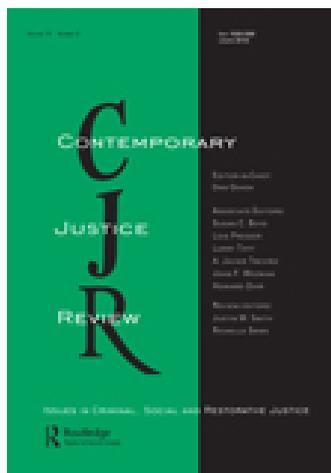


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Transitional justice and the TRC in Burundi: avoiding inconsequential chatter?

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Transitional justice and the TRC in Burundi: avoiding inconsequential chatter?

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The ongoing experiment of transitional justice (TJ) may soon find a new testing ground in Burundi. A long anticipated truth and reconciliation commission (TRC) is slated for establishment in the near future. Yet, Burundi continues to face longstanding and deep-rooted problems in its social, political, legal and institutional landscape that will fall outside of the remit of the TRC process, but that stand to negatively affect that process. Absent reform in these areas, the risk exists that the TRC may be judged as little more than inconsequential chatter by a population that has already suffered decades of violent conflict, social exclusion, corruption, and impunity. Informed by theories of transformative justice, this examination considers the potential shortcomings of TJ mechanisms where such reforms are yet to take place. It is argued that in contexts like Burundi, where impunity has become the norm, TJ mechanisms should form one part of a more combined process that ultimately aims to tackle the structures and dynamics that led to violence and that are reproduced in the present.

Keywords: Burundi; transitional justice; truth and reconciliation commissions; transformative justice

1. Introduction

After enduring 50 years of intermittent violence and instability since their independence, justice for Burundians is long overdue. In this light, the President of the Republic, Pierre Nkurunziza, has repeatedly affirmed his commitment to establish a truth and reconciliation commission (TRC), though serious and well-founded question marks remain about the sincerity of his government's undertakings.¹ Should this 12-years-in-the-making mechanism in fact be established,² Burundi will become the latest testing ground for the ongoing experiment of transitional justice (TJ).

More than a decade after Teitel (2002a, p. 893) recognized the 'steady state' development of TJ, decisions on its implementation turn not on questions of *if* it should be applied but instead on *when* it will be applied.³ As Teitel foretold, TJ has shifted from the exception to the norm; whether narrowly defined or broadly conceived, justice in times of transition and after gross human rights violations has emerged as a central concern on the political, legal, and moral conscience. This development points to a field

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or ‘non-field’ (Bell, 2009), that has undergone unprecedented expansion over a relatively short period of time, aided of course by foundational moments in the fields from which it derives at least part of its theoretical legitimacy.⁴

But in spite of this expansion, significant misgivings about the TJ paradigm have emerged among both scholars and practitioners.⁵ At least some of these misgivings are captured in Bell’s (2009) critical examination of the state of TJ, highlighting the problematic application of the term beyond its original conception. Whether or not one concurs with the analysis, Bell rightly observes that something of a generic term of TJ has now taken shape, applied far beyond its original terrain of transitions from dictatorship and military rule to democracy.⁶ Likewise, debates on implementing TJ typically revolve around decisions on how best to pursue accountability and establish the truth, more often than not leading to the establishment of classical institutionalized mechanisms based upon legalized conceptualizations.⁷ Put another way, TJ has often been used as a synonym for truth commissions and criminal prosecutions, a ‘paradigm of rule of law’ (Teitel, 2003, p. 72).

With a TRC emerging on the horizon, Burundi offers an opportunity to ask timely questions about TJ in contexts that have endured decades of violence, political instability, and impunity. A number of these questions are posed based on emerging theories of ‘transformative justice’ (Daly, 2001; Eriksson, 2009; Evans, 2013; Gready, Crawford, Boesten, & Wilding, 2010; Lambourne, 2009) that broadly understand justice as comprising redress for human rights violations as well as the need to tackle the structures and dynamics that provided the enabling conditions for those violations (Eriksson, 2009). Transformative justice theories recognize the continuities in social, economic, political, and institutional structures between the past and present, aiming for structural and institutional reform, and socioeconomic, and political justice (Lambourne, 2009), in conjunction with the traditional goals of accountability, truth, reparations, and reconciliation found in TJ.⁸ According to both Lambourne (2009) and Eriksson (2009), a key element of TJ is its focus on addressing the needs and expectations of communities affected by violence and the local population.

It is with this focus that the present analysis seeks to approach the issue of TJ and the TRC in Burundi. Rather than an examination of the appropriateness of the proposed TRC model to the Burundian context,⁹ the article examines Burundi’s institutional, legal, political, and social landscape through the lens of transformative justice to explore how shortcomings in transformation will impact the TRC, in particular from the perspective of the local population. The analysis does not aim to critique the TRC model, nor the basic rationale of TJ; instead, it offers insight into the limitations of TJ in contexts where continuities with a violent past have not been sufficiently tackled. In this respect, analyzing Burundi’s current transition from violence provides important insight for other post-conflict countries seeking to implement TJ.

2. Burundi: a legacy of impunity

In its 2012 Annual Report, Amnesty International provides the following summary of the state of human rights in Burundi:

Impunity remained widespread and became further entrenched. Extrajudicial executions and political killings increased. The justice system remained politicized. Human rights defenders and journalists faced increased repression. The government committed itself to establishing a Truth and Reconciliation Commission in 2012, but no progress was made in setting up a Special Tribunal.¹⁰

In the streets of Bujumbura or the *collines* that have played host to much of the country's violence, this legacy of impunity and contemporary abuses are not immediately visible. Armed conflict that plagued the country for decades has subsided and at least on the surface some degree of normalcy of life can now be witnessed, albeit in extreme poverty. Though claims of fraud and violent intimidation prompted the majority of the opposition to withdraw from the 2010 presidential election (Human Rights Watch [HRW], 2010), the former gym teacher and rebel leader, Pierre Nkurunziza was elected to a second term having also been elected by Parliament in 2005. According to many among the political elite and the international donor community, these elections are evidence of Burundi's transition towards democracy.¹¹

This alleged transition was however, preceded by cycles of violence commencing almost immediately after the country attained independence in 1962. Competition for power divided Burundi's two main ethnic groups – the Hutu and Tutsi – influenced by ideologies introduced during colonialism. As violence intensified and divisions solidified, power became almost the exclusive domain of a handful of Tutsi elite from a particular region of the country. Following several violent uprisings, the Tutsi-controlled army conducted a systematic purging of educated Hutu over four months in 1972, leaving the entire Hutu elite 'either dead or in exile' in events that have been described as genocide (Lemarchand, 1996, p. 97). The imprint that this violence left on the Hutu collective memory remains to this day.

Violence, military coups, and systematic violence continued throughout the 1970s and 1980s often along a similar pattern of Hutu violence being met with devastating suppression and reprisal attacks by the army, notably the violent events of 1988. But as international and regional concerns grew, Burundi took steps towards national unity in 1990 paving the way for a new Constitution and the first multiparty elections in 1993. To the complete surprise of the Tutsi elite, Melchior Ndadaye was overwhelmingly elected as the first Hutu President, but was assassinated after barely one hundred days in office. The violence that followed, including attacks upon Tutsi civilians referred to as genocide by a UN commission of inquiry,¹² once again led to brutal retaliation by the army that ultimately descended into civil war. After the violence degenerated and factional splits among the various Hutu rebel movements spiralled into prolonged conflict, tough negotiations eventually led to the 2000 Arusha Peace and Reconciliation Agreement. Despite the two most important rebel movements refusing to sign the Agreement that contained the first provisions dealing with TJ, the peace process laid the foundations for a ceasefire agreement in 2003, the approval of a new Constitution, and the 2005 elections. The last remaining rebel movement was finally disarmed in 2009.

As a consequence of almost 50 years of violence, a near-total lack of truth, justice, and reparations for these abuses, and the failure to prevent their recurrence, Burundi is consumed by a legacy of impunity. The present anticipation of a TRC has itself emerged only recently after protracted negotiations since Arusha, with its success by no means a certainty. At the time of this writing, concerns are again growing at the sincerity of the authorities to see a fully functioning and independent TRC free from political influence (Taylor, 2013b; Vandeginste, 2012). Such concerns demonstrate the fragility of Burundi's ostensible democracy and the range of political agendas that constitute the country's tenuous commitment to dealing with its past (Rubli, 2013). This is especially the case when we consider continuities with the past demonstrated by former Hutu rebel leaders and Tutsi officials holding political office.

Scratching even slightly beneath the façade of normalcy of life in Burundi, the problems raised by Amnesty International become visible. As Vandeginste (2012, p. 4) explains, since the 2010 elections that effectively reproduced one-party rule in Burundi (the ruling CNDD-FDD of the President now has an overwhelming majority in key institutions), the country has witnessed ‘mounting political tensions and increasingly numerous incidents of criminal as well as politically inspired violence.’ The government does little to hide its disdain for extra-parliamentary opposition parties that formed a coalition in exile after the 2010 elections. The state systematically fails to bring the perpetrators of political violence to justice, turning a blind eye to much of this violence. According to HRW (2012, p. 2), ‘impunity [for political killings] has been particularly striking in cases where the perpetrators are believed to be linked to the security forces or the ruling party.’ Other consequences of impunity include failings in the minimum protection of the population, shrinking democratic space, affronts to press freedom, and a lack of genuine political pluralism.

In essence, present-day Burundi epitomizes Galtung’s (1969) theories, in that, whilst armed conflict has subsided, peace is yet to be attained. Indeed structural violence, inequality, and political killings provide the evidence. Ordinary Burundians frequently claim a lack of confidence in the state, citing corruption and the absence of good governance as major concerns, as well as the threat of further violence that is a consequence of impunity (Ingelaere, 2009). Equally – and especially in the country’s interior – prevailing socioeconomic hardships occupy the minds of the rural poor. It is here in the interior that despite undeniable progress since the cessation of open hostilities, continued marginalization and a culture of impunity are daily reminders of the violence of the past.¹³

TJ is set to be implemented in this context. Whereas the issues raised hint at conditions that impede, promote, or compel TJ in Burundi, it is beyond the scope of this analysis to address the complex intersection of these issues.¹⁴

3. Transitional and transformative justice

Interventions under the banner of TJ have expanded beyond the types of transition to which its origins can be traced. Even a brief glance at the discourse and practice of TJ stakeholders in countries like Burundi reveals that the term is increasingly loosely transplanted to very diverse contexts, generally informed by a western worldview that employs a legalistic lens (Lundy & McGovern, 2008; McEvoy, 2007). In many respects, this deference to the law likely represents the conviction among the international community that the law is ‘one of the safest ways in which to engage with, or intervene, in other countries’ (Lundy & McGovern, 2008, p. 266) as well as the inherent seductiveness of the law (McEvoy, 2007). According to this logic, criminal prosecutions and other institutionalized measures founded on a legal understanding not only satisfy the demands of victims, but provide incontrovertible objectives in the aftermath of violence. Yet, whereas in the past this conviction and its underlying assumptions led to the institutionalization of single mechanisms of TJ in isolation, the effects of these mechanisms and TJ in general are under increased scrutiny, particularly with respect to their impact (Thoms et al., 2010).¹⁵

Far from denying the importance of institutionalized measures or indeed TJ, casting a critical eye would assist in managing expectations particularly when the objectives being sought are not forgone conclusions. With greater ‘humility’ (McEvoy, 2007, p. 425) proponents of TJ may recognize that institutionalized

responses offer one component of a response to widespread violence, not its defining feature, especially where realities on the ground limit the scope of plausible impact. For one, as Mani (2008, p. 255) notes, 'even the fairest trial or the most judicious truth commission remains narrow and limited if the mechanism does not go beyond the handful of individual perpetrators prosecuted and if the victims are not acknowledged and vindicated.' It is here that the limited evidence that we have of the impact of TJ provides a sobering picture (Thoms et al., 2010), especially when set against other evidence pointing to communities feeling detached from processes of TJ (see Lambourne, 2009; Stover & Weinstein, 2004) and mechanisms being overburdened with objectives overzealously conjured by proponents, resulting in 'overpromised, underdelivered' TJ (Bosire, 2006).

In this respect, TJ may be undergoing something of an identity crisis as its traditional mechanisms begin to show their shortcomings when judged against ambitious objectives. The strictures of courtroom procedures and the impossibility of many truth commission mandates limit the scope and capacity of these mechanisms to enhance the rule of law and democracy in the manner usually proclaimed. In her analysis of the various goals of TJ and claims regarding the role of its institutions in promoting political reconciliation, Leebaw (2008, p. 110) suggests that many arguments on behalf of TJ mechanisms fail to appreciate that they 'are extraordinary, temporary, responses to past abuses' and that this 'places them in tension with core principles associated with rule of law.' Equally, evidence of the law being manipulated to serve the interests of particular elites, referred to as 'the subversion of the rule of law, under the guise of law itself' (Lundy & McGovern, 2008, p. 273), will likely increase as the norm of TJ becomes a useful tool for the self-interested motives of political actors (Subotic, 2011). In Burundi, the latter is already apparent, the authorities having skillfully molded a legal framework exploiting international agreements to create a *de facto* amnesty for war crimes and crimes against humanity (see Vandeginste, 2011).

The argument forwarded here is that TJ is vital, but is not a panacea; so while the importance of developments such as the 'justice cascade' and a so-called age of accountability (Sikkink, 2011) is difficult to dispute, the extent to which they have created blind spots on the limitations of TJ and the paradoxical outcomes of seeking justice (Fletcher & Weinstein, 2002) raises a number of legitimate questions. These include whether a focus on individual accountability may obscure a wider focus on dealing with the past, permitting impunity to fester. In this sense, international or internationally sponsored justice still suffers the criticism that it can become 'a *de facto* way of exonerating many of the guilty' (Bass, 2002, p. 300), being 'woefully inadequate to address the collective political ideologies that made such heinous crimes possible' (Subotic, 2011, p. 157). By contrast, reconsidering the dominant approach to TJ may avoid narrow conceptualizations of justice tied to the courtroom and instead recognize that justice is inherently multilayered and multi-complex in countries emerging from violence. This should not dismiss the value of criminal justice, but rather inform our view of other harms that result from violence and those political, social, structural, and economic injustices that are at the root of violence, but are less easily justiciable (Gready, 2005; Lundy & McGovern, 2008; Mani, 2008). It is here that we may begin to better address the roots of violent conflict.

Developing this understanding will require us to dispel the misconception that historical abuses and contemporary injustices are separable phenomena that can be dealt with in isolation from one another. Many contemporary abuses are merely the

outward manifestation of historically grounded problems. Referring to the dilemma of dealing with violence after armed conflict, Mani (2008, pp. 259–260) thus opines that, '[a]lthough this violence is a direct continuity of the violence perpetrated during the conflict, which is the subject matter of TJ, it tends to fall outside TJ's purview.' She continues, 'We must be deeply concerned with how the patterns of violence that emerge during conflict rapidly become endemic and normalized in postconflict society' and 'TJ must speak not only to past patterns [...] but also to the continuation of these violent patterns.' TJ scholars have similarly called for more substance in projects for the delivery of justice (Subotic, 2011), a delinking of narrow questions of accountability for past crimes from broader questions of political transformation (Musila, 2009), and greater openness to the benefits of considering historically separate approaches (e.g., the security and stability paradigm, compared to TJ) as mutually reinforcing (Sharp, 2013). In this sense, theories of transformative justice provide a more comprehensive lens for considering deeply entrenched, systemic problems, and connecting the urge for criminal accountability with the need for social, economic, political, and institutional justice (Eriksson, 2009; Lambourne, 2009).

Taking the current Burundian context as illustrative, we can deepen our understanding of both transitional and transformative justice, providing insight into what can be reasonably expected of TJ in similar contexts. As we have seen, Burundi continues to 'suffer from its inherited history' (Lemarchand, 2006, p. 5), including structures and dynamics that serve modern-day injustices. The manner in which these structures and dynamics affect the country's TJ process provides the point of departure for analyzing the institutional, legal, political, and social landscape in the country, beginning with the effects that wider shortcomings in the rule of law will have upon the TRC.

3.1. *Rule of law in Burundi*

Teitel (2002b, p. 6) warned that the operation of law in times of transition may be inherently paradoxical given that its institutions and rules 'may have buttressed the existence of a repressive regime.' Ten years later, we may wonder whether this warning has been suitably heeded or whether its basic premise has been sufficiently problematized according to different notions of transition. To be sure, in Burundi we find indications that the legal framework of institutions and rules continues to buttress repressive acts, political interests and a prevailing culture of impunity (see HRW, 2012; Vandeginste, 2011).

Evidence that Burundi maintains a system whereby the law becomes complicit in the abuse of human rights (Ni Aoláin & Campbell, 2005), is a little hard to come by. In effect, what we find is an extension of Ni Aoláin and Campbell's (2005) theory concerning TJ in contexts that no longer fit the traditional conception of transition from authoritarianism. Though founded on an examination of the peace process in Northern Ireland, their conceptualization of 'conflicted democracies' provides a sound basis for understanding the existing legal framework and rule of law in Burundi, itself providing excuse for ripping up the proverbial textbook of transitional paradigms. Applying this theory to understand the rule of law in Burundi is not to equate its democracy with that of the UK's, rather the purpose in this section is to use the conceptual framework to better understand how we are to consider the impact on the TRC of the prevailing state of affairs in Burundi.

To this end, in his comprehensive examination of the interplay between domestic and international law, Vandeginste (2011) demonstrates how the prohibition of amnesty for international crimes has been simultaneously circumvented and rhetorically upheld within Burundi's legal framework. Vandeginste (2011) analyzes the factors that facilitate this *de facto* amnesty to show how the law has been historically used as a tool for political expediency in Burundi. As recent examples demonstrate, political expediency also affects the rule of law in present-day criminal cases (HRW, 2012).

We observe Ní Aoláin and Campbell's (2005, p. 189) call to re-focus attention from procedural to substantive conceptions of basic principles of law. Referred to as the 'magic syllogism' whereby states refer to their ratification of treaties as proving their commitment to international principles (Cohen, 2002, p. 108), thereby exploiting the law to gain misplaced 'international respectability' (McEvoy, 2007, p. 417), the situation requires greater attention to a *paper* versus *practice* paradox in Burundi. Indeed, the relative ease with which international commitments have been made by the authorities disguises what appear to be the real motivations for such commitments – that is, legitimacy on the international stage and the benefits that follow (Taylor, 2013b). Yet, just as the flouting of the prohibition against amnesty demonstrates (see Vandeginste, 2011), the lip service being paid to such commitments is pervasive in Burundi.

TJ does not escape this duplicity. After years of negotiations since the first provisions for TJ were agreed to in the 2000 Arusha Agreement and after numerous formal and informal commitments to establish both a TRC and special tribunal, progress continues to stall and commitments are habitually broken. In fact, there is reason to question the level of political will among the elite to genuinely make good on these commitments (Rubli, 2013; Taylor, 2013b; Vandeginste, 2012).

The absence of reference to the special tribunal in the public addresses of the President, is itself indicative, as are the clear contradictions between provisions in the Arusha Agreement and a 2006 Ceasefire Agreement between the government and the last remaining rebel movement on the issue of TJ. According to the latter Principles of the Ceasefire,¹⁶ the TRC is to be renamed by inserting the word 'pardon' into its name, while again no reference is made to a special tribunal. Since the ruling CNDD-FDD in Burundi refused to sign the Arusha Agreement, the ceasefire provisions are likely a better gauge of the real intentions of the incumbent authorities concerning TJ (Taylor, 2013a; Vandeginste, 2008). Recent developments around the draft laws for the TRC seem to confirm this inclination. In fact, a third draft of the law that was delivered to the National Assembly in December 2012 omits any of the recommendations made by civil society and the UN.¹⁷ More damningly, the draft now excludes any reference to the special tribunal or indeed criminal prosecutions. The intentions of the authorities to use the process at least in part as a way to guarantee amnesty for crimes under international law appear to be crystallizing.

Taking these factors together, there is a risk that the TRC may be considered as evidence of the government's commitment to the values of TJ, providing it with a 'veneer of legitimacy' (Snyder & Vinjamuri, 2003/2004, p. 33), but that it may in reality become little more than a symbolic gesture. Indeed if the authorities continue to simultaneously flout these same values outside of the TJ framework, then the formal institutionalization of the TRC may misdirect attention from the equally important need to foster genuine adherence to the rule of law. From a transformative justice perspective, this entails linking the transitional elements of justice to a wider

conceptualization of the term, including ‘structures, institutions and relationships to promote sustainability’ (Lambourne, 2009, p. 34).

A final point to be taken from the observation concerning Burundi’s de facto amnesty is the position of the international community. The priority given to short-term objectives is indicative of the restricted vision applied when seeking to assist countries recovering from violence, Burundi seemingly being no exception. Without a longer term, integrated vision of transformation that includes TJ as but one element, what such policy in effect may yield is a greater likelihood of impunity and recurrence of violence from the failure to address the very causes of that violence (Eriksson, 2009). The absence of insistence upon this more transformative approach, particularly from among the international community (Taylor, 2013b), may undermine the goals and values sought via the TRC. This will provide space for the appearance of democracy and the rule of law, while the very opposite may in fact be the case (Subotic, 2011; Snyder & Vinjamuri, 2003/2004).

The soundness of Burundi’s substantive rule of law and democracy (Ní Aoláin & Campbell, 2005) will present clear challenges to the TRC. Taking one final example, events following the September 2011 Gatumba massacre in which more than 30 people were killed (see HRW, 2011), demonstrates how basic democratic principles can be flouted in Burundi, though still under the guise of democracy and legality. In the immediate aftermath of the massacre, the authorities imposed a ban on reporting with suggestions that persons within the government were implicated in the killings. The Minister of Communication warned that any uncensored reporting of the case would attract a criminal investigation, referring to domestic legal provisions governing the press and limitations to press freedom (HRW, 2011). Such abuse of the law for the benefit of the authorities is common practice, as the questionable conviction of a journalist on terrorism charges¹⁸ and the disputed conviction of a prominent corruption whistle-blower¹⁹ also seem to prove.

Considering Ní Aoláin and Campbell (2005) once more, we may understand the effects of Burundi’s democratic shortfall and deficient rule of law on the proposed TRC. If wider acts of subjugation of the rule of law and the behavior that precipitates such acts are not addressed, the values that underpin mechanisms like the TRC may be rendered nonsensical. Beyond this, since TJ does not operate in a vacuum and is an inherently political process, the TRC will be in effect tasked with shedding light on a past that has unmistakable continuities with the present. As well as giving due attention to the political will and entrenched interests that maintain these structures and dynamics (see below), or what Lambourne (2009) terms ‘political justice,’ the conditions for procedural and substantive adherence to the rule of law before and after the TRC would provide a more conducive environment for effective TJ. Just as important in this regard, would be the potential benefits for the countless ordinary Burundians who have suffered the brunt of state violence and armed conflict but who are unable to rely on the basic operation of the law to safeguard their rights.

3.2. *Independence of state institutions*

Reform of key state institutions is recognized as an important focus area for ensuring transformation in countries emerging from violence (see Bosire, 2006; Lambourne, 2009). According to comparative findings from research into the state of impunity in Guatemala and Serbia,

a piecemeal approach taken in relation to institutions implicated in human rights abuses and the lack of a coherent strategy that relates such reform conceptually and operationally to prosecutions, truth-seeking and reparations, are some of the most criticized aspects of post-conflict responses in these two states.²⁰

And, as Ní Aoláin and Campbell (2005, p. 189) note, TJ shortcomings include ‘an inadequate or absent acknowledgment of the role of [key] institutions in repressive state strategies.’

While important advances have been made in addressing institutional weaknesses in the field of security sector reform, friction still exists when considering these reforms in conjunction with conventional TJ. The immediate need for security and the more long-term needs for justice (Sharp, 2013) often collide, with integrated, comprehensive, and coordinated strategies that serve the objectives of transformation rarely instituted. In contexts like Burundi, where there are identifiable institutional shortcomings, we can examine how addressing these institutional shortcomings in combination with TJ may increase the likelihood that short-term benefits gained through the TRC will be translated into longer term transformation.

Writing on the situation in the country in the pre-Arusha period, Ndikumana (1998, p. 31) identified that a culture of impunity emerged as a consequence of institutional failure, the latter resulting ‘in a divorce between state institutions and the population.’ The upshot, he concludes, of failing to investigate human rights abuses is that, ‘institutions have lost their credibility as national entities as they have failed to protect the interests of the population’ (p. 44). These conclusions remain relevant in present-day Burundi, with numerous incidents in the country’s history for which the population has been unable to obtain justice, including political ‘parodies of justice’ (Lemarchand, 1996, p. 88). Similarly, judicial independence continues to be questionable,²¹ hence key institutions directly related to the proposed mandate of the TRC are often exploited to serve the political capital of those in power. Currently absent is what Lambourne (2009, p. 44) terms ‘political justice,’ calling for state structures and institutions to undergo a similar process of truth-telling and transformation as would be expected from the population at the TRC. The suggestion is that such a process would guarantee that justice encompasses both historical abuses *and* ‘procedural justice in the present,’ as well as ‘future respect for human rights and the rule of law’ (Lambourne, 2009, p. 45).

A number of examples highlight why this transformation is needed in Burundi and what the effects may otherwise be for the proposed TRC.

Deficiencies in the criminal justice system, for example, have clear consequences for society at large. In the final report of the UN Independent Expert on human rights in Burundi in May 2011, the independence and capacity of the judiciary was specifically raised as a critical area where concerted efforts were required by both the Burundian government and the international community. On the back of a string of previous denunciations of the lack of independence, the Independent Expert raised evidence of the transfer of judges to different courts as a reprimand for judgments that displeased influential political actors.²² More recently, the above-mentioned trial of a journalist on terrorism charges was denounced by Reporters Without Borders (2012), who claimed ‘[f]rom the very start, this trial has been conducted like a politically orchestrated travesty.’ On the basis of numerous similar examples, Amnesty International (2012, p. 92) concluded that politicization and a lack of independence are major sources of a lack of confidence in the

criminal justice system among Burundians, the occasional resort to ‘mob justice’ another grave consequence. Likewise, HRW (2012, p. 2) suggests that in many instances there has been ‘at best... cursory investigations’ and in the most sensitive cases the government and judiciary ‘have actively blocked investigations and obstructed the pursuit of justice.’

The initiation of commissions of inquiry is a particular phenomenon in Burundi that undermines the independence of state institutions. Such commissions demonstrate political intent rather than genuine resolve to address the crimes under investigation. The establishment of these commissions has frequently coincided with instances of increased international criticism, the suggestion being that these commissions are used as politicized attempts to appease international concern and deflect scrutiny. For example, less than a week after the Dutch State Secretary for Foreign Affairs delivered a strongly worded statement on impunity in Burundi – the Dutch being one of Burundi’s principal donors²³ – the Burundian authorities announced the establishment of a commission to probe extrajudicial killings.²⁴ The fact that a commission was established with a similar mandate in 2011 and a separate commission was established to probe violence after international criticism of the 2010 elections, both of which have failed to date to publish findings, does little to dispel claims of political posturing. Claims are frequently made that these tactics favor the state and security forces who are often implicated in such violations (Amnesty International, 2012).

The 2011 Gatumba incident referred to earlier provides another illustration of these deficiencies. In contrast to the absence of functionality of previous commissions, the commission of inquiry initiated to investigate this massacre promptly completed its work and paved the way for the criminal prosecution of more than 20 individuals. Allegations of irregularities in the police investigations and the hasty trial process have not been investigated, nor have allegations of government complicity in the massacre or allegations by the principal defendant that high-ranking officials in the government had ordered the killings (HRW, 2012, pp. 55–62). Both the allegations and the failure to investigate them undermine the rights of the victims to impartial justice, but are symptomatic of a wider system where basic standards of due process and the rule of law are regularly circumvented. Evidence of extrajudicial killings in the form of politically motivated killings by the state security forces further illustrate the basic lack of independence and functioning rule of law (IRIN, 2012). Since such violations are met with impunity, the threat of criminal prosecution has little deterrent effect and the development of strong institutions is effectively stunted. That Burundians claim to have little trust in these institutions is, therefore, easily understandable.²⁵

Without appropriate safeguards, this situation indicates that the TRC’s independence may also be subject to abuse. But even if in practice this does not prove to be the case, the lack of independence of state institutions and popular awareness of this fact may lead the population to the perception that the TRC lacks independence. The highly charged political nature of much of the information that the TRC will be tasked to handle will require neutrality of the institution, but also the support of independent institutions of the state, both in the political and security spheres. Moreover, in order for the values that the TRC will seek to uphold to be embedded, state institutions must be in a position to consolidate the positive gains that may be had from the TRC with respect to human rights, rule of law, peace,

and security. Prevailing deficiencies in institutional and structural reform jeopardize this crucial task.

Uvin (2010) has, therefore, suggested that the very system that Burundi's institutions constitute is the heart of the country's problems. He argues that the lack of independence of state institutions can be explained by what is an extension of the *paper* versus *practice* principle, suggested earlier. Forced to institute democratic principles that had little time to develop organically in combination with institutions that were essentially cultivated from the outside, Uvin (2010, p. 175) argues that state institutions become part of the struggle for control that is fuelled by impunity and that creates an environment for abuse:

In states where impunity reigned, for both political crimes and daily abuses; where corruption and clientelism were the norm; where aid and trade resources could be monopolised by those who were in the right place at the right time; and where a viable private sector economy hardly exists outside of farming and small-scale informal jobs, competition for control over the state was bound to become increasingly violent and divisive.

With few robust oversight mechanisms, little separation of state powers and a stunted democratic mindset, the independence and impartiality of state institutions including the eventual TRC are the causalities in Burundi.

Two final points must be made. First, the absence of vetting procedures in the main political and security institutions represents a troubling feature of Burundi's current status quo. Political and stability considerations notwithstanding, we find a situation wherein suspected perpetrators from former rebel movements and security forces have been integrated into the strata of state institutions according to their former rank or position, essentially re-creating former power structures. For the proposed TRC to avoid the credibility problems that these institutions suffer, a transparent appointment process must be established that utilizes clear criteria to reject anyone implicated in human rights abuses from sitting as a commissioner. Moreover, the TRC must be – and be seen to be – an independent commission, free from political influence so as to ensure that it exercises its mandate without restriction.

The second point concerns resources and capacities. While direct evidence on these aspects (budgets, etc.) is beyond the scope here, it is important to recognize that weaknesses in human and financial resources, as well as the organizational and individual capacities of the institutions, will necessarily affect their ability to deal with crimes, both past and present. There is much anecdotal evidence to indicate such weaknesses, as well as reasonable assumptions that can be drawn in a country struggling to recover from a recent civil war and which derives a significant percentage of its national budget from foreign aid. Largely overlooked in much TJ discourse, these shortcomings must be considered since without sufficient resources and capacities the TRC will be unable to fulfill its mandate.

3.3. *Political will and entrenched interests*

'Cinq années, zéro œuvres' (*Five years, zero works*) is how progress from 2005 to 2010 under the CNDD-FDD is judged according to some Burundians.²⁶ Satirizing the 2012 slogan of the government-led independence festivities reproduced on posters, bumper-stickers, and t-shirts proclaiming '50 années d'œuvres' (*50 years of works*), dissatisfaction with the political elite's efforts to bring tangible progress to

the country is clear. That this dissatisfaction of the Hutu-dominated former rebel movement was expressed equally by former (Hutu) supporters of the CNDD-FDD and Tutsi critics is an indication of the complexity of the question of political will in Burundi. Just as the local communities in the country's interior that feel betrayed by the rebels-turned-politicians who once claimed to fight on behalf of the Hutu people but now appear to do little to improve their situation,²⁷ we find that political will to deal with the past, tackle impunity and dismantle the structures that enable(d) violence is essential for genuine transformative justice.

Often referred to as a fundamental requirement for dealing with historical abuses, political will is difficult to measure. Of course, in the most straightforward cases it will be 'weakened if those holding state power carry responsibility for past crimes' (Impunity Watch, 2007, p. 55), but the situation in Burundi is infinitely more complex. A particular indication of the level of political will is the presence of 'entrenched interests,' referring to persons or groups in positions of influence with a vested interest in the maintenance of impunity.

In this respect, Subotic (2011, p. 157) argues that individual accountability will not address the 'political ideologies' that underpin gross human rights violations. She suggests that often the enthusiastic support for prosecutions by political elites is grounded in a desire to avoid prosecution rather than a genuine belief in justice. Snyder and Vinjamuri (2003/2004) refer to the potential unintended consequences of TJ in states with weak institutions as providing an appearance of legitimacy that conceals the actual shunning of the rule of law. In Burundi, shortcomings in the rule of law and in the independence of key institutions intersect with a defective political will for transitional and transformative justice, meaning that the latter are 'being held hostage to the political and personal agendas of those with power' (Musila, 2009, p. 459). In effect, the prevailing context supports Bosire's (2006, pp. 91–92) conclusions about TJ in Sub-Saharan Africa concerning the trend to 'engage in the rhetoric' of mechanisms of justice and reconciliation in a way that is 'an embrace of the currency of accountability and human rights' but not in good faith, 'much like the inconsequential ratification of various international human rights instruments.'

Though the situation is indeed more complex in Burundi than the simple lack of political will for TJ, the simple fact that many of the political elite are implicated in human rights violations, either as former rebels or as remnants of former Tutsi hegemony, constitutes a potential hindrance to any process. The proposed TRC would unquestionably impinge on the longstanding impunity of these elites hence the threat of being called to account must, at least partially, influence the will of these actors for such a process of truth and justice. But beyond this interpretation – one which is commonly cited in the Burundian case – political will is rarely so monolithic. For example, Bell (2009, p. 25) observes that TJ mechanisms become sites for a battle to control the transition, since this control 'can enable victory in the metaconflict – the conflict about what the conflict is about.' Given that TJ will inevitably pass judgment not only on individuals, but also on the wider ideological, institutional, and societal responsibilities for the conflict (Bell, 2009, p. 25), political will in Burundi is tied to control of the narrative of the past and to interpretations that manufacture legitimacy in the present. The first arena for this battle will be the TRC, since its proposed mandate includes a writing of the entire history of Burundi from independence to 2008. This objective holds sizeable potential for political abuse especially since without any real transformation, former conflict ideologies have at least partially been transformed into political manifestos.

For this reason Vandeginste (2012, p. 6) asks, ‘will CNDD-FDD use the TRC process (and possibly subsequent criminal trials) to eliminate its coalition partner, UPRONA, and ‘finally’ take revenge for the overthrow of President Ndadaye in 1993?’ Such questions are becoming ever more important in Burundi. Whereas ethnicity is no longer central to human rights abuses, opposing ethnic collective memories of watershed moments in the country’s history, such as the assassination of Ndadaye, may well be brought into sharper focus when digging into the past, especially when spoken in the same breath as ‘genocide.’ Once again, this evokes the importance for political actors of controlling any dealing with the past if they are to control the narrative of these events. As Rubli (2011) notes, these narratives will become ‘instruments of political struggles’ for legitimizing current political positions, which should be understood in a context where the ruling CNDD-FDD not only consolidated its control over the state after 2010, but also where current indications suggest that this position will only be bolstered after the 2015 elections. Should the CNDD-FDD once again claim victory it will have free reign to align TJ with its former conflict ideology. Here, we observe the potentially dangerous consequences of pursuing TJ in the absence of transformation of the entrenched interests that exist as tangible continuities with the past.

Questionable political will and the presence of entrenched interests are the remnants of a violent conflict and overnight democracy that saw the sudden switch of warring factions into legitimized political parties. Just as the tendency to employ civil war tactics during the elections – mobilizing youth militias, political killings, and persecution – or the ‘pratiques du maquis’ (Nindorera, 2006, p. 27) demonstrate, old habits die hard in Burundi. Increasing authoritarianism, shrinking political space, extrajudicial killings, and the institutionalization of a system that maintains impunity are also carry-overs from this past system of abuse. With each step back towards authoritarianism and with each new indication that TJ will be ‘instrumentalized’ (Taylor, 2013b), the more the agreements reached at Arusha appear only to have temporarily suspended the human rights abuses and the more the so-called ‘Spirit of Arusha’ seems to have decayed over time, rewarding opportunism (Daley, 2007) with political posts rather than addressing the roots of the violence through justice and reforms. Entrenched interests represent real challenges to the protection of human rights and towards ensuring the non-recurrence of violence in Burundi, while unequal political power and the blurred lines between the party and the state maintain a latent threat of rebellion. In spite of political rhetoric to the contrary, the interests of the wider population are consequently bypassed unless they correspond with those of the elite.

3.4. Societal transformation

In countries that have suffered protracted periods of widespread human rights violations, there will be numerous social and cultural factors affecting TJ. Varying degrees of (un)willingness to engage with justice mechanisms, fear, real or perceived, of the consequences of truth-telling, a lack of knowledge of basic rights, or indeed more practical concerns such as distance or lack of awareness, are just some of the factors relevant to TJ in Burundi (Ingelaere, 2009). Whereas, certain of these factors may be no more than partially attributable to the state, considerations of how they will affect TJ should be integral to any process. As Lambourne (2009) and Eriksson (2009) argue, local ownership and addressing the needs of the local

population must be central when dealing with violent conflict, hence transformative justice is premised upon these principles.

A lack of basic trust in Burundi's major institutions is pervasive, compounded by impunity since independence and prevailing instabilities.²⁸ Burundi's status as one of the most corrupt countries in the world, a fact of which Burundians are acutely aware, confirms the legitimacy of this distrust, as does a history replete with violence perpetrated by the state (at least among the Hutu). To the extent that these sentiments indicate deeper grievances and more profound problems in areas such as political participation that have been the roots of past violence, their exclusion from processes of TJ raises cause for concern, not least for the functioning of any TJ process. In this respect, Burundi represents a clear case that simply ending conflict and establishing institutions is 'insufficient to build confidence in the new regime or to overcome the psychological barriers between people created by experiences of war' (Lambourne, 2009, p. 34). It is here where transformation is also needed, enabling Burundians to see and *feel* a genuine shift away from past practices so that they can begin to (re)gain trust in the state.

However, experiences of war have not only created fractures in the relationship between citizens and state, but also fissures within and between local communities. Just as the citizen's relationship with the state must be addressed, so too must local community relationships and conflict mindsets. A latent ethnic division persists in Burundi, including its centrality to polarized interpretations of the past between Hutu and Tutsi, meaning that collective memories are constructed around different watershed moments in the country's history to which claims of genocide are attached. These memories continue to be important in shaping ethnicity, not least because of multiple (and opposing) claims of victimhood.

For TJ and the proposed TRC the implications are clear. On the one hand, an impartial truth that explains the historical circumstances of the violence and the political responsibilities for the abuses would go a long way to finally dispelling the myth of ethnicity as the root cause of violence and other mistruths about the past. The population has expressed this desire, demanding in national consultations on TJ that history be revisited back to independence.²⁹ But on the other hand, digging into painful memories of violence that form the very basis of collective memories could open a Pandora's box of violent reactions if not done sensitively and impartially. As a previous UNESCO attempt at writing Burundi's history demonstrates,³⁰ a TRC could end up producing a truth that causes ethnic sentiments to re-surface and find violent expression. Once again it will be crucial for any process to be the very embodiment of independence and impartiality, so as to enable popular participation and not entrench or stoke already polarized ethnic identities.

Nonetheless, it would be a mistake to articulate Burundi's conflicts in purely ethnic terms. To do so obscures the underlying structural factors that have been central to violence, as does the dominance of civil and political rights in discussions of justice, effectively foreclosing examinations of the importance of social, economic, and cultural rights. Miller (2008, pp. 266–267) suggests that the 'invisibility' of the latter rights results in the failure 'to recognise the full importance of structural violence, inequality and economic (re)distribution to conflict, its resolution, transition itself and processes of truth or justice.' Should socioeconomic rights similarly fall outside the purview of justice in Burundi, many local experiences of injustice and local desires for justice outside of the typical western worldview approach will go unaddressed. The effect of narrowly focusing TJ only according

to classical institutionalized mechanisms informed by legal understandings would be to disregard local desires, as well as to overlook inequalities that may have been central to violence in the first place. Once again, approached according to a transformative justice lens, the Burundian context requires more than narrow TJ mechanisms. It is here that we can understand the importance of institutions such as the land commission (current problems notwithstanding) and other processes addressing socioeconomic hardships that would accompany or follow-on from the proposed TRC. Given the history of unequal resource distribution in the country, finding ways to extend any positive impact of the TRC through measures that may have a more tangible impact on the daily lives of Burundians could be critical.

Without addressing the specific socioeconomic factors that are at the root of violent conflict, we may wonder about the likelihood that the proposed TRC will be judged as a success at the grassroots (Laplante, 2008). The worst-case scenario in contexts like Burundi would be that ‘by ignoring the deeper roots of conflict, the relationship of inequality to reconciliation and the injustice of maldistribution, TJ mechanisms may actively contribute to new outbreaks of violence’ (Miller, 2008, p. 288). While the eventual consequences of the process cannot be fully foreseen, Burundi’s cycles of violence demonstrate that societal demands for socioeconomic justice hold the same potential to incite violence as violations of civil and political rights. Yet, the current narrow focus of TJ may be preparing an already marginalized population for little or no tangible shift from ‘their pretransition state of deprivation’ (Muvungi, 2009, p. 163), especially if the TRC is instituted as the end rather than the beginning of a process for dealing with the past and transformation.

4. Conclusion: avoiding inconsequential chatter in Burundi

We have seen how in contexts like Burundi, where a culture of impunity has been entrenched over time and where continuities with the past subvert fundamental rights and institutions in the present, there is more value to recognizing that TJ as an interim process (transitions necessarily being temporary) should form part of a wider approach to transformation. In contexts where the same factors that would potentially undermine TJ also impede wider human rights and the rule of law, measures of TJ should not be conceived or implemented as a way to close the books on the past, disconnected from the present. As Burundi demonstrates, the proposed TRC will not operate in a vacuum, with any positive impact contingent upon numerous interconnected structures and dynamics, many of which are rooted in the past.

This means that giving due attention to transformation of these structures and dynamics may go a long way to avoiding processes such as the proposed TRC being judged as irrelevant by the population. Indeed, when the TRC finally begins to hear Burundians testify, national and international policy-makers, donors, and practitioners should recognize that truth-telling on its own, let alone a potentially flawed truth-telling process, without changes in the institutional, legal, political, and social landscape of the country may be considered as little more than a cheap buy-off. Particularly with respect to socioeconomic justice and trust in the basic operation of state institutions, words are unlikely to be enough when they are not accompanied by tangible and visible improvements.³¹

While this conclusion indicates a reconsideration of the approach to TJ in Burundi, a number of measures may nonetheless be taken with respect to the proposed TRC to mitigate some of the problems raised in the analysis.

For a start, the TRC must be an independent institution. As the initiation of commissions of inquiry and the protracted negotiations on TJ demonstrate, the Commission must be free to exercise its mandate without political influence so as to ensure the impartiality of the process and the trust of the population. Excluding political actors from the process of appointing commissioners, utilizing an independent selection panel, and including vetting procedures in the process should be the very foundation of the TRC, with the population involved in the process of nomination of commissioners. Appropriate oversight mechanisms are required, including the involvement of the international community so as to avoid the process being monopolized or degenerating into a dangerous finger-pointing exercise, and to assuage the population's concerns. This means avoiding the government's preference for a purely national commission.

Should they assume their responsibility and fully represent the interests of Burundians at large, civil society organizations can be another important safeguard of the process, challenging arbitrary state action or abuse of process and pressuring the state to guarantee the rights of Burundians. International backing is required to support civil society in this task. International actors including the United Nations should ensure that organizations are safeguarded against censorship or violent suppression in order for them to continue pushing for the procedural and substantive guarantees of the rights of affected communities. International actors should further ensure that the TRC is not appropriated by the ruling authority as a tool for its own goals, impressing international norms on the government to ensure that the TRC is not left to the whim of the authorities. In this respect, the government must be held accountable to the international prohibition of amnesty for war crimes, crimes against humanity, and genocide, making clear that the TRC cannot forestall criminal prosecutions despite the apparent attempt to do so in the latest draft law for the TRC.

After decades of impunity, participation in a genuine truth-telling process must also be guaranteed. This involves the popularization of the process for those unable to directly participate, but also the reasonable prospect of justice, reparations, and non-recurrence of violence in conjunction with truth-telling. The TRC should be seen as the start of a process, not the end, with a clear strategy defined for what will follow afterwards in order to consolidate any positive impact that the TRC may have. Where viable and carefully planned, reparations programs at the individual and collective level are one clear example, especially as they speak to popular demands for redress for socioeconomic injustices. Finally, focused attention is required to the substantive as well as the procedural aspects of a genuine, functioning rule of law in Burundi, including the resolve of political actors to avoid the temptations of self-interest.

The proposed TRC presents a clear opportunity for Burundi to finally begin coming to terms with its past. However, in the current climate there are numerous factors that endanger a genuine process of truth-telling. And even if the latter can be achieved, longer term institutional, legal, political, and societal transformation is required for the TRC process to be judged as more than inconsequential chatter.³²

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Notes

1. See, for example, the statement by the President on the third anniversary of his re-election, affirming his government's commitment: *Presidence de la République du Burundi, Trois ans depuis sa réélection: le Président NKURUNZIZA s'est adressé à la Nation*, 27 août 2013. Available at: <http://www.presidence.bi/spip.php?article4026>. See also, Burundi's Poverty Reduction Strategy Paper in which the government commits to the TRC and a special tribunal: Government of Burundi, Poverty Reduction Strategy Paper II (PRSP II), August 2012. Since the manuscript for this article was submitted, the Burundian National Assembly voted in favour of establishing the TRC on 17 April 2014. This vote was followed by the adoption of the law by the Senate on 28 April 2014. At the time of publication the law is awaiting promulgation by President Nkurunziza.
2. The original agreement to set up a TRC was made at Arusha, Tanzania in 2000 on the signing of the Arusha Peace and Reconciliation Agreement.
3. See, for example, the current discussions on how to apply TJ after the Arab Spring, summarized by Kirsten Fisher at Justice in Conflict, *Distinctly Arab? Questions about Transitional Justice and the Arab Spring (Part II)*, 20 September 2012. Available at: <http://justiceinconflict.org/2012/09/20/distinctly-arab-questions-about-transitional-justice-and-the-arab-spring-part-ii/>.
4. International Criminal Law, for example, has witnessed a number of such moments since 2002, including of course the establishment of the ICC but also a number of landmark decisions that have sought to ensure (at least in the courtroom) that the law reflects the realities of violence experienced by affected communities.
5. For a good overview of the problems of a lack of 'fact-based' discussions of TJ and the deficiencies in our understanding of its effects, see Thoms, Ron, and Paris (2010).
6. For an historical overview of the development of TJ, see Teitel (2002b).
7. Indeed this is a curious development, given the evolution of TJ in the 1980s and 1990s, in particular, as a field interconnected with the theory and practice of democratization. Beyond the need for justice for human rights violations, the field at this time evolved to connect to democracy building, including measures of vetting and lustration that concern the need for institutional reform after violence and human rights abuses (see Teitel, 2003).
8. Whereas Daly (2001, p. 84) states that 'the two principle goals of transformative justice are the related aims of reconciliation and deterrence,' the present analysis finds greater resonance in the analysis of Lambourne (2009) and Gready et al. (2010) that includes a wider range of goals as being necessary for transformation. Nonetheless, for a critique of Lambourne's (2009) approach in particular, see Waldorf (2012).
9. For this examination, see Taylor (2013a).
10. Amnesty International (2012, p. 92).
11. Author interviews, Bujumbura, Burundi, June 2012 and April 2013.
12. UN Security Council, Letter Dated 25 July 1996 from the Secretary-General Addressed to the President of the Security Council, 1996, UN Doc. S/1996/682.
13. During interviews conducted by the author in the community of Kivyuka in April 2011, prevailing socioeconomic hardships and their deep association with past violence were a recurrent theme. It was noted that, 'the manner in which the prevailing hardships were intertwined with the events of the past cannot be ignored, particularly as they concern those factors that lie at the root cause of Burundi's violence including unequal access to resources' (Taylor, 2013a, p. 463).
14. For an insight into these issues, see e.g., Rubli (2013), Taylor (2013b), Vandeginste (2012).

15. See also the November 2010 special issue of the IJTJ titled, 'Transitional Justice on Trial – Evaluating Its Impact'.
16. *Accord de principes de Dar es Salaam en vue de la réalisation de la paix, de la sécurité et de la stabilité durables au Burundi*, Article 1 (3), 22 juin 2006.
17. See République du Burundi, *Rapport du comité technique chargé de la préparation de la mise en place des mécanismes de justice transitionnelle*, octobre 2011; République du Burundi, *Avant projet de loi portant création, mandat, composition, organisation et fonctionnement de la Commission Vérité et Réconciliation*, octobre 2011. Second and third drafts of the law on file with the author.
18. BBC News Online, *Burundi leader Nkurunziza defends Ruvakuki's jailing*, 26 June 2012.
19. Agence France Presse, *Burundi anti-graft activist given five-year jail term*, 25 July 2012.
20. Impunity Watch, *Comparative Aspects of Research Findings from Serbia and Guatemala*, Interim Report, 15 December 2009. On file with the author.
21. See, for example, Human Rights Watch, *Burundi: Universal Periodic Review Submission July 2012*, 10 July 2012; *Rapport de l'expert indépendant sur la situation des droits de l'homme au Burundi*, Fatsah Ouguerouz, 2011, UN Doc. A/HRC/17/50 (31 May 2011).
22. *Rapport de l'expert indépendant sur la situation des droits de l'homme au Burundi*, Fatsah Ouguerouz, 2011, UN Doc. A/HRC/17/50 (31 May 2011).
23. Ministerie van Buitenlandse Zaken, Nieuwsbericht, *Knappen bespreekt mensenrechten en corruptie in Burundi*, 5 June 2012.
24. Agence France Presse, *Burundi commission to probe extra-judicial killings*, 12 June 2012.
25. During interviews conducted by the author in April 2011 and June 2012 in Burundi, this concern was a common theme.
26. This explanation was provided to the author during discussions in Bujumbura describing the mood among the patrons of a number of *cabarets* in the capital.
27. These opinions were expressed to the author during interviews in a community in the Bubanza province in April 2011 and confirm opinions expressed to Lemarchand (2006, p. 4) during his fieldwork, such as the following: 'When [President] Nkurunziza and his men fought in the bush, their fight was legitimate, their promises reassuring. Today we've lost our illusions. We thought they were serious when they attacked corruption, human rights violations, bad governance, ethnicism and tribalism, clientelism and nepotism as a mode of government. We've been duped. We really believed that they wanted to change things and bring order to the exercise of power (*la gestion du pouvoir*). What a disappointment! Since they've come to power they never stopped doing the opposite of what they preached. They are even worse than their predecessors.'
28. This lack of trust and suspicion is widespread in the country, confirmed during numerous interviews and conversations with the author in April 2011 and June 2012 in Burundi.
29. République du Burundi, *Rapport des consultations nationales sur la mise en place des mécanismes de justice de transition au Burundi*, avril 2010.
30. UN Security Council, Letter dated 11 March 2005 from the Secretary-General addressed to the President of the Security Council, 2005, UN Doc. S/2005/158, para. 13–14; Frère Emmanuel Ntakarutimana, Centre Ubuntu, interview with the author, Bujumbura, Burundi, April 2011.
31. UN Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, Pablo de Greiff, 2012, UN Doc. A/HRC/21/46.
32. UN Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, Pablo de Greiff, 2012, UN Doc. A/HRC/21/46, para. 24.

References

- Amnesty International, Annual Report 2012: The State of the World's Human Rights, Index: POL 10/001/2012.
- Bass, G. J. (2002). *Stay the hand of vengeance: The politics of war crimes tribunals*. Princeton, NJ: Princeton University Press.
- Bell, C. (2009). Transitional justice, interdisciplinarity and the state of the 'field' or 'non-field'. *International Journal of Transitional Justice*, 3, 5–27.
- Bosire, L. K. (2006). Overpromised, underdelivered: Transitional justice in Sub-Saharan Africa. *International Journal of Human Rights*, 5, 70–107.
- Cohen, S. (2002). *States of denial: Knowing about atrocities and suffering*. Cambridge: Polity Press.
- Daley, P. (2007). The Burundi peace negotiations: An African experience of peace-making. *Review of African Political Economy*, 34, 333–352.
- Daly, E. (2001). Transformative justice: Charting a path to reconciliation. *International Legal Perspectives*, 12, 73–183.
- Eriksson, A. (2009). A bottom-up approach to transformative justice in Northern Ireland. *International Journal of Transitional Justice*, 3, 301–320.
- Evans, M. (2013, March 24–27). Land, socio-economic rights and transformative justice. Unpublished paper presented at Land Divided: Land and South African Society in 2013, in Comparative Perspective conference, Cape Town, University of Cape Town.
- Fletcher, L. E., & Weinstein, H. M. (2002). Violence and social repair: Rethinking the contribution of justice to reconciliation. *Human Rights Quarterly*, 24, 573–639.
- Galtung, J. (1969). Violence, peace, and peace research. *Journal of Peace Research*, 6, 167–191.
- Gready, P. (2005). Analysis: Reconceptualising transitional justice: Embedded and distanced justice. *Conflict, Security & Development*, 5, 3–21.
- Gready, P., Crawford, G., Boesten, J., & Wilding, P. (2010). Transformative justice: A concept note. Unpublished draft. Retrieved from http://www.wun.ac.uk/sites/default/files/transformative_justice_-_concept_note_web_version.pdf
- Human Rights Watch. (2010). *Burundi: Violence, rights violations mar elections*. Retrieved from <http://www.hrw.org/news/2010/07/01/burundi-violence-rights-violations-mar-elections>
- Human Rights Watch. (2011). *Burundi: Stop menacing the media*. Retrieved from <http://www.hrw.org/news/2011/11/21/burundi-stop-menacing-media>
- Human Rights Watch. (2012). *You will not have peace while you are living: The escalation of political violence in Burundi*. Retrieved from <http://www.hrw.org/reports/2012/05/02/you-will-not-have-peace-while-you-are-living-0>
- Impunity Watch. (2007). *Research Instrument*. Retrieved from [http://www.impunitywatch.org/upload/UserFiles/file/IW%20Research%20Instrument\(1\).pdf](http://www.impunitywatch.org/upload/UserFiles/file/IW%20Research%20Instrument(1).pdf)
- Ingelaere, B. (2009). *Living together again: The expectation of transitional justice in Burundi – A view from below* (Working Paper). Antwerp, Institute of Development Policy and Management, University of Antwerp. Retrieved from <http://www.ua.ac.be/main.aspx?c=.GRALACE&n=58985>
- IRIN. (2012). *Burundi: State still accused of killings, cover-ups*. Retrieved from <http://www.irinnews.org/report/96503/>
- Lambourne, W. (2009). Transitional justice and peacebuilding after mass violence. *International Journal of Transitional Justice*, 3, 28–48.
- Laplante, L. J. (2008). Transitional justice and peace building: Diagnosing and addressing the socioeconomic roots of violence through a human rights framework. *International Journal of Transitional Justice*, 2, 331–355.
- Leebaw, B. A. (2008). The irreconcilable goals of transitional justice. *Human Rights Quarterly*, 30, 95–118.
- Lemarchand, R. (1996). *Burundi: Ethnic conflict and genocide*. New York, NY: Woodrow Wilson Press.
- Lemarchand, R. (2006). *Burundi's endangered transition*, SwissPeace Working Paper FAST Country Risk Profile 3|2006.
- Lundy, P., & McGovern, M. (2008). Whose justice? Rethinking transitional justice form the bottom up *Journal of Law and Society*, 35, 265–292.

- Mani, R. (2008). Editorial. Dilemmas of expanding transitional justice, or forging the nexus between transitional justice and development. *International Journal of Transitional Justice*, 2, 253–265.
- McEvoy, K. (2007). Beyond legalism: Towards a thicker understanding of transitional Justice. *Journal of Law and Society*, 34, 411–440.
- Miller, Z. (2008). Effects of invisibility: In search of the ‘economic’ in transitional justice. *International Journal of Transitional Justice*, 2, 266–291.
- Musila, G. M. (2009). Options for transitional justice in Kenya: Autonomy and the challenge of external prescriptions. *International Journal of Transitional Justice*, 3, 445–464.
- Muvingi, I. (2009). Sitting on powder kegs: Socioeconomic rights in transitional societies. *International Journal of Transitional Justice*, 3, 163–182.
- Ní Aoláin, F., & Campbell, C. (2005). The paradox of transition in conflicted democracies. *Human Rights Quarterly*, 27, 172–213.
- Ndikumana, L. (1998). Institutional failure and ethnic conflicts in burundi. *African Studies Review*, 41, 29–47.
- Nindorera, W. (2006). *D’un mouvement rebelle à un parti politique au Burundi: Le cas du CNDD-FDD*. Paper prepared for the project From Rebel Movements to Political Parties: Reviewing the Role of International Actors, Amsterdam, Netherlands Institute of International Relations Clingendael.
- Reporters Without Borders. (2012, February 15). *Defence rights flouted in terrorism case involving RFI reporter*. Retrieved from <http://en.rsf.org/burundi-defence-rights-flouted-in-15-02-2012,41882.html>
- Rubli, S. (2011). Knowing the truth – What for? The contested politics of transitional justice in Burundi. *Journal für Entwicklungspolitik*, 27, 22–43.
- Rubli, S. (2013). (Re)making the social world: The politics of transitional justice in Burundi. *Africa Spectrum*, 48, 3–24.
- Sharp, D. N. (2013). Beyond the post-conflict checklist: Linking peacebuilding and transitional justice through the lens of critique. *Chicago Journal of International Law*, 14, 165–196.
- Sikkink, K. (2011). *The justice cascade: How human rights prosecutions are changing world politics*. New York, NY: W.W. Norton & Company.
- Snyder, J., & Vinjamuri, L. (2003/2004). Trials and errors: Principle and pragmatism in strategies of international justice. *International Security*, 28, 5–44.
- Stover, E., & Weinstein, H. M. (Eds.). (2004). *My neighbor, my enemy: Justice and community in the aftermath of mass atrocity*. Cambridge: Cambridge University Press.
- Subotic, J. (2011). Expanding the scope of post-conflict justice: Individual, state and societal responsibility for mass atrocity. *Journal of Peace Research*, 48, 157–169.
- Taylor, D. (2013a). Truth under the avocado trees. Local needs and Burundi’s TRC: Whither the truth? *Journal of Eastern African Studies*, 7, 450–470.
- Taylor, D. (2013b). ‘We have no influence’: International discourse and the instrumentalisation of transitional justice in Burundi. *Stability: International Journal of Security and Development*, 2, 47, 1–10.
- Teitel, R. (2002a). Transitional justice in a new eEra. *Fordham International Law Journal*, 26, 893–906.
- Teitel, R. (2002b). *Transitional justice*. Oxford: Oxford University Press.
- Teitel, R. (2003). Transitional justice genealogy. *Harvard Human Rights Journal*, 16, 69–94.
- Thoms, O. N. T., Ron, J., & Paris, R. (2010). State-level effects of transitional justice: What do we know? *International Journal of Transitional Justice*, 4, 329–354.
- Uvin, P. (2010). Structural causes, development cooperation and conflict prevention in Burundi and Rwanda. *Conflict, Security & Development*, 10, 161–179.
- Vandeginste, S. (2008). Immunité provisoire et blocage des négociations entre le gouvernement du Burundi et le Palipehutu-FNL: une analyse juridique. In S. Marysse, F. Reyntjens, S. Vandeginste, & J. Stearns (Eds.), *L’Afrique des Grands lacs: annuaire 2007–2008* (pp. 77–91). Paris: Harmattan.
- Vandeginste, S. (2011). Bypassing the prohibition of amnesty for human rights crimes under international law: Lessons learned from the Burundi peace process. *Netherlands Quarterly of Human Rights*, 29, 189–211.

- Vandeginste, S. (2012). Burundi's truth and reconciliation commission: How to shed light on the past while standing in the dark shadow of politics? *International Journal of Transitional Justice*, 6, 355–365.
- Waldorf, L. (2012). Anticipating the past: Transitional justice and socio-economic wrongs. *Social & Legal Studies*, 21, 171–186.