca though home grown and restorative form of justice, it is fraught with difficulties of some people holding back their truth and sometimes failing to contain the traumatizing testimonies being heard from the audience.

Pertinent elements to be aware of:

Conflict is natural in our lives and it should not take anybody by surprise. Depending on how we handle it, conflict can be destructive or constructive. "Ntazibana zidakomanya

amahembe". Reconciliation is a process and a goal. It takes more time than what most people are willing to accept, it is not easy, there is neither single nor simple roadmap or formulae to reconciliation. Each conflict is unique, it is this uniqueness that may require particular responses.

A multi-faceted approach is the best approach, in which case cross-cutting issues can be mainstreamed into other programs of the ministries and private organisations or civil society so as to make reconciliation a responsibility of every citizen. Supporting unity and reconciliation clubs is very important.

Probably, Martin Luther King was right when he said "where the law of an eye for an eye and a tooth for a tooth obtains, we shall have only toothless and blind people". We should learn how to leave together as people or else shall we perish together fools.

In Rwanda, we are lucky for we have good leadership that is committed to reconciliation and good governance. The political will of the government and policies are supportive of reconciliation programs, this is why Rwanda has managed to get this far.

Annexure B.4:
RECONCILIATION – A DIFFERENT KIND OF JUSTICE

Memory and Future. Truth Commissions in the international experience.

By: Mrs. Mary Burton

The story of the South African Truth and Reconciliation Commission is usually told starting with the negotiations process of 1993, leading to the country's first democratic elections held in April 1994. This paper proposes to begin earlier than that, with the announcement by then President FW de Klerk on 2 February 1990, that the political parties and organisations which had been banned would be allowed to operate once again. Within ten days Nelson Mandela was set free, and the process of talks began, leading to several major agreements and the lifting of the state of emergency.

That was the moment of public recognition by the rulers of the time that the system of apartheid could no longer withstand the continued assault of internal resistance and international rejection. The price being paid, in economic and societal terms had become too high. The country could not be controlled by the sheer force of powerful military and police units any more. The escalation of the conflict, and the increasing impact of economic and diplomatic isolation, contributed to the growing awareness that a small privileged minority could not continue to rule over a poor and disenfranchised majority.

From that moment on, in spite of delays, frustrations, disagreements and setbacks, the political terrain was irreversibly changed. The new questions were about how to share power and privilege, how to manage the transition, how to shape the future. At that stage, the more painful questions about how to deal with the past were more muted - but they would not go away.

The exiled political movements returned, their supporters were able to demonstrate their support (and their occasional disagreements), and over the next few months the liberation movements formally revised their commitment to an armed struggle. Eventually the negotiations began, although it was a year before the National Party agreed to the concept of a constituent assembly, and almost another year before the

first meeting of the Convention for a Democratic South Africa (CODESA, December 1992).

Even then, the path was not always smooth. Negotiations broke down, were rescued by, for example, the “sunset clauses” which provided for a government of national unity for the initial period of transition, and were often at risk as violence continued to rack the country.

Despite these breakdowns, an Interim Constitution was agreed to by the negotiating parties on 17 November 1993 and enacted by Parliament on 18 December 1993. The elections of April 1994 could go ahead.

The first fully democratic elections ever held in South Africa which took place on April 27 and 28, 1994, have been hailed as a “miracle”. They may indeed have been one, but it was an exhilarating, confusing, problem-riddled sort of miracle, and one which was only achieved thanks to the goodwill, patience and tolerance of the majority of the people - all of them. The installation of the new government, on May 10 1994, could build on solid foundations: the infrastructure of the previous government remained intact, and would be transformed by the advent of an influx of people who had previously been excluded.

It is important to recognise not only the role played by the supporters of the parties now represented in Parliament, particularly the majority party, the African National Congress, but also that of a variety of non-governmental organisations. During the negotiations phase, NGOs played a valuable role in raising issues, monitoring the process of agreements, putting forward claims of particular sectors of the society. The existence of a strong civil society in South Africa should not be overlooked in any consideration of its transition. Much of the leadership of the NGO community was taken up into national, provincial or local government after the elections, which weakened the organisations for a period, but meant that many of their concerns were addressed within government.

Among the issues attracting the attention of concerned organisations were the tasks facing the new government if it was to fulfill its commitment to dealing with the injustices of the past. Implementing the agreement on amnesty, and dealing with inequalities of access to education, land, and employment opportunities were the most urgent. The establishment of a Land Claims Court, an overhaul of the education

system, a Reconstruction and Development Programme, and the integration of government services, including the national security forces, were speedy indications of the government's intentions.

The establishment of the Truth and Reconciliation Commission was only one of these steps. It was developed on the principles articulated in the epilogue to the interim Constitution, which had been added on in the final days of 1993, expressing a vision of national unity and the hopes of overcoming the conflicts of the past:

This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.

The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.

These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation.

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.

With this Constitution and these commitments we, the people of South Africa, open a new chapter in the history of our country.

The Promotion of National Unity and Reconciliation Act, the founding legislation for the Truth and Reconciliation Commission, was promulgated in 1995, and the Commission of 17 members was appointed in December of that year.

Within weeks staff appointments were being made, offices were opened in four cities (Johannesburg, Durban, East London and Cape Town - the last serving also as the national office). The three committees provided for in the legislation were established: for Amnesty, for Reparation and Rehabilitation, and for Human Rights Violations.

One of the first tasks was to develop a mechanism for recording accounts of “gross violations of human rights” committed, as defined in the Act, through “killing, torture, abduction, or severe ill-treatment”. A statement form was drafted (and went through several versions) and statement-takers were trained to record the accounts given by deponents who came to the offices of the TRC or to central points in outlying areas. The Research Department identified areas and historic events which required attention; the Investigation Unit provided corroboration of the statements made by deponents. The Human Rights Violations Committee invited a representative selection of deponents to testify in public and the first public hearings were held in East London in April 1996.

That is a way of putting into one paragraph an extraordinary range of experiences! I think it is important to try to convey something of what was entailed. In the first place, Commissioners and staff members embarked on a process of public information, relying on the support of NGOs and faith communities to arrange public meetings and discussions about the TRC. The statement-takers who would then work with individuals were an essential part of the process: they were drawn from all sectors of the society, and between them could speak all the eleven languages of the country. The deponent could speak in his or her own language, but the statement form had to be filled in in English, so that it could then be uniformly captured onto the database. The statement-takers therefore needed to be accurate and detailed, but at the same time they were required to bring to the interview the qualities of respect and empathy with which the TRC constantly strove to address victims of violations. For thousands

of people those interviews would be the only face-to-face encounter with the Commission, and the goal was to ensure that they were a positive experience.

In total the Commission received over 20 000 statements, and the Human Rights Violations Committee had the task of assessing them and making findings in each and every case. Questions were sometimes asked about the veracity of the statements, and it was a great reassurance to the committee that the majority of them were subjected to investigation by the Investigation Unit. This Unit was made up of people drawn from the South African Police Services as well as from the ranks of supporters of the liberation movements, and strengthened by skilled personnel seconded from other countries as part of the international support for the Commission. It must be acknowledged that such corroboration was not possible in every case, and in such instances the Commission was obliged to state that it was “unable to make a finding”. All too often, the necessary documentation to prove incidents had taken place had been destroyed. In some cases, it was possible to corroborate statements by what was referred to as “low level corroboration” – statements from people who witnessed the effects of the incident on the victim; or the existence of a number of similar statements about a particular place, or a particular perpetrator.

The Reparations and Rehabilitation Committee’s main task was to recommend policy to the government regarding the measures it should take to provide reparation to victims of gross human rights violations. It did so, but even at this late stage the government has still to respond fully to these recommendations. However, it did agree that “urgent interim reparation” would be made as soon as the necessary documentation had been processed by the TRC. This process is almost complete. Longer term reparations are still under debate, as are the detailed recommendations which focus on rehabilitation in a broader sense, and policies of redress to entire communities and ways of ensuring that such violations can never occur again.

The Reparations and Rehabilitation Committee did more than consider policy, however. It explored links with organisations providing care and counselling to victims of trauma and violations, and referred people needing urgent care to them. It enabled some people to obtain access to medical care which might otherwise have been out of their reach. It provided “briefers” to give particular care to those people who were asked to testify in public - the briefers went through the process with them,

explaining beforehand what would happen, sitting with them through the hearing, and accompanying them afterwards.

It would have been very good indeed if this kind of care and attention had been available to all the people who came forward to make statements.

The Amnesty Committee was formed as provided for in the legislation, of two Commissioners plus three other people appointed separately by the State President. Of these three, one was to be the Chairperson, and must be a judge, and the other the Vice-Chairperson. In fact the President appointed three judges. In the first few months the process of amnesty work began slowly, but the number of applications eventually swelled to over 7 000. The legislation had to be amended to provide for an enlarged committee, up to a total of 19. Even so, the task turned out to be enormous, and the committee's life had to be extended beyond that of the Commission to accomplish it. The first five volumes of the Commission's Report were presented to then-President Mandela in October 1998, and it was not until three years later that the final two volumes of the Report were presented to President Mbeki.

The goals of the Commission are "truth" and "reconciliation", and it is against these objectives that its achievements will be measured.

The exposure of a great deal of the truth will surely be acknowledged. The processes of public testimony of victims and survivors of gross human rights violations alone have painted a vivid and unforgettable record of atrocities of the past, committed by perpetrators on both sides of the political divide. The hearings were held all over the country, in small rural towns as well as in the major cities. They were accompanied by astonishingly comprehensive media coverage, maintained over the whole period. Some of this was made possible by international assistance with funding, but even without it the newspapers and the electronic media held a steady mirror to the proceedings of the Commission. This sometimes fed into negative perceptions of divisiveness and bitterness, but it has made it impossible for anyone to deny the extent of the abuses which took place. Radio especially, with its ability to reach people of all the language groups, served the Commission's aim of exposing the truth extremely well.

In addition to the public hearings concerning individual human rights violations, the Commission also organised hearings aimed at understanding the broader context

within which such abuses took place: the political parties, the media, the judiciary, the business and the health sectors, as well as the prisons and the faith communities, all came forward to explain, accuse, defend or justify their roles in the past.

Submissions from different special interest groups, such as those working with land issues, language and educational programmes, and those organisations which had monitored human rights in the past, all served to enrich the Commission's understanding of the context and climate which had obtained during the period of its mandate.

When an overall assessment of the Commission is carried out in the future, one of the issues which will surely receive attention is the breadth of its interpretation of the definition of "severe ill treatment". Other Commissions have looked more specifically at killings and disappearances: the inclusiveness of the South African Commission has resulted in a mass of statements which presented a real challenge to process. On the other hand, it resulted in a huge and rich body of evidence which has enhanced our understanding of the past and provided a rich lode for future researchers.

The applications for amnesty were also heard in public if they concerned gross human rights violations, and these too have contributed to a clearer understanding of the truth. They have often provided answers to the questions asked by the survivors and families - "Who was responsible? Why did this happen?"

It is important to try to convey the impact of these exposures on those survivors and families; also on the Commission itself and on those close to it, as well as the broader public.

Staff members, perhaps more than the Commissioners themselves, bore the brunt of a good deal of this - the statement takers, the briefers, the people dealing with the investigations, information and research, and also the interpreters, had to absorb thousands of statements and the pain and anger that accompanied them. Journalists too, listening and telling and re-telling the stories - all of us are in one way or another changed by what we have vicariously experienced.

There can be no doubt that all this has had an indelible effect on the public as well, and had powerful consequences which will have to be taken into account. Many of the revelations were dramatic and the public hearings filled with emotion. Public reactions varied from horror, guilt and shame, to attitudes of denial and irritation. The truth is extremely painful and hard to bear, for those who suffered, and also for those who were responsible for the violations, or even those who benefitted, however unintentionally, from the policies which led to them.

What have been the effects of this search for the truth? Sometimes, we can say with honesty and humility, the generosity of forgiveness astonished us all. Sometimes, at least, speaking out provided a kind of catharsis, or perhaps a safe channel for long submerged anger. The right to be heard and acknowledged, with respect and empathy, did contribute to a process of healing in many cases. People told us that being enabled to set out their own understanding of events was indeed a relief to them. For some, the exhumation of the bodies of their family members brought much longed-for comfort. The opportunity to observe traditional burial ceremonies brought a degree of closure to the mourning process.

The detailed accounts of these events will also contribute to the historical record, and help to achieve one of the goals of the Commission - that such atrocities should never happen again. The documents of the TRC will go into the National State Archives, and should be accessible to researchers and the public.

However, we need to acknowledge the real difficulty of helping people to come to terms with the past. Reopening of old conflicts without providing an adequate mechanism for dealing with them is traumatic for victims and perpetrators alike. The Commission has been accused of carrying out a witchhunt aimed particularly at Afrikaners, a perception which will not assist future reconciliation.

At the same time, considerable anger is directed by victims and survivors towards the concept of amnesty. Such people have a profound sense of being deprived of their rights, the right to justice and the right to bring civil claims. Amnesty was the price paid for peace. Full disclosure was the cost that must be paid for amnesty. If this does indeed lead to national reconciliation the costs will have been worthwhile, but it is important to recognise that individuals' rights have been sacrificed for the good of the nation.

These matters have prompted growing discussions about concepts of restorative justice as opposed to retribution. And this brings us back to the importance of reparation and rehabilitation. The Reparation and Rehabilitation committee made extensive proposals for individual reparations packages for victims. However, these recommendations were not adopted by Parliament, and a considerably smaller amount was in fact paid out to most of the victims who were identified by the Commission. It is the belief of the Commission that these must be accompanied by broader programmes of economic and social development, as well as peace-building initiatives to be taken by the government and by non governmental organisations. Memorials and symbolic ceremonies must be developed. Some organisations have developed valuable “Healing of the memories” projects which should be made widely available. Most importantly, resources will have to be directed towards impoverished communities still suffering the effects of past discrimination and repression. There can be no real reconciliation while there remain such huge discrepancies between the relatively privileged sectors and the vast number of desperately poor, unemployed and unhoused people.

Most people classified as white can be considered to have been “beneficiaries” of the apartheid system, even if they were never perpetrators of any abuses nor even supported the policy. There is a sense in which they need to be seen to acknowledge this, and express it in a way which can be heard and received by the once-disenfranchised majority.

During its period of office, the Commission established a “Reconciliation register” in which people who wished to indicate their regret for specific actions or their commitment to the new non-racial democracy could make a formal demonstration of this commitment. This attracted some support at the time, and even now, after the life of the Commission this is the kind of action which can be undertaken by other organisations. For example, a campaign has been launched recently calling on white South Africans to commit themselves to creating of the country a “home for all” – where all citizens can work together for a future characterised by justice, peace and harmony.

The concept of public listening has been put to use in another context, in that the South African NGO Coalition, together with the churches and with the particular blessing of the Archbishop of Cape Town, His Grace Njongonkulu Ndungane, have

organised country-wide public hearings on poverty. This has succeeded in drawing attention to the urgent need to take steps to alleviate this.

There remains a great deal to be done. One of the things which would make a real contribution would be if those who were responsible for the decisions and policies which led to the abuses of the past, or created the climate in which they could take place, would acknowledge this responsibility. This has happened to some extent, and may still develop. It is something which is greatly needed by the perpetrators of actual violations which were carried out in the belief that they were acting on instructions, and now feel abandoned by their superiors.

This was the basis of one of the confrontations which severely challenged the Commission: when ex-President de Klerk presented the National Party submission to the Commission he made one of the most sweeping apologies ever made by a member of the party for the pain caused by apartheid policies, but this was overshadowed by the fact that he was unable to acknowledge any responsibility for offences committed by agents of the security forces. Yet such members, even senior members of the security forces, have alleged that they believe that leaders such as Mr de Klerk and Mr PW Botha either gave the orders or implicitly sanctioned such acts.

South Africa has benefitted at critical moments in its recent history by important steps taken by significant leaders. The reconciliation process will require equally important leadership from people who have the trust of the different sectors of a still-fragmented society. White South Africans, Afrikaans-speaking and English-speaking alike, are in need of inspired and inspiring example and direction to help them to overcome resentment, guilt and mistrust. Only by participating fully and enthusiastically in processes of reconciliation and reconstruction will they find themselves at home in the new society.

The almost three years of the Truth and Reconciliation Commission, together with the additional three years of the Amnesty Committee, enabled the country to hear the accounts of many thousands of people who experienced and caused great suffering during the conflicts of the past. Developing a common understanding of how and why this happened is an important ingredient of creating new ways of looking at our society and seeing beyond the narrow confines of individual or group identities.

April 2006

Annexure C

**NATIONAL DIALOGUE ON THE MECHANISMS OF
TRANSITIONAL JUSTICE: SPECIAL CASE OF BURUNDI**

Burundi, 2 - 11 May 2006

Summary Report of Civil Society's Response

Prepared by:



South African Embassy in Burundi

1. Introduction

From 2 to 11 May 2006 the NGO, the African Centre for the Constructive Resolution of Disputes (ACCORD), and the SOUTH AFRICAN EMBASSY in Burundi organised a national dialogue on transitional justice mechanisms with a special focus on Burundi. This dialogue was respectively held in Bururi (from 2 to 3 May) where delegates gathered from the provinces of Bururi, Makamba, and Rutana; in Gitega (from 4 to 5 May) with delegates from the provinces of Cankuzo, Gitega, Karusi, Mwaro and Ruyigi; in Ngozi (from 8 to 9 May) with delegates from the provinces of Kayanza, Kirundo, Muyinga and Ngozi; and in the city of Bujumbura (from 10 to 11 May) with delegates from the provinces of Bujumbura in the urban area and in the rural area, Bubanza, Cibitoke and Muramvya.

Almost two hundred delegates from independent organizations and civil society associations participated in the relevant dialogue which was chaired by Mr. Jerome Sachane, Deputy-Director of ACCORD in South Africa. The official openings of the seminars were performed by the Governor, or an Advisor from the Governor's office, in each province where the seminar was held. His Excellency, Ambassador Mdu Lembede, the Ambassador of the Republic of South Africa to Burundi, also officially attended the Bururi and Bujumbura sessions.

The main objective of this dialogue was to give an opportunity for the population of Burundi to express themselves on the Transitional Justice Process currently taking place in Burundi. Experts from Rwanda, Sierra Leone and South Africa shared their experiences and testimonies regarding the Transitional Justice Processes in their respective countries with the participants in order to show that such a process is needed, possible, as well as unique to each country. An expert from Burundi, who is a member of the TRC Committee, also presented participants with a basic understanding of the projected Transitional Justice Process in Burundi. In general this dialogue should be viewed as part of the greater process taking place in Burundi and can be considered to be a pilot project that will benefit other actors, such as the TRC Committee in Burundi, when planning further activities relating to this process.

Four presentations were given at each seminar, notably:

- 1) The Transitional Justice Process in Burundi, by Ambassador Procs Bigirimana.
- 2) The Transitional Justice Process in Sierra Leone, by Professor John Kamara.
- 3) The Transitional Justice Process in South Africa, by Mary Burton and Dr Fanie Du Toit.
- 4) The National Commission Process for unity and reconciliation in Rwanda, by Mr Franck Kobukeye and Mr Richard Kananga.

In each seminar these different presentations were followed by a debate session which consisted mostly of questions from the delegates and answers from the experts. The debate sessions were in turn followed by participants being divided into groups and being presented with a specific set of questions. After internal discussions each group presented the facilitator with a set of answers.

This report will provide the reader with those questions asked by participants as a response to the presentations by the experts, as well as a special set of questions

presented to participant groups followed by the answers received from the respective groups.

2. Questions by Participants following Presentations by Experts

Below please find the questions that were asked by participants after each presentation. These questions will be presented according to the provinces where the seminars took place.

2.1 Bururi Seminar

2.1.1 Transitional Justice in Burundi

1. Can we establish a relationship between the “Gacaca system” in Rwanda and the “Bashingantahe institution” in Burundi?
2. Who is going to set up the Truth and Reconciliation Commission in Burundi?
3. The major problem in Burundi is to discover truth. Each ethnic group thinks it knows all the truth and makes accusations against the other. How can we proceed to establish a common truth?
4. Which period will be covered by the potential Burundi TRC's mandate? From the start of war in 1993 between the Government Army or far before?
5. Can we expect to discover the truth in Burundi when neither the victims nor the civil society who hold the truth are heard?
6. The last measure of the Burundi Government to release those who are called “political prisoners” by some and “criminals” by others, constitutes a barrier to the discovery of truth. In fact, the survivors will be reluctant to tell the truth in order to save their own lives. What is your opinion?

2.1.2 Transitional Justice in Rwanda

1. There are some Rwandans who are fleeing the Gacaca systyem. Why?
2. Can we establish a relationship between the “Gacaca system” in Rwanda and the “Bashingantahe institution” in Burundi?
3. How far is the International Criminal Tribunal for Rwanda (ICTR) in so far as the judgement of the perpetrators of crimes that occurred in Rwanda during 1990-1994 is concerned?
4. The ICTR seems to be influenced by the Rwandese Government. What is your point of view?
5. Who are the people who shot at the plane that transported the Rwandese President, Mr Habyalimana and the Burundian president, Mr Ntaryamira?
6. Do you think Rwanda can be a good model for Burundi in so far as the reconciliation process is concerned since there are still rebels fighting against the Rwanda Government?
7. We have the impression that the Hutu have their own truth, the Tutsi have their truth as well as the Twa? Do you think there is any chance for them to have a common truth for all?
8. How did you proceed to bring the truth out into the open?
9. The hand of Burundian law seems not to reach those people who commit crimes. Is it the case in Rwanda?

2.1.3 Transitional Justice in South Africa

1. Africans do not easily tell the truth regarding their responsibility in crimes. How did the South African TRC succeed in finding all the truth? What was the role of NGOs in that process?

2. Are you confident that the reconciliation process in South Africa will not go backwards? If yes, what are the indicators?
3. Out of the 7,000 people who applied for amnesty, only 2000 were granted amnesty. What were the selection criteria?
4. How were the 300 candidates who applied to be TRC commissioners selected? Was there free registration or people's election?
5. In South Africa, there are many protestant Christians. Is it not then easier to discover the truth in that case rather than in a country where there are many Catholic Christians who are use to confessing before the priest and not publicly?
6. Were politicians and military authorities that did not acknowledge their crimes before the TRC taken to court? Did people denounce them?

2.1.4 Transitional Justice in Sierra Leone

1. During the TRC process in Sierra Leone, there have were investigations on traditional mechanisms of conflicts management and reconciliation. Who was responsible for those investigations? How did the outcome of those investigations contributed to discovering the truth?
2. Up to now, has the Special Court for Sierra Leone already tried the people who planned war crimes and crimes against human rights that were committed during the war?
3. What is the influence of international conventions vis-à-vis the laws of a country? We know in fact that the Agreements among Sierra Leonians did not provide for a Special Court but the UN imposed it?
4. Did you compensate or rehabilitate the victims and survivors of the war in Sierra Leone?
5. The TRC report underlined the responsibility of foreigners in the Sierra Leonian conflicts. Did you undertake any proceedings against those foreign actors?
6. In Rwanda, there is a traditional system of resolution of conflict; the "Gacaca". And in Burundi, it is the "Bashingantahe" Institution. Does Sierra Leone have similar institutions?

2.2 Gitega Seminar

2.2.1 Transitional Justice in Rwanda

1. The Rwandese who are being tried for having committed the genocide, are they all Hutus? Are there any Tutsis who are imprisoned for having killed Hutus?
2. In your opinion, do you think there was genocide in Burundi? If so, who are the perpetrators?
3. What is the difference between "Gacaca" and "Abunzi"?
4. Two years ago an Ambassador said that "reconciliation has made more progress in Burundi than in Rwanda". What is your opinion?
5. How did you proceed in Rwanda so as to succeed in bringing the political leaders before the Court? In my opinion, you sensitized the population at large, but how?
6. What is the relationship between the Rwandese Judiciary, the ICTR on one hand, and the "Gacaca and Abunzi" institutions on the other hand?
7. A few days ago, some Rwandans came to Burundi to seek refuge. Some said there is another genocide that is being prepared; others said they fled the Gacaca. What is your comment?
8. During the reign of kings, Hutu and Tutsi were united. What broke that unity?
9. What are the indicators to assert that there will no longer be a return to genocide in Rwanda?

2.2.2 Transitional Justice in Sierra Leone

1. What are the roles played by the TRC and the Special Court for Sierra Leone with regards to the:
 - Promotion of human rights?;
 - Good governance?;
 - Integral development of the Country?
2. Is Sierra Leone a model to imitate for Burundi? Why?
3. Do the Sierra Leonians live together today in peace and harmony?
4. How were the leaders of the groups that were in conflict and who are responsible for all the crimes committed in Sierra Leone punished?
5. Most of the time, rebels come from neighbouring countries where they often set their base so as to attack from there. How do you think we can avoid this?
6. Sierra Leone many mineral resources. How come the country does not develop?
7. What is the responsibility of companies that produced and sold weapons to different groups in conflict in Sierra Leone? Do you not think those companies and powerful countries benefited from those conflicts?
8. Why was the UN against the total amnesty for any person who played a role in the Sierra Leonian conflicts? If the UN had not objected it, what would have happened?
9. What are the strenghts and weaknesses of the TRCs and Special Courts according to the Sierra Leone experience?

2.2.3 Transitional Justice in South Africa

1. Do you think there were some black people who supported the Apartheid system and committed crimes against their brothers and sisters?
2. Were the people who planned the Apartheid system and implemented it, arrested and punished?
3. Is it possible to send a Burundian Delegation to South Africa in order for them to learn how the TRC operated in that Country?
4. His Excellency the Archbishop Desmond Tutu worked wonders as Chairman of the TRC in South Africa. Did he do it as a man of God or as a South African patriot? In that sense, what can Religious leaders do in Burundi?
5. African countries do not in general allocate enough means for compensation and rehabilitation of the war victims. Could Powerful Countries that fund those wars, not contribute with regard to rehabilitation? Do you not think there is a risk not to discover the whole truth from the victims since they would be aware that there is nothing to relieve their sufferings?
6. In 1994, Former President De Klerk and Former President Mandela jointly received the Peace Nobel Prize. Is it then not an act of recognition of the Apartheid regime of De Klerk? Why was the prize not granted to Mandela only, a black person?
7. The TRC was composed of seventeen members in South Africa: seven Black, six Whites, two Coloured and two Indians people. On which side can we classify the Coulored People?

2.3 Ngozi Seminar

2.3.1 Transitional Justice in Sierra Leone

1. Why are the ten personalities, who have been charged by the Special Court for Sierra Leone, not prosecuted yet so far?
2. The Special Court for Sierra Leone only deals with crimes that were committed after 1996. Why does it deal with this period only whilst we know that human rights violations and the war itself, started far before 1996?
3. The leaders of all the fighting factions played a role in the creation of the TRC in Sierra Leone. Was the Commission really autonomous and independent?
4. In practical terms, what is the role of the TRC so as to reconcile Sierra Leonians?
5. The TRC was composed of four Sierra Leonians and three Foreigners. What were the criteria of selection of the four commissioners selected out of the sixty five Sierra Leonian candidates?
6. The Special Courts always delay in announcing verdicts in Sierra Leone as elsewhere. Do you not think the high salaries of the members of those Courts are one of the untold reasons for the delays?
7. In Sierra Leone, what was the plan for the disarmament of civilians? Did the amnesty precede the disarmament?
8. Was the Sierra Leonian TRC set up as a political option or for the sake of reconciliation of the Sierra Leonian People?
9. What is the role of forgiveness within the process of reconciliation? Did some criminals willingly confess before the TRC?
10. Was the Special Court in Sierra Leone accepted by the Sierra Leonians or did the UN compel them to accept it?
11. What are the guarantees that violence will not resume in Sierra Leone since the Sierra Leonian People were not consulted during the signature of the Agreements?
12. Has Sierra Leone organized democratic elections up to now?

2.3.2 Transitional Justice in South Africa

1. Hearings of crimes perpetrated or crimes suffered could be done secretly or publicly. In case of public hearings, did this not have negative consequences?
2. Are there black people who perpetrated crimes against other blacks in South Africa?
3. What were the criteria used to appoint the TRC commissioners in South Africa?
4. The TRC made investigations to know the nature of crimes perpetrated in South Africa. Were those responsible for those crimes prosecuted? Were elements of the police for example prosecuted?
5. Did civil society play any role in the TRC process in South Africa?
6. Archbishop Desmond Tutu who chaired the TRC in South Africa is a personality of high moral authority. Is this not partly responsible for the success of the TRC in South Africa?
7. Are you confident that reconciliation will always go forward in South Africa?

2.3.3 Transitional Justice in Rwanda

1. What is being done to avoid another genocide in Rwanda, since millions of refugees are still living outside the country?
2. Who shot down the aircraft carrying President Habyarimana and what kind of punishment does he face?
3. Do you not have the impression that in Rwanda only the perpetrators of genocide are prosecuted, while the planners of the genocide are free?

4. Rwanda nationals continue to seek refuge in Burundi. It is said that they are fleeing the “Gacaca” courts. Does the National Commission for Unity and Reconciliation really reconcile the people of Rwanda?
5. The members of the National Commission for Unity and Reconciliation were appointed by the President of the Republic. Do they really work independently?
6. What responsibility do the Batwa have in the 1994 genocide? What are you doing to involve these people in the reconciliation process?
7. Why is it that it is only the laymen and women that flee the “Gacaca” courts and not the intellectuals? Are they not victims of manipulation? Do you not fear the eruption of other violent acts and another genocide?
8. There is one week of commemoration of genocide in Rwanda where horrible scenes and images are publicly shown. Does this really contribute to reconcile Rwandans? Do you not think that they are rather likely to feed bitterness to younger generations?
9. Are the “Gacaca” courts able to pursue people living in foreign countries?
10. The ICTR has so far tried 22 cases only while its timeframe is coming to an end. What will be the fate of other Rwanda genocide perpetrators?
11. When was the National Commission for Unity and Reconciliation set up, before or after the last presidential election?
12. What is the Rwanda Government doing to avoid the situation further deteriorating with respect to the FDLR (Democratic Front for the Liberation of Rwanda)?
13. What is the relation between the FDLR and the National Commission for Unity and Reconciliation?
14. Listening to all the opinions, one has the impression that the Tutsis in Rwanda are proud of the work done by the National Commission for Unity and Reconciliation. But the Hutus seem not to be proud of it. What do you think about it?

2.4 Bujumbura Seminar

2.4.1 Transitional Justice in Rwanda

1. There is one week of commemoration of genocide in Rwanda whereby horrible scenes and images are publicly shown. Does this really contribute to reconcile the Rwandans? Do you not think that this can be a handicap to a true reconciliation?
2. Why are there some Rwandans who are fleeing the “Gacaca”? Are they really fleeing the “Gacaca”? Are you not worried about the future because of that situation?
3. Do you not think the “Gacaca” faces many problems in dispensing justice?
4. Do the former leaders of Rwanda at all levels accept appearing before “Gacaca”?
5. Do women and young people have a seat in the “Gacaca” institution?
6. The National Commission for Unity and Reconciliation members are appointed by the President of the Republic. Do you think that the Rwandans are confident in that Commission?
7. Prisoners who confessed their crimes are granted a half penalty and they contribute to manual work? Are they not remunerated for that work?
8. When a person who raped a woman and the latter got pregnant, is brought before court, does he recognize the child and accept to compensate the raped woman. Or do they simply both agree on the future of their lives?
9. Do the prisoners who are released after serving their term never return to their crimes with regard to the witnesses who contributed to it?

2.4.2 Transitional Justice in Sierra Leone

1. When one listens to your presentation, it seems that only the Government made a lot of concessions whilst all the rebels did was to stop fighting. Why take that position of weakness in front of the RUF?
2. Was it easy to set up the TRC in Sierra Leone given that the rebels were afraid of being persecuted by the Court?
3. What was the true cause of the conflict in Sierra Leone?
4. What were the criteria of selection of the TRC members in Sierra Leone? Could the criminals be members of the TRC?
5. In Burundi, there is a political opposition fighting against impunity. Does this kind of opposition exist in Sierra Leone apart from the rebels? If yes, what was their role within the TRC?
6. In Sierra Leone, Fodey Sanko, who was the leader of the rebels and who accepted negotiations with the Government, ended up appearing before the Special Court for Sierra Leone. Do you think this constitutes a counter example for Burundi? Do you not think that the rebels run the risk of rejecting the TRC process as well as the Special Court?

2.4.3 Transitional Justice in South Africa

1. There were crimes that were granted amnesty by the TRC in South Africa, whilst others were not. Why?
2. Does amnesty from crimes not mean impunity? Is this not an offence to the victims?
3. Who was responsible for reparations and rehabilitation, the TRC or the perpetrator of crimes?
4. Who was protecting the commissioners of the TRC during the investigations of crimes?
5. The TRC had a mandate of 2 years, which was quite a short period. What were its strengths and weaknesses?
6. Was the TRC represented in all the provinces of South Africa?
7. What was the reaction of the perpetrators to the exhuming of bodies and then burying them again with dignity?
8. Are there cases where whites accused blacks of crimes against them?
9. Did the whites, who perpetrated crimes, ask for forgiveness? Is there no risk for the blacks to take revenge?
10. Before getting amnesty, one had to prove that his crimes were political oriented. Was this easy?
11. Do you think that there would have been obstacles to reconciliation if the TRC had only been composed of black people?
12. Is it not abnormal that amnesty is granted without listening to the opinions of the victims?
13. After exhuming and reburial of the bodies, did the TRC follow the family members of the victims to make sure they really forgave the perpetrators?
14. Did a limited number of amnesties granted, not discourage other perpetrators from coming ahead to confess their crimes?

3. Questions Presented to Participant Groups and Answers Received

During the National Dialogue, following the presentations by experts, participants were presented with a set of questions regarding transitional justice mechanisms and how they should or can be applied to Burundi. Participants were divided into groups where after each group was presented with the same set of questions. Following discussions within the various groups each group presented the facilitator with a set of answers. Below please find the set of questions presented to participants, followed by the answers received divided according to province.

3.1 Questions Presented to Participants:

The following set of questions was presented to the various participant groups:

- 1) What does the Truth and Reconciliation Commission (TRC) mean to the Burundi?
- 2) What kind of structure should a potential TRC have in Burundi?
 - The membership of the TRC (including number of commissioners);
 - The selection process;
 - The criteria for selection;
 - The mandate for the TRC (including life span).
- 3) What is your opinion regarding amnesty? If yes, what conditions should be considered?
- 4) What could the potential role of a Special Court be?
- 5) What should be the role of civil society with regards to the transitional justice process in Burundi? What should be the relationship between the potential TRC/ Special Court and the Government?
- 6) What should be the relationship between the potential TRC and the Special Court?

3.2 Answers Received by Participants:

3.2.1 Bururi Seminar

1) What does the Truth and Reconciliation Commission (TRC) mean to the Burundi?

It is when two people or two conflictual groups of people agree to deal with their conflict and decide to declare the truth. They ask each other for forgiveness and agree that the conflict will not be repeated.

2) What kind of structure should a potential TRC have in Burundi?

- Membership of the TRC:

The TRC should take the form of a national commission composed of a team of five to seven members, and sub-commissions at the provincial-, communal-, and colline level.

- Criteria of selection:

The TRC should be composed of Burundian men and women from the three ethnical groups. These people should have integrity; should be people who were never involved in the crimes or massacres; should be people who never stole the wealth or resources of the country; should be people who always speak the truth; should be people who are

patriotic; should be people who are not involved in corruption; and should be people who are well informed regarding the history of Burundi.

-The selection process:

Any adult person that is at least 25 years old, whose profile corresponds to the above-mentioned criteria, should register. Thereafter the list of potential candidates should be published in order to obtain the people's opinion on each candidate. Following the gathering of opinions, there should be a vote for the candidates on all levels. The Government should finally approve those candidates who obtained the most votes to serve as commissioners.

-The Mandate for the TRC (including life span):

The TRC should have a 12-18 months life span. It should commence work from the beginning of the year 2007.

3) What is your opinion regarding amnesty? If yes, what conditions should be considered?

Even though opinions regarding amnesty varied slightly, in general participants were against absolute or total amnesty. However, they agreed that a conditional amnesty should be granted to a perpetrator who is able to recognize his crime and apply for forgiveness. The TRC should invite people to accept personal responsibility for the crimes committed. The TRC will then analyze all cases, and would agree to grant amnesty to those who revealed the whole truth and who applied for forgiveness. Amnesty should be granted individually. For the other cases, the TRC will refer them to the courts.

4) What could the potential role of a Special Court be?

All the perpetrators without considering their position and the role they played on the political scene should be brought before the court. This court or chamber should try all important crimes like genocide, war crimes, human rights violations and should also try any other case that is handed over by the TRC. The special court or chamber should cover the period from independence up to when the last still fighting movement will stop hostilities.

5) What should be the role of civil society with regards to the transitional justice process in Burundi? What should be the relationship between the potential TRC/ Special Court and the Government?

The role of civil society is to help in the investigation process by sensitizing the populations with regards to the aim of the TRC. In the same way, the Government should also sensitize the population and provide all means needed by the TRC, and should avoid putting pressure on the commission. The TRC should be completely independent, but should provide the Government with a report of its activities at the end of the mandate, while the Government should set up necessary policies to avoid this report being useless or misused by politicians.

6) What should be the relationship between the potential TRC and the Special Court?

These two institutions should work side by side. This means that the TRC should submit the report of its investigation to the Special Court that will judge those crimes.

3.2.2 Gitega Seminar

1) What does the Truth and Reconciliation Commission (TRC) mean to the Burundi?

The TRC means that two persons or groups that have had conflict, come together and tell one another the truth and ask forgiveness vice-versa in order to reconcile. People brought before the TRC, should include parties to conflict - the guilty person and the offended person. The process should include declaration or investigation of the reason(s) of their dispute, the acknowledgement of the fault, the asking for forgiveness, and the giving of forgiveness.

2) What kind of structure should a potential TRC have in Burundi?

- Membership of the TRC:

The TRC should have the following structure:

People from all ethnic groups that are not guilty of murder or genocide and that are not in government. Some participants indicated that foreigners should be included, while others felt that the inclusion of foreigners will undermine the Burundi's dignity.

- Criteria of selection:

The applicants should be more than 25 years old from all genders, ethnic groups with noble character, not guilty of any crime and honest people who are well informed regarding the history of our country.

-The selection process:

The selection process should commence with the sensitization of the population about the importance of the commission. The population should then provide names of persons of noble character from collines to provinces where after a general election should be held to short list candidates. Thereafter the president should appoint the commissioners. In general the process of selection should include: 1) a public announcement; 2) the receiving of application and CVs; 3) the publication of the list of applicants so that the population makes comments on each of them; 4) elections to short list candidates; and 5) the appointment of commissioners by the President.

- The Mandate for the TRC (including life span):

The life span of the TRC should be 3 to 5 years. The mandate of the TRC should be to set up its regulations; to conduct research on all that happened in Burundi from the time of colonization till now; to organize meetings with the purpose of reconciling Burundians; to set reconciling committees up to collines; to set up agreements of living together in peace and to organise activities that promote peace; to set up a law against genocide; and to help Internally Displaced Persons (IDPs) and returnees.

3) What is your opinion regarding amnesty? If yes, what conditions should be considered?

All participants were against total amnesty. Someone should only be forgiven if he or she acknowledges his or her mistakes and ask for forgiveness by himself or herself. However, some participants were completely opposed to any kind of amnesty.

4) What could the potential role of a Special Court be?

The Special Court should have the role of punishing one who wronged Burundi, any Burundian or foreigner wherever he/she is without taking into account his/her social or political position and he/she should be punished from the time the sentence was

pronounced. Some participants were of the opinion that the Special Court should only judge people who were appointed by a presidential decree during the period starting with independence until the day of the implementation of the Court, especially those people that conceived and planned the relevant crimes.

5) What should be the relationship between the potential TRC and the Special Court?

The relation between the TRC and the Special Court should entail that the TRC will make a report of the research it has done and thereafter present this report to the Special Court. The Special Court will refer to this report while judging people. The TRC should deal with easy cases for example cases relating to theft, and hand over difficult cases to the Special Court such as genocide and war crimes etc.

3.2.3 Ngozi Seminar

1) What does the Truth and Reconciliation Commission (TRC) mean to the Burundi?

The TRC should help Burundi to get out of the cycle of violence that has been experienced by the country for some time now. Such a commission would be a mechanism for investigation with the aim of highlighting the following:

- The causes of conflict experienced by Burundians in the past;
- The perpetrators of those conflicts;
- The victims.

The commission should also help Burundians to reconcile so as to make durable peace. The perpetrators of different crimes should repent and ask for forgiveness before the TRC.

2) What kind of structure should a potential TRC have in Burundi?

- Membership of the TRC:

The Commission should be completely independent, while all regions, all categories of Burundian society (ethnic groups, gender), members of the civil society and foreigners should be represented. While some participants suggested that each province should elect three persons from whom the President should choose one, other participants indicated that all interested persons should apply where after an independent commission should select commissioners according to established criteria. In general the number of commissioners of the TRC should be either: twenty-one (seventeen Burundians and four foreigners); or nine (five Burundians and four foreigners); or ten (seven Burundians and three foreigners).

- Criteria of selection:

Eligible candidates should not have participated directly or indirectly in violence; should be intelligent and foresighted; should be informed regarding the history of Burundi; should be an independent person that is not involved in politics; and finally should be more than thirty-five years old as well as accepted by all categories of society.

- The Mandate for the TRC (Life span):

The Commission's mandate should be to inquire and provide the truth regarding the cause(s) of the conflict that was experienced by Burundians in the past, as well as to identify perpetrators and to bring them to court if necessary. Lastly victims should be identified by the TRC and given reparations and provided with rehabilitation.

In general the Commission should help Burundians to reconcile in order to produce durable peace. Perpetrators of different crimes should first acknowledge their crimes and then apologize in front of the TRC. The life span of the TRC should be two years to allow sufficient time to make investigations and produce a final report.

3) What is your opinion regarding amnesty? If yes, what conditions should be considered?

Amnesty is necessary for reconciliation on conditions like the identification of the guilty in need of amnesty and first acknowledgement of the crime followed by the request for forgiveness; perpetrators of certain extreme crimes should not be given amnesty.

4) What could the potential role of a Special Court be?

The Court should judge planners and executors of crimes like genocide, war crimes and crimes against humanity, to give compensation to the victims of those crimes.

5) What should be the role of civil society with regards to the transitional justice process in Burundi? What should be the relationship between the potential TRC/ Special Court and the Government?

Civil society should provide the TRC with information to discover the truth, and should be consulted with regards to the implementation of the commission and in the definition of its mandate. The Government should make easier the implementation and the carrying out of the commission's decisions and should provide the commission with all the necessary practical means for its work. The Government should also sensitize the population regarding the objectives of the TRC.

6) What should be the relationship between the potential TRC and the Special Court?

The TRC can send to the Court all the criminal cases that cannot benefit from amnesty.

3.2.4. Bujumbura Seminar

1) What does the Truth and Reconciliation Commission (TRC) mean to the Burundi?

The TRC could reveal the truth of what caused conflict in Burundi, as well as provide the Burundi with forgiveness and reconciliation.

2) What kind of structure should a potential TRC have in Burundi?

- Membership of the TRC:

The TRC should consist of seventeen persons, one from each province, plus three from the international community. Other participants indicated that commissioners from the international community should not be included.

- Criteria of selection:

All different categories of society should be represented, such as ethnic groups, gender etc.

- The selection process:

A conference should be organised and attended by all civil society organizations. At this conference the commissioners can be elected. A second option entails that the

President should appoint the commissioners, where after the national assembly should approve them.

- The Mandate for the TRC (including life span):

The mandate of the TRC should be to investigate the relevant crimes and perpetrators by appointing people in collines to assist them. Following investigations a final report should be drafted. The life span of the TRC should be between two and five years.

3) What is your opinion regarding amnesty? If yes, what conditions should be considered?

Consensus exists regarding conditional amnesty. Amnesty should however only be granted after the report of the commission has been finalized and on the condition that the perpetrator shows that he or she really repents the relevant crime.

4) What could the potential role of a Special Court be?

The role of the Special Court should be to judge all people involved in the crimes according to the report of the TRC following investigations, and according to the international conventions.

5) What should be the role of civil society with regards to the transitional justice process in Burundi? What should be the relationship between the potential TRC/ Special Court and the Government?

The role of the civil society should be to provide information to the TRC and Special Court, to advise them and to monitor the work of these institutions.

6) What should be the relationship between the potential TRC and the Special Court?

The TRC and the Special Court should be completely independent and only provide reports to the Government.

4. Conclusion

When taking the questions asked by participants, as well as the answers received from participants in response to the set of questions presented to them into consideration it is clear that Burundi has a valuable civil society that is able to think critical as well as provide constructive opinions regarding the Transitional Justice Process in Burundi. Civil Society in Burundi should be seen as a valuable resource of information that should be tapped throughout the whole Transitional Justice Process in Burundi. Not only will this ensure that the process is transparent, but the process will surely benefit from such a critical input.

Annexure D: Response from Civil Society to Presentations given and to a Set of Questions Presented

Annexure D.1: Questions from Participants in Response to the Presentations given

PLEASE NOTE: Column 1 refers to the presentations made, while Columns 2, 3, 4 and 5 contains the questions asked by participants. Also, in order to show similarities and difference between questions that were asked per region similar questions were presented in a horizontal line.

1	2	3	4	5
	Southern Region (Bururi Seminar)	Central Region (Gitega Seminar)	Northern Region (Ngozi Seminar)	Western Region (Bujumbura Seminar)
Presentation on the Transitional Justice Process in Rwanda	Why are Rwandans fleeing Gacaca?	Why are Rwandans fleeing Gacaca?	What does the existence of “Gacaca refugees” say about reconciliation?	What does the existence of “Gacaca refugees” imply? Is the Gacaca process just?
	What is the difference between Bashingantahe and Gacaca?	What is the relationship between ICTR, national courts, and Gacaca?	Does Gacaca have jurisdiction over those in foreign countries?	
		How did Rwanda bring political leaders to justice?	Do planners remain free while low-level perpetrators are prosecuted?	Do former leaders appear before Gacaca?
	Was the government influence in the ICTR excessive?		Is NURC sufficiently autonomous?	Is NURC sufficiently autonomous?
	Is it possible to establish one “common truth” accepted by all groups?		Did Hutus and Tutsis react differently to the reconciliation process?	
		Could there be another genocide in Rwanda?	- Instability and the presence of refugees still outside country creates risk of another genocide; does government/NURC have relationship with the FDLR?	
			Does “commemoration week” create bitterness rather than promote reconciliation?	Is “commemoration week” a handicap to reconciliation?
	Do victims and civil society have a voice in the process?			
	Is there continued impunity for criminals?			
			What was the role of Batwa in genocide and reconciliation?	
				Are women and youth represented in Gacaca?
				What compensation do rape victims receive?
				Is there retribution against witnesses?

Presentation on the Transitional Justice Process in Sierra Leone	How did international conventions allow the UN to impose a Special Court?	Why was the UN opposed to total amnesty?	Did the UN compel Sierra Leoneans to accept the Special Court?	
	Were there proceedings against foreign actors?	How can external arms providers be held responsible?		
		Has reconciliation been effective?	How does the TRC promote reconciliation in practical terms? What is the role of forgiveness in reconciliation? Did criminals willingly confess? Can reconciliation happen when citizens aren't consulted in the process?	
		How can we avoid instability caused by rebels based in foreign countries?		How can rebel fears of prosecution be addressed? Might rebels reject both the TRC and Special Court?
			How were Commissioners selected?	How were Commissioners selected?
			Was the TRC autonomous?	Was the political opposition involved in the TRC?
	Have people been tried yet for war crimes?		Why haven't prosecutions taken place yet? Are Court delays linked to judges' high salaries?	
		How does transitional justice promote human rights, good governance and development?	Have there been democratic elections?	
	Were traditional conflict resolution mechanisms used?			
	Has there been compensation?			
			Why doesn't the Court cover human rights violations before 1996?	
			What was the plan for disarmament?	

Presentation made on the Transitional Justice Process in South Africa	Could the reconciliation process move backwards?		Are you confident reconciliation will go forward?	Did exhumations and reburials help or hinder reconciliation? Is there a risk of Blacks taking revenge? Did forgiveness take place?
	Were politicians who did not confess taken to court?	Were planners and implementers of apartheid punished?	Were police and others prosecuted?	
		Did some Blacks support apartheid and commit crimes against others?	Did Blacks commit crimes against other Blacks?	Did Whites accuse Blacks of crimes against them?
		Was Tutu exceptional? Can he be a model for religious leaders in Burundi?	Was Tutu exceptional? Is his work replicable?	
	How were Commissioners selected?		How were Commissioners selected?	
	What were the criteria for amnesty?			What were the criteria for amnesty? Does amnesty encourage impunity? Does a limited amnesty prevent uncovering truth?
		Should external actors play a role in reparations?		Who was responsible for reparations?
			Are there risks of public hearings?	How were Commissioners protected?
	Do Catholics and Protestants see confession differently?			
		Will people tell the truth without a promise of reparations?		
		Why did DeKlerk receive the Nobel Peace Prize?		
			Was civil society involved?	
				Was two years a sufficient timeframe?
				Was the TRC represented in all provinces?

Annexure D.2: Responses Received from Participants to a Set of Questions presented

PLEASE NOTE: Column 1 contains the questions that were presented to the participants, while Columns 2, 3, 4 and 5 contains the responses provided by the participants. Also, in order to show similarities and difference between responses received from participants according to region similar responses were presented in a horizontal line.

1	2	3	4	5
	Southern Region (Bururi Seminar)	Central Region (Gitega Seminar)	Northern Region (Ngozi Seminar)	Western Region (Bujumbura Seminar)
1. What does the TRC mean to the Burundi?	It is a space to declare the truth	It means people tell the truth		
		Participants acknowledge fault	It is a space for acknowledgement, repentance, apology	
			Participants ask for forgiveness	
	Participants ask each other for forgiveness			
		Participants ask for forgiveness		
	Participants agree the conflict will not be repeated		Reconciliation is path to durable peace	
2. What kind of structure should a potential TRC have in Burundi? a) Membership of the TRC		Participants give forgiveness	It is a mechanism for investigation of causes of conflict, perpetrators and victims	
				The TRC provides forgiveness and reconciliation
		It investigates reasons for dispute		It reveals what caused the conflict
		N/A		
	Five to seven members		Membership suggestions: 21 members (17 Burundian, 4 foreign); 9 members (5 Burundian, 4 foreign); 10 members (7 Burundians, 3 foreigners); include members of civil society	Seventeen members, one from each province, plus 3 foreigners (the latter point is disputed)
	Sub-commissions at provincial, communal and colline-levels		Commission should be completely independent from Government	

b) Criteria of selection	Men and women and all three ethnic groups should be represented	All genders, all ethnic groups should be represented	All genders, all ethnic groups should be represented	All genders, all ethnic groups should be represented
	Select people of integrity who have no criminal background, are patriotic, not corrupt, and well-informed about history			
		Select people of noble character who are not guilty of crimes and are honest and well-informed about history	Select those who have not participated in violence and are intelligent, foresighted; informed on history of Burundi; and not involved in politics	
	Members should be 25 or older			
		Members should be 25 or older	Members should be 35 or older	
			Majority should be Burundian with foreigners also represented	
		No consensus on whether foreigners should be included		
				Majority of Commissioners should be Burundian
c) Selection Process	Candidates register names; list published for public discussion; public vote for Commissioners; Government approves results of public vote	Sensitization of population; population provides nominations; candidates submit applications and CVs, which are published and discussed; general election to short-list candidates; President appoints Commissioners from short list.		
			Each province elects three persons from which President chooses one; OR An independent commission appoints Commissioners.	
				Conference at which civil society organizations elect Commissioners; OR President appoints Commissioners, who are then approved by National Assembly.

d) Mandate for TRC, Life Span	Life span of 12 to 18 months, commencing in 2007	Life span of 3 to 5 years	Life span of 2 years	Life span of 2 to 5 years
		Mandate: The TRC should research events in Burundi since colonization; organize meetings and colline-level committees to promote reconciliation and peace; establish a law against genocide; and help IDPs and returnees	Mandate: The TRC should inquire and provide truth regarding causes of conflict; identify perpetrators and bring them to court if necessary; identify victims, provide reparations and rehabilitation; and help people reconcile to produce durable peace	Mandate: The TRC should investigate relevant crimes and perpetrators, with assistance from people in collines; and draft a final report.
3. What is your opinion regarding amnesty? If yes, what conditions should be considered?	Participants were generally against total amnesty; they suggested a conditional amnesty for perpetrators who recognize their crimes, reveal whole truth, and request forgiveness, with other cases referred to courts	All participants were against total amnesty; some suggested forgiveness for those who acknowledged mistakes and asked for forgiveness	Participants opposed a total amnesty while saying some form of amnesty is necessary for reconciliation; perpetrators should have to acknowledge crimes, and apologize in front of the TRC	Participants opposed a total amnesty, and agreed there should be a conditional amnesty after the Commission's report is finalized and for perpetrators who show true repentance
		Others opposed any kind of amnesty.		
4. What could the potential role of a Special Court be?	All perpetrators should be brought before the Court	The Court should judge both Burundians and foreigners. Some participants said it should only judge those who held political power and who conceived/ planned crimes		The Court should judge all people involved in crimes, according to TRC investigations
				The Court should follow international conventions
	The Court should try genocide, war crimes, human rights violations and all other cases handed over by TRC			
			The Court should judge planners and executors of genocide, war crimes, crimes against humanity	
	Temporal jurisdiction of the Court should extend from independence through end of (ongoing) hostilities			
			The Court should provide compensation to victims	

<p>5. What should be the role of civil society with regards to the transitional justice process in Burundi? What should be the relationship between</p>	Civil society and government: should sensitize the population about the TRC	N/A		Government should sensitize the population about the TRC	
				Civil society should provide information to the TRC and be consulted on the implementation and mandate of TRC	
					Civil society should provide information to the TRC and SC, and advise and monitor their work
	The TRC should be independent from Government				
	The TRC should provide report to Government at end of its mandate				
<p>6. What should be the relationship between the potential TRC and the Special Court?</p>				Government should facilitate implementation of both mechanisms through practical assistance	
	Both mechanisms should work side-by-side; the TRC should submit a report of its investigation to Special Court, who will judge crimes	The TRC should present a report of its research to the Special Court, to be used by Court to judge people			
		The TRC should deal with cases like theft; the Special Court should deal with genocide and war crimes			
				The TRC should send the Court cases that cannot benefit from amnesty	
					The TRC and SC should be completely independent from each other; each should only provide reports to government

Annexure E: QUOTES FROM PROJECT WORKERS

"I believe the TRC once in place, will be an opportunity for Burundi to write its real history. It will help the people of Burundi to come to terms with their past, hence start building the country."

Joelle Ndikumasabo, Administration Assistant, South African Embassy in Burundi

"Transitional justice mechanisms should be the result of an inclusive process that should be implemented after consultation of all actors of Burundi society and should lead to reconciliation of all Burundians."

Adelin Hatungimana, Project Manager, ACCORD BURUNDI

"My time in Burundi has made me feel sensitive and aware of the power of emotions. The TRC allows us to work with these emotions as tools for peace and reconciliation. The Burundian people will have to choose how they will reconcile in order to achieve peace, reconstruction and development in their country".

Zabantu Ngcobo, Political Counsellor, South African Embassy in Burundi

"Reconciliation after civil war is essential to avoid further violence. Reconciliation is expected to contribute to the emotional well-being of the affected society, which in turn motivates the population to cooperate and collaborate in the reconstruction of the country, political institutions and its economy."

Jenny Theron, Coordinator: ACCORD Burundi Operations

"The TRC is an appropriate framework to solve endless Burundian ethnic problems. It must be composed of wise, honest and conciliatory women and men. They must be clean, apolitical and not impressionable so that to help Burundians put their strengths together for the country's reconstruction and development."

Yves Ndayishimiye, Assistant – Political Section, South African Embassy in Burundi

"Once Transitional Justice will be implemented in Burundi, I hope that true and durable reconciliation will save Burundians from falling once again into war and division."

Chantal Kanyange, Programme Assistant, ACCORD BURUNDI

PROJECT WORKERS:**ACCORD:**

Jenny Theron, Coordinator – ACCORD Burundi Operations

Adelin Hatungimana, Legal Aid Project Manager

Chantal Kanyange, Programme Assistant

SOUTH AFRICAN EMBASSY IN BURUNDI:

Zabantu Ngcobo, Political Counsellor

Joelle Ndikumasabo, Administration Assistant

Yves Ndayishimiye, Assistant – Political Section

CONSULTANTS:

Barthelemy Ntakarutimana

Michel Ndayikengurukiye

TRANSLATORS:

Aimé Sabimbona

Célestin Gakwaya

GENERAL ASSISTANT:

Raissa Belissa

